

**BOARD OF SUPERVISORS FOR THE  
UNIVERSITY OF LOUISIANA SYSTEM**

**FINANCE COMMITTEE**

**February 17, 2022**

**Item I.1.**      **McNeese State University's** request for approval to reduce fees for domestic and international nonresident students effective Fall 2022.

**EXECUTIVE SUMMARY**

McNeese State University is requesting approval to reduce its domestic and international nonresident tuition and mandatory fees as allowed by Act 455 of the 2016 Regular Session as follows:

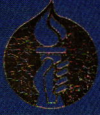
	<b>From</b>		<b>To</b>		<b>Change</b>
Domestic undergraduate	\$ 13,381		\$ 9,381		\$ (4,000)
Domestic graduate	13,820		9,820		(4,000)
International undergraduate	19,456		10,381		(9,075)
International graduate	19,895		10,820		(9,075)

The University plans to use the lower fees to more effectively recruit nonresident students. With the nonresident tuition more competitive, the University anticipates enhanced enrollment.

**RECOMMENDATION**

It is recommended that the following resolution be adopted:

***NOW, THEREFORE, BE IT RESOLVED,** that the Board of Supervisors for the University of Louisiana System hereby approves McNeese State University's request for approval to reduce fees for domestic and international nonresident students effective Fall 2022.*



I.1.

January 27, 2022

Dr. James B. Henderson, President  
University of Louisiana System  
1201 North Third Street  
Suite 7-300  
Baton Rouge, LA 70802

Dear Dr. Henderson:

McNeese State University requests approval to reduce nonresident fees for domestic and international nonresident students effective Fall 2022.

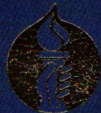
Please place this item on the ULS Board of Supervisors' agenda for consideration and approval at the February 17, 2022 meeting.

Thank you for your attention in this matter.

Sincerely,

Dr. Daryl V. Burckel  
President

Attachments



January 26, 2022

Dr. Jim Henderson, President  
University of Louisiana System  
1201 North Third Street  
Suite 7-300  
Baton Rouge, LA 70802

Dear Dr. Henderson:

McNeese State University respectfully requests approval to reduce nonresident fees for domestic and international nonresident students effective Fall 2022 as allowed by Act 455 of the 2016 Regular Session. Currently, annual undergraduate nonresident tuition and mandatory fees for domestic and international total \$13,381 and \$19,456 respectively, and resident tuition and mandatory fees total \$8,381. The annual graduate nonresident tuition and mandatory fees for domestic and international now total \$13,820 and \$19,895 respectively, and resident tuition and mandatory fees total \$8,820.

After reviewing tuition rates of out-of-state institutions, especially those in southeast Texas, the University determined that reduced nonresident tuition and fees for fiscal year 2022-2023 should be \$9,381 for domestic nonresident undergraduate students which is a 30% decrease and \$9,820 for domestic nonresident graduate students which is a 29% decrease. It is also determined that the nonresident tuition and fees should be \$10,381 for international nonresident undergraduate students which is a 47% decrease and \$10,820 for international nonresident graduate students which is a 46% decrease. The proposed fee structure will provide the institution the capability to compete throughout the region and other states and more effectively market the University and therefore increase enrollment.

Please place this item on the ULS Board of Supervisors' agenda for consideration and approval at the February 17, 2022 meeting. Thank you for your attention in this matter.

Sincerely,

Dr. Daryl V. Burckel  
President

McNeese State University						
Requested Domestic and International Nonresident Tuition and Mandatory Fees						
FY 2022-2023						
	Fall Semester (12 Credit Hours)			Academic Year (12 Credit Hours)		
	Resident	Out of	Nonresident	Resident	Out of	Nonresident
	Tuition & Fees	State Fee	Tuition & Fees	Tuition & Fees	State Fee	Tuition & Fees
<b>DOMESTIC UNDERGRADUATE:</b>						
2021-2022 tuition and fees	\$ 4,195.33	\$ 2,500.00	\$ 6,695.33	\$ 8,380.66	\$ 5,000.00	\$ 13,380.66
Requested 2022-2023 tuition and fees	\$ 4,195.33	\$ 500.00	\$ 4,695.33	\$ 8,380.66	\$ 1,000.00	\$ 9,380.66
Decrease	-	(2,000.00)	(2,000.00)	-	(4,000.00)	(4,000.00)
Percentage decrease			-30%			-30%
<b>DOMESTIC GRADUATE:</b>						
2021-2022 tuition and fees	\$ 4,414.84	\$ 2,500.00	\$ 6,914.84	\$ 8,819.68	\$ 5,000.00	\$ 13,819.68
Requested 2022-2023 tuition and fees	\$ 4,414.84	\$ 500.00	\$ 4,914.84	\$ 8,819.68	\$ 1,000.00	\$ 9,819.68
Decrease	-	(2,000.00)	(2,000.00)	-	(4,000.00)	(4,000.00)
Percentage decrease			-29%			-29%
<b>INTERNATIONAL UNDERGRADUATE:</b>						
2021-2022 tuition and fees	\$ 4,195.33	\$ 5,537.50	\$ 9,732.83	\$ 8,380.66	\$ 11,075.00	\$ 19,455.66
Requested 2022-2023 tuition and fees	\$ 4,195.33	\$ 1,000.00	\$ 5,195.33	\$ 8,380.66	\$ 2,000.00	\$ 10,380.66
Decrease	-	(4,537.50)	(4,537.50)	-	(9,075.00)	(9,075.00)



Percentage decrease				-47%				-47%
<b>INTERNATIONAL GRADUATE:</b>								
2021-2022 tuition and fees	\$ 4,414.84	\$ 5,537.50	\$ 9,952.34	\$ 8,819.68	\$ 11,075.00	\$ 19,894.68		
Requested 2022-2023 tuition and fees	\$ 4,414.84	\$ 1,000.00	\$ 5,414.84	\$ 8,819.68	\$ 2,000.00	\$ 10,819.68		
Decrease	-	(4,537.50)	(4,537.50)	-	(9,075.00)	(9,075.00)		
Percentage decrease				-46%				-46%

**BOARD OF SUPERVISORS FOR THE  
UNIVERSITY OF LOUISIANA SYSTEM**

**FINANCE COMMITTEE**

**February 17, 2022**

**Item I.2.**      **Nicholls State University's** request for approval to convert the Belle and Leonard Toups Endowed Chair in English into four Endowed Professorships.

**EXECUTIVE SUMMARY**

The Belle and Leonard Toups Endowed Chair in English was established in AY 96-97 with a family contribution of \$600,000 and LABoRSF match of \$400,000. The Endowed Chair was vacated one year ago when Dr. Ellen Barker separated from Nicholls State University, and it was not filled following her separation. Since the Endowed Chair was established in AY 96-97, the English Department has grown tremendously to now include five concentrations, 11 minors, and a certificate in Professional Writing. Considering the growth of the department, the number of declared majors, and the diversity of the faculty, the department believes that the memory and generosity of Belle and Leonard Toups would best be served by converting the Endowed Chair into four Endowed Professorships with each assigned a \$250,000 endowment, carrying the name of the Toups family. Specifically, the four super professorships would be named:

- The Belle and Leonard Toups Endowed Professorship in Writing
- The Belle and Leonard Toups Endowed Professorship in Literary Studies
- The Belle and Leonard Toups Endowed Professorship in Language Studies
- The Belle and Leonard Toups Endowed Professorship in Cultural Studies

As Mr. and Mrs. Toups are deceased, a letter of affirmation supporting this request has been signed by Mr. Lawrence Toups, a lone surviving nephew of the Toups family.

**RECOMMENDATION**

It is recommended that the following resolution adopted:

***NOW, THEREFORE, BE IT RESOLVED,** that the Board of Supervisors for the University of Louisiana System hereby approves Nicholls State University's request for approval to convert the Belle and Leonard Toups Endowed Chair in English into four Endowed Professorships.*



**Nicholls State University**

**Office of the President**

P.O. Box 2001 | Thibodaux, LA 70310 | 985.448.4003 | 985.448.4920 [F]

**I.2.**

January 27, 2022

**Via Electronic Transmittal Only**

Dr. Jim Henderson  
University of Louisiana System President  
1201 North Third Street, Suite 7-300  
Baton Rouge, LA 70802

Dear Dr. Henderson:

Nicholls State University requests consideration and approval of the following to be placed on the agenda for the February 17, 2022 meeting of the Board of Supervisors for the University of Louisiana System:

*Convert the Belle & Leonard Toups Endowed Chair into Four Endowed Professorships.*

Thank you for your assistance in this matter.

Sincerely,

Jay Clune  
President

JC/apf

Enclosures

c: Dr. Sue Westbrook, Provost/Vice President for Academic Affairs  
Mr. Terry Braud, Vice President for Finance & Administration  
Mr. Jonathan Terrell, Athletic Director  
Dr. Michele Caruso, Vice President for Student Affairs  
Dr. Todd Keller, Vice Provost  
Mr. Steven Kenney, Assistant Vice President for Human Resources, CDIO & Title IX Coordinator  
Ms. Paulette Mayon, Internal Auditor  
Ms. Claire Bourgeois, Faculty Senate President  
Ms. Renee Hicks, Assistant Vice President of Institutional Effectiveness Access & Success  
Ms. Monique Crochet, Executive Director of External Affairs



Office of Finance and Administration

P.O. Box 2070 | Thibodaux, LA 70310 | 985.448.4017 | 985.448.4123 [F]

## Memo

To: Dr. Jay Clune, President Nicholls State University  
From: Terry Braud, Vice President for Finance and Administration  
Re: Division of Belle and Leonard Toups Endowed Chair .  
Date: 20JAN22

The Belle and Leonard Toups Endowed Chair in English was established in AY 96-97 with a family contribution of \$600,000 and LABoRSF match of \$400,000. The Endowed Chair was vacated one year ago when Dr. Ellen Barker separated from Nicholls State University, and it was not filled following her separation. Since the Endowed Chair was established in AY 96-97, the English Department has grown tremendously to now include five concentrations, 11 minors, and a certificate in Professional Writing. Considering the growth of the department, the number of declared majors, and the diversity of the faculty, the department believes that the memory and generosity of Belle and Leonard Toups would best be served by converting the endowed chair into four endowed professorships with each assigned a \$250,000 endowment, carrying the name of the Toups family. Specifically, the four super professorships would be named:

- The Belle and Leonard Toups Endowed Professorship in Writing
- The Belle and Leonard Toups Endowed Professorship in Literary Studies
- The Belle and Leonard Toups Endowed Professorship in Language Studies
- The Belle and Leonard Toups Endowed Professorship in Cultural Studies

As Mr. and Mrs. Toups are deceased, a letter of affirmation supporting this request has been signed by Mr. Lawrence Toups, a lone surviving nephew of the Toups family. We respectfully request that this proposal be presented to the University of Louisiana System Board and the Louisiana Board of Regents for consideration.



