

# STANDARD CERTIFICATION AGREEMENT

## for the

### Oregon Certified Sustainable Wine Program

This standard certification agreement (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_ (month), 20\_\_ (year) (“Effective Date”), between the State of Oregon by and through its Oregon Wine Board (“OWB”), and \_\_\_\_\_ (“Participant”), a(n) \_\_\_\_\_ (individual, sole proprietor, corporation) operating in \_\_\_\_\_ (state/country).

#### **INTRODUCTION**

OWB designed and developed the Oregon Certified Sustainable Wine (OCSW) Program (defined below) to recognize Oregon wines that have been certified by one or more of the Qualifying Programs (defined below). Through the Oregon Certified Sustainable Wine Program, OWB may authorize wineries to use the Oregon Certified Sustainable Wine Marks (defined below) for qualifying Products (defined below). OWB intends to permit participation in the Oregon Certified Sustainable Wine Program via the terms and conditions of this Agreement.

#### **RECITALS**

A. Participant submitted an Oregon Certified Sustainable Wine Participant Application and an Oregon Certified Sustainable Wine Bottling-lot Application to participate in OWB’s Oregon Certified Sustainable Wine Program;

B. Following review of Participant’s applications, OWB approved the OCSW Participant Application and at least one OCSW Bottling-lot Application as meeting all requirements of the OCSW Program; and

C. OWB desires to authorize Participant to participate in the OCSW Program.

#### **AGREEMENT**

OWB and Participant hereby agree as follows:

##### **I. Definitions**

- A. “Appeal” is a request for reconsideration by an Applicant or Participant for formal reconsideration of any adverse decision made by OWB related to its desired Authorization status.
- B. “Applicant” is the owner of the Bottling-lot brand name that the owner is seeking to certify in the Oregon Certified Sustainable Wine Program.

- C. “Approval”/“Approved” is permission from OWB to a Participant to use the OCSW Certification Marks on a specified Bottling-lot.
- D. “Authorization” is permission from OWB to an Applicant to participate in the OCSW Program and occurs when OWB and Applicant execute an OCSW Certification Agreement (Appendix B) and an Applicant receives Approval for at least one Bottling-lot; upon Authorization an Applicant becomes a Participant in the OCSW Program.
- E. “Bottling-lot” is the entire quantity of a homogeneous wine that is to be bottled using labels that are identical in content, except for indication of bottle size. “Complaint” is a written expression of dissatisfaction, other than an Appeal, by any person or organization, to the OWB, relating to the functioning of the OCSW Program or a program Participant, where a response is expected.
- G. “Oregon Certified Sustainable Wine Marks” are certification marks owned by OWB for the purpose of implementing OWB’s OCSW Program; examples of these marks include: “Oregon Certified Sustainable Wine” and the infinite symbols logo.
- H. “Oregon Certified Sustainable Wine Program” is the Oregon Wine Board’s certification program, providing sustainability certification for wine grown and produced in accordance with program standards.
- I. “Participant” is actively enrolled in the OCSW Program.
- J. “Qualifying Programs” are Low Input Viticulture and Enology (LIVE), Food Alliance, Salmon Safe, National Organic Program and its certifying agencies (e.g. Oregon Tilth, Stellar Certification Services, and others), and Demeter Biodynamic®.
- K. “Products” are the Approved Bottling-lots bearing the OCSW Marks following Authorization, and the individual wine bottles that comprise these Bottling-lots.
- L. “Vintage Year” is the year in which a particular wine's grapes were harvested.

## **II. Applications and Verification**

- A. Participant shall update an Oregon Certified Sustainable Wine Program Participation Application Form (the “Participation Application”) annually, in accordance with the Oregon Certified Sustainable Wine Program Certification Manual.
- B. Participant shall complete an Oregon Certified Sustainable Wine Program Bottling-lot Application Form (“the Bottling-lot Application”) for each Bottling-lot Participant desires to enroll in the Oregon Certified Sustainable Wine Program, in accordance with the Oregon Certified Sustainable Wine Program Certification Manual.

