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Los Angeles

***Pacific Auction Exchange, Inc.***

Franchise Agreement

Dated: \_\_\_\_\_, 200\_\_

Between:

Pacific Auction Exchange, Inc.,  
Franchisor,

And

\_\_\_\_\_  
Franchisee.

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**PACIFIC AUCTION EXCHANGE**  
**FRANCHISE AGREEMENT**

**1 PARTIES:**

This Agreement is made and entered into on \_\_\_\_\_ 200\_, by and between:

Pacific Auction Exchange, Inc.  
a California corporation  
having its principal office at  
9100 Ming Avenue, Suite 202  
Bakersfield, California 93311

(hereinafter referred to as "Franchisor")

and

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(hereinafter referred to as "Franchisee.")

**2 RECITALS:**

**2.1 Ownership of System:**

Franchisor owns certain intellectual and commercial property rights, including, but not limited to, Franchisor's Trade Name "PACIFIC AUCTION EXCHANGE ", Marks and additional proprietary trade and service marks and commercial symbols. Franchisor has spent a substantial amount of time, effort and money to devise and develop business methods, technical knowledge and marketing concepts including, but not limited to, trade secrets, commercial ideas, marketing strategies, administrative procedures, business forms, distinctive signage, and employee training techniques which attributes, taken together, comprise a proprietary business system for the operation of a real estate auction firm offering to provide and providing marketing and auctioning services including.

Franchisee hereby acknowledges the validity of the Trade Name and Marks and Franchisor's ownership of and rights to the Trade Name, Marks and System, and acknowledges that they are the sole property of Franchisor. Any and all goodwill results and improvements by the Franchisee relating to the Trade Name, Marks and System shall become the sole and absolute property of Franchisor who shall have the exclusive right to register and protect all such improvements in its Trade Name, Marks and System.

**2.2 Objectives of Parties:**



Franchisor wishes to grant to Franchisee and Franchisee wishes to accept from Franchisor a franchise to engage in the Franchised Business specified in this Agreement, and using Franchisor's Trade Name, Marks, and System, on the terms and conditions described in this Agreement. The Franchisee agrees that the Franchised Business will be named "Pacific Auction Exchange" without any suffix or prefix attached thereto and that the location shall bear signs, advertising and slogans which denote that the Franchised Business is operated under the Marks.

### **3 DEFINITIONS:**

For purposes of this Franchise Agreement, the following words and phrases are defined as follows:

#### **3.1 Accounting Period:**

"Accounting Period" means each or any of the four (4) or five (5) week periods generally coinciding with calendar months, there being twelve (12) such periods per calendar year as determined by the Franchisor. Franchisor will, at the beginning of each fiscal year, provide Franchisee with a schedule of the Accounting Periods for the upcoming year.

#### **3.2 Affiliate(s):**

"Affiliate" or "Affiliates" means people and companies associated with Franchisor or Franchisee, as the context indicates, including, but not limited to, owners, general partners, limited partners owning a Substantial Interest in Franchisor or Franchisee, shareholders owning a Substantial Interest in Franchisor or Franchisee, corporations in which any person or entity owning a Substantial Interest in Franchisor or Franchisee also has a Substantial Interest, or officers, directors, employees or agents of Franchisor or Franchisee. As used in this paragraph, the phrase "Substantial Interest" means the right to ten percent (10%) or more of the capital or earnings of a partnership or, alternatively, ownership of ten percent (10%) or more of the voting stock of a corporation.

#### **3.3 Agreement:**

"The Agreement" or "this Agreement" means this Franchise Agreement together with its attachments, exhibits and appendixes.

#### **3.4 Approved Location:**

"Approved Location" means a specified location or locations which Franchisor has stated in writing is a site from which Franchisee may conduct a Franchised Business under this Agreement.

#### **3.5 Base Office:**

"Base Office" shall mean the main place of business of any Franchisee within an Exclusive Territory.

#### **3.6 Branch Office:**

"Branch Office" shall mean places of business of any Franchisee within an Exclusive Territory other than such Franchisee's main place of business within the Exclusive Territory.

#### **3.7 Commencement Date:**

"Commencement Date" means the earlier of \_\_\_\_\_, 200\_\_\_\_, or the date when Franchisee's first Franchised Business opens. The Commencement Date may be extended only with the written consent of Franchisor.

**3.8 Company-Owned Unit:**

"Company-Owned Unit" means a business operated under the Trade Name, Marks, and System which is owned by Franchisor or by any of its Affiliates.

**3.9 Designated Manager:**

"Designated Manager" means Franchisee in his or her role as general manager of a Franchised Business or a person whom Franchisee has appointed to act as general manager of a Franchised Business.

**3.10 Exclusive Territory:**

"Exclusive Territory" means the geographic area granted to Franchisee by Franchisor in this Agreement and specified in Attachment "A".

**3.11 Finance Charge:**

"Finance Charge" means an interest rate of twelve (12%) percent per annum. In no event will Franchisee be compelled to pay a Finance Charge or interest at a rate greater than the maximum permitted by applicable law. If the Finance Charge or interest rate specified herein exceeds the maximum permitted by law, then Franchisee shall pay the maximum permitted by law as of the date of accrual of such Finance Charge or interest.

**3.12 Franchised Business:**

"Franchised Business" means an enterprise which Franchisor has authorized Franchisee to conduct under the Trade Name, Marks, and Systems at an Approved Location under this Agreement.

**3.13 Franchisee:**

"Franchisee" means the person or entity that is named as Franchisee in Article 1 of this Agreement. "Franchisee" means, in addition, all persons or entities that succeed to the interest of the original Franchisee whether by Transfer or by operation of law.

**3.14 Franchisor:**

"Franchisor" means PACIFIC AUCTION EXCHANGE, INC. or any person or entity to which Franchisor allocates or assigns all or part of its rights and obligations under this agreement.

**3.15 Good Standing:**

"Good Standing" means timely compliance by Franchisee and its Affiliates with all provisions of this Agreement, any related agreements and the Operations Manual, specifically including, but not limited to, provisions for timely payment of amounts owed by Franchisee to Franchisor or its Affiliate(s).

**3.16 Gross Revenue:**

"Gross Revenue" means the total amount of commissions charged by Franchisee for all services rendered including cash, if any, collected by Franchisee from the Franchised Business or in connection with the Trade Name, Marks or System, excluding sales tax, refunds, and price adjustments made in the normal course of business.

**3.17 Marks:**

"Marks" means selected trademarks, servicemarks, trade dress, logotypes, slogans and other commercial symbols licensed by Franchisor to Franchisee under this Agreement.

**3.18 Operations Manual:**

"Operations Manual" means the manual that Franchisor will lend to Franchisee during the term of this Agreement and that contains information, forms and requirements for the establishment and operation of a Franchised Business and for use of Franchisor's Trade Name, Marks and System. The Operations Manual will describe and dictate the management and operational procedures of the Franchisor's business System and shall govern the operating procedures of the Franchised Business.

**3.19 System:**

"System" means the business methods, technical knowledge and marketing concepts licensed by Franchisor to Franchisee under this Agreement, including, but not limited to, the right to use Franchisor's trade secrets, commercial ideas, recruiting and placement techniques, advertising materials, marketing strategies, administrative procedures, Operations Manual, business forms, distinctive signage, and employee training techniques.

**3.20 Termination:**

"Termination" means any of the following: the expiration of this Agreement under its own terms on its normal expiration date, or on such other date and under such other terms as may be agreed in any modification or renewal agreement; non-renewal of this Agreement; or termination, under the circumstances described in Article 12 of this Agreement, of the then-current term of this Agreement before its normal expiration date.

**3.21 Trade Name:**

"Trade Name" means the commercial name "PACIFIC AUCTION EXCHANGE".

**3.22 Transfer:**

"Transfer" means any sale, gift, or other change in ownership of (a) all or any part of the rights and obligations of this Agreement, (b) the Franchised Business(es), or (c) an ownership interest in Franchisee of a magnitude at least as great as that described in this section.

If Franchisee is a partnership, then one or more transactions (regardless of whether or not they are related) in which there is a cumulative change in the rights to thirty-four percent (34%) or more of the capital or profits of Franchisee will be deemed to be a Transfer.

If Franchisee is a corporation, then one or more transactions (regardless of whether or not they are related) in which there is a cumulative change in beneficial ownership of thirty-four percent (34%) or more of the voting stock of Franchisee will be deemed to be a Transfer.

**4 GRANT OF FRANCHISE:**

**4.1 Grant and Acceptance of Franchise Rights and Duties:**

Franchisor hereby grants to Franchisee and Franchisee accepts from Franchisor a franchise to operate the number of Franchised Businesses specified in Attachment "A" to this Agreement, at Approved Locations within the Territory, using the Trade Name, Marks and System in accordance with the terms of this Agreement. Franchisor

expressly reserves any and all rights in the Trade Name, Marks and System not expressly granted in this Agreement within the Exclusive Territory through any means not specifically prohibited by section 4.2 of this Agreement.

