

AUCTION FROGS MASTER SERVICE AGREEMENT

Please read this Master Service Agreement (“MSA”), Auction Frogs Terms and Conditions, and the Auction Frogs Privacy Policy, collectively (the “Agreement”) carefully before submitting your Application to use Auction Frogs services. If you do not accept the Agreement, do not submit an Application. By submitting the Application, you are conclusively deemed to have accepted and agreed to be bound by this Agreement. Auction Frogs reserves the right to accept or reject all Client Applications. By signing, you agree to Auction Frogs Terms and Conditions, Auction Frogs Privacy Policy and this Auction Frogs Master Service Agreement.

RECITALS

WHEREAS, the parties agree that the Auction Frogs Master Service Agreement, Auction Frogs Terms and Conditions, and Auction Frogs Privacy Policy are incorporated herein by reference and form an integral part of this MSA and constitutes all of the terms and conditions agreed to by the parties.

WHEREAS, the parties to this MSA agree that the digital signatures of the parties included in this MSA are intended to authenticate this writing and to have the same force and effect as the use of manual signatures.

NOW THEREFORE, in consideration of the foregoing and the mutual promises and covenants herein contained, the parties agree as follows:

1. Auction Frogs Responsibilities

- a. For All Clients:
 - i. Administrative access to Auction Frogs suite for site management.
 - ii. Assigned Auction Engineer for client consultation, best practices, administrative panel training, and technical support.
 - iii. Customizable website with unique URL and design reflecting organization brand or event theme.
- b. For Live Events, all responsibilities mentioned in 1(a) above, plus:
 - i. Volunteers training from Dedicated Account Rep or Auction Frogs On-site staff.
 - ii. Providing Credit Card Readers, if Auction Frogs has been contracted to provide On-site staff.
 - iii. Managing guest checkin, item entry, and guest checkout (not including item distribution), if Auction Frogs has been contracted to provide On-site staff.
- c. For Mobile Bidding Events, all responsibilities mentioned in 1(a) above, plus:
 - i. Unique day-of bidding environment formatted specifically to view on attendees’ smart devices.
 - ii. Text message ability for outbid notifications and custom messages to attendees.

2. Client Responsibilities

- a. For All Clients:
 - i. You are solely responsible for obtaining and maintaining the necessary computer equipment, Internet connection, and other systems in order to access and use the Event Management Website Services.
 - ii. All website graphics and data entry not otherwise included in the design.
 - iii. Providing Auction Frogs reasonable advance notice of all information required for Mobile Bid Cards to be developed.
 - iv. Opening, operating, and maintaining a Merchant Account through Auction Frogs specific Gateway Provider for credit card processing.
 - v. Acquisition of all auction items.
 - vi. All auction and event marketing and promotion.
 - vii. All bidder disputes are the sole responsibility of the client.
- b. For Live Events, all responsibilities in 2(a) above, plus:
 - i. Ensuring adequate internet is available on site to conduct check in and check out.
 - ii. Furnishing one volunteer for every fifty (50) guests for check and check out.
 - iii. Provide computer equipment for volunteers or ensuring that volunteers provide their own computer equipment to work from.
 - iv. Engage in a pre-event meeting with Auction Frogs to establish event parameters and best practices.
 - v. Item and materials distribution at check in or check out that are beyond a basic bid card and program.
 - vi. Applicable Travel Fee costs for Auction Frogs On-site staff as described in the Auction Frogs Terms and Conditions.
- c. For Live & Silent Event and Mobile Bidding Events, all responsibilities in 2(a) above plus:
 - i. Ensuring adequate cell signal is available on site to conduct mobile bidding, if applicable.
 - ii. Ensuring adequate internet is available on site to conduct check in and check out.

3. **Event Costs and Payments**

- a. The total cost for services provided by Auction Frogs will be the amount quoted under Fees and Payment for the purchased Services Term:
- b. This Agreement will begin on the date signed by Auction Frogs (“Effective Date”) and will continue in full force and effect thereafter for a period of three (3) years, and shall automatically renew for successive three (3) year terms thereafter, unless terminated as set forth in the Auction Frogs Terms and Conditions.

