

## TERMS OF USE AGREEMENT

Last Updated Date: 10th Feb 2026

Welcome and thank you for your interest in Birch Hill Holdings, Inc. (“**Birch Hill**”, “**we**”, “**us**” or “**our**”). This Terms of Use Agreement (“**Terms of Use**”, and together with any applicable Supplemental Terms (as defined in Section 1.4 (Supplemental Terms)), the “**Agreement**”) describes the terms and conditions that apply to your use of (i) the website located at <https://birchhill.io/> and its subdomains, and any of other websites on which a link to these Terms of Use appears (collectively, the “**Website**”) and (ii) the products, services, content, and other resources and features available on or enabled via our Website (collectively, with our Website, the “**Service**”).

PLEASE READ THIS AGREEMENT CAREFULLY. THESE TERMS OF USE (THESE “**TERMS**”) SET FORTH THE LEGALLY BINDING TERMS AND CONDITIONS THAT GOVERN YOUR USE OF THE WEBSITE. THESE TERMS DO NOT GRANT ANY RIGHTS TO ACCESS OR USE BIRCH HILL’S PLATFORMS OR SOLUTIONS EXCEPT FOR THE WEBSITE AND SERVICE. ANY RIGHTS TO ACCESS OR USE BIRCH HILL’S PLATFORMS AND SOLUTION AND BIRCH HILL’S OBLIGATIONS WITH RESPECT TO ITS PROVISION THEREOF TO YOU WILL ONLY BE SET OUT AND GOVERNED BY A SEPARATE AGREEMENT (OR AGREEMENTS) BETWEEN YOU AND BIRCH HILL.

BY ACCESSING OR USING THE WEBSITE OR SERVICE IN ANY WAY OR COMPLETING THE ACCOUNT REGISTRATION PROCESS, YOU REPRESENT AND WARRANT THAT: (1) YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY THIS AGREEMENT, (2) YOU ARE AT LEAST 18 YEARS OLD (3) YOU ARE NOT BARRED FROM USING THE SERVICE UNDER THE LAWS OF THE UNITED STATES, YOUR PLACE OF RESIDENCE OR ANY OTHER APPLICABLE JURISDICTION; (4) YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT PERSONALLY OR, IF YOU ARE ACCESSING OR USING THE SERVICE ON BEHALF OF AN ENTITY, ON BEHALF OF THE ENTITY IDENTIFIED IN THE ACCOUNT REGISTRATION PROCESS; and (5) YOU SATISFY THE ELIGIBILITY CRITERIA AS SET FORTH IN SECTION 1.2 (ELIGIBILITY). IF THE INDIVIDUAL ENTERING INTO THIS AGREEMENT IS DOING SO ON BEHALF OF AN ENTITY, ALL REFERENCES TO “**YOU**” OR “**YOUR**” IN THIS AGREEMENT WILL ALSO BE DEEMED TO REFER TO SUCH ENTITY. **IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS OF USE, YOU MAY NOT ACCESS OR USE THE SERVICE.**

**Dispute Resolution:** PLEASE BE AWARE THAT SECTION 14 (ARBITRATION AGREEMENT) CONTAINS PROVISIONS GOVERNING HOW TO RESOLVE DISPUTES BETWEEN YOU AND BIRCH HILL. AMONG OTHER THINGS, SECTION 14 (ARBITRATION AGREEMENT) INCLUDES AN AGREEMENT TO ARBITRATE WHICH REQUIRES, WITH LIMITED EXCEPTIONS, THAT ALL DISPUTES BETWEEN YOU AND US WILL BE RESOLVED BY BINDING AND FINAL ARBITRATION. SECTION 14 ALSO CONTAINS A CLASS ACTION AND JURY TRIAL WAIVER. PLEASE READ SECTION 14 (ARBITRATION AGREEMENT) CAREFULLY.

**UNLESS YOU OPT OUT OF THE AGREEMENT TO ARBITRATE WITHIN 30 DAYS: (1) YOU WILL ONLY BE PERMITTED TO PURSUE DISPUTES OR CLAIMS AND SEEK RELIEF AGAINST US THROUGH BINDING, FINAL ARBITRATION, WITH LIMITED EXCEPTIONS, AND YOU WAIVE YOUR RIGHT TO PARTICIPATE IN A CLASS ACTION LAWSUIT OR OTHER REPRESENTATIVE PROCEEDING OR CLASS-WIDE ARBITRATION; AND (2) YOU ARE WAIVING YOUR RIGHT TO PURSUE DISPUTES OR CLAIMS AND SEEK RELIEF IN A COURT OF LAW AND TO HAVE A JURY TRIAL.**

**PLEASE READ THESE TERMS CAREFULLY AND BE AWARE THAT SECTION 14 PROVIDES THAT, UNLESS YOU OPT OUT WITHIN 30 DAYS OF AGREEING TO THESE TERMS, ALL DISPUTES BETWEEN YOU AND US, WITH LIMITED EXCEPTIONS, WILL BE RESOLVED BY BINDING AND FINAL ARBITRATION. SECTION 14 ALSO CONTAINS A CLASS ACTION AND JURY TRIAL WAIVER.**

THE AGREEMENT IS SUBJECT TO CHANGE BY BIRCH HILL IN ITS SOLE DISCRETION AT ANY TIME AS SET FORTH IN SECTION 15.6 (AGREEMENT UPDATES).

## 1. ACCESS TO THE SERVICE

**1.1 Use of Service.** Subject to your compliance with these Terms, Birch Hill grants you a non-transferable, non-exclusive, revocable, limited license to use the Service solely for your own internal, non-commercial, informational use. You will receive no access to Birch Hill's products and services absent a separate, written agreement between you and Birch Hill in each party's sole discretion. Unless otherwise indicated, any future release, update, or other addition to functionality of the Website shall be subject to these Terms. All copyright and other proprietary notices on the Website (or on any content displayed on the Website) must be retained on all copies thereof.

### 1.2 Eligibility. You represent and warrant that:

(a) None of: (i) you; (ii) any affiliate of any entity on behalf of which you are entering into this Agreement; (iii) any other person having a beneficial interest in any entity on behalf of which you are entering into this Agreement (or in any affiliate thereof); or (iv) any person for whom you are acting as agent or nominee in connection with this Agreement is: (A) a country, territory, entity or individual named on an OFAC list as provided at <http://www.treas.gov/ofac>, or any person or entity prohibited under the OFAC programs, regardless of whether or not they appear on the OFAC list; (B) a senior foreign political figure, or any immediate family member or close associate of a senior foreign political figure; or (C) (1) subject to sanctions administered or enforced by any country or government or otherwise designated on any list of prohibited or restricted parties (including but not limited to the lists maintained by the United Nations Security Council, the U.S. Government, the European Union or its Member States, or other applicable government authority); (2) an individual or entity that owns, controls, or utilizes a digital currency address that has been sanctioned, blocked, or otherwise designated by any such authority; or (3) a citizen or organization or resident in a country or territory that is the subject of country-wide or territory-wide sanctions (including, without limitation, Cuba, Democratic People's Republic of Korea, the Crimea, Donetsk, and Luhansk regions, Iran, or Syria). There is no legal proceeding pending that relates to your activities relating to buying, selling, staking, or otherwise using cryptocurrency or any other token- or digital asset- trading or blockchain technology related activities.

(b) You have not failed to comply with, and have not violated, any applicable legal requirement relating to any blockchain technologies or token-trading activities or any other applicable laws, including, but not limited to, anti-money laundering or terrorist financing laws, and no investigation or review by any governmental entity is pending or, to your knowledge, has been threatened against or with respect to you, nor does any government order or action prohibit you or any of your representatives from engaging in or continuing any conduct, activity or practice relating to cryptocurrency.

