

# DALLAS COUNTY COMMUNITY COLLEGE DISTRICT



Dallas County  
Community College District

**Agreement for**

For

**BOOKSTORE SERVICES**

Reference Number 12136

## **BOOKSTORE SERVICES AGREEMENT**

1. This agreement ("Agreement") is entered into by and between the Dallas County Community College District ("District") and Follett Higher Education Group, Inc. ("Contractor" or "Follett") and establishes the requirements, terms, conditions and consideration under which Contractor will use the District's facilities and provide bookstore services ("Services") as specified herein.
2. The contract documents ("Contract Documents") consist of this Agreement, and the following attachments: Financial Considerations; Designated Representatives; and the General Terms, Conditions and Requirements.
3. In providing the Services, Contractor shall, as specified herein, have the exclusive right to operate a bookstore in designated sites within each of the District's locations.
4. Unless sooner terminated as provided herein, the term of this Agreement is effective as of April 1, 2015 for an initial period of five (5) years ending on March 31, 2020. On-site Services shall commence on or about April 1, 2015.
5. The District and Contractor acknowledge and agree, with regards to the matters covered hereunder, this Agreement is the complete Agreement and supersedes and replaces all prior agreements and understandings.
6. If any provision of this Agreement shall be held invalid for any reason, then such provision shall be severed from the remaining provisions of this Agreement and shall not affect the validity or enforceability of the other provisions of this Agreement, unless the invalidity of any such provision deprives any party of the economic benefit intended to be conferred by this Agreement.
7. Any waiver by either party of any provision of this Agreement shall not imply a subsequent waiver of that or any other provision, and any failure to enforce strict performance of any provision of this Agreement shall not be construed as a waiver or relinquishment to enforce strict performance of such provision on any future occasion.
8. While there are no requirements for participation by Minority or Woman Owned Businesses as Subcontractors, throughout the term of this Agreement, on a monthly basis, and in a format provided by the District, Contractor shall report to District's designated representative, the type and dollar amount of participation by certified Minority and Woman Owned Businesses, if any.
9. As applicable in accordance with the Laws of the State of Texas, the obligation of the District created by this Agreement is a commitment by the District of funds in its current budget. The District will exercise its best efforts to obtain and appropriate funds for subsequent budget periods, if any. Accordingly, the District reserves the right to terminate this agreement at the end of any applicable budget period if funds are not available for the subsequent period.
10. Notwithstanding the general rules of construction both Contractor and the District acknowledge that both parties were given an equal opportunity to negotiate the terms and conditions of this agreement and agree that the identity of the drafter of this Agreement is not relevant to any interpretation of terms, conditions and requirements of this Agreement.
11. Except otherwise specifically provided in this Agreement, all remedies set forth in this Agreement shall be in addition to all other remedies available under this Agreement or at law or in equity.
12. Contractor and the District agree that this Agreement may be executed in several counterparts, each of which when so executed, shall be deemed to be an original and shall be deemed to be signed by an authorized representative of Contractor and of the District.

13. This Agreement shall be construed in accordance with the laws of the State of Texas, and exclusive venue shall lie in Dallas County, Texas.
14. This Agreement made and entered into this 1<sup>st</sup> of April 2015, by and between the Dallas County Community College District and Follett Higher Education Group, Inc.
15. This Agreement includes **Exhibits A through H**, attached hereto and made a part hereof.

**Dallas County Community College District**

By: 

Printed Name: Steven M. Park

Title: District Director of Purchasing Services

Address: 4343 IH-30

City: Mesquite

State: Texas Zip: 75150

**Follett Higher Education Group, Inc.**

By: 

Printed Name: Donald J. Germano

Title: President

Address 3 Westbrook Corporate Center  
Suite 200

City: Westchester, IL

State: Illinois Zip: 60154

**EXHIBIT A  
CONTRACT DOCUMENTS**

**The Contract Documents listed below are hereby made a part of this Agreement as attached hereto.**

Exhibit B: District Locations and Representatives

Exhibit C: Pricing and Commission Schedules

Exhibit D: Service Requirements

Exhibit E: Dallas Learning Solutions Service Requirements

Exhibit F: Information and Security Requirements

Exhibit G: General Terms and Conditions

Exhibit H: Licensing Terms, Conditions and Requirements

**The additional Contract Documents listed below are hereby made a part of this Agreement.**

District's RFP# 12136 and associated amendments

Company Proposal

**Note: In the event of any discrepancy or inconsistency between Company's proposal and other Contract Documents, or the RFP and the Contract Documents, the provisions of the other Contract Documents will take precedence.**



## **EXHIBIT B DISTRICT LOCATIONS**

A map showing the District's location be found at: <http://www.dcccd.edu/Coll/MapsLoc/Pages/default.aspx>

Brookhaven College – Main Campus  
3939 Valley View Lane,  
Farmers Branch, TX 75244

Cedar Valley College– Main Campus  
3030 North Dallas Avenue  
Lancaster, TX 75134

Cedar Valley - Cedar Hill Center  
207 Cannady Dr.  
Cedar Hill, TX 75104

Eastfield College– Main Campus  
3737 Motley Drive  
Mesquite, TX 75150

Eastfield - Pleasant Grove Center  
802 S. Buckner  
Dallas, TX 75217

El Centro College– Main Campus  
801 Main St.  
Dallas, TX 75202

El Centro – Allied Health Center  
301 N. Market St.  
Dallas, TX 75202

El Centro - West Dallas Campus  
3330 N. Hampton  
Dallas, TX 75212

El Centro – R Building 7  
701 Elm St.  
Dallas, TX 75202

El Centro – Bill J. Priest  
1402 Corinth  
Dallas, TX 75215

Mountain View College– Main Campus  
4849 West Illinois Avenue  
Dallas, TX 75211

North Lake College– Main Campus  
5001 N. MacArthur Blvd.,  
Irving, TX 75038

North Lake - North Campus  
101 S. Royal Lane,  
Coppell, TX 75019

North Lake - South Campus  
1081 West Shady Grove Road  
Irving, TX 75060

North Lake - West Campus (DFW)  
1401 West Royal Lane  
Irving, TX 75063

Richland College– Main Campus  
12800 Abrams Road,  
Dallas, TX 75243

Richland - Garland Campus  
675 W. Walnut Street  
Garland, Texas 75040

Dallas Colleges Online - R. Jan LeCroy Center  
9596 Walnut St.  
Dallas, TX 75243

District Office  
1601 South Lamar St.  
Dallas, TX 75215

District Service Center  
4343IH-30  
Mesquite, TX 75150

## DISTRICT REPRESENTATIVES

### **Contract Administration:**

Maria Garza  
Auxiliary Business Services Manager  
Dallas County Community College District  
District Service Center  
4343 IH-30, West Building  
Mesquite, TX 75150  
Phone: 972-860-4009  
Email: [meg@dcccd.edu](mailto:meg@dcccd.edu)  
Fax: 972-860-7924

### **Contract Changes and Legal Notices:**

Cindy Risher  
Purchasing Department  
Dallas County Community College District  
District Service Center  
4343 IH-30, West Building  
Mesquite, Texas 75150  
Phone - 972-860-7987  
Email: [crisher@dcccd.edu](mailto:crisher@dcccd.edu)  
Fax - 972-860-7924

### **The following persons are hereby designated as the College/Site Representatives:**

George Herring  
Phone: 972-860-4634  
Brookhaven College  
[gtherring@dcccd.edu](mailto:gtherring@dcccd.edu)  
VP of Business Services

Huan Luong  
Phone: 972-860-8007  
Cedar Valley College  
[HLuong@dccd.edu](mailto:HLuong@dccd.edu)  
VP of Business Services

Adrian Douglas  
Phone: 972-860-7603  
Eastfield College  
[AdrianD@dcccd.edu](mailto:AdrianD@dcccd.edu)  
VP of Business Services

David Browning  
Phone: 214-860-2014  
El Centro College and Bill J. Priest  
[dbrowning@dcccd.edu](mailto:dbrowning@dcccd.edu)  
VP of Business Services

Sharon Davis  
Phone: 214-860-8705  
Mountain View College  
[SDavis1@dcccd.edu](mailto:SDavis1@dcccd.edu)  
VP of Business Services

Shannon Weaver  
Phone: 972-273-3390  
North Lake College  
[sweaver@dcccd.edu](mailto:sweaver@dcccd.edu)  
VP of Business Services

Ron Clark  
Phone: 972-238-6048  
Richland College  
[Rclark@dcccd.edu](mailto:Rclark@dcccd.edu)  
VP of Business Services

Denise Zackery  
Phone: 972-669-6571  
R. Jan LeCroy Center  
[dzackery@dcccd.edu](mailto:dzackery@dcccd.edu)  
Exec. Dean, Financial Affairs, Business Office

## EXHIBIT C PRICING AND COMMISSION SCHEDULE

**The provisions of this Exhibit C dealing with Pricing, Gross Sales, Buyback and Commissions will take precedence over any conflicting terms or provisions in the Agreement**

### A. Commissions

Contractor shall pay the District the following commissions based on Net Revenue of the following item/product types:

	<u>COMMISSION</u>
○ Textbooks, course material and graduation regalia	0%
○ All non-textbook or non-course material gross sales	15%

"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), including included program fees, text rental fees and replacement costs collected for materials not returned and including Follett's agency fee when Follett sells digital content as agent, which shall be the applicable gross revenue.

"Net Revenue" is defined as Gross Revenue less refunds, returns, taxes, allocations of Follett-funded scholarships, discounted sales to departmental faculty, staff and others under this Agreement, and sales at less than a 20% gross margin, including but not limited to computer system sales (such as software, hardware and components), and consumer electronics (such as mp3 players, digital cameras and e-readers) and any rental program processing fees all as reasonably calculated by Follett

Sales through the Dallas Learning Solutions Virtual Store front as described under Exhibit "E" will be exempt from commissions as described in this Exhibit.

### B. Pricing, Discounts, Buyback

1. Pricing. In operating the bookstores Follett will charge industry standard, competitive and fair prices, to be implemented within five (5) business days of the effective date of this Agreement, as follows:
  - (a) **New textbooks and course materials** will be priced with a 10% gross margin (invoiced cost divided by .90) and rounded up to the next five-cent (\$.05) increment. **On ebooks and other digital content** when Follett determines the end-user price, Follett will follow the same pricing rules applicable to new textbooks. When the publisher determines the end-user price and Follett acts as agent, Follett will use the publisher price.  
  
