

MARKETING AGREEMENT

This Marketing Agreement (this “Agreement”) is entered into as of [DATE], by and between Gilt Groupe, Inc. (“Agent”), a Delaware corporation located at 2 Park Avenue, 4th floor, New York, NY 10016, [NAME OF ENTITY] (“Seller”), a [TYPE OF ENTITY] located at [ADDRESS] and Wineshipping.com, LLC, a California Limited Liability Company (“Shipper”). Agent, Seller and Shipper may be referred to individually as a “Party” and collectively as the “Parties.”

WHEREAS, during the term of this Agreement, each of Seller and Agent desire for Agent to provide marketing, customer service and organization services as specified in this Agreement, in return for which Seller will pay Agent a marketing fee and perform the other obligations as specified herein; and

WHEREAS, during the term of this Agreement, each of Seller and Shipper desire for Shipper to provide fulfillment services as specified in this Agreement, in return for which Agent will pay Shipper as part of its organization services for Seller; and

WHEREAS, Agent is not licensed to sell alcoholic beverage products, its primary function under the terms of this Agreement shall be to permit the Products to be displayed via the Gilt Groupe Marketing Channel, as further defined herein. Agent shall have no role in, and shall not participate in, any activity reserved to the Seller by law or regulation and Seller shall be the merchant of record in connection with any such sales and will conduct such sales in compliance with the alcoholic beverage licenses held by Seller and all applicable federal, state and local laws and regulations.

NOW THEREFORE, in consideration of the mutual promises, terms and conditions hereinafter set forth, and for other good and valuable consideration, the Parties agree as follows:

1. Definitions.

- a. “**Defined Terms**” Terms defined in this Section 1, and parenthetically elsewhere, shall throughout the Agreement have the meanings here and there provided. Defined Terms may be used in the singular or plural.
- b. “**Consumer**” shall mean any individual or entity that makes an Expression of Interest (hereinafter defined) in the Products (hereinafter defined) through the Gilt Groupe Marketing Channels (hereinafter defined).
- c. “**Expression of Interest**” shall mean a Consumer expression of interest in purchasing the Products that includes complete ordering and payment information, collected by Agent.
- d. “**Governmental Approvals**” shall mean the issuance by a federal, state or local governmental authority of any necessary permits, licenses, certificates, concessions, approvals, consents, ratifications, permissions, clearances, confirmations, exemptions, waivers, certifications, designations, ratings, qualifications or authorizations.
- e. “**Marketing Fee**” shall mean the fee that is payable by Seller to Agent and described in **Exhibit A**, attached hereto, which may be modified or supplemented in writing by the Parties from time to time.
- f. “**Gilt Groupe Marketing Channel**” refers to the Gilt Groupe Website.
- g. “**Gilt Groupe Website**” shall mean www.gilt.com or any other websites or applications controlled or managed by Agent.
- h. “**Order**” shall mean an Expression of Interest reviewed and accepted by Seller for fulfillment.
- i. “**Marketing Event**” shall mean one or more events in the Gilt Groupe Marketing Channel conducted by Agent and featuring the Products as set forth herein and on **Exhibit B**.
- j. “**Products**” shall mean Seller’s Wine (hereinafter defined), and/or other of Seller’s items marketed by Agent pursuant to this Agreement, as set forth in the then-current Product Schedule.
- k. “**Seller’s Wine**” shall mean wine owned by Seller. It is expressly understood that Seller is the owner and seller of all Seller’s Wine included in the Products.
- l. “**Product Schedule**” shall mean a document mutually agreed by the Parties setting forth the Products to be offered by Seller pursuant to this Agreement. The initial Product Schedule is attached hereto as **Exhibit C**.

