



## EXECUTIVE SUMMARY

**Recommendation that the Broward College District Board of Trustees authorize the Standard Contract for Services with Barnes & Noble College Booksellers LLC for Bookstore Services and Management, online, North, Central and South Campus bookstores. Fiscal Impact: \$0.00, Cumulative Amount: \$0.00, Revenue: \$6,500,000.00**

**Presenter(s): John Thornton, Vice Provost of Academic Operations**

**1. Describe the type and purpose of the agreement.** This agreement is a Standard Contract for Services with Barnes & Noble College Booksellers LLC for Bookstore Services and Management. Barnes & Noble LLC will provide their services on the North, Central, South Campus as well as online.

**2. For non-routine activities for which the College does not use a standard contract template, describe the business rationale for the activity and competitive selection process, if applicable.** Invitation to Negotiate (ITN-2023-161-OA – BOOKSTORE MANAGEMENT SERVICES) was utilized in this process. Barnes & Noble College Booksellers LLC, was determined to be the most qualified, responsible, and responsive respondent. The decision to recommend award to Barnes & Noble College Booksellers LLC was based on several key factors such as Bookstore Model offered (Traditional Operating Model / First Day, Scholarships, Minimum Annual Guarantee and Textbook affordability methods.

**3. Describe anything unusual about the agreement and why it was determined acceptable.**

Not Applicable. No unusual agreement(s) were made.

**4. [To Be Answered by Legal Department Only] Describe any unusual legal terms and conditions that were not resolved during the review process.**

The General Counsel's office has reviewed the agreement and any deviation to the College's standard terms has been deemed acceptable.

**This Executive Summary is approved by:**

**John Thornton  
Vice Provost of Academic Operations**

APPROVAL PATH: CS 164 Bookstore Management Services (ITN-2023-161-OA)

Review Executive Summary and Add Files	Kevin Delsoin	11/18/2024
Auto Complete - No IT Review Needed	Kevin Delsoin	11/18/2024
Department Head 1 Review	Kevin Delsoin	11/18/2024
Department Head 2 Review	Donald Astrab	11/18/2024
Department Head 3 Review	Jamonica Rolle	11/19/2024
Departments Approved-Auto Complete	Kevin Delsoin	12/2/2024
Auto Complete-No IT Review Needed	Raj Mettai	12/2/2024
Budget Review- Auto Complete	Christine Sims	12/4/2024
Contracts Coordinator Review	Natalia Triana-Aristizabal	12/2/2024
Procurement Review	Orlando Aponte	12/3/2024
Attorney Review	Kristina Raattama	12/4/2024
Attorney Rejected	Kristina Raattama	12/26/2024
Attorney Review	Kristina Raattama	1/6/2025

## CONTRACT FOR SERVICES TERMS AND CONDITIONS

This contract for services (“Contract”) is effective as of January 1, 2025 (the “Effective Date”) between the District Board of Trustees of Broward College, Florida (“College”) and BARNES & NOBLE COLLEGE BOOKSELLERS LLC (“Vendor”) (collectively, the “Parties”), will be in effect until the date which is five (5) years after the Effective Date or later date if any of the renewals in Exhibit A are exercised (“Contract”).

### **1. INVOICES AND PAYMENTS.**

A copy of all invoices (including an itemization of the date, hours expended, and description of the deliverable) shall be sent to the attention of Kevin Delsoin [kdelsoin@broward.edu](mailto:kdelsoin@broward.edu). Invoices may be submitted via email, facsimile or U.S. mail. The time at which payment will be due from the College will be approximately thirty (30) days from receipt of an undisputed invoice, acceptance of deliverables, and upon satisfaction of the College conditions that are detailed herein.

### **2. INDEMNIFICATION.**

For value received, the Vendor shall indemnify and hold the College, its officers, directors, board of trustees, agents, assigns, and employees harmless from liabilities, damages, losses and costs, including, but not limited to reasonable attorneys’ fees, to the extent caused by the negligence, recklessness or intentionally wrongful conduct of the Vendor and other persons employed or utilized by the Vendor in the performance of the Contract. The Vendor further acknowledges that it is solely responsible for ensuring its compliance and the compliance of its subcontractors, suppliers, agents, assigns, invitees and employees with the terms of this Contract. This paragraph shall survive the expiration or termination of this Contract.

