

Thrive Allen County Bike Share Release of Liability Waiver

TERMS AND CONDITIONS, RIDER'S RELEASE OF LIABILITY, ASSUMPTION OF RISK, INDEMNITY AND HOLD HARMLESS

Rider should CAREFULLY READ all terms and conditions before entering this Agreement

1. PURPOSE OF AGREEMENT

This document constitutes the entire Agreement ("Agreement") between (a) RIDER, the person agreeing to use the bike ("Bike"), and (b) Thrive Allen County ("OPERATOR").

WARNING: By entering into this Agreement, RIDER is permitted certain limited use of bikes provided by OPERATOR, but in consideration of the rental and use of the Bike, RIDER also WAIVES and RELEASES certain rights and claims, and ACCEPTS certain responsibilities.

2. GENERAL USE OF BIKE: Agreements and restrictions

2.1 GENERAL: OPERATOR expressly agrees to let, and the RIDER expressly agrees to take on, use of the bike subject to the terms and conditions set out herein. OPERATOR and the RIDER are the only parties to the Agreement. The RIDER is the sole lessee and is solely responsible for compliance with all terms and conditions contained herein.

2.2 RIDER is 12 or older: RIDER represents to OPERATOR that RIDER is at least 12 years old. If RIDER intentionally or unintentionally misrepresents RIDER'S age, RIDER accepts full responsibility and is liable for any consequences, claims, demand, causes of action, losses, liabilities, damages, injuries, costs and expenses, penalties, attorney fees, judgements, suits or disbursements of any kind or nature whatsoever related to any such intentional or unintentional misrepresentation.

2.3 RIDER is a competent bike operator. RIDER represents and certifies that he/she is physically fit to ride the Bike and also that RIDER is familiar with the operation of the Bike and is reasonably competent to ride the Bike.

2.4 Bike is exclusive property of OPERATOR: RIDER agrees that the Bike and any equipment attached thereto, at all times, remains exclusive property of OPERATOR. RIDER will not make any type of modification to the Bike at any time. The serial number is located on the Bike frame.

2.5 RIDER must follow rules of use and/or operation of bike: RIDER agrees to follow all laws pertaining to the use, riding and/or operation of the Bike, including all state and local laws and the rules and regulations pertaining to bicycles in designated area. RIDER certifies that he/she is familiar with the laws, rules and regulations pertaining to the use, riding and/or operating of the Bike in designated area before using the Bike. RIDER acknowledges and understands that OPERATOR does not provide training and regarding the use or operation of the Bike.

2.6 RIDER acknowledges that helmets are not available from OPERATOR, but in any event are strongly recommended: RIDER agrees that, for and in consideration of use of the Bike, OPERATOR, its officers, bike share partners, agencies, departments, agents and employees shall not be responsible or liable for damages for any physical injuries sustained by RIDER as a result of RIDERS failure to wear a helmet or to wear a properly fitting or fastened helmet.

2.7 RIDER must inspect Bike before use, riding and/or operating of Bike. RIDER agrees to ensure that the Bike is in proper working order BEFORE using the Bike and while within 20 feet of the OPERATOR Bike Station. RIDER agrees to examine and test the Bike's operating parts including but not limited to: steering apparatus, tires and chain, and pedals, before using/or operating the Bike. This is not intended to be an exhaustive list. RIDER agrees to adjust bike seat to fit physique. RIDER agrees, before using and/or operating the Bike, to contact and notify OPERATOR of any and all repairs that the Bike may need. If inspection and initial testing of the Bike indicates any defect, damage or failure to operate as a normal bike, RIDER shall not use and/or operate the Bike.

2.8 RIDER must not use, ride and/or operate Bike if impaired: RIDER agrees that he/she will not, under any circumstances, use, ride and/or operate the Bike if he/she has consumed, ingested and/or used alcohol or drugs and/or has a blood alcohol concentration above the jurisdictional limit prescribed.

2.9 RIDER must not use, ride and/or operate Bike in inclement weather. RIDER agrees that he/she will not, under any circumstances, use, ride and/or operate the Bike in inclement or dangerous weather, including but not limited to severe lightning storms, tornados, icy conditions, fog and/or heavy rain, hail or snowfall.

2.10 Bike is intended for only limited types of use: RIDER agrees that he/she will not use the Bike for racing, stunt or trick riding. RIDER agrees that he/she will not operate and/or use the Bike through water, or in any other location that is prohibited, illegal and/or a nuisance to others. RIDER agrees that he/she will not use the Bike for hire or reward, nor use it in violation of any law, ordinance or regulation.

2.11 Bike must not be used by or with others: RIDER agrees that he/she will not carry and/or transport any person or passengers on the Bike under any circumstances. RIDER shall not add any kind of seat or modification to allow someone to ride on any part of the Bike.

2.12 RIDER must not push or pull objects with the Bike: RIDER agrees that he/she will not pull or push anything with the Bike as this may create

an unsafe condition and affect RIDER's balance and steering control.

