

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**FORM S-3  
REGISTRATION STATEMENT**  
*UNDER*  
*THE SECURITIES ACT OF 1933*

**BIRD GLOBAL, INC.**  
(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**86-3723155**  
(I.R.S. Employer  
Identification Number)

**392 NE 191st Street #20388  
Miami, Florida 33179  
(866) 205-2442**

(Address, including zip code, and telephone number, including area code of registrant's principal executive offices)

**Shane Torchiana  
Chief Executive Officer  
Bird Global, Inc.  
392 NE 191st Street #20388  
Miami, Florida 33179  
(866) 205-2442**

(Name, address, including zip code, and telephone number, including area code, of agent for service)

*Copies to:*  
**Ryan C. Wilkins, Esq.  
Stradling Yocca Carlson & Rauth, P.C.  
660 Newport Center Drive, Suite 1600  
Newport Beach, California 92660  
(949) 725-4000**

**From time to time after the effective date of this Registration Statement**  
(Approximate date of commencement of proposed sale to the public)

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input checked="" type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
Emerging growth company	<input checked="" type="checkbox"/>		

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

**The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment that specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities**

Act or until this registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

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## EXPLANATORY NOTE

We are filing this registration statement with the Securities and Exchange Commission (the “SEC”) using a “shelf” registration process. Under this “shelf” registration statement, in the future, we may, from time to time, sell any combination of the securities described herein, in one or more offerings, up to a maximum offering price of \$25,000,000.

This registration statement contains two prospectuses:

- a base prospectus, which covers the offering, issuance, and sale by the registrant of up to a maximum aggregate offering price of \$25,000,000 of our Class A common stock, preferred stock, debt securities and/or warrants from time to time in one or more offerings; and
- a prospectus supplement relating to the offer and sale of up to \$13,450,000 of our Class A common stock pursuant to an equity distribution agreement entered into with Canaccord Genuity LLC (“Canaccord”).

The base prospectus immediately follows this explanatory note. The specific terms of any additional securities to be offered pursuant to the base prospectus will be specified in a subsequent prospectus supplement to the base prospectus.

The prospectus supplement immediately follows the base prospectus. The prospectus supplement relates to a new Equity Distribution Agreement we entered into with Canaccord, dated June 23, 2023 (the “Distribution Agreement”). The sale of up to \$13,450,000 of our Class A common stock pursuant to the Distribution Agreement and the prospectus supplement contained in this registration statement are included in the \$25,000,000 of securities that may be offered, issued and sold by us under the base prospectus. Upon termination of the Distribution Agreement, any portion of the \$13,450,000 included in the prospectus supplement that is not sold pursuant to the Distribution Agreement will be available for sale in other offerings pursuant to the base prospectus.

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The information in this prospectus is not complete and may be changed. We may not sell these securities or accept an offer to buy these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities, and it is not soliciting offers to buy these securities in any jurisdiction where such offer or sale is not permitted.

PRELIMINARY PROSPECTUS  
SUBJECT TO COMPLETION, DATED JUNE 23, 2023



**BIRD**

**\$25,000,000**

**Class A Common Stock  
Preferred Stock  
Debt Securities  
Warrants**

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From time to time we may offer and sell up to \$25,000,000 in the aggregate of any combination of the securities described in this prospectus in one or more offerings. We may also offer securities as may be issuable upon conversion, redemption, repurchase, exchange or exercise of any securities registered hereunder, including any applicable anti-dilution provisions.

This prospectus provides a general description of the securities we may offer. Each time we offer and sell securities, we will file a supplement to this prospectus that contains specific information about the offering and the amounts, prices and terms of the securities. We may also authorize one or more free writing prospectuses to be provided to you in connection with these offerings. The prospectus supplement and any related free writing prospectus may also add, update or change information contained in this prospectus. You should carefully read this prospectus, the applicable prospectus supplement and any related free writing prospectus, as well as any documents incorporated by reference, before you invest in any of the securities being offered.

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**This prospectus may not be used to consummate a sale of any securities unless accompanied by a prospectus supplement.**

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We may offer and sell the securities described in this prospectus and any prospectus supplement to or through one or more underwriters, dealers, and agents, or directly to purchasers, or through a combination of these methods, which may be on a continuous or delayed basis. For additional information on the methods of sale, you should refer to the section entitled “*Plan of Distribution*” in this prospectus and in the applicable prospectus supplement. If any agents or underwriters are involved in the sale of any securities with respect to which this prospectus is being delivered, the names of such agents or underwriters and any applicable fees, commissions, discounts or over-allotment options will be set forth in a prospectus supplement. The price to the public of such securities and the net proceeds we expect to receive from such sale will also be set forth in a prospectus supplement.

As of June 22, 2023, the aggregate market value of our outstanding Class A common stock held by non-affiliates, or public float, as calculated pursuant to the rules of the Securities and Exchange Commission, was approximately \$40.4 million, based on 12,872,589 shares of outstanding Class A common stock (including 1,381,398 shares of Class A common stock issuable upon conversion of Class X common stock), of which approximately 2,391,525 shares were held by affiliates, and a price of \$3.85 per share, which was the price at which our Class A common stock was last sold on the New York Stock Exchange on April 24, 2023. We have not offered any securities pursuant to General Instruction I.B.6 of Form S-3 during the prior 12-calendar-month period that ends on and includes the date of this prospectus. Pursuant to General Instruction I.B.6 of Form S-3, in no event will we sell securities registered on this registration statement in a public primary offering with a value exceeding more than one-third of our public float in any 12-month period so long as our public float remains below \$75 million.

Our Class A common stock is traded on the New York Stock Exchange under the symbol “BRDS.” On June 22, 2023, the last reported sale price of our Class A common stock was \$2.20 per share. The applicable prospectus supplement will contain information, where applicable, as to any other listing on the New York Stock Exchange or any securities market or other exchange of the securities, if any, covered by the prospectus supplement.

We are an “emerging growth company” and a “smaller reporting company” as defined under the federal securities laws and, as such, have elected to comply with certain reduced public company reporting requirements. Refer to the section entitled “*Summary—Implications of Being an Emerging Growth Company and Smaller Reporting Company*” in this prospectus for additional information.

**Investing in our securities involves a high degree of risk. You should review carefully the risks and uncertainties described under the heading “*Risk Factors*” on page 5 of this prospectus and in any applicable prospectus**

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supplement and related free writing prospectus we have authorized for use in connection with a specific offering, and under similar headings in the other documents that are incorporated by reference into this prospectus. You should read this entire prospectus carefully before you make your investment decision.

NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OR DISAPPROVED OF THESE SECURITIES OR DETERMINED IF THIS PROSPECTUS IS TRUTHFUL OR COMPLETE. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

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The date of this prospectus is 2023

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## ABOUT THIS PROSPECTUS

This prospectus is a part of a registration statement on Form S-3 we filed with the SEC utilizing a “shelf” registration process. Under this “shelf” registration statement, we may sell any combination of the securities described in this prospectus in one or more offerings up to a total aggregate offering price of \$25,000,000.

This prospectus provides you with a general description of the securities we may offer. Each time we sell securities under this prospectus, we will provide a prospectus supplement that will contain specific information about the terms of the offering. We may also authorize one or more free writing prospectuses to be provided to you that may contain material information relating to these offerings. The prospectus supplement and any related free writing prospectus that we may authorize to be provided to you may also add, update or change information contained in this prospectus, or in any documents that we have incorporated by reference into this prospectus. You should read this prospectus, any applicable prospectus supplement and any related free writing prospectus, together with the information incorporated herein by reference as described under the heading “*Incorporation of Certain Information by Reference*,” before investing in any of the securities offered.

### **THIS PROSPECTUS MAY NOT BE USED TO CONSUMMATE A SALE OF SECURITIES UNLESS IT IS ACCOMPANIED BY A PROSPECTUS SUPPLEMENT.**

Neither we, nor any agent, underwriter or dealer has authorized any person to give any information or to make any representation other than those contained or incorporated by reference in this prospectus, any applicable prospectus supplement or any related free writing prospectus prepared by or on behalf of us or to which we have referred you. This prospectus, any applicable supplement to this prospectus, or any related free writing prospectus do not constitute an offer to sell or the solicitation of an offer to buy any securities other than the registered securities to which they relate, nor do this prospectus, any applicable supplement to this prospectus, or any related free writing prospectus constitute an offer to sell or the solicitation of an offer to buy securities in any jurisdiction to any person to whom it is unlawful to make such offer or solicitation in such jurisdiction.

You should not assume that the information contained in this prospectus, any applicable prospectus supplement or any related free writing prospectus is accurate on any date subsequent to the date set forth on the front of the document or that any information we have incorporated by reference is correct on any date subsequent to the date of the document incorporated by reference, even though this prospectus, any applicable prospectus supplement or any related free writing prospectus is delivered, or securities are sold, on a later date.

This prospectus and the information incorporated herein by reference contain summaries of certain provisions contained in some of the documents described herein, but reference is made to the actual documents for complete information. All of the summaries are qualified in their entirety by the actual documents. Copies of some of the documents referred to herein have been filed, will be filed or will be incorporated by reference as exhibits to the registration statement of which this prospectus is a part, and you may obtain copies of those documents as described below under the heading “*Where You Can Find More Information*.”

## PROSPECTUS SUMMARY

*This summary highlights selected information from this prospectus and does not contain all of the information that you need to consider in making your investment decision. You should carefully read the entire prospectus, the applicable prospectus supplement and any related free writing prospectus, including the risks of investing in our securities discussed under the heading “Risk Factors” on page 5 of this prospectus and contained in the applicable prospectus supplement and any related free writing prospectus, and under similar headings in the other documents that are incorporated by reference into this prospectus. You should also carefully read the information incorporated by reference into this prospectus, including our financial statements and related notes, and the exhibits to the registration statement of which this prospectus is a part, before making your investment decision.*

*Unless the context indicates otherwise, as used in this prospectus, references to “we,” “us,” “our,” “the Company” and “Bird Global” refer to Bird Global, Inc. We own various U.S. federal trademark applications and unregistered trademarks, including our company name. All other trademarks or trade names referred to in this prospectus are the property of their respective owners. Solely for convenience, the trademarks and trade names in this prospectus are referred to without the symbols \* and ™, but such references should not be construed as any indication that their respective owners will not assert, to the fullest extent under applicable law, their rights thereto.*

### Overview

Our mission is to provide environmentally friendly transportation for everyone. We believe in leading the transition to clean, equitable transportation through innovation and technology. In partnership with cities, our proprietary technology and operations are revolutionizing the existing transportation paradigm by making lightweight electric vehicles readily available to rent around the world.

Since our first shared ride in 2017, we have witnessed rapid growth in our vehicle-sharing business. Today, we offer riders an on-demand, affordable, and cleaner alternative for their short-range mobility needs in more than 350 cities, primarily across the United States, Canada, Europe, the Middle East, and Australia. We believe that Bird is uniquely positioned to capture share in this market due to (i) our superior rider experience, which solves many of the traditional mobility pain points, (ii) sustainability being core to our mission and business model, (iii) our advanced hardware and software capabilities, (iv) our adaptive operating model, including our experience operating both through in-house teams and through our mutually beneficial Fleet Manager program, (v) our record of building successful city partnerships by focusing on city needs, and (vi) our strong positive year-round unit economics.

We are witnessing an increased adoption of environmentally conscious transportation alternatives by consumers around the world. We are continuing to work with cities to increase micromobility access and infrastructure investments to ensure that the shift to sustainable urban transportation continues.

Our core vehicle-sharing business and operations (“Sharing”) provide riders with on-demand access to our vehicles (e-scooters and e-bikes), enabling them to locate, unlock, and pay for rides through our mobile application (the “Bird App”). We generate revenue from trips taken on our shared vehicles. For a single ride, riders typically pay a fixed unlock fee to access the vehicle in addition to a market-level, per-minute price for each minute the vehicle is in use. We generate the substantial majority of our revenue from our Sharing business.

Local in-market operations for our Sharing business are either managed with the support of a network of local logistic providers (“Fleet Managers”) or through our in-house teams (“In-House”). Prior to the second quarter of 2020, substantially all of our in-market operations were conducted In-House. After temporarily pausing operations at the onset of COVID-19 in March 2020, we rapidly shifted to the Fleet Manager operating model as a way to quickly relaunch and provide safe and socially distanced transportation options for our global city partners. While we continue to operate certain of our operations primarily under our Fleet Manager operating model to expand into new markets and positively impact year-round unit economics, segments of our business have successfully operated in-house since inception, proving it is a viable and profitable operating model in select cities.

Fleet Managers typically manage logistics for fleets of 100 or more Bird-owned vehicles in their local markets, driving meaningful scale as we expand into small to mid-sized cities. With the support of our central operations team and advanced technology platform, Fleet Managers manage the day-to-day logistics responsibilities required for proper fleet management, including deploying, repairing, relocating, and charging our vehicles. Through a revenue share model, Fleet Managers make money on rides taken on the vehicles in their care, creating built-in economic incentives to ensure these vehicles are properly maintained, and strategically placed to align with local demand. There are no upfront fees to us associated with becoming a Fleet Manager, and Fleet Managers typically utilize existing tools and resources to manage their fleet. As such, the Fleet Manager program provides economic advancement opportunities to local businesses.

To scale our mission to a greater population, we offer a white labeled version of our products and technology (“Bird Platform”). Bird Platform partners purchase and hold title to fleets of our vehicles to operate in their local markets.

We also sell our vehicles for personal use (“Product Sales”). Our Product Sales business consists primarily of vehicle sales to retail customers. We sell several Bird vehicle models through select retail and wholesale channels. We also recognize sales of our vehicles to our Platform partners as Product Sales. In May 2022, we announced our decision to discontinue our Product Sales portfolio offering, simplify our business model and realign our resources to prioritize Sharing operations within our existing regions. We expect to sell our remaining inventory by the end of fiscal 2023.



## Corporate Information

We were incorporated under the laws of the State of Delaware on May 4, 2021 as a wholly owned subsidiary of Bird Rides, Inc. (“Bird Rides”) for the purpose of entering into the Business Combination Agreement, dated as of May 11, 2021, by and among Switchback II Corporation, a Cayman Islands exempted company (“Switchback”), Maverick Merger Sub Inc., a Delaware corporation and a direct wholly owned subsidiary of Switchback (“Merger Sub”), Bird Rides, and us. Switchback was formed on October 7, 2020 for the purpose of effecting a merger, amalgamation, share exchange, asset acquisition, share purchase, reorganization, or similar business combination involving Switchback and one or more businesses. On November 3, 2021, we merged with and into Switchback with us continuing as the surviving entity (the “Domestication Merger”), pursuant to which we became a publicly traded company. On November 4, 2021, Merger Sub merged with and into Bird Rides, with Bird Rides continuing as the surviving entity and as our wholly owned subsidiary (the “Business Combination”).

Our principal executive offices are located at 392 NE 191st Street #20388, Miami, Florida 33179, and our telephone number is (866) 205-2442. Our website address is [www.bird.co](http://www.bird.co). The information contained on, or accessible through, our website is not incorporated by reference into this prospectus, and you should not consider any information contained in, or that can be accessed through, our website as part of this prospectus, or in deciding whether to purchase our securities.

## Implications of Being an Emerging Growth Company and a Smaller Reporting Company

We qualify as an “emerging growth company” as defined in the Jumpstart Our Business Startups Act of 2012 (the “JOBS Act”). For so long as we remain an emerging growth company, we are permitted, and currently intend, to rely on the following provisions of the JOBS Act that contain exceptions from disclosure and other requirements that otherwise are applicable to public companies and file periodic reports with the SEC. These provisions include, but are not limited to:

- being permitted to present only two years of audited financial statements and selected financial data and only two years of related “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in our periodic reports and registration statements, including this prospectus, subject to certain exceptions;
- not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act of 2002, as amended (the “Sarbanes-Oxley Act”);
- reduced disclosure obligations regarding executive compensation in our periodic reports, proxy statements, and registration statements, including in this prospectus;
- not being required to comply with any requirement that may be adopted by the Public Company Accounting Oversight Board (the “PCAOB”) regarding mandatory audit firm rotation or a supplement to the auditor’s report providing additional information about the audit and the financial statements; and
- exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved.

We will remain an emerging growth company until the earliest to occur of:

- December 31, 2026 (the last day of the fiscal year that follows the fifth anniversary of the effectiveness of our Registration Statement on Form S-4 in connection with the Business Combination);
- the last day of the fiscal year in which we have total annual gross revenue of at least \$1.07 billion;
- the date on which we are deemed to be a “large accelerated filer,” as defined in the Exchange Act; and
- the date on which we have issued more than \$1 billion in non-convertible debt over a three-year period.

We have elected to take advantage of certain of the reduced disclosure obligations in this prospectus and may elect to take advantage of other reduced reporting requirements in our future filings with the SEC. As a result, the information that we provide to our securityholders may be different than what you might receive from other public reporting companies in which you hold equity interests.

We have elected to avail ourselves of the provision of the JOBS Act that permits emerging growth companies to take advantage of an extended transition period to comply with new or revised accounting standards applicable to public companies. As a result, we will not be subject to new or revised accounting standards at the same time as other public companies that are not emerging growth companies.

We are also a “smaller reporting company” as defined in the Exchange Act. We may continue to be a smaller reporting company even after we are no longer an emerging growth company. We may take advantage of certain of the scaled disclosures available to smaller reporting companies until the fiscal year following the determination that our voting and non-voting common stock held by non-affiliates is \$250 million or more measured on the last business day of our second fiscal quarter, or our annual revenues are less than \$100 million during the most recently completed fiscal year and our voting and non-voting common stock held by non-affiliates is

\$700 million or more measured on the last business day of our second fiscal quarter. As a result, the information that we provide to our stockholders may be different than you might receive from other public reporting companies in which you hold equity interests.

### **The Securities We May Offer**

We may offer shares of our Class A common stock and preferred stock, various series of debt securities and/or warrants to purchase any of such securities, either individually or in combination, up to a total aggregate offering price of \$25,000,000 from time to time in one or more offerings under this prospectus, together with any applicable prospectus supplement and any related free writing prospectus, at prices and on terms to be determined by market conditions at the time of the relevant offering. This prospectus provides you with a general description of the securities we may offer.

Each time we offer a type or series of securities under this prospectus, we will provide a prospectus supplement that will describe the specific amounts, prices and other important terms of the securities, including, to the extent applicable:

- designation or classification;
- aggregate principal amount or aggregate offering price;
- maturity;
- original issue discount, if any;
- rates and times of payment of interest or dividends, if any;
- redemption, conversion, exchange or sinking fund terms, if any;
- conversion or exchange prices or rates, if any, and, if applicable, any provisions for changes to or adjustments in the conversion or exchange prices or rates and in the securities or other property receivable upon conversion or exchange;
- ranking;
- restrictive covenants, if any;
- voting or other rights, if any; and
- U.S. federal income tax considerations.

The applicable prospectus supplement and any related free writing prospectus that we may authorize to be provided to you may also add, update or change information contained in this prospectus, or in documents we have incorporated by reference. However, no prospectus supplement or free writing prospectus will offer a security that is not registered and described in this prospectus at the time of the effectiveness of the registration statement of which this prospectus is a part.

**This prospectus may not be used to consummate a sale of securities unless it is accompanied by a prospectus supplement.**

We may sell the securities directly to investors or through underwriters, dealers or agents. We, and our underwriters or agents, reserve the right to accept or reject all or part of any proposed purchase of securities. If we do offer securities through underwriters or agents, we will include in the applicable prospectus supplement:

- the names of those underwriters or agents;
- applicable fees, discounts and commissions to be paid to them;
- details regarding over-allotment options, if any; and
- the estimated net proceeds to us.

## RISK FACTORS

Investing in our securities involves a high degree of risk. You should carefully review the risks and uncertainties described under the heading *Risk Factors* contained in the applicable prospectus supplement and any related free writing prospectus, and under similar headings in our Annual Report and Quarterly Report, as updated by any subsequently filed periodic reports and other documents that are incorporated by reference into this prospectus, before deciding whether to purchase any of the securities being registered pursuant to the registration statement of which this prospectus is a part. Each of the risk factors described in the documents referenced above could adversely affect our business, operating results and financial condition, as well as adversely affect the value of an investment in our securities, and the occurrence of any of these risks might cause you to lose all or part of your investment. Additional risks not presently known to us or that we currently believe are immaterial may also significantly impair our business operations.

This prospectus and the documents that are incorporated by reference in this prospectus contain forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those anticipated in these forward-looking statements as a result of certain factors, including the risks and uncertainties mentioned elsewhere in this prospectus. For more information, see *“Cautionary Note Regarding Forward-Looking Statements.”*

## CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus and the documents incorporated by reference herein contain forward-looking statements. These are based on our management's current beliefs, expectations and assumptions about future events, conditions and results and on information currently available to us. Discussions containing these forward-looking statements may be found, among other places, in the sections entitled "*Business*," "*Risk Factors*" and "*Management's Discussion and Analysis of Financial Condition and Results of Operations*" contained in the documents incorporated by reference herein.

Any statements in this prospectus, or incorporated by reference herein, about our expectations, beliefs, plans, objectives, assumptions or future events or performance are not historical facts and are forward-looking statements. Within the meaning of Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Exchange Act these forward-looking statements include statements regarding:

- our ability to evaluate our business and prospects in the new and rapidly changing industry in which we operate;
- our ability to retain existing riders or add new riders;
- our Fleet Managers' ability to maintain vehicle quality or service levels;
- our ability to obtain vehicles that meet our quality specifications in sufficient quantities on commercially reasonable terms;
- our ability to compete effectively with existing competitors and new market entrants in the highly competitive industries in which we operate;
- our ability to enter into and compete in new markets;
- our ability to address actions by governmental authorities to restrict access to our products and services in their localities;
- our ability to address the potential impact of weather and seasonality on our business;
- our ability to secure additional financing;
- our ability to hire and retain key personnel;
- the potential impact of claims, lawsuits, arbitration proceedings, government investigations and other proceedings to which we are regularly subject;
- our ability to cure our New York Stock Exchange ("NYSE") price deficiency and meet the continued listing requirements of the NYSE;
- our expectation regarding the time during which we will be an emerging growth company under the JOBS Act; and
- our ability to maintain proper and effective internal controls.

We caution you that the foregoing list may not contain all of the forward-looking statements made in this prospectus.

In some cases, you can identify forward-looking statements by the words "may," "might," "can," "will," "to be," "could," "would," "should," "expect," "intend," "plan," "objective," "anticipate," "believe," "estimate," "predict," "project," "potential," "likely," "continue" and "ongoing," or the negative of these terms, or other comparable terminology intended to identify statements about the future, although not all forward-looking statements contain these words. These statements involve known and unknown risks, uncertainties and other factors that may cause our actual results, levels of activity, performance or achievements to be materially different from the information expressed or implied by these forward-looking statements.

You should refer to the "*Risk Factors*" section contained in the applicable prospectus supplement and any related free writing prospectus, and under similar headings in the other documents that are incorporated by reference into this prospectus, for a discussion of important factors that may cause our actual results to differ materially from those expressed or implied by our forward-looking statements. Given these risks, uncertainties and other factors, many of which are beyond our control, we cannot assure you that the forward-looking statements in this prospectus will prove to be accurate, and you should not place undue reliance on these forward-looking statements. Furthermore, if our forward-looking statements prove to be inaccurate, the inaccuracy may be material. In light of the significant uncertainties in these forward-looking statements, you should not regard these statements as a representation or warranty by us or any other person that we will achieve our objectives and plans in any specified time frame, or at all.

Except as required by law, we assume no obligation to update these forward-looking statements publicly, or to revise any forward-looking statements to reflect events or developments occurring after the date of this prospectus, even if new information becomes available in the future.

We qualify all of our forward-looking statements by these cautionary statements.

#### **USE OF PROCEEDS**

We will retain broad discretion over the use of the net proceeds from the sale of the securities offered hereby. Except as described in any applicable prospectus supplement or in any free writing prospectuses that we may authorize to be provided to you in connection with a specific offering, we currently intend to use the net proceeds from the sale of the securities offered hereby for working capital and other general corporate purposes. We may also use a portion of the net proceeds to invest in or acquire businesses or technologies that we believe are complementary to our own, although we have no current plans, commitments or agreements with respect to any acquisitions as of the date of this prospectus. We will set forth in the applicable prospectus supplement or free writing prospectus our intended use for the net proceeds received from the sale of any securities sold pursuant to the prospectus supplement or free writing prospectus.

#### **SECURITIES THAT WE MAY OFFER**

This prospectus contains summary descriptions of the securities we may offer from time to time. These summary descriptions are not meant to be complete descriptions of each security. The particular terms of any security will be described in the applicable prospectus supplement. This prospectus provides you with a general description of the securities we may offer. Each time we sell securities described herein, we will provide prospective investors with a supplement to this prospectus that will contain specific information about the terms of that offering, including the specific amounts, prices and terms of the securities offered.

We may sell the securities to or through underwriters, dealers or agents, directly to purchasers or through a combination of any of these methods of sale or as otherwise set forth below under "*Plan of Distribution*." We, as well as any agents acting on our behalf, reserve the sole right to accept and to reject in whole or in part any proposed purchase of securities. Any prospectus supplement will set forth the names of any underwriters, dealers, agents or other entities involved in the sale of securities described in that prospectus supplement and any applicable fee, commission or discount arrangements with them.

## DESCRIPTION OF CAPITAL STOCK

*The following description of our capital stock and certain provisions of our amended and restated certification of incorporation (the "Charter") and our amended and restated bylaws (the "Bylaws"), is not intended to be a complete summary of the rights and preferences of such securities and is qualified in its entirety by reference to the full text of Charter and Bylaws, copies of which have been filed with the SEC. You are encouraged to read the applicable provisions of Delaware law, the Charter and the Bylaws in their entirety for a complete description of the rights and preferences of our securities.*

### Capital Stock

#### *Reverse Stock Split*

On May 18, 2023, at a Special Meeting of Stockholders, our stockholders approved granting our board of directors the authority to exercise its discretion to file a certificate of amendment to the Charter to effect a reverse stock split of our outstanding shares of Class A common stock, par value \$0.0001 per share, and Class X common stock, par value \$0.0001 per share, at a ratio of not less than one-for-ten and not greater than one-for-forty, with the specific ratio to be determined by our board of directors within the range, at any time within one year after stockholder approval is obtained, for the primary purpose of regaining compliance with The New York Stock Exchange's \$1.00 price requirement. At such Special Meeting of Stockholders, our stockholders also approved granting our board of directors the authority to exercise its discretion, at any time within one year after stockholder approval is obtained, to amend the Charter to reduce the number of authorized shares of our capital stock, Class A common stock, Class B common stock, Class X common stock, and preferred stock (but not the authorized shares of Series A preferred stock), in each case, by a corresponding ratio to the reverse stock split if, and only if, the reverse stock split is effected.

On May 18, 2023, our board approved the reverse stock split at a ratio of one-for-twenty-five and we filed a certificate of amendment with the Secretary of State of the State of Delaware to effect the reverse stock split. The reverse stock split and authorized share reduction became effective as of 5:00 p.m. Pacific Time on May 18, 2023.

As a result of the reverse stock split, (i) every twenty-five (25) shares of the Class A common stock were automatically reclassified and converted into one issued and outstanding share of Class A common stock, without any change in par value per share, (ii) every twenty-five (25) shares of the Class X common stock were automatically reclassified and converted into one issued and outstanding share of Class X common stock, without any change in par value per share, and (iii) the number of authorized shares of our capital stock, Class A common stock, Class B common stock, Class X common stock, and preferred stock (but not the authorized shares of Series A preferred stock), were reduced by a corresponding ratio to the reverse stock split. Fractional shares resulting from the reverse stock split were rounded up to the nearest whole share.

Commencing on May 19, 2023, the trading of our Class A common stock continued on The New York Stock Exchange on a reverse stock split-adjusted basis.

#### *Authorized Capitalization*

Our Charter, as amended in connection with the reverse stock split, authorizes the issuance of 46,400,000 shares of capital stock, consisting of four classes: 40,000,000 shares of Class A common stock, par value \$0.0001 per share, 400,000 shares of Class B common stock, par value \$0.0001 per share, 2,000,000 shares of Class X common stock, par value \$0.0001 per share, and 4,000,000 shares of preferred stock, par value \$0.0001 per share.

As of June 22, 2023, we had 11,491,191 shares of our Class A common stock outstanding, no shares of our Class B common stock outstanding, and 1,381,398 shares of our Class X common stock outstanding.

#### *Class A Common Stock*

##### *Voting Rights*

Our Charter provides that, except as otherwise expressly provided by our Charter or as provided by law, the holders of Class A common stock and Class X common stock will at all times vote together as a single class on all matters; provided, however, that except as otherwise required by law, holders of shares of Class A common stock and Class X common stock will not be entitled to vote on any amendment to our Charter that relates solely to the terms of one or more outstanding series of preferred stock if the holders of such affected series are entitled, either separately or together as a class with the holders of one or more other such series, to vote thereon pursuant to our Charter. Except as otherwise expressly provided in our Charter or by applicable law, each holder of Class A common stock will have the right to one vote per share of Class A common stock held of record by such holder.

### *Dividend Rights*

Subject to preferences that may apply to any shares of our preferred stock outstanding at the time, shares of Class A common stock and Class X common stock will be treated equally, identically, and ratably, on a per share basis, with respect to any dividends or distributions as may be declared and paid from time to time by our board out of any assets of our company legally available therefor; provided, however, that in the event a dividend is paid in the form of shares of Class A common stock or Class X common stock (or rights to acquire such shares), then holders of Class A common stock will receive shares of Class A Common Stock (or rights to acquire such shares, as the case may be) and holders of Class X common stock will receive shares of Class X common stock (or rights to acquire such shares, as the case may be), with holders of shares of Class A common stock and Class X common stock receiving, on a per share basis, an identical number of shares of Class A Common Stock or Class X common stock, as applicable.

### *Rights Upon Liquidation, Dissolution, and Winding Up*

Subject to any preferential or other rights of any holders of our preferred stock then outstanding, upon the liquidation, dissolution, or winding up of our company, whether voluntary or involuntary, holders of Class A common stock and Class X common stock will be entitled to receive ratably all assets of our company available for distribution to its stockholders.

### *Other Rights*

The holders of Class A common stock do not have preemptive, subscription, or conversion rights. There are no redemption or sinking fund provisions applicable to the Class A common stock. The rights, preferences, and privileges of holders of shares of Class A common stock will be subject to those of the holders of any shares of preferred stock that we may issue in the future.

### *Preferred Stock*

Our Charter provides that shares of preferred stock may be issued from time to time in one or more series. Our board will be authorized to fix the designation, preferences, and relative, participating, optional, or other special rights, and qualifications, limitations, or restrictions thereof, including without limitation thereof, dividend rights, conversion rights, redemption privileges, and liquidation preferences, of the shares of each such series and to increase or decrease (but not below the number of shares of such series then outstanding) the number of shares of any such series.

The number of authorized shares of preferred stock may also be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the voting power of all the then-outstanding shares of our capital stock entitled to vote thereon.

The purpose of authorizing our board of directors to issue preferred stock and determine its rights and preferences is to eliminate delays associated with a stockholder vote on specific issuances. The issuance of preferred stock, while providing flexibility in connection with possible acquisitions, future financings, and other corporate purposes, could have the effect of making it more difficult for a third party to acquire, or could discourage a third party from seeking to acquire, a majority of our outstanding voting stock. Additionally, the issuance of preferred stock may adversely affect the holders of our Class A common stock by restricting dividends on our Class A common stock, diluting the voting power of our Class A common stock, or subordinating the liquidation rights of our Class A common stock. As a result of these or other factors, the issuance of preferred stock could have an adverse impact on the market price of our Class A common stock.

As of June 22, 2023, we had one share of our preferred stock outstanding.

### **12.0% Convertible Senior Secured Notes due 2027**

On December 30, 2022, we entered into a share purchase agreement (the “Share Purchase Agreement”) with Bird Canada Inc. (“Bird Canada”), certain sellers party thereto (the “BC Sellers”) and certain other parties identified therein, with respect to our acquisition of 100% of the issued and outstanding shares of Bird Canada from the BC Sellers, on the terms and subject to the conditions set forth therein (the “Acquisition”).

On December 30, 2022, in connection with our entry into the Share Purchase Agreement, we entered into a note purchase agreement (the “Note Purchase Agreement”), as issuer, with the several purchasers from time to time party thereto (collectively, the “Note Purchasers”), and U.S. Bank Trust Company, National Association, as collateral agent, with respect to the issuance of our 12.0% Convertible Senior Secured Notes due 2027 (the “Notes”), on the terms and subject to the conditions set forth therein.

On December 30, 2022, at the initial closing of the sale and issuance of the Notes under the Note Purchase Agreement, we issued and sold Notes with an aggregate principal amount of approximately \$30 million to certain Note Purchasers. On January 3, 2023, at the closing of the Acquisition and in consideration for the consummation thereof, we (i) issued to the BC Sellers additional Notes under

the Note Purchase Agreement with an aggregate principal amount of \$26,977,675, (ii) issued to the BC Sellers an aggregate of 728,175 shares of our Class A common stock, and (iii) paid the BC Sellers a nominal amount of cash consideration.

The terms of the Notes are governed by the Note Purchase Agreement with certain material provisions thereof summarized herein. Such summaries are subject to, and qualified in their entirety by reference to, the provisions of the Note Purchase Agreement, the Share Purchase Agreement, and the other agreements referenced therein or contemplated thereby.

#### *Interest and Maturity*

Interest on the Notes is payable semi-annually in cash or, at our option, in kind, in arrears on June 30 and December 30 of each year, commencing on June 30, 2023. The Notes will mature on December 30, 2027.

#### *Optional Conversion*

The holders of the Notes are entitled to convert their Notes into shares of our Class A common stock, at any time, at an initial conversion rate of 138.9371 shares of Class A common stock per \$1,000 principal amount of Notes, which is equivalent to a conversion price of approximately \$7.1975 per share, subject to certain anti-dilution adjustments specified in the Note Purchase Agreement upon the occurrence of certain events, including any issuance of our Class A common stock at a price per share that is below the then-effective conversion price of the Notes.

The conversion rate will be increased in the event that the holder of Notes elects to convert its Notes in connection with the occurrence of certain corporate events specified in the Note Purchase Agreement, up to a maximum of an additional 28.4348 shares per \$1,000 principal amount of Notes.

In certain circumstances, the ability of a holder to convert its Notes will be limited unless we obtain the stockholder approvals required in order to issue shares of our Class A common stock upon conversion thereof.

#### *Optional and Mandatory Redemption*

At any time prior to December 30, 2024, the Notes will be redeemable at our option, in whole at any time or in part from time to time, at a price equal to 100% of the principal amount of the Notes to be redeemed, plus a make-whole premium as set forth in the Note Purchase Agreement, plus accrued and unpaid interest on the principal amount thereof, if any. On or after December 30, 2024, we may redeem the Notes, at our option, in whole at any time or in part from time to time, subject to the payment of the applicable redemption price, together with accrued and unpaid interest, if any. The redemption price also includes a call premium that varies from 7.5% to 2.5% of the principal amount of the Notes to be redeemed, depending on the year of redemption.

In addition, we will be required to offer to repurchase Notes from the holders thereof at the applicable redemption price, together with accrued and unpaid interest, if any, upon the occurrence of certain events, including a significant asset disposition or a change of control.

#### **Dividends**

Declaration and payment of any dividend will be subject to the discretion of our board of directors. The time and amount of dividends will be dependent upon our business prospects, results of operations, financial condition, cash requirements and availability, debt repayment obligations, capital expenditure needs, contractual restrictions, covenants in the agreements governing our current and future indebtedness, industry trends, the provisions of Delaware law affecting the payment of distributions to stockholders, and any other factors our board of directors may consider relevant. We currently intend to retain all available funds and any future earnings to fund the development and growth of our business and to repay indebtedness, and therefore, do not anticipate declaring or paying any cash dividends on our Class A common stock in the foreseeable future.

#### **Certain Anti-Takeover Provisions of Delaware Law and Our Charter and Bylaws**

Our Charter and Bylaws contain provisions that may delay, defer, or discourage another party from acquiring control of us. We expect that these provisions, which are summarized below, will discourage coercive takeover practices or inadequate takeover bids. These provisions are also designed to encourage persons seeking to acquire control of us to first negotiate with our board of directors, which we believe may result in an improvement of the terms of any such acquisition in favor of our stockholders. However, they also give our board of directors the power to discourage acquisitions that some stockholders may favor.



### ***Delaware Anti-Takeover Statute***

We have opted out of Section 203 of the Delaware General Corporation Law (“DGCL”) under our Charter and Bylaws. By operation of Section 203(b)(3) of the DGCL, the restrictions on business combinations (as defined in Section 203(c)(3) of the DGCL) under Section 203 of the DGCL shall continue to apply for twelve (12) months after November 3, 2021, at which time they shall cease to apply by virtue of the election set forth in the immediately preceding sentence (the “203 Opt-Out Effective Date”). From and after the 203 Opt-Out Effective Date, our Charter and Bylaws will have protections similar to those afforded by Section 203 of the DGCL, which will prohibit us from engaging in any business combination with any stockholder for a period of three years following the time that such stockholder (the “interested stockholder”) came to own at least 15% of the outstanding voting stock of our company (the “acquisition”), except if:

- our board approved the acquisition prior to its consummation;
- the interested stockholder owned at least 85% of the outstanding voting stock upon consummation of the acquisition; or
- the business combination is approved by our board, and by a two-thirds vote of the other stockholders in a meeting.

Generally, a “business combination” includes any merger, consolidation, asset or stock sale, or certain other transactions resulting in a financial benefit to the interested stockholder. Subject to certain exceptions, an “interested stockholder” is a person who, together with that person’s affiliates and associates, owns, or within the previous three years owned, 15% or more of our voting stock.

Under certain circumstances, these anti-takeover provisions will make it more difficult for a person who would be an “interested stockholder” to effect various business combinations with us for a three-year period. This may encourage companies interested in acquiring our company to negotiate in advance with our board because the stockholder approval requirement would be avoided if our board approves the acquisition that results in the stockholder becoming an interested stockholder.

This may also have the effect of preventing changes in our board and may make it more difficult to accomplish transactions that stockholders may otherwise deem to be in their best interests.

### ***Written Consent by Stockholders***

Under our Charter and Bylaws, subject to the rights of any series of preferred stock then outstanding, any action required or permitted to be taken by our stockholders (a) may be effected by a consent in writing by such stockholders until the Sunset Date, and (b) following the Sunset Date, must be effected at a duly called annual or special meeting of our stockholders and may not be effected by any consent in writing by such stockholders.

### ***Special Meeting of Stockholders***

Under our Charter and Bylaws, special meetings of our stockholders may be called only by the chairperson of our board, our chief executive officer or president, our board acting pursuant to a resolution adopted by a majority of the total number of directors constituting our board, or, until the Sunset Date, our secretary upon a written request of any holder of record of at least 25% of the voting power of the issued and outstanding shares of our capital stock, and may not be called by any other person or persons. Only such business shall be considered at a special meeting of stockholders as shall have been stated in the notice for such meeting.

### ***Advance Notice Requirements for Stockholder Proposals and Director Nominations***

Under our Bylaws, advance notice of stockholder nominations for the election of directors and of business to be brought by stockholders before any meeting of our stockholders shall be given in the manner and to the extent provided in our Bylaws. These provisions could have the effect of delaying stockholder actions that are favored by the holders of a majority of our outstanding voting securities until the next stockholder meeting.

### ***Authorized but Unissued Shares***

The authorized but unissued shares of our common stock and preferred stock are available for future issuance without stockholder approval, subject to any limitations imposed by NYSE rules. These additional shares may be used for a variety of corporate finance transactions, acquisitions, and employee benefit plans. The existence of authorized but unissued and unreserved common stock and preferred stock could make more difficult or discourage an attempt to obtain control of us by means of a proxy contest, tender offer, merger, or otherwise.

### ***Classified Board of Directors; Director Removal***

The Charter provides that our board of directors is divided into three classes, with the classes as nearly equal in number as possible and each class serving three-year staggered terms. The Charter also provides that, subject to the rights of the holders of any series of preferred stock then outstanding, (a) until the Sunset Date, directors on our board may be removed from office with or without cause, and (b) following the Sunset Date, directors on our board may only be removed for cause, in each case, by the affirmative vote of the

holders of at least a majority of the voting power of then-outstanding shares entitled to vote in the election of directors, voting together as a single class. These provisions may have the effect of deferring, delaying, or discouraging hostile takeovers, or changes in control of us or our management.

#### ***Amendment of Certificate of Incorporation or Bylaws***

The DGCL provides generally that the affirmative vote of a majority of the shares entitled to vote on any matter is required to amend a corporation's certificate of incorporation or bylaws, unless a corporation's certificate of incorporation or bylaws, as the case may be, requires a greater percentage. Our Charter and Bylaws, respectively require the affirmative vote of at least two-thirds of the voting power of the outstanding shares to (a) adopt, amend, or repeal our Bylaws, and (b) amend, alter, repeal, or rescind Article V(B), VI, VII, VIII, IX, X, XI, or XII of our Charter.

#### **Forum Selection**

Our Charter provides that the Court of Chancery of the State of Delaware (or, in the event that the Court of Chancery does not have jurisdiction, the federal district court for the District of Delaware or other state courts of the State of Delaware) and any appellate court thereof, is the sole and exclusive forum for the following types of actions or proceedings under Delaware statutory or common law: (a) any derivative action, suit, or proceeding brought on behalf of our company; (b) any action, suit, or proceeding asserting a claim of breach of a fiduciary duty owed by any director, officer, or stockholder of ours to our company or to our stockholders; (c) any action, suit, or proceeding arising pursuant to any provision of the DGCL or our Bylaws or Charter (as either may be amended from time to time); (d) any action, suit, or proceeding as to which the DGCL confers jurisdiction on the Court of Chancery; and (e) any action, suit, or proceeding asserting a claim against us or any current or former director, officer, or stockholder governed by the internal affairs doctrine. If any action the subject matter of which is within the scope of the immediately preceding sentence is filed in a court other than the courts in the State of Delaware (a "Foreign Action") in the name of any stockholder, such stockholder will be deemed to have consented to (a) the personal jurisdiction of the state and federal courts in the State of Delaware in connection with any action brought in any such court to enforce the provisions of the immediately preceding sentence, and (b) having service of process made upon such stockholder in any such action by service upon such stockholder's counsel in the Foreign Action as agent for such stockholder. Such exclusive forum provision will not apply to suits brought to enforce a duty or liability created by the Securities Act or the Exchange Act, or any other claim for which the federal courts have exclusive jurisdiction.

Unless we consent in writing to the selection of an alternative forum, to the fullest extent permitted by law, the federal district courts of the United States of America will be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act.

