

# Jostens<sup>®</sup> Yearbook Agreement

Jostens, Inc. | 7760 France Avenue South, Suite 400 | Minneapolis, MN 55435 | 952-830-3300

Customer Name	EISENHOWER HIGH SCHOOL	Customer Phone	(814)757-8878
Customer Address	3700 ROUTE 957, RUSSELL, PA 16345-9802		
Contact Name	Jessica Mcelhaney	Contact Phone	(814) 757-8878
Contact Role	Adviser	Email	mcelhaneyjl@wcsdpa.org

The Customer has selected Jostens, Inc. to be their exclusive yearbook provider for the years identified below (the "Term"). The parties agree as follows:

- ① Jostens and the Customer will work together to establish all yearbook specifications (including things such as size, copies and pages), completion deadlines, price, and delivery schedules for each year during the Term and subject to the terms and conditions found at:

<https://jostens.secure.force.com/terms?Lid=YBKUS>

- ② After this Agreement is signed, as the Customer's exclusive yearbook provider Jostens will invest in and allocate resources to provide training and assistance to the Customer to help with the creation, production and marketing of the Customer's yearbook, including without limitation the planning, content, theme, layout, and merchandising.

- ③ The Term of this Agreement is for the following years: 2025 through 2025

Additional Notes/Specifications Agreed Upon:

This Agreement is subject to acceptance by Jostens and to Jostens' standard printing terms and conditions.

X \_\_\_\_\_  
SIGNATURE OF CUSTOMER AUTHORIZED REPRESENTATIVE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
DATE

X \_\_\_\_\_  
SIGNATURE OF 2<sup>ND</sup> CUSTOMER AUTHORIZED  
REPRESENTATIVE (IF REQUIRED)

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
DATE

X \_\_\_\_\_  
SIGNATURE OF JOSTENS AUTHORIZED REPRESENTATIVE

Nick Crafts  
PRINTED NAME

10/1/24  
DATE

REP # 5912

JOB # 37021

## Jostens Yearbook Agreement Printing Terms

distress); or (b) related to or arising from a breach of Customer's obligations relating to Jostens Digital Tools.

Once this Agreement has been signed by Jostens, Inc. ("Jostens"), it becomes a binding contract between Jostens and the customer named on the front of this Agreement ("Customer"). Any changes to this Agreement must be approved in writing by both parties; provided, that Customer may change the specifications, which may result in changes to the price and/or delivery.

### 1. SUBMISSION OF, RESPONSIBILITY FOR, AND USE OF MATERIALS:

a. Jostens will provide Customer with instructions and specifications for submitting information and materials (collectively, "Materials") to Jostens. Materials include, without limitation, content, titles, photographs, videos, designs, drawings, images (including digital images), artwork, songs, lyrics, recordings, page layouts and other similar materials. Customer is responsible for all Materials furnished to Jostens for incorporation in the publication or other product provided by Jostens under this Agreement, regardless of form or medium (the "Publication").

b. Customer agrees to submit all Materials in a timely manner and in accordance with Jostens' instructions and specifications. Late or non-conforming submissions may result in additional charges, missed or delayed deadlines, delayed shipments, and/or rejection of submitted Materials.

c. Jostens will charge for Jostens artwork, corrective work or customer copy, customer alterations and non-standard composition, which may result in changes to the purchase price.

d. Jostens reserves the right in its discretion to refuse to process, print, reproduce or duplicate Material submitted for incorporation in the Publication, including Material which may reasonably be believed to violate patent, trademark, copyright, license or other proprietary rights or be pornographic or offensive, provided Jostens assumes no duty to make such determination.

e. Customer represents and warrants: (a) Customer has the unconditional and absolute right (through ownership, license or consent) to allow Jostens to print, reproduce and/or duplicate all of the Materials and to receive back any returned Materials; (b) Jostens is authorized to reproduce for and on behalf of Customer and other third parties all of the Materials provided by Customer, in order to produce and/or market the Publication; (c) the Materials comply with all applicable laws, do not infringe any intellectual property or proprietary right, or any license relating thereto, do not contain any libelous or otherwise actionable content, and do not otherwise violate the rights of or cause damage or injury to any person.

f. Except to the extent prohibited by law, Customer agrees to indemnify and hold Jostens, its licensors, and its controlled affiliates harmless from any and all damages, fees and costs arising out of claims, defenses, demands, actions or proceedings that may be asserted or brought against Jostens by parents, students or any third party: (a) on the grounds that a Material, Publication, or the marketing of the Publication by or directed by the school violates any applicable laws, rights or interests (including intellectual property or privacy rights), or causes a third party harm (such as negligence or emotional

g. Customer expressly agrees that Jostens, its sales representatives and service providers may use Materials provided by Customer to market the Publication to potential purchasers and to provide information on Jostens products and services to potential purchasers, except where Customer has indicated otherwise in writing or through a Jostens online interface. Jostens will not sell or rent student information to any third party. Please see Jostens' Privacy Policy at <http://www.jostens.com/privacy> for more information on Jostens' privacy practices.

