

## PERSONAL WINE CURATOR™ COMMUNITY TERMS AND CONDITIONS

These Terms and Conditions (the “Terms”) govern the use of The Personal Wine Curator Community Database service (the “Service”) made available to you by The Wine Curators (“The Wine Curators”). By clicking the “ACCEPT AND AGREE” button below, or by accessing or using the Service, you acknowledge that you have read these Terms, understand them, and agree to be bound by them. If you do not agree to the terms and conditions of these Terms, click the “DECLINE” button and do not access or use the Service. The Wine Curators will not and does not make the Service available to you unless you agree to these Terms.

In consideration of the promises and covenants described below and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, you agree as follows:

### 1. **Definitions.**

- a. “Personal Wine Curator” (“PWC”) means The Personal Wine Curator™ wine cellar software designed and owned by The Wine Curators for keeping track of personal wine collections.
- b. “Contributions” means all information, records, tasting notes, comments, data and other material, except for Third Party Materials, posted by you to the Service or otherwise provided by you to The Wine Curators.
- c. “Service” means The Wine Curators’ proprietary internet-based service that allows the transfer of personal wine data via PWC among parties and promotes the enhancement of wine appreciation and information.
- d. “Third Party Materials” means professional reviews, tasting notes or other information or materials authored by a third party.

2. **Service.** Subject to your compliance with the terms and conditions hereof, The Wine Curators grants you a limited, nonexclusive, nontransferable, personal and revocable license to access and use the Service for your personal and noncommercial use. You acknowledge that the Service utilizes usernames and passwords to enable access to the Service. You shall have the right to use a single username and password that you designate and identify to The Wine Curators. **THE SERVICE IS SUBJECT TO CHANGE OR CANCELLATION AT THE WINE CURATORS’ SOLE DISCRETION AND WITHOUT NOTICE TO YOU.**

3. **Limitations and Restrictions.** Except as specifically provided herein, you may not, in whole or in part: (a) copy, distribute, transmit, display, perform, reproduce, publish, license, rewrite, create derivative works from, transfer, or sell any material contained on this Service; (b) reverse engineer, make alterations, decompile, disassemble or make derivative works based on the Service or any part thereof, except as otherwise permitted by law; (c) use, rent, loan, sub-license, lease, distribute or attempt to grant other rights to the Service or any part thereof to third parties; or (d) use the Service to act as a service bureau or application service provider, or to permit remote access to the Service to any third party. Nothing in these Terms shall give you the right or license to use any

trademarks used in connection with the Service, including without limitation “The Wine Curators” and/or any marks of The Wine Curators’ providers or suppliers.

4. **Third Party Materials.** Copying and posting Third Party Materials in any section of the Service is permissible provided that you are authorized to receive, access and use such Third Party Materials and that you comply with all terms and conditions imposed by the third party copyright owner for such use, such as reproducing applicable proprietary notices or other requirements. Only the copyright owner in the third party materials can authorize the use, display, reproduction or distribution of third party materials.
  - a. You represent and warrant that you have the right to receive, access, use and post such Third Party Materials on the Service and to transmit to and authorize The Wine Curators to use the Third Party Materials for the purpose of providing the Service to the community of The Personal Wine Curator™ users.
5. **Prohibited Actions.** Your failure to comply with any of the following conditions shall constitute a violation of these Terms and result in the termination of your right to use the Service without notice:
  - a. You may not use the Service for commercial purposes of any kind.
  - b. You may not use the Service in any way that infringes or contributes to the infringement of any intellectual property rights or privacy rights of others or that is obscene, defamatory, harmful, abusive, threatening or false.
  - c. You may not use the Service in a manner that violates any applicable laws, rules or regulations, whether federal, state or local or those of any foreign jurisdiction, nor may you use the Service in a way for unlawful purposes or to promote any unlawful activities.
  - d. You may not interfere or attempt to interfere in any manner with the proper working of the Service. You may not take any action that imposes an unreasonable or disproportionately large load on the Service.
  - e. You may not rent, loan, or sub-license any username or password to a third party. You may not impersonate another person or solicit passwords or personally identifying information from other users.
  - f. You may not use the Service, directly or indirectly, to transmit “junk mail”, “chain letters”, or unsolicited mass mailing or to “spam” others.
6. **Contributions.**
  - a. You acknowledge and agree that your Contributions, including without limitation, wine data and postings in PWC “Tasting Notes” will be accessible by other Service users.
  - b. The Wine Curators does not screen Contributions in advance and is not responsible for screening or monitoring information or material posted by users or any other person or entity. If notified by a user of Contributions that are alleged not to conform to these Terms, The Wine Curators may review the claim and determine in its sole discretion to remove or request the removal of the Contributions. The Wine Curators reserves the right to remove Contributions that are abusive, illegal, disruptive or that otherwise fail to conform to these Terms. The Wine Curators reserves the right (but is not obligated) to edit or delete any

