




August 20, 2018

MEMORANDUM

TO: District Board of Trustees
FROM: Jim Murdaugh, President 
SUBJECT: Renewal for Bookstore Services

Item Description

This item requests approval of the District Board of Trustees for the renewal of the current Follett Higher Education Groups, Inc. contract for bookstore services, along with the modifications of the agreement to include support to Flagler College students.

Overview and Background

In July 2011 the Board approved a five (5) year agreement with Follett to provide the College's bookstore services, with options for successive one-year renewals after the initial contracted period. This will be the third one-year renewal of the original agreement.

This amendment also includes language that will enable Follett to sell textbooks and merchandise to the students of our university partner, Flagler College, as well as establish web based stores to sell TCC branded merchandise.

Past Actions by the Board

The Board approved the second renewal of this agreement at the June 19, 2017 meeting.

Funding/Financial Implications

There are no funding implications for these services. The College is projecting an annual commission of over \$400,000 from these services.

Staff Resource

Barbara Wills

Recommended Action

Approve the renewal of the Follett contract for bookstore services.

**THIRD AMENDMENT TO BOOKSTORE OPERATING AGREEMENT
BETWEEN TALLAHASSEE COMMUNITY COLLEGE
AND FOLLETT HIGHER EDUCATION GROUP, INC.**

This Third Amendment to the Bookstore Operating Agreement entered into by and between The District Board of Trustees of Tallahassee Community College (“TCC”) and Follett Higher Education Group, Inc. (“Follett”).

WHEREAS, TCC and Follett are parties to a certain Bookstore Operating Agreement (“Agreement”) effective July 2011, first amended on May 27, 2017, and a second amendment on July 1, 2017, and the parties now desire to amend the Agreement in certain respects as more specifically set forth herein; and

WHEREAS, TCC agrees that Follett may also provide support to Flagler College (“Flagler”) students with the sale of textbooks and merchandise; and

WHEREAS, Follett offers a service providing web-based inventory management and fulfillment of manufactured products bearing customer specified indicia through **(A) Web-based Institutional Store** where TCC employees can place orders of such TCC’s branded clothing, gifts, and supplies and **(B) Web-based Athletic Merchandise Store** where customers can place orders of TCC’s custom-branded merchandise through a web-based ordering system; operated by a Follett Corporation wholly owned subsidiary, Advanced Graphic Products, dba “Advanced Online” (“Advanced”). The terms and conditions applicable to each store-type are detailed in the relevant sections below; and

WHEREAS, terms and conditions of the original Agreement shall remain in effect, except as modified below:

2. **Term.** Section 2 of the original Agreement is amended by extending the term of the Agreement for one (1) year until June 30, 2019.

6. **General Rights and Responsibilities of Follett.**

6.20 Follett shall have the exclusive right, free from any alternate source endorsed, licensed or otherwise approved or supported by Flagler College (“Flagler”) (whether on campus, by catalog or through electronic commerce, including hyperlinks to alternate sources) to buy, sell, rent and distribute (including the right to select vendors) merchandise and services traditionally offered in college and university book stores, including but not limited to textbooks, class and alumni rings and jewelry, clothing (whether or not emblematic), Flagler supplies, desk and dorm accessories, gifts, souvenirs, graduation regalia (sale and rental), and announcements. This section 6.20 does not prohibit occasional sales by student groups or student government organizations that do not materially impact Store sales.

6.21 Follett will order Flagler required textbooks each semester once Follett is notified which books are required by Flagler. Follett will notify Flagler if it comes across new editions of

Course Materials, out of stock Course Materials, or if other issues arise regarding Course Materials.

- 6.22 Follett will maintain student Financial Aid files for Flagler students.
- 6.23 Follett will establish limits for purchases for Financial Aid purposes and will communicate these limits to TCC within 60 days prior to the start of term. These limits may include both dollar and item limits. In addition, Follett will set opening and closing dates for bookstore charges and will assure TCC is aware of all dates in advance of the start of each term.
- 6.24 Follett will send an invoice to Flagler within two (2) weeks of Financial Aid ending or closing for Flagler students.
- 6.25 Follett will maintain open communication with Flagler and TCC regarding any issues or concerns that arise from this agreement.
- 6.26 Follett, dba Advanced, will provide a web-based ordering system through which TCC designated employees may purchase products from TCC's product line on behalf of TCC, using TCC resources at discounts of approximately 25% to 40% off retail pricing utilizing Advanced's corporate pricing model. These sales will be exempt from licensing fees, if applicable. At the request of TCC, and subject to mutual amendment, Advanced will also offer other printed material such as business cards, stationery and other printed items bearing TCC's logo or other indicia for purchase through an 'institutional store' site. All direct orders through the institutional store site by TCC employees will be paid utilizing the Bank of America virtual payable method of payment.
- 6.27 Follett, dba Advanced, will provide a non-exclusive web-based ordering system through which TCC's employees or other designated TCC staff may purchase products from TCC's product line for personal use, at discounts of approximately 15% to 40% off of Advanced's corporate pricing model. Advanced will offer these products for purchase through an 'employee store' site. These sales will not be exempt from licensing fees and payment for these fees will be collected and paid by Advanced to the appropriate licensing company on behalf of TCC.
 - a) Follett, dba Advanced, will provide TCC a range of reporting capabilities to help TCC analyze and control spending by department, cost center or products type.
 - b) Follett, dba Advanced, will provide TCC with site management set up that allows for approval process for orders directly to department or cost center managers.
 - c) Follett, dba Advanced, will enter into a license agreement (the "License Agreement") with the currently appointed license provider of TCC. During the term of this Agreement, Advanced will maintain its status as a properly appointed licensee of TCC; and comply with the requirements of the License Agreement. If TCC is self-licensed, Advanced will comply with all requirements of TCC and receive approval of all graphics through TCC.
 - d) Any licensing fees shall be calculated and paid for all sales of licensed merchandise with the exception of Exempt merchandise sales to TCC for TCC staff purchases on

