

ONLINE AUCTION SERVICES

CONTRACT NO. 16569

REQUEST FOR PROPOSAL NO: 2231

OPENED: 1/31/2014

THIS AGREEMENT, entered into by and between the State of South Dakota through its Office of Procurement Management, Pierre, South Dakota, hereinafter "State", and Proxibid, Inc. of 4411 S. 96th Street, Omaha, Nebraska, 68127-1210, hereinafter "Contractor".

WITNESSETH, Whereas the Contractor has heretofore been awarded the contract to furnish and deliver to the State certain services, all of which are more specifically itemized, described and enumerated in the schedules and specifications of request for proposals number 2231, and made a part thereof by reference.

1. This contract is to provide online auction services for the SD Bureau of Administration, and interested political subdivisions of the State of South Dakota. This is a non-exclusive contract. The State of South Dakota reserves the right to utilize other providers of online auction services during the term of this agreement.
2. This is an open-ended contract between the Contractor and the State to furnish an undetermined quantity of a service in a given period of time. The quantities ordered will be those actually required during the contract period, and the Contractor will deliver only such quantities as may be ordered. No guarantee of volume is made.
3. This Agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event the Contractor breaches any of the terms or conditions hereof, this Agreement may be terminated by the State at any time with or without notice. If termination for such a default is effected by the State, any payments due to Contractor at the time of termination may be adjusted to cover any additional costs to the State because of Contractor's default. Upon termination the State may take over the work and may award another party an agreement to complete the work under this Agreement. If after the State terminates for a default by Contractor it is determined that Contractor was not at fault, then the Contractor shall be paid for eligible services rendered and expenses incurred up to the date of termination.
4. The Contractor agrees to convey, assign and transfer to the State of South Dakota all rights, title and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States, 15 U.S.C.A. §1, et seq. (1973), and under the antitrust laws of the State of South Dakota, SDCL 37-1, and amendments thereto, relating to the particular goods, services and materials purchased by the State of South Dakota in connection with this contract.
5. The Contractor will not use State equipment, supplies or facilities.
6. Service Fee: The State agrees to pay 5% commission to Contractor for use of the Contractor's online auction system pursuant to this agreement. There are no additional fees that will be charged to the State for use of the system, unless the State elects additional services to be provided by Contractor. No additional fees apply to the State's use of Contractor services unless the the State agrees to such additional fees in writing.
7. The State's use of the Contractor's online auction system, and any related services, shall be based on the attached Proxibid Unified User Agreement. Modifications to the Proxibid Unified User Agreement are identified in Attachment A, Modifications to Proxibid Unified User Agreement.
8. The parties agree that this contract shall be governed by and construed in accordance with the laws of the State of South Dakota. Venue for any action, claim, dispute or litigation pertaining to or affecting this contract shall be in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.
9. Contractor agrees to indemnify and hold the State of South Dakota, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings that may arise as the result of performing services hereunder. This section does not require the Contractor to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees in the use of the Contractor's online auction system.

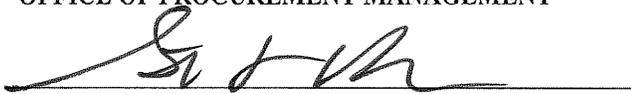
10. In the event of a conflict in terms of language among the documents, the following order of precedence shall govern:

- a. State of South Dakota contract # ;
- b. Attachment A, Modifications to Proxibid Unified User Agreement;
- c. State of South Dakota RFP #2231; and
- d. Contractor's written proposal submitted in response to the State of South Dakota RFP #2231 as finalized.

11. Notices: All notices related to this agreement shall be addressed as follows: Steve Boring, Purchasing Specialist, Office of Procurement Management, PMB 01231, 523 E. Capitol Avenue, Pierre, SD 57501.

THEREFORE, in consideration of the covenants on the part of the State which are fully set and enumerated in the said State of South Dakota request for proposals and resulting contract, the Contractor agrees to furnish and deliver to the State all of the said awarded services as enumerated in the said request for proposals and contract, at the price and according to the terms and conditions, and of the kind, quality, and amounts and at the times specified in said request for proposals and contract. The Contractor may extend the services authorized by this contract to political subdivisions of the State of South Dakota under the same terms and conditions.

STATE OF SOUTH DAKOTA
OFFICE OF PROCUREMENT MANAGEMENT



SIGNATURE

STEVEN L. BERG, DIRECTOR

2-19-2014

DATE

PROXIBID, INC.



SIGNATURE

VP of Business Development

2.19.14

DATE

ATTACHMENT A
MODIFICATIONS TO PROXIBID UNIFIED USER AGREEMENT

The State and Contractor agree that the following modifications to the Proxibid Unified User Agreement will apply to the State's use of the Contractor's online auction system pursuant to State of South Dakota contract #16569. Modified terms are listed as numbered in the Proxibid Unified User Agreement, and replace the original terms in their entirety.

3.2 Payment to Proxibid. The parties acknowledge and agree that Proxibid will be paid a 5% commission of any successful bid/purchase utilizing the Proxibid Services. Any default in payment will be subject to interest and collection fees as set forth under Section 27 below.

Accordingly, in the event for any reason the transaction between the Buyer and the Seller is not consummated or the Buyer otherwise does not make payment of the total purchase price owed to Seller with respect to that transaction. The commission will only be paid for actual completed sales. In the event of a non-paying bidder, Seller will be required to submit a non-paying bidder form within 10 days of the close of the event for mediation. If Proxibid is not successful in collecting from the bidder then the Proxibid commission will be waived. This is the only scenario in which the Proxibid commission will be waived for an item that has been sold.

4.6 Competitors. Proxibid acknowledges that the State may utilize other online auction service providers and that no guarantee of any volume of use of the Proxibid service is made by the State.

4.9 Compliance with Laws Related to Sale of Certain Products. Seller acknowledges and agrees that the promotion, advertising, sale, and distribution of certain products are subject to federal, state, and local regulations, including without limitation, firearms, Indian artifacts, recalled products, children's products, alcoholic beverages, coins and currency. Seller further acknowledges and agrees the role of Proxibid with respect to the sale of products is limited to providing a conduit through which a prospective purchaser is able to participate in an event without physically being present; Proxibid does not review or evaluate the products auctioned or sold or verify the claims made by Seller regarding the products.

Each Seller expressly represents that Seller is presently in full compliance with and shall continue to comply with all applicable federal, state, and local laws, statutes, ordinances and regulations relating to the licensing, distribution, and sale of any products Seller promotes or sells through Proxibid (hereinafter, the "Regulations"), including without limitation (i) the Gun Control Act of 1968 and all regulations promulgated by the Bureau of Alcohol, Tobacco, Firearms and Explosives (collectively the "Firearms Regulations"), (ii) the Consumer Products Safety Improvement Act of 2008, and all regulations promulgated by the U.S. Consumer Products Safety Commission, and (iii) the Indian Arts & Crafts Act of 1990 and any additional laws and regulations applicable to the sale of Indian arts and crafts.

6.2 Seller's Liability. Seller is solely responsible for all reversals, chargebacks, claims, fees, fines, penalties and other liability incurred by Proxibid, a User, or a third-party caused by or arising out of Seller's breach of this Agreement, the Default Event Terms, or any Special Terms of Sale, and/or Seller's use of the Proxibid Services.

