

STANDARD TERMS AND END USER LICENCE AGREEMENT FOR AUCTIONTEQ SOFTWARE

1. GRANT OF LICENCE

- 1.1** Webspoke Internet Solutions ("Licensor"), whose registered business address is 7 Norman Road, Hove, East Sussex, BN3 4LS, UK, hereby grants you ("Licensee") a non-exclusive, non-transferable Licence to access and use a single copy of the AuctionTeq software including all help files, ASP script files and databases (collectively referred to as "the Software"). The copyright, database rights and all other intellectual property rights in the Software remain the property of Licensor.

2. ACCEPTANCE

- 2.1** By registering with AuctionTeq and clicking on the icon to purchase and use the software, Licensee is deemed to accept the terms of this Agreement. The Commencement Date shall be the date when Licensee clicks on the said icon. Acceptance is also permitted by providing a signature and date at the bottom of this agreement.

3. USE OF THE SOFTWARE

- 3.1** For the purposes of this Licence "Use" shall mean and include:
- 3.1.1** utilisation of the Software by copying, transmitting or loading the same into the temporary memory of a personal computer, or Internet web server for the processing of the instructions or statements contained in such Software;
 - 3.1.2** copying the Software for back-up or archive purposes provided that no more than a single copy will be in existence under any Licence at any one time without prior written consent from the Licensor or as otherwise permitted by law;
 - 3.1.3** utilising (but non copying) the instructional and/or operational manuals relating to the Software.

4. COPYRIGHT

- 4.1** The Software is owned by the Licensor or its suppliers and is protected by copyright laws and international treaty provisions. The Licensee may either (a) make a single copy of the Software solely for backup or archival purposes, or (b) transfer the Software to a single hard disk provided the Licensee keeps the original solely for backup or archival purposes. The Licensee must reproduce and include the copyright notice on any copy. The Licensee may not copy the written materials accompanying the Software.

5. LICENSOR'S OBLIGATIONS

- 5.1** On registration, Licensee has the option either to request Licensor to provide Licensee with a domain name registration for Licensee's e-commerce auction site, or to request Licensor to host Licensee's existing domain name.

- 5.1.1** If Licensee requests that Licensor provides Licensee with a domain name for

Licensee's e-commerce auction site, Licensor agrees to obtain a domain name registration for a domain name as requested by Licensee. In the event that such a domain name cannot be registered, Licensor will request that Licensee provide an alternative domain name, which Licensor will then attempt to register on behalf of Licensee.

- 5.1.2** If Licensee requests that Licensor host's Licensee's existing domain name then Licensor shall effect the transfer of the domain name to Licensor's server (where applicable).

6. LICENSEE'S OBLIGATIONS

- 6.1** The Licensee undertakes not to perform any of the acts referred to in this sub-clause 6.1 except to the extent and only to the extent permitted by law to the Licensee as a lawful user of the Software and only then for the specific limited purpose permitted by law or hereunder. The Licensee undertakes:
- 6.1.1** not to copy the Software (other than for normal System operation and as specified in Clause 3 above) nor otherwise reproduce the same provided that the Licensee may copy the Software for back-up purposes or incidentally, in the course of converting the Software in accordance with Clause 6.1.3 below.
 - 6.1.2** not to translate, adapt, disassemble, decompile, reverse engineer, vary or modify the Software, except where express permission has been granted by Licensor;
 - 6.1.3** not to remove, obscure or alter any notice of patent, copyright, trademark or other proprietary notice on the Software; Removal of the copyright notice is only permitted pursuant to Clause 8.4 below;
 - 6.1.4** not to sub-license, distribute, rent, lease, or otherwise transfer the Software or any unique access code or copy the Software;
 - 6.1.5** not to use the Software to attract customers away from the Licensor or to procure commercial advantage over the Licensor or to use it in any other way which is likely to be detrimental to the Licensor or its business;
 - 6.1.6** not to enable a third party to do any of the acts set out in this Clause 6.1.
- 6.2** This Agreement permits the Licensee to access and use the Software, which will reside on Licensor's server or a server authorised by Licensor, to enable Licensee to design, construct and operate 1 (one) e-commerce auction site that will be accessed by other users via the Internet.
- 6.3** To provide accurate and truthful registration information.
- 6.4** To maintain accurate and up-to-date records of the number and location of all copies of the Software
- 6.5** To supervise and control use of the Software in accordance with the terms of this Licence.
- 6.6** To ensure that its employees, agents and other parties who will use the Software are notified of this Licence and the terms hereof prior to such employee, agent or party using the same.
- 6.7** To reproduce and include the copyright notice of the Licensor on all and any copies, whether in whole or in part, in any form, including partial copies or modifications of the Software made herein. Removal of the copyright notice is only permitted pursuant to Clause 8.4 below.

