

# Master Service Agreement

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auction  
frogs

# Master Service Agreement

Please read this Master Service Agreement (“MSA”), Auction Frogs’ Terms and Conditions, and Auction Frogs’ [Privacy Policy](#), collectively (the “Agreement”) carefully before submitting your Intake Form for use of Auction Frogs’ services. If you (“Client”) do not accept the Agreement, do not submit an Intake Form. By submitting an Intake Form, 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, [Privacy Policy](#), and this Master Service Agreement.

## Recitals

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

WHEREAS, the parties to this MSA agree that the digital signature of the Client included on the Client’s Intake Form submission is intended to authenticate this writing and to have the same force and effect as the use of a manual signature on this MSA.

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. Provide Administrative Panel access to Auction Frogs’ platform for Online Auction and/or Event management;
- b. Provide a brandable Online Auction and/or Event website with a unique URL, if applicable to Purchased Services (Simple Events excluded);
- c. Provide access to additional training materials through Auction Frogs’ Knowledgebase;
- d. Assign a Client Support Specialist for additional Administrative Panel training and technical support.

### 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 Purchased Services;
  - ii. You are solely responsible for any and all Online Auction and/or Event website graphics and data entry;
  - iii. You are solely responsible for opening, operating, and maintaining a Merchant Account through Auction Frogs’ integrated Gateway Provider for credit card processing;
  - iv. You are solely responsible for any and all solicitation, acquisition, and distribution of items;
  - v. You are solely responsible for any and all Online Auction and/or Event marketing and promotion materials and campaigns;
  - vi. You are solely responsible for any and all disputes between bidders and donors, should they arise.
- b. For Simple, Premier, Premier Plus, and Golf Tournament Events, all responsibilities in 2(a) above apply, as well as the following
  - i. You are solely responsible for furnishing one volunteer per every fifty(50) guests for check-in, check-out, and data entry at your Event;
  - ii. You are required to engage in a Pre-Event Meeting with Auction Frogs to establish event parameters

and best practices for the use of Auction Frogs' Software Products. If you fail to engage in a Pre-Event Meeting, it may reduce the quality of service Auction Frogs can provide in support of your Event;

- iii. You are solely responsible for any and all distribution of items or materials at check-in or check-out that are beyond a basic bid card and program;
- c. For Premier Plus and Golf Tournament Events, all responsibilities in 2(a) and 2(b) above apply, as well as the following
  - i. You are solely responsible for ensuring there is an adequate cellular data connection for all cell carriers available on-site at your Event venue for your attendees to participate in Mobile Bidding or Online Auction..

### 3. Costs & Payments

- a. The total cost for services provided by Auction Frogs will be the amount quoted under Fees and Payment for the Purchased Services.

## Terms & Conditions

### 1. Applicability

- a. These Terms and Conditions are the only terms that govern this Agreement.
- b. The accompanying Auction Frogs' [Privacy Policy](#), Master Service Agreement, and these Terms and Conditions (collectively, this "Agreement") comprise the entire agreement between the parties and supersede all prior or contemporaneous understandings, agreements, negotiations, representations, warranties, and communications, both written and oral.
- c. These Terms prevail over any of Client's general terms and conditions regardless of 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 Frogs' Services

- d. *How we Protect Your Data:* Please refer to our [Privacy Policy](#) available on Auction Frogs' website, and on each Online Auction and/or Event website we provide, for information on how we protect your data.
- e. *Online Auction and/or Event Website Registration:* Certain features of the Online Auction and/or Event websites we provide may require you to register as a user. By registering, 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. If you believe there has been unauthorized use of your account, you must notify us immediately.

