OPERATING AGREEMENT FOR IMPLEMENTATION OF A SHARED ACTIVE TRANSPORTATION OPERATION BETWEEN BIRD RIDES, INC. AND THE CURATORS OF THE UNIVERSITY OF MISSOURI

THIS OPERATING AGREEMENT (hereinafter "Agreement") is by and between The Curators of the University of Missouri on behalf of University of Missouri (hereinafter "MU"), a public corporation of the State of Missouri whose address is 227 University Hall, Columbia, Missouri 65211, and Bird Rides, Inc., (hereinafter "Company"), a corporation with the authority to transact business within the State of Missouri and whose registered agent address is 120 South Central Avenue, Clayton, Missouri 63105, and is entered into on the date of the last signatory below (hereinafter "Effective Date"). MU and Company are each individually referred to herein as "Party" and collectively as the "Parties."

WITNESSETH:

WHEREAS, Company wishes to implement its Shared Active Transportation Operation within the MU campus; and

WHEREAS, MU wishes to allow for a low-cost transportation option for MU's students, faculty, staff, and visitors including opportunities for transportation, recreation, and fitness;

NOW, THEREFORE, in consideration of mutual covenants set out in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the Parties agree as follows:

Section 1. Scope of Agreement. The purpose of this Agreement with the Curators of the University of Missouri on behalf of the University of Missouri is to establish interim rules and regulations governing Company's Shared Active Transportation Operation within the University of Missouri - Columbia (MU) to ensure that such Shared Active Transportation Operation is managed in a manner consistent with the safety and well-being of pedestrians, bicyclists, motorists, and other users of MU's right-of-way.

Section 2. Term. This Agreement, unless earlier terminated as provided for herein, shall commence on the Effective Date and shall expire November 20, 2019.

Section 3. Definitions.

(a) "*Company*" shall mean the entity owning the Shared Active Transportation, its agents, contractors (including independent contractors) and every individual or entity retained by the Company to gather, monitor, or maintain Company's Small Vehicles.

(b) *"Fleet"* shall mean all of Company's small vehicles in operation within MU's jurisdictional 00226613-1

boundaries at any one time.

- (c) *"Frontage Zone"* shall mean the area adjacent to the property line where transitions between public sidewalk and the space within building occurs.
- (d) *"Furnishing Zone"* shall mean that portion of the sidewalk used for street trees, landscaping, transit stops, street lights, and site furnishing.
- (e) *"No Parking Zone"* shall mean a designated area or areas in which Small Vehicles may not be left at the conclusion of usage event.
- (f) *"No Ride Zone"* shall mean a designated area or areas in which Small Vehicles may not be operated, whether through signage or control of the Small Vehicle via GPS positioning.
- (g) *"Parking Zone"* shall mean a designated area or areas in which Small Vehicles are required to be left at the conclusion of the usage event.
- (h) *"Rider"* shall mean any person using the Small Vehicle.
- (i) *"Shared Active Transportation"* shall mean a dockless network or system of Small Vehicles, placed in public right-of-way and for rent in short-term increments, that provides increased mobility options over short distances.
- (j) *"Shared Active Transportation Operation"* shall mean Company's Shared Active Transportation as well as any incidental use or patronage thereof.
- (k) "*Small Vehicle*" or "*Small Vehicles*" shall mean dockless scooters, e-scooters, skateboards, and other small wheeled vehicles designed specifically for shared-use and deployed by Company.
- (1) *"Throughway Zone"* shall mean the portion of the sidewalk for pedestrian travel along the street.

Section 4. Company Responsibilities.

4.1. **Contract**. Company agrees to enter into this Agreement, together with any other requirements necessary to conduct Shared Active Transportation at MU. Company shall remain in good standing with MU through the course of the Company's Shared Active Transportation Operation in at MU.

4.2. **Contact Information for Public.** Company shall provide easily visible contact 00226613-1

information, including a twenty-four (24) hour toll free phone number and email address on each Small Vehicle for use by members of the public to report safety concerns, complaints, or to ask questions.

