

**ATHLETIC SERVICES AGREEMENT BETWEEN
THE REGENTS OF THE UNIVERSITY OF NEW MEXICO
AND FOLLETT HIGHER EDUCATION, LLC**

This Athletic Services Agreement ("Agreement") is made as of August 22, 2022 ("Effective Date"), between the Regents of the University of New Mexico ("Athletics") and Follett Higher Education Group, LLC.

Intending to be legally bound, Athletics and Follett agree:

1. Stores. Subject to all the terms and conditions in this Agreement, Follett shall operate Stores ("Stores") at various venues operated by Athletics.
2. **Term.** This Agreement takes effect August 22, 2022, and continues, unless sooner terminated in accordance with Section 3, until June 30, 2027. For the purpose of financial calculations and reporting, the "contract year" is defined as July 1-June 30.
3. **Early Termination.**
 - 3.1 Either party may terminate this Agreement with or without cause by giving the other party at least 120 days prior written notice of termination.
 - 3.2 Either party may terminate this Agreement upon 15 days prior written notice for material nonperformance by the other party, documented, in case of nonperformance by Follett, in accordance with Section 7.4.
 - 3.3 Athletics may terminate this Agreement immediately if Follett initiates any bankruptcy proceeding, or if any such proceeding initiated against Follett remains undismissed for 60 days.
4. **Rights Upon Termination, Expiration or Non-Renewal.**
 - 4.1 Termination, expiration or non-renewal of this Agreement shall not affect any right of either party accrued prior to such termination, expiration or non-renewal. On any termination, expiration or non-renewal of this Agreement, Athletics shall pay Follett the unamortized book value of all Stores Investments (as defined in Section 5) paid by Follett. The unamortized book value shall be calculated on the straight-line method, from the in-service date(s), over a five-year period. If this Agreement is terminated by Follett without cause (per Section 3.1) of this Agreement prior to the Store Remodeling being fully depreciated, then Athletics shall not reimburse Follett for any portion of the approved Facility Investment not yet depreciated, and the Store Improvements shall remain the property of Athletics.
 - 4.3 On any termination, expiration or non-renewal of this Agreement, Athletics shall purchase, or cause to be purchased, the Store inventory then on hand. Follett and Athletics shall work together to ensure that Athletics is not unreasonably burdened by the inventory levels. In the event that the Agreement expires or is not renewed, the amount Athletics pays pursuant to this Section 4 shall not exceed \$20,000. If the Agreement is terminated prior to the intended expiration date, the amount Athletics pays pursuant to this Section 4 shall not exceed \$50,000.
5. **Physical locations and Store Improvements.**
 - 5.1 Follett shall spend up to a total of \$60,000 for capital investment. This expenditure may include kiosks, tents, furniture, trade fixtures, and equipment, that is readily removable ("Capital Equipment") and Follett and third-party design and project management services, third-party architectural and engineering services, cabling and infrastructure, floor and wall coverings,

decorating, lighting, and fixtures that are not readily removable (“Store Remodeling”). Capital Equipment and Store Remodeling each include all replacements, additions and extensions paid for by Follett, whenever installed. The Capital Equipment and Store Remodeling together comprise the “Store Improvements.” Capital improvement expense decisions shall be made in conjunction with UNM Athletics. Follett shall obtain Athletics’ written authorization before proceeding with Store Remodeling that occurs on UNM property.

