NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
SPEICAL MEETING OF APRIL 23, 2014
REFERRED FROM: COUNSEL'S OFFICE

2014-

REASON FOR REFERRAL
REQUEST FOR DIRECTION

MARKETING COMPANIES

(DECLARATORY RULING)

The Members of the Authority at their special meeting held at the Zone I New York City office on APRIL 23, 2014 determined:

L18 Holdings, Inc.
2 Clark Place
Mahopac, NY 10541
T: 212.804.7300

February 21, 2014

New York State Liquor Authority
317 Lenox Avenue
New York, New York 10027
Attn: General Counsel Jacqueline P. Flug

Dear Counsel Flug:

Pursuant to §98.1 of the Rules of the New York State Liquor Authority (98 NYCRR subtitle B), I hereby respectfully request a Declaratory Ruling to declare the validity of using nationally recognized marketing companies, to market wine clubs in New York State, which are offered for sale by a New York State licensed package store. For the purposes of this request, marketing companies are defined as entities that offer access to their large and pre-existing consumer prospecting databases and in exchange, accept compensation for access to such databases. These are companies with well-known brands associated with, but not exclusive to, magazines or other media entities (hereinafter referred to as "Marketing Agents").

We present this request before the State Liquor Authority as a licensed New York state package store operating under the corporate entity L18 Holdings, Inc. and doing business as Lot18.

This request is put forward in consideration of New York ABCL §§111, 100.1, 105.14, 105.15, 105.20 and §99.2 and §99.4 of the Rules of the State Liquor Authority (9 NYCRR §§ 99.2, 99.4).

The Model:
Lot18 seeks to serve new customers with its wine club service that educates customers about their wine tastes and conveniently delivers personalized wine selections. The wine club service eliminates the guesswork, uncertainty and confusion of shopping for wine and therefore has the potential to reach new wine customers.

One way to achieve this growth is to co-market the wine club with brand-strong Marketing Agents that have their own consumer lists, readership or website viewers, on-site customers and a recognizable brand.

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The Package Store:
The Lot18 Package store is located at 2 Clark Place, Mahopac, NY 10541. The store is open Monday –Wednesday from 1-5pm, Thursday 1-7pm, Friday and Saturday 1-9pm and Sunday 12-5pm. All sales and purchase transactions are available for inspection via the computer located on the premises.

Marketing:
As shown in the attached Exhibit A, Lot18 desires to operate a unique website that is co-branded with the Marketing Agent or create a unique co-branded section on Lot18's own websites to explain the benefits and costs of the club. The Marketing Agent or Lot18 will circulate advertisements in print, online or through other means to generate interest for the wine club. Common marketing tactics include an insert in the Marketing Agent's magazine or an email sent to the Marketing Agent's customer list. All items would be branded with a co-branded logo showing both Lot18 and the Marketing Agent.

Wines:
Lot18 chooses the wines and wine club programs advertised by the Marketing Agent and sets the pricing of the various versions of the wine club. The wines that will be sold to the customers are pre-purchased from NYS-licensed wholesalers who deliver the purchased products to a NYS-licensed warehouse, providing third party fulfillment services ("Fulfillment Warehouse"). The Fulfillment Warehouse will store the products until customer orders are placed and require shipment.

Order Acceptance:
Exhibit B shows the chain of a transaction between the customer and Lot18. A customer places an order on the co-branded website or by phone by choosing from a few options, including the type of wine club subscription, the frequency of wine shipments, and the number of bottles included in said wine shipments. Lot18 will then batch and approve orders for the wine club at the store location in Mahopac or remotely by the Lot18 store manager. Lot18 approves or rejects each order at its own discretion, thereby accepting or rejecting each sales transaction. The approved orders are sent twice a day to a Fulfillment Warehouse. Lot18 pays the Fulfillment Warehouse directly upon monthly invoicing for wine storage, pick/pack services and shipping charges. The Marketing Agent has no involvement with the customer order, acceptance, rejection or fulfillment of an order.