2. **Marketing, Pricing and Payment.**

- a. **Marketing of the Products.** Agent shall use commercially reasonable efforts to market the Products in accordance with Agent's standard business practices and this Agreement.
- b. **Product Schedule.** The Products and terms that may be presented in Marketing Events shall be as set forth in the Product Schedule which is more fully described in the attached **Exhibit C**. The Product Schedule shall at a minimum include the following information: (a) the suggested retail price for each of the Products; (b) the price at which Seller desires to sell to Consumers sourced through the Gilt Groupe Marketing Channel; (c) the price at which Seller desires to sell to Agent employees; (d) the quantities of Product available for marketing by Agent and (e) Seller's tax nexus profile (i.e., the state and local jurisdictions in which Seller is required to collect such taxes) ("Tax Nexus Profile"). The Product Schedule may be updated or modified upon mutual written agreement of the Parties. The Seller has sole responsibility for setting the price of the Products, and must provide written notice to Agent of any changes not less than 30 days in advance of the change. Agent reserves the right to terminate the Agreement, effective immediately, if, in Agent's sole opinion, the price of the Products as dictated by Seller is not appropriate for the Gilt Groupe Marketing Channel. Agent and Shipper will work with Seller to ensure that the correct quantities of available product are uploaded to inventory prior to the commencement of a Marketing Event. Product Schedules will be uploaded at least 2 business days before a Marketing Event is scheduled to go live.
- c. **Marketing Materials.** Seller will provide images of the Products to Agent at least ten (10) days before a Marketing Event. These images must meet the following requirements: (a) a minimum resolution of 1800 x 2700 pixels at 300 dpi shot at no higher than ISO 400; (b) either .JPG, .TIF, .PSD, or .PDF format; (c) must include one "front" shot (other angles/details are encouraged but optional); (d) product must be clean, straight and evenly lit on a solid white or grey background and in focus; (e) all images must be consistent and feature only the item to be sold.
- d. **Collection and Forwarding of Expressions of Interest.** During the course of a Marketing Event, Agent shall collect Expressions of Interest from Consumers, including payment, to be held in trust as outlined in **Exhibit C**, and forward the Expressions of Interest electronically through a supply change program ("VendorNet") to Shipper upon receipt; Shipper will immediately send via email or other electronic mechanism, in a secure format, such Expressions of Interest to Seller. Each Expression of Interest shall be subject to Seller's review and acceptance. Seller may, in its sole discretion, refuse to convert any Expression of Interest into an Order. Seller shall review all Expressions of Interest within 24 hours of receipt (excluding non-business days) ("Review Period") and determine if they will be converted to Orders. If special circumstances arise such that Seller needs more than twenty-four (24) hours to review an Expression of Interest, Seller may request in writing, prior to the close of the Review Period, that the review period be extended by up to thirty-six (36) hours ("Extended Review Period"). Immediately after the Review Period or, if applicable, the Extended Review Period, Seller will communicate to Shipper via email or other electronic mechanism, in a secure format, which Expressions of Interest will be converted to Orders.
- e. **Marketing Fee.** In compensation for Agent's services hereunder, Seller shall pay Agent the Marketing Fee set forth in **Exhibit A**, which is subject to periodic review.
- f. **Statements.** Seller will begin processing each Order immediately upon conversion from an Expression of Interest to an Order. Seller shall be deemed to have accepted an Order on shipment to the Consumer. In the twenty-four (24) hour period following acceptance of an Order (excluding non-business days), Seller will notify Shipper, confirm tax amounts collected by Agent on behalf of the Seller and perform any necessary compliance checks; immediately following this twenty-four (24) hour period, Seller will direct Shipper to ship the Orders to Consumers and Shipper will provide a statement to Agent on behalf of Seller, indicating for each Expression of Interest whether it was accepted as an Order or rejected, date and content of shipment (if applicable), reason for any rejections, and amount invoiced to Consumers in accordance with **Exhibit C**. Within seven (7) days of receiving the statement from Shipper on behalf of Seller, Agent will remit all revenue from the Marketing Event, including Taxes and Shipping, less the Agent Marketing Fee and the value of any rejected or incomplete Expressions of Interest or Consumer Credits (hereinafter defined). Funds collected for rejected Expressions of Interest will be returned by Agent to the source of the funds.

Statements should be sent to the following address (electronic submission preferred):
Gilt Groupe, Inc.

Accounts Payable
2 Park Ave, 4th Floor
New York, NY 10016
or
accountspayable@gilt.com

3. **Fulfillment.**

- a. All shipments of Orders resulting from a Marketing Event will be shipped by Shipper on behalf of Seller. Shipping guidelines (“Guidelines”) are attached as **Exhibit D** and are incorporated herein in full. Seller and Shipper accept and agree to abide by all of the terms and conditions of the Guidelines.
- b. Agent will pay Shipper for shipping and insurance on Orders, as outlined in the Guidelines. Shipping and insurance for returns, refunds and Consumer Credits (defined herein) will be paid as described in this Agreement.
- c. Seller will ensure that the requisite quantity of the Product is in the warehouse of Shipper that Seller will use for fulfillment (the “Warehouse”) and ready for shipment no less than 72 hours prior to the Marketing Event date. If the product is located within Napa or Sonoma counties, this will be at the Shipper’s expense. Anywhere outside of those counties will be at Seller’s sole cost. After the Product arrives at the Warehouse, and no later than twenty-four (24) hours prior to the Sale date, Shipper will conduct an audit to determine that the agreed-upon amount of Product is actually in the warehouse and will update VendorNet immediately and inform Seller’s contact at Agent if there is any discrepancy. The quantity and sale date will be specified on the attached **Exhibit C** and **Exhibit B**, respectively. Seller agrees that Agent shall have no liability with respect to unsold or oversold Product.
- d. In the event that an Expression of Interest cannot be completed as an Order for any reason including, but not limited to, a miscalculation of available Product, or shipping or quantity restrictions, or Seller rejection of an Expression of Interest, Seller must notify Shipper and Agent within the Review Period or, if applicable, during the Extended Review Period, so that Agent may notify the Consumer and refund the purchase price in a timely manner.
- e. Seller agrees that it will pay Agent a customer service fee for dealing with Consumers whose Expressions of Interest are rejected or cannot be completed, as described in 3(d), (“Customer Service Amount”), unless such cancellation is due to shipping restrictions or extreme weather conditions. Customer Service Amount as per current Agent policy is \$25 and is subject to change; Agent will notify Seller in the event of a change in Agent’s policy and such new amount will take effect with respect to Seller ten (10) days after such notification.
- f. Agent will explicitly state on the Marketing Event page that the Products are not returnable. However, if the Products are damaged upon arrival to Consumer due to Seller’s negligence or willful misconduct, or if the Products are not received by Consumer, or if the wrong Product is received by Consumer, and Agent is notified by Consumer, then Seller will within forty-eight (48) hours of notification from Agent, at Seller’s sole cost and expense, make a replacement shipment to the Consumer, and provide Agent with a tracking number for such replacement Product. If a replacement is not available, Seller will notify Agent, credit the purchase price to the Consumer and pay Agent the Customer Service Amount for handling the Consumer interaction (collectively, the “Consumer Credit”). If Agent receives a Consumer complaint that the Product that was received by Consumer is in damaged condition that would not have been apparent from external inspection (e.g. the wine is ‘corked’) or is otherwise unsatisfactory to the Consumer, Agent will forward such complaint to Seller and Seller will, within forty-eight (48) hours of notification from Agent, advise Agent whether Seller will (a) at Seller’s sole cost and expense, make a replacement shipment to the Consumer and provide Agent with a tracking number for such replacement Product, (b) provide Consumer Credit, or (c) provide no recompense to Consumer .
- g. Notwithstanding the foregoing, if the Products are returned to Seller due to the fact that no one 21 years of age or older was present to receive the Products at the time of attempted delivery by the carrier, Seller will, within forty-eight (48) hours of receipt of the returned Product, start processing the returned Product and provide credit for the return to Agent to be passed on to Consumer. This Section will only apply within 30 days of Consumer’s receipt of the Product. If a Consumer Credit occurs prior to the payment of the statement as outlined in 2(f), Agent will refund to Consumer the cost of Product, Taxes and shipping and deduct such amounts (along with a deduction payable to Agent for the Customer Service Amount) from the revenue collected for the Marketing Event. The cost of shipping will not be returned to the Consumer if no one 21 years of age or older was present to receive the Products at the time of attempted delivery by the

