

## LICENSE AGREEMENT

This License Agreement (hereinafter "Agreement") is made and entered into effective as of the \_\_\_\_ day of \_\_\_\_ 2019 (hereinafter "Effective Date"), by and between **Valley Center Unified School District No. 262** (hereinafter "Licensor") and \_\_\_\_\_(hereinafter "Licensee"). Licensor and Licensee are sometimes referred to herein as "the parties".

### RECITALS

**WHEREAS**, Licensor has adopted and is the owner of the trademarks identified and set forth on Schedule A attached hereto (hereinafter "Trademarks"); and

**WHEREAS**, Licensee desires to use one of more of the Trademarks in connection with the printing and sale of apparel, headwear, sporting goods, and other merchandise (hereinafter "Licensed Products").

**NOW, THEREFORE**, in consideration of the above premises, the mutual covenants set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereto agree as follows:

### SECTION 1 GRANT OF LICENSE

**1.1 Scope of License.** Subject to the terms and conditions set forth in this Agreement, Licensor grants to Licensee a non-exclusive, non-transferable license to use the Trademarks in connection with the License Products. Licensee shall make no other use of the Trademarks.

**1.2 Non-Assignment.** Licensee acknowledges and agrees that the rights granted to Licensee and obtained by Licensee as a result of or in connection with this Agreement are license rights only, and nothing contained in this Agreement constitutes or shall be construed to be an assignment of any or all of Licensor's rights in the Trademarks. Licensee shall have no right to sublicense any rights in the Trademarks or rights under this Agreement and may not grant permission to third parties (including federal programs or organizations) to use the Trademark(s) and/or any rights granted under this Agreement without the express written consent of Licensor.

### SECTION 2 COMPENSATION

**2.1 Royalty Amount.** In consideration for the license granted under this Agreement, Licensee agrees to pay to Licensor a royalty in the amount of Eight percent (8%) of the Licensee's Net Sales. "Net Sales" shall mean Licensee's gross sales of Licensed Products, less all discounts and allowances actually given and any *bona fide* returns. Royalties to be paid on or before June 30 and December 15 each year.

**2.2 Inspections.** For the sole purpose of verifying Net Sales payable to Licensor, Licensor or its authorized representative shall have the right, upon thirty (30) days written notice to Licensee, but not more than once per year, to conduct a reasonable inspection of the books and records of Licensee. Such inspection may be conducted on Licensee's premises, during normal business hours

and pursuant to mutually agreed upon confidentiality restrictions, in such a manner as to minimize disruption to Licensee's business. The cost and expense of such audit shall be paid by Licensor.

### SECTION 3 OWNERSHIP OF THE TRADEMARKS

**3.1 Ownership Rights.** Licensee acknowledges that Licensor owns the Trademarks and all rights therein, including but not limited to copyrights in any logos, and that nothing in this Agreement shall give Licensee any right, title, or interest in or to the Trademarks other than pursuant to the license granted hereby.

**3.2 Impairment of Licensor's Rights.** Licensee shall not at any time, whether during or after the term of this Agreement, do or cause to be done, any act or thing challenging, contesting, impairing, invalidating, or tending to impair or invalidate any of Licensor's rights in the Trademarks or any registrations derived from such rights.

**3.3 Other Trademarks.** Notwithstanding the license granted herein by this Agreement and any of the provisions hereof, no rights or licenses are granted to Licensee with respect to any other trademarks, service marks, or trade names not listed on Schedule A attached hereto. Licensee agrees it will not use Georgia Institute of Technology ("Georgia Tech") Trademark(s), the Buzz mascot or such marks, logos and images owned by Georgia Tech. The Board of Regents of the University System of Georgia by and on behalf of Georgia Institute of Technology ("Georgia Tech") owns the BUZZ Design and Word marks, pursuant to Federal Registration Nos. 1,456,921 (design) and 1,515,501 (word).

### SECTION 4 LICENSOR'S CONTROL

**4.1 Quality Control.** In order to properly protect and preserve Licensor's rights in the Trademarks, Licensee understands, acknowledges, and agrees that prior to the first date of Licensee's use of the Trademarks in connection with Licensee's Licensed Products, Licensee shall obtain Licensor's approval of all aspects of such use; and once Licensee's use of the Trademarks in connection with Licensee's Licensed Products is initially approved by Licensor, any subsequent alteration, modification, or change in such use must be reviewed and approved by Licensor prior to implementation of such alteration, modification, or change.