behalf of TCC.

- e) Employees purchasing licensed merchandise with personal funds will be considered non-exempt for licensed merchandise. License fees will be calculated on retail pricing for employees purchasing at corporate pricing for personal purchases.
- f) Any license fees on products sold by Advanced bearing TCC indicia will be paid to the TCC-appointed licensing company within fifteen (15) days following the end of the month that License Fees are earned. License Fees for each product sold shall be paid at the established percentage for TCC of the wholesale price at which a product is sold. Wholesale pricing is defined as 50% of the retail pricing. With respect to online sales, License Fees shall be deemed earned by TCC as of the transaction billing date. License Fees will not be paid for products sold directly to TCC.
- g) Follett, dba Advanced, will pay no commissions to TCC from the sales of products on the 'institutional store' or the 'employee store' as outlined in this amendment.

6.28 Follett, dba Advanced, will provide a web-based ordering system where customers can place orders of TCC's custom-branded athletic merchandise.

- a) Follett, dba Advanced, will enter into a license agreement (the "License Agreement") with the currently appointed license provider of TCC. During the term of this Agreement, Advanced will maintain its status as a properly appointed licensee of TCC; and comply with the requirements of the License Agreement. If TCC is self-licensed, Advanced will comply with all requirements of TCC and receive approval of all graphics through TCC.
- b) Any licensing fees shall be calculated and paid for all sales of licensed merchandise with the exception of Exempt merchandise sales to TCC for TCC Athletics or TCC staff purchases on behalf of TCC.
- c) Employees purchasing licensed merchandise with personal funds will be considered non-exempt for licensed merchandise. License fees will be calculated on retail pricing for employees purchasing at corporate pricing for personal purchases.
- d) Any licensing fees (as defined below) on products sold by Advanced bearing TCC Indicia will be paid to the TCC appointed licensing company within fifteen (15) days following the end of the month that License Fees are earned. License Fees for each product sold shall be paid at the established percentage for TCC of the wholesale price at which a product is sold. Wholesale pricing is defined as 50% of the retail pricing. With respect to online sales, License Fees shall be deemed earned by TCC as of the transaction billing date. License Fees will not be paid for products sold directly to TCC.
- e) Follett, dba Advanced, will provide effective email campaign, promotions and other marketing related items to enhance overall retail sales.
- f) Follett, dba Advanced, will provide a web-based ordering system through which TCC designated employees may purchase products from TCC's product line on behalf of TCC, using TCC resources at discounts of approximately 25% to 40% off retail pricing utilizing Advanced's corporate pricing model.

7. General Rights and Responsibilities of TCC.

7.9 TCC will provide Follett, dba Advanced, a web link from TCC's "Intranet" or other non-

public facing web site to the named “Store” to the Advanced-provided online institutional and employee stores.

- 7.10 TCC will promote the ‘institutional store’ and ‘employee store’ to TCC departments and employees in emails and other internal communications and media. TCC will encourage all departments to utilize the ‘institutional store’ for the acquisition of all products utilizing TCC’s logo and indicia.
- a) Athletics agrees that if merchandise will be purchased from Advanced for resale, TCC or Athletics will notify Advanced to set up an ordering group that calculates licensing since the merchandise is being resold by TCC. Without this notification, Advanced will not be liable for licensing on behalf of TCC.
 - b) Athletics agrees that direct orders purchased through the Athletics staff portal at corporate pricing is being done for the benefit of TCC and requires no licensing fees. If Athletics staff is used for personal orders, a separate licensed portal will need to be set up at the request of TCC.
- 7.11 TCC will provide a web link from TCC Athletics web site named “Athletic Merchandise Store” to be linked to the new Advanced-provided online store. A designated ad space at the top half of the TCC Athletics web site will be allocated for permanent online store advertising and an additional ad space will be allocated for promotional ads for discounted, free or special product promotions. TCC promote the ‘athletic merchandise store’ to TCC employees in emails and other internal communications and media.
- a) Athletics agrees that if merchandise will be purchased from Advanced for resale, TCC or Athletics will notify Advanced to set up an ordering group that calculates licensing since the merchandise is being resold by TCC. Without this notification, Advanced will not be liable for licensing on behalf of TCC.
 - b) Athletics agrees that direct orders purchased through the Athletics staff portal at corporate pricing is being done for the benefit of TCC and requires no licensing fees. If Athletics staff is used for personal orders, a separate licensed portal will need to be set up at the request of TCC.

