

Public Performance Content Licensing Agreement - Residence Hall Network Streaming

This Agreement is made between FORT HAYS STATE UNIVERSITY (hereafter "Licensee") and Residence Life Cinema, a division of Swank Motion Pictures, Inc. a Missouri corporation (hereafter "Swank").

WHEREAS, Swank is an authorized distributor of copyrighted Hollywood full-length feature motion pictures, television programming and Student Awareness Videos, for non-theatrical public performances (hereafter collectively referred to as "Content" and each individual motion picture as "Title(s)"); and

WHEREAS, Swank desires to license Content to Licensee for public performance exhibition to Licensee's on campus locations; and

WHEREAS, Licensee desires to exhibit Content licensed from Swank pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, the parties agree as follows:

1) Term of Agreement

- A. The term of this Agreement shall commence on AUGUST 2, 2022 and continue through JULY 31, 2027 (the "License Period"). No Content may be shown by Licensee beyond the License Period.
- B. Unless cancelled in writing by either party at least 90 days prior to the scheduled expiration date, this Agreement will automatically renew for successive one year terms at a License Fee (as defined below in Section 4.A) seven percent greater than the immediately preceding year.
- C. This Agreement may be terminated by either party for breach only prior to its scheduled expiration date (including the end of any renewal term), following written notice of the breach and passage of a 30-day cure period.
- D. In the event either party terminates this Agreement prior to its scheduled expiration date for a reason other than for breach, the party terminating the Agreement shall pay the other party, as early termination fee resulting from early termination, 50% of the aggregate License and Rental Fees (as defined below) remaining in the scheduled term.

2) Content Licensed to Licensee

- A. During the License Period and any subsequent renewal terms, Swank shall license to Licensee the following Content, for streaming to only Licensee's on campus facilities, and only through Swank's Streaming Server via IP authentication or through allowed single sign on option as it becomes available as an allowed authentication, and described below in Section 6 (the "Streaming Server" and the).
 - 600 motion picture Titles per year; plus
 - 15 television season programs per academic year; plus
 - Swank's full library of Student Awareness Videos.
- B. Licensee may select the motion picture Titles and television program seasons from Swank's current and future Content libraries, which as of the date of this Agreement includes Content distributed by the following producers (hereafter collectively referred to as "Producers"): Warner Bros., Metro-Goldwyn-Mayer, Universal Studios, Sony Pictures, Columbia Pictures, Tri-Star Pictures, Lionsgate Films, Paramount Pictures, New Line Cinema, Screen Gems, Dreamworks Animation, United Artists, Magnolia Pictures, Focus Films, CBS Films, Cohen Media, Entertainment One, Cinedigm, Hallmark Hall of Fame, RLJ Entertainment, Summit Entertainment, Miramax Films, Monterey Media, Oscilloscope Pictures, Questar, Screen Media and The Weinstein Co.

The parties acknowledge that Producers may be added or removed during the License Period or a renewal term and agree that such changes shall not affect this Agreement.

Licensee acknowledges that the Student Awareness Videos are the property of Swank.

- B. In addition to the Content, Swank also licenses to Licensee certain Movie Discussion Guides and other educational materials produced by Swank (collectively hereafter, the "Educational Materials"). The Educational Materials may be used by Licensee only during the Licensing Period and any subsequent renewal terms. Licensee shall, immediately upon termination of this Agreement, cease using the Educational Materials and return same to Swank (postage prepaid).

3) Content Ordering Schedule

Licensee agrees to either (i) ___ place orders for the Content on a reasonably timely basis as described by Swank in writing from time to time, including any monthly refreshes of Titles; or (ii) ___ allow Swank to choose the Content using its experience and judgment (Licensee to check method (i) or (ii)).

Public Performance Content Licensing Agreement - Residence Hall Network Streaming

4) License Fee and Payment Terms

- A. In consideration of the License granted herein, Licensee shall pay to Swank a License Fee of \$21,250 per academic year (which year shall run from each AUGUST 1 to JULY 31 during the License Period). The License Fee includes a Streaming Server Fee of \$2,900 and a content encoding & delivery fee of \$480.
- B. The License Fee described in Section 4.A shall be payable within 60 days of receiving invoice.
- C. Swank will render invoices to Licensee in accordance with the payment schedule outlined in Section 4.B. All invoices shall be payable within thirty (30) days of the date of the invoice. In the event of a late payment, the statutory interest rate shall apply and be added as a late fee on the next invoice.

Upon receipt by Swank of said notice, the License Fee shall be adjusted, on a prospective and pro-rata basis, based on the adjusted number of occupied rooms as compared to the number of occupied rooms existing as of the date of this Agreement. The effective date of any price adjustment pursuant to this Section 4.B shall be the first day of the month after the new rooms are occupied, if the adjustment is due to the events described in Section 4.B.1 or 2, or the first day of the month after the rooms are no longer occupied, if the adjustment is due to the events described in Section 4.B.3 or 4.

- D. All applicable taxes are the responsibility of the Licensee.

