


Purchase Change Request		Marshall University Office of Purchasing One John Marshall Drive Huntington, WV 25755-4100	Order # EvenueTix
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FY 20	Buyer TB	Date 6/21/2019	Account	P.O. Date 2/20/04	Contract EvenueTix
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Document <input type="checkbox"/> Requisition (Cancellation only) <input type="checkbox"/> Regular Purchase Order <input type="checkbox"/> Contract Purchase Order <input type="checkbox"/> Open End Contract Purchase <input type="checkbox"/> Agreement	Document Action <input type="checkbox"/> Cancellation <input type="checkbox"/> Increase/Decrease <input type="checkbox"/> Unused Balance <input type="checkbox"/> Freight <input type="checkbox"/> Renewal <input type="checkbox"/> Extension Error	<input type="checkbox"/> Error in Total Amount <input type="checkbox"/> Change of Account <input type="checkbox"/> Change of Vendor Name/Address <input type="checkbox"/> Other
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Vendor Name, Address, Phone #, etc. A-L Tier II, LLC Paciolan LLC 505 Hobbs Rd Jefferson City, MO 65109	Vendor Code 470911648	BOG Unit Name & Address Marshall University Office of Purchasing One John Marshall Drive Huntington, WV 25755-4100
Ph#	Fax	FEIN#

Item#	Quantity	Description of Change	Unit Price	Extended Price
		Change Order # <u>10</u>		
		To change vendor information and add amendment #10 to Master System Purchase and Software License Agreement, effective July 1, 2019, through June 30, 2023. Vendor Information Now Reads: Patron Solutions LLC Spectra Ticketing & Fan Engagement 5171 California Avenue Suite 200 Irvine, CA 92617 Change to read: A-L Tier II, LLC Paciolan LLC 505 Hobbs Rd Jefferson City, MO 65109		

Reason for Change: Vendor information changed and request Amendment #10 attached.	Previous Total	\$ OPEN-END
	Increase	\$ _____
	Decrease	\$ _____
	New Total	\$ OPEN-END

Approved: *Tracey Grandolini* 6/21/19
 Authorized Signature Date

N/A
 Attorney General if required Date

**AMENDMENT NO. 10
TO
MASTER SYSTEM PURCHASE AND SOFTWARE LICENSE AGREEMENT**

This Amendment No. 10 (“Amendment”) to that certain Master System Purchase and Software License Agreement dated as of May 10, 2002, as amended and supplemented from time to time (“Original Agreement”), is entered into effective as of July 1, 2019 (“Amendment Effective Date”) by and between Paciolan, LLC (formerly Paciolan, Inc.) (“Paciolan”), and the Marshall University Department of Athletics (“Customer”).

Background

Paciolan and Customer now desire to further amend and supplement the Original Agreement as specified below in order to extend the term of the Original Agreement as set forth below.

In consideration of the foregoing and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree to amend the Original Agreement as follows.

Original Agreement Amendments

1. **Term.** Section 4 of the Original Agreement shall be amended and restated in its entirety as follows:

“The term of this Agreement shall begin on the Effective Date and continue until June 30, 2023 (“Initial Term”) and may renew for subsequent periods (each a “Renewal Term”) upon mutual written agreement of the parties. The Initial Term, together with any Renewal Terms, is referred to herein as the “Term”.”

2. **Investment Addendum.** The Investment Addendum to the Original Agreement (Exhibit C), as amended and supplemented from time to time, shall be amended and restated as set forth on Exhibit C attached hereto. The Investment Addendum (i) amends and restates the fees, including all transaction fees and periodic fees set forth in the Original Agreement (i.e. Service Fees and e.Venue Services Fees, annual hosting fees), set forth in the Original Agreement (including all prior amendments); and (iii) amends and restates the Hardware, Software, Professional Services and subscription services to be provided by Paciolan to Customer under the Original Agreement. Effective as of the Amendment Effective Date, Customer shall pay to Paciolan such fees set forth in the Investment Addendum in accordance with and by the due dates as set forth therein, subject to the terms and conditions of the Original Agreement.

3. **PACFund.** After July 1, 2020, at no charge, Paciolan shall transition Customer to Paciolan’s PACFund fundraising product, which shall be provided pursuant to a supplemental Investment Addendum entered into by the parties.

4. **Digital Marketing Services.** Customer shall purchase a minimum of \$5,000 of Paciolan’s digital marketing services per collegiate year (July 1-June 30) pursuant to separate order forms and/or agreements.

