

## Enterprise Auction System ASP Agreement

*This Enterprise Auction System Application Service Provider License Agreement ("Agreement") is entered into between [Insert Company Name], as Licensee ("[INSERT COMPANY]") and REI PowerTools, LLC dba Real Estate Auction Systems, as Licensor ("REAS") for the license to [INSERT COMPANY] by REAS of the EnterpriseAuctionSystem V 1.0 Application ("Application") located at the REAS 3<sup>rd</sup> party data center. The parties acknowledge that both are business entities, that [INSERT COMPANY] is not a retail user of the product and services described herein, that this Agreement provides, through a license, for [INSERT COMPANY]'s access to REAS's Application and services in connection therewith and that REAS does not and will not provide any real estate sales or brokerage services to [INSERT COMPANY].*

### 1. TERM AND RENEWAL

The initial term of this Agreement shall be for twelve (12) months. The Effective Date of this Agreement shall be the date it is signed by both parties. This Agreement shall be considered by both parties to be automatically renewed for additional twelve (12) month periods until canceled by either party. For cancellation to be effective, the canceling party must give written notice to the other party of the cancellation not later than thirty (30) days prior to the then expiration of the Agreement, otherwise the Agreement shall automatically renew for an additional twelve months.

### 2. SERVICE

**2.1 Access.** Upon [INSERT COMPANY]'s acceptance of this Agreement and payment of the Startup Fee provided for in Section 7.1, REAS will begin work to provide [INSERT COMPANY] with the REAS Application for the term of the Agreement.

**2.2 Upgrades.** During the term of this agreement, if REAS upgrades the version of the Application [INSERT COMPANY] is using, [INSERT COMPANY] will not be charged an upgrade fee.

**2.3 No Title.** This license confers no title or ownership of the Application and is not a sale of any rights in the Application. The Application is owned by REAS and is protected by copyright law and international copyright treaty. The Application will have a link to REAS with the wording "Powered by REAuctionSystems" at the bottom of each page.

**2.4 Customization –** Custom system development is available from REAS at the rate of \$100 per hour. REAS will provide an estimated cost for all customization requests and will not begin work until written approval is received from [INSERT COMPANY].

### 3. SUPPORT

**3.1 Level 1 Support –** During the term of this agreement, [INSERT COMPANY] will provide all Level 1 Support of the Application. Level 1 support includes all support requests from customers in use of the Application (routine administrative support such as account password reset, login issues, and routine Application usage).

**3.2 Level 2 Support -** During the term of this Agreement, REAS agrees to provide [INSERT COMPANY] with Level 2 support via email and telephone access to our REAS Support Center during our standard support hours of Monday – Friday, 8:00 AM – 5:00 PM (Central Standard Time) except for standard U.S. Business Holidays. Level 2 support includes all "non-routine" Application issues, defects in the Application that are not able to be resolved by Level 1 support.

In addition, a 24 hour “emergency” contact number will be provided to [INSERT COMPANY] for emergency use only.

#### **4. PRIVACY**

**4.1 Ownership of Data.** REAS considers all data that [INSERT COMPANY] hosts on the REAS Application to be [INSERT COMPANY]’s personal property. As a policy, REAS does not examine data except at [INSERT COMPANY]’s request and only for the purposes of providing [INSERT COMPANY] with technical support. REAS will not use [INSERT COMPANY]’s data or [INSERT COMPANY]’s information for REAS’s benefit or the benefit of any third party, provided REAS may examine and record data reasonably necessary for REAS to invoice [INSERT COMPANY] for services under this Agreement.

**4.2 Analysis.** REAS reserves the right to perform statistical analysis of all of its web sites and hosting systems in order to measure the effectiveness of its web sites, to optimize website performance, and to ensure license compliance.

#### **5. SERVICE LEVEL COMMITMENT**

**5.1 REAS endeavors to ensure that the REAS Application is available 99.5% of any Month.** REAS will also provide nightly backups of [INSERT COMPANY]’s data in the unlikely event that emergency recovery is required with a mean time to restore of 1 hour on an alternative server.

**5.2 Scheduled Maintenance shall mean any maintenance in the data center at which [INSERT COMPANY]’s REAS Application is located.**

REAS will notify [INSERT COMPANY] via email at least 24 hours in advance of any scheduled maintenance. All scheduled maintenance will be performed during REAS scheduled maintenance period (12:00 AM – 1:00 AM CST). REAS is permitted to conduct emergency maintenance on an ‘as needed’ basis.

#### **6. WARRANTY OF TITLE**

REAS hereby represents and warrants to [INSERT COMPANY] that REAS is the owner of the Application and has the right to grant to [INSERT COMPANY] the rights set forth in this Agreement.

#### **7. PAYMENT**

**7.1** A Startup Fee of \$997.00 will be paid by [INSERT COMPANY] to REAS upon execution of this Agreement by [INSERT COMPANY]. The Startup Fee will cover the costs associated with setup and configuration of base application, first month’s minimum and user training.

**7.2 Monthly payments of fees for REAS services.** Monthly service fees shall consist of a listing fee per auction. For auctions that end each month, [INSERT COMPANY] shall pay \$50 for each listing. REAS will invoice [INSERT COMPANY] on the first day of each month. (Ex. May 1<sup>st</sup> invoice would include auctions that ended in April). Payment shall be due by [INSERT COMPANY] and received by REAS in clear funds by the 15<sup>th</sup> day of the month. A minimum service fee of \$300.00 shall be charged to [INSERT COMPANY] each month.

## **8. TIMELY PAYMENT**

**8.1** Except as otherwise agreed in writing and signed by an authorized officer of both parties, all payments due to REAS under this Agreement shall be made in accordance with Section 7.2 above.

