

BOARD MEETING DATE: June 18, 2024

ITEM: X-G

RECOMMEND that the District Board of Trustees for North Florida College approves a one-year renewal of the Follett bookstore contract as allowed by the attached contract.

ATTORNEY REVIEW STATUS: This item was previously reviewed by the attorney.

THIS RECOMMENDATION: allows the college to continue with Follett as the bookstore provider.

**OPERATING AGREEMENT BETWEEN
NORTH FLORIDA COMMUNITY COLLEGE
AND FOLLETT HIGHER EDUCATION GROUP, INC.**

This Store Operating Agreement ("Agreement") is made as of March, 21st, 2019 between North Florida Community College ("School") and Follett Higher Education Group, Inc. ("Follett").

Intending to be legally bound, School and Follett agree:

1. **Store.** Subject to all the terms and conditions in this Agreement, Follett shall operate a virtual store, an online ecommerce website ("Virtual Store"), for School.
2. **Term.** The term ("Term") of the contract will be for five (5) years and two and one-half (2 1/2) months beginning April 17, 2019, and ending June 30, 2024. College, but not Follett without College's written consent, shall have the option to renew the contract for five (5) one-year renewal terms (each a "Renewal Term") by providing Follett with 120 days written notice of renewal prior to the expiration of the Term or Renewal Term.
3. **Early Termination.**
 - 3.1 Either party may terminate this Agreement with or without cause by giving the other party at least 60 days prior written notice, on official letterhead, of termination.
 - 3.2 Either party may terminate this Agreement upon thirty (30) days' prior written notice, on official letterhead, for documented material nonperformance by the other party, and in case of nonperformance by Follett, in accordance with 3.2a and 3.2b.
 - a) If at any time School believes Follett is in material breach of this Agreement, School shall document the breach and provide notice to Follett within five (5) days of such alleged breach.
 - b) Follett shall work with School to remedy the performance within ten (10) business days of receiving notice.
 - 3.3 School may terminate this Agreement immediately if Follett initiates any bankruptcy proceeding.
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, Follett will deduct from any commissions payable to School, the "Dead" Inventory then on hand at standard industry discounts or cost. Dead Inventory is defined as inventory that is School-specific and cannot be returned to the publisher. If agreed upon commission does not cover dead inventory balance, school agrees to pay Follett the difference within 30 days from date of invoice.
 - 4.3 On any termination, expiration or non-renewal of this Agreement, School shall make itself available for a final debrief meeting to provide Follett with reason(s) for termination and any other applicable feedback.
 - 4.4 On any termination, expiration or non-renewal of this Agreement the School shall purchase, or cause to be purchased, the Store inventory including but not limited to emblematic supplies and apparel then on hand.
5. **General Rights and Responsibilities of Follett.**
 - 5.1 Follett shall operate the Virtual Store in accordance with the highest standards and commercial practices in the college bookstore industry.

- 5.2 Follett shall have the exclusive right, free from any alternate source endorsed, licensed or otherwise approved or supported by School (whether on campus, by catalog or online, including hyperlinks to alternate sources) to buy, sell, advertise and distribute print and electronic course materials, course related supplies, software and equipment and such other educational materials and merchandise as is mutually agreed to between School and Follett. Follett shall also have right of first refusal to fulfill any distance learning instructional and ancillary materials required by School during the term of this Agreement. This Section does not prohibit occasional sales by student groups or student government organizations that do not materially impact Virtual Store sales. Follett will have exclusive rights to conduct an on-campus buyback, if applicable, of course materials from School's students, in accordance with Section 7.7.
- 5.3 School grants Follett the right, subject to School's published standards and approval, to use the School's seal, logotype, and associated trademarks and service marks on the Virtual Store site, signage, collateral materials, stationery, soft goods, notebooks, pens, pencils, decals and other goods traditionally sold in college and **North Florida Community College** ("school") bookstores. School will not grant such right to any other online or brick-and-mortar retailer during the term of this Agreement. If School 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 School Follett's actual documented cost of all unsold emblematic merchandise on hand at the time of such change.
- 5.4 In its operation of the Virtual Store, Follett shall pay its bona fide financial obligations to School and to third parties in a timely manner.
- 5.5 Follett will offer customers commercially reasonable and occasional discounts, promotions, sweepstake events, and other customer incentives at Follett's discretion, through the Virtual Store.
- 5.6 Follett shall abide, and require its employees to abide, by applicable School regulations and policies. School shall provide Follett with copies of applicable policies, and timely inform Follett of any changes.
- 5.7 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.
- 5.8 Each party shall abide by all federal, state and local laws applicable to its operation.
- 5.9 Follett shall collect and pay any sales tax or similar tax on its retail sales, and applicable income taxes on its revenues.
- 5.10 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 Americans with Disabilities Act (ADA).
- 5.11 Follett will make its corporate representatives reasonably available to School to discuss and resolve any operational issues.