2.13 RIDER must return Bike to Bike Station: RIDER agrees that he/she must return Bike to the Bike Station within permitted time of use. RIDER will be responsible for any costs for recovery and return of Bikes left at locations other than Bike Station.

2.14 RIDER must report stolen or lost Bike: RIDER agrees that he/she must immediately report to OPERATOR and Police a stolen or lost Bike. 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, judgements, suits, or disbursements of any kind or nature whatsoever related to a stolen or lost Bike.

2.15 RIDER responsibility related to Bike use and damage: RIDER agrees to return the Bike to OPERATOR in the same condition received, ordinary wear and tear expected. RIDER agrees to ensure that the Bike is always locked and secured when unattended. Bikes may be equipped with locks, however, OPERATOR will not be responsible for any lost, stolen, destroyed, and/or damaged Bikes under any circumstances, regardless of whether Bike locks were used, broken and/or not properly functioning. RIDER agrees to pay for any damage, including replacement parts, to and/or destruction or loss of the Bike. (RIDER agrees to pay for any loss even though the damage was caused by someone else.) All repairs needed as a result of any such loss, destruction or damage, will be performed at the normal labor rates. In the event the Bike is lost, destroyed or damaged beyond repair, regardless of fault or cause, RIDER agrees to pay OPERATOR the full replacement value of the equipment.

2.16 RIDER agrees to conditions regarding payment for unreturned, damaged, lost or stolen Bike: If RIDER fails to return Bike within permitted time of use, OPERATOR reserves the rights to cancel RIDER's use of the system.

2.17 RIDER responsibility for acts of destruction; recovery of costs; prosecution: RIDER agrees that any willful or negligent act of destruction of the Bike and/or OPERATOR property will result in prosecution to the fullest extent of the law and OPERATOR will seek the recovery of all costs and administration charges from RIDER, to include attorney's fees.

2.18 RIDER responsibility for fines, fees, tickets: RIDER agrees that he/she is solely responsible and will not hold OPERATOR and/or OPERATOR parties liable for any moving violation, fines, and/or illegal activated incurred by RIDER while using, riding and/or operating the Bike. RIDER agrees to pay OPERATOR on demand all fines, and court costs, including administrative fees for parking, bus lane, traffic or other legal moving violations assessed against the bike, the RIDER or OPERATOR during the rental or use of the Bike by RIDER. RIDER agrees to pay OPERATOR for any costs, expenses and/or attorneys fees for processing, pursuing and/or defending any such claims.

2.19 RIDER agrees to report any accidents and/or incidents: RIDER agrees that in the event of an accident and/or incident, RIDER will report facts to OPERATOR in writing. This shall occur no later than the next day following of any such incident and/or accident.

2.20 No insurance provided to RIDER under this Agreement: RIDER acknowledges and understands that OPERATOR does not provide any insurance to cover property damage, personal injury, injury to others, damages, expenses, penalties, losses, costs, or any type of payment to coverage of any kind of nature whatsoever.

2.21 RIDER agrees that the bike is expected to be returned within the identified rental period. Keeping the bike beyond the agreed period may cause OPERATOR to report the Bike as stolen or missing.

3. WAIVER AND/OR LIMITATION OF LIABILITY

3.1 For and in consideration of the use of the Bike, RIDER specifically forever releases and relinquishes and discharges OPERATOR and each and every representative, agent, servant, employee, officer or director of OPERATOR, and any other persons, firms, insurers or other entities including, but not limited to, the manufacturers, sellers, and/or donors of the Bike (collectively referred to as the "RELEASED PARTIES"); from any and all claims, liability, cause(s) of action and/or damages, including for personal injury, property damage or wrongful death, injury to others and/or operation of the Bike and/or the OPERATOR program, including any and all claims, liability, cause(s) of action and/or damages related to the sole or partial negligence of OPERATOR and/or the negligence of others. By this agreement any such claims, rights and causes of action that RIDER (and RIDER'S legal guardian(s), if applicable) may have hereby waived, released and relinquished, and RIDER (and guardian(s), if applicable) does (do) so on behalf of RIDER'S heirs, executors, administrators and assigns.

3.2 RIDER expressly agrees to release and hold harmless the RELEASED PARTIES from all liability for any such property loss of damage, personal injury or loss of life whether caused by the sole or partial negligence of the RELEASED PARTIES and/or the negligence of others, whether based upon breach of contract, breach of warranty, active or passive negligence and any other legal theory, in consideration for using and/or operating the Bike.

3.3 RIDER voluntarily agrees, understands and recognizes that RIDER will have no right to make a claim or file a lawsuit against the RELEASED PARTIES arising out of this Agreement, the maintenance, assembly, design, use and/or operation of the Bike; the OPERATOR program in consideration for using and/or operating the Bike.