Example:  $\$100.00 / .90 = \$111.11$ . Rounded up to next five-cent (\$.05) increment to  $\$111.15$
  - (b) **Bundled materials, coursepacks, kits, and return-restricted or non-returnable materials** are subject to a five percent (5%) add-on to cost before the margin of ten percent (10%) is computed. This is equivalent to a 14.3% gross margin.  
  
Example:  $\$100.00 \text{ plus } \$5.00 = \$105.00 / .90 = \$116.67$  Rounded up to the next five-cent (\$.05) increment to  $\$116.70$ .
  - (c) **Used textbook and course materials** prices may not exceed seventy-five (75%) of new book price as calculated above in subsection (a).

- (d) **Rental textbooks and course materials** fees may vary as a percentage of the retail selling price.
  - (e) **Trade books, supplies and other products** will be sold at a fair market price.
  - (f) **On general merchandise**, not more than the normal gross profit margin for similar merchandise in the college bookstore industry.
2. District Purchasing Discount. District and College Department Purchases shall include a discount of 20% (excluding textbooks, sale merchandise and academically discounted software). District purchases shall be deducted from commissionable Net Revenue.
  3. Buyback Pricing. 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 District's locality rounded to the nearest quarter.

### **C. Facility Improvements**

Contractor will spend a minimum of \$450,000.00 for improvements to the District's facilities. All facility improvements must be approved by the District's Auxiliary Business Services Manager or designee. The Improvements will be subject to amortization and possible reimbursement of unamortized amounts subject to the terms of Section 8.05 of **Exhibit G**.

### **D. Program Funding**

Contractor shall provide the District a minimum of fifty thousand dollars (\$50,000) in funding for an includEd (tuition plus textbook fee) pilot program. The District will work closely with Contractor to determine the selection of courses, classes and adopted textbooks.

## **EXHIBIT D SERVICE REQUIREMENTS**

In fulfilling its obligations, Contractor (and any subcontracted personnel and agents) shall adhere to the following Service requirements:

1. Provide a full range of textbooks, course material, supplies, merchandise and Services typically associated with college bookstores.
2. Create, develop and maintain bookstore web sites for the sale of textbooks, course materials, supplies and merchandise for all District colleges including Dallas Colleges Online, which serves as the virtual campus of the District's colleges.
3. Establish hours of operation sufficient to support each college's operations and accommodate the needs of the colleges. Contractor is expected to confer with the established college representative or designee by jointly establishing operating hours. Some colleges may request weekend bookstore operations and Contractor shall undertake to provide same upon request.
4. Make available, on a timely basis, sufficient quantities of textbooks and other course materials required by the District for credit and continuing education courses. Minimize out-of-stock situations on textbooks and other instructional materials and respond to out-of-stock situations in a timely manner.
5. Establish a refund policy that allows students to return, with proof of purchase, textbooks and course material which are in new, sealable condition for a full refund. Include information pertaining to bundled course material. Such policy shall be prominently displayed at all times. At a minimum, refunds for textbooks and course material will be given during the first two weeks of classes during the fall, spring and summer term sessions.
6. Establish and maintain a used program that includes buyback of textbooks and acquisition of textbooks from wholesalers and other sources.
7. Establish and maintain a rental program for printed and digital textbooks and course material.
8. Provide a safe shopping environment for students.
9. Accept different forms of payment including but not limited to: cash, checks, credit cards and account charges (with adequate approval).
10. The Contractor shall maintain, service and supply the existing eleven (11) supply vending machines at each of the seven (7) colleges and four (4) satellite locations. Contractor shall replace any inoperable supply vending machines as necessary throughout the term of this Agreement. Machines may be added at the campuses or other locations by mutual agreement during the term of the contract. Contractor shall undertake to stock such vending machines with items which are reasonably anticipated to be in demand for students at each of the locations.
11. Create, develop and maintain a bookstore-registration integration interface (Buy My Books) that automatically populates registered students' shopping lists based on the courses/sections in which they are enrolled.
12. Create, develop and maintain a textbook and course material information interface (Textbook Info) for the publication of adoption information including ISBN, title, author, retail cost and all other information necessary for HEOA compliance.
13. Create, develop and maintain a textbook and course material adoption system to be used by faculty and staff.



14. Provide management reports including but not limited to: monthly detail sales and commission reports by college, complete and final adoption report by campus, online sales vs. onsite sales, digital vs. printed course material sales, coffee shop sales and other reports by mutual agreement.
15. Provide a robust digital platform e-reader system.
16. Work with the District to implement tuition plus a course material fee program by mutual agreement.
17. Provide copyright permission services for textbooks and course material produced by District faculty.
18. Assure good use of space and provide sufficient resources for efficient customer traffic flow during rush periods.
19. Routinely provide to the District information related to new editions of textbooks, textbook availability, sales and promotions and changes in the bookstore and publishing industries.
20. Establish and manage a customer service metrics program. Include information including but not limited to customer surveys, secret shopper programs, key performance indicators and how you plan on measuring customer service.
21. Market bookstore services to the students by use of effective advertising and promotional techniques and maintain effective communication with the District, including students, faculty staff and administrators Include information on how your Company will accomplish the following:
  - a. Inform the campus communities of bookstore policies and procedures;
  - b. Enhance customer relations with students, faculty, staff and community members;
  - c. Notify students and faculty of scheduled textbook buybacks, refund deadlines, returns of textbooks to publishers and promotions;
  - d. Notify instructional departments regarding the availability of new editions of textbooks and new editions pending;
  - e. Enhance sales
22. Employ a regional manager to oversee the District bookstores and, as applicable, satellite campuses. Staff each bookstore with an adequate number of experienced and knowledgeable personnel including a bookstore manager for each college.
23. Work with the District's Continuing Education (CE) departments throughout the District to develop flexible processes and procedures in order to meet their needs including but not limited to expedited orders, flexible refund policies and flexible adoption due dates. CE classes start throughout the semester with flexible start and end dates. Students enrolled in CE classes typically acquire the necessary course material on or after the first day of class.
24. Be able to sell and market District developed course material to non-District students including the development of a custom website, processing of credit card payments and access to course material using an access code or pin code.
25. Establish an account receivable process for agency or third-party sponsored students who need to charge approved textbooks, course materials and/or supplies. Current agencies include but are not limited to the Texas Workforce Commission, Veteran Affairs and local independent school districts. Describe your policies and procedures for establishing credit and any "credit hold" policies or other policies or procedures that may disrupt services to students.

26. Establish an accounts receivable process for District purchases such as miscellaneous office supplies and educational materials for its office and classroom use. Describe your policies and procedures for facilitating the charge of materials to the District.
27. Operate and manage the existing coffee shop located at Richland College. Provide coffee services within the existing District bookstores.
28. Additional Services including but not limited to coffee shop build-outs and food service by mutual agreement.



## **EXHIBIT E**

### **DALLAS LEARNING SOLUTIONS SERVICE REQUIREMENTS**

Contractor shall provide additional Services as described herein to the Dallas Learning Solutions division of the Dallas Colleges Online - R. Jan LeCroy Center. All other requirements and terms and conditions shall remain the same unless specifically set forth herein.

1. Contractor shall exclusively provide a virtual bookstore and associated Services to the Dallas Learning Solutions (DLS) division of the District by creating, operating and managing a virtual bookstore for the purpose of selling DLS products.
2. The design of the virtual bookstore will be by mutual agreement. All links, promotions, marketing and advertisements must be approved in writing by the designated DLS, District representative or approved designee prior to use.
3. Contractor shall accept major credit cards including Visa, MasterCard, Discover and American Express as payment, process the payment transactions and any associated refunds for all returns made within 10 days of the purchase date. The DLS shall have the right to change the refund policy and establish new refund procedures by mutual agreement.
4. The DLS division will provide Contractor access codes and other products to be sold on the DLS virtual bookstore. The retail price of said DLS products will be determined by the DLS division.
5. The DLS shall be responsible for all copyright, trademark and intellectual property compliance for all products sold on the DLS virtual bookstore.
6. Contractor shall provide customer service and support for all transactions processed on the DLS virtual bookstore including but not limited to a free 1-800 telephone number and customer service email address. Hours of operation to be by mutual agreement.
7. Contractor shall notify customers of product delivery and status via email within 24 hours of purchase.
8. The DLS will provide all customer service and support for sold products on the DLS virtual bookstore.
9. Contractor shall provide all equipment, labor, supplies resources, fees and expenses needed to provide Services.
10. The DLS shall pay Contractor a fee of twelve and a half percent (12.5%) per unit sold based on the DLS established selling price. All refunds will be deducted from the total items sold for the billing period. All sales through this DLS virtual store front will be exempt from commissions as outlined in Exhibit "C".
11. Contractor shall provide the DLS a monthly invoice and sales report. The monthly sales report shall include but is not limited to the following: order date, item description, item or ISBN number, quantity, customer name, payment type and refunds. The monthly sales report shall be provided to the District no later than the 20th of the following month.
12. Contractor and its subcontractors agree to the following:
  - a. Contractor and its subcontractors are responsible for the security of cardholder data that it possesses, including the functions relating to storing, processing, and transmitting of the cardholder data and will indemnify and hold the DLS and the District harmless from any claim arising out of, or attributable in any way to, a breach of security in connection with Contractor's storing, processing and/or transmitting of cardholder data. The provisions of this paragraph shall survive the termination of this Agreement.

- b. Contractor and its subcontractors affirms that, as of the effective date of this Agreement, it has complied with all applicable requirements to be considered PCI DSS compliant, and has performed the necessary steps to validate its compliance with the PCI DSS.
- c. Contractor and its subcontractors will supply the current status of PCI DSS compliance status, and evidence of its most recent attestation of compliance upon execution of this Agreement. Contractor and its subcontractor shall supply to the District a new status report and evidence of attestation of compliance on or before revalidations or expiration date.
- d. Contractor and its subcontractors will immediately notify the District if it learns that it is no longer PCI DSS compliant and will immediately provide the District the steps being taken to remediate the non-compliance status. In no event should Contractor's and its subcontractor's notification to the District be later than seven (7) calendar days after Contractor and its Subcontractor learns it is no longer PCI DSS complaint.
- e. Contractor and its subcontractors will immediately notify the District if it learns there has been a breach in security in which confidential information or personal information of the District or its students has been compromised. In no event should Contractor's and its subcontractor's notification to the District be later than five (5) calendar days after Contractor learns it has experienced a breach in security affecting such parties, unless directed otherwise by law enforcement officials.

