

Vendini Member Service Agreement ("MSA")

1.0 Parties

Vendini, Inc. located at 660 Market Street, San Francisco, CA 94104, ("Vendini") hereby agrees to provide Downtown Arts Center ("Member") located at 141 Main Street Lexington, KY 40507 a service as described below. Attached as Exhibit A is the Proposal and, if applicable, attached as Exhibit B is the Vendini SiteLine Agreement ("Siteline"). These exhibits constitute an integral part of this MSA and together with this MSA set forth the commercial arrangements between the parties. In the event of any conflict between the terms of this MSA and the Exhibits, the terms contained in the Exhibits shall prevail. By signing this MSA, you agree to its terms.

2.0 Introduction and Definitions

Vendini operates an online service on the World Wide Web, consisting of ticketing, event, and patron management services provided by Vendini, and by third parties (collectively, the "Services"). "Events" are any events, activities, or resources to which Member is authorized to sell or provide access. "Tickets" are any and all forms of tickets, reservations, tuitions, memberships, certificates, coupons, merchandise, or confirmations that allow the holder access to, participation in, or use of Member events. "Patron" refers to any person or organization committing to the purchase of Tickets.

3.0 Agreement with Terms and Conditions

This Agreement sets forth the terms and conditions that apply to use of the Services by Member. By using the Services, Member agrees to comply with all of the terms and conditions hereof. The Privacy Statement is incorporated by reference, as if fully set forth herein.

4.0 Changes in Terms and Conditions

Vendini has the right to change or discontinue any aspect or feature of the Services, including, but not limited to, content, hours of availability, and equipment needed for access or use, at any time. Vendini shall provide the Services to Member in the form that Vendini makes such Services generally available from time to time during the term of this Agreement. Vendini may update or change the Services or change or modify the terms and conditions applicable to Member's use of the Services, or any part thereof, or to impose new conditions. Such changes, modifications, additions or deletions shall be effective immediately upon notice thereof, which may be given by means including, but not limited to, posting on the Services, or by electronic or conventional mail, or by any other means by which Member obtains notice thereof. Any use of the Services by Member subsequent to such notice shall be deemed to constitute acceptance by Member of such changes, modifications or additions.

Notwithstanding the foregoing, in the event a material aspect or feature of the Services needs to be changed or discontinued, Vendini shall use reasonable efforts to provide Member with 30 days prior notice to such change or discontinuance. Notwithstanding the foregoing, the terms of any written and executed quotation or proposal will supersede this Section 4.0 to the extent it relates to fees payable by Member as set forth therein.

5.0 Exclusivity

Member agrees that Vendini shall have the exclusive right during the term of this Agreement to provide ticketing, event and patron management services to Member via any and all means and methods. Member shall not directly or indirectly engage any third party to provide services that are the same or similar to those services provided by Vendini hereunder. This exclusive right shall include all future methods and

technologies for ticket distribution which may be developed from time to time during the term of this agreement.

6.0 Conduct of Member

6.1 Interests

Member is a producer, promoter, presenter, or manager of events. Under this Agreement, Member contracts with Vendini to provide the Services. Member represents and warrants to Vendini that it has full power and authority to enter into this Agreement and to offer, sell, and honor the tickets to the Events it offers via the Services.

6.2 Responsibility of Member

Member agrees to accept, honor, and fulfill ticketing commitments that have been confirmed by the Services. Verification of customer name, address, customer number, membership status and/or confirmation number at or prior to the corresponding Event is the responsibility of the Member.

6.3 Lawful Use

Member shall use the Services for lawful purposes only. Member shall not post or transmit through the Services any material which: (i) violates or infringes in any way upon the rights of others; (ii) is unlawful, threatening, abusive, defamatory, invasive of privacy or publicity rights, vulgar, obscene, profane or otherwise objectionable; (iii) encourages conduct that would constitute a criminal offense, give rise to civil liability or otherwise violate any law; or (iv) contains advertising or any solicitation with respect to products or services, unless Vendini shall have expressly approved such material in advance of its transmission. Any conduct by a Member that in Vendini's discretion restricts, inhibits or negatively impacts any third party's use of the Services is expressly prohibited.