#### **Limitations on Liability and Indemnification of Officers and Directors**

Our Charter and Bylaws provide indemnification and advancement of expenses for our directors and officers to the fullest extent permitted by the DGCL. In addition, as permitted by Delaware law, our Charter includes provisions that eliminate the personal liability of our directors for monetary damages resulting from breaches of certain fiduciary duties as a director. The effect of this provision is to restrict our rights and the rights of our stockholders in derivative suits to recover monetary damages against a director for breach of fiduciary duties as a director. These provisions may be held not to be enforceable for violations of the federal securities laws of the United States. We have also entered into indemnification agreements with each of our directors and certain of our officers which provide them with contractual rights to indemnification and expense advancement which are, in some cases, broader than the specific indemnification provisions contained under Delaware law.

#### **Transfer Agent and Registrar**

The transfer agent and registrar for our Class A common stock is Continental Stock Transfer & Trust Company.

#### **Trading Symbol and Market**

Our Class A common stock is listed on the NYSE under the symbol "BRDS".

## DESCRIPTION OF DEBT SECURITIES

We may issue debt securities from time to time, in one or more series, as either senior or subordinated debt or as senior or subordinated convertible debt. While the terms we have summarized below will apply generally to any debt securities that we may offer under this prospectus, we will describe the particular terms of any debt securities that we may offer in more detail in the applicable prospectus supplement and any related free writing prospectus. The terms of any debt securities offered under a prospectus supplement and any related free writing prospectus may differ from the terms described below. Unless the context requires otherwise, whenever we refer to the indenture, we also are referring to any supplemental indentures that specify the terms of a particular series of debt securities.

We will issue the debt securities under the indenture that we will enter into with the trustee named in the indenture. The indenture will be qualified under the Trust Indenture Act of 1939, as amended (the "Trust Indenture Act"). We have filed the form of indenture as an exhibit to the registration statement of which this prospectus is a part, and supplemental indentures and forms of debt securities containing the terms of the debt securities being offered will be filed as exhibits to the registration statement of which this prospectus is a part, or will be incorporated by reference from reports that we file with the SEC.

The following summary of material provisions of the debt securities and the indenture is subject to, and qualified in its entirety by reference to, all of the provisions of the indenture applicable to a particular series of debt securities. We urge you to read the applicable prospectus supplements and any free writing prospectuses related to the debt securities that we may offer under this prospectus, as well as the complete indenture that contains the terms of the debt securities.

### General

The indenture does not limit the amount of debt securities that we may issue. It provides that we may issue debt securities up to the principal amount that we may authorize and may be in any currency or currency unit that we may designate. Except for the limitations on consolidation, merger and sale of all or substantially all of our assets contained in the indenture, the terms of the indenture do not contain any covenants or other provisions designed to give holders of any debt securities protection against changes in our operations, financial condition or transactions involving us.

We may issue the debt securities issued under the indenture as "discount securities," which means they may be sold at a discount below their stated principal amount. These debt securities, as well as other debt securities that are not issued at a discount, may be issued with "original issue discount" ("OID") for U.S. federal income tax purposes because of interest payment and other characteristics or terms of the debt securities. Material U.S. federal income tax considerations applicable to debt securities issued with OID will be described in more detail in any applicable prospectus supplement.

We will describe in the applicable prospectus supplement the terms of the series of debt securities being offered, including:

- the title of the series of debt securities;
- any limit upon the aggregate principal amount that may be issued;
- the maturity date or dates;
- the form of the debt securities of the series;
- the applicability of any guarantees;
- whether or not the debt securities will be secured or unsecured, and the terms of any secured debt;
- whether the debt securities rank as senior debt, senior subordinated debt, subordinated debt or any combination thereof, and the terms of any subordination;
- if the price (expressed as a percentage of the aggregate principal amount thereof) at which such debt securities will be issued is a price other than the principal amount thereof, the portion of the principal amount thereof payable upon declaration of acceleration of the maturity thereof, or if applicable, the portion of the principal amount of such debt securities that is convertible into another security or the method by which any such portion shall be determined;
- the interest rate or rates, which may be fixed or variable, or the method for determining the rate and the date interest will begin to accrue, the dates interest will be payable and the regular record dates for interest payment dates or the method for determining such dates;
- our right, if any, to defer payment of interest and the maximum length of any such deferral period;
- if applicable, the date or dates after which, or the period or periods during which, and the price or prices at which, we may, at our option, redeem the series of debt securities pursuant to any optional or provisional redemption provisions and the terms of those redemption provisions;
- the date or dates, if any, on which, and the price or prices at which we are obligated, pursuant to any mandatory sinking fund or analogous fund provisions or otherwise, to redeem, or at the holder's option to purchase, and the series of debt securities;

- the denominations in which we will issue the series of debt securities, if other than denominations of \$1,000 and any integral multiple thereof;
- any and all terms, if applicable, relating to any auction or remarketing of the debt securities of that series and any security for our obligations with respect to such debt securities and any other terms which may be advisable in connection with the marketing of debt securities of that series;
- whether the debt securities of the series shall be issued in whole or in part in the form of a global security or securities;
- the terms and conditions, if any, upon which such global security or securities may be exchanged in whole or in part for other individual securities;
- the depositary for such global security or securities;
- if applicable, the provisions relating to conversion or exchange of any debt securities of the series and the terms and conditions upon which such debt securities will be so convertible or exchangeable, including the conversion or exchange price, as applicable, or how it will be calculated and may be adjusted, any mandatory or optional (at our option or the holders' option) conversion or exchange features, the applicable conversion or exchange period and the manner of settlement for any conversion or exchange;
- if other than the full principal amount thereof, the portion of the principal amount of debt securities of the series which shall be payable upon declaration of acceleration of the maturity thereof;
- additions to or changes in the covenants applicable to the particular debt securities being issued, including, among others, the consolidation, merger or sale covenant;
- additions to or changes in the events of default with respect to the securities and any change in the right of the trustee or the holders to declare the principal, premium, if any, and interest, if any, with respect to such securities to be due and payable;
- additions to or changes in or deletions of the provisions relating to covenant defeasance and legal defeasance;
- additions to or changes in the provisions relating to satisfaction and discharge of the indenture;
- additions to or changes in the provisions relating to the modification of the indenture both with and without the consent of holders of debt securities issued under the indenture;
- whether interest will be payable in cash or additional debt securities at our or the holders' option and the terms and conditions upon which the election may be made;
- the terms and conditions, if any, upon which we will pay amounts in addition to the stated interest, premium, if any and principal amounts of the debt securities of the series to any holder that is not a "United States person" for federal tax purposes;
- any restrictions on transfer, sale or assignment of the debt securities of the series; and
- any other specific terms, preferences, rights or limitations of, or restrictions on, the debt securities, any other additions or changes in the provisions of the indenture, and any terms that may be required by us or advisable under applicable laws or regulations.

#### **Conversion or Exchange Rights**

We will set forth in the applicable prospectus supplement the terms on which a series of debt securities may be convertible into or exchangeable for our Class A common stock or our other securities. We will include provisions as to settlement upon conversion or exchange and whether conversion or exchange is mandatory, at the option of the holder or at our option. We may include provisions pursuant to which the number of shares of our Class A common stock or our other securities that the holders of the series of debt securities receive would be subject to adjustment.

#### **Consolidation, Merger, or Sale**

Unless we provide otherwise in the prospectus supplement applicable to a particular series of debt securities, the indenture will not contain any covenant that restricts our ability to merge or consolidate, or sell, convey, transfer or otherwise dispose of our assets as an entirety or substantially as an entirety. However, any successor to or acquirer of such assets (other than a subsidiary of ours) must assume all of our obligations under the indenture or the debt securities, as appropriate.

#### **Events of Default Under the Indenture**

Unless we provide otherwise in the prospectus supplement applicable to a particular series of debt securities, the following are events of default under the indenture with respect to any series of debt securities that we may issue:

- if we fail to pay any installment of interest on any series of debt securities, as and when the same shall become due and payable, and such default continues for a period of 90 days; provided, however, that a valid extension of an interest

payment period by us in accordance with the terms of any indenture supplemental thereto shall not constitute a default in the payment of interest for this purpose;

- if we fail to pay the principal of, or premium, if any, on any series of debt securities as and when the same shall become due and payable whether at maturity, upon redemption, by declaration or otherwise, or in any payment required by any sinking or analogous fund established with respect to such series; provided, however, that a valid extension of the maturity of such debt securities in accordance with the terms of any indenture supplemental thereto shall not constitute a default in the payment of principal or premium, if any;
- if we fail to observe or perform any other covenant or agreement contained in the debt securities or the indenture, other than a covenant specifically relating to another series of debt securities, and our failure continues for 90 days after we receive written notice of such failure, requiring the same to be remedied and stating that such is a notice of default thereunder, from the trustee or holders of at least 25% in aggregate principal amount of the outstanding debt securities of the applicable series; and
- if specified events of bankruptcy, insolvency or reorganization occur.

If an event of default with respect to debt securities of any series occurs and is continuing, other than an event of default specified in the last bullet point above, the trustee or the holders of at least 25% in aggregate principal amount of the outstanding debt securities of that series, by notice to us in writing, and to the trustee if notice is given by such holders, may declare the unpaid principal of, premium, if any, and accrued interest, if any, due and payable immediately. If an event of default specified in the last bullet point above occurs with respect to us, the principal amount of and accrued interest, if any, of each issue of debt securities then outstanding shall be due and payable without any notice or other action on the part of the trustee or any holder.

The holders of a majority in principal amount of the outstanding debt securities of an affected series may waive any default or event of default with respect to the series and its consequences, except defaults or events of default regarding payment of principal, premium, if any, or interest, unless we have cured the default or event of default in accordance with the indenture. Any waiver shall cure the default or event of default.

Subject to the terms of the indenture, if an event of default under an indenture shall occur and be continuing, the trustee will be under no obligation to exercise any of its rights or powers under such indenture at the request or direction of any of the holders of the applicable series of debt securities, unless such holders have offered the trustee reasonable indemnity. The holders of a majority in principal amount of the outstanding debt securities of any series will have the right to direct the time, method and place of conducting any proceeding for any remedy available to the trustee, or exercising any trust or power conferred on the trustee, with respect to the debt securities of that series, provided that:

- the direction so given by the holder is not in conflict with any law or the applicable indenture; and
- subject to its duties under the Trust Indenture Act, the trustee need not take any action that might involve it in personal liability or might be unduly prejudicial to the holders not involved in the proceeding.

A holder of the debt securities of any series will have the right to institute a proceeding under the indenture or to appoint a receiver or trustee, or to seek other remedies only if:

- the holder has given written notice to the trustee of a continuing event of default with respect to that series;
- the holders of at least 25% in aggregate principal amount of the outstanding debt securities of that series have made written request;
- such holders have offered to the trustee indemnity satisfactory to it against the costs, expenses and liabilities to be incurred by the trustee in compliance with the request; and
- the trustee does not institute the proceeding, and does not receive from the holders of a majority in aggregate principal amount of the outstanding debt securities of that series other conflicting directions within 90 days after the notice, request and offer.

These limitations do not apply to a suit instituted by a holder of debt securities if we default in the payment of the principal, premium, if any, or interest on, the debt securities.

We will periodically file statements with the trustee regarding our compliance with specified covenants in the indenture.

#### **Modification of Indenture; Waiver**

We and the trustee may change an indenture without the consent of any holders with respect to specific matters:

- to cure any ambiguity, defect or inconsistency in the indenture or in the debt securities of any series;
- to comply with the provisions described above under “*Description of Debt Securities—Consolidation, Merger or Sale*”;
- to provide for uncertificated debt securities in addition to or in place of certificated debt securities;

- to add to our covenants, restrictions, conditions or provisions such new covenants, restrictions, conditions or provisions for the benefit of the holders of all or any series of debt securities, to make the occurrence, or the occurrence and the continuance, of a default in any such additional covenants, restrictions, conditions or provisions an event of default or to surrender any right or power conferred upon us in the indenture;
- to add to, delete from or revise the conditions, limitations, and restrictions on the authorized amount, terms, or purposes of issue, authentication and delivery of debt securities, as set forth in the indenture;
- to make any change that does not adversely affect the interests of any holder of debt securities of any series in any material respect;
- to provide for the issuance of and establish the form and terms and conditions of the debt securities of any series as provided above under “Description of Debt Securities—General” to establish the form of any certifications required to be furnished pursuant to the terms of the indenture or any series of debt securities, or to add to the rights of the holders of any series of debt securities;
- to evidence and provide for the acceptance of appointment under any indenture by a successor trustee; or
- to comply with any requirements of the SEC in connection with the qualification of any indenture under the Trust Indenture Act.

In addition, under the indenture, the rights of holders of a series of debt securities may be changed by us and the trustee with the written consent of the holders of at least a majority in aggregate principal amount of the outstanding debt securities of each series that is affected. However, unless we provide otherwise in the prospectus supplement applicable to a particular series of debt securities, we and the trustee may make the following changes only with the consent of each holder of any outstanding debt securities affected:

- extending the fixed maturity of any debt securities of any series;
- reducing the principal amount, reducing the rate of or extending the time of payment of interest, or reducing any premium payable upon the redemption of any series of any debt securities; or
- reducing the percentage of debt securities, the holders of which are required to consent to any amendment, supplement, modification or waiver.

### **Discharge**

Each indenture provides that we can elect to be discharged from our obligations with respect to one or more series of debt securities, except for specified obligations, including obligations to:

- provide for payment;
- register the transfer or exchange of debt securities of the series;
- replace stolen, lost or mutilated debt securities of the series;
- pay principal of and premium and interest on any debt securities of the series;
- maintain paying agencies;
- hold monies for payment in trust;
- recover excess money held by the trustee;
- compensate and indemnify the trustee; and
- appoint any successor trustee.

In order to exercise our rights to be discharged, we must deposit with the trustee money or government obligations sufficient to pay all the principal of, any premium, if any, and interest on, the debt securities of the series on the dates payments are due.

### **Form, Exchange and Transfer**

We will issue the debt securities of each series only in fully registered form without coupons and, unless we provide otherwise in the applicable prospectus supplement, in denominations of \$1,000 and any integral multiple thereof. The indenture provides that we may issue debt securities of a series in temporary or permanent global form and as book-entry securities that will be deposited with, or on behalf of, The Depository Trust Company (“DTC”) or another depository named by us and identified in the applicable prospectus supplement with respect to that series. To the extent the debt securities of a series are issued in global form and as book-entry, a description of terms relating to any book-entry securities will be set forth in the applicable prospectus supplement.

At the option of the holder, subject to the terms of the indenture and the limitations applicable to global securities described in the applicable prospectus supplement, the holder of the debt securities of any series can exchange the debt securities for other debt securities of the same series, in any authorized denomination and of like tenor and aggregate principal amount.

Subject to the terms of the indenture and the limitations applicable to global securities set forth in the applicable prospectus supplement, holders of the debt securities may present the debt securities for exchange or for registration of transfer, duly endorsed or with the form of transfer endorsed thereon duly executed if so required by us or the security registrar, at the office of the security registrar or at the office of any transfer agent designated by us for this purpose. Unless otherwise provided in the debt securities that the holder presents for transfer or exchange, we will impose no service charge for any registration of transfer or exchange, but we may require payment of any taxes or other governmental charges.

We will name in the applicable prospectus supplement the security registrar, and any transfer agent in addition to the security registrar, that we initially designate for any debt securities. We may at any time designate additional transfer agents or rescind the designation of any transfer agent or approve a change in the office through which any transfer agent acts, except that we will be required to maintain a transfer agent in each place of payment for the debt securities of each series.

If we elect to redeem the debt securities of any series, we will not be required to:

- issue, register the transfer of, or exchange any debt securities of that series during a period beginning at the opening of business 15 days before the day of mailing of a notice of redemption of any debt securities that may be selected for redemption and ending at the close of business on the day of the mailing; or
- register the transfer of or exchange any debt securities so selected for redemption, in whole or in part, except the unredeemed portion of any debt securities we are redeeming in part.

#### **Information Concerning the Trustee**

The trustee, other than during the occurrence and continuance of an event of default under an indenture, undertakes to perform only those duties as are specifically set forth in the applicable indenture. Upon an event of default under an indenture, the trustee must use the same degree of care as a prudent person would exercise or use in the conduct of his or her own affairs. Subject to this provision, the trustee is under no obligation to exercise any of the powers given it by the indenture at the request of any holder of debt securities unless it is offered reasonable security and indemnity against the costs, expenses and liabilities that it might incur.

#### **Payment and Paying Agents**

Unless we otherwise indicate in the applicable prospectus supplement, we will make payment of the interest on any debt securities on any interest payment date to the person in whose name the debt securities, or one or more predecessor securities, are registered at the close of business on the regular record date for the interest.

We will pay principal of and any premium and interest on the debt securities of a particular series at the office of the paying agents designated by us, except that unless we otherwise indicate in the applicable prospectus supplement, we will make interest payments by check that we will mail to the holder or by wire transfer to certain holders. Unless we otherwise indicate in the applicable prospectus supplement, we will designate the corporate trust office of the trustee as our sole paying agent for payments with respect to debt securities of each series. We will name in the applicable prospectus supplement any other paying agents that we initially designate for the debt securities of a particular series. We will maintain a paying agent in each place of payment for the debt securities of a particular series.

All money we pay to a paying agent or the trustee for the payment of the principal of or any premium or interest on any debt securities that remains unclaimed at the end of two years after such principal, premium or interest has become due and payable will be repaid to us, and the holder of the debt security thereafter may look only to us for payment thereof.

#### **Governing Law**

The indenture and the debt securities will be governed by and construed in accordance with the internal laws of the State of New York, except to the extent that the Trust Indenture Act is applicable.

## DESCRIPTION OF WARRANTS

The following description, together with the additional information we may include in any applicable prospectus supplement and in any related free writing prospectuses, summarizes the material terms and provisions of the warrants that we may offer under this prospectus, which may consist of warrants to purchase Class A common stock, preferred stock or debt securities and may be issued in one or more series. Warrants may be offered independently or together with Class A common stock, preferred stock or debt securities offered by any prospectus supplement, and may be attached to or separate from those securities. While the terms we have summarized below will apply generally to any warrants that we may offer under this prospectus, we will describe the particular terms of any series of warrants that we may offer in more detail in the applicable prospectus supplement and any related free writing prospectus. The terms of any warrants offered under a prospectus supplement and any related free writing prospectus may differ from the terms described below.

We will file as exhibits to the registration statement of which this prospectus is a part, or will incorporate by reference from reports that we file with the SEC, the form of warrant agreement, if any, including a form of warrant certificate, which describes the terms of the particular series of warrants we are offering. The following summaries of material provisions of the warrants and the warrant agreements are subject to, and qualified in their entirety by reference to, all the provisions of the warrant agreement and warrant certificate applicable to the particular series of warrants that we may offer under this prospectus. We urge you to read the applicable prospectus supplement related to the particular series of warrants that we may offer under this prospectus, as well as any related free writing prospectuses, and the complete warrant agreements and warrant certificates that contain the terms of the warrants.

### General

We will describe in the applicable prospectus supplement the terms relating to a series of warrants being offered, including, to the extent applicable:

- the title of such securities;
- the offering price or prices and aggregate number of warrants offered;
- if applicable, the designation and terms of the securities with which the warrants are issued, and the number of warrants issued with each such security or each principal amount of such security;
- if applicable, the date on and after which the warrants and the related securities will be separately transferable;
- if applicable, the minimum or maximum amount of such warrants which may be exercised at any one time;
- in the case of warrants to purchase debt securities, the principal amount of debt securities purchasable upon exercise of one warrant and the price at which this principal amount of debt securities may be purchased upon such exercise;
- in the case of warrants to purchase Class A common stock or preferred stock, the number of shares of Class A common stock or preferred stock, as the case may be, purchasable upon the exercise of one warrant and the price at which these shares may be purchased upon such exercise;
- the effect of any merger, consolidation, sale or other disposition of our business on the warrant agreements and the warrants;
- the terms of any rights to redeem or call the warrants;
- the terms of any rights to force the exercise of the warrants;
- any provisions for changes to or adjustments in the exercise price or number of securities issuable upon exercise of the warrants;
- the dates on which the right to exercise the warrants will commence and expire;
- the manner in which the warrant agreements and warrants may be modified;
- a discussion of any material U.S. federal income tax consequences of holding or exercising the warrants;
- the terms of the securities issuable upon exercise of the warrants; and
- any other specific terms, preferences, rights or limitations of or restrictions on the warrants.



Before exercising their warrants, holders of warrants will not have any of the rights of holders of the securities purchasable upon such exercise, including:

- in the case of warrants to purchase debt securities, the right to receive payments of principal of, or premium, if any, or interest on, the debt securities purchasable upon exercise or to enforce covenants in the applicable indenture; or
- in the case of warrants to purchase Class A common stock or preferred stock, the right to receive dividends, if any, or payments upon our liquidation, dissolution or winding up or to exercise voting rights, if any.

#### **Exercise of Warrants**

Each warrant will entitle the holder to purchase the securities that we specify in the applicable prospectus supplement at the exercise price that we describe in the applicable prospectus supplement. Unless we otherwise specify in the applicable prospectus supplement, holders of the warrants may exercise the warrants at any time up to the specified time on the expiration date that we set forth in the applicable prospectus supplement. After the close of business on the expiration date, unexercised warrants will become void.

Unless we otherwise specify in the applicable prospectus supplement, holders of the warrants may exercise the warrants by delivering the warrant certificate representing the warrants to be exercised together with specified information and paying the required amount to the warrant agent in immediately available funds, as provided in the applicable prospectus supplement.

Upon receipt of the required payment and the warrant certificate properly completed and duly executed at the corporate trust office of the warrant agent or any other office indicated in the applicable prospectus supplement, we will issue and deliver the securities purchasable upon such exercise. If fewer than all of the warrants represented by the warrant certificate are exercised, then we will issue a new warrant certificate for the remaining amount of warrants. If we so indicate in the applicable prospectus supplement, holders of the warrants may surrender securities as all or part of the exercise price for warrants.

#### **Governing Law**

Unless we provide otherwise in the applicable prospectus supplement, the warrants and warrant agreements, and any claim, controversy or dispute arising under or related to the warrants or warrant agreements, will be governed by and construed in accordance with the laws of the State of New York.

#### **Enforceability of Rights by Holders of Warrants**

Each warrant agent will act solely as our agent under the applicable warrant agreement and will not assume any obligation or relationship of agency or trust with any holder of any warrant. A single bank or trust company may act as warrant agent for more than one issue of warrants. Any holder of a warrant may, without the consent of the related warrant agent or the holder of any other warrant, enforce by appropriate legal action its right to exercise, and receive the securities purchasable upon exercise of, its warrants.

## LEGAL OWNERSHIP OF SECURITIES

We can issue securities in registered form or in the form of one or more global securities. We describe global securities in greater detail below. We refer to those persons who have securities registered in their own names on the books that we or any applicable trustee, depository or warrant agent maintain for this purpose as the “holders” of those securities. These persons are the legal holders of the securities. We refer to those persons who, indirectly through others, own beneficial interests in securities that are not registered in their own names, as “indirect holders” of those securities. As we discuss below, indirect holders are not legal holders, and investors in securities issued in book-entry form or in street name will be indirect holders.

### Book-Entry Holders

We may issue securities in book-entry form only, as we will specify in the applicable prospectus supplement. This means securities may be represented by one or more global securities registered in the name of a financial institution that holds them as depository on behalf of other financial institutions that participate in the depository’s book-entry system. These participating institutions, which are referred to as participants, in turn, hold beneficial interests in the securities on behalf of themselves or their customers.

Only the person in whose name a security is registered is recognized as the holder of that security. Global securities will be registered in the name of the depository or its participants. Consequently, for global securities, we will recognize only the depository as the holder of the securities, and we will make all payments on the securities to the depository. The depository passes along the payments it receives to its participants, which in turn pass the payments along to their customers who are the beneficial owners. The depository and its participants do so under agreements they have made with one another or with their customers; they are not obligated to do so under the terms of the securities.

As a result, investors in a global security will not own securities directly. Instead, they will own beneficial interests in a global security, through a bank, broker or other financial institution that participates in the depository’s book-entry system or holds an interest through a participant. As long as the securities are issued in global form, investors will be indirect holders, and not legal holders, of the securities.

### Street Name Holders

We may terminate a global security or issue securities that are not issued in global form. In these cases, investors may choose to hold their securities in their own names or in “street name.” Securities held by an investor in street name would be registered in the name of a bank, broker or other financial institution that the investor chooses, and the investor would hold only a beneficial interest in those securities through an account he or she maintains at that institution.

For securities held in street name, we or any applicable trustee or depository will recognize only the intermediary banks, brokers and other financial institutions in whose names the securities are registered as the holders of those securities, and we or any such trustee or depository will make all payments on those securities to them. These institutions pass along the payments they receive to their customers who are the beneficial owners, but only because they agree to do so in their customer agreements or because they are legally required to do so. Investors who hold securities in street name will be indirect holders, not legal holders, of those securities.

### Legal Holders

Our obligations, as well as the obligations of any applicable trustee or third party employed by us or a trustee, run only to the legal holders of the securities. We do not have obligations to investors who hold beneficial interests in global securities, in street name or by any other indirect means. This will be the case whether an investor chooses to be an indirect holder of a security or has no choice because we are issuing the securities only in global form.

For example, once we make a payment or give a notice to the holder, we have no further responsibility for the payment or notice even if that holder is required, under agreements with its participants or customers or by law, to pass it along to the indirect holders but does not do so. Similarly, we may want to obtain the approval of the holders to amend an indenture, to relieve us of the consequences of a default or of our obligation to comply with a particular provision of an indenture, or for other purposes. In such an event, we would seek approval only from the holders, and not the indirect holders, of the securities. Whether and how the legal holders contact the indirect holders is up to the legal holders.

### Special Considerations for Indirect Holders

If you hold securities through a bank, broker or other financial institution, either in book-entry form because the securities are represented by one or more global securities or in street name, you should check with your own institution to find out:

- how it handles securities payments and notices;
- whether it imposes fees or charges;
- how it would handle a request for the holders’ consent, if ever required;

- whether and how you can instruct it to send you securities registered in your own name so you can be a holder, if that is permitted in the future;
- how it would exercise rights under the securities if there were a default or other event triggering the need for holders to act to protect their interests; and
- if the securities are in book-entry form, how the depositary's rules and procedures will affect these matters.

### **Global Securities**

A global security is a security that represents one or any other number of individual securities held by a depositary. Generally, all securities represented by the same global securities will have the same terms.

Each security issued in book-entry form will be represented by a global security that we issue to deposit with and register in the name of a financial institution or its nominee that we select. The financial institution that we select for this purpose is called the depositary. Unless we specify otherwise in the applicable prospectus supplement, The Depository Trust Company, New York, New York, known as DTC, will be the depositary for all securities issued in book-entry form.

A global security may not be transferred to or registered in the name of anyone other than the depositary, its nominee or a successor depositary, unless special termination situations arise. We describe those situations below under "*Special Situations When a Global Security Will Be Terminated*." As a result of these arrangements, the depositary, or its nominee, will be the sole registered owner and legal holder of all securities represented by a global security, and investors will be permitted to own only beneficial interests in a global security. Beneficial interests must be held by means of an account with a broker, bank or other financial institution that in turn has an account with the depositary or with another institution that does. Thus, an investor whose security is represented by a global security will not be a legal holder of the security, but only an indirect holder of a beneficial interest in the global security.

If the prospectus supplement for a particular security indicates that the security will be issued as a global security, then the security will be represented by a global security at all times unless and until the global security is terminated. If termination occurs, we may issue the securities through another book-entry clearing system or decide that the securities may no longer be held through any book-entry clearing system.

### **Special Considerations for Global Securities**

As an indirect holder, an investor's rights relating to a global security will be governed by the account rules of the investor's financial institution and of the depositary, as well as general laws relating to securities transfers.

We do not recognize an indirect holder as a holder of securities and instead deal only with the depositary that holds the global security.

If securities are issued only as global securities, an investor should be aware of the following:

- an investor cannot cause the securities to be registered in his or her name, and cannot obtain non-global certificates for his or her interest in the securities, except in the special situations we describe below;
- an investor will be an indirect holder and must look to his or her own bank or broker for payments on the securities and protection of his or her legal rights relating to the securities, as we describe above;
- an investor may not be able to sell interests in the securities to some insurance companies and to other institutions that are required by law to own their securities in non-book-entry form;
- an investor may not be able to pledge his or her interest in the global security in circumstances where certificates representing the securities must be delivered to the lender or other beneficiary of the pledge in order for the pledge to be effective;
- the depositary's policies, which may change from time to time, will govern payments, transfers, exchanges and other matters relating to an investor's interest in the global security;
- we and any applicable trustee have no responsibility for any aspect of the depositary's actions or for its records of ownership interests in the global security, nor will we or any applicable trustee supervise the depositary in any way;
- the depositary may, and we understand that DTC will, require that those who purchase and sell interests in the global security within its book-entry system use immediately available funds, and your broker or bank may require you to do so as well; and
- financial institutions that participate in the depositary's book-entry system, and through which an investor holds its interest in the global security, may also have their own policies affecting payments, notices and other matters relating to the securities.

There may be more than one financial intermediary in the chain of ownership for an investor. We do not monitor and are not responsible for the actions of any of those intermediaries.

### **Special Situations When a Global Security Will Be Terminated**

In a few special situations described below, a global security will terminate and interests in it will be exchanged for physical certificates representing those interests. After that exchange, the choice of whether to hold securities directly or in street name will be up to the investor. Investors must consult their own banks or brokers to find out how to have their interests in securities transferred to their own names, so that they will be direct holders. We have described the rights of holders and street name investors above.

Unless we provide otherwise in the applicable prospectus supplement, a global security will terminate when the following special situations occur:

- if the depositary notifies us that it is unwilling, unable or no longer qualified to continue as depositary for that global security and we do not appoint another institution to act as depositary within 90 days;
- if we notify any applicable trustee that we wish to terminate that global security; or
- if an event of default has occurred with regard to securities represented by that global security and has not been cured or waived.

The applicable prospectus supplement may also list additional situations for terminating a global security that would apply only to the particular series of securities covered by the prospectus supplement. When a global security terminates, the depositary, and neither we nor any applicable trustee, is responsible for deciding the names of the institutions that will be the initial direct holders.

## PLAN OF DISTRIBUTION

We may sell the securities from time to time pursuant to underwritten public offerings, negotiated transactions, block trades or a combination of these methods. We may sell the securities to or through underwriters or dealers, through agents, or directly to one or more purchasers. We may distribute securities from time to time in one or more transactions:

- at a fixed price or prices, which may be changed;
- at market prices prevailing at the time of sale;
- at prices related to such prevailing market prices; or
- at negotiated prices.

We may also sell equity securities covered by this registration statement in an “at-the-market offering” as defined in Rule 415(a)(4) under the Securities Act. Such offering may be made into an existing trading market for such securities in transactions at other than a fixed price on or through the facilities of the NYSE or any other securities exchange or quotation or trading service on which such securities may be listed, quoted or traded at the time of sale. Such at the market offerings, if any, may be conducted by underwriters acting as principal or agent.

A prospectus supplement or supplements, and any related free writing prospectus that we may authorize to be provided to you, will describe the terms of the offering of the securities, including, to the extent applicable:

- the name or names of any underwriters, dealers or agents, if any;
- the purchase price of the securities and the proceeds we will receive from the sale;
- any over-allotment options under which underwriters may purchase additional securities from us;
- any agency fees or underwriting discounts and other items constituting agents’ or underwriters’ compensation;
- any public offering price;
- any discounts or concessions allowed or reallowed or paid to dealers; and
- any securities exchange or market on which the securities may be listed.

Only underwriters named in the prospectus supplement are underwriters of the securities offered by the prospectus supplement.

If underwriters are used in the sale, they will acquire the securities for their own account and may resell the securities from time to time in one or more transactions at a fixed public offering price or at varying prices determined at the time of sale. The obligations of the underwriters to purchase the securities will be subject to the conditions set forth in the applicable underwriting agreement. We may offer the securities to the public through underwriting syndicates represented by managing underwriters or by underwriters without a syndicate. Subject to certain conditions, the underwriters will be obligated to purchase all of the securities offered by the prospectus supplement, other than securities covered by any over-allotment or other option. Any public offering price and any discounts or concessions allowed or reallowed or paid to dealers may change from time to time. We may use underwriters with whom we have a material relationship. We will describe in the prospectus supplement, naming the underwriter, the nature of any such relationship.

We may sell securities directly or through agents we designate from time to time. We will name any agent involved in the offering and sale of securities, and we will describe any commissions we will pay the agent in the prospectus supplement.

We may authorize agents or underwriters to solicit offers by certain types of institutional investors to purchase securities from us at the public offering price set forth in the prospectus supplement pursuant to delayed delivery contracts providing for payment and delivery on a specified date in the future. We will describe the conditions to these contracts and the commissions we must pay for solicitation of these contracts in the prospectus supplement.

We may provide agents and underwriters with indemnification against civil liabilities related to this offering, including liabilities under the Securities Act, or contribution with respect to payments that the agents or underwriters may make with respect to these liabilities. Agents and underwriters may engage in transactions with, or perform services for, us in the ordinary course of business.

All securities we may offer, other than Class A common stock, will be new issues of securities with no established trading market. Any underwriters may make a market in these securities but will not be obligated to do so and may discontinue any market making at any time without notice.

Any underwriter may engage in overallotment, stabilizing transactions, short covering transactions and penalty bids. Overallotment involves sales in excess of the offering size, which create a short position. Stabilizing transactions permit bids to purchase the underlying security so long as the stabilizing bids do not exceed a specified maximum. Short covering transactions involve purchases of the securities in the open market after the distribution is completed to cover short positions. Penalty bids permit the underwriters to reclaim a selling concession from a dealer when the securities originally sold by the dealer are purchased in a stabilizing or covering

transaction to cover short positions. Those activities may cause the price of the securities to be higher than it would otherwise be. If commenced, the underwriters may discontinue any of the activities at any time. These transactions may be effected on any exchange or over-the-counter market or otherwise.

Any underwriters or agents who are qualified market makers on the NYSE may engage in passive market making transactions in the securities on the NYSE in accordance with Rule 103 of Regulation M under the Exchange Act, during the business day prior to the pricing of the offering, before the commencement of offers or sales of the securities. Passive market makers must comply with applicable volume and price limitations and must be identified as passive market makers. In general, a passive market maker must display its bid at a price not in excess of the highest independent bid for such security; if all independent bids are lowered below the passive market maker's bid, however, the passive market maker's bid must then be lowered when certain purchase limits are exceeded. Passive market making may stabilize the market price of the securities at a level above that which might otherwise prevail in the open market and, if commenced, may be discontinued at any time.

## LEGAL MATTERS

Certain legal matters in connection with this offering and the validity of the securities offered by this prospectus, and any supplement thereto, will be passed upon by Stradling Yocca Carlson & Rauth, P.C. Any underwriters for a particular offering of securities will also be advised about the validity of the securities and other legal matters by their own counsel, which will be named in the prospectus supplement for the offering.

## **EXPERTS**

The consolidated financial statements of Bird Global, Inc., appearing in Bird Global, Inc.'s Annual Report (Form 10-K) for the year ended December 31, 2022 have been audited by Ernst & Young LLP, predecessor independent registered public accounting firm, as set forth in their report thereon (which contains an explanatory paragraph describing conditions that raise substantial doubt about the Company's ability to continue as a going concern as described in Note 2 to the consolidated financial statements), included therein, and incorporated herein by reference. Such consolidated financial statements are incorporated herein by reference in reliance upon such report given on the authority of such firm as experts in accounting and auditing.



## WHERE YOU CAN FIND MORE INFORMATION

This prospectus is part of a registration statement we filed with the SEC. This prospectus does not contain all of the information set forth in the registration statement and the exhibits to the registration statement. For further information with respect to us and the securities we are offering under this prospectus, we refer you to the registration statement and the exhibits and schedules filed as a part of the registration statement. You should rely only on the information contained in this prospectus, or incorporated by reference in this prospectus. We have not authorized anyone else to provide you with different information. We are not making an offer of these securities in any state where the offer is not permitted. You should not assume that the information in this prospectus is accurate as of any date other than the date on the front page of this prospectus, regardless of the time of delivery of this prospectus or any sale of the securities offered by this prospectus.

We file annual, quarterly and current reports, proxy statements and other information with the SEC. Our SEC filings are available to the public at the SEC's website at <http://www.sec.gov>.

Copies of certain information filed by us with the SEC are also available on our website at [www.bird.co](http://www.bird.co). The information contained on, or accessible through, our website is not incorporated by reference into this prospectus, and you should not consider any information contained in, or that can be accessed through, our website as part of this prospectus, or in deciding whether to purchase our securities.

### INCORPORATION OF CERTAIN INFORMATION BY REFERENCE

The SEC allows us to incorporate by reference the information and reports we file with it, which means that we can disclose important information to you by referring you to these documents. The information incorporated by reference is an important part of this prospectus, and the information that we file later with the SEC will automatically update and, where applicable, supersede the information already incorporated by reference. We are incorporating by reference the documents listed below, which have already been filed with the SEC (File No. 001-41019), and any future filings we make with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act, including all filings made after the date of the filing of this registration statement, except as to any portion of any future report or document that is not deemed filed under such provisions until we sell all of the securities:

- our Annual Report on Form 10-K for the fiscal year ended December 31, 2022, filed with the SEC on [March 16, 2023](#), as amended by our Amendment No. 1 to Annual Report on Form 10-K/A, filed with the SEC on [May 1, 2023](#);
- our Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2023, filed with the SEC on [May 15, 2023](#);
- our Current Reports on Form 8-K filed with the SEC on [January 3, 2023](#), [March 23, 2023](#), [March 30, 2023](#), [April 6, 2023](#), [April 20, 2023](#), [May 18, 2023](#) and [May 26, 2023](#), to the extent such information is filed and not furnished; and
- the description of our Class A common stock set forth in the registration statement on Form 8-A (File No. 001-41019) registering our Class A common stock under Section 12 of the Exchange Act, which was filed with the SEC on [November 3, 2021](#), including any amendments or reports filed for purposes of updating such description.

Upon request, either orally or in writing, we will provide, without charge, to each person, including any beneficial owner, to whom a copy of this prospectus is delivered, a copy of the documents incorporated by reference into this prospectus but not delivered with the prospectus. You may request a copy of these filings, and any exhibits we have specifically incorporated by reference as an exhibit in this prospectus, at no cost by writing us at Bird Global, Inc., 392 NE 191st Street #20388, Miami, Florida 33179, Attention: Investor Relations, or by calling us at (866) 205-2442.

You may also access these documents, free of charge on the SEC's website at [www.sec.gov](http://www.sec.gov) or on our website at [www.bird.co](http://www.bird.co). Information contained on our website is not incorporated by reference into this prospectus, and you should not consider any information on, or that can be accessed from, our website as part of this prospectus or any accompanying prospectus supplement.

This prospectus is part of a registration statement we filed with the SEC. We have incorporated exhibits into this registration statement. You should read the exhibits carefully for provisions that may be important to you.

You should rely only on the information incorporated by reference or provided in this prospectus or any prospectus supplement. We have not authorized anyone to provide you with different information. We are not making an offer of these securities in any state where the offer is not permitted. You should not assume that the information in this prospectus or in the documents incorporated by reference is accurate as of any date other than the date on the front of this prospectus or those documents.



**B I R D**

**\$25,000,000**

**Class A Common Stock  
Preferred Stock  
Debt Securities  
Warrants**

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**Prospectus**

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**, 2023**

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The information in this prospectus is not complete and may be changed. We may not sell these securities or accept an offer to buy these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities, and it is not soliciting offers to buy these securities in any jurisdiction where such offer or sale is not permitted.

PRELIMINARY PROSPECTUS  
SUBJECT TO COMPLETION, DATED JUNE 23, 2023

**PROSPECTUS SUPPLEMENT  
(To Prospectus Dated , 2023)**



**Up to \$13,450,000**

**Class A Common Stock**

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We entered into an Equity Distribution Agreement (the “Distribution Agreement”) with Canaccord Genuity LLC (“Canaccord”), as sales agent, on June 23, 2023, relating to the sale of shares of our Class A common stock, par value \$0.0001 per share, offered by this prospectus supplement and the accompanying base prospectus. In accordance with the terms of the Distribution Agreement, we may offer and sell shares of our Class A common stock having an aggregate gross sales price of up to \$25,000,000 from time to time through Canaccord. However, due to the offering limitations applicable to us under General Instruction I.B.6. of Form S-3 and our public float as of the date of this prospectus supplement, and in accordance with the terms of the Distribution Agreement, we are offering shares of our Class A common stock having an aggregate gross sales price of up to \$13,450,000 pursuant to this prospectus supplement and the accompanying prospectus. If our public float increases such that we may sell additional amounts under the Distribution Agreement and the registration statement of which this prospectus supplement and the accompanying prospectus are a part, we will file another prospectus supplement prior to making additional sales.

As of the date of this prospectus supplement, the aggregate market value of our outstanding Class A common stock held by non-affiliates, or public float, as calculated pursuant to the rules of the Securities and Exchange Commission, was approximately \$40.4 million, based on 12,872,589 shares of outstanding Class A common stock (including 1,381,398 shares of Class A common stock issuable upon conversion of Class X common stock), of which approximately 2,391,525 shares were held by affiliates, and a price of \$3.85 per share, which was the price at which our Class A common stock was last sold on the New York Stock Exchange on April 24, 2023. As of the date of this prospectus supplement, we have not offered any securities pursuant to General Instruction I.B.6 of Form S-3 during the prior 12-calendar-month period that ends on and includes the date of this prospectus supplement.

Our Class A common stock is listed on the New York Stock Exchange (“NYSE”) under the symbol “BRDS.” On June 22, 2023, the last reported sale price of our Class A common stock on the NYSE was \$2.20 per share.

Sales of our Class A common stock, if any, under this prospectus supplement and the accompanying base prospectus may be made at market prices by any method permitted by law that is deemed an “at the market offering” as defined in Rule 415(a)(4) promulgated under the Securities Act of 1933, as amended (the “Securities Act”). Canaccord is not required to sell any specific dollar amount or number of shares of our Class A common stock, but will act as sales agent using commercially reasonable efforts consistent with its normal trading and sales practices and applicable laws and regulations. There is no arrangement for funds to be received in any escrow, trust, or similar arrangement.

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Canaccord will be entitled to compensation at a commission rate of 3.0% of the gross sales price per share sold under the Distribution Agreement. Refer to the section titled “*Plan of Distribution*” in this prospectus supplement for additional information regarding Canaccord’s compensation.

In connection with the sale of our Class A common stock on our behalf, Canaccord may be deemed to be an “underwriter” within the meaning of the Securities Act and the compensation of Canaccord will be deemed to be underwriting commissions or discounts. We have also agreed to provide indemnification and contribution to Canaccord with respect to certain liabilities, including liabilities under the Securities Act and the Exchange Act of 1934, as amended (the “Exchange Act”).

We are an “emerging growth company” and a “smaller reporting company” as defined under the federal securities laws and, as such, have elected to rely on certain reduced public company reporting requirements. Refer to the section titled “*Prospectus Summary—Implications of Being an Emerging Growth Company and Smaller Reporting Company*” in this prospectus supplement for additional information.