- 5.2 Follett shall work with Athletics for a flexible approach in serving the campus community. Follett and Athletics agree to a calendar of Athletic events on an annual basis. Athletics and Follett shall work together to identify physical in-venue locations which may include permanent, semi-permanent and pop-up locations.
- 5.3 All Capital Equipment purchased by Follett will remain the property of Follett.
- 5.4 Point of Sale Systems. Follett will be responsible for providing its own point-of-sale and store management system equipment at Follett’s sole cost and expense. Follett agrees to invest an additional amount up to \$52,000 for the installation of point-of-sale and store management systems at Athletics merchandise locations in University Stadium and University Arena – The Pit, as well as any pop-up locations mutually agreed upon between the parties. Follett shall have the full responsibility to maintain PCI compliance in accordance with the highest standards and shall indemnify, defend and hold harmless Athletics for, against and from any claims to the extent arising from data security breaches caused by Follett or its technology subcontractors.
6. **General Rights and Responsibilities of Follett.**
- 6.1 Follett shall operate the Stores in accordance with the highest standards and commercial practices in the college store industry.
- 6.2 Follett shall have the exclusive right, free from any alternate source endorsed, licensed or otherwise approved or supported by Athletics (online and at athletic venues) to sell and distribute (including the right to select vendors) merchandise and services traditionally offered in college and university in-venue fan shops, including but not limited to, clothing, supplies, gifts and souvenirs. Follett acknowledges Athletics apparel contract with Nike and agrees to make Nike product readily available for merchandise sales and agrees that it shall not supply merchandise from Nike’s direct competitors (e.g. Adidas, Under Armour).
- 6.3 To the extent permitted by its preexisting licensing agreement, Athletics grants Follett the limited, revocable right, subject to Athletics published standards, to use Athletics seals, logotypes, and associated trademarks and service marks on the Stores Internet site, signage and collateral materials, soft goods, decals and other goods traditionally sold in college and university fan shops. Athletics will not grant such right to any other brick-and-mortar retailer on Athletics’ facilities as defined in Section 6.11 during the term of this Agreement, except those retailers owned and operated by Athletics. If Athletics changes its seal, or logotypes with less than one-year written notice to Follett prior to notice to the public, Follett may deduct from any commissions otherwise payable to Athletics, Follett’s actual documented cost of all unsold emblematic merchandise on hand at the time of such change.
- 6.4 In order to secure property in the Stores, Follett shall cooperate with Athletics in providing Stores security, theft prevention, and emergency procedures in case of fire or casualty.
- 6.5 In its operation of the Stores, Follett shall pay its bona fide financial obligations to Athletics and to third parties in a timely manner as per Section 9.
- 6.6 Follett will support Nike product and marketing initiatives and any other Athletics supplier’s product and marketing initiatives, in each case as mutually agreed by the parties.

- 6.7 Follett shall abide by all federal, state and local laws applicable to its operation.
- 6.8 In performing this Agreement, Follett shall not discriminate based on sex, race, national origin, religion, color, sexual orientation, veteran status, disabled veteran status, age or disability protected under the ADA.
- 6.9 Follett will be responsible for inventories and other properties damaged or lost while on display or stored at the Stores or in transit to and from the Stores. Follett will also assume responsibility for the loss of monies, checks and credit card collections, breach of credit card data, as well as inventory theft and robbery. Notwithstanding the foregoing, Follett will not be responsible for loss or damages to the extent caused by the negligent or intentional acts or omissions of Athletics, its employees or agents.
- 6.10 Follett will make its corporate representatives reasonably available to Athletics to discuss and resolve any operational issues.
- 6.11 Follett will be the exclusive merchandise vendor at all locations used for a UNM Athletic events including, but not limited to, The Lobo Den store located in University Arena – The Pit (Men’s and Women’s Basketball), University Stadium (Football), Santa Ana Star Baseball Field (Baseball), UNM Softball Complex (Softball), Johnson Center (for Volleyball & Swimming/Diving events only), McKinnon Tennis Complex (Men’s and Women’s Tennis), and the UNM Track and Soccer Complex (Women’s Soccer & Track/Field). Follett shall have a merchandise presence at all UNM Athletic events requested by Athletics.
- 6.12 Follett shall have the exclusive right to establish and operate Athletics online store for the purpose of retailing New Mexico Lobos merchandise through e-Commerce sales.
- 6.12 Follett shall work in good faith with Athletics related to products offered available for sale in the team stores. Follett shall work with the UNM Athletics Equipment Room and Licensing Partner to obtain approved designs worn by teams and coaches to potentially offer for sale in the team store.
- 6.13 Follett shall have merchandising rights for non-athletic and special events hosted in UNM Athletic Facilities at events in which UNM has the right to sell. If UNM does not have the right to sell, Follett shall make its staff available where reasonably possible to handle merchandise sales on a consignment basis at special events on behalf of UNM Athletics with revenue being shared between the parties as negotiated on an event by event basis.
- 6.14 Follett recognizes that some product may be needed on-demand, such as Mountain West Conference championship or NCAA championship apparel. Follett will use its best efforts to accommodate these requests on behalf of Athletics.
- 6.15 Follett working with Athletics shall create a retail store in the Lobo Den store at University Arena – The Pit during regular business hours. Store hours will be agreed upon with Athletics.
- 6.16 Except in cases of emergency, Follett shall contact the University Police Department for assistance and/or reporting events of theft or disturbance. Follett shall not cause University’s students, faculty, or staff suspected of theft or disturbance to be arrested by public authorities (except in emergencies) or prosecuted without prior consultation with University.

