

CALLDERA, LLC BUSINESS AFFILIATE AGREEMENT

This Calldera, LLC Business Affiliate Agreement (this “Agreement”) contains the terms and conditions that apply to the arrangement between the undersigned as a business affiliate (“Business Affiliate”) of Calldera, LLC, a Georgia limited liability company (“Calldera”).

WHEREAS, Calldera is a business providing a proprietary, personalized wine recommendation service via the Internet and mobile applications for consumers of wine;

WHEREAS, Business Affiliate is a retailer, distributor or producer of wine; and

WHEREAS, Business Affiliate wishes to increase its business by gaining access to Calldera’s customers and Calldera’s business products and services as set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and conditions hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Business Affiliate and Calldera hereby agree as follows:

1. Definitions.

Unless otherwise specified or defined herein, the following terms with initial capital letters shall have the meanings set forth below:

“Business Affiliate” means any retailer, distributor or producer of wine, whether an individual or a business entity, that has registered for a Calldera Business Account and has been accepted by Calldera as a business affiliate of Calldera in accordance with the terms of this Agreement.

“Business Affiliate Marks” means trade names, trademarks, service marks, logos and other distinctive indicia of Business Affiliate and Managed Retailer Affiliates.

“Calldera Application” means that certain user interface for accessing the Calldera Consumer Subscription, Calldera Listing Subscription, Calldera Reports Subscription and Calldera Special Offer Services via individual user login credentials on the Calldera Site and via mobile applications which may be provided by Calldera for various smart phones and tablet devices that are downloadable from Google Play, Amazon.com, the Apple Store or other application store that may be selected by Calldera in its sole discretion.

“Calldera Business Account” means an account created by a retailer, distributor or Producer of wine (or an affiliate of a retailer, distributor or Producer of wine) who visited the Calldera Site and submitted the required information that when activated allows the account-holder to purchase a Calldera Listing Subscription and/or a Calldera Reports Subscription.

“Calldera Classification System” means the methods and systems disclosed in United States Patent Applications U.S. 13/187,878, U.S. 13/188,004 and U.S. 13/188,126 (first

named inventor: Lisa A. Pickelsimer) for categorizing wines, recommending sipping wines, pairing wines with foods, and arranging wines in a systematic display.

“Calldera Confidential Information” means data and information (a) relating to the business of Calldera, regardless of whether the data or information constitutes a trade secret as that term is defined in Section 10-1-761 of the Official Code Annotated of Georgia; (b) disclosed to Business Affiliate by Calldera or of which Business Affiliate became aware as a consequence of the parties’ relationship; (c) having value to Calldera; (d) not generally known to competitors of Calldera; and (e) which includes trade secrets, methods of operation, names of customers, price lists, financial information and projections, route books, personnel data, and similar information. “Calldera Confidential Information” does not mean data or information (a) which has been voluntarily disclosed to the public by Calldera; (b) which has been independently developed and disclosed to Business Affiliate by other third parties; or (c) which has otherwise entered the public domain through lawful means.

“Calldera Consumer” means any individual or entity who (i) is a wine consumer, and (ii) has purchased a Calldera Consumer Subscription.

“Calldera Consumer Data” means all communications service usage data, data relating to the activity of Calldera Consumers on the Calldera Site and other information relating to the interaction of Calldera Consumers with Calldera.

“Calldera Consumer Subscription” means a subscription to the Calldera Application that is available only to Calldera Consumers.

“Calldera Listing Subscription” means a subscription to the Calldera Application that is available only to Business Affiliates with active Calldera Business Accounts and allows the subscriber Business Affiliate or a Managed Retailer Affiliate to be listed within the Calldera Application as a supplier of recommended wines where appropriate.

“Calldera Marks” means trade names, trademarks, service marks, logos and other distinctive indicia of Calldera.

“Calldera Products and Services” means those proprietary products and services offered via the Calldera Site and mobile applications that may be provided by Calldera for various smart phones and tablet devices, which currently consists of the Calldera Application, the Calldera Classification System and associated terminology, Calldera Special Offer Services, various reports offered for sale to Business Affiliates with a Calldera Reports Subscription or a Calldera Listing Subscription, and any proprietary products or services as may be offered at a future date on the Calldera Site during the Term of this Agreement. “Calldera Products and Services” does not include products and services offered by third parties on or through the Calldera Site.

“Calldera Products and Services Fees” is defined in Section 11.a. hereof.

“Caldera Reports Subscription” means a subscription to the Caldera Application that is available only to Business Affiliates with active Caldera Business Accounts and allows the subscriber Business Affiliate to buy certain reports proprietary to Caldera showing and analyzing Caldera Consumer Data.

“Caldera Site” means the Caldera Internet site currently located at <http://www.callderawine.com>, or any page, section, subsection or subdirectory thereof, and any other additional, substitute or successor site that may be designated by Caldera under this Agreement. “Caldera Site” includes without limitation, all content, text, images, software, media and other materials on the Caldera Site.

“Caldera Special Offer Services” means the enhancement available to Caldera Consumers whereby they receive special offers, such as discounted prices or free shipping, from participating Caldera Business Affiliates.