#### **4.2 Exclusive Territorial Rights:**

The Exclusive Territory will consist of the geographic area described in Attachment "A" to this Agreement. Franchisor shall be entitled in its sole discretion, not exercised unreasonably, to designate the size, boundaries and location of the Exclusive Territory, provided however that each such Exclusive Territory shall be designated in accordance with the following general standards and specifications, and shall be subject to the following limitations and restrictions:

4.2.1 Size. Each Exclusive Territory shall typically consist of the geographic area described in Attachment "A" to this Agreement.

4.2.2 Exclusivity. For so long as Franchisee is in Good Standing and meets its obligations under this Agreement, Franchisor shall not:

4.2.2.1 authorize or permit any other franchisee to base its Franchised Business or any Branch Offices within Franchisee's Exclusive Territory;

4.2.2.2 base or locate any Company-Owned Unit which uses the Trade Name, Marks or System within Franchisee's Exclusive Territory;

4.2.2.3 authorize or permit any other franchisee or Company-Owned Unit using the Trade Name, Marks or System to relocate to a site within the Exclusive Territory.

4.2.3 Non-exclusive operations. The exclusivity of this Agreement is limited to the locations of the base and Branch Offices of other Franchisees and any Company-Owned Unit. There is no territorial limitation on operations of other Franchisees and any Company-Owned Unit within Franchisee's Exclusive Territory.

4.2.4 Branch Offices. Franchisee shall not acquire, establish, open or operate Branch Offices within his Exclusive Territory without Franchisor's written consent. Upon obtaining such written consent, Franchisee may acquire, establish, open or operate Branch Offices within Franchisee's Exclusive Territory in accordance with this Agreement. Prior to opening each Branch Office, Franchisee shall pay a fee of Ten Thousand Dollars (\$10,000.00) to cover Franchisor's costs of training, expenses and administrative fees related to each Branch Office.

4.2.5 No Sub-franchising. Franchisee shall not enter into any sub-franchising relationships that relate in any way to the Franchised Business. Nothing in this Agreement may be construed as an exception to this prohibition.

4.2.6 Relocation. Franchisee shall not relocate its Base Office or any Branch Office of the Franchised Business within the Exclusive Territory without Franchisor's prior written consent, which shall not be unreasonably withheld. No fee shall be charged for relocation of any Base Office or Branch Office within the Exclusive Territory, however Franchisee shall reimburse Franchisor for all costs and expenses incurred by Franchisor in investigating and approving any new or different Approved Location proposed by Franchisee.

#### **4.3 Term of Agreement and Renewal of Franchise:**

The Franchise granted under this Agreement shall continue for the initial term plus any renewal terms agreed to by the parties hereto.

4.3.1 **Initial term.** The term of this Agreement and any Franchise granted hereunder shall begin on the Commencement Date, and shall continue for a period of five (5) years thereafter.

4.3.2 **Renewal.** Franchisee has the right to renew the Franchise for additional five (5) year terms on the same terms and conditions as those on which Franchisor is customarily granting new franchises at the time of renewal, except for the fee to be charged, provided that, at the time of renewal the following conditions have been fulfilled:

4.3.2.1 Franchisee and its Affiliate(s) are in Good Standing under this Agreement, any other agreement with Franchisor or its Affiliate(s), and the Operations Manual;

4.3.2.2 Not later than one hundred eighty (180) days before the expiration of this Agreement, Franchisee shall notify Franchisor in writing of its intent to renew;

4.3.2.3 Not later than: (1) thirty (30) days before this Agreement expires; or (2) one hundred fifty (150) days after Franchisee's receipt of the agreement then being used for new franchises, whichever is the later, Franchisee and any of its Affiliates who have executed this Agreement shall execute and deliver a copy of a Renewal Franchise Agreement in that form;

4.3.2.4 Before commencement of any renewal term, Franchisee shall, at its sole expense modernize all of its Approved Locations and shall replace, renovate and/or modernize the fixtures, equipment, and signage used in the Franchised Business to meet the standards then applicable to new franchised businesses;

4.3.2.5 Before commencement of any renewal term, Franchisee shall renew or secure the right to renew leases on all of its Approved Locations for terms equal to or greater than the renewal term; and

4.3.2.6 Before commencement of any renewal term, Franchisee and any of its Affiliates who are parties to this Agreement shall sign a general release of claims in a form satisfactory to Franchisor with respect to any and all of their past dealings with Franchisor and its Affiliates;

4.3.3 **Renewal Agreement May Differ.** Franchisee understands and agrees that the terms of any franchise agreement in use at the time of any renewal may differ materially from the terms of this Agreement. Such differences may include, but shall not necessarily be limited to, increased Continuing Service Fees and Advertising Fund contributions.

## **5 SERVICES TO BE PROVIDED BY FRANCHISOR:**

Provided that Franchisee remains in Good Standing, Franchisor will perform the following services for Franchisee:

### **5.1 Business Plan Development:**

Franchisor will consult with, advise, and assist Franchisee in conjunction with the information and resources needed to develop a business plan that will assist in the start-up and continued operation of the Franchised Business.

### **5.2 Training:**

Franchisor will provide the following training services:

5.2.1 Initial Training. Before the opening of Franchisee's Franchised Business, Franchisor will, conduct an initial training program in the operation of a Franchised Business under Franchisor's System for one person designated by Franchisee to work in the Franchised Business. The program shall take place at Franchisor's principal office or such other location(s) as Franchisor shall designate, and shall consist of 30 to 40 hours of classroom instruction and field training over no more than a ten (10) business day period. Instruction topics shall include but not be limited to auctioneering, the basics of real estate transactions, and other operational guidelines. Franchisee's Designated Manager for each Approved Location must attend and successfully complete the program to Franchisor's satisfaction before Franchisee may open a Franchised Business at that Approved Location. If a Designated Manager's employment is terminated, Franchisee will employ a new Designated Manager within 90 days who must successfully complete the program before beginning work in the Franchised Business.

5.2.2 Branch Offices. Prior to the opening of any Branch Office under any Territory Development Agreement, Franchisor will conduct an additional initial training program equivalent in content and duration to the program described in paragraph 5.3.1 for each person employed by Franchisee at such Branch Offices. Franchisee's Designated Manager for each such Branch Office must attend and successfully complete the training program to Franchisor's satisfaction before Franchisee may open a Franchised Business at that Branch Office. If a Branch Office Designated Manager's employment is terminated, Franchisee will within 90 days employ a new Designated Manager who must successfully complete the training program before starting work.

5.2.3 Continuing Education. Franchisor may, but shall not be required to, offer continuing education programs on matters related to the operation or promotion of Franchised Businesses. Such continuing education programs may be optional or mandatory. In the event a continuing education program is deemed mandatory, Franchisee and each of Franchisee's Designated Managers must attend, but Franchisor may limit attendance by any other employees from each Franchised Business. For continuing education programs that are deemed optional, Franchisor shall have the right to limit attendance from each Franchised Business.

5.2.4 Compensation and Expenses of Trainees. All trainees designated by Franchisee shall be considered Franchisee's employees while attending any training or continuing education programs under this Agreement. Franchisor shall not be obligated to pay any compensation for services performed by such trainee(s) during any training or continuing education program, or to reimburse Franchisee for any compensation paid by Franchisee to any such trainee(s) during any training or continuing education program. Franchisee will pay all expenses incurred by such trainee(s) in connection with and during such training or continuing education program, including, but not limited to, airfare and other means of transportation cost, meals, lodging and other living expenses.

5.2.5 Fees Charged for Training. Franchisor will not charge a fee other than the Initial Fee for the initial training of the first two (2) attendees for any Base Office or Branch Office. Franchisor may charge a reasonable fee for the initial training program for any subsequent or additional employees, including replacement Designated Managers. Franchisor shall not charge a fee for the first two (2) attendees from each Base Office or Branch Office attending any mandatory continuing education programs. For each additional attendee from each Franchised Business, and for all attendees at optional continuing education programs, Franchisor may charge a reasonable fee for each attendee.

### 5.3 Consultation:

5.3.1 Location Openings. Franchisor will, upon Franchisee's request, provide up to five (5) days of onsite consultation, including limited field training, at each Approved Location in connection with the opening of the Approved Location. Franchisor will not charge any additional fee for onsite consultations related to the opening of an Approved Location.

5.3.2 Ongoing Consultation. Franchisee may, from time to time as reasonably necessary, consult with Franchisor concerning establishment and operation of the Franchised Business. Consultations may be in writing, in person, or by telephone, during regular business hours at Franchisor's principal place of business. Franchisor will use its best efforts to respond to all inquiries, and will make its personnel reasonably available for ongoing consultations at no charge provided Franchisee is in Good Standing. If, however, Franchisor deems the frequency, duration, or complexity of consulting services being requested by Franchisee to be unreasonable, Franchisor may so notify Franchisee, and may thereafter charge an hourly or daily fee, plus reimbursement of costs associated with such consultation. Franchisor may charge Franchisee at a daily rate of One Thousand Two Hundred and Fifty Dollars (\$1,250.00) for onsite consultations in excess of five (5) days, as provided in section 5.3.1 above.