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

- 7.1 For in venue locations Athletics will deliver the Stores in an appropriate, safe and habitable condition, in accordance with all applicable laws and regulations. Athletics shall also keep the building in which the Stores are located in compliance with all fire, building and electrical codes and regulations, including regulations governing fire alarms, smoke detectors, fire extinguishers,

fire suppression and sprinkler systems, water pressure, plumbing and electrical service, except to the extent caused by Follett. Athletics shall be responsible for any loss resulting from failure of the building to meet applicable building codes and regulations except to the extent caused by Follett. If the Athletics relocates all or any part of the Stores' operations, Athletics will, except in the case of emergency, provide Follett with at least 90 days advance notice of the relocation and will reimburse Follett, within 30 days after Follett's invoice, for Follett's reasonable cost of the relocation.

- 7.2 Athletics will name a representative authorized to advise Follett of Athletics approvals, consents and instructions under this Agreement.
- 7.3 Athletics may prohibit sale at the Store of any item it finds offensive, inappropriate, or inconsistent with Athletics mission and values.
- 7.4 If at any time Athletics is dissatisfied with Follett's performance under this Agreement, Athletics shall document the unsatisfactory performance and submit the documentation to Follett for immediate review and corrective action. Athletics may require a review meeting to prepare the corrective action.
- 7.5 Athletics will make its best effort to give Follett 30-day written notice for special or themed games.
- 7.6 Athletics agrees to embed the e-Commerce store established by Follett into the main page and all other secondary pages on its GoLobos.com website and also agrees to redirect all website traffic from golobos.com/store to the e-Commerce platform established by Follett. Athletics shall promote website traffic to the e-Commerce site in weekly emails sent to its ticket holder base to drive e-Commerce sales. The link shall be placed in a conspicuous location and of reasonable size to draw attention of site visitors.

8. **Store Personnel.**

- 8.1 Follett will furnish sufficient adequately trained personnel to provide efficient and courteous service to customers, including sufficient substitute personnel in case of employee absence. In addition, Follett will provide ongoing training in customer service and will formally recognize and reward employees who provide superior customer service.
- 8.2 Follett shall conduct pre-employment screening of its employees, including but not limited to criminal background checks in scope and substance reasonably acceptable to Athletics.
- 8.3 Athletics may participate in interviewing and evaluation of Follett's Store Manager should the need arise to fill the position. Follett's selection of the Store Manager is subject to Athletics approval.

9. **Commission.**

- 9.1 Follett shall pay commission to Athletics as follows:

15% of all Commissionable Sales up to \$350,000; plus
17% of all Commissionable Sales between \$350,001 - \$750,000; plus
19% of all Commissionable Sales between \$750,001 - \$1,000,000; plus
21% % of all Commissionable Sales between \$1,000,001 - \$1,500,000
24% of any part of Commissionable Sales over \$1,500,001

Commissionable Sales is defined as all recognized revenue (in compliance with generally accepted accounting principles) generated through the Stores, less voids, refunds, sales tax, campus debit card fees, discounted sales to authorized School faculty, staff and departments,

computer hardware and other technology items, and sales of other items that carry an inherent gross margin of less than 20%.

- 9.2 Follett will keep complete and accurate records of all Store and online transactions in accordance with industry accounting practices and will provide a statement of Stores gross revenue to Athletics monthly for the preceding period. Follett will provide detailed game day sales reports, to include any available financial or other reports related to sales at the Stores, as reasonably requested by Athletics. Follett will preserve records of Stores operations for three years from the transaction date and will make those records available for review, audit and verification by Athletics upon request on reasonable advance notice.
- 9.3 Follett shall pay the commission calculated in accordance with Section 9.1 quarterly, defined as September 30, December 31, March 31, and June 30, twenty days after the end of the month. Any other payment required to be made by Follett to Athletics under this Agreement shall be made within thirty days of receipt of invoice. Follett will process commission payments by sending ACH transfers (Direct Deposit) in lieu of paper checks. On the day the ACH payment is made; the Athletics designated recipient will receive an email informing Athletics thereof. A csv file (that can be opened in Excel) will be attached to the email that will contain the remit information with the document numbers that were paid (similar to the check remittance advice). Please note that this is not a wire transfer. The process takes approximately 7-10 business days to process once the necessary form is completed by the Athletics and submitted to Follett's Accounts Payable department.

10. Additional Considerations

- 10.1 Follett agrees to provide Athletics \$5,000 annually in retail product in-kind donations each contract year during the term of this Agreement. The use of the in-kind donation shall be at the discretion of the Director of Athletics.
- 10.2 Follett agrees to offer a faculty/staff discount of 10% on all purchases over \$1.00 to UNM staff, faculty, administrators, graduate assistants, teaching assistants, research assistants, and coaches. Faculty/staff shall be required to present their valid UNM identification cards.
- 10.3 Follett agrees to offer a departmental discount of 20% on all purchases made by the Athletics department over \$1.00.