“Collected Data” is defined in Section 7.a. hereof.

“Content” is defined in Section 9.a. hereof.

“Intellectual Property Rights” means all rights in and to trade secrets, patents, copyrights, trademarks, know-how, as well as moral rights and similar rights of any type under the laws of any governmental authority, domestic or foreign, including rights in and to all applications and registrations relating to any of the foregoing.

“Link” means an embedded graphic, icon or text containing a unique hypertext pointer to the initial, top-level display of the Caldera Site, as identified by the following Uniform Resource Locator (URL) <http://www.callderawine.com>, that creates a direct link to the Caldera Site from another website so that Internet users can easily access the Caldera Site from such other website.

“Linked Sites” is defined in Section 9.d. hereof.

“Managed Retailer Affiliate” means a retailer, whether an individual or a business entity, that directly sells wine to consumer customers through a physical retail location, website or mobile application for which Business Affiliate has purchased a Caldera Listing Subscription, wherein such retailer does not itself have an active Caldera Business Account.

“Producer” means the person or entity responsible for the import, production, manufacture and/or blending of wine.

“Site Technology” is defined in Section 12.a. hereof.

“Term” is defined in Section 2.a. hereof.

2. Acceptance, Term and Termination.

- a. Acceptance and Term. The term of this Agreement (“Term”) will begin upon Calldera’s acceptance of this Agreement with Business Affiliate’s original signature and activation of Business Affiliate’s Calldera Business Account, and will continue until terminated in accordance with subsection b below. Calldera reserves the right in its sole and absolute discretion, to accept or reject Business Affiliate as a Business Affiliate for any or for no reason whatsoever. Upon Calldera’s receipt and acceptance of this Agreement with Business Affiliate’s original signature, Calldera will activate Business Affiliate’s Calldera Business Account. **ACTIVATION OF BUSINESS AFFILIATE’S CALLDERA BUSINESS ACCOUNT IS THE ONLY NOTIFICATION OF ACCEPTANCE BUSINESS AFFILIATE WILL RECEIVE.** If Calldera does not activate Business Affiliate’s Calldera Business Account, this Agreement has not been accepted by Calldera and is not binding on Calldera.
- b. Termination. This Agreement shall be terminated immediately upon any of the following:
 - i. Calldera provides notice of termination to Business Affiliate in writing and delivered by a nationally-recognized overnight express delivery service (postage pre-paid) or by certified mail (postage pre-paid with return receipt requested) at the address associated with Business Affiliate in Business Affiliate’s Calldera Business Account;
 - ii. Business Affiliate provides notice of termination to Calldera in writing and delivered by a nationally-recognized overnight express delivery service (postage pre-paid) or by certified mail (postage pre-paid with return receipt requested) at the following address: P. O. Box 8307, Atlanta, Georgia 31106;
 - iii. Business Affiliate breaches any provision of this Agreement;
 - iv. Business Affiliate’s Calldera Listing Subscription expires and is not renewed within three (3) months of its expiration date; or
 - v. If Business Affiliate has only a Reports Subscription (without a Listing Subscription), Business Affiliate’s Reports Subscription expires and is not renewed within three (3) months of its expiration date.
- c. Effect of Termination. Upon termination of this Agreement:
 - i. Business Affiliate must immediately discontinue or disable and cease use of the Link, and remove the Link and Calldera Marks from Business Affiliate’s website(s);
 - ii. Business Affiliate must immediately remove any reference to its association with Calldera and/or Calldera Products and Services from its website(s), any and all material aimed at consumers, including but not limited to any physical or digital consumer-facing retail display, and all other publicly available platforms; and

- iii. All rights and obligations of the parties under this Agreement will be extinguished, except for those rights and obligations that either by their express terms survive or that are otherwise necessary for the enforcement of this Agreement. Sections 6.b. and 12-21 of this Agreement, inclusive, shall survive any termination of this Agreement.

3. Obligations of Caldera.

- a. Upon activation of Business Affiliate's Caldera Business Account, Business Affiliate will have the opportunity and ability to purchase Caldera Listing Subscriptions for itself and Managed Retailer Affiliates and/or a Caldera Reports Subscription, depending on whether Business Affiliate is a retailer, distributor or Producer, via the Caldera Site.
- b. If Business Affiliate purchases a Caldera Listing Subscription, Caldera will fulfill its duties and obligations that are detailed in the description of the Listing Subscription on the Caldera Site at the time Business Affiliate purchases the subscription.
- c. If Business Affiliate purchases a Caldera Reports Subscription, Caldera will fulfill its duties and obligations that are detailed in the description of the Reports Subscription on the Caldera Site at the time Business Affiliate purchases the subscription, including providing the reports selected and purchased by Business Affiliate in a timely manner as set forth in the description of the Reports Subscription.
- d. All newly registered Business Affiliates will also have the opportunity to install the Link on Business Affiliate's website(s). Caldera will assist Business Affiliate in properly installing and maintaining the Link so that it is a useful tool for Business Affiliate's customers.

