



SOFTWARE-AS-A-SERVICE AGREEMENT

This Subscription Agreement (this “Agreement”) is by and between AUCTION NINJA, LLC (“AuctionNinja”), a Connecticut limited liability company and _____ (“User”) and is effective upon its complete execution and payment of the Setup Fee (the “Effective Date”).

The parties agree as follows:

1. SERVICES

AuctionNinja provides auctioneers with access on a subscription basis to its hosted AuctionNinja Platform, which consists of cloud hosted software-as-a-service applications and an online marketplace (the “Services”). The Services facilitate sellers’ interaction with participating bidders. AuctionNinja agrees to provide to User, and User agrees to purchase, access on a subscription basis to the Services. Access to the Services include integration with User’s domain, unlimited auctions and bidding, hosting, free support and integration of banking system with *authorize.net* and *stripe.com*.

2. FEES & PAYMENT

User agrees to pay AuctionNinja a \$250 non-refundable set up fee (“Setup Fee”) due upon the signing of this Agreement, a monthly (or part month) fee of \$19.19, which will be debited from a credit/debit card on file in the first 10 days of each month, and 2% of the total paid hammer prices of each auction payable by auto-debit within the first 10 days of the following month after the conclusion of each auction.

All fees are exclusive of any applicable sales, use, excise, value-added taxes, services, consumption and similar transaction taxes imposed by any national, state, provincial or local government taxing authority on the transactions contemplated by this Agreement.

Notwithstanding Section 1, use of any other financial institutions and/or banking platforms other than *authorize.net* or *stripe.com* may result in additional charges as determined the sole discretion of the AuctionNinja, and may not be supported. AuctionNinja will furnish an estimate for these services if requested by the User and agreed upon by AuctionNinja.

3. ACCESS

- A. AuctionNinja shall make the Services available to User during the term of this Agreement.
- B. AuctionNinja hereby grants to User a non-transferable, non-sub-licensable, non-exclusive, worldwide right during the term of this Agreement to access and use the Services from any location within the United States, provided that such access and use is on behalf of User.
- C. User is prohibited from transferring the Services except to a subsidiary or affiliated entity.
- D. AuctionNinja may suspend User’s access to the Services if User is in violation of this Agreement.

Exclusivity. Specific areas within Connecticut and New York (“Exclusive Territory”) are restricted territories. **User agrees that it will neither solicit nor sell estates or estate merchandise on AuctionNinja that are located within the Exclusive Territory.** Further, User shall not promote sales nor solicit clients inside the Exclusive Territory on AuctionNinja. User shall not establish any facility inside the Exclusive Territory through which services are solicited or in which inventories of sales are stored without AuctionNinja’s written consent, which consent may be

withheld or granted with or without conditions in the sole and absolute discretion of AuctionNinja.

In Connecticut. Exclusive Territory includes the towns of: Bridgeport; Darien; Easton; Fairfield; Greenwich; New Canaan; Norwalk; Stamford; Trumbull; Weston; Westport; and Wilton

In New York. Exclusive Territory includes the towns of: Armonk; Bedford; Chappaqua; Harrison; Katonah; Larchmont; Lewisboro; Mamaronek; Mount Kisco; New Castle; North Castle; North Salem; Port Chester; Pound Ridge; Rye; Rye Brook; Salem; Scarsdale; South Salem; and White Plains

4. TERM AND TERMINATION

This Agreement shall commence on the Effective Date and continue until terminated by either party by such terminating party providing ten (10) days advance written notice to the other party. AuctionNinja may terminate this Agreement immediately if User is in default of any of the terms of this Agreement.

5. AUCTIONNINJA OBLIGATIONS

User shall not: (i) make the Services available to anyone; (ii) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material; (iii) use the Services to store or transmit material in violation of third party privacy rights; (iv) use the Services to store or transmit malicious software; (v) interfere with or disrupt the integrity or performance of the Services; (vi) attempt to gain unauthorized access to the Services; (vii) decompile, disassemble, reverse engineer, reverse assemble, or otherwise prepare derivative works of, modify, or attempt to derive any source code or algorithms of the AuctionNinja Platform except to the extent permitted by applicable law; (viii) rent, lease, loan, sell, sublicense, distribute or otherwise transfer any of the access rights granted to User in this Agreement, except as expressly authorized herein; or (ix) remove, circumvent, disable, damage or otherwise interfere with any security-related features of the AuctionNinja Platform or features that enforce limitations on the use of the AuctionNinja Platform.