## **EXHIBIT F INFORMATION SECURITY REQUIREMENTS**

In fulfilling its obligations, Contractor may be granted temporary access to networks, systems, and/or data of the District and be entrusted with the security and confidentiality of the District's systems, records, and information. When such access is granted, Contractor (and any subcontracted personnel and agents) are to adhere to the following requirements.

1. Unauthorized use or access to the District's system records and information is prohibited.
2. Access will be only for the term of the contract. Thereafter, all accounts, passwords, and access associated with this Agreement will be revoked immediately.
3. If system administrator rights are granted, they will apply only to the specific actions authorized. Performance of any unrelated and/or unauthorized actions may, at the District's sole discretion, result in the immediate termination of access and termination of this contract.
4. To maintain account and password security, disclosure of any account information and passwords is prohibited.
5. Exhibiting or divulging the contents of any record or report to any person, or otherwise, is prohibited except in the performance of authorized duties and responsibilities.
6. Using any information accessed under any given request for gender and/or ethnicity-based recruiting/selections, unauthorized fund raising, or other barred activities is prohibited.
7. Personally benefiting or allowing others to benefit from any confidential information or other information gained by virtue of network or system access is prohibited.
8. Directly or indirectly causing the inclusion of any false, inaccurate, or misleading entries into any records or reports is prohibited.
9. Except as specifically authorized under this contract, no record or report or copy thereof, whether paper or electronic, may be removed from the office where it is maintained without prior written authorization from the District's authorized personnel.
10. All systems must be completely exited before leaving a computer or server unattended.
11. Industry-accepted security standards for access, use, retention, and disposal of information must be maintained.
12. Contractor will protect any accessed confidential information no less rigorously than it protects its own/customers' confidential information.
13. Contractor will hold confidential information in strict confidence, and will access information only for the explicit business purposes outlined this RFP and signed contract.
14. Contractor will ensure compliance with the protective conditions outlined in the signed contract.
15. Contractor shall certify destruction of such records in writing to District as soon as practicable after termination of the contract.
16. Contractor agrees and understands that violation of security precautions to protect confidential information may be a crime and subject to appropriate legal action and/or criminal prosecution.



17. Contractor will notify the District immediately upon the termination of any individual involved in providing Services so that account access, passwords, remote diagnostic access, or other forms of access can be revoked.
18. Contractor will not aid, or act in conspiracy with, anyone to violate any of the requirements listed above.
19. Contractor may (1) create, (2) receive from or on behalf of District, or (3) have access to, records or record systems (collectively, "District Records"). Among other things, District Records may contain social security numbers, credit card numbers, or data protected or made confidential or sensitive by applicable federal, state and local, laws, regulations, and ordinances, including the Gramm Leach Bliley Act (Public Law No: 106-102), the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g FERPA), and the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). If DISTRICT Records are subject to FERPA, (1) District designates Contractor as a District official with a legitimate educational interest in District Records, and (2) Contractor acknowledges that its improper disclosure or re-disclosure of personally identifiable information from District Records will result in Contractor's exclusion from eligibility to contract with District for at least five (5) years. Contractor represents, warrants, and agrees that it will: (1) hold District Records in strict confidence and will not use or disclose District Records except as (a) permitted or required by a signed contract, (b) required by law, or (c) otherwise authorized by District in writing; (2) safeguard District Records according to commercially reasonable, administrative, physical and technical standards such as standards established by (i) the National Institute of Standards and Technology and (ii) the Center for Internet Security, the Gramm-Leach-Bliley Act, as well as the Payment Card Industry Data Security Standards that are no less rigorous than best practices in the data security industry; (3) continually monitor its operations and take any action necessary to assure that District Records are safeguarded and the confidentiality of District Records is maintained in accordance with all applicable federal, state and local, laws, regulations, and ordinances, including FERPA and the Gramm-Leach-Bliley Act, and the terms of a signed contract; and (4) comply with the District's rules, policies, and procedures regarding access to and use of District's computer systems. Contractor represents, warrants and certifies that it complies with District's Policies on Information Security, including, without limitation, the following Board Policies:  
[http://pol.tasb.org/Policy/Download/358?filename=CR\(LOCAL\).pdf](http://pol.tasb.org/Policy/Download/358?filename=CR(LOCAL).pdf)  
[http://pol.tasb.org/Policy/Download/358?filename=CR\(REGULATION\).pdf](http://pol.tasb.org/Policy/Download/358?filename=CR(REGULATION).pdf)  
[http://pol.tasb.org/Policy/Download/358?filename=CS\(LOCAL\).pdf](http://pol.tasb.org/Policy/Download/358?filename=CS(LOCAL).pdf)  
[http://pol.tasb.org/Policy/Download/358?filename=CS\(REGULATION\).pdf](http://pol.tasb.org/Policy/Download/358?filename=CS(REGULATION).pdf)

**At the request of District, Contractor agrees to provide District with a written summary of the procedures Contractor uses to safeguard and maintain the confidentiality of District Records.**

Nothing herein shall prevent Follett from using Aggregated Data from the District Records, or from Follett's transactions with District Students, for legitimate business purposes. "Aggregated Data" is defined as data that (i) is **not identifiable** to any person or entity (including the customer), (ii) does not contain any of the customer's confidential information or intellectual property. Aggregated Data may be combined with similar data of the Contractor's other customers for macro-level analysis.

20. **Notice of Impermissible Use.** If an impermissible use or disclosure of any District Records occurs, Contractor will provide written notice to District within one (1) business day after Contractor's discovery of that use or disclosure. Contractor will promptly provide District with all information requested by District regarding the impermissible use or disclosure.
21. **Return of District Records.** Within thirty (30) days after the expiration or termination of a signed contract, Contractor will make commercially reasonable efforts, for an District Records created or received from or on behalf of District, will be (1) returned to District, with no copies retained by Contractor; or (2) If return is not feasible, destroyed in a manner reasonably acceptable to the District. Twenty (20) days before destruction of any District Records, Contractor will provide District with written notice of Contractor's Intent to destroy District Records. Within five (5) business days after destruction, Contractor will confirm to District in writing the destruction of District Records.

22. **Disclosure.** If Contractor discloses any District Records to a permitted subcontractor or agent, Contractor will require the permitted subcontractor or agent to comply with the same restrictions and obligations as are imposed on Contractor by this Section.
23. **Press Releases.** Except when defined as part of the Services, Contractor will not make any press releases, public statements, or advertisement referring to the Agreement or the engagement of Contractor as an independent contractor of the District In connection with the Agreement, or release any information relative to the Agreement for publication, advertisement or any other purpose without the prior written approval of District.
24. **Public Information.** District strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information under the Texas Public Information Act ("TPIA"), Chapter 552, Texas Government Code. In accordance with Section 552.002 of TPIA and Section 2252.907, Texas Government Code, and at no additional charge to District, Contractor will make any information created or exchanged with District pursuant to a contract (and not otherwise exempt from disclosure under TPIA) available in a format reasonably requested by District that is accessible by the public.

## EXHIBIT G GENERAL TERMS, CONDITIONS, AND REQUIREMENTS

### 1.0 TERM OF AGREEMENT

- 1.01 This Agreement shall apply and remain in effect for the term indicated in the Agreement, unless sooner terminated as provided herein.

### 2.0 GENERAL

- 2.01 Each party represents, warrants, and covenants the following:

- (a) Its execution, delivery, and performance of this Agreement do not violate the terms of any law, regulation, court order or material agreement to which such party is subject;
- (b) Each party shall comply with applicable laws, statutes, regulations and ordinances; and
- (c) This Agreement is a valid and binding obligation of the representing party, enforceable against such party in accordance with its terms.

- 2.02 Contractor represents, warrants, and covenants to The District the following:

- (a) All Services provided will comply with the provisions of this Agreement and will be of professional quality by skilled workers in accordance with the standards set forth in this Agreement or, in the absence thereof, as a minimum in accordance with industry standards and practices;
- (b) Contractor and its employees and any authorized Subcontractors shall be qualified with suitable training, experience and skill, and shall have all rights, certifications, permits and licenses necessary to fulfill their obligations under this Agreement;
- (c) Contractor shall, as provided herein, use all reasonable efforts to avoid the disruption of normal operations of the District;
- (d) Contractor shall not infringe, misappropriate, or violate any third-party rights, including, without limitation, property or contractual rights, nondisclosure obligations, trademark rights, copyrights, patent rights or other proprietary rights;
- (e) Contractor shall maintain appropriate backup, contingency and remedial plans necessary to ensure Contractor's continued performance under the Agreement;
- (f) Contractor, on an annual basis, shall deliver to the District's Auxiliary Business Service Manager its most current audited financial statements or annual report, as prepared by a regionally or nationally recognized independent certified public accounting firm, for Contractor, or its parent company, in the ordinary course of its business;

- (g) Contractor shall at all times maintain financial and other resources sufficient to permit Contractor to perform its obligations hereunder and pay its debts generally as they become due and to provide the Services specified herein. When reasonably requested by The District, Contractor shall provide evidence of compliance with such requirement; and

- (h) If, for any reason, including adverse financial conditions, Contractor suspects or discovers that Contractor shall not be able to perform its obligations hereunder, Contractor shall immediately notify The District in writing. This notification must include a detailed description of the problem, the causes of the problem and a plan to resolve the problem. All such plans are subject to The District's prior written approval and submission of such a plan shall not relieve Contractor of its obligations under this Agreement and shall not preclude any remedies available to The District hereunder. Reasons for notification include but are not limited to: loan defaults, credit holds, cash flow difficulties, bankruptcy proceedings, and changes in ownership, key management changes, supplier disruptions, transportation difficulties or delivery delays.

- 2.03 Contractor hereby agrees to provide textbooks and other instructional material for sale to the students in the District's colleges in a timely manner. As such, Contractor agrees and understands THAT TIME IS OF THE ESSENCE in providing such textbooks and instructional materials.

- 2.04 In the performance of its obligations under this Agreement, both parties shall act fairly and in good faith. Where notice, approval, or similar action by either party hereto is permitted or required by any provision of this Agreement, such action shall not be unreasonably delayed or withheld.