(c) In connection with certain features of the Service, you may need to send cryptocurrency assets to or from third-party digital wallets (each, a "**Digital Wallet**"). You represent that you are entitled to use such Digital Wallet. Please note that if a Digital Wallet or associated service becomes unavailable then you should not attempt to use such Digital Wallet in connection with the Service, and we disclaim all liability in connection with the foregoing, including without limitation any inability to access any cryptocurrency or other digital assets ("**Digital Assets**") you have sent to or

otherwise store or use in connection with such Digital Wallet. PLEASE NOTE THAT YOUR RELATIONSHIP WITH THE THIRD-PARTY SERVICE PROVIDERS ASSOCIATED WITH YOUR DIGITAL WALLET IS GOVERNED SOLELY BY YOUR AGREEMENT(S) WITH SUCH THIRD-PARTY SERVICE PROVIDERS, AND BIRCH HILL DISCLAIMS ANY LIABILITY FOR INFORMATION THAT MAY BE PROVIDED TO IT OR DIGITAL ASSETS THAT MAY BE DEPLOYED TO THE PROTOCOL BY OR THROUGH SUCH THIRD-PARTY SERVICE PROVIDERS IN VIOLATION OF THE SETTINGS THAT YOU HAVE SET IN SUCH DIGITAL WALLETS.

**1.3 Certain Restrictions.** The rights granted to you in these Terms are subject to the following restrictions: (a) you shall not license, sell, rent, lease, transfer, assign, reproduce, distribute, host or otherwise commercially exploit the Service or any portion thereof, including the Website; (b) you shall not frame or utilize framing techniques to enclose any trademark, logo, or other Service (including images, text, page layout or form) of Birch Hill; (c) you shall not use any metatags or other “hidden text” using Birch Hill’s name or trademarks; (d) you shall not modify, translate, adapt, merge, make derivative works of, disassemble, decompile, reverse compile or reverse engineer any part of the Service except to the extent the foregoing restrictions are expressly prohibited by applicable law; (e) you shall not use any manual or automated software, devices or other processes (including but not limited to spiders, robots, scrapers, crawlers, avatars, data mining tools or the like) to “scrape” or download data from any web pages contained in the Website (except that we grant the operators of public search engines revocable permission to use spiders to copy materials from the Website for the sole purpose of and solely to the extent necessary for creating publicly available searchable indices of the materials, but not caches or archives of such materials); (f) except as expressly stated herein, no part of the Service may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means; and (g) you shall not remove or destroy any copyright notices or other proprietary markings contained on or in the Service. Any future release, update or other addition to the Service shall be subject to the Agreement. Birch Hill, its suppliers and service providers reserve all rights not granted in the Agreement. Any unauthorized use of the Service may terminate the licenses granted by Birch Hill pursuant to the Agreement.

**1.4 Supplemental Terms.** Your use of, and participation in, certain features and functionality of the Service may be subject to additional terms (“**Supplemental Terms**”). Such Supplemental Terms will either be set forth in the applicable supplemental Service or will be presented to you for your acceptance when you sign up to use the supplemental Service. If these Terms of Use are inconsistent with the Supplemental Terms, then the Supplemental Terms control with respect to such supplemental Service.

**1.5 Modification.** Birch Hill reserves the right, at any time, to modify, suspend, or discontinue the Service (in whole or in part), or change any related information or content, with or without notice to you. You agree that Birch Hill will not be liable to you or to any third party for any modification, suspension, or discontinuation of the Service or any part thereof. You acknowledge and agree that Birch Hill will have no obligation to provide you with any support or maintenance in connection with the Service.

## **2. REGISTRATION.**

**1.1 Registering Your Account.** In order to access certain features of the Service, you may be required to register an account on the Service (“**Account**”), or have a valid account on a third-party platform such as email, Digital Wallet, or social networking service (collectively, “**SNS**”) through which

you can connect to the Service, as permitted by the Service (each such account, a **“Third-Party Account”**).

**1.2 Access Through an SNS.** The Service may allow you to link your Account with a Third-Party Account by allowing Birch Hill to access your Third-Party Account, as is permitted under the applicable terms and conditions that govern your use of each Third-Party Account. You represent that you are entitled to disclose your Third-Party Account login information to Birch Hill and/or grant Birch Hill access to your Third-Party Account (including, but not limited to, for use for the purposes described herein) without breach by you of any of the terms and conditions that govern your use of the applicable Third-Party Account and without obligating Birch Hill to pay any fees or making Birch Hill subject to any usage limitations imposed by such third-party service providers. By granting Birch Hill access to any Third-Party Account, you understand that Birch Hill may access, make available and store (if applicable) any information, data, text, software, music, sound, photographs, graphics, video, messages, tags and/or other materials that you have provided to and stored in your Third-Party Account (**“SNS Content”**) so that it is available on and through the Service via your Account. Unless otherwise specified in this Agreement, all SNS Content is considered to be Your Content (as defined in Section 3.4) for all purposes of this Agreement. Depending on the Third-Party Accounts you choose and subject to the privacy settings that you have set in such Third-Party Accounts, personally identifiable information that you post to your Third-Party Accounts may be available on and through your Account on the Service. If a Third-Party Account or associated service becomes unavailable, or Birch Hill’s access to such Third-Party Account is terminated by the third-party service provider, then SNS Content will no longer be available on and through the Service. You have the ability to disable the connection between your Account and your Third-Party Accounts at any time by accessing the “Settings” section of the Service. YOUR RELATIONSHIP WITH THE THIRD-PARTY SERVICE PROVIDERS ASSOCIATED WITH YOUR THIRD-PARTY ACCOUNTS IS GOVERNED SOLELY BY YOUR AGREEMENT(S) WITH SUCH THIRD-PARTY SERVICE PROVIDERS, AND BIRCH HILL DISCLAIMS ANY LIABILITY FOR PERSONALLY IDENTIFIABLE INFORMATION THAT MAY BE PROVIDED TO IT BY SUCH THIRD-PARTY SERVICE PROVIDERS IN VIOLATION OF THE PRIVACY SETTINGS THAT YOU HAVE SET IN SUCH THIRD-PARTY ACCOUNTS. Birch Hill makes no effort to review any SNS Content for any purpose, including but not limited to, for accuracy, legality or noninfringement, and Birch Hill is not responsible for any SNS Content.

**1.3 Registration Data.** In registering an account on the Service, you shall (i) provide true, accurate, current, and complete information about yourself as prompted by the registration form (the **“Registration Data”**), and (ii) maintain and promptly update the Registration Data to keep it true, accurate, current, and complete.

**1.4 Your Account.** Notwithstanding anything to the contrary herein, you acknowledge and agree that you have no ownership or other property interest in your Account, and you further acknowledge and agree that all rights in and to your Account are and will forever be owned by and inure to the benefit of Birch Hill. Birch Hill reserves the right to terminate your Account if it has been inactive for one hundred eighty (180) days, and, in such event, you shall not be entitled to any refund. Furthermore, you are responsible for all activities that occur under your Account. You shall monitor your Account to restrict use by minors, and you will accept full responsibility for any unauthorized use of the Service by minors. You may not share your Account or password with anyone, and you agree to notify Birch Hill immediately of any unauthorized use of your password or any other breach of security. If you provide any information that is untrue, inaccurate, incomplete or not current, or Birch Hill has reasonable grounds to suspect that any information you provide is untrue, inaccurate, incomplete or not current, Birch Hill has the right to suspend or terminate your Account and refuse any and all current or

future use of the Service (or any portion thereof). You agree not to create an Account using a false identity or information, or on behalf of someone other than yourself. You shall not have more than one Account at any given time. Birch Hill reserves the right to remove or reclaim any usernames at any time and for any reason, including but not limited to, claims by a third party that a username violates the third party's rights. You agree not to create an Account or use the Service if you have been previously removed by Birch Hill, or if you have been previously banned from any of the Service.