### **3. INDEMNIFICATION FOR INFRINGEMENT OF ANY INTELLECTUAL PROPERTY CLAIMS.**

For value received, the Vendor shall indemnify and hold the College, its officers, directors, board of trustees, agents, assigns, and employees harmless from liabilities, damages, losses and costs, including, but not limited to reasonable attorneys’ fees for any claim or lawsuit brought alleging infringement of any intellectual property right associated with Vendor’s performance under this Contract, including its use, development or provision of any software, books, articles or any other materials (“Materials”). Vendor warrants that the materials are owned by or licensed to the Vendor. Vendor is solely responsible for ensuring its compliance and the compliance of its subcontractors, suppliers, agents, assigns, invitees and employees with the terms of this Contract. This paragraph shall survive the expiration or termination of this Contract.

#### **4. TERMINATION FOR DEFAULT.**

A “material breach” of this Contract is defined as any substantial, unexcused non-performance by failing to perform an act that is an important part of the transaction or performing an act inconsistent with the terms and conditions of the Contract. If the Vendor materially fails to fulfill its obligations under this Contract, the College will provide written notice of the deficiency by forwarding a Cure Notice citing the specific nature of the material breach. The Vendor shall have thirty (30) days to cure the breach. If the Vendor fails to cure the breach within the thirty (30) day period, the College may immediately terminate this Contract, in addition to exercising whatever legal and/or equitable remedies it chooses regarding Vendor’s breach of contract.

#### **5. TERMINATION FOR CONVENIENCE.**

The College may terminate this Contract with or without cause at any time for convenience upon 30 calendar days’ prior written notice to the Vendor. In the event of termination for convenience, the College shall compensate the Vendor for all authorized and accepted deliverables and/or services completed through the date of termination in accordance with the Statement of Work, which is attached hereto and incorporated herein as Exhibit “A.” The College shall be relieved of any and all future obligations hereunder, including but not limited to lost profits and consequential damages, under this Contract. The College may withhold all payments to the Vendor for such work until such time as the College determines the exact amount due to the Vendor.

#### **6. AUDIT.**

The Vendor shall maintain all records, books and documents pertinent to the performance of this Contract in accordance with generally accepted accounting principles consistently applied. The College shall have inspection and audit rights to such records for a period of 3 years from final payment under this Contract. Records relating to any legal disputes arising from performance under this Contract shall be made available until final disposition of the legal dispute. If the audit reveals that Vendor owes the College any funds, Vendor shall pay for the audit and return all funds to the College immediately.

#### **7. NONDISCRIMINATION.**

The Vendor hereby assures that no person shall be excluded on the grounds of race, color, religion, national origin, disability, age gender, marital status, sexual orientation or any other basis prohibited by law from participation in, denied the benefits of, or otherwise be subjected to discrimination in any activity hereunder. The Vendor shall take all measures necessary to effectuate these assurances.

#### **8. STATE OF FLORIDA PUBLIC ENTITY CONTRACTING PROHIBITIONS.**

The Vendor represents, warrants and covenants that it is not currently and, throughout the term of this Contract, shall not be ineligible for the award of this Contract under Sections 287.133, 287.134 and 287.135, Florida Statutes. The Vendor understands and accepts that this Contract maybe void, voidable or subject to immediate termination by the College if the representation, warranty and covenant set forth above is violated. The College, in the event of such termination, shall not incur any liability to the Vendor for any work or materials furnished.

## **9. PUBLIC RECORDS/REQUEST FOR CONTRACTOR RECORDS.**

The Vendor shall allow public access to all project documents and materials in accordance with the provisions of Chapter 119, Florida Statutes. Should the Vendor assert any exemptions to the requirements of Chapter 119 and related statutes, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the Vendor and Vendor shall bear all costs and fees related to the same.

If the Vendor meets the definition of “contractor” under Section 119.0701, Florida Statutes, in addition to other contract requirements provided by law, the Vendor must comply with public records laws, and shall:

- (a) Keep and maintain public records required by the College to perform the service.
- (b) Upon request from the College, provide the College with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Vendor does not transfer the records to the College.
- (d) Upon completion of the Contract, transfer, at no cost, to the College all public records in possession of the Vendor or keep and maintain public records required by the College to perform the service. If the Vendor transfers all public records to the College upon completion of the Contract, the Vendor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Vendor keeps and maintains public records upon completion of the contract, the Vendor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the College, upon request from the College’s custodian of public records, in a format that is compatible with the information technology systems of the College
- (e) IF THE VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE VENDOR’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE COLLEGE AT (954) 201-7639, LEGALSERVICES@BROWARD.EDU, OR 111 EAST LAS OLAS BOULEVARD, #523, FORT LAUDERDALE, FL 33301.

