

NEW YORK SUSTAINABLE WINEGROWING TRUSTMARK AGREEMENT FOR WINERIES

Winery		
Business Name:		
Business Entity / File #:		
State of Organization:		
Address:		
Signature Date:		
	Contact Name:	
	Title:	
	Telephone:	
	E-Mail:	

This Agreement (the “Agreement”) of the date first written above (the “Effective Date”) is made between the business identified in the table above (the “Winery”) and the New York State Wine and Grape Foundation, a not-for-profit organization organized under New York State law and located at One Keuka Business Park, Suite 208, Penn Yan, New York 14527 (the “Foundation” or the “Certifier”).

Certifier operates New York Sustainable Winegrowing (the “Certification Program”), a program for certifying that the viticultural and business practices used by a winegrower for a particular vineyard (“Winegrowing Practices”) satisfy the standards of Certifier for sustainable winegrowing practices attached hereto as Exhibit 1 and as may be modified from time to time (the “Certification Standards”);

Certifier owns the certification mark NEW YORK SUSTAINABLE WINEMAKING (and Design) shown in Exhibit 2 (the “Trustmark”) and has the power and authority to grant to Winery a license to use the Trustmark to indicate that certain wine sourced from grapes grown on and harvested from vineyards for which the applicable Winegrowing Practices used by the applicable winegrower have been determined by Certifier to satisfy the Certification Standards (“Certified Grapes”) as described further below;

Winery desires to obtain from Certifier a license to use the Trustmark.

Now, therefore, for good and valuable consideration, the amount and sufficiency of which is hereby acknowledged, Certifier and Winery hereby agree as follows:

1. **License; Limitations and Restrictions.**
 - a. **Grant of License.**
 - i. Subject to the provisions of this Agreement, Certifier grants Winery a royalty-free, fully paid up, revocable, non-exclusive, non-sublicenseable, non-transferable, non-assignable, personal, and limited license throughout the world

during the Term (as defined in Section 3(a)) to use the Trustmark solely (i) on a wine in which at least eighty-five percent (85%) of the grapes used to manufacture such wine are Certified Grapes ("Approved Wine"), provided that the Winery has submitted a Trustmark Wine Usage Application in the form attached hereto as Exhibit 3 and as may be modified from time to time ("User Application") to Certifier, prior to sale of such wine, for each vintage year of such wine, and Certifier has approved such application, and (ii) on bottles, labeling, packaging and point of sale material for or directly referencing such Approved Wine. For clarification, Winery may not use the Trustmark on an Approved Wine other than from the vintage year specified in an approved User Application.

- ii. Further, if at least eighty percent (80%) of Winery's portfolio of wines consist of Approved Wines as determined by Certifier in its sole discretion, notwithstanding Section 1(a)(i), Winery may, with the prior written consent of Certifier, use the Trustmark in all marketing materials for Winery.

b. Limitations and Restrictions

- i. **No Other License.** Winery shall have no right or license in or to the Trustmark except as expressly permitted in Section 1(a). All other rights are expressly reserved to Certifier.
- ii. **No Claims Other Than Authorized Certification Claims.** Winery shall not make any statement relating to the Certification Program or the Certification Standards with respect to the Approved Wine except the statements set forth in Exhibit 4 ("Authorized Certification Claims").
- iii. **Required Format.** In making use of the Trustmark, Winery shall:
 1. Always use the Trustmark in the format and to the specifications set forth in Exhibit 4, which Certifier may modify from time to time;
 2. Always display the trademark notice™ at the upper right hand corner of the Trustmark in all signage, labels, packaging, containers, and advertising and promotional materials;
 3. If Winery is a member of the Foundation, clearly and conspicuously disclose that Winery is a member of the Foundation wherever the Trustmark is used;
 4. Display any other notices and legends with respect to the Trustmark as may be reasonably requested by the Certifier from time to time.
- iv. **Proposed Uses.** Upon the reasonable request of Certifier, Winery shall send to Certifier representative samples of any proposed use of the Trustmark or any Authorized Certification Claim (each a "Proposed Use"), including use on

product packaging and in advertising and promotional materials. If Certifier objects to any such Proposed Use, Winery will not make such Proposed Use.