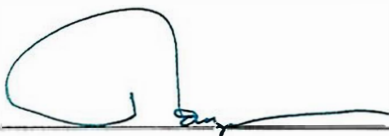
## Belle and Leonard Toups Endowed Chair

The faculty of the Department of English, Modern Languages, and Cultural Studies (formerly Languages and Literature) of Nicholls State University would like to thank the family of Belle and Leonard Toups for your investment in the Belle and Leonard Toups Endowed Chair, which has brought distinguished scholars to our faculty over the past two decades. Since the Endowed Chair was established, our department has grown with regard to its mission and vision, its number of declared majors, and the strength and diversity of the faculty. Our English majors now choose from five different concentrations: Children's and Young Adult Literature, Creative Writing, Film Studies, Literary Studies, and Writing and Rhetoric. And our department currently supports eleven minors, including Spanish and French, as well as a certificate in Professional Writing.

Given the current promise and needs of our faculty and majors in so many new disciplinary areas, we see this as an ideal time to request from the family permission to convert the Belle and Leonard Toups Endowed Chair into four Endowed Professorships, each at \$250,000. All professorships would remain in the Department of English, Modern Languages, and Cultural Studies and would be awarded to faculty who excel in teaching, research, and service and who are deserving of recognition as a result of their achievements as teachers and scholars. This conversion of the Endowed Chair to multiple Endowed Professorships would provide more of our faculty with the resources to better address our potential for enhanced recruitment of majors, improvements in the quality of our teaching, and even greater achievements in scholarship and creative writing.

Our expectation is that each of the Endowed Professorships, which will continue to carry the name of Belle and Leonard Toups, will be focused on a particular area of teaching and scholarly interest in the department, such as writing, literary studies, language studies, and cultural studies. Such a structure would ensure that the newly Endowed Professorships would support teaching and research across our diverse curriculum and thereby better address the academic interests and professional goals of our students.

Currently there is only one assigned primary faculty holder of the professorship that derives benefit of the endowment. If permitted by Regents and the University, I, Lawrence L Toups, the nephew of Leonard Toups, give my permission to Nicholls State University to convert the Belle and Leonard Toups Endowed Chair into four Endowed Professorships, each at \$250,000.



Lawrence L. Toups

11/22/21  
Date

**BOARD OF SUPERVISORS FOR THE  
UNIVERSITY OF LOUISIANA SYSTEM**

**FINANCE COMMITTEE**

**February 17, 2022**

**Item I.3.**      **University of Louisiana at Lafayette's** request for approval to enter into a ten- (10) year lease agreement for the University's Bookstore operations with Barnes & Noble College Booksellers, LLC.

**EXECUTIVE SUMMARY**

University of Louisiana at Lafayette currently self-operates its bookstore but desires to contract out its bookstore services. The University issued a Request for Proposals, evaluated the four (4) proposals it received, and then selected Barnes & Noble College Booksellers, LLC ("Barnes & Noble") as the successful proposer.

The University is now requesting approval to enter into a lease agreement with Barnes & Noble. The agreement has a term of ten (10) years and contains options to renew for up to ten (10) additional years with written amendment signed by the parties. Either party may terminate the agreement at any time by giving 120 days' written notice to the other party.

Barnes & Noble will purchase the University's new and used textbook inventory formally adopted for the following term from the University at the University's cost. Excess textbooks will be purchased by Barnes & Noble at the current wholesale price.

**Annual Rent**

Barnes & Noble will pay the University annual rent of the greater of a Guaranteed Amount or a Calculated Commission as follows:

**Guaranteed Amount**

In contract year 1, Barnes & Noble will pay the University \$600,000. After contract year 1, Barnes & Noble will pay a Guaranteed Amount equal to ninety-five percent (95%) of the Calculated Commission of the prior contract year.

**Calculated Commission**

- 10% of all Gross Sales of Course Materials; and
- 7% of all Gross Sales of First Day and Digital Products; and
- 17.5% of all Gross Sales of General Merchandise up to \$2 million; 18.5% of all Gross Sales of General Merchandise from \$2 million to \$3 million; and 20.0% of all Gross Sales of General Merchandise over \$3 million.

### **Other Consideration to be Provided by Barnes & Noble**

Barnes & Noble will pay the University a \$250,000 one-time signing bonus for the University to use at the University's discretion. Also, Barnes & Noble will annually provide \$10,000 for textbook scholarships that the University may award its discretion. In addition, Barnes & Noble will spend a minimum of \$350,000 for bookstore renovations and \$119,000 for a bookstore operating system.

### **University Bookstore Premises to be provided to Barnes & Noble**

The University will provide the Bookstore Leased Premises to Barnes & Noble in a retail-ready condition for ongoing operations. The Leased Premises is comprised of approximately 27,000 square feet of retail and storage space primarily located in the University's Student Union and on the first floor of the Heritage Apartment complex. Other smaller locations include retail space at the University's athletic complex.

The University will provide HVAC, natural gas heating, water, sewer service, electricity, and dumpster service for trash and garbage as reasonably required for the operation of the Bookstore. Barnes & Noble will pay \$15,000 per contract year to the University for these services.

### **RECOMMENDATION**

It is recommended that the following resolution be adopted:

***NOW, THEREFORE BE IT RESOLVED***, that the Board of Supervisors for the University of Louisiana System hereby approves University of Louisiana at Lafayette's request to enter into a ten-(10) year lease agreement for the University's Bookstore operations with Barnes & Noble College Booksellers, LLC.

***BE IT FURTHER RESOLVED***, that the University of Louisiana at Lafayette shall obtain final review and approval from UL System staff, legal counsel, and shall secure all other appropriate approvals from agencies/parties of processes, documents, and administrative requirements prior to execution of documents.

***BE IT FURTHER RESOLVED***, that Dr. E. Joseph Savoie, President of the University of Louisiana at Lafayette, is hereby designated and authorized to execute any and all documents necessary to execute this agreement.

***AND FURTHER***, that the University of Louisiana at Lafayette will provide the System Office with copies of all final executed documents for Board files.



January 27, 2022

Dr. James B. Henderson  
President  
University of Louisiana System  
1201 North Third Street, Suite 7-300  
Baton Rouge, LA 70802

Dear Dr. Henderson:

This is a request for approval to enter into an agreement with Barnes and Noble College for the lease of space to operate the University's Bookstore.

Please place this item on the agenda for the February 2022 meeting of the Board of Supervisors for the University of Louisiana System.

Sincerely,

A handwritten signature in blue ink, appearing to be "E. Savoie", written over a horizontal line.

E. Joseph Savoie  
President

SVC

Attachment



**Lease Agreement for Bookstore/Retail Services  
between  
The Board of Supervisors for the University of Louisiana System  
and  
Barnes & Noble College Booksellers, LLC**

This Lease Agreement for Bookstore/Retail Services (“Agreement”) is entered into effective the fifth day of March, 2022 (“Effective Date”), by and between Board of Supervisors of the University of Louisiana System, herein represented by Dr. E. Joseph Savoie, President of University of Louisiana at Lafayette (“UL Lafayette” or “University”) and Barnes & Noble College Booksellers, LLC (“Barnes & Noble College”). University and Barnes & Noble College may be referred to herein collectively as the “Parties” and each individually as a “Party.”

**WHEREAS**, University is a Louisiana state public educational institution within the jurisdiction of the Board of Supervisors for the University of Louisiana System and the Louisiana Board of Regents of State Colleges and Universities; and

**WHEREAS**, University owns or leases certain immovable property located on its campus (the “Property”) whereupon it operates University bookstore and retail space facilities (collectively, the “Bookstore”);

**WHEREAS**, the Bookstore furthers the education, scientific, research, and public service functions of University by providing needed services for students, faculty, staff, and visitors; supporting academic pursuits of faculty and students; contributing to the educational, cultural, and social environment of the University; supporting the recruitment, retention, and overall satisfaction of the University’s students; and providing a source of revenue for the University;

**WHEREAS**, in response to a competitive request for proposals process, the Request for Proposals for the Lease of Space for Operation of the Bookstore for the campus of University, Request for Proposal No. 22010 and subsequent addenda (collectively, “RFP”), attached hereto and incorporated herein as Exhibit “A”, Barnes & Noble College has been selected as the highest scored proposer;

**WHEREAS**, the Parties desire to cooperate with one another in partnership for the further development and operation of the Bookstore;

**WHEREAS**, University desires to lease or sublease the Property to Barnes & Noble College in exchange for the provision by Barnes & Noble College of bookstore and retail store services in the Bookstore for the University and for the completion of certain improvements by Barnes & Noble College to the Bookstore; and

**WHEREAS**, UL Lafayette enters into this Agreement in accordance with the authority set forth in La. R.S. § 17:3361, *et seq.*, which requires, in particular, construction and/or renovations by Barnes & Noble College of improvements which will further the educational, scientific, research, or public service functions of University, and in accordance with Louisiana Constitution Article VII, Section 14(C).

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants contained herein, the Parties hereto agree as follows:

1. All of the aforesaid “WHEREAS” clauses are adopted as part of the Agreement.
2. **Leased Premises:**

UL Lafayette hereby leases and delivers to Barnes & Noble College, and Barnes & Noble College hereby leases and accepts from UL Lafayette, the following described Bookstore facilities (the “Leased Premises”), diagrams of which are attached *in globo* hereto and incorporated herein as Exhibit “B”, totaling approximately twenty-

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seven thousand (27,000) square feet of retail and storage space, for the operation of the Bookstore, a full-service college bookstore and the delivery of bookstore and retail services by Barnes & Noble College:

- a. The first-floor bookstore of the UL Lafayette Student Union. This is a two-story space covering 21,332 square feet;
- b. A retail store at 110 E. Lewis Street, located on the bottom floor of Building 5 of the Heritage Apartment complex. This store is 4,708 square feet;
- c. Retail space at the University's baseball field, Russo Park, measuring 634 square feet;
- d. The Track and Soccer Team Store, measuring approximately 100 square feet;
- e. The Softball Team store, measuring approximately 144 square feet; and

The Leased Premises shall also include a mobile merchandise trailer measuring eight feet six inches (8'6") wide by twenty-four feet (24") long that is available for providing retail at various locations on the campus.

