

Terms of Service for MERLOT Voices

1.ACCEPTANCE OF TERMS

MERLOT *Voices*, provided by MERLOT, provides its service to you subject to the following Terms of Service ("TOS"), which may be updated by us from time to time without notice to you. You can review the most current version of the TOS at any time at:[URL]. The Terms of Service described here are supplemental to the MERLOT Acceptable Use Policy (AUP) (<http://taste.merlot.org/acceptableuserpolicy.html>); the terms of the MERLOT AUP supersede terms that may conflict with this TOS.

2.DESCRPTION OF SERVICE

MERLOT offers the collaboration environment and services website, MERLOT *Voices* consisting of a collection of computing resources such as various communications tools, forums, personalized content, etc. (the "Service"). You agree that the Service may include certain communications from MERLOT, such as service announcements, administrative messages and MERLOT newsletters. As a dynamic and open communications service with content provided by members of the MERLOT *Voices* community, you agree that the Service may include advertisements within member contributions.

3.REGISTRATION

a. In consideration of your use of the Service, you represent that you are of legal age to form a binding contract and are not a person barred from receiving Services under the laws of the United States or any other applicable jurisdiction.

b. You may browse the Service without registration, but you understand that some features of the Service may not be accessible to you unless you register. In registering for the Service, you agree to: (i) provide true, accurate, current and complete information about yourself as prompted by the Service's registration form, including a certification that you are over the age of 13 (the "Registration Data"); and (ii) maintain and promptly update the Registration Data to keep it true, accurate, current and complete. If you provide any information that is untrue, inaccurate, not current or incomplete, or MERLOT has reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, MERLOT has the right to suspend or terminate your account and refuse any and all current or future use of the Service (or any portion thereof).

4.MEMBER ACCOUNT, PASSWORD AND SECURITY

You will define your account with a user name and password as part of the Service's registration process. You are responsible for maintaining the confidentiality of your account and are fully responsible for all activities that occur under your account. You agree to: (i) notify MERLOT immediately of any unauthorized use of your account or any other breach of security; and (ii) ensure that you exit from your account at the end of each session.

5.MEMBER CONDUCT

a. You understand that all information, data, text, software, music, sound, photographs, graphics, video, messages, tags and/or other materials ("Content"), whether publicly posted or privately transmitted, are the sole responsibility of the person from whom such Content originated. This means that you, and not MERLOT, are entirely responsible for all Content that you upload, post, e-mail, transmit or otherwise make available via the Service. MERLOT does not control the Content posted via the Service and, as such, does not guarantee the accuracy, integrity or quality of such Content.

b. You agree not to use the Service to:

- i. upload, post, e-mail, transmit or otherwise make available any Content that is unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable;
 - ii. harm minors in any way;
 - iii. impersonate any person or entity, including, but not limited to, a MERLOT official or *Voices* participant Community Manager (as defined in Section 6 below), or falsely state or otherwise misrepresent your affiliation with a person or entity;
 - iv. forge headers or otherwise manipulate identifiers in order to disguise the origin of any Content transmitted through the Service;
 - v. upload, post, e-mail, transmit or otherwise make available any Content that you do not have a right to make available under any law or under contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements);
 - vi. upload, post, e-mail, transmit or otherwise make available any Content that infringes any patent, trademark, trade secret, copyright or other proprietary rights of any party;
 - vii. upload, post, e-mail, transmit or otherwise make available any unsolicited or unauthorized advertising, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation;
 - viii. upload, post, e-mail, transmit or otherwise make available any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;
 - ix. disrupt the normal flow of dialogue, cause a screen to scroll faster than other users of the Service are able to type, or otherwise act in a manner that negatively affects other users' ability to engage in real time exchanges;
 - x. interfere with or disrupt the Service or servers or networks connected to the Service, or disobey any requirements, procedures, policies or regulations of networks connected to the Service;
 - xi. intentionally or unintentionally violate any applicable local, state, national or international law or regulation;
 - xii. provide material support or resources (or conceal or disguise the nature, location, source or ownership of material support or resources) to any organization designated by the United States government as a foreign terrorist organization pursuant to Section 219 of the Immigration and Nationality Act;
 - xiii. stalk or otherwise harass another person or entity; or
 - xiv. reproduce, duplicate, copy, sell, trade, resell or exploit for any commercial purpose any portion of the Service (including your Service account), use of the Service or access to the Service.
- c. You acknowledge that MERLOT may or may not pre-screen Content, but that MERLOT and its designees shall have the right (but not the obligation) in their sole discretion to pre-screen, refuse or remove any Content that is available via the Service. Without limiting the foregoing, MERLOT and its designees shall have the right to remove any Content that violates the TOS or is otherwise objectionable. You agree that you must evaluate, and bear all risks associated with the use of any Content, including, but not limited to, any reliance on the accuracy, completeness or usefulness of such Content.

