

MEMBER SERVICES AGREEMENT

This MEMBER SERVICES AGREEMENT and the Schedules (as defined below) (collectively, this “**Agreement**” by and between CCUCU, INC. (as defined below), principally located at _____ (“**CCUCU**”), and [ARTIST], a [_____] , principally located at [_____] (the “**Seller**”, and collectively with CCUCU, the “**Parties**” and each, a “**Party**”), is effective as of [_____] (the “**Effective Date**”).

WHEREAS, Seller specializes in the sale of items (“**Property**”); and

WHEREAS, CCUCU provides certain services and support via the Internet to art, antiques, collectible and estate Sellers, that: (a) enables approved Users (as defined below) to purchase and/or bid on items being sold by Seller through the Technology; (b) allows Seller to broadcast audio and video from sale location, enables Seller to manage online participation from Seller’s website(s) using CCUCU, proprietary Infinite Bidding technology (the “**Infinite Bidding Technology**”), (c) offers Seller certain additional services as set forth on the Schedules, including, without limitation, access to CCUCU’s proprietary archive database subscription service (collectively, the “**Services**”), and (d) provides certain technology, features and functionality to accomplish the foregoing, including, without limitation, the technology, features and functionality related to hosting Live Auctions (as defined below), Fixed Price sales (as defined below), and Timed Auctions (as defined below), the Services, and CCUCU’s client email management messaging system (collectively, the “**Technology**”).

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, the Seller and CCUCU 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 (i) 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. “**Seller Site**” means any web site operated or hosted by or on behalf of the Seller, and any and all successor, companion, mirror, derivative or related sites.
- 1.3. “**Consignor**” means the person, entity or client with whom the Seller contracts regarding Property.
- 1.4. “**Information**” means all information or data in any form about the Technology and the Property to be offered for sale which includes, but is not limited to, text, images, written descriptions and any other information provided by Seller under this Agreement.
- 1.5. “**Live Auction(s)**” means live auctions using the Auction Technology.

- 1.6. **“Privacy Policy”** means the privacy polic(ies) governing the Site(s), including, without limitation, the privacy polic(ies) referenced in the Schedules, as may be amended by CCUCU, in its sole discretion, from time to time as set forth herein.
- 1.7. **“Schedules”** means the schedule(s) between the Parties that reference this Agreement and/or are attached hereto, as may be amended by CCUCU, in its sole discretion, from time to time as set forth herein.
- 1.8. **“Site Agreements”** means the terms and conditions that govern Users’ use of the Sites, including, without limitation, the Privacy Policy and Terms of Use.
- 1.9. **“Sites”** means (a) any Seller web sites that host Live Auctions and/or Timed Auctions and/or Fixed-Price using the Infinite Bidding Technology and (b) the web sites referenced in the Schedules, as may be amended by CCUCU, in its sole discretion, from time to time as set forth herein.
- 1.10. **“Terms of Use”** means the terms of use governing the Site(s), including, without limitation, the terms of use referenced in the Schedules, as may be amended by CCUCU, in its sole discretion, from time to time as set forth herein.
- 1.11. **“Timed Auctions”** means timed auctions using the Timed Technology.
- 1.12. **“User”** means any person who accesses any page on the Sites.
- 1.13. **“Fixed Price Sales”** means items offered for individual one-time sale
- 1.14. **“Technology”** means use of service through Live Auction, Timed Auction or Fixed Price Sale.

