

AGREEMENT

THIS AGREEMENT (“Agreement”) is made as of _____, 200_ (the “Effective Date”) by and between **EBAY INC.**, 2145 Hamilton Avenue, San Jose, CA 95125 (“eBay”), and _____, a _____ corporation with its principal place of business at _____ (“Company”).

Phone: _____ Fax: _____
 e-mail: _____ website (if applicable): _____

WHEREAS, eBay offers an online venue (“eBay Site” or the “Site”) for the listing of property (“Property”) by auction houses and dealers and others.

WHEREAS, Company specializes in _____.

WHEREAS, Company desires to participate in the listing and sale of Property and the marketing of services on eBay Site.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, Company and eBay hereby agree as follows:

1. DEFINITIONS.

(a) **“Company”** means the entity which will own Property or obtain property in consignment to be sold through the online auction format through the eBay Site.

(b) **“Consignor”** means the person, entity or client with whom the Company contracts regarding Property.

(c) **“eBay Services”** means the online Internet web site service provided by eBay that promotes the sale of items by allowing sellers to place items up for bid, and allowing buyers to enter the amount they are willing to pay for the item. An automated bid proxy system allocates the highest bid and notifies the seller of the highest bidder, whereby the parties negotiate the final transaction (such as payment method and shipping) and complete the purchase.

(d) **“eBay Marks”** mean the eBay domain names, trademarks, logos and other branding elements used in performance of this Agreement.

(e) **“eBay User Agreement”** means the terms and conditions that all sellers (including Company) who use the eBay Services must agree to and follow, including but not limited to the eBay Privacy Policy and Fees and Credits policy, except as otherwise set forth in this Agreement. The eBay user Agreement is published on the eBay website located at www.eBay.com.

(f) **“Information”** means all information about the Property to be offered for sale which includes, but not be limited to, text, images, written descriptions and any other information provided by Company under this Agreement, including information related to provenance, history, age, authorship, period, culture, source of origin, quality, rarity, existence of copyright or other proprietary or intellectual property rights pertaining thereto, condition/damage reports, and estimates of value and reserves.

(g) **“Live Auction”** means an auction wherein eBay customers can bid either through absentee bids or real time bids through the internet using eBay technology on Property being auctioned on the floor of an auction house or in another such live event.

(h) **“Live Auction Agreement”** means the terms and conditions that all sellers (including Company) who use Live Auctions must agree to and follow a copy of such agreement is attached hereto as Exhibit B.

(i) **“Marks”** means all proprietary domain names, trademarks and logos designated by eBay and Company.

(j) **“Online Service”** means the services and technology (to enable Company to inventory, promote, organize online, and sell items through the eBay Services) provided to Company by eBay or eBay Affiliates, including the use of Live Auctions and the tools associated with eBay such as Mr. Lister.

2. LISTING PROPERTY FOR SALE ON EBAY. The eBay Site provides a venue for Company to conduct online auctions for Property. Company agrees that eBay will not be a party to any consignment agreements between Company and Consignors or other third parties to obtain such Property. Company may list Property on the eBay Site during the term of the Agreement, subject to the participation requirements in Exhibit A of this Agreement (the “Participation Requirements”), the eBay User Agreement, the Live Auction Agreement and the other terms and conditions of this Agreement. Company shall be responsible for obtaining appropriate Property through its own resources, to properly authenticate and warrant Property and be responsible

for Property consigned and sold in auctions on eBay, to monitor the conduct of its Consignors for compliance with this Agreement and the eBay User Agreement, and to administer the pre-approved marketing of eBay's Live Auctions by Company and by its Consignors' respective advertising and marketing plans in all media, print or electronic, mailings and otherwise.

(a) Preparing Property Descriptions. Company shall prepare its Property descriptions, Company Conditions of Sale, and all Information contained therein accurately and in accordance with the Participation Requirements, the eBay User Agreement and the Live Auction Agreement.

(b) Responsibility for Information. Company is solely responsible for the content of the Information it provides. Company agrees that the Information it posts on the Site or any additional Information that Company (or its licensed auctioneer) provides to prospective bidders directly with respect to Property will be accurate, complete, and not misleading. Company hereby grants to eBay a perpetual, irrevocable, non-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 Site and the promotion thereof, and represents that it has the right to grant such license.