Barnes & Noble College, at its sole cost and expense, shall construct or renovate at the Leased Premises as set forth herein and, at its sole cost and expense, shall maintain said improvements in accordance with the standards required by the Agreement. Additionally, Barnes & Noble College, at its sole cost and expense, shall be obligated to furnish and install leasehold improvements, non-University movable equipment, trade fixtures, and signage, and all other improvements necessary to fulfill its obligations under the Agreement.

The Parties acknowledge that, in the future the University may determine it is desirable to amend this Agreement to modify the Leased Premises to add or delete space, and such may require other modifications to the terms or conditions of this Agreement, including but not limited to annual rent increases or decreases, which increases or decreases will be determined by dividing the "Annual Base Rent" as defined herein by the total square footage of the Leased Premises and multiplying that dollar per square foot amount by the number of square feet to be added to or deleted from the Leased Premises and adjusting the Annual Base Rent accordingly. Any and all additions and deletions to the Leased Premises and other changes associated therewith shall be effected only by written amendment to this Agreement executed by duly authorized representatives of the Parties.

### **3. Term:**

The initial term of this Agreement shall commence on the Effective Date and shall continue through February 29, 2032 ("Initial Term"). Thereafter, the Term of this Agreement may, upon written, mutual agreement executed by the duly authorized representatives of the Parties, be extended for up to a maximum of twenty (20) years by written amendment(s) to this Agreement ("Renewal Term(s)"), subject to the like terms and conditions contained herein and for an annual rent to be calculated in the same manner and using the Annual Base Rent as in the last year of the Initial Term, or greater. To seek an extension of the Term, a Party shall deliver notice to the other in writing no later than six (6) months before the end of any applicable Initial Term or Renewal Term hereof that the Party is seeking an extension and the duration of the proposed Renewal Term. The Initial Term, together with any Renewal Terms, shall be referred to herein as the "Term" of this Agreement.

### **4. Termination:**

- a. Each Party shall have the right to terminate this Agreement at any time by giving one hundred and twenty (120) days written notice to the other Party.
- b. In the event of a Party's Default, the non-defaulting Party shall have the right to terminate this Agreement; provided that the non-defaulting Party shall first provide thirty (30) days written notice specifying the Default and stating a reasonable time period in which the defaulting Party must cure it. In the event that the

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Default cannot be cured within thirty (30) days and the defaulting Party is attempting in good faith to cure it, the time period shall be extended for a reasonable period of time, not to exceed ninety (90) days, unless the Parties mutually agree in writing executed by the duly authorized representatives of the Parties to a longer period.

- c. Notwithstanding anything to the contrary contained in this Agreement, upon termination or expiration of this Agreement, University shall become the owner of all non-University movable equipment, trade fixtures, and signage. Barnes & Noble College shall execute any and all documents necessary to evidence the transfer of ownership. Should UL Lafayette elect not to take ownership, Barnes & Noble College, at its sole cost and expense, shall remove any Barnes & Noble College movable equipment, trade fixtures, and signage not accepted by UL Lafayette and shall repair any damage caused thereby, ordinary wear and tear excepted, within a reasonable period of time, not to exceed ninety (90) days, unless the Parties mutually agree in writing executed by the duly authorized representatives of the Parties to a longer period. All property that remains after the ninety (90) day period shall become the property of the University and may be disposed of by the University as the University sees fit without any payment to Barnes & Noble College or liability to account to Barnes & Noble College for the proceeds of any sale or other disposition thereof. At University's option, any such property remaining after said forty-five (45) days may be removed at Barnes & Noble College's expense.

#### **5. Barnes & Noble College "Default":**

- a. Barnes & Noble College shall be in Default of this Agreement if Barnes & Noble College shall refuse, fail, or be unable to perform or observe any of the terms or conditions of this Agreement for any reason other than Force Majeure, including but not limited to any of the following events:
- i. Barnes & Noble College fails to pay when due any annual rent, reimbursement, additional rent, invoice, insurance claim, indemnity, liability, or other financial obligation owed to UL Lafayette pursuant to this Agreement or otherwise stipulated, provided, however, that upon the fourth such failure to pay, UL Lafayette may exercise any rights granted herein or otherwise without the necessity to give Barnes & Noble College any notice or opportunity to cure;
  - ii. A voluntary petition in bankruptcy is filed by Barnes & Noble College or if any involuntary petition is filed to place Barnes & Noble College in bankruptcy and the matter is not dismissed within ninety (90) days of the filing;
  - iii. Barnes & Noble College fails to comply with any of the material terms and/or conditions contained herein or fails to satisfy any material obligation assumed herein;
  - iv. Any part of the Leased Premises is abandoned or ceases to be actively occupied and used for retail business for a period in excess of fifteen (15) days without written consent of University; or
  - v. Barnes & Noble College, after commencement of construction or renovations, but prior to substantially completing construction of the improvements to the Leased Premises, abandons (with no intent to continue and without written consent) construction or renovation on any part of the Leased Premises for a period of thirty (30) consecutive days.
- b. Barnes & Noble College hereby waives any and all notice(s) of eviction. Failure to strictly and promptly enforce any of the terms, conditions, or obligations of this Agreement shall not operate as a waiver of any of UL Lafayette's rights hereunder.
- c. University, following at least ten (10) days prior written notice to Barnes & Noble College and a reasonable opportunity to cure (which shall not exceed sixty (60) days or such longer or other period of time agreed to in writing by the Parties), may, but shall not be obligated to, cure any Default by Barnes & Noble College of any of Barnes & Noble College's obligations under this Agreement; and whenever University so elects,
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all costs and expenses incurred by University in curing any Default, including, but not limited to, reasonable attorney's fees, together with interest on the amount of costs and expenses so incurred at the legal rate, shall be paid by Barnes & Noble College to University on demand, and shall be recoverable as additional rent.

**6. UL Lafayette "Default":**

University shall be in Default of this Agreement if University shall refuse, fail, or be unable to perform or observe any of the terms or conditions of this Agreement for any reason other than Force Majeure.

**7. Force Majeure:**

Except for the payment of moneys, the performance of this Agreement by either Party shall be subject to "Force Majeure," which shall be defined as any event beyond the control of a Party, including, but not limited to: labor disputes, strike, riot, vandalism, sabotage, terrorist act, war (whether declared or undeclared), inclement weather, flood (whether naturally occurring or manmade), tidal surge or tsunami, landslide, earthquake, fire (whether naturally occurring or manmade), explosion, power shortage or outage, fuel shortage, embargo, congestion or service failure, epidemic, pandemic, government regulation, proclamation, order, or action, or where any of those factors, circumstances, situations, or conditions or similar ones make it illegal, impossible, or inadvisable, to fully perform the terms of the Agreement. If any Force Majeure event occurs affecting a Party's performance under this Agreement, the affected Party will give prompt written notice to the other Party and will use commercially reasonable efforts to minimize the impact of the Force Majeure event. With respect to the payment of moneys, in the event of Force Majeure circumstances that materially decrease the ability of Barnes & Noble College to operate the Bookstore, the Parties will negotiate in good faith an adjustment of the payment of the impacted period's Annual Rent Obligation under Section 13 to fairly reflect the circumstances.

**8. Transition Period:**

The Parties agree that the period from the Effective Date until March 13, 2022 shall be a period of transition from the self-operation of the Bookstore by University to operation by Barnes & Noble College ("Transition Period"). This Transition Period may be changed by mutual agreement of the Parties in writing. The Leased Premises shall be possessed concurrently by UL Lafayette and Barnes & Noble College during the Transition Period and exclusively by Barnes & Noble College thereafter during the Term. Barnes & Noble College shall use all reasonable efforts to successfully provide for the uninterrupted continuation of Bookstore services and concurrently undertake a comprehensive plan of construction and renovation within the Leased Premises. Accordingly, both Parties agree to work cooperatively during the first year of the Term by making such mutually agreeable adjustments and decisions in writing as are consistent with the best interests of the University, its students, faculty, and staff and as such are required to accomplish the transition, subject to the provisions of Section 30(k) with respect to amendments to this Agreement.

Barnes & Noble College will perform the buyback function and will buy back from students and the public at large any books in accordance with the provisions and policies set forth in this Agreement. Barnes & Noble College will own the inventory bought back by it from the point of the Effective Date forward. Barnes & Noble College will utilize its own employees for the buyback as well as its own cash registers and systems. For rented books that have been rented prior to the Effective Date through Nebraska Book Company, the University will be responsible for the return of the books to Nebraska Book Company.

**9. University Shall Provide to Barnes & Noble College:**

- a. Delivery of the Bookstore on the Leased Premises in retail-ready condition for ongoing operations (including but not limited to storage areas and access to an adequate shipping and receiving area and/or loading dock);
- b. HVAC, natural gas heating, water, sewer service, electricity, and dumpster service for trash and garbage as reasonably required for the operation of the Bookstore. University will invoice Barnes & Noble College



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and Barnes & Noble College shall pay Fifteen Thousand and No/100 Dollars (\$15,000.00) per Contract Year for these services. Barnes & Noble College shall pay University annually at the beginning of each Contract Year. In the event that Barnes & Noble College uses additional property(ies) beyond the Leased Premises to conduct Bookstore operations, University shall have no obligation to provide such services at the additional property(ies), and Barnes & Noble College shall exclusively bear the cost of any such additional services provided;

- c. Inspection and maintenance of all major building systems on the Leased Premises, with such buildings and building systems in compliance with all applicable laws (including but not limited to the Americans with Disabilities Act) and fire, building, and electrical codes and regulations (including but not limited to fire alarms, smoke detectors, fire extinguishers, elevator systems, fire suppression and sprinkler systems, water pressure, plumbing, and electrical service);
- d. Use of University-owned Equipment, Furnishings, and Fixtures within the confines of the Leased Premises which as of the Effective Date were being utilized by University solely in the operation of its Bookstore. Barnes & Noble College shall specifically determine which University-owned Equipment, Furnishings and Fixtures it wishes to utilize and shall notify UL Lafayette of same in writing. "Equipment" shall be defined as any item with a value of \$1,000.00 or greater or as defined under La. R.S. § 39:321-332. Exhibit E, attached hereto and incorporated herein, includes a list of relevant University-owned Equipment that may be utilized by Barnes & Noble College. "Furnishings and Fixtures" shall be defined those items incorporated into the Leased Premises in a fixed position, such as, by way of demonstration and not limitation, shelving, lighting, televisions, sounds systems, and gondolas. University shall retain ownership of all University-owned Equipment, Furnishings, and Fixtures used by Barnes & Noble College. In the event that Barnes & Noble College decides to utilize University-owned Furnishings and Fixtures, then said Furnishings and Fixtures must be returned to UL Lafayette when this Agreement terminates, in good condition, normal wear and tear excepted, unless the Furnishings and Fixtures become obsolete or unusable in which case Barnes & Noble College shall replace them;
- e. All repairs and maintenance for the building exteriors of the Leased Premises;
- f. Trash and recycling (cardboard) dumpsters in close proximity to the Union Bookstore facility. Barnes & Noble College shall be responsible for properly disposing of trash and recycling from all Leased Premises in the provided dumpsters;
- g. Extermination services for the Leased Premises;
- h. All financial services made available by University to its students for the purchase of educational materials and other products within the Bookstore;
- i. The placement of an electronic link on the University's appropriate web pages, registration system, and within the University's learning management system ("LMS") to the Bookstore's website; and
- j. Subject to University review and approval, a daily export file with SIS student export data (including student email addresses) to support a personal experience for faculty and students and enable Barnes & Noble College to (i) provide its products and services to University, including the Adoption and Insights Portal ("AIP"), and (ii) send Bookstore-related information and personalized content to University's students.

