


DEFINITIONS

<i>AGREEMENT</i>	THIS DOCUMENT, PLEASE READ IT CAREFULLY.
<i>WIBAKOR</i>	WIBAKOR  WIBAKOR CC AND ITS EMPLOYEES AND OWNERS, IN THEIR CAPACITY AS REPRESENTATIVES OF SAID COMPANY. ALSO REFERRED TO IN THIS AGREEMENT AS "US", "WE" OR "OUR".
<i>PRODUCT</i>	THE FLEXIAUCTION SOFTWARE APPLICATION IN EXECUTABLE FORM, ALL CUSTOMIZED SOFTWARE APPLICATIONS IN EXECUTABLE FORM, ALL DIGITAL CONTENT, FLEXIAUCTION AND FLEXILOT WEBSITES, ALL MODIFICATIONS AND UPGRADES TO THE ABOVE, OWNED AND PROVIDED BY WIBAKOR.
<i>TASK</i>	THE FOLLOWING ACTIVITIES AND IMPLIED COMMUNICATIONS THEREOF, PERFORMED BY WIBAKOR: ANALYSIS, CODING, DEVELOPING, TRAINING, INSTALLING, TESTING, DESIGNING, CUSTOMIZING AND COMPILING. THIS EXCLUDES "HELP" AS DEFINED BELOW.
<i>HELP</i>	THE FOLLOWING ACTIVITIES AND IMPLIED COMMUNICATIONS THEREOF, PERFORMED BY WIBAKOR: ADVISING, AIDING, RECOMMENDING AND ASSISTING. THIS EXCLUDES "TASK" AS DEFINED ABOVE.
<i>LICENSE</i>	THE RIGHT TO INSTALL AND USE THE PRODUCT ON A SINGLE COMPUTER.
<i>CUSTOMER</i>	THE INDIVIDUAL, ORGANIZATION, COMPANY OR CORPORATE ENTITY WHICH PURCHASES AND/OR IS GRANTED ONE OR MORE LICENSES. ALSO REFERRED TO IN THIS AGREEMENT AS "YOU" OR "YOUR".
<i>THIRD PARTY</i>	ALL OPERATING SYSTEMS SOFTWARE, COMMUNICATION SOFTWARE AND INFRASTRUCTURE SERVICES, ELECTRICITY SUPPLY, WORD PROCESSOR SOFTWARE, SPREADSHEET SOFTWARE, DATABASE SERVER SOFTWARE, HARDWARE AND SOFTWARE DRIVERS, DEVELOPMENT COMPONENTS, HARDWARE EQUIPMENT AND/OR ANY OTHER SERVICES OR PRODUCTS NOT OWNED, OPERATED OR PROVIDED BY WIBAKOR.
<i>WEBSITE</i>	OUR COMPANY WEBSITE AVAILABLE ON THE INTERNET HTTP://WWW.FLEXIAUCTION.COM
<i>BACKUPS</i>	ADDITIONAL COPIES OF DATA MADE, USED TO RESTORE THE ORIGINAL DATA AFTER A DATA LOSS EVENT.

AGREEMENT AND ACCEPTANCE

THIS AGREEMENT SETS FORTH YOUR RIGHTS AND OBLIGATIONS WITH RESPECT TO YOUR USE OF OUR PRODUCT. INSTALLING OR USING THE PRODUCT SIGNIFIES YOUR ACCEPTANCE OF THIS AGREEMENT. IF YOU DO NOT AGREE, DO NOT INSTALL OR USE THE PRODUCT.

THIS AGREEMENT SETS FORTH THE ENTIRE AGREEMENT BETWEEN YOU AND WIBAKOR, AND SUPERSEDES ANY AND ALL PRIOR VERBAL OR WRITTEN AGREEMENTS RELATED TO THE PRODUCT. NO RIGHT OR REMEDY WILL ARISE FROM ANY UNDERTAKING, WARRANTY, OR REPRESENTATION NOT INCLUDED IN THIS DOCUMENT.