**1.5 Necessary Equipment and Software.** You must provide all devices and other equipment or software necessary to access or use the Service. You are solely responsible for any fees, including internet connection or mobile fees, that you incur when accessing the Service.

## **2. RESPONSIBILITY FOR CONTENT.**

**2.1 Types of Content.** Subject to your compliance with this Agreement, you may share or upload any information, data, and/or other materials ("**Content**") through the Service, including by way of your prompts, comments, questions, and other input to the Service (collectively, "**Input**"). You, and not Birch Hill, are entirely responsible for all Input that you upload, share, post, email, transmit, query or otherwise make available through or to the Service ("**Make Available**"). When you make available any Input on or to the Service, you represent that you own and/or have sufficient rights to use such Input in connection with the Service, including to grant the license set forth in Section 3.2 (License to Your Content).

**2.2 License to Your Content.** Subject to any applicable Account settings that may be made available to you, you grant Birch Hill a non-exclusive, transferable, perpetual, irrevocable, worldwide, fully-paid, royalty-free, sublicensable (through multiple tiers of sublicensees) right (including any moral rights) and license to use, copy, reproduce, modify, adapt, prepare derivative works from, translate, distribute, publicly perform, publicly display and derive revenue or other remuneration from Your Content (in whole or in part) for the purposes of operating and providing the Service to you and to our other users (including after you cease use of the Service or terminate this Agreement).

**2.3 USER CONDUCT.** As a condition of use, you agree not to use the Service for any purpose that is prohibited by this Agreement or by applicable law. You shall not (and shall not permit any third party) to take any action or Make Available any Content on or through the Service that: (A) is unlawful, threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, tortious, obscene, offensive, or profane; (B) constitutes unauthorized or unsolicited advertising, junk or bulk email; or (C) involves commercial activities and/or sales, such as contests, sweepstakes, barter, advertising, or pyramid schemes without Birch Hill's prior written consent. Furthermore, Your Content may not contain nudity, violence, sexually explicit, or offensive subject matter as determined by Birch Hill in its sole discretion. You may not post or Make Available a photograph of another person without that person's permission. The rights granted to you in this Agreement are subject to your compliance with the restrictions set forth in this section. Any unauthorized use of the Service terminates the licenses granted by Birch Hill pursuant to this Agreement.

**2.4 Responsibility for Content.** You acknowledge that all Content, including the Services, is the sole responsibility of the party from whom such Content originated. This means that you, and not Birch Hill, are entirely responsible for all Content that you upload, post, e-mail, transmit or otherwise make available through or in connection with any Services ("**Your Content**") and that other users of the Service, and not Birch Hill, are similarly responsible for all Content that they make available through the

Service (“**User Content**”). Unless expressly agreed to by Birch Hill in writing elsewhere, Birch Hill has no obligation to store any of Your Content. Birch Hill has no responsibility or liability for the deletion or accuracy of any Content, including Your Content; the failure to store, transmit, or receive transmission of Content; or the security, privacy, storage, or transmission of other communications originating with or involving use of the Service.

### **3. OWNERSHIP.**

**3.1 The Service.** Except with respect to Your Content, you agree that Birch Hill and its suppliers or licensors own all rights, title and interest in the Service and all improvements, enhancements and updates made thereto. You shall not remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying any the Service.

**3.2 Trademarks.** Birch Hill’s name and all related stylizations, graphics, logos, service marks and trade names used on or with the Service are the trademarks of Birch Hill and may not be used without permission in connection with your, or any third-party’s, products or services. Other trademarks, service marks and trade names that may appear on or in the Service are the property of their respective owners.

**3.3 Your Content.** Birch Hill does not claim ownership of Your Content. However, when you Make Available any Content on or to the Service, you represent that you own and/or have sufficient rights to Your Content to grant the license set forth in Section 4.4 (License to Your Content).

**3.4 License to Your Content.** Subject to any applicable Account settings that you select, you grant Birch Hill a non-exclusive, transferable, perpetual, irrevocable, worldwide, fully-paid, royalty-free, sublicensable (through multiple tiers of sublicensees) right (including any moral rights) and license to use, copy, reproduce, modify, adapt, prepare derivative works from, translate, distribute, publicly perform, publicly display and derive revenue or other remuneration from Your Content (in whole or in part) for the purposes of operating and providing the Service to you and to our other users. [Please remember that other users may be able to search for, see, use, modify and/or reproduce any of Your Content that you submit to any area of the Service that is accessible by other users.]

**3.5 Feedback.** You agree that submission of any ideas, suggestions, documents, and/or proposals to Birch Hill regardless of how submitted (“**Feedback**”) is at your own risk and that Birch Hill has no obligations (including without limitation obligations of confidentiality) with respect to such Feedback. You represent and warrant that you have all rights necessary to submit the Feedback. You hereby grant to Birch Hill a fully paid, royalty-free, perpetual, irrevocable, worldwide, non-exclusive, and fully sublicensable right and license to use, reproduce, perform, display, distribute, adapt, modify, re-format, create derivative works of, and otherwise commercially or non-commercially exploit in any manner, any and all Feedback, and to sublicense the foregoing rights, in connection with the operation and maintenance of the Service and/or Birch Hill’s business.

### **4. FEES.**

**4.1 Fees.** Access to the Website and certain Services is free. However, Birch Hill reserves the right to charge fees (“**Fees**”) in connection with your use of certain Services from time to time. All pricing and payment terms for such Fees will be as indicated on a separate agreement (or agreements) between you and Birch Hill and any payment obligations you incur are binding at the time of the

applicable transaction. In the event that Birch Hill makes available, and you elect to purchase, any Services in connection with which Birch Hill charges Fees, you agree that you will pay Birch Hill all such Fees at Birch Hill's then-current standard rates. You agree that all Fees are non-cancellable, non-refundable, and non-recoupable.

**4.2 Taxes.** You are responsible for all federal, state, local, sales, use, value added, excise, or other taxes, fees, or duties arising out of the Agreement or the transactions contemplated by the Agreement (other than taxes based on Birch Hill's net income).

**4.3 Promotions.** Birch Hill may from time to time make available certain conditional offers, airdrops, promotional prices, or discounted fees (each, a **"Promotion"**) to new or existing users of the Services. The rules governing such Promotion will be made available in connection with such Promotion. Birch Hill will determine your eligibility for any Promotion in its sole discretion and may change the terms of or terminate a Promotion at any time, with or without notice to you.

**4.4 Currency.** You may not substitute any other currency, whether cryptocurrency or fiat currency, for the currency in which you have contracted to pay any Fees. For clarity, no fluctuation in the value of any currency, whether cryptocurrency or otherwise, shall impact or excuse your obligations with respect to any purchase.

**4.5 Payment Processing Services.** Birch Hill may add or change any payment processing services at any time. Such services may be subject to additional terms or conditions.

## **5. THIRD-PARTY SERVICE.**

**5.1 Third-Party Websites, Applications and Ads.** The Service may contain links to third-party websites, applications and advertisements for third parties (collectively, the **"Third-Party Services"**). Such Third-Party Services are not under the control of Birch Hill. Birch Hill is not responsible for any Third-Party Services. When you use or access a Third-Party Service, you become subject to the terms and conditions (including privacy policies) of that Third-Party Service. Birch Hill does not review, approve, monitor, endorse, warrant, or make any representations with respect to Third-Party Services, or any product or service provided in connection therewith. You use all links in Third-Party Services at your own risk. When you leave our Service, this Agreement and our policies no longer govern. You should review applicable terms and policies, including privacy and data gathering practices, of any Third-Party Services, and make whatever investigation you feel necessary or appropriate before proceeding with any transaction with any third party.