6.4 Uploading Of Intellectual Property

Member shall not upload, post, or otherwise make available through the Services any material protected by copyright, trademark, or other proprietary right, without the express written permission of the owner of the copyright, trademark, or other proprietary right, and the burden of determining that any material is not protected by copyright rests with Member. Member shall be solely liable for any damage resulting from any infringement of copyrights, proprietary rights, or any other harm resulting from such a submission. ~~By making material available through the Services, Member automatically grants, or warrants that the owner of such material has expressly granted Vendini the royalty free, perpetual, irrevocable, nonexclusive right and license to use, reproduce, modify, adapt, publish, translate, and distribute such material (in whole or in part) worldwide and/or to incorporate it in other works in any form, media or technology now known or hereafter developed for the full term of any copyright that may exist in such material. Member hereby grants Vendini the right to copy, publish, and distribute any material made available on the Services by Member.~~

6.5 Email Marketing

Member represents, covenants, and warrants that it will use the email marketing tools provided in the Services only in compliance with the Agreement, the federal CANSPAM Act of 2003 and all other applicable laws (including but not limited to policies and laws related to spamming, privacy, obscenity, or defamation and child protective email address registry laws). Member agrees that it will not access or otherwise use third-party mailing lists in connection with preparing or distributing unsolicited email to any third party. ~~Member agrees to indemnify and hold harmless Vendini and its business partners, third party suppliers and providers, licensors, officers, directors, employees, distributors and agents against any damages, losses,~~

~~liabilities, settlements, and expenses (including without limitation costs and reasonable attorneys' fees) in connection with any claim or action that arises from an alleged violation of the foregoing or otherwise arising from or relating to Member's use of the Services.~~ In addition, Member acknowledges and agrees that Vendini has the right to seek damages when Member uses the Services for unlawful purposes, in an unlawful manner, and/or in a manner inconsistent with the terms of this Agreement, and that such damages may include, without limitation, direct, indirect, special, incidental, cover, reliance and/or consequential damages. Although Vendini has no obligation to monitor the content provided by Member in connection with their use of the Services, Vendini may do so and may remove any such content or prohibit any use of the Services it believes may be (or is alleged to be) in violation of the foregoing. Patron email addresses provided to Vendini may be used by Vendini in accordance with Vendini's then-current privacy policies as described at www.vendini.com/privacy.

6.6 Non-Disclosure and Other Restrictions

Vendini's "confidential information" means any and all products provided by Vendini hereunder and information concerning any aspect of Vendini's business or proposed business not generally known to persons not associated with Vendini that is: (i) disclosed and designated to Member in writing, or (ii) disclosed orally and designated "confidential" in writing by Vendini within thirty (30) days after such oral disclosure. Vendini's confidential information includes, without limitation, information concerning Vendini's products, proposed products, product designs, manufacturing processes and techniques, trade secrets, business strategy, and results from the evaluation and/or services hereunder.

Member's "confidential information" means any information concerning Member's venue or business not generally known to persons not associated with the Member that is: (i) disclosed and designated to Vendini in writing, or (ii) disclosed orally and designated "confidential" in writing by Member within thirty (30) days after such oral disclosure.

Each party agrees to not disclose or make use of, or allow others to use, any of other party's confidential information, except to such party's employees and representatives who have a "need to know" in order to conduct the evaluation and/or services described above.

Each party shall take all reasonable precautions to prevent unauthorized disclosure or use of other party's confidential information. Each party shall, at other party's request, promptly return any materials and copies of confidential information provided by such party.

Neither party shall be under any obligation, with respect to any particular item of confidential information, when such party can document that such item of information: (i) is publicly known and available not due to such party's act or failure to act, or (ii) was in such party's possession prior to disclosure by the other party as evidenced by a written instrument, or (iii) comes into such party's possession through a third party free of any obligation of confidence to other party, or (iv) is disclosed by such party with the other party's prior written approval.