TERMS AND CONDITIONS

1. **Applicability**

- a. These terms and conditions (these “Terms”) are the only terms that govern this Agreement.
- b. The accompanying Auction Frogs Privacy Policy, Auction Frogs Master Service Agreement, and these Auction Frogs Terms and Conditions (collectively, this “Agreement”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral.
- c. These Terms prevail over any of Client’s general terms and conditions regardless whether or when Client has submitted its request for proposal, order, or such terms. Provision of services to Client does not constitute acceptance of any of Client’s terms and conditions and does not serve to modify or amend these Terms.

2. **Use of Auction Frog Service**

- a. How we protect your data: Please refer to our privacy policy available on the Auction Frogs website, and on each auction site we provide for information on how we protect your data.
- b. Auction Site Registration - Certain sections of the auction website we provide to you may require you to register as a user or create an account. By registering or creating an account, you agree to provide accurate and complete information and to inform us of any changes to that information. Each registration is for a single user only, unless otherwise expressly provided on the registration page. You are responsible for maintaining the confidentiality of your account and password and for restricting access to your computer, and you agree to accept responsibility for all activities that occur under your account or password. If you believe there has been unauthorized use, you must notify us immediately.

3. **Fees and Payment for purchased Services**

- a. Standard Service Fees
 - i. Online Auction Solution: \$695.00 Flat Rate
 - ii. Bidit Simple Solution: \$395.00 Flat Rate
 - iii. Live & Silent Event Solution: \$995.00 Flat Rate
 - iv. Mobile Bidding Add-On: \$1000.00 Flat Fee addition to Live & Silent Event Solution
 - v. On-Site Representatives: \$350.00 Flat Rate Per Auction Frogs Staff Member
 - vi. Travel: Fees assessed based on number of Auction Frogs representatives and the event location.
- b. Invoicing and Payments
 - i. Service Fees are requested upfront at time of paperwork submission through our online Intake Form. If client is unable to submit payment electronically, a mail-in option is available. Service Fees must be received by Auction Frogs before any work is performed on the account, unless otherwise discussed with Auction Frogs.
 - ii. Travel Fees shall be billed as they are assessed. Travel will not be booked until Fees are received. Should delayed receipt result in increased travel costs, assessed travel fees may increase.
 - iii. All Fees are due upon receipt.
- c. Overdue Charges
 - i. A late fee of \$50 will be assessed for each invoice not paid within 15 days of receipt.
- d. Suspension
 - i. If at any point a client has an outstanding balance and communication has not been received by Auction Frogs from client to establish payment arrangements, Auction Frogs reserves the right to suspend account access and take any Live Online Auctions and/or Event Sites offline at Auction Frogs Discretion. Auction Frogs is not liable for any of the Clients potential lost profits upon suspension of the Clients Live Online Auctions and/or Event Sites.
- e. Payment Disputes
 - i. Mediation or Arbitration – Bidders – Sole responsibility
- f. Taxes
 - i. Neither federal nor state, nor any other payroll tax of any kind, shall be withheld or paid by Auction Frogs on behalf of the Client, merchant processor or their employees. In accordance with the terms of this Agreement and the understanding of the parties, no agent or employee of the Client shall be treated for tax purposes as an employee of the Auction Frogs with respect to the services performed. The Client understands that it is responsible to pay income tax in accordance with

federal and state law. The Client further understands that it may be liable for Social Security taxes, to be paid in accordance with all applicable laws.

4. Credit Card Usage

- a. If you elect to collect payments with credit cards through the event website, you are required to apply for a merchant account through our approved Merchant Gateway Provider. We will provide a gateway through the event website so credit card transactions can be made against the bidder/buyers/contributors invoice. Processing and transaction fees will be handled through the designated Merchant Gateway Provider and at no time do we have the credentials or direct access to your established merchant account.
- b. Any agreement formed by the Client with the Merchant Gateway Provider in no way binds, forms a partnership, creates a duty or a liability on the part of Auction Frogs. All charge disputes must be brought through the Merchant Gateway Provider.