5) Restrictions on Advertising and Exhibition

The Content is specifically licensed for non-theatrical showings only and may only be exhibited in on campus locations, as set forth herein. Without limiting the foregoing:

- A. Ownership of the Content shall at all times be vested strictly with the Producers (or Swank, in the case of the Student Awareness Videos), including but not limited to all registered and unregistered trade names, logos, trademarks, characters and the names of the Content. In no event does this Agreement convey to Licensee any ownership rights or other proprietary interests in the Content or the images or sound embodied therein, other than the right to exhibit the Content on the terms and conditions set forth in this Agreement.
- B. Licensee will not make, or authorize any others to make, any modifications, deletions, cuts, alterations or additions in or to the Content. For the avoidance of doubt, no panning and scanning, time compression or similar modifications are permitted.
- C. All Content shall be exhibited in its entirety, in its original continuity of subject and in the identical form delivered to Licensee.
- D. Licensee shall not copy or in any manner duplicate any Content or any portions thereof, or authorize the Content to be copied or duplicated in any manner.
- E. Licensee agrees and warrants that it shall not and shall not attempt to de-employ or defeat any security and anti-copy measures taken by Swank or by any party with respect and/or applied to the Content.
- F. Advertising of availability of the Content is strictly limited to on campus locations, and may be used for the sole purpose of informing such students and Staff of the availability of the Content. For example, such advertising may be via bulletin boards, electronic bulletin boards, mail boxes, campus email, student email, Licensee's website, campus closed circuit system or campus intranet network. Advertising to the general public through media such as public radio, public television or general public newspapers is strictly prohibited.
- G. All advertising, publicizing and promotion permitted pursuant to Section 5.F shall be via written summaries, extracts, synopses, photographs, trailers or other materials prepared and provided or made available by Swank (collectively "Advertising Materials" herein). Licensee shall not (a) modify, edit or make any changes to the Advertising Materials (except for altering the actual reproduced size of such Advertising Materials); or (b) promote the exhibition of any Program by means of contest or giveaway.
- H. The names and likenesses of the characters, persons and other entities or connected with the production of Content may not be used separate and apart from the Advertising Materials, and no such name or likeness shall be used so as to constitute an endorsement or testimonial, express or implied, of any party, product or service, by "commercial tie-in" or otherwise.

6) Swank Streaming Server Provided to Licensee

- A. Swank will supply the Streaming Server to Licensee to exhibit the Content. The Streaming Server is the property of Swank and Licensee shall not reverse-engineer, decompile, disassemble, duplicate, modify, backup or otherwise manipulate the

Public Performance Content Licensing Agreement - Residence Hall Network Streaming

Streaming Server. This Agreement does not in any way transfer any ownership or other rights in the Streaming Server to Licensee, other than to exhibit the Content in accordance with this Agreement.

- B. Licensee agrees to return the Streaming Server to Swank within fifteen (15) business days following the end of the Agreement (postage prepaid). If the Streaming Server is not returned to Swank as provided in the previous sentence, Licensee will be billed a non-refundable fee of \$300.00 for each 30 days that the Streaming Server is delinquent.
- C. If the Streaming Server is lost or stolen while in possession of Licensee, Licensee shall immediately notify Swank in writing and agrees to pay to Swank a one-time replacement fee of \$3,000. If the Streaming Server is damaged while in the possession of Licensee, any repairs shall be made by Swank only; Licensee shall pay for the cost of such repairs plus 15% to cover coordination and administration.

7) Miscellaneous

- A. Swank represents and warrants that it has the Public Performance rights for all Content provided to Licensee pursuant to this Agreement.
- B. All changes or notices with regard to this Agreement shall be in writing and delivered personally or mailed by pre-paid certified or registered mail (return receipt requested) as follows or to such other addresses as the parties shall later specify in writing:

If to Swank:

SWANK MOTION PICTURES
ATTN: Peter Swank
President
10795 Watson Road
St. Louis, MO 63127

If to Licensee:

FORT HAYS STATE UNIVERSITY
ATTN: David Bollig

- C. So long as Licensee has complied with the terms and conditions of this Agreement, Swank agrees to indemnify and hold harmless Licensee from any losses, costs or damages (including without limitation reasonable attorneys' fees) arising from the carrying out of this Agreement and which are the result of Swank's negligent acts or omissions.
- D. This agreement shall be governed by and constructed in accordance with the laws of the State where Licensee is located.
- E. The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 12/19), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties to this Agreement indicate their acceptance by their signatures below.

SWANK MOTION PICTURES, INC

Signed By

Printed Name

Title

Date

FORT HAYS STATE UNIVERSITY

Signed By

Printed Name

Title

Date

Approved as in Form
Fort Hays State University
General Counsel

Public Performance Content Licensing Agreement - Residence Hall Network Streaming

State of Kansas
Fort Hays State University
DA-146a (Rev. 12/19)

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. 12/19), 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

Public Performance Content Licensing Agreement - Residence Hall Network Streaming

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.

Public Performance Content Licensing Agreement - Residence Hall Network Streaming

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 <https://fhsu.edu/policies/documents/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.