2. **LICENSES:** Customer grants Jostens a perpetual, royalty-free, fully paid-up right and license to use, reprint, reproduce, digitize and duplicate Customer's cover design, yearbook pages, and Materials in Jostens' marketing and promotional materials and websites, as samples, in Jostens software applications, and in collections of Jostens yearbooks and yearbook pages, except where Customer has indicated otherwise in writing or through a Jostens online interface.

With respect to any artwork created in whole or in part by Jostens, Jostens hereby grants Customer a limited, nonexclusive license to the artwork in the Publication, and for the marketing and promotion of the same. Jostens retains all other rights to such artwork, which may only be reproduced with the written consent of Jostens. Customer understands and agrees that all dies, including those for which a charge has been made, remain the sole property of Jostens. This provision shall survive the termination or expiration of this Agreement.

3. **SCHOOL OFFICIAL DESIGNATION:** Customer and Jostens hereby designate Jostens as a "school official" as that term is defined by the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. @ 1232g ("FERPA"), and Jostens recognizes that certain records regarding Customer's students are protected by FERPA. In the course of performance of this Agreement, Customer may from time to time disclose certain information protected by FERPA ("Student Identifiable Information" or "SII") to Jostens, and Jostens may from time to time create Student Identifiable Information. Jostens acknowledges it is receiving and creating such Student Identifiable Information as a "school official" as that term is defined in 34 C.F.R. 99.31(a)(1)(i)(B), and Jostens agrees it will use and maintain such information in accordance with FERPA. Customer represents and warrants that Jostens meets the definition of "school official" as specified in Customer's annual notification of FERPA rights and that it is authorized to transfer SII to Jostens. Jostens agrees to hold the SII in strict confidence. Jostens will not disclose or use SII outside of the parties' direct business relationship, except as permitted or required by this Agreement, as required by law, or as otherwise authorized in writing by Customer. By entering into this Agreement, Jostens certifies that it understands these restrictions and will comply with them.

4. **RETENTION AND DESTRUCTION OF DATA AND SII:** Within sixty (60) days following termination, cancellation, expiration or other conclusion of this Agreement, Jostens shall destroy any SII that has not already been incorporated into a Publication prior to the termination, cancellation, expiration or other conclusion of this Agreement. Notwithstanding the foregoing, and subject to Jostens' compliance with any applicable laws and regulations, nothing in this Agreement will: (i) preclude Jostens from communicating with, require Jostens to destroy, or preclude Jostens from collecting any information about an individual that Jostens has obtained directly from the individual or through another party that is not Customer; or (ii) require Jostens to destroy any information directly uploaded by an individual pursuant to their own account.

**5. SAFEGUARDS; DATA SECURITY AND PRIVACY:** Jostens shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted SII received from, or on behalf of Customer. These measures will be extended by contract to all subcontractors used by Jostens in connection with this Agreement. Within a reasonable time period after discovery, Jostens shall report to Customer any unauthorized use or disclosure of SII. Customer and Jostens further agree that the California Consumer Privacy Act, Cal. Civil Code § 1798.100, *et seq.* (CCPA) does not apply to the Publication because Jostens is providing a service to support the Publication on behalf of a school, and schools are not subject to the CCPA because they are not "organized or operated for the profit or financial benefit of its shareholders or other owners."

**6. JOSTENS DIGITAL TOOLS:** In consideration of payment of any required license fee and agreeing to any applicable license agreements, terms of use, and policies for any digital tools, for the term of this Agreement, Jostens grants Customer a limited, non-assignable license to use certain of its proprietary local, online, mobile and cloud-based yearbook development software tools, fonts and clip art, apps, websites and environments (all such tools, apps, websites and environments made available to Customer, the "Jostens Digital Tools"), solely for the limited purpose of producing its Publication with Jostens and for no other purpose. Customer acknowledges and agrees that the Jostens Digital Tools and all other materials supplied by Jostens are proprietary in nature and are owned or licensed by Jostens, and Customer agrees not to copy, duplicate, reverse engineer, or attempt to learn the source code of Jostens Digital Tools, or to rent, share, distribute or provide the Jostens Digital Tools to any third party. Customer is strictly prohibited from providing production materials in whole or in part, including but not limited to the Publication created under this Agreement, created with the Jostens Digital Tools to a third party for printing, digitizing, reproduction or any other purpose.