4. Representations and Warranties of Business Affiliate. Business Affiliate represents, warrants and covenants the following:

- a. Business Affiliate has full authority to enter into this Agreement and has or will obtain, during all times relevant hereunder, all of the necessary consents, rights, licenses, clearances, releases or other permissions to lawfully consummate the transactions and lawfully discharge, in all material respects, each and every of Business Affiliate's obligations or duties set forth hereunder, whether performance is due now or hereafter during the Term.
- b. Business Affiliate has read and understands this Agreement and has duly and validly executed and delivered this Agreement, which constitutes Business Affiliate's legal, valid, and binding obligation, enforceable against Business Affiliate in accordance with its terms.
- c. If Business Affiliate is a Producer, Business Affiliate has listed below each brand of wine Business Affiliate imports, produces, manufactures and/or blends and plans to list in the Caldera Application. Business Affiliate has full responsibility and authority for the business of each such brand.

_____	_____	_____
_____	_____	_____
_____	_____	_____

- d. If Business Affiliate installs the Link on its website(s) and/or grants permission to Calldera to establish a link from the Calldera Site to the Business Affiliate's website(s), Business Affiliate has duly registered the domain name of its website(s) with all applicable authorities and possesses and will maintain all rights necessary to use such domain name.
- e. If Business Affiliate installs the Link on its website(s) and/or grants permission to Calldera to establish a link from the Calldera Site to the Business Affiliate's website(s), content or materials available at Business Affiliate's website(s) (including without limitation, content and materials supplied by users of Business Affiliate's website(s)) does not now, nor will in the future contain any content, material, advertising or services (i) that are inaccurate, (ii) that infringe upon or violate any copyright, patent, trademark, or other proprietary right of any third party or any applicable law, regulation or other non-proprietary third-party right, (iii) that may reasonably be considered to be obscene, defamatory, threatening, harassing or malicious, or (iv) that otherwise expose Calldera to civil or criminal liability or injury to its reputation.

5. Acknowledgements of Business Affiliate. Business Affiliate hereby acknowledges and agrees to the following:

- a. Calldera shall determine, in its sole discretion, the wines that are displayed in the Calldera Application as part of any Calldera service offering;
- b. Calldera shall determine, in its sole discretion, the "Calldera classifications" used in accordance with the Calldera Classification System that are displayed in the Calldera Application as part of any Calldera service offering;
- c. Calldera may provide a rating and/or a descriptive opinion, as determined in its sole discretion, about any wine displayed in the Calldera Application as part of any Calldera service offering, and such rating or descriptive opinion might have a negative impact on Business Affiliate's business; and
- d. All information obtained at the Calldera Site or within the Calldera Application from individuals linking to the Calldera Site from a Link on Business Affiliate's website(s) shall constitute Calldera Consumer Data and be the sole and exclusive property of Calldera and, except as specifically provided herein, Business Affiliate shall neither have access to such information nor use any device, technique or software to obtain such information from the Calldera Site or from the Calldera Application.

6. Obligations of Business Affiliate.

- a. At all times during the Term of this Agreement, Business Affiliate agrees that it shall:
 - i. Update on a timely basis wine inventory information, including price and in-stock designation information, pertaining to wines that are displayed in the Caldera Application as being available for sale by Business Affiliate and Managed Retailer Affiliates, and Business Affiliate hereby consents to itself and Managed Retailer Affiliates being de-listed/removed from display in the Caldera Application for non-compliance with such inventory information management requirement, as ascertained by Caldera in Caldera's sole determination. In the event of such de-listing, Business Affiliate will receive a prorated refund of any pre-paid subscription fees;
 - ii. Honor or cause Managed Retailer Affiliate to honor any and all special offers, including but not limited to offers of discounted prices or free shipping, made by Business Affiliate as part of the Caldera Special Offer Services on qualified purchases made by Caldera Consumers from Business Affiliate or Managed Retailer Affiliate during the active/unexpired duration period of the special offer;
 - iii. Follow any instructions that may be provided by Caldera for installing and maintaining a Link on Business Affiliate's website(s), to the extent technically and reasonably feasible, so that search engine bots can readily find and understand the Link; and
 - iv. Ensure that the information contained in and otherwise associated with Business Affiliate's Caldera Business Account, including the email address, mailing address and other contact information and identification of Business Affiliate's website(s), if any, is at all times complete, accurate, and up-to-date.
- b. At all times during and after the Term of this Agreement, Business Affiliate agrees that it shall not:
 - i. Use, without the prior, express written consent of Caldera, such consent not having been subsequently withdrawn by written notice from Caldera and such consent deemed to be automatically withdrawn upon termination of this Agreement, the Caldera Classification System and associated terminology to classify/designate wines offered for sale by Business Affiliate in any promotional material or consumer-facing retail display, whether such display is a physical display or is a digital information display;
 - ii. Display, without the prior, express written consent of Caldera, such consent not having been subsequently withdrawn by written notice from Caldera and such consent deemed to be automatically withdrawn upon termination of this Agreement, any information with respect to Caldera on Business Affiliate's website(s), promotional material or otherwise in any way other than is expressly permitted herein;