- 4.3. **Contact Information for MU.** Company shall also provide MU with contact information of a locally-based manager/operations staff with decision making power who can respond to MU requests, emergencies, and other issues 24 hours a day seven (7) days a week.
- 4.4. **Time for corrective actions.** Company shall respond to public, Rider, or MU requests for rebalancing, reports of incorrectly parked Small Vehicles, or reports of unsafe/inoperable Small Vehicles by relocating, re-parking, or removing Small Vehicles completely within two (2) hours of receiving written or oral notice. MU representatives may relocate, re-park, or adjust incorrectly parked or unsafe/inoperable Small Vehicles without providing notice to Company.

In the event a Small Vehicle is not relocated, re-parked, or removed within the timeframe specified herein, or any Small Vehicle is parked in one location for more than seventy-two (72) hours without moving, such Small Vehicle may be removed by MU personnel and taken to an MU facility for storage at the expense of the Company. Notwithstanding the foregoing, MU reserves the right to impound Small Vehicles that may impact with the health, safety, or welfare of MU students, faculty, staff and visitors or is placed or operated in a manner that violates the terms of this Agreement without notice to Company and at the expense of the Company. MU shall not be responsible for any damage to any Small Vehicle impounded or taken into storage and MU is under no obligation to safe-keep any such vehicles.

- 4.5 Fleet size. Company shall begin operations within MU's jurisdictional boundaries with a Fleet of three hundred (300) Small Vehicles. During the term of this Agreement, Company may not reduce the size of its Fleet below one hundred fifty (150) Small Vehicles without written notification to MU, provided at least seven (7) days before the reduction is to occur. Company shall not increase the size of its Fleet beyond five hundred (500) Small Vehicles without MU's approval pursuant to Section 5 of this Agreement. However, MU may deny a request to increase the Fleet size as described herein if in its sole discretion it determines that an increase would not be in the best interest of the public health, safety, or welfare of MU's students, faculty, staff or visitors.
- 4.6 **Consideration.** The Company shall remit a ridership fee of Two Dollars (\$2.00) for each Small Vehicle in operation each day to MU to defray various costs incurred by MU, such fees shall be remitted as follows:

\$2.00 per Small Vehicle per day with the total amount paid quarterly. Each payment shall be remitted to MU by no later than thirty (30) days after the end of a quarter. Quarters shall be considered three month intervals within a standard calendar year.

4.7 **Parking Regulations.** Company acknowledges and agrees that Company is solely responsible for its Small Vehicles and ensuring they are in compliance with the restrictions on parking of Small Vehicles in Parking Zones as designated by MU. MU reserves the right to update the list of Parking Zones without advance notice and the Company is

responsible for incorporating this updates in their program within three (3) business days after notification by MU. The following general guidelines are provided for reference only:

- i. Small Vehicles shall not be parked in the street.
- Small Vehicles shall be parked in a manner that does not block the Throughway Zone of the sidewalk, any curb ramp, any ADA ramp or access points, benches, fire hydrant, call box, or other emergency facility, or utility pole or box. At all times, the Small Vehicles shall be parked in a manner and location which ensures the Throughway Zone meets minimum ADA accessibility guidelines.
- iii. Small Vehicles shall not be parked in such a manner as to impede or interfere with access to or from any building or access to or from off-street parking lots or garages.
- iv. Small Vehicles shall not be parked in such a manner as to impede or interfere with the reasonable use of any bicycle rack or news rack.
- v. Small Vehicles shall not be parked in the Furnishing Zone directly adjacent to or within the following areas such that access is impeded:
 - a. Loading zones;
 - b. Disabled parking zones;
 - c. Street furnishings that requires pedestrian access (for example- benches, parking pay stations, bus shelters, transit information signs, etc.);
 - d. Curb ramps;
 - e. Entryways;
 - f. Driveways; and
 - g. Portions of transit zones, including bus stops, shelters, passenger waiting areas and bus layover and staging zones, which would inhibit access.

