



FORT HAYS STATE UNIVERSITY

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CONTRACT ADDENDUM

Date: March 14, 2024

Contract Number: 18006

Addendum 1

Agency: Fort Hays State University
Location(s): Hays, Kansas
Web Address: <http://www.fhsu.edu/purchasing/bids/>
Telephone: 785-628-4251
E-Mail Address: purchasing@fhsu.edu

Item: Operations of the University Textbook Services (Option #1)

Agency: Fort Hays State University
Location(s): Hays, KS

Term of Contract: April 24, 2018 through June 30, 2026 with three (3) additional one (1) year renewals by written agreement of the parties.

Contractor: Vital Topco, LP dba Akademos, LLC
227 Fayetteville Street, Ste 400
Raleigh, NC 27601

Conditions: Vendor updated name to Vital Topco, LP dba Akademos, LLC.
Terms are also extended as noted above and within the signed Amendment.

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/>

AMENDMENT #1 to CONTRACT 18006 18010

This Amendment to Akademos, Inc. Agreement ("Amendment") is entered into by and between AKADEMOS, INC., a Delaware corporation ("Contractor") and Fort Hays State University ("FHSU") as of the date last below written but effective as of July 1, 2023 (the "Effective Date").

Recitals:

- A. Contractor and FHSU entered into Contract 18006 18010, dated as of April 24, 2018 (the "Contract").
- B. The parties have decided to amend the terms of the Contract.

Now, therefore, Company and Institution hereby agree as follows:

1. The Term of the Contract is extended to June 30, 2026, with three (3) additional one (1) year renewals by written agreement of the parties.
2. Annual Textbook Scholarships for Fort Hays State University Students is replaced entirely as follows:

Contractor will provide \$15,000 each year in textbook scholarships for Fort Hays State University students. The Textbook Scholarships will be issued in the form of voucher certificates eligible to be used on the website and are for the explicit purpose of student course material purchases and are to be distributed at the discretion of the FHSU for enrolled students

3. Annual Marketing/Support Fund is replaced entirely as follows:

The Contractor agrees to provide marketing support inclusive of print, digital assets, posters, banners, and giveaways with a value up to \$6,000 annually to support marketing and promotional initiatives as mutually agreed upon between the FHSU and the Contractor.

4. All other provisions of the Contract will remain in full force and effect.

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.

Agreed as of the Effective Date:

AKADEMOS, INC.

FORT HAYS STATE UNIVERSITY

DocuSigned by:
By: Kent Freeman
E9E17D6A3598482...
Print Name: ~~XXXXXXXXXXXX~~ Kent Freeman
Its: ~~CEO~~ Chief Executive Officer
Dated: 3/23/2023

By: Wesley D. Wintch
Print Name: Wesley D. Wintch
Its: VP for Administration and Finance
Dated: 03/21/2023

Approved as to Form
Fort Hays State University
General Counsel

[Signature]

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.



FORT HAYS STATE UNIVERSITY

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CONTRACT AWARD

Date: April 24, 2018

Contract Number: 18006

Fort Hays State University Purchasing Office

Telephone: 785-628-4251

E-Mail Address: purchasing@fhsu.edu

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

Item: Operations of the University Textbook Services (Option #1)

Agency: Fort Hays State University

Location(s): Hays, KS

Term of Contract: Contract award date begins upon signature of both parties with actual services beginning no later than July 2, 2018 through June 30, 2023 with three (3) additional one (1) year renewals by written agreement of the parties.

Contractors: Akademos Inc.
200 Connecticut Avenue
Norwalk, CT 06854
Phone: 203-866-0190
Fax: 203-866-0199
Contact: Kelly Tilstra, ktilstra@akademos.com, 815-761-4001

Performance Bond: \$500,000.00

The University requires the Contractor to provide a Performance Bond prior to the commencement of the work under this agreement. The bond shall be in the amount of Five hundred thousand dollars (\$500,000) and shall cover the University for any economic losses including, without limitation, failure to perform the agreed upon terms associated with the contract resulting from this RFP.

If this contract is Terminated for Cause, the Contractor will pay the University up to \$200,000 to cover the economic losses associated with the transition to an alternative course material supplier.

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

1. **Term of Contract:** Contract award date begins upon signature of both parties with actual services beginning no later than July 2, 2018 through June 30, 2023 with three (3) additional one (1) year renewals by written agreement of the parties.
2. **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; vendor's response including any addenda, appendices and exhibits.
3. **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/DA-146a Revised (01/18);
 - 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. FHSU Bookstore Contract Offer-Akados email response dated 04/9/2018; Best and Final and Questions for RFP 18006-Textbook Services Option Only-Akados email response dated 02/14/2108; RFP 18006 Akados Response to Vendor Questions email dated 1/17/2018;
 - f. Akados RFP 18006 Textbook Option 1 Technical and Cost Proposals;
 - g. Any supporting manuals/documents that have been incorporated in this Request;
 - h. Contractor's written proposal submitted in response to this RFP as finalized, including any addenda, appendices and exhibits; and
 - i. Akados, Inc. Agreement.
4. **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 18009

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

5. **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.

6. **Termination for Convenience:** The FHSU Purchasing Director may terminate performance of work under this contract in whole or in part whenever, for any reason, the FHSU Purchasing Director shall determine that the termination is in the best interest of FHSU. In the event that the FHSU Purchasing Director elects to terminate this contract pursuant to this provision, it shall provide the Contractor written notice at least 30 days prior to the termination date. The termination shall be effective as of the date specified in the notice. The Contractor shall continue to perform any part of the work that may have not been terminated by the notice.

7. **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.
8. **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.

9. **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.
10. **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.
11. **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.

12. **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.

13. **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.
14. **Proof of Insurance:** 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.
15. **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.

16. **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 or 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.
17. **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.
18. **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.
19. **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.
20. **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.
21. **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.
22. **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.

23. **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.

24. **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.
25. **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.
26. **Third Party Beneficiaries:** This contract shall not be construed as providing an enforceable right to any third party.
27. **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.
28. **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.
29. **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.
30. **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.
31. **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.
32. **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.
33. **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.
34. **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.
35. **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.

36. **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.

37. **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.

38. **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.

39. **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.

40. **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.

41. **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.

42. **Definitions:** Definitions pertaining to this proposal are as follows:

"Bidder" A party submitting a bid based on this proposal and the party who submits the successful bid.

"Bookstore" The bookstore located on the main floor of the Memorial Union and the adjoining storage and shipping areas.

"Contractor" That firm, corporation, or person with whom the University Contracts to carry out the Bookstore operations of the University as prescribed in these specifications and any ensuring contract.

"Gross Revenue" All revenue received the from gross sales of all merchandise sold in Textbook Services and/or Bookstore Services to students, faculty, or staff of Fort Hays State University and to the general public, less refunds made to them, and shall not include any amounts added to the selling price on account of excise taxes, sales taxes, or any taxes of any kind or nature which may be in existence during the lifetime of the agreement. Gross revenue shall not include any merchandise transferred by the Contractor to any of its operations.