5. **Annual Credit.** Paciolan shall provide Customer with an annual credit of \$2,000 during the Term for each collegiate year (July 1-June 30) for the purchase of additional digital marketing services pursuant to separate order forms and/or agreements, which annual credit shall expire at the end of each collegiate year and will not carryover to the subsequent collegiate year (i.e. “use it or lose it”) and may not be sued to satisfy Customer’s obligations under Section 4 above.

All exhibits attached hereto are incorporated herein by reference. Except as amended by this Amendment, all terms and conditions of the Original Agreement, including the definitions, are hereby incorporated into this Amendment by reference, and the same meaning shall be ascribed to them for purposes of this Amendment. If there is any conflict between the terms of this Amendment and the Original Agreement, then the terms of this Amendment shall prevail.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed and do each hereby represent that their respective signatory whose signature appears below has been and is on the Amendment Effective Date duly authorized by all necessary and appropriate corporate action to execute this Amendment.

PACIOLAN, LLC

MARSHALL UNIVERSITY

Signature:



Name:

Kimberly Damron

Title:

President & CEO

Signature:



Name:

Tracey Brown-Dolinski

Title:

Assistant Director of Purchasing

Exhibit C: Investment Addendum

HARDWARE		
Qty	Description	
Hardware Point-of-Sale Stations		
4	BOCA Lemur-S +46 Ticket Printer (w/display & cutter) 300dpi, RADJW-2	
4	USB 2.0 AB Printer Cable	
16	Credit Card Swipe	
Access Management Hardware		
8	Janam XT2+ Rugged Mobile Computer w/ABGN Radio, 2D, Extended Battery	
1	USB Cable Cup	
2	4-Slot Charger - only Cradle Kit	
4	XT2 Series - Lithium Ion Battery Pack (4000 mAh)	
1	4-Slot battery charging station	
8	Lanyard/Neck strap	
SOFTWARE		
Qty	Description	Annual
Paciolan Software Subscription Services		
1	Ticketing Software wData Account	\$65,000
1	Fundraising Software	
1	Access Management Software	\$15,000
2	eCommerce Software	
Paciolan Software License		
8	Access Management Handheld Software License	
Third Party Software Subscription Services		
1	PAC Mail	
1	Point2Point Encryption Annual Maintenance & Encryption	\$6,720
1	Point2Point Encryption Annual Service	\$1,228
Third Party Software License		
1	Credit Card Authorization - Merchant ID	
8	Microsoft Windows Device CAL for Access Management	
PROFESSIONAL SERVICES*		
Description		
Project Management		
Access Management Implementation, Training & Consulting		
eCommerce Implementation, Training & Consulting (Additional)		
* Travel expenses (airfare, meals, lodging, etc.), customs, import taxes, sales taxes and/or brokerage fees will be billed separately to Customer as incurred.		

TRANSACTION FEES	
Description	Term
Single Ticket or Value/Misc. Item (1)	
Per Price of Ticket or Value/Misc. Item Sold via e.Venue	7.0%
Minimum Fee Per Ticket or Value/Misc. Item	\$1.00
Maximum Fee Per Ticket or Value/Misc. Item	\$2.50
Item Packages (2)	
Maximum Fee Per an Item Package	\$20.00
New Combo / Multiple Event Items / Season Tickets (3)	
Per Combo / Multiple Event Item Sold via e.Venue	\$6.00
Student Season Tickets	
Per Combo / Multiple Event Item Sold via e.Venue	\$7.50
If online Student Season Tickets is mandatory for all students	\$4.50
Renewals / Application Packages	
Per Season Renewal Order or Application processed via e.Venue (Note - includes 1st payment processed)	\$6.00
Payment Processing	
Per payment transactions processed via e.Venue	\$3.00
Online Donation Processing	
Per Transaction Value processed via e.Venue	5.0%
Minimum Fee Per Transaction	\$1.00
Maximum Fee Per Transaction	\$5.00
Electronic Transfer	
Per Single Ticket transfer processed via e.Venue	\$1.50
e.Check Transactions	
Per Check electronically processed	\$3.00
Electronic Ticket / Item Delivery from e.Venue and Back Office System (4)	
Per Order utilizing Print at Home or Mobile Delivery	\$1.50
Per Order utilizing Patron ID Card/Device	\$1.50
e.Venue Guaranteed Minimum Annual Fee (5)	\$15,000
<p>1 Per Ticket or Value Item Fee is based on the purchase price of each Ticket or Value Item transacted through e.Venue, including non-ticket items such as merchandise. Zero-priced items sold will be charged the minimum fee for the item type. Value item includes gift certificate or miscellaneous item.</p> <p>2 Single Ticket or Value/Misc. Item fees apply to each item within an Item Package, up to the Maximum Fee Per an Item Package.</p> <p>3 Per Combo/Multiple Event Items Fee is based on the purchase of each Combo/Multiple Event Item (including New Season or Subscription Tickets, Multiple Event Items, Mini Plans, and Designer Series) transacted through e.Venue. Fees will be applied per Combo Item, not per the number of events each combo item represents. Additional Tickets or Value Items sold in conjunction with a Combo Item will be charged at the applicable single Ticket or Value Item rate.</p> <p>4 Back Office systems include tRes and Pac7 or higher Order Management/Item Sales</p> <p>5 Minimum Annual Fee period will begin on July 1st and end on June 30th of each year, prorated from date site is implemented.</p>	