d. You acknowledge, consent and agree that MERLOT may access, preserve and disclose your account information and Content if required to do so by law or in a good faith belief that such access, preservation or disclosure is reasonably necessary to: (i) comply with legal process; (ii) enforce the TOS; (iii) respond to claims that any Content violates the rights of third parties; (iv) respond to your requests for customer service; or (v) protect the rights, property or personal safety of MERLOT and MERLOT *Voices*, its users and the public.

e. You understand that the technical processing and transmission of the Service, including your Content, may involve: (i) transmissions over various networks; and (ii) changes to conform and adapt to technical requirements of connecting networks or devices.

6.COMMUNITY MANAGERS

a. MERLOT staff or individual users may create forums (“Community”) within the Service that focus on particular subjects and designate an individual user as the Community’s manager (“Community Manager”). Community Managers will have the ability to establish rules, policies and guidelines that apply to a particular Community, including, but not limited to: (i) eligibility requirements for membership in a Community; (ii) access rights for users within the Community; and (iii) rules concerning the posting of Content to the Community. You agree to abide by the rules, guidelines and policies established by Community Managers for their Communities, provided that such rules, guidelines and policies do not conflict with the TOS or applicable law.

b. You acknowledge that MERLOT may or may not review the decisions of Community Managers, but that MERLOT and its designees shall have the right (but not the obligation) in their sole discretion to review and overrule any decision of a Community Manager.

7.RIGHTS TO CONTENT

MERLOT does not claim ownership of Content you submit or make available for inclusion on the Service. However, with respect to Content you submit or make available for inclusion on publicly accessible areas of the Service, you grant MERLOT the following perpetual, worldwide, royalty-free, non-exclusive license to use, distribute, reproduce, modify, adapt, publicly perform and publicly display such Content in connection with the Service.

8.PRIVACY

a. MERLOT collects some personal information when you register for the Service and when you use the Service. MERLOT may automatically receive and record information from your computer and browser, such as your IP address, cookie information, software and hardware attributes and the pages you request.

b. MERLOT may use the information it collects for the following general purposes: to customize any advertising and content you may see, fulfill your requests for products or services, improve our services, contact you, conduct research and provide anonymous reporting for internal and external purposes.

c. MERLOT does not rent, sell or share personal information about you with other people or non-affiliated organizations except to provide products or services you have requested, when we have your permission, or under the following circumstances:

i. We respond to subpoenas, court orders or legal process, and we exercise our legal rights or defend against legal claims.

ii. We believe it is necessary to share information in order to investigate, prevent or take action regarding illegal activities, suspected fraud, situations involving potential threats to the physical safety of any person, violations of the TOS or as otherwise required by law.

iii. We transfer information about you if MERLOT is acquired by or merged with another entity.

d. MERLOT may use web beacons to access MERLOT cookies inside and outside our network of web sites and in connection with the Service.

e. The Service is intended for use by adults only. In connection with the Service, MERLOT does not promote online to children and does not intentionally collect any personally identifiable information from children under the age of 13.

9. INDEMNIFICATION

You agree to indemnify and hold MERLOT and its subsidiaries, affiliates, officers, agents, employees, partners, MERLOT members, Service members and participants, and licensors harmless from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of: (a) Content you submit, post, transmit or otherwise make available through the Service; (b) your use of the Service; (c) your connection to the Service; (d) your violation of the TOS; (e) or your violation of any rights of another party.

