

## Member Services Agreement

This agreement is between (a) Invaluable, LLC, a Delaware limited liability company (“**Invaluable**”), and (b) the Customer (as defined below) and consists of (i) this Member Services Agreement and (ii) the Order (as defined below) (collectively, this “**Agreement**”). Each of Invaluable and Customer may be referred to herein as a “**Party**”, or together as the “**Parties**”.

BY EXECUTING THE ORDER, YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT YOU HAVE READ, AND ARE BOUND BY, THIS AGREEMENT, AND YOU HEREBY AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE AN INDIVIDUAL ENTERING INTO THIS AGREEMENT ON BEHALF OF AN ENTITY, YOU HEREBY REPRESENT AND WARRANT TO INVALUABLE THAT YOU ARE AUTHORIZED TO ENTER INTO THIS AGREEMENT ON BEHALF OF SUCH ENTITY AND BIND SUCH ENTITY TO THIS AGREEMENT. IF YOU DO NOT HAVE SUCH AUTHORITY OR OTHERWISE DO NOT ACCEPT ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, DO NOT EXECUTE THE ORDER OR OTHERWISE USE THE INVALUABLE TECHNOLOGY OR SERVICES.

WHEREAS, Customer wishes to sell certain items (“**Property**”) online, either via auctions or fixed price sales; and

WHEREAS, Invaluable provides certain technology, services and support that: (a) enable Users (as defined below) to bid in Auctions (as defined below) hosted on the Sites (as defined below) or purchase items through Fixed Price Sales (as defined below) on the Sites; (b) enable Invaluable customers to manage online participation in Auctions and Fixed Price Sales from Customer Sites (as defined below) using the Connect Technology (as defined below); and (c) include archive database subscription services, Audio and Video Services (as defined below), the Payment Service (as defined below) and access to Invaluable’s client email management messaging system.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Customer and Invaluable hereby agree as follows:

### 1. DEFINITIONS.

- 1.1. “**Affiliate**” means a company, subsidiary, or other entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with either Party. For purposes of this definition, the term “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”) as used with respect to an entity means direct or indirect ownership of voting securities entitled to cast more than fifty percent (50%) of the votes in the election of directors or the power to direct the management and policies of such entity.
- 1.2. “**Auction**” means any Live Auction or a Timed Auction.
- 1.3. “**Connect Technology**” means Invaluable’s proprietary technology, which enables Invaluable customers to manage online participation in Auctions and/or Fixed Price Sales from Customer Sites.
- 1.4. “**Consignor**” means the person, entity or client that consigns Property to Customer.
- 1.5. “**Customer**” means the customer identified in the Order.
- 1.6. “**Customer Site**” means any web site that is enabled by the Invaluable Technology and operated or hosted by or on behalf of Customer.
- 1.7. “**Effective Date**” means the effective date identified in the Order.
- 1.8. “**Fixed Price Sale**” means an instantaneous sale of property at a fixed price using the Invaluable Technology.
- 1.9. “**Information**” means all information or data in any form about a Sale and/or Property which may include, but is not limited to, text, images, written descriptions and any other information provided by Customer to Invaluable via the Invaluable Technology or Sites, including, without limitation, any information provided by Customer to Invaluable via any application programming interface or any other technology that Invaluable (directly or indirectly) make available to Customer.
- 1.10. “**Invaluable Sites**” means the web sites that are owned by Invaluable and identified in the Order, and on which Customer may post Property for Auction or Fixed Price Sale.