IN ADDITION, THE VENDOR ACKNOWLEDGES THAT THE COLLEGE CANNOT AND WILL NOT PROVIDE LEGAL ADVICE OR BUSINESS ADVICE TO THE VENDOR WITH RESPECT TO ITS OBLIGATIONS PURSUANT TO THIS SECTION RELATED TO PUBLIC RECORDS. THE VENDOR FURTHER ACKNOWLEDGES THAT IT WILL NOT RELY ON THE COLLEGE OR ITS COUNSEL TO PROVIDE SUCH BUSINESS OR LEGAL ADVICE, AND THAT THE VENDOR IS HEREBY ADVISED TO SEEK BUSINESS/LEGAL ADVICE WITH REGARD TO PUBLIC RECORDS MATTERS ADDRESSED BY THIS CONTRACT. THE VENDOR ACKNOWLEDGES THAT ITS FAILURE TO

COMPLY WITH FLORIDA LAW AND THIS CONTRACT WITH RESPECT TO PUBLIC RECORDS SHALL CONSTITUTE A MATERIAL BREACH OF THIS CONTRACT AND GROUNDS FOR TERMINATION PURSUANT TO PARAGRAPH 4.

**10. NO WAIVER OF SOVEREIGN IMMUNITY.**

Nothing contained herein shall be construed or interpreted as: (1) denying to either party any remedy or defense available to such party under the laws of the State of Florida or the United States; (2) the consent of the State of Florida or their respective officers, employees, servants, agents, agencies, or public bodies corporate to be sued; or (3) a waiver of sovereign immunity of the State of Florida beyond the waiver under Section 768.28, Florida Statutes. This section shall survive the termination of all performance or obligations under this Contract and shall be fully binding until such time as any proceeding brought on account of this Contract is barred by any applicable statute of limitations.

**11. COLLEGE'S TAX EXEMPTION.**

The Vendor shall not utilize the College's tax exemption certificate number issued pursuant to Sales and Use Tax Law, Chapter 212, Florida Statutes, when purchasing materials used to fulfill its contractual obligations with the College. The Vendor shall be responsible and liable for the payment of all applicable FICA/Social Security and other taxes resulting from this Contract.

**12. ASSIGNMENT/GUARANTOR.**

The Vendor shall not assign, delegate or otherwise transfer its rights and obligations as set forth in this Contract without the prior written consent of the College. Any attempted assignment in violation of this provision shall be null and void. The Vendor shall not pledge the College's credit or make the College a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. Pledging the College's credit shall also be construed to include the use of "factoring agents" or the practice of selling business accounts receivables to a third party at a discount for the purpose of obtaining funding which is also expressly prohibited.

**13. FORCE MAJEURE.**

Notwithstanding any provisions of this Contract to the contrary, the Parties shall not be held liable for any failure or delay in the performance of this Contract that arises from fires, floods, strikes, embargoes, acts of the public enemy, unusually severe weather, outbreak of war, restraint of government, riots, civil commotion, declared public health emergency restrictions, force majeure, act of God, or for any other cause of the same character which is unavoidable through the exercise of due care and beyond the control of the Parties. Failure to perform shall be excused during the continuance of such circumstances, but this Contract shall otherwise remain in effect.

**14. AMENDMENTS.**

This Contract may be amended only when reduced to writing and signed by both Parties.

**15. ENTIRE AGREEMENT.**

This Contract states the entire understanding and agreement between the Parties and no course or prior dealing, usage of the trade or extrinsic or parol evidence shall be relevant to supplement, vary or explain any term used with respect to this Contract. The acceptance or acquiescence of any course of performance rendered under this Contract shall not be construed as a waiver nor shall it be relevant to define or vary any term stated herein. This Contract shall inure to the benefit of and shall be binding upon the Parties, their respective assigns and successors in interest.

**16. COMPLIANCE.**

The Vendor, its employees, subcontractors or assigns shall comply with all applicable federal, state and local laws and regulations relating to the performance of the Contract.

