



Kenton County School District | It's about ALL kids.

Issue Paper

DATE:

November 2, 2022

AGENDA ITEM (ACTION ITEM):

Consider/Approve Approve Hinsdale's Drama Department use of On The Stage to help facilitate ticket sales, program design, and merchandise sales in the Spring of 2023 for their Lion King Jr. production

APPLICABLE BOARD POLICY:

01.1 Legal Status of the Board

HISTORY/BACKGROUND:

On the Stage is software that offers schools a platform for the sale of tickets and merchandise. The website also has graphics that the school can use to promote their show. On the Stage handles all sales, eliminating the need for staff to collect money. On the Stage will send us a check for funds raised after the program has ended.

FISCAL/BUDGETARY IMPACT:

No fiscal/budgetary impact to Hinsdale.

RECOMMENDATION:


Approval to Approve Hinsdale's Drama Department use of On The Stage to help facilitate ticket sales, program design, and merchandise sales in the Spring of 2023 for their Lion King Jr. production

CONTACT PERSON:

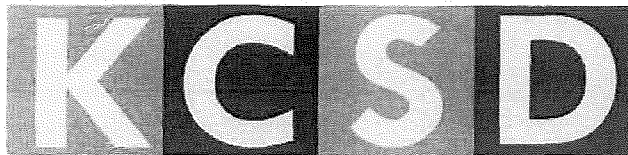
Mr. Josh Feldmann, Principal


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.



Kenton County School District | It's about ALL kids

THE KENTON COUNTY BOARD OF EDUCATION

1055 EATON DRIVE, FORT WRIGHT, KENTUCKY 41017

TELEPHONE: (859) 344-8888 / FAX: (859) 344-1531

WEBSITE: www.kenton.kyschools.us

Dr. Henry Webb, Superintendent of Schools

VENDOR ASSURANCES REGARDING PROTECTION OF PERSONAL AND CONFIDENTIAL INFORMATION

Data Security and Breach Protocols

Vendors that receive Personal Information from Kenton County Board of Education (herein referred to as "KCBOE") as defined by and in accordance with Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, et seq., (the "Act"), shall secure and protect the Personal Information by, without limitation, complying with all requirements applicable to non-affiliated third parties set forth in the Act.

"Personal Information" is defined in accordance with KRS 61.931(6) as "an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:

- a) An account number, credit card number, or debit card number that, in combination with any required security code, access code or password, would permit access to an account;
- b) A Social Security number;
- c) A taxpayer identification number that incorporates a Social Security number;
- d) A driver's license number, state identification card number or other individual identification number issued by any agency as defined under the Act;
- e) A passport number or other identification number issued by the United States government; or
- f) Individually Identifiable Information as defined in 45 C.F.R. sec. 160.013 (of the Health Insurance Portability and Accountability Act), except for education records covered by the Family Education Rights and Privacy Act, as amended 20 U.S.C. sec 1232g."

As provided in KRS 61.931(5), a "non-affiliated third party" includes any person or entity that has a contract or agreement with the KCBOE and receives (accesses, collects or maintains) personal information from the KCBOE pursuant to the contract or agreement.

The vendor hereby agrees to cooperate with the KCBOE in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.

The vendor shall notify as soon as possible, but not to exceed seventy-two (72) hours, KCBOE, the Commissioner of the Kentucky State Police, the Kentucky Auditor of Public Accounts, the Commonwealth (Kentucky) Office of Technology, and the Commissioner of the Kentucky Department of Education of a determination of or knowledge of a breach, unless the exception set forth in KRS 61.932(2)(b)(2) applies and the vendor abides by the requirements set forth in that exception. Notification shall be in writing on a form developed by the Commonwealth (Kentucky) Office of Technology.

The vendor hereby agrees to report to the KCBOE, immediately and within twenty-four (24) hours, any known reasonably believed instances of missing data, data that has been inappropriately shared, or data taken off site.

The vendor hereby agrees that the KCBOE may withhold payment(s) owed to the vendor for any violation of the Act's notification requirements.

The vendor hereby agrees to undertake a prompt and reasonable investigation of any security breach as defined under the Act in accordance with KRS 61.933.

Upon conclusion of an investigation of a security breach as defined under the Act as required by KRS 61.933, the vendor hereby agrees to an apportionment of the costs of the notification, investigation, and mitigation of the security breach.

In accordance with KRS 61.932(2)(a), the vendor shall implement, maintain, and update security and breach investigation procedures that are appropriate to the nature of the information disclosed, that are at least as stringent as the security and breach investigation procedures and practices established by the Commonwealth (Kentucky) Office of Technology and that are reasonably designed to protect the Personal Information from unauthorized access, use, modification, disclosure, manipulation, or destruction.

Student Data Security

Pursuant to KRS 365.734, if the vendor is a cloud computing service provider (which is defined pursuant to KRS 365.734(1)(b) as any person or entity other than an educational institution that operates cloud computing services) or, through service to the KCBOE, becomes the equivalent of a cloud computing service provider, the vendor further hereby agrees that:

- The vendor shall not process student data as defined pursuant to KRS 365.734 for any purpose other than providing, improving, developing, or maintaining the integrity of its cloud computing services, unless the vendor receives express permission from the student's parent. The vendor shall work with the KCBOE to determine the best method of collecting parental permission.
- With a written agreement for educational research, the vendor may assist the KCBOE to conduct educational research as permitted by the Family Education Rights and Privacy Act of 1974, as amended, 20 U.S.C. sec. 1232g.
- Pursuant to KRS 365.734, the vendor shall not in any case process student data to advertise or facilitate advertising or to create or correct an individual or household profile for any advertisement purposes.
- Pursuant to KRS 365.734, the vendor shall not sell, disclose, or otherwise process student data for any commercial purpose.
- Pursuant to KRS 365.734, the vendor shall certify in writing to the agency that it will comply with KRS 365.734(2).

Family Educational Rights and Privacy Act, National School Lunch Act and Child Nutrition Act

If during the course of this agreement, the KCBOE discloses to the vendor any data protected by the Family Educational Rights and Privacy Act of 1974 (FERPA), as amended (20 U.S.C. sec. 1232g, *et seq.*), and its regulations, and data protected by the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. sec. 1751 *et seq.*), and the Child Nutrition Act of 1966 (CNA) (42 U.S.C. sec. 1771 *et seq.*), the vendor agrees that it is bound by and will comply with the confidentiality, security and redisclosure requirements and restrictions stated in FERPA, NSLA and CNA.

The vendor hereby agrees to report to the KCBOE, immediately and within twenty-four (24) hours, any known reasonably believed instances of missing data, data that has been inappropriately shared, or data taken off site.

The vendor agrees that FERPA-protected information is confidential information. FERPA-protected information includes, but is not limited to the student's name, the name of the student's parent or other family members, the address of the student or student's family, a personal identifier, such as the student's social security number, student number, or biometric record, other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name, and other information that, alone or in combination, is linked or linkable to a specific

student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.

The vendor understands and acknowledges that any unauthorized disclosure of confidential information is illegal as provided in FERPA and in the implementing federal regulations found in 34 CFR, Part 99. The penalty for unlawful disclosure is a fine of not more than \$250,000 (under 18 U.S.C. sec. 3571) or imprisonment for not more than five years (under 18 U.S.C. sec. 3559), or both.