(c) Restricted Property. Company will refrain from offering or selling any Property on the Site that is prohibited by the Participation Requirements or would otherwise violate any applicable laws or regulations or subject eBay or its suppliers to potential liability. eBay may, in its sole discretion, remove any Property or any Information that eBay determines has been posted on the eBay Site in violation of this Agreement or that may expose eBay to potential liability or threat of litigation, and may immediately cancel the listing for such Property without liability for such cancellation.

(d) No Solicitation. Company will advise Consignors that, except for answering questions about items offered, and obtaining information to conclude a sale, there shall be no contact with buyers that are registered users of eBay.

(e) Third Party Agreements. Company shall insure that Company's agreements with Consignors, conditions of sale, and all other third party agreements pertaining to the sale of items shall be in compliance with any applicable laws, the terms and conditions of this Agreement and the eBay User Agreement and the Live Auctions Agreement.

3. CONDITIONS OF SALE.

(a) Conditions of Sale. Company agrees that the Information provided by Company in the online catalogue information page will contain, at a minimum, a link to the contractual terms under which Company will sell the Property to the successful bidder, as well as any additional terms required to consummate the sale (for example, shipping fee, insurance, taxes, etc.) (the "Company Conditions of Sale"). The Company Conditions of Sale will be binding upon Company and the ultimate purchaser 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. Nothing in the Company Conditions of Sale shall conflict with or disclaim the terms of this Agreement.

(b) No Disclaimer. Company shall not modify or disclaim the Company Conditions of Sale (or the Standard Conditions of Sale, if applicable) or any warranty provided as part of the Information, in any invoice, statement or other document or oral statement Company makes. Company agrees that eBay will not take responsibility for the content or accuracy of any Information provided by Company, and Company has the ultimate liability to any purchaser in the event that the purchaser believes the Information was misleading, inaccurate or otherwise provides such purchaser with grounds for rescission of the sale.

(i) Rescission Right. Notwithstanding any other remedy provided under this Agreement, Company agrees that the Buyer has the right to rescind the sale (and Company will return all proceeds) for a period of at least forty-eight (48) hours from the date the Property is received by the Buyer if the physical condition of the Property materially differs from what was described in the Information or if the description is, in any material respect, inaccurate, so long as Buyer provides such notice within forty-eight hours following receipt of the Property **and** returns the Property to Company reasonably promptly in the same condition it was sold. Nothing herein may be disclaimed or otherwise altered in the Company Conditions of Sale or otherwise.

(ii) Termination for Failure to Rescind in Good Faith. Company agrees that if a purchaser requests that Company rescind a sale of Property, Company will consider such purchaser's claim in good faith, and rescind such sale in accordance with the terms of this Agreement and under the Company Conditions of Sale. All claims for rescission should be resolved directly between Company and Buyer, in the event Company and Buyer are unable to resolve a dispute, a third party dispute resolution procedure shall be used. If eBay determines in good faith and in eBay's sole discretion that a claim was not handled in good faith or in accordance with the Rules, then eBay reserves the right to terminate this Agreement upon fifteen (15) days' notice to Company.

(iii) Indemnification for Failure to Rescind. Company agrees to indemnify eBay for all expenses, costs and any amounts paid to Buyer in the event eBay is required to refund the purchase price of any Property sold by Company. Upon payment to eBay of such amounts, eBay shall return the Property in question to Company.

4. ONLINE SERVICE.

(a) License Grant. Subject to the terms and conditions of this Agreement, eBay hereby grants to Company a non-exclusive, non-transferable, royalty-free license to access and use the Online Service for Company's internal business purposes as set forth in this Agreement.

(b) Security. In order to participate in the Site, Company will receive a user id and a password to list items, and may receive additional user id's or passwords in connection with online tools or customer software designed to facilitate Company's participation in the Site. Company will be responsible for any actions taken by parties who have access to these passwords, and Company agrees not to disclose the passwords to any third party. If Company discovers that any password is no longer confidential, please inform eBay immediately. Company agrees to select a single user id to use in connection with any posting or customer contacts, where that user id appropriately identifies Company, and is not misleading or confusing.