- 2.05 A business day ("Business Day") means any day, excluding the District's holidays of any given week or portion thereof that the bookstores are open for business. A calendar day ("Calendar Day") means every day of any given month or portion thereof. Regular business hours ("Business Hours") means the time during which the District's facilities are open for business during Standard or Daylight Savings Time on any Business Day.

- 2.06 Contractor shall take, and require its Subcontractors to take, reasonable precautions and institute procedures designed to promote safety, avoid accidents and prevent injury to persons or property at the District's Colleges.

- 2.07 In entering into this Agreement, the District is relying in good faith on representations and statements of fact made by Contractor. During the term of this Agreement, should any such representation or statement of fact be discovered to be untrue, the District may exercise the remedies as provided herein.



2.08 Any written document submitted to the District by Contractor in connection with this Agreement, including but not limited to, reports, invoices, packages, shipping notices, or instruction manuals, shall reference this Agreement reference number.

2.09 Contractor shall provide all materials, supplies, machinery, equipment, furniture, fixtures, computers, point of sale systems, printers, tools, supervision, labor, insurance, and transportation required to provide the Services.

2.10 Contractor acknowledges that it has financial and other resources sufficient to cover all foreseeable risks, hazards, and other difficulties inherent to the Services provided hereunder.

2.11 CONTRACTOR SHALL EXERCISE ITS BEST EFFORTS TO HAVE ALL TEXTBOOKS AVAILABLE FOR SALE ON THE FIRST DAY OF REGISTRATION FOR THE SPRING, FALL AND SUMMER SEMESTERS. FOR ALL OTHER COURSES, CONTRACTOR SHALL VERIFY AND SCHEDULE WITH THE COLLEGE REPRESENTATIVE(S) THE TIMES WHEN SERVICES ARE TO BE PROVIDED AT THE APPLICABLE COLLEGE. For special events, Contractor will open the bookstore at mutually agreed times.

2.12 Throughout the term of this Agreement, Contractor shall:

(a) Provide a full range of textbooks, merchandise and services typically associated with a college bookstore. The sale of items that are typically not associated with a college bookstore requires the written approval of the Auxiliary Business Services Manager.

(b) Make available on a timely basis sufficient quantities of textbooks and other instructional materials required by the District for credit and continuing education courses. Textbook shelving shall be properly labeled with the course names and corresponding course numbers and section numbers, information pertaining to out of stock situations and anticipated arrival dates.

(c) Sell textbooks and other supplies and materials at reasonable prices consistent in the industry and with competition in the vicinity of the College where the bookstore is located.

(d) Establish and maintain a used book program that includes buyback of book on the campuses and acquisition of books from wholesalers and other sources.

(e) Minimize out-of-stock situations on books and other instructional materials. Re-stock textbooks and other instructional materials on a timely basis when out-of-stock situations occur.

(f) Assure good use of space and provide sufficient resources for efficient customer traffic flow during rush periods.

(g) Maintain effective communication between the students, faculty, staff, administrators and the

bookstores, including but not limited to communicating bookstore policies and procedures; notifying students and faculty of scheduled promotions, textbook buybacks, refund deadlines and returns of textbooks to publishers; notifying instructional divisions regarding textbooks that will not be available at the beginning of the semester; notifying instructional departments of the availability of new editions of textbooks and pending new editions; participating in bookstore advisory committees; conducting regular meetings with College and District administrators and enhancing customer relations with students, faculty and staff.

(h) Make textbooks available through access to local bookstore web sites and develop a bookstore/registration integration program that automatically populates registered students' shopping carts based on the courses/sections in which they are enrolled.

(i) Routinely provide to the District information related to new editions of textbooks, textbook availability, sales and promotions and changes in the bookstore and publishing industries.

(j) Market bookstore services to the students by use of effective advertising and promotional techniques.

(k) Employ a district manager with responsibility only for the District bookstores. Staff the bookstores with an adequate number of experienced and knowledgeable personnel.

2.13 The District and Contractor are equal opportunity employers and does not discriminate in awarding of contracts or employment of persons because of their race, color, age, national origin, religion, sex, disability, sexual orientation, or any other characteristic protected by law.

2.14 Contractor has the exclusive right to provide Services at the District's Colleges and online throughout the term of the Agreement. As such, unless Contractor fails to provide all or part of the Services, the District will not permit competing operations at any of the colleges. The exclusivity does not apply to books or other instructional materials the District purchases: for its own use; to comply with licensing agreements with various suppliers; or when the District must provide books and materials under a contract with other parties.

2.15 The District has the right to renegotiate the exclusivity as it pertains to digital course material. Digital course material includes e-Books, digital access codes and bundle packages containing any digital components. The renegotiated terms and conditions including any financial or pricing terms will be by mutual agreement.

2.16 The District may list alternative sources on class syllabi with the following exceptions: only other retail sellers, no direct web links and no publisher sources. The District's Auxiliary Business Services Manager shall resolve any disputes.

### 3.0 USE OF DISTRICT OWNED FACILITIES AND RELATED BOOKSTORE PROPERTY



- 3.01 The District agrees to permit Contractor to use designated parts of the District's facilities and other property ("Facilities") including:
  - (a) All space designated by the District for bookstore operations;
  - (b) All space designated by the College Representative during peak times to include areas outside the physical bookstore and including, but not limited to, hallways, storage areas and designated areas in parking lots for conducting textbook buybacks and other special promotions or events; and
  - (c) Classrooms and conference rooms designated by the College Representative for meetings, special sales, promotions or events.
- 3.02 The Facilities will be under the care, custody and control of Contractor and, except as expressly provided herein, Contractor has full responsibility, risk and liability for the proper care and safe use of the Facilities. Contractor shall repair or replace District Facilities or other property that is damaged or lost as a result of, or arising from Contractor's omissions, negligence or willful misconduct. The District shall have no liability for the loss or use of any of Contractor's property.
- 3.03 Subject to approval by the District's Auxiliary Business Services Manager, Contractor shall, at its own expense, provide, install and maintain equipment, furniture and fixtures as needed to provide the bookstore services. Upon expiration of this Agreement, other than Contractor's point of sale system, ownership of all equipment, furniture and fixtures provided by Contractor shall be transferred to the District at no charge.
- 3.04 The District shall be responsible for providing standard utilities for the Facilities. Use of such utilities by Contractor shall be exclusively for Contractor, its employees and invitees. District does not guarantee an uninterrupted supply of electricity, water, air conditioning or heating, nor uninterrupted service in providing said utilities, except that it will be diligent in restoring service following any interruption, and District shall not be liable to Contractor for any loss, damage, cost, or expense which may result from the interruption or failure of any such services.
- 3.05 Contractor shall be responsible for obtaining all permits and licenses required to use the Facilities and provide the Services.
- 3.06 At each college, the District will provide one (1) telephone line and instrument for internal communications. Contractor will provide all other local telephone lines and instruments for its use at no cost to the District. Contractor will be responsible for the costs of all local and long-distance telephone/communications services.
- 3.07 The bookstore locations within a Facility are subject to change by the District if renovations or special reconfigurations dictate changes. If changes become necessary, every effort will be made to provide a comparable space and location. The District will reimburse Contractor for any reasonably incurred relocation and moving expenses.
- 3.08 The District will, at its expense, maintain and repair the Facilities. Such maintenance shall include repair and replacement of fluorescent bulbs and light fixtures in the bookstore areas. In addition, the District agrees to provide maintenance for air conditioning and heating equipment as needed.
- 3.09 At Contractor's expense, and subject to approval by the District's Auxiliary Business Services Manager, the District will provide, as reasonably requested, additional electrical service or other modifications to the Facilities. Contractor shall reimburse the District for the cost of such work.
- 3.10 The District shall make any structural changes required to bring a Facility in compliance with the Americans with Disabilities Act. To the extent possible, the District will avoid disruptions to Contractor's business operations; however, some inconvenience may be expected.
- 3.11 No nails or screws shall be driven, screwed, or otherwise placed in the walls or any other part of the buildings without prior written approval from the College Representative nor shall the Facilities be defaced by Contractor or its employees.
- 3.12 Contractor shall obtain written approval from the applicable College Representative before attaching directional or informational signs to any part of the Facility.
- 3.13 Contractor shall pay the District the cost to repair, rebuild, and repaint all or any part of the Facilities which may be damaged or destroyed by the acts or omissions of Contractor or its employees. Contractor shall report any damages to the District's property to the applicable College Representative within 24 hours.
- 3.14 Any improvements to the Facilities made by Contractor during the term of this Agreement shall, at no cost to the District, become the property of the District upon termination or expiration of this Agreement.
- 3.15 The District will permit Contractor to use District owned equipment, furniture and fixtures that are presently located in the bookstore area at each College. Ownership of all such equipment, furniture and fixtures shall be and remain in the name of the District. No such equipment, furniture or fixtures shall be removed from the Facilities for any purpose other than repair, except with prior written approval of the College Representative.
- 3.16 Except as otherwise agreed in writing between Contractor and the District, the maintenance, upkeep and replacement of all furniture, fixtures and equipment in the Facilities shall be the responsibility of Contractor.
- 3.17 Contractor shall provide at its own expense all equipment, furniture, and fixtures not provided by the District.
- 3.18 The District shall provide Contractor access to its electronic mail via one connection to the District's communication network, and offer technical support for this operation. Contractor shall provide one personal computer compatible with linkage to a local-area network. The electronic mail (email) access shall be limited to placement of orders, inquiries, and

distribution of information to faculty, staff and administrators. In using the data line, Contractor shall comply with the District's computer use policies, which can be found at the District's internet site.