## **III. Ongoing Disclosure and Records Obligations of Participant**

A. Notification of Changes in Participant’s Ability to Meet Program Requirements.  
Participant shall immediately notify OWB of any changes in Participant’s ability to meet the OCSW Program requirements. Such changes include but are not limited to changes in Participant’s Qualifying Program(s) certification status or the Qualifying Program(s) certification status of Participant’s suppliers; or in the environment, that either intentionally or inadvertently may subject or may have subjected the Products to any prohibited production or processing methods or substances that are not allowed under the Qualifying Program(s). OWB will acknowledge Participant’s notification in writing within twenty-four (24) hours of Participant's original notice to OWB.

B. Notification of Challenges to OWB’s Marks.

Participant shall immediately notify OWB of any apparent infringement of, or challenge or claim by, any person or entity to the OCSW Marks. OWB, in its sole discretion, has the right to control exclusively any settlement, litigation or other proceeding arising out of any alleged infringement, challenge, claim or otherwise relating to the OCSW Marks.

C. Records.

Participant shall maintain all financial records and other records relating to Participant's obligations under this Agreement, including the Certification Manual, in accordance with generally accepted accounting principles and in such a manner as to clearly document Participant's compliance with the program requirements. Participant acknowledges and agrees that OWB, the Oregon Secretary of State and the federal government and their duly authorized representatives shall have reasonable access, at their own cost and expense and only following reasonable notice to Participant, to such records, in paper or electronic form, to perform examinations and audits and make excerpts and transcripts. Participant shall retain and keep accessible all such records for a minimum of five years, or such longer period as may be required by applicable law, following termination of this Agreement, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Agreement, whichever date is later.

IV. Certification Term

Approval to use the OCSW Marks is specific to each Bottling-lot and remains valid as long as the labeled Product is in the marketplace.

Authorization to participate in the OCSW Program is specific to each Participant and remains valid as long as the Participant is in compliance with the program requirements.

This Agreement is effective beginning on the date on which it is fully executed and approved in accordance with applicable laws, rules and regulations. This Agreement remains in effect until termination by OWB, Participant, or both.

V. Confidential Information

A. Confidential Information, Generally.

Subject to Section B below, each party shall make reasonable efforts to maintain the confidentiality of any Confidential Information received from the other party and shall not use such Confidential Information except in performing its obligations pursuant to this Agreement. For purposes of this Agreement, "Confidential Information" means information marked or designated in writing by either party as "confidential" prior to initial disclosure.

B. Exceptions.

1. The confidentiality obligations imposed by Section A do not apply to: (a) information that becomes part of the public domain through lawful means and without breach of any confidentiality obligation by the recipient; (b) information subsequently and rightfully received from third parties who have the necessary rights to transfer said information without any obligation of confidentiality; (c) information that was known to

the recipient prior to the date on which all parties have executed this Agreement without obligation of confidentiality; (d) information that is independently developed by recipient and documented in writing without use of, or reference to, any Confidential Information of the other party; and (e) information required to be disclosed by compulsory judicial or administrative process or by law or regulation; provided that if either party is required to disclose Confidential Information under clause (e), that party shall first give the other party notice and shall provide such information as may reasonably be necessary to enable the other party to take such action to protect its interests.

2. OWB Program Administration. Participant understands and agrees that the Confidential Information provided to OWB by Participant may be disclosed to officers, directors, agents and employees of OWB, including any laboratory personnel contracted by OWB for purposes of administering the OCSW Program.

3. Bottling-lot Certifications and Product Status Reports. Participant understands and acknowledges that OCSW Program participation and Bottling-lot certificates, lists of Participants with one or more Approved Bottling-lots, and Participant descriptions (including certified Product status reports, the name and address of operations, type(s) of operations, Bottling-lot descriptions, and the effective dates of Approval and Authorization) are not Confidential Information.

4. Public Records Law. OWB may disclose Confidential Information to the extent disclosure is required by Oregon Public Records Laws, (ORS 192.410-192.505). If OWB receives from a third party any request under the Oregon Public Records Law for the disclosure of Participant Confidential Information. OWB shall notify Participant within a reasonable period of time of the request. Participant is exclusively responsible for defending Participant's position concerning the confidentiality of the requested information. OWB is not required to assist Participant in opposing disclosure of Confidential Information after and to the extent that the Attorney General orders OWB to disclose Confidential Information.