6. General Rights and Responsibilities of School.

- 6.1 Within 90 days of the execution of this Agreement, school agrees to configure and install Follett Discover Adopt, View and Access where there are commercial grade Student Information System ("SIS") and Learning Management System ("LMS") environments, and have the application links prominently displayed within these properties to make them readily accessible for the faculty adoption process, and student access to digital course materials. The School will provide a prominent hyperlink from the School's LMS to the Follett Discover tool.
- 6.2 School will name a representative authorized to advise Follett of School's approvals, consents and instructions under this Agreement.
- 6.3 School may prohibit sale at the Virtual Store of any item it finds offensive or inappropriate.

- 6.4 School will require its faculty and staff to provide School contact with timely and accurate course materials adoption information in accordance with the timelines communicated in the course materials section and during initial kick-off call with Follett.
- 6.5 Follett will extend credit to School for financial aid and departmental charge accounts in accordance with the terms set forth in Follett's standard credit application. School will furnish to Follett all required information and will pay all accounts within 60 days of invoice or will pay applicable late charges as provided in the credit application.
- 6.6 School will place on its website(s) hyperlinks to Follett's designated Virtual Store website and associated promotional materials and announcements, including but not limited to banners and buttons. School will not place on its website(s) any other link to or advertisement for any other course materials/textbooks provider.
- 6.7 School will not promote, contract with or enter into any relationship with any other party with respect to the sale of course materials to its student population.
- 6.8 School shall inform students, customers and potential customers of the Virtual Store and provide appropriate instructions on how to access and use the Virtual Store; templates to facilitate these efforts can be accessed by School using the Follett client portal provided by Follett.
- 6.9 School will use commercially reasonable efforts to market and promote the Virtual Store to students, customers, and potential customers, including but not limited to actively assisting Follett with email to students, customers, and potential customers and posting the Virtual Store's promotional materials on the School's website(s). Follett agrees to work with the school in the spirit of collaboration to determine a mutually beneficial email schedule as not to overburden students.
- 6.10 To help the School maximize their brand exposure and increase revenue, School may provide to the Virtual Store at no cost, the following:
- a) A minimum of two hyperlinks located on the home page of the School's .edu website to the Virtual Store's eFollett website, and on the appropriate subpage(s) of the School's .edu website, a Virtual Store information page that includes information on Virtual Store hours, location, and other information as appropriate. The subpage shall also include a hyperlink to the Virtual Store's eFollett website.
 - b) The inclusion of key search terms within the School's .edu site that presents eFollett hyperlinks when key words are typed into the .edu site search field. Key terms include bookstore, book store, campus store, textbooks, course materials, books, clothing, fans and athletics.
 - c) Approval to send Financial Aid notifications by email and SMS to students, notifying them of their financial aid balances, timelines for using funds, and other messaging to help promote the use of available funds in the Virtual Store and the Virtual Store's eFollett website.
 - d) The opportunity, as determined by Follett, to include material promoting the Virtual Store into all future and current student mailings (physical and digital), new student orientation packets, and new/welcome alumni membership mailings (physical and digital).
 - e) Advertising in faculty, athletic, and student e-newsletters with a hyperlink to the Virtual Store's eFollett website.
 - f) Advertising space in any School-produced print publication (weekly, quarterly or yearly).
 - g) In compliance with industry standard practices, School may provide the following:
 - i. all enrolled student email addresses one month before the start of the fall term each year;
 - ii. all accepted student email addresses within one month of acceptance notice distribution each spring; and
 - iii. all alumni emails one month before the start of the fall term each year (where the School operates the Alumni Association).
 - h) The opportunity to present Virtual Store information and promotional information at student and parent orientations.
 - i) Promote the faculty adoption process and deadlines on all related campuses via campus-based email system up to two (2) messages per adoption season whereby Follett will supply content such as graphics, copy, links, and subject lines for the School to send to faculty and administrators. If School does not choose to communicate the faculty adoption deadlines and procedures via their campus email system, all faculty email addresses will be given to Follett so they can communicate the adoption process on behalf of the School.