10. GENERAL PRACTICES REGARDING USE AND STORAGE

You acknowledge that MERLOT may establish general practices and limits concerning use of the Service, including, without limitation, the maximum number of days that e-mail messages, message board postings or other Content will be retained by the Service, the maximum number of e-mail messages that may be sent from or received by an account on the Service, the maximum size of any e-mail message that may be sent from or received by an account on the Service, the maximum disk space that will be allotted on MERLOT's servers on your behalf, and the maximum number of times (and the maximum duration for which) you may access the Service in a given period of time. You agree that MERLOT has no responsibility or liability for the deletion or failure to store any messages and other communications or other Content maintained or transmitted by the Service. You acknowledge that MERLOT reserves the right to log off accounts that are inactive for an extended period of time. You further acknowledge that MERLOT reserves the right to modify these general practices and limits from time to time.

11. MODIFICATIONS TO SERVICE

MERLOT reserves the right at any time and from time to time to modify or discontinue, temporarily or permanently, the Service (or any part thereof) with or without notice. You agree that MERLOT shall not be liable to you or to any third party for any modification, suspension or discontinuance of the Service.

12. TERMINATION

a. You agree that MERLOT may, under certain circumstances and without prior notice, immediately terminate your Service account and access to the Service. Cause for such termination shall include, but not be limited to: (i) breaches or violations of the TOS, the MERLOT Acceptable Use Agreement, or other incorporated agreements or guidelines; (ii) requests by law enforcement or other government agencies; (iii) a request by you (e.g., self-initiated account deletions); (iv) discontinuance or material modification to the Service (or any part thereof); (v) unexpected technical or security issues or problems; (vi) extended periods of inactivity; or (vii) engagement by you in fraudulent or illegal activities.

b. Termination of your Service account may include: (i) removal of access to all offerings within the Service; (ii) deletion of your password and all related information, files and content associated with or inside your account (or any part thereof); or (iii) barring of further use of the Service.

c. You agree that all terminations for cause shall be made at MERLOT's sole discretion and that MERLOT shall not be liable to you or any third party for any termination of your account or access to the Service.

13.DEALINGS WITH ADVERTISERS

You agree not to use this Service for any commercial or monetary purposes without authorization of MERLOT. Your correspondence or business dealings with, or participation in promotions of, advertisers found on or through the Service, including payment and delivery of related goods or services, and any other terms, conditions, warranties or representations associated with such dealings, are solely your responsibility. You agree that MERLOT shall not be responsible or liable for any loss or damage of any sort incurred as the result of any such dealings or as the result of the presence of such advertisers, whether direct or indirect, on the Service.

14.LINKS

The Service may provide, or third parties may provide, links to other World Wide Web sites or resources. Because MERLOT has no control over such sites and resources, you acknowledge and agree that MERLOT is not responsible for the availability of such external sites or resources, and does not endorse and is not responsible or liable for any Content, advertising, products or other materials on or available from such sites or resources. You further acknowledge and agree that MERLOT shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such Content, goods or services available on or through any such site or resource.

15.MERLOT'S PROPRIETARY RIGHTS

a. You acknowledge and agree that the Service and any necessary software used in connection with the Service ("Software") contain proprietary and confidential information that is protected by applicable intellectual property and other laws. You further acknowledge and agree that Content contained in, for example, MERLOT Partner/sponsor advertisements or information presented to you through the Service or by advertisers is protected by copyrights, trademarks, service marks, patents or other proprietary rights and laws. Except as expressly permitted by applicable law or authorized by MERLOT Partner/sponsors, you agree not to modify, rent, lease, loan, sell, distribute or create derivative works based on the Service or the Software, in whole or in part, unless such modifications etc. are authorized by MERLOT, or indicated by copyright licenses posted on the Service.

b. MERLOT grants you a personal, non-transferable and non-exclusive right and license to use the object code of its Software on a single computer; provided that you do not (and do not allow any third party to) copy, modify, create a derivative work from, reverse engineer, reverse assemble or otherwise attempt to discover any source code, sell, assign, sublicense, grant a security interest in or otherwise transfer any right in the Software. You agree not to modify the Software in any manner or form, nor to use modified versions of the Software, including (without limitation) for the purpose of obtaining unauthorized access to the Service. You agree not to access the Service by any means other than through the interface that is provided by MERLOT for use in accessing the Service.

c. The MERLOT name and logo are trademarks and services marks of MERLOT (the "MERLOT Marks"). You agree not to display or use in any manner any MERLOT Mark without MERLOT's prior written consent. See <http://taste.merlot.org/MERLOTBrandPolicy-Feb2-07.pdf>.

