

TERMS AND CONDITIONS FOR USE OF ABLEGRAPE LLC DATA AND SERVICES

The following terms and conditions, referred to collectively as the (“Terms”), govern your use of the AbleGrape LLC (“AbleGrape”) services (the "Services") and the materials available therein ("Materials"):

1. ACCEPTANCE OF TERMS

- 1.1. To use the Services and any Materials provided by the Services, you must agree to the terms and conditions set out in this agreement.
- 1.2. You can accept the terms and conditions set out in this agreement by:
 - 1.2.1. clicking to accept or agree to the Terms where this option is provided for in the user interface for any portion of the Services; or
 - 1.2.2. using the Services. Your usage of the Services and any Materials provided by the Services constitutes acceptance of the Terms from that point onwards.
- 1.3. You may not use the Services if you do not accept the Terms.
- 1.4. You may not use the Services and may not accept the Terms if you are not of legal age to form a binding contract with AbleGrape or if you are prohibited from accessing the Services or Materials under the laws of the United States or other countries including the country in which you are resident or from which you access the Services or Materials.
- 1.5. Portions of the Services, Materials, and any advertisements provided by the Services or included in the Materials (“Advertisements”) may pertain to alcoholic beverages and other alcohol products, including beer, wine, liquor, and other spirits. You may not use the Services and may not accept the Terms if you are not of legal age or otherwise legally permitted to purchase, consume, and possess alcoholic beverages and other alcohol products under the laws of the United States of America or other countries including the country in which you are resident or from which you access the Services or Materials, including the laws of any state or local jurisdiction which you are resident or from which you access the Services or Materials.

2. PROVISION OF SERVICES BY ABLEGRAPE

- 2.1. You acknowledge and agree that the form and nature of the Services and Materials provided by AbleGrape may change from time to time without prior notice to you.

- 2.2. You acknowledge and agree that AbleGrape may temporarily or permanently stop providing all or a portion of the Services to you or to users generally at AbleGrape's sole discretion, without prior notice to you.
- 2.3. You acknowledge and agree that if AbleGrape disables access to your account, you may be prevented from accessing the Services, your account details or any files or other Materials which is contained in your account.
- 2.4. You acknowledge and agree that while AbleGrape may not currently have set a fixed or variable upper limit on the number of transmissions or the rate of transmissions you may send or receive through the Services or on the amount of storage space used for the provision of any Service, such upper limits may be set by AbleGrape at any time, at AbleGrape's discretion.

3. USE OF THE SERVICES

- 3.1. In order to access certain Services, you may be required to provide registration information about yourself (such as identification, date of birth, or contact details) as part of the registration process for the Service, or as part of your continued use of the Services. You agree that any registration information you give to AbleGrape will always be accurate, correct and up to date.
- 3.2. You agree to use the Services only for purposes that are permitted by (a) the Terms and (b) any applicable law, regulation or generally accepted practices or guidelines in the relevant jurisdictions (including any laws regarding the export of data or software to and from the United States or other relevant countries).
- 3.3. You agree not to access (or attempt to access) any of the Services by any means other than through the interface that is provided by AbleGrape, unless you have been specifically allowed to do so in a separate agreement with AbleGrape. You specifically agree not to access (or attempt to access) any of the Services through any automated means (including use of scripts or web crawlers) and shall ensure that you comply with the instructions set out in any robots.txt file present on the Services or associated with any Materials provided by the Services.
- 3.4. You agree that you will not engage in any activity that interferes with or disrupts the Services (or the servers and networks which are connected to the Services).
- 3.5. Unless you have been specifically permitted to do so in a separate agreement with AbleGrape, you agree that you will not reproduce, duplicate, copy, sell, trade or resell the Services for any purpose.
- 3.6. You agree that you are solely responsible for (and that AbleGrape has no responsibility to you or to any third party for) any breach of your obligations under the Terms and for

the consequences (including any loss or damage which AbleGrape may suffer) of any such breach.

- 3.7. If AbleGrape requires you to use a password or other login information to access the Services, you agree and understand that you are responsible for maintaining the confidentiality of passwords associated with any account you use to access the Services.
- 3.8. You agree that you will be solely responsible to AbleGrape for all activities that occur under your account.
- 3.9. If you become aware of any unauthorized use of your password or of your account, or of any circumstances that you believe would threaten the confidentiality of your password or the security of your account, you agree to notify AbleGrape immediately.