7. Course Materials Management.

- 7.1 Service Provided by School: While the list of services may be modified under mutually agreeable terms, the basic service will be collecting course material adoptions to forward to Follett, communicating the ordering information to customers, and honoring Follett as the sole and exclusive provider of the materials for the courses served under this Agreement. The School Contact will collect from School faculty and staff the course adoption information (courses, instructor names, estimated enrollment, author, title, edition, publisher and ISBN) and forward it to Follett using the communicated adoption procedure and adoption tools provided by Follett at least 30 days prior to Virtual Store term opening date.
- 7.2 Procurement. Upon receipt of the adoption information from School, Follett will order sufficient quantities of adopted course material to cover the estimated student and customer demand based on estimated enrollment provided by School and sales history. Follett will utilize its resources to maximize availability of used course materials for School's customers.
- 7.3 Follett will make reasonable efforts to: (a) maintain inventory of adopted course materials sufficient to support anticipated sales which will be based on estimated enrollment and sales history; and (b) expeditiously process course material requests placed before the adoption deadline. School acknowledges that late submissions of course material requests or changes to previously submitted requests received after the adoption deadline will be processed in the order in which the requests are received; and late requests or changes to previously submitted requests for course materials received close to or after the site live date may cause a delay in the availability to customers, resulting in backorder notices on the Virtual Store.
- 7.4 Course materials sold in the Virtual Store will be provided in new or quality used condition. All used course materials will be clearly marked as used. All ancillary course materials, such as access codes/cards, will be included with textbooks, if required on the course adoption.
- 7.5 School will collaborate fully with Follett to minimize surplus new book inventory that is not returnable to publishers. In the event that such non-returnable, surplus inventory has resulted from a) explicit written directions given to Follett by School regarding excess quantities above the estimated course enrollment to stock; or b) changes by School in adopted course materials after adoptions had previously been finalized by School and inventory has been procured, Follett will deduct for such losses from any commission payable to School, in accordance with Section 4.2. Follett will use commercially reasonable efforts to minimize surplus book orders.
- 7.6 Virtual Store Rentals. Follett will provide a course material rental program ("Rental Program") via individual rental agreements with customers ("Customer Rental Agreements"). Rental transactions are understood to be between customer and Follett. Rental pricing will be determined by Follett.
- a) Rental Pricing. The textbook pricing provisions of the Agreement do not apply to rental fees. Follett solely determines rental fees for each title, and any given title's fee may vary as a percentage of the retail selling price.
- b) Commission Calculation. For the purpose of calculating commissions, rental fees are included in the Commissionable Sales calculation as are replacement costs collected for materials not returned. If customer fails to return the Rented Materials by Rental Return Due Date, or returns them in damaged or unusable condition, Follett is authorized to charge customer up to seventy-five percent (75.0%) of new book price. For the purpose of calculating commissions, rental fees are included in the Commissionable Sales calculations as are textbook replacement costs collected for materials not returned. Any processing fees for non-returned materials are not included in the calculation of Commissionable Sales.
- 7.7 Textbook Buyback. Follett will provide an online buyback, available 365/24/7, utilizing our ValoreBooks platform. During the buyback period, ValoreBooks will purchase textbooks presented in salable condition that the School has adopted again for the next academic term. The quantities purchased and the amount of payment is solely determined by Follett and is based on (a) condition of the materials, where acceptable condition will be at the discretion of Follett; (b) current level of inventory; (c) original purchase price; and (d) projected national demand for each title.

