



March 11, 2014

Master Services Agreement

BETWEEN: ExtremeTix, Inc. -and- Wheaton Parks District

This agreement confirms the terms of the arrangement between Wheaton Parks District, whose principle office and place of business is in Wheaton, IL ("Client") for a series of events (hereinafter referred to as the "Events") and ExtremeTix, Inc. ("ExtremeTix").

WHEREAS Client wishes to use the services of ExtremeTix, specifically its ticketing system and supporting services and features as defined below for the sale of tickets and redemption of those tickets.

1) TERM:

The term of this agreement is one year (1) commencing on the Effective Date (together with any extensions, as described hereinafter, the "Term"). In the event that either Client or ExtremeTix does not provide written notice of termination of this agreement, including any extensions, at least thirty (30) days prior to the end of the term, the agreement will be extended one (1) year. ExtremeTix may terminate the agreement without notice if the Client breaches the Payment terms under Section 6(e), 7 or 8 below. The Client will have a fifteen (15) day period after receiving notice to cure any other breach prior to any termination by ExtremeTix.

2) EXTREMETIX HEREBY AGREES:

- a) To provide a ticketing solution as specified on the attached Event Detail Agreement (the "EDA"), but generally comprising all or some of: Advance Internet Ticket Sales, Box Office Sales, Telephone Sales, Bulk Ticket Printing, Support Services, and/or Ticket Validation (access control) components.
- b) To collect, process and deposit all proceeds from the sale of tickets into a secure trust account. Funds will remain in this account until such time that a settlement is performed and funds are dispersed to Client net of fees owed to ExtremeTix.
- c) To provide training support for Client's personnel in the use of ticket sales and scanning equipment via telephone or onsite by special provision.
- d) To provide extended hours telephone (Help Desk) support for Client and its consumers to ensure system performance and problem resolution.
- e) To provide access to online reporting of ticket sales and demographic data.

3) CLIENT HEREBY AGREES:

- a) To provide a signed EDA for each new event at least five (5) business days, ten (10) if the event setup includes a venue map, before tickets are to go on sale.
- b) To promptly place the purchase link on the event website.
- c) To prominently promote the sale of advance tickets online as the preferred method of purchase.
- d) To prominently display the advantages of advance purchases by clearly stating the benefits on the event website such as "Buy now and SAVE", "Avoid the Lines", "No Fees", etc. as applicable.
- e) To prominently display the availability of online tickets on the main page and all ticketing pages of the event website. Online ticketing will be shown as the preferred method of ticketing for the event and other ticketing methods will be shown with less emphasis and lower on the web page.
- f) That no other online ticketing options will be offered and that ExtremeTix will be the exclusive provider of online ticketing.
- g) To price all tickets equal to or lower than ticket prices available to the general public for the same ticket types through any and all other channels, outlets or procurement methods.
- h) To promote the availability of online tickets in all appropriate advertising and media.
- i) To grant permission for ExtremeTix to use the participation in ticketing the event in advertisements and promotional materials.

- j) To keep the ExtremeTix purchase link active on the event website until at least two (2) hours before the end of the event.

4) ADMINISTRATION:

- a) ExtremeTix shall provide your Internet Sales Purchase Link within five (5) business days after receipt of 1) this executed agreement, 2) an executed EDA, 3) approval of graphics and 4) reserved seat venue map when applicable.
- b) Ticket graphics are to be provided by Client. New or updated graphics provided to ExtremeTix in the correct format will be uploaded free of charge. If graphic design services are requested by client, each design or revision will incur a fee of fifty dollars (\$50) per requested graphic design or design revision.
- c) Any changes to ticket pricing, promotion codes, allotments, event times or other pertinent event information to be affected by ExtremeTix personnel must be submitted in writing (or confirmed email) forty-eight (48) hours in advance.
- d) Client may elect to perform certain administrative duties available through ExtremeTix Self Administration feature. ExtremeTix assumes no responsibility for losses or damages resulting from errors or omissions made by Client using Self Administration.
- e) Client is solely responsible for the accuracy of all information presented for sale on the ExtremeTix System and is the actual entity that publishes the link to the public. Any changes to ticket pricing, promotion codes, allotments, event times or other pertinent event information should be reviewed by Client prior to posting.
- f) Client will provide a sufficient number of qualified personnel to set up and operate the scanning equipment during the event. Set up and testing of equipment must be performed prior to the gates opening, preferably the day before and in no event less than two (2) to three (3) hours before each event. ExtremeTix staff will assist with written instructions and telephone support.
- g) Client will make available for each event, appropriate numbers of competent gate staff and will train staff members in the use and handling of all ExtremeTix provided equipment prior to gate open time. Client must provide detailed training in problem resolution related to all aspects of admission control to all gate staff.
- h) When a ticketing solution requires networked points of sales or points of entry, ExtremeTix will provide the scanners, laptops and networking equipment necessary for communications. Client will be responsible for setting up and maintaining a networking infrastructure consistent with ExtremeTix specifications which shall be provided to Client prior to the start of the event.
- i) Client will provide power and shelter from the elements for selling and/or redemption equipment and assumes all responsibility for the proper use, care and storage of all equipment provided by ExtremeTix and will compensate ExtremeTix at full replacement or repair cost (the choice of which shall be at ExtremeTix's sole and absolute discretion) for any loss or damages.