#### **5.4 Operations Manual:**

Franchisor will lend to Franchisee one (1) copy of the Operations Manual developed by Franchisor for use in the Franchised Business. The Operations Manual contains instructions, policies and information including, but not limited to, use of the Marks, business forms, information on marketing, management, branch operations, hours of operation and administrative methods, and other information Franchisor believes will be necessary or helpful to Franchisee in Franchisee's operation of the Franchised Business.

5.4.1 Revisions. The Operations Manual will be periodically updated to adapt to the changing needs of the franchise network and will distribute revised pages to Franchisee. Unless otherwise stated, all such revisions shall apply to all franchisees, and shall be effective upon delivery to the Franchisee. Should a dispute arise concerning the requirements of the Operations Manual, the master copy of the Operations Manual maintained by Franchisor shall be deemed the original and controlling Operations Manual.

5.4.2 Ownership and Return. The Operations Manual shall remain at all times the property of Franchisor. Upon Termination of this Agreement or the Franchise granted hereunder, Franchisee will immediately return the Operations Manual to Franchisor.

5.4.3 Confidentiality. Franchisee will not make, nor cause or permit to be made, any copies or reproductions of all or any portion of the Operations Manual without Franchisor's prior written consent, and shall not disclose the contents of the Operations Manual or any portion to any person except to its employees as required to operate the Franchised Business. Prior to receiving the Operations Manual and prior to permitting its employees to review the Operations Manual, Franchisee shall execute, and require all such employees to execute a confidentiality agreement in a form prescribed by Franchisor. All such executed agreements shall be delivered to Franchisor upon execution.

## **6 EMPLOYEES AND FIELD STAFF:**

### **6.1 Office Personnel:**

Franchisee will employ and maintain a sufficient number of adequately trained and competent employees and managers to operate a Franchised Business in compliance with the Operations Manual.

6.1.1 Management. Franchisee or Franchisee's Designated Manager will devote his or her full time and effort to the management and operation of the Franchised Business. A Designated Manager or other employee who has successfully completed Franchisor's initial training program must be present at

each Approved Location during business hours. If Franchise has more than one Approved Location, an additional Designated Manager shall be employed for each. If Franchisor, in its sole discretion, determines that any Designated Manager is not properly performing his duties, Franchisor will notify Franchisee who will take corrective action immediately. Franchisee will keep Franchisor advised of the names and addresses of all current Designated Managers.

6.1.2 Franchise Office Staff. Franchisee will maintain at all times a staff of trained employees in sufficient numbers to operate the Franchised Business in compliance with Franchisor's standards and specifications as set forth in the Operations Manual.

6.1.3 Office Staff Training. Franchisee will establish and maintain an initial and continuing training program covering day to day operational procedures for its staff in accordance with the guidelines set forth in the Operations Manual.

## **6.2 Responsibility for Franchisee's Office Staff.**

Franchisee will be solely responsible for all operational expenses of Franchisee's Franchised Business including, without limitation, payment of wages to Franchisee's permanent employees, taxes, liability, state disability and worker's compensation insurance, advertising, rent, telephone, and leased or rented equipment. Franchisee will not incur any obligations on Franchisor's behalf. Franchisee will indemnify and hold Franchisor harmless from any and all damages, losses, costs, expenses, demands, claims, and judgments related to, associated with, arising out of or resulting from injury or alleged injury or personal injury to any person, or damage or alleged damage to property of others sustained in connection with, arising out of or resulting from, or alleged to have been sustained in connection with or to have arisen out of or to have resulted from the activities of Franchisee or Franchisee's agents, employees or representatives.

## **7 CONDUCT OF FRANCHISED BUSINESS:**

### **7.1 Use of Trade Name and Marks:**

7.1.1 Context of Use. Franchisee will use the Trade Name and Marks only in the operation of a Franchised Business at an Approved Location. Franchisee may not use any other trade name or marks in connection with a Franchised Business.

7.1.2 Changes in Trade Name and Marks. Franchisor has invested substantial time, energy, and money in the promotion and protection of its Trade Name and other Marks as they exist on the Commencement Date. It has no present intention of altering them. However, both parties recognize that rights in intangible property such as the Trade Name and Marks are often difficult to establish and defend and that changes in the cultural and economic environment within which the System operates may make changes in the Trade Name and Marks desirable or necessary. Franchisee understands that Franchisor therefore reserves the right to change its Trade Name and Marks and the specifications for each when and if Franchisor believes that such changes will benefit the franchise network. Franchisee agrees that it will promptly upon receipt of notice of such changes conform, at its own expense, to any such changes.

7.1.3 Legal Protection. Franchisee agrees to notify Franchisor immediately in writing if it becomes aware of any unauthorized use of Franchisor's Trade Name, Marks, or System. Franchisee will promptly notify Franchisor in writing of any claim, demand, or suit against Franchisee or against its principals based on or arising in connection with Franchisee's use of the Trade Name, Marks or System. In any action or proceeding arising from or in connection with any such claim, demand, or suit, Franchisee agrees that Franchisor may select legal counsel and has the right to control the proceedings if it wishes to exercise these prerogatives.



7.1.4 Advertising Materials. Franchisee's advertising materials shall comply with the requirements for such materials set forth in the Operating Manual. However, even if Franchisee's advertising materials comply with such requirements, Franchisor may at any time prohibit any use of such materials if it reasonably believes it necessary to make the advertising conform to changes in the System or to correct unacceptable features, including, but not limited to, intentional or negligent misrepresentations.

## 7.2 Site Selection and Franchise Location:

Franchisee must, at its sole expense, locate, obtain and occupy the site for the Franchised Business. Franchisor's prior approval of the proposed site must be obtained in writing before Franchisee enters into any lease or purchase agreement. Approval decisions shall be made in accordance with Franchisor's then current standards and specifications. To request approval, Franchisee must notify Franchisor in writing of no less than three (3) but no more than five (5) proposed locations for the Franchised Business within the Exclusive Territory, and provide Franchisor with all information which Franchisor may request concerning any such proposed location. ***By approving any particular site for the premises of a Franchised Business, Franchisor does not warrant that the business operating at that location will be successful.*** Franchisor will base its approval on the following criteria:

7.2.1 Site Guidelines. Any proposed site for an Approved Location must conform to the general guidelines for suitable franchise premises set out in the Operations Manual; and

7.2.2 Lease Guidelines. The lease must contain language satisfactory to Franchisor permitting Franchisor or its designee to assume the lease without cost or expense to Franchisor if the Franchise Agreement is terminated for any reason or if Franchisee should default under the terms of the lease.

7.2.3 Site Inspections. Franchisor may, in connection with approving any of Franchisee's proposed locations, conduct an inspection of each such proposed location. The first such site inspection shall be conducted at Franchisor's expense. Subsequent inspections may, at Franchisor's option, be charged to Franchisee who shall reimburse Franchisor for any and all costs and expenses incurred by Franchisor in inspecting and approving any such proposed locations. Payment is due on presentation of an invoice from Franchisor for such costs and expenses.

## 7.3 Commencement of Operations:

Franchisee must commence operation of the Franchised Business within Franchisee's Exclusive Territory within sixty (60) days after receipt of notice of Franchisor's approval of the Approved Location, unless otherwise agreed in writing by Franchisor.

## 7.4 Quality Control:

7.4.1 Franchised Business Opening. Franchisee may not open the Franchised Business to the public until Franchisor certifies in writing that, in the view of its management, Franchisee and Franchisee's employees are prepared for the opening. ***By so certifying, Franchisor does not warrant that the Franchised Business will be successful.***

7.4.2 Compliance with Operations Manual. Franchisee will at all times operate the Franchised Business in complete compliance with the Operations Manual and Franchisor's other written directives and notices. Franchisor may revise the Operations Manual and other standards and specifications when deemed reasonably necessary to the continued success and development of the franchise network. Such changes may require Franchisee to purchase equipment, supplies, furnishings or other goods, to undertake additional training, and/or to incur other additional costs. Franchisee will promptly take the steps necessary to conform to the revised standards and specifications at its own expense.

7.4.3 Products and Services Offered. Franchisee will offer and sell all the services and only the services that Franchisor has authorized Franchisee to provide in this Agreement and the Operating Manual.

7.4.4 Quality Control Inspections. Franchisor may make periodic quality control inspections of the Franchised Business. Such inspections may be made with or without prior notice. Franchisee will cooperate fully with the Franchisor and its agents and representatives with respect to such inspections. Franchisee will permit Franchisor and its agents and representatives to examine, copy or audit Franchisee's complete books, records and statements, including but not limited to books of accounts, bank statements, check stubs, federal, state and local tax returns, reports, documents and computer databases. If Franchisor notifies Franchisee in writing of any deficiencies, Franchisee will promptly correct any such deficiencies. If Franchisee does not correct such deficiencies within the time specified in the notice of deficiency, its failure to do so will constitute a material breach of this Agreement.