"Gross Sales" All revenues from sales of the Contractor (including sales of any assignee, subcontractor, concessionaire, or licensee of the Contractor) based upon all business conducted in or from textbook services and/or the bookstore, whether such sales be evidenced by check, cash, credit, charge account, campus ID card, gift card, exchange or otherwise, and shall include, but not be limited to, the amount received from the sale of goods, wares, and merchandise, including tangible property of every kind and nature, promotional and otherwise and for service performed by textbook services and/or the bookstore, together with the amount of all orders taken or received by the textbook services and/or the bookstore, including sales via the Internet, whether such orders be filled from textbook services and/or the bookstore or elsewhere. Gross sales shall not include sales of merchandise for which cash has been refunded, provided that they shall have previously been included in gross sales. There shall be deducted from gross sales the price of merchandise returned by customers for exchange, provided that such merchandise shall have been previously included in gross sales, and provided that the sales price of merchandise delivered to the customer in exchange shall be included in gross sales. Gross sales shall not include the amount of any sales tax imposed by any federal, state, municipal, or other governmental authority directly on sales and collected from customers, provided that the amount thereof is added to the selling price or absorbed therein, and actually paid by the Contractor to such governmental authority. Each charge or sale upon credit shall be treated as a sale for the full price in the month when such charge or sale is made, irrespective of the time when the Contractor shall receive payment (whether full or partial) therefore or if ever received.

"Gross Sales" The Company Contractor shall pay to the Institution a commission payment of five percent (5%) of Gross Product Sales ("Commission Payment"). The Parties will discuss any changes to commission payment terms after the completion of each year of the term of the contract. Gross Product Sales are defined as: (a) for non-marketplace (retail), non-agency priced (non-publisher controlled pricing) and non-Inclusive Access (non-course fee model) orders, product sales less any customer returns, order cancellations, and/or disputes, processed during the Term of this Agreement, and (b) for marketplace, agency priced, or Inclusive Access products, net commissions earned by the Company Contractor on such marketplace, agency priced or Inclusive Access products.

"Net Sales" The gross sales as defined in the above paragraph less the exclusions and deductions as also defined in the above paragraph.

"State" The State of Kansas, acting by and through the Department of Administration and its authorized and designated representative(s).

"Subject to the Approval of the FHSU Director of Purchasing" This phrase means that the FHSU Director of Purchasing as a representative of the State of Kansas has the final authority to make decisions on questions that arise resultant from this bid.

"Surety" Any firm, person, or corporation that has executed (as surety) the bidder's performance, statutory, or bid bonds in connection with this bid and contract.

"Textbook Services and/or Bookstore Services" The process of providing college textbooks and campus produced or licensed course materials to enrolled Fort Hays State University students as determined by Fort Hays State University faculty.

"University" Fort Hays State University (a state, tax-assisted liberal and applied arts university established and maintained in Hays, Kansas, by the state of Kansas), acting by and through its authorized and designated representative(s).

43. **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.

44. **Indefinite Quantity Contract:** This Request is for an open-ended contract between a Contractor and FHSU to furnish an undetermined quantity of a good or service in a given period of time. The quantities ordered will be those actually required during the contract period, and the Contractor will deliver only such quantities as may be ordered. No guarantee of volume is made. An estimated quantity based on past history or other means may be used as a guide.

45. **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.

46. **On-Site Inspection:** Failure to adequately inspect the premises shall not relieve the successful vendor from furnishing without additional cost to FHSU any materials, equipment, supplies or labor that may be required to carry out the intent of this RFP. Submission of a bid shall be construed as evidence that the vendor has made necessary examination, inspection and investigation. Failure to properly inspect the site may result in rejection of the vendor's bid.

47. **Experience:** All bidders must have/or are preferred to have a minimum of three (3) years continuous active participation in the applicable industry, providing equipment/services comparable in size and complexity to those specified herein.

Bidders may be required to furnish information supporting the capability to comply with conditions for bidding and fulfill the contract if receiving an award of contract. Such information may include, but not be limited to, a list of similar size and type projects the Bidder has completed.

48. **Prices:** FHSU will notify the contractor ninety (90) days prior to the anniversary date of the contract regarding possible adjustments to textbook services and/or bookstore services guarantees, commissions and other compensation. Operational costs of the Memorial Union will be reviewed with representatives of the contractor to determine if adjustments need to be made to the guarantee, commission, or other compensation. Terms and conditions can only be modified upon mutual agreement of both parties.

49. **Payment:** Payment Terms are Net 30 days. Payment date and receipt of order date shall be based upon K.S.A. 75-6403(b). This Statute requires Fort Hays State University to pay the full amount due for goods or services on or before the 30th calendar day after the date Fort Hays State University receives such goods or services or the bill for the goods and services, whichever is later, unless other provisions for payment are agreed to in writing by the vendor and Fort Hays State University. NOTE: If the 30th calendar day noted above falls on a Saturday, Sunday, or legal holiday, the following workday will become the required payment date.

Payments shall not be made for costs or items not listed in the vendor's response.

50. **Unit Pricing:** Each item required by the bid must be individually priced (i.e. priced per single unit) and be able to be ordered individually.

51. **Upgrades:** Bidders shall indicate the upgrade price and policy for any software, firmware, or hardware upgrades anticipated for the equipment bid. If the upgrades are provided without cost, this should be indicated.

52. **Shipping and F.O.B. Point:** Unless otherwise specified, bid prices shall be F.O.B. DESTINATION, PREPAID AND ALLOWED (included in the price bid), which means delivered to FHSU's receiving dock or other designated point as specified in this RFP without additional charge. Shipments shall be made in order to arrive at the destination at a satisfactory time for unloading during receiving hours.

53. **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, bidders shall submit that information with their bid response.

54. **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.
55. **Demonstration Requirements:** A demonstration of the selected devices/equipment/solution for FHSU may be required before final contract approval. FHSU reserves the right to request said devices/equipment/solution fully configured/operational for testing, which shall be furnished at no expense to FHSU within ten (10) days after receipt of request. Devices/equipment will be returned at the bidder's expense if found to be non-compliant with the specifications as set forth in this RFP.
56. **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.
57. **Performance Bond:** The University requires the Contractor to provide a Performance Bond prior to the commencement of the work under this agreement. The bond shall be in the amount of five hundred thousand dollars (\$500,000) and shall cover the University for any economic losses including, without limitation, failure to perform the agreed upon terms associated with the contract resulting from this RFP.

Termination for Cause Economic Loss Payment: If this contract is Terminated for Cause, the Contractor will pay the University up to \$200,000 to cover the economic losses associated with the transition to an alternative course material supplier.
58. **Equipment:** All proposed equipment, equipment options, and hardware expansions must be identified by manufacturer and model number and descriptive literature of such equipment must be submitted with the bid.
59. **Implied Requirements:** All products and services not specifically mentioned in RFP, but which are necessary to provide the functional capabilities described by the specifications, shall be included. Other products required to make the described software functional shall be identified in the vendor's response.
60. **Warranty:** Bidders 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.
61. **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.
62. **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.
63. **Software Code and Intellectual Property Rights:** As applicable, all original software and software code and related intellectual property developed or created by the Contractor in the performance of its obligations under this Contract or any Task Order issued under this Contract, shall become the sole property of the State of Kansas. The Contractor will surrender all original written materials, including any reports, studies, designs, drawings, specifications, notes, documents, software and documentation, computer-based training modules,

electronically or magnetically recorded material, used to develop this software and/or software code and related intellectual property to the state entity for which it was developed.

