

(PLEASE NOTE: Your account will be renewed automatically)

## **PERSONAL WINE CURATOR™ MOBILE TERMS AND CONDITIONS**

These Terms and Conditions (the “Terms”) govern the use of The Personal Wine Curator™ Mobile 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. “Service” means PWC Mobile (Personal Wine Curator™ Mobile) designed to access your PWC personal data remotely from a hand-held device, such as a cell phone with an internet browser. The service also includes on-line storage of your Personal Wine Curator™ personal data.
- c. “Subscription” means the sign-up fee you pay to use the service.

**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 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.

**3. Subscription.** Your subscription provides unlimited access to the service via the Internet from one or more personal hand-held devices and from one or more personal computers. You must select a Personal ID and Password at the time you subscribe (subject to the availability of the Personal ID and Password you choose).

**4. Automatic Renewal.** One and Two year memberships are automatically renewed at the standard rate after the introductory term is complete. If you do not wish for your account to automatically renew, please notify The Wine Curators either by phone or email prior to the scheduled renewal date. Your access to the service will then expire rather than renew at the end of the billing cycle. Your subscription is for the term agreed to at the time you registered for the service. The Wine Curators will attempt to notify you, using the personal information you provided, approximately 14 days before your subscription is

due to expire.

- 5. Security of Your Personal Information.** The Wine Curators strictly protects the security of your personal information and honors your choices for its intended use, and carefully protects your data from loss, misuse, unauthorized access or disclosure, alteration, or destruction. Your personal information is never shared with outside parties without your permission, except under conditions explained above in Section 2 when it is necessary to enable your access to the service. Your data is stored in password-controlled servers with access limited to The Wine Curators and its assigns. Your information will be stored and processed in the United States. You are solely responsible for protecting your personal information from use by other parties.
- 6. Satisfaction Guarantee.** If for whatever reason you are dissatisfied with The Personal Wine Curator™ Mobile service subscription you can cancel at any time and receive a credit on the unused portion of your service. Any credit will be issued to you in monthly increments only after the first month following your cancellation.
- 7. 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 or by posting it on The Wine Curators' website. 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.
- 8. 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.
- 9. 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 personal data 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 reserves the right to change or discontinue any aspect or feature of this Service at any time.
- d. 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.
- e. 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.

**10. 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.

**11. 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.

**12. Your Warranty to The Wine Curators.** You warrant that you will observe and perform all the terms and conditions of these Terms.

**13. 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; or (ii) 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.

**14. 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.

**15. 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 regarding your use of the service 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.