

## Terms and Conditions

These Terms and Conditions comprise a legal agreement ("Agreement") between you (either an individual or a single entity) ("You" or "Your") and the The Australian Wine Research Institute Limited (ABN 83 007 558 296) a company limited by guarantee, of cnr Hartley Grove and Paratoo Road, Urrbrae, SA, 5064 ("AWRI") in relation to Your access to and use of the online tool for evaluating and comparing statistical information relevant to the grape and wine industry currently known as the "Entwine Online tool" offered by AWRI via the Entwine website ("Website"). The AWRI reserves the right to change the name of the online tool in its absolute discretion. In the event the name is changed these Terms and Conditions shall be read as if the new name of the online tool and website were included in this preamble.

You must read these Terms and Conditions prior to accessing or using the Website. By accessing the Website you are acknowledging and agreeing to these Terms and Conditions.

### 1. ACCESS TO THE WEBSITE

1.1 Subject to the terms and conditions of this document, AWRI grants to You a non-exclusive licence to access the Website.

1.2 You are permitted to:

- (a) submit Information into the Website;
- (b) view all Information to which you have been expressly granted access in the Website;
- (c) subject to (b), access and use the Information solely for the Permitted Purpose; and
- (d) authorise your Representatives to do any of the acts specified in (a) to (c) above.

1.3 You are not permitted to:

- (a) access any Information to which You have not been expressly granted access;
- (b) access, use or copy Information other than for the Permitted Purpose or as otherwise expressly authorised in writing by AWRI;
- (c) distribute, transmit and/or send any of the Information contained in the Website;
- (d) permit any other person to do any of the acts specified in (a) to (c) above, without AWRI's express written consent, which may be given or withheld in AWRI's absolute discretion.

### 2. CONFIDENTIALITY AND PRIVACY

2.1 You must:

- (a) keep the Information secret and confidential;
- (b) not directly or indirectly disclose, or allow to be disclosed, the Information to anyone, except as expressly permitted by AWRI;
- (c) use the same degree of care to avoid disclosing the Information as You use to protect your own confidential information; and
- (d) inform AWRI immediately upon becoming aware or suspecting that an unauthorised person has become aware of any Information.

2.2 You are permitted to disclose the Information:

- (a) to your Representatives who have a need to know the Information in respect of the Permitted Purpose, provided that such Representatives are aware of the confidential nature of the Information and are bound by equivalent contractual obligations of confidentiality; and
- (b) where You are required by law to disclose the Information, provided that You give AWRI reasonable advance notice and opportunity to object to the requirement to disclose such information or obtain an appropriate order to protect the Information.

2.3 You are liable for any breach of these Terms and Conditions by any of your Representatives.

2.4 Subject to 2.4 (b) AWRI will not disclose information entered into the website except in a form that is not traceable to or directly attributable an individual user of this website.

- (a) You acknowledge and agree to the use of your data for the purpose of presentation to other users of the website in a form that is not traceable to or directly attributable to an individual user.
- (b) AWRI may disclose Information to its employees, directors and officers; and legal, financial or other professional advisers, who have a need to know or where required as part of grant funding criterion by the granting body or by law to disclose.

### **3. SECURITY**

3.1 You shall be solely responsible for the use, supervision, management and control of the Information accessed on the Website. You must ensure that the Information is protected at all times from any form of unauthorised access, use or disclosure.

3.2 You must (and must ensure that all Representatives will), at the written request of AWRI, return to AWRI, or destroy to the satisfaction of AWRI, all Information and all copies made of that Information. Upon request, You must provide written confirmation that no hard copies or electronic copies of the Information have been retained.

3.3 You must (and must ensure that Your Representatives will), take all reasonable steps to avoid unauthorised access to the Website, including by ensuring that all computers are either disconnected from the Website or locked before being left unattended. You must notify AWRI immediately if you become aware of, or have any reason to believe, that there is any unauthorised use of your User ID or any other breach of security.

3.4 AWRI reserves the right to suspend access, change information or access of your account or the account of any Representative upon notification by You that any password or information has been lost, stolen or otherwise compromised.

### **4. ACKNOWLEDGMENTS**

4.1 You acknowledge that:

- (a) Your use of the Website is entirely at your own risk and the services provided through the Website are provided on an "as is" basis;
- (b) AWRI makes no representation or warranty in relation to the accuracy or completeness of any Information provided through the Website;
- (c) AWRI is in no way responsible or liable to You in respect of any loss or damage caused to You for any business or financial decisions made on the basis of the Information; and
- (d) AWRI reserves the right to access and evaluate all Information entered into the Website for the purposes of operation and management of the Website.

4.2 You acknowledge and accept that any person accessing the Website leaves an auditable trail, including the date, time and duration of access and the Information accessed. AWRI reserves the right to conduct audits in relation to access to the Website from time to time.

### **5. RELEASE AND INDEMNITY**

5.1 You unconditionally release AWRI from any liability, claims, infringements, demands or damages of any kind arising out of or in connection with any use of or access to the Website by You or use of Information available through the Website.

5.2 You hereby indemnify AWRI in respect of any loss, damage, costs or expenses suffered by You or a third party as a result of Your use of the Website or any Information accessed through the Website under your User ID.

5.3 You hereby indemnify AWRI in respect of any loss, damage, costs or expenses suffered or incurred by AWRI (including reasonable legal costs for investigating or defending any claim) related to or arising from your breach of these Terms and Conditions or as a result of any unauthorised acts, fraud, wilful default, dishonesty or negligence of You or any of your Representatives.

### **6. LIMITATION OF LIABILITY**

6.1 To the fullest extent permitted by law, AWRI disclaims all liability (including any indirect, special, incidental or consequential damage or loss) suffered or incurred by any person, whether directly or indirectly by reason of any use or misuse of, or reliance upon, the Website, or any of the information on the Website being inaccurate, incomplete, incorrect or misleading or deceptive.

6.2 To the maximum extent permitted by law, all terms, conditions and warranties expressed or implied by any legislation, the common law, equity, trade, custom or usage are expressly excluded from these Terms and Conditions.

6.3 If You become entitled to obtain any legal remedy for breach of these Terms and Conditions then that remedy will be limited to the right:

- (a) if the breach relates to goods – the replacement of the goods, the supply of equivalent goods, the repair of such goods, or the payment of the cost of replacing the goods or of acquiring equivalent goods; or

(b) if the breach relates to services, the supplying of the services again or the payment of the cost of having the services supplied again.

6.4 AWRI will not be liable to You for any indirect, special, economic or consequential loss or damage or loss of revenue, profits, goodwill, bargain or opportunities or loss or corruption of data or loss of anticipated savings incurred or suffered by You, whether caused by a breach by AWRI, negligence on the part of AWRI or any of its representatives and whether AWRI was aware or should have been aware of the possibility of such loss or damage.

## **7. NOTICES**

7.1 Any notice given by any of the parties shall be served on the other party in writing by personal delivery, pre-paid recorded delivery or facsimile transmission or such subsequent addresses as may be notified by the parties to each other.

7.2 Any such notices shall be deemed to be effectively served as follows:

- (a) in the case of service by personal delivery, at the time of delivery;
- (b) in the case of service by pre-paid recorded delivery, two (2) Business Days after posting;
- (c) in the case of service by facsimile transmission, on the next Business Day, provided that the sender has a confirmation report specifying a facsimile number of the recipient, the number of pages sent and the date of transmission.

7.3 A party may change its address for the purpose of service of notices by giving notice of that change to each other party pursuant to clause 7.1.

## **8. DISPUTE RESOLUTION**

8.1 Unless provided otherwise in these Terms and Conditions, if a party has any dispute in relation to these Terms and Conditions ("Dispute") that party must, before resorting to external dispute resolution mechanisms (except for urgent interlocutory relief), notify the other party in writing setting out the reasons for the Dispute.

8.2 Where a notice has been given under clause 8.1, the parties will attempt to resolve the Dispute by good faith negotiations within ten (10) Business Days of the date of the receipt of the Dispute. If the Dispute has not been resolved between the parties within ten (10) Business Days of the commencement of the mediation process, the parties are free to pursue any other rights or remedies available to it.

8.3 Nothing in this clause 10 operates to prevent a party from seeking urgent interlocutory relief.

## **9. GENERAL**

9.1 These Terms and Conditions are governed by the laws of South Australia and the parties submit to the non-exclusive jurisdiction of the courts of that State.

9.2 These Terms and Conditions may be amended by AWRI at any time, such amendments to take effect ten (10) Business Days after posting of the amendments on the Website.

9.3 You must not assign or transfer any of Your rights or obligations under these Terms and Conditions without the prior written consent of AWRI. AWRI may assign or transfer its rights or obligations under these Terms and Conditions at any time without obtaining Your consent.

9.4 Each party must do everything necessary or reasonably required by another party to give full effect to the purposes, and transactions contemplated by, these Terms and Conditions.

9.5 The relationship between the parties is and will remain that of independent contractors, and nothing in these Terms and Conditions constitutes the parties as partners or joint venturers or constitutes any party as the agent of another party or gives rise to any other form of fiduciary relationship between the parties.

9.6 No waiver by a party of any breach or default by any other party is effective unless reduced to writing and signed by the party making such waiver, and any such waiver does not constitute a waiver of any other continuing breach or default under these Terms and Conditions.

9.7 These Terms and Conditions contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by these Terms and Conditions and had no further effect.

9.8 If any provision of these Terms and Conditions is prohibited, invalid or unenforceable in any jurisdiction, that provision will, as to that jurisdiction, be ineffective to the extent of the prohibition, invalidity or unenforceability without invalidating the remaining provisions of these Terms and Conditions or affecting the validity or enforceability of that provision in any other jurisdiction.

## 10. DEFINITIONS AND INTERPRETATION

10.1 In these Terms and Conditions:

- (a) Business Day means a day that is not a Saturday, Sunday or declared public holiday;
- (b) GST Law means the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and Regulations and other similar or related act, regulations or rulings.
- (c) Information means production metrics and other information and operational data relating to the grape and wine industry.
- (d) Permitted Purposes means the internal business purposes of evaluating and comparing statistical information and making improvements to profitability and efficiency.
- (e) Representative of a party means any director, officer, employee, agent, contractor or professional adviser of the party.

10.2 In these Terms and Conditions unless the contrary intention appears:

- (a) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements or any of them;
- (b) singular includes the plural number and vice versa and a reference to any one gender includes each other gender (as the case may require);
- (c) headings are for convenience only and do not affect interpretation;
- (d) the word "person" includes a firm, corporation, body corporate, unincorporated association or any governmental authority, and includes a reference to the person's executors, administrators, legal personal representatives, successors and permitted assigns;
- (e) an agreement on the part of, or in favour of, two or more persons binds or is for the benefit of them or any one or more of them jointly and severally;
- (f) "includes" means includes without limitation;
- (g) where a word or phrase is given a defined meaning in this document, any other part of speech or grammatical form in respect of such word or phrase has a corresponding meaning; and
- (h) "\$" or "dollars" means the currency used in Australia.
- (i) If the day on which any act, matter or thing is to be done under or pursuant to these Terms and Conditions is not a Business Day, that act, matter or thing must be done on the next succeeding Business Day.