

BUSINESS AFFAIRS AND HUMAN RESOURCES
SEPTEMBER 14, 2012

BOISE STATE UNIVERSITY

SUBJECT

Ticketing software contract with Veritix

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Section V. I. 3.

BACKGROUND/DISCUSSION

Boise State University seeks to renew a ticketing software contract with Veritix. Veritix provides Payment Card Industry-compliant hosting services which segregate credit card transactions from internal systems and can efficiently handle the volume of transactions generated by popular events. The original three year contract was awarded to Vertical Alliance in 2007 after a request for proposal process administered by Idaho State Division of Purchasing and approval from the Board's executive director. The company subsequently changed its name to Veritix. An additional two year extension was executed for FY11-FY12.

Veritix continues to upgrade functionality and remains a leader in the ticketing software industry. Upgrades to be implemented in the near future include:

- Access control via scanning of hard tickets,
- Ability to transmit tickets electronically via bar code, such as on a cell phone, and
- Electronic transfer and resale ability for patrons.

IMPACT

The renewal cost for FY13-FY15 is \$280,800, the same cost as the prior renewal period. Over the last five years, the system has been used to sell approximately 176,000 tickets totaling \$7 million annually. The contract per ticket fee is \$1.50, but the contract caps annual per ticket fees at \$78,000. As a result of ticket sales volume, the effective per ticket cost will be closer to \$0.80. The software enhancements provided through the new agreement will help reduce costs related to printing and mailing paper tickets and will increase revenue from secondary market transactions.

ATTACHMENTS

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Attachment 2 – Veritix API License Agreement	Page 8

STAFF COMMENTS AND RECOMMENDATIONS

This is a request for approval of a two-year extension of BSU's ticketing software contract with Veritix. There is no increase in the contract cost from the previous FY11-12 contract period. Staff recommends approval.

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BOARD ACTION

I move to approve Boise State University's request to extend the ticketing software agreement with Veritix for two years at a cost of \$280,800 in substantial conformance to the form provided in Attachment 2.

Moved by _____ Seconded by _____ Carried Yes _____ No _____



Proposal for Ticketing Services Extension



Boise State

Veritix™, LLC



June 30, 2012



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1. Term:

Proposed extension would be two (2) years.

Term start - 7/1/2012

Term end – 6/30/2014

2. Primary Market Convenience Fees

Boise State will be charged the rates below for all tickets processed through the Veritix managed channels (**internet, phone, outlets, and kiosk**). Boise State at their sole discretion will have the ability to set the fees as paid by the consumer. This is not a revenue share model as the team collects 100% of the fees from the market and is billed directly from Veritix for the services.

Primary Market Per Ticket Convenience Fees

<u>Event Type</u>	<u>Base Convenience Charges</u>
Per Ticket Fee	\$1.50
Cap on Annual Per Ticket Fees	\$78,000

3. Annual License Fee

The annual maintenance fee will be \$62,400.

4. Credit Card Fees:

Boise State is at liberty to use their own merchant accounts for all transactions on the primary marketplace, provided that the merchant accounts are supported by the Veritix system/processors. A list of those processors can be provided upon request.

During the term of the contract, Boise State will be charged 2.75% of the gross ticket receipts paid by credit card and processed on the Veritix authorization system, Veritix merchant account, and the Flash Seats secondary market solution. Veritix currently accepts MasterCard, Visa, American Express, and Discover. Transactions include Veritix managed distribution channels only. All rates are subject to increase based on rate adjustments from credit card companies. The venues will also be responsible for reimbursing Veritix for any chargeback losses generated from their events.



5. Primary Market Ticket Stock, Seat Locators and Envelope:
Boise State is responsible for all ticket stock and seat locator stock. All stock must conform to Veritix standards.

6. Auction Fees:

Boise State will be charged 10% of the lift for each ticket sold via auctions. Lift is determined as the selling price less the face value of the ticket less the credit card fee processed less the Veritix per ticket fee.

7. System Upgrades:

System upgrades that are made generally available to all Veritix customers are free of charge.

8. API Fees:

The API fees for direct connection from Boise State to Veritix are waived. Integration with third parties outside the Boise State firewall would be at standard rates.

A separate legal document governing the API will be sent to Boise State.

9. Secondary Market:

Veritix will split (50/50) the secondary market convenience charge that is based on the purchase price of the ticket with 50% to Boise State to partially offset the equipment investment. A minimum charge of 23% of the purchase price will be instituted. The first 3% will be used to cover the credit card expenses. Any increase in the minimum convenience charge in the secondary market is at the discretion of Boise. Should Boise State negotiate an additional charge due to a third party to obtain an event, that additional is not subject to the revenue sharing with Veritix.