- 3.19 Material Safety Data Sheets (MSDS) for any chemicals used or stored within the Facilities must be submitted to the applicable college's Hazardous Material Coordinator on or before the first date they are brought into the college. A master set of Material Safety Data Sheets shall be maintained in the college's Facilities Services office. Additionally, MSDS information shall be posted where chemicals are stored and/or used.
- 3.20 Except as otherwise provided herein, Contractor shall be responsible for the cleaning and sanitation of the Facilities. Contractor must maintain good, standard housekeeping practices relative to store front windows and other glass, sweeping, dusting, disposal of trash and the keeping of aisles free of obstacles.
- 3.21 District will provide one or more trash dumpsters at each college. All cartons, shipping containers and the like., that are disposed in the District's trash containers must be flattened or otherwise rendered into a condition that will cause the trash to occupy the least possible amount of space. Contractor shall not place any hazardous waste in the District's trash containers and shall dispose of such waste in accordance with applicable laws and regulations.
- 3.22 Unless mutually agreed otherwise in writing, the District will be responsible for pest control services in the bookstore area. Contractor's store manager will be advised of service schedules and notices of scheduled service will be posted on College premises. Treatment schedules will be coordinated with the facilities department at each college.
- 3.23 The District shall have complete access to the Facilities at all times.
- 3.24 Contractor is responsible for training its employees in the security requirements of the District, and is responsible for enforcing the security rules of the District as they apply to its employees.
  - (a) No guns, knives, or other dangerous weapons are allowed on District property.
  - (b) No illegal drugs or other prohibited substances are allowed on the premises. Alcohol consumption or possession is not allowed anywhere on the premises. Smoking is not allowed in the buildings.
  - (c) At the onset of the on-site Services, The District will re-key each bookstore so that Contractor has access keys, except that when the bookstore area is located within another College building, keys to gain access through a designated entrance will be issued or special arrangements made so that Contractor and its employees can gain access whenever required. College Police shall retain in a secure manner one set of access keys to Contractor's bookstore for emergency use.
  - (d) Should any employee of Contractor lose assigned keys or access cards, or in any other way jeopardize the security of the District's property, Contractor will be charged for all associated costs required to re-key

the building in its entirety, or any area controlled by the lost keys/cards, as applicable. The District reserves the right to select the locks and a locksmith for re-keying the Facility, or affected location, and Contractor shall be assessed the cost.

- 3.25 Contractor's agents shall use entrances, thoroughfares, and parking areas designated by the District and must comply fully with the District's prevailing fire, safety, traffic, parking, and security regulations. Prohibitions on smoking inside of buildings, or elsewhere on the premises, must be strictly observed.
- 3.26 Contractor's employees may park at no charge in the public parking lots at each college that has public parking. Any special parking requirements may be accommodated through permits issued by the College Police at each college except El Centro College. El Centro College is located in the downtown Dallas area and has no parking lots.
- 3.27 Contractor shall observe and require its Subcontractors to observe the District's standard procedures and security practices established for the College where Services are provided under this Agreement.
- 3.28 Where the Facility is described as "Name of College" Bookstore, such description shall not be construed to imply any relationship with Contractor other than that of independent contractor.

#### 4.0 RELATIONSHIP / PERSONNEL

- 4.01 Contractor is an independent contractor and this Agreement shall not be construed as creating an employee/employer, agency, partnership, or joint venture relationship between Contractor (or any of its agents or employees) and the District.
- 4.02 Neither party shall have the authority to make any agreements on behalf of the other party.
- 4.03 Each party shall have the obligation to supervise, manage, contract, direct, procure, perform or cause to be performed all work to be performed by such party under this Agreement. Each party shall pay all wages, salaries, insurance, employee benefit programs, and taxes applicable to their employees and its performance under this Agreement.
- 4.04 Neither party shall be liable for the acts or omissions of the other party's employees and agents in performing their respective obligations under this Agreement, or otherwise.
- 4.05 Contractor shall throughout the term of this Agreement provide skilled personnel, adequate in number, as required to efficiently and effectively provide the Services to be provided hereunder.
- 4.06 In providing the Services, Contractor's and its Subcontractor's employees shall be respectful and courteous to all persons with whom they come in contact as may arise under this Agreement and shall observe reasonable standards of appearance and hygiene.
- 4.07 Contractor understands that the District and its Colleges operate under various laws and federal regulatory agencies that are unique to the education industry. As such, persons engaged by Contractor to provide Services under this Agreement are held to a

higher standard of conduct and scrutiny than in other industries or business enterprises.

- 4.08 To the extent permitted by law, Contractor shall not knowingly permit persons or parties engaged by Contractor to have access to the premises, records or data, or to participate in the conduct of the affairs of the District or at any event sponsored by the District, when such Employee(s) has been convicted of a crime or has agreed to or entered into a pretrial diversion or similar program in connection with a felony criminal offense; a misdemeanor involving moral turpitude, or uses illegal drugs. The District may, upon its written request, require Contractor to provide evidence of compliance with the above provisions.
- 4.09 As a Contractor with the District, the Contractor will be required to satisfy the requirements of Texas Education Code Section 22.0834, and any other applicable law, rule or regulation, with respect to the fingerprinting and criminal background checks required of contractors for any and all facilities of the District at which such requirements are applicable.
- 4.10 Contractor shall exercise reasonable and prudent care in engaging its employees or subcontractors to assure they have suitable character, honesty and disposition to work in an educational environment. Contractor's employees and those of any subcontractor shall be expected to exhibit professional conduct at all times.
- 4.11 Contractor agrees to immediately replace any of Contractor's employee(s) or agent(s), including but not limited to permitted Subcontractors or their employee(s) or agent(s), performing services or providing products under this Agreement when such employee(s) or agent(s) are reasonably found unsatisfactory by the District.
- 4.12 Throughout the term of this Agreement, Contractor shall provide a district manager located in Dallas County, Texas. The district manager's sole responsibility shall be to manage the District's account, including serving as the primary contact for overall bookstore operations for all Colleges.

## 5.0 SUBCONTRACTING

- 5.01 In performing its obligations under this Agreement, Contractor may engage subcontractors and other third parties ("Subcontractor(s)") only in accordance with, and as specifically permitted by, this Agreement. Contractor shall notify the District in writing of its intent to engage a Subcontractor. The engagement of a Subcontractor by Contractor shall be subject to the District's prior written consent, which shall not be unreasonably withheld and shall not relieve Contractor of any of its obligations under this Agreement. Contractor shall be liable for all acts and omissions of Subcontractors and their employees, agents, officers, directors, representatives and affiliates. Contractor agrees to immediately replace any Subcontractor performing services or providing products under this Agreement when such Subcontractor or its employee(s) or agent(s) are reasonably found unsatisfactory by the District.
- 5.02 Contractor shall require that all Subcontractors shall, as a condition to their engagement, agree to be bound by provisions comparable to those included in this Agreement, specifically those relating to the

indemnification of the District's security, insurance requirements, and qualifications of employees, compliance with laws and regulations, ownership of work product, and compliance with policies and procedures of the District.

- 5.03 At the request of the District, Contractor shall provide the District with a copy of any contracts by or with Subcontractors providing Services under this Agreement.

## 6.0 INVOICING/PAYMENT/TAXES

- 6.01 As applicable for products purchased from Contractor by authorized employees of the District, Contractor shall on a monthly basis submit an invoice to the Business Office of each College. The invoice shall show the applicable charges for the products. Payment of such invoice shall be paid in accordance with Texas Government Code 2251.
- 6.02 As a political subdivision of the State of Texas, the District hereby certifies it is exempt from the payment of property, sales, use, franchise, excise or other taxes for property or services purchased for its use. Contractor shall be responsible for payment of all applicable property taxes and the District shall not be charged for such taxes. For products sold to any party other than to the District for District use, Contractor is solely responsible for the collection and remittance of all applicable sales taxes.

## 7.0 PAYMENTS TO THE DISTRICT

- 7.01 As consideration for the right to use the District's Facilities for providing bookstore services, Contractor shall pay the District as shown on the Financial Considerations exhibit to the Agreement.
- 7.02 Payments due to the District shall be paid monthly and submitted to the District's Accounting Department with an accompanying detailed financial report, which includes the amount of commission being paid for each College. A copy of the report shall be sent to the District's Auxiliary Business Service Manager and each College Representative. Monthly payments are due within thirty (30) Calendar Days from the end of the month for which payment is required. The District's Auxiliary Business Service Manager shall approve the format and content of the report.

## 8.0 TERMINATION

- 8.01 In the event of a dispute, prior to giving notice of termination as provided herein, both parties agree to exercise reasonable and prudent efforts to prevent or cure any conditions that could give rise to termination of this Agreement.
- 8.02 Either party to this Agreement may, by giving written notice to the other party, terminate this Agreement without giving the party an opportunity to cure, if the party:
  - (a) Becomes insolvent, or generally unable to pay its debts as they become due, or shall become the subject of a bankruptcy, conservatorship, receivership or similar proceeding, or shall make a general assignment for the benefit of its creditors;
  - (b) Commits a fraudulent or criminal act against the other party, or in the case of Contractor, or any of

its employees, agents, or Subcontractors, against the District; or

- (c) Shall have failed to fulfill their obligations hereunder, or has made a material representation herein which, when made, shall have been untrue.
- 8.03 Termination of this Agreement shall not negate any other remedies available in law or equity to either party.
- 8.04 All provisions of this Agreement and related obligations concerning indemnification, security, examination/audit, refunds, representations and warranties shall survive the termination of this Agreement.
- 8.05 The District may terminate this Agreement without cause upon sixty (60) Calendar Days prior written notice to Contractor. If the District terminates this Agreement without cause, the Contractor will be reimbursed for the unamortized portion of facility improvements that have received prior approval of the District. Contractor may terminate this Agreement without cause upon at least one hundred eighty (180) Calendar Days prior written notice to the District. The term " facility improvements" includes the funds expended on trade fixtures, furniture and equipment as stated in Exhibit C, section C that are kept by the District upon termination.8.06 Upon termination of the Agreement, unless mutually agreed otherwise, Contractor shall have removed all of Contractor's property and debris from the District's Facilities and shall leave the site broom clean.
- 8.06 Upon termination of this Agreement, unless mutually agreed otherwise, Contractor shall have removed all of Contractor's property and debris from the District's Facilities and shall leave the site broom clean.
- 8.07 Termination of this Agreement shall not relieve Contractor of any payments due to the District for use of the Facilities or repair of any damage to the Facilities, excluding normal wear and tear those results from the acts or omissions of Contractor.8.09 Upon the expiration of this Agreement, the District will require any new bookstore services provider to purchase Contractor's inventory, or parts thereof, as may be mutually agreed to between Contractor and any new bookstore services provider.

