

FHSU Licensing Agreement 2019-2020

Fort Hays State University (FHSU), which owns trademarks, copyrights or other rights and privileges to its name and other identity marks, hereby grants permission to _____ (the vendor) to manufacture, use and sell products bearing FHSU's protected identity marks under the following conditions:

The vendor agrees that all rights, title and interest in the protected identity marks shall remain exclusively with FHSU and that any use of the protected identity marks will inure to the benefit of FHSU.

The vendor further agrees not to attempt to obtain any trademarks or copyrights in any artwork that contains or is at all derived from the protected identity marks.

The vendor agrees that all artwork, designs or reproductions that are derived to any extent whatever from the protected identity marks are works made for hire for FHSU.

The vendor will pay an annual fee of \$50 to FHSU for permission to use FHSU's protected identity marks under this agreement. FHSU will charge no royalty fees for approved uses of its protected identity marks, and it is not necessary for a vendor to file royalty reports.

The vendor warrants that the approved products and all promotional, advertising and packaging material will be of good quality in design, accurate and approved reproduction of logo marks, material and workmanship and will be suitable for their intended purpose; that no injurious, deleterious or toxic substances will be used in or on the licensed products; that licensed products will be of good taste and support the educational mission of and/or support FHSU and its image to the public; that the licensed products will not cause harm when used as instructed and with ordinary care for their intended purpose; and the licensed products will be manufactured, sold and distributed in strict compliance with all laws and regulations.

The vendor agrees to defend and hold harmless the university from any and all claims, damages, liabilities and costs and damages of every nature relating to or arising out of the use, manufacture or sale of the licensed products.

FHSU, through the Office of University Relations and Marketing, must give approval for the intended use of the protected identity marks PRIOR to production. Any use not so licensed is not authorized. No other use of the protected identity marks is allowed.

FHSU does not warrant to the vendor that the use of any of the protected identity marks is free from any claim by any third party of infringement or unfair competition. Further, FHSU shall not be liable to the vendor as a result of the vendor's activities under this agreement for any damage or cost incurred or paid by the vendor to any third party for such claims, judgments or settlements.

FHSU directs the vendor to the *Promoting Fort Hays State University* (web site link is www.fhsu.edu/is) which is FHSU's identity standards manual, to assist the vendor in making proper use of FHSU's protected identity marks. FHSU, through its Office of University Relations and Marketing, will respond with clarifications to any questions from the vendor about proper use of FHSU's protected identity marks.

FHSU, through its Office of University Relations and Marketing, will give prompt written notice of approval or rejection (with explanations) of proposed products, usually within one business day.

FHSU may terminate this agreement immediately if the vendor breaches any of the conditions or provisions and fails to cure within ten (10) days after notice from the university. Either party may terminate this agreement without cause by giving 90 days' notice.

Any and all attachments are incorporated herein by reference.

This agreement shall become effective upon execution by both parties and will remain effective date for one year.

The parties may extend this agreement for additional one-year periods with the vendor required to pay a \$50 fee each year on the anniversary date.

By their execution the parties acknowledge that they have read, understood and agree to the terms of this licensing agreement.

**The below provisions are required by the
State of Kansas
Fort Hays State University
DA-146a (Rev. 09/19)**

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 09/19), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof.

1. Controlling Provisions: It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.

2. Disclaimer Of Liability: No provision of this contract will be given effect that attempts to require Fort Hays State University or any of its affiliates ("University") to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The terms, conditions, and limitations of liability of the State of Kansas, the University, and their employees are defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).

3. Termination Due To Lack Of Funding Appropriation: If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, the University may terminate this agreement at the end of its current fiscal year. The University agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided under the contract for which it has not been paid. The University will pay contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement under this provision, title to any such equipment shall revert to contractor at the end of the University's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.

4. Kansas Law and Venue: All matters arising out of or related to this agreement shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit arising out of or related to this agreement shall reside only in courts located in the State of Kansas.

5. Required Non-Discrimination Provision: Contractor agrees to comply with all applicable state and federal anti-discrimination laws. Contractor specifically agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission or if it is determined that the contractor has violated applicable provisions of ADA, such violation(s) shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the University. The provisions of this paragraph (except the provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the University cumulatively total \$5,000 or less during the fiscal year.

Contractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance individuals in employment without regard to race, color, religion, sex, national origin, protected veteran status or disability.

6. Acceptance Of Contract: This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

7. Arbitration, Damages, Warranties: Notwithstanding any language to the contrary, no interpretation of this contract shall find that the University has agreed to binding arbitration, or the payment of damages or penalties. Further, the University does not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages or rights of action available to the University at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.

8. Authority To Contract: By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.

9. Responsibility For Taxes: The University shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.

10. Insurance: The University shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this

contract, nor shall this contract require the University to establish a “self-insurance” fund to protect against any such loss or damage.

11. Information/Confidentiality: As a state agency, the University’s contracts are generally public records. Accordingly, no provision of this contract shall restrict the University’s ability to produce this contract in response to a lawful request or from otherwise complying with the Kansas Open Records Act (K.S.A. 45-215 et seq.). Moreover, no provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.

12. The Eleventh Amendment: The Eleventh Amendment is an inherent and incumbent protection of the State of Kansas and need not be reserved, but the University here reiterates that nothing in or related to this contract shall be deemed a waiver of the Eleventh Amendment.