**6. INDEMNIFICATION.** You shall indemnify and hold Birch Hill, its parents, subsidiaries, affiliates, officers, employees, agents, partners, suppliers, and licensors (each, a **"Indemnified Party"** and collectively, the **"Indemnified Parties"**) harmless from any losses, costs, liabilities and expenses (including reasonable attorneys' fees) relating to or arising out of any and all of the following: (i) Your Content; (ii) your use of, or inability to use, the Service; (iii) your violation of this Agreement; (iv) your violation of any rights of another party, including any user; or (v) your violation of any applicable laws, rules or regulations. Birch Hill reserves the right, at its own cost, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will fully cooperate with Birch Hill in asserting any available defenses. This provision does not require you to indemnify any of the Indemnified Parties for any unconscionable commercial practice by such party or for such party's fraud, deception, false promise, misrepresentation or concealment, or suppression or omission of any material fact in connection with the Service provided hereunder. You agree that the

provisions in this section will survive any termination of your Account, this Agreement and/or your access to the Service.

## **7. RELEASE.**

**7.1** TO THE MAXIMUM EXTENT PERMISSIBLE BY APPLICABLE LAW, YOU HEREBY RELEASE BIRCH HILL FROM ANY AND ALL LIABILITY, CLAIMS, DEMANDS, ACTIONS, AND CAUSES OF ACTION, WHATSOEVER, ARISING OUT OF OR RELATED TO ANY LOSS WHICH MAY BE SUSTAINED BY YOU WHILE USING, ARISING OUT OF, OR IN CONNECTION WITH THE USE OF THE SERVICES, INCLUDING ANY DIMINUTION OF VALUE TO OR LOSS OR THEFT OF ANY DIGITAL ASSETS. TO THE MAXIMUM EXTENT PERMISSIBLE BY APPLICABLE LAW, THIS RELEASE IS BINDING UPON YOUR RELATIVES, SPOUSE, HEIRS, NEXT OF KIN, EXECUTORS, ADMINISTRATORS, BENEFICIARIES, PARTNERS, AND ANY OTHER AFFILIATES OR INTERESTED PARTIES.

**7.2** To the maximum extent permissible by applicable law, you waive and relinquish any and all rights and benefits otherwise conferred by any statutory or non-statutory law of any jurisdiction that would purport to limit the scope of a release or waiver, including any all rights and benefits which you have or may have under California Civil Code Section 1542 or any similar law or code in your jurisdiction, which states in substance "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY." You acknowledge that the releases in these Terms are intended to be as broad and inclusive as permitted by law, and as a complete and continuous release and waiver of liability for any and all use of the Services.

## **8. DISCLAIMER OF WARRANTIES.**

**8.1 As Is.** YOU EXPRESSLY UNDERSTAND AND AGREE THAT TO THE EXTENT PERMITTED BY APPLICABLE LAW, YOUR USE OF THE SERVICE IS AT YOUR SOLE RISK, AND THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITH ALL FAULTS. BIRCH HILL EXPRESSLY DISCLAIMS ALL WARRANTIES, REPRESENTATIONS, AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT ARISING FROM USE OF THE SERVICE OR YOUR CONTENT.

**(a)** BIRCH HILL MAKES NO WARRANTY, REPRESENTATION OR CONDITION THAT: (1) THE SERVICE WILL MEET YOUR REQUIREMENTS (SUCH AS THE QUALITY, EFFECTIVENESS, REPUTATION AND OTHER CHARACTERISTICS OF SERVICE); (2) YOUR USE OF THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE; OR (3) THE ADVICE, RESULTS, OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM USE OF THE SERVICE WILL BE ACCURATE OR RELIABLE.

**(b)** ANY CONTENT DOWNLOADED FROM OR OTHERWISE ACCESSED THROUGH THE SERVICE IS ACCESSED AT YOUR OWN RISK, AND YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR PROPERTY, INCLUDING, BUT NOT LIMITED TO, YOUR COMPUTER SYSTEM AND/OR ANY DEVICE YOU USE TO ACCESS THE SERVICE, OR ANY OTHER LOSS THAT RESULTS FROM ACCESSING SUCH CONTENT.

**(c)** FROM TIME TO TIME, BIRCH HILL MAY OFFER NEW "BETA" FEATURES OR TOOLS WITH WHICH ITS USERS MAY EXPERIMENT. SUCH FEATURES OR TOOLS ARE OFFERED SOLELY FOR



EXPERIMENTAL PURPOSES AND WITHOUT ANY WARRANTY OF ANY KIND, AND MAY BE MODIFIED OR DISCONTINUED AT BIRCH HILL'S SOLE DISCRETION. THE PROVISIONS OF THIS SECTION APPLY WITH FULL FORCE TO SUCH FEATURES OR TOOLS.

**8.2 No Liability for Conduct of Third Parties.** YOU ACKNOWLEDGE AND AGREE THAT BIRCH HILL IS NOT LIABLE, AND YOU AGREE NOT TO SEEK TO HOLD BIRCH HILL LIABLE, FOR THE CONDUCT OF THIRD PARTIES, INCLUDING OPERATORS OF EXTERNAL SITES AND SUPPORTED BLOCKCHAINS, AND THAT THE RISK FROM SUCH THIRD PARTIES RESTS ENTIRELY WITH YOU. BIRCH HILL SHALL BE UNDER NO OBLIGATION TO INQUIRE INTO AND SHALL NOT BE LIABLE FOR ANY DAMAGES, OTHER LIABILITIES OR HARM TO ANY PERSON OR ENTITY RELATING TO ANY LOSSES, DELAYS, FAILURES, ERRORS, INTERRUPTIONS OR LOSS OF DATA OCCURRING DIRECTLY OR INDIRECTLY BY REASON OF CIRCUMSTANCES BEYOND BIRCH HILL'S CONTROL, INCLUDING WITHOUT LIMITATION THROUGH THE DEPLOYMENT OF DIGITAL ASSETS TO ANY SUPPORTED BLOCKCHAIN IN CONNECTION WITH THE SERVICES.

**8.3 No Guaranteed Results.** All claims, estimates, specifications, performance metrics, and other content on the Website are good-faith statements that are unaudited and subject to change. You are solely responsible for verifying accuracy and conducting due diligence. Birch Hill and its affiliates make no guarantees of any return, gain, or yield.

**8.4 No Solicitation; Recommendation.** Nothing contained on this website constitutes an offer to sell, a solicitation of an offer to buy, or a recommendation for any security, investment product, or financial service. The information provided on this website is for general informational purposes only and should not be construed as investment advice, financial advice, tax advice, or legal advice. While Birch Hill endeavors to provide accurate and up-to-date information, we make no representations or warranties, express or implied, regarding the accuracy, completeness, reliability, or suitability of any information contained herein. Users of this website are solely responsible for conducting their own independent research and due diligence before making any investment or financial decisions, and Birch Hill expressly disclaims any and all liability for any losses, damages, or other consequences arising from or related to such decisions. Participation in vaults or other products or services offered through or referenced on this website involves significant risks, including but not limited to the potential loss of principal, market volatility, liquidity risk, smart contract vulnerabilities, and regulatory uncertainty. Past performance is not indicative of future results. By accessing this website, you acknowledge and accept these risks and agree that Birch Hill shall not be held liable for any direct, indirect, incidental, consequential, or punitive damages resulting from your use of this website or reliance on any information contained herein.