## 9.0 DAMAGES

- 9.01 IN NO EVENT OTHER THAN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT SHALL CONTRACTOR BE LIABLE TO THE DISTRICT OR THE DISTRICT LIABLE TO CONTRACTOR FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOSSES OR LOST PROFITS OR FOR ANY LOSS DUE TO ANY EVENT BEYOND THE CONTROL OF CONTRACTOR OR THE DISTRICT RESPECTIVELY. However, the limitations on indirect, incidental or consequential damages set forth in this Section shall not apply to, or in any way limit, Contractor's indemnity obligations under this Agreement.
- 9.02 If either party employs an attorney or commences legal or arbitral proceedings to enforce the provisions of this Agreement, the prevailing party shall be entitled to recover from the other, reasonable costs incurred in connection with such enforcement, including, but

not limited to, attorneys' fees and costs of investigation, litigation, mediation, or arbitration.

- 9.03 In the event of termination of this contract, Contractor shall continue to provide all Services under this Agreement until the date specified in the Notice of Termination unless special circumstances exist which preclude continuation of Services.
- 9.04 Contractor shall, for a period of six (6) months prior to the expiration date of the Agreement, allow access to the facilities at all reasonable times by persons making a proposal for a successor agreement, and during the final two (2) weeks prior to the expiration, Contractor agrees to allow access to bookstore facilities by the successor contractor for the purpose of providing continuity of Services. In such latter event, the District shall insure that the successor contractor shall not interrupt or disturb Contractor's performance of the agreement while exercising the privilege granted hereunder.
- 9.05 If Contractor shall fail to remove its property upon the expiration or termination of Services, the District may, at its option, as agent for Contractor, and at Contractor's risk and expense, remove such property to a public warehouse, retain the same in its own possession; and after the expiration of thirty (30) calendar days, sell the same at public auction, the proceeds of which shall be applied first to the expense of the sale; secondly, to any sums owed by Contractor to the District, and any balance remaining shall be paid to Contractor. Any excess of the cost of removal after the proceeds of sale shall be paid by Contractor.

## 10.0 INDEMNIFICATION

- 10.01 Contractor shall indemnify, defend, and hold harmless the District and its trustees, officers, directors, employees, agents, successors and permitted assigns from and against any and all claims made, or asserted, or threatened, and all related losses, expenses, damages, costs and liabilities, including reasonable attorneys' fees and expenses incurred in investigation or defense, arising out of or related to the following:
  - (a) Any act or omission, or alleged act or omission, by Contractor, its employees and agents or any Subcontractor engaged by Contractor in the performance of Contractor's obligations under this Agreement or otherwise;
  - (b) Any material breach in a representation, covenant, warranty or obligation of Contractor contained in this Agreement or otherwise;
  - (c) Contractor's relationship with its employees, agents or Subcontractors or its capacity as an employer.
- 10.02 To the extent permitted by Texas law, and without waiving any defenses, including governmental immunity, District 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 District, its officers,



agents or employees, in the performance of this Agreement. The provisions in this paragraph are solely for the benefit of the parties to this Agreement and are not intended to create or grant any rights, contractually or otherwise, to any third party.

#### 11.0 RETENTION OF RECORDS/AUDIT

11.01 For a period of not less than four (4) years after the termination of this Agreement, Contractor shall maintain, in a single, reasonably accessible location approved by the District, all material data, files and records pertaining to its performance under this Agreement and to charges and costs paid or payable by the District under this Agreement, including, without limitation, all related contracts and insurance files.

11.02 During the term of this Agreement and during four (4) year period following the termination of this Agreement, all of Contractor's data, files and records referenced in the above Section of this Agreement may be inspected, audited and copied by the District, its duly authorized agents, representatives or employees or by federal or state agencies having jurisdiction over the District, at such reasonable times as the District may determine.

#### 12.0 INSURANCE

##### 12.01 General Requirements

- (a) Contractor shall provide all insurance specified herein and shall maintain such insurance throughout the term of this agreement.
- (b) Subcontractors shall provide and maintain throughout the time Subcontractor is providing Services under this Agreement, the insurance as required in herein.
- (c) The insurance must be obtained from a company or companies acceptable to the District and licensed to transact business in the State of Texas, and have a minimum financial security rating by A.M. Best of "A-" or better, or the equivalent from any other rating system.
- (d) The insurance specified herein is the minimum requirement. In the event Contractor or any Subcontractor has or obtains insurance coverage in amounts in excess of those required herein, such additional insurance coverage shall also insure to the benefit of the District.

##### 12.02 Coverage Requirement Levels for Contractor and Subcontractor(s)

Minimum insurance coverage to be provided by Contractor:

TYPE OF COVERAGE	LIMITS OF LIABILITY
1. Worker's Compensation (part a)	Statutory
2. Employers Liability	\$500,000 each occurrence

3. Commercial General Liability \$500,000 combined single limit each occurrence, or equivalent, with a \$2,000,000 aggregate available

4. Comprehensive Vehicle Liability \$300,000 combined single limit each occurrence or equivalent

5. Professional Liability \$500,000

12.03 The District and Contractor waive all rights against (1) each other and any of their subcontractors, agents and employees, invitees, each of the other, and (2) the District's, consultants, separate contractors, if any, and any of their subcontractors, agents, invitees and employees, for damages covered and paid by insurance obtained by Contractor pursuant to this Agreement. The District or Contractor, as appropriate, shall require of the consultants, separate contractors, if any, and the subcontractors, agents and employees or any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein.

12.04 All policies which Contractor and all subcontractors secure and maintain and which are in any way related to the Services shall be endorsed with a Waiver of Subrogation endorsement waiving the insurer's rights of subrogation against the District, Subcontractors and their insurers. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly and whether or not the person or entity had an insurable interest in the property damaged.

#### 13.0 ROUTINE COMMUNICATIONS

13.01 All routine, operational communications relating to the day-to-day operations, excluding routine telephone conversations, shall be in writing and delivered by email, United States mail, or other acceptable carrier, postage prepaid to the applicable addresses and representative(s) as named from time to time during the term of this Agreement.

#### 14.0 NOTICES

14.01 All notices concerning interpretation, change, or breach or termination of this Agreement shall be given to the persons that signed this Agreement, or their successors, in writing as follows: (a) by registered or certified United States mail, return receipt requested and postage prepaid to the applicable addresses and persons listed herein, or to such other addresses and persons as the parties may substitute by written notice given in the manner prescribed in this Notices Section; (b) by hand delivery, including courier service delivery, to such addresses; or (c) by facsimile machine transmission.

14.02 Such notices shall be deemed to have been duly given either three (3) Business Days after the date of mailing as described above, or one (1) day after being given to an express courier, or when facsimile transmission has been confirmed received.

#### 15.0 ASSIGNMENT

15.01 Neither party may assign this Agreement or any of the rights or obligations under this Agreement without the prior written consent of the other party, nor shall any such attempted assignment be void.

15.02 Subject to the provisions on Assignment set forth herein, this Agreement shall be binding upon, and inure to the benefit of, the parties and their respective successors and assigns. Except as specifically set forth in this Agreement, the parties do not intend the benefits of this Agreement to inure to any third party, and nothing contained herein shall be construed as creating any right, claim or cause of action in favor of any such third party, against either of the parties hereto.

#### 16.0 FORCE MAJEURE

16.01 The performance of either party's obligations will be suspended to the extent and for the length of time that the party is prevented from performing by acts of nature, fires, governmental actions, changes in the requirements by the District which directly contribute to a delay, or other events beyond its reasonable control.

#### 17.0 CHANGES TO THE AGREEMENT

17.01 This Agreement may not be modified, waived or amended unless mutually agreed to in writing by the persons who executed this Agreement or their successors or designees.

#### 18.0 MISCELLANEOUS

18.01 All Section headings in this document are for convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

#### 19.0 REPORTING AND COMMISSION PAYMENTS

19.01 On a monthly basis, within thirty (30) Calendar Days, Contractor shall provide to the District's Auxiliary Business Services Manager and the College a detailed report showing the pertinent data describing the Services provided in the previous month. The content and format of the reports shall be as mutually agreed between Contractor and the District's Auxiliary Business Service Manager. The monthly report should be in sufficient detail as to show:

- (a) Each College Location; for example, Brookhaven College
- (b) Gross Sales for the Month Reported, showing at minimum, new textbooks, used textbooks, trade books, supplies, gifts/clothing/insignia items, candy/snacks, beverages and sundries.
- (c) Exclusions from Gross Sales for the Month Reported
- (d) Net Sales for the Month Reported
- (e) Total for each College Location for the Month Reported
- (f) Totals for All Colleges for the Month Reported
- (g) Cumulative Contract Year to Date Information
- (h) Financial Aid Charges

19.02 Contractor shall maintain its accounting books and records in connection with its performance of this Agreement as may be reasonably required by the District consistent with good accounting practice. Such books of account and records may be kept at any location of Contractor's choosing, provided that

Contractor shall provide the District with notice in writing of the location, by address, of all such books and records and the name of the custodian thereof.

19.03 The District shall have complete access to the purchasing and sales records of Contractor in order to verify pricing and evaluate the quality and quantity of the merchandise supplied.

19.04 Contractor will maintain separate bookkeeping records for its operations of each college.

19.05 Contractor shall, at its own expense, furnish to the District annually, on or before the ninetieth (90th) Calendar Day following Contractor's fiscal year, an audited statement, prepared by an independent certified public accountant, showing the amount of the monthly gross sales, as herein defined, together with credit and allowance accounts for each and every month during the preceding fiscal year.

19.06 Contractor shall maintain statistics on expenditures for buyback of textbooks and submit to the District's Auxiliary Business Service Manager, within thirty (30) days following the close of each semester, a report showing the dollar expenditures for buyback. Reports shall include buyback expenditures for fall, spring, summer 1 and summer 2 semesters.

#### 20.0 CONTRACTOR'S BUSINESS ACTIVITIES

20.01 Contractor, and any subcontractor, shall not enter into any business activity, which is not compatible with the purpose and mission of an institution of higher education.

20.02 Contractor, and any subcontractor, shall not operate any part of its business or any other business which deals in items sold on the District's College campuses within a two (2) mile radius of any of the District's Colleges. Contractor shall conduct the business of bookstore operations strictly within the physical limits of each College.

20.03 Determination of what constitutes inappropriate business activity or competition shall rest with the District.

#### 21.0 COST OF OPERATION

21.01 Contractor shall operate on its own credit and shall furnish at its own expense all textbooks, merchandise, and equipment necessary for the performance of the contract. All incoming shipments of textbooks and merchandise shall be to Contractor's account, and under no circumstances may any such shipments be made or invoiced to the District. Contractor shall maintain a prompt payment record with its suppliers.