- 1.11. “**Invaluable Technology**” means Invaluable’s proprietary technology, which is made available to Customer, in object code format only, which may include, without limitation, the Connect Technology and application programming interfaces made available directly by Invaluable or through Invaluable’s third-party agents or partners.
  - 1.12. “**Live Auction**” means a live auction using the Invaluable Technology.
  - 1.13. “**Order**” means an order form that references, and is governed by, this Member Services Agreement and is signed by an authorized representative of each Party.
  - 1.14. “**Privacy Policy**” means the privacy policies governing the Invaluable Sites and Third Party Sites, as may be amended from time to time by Invaluable or the applicable third party, in its sole discretion.
  - 1.15. “**Sale**” means any sale of Property pursuant to a Live Auction, Timed Auction or Fixed Price Sale.
  - 1.16. “**Services**” means the services provided by Invaluable to Customer hereunder, including any services set forth on the Order.
  - 1.17. “**Site Agreements**” means the terms and conditions that govern Users’ use of the Invaluable Sites and Third Party Sites, including, without limitation, the Privacy Policy and Terms of Use.
  - 1.18. “**Sites**” means the Customer Site, Invaluable Sites and Third Party Sites.
  - 1.19. “**Terms of Use**” means the terms of use governing the Invaluable Sites and Third Party Sites, as may be amended from time to time by Invaluable or the applicable third party, in its sole discretion.
  - 1.20. “**Third Party Sites**” means the web sites that are owned by third parties and identified in the Order, and on which Customer may post Property for Auction or Fixed Price Sale.
  - 1.21. “**Timed Auction**” means a timed auction using the Invaluable Technology.
  - 1.22. “**User**” means any person who accesses any page on any Site.
2. ACCESS TO THE INVALUABLE TECHNOLOGY.
- 2.1. Access to the Invaluable Technology. Subject to the terms and conditions of this Agreement, Invaluable will make available to Customer the Invaluable Technology that is referenced in the Order during the Term (as defined below). Notwithstanding the foregoing, Invaluable may amend the Invaluable Technology, Invaluable Site(s), Third Party Site(s) and any applicable Site Agreements, in its sole discretion, from time to time, upon thirty (30) days’ prior notice to Customer (which may be sent by email). Invaluable will provide Customer with usernames and passwords pursuant to which Customer may access the Invaluable Technology and Invaluable Sites. Customer will be responsible for any actions taken by parties with access to usernames and passwords, and Customer agrees not to disclose usernames and passwords to any third party. Customer will inform Invaluable immediately if it discovers that any such username and/or password has been disclosed or made available to any third party.
  - 2.2. Connect Technology. To the extent Customer is granted the right to use the Connect Technology under the Order, Customer agrees that the pages enabled by the Connect Technology on the Customer Sites shall include the language “Powered by Invaluable”. Customer’s use of the Invaluable name shall be in accordance with Section 9 below.
  - 2.3. License Restrictions. Customer will not, directly or indirectly: (a) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of any of the Invaluable Technology; (b) modify, translate or create derivative works based on any of the Invaluable Technology; (c) copy (except for archival purposes), rent, lease, distribute, pledge, assign or otherwise transfer or allow any lien, security interest or other encumbrance on any of the Invaluable Technology; (d) use any of the Invaluable Technology for timesharing or service bureau purposes or (except as expressly permitted by the Invaluable Technology) otherwise for the benefit of a third party other than Users; or (e) hack, manipulate, interfere with or disrupt the integrity or performance of or otherwise attempt to gain unauthorized access to any of the Invaluable Technology or their related systems, hardware or networks or any content or technology incorporated in any of the foregoing. Invaluable shall own and, except for the limited rights expressly granted herein, retain all right, title and interest in and to the Invaluable Technology and all improvements, enhancements or modifications thereto.
3. CUSTOMER RESPONSIBILITIES.