7.4.5 Notification of Complaints. Franchisee will notify Franchisor in writing within five (5) days if Franchisee is served with a complaint in any legal proceeding that is in any way related to the Franchised Business or if Franchisee becomes aware that it or the Franchised Business is the subject of any complaint to or investigation by a governmental licensing authority or consumer protection agency.

## 7.5 Advertising:

7.5.1 Grand Opening. Any grand opening promotional program will be conducted by the Franchisee at its sole cost and expense, and will be conducted in accordance with the guidelines of the Operations Manual.

7.5.2 Local Advertising. Franchisee must spend a minimum of two percent (2%) of its annual Gross Revenue on local advertising and promotion as specified in the Operations Manual. For purposes of this paragraph, "local advertising" means advertising primarily directed to persons or entities within the Exclusive Territory.

7.5.2.1 As part of its local advertising, Franchisee will, at its sole expense, subscribe for and maintain throughout the term of this Agreement at least one white pages telephone listing and at least one prominent advertisement in the yellow pages of each telephone directory servicing Franchisee's Exclusive Territory. All telephone directory advertising will conform to the standards set forth in the Operations Manual.

7.5.2.2 Other than telephone directory advertising, and except as hereinafter set forth under "Advertising Fund", Franchisee may conduct local advertising in any manner it deems appropriate within the guidelines of the Operations Manual.

7.5.2.3 Franchisee shall submit, on or before the fifth (5) day of each calendar quarter, copies of invoices for advertising materials and/or media space and time, showing compliance with the advertising spending requirements during the preceding quarter. Excess spending in any quarter may be used to offset shortfalls in any later quarter, provided the Franchisee's total annual advertising expenditures equal or exceed the stated minimum.

7.5.2.4 Fifty percent (50%) of amounts contributed to the Advertising Fund Account, as hereinafter set forth, will be credited against the local advertising spending requirement. Local advertising spending will not reduce or eliminate Franchisee's obligation to make Advertising Fund contributions.

7.5.3 Advertising Fund. Franchisor may, for the purpose of pooling the advertising funds of Franchisor and each of its franchisees in order to achieve greater benefits in promoting the Trade Name

and Marks, upon thirty (30) days' prior written notice to Franchisee, establish and administer an advertising fund (the "Advertising Fund.") In such event, Franchisor may charge Franchisee an Advertising Fund Contribution, calculated on a monthly basis, and equal to three-quarters of one percent (0.75%) of Franchisee's Gross Revenue for each month. The Advertising Fund Contributions shall be administered as follows:

7.5.3.1 Franchisor shall deposit all Advertising Fund Contributions in an Advertising Fund Account maintained for the benefit of all Company Owned Units and Franchised Businesses participating in the Advertising Fund. The funds designated as the Advertising Fund shall be used by Franchisor to pay for advertising benefiting all Company Owned Units and Franchised Businesses participating in the Advertising Fund, but shall not be held as trust funds.

7.5.3.2 Should Franchisor or any franchisee contribute more than the required amount during any fiscal year, the party who contributed the excess will be entitled to a reimbursement or credit.

7.5.3.3 Franchisor will have the sole and exclusive right to determine the manner and amount of expenditures made using Advertising Fund monies, but shall give preference to Advertising Fund projects that are statewide or regional in scope. Franchisor may allocate Advertising Fund monies to regional groups of franchisees or individual franchisees when it deems it desirable. Fund monies may be used to pay for market research; to pay for the creation of advertising materials; to pay for media space and time for a national or regional basis or individually on a local basis. Fund monies may also be used to pay for point-of-purchase materials or public relations projects. Because the benefits of advertising and promotion are difficult to measure with precision, Franchisor reserves the unqualified right to determine, in its sole discretion, where, when, and how Advertising Fund monies will be spent; the sole proviso is that the monies must be used in a manner that is reasonably related to the general promotion of the Trade Name and Marks. Nothing herein will be construed to require Franchisor to expend the funds in the Advertising Fund so as to benefit any particular franchisee or group of franchisees on a pro rata or proportional basis or otherwise. Up to ten percent (10%) of Fund monies may be used to compensate Franchisor for overhead and other expenses incurred in connection with its administration of the Fund. Advertising Fund contributions are not refundable under any circumstances. Any additional advertising shall be at the sole cost and expense of the Franchisee, subject to the provisions set out in Section 8.6.

7.5.3.4 Franchisor will, within one hundred twenty (120) days after the end of each calendar year, provide each Franchised Businesses participating in the Advertising Fund with an Advertising Fund Report setting out the total Advertising Fund contributions and expenditures during the past year, and reporting on the advertising activities undertaken.

7.5.3.5 Franchisor may, at any time, terminate any Advertising Fund whereupon any withholding of Advertising Fund Contributions shall cease, and any unexpended amounts in the Advertising Fund Account shall be distributed pro-rata to Franchisor and all franchisees in proportion to their individual contributions to the Advertising Fund.

## **7.6 Client Development:**

7.6.1 Client Relations and Marketing. Franchisee shall be responsible for locating and developing clients for the Franchised Business. All client development and marketing activities shall be conducted under the guidelines set forth in the Operations Manual.

7.6.2 Clients Located Outside Exclusive Territory. Franchisee may solicit business from businesses, clients or potential clients located outside of Franchisee's Exclusive Territory, and Franchisee may accept business from outside the Exclusive Territory.

## **8 PAYMENTS BY FRANCHISEE:**

### **8.1 Initial Fee:**

When Franchisee signs this Agreement, Franchisee will pay Franchisor in cash or other form of payment acceptable to Franchisor an initial fee of Twenty Five Thousand Dollars (\$25,000.00). Franchisee shall pay forty-five percent (45%) of gross commissions for the first ten Real Estate Auctions. Should Franchisee's Designated Manager fail to satisfactorily complete the initial training course before the Commencement Date, Franchisor may cancel this Agreement and, provided Franchisee signs a general release of claims, shall refund fifty percent (50%) of Franchisee's initial fee. Otherwise, the initial fee is nonrefundable.

### **8.2 Development Fees:**

For each Branch Office opened by Franchisee within the Exclusive Territory during the term of this Agreement, Franchisee will pay to Franchisor, on signing the lease for, or opening escrow for purchase of the premises, a development fee of Ten Thousand Dollars (\$10,000.00). This fee is fully earned on receipt by Franchisor and is not refundable under any circumstances.

### **8.3 Continuing Service Fees:**

Franchisee will pay Franchisor a continuing service fee equal to six percent (6%) of the Franchisee's net commission derived from each auction. The Franchisee's net commission consists of the gross commission less expenses directly and solely attributable to each such auction. Franchisee's overhead expenses, i.e., rent, payroll, shall not be deducted from the gross commission for purposes of calculating the Continuing Service Fees.

8.3.1 Payment of Continuing Service Fee: Within five (5) business days of Franchisee's receipt of a commission arising from any auction of real or personal property, Franchisee shall deliver to Franchisor the Continuing Service Fee arising from each such auction. Any untimely Continuing Service Fee shall accrue interest at the rate specified in section 3.12 above.

8.3.2 Documentation Accompanying Continuing Service Fee: With the payment of each Continuing Service Fee, Franchisee shall provide Franchisor with (1) a copy of the closing statement arising from the escrow relating to the subject auction, (2) a copy of Franchisee's contracts with the seller and successful bidder in the subject auction (as specified in the Operations Manual), (3) a copy of documentation specifying the computation of the gross commission for the subject auction, and (3) a copy of receipts and invoices that support the deduction of expenses from gross commission in computing the net commission.

8.3.3 Renewal Fee Credit: For each renewal of this Agreement, Franchisor will credit against Franchisee's renewal fee, specified in section 4.3.2.7, the sum of Franchisee's Continuing Service Fees for the twelve (12) month period preceding the renewal of this Agreement.

### **8.4 Audit Fees:**

If Franchisor audits the books and records of the Franchised Business, and such audit discloses any underpayment by Franchisee, Franchisee will immediately pay these discrepancies to Franchisor together with accrued interest on the amount underpaid. If any such underpayment exceeds three percent (3%) of the total payments due during any period covered by the audit, Franchisee will reimburse Franchisor for all fees, costs and expenses incurred by Franchisor in connection with the audit including, but not limited to, accountants and attorney fees, costs of transportation and related expenses.

**8.5 Training Fees and Costs:**

Franchisor may charge training fees as hereinbefore provided.

**8.6 Renewal Fee:**

In lieu of paying a new initial fee for any renewal term, Franchisee will pay a renewal fee equal to thirty-five percent (35%) of the amount of the initial fee charged by Franchisor or Thirty-five Thousand Dollars (\$35,000.00), whichever is greater.

**8.7 Transfer Fee:**

In the event of any Transfer of this Franchise or of the Franchised Business, Franchisee will pay a Transfer Fee equal to thirty five percent, (35%) of the amount of the initial fee currently being charged by Franchisor to new franchisees at the time of renewal, as hereinbefore provided.