- v. **No Derivative Marks.** Winery shall not make any claim or adopt or use any trade name, trademark, service mark, slogan, trade dress, domain name, or social media identifier that comprises or resembles the Trustmark or any element thereof that would be likely to cause confusion with, impair the distinctiveness of, or tarnish the reputation of the Trustmark or Certifier.
- vi. **No Sponsorship or Endorsement.** The license granted to Winery in Section 1(a) does not constitute sponsorship or endorsement by Certifier of Winery, the Vineyard, or any other business, facility, service, or product of Winery or any association therewith, and Winery shall not use any Trustmark or variation thereof in such a way as to state, suggest, or imply any of the foregoing.
- vii. **No Disparagement.** Winery shall not use the Trustmark or Certifier's name in connection with any activity that is likely to disparage Certifier, the Certification Program, or the Certification Standards, damage the reputation thereof or the goodwill associated therewith, or be otherwise inconsistent with the values and mission of Certifier.
- viii. **False Representation Prohibited.** Winery shall not use the Trustmark or any Authorized Certification Claim in a manner that falsely represents or implies that (1) a wine other than an Approved Wine has been certified by Certifier, or (2) all the wines in of Winery's wine portfolio have been certified by the Certifier.

c. Quality Control.

- i. **Compliance with Laws and Industry Standards.** During the Term, Winery at its own expense shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances and with all industry standards, and shall obtain all appropriate government approvals, applicable to manufacture or sale of the Approved Wine or any other activity of Winery.
- ii. **Inspection of Facilities and Records.** Upon reasonable notice and during normal business hours Winery shall permit Certifier or its agents to (1) enter and inspect the Winery and the business offices associated therewith during normal business hours, (2) photograph and document these premises, and (3) inspect and at Certifier's expense copy any records or other documents reasonably related to Approved Wine or compliance by Winery with the provisions of this Agreement.
- iii. **Changes to Approved Wine.** Winery acknowledges and agrees that in the event of any change of the amount or source of Certified Grapes in an Approved Wine, Winery shall submit any such changes to Certifier for Certifier's approval. In the Licensee's failure to timely submit such changes to Licensor shall constitute a breach of this Agreement. In the event any such change causes an Approved Wine to no longer be in compliance with the Certification Program, as

determined by Certifier in its sole discretion, Winery shall immediately discontinue use of the Trustmark on such wine.

- iv. **Annual Report.** Winery will provide an annual report of all Approved Wine on which it uses the Trustmark in a format to be provided by Certifier and as required in the Certification Standards.

2. **Ownership of the Trustmark, Certification Standards, and Usage Application**

- a. **Ownership.** Winery acknowledges that Certifier is the sole and exclusive owner of all right, title, and interest throughout the world in the Trustmark, the Certification Standards, and the Usage Application, including without limitation any copyright, trademark, and trade name rights and goodwill therein. Winery agrees that any and all use of the Trustmark by Winery and any goodwill therein resulting from such use shall inure solely to the benefit of Certifier. Further, Winery shall not contest, oppose, challenge, or do anything to impair ownership by Certifier or the rights of Certifier, as between Winery and Certifier, in the Trustmark, the Certification Standards, the Usage Application, or other property of Certifier.
- b. **No Registration.** Winery shall not register or apply to register the Trustmark, the trade name or any trademark of Certifier, or any derivative mark as a trade name, trademark, service mark, certification mark, domain name, or other identifier in the United States or any other territory.
- c. **No Obligation to Obtain or Maintain Registration.** Certifier shall not be obligated to:
 - (i) file any application for registration of the Trustmark as a certification mark,
 - (ii) maintain any certification mark registration of the Trustmark, or
 - (iii) provide any assistance to Winery except for the obligations expressly assumed by Certifier in this Agreement.
- d. **Adverse Use by Third Parties.** Winery shall promptly notify Certifier in the event that Winery learn that another party may be using any mark, trade name, or identifier that is likely to cause confusion with or dilute or tarnish the goodwill and value of the Trustmark. Winery shall take no action with respect to such use except with the prior written consent of Certifier. Certifier has the right, but no obligation, to take such action as it believes advisable for the protection of its rights in the Trustmark.
- e. **Allegations of Infringement.** Winery shall promptly notify Certifier should Winery learn of any allegations that the Trustmark, the Certification Standards, or the Usage Application infringe or otherwise violate the rights of another party. Winery shall take no action with respect to such allegations except with the prior written consent of Certifier.
- f. **Assistance.** Winery shall cooperate fully with Certifier to protect, defend, and enforce the rights of Certifier in the Trustmark, the Certification Standards, or the Usage Application in any legal or equitable action. Winery shall also assist Certifier in complying with any formalities to protect and enforce the Trustmark, the Certification Standards, or the Usage Application under U.S. federal and state law and foreign law,

and shall execute any documents for the foregoing purposes as may be reasonably requested by Certifier.