REFUND POLICY

FULL PRODUCT DEMONSTRATIONS, OUR COMPLETE CUSTOMER LIST, AND A TRIAL BASED EVALUATIONS OF OUR PRODUCT IS AVAILABLE PRIOR TO BUYING OUR PRODUCT. REFUNDS WILL ONLY BE GIVEN AS REQUIRED BY LAW AND AS SUCH WILL APPLY EXCLUSIVELY TO THE LICENSE FEE, AND NOT TO ANY SERVICES AND/OR TRAVEL RELATED CHARGES.



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DISCLAIMER

THE PRODUCT IS PROVIDED TO YOU "AS IS" WITH ALL FAULTS, WITHOUT ANY WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED. WE DO NOT WARRANT THAT THE PRODUCT IS ERROR-FREE, ACCURATE, OR FIT FOR ANY PARTICULAR PURPOSE.

LIABILITY

IN NO EVENT SHALL WE BE LIABLE FOR ANY LOSS OR DAMAGES RESULTING FROM THE USE, MISUSE OR INABILITY TO USE OUR PRODUCT, INCLUDING DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL, LOSS OF BUSINESS PROFITS, LACK OF FITNESS FOR A PARTICULAR PURPOSE, INACCURACY OF DATA, DAMAGE TO EQUIPMENT, LOSS OF DATA OR DATA INTEGRITY, LOSS OF GOODWILL, OR ANY OTHER DAMAGES.

YOU INDEMNIFY US AGAINST ALL COSTS, CLAIMS, DEMANDS, EXPENSES AND LIABILITIES OF WHATSOEVER NATURE ARISING OUT OF THE USE OF THE PRODUCT.

THE ENTIRE RISK ARISING OUT OF USE OF THE PRODUCT REMAINS WITH YOU.

LICENSE

YOU ARE GRANTED THE NON-EXCLUSIVE, NON-TRANSFERABLE RIGHT TO INSTALL AND USE THE PRODUCT ON THE AMOUNT OF COMPUTERS EQUAL TO OR LESS THAN THE NUMBER OF LICENSES PURCHASED AND/OR GRANTED.

LICENSE COST IS BASED ON OUR OFFICIAL PRICELIST, THIS PRICELIST IS ALWAYS AVAILABLE ON OUR WEBSITE. AN INVOICE WILL BE SUBMITTED DURING INITIAL DELIVERY. PAYMENT IS TO BE MADE IMMEDIATELY ON PRESENTATION OF THIS INVOICE.

THE PRODUCT IS ACTIVATED USING A COMPULSORY ACTIVATION CODE PROVIDED BY US.

WE WILL HAVE THE RIGHT TO INCLUDE CODE IN THE PRODUCT TO ENSURE THAT THE NUMBER OF COMPUTERS USED DO NOT EXCEED THE NUMBER OF LICENSES PURCHASED AND/OR GRANTED.

YOU MAY ENABLE MULTIPLE USERS TO SHARE THE PRODUCT VIA REMOTE ACCESS OR VIRTUALIZATION APPLICATIONS (E.G. REMOTE DESKTOP, CITRIX, TERMINAL SERVER, VNC, ETC.) PROVIDED IT IS NOT USED BY MORE USERS THAN YOUR NUMBER OF LICENSES PERMITS. YOU WILL HOWEVER REQUIRE WRITTEN PERMISSION FROM US FOR THIS.

YOU MAY TRANSFER THE PRODUCT FROM ONE COMPUTER TO ANOTHER, PROVIDED IT IS NOT USED ON MORE COMPUTERS THAN YOUR NUMBER OF LICENSES PERMITS. YOU WILL BE REQUIRED TO PROVIDE WRITTEN REASONS AND PROOF FOR THE RE-ACTIVATION. A RE-ACTIVATION FEE WILL BE APPLICABLE IN ORDER TO RECEIVE THIS CODE.

YOU HEREBY DECLARE YOURSELF WILLING TO, ON OUR REQUEST TO DO SO, MAKE A DECLARATION UNDER OATH STATING THE REASONS FOR TRANSFER OF THE PRODUCT FROM ONE COMPUTER TO ANOTHER.



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COPYRIGHT

COPYRIGHT © 2005 WIBAKOR CC 1997/035379/23.

COPYRIGHT IN THE PRODUCT VESTS WITH US. THE PRODUCT IS LICENSED, NOT SOLD TO YOU. OWNERSHIP SHALL REMAIN WITH US. WIBAKOR RESERVES ALL RIGHTS NOT EXPRESSLY GRANTED TO YOU.