**10. Barnes & Noble College Shall Provide to University at Barnes & Noble College's Expense:**

- a. Bill paying and accounting, including sales tax collection, reporting, and payment for merchandise sold;
- b. Maintenance, upgrades, and repair of technology systems within the Bookstore, including all voice, data, and connectivity services necessary for Bookstore operations.

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- c. Any connectivity requirements, including but not limited to telephone, cable, and internet services, necessary to fulfill Barnes & Noble College's obligations under this Agreement shall first be reviewed and approved by UL Network Services, follow existing University standards, and be fully funded by Barnes & Noble College. Approval by UL Network Services shall not unreasonably be withheld. Any installed cabling ownership shall transfer to University upon expiration or termination of the Agreement Barnes & Noble College agrees to keep the Property free of liens resulting from the installation, operation, maintenance, and removal of such systems and services;
  - d. General custodial services for the Leased Premises;
  - e. Repairs to the interior and exterior of the Leased Premises and to Property which are a result of damage caused by Barnes & Noble College's operations or negligence or that of its employees;
  - f. Except as otherwise provided in this Agreement, Barnes & Noble College, at its sole cost and expense, shall acquire any and all fixtures and equipment necessary to fulfill its obligations pursuant to this Agreement and install or place same on or about the Leased Premises. To the extent Barnes & Noble College chooses not to utilize University-owned Equipment or Furnishings and Fixtures, Barnes & Noble College must purchase and provide comparable or necessary equipment, furnishings and fixtures and install or place same on or about the Leased Premises. Subject to its security alarm procedures, Barnes & Noble College shall provide access to the Leased Premises as appropriate and as may be necessary for University to inspect non-University equipment, furnishings, and fixtures for compliance with all applicable laws;
  - g. Loss prevention services for the Leased Premises;
  - h. Conspicuous posting of customer-facing Bookstore policies, including, as may be applicable, those concerning refunds, buybacks, price matching, and exchanges;
  - i. Regular communication regarding any significant physical and/or operational changes to the Bookstore, including but not limited to changes in managerial personnel and Bookstore and event hours of operation;
  - j. Following reasonable advance written notice by University, full access to the Bookstore financial and accounting records, including cash register. This shall include sales information captured by Barnes & Noble College's sales processing system (including the point of sale ("POS") system). This will be done in compliance with PCI guidelines that protect card holder information. Store POS reports will be made available by register. All POS activity is verified daily by Barnes & Noble College's corporate sales audit system. In addition, all registers have:
    - i. Transaction number controls with further security level restrictions by cashier type;
    - ii. Electronic journal, receipt and detail tape provisions, with required PCI-DSS protections; and
    - iii. Display window for customer viewing.
  - k. The State legislative auditor, federal auditors, and internal auditors of the University, the Louisiana Division of Administration ("DOA"), or others so designated by the DOA, shall have the option to audit all accounts directly pertaining to the Agreement for a period of five (5) years from the date of final payment or as required by applicable state and federal law. Records shall be made available during normal working hours for this purpose.
  - l. Barnes & Noble College will take all necessary precautions to assure that all Gross Sales (as defined below) are immediately recorded through POS devices of a type agreed to by University. Barnes & Noble College will furnish University with all requested daily/weekly/monthly/annual reports to verify customer accounts, cash sales, credit card sales, debit card sales, Cajun Cash sales, etc. and other pertinent information so requested. Monthly financial statements, as required by University, will be
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delivered to University on or before an agreed upon date of the month following the month during which the Gross Sales occurred. Upon request by University, separate and consolidated financial statements, operational reports and other supporting data will be provided to University for each major merchandise group sold by Barnes & Noble College, including but not limited to new textbooks, used textbooks, trade and reference books, general books, emblematic merchandise, class and alumni rings, caps and gowns, commencement invitations, etc. for the period required.

#### **11. Management and Staff:**

- a. Barnes & Noble College shall staff the Bookstore with experienced and qualified managerial and customer service personnel. During peak “rush” periods, Barnes & Noble College shall use sufficient additional personnel at the Bookstore to avoid unnecessary lines and to expedite making educational materials available to students.
- b. Barnes & Noble College personnel shall continue service only so long as their work and personal behavior are acceptable to Barnes & Noble College and University. Barnes & Noble College will comply with requests by University to remove or reassign Barnes & Noble College’s Bookstore personnel so long as such requests are in writing, include the specific reason for the requested removal or reassignment, and are not contrary to applicable law.
- c. Barnes & Noble College has the right to set its own wages and benefits for Bookstore employees. Barnes & Noble College will employ students of University at the Bookstore whenever reasonably possible.
- d. All staff presently working for University will be given first consideration by Barnes & Noble College for employment with Barnes & Noble College at the Bookstore.

#### **12. Services Expected:**

Barnes & Noble College shall operate the Bookstore as an independent contractor and with its own credit and preferred vendors. Services of the Bookstore shall include the following:

- a. With the exception of existing contractual obligations, the Bookstore shall be University’s exclusive retail buyer and seller of all required, recommended, or suggested course materials and supplies, including books delivered in all formats (digital, rental, new, or used), course packs, interactive or other courseware, computer software containing learning content (if available from Barnes & Noble College), textbook rentals, open educational resources (“OER”) available for purchase, student study aids, tools, and solutions, and materials published or distributed electronically, through the LMS, sold over the Internet, or through hosted e-commerce links. Barnes & Noble College will provide preferred on-line instructional services through the Bookstore website including fulfillment of any distance learning material needs during the Term. In the event that University becomes aware of any such third parties placing a link on the LMS permitting direct sales of textbooks or course materials to University students, University shall remove and disable such links and retail functionality. Barnes & Noble College shall work with University to help train, support, and encourage faculty in satisfying this Section 12(a).
- b. Barnes & Noble College shall implement a price match guarantee program (“Price Match Guarantee Program”) that will match prices of course materials advertised or offered in the same condition or format from: (i) a brick and mortar bookstore within fifteen (15) miles of University, or (ii) amazon.com or b&n.com, with the exception of online marketplaces including “other sellers” on Amazon and bn.com and peer-to-peer markets. Price matching on course materials shall be honored through the first week of class to accommodate orders placed early; outside the first week of class, Barnes & Noble College will price match textbooks, at the time of purchase, every day. Any price difference will be refunded to the customer via the original form of payment. Barnes & Noble College shall price match all course materials, including new course materials, used course materials, and rented course materials, provided the rental term period

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of the rented Barnes & Noble College course materials is the same as the rental term period of the price-matched materials. Notice will be provided to the University for any substantial change in this policy.

- c. In order to expand affordability to students, Barnes & Noble College will work with University if University opts to provide a “First Day<sup>®</sup>” (inclusive access) program to its students whereby the cost of digital course materials is included in the cost of attendance for a course(s). In such event, and except for any applicable opt-out or other legal obligations that are the responsibility of University, Barnes & Noble College will manage the First Day<sup>®</sup> program on behalf of the University and will be responsible for the procurement of desired textbooks and course materials. The Parties agree to work together to negotiate publishers’ pricing of textbooks and course materials. Barnes & Noble College will bill University for all textbooks and course materials in the First Day<sup>®</sup> model, and University will pay Barnes & Noble College within the time frame set forth in La. R.S. § 39:1695.
  - d. Additionally, the Parties acknowledge and agree (i) except as set forth herein, Barnes & Noble College shall be the exclusive (e-commerce) entity permitted to either place a link on the LMS or accept sales directly from University students and/or as part of a course charge through the LMS; and (ii) With the exception of existing contractual obligations, University shall prohibit all third parties, including but not limited to publishers and sellers of textbooks and course materials, from placing direct links within the LMS or soliciting sales directly from University students and faculty through the LMS. In the event that University becomes aware of any such third parties placing a link on the LMS permitting direct sales of textbooks or course materials to University students, University shall remove and disable such links and retail functionality. Barnes & Noble College shall work with University to help train, support, and encourage faculty placement of links in the LMS.
  - e. Barnes & Noble College shall exclusively provide the University’s online retail experience for University Insignia. Barnes & Noble College agrees and acknowledges that any change to the partnership with Fanatics, Inc. shall first be approved by the University in writing.
  - f. In the event the University makes available the acceptance of campus debit card and financial aid transactions for Bookstore merchandise typically sold in college bookstores, then Barnes & Noble College shall be the exclusive agent to accept same.
  - g. Barnes & Noble College shall provide sales for supplies for University departments and offices. Payments for such sales will be guaranteed by University and are payable within the period required by the Louisiana Procurement Code (La. R.S. § 39:1695).
  - h. The Bookstore also shall be University’s exclusive retail “on-campus” and Internet provider and seller of other items typically sold in college bookstores or distributed on campus, such as books in addition to those described in subsection (a) above, educational supplies, technology supplies, student study aids, tools, and solutions, notebooks, stationery, desk and room accessories, gift items, class and alumni rings and jewelry, and clothing, including any and all such items bearing an University emblem, logo, insignia or other identifying mark. In the event University seeks to add other retail opportunities online or on or near campus that offer any of the products, categories, or services listed in this subsection, Barnes & Noble College shall have the right of first refusal with regard to such opportunities.
  - i. The Bookstore shall be the exclusive agent for the rental and/or sale of graduation caps and gowns and commencement invitations.
  - j. Barnes & Noble College will provide custom publishing services for University course packs. Such services will include the development of course packs for faculty members, securing the appropriate copyright clearances, printing and binding of course packs, and distribution and sale of the course packs in the Bookstore. Complimentary desk copies of course packs will be provided to faculty members. Barnes & Noble College acknowledges and agrees that University’s on-campus print service is the University’s preferred method of production with respect to custom publishing services. Barnes & Noble College shall
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use University's Printing Services unless they are unable to produce all course packs within a commercially reasonable time. Barnes & Noble College shall, where practicable, use University's Printing Services to produce other all custom publishing services.