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Flow of Funds:
When a customer purchases a wine club subscription, the transaction takes place between the customer and the NYS-licensed package store, Lot18. Orders purchased online are sent to Lot18's credit card gateway for the credit card payment to be authorized. Once the payment has been approved and settled through the credit card gateway, it is forwarded in a daily batch of transactions to the credit card processor. The credit card processor verifies all transactions in the batch and automatically deposits the total amount of daily sales into the Lot18 bank account. The entire process takes 1-4 days from the day the order is placed to when the payment is deposited to the bank account.
(See Exhibit C, which diagrams the flow of funds process.)

Club Enrollment:
Upon purchase of a club subscription, the customer is enrolled as a wine club member and receives a tasting kit or an initial wine shipment followed by periodic wine shipments, all of which are processed by Lot18. A customer may cancel membership in the club at any time. All communication with customers, such as the transaction receipt or customer service inquiry, comes directly from Lot18. (See Exhibit D, a sample transaction receipt).

Paying the Marketing Agent:
On a regular basis, Lot18 will review all the new customer sign-ups generated through the unique co-marketed initiative with the Marketing Agent. The Marketing Agent will generate an invoice detailing the marketing fees that are due and payable by the package store licensee, Lot18, after the reconciliation process is complete. The fees charged by the Marketing Agent are calculated by taking the number of new customers multiplied by a flat per-customer fee, regardless of which wine club option the customer purchases or how profitable that customer becomes. Lot18 may choose to pay a bonus to the Marketing Agent at certain performance milestones, such as achievement of a goal to attain a certain number of customers or a goal based on the longevity of a customer's membership. This pay-for-performance structure is common to the digital marketing industry.
The details of the responsibilities of each party are outlined in the Sample Marketing Agent Contract, attached hereto as Exhibit E.

This same arrangement with the Marketing Agent may also be used to achieve a one-time sale to a customer not enrolled in a subscription wine club. For example, a

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Forbes magazine reader may buy just the wine tasting kit or one 12-bottle wine shipment under this arrangement.

Key issues:

- Customer is informed that he/she is purchasing from Lot18, who is a licensed retailer with premises in Mahopac, New York.
  - The name and logo of the website will always indicate the club is operated or run by a licensed retailer, Lot18, such as the "Forbes Wine Club by Lot18." ABCL § 111; 9 NYCRR §§ 99.2, 99.4
  - Various pages on the website show Lot18's connection with the Marketing Agent, including the "About Us" page and the "FAQs" page identifying the seller as Lot18 (See Exhibit F) ABCL § 111; 9 NYCRR §§ 99.2, 99.4
  - The credit card billing descriptor that a customer sees on his/her credit card bill reads "Lot18", reflecting the entity responsible for the charge. ABCL § 111; 9 NYCRR §§ 99.2, 99.4
  - Lot18 employees handle all customer service inquiries, including any telephone inquiries. ABCL § 111; 9 NYCRR §§ 99.2, 99.4
  - All wine shipments reflect that Lot18 is the shipper/sender. ABCL § 111; 9 NYCRR §§ 99.2, 99.4
- The Marketing Agent has no involvement with the customer order, acceptance, rejection or fulfillment of an order. ABCL §§ 100.1, 111
- All monies from the sales transactions flow directly to Lot18. ABCL §§ 100.1, 111. All service providers, including the Marketing Agent, receive their fees upon subsequent invoicing and bill-pay process. ABCL §§ 100.1, 111
- Lot18 selects and prices the wines offered for sale through the co-branded website. The Marketing Agent does not influence the selection or the pricing of the wines offered as referenced in the Proposed Marketing Agent Contract (Exhibit E). ABCL §§ 100.1, 111, 105.20

Many thanks,

Dini Rao
Chief Merchandise Officer
dini@lot18.com
Lot18

L18 Holdings, Inc.
2 Clark Place
Mahopac, NY 10541
T: 212.804.7300

List of Exhibits Enclosed

Exhibit A Website Screen Shot
Exhibit B Process Flow for Signup
Exhibit C Funds Flow
Exhibit D Sample Customer Receipt
Exhibit E Proposed Marketing Agent Contract
Exhibit F Forbes Wine Club by Lot18 FAQs