YOU WILL NOT: (A) REPRODUCE THE PRODUCT; (B) MARKET, LICENSE, DISTRIBUTE, SUBLICENSE OR OTHERWISE COMMERCIALY EXPLOIT THE PRODUCT OR SELL, LEND, RENT, GIVE, ASSIGN OR OTHERWISE TRANSFER OR DISPOSE OF THE PRODUCT (C) PERMIT THE USE OF THE PRODUCT BY OTHERS OR OTHERWISE OPERATE THE PRODUCT FOR ANOTHER ORGANIZATION NOT OWNED BY YOU (E.G. AS A BUREAU); (D) MODIFY THE PRODUCT; OR (E) DISASSEMBLE, REVERSE ENGINEER OR DECOMPILE THE PRODUCT OR OTHERWISE ATTEMPT TO DISCOVER ANY PORTION OF THE OBJECT OR SOURCE CODE OR TRADE SECRETS RELATED TO THE PRODUCT.

CONFIDENTIALITY/PRIVACY

WE ACKNOWLEDGE THAT YOUR CONFIDENTIAL INFORMATION ALSO INCLUDES YOUR CUSTOMER'S INFORMATION, INCLUDING NON-PUBLIC PERSONAL AND FINANCIAL INFORMATION. WE WILL: (A) USE SUCH INFORMATION SOLELY FOR PERFORMANCE UNDER THIS AGREEMENT; (B) NOT DISCLOSE SUCH INFORMATION TO ANY THIRD PARTY; AND (C) OTHERWISE PROTECT SUCH INFORMATION FROM ANY UNAUTHORIZED USE OR DISCLOSURE.

WE MAY ADVERTISE OR PUBLICLY ANNOUNCE THAT WE ARE PROVIDING THE PRODUCT AND/OR SERVICES TO YOU.

SECURITY

WE REPRESENT THAT TO THE BEST OF OUR KNOWLEDGE, BASED ON USE OF COMMERCIALY AVAILABLE VIRUS DETECTION PROGRAMS, THE PRODUCT DOES NOT CONTAIN ANY COMPUTER VIRUS OR OTHER SUCH DISABLING DEVICES. YOU ACKNOWLEDGE THAT A VIRUS MAY NOT BE CAPABLE OF SUCH DETECTION AND THAT IT IS YOUR RESPONSIBILITY TO MONITOR AND SCAN ALL COMPUTER PROGRAMS AND DATA THAT BECOME PART OF YOUR COMPUTING ENVIRONMENT.

YOU ACKNOWLEDGE THAT THE INTERNET IS INHERENTLY INSECURE. YOU ARE RESPONSIBLE FOR PROVIDING YOUR OWN FIREWALL AND OTHER PROTECTIONS AGAINST UNAUTHORIZED INCURSIONS. WE DO NOT WARRANT THAT THE PRODUCT IS SECURE WITH RESPECT TO INTERNET USE. YOU INDEMNIFY US FROM ANY CLAIM ARISING FROM OR RELATED TO USE OF THE PRODUCT OR SERVICES IN CONJUNCTION WITH THE INTERNET.

BACKUPS

YOU ACKNOWLEDGE THAT A DAILY BACKUP STORAGE OF INFORMATION IS REQUIRED IN ORDER TO TOTALLY OR PARTIALLY RECOVER YOUR DATA IN THE EVENT OF THE LOSS OF SUCH DATA. YOU INDEMNIFY US FROM ANY CLAIM ARISING FROM OR RELATED TO THE LOSS OF DATA. IT IS YOUR OWN RESPONSIBILITY TO ENSURE THAT DAILY BACKUPS ARE MADE, AND TO ENSURE THAT THESE BACKUPS ARE KEPT IN A SAFE LOCATION.