**8.8 Application of Funds and Other Payments:**

If any payment received by the Franchisor or any of its Affiliates from Franchisee is not as great as Franchisee's total indebtedness to Franchisor and Franchisor's Affiliates at the time when the payment is made, Franchisor has the right to determine, in its sole discretion, to which portion of the indebtedness the payment will be applied. In addition to all other payments made to or sums retained by Franchisor, the Franchisee will pay to Franchisor, or its subsidiaries, affiliates or designees, as applicable, promptly when due all amounts paid or loaned/advanced by Franchisor on behalf of Franchisee or which Franchisor has become obligated to pay on behalf of the Franchisee, for any reason whatsoever.

**8.9 Interest on Late Payments:**

Any payment not received by Franchisor when due will bear interest at the Finance Charge rate set forth above. Interest charges on late payments are intended to partially compensate Franchisor for loss of use of the funds and for internal administrative costs resulting from late payment which would otherwise be difficult to measure with precision. The fact that such charges are imposed should not be construed as a waiver of Franchisor's right to timely payment.

**9 FINANCIAL DEALINGS:**

**9.1 Financial Information:**

9.1.1 Records. Franchisee must maintain on the premises of the Franchised Business, complete and true records and all Gross Revenues, expenditures, client lists, employees, and other information in the form and manner specified or directed by Franchisor in the Operations Manual or otherwise.

9.1.2 Reports. Franchisee will submit to Franchisor, on or before the tenth day of each month, financial reports on the activities, income and expenses of the Franchised Business in the format specified in the Operations Manual. In addition, Franchisee will submit to Franchisor other reports concerning financial, promotional and operational aspects of the Franchised Business in the form and at the intervals specified in the Manual. All reports will be signed by Franchisee and verified in

accordance with Franchisor's requirements, which are set out in the Operations Manual. Franchisee will maintain its books and records in the form prescribed in the Operations Manual and will retain these records for a period of at least four (4) years after their preparation. Franchisor may require Franchisee to purchase or lease computer and/or communications equipment and software that meet specifications set out in the Operations Manual to facilitate the creation of standardized financial records and their transmittal to Franchisor. Franchisee will also submit to Franchisor, at the time of filing, copies of all federal, state and local income, sales, and property tax returns. Franchisor will use this data to confirm that Franchisee is complying with its obligations under this Agreement and to formulate earnings and expense information to disclose to prospective franchisees.

## **9.2 Insurance:**

9.2.1 Liability Insurance. Franchisee must purchase and maintain a policy or policies of comprehensive public liability insurance covering all Franchised Business assets, personnel, and activities on an occurrence basis with a combined single limit for bodily injury, death or property damage of not less than One Million Dollars (\$1,000,000). Franchisor may increase the minimum coverage requirement annually if necessary to reflect inflation or other changes in circumstances.

9.2.2 Casualty and Business Interruption Insurance. Franchisee must also carry (a) casualty insurance in a minimum amount equal to the replacement value of Franchisee's interest in the Franchised Business premises, including furniture, fixtures and equipment, and (b) business interruption insurance in an amount sufficient to cover the rent of the Franchised Business premises, salary or wages of key personnel, and other fixed expenses.

9.2.3 Worker's Compensation Insurance. In addition, Franchisee will maintain policies of worker's compensation insurance, disability insurance, and all other types of insurance required by applicable law.

9.2.4 Required Policy Provisions. Each insurance policy that is required under this Agreement must:

9.2.4.1 contain a provision that the policy cannot be canceled without thirty (30) days written notice to Franchisor,

9.2.4.2 be issued by an insurance company of recognized responsibility,

9.2.4.3 designate Franchisor and Franchisor's officers and directors as additional named insured, and

9.2.4.4 be satisfactory to Franchisor in form, substance and coverage.

9.2.5 Certificate of Insurance. Franchisee will deliver a certificate of the issuing insurance company evidencing each policy to Franchisor within ten (10) days after the policy is issued or renewed.

## **9.3 Financial and Legal Responsibility:**

9.3.1 Compliance with Law. Franchisee must comply with all federal, state, and local laws and regulations pertaining, directly or indirectly, to the Franchised Business. Franchisee must establish and keep current at its sole expense any and all licenses, permits, bonds, and deposits made to or required by any governmental agency in connection with the operation of the Franchised Business.

9.3.2 Taxes. Franchisee will be absolutely and exclusively responsible and liable for the prompt payment of all federal, state and local taxes, including individual and corporate income taxes, franchise taxes, gross receipt taxes, employee withholding taxes, F.I.C.A. taxes, and personal property and real estate taxes payable as a result of the Franchised Business. Franchisor shall have no liability for these taxes and the Franchisee will indemnify Franchisor for any such taxes that may be assessed or levied against Franchisor.

9.3.3 Payment of Indebtedness. Franchisee must pay promptly when due all taxes and debts incurred in the conduct of its Franchised business.

## **10 RELATIONSHIP OF PARTIES:**

### **10.1 Interest in Marks and System:**

Franchisee will not at any time do or cause to be done anything contesting or impairing Franchisor's interest in its Trade Name, Marks, or System. Franchisee acquires no rights in any of these things except for Franchisee's right to use them in accordance with the express terms of this Agreement. Franchisor retains the right to grant other franchises or licenses to use the Trade Name, Marks and System on any terms that Franchisor wishes, subject only to Franchisee's territorial rights described in Article 4 of this Agreement.

### **10.2 Independent Status:**

Franchisee is an independent legal entity and will make this fact clear in its dealings with suppliers, lessors, government agencies, employees, customers and others. Franchisee will use its own knowledge and judgment in making business decisions, subject to this Agreement and the Operations Manual. Franchisee may not expressly or implied hold itself out as an employee, partner, shareholder, joint venturer or representative of Franchisor, nor bind Franchisor or to incur any liability on Franchisor's behalf. If Franchisee is a corporation or a partnership, it will not use the Trade Name as part of its corporate name.

### **10.3 Display of Disclaimer:**

Franchisee will conspicuously display a sign that states that "PACIFIC AUCTION EXCHANGE IS A FRANCHISED BUSINESS OWNED AND OPERATED INDEPENDENTLY OF PACIFIC AUCTION EXCHANGE, INC." at the Approved Location. Business cards, stationery, contracts, invoices, leases, tax returns and other documents used by Franchisee in its business dealings with suppliers, lessors, governmental agencies, employees and customers must clearly identify Franchisee as an independent legal entity.

### **10.4 Confidentiality:**

Franchisee acknowledges and agrees that the information, ideas, forms, marketing plans and other materials disclosed to it under this Agreement, whether or not included in the Operations Manual, are confidential and proprietary trade secrets of Franchisor. Franchisee agrees to maintain the confidentiality of all such material. Franchisee will not disclose any such information to any third party, except to Franchisee's employees and agents as necessary in the regular conduct of the Franchised Business and except as authorized in writing by Franchisor. Franchisee will be responsible for requiring compliance of its Affiliates with the provisions of this section. Franchisee will procure written Noncompetition and Nondisclosure Agreement, in the form of Attachment B to this Agreement, from Franchisee's Affiliates and will send Franchisor a copy of each such agreement within ten (10) days after each Affiliate assumes that status with Franchisee.

### **10.5 Indemnification:**

Franchisee will indemnify and hold Franchisor harmless from all expenses or liabilities of any kind arising from or in any way connected to any activity of Franchisee. If Franchisor is made a party to a legal proceeding in connection with any act by Franchisee, Franchisor may hire counsel to protect its interests and bill Franchisee for all costs and expenses incurred in doing so. Franchisee will promptly reimburse Franchisor.

**10.6 Covenant Not To Compete:**

Franchisee will not, during the term of this Agreement and for two (2) years after its termination, operate or own more than a ten-percent (10%) beneficial interest in any company competing with Franchisor's businesses and located within seventy-five (75) miles of any portion of the Exclusive Territory as described in Attachment "A" to this Agreement. Franchisee agrees to obtain Noncompetition and Nondisclosure Agreements from each of its Affiliates in the form of Attachment B to this Agreement within ten (10) days after each Affiliate assumes that status with Franchisee.

**10.7 Licenses:**

Franchisee shall at all times maintain any and all licenses, including but not limited to real estate licenses, required by the jurisdiction within which Franchisee conducts its business in order to conduct the Franchised Business.

**11 TRANSFER OF FRANCHISE:**

**11.1 Purpose of Conditions for Approval of Transfer:**

Franchisor's grant of this franchise is made in reliance on Franchisee's integrity, ability, experience and financial resources. Neither the franchise nor the Franchised Business may be Transferred unless Franchisee has first obtained Franchisor's written consent, which will not be unreasonably withheld. In order to ensure that no Transfer jeopardizes the Trade Name, the Marks, or Franchisor's interest in the successful operation of the Franchised Business, Franchisor will only consent to a Transfer if Franchisee complies with the provisions of Section 11.2 and 11.3 of this Agreement and if the conditions described in section 11.5 are fulfilled.