Exhibit A: Website Screen Shot

Exhibit B: Process Flow for Signup

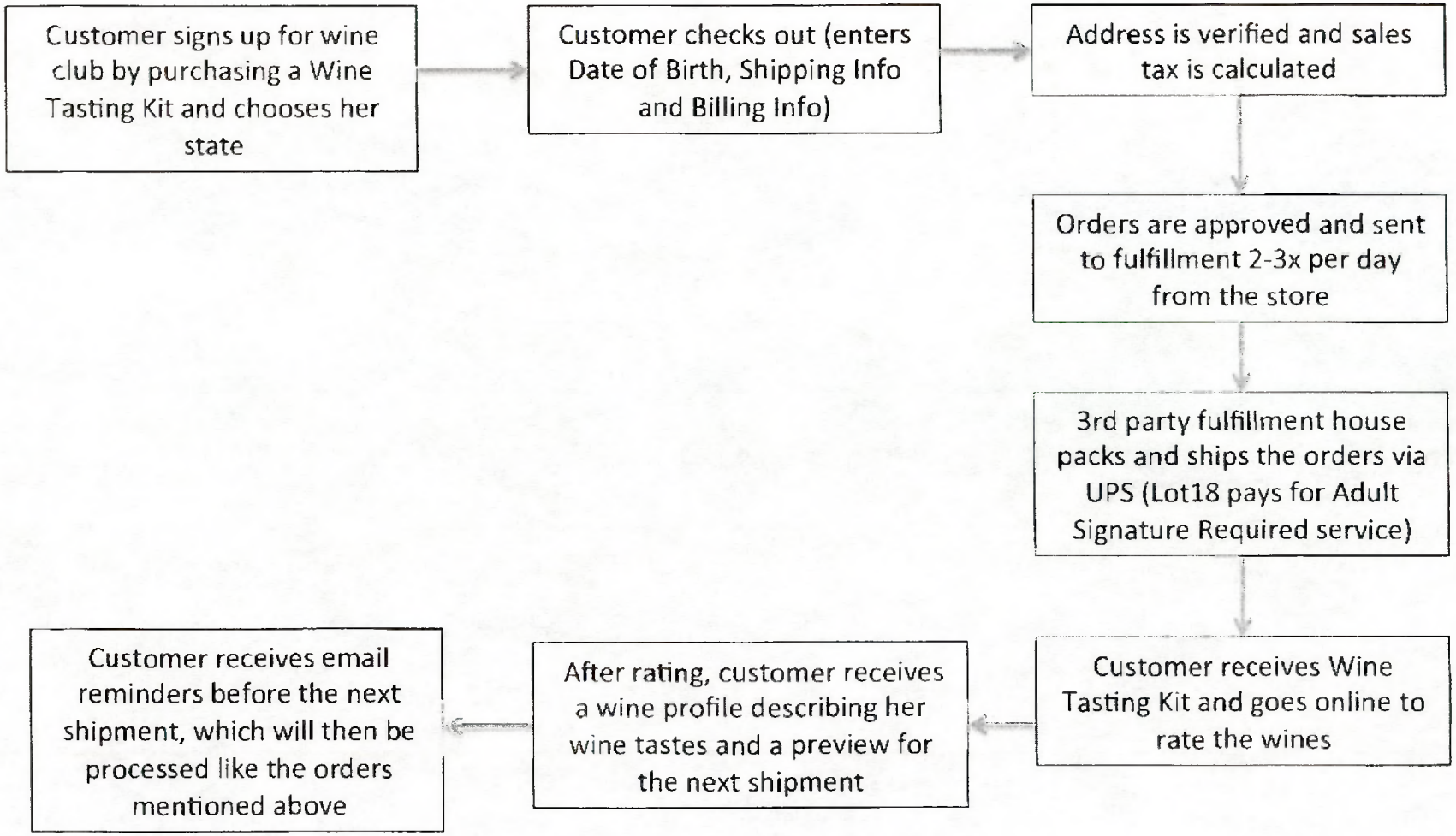


Exhibit C: Funds Flow

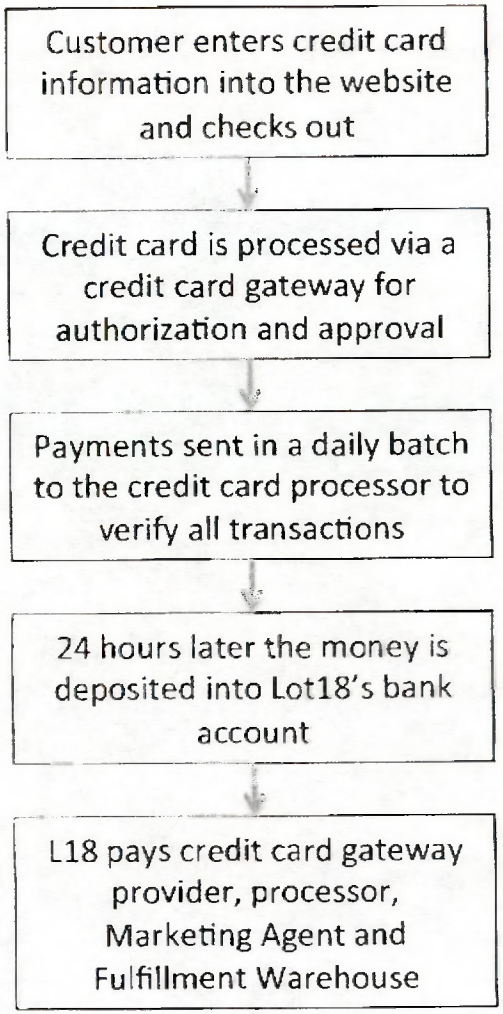


Exhibit D: Sample Customer Receipt

Forbes

WELCOME TO THE CLUB!

YOUR TASTING KIT IS ON ITS WAY!

Welcome to the Forbes Wine Club by Lot18!

Your tasting kit of six mini bottles is on its way — which means you're one step closer to getting your personalized Forbes WinePrint™ Profile! **Your tasting kit is due to arrive February 28.** After you receive it, click here and follow the easy steps to taste and rate the wines. Based on your ratings, our Forbes WinePrint™ personalization technology will generate your Wine Profile.

Your Next Shipment

In a few weeks you'll receive your first full case* of wine matched to your Forbes WinePrint™ profile. What is Forbes WinePrint™? Everyone's wine tastes are unique — just like a fingerprint. Forbes WinePrint™ is our custom technology that zeroes in on your palate's likes and dislikes, then selects the perfect assortment of curated wines for you.

100% Satisfaction Guaranteed:

If you ever have a problem with a bottle you receive from us, or if you'd like to cancel your club membership, just email [illegible] and a Lot18 representative will assist you.

ORDER NO.
80356
ORDER DATE:
02/20/2011

Forbes Wine Tasting Kit