9.1 Event Assistance Policy. This clause would not apply to the State, it is in the user agreement for live auctions only.

14. INDEMNIFICATION

Does not apply to the State. Refer to Contract #16569

16. LIMITATION OF LIABILITY

Does not apply to the State.

20. AMENDMENT OF TERMS AND CONDITIONS

In the event of any material amendment to the User Agreement, the State must affirmatively accept the amended User Agreement before those changes will have any effect on the State's use of the Web site or Proxibid Services.

21. INTEGRATION AND SEVERABILITY

Does not apply to the State. Refer to Contract #16569

23. ARBITRATION

Does not apply to the State.

24. Improperly Filed Litigation

Does not apply to the State.

26. CHOICE OF LAW AND FORUM

Does not apply to the State. Refer to Contract #16569

PROXIBID UNIFIED USER AGREEMENT

Please read this Unified User Agreement ("Agreement") carefully, as it contains the terms and conditions that will govern your use of the Proxibid Web site and services. This Agreement constitutes a legally binding agreement between you and Proxibid. Your clicking on the button marked "I ACCEPT" and your ongoing use of the Proxibid Web site www.proxibid.com indicates your acknowledgment that you have read, understand, agree to, and accept this Agreement. It is your responsibility to carefully read this Agreement before using this Web site or the Proxibid Services. If you do not wish to be bound by this Agreement, you may not use the Proxibid Web site or services.

1. DEFINITIONS

The following terms are defined for use in this Unified User Agreement, and their meaning in this Agreement is limited to the given definition.

"APN" means Auction Payment Network, LLC, a subsidiary of Proxibid, Inc.

"Buyer" means an individual or entity that creates a Buyer account on the Proxibid Web site (regardless of such User's purpose for creating the Buyer account and whether or not such Buyer account is ever utilized to place a bid).

"Claim" means a challenge to a payment that a User files directly with Proxibid.

"Customer Service" means Proxibid's customer support team which can be accessed by calling (877) 505-7770 from 7:00 AM to 10:00 PM Central Time, Sunday through Friday, and 6:00 AM until 10:00 PM Central Time Saturday.

"Default Event Terms" means the set of default terms and conditions set forth under Section 5 of this Agreement, which govern the relationship between a Buyer and Seller unless otherwise stated in Seller's Special Terms of Sale.

"Information" means any confidential and/or personally identifiable information or other information related to an account or User, including but not limited to the following: name, email address, billing/shipping address, phone number and financial information.

"Proxibid," "we," "us," and "our": These terms all refer to Proxibid, Inc.

"Proxibid Services" means all our products and services and any other features, technologies and/or functionalities offered by us on our Web site, by telephone (including support services) or through any other means.

"Seller" means the independent entity conducting or sponsoring the event, including, but not limited to sellers or auctioneers.

"Significantly Not as Described" (SNAD) Claim means an action taken by a Buyer against a Seller when the Buyer has purchased an item that arrived but was significantly different from the item description.

"Special Terms of Sale" means a Seller's own terms of sale which modify and/or supplement the Default Event Terms set forth under Section 5.

"You," "your," and "User": These terms refer to the individual or entity using the Proxibid Web site, whether as a Buyer, Seller, or otherwise.

2. OVERVIEW OF PROXIBID SERVICES

Proxibid provides online event services in a variety of capacities. For auction-style events, Buyers who cannot be physically present at an event site have an opportunity to participate in the live event through real-time webcast online bidding ("live bidding"). Buyers who are unable to personally monitor the live event webcast have the opportunity to participate in the event by entering an absentee bid ("pre-bidding").

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Proxibid also provides timed online event services. Proxibid allows Buyers to buy and Sellers to sell an item immediately through its "Instant Purchase" process. Under the "Instant Purchase" process, a Buyer has the ability to buy an item at a set price (plus applicable buyer's premium, shipping and handling charges) without having to place a bid and compete in an auction for an item. As a Seller, you can offer an "Instant Purchase" option as part of your event listing, or you can offer "Instant Purchase" as the only option for an item.

Proxibid also allows Buyers to buy and Sellers to sell an item through its "Make an Offer" process. Under the "Make an Offer" process, the Buyer has the ability to submit an offer to the Seller to purchase the item, either directly to Seller or through a Proxibid intermediary. By submitting an offer the Buyer is committing to purchase the item if the Seller accepts the offer.

All events are operated by independent Sellers. The Sellers are solely responsible for running each event and regulating each sale. While this Agreement contains a set of default terms governing the relationship between a Buyer and Seller, each Seller has the discretion to alter those terms for their individual event and may impose Special Terms of Sale for participation. (See "DEFAULT EVENT TERMS" under Section 5 below).

Sellers have the ultimate discretion over approving or rejecting Buyers for each event. Creating an account as a Buyer with Proxibid does not automatically guarantee that a Buyer will be approved for any of the events hosted by Proxibid.

Many Sellers have their own Web sites and their own Special Terms of Sale which modify and/or supplement the Default Event Terms set forth under Section 5 below and may or may not contain the same level of protection as the terms of this Agreement. Before participating in an event, a Buyer must review and accept the Special Terms of Sale governing the particular event, if any. A Seller shall not make any material changes to the Special Terms of Sale governing an open event unless the Seller has provided written notice to all Buyers participating in the event. Any participating Buyer who does not receive such notice shall have the right to retract the Buyer's bid.

Because the Internet occasionally experiences disruptions, Proxibid cannot guarantee the Proxibid Services will be available 100% of the time. Although Proxibid strives to provide the most reliable services possible, interruptions and delays in service are unavoidable and Proxibid disclaims any liability for damages resulting from such disruptions. Thus, you use this Web site at your own risk.

Proxibid reserves the right to not conduct business with any individual Seller or Buyer or groups of Sellers or Buyers at any time for any reason, and to cancel any scheduled event at any time and for any reason. Proxibid may terminate or deny access to this Web site at any time at our sole and absolute discretion. Proxibid will not be liable for any direct, indirect or consequential damages that result from such actions.

3. BUYER OBLIGATIONS

3.1 Payment to Seller. Placing a bid in an auction-style event, making an offer through the Make an Offer process, or committing to buy an item through the Instant Purchase process is a legally binding obligation. If you are the successful Buyer, you agree to pay the amount of your bid plus all applicable taxes and charges in the time and manner designated by the Seller. Failure to make such payment shall be deemed a breach of this Agreement.

3.2 Payment to Proxibid. The parties acknowledge and agree that Proxibid is paid a percentage, to be solely determined by Proxibid based on the event, of any successful bid/purchase utilizing the Proxibid Services (the "Proxibid Premium"), and the Seller incorporates such Proxibid Premium into the total purchase price due from the successful Buyer. Buyer acknowledges and agrees that its payment of the Proxibid Premium to Proxibid is in consideration for Buyer's use of the Proxibid Services to become the successful buyer and such payment obligation is not contingent upon the consummation of the sale transaction between Buyer and Seller. Accordingly, notwithstanding and without limiting Buyer's payment obligation to Seller set forth in Section 3.1 above or Section 5 below (or the Seller's Special Terms), in the event for any reason the transaction between the Buyer and the Seller is not consummated or the Buyer otherwise does not make payment of the total purchase price owed to Seller with respect to the successful bid/purchase offer, within fifteen (15) days of the date of the bid/purchase offer, the successful Buyer agrees to pay the Proxibid Premium directly to Proxibid. Any default in payment will be subject to interest and collection fees as set forth under Section 27 below.

