

# BRITISH COLUMBIA WINE INSTITUTE

## TERMS OF USE

*Last Update: June, 2020*

### 1. Introduction

Welcome to Wines of British Columbia Explorer. The following terms of use (these “**Terms**”) govern your use of the <https://explorer.winebc.com> website, mobile application (“**App**”) and all related webpages (collectively, the “**Site**”), together with all of the Site’s content and related features (“**Content**”), and the services available thereon, including the curation of wine and other alcoholic beverage recommendations in your region based on your personal preferences and tastes (collectively, the “**Services**”).

### 2. Acceptance and Changes

**You should carefully review these Terms and, if you do not agree with them, you are not permitted to access or use the Site, App or Services and you must exit the Site, cease using the App and Services immediately and, if you have downloaded or installed the App on to your device, uninstall the App from such device immediately.**

The Site and Services are owned and operated by British Columbia Wine Institute (“**Wines of British Columbia Explorer**”, “**we**”, “**us**”, or “**our**”) and all Content is owned or licensed by Wines of British Columbia Explorer. By accessing the Site or using any of the Services you accept and agree to be bound by these Terms. If you do not agree to these Terms, you may not access or otherwise use the Site or Services.

We reserve the right, acting in our sole discretion and with or without prior notice to you, to do any of the following: (i) modify, suspend or terminate operation of, or access to, any portion, features or functions of the Site or Services including, but not limited to, hours of availability, geographical availability and applicable policies or terms; (ii) make changes to any fees or charges, if any, related to your use of the Site or Services; (iii) make changes to the equipment, hardware or software required to use and access the Site or Services; (iv) interrupt the Site or Services, or any portion thereof, as necessary to perform routine or non-routine maintenance, error correction or other modifications; and (v) revise these Terms. We will give you notice of such revisions by posting the revised Terms on the Site. It is your responsibility to ensure that you are aware of the current Terms when you use the Site or Services. If you continue to access or use any of the Site or Services after any revisions to these Terms you will be deemed to have accepted those revisions.

### 3. Privacy

By accessing or using the Site and/or Services, or otherwise accepting or agreeing to these Terms, you consent to the collection, use and disclosure of your Personal Information (as defined in the Privacy Policy) by us as set out in the [Privacy Policy](#), which may be amended from time to time and which is incorporated into these Terms. The Privacy Policy sets out the types of Personal Information that we collect through your use of the Site and Services, and the purposes for our collection, use and disclosure of your Personal Information.

#### 4. Disclaimer

The Site, Services and Content contain information about certain wine and other alcoholic beverages which may be available for purchase in your jurisdiction and are intended for use by adults of legal drinking age in the jurisdiction in which you reside. We provide the Site, Services and Content with the intention that adults will use it to enjoy wine and alcoholic beverages responsibly and in moderation. You acknowledge and agree that we do not sell, offer to sell, invite to sell, or solicit any sales of alcohol beverages. By accessing or using the Site or Services, you represent and warrant that you are of legal drinking age in the jurisdiction in which you reside. You acknowledge and agree that you are solely responsible for ensuring compliance with all applicable laws and regulations in your jurisdiction.

#### 5. Accounts

##### *(a) Types of Accounts*

In order to access and use the Services, you will be required to either sign in using a third-party service log-in (e.g. Facebook) or register an account (“**Account**”) through the Site. We may maintain different types of Accounts for different types of users. We and our third party service providers use an administrator account (“**Admin Account**”) in order to administer the Site and Services. Merchants in the alcoholic beverage industry who post Listings (as defined below) on our Site and Services use a management account (“**Management Account**”) in order to upload and review their respective Listings. If you open a Management Account on behalf of a company, organization or other entity, then “you” means, collectively, you and the entity, and you represent and warrant that you are an authorized representative of the entity with the authority to bind the entity to these Terms, and that you agree to these Terms on the entity’s behalf. All other users will be required to register a taster account (“**Taster Account**”) in order to access and use the Site and Services. We retain the sole discretion to approve applications for registration.