Contributions posted on the Service, regardless of whether such Contributions violate these standards for Contributions.

- c. The Wine Curators reserves the right (but is not obligated) to monitor, edit, disclose or record any type of Contributions for adherence to these Terms. The Wine Curators may exercise these rights if required, in the course of normal operations and maintenance of the Service, or by law or in the good faith belief that such action is necessary to: (i) comply with the law or with legal process served; (ii) protect and defend the rights of The Wine Curators or others; or (iii) act in an emergency to protect the personal safety of our users or the public or to protect the operation or integrity of the Service infrastructure. The Wine Curators has no liability or responsibility to users or any other person or entity for performance or nonperformance of the aforementioned screening activities.
  - d. By posting Contributions, you are granting to The Wine Curators and its licensees a worldwide, royalty-free, perpetual, non-exclusive and irrevocable right and license to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, perform and display such Contributions by you (in whole or in part) and/or to incorporate it in other works in any form, media or technology now or hereafter known.
  - e. You represent and warrant that you have the right to transmit to and authorize The Wine Curators to use the Contributions and all information, materials, data or records that you provide to The Wine Curators in connection with the Service as set forth in hereunder.
7. **No Commercial Use.** The Service may not be used by you for any commercial or promotional purposes, including without limitation to conduct sales of merchandise or services of any kind. You must obtain The Wine Curators' prior written consent to make commercial offers of any kind, whether by advertising, solicitations, links, or any other form of communication.
  8. **Offline Conduct.** Although The Wine Curators cannot monitor the conduct of its users off the Service, it is also a violation of these rules to use any information obtained from this Service in order to harass, abuse, or harm another person, or in order to contact, advertise to, solicit or sell to any user without such user's prior explicit consent.
  9. **Access and Interference.** You may not use any robot, spider, other automatic device, or manual process to monitor or copy any portion of the Service or the Contributions contained thereon or for any other unauthorized purpose without our prior express written permission. You may not use any device, software or routine to interfere or attempt to interfere with the proper working of the Service. You may not take any action that imposes an unreasonable or disproportionately large load on the Service's infrastructure.
  10. **Termination.** Your right to access and use the Service will automatically terminate without notice, if you breach any provision of these Terms. You agree that The Wine Curators may terminate your use of this Service, remove your Contributions and/or exercise any other remedy available to it if The Wine Curators reasonably believes that you have violated or acted inconsistently with the letter or spirit of these Terms, or

violated the rights of The Wine Curators or any third party, or for any reason with or without notice to you. The Wine Curators reserves the right to terminate your account or discontinue the service or any portion or feature thereof for any or no reason and at any time in The Wine Curators' sole discretion. You agree that The Wine Curators will not be liable to you or any third party as a result of such modification or discontinuation. The following Sections shall survive termination of these Terms: 3(b), 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 and all other sections that may be reasonably interpreted to or are intended to survive these Terms.

