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# City of Detroit CITY COUNCIL

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TO: Detroit City Council

FROM: David Whitaker, Director  
Legislative Policy Division Staff 

DATE: October 15, 2018

RE: Report on Motorized Electric Scooters

The Legislative Policy Division (LPD) provides this report with regard to the request submitted by council President Pro-Tem Mary Sheffield on the use and regulation of electric scooters in Detroit. LPD notes that the Law Department is undertaking the drafting of an ordinance to properly regulate the use of electric scooter in Detroit. This report is to provide information which may be useful when considering the type of ordinance needed to properly regulate electric scooter use.

The City of Detroit has in the past few months been inundated with electric scooters that are being utilized by a number of people in and around the city. This phenomenon has not only impacted the city of Detroit but multiple cities across the nation. The two main providers of the electric scooters in Detroit are Bird which was founded in 2017 in Santa Monica, CA and Neutron Holdings, Inc. (DBA Lime) founded in 2017 in San Mateo, CA. Both entities have begun electric scooter operations by dropping off large numbers of the vehicles in cities across the country. The basic premise is that for a small fee (\$1 to start and \$0.15- \$0.20 cents per minute) a person can rent the vehicle. Under the Lime rental program, a person can obtain access to the vehicle by subscribing to the program using a credit/debit card or cash paid at participating payment locations. Under the Bird rental program a person can obtain access to the vehicle by providing Bird access to a valid credit/debit card.

Both entities provide a detailed rental agreement that is accessed via their respective websites which prescribes the manner in which the electric scooter is to be used. The rental agreement

includes prohibitions as well as a full assumption of risk provision on the part of the user.<sup>1</sup> The user by accepting the terms and conditions of use, grants a waiver for any injury resulting from use, in addition to indemnifying Bird (Section 15 of agreement) or Lime (Section 5 of agreement) respectively, for any claims or injuries caused by or resulting from the user to others.

LPD has found that there are a number of issues that have commonly occurred since the broad use of the electric scooters have begun. Some examples of concerns that have arisen include<sup>2</sup>:

- Children riding the electric scooters
- People riding the scooters without helmets
- People riding the scooters on sidewalks
- Scooters left abandoned in the middle of sidewalks
- Scooters left in front of building entrances and exits, and blocking handicap access ramps
- People riding additional persons on the scooters.

Additional safety issues identified which should be taken into consideration are:

- Because electric scooters are small, motorists are often unable to see them. The electric scooters and riders are easily hidden from view by other objects such as cars, or objects on or off the streets, in blind naturally occurring blind spots.
- Riders of electric scooters on the street have no barrier protection similar to motorcyclist and bicyclist. Additionally, most scooter riders do not wear helmets, even though the providers recommend them particularly for children and inexperienced operators.
- Electric scooter riders often crash as the result of hitting or swerving to avoid potholes, gravel, roadway debris, or uneven surfaces.
- Many electric scooter riders have little or no experience, the scooter can become wobbly, or lock up, especially during emergency braking or swerving.
- Electric scooters cause a hazard to pedestrians tripping on an electric scooter lying on the sidewalk or just outside a building entrance.
- Electric scooter riders are susceptible to being hit by an opening car door, a turning or backing vehicle, or a swerving car.
- Electric scooters cause a hazard to motorists swerving to avoid a scooter rider and crashes into another car.

Based upon research conducted by the National Electronic Injury Surveillance System under the Consumer Product Safety Commission, injuries for all standup scooters, (including hoverboards), for the last four years were estimated as:

- 2014: 5,700 injuries
- 2015: 15,800 injuries

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<sup>1</sup> The Bird Rental Agreement is available in multiple languages (English version attached) and includes a list of prohibited acts by riders and the requirement that all state and local laws be followed. The Lime Rental Agreement like the Bird agreement contains similar prohibitions and requirements.

<sup>2</sup> McGee, Lerer & Associates, Santa Monica CA

- 2016: 34,300 injuries
- 2017: 32,700 injuries

LPD notes that as of the date of this report there were two deaths identified as being related to riders of electric scooters. One person was struck and killed by an SUV in Washington, DC and dragged 20 yards.<sup>3</sup> In another incident a man riding an electric scooter allegedly fell off injuring his foot. After emergency medical services arrived it appears the man suffered a head injury, was hospitalized and died from the injuries.<sup>4</sup>

In an attempt to regulate the use of electric scooters in Michigan, the State has passed legislation addressing the matter. The Michigan Motor Vehicle Code defines the electric scooter under MCL 257.13f. "Electric skateboard" defined.

"Electric skateboard" means a wheeled device that has a floorboard designed to be stood upon when riding that is no more than 60 inches long and 18 inches wide, is designed to transport only 1 person at a time, has an electrical propulsion system with power of no more than 2,500 watts, and has a maximum speed on a paved level surface of not more than 25 miles per hour. An electric skateboard may, in addition to having an electrical propulsion system with power of no more than 2,500 watts, be designed to also be powered by human propulsion.