64. **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.
65. **Submission of the Bid:** Submission of the bid will be considered presumptive evidence that the vendor is conversant with local facilities and difficulties, the requirements of the documents and of pertinent State and/or local codes, state of labor and material markets, and has made due allowances in the RFP for all contingencies. Later claims for labor, work, materials, equipment, and tax liability required for any difficulties encountered which could have foreseen will not be recognized and all such difficulties shall be properly taken care of by Contractor at no additional cost to FHSU.
66. **Certification of Materials Submitted:** The response to this RFP, together with the specifications set forth herein and all data submitted by the vendor to support the response including brochures, manuals, and descriptions covering the operating characteristics of the item(s) proposed, shall become a part of any contract between the successful vendor and FHSU. Any written representation covering such matters as reliability of the item(s), the experience of other users, or warranties of performance shall be incorporated by reference into the contract.
67. **Inspection:** FHSU reserves the right to reject, on arrival at destination, any items which do not conform with specification of this RFP.
68. **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.
69. **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.)
70. **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.
71. Vendor hereby warrants that the products or services to be provided under this agreement comply with Fort Hays State University accessibility requirements including ADA, Section 504 and 508. Vendor agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services which is brought to its attention. Vendor further agrees to indemnify and hold harmless Fort Hays State University from any claim arising out of its failure to comply with the aforesaid requirements. Failure to comply with these requirements shall constitute a breach and be grounds for termination of this agreement.

SPECIFICATIONS

Term of Contract: The term of this contract is for a five (5) year(s) period from the date of award with three (3) additional one (1) year renewal(s) by written agreement of the parties.

I) GENERAL SPECIFICATIONS

Fort Hays State University (FHSU) solicited proposals to operate textbook services as well as to manage the University bookstore. Proposals were submitted for textbook services only (Option 1), bookstore services only (Option 2), or both textbook and bookstore services.

The following specifications were provided in RFP 18006 **except for the changes noted below**. Refer to Akademos's Technical Proposal Response for contract details for Textbook Services (Option #1).

- A) Other University Sales:
FHSU reserves the right to sell University merchandise at various locations on and off campus as determined by the University.
- B) Signage:

FHSU shall have the right of approval of all signs, posters, or other advertisements placed on University premises. All signage must comply with FHSU rules and regulations.
- C) Merchandise Delivery:

The Contractor shall make all arrangements for delivery, unloading, receiving, and storage of merchandise and, as necessary, coordinate these functions with other FHSU vendors and/or departments as applicable. The University will not assume any responsibility for receiving or handling these shipments.
- D) Customer Service:

The Contractor will provide excellent customer service and will use customer satisfaction surveys to evaluate services. An additional focus is expected on excellent service delivery to out-of-country faculty and students. The Contractor shall provide customers with a toll free telephone number with staffed multiple service lines, e-mail address, and Web-based customer service (~~i.e. online live chat with a customer service representative~~) with 24-hour service, seven days a week.
- E) Financial Requirements and Administration:
- 1) Financial Responsibility:

The Contractor shall have complete responsibility for the financial administration of its operations. Such responsibilities include, but are not limited to, ordering books and merchandise, billings and collections from third parties, processing payments for all goods, acceptance and deposit of all funds, reconciliation of accounts, preparation of annual financial reports and all other such activities that may apply.
 - 2) Laws, Regulations, Permits, Licenses

The Contractor shall, at the Contractor's own expense, comply with all Federal, State and Local laws, ordinances and regulations pertaining to any and all operations of the Contractor and shall in the Contractor's name, obtain any and all necessary licenses and permits in connection with any and all operations of the Contractor under the Contract.
 - 3) Commission and Guarantee:

The Contractor shall pay to FHSU a commission percentage based on net sales as defined herein. The Contractor shall specify this commission percentage in its Proposal. Further, the Contractor shall guarantee a minimum amount that shall be paid **annually in Year 1 only** to FHSU in the event that the above commission percentage does not produce this minimum amount.

4) Additional Commission Payment:

The Contractor shall pay any additional amount due to FHSU within thirty (30) days following the end of the contract year. An annual operating statement certified by a qualified CPA firm shall be submitted to FHSU within 120 days after the closing of each fiscal year of operation of textbook services and/or the bookstore.

5) Interest on Past Due Payments:

FHSU may charge interest on all outstanding receivables thirty (30) days past due at the interest amount allowed by applicable state law. All such amounts shall be calculated monthly and shall be due and owing in the same manner and at the same time as other payments.

6) Accounting Controls and Records:

The Contractor shall maintain appropriate internal accounting controls and keep full, complete, and proper books, records, and accounts of the Contractor's gross sales (as defined above), both for cash and on credit; said books, records, and accounts, including any sales or other tax reports that the Contractor may be required to furnish to any government or governmental agency, shall at all reasonable times be open to the inspection of FHSU, or its designee for as long as such records exist but in no event less than three years following the termination or expiration of the contract. FHSU may cause an audit of the business of the Contractor in the operation of the FHSU textbook services and/or the bookstore to be made by an audit team of FHSU's selection.

Fort Hays State University has access to Real Time Sales Reports and access to all gross sales at any time within the website.

7) Contract Administrator:

The Contract Administrator for this contract shall be the FHSU Assistant Vice President for Student Affairs. The Contract Administrator shall use all powers under the contract to enforce its full and faithful performance. The Contract Administrator shall determine the amount, quality, and acceptability of the work and shall decide all questions in connection with the work and shall decide all questions in connection with the work.

8) General Expectations

It is expected the Contractor(s) will explore and present opportunity to the university in response to the changing market. An annual meeting should be held with the Bookstore Oversight Committee as well as other interested parties, such as athletics, Financial Assistance Office, and Student Fiscal Services to present new and innovative ideas for textbook and bookstore services.

II) SPECIFICATIONS FOR TEXTBOOK SERVICES (OPTION 1)

A) Minimum Service/Technical Requirements:

1) Contractor Responsibility:

The Contractor shall have the sole and exclusive privilege of and responsibility for operating textbook services for Fort Hays State University (FHSU). This shall be for the purpose of selling college textbooks and campus produced or licensed course materials. The Contractor is expected to establish and maintain a "buy back" program for textbooks.

2) Pricing Policy:

The Contractor shall have the privilege of determining and establishing the selling price of all items offered for sale; however, FHSU shall have input into the general price structure for all books offered by the Contractor. FHSU's position on the pricing of textbooks is to maintain a textbook "markup" that is reasonable (e.g. guaranteed to match the lowest price of local competitors and not to exceed the national average) and competitive with the market. The Contractor will be expected to identify current and future corporate policy on textbook pricing. In addition, the price of any item offered for sale in no instance shall exceed the manufacturer's suggested retail price.