[illegible]

SUBTOTAL
$9.95
SHIPPING
$0.00
TAX
$0.00
TOTAL
$9.95
was charged to your credit card
**********4444

BILLING ADDRESS:
[illegible]

SHIPPING ADDRESS:
[illegible]

Forbes Wine Club Terms & Conditions*

Our promise is always to deliver only the best wines that suit your tastes. All wine sales are solicited, offered, made and delivered by licensed sellers who accept and fulfill all orders from adults at least 14 years old. State shipping restrictions and other terms apply. Please see Terms for full details. You may contact us at any time to cancel.

Click here to complete Terms.

[illegible]

Exhibit E Proposed Marketing Agent Contract

MARKETING AGREEMENT

This Marketing Agreement (this "**Agreement**") is made as of the ___ day of _____ by and between L18 Holdings, Inc., a Delaware corporation with a principal business address of 2 Clark Place, Mahopac, NY 10541 ("**L18**") and _____, a _____ with a principal business address of _____ (the "**Company**"), with respect to a wine club to be established by L18 and co-marketed by the Company in accordance with the terms hereof (the "**Wine Club**").

In consideration of the mutual covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Term. The term of this Agreement shall commence on the date hereof and end on [ ] unless otherwise extended or terminated in accordance with Exhibit E.