##### *(b) Your Information and Security*

When registering for or updating an Account, you will be required to provide us with certain information, which includes your select user name and password (collectively, the “**Login Information**”) and your name and email address (your Personal Information). We also provide you with the opportunity to provide additional Personal Information such as your postal code, age and gender, which we use to perform analytics on an aggregated and anonymized basis so that we can improve and personalize the delivery of our Services to you. Your Personal Information will be collected and used by us in accordance with our [Privacy Policy](#). You are solely responsible for (a) maintaining the security and confidentiality of your Account and Login Information; (b) restricting access to the devices from which you access the Site, Services and your Account; and (c) keeping the Login Information and Personal Information accurate and current. You are solely responsible and liable for all activities which occur on the Site and Services under your Account whether or not such activities have been authorized by you. You agree to immediately notify us of any unauthorized use of your Account. We are not responsible for any unauthorized use of your Account(s) even if you have advised us of such use.

## 6. Application

The Site and Services operate on certain operating systems and are available through third party application stores on mobile devices. Currently, the App is available to be downloaded onto mobile devices with iOS and Android operating systems from the Apple App Store and Google Play. You acknowledge and agree that we are not responsible for ensuring that your mobile device's software is compatible with the Site or the App, or that you can use or access the Site, App or Services through your mobile device. In addition, the terms and conditions of the applicable app store from which you are downloading the App will also apply.

You agree that we may enforce these Terms directly, as may the owners of the operating systems on which the App runs, such as Apple and Google, who will also have the right to enforce this Agreement against you as a third party beneficiary. If you download the App from the Apple App Store, then this Agreement incorporates by reference Apple's [Licensed Application End User License Agreement](#), for purposes of which, you are "the end-user." In the event of a conflict in the terms of the Licensed Application End User License Agreement and these Terms, the terms of the Licensed Application End User License Agreement shall control.

## 7. Electronic Communications

You consent to receive electronic communications from us either in the form of email, push notification or in-App notification to your mobile device or other forms of electronic messages sent to you at the addresses listed on your Account or by communications posted on or notifications through the Site. You acknowledge and agree that any electronic communication shall satisfy any legal requirement that such communication or notification be in writing. Please see our [Privacy Policy](#) for information on how to unsubscribe from certain promotional and marketing electronic communications from us.

## 8. Limited End User License and Restrictions

We grant to you a limited, personal, revocable, non-exclusive, royalty free, non-transferable license to use the (i) Site, (ii) Services, and (iii) Content, as applicable, on a single computer, mobile device or media platform, including applications downloaded directly from a legitimate marketplace (the "License"). The term of your License commences on the date of your acceptance of these Terms and shall end on the earlier date of your or our suspension or termination of your Account. Your License shall terminate immediately, automatically and without notice if you attempt to circumvent any technical protection measures used in connection with the Site, Services or Content or you otherwise breach these Terms.

In connection with your use of the Site and the Services, you acknowledge and agree that you will not: (i) copy, reverse engineer, reverse assemble, otherwise attempt to discover the source code, distribute, transmit, display, perform, reproduce, publish, license, create derivative works from, transfer or sell any information, software, products or services obtained through the Site or the Services; (ii) post or transmit any material that contains a virus or corrupted data; (iii) delete any author attributions, legal notices or proprietary designations or labels; (iv) violate any applicable laws or use the Site or the Services for any purpose that is prohibited by these Terms; (v) use the Site or the Services in any manner that could damage, disable, overburden or impair

our servers or networks, or interfere with any other user's use and enjoyment of the Site and/or the Services; (vi) gain or attempt to gain unauthorized access to any of the Site, Services, accounts, computer systems or networks connected to us through hacking, password mining or any other means; or (vii) use the Site in any manner that could damage, disparage or otherwise negatively impact us.