**8.5 Risk of Financial Loss.** WHEN YOU USE THE SERVICES, YOU UNDERSTAND AND ACKNOWLEDGE THAT THE SERVICES ENTAIL A RISK OF LOSS AND MAY NOT MEET YOUR NEEDS. The Services provided by Birch Hill rely on third party distributed ledgers (each, a "**Supported Blockchain**") which may not be reliable, consistent or dependent in all scenarios. Birch Hill may not be able to foresee or anticipate technical or other difficulties which may result in data loss or other service interruptions. Birch Hill encourages you to periodically confirm the valuation of your cryptocurrency assets and the accuracy of any Digital Asset Information through independent sources. Birch Hill does not and cannot make any guarantee that your cryptocurrency assets will not lose value. The prices of cryptocurrency assets can be extremely volatile. Birch Hill makes no warranties as to the markets in which your cryptocurrency assets are staked, transferred, purchased, or traded.

**8.6 Cybersecurity Risks.** You understand that the Service could be at risk of third-party malware, hacks or cybersecurity breaches. You agree that it is your responsibility to monitor your cryptocurrency assets regularly and confirm their proper use and deployment consistent with your intentions.

**8.7 Expertise and Experience.** You represent and warrant that you (i) have the necessary technical expertise and ability to review and evaluate the security, integrity and operation of your Digital Wallet and any Supported Blockchains to which your cryptocurrency assets may be deployed and staked in connection with the Services; (ii) have the knowledge, experience, understanding, professional advice and information to make your own evaluation of the merits, risks and applicable compliance requirements under applicable laws of any use of your Digital Wallet and any Supported Blockchains to which your cryptocurrency assets may be deployed in connection with the Services; (iii) know, understand and accept the risks associated with your Digital Wallet and any Supported Blockchains to which your cryptocurrency assets may be deployed in connection with the Services; and (iv) accept the risks associated with blockchain technology generally, and are responsible for conducting your own independent analysis of the risks specific to your use of the Services. You further agree that Birch Hill will have no responsibility or liability for such risks.

**8.8 General Risks of Blockchain Technology.** In order to be successfully completed, any transaction involving your cryptocurrency assets initiated by or sent to your Digital Wallet must be confirmed by and recorded on the applicable Supported Blockchain. Birch Hill has no control over any Supported Blockchain, and therefore cannot and does not ensure that any transaction details that you submit or receive via our Services will be validated by or confirmed on the relevant Supported Blockchain, and Birch Hill does not have the ability to facilitate any cancellation or modification requests. You accept and acknowledge that you take full responsibility for all activities that you effect through your Digital Wallet and accept all risks of loss, including loss as a result of any authorized or unauthorized access to your Digital Wallet, to the maximum extent permitted by law. You further accept and acknowledge that:

(a) There are risks associated with using digital assets, including but not limited to, the risk of hardware, software and Internet connections; the risk of malicious software introduction; the risk that third parties may obtain unauthorized access to information stored within your Digital Wallet; the risks of counterfeit assets, mislabeled assets, assets that are vulnerable to metadata decay, assets on smart contracts with bugs, and assets that may become untransferable; and the risk that such digital assets may fluctuate in value. You accept and acknowledge that Birch Hill will not be responsible for any communication failures, disruptions, errors, distortions, delays or losses you may experience when using blockchain technology, however caused.

(b) The regulatory regimes governing blockchain technologies, cryptocurrencies, and tokens are uncertain, and new regulations or policies, or new or different interpretations of existing regulations, may materially adversely affect the development of the Services and the value of your Digital Assets.

(c) Birch Hill makes no guarantee as to the functionality of any blockchain's decentralized governance, which could, among other things, lead to delays, conflicts of interest, or operational decisions (including without limitation changes to any Blockchain Rules) that are unfavorable to your Digital Assets. You acknowledge and accept that the Blockchain Rules governing the operation of a Supported Blockchain may be subject to sudden changes which may materially alter such Supported

Blockchain and affect the value and function of any of your Digital Assets staked on or to that Supported Blockchain.

**(d)** Birch Hill makes no guarantee as to the security of any Supported Blockchain or Digital Wallet. Birch Hill is not liable for any hacks, double spending, or any other attacks on a Supported Blockchain or Digital Wallet.

**(e)** Any Supported Blockchain may slash or otherwise impose penalties on certain validators (including validators to which your Digital Assets have been deployed) in response to any activity not condoned by such Supported Blockchain, whether in accordance with the applicable Blockchain Rules or otherwise. You acknowledge and agree that Birch Hill shall have no liability in connection with any such slashing or penalties, including any slashing or penalties that result in a loss or depreciation of value of your cryptocurrency assets.

**(f)** The Supported Blockchains are controlled by third parties, and Birch Hill is not responsible for their performance nor any risks associated with the use thereof. The Services rely on, and Birch Hill makes no guarantee or warranties as to the functionality of or access to, any Supported Blockchain, Digital Wallet, or Third-Party Service.

**(g)** You control your Digital Wallet, and Birch Hill is not responsible for its performance, nor any risks associated with the use thereof.

## **9. LIMITATION OF LIABILITY.**

**9.1 Disclaimer of Certain Damages.** YOU UNDERSTAND AND AGREE THAT, TO THE FULLEST EXTENT PROVIDED BY LAW, IN NO EVENT SHALL BIRCH HILL BE LIABLE FOR ANY LOSS OF PROFITS, REVENUE OR DATA, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, OR DAMAGES OR COSTS DUE TO LOSS OF PRODUCTION OR USE, BUSINESS INTERRUPTION, OR PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, IN EACH CASE WHETHER OR NOT ANY COMPANY PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE SERVICE, OR ANY COMMUNICATIONS, INTERACTIONS OR MEETINGS WITH OTHER USERS OF THE SERVICE OR THIRD PARTIES, ON ANY THEORY OF LIABILITY, INCLUDING TO THE EXTENT RESULTING FROM: (i) THE USE OR INABILITY TO USE THE SERVICE; (ii) ANY GOODS, DATA, INFORMATION OR SERVICE PURCHASED OR OBTAINED; OR MESSAGES RECEIVED FOR TRANSACTIONS ENTERED INTO THROUGH THE SERVICE; (iii) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (iv) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SERVICE; OR (v) ANY OTHER MATTER RELATED TO THE SERVICE, WHETHER BASED ON WARRANTY, COPYRIGHT, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY. THE FOREGOING LIMITATION OF LIABILITY DOES NOT APPLY TO LIABILITY OF A COMPANY PARTY FOR (A) DEATH OR PERSONAL INJURY CAUSED BY A COMPANY PARTY'S NEGLIGENCE; OR FOR (B) ANY INJURY CAUSED BY A COMPANY PARTY'S FRAUD OR FRAUDULENT MISREPRESENTATION.

**9.2 Cap on Liability.** TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR MORE THAN THE GREATER OF (i) THE TOTAL AMOUNT PAID TO BIRCH HILL BY YOU DURING THE THREE-MONTH PERIOD PRIOR TO THE ACT, OMISSION OR OCCURRENCE GIVING RISE TO SUCH LIABILITY; (ii) \$100; OR (iii) IF APPLICABLE, THE STATUTORY REMEDY OR PENALTY IMPOSED BY THE STATUTE UNDER WHICH SUCH CLAIM ARISES. THE FOREGOING CAP ON LIABILITY DOES NOT APPLY TO LIABILITY OF A COMPANY PARTY FOR (A) DEATH OR PERSONAL INJURY CAUSED BY A COMPANY

PARTY'S NEGLIGENCE; OR (B) ANY INJURY CAUSED BY A COMPANY PARTY'S FRAUD OR FRAUDULENT MISREPRESENTATION.

**9.3 User Content.** COMPANY ASSUMES NO RESPONSIBILITY FOR THE TIMELINESS, DELETION, MIS-DELIVERY OR FAILURE TO STORE ANY CONTENT (INCLUDING, BUT NOT LIMITED TO, YOUR CONTENT AND USER CONTENT), USER COMMUNICATIONS OR PERSONALIZATION SETTINGS.

