

MASTER LICENCE AGREEMENT

Dated this

PARTIES

The Australian Wine Research Institute Ltd (ABN 83 007 558 296) of Cnr Hartley Grove and Paratoo Road, Urrbrae, South Australia 5064 (the **AWRI**);

And

of (ABN)
.....(the **Licensee**).

RECITALS

- A The AWRI has developed a sensory and spectral system for classifying wines made from Pinot gris grapes on a scale known as the PinotG Style Spectrum. Using style indicators 'luscious' and 'crisp' the Spectrum allows a wine style to be communicated to the customer/consumer independent of branding or other nomenclature.
- B The AWRI is the proprietor of:
- (a) Trade Mark Application No. 1359375 for the Pinot G Style Spectrum device;
 - (b) Trade Mark Application No. 1359374 for the words Pinot G Style Spectrum; and
 - (c) Trade Mark/s to be detailed in the Licence Schedule from time to time in accordance with this Agreement.

(individually a **Trade Mark** and collectively **the Trade Marks**)

- C The Licensee wishes to use the Trade Marks in respect of any wine produced by the Licensee which is submitted for classification and classified by the AWRI in accordance with the terms of this Agreement and specified from time to time in the Licence Schedule to this Agreement (**Wine**).

AGREED TERMS AND CONDITIONS

1. Acknowledgement

The Licensee acknowledges that the AWRI is the proprietor of the Trade Marks and that nothing in this Agreement has the effect of transferring any ownership or other rights (save for the Licence) in or to the Trade Marks to the Licensee.

2. Submission of Wine, licence, allocation and use of Trade Marks

- (a) The Licensee warrants that Wine submitted by the Licensee and classified by the AWRI is made from at least 85% Pinot Gris grapes and that Wine submitted for classification is representative of Wine to be sold to customers/ consumers and complies with relevant FSANZ standards.
- (b) AWRI grants the Licensee a licence to use the Trade Marks in accordance with the terms of this Agreement, including without limitation, the permitted uses set out in clause 5 and the Licence Procedures set out in Clause 3.
- (c) The Trade Marks licensed to the Licensee are to be listed in each Licence Schedule as applicable. The AWRI will supply the Licensee with an applicable electronic image of the licensed Trade Marks for each Wine and this electronic image will be incorporated in the Licence Schedule.
- (d) The Trade Marks feature a classification scale that is unique to the Wine.
- (e) The Licensee agrees to:
 - (a) Advertise, promote, offer or sell the Wine in accordance with the terms of this Agreement;
 - (b) Abide by the classification assigned to the Wine by the AWRI.
- (f) The Licensee agrees to maintain a current register of all Wine which has been submitted and classified by the AWRI in accordance with this Agreement. The Licensee will provide a copy of this register to AWRI upon written request.

3. Licence Procedure

- (a) The Licensee will require a Trade Mark licence from the AWRI to use a Trade Mark or Trade Marks in respect of Wine for the permitted purposes and on the terms and conditions set out in this Agreement. Details of this licence will be specified in a Licence Schedule.
- (b) The Licensee may prepare a Licence Schedule or Schedule/s from time to time throughout the Term.
- (c) The AWRI will agree to grant a Trade Mark Licence, in accordance with the terms of this Agreement, for any Wine specified in a Licence Schedule.
- (d) Each Licence Schedule must be substantially in the form set out in the Licence Schedule and should contain at least the following information:
 - a. Details of the Trade Marks to be applied in accordance with Clause 5;
 - b. The name of the Wine/s to which the Trade Mark will be applied;
 - c. The Fee for the applicable use of the Trade Mark and classification of the Wine; and
 - d. Any permitted Trade Mark uses other than the permitted uses set out in clause 5.
- (e) Each Licence Schedule, once agreed by the parties, will be governed by and subject to the terms and conditions of this Agreement. A Licence Schedule will not be binding on the parties unless it is validly executed by authorised representatives of both parties.
- (f) Unless terminated earlier in accordance with this Agreement, each Licence Schedule will remain in force from the date that the last party executed the Licence Schedule.
- (g) For the purposes of this Agreement a “**Licence Schedule**” means a document substantially in the form set out in Schedule 1 to this Agreement.