7.0 Disclaimers and Limitation of Liability

Vendini owns the design and function of the Services and website (<http://www.vendini.com>.) Member acknowledges that Vendini does not commit to supporting or specifying any particular browsing or operating platform, and that Vendini has the right at any time to revise and modify its web pages and service, release subsequent versions thereof, and/or alter features, specifications, capabilities, functions, and other characteristics of the Services, all without notice to the Member.

7.1 Use Is At Member's Risk



Member expressly agrees that use of the Services is at Member's own risk. Member shall be responsible for protecting the confidentiality of Member's password(s), and for all activity that takes place using such passwords. NEITHER VENDINI, ITS AFFILIATES, NOR ANY OF THEIR RESPECTIVE EMPLOYEES, SHAREHOLDERS, AGENTS, THIRD PARTY PROVIDERS OR LICENSORS, WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DO THEY MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES, OR AS TO THE ACCURACY, RELIABILITY OR CONTENT OF ANY INFORMATION, SERVICE, OR MERCHANDISE PROVIDED THROUGH THE SERVICES.

7.2 Warranties Of Service; Disclaimer

Vendini warrants that the Services will conform substantially to the services description referenced in Section 2.0 in all material respects. In the event of a breach of such warranty, Member's sole remedy and Vendini's sole obligation will be for Vendini to use reasonable efforts to correct such nonconformity, or, if Vendini determines in its discretion that such conformity cannot be corrected, to refund a reasonable portion of the amounts paid by Member for the applicable Services. Except as provided in the foregoing express warranty, THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OTHER THAN THOSE WARRANTIES WHICH ARE IMPLIED BY AND INCAPABLE OF EXCLUSION, RESTRICTION OR MODIFICATION UNDER THE LAWS APPLICABLE TO THIS AGREEMENT.

7.3 Disclaimer Of Liability

THIS DISCLAIMER OF LIABILITY APPLIES TO ANY DAMAGES OR INJURY CAUSED BY ANY FAILURE OF PERFORMANCE, ERROR, OMISSION, INTERRUPTION, DELETION, DEFECT, DELAY IN OPERATION OR TRANSMISSION, COMPUTER VIRUS, COMMUNICATION LINE FAILURE, THEFT OR DESTRUCTION OR UNAUTHORIZED ACCESS TO, ALTERATION OF, OR USE OF RECORD, WHETHER FOR BREACH OF CONTRACT, TORTIOUS BEHAVIOR, NEGLIGENCE, OR UNDER ANY OTHER CAUSE OF ACTION.

7.4 Member's Waiver of Damages

IN NO EVENT WILL VENDINI, OR ANY PERSON OR ENTITY INVOLVED IN CREATING, PRODUCING, OR DISTRIBUTING THE SERVICES BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES ARISING OUT OF THIS AGREEMENT OR THE USE OF OR INABILITY TO USE THE SERVICES.

IN ADDITION TO THE TERMS SET FORTH ABOVE, NEITHER, VENDINI, NOR ITS AFFILIATES, INFORMATION PROVIDERS, OR CONTENT PARTNERS SHALL BE LIABLE REGARDLESS OF THE CAUSE OR DURATION, FOR ANY ERRORS, INACCURACIES, OMISSIONS, OR OTHER DEFECTS IN, OR UNTIMELINESS OR INTERRUPTION IN THE TRANSMISSION THEREOF TO A PATRON, OR FOR ANY CLAIMS OR LOSSES ARISING THEREFROM OR OCCASIONED THEREBY. ~~NONE OF THE FOREGOING PARTIES SHALL BE LIABLE FOR ANY THIRDPARTY CLAIMS OR LOSSES OF ANY NATURE, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, PUNITIVE OR CONSEQUENTIAL DAMAGES.~~

Because some jurisdictions do not allow for the exclusion of damages, Vendini's liability in such jurisdictions will be limited to the greatest extent permitted by the law of such jurisdiction. In such jurisdictions, Member agrees that in no event will Vendini's liability to Member in connection with Vendini's provision of the Services and the terms of this Agreement exceed the amount paid by Member to Vendini in the six months immediately preceding the event which gave rise to such liability. In addition, because some jurisdictions do



not permit the disclaimer of certain warranties, the disclaimers set forth in this Section 7 may not apply to you.