carrier, or for other reasons as specified in advance of the Marketing Event by Seller. If Consumer Credit occurs after the payment of the statement as outlined in 2(f), Agent will issue the refund as described in this paragraph and will bill Seller for the full Consumer Credit. Seller agrees that each Consumer Credit under this Agreement is at the election of Seller, and Seller agrees to pay all Consumer Credit bills submitted by Agent within fifteen (15) days of receipt. Agent will inform Seller of any delivery specifications provided by a Consumer at the time an Expression of Interest is forwarded, at which point Seller will work with Shipper to: (i) adjust the ship date to accommodate the request; or (ii) make arrangements to hold Product for the Consumer for the requested period of time up to a maximum of two (2) months without charging an additional storage fee. Storage requests beyond two (2) months are subject to a storage fee to be determined based upon the quantity of Product. Seller will advise Agent of the amount of any such storage fee, to be communicated to the Consumer for approval and collection of corresponding payment

- h. Shipper will maintain an inventory accuracy level of 99.6% of the average product volume during the period of the Marketing Event by bottle movement in the warehouse. This is to be validated by a beginning inventory count and an inventory count at the end of the Marketing Event. Shipper will validate inbound inventory upon receipt; if a variance occurs, Shipper shall promptly notify Seller of such discrepancies and work with Seller to resolve these discrepancies before receipt is completed.

4. **Shipping and Freight.**

- a. Shipping / freight costs for Orders hereunder shall be the responsibility of Seller. However, such fees will be built into the Marketing Fee and as such will be advanced by Agent to Shipper at the conclusion of each Marketing Event. Shipments will be made by a shipping provider that requires a signature and proof that the recipient is twenty-one (21) years of age or older for delivery.
- b. Seller agrees that all packaging and invoices related to Orders will make clear that Seller is the merchant of record..
- c. Seller shall ensure that Shipper ships each Order hereunder so that it arrives in a timely manner (in no event later than the date range Seller provided to Agent).
- d. Seller will not include extra items or inserts in any shipment (e.g. giveaways, order forms, pamphlets) without advance review and approval from Agent.

5. **Sales Tax.**

- a. Seller will be responsible for providing to Agent its correct Tax Nexus Profile. Agent will collect Taxes from Consumers on behalf of Seller based solely on the Tax Nexus Profile provided to Agent. Seller will be solely responsible for the payment of all state, local and any other taxes for Orders hereunder (collectively, "Taxes") to the appropriate taxing authority. In no case will Agent be responsible for collection of Taxes not identified on the Tax Nexus Profile nor liable to any taxing authority for any shortfall in Taxes.
- b. In addition to the indemnification obligations contained herein, Seller shall indemnify, defend and hold Agent harmless from and against any and all penalties, fines, claims (including, without limitation, any and all penalties, fines and claims issued by any governmental authority), damages, losses, liabilities, costs and expenses incurred or otherwise suffered by Agent arising out of Seller's failure to timely and accurately pay any and all Taxes regardless of whether or not the correct amount of such Taxes was collected and forwarded by Agent to Seller pursuant to this Section 5.

6. **Disclosures.** For each Marketing Event, Agent will include on the Gilt Groupe Website appropriate disclosure language, as instructed by Seller and subject to each Party's review and approval (such approval not to be unreasonably withheld). The disclosure language will include, at a minimum: (a) Seller's responsible advertiser statement as required by 27 C.F.R. Part 4; (b) that any money, including Taxes and Shipping, collected by Agent is collected on behalf of the Seller; (c) a list of the states into which the Products may legally be shipped; (d) notice that the recipient of the Products must be twenty-one years of age or older and show proof of age at time of delivery; (e) that the Products may not be re-sold by Consumers; and (f) such other language as may be legally required and/or as the Parties may mutually agree.

