



FORT HAYS STATE UNIVERSITY

Forward thinking. World ready.

Renewal

Date: August 16, 2023

Number: 1

Fort Hays State University Purchasing Office

Telephone: 785-628-4251

Fax: 785-628-4046

E-Mail Address: purchasing@fhsu.edu

Web Address: <http://www.fhsu.edu/purchasing/>

Item: Collegiate Licensing Program Partner

Agency: Fort Hays State University

Location(s): Hays, KS

Term of Contract: Contract Award is renewed for two (2) years from July 1, 2023 through June 30, 2025

Contractor: **Affinity Licensing, LLC**
5751 Palmer Way, Suite G
Carlsbad, CA 92010
Phone: 760-860-4005, ex. 270
Contact Person: Wil Spires
Email: wil@affinitylicensing.com

Conditions:

Contract renewal was changed from two, one-year renewals to one, two-year renewal.

Affinity Licensing, LLC

By: Wil Spires

Printed Name: Wil Spires

Title: Partner

Date: 08/25/2023

Fort Hays State University

By: Wesley D. Wintch

Printed Name: Wesley D. Wintch

Title: Vice President for Administration

Date: 08/28/2023



FORT HAYS STATE UNIVERSITY

Forward thinking. World ready.

CONTRACT AWARD

Date of Award: May 1, 2020

Contract Number: 20008

Fort Hays State University Purchasing Office

Telephone: 785-628-4251

E-Mail Address: purchasing@fhsu.edu

Web Address: <http://www.fhsu.edu/purchasing/>

Item: Collegiate Licensing Program Partner

Agency: Fort Hays State University

Location(s): Hays, KS

Term of Contract: Contract Award from May 1, 2020 through June 30, 2023, with the option to renew for two (2) additional one (1) year renewal periods by written agreement of the parties

Contractors: **Affinity Licensing, LLC**
5751 Palmer Way, Suite G
Carlsbad, CA 92010
Phone: 760-860-4005, ex. 270
Contact Person: Wil Spires
Email: wil@affinitylicensing.com

Prices: See Attached

Payment Terms: Net 30

Political Subdivisions: Pricing **is not** available to the political subdivisions of the State of Kansas.

The above referenced contract award was recently posted to the Fort Hays State University Internet website. The document can be downloaded by going to the following website:

<http://www.fhsu.edu/purchasing/>

CONDITIONS

Term of Contract: The term of this contract is for a three (3) years with the option to renew for two (2) additional one (1) year renewal periods by written agreement of the parties.

1. **Conditions of Contract:** The following terms and conditions of award are incorporated by reference and include: DA-45/146a; specifications and conditions of the proposal including any addenda; vendors response including any addenda, appendices and exhibits.
2. **Order of Preference:** Any conflict to the provisions of this contract and the documents incorporated by reference shall be determined by the following priority order:
 - a. Contract Provisions Attachment DA-45/146a;
 - b. Written modifications and addenda to the executed contract;
 - c. Written contract signed by the parties and attachments;
 - d. The above referenced Request for Proposal (RFP) including any and all addenda;
 - e. Affinity Licensing Services Agreement (Attachment A);
 - f. Affinity Response to FHSU Question regarding the revenue amount dated 3/5/2020;
 - g. Affinity Response to FHSU Follow-Up Question email dated 02/07/2020;
 - h. Affinity 20008 Collegiate Licensing Program Partner Technical and Cost Proposals;
 - i. Any supporting manuals/documents that have been incorporated in this Request; and
 - j. Contractor's written proposal submitted in response to this RFP as finalized, including any addenda, appendices and exhibits.
3. **Notices:** All notices, demands, requests, approvals, reports, instructions, consents or other communications (collectively "notices") which may be required or desired to be given by either party to the other shall be **IN WRITING** and addressed as follows:

**Fort Hays State University
Purchasing Office
601 Park Street Sheridan Hall Rm 318
Hays, KS 67601
RE: Contract number see page 1**

or to any other persons or addresses as may be designated by notice from one party to the other.

4. **Termination for Cause:** The FHSU Purchasing Director may terminate this contract, or any part of this contract, for cause under any one of the following circumstances:
 - the Contractor fails to make delivery of goods or services as specified in this contract; or
 - the Contractor provides substandard quality and/or workmanship;
 - the Contractor fails to perform any of the provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms.

The FHSU Purchasing Director shall provide Contractor with written notice of the conditions endangering performance. If the Contractor fails to remedy the conditions within ten (10) days from the receipt of the notice (or such longer period as FHSU may authorize in writing), the FHSU Purchasing Director shall issue the Contractor an order to stop work immediately. Receipt of the notice shall be presumed to have occurred within three (3) days of the date of the notice.

If it is determined, after notice of termination for cause, that Contractor's failure was due to causes beyond the control of or negligence of the Contractor, the termination shall be a termination for convenience.

