

**TOUR SERVICES AGREEMENT  
TERMS & CONDITIONS**

This Tour Services Agreement (the "Agreement") dated as of \_\_\_\_\_, 2020, (the "Effective Date"), is made and entered by and between Take in Baja & The Grape Underground LLC (the "Company"), and \_\_\_\_\_ (the "Client") for purposes of Baja California winery tour services (the "Tour"). The Company and Client may be referred to hereinafter individually as a "Party" or collectively as the "Parties". This Agreement supersedes any prior agreements between the Company and Client, unless otherwise included by reference herein.

1. **Confirmation:** The above-referenced Tour shall be confirmed for the date and time requested upon the Company's receipt of a signed copy of this Agreement, together with the agreed upon deposit amount.
2. **Payment Terms and Non-refundable Initial Deposit:** The cost of the Tour shall be \_\_\_\_\_ (\$ \_\_\_\_\_), which includes all goods and services provided by the Company pursuant to the itinerary (food and beverage, entertainment, damage deposits, etc.). All additional goods or services (souvenirs, additional wine or food, etc.) are the responsibility of the Client. The Tour date will be confirmed upon payment of a two hundred-dollar (\$200.00) non-refundable initial deposit (the "Deposit"), which shall be due no later than three (3) days from execution of this Agreement. After payment of the Deposit, the Tour itinerary will be made available, upon request. The remaining balance will be due no later than five (5) days prior to the event date of the Tour, Payment is accepted by cash, check, electronic deposit, or credit card. All credit card payments must be cleared through the Company's credit card processor no later than five (5) days prior to the event date of the Tour.
3. **Tour Date, Itinerary, and Changes:** The Tour event date shall be \_\_\_\_\_, 2020. Once this Agreement is signed, an event date change will not be allowed. Exceptions may be made on a case-by-case basis, including any applicable additional fees, as determined in the Company's sole discretion. While the Company will attempt to reasonably maintain the Tour itinerary, in order to provide the best experience for the Client, the Tour itinerary is subject to change in the Company's sole discretion.
4. **Cancellation:** In the event Client cancels the Tour in writing three (3) weeks or more in advance of the scheduled Tour event date, the Company shall refund any payments, except the Deposit, less a \$50.00 administrative fee. If Client cancels the Tour in writing within three (3) weeks of the scheduled Tour event date, Client shall forfeit 100% all money paid as a cancellation fee. *ALL NOTICES OF CANCELLATION MUST BE DELIVERED TO THE COMPANY IN WRITING TO THE ADDRESS PROVIDED HEREIN.* In the unlikely event the Company cancels the Tour, Client shall receive a full 100% refund of all money paid to the Company, including the Deposit.
5. **Damage and Damage Deposit:** Client agrees to be liable for repair or replacement, to the Company's satisfaction, of any damage or loss to the Tour vehicle and/or its furniture, fixtures, and equipment caused by Client or Client's passengers, guests, vendors, or invitees. *A damage deposit, if required by the Company, must be paid five (5) days prior to the scheduled Tour event date.* If no damage is found by the Company, the full damage deposit will be refunded within 30 days after completion of the Tour. If damages are found by the Company, the cost of repair or replacement of the damaged or lost item(s) shall be deducted from the damage deposit and any remaining amount refunded within 30 days after completion of the Tour. Should the amount of the repair or replacement exceed the damage deposit collected, the Company has the right to bill and promptly collect for any and all additional costs associated with the repair and replacement.