7. **Expenses.** Each Party shall be solely responsible for any and all expenses incurred in the performance of its obligations under this Agreement.

8. **Exclusivity.** Seller agrees that for the Term of this Agreement, and for twelve (12) months following the Term, it will not enter into any similar agreement with a Direct Competitor or create its own flash sale site for the marketing of wine. “Direct Competitor” means a company similarly situated to Agent that is in the business of conducting online marketing via a flash sale model, including, but not limited to, Rue La La, One Kings Lane, HauteLook, Lot18, inVino and ideeli. In addition to the termination rights contained in Section 11, Agent shall have the right to terminate this Agreement immediately if Seller breaches this Section 8. Upon such termination, Agent shall have no obligation to feature a previously agreed upon Marketing Event on the Gilt Groupe Website.
9. **Recordkeeping.** Each Party will be responsible for maintenance of accounting and other records that are necessary for the Parties to comply with legal and regulatory requirements in connection with a Party’s performance hereunder. Such records will be maintained for at least three (3) years after the Term. In the event a Party requires the other Party’s records in order to comply with legal and regulatory requirements, or otherwise is entitled access, to the extent specified hereunder, to the other Party’s information or data relating to this Agreement, it may request same from the other Party via reasonable advance written notice thereof, and such other Party will not unreasonably delay or deny such request.
10. **Intellectual Property.**
 - a. Each Party will retain all right, title and interest in and to its trademarks, service marks, logos and trade names worldwide, subject to the limited license granted below.
 - b. Each Party hereby grants to the other a non-exclusive, non-sublicensable, limited, royalty free license to use its trademarks, service marks, logos or trade names solely for the purposes described herein, and only for the Term of this Agreement. All such use shall be in accordance with each Party's policies regarding advertising and trademark usage as reasonably established from time to time.
 - c. Upon the expiration or termination of this Agreement, each Party will immediately cease using the trademarks, service marks, logos and/or trade names of the other Party.
 - d. Seller agrees that Agent may use images, including video, static images and clips thereof, trademarks, service marks, trade names, trade dress and any other content that Seller may provide to Agent (collectively, the “Intellectual Property”) in connection with this Agreement; provided that Agent may not sell, transfer, assign, license, sub-license, sub-sub-license, modify, combine or otherwise alter the Intellectual Property without Seller’s prior written consent.
11. **Term and Termination.**
 - a. This Agreement will remain in effect from the date set forth above until the thirtieth (30th) day after a Party provides the other Parties with written notice of termination with or without cause. Notwithstanding the foregoing, in the event the notice of termination would have an effective termination date before or during a scheduled and agreed upon Marketing Event, with respect to that particular Marketing Event, the termination shall not take effect until the day the last resulting Order is fulfilled by Seller.
 - b. In the event of a material breach of this Agreement, a non-breaching Party shall have the right to terminate this Agreement provided it has notified the breaching Party and the other Party in writing in a timely manner of the breach and the breaching Party has failed to cure the breach, if such breach is curable, within a reasonable amount of time following receipt of notification, not to exceed thirty (30) days.
 - c. Seller agrees to review any Expressions of Interest provided by Agent pre-termination and evaluate them for conversion to Orders in accordance with the terms of this Agreement. Seller agrees to fulfill all such Orders. Shipper agrees to ship all Orders.
 - d. Upon termination: (i) each Party shall return all property and Confidential Information (as hereafter defined) of the other Party in its possession and shall immediately purge such property and Confidential Information of the other Party that may be stored in that Party’s systems or files.
 - e. If Agent does not conduct any Marketing Events within sixty (60) days of the effective date hereof, Seller shall have the right to terminate this Agreement upon written notice to Agent and Shipper.
12. **Confidentiality.**
 - a. For the purposes of this Agreement, “Confidential Information” means information about a Party's (or its or affiliated companies’) business or activities that is either designated as proprietary and confidential or information which, by the nature of the circumstances surrounding the disclosure, ought in good faith to be treated as confidential, which shall include the personally identifiable information of any Agent customers,

any secret or proprietary information relating directly to either Party's business and that of its affiliated companies, subsidiaries or suppliers, whether communicated in writing, orally, electronically or by other means, including, but not limited to, products, customer lists and other customer information, pricing policies, employment records and policies, operational methods, marketing plans and strategies, product development techniques or plans, business acquisition plans, new personnel acquisition plans, notes, analyses, forecasts, studies, methods of manufacture, technical processes, artwork, logos, trademarks, designs and design projects, inventions and research programs, trade "know-how," trade secrets, specific software, algorithms, computer processing systems, object and source codes, user manuals, systems documentation and other business affairs of each Party or such Party's affiliated companies, subsidiaries or suppliers.