It is expected the Contractor will price within the following guidelines, or if not, explain why:

- (a) Required and non-required texts shall be priced at: a) no greater than 25% margin; or b) at retail list price.
- (b) Used books shall be priced no greater than 75% of new text price as defined in #1 above.
- (c) Course packs and textbooks purchased from publishers with restrictive or non-returning text policies, will be priced at up to a 30% gross margin.

3) Examination of Records:

In an effort to ensure adequate oversight of actual pricing, FHSU reserves the right to examine any or all records maintained by the Contractor concerning the operations of FHSU textbook services. This includes, but is not limited to sales records, Internet sales records, invoices, operating statements, and balance sheets.

Within fifteen days following the last day of each monthly accounting period, the Contractor shall submit to FHSU a detailed operating statement indicating gross sales and net sales as defined herein for that month along with a check for the stipulated percentage of sales commission amount. The sales shall be reported in the categories as specified by FHSU to include, at a minimum: new textbooks, used textbooks, e-books, and custom books. Internet sales for the same categories are to be reported separately.

4) Payment Options:

Customers shall be afforded the greatest variety of payment options possible, including cash, approved personal checks, credit cards, and ATM or bank debit cards. The Contractor will be PCI compliant.

5) Technology:

The Contractor shall be able to interface with the University's student portal and course registration systems through single sign-on (SSO) processing enabling access to semester specific book lists. Additionally the Contractor shall implement the latest electronic and technological innovations for students and other customers to order books. ISBNs must be identified for all textbooks via the on-line course registration system as well as the University textbook services web site. The Contractor will provide FHSU with a high quality, interactive web site to include a secure server for the purchase of books electronically. The Contractor will provide real time information of textbook inventory and student order status. FHSU currently uses book vouchers on a limited basis for certain student populations and Intersession term. Contractor shall be able to provide online functionality for students to use book vouchers.

6) Refund Policy:

~~The Contractor shall identify and implement a refund and exchange policy. As a minimum, new and used textbooks may be returned for a full refund, within one week after the start of class 30 days from when the textbooks and/or class materials ship for a full refund.~~

~~The Company~~ Contractor will accept returns in accordance with the following policies:

- a) New and used textbooks within thirty (30) days of the delivery date.
- b) Rental and eBooks within fifteen (15) days of the delivery date.
- c) The item was not sold as "non-returnable" (e.g., certain course packs, which are non-returnable due to their consumable nature).
- d) If the item is "consumable" (e.g., a bundle containing a one-time use access code), it cannot be opened or used.
- e) The item was not purchased as a Marketplace Transaction.

7) Transfer of Existing Inventory:

~~The successful Contractor, if other than the current Contractor, shall agree to purchase the existing inventory of adopted textbooks at the current Contractor's invoice price. The date and time of such transfer shall be by mutual agreement of the two companies, with the approval of the University. Any~~

transfer shall be accomplished in such a manner as to minimize the disruption of textbook services operation. Payment for all merchandise shall be completed within 30 days following the inventory date.

Any transfer of inventory is yet to be negotiated between Akademos and Follett.

8) General Expectations Regarding Textbook Services:

- (a) The Contractor shall ensure a timely acquisition of all required and recommended textbooks and maintain a sufficient range and depth of textbook and campus produced or licensed course materials inventory to satisfy reasonable student sales demand. Backorders should be infrequent and should be priority shipped at the cost of the Contractor. The University assumes no liability whatsoever for any loss or damage sustained by the Contractor in the event enrollment estimates furnished differ from the actual enrollment and therefore, negatively impact sales.
- (b) The Contractor shall provide students with options on textbooks such as E-books, audio books, customized course packs, used books, etc.
- (c) FHSU seeks the lowest cost and best service for students regardless of delivery model. Services may be provided entirely online, online with a campus delivery system in the Memorial Union, such as lockers, or on shelves in the University bookstore. The Contractor should outline details for a campus delivery system, including square footage and security.
- (d) The contractor will facilitate the use of a textbook rental program
- (e) The Contractor will market the capability to, and work with, faculty to create digital books (customized) to be distributed via paper and electronically. Additionally, the Contractor will package and distribute DVDs, lab kits, and other course materials created or licensed by the University.
- (f) It is expected that close communications with academic departments and administrative staff will be maintained to ensure a regular and timely exchange of information on required textbooks and supplemental material utilized by faculty. Each department head will be provided with textbook purchase history. The book adoption process, including book history, will be delivered electronically. The Contractor will willingly process late requests and changes from faculty. The University will work with the Contractor to ensure that late requests are reasonable.
- (g) ISBNs must be identified for all textbooks via the on-line course registration system as well as on the textbook services web site.
- (h) The Contractor will be able to ship course materials during University enrollment dates.
- (i) The Contractor will provide real time information of textbook inventory and student order status.
- (j) The Contractor will provide flexible textbook and course materials shipping options for students (e.g. ship to their home, residence hall, or to the Memorial Union for pick-up). Shipping options should also include a 48 hour maximum, and during peak demand, next day shipping if received before 12 p.m. Central Standard Time.
- (k) The Contractor will continue a textbook scholarship program for FHSU student athletes, Memorial Union student employees, and/or other FHSU students. The scholarship offer, if any, shall not have any impact on the financial offer to FHSU under the terms of the contract resulting from this RFP.
- (l) The Contractor is encouraged to have course packs and materials printed or copied in FHSU University Printing Services. All course materials, regardless of where they are reproduced, are subject to the review and approval of the appropriate academic department at the University. The Contractor will be responsible for copyright clearance and approval.
- (m) FHSU expects the Contractor will make every effort to secure, promote, and market used books and provide a highly visible, well-marked shelf or web space. In terms of assessing effective performance on this measure, FHSU requires the Contractor to offer used, digital, or customized books. In addition FHSU expects contractor to provide textbooks at the lowest price possible to students and working with FHSU administration agrees to develop a reasonable evaluation tool to analyze the effectiveness of its efforts.
- (n) The Contractor will propose an evaluation process to be conducted in conjunction with the FHSU Assistant Vice President for Student Affairs (or designee) to assess the effectiveness of textbook services in terms of products, services, and contract compliance. Additionally, the Contractor will participate in regularly scheduled meetings of the FHSU Contract Oversight Committee and the Memorial Union Policy Board.
- (o) The Contractor will support FHSU's practice in providing textbook services to groups when necessary.
- (p) The Contractor will provide a financial aid book voucher program for students awaiting disbursements for Winter Intersession courses or other special circumstances.

- 9) Shipping shall meet or exceed the average economy delivery times as listed below. Penalties for exceeding the average will be a reduction in cost of shipping based on the percentage of time exceeding averages listed. For example, 3.2 days economy average for academic year 2019 is actually 4.0 days = 25% reduction in next year's shipping price.

See page 35 of the technical response.