#### C. Trade Secrets.

Many of OWB's records are subject to public disclosure. Copies of OWB's records may be requested by any person. Participant shall label any information that Participant wishes to protect from disclosure to third parties as a trade secret under ORS 192.501(2) with the following: "This material constitutes a trade secret under ORS 192.501(2) and is not to be disclosed except as required by law." OWB shall take reasonable measures to hold in confidence all such labeled information, but Participant shall not hold OWB liable for release of any information when required by law or court order to do so, whether pursuant to the Oregon Public Records Law or otherwise and OWB shall also be immune from liability for disclosure or release of information under the circumstances set out in ORS 646.473(3).

## VI. Fees

### A. Fee Schedule.

Fees to participate in the OCSW Program and use the OCSW Marks are charged, according to the procedures outlined in this Agreement and Exhibit D, the Oregon Certified Sustainable Wine Program Fee Schedule.

### B. Late Payments.

Participants shall pay to OWB certification fees in full within 45 days of the receipt of the OWB invoice. Participant shall be fully liable for any and all unpaid portions of the invoice, and all expenses incurred by OWB in connection with collecting unpaid debt.

## **VII. Representations and Warranties**

A. Participant represents and warrants to OWB that:

1. Participant has the power and authority to enter into and perform this Agreement;
2. This Agreement, when executed and delivered, will be a valid and binding obligation of Participant enforceable in accordance with its terms;
3. Participant is not in violation of, charged with nor, to the best of Participant's knowledge, under any investigation with respect to violation of, any provision of any federal, state or local law, ordinance or regulation or any other requirement or order of any governmental or regulatory body or court or arbitrator applicable to Participant's obligations under this Agreement, and Participant's fulfillment of its obligations under this Agreement shall not violate any such law, ordinance, regulation or order; and
4. Participant's fulfillment of its obligations under this Agreement creates no potential or actual conflict of interest, as defined by ORS 244, for either Participant or any Participant personnel.

B. OWB represents and warrants to Participant that:

1. OWB has the power and authority to enter into and perform this Agreement; and
2. This Agreement, when executed and delivered, will be a valid and binding obligation of OWB enforceable in accordance with its terms.

## **VIII. Warranty Disclaimers**

THE OREGON CERTIFIED SUSTAINABLE WINE MARKS ARE PROVIDED TO PARTICIPANT ON AN "AS-IS" BASIS AND PARTICIPANT IS SOLELY RESPONSIBLE FOR ITS USE OF THE MARKS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, OWB HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE OREGON CERTIFIED SUSTAINABLE MARKS, INCLUDING NON-INFRINGEMENT WARRANTIES.

## **IX. Limitation of Liability**

EXCEPT FOR LIABILITY PURSUANT TO SECTION X, INDEMNITY, IN NO EVENT IS EITHER PARTY LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, OR FOR ANY LOSS OF BUSINESS OR PROSPECTIVE BUSINESS OPPORTUNITIES, PROFITS, SAVINGS, INFORMATION, DATA, USE OR OTHER COMMERCIAL OR ECONOMIC LOSS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, REGARDLESS OF WHETHER THE THEORY UPON WHICH ANY SUCH LIABILITY IS PREDICATED IS BREACH OF CONTRACT, NEGLIGENCE OR OTHER TORT, OR OTHERWISE. IN NO EVENT WILL OWB'S LIABILITY FOR DAMAGES ARISING FROM OR RELATING TO THIS AGREEMENT, OR FOR THE PERFORMANCE OR BREACH HEREOF, OR FOR ANY ACT OR OMISSION RELATING HERETO, EXCEED THE TOTAL SUM OF FEES PAID BY PARTICIPANT TO OWB

PURSUANT TO THIS AGREEMENT AND THE LIMITS OF THE OREGON TORT CLAIMS ACT AS WELL AS THE LIMITS OF ARTICLE XI OF THE OREGON CONSTITUTION.

