Assumption of Risk, Indemnification, Release and Waiver

THE UNDERSIGNED (ALSO REFERRED TO AS “CUSTOMER”) HEREBY AGREES AS FOLLOWS:

**THIS AGREEMENT CONTAINS RELEASES, DISCLAIMERS, ASSUMPTION-OF-RISK PROVISIONS AND A BINDING ARBITRATION AGREEMENT, WHICH LIMITS YOUR LEGAL RIGHTS AND REMEDIES.**

THIS AGREEMENT RELATES TO YOUR AGREEMENT TO PARTICIPATE IN A GUIDED E-BIKE TOUR THROUGH KICKSTAND TOURS, LLC.

HEREINAFTER, **KICKSTAND TOURS, LLC** SHALL BE REFERRED TO AS “KICKSTAND”.

IT IS UNDERSTOOD KICKSTAND OFFERS E-BIKE TOURS OF LOCAL WINERIES. KICKSTAND PROVIDES E-BIKES, A SUPPORT VEHICLE, AN ITINERARY AND A TRAINED GUIDE. CUSTOMERS WILL BE RIDING E-BIKES ON PUBLIC ROADWAYS AND PATHS, WHICH IS INHERENTLY DANGEROUS.

KICKSTAND TOURS WILL MAKE ALL REASONABLE EFFORTS TO LIMIT THE RISKS AND DANGERS ASSOCIATED WITH THE E-BIKE TOURS, BUT CUSTOMER ACKNOWLEDGES THEY ARE AGREEING TO PARTICIPATE IN AN ACTIVITY THAT INCLUDES RISK OF SERIOUS INJURY OR DEATH, EVEN IN THE ABSENCE OF FAULT.

 **1. Assumption of Risk.**

Customer is solely and fully responsible for the safe operation of any e-Bikes or related equipment obtained through KICKSTAND. Customer understands e-Bikes can malfunction and such malfunction may cause injury or harm. Customer understands there is a risk of injury or harm from the use of an e-Bike even in the absence of a malfunction.

Customer acknowledges he/she has been advised to read and review all safety precautions and instructions for the e-Bike and any related equipment before using the e-Bike or equipment.

Customer is responsible for ensuring he or she is comfortable with using the e-Bike safely and is competent to operate the e-Bike safely. IF YOU DO NOT FEEL SAFE OR COMFORTABLE OPERATING THE E-BIKE, PLEASE NOTIFY KICKSTAND IMMEDIATELY.

Customer agrees use of e-Bike involves many obvious and not-so-obvious risks, dangers and hazards, which may result in property damage, injury or death, and such risks cannot always be predicted or avoided.

Customer agrees to use appropriate protective gear when using any e-Bike, including an approved helmet that has been properly sized, fitted and fastened in accordance with manufacturer’s instructions.

Customer acknowledges that this activity may involve a test of a person's physical and mental limits and carries with it the potential for death, serious injury, and property loss. The risks include, but are not limited to, those caused by terrain, facilities, temperature, weather, condition of participants, equipment, vehicular traffic, lack of hydration, and actions of other people including, but not limited to, participants in tours.

**2. Certification of Fitness.**

Customer certifies he or she is physically fit, and has sufficiently prepared or trained for participation in the use of the e-Bike, and have not been advised to not participate by a qualified medical professional. Customer certifies there are no health-related reasons or problems, which preclude Customer’s use of the e-Bike or otherwise impairs Customer’s ability to use the e-Bike safely for its intended use.

**3. Waiver of all Express and Implied Warranties.**

TO THE FULLEST EXTENT PERMITTED BY LAW, AND WITH RESPECT TO YOUR USE OF ANY OF THE SERVICES, E-BIKES, OR RELATED EQUIPMENT, KICKSTAND DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Some jurisdictions limit or do not allow the disclaimer of implied or other warranties so the above disclaimers may not apply to the extent such jurisdictions’ laws are applicable. However, in those jurisdictions, KICKSTAND expressly disclaims any and all warranties to the fullest extent permitted by applicable law.