Those who operate an electric skateboard (as defined by law) must comply with several recently passed state laws. MCL 257.658(3), (4) and (9) provide in pertinent parts:

(3) An electric personal assistive mobility device or an electric skateboard shall not be used to carry more than 1 person at a time.

(4) A person less than 19 years of age operating an electric skateboard shall wear a crash helmet on his or her head.

(9) A person under the age of 12 shall not operate an electric skateboard on a public highway or street.

Pursuant to the legislation, a person operating a Bird or Lime electric scooter must ride, one person at a time. If under the age of 19, the operator must wear a crash helmet, and if under the age of 12, cannot operate the vehicle on a public highway or street. Additional state provisions regulating the use of electric skateboards are under MCL 257.660 and provide in pertinent part:

(1) A person operating an electric personal assistive mobility device, low-speed vehicle, electric skateboard, or moped upon a roadway shall ride as near to the right side of the roadway as practicable and shall exercise due care when passing a standing vehicle or one proceeding in the same direction.

(2) A person riding an electric personal assistive mobility device, motorcycle, electric skateboard, or moped upon a roadway shall not ride more than 2 abreast

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<sup>3</sup> U.S. News September 25, 2018.

<sup>4</sup> CBSDFW.COM September 3, 2018.

except on a path or part of a roadway set aside for the exclusive use of those vehicles.

(3) Where a usable and designated path for bicycles is provided adjacent to a highway or street, a person operating an electric personal assistive mobility device or electric skateboard may, by local ordinance, be required to use that path.

(4) A person operating a motorcycle, moped, low-speed vehicle, electric personal assistive mobility device, or electric skateboard shall not pass between lines of traffic, but may pass on the left of traffic moving in his or her direction in the case of a 2-way street or on the left or right of traffic in the case of a 1-way street, in an unoccupied lane.

(5) A person operating an electric personal assistive mobility device or electric skateboard on a sidewalk constructed for the use of pedestrians shall yield the right-of-way to a pedestrian and shall give an audible signal before overtaking and passing the pedestrian.

(10) An electric skateboard shall be operated at a speed of not more than 25 miles per hour and shall not be operated on a highway or street with a speed limit of more than 25 miles per hour except to cross that highway or street.

In furtherance of regulating electric skateboards, state law allows municipalities such as the City of Detroit to provide additional regulations to promote the public health, safety and general welfare of its citizens by ordinance under Section 257.660(11):

The governing body of a county, a city...may, by ordinance based on the health, safety, and welfare of the citizens, regulate the operation of electric personal assistive mobility devices, electric skateboards, or commercial quadricycles on sidewalks, highways or streets, or crosswalks... may prohibit the operation of electric personal assistive mobility devices, electric skateboards or commercial quadricycles in an area open to pedestrian traffic adjacent to a waterfront or on a trail under its jurisdiction or in a downtown or central business district. Signs indicating the regulation shall be conspicuously posted in the area where the use of an electric personal assistive mobility device, electric skateboard, or commercial quadricycle is regulated.

The statute also allows the city to prohibit the use of electric skateboards in a historic district. The State also requires electric Skateboards to have “be equipped with a lamp on the front that emits a white light visible from a distance of at least 500 feet to the front and with a red reflector on the rear that shall be visible from all distances from 100 feet to 600 feet to the rear when directly in front of lawful lower beams of head lamps on a motor vehicle” under MCL 257.662(1).

In acknowledging that the state allows the City to regulate electric scooters by ordinance, LPD believes the proposed ordinance should provide a provision requiring Bird or Lime rental agreements entered into by consumers in Detroit, contain the operating requirements set by Michigan law. LPD hopes this information will be of assistance to this Honorable Body and the Law Department in crafting an appropriate ordinance regulating electric scooters in Detroit.

# Bird

Dockless Scooter-Share Company

## Rental Agreement

[Cliquez ici pour l'accord français](#)

[כאן לחצו אנא בעברית הגרסה עבור](#)

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[haga clic aquí para la acuerdo Mexicano](#)

[Klik hier voor de Overeenkomst in het Nederlands voor België.](#)

## Bird Rental Agreement, Waiver of Liability and Release

*Effective Date: August 1, 2018*

PLEASE READ THIS AGREEMENT CAREFULLY. IT SETS FORTH THE LEGALLY BINDING TERMS AND CONDITIONS FOR YOUR USE OF THE SERVICE.

In consideration of Your use of any of the Bird Services (defined below) provided by Bird Rides, Inc. d/b/a Bird ("Bird"), Bird requires that You ("Rider," "You," or "Your") (acting for all of Rider's family, heirs, agents, affiliates, representatives, successors, and assigns) agree to all terms and conditions in this Bird Rental Agreement, Waiver of Liability, and Release ("Agreement").