5. **Debarment of University Contractors:** Any vendor who defaults on delivery or does not perform in a satisfactory manner as defined in this contract may be barred for a period up to three (3) years, pursuant to KSA 75-37,103, or have their work evaluated for pre-qualification purposes.
6. **Rights and Remedies:** If this contract is terminated, FHSU, in addition to any other rights provided for in this contract, may require the Contractor to transfer title and deliver to FHSU in the manner and to the extent directed, any completed materials. FHSU shall be obligated only for those services and materials rendered and accepted prior to the date of termination.

In the event of termination, the Contractor shall receive payment prorated for that portion of the contract period services were provided to and/or goods were accepted by FHSU subject to any offset by FHSU for actual damages including loss of state or federal matching funds.

The rights and remedies of FHSU provided for in this contract shall not be exclusive and are in addition to any other rights and remedies provided by law.

7. **Force Majeure:** The Contractor shall not be held liable if the failure to perform under this contract arises out of causes beyond the control of the Contractor. Causes may include, but are not limited to, acts of nature, fires, tornadoes, quarantine, strikes other than by Contractor's employees, and freight embargoes, etc.
8. **Waiver:** Waiver of any breach of any provision in this contract shall not be a waiver of any prior or subsequent breach. Any waiver shall be in writing and any forbearance or indulgence in any other form or manner by FHSU shall not constitute a waiver.
9. **Independent Contractor:** Both parties, in the performance of this contract, shall be acting in their individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor accepts full responsibility for payment of unemployment insurance, workers compensation and social security as well as all income tax deductions and any other taxes or payroll deductions required by law for its employees engaged in work authorized by this contract.

10. **Staff Qualifications:** The Contractor shall warrant that all persons assigned by it to the performance of this contract shall be employees of the Contractor (or specified Subcontractor) and shall be fully qualified to perform the work required. The Contractor shall include a similar provision in any contract with any Subcontractor selected to perform work under this contract.

Failure of the Contractor to provide qualified staffing at the level required by the proposal specifications may result in termination of this contract and/or damages.

11. **Subcontractors:** The Contractor shall be the sole source of contact for the contract. FHSU will not subcontract any work under the contract to any other firm and will not deal with any subcontractors. The Contractor is totally responsible for all actions and work performed by its subcontractors. All terms, conditions and requirements of the contract shall apply without qualification to any services performed or goods provided by any subcontractor.
12. **Proof of Insurance:** Upon request, the vendor shall present Certificates of Insurance to the FHSU Purchasing Office evidencing the following coverage during the performance of the Services:
 - (a) Worker's Compensation with statutory limits;
 - (b) Employers Liability, with a minimum \$1,000,000 limit of liability per occurrence;
 - (c) Commercial General Liability, including Contractual Liability coverage, with the following minimum limits of liability: \$1,000,000 per occurrence for Bodily Injury and Property Damage, and \$1,000,000 General Aggregate; and
 - (d) Professional Liability in the minimum amount of \$1,000,000 per claim.
13. **Conflict of Interest:** The Contractor shall not knowingly employ, during the period of this contract or any extensions to it, any professional personnel who are also in the employ of the FHSU and who are providing services involving this contract or services similar in nature to the scope of this contract to the University. Furthermore, the Contractor shall not knowingly employ, during the period of this contract or any extensions to it, any FHSU employee who has participated in the making of this contract until at least two years after his/her termination of employment with FHSU.
14. **Confidentiality:** The Contractor may have access to private or confidential data maintained by FHSU to the extent necessary to carry out its responsibilities under this contract. Contractor must comply with all the requirements of the Kansas Open Records Act in providing services under this contract. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data

collected, maintained or used in the course of performance of this contract shall be disseminated by either party except as authorized by statute, either during the period of the contract or thereafter. Contractor must agree to return any or all data furnished by FHSU promptly at the request of FHSU in whatever form it is maintained by Contractor. On the termination of expiration of this contract, Contractor will not use any of such data or any material derived from the data for any purpose and, where so instructed by FHSU, will destroy or render it unreadable.

15. **Nondiscrimination and Workplace Safety:** The Contractor agrees to abide by all federal, state and local laws, rules and regulations prohibiting discrimination in employment and controlling workplace safety. Any violations of applicable laws, rules and regulations may result in termination of this contract.
16. **Environmental Protection:** The Contractor shall abide by all federal, state and local laws, rules and regulations regarding the protection of the environment. The Contractor shall report any violations to the applicable governmental agency. A violation of applicable laws, rule or regulations may result in termination of this contract.
17. **Hold Harmless:** The Contractor shall indemnify FHSU against any and all loss or damage to the extent arising out of the Contractor's negligence in the performance of services under this contract and for infringement of any copyright or patent occurring in connection with or in any way incidental to or arising out of the occupancy, use, service, operations or performance of work under this contract.

FHSU shall not be precluded from receiving the benefits of any insurance the Contractor may carry which provides for indemnification for any loss or damage to property in the Contractor's custody and control, where such loss or destruction is to state property. The Contractor shall do nothing to prejudice the FHSU's right to recover against third parties for any loss, destruction or damage to State property.