Retail Orders (Delivery Options and Average Delivery Time):

- **Standard Shipping:** 2.0 business days average delivery time
- **UPS Next Day Air:** 1.2 business days average delivery time
- **FREE Economy Shipping (for orders over \$49):** 3.2 business days average delivery time

Marketplace Orders (Delivery Options and Average Delivery Time):

- **Standard Shipping:** 2.4 Business Days Average Delivery Time
- **Economy:** 2.7 Business Days Average Delivery Time

- 9) The Company Contractor will present the students with delivery options for each order. Each option provides an estimated delivery timeframe and an associated cost, so that the shipping costs are clearly identified prior to the completion of the order. The Company Contractor will offer FREE economy shipping on retail orders of more than \$49.00.

At the end of each contract year average shipping times will be reviewed. Adjustments to rates will be negotiated in the event averages are not within reasonable expectations.

Contract Pricing

Commission on Textbook and Course Material Gross Sales

Akados, provides a set-your-own-commission percentage plan for course materials and textbooks. FHSU has elected to receive a 5% commission rate for year 1 with the ability to negotiate each year thereafter. The commission percentage can be changed at the beginning of each academic year for each year of the contract.

Minimum Commission Payment Guarantee (Year 1)

Akados shall pay the University a guaranteed minimum commission on Gross Sales of \$150,000 during the first year of the contract.

Annual Textbook Scholarships for Fort Hays State University Students

Akados will provide \$12,000 each year in textbook scholarships for Fort Hays State University students. This fund is designated for the explicit purpose of student textbook purchases and is to be distributed at the discretion of the University for enrolled students.

Annual Marketing/Support Fund

Akados will provide \$6,000 each year to support marketing and promotional initiatives as mutually agreed upon between Fort Hays State University and Akados.

Annual Funding and Management of Two Fort Hays State University Student Interns

Akados will fund and manage two paid student interns each year at a cost of \$500 per student.

CONTRACT

This contract is being established on the 10th day of May, 2018 by and between Fort Hays State University and Akademos Inc., 200 Connecticut Avenue, Norwalk, CT 06854 (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 12/15/2017.
2. It is understood and agreed by the parties that pursuant to the bid, Contractor agrees to provide Textbook Services for Fort Hays State University with actual services beginning no later than July 2, 2018 through June 30, 2023 with three (3) additional one (1) year renewals by written agreement of the parties. Contractor is also aware they must coordinate transition with Follett Higher Education Group. This contract is subject to the signing of the corresponding contract by indiCo.

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.

Akademos Inc.

By: [Signature]
Printed Name: John Squires
Title: CEO
Date: May 9, 2018

Fort Hays State University

By: [Signature]
Printed Name: Mike Barnett
Title: Vice President for Administration & Finance
Date: 05/10/2018

Approved as to Form
Fort Hays State University
General Counsel

5/10/18 as by
fm

State of Kansas
Department of Administration
DA-146a (Rev. 01/18)

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. 01/18), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being 9 May 2018.

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. All actions to be filed in Ellis County 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.

AKADEMOS, INC. AGREEMENT

AGREEMENT made this 10th of May, 2018 between **AKADEMOS, INC.**, a Delaware corporation, with its principal office address at 200 Connecticut Ave., Norwalk, Connecticut 06854 (the "Company"), and **Fort Hays State University**, with its principal business address at 600 Park St #1, Hays, KS 67601 (the "Institution"). The Company and Institution are sometimes collectively referred to herein as the "Parties".

In consideration of the terms and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties, intending to be bound legally, agree as follows:

I. Website. The Company will design, produce and operate a co-branded Website ("the Website") which will: (1) provide the Institution's students and faculty with the ability to purchase all books or other materials designated and assigned by the Institution's faculty and administrators for use by the Institution's student population and available for sale on the Website ("Course Materials"); (2) provide access to the Company's broad base of other educational texts and materials online; and (3) permit the faculty to modify the course information and required Course Materials for courses offered by the Institution and included on the Website. The Institution hereby engages the Company as an independent contractor to design and implement the Website, which will be promoted to students, faculty and administrators of the Institution. The Institution also authorizes the Company to publicize the completed Website to Web search engines, as well as other Web Directories and indexes.

II. Company Obligations. The Website design will provide the Institution's students and faculty with access to all titles contained in the Company's title data base inventory, as may be modified or updated from time to time by the Company. The Website design will permit the Institution's faculty to load, maintain and modify course information. The Website also will provide an editable graphical interface through which the Institution's administrators and faculty can add or change messages to the Institution's students. The Website will provide the Users with the ability to locate and purchase from the Company ("Retail Transactions") and/or from third party sellers ("Marketplace Transactions") the Course Materials and other items available through the Website.

III. Order Processing. The Company will process all orders received from each person who makes a purchase through the Website ("Users") through its consumer website TextbookX.com. Users will pay for such purchases in accordance with accepted payment options acceptable on the Website. The Company will provide the ability for a User to pay via vouchers or other credits ("Alternative Plan Purchases") funded by the Institution in lieu of cash or credit card payments. The use of vouchers or other credits funded by the Institution or other third parties represents a commercial transaction between the Company and the Institution whereby the Institution is fully responsible for payment of the student voucher transactions. The Company will invoice the Institution on a weekly basis for all such Alternative Plan Purchases, and such invoices will be paid within ten (10) days of receipt thereof. The Institution hereby covenants that it will not issue vouchers or credits to any User for the purpose of making purchases on the Website if and to the extent such voucher or credit amounts are not the subject of currently available appropriations for payment hereunder by the Institution to the Company. Invoices past due will incur an interest charge of one and a half percent (1 1/2%) per month or the maximum interest rate allowed by law, whichever is less, retroactive to the first day the invoice is past due. State of Kansas requires payment within 30 days.

Invoices from the Company to the Institution should be sent to:

Name Fort Hays State University
Address: Administration and Finance
600 Park Street, Hays, KS 67601
Phone 785-628-4251
Email 785-628-4046

The Company will process all orders, returns and refunds in accordance with the terms of the Website, and will be responsible for maintaining commercially reasonable customer service capabilities in relation to the purchase of materials from the Website by Users.

IV. Commissions. The Company shall pay to the Institution a commission payment of five percent (5%) of Gross Product Sales ("Commission Payment"). The Parties will discuss any changes to commission payment terms after the completion of each year of the term of the contract. Gross Product Sales are defined as: (a) for non-marketplace, non-agency priced and non-Inclusive Access orders, product sales less any customer returns, order cancellations, and/or disputes, processed during the Term of this Agreement, and (b) for marketplace, agency priced, or Inclusive Access products, net commissions earned by the Company on such marketplace, agency priced or Inclusive Access products. The Company shall pay all Commission Payments to the Institution on August 31st, for the January to June sales period, and February 28th, for the July to December sales period during the Term. Notwithstanding the foregoing, if the Institution is not current on its payment of outstanding invoices from the Company, commission payments will be deferred until such time as the Institution's invoices from the Company are on a current status. On contract termination, final commission payment will be deferred three additional months to allow adequate time for complete processing of customer returns.