TRAINING

YOU ACKNOWLEDGE THAT THE ADMINISTRATION OF AN AUCTION IS OF A COMPLEX NATURE; MISTAKES CAN CAUSE FINANCIAL OR ANY OTHER KIND OF LOSS, (E.G. PAID TOO MUCH TO A SELLER, CHARGING INCORRECT VAT, ETC.) FOR THIS REASON IT IS VERY IMPORTANT THAT AUCTION CLERKS SHOULD NOT DEPEND ON TRAINING ALONE TO MASTER THE PRODUCT, BUT SHOULD ALSO EXERCISE WITH DUMMY (PRETEND) AUCTIONS UNTIL SUCH TIME THAT THEY POSSESS THE REQUIRED UNDERSTANDING, EXPERIENCE LEVEL AND SPEED OF OPERATION, PRIOR TO DOING AN ACTUAL AUCTION.

WE VERY HIGHLY RECOMMEND AUCTION CLERKS TO BE COMPUTER LITERATE.

YOU INDEMNIFY US FROM ANY CLAIM ARISING FROM THE USE, MISUSE, OR INABILITY TO USE OF OUR PRODUCT.

SERVICES

ALL REQUESTS TO US MUST BE DONE VIA ANY OF THE METHODS BELOW:

MOBILE	060 980 5555
E-MAIL	HELPDESK@FLEXIAUCTION.COM
INTERNET	WWW.FLEXIAUCTION.COM
POSTAL	P.O.BOX 33240 FICHARDPARK 9317

WE DIFFERENTIATE BETWEEN TWO MUTUALLY EXCLUSIVE TYPES OF REQUESTS, NAMELY A TASK REQUEST, AND A HELP REQUEST.



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TASK REQUEST

THIS IS A REQUEST TO US TO DO A SPECIFIC TASK TO ACHIEVE A RESULT.

IT IS NOT USUALLY OF A CRITICAL NATURE, BUT IT MIGHT BE.

E.g. create a new report, amend a profile, give training, request a new function, do some customization, change content of a hosted webpage, convert a customer list from excel, import a vendueroll from excel, fix a program error, do an installation, fix auction data caused by clerk error, re-activate license on a new computer, change invoice template, change your invoice address, etc.

ALL REQUESTS WILL BE EVALUATED FIRST, AND QUOTED ON, BASED ON THE AMOUNT OF HOURS SPENT TO COMPLETE THE REQUEST. ONCE APPROVED WORK WILL COMMENCE.

ERRORS IN THE PRODUCT WILL ALWAYS BE FIXED FREE OF CHARGE.

RE-ACTIVATION CODES WILL ALWAYS BE CHARGED AT EXACTLY ONE FULL HOUR.

HELP REQUEST

THIS IS A REQUEST TO US FOR HELP TO ACHIEVE A RESULT.

IT IS USUALLY, BUT NOT ALWAYS, OF A MORE URGENT OR CRITICAL NATURE.

E.G. CANNOT INVOICE A CUSTOMER, ERROR MESSAGE KEEPS SHOWING, CANNOT CONNECT TO NETWORK, INVOICE IS NOT PRINTING, CANNOT OPEN CUSTOMER LIST, WRONG AMOUNT DISPLAYED, AUCTION IS NOT BALANCING, ETC.

THE REQUEST WILL BE FREE **ONLY** IF ALL THREE OF THE CONDITIONS BELOW IS MET:

- (1) IF TELEPHONIC, THE CALL SHOULD BE INBOUND, AND
- (2) IF TELEPHONIC, THE CALL DURATION SHOULD BE LESS THAN 5 MINUTES, AND
- (3) NO TASK IS DONE, ONLY HELP IS PROVIDED.

IF ABOVE CRITERIA IS NOT MET, THE REQUEST WILL BE INVOICED AS A TASK REQUEST.

PLEASE NOTE THAT WE DO NOT CHARGE ANY MONTHLY OR ANNUAL SERVICE FEES, THIS IS A VALUE-ADDED SERVICE THAT WE PROVIDE TO YOU FREE OF CHARGE, AND AS SUCH WE EXPECT CALLS TO RELATE TO OUR PRODUCT, AND NOT TO ANY THIRD PARTY ISSUES. YOU SHOULD AT LEAST TRY TO RESOLVE THE ISSUE FROM OTHER SOURCES, E.G. USER MANUALS, CO-WORKERS, INTERNET, SEARCH ENGINES, YOUR HARDWARE VENDOR, ETC., PRIOR TO CALLING US.