9. Bookstore Stock and Sales.

- 9.6 In the case that TCC requests that Advanced hold specific special inventory for the benefit of TCC, those products will be set forth in Exhibit A (if applicable). TCC acknowledges that Advanced will not be able to use in connection with any customer other than those products that will be set forth in Exhibit A. Accordingly, Advanced may request payment, and TCC shall render payment, for the products described in Exhibit A for quantities up to, but not exceeding, the maximum quantity for each product shown in Exhibit A upon the occurrence of any of the following events:
- a) The products have not sold within twelve (12) months after TCC requested Advanced maintain such products in inventory; or
 - b) The product(s) is discontinued and replaced by another product(s); or

- c) This Agreement is terminated for any reason.
- 9.7 During the term of this agreement, Advanced and TCC acknowledge that products will be added to and deleted from Exhibit A from time to time as directed by TCC. Any such change or amendment to Exhibit A shall be mutually agreed upon in writing by the parties.
- 9.8 The minimum total spending by all customer segments is expected to be a minimum of \$5,000 per year in order for Advanced to continue to provide the online store. If total spending does not reach the minimum of \$5,000 per year pace, Advanced will at its discretion determine a time to close down the online store(s) and provide TCC a 90 days written notice of closure.
- 9.9 If TCC would like Advanced to continue operating the online store(s), despite not meeting the \$5,000 minimum annual sales threshold, Advanced will continue to operate the online store(s), Advanced will invoice and TCC will pay \$1,000 as a yearly maintenance fee for this continued service.
- 10. Commission.**
- 10.6 On the Flagler sales, Follett shall pay commission to TCC in an annual amount equal to the sum of:
- 12.85%** of all Gross Revenue up to **\$6,000,000**; plus
13.25% of any part of Gross Revenue over **\$6,000,000**.
- 10.7 On the Flagler sales, TCC shall pay commission to Flagler in an annual amount equal to:
- 6.00%** of all Gross Revenue for any Flagler Financial Aid purchases.
- 10.8 On the Follett stores sales, Commission on products sold by Advanced bearing TCC indicia shall be:
- a) Paid to TCC within fifteen (15) days following the end of the month that Commissions are earned.
 - b) Paid at 12% of the retail price at which a product is sold.
 - c) Paid only on retail sales to fans, alumni, donors and the public. Any sales to TCC staff are exempt from commissions.
- 10.9 With respect to online sales, royalties shall be deemed earned by TCC as of the transaction billing date. Retail sales are defined as price at which product is sold online excluding freight and sales tax.
- 10.10 Gross Revenue is defined as all sales made by the Store or the Store's world wide web page, catalog, or mail order function (if any), less refunds, returns, taxes, computer systems sales, including, but not limited to, computer hardware, software, mp3 players and mp3 accessories, commissions earned from rings and graduation regalia, and allocations of

Follett-funded scholarships, and sales to departmental faculty, staff and other sales at a discount, all as reasonably calculated by Follett. For the purposes of calculating commissions, rental fees are included in the gross revenue calculations, as are replacement costs collected for materials not returned. Any processing fees are not included.

19. **Non-Exclusive Engagement.** Notwithstanding the provisions of Section 6.3. of the Bookstore Operating Agreement effective July 1, 2011, and all subsequent amendments, it is understood and agreed that this Amendment does not grant to Follett any exclusive rights to do business with TCC solely with respect to Follett’s operation of the web-based Institutional Store, Employee Store, or the Athletic Merchandise Store as set forth in this Amendment (“Non-exclusive Services”). TCC may contract with other partners for the procurement of Non-exclusive Services similar services provided by Follett as set forth in this Amendment, and to enter into agreements, in all cases without the necessity of obtaining approval from Follett.

Except as specifically amended hereby, the Agreement shall continue in full force and effect in all respects.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective authorized representatives as of the date signed.

**FOLLETT HIGHER EDUCATION
GROUP, INC.**

**THE DISTRICT BOARD OF TRUSTEES
OF TALLAHASSEE COMMUNITY
COLLEGE**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

**BOOKSTORE OPERATING AGREEMENT BETWEEN
TALLAHASSEE COMMUNITY COLLEGE
AND FOLLETT HIGHER EDUCATION GROUP, INC.**

This Bookstore Operating Agreement ("Agreement") incorporates by reference Follett Higher Education Group's response to RFP 2011-7 and is made as of June 20, 2011 between ("Tallahassee Community College", hereafter referred to as TCC) and Follett Higher Education Group, Inc. ("Follett").