FEES AND PAYMENT TERMS

FEES	
ANNUAL HOSTING SERVICES	\$65,000
ANNUAL ACCESS MANAGEMENT SUSBSRIPTION	\$15,000
ANNUAL POINT2POINT ENCRYPTION, MAINTENANCE AND SERVICE	\$7,948
ACCESS MANAGEMENT HARDWARE, SOFTWARE AND SERVICES	\$2,857
PAYMENT TERMS	
DUE ON July 1, 2019	<u>\$90,805</u>
DUE ON July 1, 2020 and each July 1 st thereafter thru term of Agreement	<u>\$87,948</u>

**MARSHALL UNIVERSITY ("MARSHALL")
ADDENDUM TO VENDOR'S STANDARD FORMS**

Vendor: Paciolan, LLC

Contract No.: _____

Marshall and the Vendor are entering into the Contract identified above. The Vendor desires to incorporate one or more forms it created into the Contract. Vendor's form(s), however, include(s) one or more contractual terms and conditions that Marshall cannot or will not accept. In consideration for Marshall's incorporating Vendor's form(s) into the Contract, the Vendor enters into this Addendum which specifically eliminates or alters the legal enforceability of certain terms and conditions contained in Vendor's form(s). Therefore, on the date shown below each signature line, the parties agree to the following contractual terms and conditions in this Addendum are dominate over any competing terms made a part of the Contract:

1. **ORDER OF PRECEDENCE:** This Addendum modifies and supersedes anything contained on Vendor's form(s) whether or not they are submitted before or after the signing of this Addendum. **IN THE EVENT OF ANY CONFLICT BETWEEN VENDOR'S FORM(S) AND THIS ADDENDUM, THIS ADDENDUM SHALL CONTROL.**

2. **PAYMENT** — Payments for goods/services will be made in arrears only upon receipt of a proper invoice, detailing the goods/services provided or receipt of the goods/services, whichever is later. Notwithstanding the foregoing, payments for software licenses, subscriptions, or maintenance may be paid annually in advance.
Any language imposing any interest or charges due to late payment is deleted.

3. **FISCAL YEAR FUNDING** — Performance of this Contract is contingent upon funds being appropriated by the WV Legislature or otherwise being available for this Contract. In the event funds are not appropriated or otherwise available, the Contract becomes of no effect and is null and void after June 30 of the current fiscal year. If that occurs, Marshall may notify the Vendor that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default, *provided that Marshall does not utilize the services and/or products of a third party ticketing vendor (i.e. a competitor of Vendor) for the then remaining terms of the Contract.*

4. **RIGHT TO TERMINATE** — All provisions are deleted that seek to require Marshall to (1) compensate Vendor, in whole or in part, for lost profit, (2) pay a termination fee, or (3) pay liquidated damages if the Contract is terminated early.

Any language seeking to accelerate payments in the event of Contract termination, default, or non-funding is hereby deleted.

5. **DISPUTES** — Any language binding Marshall to any arbitration or to the decision of any arbitration board, commission, panel or other entity is deleted; as is any requirement to waive a jury trial.

Any language requiring or permitting disputes under this Contract to be resolved in the courts of any state other than the State of West Virginia is deleted. All legal actions for damages brought by Vendor against Marshall shall be brought in the West Virginia Claims Commission. Other causes of action must be brought in the in the Circuit Court of Cabell County, West Virginia, or such other West Virginia court authorized by statute to exercise jurisdiction over it.

Any language requiring Marshall to agree to, or be subject to, any form of equitable relief not authorized by the Constitution or laws of State of West Virginia is deleted.