- 4.8 **Safety Equipment.** Company shall establish a program to offer helmets to riders at a discounted price, including free. Such program may be directly from the Company or delivered in conjunction with existing MU stores.
- 4.9 **Monitors.** Company shall at its own expense initiate a test program at MU within thirty (30) days of the Effective Date to run throughout the duration of this Agreement that enlists employees, contractors, volunteers, or any other person Company deems appropriate to monitor Small Vehicles and ensure compliance on behalf of Company with the Parking Regulations established in Section 4 of this Agreement.
- 4.10 **Notice.** Company shall provide detailed notice to all Riders by means of signage and through a mobile or web application that:
 - i. Small Vehicles may not be operated in University owned parking structures.
 - ii. Small Vehicles are to be ridden to the right of street lanes in the same direction as traffic.
 - iii. Small Vehicles should offer the right-of-way to bicycles on bike lanes.
 - iv. Riders shall not ride on sidewalks less than 48" wide. Rides must follow applicable rules of the road including observance of stop signs, stop lights and yield signs.
 - v. Riders must wear helmets when riding Small Vehicles.
 - vi. Company shall inform riders of the Safety Equipment program as required under 4;.8.
 - vii. Riders are limited to one person on a Small Vehicle at a time, unless otherwise outfitted for multiple riders.
 - viii. Riders may not tow an external wagon/sled or similar device while riding a Small Vehicle.
 - ix. Rides may not grab onto another motorized vehicle while a Small Vehicle is in use.
 - x. Riders may not operate a Small Vehicle in inclement weather including rain and snow, nor after inclement weather events (other than rain) prior to paved surfaces being fully restored to pre-weather conditions.
 - xi. Riders must dismount and walk scooters on sidewalks less than 48" swide or sidewalks with significant pedestrian traffic.
 - xii. Riders must park Small Vehicles in accordance with the parking regulations in section 4.
 - xiii. Riders are required to take a photo of how the small vehicle has been parked at the end of a ride.
 - xiv. Riders must remain alert to their surroundings and free from distractions such as use of headphones or mobile devices.
 - xv. Riding responsibly is required.
 - xvi. Rider cannot ride a Small Vehicle while intoxicated.
 - xvii. Riders are at all times to operate the device in a manner consistent with MU's regulations, rules, policies and procedures.
 - xviii. Small Vehicles may not be operated in a MU-declared No Ride Zone.
 - xix. Small Vehicles may not be parked in a MU-declared No Parking Zone
- 4.11 **Data Sharing.** Company agrees to provide data to MU related to the utilization of Small

Vehicles. Company will provide real-time data feeds via API, monthly reports, and upon request, to MU displaying trip information including but not limited to the following: Aggregated reports on system use, compliance, operations- including but not limited to parking complaints, crashes, damaged, or lost Small Vehicles, utilization rates, total trips by day of week and time of day, origins & destination information for all trips, trips per Small Vehicle by day of week and time of day, average trip distance, parking compliance at designated zones and at transit and bus stops, incidents of Small Vehicle theft and vandalism, Small Vehicle maintenance reports, payment method information. Anonymized/de-identified demographic data, such as age cohort, gender, general trip purpose, etc., collected by Company shall be provided to MU on a monthly basis, or upon request. Company must provide MU with individual rider information upon request from a senior administrator. Any data shared by Company with MU will comply with Company's terms of service and privacy agreement with Riders and will not reveal proprietary information that puts at risk Company or its employees, agents, or Riders.

Company will be expected to comply with all data sharing requirements in order to remain compliant with this Agreement. MU in its sole discretion may determine if Company has failed to comply with the data sharing requirements. Company's failure to comply may result in Default or Termination of this Agreement as described herein.