8. **Virtual Store Operations.**

- 8.1 The website will be available 24/7 to customers to place orders for their course materials or general merchandise; however, School acknowledges that from time to time and with advance notice, Follett will conduct routine website maintenance.
- a) In operating the Virtual Store, Follett will charge competitive and fair prices on new, used, rental, coursepacks, and digital books and will be setting retail prices for each title, and any given title's selling price may vary as a percentage of the retail selling price. During the school year, Follett will offer occasional promotions on the website to customers that may include discounts on shipping and/or textbooks.
- 8.2 Follett shall accept as a minimum, MasterCard, Visa, Discover and American Express charge cards.
- 8.3 Order Fulfillment. Orders received before 4:00 PM (CT) under the standard ground shipping option will be shipped within one (1) business day (Monday through Friday, excluding holidays). Expedited orders received before 1PM (CT) will be shipped the same day (Monday - Friday, excluding holidays).
- 8.4 Shipping and Handling. Major acceptable carriers such as FedEx and USPS will be utilized for shipping. Domestic and international shipping will be offered. Other special handling, including expedited or overnight delivery, also will be offered. Tracking shipments in transit will be available, with the exception of USPS shipments. Standard shipping charges will be applied on a per order basis based on the total weight for the order and the shipping zone.
- 8.5 Customer Returns. Follett will accept returns in accordance with Follett's then current return policies that shall be located on the Virtual Store website. Subject to the satisfactory condition of returned books or general merchandise, if applicable, Follett will offer a refund (excluding shipping and handling charges); refunds will be in the original form of payment to be issued upon receipt of returned products.

Follett will accept returns in accordance with the following policies:

- a) Textbooks in resalable condition may be refunded with receipt within fourteen (14) calendar days from the later of the start of classes or the date the textbook was received.
- b) Textbooks purchased during the last week of classes or during exams may be sold back under the book buyback policy.
- c) 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.
- 8.6 Follett will expeditiously process text requests placed after the adoption deadline.
- 8.7 Bulk orders, and the items contained therein, placed by or on behalf of the School are non-returnable.
- 8.8 Customer Service. Customers can contact Customer Service via email and via a toll-free phone number during standard customer service hours.

9. **Commission, Fees and Payments.**

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

- 5% of all Commissionable Sales

- 9.1 Commissionable Sales is defined as all collected sales made at the bookstore or the bookstore website, including Follett's agency fee when Follett sells digital content as agent, textbook rental fees, included program fees and the income earned from regalia, class rings and graduation items less voids, refunds, sales tax, discounted sales to authorized School faculty, staff and other departments, Follett-funded scholarships, handling fees associated with non-return of rental textbooks, pass-through income and merchandise sales at less than an inherent 20% margin.

- 9.2 Follett will keep complete and accurate records of all Virtual Store transactions in accordance with industry accounting practices and will provide a statement of Virtual Store Commissionable Sales to School monthly for the preceding period. Follett will preserve records of Virtual Store operations for three (3) years from the transaction date, and will make them available for review, audit and verification by School upon request on reasonable advance notice during ordinary business hours other than during Virtual Store "rush" periods. Follett agrees to review the current commission structure on an annual basis with the school.
- 9.3 Follett shall pay the commission calculated quarterly, twenty days after the end of the quarter. Any other payment required to be made by Follett to School under this Agreement shall be made within thirty days of receipt of invoice. Follett will process commission payments by sending ACH transfers (Direct Deposit) in lieu of paper checks.

On the day the ACH payment is made, the School's designated recipient will receive an email informing the School thereof. A csv file (that can be opened in Excel) will be attached to the email that will contain the remit information with the document numbers that were paid (similar to the check remittance advice). Please note that this is not a wire transfer. The process takes approximately 7-10 business days to process once the necessary form is completed by the School and submitted to Follett's Accounts Payable department.

10. Emblematic Merchandise Web Store.

- 10.1 During the term of the Agreement, Follett will offer a general merchandise web-based retail Store for the School selling certain products for sale through a web-based ordering system operated by a Follett Corporation with products supplied by Follett's wholly owned subsidiary, Advanced Graphic Products, Inc. dba Follett On-Demand ("Follett"). Follett will provide a web-based ordering system through which School students, faculty, staff, alumni, and the general public will be able to order products bearing School Indicia.
- 10.2 Follett has or will enter into a license agreement (the "License Agreement") with the currently appointed license provider of School. During the term of this Agreement, Follett will maintain its status as a properly appointed licensee of School and Follett will comply with the requirements of the License Agreement. If School is self-licensed, Follett will comply with all requirements of School and receive approval of all graphics through School.
- 10.3 Follett will provide promotional emails for free, discounted or special product promotions will be sent from the School website database every two (2) to four (4) weeks by Follett, the School website provider.
- 10.4 A web link from the School website named "Campus Store" will be linked to the new Follett provided online store. Store advertising and an additional ad space will be allocated for promotional ads for discounted, free or special product promotions.
- 10.5 Follett will provide a website application to allow staff members or other designated School staff to purchase products from the School's product line at discounts of approximately 25% to 50% off retail pricing.
- 10.6 Commissions (as defined below) on products sold by Follett bearing School Indicia will be paid to School within fifteen (15) days following the end of the month that commissions are earned. Commissions for each product sold, shall be paid at 10% of the retail price at which a product is sold. With respect to online sales, royalties shall be deemed earned by University as of the transaction billing date. Retail sales are defined as price at which product is sold online excluding freight and sales tax.
- 10.7 License Fees (as defined below) on products sold by Follett bearing School Indicia will be paid to the School 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 School 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 School as of the transaction billing date. License Fees will not be paid for products sold directly to School.