2. ACCESS TO THE TECHNOLOGY.

- 2.1. Access to the Technology. Subject to the terms and conditions of this Agreement, CCUCU will make the Technology that is referenced in any Schedule available to the Seller pursuant to this Agreement during the Term (as defined below). Notwithstanding the foregoing, CCUCU may amend the Technology, Site(s) and Site Agreements in any Schedule, in its sole discretion, from time to time, upon thirty (30) days’ prior notice to Seller (which may be sent by email). CCUCU will provide the Seller with usernames and passwords pursuant to which the Seller may access the Technology and Sites. Seller will be responsible for any actions taken by parties with access to usernames and passwords, and Seller agrees not to disclose usernames and passwords to any third party. Seller will inform CCUCU immediately if it discovers that any Technology username and/or password have been disclosed or made available to any third party.
- 2.2. License Restrictions. Seller will not, directly or indirectly: (a) reverse engineer, decompile, disassemble or otherwise \ J attempt to discover the source code, object code or underlying structure, ideas or algorithms of any of the Technology; modify, translate or create derivative works based on any of the 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 Technology; (d) use any of the Technology for timesharing or service bureau purposes or (except as expressly permitted by the 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 Technology or their related systems, hardware or networks or any content or technology incorporated in any of the foregoing. CCUCU shall own and, except for the limited rights expressly granted herein, retain all right, title and interest in and to the Technology and all improvements, enhancements or modifications thereto.

3. SELLER RESPONSIBILITIES.

- 3.1. Compliance. While conducting Live Auctions and/or Timed Auctions and/or Fixed Price, Seller represents that it will comply at all times, and will cause its auctioneer or any employee, if applicable, to comply at all times, with (a) the terms and conditions of this Agreement, (b) the Site Agreements and (c) all applicable laws, regulations, rules, ordinances and orders (including any applicable licensing requirements).
- 3.2. Information. Seller agrees that the Information it posts on the Sites or any additional Information that Seller (or its auctioneer or employees) provides to CCUCU or prospective buyers directly 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. Seller agrees to notify CCUCU of any issues within twenty-four (24) hours of catalog/item posting on Sites, and to actively maintain online catalogs/items to ensure that Information is as current and accurate as possible at all times. Seller hereby grants to CCUCU a perpetual, irrevocable, exclusive, 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 and the promotion thereof. Seller will provide auction catalog and item Information (including photos) to CCUCU in CCUCU's recommended digital formats and on a mutually acceptable uploading and refresh schedule. Based on the Information provided by Seller, CCUCU may categorize, "tag" or otherwise describe Property on the Site. CCUCU DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES REGARDING THE ACCURACY OR RELIABILITY OF SUCH CATEGORIZATIONS, "TAGS" OR DESCRIPTIONS OF ANY NATURE.
- 3.3. Restricted Property. Seller will refrain from offering or selling any Property on the Sites that is prohibited by this Agreement or the Site Agreements or would otherwise violate any applicable laws or regulations or subject CCUCU or its suppliers to potential liability. CCUCU may, in its sole discretion, remove any Property or any Information that CCUCU determines has been posted on the Sites in violation of this Agreement or the Site Agreements or applicable laws or regulations or that may expose CCUCU to potential liability or threat of litigation, and may immediately cancel the listing for such Property without liability for such cancellation.
- 3.4. Auctions. Seller 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 for online bidders at each Live Auction and/or Timed Auction. All auction room set-up and testing will be performed by Seller at least three (3) Seller days in advance of a Live Auction and/or Timed Auction.
- 3.5. Third Party Agreements. Seller agrees that CCUCU will not be a party to any consignment agreements between Seller and Consignors, and that Seller's agreements

with Consignor, the Seller 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.

- 3.6. Insurance. Seller 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. SELLER CONDITIONS OF SALE.

- 4.1. Conditions of Sale. Seller agrees that the Information provided by Seller in the online catalogue or postings information page will contain, at a minimum, a link to the contractual terms under which Seller will sell the Property to the successful buyer, 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 “***Seller Conditions of Sale***”). The Seller Conditions of Sale will contain accurate information and be binding upon Seller 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. Seller agrees to be bound by the Seller Conditions of Sale. If Seller acts as an auctioneer, it has the final determination with respect to the bidding on a Lot, the sale of the item and the resolution of disputes between bidders and/or buyers. Nothing in the Seller Conditions of Sale shall conflict with or disclaim the terms of this Agreement. Seller shall not modify or disclaim the Seller 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 Buyers: Buyer’s Premium. Seller agrees to treat online and in person buyers fairly and in accordance with this Agreement. All Seller Conditions of Sale must be the same for Users and other bidders and/or buyers (other than the fees charged by CCUCU to Users). Notwithstanding the foregoing, Seller may in its sole discretion charge Buyers a premium as determined by Seller at the time Property is listed in the online catalog or posting (the “***Buyer’s Premium***”), provided, that the Buyer’s Premium must be equal to or less than the lowest buyer’s premium charged by Seller on any third-party platform that facilitates or hosts live auctions or timed auctions. Subject to the terms and conditions herein, including the foregoing sentence, a Seller may raise the Buyer’s Premium to offset CCUCU’s commission received hereunder. Seller will use commercially reasonable efforts to: (a) promptly respond to User inquiries; and (b) properly operate Technology in accordance with this Agreement and the Site Agreements in order to receive and process bids before and during Live Auctions and/or Timed Auctions and/or Fixed-Price.
- 4.3. Rescission Right. Notwithstanding any other remedy provided in this Agreement, Seller agrees that the Buyer has the right to rescind a sale of Property (and Seller 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 Seller in the same condition it was sold. Nothing in this Section may be disclaimed or otherwise altered in the Seller Conditions of Sale or otherwise. AH claims for rescission should be resolved directly between Seller and Buyer.

4.4. Payment by Buyers.

- a) As between Seller and CCUCU, Seller is solely responsible for collecting and otherwise managing payments with its Buyers and establishing the payment terms and conditions related thereto. Sellers using Fixed Price services must allow its Buyers to submit payment to Seller using the integrated online Payment Service powered by WePay, Inc. (“**WePay**”) and made available by CCUCU on its Sites (the “**Payment Service**”). Those Sellers who use Fixed Price and elect to use Live Auctions services must allow its Buyers to submit payment to Seller using integrated online Payment Service powered by WePay, Inc. Seller must set up an account with WePay and agree to WePay’s Terms of Service and Privacy Policy located at www.wepay.com/legal/, as may be updated by WePay from time to time (collectively, the “**WePay Terms**”). Seller expressly acknowledges and agrees that, if it elects to use the Payment Service: (i) neither WePay nor CCUCU is a party to any contract between Seller and any Buyer; and (ii) neither WePay nor CCUCU will have any liability for nonpayment by Buyers. Seller may not use the Payment Service to engage in activities prohibited by the WePay Terms or otherwise to violate applicable law.
- b) As part of the Payment Service, WePay will provide payment authorization, processing, clearing, settlement and related dispute resolution services in accordance with the WePay Terms. In the event Seller receives a chargeback, WePay will dispute the chargeback or collect the funds directly from Seller, as appropriate and in accordance with the WePay Terms. Notwithstanding the foregoing, Seller will ensure that the Seller Conditions of Sale contain a reasonable return policy in order to reduce the risk of chargebacks.
- c) Either CCUCU 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 CCUCU or WePay. In addition, WePay may decline to provide the Payment Service to Seller 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.
- d) WePay will deduct the following amounts from each payment submitted by a Buyer to Seller using the WePay Services:
 - i. **2.9% plus \$0.30 per transaction for Visa or MasterCard transactions, or 3.55% plus \$0.30 per transaction for AMEX transactions; and**
 - ii. **1% plus \$0.30 per transaction for ACH/EFT transactions.**
- e) Seller will indemnify, hold harmless and defend CCUCU and their respective affiliates and each of their respective directors, officers, employees and agents from and against any and all claims, suits, actions, damages, demands, obligations, proceedings, investigations, liabilities or other losses of any kind (including reasonable attorneys’ fees and costs) arising from a third party claim based on, arising from or relating to Seller’s use of the Payment Service and Seller will do so regardless of whether such claim(s) is due to CCUCU’s own negligence, actions and/or inactions or the negligence, actions and/or inactions of other entity(s) and/or individuals other than CCUCU.

5. CCUCU RESPONSIBILITIES AND RIGHTS.

- 5.1. CCUCU Not An Auction House. CCUCU is not a certified Auction House and does not conduct the Live Auctions or Timed Auctions or sell via Fixed-Price. The Technology allows Seller to list items in Live Auctions and/or Timed Auctions and/or Fixed Price run by certified Auctioneers or licensed Sellers. CCUCU is solely a passive conduit to facilitate communication between Seller and Buyers.
- a) Provide Seller with access to the Technology as described in Section 2.1 above;
 - b) Perform the Services in a professional and workmanlike manner; and
 - c) Provide a reasonable amount of training and technical support to facilitate Live Auctions, Fixed Price Sales and/or Timed Auctions on behalf of Seller.
- 5.2. Right to Suspend. CCUCU may temporarily suspend Seller's access to any portion of the Technology if CCUCU reasonably determines that: (a) there is a threat or attack on the Technology or other event that may create a risk to the Technology or Seller or any other Seller or Buyer, (b) Seller's use of the Technology or any Information disrupts or poses a security risk to the Technology, CCUCU or any Buyer, or (c) Seller is using the Technology for fraudulent or illegal activities, or otherwise acting in bad faith (collectively, "*Service Suspensions*"). CCUCU will provide written notice of any Service Suspension to Seller and to provide updates regarding resumption of Seller's access to the Technology following any Service Suspension.

6. REPRESENTATIONS, WARRANTIES AND COVENANTS.

- 6.1. Power and Authority. Each of CCUCU and Seller 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. Seller represents that it has all necessary rights and powers to act on behalf of, and to contractually bind, any third party on whose behalf Seller submits a lot, item listing, or the Information related thereto. Seller guarantees that the performance of any third party, which Seller uses to supply any Property, Information, or fulfill any aspect of a related sale or service, will comply with the terms of this Agreement.
- 6.3. Representations and Warranties Regarding Property. Seller 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 CCUCU'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. Seller covenants that it and its employee(s) 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 Seller;
- b) Comply with all applicable laws, regulations, rules, ordinances and orders regarding accepting bids over 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 term of this Agreement (“*Term*”) will begin on the Effective Date and continues until terminated as set forth -below. Unless terminated earlier in accordance with this Agreement, the initial term of each Schedule begins on the applicable Schedule Effective Date and continues for the term expressly set forth therein. Except as otherwise specified in each applicable Schedule, each Schedule initial term shall automatically renew for additional periods of one year unless either Party gives the other Party notice of non-renewal at least thirty (30) days before the end of the relevant Schedule initiator renewal term. Either Party may terminate this Agreement and/or an applicable Schedule upon delivery of written notice if, (a) either Party breaches this Agreement and/or such Schedule, and fails to remedy such breach within thirty (30) days after receiving written notice of such breach from 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. If this Agreement expires or is terminated for any reason, all rights, licenses and obligations of the Parties shall terminate except that the following provisions will survive”: 1, 2.2, 7, 8 (to the extent any payable fees remain unpaid), and 10 through 13.

8. **PAYMENT.**

8.1. Fees. All fees will be paid in currency of the U.S.A. Seller will pay CCUCU the fees set forth in the Schedules, including, without limitation, the posting fee payable per auction section (multi-day auctions are charged a minimum of one (1) auction session listing fee per day) (the “*Listing Fee*”) and the success transaction fee payable per each bid accepted by Seller from a User (the “*Commission Fee*” and, collectively with the Listing Fee and any other fees payable hereunder, the “*Fees*”). Payment obligations are non-cancelable and non-refundable.

8.2. Payment Terms. Seller will pay CCUCU the Fees within thirty (30) days of receipt of invoice. 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. CCUCU reserves the right to increase the Fees by giving Seller at least thirty (30) days’ prior notice (which may be sent by email).

- 8.3. **Taxes.** Seller 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 Seller's location for the sale of Property. Seller agrees to be fully responsible for, and indemnify and hold CCUCU harmless from any such taxes and duties.
9. **TRADEMARKS.** Subject to the terms and conditions of this Am, CCUCU hereby grants to Seller a non-exclusive, nonsublicenseable, nontransferable, and nonassignable license to use CCUCU's domain names, trademarks and logos ("**CCUCU Marks**"), upon prior written approval by CCUCU: in links to and advertisements and promotions for Seller offerings on the Sites. Subject to the terms and conditions of this Agreement, Seller hereby grants to CCUCU a non-exclusive, nontransferable and nonassignable license to use Seller's domain names, trademarks and logos ("**Seller Marks**" and, together with CCUCU Marks, the "**Marks**") on the Sites, and in links to and advertisements and promotions for the 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 Seller may receive personally identifiable information regarding Users ("**User Data**") under the normal use of the Sites. Seller agrees to: (a) only use User Data in accordance with the 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 CCUCU 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. Seller shall cooperate fully with CCUCU in investigating and responding to any security breach of User Data. Seller 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, CCUCU 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 terms of this Agreement will be considered the Confidential Information of CCUCU. 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 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.

12. DISCLAIMERS; LIMITATION OF LIABILITY; INDEMNIFICATION

- 12.1. No Warranty. SELLER ACKNOWLEDGES-AND AGREES THAT THE TECHNOLOGY, THE 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 CCUCU DOES NOT REPRESENT OR WARRANT THAT THE TECHNOLOGY, THE SITES OR THE SERVICES WILL MEET SELLER’S REQUIREMENTS OR THAT THE OPERATION OF THE TECHNOLOGY, THE SITES OR THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. SELLER ACKNOWLEDGES AND AGREES THAT .CCUCU HAS NO CONTROL OVER THE IDENTITY, QUALITY OR THE ABILITY OF BUYERS TO BUY ITEMS.**
- 12.2. Limitation of Liability. THE PARTIES AGREE THAT, NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, EXCEPT FOR (A) SELLER’S BREACH OF SECTION 2 (ACCESS TO THE TECHNOLOGY) AND (B) EITHER PARTY’S BREACH OF SECTION 11 (CONFIDENTIALITY), 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 (A) SELLER’S BREACH OF SECTION 2 (ACCESS TO THE TECHNOLOGY), (B) EITHER PARTY’S BREACH OF SECTION 11 (CONFIDENTIALITY), AND (C) LIABILITY ARISING FROM SELLER’S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 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 SELLER TO CCUCU PER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE GIVING RISE TO SUCH LIABILITY. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT.
- 12.3. Indemnification. Seller agrees to defend, hold harmless, and indemnify CCUCU and its agents, owners and employees and any Buyer of any Property offered for sale by Seller via the Sites (collectively, the “**CCUCU 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 CCUCU 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 Seller 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 4.3 above; (c) relating to the actions of the Seller's auctioneer; or (d) any breach by Seller of Section 6. CCUCU agrees to defend, hold harmless, and indemnify Seller and its agents, owners and employees (collectively, the "**AH 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 AH Indemnified Parties arising out of or relating to, or resulting from any and all third-party claims, demands or allegations that the use of the Technology in accordance with, this Agreement infringes or violates any intellectual property or other proprietary rights.

- 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.
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 Seller 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, including all Schedules, 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 2.1 and 8.2). To the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any Schedules, the terms of such Schedule shall prevail. 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 above 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 law 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. Seller acknowledges that any unauthorized use of the Technology may cause irreparable harm and injury to CCUCU for which there is no adequate remedy at law. In addition to all other remedies available under this Agreement, at law or in equity, Seller further agrees that CCUCU shall be entitled to injunctive relief in the event Seller uses the Technology in violation of the limited license granted herein or uses the Technology in any way not expressly permitted by this Agreement.

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