11. Insurance.

- 11.1 During the term of this Agreement, Follett shall keep in force, at its own expense, at least the following insurance, all in accordance with this Section:
- a) Commercial General Liability having a combined single limit of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate covering premises and operations, contractual liability and products/completed operations;
 - b) Business Automobile Liability having a combined single limit of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate covering claims arising out of ownership, maintenance, or use of owned or non-owned automobiles;
 - c) Worker's Compensation insurance having limits not less than those required by applicable statute;
 - d) Employer's Liability in the amount of at least \$1,000,000; and
 - e) Excess or Umbrella Liability in the amount of at least \$2,000,000.

Coverage will include coverage for Commercial General Liability, Business Automobile Liability, Workers Compensation, Employer's Liability, Products Liability, Cyber Insurance and Excess or Umbrella Liability. Follett will maintain insurance, at its expense, throughout the term of the

Agreement. The insurance provided by Follett will cover all of Follett's furniture, fixtures, equipment and inventory located in or on the premises against loss or damage by fire, lightning, windstorm, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke and any other hazards outlined by Athletics. This insurance policy will be sufficient to cover the full replacement cost of the items listed. All such policies will name Athletics as an additional insured via blanket endorsement and provide a waiver of subrogation where applicable. Athletics may reasonably modify the required insurance coverage to reflect future risk management practices for universities and underwriting practices in the insurance industry. Policy limits set forth above are the minimum dollar amount of insured coverage for the risk or peril specified. If Follett maintains greater limits, then these specifications shall not limit the amount of recovery available to Athletics.

12. Indemnification. Follett shall defend, indemnify and hold harmless Athletics, its Board of Regents, affiliates, officers and employees from any and all claims, suits, actions, damages, judgments, and costs (including reasonable attorney fees), arising out of any: (i) damage, destruction or loss of any property (including but not limited to Athletics property); or (ii) injury to or death of any person (including but not limited to any employee of Athletics); which results from or arises out of negligent or willful acts or omissions of Follett, its officers, agents and employees, in the performance of this Agreement.
13. Independent Contractor Status. The relationship of the parties is that of independent contractors, and no tenancy, partnership, joint venture, agency, fiduciary or other relationship is created. Neither party may order any goods nor services, incur any indebtedness, or enter into any obligation or commitment on the other party's behalf.
14. **Nonassignability.** Neither party may assign or sublet this Agreement in whole or in part without the prior written consent of the other party, except that either party may assign this Agreement in its entirety to an affiliate that controls, is controlled by or is under common control with such party. This Agreement is made for the exclusive benefit of the parties, and no benefit to any third party is intended.
15. **Notice.** Notices required or permitted by this Agreement shall be deemed given when received if sent by recognized overnight courier or first-class mail, postage prepaid, to the following address, or such other address as the party may specify by notice:

To Athletics:	To Follett:
University of New Mexico Athletics 1 University of New Mexico MSC04 2680 Albuquerque, NM 87131	Follett Corporation 3 Westbrook Corporate Center, Suite 200 Westchester, Illinois 60154 Attn: General Counsel
16. **Severability.** If any provision of this Agreement is finally adjudicated illegal, invalid, in excess of the authority of either party hereto, or otherwise unenforceable, then such provision shall be severed, and the remainder of this Agreement shall remain in force as if such adjudicated provision were never included in this Agreement.
17. **Integrated Agreement.** This Agreement: (a) is the sole expression of the understanding of the parties with respect to operation of the Stores, (b) supersedes all prior statements and agreements with respect thereto, and (c) may not be modified, amended or waived except in writing signed by an authorized representative of the party against whom such modification, amendment or waiver is sought to be enforced.

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

FOLLETT HIGHER EDUCATION GROUP, LLC

THE REGENTS OF THE UNIVERSITY NEW MEXICO

By: *Ryan Petersen*
Ryan Petersen (Oct 26, 2022 17:53 CDT)

By: *Bruce Cherrin*
Bruce Cherrin (Oct 24, 2022 12:54 MDT)

Name: Ryan Petersen

Name: Bruce Cherrin

Title: President

Title: Chief Procurement Officer

Date: Oct 26, 2022

Date: Oct 24, 2022

By: *Eddie Nunez*
Eddie Nunez (Oct 24, 2022 11:29 MDT)

Name: Eddie Nuñez

Title: VP / Director of Athletics

Date: Oct 24, 2022