**Investing in our Class A common stock involves numerous risks and uncertainties. You should carefully review the section titled “*Risk Factors*” beginning on page S-7 of this prospectus supplement, and under similar headings in our filings with the Securities and Exchange Commission that are incorporated by reference into this prospectus supplement, to read about factors you should consider before buying our Class A common stock.**

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.**

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## Canaccord Genuity

, 2023

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## ABOUT THIS PROSPECTUS SUPPLEMENT

This document is in two parts. The first part is this prospectus supplement, which describes the specific terms of this offering and adds to and updates information contained in the accompanying base prospectus and documents incorporated by reference herein. The second part is the accompanying base prospectus, which provides more general information about securities we may offer from time to time, some of which does not apply to this offering. Generally, when we refer to this prospectus, we are referring to both parts of this document combined.

This prospectus supplement may add, update or change information contained in the accompanying base prospectus and the documents incorporated by reference into this prospectus. To the extent there is a conflict between the information contained in this prospectus supplement and the information contained in the accompanying base prospectus or any document incorporated by reference therein filed prior to the date of this prospectus supplement, you should rely on the information in this prospectus supplement; provided that if any statement in one of these documents is inconsistent with a statement in another document having a later date—for example, a document incorporated by reference in the accompanying base prospectus—the statement in the document having the later date modifies or supersedes the earlier statement.

Neither we nor Canaccord has authorized anyone to provide any information other than that contained or incorporated by reference into this prospectus supplement, the accompanying base prospectus or in any free writing prospectus prepared by or on behalf of us or to which we have referred you. We and Canaccord take no responsibility for, and can provide no assurance as to the reliability of, any other information that others may give you. This prospectus does not constitute an offer to sell, or a solicitation of an offer to purchase, the securities offered by this prospectus in any jurisdiction to or from any person to whom or from whom it is unlawful to make such offer or solicitation of an offer in such jurisdiction. The information contained in this prospectus, or incorporated by reference herein, is accurate only as of the respective dates thereof, regardless of the time of delivery of this prospectus supplement and the accompanying base prospectus or of any sale of our Class A common stock. It is important for you to read and consider all information contained in this prospectus, including the documents incorporated by reference herein, in making your investment decision. You should also read and consider the information in the documents to which we have referred you in the sections titled “*Where You Can Find More Information*” and “*Incorporation of Certain Information by Reference*” in this prospectus supplement and the accompanying base prospectus.

We are offering to sell, and seeking offers to buy, shares of our Class A common stock only in jurisdictions where offers and sales are permitted. The distribution of this prospectus supplement and the accompanying base prospectus and the offering of the Class A common stock in certain jurisdictions may be restricted by law. Persons outside the United States who come into possession of this prospectus supplement and the accompanying base prospectus must inform themselves about, and observe any restrictions relating to, the offering of the Class A common stock and the distribution of this prospectus supplement and the accompanying base prospectus outside the United States. This prospectus does not constitute, and may not be used in connection with, an offer to sell, or a solicitation of an offer to buy, any securities offered by this prospectus by any person in any jurisdiction in which it is unlawful for such person to make such an offer or solicitation.

Unless the context indicates otherwise, as used in this prospectus supplement, references to “we,” “us,” “our,” “the Company” and “Bird Global” refer to Bird Global, Inc. We own various U.S. federal trademark applications and unregistered trademarks, including our company name. All other trademarks or trade names referred to in this prospectus are the property of their respective owners. Solely for convenience, the trademarks and trade names in this prospectus are referred to without the symbols ® and ™, but such references should not be construed as any indication that their respective owners will not assert, to the fullest extent under applicable law, their rights thereto.

## PROSPECTUS SUPPLEMENT SUMMARY

*This summary highlights selected information contained elsewhere in this prospectus and in the documents we incorporate by reference herein. This summary does not contain all of the information you should consider before investing in our Class A common stock. You should carefully read this entire prospectus before making an investment decision, especially the risks and uncertainties discussed under the section titled “Risk Factors” beginning on page S-7 of this prospectus supplement, in our Annual Report on Form 10-K for the year ended December 31, 2022, and in our Quarterly Report on Form 10-Q for the quarter ended March 31, 2023. You should also carefully read the information incorporated by reference into this prospectus, including our financial statements and related notes, and the exhibits to the registration statement of which this prospectus is a part, before making your investment decision.*

### Overview

Our mission is to provide environmentally friendly transportation for everyone. We believe in leading the transition to clean, equitable transportation through innovation and technology. In partnership with cities, our proprietary technology and operations are revolutionizing the existing transportation paradigm by making lightweight electric vehicles readily available to rent around the world.

Since our first shared ride in 2017, we have witnessed rapid growth in our vehicle-sharing business. Today, we offer riders an on-demand, affordable, and cleaner alternative for their short-range mobility needs in more than 350 cities, primarily across the United States, Canada, Europe, the Middle East, and Australia. We believe that Bird is uniquely positioned to capture share in this market due to (i) our superior rider experience, which solves many of the traditional mobility pain points, (ii) sustainability being core to our mission and business model, (iii) our advanced hardware and software capabilities, (iv) our adaptive operating model, including our experience operating both through in-house teams and through our mutually beneficial Fleet Manager program, (v) our record of building successful city partnerships by focusing on city needs, and (vi) our strong positive year-round unit economics.

We are witnessing an increased adoption of environmentally conscious transportation alternatives by consumers around the world. We are continuing to work with cities to increase micromobility access and infrastructure investments to ensure that the shift to sustainable urban transportation continues.

Our core vehicle-sharing business and operations (“Sharing”) provide riders with on-demand access to our vehicles (e-scooters and e-bikes), enabling them to locate, unlock, and pay for rides through our mobile application. We generate revenue from trips taken on our shared vehicles. For a single ride, riders typically pay a fixed unlock fee to access the vehicle in addition to a market-level, per-minute price for each minute the vehicle is in use. We generate the substantial majority of our revenue from our Sharing business.

Local in-market operations for our Sharing business are either managed with the support of a network of local logistic providers (“Fleet Managers”) or through our in-house teams (“In-House”). Prior to the second quarter of 2020, substantially all of our in-market operations were conducted In-House. After temporarily pausing operations at the onset of COVID-19 in March 2020, we rapidly shifted to the Fleet Manager operating model as a way to quickly relaunch and provide safe and socially distanced transportation options for our global city partners. While we continue to operate certain of our operations primarily under our Fleet Manager operating model to expand into new markets and positively impact year-round unit economics, segments of our business have successfully operated in-house since inception, proving it is a viable and profitable operating model in select cities.

Fleet Managers typically manage logistics for fleets of 100 or more Bird-owned vehicles in their local markets, driving meaningful scale as we expand into small to mid-sized cities. With the support of our central operations team and advanced technology platform, Fleet Managers manage the day-to-day logistics responsibilities required for proper fleet management, including deploying, repairing, relocating, and charging our vehicles. Through a revenue share model, Fleet Managers make money on rides taken on the vehicles in their care, creating built-in economic incentives to ensure these vehicles are properly maintained, and strategically placed to align with local demand. There are no upfront fees to us associated with becoming a Fleet Manager, and Fleet Managers typically utilize existing tools and resources to manage their fleet. As such, the Fleet Manager program provides economic advancement opportunities to local businesses.

To scale our mission to a greater population, we offer a white labeled version of our products and technology (“Bird Platform”). Bird Platform partners purchase and hold title to fleets of our vehicles to operate in their local markets.

We also sell our vehicles for personal use (“Product Sales”). Our Product Sales business consists primarily of vehicle sales to retail customers. We sell several Bird vehicle models through select retail and wholesale channels.



We also recognize sales of our vehicles to our Platform partners as Product Sales. In May 2022, we announced our decision to discontinue our Product Sales portfolio offering, simplify our business model and realign our resources to prioritize Sharing operations within our existing regions. We expect to sell our remaining inventory by the end of fiscal 2023.

### **Reverse Stock Split**

On May 18, 2023, at a Special Meeting of Stockholders, our stockholders granted our board of directors (the “Board”) the authority to (i) effect a reverse stock split of our outstanding shares of Class A common stock and Class X common stock at a ratio of not less than one-for-ten and not greater than one-for-forty, with the specific ratio to be determined by the Board within the range, and (ii) reduce the number of authorized shares of our capital stock, Class A common stock, Class B common stock, Class X common stock, and preferred stock (but not the authorized shares of Series A preferred stock), in each case, by a corresponding ratio to the reverse stock split.

On May 18, 2023, the Board approved the reverse stock split at a ratio of one-for-twenty-five and we filed a certificate of amendment with the Secretary of State of the State of Delaware to effect the reverse stock split and authorized share reduction.

As a result of the reverse stock split, (i) every twenty-five (25) shares of the Class A common stock were automatically reclassified and converted into one issued and outstanding share of Class A common stock, without any change in par value per share, (ii) every twenty-five (25) shares of the Class X common stock were automatically reclassified and converted into one issued and outstanding share of Class X common stock, without any change in par value per share, and (iii) the number of authorized shares of our capital stock, Class A common stock, Class B common stock, Class X common stock, and preferred stock (but not the authorized shares of Series A preferred stock), were reduced by a corresponding ratio to the reverse stock split. Fractional shares resulting from the reverse stock split were rounded up to the nearest whole share.

Commencing on May 19, 2023, the trading of our Class A common stock continued on The New York Stock Exchange on a reverse stock split-adjusted basis.

All of the share and per share amounts set forth in this prospectus reflect the effectiveness of the reverse stock split.

### **Corporate Information**

We were incorporated under the laws of the State of Delaware on May 4, 2021 as a wholly owned subsidiary of Bird Rides, Inc. (“Bird Rides”) for the purpose of entering into the Business Combination Agreement, dated as of May 11, 2021, by and among Switchback II Corporation, a Cayman Islands exempted company (“Switchback”), Maverick Merger Sub Inc., a Delaware corporation and a direct wholly owned subsidiary of Switchback (“Merger Sub”), Bird Rides, and us (the “Business Combination”). Switchback was formed on October 7, 2020 for the purpose of effecting a merger, amalgamation, share exchange, asset acquisition, share purchase, reorganization, or similar business combination involving Switchback and one or more businesses. On November 3, 2021, we merged with and into Switchback with us continuing as the surviving entity, pursuant to which we became a publicly traded company. On November 4, 2021, Merger Sub merged with and into Bird Rides, with Bird Rides continuing as the surviving entity and as our wholly owned subsidiary.

Our principal executive offices are located at 392 NE 191st Street #20388, Miami, Florida 33179, and our telephone number is (866) 205-2442. Our website address is [www.bird.co](http://www.bird.co). The information contained on, or accessible through, our website is not incorporated by reference into this prospectus, and you should not consider any information contained in, or that can be accessed through, our website as part of this prospectus, or in deciding whether to purchase our securities.

### **Implications of Being an Emerging Growth Company and a Smaller Reporting Company**

We qualify as an “emerging growth company” as defined in the Jumpstart Our Business Startups Act of 2012 (the “JOBS Act”). For so long as we remain an emerging growth company, we are permitted, and currently intend, to rely on the following provisions of the JOBS Act that contain exceptions from disclosure and other requirements that otherwise are applicable to public companies and file periodic reports with the SEC. These provisions include, but are not limited to:

- being permitted to present only two years of audited financial statements and selected financial data and only two years of related “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in our periodic reports and registration statements, including this prospectus, subject to certain exceptions;

- not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act of 2002, as amended (the “Sarbanes-Oxley Act”);
- reduced disclosure obligations regarding executive compensation in our periodic reports, proxy statements, and registration statements, including in this prospectus;
- not being required to comply with any requirement that may be adopted by the Public Company Accounting Oversight Board (the “PCAOB”) regarding mandatory audit firm rotation or a supplement to the auditor’s report providing additional information about the audit and the financial statements; and
- exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved.

We will remain an emerging growth company until the earliest to occur of:

- December 31, 2026 (the last day of the fiscal year that follows the fifth anniversary of the effectiveness of our Registration Statement on Form S-4 in connection with the Business Combination);
- the last day of the fiscal year in which we have total annual gross revenue of at least \$1.07 billion;
- the date on which we are deemed to be a “large accelerated filer,” as defined in the Exchange Act; and
- the date on which we have issued more than \$1 billion in non-convertible debt over a three-year period.

We have elected to take advantage of certain of the reduced disclosure obligations in this prospectus and may elect to take advantage of other reduced reporting requirements in our future filings with the SEC. As a result, the information that we provide to our securityholders may be different than what you might receive from other public reporting companies in which you hold equity interests.

We have elected to avail ourselves of the provision of the JOBS Act that permits emerging growth companies to take advantage of an extended transition period to comply with new or revised accounting standards applicable to public companies. As a result, we will not be subject to new or revised accounting standards at the same time as other public companies that are not emerging growth companies.

We are also a “smaller reporting company” as defined in the Exchange Act. We may continue to be a smaller reporting company even after we are no longer an emerging growth company. We may take advantage of certain of the scaled disclosures available to smaller reporting companies until the fiscal year following the determination that our voting and non-voting common stock held by non-affiliates is \$250 million or more measured on the last business day of our second fiscal quarter, or our annual revenues are less than \$100 million during the most recently completed fiscal year and our voting and non-voting common stock held by non-affiliates is \$700 million or more measured on the last business day of our second fiscal quarter. As a result, the information that we provide to our stockholders may be different than you might receive from other public reporting companies in which you hold equity interests.

## THE OFFERING

Class A common stock offered by us	A number of shares of Class A common stock having an aggregate gross sales price of up to \$13,450,000.
Class A common stock to be outstanding immediately following this offering	Up to 18,986,225 shares, assuming sales of 6,113,636 shares of Class A common stock in this offering at a price of \$2.20 per share, which was the closing price of our Class A common stock on the NYSE on June 22, 2023. The actual number of shares issued will vary depending on the sales prices under this offering.
Manner of offering	<p>“At the market offering” as defined in Rule 415(a)(4) under the Securities Act. Canaccord is not required to sell any specific dollar amount or number of shares of our Class A common stock, but will act as sales agent using commercially reasonable efforts consistent with its normal trading and sales practices and applicable laws and regulations.</p> <p>Refer to the “<i>Plan of Distribution</i>” section beginning on page S-16 of this prospectus supplement.</p>
Use of proceeds	<p>We intend to use the net proceeds from this offering for working capital and general corporate purposes.</p> <p>Refer to the “<i>Use of Proceeds</i>” section on page S-13 of this prospectus supplement.</p>
Risk factors	Investing in our common stock involves significant risks and uncertainties. You should read the “ <i>Risk Factors</i> ” section beginning on page S-7 of this prospectus supplement, in our Annual Report on Form 10-K for the year ended December 31, 2022, and in our Quarterly Report on Form 10-Q for the quarter ended March 31, 2023, for a discussion of factors to consider carefully before deciding to invest in shares of our Class A common stock.
NYSE symbol	“BRDS”

The number of shares of our Class A common stock to be outstanding after this offering is based on 12,872,589 shares of our common stock outstanding as of March 31, 2023, which includes 1,381,398 shares of our Class A common stock issuable upon conversion of 1,381,398 shares of our Class X common stock outstanding as of March 31, 2023, and excludes:

- 89,510 restricted shares of our Class A common stock held by certain equity award holders under our 2021 Equity Incentive Plan, as well as restricted shares of Class A common stock issued upon early exercises of options that had not vested;
- 8,312,280 shares of our Class A common stock issuable upon conversion of our 12.0% Convertible Senior Secured Notes due December 30, 2027, outstanding as of March 31, 2023;
- 1,228,520 shares of our Class A common stock issuable upon the vesting of time-based restricted stock units outstanding as of March 31, 2023;

- 290,000 shares of our Class A common stock issuable upon the vesting of market-based restricted stock units outstanding as of March 31, 2023;
- 475,120 shares of our Class A common stock issuable upon the exercise of stock options outstanding as of March 31, 2023, at a weighted average exercise price of \$7.305 per share;
- 517,400 shares of our Class A common stock issuable upon the exercise of warrants outstanding as of March 31, 2023, at a weighted average exercise price of \$275 per share; and
- 1,304,954 shares of our Class A common stock available for future issuance under our 2021 Equity Incentive Plan, as well as any automatic increases in the number of shares of Class A common stock reserved under such plan.

Unless otherwise indicated, all information in this prospectus assumes:

- no vesting of the restricted stock units described above;
- no vesting of the performance stock units described above;
- no exercise of the outstanding options described above; and
- no exercise of the outstanding warrants described above.

All of the share and per share amounts set forth in this prospectus reflect the effectiveness of the reverse stock split.

## RISK FACTORS

*Investing in our securities involves a high degree of risk. You should carefully review the risks and uncertainties described under the heading “Risk Factors” contained in this prospectus supplement, the accompanying base prospectus, and any related free writing prospectus, and under similar headings in our Form 10-K for the year ended December 31, 2022 and our Quarterly Report on Form 10-Q for the quarter ended March 31, 2023, as updated by any subsequently filed periodic reports and other documents that are incorporated by reference into this prospectus, before investing in our Class A common stock. Each of the risk factors described in the documents referenced above could adversely affect our business, operating results and financial condition, as well as adversely affect the value of an investment in our Class A common stock, and the occurrence of any of these risks might cause you to lose all or part of your investment. Additional risks not presently known to us or that we currently believe are immaterial may also significantly impair our business operations. Please also read carefully the section below titled “Cautionary Note Regarding Forward-Looking Statements.”*

### **Risks Related to Our Class A Common Stock, this Offering and Other Matters**

***The market price of our Class A common stock has been and may in the future be highly volatile, and could be subject to wide fluctuations in response to various factors, some of which are beyond our control, and could result in substantial losses for investors purchasing our shares.***

The stock market in general and the market for our Class A common stock have experienced extreme volatility that has often been unrelated to the operating performance of particular companies. For example, since the Business Combination, the market price of our Class A common stock has ranged from a high of \$11.00 to a low of \$0.11. As a result of this volatility, you may not be able to sell your Class A common stock at or above the assumed public offering price of \$2.20 per share, the last reported sale price of our Class A common stock on the NYSE on June 22, 2023, or the amount you actually paid for the shares, and you may lose some or all of your investment.

***If you purchase shares of Class A common stock in this offering, you will suffer immediate dilution of your investment.***

The shares sold in this offering, if any, will be sold from time to time at various prices. However, the expected offering price of our Class A common stock will be substantially higher than the as adjusted net tangible book value per share of our Class A common stock. Therefore, if you purchase shares of our Class A common stock in this offering, you will pay a price per share that substantially exceeds our as adjusted net tangible book value per share after this offering. Assuming that an aggregate of 6,113,636 shares of our Class A common stock are sold at a price of \$2.20 per share pursuant to this prospectus supplement, which was the last reported sale price of our Class A common stock on the NYSE on June 22, 2023, for aggregate gross proceeds of approximately \$13,450,000, and after deducting commissions and estimated aggregate offering expenses payable by us, you will experience immediate dilution of \$3.55 per share, representing the difference between our as adjusted net tangible book value per share after giving effect to this offering and the assumed offering price of \$2.20 per share. To the extent outstanding options are exercised or restricted stock unit awards or performance stock unit awards vest, you will incur further dilution. For additional information on the dilution that you will experience immediately after this offering, see the section titled “Dilution.”

***You may experience future dilution as a result of future equity issuances and offerings.***

To raise additional capital, we may in the future offer additional shares of our Class A common stock or other securities convertible into or exchangeable for our Class A common stock at prices that may not be the same as the price per share in this offering. We may sell shares or other securities in any other offering at a price per share that is less than the price per share paid by investors in this offering, and investors purchasing shares or other securities in the future could have rights superior to those of existing stockholders. The price per share at which we sell additional shares of our Class A common stock, or securities convertible into or exchangeable for Class A common stock, in future transactions may be higher or lower than the price per share paid by investors in this offering.

***The actual number of shares we will issue under the Distribution Agreement, at any one time or in total, is uncertain.***

Subject to certain limitations in the Distribution Agreement and compliance with applicable law, we have the discretion to deliver sale instructions to Canaccord at any time throughout the term of the Distribution Agreement. The number of shares that are sold by Canaccord after we deliver sale instructions will fluctuate based on the market price of our Class A common stock and limits we set with Canaccord. Because the price per share of each share sold will fluctuate based on the market price of our Class A common stock during the sales period, it is not possible to predict the number of shares that will be ultimately issued and sold.

***The Class A common stock offered hereby will be sold in “at the market offerings,” and investors who buy shares at different times will likely pay different prices.***

The shares sold in this offering, if any, will be sold from time to time at various prices. If you purchase shares in this offering, you may experience different outcomes in your investment results relative to other investors who purchase shares in this offering. We will have discretion, subject to market demand, to vary the timing, prices, and numbers of shares sold, and there is no minimum or

maximum sales price. If you purchase shares in this offering, you may experience a decline in the value of your shares as a result of share sales made to other investors at prices lower than the price you paid.

***We have broad discretion in the use of the net proceeds from this offering and may invest or spend the proceeds in ways with which you do not agree and in ways that may not yield a return on your investment.***

Our management has broad discretion in the application of the net proceeds from this offering and could spend the proceeds in ways that do not improve our results of operations or enhance the value of our Class A common stock. You will not have the opportunity to influence our decisions on how to use the net proceeds from this offering. The failure by our management to apply these funds effectively could result in financial losses that could harm our business and cause the price of our Class A common stock to decline. Pending their use, we may invest the net proceeds from this offering in a manner that does not produce income or that loses value.

***Because we do not anticipate paying any cash dividends on our capital stock in the foreseeable future, capital appreciation, if any, will be your sole source of gain.***

We have never declared or paid cash dividends on our capital stock. We currently intend to retain all of our future earnings, if any, to finance the growth and development of our business. In addition, the terms of our existing Note Purchase Agreement, dated December 30, 2022, by and among the Company, the several purchasers from time to time party thereto, and U.S. Bank Trust Company, National Association, as collateral agent, include limitations on our ability to pay cash dividends on our capital stock without the written consent of certain noteholders. As a result, capital appreciation, if any, of our Class A common stock will be your sole source of gain for the foreseeable future, and investors seeking cash dividends should not purchase shares of our Class A common stock.

***We are a “smaller reporting company,” and the reduced disclosure requirements applicable to smaller reporting companies may make our Class A common stock less attractive to investors.***

We are a smaller reporting company and will remain a smaller reporting company until the fiscal year following the determination that our voting and non-voting common shares held by non-affiliates is more than \$250 million measured on the last business day of our second fiscal quarter, or our annual revenues are more than \$100 million during the most recently completed fiscal year. Smaller reporting companies have reduced disclosure obligations as compared to other public companies that are not smaller reporting companies, such as an exemption from providing selected financial data and an ability to provide simplified executive compensation information and only two years of audited financial statements.

We have elected to take advantage of certain of the reduced reporting obligations. Investors may find our Class A common stock less attractive as a result of our reliance on these exemptions. If some investors find our Class A common stock less attractive as a result, there may be a less active trading market for our Class A common stock and our stock price may be more volatile.

***We may not be able to remain in compliance with the NYSE’s requirements for the continued listing of our Class A common stock on the exchange.***

On May 23, 2023 we received written notice (the “Notice”) from the NYSE that we were not in compliance with Section 802.01C of the NYSE Listed Company Manual, which requires us to maintain an average market capitalization over a consecutive 30 trading-day period in excess of \$50.0 million. We plan to submit a business plan (the “Plan”) to the NYSE by July 5, 2023, which will demonstrate how we intend to regain compliance with this continued listing standard within 18 months of receipt of the Notice, but we cannot assure you that we will be able to effectively execute such Plan. Further, if the Plan is not accepted by the NYSE or if the NYSE determines that we are not making sufficient progress on the Plan during the 18-month cure period, the NYSE could initiate suspension and delisting proceedings prior to the end of such cure period.

Any failure to timely resume compliance with the NYSE’s continued listing standards within the applicable cure period could result in delisting from the NYSE, which could negatively impact our company and holders of our Class A common stock, including by reducing the willingness of investors to hold our Class A common stock because of factors such as decreased trading price and reduced trading volume of our Class A common stock, limited availability of price quotations for our Class A common stock, and reduced news and analyst coverage. Delisting may adversely impact the perception of our company and financial condition, cause reputational harm with investors, our employees and parties conducting business with us, and limit our access to debt and equity financing. In addition, the perceived decrease in value of employee equity incentive awards may reduce their effectiveness in encouraging performance and retention.

***If securities or industry analysts do not publish research or reports about us, our business or our market, or if they publish negative evaluations of our stock or the stock of other companies in our industry, the price of our stock and trading volume could decline.***

The trading market for our Class A common stock is influenced by the research and reports that industry or securities analysts may publish about us, our business, our market or our competitors. If the analyst(s) covering our business downgrade their evaluations of our stock or the stock of other companies in our industry, the price of our stock could decline. Further, if these analysts cease to cover our stock and other analysts do not begin to cover our stock, we could lose additional visibility in the market for our stock, which in turn could cause our stock price to decline further. The trading market for our Class A common stock is influenced by the research and reports that industry or financial analysts publish about us or our business. There can be no assurance that existing analysts will

continue to cover us or that new analysts will begin to cover us. There is also no assurance that any covering analyst will provide favorable coverage. A lack of research coverage or adverse coverage may negatively impact the market price of our Class A common stock. In addition, if one or more of the analysts covering our business downgrade their evaluations of our stock or the stock of other companies in our industry, the price of our Class A common stock could decline.

#### CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus and the documents incorporated by reference herein contain forward-looking statements. These are based on our management's current beliefs, expectations and assumptions about future events, conditions and results and on information currently available to us. Discussions containing these forward-looking statements may be found, among other places, in the sections titled "*Business*," "*Risk Factors*" and "*Management's Discussion and Analysis of Financial Condition and Results of Operations*" contained in the documents incorporated by reference herein.

Any statements in this prospectus, or incorporated by reference herein, about our expectations, beliefs, plans, objectives, assumptions or future events or performance are not historical facts and are forward-looking statements. Within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act these forward-looking statements include statements regarding:

- our ability to evaluate our business and prospects in the new and rapidly changing industry in which we operate;
- our ability to retain existing riders or add new riders;
- our Fleet Managers' ability to maintain vehicle quality or service levels;
- our ability to obtain vehicles that meet our quality specifications in sufficient quantities on commercially reasonable terms;
- our ability to compete effectively with existing competitors and new market entrants in the highly competitive industries in which we operate;
- our ability to enter into and compete in new markets;
- our ability to address actions by governmental authorities to restrict access to our products and services in their localities;
- our ability to address the potential impact of weather and seasonality on our business;
- our ability to secure additional financing;
- our ability to hire and retain key personnel;
- the potential impact of claims, lawsuits, arbitration proceedings, government investigations and other proceedings to which we are regularly subject;
- our ability to cure our NYSE price deficiency and meet the continued listing requirements of the NYSE;
- our expectation regarding the time during which we will be an emerging growth company under the JOBS Act; and
- our ability to maintain proper and effective internal controls.

We caution you that the foregoing list may not contain all of the forward-looking statements made in this prospectus.

In some cases, you can identify forward-looking statements by the words "may," "might," "can," "will," "to be," "could," "would," "should," "expect," "intend," "plan," "objective," "anticipate," "believe," "estimate," "predict," "project," "potential," "likely," "continue" and "ongoing," or the negative of these terms, or other comparable terminology intended to identify statements about the future, although not all forward-looking statements contain these words. These statements involve known and unknown risks, uncertainties and other factors that may cause our actual results, levels of activity, performance or achievements to be materially different from the information expressed or implied by these forward-looking statements.

You should refer to the "*Risk Factors*" section contained in this prospectus supplement, the accompanying base prospectus, and any related free writing prospectus, and under similar headings in the other documents that are incorporated by reference into this prospectus, for a discussion of important factors that may cause our actual results to differ materially from those expressed or implied by our forward-looking statements. Given these risks, uncertainties and other factors, many of which are beyond our control, we cannot assure you that the forward-looking statements in this prospectus will prove to be accurate, and you should not place undue reliance on these forward-looking statements. Furthermore, if our forward-looking statements prove to be inaccurate, the inaccuracy may be material. In light of the significant uncertainties in these forward-looking statements, you should not regard these statements as a representation or warranty by us or any other person that we will achieve our objectives and plans in any specified time frame, or at all.



Except as required by law, we assume no obligation to update these forward-looking statements publicly, or to revise any forward-looking statements to reflect events or developments occurring after the date of this prospectus, even if new information becomes available in the future.

We qualify all of our forward-looking statements by these cautionary statements.

## USE OF PROCEEDS

From time to time, we may issue and sell shares of our Class A common stock having aggregate gross sales proceeds of up to \$13,450,000 (before deducting sales agent commissions and expenses) under the Distribution Agreement. Because there is no minimum offering amount required as a condition to close this offering, the actual total public offering amount, commissions and proceeds to us, if any, are not determinable at this time. There can be no assurance that we will sell any shares under the Distribution Agreement, and even if we do sell shares under the Distribution Agreement, such sales may be for an amount that is significantly lower than the maximum amount referenced in the Distribution Agreement and this prospectus. We therefore cannot estimate with certainty the amount of net proceeds to be used for the purposes described above.

We intend to use the net proceeds, if any, from this offering for working capital and general corporate purposes. We may also use a portion of the net proceeds to strengthen our balance sheet to provide us greater flexibility to pursue, evaluate and potentially execute upon other less dilutive financing opportunities. Further, we may use a portion of the net proceeds to invest in or acquire additional businesses, assets or technologies that we believe are complementary to our own. However, we do not have any agreements or commitments for any such financings or strategic transactions at this time and there can be no assurance that any such transactions will occur or that any such transactions will achieve the anticipated benefits for our stockholders.

Our management has broad discretion in the application of the net proceeds, if any, from this offering and could spend the proceeds in ways that do not improve our results of operations or enhance the value of our Class A common stock.

## DILUTION

If you invest in our Class A common stock in this offering, your ownership interest will be diluted immediately to the extent of the difference between the public offering price per share you will pay in this offering and the as adjusted net tangible book value per share of our Class A common stock after this offering.

Our historical net tangible book value (deficit) as of March 31, 2023 was \$(38.4) million, or \$(3.01) per share of Class A common stock outstanding as of March 31, 2023. Our historical net tangible book value (deficit) is the amount of our total tangible assets less our total liabilities. Historical net tangible book value (deficit) per share represents our historical net tangible book value (deficit) divided by the number of shares of our Class A common stock outstanding as of March 31, 2023.

After giving effect to an assumed sale of 6,113,636 shares of Class A common stock for aggregate gross sales proceeds of approximately \$13,450,000 in this offering at an assumed offering price of \$2.20 per share, the last reported sale price of our Class A common stock on the NYSE on June 22, 2023, and after deducting commissions and estimated offering expenses payable by us, our as adjusted net tangible book value as of March 31, 2023 would have been \$(25.9) million, or \$(1.37) per share. This represents an immediate increase of \$1.64 in as adjusted net tangible book value per share to existing stockholders and immediate dilution of \$3.57 in as adjusted net tangible book value per share to investors purchasing shares of our Class A common stock in this offering. Dilution per share to investors purchasing shares of our Class A common stock in this offering is determined by subtracting as adjusted net tangible book value per share after this offering from the assumed public offering price per share paid by investors purchasing shares of our Class A common stock in this offering.

The following table illustrates this dilution to the investors purchasing shares of our Class A common stock in this offering:

Assumed public offering price per share		\$	2.20
Net tangible book value (deficit) per share as of March 31, 2023		\$	3.01
Increase in net tangible book value per share attributable to this offering		\$	<u>1.64</u>
As adjusted net tangible book value per share as of March 31, 2023, after giving effect to this offering			<u>\$1.37</u>
Dilution per share to investors purchasing Class A common stock in this offering		\$	<u>3.57</u>

The number of shares of our Class A common stock to be outstanding after this offering is based on 12,764,644 shares of our common stock outstanding as of March 31, 2023, which includes 1,381,398 shares of our Class A common stock issuable upon conversion of 1,381,398 shares of our Class X common stock outstanding as of March 31, 2023, and excludes:

- 89,510 restricted shares of our Class A common stock held by certain equity award holders under the Bird Global, Inc. 2021 Equity Incentive Plan (our "2021 Equity Incentive Plan"), as well as restricted shares of Class A common stock issued upon early exercises of options that had not vested;
- 8,312,280 shares of our Class A common stock issuable upon conversion of our 12.0% Convertible Senior Secured Notes due December 30, 2027, outstanding as of March 31, 2023;
- 1,228,520 shares of our Class A common stock issuable upon the vesting of time-based restricted stock units outstanding as of March 31, 2023;
- 290,000 shares of our Class A common stock issuable upon the vesting of market-based restricted stock units outstanding as of March 31, 2023;
- 475,120 shares of our Class A common stock issuable upon the exercise of stock options outstanding as of March 31, 2023, at a weighted average exercise price of \$7.305 per share;

- 517,400 shares of our Class A common stock issuable upon the exercise of warrants outstanding as of March 31, 2023, at a weighted average exercise price of \$275 per share; and
- 1,304,954 shares of our Class A common stock available for future issuance under our 2021 Equity Incentive Plan, as well as any automatic increases in the number of shares of Class A common stock reserved under such plan.

Unless otherwise indicated, all information in this prospectus assumes:

- no vesting of the restricted stock units described above;
- no vesting of the performance stock units described above;
- no exercise of the outstanding options described above; and
- no exercise of the outstanding warrants described above.

All of the share and per share amounts set forth in this prospectus reflect the effectiveness of the reverse stock split.

To the extent that stock options are exercised, outstanding restricted stock units are settled, new stock options, restricted stock units or performance stock units are issued under our 2021 Equity Incentive Plan, or we issue additional shares of Class A common stock (or securities exercisable for or convertible into Class A common stock) in the future, there will be further dilution to investors participating in this offering.

## PLAN OF DISTRIBUTION

We have entered into the Distribution Agreement with Canaccord under which we may issue and sell shares of our Class A common stock from time to time through Canaccord, acting as sales agent, having an aggregate gross sales price of up to \$25,000,000. However, due to the offering limitations applicable to us under General Instruction I.B.6. of Form S-3 and our public float as of the date of this prospectus supplement, and in accordance with the terms of the Distribution Agreement, we are offering shares of our Class A common stock having an aggregate gross sales price of up to \$13,450,000 pursuant to this prospectus supplement and the accompanying prospectus. If our public float increases such that we may sell additional amounts under the Distribution Agreement and the registration statement of which this prospectus supplement and the accompanying prospectus are a part, we will file another prospectus supplement prior to making additional sales. Sales of shares of our Class A common stock, if any, under this prospectus may be made by any method that is deemed to be an “at the market offering” as defined in Rule 415(a)(4) promulgated under the Securities Act, including sales made directly on or through the NYSE, or on any other existing trading market for our Class A common stock.

Each time we wish to issue and sell any shares of our Class A common stock under the Distribution Agreement, we will notify Canaccord of the aggregate number of shares to be sold, the dates on which such sales are requested to be made, any limitation on the number of shares to be sold in any one day, any minimum price below which sales may not be made, and other sales parameters as we deem appropriate. Once we have so instructed Canaccord, unless Canaccord declines to accept the terms of such notice, Canaccord has agreed to use its commercially reasonable efforts, consistent with its normal trading and sales practices to sell such shares of Class A common stock up to the amount specified on such terms. The obligations of Canaccord under the Distribution Agreement to sell shares of our Class A common stock are subject to a number of conditions that we must meet.

The settlement for sales of Class A common stock between us and Canaccord is generally anticipated to occur on the second trading day following the date on which the sale was made. There is no arrangement for funds to be received in an escrow, trust or similar arrangement.

We have agreed to pay Canaccord a commission equal to 3.0% of the aggregate gross sales proceeds we receive from each sale of our Class A common stock sold through Canaccord pursuant to the Distribution Agreement. Because there is no minimum offering amount required as a condition to close this offering, the actual total public offering amount, Canaccord’s commissions and the proceeds to us, if any, are not determinable at this time. We have also agreed to reimburse Canaccord for certain reasonable and documented expenses, including fees and disbursements of its counsel, up to a maximum reimbursement of \$75,000, plus an additional \$10,000 per calendar quarter for each quarter during which the Distribution Agreement remains in effect, subject to certain exceptions. We estimate the total expenses of the offering payable by us, excluding any commissions and the reimbursement payable to Canaccord under the terms of the Distribution Agreement, will be approximately \$250,000. The remaining sale proceeds, after deducting any other transaction fees, will equal the net proceeds from the sale of such Class A common stock.

Canaccord will provide written confirmation to us before the open on the NYSE on the day following each day on which our shares of Class A common stock are sold under the Distribution Agreement. Each confirmation will include the number of shares sold on that day, the aggregate gross proceeds of such sales, and the net proceeds of such sales.

In connection with the sale of Class A common stock on our behalf, Canaccord will be deemed to be an “underwriter” within the meaning of the Securities Act, and the compensation of Canaccord will be deemed to be underwriting commissions or discounts. We have also agreed to provide indemnification and contribution to Canaccord with respect to certain liabilities, including liabilities under the Securities Act and the Exchange Act.

The offering of our Class A common stock pursuant to the Distribution Agreement will terminate upon the earlier of (i) the issuance and sale of all shares of our Class A common stock subject to the Distribution Agreement, and (ii) the termination of the Distribution Agreement as permitted therein. We or Canaccord may suspend the offering of Class A common stock under the Distribution Agreement upon notice to the other party, subject to the satisfaction of certain conditions.

This summary of the material provisions of the Distribution Agreement does not purport to be a complete statement of its terms and conditions. A copy of the Distribution Agreement is filed as an exhibit to the registration statement of which this prospectus is a part, and is incorporated by reference in this prospectus.

Canaccord and its affiliates may in the future provide various investment banking and other financial services for us and our affiliates, for which services they may in the future receive customary fees.

To the extent required by Regulation M, Canaccord will not engage in any market making activities involving our Class A common stock while the offering is ongoing under this prospectus.

This prospectus may be made available in electronic format on a website maintained by Canaccord, and Canaccord may distribute this prospectus electronically.

**LEGAL MATTERS**

The validity of the shares of our Class A common stock offered hereby is being passed upon for us by Stradling Yocca Carlson & Rauth, P.C., Newport Beach, California. Canaccord is being represented in connection with this offering by Goodwin Procter LLP, New York, New York.

## **EXPERTS**

The consolidated financial statements of Bird Global, Inc., appearing in Bird Global, Inc.'s Annual Report (Form 10-K) for the year ended December 31, 2022 have been audited by Ernst & Young LLP, predecessor independent registered public accounting firm, as set forth in their report thereon (which contains an explanatory paragraph describing conditions that raise substantial doubt about the Company's ability to continue as a going concern as described in Note 2 to the consolidated financial statements), included therein, and incorporated herein by reference. Such consolidated financial statements are incorporated herein by reference in reliance upon such report given on the authority of such firm as experts in accounting and auditing.

#### WHERE YOU CAN FIND MORE INFORMATION

This prospectus is part of a registration statement we filed with the SEC. This prospectus does not contain all of the information set forth in the registration statement and the exhibits to the registration statement. For further information with respect to us and the securities we are offering under this prospectus, we refer you to the registration statement and the exhibits and schedules filed as a part of the registration statement. You should rely only on the information contained in this prospectus, or incorporated by reference in this prospectus. We have not authorized anyone else to provide you with different information. We are not making an offer of these securities in any state where the offer is not permitted. You should not assume that the information in this prospectus is accurate as of any date other than the date on the front page of this prospectus, regardless of the time of delivery of this prospectus or any sale of the securities offered by this prospectus.

We file annual, quarterly and current reports, proxy statements and other information with the SEC. Our SEC filings are available to the public at the SEC's website at <http://www.sec.gov>.

Copies of certain information filed by us with the SEC are also available on our website at [www.bird.co](http://www.bird.co). The information contained on, or accessible through, our website is not incorporated by reference into this prospectus, and you should not consider any information contained in, or that can be accessed through, our website as part of this prospectus, or in deciding whether to purchase our securities.



## INCORPORATION OF CERTAIN INFORMATION BY REFERENCE

The SEC allows us to incorporate by reference into this prospectus the information and reports we file with it, which means that we can disclose important information to you by referring you to these documents. The information we incorporate by reference into this prospectus is considered to be a part of this prospectus. Because we are incorporating by reference future filings with the SEC, this prospectus is continually updated and those future filings may modify or supersede some of the information included or incorporated in this prospectus. This means that you must look at all of the SEC filings that we incorporate by reference to determine if any of the statements in this prospectus or in any document previously incorporated by reference have been modified or superseded. The SEC file number for the documents incorporated by reference in this prospectus is 001-41019. This prospectus incorporates by reference the documents listed below and any future filings we make with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act (in each case, other than those documents or the portions of those documents not deemed to be filed), until the offering of the securities under the registration statement is terminated or completed.

The following documents are incorporated by reference into this document:

- our Annual Report on Form 10-K for the fiscal year ended December 31, 2022, filed with the SEC on [March 16, 2023](#), as amended by our Amendment No. 1 to Annual Report on Form 10-K/A, filed with the SEC on [May 1, 2023](#);
- our Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2023, filed with the SEC on May 15, 2023;
- our Current Reports on Form 8-K filed with the SEC on January 3, 2023, March 23, 2023, March 30, 2023, April 6, 2023, April 20, 2023, May 18, 2023, and May 26, 2023, to the extent such information is filed and not furnished; and
- the description of our Class A common stock set forth in the registration statement on Form 8-A (File No. 001-41019) registering our Class A common stock under Section 12 of the Exchange Act, which was filed with the SEC on November 3, 2021, including any amendments or reports filed for purposes of updating such description.

Upon request, either orally or in writing, we will provide, without charge, to each person, including any beneficial owner, to whom a copy of this prospectus is delivered, a copy of the documents incorporated by reference into this prospectus but not delivered with the prospectus. You may request a copy of these filings, and any exhibits we have specifically incorporated by reference as an exhibit in this prospectus, at no cost by writing us at Bird Global, Inc., 392 NE 191st Street #20388, Miami, Florida 33179, Attention: Investor Relations, or by calling us at (866) 205-2442.

You may also access these documents, free of charge on the SEC's website at [www.sec.gov](http://www.sec.gov) or on our website at [www.bird.co](http://www.bird.co). Information contained on our website is not incorporated by reference into this prospectus, and you should not consider any information on, or that can be accessed from, our website as part of this prospectus or any accompanying prospectus supplement.

You should rely only on the information incorporated by reference or provided in this prospectus. We have not authorized anyone to provide you with different information. We are not making an offer of these securities in any state where the offer is not permitted. You should not assume that the information in this prospectus or in the documents incorporated by reference is accurate as of any date other than the date on the front of this prospectus or those documents.



**Up to \$13,450,000**

**Class A Common Stock**

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**Prospectus Supplement**

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**Canaccord Genuity**

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**, 2023**

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**PART II**  
**INFORMATION NOT REQUIRED IN PROSPECTUS**

**Item 14. Other Expenses of Issuance and Distribution**

The following table sets forth the estimated costs and expenses, other than underwriting discounts and commissions, payable by us in connection with the offering of the securities being registered. All the amounts shown are estimates, except for the SEC registration fee and FINRA filing fee.