10. Equipment buy-back:

Initial scanners/printers to be purchased by Boise State may become obsolete due to projected roll-out of new technology during the contract term. Should this occur, and should Boise State wish to convert to the new equipment, Veritix will buy-back the equipment at net book value. Net book value is based on a three year-life from the date of placing equipment in service.



Signature for Consent

For Boise State

By:

For Veritix

By



API LICENSE AGREEMENT

THIS API LICENSE AGREEMENT (this "Agreement") is made and entered into as of this ____ day of _____, 2012 (the "Effective Date"), by and between FLASH SEATS VERTICAL ALLIANCE, LLC (dba VERITIX), a Delaware limited liability company ("Veritix") and Boise State University, a [REDACTED] ("Licensee").

RECITALS:

A. Veritix is in the business of providing products and services (i) for the original sale, issuance, resale and/or transfer of tickets (in paper or electronic form) to events (such as professional sports games and concerts) and other rights associated with such events (the "Ticketing Operations"); (ii) to collect and analyze consumer data; and (iii) to conduct consumer marketing activities other services in support of the foregoing.

B. Veritix conducts its Ticketing Operations through its proprietary, web-based electronic ticketing systems the ("Electronic Marketplaces").

C. Veritix has developed a proprietary application program interface that will allow its clients and others to access certain data and other information that Veritix collects from users of the Electronic Marketplaces in connection with its operation thereof (the "API").

D. Veritix and Licensee have entered into that certain Master Ticketing Agreement, Primary Marketplace Service Order and Secondary Marketplace Service Order] each dated as of September [], 2009 (collectively, the "Ticketing Agreement") pursuant to which Veritix provides to Licensee various Ticket Operations services, including the right to use the Electronic Marketplaces.

E. Licensee desires to obtain the right and license to use the API to obtain access to the information (including personally identifiable information) collected by Veritix in the performance of its services to Licensee under the Ticketing Agreement and which information is owned by Licensee pursuant to the terms of the Ticketing Agreement.

F. Veritix is willing to so provide to Licensee such right and license to use the API upon the terms and conditions set forth below.

AGREEMENTS:

In consideration of the foregoing Recitals and the mutual promises set forth herein and for other good and valuable consideration, the parties hereto agree as follows:

1. LICENSE. Veritix hereby grants to Licensee a limited, revocable, personal, non-exclusive, non-transferable, non-assignable, nonsublicensable, object code right and license during the Term (as hereinafter defined) of this Agreement to download, install, and use the API in accordance with the terms of this Agreement to access and download the Licensee Data (as hereinafter defined) residing in the Electronic Marketplaces. For purposes of this Agreement, "Licensee Data" shall mean data concerning (i) users of such Electronic Marketplace(s) that Licensee provides to Licensee under the Ticketing Agreement, including, but not limited to, names, email addresses, phone numbers, facsimile numbers, addresses, demographics, profiles, purchasing history, and other marketing or identifying information; and (ii) such other data regarding the utilization and operation of the Electronic Marketplaces as may be collected by Veritix in the performance of services for its clients and to which Licensee is authorized to access pursuant to this Agreement.

2. SERVICES. Veritix shall permit the initial download by Licensee of Licensee Data via the API and shall provide up to twenty (20) hours of integration and engineering support services may be reasonably necessary in order to permit such initial download (the "Initial Services"). Licensee shall have forty-eight (48) hours from commencement of its initial download of Licensee Data to complete the data transmission. In addition, subject to Licensee's payment of the annual maintenance fee described below, Veritix shall provide such updates to the API that Veritix makes generally available to all Veritix API licensees.

3. FEES, TERMS OF PAYMENT, TAXES.

3.1 License, Services and Annual Maintenance Fees. Licensee shall pay to Veritix \$0 for (i) each download of the API by Licensee, (ii) the Initial Services pertaining thereto, (iii) submission of up to two hundred (200) queries per hour to the Electronic Marketplaces through the API for items of Licensee Data, and (iv) submission of up to twenty (20) queries per hour to the Electronic Marketplaces through the API for extract summaries or reports pertaining to the Licensee Data. Such fee shall be due and payable upon the Effective Date. In the event that Licensee requires additional queries beyond the limits set forth in this Section 3.1 and Veritix agrees to permit such additional queries, Veritix shall invoice Licensee therefor at Veritix's then-current rates. The amounts set forth in such invoices shall be due and payable upon Licensee's receipt thereof. In addition, Licensee shall pay to Veritix an annual maintenance fee (the "Annual Maintenance Fee") of \$0 per year. Such Annual Maintenance Fee shall be due and payable on upon the Effective Date and upon each anniversary of the Effective Date. In addition, Licensee shall pay to Veritix \$250 per hour for engineering service time provided by Veritix to Licensee other than for the Initial Services, which fees shall be due and payable upon Licensee's receipt of Veritix's monthly invoice therefor.