Nothing contained herein shall be taken as a waiver of any defense available to Member, including without limitation the defense of sovereign immunity. Member shall not indemnify, defend, or hold harmless Vendini in any way whatsoever, nor shall Member accept responsibility for claims brought against Contractor by third parties.

8.0 Indemnification

~~Member agrees to defend, indemnify, and hold harmless Vendini, its affiliates and their respective directors, officers, shareholders, employees, agents, and assigns from and against all claims and expenses, including attorneys' fees, arising out of Member's use of the Services, including without limitation any dispute between Member and any guest or ticket holder of Member, provided that Vendini promptly notifies Licensor of any such claim or expense, cooperates with such defense at Member's expense, and Vendini allows Member control of the defense. Vendini shall have the right, but not the obligation, to be represented by counsel of its choice and to participate in the defense of the claim; provided, however, that the expense of such counsel and such participation shall be borne by Vendini.~~

9.0 Fees and Charges

For its services, Vendini applies transaction fees to Member's account, which are covered (i). entirely by Member, (ii). entirely by Patron, or (iii). by a combination of Member and Patron. A complete breakdown of transaction fees is available in Member's account section immediately after account has been upgraded to live mode.

9.1 Upfront Fees

Member shall pay any upfront costs before the Services are upgraded to live mode. Actual fees will be communicated to Member from Vendini via a written invoice, quote, and/or proposal detailing upfront costs.

9.2 Ongoing Fees

Fees for products and services will be communicated to Member from Vendini via a written invoice, quote, and/or proposal detailing ongoing costs. Fees are posted in Member's account section immediately after account has been upgraded to live mode.

10.0 Merchant Accounts

Member may elect to have its Patrons purchase Tickets through Member's merchant account (MMA) or through Vendini's merchant account (VMA) for either website and/or retail transactions. If Member has elected to have its Patrons purchase Tickets through VMA, such Tickets are considered to be Vendini inventory, which Vendini sells to Patrons as part of a direct retail transaction with such Patron.

11.0 Fees and Collection Cycle

All sales, fees, and funds are payable in U.S. dollars. A complete schedule of fees, account activity, and reserve details are provided in Member's account.

11.1 Daily Fee Collection Member's



Merchant Account (MMA) Member agrees that Vendini may deduct all fees and charges via ACH debit from the Member's business checking account for all website and/or retail transactions. Member must have a business checking account. Activation may take up to 7 business days.

Vendini will initiate an ACH debit to Member's business checking account 2 business days after transactions

occur to collect fees and payments due to Vendini. Vendini will wait until the collection amount is greater than or equal to \$25.00 before collecting. An outstanding balance of less than \$25.00 will be collected on a monthly basis.

Member agrees that there will be sufficient funds in Member's business checking account at time of collection. Member agrees that Vendini will not be held responsible for charges incurred due to insufficient funds. In the event funds are not available in Member's checking account at time of collection, Vendini will attempt to draft again the next business day. A fee of \$25.00 will be assessed for each transaction if funds are not available.

Delinquent accounts are subject to termination of Member's account.

104.2 Weekly Disbursement and Fee Collection – Vendini Merchant Account (VMA)

If applicable, Member agrees that Vendini may deposit credit card revenues collected via Vendini's merchant account less any fees or charges via ACH credit to Member's business checking account. Should any fees or charges exceed credit card revenues, Member agrees that Vendini will deduct fees via ACH debit from Member's business checking account. Member must have a business checking account. Activation may take up to 7 business days.

Disbursements and fee collections for events dates that have occurred will be reconciled with Member's checking account the Wednesday following the event date, unless the event date occurs on a Monday or Tuesday. If the event date occurs on a Monday or Tuesday, reconciliation will be made the following Wednesday. If Wednesday is a Bank Holiday, reconciliation will occur on the next business day after the Holiday if reconciliation is due.