HELP REQUESTS FROM NEW CUSTOMER WILL BE FREE FOR THE FIRST MONTH, PROVIDING THAT TRAINING WAS PROVIDED BY US.

SERVICES (CONTINUED)

REQUEST HOURS: MONDAYS-FRIDAYS 9H00 TO 16H00 (EXCLUDING WEEKENDS AND PUBLIC HOLIDAYS AND THE TWO-WEEK PERIOD OCCUPIED BY CHRISTMAS AND NEW YEAR).

ALL BILLING IS BASED ON OUR HOURLY TARIFF.

THE LATEST TARIFFS IS ALWAYS AVAILABLE ON OUR WEBSITE.

PRICES ARE USUALLY UPDATED IN JANUARY OF EACH YEAR, BUT WE DO RESERVE THE RIGHT TO CHANGE PRICES WITHOUT ANY PRIOR NOTICE.

BILLING WILL ALWAYS BE DONE IN INCREMENTS OF 30 MINUTES.

WHEN APPLICABLE, TRAVEL CHARGES WILL BE QUOTED SEPARATELY AT ACTUAL COST.

IF THE SOURCE OF THE PROBLEM IS RELATED TO A THIRD PARTY ISSUE, WE WILL MAKE OUR SERVICES AVAILABLE TO ATTEMPT TO RESOLVE THE ISSUE; WE DO NOT HOWEVER ACCEPT RESPONSIBILITY TO RESOLVE IT.

THE TIME LAPSED BETWEEN THE REQUEST BEING LOGGED AND OUR INITIAL RESPONSE, WILL BE LESS THAN 3 HOURS.

SUPPORT SERVICES WILL ONLY BE APPLICABLE TO THE NEWEST RELEASE OF THE PRODUCT. THE NEWEST RELEASE IS ALWAYS AVAILABLE FROM THE WEBSITE AT NO CHARGE.

PAYMENT TERMS ARE 5 DAYS FROM DATE OF PRESENTATION OF AN INVOICE.

NO SUPPORT WILL BE GIVEN TO CUSTOMERS WITH OUTSTANDING PAYMENTS.

NO SUPPORT WILL BE GIVEN TO CUSTOMERS IN BREACH OF THE TERMS AND CONDITIONS OF THIS AGREEMENT.

NO DEVELOPMENT WILL BE DONE FOR THE EXCLUSIVE BENEFIT OF ANY ONE CUSTOMER, ALL FUNCTIONALITY DEVELOPED AND ADDED TO OUR PRODUCT, IRRESPECTIVE OF THE REQUESTER OF SUCH FUNCTIONS, WILL ALWAYS BE AVAILABLE TO ALL CUSTOMERS.

IF CHANGES TO THE PRODUCT IS REQUIRED AS A RESULT OF CHANGES IN LEGISLATION, THE DEVELOPMENT COST OF SUCH CHANGES WILL BE SHARED BETWEEN ALL CUSTOMERS.

DISCONTINUATION

IN THE EVENT THAT WE CANNOT PERFORM THE REASONABLE REQUIRED ONGOING SUPPORT AND MAINTENANCE TO THE PRODUCT, (E.G. DEATH OR DISABILITY TO THE OWNER) AND NO SUITABLE REPLACEMENT CAN BE FOUND WITHIN A REASONABLE TIME TO PERFORM SUCH ONGOING SUPPORT AND MAINTENANCE, ALL SOURCE CODE WILL BE RELEASED ON OUR WEBSITE.

IN SUCH AN EVENT YOU ARE ONLY ALLOWED TO DOWNLOAD AND RECOMPILE THE SOURCE CODE FOR YOUR INTERNAL USE. OWNERSHIP AND ALL RIGHTS TO THE PRODUCT REMAINS VESTED IN WIBAKOR AND THE TERMS AND CONDITIONS OF THIS AGREEMENT REMAINS IN FORCE.

AN EXTERNAL CONSULTANT HAS BEEN ASSIGNED BY WIBAKOR TO FIND A SUITABLE REPLACEMENT IN CASE OF SUCH AN EVENTUALITY.

OUR LEGAL REPRESENTATIVES HAVE BEEN PROPERLY INSTRUCTED TO ENSURE COMPLIANCE WITH THE PROVISIONS OF THIS CLAUSE.