3.2 Late Payments. All payments of fees made after the due date thereof shall be subject to a monthly finance charge at the rate of one and one-half percent (1.5%) per month or the maximum amount allowed by law, whichever is less, commencing upon the date such payment was due. In addition, failure of Licensee to pay in full any fees within the time period set forth in Section 3.1 shall be deemed a breach of this Agreement by Licensee and will be sufficient cause for immediate termination of this Agreement by Veritix. Any such termination shall not relieve Licensee from paying past due fees, plus interest, and, in the event of collection

enforcement, Licensee shall be liable for any cost associated with such collection, including, but not limited to, legal costs, attorneys' fees, court costs, and collection agency fees.

4. OWNERSHIP.

4.1 API and Electronic Marketplaces. All title, copyright and other proprietary and ownership rights in and to the API and the Electronic Marketplaces, including any updates, enhancements, or modifications thereof shall be and remain the property of Veritix.

4.2 Licensee Data. The terms and provisions of the Ticketing Agreement pertaining to the ownership and other intellectual property rights in and to the Licensee Data shall remain unmodified by this Agreement.

5. RESTRICTIONS; REMEDIES.

5.1 Restrictions. Licensee shall not use the API to use, post, transmit, distribute, disclose, store or destroy any information (including the Licensee Data) on the Electronic Marketplaces or otherwise (i) in violation of any applicable law, statute, ordinance or regulation, (ii) in any manner that may infringe the intellectual property rights of others, (iii) that is defamatory, trade libelous or obscene or (iv) that contains any viruses, Trojan horses, worms, time bombs or other computer programming routines that are intended to damage or detrimentally interfere with any system of Veritix, including, without limitation, the Electronic Marketplaces, or any data or information contained therein. Licensee will not violate or attempt to violate the security, integrity or performance of, or attempt to gain unauthorized access to, the Electronic Marketplaces or their related systems or networks, including (i) intentionally accessing data not intended for Licensee or (ii) attempting to interfere with service to any client or any other user of the Electronic Marketplaces or with any Veritix network. Licensee shall not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the API in any way; (ii) modify, disassemble, decompile, reverse engineer, or make derivative works based upon the API; (iii) create Internet "links" to the Electronic Marketplaces; or (iv) reverse engineer or access the API or the Electronic Marketplaces in order to (a) build a competitive product or service, (b) build a product using similar functions or graphics of the API or the Electronic Marketplaces.

5.2 Remedies. Licensee expressly agrees and understands that the remedy at law for any breach by Licensee of this Section 5 will be inadequate and that the damages to Veritix arising out of any such breach are not readily susceptible to being measured in monetary terms. Accordingly, Licensee acknowledges and agrees that Veritix shall be entitled to immediate injunctive relief and may obtain a temporary order restraining any threatened or further breach. Nothing in this Section 5 shall be deemed to limit Veritix's remedies at law or in equity for any breach by Licensee of any of the provisions of this Section 5, which may be pursued or availed by Veritix.

6. REPRESENTATIONS AND WARRANTIES. Licensee hereby represents and warrants to Veritix as follows:

6.1 Authority. Licensee has the general partner right and authority to enter into and fully perform this Agreement in accordance with its terms;

6.2 Enforceability. This Agreement, when executed by Licensee, will be its legal, valid and binding obligation enforceable against such Licensee in accordance with its terms, except to the extent that enforcement may be limited by bankruptcy, insolvency or similar laws affecting creditors' rights generally;

6.3 Execution and Delivery. The execution and delivery of this Agreement has been duly authorized by such Licensee and no approval or other action of any third party is required in connection herewith; and

6.4 No Conflict. Neither the execution and delivery of this Agreement, nor the performance by such Licensee of the transactions contemplated hereby will conflict with, result in a breach of, or constitute a default under any contract or other agreement to which such Licensee is a party.