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3.3 Absentee Bids. Buyers who are unable to personally monitor the live event webcast have the opportunity to participate in the event through the pre-bidding process. Under the pre-bidding process in an auction-style event, a Buyer may not remove an absentee bid (pre-bid) without the approval of the Seller or Proxibid, which may be granted or denied in each of their sole discretion. Proxibid retains the right to take any adverse action, including without limitation termination of a Buyer's account, against Buyers who are deemed to be abusing bid-retractions. Buyers expressly acknowledge and agree that Proxibid makes no guarantee or representation regarding the effectiveness or success of pre-bids. By placing a pre-bid, a Buyer expressly authorizes Proxibid to begin bidding and continue bidding on Buyer's behalf at any price in excess of the opening bid (determined by the Seller in its discretion) up to the amount of the pre-bid. Buyer expressly acknowledges that Proxibid owes no duty to Buyer to obtain the lowest possible price on behalf of the Buyer and Buyer may be able to enter a successful bid at a lower price if Buyer were to actively participate in the event.

3.4 Disclosure of Maximum Pre-Bids to Seller. Buyer acknowledges and agrees that a Seller may have access to and knowledge of Buyer's maximum pre-bid and may determine the starting bid based in whole or in part on the amount of Buyer's maximum pre-bid; provided that Seller must affirmatively "enable" such access and Buyer will be provided notice that such access to maximum pre-bids has been enabled by the Seller prior to Buyer's submission of the maximum pre-bid.

3.5 Due Diligence. Proxibid is not responsible for any errors or omissions in the description or photography provided on this Web site or in Proxibid's bidding application. Due diligence to verify the condition and description of an item is the sole responsibility of the Buyer prior to placing any bid on this Web site.

3.6 User ID and Password. Buyer agrees to keep Buyer's user identification and password confidential and Buyer is solely responsible for any activity generated utilizing its account with Proxibid. Buyer represents and guarantees that any and all information supplied by Buyer to Proxibid is accurate.

4. SELLER OBLIGATIONS

4.1 Seller Requirements/Approval. Sellers must be approved by Proxibid, in its sole discretion, before they can use Proxibid's Web site. Sellers must be licensed, bonded (if required by the state where Seller is located), and have a federal tax identification number. When deciding whether or not to approve a Seller, Proxibid will also consider: (1) Seller's outcry auction experience; (2) any professional designation which Seller may have; and (3) Seller's state and/or national association memberships.

4.2. Fees/Taxes.

(a) Fee Schedule – Auction Events . Seller agrees to pay Proxibid the fees and expenses for each event for which Seller engages Proxibid to provide Proxibid Services (each an "Auction Event") as set forth in Proxibid's then-current rate card (which has been provided to Seller and Seller acknowledges receipt thereof) (the "Rate Card") or as otherwise set forth in this Agreement or otherwise agreed upon in writing between Seller and Proxibid, and any taxes related to the Auction Event.

(b) Fees for Additional Services . In the event Proxibid provides additional services pursuant to a separate statement of work, purchase order, or otherwise agreed upon in writing between the Seller and Proxibid ("Additional Services"), Seller shall pay the fees and expenses associated with such Additional Services agreed upon between Seller and Proxibid. Seller acknowledges and agrees such Additional Services shall be considered Proxibid Services subject to the terms and conditions of this Agreement.

(c) Due Date . Unless alternate payment arrangements have been agreed to in writing by Proxibid, payment in full is due to Proxibid no later than fifteen (15) days after the date of Proxibid's invoice (the "Due Date"). Any request for alternative payment arrangements must be submitted by Seller to Proxibid within ten (10) days following the Auction Event. Any amount due to Proxibid which is not paid by Seller by the Due Date shall be subject to interest and collection costs as set forth in Section 27 below.

(d) Credit/Debit Card Payment Authorization . If Seller has provided to Proxibid a designated credit or debit card for payment to Proxibid hereunder, Seller hereby represents and warrants to Proxibid that Seller is the authorized owner of such credit/debit card account and hereby authorizes and directs Proxibid to make recurring charges to such credit/debit card in payment of all amounts due to Proxibid under this Section 4.2, and, if necessary, initiate adjustments for any

transactions credited or debited in error. This authority shall remain in effect for so long as Seller maintains an account with Proxibid or until Proxibid is earlier notified by Seller in writing to cancel such authorization in such time and manner as to afford Proxibid a reasonable opportunity to act upon it. Seller agrees to notify Proxibid fifteen (15) days prior to Seller's next Auction Event of any changes made to Seller's designated account, including but not limited to closed status, bank ownership changes, account changes and changes in the expiration date of the card. If any charge authorized hereunder is rejected by Seller's credit card company or bank for any reason (including without limitation insufficient funds or closed account), Seller agrees to pay Proxibid prior to the Due Date the amount of the declined charge plus, at Proxibid's discretion, an additional fee up to fifty dollars (\$50).

(e) Reactivation/Recapture Fee . In the event Seller's account is disabled by Proxibid upon Seller's nonpayment or other breach of this Agreement, and Proxibid agrees in its discretion to reactivate Seller's account, then Seller may be required to pay Proxibid a reactivation (as determined by Proxibid in its sole discretion).

(f) Non-Refundable . Seller acknowledges that all fees paid to Proxibid are non-refundable, and that under no circumstances will Seller be entitled to a return of any fees paid to Proxibid.

4.3 Auction Events.

(a) Selling Options . Sellers can list an item in a combination of ways: (1) through a fixed price (or "Instant Purchase") event, (2) through an auction-style event with the Instant Purchase option, (3) through an auction-style event without the Instant Purchase option, or (4) through the Make an Offer option.

(b) Cancellation . If any Auction Event is cancelled by the Seller during the seventy-two (72) hour period immediately preceding the scheduled start of the Auction Event, Seller will be charged an amount equal to the standard event fee or per lot fee (as applicable) for such type of Auction Event as set forth in Proxibid's then-current Rate Card. If any Auction Event is cancelled by the Seller prior to such seventy-two (72) hour period, Proxibid may in its discretion charge Seller an amount equal to the standard event fee or per lot fee (as applicable) for such type of Auction Event as set forth in Proxibid's then-current Rate Card. Once a timed Auction Event has started, Seller may not cancel, add, or remove any lots or modify the end time of the Auction Event unless Seller has obtained Proxibid's prior written approval (which may be withheld in Proxibid's sole discretion and may require an additional fee paid by Seller).

(c) Catalog . Seller must submit to Proxibid substantially all of the content for the catalog not less than twenty-four (24) hours before the scheduled Auction Event. If Seller fails to do so, Proxibid may in its discretion cancel the Auction Event and charge Seller an amount equal to the standard event fee or per lot fee (as applicable) for such type of Auction Event as set forth in Proxibid's then-current Rate Card. Supplemental auction content may be submitted up to one (1) hour before the scheduled Auction Event.