The services provided by Bird include (1) Bird mobile-application and related website, (2) Bird Electric Vehicles ("Vehicle" or "Vehicles"), (3) discretionary charging of the Vehicle by Rider per Section 1.15 below, and (4) all other related equipment, personnel, services, applications, websites, and information provided or made available by Bird (collectively, the "Bird Services").

In addition to the Terms of Service, located at <https://www.bird.co/terms>, You expressly agreed to when you signed up for Bird, You should CAREFULLY READ all terms and conditions before entering into this Agreement, but here is a partial list of some of the terms that Bird wants to bring to Your initial attention in the event You are on a smartphone or other device with a small screen. Capitalized terms have the meanings given to them where defined in this Agreement.

- **THIS AGREEMENT CONTAINS RELEASES, DISCLAIMERS, AND ASSUMPTION-OF-RISK PROVISIONS AND A BINDING ARBITRATION AGREEMENT THAT LIMIT YOUR LEGAL RIGHTS AND REMEDIES. FOR MORE DETAILS, PLEASE REFER TO SECTIONS 9 AND 15 BELOW**
- The Vehicle must be locked at the conclusion of the ride. If the Vehicle is not locked, the trip will continue and You will continue to be charged. The max charge for a single trip is \$100 for 24 hours. For more details, please refer to Section 2.3 below.

- Upon conclusion of Your ride, the Vehicle must be parked at a lawful parking spot, i.e. the Vehicle cannot be parked on private property or in a locked area or in any other non-public space.
- All applicable laws (including, without limitation, those applicable to traffic, pedestrians, parking, charging and electric Vehicles) must be obeyed, including any helmet laws in Your area.
- You must promptly report any damaged or malfunctioning Vehicles to Bird via the Bird mobile application (the "Bird App") or via e-mail.

Bird expressly agrees to let, and the Rider expressly agrees to take on, rental of the Vehicle subject to the terms and conditions set out herein. Unless otherwise indicated, all monetary values set forth in this Agreement shall be deemed to be denominated in U.S. dollars.

## **1. GENERAL RENTAL AND USE OF VEHICLE.**

**1.1 Rider is Sole User.** Bird and the Rider are the only parties to this Agreement. The Rider is the sole renter and is solely responsible for compliance with all terms and conditions contained herein. You understand that when You activate a Vehicle from the location, the Vehicle must be used only by You. You must not allow others to use a Vehicle that You have activated from the location.

**1.2 Rider is At Least 18 Years Old.** Rider represents and certifies that Rider is at least 18 years old.

**1.3 Rider is a Competent Vehicle Operator.** Rider represents and certifies that he/she is familiar with the operation of the Vehicle, and is reasonably competent and physically fit to ride the Vehicle. You can find materials provided by the Vehicle manufacturers [here](#). This information may be updated periodically. By choosing to ride a Vehicle, Rider assumes all responsibilities and risks for any injuries or medical conditions. You are responsible for determining whether conditions, including, without limitation, rain, fog, snow, hail, ice, heat or electrical storms, make it dangerous to operate a Vehicle. You are advised to adjust Your riding behavior and braking distance to suit the weather, visibility, surrounding environment, and traffic conditions.

**1.4 Vehicle is the Exclusive Property of Bird.** Rider agrees that the Vehicle and any Bird equipment attached thereto, at all times, remain the exclusive property of Bird. You must not dismantle, write on, or otherwise modify, repair or deface a Vehicle, any part of a Vehicle, or other Bird equipment in any way. You must not write on, peel, or otherwise modify or deface any sticker on a Vehicle in any way. You must not use a Vehicle, or other Bird equipment, for any advertising or other commercial purpose without the express written permission of Bird.

**1.5 Vehicle Operating Hours and Vehicle Availability.** Rider agrees and acknowledges that the Vehicles are not available 24 hours a day, 7 days/week, 365 days per year. Vehicles must be rented within the maximum rental time limits set forth below. The number of Vehicles are limited and Vehicle availability is never guaranteed.

**1.6 Vehicle May be Used and/or Operated only in Metropolitan Areas.** Rider agrees to only use, operate, and/or ride the Vehicle in metropolitan areas.

**1.7 Rider Must Follow Laws Regarding Use and/or Operation of Vehicle.** Rider agrees to follow all laws pertaining to the use, riding, parking, charging, and/or operation of the Vehicle, including all state and

local laws and the rules and regulations pertaining to Vehicles in the area where You are operating the Vehicle, including any helmet laws. Rider also agrees to act with courtesy and respect toward others while using the Bird Services.