13. Campaign Contributions / Lobbying: Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

14. Privacy of Student Records: Contractor understands that the University is subject to FERPA (Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g) and agrees to handle any student education records it receives pursuant to this Agreement in a manner that enables the University to be compliant with FERPA and its regulations. Contractor agrees to protect the privacy of student data and educational records in a commercially reasonable manner and shall not transmit, share, or disclose any data about a student without the student’s written consent, except to other University officials who seek the information within the context of his/her professionally assigned responsibilities and used within the context of official University business. Contractor shall promptly report to the University any disclosure of University’s student educational records.

15. Boycotts of Israel Prohibited: Kansas 2018 HB 2482 generally prohibits the University from entering into a contract with a company to acquire or dispose of services, supplies, information technology or construction, unless such company submits a written certification that such company is not currently engaged in a boycott of Israel. For the purposes of this Section, “company” means an organization, association, corporation, partnership, venture or other entity, its subsidiary or affiliate, that exists for profitmaking purposes or to otherwise secure economic advantage. Accordingly, by executing this contract, Contractor hereby certifies that it is not currently engaged in a boycott of Israel.

16. Harassment Policy: Fort Hays State University prohibits sexual harassment, discrimination, and retaliation. The University’s applicable policies on sexual harassment, discrimination, and retaliation are available at <http://www.fhsu.edu/policies/harassment-policy/index.pdf> and include the procedures for submitting a complaint of sexual harassment, discrimination, or retaliation, including an anonymous complaint. Contractor and its employees, officials, agents, or subcontractors shall at all times comply with the University’s policies on sexual harassment, discrimination, and retaliation.

VENDOR INFORMATION (SO WE CAN REFER CUSTOMERS TO YOU)

Please include all information and print clearly. Be sure to sign your agreement.

Vendor business name and all names you intend to do business under for this contract: _____

Business address: _____

Business phone: _____

Business fax: _____

Business email: _____

Business Web site: _____

Vendor contact name: _____

Vendor contact email: _____

FHSU product you intend to manufacture: (please check all that apply)

- | | |
|---|---|
| <input type="checkbox"/> Artwork; art prints | <input type="checkbox"/> Outdoor gear; back packs and related accessories; rain wear; rain ponchos; umbrellas |
| <input type="checkbox"/> BBQ grills; cooking tools; branding irons; fire pits | <input type="checkbox"/> Packaging |
| <input type="checkbox"/> Beverage and food-related products | <input type="checkbox"/> Paper products; invitations; graduation announcements; stationery; stickers |
| <input type="checkbox"/> Blankets; flags; banners | <input type="checkbox"/> Party goods; balloons; single use tableware; party lights, tumblers |
| <input type="checkbox"/> Caps; hats | <input type="checkbox"/> Pennants and felt banners |
| <input type="checkbox"/> Concrete products | <input type="checkbox"/> Pet toys, treats, apparel |
| <input type="checkbox"/> Diploma frames; picture frames | <input type="checkbox"/> Plush animals |
| <input type="checkbox"/> Embroidery and screen printing | <input type="checkbox"/> Services: advertising, design, filmography, other _____ |
| <input type="checkbox"/> Engraved gifts and awards | <input type="checkbox"/> Socks |
| <input type="checkbox"/> Exhibits and displays | <input type="checkbox"/> Sportswear; sports accessories; sports related products |
| <input type="checkbox"/> Flags and banners | <input type="checkbox"/> Storage and organizational products |
| <input type="checkbox"/> Floor mats | <input type="checkbox"/> Sunglasses; 3D glasses |
| <input type="checkbox"/> Framed art | <input type="checkbox"/> Tailgating and outdoor game gear; shade covers |
| <input type="checkbox"/> General imprinted advertising products | <input type="checkbox"/> Technology accessories; cell phone covers; headphones |
| <input type="checkbox"/> Golf clothing; golf gear | <input type="checkbox"/> Vinyl signs; signage, billboards; decals; murals |
| <input type="checkbox"/> Glassware | <input type="checkbox"/> Welding and metal fabrication; steel fabricated products |
| <input type="checkbox"/> Holiday ornaments | <input type="checkbox"/> Yearbooks; magazines, diplomas; certificates |
| <input type="checkbox"/> Insulated beverage containers; coolers and thermos | <input type="checkbox"/> Sponsored product by private individual |
| <input type="checkbox"/> Jewelry; class rings; watches | <input type="checkbox"/> Provider of products from multiple manufacturers |
| <input type="checkbox"/> Knitted products | <input type="checkbox"/> Other (please specify) _____ |
| <input type="checkbox"/> Leather goods | |
| <input type="checkbox"/> Limestone signs; cemetery markers | |
| <input type="checkbox"/> Motorcycle and automotive products; license plate frames; magnetic car signs | |

Fort Hays State University

Vendor (please print clearly)

By: Michael W. Barnett

By: _____

Title: VP of Administration & Finance

Title: _____

Signature: _____

Signature: _____

Effective Date: _____

Date: _____

For payment by credit card see end of this document

PLEASE COMPLETE, SIGN AND RETURN A COPY WITH PAYMENT TO:

Fort Hays State University
University Relations and Marketing
Attn: Licensing
600 Park Street
Hays, KS 67601-4099

Phone: 785-628-4206
FAX: 785-628-4152

Your license will be activated when payment is received. THANK YOU.

Credit Card Information (do not submit this information if sending a check)

Type (check one): ☐ MasterCard ☐ Visa ☐ Discover ☐ American Express

Name on card: _____

Card Number: _____

Expiration Date: ____ / ____ ZIP CODE: _____