**9.4 Exclusion of Damages.** THE FOREGOING LIMITATIONS OF LIABILITY APPLY TO THE FULLEST EXTENT ALLOWED BY LAW.

**9.5 Basis of the Bargain.** THE LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN COMPANY AND YOU.

**10. PROCEDURE FOR MAKING CLAIMS OF INTELLECTUAL PROPERTY RIGHT INFRINGEMENT.** It is Birch Hill's policy to terminate membership privileges of any user who repeatedly infringes copyright, trademark, or other intellectual property rights upon prompt notification to Birch Hill by the respective intellectual property owner or their legal agent. Without limiting the foregoing, if you believe that your work has been copied and posted on the Service in a way that constitutes intellectual property rights infringement, please provide our designated intellectual property agent with the following information: (i) an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright, trademark, or other intellectual property right; (ii) a description of the copyrighted work, trademark, or other intellectual property right that you claim has been infringed; (iii) a description of the location on the Service of the material that you claim is infringing; (iv) your address, telephone number, and email address; (v) a written statement by you that you have a good faith belief that the disputed use is not authorized by the copyright, trademark, or other intellectual property right owner, its agent or the law; and (vi) a statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright, trademark, or other intellectual property right owner or authorized to act on the copyright, trademark, or other intellectual property right owner's behalf. Contact information for Birch Hill's designated agent for notice of claims of infringement is as follows: **[Include name or title, and physical address of designated agent]**.

## **11. TERM AND TERMINATION.**

**11.1 Term.** The term of this Agreement commences on the date when you accept this Agreement (as described in the preamble above) and continues in full force and effect while you use the Service, unless terminated earlier in accordance with this Agreement.

**11.2 Termination of Service by Birch Hill.** Birch Hill reserves the right to terminate this Agreement and your access to the Services at any time, for any or for no reason, with or without notice to you.

**11.3 Termination by You.** If you want to terminate this Agreement, you may do so by (i) notifying Birch Hill at any time and (ii) closing your Account for the Service. Your notice should be sent, in writing, to Birch Hill's address set forth below.

**11.4 Effect of Termination.** Upon termination of the Service or the applicable feature or functionality thereof, your right to use the Service or the applicable feature or functionality thereof will automatically terminate, and we may delete Your Content associated therewith from our live databases. If we terminate your Account for cause, we may also bar your further use or access to the Service. Birch

Hill will not have any liability whatsoever to you for any suspension or termination, including for deletion of Your Content. All provisions of this Agreement which by their nature should survive, will survive termination of Service, including without limitation, ownership provisions, warranty disclaimers, and limitations of liability.

**11.5 No Subsequent Registration.** If this Agreement is terminated for cause by Birch Hill or if your Account or ability to access the Service is discontinued by Birch Hill due to your violation of any portion of this Agreement or for conduct otherwise deemed inappropriate, then you agree that you shall not attempt to re-register with or access the Service through use of a different member name or otherwise.

**12. INTERNATIONAL USERS.** The Service may be accessed from countries around the world and may contain references to services and Content that are not available in your country. These references do not imply that Birch Hill intends to announce such service or Content in your country. The Service is controlled and offered by Birch Hill from its facilities in the United States of America. Birch Hill makes no representations that the Service is appropriate or available for use in other locations. Those who access or use the Service from other countries do so at their own volition and are responsible for compliance with local law.

### **13. ARBITRATION AGREEMENT.**

**13.1 Applicability of Arbitration Agreement.** Subject to the terms of this Section 14 (“**Arbitration Agreement**”), you and Birch Hill agree that any disagreement, controversy, or claim arising out of or relating in any way to your access to or use of the Service, any communications you receive, anything sold or distributed through the Service, or this Terms of Use or prior versions of this Terms of Use (each, a “**Dispute**”) will be resolved by binding arbitration, rather than in court, except that: (1) you and Birch Hill may assert claims or seek relief in small claims court if such claims qualify and remain in small claims court; and (2) you or Birch Hill may seek equitable relief in court for infringement or other misuse of intellectual property rights (such as trademarks, trade dress, domain names, trade secrets, copyrights, and patents). For purposes of this Arbitration Agreement, “Dispute” will also include disputes that were not noticed at the time you first became subject to these Terms of Use but that arose or involve facts occurring before the existence of this or any prior versions of the Terms of Use as well as claims that may arise after the termination of these Terms of Use.

**13.2 Informal Dispute Resolution.** There might be instances when a Dispute arises between you and Birch Hill. If that occurs, Birch Hill is committed to working with you to reach a prompt, low-cost and mutually beneficial resolution. You and Birch Hill agree to participate in good faith informal efforts to resolve Disputes before starting an arbitration or initiating an action in small claims court (“**Informal Dispute Resolution**”). You and Birch Hill agree that as part of these efforts, either party has the option to ask the other to meet and confer telephonically (“**Informal Dispute Resolution Conference**”). If you are represented by counsel, your counsel may participate in the conference, but you must also personally participate.

To initiate Informal Dispute Resolution, a party must give notice in writing to the other party (“**Notice**”). Such Notice to Birch Hill should be sent by email to [\_\_\_\_\_] or regular mail to [\_\_\_\_\_]. The Notice must include: (1) your name, telephone number, mailing address, and e-mail address associated with your account (if you have one); (2) the name, telephone number, mailing address and e-mail address of your counsel, if any; and (3) a description of the Dispute, including the specific relief sought. Birch Hill

will send Notice, including a description of the Dispute, to your email address or regular address on file. It is your responsibility to ensure your email and regular address are correct and remain up to date. The Notice must be signed by the party initiating the Dispute (i.e., either you personally or a Birch Hill representative).

The Informal Dispute Resolution process lasts 45 days and is a mandatory precondition to commencing arbitration. The Informal Dispute Resolution Conference, if requested by either party, shall be individualized such that a separate conference must be held each time either party initiates a Dispute, even if the same law firm or group of law firms or organizations represents multiple users in similar cases, unless all parties agree; multiple individuals initiating a Dispute cannot participate in the same Informal Dispute Resolution Conference unless all parties agree.

The statute of limitations and any filing deadlines shall be tolled while the parties engage in Informal Dispute Resolution.

**13.3 Waiver of Jury Trial. YOU AND BIRCH HILL HEREBY WAIVE ANY CONSTITUTIONAL AND STATUTORY RIGHTS TO SUE IN COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR A JURY.** You and Birch Hill are instead electing that all Disputes shall be resolved by arbitration under this Arbitration Agreement, except as specified in the subsection entitled “Applicability of Arbitration Agreement” above. There is no judge or jury in arbitration, and court review of an arbitration award is subject to very limited review.

**13.4 Waiver of Class and Other Non-Individualized Relief. EACH OF US MAY BRING CLAIMS AGAINST THE OTHER ONLY ON AN INDIVIDUAL BASIS AND NOT ON A CLASS, REPRESENTATIVE, OR COLLECTIVE BASIS, AND THE PARTIES HEREBY WAIVE ALL RIGHTS TO HAVE ANY DISPUTE BE BROUGHT, HEARD, ADMINISTERED, RESOLVED, OR ARBITRATED ON A CLASS, COLLECTIVE, OR REPRESENTATIVE BASIS. ONLY INDIVIDUAL RELIEF IS AVAILABLE.** Subject to this Arbitration Agreement, the arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by the party’s individual claim. Nothing in this paragraph is intended to, nor shall it, affect the terms and conditions under Subsection 14.9 (Batch Arbitration). Notwithstanding anything to the contrary in this Arbitration Agreement, if a final decision, not subject to any further appeal or recourse, determines that the limitations of this subsection, “Waiver of Class and Other Non-Individualized Relief,” are invalid or unenforceable as to a particular claim or request for relief (such as a request for public injunctive relief), you and Birch Hill agree that that particular claim or request for relief (and only that particular claim or request for relief) shall be severed from the arbitration and may be litigated in the state or federal courts located in the [State of Delaware]. The parties agree that any claims or requests for relief that are severed from an arbitration may not proceed in litigation and shall be stayed until all Disputes between the parties that remain in arbitration are finally resolved. All other Disputes shall be arbitrated or litigated in small claims court. This subsection does not prevent you or Birch Hill from participating in a class-wide or mass settlement of claims.