3. Term.

- a. Unless earlier terminated as provided in this Agreement, the term of this Agreement is (3) years commencing on the Effective Date (the "Term").

4. Termination; Effect of Expiration or Termination.

- a. **General.** Either of the parties to this Agreement may terminate the Agreement at any time, for any reason, upon sixty (60) days' prior written notice to the other party.
- b. **Termination by Certifier.** Certifier may terminate the Agreement effective immediately upon written notice to Winery in any of the following instances:
 - i. **Dissolution and Insolvency of Winery.** Winery either (1) dissolves, liquidates, or ceases to engage in its business or (2) commences any proceeding under any provision of the United States Bankruptcy Code, as amended, or under any bankruptcy or insolvency law, including assignments for the benefit of creditors, formal or informal moratoria, compositions, extension generally with its creditors, or proceedings seeking reorganization, arrangement, appointment of a custodian, receiver, or trustee, or other relief.
 - ii. **Material Breach of Agreement by Winery.** Winery violates any of the following sections of this Agreement: **1, 2, 4(c), 5, and 6(a)**.
 - iii. **Reputational Harm.** Winery engages in any conduct that in the sole determination of Certifier would reflect unfavorably on the reputation of Certifier, the Certification Program, or the Certification Standards, or that would subject Certifier to public disrepute, and fails to discontinue this conduct and, in the sole discretion of Certifier, cure such breach within ten (10) days after the date of written notice by Certifier.
 - iv. **Other Breach by Winery.** Winery fails in the sole determination of Certifier to cure any other breach within thirty (30) days after the date of written notice by Certifier, except as may be expressly provided otherwise by this Agreement.
- c. **Effect of Expiration or Termination.** Upon expiration or termination of the Agreement, any license granted to Winery by this Agreement shall immediately, automatically, and without further consideration terminate, and Winery and its agents shall immediately discontinue and thereafter refrain from any and all use of the Trustmark and any Authorized Certification Claim.

5. Representations and Warranties.

- a. **By Certifier and Winery.** Each party to this Agreement hereby represents and warrants to the other that it has full power to enter into this Agreement and to accept the

undertakings and perform the obligations provided herein; and that accepting the undertakings and performing the obligations provided by this Agreement does not and will not violate, conflict with or constitute a breach of any contract or commitment made to any person or entity.

- b. **By Winery.** Winery hereby represents and warrants that, based on information and belief, any and all information provided to Certifier in connection with the Certification Program are true, accurate, and complete, and that it has not intentionally either provided false information or omitted information that is material to evaluation of its application under the Certification Program; that it has and will continue to have during the Term any and all approvals, registrations, licenses, and authorizations of any kind whatsoever as may be required by manufacture and sell wine, and that it is not at present subject to any inquiry, complaint, investigation, adverse finding, or regulatory action concerning its business or services and will immediately report any of the foregoing to Certifier.

