

# SUSTAINABILITY IN PRACTICE WINE CERTIFICATION AGREEMENT

THIS SUSTAINABILITY IN PRACTICE™ WINERY CERTIFICATION AGREEMENT (this "Agreement") is by and between Vineyard Team, a California

nonprofit mutual benefit corporation ("VT") and \_\_\_\_\_, Company Name  
 a \_\_\_\_\_ ("Winery"), and is effective as of \_\_\_\_\_, Today's Date  
 Company Type (i.e., Corporation, LLC, etc.)

## 1. DEFINITIONS.

Terms with initial capital letters used and not defined elsewhere in this Agreement shall have the meanings set forth below, unless the context requires otherwise.

- a. "VT Material" shall mean the names, characters, symbols, designs, likenesses, and visual representations provided to Winery by VT in digital form, examples of which are set forth on Exhibit A.
- b. "Certification Payment" shall mean the gross amount payable by Winery to VT, determined as follows:

Wine Certification Fee	
Cases	(\$/case)
0 - 7,500	\$0.16
7,500 - 24,999	\$0.12
25,000 - 49,999	\$0.10
50,000 - 99,999	\$0.08
100,000 - 249,999	\$0.07

c. "CERTIFIED PRODUCTS" shall mean wine produced by Winery from grapes where eighty-five percent (85%) or more of the grapes are from a vineyard block or blocks certified in accordance with the Sustainability in Practice™ Vineyard Certification Program (the "Program"), as confirmed by a chain of custody audit (the "Audit"). Winery's products become Certified Products upon successful completion of the Audit and payment of the Certification Payment to VT. Certified Products shall not include any wine that is not produced from grapes grown in blocks specifically certified pursuant to the Program.

## 2. TERMS OF CERTIFICATION.

- a. Upon the terms and conditions of this Agreement, VT hereby grants Winery the non-exclusive right to hold the Certified Products out as being produced using grapes where at least eighty-five percent (85%) of the grapes come from a vineyard block or blocks certified in accordance with the Program, and to use the VT Material during the Term of this Agreement, solely on and in connection with the Certified Products.
- b. VT reserves the right to conduct follow up chain of custody audits to confirm wine claimed as Certified Products was produced using grapes from vineyard blocks certified pursuant to the Program.

## 3. CONSIDERATION.

In consideration for the rights granted to Winery under this Agreement, Winery shall pay to VT the Certification Payment.

- a. Any amount payable by Winery to VT hereunder not paid when due shall accrue interest at the monthly rate of one and one-half percent (1.5%) from the date due until such amount is paid in full. The payment of such interest shall be in addition to and not in substitution for any other remedies available to VT with respect to non-payment.
- b. Winery shall pay VT the Certification Payment as follows:
  - (i) The Certification Payment for white and rose wines is due on the earlier of: (A) thirty days after bottling, or (B) September 15th of the following vintage year (for example, if the certified vintage is 2009, fees are due no later than September 15, 2010).
  - (ii) The Certification Payment for red wines is due on the earlier of: (A) thirty days after bottling, or (B) December 15th of the following vintage year (for example, if the certified vintage is 2009, fees are due no later than December 15, 2010).

## 4. USE OF VT MATERIAL.

In addition to the provisions set forth elsewhere in this Agreement, the use of the VT Material by Winery is subject to the following conditions:

- a. Winery shall use the VT Material only in relation to Certified Products, and not in relation to any of Winery's products that are not certified pursuant to the Audit.
- b. Winery shall use the VT Material in the exact form provided to Winery by VT, without modification or deviation of any kind, except as may be pre-approved in writing by VT, and except that Winery may re-size the material, so long as the overall dimensions of the VT Material remain consistent and legible.