- 4.12 **Speed.** Small Vehicles which do not rely solely on human propulsion and are equipped with an electric motor that is capable of propelling the device shall be governed at a speed not to exceed fifteen (15) miles per hour on a paved level surface.
- 4.13 Education and Outreach. Company shall provide education to Small Vehicle Riders on MU's existing rules and regulations, safe and courteous riding, and proper parking. Company shall provide this educational material to MU for review prior to disseminating the information to Riders. Company shall also provide MU-specific information through Company's mobile or web application that explains the terms of service, user instructions, privacy policies, fees, penalties, unexpected charges, and local management and operations contact information.
- 4.14 **Daily Removal.** Company shall halt its Shared Active Transportation Operation completely daily by dusk or 8:00 p.m.(CST), whichever is later. Small Vehicles shall remain inactive until dawn (CST) of the following day.
- 4.15 **Inclement Weather.** On days where inclement weather (rain or snow) is anticipated, Company will halt its Shared Active Transportation Operation completely. On days where snow is anticipated, Company shall remove its Small Vehicles from MU rightsof-way. Company agrees to hold MU harmless for damage to Small Vehicles caused by MU's snow removal operations and for any damage caused to MU vehicles by improper location and removal of Small Vehicles.
- 4.16 **Environment.** Company shall embrace transparency in recycling efforts and recycle or otherwise dispose of Small Vehicles and Small Vehicle parts in an environmentally-friendly manner at end of life cycle.

Section 5. MU's Obligations.

5.1 Use of Right-of-Way. MU agrees to allow Company, its representatives, employees, consultants and contractors, non-exclusive use of those portions of the public right-of way reasonably necessary for operation of Company's Shared Active Transportation Operation, but subject to the limitations imposed by the University of Missouri System Collected Rules and Regulations, MU's Business Policy and Procedure Manual and the terms of this Agreement. The grant of this use shall not constitute a conveyance of any interest in the public right of way.

Notwithstanding anything herein, the Parties agree that MU shall have the right to work within and restrict access to portions of the right-of-way, whether by its own forces or contracted forces.

5.2 **Approval.** MU may, at its sole discretion, approve and permit reasonable increases to Company's Fleet based on utilization of the Fleet at three (3) or more rides per day until Fleet Size reaches five hundred (500) Small Vehicles. Such increase requests will not be unreasonably denied. MU may deny any increase for more than 500 Small Vehicles if MU in its sole discretion believes that an increase is not in the best interest of the safety, health, or welfare of its residents or visitors.

Section 6. Signage. Company agrees all signage on Small Vehicles shall related to the Company only. No advertising of any other product or service shall be allowed. A violation of this Section shall be cause for MU to terminate this Agreement if said violation is not corrected within twenty-four (24) hours' notice to Company. The determination that there has been a violation of these signage guidelines shall be solely at MU's discretion.

Section 7. Default or Termination.

- 7.1 Except where specifically provided otherwise in this Agreement, in the event the Company shall default in any of the covenants, agreements, commitments, or conditions herein, or if any of the conditions set forth herein shall occur, and any such default shall continue unremedied for a period of three (3) business days after written notice thereof to Company, MU may, at its option and in addition to all other rights and remedies which it may have at law or equity against Company, including expressly the specific enforcement hereof and the enforcement of MU rules, regulations and policies, have the cumulative right to immediately terminate this contract and all rights of Company under this Agreement.
- 7.2 Prior to the conclusion of the Term of this Agreement, MU may establish a Program of formalized regulations for Shared Active Transport Operation. If such Program is established prior to the conclusion of the Term, MU shall have the right to terminate this Agreement.

- 7.3 Notwithstanding anything to the contrary herein, MU may suspend or terminate this Agreement at any time if MU finds, in its sole discretion that Company's Shared Active Transportation Operation is not in the best interest of the health, safety, or welfare of MU's faculty, staff, students and visitors.
- 7.4 Company's obligation with regards to indemnification as provided in Section 12 of this Agreement shall survive the expiration or termination of this Agreement with regards to any claims arising during such time as this Agreement was in effect.

Section 8. Removal of Small Vehicles. Upon instances of Default or Termination under Section 7, Company shall remove its Small Vehicles from the right-of- way within two (2) days of being notified of termination by MU. If Company fails to remove the Small Vehicles upon due notice, any remaining Small Vehicles may be removed by MU at Company's expense. Company shall not be entitled to damages for the removal of Small Vehicles by MU. Company agrees to hold the MU harmless for any damage to Small Vehicles caused by MU's removal and or storage of such vehicles.