- k. The Barnes & Noble College shall have a non-exclusive right to sell convenience store items such as prepackaged food, health and beauty items, and other sundries, however, Barnes & Noble College must comply with any existing University contract for food and beverage including but not limited to food services, beverages, and vending. Currently, food services are exclusively contracted with Sodexo for dining services and with Coca-Cola Bottling Company United – Gulf Coast, LLC for beverages sold on Property. Barnes & Noble College shall provide special book order services for students, faculty, and staff and endeavor to obtain the earliest possible delivery of such books.
- l. Barnes & Noble College will allow full-time faculty and staff of University a ten percent (10%) discount on personal purchases of all merchandise available at the Bookstore except adopted textbooks, special orders, sale books, class and alumni rings, computer software and hardware, periodicals, discounted merchandise, stamps, health and beauty aids, food, snacks, and beverages.
- m. Barnes & Noble College will offer a twenty percent (20%) discount on all authorized departmental purchases except adopted textbooks, special orders, sale books, class and alumni rings, computer software and hardware, periodicals, discounted merchandise, stamps, health and beauty aids, food, snacks, and beverages. Departmental purchases are subject to the laws, rules, and regulations of the State of Louisiana and the Louisiana Procurement Code, which such compliance is the responsibility of University (and not Barnes & Noble College).
- n. University shall not accept advertising or permit tabling or other promotional activities by any seller of college course materials and/or course supplies other than the Bookstore at any event sponsored by University or located on University property. Occasional sales by student groups and student-sponsored events shall be permitted so long as such sales do not materially impact Bookstore sales.
- o. Barnes & Noble College will participate with University in new student orientation and faculty outreach programs. Barnes & Noble College shall coordinate with University's Office of Orientation for new student orientation programs. University shall provide Barnes & Noble College with University email lists for enrolled students and faculty within thirty (30) days of execution of this Agreement and no later than August 30 of each Contract Year thereafter. The Parties acknowledge and agree that because Barnes & Noble College based its financial offer to University in reliance on obtaining such emails each year of the term of this Agreement, in the event University does not timely provide Barnes & Noble College such emails, the Parties will renegotiate the financial terms of the Agreement. Upon request, University will work with Barnes & Noble College to develop email communications with other groups where appropriate.
- p. Barnes & Noble College shall provide to University, upon request, the customer data available.
- q. Barnes & Noble College, in conjunction with University, will implement Barnes & Noble College's integrative technologies, including but not limited to registration, LMS, and AIP integrations, and enrollment feeds.

### **13. Lease Amount / Calculated Commission:**

- a. Annual Rent Obligation. In addition to the other consideration set forth herein, Barnes & Noble College shall pay to UL Lafayette annual rent for each Contract Year during the Term. The annual rent shall be the greater of the following: (i) Guaranteed Amount or (ii) Calculated Commission.

- i. Guaranteed Amount:

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1. Contract Year 1 (March 5, 2022 through February 28, 2023): Six Hundred Thousand and No/100 Dollars (\$600,000.00).
  2. After Contract Year 1 (each March 1 through the end of each February), Barnes & Noble College will provide a Guaranteed Amount in all future years of this Agreement equal to ninety-five percent (95%) of the Calculated Commission of the prior Contract Year.
- ii. Calculated Commission:
    1. **10.0%** of all Gross Sales of Course Materials; and
    2. **7.0%** of all Gross Sales of First Day<sup>®</sup> and Digital Products; and
    3. **17.5%** of all Gross Sales of General Merchandise up to \$2,000,000; and
    4. **18.5%** of all Gross Sales of General Merchandise from \$2,000,000 to \$3,000,000; and
    5. **20.0%** of all Gross Sales of General Merchandise over \$3,000,000.
  - iii. In any Contract Year that is less than twelve months, payments shall be based on the Calculated Commission.
- b. "Gross Sales of First Day<sup>®</sup> and Digital Products" is defined as all collected in-store and online/website sales of (i) eTextbooks, (ii) pure digital products, and (iii) course materials within the LMS, whether through the First Day<sup>®</sup> or First Day<sup>®</sup> Complete programs or any other course material sales outside of such programs, less voids, refunds, sales tax, Gross Sales of Course Materials, and handling fees associated with non-return of rental textbooks.
  - c. "Gross Sales of General Merchandise" is defined as all collected in-store and online/website sales of general merchandise, including the amounts earned from Barnes & Noble College's marketing programs and relationships with its brand partners, less voids, refunds, sales tax, campus debit card fees, computer hardware sales, contractually discounted sales (such as discounted department and faculty/ staff sales), pass-through income, merchandise sales at less than a 20% initial gross margin and other merchandise mutually designated as non-commissionable.
  - d. "Gross Sales of Course Materials" is defined as all collected in-store and online/website sales of course materials and Barnes & Noble College-owned textbook rentals at the Bookstore, including the amounts earned from processing transactions for publishers related to the consignment of their rental property, less voids, refunds, sales tax, Gross Sales of First Day<sup>®</sup> and Digital Products, and handling fees associated with non-return of rental textbooks.

The applicable Calculated Commission as set forth above shall be made quarterly by Barnes & Noble College to UL Lafayette and shall be paid within thirty (30) days after the close of the quarter in which they were earned. The final payment for any Contract Year shall be made within thirty (30) days after the end of the applicable Contract Year and will include any adjustments required by the calculations in this Section 13. Each payment shall be accompanied by a detailed statement of its computation. Barnes & Noble College shall furnish supporting documentation to University upon request. Barnes & Noble College shall remit all payments to University under this Agreement via ACH.

#### **14. Textbook Scholarships and Donations:**

Barnes & Noble College will provide \$10,000 for annual textbook scholarships and donations to be awarded at the discretion of University.

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**15. Signing Bonus:**

Barnes & Noble College will provide a \$250,000 one-time signing bonus to University to be used at University's discretion. Payment of the one-time signing bonus is contingent upon, and shall be made within sixty (60) days after, the successful implementation of Barnes & Noble College's integrative technologies, including but not limited to registration, LMS, and AIP (Faculty Adoptions & Insights Portal) integrations, and enrollment feeds, and University providing Barnes & Noble College University's student email lists (including, if available, incoming students) by April 1, 2022 and then by July 1st of each year thereafter.

Barnes & Noble College will amortize the one-time signing bonus on a straight-line basis over the ten (10) year Initial Term of this Agreement. Should this Agreement terminate before the end of the Initial Term, then University shall reimburse Barnes & Noble College for any amount of the investment not yet amortized.

**16. Sales Representation:**

University represents to Barnes & Noble College that sales reported in the RFP for the year ended FY2020 were Four Million Three Hundred Sixty-Five Thousand One Hundred Eighty Five and No/100 Dollars (\$4,365,185.00), and that the corrected sales for the year ended FY2020 were Four Million Three Hundred Thirty Thousand Nine Hundred Thirteen and No/100 Dollars (\$4,330,913.00), net of all refunds, voids, sales tax, low or no margin sales, and discounts provided to customers. This figure includes sales in all Bookstore locations for which Barnes & Noble College will assume operations. Because Barnes & Noble College based its financial offer in reliance on this figure and maintaining the existing business and programs, the Parties agree to renegotiate the financial terms of the Agreement if the reported sales are found to be in error or materially inaccurate.

**17. Renovations:**

Barnes & Noble College will spend at least Four Hundred Sixty-Nine Thousand and No/100 Dollars (\$469,000.00) (with \$350,000.00 designated for renovations and fixtures for the Bookstore and \$119,000.00 to equip the Bookstore with operating system) to design, construct, equip, and install furnishings, fixtures, and equipment in the Bookstore. Barnes & Noble College will depreciate this investment on a straight-line basis over the ten (10) year Initial Term of this Agreement. Should this Agreement terminate before the end of that period, then University shall reimburse Barnes & Noble College for any amount of the investment not yet depreciated. Barnes & Noble College shall own all Barnes & Noble College fixtures until they are fully depreciated or until University provides reimbursement for any amount of investment not yet depreciated, at which time ownership shall revert to UL Lafayette at no cost. For amounts spent above that specified herein, the Parties shall first come to a mutual agreement in writing executed by the duly authorized representatives of the Parties regarding responsibility for cost.

In order to provide the best possible service for University students, faculty, and other customers, University retains the right of final approval and necessary alterations of any Bookstore plans as proposed by Barnes & Noble College, which approval shall not be unreasonably withheld, conditioned, or delayed, in order to assist Barnes & Noble College with meeting its minimum operational and retailing standards. Building renovations are subject to the approval of University and shall be completed in accordance with all University Design Standards, as well as applicable building codes and standards. All building renovations shall be performed under the design and direction of a design professional (architect of record).

If University relocates all or any part of the Bookstore or Bookstore operations, University will provide Barnes & Noble College with at least ninety (90) days advance notice of the relocation and will reimburse Barnes & Noble College, within thirty (30) days after Barnes & Noble College's invoice, for Barnes & Noble College's cost of the relocation.

**18. Sales Markup Basis:**

Barnes & Noble College represents that the sale markup basis at the Bookstore will be as follows:

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- a. New textbooks will be sold at no greater than (i) the publisher's list price, or (ii) a twenty-five percent (25%) gross margin on Net Priced Books. "Net Priced Books" are books (i) purchased from publishers that do not have a publisher's suggested list price or (ii) with a publisher's discount to the Bookstore of less than twenty percent (20%). Freight charges, restocking fees, and other publisher charges invoiced to Barnes & Noble College are included in the publisher unit cost of Net Priced Books, to which the gross margin % is added.
  - b. Used textbooks will be sold at or less than twenty-five percent (25%) off the new selling price.
  - c. Course packs and textbooks purchased from publishers with restrictive or non-returnable text policies or are single use products will be priced at up to a thirty percent (30%) gross margin.
  - d. Barnes & Noble College will set rental fees for each textbook title, and any given title's fee may vary as a percentage of the retail selling price.
  - e. School supplies will be priced at or below manufacturers' suggested retail prices.

Barnes & Noble College shall, upon request, provide proof of conformity to pricing policies as specified herein.