The vendor understands and acknowledges that children's free and reduced price meal and free milk eligibility information or information from the family's application for eligibility, obtained under provisions of the NSLA or the CNA is confidential information and that any unauthorized disclosure of confidential free and reduced price lunch information or information from an application for this benefit is illegal. The penalty for unlawful disclosure is a fine of not more than \$1,000.00 (under 7 C.F.R. 245.6) or imprisonment for up to one year (under 7 C.F.R. 245.6), or both.

In the event there is a conflict between this agreement and any other agreement between KCBOE and Vendor, the terms of this agreement shall apply.

ARTech Holdings LLC d/b/a On The Stage

Vendor Name

254 West 54th Street, 14th Floor, New York, NY 10019

Vendor Address

Vendor Telephone

jeff@onthestage.com

Vendor Email Address


Signature by Vendor's Authorized Representative

Jeff Hubbard

Print Name

October 12, 2022


Date


ON THE
NO


STAGE

REVIEWING THE MEETING

QUICK RECAP

 With On The Stage there are **no startup costs or hidden fees**. Our platform will always be free for you and your organization to use. The only time you'd ever pay for our services is you choose to absorb our standard fees into the cost of your ticket.

 When you send over your W9, **please confirm** the following with me: that you would like to use the pricing plan we discussed (you are locked into that plan for a year, but can upgrade anytime!) and the address where you'd like us to send your revenue checks. Remember, you can sign up for ACH payments at any time in your Settings page.

 To get started with On The Stage, the only things you need to do are create your account and send in your W9. By creating the account you're agreeing to our Terms of Service (our terms protect our organization and yours) and you're agreeing to work with On The Stage for **one full season or one calendar year**. It's that easy!

MY PRICING PLAN

My Account Executive recommended the Empower plan.

Why did we discuss this plan? So I have access to the fundraising suite and the ability to upload my email contacts.

The base per ticket fee for my pricing plan is \$1.35. The CC processing fee is 4% + 30¢ per order.

THE SHOW MUST GO ON [LINE].

ON THE
STAGE

STAGE

NEXT
STEPS

CONFIRMATION CHECKLIST

Have I created my account? ☐

Have I confirmed my pricing plan? ☐

Have I sent in my W9? ☐

WHY DO THEY NEED MY W9?

On The Stage will use your signed W9 to verify your organization as a legal entity, and will use the name and address on that form to process all payments following the close of your productions.

PLAN FOR MY NEXT SHOW

My next show is The Lion King JR, opening April 2023.

MY TO-DO LIST

My next step to get my AE my W9 is to make sure my bookkeeper approves OTS

If I am unable to do so, I will reach out to my AE to have her answer their questions directly

DATES AND TIMES

I must confirm my account no later than mid September because I'll need that time to prep for my fundraiser/registration page

The deadline I've set for sending in my W9 having an update is August 31st

If I don't contact my AE before then, we will reconnect via phone at 4:15pm.

THE SHOW MUST GO ON LINE!



On The Stage Order Form

This Agreement is made between:

OTS	Artech Holdings, LLC (d/b/a On The Stage, hereinafter "OTS") 254 W. 54 th Street, 13 th Floor, New York, NY 10019
Customer	Kenton County School District 1055 Eaton Drive Ft. Wright, KY 41017

Customer appoints OTS, as of the Effective Date and during the Term set forth below, as its exclusive agent to process ticket sales sold either online or through its box office, both through the OTS ticketing platform. The parties agree that these terms including the Commercial Terms below, shall apply as between the parties to the sale of any tickets sold on behalf of the Customer during the Term, to the exclusion of any other terms and conditions. In the event of any inconsistency between the provisions of this OTS Terms of Service and the provisions of this Order Form, the provisions of the Order Form shall prevail.

Kenton County School District	OTS
By _____	<i>Ryan P. Bush</i>
Name:	Name: Ryan P. Bush
Title:	Title: President



Commercial Terms

Effective Date	Nov 29 2022
End Date	July 1st, 2024
Product Plan	OTS Empower Plan
Booking Fees	\$1.35 per Ticket
Processing Fee	<p>OTS charges a fee of 4% + \$.30 per on each transaction (" Processing Fee").</p> <p>For OTS Managed Payment Accounts, Customer will receive the transaction total minus all applicable OTS Fees and the Processing Fee ("Net Receipts") when payment is sent.</p> <p>For 3rd Party Merchant Accounts, Customer will receive the Net Receipts. In addition, Customer receives 2.9% + \$0.30 of the transaction total ("3rd Party Merchant Rebate"). Customer will likely pay other fees per its agreement directly with 3rd Party Merchant.</p> <p>In both cases, Customer receives roughly the same amount after all Fees and rebates are assessed.</p>
Other Fees	Other Fees set forth in Section 3(c) of OTS Terms as applicable.
Other Commercial Terms	Customer agrees to create and maintain a 3rd Party Merchant Account via Stripe Connect Commercial account. Per Section 3(b)(vi)(2), Stripe payment terms will apply for Customer Payments.
Other Terms	OTS agrees to waive late fees and give customer Option to cancel with 30 days notice notwithstanding sections herewithin to the contrary.

RPB



Terms of Service

These Terms of Service constitute a legally binding agreement made between you, whether personally or on behalf of an entity ("Customer," or "Customers") and On The Stage (a dba of ARTech Holdings LLC) ("OTS") concerning Customer's access to and use of the: (i) OTS Site, (ii) OTS Ticketing Platform (including Enterprise Ticketing) (the "Ticketing Platform"); (ii) OTS Streaming Platform (including Exclusive Content Services) (the "Streaming Platform"); and/or (iii) OTS Fundraising Platform (including Exclusive VOD Content Services) (the "Fundraising Platform").

To help make OTS Services secure, all users of OTS Services are required to accept and comply with these Terms of Service. Customer agrees that by accessing or using OTS Services, Customer has read, understands, and agrees to be bound by these Terms of Service. If Customer does not agree with all of the Terms of Service, then Customer is expressly prohibited from using OTS Services and must discontinue use immediately.

Supplemental terms and conditions, documents that may be posted on the Site from time to time, and documents OTS may, from time to time, ask you to acknowledge and sign are hereby expressly incorporated herein by reference. OTS reserves the right, in its sole discretion, to make changes or modifications to these Terms of Service at any time and for any reason.

Customer will be subject to, and will be deemed to have been made aware of and to have accepted, the changes in these Terms of Service by Customer's continued use of the Site after the date such revised Terms of Service are posted. In the event of a material change to how personal information will be handled, we will make you aware of the change before it goes into effect.

The information provided on the Site is not intended for distribution to or use by any person or entity in any jurisdiction or country where such distribution or use would be contrary to law or regulation or which would subject OTS to any registration requirement within such jurisdiction or country. Accordingly, those persons who choose to access the Site from their location do so on their own initiative and are solely responsible for compliance with local laws, if and to the extent local laws are applicable.

1. Definitions

- (a) **"End User" or "End Users"** means any person to whom a ticket for Offerings through the Site is sold by OTS on behalf of the Customer.
- (b) **"EULA"** means the End User License Agreement that End Users enter into when they purchase a product or service from the Site.
- (c) **"Force Majeure Programs"** mean the definition provided in Section 2(i).



- (d) **“Fundraising Platform”** means the product or services that OTS offers Customers for purposes of fundraising.