2. Services. The services to be provided by the Company are set forth on Exhibit A hereto.

3. Fees.

(a) As compensation for its marketing services and the performance of its other obligations under this Agreement, L18 shall pay to the Company a flat marketing fee based on member signups as set forth in Exhibit B.

(b) L18 will maintain accurate books and records of all transactions and interactions with customers pertaining to the Wine Club.

4. Collaboration. In addition to the services set forth on Exhibit A hereto, the parties agree to collaborate during the Term on marketing initiatives related to the promotion of each other's brands so as to, among other things, increase Wine Club membership and promote Company offerings.

5. Exclusivity. Exclusivity rights under this Agreement are set forth on Exhibit F hereto.

6. Representations, Warranties and Covenants of the Parties. Each party hereby represents, warrants and covenants to the other party, as of the date hereof and at all times hereafter, as follows:

(a) The information provided by the representing party is true, correct and complete in all material respects.

(b) The representing party has full power and authority to execute and deliver this Agreement and to enter into the transactions contemplated hereby, all of which have been duly authorized by all proper and necessary company action. No consent or approval of any other person or public authority is required as a condition to the validity or enforceability of this Agreement.

7. Use of Company and L18 Trademarks. Use of Company and L18 Trademarks under this Agreement are set forth on Exhibit C hereto.

8. Ownership of Deliverables. L18 is, and shall be, the sole and exclusive owner of all right, title and interest in and to the deliverables to be provided by the Company pursuant hereto ("**Deliverables**"), including all intellectual property therein. The Company agrees, and will cause Company personnel to agree, that with respect to any Deliverables that may qualify as "work made for hire" as defined in 17 U.S.C. § 101, such Deliverables are hereby deemed a "work made for hire" for L18. To the extent that any of the Deliverables do not constitute a "work made for hire," the Company hereby irrevocably assigns, and shall cause Company personnel to irrevocably assign to L18, in each case without additional consideration, all right, title and interest throughout the world in and to the Deliverables, including all intellectual property therein. The Company shall cause Company personnel to irrevocably waive, to the extent permitted by Applicable Law, any and all claims such Company personnel may now or hereafter have in any jurisdiction to so-called "moral rights" or rights of *droit moral* with respect to the Deliverables. Upon the request of L18, the Company shall, and shall cause Company personnel to, promptly take such further actions, including execution and delivery of all appropriate instruments of conveyance, as may be necessary to assist L18 to prosecute, register, perfect or record its rights in or to any Deliverables.

9. Indemnification. Each party shall indemnify and hold the other harmless for any losses, claims, damages, awards, penalties, or injuries incurred as a result of a claim by any third party, including reasonable attorney's fees, which arise from any alleged breach of such indemnifying party's representations and warranties made under this Agreement, or such party's breach of this Agreement, and in the case of L18 as the indemnifying party, for any claim based on the acts or omissions of the merchants it engages, provided that in all cases the indemnifying party is promptly notified of any such claims. The indemnifying party shall have the sole right to defend such claims at its own expense. The other party shall provide, at the indemnifying party's expense, such assistance in investigating and defending such claims as the indemnifying party may reasonably request. This indemnity shall survive the termination of this Agreement. EXCEPT AS EXPRESSLY PROVIDED IN THE LAST SENTENCE OF THIS SECTION, UNDER NO CIRCUMSTANCES WILL EITHER PARTY, OR ITS PARENT COMPANY OR DIRECT OR INDIRECT SUBSIDIARIES, AFFILIATES, AGENTS, EMPLOYEES OR REPRESENTATIVES BE LIABLE TO THE OTHER PARTY (OR ANY PERSON CLAIMING RIGHTS THROUGH SUCH OTHER PARTY) FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, NOR FOR ANY LOST PROFITS OR REVENUES, IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT, THE USE OR INABILITY TO USE THE COMPANY WEBSITE OR THE L18 SERVICE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT AS EXPRESSLY PROVIDED IN THE LAST SENTENCE OF THIS SECTION, EACH PARTY'S MAXIMUM LIABILITY ARISING OUT OF OR RELATING TO THE WINE CLUB, THE L18 SERVICE, OR OTHERWISE ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE CAUSE OF ACTION (WHETHER IN CONTRACT, TORT, BREACH OF WARRANTY OR OTHERWISE), WILL NOT EXCEED THE AGGREGATE AMOUNT OF THE FEES PAID TO COMPANY BY LOT18 UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE ON WHICH THE CLAIM ARISES. THE FOREGOING EXCLUSIONS AND LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION SHALL NOT APPLY TO: (I) LIABILITY RESULTING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF A PARTY, (II) LIABILITY RESULTING FROM A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS HEREUNDER, OR (III) A PARTY'S INDEMNIFICATION OBLIGATIONS. Each party will maintain in effect commercial general liability insurance, errors and omissions or equivalent professional liability insurance, and, in the case of L18, liquor law liability insurance in customary amounts sufficient to cover its indemnification obligations hereunder.