### 3. Fees & Payment for Purchased Services

- a. Standard Service Fees
  - i. Online Auctions: \$695.00 Flat Rate;
  - ii. Simple Events: \$395.00 Flat Rate;
  - iii. Premier Events: \$995.00 Flat Rate;
  - iv. Premier Plus Events: \$1,995.00 Flat Rate;
  - v. Golf Tournaments: \$1,295.00 Flat Rate;
  - vi. Premier & Premier Plus Event Staffing: \$1,000.00 Flat Rate for two(2) Event Staff for six(6) hours max. Additional fees will apply for more than two(2) Event Staff and/or events longer than six(6) hours. Includes Credit Card Reader Rentals;
  - vii. Golf Tournament Event Staffing: \$800.00 Flat Rate for one(1) Event Staff for ten(10) hours max. Additional fees will apply for more than one(1) Event Staff and/or tournaments longer than ten(10)

- hours. Includes Credit Card Reader Rentals;
- viii. Travel Fees: \$1,000.00 Deposit is required for venues located over 50 miles outside of the Boise Metropolitan Area. Any remaining Travel Fees will be assessed based on the number of Auction Frogs Representatives traveling and the venue location;
  - ix. Credit Card Reader Rental: \$25.00 per Reader. Limit six(6) Readers per event, subject to availability. Price includes shipping and handling.
- b. Invoicing and Payments
    - i. Service Fees are requested upfront at the time of paperwork submission through our online Intake Form. If the 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 a representative of Auction Frogs;
    - ii. A \$1,000.00 Deposit for Travel Fees must be received before Auction Frogs will commit to staffing your event. Additional Travel Fees beyond the \$1,000.00 Deposit shall be billed as they are assessed. Travel will not be booked until all Travel Fees are received. Should delayed receipt result in increased travel costs, assessed Travel Fees will 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 30 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 the Client to establish payment arrangements, Auction Frogs reserves the right to suspend account access and take any Online Auctions and/or Event Websites offline at Auction Frogs' discretion. Auction Frogs is not liable for any of the Client's potential lost profits upon suspension of the Client's Online Auctions and/or Event Website.
  - e. Payment Disputes
    - i. Mediation or Arbitration between Bidders and Clients is the sole responsibility of the Client.
  - f. Taxes
    - i. Neither federal nor state, nor any other 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 Auction Frogs with respect to the services performed. The Client understands that the Client is responsible to pay any and all taxes 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 credit card payments through the Online Auction and/or Event website, or its associated Administrative Panel, you are required to apply for a Merchant Account through our approved Gateway Provider. Processing fees and transaction fees will be assessed directly by the Gateway Provider and at no time does Auction Frogs have the direct access or authority to establish, manage, or maintain your Merchant Account for you.
- b. Any agreement formed by the Client with the Gateway Provider in no way binds, forms a partnership with, or creates a duty or a liability on the part of Auction Frogs. All charge disputes must be brought through the Gateway Provider.
- c. Auction Frogs reserves the right to discontinue Gateway Provider integrations at any time, which may require the Client to open a new Merchant Account with the new approved Gateway Provider. You will be notified if such a change will be necessary.

#### **5. Proprietary Rights**

- a. Patents, Copyrights, and Trademarks
  - i. The technology and content provided on the Online Auction and/or Event website, or its associated Administrative Panel, are owned by or licensed to Auction Frogs and protected by the 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 websites, products, and services for additional information. The trademarks, service marks, trade names, and logos appearing on the Online Auction and/or Event website, or its associated Administrative Panel, 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, non-transferable, revocable, limited license to access and use 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' Online Auction and/or Event website, or its associated Administrative Panel, you agree to the following restrictions:
  - i. You will not use, intentionally or unintentionally any of the content, information, or services on any 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 any 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 any Auction Frogs website, or of any of the content, information, or services provided on any Auction Frogs website;
  - iv. To the extent that you are able to upload, post or otherwise transmit content using any Auction Frogs website 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 any Auction Frogs website, or any portion thereof without prior written consent from Auction Frogs, except that you may reproduce limited content from this website 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 any Auction Frogs website (including, but not limited to, images, text, page layout, and form) without prior written consent from