**X. Indemnity**

**A. Participant Indemnity Obligation.**

Participant agrees to indemnify, defend and hold harmless OWB, its officers, employees, agents, successors and assigns, from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever arising out of or relating to the (i) intentional misconduct, reckless or negligent acts or omissions of Participant or its agents or employees, in connection with this Agreement, or (ii) the results of any investigations, reports or tests related to Participant's participation in the OCSW Program disclosed to the public at large or to specific groups or individuals. Such acts or omissions include the failure of Participant to comply with OWB's marketing guidelines, or from any of Participant's marketing claims, which may intentionally or unintentionally misrepresent, misinform, or misconstrue the OCSW Program.

**B. Control of Defense and Settlement.**

Participant's obligation to indemnify OWB as set forth above is conditioned on OWB providing to Participant prompt notification of any claim or potential claim of which OWB becomes aware that may be the subject of that Section A. Participant shall have control of the defense and settlement of any claim that is subject to Section A; however, neither Participant nor any attorney engaged by Participant shall defend the claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the approval of the Attorney General, nor shall Participant settle any claim on behalf of the State of Oregon without the approval of the Attorney General. The State of Oregon may, at its election and expense, assume its own defense and settlement in the event that the State of Oregon determines that Participant is prohibited from defending the State of Oregon, is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue and the State of Oregon desires to assume its own defense.

**XI. Default and Termination**

**A. Events of Default.**

1. **Default by Participant.** Participant shall be in default under this Contract if:
  - a) Participant institutes or has instituted against it insolvency, receivership or bankruptcy proceedings which are not dismissed within 60 days of their commencement, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis; or
  - b) Participant no longer holds a required license or certificate, including a Qualifying Program certification, and Participant has not obtained such license or certificate within thirty (30) business days after delivery of OWB's notice or such longer period as OWB may specify in such notice; or
  - c) Participant commits any material breach or default of any covenant, warranty, obligation or certification under this Agreement (including but not limited to Participant fails to timely pay OWB any amount pursuant to the terms of this Agreement, or Participant fails to use the Oregon Certified Sustainable Marks in accordance with the specifications and requirements of this Agreement), or Participant clearly manifests an intent not to comply with obligations

under this Agreement, and such breach or default is not cured, or such manifestation of an intent not to comply is not corrected by reasonable written assurances of performance within thirty (30) business days after delivery of OWB's notice or such longer period as OWB may specify in such notice.

2. Default by OWB. OWB shall be in default under this Agreement if OWB commits any material breach or default of any covenant, warranty, or obligation under this Agreement, fails to perform its commitments hereunder within the time specified or any extension thereof, and OWB fails to cure such failure within thirty (30) business days after delivery of Participant's notice or such longer period as Participant may specify in such notice.

#### B. Remedies for Default.

1. OWB's Remedies. In the event Participant is in default under Section XI.A.1, OWB may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, which include, without limitation:

- a) termination of this Agreement;
- b) denying Approval or Authorization with respect to Participant's pending applications;
- c) requiring removal of the OCSW Marks from:
  - (1) Approved Bottling-lots that are being sold or being prepared for sale in the marketplace by Participant, wholesalers, distributors or retailers,
  - (2) Participant's marketing and promotional materials, or
  - (3) both (1) and (2);
- d) initiation of an action or proceeding for damages, declaratory or injunctive relief; and
- e) revocation, temporarily or permanently, of existing Approvals, Authorization or both.

These remedies are cumulative to the extent the remedies are not inconsistent, and OWB may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If it is determined for any reason that Participant was not in default under Section XI.A.1, the rights and obligations of the parties shall be the same as if this Agreement was terminated pursuant to Section XI.C.1.

2. Participant's Remedies. In the event OWB terminates this Agreement as set forth in XI.C.1, or in the event OWB is in default under XI.A.2 and whether or not Participant elects to exercise its right to terminate the Agreement under Section XI.C.3, Participant's maximum monetary remedy shall be a refund of paid OCSW Program fees, less any claims which OWB has against Participant.