7. CONFIDENTIAL INFORMATION

7.1 Confidential Information. Licensee acknowledges and agrees that any and all information emanating from Veritix's business in any form, including, without limitation, the API and Electronic Marketplaces, is "Confidential Information" of Veritix, and Licensee agrees that except as expressly provided by this Agreement or as otherwise required by law, it will not, during or after the term of this Agreement use, publish or disclose any such Confidential Information or permit any third party to use, publish or disclose any such Confidential Information, unless such use, publication or disclosure independently is authorized by Veritix in writing prior to any such use, publication or disclosure. Licensee shall use reasonable diligence to prevent the unauthorized use, publication, and disclosure or reproduction of such Confidential Information. Without limiting the generality of the foregoing, to the extent that this Agreement permits the copying of Confidential Information, all such copies shall bear the same confidentiality notices, legends, and intellectual property rights designations that appear in the original versions. For the purposes of this Section, the term "Confidential Information" shall not include the Licensee Data; information that is in the public domain; information that was in Licensee's lawful possession prior to the disclosure and had not been obtained by Licensee either directly or indirectly from Veritix; and information properly obtained hereafter from a source who is not under an obligation of confidentiality in respect of such information; or information which is independently developed by Licensee.

7.2 Remedies. Licensee acknowledges and agrees that any violation by Licensee of the terms and provisions of this Section 7 will result in irreparable injury to Veritix parties which cannot be compensated adequately by monetary damages. Accordingly, Licensee agrees that any violation by it of the terms and provisions of this Section 7, in addition to any

other rights and remedies the other parties may have, will be the proper subject for immediate injunctive and other equitable relief to Veritix.

8. TERM AND TERMINATION. The term of this Agreement (the "Term") shall commence on the Effective Date and shall continue until the first anniversary of the Effective Date; provided, however, that the Term may be extended for subsequent one-year periods upon timely payment by Licensee of the Annual Maintenance Fee until termination of the Ticketing Agreement. In the event that Licensee shall be in breach or default of any of the terms, conditions or covenants set forth in this Agreement, including, without limitation, the payment when due of the fees set forth herein, and such breach or default shall continue for a period of thirty (30) days (ten (10) days with respect to any monetary breach or default) after the receipt of Veritix's written notice to Licensee, then in addition to any other rights or remedies it may have, Veritix shall have the immediate right, in its sole discretion, to terminate this Agreement. Notwithstanding the foregoing, if any such breach or default by Licensee is not susceptible to cure or if Licensee breaches or defaults in its obligations under Section 5, Veritix may terminate this Agreement immediately upon written notice to Licensee. In addition, the parties' rights and obligations under Sections 3.2 and 4 through 11 shall survive termination of this Agreement. Termination of this Agreement shall terminate the license to use the API granted in this Agreement, but not Licensee's right to use the Licensee Data then residing on Licensee's systems. Upon termination of this Agreement, Licensee shall destroy and remove from all computers, hard drives, networks and other storage media all copies of the API and shall so certify to Veritix that such actions have occurred. No termination of this Agreement shall be deemed to terminate the Ticketing Agreement, which shall remain in full force and effect in accordance with its terms.

9. DISCLAIMER; LIMITATION OF LIABILITY.

9.1 Disclaimer. Licensee acknowledges and agrees that (i) Licensee's use of the API and the Licensee Data is at its own risk; (ii) the API and the Licensee Data is provided on an "AS IS", "AS AVAILABLE" basis without any warranties of any kind, whether express or implied, including, without limitation, the warranties of merchantability and fitness for a particular purpose by Licensee; (iii) Veritix does not warrant that the API or the Licensee Data will meet Licensee's requirements, that the API will operate in the combinations which Licensee may select for use, or that the operation of the API will be uninterrupted or error free.

9.2 Limitation of Liability.

(a) VERITIX SHALL NOT BE LIABLE TO LICENSEE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES ARISING FROM OR RELATED TO THIS AGREEMENT OR THE OPERATION OR USE OF THE API, THE ELECTRONIC MARKETPLACES OR THE LICENSEE DATA, INCLUDING, WITHOUT LIMITATION, DAMAGES ARISING FROM INTERRUPTION OR FAILURE OF TELECOMMUNICATION OR DIGITAL TRANSMISSION LINKS, INTERNET SLOWDOWNS OR FAILURES, ACCURACY OF THE LICENSEE DATA, PERFORMANCE OR NON-PERFORMANCE OF ANY

THIRD-PARTY TOOLS OR PRODUCTS OR THEIR IMPACT ON THE API, LOSS OF DATA OR PROGRAMMING, LOSS OF REVENUE OR PROFITS, FAILURE TO REALIZE SAVINGS OR OTHER BENEFITS, DAMAGE TO EQUIPMENT, AND CLAIMS AGAINST LICENSEE PARTY BY ANY THIRD PERSON, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(b) NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, VERITIX'S LIABILITIES UNDER THIS AGREEMENT WHETHER UNDER CONTRACT LAW, TORT LAW OR OTHERWISE SHALL NOT BE GREATER THAN THE AMOUNTS PAID TO VERITIX UNDER THIS AGREEMENT. This limitation shall not apply to actions for wrongful death, personal injury, or property damage.