5. Proprietary Rights

- a. Patents, Copyrights and Trademarks:
 - i. The technology and content provided on this website are owned by or licensed to Auction Frogs and protected by United States and international intellectual property laws. Auction Frogs and its licensors retain all proprietary rights to that content and technology. Please see notices on individual referenced sites, products and services for additional notices and information. The trademarks, service marks, trade names and logos appearing on this site are trademarks of Auction Frogs and or its affiliates or licensors.
- b. License:
 - i. By offering this website for use, we provide you with a worldwide, nonexclusive, nontransferable, revocable, limited license to access and use of the information and services on this website, strictly subject to and in accordance with these Terms. We reserve the right to terminate this license at any time and for any reason. Your failure to comply with these Terms will result in automatic termination of this license, with or without prior notice, and you must immediately destroy all copies of any downloaded materials in your possession or control. Except for the limited license set forth in these Terms, Auction Frogs does not grant you any express or implied rights or licenses under any patents, trademarks, copyrights, or other proprietary or intellectual property rights.
- c. Usage Restrictions: By accessing, browsing, or using any Auction Frogs website (the "Website"), you agree to the following restrictions:
 - i. You will not use, intentionally or unintentionally any of the content, information, or services on an Auction Frogs Website in a manner contrary to or in violation of any applicable international, national, federal, state, or local law, rule, or regulation having the force of law.
 - ii. You will not use an Auction Frogs Website in any manner that could harm, infect, take over, disable, overburden, or otherwise impair any of our computer systems, including, but not limited to, the servers, networks, and other components connected to or used for this website
 - iii. You will not interfere with any other party's use and enjoyment of an Auction Frogs Website, or of any of the content, information, or services provided on an Auction Frogs Website;
 - iv. To the extent that you are able to upload, post or otherwise transmit content using this site you will not upload, post, or otherwise transmit any content that you do not have a right to transmit under any law or under contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements);
 - v. You will not upload, post, or otherwise transmit any material that contains software viruses or any other computer code, files, or programs designed to interrupt, destroy, or limit the functionality of any computer software or hardware or telecommunications equipment;
 - vi. You will not attempt to gain unauthorized access to any services, accounts, computer systems, or networks connected to any server used for this website, through password mining, hacking, or any other means;
 - vii. You will not seek to gain access to any materials or information through any means not intentionally made available by us;
 - viii. You will not reproduce, duplicate, copy, download, store, further transmit, disseminate, transfer, or otherwise exploit an Auction Frogs Website, or any portion hereof without Auction Frogs' prior written consent, except that you may reproduce limited content from this site describing Auction Frogs' products and services solely to educate users or potential users about Auction Frogs products or services;
 - ix. You will not use any framing techniques to enclose any portion of an Auction Frogs Website (including, but not limited to, images, text, page layout, and form) without Auction Frogs prior consent;
 - x. You will not make any use of the trademarks, service marks, trade names, logos, and graphics on this website without Auction Frogs consent;
 - xi. You will not use any network monitoring or discovery software to determine the site architecture, or extract information about usage, individual identities, or users;

- xii. You will not use any robot, spider, other automatic software or device, or manual process to monitor or copy an Auction Frogs Website or the content, information, or services on this website without Auction Frogs prior written consent;
- xiii. You will not collect any email addresses made available on this site for purposes of 3rd party promotions or marketing campaigns;
- xiv. You agree to not send unsolicited electronic messages to multiple unrelated recipients in promoting your Event or engage in any other form of spamming prohibited by law in connection with activities contemplated under this Agreement.
- xv. You will not distribute, on or through an Auction Frogs Website, any advertising; promotion; solicitation for goods, services, or funds; or solicitation for others to become members of any enterprise or organization outside the scope of this Agreement without Auction Frogs prior written permission; and
- xvi. You will not use or otherwise export or re-export this website, or any portion thereof, in violation of the export control laws and regulations of the United States of America or any other country.