11. **Amendment.** The Wine Curators may modify any of the terms and conditions contained in these Terms, at any time by providing you notice of the change via email. If any modification is unacceptable to you, your only recourse is to terminate this agreement by opting out of the service. Your continued use of the service following notice of a change will constitute binding acceptance of the change.
12. **Proprietary Rights.** The Wine Curators owns all right, title and interest in and to the Service, including without limitation, copyright, patent, trademark and trade secret rights therein, and you understand and agree that you receive no ownership rights in and to the Service. You agree to take all steps necessary to protect The Wine Curators' proprietary rights in the Service related to your use and possession of the same, including but not limited to, maintaining the confidentiality of your username and password. You will, at your own cost and expense, protect and defend The Wine Curators' ownership of the Service against all claims, liens and legal processes of your creditors and will keep the Service free and clear of all such claims, liens and processes. All rights not expressly granted herein are reserved to The Wine Curators.
13. **Confidentiality.** The Service is and contains confidential and proprietary information of The Wine Curators. You agree to hold in strict confidence, not to use or disclose to any third party, and to take all necessary precautions to secure the confidentiality of the Service and any other nonpublic information of The Wine Curators (collectively "Confidential Information"). You agree to take all steps necessary to safeguard the Confidential Information against unauthorized disclosure, reproduction, publication, or use, and to satisfy your obligations hereunder. In accordance with this provision, you will maintain at least the same precautions as you take in regard to your own confidential information, but not less than reasonable care. You will not at any time, during or after the conclusion of your use of the Service, directly or indirectly, divulge or disclose for any purpose or use for its own benefit or for the purposes or benefit of any other person any Confidential Information. You shall immediately advise The Wine Curators in writing of any improper disclosure, misappropriation, or misuse of the Confidential Information, which may come to your attention.
14. **No Responsibility.** You, as the user of the Service, assume full responsibility for the selection and use of the Service and for the access, use and results obtained from the Service.
  - a. The Wine Curators assumes no liability for or relating to the delay, failure, interruption or corruption of any data or other information transmitted in

connection with use of the Service. The Wine Curators is not liable for any lost data resulting from the access, use and operation of the Service and/or the enforcement of these Terms. The entire risk arising out of the use or performance of the Service remains with you. The Wine Curators urges all users to maintain their own back up versions of any Contributions they submit to the Service.

- b. If your use of this Service results in the need for servicing or replacing property, material, equipment or data, The Wine Curators is not responsible for those costs. No agent or representative has the authority to create any warranty regarding this Service on behalf of The Wine Curators.
- c. The Wine Curators does not assume any liability for the content of any material provided on this Service. Reliance on any information presented on this Service is at your own risk. The Wine Curators reserves the right to change or discontinue any aspect or feature of this Service at any time.
- d. The Wine Curators disclaims any and all liability for the acts, omissions and conduct of any users on the Service or otherwise related to your use of the Service. The Wine Curators is not responsible for the actions or failure to act of any other third party in connection with or referenced on the Service. Without limiting the foregoing, you may report the misconduct of users referenced on or included in the Service to The Wine Curators. The Wine Curators may review your claim and take any actions it deems appropriate, in its sole discretion.
- e. The Wine Curators does not warrant that the service will meet your requirements or that the operation of the service will be reliable, uninterrupted or error-free. The wine curators makes no representations or warranties about the suitability, reliability, timeliness, completeness and accuracy, for any purpose, of the service, its operation or any information, input or results obtained thereby. The wine curators does not warrant that the service is accurate, complete, free of viruses or other harmful components, or that it will be accessible on an ongoing basis or without interruption.
- f. Without limiting the foregoing, the service is provided to you “as is” and “as available” without warranty of any kind, whether expressed or implied, including without limitation, warranties of title, merchantability, fitness for a particular purpose and noninfringement.