6. Indemnification.

- a. **By Winery.** Except as to the matters as to which Certifier is required to indemnify Winery under Section 6(b), Winery shall defend, indemnify, and hold harmless Certifier and its directors, officers, employees, agents, and contractors (each a "Certifier Indemnified Party") from and against any liabilities, losses, claims, causes of action, suits, damages, costs, expenses (including reasonable attorneys' fees), and settlement amounts arising out of or in connection with (i) any Approved Wine; (ii) any breach by Winery of any provision of this Agreement; (iii) any claim arising from use of the Trustmark or any Authorized Certification Statement by Winery except as expressly permitted in this Agreement; (iv) any other negligent act or omission by Winery or its directors, officers, employees, agents, and contractors relating to any Approved Wine or the Certification Program. Certifier will promptly notify Winery after receiving a claim for which Certifier or any Certified Indemnified Party will seek indemnification.
- b. **By Certifier.** Certifier shall defend, indemnify and hold harmless Winery and its directors, officers, employees, agents, and contractors (each a "Winery Indemnified Party") against any and all liabilities, losses, claims, causes of action, suits, damages, costs, expenses (including reasonable attorneys' fees), and settlement amounts for which Winery is or becomes liable to another party or may incur solely by reason of use by Winemaker of the Trustmark in accordance with the terms and conditions of this Agreement, to the extent that such liability arises through infringement or violation of the trademark rights of another party, provided and only to the extent that (a) the claim did not arise from negligence or willful misconduct of Winery or from use of any derivative or modification of the Trustmark by Winery; (b) Winery gives Certifier timely written notice of any such claim so as not to prejudice its settlement or defense; and (c) Winery gives Certifier the opportunity to assume sole control over and all necessary assistance with its settlement and defense.

7. Agreements Regarding Liability and Remedies.

- a. **Limitation of Liability.** The liability of Certifier for any liability, loss, claim, cause of action, suit, damage, cost, expense (including reasonable attorneys' fees), and settlement amounts arising out of or in connection with the decision by Certifier to certify or not certify particular wine grapes or a particular wine, or this Agreement shall not exceed the greater of One Thousand Dollars (\$1,000) or the cumulative fees paid by Winery to Certifier for any applications under the Certification Program.
- b. **LIMITATION ON DAMAGES. CERTIFIER SHALL NOT BE LIABLE TO WINERY FOR ANY INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, OR INDIRECT DAMAGES ARISING OUT OF OR OTHERWISE RELATED TO THIS AGREEMENT (INCLUDING CLAIMS FOR LOSS OF REVENUE, LOSS OF PROFIT, OR LOSS OF USE) EVEN IF WINERY HAS BEEN APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES.**
- c. **Remedies and Claims of Winery.** Winery shall under no circumstance be entitled, directly or indirectly, to any form of compensation or indemnity from Certifier or to obtain an injunction, specific performance or other equitable remedy as a consequence of the termination or expiration of this Agreement for any reason. Winery waives any claims it may have against Certifier arising from any alleged goodwill created by Winery for the benefit of Certifier or from the alleged creation or increase of a market for products, services or other items bearing the Trustmark or any Authorized Certification Claim.
- d. **Remedies of Certifier.** Notwithstanding any other provision of this Agreement, Certifier shall have all the rights and remedies which it may have, at law or in equity. Winery acknowledges that failure to use or to discontinue use of the Trustmark and any Authorized Certification Claim in accordance with this Agreement will result in immediate and irreparable harm to Certifier, and agrees that termination of this Agreement shall not be considered an exclusive remedy therefor or in any way limit Certifier from enforcing its other rights or remedies. Winery acknowledges and agrees that there would be no adequate remedy at law for its failure to comply with the provisions of this Agreement and agrees that, in the event of such failure and in addition to the foregoing rights, Certifier shall be entitled to equitable relief by way of temporary restraining order, preliminary injunction and permanent injunction and such other and further relief as any court with jurisdiction may deem just and proper, without the necessity of posting bond or proving actual damages.
- e. **Notices.** All notices and other communications pertaining to this Agreement shall be in writing and shall be deemed given when delivered personally (which shall include delivery by Federal Express or other recognized overnight courier service that issues a receipt or other confirmation of delivery) to the party for whom such communication is intended, or as of the date of receipt when mailed by certified mail, return receipt requested, postage prepaid, or when transmitted electronically by email with an acknowledgment of receipt, addressed as follows:

If to Certifier:

New York Wine and Grape Foundation

Attn: [Name, Title]

Main Telephone:

E-Mail:

If to Winery:

Refer to information provided on Page 1.

Any party may change its address for purposes of this section by written notice given in the manner provided above.

