CHARTER AGREEMENT

This Charter Agreement (the "Contract"), dated as of _____, is between Kiwi Cat Charters, LLC DBA Napa Valley Wine Yacht, a California limited liability company ("Napa Valley Wine Yacht") and _____, an individual residing at _____, ("Host"). Napa Valley Wine Yacht and Host are referred to herein individually as a Party and collectively as the Parties.

The Parties agree as follows:

1. **Payment Terms:** The Host shall pay Napa Valley Wine Yacht $4,500 ("Charter Fee") for a charter trip scheduled aboard the Kiwi Cat, a licensed United States Coast Guard yacht ("Vessel") by:
   a. Paying Napa Valley Wine Yacht a **non-refundable**[1] deposit of $1,500 by cash, Venmo, PayPal or credit card; and,
   b. Paying the outstanding balance of the charter fee 10 days prior to Departure Date (as expressly scheduled below).

   Staff gratuity is not included. Suggested gratuity is 12%-25%. Gratuity can be based on group size and the level of service you wish to receive.

2. **Charter Trip:** Napa Valley Wine Yacht shall provide a ~3-hour cruise up and down the Napa Valley River, through downtown Napa, and then back to Cuttings Wharf ("Charter Trip"). Napa Valley Wine Yacht shall operate the Vessel with a licensed captain.

   Napa Valley Wine Yacht shall provide the Charter Trip in accordance with the following particulars:
   Departure Date: _____
   Departure Time: _____

3. **Vessel Rules:** Host and Host's guests SHALL and are OBLIGATED to:
   a) Obey all posted rules and regulations;
   b) Obey all rules disseminated prior to departure by the Host;
   c) Execute the required waiver agreement;

[1] Non-refundable expressly means the Host's deposit ***shall not*** be refunded. This includes but is not limited to circumstances which are outside of the control of either party such as and expressly referring to the Coronavirus Pandemic or any other act of God. However, pursuant to paragraph 4, a charter credit may possibly apply if Host adheres to the 90-day "in advance of scheduled departure date" cancellation policy.

d) Refrain from and must not jump off the Vessel without the express approval of the Captain;
e) Refrain from and must not bring or use illegal drugs or illegal substances; or
f) Refrain from and must not engage in excessively drunk behavior or disorderly conduct, including but not limited to any destructive behavior.

If Host and/or Host's guests break any of the Vessel Rules listed herein, Napa Valley Wine Yacht has the right to terminate the Charter Trip immediately ***without refund*** for all or any portion of the fee regardless of the duration of the trip at the time of the prohibited conduct. The decision to terminate a Charter Trip shall be the sole discretion of Napa Valley Wine Yacht in the best interest and for the safety of all the passengers, crew and the Vessel.

4. **Cancellation:** Host shall notify Napa Valley Wine Yacht immediately by emailing cruise@NapaValleyWineYacht.com or calling Napa Valley Wine Yacht directly if Host chooses to cancel. Napa Valley Wine Yacht shall return 100% of the non-refundable deposit if Host cancels 90 days or more prior to the Departure Date. Napa Valley Wine Yacht shall return 100% of the non-refundable deposit if the Charter Trip is cancelled due to unforeseen weather circumstances or a weather advisory from the United States Coast Guard. Napa Valley Wine Yacht shall issue a non-refundable and non-transferable future charter credit in the amount of the non-refundable deposit if Host cancels less than 90 days prior to the Departure Date. Napa Valley Wine Yacht may, at its sole discretion, refund Host for any amount paid in excess of the non-refundable deposit if Host cancels less than 90 days from the Departure Date.

5. **Assumption of Risk:** HOST AND HOST'S GUESTS ASSUME ALL RISKS INCIDENT TO TRAVEL AND TRANSPORTATION. While at sea or in port the availability of medical care may be limited or delayed. Host acknowledges that all or part of their charter may be in areas where medical care and evacuation may not be available. Host and/or guests who embark in violation of the Vessel Rules or Charter Agreement terms assume all associated risks and agree to indemnify and reimburse Napa Valley Wine Yacht for all resulting losses, costs, and expenses.

6. **Insurance:** Napa Valley Wine Yacht shall insure Vessel on such terms and subject to such deductible as are customary for a vessel of the Vessel's type, size, and value. Napa Valley Wine Yacht shall make available for inspection, upon reasonable notice by Host, copies of all relevant insurance documentation, which will also be carried on board the Vessel. If the Host or any of the Host's guests act in such a way, whether by negligence or willful act, as to void or limit coverage under Napa Valley Wine Yacht' insurance policy, then the Host shall indemnify and hold Napa Valley Wine Yacht harmless against and from any claim for loss, damage, or expense attributable to such negligence or willful act, to the extent that such loss, damage, or expense would otherwise be covered by Napa Valley Wine Yacht' insurance policy.