6. Confidentiality

- a. Definition of Confidential Information - “Confidential Information” shall mean any business, marketing, sales, financial or technical information, including, without limitation, any information relating to present or future business affairs, operations, methods, techniques, operations, financial condition, reports, research, product plans, products, developments, processes, models, designs, drawings, formulae, markets, software (including source and object code), algorithms, business plans or agreements between Client and Auction Frogs or with third parties, and all other information of any kind disclosed by Auction Frogs to the Client, whether such information is in written, oral, graphic or machine-readable form.
- b. Confidential Information shall not include information which: (i) has been or becomes published or is now or is in the future in the public domain through no action of the Client; (ii) prior to disclosure hereunder, is within the legitimate possession of the Client as evidenced by competent written proof; (iii) subsequent to disclosure hereunder, is lawfully received from a third party having rights therein without restriction of the third party’s rights to disseminate the information and without notice of any restriction against its further disclosure; (iv) is independently developed or acquired by the Client through persons who have not had, either directly or indirectly, access to or knowledge of such Confidential Information; or (v) is approved for release by written authorization of the Auction Frogs; or (vi) is required to be disclosed by law.
- c. Nondisclosure: The Confidential Information shall be kept confidential by the Client and not disclosed to any third parties. Notwithstanding the foregoing, the Client may disclose the Confidential Information to its affiliates’ directors, officers, employees, consultants, contractors and agents (collectively, “Representatives”) only if such Representatives need to know the Confidential Information in connection with the discussions and are bound by confidentiality obligations similar to those contained herein. The Client shall: (i) inform each of its Representatives receiving Confidential Information of the confidential nature of the Confidential Information and of this Agreement; (ii) direct its Representatives to treat the Confidential Information confidentially and not to use it other than in connection with the discussions; and (iii) be responsible for any improper use of the Confidential Information by the Client or its Representatives.
- d. Compelled Disclosure: If Client is ordered by a court, administrative agency or other governmental body to disclose Information, Client will not be liable to Auction Frogs for disclosure required by such an order so long as Client promptly notifies Auction Frogs of such order and assists Auction Frogs, at Auction Frogs’ cost, in seeking a protective order or other appropriate remedy. In the event that a protective order or other remedy is not obtained, Client shall disclose only that portion of the Information that is, on the advice of Client’s counsel, legally required to be disclosed.

7. Warranties and Disclaimers

Auction Frogs provides this website “As Is,” without warranty of any kind, express or implied, including, but not limited to:

- a. Warranties of performance, merchantability, fitness for a particular purpose, accuracy, omissions, completeness, currentness, and delays; Warranties that access to any product will be uninterrupted, secure, complete, or error free; Warranties as to the life of any URL of Third-Party Web Service; And warranties with regard to any content or software that has been modified in any way by anyone other than, and without the express approval of, Auction Frogs.
- b. By accessing, browsing, or using any Auction Frogs website, you acknowledge that provisions of content and software entails the likelihood of some human and machine errors, delays, interruptions, and losses, including the inadvertent loss of data or damage to media; Auction Frogs’ sites, and the products and services referenced therein may not satisfy client requirements not expressly stated in the Client Agreement and in no event will Auction Frogs be liable, in contract, tort, strict liability, or otherwise, for indirect, incidental, special, punitive, or consequential damages of any kind arising out of, or in connection with use of this website, whether or not Auction Frogs has been advised of the possibility of such damage; Any claim(s) relating in any way to Client’s inability or failure to perform research or other work or to perform such research or work properly or completely, even if assisted by Auction Frogs; Any decision made or action taken by Client in reliance upon the availability of or content made available through any Auction Frogs website.

8. Indemnification

- a. You agree to indemnify, defend, and hold Auction Frogs and its officers, directors, employs, affiliates, agents, licensors, and suppliers harmless from and against all claims, losses, expenses, damages, and costs, including reasonable attorneys' fees, resulting from any violation of these terms by you.

9. Limitation of Liability

- a. In no event shall Auction Frogs be liable to client or to any Third Party for any loss of use, revenue or profit (or loss of data or diminution in value), or for any consequential, incidental, indirect, exemplary, special or punitive damages whether arising out of breach of contract, tort (including negligence) or otherwise, regardless of whether such damages were foreseeable and whether or not Auction Frogs has been advised of the possibility of such damages, and notwithstanding the failure of any agreed or other remedy of its essential purpose.
- b. In no event shall Auction Frogs aggregate liability arising out of or related to this Agreement, whether arising out of or related to breach of contract, tort (including negligence) or otherwise, exceed two times the aggregate amounts paid or payable to Auction Frogs pursuant to this Agreement in the year period preceding the event giving rise to the claim.

