



## Issue Paper

**DATE:**

October 16, 2023

**AGENDA ITEM (ACTION ITEM):**

**Consider/Approve** the purchase of software with Boris Effects/Hank Teixeira for the video/green screen subscription for the Kenton County School District Communication Studio for the 2023-24 school year.

**APPLICABLE BOARD POLICY:**

01.11 General Powers and Duties of the Board

**HISTORY/BACKGROUND:**

At the KCS D Communications Studio, the district has a green screen for production videos. The green screen requires the use of Boris Effects/Hank Teixeira software in order to continue. We have paid for this service for over 12 years.

**FISCAL/BUDGETARY IMPACT:**

\$390.00 from the Communication Team budget.

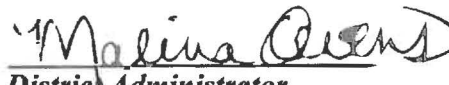
**RECOMMENDATION:**

**Approve** the purchase of software with Boris Effects/Hank Teixeira for the video/green screen subscription for the Kenton County School District Communication Studio for the 2023-24 school year.

**CONTACT PERSON:**

Jess Dykes

  
Principal/Administrator

  
District Administrator

  
Superintendent

*Use this form to submit your request to the Superintendent for items to be added to the Board Meeting Agenda.*

*Principal –complete, print, sign and send to your Director. Director –if approved, sign and put in the Superintendent's mailbox.*

# BORIS FX Quote

111 NE 1st Street  
8th Floor #8945  
Miami, FL 33132  
617.451.9900  
sales@borisfx.com

Invoice #	Date	Purchase Order	Payment Terms	Total Due
2001123119	July 18, 2023	N/A	Immediate	USD 390.00

**Invoice To:**

**Company:** Kenton County Schools  
**Name:** cris Kendall  
**Address:** 1055 Eaton Dr  
Fort Wright, Kentucky 41017  
United States

**Your Sales Representative:**

**Name:** Hank Teixeira  
**Email:** hank@borisfx.com  
**Phone #:** (857) 488-3572

Product Code	Description	Qty	Sales Price	Total
BCCMULTISUBA	Continuum - Subscription - Multi-Host (Adobe/Apple/OFX/Avid) - Academic (Schools & Faculty)	1	390.00	390.00

**Subtotal** USD 390.00

**Taxes** USD 0.00

**Total** USD 390.00

**Total Due** USD 390.00

**Notes:****Payment Information**

(Please Note: Boris FX no longer accepts paper checks.)

**Bank:** Citizens Bank

**Branch Address:** One Financial Center MA 664, Boston, MA 02111

**Account Number:** 1135649402

**Account Name:** Artel Software Corp./DBA Boris FX

**Currency:** US Dollars

**SWIFT Code:** CTZIUS33

**Domestic Transit Number:** 011500120

**ABA Routing Number:** 211070175

**Federal EIN:** 04-3278748

## SOFTWARE LICENSE/SUBSCRIPTION TERMS AND CONDITIONS

### 1. Parties; Products; Services; Effective Date; Disclaimer of Different or Additional Terms

These Software License/Subscription Terms and Conditions (this "Agreement") are between Boris FX, Inc. a Massachusetts corporation ("Company"), and the person or entity ("Licensee") identified on the invoice (the "Invoice") for Company's software product(s) or services identified on such Invoice.

The software product(s) listed on the Invoice are referred to herein as the "Product". This Agreement governs the Product and the Upgrade and Support Services (as defined in Section 9).

The "Effective Date" of this Agreement is the date on which full payment of the amounts identified in the Invoice is made to the bank identified on the Invoice. Any different or additional terms of any related purchase order, confirmation, or similar form even if signed by the parties after the date hereof will have no force or effect. Each party represents to the other party that the person executing this Agreement on its behalf has actual authority to bind it to this Agreement.

This Agreement contains, among other things, warranty disclaimers, liability limitations and use limitations.

### 2. Grant of License and Restrictions

Subject to all the terms of this Agreement and payment of all fees, Company grants Licensee a non-transferable, nonexclusive license to install and use the Product at the address identified on the Invoice on one computer per license purchased, subject to the related user documentation and any terms and procedures Company may prescribe from time to time. Except for one copy solely for back-up purposes, Licensee may possess only the number of copies of the Product set forth on the Invoice and may use each such copy on only one desktop computer and only in accordance with the terms expressly authorized herein.

If the license purchased under this Agreement is designated on the Invoice as a Subscription License ("Subscription License"), then Licensee will also receive Upgrade and Support Services during the Term of the Subscription License.