18. **Care of State Property:** The Contractor shall be responsible for the proper care and custody of any state-owned personal tangible property and real property furnished for Contractor's use in connection with the performance of this contract, and Contractor will reimburse FHSU for such property's loss or damage caused by Contractor, normal wear and tear excepted.
19. **Prohibition of Gratuities:** Neither the Contractor nor any person, firm or corporation employed by the Contractor in the performance of this contract shall offer or give any gift, money or anything of value or any promise for future reward or compensation to any FHSU employee at any time.
20. **Retention of Records:** Unless FHSU specifies in writing a different period of time, the Contractor agrees to preserve and make available all of its books, documents, papers, records and other evidence involving transactions related to this contract for a period of five (5) years from the date of the expiration or termination of this contract.

Matters involving litigation shall be kept for one (1) year following the termination of litigation, including all appeals, if the litigation exceeds five (5) years.

The Contractor agrees that authorized federal and state representatives, including but not limited to, personnel of FHSU; independent auditors acting on behalf of state and/or federal agencies shall have access to and the right to examine records during the contract period and during the five (5) year post-contract period. Delivery of and access to the records shall be at no cost to FHSU.

21. **Antitrust:** If the Contractor elects not to proceed, the Contractor assigns to FHSU all rights to and interests in any cause of action it has or may acquire under the anti-trust laws of the United States and FHSU relating to the particular products or services purchased or acquired by FHSU pursuant to this contract.
22. **Modification:** This contract shall be modified only by the written agreement of the parties with the approval of the PNC. No alteration or variation of the terms and conditions of the contract shall be valid unless made in writing and signed by the parties. Every amendment shall specify the date on which its provisions shall be effective.

23. **Assignment:** The Contractor shall not assign, convey, encumber, or otherwise transfer its rights or duties under this contract without the prior written consent of the University.
- This contract may terminate in the event of its assignment, conveyance, encumbrance or other transfer by the Contractor without the prior written consent of the University.
24. **Third Party Beneficiaries:** This contract shall not be construed as providing an enforceable right to any third party.
25. **Captions:** The captions or headings in this contract are for reference only and do not define, describe, extend, or limit the scope or intent of this contract.
26. **Severability:** If any provision of this contract is determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this contract shall not be affected and each provision of this contract shall be enforced to the fullest extent permitted by law.
27. **Governing Law:** This contract shall be governed by the laws of the State of Kansas and shall be deemed executed at Hays, Ellis County, Kansas, unless otherwise specified and agreed upon by FHSU.
28. **Jurisdiction:** The parties shall bring any and all legal proceedings arising hereunder in the State of Kansas, District Court of Ellis County, unless otherwise specified and agreed upon by FHSU. The United States District Court for the State of Kansas sitting in Topeka, Shawnee County, Kansas, shall be the venue for any federal action or proceeding arising hereunder in which the State is a party.
29. **Mandatory Provisions:** The provisions found in Contractual Provisions Attachment (DA-146a) which is attached are incorporated by reference and made a part of this contract.
30. **Integration:** This contract, in its final composite form, shall represent the entire agreement between the parties and shall supersede all prior negotiations, representations or agreements, either written or oral, between the parties relating to the subject matter hereof. This contract between the parties shall be independent of and have no effect on any other contracts of either party.
31. **Criminal Or Civil Offense:** Any conviction for a criminal or civil offense of an individual or entity that controls a company or organization or will perform work under this contract that indicates a lack of business integrity or business honesty must be disclosed. This includes (1) conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract; (2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property; (3) conviction under state or federal antitrust statutes; and (4) any other offense to be so serious and compelling as to affect responsibility as a state contractor. For the purpose of this section, an individual or entity shall be presumed to have control of a company or organization if the individual or entity directly or indirectly, or acting in concert with one or more individuals or entities, owns or controls 25 percent or more of its equity, or otherwise controls its management or policies. Failure to disclose an offense may result in disqualification of the bid or termination of the contract.
32. **Injunctions:** Should FHSU be prevented or enjoined from proceeding with the acquisition before or after contract execution by reason of any litigation or other reason beyond the control of the University, vendor shall not be entitled to make or assert claim for damage by reason of said delay.
33. **Statutes:** Each and every provision of law and clause required by law to be inserted in the contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein. If through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then on the application of either party the contract shall be amended to make such insertion or correction.

34. **Materials and Workmanship:** The Contractor shall perform all work and furnish all supplies and materials, machinery, equipment, facilities, and means, necessary to complete all the work required by this solicitation, within the time specified, in accordance with the provisions as specified.

The contractor shall be responsible for all work put in under these specifications and shall make good, repair and/or replace, at the contractor's own expense, as may be necessary, any defective work, material, etc., if in the opinion of Fort Hays State University said issue is due to imperfection in material, design, workmanship or contractor fault.

35. **Industry Standards:** If not otherwise provided, materials or work called for in this contract shall be furnished and performed in accordance with best established practice and standards recognized by the contracted industry and comply with all codes and regulations which shall apply.

