

**LIMITED LIABILITY COMPANY AGREEMENT**

**OF**

**RAILBIRD EXCHANGE, LLC**

THIS LIMITED LIABILITY COMPANY AGREEMENT (this “Agreement”) of Railbird Exchange, LLC, a Delaware limited liability company (the “Company”) is entered into as of the date set forth below by Railbird Technologies Inc., a Delaware corporation (the “Member”), and the Company.

**WHEREAS**, the Company was formed as a limited liability company on December 12, 2022 by the filing of a Certificate of Formation (the “Certificate”) with the Secretary of State of the State of Delaware, pursuant to and in accordance with the Delaware Limited Liability Company Act, as amended from time to time (the “Act”); and

**WHEREAS**, the Member and the Company hereby agree that the membership in and management of the Company shall be governed by the terms set forth herein.

NOW, THEREFORE, the Member agrees as follows:

1. **Name**. The name of the Company shall be Railbird Exchange, LLC.
2. **Member**. The name and the business address of the Member is as follows:

<b><u>Name</u></b>	<b><u>Address</u></b>
Railbird Technologies Inc.	169 Madison Ave. #2138 New York, NY 10016

3. **Registered Office/Registered Agent**. The address of the registered office of the Company in the State of Delaware, and the name and address of the registered agent of the Company for service of process on the Company in the State of Delaware, is Corporation Service Company, 251 Little Falls Drive, Wilmington, Delaware 19808, County of New Castle.
4. **Certificate**. The Member and any person designated by the Member shall be an authorized person within the meaning of the Act to execute, deliver and file the Certificate, and to execute, deliver and file any amendments or restatements of the Certificate or any certificate of cancellation of the Certificate.
5. **Purpose/Powers**. The Company is formed for the object and purpose of engaging in any lawful act or activity for which limited liability companies may be formed under the Act and engaging in any and all activities necessary or incidental to the foregoing. The Company shall have the power and authority to do any and all acts necessary or convenient to or in furtherance of said purposes, including all power and authority, statutory or otherwise, possessed by, or which may be conferred upon, limited liability companies under the laws of the State of Delaware.
6. **Management**.
  - a. **Management of Company by Board of Directors**. The Management of the Company shall be vested in a Board of Directors (collectively, the “Board”), the members of which shall be natural persons (the “Directors”) appointed in accordance with clause “(c)” below. The business and affairs of the Company shall be managed, operated and controlled by or under the

direction of the Board, and the Board shall have and is hereby granted, the full, complete and exclusive power, authority and discretion for, on behalf of and in the name of the Company, to take such actions as it may in its sole discretion deem necessary or advisable to carry out any and all of the objectives and purposes of the Company, subject only to the terms of this Agreement. Except as otherwise provided in this Agreement, no Director, acting alone or with any other Director(s), shall have the right, power, or authority to bind the Company with respect to any matter except pursuant to a resolution authorizing such action that is duly adopted by the Board by the affirmative vote required with respect to such matter pursuant to this Agreement. Except as otherwise provided in this Agreement or by applicable law, no Member, in its capacity as a Member, shall have any power or authority over the business and affairs of the Company or any power or authority to act for or on behalf of, or to bind, the Company. Each Director shall enter into a Director Agreement with the Company, which is incorporated into this Agreement by reference.

**b. Matters for Which Member Approval is Required.** In addition to approval of the Board, the following matters shall require approval of the Member. The Company shall not, and shall not enter into any commitment to (and the Board shall not authorize the Company to or to enter into any commitment to), do any of the following without the prior approval of the Member:

- i. amend modify or waive the Certificate of Formation or this Agreement;
- ii. make any material change to the nature of the business conducted by the Company;
- iii. issue or redeem any membership interest or admit additional Members to the Company;
- iv. issue or incur any material indebtedness or pledge or grant liens or encumbrances on any material assets, except in the ordinary course of business consistent with past practice;
- v. make any loan, advance, capital contribution or other investment in or to any Person, other than loans, including relocation or travel advances, to Officers and employees for amounts incurred in the ordinary course of business consistent with past practice;
- vi. enter into or effect any transaction or series of related transactions involving the purchase, lease, license, exchange or other acquisition (including by merger, consolidation, acquisition of stock or acquisition of assets) by the Company of any assets and/or equity interests of any Person, other than in the ordinary course of business consistent with past practice;
- vii. enter into or effect any transaction or series of related transactions involving the sale, lease, license, exchange or other disposition (including by merger, consolidation, sale of stock or sale of assets) by the Company of any material assets, other than in the ordinary course of business consistent with past practice;
- viii. approve any merger, consolidation, or combination of the Company with or into any other Person;
- ix. establish a subsidiary or enter into any joint venture or similar business arrangement;

x. settle any material lawsuit, action, dispute or other proceeding or otherwise assume any material liability or agree to the provision of any equitable relief by the Company;

xi. initiate or consummate an initial public offering or make a public offering and sale of any membership interests or any other securities of the Company or any successor entity;

xii. initiate a bankruptcy proceeding (or consent to any involuntary bankruptcy proceeding) involving the Company;

xiii. hire or terminate the Chief Executive Officer or other executive officer, change any compensation policies applicable to any such Officer, or enter into any material agreement with respect to employment, severance, consultancy or any similar agreement with any such Officer;

xiv. modify in any material respect the role or authority of, or change the composition of, the Regulatory Oversight Committee; or

xv. dissolve, liquidate or terminate the Company.

**c. Board Composition.** The Board shall consist of five (5) Directors. The Board shall be comprised as follows:

i. Three (3) individuals designated by the Member, in the Member's sole and absolute discretion; and

ii. Two (2) individuals designated from time to time by the Member, in the Member's sole and absolute discretion, provided that each such individual shall be a "public director" as defined in the applicable guidance by the U.S. Commodity Futures Trading Commission ("CFTC") for the governance of a designated contract market (the "Public Directors").

**d. Removal; Resignation; Vacancies.**

i. The Member may remove any Director at any time with or without cause, for any reason or no reason, effective upon written notice to the Chair.

ii. A Director may resign at any time from the Board by delivering his written resignation to the Chair. Any such resignation shall be effective upon receipt thereof unless it is specified to be effective at some other time or upon the occurrence of some other event. The Board's or Company's acceptance of a resignation shall not be necessary to make it effective.

iii. Any vacancy on the Board resulting from the resignation, removal, death or disability of a Director shall be filled by the Member, with such appointment to become effective immediately upon delivery of written notice of such appointment to the Chair.

**e. Board Meetings.**

i. Regular meetings of the Board shall be held when and as determined by the Board, at such dates and times as the Board may designate. Special meetings of the Board may be called at any time by the Chair and shall be called by the Chair at the written request of any Director who makes such request in good faith. Meetings of the Board may be held either in person or by telephone or video conference or other communication device that permits all Directors participating in the meeting to hear each other.

ii. Written notice of a meeting of the Board or any Committee stating the place, date and hour of the meeting and the purpose or purposes for which the meeting is called shall be given to each Director by telephone, electronic mail or facsimile no fewer than three business days before the date of the meeting. Notice of any meeting may be waived in writing by any Director. Presence at a meeting shall constitute waiver of any deficiency of notice, except when a Director attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting was not called or convened in accordance with this Agreement and does not otherwise attend the meeting.

iii. The Secretary of the Company (or the Chair, if there is no Secretary) shall circulate to each Director an agenda for each regular meeting not less than three business days in advance of such meeting. In the case of a regular meeting, such agenda shall include a discussion of the financial reports and any other matters that a Director may reasonably request to be included on such agenda. In the case of a special meeting, the agenda for such meeting shall be established by the Chair and shall, if applicable, include any matters specified by the Director requesting such meeting, and shall be provided to each Director at the time such special meeting is called.

iv. The decisions and resolutions of the Board and each Committee shall be recorded in minutes, which shall state the date, time and place of the meeting (or the date of any written consent in lieu of a meeting), the Directors present at the meeting, the resolutions put to a vote (or the subject of a written consent) and the results of such voting or written consent. The minutes shall be entered in a minute book kept at the principal office of the Company and a copy of the minutes of each Board and Committee meeting shall be provided to each Director and the Member.