#### **19. Calendar of Operating Hours:**

Barnes & Noble College shall maintain a schedule of operating hours and weeks of business for the Bookstore in accordance with the official University calendar and in mutual agreement with University in meeting the needs of the students, faculty, and staff.

#### **20. Book Orders and Deadlines:**

Barnes & Noble College shall fill orders for books and required supply items from term to term in accordance with textbook and supply adoptions by University faculty. The Bookstore shall be given notice by University faculty or authorized department designees of the textbook and supply adoptions for all courses offered as follows:

- a. On or before October 1 for the spring term;
- b. On or before March 1 for the summer sessions; and
- c. On or before April 1 for the fall term.

In the event that any additional adoptions are made and provided by University after these deadlines, Barnes & Noble College shall make good faith efforts to fill such orders. Barnes & Noble College shall be responsible, at its cost and expense, for contacting in a timely manner all faculty members for their textbook and supply adoptions. University shall not be responsible for compiling, nor shall it maintain, a list of such adoptions. Barnes & Noble College shall provide University administration all necessary information related to book adoption by faculty and departments.

#### **21. Booklist:**

In the course of providing the services contracted for in this Agreement, Barnes & Noble College collects certain information from the faculty (whether through AIP, its course book information forms, or otherwise) and creates a computer database containing, among other things, course book information (all such information, the "Booklist"). The Booklist and these forms and database are Barnes & Noble College's proprietary information, created at substantial cost and expense to Barnes & Noble College, and used in connection with its business.

Barnes & Noble College shall provide the Booklist to University upon written request therefor, provided, however, that University agrees it shall keep the Booklist confidential in accordance with the terms of this

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Agreement, shall use it only for educational purposes, and shall not disclose it to any third parties except as permitted herein.

Nothing set forth in this Section 21 shall be construed to limit in any manner the right of any other off-campus vendor to use its own course book information form to obtain this information from the faculty.

## **22. Used Book Purchase and Resale:**

Barnes & Noble College shall buy books from University faculty, staff, and students at the following prices:

- a. When the Bookstore has been notified that the book will be used at University the following term, Barnes & Noble College shall buy back the book at fifty percent (50%) of the customer's purchase price (provided the book is a good used copy) until the Bookstore has met its semester needs.
- b. In the absence of such notification, or if the book will not be used for the following term or is to be replaced shortly by a revised edition according to an announcement of the publisher, the book will be purchased at the wholesale price.
- c. Used textbooks in good condition will be sold by Barnes & Noble College at or less than 25% off the new selling price.

## **23. Refunds and Exchanges:**

Barnes & Noble College shall offer refunds and exchanges as follows:

### **a. Textbooks and Required Course Materials**

The Bookstore will issue refunds in the original form of payment for textbooks and required course materials purchased at the Bookstore if returned in the original purchase condition, with an original receipt and within the first week of classes. Within thirty (30) days of the first day of classes, textbooks and required course materials will be refunded with an original receipt and with a valid proof of add/drop.

### **b. General Reading Books, Medical and Specialty Reference Books, Software, Audio, Video, & Small Electronics**

The Bookstore will issue refunds in the original form of payment if returned in the original purchase condition, with an original receipt and within fourteen (14) days of purchase, except that courseware access codes, audio books, DVDs, CDs, music, and small electronics may not be returned for a refund but can be exchanged for the same item if defective.

### **c. All Other Merchandise**

The Bookstore will issue refunds in the original form of payment any time during the semester for other merchandise purchased at the Bookstore if returned in the original purchase condition and with the original receipt. If a return is made without the original receipt, a store credit will be issued at the current selling price.

Refunds or exchanges will not be issued for the following items: food and beverages, unwrapped loose leaf books or shrink wrapped titles that do not have the wrapping intact, digital content once accessed or activated, custom course materials, outlines, study guides, school guides, gift cards, phone cards, newspapers, magazines, and prepaid cards.



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**24. Purchase of University Inventory by Barnes & Noble College:**

All saleable inventory of the Bookstore will be purchased and paid for by Barnes & Noble College from University in the following manner:

a. New Textbooks

1. All new textbooks (in quantities not exceeding normal course requirements) formally adopted for the following term and on hand at the time of inventory will be purchased by Barnes & Noble College at University's cost.
2. All excess textbooks not accepted for return will be purchased by Barnes & Noble College at the current wholesale price.
3. In determining overstock for adopted textbooks, new texts will take preference over used. For example, if the adoption for the following term calls for forty (40) texts and the Bookstore has thirty (30) used texts on hand and fifteen (15) new texts on hand, then five (5) of the used texts would be considered overstock.

b. Used Textbooks

1. At the time of inventory, all used textbooks on hand that are formally adopted for the following term (in quantities not exceeding normal course requirements) will be purchased by Barnes & Noble College at University's cost.
2. All excess adopted used textbooks will be purchased by Barnes & Noble College at the current wholesale price.

c. Trade, Paperback, Technical, and Reference Books

All trade, paperback, technical, and reference books in clean and saleable condition and less than six (6) months old will be purchased by Barnes & Noble College at University's cost.

d. School Supplies and General Merchandise

This category includes all items not previously mentioned, including art, office and general supplies, stationery, Insignia, and greeting cards, etc.

1. All of the above supplies and merchandise in clean and saleable condition, up to a six (6) month supply, and not older than one (1) year, will be purchased by Barnes & Noble College at University's cost. All of the above supplies and merchandise in clean and saleable condition older than one (1) year and not older than two (2) years will be purchased by Barnes & Noble College at fifty percent (50%) of University cost. All of the above supplies and merchandise in clean and saleable condition older than two (2) years will be purchased by Barnes & Noble College at a price mutually agreed upon by the Parties.
2. Items not in clean and saleable condition will be set aside and purchased by Barnes & Noble College at a mutually agreeable price below full retail.

e. Vendor Credits

After University has made reasonable good faith efforts to collect cash from all of its University bookstore vendors for outstanding credit balances owed to University, Barnes & Noble College shall purchase at face value from University all uncollected vendor credits, after verification from the respective vendors evidenced by written statement from the vendors as to the amount to be transferred to Barnes & Noble.

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Barnes & Noble shall not be obligated to purchase any vendor credit a vendor has refused to transfer to Barnes & Noble. Payment for purchased vendor credits shall be made by Barnes & Noble College within thirty (30) days of invoice by University and upon agreement by the vendor.

f. Payment for Inventory

Barnes & Noble College will pay University for all inventory in two (2) equal payments: fifty percent (50%) within sixty (60) days after the completion of a physical inventory, and fifty percent (50%) within one hundred twenty (120) days after the completion of that inventory.

**25. Purchase of Barnes & Noble College Inventory by University:**

In the event of termination or expiration of this Agreement for any reason, UL Lafayette shall provide (i) a secure space in or near the Bookstore during the last two (2) weeks of the then-current term or semester to allow Barnes & Noble College to collect from students all outstanding rented textbooks, including those on consignment owned by the publishers; and (ii) reasonable support related to such returns, including but not limited to communications to students. Alternatively, if University chooses not to provide such space and support, then (i) University shall assume and be wholly responsible for all Barnes & Noble College's liability to the publishers related to the textbooks on consignment during the applicable term or semester, including but not limited to financial obligations with regard to the returns or non-returns of textbooks; and (ii) University shall repurchase or require successor contractor to purchase Barnes & Noble College's outstanding rental inventory at the buyback value (fifty percent (50%) of retail price).

In the event of any termination or expiration of this Agreement, University shall purchase, or require a successor contractor to purchase Barnes & Noble College's inventory in the same manner as set forth in Section 24.

Should University change logo or contracted athletic apparel provider/licensee, University will either give Barnes & Noble College six (6) months written notice or will allow Barnes & Noble College to deduct from commissions due the cost of unsold Insignia.

**26. University's Retained Rights:**

University retains the following rights:

- a. Subject to Barnes & Noble College's security alarm procedures, the right of inspection and supervision of the Bookstore facility. Subject to Barnes & Noble College's security alarm procedures, University and its agents shall have the right to enter the Leased Premises at any time in order to fulfill any of University's obligations under this Agreement and for the purpose of examination, inspection, or supervision, or for the purpose of making repairs or alterations to University property as may be determined necessary by University;
- b. The right of approval for all store manager personnel in advance of their being employed in the Bookstore; and
- c. The right to approve, in writing, all physical and operational changes initiated within the Leased Premises or surrounding areas.

**27. PCI Compliance; Data Security; Accessibility:**

- a. PCI Compliance. Barnes & Noble College has implemented, and will maintain throughout the term of the Agreement, reasonable and appropriate administrative, physical, and technical safeguards to protect University's Confidential Information (as defined below) from unauthorized access, destruction, use, modification, or disclosure. Barnes & Noble College shall maintain security measures in the daily operation of the Bookstore, including training of booksellers to protect customer personal information and employing

security hardware and software (such as firewalls, intrusion detection systems, SFTP, SSL, and encryption) in order to help prevent any unauthorized access of information and ensure the integrity of information. Barnes & Noble College is certified as compliant with the Payment Card Industry Data Security Standard (PCI DSS) and shall perform annual PCI DSS compliance assessments during the term of this Agreement. Barnes & Noble College shall provide to University a copy of its most recent Attestation of Compliance (AOC) document upon written request.

- b. Data Security. Barnes & Noble College shall not collect, access, store, copy, analyze, monitor, disclose, transfer, or otherwise use any Customer Data (as defined below) except as necessary to perform under this Agreement or as authorized by the data subject or in accordance with the law. Barnes & Noble College shall comply fully with all applicable federal and state privacy and data protection laws, including but not limited to the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232g and its implementing regulations, as well as all other applicable regulations and directives relating to personally identifiable data (“PII”) and data privacy with respect to any such data. As required by this Agreement and applicable law, Barnes & Noble College shall protect all PII and the privacy and legal rights of University’s students, alumni, employees, visitors, guests, projects, transactions, clients, and customers. Barnes & Noble College shall take all reasonable steps and use commercially reasonable efforts to remedy any security breach of the data described herein and prevent any further security breach at Barnes & Noble College’s expense in accordance with applicable privacy rights, laws, regulations, and standards. To the extent legally permitted, Barnes & Noble College agrees to notify University promptly of any security breach that results in the unauthorized access, disclosure, or misuse of student or customer information obtained in connection with this Agreement (collectively, “Customer Data”). Barnes & Noble College’s report to University of any such security breach shall identify, to the extent reasonably available and permitted by law: (i) the nature of the unauthorized use or disclosure; (ii) the Customer Data used or disclosed; (iii) who made the unauthorized use or received the unauthorized disclosure, if known; (iv) what Barnes & Noble College has done or will do to mitigate the effect of the security breach; (v) what corrective action Barnes & Noble College has taken or will take to prevent future similar unauthorized use or disclosure; and (vi) such other information as reasonably requested by University. Barnes & Noble College shall provide all data security breach notifications and remediation in accordance with applicable law and any additional requirements of University. Upon written request from University, Barnes & Noble College shall provide detailed information to University regarding the date and nature of the security breach and confirmation that notifications have been provided to affected individuals. In the event that Barnes & Noble College fails to provide a required security breach notification and University chooses to provide notification to affected individuals, Barnes & Noble College shall reimburse University for actual costs incurred by University in responding to, and mitigating damages caused by, any security breach described in this paragraph, including all costs of notice and/or remediation. Barnes & Noble College agrees to cooperate at its own expense with University in any litigation or other formal action deemed necessary by University to protect its rights relating to the use, disclosure, protection, and maintenance of PII held by Barnes & Noble College.
- c. Accessibility. Barnes & Noble College acknowledges and warrants it will take necessary and appropriate action to ensure the Bookstore website complies, during the Term of this Agreement, with all applicable state and federal disabilities laws and regulations and Web Content Accessibility Guidelines (WCAG) 2.1 Level AA or the current version of those Guidelines. Barnes & Noble College further agrees to promptly respond to any complaint regarding the accessibility of the Bookstore website.