- (e) **"Gross Receipts"** means the monies received by OTS from End Users for all Offerings, including Tickets and Donations, sold in respect of the relevant Programs.
- (f) **"Indemnified Claim"** means the definition provided in Section 2(e)(iii).
- (g) **"Indemnified Party"** means the definition provided in Section 2(e)(iii).
- (h) **"Indemnifying Party"** means the definition provided in Section 2(e)(iii).
- (i) **"License Term"** means the distribution terms specified in any Schedule issued pursuant to these Terms of Service.
- (j) **"Losses"** mean the definition provided in Section 2(e)(i).
- (k) **"Marketing Services"** means automated emails and social media postings that OTS shall coordinate to promote a Program or fundraiser.
- (l) **"Net Receipts"** means the monies received by OTS from End Users for all Offerings, including Tickets and Donations, sold in respect of the relevant Programs less any Chargebacks (and excluding any monies subsequently refunded to Customers), and less the Fees detailed in Section 3(c).
- (m) **"Offerings"** means any products or services displayed on the Site for Customers or End Users to purchase.
- (n) **"OTS Service"** or **"OTS Services"** means the Site, the Ticketing Platform, the Streaming Platform, the Fundraising Platform, and the Offerings collectively and individually.
- (o) **"Order Form"** means a separate agreement signed between OTS and Customer to address additional terms. In the event of an inconsistency between these Terms of Service and the terms in an Order Form, the Order Form will govern.
- (p) **"Program"** means the means any performance, production or other event promoted or produced by the Customer for which the parties agree that OTS shall make tickets available for sale to the public.
- (q) **"Promotion Site"** means a dedicated Internet Web page created by OTS to promote a Program.
- (r) **"Schedule"** means certain supplemental terms and conditions that govern any Customer's use of the Streaming Platform.



- (s) **“Site”** means the OTS Website as well as any other media form, media channel, mobile website, or mobile application related, linked or otherwise connected thereto.



- (t) **“Streaming Platform”** means the video streaming viewing technology provided through an online portal through which Offerings can be viewed at URLs that OTS specifies pursuant to the Streaming Platform Services (as defined below) provided hereunder, together with certain software-based editing, visual effects, and other production support services as may be specified below.
- (u) **“Streaming Platform Services”** means those services specified in Section 4(b).
- (v) **“Submission”** or **“Submissions”** means the definition provided in Section 2(u).
- (w) **“Subscription”** or **“Subscriptions”** means a package purchase of tickets to multiple Programs offered by Customer specifically listed therein.
- (x) **“Term”** means the duration of an agreement found within a Schedule.
- (y) **“Third-Party Claims”** mean the definition provided in Section 2(e)(i).
- (z) **“Third Party Services”** means services, products, offers and promotions provided by third parties and not by OTS.
- (aa) **“Third Party Websites”** means websites and platforms operated by third parties and not by OTS.
- (bb) **“Territory”** means worldwide.

2. **General Provisions**

- (a) **Representations and Warranties.**
 - (i) Each party represents and warrants that it has the full right, power, and authority to enter into and perform its obligations under these Terms of Service.
 - (ii) Customer represents and warrants (1) that Customer has secured the public performance rights to any Program prior to utilizing the OTS Services in connection with any such Program, (2) that Customer has the right to deliver the Program for which the Customer is using OTS Services to sell tickets, and (3) that the Program does not and will not violate or infringe any copyright, trademark, or other intellectual property right, or any privacy, publicity, contract, or other third-party right, or constitute libel or slander, of any person, company, or other entity. OTS holds no



responsibility for securing or confirming such rights.

- (iii) By using OTS Services, Customer represents and warrants that: (1) Customer agrees to comply with these Terms of Service and has legal capacity to do so; (2) as it pertains to making an online purchase, Customer is not classified as a minor in the jurisdiction in which Customer is located; (3) Customer will not access OTS Services through automated or non-human means, whether through a bot, script or otherwise; (4) Customer will not use OTS Services for any illegal or unauthorized purpose; and (5) Customer's use of OTS Services will not violate any applicable law or regulation.
- (iv) In consideration of Customer's use of OTS Services, Customer agrees to: (a) provide true, accurate, current and complete information about itself as prompted by the registration form, if applicable; (b) maintain and update this information to keep it true, accurate, current, and complete; and (c) not to resell or transfer Customer's OTS account or associated web properties, nor use of or access to OTS Services, except to another agent of the original Customer organization. If any information provided by Customer is untrue, inaccurate, not current, or incomplete, OTS reserves the right to terminate Customer's account and refuse any and all current or future use of OTS Services (or any portion thereof). OTS reserve the right to verify or re-verify all information submitted to OTS Services, either automatically or in real time during the initial registration process, after the initial registration should it be required, and/or as any ongoing need may dictate, using any commercially or publicly available means necessary.
- (v) Customer certifies that its performance license permits Customer to use outside artwork in the promotion of its production, or Customer certifies that you have been granted explicit permission to use any/all artwork that Customer will provide to OTS for the promotion of your production.
- (vi) Customers who provide contact lists for the OTS Services to promote Programs via email represent and warrant that they have obtained all necessary consents, approvals, and/or opt-ins to contact these individuals via email. Customers further warrant that they have all necessary consents, approvals, and/or opt-ins to contact past ticket purchasers via email to promote future Programs.
- (vii) Customers who take advantage of OTS Services to integrate with social media channels and automate postings represent and warrant that they have all necessary permissions, approvals, and/or credentials to access those social media accounts and authorize



OTS to post content to those accounts on their behalves.

ON THE STAGE

- (b) Choice of Law; Venue. These Terms of Service and all matters arising out of or relating to these Terms of Service, including tort and statutory claims, are governed by the laws of Kentucky (including its statute of limitations), without giving effect to any conflict of law provisions thereof that would result in the application of the laws of a different jurisdiction. *RPB*
- (c) Dispute Resolutions. By agreeing to the Terms of Service, you waive any present or future right that you may have to a trial by jury, and agree that any controversy or claim arising out of or relating to these Terms of Service or the breach thereof, or otherwise relating to the OTS Services, shall be settled by arbitration within the State of Kentucky, and shall be administered by the American Arbitration Association under its Commercial Arbitration Rules. Any decision or award as a result of any such arbitration proceeding shall be in writing and shall provide an explanation for all conclusions of law and fact and shall include the assessment of costs, expenses, and reasonable attorneys' fees. Any judgment of award rendered by the arbitrator(s), which will be the final ruling, shall include a written record of the arbitration hearing and may be entered in any court having jurisdiction thereof. YOU FURTHER AGREE THAT YOU WILL NOT PARTICIPATE IN ANY CLASS ACTION CLAIMS AGAINST OTS OR ITS REPRESENTATIVES AND YOU MUST ARBITRATE ANY CLAIM YOU BRING AGAINST OTS INDIVIDUALLY. CUSTOMER EXPRESSLY WAIVES YOUR ABILITY TO BRING, REPRESENT, JOIN OR OTHERWISE MAINTAIN A CLASS ACTION OR ANY SIMILAR COLLECTIVE ACTION AGAINST OTS IN ANY FORUM. *RPB*
- (d) Limitation of Liability. IN NO EVENT WILL OTS OR ITS DIRECTORS, EMPLOYEES, OR AGENTS BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL, OR PUNITIVE DAMAGES, INCLUDING LOST PROFIT, LOST REVENUE, LOSS OF DATA, OR OTHER DAMAGES ARISING FROM YOUR USE OF THE SITE, THE STREAMING PLATFORM, THE FUNDRAISING PLATFORM, OR THE OFFERINGS, EVEN IF OTS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, OTS' LIABILITY TO YOU FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION, WILL AT ALL TIMES BE LIMITED TO THE LESSER OF THE AMOUNT PAID, IF ANY, BY CUSTOMER TO OTS. CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR



ALL OF THE ABOVE DISCLAIMERS OR LIMITATION MAY NOT
APPLY TO YOU, AND YOU MAY HAVE ADDITIONAL RIGHTS.