36. **Federal, State and Local Taxes:** Unless otherwise specified, the contract price shall include all applicable federal, state and local taxes. The successful vendor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this contract. **FHSU is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the vendor's price quotation.**

The University makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.

37. **Accounts Receivable Set-Off Program:** If, during the course of this contract the Contractor is found to owe a debt to the State of Kansas, agency payments to the vendor may be intercepted / setoff by the State of Kansas. Notice of the setoff action will be provided to the Contractor. Pursuant to K.S.A. 75-6201 et seq., Contractor shall have the opportunity to challenge the validity of the debt. If the debt is undisputed, the Contractor shall credit the account of the agency making the payment in an amount equal to the funds intercepted.

K.S.A. 75-6201 et seq. allows the Director of Accounts & Reports to setoff funds the State of Kansas owes Contractors against debts owed by the Contractors to the State of Kansas. Payments setoff in this manner constitute lawful payment for services or goods received. The Contractor benefits fully from the payment because its obligation to the State is reduced by the amount subject to setoff.

38. **Immigration and Reform Control Act of 1986 (IRCA):** All contractors are expected to comply with the Immigration and Reform Control Act of 1986 (IRCA), as may be amended from time to time. This Act, with certain limitations, requires the verification of the employment status of all individuals who were hired on or after November 6, 1986, by the contractor as well as any subcontractor or sub-contractors. The usual method of verification is through the Employment Verification (I-9) Form.

With this contract, the contractor hereby certifies without exception that such contractor has complied with all federal and state laws relating to immigration and reform. Any misrepresentation in this regard or any employment of persons not authorized to work in the United States constitutes a material breach and, at FHSU's option, may subject the contract to termination and any applicable damages.

Unless provided otherwise herein, all contractors are expected to be able to produce to FHSU any documentation or other such evidence to verify Contractor's IRCA compliance with any provision, duty, certification or like under the contract.

39. **Worker Misclassification:** The contractor and all lower tiered subcontractors under the contract shall properly classify workers as employees rather than independent contractors and treat them accordingly for purposes of workers' compensation insurance coverage, unemployment taxes, social security taxes, and income tax withholding. Failure to do so may result in contract termination.

40. **Definitions:** A glossary of common procurement terms used by the State of Kansas is available at <http://da.ks.gov/purch>, under "Purchasing Forms".

41. **Graphic Identity Standards and Use of University Marks:** Compliance with FHSU Graphic Identity Standards and Use of University Marks Policies is required and may not be waived with equivalents.
42. **Definite Quantity Contract:** This Request is for a close-ended contract between the vendor and FHSU to furnish a predetermined quantity of a good or service in a given period of time.
43. **Off-Shore Sourcing:** Bidders shall disclose in their bid response the location where the contracted services will be performed and whether or not any of the work necessary to provide the contracted services will be performed at a site outside the United States.

If, during the term of the contract, the Contractor or subcontractor moves work previously performed in the United States to a location outside of the United States, the Contractor shall immediately notify the FHSU Purchasing Office in writing, indicating the new location and the percentage of work relocated.

44. **Prices:** Prices shall remain firm for the entire contract period and subsequent renewals. Prices quoted shall be net delivered, including all trade, quantity and cash discounts. Any price reductions available during the contract period shall be offered to FHSU. Failure to provide available price reductions may result in termination of the contract.
45. **Shipping and F.O.B. Point:** Unless otherwise specified, prices shall be F.O.B. DESTINATION, PREPAID AND ALLOWED (included in the price), which means delivered to FHSU's receiving dock or other designated point as specified in this contract without additional charge. Shipments shall be made in order to arrive at the destination at a satisfactory time for unloading during receiving hours.
46. **Deliveries:** All orders shall be shipped FOB destination, prepaid and allowed clearly marked with the purchase order number. If delays in delivery are anticipated, the Contractor shall immediately notify the Fort Hays State University of the revised delivery date or partial delivery date. The order may be cancelled if delivery time is unsatisfactory. The Contractor shall inform the FHSU Purchasing Office of any supply or delivery problems. Continued delivery problems may result in termination of the contract.

In the event delivery minimums apply, the contractor shall provide information to FHSU.

47. **Charge Back Clause:** If the contractor fails to deliver the product within the delivery time quoted on the contract, FHSU reserves the right to purchase the product from the open market and charge back the difference between contract price and open market price to the contractor.
48. **Subcontractors:** Kansas Statute K.S.A. 75-3741, as amended, requires a Bidder to list and identify the "Major Sub-Contractors" for Mechanical Construction, Plumbing Construction, and/or Electrical Construction included as a part of the Proposed, when a single contract for the "Project as a whole" is to be awarded.

FHSU requires tax clearance certificates for all subcontractors be submitted with the proposal, and that the bidder additionally provide subcontract(s) legal company name, contract information and tax ID number (FEIN/TIN) as well.

49. **Warranty:** Contractors shall indicate the type and extent of the warranty for all equipment, hardware, software, and services proposed. FHSU requires a "standard" warranty of a specific amount of days, or one (1) year, whichever is greater. This warranty shall be included in the cost of the equipment.