- iii. Use libelous, profane, violent, illegal, sexually explicit, pornographic, lewd or obscene language in any description of a special offer provided by Business Affiliate as part of the Calldera Special Offer Services;
- iv. Share with any third party that is not acting on behalf of Business Affiliate in the conduct of Business Affiliate's primary business operations any data provided by Calldera to Business Affiliate as part of free or fee-based Calldera Products and Services, except with the prior, express written consent of Calldera;
- v. Disparage Calldera, the Calldera Site or the Calldera Products or Services, or portray any of these in a derogatory or negative manner;
- vi. Use, without the express written consent of Calldera, the Calldera Marks in any way other than is expressly permitted herein;
- vii. Misrepresent the relationship between Calldera and Business Affiliate or present any other false information about Calldera;
- viii. Suggest in any way that Calldera is endorsing any products or services other than the Calldera Products and Services; or
- ix. Design or maintain any website that in any way copies or resembles the look and feel of the Calldera Site or creates the impression that such website is the Calldera Site or a part of the Calldera Site.
- x. Design or maintain any application that in any way copies or resembles the look and feel of the Calldera Application or creates the impression that such application is the Calldera Application.

7. Collection and Use of Business Affiliate Data.

- a. Business Affiliate hereby agrees that Calldera may collect data related to Business Affiliate's purchase, provisioning and use of the Calldera Products and Services (hereinafter "Collected Data") and that:
 - i. Calldera and any of its designated third-party representatives acting on behalf of Calldera may use Collected Data to facilitate the provisioning, support and improvement of the Calldera Products and Services and Calldera's business operations;
 - ii. Calldera is not obligated to share Collected Data with Business Affiliate except as part of a free or fee-based product or service offering that Calldera in its sole discretion decides to make available to Business Affiliate and which Business Affiliate elects to receive and, in the case of a fee-based product or service offering, Business Affiliate pays the applicable fee for access to the product or service offering; and

- iii. Calldera may share Collected Data with third parties for a fee or otherwise as part of aggregate data in a form that does not personally identify Business Affiliate.
- b. Business Affiliate hereby agrees that Calldera may for a fee or otherwise share with third parties the Business Affiliate's and Managed Retailer Affiliates' name, business address and identifying information (such as vintage, producer, wine name, etc.) pertaining to the wines that Business Affiliate and Managed Retailer Affiliates produce and/or sell to consumers.
- c. Business Affiliate hereby agrees that Calldera may display within the Calldera Application wine inventory information, including but not limited to retail pricing information, which is submitted by Business Affiliate and pertains to wines offered by Business Affiliate and Managed Retailer Affiliates for sale to consumers.

8. Licenses and Use of the Marks.

- a. Linking License and Use of Calldera Marks.
 - i. Subject to the limitations in this Agreement, Calldera hereby grants Business Affiliate a non-exclusive, non-transferable, revocable limited license to use the Link provided by Calldera solely for the purpose of allowing visitors to the Business Affiliate's website(s) to link directly to the Calldera Site and in accordance with the terms of this Agreement. This limited license shall terminate upon the expiration or termination of this Agreement.
 - ii. Subject to the limitations in this Agreement, Calldera hereby grants Business Affiliate a non-exclusive, non-transferable, revocable limited license to use only those specific Calldera Marks provided to Business Affiliate by Calldera in connection with the Link solely for the purpose of creating and describing the Link and in accordance with this Agreement. This limited license shall terminate upon the expiration or termination of this Agreement.
- b. Linking License and Use of Business Affiliate Marks.
 - i. If Business Affiliate grants permission to Calldera to establish a link from the Calldera Site or the Calldera Application to the Business Affiliate's website(s), such grant is intended to convey to Calldera a non-exclusive, revocable limited license to use the link provided by Business Affiliate solely for the purpose of allowing visitors to the Calldera Site or users of the Calldera Application to link directly to Business Affiliate's website(s). This limited license shall terminate upon the expiration or termination of this Agreement.
 - ii. Business Affiliate hereby grants to Calldera a non-exclusive limited license to use the Business Affiliate Marks in connection with a Business Affiliate's Calldera Listing

Subscription. This license shall terminate upon the expiration or termination of this Agreement.

9. Use of the Caldera Site and the Caldera Application.

- a. The Caldera Site, the Caldera Application and all content, information, data, and other materials featured, displayed, contained, and available thereon (collectively, the "Content") are owned by or licensed to Caldera and are protected by copyright, trademark, trade dress, patent, and/or other intellectual property rights and unfair competition laws under the United States and foreign laws. Subject to Business Affiliate's compliance with this Agreement, Caldera grants Business Affiliate a non-exclusive, non-transferable, limited right to access, use and display the Caldera Site and, upon Business Affiliate's registration for a Caldera Listing Subscription or a Caldera Reports Subscription, the Caldera Application and the Content. Business Affiliate may not, in any way, otherwise copy, reproduce, distribute, transmit, display, perform, reproduce, publish, license, modify, create derivative works from, sell, or exploit, in whole or in part, the Caldera Site, the Caldera Application, or the Content.