## 9. Intellectual Property

The Site, Services and Content, including but not limited to any audio, video, icons and images, graphics, images, domain names, business names, site design, as well as the selection, arrangement and "look and feel" of such Content (collectively, the "**Copyrighted Material**") and all trademarks, service marks, trade names and logos, whether registered or not, that appear on the Site and Services (collectively, the "**Marks**") are the sole property of us, our partners and third party licensors and are protected by intellectual property laws and may not be used except in accordance with these Terms or with our express written consent. You are prohibited from modifying, copying, distributing, displaying, reproducing, selling, licensing, creating derivative works or using any of the Services, Content, Copyrighted Material or Marks for commercial purposes or in contravention of these Terms without our express written consent. We reserve the right to remove any Services or Content at any time and for any reason. You agree that any and all creative ideas, concepts, notes, drawings, suggestions, feedback or other information that you may provide to us, whether solicited or unsolicited, as an Account holder or otherwise ("**Feedback**"), will be owned by us, without providing compensation to you or any other person and without any liability whatsoever, including all intellectual property rights therein and you hereby agree to irrevocably assign all intellectual property rights throughout the world and in perpetuity in and to the Feedback to us and waive all moral rights you may have therein. You may submit Feedback by emailing us at: [support@winebc.com](mailto:support@winebc.com).

## 10. Copyright Policy

Wines of British Columbia Explorer respects the intellectual property rights of others and expects you to do the same. We will respond to notices of alleged copyright infringement that are properly provided to us and comply with applicable law. If you believe that anything on our Site or Services, including on the App, infringes any copyright that you own or control, please provide us with the following information:

- (a) a physical or electronic signature of the copyright owner or a person authorized to act on their behalf;
- (b) identification of the copyrighted work claimed to have been infringed;
- (c) identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit us to locate the material;
- (d) your contact information, including your address, telephone number, and an email address;

- (e) a statement by you that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
- (f) a statement that the information in the notification is accurate and, under penalty of perjury, that you are authorized to act on behalf of the copyright owner.

We reserve the right to remove Content alleged to be infringing and to terminate your Account without prior notice and at our sole discretion. If you knowingly misrepresent that any Content on our Site or Services is infringing, you may be liable to us for certain costs and damages. Please submit all notices of alleged copyright infringement appearing on the Site or through the Services to support@winebc.com.

## **11. Wine Merchant Listings**

We offer a listing service to merchants in the wine and other alcoholic beverage industry. If you are a wine or other alcoholic beverage merchant and we have agreed to list your product(s), location(s), event(s) or other similar content (“**Listings**”) on the Site or Services, you acknowledge and agree that you are authorized to sell, advertise for sale, and distribute all products identified in the Listings in all applicable jurisdictions. You agree that all Listings information provided to us is accurate, complete and current, including without limitation, your business name, address, contact information and working hours. We reserve the right to remove all or a portion of any collected Listings in our sole discretion.

## **12. Third Party Links and Purchases**

The Site and Services may contain links that direct you to the website of a third party. These links are provided to you as a convenience. The content of these websites has not been reviewed or approved by us. You acknowledge and agree that we shall not be responsible or liable in any way for any damage or loss caused or alleged to be caused by your use of any third party link, content, goods or services (including, without limitation, in connection with any third party goods or services recommended by us). You are responsible for reviewing and complying with the terms of use applicable to any such third party website.

Any purchase or other transaction between you and any third party whose link may be listed on the Site or Services is entirely between you and such third party. Payment, delivery and all other dealings are entirely between you and the applicable third party. You agree that we shall not be responsible or liable for any loss, damage or other matters associated with your transaction with any third party and you hereby irrevocably waive, release, agree not to sue, and forever discharge us from and against any and all claims or causes of action arising out of or in connection with any transaction with a third party.

We may provide tools through the Site, Services or Content that enable you to export information to third-party services, including through features that allow you to link your Account with an account on a third-party service, such as Facebook, or through our implementation of third-party buttons (such as “like” or “share” buttons). Third-party services are not under our control, and we are not responsible for any third-party services’ use of your exported information.