**1.8 Prohibited Acts.** Rider agrees to the following:

- Bird recommends against operation of a Vehicle while carrying or holding a briefcase, backpack, bag, or other item that can alter balance or impair safe operation of the Vehicle. If You choose to use such an item, Bird recommends that You ensure the item fits snugly to Your body and does not impede Your ability to operate the Vehicle safely.
- You must not place heavy objects on the handlebar of the Vehicle, such as heavy backpacks or bags.
- While riding a Vehicle, You must not use any cellular telephone, text messaging device, portable music player, or other device that may distract You from operating the Vehicle safely.
- You must not operate a Vehicle while under the influence of any alcohol, drugs, medication, or other substance that may impair Your ability to operate a Vehicle safely.
- You must not carry a second person or child on a Vehicle.
- You may only use locking mechanisms provided by Bird. You may not add another lock to the Vehicle or lock a Vehicle to anything.
- The Vehicle must be parked at a lawful parking spot, in an upright position using the kickstand. The Vehicle cannot be parked on unauthorized private property, in a locked area, or in any other unapproved non-public space. You should not park the Vehicle in heavily trafficked areas if the Vehicle is in danger of being knocked down.
- The Vehicle must be parked in a space that is visible.

~~**1.9 Vehicle is Intended for Only Limited Types of Use.** Rider agrees that he/she will not use the Vehicle for racing, mountain riding, or stunt or trick riding. Rider agrees that he/she will not operate and/or use the Vehicle on unpaved roads, through water (beyond normal urban riding), or in any location that is prohibited, illegal, and/or a nuisance to others. Rider agrees that he/she will not use the Vehicle for hire or reward, nor use it in violation of any law, ordinance or regulation.~~

**1.10 Weight and Cargo Limits.** You must not exceed the maximum weight limit for the Vehicle (200 pounds).

**1.11 No Tampering.** You must not tamper with, attempt to gain unauthorized access to, or otherwise use the Bird Services other than as specified in this Agreement.

**1.12 Reporting of Damage or Crashes.** Rider must report any accident, crash, damage, personal injury, or stolen or lost Vehicle to Bird as soon as possible. If a crash involves personal injury, property damage, or a stolen Vehicle, Rider shall file a report with the local police department within 24 hours. Rider agrees that he/she is responsible and liable for any misuse, consequences, claims, demands, causes of action, losses, liabilities, damages, injuries, costs and expenses, penalties, attorney's fees, judgments, suits or disbursements of any kind or nature whatsoever related to a stolen or lost Vehicle.

- **YOUR AUTOMOTIVE INSURANCE POLICIES MAY NOT PROVIDE COVERAGE FOR ACCIDENTS INVOLVING OR DAMAGE TO THIS VEHICLE. TO DETERMINE IF COVERAGE IS PROVIDED, YOU SHOULD CONTACT YOUR AUTOMOTIVE INSURANCE COMPANY OR AGENT**

**1.13 Rider Responsibility for Vehicle Use and Damage.** Rider agrees to return the Vehicle to Bird in the same condition in which it was rented. Rider will not be responsible for normal wear and tear.

**1.14 Electric Vehicle.** The Vehicle is an electric Vehicle that requires periodic charging of its battery in order to operate. Rider agrees to use and operate the Vehicle safely and prudently in light of the Vehicle being an electric Vehicle and all of the limitations and requirements associated therewith. Rider understands and agrees with each of the following:

- The level of charge power remaining in the Vehicle will decrease with use of the Vehicle (over both time and distance), and that as the level of charge power of the Vehicle decreases, the speed and other operational capabilities of the Vehicle may decrease (or cease in their entirety).
- The level of charging power in the Vehicle at the time Rider initiates the rental or operation of the Vehicle is not guaranteed and will vary with each rental use.
- The rate of loss of charging power during the use of the Vehicle is not guaranteed and will vary based on the Vehicle, road conditions, weather conditions, and other factors.
- It is Rider's responsibility to check the level of charge power in the Vehicle and to ensure that it is adequate before initiating operation of the Vehicle.
- The distance and/or time that Rider may operate the Vehicle before it loses charging power is never guaranteed.
- The Vehicle may run out of charging power and cease to operate at any time during Rider's rental of the Vehicle, including before reaching Rider's desired destination.

**1.15 Charging of Vehicle.** If the Vehicle runs out of charging power during a rental, Rider shall conclude the ride in compliance with all terms of this Agreement. Alternatively, in Rider's sole discretion, Rider may charge the Vehicle only by plugging a proper manufacturer-approved charging cord into an outlet that may be lawfully used for such purpose. Rider agrees to follow all laws and rules pertaining to the charging of the Vehicle, including all state and local laws and all public and private rules and regulations pertaining to the area and to the property where Rider is charging the Vehicle. Rider agrees that he/she is responsible for all costs, charges, fees, expenses, penalties, and fines associated with the charging of the Vehicle, and that Bird will not reimburse Rider for such.

Consistent with Section 1.15, Rider agrees that he/she is responsible and liable for any misuse, consequences, claims, demands, causes of action, losses, liabilities, property or fire or other damages, injuries, costs, and expenses, penalties, attorney's fees, judgments, suits, or disbursements of any kind or nature whatsoever related to charging of the Vehicle. By choosing to charge a Vehicle, Rider assumes full and complete responsibility for all related risks, dangers, and hazards, and Rider agrees that Bird and all other Released Persons (defined below in Section 15) are not responsible for any injury, damage, or cost caused by Rider with respect to any person or property, including the Vehicle itself, directly or indirectly related to the charging of the Vehicle.