#### C. Termination.

1. OWB's Right to Terminate. OWB may, at its sole discretion, terminate this Agreement, as follows:

- a) OWB may terminate this Agreement for its convenience upon thirty (30) days' prior written notice to Participant.
- b) OWB may terminate this Agreement if OWB fails to receive funds, appropriations, limitations or other expenditure authority at levels sufficient to continue the OCSW Program; and
- c) OWB may terminate this Agreement if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the operation of the OCSW Program is prohibited or OWB is unable to pay for the OCSW Program from the planned funding source.

2. OWB's Right to Terminate for Cause. In addition to any other rights and remedies OWB may have under this Agreement, OWB may terminate this Agreement, in whole or in part, immediately upon Participant's default under XI.A.1.

3. Participant's Right to Terminate. Participant may terminate this Agreement for its convenience upon thirty (30) days' prior written notice to OWB, or upon OWB's default under Section XI.A.2.

4. Participant's Obligations in the Event of Termination of the Agreement.  
In the event this Agreement is terminated, whether for convenience or for cause, Participant shall cease to sell or distribute Products, advertisements or promotional materials in conjunction with the OCSW Marks and cease to make any participation claim to the OCSW Program.

## **XII. Compliance with Law Generally**

Participant shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement. Without limiting the generality of the foregoing, Participant expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) ORS 646a.600 et. seq. (Oregon Consumer Identity Theft Protection Act); (x) all regulations and administrative rules established pursuant to the foregoing laws; and (xi) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated.

## **XIII. Disputes**

### **A. Mediation.**

Should any dispute arise between OWB and Participant concerning this Agreement which is not resolved by mutual agreement, OWB and Participant agree that the dispute will be submitted to mediation as a condition precedent to either OWB or Participant commencing litigation. In such an event, OWB and Participant agree to participate in good faith in a process in which a mediator assists and facilitates OWB and Participant in reaching a mutually acceptable resolution of the controversy. The mediator has no authority to force a settlement on OWB and Participant. The mediator is to be selected by mutual agreement of OWB and Participant, but in the absence of such agreement, OWB and Participant shall each select a temporary mediator and those mediators will jointly select the permanent mediator. All costs of mediation are to be borne equally by OWB and Participant; provided, however, OWB is not required to pay mediation costs unless OWB is able to enter a personal services contract with the mediator in a form and amount reasonably so stating to OWB. The schedule and time allowed for mediation must be acceptable to both OWB and Participant. OWB and Participant shall comply with the statutes and administrative rules governing the confidentiality of mediation, including OAR 410-006-0011 when attempting to mediate a dispute under this Agreement.

**B. Choice of Law; Choice of Forum.**

This Agreement shall be construed and enforced in accordance with the laws of the State of Oregon, without giving effect to the conflict of law principles thereof, and applicable federal law. Any action or suit brought by the parties relating to this Agreement shall be brought and conducted solely and exclusively in the Circuit Court of Marion County for the State of Oregon in Salem, Oregon. Participant hereby consents to the in personam jurisdiction of such courts, waives any objection to venue in such courts, and waives any claim that such forum is an inconvenient forum; provided, however, that if a claim must be brought in a federal forum, then it will be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. In no way will this Section or any other provision of this Agreement be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise, from any Claim or from the jurisdiction of any court. BY EXECUTION OF THIS Agreement, CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SUCH COURT.

**XIV. Miscellaneous Provisions**

**A. Mark Modifications.**

Participant shall not modify the OCSW Marks, except as otherwise provided in this Agreement, without prior written consent from OWB. OWB and Participant agree that such original works of authorship are “work made for hire” of which OWB is the author within the meaning of the United States Copyright Act. Participant hereby irrevocably assigns to OWB any and all of its rights, title, and interest in all such modifications, whether arising from any state or federal intellectual property law or doctrine.

**B. Qualified to do Business in Oregon.**

Participant shall, at all times during the term of this Agreement, be qualified to do business in the State of Oregon, including but not limited to registration with the Oregon Secretary of State and the Oregon Department of Revenue.