#### 22.0 BOOKSTORE OPERATING REQUIREMENTS

22.01 The requirements contained in this Agreement are intended to establish a generic description of the Services to be provided by Contractor and are not intended nor shall they be construed to limit or describe the details of the Services to be provided by Contractor.

22.02 Contractor will honor the District's financial aid procedures, establish a financial aid charge program and bill the District, Colleges or third parties for appropriate charges.

- 22.03 Contractor will accept personal and District checks from students, faculty and staff in reasonable amounts in relation to purchase amounts, subject to appropriate identification and prior experience relating to the presenter of the check.
- 22.04 Contractor will honor major credit cards, including American Express, Visa, MasterCard and Discover.
- 22.05 Contractor will establish an account for purchases by each College within the District. The account will be solely for products and materials for use by the Colleges. The discount for such purchases shall be as shown on the Financial Considerations Exhibit to this Agreement.
- 22.06 Contractor shall be solely responsible for the collection of any debts resulting from purchases by checks, charge cards, or charges on account to third parties. The District is not responsible for Contractor's bad debts relating to services provided to the District.
- 22.07 Contractor will be responsible for stocking, servicing, maintaining and repairing supply vending machines and collections of monies from the machines at all colleges at no cost to the District.
- 22.08 Contractor will deliver textbooks, supplies and other educational materials to off-campus class locations as directed by the District.
- 22.09 Contractor, at the District's direction, will provide bookstore services at the community campuses, including delivery of textbooks, supplies and other instructional materials on an as-needed basis. Contractor will work with the District in determining the feasibility of operating convenience stores at the Community Campuses.

### **23.0 ADVERTISING - MARKETING**

- 23.01 Contractor shall, at its expense, have the right to advertise its operations on each of the District's college campuses as approved by the applicable College Representative. This may include, but is not limited to, advertising store location, store operating hours, sales of merchandise, and book buy-backs. The right to advertise on a campus does not preclude competing bookstores from purchasing advertising space in student or college newspapers, or posting college-approved advertising on bulletin boards.
- 23.02 Unless approved in writing by the College Representative, Contractor shall not advertise or place any signs at, on, or about the premises, except as and where first approved by District, and District shall have the right to remove any sign or signs in order to paint the building or make any other repairs or alterations.
- 23.03 Contractor shall obtain prior approval from the District's Auxiliary Business Services Manager on all advertising to the general public, and for any use of the District or College logos in promotional materials.
- 23.04 Contractor shall establish and coordinate with the College Representative, within its general marketing program, provisions to support programs and events such as ethnic themes, holiday promotions and other campus sponsored events.
- 23.05 The District will provide to the Contractor access to the District's web page for the purpose of linking to

Contractor's DCCCD campus web sites. No links by Contractor to Internet sites operated by third parties will be allowed on the Contractor's web sites without the prior written permission of the Auxiliary Business Services Manager.

### **24.0 PERIODS OF OPERATION**

- 24.01 The District expects Contractor to maintain hours of operation sufficient to support each college's operations. Contractor will work with the College Representative at each campus to establish regular store hours and modified schedules during peak periods.
- 24.02 The District shall not be responsible for any loss to Contractor due to temporary suspension of operations, regardless of cause. Such suspensions may result from, but are not limited to, mechanical failure of equipment, power failure, or extraordinary weather conditions.
- 24.03 Appropriateness of opening a bookstore on inclement weather days shall be coordinated with the College Representative at each respective College.

### **25.0 ACCEPTABILITY OF MERCHANDISE**

- 25.01 Contractor agrees that all items offered for sale shall be of quality and character commensurate with a public institution of higher education and are subject to approval by the District's Auxiliary Business Services Manager.
- 25.02 Upon written notice by the District's Auxiliary Business Services Manager, Contractor shall remove from sale any item(s) which are declared objectionable. The sale of tobacco products is prohibited. The District's Auxiliary Business Services Manager shall resolve any disputes.
- 25.03 Inasmuch as the District has contracts with other companies to provide food service and vending machine service at all Colleges, as approved by the District's Auxiliary Business Services Manager, Contractor may sell food and drink products. Under normal circumstances, Contractor may not sell food or beverage brands regularly stocked in the vending machines. If the Contractor has an agreement with a vendor who provides products under an agreement with the District, Contractor, with the approval of the vendor may sell those products, since no competition with the vendor's products is created. The selling price of similar products shall not be less than the selling price under the other contracts. The District's Auxiliary Business Services Manager shall resolve any complaint from another contractor regarding food or drink sales through bookstore outlets. The District reserves the right to prohibit the sale of food and beverage products by the Contractor.

### **26.0 GROSS SALES**

- 26.01 Except as provided herein, the term "gross sales" as used in this Agreement, shall include the sale of all products sold by Contractor under this Agreement.
- 26.02 Gross sales shall not include any excise tax, sales tax, or any other tax collected by Contractor and remitted to applicable taxing authorities.



- 26.03 Intra-company transfers of merchandise shall not be included in gross sales.
- 26.04 Sales to District's instructional/administrative divisions for which fixed discounts apply shall not be included in gross sales.
- 26.05 Any personal sales to District personnel are to be included in calculations of gross sales.
- 26.06 Contractor's sale or rental of academic regalia shall be excluded from calculations of gross sales.

26.07 Under some circumstances, the sale of textbooks, products, merchandise, and services may be excluded from the calculation of gross sales if the exclusion is deemed in the best interest of the District. Such exclusions will be determined as appropriate for discounted sales to students or instances where the District directs the Contractor to sell the products below the established margin or price. Any waiver of commissions will require written approval by the District's Auxiliary Business Services Manager.

26.08 In case of conflict between the Gross Sales provisions of this Exhibit and Exhibit C, Exhibit C will take precedence.

#### 27.0 SELLING PRICE OF MERCHANDISE

- 27.01 The selling price for new and used textbooks and all other products shall be as per the Financial Considerations exhibit to this Agreement.
- 27.02 Contractor shall guarantee that the maximum selling price of a new textbook will be determined as shown on the Financial Considerations exhibit to this Agreement. Freight, handling charges, publisher's administrative charges or any costs other than the actual invoiced cost of textbooks shall not be considered in calculating the selling price.
- 27.03 For pricing purposes, a trade book, even if required for a course, will not be considered to be a new textbook. The price for trade books and other merchandise shall be determined as provided on the Financial Considerations exhibit to this Agreement.
- 27.04 The pricing of used textbooks shall be as provided on the Financial Considerations exhibit to this Agreement and shall be shown as a percentage of the net textbook selling price.
- 27.05 For products sold to the District for its use, Contractor will apply a discount as shown on the Financial Considerations exhibit to this Agreement from the regular retail selling price for stocked items, and catalog list price for special order items, on official purchases of departmental supplies and the same discount structure on official purchases of specialty and sundry items. Textbooks for departmental use will be sold to the District at prices no higher than the prices to students. The amount of the discount for official purchases shall apply to all locations. The discount granted shall apply to all sales of \$1.00 or more but shall not apply to any merchandise that is specially priced. Discounted Official purchases to instructional/administrative divisions are excluded from calculations of gross sales.
- 27.06 Contractor shall not change the pricing methodology shown on the Financial Considerations Exhibit without

the written approval of the District Director of Purchasing or Vice Chancellor of Business Affairs.

27.07 For the pricing purposes of this Agreement, should a question arise as to whether a book is considered to be a textbook or a trade book, the District's Auxiliary Business Services Manager shall resolve any disputes.

27.08 In case of conflict between the Pricing provisions of this Exhibit and Exhibit C, Exhibit C will take precedence.

#### 28.0 CLASS INFORMATION

28.01 Subject to the provisions of State and Federal laws, and upon reasonable request and notice from Contractor, the District will make available for Contractor's use enrollment data, pre-registration information, class schedules, book adoptions, and similar information that may be beneficial in the effective administration and operation of the bookstores.

#### 29.0 OFF-CAMPUS REGISTRATION

29.01 Contractor will be responsible for the transport and sale of books, supplies and other instructional materials at off-campus sites during registration and at other times as deemed appropriate by the District. Off-site sales of products shall be coordinated with the College Representative or designee.

#### 30.0 TEXTBOOKS PROCUREMENT PROCESS

30.01 For textbook needs, the District will provide to Contractor the course name, course number, section number and start date, and the textbook author, title, edition, ISBN, publisher, and estimated enrollment by using the Contractor's online adoption tool. The Contractor shall be solely responsible for all the security, maintenance, upkeep and cost of such online adoption tool. Contractor shall provide all training and associated training material for online adoption tool.

30.02 Unless adjustments in the academic calendar dictate corresponding adjustments in the dates, which follow, and excluding extenuating circumstances that cause delays, the District will provide adoption information to Contractor in accordance with the following schedule:

- (a) For Credit Courses:
- |                    |            |
|--------------------|------------|
| Fall Semester -    | April 15   |
| Spring Semester -  | October 15 |
| Summer Semesters - | March 15   |
| May Term           | March 15   |
- (b) For Continuing Education Courses:
- Continuing Education classes do not run concurrent with the academic terms Textbook adoption information for Continuing Education courses will be provided according to the following schedule:
- |                        |             |
|------------------------|-------------|
| Quarter 1 (Sept -Nov): | July 1      |
| Quarter 2 (Dec -Feb):  | November 1  |
| Quarter 3 (Mar-May):   | November 15 |
| Quarter 4 (June-Aug):  | April 1     |

30.03 The selection of course texts and other instructional materials shall be the decision of the District's instructional divisions, and as an academic matter,

selection shall not be within the discretion of Contractor.