6. **FEES OR COSTS** -- Any language obligating Marshall to pay costs of collection, court costs, or attorney's fees, unless ordered by a court of competent jurisdiction is deleted.
7. **GOVERNING LAW** — Any language requiring the application of the law of any state other than the State of West Virginia in interpreting or enforcing the Contract is deleted. The laws of the State of West Virginia shall govern the Contract.
8. **RISK SHIFTING** — Any provision requiring Marshall to bear the costs of all or a majority of business/legal risks associated with this Contract, to indemnify the Vendor, or hold the Vendor or a third party harmless for any act or omission is hereby deleted.
9. **LIMITING LIABILITY** — Any language limiting the Vendor's liability for direct damages to person or property is deleted.
10. **TAXES** — Any provisions requiring Marshall to pay Federal, State or local taxes or file tax returns or reports on behalf of Vendor are deleted. Marshall will, upon request, provide a tax exempt certificate to confirm its tax exempt status.
11. **NO WAIVER** — Any provision requiring Marshall to waive any rights, claims or defenses is hereby deleted.
12. **STATUTE OF LIMITATIONS** — Any clauses limiting the time in which Marshall may bring suit against the Vendor or any other third party are deleted.
13. **ASSIGNMENT** — The Vendor agrees not to assign the Contract to any person or entity without Marshall's prior written consent, which will not be unreasonably delayed or denied. Marshall reserves the right to assign this Contract to another State agency, board or commission upon thirty (30) days written notice to the Vendor. These restrictions do not apply to the payments made by Marshall. Any assignment will not become effective and binding upon Marshall until Marshall is notified of the assignment, and Marshall and Vendor execute a change order to the Contract.
14. **RENEWAL** — Any language that seeks to automatically renew, modify, or extend the Contract beyond the initial term or automatically continue the Contract period from term to term is deleted. The Contract may be renewed or continued only upon mutual written agreement of the Parties.
15. **INSURANCE** — Any provision requiring Marshall to maintain any type of insurance for either its or the Vendor's benefit is deleted.
16. **RIGHT TO REPOSSESSION NOTICE** — Any provision for repossession of equipment without notice is hereby deleted. However, Marshall does recognize a right of repossession with notice.
17. **DELIVERY** —All deliveries under the Contract will be FOB destination unless Marshall expressly and knowingly agrees otherwise. Any contrary delivery terms are hereby deleted.
18. **CONFIDENTIALITY** — Any provisions regarding confidential treatment or non-disclosure of the terms and conditions of the Contract are hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act ("FOIA") (W. Va. Code §29B-a-1, et seq.) and public procurement laws. This Contract and other public records may be disclosed without notice to the vendor at Marshall's sole discretion. Any provision requiring notice before disclosure is deleted.

Any provisions regarding confidentiality or non-disclosure related to contract performance are only effective to the extent they are consistent with FOIA and incorporated into the Contract through a separately approved and signed non-disclosure agreement.

19. **THIRD-PARTY SOFTWARE** — If this Contract contemplates or requires the use of third party software, the Vendor represents that none of the mandatory click-through, unsigned, or web-linked terms and conditions presented or required before using such third party software conflict with any term of this Addendum or For the avoidance of doubt, third party terms, including web-linked terms and conditions, incorporated by reference into the mutually signed Contract or mutually signed amendments or addenda between Vendor and Marshall shall be applicable to use of the applicable third party software

20. **AMENDMENTS** — The parties agree that all amendments, modifications, alterations or changes to the Contract shall be by mutual agreement, in writing, and signed by both parties. Any language to the contrary is deleted.

Notwithstanding the foregoing, this Addendum can only be amended by (1) identifying the alterations to this form by using Italics to identify language being added and strikethrough for language being deleted (do not use track-changes) and (2) having Marshall University's authorized representative expressly agree to and knowingly approve those alterations.

21. **PUBLICITY** – Vendor shall not, in any way or in any form, publicize or advertise the fact that Vendor is supplying goods or services to Marshall without the express written consent of Marshall.

22. **UNIVERSITY MARKS** – Vendor shall not, in any way or in any form use Marshall's trademarks or other intellectual property without prior written consent of Marshall.

23. **FERPA** – Vendor agrees to abide by the Family Education Rights and Privacy Act of 1974 ("FERPA) to the extent applicable to Vendor as a vendor to Marshall. To the extent that Vendor receives personally identifiable information from education records as defined in (FERPA), Vendor agrees to abide by the limitations on re-disclosure set forth in which states that the officers, employees and agents of a party that receives education record information from Marshall may use the information, but only for the purposes for which the disclosure was made.

ACCEPTED BY:
MARSHALL UNIVERSITY
OFFICE OF PURCHASING

By: Tracey Brown-Dolinski

Printed Name: Tracey Brown-Dolinski

Title: Assistant Director of Purchasing

Dates: 6/24/19

Vendor: Paclolan, LLC

By: Kimberly Damron

Printed Name: Kimberly Damron

Title: President & CEO

Dates: 06/14/19

Jendonnae L.
Houdyschell

Digitally signed by Jendonnae L. Houdyschell
Reason: I have reviewed this document
Date: 2019.06.14 14:45:42 -04'00'