(d) Passed Lot Fee . If Seller conducts bidding for any lot within an Auction Event without allowing Buyers the opportunity to bid using the Proxibid Services (a "Passed Lot"), Proxibid may in its sole discretion charge Seller a fee per Passed Lot.

4.4 Marketing and Accuracy of Materials. Proxibid is not responsible for any errors or omissions in the description or photography provided to us for use on this Web site. In addition, Proxibid is not liable for any damages resulting from the photographs it takes or information that is collected at the event location. Seller guarantees that the information provided to Proxibid by Seller (or any agent of Seller) is accurate. Seller is responsible for the content and accuracy of any catalog or other promotional materials of any kind created for or by Seller in conjunction with any event.

If Seller includes any statement that a product posted for sale through the Web site is sold "AS-IS" (attempting to disclaim implied warranties), Seller must also include a clear and conspicuous description of the known defect(s) in the product (for example, "BROKEN", "MISSING PARTS", "FOR PARTS ONLY"). Any attempt to list a product "AS IS" without a clear and conspicuous description of the defect is a violation of this Agreement.

Seller shall not knowingly misrepresent any items. All catalog descriptions must accurately describe the items for sale, and all photos must be original. If Seller uses stock photos, Seller must disclose so in the catalog description as well as in the Special Terms of Sale for the auction.

Proxibid does not evaluate the quality of the items auctioned/sold or verify the claims made by Seller regarding your auctioned/sold items. However, Proxibid reserves the right, at its sole and absolute discretion, (1) to prohibit Seller from promoting and/or selling certain items; and (2) to replace any image or content on this Web site. Seller agrees to remove any item from this Web site upon Proxibid's request. (See "PROHIBITED USES OF THIS WEB SITE" under Section 10 below.) Proxibid may, at its sole and absolute discretion, market/advertise any of Seller's events.

4.5 Legal Compliance. Seller acknowledges and agrees that Seller is licensed under all applicable federal, state and local laws and regulations to conduct the activity described herein, including but not limited to acting as a Seller or auctioneer. When using this Web site Seller must obey all applicable federal, state and local laws. Any use of this Web site that violates any applicable laws will be grounds for discontinuing your rights to this Web site. This Web site was created and will be operated from the United States.

4.6 Competitors. If Seller engages another online event service provider during any period of time when Seller is utilizing the Proxibid Services, (a) Proxibid may in its discretion increase the fees owed by Seller in connection with Seller's Auction Events above the standard rates set forth in Proxibid's Rate Card, and (b) to the extent the Rate Card imposes any maximum on the amount of Auction Event fees a Seller may be required to pay in a given period of time (sometimes referred to as an "event fee cap"), Proxibid may determine in its discretion that such event fee cap shall not apply to such Seller.

4.7 Reconciliation. Seller has a duty to reconcile its event and to send an invoice through our system to notify the successful Buyer and Proxibid within twenty-four (24) hours of the end of each event. For any adjustments or corrections to the initial reconciliation, please contact reconcile.manager@proxibid.com.

4.8 Recognition of Proxibid. For every event a Seller conducts utilizing Proxibid, Seller agrees to reference online bidding "Powered by Proxibid" in a prominent position on Seller's site, as well as to include Seller's custom Proxibid URL in any and all marketing materials related to events on Proxibid, as appropriate.

4.9 Compliance with Laws Related to Sale of Certain Products. Seller acknowledges and agrees that the promotion, advertising, sale, and distribution of certain products are subject to federal, state, and local regulations, including without limitation, firearms, Indian artifacts, recalled products, children's products, alcoholic beverages, coins and currency. Seller further acknowledges and agrees the role of Proxibid with respect to the sale of products is limited to providing a conduit through which a prospective purchaser is able to participate in an event without physically being present; Proxibid does not review or evaluate the products auctioned or sold or verify the claims made by Seller regarding the products.

Each Seller expressly represents that Seller is presently in full compliance with and shall continue to comply with all applicable federal, state, and local laws, statutes, ordinances and regulations relating to the licensing, distribution, and sale of any products Seller promotes or sells through Proxibid (hereinafter, the "Regulations"), including without limitation (i) the Gun Control Act of 1968 and all regulations promulgated by the Bureau of Alcohol, Tobacco, Firearms and Explosives (collectively the "Firearms Regulations"), (ii) the Consumer Products Safety Improvement Act of 2008, and all regulations promulgated by the U.S. Consumer Products Safety Commission, and (iii) the Indian Arts & Crafts Act of 1990 and any additional laws and regulations applicable to the sale of Indian arts and crafts.

Seller hereby agrees that the Seller shall at all times defend, indemnify and hold harmless Proxibid, its shareholders, officers, directors, employees, successors and assigns, from and against any and all liabilities, losses, damages, awards, penalties, fines, costs and expenses (including, without limitation, reasonable attorney's fees), causes of action, suits, claims, demands, and judgments of any nature or kind, arising under or resulting from: (i) the use, sale, or distribution of any products in violation of any Regulations; (ii) Seller's use of Proxibid in connection with the sale of any products subject to any Regulations; and (iii) Seller's alleged or actual violation or breach of any Regulations.

4.10 PCI Compliance. The Payment Card Industry (PCI) Compliance Standard is a set of requirements designed to ensure that all companies that process, store or transmit credit card information maintain a secure environment. All events on Proxibid that require access to the full credit card number for invoicing require the Seller to view this information through the Auction Payment Network (www.apn.com) client application. No Winning Buyer Report will be available. This downloadable application is the only method of accessing credit card information for payment processing for Proxibid-run events. These changes are required to ensure we provide all Sellers with a safe and secure payment system that is PCI-Compliant.

5. DEFAULT EVENT TERMS

Unless and except as expressly set forth in any Special Terms of Sale, Buyers and Sellers agree to the following Default Event Terms:

1. Seller agrees that all goods and property sold "AS IS" (attempting to disclaim implied warranties) shall include a clear and conspicuous description of any known defect(s) of the product (for example: "broken," "missing parts," "for parts only").
2. Buyers are encouraged to bid or make an offer to purchase an item only after they are completely satisfied as to origin, authenticity and condition. Questions regarding any item being sold should be directed to the event staff at least 48 hours prior to the event.
3. For auction-style events, the Seller is allowing the Buyer to participate in the event through Internet pre-bidding and live bidding. The Buyer acknowledges and understands that such services may or may not function correctly the day of the event. Under no circumstances shall the Buyer have any kind of claim against the Seller or anyone else if the Internet service fails to work correctly before or during the live event. The Seller will not be responsible for any missed bids from any source. Buyers, who desire to increase the chance that their bid is acknowledged during a live event, should use the pre-bidding feature.
4. For an auction-style event, if the Seller determines that any opening bid is not commensurate with the value of the article offered, the Seller may reject that opening bid and withdraw the article from sale; and, if having acknowledged an opening bid, the Seller decides that any advance thereafter is not of sufficient amount, the Seller may reject the advance.
5. Due to the complexity of modern electronics and digital photography it is often impossible to get an exact and consistent reproduction of color. Therefore, the only flawless manner to assess the color saturation and detail of any graphic is by personally viewing the subject. The Seller will not be responsible for any variation between the catalog image and the actual piece.
6. The Seller may postpone or cancel the event, withdraw any property from the event, or change any terms of the event or particular conditions of sale prior to the event.
7. All announcements made on the day of the event supersede all printed material.
8. Certain items in the sale are being offered subject to reserve, which is the confidential minimum price below which such lot will not be sold.
9. Items may be offered with a "minimum bid", in which case, the Seller agrees to sell the item to the Buyer who bids at or above the minimum bid price.
10. The Buyer's premium is set by the Seller and will be added to the high bid to determine the total purchase price paid by the Buyer.
11. Once a Buyer has won the bid, ownership of the item immediately passes to the Buyer who thereupon (a) assumes full risk and responsibility therefore, and (b) shall pay the full purchase price therefore or such part as Seller may require. The item(s) becomes the full and sole responsibility of the Buyer at this point, and the Buyer assumes all risk of loss and damage. The record of sale, kept by the auctioneer and clerk, will be taken as absolute and final in all disputes.
12. Delivery of the purchased items is the responsibility of the Buyer unless shipping is offered by the Seller.
13. Items sold must be picked up or shipping arranged within a reasonable amount of time or the Buyer may be subject to removal and storage fees.
14. The value of an item purchased at the event is unrelated to the cost of shipping/packing. A Buyer who is a reseller of items should take this into consideration and be aware of shipping charges before bidding.

15. Buyer must submit payment to Seller for all purchased items within thirty (30) days following receipt of an invoice. Such payment is subject to the terms of the invoice.

16. If, within a reasonable amount of time, Buyer gives notice in writing to Seller that the lot so sold is a counterfeit and after such notice the Buyer returns the lot to Seller in the same condition as when sold, and establishes to the satisfaction of Seller that the returned lot is in fact a counterfeit, Seller as agent for the consignor will rescind the sale and refund the purchase price.

17. These Default Event Terms shall constitute a legally binding contract between Buyer and Seller, which contract shall be construed and enforced in accordance with the laws of the state in which the Seller is located, without giving effect to the conflicts of laws principles of such state. In the event of any conflict or inconsistency between these Default Event Terms and any Special Terms of Sale, the Special Terms of Sale shall prevail and govern.

Each Seller acknowledges and agrees that Proxibid makes no guarantee or representation concerning the enforceability or merit of these Default Event Terms and that these Default Event Terms may not be enforceable or otherwise suitable for use in each state and for each Seller and event. Sellers are strongly encouraged to engage an attorney licensed in Seller's state to represent Seller and modify the Default Event Terms for Seller's particular needs and specific state law.

User acknowledges and agrees that Proxibid has no responsibility or obligation to police or enforce compliance by Buyers or Sellers with the Default Event Terms or Special Terms of Sale.

6. DISPUTE RESOLUTION

6.1 Seller's Return Policy and Privacy Policy. Every Seller must have a published return policy and a published privacy policy in the Seller's Special Terms of Sale, even if that policy is that returns are not permitted.

6.2 Seller's Liability. Seller is responsible for all reversals, chargebacks, claims, fees, fines, penalties and other liability incurred by Proxibid, a User, or a third-party caused by or arising out of Seller's breach of this Agreement, the Default Event Terms, or any Special Terms of Sale, and/or Seller's use of the Proxibid Services. Seller agrees to indemnify and hold harmless Proxibid, other Users, or a third party for any and all such liability.

6.3 Disputes Between Users. In the event of a dispute between you and another User, you agree to use good faith efforts to resolve the dispute, including contacting the other User by reasonable means and allowing the other User a reasonable time to respond. If you are unable to resolve a dispute directly with the other User through your own good faith efforts, you may contact our Operations Support Center and follow this process:

- Open a Dispute – If you are a Buyer, you must open a dispute within forty-five (45) calendar days of the date you made the payment for the item at the subject of the dispute. If you are a Seller, you must open a dispute within ten (10) calendar days from date of the event for the item at the subject of the dispute. If you are a Seller and the amount of money or value of property which is the subject of your dispute is less than \$1,000, Proxibid may require that you pay an administrative fee before opening a dispute.
- Respond to Proxibid's Requests for Information in a Timely Manner – During the dispute process, Proxibid may require you to provide documentation to support your position. You may be asked to provide receipts, third-party evaluations, police reports, or any other information or documentation that Proxibid specifies.
- Comply with Proxibid's Shipping Requests in a Timely Manner – For Significantly Not as Described (SNAD) Claims, Proxibid may require you, at your expense, to ship the item back to the Seller, or to Proxibid, or to a third party and to provide proof of delivery. For transactions that total less than \$250, proof of delivery is confirmation that can be viewed online and includes the delivery address showing at least city/state or zip code, delivery date, and the URL to the shipping company's Web site. For transactions that total \$250 or more, you must obtain signature confirmation of delivery with online tracking.
- For items damaged during shipping for which a Buyer opens a dispute, Seller agrees to resolve the issue with the Buyer by either providing a replacement item or refunding to the Buyer the full purchase price plus original shipping costs, if any. Seller further agrees to resolve any open issues with the Buyer even if Seller is awaiting final resolution of any claims against the shipping agent for damaging the item during shipment. It is expressly prohibited for Seller to withhold a Buyer's refund pending resolution with the shipping agent.

- **Dispute Resolution** – Proxibid will make a decision in favor of the Buyer or the Seller within a reasonable time after a claim is filed and the Users provide all requested information. Proxibid retains full discretion to make a decision in favor of the Buyer or the Seller based on any criteria Proxibid deems appropriate. In the event that Proxibid makes a final decision in favor of the Buyer or Seller, each party must comply with Proxibid's decision. Proxibid will generally require the Buyer to ship an item that the Buyer claims is Significantly Not as Described back to the Seller (at the Buyer's expense), and Proxibid will generally require a Seller to accept the item back and refund the Buyer the full purchase price plus original shipping costs. In the event a Seller loses a claim, the Seller will not receive a refund on his or her APN or Proxibid fees associated with the transaction. If Seller loses a SNAD Claim because the item sold is counterfeit, Seller will be required to provide a full refund to the Buyer. Seller liability will include the full purchase price of the item and original shipping cost (and in some cases, Seller may not receive the item back).

6.4 Assumption of Rights. If Proxibid pays out a claim, reversal or chargeback that you file against a recipient of your payment, you agree that Proxibid assumes your rights against the recipient and third-parties related to the payment, and may pursue those rights directly or on your behalf, at Proxibid's discretion.

6.5 Release of Proxibid. If you have a dispute with one or more Users, you release Proxibid (and our officers, directors, agents, joint ventures and employees) from any and all claims, demands and damages (actual and consequential) of every kind and nature arising out of or in any way connected with such disputes.

7. INFORMATION COLLECTED BY PROXIBID

Collection and use of personal information is governed by our Privacy Policy. You hereby accept the terms of our Privacy Policy, which can be accessed on our Web site at <http://www.proxibid.com/asp/PrivacyPolicy.asp>.