SEC registration fee	\$ 2,755
FINRA filing fee	\$4,250
Legal fees and expenses	*
Accounting fees and expenses	*
Printing fees and expenses	*
Transfer agent and trustee fees	*
Miscellaneous	*
Total	<u>\$ *</u>

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\* These fees are calculated based on the securities offered and the number of issuances and, accordingly, cannot be estimated at this time.

**Item 15. Indemnification of Directors and Officers**

We are incorporated under the laws of the State of Delaware. Section 102 of DGCL permits a corporation to eliminate the personal liability of directors of a corporation to the corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director, except where the director breached his duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of the DGCL or obtained an improper personal benefit. Our Certificate of Incorporation provides that no director of the Registrant shall be personally liable to it or its stockholders for monetary damages for any breach of fiduciary duty as a director, notwithstanding any provision of law imposing such liability, except to the extent that the DGCL prohibits the elimination or limitation of liability of directors for breaches of fiduciary duty.

Section 145 of the DGCL provides that a corporation has the power to indemnify a director, officer, employee, or agent of the corporation, or a person serving at the request of the corporation for another corporation, partnership, joint venture, trust or other enterprise in related capacities against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with an action, suit or proceeding to which he was or is a party or is threatened to be made a party to any threatened, ending or completed action, suit or proceeding by reason of such position, if such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, in any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful, except that, in the case of actions brought by or in the right of the corporation, no indemnification shall be made with respect to any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or other adjudicating court determines that, despite the adjudication of liability but in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Our Certificate of Incorporation provides that we will indemnify each person who was or is a party or threatened to be made a party to any threatened, pending or completed action, suit or proceeding (other than an action by or in the right of us) by reason of the fact that he or she is or was, or has agreed to become, a director or officer, or is or was serving, or has agreed to serve, at our request as a director, officer, partner, employee or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise (all such persons being referred to as an "Indemnitee"), or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding and any appeal therefrom, if such Indemnitee acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, our best interests, and, with respect to any criminal action or proceeding, he or she had no reasonable cause to believe his or her conduct was unlawful. Our Certificate of Incorporation provides that we will indemnify any Indemnitee who was or is a party to an action or suit by or in the right of us to procure a judgment in our favor by reason of the fact that the Indemnitee is or was, or has agreed to become, a director or officer, or is or was serving, or has agreed to serve, at our request as a director, officer, partner, employee or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise, or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including attorneys' fees) and, to the extent permitted by law, amounts paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding, and any appeal therefrom, if the Indemnitee acted in good

faith and in a manner he or she reasonably believed to be in, or not opposed to, our best interests, except that no indemnification shall be made with respect to any claim, issue or matter as to which such person shall have been adjudged to be liable to us, unless a court determines that, despite such adjudication but in view of all of the circumstances, he or she is entitled to indemnification of such expenses. Notwithstanding the foregoing, to the extent that any Indemnitee has been successful, on the merits or otherwise, he or she will be indemnified by us against all expenses (including attorneys' fees) actually and reasonably incurred in connection therewith. Expenses must be advanced to an Indemnitee under certain circumstances.

Our policy is to enter into agreements with our directors and executive officers that require us, among other things, to indemnify our directors and officers for some expenses, including attorneys' fees, judgments, fines and settlement amounts incurred by a director or officer in any action or proceeding arising out of his or her service as one of our directors or officers, or any of our subsidiaries or any other company or enterprise to which the person provides services at our request.

We maintain a general liability insurance policy that covers certain liabilities of directors and officers of our corporation arising out of claims based on acts or omissions in their capacities as directors or officers.

In any underwriting agreement we enter into in connection with the sale of our Class A common stock registered hereunder, the underwriters will agree to indemnify, under certain conditions, us, our directors, our officers and persons who control us within the meaning of the Securities Act against certain liabilities.

**Item 16. Exhibits and Financial Statement Schedules**

Exhibit Number	Exhibit Description	Form	Date	Incorporated by Reference		Filed Herewith
				Number		
1.1*	Form of Underwriting Agreement.					
<u>1.2</u>	<u>Equity Distribution Agreement, dated as of June 23, 2023, by and between Bird Global, Inc. and Canaccord Genuity LLC.</u>					X
3.1	Amended and Restated Certificate of Incorporation of Bird Global, Inc.	S-8	11/09/2021	4.1		
3.2	Certificate of Amendment of Amended and Restated Certificate of Incorporation of Bird Global, Inc.	8-K	05/18/2023	3.1		
3.3	Amended and Restated Bylaws of Bird Global, Inc.	10-Q	11/15/2021	3.2		
4.1	Specimen Class A Common Stock Certificate of Bird Global, Inc.	S-4/A	07/15/2021	4.5		
<u>4.2</u>	<u>Form of Indenture.</u>					X
4.3	Description of Capital Stock.	10-K	03/15/2022	4.3		
4.4*	Form of Note.					
4.5*	Form of Warrant.					
4.6*	Form of Warrant Agreement.					
4.7*	Form of Preferred Stock Certificate.					
<u>5.1</u>	<u>Opinion of Stradling Yocca Carlson &amp; Rauth, P.C.</u>					X
<u>5.2</u>	<u>Opinion of Stradling Yocca Carlson &amp; Rauth, P.C.</u>					X
23.1	Consent of Stradling Yocca Carlson & Rauth, P.C. (included in Exhibits 5.1 and 5.2).					X
<u>23.2</u>	<u>Consent of Ernst &amp; Young LLP.</u>					X
24.1	Powers of Attorney (incorporated by reference to the signature page hereto).					X
25.1**	Statement of Eligibility on Form T-1 under the Trust Indenture Act as trustee under the indenture filed as Exhibit 4.2 above.					
<u>107.1</u>	<u>Filing Fee Table.</u>					X

\* To be filed by amendment or incorporated by reference in connection with a particular offering of securities.

\*\* To be filed pursuant to Section 305(b)(2) of the Trust Indenture Act.

**Item 17. Undertakings**

The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

- (i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

- (ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and
- (iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

*provided, however*, that the undertakings set forth in paragraphs (1)(i), (1)(ii) and (1)(iii) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in this registration statement or are contained in a form of prospectus filed pursuant to Rule 424(b) that is part of this registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser:

- (i) Each prospectus filed by the registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and
- (ii) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii), or (x) for the purpose of providing the information required by Section 10(a) of the Securities Act of 1933 shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof. *Provided, however*, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

(5) That, for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

- (i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;
- (ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;
- (iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and
- (iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

(6) That, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(7) To file an application for the purpose of determining the eligibility of the trustee to act under subsection (a) of Section 310 of the Trust Indenture Act in accordance with the rules and regulations prescribed by the SEC under Section 305(b)(2) of the Trust Indenture Act.

(8) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.



**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Miami, State of Florida, on the 23rd day of June, 2023.

**BIRD GLOBAL, INC.**

By: */s/ Shane Torchiana* \_\_\_\_\_  
Shane Torchiana  
Chief Executive Officer

**POWER OF ATTORNEY**

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Shane Torchiana and Michael Washinushi, and each of them singly (with full power to each of them to act alone), as his or her true and lawful agent, proxy and attorneys-in-fact, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to (i) act on, sign and file with the Securities and Exchange Commission any and all amendments (including post-effective amendments) to this registration statement together with all schedules and exhibits thereto and any subsequent registration statement filed pursuant to Rule 462(b) under the Securities Act of 1933, as amended, together with all schedules and exhibits thereto, (ii) act on, sign and file such certificates, instruments, agreements and other documents as may be necessary or appropriate in connection therewith, (iii) act on and file any supplement to any prospectus included in this registration statement or any such amendment or any subsequent registration statement filed pursuant to Rule 462(b) under the Securities Act of 1933, as amended, and (iv) take any and all actions which may be necessary or appropriate to be done, as fully for all intents and purposes as he or she might or could do in person, hereby approving, ratifying and confirming all that such agent, proxy and attorney-in-fact or any of his or her substitutes may lawfully do or cause to be done by virtue thereof.

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<i>Name and Signature</i>	<i>Title</i>	<i>Date</i>
<i>/s/ Shane Torchiana</i> Shane Torchiana	Chief Executive Officer (Principal Executive Officer)	June 23, 2023
<i>/s/ Michael Washinushi</i> Michael Washinushi	Chief Financial Officer (Principal Financial Officer)	June 23, 2023
<i>/s/ Jeffrey Vance</i> Jeffrey Vance	Controller (Principal Accounting Officer)	June 23, 2023
<i>/s/ Travis VanderZanden</i> Travis VanderZanden	Founder and Chair of the Board	June 23, 2023
<i>/s/ Antonio Occhionero</i> Antonio Occhionero	Director	June 23, 2023
<i>/s/ Kevin Lowell Talbot</i> Kevin Lowell Talbot	Director	June 23, 2023
<i>/s/ Robert Komin</i> Robert Komin	Director	June 23, 2023
<i>/s/ James E. Mutrie</i> James E. Mutrie	Director	June 23, 2023
<i>/s/ Racquel Russell</i> Racquel Russell	Director	June 23, 2023
<i>/s/ John Bitove</i> John Bitove	Director	June 23, 2023
<i>/s/ Philip Evershed</i> Philip Evershed	Director	June 23, 2023
<i>/s/ Philip Ryan</i> Philip Ryan	Director	June 23, 2023

**Calculation of Filing Fee Tables**

**Form S-3**  
(Form Type)

**Bird Global, Inc.**

(Exact Name of Registrant as Specified in its Charter)

Table 1: Newly Registered and Carry Forward Securities

	Security Type	Security Class Title	Fee Calculation or Carry Forward Rule	Amount Registered (1)	Proposed Maximum Offering Price Per Unit	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee	Carry Forward Form Type	Carry Forward File Number	Carry Forward Initial effective date	Filing Fee Previously Paid In Connection with Unsold Securities to be
<b>Newly Registered Securities</b>												
Fees to Be Paid	Equity	Class A common stock, \$0.0001 per share										
	Equity	Preferred stock, \$0.0001 par value										
	Debt	Debt securities										
	Other	Warrants										
	Unallocated (Universal) Shelf		Rule 457(o)	(2)	(2)	\$25,000,000(3)	\$110.20 per \$1,000,000	\$2,755				
Fees Previously Paid												
<b>Carry Forward Securities</b>												
Carry Forward Securities												
	Total Offering Amounts							\$25,000,000				
	Total Fees Previously Paid							—				
	Total Fee Offsets							—				
	Net Fee Due							\$2,755				

(1) In accordance with Rule 416 under the Securities Act of 1933, as amended (the “Securities Act”), this Registration Statement shall be deemed to cover an indeterminate number of additional shares of Class A common stock to be offered or issued from stock splits, stock dividends or similar transactions.

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- (2) Pursuant to Instruction 2.A.iii.b. of Item 16(b) of Form S-3, this information is not specified as to each class of securities to be registered. There is being registered hereby such indeterminate number of the securities of each identified class as may from time to time be issued at indeterminate prices. Securities registered hereunder may be sold separately, or in combination with other securities registered hereunder.
- (3) The proposed maximum aggregate offering price has been estimated solely to calculate the registration fee in accordance with Rule 457(o) under the Securities Act.

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**BIRD GLOBAL, INC.**

**\$25,000,000**

**EQUITY DISTRIBUTION AGREEMENT**

June 23, 2023

Canaccord Genuity LLC  
99 High Street, Suite 1200  
Boston, Massachusetts 02110

Ladies and Gentlemen:

Bird Global, Inc., a Delaware corporation (the “Company”), confirms its agreement (this “Agreement”) with Canaccord Genuity LLC (“Canaccord”), as follows:

1. Issuance and Sale of Shares.

(a) The Company agrees that, from time to time during the term of this Agreement, on the terms and subject to the conditions set forth herein, it will issue and sell through Canaccord, acting as sales agent, the Company’s Class A common stock, \$0.0001 par value per share (the “Common Shares”) having an aggregate offering price of up to \$25,000,000 (the “Shares”). The Shares will be sold on the terms set forth herein at such times and in such amounts as the Company and Canaccord shall agree from time to time. The issuance and sale of the Shares through Canaccord will be effected pursuant to the Registration Statement (as defined below) filed by the Company, after it is declared effective by the Securities and Exchange Commission (the “Commission”).

(b) Notwithstanding any other provision of this Agreement, the Company and Canaccord agree that the Company shall not deliver a Placement Notice to Canaccord, and Canaccord shall not be obligated to place any Shares, during any period in which the Company is in possession of material non-public information.

2. Placements.

(a) Placement Notice. Each time that the Company wishes to issue and sell Shares hereunder (each, a “Placement”), it will notify Canaccord by e-mail notice (or other method mutually agreed to in writing by the parties) containing the parameters within which it desires to sell the Shares, which shall at a minimum include the number of Shares (“Placement Shares”) to be issued, the time period during which sales are requested to be made, any limitation on the number of Shares that may be sold in any one day and any minimum price below which sales may not be made (a “Placement Notice”), a form of which shall be mutually agreed upon by the Company and Canaccord. The Placement Notice shall originate from any of the individuals (each



an “Authorized Representative”) from the Company set forth on Schedule 1 (with a copy to each of the other individuals from the Company listed on such schedule), and shall be addressed to each of the individuals from Canaccord set forth on Schedule 1 attached hereto, as such Schedule 1 may be amended from time to time. The Placement Notice shall be effective upon confirmation by Canaccord unless and until (i) Canaccord declines to accept the terms contained therein for any reason, in its sole discretion, in accordance with the notice requirements set forth in Section 4, (ii) the entire amount of the Placement Shares have been sold, (iii) the Company suspends or terminates the Placement Notice in accordance with the notice requirements set forth in Section 4, (iv) the Company issues a subsequent Placement Notice with parameters superseding those on the earlier dated Placement Notice, or (v) the Agreement has been terminated under the provisions of Section 12.

(b) Placement Fee. The amount of compensation to be paid by the Company to Canaccord with respect to each Placement (in addition to any expense reimbursement pursuant to Section 7(g)(ii)) shall be set forth in the Placement Notice and be up to 3.0% of gross proceeds from each Placement.

(c) No Obligation. It is expressly acknowledged and agreed that neither the Company nor Canaccord will have any obligation whatsoever with respect to a Placement or any Placement Shares unless and until the Company delivers a Placement Notice to Canaccord, and then only upon the terms specified therein and herein. It is also expressly acknowledged that Canaccord will be under no obligation to purchase Shares on a principal basis. In the event of a conflict between the terms of this Agreement and the terms of a Placement Notice, the terms of the Placement Notice control.

3. Sale of Placement Shares by Canaccord. Subject to the terms and conditions of this Agreement, upon the Company’s issuance of a Placement Notice, and unless the sale of the Placement Shares described therein has been declined, suspended, or otherwise terminated in accordance with the terms of this Agreement, Canaccord will use its commercially reasonable efforts consistent with its normal trading and sales practices to sell on behalf of the Company and as agent, such Placement Shares up to the amount specified during the time period specified, and otherwise in accordance with the terms of such Placement Notice. The Company acknowledges that Canaccord will conduct the sale of Placement Shares in compliance with applicable law, rules and regulations including, without limitation, all applicable United States state and federal securities laws, including the United States Securities Act of 1933, as amended (the “Securities Act”), the Securities Exchange Act of 1934, as amended (the “Exchange Act”) (including Regulation M thereunder) and the rules of the New York Stock Exchange (the “Principal Trading Market”) and that such compliance may include a delay in commencement of sales efforts after receipt of a Placement Notice. Canaccord will provide written confirmation to the Company no later than the opening of the Trading Day next following the Trading Day on which they have made sales of Placement Shares hereunder setting forth the number of Placement Shares sold on such day, the compensation payable by the Company to Canaccord with respect to such sales, and the Net Proceeds (as defined below) payable to the Company. Subject to the terms and conditions of the Placement Notice, Canaccord may sell Placement Shares by any method permitted by law deemed to be an “at the market offering” under Rule 415 of the Securities Act, including without limitation sales made directly on or through the Principal Trading Market, on any other existing trading market for the Common Shares, sales to or through a market maker



other than on an exchange or in negotiated transactions at market prices prevailing at the time of sale or at prices related to such prevailing market prices. During the term of this Agreement, and notwithstanding anything to the contrary herein, Canaccord agrees that in no event will it or any of its affiliates engage in any market making, bidding, stabilization or other trading activity with regard to the Common Shares if such activity would be prohibited under Regulation M or other anti-manipulation rules under the Securities Act. Notwithstanding anything to the contrary set forth in this Agreement or a Placement Notice, the Company acknowledges and agrees that (i) there can be no assurance that Canaccord will be successful in selling any Placement Shares or as to the price at which any Placement Shares are sold, if at all, and (ii) Canaccord will incur no liability or obligation to the Company or any other person or entity if they do not sell Placement Shares for any reason other than a failure by Canaccord to use its commercially reasonable efforts consistent with its normal trading and sales practices to sell on behalf of the Company and as agent such Placement Shares as provided under this Section 3. For the purposes hereof, "Trading Day" means any day on which the Principal Trading Market is open for trading.

4. Suspension of Sales. The Company or Canaccord may, upon notice to the other party in writing, by telephone (confirmed by e-mail) or by e-mail notice (or other method mutually agreed to in writing by the parties), suspend any sale of Placement Shares; *provided, however*, that such suspension shall not affect or impair either party's obligations with respect to any Placement Shares sold hereunder prior to the receipt of such notice. The Company and Canaccord agree that no such notice shall be effective against the other party unless it is made to one of the individuals named on Schedule 1 hereto, as such Schedule may be amended from time to time.

5. Settlement.

(a) Settlement of Placement Shares. Unless otherwise specified in the applicable Placement Notice, settlement for sales of Placement Shares will occur on the second (2nd) Business Day (as defined herein) (or such earlier day as is agreed by the parties to be industry practice for regular-way trading) following the date on which such sales are made (each a "Settlement Date"). The amount of proceeds to be delivered to the Company on a Settlement Date against the receipt of the Placement Shares sold ("Net Proceeds") will be equal to the aggregate sales price at which such Placement Shares were sold, after deduction for (i) the commission or other compensation for such sales payable by the Company to Canaccord, as the case may be, and (ii) any transaction fees imposed by any governmental or self-regulatory organization in respect of such sales.

(b) Delivery of Shares. On each Settlement Date, the Company will, or will cause its transfer agent to, electronically transfer the Placement Shares being sold by crediting Canaccord's accounts or its designee's account at The Depository Trust Company through its Deposit Withdrawal Agent Commission System or by such other means of delivery as may be mutually agreed upon by the parties hereto and, upon receipt of such Placement Shares, which in all cases shall be freely tradeable, transferable, registered shares in good deliverable form, Canaccord will, on each Settlement Date, deliver the related Net Proceeds in same day funds delivered to an account designated by the Company prior to the Settlement Date. If the Company defaults in its obligation to deliver Placement Shares on a Settlement Date, the Company agrees that in addition to and in no way limiting the rights and obligations set forth in Section 10 hereto,



it will (i) hold Canaccord harmless against any loss, claim, damage, or expense (including legal fees and expenses), as incurred, arising out of or in connection with such default by the Company and (ii) pay to Canaccord any commission, discount, or other compensation to which it would otherwise have been entitled absent such default.

6. Representations and Warranties of the Company. The Company represents and warrants to, and agrees with, Canaccord that, as of the date of this Agreement:

(a) Registration Statement and Prospectus. The Common Shares are registered pursuant to Section 12(b) of the Exchange Act, and the Company has filed all reports, schedules, forms, statements and other documents required to be filed by it with the Commission (the "Commission Documents") since the Company has been subject to the requirements of Section 12 of the Exchange Act, and all of such filings required to be filed within the last 12 months have been made on a timely basis (subject to applicable grace periods pursuant to the Exchange Act and the rules and regulations thereunder). The Common Shares are currently quoted on the Principal Trading Market under the trading symbol "BRDS". The Company and the transactions contemplated hereby meet the requirements for use of Form S-3 under the Securities Act and the rules and regulations thereunder ("Rules and Regulations"), including but not limited to the transaction requirements for an offering made by the issuer set forth in Instruction I.B.6 to Form S-3. The Company has prepared and filed, or will prepare and file, with the Commission a registration statement on Form S-3 with respect to the Shares to be offered and sold by the Company pursuant to this Agreement. Such registration statement, at any given time, including the amendments thereto at such time, the exhibits and any schedules thereto at such time, the documents incorporated by reference therein pursuant to Item 12 of Form S-3 under the Securities Act at such time, and the documents otherwise deemed to be a part thereof or included therein by the rules and regulations under the Securities Act, is herein called the "Registration Statement." The Registration Statement, including the base prospectus contained therein (the "Base Prospectus") was prepared by the Company in conformity, in all material respects, with the requirements of the Securities Act and all applicable Rules and Regulations. One or more prospectus supplements relating to the Shares (the "Prospectus Supplements," and together with the Base Prospectus and any amendment thereto and all documents incorporated therein by reference, the "Prospectus") have been or will be prepared by the Company in conformity, in all material respects, with the requirements of the Securities Act and all applicable Rules and Regulations and have been or will be filed with the Commission in the manner and time frame required by the Securities Act and the Rules and Regulations. Any amendment or supplement to the Registration Statement or Prospectus required by this Agreement will be so prepared and filed by the Company and, in the case of the Registration Statement, the Company will use commercially reasonable efforts to cause it to become effective as soon as reasonably practicable. No stop order suspending the effectiveness of the Registration Statement has been issued, and no proceeding for that purpose has been instituted or, to the knowledge of the Company, threatened by the Commission. No order preventing or suspending the use of the Base Prospectus, the Prospectus Supplement, the Prospectus or any Issuer Free Writing Prospectus (as defined herein) has been issued by the Commission. Copies of all filings made by the Company under the Securities Act and all Commission Documents that were filed with the Commission are available to Canaccord on the Commission's Electronic Data Gathering, Analysis, and Retrieval system ("EDGAR"). Any reference herein to the Registration Statement, the Prospectus, or any amendment or supplement thereto shall be deemed to refer to and include the documents

amendment or supplement thereto shall be deemed to refer to and include the documents

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incorporated (or deemed to be incorporated) by reference therein pursuant to Item 12 of Form S-3 under the Securities Act, and any reference herein to the terms “amend,” “amendment” or “supplement” with respect to the Registration Statement or Prospectus shall be deemed to refer to and include the filing after the execution hereof of any document with the Commission deemed to be incorporated by reference therein. For the purposes of this Agreement, the “Applicable Time” means, with respect to any Shares, the time of sale of such Shares pursuant to this Agreement.

(b) No Misstatement or Omission. The Registration Statement, when such became or becomes effective, at any deemed effective date pursuant to Rule 430B(f)(2) on the date of filing thereof with the Commission and the Prospectus, on the date of filing thereof with the Commission and at each Applicable Time and Settlement Date, conformed or will conform in all material respects with the requirements of the Securities Act and the Rules and Regulations; each part of the Registration Statement, when such part became or becomes effective, did not or will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading; and the Prospectus, on the date of filing thereof with the Commission, and the Prospectus and any applicable Issuer Free Writing Prospectus(es) issued at or prior to such Applicable Time, taken together (collectively, and with respect to any Shares, together with the public offering price of such Shares, the “Disclosure Package”) and at each Applicable Time and Settlement Date, did not or will not include an untrue statement of a material fact or omit to state a material fact necessary to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; except that the foregoing shall not apply to statements or omissions in any such document made in reliance on information furnished in writing to the Company by Canaccord expressly stating that such information is intended for use in the Registration Statement, the Prospectus, or any amendment or supplement thereto, or in any Issuer Free Writing Prospectus(es). The representations and warranties set forth in this subsection (b) do not apply to statements in or omissions from the Registration Statement, the Prospectus, or the Disclosure Package, made in reliance upon and in conformity with information relating to Canaccord furnished to the Company by Canaccord for use therein, it being understood and agreed that the only such information furnished by Canaccord to the Company consists of the information described in Section 10(b) below.

(c) Conformity with Securities Act and Exchange Act. The documents incorporated by reference in the Registration Statement or the Prospectus, or any amendment or supplement thereto, when they became effective under the Securities Act or were filed with the Commission under the Exchange Act, as the case may be, conformed in all material respects with the requirements of the Securities Act or the Exchange Act, as applicable, and the rules and regulations of the Commission thereunder, and none of such documents contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; and any further documents so filed and incorporated by reference in the Registration Statement or the Prospectus or any further amendment or supplement thereto, when such documents become effective or are filed with the Commission, as the case may be, will conform to the requirements of the Securities Act or the Exchange Act, as applicable, and the rules and regulations of the Commission thereunder and will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the

material fact or omit to state a material fact required to be stated therein or necessary to make the

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statements therein, in the light of the circumstances under which they were made, not misleading; provided however, that this representation and warranty shall not apply to any statements or omissions (a) that have been corrected in a filing that has been incorporated by reference in the Prospectus prior to the relevant Applicable Time or (b) made in reliance on information furnished in writing to the Company by Canaccord expressly stating that such information is intended for use in any such document.

(d) Financial Information. The financial statements (including the related notes thereto and the supporting schedules, if any) of the Company and its consolidated subsidiaries (at the respective times such financial statements were prepared) (the Company's consolidated subsidiaries as of the date of this Agreement, being those listed on Schedule 2 hereto, the "Subsidiaries"), set forth or incorporated by reference in the Registration Statement, the Prospectus and Disclosure Package, have been prepared, in all material respects, in accordance with Regulation S-X under the Securities Act and with United States generally accepted accounting principles ("US GAAP") consistently applied at the times and during the periods covered thereby (except (i) as may be otherwise indicated in such financial statements or the notes thereto, and (ii) in the case of unaudited interim statements, subject to normal year-end audit adjustments and the exclusion or condensing of certain footnotes), and fairly present in all material respects the financial position of the Company as of the dates indicated and the results of its operations and the changes in its cash flows for the periods specified (subject, in the case of unaudited statements, to normal year-end adjustments); and the other financial information included or incorporated by reference in the Registration Statement, the Prospectus and the Disclosure Package has been derived from the accounting records of the Company and its Subsidiaries and presents fairly in all material respects the information shown thereby. The Company does not have any material liabilities or obligations, direct or contingent, which are not disclosed in the Registration Statement, Prospectus and Disclosure Package, as of the date of filing of those documents. Except as included therein, no historical or pro forma financial statements or supporting schedules are required to be included in the Registration Statement, the Disclosure Package or the Prospectus under the Securities Act or the Rules and Regulations. The pro forma financial information included in the Registration Statement, the Disclosure Package or the Prospectus has been prepared in accordance with the applicable requirements of the Securities Act and the rules and regulations thereunder and include all adjustments necessary to present fairly in accordance with US GAAP the pro forma financial position of the respective entity or entities presented therein at the respective dates indicated.

(e) [Reserved].

(f) Emerging Growth Company Status. As of the date hereof, the Company is an "emerging growth company" as defined in Section 2(a) of the Securities Act (an "Emerging Growth Company").

(g) Organization. The Company is duly incorporated and validly existing under the laws of the state of Delaware and has all requisite power and authority to carry on its business as is currently being conducted as described in, or incorporated by reference into, the Prospectus, and to own, lease and operate its properties. The Company is duly qualified as a foreign corporation to transact business and is in good standing in each jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the



conduct of business, except where the failure, individually or in the aggregate, to be so qualified or in good standing or have such power or authority would not be reasonably expected to, individually or in the aggregate, have a material adverse effect on (i) the assets, properties, condition, financial or otherwise or in the results of operations, business affairs or business prospects of the Company and its Subsidiaries taken as a whole, (ii) the transactions contemplated hereby or (iii) the ability of the Company to perform its obligations under this Agreement (collectively, a “Material Adverse Effect”).

(h) Encumbrances. Except as otherwise described in, or incorporated by reference into, the Registration Statement, Prospectus and Disclosure Package, each of the Company and its Subsidiaries has good and marketable title to all of the properties and assets owned by it that are material to the business of the Company and the Subsidiaries taken as a whole, free and clear of all material liens, charges, claims, security interests or encumbrances (collectively, “Encumbrances”), except (i) those that do not materially interfere with the use made and proposed to be made of such property by the Company and the Subsidiaries, (ii) those that would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, (iii) as relates to possession under all material leases to which it is party as lessee, and (iv) such other Encumbrances executed by the Company and its Subsidiaries in the ordinary course of business or as or may be required to conduct their business. All material leases to which the Company or its Subsidiaries is a party are valid and binding and no material default has occurred and is continuing thereunder, and no event or circumstance that with the passage of time or giving of notice, or both, would constitute such a material default has occurred and is continuing, and, to the knowledge of the Company, no material defaults by the counterparties exist under any such leases.

(i) No Improper Practices. (i) Neither the Company nor the Subsidiaries, nor to the knowledge of the Company, any director, officer, or employee of the Company or the Subsidiaries, has, since January 1, 2021, in connection with the operation of the Company or any of the Subsidiaries, used any corporate funds of the Company for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds of Company, violated or is in violation of any provision of the Foreign Corrupt Practices Act of 1977 (“FCPA”); or made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment in breach of the FCPA; (ii) no relationship, direct or indirect, exists between or among the Company or, to the knowledge of the Company, the Subsidiaries, on the one hand, and the directors, officers and stockholders of the Company or, to the knowledge of the Company, the Subsidiaries, on the other hand, that is required by the Securities Act to be described in, or incorporated by reference into, the Registration Statement and the Prospectus that is not so described; (iii) no relationship, direct or indirect, exists between or among the Company or the Subsidiaries or any of their controlled affiliates, on the one hand, and the directors, officers, stockholders or directors of the Company or, to the knowledge of the Company, the Subsidiaries, on the other hand, that is required by the rules of the Financial Industry Regulatory Authority, Inc. (“FINRA”) to be described in, or incorporated by reference into, the Registration Statement and the Prospectus that is not so described; and (iv) except as otherwise described in, or incorporated by reference into, the Registration Statement, the Disclosure Package or the Prospectus, there are no material outstanding loans or advances or material guarantees of indebtedness by the Company or, to the knowledge of the Company, the

material guarantees of indebtedness by the Company or, to the knowledge of the Company, the

Subsidiaries to or for the benefit of any of their respective officers or directors or any of the members of the families of any of them.

(j) Investment Company Act. The Company is not now and, after giving effect to the offering and sale of the Shares, will not be required to register as an “investment company” or an entity “controlled” by an “investment company,” as such terms are defined in the Investment Company Act of 1940, as amended (the “Investment Company Act”).

(k) Capitalization. The Company has an authorized capitalization as set forth in the Registration Statement, the Disclosure Package and the Prospectus as of the date or dates set forth therein. All of the issued shares of share capital of the Company have been duly and validly authorized and issued and are fully paid and non-assessable and have been issued in compliance with all federal and state securities laws; and all of the issued shares of share capital or other equity interests of the Subsidiaries have been duly and validly authorized and issued and are fully paid and non-assessable or issued in accordance with the terms of such securities of the Company (except, in the case of any foreign subsidiary, for directors’ qualifying shares) and the shares of such Subsidiaries are owned directly or indirectly by the Company and are held free and clear of all Encumbrances. None of the outstanding Common Shares were issued in violation of any preemptive rights, rights of first refusal or other similar rights to subscribe for or purchase securities of the Company. Except as may be otherwise described in, or incorporated by reference into, the Registration Statement, the Disclosure Package and the Prospectus, and except with respect to equity awards (the “Equity Incentive Securities”) issued under the Company’s equity incentive plans (the “Company Equity Incentive Plans”), there are no outstanding options, warrants, preemptive rights, rights of first refusal or other rights to purchase, or equity or debt securities convertible into or exchangeable or exercisable for, any share capital of the Company.

(l) Equity Incentive Plans. With respect to the Equity Incentive Securities (i) each grant of an Equity Incentive Security was duly authorized by the Company in accordance with the applicable laws by all necessary corporate action, including, as applicable, approval by the board of directors of the Company (or a duly constituted and authorized committee thereof) and any required stockholder approval by the necessary number of votes or written consents, (ii) each such grant was made in accordance with the terms of the Company Equity Incentive Plans and all other applicable laws and regulatory rules or requirements, except where the failure to comply with such laws, regulatory rules or requirements would not be reasonably expected to result in a Material Adverse Effect, and (iii) each such grant was properly accounted for in accordance with US GAAP in the financial statements (including the related notes) of the Company included in the Registration Statement, the Disclosure Package and the Prospectus, to the extent required under US GAAP to be accounted for in such financial statements.

(m) The Shares. The Shares have been duly authorized and, when issued, delivered and paid for pursuant to this Agreement, will be validly issued, fully paid and non-assessable and free and clear of all Encumbrances and will be issued in compliance with federal and state securities laws; the share capital of the Company, including the Common Shares, conforms in all material respects to the description thereof contained in the Registration Statement and the Common Shares, including the Placement Shares, will conform to the description thereof contained in the Prospectus as amended or supplemented. Neither the stockholders of the





Company, nor any other person or entity have any preemptive rights or rights of first refusal with respect to the Placement Shares, or other rights to purchase or receive any of the Placement Shares, and no person has the right, contractual or otherwise, to cause the Company to issue to it, or register pursuant to the Securities Act, any shares of share capital or other securities of the Company upon the issuance or sale of the Placement Shares, in each case except for rights that have been validly waived.

(n) No Material Changes. Since the date of the most recent financial statements of the Company set forth in, or incorporated by reference into, the Registration Statement, the Prospectus and the Disclosure Package, (i) neither the Company nor any of the Subsidiaries has sustained any material loss or interference with the business of the Company and its Subsidiaries, taken as a whole, including without limitation, from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree, except in each case as otherwise disclosed in, or incorporated by reference into, the Registration Statement, Prospectus and Disclosure Package; (ii) there have been no transactions entered into by the Company or the Subsidiaries which are material to the Company and its Subsidiaries, considered as a whole, except as otherwise disclosed in, or incorporated by reference into, the Registration Statement, Prospectus and Disclosure Package; (iii) there has not been any material change, on a consolidated basis, in the authorized share capital of the Company and its Subsidiaries (other than the issuance of Common Shares upon the exercise of stock options and warrants or upon conversion of convertible securities described as outstanding in, and the grant of options and awards under Company Equity Incentive Plans described in, or incorporated by reference into, the Registration Statement, Prospectus and Disclosure Package), any material increase in the short-term debt or long-term debt of the Company and its Subsidiaries, on a consolidated basis, or any dividend or distribution of any kind declared, set aside for payment, paid or made by the Company on any class of share capital, or any Material Adverse Effect, or any development reasonably likely to cause or result in a Material Adverse Effect.

(o) Legal Proceedings.

(i) Except as set forth in, or incorporated by reference into, the Registration Statement, Prospectus and Disclosure Package, there is no legal, governmental or administrative proceeding, investigation, action, or suit pending, or, to the knowledge of the Company, threatened against or affecting the Company or its Subsidiaries or any of their respective properties, or to which the Company or its Subsidiaries is or may be a party, or to which any property of the Company or its Subsidiaries is or may be the subject, or against any officer or director of the Company or the Subsidiaries in connection with such person's employment therewith that, if determined adversely to the Company or the Subsidiaries or such officer or director, would individually or in the aggregate reasonably be expected to have, a Material Adverse Effect. Neither the Company nor its Subsidiaries is a party to or subject to the provisions of, any order, writ, injunction, judgment or decree of any court or government agency or instrumentality which would reasonably be expected to have a Material Adverse Effect, except for such order, writ, injunction, judgment or decree applicable to all companies in the similar industry or business of the Company and its Subsidiaries or applicable to all companies in the jurisdictions in which the Company operates.



(ii) There are no legal, governmental or administrative proceedings, actions or suits, or, to the knowledge of the Company, investigations, of the Company or its Subsidiaries that are required to be described in, or incorporated by reference into, or filed as exhibits to the Registration Statement or any of the documents incorporated by reference therein by the Securities Act or the Exchange Act or by the rules and regulations of the Commission thereunder that have not been so described or filed as required by the Securities Act or the Exchange Act and the Rules and Regulations under either of them.

(p) Authorization; Enforceability.

(i) The Company has all requisite corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder, and to provide the representations, warranties and indemnities under this Agreement, and all necessary action has been duly and validly taken by the Company to authorize the execution, delivery and performance of this Agreement. This Agreement has been duly and validly authorized, executed and delivered by the Company and constitutes the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except that rights to indemnification and contribution hereunder may be limited by applicable law and except that enforcement hereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether applied in a proceeding in law or equity).

(ii) The execution and delivery of this Agreement and the issuance and sale of the Shares hereunder, and the compliance by the Company with all of the provisions of this Agreement and the consummation of the transactions contemplated herein will not result in (1) a breach or violation of any of the terms and provisions of, or constitute a default under, any obligation, agreement, covenant or condition contained in any indenture, mortgage, deed of trust, loan or credit agreement or other agreement or instrument to which the Company or its Subsidiaries is a party or by which either of them is bound or to which any property of the Company or its Subsidiaries is subject, (2) a violation of the Company's certificate of incorporation, (3) a violation of any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or its Subsidiaries or any of their properties, or (4) the creation of any material Encumbrance upon any assets of the Company or its Subsidiaries or the triggering, solely as a result of the Company's execution and delivery of this Agreement, of any preemptive or rights of first refusal or first offer, or any similar rights (whether pursuant to a "poison pill" provision or otherwise), on the part of holders of the Company's securities or any other person, except, in the cases of (1), (3) and (4) above, for any such conflict, breach, violation, creation or default that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Neither the Company nor its Subsidiaries or controlled affiliates, nor any person acting on its or their behalf, has issued or sold any Common Shares or securities or instruments convertible into, exchangeable for and/or otherwise entitling the holder thereof to acquire Common Shares which would be integrated with the offer and sale of the Shares hereunder.



(q) [Reserved].

(r) No Violations or Default. The Company and each of its “significant subsidiaries” within the meaning of Rule 1-02(w) of Regulation S-X is not (A) in violation of its certificate of incorporation or by-laws or other applicable governing documents, (B) in default in the performance or observance of any material obligation, agreement, covenant or condition contained in any contract, indenture, mortgage, deed of trust, loan or credit agreement, note, lease or other agreement or instrument to which the Company or any of its Subsidiaries is a party or by which it may be bound or to which any of the properties or assets of the Company or any of its Subsidiaries is subject (collectively, “Agreements and Instruments”), except for such defaults that would not reasonably be expected to, singly or in the aggregate, result in a Material Adverse Effect, or (C) in violation of any law, statute, rule, regulation, judgment, order, writ or decree of any arbitrator, court, governmental body, regulatory body, administrative agency or other authority, body or agency having jurisdiction over the Company or any of its Subsidiaries or any of their respective properties, assets or operations (each, a “Governmental Entity”), except for such violations that would not reasonably be expected to, singly or in the aggregate, result in a Material Adverse Effect. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated herein and in the Registration Statement, the Disclosure Package and the Prospectus, and compliance by the Company with its obligations hereunder, have been duly authorized by all necessary corporate action and do not and will not, whether with or without the giving of notice or passage of time or both, conflict with or constitute a breach of, or default under, or result in the creation or imposition of any lien, charge or encumbrance upon any properties or assets of the Company or any of its Subsidiaries pursuant to, the Agreements and Instruments (except for such conflicts, breaches, defaults or Encumbrances that would not reasonably be expected to, singly or in the aggregate, result in a Material Adverse Effect), nor will such action result in any violation of (i) the provisions of the certificate of incorporation or by-laws or similar organization document of the Company or any of its Subsidiaries or, (ii) any law, statute, rule, regulation, judgment, order, writ or decree of any Governmental Entity, except with respect to clause (ii), such violations as would not reasonably be expected to, singly or in the aggregate, result in a Material Adverse Effect.

(s) Compliance with Laws. Except as otherwise described in, or incorporated by reference into, the Registration Statement, the Disclosure Package and the Prospectus, and since January 1, 2021, the Company and its Subsidiaries have not violated and are in compliance in all material respects with all laws, statutes, ordinances, regulations, rules and orders of each foreign, federal, state or local government and any other governmental department or agency having jurisdiction over the Company and the Subsidiaries, and any judgment, decision, decree or order of any court or governmental agency, department or authority having jurisdiction over the Company and the Subsidiaries, except for such violations or noncompliance which, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

(t) Consents and Permits. The Company and each of its Subsidiaries possesses such permits, licenses, certificates, approvals, clearances, consents and other authorizations (collectively, “Governmental Licenses”) issued by the appropriate Governmental Entities necessary to conduct the business now operated by them, except where the failure to possess would not reasonably be expected to, singly or in the aggregate, result in a Material Adverse Effect. The Company and each of its Subsidiaries is in compliance with the terms and conditions



of all Governmental Licenses and, to the Company's knowledge, no event has occurred which allows, or after notice or lapse of time would allow, revocation or termination thereof or result in any other material impairment of the rights of the holder of any Government License, except where the failure so to comply would not reasonably be expected to, singly or in the aggregate, result in a Material Adverse Effect. All of the material Governmental Licenses are valid and in full force and effect. Neither the Company nor any of its Subsidiaries (a) has received written notice of any ongoing claim, action, suit, proceeding, hearing, enforcement, investigation, arbitration or other action from any U.S. or non-U.S. Governmental Entity or third party alleging that any product, operation or activity is in violation of any Governmental Licenses; (b) has received written notice that any Governmental Entity has taken, is taking or intends to take regulatory action; and (c) has, either voluntarily or involuntarily, initiated, conducted, or issued or caused to be initiated, conducted or issued, any recall, safety alert, or similar notice or action relating to any alleged product defect, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(u) Absence of Further Requirements. No filing with, or authorization, approval, consent, license, order, registration, qualification or decree of, any Governmental Entity is necessary or required for the performance by the Company of its obligations hereunder, in connection with the offer and sale of the Shares hereunder, or the consummation of the transactions contemplated hereby, except such as have been already obtained or as may be required under the Securities Act, the Rules and Regulations, the rules of the New York Stock Exchange, state securities laws, and the rules of FINRA.

(v) Insurance. The Company and its Subsidiaries carry, or are covered by, insurance in such amounts and covering such risks as is prudent and reasonable for companies engaged in similar businesses in similar industries; and all such insurance is outstanding and in full force and effect and neither the Company nor the Subsidiaries has received any notice of cancellation or proposed cancellation relating to such insurance.

(w) Environmental Laws. Except as otherwise described in, or incorporated by reference into, the Registration Statement, the Disclosure Package and the Prospectus, neither the Company nor any of its Subsidiaries is in violation of any statute, rule, regulation, decision or order of any governmental agency or body or any court, domestic or foreign, relating to the use, disposal or release of hazardous or toxic substances or relating to the protection or restoration of the environment or human exposure to hazardous or toxic substances (collectively, "Environmental Laws"), owns or operates any real property contaminated with any substance that is subject to any Environmental Laws, is liable for any off-site disposal or contamination pursuant to any Environmental Laws, or is subject to any claim relating to any Environmental Laws, which violation, contamination, liability or claim would individually or in the aggregate, have a Material Adverse Effect.

(x) Independent Public Accountants. Each of (i) Ernst & Young LLP, who has expressed its opinion with respect to the Company's audited financial statements (which term as used in this Agreement includes the related notes thereto) incorporated by reference as a part of the Registration Statement and included in the Prospectus, and (ii) Moss Adams, LLC, is an independent registered public accounting firm as required by the Securities Act and the Exchange Act.