### **13. Disclaimer of Warranties**

THE SITE, SERVICES AND CONTENT ARE PROVIDED “AS IS”, “AS AVAILABLE”, AND WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, Wines of British Columbia Explorer DOES NOT WARRANT AND EXPRESSLY DISCLAIMS THAT: (I) YOUR USE OF THE SITE, SERVICES OR CONTENT WILL BE UNINTERRUPTED, ERROR-FREE, SECURE OR WILL MEET YOUR REQUIREMENTS; (II) THE SITE, SERVICES OR CONTENT ARE ACCURATE, RELIABLE OR COMPLETE; (III) ANY ERRORS OR DEFECTS IN THE SITE, SERVICES OR CONTENT WILL BE CORRECTED BY US; OR (IV) ANY OF THE SITE, SERVICES, CONTENT OR SERVER(S) ON WHICH THE SITE IS HOSTED ARE FREE OF VIRUSES OR OTHER MALICIOUS CODE. YOU AGREE THAT YOUR USE OF THE SITE, SERVICES AND CONTENT IS ENTIRELY AT YOUR OWN RISK.

### **14. Limitation of Liability**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER Wines of British Columbia Explorer NOR ITS AFFILIATES OR THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS WILL BE RESPONSIBLE OR LIABLE TO YOU OR ANY THIRD PARTY FOR ANY BODILY INJURY, PROPERTY DAMAGE OR ANY LOSSES OR DAMAGES OF ANY TYPE WHATSOEVER, INCLUDING BUT NOT LIMITED TO DIRECT, INDIRECT, PUNITIVE, CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES OR DAMAGES RESULTING FROM THE LOSS OR CORRUPTION OF DATA, REPUTATION, REVENUE, PROFIT OR BUSINESS OPPORTUNITIES, ARISING OUT OF OR IN CONNECTION WITH (I) YOUR ACCESS TO AND USE OF, OR INABILITY TO ACCESS OR USE, THE SITE, SERVICES OR CONTENT; OR (II) ANY ACTION TAKEN BY YOU IN RESPONSE TO OR AS A RESULT OF ANY INFORMATION, IDEA, OR INSTRUCTION AVAILABLE ON OR THROUGH THE SITE AND/OR SERVICES, EVEN IF WE ARE MADE AWARE OF THE POSSIBILITY OF SUCH BODILY INJURY, PROPERTY DAMAGE OR LOSSES OR DAMAGES.

IF HOWEVER, WE ARE FOUND LEGALLY RESPONSIBLE TO YOU FOR ANY LOSSES YOU MAY HAVE SUFFERED OR INCURRED ARISING OUT OF OR IN CONNECTION WITH (I) YOUR ACCESS TO AND USE OF, OR INABILITY TO ACCESS OR USE, THE SITE, SERVICES OR CONTENT; OR (II) ANY ACTION TAKEN BY YOU IN RESPONSE TO OR AS A RESULT OF ANY INFORMATION, IDEA, OR INSTRUCTION AVAILABLE ON OR THROUGH THE SITE AND/OR SERVICES, THEN OUR LIABILITY TO YOU SHALL NOT EXCEED THE AMOUNT OF CANADIAN FIFTY DOLLARS (CDN \$50.00).

### **15. Indemnity**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, YOU AGREE TO DEFEND, INDEMNIFY AND HOLD Wines of British Columbia Explorer, ITS AFFILIATES

AND THEIR RESPECTIVE AND ITS DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES AND AGENTS HARMLESS FROM AND AGAINST ANY AND ALL LOSSES, CLAIMS, LIABILITIES, FINES, PENALTIES AND OTHER EXPENSES (INCLUDING LEGAL COSTS ON A FULL INDEMNITY BASIS), OF WHATEVER NATURE THAT MAY BE BROUGHT AGAINST Wines of British Columbia Explorer, ARISING FROM YOUR ACCESS TO AND USE OF THE SITE, SERVICES OR CONTENT, VIOLATION OF ANY TERM OF THESE TERMS, OR ANY CLAIM ASSERTED BY A THIRD PARTY.

WITHOUT DEROGATING FROM OR EXCUSING YOUR OBLIGATIONS UNDER THIS SECTION WE RESERVE THE RIGHT (AT YOUR EXPENSE), BUT ARE NOT UNDER ANY OBLIGATION, TO ASSUME THE EXCLUSIVE DEFENSE AND CONTROL OF ANY MATTER WHICH IS SUBJECT TO AN INDEMNIFICATION BY YOU EVEN IF YOU CHOOSE TO DEFEND OR SETTLE IT. YOU AGREE NOT TO SETTLE ANY MATTER THAT IS SUBJECT TO AN INDEMNIFICATION BY YOU WITHOUT FIRST OBTAINING OUR EXPRESS APPROVAL.