If the license purchased under this Agreement is not designated on the Invoice as a Subscription or Rental or Unit License ("Perpetual License"), then, as part of the initial purchase of the Perpetual License, Licensee will be entitled to one (1) year of Upgrade and Support Services.

If the license purchased under this Agreement is designated on the Invoice as a Floating License ("Floating License"), then for each such purchased Floating License, Licensee may install the Product on any desktop computers at Licensee's facility.

If the license purchased under this Agreement (as designated on the Invoice) is for Company's Burn, Nuke or other host products that support network rendering, then Licensee may use the Product for network rendering on additional computers if (a) Licensee's host application supports it, (b) the plug-ins software supports it with that host application, (c) Licensee has purchased a valid network rendering license if required by Company, and (d) Licensee initiates the network rendering from a computer on which the Product is installed and the subject of a valid, unexpired license.

If the license purchased under this Agreement (as designated on the Invoice) is for a Product designated as a Cross Host license, Licensee may use the Product on one desktop computer per license purchased, across multiple host products (e.g., Avid and Adobe) as described in more detail on the Cross Host Site.

All the license rights and limitations and restrictions in this Agreement on the Product also apply to documentation made available by Company.

The Product licensed hereunder includes any updates made available to Licensee as part of Upgrade and Support Services. Company is not obligated to provide any updates if Licensee has not purchased Upgrade and Support Services.

### 3. Term; Renewal

(a) Subscription License. The initial term of a Subscription License is as specified on the Invoice. A Subscription License will be automatically renewed each year for additional consecutive periods of the same length as the initial term, unless the Subscription License expires or is terminated in accordance with Section 6 (together with the initial term, "Term").

(b) Perpetual License; Upgrade and Support Services. If the Product license is a Perpetual License, then Licensee may use the Product perpetually, unless terminated in accordance with Section 6 ("Term"). Upgrade and Support Services shall be provided for the term specified on the Invoice. After such initial term of Upgrade and Support Services, the term of any Upgrade and Support Services will be automatically renewed each year for additional consecutive periods the same length as the initial term, unless Upgrade and Support Services expire or are terminated in accordance with Section 6 (together with the initial term, "Support Term").

### 4. Ownership

Company retains ownership of all Products and documentation and copies thereof, and reserves all rights not expressly granted in this Agreement. Licensee will maintain on any copies and any media the copyright notice and any other notices that appear on the Product and documentation. Licensee will not (and will not allow any third party to) (i) reverse engineer or attempt to discover any source code or underlying ideas or algorithms of any Product (except to the extent that applicable law prohibits reverse engineering restrictions), (ii) provide, lease, lend, use for timesharing or service bureau purposes or otherwise use or allow others to use a Product for the benefit of any third party, unless Licensee and Company have entered into a Software Rental House Addendum to this Agreement, or (iii) use any Product, or allow the transfer, transmission, export, or re-export of any Product or portion thereof in violation of any export control laws or regulations administered by the U.S. Commerce Department, U.S. Office of Foreign Assets Control, British Government, or any other government agency.

### 5. Fees and Payment

Licensee will pay Company the license fees and other charges set forth on the Invoice (the "License Fee").

For renewals of either a Subscription License or Upgrade and Support Services, Licensee will be charged Company's then-current price in effect at the time of renewal. Renewal invoices will be sent to Licensee 60 days prior to the renewal date.

In the event that Upgrade and Support Services are discontinued by Licensee and Licensee later wishes to reinstate any commercially available Upgrade and Support Services, a fee will be charged by Company for such reinstatement in an amount equal to 1.5 times the fees that would have been paid to maintain Upgrade and Support Services in effect through the reinstatement date, plus full payment for the pending Upgrade and Support Services period.

All payments are due within 30 days of the invoice date. Any payments more than thirty (30) days overdue will bear a late payment fee of 1.5% per month, or, if lower, the maximum rate allowed by law.

### 6. Expiration; Termination

This Agreement will continue in effect for the Term.

To allow a Subscription License or Upgrade and Support Services to expire at the end of the applicable Term or Support Term, Licensee or Company must notify the other party no less than 30 days prior to the end of the then-current Term or Support Term. No refunds will be given upon expiration and the expiration will take effect at the end of the then-current Term or Support Term, as applicable.

In addition, if either party breaches this Agreement, the other party will have the right to terminate this Agreement (and all licenses) upon thirty (30) days written notice of any such breach or immediately in the case of nonpayment.

Upon expiration or termination, Licensee will cease use of Products and return or destroy all copies of Products. Except as otherwise expressly provided, the terms of this Agreement will survive expiration or termination. Termination is not an exclusive remedy and all other remedies will be available whether or not termination occurs.