8. OWNERSHIP OF THIS WEB SITE

Proxibid, Inc. owns and retains all rights to this Web site, and all content and materials contained on this Web site, including text, graphics, logos, audio clips, software server information, files, images, photos, works of authorship, links, or other materials. You acknowledge and agree that this Web site and the content and materials on this Web site are protected by copyrights, trademarks, service marks, patents, trade secrets, or other proprietary rights and laws. Except as expressly authorized by Proxibid, you agree not to sell, license, rent, modify, distribute, copy, reproduce, transmit, publicly display, publicly perform, publish, adapt, edit, or create derivative works from the content or materials on this Web site. Use of the content or materials on this Web site for any purpose not expressly permitted in this Agreement is prohibited.

9. RELATIONSHIP BETWEEN PROXIBID AND SELLERS

Proxibid has no affiliation with or control over the Sellers or over their operation of the actual events. Proxibid provides a service to Sellers and Buyers by facilitating the connection between the Seller and the Buyer. Proxibid is not responsible for the content of any Seller's postings. Proxibid does not review or evaluate the quality or origins of the items sold or verify the claims made by each Seller regarding its items.

Proxibid does not guarantee the accuracy of any of the postings or content on the Web site. No User has a claim against Proxibid for relying on these postings or content.

Proxibid has the right to monitor the Sellers' postings, but is under no obligation to do so. If Proxibid determines, in its sole discretion, that any content posted on the Web site is inappropriate, Proxibid reserves the right to delete such content from the Web site and to terminate or suspend the posting Seller's account and/or use of this Web site.

9.1 Event Assistance Policy. Proxibid reserves the right to regularly monitor events to ensure they are running at peak performance. Proxibid may in its sole discretion (but shall not be obligated to) assume the role of software operator when it is determined by our staff that Seller's online Buyers are suffering a poor experience for any reason and/or instances where the software operator demonstrates an inability to properly run the software application. In such an event, Seller will be charged the then-current rate for such additional services.

9.2 Real Estate Auctions. The role of Proxibid in the sale of real property is limited to providing a vehicle for interested potential purchasers to utilize when they desire to bid at real estate auctions. Proxibid does not broker, sell, purchase, exchange, or lease real or personal property. No brokerage relationship or sales relationship of any kind is created between

Proxibid and any seller or buyer of real estate. Proxibid merely provides a conduit through which a prospective buyer is able to participate in a real estate auction without physically being present.

9.3 MarketGuard™. MarketGuard™ is Proxibid's proprietary risk-assessment software that relies on third party partners, as well as a Buyer's history with the Proxibid's platform, to determine a Buyer's "eligibility". Proxibid may limit eligibility for certain events to Buyers that meet certain criteria.

Buyer acknowledges and agrees that Buyer may be identified in Proxibid records in accordance with the Buyer's MarketGuard™ results. Buyer further agrees that, each time Buyer attempts to participate in a Seller's event, Buyer may be granted or denied access to such event based on Buyer's MarketGuard™ results.

Any breach of this Agreement by Buyer may negatively impact Buyer's MarketGuard™ results.

10. PROHIBITED USES OF THIS WEB SITE

When using this Web site you must obey all applicable federal, state and local laws. Any use of this Web site that violates any applicable laws will be grounds for discontinuing your rights to this Web site. This Web site was created and will be operated from the United States.

You are prohibited from utilizing this Web site for any illegal or unauthorized purpose or contrary to Proxibid's policies and procedures (as published on the Web site periodically), including but not limited to the following:

- a. Fraud/Deception – You may not engage in fraudulent, deceptive or intentionally disruptive or malicious activity of any kind;
 - b. Intellectual Property Infringement – You agree not to post any content to the Web site which infringes on any patent, trademark, trade secret, copyright, right of publicity, or other proprietary right of any party;
 - c. Offensive Content – You agree not to post any content to the Web site which is unlawful, threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, tortuous, contains obscene language or obscene references, contains explicit or graphic descriptions or accounts of sexual acts, or otherwise violates Proxibid's rules or policies;
 - d. Compromise/Disruption of Web site – You are prohibited from engaging in activity that compromises the Proxibid Web site, including but not limited to: any hacking, distribution of malicious software, spamming, mail bombing or crashing. You agree not to post any content to the Web site which contains software viruses or any other computer code, files, or programs that are designed or intended to disrupt, damage, or limit the functioning of any software, hardware, or telecommunications equipment or to damage or obtain unauthorized access to any data or other information of any third-party;
- You may not engage in any activity designed to impede the use of the Proxibid Web site by other Users. You are prohibited from engaging in any activity that jams this Web site, including overloading and flooding;
- e. Unauthorized Linking – You may only link or create links from Proxibid's Web site back to your own Web site. You cannot link or create or facilitate any other links without Proxibid's written permission;
 - f. Framing/Deep Linking – You are prohibited from framing or deep linking into the Proxibid Web site, without our express written permission. You are not to place hyperlinks in your own postings;
 - g. Unauthorized Access – Any access to the Proxibid Web site by means of any unauthorized process, including but not limited to manually scraping or utilizing spiders, bots or any similar devices, is prohibited unless Proxibid consents to such access use in writing;
 - h. Copying or Modifying Web site Content - Any duplication of the pages or modification of this Web site or the content of this Web site, without the advance written permission of Proxibid, is a violation of this Agreement;

i. Illegal Activity - You may not use the Web site or Proxibid's services for any purpose or in any manner which violates any local, state, national, or international laws and regulations;

j. Bidding by Seller or Seller's Agents – Unless Seller posts a clear and conspicuous notice that Seller or Seller's Agents will be participating in the event (the contents of which must be approved in advance by Proxibid in its discretion), Seller is prohibited from bidding in any event Seller is conducting regardless of the purpose of such bidding, and Seller agrees not to encourage or permit any of Seller's officers, directors, shareholders, employees, agents, or immediate family members (each referred to for purposes of this Section 10.j. as "Seller's Agent") to bid in any event conducted by Seller. To the extent Seller (or Seller's Agent) does bid in any event and Seller or Seller's Agent is the successful bidder, Seller or Seller's Agent is liable for the purchase price and all associated expenses of the auctioned item if Seller or Seller's Agent is the highest bidder, regardless of Seller's or Seller's Agent's intent when making the bid. For purposes of this Agreement, "immediate family member" shall mean the Seller's spouse, parents, children, whether by blood, marriage (including "in-law" relationships), or adoption, or anyone residing in Seller's home.