- c. Use of the VT Material does not constitute and may not be used to imply the endorsement of the Certified Products by VT, or any other product of Winery, and the VT Material may not be used as an indication of a particular standard of quality.
- d. Winery will not harm, misuse or bring into disrepute the VT Material, its reputation, or that of VT.
- e. Winery will comply with all laws and regulations relating or pertaining to the manufacture, sale, advertising or use of the Certified Products, shall maintain high quality and standards commensurate with Winery's market, and shall comply with any regulatory agencies which shall have jurisdiction over the Certified Products.
- f. Winery will never disclose any confidential and non-public information about VT it acquires from any source during the Term of this Agreement.

## 5. OWNERSHIP OF VT MATERIAL; RESERVATION OF RIGHTS.

All right title and interest in and to the VT Material shall belong solely to VT. All use of the VT Material by Winery shall inure to the benefit of VT. VT retains all rights not expressly conveyed to Winery hereunder, and VT may use and/or grant to others the right to use the VT Material in connection with other products.

## 6. QUALITY OF CERTIFIED PRODUCTS.

Winery shall ensure that the Certified Products shall be of high standard and quality, and shall be adequate and suitable for their intended uses.

## 7. PROTECTION OF RIGHTS.

- a. Winery agrees that it will not apply for or seek to obtain trademark, copyright or any other proprietary right in the VT Material, or packaging, labeling, advertising or promotional material therefore, or related thereto. VT makes no warranty with respect to the VT Material.
- b. Winery agrees that if Winery receives knowledge of any unauthorized use of the VT Materials, Winery will call such fact to the attention of VT. VT shall then have the exclusive right in its sole discretion to pursue any such unauthorized use, and Winery shall cooperate and assist in any such action. If requested by VT, Winery shall join in or cooperate in any such action as may be instituted by VT; all at VT's expense, including reasonable attorneys' fees. The proceeds recovered in any such action in the form of damages, profits, or other recovery shall belong solely to VT. Winery shall not commence any action of its own to restrain or recover damages for any alleged infringements of the VT Material without first obtaining express written permission to do so from VT.
- c. Winery will not attack the title or right of VT in and to the VT Material or any copyright or trademark pertaining thereto, nor will it attack the validity of the rights granted hereunder during the Term hereof or thereafter.

## 8. INDEMNIFICATION.

a. Winery hereby agrees to defend, indemnify and hold VT and its agents, employees, and representatives harmless from any loss, liability, damage, cost or expense (including reasonable attorneys' fees), arising out of the production, distribution, advertising, promotion, offering for sale, and sale of the Certified Products, including without limitation any claims or suits against any of them by reason of or alleging any unauthorized or infringing use by Winery of any patent, process, method, trade secret, copyright, trademark, or publicity right or other similar property (other than the VT Material covered by this Agreement) or any alleged defects or inherent dangers in said Certified Products or the use thereof. b. VT shall give Winery prompt notice of any claim asserted against VT on the basis of which VT intends to seek defense and/or indemnification from Winery as herein provided (but the obligations of the Winery under this Paragraph shall not be conditioned upon the receipt of such notice). The defense and indemnification provisions of this Paragraph 8 shall not require payment as a condition precedent to recovery.

## 9. TERM.

The initial term of this Agreement shall be one (1) year, and shall automatically renew for each consecutive year in which Winery is certified following successful completion of an Audit.

## 10. TERMINATION.

- a. VT shall have the right to terminate this Agreement without prejudice to any other rights which it may have, whether under the provisions of this Agreement, in law or in equity or otherwise, upon thirty (30) days prior written notice to Winery.
- b. In the event of termination of this Agreement due to Winery's uncured breach, Winery will refrain from further use of the VT Material, and will, within fifteen (15) days of written notice from VT, remove the VT Material

from all of Winery's products. Winery agrees that the VT Material possess a special, unique and extraordinary character which makes difficult the assessment of the monetary damage sustained by unauthorized use. Winery recognizes that irreparable injury would be caused by unauthorized use and agrees that injunctive and other equitable relief would be appropriate in the event of a breach of this Agreement, provided, however, that such remedy shall not be exclusive of other legal remedies otherwise available to VT.

c. The obligation to remit any fees or payments to VT, including without limitation any Certification Payment, shall survive termination or expiration of this Agreement.