- 6.8** Not to provide or otherwise make available the Software in whole or in part in any form in connection with or in conjunction with or as part of any Managed Service or to any person other than as specified in Clause 6.7 above without prior written consent from the Licensor. For the purpose of this Clause 6.9 "Managed Service" shall mean any commercial time sharing rental, bureau service or outsourcing agreement or arrangement.
- 6.9** Within fourteen (14) days after the date of termination or discontinuance of this Licence for whatever reason, to destroy the Software and all updates, upgrades or copies, in whole and in part, in any form including partial copies or modifications of the Software received from the Licensor or made in connection with this Licence, and all documentation relating thereto.

7. WARRANTY

- 7.1** The Licensee acknowledges that the Software is not error-free and agrees that the existence of such errors shall not constitute a breach of this Licence.
- 7.2** In the event that the Licensee discovers a material error which substantially affects the Licensee's use of the same and notifies the Licensor of the error within ninety (90) days from the date of the first use of the Software (the "warranty period") the Licensor shall use all reasonable endeavours to correct by patch or new release that part of the Software which does not so comply provided that such non-compliance has not been caused by any modification, variation or addition to the Software not performed by the Licensor or caused by its incorrect use, abuse or corruption of the Software or by use of the Software with other Software or on equipment with which it is incompatible.
- 7.3** To the extent permitted by law, the Licensor disclaims all other warranties with respect to the Software, either express or implied, including but not limited to any implied warranties or terms and conditions of satisfactory quality or fitness for any particular purpose. Specifically the Licensor does not warrant that the functions mentioned in the Software will meet the Licensee's individual requirements.

8. PAYMENT

- 8.1** Once Licensee has accepted the terms of this Agreement by clicking on the icon to purchase and use the Software, Licensee will immediately be invoiced for the sum due, payable to Licensor. Such invoice will be sent to the address as per the registration details provided by Licensee. This sum will be payable to Licensor within 14 (fourteen) days of receipt of the invoice.
- 8.2** On the yearly anniversaries of the Commencement Date, Licensor shall issue an invoice for annual hosting and Licence renewal. If Licensee wishes to extend the term of the Licence in accordance with Clause 9 of this Agreement, then such invoices shall be payable within 14 (fourteen) days of receipt.
- 8.3** If the payments referred to at Clauses 8.1 and 8.2 above are not received within the 14 (fourteen) day period, then Licensee's rights to access and use the Software will terminate forthwith and access will be denied.
- 8.4** If Licensee wishes to 'white-label' the Software, i.e. remove the copyright notice and/or hyperlink text ("Auction Software powered by auctionteq.biz") from the footer of the e-commerce auction site Software, a fee of £600 + VAT will be payable to Licensor. Upon written request from Licensee, Licensor will issue an invoice for the sum above, payable within 14 (fourteen) days of receipt.

9. TERM AND TERMINATION

- 9.1** This Agreement shall continue for an initial term of 12 (twelve) months from the Commencement Date.
- 9.2** This Agreement shall continue for further terms of 12 (twelve) month periods provided that Licensee makes payments to Licensor as set out in Clause 8.2 above.
- 9.3** This Agreement shall terminate immediately and automatically if Licensee fails to abide by any of the terms set out in this Agreement. Further, Licensor expressly retains the right to claim damages against Licensee for breaches of Clause 6.1 above.
- 9.4** Upon termination, the Licence granted to Licensee pursuant to Clause 1 above shall cease immediately. Further, all obligations on Licensor shall immediately come to an end, particularly those obligations set out in Clause 5.1 above in relation to hosting the Licensee's e-commerce auction site.
- 9.5** The Licensor may by notice in writing to the Licensee terminate this Licence if:
- 9.5.1** the Licensee is in breach of any term, condition or provision of this Licence or required by law and fails to remedy such breach (if capable of remedy) within thirty (30) days of having received written notice from the Licensor specifying such breach or
 - 9.5.2** if Licensee ceases to carry on business or a substantial part thereof or enters into liquidation whether compulsory or voluntary other than for the purpose of amalgamation or reconstruction or compounds with its creditors generally or has a receiver or manager or administrator appointed over all or any part of its assets or becomes unable to pay its debts as they fall due.
- 9.6** Upon termination, the Licensee shall comply with its undertaking specified in Clause 6.10 above.
- 9.7** Either party may terminate this Licence by giving the other party not less than thirty (30) days written notice.
- 9.8** Termination, howsoever or whenever occasioned shall be subject to any rights and remedies the Licensor may have under this Licence or under law.

10. HOSTING TERMS

- 10.1** This Clause 10.1 sets out the obligations on Licensee operating Licensee's e-commerce auction site in conjunction with using Licensor's web hosting service.
- 10.2** Licensee agrees that it is solely responsible for all material posted on Licensee's e-commerce auction site. Licensee acknowledges that Licensor does not screen material posted by Licensee on Licensee's e-commerce auction site. However, Licensor reserves the right (but is not obliged) to delete any material from Licensee's e-commerce auction site that breaches the terms of this Agreement or is in any way unlawful.
- 10.3** Licensee shall not on Licensee's e-commerce auction site:-
- 10.3.1** post material that is harmful, unlawful, pornographic, obscene or in any way objectionable;
 - 10.3.2** post material that infringes any third party intellectual property rights;
 - 10.3.3** post material that contains computer viruses or is in any way likely to cause damage to hardware, software or telecommunications equipment; and
 - 10.3.4** post material that will interfere with or disrupt the operation of Licensor's server.