The successful bidder will be the sole point of contact on any problems with the equipment or systems during the warranty period.

The Contractor shall be responsible for all work performed under these specifications. The Contractor shall make good, repair and replace, at the Contractor's own expense, as may be necessary, any defective work, material acceptance, if in the opinion of the FHSU Purchasing

Office said defect is due to imperfection in material, design, or workmanship for the warranty period specified.

50. **Acceptance:** No contract provision or use of items by FHSU shall constitute acceptance or relieve the vendor of liability in respect to any expressed or implied warranties.
51. **Ownership:** All data, forms, procedures, software, manuals, system descriptions and work flows developed or accumulated by the Contractor under this contract shall be owned by FHSU. The Contractor may not release any materials without the written approval of FHSU.
52. **Data:** Any and all data required to be provided at any time during the bid process or contract term shall be made available in a format as requested and/or approved by FHSU.
53. **New Materials, Supplies or Equipment:** Unless otherwise specified, all materials, supplies or equipment offered by a vendor shall be new, unused in any regard and of most current design. All materials, supplies and equipment shall be first class in all respects. Seconds or flawed items will not be acceptable. All materials, supplies or equipment shall be suitable for their intended purpose and, unless otherwise specified, fully assembled and ready for use on delivery.
54. **Vendor Contracts:** Include a copy of any contracts, agreements, licenses, warranties, etc. proposed. (State of Kansas form DA-146a remains a mandatory requirement in all contracts.)
55. **Transition Assistance:** In the event of contract termination or expiration, Contractor shall provide all reasonable and necessary assistance to FHSU to allow for a functional transition to another vendor.

SPECIFICATIONS

The following specifications were provided in RFP 20008. Refer to Affinity Licensing's Technical Proposal Response for contract details.

Fort Hays State University invites proposals for a collegiate licensing program partner.

Fort Hays State University is a regional comprehensive university with 15,523 students and 385 faculty. The University has three divisions: Academic Affairs, Student Affairs, and Administration and Finance. Students can pursue majors in 30 academic departments in five colleges – the College of Arts, Humanities, and Social Sciences; the W.R. and Yvonne Robbins College of Business and Entrepreneurship; the College of Education; the College of Health and Behavioral Sciences; the Werth College of Science, Technology, and Mathematics – and the Graduate School.

The university's current collegiate licensing program includes more than 90 vendor partners and is managed by the Office of Strategic Communications. Under the current program, the university charges licensed vendors \$50 per year and collects no royalties from vendor sales.

The university seeks a collegiate licensing partner with proven expertise in brand development and management, trademark search and registration management, retail marketing, e-commerce, and marketing agency-level project management. The university welcomes proposals from qualified, experienced, financially sound, and responsible firms to provide services to market the trademarks and brands of FHSU, as well as the accounting for and collection of royalties from the licensing of third-party firms to use the trademarks.

The University is looking for methods to expand its range of trademarks. The university boasts a global student body, and we are committed to promoting our trademarks locally, throughout Kansas and online all over the world.

We seek a partner with a solid record of financial success in promoting a university brand through advertising, publicity, events, promotions, sponsorship, and traditional and online retail merchandising initiatives.

I. Scope of Services

The collegiate licensing partner selected by FHSU shall be expected to provide the following services:

1. Develop strategies that advance the FHSU brand and create positive revenue streams for the university, including but not limited to strategies for marketing and expanding trademarks and brands of FHSU.
2. Manage and expand the university's relationships with current and new licensing program vendor partners.
3. Work closely with the Office of Strategic Communications to effectively facilitate the development, registration, and/or management of trademarks and licensees, along with approval of quality merchandise in keeping with the University's brand standards as set forth in The Black and Gold Book, the university brand and style guide.
4. Remain in close communication with the Office of Strategic Communications representatives and licensees to keep all parties informed of changes in licensing practice and ensure timely and appropriate royalty collection and management
5. Act as the University's primary agent to license the use of one or more of said marks and logos in connection with the marketing of various articles of merchandise.

Any proposal shall provide, at minimum, the following information:

- Proposed preferred pricing structure and/or options
- Suggested one-time and/or recurring licensing and/or administrative fees structure to transition current licensing program vendor partners to the new program, including a process for transitioning valued small/low revenue volume, local retailers.
- Suggested one-time and/or recurring licensing and/or administrative fees structure for larger (regional, national, global) licensing partners
- Suggested one-time and/or recurring fees and royalty revenue sharing model that minimizes university costs during the initial launch of this new program

- Options for performance-based modifications to revenue sharing that rewards growth in revenue, partnership expansion, over the course of one to three years.
- Summary of past experiences in higher education collegiate licensing
- Sample marketing plans used with colleges and universities of similar size and complexity
- Description of licensing management systems and the process for artwork/licensed item submission, review, and approval
- Description of reporting processes
- Summary of the capability of any e-commerce applications and online store solutions that would be included in the licensing program
- Description of processes for onboarding a new licensee, educating existing licensees, and working through issues with licensees
- Vendors list and product categories
- Potential new vendor partner evaluation standards and processes
- Sample institutional art sheet
- Evidence of successful promotional initiatives previously implemented to support institutions and licensees/vendors
- Three (3) references

PRICING

The following revenue sharing agreement is the same for each three (3) year period and for the optional two (2) one (1) year renewal periods by written agreement of the parties.

