



909 Aviation Parkway, Suite 900  
Morrisville, NC 27560

## TICKETING SERVICES AGREEMENT




# Exhibit A

## Term Sheet

Dates		
A1	Dated as of	2/16/2018
A2	Effective Date	4/1/2018
A3	Initial Term	1 Year
A4	Renewal Term	N/A
Deal Points		
A5	Internet Sales	Conv Level 1 \$0.00 - \$9.99 Conv Level 1 Fee <b>\$1.00</b> Conv Level 2 \$10.00 - \$19.99 Conv Level 2 Fee <b>\$2.00</b> Conv Level 3 \$20.00 - \$29.99 Conv Level 3 Fee <b>\$3.00</b> Conv Level 4 \$30.00 - \$39.99 Conv Level 4 Fee <b>\$3.50</b> Conv Level 5 \$40.00 - \$99.99 Conv Level 5 Fee <b>\$4.00</b> Conv Level 8 \$100.00+ Conv Level 8 Fee <b>\$5.00</b>
A6	Package Sales	N/A
A7	Group Sales	N/A
A8	Box Office Sales	\$.25 per Ticket Comps first 250 Free \$.25 after
A9	Blank Ticket Stock (Per 1000)	Included
A10	Pull Ticket Sales	\$.25 per ticket
A11	Bank Charge Card	3%
A12	Support & Maintenance	Included
A13	Initial Set-up	Waived
A14	Merchant Account Connection	Waived (\$500 value)
A15	Digital Marketing	N/A
A16	Phone Center Sales (This includes standard mail, will call, and electronic delivery)	\$4.50 per transaction
A17	Mail Fulfillment (For online sales & box office sales fulfilled by Etix)	Optional \$4.50 per transaction
A18	On-site Technical Support (Optional)	Actual travel expenses

X



X



**TICKETING SERVICES AGREEMENT**

by and between

Wheaton Park District

Etix, Inc.

(a/k/a the "Client")

Effective Date: 2/24/18

Dated as Of: 02/19/2018

The Client and Etix agree as follows:

1. **The Deal.** The Client grants to Etix the exclusive right and authority to sell on the Client's behalf all available tickets through the System for all events at the Attraction, including but not limited to online, point-of-sale or box office sales, phone orders, group sales, all season tickets, and mini-plans. No third-party ticketing companies or brokers may sell any portion of the ticket inventory for any event unless there is an exclusive written agreement in place between Client and any such companies or brokers that took effect prior to the above Effective Date and Client has notified Etix of such agreement in writing prior to the above Effective Date. Without limiting the foregoing, all online sales shall transpire through Etix pursuant to this Agreement. Etix makes no guarantees with respect to ticket sales in connection with this Agreement, including without limitation any guarantees that a minimum or fixed number of tickets will be sold through the System for the Attraction. In no event shall Client have any right, title, or interest in or to the System or any portion or component thereof.
2. **Term.** The term shall be for the period specified in Exhibit A, Box A3.
  - A. **Auto-Renew.** At the expiration of the initial term and/or subsequent renewal terms, the term shall automatically renew for subsequent periods specified in Exhibit A, Box A4 unless written notice is received by a party more than 30 days prior to the end of such Initial Term or then-current Renewal Term, as the case may be, indicating the other party's intent to not renew the Agreement.
3. **Payment & Fees.** Etix shall be entitled to receive from the Client, and Client shall pay to Etix, compensation for Etix's services as follows:
  - A. For **Internet Sales**, the Client authorizes Etix to collect from purchasers a convenience fee as specified in Exhibit A, Box A5.
    - i. For **Package Sales**, the Client authorizes Etix to collect from purchasers a convenience fee as specified in Exhibit A, Box A6.
    - ii. For **Group Sales**, the Client authorizes Etix to collect from purchasers a convenience fee as specified in Exhibit A, Box A7.
  - B. For **Box Office Sales**, the Client authorizes Etix to collect from purchasers a convenience fee as specified in Exhibit A, Box A8. Additional charges may apply for custom ticket stock. Blank Etix stock is available for the fee specified in Exhibit A, Box A9.
  - C. For **Pull Ticket Sales**, the Client authorizes Etix to collect from purchasers a convenience fee as specified in Exhibit A, Box A10.