(y) Forward-Looking Statements. No forward looking statement within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act contained in, or incorporated by reference into, the Commission Documents, the Registration Statement or the Prospectus, has been made or reaffirmed without a reasonable basis.

(z) Title to Property. Each of the Company and the Subsidiaries has good and marketable title to all real property owned by it and good title or valid leases to all personal property owned by it, in each case, free and clear of all mortgages, pledges, liens, security interests, claims, restrictions or Encumbrances (except for customary easements and rights of way) of any kind except such as (A) are described in, or incorporated by reference into, the Registration Statement, the Disclosure Package and the Prospectus, (B) are not expected, singly or in the aggregate, to materially affect the value of such property and to materially interfere with the use made and proposed to be made of such property by the Company and the Subsidiaries, or (C) such other Encumbrances executed by the Company and its Subsidiaries in the ordinary course of business or as or may be required to conduct their business.

(aa) Intellectual Property. Except as otherwise described in, or incorporated by reference into, the Registration Statement, Prospectus or Disclosure Package or as would not reasonably be expected to, individually or in the aggregate, result in a Material Adverse Effect, (i) the Company and its Subsidiaries own or possess, or can promptly acquire on reasonable terms, ownership, licenses or other legal rights to use all patents, trademarks, service marks, tradenames, copyrights, trade secrets or other proprietary rights (collectively, "Intellectual Property Rights") necessary for their respective businesses as now conducted, (ii) the Company believes it and its Subsidiaries have taken commercially reasonable steps necessary to establish and preserve their respective ownership of all Intellectual Property Rights owned by the Company or any of its Subsidiaries that is necessary for their respective businesses as now conducted, (iii) to the knowledge of the Company, there is no infringement, misappropriation or other violation of the Intellectual Property Rights owned by the Company or any of its Subsidiaries by any third party, (iv) to the knowledge of the Company, the present business, activities and products of the Company and its Subsidiaries do not infringe, misappropriate or otherwise violate any Intellectual Property Rights of any other person or entity, (v) to the knowledge of the Company, there is no proceeding pending or threatened in writing, charging the Company or any of its Subsidiaries with infringement, misappropriation or other violation of any Intellectual Property Rights adversely held by a third party which has been filed, (vi) to the knowledge of the Company, no proceedings have been instituted or are pending or threatened in writing, which challenge the rights of the Company or any of its Subsidiaries to use the Intellectual Property Rights owned by or licensed to the Company or its Subsidiaries, and (vii) the Intellectual Property Rights owned by and, to the knowledge of the Company, licensed, to the Company and its Subsidiaries, have not been adjudged invalid or unenforceable in whole or in part and to the knowledge of the Company, there is no pending or threatened in writing proceeding by others challenging the validity or scope of any such Intellectual Property Rights.



(bb) Taxes.

(i) The Company has filed all federal and state and all applicable local and foreign income tax returns which have been required to be filed through the date hereof, except in any case in which the failure to so file would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(ii) The Company has paid all federal, state, local and foreign taxes required to be paid and any other assessment, fine or penalty levied against it, to the extent that any of the foregoing would otherwise be delinquent, except, in all cases, for any such tax, assessment, fine or penalty that is being contested in good faith and except in any case in which the failure to so pay would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(cc) No Reliance. The Company has not relied upon Canaccord or legal counsel for Canaccord for any legal, tax or accounting advice in connection with the offering and sale of the Placement Shares.

(dd) Underwriter Agreements. Except for this Agreement, the Company is not a party to any agreement with an agent or underwriter for any other “at the market” transaction.

(ee) Disclosure Controls.

(i) Except as otherwise described in, or incorporated by reference into, the Registration Statement, the Disclosure Package or the Prospectus, the Company has established and maintains disclosure controls and procedures (as such term is defined in Rule 13a-15 under the Exchange Act), which (a) are designed to ensure that material information relating to the Company, including its consolidated Subsidiaries, is made known to the Company’s principal executive officer and principal financial officer by others within those entities; (b) have been evaluated for effectiveness in accordance with U.S. securities laws; and (c) are effective in all material respects to perform the functions for which they were established.

(ii) Except as otherwise described in, or incorporated by reference into, the Registration Statement, the Disclosure Package or the Prospectus, the Company maintains internal accounting controls which provide reasonable assurance that (1) transactions are executed in accordance with management’s authorization, (2) transactions are recorded as necessary to permit preparation of its financial statements and to maintain accountability for its assets, (3) access to its assets is permitted only in accordance with management’s authorization and (4) the reported accountability for its assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(ff) Accounting Controls. Except as otherwise described in, or incorporated by reference into, the Registration Statement, the Disclosure Package and the Prospectus, the Company maintains effective internal control over financial reporting (as defined under Rule 13a-15 and 15d-15 of the Exchange Act Regulations) and a system of internal accounting

controls sufficient to provide reasonable assurances that (A) transactions are executed in

accordance with management's general or specific authorization; (B) transactions are recorded as necessary to permit preparation of financial statements in conformity with US GAAP and to maintain accountability for assets; (C) access to assets is permitted only in accordance with management's general or specific authorization; and (D) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. Except as otherwise described in, or incorporated by reference into, the Registration Statement, the Disclosure Package and the Prospectus, since the end of the Company's most recent audited fiscal year, there has been (1) no material weakness identified in the Company's internal control over financial reporting (whether or not remediated) and (2) no adverse change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

(gg) [Reserved].

(hh) Broker/Dealer Relationships. Neither the Company nor the Subsidiaries or any related entities (i) is required to register as a "broker" or "dealer" in accordance with the provisions of the Exchange Act or (ii) directly or indirectly through one or more intermediaries, controls or is a "person associated with a FINRA member" or "associated person of a FINRA member" (within the meaning of Article I of the Bylaws of the FINRA).

(ii) [Reserved].

(jj) Sarbanes-Oxley. The Company is in compliance in all material respects with all applicable provisions of the Sarbanes-Oxley Act.

(kk) Finder's Fees. Neither the Company nor, to the Company's knowledge, the Subsidiaries has incurred any liability for any brokerage commission, finder's fees or similar payments in connection with the transactions herein contemplated, except as may otherwise exist with respect to Canaccord pursuant to this Agreement.

(ll) Labor Disputes. No labor dispute with the employees of the Company or any of its Subsidiaries exists or, to the knowledge of the Company, is imminent, except where any such labor dispute would not, individually or in the aggregate, result in a Material Adverse Effect.

(mm) Canaccord Purchases. The Company acknowledges and agrees that Canaccord has informed the Company that Canaccord may, to the extent permitted under the Securities Act and the Exchange Act (including Regulation M thereunder), purchase and sell Common Shares for Canaccord's own account and for the account of its clients at the same time as sales of Placement Shares occur pursuant to this Agreement.

(nn) No Registration Rights. Except as waived or as may be described in the Prospectus, including the documents incorporated therein by reference, neither the Company nor its Subsidiaries is party to any agreement that provides any person with the right to require the Company or its Subsidiaries to register any securities for sale under the Securities Act by reason of the filing of the Registration Statement with the Commission or the issuance and sale of the Placement Shares.



(oo) Prospectus Disclosure. The statements set forth in the Prospectus under the caption “Description of Capital Stock” insofar as they purport to constitute a summary of the terms of the Shares, and under the caption “Plan of Distribution,” insofar as they purport to describe the provisions of the laws and documents referred to therein, are accurate in all material respects.

(pp) OFAC. To the knowledge of the Company, none of the Company, its Subsidiaries or any director, officer, agent, employee or controlled affiliate of the Company or its Subsidiaries is currently the target of any proceeding, investigation, suit or other action arising out of any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury (“OFAC”); and the Company will not directly or indirectly use the proceeds of the offering of the Placement Shares hereunder, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of any person currently the subject of any U.S. sanctions administered by OFAC, in breach of such sanctions.

(qq) Anti-Money Laundering. The operations of the Company and its Subsidiaries are and have been conducted at all times in compliance in all material respects with applicable financial record keeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all jurisdictions to which the Company and its Subsidiaries are subject, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the “Money Laundering Laws”), except as would not reasonably be expected to result in a Material Adverse Effect; and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or its Subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

(rr) Off-Balance Sheet Arrangements. There are no transactions, arrangements and other relationships between and/or among the Company, and/or, to the knowledge of the Company, any of its controlled affiliates and any unconsolidated entity, including, but not limited to, any structural finance, special purpose or limited purpose entity that could reasonably be expected to affect materially the Company’s liquidity or the availability of or requirements for its capital resources, required to be described in, or incorporated by reference into, the Prospectus which have not been described as required.

(ss) No Misstatement or Omission in an Issuer Free Writing Prospectus. Each issuer free writing prospectus, as defined in Rule 405 under the Securities Act (an “Issuer Free Writing Prospectus”), as of the Applicable Time did not or will not contain an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; provided, however, that the Company makes no representation or warranty with respect to any statement contained in any Issuer Free Writing Prospectus in reliance upon and in conformity with written information furnished to the Company by and through Canaccord for use therein.

(tt) Conformity of Issuer Free Writing Prospectus. Each Issuer Free Writing Prospectus conformed or will conform in all material respects with the requirements of the





Securities Act on the date of first use, and the Company has complied or will comply with any filing requirements applicable to such Issuer Free Writing Prospectus pursuant to the Securities Act. Each Issuer Free Writing Prospectus, as of its issue date and at all subsequent times through the completion of the public offer and sale of the Placement Shares, did not, does not and will not include any information that conflicted, conflicts or will conflict with the information contained in the Registration Statement, the Disclosure Package or the Prospectus, including any document incorporated by reference therein that has not been superseded or modified. The Company has not made any offer relating to the Shares that would constitute an Issuer Free Writing Prospectus without the prior written consent of Canaccord. The Company has retained in accordance with the Securities Act all Issuer Free Writing Prospectuses that were not required to be filed pursuant to the Securities Act.

(uu) eXtensible Business Reporting Language. The interactive data in eXtensible Business Reporting Language included or incorporated by reference in the Registration Statement has been prepared in accordance with the Commission's rules and guidelines applicable thereto.

(vv) Cybersecurity. Except as otherwise disclosed in, or incorporated by reference into, the Registration Statement and the Prospectus, or where the breach or compromise would not, individually or in the aggregate, reasonably be expected have a Material Adverse Effect, (i)(x) to the knowledge of the Company, there has been no security breach or other compromise of or relating to any of the Company's or its Subsidiaries' information technology and computer systems, networks, hardware, software, data (including the data of their respective customers, employees, suppliers, vendors and any third party data that the Company maintains within its own systems on the behalf of the foregoing), equipment or technology (collectively, "IT Systems and Data") and (y) the Company and its Subsidiaries have not been notified of, and have no knowledge of any event or condition that would reasonably be expected to result in, any security breach or other compromise to their IT Systems and Data except where such event or condition would not, individually or in the aggregate, reasonably be expected have a Material Adverse Effect; and (ii) the Company and its Subsidiaries are presently in compliance with all applicable laws or statutes and all applicable judgments, orders, rules and regulations of any court or arbitrator or governmental or regulatory authority and contractual obligations relating to the privacy and security of IT Systems and Data and to the protection of such IT Systems and Data from unauthorized use, access, misappropriation or modification.

(ww) [Reserved].

(xx) Stabilization. The Company has not taken, nor will it take, directly or indirectly, any action designed to, or which might reasonably be expected to cause or result in, or which has constituted or which might reasonably be expected to constitute, the stabilization or manipulation of the price of the Common Shares or any security of the Company to facilitate the sale or resale of any of the Shares.

(yy) Lending Relationship. Except as otherwise disclosed in, or incorporated by reference into, the Registration Statement, the Disclosure Package and the Prospectus, the Company (A) does not have any material lending or other relationship with any bank or lending



affiliate of Canaccord and (B) does not intend to use any of the proceeds from the sale of the Placement Shares to repay any outstanding debt owed to any affiliate of Canaccord.

(zz) Statistical and Market-Related Data. Any statistical and market-related data included in, or incorporated by reference into, the Registration Statement, the Disclosure Package or the Prospectus are based on or derived from sources that the Company believes to be reliable and accurate in all material respects and, to the extent required, the Company has obtained the written consent to the use of such data from such sources.

(aaa) Related Party Transactions. There are no business relationships or related-party transactions involving the Company, any of the Subsidiaries or any other person required to be described in, or incorporated by reference into, the Registration Statement, the Prospectus and the Disclosure Package, which have not been described as required.

(bbb) Margin Rules. The application of the proceeds received by the Company from the issuance, sale and delivery of the Placement Shares as described in the Registration Statement, the Disclosure Package and the Prospectus will not violate Regulation T, U or X of the Board of Governors of the Federal Reserve System or any other regulation of such Board of Governors.

7. Covenants of the Company. The Company covenants and agrees with Canaccord that:

(a) Registration Statement Amendments. After the date of this Agreement and during the period in which a prospectus relating to the Placement Shares is required to be delivered by Canaccord under the Securities Act (including in circumstances where such requirement may be satisfied pursuant to Rule 172 or Rule 173(a) under the Securities Act), (i) the Company will notify Canaccord promptly of the time when any subsequent amendment to the Registration Statement has been filed with the Commission and has become effective (each, a "Registration Statement Amendment Date") or any subsequent supplement to the Prospectus has been filed and of any request by the Commission for any amendment or supplement to the Registration Statement or Prospectus or for additional information; (ii) the Company will file promptly all other material required to be filed by it with the Commission pursuant to Rule 433(d) under the Securities Act; (iii) it will prepare and file with the Commission, promptly upon Canaccord's request, any amendments or supplements to the Registration Statement or Prospectus that (under the advice of counsel) are necessary or advisable in connection with the distribution of the Placement Shares by Canaccord (provided, however that the failure of Canaccord to make such request shall not relieve the Company of any obligation or liability hereunder, or affect Canaccord's right to rely on the representations and warranties made by the Company in this Agreement); and (iv) the Company will submit to Canaccord a copy of any amendment or supplement to the Registration Statement or Prospectus a reasonable period of time before the filing thereof and will afford Canaccord and Canaccord's counsel a reasonable opportunity to comment on any such proposed filing prior to such proposed filing; and the Company will cause each amendment or supplement to the Prospectus to be filed with the Commission as required pursuant to the applicable paragraph of Rule 424(b) of the Rules and Regulations or, in the case of any document to be incorporated therein by reference, to be filed with the Commission as required pursuant to the Exchange Act, within the time period prescribed.



(b) Notice of Commission Stop Orders. The Company will advise Canaccord promptly after it receives notice of the issuance by the Commission of any stop order or of any order preventing or suspending the use of the Prospectus, of any notice of objection of the Commission to the use of the form of the Registration Statement or any post-effective amendment thereto pursuant to Rule 401(g)(2) under the Securities Act, of the suspension of the qualification of the Shares for offering or sale in any jurisdiction, of the initiation or threatening of any proceeding for any such purpose, or of any request by the Commission for the amending or supplementing of the form of the Registration Statement or the Prospectus or for additional information; and, in the event of the issuance of any such stop order or of any such order preventing or suspending the use of the Prospectus in respect of the Shares or suspending any such qualification, to promptly use its commercially reasonable efforts to obtain the withdrawal of such order; and in the event of any such issuance of a notice of objection, promptly to take such reasonable steps as may be necessary to permit offers and sales of the Placement Shares by Canaccord, which may include, without limitation, amending the Registration Statement or filing a new registration statement, at the Company's expense (references in this Section 7 to the Registration Statement shall include any such amendment or new registration statement).

(c) Delivery of Prospectus; Subsequent Changes. Within the time during which a prospectus relating to the Shares is required to be delivered by Canaccord under the Securities Act (including in circumstances where such requirement may be satisfied pursuant to Rule 172 or Rule 173(a) under the Securities Act), the Company will comply with all requirements imposed upon it by the Securities Act and by the Rules and Regulations, as from time to time in force, and will file on or before their respective due dates all reports required to be filed by it with the Commission pursuant to Sections 13(a), 13(c), 15(d), if applicable, or any other provision of or under the Exchange Act. If during such period any event occurs as a result of which the Prospectus as then amended or supplemented would include an untrue statement of material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances then existing, not misleading, or if during such period it is necessary to amend or supplement the Registration Statement or Prospectus to comply with the Securities Act, the Company will promptly notify Canaccord to suspend the offering of Shares during such period and the Company will promptly amend or supplement the Registration Statement or Prospectus (at the expense of the Company) so as to correct such statement or omission or effect such compliance.

(d) NYSE Filings. In connection with the offering and sale of the Placement Shares, the Company will file with the Principal Trading Market all required documents and notices, and make all required certifications.

(e) Listing of Placement Shares. The Company will use commercially reasonable efforts to cause the Placement Shares to be listed on the Principal Trading Market and to qualify the Placement Shares for sale under the securities laws of such jurisdictions as Canaccord designates and to continue such qualifications in effect so long as required for the distribution of the Placement Shares; provided that the Company shall not be required in connection therewith to qualify as a foreign corporation or other entity or as a dealer in securities in any such jurisdiction where it would not otherwise be required to so qualify or to file a general consent to service of process in any such jurisdiction or subject itself to taxation in any such jurisdiction if it is not otherwise so subject.



(f) Delivery of Registration Statement and Prospectus. Upon the request of Canaccord, the Company will furnish to Canaccord and its counsel (at the expense of the Company) copies of the Registration Statement, the Prospectus (including all documents incorporated by reference therein) and all amendments and supplements to the Registration Statement or Prospectus that are filed with the Commission during the period in which a prospectus relating to the Shares is required to be delivered under the Securities Act (including all documents filed with the Commission during such period that are deemed to be incorporated by reference therein), in each case as soon as reasonably practicable and in such quantities as Canaccord may from time to time reasonably request and, at Canaccord's request, will also furnish copies of the Prospectus to each exchange or market on which sales of Placement Shares may be made.

(g) Expenses.

(i) The Company, whether or not the transactions contemplated hereunder are consummated or this Agreement is terminated, will pay or cause to be paid all expenses incident to the performance of its obligations hereunder, including but not limited to (i) the preparation, printing and filing of the Registration Statement and each amendment and supplement thereto, of each Prospectus and of each amendment and supplement thereto and each Issuer Free Writing Prospectus (as defined in Section 8 of this Agreement), (ii) the preparation, issuance and delivery of the Placement Shares, (iii) all fees and disbursements of the Company's counsel, accountants and other advisors, (iv) the qualification of the Placement Shares under securities laws in accordance with the provisions of Section 7(e) of this Agreement, including filing fees in connection therewith, (v) the printing and delivery to Canaccord of any requested copies of the Prospectus and any amendments or supplements thereto, and of this Agreement, (vi) the fees and expenses incurred in connection with the listing or qualification of the Placement Shares for trading on the Exchange, and (vii) any filing fees and expenses incident to any review by FINRA of the terms of the sale of the Placement Shares.

(ii) In addition to any fees that may be payable to Canaccord hereunder and regardless of whether or not the transactions contemplated hereunder are consummated or this Agreement is terminated, the Company shall reimburse Canaccord for all of its reasonable and documented expenses (including travel and related expenses, the costs of document preparation, production and distribution, third party research and database services and the reasonable fees and disbursements of counsel to Canaccord), up to a maximum reimbursement of \$75,000, arising out of this Agreement payable upon execution of this Agreement, plus an additional \$10,000 per calendar quarter.

(h) Use of Proceeds. The Company will use the Net Proceeds as described in the Prospectus.

(i) Other Sales. Without the prior written consent of Canaccord (which consent shall not be unreasonably withheld, conditioned or delayed), the Company will not (A) directly or indirectly, offer to sell, sell, announce the intention to sell, contract to sell, pledge, lend, grant or sell any option, right or warrant to sell or any contract to purchase, purchase any contract or option to sell or otherwise transfer or dispose of any Common Shares (other than the Shares





offered pursuant to the provisions of this Agreement) or securities convertible into or exchangeable or exercisable for Common Shares, warrants or any rights to purchase or acquire, Common Shares or file any registration statement under the Securities Act with respect to any of the foregoing (other than a registration statement on Form S-8 or any amendments or supplements to existing Registration Statements on Form S-1 or any new Registration Statements on Form S-1 or S-3 in replacement thereof pursuant to registration requirements of the Company in existence on the date hereof), or (B) enter into any swap or other agreement or any transaction that transfers in whole or in part, directly or indirectly, any of the economic consequence of ownership of the Common Shares, or any securities convertible into or exchangeable or exercisable for or repayable with Common Shares, whether any such swap or transaction described in clause (A) or (B) above is to be settled by delivery of Common Shares or such other securities, in cash or otherwise, during the period beginning on the date on which any Placement Notice is delivered by the Company hereunder and ending on the final Settlement Date with respect to Placement Shares sold pursuant to such Placement Notice; and without the prior written consent of Canaccord (which consent shall not be unreasonably withheld, conditioned or delayed), the Company will not directly or indirectly in any other “at the market” or continuous equity transaction offer to sell, sell, contract to sell, grant any option to sell or otherwise dispose of any Common Shares (other than the Placement Shares offered pursuant to the provisions of this Agreement) or securities convertible into or exchangeable or exercisable for Common Shares, warrants or any rights to purchase or acquire, Common Shares prior to the termination of this Agreement, *provided, however*, that such restrictions will not be applicable to the Company’s issuance or sale of (i) Common Shares, options to purchase Common Shares, Common Shares issuable upon the exercise of options, restricted stock awards, restricted stock unit awards, Common Shares issuable upon the settlement of restricted stock unit awards, or other equity awards or Common Shares issuable upon exercise or vesting of such other equity awards, pursuant to any (x) Company Equity Incentive Plan, (y) stock incentive plan, share ownership plan, or share purchase plan or (z) dividend reinvestment plan (but not shares subject to a waiver to exceed plan limits in its dividend reinvestment plan) of the Company whether now in effect or hereafter implemented, (ii) Common Shares issuable upon the conversion of Company securities (including convertible notes and preferred stock), or the exercise of warrants, options or other rights in effect or outstanding on the date hereof, and (iii) Common Shares, warrants, or other securities convertible into or exchangeable or exercisable for Common Shares, or any rights to purchase or acquire Common Shares, pursuant to any merger, acquisition, consolidation, reorganization, financing, partnership, joint venture, license, or other transaction involving the Company.

(j) Change of Circumstances. The Company will, at any time during the term of this Agreement, advise Canaccord promptly after it shall have received notice or obtained knowledge of any information or fact that would materially alter or affect any opinion or certificate provided to Canaccord pursuant to this Agreement.

(k) Due Diligence Cooperation. The Company will cooperate with any due diligence review conducted by Canaccord or its agents, including, without limitation, providing information and making available documents and senior corporate officers, as Canaccord may reasonably request; *provided, however*, that the Company shall be required to make available senior corporate officers only (i) by telephone or at the Company’s principal offices and (ii) during the Company’s ordinary business hours.

during the Company's ordinary business hours.

(l) Affirmation of Representations, Warranties, Covenants and Other Agreements. Upon commencement of the offering of the Placement Shares under this Agreement (and upon the recommencement of the offering of the Placement Shares under this Agreement following any termination of a suspension of sales hereunder), and at each Applicable Time, each Settlement Date, each Registration Statement Amendment Date and each Company Periodic Report Date (as defined below), in each case, to the extent no waiver is applicable pursuant to Section 7(n), the Company shall be deemed to have affirmed each representation, warranty, covenant and other agreement contained in this Agreement.

(m) Required Filings Relating to Placement of Placement Shares. In each Annual Report on Form 10-K or Quarterly Report on Form 10-Q filed by the Company in respect of any quarter in which sales of Placement Shares were made by Canaccord under this Agreement (each date on which any such document is filed, a "Company Periodic Report Date"), the Company shall set forth with regard to such quarter the number of Shares sold through Canaccord under this Agreement and the Net Proceeds received by the Company.

(n) Representation Dates; Certificate. During the term of this Agreement, on the date of each Placement Notice given hereunder, and each time the Company (i) files the Prospectus relating to the Placement Shares or amends or supplements (other than a prospectus supplement relating solely to an offering of securities other than the Placement Shares) the Registration Statement or the Prospectus relating to the Placement Shares by means of a post-effective amendment or supplement (but not by means of incorporation of document(s) by reference to the Registration Statement or the Prospectus relating to the Placement Shares); (ii) files an Annual Report on Form 10-K or Quarterly Report on Form 10-Q under the Exchange Act; or (iii) files a Current Report on Form 8-K containing amended financial information (other than an earnings release, to "furnish" information pursuant to Form 8-K relating to the reclassification of certain properties as discontinued operations in accordance with Statement of Financial Accounting Standards No. 144) under the Exchange Act (each date of filing of one or more of the documents referred to in clauses (i) through (iii) shall be a "Representation Date"); the Company shall furnish Canaccord (but in the case of clause (iii) above only if Canaccord reasonably determines that the financial information contained in such Form 8-K is material) with a certificate, in the form attached hereto as Exhibit A. The requirement to provide a certificate under this Section 7(n) shall be waived for any Representation Date occurring at a time at which no Placement Notice is pending, which waiver shall continue until the earlier to occur of the date the Company delivers a Placement Notice hereunder (which for such calendar quarter shall be considered a Representation Date) and the next occurring Representation Date; *provided, however*, that such waiver shall not apply for any Representation Date on which the Company files its Annual Report on Form 10-K. Notwithstanding the foregoing, if the Company subsequently decides to sell Placement Shares following a Representation Date when the Company relied on such waiver and did not provide Canaccord with a certificate under this Section 7(n), then before the Company delivers the Placement Notice or Canaccord sells any Placement Shares, the Company shall provide Canaccord with a certificate, in the form attached hereto as Exhibit A, dated the date of the Placement Notice.

(o) Legal Opinions. Upon commencement of the offering of Placement Shares under this Agreement (and upon the recommencement of the offering of the Placement Shares under this Agreement following any termination of a suspension of sales hereunder), and promptly



after each (i) Registration Statement Amendment Date and (ii) Company Periodic Report Date, in each case, to the extent no waiver is applicable pursuant to Section 7(n), the Company will furnish or cause to be furnished to Canaccord the written opinion and negative assurance letter, to the extent applicable, of Stradling Yocca Carlson & Rauth, P.C., counsel for the Company, or other counsel reasonably satisfactory to Canaccord, dated the date of such commencement or recommencement, or the date of effectiveness of such amendment, or the date of filing with the Commission of such supplement or other document, as the case may be, in a form and substance reasonably satisfactory to Canaccord and its counsel, *provided, however*, in lieu of such opinion and letter, counsel last furnishing such letter to Canaccord may furnish Canaccord with a letter substantially to the effect that Canaccord may rely on such last opinion and letter to the same extent as though each were dated the date of such letter authorizing reliance (except that statements in such last letter shall be deemed to relate to the Registration Statement and the Prospectus as amended and supplemented to the time of delivery of such letter authorizing reliance). As used in this paragraph, to the extent there shall be an Applicable Time on or following the date referred to in clause (i) or (ii) above, promptly shall be deemed to be on or prior to the next succeeding Applicable Time. Such opinion and negative assurance letter, to the extent applicable, shall be rendered to Canaccord at the request of the Company and shall state so therein.

(p) Comfort Letters. Upon commencement of the offering of Placement Shares under this Agreement (and upon the recommencement of the offering of the Shares under this Agreement following any termination of a suspension of sales hereunder), and promptly after each (i) Registration Statement Amendment Date and (ii) Company Periodic Report Date, in each case, to the extent no waiver is applicable pursuant to Section 7(n), the Company shall cause its independent accountants reasonably satisfactory to Canaccord, to furnish Canaccord letters dated the date of this Agreement or the date of such commencement or recommencement or the date of effectiveness of such amendment or the date of filing of such supplement or other document with the Commission, as the case may be (the “Comfort Letters”), in form and substance satisfactory to Canaccord, (i) confirming that they are registered independent public accountants within the meaning of the Securities Act and are in compliance with the applicable requirements relating to the qualification of accountants under Rule 2-01 of Regulation S-X of the Commission, (ii) stating, as of such date, the conclusions and findings of such firm with respect to the financial information and other matters included in or incorporated by reference in the Registration Statement as ordinarily covered by accountants’ “comfort letters” to underwriters in connection with registered public offerings (the first such letter, the “Initial Comfort Letter”) and (iii) updating the Initial Comfort Letter with any information which would have been included in the Initial Comfort Letter had it been given on such date and modified as necessary to relate to the Registration Statement and the Prospectus, as amended and supplemented to the date of such letter.

(q) Chief Financial Officer Certificate. Upon commencement of the offering of Placement Shares under this Agreement (and upon the recommencement of the offering of the Shares under this Agreement following any termination of a suspension of sales hereunder), and promptly after each (i) Registration Statement Amendment Date and (ii) Company Periodic Report Date, in each case, to the extent no waiver is applicable pursuant to Section 7(n), the Company shall furnish to the Agent a certificate of the Chief Financial Officer of the Company, in the form attached hereto as Exhibit B.

in the form attached hereto as EXHIBIT D.

(r) Market Activities. The Company will not, directly or indirectly, without giving effect to activities by Canaccord, (i) take any action designed to cause or result in, or that constitutes or might reasonably be expected to constitute, the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Shares or (ii) sell, bid for, or purchase the Shares, or pay anyone any compensation for soliciting purchases of the Shares other than Canaccord.

(s) Insurance. The Company and its Subsidiaries shall maintain, or cause to be maintained, insurance in such amounts and covering such risks as is reasonable and customary for companies engaged in similar businesses in similar industries.

(t) Compliance with Laws. The Company and its Subsidiaries shall comply with all federal, state and local or foreign law, rule, regulation, ordinance, order or decree applicable to them, except where failure to so comply would not reasonably be expected to have a Material Adverse Effect. Furthermore, the Company and its Subsidiaries shall maintain, or cause to be maintained, all material environmental permits, licenses and other authorizations required by federal, state and local law in order to conduct their businesses as described in, or incorporated by reference into, the Registration Statement, the Disclosure Package or the Prospectus, and the Company and its Subsidiaries shall conduct their businesses, or cause their businesses to be conducted, in substantial compliance with such material permits, licenses and authorizations and with applicable environmental laws, except where the failure to maintain or be in compliance with such permits, licenses and authorizations would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

(u) Investment Company Act. The Company will conduct its affairs in such a manner so as to reasonably ensure that it will not be or become, at any time prior to the termination of this Agreement, an “investment company,” as such term is defined in the Investment Company Act, assuming no change in the Commission’s current interpretation as to entities that are not considered an investment company.

(v) Securities Act and Exchange Act. The Company will use commercially reasonable efforts to comply, in all material respects, with all requirements imposed upon it by the Securities Act and the Exchange Act as from time to time in force, so far as necessary to permit sales of the Shares pursuant to this Agreement and the Prospectus.

(w) No Offer to Sell. Other than a free writing prospectus (as defined in Rule 405 under the Securities Act) approved in advance by the Company and Canaccord in its capacity as principal or agent hereunder, neither Canaccord nor the Company (including its agents and representatives, other than Canaccord in its capacity as such) will make, use, prepare, authorize, approve or refer to any written communication (as defined in Rule 405 under the Securities Act), required to be filed by it with the Commission, that constitutes an offer to sell or solicitation of an offer to buy Common Shares hereunder.

(x) Sarbanes-Oxley Act. The Company and the Subsidiaries will comply, in all material respects, with all effective applicable provisions of the Sarbanes-Oxley Act.





(y) Consent to Canaccord Trading. The Company consents to Canaccord trading in the Common Shares of the Company for Canaccord's own account and for the account of its clients at the same time as sales of Placement Shares occur pursuant to this Agreement to the extent permitted under the Securities Act and the Exchange Act (including Regulation M thereunder),

(z) [Reserved].

(aa) [Reserved].

(bb) Blue Sky Qualifications. The Company will use its commercially reasonable efforts, in cooperation with Canaccord, to qualify the Placement Shares for sale under the applicable securities laws of such states and other jurisdictions (domestic or foreign) as Canaccord may designate and to maintain such qualifications in effect so long as required to complete the sale of the Placement Shares; provided, however, that the Company shall not be obligated to file any general consent to service of process or to qualify as a foreign corporation or as a dealer in securities in any jurisdiction in which it is not so qualified or to subject itself to taxation in respect of doing business in any jurisdiction in which it is not otherwise so subject.

(cc) Emerging Growth Company Status. The Company will promptly notify Canaccord if the Company ceases to be an Emerging Growth Company at any time prior to the termination of this Agreement.

8. Additional Representations and Covenants of the Company.

(a) Issuer Free Writing Prospectuses.

(i) The Company represents that it has not made, and covenants that, unless it obtains the prior written consent of Canaccord (such consent not to be unreasonably withheld, conditioned or delayed), it will not make any offer relating to the Shares that would constitute a "free writing prospectus" (as defined in Rule 405 of the Securities Act) (an "Issuer Free Writing Prospectus") required to be filed by it with the Commission or retained by the Company under Rule 433 of the Securities Act; except as set forth in a Placement Notice, no use of any Issuer Free Writing Prospectus has been consented to by Canaccord. The Company agrees that it will comply with the requirements of Rules 164 and 433 of the Securities Act applicable to any Issuer Free Writing Prospectus.

(ii) The Company agrees that no Issuer Free Writing Prospectus, if any, will include any information that conflicts with the information contained in the Registration Statement, including any document incorporated by reference therein that has not been superseded or modified, or the Prospectus. In addition, no Issuer Free Writing Prospectus, if any, will include an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; provided however, the foregoing shall not apply to any statements or omissions in any Issuer Free Writing Prospectus made in reliance on information furnished in writing to the Company by Canaccord expressly stating that such information is intended for use therein.



(iii) The Company agrees that if at any time following issuance of an Issuer Free Writing Prospectus any event occurred or occurs as a result of which such Issuer Free Writing Prospectus would conflict with the information in the Registration Statement, including any document incorporated by reference therein that has not been superseded or modified, or the Prospectus or would include an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, the Company will give prompt notice thereof to Canaccord and, if reasonably requested by Canaccord, will prepare and furnish without charge to Canaccord an Issuer Free Writing Prospectus or other document which will correct such conflict, statement or omission; *provided, however*, the foregoing shall not apply to any statements or omissions in any Issuer Free Writing Prospectus made in reliance on information furnished in writing to the Company by Canaccord expressly stating that such information is intended for use therein.

(b) Non-Issuer Free Writing Prospectus. The Company consents to the use by Canaccord of a press release or other written communication that contains only information permitted under Rule 134 under the Securities Act; provided that the Company shall a reasonable opportunity to review and comment on such press release. Canaccord covenants not to take any action that would result in the Company being required to file with the Commission under Rule 433(d) under the Securities Act a free writing prospectus.

(c) Distribution of Offering Materials. The Company has not distributed and will not distribute, during the term of this Agreement, any offering materials in connection with the offering and sale of the Placement Shares other than the Registration Statement, Prospectus or any Issuer Free Writing Prospectus reviewed and consented to by Canaccord and included in a Placement Notice (as described in clause (a)(i) above).

9. Conditions to Canaccord's Obligations. The obligations of Canaccord hereunder with respect to a Placement will be subject to the continuing accuracy and completeness of the representations and warranties made by the Company herein and in the applicable Placement Notices, to the due performance by the Company of its obligations hereunder, to the completion by Canaccord of a due diligence review satisfactory to Canaccord in its reasonable judgment, and to the continuing satisfaction (or waiver by Canaccord in its sole discretion) of the following additional conditions:

(a) Registration Statement Effective. The Registration Statement shall have become effective and shall be available for the sale of (i) all Placement Shares issued pursuant to all prior Placements and not yet sold by Canaccord and (ii) all Placement Shares contemplated to be issued by the Placement Notice relating to such Placement.

(b) No Material Notices. None of the following events shall have occurred and be continuing: (i) receipt by the Company of any request for additional information from the Commission or any other federal, state, foreign or other governmental, administrative or self-regulatory authority during the period of effectiveness of the Registration Statement, the response to which might reasonably require any amendments or supplements to the Registration Statement or the Prospectus; (ii) the issuance by the Commission or any other federal, state, foreign or other governmental authority of any stop order suspending the effectiveness of the



Registration Statement or the initiation of any proceedings for that purpose; (iii) receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Shares for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose; (iv) the occurrence of any event that makes any statement made in the Registration Statement or the Prospectus or any document incorporated or deemed to be incorporated therein by reference untrue in any material respect or that requires the making of any changes in the Registration Statement, related prospectus or documents so that, in the case of the Registration Statement, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, and in the case of the Prospectus, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; and (v) the Company's reasonable determination that a post-effective amendment to the Registration Statement would be appropriate.

(c) No Misstatement or Material Omission. Canaccord shall not have advised the Company that the Registration Statement or Prospectus, or any amendment or supplement thereto, contains an untrue statement of fact that in Canaccord's opinion (under the advice of counsel) is material, or omits to state a fact that in Canaccord's opinion (under the advice of counsel) is material and is required to be stated therein or is necessary to make the statements therein not misleading.

(d) Material Changes. Except as contemplated and appropriately disclosed in the Prospectus, or disclosed in the Company's reports filed with the Commission, in each case at the time the applicable Placement Notice is delivered, there shall not have been any material change, on a consolidated basis, in the authorized share capital of the Company and its Subsidiaries, or any Material Adverse Effect, or any development that may reasonably be expected to cause a Material Adverse Effect, or a downgrading in or withdrawal of the rating assigned to any of the Company's securities by any rating organization or a public announcement by any rating organization that it has under surveillance or review its rating of any of the Company's securities, the effect of which, in the sole judgment of Canaccord (without relieving the Company of any obligation or liability it may otherwise have), is so material as to make it impracticable or inadvisable to proceed with the offering of the Placement Shares on the terms and in the manner contemplated in the Prospectus.

(e) Certificates. Canaccord shall have received the certificate required to be delivered pursuant to Section 7(n) on or before the date on which delivery of such certificate is required pursuant to Section 7(n). Canaccord shall have also received the certificate required to be delivered pursuant to Section 7(q) on or before the date on which delivery of such certificate is required pursuant to Section 7(q).

(f) Legal Opinions. Canaccord shall have received the opinions of counsel to the Company required to be delivered pursuant Section 7(o) on or before the date on which such delivery of such opinions are required pursuant to Section 7(o). In addition, Canaccord shall have received the negative assurance letter of Goodwin Procter LLP, counsel to Canaccord, on such dates and with respect to such matters as Canaccord may reasonably request.



(g) Comfort Letters. Canaccord shall have received the comfort letters required to be delivered pursuant Section 7(p) on or before the date on which such delivery of such letters are required pursuant to Section 7(p).

(h) Approval for Listing; No Suspension. The Placement Shares shall have either been (i) approved for listing, subject to notice of issuance, on the Principal Trading Market, or (ii) the Company shall have filed an application for listing of the Placement Shares on the Principal Trading Market at or prior to the issuance of the Placement Notice. Trading in the Common Shares shall not have been suspended on such market.

(i) Other Materials. On each date on which the Company is required to deliver a certificate pursuant to Section 7(n), the Company shall have furnished to Canaccord such further information, certificates, opinions and documents as Canaccord may reasonably request. All such opinions, certificates, letters and other documents will be in compliance with the provisions hereof. The Company will furnish Canaccord with such conformed copies of such opinions, certificates, letters and other documents as Canaccord shall reasonably request.

(j) Securities Act Filings Made. All filings with the Commission required by Rule 424 under the Securities Act to have been filed prior to the issuance of any Placement Notice hereunder shall have been made within the applicable time period prescribed for such filing by Rule 424.

(k) No Termination Event. There shall not have occurred any event that would permit Canaccord to terminate this Agreement pursuant to Section 12(a).

#### 10. Indemnification and Contribution.

(a) Company Indemnification. The Company will indemnify and hold harmless Canaccord and each person, if any, who controls Canaccord within the meaning of the Securities Act or the Exchange Act against any losses, claims, damages or liabilities, to which Canaccord or such controlling person may become subject, under Section 15 of the Securities Act or Section 20 of the Exchange Act, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon (i) an untrue statement or alleged untrue statement of a material fact contained in the Registration Statement (or any amendments thereto), the Prospectus (or any amendment or supplement thereto) or the Disclosure Package or (ii) the omission or alleged omission to state therein a material fact, (a) in the case of the Registration Statement or any amendment thereto, required to be stated therein or necessary to make the statements therein not misleading and (b) in the case of the Prospectus or any supplement thereto or the Disclosure Package, necessary to make the statements therein, in light of the circumstances in which they were made, not misleading, and will reimburse Canaccord for any reasonable documented legal expenses of counsel for Canaccord, and for other documented expenses reasonably incurred by Canaccord in connection with investigating or defending any such action or claim as such expenses are incurred; *provided, however*, that the Company shall not be liable in any such case to the extent that any such losses, claims, damages or liabilities arise out of or are based upon an untrue statement or alleged untrue statement or omission or alleged omission was made in the Registration Statement (or any amendments thereto), the Prospectus (or any amendment or supplement thereto) or the Disclosure Package, in reliance





upon and in conformity with written information furnished to the Company by and through Canaccord as set forth in Section 10(b) below expressly for use therein.

(b) Canaccord Indemnification. Canaccord will indemnify and hold harmless the Company, each of its directors, each of its officers who signs the Registration Statement, and each person, if any, who controls the Company within the meaning of the Securities Act or the Exchange Act against any losses, claims, damages or liabilities to which the Company or such director, officer or controlling person may become subject under Section 15 of the Securities Act or Section 20 of the Exchange Act, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon (i) an untrue statement or alleged untrue statement of a material fact contained in the Registration Statement (or any amendments thereto), the Prospectus (or any amendment or supplement thereto) or the Disclosure Package, or (ii) the omission or alleged omission to state therein a material fact, (a) in the case of the Registration Statement or any amendment thereto, required to be stated therein or necessary to make the statements therein not misleading and (b) in the case of the Prospectus or any supplement thereto or the Disclosure Package, necessary to make the statements therein, in light of the circumstances in which they were made, not misleading, in each case to the extent, but only to the extent, that any such losses, claims, damages or liabilities arise out of or are based upon an untrue statement or alleged untrue statement or omission or alleged omission was made in the Registration Statement (or any amendments thereto), the Prospectus (or any amendment or supplement thereto), the Disclosure Package, in reliance upon and in conformity with written information furnished to the Company by and through Canaccord expressly for use therein, it being understood and agreed that the only such information furnished by Canaccord to the Company consists of the information set forth in the last sentence of the seventh paragraph under the caption "Plan of Distribution" in the Prospectus; and will reimburse the Company for any legal or other expenses reasonably incurred by the Company in connection with investigating or defending any such action or claim as such expenses are incurred.



(c) Procedure.