### 7. Limited Warranty and Disclaimer

Company warrants for a period of thirty (30) days from Licensee's first acquisition of a Product that such Product will materially conform to Company's then current user documentation for such Product. This warranty covers only problems reported to Company during the warranty period.

ANY LIABILITY OF COMPANY WITH RESPECT TO A PRODUCT OR THE PERFORMANCE THEREOF UNDER ANY WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY WILL BE LIMITED EXCLUSIVELY TO PRODUCT REPAIR OR REPLACEMENT OR, IF, IN COMPANY'S OPINION, REPAIR OR REPLACEMENT IS IMPRACTICAL, TO REFUND OF THE LICENSE FEE, EXCEPT FOR THE FOREGOING, ALL PRODUCTS ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TITLE OR

NONINFRINGEMENT. FURTHER, COMPANY DOES NOT WARRANT RESULTS OF USE OF THAT THE PRODUCTS ARE BUG FREE OR THAT THEIR USE WILL BE UNINTERRUPTED.

### 8. Limitation of Liability

NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT OR OTHERWISE, AND EXCEPT FOR BODILY INJURY, COMPANY WILL NOT BE LIABLE OR OBLIGATED WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT OR UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY (i) FOR ANY AMOUNTS IN EXCESS IN THE AGGREGATE OF THE FEES PAID TO IT HERE UNDER WITH RESPECT TO THE APPLICABLE PRODUCT DURING THE SIX MONTH PERIOD PRIOR TO THE CAUSE OF ACTION; OR (ii) FOR ANY COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY, SERVICES OR RIGHTS; (iii) FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES; (iv) FOR INTERRUPTION OF USE OR LOSS OR CORRUPTION OF DATA; OR (v) FOR ANY MATTER BEYOND ITS REASONABLE CONTROL.

### 9. Upgrade and Support Services

(a) General. Company will use reasonable commercial efforts to provide Upgrade and Support Services for each Product for which Company is licensed under a then-current (i) Perpetual License if the Support Term for the applicable Product has been renewed and (ii) Subscription License.

(b) Exclusions. Company will have no obligation to support: (a) altered or damaged Product or any portion of a Product incorporated with or into other software; (b) except for Legacy Support, Product that is not the then-current release or immediately Previous Sequential Release; (c) Product problems caused by Licensee's negligence, abuse or misapplication, use of Product other than as specified in Company's user manual or other causes beyond the control of Company; or (d) Product installed on any hardware or used with any host products that are not supported by Company. Company will have no liability for any changes in Licensee's hardware that may be necessary to use Product due to a Workaround or maintenance release.

### (c) Definitions.

(i) "Business Hours" means 9:00AM to 6:00PM Eastern Time, Monday through Friday, excluding holidays.

(ii) "Email Support" means email technical support by Company to the Technical Support Contact during Business Hours concerning the use of the then current release of a Product and the Previous Sequential Release. Reasonable effort will be made to respond by email within one (1) hour of receipt of Licensee's email.

(iii) "Legacy Support" means email technical support by Company to the Technical Support Contact during Business Hours concerning the use of the versions older than the Previous Sequential Release. Reasonable effort will be made to respond by email within two (2) hours of receipt of Licensee's email.

(iv) "Previous Sequential Release" means the release of a Product that has been replaced by a subsequent release of the same Product. Notwithstanding anything else, a Previous Sequential Release will be supported by Company only for a period of nine (9) months after release of the subsequent release.

(v) "Upgrade and Support Services" means (a) Email Support and Telephone Support provided in a single technical support contact concerning the installation and use of the then current release of a Product and the Previous Sequential Release, and (b) product updates that Company in its discretion makes generally available without additional charge.

(vi) "Telephone Support" means technical support telephone assistance provided by Company to the Technical Support Contact during Business Hours concerning the use of the then current release of a Product and the Previous Sequential Release.

(d) THIS SECTION 9 CONSTITUTES A SERVICE CONTRACT AND NOT A PRODUCT WARRANTY. ALL PRODUCTS AND MATERIALS RELATED THERETO ARE SUBJECT EXCLUSIVELY TO THE WARRANTIES IN SECTION 7. THIS SECTION 9 IS AN ADDITIONAL PART OF THIS AGREEMENT AND DOES NOT CHANGE OR SUPERSEDE ANY TERM OF THIS AGREEMENT EXCEPT TO THE EXTENT UNAMBIGUOUSLY CONTRARY THERETO.