## **28. Insurance and Indemnification:**

- a. Barnes & Noble College shall purchase at its own cost and expense and maintain for the duration of the Agreement insurance coverage in accordance with Exhibit C: Insurance Requirements for Contractors, which is attached hereto and incorporated herein. At the request of University, Barnes & Noble College shall obtain and deliver certificates evidencing such insurance from its insurers.
- b. Barnes & Noble College agrees to indemnify, defend, and hold University, the State of Louisiana, the Louisiana Board of Regents, the University of Louisiana System, and each of their respective employees,

directors, officers, members, student workers, student interns, volunteers, representatives, institutions, departments, and agents (the "University Indemnified Parties") harmless from and against any and all losses, liabilities, demands, suits, judgments, claims, damages and costs, including reasonable attorney's fees, relating to personal injury or damage to real or personal tangible property (the "Claims") to the extent that such Claims arise out of or result from the act, fault, omission, or negligence of Barnes & Noble College, or that of Barnes & Noble College's officers, directors, agents, or employees, in performing Barnes & Noble College's services or obligations under this Agreement; provided, however, that Barnes & Noble College shall not be liable to University for any consequential damages, including without limitation lost profits or lost revenues, or Claims arising out of University's act, fault, omission or negligence or that of its officers, directors, agents, or employees.

## 29. General Terms and Conditions:

- a. Non-Discrimination. Neither Party shall discriminate on the basis of race, color, national origin, citizenship, genetic information, age, religion, sex (including pregnancy, gender identity, and transgender status), sexual orientation, disability, or military or veteran status in any manner prohibited by law, including in the admission to, access to, treatment in, or employment, in accordance with state and federal law, including but not limited to Title VI and Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Age Discrimination Act of 1975, the Equal Pay Act of 1963, Title IX of the Education Amendments of 1972, Executive Order 11246, the Rehabilitation Act of 1973, Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, the Uniformed Services Employment and Reemployment Rights Act of 1994, the Genetic Information Nondiscrimination Act of 2008, and the 1990 Americans with Disabilities Act, and amendments thereto.
- b. Governing Law; Venue. This Agreement and all claims arising out of or relating to this Agreement shall exclusively be governed by and interpreted in accordance with the laws of the State of Louisiana, without regard to conflicts of laws principles, including but not limited to La. R.S. § 17:3361; rules and regulations; executive orders; standard terms and conditions, special terms and conditions, and specifications listed in the RFP; and this Agreement. Venue of any action brought, after exhaustion of administrative remedies, arising out of or relating to this Agreement shall exclusively be in the Fifteenth Judicial District Court, Parish of Lafayette, State of Louisiana.
- c. Confidentiality.
  - i. The Parties acknowledge that certain information and trade secrets may be disclosed between them as it relates to Bookstore/Retail Services and to this Agreement, including, but not limited to, pricing, software, business and financial information, marketing and promotion plans, and any changes or improvements to the foregoing, including any cost savings measures, customer information, research, development, products, services, technical knowledge, personally identifiable student and employee information, or such information that is otherwise of value to the disclosing party and not generally known to third parties.
  - ii. "Confidential Information" shall be defined as that proprietary information, intellectual property, and all information, know-how, and data, technical or non-technical, owned or controlled by either Party, that is transmitted or otherwise disclosed by one Party to this Agreement (the "Disclosing Party") to the other Party to this Agreement (the "Recipient") and designated as confidential as set forth herein. Confidential Information shall include (i) disclosures of such information made at any time by or on behalf of a Party, whether made orally, in writing, electronically, or by any other means whether tangible, intangible, electronic, or observational; (ii) all analyses, compilations, data, studies, notes, memoranda, or other documents prepared by either Party containing or based in whole or in part on such information; and (iii) the fact that a Party has received Confidential Information.

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- iii. Confidential Information shall not include information that: (i) is in or enters the public domain without breach of this Agreement through no fault of a Party to this Agreement; (ii) Recipient can reasonably demonstrate was in its possession prior to first receiving it from Disclosing Party; (iii) Recipient receives from a third party without restriction on disclosure and without breach of a nondisclosure obligation; or (iv) information that is deemed public information as per the Louisiana Public Records Law, La. R.S. § 44.1, et seq. The non-disclosure obligations of this Section 29(c) shall not apply to information that is required to be disclosed in a judicial or administrative proceeding, for accreditation or reporting purposes, or is otherwise requested or required to be disclosed by law or regulation.
  - iv. Confidential Information which is disclosed in writing or electronically shall be clearly marked "CONFIDENTIAL." Confidential Information which is disclosed in any other manner, whether orally, observationally, or otherwise, shall be described as "confidential" when disclosed, and such designation shall be reduced to writing and delivered to Recipient by Disclosing Party within thirty (30) days of the disclosure.
  - v. Except as otherwise set forth herein, neither Party shall disclose any Confidential Information of the other to any third party or use Confidential Information for the benefit of a third party. Each Party shall take all commercially reasonable measures to protect the confidentiality of Confidential Information and to prevent its disclosure to others. The Parties shall not use Confidential Information for any purpose other than that for which it was disclosed, or which is otherwise permissible under this Agreement.
  - vi. Each Recipient may disclose the Confidential Information of Disclosing Party to Recipient's affiliates and their respective employees and agents who: (i) are directly involved in the performance of this Agreement, (ii) who have a need to know, and (iii) who are obligated to honor the restrictions on disclosure and use of such Confidential Information set forth in this Agreement (the persons to whom such disclosure is permissible being collectively known as "Representatives"). Each Party shall be responsible for any breach of this Section 29 by its Representatives.
  - vii. Confidential Information disclosed hereunder shall at all times remain the property of the Disclosing Party. No interest, license, right to use, or right under any patent of the United States or a foreign country, or any trade secrets, copyrights, or other rights, are granted by this Agreement or any disclosure of Confidential Information hereunder, nor shall this Agreement impair the right of a Party to contest the validity, scope, or alleged infringement of a patent or copyright.
  - viii. Upon any termination or expiration of this Agreement, each Party shall return to the other the other Party's Confidential Information in the form in which it was communicated, including but not limited to any electronic media version, such as CD-ROM or computer disk, and upon written request shall confirm to such other Party in writing that all Confidential Information has been so provided and that all copies thereof have been destroyed subject to compliance with Law.
  - ix. To the extent any Party determines it necessary or advisable to file a copy of this Agreement with a governmental agency, including the United States Securities and Exchange Commission, or otherwise in accordance with Law, that Party and its counsel shall engage in reasonable efforts with the other Party and its counsel to obtain confidential treatment of relevant portions of this Agreement, including, without limitation, product and service specifications and pricing information.
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- x. To the extent legally permissible, each Party agrees to notify the other Party of any unauthorized use or disclosure of Confidential Information and to take all actions reasonably necessary to prevent further unauthorized use or disclosure.
  - xi. If a Party is required by an interrogatory, subpoena, civil investigative demand, or similar process to disclose any Confidential Information, to the extent legally permissible, such Party shall promptly provide written notice to the other Party so the other Party may determine whether to seek to avoid or minimize the required disclosure.
  - xii. Each Party's obligation with respect to the Confidential Information of a Disclosing Party shall expire three (3) years after the termination or expiration of this Agreement; provided, however, that each Party's obligations with respect to the trade secrets of a Disclosing Party shall remain in effect throughout the Term and at all times thereafter, but only for so long as such information remains a trade secret.
- d. Notices. Any notice required or permitted under this Agreement shall be deemed to have been duly delivered when made (i) in writing and mailed by overnight delivery service or certified United States mail with postage prepaid and return receipt requested or (ii) email to the intended recipient at the address set forth for that Party below:

*If to University:*

University of Louisiana at Lafayette  
Marie C. Frank, Assistant Vice President of Administration and CPO  
Office of Purchasing  
P.O. Box 40197  
Lafayette, LA 70504-0197  
marie.frank@louisiana.edu

*If to Barnes & Noble College:*

Barnes & Noble College Booksellers, LLC  
Brian Stark, Senior Vice President of Stores  
Barnes & Noble College  
University of Central Florida Bookstore  
101 Aquarius Agora Drive, Orlando, Florida 32816  
bstark@bncollege.com

*With courtesy copy to:*

Barnes & Noble College Booksellers, LLC  
120 Mountain View Boulevard  
Basking Ridge, NJ 07920  
Attn: Legal Department  
legaldepartment@bncollege.com

- e. Environmental Matters. To the best of its knowledge, University is not aware of any health or environmental problems that currently exist or are likely to develop in the Leased Premises. University shall be responsible for remedying at its sole cost as soon as reasonably practicable any health or environmental problem at the Leased Premises, other than those caused by Barnes & Noble College or its employees, agents, contractors, subcontractors, vendors, or invitees. Barnes & Noble College shall be responsible for remedying at its sole cost as soon as reasonably practicable any health or environmental problem at the Leased Premises caused by Barnes & Noble College or its employees, agents, contractors, subcontractors, vendors, or invitees. Each



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Party shall be responsible for promptly notifying the other Party of the existence of any health or environmental problem it finds on the Leased Premises.

- f. Compliance with Laws; FERPA. Barnes & Noble College and University each shall comply with all laws, ordinances, rules, orders, and regulations of federal, state, and municipal governments applicable to each as well as to their respective performance under this Agreement.