Section 9. Maintenance of Small Vehicles. Company shall maintain its Small Vehicles in a good working manner included a documented preventive maintenance program at a frequency no greater than 31 days. Company must make available to MU, on request, the names and contract information for the persons assigned maintenance duties. In the event a safety or maintenance issue is reported for a specific Small Vehicle, that Small Vehicle shall be made unavailable to users and shall be removed within the timeframes provided herein. Any inoperable or unsafe Small Vehicle shall be repaired before it is placed back in service. MU shall not have any obligations with regards to the maintenance of Company's Small Vehicles.

Section 10. Impounding. Company agrees to the following penalties and procedure for those Small Vehicles subject to impounding as described herein. MU may remove a Small Vehicle that impacts with the health, safety, or welfare of MU faculty, staff, students or visitors and may store the impounded Small Vehicles at a location convenient for MU. MU may, in its sole discretion, provide photographic or written documentation to Company of the violation. However, such documentation is not required and shall not be a condition precedent before MU may enforce the terms herein. MU may assess a penalty of \$100 for each Small Vehicle it impounds. MU shall notify the Company of the impounded Small Vehicles and their location. In such instances, Company shall retrieve Small Vehicles from MU within twenty-four (24) hours of receiving notice. Company will be responsible for paying a performance bond for each Small Vehicle deployed at MU as further described herein. Company is responsible for paying storage costs of Fifty Dollars (\$50) per day, penalties, and all other expenses related to the impounding before having the Small Vehicles returned. If Company does not retrieve the Small Vehicles within (24) hours of receiving notice, MU may draw upon the performance bond to recover costs to MU and may dispose of Small Vehicles at Company's expense within seventytwo (72) hours of providing notice. MU may invoice the Company for the cost of disposal and Company agrees to pay the invoice within ten (10) days of receipt.

Section 11. Performance Bond. **Section 11. Performance Bond**. Company will be responsible for providing a performance bond, or similar bond that MU can draw upon as needed for costs

associated with auditing, removing, and storing impounded Small Vehicles. The Performance Bond shall be based on the total count of Small Vehicle deployed in at MU as of the Effective Date. Evidence of Performance Bond will be due once the contract is executed. Failure to pay the Performance Bond amount may result in Default or Termination as described herein.

Section 12. Insurance. Company agrees to maintain for the duration of this Agreement, on a primary basis and at its sole expense, the following insurance coverages, limits, including endorsements described herein. The requirements contained herein, as well as MU's review or acceptance of insurance maintained by Company is not intended to, and shall not in any manner limit or qualify the liabilities or obligations assumed by Company under the Agreement. Coverage to be provided as follows by a carrier with A.M. Best minimum rating of A- VIII:

- i. Workers' Compensation & Employers Liability. Company shall maintain Workers' Compensation in accordance with Missouri State Statutes or provide evidence of monopolistic state coverage. Employers Liability with the following limits: \$1,000,000 each accident, disease each employee and disease policy limit.
- ii. Commercial General Liability. Company shall maintain Commercial General Liability at a limit of not less than \$2,000,000 Each Occurrence, \$3,000,000 Annual Aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Cross Liability.
- III. Business Auto Liability. Company shall maintain Business Automobile Liability at a limit not less than \$2,000,000 Each Occurrence. Coverage shall include liability for Owned, Non-Owned & Hired automobiles. In the event Company does not own automobiles, Company agrees to maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.
- Company may satisfy the minimum liability limits required for Commercial General Liability or Business Auto Liability under an Umbrella or Excess Liability policy. There is no minimum per occurrence limit of liability under the Umbrella or Excess Liability; however, the Annual Aggregate limit shall not be less than the highest "Each Occurrence" limit for either Commercial General Liability or Business Auto Liability. Company agrees to endorse the MU as an Additional Insured on the Umbrella or Excess Liability, unless the Certificate of Insurance state the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.
- v. The Curators of the University of Missouri are to be Additional Insured with respect to the terms to which these insurance requirements pertain. A certificate of insurance evidencing all coverage required is to be provided at least 10 days prior to the Effective Date of this Agreement. Company is required to maintain coverages as stated and required to notify MU of a Carrier Change or cancellation within two (2) business days. A copy of the policy must be included with this agreement.
- vi. The Parties hereto understand and agree that the MU is relying on, and does not waive or intend to waive by any provision of this Agreement, any monetary

limitations or any other rights, immunities, and protections provided by the State of Missouri, as from time to time amended, or otherwise available to the MU, or its officials or employees.