11. RISK

11.1 **Prohibited Actions.** In connection with your use of our Web site, your account, or Proxibid Services, or in the course of your interactions with Proxibid, other Users, or third-parties, you will not:

- a. Breach this Agreement or any other agreement or policy that you have agreed to with Proxibid;
- b. Violate any law, statute, ordinance, or regulation (for example, those governing financial services, consumer protections, unfair competition, anti-discrimination, false advertising, or the Uniform Commercial Code);
- c. Use our sites, services or tools if you are not able to form legally binding contracts, are under the age of 18, or are temporarily or indefinitely suspended from using our sites, services or tools;
- d. Infringe Proxibid's or any third party's copyright, patent, trademark, trade secret or other intellectual property rights, or rights of publicity or privacy;
- e. Sell counterfeit goods;
- f. Act in a manner that is defamatory, threatening, harassing, or libelous (including personal information);
- g. Provide false, inaccurate or misleading information;
- h. Send or receive what we reasonably believe to be potentially fraudulent funds;
- i. Refuse to cooperate in an investigation or provide confirmation of your identity or any Information you provide to us;
- j. Attempt to double dip during the course of a dispute by receiving or attempting to receive funds from the Seller, bank or credit card issuer for the same transaction;
- k. Use an anonymizing proxy;
- l. Control an account that is linked to another account that has engaged in any of these Prohibited Actions;
- m. Conduct your business or use Proxibid Services in a manner that results in or may result in complaints, disputes, reversals, chargebacks, fees, fines, penalties and other liability to Proxibid, other Users or third-parties;
- n. Integrate the Proxibid Services in a manner inconsistent with Proxibid integration guidelines;
- o. Use your account, Proxibid Services, or APN, in a manner that Proxibid, Visa, MasterCard, American Express, Discover or any other electronic funds transfer network reasonably believes to be an abuse of the card system or a violation of card association or network rules;

- p. Provide yourself a cash advance from your credit card (or help others to do so) through APN;
- q. Access Proxibid Services from a country that is sanctioned;
- r. Disclose or distribute another User's Information to a third-party, or use the Information for marketing purposes unless you receive the User's express consent to do so;
- s. Distribute or post spam, unsolicited, or bulk electronic communications, chain letters, pyramid schemes to a User or use the Proxibid Services to collect information or data for sending, or assisting in sending, unsolicited email to third-parties;
- t. Take any action that imposes an unreasonable or disproportionately large load on our infrastructure;
- u. Facilitate any viruses, Trojan horses, worms or other computer programming routines that may damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or Information;
- v. Use any robot, spider, other automatic device, or manual process to monitor or copy our Web site without our prior written permission;
- w. Use any device, software or routine to bypass our robot exclusion headers or file, or interfere or attempt to interfere with our Web site or Proxibid Services, or the interests or property of Proxibid Users;
- x. Take any action that may cause us to lose any of the services from our internet service providers, APN, or other suppliers;
- y. Use the Proxibid Services to test credit card behaviors;
- z. Post content or items in an inappropriate category or areas on our sites and services;
- aa. Fail to pay for items purchased by you, unless the Seller has materially changed the item's description after you bid, a clear typographical error is made, or you cannot authenticate the Seller's identity;
- bb. Fail to deliver items purchased from you, unless the Buyer fails to meet the posted Special Terms of Sale, or you cannot authenticate the Buyer's identity;
- cc. Manipulate the price of any item or interfere with other Sellers' listings;
- dd. Circumvent or manipulate our fee structure, the billing process, or fees owed to Proxibid;
- ee. Take any action that may undermine the feedback or ratings systems (such as displaying, importing or exporting feedback information off of the sites or using it for purposes unrelated to Proxibid);
- ff. Transfer your Proxibid account (including feedback) and User ID to another party without our consent;
- gg. Export or re-export any Proxibid tools except in compliance with the export control laws of any relevant jurisdictions;
- hh. Fail to use good faith to attempt to resolve a dispute with another User, in accordance with Section 6 above entitled "DISPUTE RESOLUTION".
- ii. Sell "mystery items" for which Seller does not specifically identify the contents, number, quality, condition or provide pictures of the item or items for sale.

(collectively, the "Prohibited Actions").

11.2 Proxibid Action on Accounts. If we have reason to believe you have engaged in any Prohibited Actions, in addition to our termination rights and all other remedies we may have under this Agreement, we may take various actions to protect

Proxibid, APN, other Users, other third-parties, or you from complaints, chargebacks, disputes, fees, fines, penalties, and any other liability. The actions we may take include but are not limited to the following:

- a. We may close, suspend, or limit your access to your account or the Proxibid Services (such as limiting access to posting catalogs, use of your payment methods, and/or your ability to send or receive money through APN or remove financial Information);
- b. We may contact Users who have purchased goods or services from you, contact your bank or credit card issuer, and/or warn other Users, law enforcement, or impacted third-parties of your actions;
- c. We may update inaccurate Information you provided us;
- d. We may refuse to provide the Proxibid Services to you in the future;
- e. We may take legal action against you.

12. SYSTEM INTEGRITY

You may not use any device, software or routine to interfere or attempt to interfere with the proper working of this Web site or any transaction conducted on our Web site. You may not take any action which imposes an unreasonable or disproportionately large load on our infrastructure. You may not disclose or share your password with any third-parties or use your password for any unauthorized purpose. The Web site contains robot exclusion headers and you agree that you will not use any robot, spider, other automatic device, or manual process to monitor or copy our pages or the content contained herein without our prior written consent. You agree that you will not use any device, software or routine to interfere with the proper working of the Web site.

13. INTELLECTUAL PROPERTY

The software and source codes used on this Web site are the intellectual property of Proxibid. Any modification or attempt to modify or acquire this Web site through duplication, transfer, reverse engineering, dis-assembly, or otherwise is prohibited. Users may not create derivative works from this Web site. Users may not attempt to access or duplicate the software available through the Proxibid Web site in an attempt to sell or transfer any rights in such software.

- **Trademarks**

The trademarks and service marks found on the Proxibid Web site are property of Proxibid, whether registered or unregistered. Proxibid does not grant you permission to use these trademarks or service marks. You should not interpret anything in this Web site as granting a license or right in these trademarks. Licenses should not be considered granted on theories of implication or estoppel. The "Proxibid" logo and the trademark "Proxibid" may not be used in any way without express written permission from Proxibid.

- **Copyright**

Any content contained within this Web site is covered by Proxibid's registered copyright. Proxibid does not release its legal copyrights in any way, either by implication, estoppel or otherwise. Any attempt to modify or subvert the content of this Web site is a violation of Proxibid's copyright. This copyright extends to the software programs and the source codes contained within this Web site.

14. INDEMNIFICATION

You agree to indemnify, defend and hold Proxibid, its officers, directors, employees, agents, shareholders, partners, affiliates, representatives and agents (the "Indemnified Parties") harmless from any claims, causes of action, lawsuit or damages (including attorney's fees) incurred by or imposed against the Indemnified Parties resulting from your use or misuse of the Web site or Proxibid Services or breach of this Agreement. Proxibid reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will cooperate with Proxibid in asserting any available defenses.

15. DISCLAIMERS OF WARRANTY

ALL MATERIALS, INFORMATION, SOFTWARE, AND PRODUCTS INCLUDED ON OR AVAILABLE THROUGH THIS WEB SITE (THE "CONTENT") AND ALL PROXIBID SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" FOR YOUR USE. THE CONTENT AND PROXIBID SERVICES ARE PROVIDED WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. PROXIBID DOES NOT WARRANT THAT THE CONTENT AND PROXIBID SERVICES ARE ACCURATE, RELIABLE OR CORRECT; THAT THE WEB SITE WILL BE UNINTERRUPTED, ERROR FREE, OR AVAILABLE AT ANY PARTICULAR TIME OR LOCATION; THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED; OR THAT THE CONTENT IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. YOUR USE OF THE WEB SITE AND PROXIBID SERVICES IS SOLELY AT YOUR RISK. BECAUSE SOME JURISDICTIONS DO NOT PERMIT THE EXCLUSION OF CERTAIN WARRANTIES, THESE EXCLUSIONS MAY NOT APPLY TO YOU.