10. Termination

- a. Termination for Cause - You acknowledge and agree that Auction Frogs, in its sole discretion, may terminate your website access if your conduct is found to be unlawful, inconsistent with, or in violation of, the letter or spirit of these Terms, or for any other reason, Auction Frogs shall not be liable to you or any third party for termination of website access. Should you object to any terms and conditions of these Terms, or to any subsequent modifications thereto, your only recourse is to immediately discontinue use of the website.
- b. Early Termination - Either party shall be entitled to terminate this Agreement at any time by giving thirty (30) days' written notice to the other party. If Auction Frogs terminates the Agreement early, all paid fees will be refunded to the Client. Early termination by the Client will result in a forfeit of any fees paid to Auction Frogs. The Client will also be liable for any unpaid expenses owed to Auction Frogs at the time of termination.

11. Governing Law and Jurisdiction

- a. These Terms are governed by and construed in accordance with the laws of the State of Idaho, and any action arising out of or relating to these terms shall be filed only in state or federal courts located in ADA County, and you hereby consent and submit to the personal jurisdiction of such courts for the purpose of litigating any such action.

12. Notice

- a. Any notice given in connection with this Agreement shall be in writing and shall be delivered either by e-mail, U.S. mail, certified mail, or fax. Notice shall be deemed delivered immediately upon personal service or facsimile transmission or forty-eight (48) hours after depositing notice or demand in the United States mail. Either party may change its address by giving written notice of the change to the other party.

13. Relationship of Parties

- a. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

14. Links to Third Party Sites

- a. This Site may provide links to other third-party World Wide Web sites or resources. Auction Frogs makes no representations whatsoever about any other web site which you may access through this Site. Because Auction Frogs has no control over such sites and resources, you acknowledge and agree that Auction Frogs is not responsible for the availability of such external sites or resources and is not responsible or liable for any Content, advertising, products, services or other materials on or available from such sites or resources. It is up to you to take precautions to ensure that whatever you select for your use is free of such items as viruses, worms, Trojan horses and other items of a destructive nature. References on this Site to any names, marks, products or services of any third parties or hypertext links to third party sites or information are provided solely as a convenience to you, and do not constitute or imply an endorsement, sponsorship or recommendation of, or affiliation with the third party or its products and services. Auction Frogs makes no representation or warranty as to any third party Content, products or services, and you agree that Auction Frogs shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such third-party Content, products or services available on or through any such site or resource.

15. Waiver

- a. No waiver by Auction Frogs of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Auction Frogs. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement operates or may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

16. Severability

- a. If any provision of these Terms is deemed unlawful, void, or unenforceable, then that provision shall be deemed severable from the remaining provisions and shall not affect their validity and enforceability.

17. Attorney's Fees

- a. In the event a lawsuit of any kind is instituted under this Agreement or to obtain performance of any kind under this Agreement, the prevailing party shall be entitled to additional sums as the court may adjudge for reasonable attorneys' fees, subject to the other party's right to appeal.

18. Force Majeure

- a. Neither party shall be liable for or deemed to be in default for any delay or failure to perform under this Agreement if such delay or failure to perform results from an act of God, civil or military authority, act of war, riot, insurrection, escalation of hostilities, or other occurrence beyond that party's control. In such case, the intervening cause must not be caused by the party asserting it and the excused party is obligated to promptly perform in accordance with the terms of this Agreement after the intervening cause ceases.

19. No Third Party Beneficiaries

- a. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

20. Assignment

- a. Client shall not assign any of its rights or delate any of its obligations under this Agreement without the prior written consent of Auction Frogs. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Client of any of its obligations under this Agreement.

21. Entire Agreement

- a. This Agreement represents the entire Agreement between the parties with respect to the subject matter hereof, superseding all previous oral or written communications, representations or agreements. This Agreement may be modified only by a duly authorized and executed writing signed by both parties.