6. **California State Sales Tax:** Client understands that applicable California State Sales Tax will be assessed on the cost of all food, beverage, entertainment, additional services, and service charge provided by the Company as may be applicable, from time to time, under California State law.
7. **Smoking Prohibition:** Client understands that smoking (to include vaporization or “vaping”) is prohibited by California State Law in certain public areas and the Company prohibits all smoking on its Tours and Tour vehicles, with the exception of designated smoking areas.
8. **Drugs, Alcohol and Firearms, Etc.:** Client agrees that Client, its passengers, guests, vendors, and invitees, will not bring illegal drugs or paraphernalia, alcoholic beverages, firearms, or other contraband (“Contraband”) on the Tour. This includes all substances considered illegal under federal law, including cannabis (marijuana) and all derivatives thereof. Client will be responsible for the conduct of its passengers, guests, vendors, and invitees with regard to Contraband on the Tour, and will indemnify, defend, and hold the Company harmless for any loss (including attorney’s fees and costs), including seizure or forfeiture of the Tour vehicle, caused by or related to Contraband brought on the Tour by Client, its passengers, guests, vendors, and invitees. It is expressly agreed that if any such Contraband is found on the Tour, the remainder of the Tour will be terminated and no monies shall be refunded.
9. **Injury, Death, or Illness:** The Company shall not be responsible for death, injury, or illness to Client or its passengers, guests, invitees, vendors, agents, servants, representatives, or employees arising from acts of God, the public enemy, governmental restraint, riot, strike, lockout, labor disturbance of whatsoever cause, civil disturbances, or for any act, omission, fault, or negligence of Client or its passengers, guests, invitees, vendors, agents, servants, representatives, or employees, or for any cause beyond the reasonable control of the Company.
10. **Lost or Stolen Articles:** The Company shall not be responsible for any lost or stolen articles on the Tour or for any articles left on the Tour vehicle.
11. **Force Majeure:** A Party is not liable for failure to perform the Party's obligations if such failure is as a result of Acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption or failure of electricity or telephone service. This Agreement may be terminated for any of the above reasons by written notice from either Party to the other Party without liability. If a Party asserts Force Majeure as an excuse for failure to perform the Party's obligation, then the non-performing Party must prove that the Party took reasonable steps to minimize delay or damages caused by foreseeable events, that the Party substantially fulfilled all non-excused obligations, and that the other Party was timely notified of the likelihood or actual occurrence of an event described in paragraph above.
12. **Indemnification:** Each Party to this Agreement (the “Indemnifying Party”) agrees to fully defend, indemnify, and hold harmless the other Party (the “Indemnified Party”), and its subsidiaries, representatives, affiliates, assigns, shareholders, members, partners, directors, officers, servants, agents, attorneys, and employees, and the Tour vehicle, (collectively the “Representatives”), from and against each all losses, liability, costs, expenses (including, but not limited to reasonable attorney’s fees and costs) (collectively “Losses”) arising from or related to claims, demands, proceedings, causes of action (collective a “Claim”) alleging personal injury or death of any person or damage to real and/or tangible personal property incurred during the term of the Agreement, to the extent proximately caused by the negligent or willful acts or omissions of the Indemnifying Party or its Representatives. The foregoing indemnification obligations are conditioned upon the Indemnifying Party receiving (i) prompt written

Company \_\_\_\_\_  
Client \_\_\_\_\_

notice of any Claim, (ii) from the Indemnified Party all material information related to and reasonable cooperation in connection with the Claim, at the Indemnifying Party's expense, and (iii) sole control of the defense of any Claim, including attorney selection, and any related settlement negotiations. The Indemnifying Party may settle any Claim without the Indemnified Party's written consent, provided, however, the Indemnified Party's prior written consent must be obtained in the event such settlement (A) does not include a release of all covered Claims pending against the Indemnified Party; or (B) contains an admission of liability or wrongdoing by the Indemnified Party.

- 13. **Liability Waiver and Release:** IN CONSIDERATION OF THE INHERENT RISK OF INJURY WHILE TRAVELING INTERNATIONALLY ON THE TOUR, AND AS CONSIDERATION FOR THE RIGHT TO TRAVEL ON THE TOUR, CLIENT, ON BEHALF OF THEMSELVES, THEIR HEIRS, EXECUTORS, ADMINISTRATORS, ASSIGNS, AND PERSONAL REPRESENTATIVES, KNOWINGLY AND VOLUNTARILY ENTER INTO THIS WAIVER AND RELEASE OF LIABILITY AND HEREBY WAIVE ANY AND ALL RIGHTS, CLAIMS, OR CAUSES OF ACTION OF ANY KIND WHATSOEVER ARISING OUT OF THE PARTICIPATION AND TRAVELING ON THE TOUR, AND DO HEREBY RELEASE AND FOREVER DISCHARGE THE COMPANY AND ITS REPRESENTATIVES (AS DEFINED ABOVE), FOR ANY PHYSICAL OR PSYCHOLOGICAL INJURY, INCLUDING WITHOUT LIMITATION ECONOMICAL OR EMOTIONAL LOSS.
  