16. LIMITATION OF LIABILITY

UNDER NO CIRCUMSTANCES SHALL PROXIBID BE LIABLE FOR ANY DIRECT, INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, WHETHER SUCH CLAIM IS BASED ON WARRANTY, CONTRACT, TORT OR OTHERWISE, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA, OR OTHER INTANGIBLE LOSSES (EVEN IF PROXIBID HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) RESULTING FROM YOUR USE OF OR INABILITY TO USE THE WEB SITE OR PROXIBID SERVICES. UNDER NO CIRCUMSTANCES WILL PROXIBID'S AGGREGATE LIABILITY, ON ANY FORM OF ACTION WHATSOEVER IN CONNECTION WITH YOUR USE OF THE WEB SITE OR PROXIBID SERVICES EXCEED THE FEES ACTUALLY PAID BY YOU IN CONSIDERATION FOR THE PROXIBID SERVICES.

Because certain jurisdictions do not allow the exclusion or limitation of liability for incidental or consequential damages, Proxibid's liability in such jurisdictions shall be limited to the extent permitted by law.

17. THIRD-PARTY SITES

This Web site may provide links to other third-party Web sites. These third-party Web sites are not under the control of Proxibid, and you acknowledge and agree that Proxibid is not responsible for the accuracy, copyright compliance, legality, decency, or other aspect of the content of such sites. The inclusion of such a link does not imply endorsement of the site by Proxibid or any association with its operators.

18. TERMINATION

Proxibid reserves the right, at its sole and absolute discretion, to terminate this Agreement or your access to all or part of the Web site or Proxibid Services for any reason and at any time effective immediately, or to discontinue temporarily or permanently providing the Proxibid Services, with or without notice. In the event of termination by Proxibid in connection with your breach of this Agreement, Proxibid may pursue any remedy that may be available, at law or in equity, with respect to such breach. Regardless of the reason for any termination, upon a termination of the Agreement, you agree to pay Proxibid for all Services performed through the date of termination.

19. ELECTRONIC MEANS

You and Proxibid desire to facilitate certain transactions pursuant to this Agreement by exchanging documents, records and signatures electronically or by utilizing electronic agents. The use of electronic facilities or agents shall be in accordance with procedures established by Proxibid and governed by the applicable provisions of the Uniform Electronic Transactions Act as adopted in the State of Nebraska.

20. AMENDMENT OF TERMS AND CONDITIONS

Proxibid has the right to amend this Agreement at any time. Any amendment will be accomplished by updating the pages you are looking at now. Please visit this page periodically in order to monitor any changes that may have been made to this Agreement, particularly before you participate in an event. Every time you use this Web site, you are agreeing to the Unified User Agreement as it exists at that time. In the event of any material amendment to the User Agreement which would adversely impact your rights or obligations hereunder, you will be required to affirmatively accept the amended User Agreement in order to continue to use the Web site or Proxibid Services.

21. INTEGRATION AND SEVERABILITY

This Agreement constitutes the entire agreement between you and Proxibid with respect to the Web site and Proxibid Services and supersedes all prior or contemporaneous communications and proposals (whether oral, written, or electronic) between you and Proxibid with respect to the Web site and Proxibid Services, including without limitation all prior versions of this document referred to as "Terms and Conditions of Use of Proxibid Web Site." If any part of this Agreement is held invalid or unenforceable, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties, and the remaining portions shall remain in full force and effect.

22. DISPUTES BETWEEN YOU AND PROXIBID

If a dispute arises between you and Proxibid, our goal is to learn about and address your concerns and, if we are unable to do so to your satisfaction, to provide you with a neutral and cost effective means of resolving the dispute quickly. Disputes between you and Proxibid regarding Proxibid Services may be reported to Customer Service online through the Proxibid Operations Support Center at any time by emailing info@proxibid.com or by calling (877) 505-7770 from 7:00 AM to 10:00 PM, Central.

23. ARBITRATION

For any claim arising under this Agreement (excluding claims for injunctive or other equitable relief) where the total amount of the award sought is more than \$10,000.00 USD, the party requesting relief may elect to resolve the dispute in a cost effective manner through binding non-appearance-based arbitration. If a party elects arbitration, that party will initiate such arbitration through an established alternative dispute resolution (ADR) provider mutually agreed upon by the parties. The ADR provider and the parties must comply with the following rules: a) the arbitration shall be conducted by telephone, online and/or be solely based on written submissions, the specific manner shall be chosen by the party initiating the arbitration; b) the arbitration shall not involve any personal appearance by the parties or witnesses unless otherwise mutually agreed by the parties; and c) any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

24. Improperly Filed Litigation

All claims you bring against Proxibid must be resolved in accordance with this Agreement. All claims filed or brought contrary to this Agreement shall be considered improperly filed a breach of this Agreement. Should you file a claim contrary to this Agreement, Proxibid may recover attorneys' fees and costs (including in-house attorneys and paralegals); provided that Proxibid has notified you in writing of the improperly filed claim, and you have failed to promptly withdraw the claim.

25. Insolvency Proceedings

If any proceeding by or against you is commenced under any provision of the United States Bankruptcy Code, as amended, or under any other bankruptcy or insolvency law, Proxibid will be entitled to recover all reasonable costs or expenses (including reasonable attorneys' fees and expenses) incurred in connection with the enforcement of this Agreement.

26. CHOICE OF LAW AND FORUM

This Agreement is governed by the federal laws of the United States of America and the laws of the state of Nebraska. You expressly agree that the exclusive jurisdiction for any claim or action involving Proxibid which arises out of or relates to this Agreement or your use of the Web site or Proxibid Services shall be filed only in the state or federal courts located in Douglas County, Nebraska, and you further agree and submit to the exercise of personal jurisdiction of such courts for the purpose of litigation any such claim or action.

27. PAYMENTS TO PROXIBID

Unless another due date is provided herein, any payment due to Proxibid (by Buyer or Seller) must be paid within thirty (30) days of receipt of an invoice. Any amounts not paid when due shall be subject to a late payment fee of \$35 per invoice and Proxibid's cost of collection (including reasonable legal fees and costs) and shall accrue interest at a rate equal to (i) 1.5% per month or (ii) the highest rate permitted under applicable law, on the unpaid balance, commencing on the due date. In addition, if any amount due to Proxibid is not paid by the Due Date, Proxibid may, at its sole discretion, terminate or suspend the non-paying User's account and/or withhold from the User further Proxibid Services until such time as full payment is made. Notwithstanding any such cessation or suspension of Proxibid Services, the User shall continue to be obligated under this Agreement to pay the remaining balance (including accrued interest) due to Proxibid.

28. NOTICES AND PROCEDURE FOR MAKING CLAIMS OF COPYRIGHT INFRINGEMENT

Pursuant to Title 17, United States Code, Section 512(C)(2), notifications of claimed copyright infringement should be sent to Proxibid's Designated Agent. For more information, contact:

Proxibid
4411 South 96th Street
Omaha, NE 68127
1-877-505-7770
Useragreement@proxibid.com

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