- b. Business Affiliate agrees not to:
 - i. remove, obscure, or alter any proprietary right notices which may be affixed to or contained within the Caldera Site, the Caldera Application, or the Content;
 - ii. modify, adapt, translate, or reverse engineer any portion of Caldera Site, the Caldera Application, or the Content;
 - iii. use the Caldera Site, the Caldera Application, or the Content for any unlawful, fraudulent, or malicious purposes or other purposes that may give rise to criminal or civil liability, or to solicit any such activity;
 - iv. attempt to gain unauthorized access to any accounts, features, systems, or networks through hacking, password mining, or any other means;
 - v. use the Caldera Site, the Caldera Application, or the Content in any way that could disrupt, damage, disable, overburden, or impair it or its systems, servers, or networks;
 - vi. frame or mirror any portion or feature of the Caldera Site or the Caldera Application;
 - vii. interfere or disrupt the Caldera Site, the Caldera Application, or the Content or servers or networks connected thereto, including by transmitting any worms, viruses, Trojan horses, time bombs, cancel-bots, spyware, malware, or any other code of a destructive or disruptive nature;
 - viii. use any device, code, or routine to interfere or attempt to interfere with the proper working of the Caldera Site, the Caldera Application, the display of the Content, or with any other person's use thereof;
 - ix. circumvent or attempt to circumvent any security or authentication measures implemented by or on behalf of Caldera;

- x. forge headers or otherwise manipulate identifiers;
- c. The Calldera Application may be updated from time to time. Business Affiliate agrees to receive such updates as part of its Calldera Listing Subscription or Calldera Reports Subscription. Business Affiliate acknowledges that in some instances updates may reduce or remove functionality in prior versions of the Calldera Application, or may impose new fees for use of the Calldera Products and Services. Calldera will inform Business Affiliate when new fees apply.
- d. The Calldera Site and the Calldera Application may contain links to other third-party websites (collectively, “Linked Sites”). Linked Sites are provided only for user convenience. If Business Affiliate decides to visit any Linked Site, Business Affiliate does so at its own risk. Calldera has no responsibility or liability for any Linked Sites, or the content, policies, or actions thereof. If Business Affiliate chooses to purchase any product or service from a Linked Site, Business Affiliate’s relationship is with that third party. Business Affiliate agrees that Calldera is not responsible for the quality of third-party products or services, or fulfilling any of the terms of Business Affiliate’s agreement with the seller, including, but not limited to, the delivery of products and services and warranty obligations related to products and services. Links do not imply that Calldera sponsors, endorses, is affiliated with or associated with, or are legally authorized to use any trademark, trade name, service mark, design, logo, symbol, or other copyrighted materials displayed on or accessible through such Linked Site.

10. Calldera Products and Services.

- a. From time to time, Calldera may offer different terms, features, and discounts for Calldera Products and Services, and the fees for such may vary. Business Affiliate acknowledges and agrees that Calldera reserves the right to accept or refuse business affiliates and subscribers in its sole and absolute discretion.
- b. In registering for a Calldera Listing Subscription or a Calldera Reports Subscription account, Business Affiliate will create a User ID and password. Business Affiliate is responsible for (1) keeping its User ID and password confidential and secure, (2) preventing unauthorized use of its Calldera Listing Subscription or Calldera Reports Subscription account, and (3) all actions taken using its Calldera Listing Subscription or Calldera Reports Subscription account. Calldera recommends that Business Affiliate does not select an obvious password and that Business Affiliate changes its password regularly. Business Affiliate agrees that it will notify Calldera immediately if it believes that a third party has obtained its User ID and password, or if it believes that any unauthorized access or use may occur or has occurred. For Business Affiliate’s protection, if Calldera believes that any unauthorized access may occur or has occurred, Calldera may terminate Business Affiliate’s access or its Calldera Listing Subscription or Calldera Reports Subscription without prior notice to Business Affiliate. Business Affiliate also agrees that Calldera is permitted to act upon any instructions received using Business Affiliate’s User ID and Password and to consider such instructions as authorized by Business Affiliate.

- c. Business Affiliate acknowledges and agrees that it may not use anyone else's Calldera Listing Subscription or Calldera Reports Subscription at any time.
- d. Business Affiliate acknowledges and agrees that it may not in any way transfer or assign its Calldera Listing Subscription or Calldera Reports Subscription.