Intending to be legally bound, TCC and Follett agree:

1. **Store.** Subject to all the terms and conditions in this Agreement, Follett shall operate a bookstore ("Store") for TCC.
2. **Term.** This Agreement takes effect July 1, 2011, and continues, unless sooner terminated in accordance with Section 3, until June 30, 2016. Thereafter, unless either party notifies the other in writing at least 120 days before expiration of the initial term, or then-current renewal term, of its intention not to renew, this Agreement shall automatically renew for successive one-year renewal terms under the terms and conditions set forth in this Agreement. Renewal is subject to the review by the Board of Trustees of TCC.
3. **Early Termination.**
 - 3.1 Either party may terminate this Agreement with or without cause by giving the other party at least 120 days prior written notice of termination.
 - 3.2 Either party may terminate this Agreement upon 120 days prior written notice for material nonperformance by the other party, documented, in case of nonperformance by Follett, in accordance with Section 7.4.
 - 3.3 TCC may terminate this Agreement immediately if Follett initiates any bankruptcy proceeding, or if any such proceeding initiated against Follett remains undismissed for 60 days.
4. **Rights Upon Termination, Expiration or Non-Renewal.**
 - 4.1 Termination, expiration or non-renewal of this Agreement shall not affect any right of either party accrued prior to such termination, expiration or non-renewal.
 - 4.2 On any termination, expiration or non-renewal of this Agreement, TCC shall pay Follett the unamortized book value (calculated on the straight-line method from the in-service date[s] over the greater of 4 years or until expiration of this Agreement) of all Store Remodeling (as defined in Section 5) and contributions paid by Follett.
 - 4.3 On any termination, expiration or non-renewal of this Agreement, TCC shall purchase, or cause to be purchased, the Store inventory then on hand under the following terms:

“Store Merchandise” will include all salable and rentable merchandise in the Store, including new textbooks, used textbooks, trade, reference and technical books, rental Program inventory, whether in stock or rented, and general merchandise. TCC shall cause all such merchandise to be inventoried by an independent firm. Each party may observe the inventory if desired. Payment to Follett for Store Merchandise shall be made or caused to be made by TCC within 30 days after the completion of the inventory as follows:

- a) New Textbooks
 - 1. New textbooks adopted for the next academic term in quantities not exceeding course requirements will be purchased at standard industry discounts or cost.
 - 2. New textbooks not adopted for the next academic term, or adopted but in excess of course requirements, will be purchased at the current wholesale price.

- b) Used Textbooks
 - 1. Used textbooks adopted for the next academic term in quantities not exceeding course requirements will be purchased at 50% of the current retail selling price.
 - 2. Used textbooks not adopted for the next academic term, or adopted but in excess of course requirements, will be purchased at current wholesale price.

- c) Trade, Reference and Technical Books (“Trade Books”)
 - 1. Trade Books that have been purchased during the past academic year and are returnable to the publisher will be purchased at standard industry discounts or cost.
 - 2. Trade Books not meeting these requirements will be purchased at a price agreeable to TCC and Follett.

- d) General Merchandise
 - 1. General merchandise traditionally sold in college bookstores, purchased in the past academic year, in salable condition, and not in excessive quantities, will be purchased at standard industry discounts or cost.
 - 2. General merchandise not meeting these requirements will be purchased at a price agreeable to TCC and Follett.

4.4 Upon termination Follett shall surrender premises in good order and will make reasonable repairs at the discretion of the College as needed if damages have occurred.

5. **Store Improvements.**

- 5.1 Follett shall spend up to a total of **\$200,000** to improve the Store in accordance with this Section 5. This expenditure may include furniture, trade fixtures, and equipment, including point-of-sale equipment, that is readily removable (“Capital Equipment”) and Follett and third-party design and project management services, third-party architectural and engineering services, cabling and infrastructure, floor and wall coverings, decorating, lighting, and fixtures that are not readily removable (“Store Remodeling”). Capital Equipment and Store Remodeling each include all replacements, additions and extensions paid for by Follett, whenever installed. The Capital Equipment and Store Remodeling together comprise the “Store Improvements.”
- 5.2 Follett shall prepare complete plans and specifications for the Store Improvements for review and approval by TCC, and shall work closely with TCC to develop mutually acceptable plans (“Plans”). TCC shall have the final approval over all the Plans; provided, however, that if the cost of carrying out the Plans as approved by TCC exceeds the amount set forth in Section 5.1, TCC shall be responsible for the excess.
- 5.3 When TCC has given final approval to the Plans, Follett shall submit an installation and construction schedule to TCC for approval. TCC shall review and comment on the Plans and schedule in a reasonable time frame to allow the project completion date to be met.
- 5.4 The Store Improvements shall meet or exceed the requirements of the Americans With Disabilities Act (“ADA”) and all other applicable codes, laws and regulations, and shall be in accordance with Follett’s Design Intent documents.
- 5.5 All Capital Equipment purchased by Follett and not attached as a fixture to real estate will remain the property of Follett.