For the avoidance of doubt, the aforementioned commissions are not applicable to the purchase of course material or merchandise sold by Follett under the terms of Section 9.

- 10.8 Except for the School's eFollett website, Follett shall have the exclusive right, free from any alternate source endorsed, licensed or otherwise approved or supported by School through electronic commerce (including hyperlinks to alternate sources) to sell merchandise traditionally offered through college and university online retail stores.
11. **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.
12. **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.
13. **Severability and Integration.** 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. This Agreement is the sole expression of the understanding of the parties with respect to operation of the Virtual Store and supersedes all prior statements and agreements with respect thereto. This Agreement may not be modified, amended or waived except in writing signed by an authorized representative of both parties.
14. **Confidentiality.** Follett and School agree that this Agreement, both the general nature of it and the specific terms thereof, and all information received by a party from the other as contemplated by this Agreement, shall be kept confidential and not disclosed by either of them except: (a) to their professional advisors and their officers and directors, provided that such advisors, officers and directors also agree to be so bound; (b) if required by court order or required in respect of any legal process involving any of Follett or School; or (c) if the term or terms to be disclosed have become a matter of public knowledge. Neither party shall make any disclosure regarding this transaction without the prior consent of the other party, and the content of such disclosure shall first be approved by both parties, acting reasonably.
15. **Indemnification.**
- 15.1 Follett shall defend, indemnify and hold harmless School, 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: (a) damage, destruction or loss of any property (including but not limited to School's property); (b) injury to or death of any person (including but not limited to any employee of School); or (c) breach of this Agreement by Follett, 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.
- 15.2 To the extent permitted by applicable law, School 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: (a) damage, destruction or loss of any property (including but not limited to Follett's property); or (b) 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 School, its officers, agents or employees, in the performance of this Agreement.
16. **Notice.**
- 16.1 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 School (please complete):

To Follett:

Clay Wahl
 President
 Follett Higher Education Group
 3 Westbrook Corporate Center, Suite 200
 Westchester, IL 60154

To School (please complete):

To Follett:

Clay Wahl
President
Follett Higher Education Group
3 Westbrook Corporate Center, Suite 200
Westchester, IL 60154

17. **Governing Law.** This Agreement shall be governed by the laws of the State of Florida, excluding it's choice of laws' provisions. The parties agree that any dispute shall be subject to the exclusive jurisdiction of the courts located in the State of Florida.
18. **Public Records.** Follett must keep and maintain public records as defined in Chapter 119, Florida Statutes. Upon request from the School's custodian of public records, Follett must provide the School with a copy of the requested public records or allow the records to be inspected or copied within a reasonable time at a cost not to exceed that permissible under Chapter 119, Florida Statutes, or as otherwise provided by Florida Law. Follett may not disclose those records which are exempt or confidential pursuant to Florida Law. Upon completion of this Agreement, Follett shall transfer to School all public records in its possession or shall keep and maintain such records for those periods required by Florida Law. If Follett transfers such records, it shall destroy any duplicate records which are confidential or exempt from disclosure. School may unilaterally terminate this contract if Follett refuses to allow access to public records made or maintained by Follett in conjunction with this Agreement unless such records are exempt from Article 1 section 24 of the Florida Constitution and Chapter 119, Florida Statutes.

IF FOLLETT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO FOLLETT' DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, KIM SCARBOROUGH, AT (850) 973-1613 OR SCARBROK@NFCC.EDU.

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.

NORTH FLORIDA COMMUNITY COLLEGE


By: 

Name: John D Grosskopf

Title: President

Date: 4-23-2019

FOLLETT VIRTUAL BOOKSTORES INC.

By: 

Name: Clay Wahl

Title: President

Date: 4-1-19