**11.2 Notice of Proposed Transfer:**

If Franchisee wishes to Transfer this franchise, Franchisee will submit to Franchisor: (a) the form of franchise purchase application currently in use by Franchisor completed by the prospective transferee; (b) a written notice, setting forth all the terms and conditions of the proposed Transfer; and (c) the transfer fee described in Article 9 of this Agreement. If the Transfer is not approved by Franchisor, Franchisor will return the transfer fee to Franchisee after deducting costs incurred in connection with the proposed Transfer.

**11.3 Consent by Franchisor; Right of First Refusal:**

Franchisor must respond to the written notice of Franchisee within thirty (30) days after receipt of the notice, or, if Franchisor requests additional information, within the later date of sixty (60) days after receipt of the additional information or the final day of the original ninety (90) day period. Franchisor may either consent to the Transfer, state its reason for refusing to consent, or purchase the Franchised Business itself on the same terms and conditions as those offered by the third party, modified only by permitting Franchisor to extend the date when the sale will close to a date up to thirty (30) days later than that originally agreed upon to allow completion of the Transfer in a manner more convenient to Franchisor. Silence will not be construed as consent to the transfer. If Franchisor consents to the Transfer, then Franchisee may Transfer the interest described in the notice only to the named transferee and only on the terms and conditions set forth in the notice. Consent by Franchisor to a particular Transfer will not constitute consent to any other or subsequent Transfer.

**11.4 Conditions for Consent To Transfer:**

The consent of Franchisor is subject to certain conditions, as follows:



11.4.1 Satisfaction of Franchisor that the proposed transferee meets all of the criteria of character, business experience, financial responsibility, net worth and other standards that Franchisor customarily applies to new franchisees at the time of Transfer;

11.4.2 Payment of all Franchisee's outstanding debts to Franchisor;

11.4.3 Curing of all defaults under this Agreement, any other agreement between the parties, and the Operations Manual;

11.4.4 Signing by the transferee of the then-current form of Franchise Agreement, amended, if Franchisor elects, to shorten the term to the remainder of Franchisee's current term and to waive payment of an initial fee by the proposed transferee, together with ancillary agreements that Franchisor requires new franchisees and Affiliates to sign at the time of Transfer;

11.4.5 Payment by Franchisee of the transfer fee described in Article 8 of this Agreement;

11.4.6 Completion by the transferee of Franchisor's initial training program to Franchisor's satisfaction;

11.4.7 Signing of a general release of claims by franchisee in favor of Franchisor and of any other documents reasonably necessary to complete the transfer; and

11.4.8 Prior to completion of the Transfer, at Franchisee's own expense, remodeling, modernization and redecoration of the Franchised Business premises and replacing and modernization of the fixtures, equipment, and signage used in the Franchised Business so that the premises of the Franchised Business meet the standards of appearance and function applicable to the premises of new Franchised Business at the time of Transfer.

#### **11.5 Changes of Ownership Deemed Not To Be Transfers:**

As used in this Agreement, the term "Transfer" does not mean a change of ownership to:

11.5.1 Any Trustee, Guardian or Conservator for the account and benefit of Franchisee, or Franchisee's spouse, ancestors or descendants;

11.5.2 Any business entity, provided that the beneficial ownership of the business entity immediately after the change of ownership is the same and in the same proportions as the beneficial ownership immediately before the change of ownership; provided, however, that no such change of ownership will relieve the original party of any of its obligations under this Agreement. Information on the identity of the shareholders and officers of the corporation, the percentage of ownership, and the address where corporate records are maintained must be submitted promptly to Franchisor; or

11.5.3 Any employee of Franchisee pursuant to any employee stock option plan or stock purchase plan, provided that any share certificate distributed pursuant to such a plan is marked with a legend describing the restrictions and conditions of Transfer required by this Agreement.

#### **11.6 Transfer on Death of Franchisee:**

If Franchisee, or any owner of Franchisee (if Franchisee is a corporation or partnership) dies within the term of this Agreement, the heirs or beneficiaries of such deceased Franchisee or owner of Franchisee will have ninety (90) days within which to demonstrate to Franchisor's satisfaction that they meet all of the criteria of character, business experience, financial responsibility, net worth and other standards that Franchisor requires of new franchisees at that time. If Franchisor approves such heirs or beneficiaries as transferee of the franchise, Franchisor will waive any transfer fee in

connection with the Transfer. If Franchisor advises such heirs or beneficiaries in writing that Franchisor will not approve them as transferee of the franchise, or if Franchisor fails to approve or disapprove the Transfer within six (six) months following the death of Franchisee, then such heirs or beneficiaries will have three (3) additional months from the date of disapproval of the Transfer within which to find and notify Franchisor of a proposed Transfer to a qualified transferee in conformity with the provisions of Sections 11.2, 11.3 and 11.4 of this Agreement. If such heirs or beneficiaries fail to notify Franchisor of a proposed qualified transferee within the specified period, the franchise will automatically terminate at the end of the period unless a written extension of time has been granted by Franchisor.

#### **11.7 Change of Ownership by Franchisor:**

Franchisor may at any time cause a change in ownership of the franchising company operated by Franchisor or its assets, or any rights of obligations created by this Agreement without the consent of Franchisee, provided that: (a) the new owner is financially responsible; (b) the new owner is capable of performing Franchisor's obligations under this Agreement; and (c) the new owner expressly agrees in writing to assume Franchisor's obligations under this Agreement.

## **12 TERMINATION OF FRANCHISE:**

### **12.1 Termination by Consent of the Parties.**

This Agreement may be terminated on the mutual written agreement of the parties.

### **12.2 Termination by Franchisor.**

Franchisor may terminate the Franchise for the following reasons and in the following manner:

12.2.1 Acts of Default. On the occurrence of any of the following defaults by Franchisee, Franchisor, at its option, may terminate this Agreement:

12.2.1.1 If Franchisee or any of its Affiliates has any direct or indirect interest in the ownership or operation of any business that is confusingly similar to the Franchised Business or uses the System or the Marks, or if Franchisee fails to execute the Nondisclosure and Noncompetition Agreement for each of its Affiliates within (10) days after the Affiliate assumes that status with Franchisee;

12.2.1.2 If Franchisee fails to timely submit any information it is required to submit to Franchisor under this Agreement;

12.2.1.3 If Franchisee fails to begin operation of the Franchised Business by the Commencement Date, or if Franchisee fails to operate the Franchised Business in accordance with this Agreement and the Operations Manual;

12.2.1.4 If Franchisee acts in regard to a matter which requires Franchisor's prior written approval or consent without first having obtained such approval or consent;

12.2.1.5 If Franchisee defaults in the performance of any material obligation under this Agreement or any other agreement with Franchisor;

12.2.1.6 If Franchisee ceases to operate the Franchised Business, unless: (1) operations are suspended for a period of no more than one hundred eighty (180) days, and (2) the suspension was caused by fire, condemnation, or act of God;

12.2.1.7 If Franchisee fails to make any payment when due under this Agreement or any other agreement between Franchisee and Franchisor or an Affiliate of Franchisor;

12.2.1.8 If Franchisee misuses the Marks or the System or engages in conduct which reflects materially and unfavorably on the goodwill associated with them or if Franchisee uses in the Franchised Business any names, marks, systems, logotypes or symbols that Franchisor has not authorized it to use;

12.2.1.9 If Franchisee or its Affiliate have made any material misrepresentation in connection with acquiring the Franchised Business or to induce Franchisor to enter into this Agreement;

12.2.1.10 If Franchisee fails to permanently cure a breach of this Agreement or default in meeting the Operations Manual's standards after being twice notified in writing by Franchisor of such breach or default in any twelve (12) month period;

12.2.1.11 If Franchisor determines that operation of the Franchised Business poses a threat to public health or safety;

12.2.1.12 Except as otherwise required by the United States Bankruptcy Code, if Franchisee becomes insolvent, is adjudicated a bankrupt, or files or has filed against it a petition in bankruptcy, reorganization or similar proceeding;

12.2.1.13 If Franchisee attempts to cause a change in ownership of its rights or obligations or both under this Agreement in any manner not authorized by this Agreement;

12.2.1.14 If Franchisee or any of its partners or officers is convicted of any felony, or of any crime related to the operation of the Franchised Business;

12.2.1.15 If Franchisee commits any of the defaults described above and Franchisor has notified Franchisee twice within the preceding twelve (12) month period of the same type of default, whether or not such prior defaults have been cured;

12.2.1.16 If Franchisee fails to maintain any license required under subsection 10.7.

12.2.2 Notice of Default. Termination will be effective thirty (30) days after written notice of default is given to Franchisee if any of the defaults described in subsections 12.2.1.1 through 12.2.1.6 above has not been cured. Termination will be effective ten (10) days after written notice is given to Franchisee if the default described in subsection 12.2.1.7 above has not been cured; Termination will be effective immediately on written notice to Franchisee if any of the defaults described in subsection 12.2.1.8 through 12.2.1.16 above occurs.

### **12.3 Termination by Franchisee.**

Franchisee may terminate this Agreement on sixty (60) days written notice to Franchisor if the conditions of the next section of this Agreement, entitled "Rights and Obligations After Termination," are met in full within the specified time periods.