5) ONSITE SALES TERMINALS (QuikTix™):

- a) If the ExtremeTix Box Office system (QuikTix™) is utilized, Client acknowledges that a constant, high-speed internet connection is required to process ticket orders. It is the responsibility of Client to set up and maintain the dedicated internet connection along with electric power throughout the event.

An internet connection providing at least 128kbps bandwidth per station is required (a secondary internet connection is strongly recommended) to operate QuikTix™. At this time satellite or cell connections are not acceptable due to latency issues.
- b) ExtremeTix will not be held accountable for any costs incurred or lost revenues resulting from poor or lost internet connection, poor or lost power connection or supply.
- c) Client agrees to have a qualified technical resource test and complete the Internet Connection Verification worksheet and return to ExtremeTix at least 2 weeks before the event. In the event that the internet connection does not meet minimum standards, Client authorizes ExtremeTix to remedy any deficiencies and to deduct any additional costs from event proceeds or institute a backup or manual ticketing solution.

- d) If the QuikTix™ system is utilized, it is the responsibility of Client to assure that all set up, wiring, connections and workspace facilities adhere to applicable regulatory codes.
- e) If the QuikTix™ system is used for box office purchases, fees will be assessed according to the ExtremeTix Processing Fee Schedule Addendum.

6) REDEMPTION EQUIPMENT CONFIGURATIONS (Scanning Equipment):

- a) ExtremeTix will provide scanners to authenticate tickets. The number and type of scanners will depend entirely on guidelines provided by ExtremeTix that have been established for similar event types and size (volume of tickets sold) by ExtremeTix.
- b) When fewer than five hundred (500) tickets are sold through ExtremeTix three (3) business days prior to the event, ExtremeTix reserves the right to substitute a manual process for authentication of tickets using an Event Attendance List.
- c) Equipment over and above recommended configuration can be supplied to Client at a rental fee of one hundred dollars (\$100) per piece of equipment, per week. A minimum of one (1) week notice is required for configuration and shipping of additional equipment.
- d) Client will be responsible for the shipping cost of equipment to and from each event.
- e) All equipment will be returned to ExtremeTix within five (5) business days of the close of the event or season unless other arrangements are made in writing. Failure to return the equipment within five (5) days will result in additional charges of one hundred dollars (\$100) per piece of equipment, per week.

7) PRICING AND FEES:

- a) Fees will be assessed based on the ExtremeTix Processing Fee Schedule Addendum included with this agreement. ExtremeTix reserves the right to deny or terminate any EDA that does not maintain agreed upon terms and conditions.
- b) Telephone sales will be offered to all ExtremeTix events. An additional per ticket "personal assistance" fee will be charged to the purchaser for this service as shown on the ExtremeTix Processing Fee Schedule Addendum.
- c) Taxes
 - (1) Client shall be responsible for calculating any and all Taxes, for preparing and timely filing any and all tax returns or reports to be filed, and for timely remitting Taxes to the appropriate taxing authority. In the event that ExtremeTix is required to pay Taxes on behalf of Client, Client shall promptly reimburse ExtremeTix for any and all such Taxes paid by ExtremeTix, including penalties and interest assessed (other than Principal Taxes, penalties and interest that ExtremeTix pays directly).
 - (2) Client shall also promptly reimburse ExtremeTix for any and all expenses (including reasonable attorneys' fees) or damages that result from Client's failure to properly calculate and timely remit Taxes assessed on all amounts received by Client under this Agreement, to timely file all related returns or reports, or to timely reimburse ExtremeTix for any such Taxes, interest and penalties as provided above.
 - (3) If ExtremeTix is required to remit Taxes on behalf of Client and file related tax returns or reports, ExtremeTix shall have the right to do so upon notice to Client. After that, any payments due under Sections 7(a) and 8 shall be reduced by such Taxes.
 - (4) Client shall provide ExtremeTix with taxpayer identification upon request.
- d) Credit card processing fees of 3% incurred through the sale of Online and PhoneTix™ tickets will be the responsibility of Client. All Credit card processing fees of 3% associated with QuikTix™ transactions are the responsibility of .
- e) ExtremeTix support personnel can be provided for onsite set up and training if requested at least fourteen (14) days before any specific event. Actual travel expenses and a fee of two hundred dollars (\$200) per person, per day will be paid by Client.