(e) Indemnification.

- (i) Customer agrees to defend, indemnify, and hold harmless OTS, including its subsidiaries, affiliates, and all of OTS' officers, agents, partners and employees, from and against any losses, damages, liabilities, deficiencies, claims, actions, demands, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind ("Losses") including reasonable attorneys' fees, the cost of enforcing any right to indemnification hereunder, and the cost of pursuing any insurance providers, arising out of or in connection with any third-party claim, suit, action, or proceeding ("Third-Party Claim") (i) relating to any actual or alleged breach or misrepresentation by Customer of, inaccuracy in, or failure to perform, its representations, warranties, covenants, or other obligations hereunder; (ii) failure to deliver the Program by the Delivery Date; (iii) relating to the subject matter of the Program or any other Deliverables; (iv) resulting directly or indirectly from the Program or OTS' use of the Program or any Deliverables in accordance with these Terms of Service; (v) relating to any sales tax or gross receipts tax paid by OTS and reimbursable by Customer under these Terms of Service; (vi) relating to Customer's use of OTS Services; (vii) any breach of Customer's representations and warranties set forth in these Terms of Service; (viii) Customer's violation of the rights of a third party, including, but not limited to intellectual property rights; or (ix) any overt harmful act toward any other user of OTS Services.
- (ii) OTS shall indemnify, defend, and hold harmless Customer and its officers, directors, employees, agents, affiliates, successors, and assigns, from and against any Losses, including attorneys' fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers, arising out of or in connection with any Third-Party Claim relating to any actual or alleged breach or misrepresentation by OTS of its representations, warranties, covenants, or other obligations hereunder.
- (iii) A party entitled to indemnification under this section ("Indemnified Party") shall promptly notify the party from whom it is seeking indemnification ("Indemnifying Party") upon becoming aware of a Third-Party Claim with respect to which the Indemnifying Party is obligated to provide indemnification under this section ("Indemnified Claim"). The Indemnifying Party shall promptly assume control of the defense and investigation of the Indemnified Claim, with counsel of its own choosing, and the Indemnified Party



shall fully cooperate with the Indemnifying Party in connection therewith, in each case at the Indemnifying Party's sole cost and

expense. The Indemnified Party may participate in the defense of such Indemnified Claim, with counsel of its own choosing and at its own cost and expense. The Indemnifying Party shall not settle any Indemnified Claim on any terms or in any manner that adversely affects the rights of any Indemnified Party without such Indemnified Party's prior written consent (which consent shall not be unreasonably withheld, conditioned, or delayed). If the Indemnifying Party fails or refuses to assume control of the defense of such Indemnified Claim, the Indemnified Party will have the right, but no obligation, to defend against such Indemnified Claim, including settling such Indemnified Claim after giving notice to the Indemnifying Party, in each case in such manner and on such terms as the Indemnified Party may deem appropriate. Neither the Indemnified Party's failure to perform any obligation under this section nor any act or omission of the Indemnified Party in the defense or settlement of any Indemnified Claim will relieve the Indemnifying Party of its obligations under this section, including with respect to any Losses, except to the extent that the Indemnifying Party can demonstrate that it has been materially prejudiced as a result thereof.

(f) Electronic Communications.

- (i) Visiting or using the Site, the Streaming Platform, or the Fundraising Platform, sending OTS emails, and completing online forms constitute electronic communications. Customer consents to receive electronic communications from OTS, and Customer agrees that all agreements, notices, disclosures, and other communications OTS provide to it electronically, via email and on the Site, satisfy any legal requirements that such communication be in writing. CUSTOMER HEREBY AGREES TO THE USE OF ELECTRONIC SIGNATURES, CONTRACTS, ORDERS, AND OTHER RECORDS, AND TO ELECTRONIC DELIVERY OF NOTICE, POLICIES, AND RECORDS OF TRANSACTIONS INITIATED OR COMPLETED BY OTS OR VIA THE SITE. The parties hereby waive any rights or requirements under any statutes, regulations, rules, ordinances, or other laws in any jurisdiction which require an original signature or delivery or retention of non-electronic records, or to payments or the granting of credits by any means other than electronic means. Customer is responsible for providing, at its expense, any access to the Internet and any required equipment.

(g) Miscellaneous. These Terms of Service, together with any policies or



operating rules posted by OTS on the Site or the Offerings and any Order Forms executed by OTS and Customer, constitute the entire agreement and

understanding between Customer and OTS. OTS' failure to exercise or enforce any right or provision of these Terms of Service shall not operate as a waiver of such right or provision. These Terms of Service operate to the fullest extent permissible by law. OTS may assign any or all of OTS' rights and obligations to others at any time. OTS shall not be responsible or liable for any loss, damage, delay or failure to act caused by any cause beyond OTS' reasonable control. If any provision or part of a provision of these Terms of Service is determined to be unlawful, void, or unenforceable, that provision is deemed severable from the Terms of Service and does not affect the validity and enforceability of any remaining provisions. Upon a determination that any term or provision is invalid, illegal, or unenforceable, the parties shall negotiate in good faith to modify these Terms of Service to effect the original intent of the parties as closely as possible in order to ensure the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible. There is no joint venture, partnership, employment or agency relationship created between the parties as a result of these Terms of Service or use of the Site.

(h) User Data.

- (i) OTS will maintain certain data that Customer transmits to OTS Services for the purpose of managing the performance of OTS Services, as well as data relating to Customer's use of same. Although OTS performs regular routine backups of data, Customer is solely responsible for all data that it transmits or that relates to any activity it has undertaken using OTS Services. Customer agrees that OTS shall have no liability to Customer for any loss or corruption of any such data, and Customer hereby waives any right of action against OTS arising from any such loss or corruption of such data.
- (ii) For live stream and virtual events, sessions may be recorded for quality and evaluation purposes. These recordings are not intended for distribution, and will be automatically deleted after five (5) days. Recordings may be only viewed by OTS staff if there is a reported problem in need of evaluation, and for quality review purposes. Customers have the ability to record each session to their computers. Customer is solely responsible for implementing the relevant requirements as outlined by Children's Internet Protection Act in order to be in compliance.
- (iii) Customer agrees to keep confidential and secure any personal identifiable information belonging to any End User that purchases a ticket for any Program. Customer acknowledges that any failure

ON THE STAGE

by Customer to keep such data confidential and secured risks
Customer

being subjected to notification obligations pursuant to applicable law.