11. Calldera Products and Services Fees and Renewal.

- a. Access to Calldera Products and Services will be subject to the fees and payment terms set forth on the Calldera Site and within the Calldera Application, plus any applicable taxes (the "Calldera Products and Services Fees"). The Calldera Products and Services Fees are subject to change at any time in Calldera's sole discretion, and if Business Affiliate does not agree to any such changes, Business Affiliate should contact Calldera to cancel its access to Calldera Products and Services. Calldera will use good faith efforts to notify Business Affiliate prior to the effectiveness of any significant change to the Calldera Products and Services Fees, but Business Affiliate is responsible for reviewing the Calldera Products and Services Fees from time to time and remaining aware of the fees charged by Calldera and any applicable discounts.
- b. Only credit cards are eligible for payment of Calldera Products and Services Fees. If Calldera is for any reason unable to effect automatic payment by credit card, Calldera will attempt to notify Business Affiliate by email and Business Affiliate's access to Calldera Products and Services will be disabled until payment is received.
- c. UNLESS BUSINESS AFFILIATE NOTIFYS CALLDERA BEFORE A CHARGE THAT BUSINESS AFFILIATE WANTS TO CANCEL OR DOES NOT WANT TO AUTO RENEW, BUSINESS AFFILIATE UNDERSTANDS BUSINESS AFFILIATE'S ACCESS TO THE THEN-ELECTED CALLDERA PRODUCTS AND SERVICES WILL AUTOMATICALLY CONTINUE AND BUSINESS AFFILIATE AUTHORIZES CALLDERA (WITHOUT NOTICE TO BUSINESS AFFILIATE, UNLESS REQUIRED BY APPLICABLE LAW) TO COLLECT THE THEN-APPLICABLE CALLDERA PRODUCTS AND SERVICES FEES, USING ANY CREDIT CARD CALLDERA HAS ON RECORD FOR BUSINESS AFFILIATE.
- d. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, THERE ARE NO REFUNDS FOR ANY FEES PAID FOR CALLDERA PRODUCTS AND SERVICES. BUSINESS AFFILIATE IS SOLELY RESPONSIBLE FOR TERMINATING ITS ACCESS TO CALLDERA PRODUCTS AND SERVICES, AND CALLDERA IS NOT RESPONSIBLE FOR BUSINESS AFFILIATE'S FAILURE TO PROPERLY TERMINATE BUSINESS AFFILIATE'S ACCESS TO CALLDERA PRODUCTS AND SERVICES OR FOR ANY CREDIT CARD OR OTHER CHARGES OR FEES BUSINESS AFFILIATE INCURS AS A RESULT THEREOF.
- e. Notwithstanding anything set forth herein to the contrary, any disputes about any charges Business Affiliate incurs must be submitted to Calldera in writing within 60 days of the date such charges are incurred. Business Affiliate agrees to waive all disputes not

brought within the 60 day period, and all such charges will be final and not subject to challenge.

12. Ownership of Intellectual Property

- a. The Calldera Marks are owned by or licensed to Calldera and protected by U.S. and international trademark laws. The Calldera Application and other technology and know-how constituting the Calldera Site and the Calldera Products and Services, and the data contained therein (collectively, "Site Technology") are protected under U.S. and foreign patent, copyright and other applicable laws and treaty provisions. Business Affiliate agrees not to, directly or indirectly, (i) reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code of the Site Technology, or (ii) modify, translate, or create derivative works based on the Site Technology.
- b. Business Affiliate agrees that Calldera owns and retains all right, title and interest (including all intellectual property rights) in and to the Calldera Site, the Content, the Calldera Marks, and the Site Technology, and that no interest therein is transferred to Business Affiliate except for a limited right to use such solely in connection with the Calldera Site and the Calldera Products and Services. Except as expressly set forth herein, nothing herein shall be construed to confer any grant or license of any Calldera Intellectual Property Rights, whether by estoppel, by implication, or otherwise.

13. Modification.

Calldera may modify any of the terms and conditions contained in this Agreement at any time in its sole and absolute discretion effective immediately upon notice to Business Affiliate. IF ANY MODIFICATION IS UNACCEPTABLE TO BUSINESS AFFILIATE, THE ONLY RECOURSE IS TO TERMINATE THIS AGREEMENT. FAILURE TO DO SO FOLLOWING POSTING OF A CHANGE NOTICE OR NEW AGREEMENT ON THE CALLDERA SITE WILL CONSTITUTE BINDING ACCEPTANCE OF THE CHANGE OR NEW AGREEMENT, AS APPLICABLE.

14. Disclaimer.

THE CALLDERA SITE AND CALLDERA PRODUCTS AND SERVICES ARE PROVIDED "AS IS" WITH NO WARRANTY, AND CALLDERA EXPRESSLY DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, REGARDING THE CALLDERA SITE AND CALLDERA PRODUCTS AND SERVICES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. IN ADDITION, CALLDERA MAKES NO REPRESENTATION OR WARRANTY THAT THE LINKS,

THE TRACKING DATA, THE OPERATION OF THE CALLDERA SITE AND THE CALLDERA APPLICATION, OR ANY THIRD-PARTY'S PROCEDURES AND SYSTEMS FOR TRACKING AND REPORTING CONSUMER VIEWS OF WINE RECOMMENDATIONS AND/OR SALES GENERATED BY THE CALLDERA SITE WILL BE UNINTERRUPTED OR ERROR-FREE, AND CALLDERA SHALL NOT BE LIABLE FOR THE CONSEQUENCES OF ANY INTERRUPTIONS OR ERRORS, INCLUDING, WITHOUT LIMITATION, LOSS OF DATA. CALLDERA SHALL HAVE NO LIABILITIES OR OBLIGATIONS UNDER WARRANTY OR OTHERWISE TO ANY OF BUSINESS AFFILIATE'S CUSTOMERS FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE DELIVERY, USE OR PERFORMANCE OF THE CALLDERA PRODUCTS AND SERVICES.