## **2. PAYMENT AND FEES.**

**2.1 Fees.** Rider may use the Vehicle on a pay per ride basis or as otherwise in accordance with the pricing described in the Bird mobile application. In each case, fees and other charges may be subject to applicable taxes and other local government charges, which may be charged and collected by Bird. Bird will charge the Rider (through credit, or debit card or through another agreed payment method) the amount of the fees as described in this Agreement.

**2.2 Promo Codes.** Promo codes (discounts) are one-time offers and can be redeemed only via the Bird App. Bird reserves the right to modify or cancel discounts at any time. Discounts are limited to one per customer and account and may not be combined with other offers. Discounts are non-transferable and may not be resold.

**2.3 Maximum Rental Time and Charges.** Maximum rental time is 24 hours. Rider agrees that Rider will deactivate the Vehicle rental within 24 hours of renting a Vehicle. Rider may then rent again. Rider agrees that he/she is solely responsible for being aware of any elapsed time related to the timely locking of the Vehicle. The maximum day charge is \$100 and is based on a calendar day. After return of the Vehicle, Rider will be charged the accumulated rental charges, or the maximum day charge, whichever is less. Vehicles not returned (locked and a ride concluded) within 48 hours will be considered lost or stolen, and Rider may be charged up to \$500 and a police report may be filed. Bird may also charge a service fee of \$25 for rentals in excess of 24 hours where the Vehicle is not lost or stolen.

**2.4 Valid Credit Card or Debit Card.** To be registered to use the Bird Services, Rider must provide Bird with a valid credit or debit card number and expiration date. Rider represents and warrants to Bird that Rider is authorized to use any credit or debit card Rider furnishes to Bird. Rider authorizes Bird to charge the card for all fees incurred by Rider. All fees are subject to applicable sales taxes and other local government charges, which may be charged and collected by Bird. If Rider disputes any charge on Rider's credit or debit card account, then Rider must contact Bird within 10 business days from the end of the month with the disputed charge, and provide to Bird all trip information that is necessary to identify the disputed charge, such as the date of the trip and the approximate starting and ending times of the ride associated with the disputed charge. Rider agrees to immediately inform Bird of all changes relating to the card.

**2.5 Pick Up Fees.** If You are unable to return a Vehicle to a valid area (i.e. You deactivate the Vehicle on private property, a locked community, or another unreachable area), and request that the Vehicle be picked up by Bird staff, Bird, at its sole discretion, may choose to charge You a pick-up fee up to \$120. If any Vehicle accessed under Your account is abandoned without notice, You will be responsible for all trip fees until the Vehicle is recovered and deactivated, plus a service charge (currently \$120.00) to recover the Vehicle. Fees are subject to change.

## **3. ADDITIONAL TERMS OF USE.**

**3.1 Safety Check.** Before each use of a Vehicle, Rider shall conduct a basic safety inspection of the Vehicle, which includes inspecting the following: (i) trueness of the wheels; (ii) safe operation of all brakes and lights; (iii) good condition of the frame; (iv) sufficient battery charge power; and (iv) any sign of damage, unusual or excessive wear, or other open and obvious mechanical problem/maintenance

need. Rider agrees not to ride the Vehicle if there are any noticeable issues, and to immediately notify customer service to alert Bird of any problems.

**3.2 Lost or Stolen Vehicle.** A Vehicle may be deemed lost or stolen if (a) the Vehicle is not returned within 24 consecutive hours, (b) the Vehicle's GPS unit is disabled, (c) the Vehicle is parked on unauthorized private property, in a locked area, or in any other non-public space for more than ten minutes after a ride ends, (d) the Vehicle moves more than thirty feet after a rental has ended and Bird believes such movement was not caused by another Rider or authorized third party, or (e) other facts and circumstances that suggest to Bird in its reasonable, good faith determination that a Vehicle has been lost or stolen. Bird and You agree that the last Rider of a Vehicle shall be responsible for a lost or stolen Vehicle unless facts and circumstances suggest otherwise to Bird in its reasonable, good faith determination. If Bird deems a Vehicle lost or stolen, Bird shall have the authority to take any and all actions it deems appropriate (with respect to the last Rider of a Vehicle or otherwise), including (without limitation) obtaining restitution and other appropriate compensation and damages and filing a police report with local authorities. Rider agrees the data generated by Bird's computer is conclusive evidence of the period of use of a Vehicle by a Rider. Rider agrees to report Vehicle disappearance or theft to Bird immediately or as soon as possible.