- (iv) For an explanation of what information OTS collects and how that information may be used and/or shared with others, please refer to our [Privacy Policy](#).
- (i) Force Majeure. Neither Customer nor OTS will be liable or responsible to the other party, nor be deemed to have defaulted under or breached these Terms of Service, for any failure or delay in fulfilling or performing any term of these Terms of Service (except for any obligations to make payments to the other party hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's reasonable control, including, without limitation, the following force majeure events ("Force Majeure Programs"): (a) acts of God; (b) flood, fire, earthquake, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) government order or law; (e) actions, embargoes, or blockades in effect on or after the date of these Terms of Service; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages or slowdowns, or other industrial disturbances; and (i) shortage of adequate power. The impacted party shall give notice within five days of the Force Majeure Program to the other party, stating the period of time the occurrence is expected to continue. The impacted party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Program are minimized. The impacted party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. If the impacted party's failure or delay remains uncured for a period of 10 days following written notice given by it under this section, either party may thereafter terminate these Terms of Service on 10 days' written notice.
- (j) Terms and Termination of Account.
 - (i) These Terms of Service shall remain in full force and effect while Customer uses OTS Services. WITHOUT LIMITING ANY OTHER PROVISION OF THESE TERMS OF SERVICE, OTS RESERVES THE RIGHT TO, IN ITS SOLE DISCRETION AND WITHOUT NOTICE OR LIABILITY, DENY ACCESS TO AND USE OF OTS SERVICES (INCLUDING BLOCKING CERTAIN IP ADDRESSES), TO ANY PERSON FOR ANY REASON OR FOR NO REASON, INCLUDING WITHOUT LIMITATION FOR BREACH OF ANY REPRESENTATION, WARRANTY, OR COVENANT CONTAINED IN THESE TERMS OF SERVICE OR OF ANY APPLICABLE LAW OR REGULATION. OTS MAY TERMINATE CUSTOMER'S USE



OR PARTICIPATION IN



OTS SERVICES OR DELETE ANY CONTENT OR INFORMATION THAT CUSTOMER POSTED AT ANY TIME, WITHOUT WARNING, IN OTS' SOLE DISCRETION.

- (ii) If OTS terminates or suspends a Customer's account for any reason, Customer is prohibited from registering and creating a new account under Customer's name, a fake or borrowed name, or the name of any third party, even if Customer may be acting on behalf of the third party. In addition to terminating or suspending Customer's account, OTS reserves the right to take appropriate legal action, including without limitation pursuing civil, criminal, and injunctive redress.
- (iii) OTS also may, in its sole discretion, provide notice to Customer if Customer materially breaches these Terms of Service and provide Customer with an opportunity to cure such breach within 30 days after receiving notice of such breach.
- (iv) Notwithstanding the foregoing, when an Order Form specifies an Effective Date and End Date (a "Subscription Term"), the following terms apply, and for the avoidance of doubt, supersede terms herewithin to the contrary:
 - (1) Either party may terminate the agreement if: (i) the other party becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors; or (ii) the other party becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within 60 days of filing.
 - (2) Material Breach. Either party will have the right to terminate this agreement, including upon written notice, if the other party materially breaches the agreement and fails to cure such breach within 30 days after receipt of such written notice. This 30-day cure period will not apply in the case of your failure to pay Fees as they become due.
 - (3) Automatic Renewal. Unless otherwise specified in an applicable Order Form, all Subscription Terms automatically renew as follows: Annual or multi-year Subscription Terms will automatically renew for additional,



successive 12 month increments beginning on the day after the Order Form End Date, unless you inform us, or we



inform you, in writing, of non-renewal at least 30 days prior to your Annual Renewal Date.

(k) Effect of Termination; Survival.

- (i) On the expiration or earlier termination of these Terms of Service, OTS may retain one archived copy of any Program solely for purposes of responding to claims or inquiries relating to the Program.
- (ii) Any rights or obligations of the parties in these Terms of Service which, by their nature, should survive termination or expiration of these Terms of Service, including representations, warranties, and indemnification obligations, will survive any such termination or expiration.

(l) Waiver of Equitable Relief. Notwithstanding any other provision to the contrary contained in these Terms of Service, Customer acknowledges and agrees that (a) monetary damages at law are a fully adequate remedy to compensate Customer for any breach or threatened breach of these Terms of Service by OTS, and (b) an action at law for monetary damages is Customer's sole and exclusive remedy for any such breach. No breach by OTS of these Terms of Services will entitle Customer to equitable relief, including specific performance, injunctive relief, rescission, or any other form of equitable remedy. Without limiting the generality of the immediately preceding two sentences, Customer shall not seek injunctive relief to enjoin or otherwise restrain or limit the distribution, exploitation, advertising, or promotion of the Customer or any rights therein.

(m) No Obligation. OTS is not obligated to exhibit, distribute, or otherwise exploit any Program. Provided that Customer is not in default or breach of these Terms of Service, and subject to all terms and conditions of these Terms of Service, OTS has full discretion to schedule, preempt, or cancel the exhibition of a Program.

(n) Assignment. OTS may freely assign or otherwise transfer any of its rights and delegate any of its obligations under these Terms of Service. Customer may not assign or otherwise transfer any of its rights or delegate any of its obligations under these Terms of Service without the prior written consent of OTS. These Terms of Service are binding on and inure to the benefit of the parties hereto and their respective permitted successors and assigns.



- (o) Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder that are required to be in writing to OTS will be deemed effectively given: (a) when received, if delivered by hand

(with written confirmation of receipt); (b) when received if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or email if sent during normal business hours of the recipient, and on the next business day, if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent at the addresses indicated below (or at such other address specified by a party in a notice given in accordance with this Section): admin@artech.holdings

- (p) Interpretation. For purposes of these Terms of Service (a) the words “include,” “includes,” and “including” are deemed to be followed by the words “without limitations”; (b) the word “or” is not exclusive; and (c) the word “herein,” “hereof,” “hereby,” “hereto,” and “hereunder” refer to these Terms of Service as a whole. These Terms of Service is intended to be construed without regard to any presumption or rule requiring construction of interpretation against the party drafting an instrument or causing any instrument to be drafted.
- (q) Third Party Services. In connection with Customer’s use of OTS Services, Customer may be made aware of Third Party Services. If Customer decides to use Third Party Services, Customer is responsible for reviewing and understanding the terms and conditions governing any Third Party Services. Customer agrees that the third party, and not OTS, is responsible for the performance of the Third Party Services.
- (r) Third Party Websites. Customers using the Streaming Platform will be able to integrate with Third Party Websites like Zoom, Switcher Studio, and Ayrshare that they are already using. Customers participating in Enterprise Ticketing services similarly will be able to take advantage of API integrations into Third Party Websites that Customers are already using. In those situations, OTS will link to the Third Party Websites where tickets will be advertised and sold. Other OTS Services may also contain or reference links to Third Party Websites. These links are provided only as a convenience. All Third Party Websites are not under the control of OTS. OTS is not responsible for the content of any Third Party Website or any link contained in a Third Party Website. OTS does not review, approve, monitor, endorse, warrant, or make any representations with respect to Third Party Websites, and the inclusion of any link in the OTS Service is not and does not imply an affiliation, sponsorship, endorsement, approval, investigation, verification or monitoring by OTS of any information contained in any Third Party Website. In no event will OTS be responsible for the information contained in such Third Party Website or for your use of or inability to use such website. Access to any Third



Party Website is at Customer's own risk, and Customer acknowledges and understands that linked Third Party Websites may contain terms and privacy policies that are



different from those of OTS. OTS is not responsible for such provisions, and expressly disclaims any liability for them.

(s) Products and Services on the Site.

(i) OTS makes every effort to display as accurately as possible the feature, specifications, and details of the products, services, and Offerings available on the Site. However, OTS do not guarantee that the features, specifications, and the details of the products, services, and Offerings will be accurate, complete, reliable, current, or free of other errors, and an electronic display may not accurately reflect the actual details. All products, services, and Offerings are subject to availability at the time of the transaction, and OTS cannot guarantee that products, services, and Offerings will be in available.

(ii) All descriptions or pricing of the products, services, and Offerings are subject to change at any time without notice. OTS reserves the right to discontinue any products, services, and Offerings at any time for any reason. OTS does not warrant that any errors in OTS Services will be corrected.