**4.2 Samples.** Licensee shall deliver to Licensor, upon Licensor's reasonable request and without charge to Licensor, representative samples of advertisements, publications, labels, goods, Licensed Products and the like, containing the Trademarks, to enable Licensor to ensure that such Trademarks are used only in a manner in accordance with this Agreement. Licensee shall, before it sells or distributes any of the Licensed Products, furnish to Licensor, free of cost, for its approval, a sample of each Licensed Products.

**4.3 Business Activity.** Licensee is not authorized, without the prior written approval of Licensor, to use the Trademarks in connection with any business activity or products not specifically licensed in this Agreement. Licensee shall use the Trademark(s) in such a way as to preserve the integrity, character, and dignity of Licensor. Licensed Products should be of high quality in design, material, and workmanship. Licensee shall not reference alcohol, drugs, or tobacco related products in conjunction with

its use of the Trademark(s).

## **SECTION 5 USE OF THE TRADEMARKS**

**5.1 Trademark Format.** Licensor retains the right to specify, from time to time, the format in which Licensee shall use and display the Trademarks, and Licensee shall only use or display the Trademarks in a format approved by Licensor.

**5.2 Proper Notice and Acknowledgement.** Every use of the Trademarks by Licensee shall incorporate, in an appropriate manner, a “TM” to indicate its use as a trademark.

**5.3 Licensor’s Rights and Remedies.** Licensee acknowledges and agrees that Licensor has, shall retain, and may exercise, both during the term of this Agreement and thereafter, all rights and remedies available to Licensor, whether derived from this Agreement, from statute, or otherwise, as a result of or in connection with Licensee’s breach of this Agreement, misuse of the Trademarks, or any other use of the Trademarks by Licensee that is not expressly permitted by this Agreement.

## **SECTION 6 TERM AND TERMINATION**

**6.1 Term.** The term of this Agreement shall be for the period of One (1) year, provided, however, that either party may terminate this Agreement, with or without cause, by delivering written notice of termination to the other party, and, unless a later date is specified in such notice, termination shall be effective sixty (60) days after the date such notice is given.

**6.2 Termination for Cause.** Notwithstanding the provisions of the foregoing section regarding Term, this Agreement and all rights granted hereby, including but not limited to Licensee’s right to use the Trademarks, shall automatically terminate without notice from Licensor if Licensee attempts to assign, sublicense, transfer, or otherwise convey, without first obtaining Licensor’s written consent, any of the rights granted to Licensee by or in connection with this Agreement; Licensee fails to obtain Licensor’s approval of Licensee’s use of the Trademarks in accordance with this Agreement; Licensee uses the Trademarks in a manner in violation of, or otherwise inconsistent with, the restrictions imposed by this Agreement; or Licensee uses the Trademarks in a manner not expressly permitted by this Agreement. Either party may immediately terminate this Agreement for fraud, willful misconduct, or illegal conduct of the other party upon written notice of same to that other party.

**6.3 Effect of Termination.** All rights granted by this Agreement, including, without limitation, Licensee’s right to use the Trademarks, shall expire upon termination of this Agreement, and upon termination, Licensee shall immediately cease and desist from all further use of the Trademarks and shall cease all sales and marketing of Licensed Product, and shall no longer have any rights therein.

**SECTION 7  
PROTECTION**

**7.1 Infringement.** Licensee shall promptly notify Licensor of any and all infringements, imitations, simulations, or other illegal use or misuse of the Trademarks that comes to the Licensee's attention. As the sole owner of the Trademarks, Licensor shall determine whether to take any action to prevent the infringement, imitation, simulation, or other illegal use or misuse of the Trademarks.

**7.2 Assistance.** Licensee shall render to Licensor all reasonable assistance in connection with any matter pertaining to the protection, enforcement, or infringement of the Trademarks used by Licensee, whether in the courts, administrative agencies, or otherwise.

**SECTION 8  
NEW TRADEMARKS**

Should Licensee desire to develop a new trademark or design using any of the Trademarks in any form other than those listed in Schedule A, Licensee must first consult with and obtain the written approval of Licensor, which approval may be withheld in its sole discretion.

**SECTION 9  
INDEMNIFICATION**

Licensee shall indemnify and hold harmless Licensor against all liability, costs, and expenses, including but not limited to reasonable attorneys' fees, arising out of or in connection with claims relating to any attempted assignment, sublicense, transfer, or other conveyance of Licensee's rights and obligations hereunder.