**15. Limitation of Liability and Exclusive Remedy.** To the maximum extent permitted by applicable law: in no event shall The Wine Curators be liable for any damages whatsoever (including, without limitation, direct, consequential, indirect, special, or incidental damages, or damages for loss of business profits, business interruption, loss of business information, or other pecuniary loss) arising out of the use of or inability to use the service, even if The Wine Curators has been advised of the possibility of such damages. Your sole and exclusive remedy from your use or inability to use the service or any other breach of these terms by The Wine Curators shall be for you to discontinue use of the service. Some states do not allow the exclusion or limitation of liability for consequential or incidental damages, so the above limitation may not apply to you under the laws of those states. No action, regardless of form, arising out of any transaction under these Terms, may be brought by you more than one year after you have knowledge

of the occurrence which gives rise to the cause of such action.

16. **Waiver and Release.** You hereby disclaim, waive and release to The Wine Curators and covenant not to sue The Wine Curators for any and all claims, causes of action, judgments, injury, loss, damages, expenses and demands which may arise in connection with your use of, reliance on, or reference to the service.
17. **Your Warranty to The Wine Curators.** You warrant that you will observe and perform all the terms and conditions of these Terms.
18. **Indemnity.** You agree to indemnify, defend and hold harmless The Wine Curators and its officers, directors, employees, consultants, suppliers, agents and contractors from any and all claims, actions, losses, liabilities, damages, costs and expenses (including without limitation attorneys' fees) resulting from or incidental to: (i) your use or inability to use, whether by act or omission, the Service; (ii) any claim of infringement of any intellectual property rights, privacy rights or violations any other rights of any third party based on your use of the Service, or any Contributions or Third Party Materials posted by you or on your behalf; (iii) The Wine Curators' use of the Contributions, Third Party Materials or other information, materials or records provided by you; or (iv) any negligence or willful misconduct or any breach of any warranty or covenant hereunder by you. The Wine Curators may, at its option and expense, participate in its defense with counsel of its choosing. You may not settle any such claim without The Wine Curators' prior written consent.
19. **Injunctive Relief.** Because of the community trust involved with the use of the Service, you understand and agree that The Wine Curators may suffer irreparable injury in the event you fail to comply with any of these Terms and that monetary damages may be inadequate to compensate The Wine Curators for such breach. Accordingly, you agree that The Wine Curators will, in addition to any other remedies available to it at law or in equity, be entitled to immediate, injunctive relief to enforce these Terms without the necessity of posting a bond.
20. **General.**
  - a. **Assignment, Successors.** No right or license under these Terms may be assigned or transferred by you, nor may any duty be delegated by you without The Wine Curators' prior written consent. Any assignment, transfer or delegation in contradiction of this provision shall be null and void. Subject to the foregoing, these Terms will bind and inure to the benefit of the successors and assigns of you and The Wine Curators.
  - b. **Governing Law and Venue.** These Terms shall be governed by the laws of the State of California, but not including the 1980 United Nations Convention on Contracts for International Sale of Goods. You agree that Los Angeles County, in the State of California shall be the exclusive and proper forum for any action or proceeding, including arbitration, if any, related to the subject matter of these Terms. You accept the personal jurisdiction of such courts.

- c. **Waiver, Severability.** Waiver of a breach of or right hereunder will not constitute a waiver of any other or subsequent breach or right. If any provision herein shall be held by a court of competent jurisdiction to be contrary to law, that provision shall be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions herein will remain in full force and effect.
21. **Acknowledgment of Understanding – Entire Agreement.** You acknowledge that you have read these Terms, understand them and agree to be bound by them. You also agree that these Terms are the complete and exclusive statement of the agreement between The Wine Curators and you and supersede all proposals, representations or prior agreements, oral or written, and any other communications between The Wine Curators and you relating to the subject matter of these Terms. These Terms may not be amended, except by an agreement in writing which is signed by authorized representatives of The Wine Curators and you.