- b. Confidential Information will not include information that (i) is in or enters the public domain without breach of this Agreement, (ii) the receiving Party lawfully receives from a third party which to the knowledge of the receiving Party was without restriction on disclosure and without breach of a nondisclosure obligation or (iii) the receiving Party knew prior to receiving such information from the disclosing Party or develops independently.
- c. Each Party agrees that it will (i) not use or disclose to any third party any Confidential Information disclosed to it by the other Party except as expressly permitted in this Agreement and (ii) take all reasonable measures to maintain the confidentiality of all Confidential Information of the other Party in its possession or control, which will in no event be less than the measures it uses to maintain the confidentiality of its own information of similar importance.
- d. Notwithstanding the foregoing, each Party may disclose Confidential Information (i) to its employees or subcontractors who require access to the Confidential Information for purposes of carrying out that Party's obligations hereunder, provided they agree to maintain confidentiality, (ii) to the extent required by a court of competent jurisdiction or other governmental authority or otherwise as required by law, (iii) on a "need-to-know" basis under an obligation of confidentiality to its legal counsel, accountants, banks and other financing sources and their advisors, or (iv) with the other Party's prior written consent.
- e. The terms and conditions of this Agreement will be deemed to be the Confidential Information of each Party and will not be disclosed without the written consent of the other Party.
- f. Consumer's personally identifiable information and contact information will be considered Confidential Information for the purposes of this Agreement and will only be used by Seller for fulfillment purposes, unless the Consumer specifically consents to be contacted by Seller for other purposes.

13. **Security of Agent Data.**

In addition to the obligations contained in Section 12, Seller shall take, at a minimum, the following steps to protect Agent's tangible Confidential Information, and any backup copies thereof ("Agent Data"):

- (a) Ensure that all Agent Data is encrypted-at-rest using AES;
- (b) Transmit Agent Data using only a secure transport channel (e.g. encrypted email, SFTP, HTTPS);
- (c) Notify Agent immediately if the security of Agent Data has been compromised; and
- (d) Dispose of Agent Data properly using the NIST 800-88 media sanitization standard promptly at the sooner to occur of: (i) the termination of the relationship between Agent and Seller; or (ii) Agent's written request (email sufficing).

14. **Representations and Warranties.**

- a. Seller represents and warrants to Agent and Shipper that: (i) the person entering into this Agreement on behalf of Seller has the authority and full power to do so, and all actions have been taken, and all approvals obtained, that are necessary to make this Agreement binding and enforceable as against Seller; (ii) Seller's performance of this Agreement is not in conflict with, and will not cause an event of default under, any agreement or instrument to which Seller is a party or by which Seller is bound; (iii) Seller has all Governmental Approvals to perform its obligations under this Agreement related to the marketing, advertising, sale and shipping of alcoholic beverages and will perform its obligations under this Agreement in compliance with all applicable laws, rules, and regulations, including, but not limited to those outlined in **Exhibit E**; and (iv) Seller has full authority to distribute and use the Intellectual Property and has full authority and full power to grant to Agent the right to use such Intellectual Property in the manner set forth in Section 10, above.
- b. Without limiting the generality of the foregoing, Seller expressly represents and warrants that it has obtained and shall maintain all Governmental Approvals (including, without limitation, licenses and

- other permits) necessary for the solicitation of Expressions of Interest and acceptance of Orders and for the sale and shipment of the Products into the Permitted Areas (as defined in **Exhibit E**) as contemplated herein, and for Agent and Shipper to perform their services with respect to the Products in connection with this Agreement. For the avoidance of doubt, Seller further expressly warrants and represents that the activities described, contemplated or required by this Agreement are fully legal in the Permitted Areas, that it will only allow wine to be shipped to consumers in those states where such shipments are legal and from which it has obtained the required Governmental Approvals and that no act, by any Party, so described, contemplated or required will violate any law, regulations, policy, procedure, advisory or similar requirement issued or administered by any governmental authority charged with the administration of the alcoholic beverage trade. Furthermore, Seller represents and warrants that it will comply in all material respects with the Wine Industry Code for Direct Shipping, attached as **Exhibit F**.
- c. Agent represents and warrants to Seller that (i) the person entering into this Agreement on behalf of Agent has the authority and full power to do so, and all corporate actions have been taken, and all approvals obtained, that are necessary to make this Agreement binding and enforceable as against Agent; (ii) Agent's performance of this Agreement is not in conflict with, and will not cause an event of default under, any agreement or instrument to which Agent is a party or by which Agent is bound; and (iii) Agent will perform its obligations under this Agreement in compliance with all applicable law.
 - d. Shipper represents and warrants to Seller that (i) the person entering into this Agreement on behalf of Shipper has the authority and full power to do so, and all corporate actions have been taken, and all approvals obtained, that are necessary to make this Agreement binding and enforceable as against Shipper; (ii) Shipper's performance of this Agreement is not in conflict with, and will not cause an event of default under, any agreement or instrument to which Shipper is a party or by which Shipper is bound; and (iii) Shipper will perform its obligations under this Agreement in compliance with all applicable law.
15. **Indemnity.** Each Party (the "Indemnifying Party") agrees to defend, fully indemnify and hold harmless the other Party and its subsidiary and affiliated companies, and its and their respective directors, officers, employees, contractors, stockholders, agents and representatives, from and against any and all claims, demands, suits, actions, causes of action and/or liability, of any kind whatsoever (a "Claim"), for damages, losses, costs and/or expenses (including legal fees and disbursements) resulting from: (i) the Indemnifying Party's actual or alleged negligence or willful misconduct (including, without limitation, misfeasance, malfeasance or nonfeasance) in connection with the Indemnifying Party's performance hereunder and/or operation of its business, (ii) the Indemnifying Party's actual or alleged infringement or misappropriation of any copyright, patent, trademark, trade secret, right of confidentiality or other intellectual property right, (iii) the Indemnifying Party's actual or alleged violation of any federal, state or local law(s) in connection with its performance hereunder (which, with regard to Seller as the Indemnifying Party, shall include, without limitation, the Indemnifying Party's actual or alleged violation of any law, regulations, policy, procedure, advisory or similar requirement issued or regulated by any governmental authority charged with the administration of the alcoholic beverage trade and/or either Party's failure to obtain or maintain the appropriate government licenses or other Governmental Approvals) and/or (iv) any actual or alleged breach by the Indemnifying Party and/or its agents and representatives of any of its obligations, representations, warranties and covenants under this Agreement.
16. **Miscellaneous.**
- a. **Independent Parties.** The relationship between Agent and Seller is that of independent contractors. Agent is an independent contractor providing marketing services to Seller. This Agreement shall not be construed in any way to deem Agent as an agent, representative or franchisee of Seller for any purpose whatsoever except as explicitly set forth in this Agreement.
 - b. **Legal Fees.** In any action, proceeding or suit to enforce any right or remedy under this Agreement or to interpret any provision of this Agreement the prevailing Party will be entitled to recover its reasonable, documented costs, including reasonable attorneys' fees and fees of other litigation-related professionals, such as expert witnesses and accountants. If such a action, proceeding or suit is settled, both Parties will pay their own costs and expenses, unless otherwise specified in a settlement agreement.