**17. APPLICABLE LAW/VENUE.**

The laws of the State of Florida shall govern all aspects of the Contract. In the event it is necessary for either Party to initiate legal action regarding the Contract, venue for all claims shall be in Broward County, Florida.

**18. VENDOR NOT TO LIMIT WARRANTY.**

The Vendor shall not limit or exclude any express or implied warranties and any attempt to do so shall render this Contract void, at the option of the College. The Vendor warrants that the services comply with the deliverables in the Statement of Work, and are expressly fit for their particular purpose, and are in accordance with industry standards.

**19. TERMS/PROVISIONS.**

Should any term or provision of this Contract be held, to any extent, invalid or unenforceable, as against any person, entity or circumstance during the term hereof, by force of any statute, law, or ruling of any forum of competent jurisdiction, such invalidity shall not affect any other term or provision of this Contract, and the Contract shall remain operable, enforceable and in full force and effect to the extent permitted by law.

**20. STATEMENT OF SERVICES.**

The Vendor shall, to the satisfaction of the College, fully and timely perform all work items described in the Statement of Work. As part of the services to be provided by the Vendor under this Contract, the Vendor shall substantiate, in whatever form reasonably requested by the College, the methodology, lab analyses, scientific theories, data, reference materials and research notes to formulate its opinions. This requirement shall survive the expiration or termination of this Contract. The Parties agree that time is of the essence in the performance of each and every obligation hereunder. It is the Vendor's responsibility to advise its employees or hired workers of the nature of the project, as described in the Contract and the Statement of Work attached hereto. The Vendor shall determine the method, details and means of performing the services, within the parameters established by the Statement of Work. The College may provide additional guidance and instructions to the Vendor's employees or hired workers where necessary or appropriate as determined by the College. The Vendor agrees to abide by any and all additional guidance and instructions.

## **21. COMPENSATION/CONSIDERATION.**

The total consideration for all work required by the College pursuant to the Contract shall not exceed the amount indicated in the Statement of Work. Should the Vendor incur any travel expenses, payment for such travel will be in accordance with Section 112.061, Florida Statutes. The Vendor shall supply the College with receipts and supporting documentation for all reimbursable travel expenses. The Vendor, by executing the Contract, certifies to truth-in-negotiation, specifically, that wage rates and other factual unit costs supporting the consideration are accurate, complete and current at the time of contracting. If the total consideration for this Contract is subject to multi-year funding allocations, funding for each applicable fiscal year of this Contract will be subject to College Board of Trustees budgetary appropriation. In the event the College does not approve funding for any subsequent fiscal year, this Contract shall terminate upon expenditure of the current funding, notwithstanding other provisions in this Contract to the contrary. The College will notify the Vendor of the termination in writing.

## **22. INSURANCE.**

The insurance requirements in terms of types of insurance and the amount of insurance will vary depending on the Statement of Work. The College will determine the amounts and types of insurance required, if any, for the work performed. The Vendor shall procure and maintain, through the term of this Contract, insurance coverage required by the College, each with a limit of not less than the following:

- A. Commercial General Liability
  - 1. Each Occurrence \$ 1,000,000
  - 2. Personal & Advertising Injury \$ N/A
  - 3. General Aggregate \$ 2,000,000
  - 4. Products-Completed Operations \$2,000,000  
Policy must contain contractual liability coverage.
  
- B. Automobile Liability \$ 300,000  
Coverage required for all owned, non-owned and hired vehicles used in connection with this Contract.
  
- C. Worker's Compensation in accordance with Florida Statutory limits and Employer's Liability Insurance.
  
- D. Professional Liability
  - 1. Per Occurrence \$ 1,000,000
  - 2. General Aggregate \$ N/A
  
- E. Cyber Liability \$ 1,000,000
  
- F. Pollution Liability
  - 1. Per Occurrence \$ N/A
  - 2. General Aggregate \$ N/A  
Coverage may be provided through a stand-alone Pollution Liability policy or added to the Commercial General Liability policy through endorsement.

The coverage required shall extend to all employees and subcontractors of the Vendor. The Vendor must provide a Certificate of Insurance completed in full, indicating the producer, insured, carrier's name, and Best rating, policy numbers and effective and expiration dates of each type of coverage required. The Certificate of Insurance shall be signed by an authorized representative and shall identify the College as an additional insured as required. No work is authorized until such time as the College has received a Certificate of Insurance in compliance with the above requirements.