5. LIVE AUCTIONS.

(a) Company shall hire a licensed auctioneer to conduct its Live Auctions who will act as Company's agent with respect to those auctions. Company will comply at all times, and will cause its licensed auctioneer to comply at all times, with the terms and conditions of this Agreement, the eBay User Agreement and the Live Auction Agreement attached hereto as Exhibit B, while conducting or participating in a Live Auction through the eBay Site.

6. TRADEMARK LICENSE.

(a) Trademark License. eBay hereby grants to Company a non-exclusive, nonsublicenseable, nontransferable, and nonassignable license to use those proprietary domain names, trademarks and logos ("Marks") designated by eBay, upon prior written approval by eBay, in links to and advertisements and promotions for Company offerings on the eBay Site. Company hereby grants to eBay a non-exclusive, nontransferable and nonassignable license to use Company's Marks on the eBay Site, and in links to and advertisements and promotions for the eBay Site.

(b) Trademark Restrictions. The Mark owner may terminate the foregoing license if, in its reasonable discretion, the licensee's use of the Marks tarnishes, blurs or dilutes the quality associated with the Marks or the associated goodwill and such problem is not cured within ten (10) days of notice of breach; alternatively, instead of terminating the license in total, the owner may specify that certain pages of the licensee's website or certain promotional materials may not contain the Marks. 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 in conformance with any trademark usage policies provided by the owner of the Marks. The licensee will not take any action inconsistent with the owner's ownership of the Marks, and any benefits 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.

7. LICENSE TO USE CUSTOMER DATA. Company agrees not to use or disclose any personally identifiable information of any eBay user that Company obtains through the eBay Site or through any eBay or eBay-related communication or eBay or eBay-facilitated transaction ("Customer Data") except for the purposes of completing the transaction with the Buyer and fulfilling its obligations under this Agreement. Company agrees to (i) disclose and obtain the consent of the winning bidder (the "Buyer") if Company wishes to add the Buyer to Company's customer list or make any use of the Buyer's information, and (ii) provide the Buyer with the ability to opt-out of such inclusion. So long as Company has not actively solicited or encouraged (as part of Company's Information posted on the Site) eBay users to register with Company, and in any registration the user is informed (x) that she is affirmatively registering with Company, and (y) what the privacy policies of Company are with respect to that user's information, then such information will not be deemed "Customer Data" under this Agreement. Company agrees not to target (nor to encourage or facilitate the targeting by any third party of) eBay users for any promotion or activity of Company or any third party. Company agrees not to spider the eBay Site or otherwise collect User information for any purpose without the express written permission of eBay.

8. EXCLUSIVITY. Unless otherwise stated herein, this Agreement is non-exclusive.

9. Fees - For Live Auctions.

(a) To eBay. Company will pay eBay: (x) eBay's then-current Insertion Fee for items/catalogues listed to be sold through a Live Auction; and (y) eBay's then-current Sale Fee on all items sold via Live Auctions where the high bid is an internet bidder (as such fees are posted on the eBay Site). eBay's current fee schedule for Live Auctions is posted at <http://pages.liveauctions.ebay.com/help/forsellers/laopenfloor.html>.

(b) Buyer's Premium Fee. Company may in its sole discretion charge the Buyer a buyer's premium as determined by Company at the time Property is listed in the online catalog; provided, however, any such buyer's premium shall be set at the same amount for internet and floor bidders.

(c) Payment Terms. All fees due to eBay shall be charged to Company's credit card or to Company's account on file as follows: (i) as property is posted to the site, the Listing Fee, as set forth above or as modified in accordance with this agreement; (ii) as items are sold, the Sale Fee, as set forth above or as modified in accordance with this Agreement.

(d) Right to Change Fees. eBay reserves the right to change the fees with thirty (30) days written notice to Company. For purposes of this Agreement email notification shall be deemed "in writing".

(e) Taxes. Company 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 Company's location for the sale of Property. Company agrees to be fully responsible for, and indemnify and hold eBay harmless from any such taxes and duties.