- c. **Further Assurances.** The Parties agree to do such further acts and things and to execute and deliver such additional agreements and instruments as may be reasonably necessary to give effect to the purposes of this Agreement and the Parties' agreements hereunder.
- d. **Successors; Assignments.** This Agreement will be binding on and inure to the benefit of the parties and their respective successors in interest and assigns.
- e. **Force Majeure.** If either Party is prevented from performing any of its obligations under this Agreement because of an event beyond its reasonable control, such as, but not limited to, a strike, act of God, fire, flood, war, insurrection, riot, plant breakdown, embargo, explosion, lack of material supplies, lack of common carrier facilities, shortage of Products or government order or decree, the affected Party shall be excused from performance for the duration of the event. Force majeure events continuing to prevent a Party's performance after sixty (60) days constitute grounds for termination by the non-affected Party, but do not give rise to a claim for damages.
- f. **Notices.** Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, or mailed by registered or certified mail, return receipt requested, postage prepaid, in each case to the addresses indicated below, or at such other address either Party may specify in writing. Such notice will be deemed to have been given as of the date it is delivered, mailed or sent by facsimile or overnight courier, whichever is earlier.

If to Agent: Gilt Groupe, Inc.
 2 Park Avenue, 4th Floor
 New York, NY 10016
 Fax: (646) 619-4554
 Attn: President Gilt Stores

With a copy to: Gilt Groupe, Inc.
 2 Park Avenue, 4th Floor
 New York, NY 10016
 Fax: (413) 725-3590
 Attn: General Counsel

If to Seller: [NAME]
 [ADDRESS 1]
 [ADDRESS 2]
 Attn: _____]

If to Shipper: Wineshipping.com
 21481 8th Street East, Suite 15C
 Sonoma, CA 95476
 Attn: _____

- f. **Governing Law; Venue.** This Agreement and the rights and obligations of the parties will be governed by and construed according to the laws of the state of New York, in accordance with the Federal Alcohol Administration Act and all regulations promulgated pursuant to such Act, without regard to the choice of law provisions that would require the application of the laws of another jurisdiction. Seller irrevocably submits to the exclusive jurisdiction of courts of the state of New York and of the United States located in the City of New York. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in the City of New York, before a single arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. Judgment on the award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.
- g. **Severability.** The provisions of this Agreement are severable, and in the event that any provision thereof is determined to be invalid or unenforceable, such invalidity or unenforceability will not in any way affect the validity or enforceability of the remaining provisions.

- h. **Amendment; Waiver.** No amendment, waiver, or discharge of any provision of this Agreement will be effective unless made in writing and signed by Agent and Seller. The failure or omission by either Party to insist upon or enforce any of the terms of this Agreement shall not be deemed a waiver of such terms.
- i. **Entire Agreement; Conflict.** This Agreement, including all documents incorporated herein by reference, constitutes the entire agreement between Agent and Seller with respect to the subject matter hereof and supersedes all prior agreements (whether such prior agreements were oral or written).
- j. **Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original, but both of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

<p>AGENT GILT GROUPE, INC.</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>	<p>SELLER [NAME].</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>
<p>SHIPPER WINESHIPPING.COM, LLC</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>	

Exhibit A

Marketing Fees
(includes shipping and insurance)

Marketing Event #1 (Date estimate—exact date to be determined)

Fee per event: Estimated \$x Payable as Described in Agreement

PRIOR TO THE START OF THE MARKETING EVENT AND ONCE THE ASSORTMENT IN THE MARKETING EVENT HAS BEEN FINALIZED, THE PARTIES AGREE TO MEET AND FINALIZE A FLAT MARKETING FEE PER DEAL.