10. INDEMNIFICATION. In consideration of the rights granted by Veritix to Licensee under this Agreement, Licensee shall indemnify, defend and hold harmless Veritix, its members, directors, officers, employees and agents from and against any and all claims, actions, damages, liabilities and expenses (including attorneys' fees) incurred, arising from or out of Licensee's breach of this Agreement, Licensee's use of the API, the Electronic Marketplaces or the Licensee Data, or the negligence or willful misconduct of Licensee, its agents or employees. Nothing herein shall be deemed to constitute a waiver by Licensee of any privilege, protection, or immunity otherwise afforded it under the Idaho Constitution, the Idaho Tort Claims Act, or any other applicable law.

11. MISCELLANEOUS

11.1 Local Laws and Export Control. The Electronic Marketplaces and the API provide services and use software and technology that may be subject to United States export controls administered by the U.S. Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, and other U.S. agencies. Licensee acknowledges and agrees that neither the API nor the Electronic Marketplaces shall be used, and none of the underlying information, software, or technology may be transferred or otherwise exported or re-exported to countries as to which the United States maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. Licensee agrees to comply strictly with all U.S. export laws and assume sole responsibility for obtaining licenses to export or re-export as may be required. Additionally, the API and the Electronic Marketplaces may use encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774 and Council Regulation (EC) No. 1334/2000. If Licensee uses the API or the Electronic Marketplaces from outside the United States, Licensee is solely responsible for compliance with all applicable laws, including without limitation export and import regulations of other countries.

11.2 Waiver. The failure by either party at any time to require performance by the other party or to claim a breach of any provision of this Agreement shall not affect any subsequent breach or the right to require performance or to claim a subsequent breach.

11.3 Governing Law. This Agreement shall be governed in all respects by and construed in accordance with the laws of the State of Idaho, without regard to principles or conflicts of law.

11.4 Notices. All notices and other communications required hereunder shall be made in writing and shall be deemed to have been duly given and effective: (i) on the date of delivery, if delivered personally; (ii) on the earlier of the fourth (4th) day after mailing or the date of the return receipt acknowledgment, if mailed, postage prepaid, by certified or registered mail, return receipt requested; (iii) on the following day if sent by nationally recognized overnight courier service such as Federal Express; or (iv) on the date of transmission, if sent by facsimile, telecopy, telegraph, telex, e-mail or other similar communications equipment; to the respective parties at the following addresses, or at such other addresses as the parties shall designate by written notice to the other:

If to Veritix: 1500 West Third Street
Suite 500
Cleveland, Ohio 44113
Attn: Samuel Gerace
Telephone: 216.466.8200
Fax: 216.466.8080
E-Mail: **Samuel.gerace@veritix.com**

If to Licensee: _____

Attn: _____
Telephone: _____
Fax: _____
E-Mail: _____

11.5 Validity. If any part of this Agreement is found to be invalid or unenforceable, then that part of this Agreement shall not affect the validity or enforceability of the remainder of this Agreement in any way unless the invalidity significantly affects the ability of either party to perform as contemplated under this Agreement.

11.6 Entire Agreement. This Agreement and the Ticketing Agreement comprise the entire agreement between the parties and may not be modified or amended except by written instrument signed by authorized representatives of the parties. In the event of a conflict between the terms of this Agreement and the terms of the Ticketing Agreement, the terms of this agreement shall control.

11.7 Independent Contractor. The parties to this Agreement are independent contractors and this Agreement will not establish any relationship of partnership, joint venture,

employment, franchise, or agency between the parties. Neither party shall have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent. Neither party shall represent itself as an agent, employee, legal representative, joint venture, or partner of the other and shall not assume or purport to create any obligation on behalf of the other.

11.8 Counterparts. This Agreement may be signed in any number of counterparts, each of which (when executed and delivered) shall constitute an original instrument, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

LICENSEE:

VERITIX:

BOISE STATE UNIVERITY

FLASH SEATS VERTICAL
ALLIANCE, LLC

By: _____

By: _____

Its: _____

Its: _____

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