6. PROPERTY RIGHTS AND OWNERSHIP

- A. Ownership. AuctionNinja and the User acknowledge and agree that (i) AuctionNinja owns all right, title, and interest in and to the AuctionNinja Platform, any modifications or customizations thereof, and any and all intellectual property or proprietary rights anywhere in the world, irrespective of whether such rights arise under U.S. or foreign intellectual property, unfair competition or trade secret laws (collectively, "Proprietary Rights"), in or to any of the foregoing and (ii) subject to AuctionNinja's underlying ownership of the AuctionNinja Platform and the Proprietary Rights therein and thereto, the User owns all right, title, and interest in and to the User Material.
- B. Feedback. AuctionNinja may freely use and exploit without any restrictions all feedback or suggestions conveyed to AuctionNinja by User and User's personnel and agents in connection with the AuctionNinja Platform.
- C. User Material. Subject to the terms and conditions of this Agreement, User hereby grants to AuctionNinja a nonexclusive, worldwide and royalty-free right and license to store, reproduce, adopt, modify, display, perform, transmit and use all information, data, text, images, audio, video and audiovisual material, trademarks, marketing materials, and other materials uploaded to the AuctionNinja Platform or otherwise provided by or on behalf of the User or its agents in connection with the AuctionNinja Platform, and any updates, modifications or derivatives thereof (collectively, the "User Material").

7. CONFIDENTIALITY

- A. Definition. "Confidential Information" means (i) any information disclosed (directly or indirectly) by one party ("Disclosing Party") to the other party ("Receiving Party") pursuant to this Agreement that is in written, graphic, machine readable or other tangible form (including, without limitation, research, product plans, products, services, equipment, customers, markets, software, inventions, processes, designs, drawings, formulations, specifications, product configuration information, marketing and finance documents, prototypes, samples, data sets, and equipment), and or is (ii) information, including that communicated orally, which is otherwise reasonably expected to be treated in a confidential manner under the circumstances of disclosure under this Agreement or by the nature of the information itself.
- B. Exceptions. Confidential Information shall not, however, include the User Material, or any information that: (i) was publicly known or made generally available without a duty of confidentiality prior to the time of disclosure by Disclosing Party to Receiving Party; (ii) becomes publicly known or made generally available without a duty of confidentiality after disclosure by Disclosing Party to Receiving Party through no wrongful action or inaction of Receiving Party; (iii) is in the rightful possession of Receiving Party without confidentiality obligations at the time of disclosure by Disclosing Party to Receiving Party as shown by Receiving Party's then-contemporaneous written files and records kept in the ordinary course of business; (iv) is obtained by Receiving Party from a third party without an accompanying duty of confidentiality and without a breach of such third party's obligations of confidentiality; or (v) is independently developed by Receiving Party without use of or reference to Disclosing Party's Confidential Information, as shown by written records and other competent evidence prepared contemporaneously with such independent development.
- C. Non-Use and Non-Disclosure. Each party agrees not to use any Confidential Information of the other party for any purpose except to exercise its rights and perform its obligations under this Agreement. Each party agrees not to disclose any Confidential Information of the other party to third parties or to such party's employees or subcontractors other than the employees, subcontractors or authorized users who use such information solely in the performance of services for or on behalf of such party.
- D. Maintenance of Confidentiality. Each party agrees that it shall take reasonable measures to protect the secrecy of and avoid unauthorized disclosure or use of the Confidential Information of the other party. Without limiting the foregoing, each party shall take at least those measures that it takes to protect its own most highly confidential information and shall ensure that its employees, consultants or authorized users who have access to Confidential Information of the other party have signed a non-use and non-disclosure agreement substantially as protective of the other party's Confidential Information as the provisions hereof, prior to any disclosure of Confidential Information to such persons. Each party agrees that the unauthorized use or disclosure of the other party's Confidential Information may cause irreparable injury to the party concerned. Accordingly, both parties agree that the remedy at law for any breach of this Section 7 may be inadequate and that the party suffering from the unauthorized use or disclosure shall be entitled to ex parte injunctive relief to prevent any such breach or the threat of such a breach.
- E. Compelled Disclosure. If Receiving Party becomes legally compelled to disclose any Confidential Information, other than pursuant to a confidentiality agreement, Receiving Party will provide Disclosing Party prompt written notice, if legally permissible, and will use its best efforts to assist Disclosing Party in seeking a protective order or another appropriate remedy.
- F. Return of Confidential Information. Upon the termination of this Agreement, the Receiving Party shall deliver to the Disclosing Party or destroy all of the Disclosing Party's Confidential Information obtained hereunder, and all copies thereof, that the Receiving Party may have in its possession or control.

8. WARRANTY DISCLAIMER

User accepts the Services as-is. AuctionNinja makes no warranties as to the function or use of the Services, whether express, implied or statutory, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose. The entire risk as to the quality and performance of the Services is with User. AuctionNinja does not warrant that the Software will meet User's requirements or that the operation of the Software will be uninterrupted or error free.