**8.2** All past due payments will accrue interest due at a rate of one and one-half percent (1.5%) per month on the unpaid balance from the due date until paid in full.

**8.3** REAS may, at its option elect to restrict [INSERT COMPANY]'s access to the Application for failure to pay any fees associated with use of this Application that are past due by more than sixty (60) days.

## **9. TERMINATION**

Either party may elect to terminate this agreement upon written notice informing the other party of a breach of obligation by that party regarding this Agreement unless the breach, if a monetary breach is cured within fifteen (15) days from receipt of any such notice or, if a non-monetary breach, within thirty (30) days from receipt of the notice provided a cure of the breach can reasonably be effected within thirty (30) days. All disclaimers of warranties and limitations of liability shall survive any termination of this Agreement.

## **10. APPLICABLE LAW**

This License agreement will be governed by and construed in accordance with the laws of the State of Missouri. The federal courts of the Eastern District of Missouri and/or state courts of Saint Louis County, Missouri shall have sole and exclusive jurisdiction and venue to adjudicate any dispute arising out of this License Agreement or the parties relationship, and [INSERT COMPANY] expressly consents to (i) the personal jurisdiction of these state and federal courts of Missouri, and (ii) service of process being effected upon [INSERT COMPANY] by registered mail, return receipt requested.

## **11. REAS LIMITED WARRANTY STATEMENT**

**11.1** REAS warrants to [INSERT COMPANY] that the Application will perform in accordance with its designed functionality. [INSERT COMPANY] acknowledges that has had the opportunity to examine the Application and is satisfied with its capabilities and proposed performance.

**11.2** If REAS receives notice of non-performance as stated in section 11.1 REAS will repair the Application that proves to be defective. If REAS is unable, within thirty (30) days, to correct a defect that [INSERT COMPANY] has notified REAS of, [INSERT COMPANY] will be entitled to terminate this Agreement upon written notice.

**11.3** Warranty does not apply to defects resulting from improper or inadequate installation, maintenance or configuration of Application performed by non-REAS employees unless such non-REAS employees were retained as contractors or consultants by REAS.

**11.4** THE EXPRESS WARRANTY SET FORTH ABOVE IS THE SOLE AND EXCLUSIVE WARRANTY PROVIDED [INSERT COMPANY] HEREIN AND EXCLUDES ANY AND ALL OTHER WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE

**11.5** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL REAS OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION DAMAGES FOR LOSS OF BUSINESS PROFITS) ARISING OUT OF THE USE OF OR INABILITY TO USE THE APPLICATION, EVEN IF REAS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, REAS'S ENTIRE LIABILITY UNDER ANY PROVISION OF THIS LICENSE AGREEMENT SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY [INSERT COMPANY] FOR USE OF THE APPLICATION.

**12. NON-WAIVER**

The waiver by either party of any default or breach under this Agreement shall not constitute a waiver of any subsequent default or breach of the same or of a different kind.

**13. ENTIRE AGREEMENT**

**13.1** This License Agreement supersedes any prior oral or written statements, agreements, or representations and can be changed only by an amendment designated as such and signed by an authorized officer of both parties.

**13.2** In the event that one or more of the provisions of this License Agreement shall be found illegal or unenforceable, then such provisions shall be deemed struck and other provisions of this License Agreement shall remain in full force and effect.

**14. FORCE MAJEURE.**

REAS shall not be responsible for delays or failures if such delay arises out of causes beyond its control. Such causes may include, but are not restricted to, acts of God or of the public enemy, fires, floods, epidemics, riots, quarantine restrictions, strikes, freight embargoes, earthquakes, electrical outages, computer or communications failures, and severe weather, and acts or omissions of subcontractors or third parties.

**15. PREVAILING PARTY ATTORNIES FEES.**

In the event either party to this Agreement retains the services of an attorney to enforce the provisions or obligations of this Agreement or with regard to the parties' relationship, the prevailing party shall recover from the non-prevailing party its reasonable attorney's fees and all costs, including in all trials and appeals.

**16. NOTICE.**

All notices required or permitted under this Agreement shall be made as follows, except as otherwise specifically set forth herein.

As to Licensor REAS:

By U.S. Mail: REI PowerTools, LLC  
1381 Thornwick Drive Suite 202  
St. Louis, MO 63011

or by Telecopier: 877-234-6706 with a copy also sent via email or email attachment to:  
[admin@reipowertools.com](mailto:admin@reipowertools.com)

As to Licensee [INSERT COMPANY]:

By U.S. Mail [INSERT COMPANY]  
[INSERT ADDRESS]

or by Telecopier: with a copy also sent via email or email attachment to: [INSERT E-MAIL]

**17. Unique Nature of Application.**

The parties acknowledge that the Application, including the Source Codes, are unique and proprietary to REAS. In the event [INSERT COMPANY] breaches any obligation of this Agreement by any unauthorized use, transfer or sharing of the Application, including Source Codes, or information with regard thereto, the parties agree that REAS would not have an adequate remedy at law and would suffer irreparable harm that could not be sufficiently compensated for with an award of monetary damages, and that the parties and the public would be served by and REAS would immediately be entitled to an injunction against any and all unauthorized use, transfer or sharing of the Application, including Source Codes, entered by a court of competent jurisdiction.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year provided below. For all intents and purposes an electronic signature or other means of acceptance shall bear the same weight as a signature provided in either parties own handwriting.

[INSERT COMPANY]

\_\_\_\_\_  
Company Officer – Title

\_\_\_\_\_  
Date

REI PowerTools, LLC

\_\_\_\_\_  
Tom Wood – Managing Member

\_\_\_\_\_  
Date