6. **General Rights and Responsibilities of Follett.**

- 6.1 Follett shall operate the Store in accordance with the highest standards and commercial practices in the college bookstore industry and shall make every effort to provide a full quantity of TCC required textbooks each term. Follett shall provide a report of title adoption and quantity to cover to TCC contact prior to the beginning of each term.
- 6.2 Follett shall operate the Store 12 months per year. The name of the Store shall not change. The Store’s normal hours of operation and holiday closing schedule, shall be as approved in writing by TCC after consultation with Follett; hours of operation during registration periods, the first two weeks of classes, and all special campus events, shall be extended to coincide with demand.
- 6.3 Follett shall have the exclusive right, free from any alternate source endorsed, licensed or otherwise approved or supported by TCC (whether on campus, by catalog or through electronic commerce, including hyperlinks to alternate sources) to buy, sell, rent and distribute (including the right to select vendors) merchandise and services traditionally offered in college and university bookstores, including but not limited to, textbooks, class and alumni rings and jewelry, clothing (whether or not emblematic), TCC supplies, desk

and dorm accessories, gifts, souvenirs, graduation regalia (sale and rental) and announcements, course-adopted software and paper and electronic custom anthologies, and textbook buybacks. Follett shall also have right of first refusal to fulfill any distance learning instructional and ancillary materials required by TCC during the term of this Agreement. This Section 6.3 does not prohibit occasional sales by student groups or student government organizations that do not materially impact Store sales.

- 6.4 TCC grants Follett the right, subject to TCC's published standards, to use the TCC's seal, logotype, and associated trademarks and service marks on the Store's Internet site, signage and collateral materials, and stationery, soft goods, notebooks, pens, pencils, decals and other goods traditionally sold in college and university bookstores. TCC will not grant such right to any other online or brick-and-mortar retail bookseller during the term of this Agreement. If TCC changes its name, seal, or logotype with less than one year written notice to Follett prior to notice to the public, Follett may deduct from any commissions otherwise payable to TCC Follett's actual documented cost of all unsold emblematic merchandise on hand at the time of such change.
- 6.5 In order to secure property in the Store, Follett shall cooperate with TCC in providing Store security, theft prevention, and emergency procedures in case of fire or casualty. In cooperation with TCC Security, Follett shall create and maintain a Store security plan acceptable to TCC for textbook buyback, rush and other special events.
- 6.6 Follett shall not cause TCC's students, faculty, or staff suspected of theft or disturbance to be arrested by public authorities (except in emergencies) or prosecuted without prior consultation with TCC.
- 6.7 In its operation of the Store, Follett shall pay its bona fide financial obligations to TCC and to third parties in a timely manner.
- 6.8 Follett shall collect and pay any sales tax or similar tax on its retail sales, and applicable income taxes on its revenues. Follett shall not be responsible for property taxes on the Store facility or any other taxes not currently assessed.
- 6.9 Follett shall obtain and maintain at its sole expense, and in its name, all necessary licenses and permits required to perform the services described herein.
- 6.10 Follett shall abide, and require its employees to abide, by applicable TCC regulations and policies. TCC shall provide Follett with copies of applicable policies, and timely inform Follett of any changes.
- 6.11 Follett shall abide by all federal, state and local laws applicable to its operation and shall assist TCC with compliance of the Higher Education Opportunity Act (HEOA). In addition, Follett will ascertain FERPA compliance in all operational regards.
- 6.12 In performing this Agreement, Follett shall not discriminate based on sex, race, national origin, religion, color, sexual orientation, veteran status, disabled veteran status, age or disability protected under the ADA.

- 6.13 Follett shall be responsible for any loss or damage to property owned by TCC that is in Follett's possession or control or is caused by Follett or its employees or agents in the course and scope of their employment.
- 6.14 Follett will make its corporate representatives available to TCC to discuss and resolve any operational issues.
- 6.15 Follett shall be responsible for daily cleaning of the Store interior, including provision of basic janitorial equipment and supplies, sweeping, dusting, and removal of light trash to TCC-provided receptacles.
- 6.16 Follett will offer TCC faculty and staff a 10% discount on all purchases over \$1.00, excluding textbooks, sale merchandise, computer hardware, and academically discounted software. Follett will offer all TCC departments a 20% discount on purchases of supplies over \$1.00, excluding textbooks, sale merchandise, computer hardware, and academically discounted software.
- 6.17 Follett will provide **\$10,000** annually in textbook scholarships during the term of this Agreement, in the form of gift cards or as an accounts receivable account.
- 6.18 Follett will provide **\$12,000** annually in eBook scholarships during the term of this Agreement, in the form of gift cards or as an accounts receivable account.
- 6.19 Follett agrees to expeditiously inform faculty and staff of any difficulties arising from an inability to acquire the correct texts or editions.