10. Confidentiality.

(a) In order to satisfy the terms of this Agreement, the Company and L18 must exchange Confidential Information. As used in this Agreement, the term "**Confidential Information**" shall mean all information of a proprietary, intellectual or similar nature, relating to the disclosing party's business, projects, operations, activities or affairs whether of a technical or financial nature or otherwise (including, without limitation, transaction data, pricing, documentation, agreements, reports, financial information, business plans and proposals, ideas, concepts, trade secrets, know-how, processes, and other technical or business information, whether concerning the disclosing party's business or otherwise) which has not been publicly disclosed and which the receiving party acquires directly or indirectly from the disclosing party, its officers, employees, affiliates, agents or representatives. Confidential Information shall not include information which (i) is or becomes generally available to the public other than as a result of a disclosure by the disclosing party or its representatives (except as permitted herein), (ii) was available to the receiving party on a non-confidential basis prior to its disclosure to the receiving party by the disclosing party or its representatives, (iii) becomes available to the receiving party on a non-confidential basis from a person other than disclosing party or its representatives, who to the receiving party's knowledge is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from transmitting the information to the receiving party, or (iv) is disclosed as required by judicial action after all available legal remedies to maintain the Confidential Information in secret have been exhausted; provided that advance notice of such judicial action was timely given to the disclosing party.

(b) Without the prior written consent of the disclosing party, the receiving party will not disclose, transfer, or allow access to any Confidential Information to any person other than its representatives who have been made aware of, and consent to abide by, the restrictions contained herein. Without limiting the generality of the foregoing, in no event will the receiving party disclose any such Confidential Information to any competitors of the disclosing party. The obligations set forth in this Section 9 shall survive termination of this Agreement and continue for so long as the relevant information remains Confidential Information.

11. Nonperformance. Except with respect to failure to pay any amount due under this Agreement and any misuse of either party's trademarks, nonperformance of either party will be excused only to the extent that performance is rendered impossible by strike, fire, flood, governmental acts, orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the control and not caused by the negligence of the breaching party.

12. Miscellaneous.

(a) In the event that the parties' arrangement under this Agreement would result in non-compliance with any federal or state law, regulation, directive, order or other governmental or third party requirement of any kind (including, without limitation, credit card processing requirements) (collectively, "**Applicable Law**"), now or hereafter in force, the parties agree to renegotiate this Agreement in good faith for the purpose of ensuring compliance with the Applicable Law.

(b) This Agreement, including the related exhibits attached hereto, constitutes the sole and entire agreement of the parties with respect to the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

(c) No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each party.

(d) Neither party may assign, transfer or delegate any or all of its rights or obligations under this Agreement, without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed; provided, however, that either party may assign this Agreement to a successor-in-interest by consolidation, merger or operation of law or to a purchaser of all or substantially all of the party's assets. No assignment shall relieve the assigning party of any of its obligations hereunder. Any attempted assignment, transfer or other conveyance in violation of the foregoing shall be null and void. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

(e) This Agreement and all matters arising out of or relating to this Agreement, shall be governed by, and construed in accordance with, the laws of the State of New York, United States of America without giving effect to any conflict of laws provisions thereof. Each party irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind whatsoever against the other party in any way arising from or relating to this Agreement other than in the state or federal courts located in New York, New York. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts.