**4. Limitation of Liability.**

CUSTOMER HEREBY ACKNOWLEDGES AND AGREES THAT, EXCEPT AS MAY OTHERWISE BE LIMITED BY LAW, KICKSTAND IS NOT RESPONSIBLE OR LIABLE FOR ANY CLAIM, INCLUDING THOSE THAT ARISE OUT OF OR RELATE TO (A) ANY RISK, DANGER, OR HAZARD DESCRIBED IN THIS AGREEMENT, (B) CUSTOMER’S USE OF, OR INABILITY TO USE, ANY OF THE EQUIPMENT, (C) CUSTOMER’S BREACH OF THIS AGREEMENT AND/OR CUSTOMER’S VIOLATION OF ANY LAW, RULE, REGULATION, AND/OR ORDINANCE, INCLUDING RIDING ON SIDEWALKS AND/OR PARKING LOTS, (D) ANY NEGLIGENCE, MISCONDUCT, AND/OR OTHER ACTION AND/OR INACTION BY CUSTOMER, (E) CUSTOMER’S FAILURE TO WEAR AN APPROVED HELMET WHICH HAS BEEN PROPERLY SIZED, FITTED AND FASTENED ACCORDING TO THE MANUFACTURER’S INSTRUCTIONS WHILE USING ANY PRODUCT, AND/OR (F) ANY NEGLIGENCE, MISCONDUCT, AND/OR OTHER ACTION OR INACTION OF ANY THIRD PARTY.

**5. Maximum Liability of KICKSTAND.**

In the event of any claim by Customer arising out of or relating to the use of e-Bike, Customer agrees, understands and accepts KICKSTAND liability shall be limited to one hundred thousand dollars ($100,000.00) or less.

CUSTOMER UNDERSTANDS AND ACCEPTS THIS LIMITS CUSTOMER’S DAMAGES WHICH, IN THE EVENT OF SERIOUS PROPERTY DAMAGE, SERIOUS PERSONAL INJURY OR DEATH, COULD GREATLY EXCEED THIS AMOUNT.

WITH THE EXPRESS ACKNOWLEDGEMENT AND AGREEMENT TO SUCH LIMITATION, CUSTOMER AGREES TO BE BOUND BY THIS PROVISION TO THE FULLEST EXTENT PERMITTED BY LAW.

**6. Indemnification**

Customer agrees to defend, indemnify, and hold harmless KICKSTAND from and against any and all consequences, claims, demands, causes of action, losses, liabilities, damages, injuries, fees, costs and expenses, penalties, attorneys’ fees, judgments, suits settlements, and/or disbursements of any kind, or nature whatsoever, whether foreseeable or unforeseeable, and whether known or unknown, that directly or indirectly arise from or are related to any claim, suit, action, demand, or proceeding made or brought against any KICKSTAND, or on account of the investigation, defense, or settlement thereof, arising out of or in connection with, whether occurring heretofore or hereafter: (i) Your use or misuse of an e-Bike provided by KICKSTAND, (ii) Your breach or alleged breach of this Agreement; (iii) Your violation or alleged violation of any laws, rules, regulations, codes, statutes, ordinances, or orders of any governmental or quasi-governmental authorities in connection with any e-Bike; and (iv) any misrepresentation made by Customer (all of the foregoing, “Claims and Losses”).

**7. Waiver.**

Customer hereby WAIVES, RELEASES, AND DISCHARGES KICKSTAND, and its employees, agents, contractors, officers, and owners, from any and all liability, including but not limited to, liability arising from the negligence or fault of the entities or persons released, for my death, disability, personal injury, property damage, property theft, or actions of any kind which may hereafter occur to Customer related to the e-Bike tour and all associated and related activities and equipment.

**8. Use of e-Bike/Safety Checks.**

Before each use of any e-Bike, Customer is responsible for conducting a basic safety inspection of the e-Bike. Customer agrees not to use the e-Bike if there are any noticeable issues, and to immediately notify customer service to alert KICKSTAND of any problems.

If at any time, whether prior to, during, or after riding any e-Bike, Customer discovers any defect or notice any other potentially unsafe condition, no matter how slight, Customer shall not use the e-Bike without the express permission of KICKSTAND.