(f) Audit Rights. Company shall keep for three (3) years proper records and books of account relating to the computation of payments owed to eBay. Once every twelve (12) months, eBay or its designee may inspect such records to verify reports. Any such inspection will be conducted in a manner that does not unreasonably interfere with Company's business activities. Company shall immediately make any overdue payments disclosed by the audit plus applicable interest. Such inspection shall be at eBay's expense; however, if the audit reveals overdue payments in excess of five percent (5%) of the payments owed to date, Company shall immediately pay the cost of such audit, and eBay may conduct another audit during the same twelve (12) month period.

10. CONFIDENTIAL INFORMATION. "Confidential Information" is defined as any confidential or proprietary information of eBay and its suppliers (including without limitation, the terms of this Agreement, the various policies referred to herein, including but not limited to the Participation Requirements), and any other material disclosed to Company by eBay in a writing marked "confidential" or, if disclosed orally, is identified as confidential at the time of disclosure and is subsequently reduced to a writing marked "confidential" and delivered to Company within thirty (30) days of disclosure. Company will hold eBay's Confidential Information in confidence and will not disclose such Confidential Information to third parties nor use eBay's Confidential Information for any purpose other than as required to perform under this Agreement. Such restrictions will not apply to Confidential Information which (a) is already known by Company, (b) becomes, through no act or fault of the recipient, publicly known, (c) is received by Company from a third party without a restriction on disclosure or use, or (d) is independently developed by Company without reference to the Confidential Information. The Company may disclose Confidential Information, which is required to be disclosed by a court or government agency to such court or agency.

11. PUBLICITY. Company will not issue any press release nor make any similar public statement regarding this Agreement, the activities contemplated under this Agreement, eBay, or the eBay Site without eBay's prior written approval and prior coordination with eBay's public relations department. Company agrees to reasonably cooperate with eBay's public relations department in various eBay related activities.

12. REPRESENTATIONS, WARRANTIES AND COVENANTS.

(a) Power and Authority. Company represents and warrants that: (i) Company has the right, power and authority to place consigned Property for sale and to enter into this Agreement and to perform all of its obligations hereunder; (ii) that such 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; (iii) good title to such Property will pass to the buyer upon sale; and (iv) there are no restrictions on eBay's right to reproduce photographs of such Property.

(b) Power to Bind Third Parties. Company represents that it has all necessary rights and powers to act on behalf of, and to contractually bind, any third party on whose behalf Company submits an item listing or other Information.

(c) No Conflict. Company represents that entering into and performing this Agreement will not conflict with or constitute a breach of any other agreement, arrangement or obligation to which Company is now, or later becomes, a party.

(d) Third Party Performance. Company guarantees that the performance of any third party, which Company uses to supply any Property, Information, or fulfill any aspect of a related sale or service, will comply with the terms of this Agreement.

(e) Representations and Warranties Regarding Property. Upon the posting of any Property for sale on the eBay Site, Company represents and warrants that there is no reason to believe that the Property is not authentic or is counterfeit; and that, 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 (including any laws or regulations applicable in the European Union) 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 purchaser.

(f) Additional Company Representations, Warranties and Covenants. In addition to any other covenants and agreements set forth in this Agreement, Company and its licensed auctioneer will:

(i) Refrain from (a) targeting eBay users to solicit such users for any activity outside of the scope of consummating the transactions on the eBay Site as set forth in this Agreement; (b) using any information derived from Company's participation on the eBay Site for any purpose other than in connection with such participation; and (c) disclosing or providing such information thereof to any third party.

(ii) 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 Company.

(iii) Comply with the guidelines provided by eBay to Company and participate on the eBay Site in an ethical, fair, reasonable, and nondiscriminatory manner and in compliance with all applicable laws.

(iv) Refrain from withdrawing any Property from the Site unless such withdrawal is required to avoid breaching the representations or warranties set forth in the Agreement with respect to such Property (excluding Section regarding offering of items in multiple venues).

(v) Refrain from interfering with the operation of eBay's Site or with any activity being conducted on the eBay Site, through any device, software, virus or other means.

(vi) Refrain from (a) interfering with any contractual relationship between eBay and any other Company, and (b) inducing third parties to terminate their participation on the Site at any time, including without limitation, in the event that Company terminates its own participation on the eBay Site.

(vii) Company also hereby represents and warrants that it and its licensed auctioneer will comply with all applicable laws, regulations, rules, ordinances and orders regarding accepting bids over the Internet.

13. NO WARRANTY. COMPANY ACKNOWLEDGES AND AGREES THAT THE EBAY SITE, THE ONLINE SERVICE, THE EBAY SERVICES, LIVE AUCTIONS AND ANY OTHER SERVICES PROVIDED BY EBAY OR EBAY AFFILIATES UNDER THIS AGREEMENT 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 EBAY DOES NOT REPRESENT OR WARRANT THAT THE LIVE AUCTIONS, THE EBAY SITE OR SERVICES WILL MEET COMPANY'S REQUIREMENTS OR THAT THE OPERATION OF THE LIVE AUCTION, THE EBAY SITE OR ANY SERVICES WILL BE UNINTERRUPTED OR ERROR FREE.

14. LIMITATION OF LIABILITY. EBAY AND ITS SUPPLIERS WILL NOT BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOST PROFITS (HOWEVER ARISING, INCLUDING NEGLIGENCE) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. IN NO EVENT WILL EBAY OR EBAY AFFILIATES BE LIABLE TO COMPANY FOR ANY CLAIMS RELATED TO THE LIVE AUCTION TECHNOLOGY. IN NO EVENT WILL EBAY OR EBAY AFFILIATES BE LIABLE TO COMPANY FOR AN AMOUNT GREATER THAN THE AMOUNTS PAYABLE BY COMPANY UNDER SECTION 9 OF THIS AGREEMENT. THIS LIMITATION OF LIABILITY IS CUMULATIVE, WITH ALL PAYMENTS FOR CLAIMS OR DAMAGES IN CONNECTION WITH THIS AGREEMENT BEING AGGREGATED TO DETERMINE SATISFACTION OF THE LIMIT.

15. INDEMNIFICATION. Company agrees to defend, hold harmless, and indemnify eBay and its agents, owners, and employees, and any Buyer of any Property offered for sale by Company via the eBay Site or a Live Auction, against any and all claims, actions, damages, losses, liabilities and expenses (including reasonable attorney's fees for counsel of our choice, including in house counsel) arising out of, relating to, or resulting from any and all claims: (i) of ownership or right to possession of any of the Property offered or sold by Company or; (ii) of any alleged breach by Company or its licensed auctioneer of any covenant, obligation, representation or warranty set forth in this Agreement; (iii) of any rescission claim made by any Buyer; or (iv) in connection with the Information that Company provides.

16. INSURANCE. Company agrees to maintain over the term of this Agreement insurance in amounts and types necessary and reasonable in the industry. Such insurance shall cover all items listed on the eBay Site and be in an amount necessary to cover any possible rescission of a sale.

17. AMENDMENT AND MODIFICATION. From time to time during the term of the Agreement, eBay may amend the Agreement (including any incorporated document) by posting the amended terms on the eBay Site, e-mailing notice of the amendment to Company, or otherwise communicating such amendment to Company. Each amendment will be effective thirty (30) days after it is initially posted on the eBay Site, emailed to Company, or otherwise communicated to Company. Company may terminate this Agreement on thirty (30) days' written notice if it believes in good faith that that such amendment would materially and adversely affect Company's rights under this Agreement.

18. TERM AND TERMINATION.

(a) **Term.** This Agreement shall be effective on the Effective Date and shall continue in full force and effect until cancelled or terminated in accordance with this Agreement.

(b) **Convenience.** Either party may cancel this Agreement for any reason, or no reason whatsoever, upon thirty (30) days written notice to the other.

(c) **Breach.** By providing written notice, a party may immediately terminate this Agreement if the other party materially breaches this Agreement and fails to cure that breach within five (5) days after receiving written notice of the breach. Material breaches included:

(i) Failure by Company to resolve three (3) disputes in any three (3) month period consistent with the Rules and the philosophies and practices of eBay.

(ii) Refusal to take all necessary and prompt action to correct Company's actions or omissions or the actions or omissions of any Consignor.

(iii) Breach of the warranties, representations and covenants set forth in Section 12 of this Agreement.

(iv) Breach of the prohibition against withdrawal of property set forth in the Participation Requirements.