**11. USE OF MATERIAL UPON EXPIRATION OR TERMINATION.**

Following expiration or termination of this Agreement, other than termination due to Winery's breach, Winery may continue to distribute and sell Certified Products remaining after such expiration or termination of any applicable Audit period. Following expiration or termination of this Agreement for whatever reason, and the distribution and sale of Certified Products pursuant to this Paragraph, Winery agrees to make no further use of the VT Material whatsoever, either in or on products or in advertising, publicity, promotional or display materials.

**12. NOTICES.**

All notices which either party hereto is required or may desire to give to the other shall be given by addressing the same to the other at the address provided below, or at such other address as may be designated in writing or by facsimile by any such party in a notice to the other given in the manner described in this Paragraph. All such notices shall be sufficiently given when the same shall be received by facsimile or after such notice is deposited so addressed, postage prepaid, in the United States mail. The date of actual receipt of such facsimile or mail shall be the date of the giving of such notice.

**13. NO PARTNERSHIP OR JOINT VENTURE.**

This Agreement does not constitute and shall not be construed as constituting a partnership, joint venture or agency between Winery and VT. Neither party shall have any right to obligate or bind the other party in any manner whatsoever, and nothing herein contained shall give, or is intended to give, any rights of any kind to any third persons.

**14. NO ASSIGNMENT.**

The rights granted to Winery pursuant to this Agreement are personal to Winery and Winery shall not assign, transfer or sub-license any or all of the

rights granted herein to any third party without the written consent of VT. Winery shall not pledge or encumber this Agreement as security or collateral for any obligation of Winery.

**15. ENTIRE AGREEMENT; WAIVER, MODIFICATION.**

This Agreement represents the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all previous representations, understandings or agreements between the parties hereto. No waiver, modification or cancellation of any term or condition of this Agreement shall be effective unless executed in writing by the party charged therewith. No written waiver shall excuse the performance of any act other than those specifically referred to therein.

**16. DISPUTE RESOLUTION.**

a. Any dispute or disagreement between the parties hereto seeking to enjoin or restrain Winery's sale or distribution of the Certified Products, or of any other products, services, or merchandising bearing VT Material or any copy or simulation thereof, or other use of the VT Material, may be determined in any forum of VT's choosing, and Winery hereby consents to venue and personal jurisdiction in the Superior Court of San Luis Obispo County, State of California, and the United States District Court for the Central District of California. In any such action, the forum may retain jurisdiction to award damages, profits, attorney's fees or costs, as allowed by law in such matters.

b. Any other dispute or disagreement between the parties hereto arising out of or relating to this Agreement shall be settled by binding arbitration in San Luis Obispo County, California, under the rules of the American Arbitration Association, and judgment upon the award may be entered in any court having jurisdiction. Arbitration shall not preempt the seeking of relief provided by Paragraph 16.a, and if such relief is sought, any court in which such action is commenced, not any arbitration panel, shall determine whether any particular matter is justiciable by the court or only arbitrable.

c. This Agreement shall be construed in accordance with the laws of the State of California, without giving effect to the conflict of laws principles thereof.

**17. SEVERABILITY.**

If any provision of this Agreement is invalid, illegal or unenforceable, the balance of this Agreement shall remain in full force and effect, and if any provision is inapplicable to any person or circumstances, it shall nevertheless remain applicable to all other persons and circumstances.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers, as of the date first written above.

VINEYARD TEAM

Authorized Signature: \_\_\_\_\_

Print Name: Kris Beal

Title: Executive Director

Address: 5915 El Camino Real, Atascadero, CA 93422

[WINERY]

Authorized Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_