### **23. OWNERSHIP OF WORKS.**

If the Contract involves the creation or development of works entitled to intellectual property protection, such works shall be considered works for hire and ownership shall vest in the College. For all other works created or developed by Vendor under this Contract for the benefit of College which are either not eligible to be works for hire or are not eligible for intellectual property protection, Vendor hereby grants to College a perpetual, non-transferable, exclusive right to use, reproduce, perform, display, distribute copies and make derivative works of such works, as applicable. For purposes hereof, works includes, but is not limited to, all documents, technical reports, research notes, scientific data, computer programs, including the source and object code. Any equipment purchased by the Vendor with College funding shall be returned and title transferred from the Vendor to the College upon expiration or termination of the Contract.

### **24. COMPLIANCE/LICENSES.**

The Vendor, its employees, subcontractors or assigns, shall obtain, at its own expense, all licenses, permits and other authorizations necessary to comply with all applicable federal, state and local laws and regulations relating to the performance of the Contract. The Vendor is also responsible for compliance with all labor and employment laws as well as all Federal, State, and local discrimination laws. The Vendor is solely responsible for compliance with all labor and tax laws pertaining to its officers, agents, and Vendor employees and shall indemnify and hold the College harmless from any failure by Vendor to comply with such laws and this indemnification obligation shall survive the expiration or earlier termination of the Contract.

### **25. INDEPENDENT CONTRACTOR.**

The Vendor shall be considered an independent contractor and nothing in this Contract shall be interpreted to establish any relationship other than that of an independent contractor between the Parties and their respective employees, agents, subcontractors or assigns, during or after the term of the Contract. Both Parties are free to enter into contracts with other Parties for similar services. The College assumes no duty with regard to the supervision of the Vendor and the Vendor shall remain solely responsible for compliance with all safety requirements and for the safety of all persons and property at the site of performance under the Contract. In the event the Vendor is a sole proprietor, the Vendor is responsible for submitting legally required tax returns to the Federal Government.

### **26. DISPUTES.**

In the event a dispute arises which the Vendor and the College cannot resolve between themselves, the Parties shall have the option to submit to nonbinding mediation. The mediator or mediators shall be impartial, shall be selected by the Parties and the cost of the mediation shall be borne equally by the Parties. The mediation process shall be confidential to the extent permitted by law. Mediation shall not occur unless both Parties agree in writing.

**27. E-VERIFY.**

If the Vendor meets the definition of “contractor” under Section 448.095, Florida Statutes, in addition to other contract requirements provided by law, the Vendor shall register with and use the E-Verify system operated by the United States Department of Homeland Security to verify the work authorization status of all its employees hired during the term of this Agreement. The Vendor shall also require all subcontractors performing work under this Agreement to use the E-Verify system for any employees they may hire during the term of this Agreement. The Vendor must provide evidence of compliance to the College as required under Section 448.095, Florida Statutes. Failure to comply with this provision is a material breach of the Agreement, and the College may terminate the Agreement at its sole discretion without liability. The Vendor shall be liable for all costs incurred by the College resulting from the Vendor’s noncompliance with the requirements of this section.

**28. CHANGE IN PERSONNEL.**

The College may at any time and at its sole discretion request that the Vendor replace any Vendor personnel provided by the Vendor to work on this Contract if the College believes that it is in the best interest of the College to do so. The College may, but will not be required to, provide a reason for requesting the replacement of personnel. Such change in personnel shall be made immediately upon the College’s written request for a change of personnel. The Vendor shall place the above language in any contract that it has with subcontractors. The Vendor will enforce the replacement of subcontractor personnel upon a request by the College.

**29. BACKGROUND CHECKS.**

**This clause applies to long term Vendors working on site, including, but not limited to, Janitorial Services, Food Services and Security. In addition, this clause applies to Vendors providing childcare services, on site or off site.** Vendor shall conduct thorough background checks for all of the Vendor’s employees or hired workers who will be working on any College site. The background checks shall consist of education verification, a national criminal check for state and federal felonies and misdemeanors, and a check on immigration status in accordance with the above provision titled “E-VERIFY.” After reviewing the results of the background check, the Vendor shall determine whether the Vendor’s employee and/or hired worker meets the necessary criteria for the position sought to be filled by the College. The College will rely on the Vendor’s assessment of its employees’ or hired workers’ suitability to be hired for the position(s) sought to be filled by the College, based on the background check conducted by the Vendor. Prior to allowing any employees or hired workers to work on-site at College facilities, the Vendor will provide written verification to the College that a complete background check, as described above, was conducted for any such employee or hired worker. The Vendor will place the above language in any contract that it has with its subcontractors and is responsible for enforcement of this provision.