(t) Exclusivity. For any Program or Series which Customer creates and publishes a Promotion Site using the Site, OTS will act as the sole and exclusive ticketing agent for the Customer in connection with the sale of all tickets sold online via the Internet, by phone, or in person, including those paid for with cash, which shall be processed through the OTS walk-up ticket functionality. The OTS platform will be the sole viewing platform for streamed and/or virtual performances distributed by these Customers. In the event OTS discovers or determines such a Customer is streaming a production ticketed or streamed through the site to an unauthorized platform, OTS, at its discretion, may immediately and permanently revoke that Customer's user license and disable Customer's site(s). In the event of Customer's user license being revoked, Customer will be responsible for all ticket fees, streaming fees, credit card refund and/or dispute fees, as applicable.

For Customers utilizing Enterprise Ticketing services, OTS will still be the exclusive ticketing system of record for the event, but it can be promoted on any platform of the Customer's choosing, as long as the transactions for the sale of tickets ties back to OTS. Customers will be able to leverage OTS' API to promote their Programs on Third Party Websites.



- (u) Submissions. Customer acknowledges and agrees that any questions, comments, suggestions, ideas, feedback, or other information regarding OTS Services ("Submissions") provided by Customer are non-confidential



and shall become OTS' sole property. OTS shall own exclusive rights, including all intellectual property rights, and shall be entitled to the unrestricted use and dissemination of these Submissions for any lawful purpose, commercial, or otherwise, without acknowledgement or compensation to Customer. Customer hereby warrants that any such submissions are original or that Customer has the right to submit such Submissions. Customer agrees there shall be no recourse against OTS for any alleged or actual infringement or misappropriation of any proprietary right in Customer's submissions.

- (v) OTS Services Management. OTS reserves the right, but not the obligation, to: (1) monitor OTS Services for violations of these Terms of Service; (2) take appropriate legal action against anyone who, in OTS' sole discretion, violates the law or these Terms of Service, including without limitation, reporting such user to law enforcement authorities; (3) in OTS' sole discretion and without limitation, refuse, restrict access to, limit the availability of, or disable (to the extent technologically feasible) any of Customer's contributions or any portion thereof; (4) in OTS' sole discretion and without limitation, notice, or liability, to remove from OTS Services or otherwise disable all files and content that are excessive in size or are in any way burdensome to OTS' systems; and (5) otherwise manage OTS Services in a manner designed to protect OTS' rights and property and to facilitate the proper functioning of OTS Services.
- (w) Support. Customers and End Users shall be provided with a customer service email or chat option to address trouble-shooting issues, and OTS may offer phone support at its discretion, as needed. OTS will also take reasonable commercial efforts to assist Customers answering questions from End Users as needed. Additional Support may be provided for Enterprise Services, as set forth in the Order Form.
- (x) Security. Although OTS takes the necessary actions to keep Customer's recordings and other data secure, given the nature of the Internet, OTS cannot guarantee that there aren't security threats that may be out of OTS' control. Accordingly, Customer acknowledges that it bears sole responsibility for adequate security, protection and backup of its recordings and other data. OTS will have no liability to Customer for any unauthorized access or use, corruption, deletion, destruction or loss of any of Customer's recordings or other data.
- (y) Modification and Interruptions.
 - (i) OTS reserves the right to change, modify, or remove the contents of OTS Services at any time or for any reason at OTS' sole discretion without notice. However, OTS has no obligation to

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update any information on OTS Services. OTS also reserves the right to modify or discontinue all or part of OTS Services without notice at any time.

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OTS will not be liable to Customer or any third party for any modification, price change, suspension, or discontinuance of OTS Services.

- (ii) OTS cannot guarantee OTS Services will be available at all times. OTS may experience hardware, software, or other problems or need to perform maintenance related to OTS Services, resulting in interruptions, delays, or errors, OTS reserves the right to change, revise, update, suspend, discontinue, or otherwise modify OTS Services at any time or for any reason without notice to Customer. Customer agrees that OTS has no liability whatsoever for any loss, damage, or inconvenience caused by Customer's inability to access or use of OTS Services during any downtime or discontinuance of OTS Services. Nothing in these Terms of Service will be construed to obligate OTS to maintain and support OTS Services or to supply any corrections, updates, or releases in connection therewith.
- (z) Disclaimer. OTS SERVICES ARE PROVIDED ON AN AS-IS AND AS-AVAILABLE BASIS. CUSTOMER AGREES THAT ITS USE OF OTS' SERVICES WILL BE AT CUSTOMER'S SOLE RISK. TO THE FULLEST EXTENT PERMITTED BY LAW, OTS DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, IN CONNECTION WITH OTS SERVICES AND CUSTOMER'S USE THEREOF, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. OTS MAKES NO WARRANTIES OR REPRESENTATIONS ABOUT THE ACCURACY OR COMPLETENESS OF OTS SERVICES' CONTENT OR THE CONTENT OF ANY WEBSITES LINKED TO OTS SERVICES AND OTS WILL ASSUME NO LIABILITY OR RESPONSIBILITY FOR ANY (1) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT AND MATERIALS; (2) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM CUSTOMER'S ACCESS TO OR USE OF OTS SERVICES;
(3) ANY UNAUTHORIZED ACCESS TO OR USE OF OTS' SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION AND/OR FINANCIAL INFORMATION STORED THEREIN; (4) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE SITE OF THE OFFERINGS; (5) ANY BUGS, VIRUSES, TROJAN HORSES, OR



THE LIKE WHICH MAY BE TRANSMITTED TO OR
THROUGH OTS SERVICES BY ANY THIRD PARTY; AND/OR
(6) ANY ERRORS OR OMISSIONS IN ANY CONTENT
AND



MATERIALS OR FOR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE VIA OTS SERVICES. OTS DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH THE SITE, ANY HYPERLINKED WEBSITE, OR ANY WEBSITE OR MOBILE APPLICATION FEATURED IN ANY BANNER OR OTHER ADVERTISING, AND OTS WILL NOT BE A PARTY TO OR IN ANY WAY BE RESPONSIBLE FOR MONITORING ANY TRANSACTION BETWEEN CUSTOMER AND ANY THIRD- PARTY PROVIDERS OF PRODUCTS OR SERVICES. AS WITH THE PURCHASE OF A PRODUCT OR SERVICE THROUGH ANY MEDIUM OR IN ANY ENVIRONMENT, CUSTOMER SHOULD USE ITS BEST JUDGEMENT AND EXERCISE CAUTION WHERE APPROPRIATE.

- (aa) Promotion. Customer agrees to allow OTS to use its Company/Entity name, logo, and likeness in marketing efforts.

3. **Use Of The Ticketing Platform**

- (a) Function of OTS Ticketing Platform.
 - (i) The OTS Ticketing Platform facilitates the sale of tickets by Customer by providing Customer access to the Site to create a Promotion Site from which tickets can be purchased by End Users. OTS provides Customers with an online presence and facilitates access to a secure payment gateway. Each ticket is issued at the discretion of the Customer. As such, except as specified in these Terms of Service, OTS is not liable for any dispute that may arise between an End User and Customer related to transactions that occur between an End User and Customer including, but not limited to, ticket purchases, merchandise purchases, or monetary donations. OTS will also provide Marketing Services for all Customers who opt in.
 - (ii) OTS provides a paperless ticketing solution to Customers. Customer acknowledges that OTS acts as a transaction broker between Customer and End User. Any claims with respect to the purchase of tickets, inclusive group sales, including but not limited to claims that arise due to cancellation or postponement of



Programs, or monetary donations made through the Customer's site, are solely



between End User and Customer. To the extent permitted by law, OTS takes no responsibility or liability for such claims.