V. Institution Obligations. The Institution agrees that during the Term the Company will be the exclusive provider of Course Materials and other products of the type sold on or through the Website to students, faculty and administrators of the Institution. This exclusivity shall encompass all digital courseware materials, including eBooks, publisher access codes and Inclusive Access programs. The Institution, including its administrators and faculty, will not promote, sponsor or enter into any agreement with any other person or entity, including publishers, with respect to the sale of Course Materials and other products of the type sold on or through the Website during the Term. The Institution will furnish to the Company all necessary data and materials regarding the Institution's faculty, courses and Course Materials (including, but not limited to, inventory title information and demand forecasts) no later than sixty (60) days prior to the start of the academic term in which the materials will be used. The Company will not be responsible for the unavailability of textbooks or course materials on the first day of classes due to the Institution's ability to provide such information or changes in textbook adoption. In addition, the Institution will be responsible for custom, non-returnable course materials costs incurred by the Company due to changes in textbook adoption, cancellation of courses subsequent to the initial textbook and course material adoption, or termination of this agreement. The Institution will use its best efforts to publicize and inform its faculty and students of the Company's services, including the Website and to actively promote its use in accordance with the Company's best practices. Without limiting the foregoing, the Institution will include one or more prominent links on the Institution's web site, with placement and content mutually approved by the Institution and the Company, referring students, faculty and administrators to the Website for purchases of Course Materials and other products available thereon.

VI. Term. The term of this Agreement will commence on the date hereof and continue for five (5) years (the "Initial Term"), unless sooner terminated by either Party in accordance with the terms hereof. The Term of this Agreement will automatically renew for a one (1) year period (each a "Renewal Term" and together with the Initial Term, the "Term") for a maximum of three (3) Renewal Terms, unless either Party gives written notice to the other Party at least ninety (90) days prior to the end of the Initial Term or the applicable Renewal Term of its intention not to renew this Agreement. Neither Party may terminate this Agreement during the Term other than "For Cause". As used herein, "For Cause" will mean (i) with respect to termination by the Company: (a) if the Institution has a course cancellation rate and/or Course Materials return rate in excess of 15% for any calendar quarter during the Term; (b) failure by the Institution to remit any payment pursuant to the Alternative Plan Purchases; or (c) if the Institution breaches this Agreement and fails to remedy such breach after thirty (30) days written notice is given by the Company of such breach; or (ii) with respect to termination by the Institution if the Company breaches this Agreement and fails to remedy such breach after thirty (30) days written notice is given by the Institution of such breach.

VII. Warranties/Indemnification. The Website will conform to the specifications set forth in Section 1 in all material respects during the Term, and after commercially reasonable diligence, the Company has no

knowledge that the content on such Website constitutes an infringement of the intellectual property rights of any third party. OTHER THAN THIS LIMITED WARRANTY, THE WEBSITE AS DEVELOPED AND OPERATED HEREUNDER IS PROVIDED "AS IS," WITHOUT ANY WARRANTY WHATSOEVER, INCLUDING BUT NOT LIMITED TO GUARANTEED UPTIME OR SERVICE RESPONSE. THE COMPANY, FOR ITSELF AND ITS SUPPLIERS, DISCLAIMS ALL OTHER WARRANTIES, CONDITIONS AND OTHER TERMS, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE WEBSITE OR THE SERVICES PROVIDED THEREUNDER. The Institution's sole and exclusive remedy, and the Company's entire liability for breach of such limited warranty, will be the Company's reasonable attempts to correct the warranted nonconformity. The Institution will indemnify, defend and hold harmless the Company and its directors, officers, affiliates, agents and employees from and against any losses, claims or proceedings including damages, judgments, assessments, investigation costs, settlement costs, legal fees and expenses, fines, penalties, arbitration awards, other liabilities, costs, fees and expenses (collectively, the "Losses") related to or arising out of (i) any oral or written information provided by the Institution to the Company or its agents for use on or in connection with this Agreement and the Website, or (ii) any breach by the Institution of any representation, covenant or agreement by it in this Agreement. The Company will indemnify, defend and hold harmless the Institution and its directors, officers, affiliates, agents and employees from and against all Losses related to or arising out of (i) any breach by the Company of the limited warranty set forth in this Section VII; (ii) for any third party claim against Institution alleging infringement with respect to the Website; or (iii) any breach by the Company of any representation, covenant or agreement arising out of this Agreement.

VIII. Miscellaneous.

All notices, requests, consents, demands and other communications hereunder will be in writing and will be mailed by registered or certified first class mail or delivered by an overnight courier or by facsimile, to the respective Parties to this Agreement as follows: if to the Company: Akademos, Inc., 200 Connecticut Ave, Norwalk, Connecticut 06854. Attention: John Squires, CEO. Fax: 203-866-0199. If to the Institution: Fort Hays State University, with its principal business address 600 Park St, Hays, KS 67601; Attention: Administration and Finance; Fax: 785-628-4046. All such notices and communications will be deemed to have been delivered on the date of delivery thereof, one day after receipt of facsimile or on the third business day after the mailing thereof.

- a) The Company will implement the same privacy policy on the Website as currently used on the Company's consumer website, www.TextbookX.com.
- b) The Company will have the right to assign subcontractors for purposes of completing the Website and providing all necessary service hereunder.
- c) During the term of this Agreement and for a period of three (3) years thereafter, neither of the Parties will, directly or indirectly, use or disclose any Confidential Information of the other Party, whether by private communication, public address, publication or otherwise, except as directed in writing by an authorized representative of such other Party. "Confidential Information" means with respect to either Party, all information, in any form, furnished or made available directly or indirectly by that Party to the other that is proprietary or otherwise sensitive and held in confidence by such Party, including without limitation: (i) information that is marked confidential, restricted, proprietary, or with a similar designation; (ii) all specifications, designs, documents, correspondence, software, software documentation, data and other materials and work products produced by the Party or its agents, consultants, licensees or representatives; and (iii) all information concerning the operations, affairs, methods, transactions and businesses of the Party or its affiliates (including ideas, marketing plans, business plans or strategies, business volumes or usage, data and other information that are trade secrets or are competitively sensitive), the financial information or affairs of the Party, pricing information and the relations of the Party with its employees and service providers. Notwithstanding the foregoing, Confidential Information does not include information that the Company or the Institution has voluntarily disclosed to the public without restriction, or which is otherwise publicly available.