**f. Quorum; Manner of Action; Majority Approval.**

i. The presence in person of a number of Directors equal to a majority of the total number of Directors serving on the Board shall constitute a quorum for the conduct of business at any meeting of the Board; *provided, however*, that, in order to constitute a quorum, at least one of the Directors present in person must be a Public Director.

ii. Participation by a Director in a meeting of the Board or any Committee may be conducted by telephone or video conference or other communications device that permits all Directors participating in the meeting to hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting.

iii. Each Director shall have one vote on all matters submitted to the Board or any Committee of which such Director is a member. Except as otherwise set forth in this Agreement, the affirmative vote of a majority of the Directors in attendance at any meeting of the Board or any Committee at which a quorum is present shall be required to authorize any action by the Board or Committee and shall constitute the action of the Board or Committee for all purposes.

**g. Action by Written Consent.** Any action of the Board or any Committee may be taken without a meeting if a consent in writing, setting forth the action to be taken, is signed unanimously by all the Directors (or all the Directors comprising the Committee, as applicable). Such consent shall have the same force and effect as a vote at a meeting where a quorum was present and may be stated as such in any document or instrument filed with the Secretary of State of the State of Delaware.

**h. Chair of the Board.** The Board may appoint any Director to act as Chair of the Board (“Chair”) and preside at all meetings of the Board at which such Director is present, subject to the ultimate authority of the Board to appoint an alternate presiding chair at any meeting. For the avoidance of doubt, a Chair or presiding chair shall not have any rights or powers different from any other Director other than with respect to any procedural matters to the extent delegated by the Board or as expressly set forth in this Agreement.

**i. Board Committees.**

i. The Board may, by resolution, designate from among the Directors one or more committees of the Board (each, a “Committee”), each of which shall be comprised of one or more Directors. Any such Committee, to the extent provided in the resolution forming such Committee, shall have and may exercise the authority of the Board. The Board may dissolve any Committee at any time.

ii. Except as otherwise provided in the resolution initially establishing such Committee, the presence in person of a number of Directors equal to a majority of the total number of Directors comprising the applicable Committee shall constitute a quorum for the conduct of business at any meeting of such Committee. Except as otherwise provided in the resolution adopting such Committee, actions of any Committee shall be made and determined in accordance with the provisions set forth above for actions of the Board, *mutatis mutandis*. Notice of Committee meetings shall be given to each member of the Committee in the manner provided above for meetings of the Board, *mutatis mutandis*.

iii. Notwithstanding anything to the contrary set forth in the preceding clauses “(i)” and “(ii),” the Board shall at all times have a Regulatory Oversight Committee (“ROC”) which shall have the powers and responsibilities set forth for a ROC provided by the applicable CFTC Guidance for ROCs governing designated contract markets. The ROC shall consist exclusively of all of the Public Directors.

7. **Officers.** The Board may appoint such individuals as officers of the Company (the “Officers”) as it deems necessary or desirable to carry on the business of the Company. The Board may delegate to such Officers such powers and authorities as the Board deems advisable. No Officer need be a Member or Director. Any individual may hold two or more offices of the Company. Each Officer shall hold office until his successor is designated by the Board or until his earlier death, resignation or removal. Any Officer may resign at any time on written notice to the Board. Any Officer may be removed by the Board with or without cause at any time. A vacancy in any office occurring because of death, resignation, removal or otherwise, may, but need not, be filled by the Board. The initial officers of the Company shall be a Chief Executive Officer (Miles Isaac Saffran) and Chief Operating Officer (Edward Tian), which shall have the powers and responsibilities typical of a Chief Executive Officer and Chief Operating Officer, respectively.