**3.3 Helmets; Safety.** Bird recommends that all Riders wear a Snell, CPSC, ANSI or ASTM approved helmet that has been properly sized, fitted and fastened according to the manufacturer's instructions. **Bird and all other Released Persons (defined below in Section 15) do not represent or warrant the quality or safety characteristics of any helmet, and Rider agrees that none of the Released Persons is liable for any injury suffered by Rider while using any of the Bird Services, whether or not Rider is wearing a helmet at the time of injury. Rider assumes all risk of not wearing a helmet or other protective gear.** Rider may need to take additional safety measures or precautions not specifically addressed in this Agreement.

**3.4 Vehicle Routes.** Rider agrees that Bird does not provide or maintain places to ride Vehicles, and that Bird does not guarantee that there will always be a safe place to ride a Vehicle. Roads, sidewalks, vehicle lanes, and vehicle routes may become dangerous due to weather, traffic, or other hazards.

**3.5 Limitations on Vehicle Rental.** Rider agrees that Bird is not a common carrier. Alternative means of public and private transportation are available to the general public and to Rider individually, including public buses and rail service, taxis, and pedestrian paths. Bird provides Vehicles only as a convenience, and such rental availability is intended to be used only by those persons who are able and qualified to operate a Vehicle on their own and who have agreed to all terms and conditions of this Agreement.

**3.6 Limitations on Availability of Bird Services.** Bird makes every effort to provide Bird Services 365 days per year, but does not guarantee that Bird Services will be available at all times, as unforeseen events or other circumstances might prevent Bird from providing the Bird Services. Access to Bird Services is also conditioned on the availability of Vehicles. Bird does not represent or warrant the availability of any of Bird Services or the availability of any Vehicle at any time. Rider agrees that Bird may require Rider to return a Vehicle at any time.

#### **4. TERMINATION.**

**4.1 Termination by Bird.** At any time and from time to time, and without Rider's consent, Bird may unilaterally terminate Rider's right to use the Bird Services, in Bird's sole discretion and without any notice or cause. Rider may terminate Rider's use of the Bird Services at any time; provided, however, that (i) no refund will be provided by Bird, (ii) the term of this Agreement continues in accordance with this Agreement, and (iii) Rider may still be charged any applicable additional fees in accordance with this Agreement. This Agreement remains in full force and effect, in accordance with its terms and conditions, after any termination of Rider's right to use any of the Bird Services, regardless of how the Agreement is terminated.

**5.1 Confidentiality of Information; Privacy Policies.** You understand and agree that all personal information that is held by Bird and pertains to Riders, including all names, addresses, phone numbers, email addresses, passwords, payment information, and other information will be kept by Bird in accordance with its privacy policy located at <http://www.bird.co/privacy/>

**6. License to Image and Likeness.** For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, You do hereby knowingly, voluntarily, and irrevocably: (1) give Your full and unconditional consent to Bird and its affiliates, successors, and assigns to use at any time and from time to time, without any restriction, Your appearance and voice in photographs, videos, and other recordings related to Your use of the Bird Services, on all websites and for all press, promotional, advertising, publicity, and other commercial purposes, including all formats and media, whether now known or hereafter devised, throughout the world and in perpetuity; (2) grant to Bird and its affiliates, successors, and assigns (a) the right to photograph, videotape, and otherwise record Your appearance and voice related to Your use of the Bird Services, at any time and from time to time, (b) all rights, copyrights, title, and interests in the results of such photographs, videos, and other recordings, as a work for hire for copyright purposes, and (c) the right to use, reproduce, exhibit, distribute, transmit, alter, and exploit, at any time and from time to time and as Bird may decide in its sole discretion, such photographs, videos, and other recordings, or any component thereof, and all related merchandising, promotions, advertising, and publicity; and (3) waive, release, and discharge all Released Persons from all Claims (defined below in Section 15) that You have or may have for any libel, defamation, invasion of privacy, right of publicity, infringement of copyright, or violation of any right granted by You in this paragraph.

**7. Notice.** Bird may be contacted by emailing [hello@bird.co](mailto:hello@bird.co) or by mail at 406 Broadway #369, Santa Monica, CA 90401

**8. Choice of Law; Dispute Resolution.** This Agreement is governed by, and must be construed and enforced in accordance with, the laws of the State of California, excluding principles of conflicts of laws. For every dispute regarding this Agreement: (i) the prevailing party is entitled to its costs, expenses, and reasonable attorney fees (whether incurred at trial, on appeal, or otherwise) incurred in resolving or settling the dispute, in addition to all other damages or awards to which the party may be entitled; (ii) each party consents to the jurisdiction of the courts of the State of California and agrees that those courts have personal jurisdiction over each party; (iii) venue must be in Los Angeles, California.

**9. Binding Arbitration and Class Action Waiver**

PLEASE READ THIS SECTION CAREFULLY - IT MAY SIGNIFICANTLY AFFECT YOUR LEGAL RIGHTS, INCLUDING YOUR RIGHT TO FILE A LAWSUIT IN COURT.