11. LICENSOR'S LIABILITY

- 11.1** The Licensor shall not be liable to the Licensee for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with this Licence, the Software, its use or otherwise.
- 11.2** The Licensor expressly excludes liability for indirect, special, incidental or consequential loss or damage which may arise in respect of the Software, its use, the System or in respect of other equipment or property, or for loss of profit, business, revenue, goodwill or anticipated savings.
- 11.3** The Licensor does not exclude liability for death or personal injury to the extent only that the same arises as a result of the negligence of the Licensor, its employees, agents or authorised representatives.
- 11.4** If the Licensor is unable through no act or default of the Licensee to secure the correction of defects in the Software in accordance with and during the ninety (90) day warranty period and where the Software is totally unusable due to the defect, Licensee may reject it by sending written notice to the Licensor within fourteen (14) days of receipt of notice from the Licensor that the Licensor is unable to correct or procure the correction of such defects.

12. INTELLECTUAL PROPERTY RIGHTS

- 12.1** The Licensee acknowledges that any and all of the copyright, trademarks, trade names, patents and other intellectual property rights subsisting in or used in connection with the Software including but not limited to all documentation and manuals relating thereto, all images, animations, audio music and text incorporated into the Software remain the sole property of the Licensor. The Licensee agrees to immediately notify the Licensor of any actual or suspected infringement and the Licensee also agrees not to use any of the Licensor's trademarks as any part of the name under which the Licensee conducts its business.

13. CONFIDENTIAL INFORMATION

- 13.1** If during the performance of its obligations under this Licence either party ("the Receiving Party") is exposed to any information of the other ("the Disclosing Party") which the Disclosing Party identifies as being of a confidential or sensitive nature, the Receiving Party shall respect the confidentiality of such information and will not use it save insofar as its use is necessary in the performance of its obligations under this Licence and the Receiving Party shall restrict dissemination of such information to its employees on a need-to-know basis.
- 13.2** The obligations accepted by the Receiving Party under Clause 13.1 above shall not apply to any material which:
 - 13.2.1** is already known to the Receiving Party; or
 - 13.2.2** is public knowledge or enters the public domain without fault on the Receiving Party's part; or
 - 13.2.3** is lawfully received from a third party; or
 - 13.2.4** is ordered to be disclosed by a court or other tribunal of competent jurisdiction.
- 13.3** The obligations upon the Receiving Party under Clause 13.1 shall not oblige the Receiving Party to exercise a higher degree of care towards the Disclosing Party's confidential information than it does towards its own information of a like nature.

14. FORCE MAJEURE

The Licensor shall be under no liability to the Licensee in respect of anything which, apart from this provision, may constitute breach of this Licence arising by reason of force majeure, where such event is beyond that party's reasonable control.

15. ASSIGNMENT

The Licensee shall not assign or otherwise transfer all or any part of the Software or this Licence without the prior written consent of the Licensor.

16. WAIVER

No delay, neglect or forbearance on the part of either party in enforcing its rights or any of them against the other shall be construed as a waiver or in any way prejudice any of its rights hereunder.

17. HEADINGS

The headings of the terms and conditions herein contained are inserted for convenience or reference only and are not intended to be part of or to affect the meaning or interpretation of any of the terms and conditions of this Licence.

18. SEVERABILITY

In the event that any of these terms and conditions or provisions shall be determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such terms, condition or provision shall to that extent be severed from the remaining terms, conditions and provisions which shall continue to be valid to the fullest extent permitted by law.

19. LAW

This Agreement shall be governed by and construed in accordance with the laws of England and shall be subject to the jurisdiction of the English Courts.

20. NOTICES

Any notice, instruction or other document to be given by either party to the other hereunder may be left at or sent by pre-paid post, telex or confirmed facsimile transmission (as appropriate) to the address specified above or such other address notified by either party to the other for such purpose.

21. SURVIVAL

The provisions of Clauses 6, 8, 9, 11, 12, 17, and 18 shall survive termination of this Licence.

22. ENTIRE AGREEMENT

This Agreement supersedes all prior agreements and arrangements of whatever nature and sets out the entire agreement and understanding between the parties relating to its subject matter. Nothing in this clause shall relieve either party of liability for fraudulent misrepresentations and neither party shall be entitled to any remedy for either any negligent or any innocent misrepresentation except to the extent (if any) that a court or arbitrator may allow reliance as the same as being fair and reasonable.

ACCEPTANCE

Please complete the details below to confirm your acceptance of this licence agreement.

Name:**Company Name:****Date:****Signature:**