4. Modifications to the Wine after classification

- (a) The Licensee agrees to not use the Trade Marks in connection with any Wine that after classification by AWRI is for any reason materially altered in composition. An alteration in wine style that is reasonably likely to result in a shift of more than 10% of the assigned position on the PinotG Style Spectrum shall be considered a material alteration. A material alteration might be result from but is not limited to blending, addition or oxidative changes.
- (b) The Licensee agrees to not use the Trade Marks on any Wine subjected to a material alteration outlined in 4.(a) prior to receiving a revised reclassification by the AWRI. If there is any doubt regarding any material alteration causing a shift of more than 10% in the assigned position on the PinotG Style Spectrum the Licensee agrees to submit the Wine for reclassification.

5. Permitted uses

Subject to the prohibited uses set out in clause 6, the Licensee may use the Trade Marks on the following goods and in the following contexts for the purpose of the promoting the Wine style:

- (a) Wine labels;
- (b) Printed materials, such as tasting notes, promotional materials, fact sheets, packaging materials;
- (c) on websites;
- (d) any other use outlined in the Licence Schedule.

6. Prohibited uses

The Licensee agrees that it will not:

- (a) use the Trade Marks in any manner or form or in respect of any goods whatsoever or any services except as specified in this Agreement;
- (b) use a Trade Mark or the Trade Marks in any manner or form, whether directly or indirectly, in respect of or to refer to wines that have not been analysed and classified by the AWRI on the PinotG Style Spectrum;
- (c) use a Trade Mark or the Trade Marks in any manner of form, whether directly or indirectly, to imply that the AWRI has endorsed the wine that a Trade Mark or the Trade Marks are being used in respect of, except for the purpose of stating the PinotG Style Spectrum classification approved by the AWRI;
- (d) do anything that may encumber or otherwise prejudice the AWRI's rights in a Trade Mark or the Trade Marks, or the goodwill or reputation of the AWRI in a Trade Mark or the Trade Marks; or

- (e) in any way change, alter or modify a Trade Mark or the Trade Marks or superimpose other print, images or other text on the Trade Marks.

7. Uses subject to approval by the AWRI

The Licensee must obtain the AWRI's prior written approval for all forms of use by the Licensee of the Trade Marks that are not otherwise specifically permitted under this Agreement and each Licence Schedule.

8. Approval mechanism

- (a) Where the Licensee seeks the AWRI's approval pursuant to clause 7 to a proposed use of the Trade Marks that is not otherwise specifically permitted or prohibited under this Agreement, the Licensee will give the AWRI twenty-one (21) days prior written notice of the Licensee's proposed use of the Trade Marks setting out full details of the Licensee's proposed use.
- (b) Where the Licensee does not receive the AWRI's approval in respect of its proposed use of the Trade Marks, it will not make the proposed use of the Trade Marks.

9. Classification and License fees (together "the Fee")

- (a) In consideration of being granted the licence to use the Trade Marks in accordance with this Agreement the Licensee will pay to the AWRI a Licence Fee as specified in the applicable Licence Schedule to be paid to AWRI.
- (b) The Licensee will also be required to pay a Classification Fee as specified in the Licence Schedule.
- (c) The Licence Fee and the Classification Fee are collectively known as the Fee for the purposes of this Agreement.
- (d) The Fee will be paid within 60 days of receiving a valid tax invoice from AWRI. No other amounts for the Trade Mark licence or the classification procedure will be payable by the Licensee to AWRI.

10. Design guidelines

Licensee agrees to maintain the integrity of the Trade Marks in any permitted use, including but not limited to maintenance of aspect ratio in accordance with the Design Guidelines set out in Annexure 1 to this Agreement

11. Jurisdiction

This Licence is effective in any country in which AWRI holds rights to the Trade Marks. Licensees that elect to sell products in a country in which AWRI does not hold rights to the Trade Marks do so at their own risk.