7. **Independent Contractors:** Host acknowledges that all Shore excursions/tours (whether conducted in the water, on land or by air), ground transportation, music services, catering, wine tastings and any third party "on board concessions" are either operated by or are independent contractors. Even though Napa Valley Wine Yacht shall be entitled to collect a fee and earn a profit from the ticketing or sale of such services by such persons or entities, Napa Valley Wine Yacht neither supervises nor controls their actions, nor makes any representation either express or implied as to their suitability. Napa Valley Wine Yacht, in arranging for the services does so only as a convenience for the Host and Host's guests are free to use or not use these services. Host agrees that Napa Valley Wine Yacht assumes no responsibility, does not guarantee performance and in no event shall be liable for any negligent or intentional acts or omissions, loss, damage, injury or delay to Host and/or Host's guests' baggage, property or effects in connection with said services. Host and Host's guests use the services of all independent contractors at the Host's and Host's guests' sole risk. Independent contractors are entitled to make a proper charge for any service performed with respect to a Host.

8. **Indemnification:** Host shall indemnify, defend and hold Napa Valley Wine Yacht harmless against and from any liability for loss, damages, or expense incurred by Host or the Host's guests as a result of the negligence or willful act of the Host or the Host's guests, to the extent such loss, damage, or expense is not covered by Napa Valley Wine Yacht's insurance policy.

9. **Limitation of Liability:**
   a. Napa Valley Wine Yacht shall not be held vicariously liable for the intentional or negligent acts of any persons not employed by Napa Valley Wine Yacht nor for any intentional or negligent act of Napa Valley Wine Yacht's employees committed while off duty or outside the course and scope of their employment.

   b. Napa Valley Wine Yacht shall not be liable for personal injury or property damage arising from Host or Host's guests' negligent or intentional conduct, except when such damages were caused by the gross negligence of Napa Valley Wine Yacht and resulted from the same passenger sustaining actual physical injury, or when such damages are held to be intentionally inflicted by Napa Valley Wine Yacht.

   c. Napa Valley Wine Yacht shall not be liable to Host or Host's guests for damages for emotional distress, mental suffering/anguish or psychological injury of any kind under any circumstances, except when such damages were caused by the gross negligence of Napa Valley Wine Yacht and resulted from the same passenger sustaining actual physical injury, or when such damages are held to be intentionally inflicted by Napa Valley Wine Yacht.

   d. Napa Valley Wine Yacht shall also have the benefit of all statutes of the United States of America providing for limitation and exoneration from liability and the procedures provide thereby, including but not limited Title 46 of the United States

Code sections 30501 through 30509, and 30511. Nothing in this Contract is intended to nor shall it operate to limit or deprive Napa Valley Wine Yacht or any such statutory limitation of or exoneration from liability under any applicable laws.

10. **Use of Host's and Host's Guests' Likeness:** Host and Host's guests grant Napa Valley Wine Yacht the right to include photographic, video and other visual portrayals of Host and/or Host's guests in any medium of any nature whatsoever for any purpose, including but not limited to subsequent advertising, marketing material, website content and/or internet postings.

11. **Law and Arbitration:** The Charter Agreement shall be governed by and construed in accordance with the maritime law of the United States, and to the extent such law fails to supply a rule of decision, the law of the State of California regarding any conflicts-of-law principles that would require the application of any other law. Any dispute arising out of or in connection with this Charter Agreement will be resolved by binding and confidential arbitration in Napa, California as the exclusive venue for any arbitration proceeding arising out of or relating to the enforcement of the provisions of this Agreement or potential liability as a result of Napa Valley Wine Yacht's services, or any other such place as the Parties may mutually agree upon ***in writing***, by a single arbitrator under the rules of the American Arbitration Association. The arbitrator must base his or her decision upon this Agreement and applicable law. If any legal action is necessary to enforce this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees, costs, and expenses.

12. **Entire Agreement:** This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all previous communications, representations, understandings, and agreements, either oral or written, between the Parties with respect to the subject matter of this Agreement. The Agreement may be executed in counterparts, each of which will be an original, and all of which together will constitute one and the same document. No modification of these Terms will be binding unless in writing and signed by both Parties. If any provision herein is held to be unenforceable, the remaining provisions will remain in full force and effect. All rights and remedies hereunder are cumulative.

13. **Force Majeure:** If a Force Majeure Event occurs and is continuing, the affected Party is excused from the performance to the extent prevented from performing. Force Majeure Event means any act or event whether foreseen or unforeseen, that meets all three of the following tests:

    a. The act or event prevents a party (the "Nonperforming Party"), in whole or in part, from
        (i) performing under this Agreement; or
        (ii) satisfying any condition to any obligation of the other Party (the "Performing Party") under this Agreement.

b. The act or event is beyond the reasonable control of and not the fault of the Nonperforming Party.
c. The Nonperforming Party has been unable to avoid or overcome the act or event by exercise of due diligence.

It is hereby expressly understood by and between the Parties that, as of today's date, the Covid-19 Pandemic is a Force Majeure Event as both Parties are fully aware of the circumstances surrounding this virus and government mandates. Moreover, nothing herein shall impact the applicability of paragraph 1, above, and the obligations of Host created therein.

IN WITNESS WHEREOF, Napa Valley Wine Yacht and Host have executed this Agreement:

NAPA VALLEY WINE YACHT

Name: _____

Signature: _____

Date: _____

HOST

Name: _____

Signature: _____

Date: _____