- D. **Bank Charge Card Fees.** The Client authorizes Etix to collect a Bank Charge Card fee as specified in Exhibit A, Box A11 for transactions processed by Etix's merchant account including but not limited to Internet sales, box office and pull tickets, and phone center sales. The Client authorizes Etix to deduct any charge-back fees from the Total Receipts. The Client shall pay the Bank Charge Card fee for all transactions processed through the Client's merchant account. The Client may add the Bank Charge Card fees to the convenience fee collected by Etix in addition to any additional fees to be collected for the Client's benefit and paid by the ticket box.
  - E. **Shipping and Handling.** The Client shall pay all shipping and handling charges associated with the delivery of direct pull tickets and the delivery and return of any rental equipment. The Client further authorizes Etix to collect a postage and handling fee from consenting purchasers who select the mail delivery method.
  - F. **Additional Fees.** In addition to the fees established above, the Client agrees:
    - i. **Support and Maintenance.** An annual fee for e-mail/phone support and maintenance as specified in Exhibit A, Box A12 is due to Etix upon execution of this Agreement and upon the anniversary of that date each year for the term of the Agreement.
    - ii. **Initial Set-up Fee.** An initial set-up fee as specified in Exhibit A, Box A13 is due to Etix upon execution of this Agreement.
    - iii. **Merchant Account Connection Fee.** An initial, one-time, merchant account connection set-up fee as specified in Exhibit A, Box A14 is due to Etix upon successful connection of the Client and Etix' merchant accounts.
  - G. **Other Costs.** All other costs associated with the Attraction including but not limited to expenses associated with box office, labor, and staffing shall be the sole responsibility of the Client.
4. **Optional Services and Fees.** The Client may use the Etix Digital Marketing Services, Phone Center and/or Mail Fulfillment Center, rent scanners and/or ticket printers, and/or purchase on-site technical support as follows:
- A. **Digital Marketing Services,** including Digital Audit, Strategic Planning, Website Design and Development, Email Database Growth, Email Marketing, Social Media Marketing, Sponsorship Activation & Measurement, Search Engine Optimization (SEO), and Weekly Reporting and Analysis, is available for the fee as specified in Exhibit A, Box A15.
  - B. For **Phone Center Sales**, the Client authorizes Etix to collect from purchasers a convenience fee as specified in Exhibit A, Box A16 as compensation for effecting sales of such tickets. This fee includes standard mail, will call, or electronic delivery.
  - C. For **Mail Fulfillment**, the Client authorizes Etix to collect from consenting purchasers who select mail delivery a postage and handling fee as specified in Exhibit A, Box 17. Etix will print thermal tickets and mail said tickets to purchasers via First Class US Mail or other reasonably similar method.
  - D. **Rental Equipment.** Scanners and ticket printers may be rented by Client according to the prices set forth in Exhibit B (price may be adjusted annually for inflation). Clients must comply with the Rental Equipment Terms and Conditions. Clients must give Etix a minimum of three weeks notice on all equipment requests. Scanners and thermal ticket printers may also be purchased through Etix.
  - E. **Technical Support.** Etix will provide complimentary technical support via phone and email. On-site support is available at the rate specified in Exhibit A, Box A18. This price includes Etix-arranged transportation, commercially reasonable accommodations, and meals. The Client agrees to reimburse Etix for any additional expenses incurred.
5. **Client's Additional Obligations.** The Client shall:
- A. Honor or cause to be honored all tickets properly issued by Etix;
  - B. Allow the sale of all those tickets to an Attraction available for sale to the public;
  - C. Inspect all the data in the System for accuracy before the on-sale date. Etix is not responsible or liable for any typos or mistakes pertaining to ticket price, spelling, date, time, seating chart, or any other data entered into the System;