- 14. **Insurance:** The Company shall, throughout the Tour, maintain in effect, at its sole cost and expense, full coverage comprehensive Mexican automotive insurance in an amount not less than one hundred fifty thousand dollars (\$150,000.00) combined single limit liability.

Upon written request, the Company may provide Client with an individual certificate of insurance for an administrative fee of fifty dollars (\$50.00).

- 15. **Confidentiality:** The Parties hereby acknowledge and agree that each may have access to proprietary, confidential, or sensitive information in the course of this Agreement. For purposes of this Agreement, "Confidential Information" shall include all information or material that has or could have commercial value or other utility in the business in which Disclosing Party is engaged. Confidential Information may comprise technical information, including patent, copyright, trade secret (winery and event locations), and other proprietary information, techniques, sketches, drawings, models, inventions, know-how, processes, apparatus, equipment, algorithms, software programs, software source documents, and formulae related to the current, future, and proposed products and services of the Disclosing Party. Confidential Information may also include non-technical information relating to the Disclosing Party's products, including without limitation pricing, margins, merchandising plans and strategies, finances, financial and accounting data and information, suppliers, customers, customer lists, purchasing data, sales and marketing plans, future business plans and any other information which is proprietary and confidential to the Disclosing Party. If Confidential Information is in written form, the Disclosing Party shall label or stamp the materials with the word "Confidential" or some similar warning. If Confidential Information is transmitted orally, the Disclosing Party shall promptly provide a writing indicating that such oral communication constituted Confidential Information. Receiving Party's obligations under this Agreement do not extend to information that is: (a) publicly known at the time of disclosure or subsequently becomes publicly known through no fault of the Receiving Party; (b) discovered or created by the Receiving Party before disclosure by Disclosing Party; (c) learned by the Receiving Party through legitimate means other than from the Disclosing Party or Disclosing Party's representatives; or (d) is disclosed by Receiving Party with Disclosing Party's prior written approval. Receiving Party shall hold and maintain the Confidential Information in strictest confidence for the sole and exclusive benefit of the Disclosing Party. Receiving Party will not remove or obliterate markings

(if any) on Confidential Information indicating its proprietary or confidential nature. Receiving Party may disclose or produce any Confidential Information if and to the extent required by any discovery request, subpoena, court order or governmental action, provided that Receiving Party gives Disclosing Party reasonable advance notice of the same (e.g., so as to afford Disclosing Party a reasonable opportunity to appear, object, and obtain a protective order or other appropriate relief regarding such disclosure). Upon Disclosing Party's request in writing, Receiving Party shall within 30 days destroy or return to Disclosing Party any and all records, notes, and other written, printed, or tangible materials in its possession pertaining to Confidential Information. Upon Disclosing Party's request, Receiving Party will certify in writing its destruction of such Confidential Information. All Confidential Information is the property of Disclosing Party. This Agreement will not be interpreted or construed as granting any license or other right under any patent, copyright, trademark, trade secret, or other proprietary right. Receiving Party will hold all Confidential Information in trust for Disclosing Party and will promptly destroy them or deliver them to Disclosing Party upon the earlier of Disclosing Party's request or when they are no longer needed for the purposes of this Agreement. In the event of any breach of this Agreement, Disclosing Party may suffer irreparable harm and have no adequate remedy at law. In such event or the threat of any such event, Disclosing Party will be entitled (in addition to any and all other remedies) to injunctive relief, specific performance, and other equitable remedies without proof of monetary damages or the inadequacy of other remedies. In such event, the prevailing Party shall have the right to collect from the other Party its reasonable attorney fees and costs and necessary expenditures. The protections afforded under this Agreement are in addition to, and not in lieu of, the protections afforded under any applicable trade secrets laws, including the Uniform Trade Secrets Act and the Economic Espionage Act of 1996.