- d) The Website produced by the Company will be wholly owned by the Company, including all rights to the copyright therein. The Institution agrees that it has no rights in and to the ownership of the Website or any portion thereof, other than the name of the Institution. Rights to photos, graphics, source codes, work-up files and computer programs are not transferred to the Institution and remain the property of the Company. The Company retains the right to display graphics and other Website elements as examples of its work in its portfolio. The Institution hereby licenses to the Company, on a non-exclusive basis, the right to use the Institution's name and logo for (in compliance with any usage guidelines provided to the Company by the Institution) during the Term.
- e) This Agreement constitutes and expresses the entire understanding between the Parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, inducements or conditions, whether express or implied, oral or written. Neither this Agreement nor any portion or provision hereof may be changed, waived or amended orally or in any manner other than by an agreement in writing signed by the Parties.
- f) The validity, construction and enforcement of this Agreement will be governed by the laws of the State of Connecticut and the Parties consent irrevocably to the jurisdiction of the courts of the State of Connecticut in resolving any dispute arising from this Agreement.
- g) The provisions of this Agreement are independent of and separable from each other. If any provision hereof will for any reason be held invalid or unenforceable, it is the intent of the Parties that such invalidity or unenforceability will not affect the validity or enforceability of any other provision hereof, and that this Agreement will be construed as if such invalid or unenforceable provision had never been contained herein.
- h) This Agreement may be executed in any number of counterparts, each of which will be an original, with the same effect as if the signatures were upon the same instrument. It will not be necessary in making proof of this Agreement to produce or account for more than one counterpart.
- i) The Institution will agree to remove references and/or web links to any online bookstore website and/or services operated by any other company prior to this agreement. The Institution will verify that any previous company's bookstore website for the Institution's student purchases has been taken offline.
- j) The Company will provide the Institution within 30 days after the execution of this agreement an on-site and virtual training plan for the launch of the service for faculty/staff and students.
- k) The Company will provide the Institution within 30 days after the execution of this agreement a marketing plan for the launch of the service.
- l) The Company will provide students with the option to have textbooks and course materials shipped to the Institution's campus store for pick-up and develop a reduced shipping rate program for such shipments.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

AKADEMOS, INC.

By _____

John Squires

CEO

FORT HAYS STATE UNIVERSITY

By  _____

Michael W. Barnett

VP for Administration and Finance

AKADEMOS, INC. AGREEMENT

AGREEMENT made this _____ of _____, 2018 between **AKADEMOS, INC.**, a Delaware corporation, with its principal office address at 200 Connecticut Ave., Norwalk, Connecticut 06854 (the "**Company**"), and **Fort Hays State University**, with its principal business address at 600 Park St #1, Hays, KS 67601 (the "**Institution**"). The Company and Institution are sometimes collectively referred to herein as the "**Parties**".

In consideration of the terms and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties, intending to be bound legally, agree as follows:

I. Website. The Company will design, produce and operate a co-branded Website ("the Website") which will: (1) provide the Institution's students and faculty with the ability to purchase all books or other materials designated and assigned by the Institution's faculty and administrators for use by the Institution's student population and available for sale on the Website ("Course Materials"); (2) provide access to the Company's broad base of other educational texts and materials online; and (3) permit the faculty to modify the course information and required Course Materials for courses offered by the Institution and included on the Website. The Institution hereby engages the Company as an independent contractor to design and implement the Website, which will be promoted to students, faculty and administrators of the Institution. The Institution also authorizes the Company to publicize the completed Website to Web search engines, as well as other Web Directories and indexes.

II. Company Obligations. The Website design will provide the Institution's students and faculty with access to all titles contained in the Company's title data base inventory, as may be modified or updated from time to time by the Company. The Website design will permit the Institution's faculty to load, maintain and modify course information. The Website also will provide an editable graphical interface through which the Institution's administrators and faculty can add or change messages to the Institution's students. The Website will provide the Users with the ability to locate and purchase from the Company ("Retail Transactions") and/or from third party sellers ("Marketplace Transactions") the Course Materials and other items available through the Website.

III. Order Processing. The Company will process all orders received from each person who makes a purchase through the Website ("Users") through its consumer website TextbookX.com. Users will pay for such purchases in accordance with accepted payment options acceptable on the Website. The Company will provide the ability for a User to pay via vouchers or other credits ("Alternative Plan Purchases") funded by the Institution in lieu of cash or credit card payments. The use of vouchers or other credits funded by the Institution or other third parties represents a commercial transaction between the Company and the Institution whereby the Institution is fully responsible for payment of the student voucher transactions. The Company will invoice the Institution on a weekly basis for all such Alternative Plan Purchases, and such invoices will be paid within ten (10) days of receipt thereof. The Institution hereby covenants that it will not issue vouchers or credits to any User for the purpose of making purchases on the Website if and to the extent such voucher or credit amounts are not the subject of currently available appropriations for payment hereunder by the Institution to the Company. Invoices past due will incur an interest charge of one and a half percent (1 1/2%) per month or the maximum interest rate allowed by law, whichever is less, retroactive to the first day the invoice is past due. State of Kansas requires payment within 30 days.

Invoices from the Company to the Institution should be sent to:

Name Fort Hays State University
Address: Administration and Finance
600 Park Street, Hays, KS 67601
Phone 785-628-4251
Email 785-628-4046

The Company will process all orders, returns and refunds in accordance with the terms of the Website, and will be responsible for maintaining commercially reasonable customer service capabilities in relation to the purchase of materials from the Website by Users.

IV. Commissions. The Company shall pay to the Institution a commission payment of five percent (5%) of Gross Product Sales ("Commission Payment"). The Parties will discuss any changes to commission payment terms after the completion of each year of the term of the contract. Gross Product Sales are defined as: (a) for non-marketplace, non-agency priced and non-Inclusive Access orders, product sales less any customer returns, order cancellations, and/or disputes, processed during the Term of this Agreement, and (b) for marketplace, agency priced, or Inclusive Access products, net commissions earned by the Company on such marketplace, agency priced or Inclusive Access products. The Company shall pay all Commission Payments to the Institution on August 31st, for the January to June sales period, and February 28th, for the July to December sales period during the Term. Notwithstanding the foregoing, if the Institution is not current on its payment of outstanding invoices from the Company, commission payments will be deferred until such time as the Institution's invoices from the Company are on a current status. On contract termination, final commission payment will be deferred three additional months to allow adequate time for complete processing of customer returns.

V. Institution Obligations. The Institution agrees that during the Term the Company will be the exclusive provider of Course Materials and other products of the type sold on or through the Website to students, faculty and administrators of the Institution. This exclusivity shall encompass all digital courseware materials, including eBooks, publisher access codes and Inclusive Access programs. The Institution, including its administrators and faculty, will not promote, sponsor or enter into any agreement with any other person or entity, including publishers, with respect to the sale of Course Materials and other products of the type sold on or through the Website during the Term. The Institution will furnish to the Company all necessary data and materials regarding the Institution's faculty, courses and Course Materials (including, but not limited to, inventory title information and demand forecasts) no later than sixty (60) days prior to the start of the academic term in which the materials will be used. The Company will not be responsible for the unavailability of textbooks or course materials on the first day of classes due to the Institution's ability to provide such information or changes in textbook adoption. In addition, the Institution will be responsible for custom, non-returnable course materials costs incurred by the Company due to changes in textbook adoption, cancellation of courses subsequent to the initial textbook and course material adoption, or termination of this agreement. The Institution will use its best efforts to publicize and inform its faculty and students of the Company's services, including the Website and to actively promote its use in accordance with the Company's best practices. Without limiting the foregoing, the Institution will include one or more prominent links on the Institution's web site, with placement and content mutually approved by the Institution and the Company, referring students, faculty and administrators to the Website for purchases of Course Materials and other products available thereon.