- (iii) Subscriptions represents a purchase of the number of tickets which can only be redeemed by End User ("Redemptions") to Programs listed therein ("Subscription Designated Programs" or together, a "Series"). Redemptions to each Subscription Designated Program in a Subscription must be redeemed during the Subscription Presale Period (when and if offered by Customer) or the general On Sale Period for each Subscription Designated Program included in the Subscription. Failure to process a Redemption during these periods will result in the forfeiture of said Redemption unless Customer, provides End User the accommodations set forth in 3(a) (iv). Fees associated with Subscription tickets, notwithstanding anything to the contrary herewithin, as set forth in 3(c) must be passed on to the End User at the time of purchase.
 - (iv) Once a Subscription purchase has been processed, notwithstanding anything herewithin, it is considered a final sale, and no refunds or exchanges will be issued by OTS. In the event of the cancellation of a Subscription Designated Program or Series, the Customer will offer End Users Programs in the current or future seasons to replace those which were canceled. Customer shall be solely responsible for any End User claims relating to Programs that may be canceled or do not take place for whatever reason.
 - (v) In the event OTS has already paid Customer ticket fees associated with a Subscription for future Programs that do not occur, OTS shall be entitled to recoup those fees.
- (b) Purchases and Payment.
- (i) OTS accepts the following forms of payment from Customers: (i) Visa; (ii) MasterCard; (iii) American Express; and (iv) Discover. All payment transactions shall be in U.S. dollars, otherwise provided for in writing.
 - (ii) Customers are responsible for all charges, at the prices in effect at the time of purchase, including but not limited to any applicable taxes, fees, or shipping charges. Customers have the option to pass fees along to End Users or have them deducted from Gross Receipts. For the avoidance of doubt, OTS shall retain and not be required to pay Customer the Fees set forth in section 3(c) or an Order Form, and OTS may deduct and set off any monies owed by the Customer to OTS against the Gross Receipts to be remitted to

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the Customer.

- (iii) In the event Fees cannot be set off and retained in accordance with section 3(b)(ii), Payment for the Services will be billed at prevailing rates as listed for the specific Services used, at the time of transaction, on the relevant OTS pricing sheets. Customer authorizes OTS to issue an invoice for any payment due for any unresolved balance after reconciliation by OTS. OTS reserves the right to correct any errors or mistakes in pricing, even if OTS has already requested or received payment. Payment for any Services is due within 30 days of the date of OTS invoice. Any delinquency in payment shall incur a delinquency charge of the lesser of 1% per month or the highest rate allowed under applicable law on all overdue amounts until the amounts are paid in full.
- (iv) OTS reserves the right to pursue any late and unpaid amounts due and owing to OTS or any of its affiliates for collections if such amounts are not paid within thirty (30) days after the date of the invoice. In addition, Customer agrees to promptly and fully reimburse OTS or any of its affiliates upon demand for all out-of-pocket costs and expenses, including without limitation, reasonable attorneys' fees and expenses, incurred by OTS or any of its affiliates in collecting past due amounts or any other amounts due and owing from Customer or any of its affiliates under this agreement for Services provided by OTS or any of its affiliates. Customer and any of its affiliates agree that if OTS or any of its affiliates must seek collections for past due amounts and Customer or any of its affiliates does not respond or pay in full after receiving a collection notice, OTS or any of its affiliates reserves the right to pursue outstanding balances through judicial proceedings, and such actions are expressly excluded from any arbitration provisions set forth in the Terms.
- (v) OTS reserves the right to refuse any order placed through the Site. OTS may, in its sole discretion, limit or cancel ticket quantities purchased per person, per household, or per order. These restrictions may include orders placed by or under the same customer account, the same payment method, and/or orders that use the same billing or shipping address. OTS reserves the right to limit or block transactions that, in its sole judgment, appear to be placed by dealers, resellers, distributors, or any other End User deemed to be suspicious or attempting to make an illegal transaction.
- (vi) OTS provides functionality that allows Customers to charge and accept payments from End Users for Programs (the "Customer-



User Transaction”), which are processed by Stripe and Stripe Connect (“Credit Card Processing”), as set forth herewith. In both payment scenarios below, OTS shall make available for Customer a written



statement detailing Net Receipts together with reasonable information to enable the Customer to reconcile such account to its own record.

- (1) **OTS Managed Payments.** Customers using Credit Card Processing via OTS Managed Payments agree OTS is serving as a limited payments agent as set forth in this section. To provide the Credit Card Processing, OTS utilizes third party gateways, payment processors, merchant acquirers and/or merchant acquiring banks with which we have relationships (collectively, "Payment Processing Partners") and both Customers and OTS are subject to the rules and regulations of such Payment Processing Partners. Unless otherwise set out in an Order Form or agreed by the parties, within 14 days of the completion of a Program, OTS shall pay such Net Receipts to the Customer either via Check or ACH payment to the bank account nominated by the Customer. The Customer shall be responsible for any receiving bank charges or other costs associated with international transfers.
- (2) **3rd Party Merchant Account Payments.** At Customer's election, OTS may offer the option for payment via a 3rd Party Merchant Account. To participate, Customer must have entered into a separate agreement with our Payment Processing Partner (the "Payment Processor Agreement") which governs terms including when Customer funds will be available for payout. For convenience, OTS shows you a balance of proceeds for your Programs in your OTS account, however, that balance merely reflects the amount of Customer-User Transaction collected by our Payment Processing Partners and represents only a general unsecured claim against OTS and not a store of value or a deposit/current account. We facilitate each Customer-User Transaction by collecting from each End User information necessary to enable the processing of that Customer-User Transaction ("Customer-User Payment Information") and submitting it to Stripe. You hereby authorize us to provide Customer-User Payment Information to Stripe to initiate and process Customer-User Transactions. If you are a Customer, you hereby agree to be bound by the Stripe Services Agreement, including the timing of when Customer Net Receipts will become available, which can be found at <https://stripe.com/ssa>, and the Stripe Connected



Account Agreement available at <https://stripe.com/connect-account/legal>, and you acknowledge that Stripe's privacy

policy is available at <https://stripe.com/privacy>. We are not responsible for the relationships between Customers and End Users, or for any liability associated therewith, including but not limited to the Customer-User Transactions.

- (vii) It is the responsibility of Customer to maintain compliance with any sales tax laws that are applicable to the Customer's offerings. Though Customer is not required to collect sales tax through OTS, Customer may be required to report on taxable sales and remit any tax due to the proper agency. OTS can provide collection services related to sales tax, but not reporting services. Be advised that OTS cannot make legal recommendations or offer advice regarding the possible collection of sales tax. It is the responsibility of the Customer to consult with a tax professional regarding local sales tax codes, and to comply with the collection, reporting, and remittance obligations for Customer's organization, as applicable. Any sales tax due because of the Customer's use of OTS are the sole responsibility of the Customer.
- (c) Fees.
 - (i) For the Services provided to the Customer by OTS, the Customer agrees to pay the applicable ticketing and transaction fees for all purchases processed through the Site. Current pricing details for all products and services are available [here](https://www.onthestage.com/site/pricing). <https://www.onthestage.com/site/pricing>. Per section 3(f) herewithin, pricing for Enterprise Services will be governed separately in an Order Form.
 - (ii) All OTS fees are subject to change at the discretion of OTS.
- (d) Refunds and Credit Card Disputes.
 - (i) Notwithstanding Subscription refund policy set forth in 3(a)(iv), Non-Subscription Ticket refunds may be made in full at the discretion of the Customer. Should the Customer choose to offer refunds, it is the sole responsibility of the Customer to communicate to ticket buyers any information pertaining to refunds. The Customer will still incur the Fees set forth in 3(c) for each refunded transaction, regardless of whether they chose to pass the Fees on to the End User at the time of purchase. Post-performance refunds must be made within 24 hours of the closing performance.