4. **PRIVACY AND PERSONAL INFORMATION**

- 4.1. You agree to the use of your data in accordance with AbleGrape's privacy policies. **[INSERT LINK TO PRIVACY POLICY]**

5. **MATERIALS PROVIDED BY AND ACCESSED VIA THE SERVICES**

- 5.1. You understand that all Materials, including web pages; data files; text or other electronic documents; graphs, charts, tables, and other presentations of data; computer software; music, audio files or other sounds; photographs, videos or other images; and maps, that you may have access to as part of, or through your use of, the Services are the sole responsibility of the person or organization from which such Materials originated.
- 5.2. AbleGrape may present Materials using proprietary arrangements ("Proprietary Arrangements of Materials"), including but not limited to categories or classifications, AbleGrape editorial content, quality assessments, rankings, and other arrangement techniques. Proprietary Arrangements of Materials include explicitly presented information, such as editorial content summarizing the contents of Materials, and implicitly presented information, such as the order of presentation of search results implicitly presenting a ranking of Materials.
- 5.3. You should be aware that Materials presented to you as part of the Services, including but not limited to advertisements in the Services and sponsored Materials within the Services may be protected by intellectual property rights which are owned by the sponsors or advertisers who provide that Materials to AbleGrape (or by other persons or companies on their behalf). You may not modify, rent, lease, loan, sell, distribute or create derivative works based on this Materials (either in whole or in part) unless you have been specifically told that you may do so by AbleGrape or by the owners of that Materials, in a separate agreement.

- 5.4. AbleGrape reserves the right (but shall have no obligation) to pre-screen, review, flag, filter, modify, refuse or remove any or all Materials from any Services.
- 5.5. You understand that by using the Services you may be exposed to Materials that you may find offensive, indecent or objectionable and that, in this respect, you use the Services at your own risk.
- 5.6. The Services may include hyperlinks to Materials, such as web sites, electronic documents, or other online resources. You acknowledge and agree that AbleGrape has no control over the content of any Materials that are provided by companies or persons other than AbleGrape.
- 5.7. You acknowledge and agree that AbleGrape is not responsible for the availability of any Materials, and does not endorse any advertising, products or services on or available from such Materials.
- 5.8. You acknowledge and agree that AbleGrape is not liable for any loss or damage which may be incurred by you as a result of the availability of Materials, as a result of any reliance placed by you on the completeness, accuracy or existence of any advertising, products or other information on, or available from, such Materials, or as a result of any reliance placed by you on the completeness, accuracy or existence of Proprietary Arrangement of Materials.
- 5.9. You acknowledge and agree that AbleGrape is not liable for any loss or damage which may be incurred by you as a result of AbleGrape providing other users with access to Materials provided by AbleGrape or companies or persons other than AbleGrape, including any losses or damages occurring due to the completeness, accuracy or existence of Materials, or as a result of any reliance placed by you on the completeness, accuracy or existence of Proprietary Arrangement of Materials.
- 5.10. You acknowledge and agree that AbleGrape is not liable for any loss or damage which may be incurred by you as a result of AbleGrape partially or completely failing to provide other users with access to Materials, either provided by AbleGrape or by companies or persons other than AbleGrape, including any losses or damages occurring due to consumer confusion, dilution of trade marks, unfavorable search rankings of Materials, or the Proprietary Arrangement of Materials.

6. MATERIALS PROVIDED BY YOU

- 6.1. You agree that you are solely responsible for any Materials that you create, transmit or display while using the Services and for the consequences of your actions, including any loss or damage which AbleGrape may suffer, by doing so.
- 6.2. You agree that AbleGrape has no responsibility to you or to any third party for any Materials that you create, transmit or display while using the Services and for the

consequences of your actions, including any loss or damage suffered by you or any third party, by doing so.