8. **Capital Contributions.** The Member shall contribute, as its initial capital contribution to the Company, cash in the amount set forth opposite the Member’s name on Exhibit A hereto. The Member may make, but shall not be required to make, additional capital contributions to the Company.

9. **Tax Status; Income and Deductions.**

a. **Tax Status.** As long as the Company has only one member, it is the intention of the Company and the Member that the Company be treated as a disregarded entity for federal and

all relevant state tax purposes and neither the Company nor the Member shall take any action or make any election which is inconsistent with such tax treatment. All provisions of this Agreement are to be construed so as to preserve the Company's tax status as a disregarded entity.

**b. Income and Deductions.** All items of income, gain, loss, deduction and credit of the Company (including, without limitation, items not subject to federal or state income tax) shall be treated for federal and all relevant state income tax purposes as items of income, gain, loss, deduction and credit of the Member.

10. **Distributions.** Distributions shall be made to the Member at the times and in the aggregate amounts determined by the Board.

11. **Dissolution.** The Company shall have perpetual existence unless it shall be dissolved, and its affairs shall have been wound up upon (a) the written consent of the Board or (b) the entry of a decree of judicial dissolution under Section 18-802 of the Act. The existence of the Company as a separate legal entity shall continue until the cancellation of the Certificate as provided in the Act. None of the events described in Section 18-304 of the Act shall cause the Member to cease to be the Member of the Company.

12. **Assignments.** The Member may assign its limited liability company interest, to any person, which person shall become a Member upon the filing of the instrument of assignment with the records of the Company.

13. **Amendments.** This Agreement may be amended or restated from time to time by the Board, with the written consent of the Member, or by the Member

14. **Liability; Exculpation; Indemnification.**

**a. Covered Persons.** As used herein, the term "Covered Person" shall mean (i) each Member; (ii) each officer, director, shareholder, partner, member, affiliate, employee, agent or representative of each Member, and each of their affiliates; and (iii) each Director, Officer, employee, agent or representative of the Company

**b. Exculpation of Covered Persons.** No Covered Person shall be liable to the Company or any Member or any affiliate of a Member for any loss, damage or claim incurred by reason of any action taken or omitted to be taken by such Covered Person in his or its capacity as a Covered Person, so long as such action or omission does not constitute fraud, gross negligence, willful misconduct or a breach or violation of this Agreement or any Director Agreement by such Covered Person.

**c. Liabilities and Duties of Covered Persons.** This Agreement is not intended to, and does not, create or impose any fiduciary duty on any Covered Person. Furthermore, each of the Members and the Company hereby waives any and all fiduciary duties that, absent such waiver, may be implied by applicable law, and in doing so, acknowledges and agrees that the duties and obligations of each Covered Person to each other and to the Company are only as expressly set forth in this Agreement, including, in the case of Directors, the Director Agreements. The provisions of this Agreement, including any Director Agreements, to the extent that they restrict the duties and liabilities of a Covered Person otherwise existing at law or in equity, are agreed by the Members to replace such other duties and liabilities of such Covered Person