**13.5 Rules and Forum.** The Terms of Use evidence a transaction involving interstate commerce; and notwithstanding any other provision herein with respect to the applicable substantive law, the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.*, will govern the interpretation and enforcement of this Arbitration Agreement, including the procedures governing Batch Arbitration, and any arbitration. If Informal Dispute Resolution does not resolve satisfactorily within forty-five (45) days after receipt of a

Notice, or after completion of the Informal Dispute Resolution Conference, if requested, you and Birch Hill agree that either party shall have the right to finally resolve the Dispute through binding arbitration.

The arbitration will be administered by the National Arbitration & Mediation (“**NAM**”) in accordance with the NAM Comprehensive Dispute Resolution Rules and Procedure (the “**NAM Comprehensive Rules**”) in effect at the time of arbitration, except as supplemented, where applicable, by the NAM Mass Filing Supplemental Dispute Resolution Rules and Procedures (the “**NAM Mass Filing Rules**”; together with the NAM Comprehensive Rules, the “**NAM Rules**”), and as modified by this Arbitration Agreement. The NAM Rules are currently available at <https://www.namadr.com/resources/rules-fees-forms/>.

A party who wishes to initiate arbitration must provide the other party with a request for arbitration (the “**Demand**”). The Demand must include: (1) the name, telephone number, mailing address, e-mail address of the party seeking arbitration, and the account username (if applicable), as well as the email address associated with any applicable account; (2) a statement of the legal claims being asserted and the factual bases of those claims; (3) a description of the remedy sought and an accurate, good-faith calculation of the amount in controversy in United States Dollars; (4) a statement certifying completion of the Informal Dispute Resolution process as described above; and (5) a statement certifying that the requesting party will pay any necessary filing fees in connection with such arbitration. Any Demand you send to Birch Hill should be sent by email to [info@birchhill.io] or regular mail to [\_\_\_\_\_]. Birch Hill will provide the Demand to your email address or regular address on file. It is your responsibility to ensure your email and regular address are correct and remain up to date.

If the party requesting arbitration is represented by counsel, the Demand shall also include counsel’s name, telephone number, mailing address, and email address. Such counsel must also sign the Demand. By signing the Demand, counsel certifies to the best of counsel’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, that, consistent with the standards set forth in Federal Rule of Civil Procedure 11(b): (1) the Demand is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of dispute resolution; (2) the claims, defenses and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law; and (3) the factual and damages contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery (“**Counsel’s Certification**”).

Unless you and Birch Hill otherwise agree, or the Batch Arbitration process discussed in subsection 14.9 is triggered, the arbitration, including any in-person arbitration hearing, will be conducted in [City, State] the county where you reside. Subject to the NAM Rules, the arbitrator may direct a limited and reasonable exchange of information between the parties, consistent with the expedited nature of arbitration. If NAM is not available to arbitrate, the parties will select an alternative arbitral forum. Your responsibility to pay any NAM fees and costs will be solely as set forth in the applicable NAM fee schedules (the “**Fee Schedules**”).

You and Birch Hill agree that all materials and documents exchanged during the arbitration proceedings shall be kept confidential and shall not be shared with anyone except the parties’ attorneys, accountants, or business advisors, and then subject to the condition that they agree to keep all materials and documents exchanged during the arbitration proceedings confidential.

You and Birch Hill agree that at least 14 days before the date set for an arbitration hearing, any party may serve an offer in writing upon the other party to allow judgment on specified terms. If the offer made by one party is not accepted by the other party, and the other party fails to obtain a more favorable award, the other party shall not recover any post-offer costs to which they otherwise would be entitled and shall pay the offering party's costs from the time of the offer.

**13.6 Arbitrator.** The arbitrator will be either a retired judge or an attorney licensed to practice law in the state of Delaware and will be selected by the parties from NAM's roster of consumer dispute arbitrators. If the parties are unable to agree upon an arbitrator within thirty-five (35) days of delivery of the Demand, then NAM will appoint the arbitrator in accordance with NAM Rules, provided that if the Batch Arbitration process under subsection 14.9 is triggered, NAM, without soliciting input or feedback from any party, will appoint the arbitrator for each batch, subject to your right to object to that appointment.

**13.7 Authority of Arbitrator.** The arbitrator shall have exclusive authority to resolve any Dispute, including, without limitation, disputes regarding the interpretation or application of the Arbitration Agreement, including the enforceability, revocability, scope, or validity of the Arbitration Agreement or any portion of the Arbitration Agreement, except that all Disputes regarding the subsection entitled "Waiver of Class and Other Non-Individualized Relief," including any claim that all or part of the subsection entitled "Waiver of Class and Other Non-Individualized Relief" is unenforceable, illegal, void or voidable, or that such subsection entitled "Waiver of Class and Other Non-Individualized Relief" has been breached, shall be decided by a court of competent jurisdiction and not by an arbitrator. The arbitrator shall have the authority to grant motions dispositive of all or part of any Dispute. The arbitrator shall issue a written award and statement of decision describing the essential findings and conclusions on which the award is based, including the calculation of any damages awarded. The award of the arbitrator is final and binding upon you and us. Judgment on the arbitration award may be entered in any court having jurisdiction.

**13.8 Attorneys' Fees and Costs.** Unless fee shifting is specifically authorized by law or by the NAM Rules, the parties shall bear their own attorneys' fees and costs in arbitration unless the arbitrator finds that either the substance of the Dispute or the relief sought in the Demand was frivolous or was brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)). To the extent, following a presentation on the merits, on its own motion or a party's, and after affording a reasonable opportunity to respond, an arbitrator determines that a party who commenced arbitration did not bring its claim(s) consistent with Counsel's Certification and the standards set forth in Federal Rule of Civil Procedure 11(b), the parties agree that the arbitrator shall, as part of its award, impose sanctions by ordering that the initiating party reimburse the responding party for all arbitration filing and administrative fees and arbitrator costs the responding party incurred under the Fee Schedules.

**13.9 Batch Arbitration.** To increase the efficiency of administration and resolution of arbitrations, you and Birch Hill agree that in the event that there are twenty-five (25) or more individual Demands of a substantially similar nature filed against Birch Hill by or with the assistance of the same law firm, group of law firms, or organizations, within a reasonably proximate period of time, for example, a ninety (90) day period, NAM shall (1) administer the arbitration demands in batches of 100 Demands per batch (or, if between twenty-five (25) and ninety-nine (99) individual Demands are filed, a single batch of all those Demands, and, to the extent there are fewer than 100 Demands remaining after the batching described above, a final batch consisting of the remaining Demands); (2) appoint one arbitrator



for each batch; and (3) provide for the resolution of each batch on a consolidated basis with one set of filing and administrative fees due per batch, one procedural calendar, one hearing (if any) in a place to be determined by the arbitrator, and one final award, which will provide for any and all relief to which the arbitrator determines each individual party is entitled ("**Batch Arbitration**"). NAM shall administer all batches concurrently, to the extent possible.