Upon termination or expiration of the relationship between Customer and Jostens, Customer will promptly return any Jostens Digital Tools to Jostens, and destroy and delete any copies of Jostens Digital Tools and any login credentials provided. Certain products of Adobe Corporation or other third parties may be required for use of the Jostens Digital Tools, and Customer acknowledges that Jostens is not obligated to provide training or other support for third-party products.

For purposes of this Agreement, Jostens Digital Tools do not include Yearbook+. The terms and conditions for Yearbook+ follow for Customers who have opted-in on the cover page of this Agreement.

**7. ORDER PROCESSING:** If Customer elects to participate in an order processing and management program offered by Jostens (a "Program"), Customer acknowledges and agrees that Jostens or other third parties may act on behalf of Customer to bill students for yearbooks and related products and collect payment from them. Customer acknowledges it has been given materials explaining the Program and understands the Program, and the billing process under that program.

**8. DELIVERY; INSPECTION OF PRODUCTS:** Shipment will be made pursuant to the shipment method and vendor chosen by Jostens, in its sole discretion, and according to terms of the Deadline Schedule established between the parties, provided that Customer sends all materials conforming to specifications and on time according to the Schedule. Title to and risk of loss for all shipments is F.O.B. Jostens production plant. Jostens reserves the right to withhold delivery of the products if, for any reason, Customer violates any terms or conditions in this Agreement or fails to pay to Jostens any portion of the purchase price due for the products in the amount(s) and at the time(s) specified in this Agreement. Immediately upon Customer's receipt of the products shipped hereunder, Customer shall inspect the same and shall notify Jostens in writing of any claims for shortages, defects, or damages, and shall hold the products for Jostens' written instructions concerning disposition of the products. If

Customers fails to so notify Jostens within five (5) business days after the products have been received by Customer, such goods shall conclusively be deemed to conform to the terms and conditions herein and to have been irrevocably accepted by Customer. Jostens shall not be responsible for claims for error in quantity or quality not made within five (5) business days after Customer's receipt of the products. Due to the printing process, there may be a limited number of copies of the yearbook produced in excess of Customer's order. Jostens may ship the excess yearbooks to Customer, who may keep and pay for the overages or return them to Jostens for credit.

**9. FORCE MAJEURE; WARRANTY; LIMITATIONS:** Jostens shall not be liable for delays or losses caused by strikes, accidents, pandemics, government restrictions, acts of God or other causes beyond its reasonable control, and such delays shall not constitute a breach of contract. Jostens will perform the work in a good and workmanlike manner. EXCEPT AS EXPRESSLY PROVIDED HEREIN, JOSTENS MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES AND DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. BECAUSE SOFTWARE, APPS AND SYSTEMS ARE INHERENTLY COMPLEX AND MAY NOT BE COMPLETELY FREE OF ERRORS, YOU ARE ADVISED TO VERIFY YOUR WORK. IN NO EVENT WILL JOSTENS BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR BUSINESS INTERRUPTION, HOWEVER FORESEEABLE, ARISING OUT OF THIS AGREEMENT, THE WORK PERFORMED HEREUNDER, THE SERVICES PROVIDED OR THE PRODUCTS PRODUCED HEREUNDER. THE LIABILITY OF JOSTENS, IF ANY, FOR CLAIMS RELATING TO ANY DEFICIENT OR DEFECTIVE SERVICE OR PRODUCT PRODUCED HEREUNDER SHALL BE LIMITED TO THE ACTUAL FEE PAYABLE TO JOSTENS FOR THE DEFICIENT OR DEFECTIVE SERVICE OR PRODUCT HEREUNDER. JOSTENS SHALL NOT BE LIABLE FOR TYPOGRAPHICAL ERRORS, MISSPELLINGS OR OTHER DEVIATIONS OR ERRORS.