**d. Indemnification.** To the fullest extent permitted by the Act, as the same now exists or may hereafter be amended, substituted or replaced (but, in the case of any such amendment, substitution or replacement, only to the extent that such amendment, substitution or replacement permits the Company to provide broader indemnification rights than the Act permitted the Company to provide prior to such amendment, substitution or replacement), the Company shall indemnify, hold harmless, defend, pay and reimburse any Covered Person against any and all losses, claims, damages, judgments, fines or liabilities, including reasonable legal fees or other expenses incurred in investigating or defending against such losses, claims, damages, judgments, fines or liabilities, and any amounts expended in settlement of any claims (other than in connection with any claims brought by the Company) (collectively, "Losses") to which such Covered Person may become subject by reason of: any act or omission or alleged act or omission performed or omitted to be performed on behalf of the Company in connection with the business of the Company; or such Covered Person being or acting in connection with the business of the Company as a Member, a Director or an Officer, or that such Covered Person is or was serving at the request of the Company as a member, manager, partner, director, officer, employee or agent of any other Person, in each case, provided that (x) such Covered Person acted in good faith and in a manner believed by such Covered Person to be in, or not opposed to, the best interests of the Company and within the scope of such Covered Person's authority conferred on him or it by the Company and, with respect to any criminal proceeding, had no reasonable cause to believe his or its conduct was unlawful, and (y) such Covered Person's conduct did not constitute fraud, gross negligence, willful misconduct or a breach or violation of this Agreement, including any Director Agreement, in each case, as determined by a final, non-appealable order of a court of competent jurisdiction. In connection with the foregoing, the termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the Covered Person did not act in good faith or, with respect to any criminal proceeding, had reasonable cause to believe that such Covered Person's conduct was unlawful, or that the Covered Person's conduct constituted fraud, gross negligence, willful misconduct or a breach or violation of this Agreement, including any Director Agreement, by such Covered Person. The indemnification provided herein shall not be deemed exclusive of any other rights to indemnification to which those seeking indemnification may be entitled under any agreement or otherwise. The provisions hereof shall continue to afford protection to each Covered Person regardless of whether such Covered Person remains in the position or capacity pursuant to which such Covered Person became entitled to indemnification hereunder and shall inure to the benefit of the executors, administrators, legatees and distributees of such Covered Person. Notwithstanding anything contained herein to the contrary, any indemnity by the Company shall be provided out of and to the extent of Company assets only, and no Member (unless such Member otherwise agrees in writing) shall have personal liability on account thereof or shall be required to make additional capital contributions to help satisfy such indemnity by the Company

**e. D&O Insurance.** To the extent available on commercially reasonable terms, the Company will purchase, at its expense, insurance to cover Losses covered by the foregoing indemnification provisions and to otherwise cover Losses for any breach or alleged breach by any Covered Person of such Covered Person's duties in such amount and with such deductibles as the Board may determine. If any Covered Person recovers any amounts in respect of any Losses from any insurance coverage, then such Covered Person shall, to the extent that such recovery is duplicative, reimburse the Company for any amounts previously paid to such Covered Person by the Company in respect of such Losses.

15. **Governing Law.** This Agreement shall be governed by, and construed under, the laws of the State of Delaware, all rights and remedies being governed by said laws.

16. **Entire Agreement.** This Agreement, together with the Certificate of Formation, Director Agreements and all Exhibits and Schedules, constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.
  
17. **Severability.** If any term or provision of this Agreement is held to be invalid, illegal, or unenforceable under applicable law in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

*[Signature Page Follows]*



IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has duly executed this Limited Liability Company Agreement as of the date listed below.

**MEMBER:**

**RAILBIRD TECHNOLOGIES INC.**

By: Miles Isaac Saffran

Name: Miles Isaac Saffran

Title: President and Chief Executive Officer

Email: miles.saffran@railbirdexchange.com

Date: December 13, 2022

**COMPANY:**

**RAILBIRD EXCHANGE, LLC**

By: Railbird Technologies Inc.

Its: Member

By: Miles Isaac Saffran

Name: Miles Isaac Saffran

Title: President and Chief Executive Officer

Email: miles.saffran@railbirdexchange.com

Date: December 13, 2022

**EXHIBIT A**

**INITIAL CAPITAL CONTRIBUTIONS**

<b><u>Member's Name</u></b>	<b><u>Member's Address</u></b>	<b><u>Percentage Interest</u></b>	<b><u>Capital Contributions</u></b>
Railbird Technologies Inc.	169 Madison Ave., #2138 New York, NY 10016	100%	\$100