(d) **Effect of Termination.** If this Agreement expires or is terminated for any reason, Company's obligations under the Company Conditions of Sale (or the Standard Conditions of Sale, if appropriate) to purchasers who have acquired Property sold by Company on the eBay Site will survive according to their terms. In addition, Sections 2(b), 2(c), 3, 6, 9 (relating to

Company's obligation to pay any then-currently owed but unpaid amounts), 10, 12, 15, 18(d), and 19 will survive the termination of this Agreement.

19. MISCELLANEOUS.

(a) Governing Law and Language. This Agreement will be governed and construed in accordance with the laws of the State of California as applied to agreements entered into in California and performed by California residents. All parties agree to submit to personal jurisdiction in California and further agree that any cause of action arising or a judgment rendered in accordance with the foregoing under this Agreement may be brought in a court in Santa Clara County, California. In the event the preceding provision is unenforceable in accordance with a nation's laws with respect to venue or otherwise, then the parties hereby agree that any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination, or invalidity thereof, will be settled by arbitration in San Jose, California, United States of America, in accordance with the UNCITRAL Arbitration Rules in effect on the Effective Date applying the laws of the State of California. This Agreement has been negotiated and executed in the English language, and the rules of construction and definitions of the English language will be applied in interpreting this Agreement. All other translations interpreting this Agreement will be null and void. Unless otherwise specifically required hereunder, all notices and other communications required or permitted under this Agreement will be written in the English language.

(b) Severability; Headings. If any provision herein is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The parties agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision. Headings are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section.

(c) Assignment. Company will not assign or transfer this Agreement, or any of its rights and obligations hereunder without eBay's prior written consent. Any attempted assignment or transfer in violation of the foregoing will be null and void.

(d) Force Majeure. Except as otherwise provided, if performance hereunder (other than payment) is prevented, restricted or interfered with by any act or condition whatsoever beyond the reasonable control of a party, the party so affected, upon giving prompt notice to the other party, will be excused from such performance to the extent of such prevention, restriction or interference.

(e) Independent Contractors. The parties are independent contractors, and no agency, partnership, joint venture, employee-employer or franchiser-franchisee relationship is intended or created by this Agreement.

(f) Notice. Any notices hereunder will be given to the appropriate party at the address specified above or at such other address as the party will specify in writing. Notice will be deemed given: upon personal delivery; if sent by fax, upon confirmation of receipt; if sent by a reputable overnight courier with tracking capabilities, upon confirmation of delivery by the courier; if by mail, then three (3) days after deposit of certified mail; and if provided by eBay under Section 15, upon posting on the Site or e-mailing notice to Company. Notice to eBay should include a copy sent to "General Counsel."

(g) Entire Agreement; Waiver. This Agreement, including the eBay User Agreement and all exhibits and other documents incorporated by reference (including, without limitation, the Participation Requirements and the Rules), sets forth the entire understanding and agreement of the parties, and supersedes any and all oral or written agreements or understandings between the parties as to the subject matter of the Agreement. In the event of an inconsistency between the eBay User Agreement and any other document which is part of this Agreement, the terms of this Agreement will govern. This Agreement may only be modified or amended according to its terms, or by a writing signed by authorized representatives of both parties. The waiver of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach.

(h) Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which will be taken together and deemed to be one instrument.

(i) Verification/ Binding Effect. In order to be eligible to use Live Auctions, Company must first submit written documentation to eBay demonstrating that it has hired a licensed auctioneer in good standing to conduct the auctions. For convenience, the documentation may be submitted via facsimile to: _____ at (408) ____-_____. This Agreement will be valid only after executed by a duly authorized officer of eBay and eBay confirms to Company in writing (email to be sufficient) that it has verified Company's auctioneer's license and good standing.

EBAY INC.:
By: _____
Name: _____
Title: Vice President

COMPANY:
By: _____
Name: _____
Title: _____

EXHIBIT A
Participation Requirements

The following participation requirements document lists some of the requirements and guidelines (the "Participation Requirements") with which Company must comply in order to participate on the eBay Site and Live Auctions, and is incorporated by reference into the Agreement between Company and eBay.

1. POSTING GUIDELINES.

(a) **Categories.** Company must concentrate in your area(s) of expertise, and offer items of Property within such categories.