- 6.3. You retain copyright and any other rights you already hold in Materials which you submit, post or display on or through, the Services. By submitting, posting or displaying the Materials you give AbleGrape a perpetual, irrevocable, worldwide, royalty-free, and non-exclusive license to reproduce, adapt, modify, translate, publish, publicly perform, publicly display and distribute any Materials which you submit, post or display on or through, the Services. This license is for the sole purpose of enabling AbleGrape to display, distribute and promote the Services.
- 6.4. You agree that the license set forth in Section 6.3 includes a right for AbleGrape to make such Materials available to other companies, organizations or individuals with whom AbleGrape has relationships for the provision of syndicated services, and to use such Materials in connection with the provision of those services.
- 6.5. You understand that AbleGrape, in performing the required technical steps to provide the Services to our users, may (a) transmit or distribute your Materials over various public networks and in various media; and (b) make such changes to your Materials as are necessary to conform and adapt that Materials to the technical requirements of connecting networks, devices, services or media. You agree that the license set forth in Section 6.3 shall permit AbleGrape to take these actions.
- 6.6. You confirm and warrant to AbleGrape that you have all the rights, power and authority necessary to grant the license set forth in Section 6.3.
- 6.7. Other than the limited license set forth in Section 6.3, AbleGrape acknowledges and agrees that it obtains no right, title or interest from you (or your licensors) under these Terms in or to any Materials that you submit, post, transmit or display on, or through, the Services, including any intellectual property rights which subsist in that Materials (whether those rights happen to be registered or not, and wherever in the world those rights may exist). Unless you have agreed otherwise in writing with AbleGrape, you agree that you are responsible for protecting and enforcing those rights and that AbleGrape has no obligation to do so on your behalf.

7. **PROPRIETARY RIGHTS**

- 7.1. You acknowledge and agree that AbleGrape (or AbleGrape's successors or licensors) own all legal right, title and interest in and to the Services, including any patent, federal or state trademark, copyright, federal or state trade secret, or any other intellectual property rights which subsist in the Services (whether those rights happen to be registered or not, and wherever in the world those rights may exist).
- 7.2. You acknowledge and agree that AbleGrape (or AbleGrape's successors or licensors) own all legal right, title and interest in and to the Proprietary Arrangement of Materials,

including any patent, federal or state trademark, copyright, federal or state trade secret, or any other intellectual property rights which subsist in the Proprietary Arrangement of Materials (whether those rights happen to be registered or not, and wherever in the world those rights may exist).

- 7.3. You further acknowledge that the Services may contain information which is designated confidential by AbleGrape and that you shall not disclose such information without AbleGrape's prior written consent.
- 7.4. Unless you have agreed otherwise in writing with AbleGrape, nothing in the Terms gives you a right to use any of AbleGrape's trade names, trade marks, service marks, logos, domain names, and other distinctive brand features.
- 7.5. You agree that you shall not remove, obscure, or alter any proprietary rights notices (including copyright and trade mark notices) which may be affixed to or contained within the Services.
- 7.6. Unless you have been expressly authorized to do so in writing by AbleGrape, you agree that in using the Services, you will not use any trade mark, service mark, trade name, logo of any company or organization in a way that is likely or intended to cause confusion about the owner or authorized user of such marks, names or logos.

8. LICENSE FROM ABLEGRAPE

- 8.1. AbleGrape gives you a personal, worldwide, royalty-free, non-assignable and non-exclusive license to use the Services provided to you by AbleGrape. This license is for the sole purpose of enabling you to use and enjoy the benefit of the Services as provided by AbleGrape, in the manner permitted by the Terms, and may not be used for any other purpose.
- 8.2. You may not and you may not permit anyone else to copy, modify, create a derivative work of, reverse engineer, decompile or otherwise attempt to extract the source code of the Services or any software used to provide the Services, unless this is expressly permitted or required by law, or unless you have been specifically told in writing that you may do so by AbleGrape.
- 8.3. You may not and you may not permit anyone else to copy, modify, create a derivative work of, reverse engineer, decompile or otherwise attempt to extract AbleGrape's Proprietary Arrangement of Materials, unless this is expressly permitted or required by law, or unless you have been specifically told in writing that you may do so by AbleGrape.
- 8.4. Unless AbleGrape has given you specific written permission to do so, you may not assign (or grant a sub-license of) your rights to use the Services, grant a security interest

in or over your rights to use the Services, or otherwise transfer any part of your rights to use the Services.

9. SERVICE AND SOFTWARE UPDATES

9.1. The Services and any required software which you use may automatically download and install updates from time to time from AbleGrape. These updates are designed to improve, enhance and further develop the Services and may take the form of bug fixes, enhanced functions, new software modules and completely new versions. You agree to receive such updates (and permit AbleGrape to deliver these to you) as part of your use of the Services.

10. ENDING YOUR RELATIONSHIP WITH ABLEGRAPE

10.1. The Terms will continue to apply until terminated by either you or AbleGrape as set out below.

10.2. If you want to terminate your legal agreement with AbleGrape, you may do so by (a) notifying AbleGrape at any time and (b) closing your accounts for all of the Services which you use, where AbleGrape has made this option available to you.