If FHSU decides that Affinity's values, innovation and commitment to licensing are aligned with FHSU's goals, Affinity is willing to collaborate with FHSU to structure a financial offer that meets FHSU and Affinity's mutual objectives. For the sake of this proposal, FHSU shall receive seventy percent (70%) of the first \$50,000 in gross royalties collected annually. FHSU shall receive seventy-five percent (75%) of all gross royalties collected above \$50,000 annually. In the event Affinity's revenue share of the gross royalties does not equal \$7,500 annually, FHSU will be billed the difference.

Vendors will pay an annual administrative fee of \$100 to maintain and hold their license agreement with Affinity. Vendors will pay a quarterly royalty percentage on all sales of FHSU merchandise. We propose using a 12% royalty rate which is what is industry standard. Note, this royalty rate is paid by the vendors to Affinity, not from retailers to Affinity.

Fort Hays State University
DA-45/146a (Rev 12-19)

Contract No.: 20008
Date: April 7, 2020

CONTRACT

This contract is being established on the 1st day of May 2020 by and between Fort Hays State University and Affinity Licensing, LLC, 5751 Palmer Way, Suite G, Carlsbad, CA 92010 (Contractor).

The parties agree as follows:

1. Subject to the terms and conditions of this contract and companion Contract Award document, Fort Hays State University hereby accepts the offer of Contractor as expressed by Contractor's pricing submitted on 01/09/2020.
2. It is understood and agreed by the parties that pursuant to the bid, Contractor agrees to provide a Collegiate Licensing Program Partner from May 1, 2020 through June 30, 2023 with the option to renew for two (2) additional one (1) year renewal periods by written agreement of the parties. Fort Hays State University agrees to pay on delivery of the item(s) the amount(s) billed by Contractor in accordance with the pricing offered as shown on delivery invoice(s) of the Contractor to Fort Hays State University. Payment will be made as soon after receipt of the invoice(s) as possible in accordance with state law.
3. Failure of Contractor to furnish the item(s) in accordance with the bid specifications incorporated into this contract by reference, or failure of Contractor to deliver the item(s) in accordance with any time schedules prescribed in this contract or any documents incorporated by reference into this contract shall result in forfeiture of any performance bond of Contractor and/or in termination of this contract at the option of Fort Hays State University.
4. It is understood and agreed that the provisions set out in the Fort Hays State University bid document for this contract are incorporated and made a part of this contract by reference as though fully set forth herein. Contractor agrees and understands that these documents are controlling over Contractor's bid, invoice, Fort Hays State University order forms or any other documents of the Contractor.
5. The provisions found in Contractual Provisions Attachment (DA-146a), shown on the reverse side of this Contract, is incorporated and made a part of this contract by reference.
6. The prospective contractor signature below certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any transaction by any Federal, State, or Local Department or Agency.
7. In the event of any disputes regarding the terms and conditions of this Contract or payments alleged to be due and owing, Contractor's sole remedy shall be with Fort Hays State University.

Affinity Licensing, LLC

By: Wil Spires

Printed Name: Wil Spires

Title: Partner

Date: 04/10/2020

Fort Hays State University

By: Michael W. Barnett

Printed Name: Michael W. Barnett

Title: Vice President for Administration & Finance

Date: 04/08/2020

Approved as to Form
Fort Hays State University
General Counsel

gs

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 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 <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.

ATTACHMENT A LICENSING SERVICES AGREEMENT

This LICENSING SERVICES AGREEMENT (the "Agreement") is by and between Affinity Licensing, LLC., a California based limited liability company, having its principal place of business at 5751 Palmer Way, Suite G, Carlsbad, CA 92010 ("Affinity"), and **Fort Hays State University**, having its principal place of business at 600 Park Street, Hays, Kansas (the "University").

PRELIMINARY STATEMENTS

WHEREAS, the University has adopted various distinct marks for the utilization of the University, which marks, as detailed on Exhibit A of Affinity's Technical Response, are the subject of various registrations issued to the University by the United States Patent and Trademark Office as well as various unregistered marks (the "Trademarks") and as a result of the long term continuous utilization of said marks by the University, considerable goodwill has inured to the benefit of the University; and

WHEREAS, Affinity is engaged in the business of marketing and arranging for the licensing of marks on behalf of various universities; and

WHEREAS, the University desires to engage Affinity to negotiate and manage license agreements with companies desiring to utilize the Trademarks of the University; and

WHEREAS, Affinity desires to accept such engagement subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in the consideration of the foregoing and the mutual covenants contained herein, the parties hereto agree as follows:

1. Retention of Affinity. The University hereby retains the services of Affinity as its exclusive licensing administrator and Affinity hereby agrees to act as licensing administrator on behalf of the University, in connection with those services which are described in Section 2 of this Agreement. Notwithstanding the foregoing, University shall be permitted to maintain and establish partnerships without violating the term of this Agreement.