16. **Model and Social Media Release:** Client hereby grants to the Company and its Representatives the irrevocable and unrestricted right to use and publish photographs of the Client, or in which the Client may be included, for editorial, trade, advertising, social media, and any other purpose and in any manner and medium, to alter same without restrictions, and to copyright same. Client accordingly releases the Company and its Representatives from all claims and liability relating to said photographs.

17. **Applicable Law and Alternative Dispute Resolution:** This Agreement shall be governed by the laws of the State of California. If a dispute arises out of or relates to this Agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree, as their sole dispute resolution, to submit the dispute to binding arbitration administered by the American Arbitration Association with its Commercial Arbitration Rules in accordance with California law, to take place in the City of San Diego. Such arbitration shall be confidential, including without limitation, the proceeding, all evidence taken, and the decision or order issued by the arbitrator. If either Party refuses to perform any or all of its obligations under the final arbitration award within thirty (30) days of such award being rendered, then the other Party may enforce the final award in any court of competent jurisdiction in San Diego, California. In the event that arbitration results from or arises out of this Agreement, or the performance thereof, the parties agree to reimburse the prevailing Party's reasonable attorney's fees, court costs, and all other expenses, whether or not taxable by the court as costs, in addition to any other relief to which the prevailing Party may be entitled.

18. **Notices:** Notices under this Agreement shall be in writing and shall be delivered by any one of the following means: electronic mail (e-mail); hand delivery; Federal Express or other nationally recognized overnight courier service with confirmation of receipt; United States certified mail, postage prepaid, return receipt requested; addressed to the parties at the addresses set forth here:

[Company]

Take in Baja & The Grape Underground LLC

Attn: Josh Neimeyer

[Client]

\_\_\_\_\_

\_\_\_\_\_

Company \_\_\_\_\_

Client \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
josh@takeinbaja.com

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Notices shall be deemed as given on the following dates: hand-delivered notice is deemed to have been given on the date of delivery; Federal Express or other nationally recognized overnight courier service delivered notice is deemed to have been given the next business day following the date of transmittal; notice delivered via certified mail is deemed to have been given when received or on the date on which such notice would have been received had the same not been refused by the addressee; notice delivered via fax is deemed to have been given on the date transmitted with confirmation of receipt. Such addresses may be changed from time to time by either Party by providing written notice in the manner set forth above.

19. **Headings:** The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.
20. **Entire Agreement:** This Agreement represents the entire understanding of the Parties as to those matters contained herein and supersedes and cancels any prior oral or written understanding, promises, or representations with respect to those matters covered herein. This Agreement may not be modified, amended, or altered except in writing signed by both Parties hereto. This is a fully-integrated document.
21. **Interpretation:** In interpreting this Agreement, it shall be deemed that it was prepared jointly by the Parties with full access to legal counsel of their own choosing. No ambiguity shall be resolved against any Party on the premise that it or its attorneys were sole responsible for drafting this Agreement or any provision thereof.
22. **Severability:** If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court of competent jurisdiction finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid or enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.
23. **Miscellaneous:** No provision of this Agreement may be modified, waived or discharged unless such waiver, modification, or discharge is agreed to in writing signed by the Independent Contractor and the Company. No waiver by either Party hereto at any time of any breach by the other Party hereto or compliance with any condition or provision of this Agreement to be performed by such other Party will be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time. No agreements or representations, oral or otherwise, expressed or implied with respect to the subject matter hereof have been made by either Party that are not set forth expressly in this Agreement. Any reference in this Agreement to a provision of a statute, rule, or regulation will also include any successor provision thereto.
24. **Counterparts:** This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original but all of which together will constitute one and the same agreement.

[SIGNATURE PAGE FOLLOWS]

Company \_\_\_\_\_  
Client \_\_\_\_\_

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed and delivered as of the date below written.

COMPANY

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

CLIENT

\_\_\_\_\_

Print Name: \_\_\_\_\_