RELAXATION OF TERMS

NO RELAXATION OF THE TERMS OF THIS AGREEMENT AND NO INDULGENCE WHICH WIBAKOR MAY GRANT TO YOU, WILL IN ANY WAY OPERATE AS AN ESTOPPEL AGAINST US OR BE DEEMED TO BE A WAIVER OF OUR RIGHTS, OR IN ANY OTHER WAY LIMIT, ALTER, OR PREJUDICE THOSE RIGHTS AND IN NO WAY PROHIBITS US TO, WITHOUT NOTICE, ENFORCE STRICT AND TIMELY PERFORMANCE OF EVERY TERM AND CONDITION OF THIS AGREEMENT. ALL LEGAL REMEDIES, RIGHTS, UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS CONTAINED HEREIN ARE CUMULATIVE AND ARE NONE OF THEM DEEMED TO BE SEPARABLE.

BREACH

IN THE EVENT THAT YOU BREACH ANY OF THE TERMS OF THIS AGREEMENT AND FAIL TO REMEDY SUCH BREACH WITHIN A PERIOD OF TEN DAYS AFTER RECEIPT OF A WRITTEN NOTICE REQUIRING SUCH BREACH TO BE REMEDIED, WE SHALL BE ENTITLED, WITHOUT PREJUDICE TO ANY OTHER RIGHTS WHICH WE MAY HAVE IN TERMS OF THIS AGREEMENT OR AT LAW, TO:

- CLAIM SPECIFIC PERFORMANCE OF THE TERMS OF THIS AGREEMENT AS WELL AS SUCH DAMAGES WHICH WE MAY HAVE SUFFERED;
- CANCEL THIS AGREEMENT AND CLAIM AND RECOVER DAMAGES; OR
- KEEP THIS AGREEMENT IN FORCE AND RECOVER SUCH DAMAGES AS WE MAY HAVE SUFFERED AS A RESULT OF SUCH BREACH.

GOVERNING LAW

THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE REPUBLIC OF SOUTH AFRICA.

JURISDICTION

IF ANY DISPUTE SHOULD ARISE BETWEEN THE PARTIES REGARDING THIS AGREEMENT, OR IF IT SHOULD BECOME NECESSARY FOR WIBAKOR TO INSTITUTE LEGAL ACTION IN ORDER TO ENFORCE ANY OF OUR RIGHTS IN TERMS OF THIS AGREEMENT YOU HEREBY AGREE TO THE JURISDICTION OF THE BLOEMFONTEIN MAGISTRATES' COURT. THIS CLAUSE DOES NOT HOWEVER PRECLUDE WIBAKOR FROM INSTITUTING ACTION IN THE HIGH COURT IF WE CONSIDER IT NECESSARY TO DO SO.

SERVICE OF NOTICES

THE MANNER OF SERVICE FOR ALL PURPOSES RELATING TO THESE TERMS AND CONDITIONS INCLUDING THE GIVING OF ANY NOTICE IS BY WAY OF THE FACSIMILE NUMBER AND E-MAIL ADDRESS AS SET OUT ABOVE.

WIBAKOR SHALL BE ENTITLED FROM TIME TO TIME, BY GIVING NOTICE TO YOU, TO VARY ITS FACSIMILE AND/OR E-MAIL ADDRESS FOR SERVICE TO ANY OTHER FACSIMILE NUMBER OR E-MAIL ADDRESS.



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REVISIONS TO THIS DOCUMENT FROM 4.8.2009.a

30/3/11 – Fix website URL spelling mistake (in Definitions section)

30/3/11 – Add additional email address and mobile to service methods

30/3/11 – Added to Help request "PROVIDING THAT TRAINING WAS PROVIDED BY US."

16/5/11 – Removed Johan Kok as Service contact

14/9/18 – Revise Service contact mobile & email address & remove fax

14/9/18 – Remove "INVOICES WILL BE SUBMITTED MONTHLY ON THE MONDAY CLOSEST TO THE 15TH."

20/6/19 – Name of closed corporation changed to "WIBAKOR" effective 10/6/19. All references updated.

13/11/19 – Correction above date, new Flexiauction logo, Wibakor logo added

THANK YOU FOR YOUR SUPPORT.