2. Services and Agreements of Affinity. Affinity hereby agrees to provide the following services to the University (hereinafter collectively referred to as "Services") during the Term of this Agreement, as defined in Section 5, below:

(a) On behalf of the University, Affinity shall use good faith efforts to locate potential licensees and to negotiate and manage License Agreements with licensees that comply with the University's trademark policies and product quality requirements.

(b) Affinity shall use good faith efforts to ensure that all manufacturing, marketing and distribution of products or services that utilize the University's registered and unregistered marks are done in compliance with the License Agreement and with the University's prior approval.

(c) Affinity shall collect all royalties and receive reports from licensees on behalf of the University. Affinity shall routinely review reports for completeness, and to ensure accurate royalty reporting. Affinity shall submit to the University a complete report and royalty payment, as detailed in Section 4 of this Agreement.

(d) On behalf of the University, Affinity shall use good faith efforts to locate and notify all companies found to be infringing upon the University's marks or otherwise violating the University's rights in its marks. Should infringing companies not comply with the University's rights, Affinity shall, when in its discretion it deems it appropriate and upon mutual agreement by University, issue a *cease and desist* notice on behalf of the University. Affinity's obligation hereunder does not include initiating and maintaining lawsuits on behalf of the University against such companies for infringement. If Affinity and the University so agree, Affinity will manage any infringement litigation involving the Trademarks for a fee to be determined and agreed upon by Affinity and the University at that time.

(e) Affinity will use good faith efforts to obtain payment from licensees in default under the royalty payment provisions of the Licensing Agreement and notify the University of such defaulting licensees. Affinity's obligation hereunder does not include initiating and maintaining lawsuits against such licensees for payment.

3. Duties and Agreements of University. The University agrees to provide Affinity all information in its possession relating to previous and current use of its registered and unregistered marks, and any other information that will assist Affinity with the performance of the Services, subject to University's right to withhold information due to privacy, confidentiality, proprietary, or other legitimate educational or business concerns.

(a) University shall designate a primary licensing contact to assist Affinity in the review and final approval of product designs, license agreements and any other marketing and/or promotional concepts.

4. Fees and Billing.

(a) To Affinity. During the Term of this Agreement, as compensation for the Services, Affinity shall be entitled to a percentage of the royalties collected from those License Agreements negotiated and/or managed by Affinity. During the term of this Agreement, such percentage shall equal thirty percent (30%) of the first fifty thousand (\$50,000) in royalties collected annually, and twenty-five percent (25%) on all annual royalties collected above fifty thousand (\$50,000), collectively in total referred to as "Gross Royalty". In the event Affinity's compensation does not equal seven thousand five hundred (\$7,500), the University will be billed the difference.

(b) To the University. Affinity shall pay seventy percent (70%) of the first fifty thousand (\$50,000) in royalties collected annually; and seventy-five percent (75%) of all annual royalties collected above fifty thousand (\$50,000) by it from the License Agreements negotiated and/or managed by Affinity during the Term of this Agreement. In the event the University receives royalty payments directly from licensees negotiated and/or procured by Affinity for the University and who have executed a License Agreement, the University shall notify Affinity and Affinity will invoice the University for its portion of the royalties.

(c) Payments and Collections. Affinity shall contract with licensees to receive payments on behalf of the University from licensees at least as often as within thirty (30) days following the end of each calendar quarter. Affinity shall submit all reports and payments received from licensees, less Affinity's commission, to the University within sixty (60) days following the end of each royalty reporting period.

5. Exemptions. University and Affinity agree with the basic concept that any user of its marks and logos on licensed products should be an approved, licensed vendor, and that no user of the marks shall be exempt from royalty payments. University purchases of licensed product not for resale shall be exempt from royalties. The Parties will make every good faith effort to comply with this concept. University reserves the right to exempt any user from royalty payments if University determines that it would be in the best interests of the University.

6. Term. This Agreement shall begin effective May 1, 2020 and shall expire on June 30, 2023, unless terminated earlier pursuant to this Agreement. This Agreement may be extended for two (2) additional one (1) year periods upon mutual written agreement by the parties. The initial term and any renewal period are referred to herein as the "Term."