**C. Order of Precedence.**

This Agreement consists of the following documents that are listed in descending order of precedence: (a) the terms and conditions of this Agreement, less its Exhibits; (b) Exhibit A, the Oregon Certified Sustainable Wine Program Certification Manual, (c) Exhibit B, the Oregon Certified Sustainable Wine Program Marks and Usage Guidelines, (d) Exhibit C, the Oregon Certified Sustainable Wine Program Style Guide, and (e) Exhibit D, Fee Schedule. The aforementioned Exhibits are by this reference incorporated in the Agreement.

**D. Assignment; Delegation.**

Participant shall not assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without first obtaining the written consent of OWB, which OWB may not unreasonably withhold. OWB’s consent to any delegation of duties does not relieve Participant of any of its duties or obligations under this Agreement. This Agreement is binding upon and inures to the benefit of each of the parties, and, except as otherwise provided their permitted legal successors and assigns.

E. Successors; Assigns.

The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns, if any.

F. No Third-Party Beneficiaries.

OWB and Participant are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

G. Survival.

All rights and obligations cease upon termination of this Agreement, except for the rights and obligations and declarations set forth in Sections III.C, V, VII, VIII, IX, X, XI.B, XI.C, XIII, XIV.B, XIV.C, XIV.E, XIV.F, XIV.G, XIV.I, XIV.J, XIV.M, XIV.N, and XIV.O.

H. Uncontrollable Breaches.

Neither OWB nor Participant shall be liable for loss or damage or deemed to be in breach of this Agreement if the failure to perform their respective obligations results from: (1) compliance with any law, ruling, order, regulation, requirement, or instruction of any federal, state, or municipal government or any department or agency thereof; (2) acts of God; (3) failure of any subcontractor to perform work on behalf of OWB to OWB's specifications; or (4) inability of OWB, in the exercise of its reasonable administrative discretion, to maintain the OCSW Program due to insufficient appropriations, limitations, expenditure authority or program funds. Any delay resulting from any of these causes shall extend performance accordingly or excuse performance, in whole or in part, as may be reasonable, except that these causes shall not excuse payment of amounts owed at the time of such occurrence.

I. Notices and Payments.

All written notices and reports permitted or required under this Agreement will be deemed so delivered at the time of: (a) delivery by hand; (b) one (1) business day after sending by telegraph, telex, mailgram, or comparable electronic system; or (c) three (3) business days after being placed in the U.S. mail, postage prepaid and addressed to the party to be notified at its most current principle business address of which the notifying party has been notified. Participant shall designate an authorized agent to assume compliance with all of the terms and conditions of this Agreement on behalf of Participant. Any required payment or report not actually received by OWB during regular business hours on the date due (or postmarked by postal authorities at least two (2) days before it is due) will be delinquent.

J. Severability.

The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.

**K. Amendments.**

This Agreement may be amended, modified, or supplemented only by a written amendment signed by OWB and Participant. No amendment shall be effective until all requisite signatures and approvals are obtained. For the purpose of amending the Agreement, emails with a typed name or signature block do not amount to a signed writing.

**L. Waiver.**

The failure of either party to enforce any provision of this Agreement or the waiver of any violation or nonperformance of this Agreement in one instance shall not constitute a waiver by the party of that or any other provision nor shall it be deemed to be a waiver of any subsequent violation or nonperformance. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and, with respect to OWB's waiver or consent all necessary State of Oregon approvals have been obtained. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given.

**M. Introduction and Headings.**

The introduction and headings in this Agreement are included only for convenience and shall not control or affect the meaning or construction of this Agreement.

**N. Integration.**

This Agreement constitutes the entire agreement between Participant and OWB with respect to the subject matter hereof and all prior negotiations, agreements and understandings are merged herein and superseded hereby. Participant and OWB agree that there are no other oral or written understandings or agreements concerning the subject matter of this Agreement. Any revisions or modifications made to this Agreement must be agreed to, and made in writing by, Participant and OWB.

**O. No Partnership.**

This Agreement is not intended, and shall not be construed, to create a partnership or joint venture between OWB and Participant. Nothing in this Agreement shall be construed to make OWB and Participant partners or joint venture participants.

