



PHENOLAB SERVICES TERMS

(Version effective as of 1 October 2019)

IMPORTANT NOTICE

- (1) These terms will apply to the services provided by Phenolab to persons who subscribe to make use of such services on the Website. Read this document carefully. You should contact us if any part of this document is unclear.
- (2) We may amend or update these terms from time to time. You should read these terms on each occasion when you make use of our services, as the amended terms will govern your continued use of such services after the effective date of such amendment. **CONTINUED USE OF THE SERVICES DESCRIBED SHALL BE DEEMED TO CONSTITUTE AN ACCEPTANCE BY YOU OF THE AMENDED TERMS.**
- (3) If you are younger than 18, you must get your parent or legal guardian's consent to make use of the service, unless you are able to confirm that you have been emancipated. "Emancipated" means the court has given you the right to act without your parent or guardian's consent.
- (4) **THESE TERMS CONTAIN SPECIFIC PROVISIONS TO LIMIT OUR LIABILITY, ALLOCATE RISK OR LIABILITY TO YOU OR CONSTITUTE ACKNOWLEDGEMENT OF FACTS BY YOU. THESE TERMS HAVE BEEN SET OUT IN CAPITAL LETTERS. PARTICULAR ATTENTION SHOULD BE PAID TO THESE TERMS SINCE THEY LIMIT YOUR ABILITY TO RECOVER LOSSES INCURRED BY YOU IN CONNECTION WITH YOUR USE OF OUR SERVICES.**
- (5) The terms contained in this document and our information processing policy available at <http://phenolab.co.za/downloads/phenolab-information-processing-policy.pdf> shall govern your use of the services described herein exclusively. No other terms and conditions contained in any other document shall apply to or govern your use of the services described herein. No variation or amendment of these terms will be effective unless agreed thereto in writing and signed by a duly authorised signatory of Phenolab.

1. DEFINITIONS

1.1. In these terms:

- **"Phenolab"**, **"we"**, **"us"** and **"our"** means Stellenbosch University, acting through its Department of Oenology and Viticulture;
- **"Samples"** means grape and wine samples collected by Phenolab and/or a Service Partner for analysis pursuant to the Service;
- **"Sample Data"** means phenolic and related data provided, derived and/or generated from the Samples, or which otherwise relate to the Samples;
- **"Service Partner"** means a person authorised by Phenolab to collect and conduct initial laboratory testing of the Samples; and
- **"Service"** means the phenolic analysis services described at www.phenolab.co.za;

- “Service Fee” means the fees applicable to your use of our Services;
- “Website” means the website located at <http://www.phenolab.co.za/>;
- “you” means a user of the Website who has validly subscribed to make use of the Service.

2. SUBSCRIBING TO THE SERVICES

- 2.1. The Services enable you to store, interpret, benchmark, extract and generate phenolic data based on the Samples made available to us.
- 2.2. You will be required to complete the subscription process at <http://phenolab.co.za/register> before you will be granted access to the Services. We require certain information about you to be able to provide our services to you. Such information will be used by us strictly in accordance with our Information Processing Policy which you can access at <http://phenolab.co.za/downloads/phenolab-information-processing-policy.pdf>.
- 2.3. We may issue you with a user or access code which you will be required to submit on each occasion where you access or make use of the Service. You must keep such access code confidential and may not share it with any third party. **YOU ACKNOWLEDGE THAT YOU ARE RESPONSIBLE FOR ALL ACTIONS PERFORMED ON THE WEBSITE ENABLED THROUGH THE USE OF THE USER/ACCESS CODE.**