4. ACCEPTANCE OF RESPONSIBILITY AND ASSUMPTION OF RISKS

4.1 RIDER expressly acknowledges and accepts that RIDER rides at his/her own Risk. RIDER accepts the Bike for use, exercising his/her own free choice to participate voluntarily in this activity. RIDER promises to take due care during such participation, use and/or operation of the Bike. RIDER understands that bicycling is a hazardous activity. RIDER acknowledges, understands and assumes all risks relating to the maintenance,

design, use and/or the operation of the Bike and understands that bicycling involves risks to the RIDER and others including bodily injury, partial or total disability, paralysis, and death, and damages which may arise there from and that RIDER has full knowledge of said risks and dangers. RIDER understands that bicycle protective gear such as helmets and gloves are not provided but are recommended. RIDER understands that such gear, even when used, does not eliminate the risk of injury in the event of an accident.

4.2 RIDER acknowledges that there may be risks and dangers not known to RIDER or not reasonably foreseeable at this time related to bicycling, maintenance, design, use and/or operation of the Bike, and RIDER assumes responsibility for any and all such risks and dangers. RIDER acknowledges and understands that risks and dangers related to the maintenance, design, use and/or operation of the Bike may be caused by the negligence of the RIDER or the negligence of others, including OPERATOR and/or OPERATOR Parties. RIDER assumes the responsibility for all such risks and dangers.

4.3 RIDER freely and expressly assumes and accepts any risks and all injury to RIDER, RIDER'S personal property, and any others injured or damages as a result of the maintenance, design, and use and/or operation of the Bike. RIDER acknowledges, understands and agrees that all of the risks and dangers related to the maintenance, design, use and/or operation of the Bike including those caused by the negligence of others, are included within the waiver, release and relinquishment of liability described in paragraph Three (3) of the Agreement.

5. INDEMNIFICATION

In consideration for the use of the Bike, RIDER agrees to indemnify, defend, protect and hold harmless OPERATOR and/or OPERATOR Parties against any and all claims, demands, causes of actions, losses, liabilities, damages, injuries, costs and expenses, penalties, attorney's fees, judgments, suits, including claims brought by a third party, or disbursement of any kind or nature whatsoever related to, resulting from, regarding and/or referencing this Agreement, the maintenance, design, use and/or operation of the Bike; the OPERATOR program; even where caused in whole or in part by OPERATOR's negligence, and/or the negligence of others, whether presently known or unknown.

6. NO WARRANTY

OPERATOR itself provides no warranties express or implied. There is no warranty of merchantability or fitness for a particular purpose, and the Bike and OPERATOR equipment are accepted "AS IS".

7. JURISDICTION: Governing Law for any Proceedings

RIDER expressly agrees that any proceeding, dispute, claim or controversy arising out of, resulting from and/or relating to this Agreement, the maintenance, design, use and/or operation of the Bike or the OPERATOR program shall be construed in accordance with and governed in all respects by the laws of the State of Kansas, without application or regard to choice of law provision. RIDER expressly agrees to submit to the exclusive jurisdiction of the courts presiding in designated area. OPERATOR may assign its right and duties under this Agreement to any party at any time without notice to RIDER.

8. TERMINATION OF AGREEMENT

OPERATOR may terminate this Agreement at any time, with or without cause, legal process, or notice to the RIDER. RIDER waives all claims, causes of actions, expenses, and/or damages connected and/or related to any such termination.

9. NO WAIVER

OPERATOR's failure to insist upon or enforce strict performance of any provision of this Agreement shall not be construed as a waiver of any provision or right. Neither the course of conduct between the parties nor trade practice shall act to modify any part of this Agreement. No waiver by OPERATOR shall be construed as a waiver of any proceeding or succeeding breach of any provision in this Agreement.

10. SEVERABILITY

Each provision of this Agreement, including an exclusions or limitations of liability, shall be construed separately, applying and surviving even if for any reason any provision in this Agreement is held to be inapplicable or unenforceable under any circumstance.

11. ENTIRE AGREEMENT: Complete agreement; Changes to the Terms and Conditions

This Agreement constitutes the final and entire Agreement between OPERATOR and RIDER. This Agreement represents the entire understanding between OPERATOR and RIDER and prevails over any prior or contemporaneous, conflicting or additional communications, unless OPERATOR revises or modifies this Agreement. OPERATOR shall have the right to revise, change, and modify the terms and conditions contained in the Agreement at any time without prior written notification by posting the revised Agreement on the Site. RIDER shall be solely responsible for reviewing and becoming familiar with any modification to this Agreement. Use and/or operation of the Bike by RIDER following any modifications to this Agreement constitutes RIDER's acceptance of the Terms and Conditions as modified.

12. ACCEPTANCE OF AGREEMENT AND TERMS AND CONDITIONS OF RIDER

RIDER expressly acknowledges that he/she has carefully read the entire Agreement, including the Terms and Conditions, and understands this Agreement, including but not limited to the Waiver of Liability, Assumption of Risk and Indemnification Provisions, fully and expressly agrees to be bound by this Agreement. After careful deliberation, RIDER voluntarily gives his/her consent and expressly agrees to all the conditions included in this Agreement as set forth above.

BY SIGNING THE ALLEN COUNTY BIKE SHARE RENTAL APPLICATION, RIDER HAS READ, UNDERSTANDS AND EXPRESSLY AGREES TO THE ABOVE AGREEMENT AND TERMS AND CONDITIONS.