**SIGNATURES:**

\_\_\_\_\_  
Authorized Representative of Participant

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
Authorized Representative of OWB

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print or Type Name

# Exhibit B to Standard Certification Agreement

## Oregon Certified Sustainable Wine Program Marks and Usage Guidelines

“Oregon Certified Sustainable Wine” and the infinite symbols logo are registered certification marks of the Oregon Wine Board.

### **I. Purpose**

The purpose of this document is to provide guidance to Participants in the OCSW Program to ensure the accurate use of the OCSW Program name and OCSW Marks. These guidelines should be distributed to all individuals, including in-house employees and outside personnel, who may be responsible for incorporating the OCSW Marks and information about OCSW Program into product labeling, advertising, marketing and other communications materials.

Oregon Certified Sustainable Wine Marks artwork is issued upon Authorization and acknowledgement of receipt of these guidelines. Please sign the bottom of this form and return by mail, email or fax to:

Oregon Wine Board  
1200 NW Naito Parkway, Suite 400  
Portland, OR 97209  
Email: [ocsw@oregonwine.org](mailto:ocsw@oregonwine.org)  
Fax: 503-228-8336

Along with the OCSW Marks artwork, Participants will receive one registration code for each winery and a sub-certificate code for each Bottling-lot for which the OCSW Program provides Approval.

### **Certification Mark Protection**

The OCSW Marks, including the phrase “Oregon Certified Sustainable Wine” and the “infinite symbols” logo, are certification marks of the Oregon Wine Board, protected by U.S. and international trademark laws. The “infinite symbols” mark is also protected under U.S. copyright laws. The Oregon Wine Board owns the OCSW Marks and copyrighted works, and OWB will take all necessary actions to protect this intellectual property. OWB reserves the right to deny any use of the OCSW Marks that OWB finds to be unauthorized or incorrect, even if that use is not expressly prohibited in the OCSW Program Standard Certification Agreement, this OCSW Marks and Usage Guidelines or other relevant OCSW Program documentation. Participants intentionally misusing the OCSW Marks may be suspended or prohibited from participating in the OCSW Program.

### **II. Guidelines and Requirements**

The following guidelines are designed to provide Participants with general parameters as Participants develop artwork for labels, advertising, merchandising materials, etc. *If the Oregon Certified Sustainable Wine Marks are being used along with the label or mark of a Qualifying*

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*Program, then the respective guidelines of the Qualifying Program must be used in conjunction with the Oregon Certified Sustainable Wine Program guidelines.*

**1. Authorized Uses of Certification Mark**

The OCSW Marks may be reproduced on the following items, provided that the use of the mark is in accordance with the OCSW Program Style Guide: a) product stickers/labels; b) product shipping crates or boxes; c) product literature; d) product point-of-purchase promotional material; e) pallet tags; f) advertisements; and g) company documents directly related to certified products. Review the OCSW Program Style Guides and contact OWB for more details.

**2. Avoid Usage Which Suggests Overly Broad Certification**

The OCSW Marks, program name and certification logo may not be used in any manner which suggests a broader certification than that which has actually been completed.

**3. No Usage in Conjunction with Non-Certified Claims**

Neither the OCSW Marks, program name or certification logo should be used in any layout that could confuse the public by combining certified claims with non-certified claims, or creating an appearance that non-certified products are certified.

**4. Format of Certification Logo**

At the completion of the Authorization, each Participant is supplied with an approved OCSW Style Guide. OWB requires that the OCSW Marks be used in one of the formats provided in the OCSW Style Guide.

**5. Transferability**

The OCSW Program Authorization is not transferable for use by third parties without the specific prior written approval of OWB.

**6. Avoiding Harm to Integrity and Credibility of Oregon Certified Sustainable Wine Program**

OCSW Marks must be used in a way that does not compromise the OCSW Program's integrity and credibility. Participant must avoid misleading information that could imply that non-certified products, wineries, or vineyards are endorsed by the OCSW Program. The promotional material carrying the OCSW Marks is not implying that OCSW Program or OWB endorses, participates in or is responsible for other activities performed by the Participant, outside of the scope of OCSW Program Authorization. Participants promoting specific OCSW Program certified products shall clearly link the OCSW Marks only to the OCSW Program certified products that are being promoted.