- Vii. Failure to maintain the required insurance in force may be cause for termination of the Agreement. In the event Company fails to maintain and keep in force the required insurance or to obtain coverage from its subcontractors, the MU shall have the right to cancel and terminate the Agreement without notice.
- viii. The insurance required by the provisions of this article is required in the public interest and the MU does not assume any liability for acts of the Company and/or their employees and/or their subcontractors in the performance of this Agreement.

Section 13. Miscellaneous.

- 13.1. Hold Harmless and Indemnification Agreement. To the fullest extent not prohibited by law, Company shall indemnify and hold harmless MU, its directors, officers, agents, and employees from and against all claims, damages, losses, and expenses (including but not limited to attorney's fees) arising by reason of any act or failure to act, negligent or otherwise of Company, of any subcontractors (meaning anyone including but not limited to contractors having a contract with Company) or a subcontractors for part of the services), of anyone directly or indirectly employed by Company or by any subcontractors, or anyone for whose acts Company or its subcontractors may be liable, in connection with manufacturing Small Vehicles or providing Shared Active Transportation services. This provision does not, however, require Company to indemnify, hold harmless, or defend MU from its own negligence.
- 13.2. **No Waiver of Immunities.** In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either Party's rights or defenses with regard to each Party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitution or laws.
- 13.3. **Governing Law and Venue.** This Agreement shall be governed, interpreted, and enforced in accordance with the laws of the State of Missouri and/or the laws of the United States, as applicable. The venue for all litigation arising out of, or relating to this Contract, shall be in Boone County, Missouri. The Parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Missouri.
- 13.4. **Unauthorized Aliens Prohibited.** Company shall comply with Missouri Revised Statute Section 285.530 in that Company shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the state of Missouri. As a condition for the award of this Agreement, Company shall by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. Company shall sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. Company shall require all subcontractors to observe the

requirements of this section and shall obtain a Work Authorization Affidavit from each subcontractors performing any of the contracted services.

- 13.5. **General Laws.** Company shall comply with all federal, state and local laws, rules, regulations and ordinances.
- 13.6. **Notices.** Any notice, demand, request, or communication required or authorized by this Agreement, unless otherwise specified herein, shall be delivered either by hand, facsimile, overnight courier or mailed by certified mail, return receipt request, with postage prepaid to:

IF TO MU:

Campus Operations 305 Jesse Hall Columbia, MO 65211

With Copy To: Division of Finance 319 Jesse Hall Columbia, MO 65211

IF TO COMPANY:

406 Broadway, #369 Santa Monica, CA 90401 Attn: University Partnerships

Any notice required by this Agreement to be given in writing, or that either MU or Company wishes to give to the other in writing, shall be signed by or on behalf of the Party giving notice. The notice shall be deemed to have been completed when sent by certified or registered mail to the other Party at the address set forth herein, or delivered in person to said Party or their authorized representative.

- 13.7. **No Third-Party Beneficiary.** No provision of this Agreement is intended to nor shall it in any way inure to the benefit of any customer, property owner or any other third party, so as to constitute any such person a third-party beneficiary under this Agreement.
- 13.8. **Amendment.** No amendment, addition to, or modification of any provision hereof shall be binding upon the Parties, and neither Party shall be deemed to have waived any provision or any remedy available to it, unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the

applicable Party or Parties.

13.9. Entire Agreement. This Agreement represents the entire and integrated agreement between the Parties relative to the contracted services herein. All previous or contemporaneous contracts, representations, promises and conditions relating to the contracted services herein are superseded.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized representatives as of the date of the last signatory to this Agreement.

The Curators of the University of Missouri

By: as Casey E Forbis Senior Business Services Consultant

Date: 5/1/2019

Bird Rides, Inc.

By:____ Austin Marshburn

Date: _____4/30/2019

Approved as to Legal Form <u>MVZ</u> Mark Van Zandt

4/30/19