**Vendor who has long term onsite workers performing work at College facilities agrees to be bound by the College policies and standards of conduct listed in the “Contractor Policy Code Acknowledgement Form,” which is attached hereto and incorporated herein as Exhibit “B.”**

**30. ANNOUNCEMENTS AND PRESS STATEMENTS.**

No party shall, except with prior written consent of the other party on each occasion, make any press or media announcements concerning the Agreement or use the name, logos, or trademarks of any other party, or any version, abbreviation, or representation of them, in any advertising or other form of publicity or fundraising without the written permission of the party whose name, logo, or trademark is sought for use. In the case of the College, permission must be granted by its Senior Director, Auxiliary Services (currently Kevin Delsoin) or that position’s designee, and in the case of the other party, permission must be granted by its VP Stores (currently Bobby Hamous) or that position’s designee.

**31. EMPLOYMENT BENEFITS.**

Vendor expressly understands and agrees that Vendor, its officers, agents, and employees, are not entitled to any employment benefits from the College.

**32. STOP WORK ORDER.**

The College may order that all or part of the work stop if circumstances dictate that this action is in the College’s best interest. Such circumstances may include, but are not limited to, unexpected technical developments, direction given by the College’s Board of Trustees, a condition of immediate danger to the College, the Vendor or the public, or the possibility of damage to equipment or property. This provision shall not shift responsibility for loss or damage, including but not limited to, lost profits or consequential damages sustained as a result of such delay, from the Vendor to the College. If this provision is invoked, the College shall notify the Vendor in writing to stop work as of a certain date and specify the reasons for the action, which shall not be arbitrary or capricious. The Vendor shall then be obligated to suspend all work efforts as of the effective date of the notice and until further written direction from the College is received. If deemed appropriate by the College and in the event work is resumed, the College may amend this Contract to reflect any changes to the Statement of Work and/or the project schedule.

**33. ADDITIONAL TERMS AND CONDITIONS.**

Parties shall initial here if there are any changes, deletions and/or additions to the terms and conditions and they are contained in Exhibit “C.”

BH  
\_\_\_\_\_  
College                      Vendor

**FOR VENDOR USE ONLY**

Vendor Name (type)	<u>Barnes &amp; Noble College Booksellers, LLC</u>	Tax ID No.	<u>27-0884085</u>
Authorized Representative	<u>Bobby Hamous</u>	Title	<u>VP, Stores</u>
Address	<u>120 Mountainview Blvd. Basking Ridge, NJ 07920</u>	Telephone	<u>205.531.7444</u>

Signature of Vendor Bobby Hamer Date January 6, 2025  
Attested By Name (type) Andy Shaffer Title Director, Stores  
Signature of Attester [Signature] Date Signed January 6, 2025

**FOR COLLEGE USE ONLY**

Contract Originator Name \_\_\_\_\_ Title \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

AVP/Dean Name \_\_\_\_\_ Title \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

Campus President/VP Name \_\_\_\_\_ Title \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

Senior Vice President \_\_\_\_\_ Title \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

**IF REQUIRED**

College President Name \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

*Approved as to Form and Legality*

Signature \_\_\_\_\_ Date \_\_\_\_\_

Board Chairperson Name \_\_\_\_\_

Signature

\_\_\_\_\_

Date

\_\_\_\_\_

**Contract for Services**

**Statement of Work**

**Exhibit “A”**

This Contract includes the terms and conditions and provisions of the solicitation **Invitation To Negotiate ITN-2023-161-OA – BOOKSTORE MANAGEMENT SERVICES**, with latest Amendments, and the Vendor’s response/reply, with Best And Final Offer (BAFO) and latest Amendments. In the event of any conflict and/or inconsistency between the contract documents, the order of precedence shall be as follows:

- 1) Contract for Services and Exhibits, with latest Amendments.
- 2) Amendments to the ITN document, if any, with the latest taking precedence and chronologically thereafter.
- 3) ITN document.
- 4) Vendor Best and Final Offer (BAFO) dated October 21, 2024
- 5) Amendments to the Vendor response/reply, if any, with the latest taking precedence and chronologically thereafter.
- 6) Vendor response/reply dated April 2, 2024, as amended.