7. Termination. In addition to any other provisions of this Agreement, this Agreement may be terminated prior to the expiration of the Term pursuant to the following conditions:

(a) The University has the right to immediately terminate this Agreement by written notice to Affinity, with termination effective as of such written notice, upon the occurrence of any of the following events:

(i) Willful and material falsification of any records required to be maintained or reports required to be provided by Affinity to the University; or

(ii) Affinity becomes bankrupt or insolvent or has filed against it a petition in bankruptcy or for reorganization or arrangement or the appointment of a receiver or trustee of all or a portion of such party's property, or if Affinity makes an assignment for the benefit of creditors;

(b) The University has the right to terminate this Agreement upon thirty (30) days' notice to Affinity, by written notice specifying the details of the grounds for termination and advising that unless Affinity immediately proceeds to cure and does cure the default(s) within said thirty (30) days, in any of the following situations:

(i) Misuses or unauthorized uses of the Trademarks or any other conduct which in the University's reasonable judgment is detrimental to the goodwill of the University or otherwise injurious to the best interest of the University; or

(ii) Failure to comply with any other obligation imposed on Affinity by or through this Agreement.

(c) Affinity has the right to immediately terminate this Agreement by written notice to the University, with termination effective as of such written notice, upon the occurrence of any of the following events:

(i) if the University becomes bankrupt or insolvent or has filed against it a petition in bankruptcy or for University or arrangement or the appointment of a receiver or trustee of all or a portion of such party's property, or if the University makes an assignment for the benefit of creditors.

(d) Affinity has the right to terminate this Agreement upon thirty (30) days' notice to the University, by written notice specifying the details of the grounds for termination and advising that unless the University immediately proceeds to cure and does cure the default(s) within said thirty (30) days, if the University fails to comply with any other obligation imposed on the University by or through this Agreement.

8. Obligations Upon Termination or Expiration. Upon termination or expiration of this Agreement, Affinity and the University shall each cease holding itself out as being affiliated with the other. Affinity shall return to the University any official artwork of the University, as well as all contracts and business records relating to the licensing of the University's Trademarks within 30 days of receipt of notice of termination or expiration. Provided however, Affinity may retain copies of any of such items to the extent reasonably necessary to facilitate and monitor the winding down of this relationship. In addition, Affinity will promptly notify any licensees of the termination or expiration of this Licensing Services Agreement. Affinity shall continue to receive its percentage of the Gross Royalty, as defined in section 4 above, throughout the usual Term of this Agreement, and for a period of one year following termination or expiration of this Agreement on all license agreements in effect as of the date of termination or expiration of this Agreement, regardless of when such license agreements expire.

9. Relationship of the Parties. The University and Affinity each acknowledge and agree that in fulfilling the mutual obligations required pursuant to this Agreement, Affinity is acting and will act as an independent contractor and not as an employee of the University. Except for the authority to engage in activities described in Section 2 of this Agreement, Affinity acknowledges and agrees that it is not an agent for the University and it will not have nor will it represent or hold itself out as having authority to bind the University or to incur any obligations whatsoever on behalf of the University. Neither party hereto shall be liable to any third party in any way for any engagement, obligations, commitment, contract, or transaction for any act or omission to act of the other except as provided herein.

10. Indemnification.

(a) By Affinity. Affinity agrees to indemnify, defend and hold the University and its affiliates, and each of their officers, directors, and employees harmless from and against any and all losses, damages, claims, demands, actions and causes of action, including but not limited to all costs and expenses of litigation and all reasonable attorneys' fees, incurred by the University as a result of, or arising out of, any violation of this Agreement, provided, however, that the University shall not be indemnified from its own gross negligence, willful misconduct, negligence or breach of contract, or the gross negligence, willful misconduct, negligence or breach of contract of its officers, employees, agents or representatives.

(b) By the University. The University agrees to indemnify, defend and hold Affinity and its affiliates, and each of their officers, directors, and employees harmless from and against any and all losses, damages, claims, demands, actions and causes of action, including but not limited to all costs and expenses of litigation and all reasonable attorneys' fees, incurred by Affinity as a result of, or arising out of, any violation of this Agreement, provided, however, that Affinity shall not be indemnified from its own gross negligence, willful misconduct, negligence or breach of contract, or the gross negligence, willful misconduct, negligence or breach of contract of its officers, employees, agents or representatives.

11. Assignment. This Agreement may not be assigned by either party without the prior written consent of the other. When assigned with the other party's prior written consent, this Agreement is binding upon and shall inure to the benefit of the successors and assigns of Affinity and the University.

12. Notices. All notices provided for hereunder shall be deemed sufficient if in writing and delivered personally, or sent by registered or certified mail or express courier, to the parties hereto at the addresses given herein or at such other addresses as the parties may from time to time designate in writing.

13. Waiver. No waiver of this Agreement shall be valid unless the waiver is in writing and signed by the parties. No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision (whether or not similar), nor shall such waiver constitute a continuing waiver unless expressly provided for in writing.

14. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of the remaining provisions.

15. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of Kansas, without regard to its conflict of laws principles.

16. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. This Agreement may not be modified orally and no claimed modification shall be valid unless in writing and signed by both parties. This Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the day and year first above written.

Affinity Licensing, LLC

By: Wil Spires
Printed Name: Wil Spires
Title: Partner
Date: 04/10/2020

Fort Hays State University

By: Michael W. Barnett
Printed Name: Michael W. Barnett
Title: Vice President for Administration & Finance
Date: 04/08/2020

Approved as to Form
Fort Hays State University
General Counsel

qs