7. **General Rights and Responsibilities of TCC.**

- 7.1 TCC will provide and maintain an appropriate, safe and habitable location, in accordance with all applicable laws and regulations, in retail-ready condition, for the Store Improvements and ongoing Store operations. Except for the Store Improvements provided by Follett in accordance with Section 5, TCC shall be responsible for furnishing appropriate decorating, fixtures, equipment, shelving, lighting, flooring, plumbing, power and HVAC. TCC shall also keep the building in which the Store is located in compliance with all fire, building and electrical codes and regulations, including regulations governing fire alarms, smoke detectors, fire extinguishers, fire suppression and sprinkler systems, water pressure, plumbing and electrical service. TCC shall be responsible for any loss resulting from failure of the building to meet applicable building codes and regulations. If the TCC relocates all or any part of the Store operations, TCC will provide Follett with at least 90 days advance notice of the relocation and will reimburse Follett, within 30 days after Follett's invoice, for Follett's cost of the relocation.
- 7.2 TCC will name a representative authorized to advise Follett of TCC's approvals, consents and instructions under this Agreement.
- 7.3 TCC may prohibit sale at the Store of any item it finds offensive or inappropriate.

- 7.4 If at any time TCC is dissatisfied with Follett's performance under this Agreement, TCC shall document the unsatisfactory performance and submit the documentation to Follett for immediate review and corrective action. TCC may require a review meeting to prepare the corrective action.
- 7.5 TCC shall provide the following services to the Store in accordance with TCC's building standards at no cost to Follett:
- a) Security of persons and property in the same manner provided for other TCC premises;
 - b) Internal and external building maintenance, including, but not limited to, plumbing, electric, light bulbs, HVAC and other mechanical systems, fire protection, roof membrane and structure, floors, walls, ceilings, windows and doors;
 - c) Pest control services on the regular TCC schedule;
 - d) Lost and found service as regularly provided by TCC;
 - e) Parking for Follett's employees in common with other authorized parkers in a location approved and provided by TCC (Follett's employees must abide by all applicable parking regulations);
 - f) Participation in any debit or credit card, voucher program, or other payment or financial aid service now or hereafter made available by TCC to its students or to local merchants;
 - g) Local telephone/data service including all equipment and lines (telephone toll charges to be charged to Follett at the same rate charged to TCC's departments);
 - h) Reasonable access to TCC's telecommunications and network systems as required to install, at Follett's sole expense, T1 lines and associated connectivity for Follett's point-of-sale systems; and
 - i) Building standard utilities.
- 7.6 TCC will require its faculty and staff to provide Follett with timely and accurate textbook adoption information in accordance with the HEOA requirements.
- 7.7 Follett will extend credit to TCC for financial aid and departmental charge accounts in accordance with the terms set forth in Follett's standard credit application. TCC will furnish to Follett all required information and will pay all accounts within 30 days of invoice.
- 7.8 TCC will establish limits for purchases for financial aid purposes and will communicate these limits to Follett 60 days prior to the start of term. These limits may include both dollar and item limits. In addition, TCC will also set opening and closing dates for bookstore charges and will ascertain that Follett is aware of all dates well in advance in start of each term.

8. **Bookstore Personnel.**

- 8.1 Follett will furnish sufficient adequately trained personnel to provide efficient and courteous service to customers, including sufficient substitute personnel in case of employee absence. In addition, Follett will provide ongoing training in customer service and will formally recognize and reward employees who provide superior customer

service. The Store will hire additional personnel to meet customer needs during high demand periods

- 8.2 TCC may participate in interviewing and evaluation of Follett's Store Manager should the need arise to fill the position. Follett's selection of the Store Manager is subject to TCC's approval.
- 8.3 The Store agrees to employ as much TCC student labor as practical in its operation and agrees to reimburse student labor in accordance with industry standard wage scales
- 8.4 Follett will be responsible for the acts and omission of its employees and officers. TCC has no responsibility for the acts and omission of Follett employees.

9. **Bookstore Stock and Sales.**

- 9.1 In operating the Store, Follett will charge industry standard, competitive and fair prices, which, at present, are as follows:
 - a) On new textbooks and trade books, not more than the publishers' list price, or a 25% gross margin (cost divided by .75, inclusive of restocking fees and return penalties) on net price books and list price books sold to Follett at less than a 25% discount off list (inclusive of restocking fees and return penalties), plus freight and handling costs and rounded up to the next quarter.
 - b) On e-books, e-coursepacks, coursepacks, text "packages," "kits," "sets," and "bundles," and non-returnable and return-restricted texts, not more than a 30% gross margin (cost divided by .70, inclusive of restocking fees and return penalties), plus freight and handling costs and rounded up to the next quarter.
 - c) On used books, including cloth, paperback and others, not more than 75% of the new textbook selling prices rounded up to the next quarter.
 - d) Follett will be setting rental fees for each title, and any given title's fee may vary as a percentage of the retail selling price.
 - e) On general merchandise, not more than the normal gross profit margin for similar merchandise in the college bookstore industry. General merchandise includes, but is not limited to, non-course work materials commonly sold in college bookstores, such as clothing, computers, convenience items, gifts, health and beauty aids software, art and school supplies and materials, and testing products.
- 9.2 Follett will expeditiously process text requests placed after the adoption deadline.
- 9.3 Follett shall purchase used textbooks year round. Follett shall purchase used textbooks adopted for the next academic term in quantities sufficient to meet course requirements at not less than 50% of the student's purchase price rounded to the nearest quarter. Follett shall purchase used books not adopted for the next academic term or in excess of course

requirements at wholesale prices prevailing in TCC's locality rounded to the nearest quarter.