Auction Frogs;

- x. You will not make any use of the trademarks, service marks, trade names, logos, and graphics on any Auction Frogs website without prior written consent from Auction Frogs;
- xi. You will not use any network monitoring or discovery software to determine the architecture of any Auction Frogs website, 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 any Auction Frogs website or the content, information, or services on any Auction Frogs website without prior written consent from Auction Frogs;
- xiii. You will not collect any email addresses made available on this website for purposes of third-party promotions or marketing campaigns, whether compensated for that data or not;
- xiv. You agree to not send unsolicited electronic messages to multiple unrelated recipients in promoting your Online Auction and/or 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 any 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 prior written consent from Auction Frogs;
- xvi. You will not use or otherwise export or re-export any Auction Frogs 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 the 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 competently written proof;
  - iii. Subsequent to disclosure hereunder is lawfully received from a third party having rights therein without the 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 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 the Client is ordered by a court, administrative agency, or other governmental body to disclose information, the Client will not be liable to Auction Frogs for a disclosure required by such an order so long as the Client promptly notifies Auction Frogs of such order and assists Auction Frogs, at Auction Frogs' cost, in seeking a protective order or other appropriate remedies. In the event that a protective order or other remedy is not obtained, the Client shall disclose only that portion of the Information that is, on the advice of the Client's counsel, legally required to be disclosed.

## 7. Warranties & Disclaimers

Auction Frogs provides Online Auction and/or Event websites "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 websites, 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 any Auction Frogs website, whether or not Auction Frogs has been advised of the possibility of such damage; Any claim(s) relating in any way to the 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 the 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, employees, affiliates, agents, licensors, and suppliers harmless from and against all claims, losses, expenses, damages, and costs, including reasonable attorney fees, resulting from any violation of these terms by you.

## 9. Limitation of Liability

- a. In no event shall Auction Frogs be liable to the 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 remedies 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 Online Auction and/or Event website and Administrative Panel 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 conditions of these Terms, or to any subsequent modifications thereto, your only recourse is to immediately discontinue use of all Auction Frogs websites.

- b. 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, an assessment of services rendered will be conducted, and any applicable prorated fees will be refunded to the Client. Termination by the Client will result in termination of access to the Auction Frogs' Administrative Panel, termination of any Online Auctions and/or Event Websites, and termination of access to the Client's data, as well as 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 & Jurisdiction**

- a. This Agreement and these Terms and Conditions 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, Idaho 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 email to support@auctionfrogs.org, or by U.S. mail or certified mail to 5555 North Glenwood Street, Boise, Idaho 83714. Notice shall be deemed delivered immediately upon personal service or forty-eight(48) hours after depositing notice or demand in the U.S. 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 forms 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 Websites**

- a. Auction Frogs' websites may provide links to other third-party websites or resources. Auction Frogs makes no representations whatsoever about any other websites which you may access through an Auction Frogs website. Because Auction Frogs has no control over such websites and resources, you acknowledge and agree that Auction Frogs is not responsible for the availability of such external websites or resources and is not responsible or liable for any content, advertising, products, services, or other materials on or available from such websites 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 Auction Frogs' websites to any names, marks, products, or services of any third-parties or hyperlinks to third-party websites 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 website 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 this Agreement or these Terms and Conditions 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 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 attorney 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, an act of war, riot, insurrection, escalation of hostilities, or other occurrences beyond that party's control. In such a 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 and Conditions.

#### **20. Assignment**

- a. Client shall not assign any of its rights or delegate 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 the Client of any of its obligations under this Agreement.

#### **21. Entire Agreement**

- a. This Agreement represents the entire Agreement between the parties (the Client and Auction Frogs) 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.



Auction Frogs streamlines your fundraising efforts by giving online or live and silent auctions a digital backbone. Reduce hassles, save valuable volunteer time, and increase your revenue raised. We deliver unique technology to simplify the experience of hosting a successful fundraiser.

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