12. Representations

The Licensee must not make any misrepresentations in the conduct or provision of goods and/or services under or by reference to the Trade Marks and it must ensure that its officers, employees, servants or agents do not make any such misrepresentation.

13. No challenge by Licensee

The Licensee agrees that neither it nor its officers, employees, servants or agents will, during the term of this Agreement or thereafter, directly or indirectly dispute the validity of the AWRI's trade mark registrations for the Trade Marks.

14. Benefit of the Licensee's use accrues to the AWRI

The Licensee agrees and acknowledges that all and any use made by the Licensee of the Trade Marks and any benefit accruing by its use of the Trade Marks will accrue solely to the benefit of the AWRI.

15. IP Warranty and Indemnity

- (a) AWRI warrants that it is the owner of all Intellectual Property Rights in the Trade Marks and that the use or reproduction of the Trade Marks will not infringe the rights, including the

moral rights, of any third party. **“Intellectual Property Rights”** means all rights conferred under statute, common law and equity in relation to the Trade Marks.

(b) AWRI will indemnify the Licensee against all actions, suits, claims, demands, loss or damage arising from any breach of this Agreement by AWRI, any claim for misuse of intellectual property in relation to or connected with the Trade Marks or any other undertaking given in relation to the intellectual property in the Trade Marks.

16. Registration of business, company and domain names

The Licensee agrees that it will not register or attempt to register the words Pinot G Style Spectrum, or any names or words substantially identical or deceptively or misleadingly or confusingly similar to the words Pinot G Style Spectrum, as a business, company or domain name or as an e-mail address in any country.

17. Endorsement on documents and other goods

The Licensee agrees where possible and appropriate (in its sole discretion) to use reasonable efforts to place on all promotional materials and other goods (except wine labels) which bear a Trade Mark(s) a notice as follows:

“The Pinot G Style Spectrum Trade Marks are used under licence from the Australian Wine Research Institute Ltd”.

18. Compliance with laws

- (a) The Licensee must comply with and must ensure that its officers, employees, servants or agents comply with all statutes, laws, policies, notices, directions, orders, requirements or demands of any government or other authority in relation to:
 - i. any premises from which it offers goods and/or services under or by reference to the Trade Marks; and
 - ii. any goods it offers for sale and sells under or by reference to the Trade Marks.
- (b) The Licensee must comply with the provisions of the Australian Wine and Brandy Corporation Act 1980 including but not limited to those provisions that related to the Label Integrity Program.

19. No right of the Licensee to take action

Subject to clauses 20 and 21, the Licensee may not take any measures whatsoever, whether by way of litigation or any other means, against any third party which is alleged to have infringed the Trade Marks or which claims that use of the Trade Marks infringes third party rights.

20. The Licensee must notify AWRI

The Licensee must notify the AWRI immediately if it becomes aware of any actual or suspected infringement of one or more Trade Marks, or any claim by a third party that the use of the Trade Marks infringe any third party rights.

21. The Licensee must provide assistance to the AWRI

The Licensee, must, if requested by the AWRI, provide the AWRI with such reasonable assistance as the AWRI may require in conducting enforcement proceedings or defending any third party claim in respect of the Trade Marks.

22. Restrictions of assignment

The Licensee must not sell, transfer, delegate or assign or mortgage, charge or otherwise encumber, any of its rights under this Agreement without the prior written consent of the AWRI, which shall not be unreasonably withheld, except that the Licensee may assign, transfer or novate all or any part of its rights and obligations under this Agreement to a related body corporate in its absolute discretion and the AWRI must take all action reasonably required to give effect to such assignment, transfer or novation.

23. Term

Subject to clauses 24 and 25, this Agreement will continue in force and effect until it is lawfully terminated by either party.