3. SCOPE OF THE SERVICES

- 3.1. You will for the duration of the period that you are subscribed to make use of the Services be granted access to our cloud-based platform which you can access via the Website and where you will be able to access the Sample Data and perform further data analysis using our models. **IF YOU ENCOUNTER ANY DIFFICULTIES USING THE SERVICES OR IF YOU BECOME AWARE OF ANY PROBLEMS AFFECTING THE SERVICES, PLEASE NOTIFY US IMMEDIATELY USING THE CONTACT DETAILS PROVIDED.**
- 3.2. It is your duty to provide us with the Samples. The quantity and type of the Samples as well as any other requirements relating to the collection and delivery of such Samples will be specified by us or one of our Service Partners on each occasion you wish to submit Samples to us. **ANY FAILURE TO COMPLY WITH THESE REQUIREMENTS MAY RESULT IN US NOT BEING ABLE TO PROVIDE THE SERVICES TO YOU, OR MAY RESULT IN THE SAMPLE DATA BEING INCORRECT OR INACCURATE.** We may agree to assist you with Sample collection and preparation, in which case it is your responsibility to ensure that you have obtained all authorisations and consents to enable us to do so, including to permit our personnel to enter any premises as required for the collection of the Samples. You undertake to provide all reasonable assistance to us and our personnel in this regard, including by being present at the premises.
- 3.3. You may appoint one of our Service Partners to collect and conduct initial laboratory testing of the Samples. Such Service Partner will be responsible for the collection of the samples and for liaising with us with regards to the testing and analysis of the Samples. **YOU ARE RESPONSIBLE FOR APPOINTING THE SERVICE PARTNER AND FOR AGREEING ON THE TERMS OF YOUR ENGAGEMENT WITH SUCH SERVICE PARTNER. NOTE THAT NEITHER YOU OR THE SERVICE PARTNER ARE AUTHORISED TO MAKE ANY COMMITMENTS, REPRESENTATIONS OR UNDERTAKINGS ON OUR BEHALF, AND FURTHERMORE THAT WE WILL NOT BE RESPONSIBLE FOR THE ACTIONS OF THE SERVICE PARTNER OR THE PERFORMANCE BY IT OF ITS DUTIES FOR YOU.**
- 3.4. We use the Sample Data collected to derive (and to improve our existing) models which we use to improve our Services offered to all users of the Service, including you. **CONSEQUENTLY, YOU AGREE THAT WE MAY USE THE SAMPLE DATA WHICH WE COLLECT FROM YOU TO IMPROVE OUR SERVICES AND TO ENABLE NEW FEATURES IN RELATION TO OUR SERVICES WHICH WE MAY OFFER TO ALL OF OUR CUSTOMERS.**
- 3.5. You may use the Services for your own benefit only. You may not provide third parties with access to our platforms or the Services or otherwise make use of the Services (including the Sample Data and results obtained from the Services) for the benefit of any third party. **YOU AGREE THAT YOU WILL INDEMNIFY AND HOLD US AND**

OUR PERSONNEL HARMLESS AGAINST ANY LOSSES OR CLAIMS MADE AGAINST US OR OUR PERSONNEL AS A RESULT OF YOUR FAILURE TO COMPLY WITH THIS PROVISION.

4. FEES

- 4.1. The Service Fees are published on the Website. Such fees will be payable and may be invoiced by us or our Service partner on an upfront basis prior to your being permitted to make use of the Services. Service Fees which are paid by you are not refundable.
- 4.2. **PLEASE NOTE THAT OUR SERVICE PARTNERS MAY CHARGE ADDITIONAL FEES FOR THE FUNCTIONS WHICH THEY ARE APPOINTED TO PERFORM FOR YOU. SUCH FEES ARE TO BE AGREED BETWEEN YOU AND THE RELEVANT SERVICE PARTNER AND ARE IN ADDITION TO THE SERVICE FEES.**
- 4.3. We may increase our Service Fees from time to time, and the revised rates will be published on our Website. **IT IS YOUR RESPONSIBILITY TO MONITOR OUR WEBSITE AND TO TAKE NOTE OF THESE CHANGES.** The new Service Fee rates will apply from the date of publication on our Website.
- 4.4. You agree to reimburse us for reasonable expenses which we incur in relation to the collection of Samples (if applicable). Such expenses include travelling, accommodation and subsistence. We will provide you with a breakdown of such expenses to enable you to verify the amounts claimed. You agree to reimburse us within 7 (seven) days of presentation of the breakdown.
- 4.5. Amounts which are invoiced by us to you shall be paid by you within 7 (seven) days of the invoice date into the account designated for payment under the invoice. Our fees exclude all taxes, duties tariffs, rates, levies and other charges that may apply to our service, which you shall be liable to pay in addition to our fees.