- 30.04 Textbook requisitions submitted by the District shall be honored as to title, edition, and other variables, except for good and verifiable cause for alternative action. When Contractor, in exercising proper business judgment, determines that an enrollment projection is excessive, a report of this conclusion should be made via electronic mail or computer-generated report to the appropriate instructional division no later than one month prior to the beginning of the class.
- 30.05 Contractor must inform the appropriate instructional division regarding any substantial reduction in textbook order quantities or alteration of the order at least one month prior to the beginning of the class.
- 30.06 Contractor's commitment to Services will be gauged in large measure by the timeliness and adequacy of orders for textbooks and instructional supplies. Contractor agrees to obtain all formally adopted textbooks and make them available to students and faculty when they are needed. During fall, spring and summer semesters, the textbooks will be available for sale no later than the first day of regular registration. For classes that begin throughout the semester, books shall be made available a minimum of one week prior to the beginning of class.
- 30.07 In the event Contractor is unable to provide textbooks or other instructional materials at the required times, Contractor shall promptly notify the instructional division of the revised delivery date and an explanation for the delay.
- 30.08 If information is received from a textbook supplier that a book is back-ordered or unavailable, a written report of the problem shall be made to the instructional division immediately.
- 30.09 Approximately ten (10) business days prior to the beginning of a semester, Contractor's management shall provide to each instructional division a written report giving notice of existing or anticipated shortages, along with actions undertaken to resolve the shortages before the beginning of the semester.
- 30.10 If there is an unavoidable shortage of a textbook at the beginning of the semester, the faculty and students are entitled to the persistent efforts of store personnel to obtain the book. While this effort is underway, the instructional division should receive frequent reports of the status of the order and remedial actions, which have been undertaken.
- 30.11 Contractor shall expedite requests for textbooks, publications, and materials approved for new programs or sections added after the dates prescribed for submission of adoption data. District's instructional divisions may be charged any special freight or publisher's administrative charges for expedited requests.
- 30.12 Contractor will employ cost-saving measures whenever possible, including the acquisition of used books, digital delivery and promoting the minimization of bundling.
- 30.13 Some of the District's instructional programs require the use of educational software. Contractor will work with the software providers to provide licenses and

accompanying materials for sale in the bookstores. In some instances, this will require the Contractor to enter into agreements with software providers to pre-pay for the costs of licenses.

### 31.0 USED BOOKS

- 31.01 Contractor shall strive to make available a reasonably adequate supply of used books to decrease book costs to students.
- 31.02 Contractor agrees to establish a used book "Buy-Back" program and to purchase from student's books in saleable condition. Prices paid to students for used books will be the highest market value consistent with adoption information, inventory status, and condition.
- 31.03 Contractor shall have the exclusive right to buy back used books on each campus. The District will not support competing companies in their efforts to buy books on campus.
- 31.04 Contractor will buy back books from students every business day throughout the year. The dates of end-of semester book buy-backs will be as mutually agreed between Contractor and the District, but at a minimum will be scheduled every day during final exams at each college.

### 32.0 DISTRICT DEVELOPED MATERIALS

- 32.01 District is a major developer of instructional materials adopted for use at its colleges. On a mutually agreed basis, Contractor shall purchase such instructional materials from the District or its suppliers.
- 32.02 The District is obligated to furnish internally developed materials to competing off-campus bookstores upon request. Contractor should not assume that in all cases Contractor will be the sole distributor of District developed materials.
- 32.03 Unless mutually agreed otherwise, the District does not accept returns of unsold District publications.

### 33.0 ACADEMIC REGALIA

- 33.01 The Colleges conduct commencement exercises annually at the end of the spring semester and at other designated times. Contractor shall be responsible for the measurement, ordering, distribution and return of academic regalia including caps and gowns for students, faculty and staff.
- 33.02 Contractor is solely responsible to the designated vendor for the collection and/or return of rented regalia. Contractor is responsible for maintaining a good relationship with the designated vendor of academic regalia, and to promptly process payments and returns of regalia.
- 33.03 The financial transactions related to Contractor's handling of caps and gowns, as set forth herein, shall be excluded from calculations of gross sales.

### 34.0 SALES POLICIES

- 34.01 Contractor shall provide for charge or debit card sales of books, supplies and all other merchandise through acceptance of nationally-recognized credit or debit cards, which shall include, at a minimum, American Express, MasterCard, Visa, and Discover.

- 34.02 Contractor shall sell books and other supplies and materials at reasonable prices consistent in the industry and with competition in the vicinity of the College where the bookstore is located. Provided however, in no event shall the price of a textbook exceed the price established by provisions shown in the Financial Considerations exhibit to this Agreement.
- 34.03 Contractor shall provide for charge sales to District on its own account, with monthly invoicing to each location for purchases by the District's colleges. A copy of the monthly invoice shall be furnished to the cost center manager and the College business office within ten (10) days following the end of the month when the charges were made. The District's fiscal year runs September 1 through August 31. At year-end, invoices for charge sales to the District and the colleges for the month of August will be submitted to the District no later than the fifth business day of September.
- 34.04 From time to time textbooks and/or course supplies are to be purchased for a student through a federal grant, by the Texas Rehabilitation Commission, by some similar agency or a private company. Contractor shall work with governmental agencies and private companies to establish an accounts receivable process for agency-sponsored or company-sponsored students who need to charge approved books and supplies. Contractor shall agree to bill the applicable agency or company for sponsored student's purchases. The District is not responsible for charges to third parties.
- 34.05 Contractor shall allow students to return, with proof of purchase, textbooks, which are in new, saleable condition for a full refund. The refund policy must be prominently posted within the bookstore and a printed copy of the policy must be given to customer at time of purchase.
- 34.06 Contractor's policies regarding refunds, book buy-backs, exchanges, check cashing, and special orders shall be posted conspicuously in each bookstore. A

handout brochure or leaflet outlining these policies shall be presented to the customer at the time of purchase.

### 35.0 NEW TECHNOLOGY

- 35.01 Contractor shall be responsive to any developments in technology that may affect the operation of the bookstores and shall cooperate with the District by adopting systems that may be implemented to minimize textbook costs and improve customer service, inventory control, or financial reporting.
- 35.02 Contractor will work with faculty and instructional divisions in identifying ways to reduce or minimize the costs of textbooks, including digital delivery, custom publishing, emphasis on used books, and promoting a reduction in bundling.

### 36.0 CONTINUOUS IMPROVEMENT

- 36.01 The District is committed to improving work environments by applying Continuous Improvement techniques to identify areas that need improvement and to seek viable changes. The Continuous Improvement process involves a team approach to identifying an area of opportunity for improvement and developing processes to effect change. Contractor may be requested to participate in each College's efforts to improve the quality and delivery of services, including, but not limited to, participation in student orientation, advisory committees, focus groups and campus forums.
- 36.02 As part of the quality assurance process, Contractor will be required to provide customer satisfaction surveys in various formats for distribution to bookstore customers. The format and content of the surveys will be developed by mutual agreement between the District and Contractor.

## EXHIBIT H LICENSING TERMS, CONDITIONS, AND REQUIREMENTS

Contractor, in order to be permitted to sell merchandise bearing a trademark, logo, service mark, or other intellectual property of the District, shall be required to enter into a License Agreement in form and substance acceptable to General Counsel for the District and which shall be substantially the same, in form and substance, as that attached hereto.

### 1.0 GENERAL

- 1.01 This Agreement shall serve as a legal and binding Agreement by and between the Dallas County Community College District, a political subdivision of higher education in the State of Texas. In consideration of the mutual promises, covenants and conditions contained herein, the parties hereto agree to the following listed herein.
- 1.02 WHEREAS, the District is the owner of certain designations, including designs, trademarks, service marks, logo-graphics, symbols, and other indicia (hereinafter "Licensed Indicia").
- 1.03 WHEREAS, Contractor desires to use certain of the Licensed Indicia in connection with the sale of merchandise displaying the Licensed Indicia (hereinafter "Licensed Articles").
- 1.04 WHEREAS, the District is willing to authorize Contractor to use certain of the Licensed Indicia in connection with the sale of the Licensed Articles.

### 2.0 OWNERSHIP OF RIGHTS

- 2.01 Contractor acknowledges and agrees that the District is the sole and exclusive owner of all rights, title and interest in and to its Licensed Indicia as shown on Appendix B, as well as any derivatives of the Licensed Indicia, and all rights relating thereto are expressly reserved by the District.

### 3.0 GRANT

- 3.01 The District hereby grants to Contractor limited, non-exclusive permission to sell the Licensed Articles listed in Appendix A and displaying certain of the Licensed Indicia set forth in Appendix B, and in accordance with the limited terms and conditions herein. Contractor may only sell the Licensed Articles directly to individual consumers. Contractor acknowledges and agrees that, with the exception of the rights granted herein to use the Licensed Indicia of the District, it may not use the indicia of any other colleges, universities, conferences, bowl games or the NCAA, NJCAA, or the names and/or likenesses of any third party, in connection with the Licensed Articles. No wholesale sales or sale to any third party retailers are permitted.

### 4.0 APPROVAL OF LICENSED ARTICLES

- 4.01 The execution of this Agreement shall be considered the District's approval for Contractor to sell the Licensed Articles displaying the Licensed Indicia. In the event that Contractor wants to get licensed for any products not set forth in Appendix A, Contractor shall submit a sample of such product to District for written approval.

- (a) Contractor shall pay to the District a non-refundable license royalty fee in the sum of \$500.00 upon execution of this Agreement.
- (e) Contractor shall pay to the District quarterly, during the term of this Agreement a royalty of (number) percent of Net Sales by Contractor. For purposes of this Agreement, the term "Net Sales" shall mean: the amount billed, invoiced, or received (whichever occurs first) for sales, leases, or other transfers of the Licensed Articles, less:
- (i) Customary trade, quantity or cash discounts and non-affiliated brokers' or agents' commissions actually allowed and taken;
- (ii) Amounts repaid or credited by reason of rejection or return;
- (iii) To the extent separately stated on purchase orders, invoices, or other documents of sale, taxes levied on and/or other governmental charges made as to production, sale, transportation, delivery or use and paid by or on behalf of Contractor; and
- (iv) Reasonable charges for delivery or transportation provided by third parties, if separately stated.

Net Sales also includes the fair market value of any non-cash consideration received by Contractor for the sale, lease, or transfer of Licensed Articles.

### 6.0 ROYALTY REPORTS

- 6.01 Royalty Reports. Contractor shall provide the District a monthly report indicating the total sales amounts of Licensed Articles, total units of Licensed Articles sold, and the specific location where such sales were made.

### 8.0 SEVERABILITY

- 8.01 In the event that any term or provision of this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other term or provision and this Agreement shall be interpreted and construed as if such term or provision, to the extent the same shall have been held to be invalid, illegal or unenforceable, had never been contained herein.

### 9.0 INTEGRATION

- 9.01 This Agreement represents the entire understanding between the parties hereto with respect to the subject matter hereof and this Agreement supersedes all previous representations, understandings or agreements, oral or written, between the parties with respect to the subject matter hereof and cannot be modified except by a written instrument signed by the parties here.