- (ii) Refunds, exchanges, and any other requests relating to the End Users and their ticket purchases or other transactions made through the Site are the sole responsibility of the Customer. If the End User requests a partial refund (i.e., less than all tickets in an order), OTS



will work with Customer to accommodate this upon Customer's request. Consistent with (d)(i) the in the event of a partial refund, Customer will still incur all Fees as set forth in 3(c).

- (iii) If an End User submits a dispute with their payment provider for a purchase made through the Site for Customer's offerings, the total amount of the original transaction in dispute, plus any fees imposed by the processor will be the responsibility of the Customer and will be charged back accordingly (a "Chargeback").

(e) Prohibited Activities.

- (i) Customer may not access or use the Site for any purpose other than that for which OTS makes the Site available. The Site may not be used in connection with any commercial endeavors except those that are specifically endorsed or approved by OTS.

- (ii) As a user of the Site, Customer agrees not to:

- (1) Systematically retrieve data or other content from the site to create or compile, directly or indirectly, a collection, compilation, database, or directory without written permission from OTS.
- (2) Use a buying agent or purchasing agent to make purchases on the Site.
- (3) Circumvent, disable, or otherwise interfere with security-related features of the Site, including features that prevent or restrict the use or copying of any content or enforce limitations on the use of the Site and/or the content contained therein.
- (4) Engage in unauthorized framing of or linking to the site.
- (5) Trick, defraud, or mislead OTS and other users, especially in any attempt to learn sensitive account information such as user passwords.
- (6) Make improper use of OTS' support services or submit false reports of abuse or misconduct.
- (7) Engage in any unauthorized integration or automated use of the system, such as using scripts to send comments or messages, or using any data mining, robots, or similar data

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gathering and extraction tools.

- (8) Interfere with, disrupt, or create an undue burden on the Site or the networks or services connected to the Site.
- (9) Attempt to impersonate another user or person or use the username of another user.
- (10) Use any information from the Site in order to harass, abuse, or harm another person.
- (11) Use the Site as part of any effort to compete with OTS or otherwise use the Site and/or the content for any revenue-generating endeavor or commercial enterprise.
- (12) Decipher, decompile, disassemble, or reverse engineer any of the software comprising or in any way making up a part of the Site.
- (13) Attempt to bypass any measure of the Site designed to prevent or restrict access to the site, or any portion of the Site.
- (14) Harass, annoy, intimidate, or threaten any of OTS' employees or agents engaged in providing any portion of the Site to Customer.
- (15) Delete the copyright or other proprietary rights notice from any Content.
- (16) Copy or adapt the Site's software, including but not limited to Flash, PHP, HTML, JavaScript, or other code.
- (17) Upload or transmit (or attempt to upload or to transmit) viruses, Trojan horses, or other material, including excessive use of capital letters and spamming (continuous posting of repetitive text), that interfere with any party's uninterrupted use and enjoyment of the Site or modifies, impairs, disrupts, alters or interferes with the use, features, functions, operation, or maintenance of the Site.
- (18) Except as may be the result of standard search engine or Internet browser usage, use, launch, develop, or distribute any automated system, including without limitation, any spider, robot, cheat utility, scraper, or offline reader that accesses the Site, or using or launching any unauthorized script or other software.



- (19) Disparage, tarnish, or otherwise harm, in OTS' opinion, OTS and/or the Site.
 - (20) Use the Site in a manner inconsistent with any applicable laws or regulations.
- (f) Enterprise Ticketing. This program is designed to integrate with Third Party Websites that the Customer is already using (such as CRM databases or promotional sites) via an API. For Enterprise Ticketing Customers, OTS shall manage the ticket inventory and purchasing, but will not handle marketing or promotion of the tickets. In addition to these Terms of Service, Enterprise Ticketing Customers will be required to executed a separate Order Form addressing pricing, payment, and other terms, which will be provided before Enterprise Ticketing Services begin.

4. **Use Of The Streaming Platform**

- (a) Customer can utilize the Streaming Platform to sell tickets to streaming versions of a Program. Programs are streamed using integrations with Zoom, Switcher Studio, or streaming through a feed to OTS' streaming platform.
- (b) Streaming Platform Services. OTS shall provide the following services to Customer:
 - (i) Marketing Services. For Customers who opt in, OTS shall provide Marketing Services for the Program being streamed.
 - (ii) Streaming Services. OTS shall provide hosting and streaming services for the Program during the Term. OTS shall use commercially reasonable efforts to ensure the Program is available to end users on an on demand basis. End Users shall be required to accept a click-through End User License Agreement ("EULA"). The Streaming Platform will create unique links that can be accessed by End Users on one device at a time and will be accessible to End Users for a period of 24 hours after first access by End User of any one Program, no later than 24 hours before the expiration of the License Term for any such Program. The Streaming Platform will deploy technology that reasonably prevents downloading or recording of the Program from the Customers' devices that is accessing the Program.
 - (iii) Fee Collection Services. Standard Streaming Platform Services are



subject to the Fees set forth in Section 3(c).

- (iv) Exclusive Content Services. OTS will from time-to-time contract with large theatre companies to perform professional productions, the rights of which are held by OTS for a certain period. Customers can sell tickets to watch the streaming version of the production. Customers can use take part in Exclusive Content via (a) the Fundraising Platform with Marketing Services, or (b) directly through the Streaming Platform without Marketing Services (in such instances, Customers will need to follow marketing plan and style guide provided by OTS). Pricing, fees, and revenue share from ticket sales will be shared among the producer of the Exclusive Content, Customer, and OTS, at pre-determined rates related to each Offering and applicable additional terms will be provided at <https://www.onthestage.com/site/exclusivecontent>

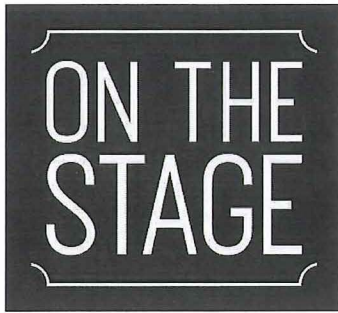
In the event the Streaming Platform cannot be accessed by an End User attempting to access Exclusive Content for a period of greater than 24 hours, and proper notice of said problem was given to OTS via the customer service contact points, OTS may, at its discretion, offer End User the option of a refund for the full amount. In such event, Customer will be not be entitled to fees.

- (c) Associated Schedules. Customer should note that supplemental terms found in a Schedule may apply to Customer's use of the Streaming Platform.

5. Use of the Fundraising Platform

- (a) The purpose of the Fundraising Platform is to allow Customer to raise funds for local organizations beyond ticket sales. Customer can (a) ask for recurring donations, and (b) ask for donations for specific items in Customer needs to purchase (e.g. "Buy Dorothy's Ruby Slippers"). Marketing Services are provided for these requests, if Customer opts in.
- (b) Exclusive VOD Content. As noted in Section 4(b)(iv), OTS will from time- to-time contract with large theatre companies to perform professional productions, the rights of which are held by OTS for a certain period. Customers can use the Fundraising Platform to sell tickets to watch the streaming version of the production, with Marketing Services done by OTS.

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