### **12.4 Rights and Obligations After Termination.**

On Termination of this Agreement for any reason, the parties will have the following rights and obligations:

12.4.1 Termination of Franchisor's Obligations. Franchisor will have no further obligations under this Agreement;

12.4.2 Final Accounting. Within thirty (30) days after Termination Franchisee must provide Franchisor with a final accounting for the Franchised Business, and shall immediately thereafter make all payments due to Franchisor;

12.4.3 Return of Materials. At the time of delivering the Final Accounting, Franchisee must return the Operations Manual and other proprietary materials loaned or delivered in connection with this Agreement and operation of the Franchised Business;

12.4.4 Termination of Use of Marks. Franchisee must immediately and permanently cease using the Marks or any confusingly similar marks, and any advertising, signs, stationery, or forms that bear identifying marks or colors that might give others the impression that Franchisee is operating a Franchised Business;

12.4.5 Termination of Use of Business System. Franchisee must immediately and permanently cease using Franchisor's Business System, or from otherwise acting in a manner that might give others the impression that Franchisee is operating a Franchised Business;

12.4.6 Termination or Assignment of Telephone Listings. Franchisee must, upon request, sign any documents and take any and all steps Franchisor deems necessary to delete Franchisee's listings from classified telephone directories, disconnect, or, at Franchisor's option, assign to Franchisor all telephone numbers that have been used in the Franchised Business, and to terminate any and all other references that indicate Franchisee is or ever was associated with Franchisor. By signing this Agreement, Franchisee irrevocably appoints Franchisor its attorney-in-fact to take the actions described in this paragraph if Franchisee fails to do so within seven (7) days after Termination of this Agreement.

12.4.7 Maintenance of Records for Prescribed Period. Franchisee must maintain all records required pursuant to this Agreement for a period of not less than ninety (90) days after making final payment of any amounts owed to Franchisor upon Termination of this Agreement.

12.4.8 Option to Purchase Assets. Franchisor may, for ninety (90) days following the effective date of Termination and at Franchisor's option, purchase any or all of the physical assets of the Franchised Business, including business equipment, supplies, and inventory, which equipment, supplies and inventory shall be valued as follows:

12.4.8.1 The lower of cost or fair market value of the supplies and inventory; and

12.4.8.2 Depreciated value of other tangible personal property and equipment calculated on the straight line method over a five (5) year life, less any liens or encumbrances; less

12.4.8.3 Liens and encumbrances to which any of the transferred assets are subject, monies owed by Franchisee to Franchisor or its Affiliates, and credits to Franchisor for proration of rent, interest on mortgage indebtedness, real estate taxes, prepaid service contracts, premiums under assignable insurance policies, and other items that are customarily prorated between a buyer and seller of business assets.

12.4.8.4 If the parties cannot agree on a price within the option period, the option period will be extended for up to sixty (60) business days to permit appraisal by an independent appraiser who is mutually satisfactory to the parties. If the parties fail to agree on an appraiser within the specified period, each party will appoint one appraiser and the two appraisers thus appointed will agree on a third appraiser within thirty (30) days after Termination who will determine the price for the physical assets of the Franchised Business in accordance with the standards specified above. This determination will be final and binding on both Franchisor and Franchisee. Franchisor

must send written notice to Franchisee within thirty (30) days after Termination if it elects to exercise the option to purchase. Franchisee must sign a bill of sale and any other documents necessary to complete the sale on the terms set out above.

12.4.9 Option to Assume Equipment Leases. Franchisor has an option to replace Franchisee as lessee under any equipment lease for equipment that is used in connection with the Franchised Business.

12.4.9.1 Should Franchisor so request, Franchisee will give Franchisor copies of the leases for all equipment used in the Franchised Business immediately on Termination. Franchisee shall permit Franchisor to inspect the leased equipment at a mutually convenient time. Franchisor must request the lease information and inspection described in this paragraph within thirty (30) days after Termination. Franchisor shall notify Franchisee of its wish to exercise its option within thirty (30) days after receiving the information and/or inspecting the equipment. Franchisor may assume any such lease by assuming liability for all future obligations under the lease. On Franchisor's exercise of this option, Franchisee will be fully released and discharged from future rents and other future liabilities under the lease if the terms of the lease permit it, but not from any obligations owing to the lessor that already exist on the date when the option is exercised.

12.4.10 Option to Acquire Business Premises. Franchisor has an option to replace Franchisee as lessee or owner of the premises of the Franchised Business as follows.

12.4.10.1 If Franchisee rents the premises of the Franchised Business, Franchisor may assume the lease in consideration of its assumption of future obligations under the lease. On exercise of this option by Franchisor, Franchisee will be fully released and discharged from future rents and other future liabilities under the lease if the terms of the lease permit it, but not from any debts to the lessor that already exist on the date when the option is exercised.

12.4.10.2 If Franchisee owns the premises of the Franchised Business, Franchisor may purchase the premises from Franchisee by paying the fair market value of the property. Franchisor must notify Franchisee in writing within thirty (30) days after Termination of this Agreement of its election to exercise the option to purchase the premises and must be ready, willing and able to close the transaction within thirty (30) days after the fair market value has been determined. If Franchisor and Franchisee fail to agree on the fair market value of the property within thirty (30) days after Franchisor has given notice of its election to purchase the premises, each must appoint an appraiser and the two appraisers thus appointed must agree on a third appraiser within sixty (60) days after Franchisor has given notice of its election to purchase. The appraisers, or a majority of them, will determine the fair market value of the premises of the Franchised Business. This determination will be final and binding on both Franchisor and Franchisee.

12.4.11 Described Remedies Not Exclusive. If the franchise granted in this Agreement is terminated because of Franchisee's default, Franchisor's rights and remedies described above will not be exclusive, but will instead supplement any other equitable or legal remedies available to Franchisor. If this Agreement is terminated because of Franchisee's material default, nothing in this section will be construed to deprive Franchisor of the right to recover damages as compensation for lost profits. Termination of this Agreement will not extinguish any obligation of either party that has accrued before Termination. All obligations of the parties which by their terms or by reasonable implication are to be performed in whole or in part after Termination will survive Termination.

## 13 MISCELLANEOUS PROVISIONS:

### 13.1 Construction of Contract.

The headings and paragraph numbering in this Agreement are included for convenience only and shall neither affect the construction or interpretation of any provision of this Agreement nor affect the rights or obligations of any of the parties to this Agreement. Each word in this Agreement will be deemed to include any number or gender that the context requires. If there is any conflict between this Agreement and the Operations Manual, this Agreement will control.

### 13.2 Governing Law.

13.2.1 California Law to Apply. This Agreement is entered into, is to be performed, and concerns matters occurring within the state of California, and shall be construed in accordance with the laws of the state of California.

13.2.2 Venue. The parties hereto expressly agree that all payments to be made between Franchisee and Franchisor, and all performances due between Franchisee and Franchisor are to occur in the County of Kern, State of California, and that the proper venue for any dispute arising hereunder shall be in such County and State. All parties agree that any legal proceeding commenced in a court or venue other than in such County and State may be transferred to a court of such County and State upon motion of any party, and the party who commenced such legal proceedings shall pay all costs and attorneys' fees incurred in securing such transfer within ten (10) days after the date of the order transferring the action. The parties further agree that any action arising herefrom which is commenced other than in the County of Kern shall be stayed during the pendency of an action pending in the County of Kern.

### 13.3 Notices.

Any and all notices, requests, demands or other communications under this Agreement shall be in writing, subject to the following.

13.3.1 Manner of Delivery. Notice shall be sufficiently given for all purposes as follows:

13.3.1.1 Personal Delivery. When personally delivered to the recipient. Notice is effective upon delivery.

13.3.1.2 First Class Mail. When mailed first class to the last address of the recipient known to the party giving notice, notice is effective two mail delivery days after deposit in a U.S. Postal Service office or mailbox.

13.3.1.3 Certified Mail. When mailed certified mail, return receipt requested. Notice is effective upon receipt, if delivery is confirmed by a return receipt, otherwise notice is effective as for first class mail.

13.3.1.4 Overnight Delivery. When delivered by Federal Express, Express Mail, UPS, or other equivalent delivery service providing next day delivery service, charges prepaid or charged to the sender's account, notice is effective upon receipt, if delivery is confirmed by the delivery service, otherwise notice is effective as for first class mail.

13.3.1.5 Facsimile Transmission. When sent by fax to the last fax number of the recipient known to the party giving notice, notice is effective on receipt, provided that (a) a duplicate copy of the notice is promptly given by first class mail, certified mail or overnight delivery, or (b) the receiving party delivers a written confirmation of receipt.

Any notice given by fax shall be deemed received on the next business day following transmission if it is received after 5:00 p.m. (recipient's time) or on a nonbusiness day.

13.3.2 Any correctly addressed notice that is refused, unclaimed or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed or deemed undeliverable by the postal authorities, messenger or overnight delivery service.

13.3.3 Any and all notices to be given hereunder, not delivered personally, shall be delivered to the parties at their respective addresses as follows:

If to Franchisor: Pacific Auction Exchange, Inc.  
9100 Ming Avenue, Suite 202  
Bakersfield, California 93311  
Fax: (661) 665-7962

If to Franchisee: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or to such other address as to which the parties may hereafter provide written notice.