- f) ExtremeTix has a no refund/exchange policy but will issue refunds in consultation with Client. The per ticket fee specified in the EDA will be withheld to offset processing and handling costs. The refund processing fees will be identified as a separate line item on the statement accompanying payment. Additional merchant card processor fees will be netted from Client settlement, retainage payment or billed to the client.
- g) Client has option to take part in ExtremeTix partnership with LivingSocial™ to target large audiences with special deals, value-added packages or group pricing. For new LivingSocial users, ExtremeTix has negotiated a rate exclusively for our Clients.
- h) Should Client elect to engage a targeted discounting or couponing provider such as Groupon™ in order to sell tickets, ExtremeTix will be compensated its normal fee, as defined in the EDA, for each ticket sold.

8) PAYMENTS:

- a) Settlements and payments will be processed Bi-Weekly. All processing occurs the Monday after the scheduled settlement date excluding holidays and payment will be sent within five (5) days after processing. If for any reason the amount of cancellations prior to the event exceeds the retained amount (in section b below), or if the event is cancelled, postponed or delayed for more than fourteen (14) days, Client agrees to wire transfer to ExtremeTix the combined amount of all advance payments within one (1) business day. If the event is rescheduled, the settlement date will be the Monday after the successfully completed event.
- b) ExtremeTix will retain 5% of the total amount owed to the Client for a period of thirty days to cover any costs related to charge-backs, refunds and equipment loss or damage. The amount retained will be forwarded, net of these charges, thirty days after last event settlement date.
- c) In the unlikely event that the balance withheld is insufficient to cover charge-backs and or other expenses, Client agrees to pay ExtremeTix the difference between the total owing and the retained amount within thirty (30) days of notification.
- d) Client acknowledges that charge-backs may occur as much as nine (9) months to a year after the original date the event is advertised to take place, therefore while unlikely, expenses may be incurred and billed to Client after final settlement and retainage payments have been received.
- e) ExtremeTix works aggressively to reverse all credit card chargeback on behalf of the client at no charge for chargeback management. Client is responsible for all associated merchant card fees and lost ticket revenues resulting from charge-backs.
- f) Charge-backs and related merchant card processor fees will be netted from Client settlements and payments on receipt by ExtremeTix. On successful reversal the charge-back amount less merchant card processor fees will be credited to Client settlement or retainage amount owing, or paid to Client within seven (7) business days. If a charge-back is lost, and all efforts to overturn have been unsuccessful then any additional merchant card processor fees will be netted from Client settlements or retainage payments, or billed to Client.
- g) Full documentation regarding charge-backs will be provided to Client within seven (7) business days upon written request.
- h) The Client hereby agrees that the ExtremeTix payment detail report indicating the number and type of tickets sold to any event shall be the definitive count for that event.

9) INDEMNIFICATION:

- a) Each party shall indemnify, defend and hold harmless the other party from all liabilities, or judgments related to any claim that the use of the indemnifying party's trademarks, copyrights, patents, or other proprietary rights by the other party infringes any third party patent, copyright, trademark or other proprietary right.
- b) If Client's event(s) include contests, drawings, or games of chance where ticket purchases are used for entry, Client is responsible for ensuring that local, state and federal laws are not violated. Client agrees to indemnify, defend and hold harmless ExtremeTix from all liability from any such contests, drawings or games of chance.
- c) Client and ExtremeTix agree to indemnify and reimburse each other for expenses incurred in defending against claims (including litigation) related to services under this Master Service Agreement when the claims are the result of that first party's actions. Client and ExtremeTix agree that this indemnification and reimbursement shall also apply to settlement payments, if any, although the indemnifying party must approve of any such settlement.

Notably, no indemnification is due if the party seeking indemnification has been grossly negligent. Under no circumstances will the total amount of indemnification and reimbursement due from ExtremeTix exceed the amount of fees received under the Master Service Agreement (net of the other amounts due to ExtremeTix under the Master Service Agreement).