### 10. Miscellaneous

Neither this Agreement nor the licenses granted hereunder are assignable or transferable by Licensee without the prior written consent of Company by operation or law (including a change of control) or otherwise; any attempt to do so will be void. Company may assign this Agreement in whole or in part. Any notice, report, approval or consent required or permitted hereunder will be in writing. No failure or delay in exercising any right hereunder will operate as a waiver thereof, nor will any partial exercise of any right or power hereunder preclude further exercise. The Product may include a mechanism that can detect the installation or use of illegal copies of the Product, and collect and transmit data about those illegal copies. Data collected will not include any customer data created with the Product. By using the Product, you consent to such detection and collection of data, as well as its transmission and use if an illegal copy is detected.

If any provision of this Agreement will be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement will be construed pursuant to the laws of the Commonwealth of Massachusetts and the United States without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods.

Any waivers or amendments will be effective only if made in writing.

This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement.

The prevailing party in any action to enforce this Agreement will be entitled to recover its attorney's fees and costs in connection with such action. The headings and captions used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

### 11. U.S. federal government end user

Company provides the Product for federal government end use as a "Commercial Item" as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as those terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Product is provided to Licensee with only those rights as provided under the terms and conditions of this Agreement. If a government agency has a need for rights not conveyed under these terms, it must negotiate with Company to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

THE SIX MONTH PERIOD PRIOR TO THE CAUSE OF ACTION; OR (ii) FOR ANY COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY, SERVICES OR RIGHTS; (iii) FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES; (iv) FOR INTERRUPTION OF USE OR LOSS OR CORRUPTION OF DATA; OR (v) FOR ANY MATTER BEYOND ITS REASONABLE CONTROL.



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hereof will have no force or effect.

Each party represents to the other party that the person executing this Agreement on its behalf has actual authority to bind it to this Agreement.

This Agreement contains, among other things, warranty disclaimers, liability limitations and use limitations.

## 2. Grant of License and Restrictions

Subject to all the terms of this Agreement and payment of all fees, Company grants Licensee a non-transferable, nonexclusive license to install and use the Product at the address identified on the Invoice on one computer per license purchased, subject to the related user documentation and any terms and procedures Company may prescribe from time to time. Except for one copy solely for back-up purposes, Licensee may possess only the number of copies of the Product set forth on  Hi. Need any help? each such copy on only one desktop computer and only in accordance with the terms expressly authorized herein.







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Upon expiration or termination, Licensee will cease use of Products and return or destroy all copies of Products.

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ANY LIABILITY OF COMPANY WITH RESPECT TO A PRODUCT OR THE PERFORMANCE THEREOF UNDER ANY WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY WILL BE LIMITED EXCLUSIVELY TO PRODUCT REPAIR OR REPLACEMENT OR, IF, IN COMPANY'S OPINION, REPAIR OR REPLACEMENT IS IMPRACTICAL, TO REFUND OF THE LICENSE FEE. EXCEPT FOR THE FOREGOING, ALL PRODUCTS ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NONINFRINGEMENT. FURTHER, COMPANY DOES NOT WARRANT RESULTS OF USE OF THAT THE PRODUCTS ARE BUG FREE OR THAT THEIR USE WILL BE UNINTERRUPTED.

## **8. Limitation of Liability**

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... .. Company is licensed under a then-current (v) Support License and Support Term for the applicable Product has been renewed and (ii) Subscription License.

(b) Exclusions. Company will have no obligation to support: (a) altered or damaged Product or any portion of a Product incorporated with or into other software; (b) except for Legacy Support, Product that is not the then-current release or immediately Previous Sequential Release; (c) Product problems caused by Licensee's negligence, abuse or misapplication, use of Product other than as specified in Company's user manual or other causes beyond the control of Company; or (d) Product installed on any hardware or used with any host products that are not supported by Company. Company will have no liability for any changes in Licensee's hardware that may be necessary to use Product due to a Workaround or maintenance release.

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OR SUPERSEDE ANY TERM OF THIS AGREEMENT EXCEPT TO THE EXTENT UNAMBIGUOUSLY CONTRARY THERETO.

## 10. Miscellaneous

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The Product may include a mechanism that can detect the installation or use of illegal copies of the Product, and collect and transmit data about those illegal copies. Data collected will not include any customer data created with the Product. By using the Product, you consent to such detection and collection of data, as well as its transmission and use if an illegal copy is detected.

If any provision of this Agreement will be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

This Agreement will be construed pursuant to the laws of the Commonwealth of Massachusetts and the United States without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods.

Any waivers or amendments will be effective only if made in writing.

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mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

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