



## **WAIVER OF LIABILITY, ASSUMPTION OF ALL RISKS, AND ARBITRATION AGREEMENT**

In consideration of the services of Outfitter Bicycle Tours, its agents, shareholders, subsidiaries, affiliates, directors, successors, representatives, owners, officers, volunteers, participants, employees, assigns and all other persons or entities acting in any capacity on its behalf (collectively, "OBT") and in further consideration of the opportunity to register for and participate in an OBT Tour, I have read this Waiver of Liability, Assumption of All Risks, and Arbitration Agreement ("Waiver") and I agree to the following terms:

1. **Consideration and Intent** - I acknowledge that the cost of all OBT tours is based upon trip participants executing this Waiver. I agree that this Waiver shall be legally binding upon me personally, all members of my family and all minors traveling with me, my and their heirs, successors, assigns, and legal representatives, it being my intention fully to assume all the risks associated with this trip and to release OBT from any and all liability to the maximum extent permitted by law.
  
2. **Assumption of Risk**
  - a. I have voluntarily applied for, and plan to participate in, the OBT tour that I have selected. I have read the tour itinerary and I understand the hazards involved, and I elect to participate in spite of the potential risks and hazards, which I understand may include, but are not limited to, the following: negligence in any manner on the part of OBT including, without limitation, negligence in the conduct or arrangement of the trip in any respect from inception to completion, negligence with regard to bicycle selection or maintenance, the use, installation or maintenance of any optional or add-on equipment such as pedals, odometers, mirrors, bar ends, etc., in the maintenance or operation of any van or other motor vehicle utilized to transport passengers, etc.; acts of God or force majeure, acts of war or civil unrest, insurrection or revolt, acts of government, strikes or other labor activities; physical exertion for which I am not

prepared; falling, collision, upset, striking obstructions or other persons, unsafe speed of travel for conditions; dehydration; forces of nature; weather conditions including temperature exposure (hypothermia, sunstroke, sunburn, heat exhaustion); transportation failures or the failure of any transportation mechanism to arrive or depart timely or safely, whether by plane, train, auto, boat, canoe, kayak, bicycle, ski, horseback or other animal, by foot, or by any other conveyance; consumption of alcoholic beverages; risks associated with food or impure water; terrorism or the threat thereof; criminal activity; bites from or dangers associated with wild or other animals, pests or insects; negligence or willful misconduct by third parties; breakdown or failure of bicycles or other equipment; financial default of any supplier; high altitude; accident or illness without access to means of rapid evacuation or availability of medical supplies or services; the adequacy of medical attention once provided; epidemics or the threat thereof; stolen, lost, or misplaced luggage or property; and theft or break-ins into vehicles, lodging rooms or elsewhere.

- b. I understand that unforeseen circumstances, including but not limited to any of the above-described risks as well as the acts or omissions of third parties or other tour participants, can sometimes result in delays or itinerary changes that can result in the non-completion of certain tour inclusions. I understand and accept the potential for such circumstances to cause delays or itinerary changes, including non-completion of tour inclusions.
  - c. I certify that I have no medical or physical conditions, which could interfere with my safety in this activity, or else I am willing to assume all costs that may be created, directly or indirectly, by any such condition.
  - d. I acknowledge that the enjoyment and excitement of adventure travel is derived in part from the inherent risks incurred by travel and activity beyond the accepted safety of life at home or work and that these inherent risks contribute to such enjoyment and excitement, being a reason for my participation. I hereby agree to be responsible for my own welfare and accept any and all risks of delay, unanticipated events, inconvenience, illness, injury, emotional trauma or death.
3. **Waiver of Liability** - I hereby voluntarily release, waive, forever discharge, agree not to sue, and agree to indemnify and hold harmless OBT from any and all claims, demands, costs, losses, causes of action, liability, expense, obligation, damages, recoveries, or judgments, including interest, penalties and reasonable

attorney's fees, which are in any way connected with my participation in the OBT tour; my acceptance and undertaking of the risks described in paragraph 2, above; my use of OBT's bicycles and bicycle equipment or facilities; or the accuracy, adequacy or completeness of the services provided by OBT, including any such claims which allege negligent acts or omissions of OBT or any claims seeking to hold OBT responsible for the acts or omissions of third parties. To the extent that I may have claims that are derivative of my child's claims, then it is my intent to waive and release those claims.

**4. Arbitration Agreement, Governing Law, and Forum Selection**

- a. I agree that any dispute concerning, relating to, or referring to this Waiver, the OBT Terms and Conditions of Registration and Participation ("Terms and Conditions"), or any other contract, form, brochure, or other literature concerning my tour, or the tour itself (including but not limited to the acts or omissions of OBT or any tour participant) shall be resolved exclusively by binding arbitration according to the then existing commercial rules of the American Arbitration Association ("AAA") in person in Buncombe County or Henderson County, North Carolina, United States of America. Such proceedings will be governed by the substantive law of North Carolina, without reference to any conflict of law rules. Except for trips in North Carolina, the Motor Vehicle Code of North Carolina (Chapter 20 of the North Carolina General Statutes) will be inapplicable to my trip or any claim arising therefrom. Nothing in this section shall require the parties to use the services of the American Arbitration Association. The arbitrator and not any federal, state, or local court or agency shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability, conscionability or formation of this contract, including but not limited to any claim that all or any of this contract is void or voidable. I understand that I am giving up any right that I may have to a jury trial or to bring claims in court against OBT. I agree that payment of all filing, administration and arbitrator fees will be governed by the AAA's rules, and that the arbitrator shall be entitled to award attorneys' fees as permitted under North Carolina law Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.
- b. Should any party to this Waiver hereafter institute any legal action or administrative proceeding against the other by any method other than by binding arbitration as specified in this paragraph, then the responding party shall be entitled to recover from the initiating party all damages, costs, expenses, and attorneys' fees incurred as a result of such action if the responding party prevails in having the legal action or administrative

proceeding referred to arbitration in accordance with this arbitration provision.

- c. The venue for any court proceedings concerning, relating to, or referring to this Waiver, the OBT Terms and Conditions of Registration and Participation (“Terms and Conditions”), or any other contract, form, brochure, or other literature concerning my tour, or the tour itself (including but not limited to the acts or omissions of OBT or any tour participant) shall be exclusively the federal or state courts located in the State of North Carolina, Buncombe or Henderson Counties, United States of America. North Carolina’s substantive law shall apply to any such proceedings, without reference to any conflict of law rules.

5. **Modification and Severability** - This Waiver shall not be modified except in writing by each of the Parties. If any portion of this Waiver is held to be invalid, the remaining portions shall continue in full legal force and effect.

By agreeing to this Waiver, I hereby acknowledge that I have read, understand and have had adequate opportunity to secure independent legal advice concerning its meaning and intent and based thereon have agreed to the provisions of this Waiver. I understand that this Waiver, and the accompanying Terms and Conditions, are material consideration for my tour registration and participation, without which OBT would not agree to allow me to register or participate in a tour.

This Waiver is Accepted by OBT in Henderson County, North Carolina.

Sign: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_ I am the registered participant, I am 18 years of age or older, and I have read and agree to be bound by the terms of this Waiver of Liability, Assumption of Risk, and Arbitration Agreement.

or

\_\_\_ I am the parent or guardian of the registered participant, who is a minor child under the age of 18 years, and I give my permission for my child or ward to participate in the trip and I further accept and agree to be bound, individually and on behalf of my child or ward, by this Waiver of Liability, Assumption of Risk, and Arbitration Agreement.