8. **Dispute Resolution.** Any dispute, controversy, or claim arising out of or related to this Agreement or any breach or termination of this Agreement shall be submitted to and decided by binding arbitration. Arbitration shall be governed by the Federal Arbitration Act and administered by the American Arbitration Association ("AAA") and held in Yates County in the State of New York before a single arbitrator, in accordance with the AAA's rules, regulations, and requirements for commercial disputes. Any arbitral award determination shall be final and binding upon the parties. Judgment on the arbitrator's award may be entered in any court of competent jurisdiction. Arbitration shall proceed only on an individual basis. The parties waive all rights to have their disputes heard or decided by a jury or in a court trial and the right to pursue any class or collective claims against each other in court, arbitration, or any other proceeding. Each party shall only submit their own individual claims against the other and will not seek to represent the interests of any other person. The arbitrator shall have no jurisdiction or authority to compel any class or collective claim, or to consolidate different arbitration proceedings with or join any other party to an arbitration between the parties. The costs of the arbitration, including any fees and costs of the arbitrator, shall be divided equally between or among all parties involved in the arbitration.
9. **Other Provisions.**
- a. **Survival.** All provisions that are intended to survive, including without limitation Sections 2(a), 4(c), 6(a), 7, 8, and 9 herein, shall survive expiration or termination of this Agreement.
 - b. **Governing Law, Jurisdiction, and Venue.** This Agreement shall be governed by the law of the State of New York without regard to the conflict of laws rules of any territory. Winery and Certifier each consent to the exclusive jurisdiction and venue of the state and federal courts of the State of New York.
 - c. **Relationship of Parties.** This Agreement shall not create any agency, partnership, joint venture, or employment relationship between or among any of the parties, either individually or collectively, for any purpose. No party shall have any authority or hold itself out as having authority to bind any other party or make any agreement or representation on behalf of any other party.
 - d. **Amendment.** This Agreement may not be amended except by a writing signed by the parties. Notwithstanding the foregoing, the Certifier may modify the Exhibits to this Agreement from time to time in its sole discretion.

- e. **Waiver.** Any waiver of the provisions of this Agreement or of the parties' rights or remedies under this Agreement must be in writing signed by an officer of the waiving party to be effective. Failure, neglect, or delay by a party at any time to enforce the provisions of this Agreement or its rights or remedies will not be construed as a waiver of such party's rights, power, or remedy under this Agreement. Waiver of any breach or provision of this Agreement shall not be considered a waiver of any later breach or of the right to enforce any provision of this Agreement.
- f. **Severability.** The provisions of this Agreement shall be severable such that, if any provision of this Agreement or any portion thereof is held to be invalid and unenforceable, that provision shall be interpreted, limited, or eliminated to the minimum extent necessary to give full effect to the remaining provisions of the Agreement.
- g. **No Presumption Against Drafter.** This Agreement shall be construed without regard to any presumption or rule requiring construction against the party drafting the Agreement.
- h. **Entire Agreement.** This Agreement and the exhibits hereto as they may be modified by the Certifier are the entire agreement of Certifier and Winery and supersedes all prior or contemporaneous communications, representations, understandings, and agreements, either oral or written, relating to the subject matter of this Agreement. The terms of this Agreement shall govern in the event of a conflict with the Exhibits.
- i. **Counterparts.** This Agreement may be executed in counterparts, each of which so executed will be deemed to be an original. Such counterparts together will constitute one and the same agreement.

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

NEW YORK WINE & GRAPE FOUNDATION

WINERY

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

**NEW YORK SUSTAINABLE WINEGROWING TRUSTMARK AGREEMENT
FOR WINERIES**

EXHIBIT 1

Current Iteration of Certification Guidelines

<https://newyorkwines.org/wp-content/uploads/2022/10/New-York-Sustainable-Winegrowing-Certification-Guidelines-10.2022.pdf>

**NEW YORK SUSTAINABLE WINEGROWING TRUSTMARK AGREEMENT
FOR WINERIES**

**EXHIBIT 2
TRUSTMARK**



**NEW YORK SUSTAINABLE WINEGROWING TRUSTMARK AGREEMENT
FOR WINERIES**

EXHIBIT 3

Wine Name

Grapes	Percentage	Vineyard of origin

**NEW YORK SUSTAINABLE WINEGROWING TRUSTMARK AGREEMENT
FOR WINERIES**

EXHIBIT 4

Current iteration of Trustmark Usage Guidelines

<https://newyorkwines.org/wp-content/uploads/2023/06/New-York-Sustainable-Winegrowing-Trustmark-Usage-Guide-v1.0.pdf>