VI. Term. The term of this Agreement will commence on the date hereof and continue for five (5) years (the "Initial Term"), unless sooner terminated by either Party in accordance with the terms hereof. The Term of this Agreement will automatically renew for a one (1) year period (each a "Renewal Term" and together with the Initial Term, the "Term") for a maximum of three (3) Renewal Terms, unless either Party gives written notice to the other Party at least ninety (90) days prior to the end of the Initial Term or the applicable Renewal Term of its intention not to renew this Agreement. Neither Party may terminate this Agreement during the Term other than "For Cause". As used herein, "For Cause" will mean (i) with respect to termination by the Company: (a) if the Institution has a course cancellation rate and/or Course Materials return rate in excess of 15% for any calendar quarter during the Term; (b) failure by the Institution to remit any payment pursuant to the Alternative Plan Purchases; or (c) if the Institution breaches this Agreement and fails to remedy such breach after thirty (30) days written notice is given by the Company of such breach; or (ii) with respect to termination by the Institution if the Company breaches this Agreement and fails to remedy such breach after thirty (30) days written notice is given by the Institution of such breach.

VII. Warranties/Indemnification. The Website will conform to the specifications set forth in Section 1 in all material respects during the Term, and after commercially reasonable diligence, the Company has no

knowledge that the content on such Website constitutes an infringement of the intellectual property rights of any third party. OTHER THAN THIS LIMITED WARRANTY, THE WEBSITE AS DEVELOPED AND OPERATED HEREUNDER IS PROVIDED "AS IS," WITHOUT ANY WARRANTY WHATSOEVER, INCLUDING BUT NOT LIMITED TO GUARANTEED UPTIME OR SERVICE RESPONSE. THE COMPANY, FOR ITSELF AND ITS SUPPLIERS, DISCLAIMS ALL OTHER WARRANTIES, CONDITIONS AND OTHER TERMS, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE WEBSITE OR THE SERVICES PROVIDED THEREUNDER. The Institution's sole and exclusive remedy, and the Company's entire liability for breach of such limited warranty, will be the Company's reasonable attempts to correct the warranted nonconformity. The Institution will indemnify, defend and hold harmless the Company and its directors, officers, affiliates, agents and employees from and against any losses, claims or proceedings including damages, judgments, assessments, investigation costs, settlement costs, legal fees and expenses, fines, penalties, arbitration awards, other liabilities, costs, fees and expenses (collectively, the "Losses") related to or arising out of (i) any oral or written information provided by the Institution to the Company or its agents for use on or in connection with this Agreement and the Website, or (ii) any breach by the Institution of any representation, covenant or agreement by it in this Agreement. The Company will indemnify, defend and hold harmless the Institution and its directors, officers, affiliates, agents and employees from and against all Losses related to or arising out of (i) any breach by the Company of the limited warranty set forth in this Section VII; (ii) for any third party claim against Institution alleging infringement with respect to the Website; or (iii) any breach by the Company of any representation, covenant or agreement arising out of this Agreement.

VIII. Miscellaneous.

All notices, requests, consents, demands and other communications hereunder will be in writing and will be mailed by registered or certified first class mail or delivered by an overnight courier or by facsimile, to the respective Parties to this Agreement as follows: if to the Company: Akademos, Inc., 200 Connecticut Ave, Norwalk, Connecticut 06854. Attention: John Squires, CEO. Fax: 203-866-0199. If to the Institution: Fort Hays State University, with its principal business address 600 Park St, Hays, KS 67601; Attention: Administration and Finance; Fax: 785-628-4046. All such notices and communications will be deemed to have been delivered on the date of delivery thereof, one day after receipt of facsimile or on the third business day after the mailing thereof.

- a) The Company will implement the same privacy policy on the Website as currently used on the Company's consumer website, www.TextbookX.com.
- b) The Company will have the right to assign subcontractors for purposes of completing the Website and providing all necessary service hereunder.
- c) During the term of this Agreement and for a period of three (3) years thereafter, neither of the Parties will, directly or indirectly, use or disclose any Confidential Information of the other Party, whether by private communication, public address, publication or otherwise, except as directed in writing by an authorized representative of such other Party. "Confidential Information" means with respect to either Party, all information, in any form, furnished or made available directly or indirectly by that Party to the other that is proprietary or otherwise sensitive and held in confidence by such Party, including without limitation: (i) information that is marked confidential, restricted, proprietary, or with a similar designation; (ii) all specifications, designs, documents, correspondence, software, software documentation, data and other materials and work products produced by the Party or its agents, consultants, licensees or representatives; and (iii) all information concerning the operations, affairs, methods, transactions and businesses of the Party or its affiliates (including ideas, marketing plans, business plans or strategies, business volumes or usage, data and other information that are trade secrets or are competitively sensitive), the financial information or affairs of the Party, pricing information and the relations of the Party with its employees and service providers. Notwithstanding the foregoing, Confidential Information does not include information that the Company or the Institution has voluntarily disclosed to the public without restriction, or which is otherwise publicly available.

- d) The Website produced by the Company will be wholly owned by the Company, including all rights to the copyright therein. The Institution agrees that it has no rights in and to the ownership of the Website or any portion thereof, other than the name of the Institution. Rights to photos, graphics, source codes, work-up files and computer programs are not transferred to the Institution and remain the property of the Company. The Company retains the right to display graphics and other Website elements as examples of its work in its portfolio. The Institution hereby licenses to the Company, on a non-exclusive basis, the right to use the Institution's name and logo for (in compliance with any usage guidelines provided to the Company by the Institution) during the Term.
- e) This Agreement constitutes and expresses the entire understanding between the Parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, inducements or conditions, whether express or implied, oral or written. Neither this Agreement nor any portion or provision hereof may be changed, waived or amended orally or in any manner other than by an agreement in writing signed by the Parties.
- f) The validity, construction and enforcement of this Agreement will be governed by the laws of the State of Connecticut and the Parties consent irrevocably to the jurisdiction of the courts of the State of Connecticut in resolving any dispute arising from this Agreement.
- g) The provisions of this Agreement are independent of and separable from each other. If any provision hereof will for any reason be held invalid or unenforceable, it is the intent of the Parties that such invalidity or unenforceability will not affect the validity or enforceability of any other provision hereof, and that this Agreement will be construed as if such invalid or unenforceable provision had never been contained herein.
- h) This Agreement may be executed in any number of counterparts, each of which will be an original, with the same effect as if the signatures were upon the same instrument. It will not be necessary in making proof of this Agreement to produce or account for more than one counterpart.
- i) The Institution will agree to remove references and/or web links to any online bookstore website and/or services operated by any other company prior to this agreement. The Institution will verify that any previous company's bookstore website for the Institution's student purchases has been taken offline.
- j) The Company will provide the Institution within 30 days after the execution of this agreement an on-site and virtual training plan for the launch of the service for faculty/staff and students.
- k) The Company will provide the Institution within 30 days after the execution of this agreement a marketing plan for the launch of the service.
- l) The Company will provide students with the option to have textbooks and course materials shipped to the Institution's campus store for pick-up and develop a reduced shipping rate program for such shipments.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

AKADEMOS, INC.

By _____

John Squires

CEO

FORT HAYS STATE UNIVERSITY

By _____

Name

Title