**10. PAYMENT TERMS:** Customer agrees to pay a 40% deposit November 1st (December 1st for CY Customers) and an additional 40% deposit March 1st (April 1st for CY Customers) that will bring the total deposit up to 80% of the base price. Customer will receive a final invoice when the Publication is completed. Final payment is due within thirty (30) calendar days after the final invoice is received. A service charge of 1.5% a month on the unpaid balance (18% annual percentage rate) or the maximum allowed by local law will be assessed for late payment. Should it be necessary for Jostens to institute collection procedures against Customer, Jostens shall be entitled to recover its reasonable attorneys' fees and costs from Customer. All payments and checks must be made payable to and sent directly to Jostens, Inc., **21336 Networks Place, Chicago, IL 60673-1213.**

**11. TAXES:** Applicable sales taxes will be charged unless evidence of tax exemption is furnished prior to invoicing. A number of states do not exempt schools from the requirement to collect sales tax on sales. It is Customer's responsibility to collect and remit sales tax on its distribution or resale of yearbooks based on sales tax regulations in its state, except for sales facilitated by Jostens. Where Jostens accepts orders on a school's behalf and collects applicable sales taxes on such orders, Jostens may, at Jostens' option, remit taxes collected on such orders directly to the taxing authority.

**12. MISCELLANEOUS:** The person signing this Agreement represents that he/she is fully authorized to execute this Agreement on behalf of Customer. Jostens may use its controlled affiliates as subcontractors to perform obligations under this Agreement. Customer understands that this is a binding Agreement between the parties hereto for the term specified in the Agreement, and represents that it has all necessary power and authority to execute this Agreement. This Agreement, including the proposed budget, schedule, and other specifications set forth herein and any additional or changed specifications agreed upon by the parties related to the products manufactured by Jostens under this Agreement (which shall

automatically be incorporated by reference into this Agreement), represents the entire agreement between the parties. In the event that after the date hereof Customer submits purchase orders or other written instructions that contain any terms or conditions, those terms and conditions shall be of no force and effect. The parties are independent contractors; nothing herein contained shall in any way constitute a partnership between, or joint venture by, any of the parties hereto. This Amendment may be executed in multiple counterparts, each of which shall be an original, but all of which shall constitute one and the same Amendment. Digital and electronic signatures shall have the same binding effect as original signatures, and an Amendment sent in electronic or facsimile format containing the signatures of the parties shall be binding.

**13. GOVERNING LAW:** Any and all disputes, claims, or controversies arising out of, relating to, or between the parties regarding the execution of, application of, or interpretation of this Agreement shall be governed by the laws of the State of Minnesota without regard to any conflicts of laws principles.

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**Paragraphs A-D only apply to Customer if Customer has elected to participate in the Yearbook+ Program now or in the future.**

**A. Provision of Information.** Customer agrees that it will provide Jostens with student email address, parent email address, student name and student grade. Upon Jostens' reasonable request, Customer will provide additional SII to Jostens if necessary for Jostens to provide the Service. Customer also agrees to whitelist domains associated with Jostens or the Yearbook+ product to facilitate authentication and operability of Yearbook +.

**B. Destruction of Data and SII.** To the extent required to do so by applicable law, Jostens will delete SII related to Yearbook+ upon Customer, student, parent or legal guardian's request.

**C. Breach of Confidentiality.** If Customer reasonably determines in good faith that Jostens has materially breached any of its confidentiality obligations under the Agreement, Customer, in its sole discretion, shall have the right to: (a) require Jostens to create an internal a plan for monitoring and reporting related to Customers SII; (b) provide Jostens with a fifteen (15) day period to cure the breach; or (c) provide notice of Customer's intent to terminate the Yearbook+ program immediately if cure is not possible. Before exercising any of these options, Customer shall provide written notice to Jostens describing the violation and the action it intends to take, and permit Jostens thirty (30) days to respond to the alleged violation and demonstrate either that a breach did not occur or provide a remediation plan to resolve the breach.

**D. Moderation.** The Services will allow individuals to upload digital photographs to be considered for use in the Publication. Jostens may offer enhanced moderation services that include manual review of the photographs by a third party ("Manual Moderation") and Customer may elect to purchase Manual Moderation in the event it is offered. Customer will be responsible for curating the digital photographs uploaded for use in the Publication. Customer will also be responsible for responding to inquiries from individuals about digital photographs submitted, uploaded or removed from the Publication. Notwithstanding the foregoing, Jostens reserves the right to remove any digital photograph for any reason. Jostens shall maintain complete discretion on the terms of its storage, retention and availability of digital photographs associated with Publication. Customer shall pay any fees associated with the storage, retention and availability of the digital photographs in the Publication until Customer provides notice to Jostens of its intent to cease storage and terminate any ongoing fees. Customer and Jostens agree to comply with all applicable privacy laws with respect to the Publication. Customer and Jostens further agree that the California Consumer Privacy Act, Cal. Civil Code § 1798.100, *et seq.* (CCPA) does not apply to the Publication because Jostens is providing a service to support the Publication on behalf of a school, and schools are not subject to the CCPA because they are not "organized or operated for the profit or financial benefit of its shareholders or other owners."

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