15. Limitation of Liability.

UNDER NO CIRCUMSTANCES WILL CALLDERA BE LIABLE WHETHER IN TORT, CONTRACT OR OTHERWISE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES (INCLUDING BUT NOT LIMITED TO DAMAGES FOR ANY LOSS OF REVENUE OR PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION OR DATA, LOSS OF GOODWILL, OR OTHER PECUNIARY LOSS) ARISING FROM OR RELATING TO ANY PROVISION OF THIS AGREEMENT. WITHOUT LIMITING THE FOREGOING, CALLDERA'S MAXIMUM AGGREGATE LIABILITY ARISING WITH RESPECT TO THIS AGREEMENT WILL NOT EXCEED THE TOTAL AMOUNT OF SUBSCRIPTION FEES PAID BY BUSINESS AFFILIATE DURING THE TERM OF THIS AGREEMENT.

16. Indemnification.

To the maximum extent permitted by law, Business Affiliate hereby agrees to defend, indemnify and hold harmless Calldera and its subsidiaries and affiliates, and each of their respective directors, officers, employees, agents, successors and assigns, from and against any and all claims, liabilities, damages, actions, causes of action, suits, threats, demands and settlements, including all costs and attorney fees related thereto, that Calldera and/or its subsidiaries and affiliates, and/or each of their respective directors, officers, employees, agents, successors and assigns, may incur and which are based in whole or in part upon Business Affiliate's breach of any term, covenant, condition, representation or warranty contained in this Agreement.

17. Relationship of Parties.

Business Affiliate and Calldera are independent contractors, and nothing in this Agreement will create any partnership, joint venture, agency, franchise, sales representative, or employment relationship, or the relationship of principal and agent between the parties. Business Affiliate will have no authority to make or accept any offers or representations on Calldera's behalf. Business Affiliate, as an independent contractor, will have sole responsibility for its expenses, taxes, employees, sales representatives and agents.

18. Confidentiality.

Business Affiliate acknowledges that by reason of its relationship to Calldera hereunder it will have access to Calldera Confidential Information. Consequently, Business Affiliate hereby covenants and agrees that it shall not use in any way for its own account or the account of any third party, nor disclose to any third party, any such Calldera Confidential Information revealed to it as a result of or arising out of the relationship hereunder (other than to fulfill its obligations under this Agreement). Business Affiliate shall take every reasonable precaution to protect the confidentiality of such Calldera Confidential Information. Further, Business Affiliate shall keep secret the Calldera Confidential Information and shall not disclose any of the same without the prior written consent of Calldera during and for two (2) years after the Term of this Agreement or for so long as such data and information remains confidential, whichever is longer.

19. Reservation of Rights.

Calldera reserves all rights other than those expressly granted in this Agreement, and no licenses are granted except as expressly set forth herein. Calldera retains all right, title, and interest in and to the Calldera Marks, the Calldera Site, and the Calldera Products and Services, together with all Intellectual Property Rights thereto.

20. Miscellaneous.

- a. This Agreement shall be treated as though it were executed and performed in Atlanta, Georgia, and shall be governed by and construed in accordance with the laws of the State of Georgia (without regard to conflict of law principles).
- b. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement.
- c. This Agreement may be automatically assigned by Calldera in its sole discretion to a third party in the event of an acquisition, sale or merger. This Agreement may not be assigned or otherwise transferred by Business Affiliate without the express written consent of Calldera.
- d. If any provision of this Agreement is held illegal, invalid or unenforceable for any reason, that provision shall be enforced to the maximum extent permissible, and the other provisions of this Agreement shall remain in full force and effect. If any provision of this Agreement is held illegal, invalid or unenforceable, it shall be replaced, to the extent possible, with a legal, valid, and enforceable provision that is similar in tenor to the illegal, invalid, or unenforceable provision as is legally possible.
- e. No waiver of any provision of this Agreement shall constitute a continuing waiver, and no waiver shall be effective unless made in a signed writing.

- f. Calldera's rights under this Agreement shall survive any termination of this Agreement.
- g. The title, headings and captions of this Agreement are provided for convenience only and shall have no effect on the construction of the terms of this agreement.
- h. Other than as set forth in Sections 2.b.i. and 21.i.v. hereof, notices and other communications made by Calldera to Business Affiliate, as required or permitted to be given hereunder, may be posted on the Calldera Site and/or emailed to the email address associated with Business Affiliate's Calldera Business Account at the time, and shall be deemed effective upon posting or emailing. Other than as set forth in Sections 2.b.ii. and 21.i.v. hereof, notice or other communications to Calldera shall be sent by email to customer support at support@callderawine.com, and shall be deemed effective one (1) business day after emailing.
- i. This Agreement will be binding on and will inure to the benefit of the legal representatives, successors and valid assigns of the parties hereto. This Agreement contains the entire agreement between Calldera and Business Affiliate with respect to the subject matter hereof, and supersedes all prior and/or contemporaneous agreements or understandings, written or oral, between Calldera and Business Affiliate with respect to the subject matter hereof.