To the extent Barnes & Noble College receives education records from University under this Agreement, Barnes & Noble College shall comply with applicable state and federal privacy laws and regulations, including FERPA. Specifically, for purposes of this Agreement, Barnes & Noble College is designated as a “school official” with “legitimate educational interests” in the “education records” provided by University to Barnes & Noble College hereunder (as each such term is defined under FERPA) and shall comply with the applicable FERPA provisions imposed on “school officials”. Barnes & Noble College shall not (i) use such education records for any purpose other than the purpose for which the disclosure was made (which purposes shall include but not be limited to fulfilling its duties under this Agreement) except as permitted or required by law, or (ii) disclose any such education records to a third party except as provided for in this Agreement, required by law, or authorized in writing by University or the applicable student. For the avoidance of doubt, University is solely responsible for complying with FERPA’s requirements with respect to annual notification of rights to its students.

- g. Independent Parties. The relationship established under this Agreement between University and Barnes & Noble College is that of independent third parties. This Agreement shall not be construed to create a partnership, joint venture, agency, or other association between the Parties or their respective employees. Unless otherwise provided in this Agreement, neither Party nor its employees, agents, or subcontractors has any authority to bind or act on behalf of the other Party. Nothing in this Agreement shall be construed to create any borrowed servant, joint employment, or leased employee status between the Parties or their respective employees or agents.
- h. Marks. The names, trademarks, and logos (“Marks”) of each Party are the exclusive property of such Party, and each Party reserves all rights in and to its own Marks. Each Party may use the Marks of the other Party only as set forth in this Agreement and only in connection with its performance under this Agreement, provided, however, Barnes & Noble College may use University’s name in any of its required public filings. Barnes & Noble College acknowledges that University licenses the use of its Marks on products through an agency agreement with the Collegiate Licensing Company. University licenses on a non-exclusive basis a large variety of University emblematic merchandise (“Insignia”) which is sold from locations on University campus and locations off of the campus. All Insignia for sale to the public must be licensed and a royalty must be paid. Barnes & Noble College agrees that any use it makes of the Marks of University shall be only as licensed unless any licensing requirements are specifically waived in writing by University. The Parties must agree in writing as to the form and content of all uses of the other’s Marks and of any promotional or advertising materials and the media in which such materials are to be used prior to their use, which approval the Parties shall not unreasonably withhold; and such use may be subject to such reasonable conditions as either Party may impose, including, but not limited to, conditions affording each Party adequate protection of its Marks. All uses of or references to the Marks shall inure to the benefit of the respective owner, and all rights with respect to the Marks not specifically granted in this Agreement shall be and are hereby reserved to the respective owner. The Parties shall use all appropriate legal notices (e.g., TM, etc.) as directed by the owning Party. The University will maintain ownership of and be responsible for maintaining the cost of its domain names. The Parties must expressly agree in writing to the incorporation into a domain name of any Party’s Marks by another Party. Such agreement must include, but is not limited to, the content, form, and ownership of such domain name.
- i. Limitation of Liability. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, SPECIAL, EXEMPLARY, OR INDIRECT DAMAGES OR EXPENSES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR BUSINESS INTERRUPTION, LOST USE,
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REVENUE, OR PROFIT, OR OTHER ECONOMIC LOSSES) EVEN IF SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

- j. Disclaimer. EXCEPT AS MAY BE EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO ITS PERFORMANCE UNDER THIS AGREEMENT, AND ALL WARRANTIES, EXPRESS AND IMPLIED, ARE EXPRESSLY DISCLAIMED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT AND ANY WARRANTIES THAT MAY ARISE FROM CUSTOM, USAGE OF TRADE OR ANY PREVIOUS COURSE OF DEALINGS BETWEEN THE PARTIES OR ANY OTHER PERSON. BARNES & NOBLE COLLEGE WILL NOT BE LIABLE IN ANY WAY RELATED TO ANY THIRD-PARTY WEBSITES OR THIRD-PARTY CONTENT, DATA, APPLICATIONS OR SYSTEMS.
- k. Waiver; Amendment. Any change, modification, alteration, variation, or amendment of this Agreement shall be valid only when it has been reduced to writing and executed by the duly authorized representatives of the Parties. No express waiver hereunder will affect any provision other than that occurrence to which the waiver is applicable and only for that occurrence. Failure or delay of a Party to enforce any of its rights under this Agreement is not deemed a modification or a continuing waiver by such Party of any of its rights hereunder.
- l. Assignment. Neither Party shall assign or transfer any rights, interest, or obligations under this Agreement, in whole or in part, without the prior written consent of the other Party; provided, however, that the University shall be permitted to assign its interest in this Agreement to the trustee for the University's outstanding bonds without the consent of Barnes & Noble College. Any assignment or transfer without such consent shall be deemed void and of no effect. Notwithstanding the foregoing, either Party may assign this Agreement upon written notice to the other Party (but without the prior written consent of the other Party) to any entity controlled by, controlling, or under common control with the assigning Party or to any successor corporation or entity resulting from a merger or consolidation with the assigning Party or the sale of all or substantially all of the assets of the assigning Party. Such assignment shall not relieve the assigning Party as the primary obligor under this Agreement, and the assigning Party shall continue to be bound by the Agreement. Notice of any such assignment or transfer shall be furnished promptly to University. Consent by either Party to any assignment in one instance shall not constitute consent by the Party to any other assignment. Purchases of goods and materials normally purchased by Barnes & Noble College or required by this Agreement shall not be construed as subcontracts, assignments, or delegations.
- m. Headings and Interpretation. The headings used in this Agreement are for convenience only and do not constitute substantive matter to be considered in construing its terms. The use in this Agreement of the terms (a) "include", "includes", "including", and "such as" shall be deemed in all cases to be followed by the words "without limitation" and (b) "shall", "must", and "will" are equivalent and indicate mandatory and definitive requirements in all cases.

When used in this Agreement, "University" includes all segments of the University, including all athletic and academic departments.

Each Party to this transaction represents it has been afforded the opportunity to negotiate the terms of this Agreement and to consult legal counsel regarding the same. This Agreement will be fairly interpreted and construed in accordance with its terms and without strict interpretation or construction in favor of or against either Party, and the Parties hereby waive and disclaim any principle of contract interpretation that would construe any ambiguity herein against either Party as the drafter hereof.

- n. Severability. If any term or condition of this Agreement or the application thereof is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the

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invalid term, condition, or application; to this end the terms and conditions of this Agreement are declared severable.

- o. Further Assurances. Each Party shall provide such further documents or instruments required by the other Party as may be reasonably necessary or desirable to give effect to this Agreement and carry out its provisions. Whenever this Agreement requires or contemplates any action, consent, or approval, such Party shall act reasonably and in good faith and (unless the Agreement expressly allows exercise of a Party's sole discretion) shall not unreasonably withhold or delay such action, consent, or approval.
- p. Remedies. Unless otherwise specified in this Agreement, each Party's rights and remedies (including but not limited to termination) are cumulative and not exclusive, are in addition to any other rights and remedies provided at law, in equity, or under this Agreement, and may be pursued separately or concurrently as such Party determines. Termination of this Agreement will not relieve any Party from any liability for any obligation or breach of this Agreement occurring prior to termination.
- q. Survival. The provisions of this Agreement which, by their nature, are required for the full interpretation of the Agreement or may be enforced subsequent to its termination or expiration (including, but not limited to, indemnification, confidentiality, and limitation of liability) will survive and will not be affected by the termination or expiration of this Agreement regardless of the reason for termination or expiration.
- r. Authority. Each Party represents and warrants (i) it has all rights, power, and authority to enter into this Agreement and to fully perform its obligations hereunder, (ii) the execution and delivery of this Agreement and the performance of its obligations hereunder have been duly and validly authorized by all necessary action, (iii) upon the full execution and delivery hereof, this Agreement constitutes a valid and binding obligation enforceable against it in accordance with the terms hereof, and (iv) the execution, delivery, and performance of this Agreement do not and will not conflict with any other license, instrument, contract, agreement, or other commitment or arrangement or instrument to which it is a party or by which it is bound.
- s. University Policies. Barnes & Noble College shall be responsible for compliance with all applicable University policies, safety and security measures, environmental and sustainability guidelines, and vehicle regulations, including but not limited to the University's Tobacco-Free Policy. Barnes & Noble College shall also be responsible for disseminating to its employees any and all updates to University policies, guidelines, etc., including but not limited to those concerning or relating to COVID-19, as found on policies.louisiana.edu or as otherwise provided by University to Barnes & Noble College in writing.
- t. Entire Agreement. This Agreement, together with the exhibits attached hereto, contains the entire agreement between the Parties with respect to the subject of this Agreement and contains all of the terms and conditions agreed upon with respect to the subject of this Agreement, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties; it being the intent of the Parties that neither shall be bound by any term, condition, or representations not herein written. This Agreement shall be binding upon and shall inure to the benefit of University and Barnes & Noble College and their successors and permitted assigns. This Agreement is enforceable only by University and Barnes & Noble College. There are no third-party beneficiaries under or pursuant to the terms of this Agreement. In the event this Agreement conflicts with any of the exhibits hereto, the Agreement shall control the exhibits. Furthermore, in the event that the RFP (Exhibit A) conflicts with information out of Barnes & Noble's proposal, attached hereto and incorporated herein as Exhibit "D", the RFP shall control.
- u. Counterparts and Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which individually shall be deemed original but all of which together shall constitute one and the same document. An electronic (e.g., Portable Document Format or PDF) copy of the original signature of the representative of a Party shall have the same validity as an original signature for the purpose of this Agreement. In accordance with La. R.S. § 9:2605B(1) and (2), the Parties hereto each agree that this transaction may be conducted by electronic means; and electronic signatures of the Parties to this

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Agreement shall be acceptable and satisfactory for all legal purposes, as authorized by the Louisiana Uniform Electronic Transactions Act, La. R.S. § 9:2601 through 9:2621.

*[Remainder of page intentionally left blank; signature page to follow.]*

IN WITNESS WHEREOF, the Parties, by signature below of their duly authorized representatives, have executed this Agreement as of the Effective Date.

**Barnes & Noble College Booksellers, LLC**

By: \_\_\_\_\_

Name: Marc Eckhart

Title: Vice President of Strategic Partnerships

Date: \_\_\_\_\_

**Board of Supervisors for the University of Louisiana System**

By: \_\_\_\_\_

Name: Dr. E. Joseph Savoie

Title: President, University of Louisiana at Lafayette

Date: \_\_\_\_\_