10.3. AbleGrape may at any time, terminate its legal agreement with you if:

10.3.1. you have breached any provision of the Terms (or have acted in manner which clearly shows that you do not intend to, or are unable to comply with the provisions of the Terms); or

10.3.2. AbleGrape is required to do so by law (for example, where the provision of the Services to you is, or becomes, unlawful); or

10.3.3. the partner with whom AbleGrape offered the Services to you has terminated its relationship with AbleGrape or ceased to offer the Services to you; or

10.3.4. AbleGrape is transitioning to no longer providing the Services to users in the country in which you are resident or from which you use the service; or

10.3.5. the provision of the Services to you by AbleGrape is, in AbleGrape's opinion, no longer commercially viable.

10.4. Nothing in this Section shall affect AbleGrape's rights regarding provision of Services under Section 2 of the Terms.

10.5. When these Terms come to an end, all of the legal rights, obligations and liabilities that you and AbleGrape have benefited from, been subject to (or which have accrued over time whilst the Terms have been in force) or which are expressed to

continue indefinitely, shall be unaffected by this cessation, and the provisions of paragraph **20.7 – Choice of Law** shall continue to apply to such rights, obligations and liabilities indefinitely.

11. EXCLUSION OF WARRANTIES

- 11.1. NOTHING IN THESE TERMS, INCLUDING SECTIONS 11 AND 12, SHALL EXCLUDE OR LIMIT ABLEGRAPE'S WARRANTY OR LIABILITY FOR LOSSES WHICH MAY NOT BE LAWFULLY EXCLUDED OR LIMITED BY APPLICABLE LAW. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR CONDITIONS OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR LOSS OR DAMAGE CAUSED BY NEGLIGENCE, BREACH OF CONTRACT OR BREACH OF IMPLIED TERMS, OR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, ONLY THE LIMITATIONS WHICH ARE LAWFUL IN YOUR JURISDICTION WILL APPLY TO YOU AND OUR LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.
- 11.2. YOU EXPRESSLY UNDERSTAND AND AGREE THAT YOUR USE OF THE SERVICES AND MATERIALS IS AT YOUR SOLE RISK AND THAT THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE."
- 11.3. IN PARTICULAR, ABLEGRAPE, ITS SUBSIDIARIES AND AFFILIATES, AND ITS LICENSORS DO NOT REPRESENT OR WARRANT TO YOU THAT:
 - 11.3.1. YOUR USE OF THE SERVICES WILL MEET YOUR REQUIREMENTS,
 - 11.3.2. YOUR USE OF THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR,
 - 11.3.3. ANY INFORMATION OBTAINED BY YOU AS A RESULT OF YOUR USE OF THE SERVICES WILL BE ACCURATE OR RELIABLE, AND
 - 11.3.4. THAT DEFECTS IN THE OPERATION OR FUNCTIONALITY OF ANY SOFTWARE PROVIDED TO YOU AS PART OF THE SERVICES WILL BE CORRECTED.
- 11.4. ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICES IS DONE AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR OTHER DEVICE OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.
- 11.5. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM ABLEGRAPE OR THROUGH OR FROM THE

SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THE TERMS.

- 11.6. ABLEGRAPE FURTHER EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

12. LIMITATION OF LIABILITY

- 12.1. SUBJECT TO OVERALL PROVISION IN PARAGRAPH 11.1 ABOVE, YOU EXPRESSLY UNDERSTAND AND AGREE THAT ABLEGRAPE, ITS SUBSIDIARIES AND AFFILIATES, AND ITS LICENSORS SHALL NOT BE LIABLE TO YOU FOR:

12.1.1. ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL CONSEQUENTIAL OR EXEMPLARY DAMAGES WHICH MAY BE INCURRED BY YOU, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY. THIS SHALL INCLUDE, BUT NOT BE LIMITED TO, ANY LOSS OF PROFIT (WHETHER INCURRED DIRECTLY OR INDIRECTLY), ANY LOSS OF GOODWILL OR BUSINESS REPUTATION, ANY LOSS OF DATA SUFFERED, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR OTHER INTANGIBLE LOSS; OR

12.1.2. ANY LOSS OR DAMAGE WHICH MAY BE INCURRED BY YOU, INCLUDING BUT NOT LIMITED TO LOSS OR DAMAGE AS A RESULT OF:

12.1.2.1. ANY RELIANCE PLACED BY YOU ON THE COMPLETENESS, ACCURACY OR EXISTENCE OF ANY MATERIALS AVAILABLE OR PURPORTED TO BE AVAILABLE VIA THE SERVICES; OR