9.4 Follett will accept returns in accordance with the following policies:

- a) Non-textbook items in resalable condition may be refunded or exchanged at any time with original receipt.
- b) Textbooks in resalable condition may be refunded with receipt within seven (7) calendar days from the start of classes or within two (2) days of purchase thereafter, including during summer term.
- c) Textbooks purchased during the last week of classes or during exams may be sold back under the book buyback policy.
- d) Computer software may be returned if it is unopened and shrink-wrapped.
- e) In addition, upon proof of drop/add, Follett will accept textbook returns from students who have dropped a course up to thirty (30) days from the start of classes or until the end of the official drop/add period, whichever comes first.

9.5 In operating the Store, Follett shall accept as a minimum, MasterCard, Visa, Discover and American Express charge cards. Follett will pay all merchant charges associated with acceptance of these credit cards.

10. Commission.

10.1 Follett shall pay commission to TCC in an annual amount equal to the sum of:

12.85% of all Gross Revenue up to **\$6,000,000**; plus
13.25% of any part of Gross Revenue over **\$6,000,000**.

As used in this Section 10, Gross Revenue is defined as all sales made by the Store or the Store's world wide web page, catalog, or mail order function (if any), less refunds, returns, taxes, computer systems sales, including, but not limited to, computer hardware, software, mp3 players and mp3 accessories, commissions earned from rings and graduation regalia, and allocations of Follett-funded scholarships, and sales to departmental faculty, staff and other sales at a discount, all as reasonably calculated by Follett.

For the purpose of calculating commissions, rental fees are included in the gross revenue calculations, as are replacement costs collected for materials not returned. Any processing fees are not included.

10.2 If in the first full year during the term of this Agreement, commission payments to TCC calculated in accordance with Section 10.1 are less than **\$500,000** ("Guaranteed Annual Income"), Follett will pay TCC an additional amount necessary to bring total payments to TCC for that year up to the Guaranteed Annual Income. Follett will provide a Guaranteed Annual Income in all future years of this agreement that will be an amount equal to ninety percent (90%) of the calculated commission on gross revenue of the immediately preceding year. This Section 10.2 shall not apply in any year in which TCC enrollment drops by 5% or more from the first year of this agreement. The 5% enrollment drop will

be determined by TCC's actual credit hour enrollment from one academic year to the next.

- 10.3 Follett will keep complete and accurate records of all Store transactions in accordance with industry accounting practices and will provide a statement of Store gross revenue to TCC monthly for the preceding period. Follett will preserve records of store operations for 3 years from the transaction date, and will make them available for review, audit and verification by TCC at the Store upon request on reasonable advance notice during ordinary business hours other than during Store "rush" periods.
- 10.4 Follett shall pay the commission calculated in accordance with Section 10.1 monthly, twenty days after the end of the month. Any other payment required to be made by Follett to TCC under this Agreement shall be made within thirty days of receipt of invoice. Follett will make any payments due under Section 10.2 within 90 days after the end of the year. In case of termination of this Agreement other than at year-end, payments under Section 10.2 shall be prorated to the actual date of termination.
- 10.5 Follett shall provide a one-time contribution of **\$100,000** on or before August 1, 2011. This contribution shall be amortized and shall be subject to reimbursement by the School to Follett in the event of contract termination under the terms outlined in Section 4.2. This amount may be used for additional Store Improvements if directed by School.

11. Bookstore Rentals.

- 11.1 Follett will provide a proprietary course material rental program ("Rental Program") via individual rental agreements with students ("Student Rental Agreements"). Rental pricing will be determined by Follett. Two types of textbooks will be eligible for adoption in the rental program:

The "National Title List" Textbook. Follett will offer a National Textbook Rental Title List of the textbooks available for rental, which will be updated periodically by Follett (the "National Title List").

The "Local Program" Textbook. TCC may select books not on the National Title List to be part of the Rental Program provided TCC agrees to continue to adopt the specific book(s) for at least 4 consecutive semesters as is currently the College's book adoption policy. In the event TCC fails to consistently comply with meeting the 4 consecutive similar-sized semesters commitment in the aggregate, Follett at its sole discretion may eliminate the Local Program.

- 11.2 TCC will support the Rental Program as follows: Successor in Interest - On any termination, expiration or non-renewal of this Agreement, Student Rental Agreements will be assigned to TCC or successor store operator. Where rented textbooks have not been returned, where no charge has been made to the credit or debit card held as security therein, or where some other loss occurs under a Student Rental Agreement, TCC will look solely to the student.