All parties agree that Demands are of a "substantially similar nature" if they arise out of or relate to the same event or factual scenario and raise the same or similar legal issue(s) and seek the same or similar relief. To the extent the parties disagree on the application of the Batch Arbitration process, the disagreeing party shall advise NAM, and NAM shall appoint a sole standing Procedural Arbitrator or, should the circumstances so require, an Emergency Arbitrator, according to the NAM Rules, to determine the applicability of the Batch Arbitration process (the Procedural Arbitrator or Emergency Arbitrator, the "**Administrative Arbitrator**"). In an effort to expedite resolution of any such dispute by the Administrative Arbitrator, the parties agree the Administrative Arbitrator may set forth such procedures as are necessary to resolve any disputes promptly. The Administrative Arbitrator's fees shall be paid by Birch Hill.

You and Birch Hill agree to cooperate in good faith with NAM to implement the Batch Arbitration process including the payment of single filing and administrative fees for batches of Demands, as well as any steps to minimize the time and costs of arbitration, which may include: (1) the appointment of a discovery special master to assist the arbitrator in the resolution of discovery disputes; and (2) the adoption of an expedited calendar of the arbitration proceedings.

This Batch Arbitration provision shall in no way be interpreted as authorizing or creating a class, collective, and/or representative arbitration or action of any kind, except as expressly set forth in this provision, and nothing about the Batch Arbitration process will preclude any party from participating in any arbitration administered according to that process.

**13.10 30-Day Right to Opt Out.** You have the right to opt out of the provisions of this Arbitration Agreement by sending written notice of your decision to opt out to Birch Hill, within thirty (30) days after first becoming subject to this Arbitration Agreement. Your notice must include your name and address, the email address you used to set up your Birch Hill account (if you have one), and an unequivocal statement that you want to opt out of this Arbitration Agreement. If you opt out of this Arbitration Agreement, all other parts of these Terms of Use will continue to apply to you. Opting out of this Arbitration Agreement has no effect on any arbitration agreements that you may currently have with us, including any previous versions of this Arbitration Agreement to which you agreed and did not timely opt out, which will remain in effect, and has no effect on any arbitration agreements with us you may enter in the future.

**13.11 Invalidity, Expiration.** Except as provided in the subsection entitled "Waiver of Class or Other Non-Individualized Relief," if any part or parts of this Arbitration Agreement (other than Section 14.9) are found under the law to be invalid or unenforceable, then such specific part or parts shall be of no force and effect and shall be severed, and the remainder of the Arbitration Agreement shall continue in full force and effect. You further agree that any Dispute that you have with Birch Hill as detailed in this Arbitration Agreement must be initiated within the applicable statute of limitation for that claim or controversy, or it will be forever time barred. Likewise, you agree that all applicable statutes of limitation will apply to such arbitration in the same manner as those statutes of limitation would apply in the applicable court of competent jurisdiction.

**13.12 Modification.** You and we agree that Birch Hill retains the right to modify this Arbitration Agreement in the future. Any such changes will be posted at [[info@birchhill.io](mailto:info@birchhill.io)] and you should check for updates regularly. Your continued use of the Service, including the acceptance of products and services offered through the Service following the posting of changes to this Arbitration Agreement, constitutes your acceptance of any such changes. If you have previously agreed to a version of these Terms of Use with an arbitration agreement and you did not validly opt out of arbitration then, changes to this Arbitration Agreement do not provide you with a new opportunity to opt out of your previous agreement to arbitrate. Birch Hill will continue to honor any valid opt outs of the Arbitration Agreement that you made to a prior version of these Terms of Use.

#### **14. GENERAL PROVISIONS.**

**14.1 Limitation Period.** YOU AND BIRCH HILL AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE TERMS, THE SERVICE OR THE CONTENT MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

**14.2 Electronic Communications.** The communications between you and Birch Hill may take place via electronic means, whether you send Birch Hill an email or whether Birch Hill posts notices on the Services or communicates with you via e-mail. For contractual purposes, you (a) consent to receive communications from Birch Hill in an electronic form; and (b) agree that all terms and conditions, agreements, notices, disclosures, and other communications that Birch Hill provides to you electronically satisfy any legal requirement that such communications would satisfy if it were to be in writing.

**14.3 Force Majeure.** Birch Hill shall not be liable for any delay or failure to perform resulting from causes outside its reasonable control, including, but not limited to, acts of God, war, terrorism, riots, embargos, acts of civil or military authorities, fire, floods, accidents, pandemics, strikes or shortages of transportation facilities, fuel, energy, labor or materials.

**14.4 Questions, Complaints, Claims.** If you have any questions, complaints or claims with respect to the Service, please contact us at: [[info@birchhill.io](mailto:info@birchhill.io)]. We will do our best to address your concerns. If you feel that your concerns have been addressed incompletely, we invite you to let us know for further investigation.

**14.5 Consumer Complaints.** In accordance with California Civil Code §1789.3, you may report complaints to the Complaint Assistance Unit of the Division of Consumer Service of the California Department of Consumer Affairs by contacting them in writing at 1625 North Market Blvd., Suite N 112, Sacramento, CA 95834, or by telephone at (800) 952-5210.

**14.6 Agreement Updates.** These Terms are subject to revision, and if we make any substantial changes, we may notify you by sending you an e-mail to the last e-mail address you provided to us (if any), and/or by prominently posting notice of the changes on our Website. You are responsible for providing us with your most current e-mail address. In the event that the last e-mail address that you have provided us is not valid, or for any reason is not capable of delivering to you the notice described above, our dispatch of the e-mail containing such notice will nonetheless constitute effective notice of the changes described in the notice. Any changes to these Terms will be effective upon the earlier of thirty (30) calendar days following our dispatch of an e-mail notice to you (if applicable) or thirty (30) calendar days following our posting of notice of the changes on our Website. These changes will be effective immediately for new users of our Website. Continued use of our Website following notice of

such changes shall indicate your acknowledgement of such changes and agreement to be bound by the terms and conditions of such changes.

**14.7 Exclusive Venue.** To the extent the parties are permitted under this Agreement to initiate litigation in a court, both you and Birch Hill agree that all claims and disputes arising out of or relating to the Agreement will be litigated exclusively in the [Court of Chancery, sitting in the State of Delaware].

**14.8 Governing Law.** THIS AGREEMENT AND ANY ACTION RELATED THERETO WILL BE GOVERNED AND INTERPRETED BY AND UNDER THE LAWS OF THE STATE OF DELAWARE, CONSISTENT WITH THE FEDERAL ARBITRATION ACT, WITHOUT GIVING EFFECT TO ANY PRINCIPLES THAT PROVIDE FOR THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION. THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS DOES NOT APPLY TO THE AGREEMENT.

**14.9 Choice of Language.** It is the express wish of the parties that this Agreement and all related documents have been drawn up in English.

**14.10 Notice.** Where Birch Hill requires that you provide an email address, you are responsible for providing Birch Hill with a valid and current email address. In the event that the email address you provide to Birch Hill is not valid, or for any reason is not capable of delivering to you any notices required by this Agreement, Birch Hill's dispatch of the email containing such notice will nonetheless constitute effective notice. You may give notice to Birch Hill at the following address: [info@birchhill.io]. Such notice shall be deemed given when received by Birch Hill by letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail at the above address.

**14.11 Waiver.** Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

**14.12 Severability.** If any portion of this Agreement is held invalid or unenforceable, that portion must be construed in a manner to reflect, as nearly as possible, the original intention of the parties, and the remaining portions must remain in full force and effect.

**14.13 Export Control.** You may not use, export, import, or transfer the Service except as authorized by U.S. law, the laws of the jurisdiction in which you obtained the Service, and any other applicable laws.

**14.14 Entire Agreement.** The Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matter hereof and supersedes and merges all prior discussions between the parties with respect to such subject matter.