IN ADDITION, THE PARTIES AGREE TO CONFER PERIODICALLY TO DISCUSS, AND POSSIBLY ADJUST, THE MARKETING FEES TO ENSURE THEY BEAR A REASONABLE RELATIONSHIP TO THE BENEFITS ACTUALLY REALIZED BY SELLER.

Exhibit B

Marketing Event Date(s) Estimate

Exhibit C

Product Schedule

Brand	SKU#	Vintage	Product Description	MSRP	MSRP for Gilt Groupe Marketing Channel	MSRP for Gilt Groupe Employees	Amount of Product for Gilt Groupe Marketing Channel

Tax Nexus

AL		IN		NE		SC	
AK		IA		NV		SD	
AZ		KS		NH		TN	
AR		KY		NJ		TX	
CA		LA		NM		UT	
CO		ME		NY		VT	
DE		MD		NC		VA	
DC		MA		ND		WA	
FL		MI		OH		WV	
GA		MN		OK		WI	
HI		MS		OR		WY	
ID		MO		PA			
IL		MT		RI			

Exhibit D

Shipping Guidelines

1. All Products must be received by Shipper no later than 72 hours in advance of the start of a Marketing Event. All boxes and cartons must be properly labeled.
2. Informational or marketing inserts, or any other item, are not permitted for inclusion with product without Agent's written pre-approval. Agent must pre-approve all Agent branded documents including, but not limited to, shipping labels, packing slips, inserts and shipping cartons.
3. The section of the shipping label addressing product origin must read as follows:

Gilt Groupe, Inc.
1-877-280-0545
[Seller Name]
[Seller Warehouse Address]

4. Seller and Shipper must meet a 100% fulfillment and on-time delivery rate for all accepted Orders
5. Shipping includes Carrier base transportation fee and the following applicable Carrier accessorial charges, if associated with the package: adult signature fee, residential delivery fee, rural delivery fee and fuel surcharge up to 4.5% for ground and 9% for air shipments. Carrier posted fuel service fees above these amounts may result in additional charges. Shipping is based on 3lb bottle weights, and additional charges may apply for heavier bottles. Standard pulp or Styrofoam packaging is included, but non-standard or customized packaging is not included.
6. All Orders received by Shipper by 6:00 PM Pacific Standard Time will be shipped the following business day. (Mon-Fri)
7. Shipments will go out Monday through Friday. However, no shipments will be made on the dates observed for New Years Day, President's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Thanksgiving Friday, Christmas Eve, Christmas Day, or on days that Shipper is closed for physical inventory.
8. Shipper will pack, complete bills of lading, conduct label and post-shipment tracking, engage in customer service, file Carrier claims as necessary, and manage return packages.
9. Each shipment includes an automatic insurance coverage of \$100. Additional insurance over the initial \$100 declared value can be provided at the request of the Seller for an additional charge.
10. Seller will obtain sufficient insurance coverage for the Products located at any of Shipper's warehouse locations against loss or damage by fire or other peril. Seller's policy of insurance shall name Shipper as an additional insured and shall provide that it may not be cancelled, terminated, or modified without thirty (30) days' advance notice to Shipper. Shipper is not responsible for such loss in the case the Seller does not provide such policy.
11. Additional fees may apply for post-shipment activities directed by Supplier, such as address correction fees, re-route fees, delivery intercept fees, Saturday delivery fees or call tags.
12. Shipper will facilitate order processing, shipment, and delivery of all Orders, including;
 - a. Inventory management of all SKU's;
 - b. Storage of sufficient Product to meet anticipated shipping requirements for Marketing Event;
 - c. Pick-up Product from locations designated to Shipper by Seller in Napa and/or Sonoma counties once per Marketing Event;
 - d. Process and ship Orders properly formatted and received electronically via data transfer from Seller or via Agent on behalf of Seller;
 - e. Use of commercially reasonable efforts to ensure that all Seller and Agent queries are responded to within one business day;
 - f. Pack Product, including packaging materials;
 - g. Delivery of Product to Carriers (UPS, FedEx, GSO);
 - h. Daily transmission to Seller of specified compliance software tracking number for shipped Product;
 - i. Tracking numbers are posted daily at the password protected portal at www.wineshippingllc.com;