(i) Each indemnified party shall give written notice as promptly as reasonably practicable to each indemnifying party of any action commenced against it in respect of which indemnity may be sought hereunder, but failure to so notify an indemnifying party shall not relieve such indemnifying party from any liability hereunder to the extent it is not materially prejudiced as a result thereof and in any event shall not relieve it from any liability which it may have otherwise than on account of this Section 10. In the case of parties indemnified pursuant to Section 10(a) above, counsel to the indemnified parties shall be selected by Canaccord, and, in the case of parties indemnified pursuant to Section 10(b) above, counsel to the indemnified parties shall be selected by the Company. An indemnifying party may participate at its own expense in the defense of any such action; *provided, however*, that counsel to the indemnifying party shall not (except with the consent of the indemnified party) also be counsel to the indemnified party. In no event shall the indemnifying parties be liable for fees and expenses of more than one counsel (in addition to any relevant local counsel) separate from their own counsel for all indemnified parties in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances. No indemnifying party shall, without the prior written consent of the indemnified parties, settle or compromise or consent to the entry of any judgment with respect to any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever in respect of which indemnification or contribution could be sought under this Section 10 (whether or not the indemnified parties are actual or potential parties thereto), unless such settlement, compromise or consent (i) includes an unconditional release of each indemnified party from all liability arising out of such litigation, investigation, proceeding or claim and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party. Notwithstanding anything to the contrary herein, neither the assumption of the defense of any such action nor the payment of any fees or expenses related thereto shall be deemed to be an admission by the indemnifying party that it has an obligation to indemnify any person pursuant to this Agreement.

(ii) The indemnifying party shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying person agrees to indemnify each indemnified party from and against any loss, claim, damage or liability by reason of such settlement or judgment. Notwithstanding the foregoing sentence, if at any time an indemnified party shall have requested that an indemnifying party reimburse the indemnified party for reasonable fees and expenses of counsel as contemplated by this section, the indemnifying person shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 30 days after receipt by the indemnifying party of the proposed terms of such settlement and (ii) the indemnifying party shall not have reimbursed the indemnified person in accordance with such request prior to the date of such settlement. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement, compromise or consent to the entry of judgment in any pending or threatened action, suit



or proceeding in respect of which any indemnified party is or could have been a party and indemnity was or could have been sought hereunder by such indemnified party, unless such settlement, compromise or consent includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such action, suit or proceeding.

(d) Contribution. If the indemnification provided for in this Section 10 is for any reason held to be unavailable to or otherwise insufficient to hold harmless an indemnified party under subsection (a) or (b) above in respect of any losses, claims, damages or liabilities (or actions in respect thereof) referred to therein, then each indemnifying party shall contribute to the aggregate amount paid or payable by such indemnified party, as incurred, as a result of such losses, claims, damages or liabilities (or actions in respect thereof) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and Canaccord on the other from the offering of the Placement Shares. If, however, the allocation provided by the immediately preceding sentence is not permitted by applicable law or if the indemnified party failed to give the notice required under subsection (c) above, then each indemnifying party shall contribute to such amount paid or payable by such indemnified party in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Company on the one hand and Canaccord on the other in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities (or actions in respect thereof), as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and Canaccord on the other shall be deemed to be in the same proportion as the total net proceeds from the offering of the Shares (before deducting expenses) received by the Company, bear to the total commissions received by Canaccord. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company on the one hand or Canaccord on the other and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company and Canaccord agree that it would not be just and equitable if contributions pursuant to this subsection (d) were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to above in this subsection (d). The amount paid or payable by an indemnified party as a result of the losses, claims, damages or liabilities (or actions in respect thereof) referred to above in this subsection (d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this subsection (d), Canaccord shall not be required to contribute any amount in excess of the selling commission received by Canaccord in connection with the offering contemplated hereby. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this subsection (d), each officer and employee of Canaccord and each person, if any, who controls Canaccord within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act shall have the same rights to contribution as Canaccord, and each director of the Company, each officer of the Company who signed the Registration Statement, and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act shall have the same rights to contribution as the Company.



(e) Obligations. The obligations of the Company under this Section 10 shall be in addition to any liability which the Company may otherwise have and shall extend, upon the same terms and conditions, to each person, if any, who controls Canaccord within the meaning of the Securities Act; and the obligations of Canaccord under this Section 10 shall be in addition to any liability which Canaccord may otherwise have and shall extend, upon the same terms and conditions, to each officer and director of the Company and to each person, if any, who controls the Company within the meaning of the Securities Act.

11. Representations and Agreements to Survive Delivery. All representations and warranties contained in this Agreement or in certificates of officers of the Company and Canaccord delivered pursuant hereto shall remain operative and in full force and effect regardless of (i) any investigation made by or on behalf of Canaccord or its agents, any controlling persons of Canaccord, its officers or directors, or any person controlling the Company (or any of their respective officers, directors or controlling persons), (ii) delivery and acceptance of the Placement Shares and payment therefor or (iii) any termination of this Agreement.

12. Termination.

(a) Canaccord shall have the right to terminate this Agreement at any time by giving notice as hereinafter specified if (i) any Material Adverse Effect has occurred, or any development that is reasonably expected to cause a Material Adverse Effect has occurred or any other event has occurred which, in the sole judgment of Canaccord, may materially impair Canaccord's ability to proceed with the offering to sell the Shares, (ii) the Company shall have failed, refused or been unable, at or prior to any Settlement Date, to perform any agreement on its part to be performed hereunder, (iii) any other condition of Canaccord's obligations hereunder is not fulfilled, or (iv) any suspension or limitation of trading in the Common Shares of the Company on the Principal Trading Market shall have occurred. Any such termination shall be without liability of any party to any other party except that the provisions of Section 7(g) (Expenses), Section 10 (Indemnification), Section 11 (Survival of Representations), Section 12(f) (Termination), Section 17 (Applicable Law; Consent to Jurisdiction) and Section 18 (Waiver of Jury Trial) hereof shall remain in full force and effect notwithstanding such termination. If Canaccord elects to terminate this Agreement as provided in this Section 12(a), Canaccord shall provide the required notice as specified in Section 13 (Notices).

(b) The Company shall have the right to terminate this Agreement in its sole discretion at any time by giving five (5) days' notice as hereinafter specified. Any such termination shall be without liability of any party to any other party except that the provisions of Section 7(j), Section 10, Section 11, Section 12(f), Section 17 and Section 18 hereof shall remain in full force and effect notwithstanding such termination.

(c) In addition to, and without limiting Canaccord's rights under Section 12(a), Canaccord shall have the right to terminate this Agreement in its sole discretion at any time after the date of this Agreement by giving five (5) days' notice as hereinafter specified. Any such termination shall be without liability of any party to any other party except that the provisions of Section 7(j), Section 10, Section 11, Section 12(f), Section 17 and Section 18 hereof shall remain in full force and effect notwithstanding such termination.





(d) This Agreement shall remain in full force and effect unless terminated pursuant to Sections 12(a), 12(b) or 12(c) above or otherwise by mutual agreement of the parties; provided that any such termination by mutual agreement shall in all cases be deemed to provide that Section 7(j), Section 10, Section 11, Section 12(f), Section 17 and Section 18 shall remain in full force and effect.

(e) Any termination of this Agreement shall be effective on the date specified in such notice of termination; provided that such termination shall not be effective until the close of business on the date of receipt of such notice by Canaccord or the Company, as the case may be. If such termination shall occur prior to the Settlement Date for any sale of Placement Shares, such Placement Shares shall settle in accordance with the provisions of this Agreement.

(f) In the event that the Company terminates this Agreement, as permitted under Section 12(b), the Company shall be under no continuing obligation pursuant to this Agreement to utilize the services of Canaccord in connection with any sale of securities of the Company or to pay any compensation to Canaccord other than compensation with respect to sales of Placement Shares subscribed on or before the termination date and the Company shall be free to engage other placement agents and underwriters from and after the termination date with no continuing obligation to Canaccord.

13. Notices. All notices or other communications required or permitted to be given by any party to any other party pursuant to the terms of this Agreement shall be in writing (including electronic transmission) and if sent to Canaccord, shall be delivered to:

Canaccord Genuity LLC  
99 High Street, Suite 1200  
Boston, Massachusetts 02110  
Attention: ECM, General Counsel

With a copy to:

Goodwin Procter LLP  
The New York Times Building  
620 Eighth Avenue  
New York, New York 10018  
Attention: Thomas S. Levato

or if sent to the Company, shall be delivered to:

Bird Global, Inc.  
392 NE 191st Street #20388  
Miami, Florida 33179  
Attention: Chief Financial Officer



With a copy to:

Stradling Yocca Carlson & Rauth, P.C.  
660 Newport Center Drive  
Suite 1600  
Newport Beach, California 92660  
Attention: Ryan C. Wilkins

Each party to this Agreement may change such address for notices by sending to the other party to this Agreement written notice of a new address for such purpose. Each such notice or other communication shall be deemed given (i) when delivered personally or by verifiable facsimile transmission (with an original to follow) on or before 4:30 p.m., eastern time, on a Business Day or, if such day is not a Business Day, on the next succeeding Business Day, (ii) on the next Business Day after timely delivery to a nationally-recognized overnight courier, (iii) on the Business Day actually received if deposited in the U.S. mail (certified or registered mail, return receipt requested, postage prepaid), and (iv) if sent by email, on the Business Day on which the email was sent (provided no “bounce back” or notice of non-delivery is received). For purposes of this Agreement, “Business Day” shall mean any day on which the Principal Trading Market and commercial banks in the city of New York are open for business.

14. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the Company and Canaccord and their respective successors and the affiliates, controlling persons, officers and directors referred to in Section 10 hereof. References to any of either of the parties contained in this Agreement shall be deemed to include the successors and permitted assigns of such party. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and permitted assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement. Neither party may assign its rights or obligations under this Agreement without the prior written consent of the other party, *provided, however*, that Canaccord may assign its rights and obligations hereunder to an affiliate of Canaccord without obtaining the Company’s consent.

15. Adjustments for Share Splits. The parties acknowledge and agree that all share related numbers contained in this Agreement shall be adjusted to take into account any share split, share dividend or similar event effected with respect to the Shares.

16. Entire Agreement; Amendment; Severability. This Agreement (including all schedules and exhibits attached hereto and placement notices issued pursuant hereto) constitutes the entire agreement and supersedes all other prior and contemporaneous agreements and undertakings, both written and oral, among the parties hereto with regard to the subject matter hereof. Neither this Agreement nor any term hereof may be amended except pursuant to a written instrument executed by the Company and Canaccord. In the event that any one or more of the provisions contained herein, or the application thereof in any circumstance, is held invalid, illegal or unenforceable, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions contained herein shall not be affected or impaired thereby.



17. Applicable Law; Consent to Jurisdiction. This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of New York without regard to the principles of conflicts of laws. Each party hereby irrevocably submits to the non-exclusive jurisdiction of the state and federal courts sitting in the City of New York, borough of Manhattan, for the adjudication of any dispute hereunder or in connection with any transaction contemplated hereby, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof (certified or registered mail, return receipt requested) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law.

18. Waiver of Jury Trial. The Company and Canaccord hereby irrevocably waive any right either may have to a trial by jury in respect of any claim based upon or arising out of this agreement or any transaction contemplated hereby.

19. Absence of Fiduciary Duties. The parties acknowledge that they are sophisticated in business and financial matters and that each of them is solely responsible for making its own independent investigation and analysis of the transactions contemplated by this Agreement. They further acknowledge that Canaccord has not been engaged by the Company to provide, and has not provided, financial advisory services in connection with the terms of the offering and sale of the Shares nor has Canaccord assumed at any time a fiduciary relationship to the Company in connection with such offering and sale. The parties also acknowledge that the provisions of this Agreement fairly allocate the risks of the transactions contemplated hereby among them in light of their respective knowledge of the Company and their respective abilities to investigate its affairs and business in order to assure that full and adequate disclosure has been made in the Registration Statement, the Disclosure Package and the Prospectus (and any amendments and supplements thereto). The Company hereby waives, to the fullest extent permitted by law, any claims it may have against Canaccord for breach of fiduciary duty or alleged breach of fiduciary duty and agrees Canaccord shall have no liability (whether direct or indirect) to the Company in respect of such a fiduciary duty claim or to any person asserting a fiduciary duty claim on behalf of or in right of the Company, including stockholders, employees or creditors of Company.

20. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed Agreement by one party to the other may be made by facsimile or email transmission.



If the foregoing accurately reflects your understanding and agreement with respect to the matters described herein please indicate your agreement by countersigning this Agreement in the space provided below.

Very truly yours,

**Bird Global, Inc.**

By: /s/ Michael Washinushi

Name: Michael Washinushi

Title: Chief Financial Officer

**Canaccord Genuity LLC**

By: /s/ Jennifer Pardi

Name: Jennifer Pardi

Title: Managing Director





**SCHEDULE 1**

The Authorized Representatives of the Company are as follows:

Stewart Lyons  
stewart.lyons@bird.co

Shane Torchiana  
shane.torchiana@bird.co

Michael Washinushi  
michael.washinushi@bird.co

The Authorized Representatives of Canaccord are as follows:

Jen Pardi  
jpardi@cgf.com

Michael Wright  
mwright@cgf.com



**SCHEDULE 2**

**Subsidiaries**

See Exhibit 21.1 to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2022, filed with the Commission on March 16, 2023



**EXHIBIT A**

**OFFICER'S CERTIFICATE**

I, *[name of executive officer]*, the *[title of executive officer]* of Bird Global, Inc. (the "Company"), do hereby certify in such capacity and on behalf of the Company, and not in my personal capacity, pursuant to Section 7(n) of the Equity Distribution Agreement dated as of June 23, 2023 (the "Distribution Agreement") between the Company and Canaccord Genuity LLC, to my knowledge that:

(i) The representations and warranties of the Company in Section 6 of the Distribution Agreement (A) to the extent such representations and warranties are subject to qualifications and exceptions contained therein relating to materiality or Material Adverse Effect, are true and correct on and as of the date hereof with the same force and effect as if expressly made on and as of the date hereof, except for those representations and warranties that speak solely as of a specific date and which were true and correct as of such date, and (B) to the extent such representations and warranties are not subject to any qualifications or exceptions, are true and correct in all material respects as of the date hereof as if made on and as of the date hereof with the same force and effect as if expressly made on and as of the date hereof except for those representations and warranties that speak solely as of a specific date and which were true and correct as of such date; and

(ii) The Company has complied with all agreements and satisfied all conditions on its part to be performed or satisfied pursuant to the Distribution Agreement at or prior to the date hereof.

Date:

\_\_\_\_\_

By:

\_\_\_\_\_  
Name:

Title:



**EXHIBIT B**

**CHIEF FINANCIAL OFFICER'S CERTIFICATE**







**BIRD GLOBAL, INC.,  
Issuer**

**AND**

**[TRUSTEE],  
Trustee**

**INDENTURE**

**Dated as of [•], 20**

**Debt Securities**

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## INDENTURE

INDENTURE, dated as of [●], 20[●], between Bird Global, Inc., a Delaware corporation (the “*Company*”), and [TRUSTEE], as trustee (the “*Trustee*”):

WHEREAS, for its lawful corporate purposes, the Company has duly authorized the execution and delivery of this Indenture to provide for the issuance of debt securities (hereinafter referred to as the “*Securities*”), in an unlimited aggregate principal amount to be issued from time to time in one or more series as in this Indenture provided, as registered Securities without coupons, to be authenticated by the certificate of the Trustee;

WHEREAS, to provide the terms and conditions upon which the Securities are to be authenticated, issued and delivered, the Company has duly authorized the execution of this Indenture; and

WHEREAS, all things necessary to make this Indenture a valid agreement of the Company, in accordance with its terms, have been done.

NOW, THEREFORE, in consideration of the premises and the purchase of the Securities by the holders thereof, it is mutually covenanted and agreed as follows for the equal and ratable benefit of the holders of Securities:

## ARTICLE 1

### DEFINITIONS

**Section 1.01 Definitions of Terms.** The terms defined in this Section (except as in this Indenture or any indenture supplemental hereto otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and of any indenture supplemental hereto shall have the respective meanings specified in this Section and shall include the plural as well as the singular. All other terms used in this Indenture that are defined in the Trust Indenture Act of 1939, as amended, or that are by reference in such Act defined in the Securities Act of 1933, as amended (except as herein or any indenture supplemental hereto otherwise expressly provided or unless the context otherwise requires), shall have the meanings assigned to such terms in said Trust Indenture Act and in said Securities Act as in force at the date of the execution of this instrument.

“*Authenticating Agent*” means the Trustee or an authenticating agent with respect to all or any of the series of Securities appointed by the Trustee pursuant to Section 2.10.

“*Bankruptcy Law*” means Title 11, U.S. Code, or any similar federal or state law for the relief of debtors.

“*Board of Directors*” means the Board of Directors (or the functional equivalent thereof) of the Company or any duly authorized committee of such Board.

“*Board Resolution*” means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors (or duly authorized committee thereof) and to be in full force and effect on the date of such certification.

“*Business Day*” means, with respect to any series of Securities, any day other than a day on which federal or state banking institutions in the Borough of Manhattan, the City of New York, or in the city of the Corporate Trust Office of the Trustee, are authorized or obligated by law, executive order or regulation to close.

“*Commission*” means the Securities and Exchange Commission, as from time to time constituted, created under the Exchange Act, or, if at any time after the execution of this instrument such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

“*Company*” means Bird Global, Inc., a corporation duly organized and existing under the laws of the State of Delaware, and, subject to the provisions of Article Ten, shall also include its successors and assigns.

“*Corporate Trust Office*” means the office of the Trustee at which, at any particular time, its corporate trust business shall be principally administered, which office at the date hereof is located at [●].



“**Custodian**” means any receiver, trustee, assignee, liquidator or similar official under any Bankruptcy Law.

“**Defaulted Interest**” has the meaning set forth in Section 2.03.

“**Depository**” means, with respect to Securities of any series for which the Company shall determine that such Securities will be issued as a Global Security, The Depository Trust Company, another clearing agency, or any successor registered as a clearing agency under the Exchange Act, or other applicable statute or regulation, which, in each case, shall be designated by the Company pursuant to either Section 2.01 or 2.11.

“**Event of Default**” means, with respect to Securities of a particular series, any event specified in Section 6.01, continued for the period of time, if any, therein designated.

“**Exchange Act**” means the United States Securities and Exchange Act of 1934, as amended, and the rules and regulations promulgated by the Commission thereunder.

The term “**given**,” “**mailed**,” “**notify**” or “**sent**” with respect to any notice to be given to a Securityholder pursuant to this Indenture, shall mean notice (x) given to the Depository (or its designee) pursuant to the standing instructions from the Depository or its designee, including by electronic mail in accordance with accepted practices or procedures at the Depository (in the case of a Global Security) or (y) mailed to such Holder by first class mail, postage prepaid, at its address as it appears on the Security Register (in the case of a definitive Security). Notice so “**given**” shall be deemed to include any notice to be “**mailed**” or “**delivered**,” as applicable, under this Indenture.

“**Global Security**” means a Security issued to evidence all or a part of any series of Securities which is executed by the Company and authenticated and delivered by the Trustee to the Depository or pursuant to the Depository’s instruction, all in accordance with the Indenture, which shall be registered in the name of the Depository or its nominee.

“**Governmental Obligations**” means securities that are (a) direct obligations of the United States of America for the payment of which its full faith and credit is pledged or (b) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America, the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America that, in either case, are not callable or redeemable at the option of the issuer thereof at any time prior to the stated maturity of the Securities, and shall also include a depository receipt issued by a bank or trust company as custodian with respect to any such Governmental Obligation or a specific payment of principal of or interest on any such Governmental Obligation held by such custodian for the account of the holder of such depository receipt; provided, however, that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the Governmental Obligation or the specific payment of principal of or interest on the Governmental Obligation evidenced by such depository receipt.

“**herein**,” “**hereof**,” “**hereunder**” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

“**Indenture**” means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into in accordance with the terms hereof and shall include the terms of particular series of Securities established as contemplated by Section 2.01.

“**Interest Payment Date**,” when used with respect to any installment of interest on a Security of a particular series, means the date specified in such Security or in a Board Resolution or in an indenture supplemental hereto with respect to such series as the fixed date on which an installment of interest with respect to Securities of that series is due and payable.

“**Officer**” means, with respect to the Company, the chairman of the Board of Directors, a chief executive officer, a president, a chief financial officer, a chief operating officer, any executive vice president, any senior vice president, any vice president, the treasurer or any assistant treasurer, the controller or any assistant controller or the secretary or any assistant secretary.

“**Officer’s Certificate**” means a certificate signed by any Officer. Each such certificate shall include the statements provided for in Section 13.07, if and to the extent required by the provisions thereof.



**“Opinion of Counsel”** means an opinion in writing subject to customary exceptions of legal counsel, who may be an employee of or counsel for the Company, that is delivered to the Trustee in accordance with the terms hereof. Each such opinion shall include the statements provided for in Section 13.07, if and to the extent required by the provisions thereof.

**“Outstanding,”** when used with reference to Securities of any series, means, subject to the provisions of Section 8.04, as of any particular time, all Securities of that series theretofore authenticated and delivered by the Trustee under this Indenture, except (a) Securities theretofore canceled by the Trustee or any paying agent, or delivered to the Trustee or any paying agent for cancellation or that have previously been canceled; (b) Securities or portions thereof for the payment or redemption of which moneys or Governmental Obligations in the necessary amount shall have been deposited in trust with the Trustee or with any paying agent (other than the Company) or shall have been set aside and segregated in trust by the Company (if the Company shall act as its own paying agent); provided, however, that if such Securities or portions of such Securities are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as provided in Article Three, or provision satisfactory to the Trustee shall have been made for giving such notice; and (c) Securities in lieu of or in substitution for which other Securities shall have been authenticated and delivered pursuant to the terms of Section 2.07.

**“Person”** means any individual, corporation, partnership, joint venture, joint-stock company, limited liability company, association, trust, unincorporated organization, any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

**“Predecessor Security”** of any particular Security means every previous Security evidencing all or a portion of the same debt as that evidenced by such particular Security; and, for the purposes of this definition, any Security authenticated and delivered under Section 2.07 in lieu of a lost, destroyed or stolen Security shall be deemed to evidence the same debt as the lost, destroyed or stolen Security.

**“Responsible Officer”** when used with respect to the Trustee means any officer within the Corporate Trust Office of the Trustee (or any successor group of the Trustee) or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his or her knowledge of and familiarity with the particular subject and in each case who shall have direct responsibility for the administration of this Indenture.

**“Securities”** has the meaning stated in the first recital of this Indenture and more particularly means any Securities authenticated and delivered under this Indenture.

**“Securities Act”** means the Securities Act of 1933, as amended.

**“Securityholder,” “holder of Securities,” “registered holder,”** or other similar term, means the Person or Persons in whose name or names a particular Security is registered on the Security Register kept for that purpose in accordance with the terms of this Indenture.

**“Security Register”** and **“Security Registrar”** shall have the meanings as set forth in Section 2.05.

**“Subsidiary”** means, with respect to any Person, any corporation, association, partnership or other business entity of which more than 50% of the total voting power of shares of capital stock or other interests (including partnership interests) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers, general partners or trustees thereof is at the time owned or controlled, directly or indirectly, by (i) such Person; (ii) such Person and one or more Subsidiaries of such Person; or (iii) one or more Subsidiaries of such Person.

**“Trustee”** means [●], and, subject to the provisions of Article Seven, shall also include its successors and assigns, and, if at any time there is more than one Person acting in such capacity hereunder, “Trustee” shall mean each such Person. The term “Trustee” as used with respect to a particular series of the Securities shall mean the trustee with respect to that series.

**“Trust Indenture Act”** means the Trust Indenture Act of 1939, as amended.

**“U.S.A. Patriot Act”** means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. 107-56, as amended and signed into law October 26, 2001.



## ARTICLE 2

### ISSUE, DESCRIPTION, TERMS, EXECUTION, REGISTRATION AND EXCHANGE OF SECURITIES

#### Section 2.01 Designation and Terms of Securities.

(a) The aggregate principal amount of Securities that may be authenticated and delivered under this Indenture is unlimited. The Securities may be issued in one or more series up to the aggregate principal amount of Securities of that series from time to time authorized by or pursuant to a Board Resolution or pursuant to one or more indentures supplemental hereto. Prior to the initial issuance of Securities of any series, there shall be established in or pursuant to a Board Resolution, and set forth in an Officer's Certificate, or established in one or more indentures supplemental hereto:

(1) the title of the Securities of the series (which shall distinguish the Securities of that series from all other Securities);

(2) any limit upon the aggregate principal amount of the Securities of that series that may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities of that series);

(3) the maturity date or dates on which the principal of the Securities of the series is payable;

(4) the form of the Securities of the series including the form of the certificate of authentication for such series;

(5) the applicability of any guarantees;

(6) whether or not the Securities will be secured or unsecured, and the terms of any secured debt;

(7) whether the Securities rank as senior debt, senior subordinated debt, subordinated debt or any combination thereof, and the terms of any subordination;

(8) if the price (expressed as a percentage of the aggregate principal amount thereof) at which such Securities will be issued is a price other than the principal amount thereof, the portion of the principal amount thereof payable upon declaration of acceleration of the maturity thereof, or if applicable, the portion of the principal amount of such Securities that is convertible into another security or the method by which any such portion shall be determined;

(9) the interest rate or rates, which may be fixed or variable, or the method for determining the rate and the date interest will begin to accrue, the dates interest will be payable and the regular record dates for interest payment dates or the method for determining such dates;

(10) the Company's right, if any, to defer the payment of interest and the maximum length of any such deferral period;

(11) if applicable, the date or dates after which, or the period or periods during which, and the price or prices at which, the Company may at its option, redeem the series of Securities pursuant to any optional or provisional redemption provisions and the terms of those redemption provisions;

(12) the date or dates, if any, on which, and the price or prices at which the Company is obligated, pursuant to any mandatory sinking fund or analogous fund provisions or otherwise, to redeem, or at the Securityholder's option to purchase, the series of Securities and the currency or currency unit in which the Securities are payable;

(13) the denominations in which the Securities of the series shall be issuable, if other than denominations of one thousand U.S. dollars (\$1,000) or any integral multiple thereof;

(14) any and all terms, if applicable, relating to any auction or remarketing of the Securities of that series and any security for the obligations of the Company with respect to such Securities and any other terms which may be advisable in connection with the marketing of Securities of that series;





(15) whether the Securities of the series shall be issued in whole or in part in the form of a Global Security or Securities; the terms and conditions, if any, upon which such Global Security or Securities may be exchanged in whole or in part for other individual Securities; and the Depositary for such Global Security or Securities;

(16) if applicable, the provisions relating to conversion or exchange of any Securities of the series and the terms and conditions upon which such Securities will be so convertible or exchangeable, including the conversion or exchange price, as applicable, or how it will be calculated and may be adjusted, any mandatory or optional (at the Company's option or the holders' option) conversion or exchange features, the applicable conversion or exchange period and the manner of settlement for any conversion or exchange, which may, without limitation, include the payment of cash as well as the delivery of securities;

(17) if other than the full principal amount thereof, the portion of the principal amount of Securities of the series which shall be payable upon declaration of acceleration of the maturity thereof pursuant to Section 6.01;

(18) additions to or changes in the covenants applicable to the series of Securities being issued, including, among others, the consolidation, merger or sale covenant;

(19) additions to or changes in the Events of Default with respect to the Securities and any change in the right of the Trustee or the Securityholders to declare the principal, premium, if any, and interest, if any, with respect to such Securities to be due and payable;

(20) additions to or changes in or deletions of the provisions relating to covenant defeasance and legal defeasance;

(21) additions to or changes in the provisions relating to satisfaction and discharge of this Indenture;

(22) additions to or changes in the provisions relating to the modification of this Indenture both with and without the consent of Securityholders of Securities issued under this Indenture;

(23) the currency of payment of Securities if other than U.S. dollars and the manner of determining the equivalent amount in U.S. dollars;

(24) whether interest will be payable in cash or additional Securities at the Company's or the Securityholders' option and the terms and conditions upon which the election may be made;

(25) the terms and conditions, if any, upon which the Company shall pay amounts in addition to the stated interest, premium, if any and principal amounts of the Securities of the series to any Securityholder that is not a "United States person" for federal tax purposes;

(26) any restrictions on transfer, sale or assignment of the Securities of the series; and

(27) any other specific terms, preferences, rights or limitations of, or restrictions on, the Securities, any other additions or changes in the provisions of this Indenture, and any terms that may be required by us or advisable under applicable laws or regulations.

All Securities of any one series shall be substantially identical except as may otherwise be provided in or pursuant to any such Board Resolution or in any indentures supplemental hereto.

If any of the terms of the series are established by action taken pursuant to a Board Resolution of the Company, a copy of an appropriate record of such action shall be certified by the secretary or an assistant secretary of the Company and delivered to the Trustee at or prior to the delivery of the Officer's Certificate of the Company setting forth the terms of the series.

Securities of any particular series may be issued at various times, with different dates on which the principal or any installment of principal is payable, with different rates of interest, if any, or different methods by which rates of interest may be determined, with different dates on which such interest may be payable and with different redemption dates.

**Section 2.02 Form of Securities and Trustee's Certificate.** The Securities of any series and the Trustee's certificate of authentication to be borne by such Securities shall be substantially of the tenor and purport as set forth in one or more indentures supplemental hereto or as provided in a Board Resolution, and set forth in an Officer's Certificate, and they may have such letters, numbers or other marks of identification or designation and such legends or endorsements printed, lithographed or engraved thereon as the Company may deem appropriate and as are not inconsistent with the provisions of this Indenture, or as may be required to



comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any securities exchange on which Securities of that series may be listed, or to conform to usage.

**Section 2.03 Denominations: Provisions for Payment.** The Securities shall be issuable as registered Securities and in the denominations of one thousand U.S. dollars (\$1,000) or any integral multiple thereof, subject to Section 2.01(a)(13). The Securities of a particular series shall bear interest payable on the dates and at the rate specified with respect to that series. Subject to Section 2.01(a)(23), the principal of and the interest on the Securities of any series, as well as any premium thereon in case of redemption or repurchase thereof prior to maturity, and any cash amount due upon conversion or exchange thereof, shall be payable in the coin or currency of the United States of America that at the time is legal tender for public and private debt, at the office or agency of the Company maintained for that purpose. Each Security shall be dated the date of its authentication. Interest on the Securities shall be computed on the basis of a 360-day year composed of twelve 30-day months.

The interest installment on any Security that is payable, and is punctually paid or duly provided for, on any Interest Payment Date for Securities of that series shall be paid to the Person in whose name said Security (or one or more Predecessor Securities) is registered at the close of business on the regular record date for such interest installment. In the event that any Security of a particular series or portion thereof is called for redemption and the redemption date is subsequent to a regular record date with respect to any Interest Payment Date and prior to such Interest Payment Date, interest on such Security will be paid upon presentation and surrender of such Security as provided in Section 3.03.

Any interest on any Security that is payable, but is not punctually paid or duly provided for, on any Interest Payment Date for Securities of the same series (herein called "Defaulted Interest") shall forthwith cease to be payable to the registered holder on the relevant regular record date by virtue of having been such holder; and such Defaulted Interest shall be paid by the Company, at its election, as provided in clause (1) or clause (2) below:

(1) The Company may make payment of any Defaulted Interest on Securities to the Persons in whose names such Securities (or their respective Predecessor Securities) are registered in the Security Register at the close of business on a special record date for the payment of such Defaulted Interest, which shall be fixed in the following manner: the Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each such Security and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this clause provided. Thereupon the Trustee shall fix a special record date for the payment of such Defaulted Interest which shall not be more than 15 nor less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such special record date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the special record date therefor to be sent, to each Securityholder not less than 10 days prior to such special record date. Notice of the proposed payment of such Defaulted Interest and the special record date therefor having been sent as aforesaid, such Defaulted Interest shall be paid to the Persons in whose names such Securities (or their respective Predecessor Securities) are registered in the Security Register on such special record date.

(2) The Company may make payment of any Defaulted Interest on any Securities in any other lawful manner not inconsistent with the requirements of any securities exchange on which such Securities may be listed, and upon such notice as may be required by such exchange, if, after notice given by the Company to the Trustee of the proposed payment pursuant to this clause, such manner of payment shall be deemed practicable by the Trustee.

Unless otherwise set forth in a Board Resolution or one or more indentures supplemental hereto establishing the terms of any series of Securities pursuant to Section 2.01 hereof, the term "regular record date" as used in this Section with respect to a series of Securities and any Interest Payment Date for such series shall mean either the fifteenth day of the month immediately preceding the month in which an Interest Payment Date established for such series pursuant to Section 2.01 hereof shall occur, if such Interest Payment Date is the first day of a month, or the first day of the month in which an Interest Payment Date established for such series pursuant to Section 2.01 hereof shall occur, if such Interest Payment Date is the fifteenth day of a month, whether or not such date is a Business Day.

Subject to the foregoing provisions of this Section, each Security of a series delivered under this Indenture upon transfer of or in exchange for or in lieu of any other Security of such series shall carry the rights to interest accrued and unpaid, and to accrue, that were carried by such other Security.

**Section 2.04 Execution and Authentications.** The Securities shall be signed on behalf of the Company by one of its Officers.

Signatures may be in the form of a manual or facsimile signature.

The Company may use the facsimile signature of any Person who shall have been an Officer (at the time of execution), notwithstanding the fact that at the time the Securities shall be authenticated and delivered or disposed of such Person shall have ceased to be such an officer of the Company. The Securities may contain such notations, legends or endorsements required by law, stock exchange rule or usage. Each Security shall be dated the date of its authentication by the Trustee.

A Security shall not be valid until authenticated manually by an authorized signatory of the Trustee, or by an Authenticating Agent. Such signature shall be conclusive evidence that the Security so authenticated has been duly authenticated and delivered hereunder and that the holder is entitled to the benefits of this Indenture. At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities of any series executed by the Company to the Trustee for authentication, together with a written order of the Company for the authentication and delivery of such Securities, signed by an Officer, and the Trustee in accordance with such written order shall authenticate and deliver such Securities.

Upon the Company's delivery of any such authentication order to the Trustee at any time after the initial issuance of Securities under this Indenture, the Trustee shall be provided with, and (subject to Sections 315(a) through 315(d) of the Trust Indenture Act) shall be fully protected in relying upon, (1) an Opinion of Counsel or reliance letter and (2) an Officer's Certificate stating that all conditions precedent to the execution, authentication and delivery of such Securities are in conformity with the provisions of this Indenture.

The Trustee shall not be required to authenticate such Securities if the issue of such Securities pursuant to this Indenture will affect the Trustee's own rights, duties or immunities under the Securities and this Indenture or otherwise in a manner that is not reasonably acceptable to the Trustee.

#### **Section 2.05 Registration of Transfer and Exchange.**

(a) Securities of any series may be exchanged upon presentation thereof at the office or agency of the Company designated for such purpose, for other Securities of such series of authorized denominations, and for a like aggregate principal amount, upon payment of a sum sufficient to cover any tax or other governmental charge in relation thereto, all as provided in this Section. In respect of any Securities so surrendered for exchange, the Company shall execute, the Trustee shall authenticate and such office or agency shall deliver in exchange therefor the Security or Securities of the same series that the Securityholder making the exchange shall be entitled to receive, bearing numbers not contemporaneously outstanding.

(b) The Company shall keep, or cause to be kept, at its office or agency designated for such purpose a register or registers (herein referred to as the "Security Register") in which, subject to such reasonable regulations as it may prescribe, the Company shall register the Securities and the transfers of Securities as in this Article provided and which at all reasonable times shall be open for inspection by the Trustee. The registrar for the purpose of registering Securities and transfer of Securities as herein provided shall be appointed as authorized by Board Resolution or Supplemental Indenture (the "Security Registrar").

Upon surrender for transfer of any Security at the office or agency of the Company designated for such purpose, the Company shall execute, the Trustee shall authenticate and such office or agency shall deliver in the name of the transferee or transferees a new Security or Securities of the same series as the Security presented for a like aggregate principal amount.

The Company initially appoints the Trustee as initial Security Registrar for each series of Securities

All Securities presented or surrendered for exchange or registration of transfer, as provided in this Section, shall be accompanied (if so required by the Company or the Security Registrar) by a written instrument or instruments of transfer, in form satisfactory to the Company or the Security Registrar, duly executed by the registered holder or by such holder's duly authorized attorney in writing.

(c) Except as provided pursuant to Section 2.01 pursuant to a Board Resolution, and set forth in an Officer's Certificate, or established in one or more indentures supplemental to this Indenture, no service charge shall be made for any exchange or registration of transfer of Securities, or issue of new Securities in case of partial redemption of any series or repurchase, conversion or exchange of less than the entire principal amount of a Security, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge in relation thereto, other than exchanges pursuant to Section 2.06, Section 3.03(b) and Section 9.04 not involving any transfer.

(d) The Company and the Security Registrar shall not be required (i) to issue, exchange or register the transfer of any Securities during a period beginning at the opening of business 15 days before the day of the sending of a notice of redemption of less than all the Outstanding Securities of the same series and ending at the close of business on the day of such sending, nor (ii) to register

the transfer of or exchange any Securities of any series or portions thereof called for redemption or surrendered for repurchase, but not

validly withdrawn, other than the unredeemed portion of any such Securities being redeemed in part or not surrendered for repurchase, as the case may be. The provisions of this Section 2.05 are, with respect to any Global Security, subject to Section 2.11 hereof.

The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Security (including any transfers between or among Depository participants or beneficial owners of interests in any Global Security) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

**Section 2.06 Temporary Securities.** Pending the preparation of definitive Securities of any series, the Company may execute, and the Trustee shall authenticate and deliver, temporary Securities (printed, lithographed or typewritten) of any authorized denomination. Such temporary Securities shall be substantially in the form of the definitive Securities in lieu of which they are issued, but with such omissions, insertions and variations as may be appropriate for temporary Securities, all as may be determined by the Company. Every temporary Security of any series shall be executed by the Company and be authenticated by the Trustee upon the same conditions and in substantially the same manner, and with like effect, as the definitive Securities of such series. Without unnecessary delay the Company will execute and will furnish definitive Securities of such series and thereupon any or all temporary Securities of such series may be surrendered in exchange therefor (without charge to the Securityholders), at the office or agency of the Company designated for the purpose, and the Trustee shall authenticate and such office or agency shall deliver in exchange for such temporary Securities an equal aggregate principal amount of definitive Securities of such series, unless the Company advises the Trustee to the effect that definitive Securities need not be executed and furnished until further notice from the Company. Until so exchanged, the temporary Securities of such series shall be entitled to the same benefits under this Indenture as definitive Securities of such series authenticated and delivered hereunder.

**Section 2.07 Mutilated, Destroyed, Lost or Stolen Securities.** In case any temporary or definitive Security shall become mutilated or be destroyed, lost or stolen, the Company (subject to the next succeeding sentence) shall execute, and upon the Company's request the Trustee (subject as aforesaid) shall authenticate and deliver, a new Security of the same series, bearing a number not contemporaneously outstanding, in exchange and substitution for the mutilated Security, or in lieu of and in substitution for the Security so destroyed, lost or stolen. In every case the applicant for a substituted Security shall furnish to the Company and the Trustee such security or indemnity as may be required by them to save each of them harmless, and, in every case of destruction, loss or theft, the applicant shall also furnish to the Company and the Trustee evidence to their satisfaction of the destruction, loss or theft of the applicant's Security and of the ownership thereof. The Trustee may authenticate any such substituted Security and deliver the same upon the written request or authorization of any officer of the Company. Upon the issuance of any substituted Security, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

In case any Security that has matured or is about to mature shall become mutilated or be destroyed, lost or stolen, the Company may, instead of issuing a substitute Security, pay or authorize the payment of the same (without surrender thereof except in the case of a mutilated Security) if the applicant for such payment shall furnish to the Company and the Trustee such security or indemnity as they may require to save them harmless, and, in case of destruction, loss or theft, evidence to the satisfaction of the Company and the Trustee of the destruction, loss or theft of such Security and of the ownership thereof.

Every replacement Security issued pursuant to the provisions of this Section shall constitute an additional contractual obligation of the Company whether or not the mutilated, destroyed, lost or stolen Security shall be found at any time, or be enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities of the same series duly issued hereunder. All Securities shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities, and shall preclude (to the extent lawful) any and all other rights or remedies, notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement or payment of negotiable instruments or other securities without their surrender.

**Section 2.08 Cancellation.** All Securities surrendered for the purpose of payment, redemption, repurchase, exchange, registration of transfer or conversion shall, if surrendered to the Company or any paying agent (or any other applicable agent), be delivered to the Trustee for cancellation, or, if surrendered to the Trustee, shall be cancelled by it, and no Securities shall be issued in lieu thereof except as expressly required or permitted by any of the provisions of this Indenture. On request of the Company at the time of such surrender, the Trustee shall deliver to the Company canceled Securities held by the Trustee. In the absence of such request the Trustee may dispose of canceled Securities in accordance with its standard procedures and deliver a certificate of disposition to the Company. If the Company shall otherwise acquire any of the Securities, however, such acquisition shall not operate





as a redemption or satisfaction of the indebtedness represented by such Securities unless and until the same are delivered to the Trustee for cancellation.

**Section 2.09 Benefits of Indenture.** Nothing in this Indenture or in the Securities, express or implied, shall give or be construed to give to any Person, other than the parties hereto and the holders of the Securities any legal or equitable right, remedy or claim under or in respect of this Indenture, or under any covenant, condition or provision herein contained; all such covenants, conditions and provisions being for the sole benefit of the parties hereto and of the holders of the Securities.

**Section 2.10 Authenticating Agent.** So long as any of the Securities of any series remain Outstanding there may be an Authenticating Agent for any or all such series of Securities which the Trustee shall have the right to appoint. Said Authenticating Agent shall be authorized to act on behalf of the Trustee to authenticate Securities of such series issued upon exchange, transfer or partial redemption, repurchase or conversion thereof, and Securities so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. All references in this Indenture to the authentication of Securities by the Trustee shall be deemed to include authentication by an Authenticating Agent for such series. Each Authenticating Agent shall be acceptable to the Company and shall be a corporation that has a combined capital and surplus, as most recently reported or determined by it, sufficient under the laws of any jurisdiction under which it is organized or in which it is doing business to conduct a trust business, and that is otherwise authorized under such laws to conduct such business and is subject to supervision or examination by federal or state authorities. If at any time any Authenticating Agent shall cease to be eligible in accordance with these provisions, it shall resign immediately.

Any Authenticating Agent may at any time resign by giving written notice of resignation to the Trustee and to the Company. The Trustee may at any time (and upon request by the Company shall) terminate the agency of any Authenticating Agent by giving written notice of termination to such Authenticating Agent and to the Company. Upon resignation, termination or cessation of eligibility of any Authenticating Agent, the Trustee may appoint an eligible successor Authenticating Agent acceptable to the Company. Any successor Authenticating Agent, upon acceptance of its appointment hereunder, shall become vested with all the rights, powers and duties of its predecessor hereunder as if originally named as an Authenticating Agent pursuant hereto.

### **Section 2.11 Global Securities.**

(a) If the Company shall establish pursuant to Section 2.01 that the Securities of a particular series are to be issued as a Global Security, then the Company shall execute and the Trustee shall, in accordance with Section 2.04, authenticate and deliver, a Global Security that (i) shall represent, and shall be denominated in an amount equal to the aggregate principal amount of, all of the Outstanding Securities of such series, (ii) shall be registered in the name of the Depository or its nominee, (iii) shall be delivered by the Trustee to the Depository or pursuant to the Depository's instruction (or if the Depository names the Trustee as its custodian, retained by the Trustee), and (iv) shall bear a legend substantially to the following effect: "Except as otherwise provided in Section 2.11 of the Indenture, this Security may be transferred, in whole but not in part, only to another nominee of the Depository or to a successor Depository or to a nominee of such successor Depository."

