

## Nashville B-Cycle User Agreement

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

These Terms and Conditions provide the entire agreement between B-Cycle, LLC ("BCycle") and the person (the "Rider") agreeing to lease and use that certain B-Cycle bike (the "Bike") as part of the BCycle bike share website and rental service (the "Bike-Share Service"). **If Rider is not 18 years or older, Rider's parent or guardian must consent to this agreement before Rider may use a Bike. Rider's use of any Bike constitutes his or her binding acceptance to the terms of this agreement.**

**RIDER should CAREFULLY READ all terms and conditions before entering this agreement.**

#### **1. RENTAL AND USE OF BIKE**

1.1 **Sole User.** BCycle expressly agrees to let, and the Rider expressly agrees to take on, rental of the Bike subject to the terms and conditions set out herein. The Rider is the sole lessee and is solely responsible for compliance with all terms and conditions contained herein. Rider acknowledges and understands that the representations herein are material inducements to BCycle agreeing to rent a Bike to Rider and that BCycle is justified in relying on Rider's representations.

1.2 **Membership.** In order for Rider to be a member of the Bike-Share Service (a "Member"), he or she must be 18 years or older and possess a valid credit card to access the Bike-Share Service system. A Member may check out a Bike to a minor Rider and the Member will be responsible for ensuring that Rider complies with the terms and conditions of this agreement.

1.3 **Rider Restrictions.** Riders must be at least five feet (5') tall but no more than six feet five inches (6'5") tall. Rider accepts full responsibility and is liable for any consequence, claims, demands, causes of action, losses, liabilities, damages, injuries, costs and expenses, penalties, attorney's fees, judgments, suits or disbursements of any kind or nature whatsoever related to any such misrepresentation.

1.4 **Rider Experience.** Rider is a competent bicycle operator: Rider represents and certifies that he/she is familiar with the operation of the Bike, and is reasonably competent and physically fit to ride the Bike.

1.5 **Ownership.** Rider agrees that the Bike and any equipment attached thereto, at all times, remains the exclusive property of BCycle. Rider will not make any modification to the Bike at any time.

1.6 **Operating Hours Availability.** Bikes must be rented within the maximum rental time limits set forth in section 1.7 below. Bikes are limited and Bike availability at any station is never guaranteed.

1.7 **Maximum Rental Time and Charges.** Maximum rental time is 24 hours. Rider agrees that Rider will return the Bike to a designated BCycle Bike Station within 24 hours of checking out a Bike. Once returned, Rider may then rent again. Rider agrees that he/she is solely responsible for being aware of the time elapsed since checking out a Bike.

1.8 **Rental Charges.** Bike Rental Charges are:

- Free for the first hour,
- \$3.00 for next 30 minutes,
- \$3.00 for each 30 minute period thereafter.

1.9 **Maximum Charge.** The maximum day charge is \$75.00 and is based on a calendar day. Upon return of the bicycle, the rider will be charged the accumulated rental charges, or the

maximum day charge, whichever is less (the "Rental Charge"). Bikes not returned within 24 hours will be considered stolen, and Rider will be charged \$2,500.00 (the "Replacement Charge"). Applicable local and state sales tax of 9.25% will be included in Rental and Replacement Charges.

1.10 **Geographical Restrictions.** Rider agrees to only use, operate and ride the Bike within Davidson County. Rider will not, under any circumstances, remove the Bike from Davidson County.

1.11 **Compliance with Laws.** Rider agrees to follow all laws pertaining to the use, riding and operation of the Bike, including all state and local laws and the rules and regulations pertaining to bicycles in the City of Metropolitan Government of Nashville and Davidson County. Riders under sixteen years of age must wear a protective helmet designed for public safety. BCycle encourages all Riders to wear protective helmets.

1.12 **Limited Use of Bike.** Rider agrees that he/she will not use the Bike for racing, mountain bike riding, stunt or trick riding. Rider agrees that he/she will not operate or use the Bike on unpaved roads, through water, or in any location that is prohibited, illegal 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.

1.13 **Use of Front Carrier/Basket.** Rider acknowledges that the front carrier/basket of the Bike is intended for light goods only, and that he/she will not carry people or animals anywhere on the bicycle.

1.14 **Reporting of Lost or Stolen Property.** Rider agrees that he/she must immediately report an accident, or a stolen or lost Bike to BCycle and local police. Stolen or lost membership cards will be reported to BCycle. 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, judgments, suits or disbursements of any kind or nature whatsoever related to a stolen or lost Bike or Nashville B-Cycle membership card.

1.15 **Rider Responsibility.** Rider agrees to return the Bike to BCycle in the same condition received, with no more than ordinary wear and tear. Rider agrees to ensure that the Bike is always locked and secured when unattended. Bikes may be equipped with wire locks; however, BCycle will not be responsible for any lost, stolen, destroyed or damaged Bike under any circumstances, regardless of whether Bike locks are used or not properly functioning. Rider agrees to pay for destruction or loss of Bike and for any damage, including replacement parts. All repairs needed as a result of any damage, will be performed at the normal labor rates. In the event the Bike is lost or damaged beyond repair, regardless of fault or cause, Rider agrees to pay BCycle the full replacement value of the equipment.