12.1.2.2. ANY RELIANCE PLACED BY YOU ON THE COMPLETENESS, ACCURACY OR EXISTENCE OF ADVERTISING, OR AS A RESULT OF ANY RELATIONSHIP OR TRANSACTION BETWEEN YOU AND ANY ADVERTISER OR SPONSOR WHOSE ADVERTISING APPEARS ON THE SERVICES; OR

12.1.2.3. ANY CHANGES WHICH ABLEGRAPE MAY MAKE TO THE SERVICES, OR FOR ANY PERMANENT OR TEMPORARY CESSATION IN THE PROVISION OF THE SERVICES (OR ANY FEATURES WITHIN THE SERVICES); OR

12.1.2.4. THE DELETION OF, CORRUPTION OF, OR FAILURE TO STORE, ANY MATERIALS AND OTHER COMMUNICATIONS DATA MAINTAINED OR TRANSMITTED BY OR THROUGH YOUR USE OF THE SERVICES; OR

12.1.2.5. YOUR FAILURE TO PROVIDE ABLEGRAPE WITH ACCURATE ACCOUNT INFORMATION; OR

12.1.2.6. YOUR FAILURE TO KEEP YOUR PASSWORD OR ACCOUNT INFORMATION SECURE AND CONFIDENTIAL.

12.2. THE LIMITATIONS ON ABLEGRAPE'S LIABILITY TO YOU IN PARAGRAPH 12.1 ABOVE SHALL APPLY WHETHER OR NOT ABLEGRAPE HAS BEEN ADVISED OF OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF ANY SUCH LOSSES ARISING.

13. COPYRIGHT AND TRADE MARK POLICIES

13.1. It is AbleGrape's policy to respond to notices of alleged copyright infringement that comply with applicable international intellectual property law (including, in the United States, the Digital Millennium Copyright Act) and to terminating the accounts of repeat infringers.

14. ADVERTISEMENTS

14.1. Some of the Services are supported by advertising revenue and may display advertisements and promotions. These advertisements may be targeted to the Materials provided or accessible via the Services, information stored on the Services, queries made through the Services or other information.

14.2. The manner, mode and extent of advertising by AbleGrape on the Services are subject to change without specific notice to you.

14.3. In consideration for AbleGrape granting you access to and use of the Services, you agree that AbleGrape may place such advertising on the Services.

15. CHANGES TO TERMS

15.1. Changes to the Terms

15.1.1. AbleGrape may make changes to the Terms from time to time. When these changes are made, AbleGrape will make a new copy of the Terms available at **[INSERT TOS URL HERE]** and from within, or through, the affected Services.

15.1.2. You understand and agree that if you use the Services after the date on which the Terms have changed, AbleGrape will treat your use as acceptance of the updated Terms.

16. GENERAL LEGAL TERMS

- 16.1. You may (as a result of, or through your use of the Services) use a service or download a piece of software, or purchase goods, which are provided by another person or company. Your use of these other services, software or goods may be subject to separate terms between you and the company or person concerned. If so, the Terms do not affect your legal relationship with these other companies or individuals.
- 16.2. The Terms constitute the whole legal agreement between you and AbleGrape and govern your use of the Services (but excluding any services which AbleGrape may provide to you under a separate written agreement), and completely replace any prior agreements between you and AbleGrape in relation to the Services.
- 16.3. You agree that AbleGrape may provide you with notices, including those regarding changes to the Terms, by email, regular mail, or postings on the Services.
- 16.4. You agree that if AbleGrape does not exercise or enforce any legal right or remedy which is contained in the Terms (or which AbleGrape has the benefit of under any applicable law), this will not be taken to be a formal waiver of AbleGrape's rights and that those rights or remedies will still be available to AbleGrape.
- 16.5. If any court of law, having the jurisdiction to decide on this matter, rules that any provision of these Terms is invalid, then that provision will be removed from the Terms without affecting the rest of the Terms. The remaining provisions of the Terms will continue to be valid and enforceable.
- 16.6. The Terms, and your relationship with AbleGrape under the Terms, shall be governed by the laws of the State of California without regard to its conflict of laws provisions. You and AbleGrape agree to submit to the exclusive jurisdiction of the courts located within the county of San Francisco, California to resolve any legal matter arising from the Terms. Notwithstanding this, you agree that AbleGrape shall still be allowed to apply for injunctive remedies (or an equivalent type of urgent legal relief) in any jurisdiction.