(f) This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together is deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

(g) Nothing in this Agreement creates any agency, joint venture, partnership or other form of joint enterprise, employment or fiduciary relationship between the parties. The Company is an independent contractor pursuant to this Agreement. Neither party has any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other party or to bind the other party to any contract, agreement or undertaking with any third party.

[Remainder of Page Intentionally Left Blank]

Executed under seal as of the date first above written.

L18 Holdings, Inc.

By:_____

Print Name and Title:

_____

[Company]

By:_____

Print Name and Title:

_____

EXHIBIT A

Services to be Provided by Company

1. Company will market Wine Club through agreed-upon tactics using online and offline distribution methods.

2. Company does not and shall not influence the selection or the pricing of the wines offered by the Wine Club.

EXHIBIT B

Fees

EXHIBIT C

Company and L18 Trademarks

Lot18

Company

Exhibit D

Customer Service/Other Responsibilities

The following are additional responsibilities of L18 pursuant to this Agreement. L18 will be responsible for its own compliance with these requirements as well as for insuring that the merchants it engages are also in compliance.

L18 will be responsible for the following:

(a) compliance with all current and future state, federal, local and other laws governing the marketing, sale, packaging, storage, labeling, shipping and fulfillment of wine;

(b) maintaining alcohol beverage licenses in good status;

(c) the fulfillment of orders for such wine placed by consumers; and

(d) the remittance of any and all federal, state, sales use and excise taxes (the "**Taxes**") related to the wine orders.

Customer Service

L18 shall provide at a minimum, the following levels of customer service

- L18 will use commercially reasonable efforts to service Wine Club subscribers in accordance with agreed-upon standards

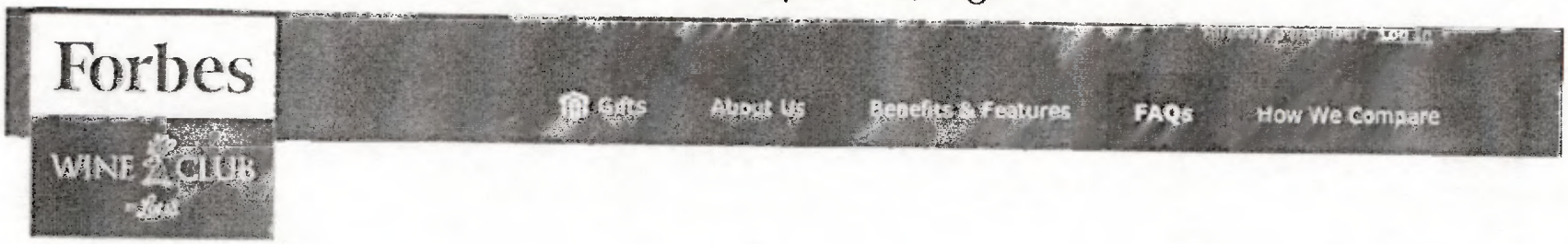
EXHIBIT E

Termination Rights

EXHIBIT F

Exclusivity Rights

Exhibit F: Example FAQ Page



Frequently Asked Questions

- About
- Membership
- Account Information
- Feedback & Returns
- Payment
- Shipping
- Order Status

About

1. What is ForbesWineClub.com?
2. What is Forbes Wine Club's relationship to Lot18?
3. Who is the seller of the wine?
4. What are my wine samplers?
5. Why do you send wine samplers?
6. What if I don't rate the wine samplers you send me?
7. What is my Wine Profile?

What is ForbesWineClub.com?

The Forbes Wine Club by Lot18 is a personalized wine club that enables you to sample fine wines, discover what type of wine drinker you are, and get wines that suit your preferences — all at substantial savings. Our advanced personalization technology ensures that you always receive the perfect wine for your palate.

What is Forbes Wine Club's relationship to Lot18?

In 2013 Forbes launched a partnership with Tasting Room by Lot18. Lot18 is the preeminent online seller of fine wines at attractive prices, and by joining forces Lot18 and Tasting Room are able to provide wine buyers with an unprecedented level of savings, service and selection. To visit Lot18, click here.

Who is the seller of the wine?

Lot18 is a licensed fine-wine retailer with a store in Mahopac, New York.