### **9.1 Initial Dispute Resolution**

Rider Support is available via the app to address any concerns you may have regarding your use of a Vehicle and/or this Agreement. The parties shall use their best efforts through this support process to settle any dispute, claim, question, or disagreement and engage in good faith negotiations which shall be a condition to either party initiating mediation, arbitration, or a lawsuit.

### **9.2 Binding Arbitration**

If the parties do not reach an agreed upon solution through the support process, then either party may initiate binding arbitration as the sole means to resolve claims, subject to the terms set forth below. Specifically, all claims arising out of or relating to use and rental of a Vehicle, this Agreement, and the parties' relationship with each other shall be finally settled by binding arbitration administered by JAMS, or alternatively a mutually agreed upon arbitrator or arbitration service, under the applicable commercial arbitration rules for JAMS or the mutually agreed upon arbitration service, excluding any rules or procedures governing or permitting class actions.

The arbitrator, and not any federal, state or local court or agency, shall have exclusive authority to resolve all disputes arising out of or relating to the interpretation, applicability, enforceability or formation of this Agreement, including, but not limited to any claim that all or any part of this Agreement are void or voidable, or whether a claim is subject to arbitration. The arbitrator shall be empowered to grant whatever relief would be available in a court under law or in equity. The arbitrator's award shall be written, and binding on the parties and may be entered as a judgment in any court of competent jurisdiction.

To the extent the filing fee for the arbitration exceeds the cost of filing a lawsuit, Bird will pay the additional cost. The arbitration rules also permit you to recover attorney's fees in certain cases. The parties understand that, absent this mandatory provision, they would have the right to sue in court and have a jury trial. They further understand that, in some instances, the costs of arbitration could exceed the costs of litigation and the right to discovery may be more limited in arbitration than in court.

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### **9.3 Location**

The arbitration will take place in Los Angeles, California or a mutually agreed upon location.

### **9.4 Class Action Waiver**

The parties further agree that any arbitration shall be conducted in their individual capacities only and not as a class action or other representative action, and the parties expressly waive their right to file a class action or seek relief on a class basis. YOU AND BIRD AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. If any court or arbitrator determines that the class action waiver set forth in this paragraph is void or unenforceable for any reason or that an arbitration can proceed on a class basis, then the arbitration provision set forth above shall be deemed null and void in its entirety and the parties shall be deemed to have not agreed to arbitrate disputes.

### **9.5 Litigation of Intellectual Property and Small Claims Court Claims**

Notwithstanding the parties' decision to resolve all disputes through arbitration, either party may bring an action in state or federal court to protect its intellectual property rights ("intellectual property rights" means patents, copyrights, moral rights, trademarks, and trade secrets, but not privacy or publicity rights). Either party may also seek relief in a small claims court for disputes or claims within the scope of that court's jurisdiction.

#### **9.6 Right to Opt Out**

You have the right to opt-out and not be bound by the arbitration and class action waiver provisions set forth above by sending written notice of your decision to opt-out to the following address: Bird Rides, Inc., 406 Broadway, #369, Santa Monica, California 90401. The notice must be sent within 30 days of the effective date or your first use of the Service, whichever is later, otherwise you shall be bound to arbitrate disputes in accordance with the terms of those paragraphs. If you opt-out of these arbitration provisions, Bird also will not be bound by them.

#### **9.7 Changes to this Section**

Bird will provide prior written notice of any changes to this section. Changes will become effective only after prior written notice and will apply prospectively only to any claims arising after the notice period.

For any dispute not subject to arbitration you and Bird agree to submit to the personal and exclusive jurisdiction of and venue in the federal and state courts located in Los Angeles, California. You further agree to accept service of process by mail, and hereby waive any and all jurisdictional and venue defenses otherwise available.

**10. Waiver and Severability.** No waiver of any breach of any provision of this Agreement is a waiver of any other breach or of any other provision of this Agreement. The provisions of this Agreement are independent of and separable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part.

**11. Cumulative Remedies.** All rights and remedies granted under or referred to in this Agreement are cumulative and nonexclusive, and resort to one does not preclude the availability or applicability of another or to any other right or remedy provided by law.

**12. Final Agreement; Modification by Bird.** This Agreement contains the complete, final, and exclusive integrated agreement between the parties with respect to its subject matter. This Agreement supersedes all other prior agreements, written or oral, relating to such subject matter. At any time and from time to time, and without Rider's consent, Bird may unilaterally amend, modify, or change this Agreement, in its sole discretion. By continuing to use any of the Bird Services after any amendment, modification, or change, Rider has agreed to be bound by all such amendments, modifications, and changes. Rider must carefully review this Agreement on a regular basis to maintain awareness of all amendments, modifications, and changes. Whenever a change is made to this Agreement, Bird will post a notification on the Website. The pricing set forth on the Website supersedes all pricing set forth in this Agreement.

**13. Contract Interpretation.** The headings in this Agreement do not affect the interpretation of this Agreement. "Or" is not to be exclusive in its meaning. "Including" means "including, but not limited to."