**SECTION 10  
MISCELLANEOUS**

**10.1 Assignment.** Licensee shall not assign, sublicense, transfer, or otherwise convey Licensee's rights or obligations under this Agreement without Licensor's prior written consent.

**10.2 Applicable Law and Venue.**

**10.2.1 Choice of Law.** This Agreement shall be deemed to have been entered into in the State of Kansas, and all questions concerning the validity, interpretation or performance of any of its terms or provisions, or of any rights or obligations of the parties hereof, shall be governed by and resolved in accordance with the internal laws of the State of Kansas, including, without limitation, the statute of limitations.

**10.2.2 Choice of Venue.** All disputes arising under this Agreement shall be submitted to the Kansas State Court for the County of Sedgwick which shall have subject matter jurisdiction over the claim or controversy or to the United States District Court for the District of Kansas, sitting in Wichita, Kansas. Licensee and Licensor expressly consent to the exercise of personal jurisdiction by the Sedgwick County, Kansas State Court or by the United States District Court for the District of Kansas, sitting in Wichita, Kansas, and expressly consent to service of process by either certified mail or registered mail and waive

any objections to venue.

**10.3 Entire Agreement.** This Agreement supersedes all previous agreements, understandings, and arrangements between the parties, whether oral or written, and constitutes the entire agreement between the parties.

**10.4 Amendments.** This Agreement may not be modified, amended, altered, or supplemented except by an agreement in writing executed by the parties.

**10.5 Waiver.** The waiver by either party of a breach or other violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provision of this Agreement.

**10.6 Disclaimer of Agency, Partnership, and Joint Venture.** Nothing in this Agreement shall constitute or be deemed to constitute a partnership or joint venture between the parties hereto or authorize the employees of one party to act as an agent of the other party for any purpose whatsoever, and neither party shall have authority or power to bind the other party or to contract in the name of, or create a liability against, the other party in any way or for any purpose.

**10.7 Severability.** If any provision of this Agreement shall be invalid or unenforceable, such invalidity or unenforceability shall not render the entire Agreement invalid. Rather, the Agreement shall be construed as if not containing the invalid or unenforceable provision, and the rights and obligations of each party shall be construed and enforced accordingly.

**10.8 Notice.** Any notice, instruction, direction, demand, or other communication required, permitted, or desired to be given hereunder shall be in writing and shall be delivered by hand, by facsimile transmission, or by registered or prepaid certified mail through the United States Postal Service, return receipt requested, to the following addresses:

If to Licensor:

If to Licensee:

Valley Center Unified School District No. 262  
Attn: Mike Bonner, Asst. Superintendent  
143 S. Meridian Ave.,  
Valley Center, KS 67147

**10.9 Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original, but all of which together shall constitute one and the same Agreement.

**10.10 Sections, Articles, and Other Headings.** The sections, articles, and other headings contained in this Agreement are for reference purposes only, and shall not affect in any way the meaning or interpretation of the terms of this Agreement.

**10.11 Mandatory Contractual Provisions.** The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first set forth above.

**Valley Center Unified School District No. 262**

Licensors

Licensee

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## **SCHEDULE A**

### **TRADEMARKS**

**The word marks:** Any combination of words or phrases that include: VALLEY CENTER, HIGH SCHOOL, MIDDLE SCHOOL, INTERMEDIATE SCHOOL, WEST, WHEATLAND, ABILEN, ELEMENTARY, HORNETS, VC, VCHS, VCHS, VCMS, VCIS, VALLEY CENTER SCHOOLS,

**The stylized logo(s) shown below:**

VCHS style guide with TM.pdf (enclosed/attached)

## SCHEDULE B

State of Kansas  
Department of Administration  
DA-146a (Rev. 06-12)

### 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. 06-12), 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, said contract being the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

1. **Terms Herein 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. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
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, State may terminate this agreement at the end of its current fiscal year. State 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 State under the contract. State will pay to the 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 by State, title to any such equipment shall revert to contractor at the end of the State'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. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.)
5. **Anti-Discrimination Clause:** The contractor 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, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those 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 contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.

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 State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do 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 available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's 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 State of Kansas and its agencies 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 State of Kansas and its agencies 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 them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** **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 with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing 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.