Reserves are held to cover any applicable refunds, charge-backs, related charges, or fees due. A minimum reserve of 5% of disbursements will be held at the time an Event is settled and will be paid out on the next disbursement cycle following 90 days past the settlement date less refunds, charge-backs, related charges, or fees due.

104.3 Monthly Disbursement and Fee Collection

If Member has elected to have its Patrons purchase Tickets using VMA, and has not opted for Weekly Disbursement and Fee Collection, disbursements will be made by check. For all transactions processed with VMA, Vendini will issue payments to Member on a monthly basis, on the closest business day after the 30th of the month or the last day of the month (whichever occurs first.) Payments will include credit card revenues collected through VMA as of 11:59:59PM Pacific Time on the 20th day of the month for Events where the Event date has passed, less any fees or charges. Checks will be mailed via United States Postal Service First Class Mail to the address provided in the Member account section.

Should the amount of authorized fees or charges exceed the amount of revenues collected, Member's account may be subject to suspension or termination.

A service fee of \$10/month applies and will be deducted from each disbursement.

A reserve may be held to cover any applicable refunds, charge-backs, related charges, or fees due. A reserve of up to 10% of disbursements may be held at the time an Event is settled and will be paid out on the next disbursement cycle following 90 days past the settlement date less refunds, charge-backs, related charges, or fees due.

If for any reason a check needs to be reissued, Vendini will cancel original check and reissue a new check,

on the billing cycle following 6 weeks from original issue date.

12.0 Cancellations, Refunds, and Charge-backs

Method for cancellations and refunds is determined by whether Member is using Vendini's merchant account or Member's merchant account.

~~12~~1.1 Transactions using VMA

Any credit card charge-backs initiated by the Patron through their credit card issuing bank for any reason will incur a fee of \$25.00 to the Member. If there is no prompt amicable resolution, Vendini may also choose to process the refund.

Vendini is authorized to deduct these costs from Member's outstanding balance, or invoice Member for the costs if no balance exists. Vendini reserves the right to withhold up to 100% of disputed booking revenues for any event for a period up to 180 days after the event occurs, to allow all returns and disputed charges to clear processing.

VENDINI WILL NOT BE HELD RESPONSIBLE FOR MONETARY LOSS DUE TO FRAUDULENT TRANSACTIONS PROCESSED THROUGH THE VENDINI SERVICE. FRAUDULENT TRANSACTIONS, INCLUDING BUT NOT LIMITED TO CREDIT CARD THEFT AND/OR IDENTITY THEFT THAT ARE DISPUTED BY THE CARDHOLDER THROUGH THE CARDHOLDER'S BANK WILL BE IMMEDIATELY REFUNDED BY VENDINI. MEMBER AGREES THAT VENDINI MAY COLLECT REFUNDED TRANSACTIONS (INCLUDING ORIGINAL PROCESSING FEES) DUE TO FRAUD FROM MEMBER. REFUND AND CHARGEBACK FEES ALSO APPLY.

~~11~~2.2 Transactions using MMA

VENDINI WILL NOT BE HELD RESPONSIBLE FOR MONETARY LOSS DUE TO FRAUDULENT TRANSACTIONS PROCESSED THROUGH THE VENDINI SERVICE. IT IS THE SOLE RESPONSIBILITY OF MEMBER TO RESOLVE ANY ISSUE RELATED TO FRAUDULENT TRANSACTIONS, INCLUDING BUT NOT LIMITED TO CREDIT CARD THEFT AND/OR IDENTITY THEFT, THAT ARE DISPUTED BY THE CARDHOLDER AND/OR THE CARDHOLDER'S BANK.

13.0 Use of Equipment

~~If Vendini grants to the Member the right to use equipment ("Equipment") at no additional cost in connection with the services to be provided by Vendini. Member is obligated to return the Equipment to Vendini (at Member's cost) only if this Agreement is terminated prior to the end of the term of this Agreement. Member shall not rent, lease, sell or otherwise transfer the Equipment to any third parties. Member shall supervise and control the use of the Equipment by its employees to ensure that its use is in compliance with this Agreement. This Agreement conveys no ownership interest in the Equipment to Member. Member shall be responsible for the Equipment from the time it is delivered to Member until it is returned to Vendini. Member shall reimburse Vendini for any damage to the Equipment sustained during this time period. If Vendini does not receive the Equipment within thirty (30) days of the termination date of this Agreement, Member shall pay Vendini the Replacement Value (defined as replacement cost, shipping fees, and sales tax not included in replacement cost). Actual cost will be assessed at time of replacement. THE EQUIPMENT IS PROVIDED "AS IS." VENDINI MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT.~~

14.0 Entire Agreement



This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof, and supersedes all previous written or oral agreements between the parties with respect to such subject matter. Any amendments or modifications to this Agreement must be agreed to by Vendini and Member in writing. If any of the terms, provisions, or conditions of this Agreement or the application thereof to any circumstances shall be ruled invalid or unenforceable, the validity or enforceability of the remainder of this Agreement shall not be affected thereby, and each of the other terms, provisions, and conditions of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

124.1 Independent Contractor

Vendini's relationship with Member will be as that of an independent contractor.

15.0 Termination

~~If either party breaches any of its material obligations under this Agreement, the other party will have the right to~~ Either party may terminate the Agreement and/or discontinue delivery of service by giving 30 days' written notice to the ~~breaching other party unless the breaching party remedies the breach within a 30 day period.~~

Either party has the right to immediately, without notice, terminate this Agreement in the event either party terminates or suspends its business, becomes insolvent, makes an assignment for the benefit of creditors or suffers or permits the appointment of a receiver, trustee in bankruptcy, or similar official.

Upon any expiration or termination of this Agreement, Vendini will stop providing the Services to Member. Termination of this agreement will not terminate the confidentiality ~~and indemnification~~ obligations herein.

Member's obligations to pay the costs, expenses and fees due will survive the termination of this Agreement unless such termination is the result of a non-cured breach by Vendini. In such instance, Member will be responsible for costs, expenses and fees due up to the termination date.

135.1 Account Usage Lapse

Member's account may be terminated if there has been a period of sales inactivity of over 12 months. A re-activation fee \$995.00 will apply.

135.2 Excessive Refunds or Chargebacks

Member's account may be terminated if there are unusually high occurrences of refunds or chargebacks.

16.0 Controlling Law

This Agreement shall be construed in accordance with the laws of the ~~State of California~~ Commonwealth of Kentucky, without regard to its conflict of laws rules. Any cause of action of any nature arising out this Agreement shall be brought in the state or federal courts located in ~~San Francisco, California~~ Fayette County, Kentucky.

17.0 Addresses and Notices

Any communications under this Agreement shall be in writing and are deemed delivered upon receipt by the addressed party at the address specified herein. Communications may be sent by hand or messenger, by commercial overnight carrier, or by US mail (return receipt requested).

Downtown Arts Center
Attn: Celeste Lewis, Director
141 East Main Street
Lexington, Kentucky 40507

Vendini, Inc.
660 Market Street
San Francisco, CA 94104

18.0 Force Majeure

Except for the payment of any amount due pursuant to this Agreement, neither party will be liable to the other for damages in the event of any loss, damage, claim, delay or default arising by reason of Acts of Mother Nature, storm, fire, flood, earthquake, labor disturbance (including strikes, lockouts, and boycotts), war or terrorism, vandalism, civil commotion, shortages or unavailability of labor, present or future governmental law, ordinance, rule, or regulation, disruption of postal, banking, electrical, telephone or utility service, or other cause beyond the control of the party sought to be charged.

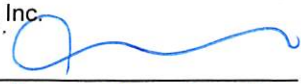
19.0 Headings

The section headings used herein are for convenience only and shall not be given any legal import whatsoever.

20.0 Signatures

In witness whereof, the parties have hereunto set their hands and seals as of the date set out beneath their respective signatures.

Member: Downtown Arts Center
By: _____
Name: _____
Title: _____
Date: _____

Vendini, Inc.
By: 
Name: Mark A. Dirsa
Title: CF
Date: 29 June 2015