**13.4 Amendments.**

This Agreement may be supplemented, amended or modified only by the mutual agreement of the parties or their authorized agents. No supplement, amendment or modification of this Agreement shall be binding unless it is in writing and signed by all parties hereto, or their respective authorized agents.

**13.5 Ambiguities.**

Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to interpretation of this Agreement.

**13.6 Further Assurances.**

The parties hereto agree that they shall, at their own cost and expense, promptly execute such further documents and to do such other and further acts as may be reasonably required, necessary or appropriate to evidence or effectuate the purpose and intent of this Agreement.

**13.7 Waiver.**

No waiver of any breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other waiver of any breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

**13.8 Entire Agreement.**

This Agreement, any exhibits or attachments to it, and the Uniform Franchise Offering Circular that has been provided to Franchisee constitute the entire agreement between the parties concerning the franchise granted under this Agreement. All prior and contemporaneous agreements and representations are superseded by it.

### **13.9 Arbitration.**

Any dispute arising out of or in connection with this Agreement or the relationship between Franchisor and Franchisee will be determined in Kern County, California, in accordance with the then current rules for commercial arbitration of the American Arbitration Association. All rights and rules concerning process and discovery shall be governed by the rules of the American Arbitration Association. The arbitrator will have the power and obligation to grant injunctive relief on a provisional or permanent basis, in addition to any other relief that is available, if the Trade Name, Marks, or goodwill of the franchise network are jeopardized or harmed by any act or omission of Franchisee. This arbitration clause will not deprive either party of any right it may otherwise have to seek provisional injunctive relief from a court or competent jurisdiction. If proper notice of any hearing has been given, the arbitrator(s) will have full power to proceed to take evidence or to perform any other acts necessary to arbitrate the matter in the absence of any party who fails to appear. ***Both Franchisor and Franchisee waive any rights they may have to demand trial by jury or to seek punitive damages.*** The arbitrator will have no power to (a) stay the effectiveness of any pending Termination of Franchise; (b) assess punitive damages; or (c) make any award that modifies or suspends any lawful provision of this Agreement. All expenses of arbitration must be paid by the party against which the arbitrator(s) renders a decision. Judgment on any award and/or enforcement of any order of the arbitrator may be entered by any court of competent jurisdiction.

### **13.10 Injunctive Remedy for Breach.**

Franchisee recognizes that its Franchised Business is only one of several businesses operating under Franchisor's Trade Name and in substantial association with its Marks. Failure on the part of a single franchisee to comply with the terms of its franchise agreement is likely to cause irreparable damage to Franchisor and to some or all of the other franchises of Franchisor. For this reason, Franchisee agrees that if Franchisor can demonstrate to a court of competent jurisdiction that there is a substantial likelihood of a breach or threatened breach or any of the terms of this Agreement by Franchisee, Franchisor will be entitled, without posting of a bond, to an injunction restraining the breach and/or to a decree of specific performance, without showing or proving any actual damage, until a final determination is made by an arbitrator.

### **13.11 Limitations of Actions.**

No action or arbitration proceeding may be maintained by Franchisee against Franchisor unless (a) written notice of any claim alleged to exist is delivered by Franchisee to Franchisor within thirty (30) days after the event complained of becomes known to Franchisee and (b) an arbitration proceeding is commenced by Franchisee within ninety (90) days after such notice.

### **13.12 Attorney Fees and Costs.**

13.12.1 Should any party hereto be required to retain an attorney and/or to commence legal proceedings to enforce the provisions of this Agreement, or to resolve any dispute hereunder, the prevailing party shall be entitled to recover all costs and attorneys' fees incurred in seeking enforcement of this Agreement, including costs and fees incurred in pre-litigation consultations concerning enforcement of this Agreement. The amount of such costs and attorneys' fees shall be added to, and be recoverable as part of any such judgment.

13.12.2 Should any legal proceedings or dispute arising out of this agreement result in a settlement, or a voluntary dismissal of any legal proceedings filed, the parties agree to submit the issue of which party should be deemed the prevailing party for purposes of paragraph 9.1 above, to binding arbitration. This paragraph shall not be construed as an agreement to submit any other issues arising out of this Agreement to such arbitration.

### **13.13 Time of the Essence.**



Time shall be of the essence of this Agreement.

**13.14 Severability.**

Each provision of this Agreement will be considered severable. Should any provision or agreement contained herein be determined to be invalid, void, unenforceable or illegal, that provision shall be severed herefrom and the remainder of this Agreement shall remain in full force and effect, and shall be enforceable as though such invalid, void, unenforceable or illegal provision had never been included herein. If, however, Franchisor determines that the finding of illegality adversely affects the basic consideration for its performance under this Agreement, Franchisor may, at its option, terminate this Agreement in its entirety.

**13.15 Agreement to Enure to the Benefit of Heirs.**

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, personal representatives, successors in interest and assigns.

**13.16 Approval and Guarantees.**

If Franchisee is a corporation, all officers and shareholders with a ten-percent (10%) or greater interest in Franchisee, or, if Franchisee is a partnership, all general partners of Franchisee must sign separately written Personal Guarantees of Franchisee's payments and performance in the form of Attachment C to this Agreement.

**13.17 Acceptance by Franchisor.**

This Agreement will not be binding on Franchisor unless and until it has been signed by an authorized officer of Franchisor.

**13.18 Warranty of Corporate Authority.**

Franchisor and Franchisee each hereby represent and warrant to the other that the management of Franchisor and Franchisee, and the Authorized Signatories named below, have been authorized by the directors of Franchisor and Franchisee respectively to enter into and execute this Agreement on their behalf.

**13.19 Counterparts.**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall be one agreement.

**13.20 Representation by Counsel.**

The parties acknowledge and agree that Franchisor and Franchisee have each been represented by legal counsel in the preparation and execution of this Agreement. Such legal counsel have represented the rights of their respective clients exclusively, and have provided no advice, legal counsel or representation to any party to this agreement other than their client.

**13.21 DISCLAIMER OF REPRESENTATIONS.**

***NO STATEMENTS OR PROMISES OF ANY KIND HAVE BEEN MADE BY FRANCHISOR OR ANY PERSON ON FRANCHISOR'S BEHALF TO INDUCE FRANCHISEE TO SIGN THIS AGREEMENT EXCEPT THOSE SPECIFICALLY SET FORTH IN THE FRANCHISE DISCLOSURE DOCUMENTS THAT HAVE BEEN DELIVERED TO FRANCHISEE. FRANCHISEE ACKNOWLEDGES THAT NEITHER FRANCHISOR NOR***

**ANY OTHER PERSON HAS GUARANTEED THAT FRANCHISEE WILL SUCCEED IN THE OPERATION OF THE FRANCHISED BUSINESS OR HAS PROVIDED ANY SALES OR INCOME PROJECTIONS OF ANY KIND TO FRANCHISEE. FRANCHISEE HAS MADE AN INDEPENDENT INVESTIGATION OF ALL IMPORTANT ASPECTS OF THE FRANCHISED BUSINESS. FRANCHISEE REALIZES THAT THE BUSINESS VENTURE CONTEMPLATED BY THIS AGREEMENT INVOLVES BUSINESS RISKS AND THAT ITS SUCCESS WILL DEPEND LARGELY UPON FRANCHISEE'S BUSINESS ABILITY AND HARD WORK. FRANCHISEE IS AWARE THAT OTHER FRANCHISEES OR FRANCHISOR MAY OPERATE UNDER OTHER FORMS OF AGREEMENT THAT DIFFER FROM THIS ONE IN IMPORTANT WAYS. FRANCHISEE HAS READ THIS AGREEMENT, UNDERSTANDS ITS TERMS, AND HAS HAD THE OPPORTUNITY TO ASK QUESTIONS ABOUT IT AND CONSULT LEGAL COUNSEL. FRANCHISEE UNDERSTANDS THAT FRANCHISOR IS NOT A FIDUCIARY AND HAS NO SPECIAL RESPONSIBILITIES BEYOND THE NORMAL RESPONSIBILITIES OF A SELLER IN A BUSINESS TRANSACTION.**

**IN WITNESS WHEREOF** and intending to be legally bound hereby, the parties hereto have executed this Agreement the day and year first set forth above.

Executed on behalf of PACIFIC  
AUCTION EXCHANGE, INC., by:

\_\_\_\_\_  
AUTHORIZED SIGNATORY

Date: \_\_\_\_\_, 200\_\_\_\_\_

Executed on behalf of Franchisee: \_\_\_\_\_  
by:

\_\_\_\_\_  
AUTHORIZED SIGNATORY

Date: \_\_\_\_\_, 200\_\_\_\_\_

Approved as to form and content by  
attorney for PACIFIC AUCTION  
EXCHANGE, INC.

\_\_\_\_\_  
Approved as to form and content by  
attorney for \_\_\_\_\_  
\_\_\_\_\_