- 3.1. Compliance. While conducting Sales, Customer represents that it will comply at all times, and will cause its seller, if applicable, to comply at all times, with (a) the terms and conditions of this Agreement, (b) any applicable Site Agreements and (c) all applicable laws, regulations, rules, ordinances and orders (including any applicable licensing requirements).
- 3.2. Information. Customer agrees that the Information it posts on the Sites or any additional Information that Customer (or its auctioneer or other representative) provides to Invaluable or Users with respect to Property will be accurate, complete and not misleading, and will use best efforts to promptly update all Information including correcting its errors or omissions, or the errors or omissions of any Consignor, upon becoming aware of such errors or omissions. Customer agrees to notify Invaluable of any such issues regarding the Information within twenty-four (24) hours of becoming aware of such issues, and to actively maintain online catalogs to ensure that Information is as current and accurate as possible at all times. Customer hereby grants to Invaluable a perpetual, irrevocable, nonexclusive (subject to any restrictions set forth in the Order), worldwide, royalty-free license to use, reproduce, distribute, create derivative works of, publicly perform, publicly display and digitally perform the Information in connection with the Sites, including the promotion of the Invaluable Sites. Customer will provide Information (including photos) to Invaluable in Invaluable's recommended digital formats and on a mutually acceptable uploading and refresh schedule. Based on the Information provided by Customer, Invaluable may categorize, "tag" or otherwise describe Property. INVALUABLE DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES REGARDING THE ACCURACY OR RELIABILITY OF SUCH CATEGORIZATIONS, "TAGS" OR DESCRIPTIONS OF ANY NATURE.
- 3.3. Restricted Property. Customer will not offer or sell any Property on the Sites that is prohibited by this Agreement or any applicable Site Agreements, or would otherwise violate any applicable laws or regulations or subject Invaluable or its suppliers to potential liability. Invaluable may, in its sole discretion, remove any Property or any Information, or may request that Customer remove any Property or any Information on Customer Sites, that Invaluable determines has been posted on the Sites in violation of this Agreement, any applicable Site Agreements or applicable laws or regulations, or that may expose Invaluable to potential liability or threat of litigation, and may immediately cancel the listing for such Property without liability for such cancellation. Customer will promptly comply with any such requests.
- 3.4. Auctions. If Customer is holding any Auctions under the Order, Customer agrees to provide, at its own cost a computer terminal and a back-up computer terminal, each with a high speed Internet connection and a representative to monitor and communicate bids. All auction room set-up and testing will be performed by Customer at least three (3) business days in advance of any Auction.
- 3.5. Audio and Video Services. If audio and video services are included in the Order, at Customer's option, Invaluable will provide streaming audio and video services and support for Live Auctions (the "**Audio and Video Services**"). If Customer so opts to receive the Audio and Video Services, Customer is solely responsible for purchasing and setting up one of auction room cameras recommended by Invaluable.
- 3.6. Insurance. Customer agrees to maintain insurance in amounts and types necessary and reasonable in the industry. Such insurance shall cover all items listed on the Sites and be in an amount necessary to cover any possible rescission of a sale.
4. CUSTOMER CONDITIONS OF SALE.
  - 4.1. Conditions of Sale. Customer agrees that the Information provided by Customer will contain, at a minimum, a link to the contractual terms under which Customer will sell the Property to the successful bidder, as well as any additional terms required to consummate the sale (for example, information with respect to any applicable shipping fees, insurance, taxes, etc.) (the "**Customer Conditions of Sale**"). The Customer Conditions of Sale will contain accurate information and be binding upon Customer and the ultimate purchaser of the Property (the "**Buyer**") and must include at a minimum, a warranty of clear title and right to convey clear title, a warranty that the Property conforms to the Information, and rescission rights in accordance with this Agreement. Customer agrees to be bound by the Customer Conditions of Sale. Customer has the final determination with respect to the bidding on the Property, the sale of the Property and the resolution of disputes between bidders. Nothing in the Customer Conditions of Sale shall conflict with or disclaim the terms of this Agreement. Customer shall not modify or disclaim the Customer Conditions of Sale or any warranty provided as part of the Information, in any invoice, statement or other document or oral statement and any such modifications and disclaimers shall be null and void.
  - 4.2. Treatment of Users. Customer agrees to treat Users fairly and in accordance with this Agreement. All Customer Conditions of Sale must be the same for Users (other than the fees charged by Invaluable to Users). Customer will use commercially reasonable efforts to: (a) promptly respond to User inquiries; and (b) properly operate Invaluable

Technology in accordance with this Agreement and the Site Agreements in order to receive and process bids before and during Auctions and process purchases in connection with Fixed Price Sales.

- 4.3. Buyer's Premium. To the extent Customer is holding any Auctions under the Order, Customer may in its sole discretion charge Buyers a premium, as determined by Customer at the time Property is listed on the applicable Site (the "**Buyer's Premium**") and may raise the Buyer's Premium to offset Invaluable's commission received hereunder.

Notwithstanding the foregoing, if Customer selects the "Pricing Parity Tired Fee Structure" under the Order, then Customer agrees that the Buyer's Premium will be identical for all buyers, regardless of whether a buyer participates in an auction for the Property in person, online, by telephone or by any other Customer bidding method. Customer agrees that Invaluable will suffer a material adverse impact to its business if Customer breaches this provision, and the resulting damages may not be susceptible to precise determination. In the event Customer breaches this provision, Customer will pay Invaluable one thousand dollars (\$1,000) for each such breach (the "Liquidated Damages"), in addition to all other fees due Invaluable under this Agreement. Such Liquidated Damages are a reasonable approximation of such damages and will be deemed to be liquidated damages and not a penalty.

- 4.4. Rescission Right. Notwithstanding any other remedy provided in this Agreement, Customer agrees that the Buyer has the right to rescind a sale of Property (and Customer will return all proceeds) if the Property is forged or otherwise counterfeit or fraudulently misrepresented, so long as Buyer provides notice (email to be sufficient) of such rescission within forty-eight (48) hours of receipt of the Property and promptly returns the Property to Customer in the same condition it was sold. Nothing in this Section may be disclaimed or otherwise altered in the Customer Conditions of Sale or otherwise. All claims for rescission should be resolved directly between Customer and Buyer.

- 4.5. Payment by Buyers.