#### **2. RISK ALLOCATION**

2.1 **Disclaimer of Warranties.** BCYCLE MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE BIKES, MAINTENANCE OR THE PERFORMANCE OR RESULTS OF USE OF THE BIKERS OR BIKE-SHARE SERVICE. BCYCLE HEREBY DISCLAIMS, AND MAKES NO, IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, OF FITNESS FOR ANY PARTICULAR PURPOSE OR ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE.

2.2 **Limitations of Liability.** BCYCLE, NASHVILLE DOWNTOWN PARTNERSHIP, THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, ALL RELATED SPONSORS AS WELL AS OWNERS OF PROPERTY UPON OR NEAR WHICH STATIONS ARE LOCATED (“RELEASED PARTIES”) SHALL HAVE NO LIABILITY WITH RESPECT TO THE BIKES, THEIR MAINTENANCE OR ANY OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE FOR ANY CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FOR AND IN CONSIDERATION OF RENTAL AND USE OF THE BIKE, RIDER FOREVER RELEASES AND RELINQUISHES AND DISCHARGES THE RELEASED PARTIES FROM ANY AND ALL CLAIMS, LIABILITY, CAUSES OF ACTION, DAMAGE, INJURY TO OTHERS, OR WRONGFUL DEATH ARISING OUT OF, RESULTING FROM OR RELATED TO THIS AGREEMENT; THE RENTAL, MAINTENANCE, DESIGN, USE OR OPERATION OF THE BIKE OR THE BIKE-SHARE SERVICE, INCLUDING ANY AND ALL CLAIMS, LIABILITY, CAUSES OF ACTION OR DAMAGES RELATED TO THE SOLE OR PARTIAL NEGLIGENCE OF RELEASED PARTIES OR THE NEGLIGENCE OF OTHERS. BY THIS AGREEMENT ANY SUCH CLAIMS, RIGHTS, AND CAUSES OF ACTION THAT RIDER (AND RIDER’S LEGAL GUARDIANS, IF APPLICABLE) MAY HAVE ARE HEREBY WAIVED, RELEASED AND RELINQUISHED, AND RIDER (AND GUARDIANS, IF APPLICABLE) DOES SO ON BEHALF OF RIDER’S HEIRS, EXECUTORS, ADMINISTRATORS AND ASSIGNS.

2.3 **Waiver.** RIDER, IN CONSIDERATION FOR USING OR OPERATING THE BIKE, VOLUNTARILY AGREES, UNDERSTANDS AND RECOGNIZES THAT RIDER WILL HAVE NO RIGHT TO MAKE A CLAIM OR FILE A LAWSUIT AGAINST RELEASED PARTIES ARISING OUT OF THIS AGREEMENT, THE RENTAL, MAINTENANCE, DESIGN, USE AND/OR OPERATION OF THE BIKE OR BIKE-SHARE SERVICE.

2.4 **Indemnification.** IN CONSIDERATION FOR USING OR OPERATING THE BIKE, RIDER EXPRESSLY AGREES TO INDEMNIFY, RELEASE AND HOLD HARMLESS RELEASED PARTIES FROM ALL LIABILITY FOR ANY SUCH PROPERTY LOSS OR DAMAGE, PERSONAL INJURY OR LOSS OF LIFE, WHETHER CAUSED BY THE SOLE OR PARTIAL NEGLIGENCE OF BCYCLE OR THE NEGLIGENCE OF OTHERS, WHETHER BASED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, ACTIVE OR PASSIVE NEGLIGENCE OR ANY OTHER LEGAL THEORY.

### 3. GENERAL

3.1 **Governing Law and Venue.** The validity, interpretation and enforcement of this Agreement shall be governed by the laws of the State of Tennessee, without giving effect to its conflict of law principles. Venue for all actions related to this Agreement shall be located in state courts located in Davidson County, Tennessee or in the federal court of the United States District Court for the Middle District of Tennessee. The parties consent to the personal jurisdiction and subject matter jurisdiction of such courts. Further, the parties waive any defenses of lack of person or subject matter jurisdiction and improper venue related to the validity, enforceability, and damages and injunctions that may result from breach of this Agreement.

3.2 **Force Majeure.** BCycle will not have any liability as a result of service outages that are caused by our maintenance on the servers or the technology that underlies the service, failures of our service providers (including telecommunications, hosting and power providers) computer viruses, natural disasters or other destruction or damage of our facilities, an act of God, war, civil disturbance or other cause beyond our reasonable control.

3.3 **Severability.** If any provision of this agreement is deemed to be invalid or unenforceable, such provision shall be deemed limited by construction in scope and effect to the minimum extent necessary to render the same valid and enforceable. The remaining provisions of this agreement will remain in full force.

3.4 **Entire Agreement.** This agreement constitutes the final agreement between BCycle and the Rider. It is the complete and exclusive expression of the parties’ agreement on the matters contained in this agreement. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this agreement are expressly merged into and superseded by this agreement. In entering into this agreement, neither party has relied upon any statement, representation, warranty or agreement of any other party except for those expressly contained in this agreement. There are no conditions precedent to the effectiveness of this agreement, other than those expressly stated in this agreement.