Unless the context otherwise requires, words in the singular number or in the plural number shall each include the singular number or the plural number. All pronouns include the masculine, feminine, and neuter pronoun forms.

**14. Voluntary Execution of this Agreement.** This Agreement is entered into voluntarily, with consideration, and without any duress or undue influence on the part or behalf of Bird. Rider acknowledges that he/she (a) has read this Agreement; (b) understands the terms and consequences of this Agreement, including the releases it contains; and (c) is fully aware of the legal and binding effect of this Agreement.

**15. RELEASES; DISCLAIMERS; ASSUMPTION OF RISK.**

In exchange for Rider being allowed to use Bird Services, Vehicles, and other equipment or related information provided by Bird, Rider agrees to fully release, indemnify, and hold harmless Bird and all of its owners, managers, affiliates, employees, contractors, officers, directors, shareholders, agents, representatives, successors, assigns, and to the fullest extent permitted by law any Municipality (including its elected and appointed officials, officers, employees, agents, contractors, and volunteers) with which the operators have contracted with to provide Bird Services, and every sponsor of any of the Bird Services and all of the sponsor's owners, managers, affiliates, employees, contractors, officers, directors, shareholders, agents, representatives, successors, and assigns (collectively, the "Released Persons") from liability for all "Claims" arising out of or in any way related to Rider's use of the Bird Services, Vehicles, or related equipment, including, but not limited to, those Claims based on Released Persons' alleged negligence, breach of contract, and/or breach of express or implied warranty, except for Claims based on Released Persons' gross negligence or willful misconduct. Such releases are intended to be general and complete releases of all Claims.

"Claims" means, collectively, any and all claims, injuries, demands, liabilities, disputes, causes of action (including statutory, contract, negligence, or other tort theories), proceedings, obligations, debts, liens, fines, charges, penalties, contracts, promises, costs, expenses (including attorney's fees, whether incurred at trial, on appeal, or otherwise), damages (including but not limited to, for personal injury, wrongful death, property damage, and injury to rider or to third parties, consequential, compensatory, or punitive damages), or losses (whether known, unknown, asserted, unasserted, fixed, conditional, or contingent) that arise from or relate to (a) any of the Bird Services, including any of the Vehicles, placement, equipment, maintenance, related information, this agreement or (b) Rider's use of any of the foregoing.

To the fullest extent permitted by law, and as to Rider's use of any of the Bird Services, Vehicles, or related equipment, Bird and all other Released Persons disclaim all express and implied warranties, including warranties of merchantability and fitness for a particular purpose. All of the Bird Services, Vehicles, and related equipment are provided "as is" and "as available," and Rider relies on them at Rider's own risk.

Rider is aware that Rider's use of any of the Bird Services, Vehicles, and related equipment involves obvious and not-so-obvious risks, dangers, and hazards that may result in injury or death to Rider or

others and damage to property, and that such risks, dangers, and hazards cannot always be predicted or avoided. Risks, dangers, and hazards, include, but are not limited to:

- vehicles and other objects;
- pedestrians;
- traffic;
- Vehicle or component malfunction;
- road conditions;
- weather conditions;
- failure to follow applicable laws regarding use and/or operation of the Vehicle pursuant to Section 1.7;
- commission of any of the prohibited acts listed in Section 1.8;
- failure to perform the required safety check pursuant to Section 3.1;
- failure to wear a helmet where required by law; and
- negligent acts or omissions by Bird, any other Released Person, Rider, or third party.

Rider is solely and fully responsible for the safe operation of Vehicle at all times. Rider agrees that Vehicles are machines that may malfunction, even if the Vehicle is properly maintained and that such malfunction may cause injury. Rider assumes full and complete responsibility for all related risks, dangers, and hazards.

To the fullest extent permitted by law, this release and hold harmless agreement includes any and all Claims related to or arising from the sole or partial negligence of Bird, the Released Parties, any Municipality or any other party. Rider hereby expressly waives any claims against the Released Parties, any Municipality or any other party which Rider does not know or suspect to exist in his or her favor at the time of use of Bird Services, and expressly waives Rider's rights under any statutes that purport to preserve Rider's unknown claims.

#### **RIDER ACCEPTANCE OF AGREEMENT**

I certify that I have read and expressly agree to the terms and conditions of Section 15 Releases; Disclaimers; Assumption of Risk, and I acknowledge that this section limits my legal rights and remedies. I intend my assent to this Agreement to be a complete and unconditional release of all liability to the greatest extent permitted by law. I represent and certify that I am familiar with the operation of the Vehicle, and am reasonably competent and physically fit to ride the Vehicle.

I certify that I am the Rider, I am 18 years old or over, I will wear a helmet where required by law, I will not ride a Bird with another occupant, I will obey all traffic laws, I will ride at my own risk, and I have read and expressly agree to the terms and conditions set forth in this Agreement.