9. INDEMNIFICATION

- A. By AUCTIONNINJA. Subject to Section 9.C, AuctionNinja shall, at its own expense, defend or at its option settle any third party claim (except for a claim which gives rise to the User's indemnification obligations as set forth in Section 9.b) brought against the User to the extent the third party claim alleges the use of the AuctionNinja Platform by the User infringes any copyright, trade secret, patent, or trademark of any third party. The foregoing provisions of this Section 9.a states the sole and exclusive liability of AUCTIONNINJA, and the sole and exclusive remedy of the User with respect to any actual or alleged claim of infringement or misappropriation of intellectual property rights.
- B. By User. AuctionNinja shall have no liability for, and the User shall, at its own expense, defend or at its option settle any claims by a third party or governmental authority arising out of User's use of the AuctionNinja platform.
- C. Procedures. Each party will notify the other party promptly upon learning of a claim, demand, suit, or proceeding that might give rise to an indemnified loss, and the potentially indemnifying party may control defense and settlement thereof provided it does so diligently, in good faith, and using reasonably experienced counsel with expertise in the relevant field. The potentially indemnified party will reasonably cooperate in such defense and/or settlement at the potentially indemnifying party's request and expense and may participate at its own expense using its own counsel.

10. LIMITATION OF LIABILITY

AuctionNinja's liability to User under this Agreement shall be limited to the amounts actually paid hereunder by User to AuctionNinja for the twelve consecutive month period immediately preceding the date of the subject occurrence. In no event shall AuctionNinja be liable for indirect, incidental, special or consequential damages, including loss of use, loss of profits or interruption of business.

11. NOTICE

Any notice required by this Agreement or given in connection with it, shall be in writing and shall be given to the appropriate party by personal delivery or by certified mail, postage prepaid, or recognized overnight delivery services.

<u>If to AuctionNinja:</u>	<u>If to User:</u>
Christie Spooner, Member	Name _____
AuctionNinja, LLC.	Company _____
1720 Fairfield Avenue	Mailing Address _____
Bridgeport, CT 06605	City, State, Zip _____
christie@blackrockgalleries.com	Email _____

12. ASSIGNMENT

AuctionNinja may assign this Agreement to a third party.

13. ENTIRE AGREEMENT & AMENDMENT

This Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof, and is the complete and exclusive statement of the rights and liabilities of the parties with regards to the subject matter herein. This Agreement may be modified only by a further writing that is duly executed by both parties.

14. SEVERABILITY

If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

15. GOVERNING LAW

This Agreement shall be construed and enforced in accordance with the laws of the State of Connecticut and the parties consent to exclusive jurisdiction and venue of the state and federal courts in the State of Connecticut, County of Fairfield.

AUCTION NINJA, AUCTION NINJA, LLC

_____ <i>Authorized AuctionNinja Signature</i>	_____ <i>Date</i>
Jennifer Ventresca	Marketing Manager
_____ <i>Name (Printed)</i>	_____ <i>Title</i>

USER,

_____ <i>Name of Company</i>	
_____ <i>Signature: Duly Authorized Representative</i>	_____ <i>Date</i>
_____ <i>Name: Duly Authorized Representative (Printed)</i>	_____ <i>Title</i>

RECURRING PAYMENT AUTHORIZATION FORM

PLEASE COMPLETE THE INFORMATION BELOW:

I _____ ^{Full Name} authorize Auction Ninja, LLC to charge my credit card indicated below for a one-time \$250 set-up fee (charged upon registration), as well as \$19.19 within the first ten (10) days of each month and 2% of the gross auction sales for each auction within forty five (45) days of auction completion.

BILLING INFORMATION

Company

Street Address

City

State

Billing Zip Code

Telephone Number

Email Address

CREDIT CARD INFORMATION

Please circle one: **VISA** **MASTERCARD** **AMEX** **DISCOVER**

Card Number

Expiration Date

CVV Code

Name as it Appears on Card

SIGNATURE

Authorized Signature (Primary)

Date

Name (Printed)

OTHER REQUIRED INFORMATION:

Before we can complete your account approval, we need some additional information, as listed below.

Proof of Business

Please provide us with a form of official proof of your business. Here are some examples of acceptable forms of proof:

- Articles of Incorporation or Organization
- Federal Tax ID Certificate
- Current City, County or State Business License
- Voided Business Check
- Qualified Professional License
- State Resale Certificate or Exemption Certificate

Domain Name / URL

Please provide us with your business domain name (URL).

If you don't currently have a domain name, you will need to purchase one. You may use any domain name provider/registration service you wish, but for convenience, we suggest GoDaddy (www.godaddy.com/domainname).

DOMAIN NAME

http:// _____

Please note that your domain name will need to be pointed to the AuctionNinja server as part of the account activation process. If you need assistance with this, our IT department will be happy to help walk you through the steps.

Payment System

AuctionNinja is designed to auto-debit your clients at the conclusion of each auction so you don't have to worry about billing! The system can use either of the following services: **Stripe** (<https://stripe.com>) or **Authorize.net** (<http://www.authorize.net>). Setting up an account with these third-party suppliers is easy. Please let us know which billing/payment system you plan to use:

I plan to use (circle one) **STRIPE** **AUTHORIZE.NET**