(b) **Community Guidelines.** Company needs to comply with the general community guidelines of eBay, though in the event of a conflict between those general guidelines and the Agreement, the Agreement governs. General rules of behavior on eBay may be found at <http://pages.ebay.com/help/community/png-list.html>.

(c) **Single Offering.** Company may not list any Property for sale that is simultaneously being offered for sale in any other venue.

(d) **Linking Back.**

(i) **Conditions of Sale.** The Information that Company posts about the Property on the catalogue information page needs to refer to the Company Conditions of Sale, as defined in the Agreement. As stated in the Agreement, Company must include certain minimum terms in the Company Conditions of Sale (e.g., warranties of title, conformance to description, etc.), but Company is free to set its own terms regarding shipping, payment, insurance, and the like.

(ii) **Educational Content.** Company is free to link to educational content on Company Site designed to inform and educate buyers about the Property Company is offering, so long as such links are also in compliance with the Agreement.

(iii) **Auctions and Retail.** Company shall not link from the Information to any online listing services, nor may Company promote other online listing services or auctions (whether offered by yourself or third parties) from the Information. Company may not provide links to any sites offering the same merchandise for the same or lower price than that included in the information, or to any sites offering merchandise prohibited on eBay. Company may not provide links to any retail site from Company's "View Item" page on eBay.

(e) **Prohibited Items.** Company agrees not to offer any Property on the eBay Site or through a Live Auction if the offering or sale of such Property violates any policy set forth in the Agreement, any applicable laws or regulations, or that may subject Company, eBay, or the buyer to potential liability. Company will be responsible for determining whether the offering or selling of Property may violate applicable laws or regulations. Without limiting the foregoing, Company agrees not to offer any (a) Property containing ivory from the sources prohibited by eBay, tortoiseshell, or any other product of a plant or animal species that is protected as endangered or threatened under applicable national or local law; (b) wine (unless otherwise agreed to in writing by eBay), beer, liquor, distilled spirits or any product containing alcohol products, tobacco or tobacco derivatives, firearms and munitions, or pornographic or obscene material; (c) perishable Property; (d) livestock; (e) slot machines or gaming equipment; (f) Property that is prohibited for sale under applicable "foreign asset control" or "economic sanction" restrictions and regulations; (g) Property or Information that may infringe upon or violate any third party's intellectual property rights, including, without limitation, copyright, patent, trademark, trade secret, moral right, proprietary rights or rights of publicity or privacy, or contain obscenity, pornography or be otherwise inflammatory; (h) Property or Information that eBay deems, in its sole discretion, to be inappropriate or offensive; or (i) Property that is on eBay's "Questionable Items" list (<http://pages.ebay.com/help/community/png-items.html>).

(f) **Deletion of Listing.** eBay may remove the listing for any Property if, in eBay's sole discretion (i) there is doubt as to the accuracy of the Information, (ii) Company has breached or is about to breach any provision of the Agreement, the eBay User Agreement, the Participation Requirements or Rules, whether because of such listing or otherwise, (iii) there is doubt as to title or, the right to pass clear title, to the Property, or (iv) such listing may expose eBay to potential liability or the threat of litigation. Removal of property pursuant to this section shall be grounds for us to immediately terminate this Agreement.

(g) **Removal of Company Information.** eBay reserves the right to take any action, from modification to removal of Information as eBay deems necessary or appropriate if, in eBay's absolute discretion, the publication of the Information (i) may create liability for Company and/or eBay, or may cause eBay to lose (in whole or part) the services of eBay's Internet business partners; (ii) infringes upon or violates third party's intellectual property rights or rights of publicity or privacy; (iii) violates any law, statute, ordinance or regulation; (iv) is defamatory, libelous, illegally threatening or harassing; (v) contains obscenity, pornography or is otherwise inflammatory; (vi) contains a virus or other damaging programming, or (vii) in anyway violates this Agreement or the eBay User Agreement.

(h) **Withdrawal.** Company shall not sell or dispose of any Property listed in on the eBay Site by any other means as long as the item is listed for sale on the eBay Service. We may, in its sole discretion, terminate this Agreement and/or charge Company a withdrawal fee for any violation of this section.