10) DISCLAIMER OF WARRANTIES & LIMITATION OF LIABILITY:

EXTREMETIX DISCLAIMS AND CLIENT WAIVES ANY WARRANTY OF MERCHANTABILITY, WARRANTY AND ANY OTHER WARRANTY OF THE SYSTEM, EQUIPMENT, SOFTWARE, OR DATA PROVIDED BY EXTREMETIX. CLIENT ACCEPTS EXTREMETIX'S EQUIPMENT AND SYSTEM "AS IS."

EXTREMETIX SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING ANY LOSS OF REVENUES SUFFERED BY THE CLIENT.

11) FORCE MAJEURE:

Each of the parties shall be excused from the performance of any obligation, other than the payment of money, hereunder to the extent that such obligation is hindered or prevented by any strike, boycott, lockout or other dispute, act of God, any riot civil disturbance or any act of war, terrorism, any fire or theft, any present or future governmental law, ordinance, rule or regulation, or any other cause beyond the parties' control.

12) DISPUTE RESOLUTION, VENUE AND CHOICE OF LAW:

This Agreement shall be construed and interpreted in accordance with the laws of the State of Texas without regard to any choice of law principles. The Parties acknowledge that this Agreement has been negotiated in Harris County, Texas, and that performance at least in significant part will occur in Harris County, Texas. If one or more disputes arise with regard to the interpretation and/or performance of this Agreement or any of its provisions, the Parties agree to attempt to resolve same by telephone conference directly or through the Parties' representatives. If the Parties cannot resolve their dispute by telephone conference, then each agrees to schedule a one-half day of mediation within thirty (30) days to resolve the dispute and to share the costs of same equally.

13) OTHER & MISCELLANEOUS:

- a) The terms and pricing of this agreement expire if not signed and returned to ExtremeTix within thirty (30) days of the date of issue.
- b) Each Event Detail Agreement, once signed by both parties, becomes a part of this Master Services Agreement.
- c) Neither party may assign rights or obligations under this Agreement, without the prior written consent of the other party.
- d) This agreement represents entire agreement between the parties hereto with respect to the matters dealt with herein and supersedes all prior oral and written proposals and communications.
- e) This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. This agreement shall be binding upon and insured to the benefit of the parties hereto and their respective successors and assigns. No waiver or amendment of the terms of this agreement shall be effective unless in writing duly executed by the party to be bound.
- f) This agreement is written in straightforward language and is intended to be interpreted as written using commonly accepted business practices. Each party had access to competent counsel and participated equally in the drafting of the language in this agreement.
- g) Confidentiality: The Parties agree that, except with the other Party's express written permission, they shall keep the terms of this Agreement confidential. The Parties understand and agree, however, that disclosure of this Agreement or its terms may be required by order of any court or tribunal, to fulfill standard or legally-required corporate reporting or disclosure requirements, or as otherwise required by law, and that such disclosure shall not constitute a breach of this Agreement. Furthermore, nothing herein shall preclude the Parties from disclosing the terms of this Agreement to their accountants, legal counsels, insurers, or tax advisors on a need-to-know basis.
- h) Each person executing this agreement represents that he or she has the authority to bind his or her respective entity/company.

- i) Notice under this contract shall be sent or received through the listed address, fax number(s) or electronic mail address will meet any requirements for written notice under the Contract:

As to ExtremeTix: ExtremeTix, Inc.
7600 W Tidwell Ste 806
Houston, TX 77040
800-370-2364 (Corporate)
832-251-0888 (Houston)

As to Client: Wheaton Parks District
102 East Wesley
Wheaton, IL 60187
(630) 665-4710

- j) This agreement shall be construed without regard to which party drafted it, and it shall be interpreted as if the Parties participated equally in drafting the Agreement.

Agreed & Accepted

By: Wheaton Parks District

Signature: Michael J Bernard
Michael J Bernard (Mar 20, 2014)

By: ExtremeTix, Inc.

Signature: Tony DiCamillo
Tony DiCamillo (Mar 21, 2014)

ExtremeTix Processing Fee Schedule Addendum

Additional Fees

<i>QuikTix (Box Office)</i>	\$0.25
<i>PhoneTix</i>	\$2.50
<i>Comps</i>	\$0.25
<i>Hardstock</i>	\$0.25
<i>Other</i>	


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<i>ClicknPrint™ Online – Convenience Fees</i>	<i>Fee Per Ticket</i>
\$0.00 - \$9.99	\$1.00
\$10.00 - \$19.99	\$2.00
\$20.00 - \$29.99	\$3.00
\$30.00 - \$39.99	\$3.50
\$40.00 - \$49.99	\$4.00
\$50.00 - \$74.99	\$4.00
\$75.00 - \$99.99	\$4.00
\$100.00+	\$5.00


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MSA - Wheaton Parks District

EchoSign Document History

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