(a) Payment Services. As between Customer and Invaluable, Customer is solely responsible for collecting and otherwise managing payments with its Buyers and establishing the payment terms and conditions related thereto. Customer may elect to allow its Buyers to submit payment to Customer using integrated online payment services powered by third parties and made available by Invaluable on the Sites (collectively, the "**Payment Services**"). Customer expressly acknowledges and agrees that, if it elects to use any Payment Services: (i) neither the applicable Payment Service provider nor Invaluable is a party to any contract between Customer and any Buyer; and (ii) neither the applicable Payment Service provider nor Invaluable will have any liability for nonpayment by Buyers. Customer may not use any Payment Services to engage in activities prohibited by the WePay Terms or Stripe Terms (as applicable, each as defined below) or otherwise to violate applicable law. Customer represents and warrants that it will fully comply with the WePay Terms, Stripe Terms and/or any other Payment Services terms and conditions that apply to Customer's use of any Payment Services made available on the Sites. Customer will indemnify, hold harmless and defend Invaluable and any Payment Services providers and their respective affiliates and each of their respective directors, officers, employees and agents from and against any and all losses, expenses, liabilities and other costs (including reasonable attorneys' fees and costs) arising from any third party claim, suit, action, demand, proceeding or investigation, arising from or relating to Customer's use of the Payment Services.

(b) Stripe Services. If Customer wishes to use and offer to its Buyers the Payment Services powered by Stripe, Inc. ("**Stripe**"), then Customer is subject to the following terms and conditions.

(i) Customer must set up an account with Stripe by (A) completing Stripe's account application process for use of its Payment Services, (B) agreeing to the Connected Account Agreement located at [https://stripe.com/\[Country Code\]/connect/account-terms](https://stripe.com/[Country Code]/connect/account-terms) (where "Country Code" is the two letter code for the jurisdiction in which Customer is located), as may be updated by Stripe from time to time (the "**Stripe Terms**") and (C) obtaining approval from Stripe in accordance with Stripe's then current standard onboarding policies.

(ii) Invaluable may engage with Stripe on Customer's Stripe account to the extent that Invaluable is doing so as an agent on behalf of the Customer for the limited purpose of processing or acceptance of payments using the Payment Services offered by Stripe.

(iii) Customer's use of the Payment Services offered by Stripe is subject to the transaction fees set forth therein.

(c) WePay Services. If Customer wishes to use and offer to its Buyers the Payment Services powered by WePay, Inc. ("**WePay**"), then Customer is subject to the following terms and conditions.

- (i) Customer must set up an account with WePay and agree to WePay's Terms of Service and Privacy Policy located at [www.wepay.com/legal/](http://www.wepay.com/legal/), as may be updated by WePay from time to time (collectively, the "**WePay Terms**").
- (ii) As part of the Payment Services, WePay will provide payment authorization, processing, clearing, settlement and related dispute resolution services in accordance with the WePay Terms. In the event Customer receives a chargeback, WePay will dispute the chargeback or collect the funds directly from Customer, as appropriate and in accordance with the WePay Terms. Notwithstanding the foregoing, Customer will ensure that the Customer Conditions of Sale contain a reasonable return policy in order to reduce the risk of chargebacks.
- (iii) Either Invaluable or WePay may decline to process any transaction that is too large in dollar amount, too long in duration or exceed other risk parameters, as determined by Invaluable or WePay. In addition, WePay may decline to provide the Payment Services to Customer or any Buyer, or may impose a reserve requirement, or may limit transaction size, or may decline to process a transaction, based on WePay's then-current compliance and risk management programs or any other bona fide reason.
- (iv) Customer agrees that WePay will deduct the following amounts from each payment submitted by a Buyer to Customer using the Payment Services:
  - (A) 2.99% of each such payment plus \$0.30 per transaction for VISA or MasterCard transactions, or 3.55% plus \$0.30 per transaction for AMEX transactions; and
  - (B) 1% of each such payment plus \$0.30 per transaction for ACH/EFT transactions.

## 5. INVALUABLE RESPONSIBILITIES AND RIGHTS.

### 5.1. Invaluable Responsibilities. Invaluable will:

- (a) provide Customer with access to the Invaluable Technology as described in Section 2.2 above;
- (b) perform the Services in a professional and workmanlike manner; and
- (c) provide a reasonable amount of training and technical support to Customer with respect to the administration of Sales on the Sites.

5.2. Right to Suspend. Invaluable may temporarily suspend Customer's access to any portion of the Invaluable Technology if Invaluable reasonably determines that: (a) there is a threat or attack on the Invaluable Technology or other event that may create a risk to the Invaluable Technology, Invaluable or any User, (b) Customer's use of the Invaluable Technology or any Information disrupts or poses a security risk to the Invaluable Technology, Invaluable or any User, or (c) Customer is using the Invaluable Technology for fraudulent or illegal activities, or otherwise acting in bad faith (collectively, "**Service Suspensions**"). Invaluable will provide written notice of any Service Suspension to Customer and provide updates regarding resumption of Customer's access to the Invaluable Technology following any Service Suspension.