If Customer fails to strictly comply with the aforementioned requirements, Customer shall be solely and completely liable for any and all consequences, claims, demands, causes of action, losses, liabilities, damages, injuries, fees, costs and expenses, penalties, attorneys’ fees, judgments, suits settlements, and/or disbursements of any kind, or nature whatsoever, whether foreseeable or unforeseeable, and whether known or unknown, and Customer shall indemnify and hold harmless KICKSTAND for the same.

**9. Savings Clause**

In the event any term, condition, clause, waiver, release or provision of this Agreement is deemed unenforceable under applicable law, the rest and remainder of this Agreement shall remain enforceable to the fullest extent of the law.

**10. Applicable Law and Venue.**

Any claim arising out of or relating to use of any e-Bike or equipment through KICKSTAND shall be subject to the laws of the State of Washington. Customer expressly consents to Seattle, King County, Washington as the appropriate and proper venue. Customer waives any claim or defense of inconvenient or improper forum.

This Agreement shall be construed broadly to provide a release and waiver to the maximum extent permissible under applicable law.

**11. Intoxication.**

Customer understands and agrees the tours offered by KICKSTAND include the opportunity, but not the requirement, to participate in wine tastings at various local vineyards. Customer understands there are additional risks associated with operating an e-Bike while under the influence of alcohol. Customer acknowledges his or her ability to perceive risks or dangers and his or her reaction time to such risks or dangers may be affected by the consumption of even modest amounts of alcohol. Customer expressly assumes these risks when/if Customer decides to participate in wine tastings or imbibes alcohol or other intoxicants during any tour.

**Customer agrees not to operate an e-Bike while intoxicated or while otherwise impaired due to the consumption of alcohol or any other intoxicant, drug, or medication.**

 **Initials**

If, at any time during a tour, Customer becomes intoxicated or impaired, Customer is obligated to notify KICKSTAND immediately and KICKSTAND will coordinate alternate transportation for Customer. If, at any time during a tour, KICKSTAND determines Customer is intoxicated or impaired, at KICKSTAND’s sole and exclusive option, KICKSTAND may take Customer’s e-Bike away and coordinate alternate transportation for Customer. In the event KICKSTAND determines a Customer is intoxicated or impaired and Customer refuses the surrender the e-Bike in a calm and respectful manner, KICKSTAND may terminate the entire tour, call law enforcement, or take such other or further action as KICKSTAND deems reasonable and appropriate. Customer shall be responsible for ensuring safe transportation after the conclusion of the tour.

**12. Consent to photo and/or video.**

I understand while participating in this activity, I may be photographed. I agree to allow my photo, video, or film likeness to be used for any legitimate purpose by the activity holders, producers, sponsors, organizers, and assigns

**13. Consent to emergent medical treatment.**

I hereby consent to receive medical treatment which may be deemed advisable in the event of injury, accident, and/or illness during this activity. I agree to be responsible for all necessary charges incurred by any hospitalization or treatment rendered pursuant to this authorization.

I CERTIFY THAT I HAVE READ THIS DOCUMENT AND I FULLY UNDERSTAND ITS CONTENT. I AM AWARE THAT THIS IS A RELEASE OF LIABILITY, ASSUMPTION OF RISK, AND A CONTRACT AND I AGREE TO IT OF MY OWN FREE WILL. BY SIGNING THIS DOCUMENT, I AM WAIVING ANY RIGHT TO BRING A LEGAL ACTION OR ASSERT A CLAIM AGAINST KICKSTAND OR ITS OFFICERS, OWNERS, AGENTS OR REPRESENTATIVES, AS A RESULT OF ANY NEGLIGENCE OR FAULT BY KICKSTAND OR ITS EMPLOYEES, OFFICERS, OWNERS, AGENTS OR REPRESENTATIVES. THIS AGREEMENT IS TO BE BINDING TO THE FULLEST EXTENT OF THE LAW AND SHALL APPLY TO MY SUCCESSORS, HEIRS AND ASSIGNS.

NAME DATE

DRIVER’S LICENSE/ID NUMBER

ADDRESS: