



# Confidentiality Deed

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## Parties

1. **Accolade Wines Australia Limited** ABN 86 008 273 907 of Reynell Road, Reynella South Australia 5161 ("**Accolade Wines**")
2. The Party identified in Schedule 1 ("**Recipient**")

## Introduction

- A. Accolade Wines may provide the Recipient with certain Confidential Information in relation to the Purpose.
- B. In consideration of Accolade Wines disclosing Confidential Information to the Recipient, its Representatives and/or its Financiers, the Recipient has agreed to keep the Confidential Information confidential and use the Confidential Information only in accordance with the terms of this deed.

## Operative clauses

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### 1. Introduction

The Introduction is correct and forms part of this deed.

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### 2. Definitions and Interpretation

#### 2.1 Definition

In this deed, unless the context otherwise requires:

**Confidential Information** means:

- (a) all financial, business, commercial, strategic, contractual, operational and other information relating to Accolade Wines, its Related Bodies Corporate or any third party, that is disclosed to or made available to the Recipient for the Purpose, irrespective of whether that disclosure is in writing or verbal or whether such information is made available before or after the date of this deed; and
- (b) the fact that the Recipient is engaged in discussions with Accolade Wines and its Related Bodies Corporate regarding the Purpose.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Financier** means any existing or prospective financier of the Recipient or a Related Body Corporate of the Recipient.

**Purpose** means the purpose identified in Schedule 2.

**Related Body Corporate** of a corporation means a related body corporate of that corporation within the meaning of section 50 of the Corporations Act, and in the case of Accolade Wines also includes:

- (a) Accolade Wines Limited (**Accolade Europe**); and
- (b) related bodies corporate (as defined in the Corporations Act) of Accolade Europe.

**Representative** of a party means any Related Body Corporate of that party and any director, officer, employee or professional adviser (and, in the case of the Recipient, excludes a Financier) of that party or of a Related Body Corporate of that party.

## 2.2 Interpretation

In this deed headings are for convenience only and do not affect interpretation and, unless the contrary intention appears:

- (a) a word importing the singular includes the plural and vice versa, and a word of any gender includes the corresponding words of any other gender;
- (b) the word **including** or any other form of that word is not a word of limitation;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (e) a reference to an agreement (including this deed) is to that agreement as varied, novated, ratified or replaced from time to time;
- (f) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it; and
- (g) this deed must not be construed adversely to a party just because that party prepared it or caused it to be prepared.

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## 3. Provision of Confidential Information

### 3.1 Provision of Information

- (a) Subject to this deed, Accolade Wines may make Confidential Information available to the Recipient from time to time for the Purpose.
- (b) Nothing in this deed requires Accolade Wines to make any Confidential Information available to the Recipient. The disclosure of any Confidential Information by Accolade Wines to the Recipient is at the absolute discretion of Accolade Wines.

### **3.2 Further Information**

Except where Accolade Wines is under a strict obligation imposed by law, the Recipient acknowledges that Accolade Wines is not under any obligation to:

- (a) correct or clarify any inaccurate or incomplete Confidential Information; or
- (b) update any information disclosed to the Recipient.

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## **4. Confidentiality**

### **4.1 Confidential nature of information**

The Recipient acknowledges and agrees that the Confidential Information is confidential and of significant commercial value to Accolade Wines and that any unauthorised disclosure of the Confidential Information will cause loss or damage to Accolade Wines and its Related Bodies Corporate.

### **4.2 Recipient's obligations**

Except as expressly permitted by this deed, the Recipient:

- (a) must hold the Confidential Information in strict confidence and not disclose it or otherwise make it available to any person;
- (b) must not use any Confidential Information for any purpose other than the Purpose and, in particular, must not use any Confidential Information for its own commercial purposes or to the current or potential competitive disadvantage of Accolade Wines or any Related Body Corporate of Accolade Wines;
- (c) must not copy, extract, record or reproduce any Confidential Information except to the extent necessary to carry out the Purpose;
- (d) must store all Confidential Information so that it is protected from unauthorised access, use, copying, reproduction or disclosure and in such a way that it can be retrieved later;
- (e) must promptly notify Accolade Wines if it becomes aware or suspects that any Confidential Information has been, or is likely to be, held, disclosed, used, copied, reproduced or stored in a way that is inconsistent with the terms of this deed; and
- (f) promptly do anything reasonably required by Accolade Wines to prevent or restrain a breach or suspected breach of this deed or any infringement or suspected infringement of Accolade Wines' rights arising out of this deed by any person, whether by court proceedings or otherwise.