## 6. REPRESENTATIONS, WARRANTIES AND COVENANTS.

- 6.1. Power and Authority. Each of Invaluable and Customer represents and warrants that: (a) such party has the right, power and authority to enter into this Agreement and to perform all of its obligations hereunder; (b) entering into and performing this Agreement will not conflict with or constitute a breach of any other agreement, arrangement or obligation to which such party is now, or later becomes, a party and (c) this Agreement constitutes a legal, valid and binding obligation when signed by both parties.
- 6.2. Third Parties. Customer represents and warrants that it has all necessary rights and powers to act on behalf of, and to contractually bind, any third party on whose behalf Customer submits Property or Information. Customer guarantees that the performance of any third party, which Customer uses to supply any Property, Information, or fulfill any aspect of a related Sale, will comply with the terms of this Agreement. Customer represents and warrants that Invaluable will not be a party to any consignment agreements between Customer and Consignors, and that Customer's agreements with Consignors, the Customer Conditions of Sale and any other third party agreements pertaining to the sale of the Property shall be in compliance with any applicable laws and the terms and conditions of this Agreement.

6.3. Representations and Warranties Regarding Property. Customer represents and warrants that: (a) to its knowledge, the Property is authentic and is not counterfeit; (b) it has the right, power and authority to place the Property for sale and such Property until sold will remain free and clear of all liens, encumbrances and claims of third parties of every kind or nature, (c) there are no restrictions on Invaluable's right to use and reproduce the Information, including, without limitation, photographs of the Property, (d) if applicable, the Property has been lawfully imported into the jurisdiction in which it is currently located, and has been lawfully and permanently exported as required by the laws of any country in which it was located previously, and that required declarations upon the export and import of the Property have been or will be properly made and any duties and taxes on the export and import of the Property have been or will be paid prior to the transfer of the Property to the Buyer; (e) the Property is, and, until sold, shall remain free and clear of all liens, encumbrances or claims of third parties of every kind or nature whatsoever; and (f) good title to such Property will pass to the Buyer upon sale.

6.4. Additional Covenants. Customer covenants that it and its auctioneers, if applicable, will:

- (a) Refrain from manipulating or attempting to manipulate the sale price of any Property by any means, including but not limited to bidding on, or instructing others to bid on, any Property offered by Customer in an Auction;
- (b) Comply with all applicable laws, regulations, rules, ordinances and orders, including, without limitation, laws, regulations, rules ordinances and orders regarding accepting bids over, or conducting Sales on, the Internet;
- (c) Refrain from withdrawing any Property from the Sites unless such withdrawal is required to avoid breaching the representations or warranties set forth in this Agreement; and
- (d) Comply with the Site Agreements, which are hereby incorporated by reference.

7. **TERM.** The initial term of this Agreement begins on the Effective Date and, unless earlier terminated in accordance with this Agreement, continues for the initial term set forth in the Order (the "**Initial Term**"). Except as otherwise specified in the Order, this Agreement will automatically renew for additional periods of one (1) year (each, a Renewal Term, and together with the Initial Term, the "**Term**") unless either Party gives the other Party notice of non-renewal at least thirty (30) days before the end of the then-current term. Either Party may terminate this Agreement upon delivery of written notice if, (a) either Party materially breaches this Agreement and fails to remedy such breach within thirty (30) days after receiving written notice of such breach from the other Party (unless the breach is incurable, in which case, either Party may terminate this Agreement immediately upon written notice to the other Party), or (b) either Party makes an assignment for the benefit of creditors or is the subject of any bankruptcy or reorganization proceeding (which, if involuntary, is not dismissed within forty-five (45) days of its institution). If this Agreement expires or is terminated for any reason, all rights, licenses and obligations of the Parties shall terminate except that the following Sections will survive: 1, 2.4, 7, 8 (to the extent any payable fees remain unpaid), and 10 through 13.

## 8. PAYMENT.

8.1. Fees. Customer will pay Invaluable the fees set forth in the Order, which may include (a) a catalog-listing fee (multi-day Auctions are charged a minimum of one (1) Auction session listing fee per day) (the "**Listing Fee**") and (b) a success transaction commission fee payable per each Sale by Customer to a Buyer (the "**Commission Fee**"). Payment obligations are non-cancelable and non-refundable; provided, that, Invaluable will issue a credit to Customer for the amount of any commission fee paid with respect to a Sale by Customer to a Buyer that is subsequently rescinded pursuant to Section 4.4.

8.2. Payment Terms. Unless otherwise set forth in the Order, Customer will pay Invaluable the fees (excluding subscription fees, if applicable) within thirty (30) days of receipt of invoice. Unless otherwise set forth in the Order, Customer will pay Invaluable any applicable subscription fees in advance and via credit card. By providing any credit card information, Customer authorizes Invaluable to automatically charge such credit card for the full amount due on a recurring basis (if applicable) until Customer notifies Invaluable in writing with an alternative, authorized payment method. Customer will provide true, complete and accurate information with respect to any applicable method of payment and agrees to promptly contact Invaluable if any such information needs to be updated. Customer will ensure that Customer has sufficient funds or credit (as applicable) associated with any selected method of payment. Unpaid amounts are subject to a finance charge of one and one-half percent (1.5%) per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all reasonable expenses of collection. Invaluable reserves the right to increase the fees by giving Customer at least thirty (30) days' prior notice (which may be sent by email).