21. Arbitration.

Any dispute relating in any way to this Agreement (including any actual or alleged breach hereof and the enforceability of this arbitration clause) and any transactions or activities under this Agreement or Business Affiliate's relationship with Calldera shall be settled by arbitration conducted in Atlanta, Georgia, except that, to the extent Business Affiliate has in any manner violated or threatened to violate Calldera's Intellectual Property Rights or the provisions of Section 6.b. of this Agreement, Calldera may seek injunctive or other appropriate relief in any state or federal court in the State of Georgia (and Business Affiliate consents to non-exclusive jurisdiction and venue in such courts) or any other court of competent jurisdiction.

- i. Unless otherwise agreed to by the Parties, all arbitration proceedings must be conducted in Atlanta, Georgia, at a place, date and time mutually acceptable to the disputing Parties.
- ii. Arbitration under this Agreement shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as they exist at the time of the commencement of the arbitration.
- iii. If a Party files a judicial or administrative action asserting claims subject to arbitration, as prescribed in this Agreement, and the other Party successfully stays the action and/or compels arbitration of the claims, the Party filing the action must pay the other Party's costs incurred in seeking the stay and/or compelling arbitration, including reasonable attorneys' fees.
- iv. Any notice of arbitration must be provided in writing and delivered by a nationally-recognized overnight express delivery service (postage pre-paid) or certified mail

(postage pre-paid with return receipt requested) addressed to the applicable party as follows:

- a. to Calldera at the following address: P. O. Box 8307, Atlanta, Georgia 31106
- b. to Business Affiliate at the address associated with Business Affiliate in Business Affiliate's Calldera Business Account

Such notices or other communications shall be deemed received: (i) on the next business day after mailing with a nationally-recognized overnight express delivery; or (ii) on the third business day after mailing, if sent by certified mail return receipt requested.

- v. Within 30 days after a notice of arbitration has been received in accordance with Section 21.i.v. of this Agreement, the Parties must attempt to agree on an arbitrator to hear and determine the dispute. If they are unable to do so within the 30-day period, either Party may petition the American Arbitration Association to appoint an arbitrator.
- vi. The Parties agree that discovery must be limited and must be handled expeditiously. All disputes regarding discovery must be promptly resolved by the arbitrator.
- vii. If the arbitrator determines that any provision of this Agreement is invalid, the arbitrator must modify this Agreement to reduce the scope, duration or area of the provision, to delete specific words or phrases, or to replace any invalid provision with a provision that is valid and that comes closest to expressing the invalid provision. In the event of such invalidity, the arbitrator must also determine whether this Agreement as so modified materially reduces the rights or materially increases the obligations of a Party as compared with the rights and obligations that the Party would have had if the invalid provision had been valid.
- viii. The arbitrator has discretion to issue orders of attachment, temporary restraining orders, and injunctions, and to appoint a receiver. If the arbitrator issues such an order, either disputing Party may immediately apply to a court of competent jurisdiction for enforcement of the order, even though the arbitrator may not have rendered a final award.
- ix. Costs for the arbitration proceeding and the arbitrator(s) shall be borne equally by the parties, and each Party will be responsible for paying its own attorneys' fees. Notwithstanding the foregoing, however, a party prevailing in the arbitration may be entitled to recover such amount for its costs and attorney fees incurred in connection with the arbitration as shall be determined by the arbitrator(s), and judgment upon the award rendered may be entered in any court having jurisdiction thereof.
- x. The arbitration award must be in writing and must specify the factual and legal basis for the award.
- xi. The arbitrator has the authority to award any remedy or reward that a court in the United States of America could order or grant, including specific performance of any obligation created under this Agreement, the issuance of an injunction or other provisional relief, or the imposition of sanctions for abuse or frustration of the arbitration process.
- xii. Judgment on the arbitration award may be entered in any court having jurisdiction over the Parties or their assets.
- xiii. Notwithstanding anything set forth herein to the contrary, the parties agree that the Underlying Award may be appealed pursuant to the AAA's Optional Appellate

Arbitration Rules (“Appellate Rules”); that the Underlying Award rendered by the arbitrator(s) shall, at a minimum, be a reasoned award; and that the Underlying Award shall not be considered final until after the time for filing the notice of appeal pursuant to the Appellate Rules has expired. Appeals must be initiated within thirty (30) days of receipt of an Underlying Award, as defined by Rule A-3 of the Appellate Rules, by filing a Notice of Appeal with any AAA office. Following the appeal process, the decision rendered by the appeal tribunal may be entered in any court having jurisdiction thereof.

IN WITNESS WHEREOF, intending to be legally bound, the undersigned has caused this Agreement to be executed by its duly authorized officer under seal, on the day and year written below.

BUSINESS AFFILIATE

Legal Name of Business Affiliate

Date

Street Address

City, State, Zip Code

Signature

Name of Individual Signing

Title of Individual Signing

A copy of this agreement with Business Affiliate's original signature should be sent to Caldera, LLC:

- Via mail to P. O. Box 8307, Atlanta, GA 31106;
- Via email at support@calderawine.com; or
- Via facsimile at 1-844-266-9463.