- D. No later than five business days prior to the on-sale date, provide Etix with the necessary information regarding the venue and Attraction, including but not limited to seating layout, ticket structure, permissible discounts, and any tax information;
  - E. Reserve one image space (size 101 x 375 pixels) on the print-at-home ticket for Etix to use at its discretion, including licensing the space to a third party; and
  - F. Give Etix permission to offer tickets for sale at Etix.com, unless directed otherwise by the Client. The Client shall, whenever commercially reasonable, feature the Etix.com logo and instructions as to where customers can purchase the tickets online at the Client's website, in advertising, or other promotional material which it creates or controls.
6. **The Settlement.** Etix shall have the right to withhold its compensation (all fees owed to Etix under this Agreement) from receipts from those ticket sales for the Attraction processed by Etix. Etix will remit the balance due to the Client in the manner provided in this Section.
- A. **Process (Etix Merchant Account).** For credit card transactions processed by Etix, Etix shall collect the Total Receipts for each Attraction. Etix may keep funds arising from the sale of tickets in an account containing funds connected with other unrelated ticket servicing agreements (sometimes called "commingling" funds). For transactions processed by Etix' merchant account, Etix shall remit to the Client the Total Receipts (exclusive of any Convenience Fee and any other fees due to Etix hereunder and applicable taxes) of all sales transpiring the previous Monday through Sunday that will settle between Monday and Wednesday of the following week by check or ACH. At the time payment is made, Etix shall also furnish the Client an event settlement report setting forth the Total Receipts for the applicable Attraction, the deductions therefrom, and the net amount due to the Client. Such event settlement report in each case shall be conclusive unless within seven days of providing the applicable event settlement report, the Client notifies Etix in writing in reasonable detail the respects in which the Client believes in good faith the event settlement report to be incorrect (each a "Dispute"); provided, however, that the parties promptly shall negotiate in good faith to resolve any such Dispute.
  - B. **Process (Client Merchant Account and other Client Fees).** Etix shall invoice the Client the total amount due Etix for all fees due Etix from Client hereunder (other than fees collected by Etix from the sale of tickets through Etix' merchant account as specified in Section 6A above). Payments not received within forty-five (45) days of receipt of invoice date will accrue an interest rate of one and one half (1.5%) per month. If payments are not received within ninety (90) days of receipt of invoice date, Etix may begin collecting receipts on its own merchant account until the Client has no invoices outstanding.
  - C. **Refunds: Etix will adhere to the refund policy of the Client.** If the Attraction is canceled, Etix agrees to make refunds for tickets (less Etix' convenience fee) purchased through the System and processed by Etix' merchant account for a period of 30 days after being notified of cancellation. After the 30-day period expires, any amounts remaining from the Total Receipts for the canceled Attraction (less all amounts due to Etix) shall be remitted to the Client and the Client shall thereon be solely responsible for making further refunds. The Client shall indemnify and hold Etix harmless from any loss, liability, cost or expense arising from refund claims made after the 30-day period. The Client shall cover all charges and expenses related to credit card charge fees associated with refunds. The Client shall comply with Etix' reasonable business practices concerning the return or exchange of tickets, if any such were allowed.
7. **Early Termination.** This Agreement shall automatically terminate if either party suffers the appointment of a receiver for all or a substantial part of its assets or business, or otherwise takes advantage of or is subject to any other law relating to bankruptcy, insolvency, or relief from the claims of creditors. Either party may terminate this Agreement in the event the other party:
- A. **Payment.** Fails to account and make payment hereunder, and such failure is not cured within fourteen days after written notice of the failure is sent to the other party; or

- B. **Other.** Fails to perform any other required obligation hereunder, and such failure is not cured within thirty days after written notice of the failure is sent to the other party.
  - C. **Effect.** Termination in this section shall be effective upon the notifying party mailing a notice to the other party declaring its election to terminate. No premature termination of the Agreement shall affect any right of either party accruing prior to such termination, whether such right is conferred by the terms of the Agreement or arises under general principals of law.
8. **Additional Financial Stipulations.** Any additional fees or stipulations are included in Exhibit A, Box A19.
9. **Terms and Conditions.**
- A. **Notice.** All notices, approvals, or requests in connection with this Agreement shall be deemed given when deposited in the US mail, certified, return receipt requested, with postage prepaid, or when sent by telegram. Notices shall be sent to the parties at their respective addresses set forth in the preamble to this Agreement. Either party may change the address to which notices are to be sent by written notice to the other party.
  - B. **Indemnity.** Each party agrees to indemnify, defend and hold harmless the other party (an "indemnified party") and the employees, officers, directors, and agents of such indemnified party from and against all claims, actions, demands, costs, damages, losses, liabilities or expenses (including reasonable attorneys' fees) of any kind asserted by a third party against the indemnified party and arising out of the indemnifying party's negligence, willful misconduct, and negligence performance of, or failure to perform, any of it covenants or obligations under this Agreement. The provisions of this indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.
  - C. **Assignment.** This Agreement may not be assigned by either party without the prior written consent of the other, except to a successor (by merger, purchase of assets or stock, consolidation, etc.) to all or substantially all of the assets of the assigning party. To the extent that an assignment is so permitted, this Agreement shall be binding upon and inure to the benefit of the successors and assigns of either party. Any other assignment or purported assignment of this Agreement shall be null and void.
  - D. **Construction.** This is not an agreement of lease, partnership, or employment of Etix or any of Etix's employees by the Client. Etix shall not order any merchandise or equipment, incur any indebtedness, enter into any undertaking or make any commitment in the Client's name or purporting to be on the Client's behalf, except as required to advertise, publicize, sell or do all things pursuant or incidental to the purposes and intents of this Agreement. The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the State of North Carolina without resort to any conflict of law principles thereof.
  - E. **Conflicts.** In the event Etix shall have a separate agreement similar hereto with the owner or management of the facility at which the Attraction is to be performed, such separate agreement shall apply to such Attraction unless Etix is otherwise directed in writing by the owner or management of such facility.
  - F. **Force majeure.** Neither party shall be responsible for any delay or failure of performance resulting from fire, strike, flood, labor dispute, domestic, or international unrest, delay in receipt of supplies, energy shortage, power failure, Internet failure, or any other cause beyond its reasonable control.
  - G. **Legal compliance.** The parties hereto shall each comply with all laws and regulations respectively applicable to each party in connection with the operations contemplated hereunder.
  - H. **Severability of Provisions.** In the event that any provision hereof shall be deemed in violation of any law or held to be invalid by any court in which this Agreement shall be interpreted, the violation or invalidity of any particular provision shall not be deemed to affect any other provision hereof but this Agreement shall be thereafter interpreted as though the particular provision so held to be in violation or invalid were not contained herein.