- j. Processing claims, reimbursements, Carrier surcharges, additional insurance premiums and other non-freight costs concerning Carriers;
 - k. Inventory returned packages and notify Seller and Agent of the same and deliver or reship the returned packages as Seller or Agent on behalf of Seller directs in writing (email acceptable);
 - l. Process claims in the event of a damaged shipment due to Carrier mishandling;
 - m. Process Reroute, Address Correction, Delivery Intercept, Return-to-Sender and Call Tag requests;
 - n. Return Products remaining unsold thirty (30) days after the end of a Marketing Event to Seller, within Napa or Sonoma counties;
 - o. Process packages returned by Carriers as described in this Agreement
 - p. Reship packages returned by Carriers as described in this Agreement.
13. Within 48 hours of a decision by Seller to offer a return to a customer, Shipper will issue a calltag for the return and will email it to dropship@gilt.com. This label will be provided to the customer in order to process a return.
14. A shipment confirmation must be transmitted to Agent and Seller on the same day product leaves Shipper's warehouse. Timely and accurate shipment confirmations and customer receipt of shipment emails are extremely important to the fulfillment process and late fulfillment rates will be tracked. Shipment confirmations will include customer Order number, carrier and tracking/PRO number for the shipment. Only one shipping address will be designated per each customer Order. Receipt of shipment confirmations: (i) enables the customer's payment to be processed, (ii) allows Agent to provide shipping status updates to customers (triggers an "Your Order Has Been Shipped" email with tracking numbers); and (iii) creates the key record to match against the Seller's invoice for payment. Shipper will send delivery confirmations to Agent via email on the day it receives such delivery confirmation
15. Seller must inspect any returned product and notify Agent if they accept or dispute such returns via email to dropship@gilt.com within two (2) business days of receipt of the product. If Seller does not provide a status update on a return within the two-day inspection window, such return will be considered "accepted" and a Consumer Credit will be issued. Seller will accept returns of items which customers receive in the following conditions: damaged, incorrect or incomplete (missing pieces or, in the case of paired items, a missing item). If the item is damaged or lost in transit, Shipper will file a claim. Seller will pay shipping charges for authorized returns, as outlined in this Agreement. Returned product must be received by Shipper or Seller for inspection before a customer is eligible to receive a credit. These returns will be reported within twenty-four (24) hours. No restocking fees will be allowed. Agent may assist with coordinating shipping arrangements from the customer to Seller for all authorized returns.
16. The Federal Trade Commission (FTC) has strict rules governing timely deliveries of internet orders. Failure to comply with these rules may result in a fine that, if paid by Agent or Shipper, will be passed on to Seller. For more information about the FTC's delivery rules, please visit www.ftc.gov and review, "A Business Guide to the Federal Trade Commission's Mail or Telephone Order Merchandise Rule."

Exhibit E

Permitted Marketing Areas

STATE	Yes	No	STATE	Yes	No
AL			NE		
AK			NV		
AZ			NH		
AR			NJ		
CA			NM		
CO			NY		
DE			NC		
DC			ND		
FL			OH		
GA			OK		
HI			OR		
ID			PA		
IL			RI		
IN			SC		
IA			SD		
KS			TN		
KY			TX		
LA			UT		
ME			VT		
MD			VA		
MA			WA		
MI			WV		
MN			WI		
MS			WY		
MO					
MT					

Exhibit F

Wine Industry Code for Direct Shipping

Wine Industry Code for Direct Shipping

1. Out-of-state licensees may direct ship wine sold to adult consumers, for personal use, only in states where it is legal to do so.
2. Out-of-state licensees must not ship to an address in an area identified by an appropriate state department of alcohol beverage control as a "dry" or local option area for such shipments.
3. Cartons used to direct ship wine to adult consumers must be conspicuously labeled with a minimum notification "signature of person age 21 or older required for delivery" and must include a return address and other language required by specific state laws. Licensees may opt to further identify the contents, including words such as "wine enclosed" or "contains alcohol." Free the Grapes! recommends that wineries support shippers, fulfillment companies and freight consolidators who utilize this labeling procedure.
4. Licensees must verify the purchaser's age at the point of online purchase before completing any transaction. Some state laws now require age verification using a state approved vendor, or by receiving a copy of the purchaser's drivers license, prior to the completion of the transaction. Additionally, licensees must notify purchasers that the recipient will be asked to show identification upon delivery.
5. Wineries must comply with all anti-spam legislation. For example, some states have enacted laws designed to prevent wine-related emails that might be unintentionally sent to underage consumer who have registered on a "do not email" database, and requires wineries to have their email lists scrubbed against a database of "do not email" lists.
6. Free the Grapes! encourages licensees to contract only with shippers who check the identification of recipients at the time of delivery to ensure that the recipient is 21 years of age or older.
7. All out-of-state licensees must report to the appropriate state authority the total of wine shipped into the state the preceding calendar year, as required by state law. Additionally, as required by state law, out-of-state shipper licensees must pay the appropriate state agency sales and excise taxes due on sales to residents of that state in the preceding calendar year.
8. Out-of-state licensees should offer consumers resources for answering their questions about direct shipping, including Free the Grapes! (www.freethegrapes.org), Wine Institute (www.wineinstitute.org), Family Winemakers of California (www.familywinemakers.org), WineAmerica (www.wineamerica.org), and Specialty Wine Retailers Association (www.specialtywineretailers.org), among other resources.
9. Free the Grapes! encourages wineries to conspicuously post this code and train employees, to increase the knowledge of and appreciation for, the industry's responsibilities in direct shipping.
10. Wineries, their agents, retailers, fulfillment companies, freight consolidators and other shippers who do not abide by this voluntary code of business practices are not in compliance with wine industry sanctioned standards. Non-compliance undermines the wine industry's desire to: a) fulfill consumer demand, b) comply with government regulations and controls, and c) support a dynamic distribution system which embraces both the efficiencies of the traditional three tier system, and the evolution of a dynamic, direct-to-consumer marketplace.

Code Updates:

December 2006: added provisions on anti-spam laws, age verification.