8.3. Taxes. Customer will be liable for collecting any sales, use, value added tax (VAT), ad valorem, import, excise or other tax which may be imposed by the taxing authorities at Customer's location for the sale of Property. Customer agrees to be fully responsible for, and indemnify and hold Invaluable harmless from any such taxes and duties.

9. **TRADEMARKS**. Subject to the terms and conditions of this Agreement, Invaluable hereby grants to Customer a non-exclusive, nonsublicenseable, nontransferable (subject to Section 13) license, during the Term, to use Invaluable's name and logo (the "**Invaluable Marks**"), solely in connection with including a link from the Customer Sites to Customer's catalog(s) on the Invaluable Sites and in connection with use of the Connect Technology, as set forth in Section 2.3 (if applicable). Subject to the terms and conditions of this Agreement, Customer hereby grants to Invaluable a non-exclusive, nontransferable (subject to Section 13) license, during the Term, to use Customer's name, trademarks and logos (the "**Customer Marks**" and, together with the Invaluable Marks, the "**Marks**") on the Invaluable Sites, and in links to and advertisements and promotions for the Invaluable Sites. Title to and ownership of the owner's Marks will remain with the owner. The licensee will use the Marks exactly in the form provided and will not take any action inconsistent with the owner's ownership of the Marks, and all goodwill accruing from use of such Marks will automatically vest in the owner. The licensee will not form any combination marks with the other Party's Marks, and agrees to comply with any usage guidelines or quality control requirements with respect to the other Party's Marks, as may be provided by such Party from time to time. Any and all use of a party's Marks will inure to the sole and exclusive benefit of the owner of such Mark.

10. **USER DATA**. The Parties acknowledge that Customer may receive from Invaluable (via the Invaluable Technology, Sites or otherwise) personally identifiable information regarding Users ("**User Data**"). Customer agrees to: (a) only use User Data in accordance with the applicable Privacy Policy; (b) keep User Data confidential and not use any User Data in a manner which violates any applicable laws, or any legal right of the User regarding the use and/or disclosure of the User Data; (c) only use User Data to contact or communicate with such User to fulfill transactions conducted via the Sites; (d) not sell, rent, lease or otherwise disclose User Data, including lists of bidders and/or Buyers, to any other person or entity (including Affiliates); (e) not send unsolicited communications to any bidder or other User; (f) maintain adequate commercially available facility procedures, data security procedures and other safeguards against the disclosure, destruction, loss or alteration of User Data; and (g) immediately notify Invaluable in writing of any actual or attempted unauthorized access to or use of any User Data or any facilities associated therewith and provide information regarding the extent of any such intrusion and how any User Data was affected. In addition, Customer will not attempt to disintermediate Users. If Invaluable becomes aware that Customer is attempting to disintermediate Users, Invaluable may terminate this Agreement in effect upon at least fifteen (15) days' prior written notice. Customer shall cooperate fully with Invaluable in investigating and responding to any security breach of User Data. Customer will not solicit or facilitate the solicitation by any third party of any User for any activity outside of the scope of consummating the transactions on the Sites as set forth in this Agreement. As between the Parties, Invaluable owns all right, title and interest in and to the User Data.

11. **CONFIDENTIAL INFORMATION**. "**Confidential Information**" means any confidential or proprietary information of a Party, and any other material disclosed by a Party to the other Party in a writing marked "confidential" or, if disclosed orally, identified as confidential at the time of disclosure and subsequently reduced to a writing marked "confidential" and delivered to the receiving Party within thirty (30) days of such disclosure. The Invaluable Technology and the terms of this Agreement will be considered the Confidential Information of Invaluable. The receiving Party will hold the disclosing Party's Confidential Information in confidence and will not disclose such Confidential Information to third parties or use such Confidential Information for any purpose other than as required to perform the receiving Party's obligations or exercise its rights under this Agreement. The receiving Party will use reasonable measures to protect the secrecy and confidentiality of the other Party's Confidential Information. Such restrictions will not apply to Confidential Information which (a) is already known by the receiving Party prior to its disclosure by the disclosing Party, (b) becomes, through no act or fault of the receiving Party, publicly known, (c) is separately received from a third party without such third party being restricted from such disclosure or use, or (d) is independently developed by the receiving Party without reference to the Confidential Information. Notwithstanding the foregoing restrictions, the receiving Party may disclose information: (i) to the extent required by an order of any court or other governmental authority, but only after the receiving Party has notified the disclosing Party and given the disclosing Party a reasonable opportunity to obtain protection for such information in connection with such disclosure; and (ii) to its employees and consultants solely to the extent necessary to perform its obligations under this Agreement; provided, that such employees and consultants are bound by written agreements containing nondisclosure and nonuse restrictions with respect to the disclosing Party's Confidential Information at least as restrictive as set forth herein.