5. SUBSCRIPTION PERIOD

You will be permitted to make use of the Services for the duration of the period that you are validly subscribed to do so. Your subscription to the Services will commence on the date that you complete the subscription process on the Website and may be terminated:

- By you on written notice to us at info@phenolab.co.za;
- By us, if you breach these terms; or
- Upon the Services being discontinued by us.

6. DISCLAIMERS

YOU ACKNOWLEDGE THAT THE INFORMATION MADE AVAILABLE TO YOU BY US DO NOT CONSTITUTE PROFESSIONAL ADVICE OF ANY KIND AND THAT YOUR USE OF AND RELIANCE ON THE SERVICES OCCUR AT YOUR OWN RISK.

WE WILL NOT BE LIABLE FOR ANY FAILURE BY YOU TO PROVIDE US WITH THE NECESSARY AUTHORISATIONS AND CONSENTS IN CONNECTION WITH OUR RENDERING OF THE SERVICES TO YOU, AND YOU AGREE THAT YOU WILL INDEMNIFY AND HOLD US AND OUR PERSONNEL HARMLESS AGAINST ANY LOSSES OR CLAIMS MADE AGAINST US OR OUR PERSONNEL AS A RESULT OF SUCH FAILURE ON YOUR PART.

WE DO NOT WARRANT THAT THE WEBSITE OR SERVICES WILL ALWAYS BE AVAILABLE. WE RESERVE THE RIGHT TO CANCEL OR SUSPEND YOUR USE OF THE SERVICES AT ANY TIME IF WE SUSPECT THAT YOU ARE USING THE SERVICES IN AN UNAUTHORISED OR UNLAWFUL MANNER.

OUR TOTAL LIABILITY TO YOU IN RESPECT OF ANY BREACH BY US OF OUR OBLIGATIONS UNDER THESE TERMS SHALL NOT EXCEED AN AMOUNT WHICH IS EQUAL TO THE AMOUNT OF FEES WHICH YOU HAVE PAID TO US DURING THE THREE MONTHS PRECEDING THE DATE OF YOUR CLAIM, SAVE TO THE EXTENT THAT SUCH LIMITATION IS PROHIBITED BY APPLICABLE LAW. IN NO EVENT SHALL PHENOLAB BE LIABLE FOR ANY INDIRECT, INCIDENTAL, EXTRINSIC OR SPECIAL OR CONSEQUENTIAL DAMAGES OR LOSSES (WHETHER FORESEEABLE OR UNFORESEEABLE)

OF ANY KIND (INCLUDING, WITHOUT LIMITATION, IN RESPECT OF LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF GOODWILL, LOSS OR CORRUPTION OF DATA, BUSINESS INTERRUPTION, THIRD PARTY CLAIMS OR OTHER PECUNIARY LOSS ARISING OUT OF THE UNAVAILABILITY, DELAY IN DELIVERY OR RELIANCE ON THE SERVICE), WHETHER BASED ON CONTRACT, DELICT, STATUTE OR OTHERWISE, EXCEPT TO THE EXTENT THAT THE LIMITATION OF LIABILITY IS NOT PERMITTED BY APPLICABLE LAW.

7. Governing law

This Agreement shall be governed and construed according to the laws of the Republic of South Africa and the Parties agree to submit to the non-exclusive jurisdiction of the Western Cape High Court, Cape Town.