(i) **Updating Information.** Company may add additional Information to the Property description posted on the Site so long as such additions are immaterial to the value of the Property.

2. CUSTOMER SUPPORT AND INTERACTION.

(a) **Response.** Company agrees to provide prompt and courteous customer support to users of the eBay Site, and to strive to respond to users' inquiries within twenty-four (24) hours.

(b) **Feedback.** Company agrees to abide by any user feedback rules provided by eBay. Company agrees that eBay has the right to restrict or deny Company the ability to post Property if Company does not fulfill Company obligations with respect to user support or if Company exceeds the established metrics for negative customer feedback applicable to eBay sellers.

Exhibit B Live Auction Agreement

THE FOLLOWING DESCRIBES THE TERMS ON WHICH EBAY OFFERS COMPANY ACCESS TO LIVE AUCTIONS.

This Live Auction Agreement supplements and is made part of the Agreement and eBay User Agreement and contains additional and different terms and conditions applicable to Company's use of the Live Auction service. In any dispute between the terms of this Live Auction Agreement and the Agreement, the Agreement shall govern.

eBay may amend this Live Auction Agreement at any time by posting the amended terms on the eBay Site or by mail. Except as stated below, all amended terms shall be effective within thirty (30) days of notice to Company.

1. eBay is Only a Venue.

- 1.1 **Services.** eBay is not a certified Auction House and therefore does not conduct the Live Auctions. The Live Auction allows Company to list items in Live Auctions run by certified auctioneers. eBay is solely a passive conduit to facilitate communication between Company and Buyers. eBay reserves the right in its sole discretion to change some or all of its services at any time.
- 1.2 **Control.** eBay has no control over the identity, quality or the ability of buyers to buy items. Nor does eBay guarantee that a buyer will actually complete a transaction.

2. Listing terms for a Live Auction.

In addition to the requirements set forth in Sections 2 & 3 of the Agreement and the Participation Requirements set forth in Exhibit A, Company agrees to the additional terms for Live Auction listings:

- 2.1 Lots for Property to be sold through a Live Auction should appear consecutively during the Live Auction; provided, however, that seller may skip one or more lots during the sale and then return to the skipped lot(s) prior to the conclusion of the sale.
- 2.2 Company must comply with the requirements set forth in the Agreement for listing Property on the eBay Site, including but not limited to Restricted Property, Property Descriptions, Responsibility for Information, Conditions of Sale, Completely Safe Program and Rescission Rights.
- 2.3 All Conditions of Sale must be fair for both floor and internet bidders.
- 2.4 Company may modify the Buyer's Premium for Live Auctions with proper disclosure in the listing and in accordance with Section 2 of the Agreement.
- 2.5 Company will disclose expected bid increments in the catalog listing. Notwithstanding the foregoing, the Company may deviate from those bid increments during the Live Auction event.

3. Bidding, Buying and Conditions of Sale.

Company is required to post the terms and conditions listed above in accordance with the Agreement and to maintain the terms throughout the auction period and for three months thereafter. Company agrees to be bound by its posted bidding terms and conditions of sale. If Company 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. Company agrees to treat online and floor bidders fairly and in accordance with the Agreement and the Live Auction Agreement. Company shall be responsible and indemnify and hold eBay harmless for the actions of the auctioneer including but not limited to the acceptance of bids and the translation of bids.

4. Computer Terminals.

Company agrees to provide, at its own cost a computer terminal with a high speed internet connection and a representative to monitor and communicate bids for online bidders at each Live Auction. Company agrees to have a back up computer terminal and internet connection in the event of technical difficulties.

5. Video and Audio.

Company shall provide any audio or video components of a Live Auction. [eBay will offer Company access to video (and possibly audio) providers that we have partnered with for the purpose of offering video or audio webcasts. Company may choose to use those services at their sole discretion. Company must agree to pay all fees due to video and audio broadcasting above and beyond the regular fees in the contract] The auctioneer has the final determination with respect to bidding on and the sale of an item.

6. No Guarantee.

eBay does not guarantee that the Live Auction technology, the eBay Site or any related services will meet Company's requirements or be uninterrupted or error-free. eBay does not guarantee real-time performance of any service or that eBay will execute all absentee bids.