12. **DISCLAIMERS; LIMITATION OF LIABILITY; INDEMNIFICATION**.

12.1. No Warranty. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE INVALUABLE TECHNOLOGY, THE INVALUABLE SITES, THE THIRD PARTY SITES AND THE SERVICES ARE PROVIDED "AS IS," WITHOUT ANY WARRANTIES OF ANY KIND, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND THAT INVALUABLE DOES NOT REPRESENT OR WARRANT THAT THE INVALUABLE TECHNOLOGY, THE INVALUABLE SITES, THE THIRD PARTY SITES OR THE SERVICES WILL MEET CUSTOMER'S

REQUIREMENTS OR THAT THE OPERATION OF THE INVALUABLE TECHNOLOGY, THE INVALUABLE SITES, THE THIRD PARTY SITES OR THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. CUSTOMER ACKNOWLEDGES AND AGREES THAT INVALUABLE HAS NO CONTROL OVER THE IDENTITY OR QUALITY OF USERS OR THE ABILITY OF USERS TO BUY PROPERTY. INVALUABLE IS NOT A CERTIFIED AUCTION HOUSE AND IS NOT RESPONSIBLE FOR CONDUCTING ANY AUCTIONS OR FIXED PRICE SALES HEREUNDER. INVALUABLE IS SOLELY A PASSIVE CONDUIT TO FACILITATE COMMUNICATION BETWEEN CUSTOMER AND BUYERS.

- 12.2. Limitation of Liability. THE PARTIES AGREE THAT, NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, EXCEPT FOR LIABILITY ARISING FROM (A) CUSTOMER'S BREACH OF SECTION 2.2, 2.3 OR 2.4 (INVALUABLE TECHNOLOGY) OR (B) EITHER PARTY'S BREACH OF SECTION 11 (CONFIDENTIAL INFORMATION), IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, RELIANCE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, LOST OR DAMAGED DATA, LOST PROFITS OR LOST REVENUE, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EVEN IF A PARTY HAS BEEN NOTIFIED OF THE POSSIBILITY THEREOF. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, EXCEPT FOR LIABILITY ARISING FROM (A) CUSTOMER'S BREACH OF SECTION 2.2, 2.3 OR 2.4 (INVALUABLE TECHNOLOGY), (B) EITHER PARTY'S BREACH OF SECTION 11 (CONFIDENTIAL INFORMATION), OR (C) CUSTOMER'S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 4.5 OR 12.3, UNDER NO CIRCUMSTANCES WILL EITHER PARTY'S LIABILITY FOR ALL CLAIMS ARISING UNDER OR RELATING TO THIS AGREEMENT (INCLUDING BUT NOT LIMITED TO WARRANTY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, OR OTHERWISE, EXCEED THE AGGREGATE FEES PAID OR PROPERLY PAYABLE BY CUSTOMER TO INVALUABLE UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT OR CIRCUMSTANCES GIVING RISE TO SUCH LIABILITY. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT.
- 12.3. Indemnification. Customer agrees to defend, hold harmless, and indemnify Invaluable and its agents, owners and employees and any Buyer of any Property offered for sale by Customer via the Sites (collectively, the "**Invaluable Indemnified Parties**") against any and all claims, actions, damages, losses, liabilities and expenses (including reasonable attorney's fees) (collectively, "**Claims**") that are payable to any third party or incurred by any of the Invaluable Indemnified Parties arising out of, relating to, or resulting from any and all third-party claims, demands or allegations: (a) relating to any of the Property offered or sold by Customer or any of the Information, including, without limitation, any third party claims, demands or allegations that the Information infringes, constitutes a misappropriation of and/or violates any intellectual property rights; (b) regarding any rescission claim made by any Buyer covered by Section 4.4 above; (c) relating to the actions of the Customer's auctioneer; (d) relating to the Customer Sites or (e) any breach by Customer of Section 6. Invaluable agrees to defend, hold harmless, and indemnify Customer and its agents, owners and employees (collectively, the "**AH Indemnified Parties**") against any and all Claims that are payable to any third party or incurred by any of the AH Indemnified Parties arising out of, relating to, or resulting from any and all third-party claims, demands or allegations that the use of the Invaluable Technology in accordance with this Agreement infringes or violates any copyright or trade secret of a third party. Notwithstanding the foregoing, Invaluable shall have no obligation under this Section 12.3 to the extent that the claim, demand or allegation arises from: (i) modification of the Invaluable Technology by any party other than Invaluable without Invaluable's express consent; (ii) the combination, operation, or use of the Invaluable Technology with other product(s), data or services where the Invaluable Technology would not by itself be infringing; or (iii) unauthorized or improper use of the Invaluable Technology.
- 12.4. Indemnification Procedure. If an indemnified party (the "**Indemnified Party**") becomes aware of any matter it believes it should be indemnified under Section 12.3, involving any claim, demand or allegation against the Indemnified Party by any third party (each an "**Action**"), the Indemnified Party will give the other Party (the "**Indemnifying Party**") prompt written notice of such Action. The Indemnifying Party has the right to control the investigation, defense and settlement of any such Action, except that the Indemnifying Party will not enter into any settlement that affects the Indemnified Party's rights or interest without the Indemnified Party's prior written approval, which approval will not be unreasonably withheld or delayed. The Indemnified Party will cooperate, at the expense of the Indemnifying Party, with the Indemnifying Party and its counsel in the defense and the Indemnified Party will have the right to participate fully, at its own expense, in the defense of such Action with counsel of its own choosing. Any compromise or settlement of an Action will require the prior written consent of both Parties hereunder, such consent not to be unreasonably withheld or delayed.
- 12.5. Infringement by Invaluable Technology. If the use of the Invaluable Technology by Customer has become, or in Invaluable's opinion is likely to become, the subject of any claim of infringement, Invaluable may at its option and expense (a) procure for Customer the right to continue using the Invaluable Technology as set forth hereunder; (b)