### **4.3 Disclosure to other parties**

- (a) The Recipient may disclose or otherwise make available any Confidential Information to:
  - (i) a Representative of the Recipient; or

- (ii) subject to Accolade Wines' prior written consent (which may be given or withheld in its absolute discretion and on any conditions it deems fit), a Financier,

if:

- (iii) that Representative or Financier reasonably requires access to that Confidential Information for the Purpose; and
- (ii) the Recipient has informed that Representative or Financier that the Confidential Information is confidential and that the Representative or Financier is required to comply with the terms of this deed as if it were the Recipient,

and the Recipient must ensure that each of its Representatives or Financiers to whom Confidential Information is disclosed or made available under this clause 4.3 strictly observes all of the Recipient's obligations under this clause 4 as if the obligations were imposed on that person.

- (b) The Recipient will, upon request by Accolade Wines, promptly arrange for any of its Representatives or Financiers to execute a confidentiality deed in favour of Accolade Wines on terms similar to the terms of this deed.
- (c) The Recipient must:
  - (i) keep a register of all persons to which the Recipient has disclosed Confidential Information; and
  - (ii) provide a copy of the register referred to in clause 4.3(c)(i) to Accolade Wines within 2 business days of receipt of a request from Accolade Wines.
- (d) The Recipient must not disclose Confidential Information to any governmental or regulatory entity (including without limitation liquor licensing bodies and the Foreign Investment Review Board) without the prior written consent of Accolade Wines (which may be given or withheld in its absolute discretion and on any conditions it deems fit).

#### **4.4 Exceptions**

Nothing in this deed prevents the Recipient, its Representatives or Financiers:

- (a) from using and disclosing Confidential Information to the extent that the Confidential Information is in or comes into the public domain, other than as a result of breach of this deed or any other obligation of confidence; or
- (b) from disclosing Confidential Information if disclosure of that Confidential Information is required to be made by law or the rules of any recognised stock exchange and:
  - (i) the Recipient, the relevant Representative or Financier notifies Accolade Wines as soon as reasonably practicable after it becomes aware that disclosure is required;
  - (ii) the Recipient, the relevant Representative or Financier takes all steps reasonably required by Accolade Wines to prevent or restrict the disclosure of the Confidential Information; and

- (iii) unless immediate disclosure is required, the Recipient, the relevant Representative or the Financier gives Accolade Wines a reasonable opportunity to comment on the requirement for, and proposed form of, the disclosure.

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## **5. Recipient Obligations**

### **5.1 No Contact**

- (a) The Recipient must not, and procure its Representatives and its Financiers do not, make contact with any director, employee, supplier, contractor, customer, lessor, person or company associated with Accolade Wines without the prior written consent of Accolade Wines (provided that nothing herein shall preclude or prohibit the Recipient, its Representatives or its Financiers from maintaining contact with persons or entities with whom it has a business relationship existing before the date of this deed so long as the Purpose and/or the Confidential Information are not used, disclosed or referred to in this context).
- (b) Accolade Wines will (at its sole discretion) arrange for appropriate contacts of Accolade Wines to be made available to the Recipient or its Representatives for due diligence purposes.
- (c) The Recipient shall ensure that its Representatives and its Financiers direct all:
  - (i) communications regarding the Purpose (including any request for Accolade Wines' consent with respect to any matter relating to the Purpose);
  - (ii) requests for additional information or materials;
  - (iii) requests for facility tours or management meetings; and
  - (iv) discussions or questions regarding procedures in connection with any aspect of the Purpose,

exclusively to Accolade Wines or the contacts specified by Accolade Wines in writing.

### **5.2 No Solicitation**

The Recipient must not, and procure its Representatives and Financiers who receive Confidential Information do not, either directly or indirectly, solicit for employment or engagement as a consultant, or cause to be solicited for employment or engagement as a consultant any director, officer, contractor, or employee employed or engaged by, Accolade Wines or its Related Bodies Corporate (provided that the foregoing shall not prohibit general bona fide solicitations or advertisements of employment (or hiring as a result thereof) by the Recipient, its Representatives and Financiers not specifically directed at such persons).

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## **6. Return or destruction of Confidential Information**

### **6.1 Return or destruction**

Promptly following a written demand from Accolade Wines, the Recipient must at its own expense:

- (a) return to Accolade Wines or destroy or procure the destruction of all documents and other materials containing Confidential Information (including all information based on or derived from Confidential Information, or which includes, incorporates or refers to Confidential Information) in the possession, power or control of the Recipient, its Representatives or Financiers (whether or not created by the Recipient, its Representatives or Financiers);
- (b) delete, or procure the deletion of, any Confidential Information that has been entered into a computer, database or other electronic information storage medium by or on behalf of the Recipient, its Representatives or Financiers (whether or not it was created by the Recipient, its Representatives or Financiers); and
- (c) confirm in writing to Accolade Wines that the Recipient has complied with this clause 6.1.

This clause 6.1 does not apply to the extent that the Recipient, any Representative of the Recipient or any Financier holding Confidential Information is required by law or the rules of any governmental or regulatory authority or any mandatory rule of professional standards applying to the Recipient, the relevant Representative or Financier to retain a copy of such Confidential Information.