12. Insurance.

- 12.1 During the term of this Agreement, Follett shall keep in force, at its own expense, at least the following insurance, all in accordance with this Section 12:
- a) Commercial General Liability having a combined single limit of not less than \$1,000,000 per occurrence covering contractual liability and products/completed operations;
 - b) Business Automobile Liability having a combined single limit of not less than \$1,000,000 per occurrence covering claims arising out of ownership, maintenance, or use of owned or non-owned automobiles;
 - c) Worker's Compensation insurance having limits not less than those required by applicable statute;
 - d) Employer's Liability in the amount of at least \$1,000,000.
 - e) Excess or Umbrella Liability in the amount of at least \$2,000,000.
- 12.2 TCC, its affiliates, officers, directors, trustees, volunteers, and employees shall be named as additional insureds under the Commercial General Liability policy.
- 12.3 Follett shall furnish industry standard Certificate[s] of Liability Insurance to TCC showing the coverage required by this Section 12 within 30 days after execution of this Agreement or before Follett takes possession of the Store, whichever is earlier. The Certificate[s] shall provide that the issuing company will endeavor to mail written notice to the Certificate Holder (TCC) in the event of any policy cancellation or termination.
- 12.4 TCC will notify Follett of any flood plain zoning changes affecting the Store within 30 days of receiving notice of such change from any source.
- 12.5 If TCC causes any work to be performed by a third party on the building housing the Store, then TCC will provide Follett an industry standard Certificate of Liability Insurance from the third party's insurance company (ies) showing Follett as an additional insured under the third party's Commercial General Liability policy and Business Automobile Liability policy. Both policies shall show combined single limits of \$1,000,000 per occurrence.

13. Indemnification.

- 13.1 Follett shall defend, indemnify and hold harmless TCC, its Board of Trustees, affiliates, officers and employees from any and all claims, suits, actions, damages, judgments, and costs (including reasonable attorney fees), arising out of any: (i) damage, destruction or loss of any property (including but not limited to TCC's property); or (ii) injury to or death of any person (including but not limited to any employee of TCC); which results from or arises out of negligent or willful acts or omissions of Follett, its officers, agents and employees, in the performance of this Agreement.
- 13.2 To the extent permitted by applicable law, TCC shall defend, indemnify and hold harmless Follett, its affiliates, directors, officers and employees from any and all claims, suits, actions, damages, judgments, and costs (including reasonable attorney fees) arising

out of any: (i) damage, destruction or loss of any property (including but not limited to Follett's property); or (ii) injury to or death of any person (including but not limited to any employee of Follett); which results from or arises out of negligent or willful acts or omissions of TCC, its officers, agents or employees, in the performance of this Agreement. The liability of TCC is strictly limited as provided in Section 768.28, Florida Statutes.

14. **Independent Contractor Status.** The relationship of the parties is that of independent contractors, and no tenancy, partnership, joint venture, agency, fiduciary or other relationship is created. Neither party may order any goods nor services, incur any indebtedness, or enter into any obligation or commitment on the other party's behalf.
15. **Nonassignability.** Neither party may assign or sublet this Agreement in whole or in part without the prior written consent of the other party, except that either party may assign this Agreement in its entirety to an affiliate that controls, is controlled by or is under common control with such party. This Agreement is made for the exclusive benefit of the parties, and no benefit to any third party is intended.
16. **Notice.** Notices required or permitted by this Agreement shall be deemed given when received if sent by recognized overnight courier or first class mail, postage prepaid, to the following address, or such other address as the party may specify by notice:

To TCC:

Bobby Hinson
Purchasing Manager
Tallahassee Community College
Purchasing Department
Administration Building, Room 113
444 Appleyard Drive
Tallahassee, Florida 32304-2895

To Follett:

Thomas A. Christopher
President
Follett Higher Education Group
1818 Swift Drive
Oak Brook, Illinois 60523

With copy to:

Teresa E. Smith
Tallahassee Community College
444 Appleyard Drive
Tallahassee, FL 32304

With copy to:

Follett Corporation
2233 West Street
River Grove, Illinois 60171
Attn: General Counsel

17. **Severability.** If any provision of this Agreement is finally adjudicated illegal, invalid, in excess of the authority of either party hereto or otherwise unenforceable, then such provision shall be severed, and the remainder of this Agreement shall remain in force as if such adjudicated provision were never included in this Agreement.
18. **Integrated Agreement.** This Agreement: (i) is the sole expression of the understanding of the parties with respect to operation of the Store, (ii) supersedes all prior statements and agreements with respect thereto, and (iii) may not be modified, amended or waived

except in writing signed by an authorized representative of the party against whom such modification, amendment or waiver is sought to be enforced.

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

**FOLLETT HIGHER EDUCATION
GROUP, INC.**

By: 

Name: Thomas A. Christopher

Title: President

Date: 5/25/2011

**TALLAHASSEE COMMUNITY
COLLEGE**

By: 

Name: Jim MURDAUGH

Title: PRESIDENT

Date: 6/24/11