24. Termination

- (a) The Licensee may terminate this Agreement at any time without cause upon one (1) month notice to the AWRI;
- (b) If this Agreement is terminated for any reason the Fee paid is forfeited.
- (c) Subject to clause 26, the AWRI agrees Licensee will not be required to remove any application of a Trade Mark on Wine which has been approved by AWRI for Trade Mark application in accordance with this Agreement throughout the Term.

25. Termination for breach of the Licensee

The parties agree that:

- (a) if the Licensee breaches any of its obligations pursuant to this Agreement and fails to remedy any such breach within thirty (30) days after written notice thereof is sent to the Licensee by the AWRI, the AWRI may at its option terminate the Agreement by giving written notice of three (3) months to the Licensee to such effect; and
- (b) if the Licensee breaches any of its obligations pursuant to this Agreement and the said breach cannot be remedied, the AWRI may at its option terminate this Agreement by giving written notice of one (1) month to the Licensee to such effect.

If the AWRI terminates the Agreement pursuant to sub-paragraphs (a) or (b) above it will not prejudice any cause of action or claim of the AWRI accrued or to accrue on account of any breach of the Agreement by the Licensee.

26. License after termination

Licensee agrees that, upon valid termination of this Agreement in accordance with clause 24 or clause 25, it will immediately cease to use the Trade Marks for any Wine labels and other materials which have been approved by the AWRI provided that such Wine labels and other materials bearing the Trade Marks are within the Licensee's possession and control. The parties further agree that the Licensee shall have a period advised by AWRI but not less than six months (6) months after the valid termination of this Agreement in which to re-brand its wine labels, promotional materials and other goods that are in the Licensee's possession and control bearing the Trade Marks.

27. Dispute resolution

If a dispute arises in relation to this Agreement, either party may refer the matter to mediation.

28. Liability and warranty

- (a) The classification provided by the AWRI for Wine as outlined in the Trade Mark in Schedule 1 is to the best of the AWRI's reasonable understanding an accurate classification within 90% confidence. The AWRI is not responsible for any change to the classification as a result of any alteration to the Wine arising from time, heat, oxygen or any other event after the date of classification.
- (b) Unless expressly prohibited by any applicable law, AWRI is not liable (whether in contract, tort, under any statute or otherwise) for loss or damage of any kind (including direct, indirect and consequential loss and damage of business revenue, loss of profits, failure to realise expected profits or savings or other commercial or economic loss of any kind), however caused arising out of or in any way related to the Trade Marks or this Agreement. The limitations on the AWRI's liability in this clause 28.(b) do not apply to allow the AWRI to avoid any liability for any loss or damage arising:
 - (i) as a result of any breach of Intellectual Property Rights in connection with the Trade Marks; and
 - (ii) in respect of any fraud or willful misconduct of the AWRI.

29. General

- (a) If a provision in this Agreement is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.
- (b) If it is not possible to read down a provision as required in the clause, that provision is severable without effecting the validity or enforceability of the remaining part of that provision or the other provisions in this Agreement.
- (c) This Agreement contains the entire understanding between the parties as to its subject matter. All previous agreements, representations, warranties, explanations and commitments (expressed or implied) affecting this subject matter are superseded by the Agreement and have no effect.
- (d) The Licensee hereby agrees and acknowledges that it does not have the power to obligate or bind the AWRI and nothing in this Agreement will be construed or deemed to constitute a partnership, joint venture, employee or agency relationship between the Licensee and the AWRI.
- (e) If a party consists of more than one person, this Agreement binds each of them jointly and severally.
- (f) This Agreement is governed by and is to be construed in accordance with the laws of South Australia. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of South Australia (including the Federal Court of Australia) and waives any right to object to proceedings being brought in those courts.

EXECUTED AS AN AGREEMENT

**Executed for and on behalf of
The Australian Wine Research Institute Ltd**

.....
Authorised Representative Signature

.....
Print name/capacity

**Executed for and on behalf of
The Licensee**

.....
Authorised Representative Signature

.....
Print name/capacity