- I. **Records.** Etix shall keep adequate records reflecting Ticket transactions to allow the Client to make a meaningful Ticket audit. The Client shall have the right at all reasonable times to examine and audit the records of Etix insofar as they relate to the Attraction.
- J. **This Agreement,** including all exhibits attached hereto, contains all the terms agreed to between the parties. Statements or representations not included herein shall not be binding upon the parties, and no modifications or amendments of any of the terms hereof shall be valid or binding unless made in writing and signed by both parties.
- K. **Limitation of Liability.** NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR SPECIAL DAMAGES (INCLUDING DAMAGES FOR LOST PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA AND THE LIKE) FOR ANY MATTER ARISING FROM, IN CONNECTION WITH OR RELATED TO THIS AGREEMENT OR THE SERVICES OR PRODUCTS PROVIDED HEREUNDER, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. UNDER NO CIRCUMSTANCES WILL THE TOTAL LIABILITY DUE FROM ETIX IN CONNECTION WITH THIS AGREEMENT EXCEED THE AGGREGATE COMPENSATION RECEIVED BY ETIX HEREUNDER.
- L. **Disclaimer of Warranties.** THE ETIX SERVICES, SYSTEM, EQUIPMENT AND ANY DELIVERABLES PROVIDED IN CONNECTION THEREWITH ARE PROVIDED "AS IS" "WHERE IS" WITHOUT WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AND ETIX DISCLAIMS AND CLIENT HEREBY WAIVES ANY WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT THERETO, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTY OF THE SYSTEM, EQUIPMENT, OR SOFTWARE WILL BE ERROR-FREE.

**10. Glossary.** As used throughout this Agreement:


- A. "Attraction" means the venue, theatrical production, sporting event, permanent or temporary exhibit or other entertainment feature produced or presented, in whole or in part, by the Client for which tickets are sold. An attraction may encompass only one event or several events.
- B. "Ticket" means evidence of the right to occupy space or obtain entry to the attraction
- C. "Convenience Fee" and other Fees shall mean monies charged to purchasers by Etix for such purchaser's convenience of utilizing the System.
- D. "Group Sales" are tickets purchased from a group price code.
- E. "Package Sales" are bundled, single transaction purchases of multiple performances purchased at one time and labeled as a "Package".
- F. "System" means the system developed, maintained, and owned solely and exclusively by Etix, as modified from time to time, for the sale of tickets via the Internet and permitting remote printing by purchasers.
- G. "Total Receipts" means all monies processed through Etix's merchant account (Etix will collect the proceeds) and/or the Client's merchant account (Client collects proceeds) in connection with the sale of tickets exclusive of any Convenience Fee or handling fee, and any other fees due Etix hereunder, and applicable taxes.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed on the date first listed above.

The Client:

Wheaton Park District

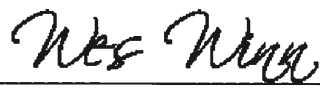
**Etix, Inc.**

By:   
M. S. B.

Signed:

Date Signed: 2/20/18

By: Wes Winn

Signed: 

Date Signed: 02/19/2018



**Exhibit B**  
**Rental Equipment**

<b>Item</b>	<b>Quantity</b>	<b>Price/Term</b>
POS Terminal		N/A
Ticket Printer		N/A
Credit card swipe		N/A
Ticket Scanner	As needed	\$0.00
Credential System		N/A

Client must comply with the Rental Equipment Terms and Conditions.