## **16. Violations and Termination**

We may monitor, terminate or suspend your Account or our Services at any time.

You acknowledge and agree that we may, acting in its sole discretion and without prior notice to you, terminate or suspend your ability to access one or all of the Site or Services or any portions thereof, and cancel your Account for any reason including, without limitation: (i) if you violate or otherwise fail to strictly comply with any term or provision of these Terms; (ii) if we have determined, acting in our sole discretion, that your use has created or potentially created risk or legal exposure for us; or (iii) in response to requests by law enforcement or any other government agencies.

Notwithstanding anything contained in these Terms, we reserve the right to terminate your ability to access the Site or Services or portions thereof, without notice to you, at any time and for any reason, including but not limited to any breach of these Terms. Upon such termination, you must cease use of your Account(s), cease accessing the Site and Services and promptly destroy any and all Content generated from the Site and Services.

## **17. Governing Law and Dispute Resolution**

These Terms and your legal relationship with Wines of British Columbia Explorer shall be governed by and construed in accordance with the laws of the Province of British Columbia and the federal laws of Canada applicable therein, without regard to its conflict of laws principles.

Except for any claim involving the violation of intellectual property rights, breach of confidentiality or breach of privacy, all disputes arising out of or in connection with these Terms shall be promptly referred to a member of senior management of each of the parties involved, who shall have sixty (60) days to attempt to resolve the dispute in good faith. If that fails, the parties agree to arbitrate any and all disputes, claims or controversies arising out of or relating to these Terms in any way.

The parties involved will submit the dispute to arbitration by a single arbitrator who is acceptable to both parties and whose expenses will be shared equally by them. If they cannot agree on an arbitrator, an arbitrator will be appointed by the BC International Commercial Arbitration Centre for Domestic Disputes. The seat of the arbitration shall be in Vancouver, British Columbia. The *International Arbitration Rules* or successor legislation will apply to the arbitration. You and Wines of British Columbia Explorer hereby irrevocably submit to the jurisdiction of the arbitrator in Vancouver, British Columbia and waive any defense in an arbitration based upon any claim that such party is not subject personally to the jurisdiction of such arbitrator, or that such arbitration is brought in an inconvenient forum or that such venue is improper. The determination of the arbitrator will be conclusive, final and binding on the parties. The parties expressly waive any right of appeal to any court or judicial authority to the fullest extent permitted by law, other than as may be necessary to enforce or confirm any arbitration award.

You and Wines of British Columbia Explorer agree to submit to the exclusive jurisdiction of the courts of British Columbia situated in the city of Vancouver with respect to any claim, proceeding or action involving the violation of intellectual property rights, breach of confidentiality or breach of privacy, provided that Wines of British Columbia Explorer may seek and obtain injunctive relief in any jurisdiction in any court of competent jurisdiction.

#### **18. Waiver and Severability**

The failure of Wines of British Columbia Explorer to enforce any right or provision of these Terms will not constitute a waiver of such right or provision. In the event that any provision of these Terms shall, in whole or in part, be determined to be invalid, unenforceable or void by a court of competent jurisdiction, such determination shall affect only the portion of such provision determined to be invalid, unenforceable or void, and shall not affect in anyway the remainder of such provision or any other provision of these Terms.

#### **19. Entire Agreement**

These Terms, together with the Privacy Policy, constitute the entire agreement between the parties concerning the subject-matter hereof and supersede and replace any and all prior oral or written understandings or agreements between you and Wines of British Columbia Explorer regarding the Site and Services.

#### **20. Questions and Feedback**

If you have any questions, comments, concerns or any Feedback regarding these Terms or the Site, Services or Content, please contact us at: [support@winebc.com](mailto:support@winebc.com).

#### **21. California Users**

California users of the Site or Services may contact The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs in writing at 1625 North Market Blvd., Suite N 112, Sacramento CA 95834, or by telephone at (916) 445-1254 or (800) 952-5210.