(b) Notwithstanding the provisions of Section 2.05, the Global Security of a series may be transferred, in whole but not in part and in the manner provided in Section 2.05, only to another nominee of the Depository for such series, or to a successor Depository for such series selected or approved by the Company or to a nominee of such successor Depository.

(c) If at any time the Depository for a series of the Securities notifies the Company that it is unwilling or unable to continue as Depository for such series or if at any time the Depository for such series shall no longer be registered or in good standing under the Exchange Act, or other applicable statute or regulation, and a successor Depository for such series is not appointed by the Company within 90 days after the Company receives such notice or becomes aware of such condition, as the case may be, or if an Event of Default has occurred and is continuing and the Company has received a request from the Depository or from the Trustee, this Section 2.11 shall no longer be applicable to the Securities of such series and the Company will execute, and subject to Section 2.04, the Trustee will authenticate and deliver the Securities of such series in definitive registered form without coupons, in authorized denominations, and in an aggregate principal amount equal to the principal amount of the Global Security of such series in exchange for such Global Security. In addition, the Company may at any time determine that the Securities of any series shall no longer be represented by a Global Security and that the provisions of this Section 2.11 shall no longer apply to the Securities of such series. In such event the Company will execute and, subject to Section 2.04, the Trustee, upon receipt of an Officer's Certificate evidencing such determination by the Company, will authenticate and deliver the Securities of such series in definitive registered form without coupons, in authorized denominations, and in an aggregate principal amount equal to the principal amount of the Global Security of such series in exchange for such Global Security. Upon the exchange of the Global Security for such Securities in definitive registered form without coupons, in authorized denominations, the Global Security shall be canceled by the Trustee. Such Securities in definitive registered form without coupons, in authorized denominations, shall be issued by the Trustee to the holders of the Global Security in exchange for the Global Security.

registered form issued in exchange for the Global Security pursuant to this Section 2.11(c) shall be registered in such names and in

such authorized denominations as the Depository, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee. The Trustee shall deliver such Securities to the Depository for delivery to the Persons in whose names such Securities are so registered.

**Section 2.12 CUSIP Numbers.** The Company in issuing the Securities may use “CUSIP” numbers (if then generally in use), and, if so, the Trustee shall use “CUSIP” numbers in notices of redemption as a convenience to Holders; provided that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of a redemption and that reliance may be placed only on the other elements of identification printed on the Securities, and any such redemption shall not be affected by any defect in or omission of such numbers. The Company will promptly notify the Trustee of any change in the “CUSIP” numbers.

### ARTICLE 3

#### REDEMPTION OF SECURITIES AND SINKING FUND PROVISIONS

**Section 3.01 Redemption.** The Company may redeem the Securities of any series issued hereunder on and after the dates and in accordance with the terms established for such series pursuant to Section 2.01 hereof.

**Section 3.02 Notice of Redemption.**

(a) In case the Company shall desire to exercise such right to redeem all or, as the case may be, a portion of the Securities of any series in accordance with any right the Company reserved for itself to do so pursuant to Section 2.01 hereof, the Company shall, or shall cause the Trustee to, give notice of such redemption to holders of the Securities of such series to be redeemed by mailing, first class postage prepaid (or with regard to any Global Security held in book entry form, by electronic mail in accordance with the applicable procedures of the Depository), a notice of such redemption not less than 30 days and not more than 90 days before the date fixed for redemption of that series to such Securityholders, unless a shorter period is specified in the Securities to be redeemed. Any notice that is mailed in the manner herein provided shall be conclusively presumed to have been duly given, whether or not the registered holder receives the notice. In any case, failure duly to give such notice to the holder of any Security of any series designated for redemption in whole or in part, or any defect in the notice, shall not affect the validity of the proceedings for the redemption of any other Securities of such series or any other series. In the case of any redemption of Securities prior to the expiration of any restriction on such redemption provided in the terms of such Securities or elsewhere in this Indenture, the Company shall furnish the Trustee with an Officer’s Certificate evidencing compliance with any such restriction.

Each such notice of redemption shall identify the Securities to be redeemed (including CUSIP numbers, if any), specify the date fixed for redemption and the redemption price at which Securities of that series are to be redeemed, and shall state that payment of the redemption price of such Securities to be redeemed will be made at the office or agency of the Company, upon presentation and surrender of such Securities, that interest accrued to the date fixed for redemption will be paid as specified in said notice, that from and after said date interest will cease to accrue and that the redemption is from a sinking fund, if such is the case. If less than all the Securities of a series are to be redeemed, the notice to the holders of Securities of that series to be redeemed in part shall specify the particular Securities to be so redeemed.

In case any Security is to be redeemed in part only, the notice that relates to such Security shall state the portion of the principal amount thereof to be redeemed, and shall state that on and after the redemption date, upon surrender of such Security, a new Security or Securities of such series in principal amount equal to the unredeemed portion thereof will be issued.

(b) If less than all the Securities of a series are to be redeemed, the Company shall give the Trustee at least 45 days’ notice (unless a shorter notice shall be satisfactory to the Trustee) in advance of the date fixed for redemption as to the aggregate principal amount of Securities of the series to be redeemed, and thereupon the Securities to be redeemed shall be selected, by lot, on a pro rata basis, or in such other manner as the Company shall deem appropriate and fair in its discretion and that may provide for the selection of a portion or portions (equal to one thousand U.S. dollars (\$1,000) or any integral multiple thereof) of the principal amount of such Securities of a denomination larger than \$1,000, the Securities to be redeemed and shall thereafter promptly notify the Company in writing of the numbers of the Securities to be redeemed, in whole or in part. The Company may, if and whenever it shall so elect, by delivery of instructions signed on its behalf by an Officer, instruct the Trustee or any paying agent to call all or any part of the Securities of a particular series for redemption and to give notice of redemption in the manner set forth in this Section, such notice to be in the name of the Company or its own name as the Trustee or such paying agent may deem advisable. In any case in which notice of redemption is to be given by the Trustee or any such paying agent, the Company shall deliver or cause to be delivered to, or



permit to remain with, the Trustee or such paying agent, as the case may be, such Security Register, transfer books or other records, or suitable copies or extracts therefrom, sufficient to enable the Trustee or such paying agent to give any notice by mail that may be required under the provisions of this Section.



### **Section 3.03 Payment Upon Redemption.**

(a) If the giving of notice of redemption shall have been completed as above provided, the Securities or portions of Securities of the series to be redeemed specified in such notice shall become due and payable on the date and at the place stated in such notice at the applicable redemption price, together with interest accrued to, but excluding, the date fixed for redemption and interest on such Securities or portions of Securities shall cease to accrue on and after the date fixed for redemption, unless the Company shall default in the payment of such redemption price and accrued interest with respect to any such Security or portion thereof. On presentation and surrender of such Securities on or after the date fixed for redemption at the place of payment specified in the notice, said Securities shall be paid and redeemed at the applicable redemption price for such series, together with interest accrued thereon to, but excluding, the date fixed for redemption (but if the date fixed for redemption is an Interest Payment Date, the interest installment payable on such date shall be payable to the registered holder at the close of business on the applicable record date pursuant to Section 2.03).

(b) Upon presentation of any Security of such series that is to be redeemed in part only, the Company shall execute and the Trustee shall authenticate and the office or agency where the Security is presented shall deliver to the Securityholder thereof, at the expense of the Company, a new Security of the same series of authorized denominations in principal amount equal to the unredeemed portion of the Security so presented.

**Section 3.04 Sinking Fund.** The provisions of Sections 3.04, 3.05 and 3.06 shall be applicable to any sinking fund for the retirement of Securities of a series, except as otherwise specified as contemplated by Section 2.01 for Securities of such series.

The minimum amount of any sinking fund payment provided for by the terms of Securities of any series is herein referred to as a "mandatory sinking fund payment," and any payment in excess of such minimum amount provided for by the terms of Securities of any series is herein referred to as an "optional sinking fund payment." If provided for by the terms of Securities of any series, the cash amount of any sinking fund payment may be subject to reduction as provided in Section 3.05. Each sinking fund payment shall be applied to the redemption of Securities of any series as provided for by the terms of Securities of such series.

**Section 3.05 Satisfaction of Sinking Fund Payments with Securities.** The Company (i) may deliver Outstanding Securities of a series and (ii) may apply as a credit Securities of a series that have been redeemed either at the election of the Company pursuant to the terms of such Securities or through the application of permitted optional sinking fund payments pursuant to the terms of such Securities, in each case in satisfaction of all or any part of any sinking fund payment with respect to the Securities of such series required to be made pursuant to the terms of such Securities as provided for by the terms of such series, provided that such Securities have not been previously so credited. Such Securities shall be received and credited for such purpose by the Trustee at the redemption price specified in such Securities for redemption through operation of the sinking fund and the amount of such sinking fund payment shall be reduced accordingly.

**Section 3.06 Redemption of Securities for Sinking Fund.** Not less than 45 days prior to each sinking fund payment date for any series of Securities (unless a shorter period shall be satisfactory to the Trustee), the Company will deliver to the Trustee an Officer's Certificate specifying the amount of the next ensuing sinking fund payment for that series pursuant to the terms of the series, the portion thereof, if any, that is to be satisfied by delivering and crediting Securities of that series pursuant to Section 3.05 and the basis for such credit and will, together with such Officer's Certificate, deliver to the Trustee any Securities to be so delivered. Not less than 30 days before each such sinking fund payment date the Securities to be redeemed upon such sinking fund payment date shall be selected in the manner specified in Section 3.02 and the Company shall cause notice of the redemption thereof to be given in the name of and at the expense of the Company in the manner provided in Section 3.02. Such notice having been duly given, the redemption of such Securities shall be made upon the terms and in the manner stated in Section 3.03.

## **ARTICLE 4**

### **COVENANTS**

**Section 4.01 Payment of Principal, Premium and Interest.** The Company will duly and punctually pay or cause to be paid the principal of (and premium, if any) and interest on the Securities of that series at the time and place and in the manner provided herein and established with respect to such Securities. Payments of principal on the Securities may be made at the time provided herein and established with respect to such Securities by U.S. dollar check drawn on and mailed to the address of the Securityholder entitled thereto as such address shall appear in the Security Register, or U.S. dollar wire transfer to, a U.S. dollar account if such Securityholder shall have furnished wire instructions to the Trustee no later than 15 days prior to the relevant payment date. Payments



of interest on the Securities may be made at the time provided herein and established with respect to such Securities by U.S. dollar

check mailed to the address of the Securityholder entitled thereto as such address shall appear in the Security Register, or U.S. dollar wire transfer to, a U.S. dollar account if such Securityholder shall have furnished wire instructions in writing to the Security Registrar and the Trustee no later than 15 days prior to the relevant payment date.

**Section 4.02 Maintenance of Office or Agency.** So long as any series of the Securities remain Outstanding, the Company agrees to maintain an office or agency with respect to each such series and at such other location or locations as may be designated as provided in this Section 4.02, where (i) Securities of that series may be presented for payment, (ii) Securities of that series may be presented as herein above authorized for registration of transfer and exchange, and (iii) notices and demands to or upon the Company in respect of the Securities of that series and this Indenture may be given or served, such designation to continue with respect to such office or agency until the Company shall, by written notice signed by any officer authorized to sign an Officer's Certificate and delivered to the Trustee, designate some other office or agency for such purposes or any of them. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, notices and demands may be made or served at the Corporate Trust Office of the Trustee, and the Company hereby appoints the Trustee as its agent to receive all such presentations, notices and demands. The Company initially appoints the Corporate Trust Office of the Trustee as its paying agent with respect to the Securities.

**Section 4.03 Paying Agents.**

(a) If the Company shall appoint one or more paying agents for all or any series of the Securities, other than the Trustee, the Company will cause each such paying agent to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section:

(1) that it will hold all sums held by it as such agent for the payment of the principal of (and premium, if any) or interest on the Securities of that series (whether such sums have been paid to it by the Company or by any other obligor of such Securities) in trust for the benefit of the Persons entitled thereto;

(2) that it will give the Trustee notice of any failure by the Company (or by any other obligor of such Securities) to make any payment of the principal of (and premium, if any) or interest on the Securities of that series when the same shall be due and payable;

(3) that it will, at any time during the continuance of any failure referred to in the preceding paragraph (a)(2) above, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such paying agent; and

(4) that it will perform all other duties of paying agent as set forth in this Indenture.

(b) If the Company shall act as its own paying agent with respect to any series of the Securities, it will on or before each due date of the principal of (and premium, if any) or interest on Securities of that series, set aside, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to pay such principal (and premium, if any) or interest so becoming due on Securities of that series until such sums shall be paid to such Persons or otherwise disposed of as herein provided and will promptly notify the Trustee of such action, or any failure (by it or any other obligor on such Securities) to take such action. Whenever the Company shall have one or more paying agents for any series of Securities, it will, prior to each due date of the principal of (and premium, if any) or interest on any Securities of that series, deposit with the paying agent a sum sufficient to pay the principal (and premium, if any) or interest so becoming due, such sum to be held in trust for the benefit of the Persons entitled to such principal, premium or interest, and (unless such paying agent is the Trustee) the Company will promptly notify the Trustee of this action or failure so to act.

(c) Notwithstanding anything in this Section to the contrary, (i) the agreement to hold sums in trust as provided in this Section is subject to the provisions of Section 11.05, and (ii) the Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or direct any paying agent to pay, to the Trustee all sums held in trust by the Company or such paying agent, such sums to be held by the Trustee upon the same terms and conditions as those upon which such sums were held by the Company or such paying agent; and, upon such payment by the Company or any paying agent to the Trustee, the Company or such paying agent shall be released from all further liability with respect to such money.

**Section 4.04 Appointment to Fill Vacancy in Office of Trustee.** The Company, whenever necessary to avoid or fill a vacancy in the office of Trustee, will appoint, in the manner provided in Section 7.10, a Trustee, so that there shall at all times be a Trustee hereunder.



## ARTICLE 5

### SECURITYHOLDERS' LISTS AND REPORTS BY THE COMPANY AND THE TRUSTEE

**Section 5.01 Company to Furnish Trustee Names and Addresses of Securityholders.** The Company will furnish or cause to be furnished to the Trustee (a) within 15 days after each regular record date (as defined in Section 2.03) a list, in such form as the Trustee may reasonably require, of the names and addresses of the holders of each series of Securities as of such regular record date, provided that the Company shall not be obligated to furnish or cause to furnish such list at any time that the list shall not differ in any respect from the most recent list furnished to the Trustee by the Company and (b) at such other times as the Trustee may request in writing within 30 days after the receipt by the Company of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished; provided, however, that, in either case, no such list need be furnished for any series for which the Trustee shall be the Security Registrar.

#### **Section 5.02 Preservation Of Information; Communications With Securityholders.**

(a) The Trustee shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the holders of Securities contained in the most recent list furnished to it as provided in Section 5.01 and as to the names and addresses of holders of Securities received by the Trustee in its capacity as Security Registrar (if acting in such capacity).

(b) The Trustee may destroy any list furnished to it as provided in Section 5.01 upon receipt of a new list so furnished.

(c) Securityholders may communicate as provided in Section 312(b) of the Trust Indenture Act with other Securityholders with respect to their rights under this Indenture or under the Securities, and, in connection with any such communications, the Trustee shall satisfy its obligations under Section 312(b) of the Trust Indenture Act in accordance with the provisions of Section 312(b) of the Trust Indenture Act.

#### **Section 5.03 Reports by the Company.**

(a) The Company will at all times comply with Section 314(a) of the Trust Indenture Act. The Company covenants and agrees to provide (which delivery may be via electronic mail) to the Trustee within 30 days, after the Company files the same with the Commission, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may from time to time by rules and regulations prescribe) that the Company is required to file with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act; provided, however, the Company shall not be required to deliver to the Trustee any correspondence filed with the Commission or any materials for which the Company has sought and received confidential treatment by the Commission; and provided further, that so long as such filings by the Company are available on the Commission's Electronic Data Gathering, Analysis and Retrieval System (EDGAR), or any successor system, such filings shall be deemed to have been filed with the Trustee for purposes hereof without any further action required by the Company. For the avoidance of doubt, a failure by the Company to file annual reports, information and other reports with the Commission within the time period prescribed thereof by the Commission shall not be deemed a breach of this Section 5.03.

(b) Delivery of reports, information and documents to the Trustee under Section 5.03 is for informational purposes only and the information and the Trustee's receipt of the foregoing shall not constitute constructive notice of any information contained therein, or determinable from information contained therein including the Company's compliance with any of their covenants thereunder (as to which the Trustee is entitled to rely exclusively on an Officer's Certificate). The Trustee is under no duty to examine any such reports, information or documents delivered to the Trustee or filed with the Commission via EDGAR to ensure compliance with the provision of this Indenture or to ascertain the correctness or otherwise of the information or the statements contained therein. The Trustee shall have no responsibility or duty whatsoever to ascertain or determine whether the above referenced filings with the Commission on EDGAR (or any successor system) has occurred.

#### **Section 5.04 Reports by the Trustee.**

(a) If required by Section 313(a) of the Trust Indenture Act, the Trustee, within sixty (60) days after each May 1, shall send to the Securityholders a brief report dated as of such May 1, which complies with Section 313(a) of the Trust Indenture Act.

(b) The Trustee shall comply with Section 313(b) and 313(c) of the Trust Indenture Act.



(c) A copy of each such report shall, at the time of such transmission to Securityholders, be filed by the Trustee with the Company, with each securities exchange upon which any Securities are listed (if so listed) and also with the Commission. The Company agrees to notify the Trustee when any Securities become listed on any securities exchange.

## ARTICLE 6

### REMEDIES OF THE TRUSTEE AND SECURITYHOLDERS ON EVENT OF DEFAULT

#### Section 6.01 Events of Default.

(a) Whenever used herein with respect to Securities of a particular series, "Event of Default" means any one or more of the following events that has occurred and is continuing:

(1) the Company defaults in the payment of any installment of interest upon any of the Securities of that series, as and when the same shall become due and payable, and such default continues for a period of 90 days; provided, however, that a valid extension of an interest payment period by the Company in accordance with the terms of any indenture supplemental hereto shall not constitute a default in the payment of interest for this purpose;

(2) the Company defaults in the payment of the principal of (or premium, if any, on) any of the Securities of that series as and when the same shall become due and payable whether at maturity, upon redemption, by declaration or otherwise, or in any payment required by any sinking or analogous fund established with respect to that series; provided, however, that a valid extension of the maturity of such Securities in accordance with the terms of any indenture supplemental hereto shall not constitute a default in the payment of principal or premium, if any;

(3) the Company fails to observe or perform any other of its covenants or agreements with respect to that series contained in this Indenture or otherwise established with respect to that series of Securities pursuant to Section 2.01 hereof (other than a covenant or agreement that has been expressly included in this Indenture solely for the benefit of one or more series of Securities other than such series) for a period of 90 days after the date on which written notice of such failure, requiring the same to be remedied and stating that such notice is a "Notice of Default" hereunder, shall have been given to the Company by the Trustee, by registered or certified mail, or to the Company and the Trustee by the holders of at least 25% in principal amount of the Securities of that series at the time Outstanding;

(4) the Company pursuant to or within the meaning of any Bankruptcy Law (i) commences a voluntary case, (ii) consents to the entry of an order for relief against it in an involuntary case, (iii) consents to the appointment of a Custodian of it or for all or substantially all of its property or (iv) makes a general assignment for the benefit of its creditors; or

(5) a court of competent jurisdiction enters an order under any Bankruptcy Law that (i) is for relief against the Company in an involuntary case, (ii) appoints a Custodian of the Company for all or substantially all of its property or (iii) orders the liquidation of the Company, and the order or decree remains unstayed and in effect for 90 days.

(b) In each and every such case (other than an Event of Default specified in clause (4) or clause (5) above), unless the principal of all the Securities of that series shall have already become due and payable, either the Trustee or the holders of not less than 25% in aggregate principal amount of the Securities of that series then Outstanding hereunder, by notice in writing to the Company (and to the Trustee if given by such Securityholders), may declare the principal of (and premium, if any, on) and accrued and unpaid interest on all the Securities of that series to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable. If an Event of Default specified in clause (4) or clause (5) above occurs, the principal of and accrued and unpaid interest on all the Securities of that series shall automatically be immediately due and payable without any declaration or other act on the part of the Trustee or the holders of the Securities.

(c) At any time after the principal of (and premium, if any, on) and accrued and unpaid interest on the Securities of that series shall have been so declared due and payable, and before any judgment or decree for the payment of the moneys due shall have been obtained or entered as hereinafter provided, the holders of a majority in aggregate principal amount of the Securities of that series then Outstanding hereunder, by written notice to the Company and the Trustee, may rescind and annul such declaration and its consequences if: (i) the Company has paid or deposited with the Trustee a sum sufficient to pay all matured installments of interest upon all the Securities of that series and the principal of (and premium, if any, on) any and all Securities of that series that shall have become due otherwise than by acceleration (with interest upon such principal and premium, if any, and, to the extent that such payment is enforceable under applicable law, upon overdue installments of interest, at the rate per annum expressed in the Securities

payment is enforceable under applicable law, upon overdue installments of interest, at the rate per annum expressed in the securities

of that series to the date of such payment or deposit) and the amount payable to the Trustee under Section 7.06, and (ii) any and all Events of Default under the Indenture with respect to such series, other than the nonpayment of principal on (and premium, if any, on) and accrued and unpaid interest on Securities of that series that shall not have become due by their terms, shall have been remedied or waived as provided in Section 6.06. No such rescission and annulment shall extend to or shall affect any subsequent default or impair any right consequent thereon.

(d) In case the Trustee shall have proceeded to enforce any right with respect to Securities of that series under this Indenture and such proceedings shall have been discontinued or abandoned because of such rescission or annulment or for any other reason or shall have been determined adversely to the Trustee, then and in every such case, subject to any determination in such proceedings, the Company and the Trustee shall be restored respectively to their former positions and rights hereunder, and all rights, remedies and powers of the Company and the Trustee shall continue as though no such proceedings had been taken.

#### **Section 6.02 Collection of Indebtedness and Suits for Enforcement by Trustee.**

(a) The Company covenants that (i) in case it shall default in the payment of any installment of interest on any of the Securities of a series, or in any payment required by any sinking or analogous fund established with respect to that series as and when the same shall have become due and payable, and such default shall have continued for a period of 90 days, or (ii) in case it shall default in the payment of the principal of (or premium, if any, on) any of the Securities of a series when the same shall have become due and payable, whether upon maturity of the Securities of a series or upon redemption or upon declaration or otherwise then, upon demand of the Trustee, the Company will pay to the Trustee, for the benefit of the holders of the Securities of that series, the whole amount that then shall have become due and payable on all such Securities for principal (and premium, if any) or interest, or both, as the case may be, with interest upon the overdue principal (and premium, if any) and (to the extent that payment of such interest is enforceable under applicable law) upon overdue installments of interest at the rate per annum expressed in the Securities of that series; and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, and the amount payable to the Trustee under Section 7.06.

(b) If the Company shall fail to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, shall be entitled and empowered to institute any action or proceedings at law or in equity for the collection of the sums so due and unpaid, and may prosecute any such action or proceeding to judgment or final decree, and may enforce any such judgment or final decree against the Company or other obligor upon the Securities of that series and collect the moneys adjudged or decreed to be payable in the manner provided by law or equity out of the property of the Company or other obligor upon the Securities of that series, wherever situated.

(c) In case of any receivership, insolvency, liquidation, bankruptcy, reorganization, readjustment, arrangement, composition or judicial proceedings affecting the Company, or its creditors or property, the Trustee shall have power to intervene in such proceedings and take any action therein that may be permitted by the court and shall (except as may be otherwise provided by law) be entitled to file such proofs of claim and other papers and documents as may be necessary or advisable in order to have the claims of the Trustee and of the holders of Securities of such series allowed for the entire amount due and payable by the Company under the Indenture at the date of institution of such proceedings and for any additional amount that may become due and payable by the Company after such date, and to collect and receive any moneys or other property payable or deliverable on any such claim, and to distribute the same after the deduction of the amount payable to the Trustee under Section 7.06; and any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized by each of the holders of Securities of such series to make such payments to the Trustee, and, in the event that the Trustee shall consent to the making of such payments directly to such Securityholders, to pay to the Trustee any amount due it under Section 7.06.

(d) All rights of action and of asserting claims under this Indenture, or under any of the terms established with respect to Securities of that series, may be enforced by the Trustee without the possession of any of such Securities, or the production thereof at any trial or other proceeding relative thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for payment to the Trustee of any amounts due under Section 7.06, be for the ratable benefit of the holders of the Securities of such series.

In case of an Event of Default hereunder, the Trustee may in its discretion proceed to protect and enforce the rights vested in it by this Indenture by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any of such rights, either at law or in equity or in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in the Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other legal or equitable right vested in the Trustee by this Indenture or by law.





Nothing contained herein shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Securityholder any plan of reorganization, arrangement, adjustment or composition affecting the Securities of that series or the rights of any Securityholder thereof or to authorize the Trustee to vote in respect of the claim of any Securityholder in any such proceeding.

**Section 6.03 Application of Moneys Collected.** Any moneys collected by the Trustee pursuant to this Article with respect to a particular series of Securities shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such moneys on account of principal (or premium, if any) or interest, upon presentation of the Securities of that series, and notation thereon of the payment, if only partially paid, and upon surrender thereof if fully paid:

FIRST: To the payment of costs and expenses of collection and of all amounts payable to the Trustee under Section 7.06;

SECOND: To the payment of the amounts then due and unpaid upon Securities of such series for principal (and premium, if any) and interest, in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Securities for principal (and premium, if any) and interest, respectively; and

THIRD: To the payment of the remainder, if any, to the Company or any other Person lawfully entitled thereto.

**Section 6.04 Limitation on Suits.** No holder of any Security of any series shall have any right by virtue or by availing of any provision of this Indenture to institute any suit, action or proceeding in equity or at law upon or under or with respect to this Indenture or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless (i) such Securityholder previously shall have given to the Trustee written notice of an Event of Default and of the continuance thereof with respect to the Securities of such series specifying such Event of Default, as hereinbefore provided; (ii) the holders of not less than 25% in aggregate principal amount of the Securities of such series then Outstanding shall have made written request upon the Trustee to institute such action, suit or proceeding in its own name as Trustee hereunder; (iii) such Securityholder or Securityholders shall have offered to the Trustee indemnity satisfactory to it against the costs, expenses and liabilities to be incurred in compliance with such request; (iv) the Trustee for 90 days after its receipt of such notice, request and offer of indemnity, shall have failed to institute any such action, suit or proceeding and (v) during such 90 day period, the holders of a majority in principal amount of the Securities of that series do not give the Trustee a direction inconsistent with the request.

Notwithstanding anything contained herein to the contrary or any other provisions of this Indenture, the right of any holder of any Security to receive payment of the principal of (and premium, if any) and interest on such Security, as therein provided, on or after the respective due dates expressed in such Security (or in the case of redemption, on the redemption date), or to institute suit for the enforcement of any such payment on or after such respective dates or redemption date, shall not be impaired or affected without the consent of such holder and by accepting a Security hereunder it is expressly understood, intended and covenanted by the taker and holder of every Security of such series with every other such taker and holder and the Trustee, that no one or more holders of Securities of such series shall have any right in any manner whatsoever by virtue or by availing of any provision of this Indenture to affect, disturb or prejudice the rights of the holders of any other of such Securities, or to obtain or seek to obtain priority over or preference to any other such holder, or to enforce any right under this Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all holders of Securities of such series. For the protection and enforcement of the provisions of this Section, each and every Securityholder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

**Section 6.05 Rights and Remedies Cumulative; Delay or Omission Not Waiver.**

(a) Except as otherwise provided in Section 2.07, all powers and remedies given by this Article to the Trustee or to the Securityholders shall, to the extent permitted by law, be deemed cumulative and not exclusive of any other powers and remedies available to the Trustee or the holders of the Securities, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements contained in this Indenture or otherwise established with respect to such Securities.

(b) No delay or omission of the Trustee or of any holder of any of the Securities to exercise any right or power accruing upon any Event of Default occurring and continuing as aforesaid shall impair any such right or power, or shall be construed to be a waiver of any such default or an acquiescence therein; and, subject to the provisions of Section 6.04, every power and remedy given by this Article or by law to the Trustee or the Securityholders may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or by the Securityholders.

**Section 6.06 Control by Securityholders.** The holders of a majority in aggregate principal amount of the Securities of any series at the time Outstanding, determined in accordance with Section 8.04, shall have the right to direct the time, method and place of



conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee with respect to such series; provided, however, that such direction shall not be in conflict with any rule of law or with this Indenture or subject the Trustee in its sole discretion to personal liability. Subject to the provisions of Section 7.01, the Trustee shall have the right to decline to follow any such direction if the Trustee in good faith shall, by a Responsible Officer or officers of the Trustee, determine that the proceeding so directed, subject to the Trustee's duties under the Trust Indenture Act, would involve the Trustee in personal liability or might be unduly prejudicial to the Securityholders not involved in the proceeding. The holders of a majority in aggregate principal amount of the Securities of any series at the time Outstanding affected thereby, determined in accordance with Section 8.04, may on behalf of the holders of all of the Securities of such series waive any past default in the performance of any of the covenants contained herein or established pursuant to Section 2.01 with respect to such series and its consequences, except a default in the payment of the principal of, or premium, if any, or interest on, any of the Securities of that series as and when the same shall become due by the terms of such Securities otherwise than by acceleration (unless such default has been cured and a sum sufficient to pay all matured installments of interest and principal and any premium has been deposited with the Trustee (in accordance with Section 6.01(c)). Upon any such waiver, the default covered thereby shall be deemed to be cured for all purposes of this Indenture and the Company, the Trustee and the holders of the Securities of such series shall be restored to their former positions and rights hereunder, respectively; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

**Section 6.07 Undertaking to Pay Costs.** All parties to this Indenture agree, and each holder of any Securities by such holder's acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section shall not apply to any suit instituted by the Trustee, to any suit instituted by any Securityholder, or group of Securityholders, holding more than 10% in aggregate principal amount of the Outstanding Securities of any series, or to any suit instituted by any Securityholder for the enforcement of the payment of the principal of (or premium, if any) or interest on any Security of such series, on or after the respective due dates expressed in such Security or established pursuant to this Indenture.

## ARTICLE 7

### CONCERNING THE TRUSTEE

#### Section 7.01 Certain Duties and Responsibilities of Trustee.

(a) The Trustee, prior to the occurrence of an Event of Default with respect to the Securities of a series and after the curing of all Events of Default with respect to the Securities of that series that may have occurred, shall undertake to perform with respect to the Securities of such series such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants shall be read into this Indenture against the Trustee. In case an Event of Default with respect to the Securities of a series has occurred (that has not been cured or waived), the Trustee shall exercise with respect to Securities of that series such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his or her own affairs.

(b) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(i) prior to the occurrence of an Event of Default with respect to the Securities of a series and after the curing or waiving of all such Events of Default with respect to that series that may have occurred:

(A) the duties and obligations of the Trustee shall with respect to the Securities of such series be determined solely by the express provisions of this Indenture, and the Trustee shall not be liable with respect to the Securities of such series except for the performance of such duties and obligations as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(B) in the absence of bad faith on the part of the Trustee, the Trustee may with respect to the Securities of such series conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions that by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture;

a duty to examine the same to determine whether or not they conform to the requirements of this indenture,

(ii) the Trustee shall not be liable to any Securityholder or to any other Person for any error of judgment made in good faith by a Responsible Officer or Responsible Officers of the Trustee, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts;



(iii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the holders of not less than a majority in principal amount of the Securities of any series at the time Outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Indenture with respect to the Securities of that series;

(iv) none of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers if there is reasonable ground for believing that the repayment of such funds or liability is not reasonably assured to it under the terms of this Indenture or adequate indemnity against such risk is not reasonably assured to it;

(v) The Trustee shall not be required to give any bond or surety in respect of the performance of its powers or duties hereunder;

(vi) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty of the Trustee; and

(vii) No Trustee shall have any duty or responsibility for any act or omission of any other Trustee appointed with respect to a series of Securities hereunder.

**Section 7.02 Certain Rights of Trustee.** Except as otherwise provided in Section 7.01:

(a) The Trustee may conclusively rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, bond, security or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) Any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by a Board Resolution or an instrument signed in the name of the Company by any authorized Officer of the Company (unless other evidence in respect thereof is specifically prescribed herein);

(c) The Trustee may consult with counsel and the opinion or written advice of such counsel or, if requested, any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or suffered or omitted hereunder in good faith and in reliance thereon;

(d) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request, order or direction of any of the Securityholders pursuant to the provisions of this Indenture, unless such Securityholders shall have offered to the Trustee security or indemnity reasonably acceptable to the Trustee against the costs, expenses and liabilities that may be incurred therein or thereby; nothing contained herein shall, however, relieve the Trustee of the obligation, upon the occurrence of an Event of Default with respect to a series of the Securities (that has not been cured or waived), to exercise with respect to Securities of that series such of the rights and powers vested in it by this Indenture, and to use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his or her own affairs;

(e) The Trustee shall not be liable for any action taken or omitted to be taken by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture;

(f) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, bond, security, or other papers or documents or inquire as to the performance by the Company of one of its covenants under this Indenture, unless requested in writing so to do by the holders of not less than a majority in principal amount of the Outstanding Securities of the particular series affected thereby (determined as provided in Section 8.04); provided, however, that if the payment within a reasonable time to the Trustee of the costs, expenses or liabilities likely to be incurred by it in the making of such investigation is, in the opinion of the Trustee, not reasonably assured to the Trustee by the security afforded to it by the terms of this Indenture, the Trustee may require security or indemnity reasonably acceptable to the Trustee against such costs, expenses or liabilities as a condition to so proceeding. The reasonable expense of every such examination shall be paid by the Company or, if paid by the Trustee, shall be repaid by the Company upon demand;

(g) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder;





(h) In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances;

(i) In no event shall the Trustee be responsible or liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action; and

(j) The Trustee agrees to accept and act upon instructions or directions pursuant to this Indenture sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods; provided, however, that such instructions or directions shall be signed by an authorized representative of the party providing such instructions or directions. If the party elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The party providing electronic instructions agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties. The Trustee may request that the Company deliver an Officer's Certificate setting forth the names of individuals and/or titles of officers authorized at such time to furnish the Trustee with Officer's Certificates, Company Orders and any other matters or directions pursuant to this Indenture.

(k) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder and under the Securities, and each agent, custodian or other person employed to act under this Indenture.

(l) The Trustee shall not be deemed to have knowledge of any Default or Event of Default (other than an Event of Default constituting the failure to pay the interest on, or the principal of, the Securities if the Trustee also serves the paying agent for such Securities) until the Trustee shall have received written notification in the manner set forth in this Indenture or a Responsible Officer of the Trustee shall have obtained actual knowledge.

### **Section 7.03 Trustee Not Responsible for Recitals or Issuance of Securities.**

(a) The recitals contained herein and in the Securities shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the same. The Trustee shall not be responsible for any statement in any registration statement, prospectus, or any other document in connection with the sale of Securities. The Trustee shall not be responsible for any rating on the Securities or any action or omission of any rating agency.

(b) The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities.

(c) The Trustee shall not be accountable for the use or application by the Company of any of the Securities or of the proceeds of such Securities, or for the use or application of any moneys paid over by the Trustee in accordance with any provision of this Indenture or established pursuant to Section 2.01, or for the use or application of any moneys received by any paying agent other than the Trustee.

**Section 7.04 May Hold Securities.** The Trustee or any paying agent or Security Registrar, in its individual or any other capacity, may become the owner or pledgee of Securities with the same rights it would have if it were not Trustee, paying agent or Security Registrar.

**Section 7.05 Moneys Held in Trust.** Subject to the provisions of Section 11.05, all moneys received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any moneys received by it hereunder except such as it may agree with the Company to pay thereon.



### **Section 7.06 Compensation and Reimbursement.**

(a) The Company shall pay to the Trustee for each of its capacities hereunder from time to time compensation for its services as the Company and the Trustee shall from time to time agree upon in writing. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Company shall reimburse the Trustee upon request for all reasonable out-of-pocket expenses incurred by it. Such expenses shall include the reasonable compensation and expenses of the Trustee's agents and counsel.

(b) The Company shall indemnify each of the Trustee in each of its capacities hereunder against any loss, liability or expense (including the cost of defending itself and including the reasonable compensation and expenses of the Trustee's agents and counsel) incurred by it except as set forth in Section 7.06(c) in the exercise or performance of its powers, rights or duties under this Indenture as Trustee or Agent. The Trustee shall notify the Company promptly of any claim for which it may seek indemnity. The Company shall defend the claim and the Trustee shall cooperate in the defense. The Trustee may have one separate counsel and the Company shall pay the reasonable fees and expenses of such counsel. The Company need not pay for any settlement made without its consent, which consent shall not be unreasonably withheld. This indemnification shall apply to officers, directors, employees, shareholders and agents of the Trustee.

(c) The Company need not reimburse any expense or indemnify against any loss or liability incurred by the Trustee or by any officer, director, employee, shareholder or agent of the Trustee through negligence or bad faith.

(d) To ensure the Company's payment obligations in this Section, the Trustee shall have a lien prior to the Securities on all funds or property held or collected by the Trustee, except that held in trust to pay principal of or interest on particular Securities. When the Trustee incurs expenses or renders services in connection with an Event of Default specified in Section 6.01(4) or (5), the expenses (including the reasonable fees and expenses of its counsel) and the compensation for services in connection therewith are to constitute expenses of administration under any bankruptcy law. The provisions of this Section 7.06 shall survive the termination of this Indenture and the resignation or removal of the Trustee.

**Section 7.07 Reliance on Officer's Certificate.** Except as otherwise provided in Section 7.01, whenever in the administration of the provisions of this Indenture the Trustee shall deem it reasonably necessary or desirable that a matter be proved or established prior to taking or suffering or omitting to take any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of negligence or bad faith on the part of the Trustee, be deemed to be conclusively proved and established by an Officer's Certificate delivered to the Trustee and such certificate, in the absence of negligence or bad faith on the part of the Trustee, shall be full warrant to the Trustee for any action taken, suffered or omitted to be taken by it under the provisions of this Indenture upon the faith thereof.

**Section 7.08 Disqualification; Conflicting Interests.** If the Trustee has or shall acquire any "conflicting interest" within the meaning of Section 310(b) of the Trust Indenture Act, the Trustee and the Company shall in all respects comply with the provisions of Section 310(b) of the Trust Indenture Act.

**Section 7.09 Corporate Trustee Required; Eligibility.** There shall at all times be a Trustee with respect to the Securities issued hereunder which shall at all times be a corporation organized and doing business under the laws of the United States of America or any state or territory thereof or of the District of Columbia, or a corporation or other Person permitted to act as trustee by the Commission, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least fifty million U.S. dollars (\$50,000,000), and subject to supervision or examination by federal, state, territorial, or District of Columbia authority.

If such corporation or other Person publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such corporation or other Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. The Company may not, nor may any Person directly or indirectly controlling, controlled by, or under common control with the Company, serve as Trustee. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, the Trustee shall resign immediately in the manner and with the effect specified in Section 7.10.



### **Section 7.10 Resignation and Removal; Appointment of Successor.**

(a) The Trustee or any successor hereafter appointed may at any time resign with respect to the Securities of one or more series by giving written notice thereof to the Company and the Securityholders of such series. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee with respect to Securities of such series by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor trustee. If no successor trustee shall have been so appointed and have accepted appointment within 30 days after the sending of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor trustee with respect to Securities of such series, or any Securityholder of that series who has been a bona fide holder of a Security or Securities for at least six months may on behalf of himself and all others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

(b) In case at any time any one of the following shall occur:

(i) the Trustee shall fail to comply with the provisions of Section 7.08 after written request therefor by the Company or by any Securityholder who has been a bona fide holder of a Security or Securities for at least six months; or

(ii) the Trustee shall cease to be eligible in accordance with the provisions of Section 7.09 and shall fail to resign after written request therefor by the Company or by any such Securityholder; or

(iii) the Trustee shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or commence a voluntary bankruptcy proceeding, or a receiver of the Trustee or of its property shall be appointed or consented to, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation;

then, in any such case, the Company may remove the Trustee with respect to all Securities and appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or any Securityholder who has been a bona fide holder of a Security or Securities for at least six months may, on behalf of that holder and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee. Such court may thereupon after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee.

(c) The holders of a majority in aggregate principal amount of the Securities of any series at the time Outstanding may at any time remove the Trustee with respect to such series by so notifying the Trustee and the Company and may appoint a successor Trustee for such series with the consent of the Company.

(d) Any resignation or removal of the Trustee and appointment of a successor trustee with respect to the Securities of a series pursuant to any of the provisions of this Section shall become effective upon acceptance of appointment by the successor trustee as provided in Section 7.11.

(e) Any successor trustee appointed pursuant to this Section may be appointed with respect to the Securities of one or more series or all of such series, and at any time there shall be only one Trustee with respect to the Securities of any particular series.

### **Section 7.11 Acceptance of Appointment By Successor.**

(a) In case of the appointment hereunder of a successor trustee with respect to all Securities, every such successor trustee so appointed shall execute, acknowledge and deliver to the Company and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on the request of the Company or the successor trustee, such retiring Trustee shall, upon payment of any amounts due to it pursuant to the provisions of Section 7.06, execute and deliver an instrument transferring to such successor trustee all the rights, powers, and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor trustee all property and money held by such retiring Trustee hereunder.

(b) In case of the appointment hereunder of a successor trustee with respect to the Securities of one or more (but not all) series, the Company, the retiring Trustee and each successor trustee with respect to the Securities of one or more series shall execute

and deliver an indenture supplemental hereto wherein each successor trustee shall accept such appointment and which (i) shall contain

such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each successor trustee all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor trustee relates, (ii) shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series as to which the retiring Trustee is not retiring shall continue to be vested in the retiring Trustee, and (iii) shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust, that each such Trustee shall be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee and that no Trustee shall be responsible for any act or failure to act on the part of any other Trustee hereunder; and upon the execution and delivery of such supplemental indenture the resignation or removal of the retiring Trustee shall become effective to the extent provided therein, such retiring Trustee shall with respect to the Securities of that or those series to which the appointment of such successor trustee relates have no further responsibility for the exercise of rights and powers or for the performance of the duties and obligations vested in the Trustee under this Indenture, and each such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor trustee relates; but, on request of the Company or any successor trustee, such retiring Trustee shall duly assign, transfer and deliver to such successor trustee, to the extent contemplated by such supplemental indenture, the property and money held by such retiring Trustee hereunder with respect to the Securities of that or those series to which the appointment of such successor trustee relates.

(c) Upon request of any such successor trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor trustee all such rights, powers and trusts referred to in paragraph (a) or (b) of this Section, as the case may be.