16.DISCLAIMER OF WARRANTIES

a. YOUR USE OF THE SERVICE IS AT YOUR SOLE RISK. THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. MERLOT AND ITS SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

b. MERLOT AND ITS SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS MAKE NO WARRANTY THAT (i) THE SERVICE WILL MEET YOUR REQUIREMENTS; (ii) THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE; (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE WILL BE ACCURATE OR RELIABLE; (iv) ANY ERRORS IN THE SOFTWARE WILL BE CORRECTED.

c. ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS ACCESSED AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.

d. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM MERLOT OR THROUGH OR FROM THE SERVICE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THE TOS.

17.LIMITATION OF LIABILITY

a. YOU UNDERSTAND AND AGREE THAT MERLOT AND ITS SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS SHALL NOT BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF MERLOT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM: (i) THE USE OR THE INABILITY TO USE THE SERVICE; (ii) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE SERVICE; (iii) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (iv) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SERVICE; OR (v) ANY OTHER MATTER RELATING TO THE SERVICE.

b. YOU UNDERSTAND AND AGREE THAT BY USING THE SERVICE, YOU MAY BE EXPOSED TO CONTENT THAT IS OFFENSIVE, INDECENT OR OBJECTIONABLE. UNDER NO CIRCUMSTANCES WILL MERLOT AND ITS SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS BE LIABLE IN ANY WAY FOR ANY CONTENT, INCLUDING, BUT NOT LIMITED TO, ANY ERRORS OR OMISSIONS IN ANY CONTENT, OR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, E-MAILED, TRANSMITTED OR OTHERWISE MADE AVAILABLE VIA THE SERVICE.

c. YOU UNDERSTAND AND AGREE THAT THE SERVICE IS PROVIDED "AS-IS" AND THAT MERLOT AND ITS SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS ASSUME NO RESPONSIBILITY FOR THE TIMELINESS, DELETION, MIS-DELIVERY OR FAILURE TO STORE ANY USER COMMUNICATIONS OR PERSONALIZATION SETTINGS.

18.NO THIRD-PARTY BENEFICIARIES

You agree that, except as otherwise expressly provided in this TOS, there shall be no third-party beneficiaries to this agreement.

19.COPYRIGHT OR INTELLECTUAL PROPERTY INFRINGEMENT

a. MERLOT respects the intellectual property of others, and we ask our users to do the same. MERLOT may, in appropriate circumstances and at its discretion, disable or terminate the accounts of users who may be repeat infringers.

b. If you believe that your work has been made available on the Service in a way that constitutes copyright infringement, or your intellectual property rights have been otherwise violated in connection with the Service, please provide MERLOT with the information below, via email to webmaster@merlot.org:

i. an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other intellectual property interest;

ii. a description of the copyrighted work or other intellectual property that you claim has been infringed;

iii. a description of where the material that you claim is infringing is located within the Service;

iv. your address, telephone number and e-mail address;

v. a statement by you that you have a good faith belief that the disputed use is not authorized by the copyright or intellectual property owner, its agent or the law; and

vi. a statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright or intellectual property owner or authorized to act on the copyright or intellectual property owner's behalf.

20. GENERAL PROVISIONS

a. *Entire Agreement.* The TOS constitutes the entire agreement between you and MERLOT and governs your use of the Service, superseding any prior agreements between you and MERLOT with respect to the Service.

b. *Choice of Law and Forum.* The TOS and the relationship between you and MERLOT shall be governed by the laws of the State of California without regard to its conflict of law principles. You agree to submit to the personal and exclusive jurisdiction of the courts located within the State of California with respect to any claims arising from the TOS or your use of the Service.

c. *Waiver and Severability.* The failure of MERLOT to exercise or enforce any right or provision of the TOS shall not constitute a waiver of such right or provision. If any provision of the TOS is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of the TOS shall remain in full force and effect.

21. VIOLATIONS

Please report any violations of the TOS, via email, to webmaster@merlot.org.