replace or modify the Invaluable Technology to make it non-infringing so long as the Invaluable Technology has at least equivalent functionality; (c) substitute an equivalent for the Invaluable Technology or (d) if options (a)-(c) are not reasonably practicable, terminate this Agreement.

13. MISCELLANEOUS. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. Neither Party may assign this Agreement or assign or delegate its rights or obligations under the Agreement without the other Party's prior written consent; provided however, that either Party may assign this Agreement to an acquirer of or successor to all or substantially all of its business or assets to which this Agreement relates, whether by merger, sale of assets, sale of stock, reorganization or otherwise. Any assignment or attempted assignment by either Party otherwise than in accordance with this Section shall be null and void. Both Parties agree that this Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both Parties, except as otherwise provided herein (including, without limitation, in Sections 2.2 and 8.2). In the event of any conflict between any term or condition of this Member Services Agreement and any term or condition of the Order, the term or condition of this Member Services Agreement will govern, unless the Order expressly states that it is the intention of the Parties to amend this Member Services Agreement. No agency, partnership, joint venture, or employment is created as a result of this Agreement and a Party does not have any authority of any kind to bind the other Party in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing Party will be entitled to recover costs and attorneys' fees. All notices under this Agreement will be in writing and sent to the recipient's address set forth in the Order and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or email; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. Each Party shall be excused from performance for any period during which, and to the extent that, it is prevented from performing any obligation or service, in whole or in part, as a result of a cause beyond its reasonable control and without its fault or negligence, including, but not limited to, acts of God, acts of war, epidemics, fire, communication line failures, power failures, earthquakes, floods, blizzard, or other natural disasters (but excluding failure caused by a Party's financial condition or any internal labor problems (including strikes, lockouts, work stoppages or slowdowns, or the threat thereof)) (a "**Force Majeure Event**"). Delays in performing obligations due to a Force Majeure Event shall automatically extend the deadline for performing such obligations for a period equal to the duration of such Force Majeure Event. Except as otherwise agreed upon by the Parties in writing, in the event such non-performance continues for a period of thirty (30) days or more, either Party may terminate this Agreement by giving written notice thereof to the other Party. Upon the occurrence of any Force Majeure Event, the affected Party shall give the other Party written notice thereof as soon as reasonably practicable of its failure of performance, describing the cause and effect of such failure, and the anticipated duration of its inability to perform. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts, without regard to its conflict of laws provisions. For all disputes relating to this Agreement, each Party submits to the exclusive jurisdiction of the state and federal courts located in Boston, Massachusetts and waives any jurisdictional, venue, or inconvenient forum objections to such courts. Customer acknowledges that any unauthorized use of the Invaluable Technology may cause irreparable harm and injury to Invaluable for which there is no adequate remedy at law. In addition to all other remedies available under this Agreement, at law or in equity, Customer further agrees that Invaluable shall be entitled to injunctive relief in the event Customer uses the Invaluable Technology in violation of the limited license granted herein or uses the Invaluable Technology in any way not expressly permitted by this Agreement.