(d) No successor trustee shall accept its appointment unless at the time of such acceptance such successor trustee shall be qualified and eligible under this Article.

(e) Upon acceptance of appointment by a successor trustee as provided in this Section, the Company shall send notice of the succession of such trustee hereunder to the Securityholders. If the Company fails to transmit such notice within ten days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be transmitted at the expense of the Company.

**Section 7.12 Merger, Conversion, Consolidation or Succession to Business.** Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all the corporate trust business of the Trustee, including the administration of the trust created by this Indenture, shall be the successor of the Trustee hereunder, provided that such corporation shall be qualified under the provisions of Section 7.08 and eligible under the provisions of Section 7.09, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding. In case any Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Securities.

**Section 7.13 Preferential Collection of Claims Against the Company.** The Trustee shall comply with Section 311(a) of the Trust Indenture Act, excluding any creditor relationship described in Section 311(b) of the Trust Indenture Act. A Trustee who has resigned or been removed shall be subject to Section 311(a) of the Trust Indenture Act to the extent included therein.

**Section 7.14 Notice of Default.** If any Event of Default occurs and is continuing and if such Event of Default is known to a Responsible Officer of the Trustee, the Trustee shall send to each Securityholder in the manner and to the extent provided in Section 313(c) of the Trust Indenture Act notice of the Event of Default within the earlier of 90 days after it occurs and 30 days after it is known to a Responsible Officer of the Trustee or written notice of it is received by the Trustee, unless such Event of Default has been cured; *provided, however,* that, except in the case of a default in the payment of the principal of (or premium, if any) or interest on any Security, the Trustee shall be protected in withholding such notice if and so long as the Responsible Officers of the Trustee in good faith determine that the withholding of such notice is in the interest of the Securityholders.





## ARTICLE 8

### CONCERNING THE SECURITYHOLDERS

**Section 8.01 Evidence of Action by Securityholders.** Whenever in this Indenture it is provided that the holders of a majority or specified percentage in aggregate principal amount of the Securities of a particular series may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action the holders of such majority or specified percentage of that series have joined therein may be evidenced by any instrument or any number of instruments of similar tenor executed by such holders of Securities of that series in person or by agent or proxy appointed in writing.

If the Company shall solicit from the Securityholders of any series any request, demand, authorization, direction, notice, consent, waiver or other action, the Company may, at its option, as evidenced by an Officer's Certificate, fix in advance a record date for such series for the determination of Securityholders entitled to give such request, demand, authorization, direction, notice, consent, waiver or other action, but the Company shall have no obligation to do so. If such a record date is fixed, such request, demand, authorization, direction, notice, consent, waiver or other action may be given before or after the record date, but only the Securityholders of record at the close of business on the record date shall be deemed to be Securityholders for the purposes of determining whether Securityholders of the requisite proportion of Outstanding Securities of that series have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other action, and for that purpose the Outstanding Securities of that series shall be computed as of the record date; provided, however, that no such authorization, agreement or consent by such Securityholders on the record date shall be deemed effective unless it shall become effective pursuant to the provisions of this Indenture not later than six months after the record date.

**Section 8.02 Proof of Execution by Securityholders.** Subject to the provisions of Section 7.01, proof of the execution of any instrument by a Securityholder (such proof will not require notarization) or his or her agent or proxy and proof of the holding by any Person of any of the Securities shall be sufficient if made in the following manner:

(a) The fact and date of the execution by any such Person of any instrument may be proved in any reasonable manner acceptable to the Trustee.

(b) The ownership of Securities shall be proved by the Security Register of such Securities or by a certificate of the Security Registrar thereof.

The Trustee may require such additional proof of any matter referred to in this Section as it shall deem necessary.

**Section 8.03 Who May be Deemed Owners.** Prior to the due presentment for registration of transfer of any Security, the Company, the Trustee, any paying agent and any Security Registrar may deem and treat the Person in whose name such Security shall be registered upon the books of the Security Registrar as the absolute owner of such Security (whether or not such Security shall be overdue and notwithstanding any notice of ownership or writing thereon made by anyone other than the Security Registrar) for the purpose of receiving payment of or on account of the principal of, premium, if any, and (subject to Section 2.03) interest on such Security and for all other purposes; and neither the Company nor the Trustee nor any paying agent nor any Security Registrar shall be affected by any notice to the contrary.

**Section 8.04 Certain Securities Owned by Company Disregarded.** In determining whether the holders of the requisite aggregate principal amount of Securities of a particular series have concurred in any direction, consent or waiver under this Indenture, the Securities of that series that are owned by the Company or any other obligor on the Securities of that series or by any Person directly or indirectly controlling or controlled by or under common control with the Company or any other obligor on the Securities of that series shall be disregarded and deemed not to be Outstanding for the purpose of any such determination, except that for the purpose of determining whether the Trustee shall be protected in relying on any such direction, consent or waiver, only Securities of such series that the Trustee actually knows are so owned shall be so disregarded. The Securities so owned that have been pledged in good faith may be regarded as Outstanding for the purposes of this Section, if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right so to act with respect to such Securities and that the pledgee is not a Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any such other obligor. In case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee.

**Section 8.05 Actions Binding on Future Securityholders.** At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 8.01, of the taking of any action by the holders of the majority or percentage in aggregate principal amount of the



Securities of a particular series specified in this Indenture in connection with such action, any holder of a Security of that series that is shown by the evidence to be included in the Securities the holders of which have consented to such action may, by filing written notice with the Trustee, and upon proof of holding as provided in Section 8.02, revoke such action so far as concerns such Security. Except as aforesaid any such action taken by the holder of any Security shall be conclusive and binding upon such holder and upon all future holders and owners of such Security, and of any Security issued in exchange therefor, on registration of transfer thereof or in place thereof, irrespective of whether or not any notation in regard thereto is made upon such Security. Any action taken by the holders of the majority or percentage in aggregate principal amount of the Securities of a particular series specified in this Indenture in connection with such action shall be conclusively binding upon the Company, the Trustee and the holders of all the Securities of that series.

## ARTICLE 9

### SUPPLEMENTAL INDENTURES

**Section 9.01 Supplemental Indentures Without the Consent of Securityholders.** In addition to any supplemental indenture otherwise authorized by this Indenture, the Company and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto (which shall conform to the provisions of the Trust Indenture Act as then in effect), without the consent of the Securityholders, for one or more of the following purposes:

- (a) to cure any ambiguity, defect, or inconsistency herein or in the Securities of any series;
- (b) to comply with Article Ten;
- (c) to provide for uncertificated Securities in addition to or in place of certificated Securities;
- (d) to add to the covenants, restrictions, conditions or provisions relating to the Company for the benefit of the holders of all or any series of Securities (and if such covenants, restrictions, conditions or provisions are to be for the benefit of less than all series of Securities, stating that such covenants, restrictions, conditions or provisions are expressly being included solely for the benefit of such series), to make the occurrence, or the occurrence and the continuance, of a default in any such additional covenants, restrictions, conditions or provisions an Event of Default, or to surrender any right or power herein conferred upon the Company;
- (e) to add to, delete from, or revise the conditions, limitations, and restrictions on the authorized amount, terms, or purposes of issue, authentication, and delivery of Securities, as herein set forth;
- (f) to make any change that does not adversely affect the rights of any Securityholder in any material respect;
- (g) to provide for the issuance of and establish the form and terms and conditions of the Securities of any series as provided in Section 2.01, to establish the form of any certifications required to be furnished pursuant to the terms of this Indenture or any series of Securities, or to add to the rights of the holders of any series of Securities;
- (h) to evidence and provide for the acceptance of appointment hereunder by a successor trustee; or
- (i) to comply with any requirements of the Commission or any successor in connection with the qualification of this Indenture under the Trust Indenture Act.

The Trustee is hereby authorized to join with the Company in the execution of any such supplemental indenture, and to make any further appropriate agreements and stipulations that may be therein contained, but the Trustee shall not be obligated to enter into any such supplemental indenture that affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Any supplemental indenture authorized by the provisions of this Section may be executed by the Company and the Trustee without the consent of the holders of any of the Securities at the time Outstanding, notwithstanding any of the provisions of Section 9.02.

**Section 9.02 Supplemental Indentures With Consent of Securityholders.** With the consent (evidenced as provided in Section 8.01) of the holders of not less than a majority in aggregate principal amount of the Securities of each series affected by such supplemental indenture or indentures at the time Outstanding, the Company, when authorized by a Board Resolution, and the Trustee



may from time to time and at any time enter into an indenture or indentures supplemental hereto (which shall conform to the provisions of the Trust Indenture Act as then in effect) for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of any supplemental indenture or of modifying in any manner not covered by Section 9.01 the rights of the holders of the Securities of such series under this Indenture; provided, however, that no such supplemental indenture shall, without the consent of the holders of each Security then Outstanding and affected thereby, (a) extend the fixed maturity of any Securities of any series, or reduce the principal amount thereof, or reduce the rate or extend the time of payment of interest thereon, or reduce any premium payable upon the redemption thereof or (b) reduce the aforesaid percentage of Securities, the holders of which are required to consent to any such supplemental indenture.

It shall not be necessary for the consent of the Securityholders of any series affected thereby under this Section to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such consent shall approve the substance thereof.

**Section 9.03 Effect of Supplemental Indentures.** Upon the execution of any supplemental indenture pursuant to the provisions of this Article or of Section 10.01, this Indenture shall, with respect to such series, be and be deemed to be modified and amended in accordance therewith and the respective rights, limitations of rights, obligations, duties and immunities under this Indenture of the Trustee, the Company and the holders of Securities of the series affected thereby shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the terms and conditions of any such supplemental indenture shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

**Section 9.04 Securities Affected by Supplemental Indentures.** Securities of any series affected by a supplemental indenture, authenticated and delivered after the execution of such supplemental indenture pursuant to the provisions of this Article or of Section 10.01, may bear a notation in form approved by the Company, provided such form meets the requirements of any securities exchange upon which such series may be listed, as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities of that series so modified as to conform, in the opinion of the Board of Directors, to any modification of this Indenture contained in any such supplemental indenture may be prepared by the Company, authenticated by the Trustee and delivered in exchange for the Securities of that series then Outstanding.

**Section 9.05 Execution of Supplemental Indentures.** Upon the request of the Company, accompanied by its Board Resolutions authorizing the execution of any such supplemental indenture, and upon the filing with the Trustee of evidence of the consent of Securityholders required to consent thereto as aforesaid, the Trustee shall join with the Company in the execution of such supplemental indenture unless such supplemental indenture affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion but shall not be obligated to enter into such supplemental indenture. The Trustee, subject to the provisions of Section 7.01, shall receive an Officer's Certificate or an Opinion of Counsel as conclusive evidence that any supplemental indenture executed pursuant to this Article is authorized or permitted by the terms of this Article and that all conditions precedent to the execution of the supplemental indenture have been complied with; provided, however, that such Officer's Certificate or Opinion of Counsel need not be provided in connection with the execution of a supplemental indenture that establishes the terms of a series of Securities pursuant to Section 2.01 hereof.

Promptly after the execution by the Company and the Trustee of any supplemental indenture pursuant to the provisions of this Section, the Company shall (or shall direct the Trustee to) send a notice, setting forth in general terms the substance of such supplemental indenture, to the Securityholders of all series affected thereby as their names and addresses appear upon the Security Register. Any failure of the Company to send, or cause the sending of, such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such supplemental indenture.

## ARTICLE 10

### SUCCESSOR ENTITY

**Section 10.01 Company May Consolidate, Etc.** Nothing contained in this Indenture shall prevent any consolidation or merger of the Company with or into any other Person (whether or not affiliated with the Company) or successive consolidations or mergers in which the Company or its successor or successors shall be a party or parties, or shall prevent any sale, conveyance, transfer or other disposition of the property of the Company or its successor or successors as an entirety, or substantially as an entirety, to any other Person (whether or not affiliated with the Company or its successor or successors); provided, however, the Company hereby covenants and agrees that, upon any such consolidation or merger (in each case, if the Company is not the survivor of such transaction) or any such sale, conveyance, transfer or other disposition (other than a sale, conveyance, transfer or other disposition to a Subsidiary of the Company), the due and punctual payment of the principal of (premium, if any) and interest on all of the Securities of all series in accordance with the terms of each series, according to their tenor, and the due and punctual performance and observance of all the



covenants and conditions of this Indenture with respect to each series or established with respect to such series pursuant to Section 2.01 to be kept or performed by the Company shall be expressly assumed, by supplemental indenture (which shall conform to the provisions of the Trust Indenture Act, as then in effect) reasonably satisfactory in form to the Trustee executed and delivered to the Trustee by the entity formed by such consolidation, or into which the Company shall have been merged, or by the entity which shall have acquired such property.

#### **Section 10.02 Successor Entity Substituted.**

(a) In case of any such consolidation, merger, sale, conveyance, transfer or other disposition and upon the assumption by the successor entity by supplemental indenture, executed and delivered to the Trustee and satisfactory in form to the Trustee, of the obligations set forth under Section 10.01 on all of the Securities of all series Outstanding, such successor entity shall succeed to and be substituted for the Company with the same effect as if it had been named as the Company herein, and thereupon the predecessor corporation shall be relieved of all obligations and covenants under this Indenture and the Securities.

(b) In case of any such consolidation, merger, sale, conveyance, transfer or other disposition, such changes in phraseology and form (but not in substance) may be made in the Securities thereafter to be issued as may be appropriate.

(c) Nothing contained in this Article shall require any action by the Company in the case of a consolidation or merger of any Person into the Company where the Company is the survivor of such transaction, or the acquisition by the Company, by purchase or otherwise, of all or any part of the property of any other Person (whether or not affiliated with the Company).

### **ARTICLE 11**

#### **SATISFACTION AND DISCHARGE**

**Section 11.01 Satisfaction and Discharge of Indenture.** If at any time: (a) the Company shall have delivered to the Trustee for cancellation all Securities of a series theretofore authenticated and not delivered to the Trustee for cancellation (other than any Securities that shall have been destroyed, lost or stolen and that shall have been replaced or paid as provided in Section 2.07 and Securities for whose payment money or Governmental Obligations have theretofore been deposited in trust or segregated and held in trust by the Company and thereupon repaid to the Company or discharged from such trust, as provided in Section 11.05); or (b) all such Securities of a particular series not theretofore delivered to the Trustee for cancellation shall have become due and payable, or are by their terms to become due and payable within one year or are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption, and the Company shall deposit or cause to be deposited with the Trustee as trust funds the entire amount in moneys or Governmental Obligations or a combination thereof, sufficient in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay at maturity or upon redemption all Securities of that series not theretofore delivered to the Trustee for cancellation, including principal (and premium, if any) and interest due or to become due to such date of maturity or date fixed for redemption, as the case may be, and if the Company shall also pay or cause to be paid all other sums payable hereunder with respect to such series by the Company then this Indenture shall thereupon cease to be of further effect with respect to such series except for the provisions of Sections 2.03, 2.05, 2.07, 4.01, 4.02, 4.03, 7.10, 11.5 and 13.04, that shall survive until the date of maturity or redemption date, as the case may be, and Sections 7.06 and 11.05, that shall survive to such date and thereafter, and the Trustee, on demand of the Company and at the cost and expense of the Company shall execute proper instruments acknowledging satisfaction of and discharging this Indenture with respect to such series.

**Section 11.02 Discharge of Obligations.** If at any time all such Securities of a particular series not heretofore delivered to the Trustee for cancellation or that have not become due and payable as described in Section 11.01 shall have been paid by the Company by depositing irrevocably with the Trustee as trust funds moneys or an amount of Governmental Obligations sufficient to pay at maturity or upon redemption all such Securities of that series not theretofore delivered to the Trustee for cancellation, including principal (and premium, if any) and interest due or to become due to such date of maturity or date fixed for redemption, as the case may be, and if the Company shall also pay or cause to be paid all other sums payable hereunder by the Company with respect to such series, then after the date such moneys or Governmental Obligations, as the case may be, are deposited with the Trustee the obligations of the Company under this Indenture with respect to such series shall cease to be of further effect except for the provisions of Sections 2.03, 2.05, 2.07, 4.01, 4.02, 4.03, 7.06, 7.10, 11.05 and 13.04 hereof that shall survive until such Securities shall mature and be paid.

Thereafter, Sections 7.06 and 11.05 shall survive.





**Section 11.03 Deposited Moneys to be Held in Trust.** All moneys or Governmental Obligations deposited with the Trustee pursuant to Sections 11.01 or 11.02 shall be held in trust and shall be available for payment as due, either directly or through any paying agent (including the Company acting as its own paying agent), to the holders of the particular series of Securities for the payment or redemption of which such moneys or Governmental Obligations have been deposited with the Trustee.



**Section 11.04 Payment of Moneys Held by Paying Agents.** In connection with the satisfaction and discharge of this Indenture all moneys or Governmental Obligations then held by any paying agent under the provisions of this Indenture shall, upon demand of the Company, be paid to the Trustee and thereupon such paying agent shall be released from all further liability with respect to such moneys or Governmental Obligations.

**Section 11.05 Repayment to Company.** Any moneys or Governmental Obligations deposited with any paying agent or the Trustee, or then held by the Company, in trust for payment of principal of or premium, if any, or interest on the Securities of a particular series that are not applied but remain unclaimed by the holders of such Securities for at least two years after the date upon which the principal of (and premium, if any) or interest on such Securities shall have respectively become due and payable, or such other shorter period set forth in applicable escheat or abandoned or unclaimed property law, shall be repaid to the Company on May 31 of each year or upon the Company's request or (if then held by the Company) shall be discharged from such trust; and thereupon the paying agent and the Trustee shall be released from all further liability with respect to such moneys or Governmental Obligations, and the holder of any of the Securities entitled to receive such payment shall thereafter, as a general creditor, look only to the Company for the payment thereof.

## ARTICLE 12

### IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS

**Section 12.01 No Recourse.** No recourse under or upon any obligation, covenant or agreement of this Indenture, or of any Security, or for any claim based thereon or otherwise in respect thereof, shall be had against any incorporator, stockholder, officer or director, past, present or future as such, of the Company or of any predecessor or successor corporation, either directly or through the Company or any such predecessor or successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that this Indenture and the obligations issued hereunder are solely corporate obligations, and that no such personal liability whatever shall attach to, or is or shall be incurred by, the incorporators, stockholders, officers or directors as such, of the Company or of any predecessor or successor corporation, or any of them, because of the creation of the indebtedness hereby authorized, or under or by reason of the obligations, covenants or agreements contained in this Indenture or in any of the Securities or implied therefrom; and that any and all such personal liability of every name and nature, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such incorporator, stockholder, officer or director as such, because of the creation of the indebtedness hereby authorized, or under or by reason of the obligations, covenants or agreements contained in this Indenture or in any of the Securities or implied therefrom, are hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issuance of such Securities.

## ARTICLE 13

### MISCELLANEOUS PROVISIONS

**Section 13.01 Effect on Successors and Assigns.** All the covenants, stipulations, promises and agreements in this Indenture made by or on behalf of the Company shall bind its successors and assigns, whether so expressed or not.

**Section 13.02 Actions by Successor.** Any act or proceeding by any provision of this Indenture authorized or required to be done or performed by any board, committee or officer of the Company shall and may be done and performed with like force and effect by the corresponding board, committee or officer of any corporation that shall at the time be the lawful successor of the Company.

**Section 13.03 Surrender of Company Powers.** The Company by instrument in writing executed by authority of its Board of Directors and delivered to the Trustee may surrender any of the powers reserved to the Company, and thereupon such power so surrendered shall terminate both as to the Company and as to any successor corporation.

**Section 13.04 Notices.** Except as otherwise expressly provided herein, any notice, request or demand that by any provision of this Indenture is required or permitted to be given, made or served by the Trustee, the Security Registrar, any paying or other agent under this Indenture or by the holders of Securities or by any other Person pursuant to this Indenture to or on the Company may be given or served by being deposited in first class mail, postage prepaid, addressed (until another address is filed in writing by the Company with the Trustee), as follows: Any notice, election, request or demand by the Company or any Securityholder or by any other Person pursuant to this Indenture to or upon the Trustee shall be deemed to have been sufficiently given or made, for all purposes, if given or made in writing at the Company's Trust Office of the Trustee.

purposes, if given or made in writing at the Corporate Trust Office of the Trustee.

**Section 13.05 Governing Law; Jury Trial Waiver.** This Indenture and each Security shall be governed by, and construed in accordance with, the internal laws of the State of New York, except to the extent that the Trust Indenture Act is applicable.

EACH PARTY HERETO, AND EACH HOLDER OF A SECURITY BY ACCEPTANCE THEREOF, HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS INDENTURE.

**Section 13.06 Treatment of Securities as Debt.** It is intended that the Securities will be treated as indebtedness and not as equity for federal income tax purposes. The provisions of this Indenture shall be interpreted to further this intention.

**Section 13.07 Certificates and Opinions as to Conditions Precedent.**

(a) Upon any application or demand by the Company to the Trustee to take any action under any of the provisions of this Indenture, the Company shall furnish to the Trustee an Officer's Certificate stating that all conditions precedent provided for in this Indenture (other than the certificate to be delivered pursuant to Section 13.12) relating to the proposed action have been complied with and, if requested, an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent have been complied with, except that in the case of any such application or demand as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or demand, no additional certificate or opinion need be furnished.

(b) Each certificate or opinion provided for in this Indenture and delivered to the Trustee with respect to compliance with a condition or covenant in this Indenture (other than the certificate to be delivered pursuant to Section 13.12 of this Indenture or Section 314(a)(1) of the Trust Indenture Act) shall include (i) a statement that the Person making such certificate or opinion has read such covenant or condition; (ii) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based; (iii) a statement that, in the opinion of such Person, he has made such examination or investigation as is reasonably necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and (iv) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been complied with.

**Section 13.08 Payments on Business Days.** Except as provided pursuant to Section 2.01 pursuant to a Board Resolution, and set forth in an Officer's Certificate, or established in one or more indentures supplemental to this Indenture, in any case where the date of maturity of interest or principal of any Security or the date of redemption of any Security shall not be a Business Day, then payment of interest or principal (and premium, if any) may be made on the next succeeding Business Day with the same force and effect as if made on the nominal date of maturity or redemption, and no interest shall accrue for the period after such nominal date.

**Section 13.09 Conflict with Trust Indenture Act.** If and to the extent that any provision of this Indenture limits, qualifies or conflicts with the duties imposed by Section 318(c) of the Trust Indenture Act, such imposed duties shall control.

**Section 13.10 Counterparts.** This Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument. The exchange of copies of this Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

**Section 13.11 Separability.** In case any one or more of the provisions contained in this Indenture or in the Securities of any series shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Indenture or of such Securities, but this Indenture and such Securities shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein or therein.

**Section 13.12 Compliance Certificates.** The Company shall deliver to the Trustee, within 120 days after the end of each fiscal year during which any Securities of any series were outstanding, an officer's certificate stating whether or not the signers know of any Event of Default that occurred during such fiscal year. Such certificate shall contain a certification from the principal executive officer, principal financial officer or principal accounting officer of the Company that a review has been conducted of the activities of the Company and the Company's performance under this Indenture and that the Company has complied with all conditions and covenants under this Indenture. For purposes of this Section 13.12, such compliance shall be determined without regard to any period of grace or requirement of notice provided under this Indenture. If the officer of the Company signing such certificate has knowledge of such an

Event of Default, the certificate shall describe any such Event of Default and its status.

**Section 13.13 U.S.A Patriot Act.** The parties hereto acknowledge that in accordance with Section 326 of the U.S.A. Patriot Act, the Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The parties to this Indenture agree that they will provide the Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the U.S.A. Patriot Act.

**Section 13.14 Force Majeure.** In no event shall the Trustee, the Security Registrar, any paying agent or any other agent under this Indenture be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions or utilities, communications or computer (software and hardware) services; it being understood that the Trustee, the Security Registrar, any paying agent or any other agent under this Indenture shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

**Section 13.15 Table of Contents; Headings.** The table of contents and headings of the articles and sections of this Indenture have been inserted for convenience of reference only, are not intended to be considered a part hereof, and will not modify or restrict any of the terms or provisions hereof.

**IN WITNESS WHEREOF**, the parties hereto have caused this Indenture to be duly executed all as of the day and year first above written.

**BIRD GLOBAL, INC.**

By:

Name:

Title:

**[TRUSTEE]**, as Trustee

By:

Name:

Title:





## CROSS-REFERENCE TABLE

Section of Trust Indenture Act of 1939, as Amended	Section of Indenture
310(a)	7.09
310(b)	7.08
	7.10
310(c)	Inapplicable
311(a)	7.13
311(b)	7.13
311(c)	Inapplicable
312(a)	5.01
	5.02(a)
312(b)	5.02(c)
312(c)	5.02(c)
313(a)	5.04(a)
313(b)	5.04(b)
313(c)	5.04(a)
	5.04(b)
313(d)	5.04(c)
314(a)	5.03
	13.12
314(b)	Inapplicable
314(c)	13.07(a)
314(d)	Inapplicable
314(e)	13.07(b)
314(f)	Inapplicable
315(a)	7.01(a)
	7.01(b)
315(b)	7.14
315(c)	7.01
315(d)	7.01(b)
315(e)	6.07
316(a)	6.06
	8.04
316(b)	6.04
316(c)	8.01
317(a)	6.02
317(b)	4.03
318(a)	13.09







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Newport Beach, CA 92660-6422  
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June 23, 2023

Bird Global, Inc.  
392 NE 191st Street #20388  
Miami, Florida 33179

Re: *Registration Statement on Form S-3*

Ladies and Gentlemen:

You have requested our opinion with respect to certain matters in connection with the filing by Bird Global, Inc., a Delaware corporation (the "**Company**"), of a Registration Statement on Form S-3 (as such may be amended or supplemented from time to time, the "**Registration Statement**") with the Securities and Exchange Commission ("**Commission**") on June [●], 2023 under the Securities Act of 1933, as amended (the "**Securities Act**").

You have provided us with the Registration Statement in the form in which it will be filed, which includes the prospectus (the "**Prospectus**"). The Prospectus provides that it may be supplemented by one or more supplements (each, a "**Prospectus Supplement**"). The Registration Statement, including the Prospectus, as supplemented by one or more Prospectus Supplements, will provide for the registration by the Company of up to \$25,000,000 initial aggregate offering price of (a) shares of Class A common stock, par value \$0.0001 per share (the "**Class A Common Stock**"); (b) shares of preferred stock, par value \$0.0001 per share (the "**Preferred Stock**"), that may be exchangeable for or convertible into shares of Class A Common Stock, other shares of Preferred Stock, Debt Securities or Warrants (each as defined hereafter); (c) debt securities (the "**Debt Securities**") that may be exchangeable for or convertible into shares of Class A Common Stock, shares of Preferred Stock, other Debt Securities or Warrants (or which may be non-exchangeable or non-convertible); and/or (d) warrants to purchase shares of Class A Common Stock, shares of Preferred Stock or Debt Securities (the "**Warrants**"), plus any additional shares of Class A Common Stock, shares of Preferred Stock, Debt Securities, and/or Warrants that may be registered pursuant to any subsequent registration statement relating to the Registration Statement that the Company may hereafter file with the Commission pursuant to Rule 462(b) under the Securities Act. The Class A Common Stock, Preferred Stock, Debt Securities, and Warrants to be offered and sold pursuant to the Registration Statement, the Prospectus, and any applicable Prospectus Supplement(s), shall be collectively referred to as the "**Securities**."

The Securities will be offered and sold, either individually or collectively, pursuant to one or more definitive purchase agreements, subscription agreements, underwriting agreements, indentures, warrant agreements, or similar agreements (any such agreement, a "**Purchase Agreement**").

In our capacity as your counsel, we are familiar with the proceedings taken and proposed to be taken by the Company in connection with the preparation and filing of the Registration Statement (including the Prospectus), the preparation and filing of any applicable Prospectus Supplement(s), and the authorization, issuance and sale of the Securities. For the purposes of this opinion, with your consent, we have assumed that (a) at the time any Securities are sold pursuant to the Registration Statement (any such time, the "**Relevant Time**"), the Registration Statement and any supplements and amendments thereto (including any post-effective amendments) will be effective and will comply with all applicable laws and regulations; (b) at the Relevant Time, one or more Prospectus Supplements will have been prepared and filed describing the Securities offered thereby and will comply with all applicable laws; (c) at the time of execution, each of the parties to any Purchase Agreement other than the Company will (i) be duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, (ii) have the requisite power and authority to execute, deliver and perform its obligations under each Purchase Agreement to which it is a party, and (iii) have duly authorized, executed and delivered each Purchase Agreement; and (d) with respect to each of the parties to each Purchase Agreement (other than the Company), such Purchase Agreement to which it is a party will constitute its legally valid and binding agreement, enforceable against it in accordance with its terms.

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In connection with this opinion, we have examined and relied upon (a) the Registration Statement, (b) the Company's Amended and Restated Certificate of Incorporation in the form filed as Exhibit 3.1 to the Registration Statement (as such may be amended from time to time, the "**Restated Articles**"), (c) the Company's Amended and Restated Bylaws in the form filed as Exhibit 3.2 to the Registration Statement, and (d) originals or copies, certified to our satisfaction, of such records, documents, certificates, memoranda and other instruments as in our judgment are necessary or appropriate to enable us to render the opinion expressed below. We have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, and the conformity to originals of all documents submitted to us as copies.

Subject to the foregoing, and the other matters set forth herein, it is our opinion that:

1. When the Registration Statement and any required post-effective amendments thereto have all become effective under the Securities Act and (a) any and all Prospectus Supplement(s) required by applicable laws have been delivered and filed as required by such laws; (b) any applicable Purchase Agreement covering the offer and sale of the shares of Class A Common Stock has been duly authorized, executed and delivered by the Company; (c) the issuance and delivery of the shares of Class A Common Stock have been duly authorized in accordance with applicable laws, including, without limitation, by the adoption of resolutions of the Board of Directors of the Company (the "**Board**") (or an authorized committee thereof); and (d) payment of legal consideration for the shares of Class A Common Stock, in the manner contemplated by the Registration Statement, the Prospectus, the related Prospectus Supplement(s), and any applicable Purchase Agreement, has been received by the Company, and assuming that (i) the terms of such shares of Class A Common Stock, as issued and delivered, are materially consistent with the description thereof in the Registration Statement, the Prospectus, and the related Prospectus Supplement(s); (ii) at the time of the issuance of such shares of Class A Common Stock, the Company has a sufficient number of authorized but unissued shares of Class A Common Stock under the Restated Articles; (iii) such shares of Class A Common Stock, as issued and delivered, comply with all requirements and restrictions, if any, applicable to the Company, whether imposed by any court, governmental agency or regulatory body having jurisdiction over the Company or otherwise; and (iv) such shares of Class A Common Stock are issued and sold as contemplated in the Registration Statement, the Prospectus, the related Prospectus Supplement(s), any applicable Purchase Agreement, and such resolutions of the Board (or of an authorized committee thereof), then such shares of Class A Common Stock, including any shares of Class A Common Stock duly issued upon (A) the exchange or conversion of any shares of Preferred Stock that are exchangeable for or convertible into shares of Class A Common Stock, (B) the exchange or conversion of any Debt Securities that are exchangeable for or convertible into shares of Class A Common Stock, or (C) the exercise of any Warrants that are exercisable for shares of Class A Common Stock, will be validly issued, fully paid and nonassessable.

2. When the Registration Statement and any required post-effective amendments thereto have all become effective under the Securities Act and (a) any and all Prospectus Supplement(s) required by applicable laws have been delivered and filed as required by such laws; (b) any applicable Purchase Agreement covering the offer and sale of the shares of Preferred Stock has been duly authorized, executed and delivered by the Company; (c) the Board has properly designated a series of Preferred Stock in accordance with the terms of the Restated Articles and applicable laws; (d) the issuance and delivery of the shares of Preferred Stock have been duly authorized in accordance with applicable laws, including, without limitation, by the adoption of resolutions of the Board (or an authorized committee thereof); and (e) payment of legal consideration for the shares of Preferred Stock, in the manner contemplated by the Registration Statement, the Prospectus, the related Prospectus Supplement(s), and any applicable Purchase Agreement, has been received by the Company, and assuming that (i) the terms of such shares of Preferred Stock, as issued and delivered, are materially consistent with the description thereof in the Registration Statement, the Prospectus, and the related Prospectus Supplement(s); (ii) at the time of the issuance of such shares of Preferred Stock, the Company has a sufficient number of authorized but unissued shares of Preferred Stock under the Restated Articles; (iii) such shares of Preferred Stock, as issued and delivered, comply with all requirements and restrictions, if any, applicable to the Company, whether imposed by any court, governmental agency or regulatory body having jurisdiction over the Company or otherwise; and (iv) such shares of Preferred Stock are issued and sold as contemplated in the Registration Statement, the Prospectus, the related Prospectus Supplement(s), any applicable Purchase Agreement, and such resolutions of the Board (or of an authorized committee thereof), then such shares of Preferred Stock, including any shares of Preferred Stock duly issued upon (A) the exchange or conversion of any shares of Preferred Stock that are exchangeable for or convertible into another series of Preferred Stock, (B) the exchange or conversion of any Debt Securities that are exchangeable for or convertible into shares of Preferred Stock, or (C) the exercise of Warrants that are exercisable for shares of Preferred Stock, will be validly issued, fully paid and nonassessable.

3. When the Registration Statement and any required post-effective amendments thereto have all become effective under the Securities Act and (a) any and all Prospectus Supplement(s) required by applicable laws have been delivered and filed as required by such laws; (b) any applicable Purchase Agreement covering the offer and sale of the Debt Securities has been duly authorized, executed and delivered by the Company; (c) the issuance and delivery of the Debt Securities have been duly authorized in accordance with applicable law including, without limitation, by the adoption of resolutions of the Board (or an authorized committee thereof); (d) the Debt Securities have been duly executed, authenticated and/or countersigned (as applicable) in accordance with any applicable





Purchase Agreement; (e) a trustee for the Debt Securities has been selected by the Company and qualified under the Trust Indenture Act of 1939, as amended, to the extent applicable; and (f) payment of legal consideration for the Debt Securities, in the manner contemplated by the Registration Statement, the Prospectus, the related Prospectus Supplement(s), and any applicable Purchase Agreement has been received by the Company, and assuming that (i) the terms of such Debt Securities, as issued and delivered, are materially consistent with the description thereof in the Registration Statement, the Prospectus, and the related Prospectus Supplement(s); (ii) the Debt Securities, as executed and delivered, do not violate any law applicable to the Company or result in a default under or breach of any agreement or instrument then binding upon the Company; (iii) the Debt Securities, as executed and delivered, comply with all requirements and restrictions, if any, applicable to the Company, whether imposed by any court, governmental agency or regulatory body having jurisdiction over the Company or otherwise; and (iv) the Debt Securities are issued and sold as contemplated by the Registration Statement, the Prospectus, the related Prospectus Supplement(s), any applicable Purchase Agreement, and such resolutions of the Board (or of an authorized committee thereof), then such Debt Securities, including any Debt Securities issuable upon (A) the exchange or conversion of any shares of Preferred Stock that are exchangeable for or convertible into Debt Securities, (B) the exchange or conversion of any Debt Securities that are exchangeable for or convertible into other Debt Securities, or (C) the exercise of any Warrants to purchase Debt Securities, will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms.

4. When the Registration Statement and any required post-effective amendments thereto have all become effective under the Securities Act and (a) any and all Prospectus Supplement(s) required by applicable laws have been delivered and filed as required by such laws; (b) any applicable Purchase Agreement covering the offer and sale of the Warrants has been duly authorized, executed and delivered by the Company; (c) the Warrants have been duly established in accordance with the terms of any applicable Purchase Agreement; (d) the issuance and delivery of the Warrants have been duly authorized in accordance with applicable laws including, without limitation, by the adoption of resolutions of the Board (or an authorized committee thereof); (e) the Warrants have been duly executed, authenticated and/or countersigned (as applicable) in accordance with any applicable Purchase Agreement; and (f) payment of legal consideration for the Warrants (if any) in the manner contemplated by the Registration Statement, the Prospectus, the related Prospectus Supplement(s), and any applicable Purchase Agreement, has been received by the Company, and assuming that (i) the terms of the Warrants, as executed and delivered, are materially consistent with the description thereof in the Registration Statement, the Prospectus, and the related Prospectus Supplement(s); (ii) the Warrants, as executed and delivered, do not violate any law applicable to the Company or result in a default under or breach of any agreement or instrument then binding upon the Company; (iii) the Warrants, as executed and delivered, comply with all requirements and restrictions, if any, applicable to the Company, whether imposed by any court, governmental agency or regulatory body having jurisdiction over the Company or otherwise; and (iv) the Warrants are issued and sold as contemplated by the Registration Statement, the Prospectus and related Prospectus Supplement(s), any applicable Purchase Agreement and such resolutions of the Board (or of an authorized committee thereof), then such Warrants, including any Warrants issuable upon (A) the exchange or conversion of any shares of Preferred Stock that are exchangeable for or convertible into Warrants, or (B) the exchange or conversion of any Debt Securities that are exchangeable for or convertible into Warrants, will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms.

Our opinion is expressed only with respect to the General Corporation Law of the State of Delaware. We express no opinion to the extent that any other laws are applicable to the subject matter hereof, and express no opinion and provide no assurance as to compliance with any federal or state securities law, rule or regulation.

The opinions set forth in Paragraphs 3 and 4 above relating to the enforceability of the Debt Securities and Warrants, respectively, are subject to the following exceptions, limitations and qualifications: (a) the effect of bankruptcy, insolvency, reorganization, preference, fraudulent transfer, moratorium or other similar laws relating to or affecting the rights and remedies of creditors; (b) the effect of general principles of equity, whether enforcement is considered in a proceeding in equity or at law (including the possible unavailability of specific performance or injunctive relief), concepts of materiality, reasonableness, good faith and fair dealing, and the discretion of the court before which any proceeding therefor may be brought; (c) the unenforceability under certain circumstances under law or court decisions of provisions providing for the indemnification of, or contribution to, a party with respect to a liability where such indemnification or contribution is contrary to public policy; and (d) the unenforceability of any provision requiring the payment of attorneys' fees, where such payment is contrary to law or public policy.

We consent to the use of this opinion as Exhibit 5.1 to the Registration Statement, and to the reference to our firm in the Registration Statement and any amendments or supplements thereto. In giving such consent, we do not admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations thereunder.



This opinion is intended solely for use in connection with the issuance and sale of the Securities pursuant to the Registration Statement and is not to be relied upon for any other purpose or delivered to or relied upon by any other person without our prior written consent. This opinion is rendered as of the date hereof and based solely on our understanding of facts in existence as of such date after the examination described in this opinion. We assume no obligation to advise you of any fact, circumstance, event or change in the law or the facts that may hereafter be brought to our attention whether or not such occurrence would affect or modify the opinion expressed herein.

Very truly yours,

STRADLING YOCCA CARLSON & RAUTH, P.C.

/s/ Stradling Yocca Carlson & Rauth, P.C.







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June 23, 2023

Bird Global, Inc.  
392 NE 191st Street #20388  
Miami, Florida 33179

Re: *Registration Statement on Form S-3*

Ladies and Gentlemen:

You have requested our opinion with respect to certain matters in connection with the proposed offer and sale by Bird Global, Inc., a Delaware corporation (the "**Company**"), of up to an aggregate of \$25,000,000 of shares of the Company's Class A common stock, par value \$0.0001 per share (the "**Placement Shares**"), pursuant to a Registration Statement on Form S-3 (as such may be amended or supplemented from time to time, the "**Registration Statement**"), which is being filed with the Securities and Exchange Commission ("**Commission**") on June [●], 2023 under the Securities Act of 1933, as amended (the "**Securities Act**"), the base prospectus contained in the Registration Statement (the "**Base Prospectus**"), and the prospectus supplement relating to the proposed offer and sale of the Placement Shares contained in the Registration Statement (the "**Prospectus Supplement**"), and together with the Base Prospectus, the "**Prospectus**"). We understand that the Placement Shares are proposed to be offered and sold by the Company through Canaccord Genuity LLC (the "**Agent**") pursuant to an Equity Distribution Agreement, dated June [●], 2023, entered into by and between the Company and the Agent (the "**Distribution Agreement**"). We have rendered a separate opinion in connection with certain matters relating to the Registration Statement, which is being filed as Exhibit 5.1 thereto.

In connection with this opinion, we have examined and relied upon (a) the Registration Statement, (b) the Company's Amended and Restated Certificate of Incorporation in the form filed as Exhibit 3.1 to the Registration Statement, (c) the Company's Amended and Restated Bylaws in the form filed as Exhibit 3.2 to the Registration Statement, and (d) originals or copies, certified to our satisfaction, of such records, documents, certificates, memoranda and other instruments as in our judgment are necessary or appropriate to enable us to render the opinion expressed below.

We have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as copies, the accuracy, completeness and authenticity of the certificates of public officials, and the due authorization, execution and delivery by all persons (other than by officers of the Company) of all documents where due authorization, execution and delivery are prerequisites to the effectiveness thereof. As to certain factual matters, we have relied upon a certificate of an officer of the Company and have not independently verified such matters. We have also assumed that the Placement Shares will be sold (a) in a manner consistent with the terms of the Distribution Agreement, and (b) at a price established by the Board of Directors of the Company.

Subject to the foregoing, and the other matters set forth herein, it is our opinion that the Placement Shares have been duly authorized and, when issued and sold in the manner described in the Registration Statement, the Prospectus and the Distribution Agreement, will be validly issued, fully paid and non-assessable.

Our opinion is expressed only with respect to the General Corporation Law of the State of Delaware. We express no opinion to the extent that any other laws are applicable to the subject matter hereof and express no opinion and provide no assurance as to compliance with any federal or state securities law, rule or regulation.

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We consent to the use of this opinion as Exhibit 5.2 to the Registration Statement, and to the reference to our firm in the Registration Statement and any amendments or supplements thereto. In giving such consent, we do not admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations thereunder.

This opinion is intended solely for use in connection with the issuance and offer and sale of the Placement Shares pursuant to the Registration Statement and is not to be relied upon for any other purpose or delivered to or relied upon by any other person without our prior written consent. This opinion is rendered as of the date hereof and based solely on our understanding of facts in existence as of such date after the examination described in this opinion. We assume no obligation to advise you of any fact, circumstance, event or change in the law or the facts that may hereafter be brought to our attention whether or not such occurrence would affect or modify the opinion expressed herein.

Very truly yours,

STRADLING YOCCA CARLSON & RAUTH, P.C.

*/s/ Stradling Yocca Carlson & Rauth, P.C.*



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### **Consent of Independent Registered Public Accounting Firm**

We consent to the reference to our firm under the caption "Experts" in the Registration Statement (Form S-3) and related base prospectus and prospectus supplement of Bird Global, Inc. for the registration of Class A common stock, preferred stock, debt securities and warrants and to the incorporation by reference therein of our report dated March 16, 2023, with respect to the consolidated financial statements of Bird Global, Inc. included in its Annual Report (Form 10-K) for the year ended December 31, 2022, filed with the Securities and Exchange Commission.

/s/ Ernst and Young LLP

Los Angeles, California

June 23, 2023

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