## **6.2 Effect of return or destruction**

The return, destruction or deletion of any Confidential Information in accordance with clause 6.1 does not release the Recipient from its obligations under this deed.

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## **7. No warranties, reliance or claims**

### **7.1 No warranties or reliance**

To the maximum extent permitted by law, the Recipient acknowledges and agrees that:

- (a) Accolade Wines and its Representatives make no representation or warranty as to the accuracy or completeness of the Confidential Information or that the Confidential Information includes all information that may be material to the Recipient in connection with the Purpose; and
- (b) the Recipient, its Representatives and Financiers may not rely on the Confidential Information in any way,

except to the extent that the parties agree otherwise in any executed document relating to, or connected with, the Purpose.

### **7.2 No action against Discloser or its Representatives**

The Recipient waives and must procure that each of its Representatives and Financiers waives all rights and claims that they may otherwise have against Accolade Wines or its Representatives in relation to the Confidential Information or any matter arising directly or indirectly in connection with this deed.

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## **8. Breach and remedies for breach**

### **8.1 Indemnity**

Without limiting any other remedy available to Accolade Wines, the Recipient must pay to Accolade Wines on demand the amount of any loss, cost, damage, expense or other liability suffered or incurred by Accolade Wines or any of its Related Bodies Corporate arising out of or in connection with any breach by the Recipient of this deed (including a breach of obligation to procure that the Recipient's Representatives or Financiers do or omit to do any thing).

### **8.2 Proceedings**

The Recipient acknowledges that damages alone would not be adequate to compensate Accolade Wines for any breach by the Recipient of this deed (including a breach of any obligation to procure that the Recipient's Representatives or Financiers do or omit to do any thing) and agrees that, without limiting the relief that Accolade Wines is entitled to seek, Accolade Wines may seek an injunction against the Recipient if the Recipient is in breach or threatens to breach, or if Accolade Wines reasonably believes that the Recipient will breach, this deed (including a breach of any obligation to procure that the Recipient's Representatives or Financiers do or omit to do anything).

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## **9. Term**

The obligations of the Recipient under this deed will terminate on the date which is 3 years from the date of this deed.

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## **10. General**

### **10.1 Amendments**

This deed may only be varied by a document executed by each party.

### **10.2 Assignment**

The Recipient cannot assign or otherwise transfer any of its rights or obligations under this deed without the prior consent of Accolade Wines.

### **10.3 Counterparts**

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this deed and all counterparts together constitute one deed.

### **10.4 Severance**

If any provision or part of a provision of this deed is held or found to be void, invalid or otherwise unenforceable (whether in respect of a particular party or generally), it will be deemed to be severed to the extent that it is void or to the extent of voidability, invalidity or unenforceability, but the remainder of that provision will remain in full force and effect.

## **10.5 Waivers**

Without limiting any other provision of this deed, the parties agree that:

- (a) failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed:
- (b) a waiver given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party; and
- (c) no waiver of a breach of a term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.

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## **11. Governing law and jurisdiction**

This deed is governed by the law applying in South Australia. Each party submits to the non-exclusive jurisdiction of the courts of South Australia, Commonwealth courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this deed and waives any objection it may have now or in the future to the venue of any proceedings, and any claim it may have now or in the future that any proceedings have been brought in any inconvenient forum, if that venue is in accordance with the provisions of this clause 11.

**Executed** as a deed.

**Signed, sealed and delivered** for and on behalf of  
**Accolade Wines Australia Limited** by the  
Authorised Signatory in the presence of:

\_\_\_\_\_  
Witness (signature)

\_\_\_\_\_  
Authorised Signatory (signature)

\_\_\_\_\_  
PLEASE PRINT NAME

\_\_\_\_\_  
PLEASE PRINT NAME

\_\_\_\_\_  
DATE

\_\_\_\_\_  
DATE

**Signed, sealed and delivered** for and on behalf of  
the **Recipient identified in Schedule 1** by the  
Authorised Signatory in the presence of:

\_\_\_\_\_  
Witness (signature)

\_\_\_\_\_  
Authorised Signatory (signature)

\_\_\_\_\_  
PLEASE PRINT NAME

\_\_\_\_\_  
PLEASE PRINT NAME

\_\_\_\_\_  
DATE

\_\_\_\_\_  
DATE

**Schedule 1 – Recipient**

<b>Legal Entity Name:</b>	
<b>ACN/ABN (if applicable):</b>	
<b>Address:</b>	
<b>Contact Name (if different from name above):</b>	
<b>Contact Name Position:</b>	
<b>Email Address:</b>	
<b>Telephone No:</b>	<b>(Bus)</b> ----- <b>(Mob)</b> -----

**Schedule 2 - Purpose**

<b>Purpose</b>	Investigating and if appropriate, negotiating, a possible transaction in relation to the acquisition of certain assets, vineyards and property associated with the Knapstein Winery and/or Houghton Winery owned by Accolade Wines or its Related Bodies Corporate.
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