**BACKGROUND.** The College currently has a total of three (3) bookstores located in the College’s North, Central, and South Campuses, along with a café bookstore located on the North Campus. “Bookstores” shall mean all bookstores and café bookstores operated by Vendor on College’s campuses as well as the e-commerce bookstore site, as mutually agreed in writing upon from time to time. These Bookstores provide new and used books for purchase or limited rental, and e-books. Additionally, the Bookstores sell merchandise and food items.

The Bookstores shall offer students a wide range of products including new, used, digital, and rental textbooks, trade books, and reference book. The Bookstores also provide an extensive assortment of non-textbook merchandise, customized school spirit apparel, gifts, and graduation necessities to convenience items, uniforms, and the latest technology products.

The College abides by all Florida Statutes in making all educational materials available to the students. The curriculum is established by the Academic Deans at each campus and provided to the bookstore operators typically 60 days in advance of an educational semester.

**CONTRACT TERM.** The Contract commences on the Effective Date and continues for a period of five (5) years (“Initial Term”).

**CONTRACT RENEWAL(S).** The Initial Term of the Contract may, by mutual agreement between the College and the Vendor, upon final College approval, be renewed for one (1) additional five (5) year period, and if needed, extended for 180 days beyond the expiration date of the final renewal period upon mutually agreeable written terms.

The College will, if considering renewal, request a letter of intent to renew from the Vendor. The Vendor will be notified in writing when the recommendation has been acted upon by the College.

**ADDITIONAL PRODUCTS AND/OR SERVICES MAY BE ADDED OR DELETED.**

Although this Contract identifies specific products and/or services, it is hereby agreed and understood that products and/or services may be added to or deleted from this Contract at the option of the College upon thirty (30) days written notice. During the Contract term, if a need arises for a product and/or service not included in the resulting Contract, the College may request a quote for a specific product and/or service. Should College desire to sell or provide course materials or general merchandise that is sold by a third party vendor, Vendor shall have the right of first offer to provide that content or merchandise to College's students. College shall provide written notice to Vendor of the course materials or general merchandise desired, and Vendor shall inform College by written notice within thirty (30) days whether it desires to offer the same. Should Vendor not be able to provide such selected content or merchandise in a manner that is comparable with another third party vendor, as determined by College in its sole and reasonable discretion, then College shall have the right to sell or provide the third party product without Vendor involvement.

Additionally, the College may upon mutual agreement with the Vendor, require, by written order, changes altering, adding to, or deducting from the contract specifications, provided that such changes are within the general scope of the Contract.

**PROBATION PERIOD.** The first three months of the Contract will be considered probationary. The probationary period may be extended for additional three-month periods if the College deems necessary. The College representative will notify the Vendor of any Contract deficiencies verbally and in writing. The situation must be remedied within a time period relative to the gravity of the situation and the representative of the College shall be notified when corrections have been completed. If, in the opinion of the College, the deficiencies observed are not satisfactorily corrected within a reasonable amount of time, the College reserves the right to terminate the Contract per the termination of contract provisions. In addition, the College reserves the right in its best interest to re-award to the next approved Proposer or to review its needs to re-solicit.

**CONTRACT ADMINISTRATION.** The responsibility and authority for the administration of this Contract shall be assigned to the Auxiliary Services Department, hereinafter referred to in this proposal as Contract Administrator. The Vendor will be required to appoint one or more primary account representatives to work with the College in the administration of this Contract. In the event this representative does not meet the College's requirements, the successful Vendor agrees that it will assign a replacement immediately.

**PRICE ADJUSTMENTS.** Prices offered shall remain firm throughout the Initial Term of the Contract. If price adjustments are allowed, the Vendor may only request price adjustment at the time of invitation to renew the Contract, approximately sixty (60) days prior to Contract expiration, or only during other approved periods. Requests for price adjustments shall be fully documented and shall not exceed the percentage of change in the applicable index, as determined by the College, established by the Bureau of Labor Statistics ([www.bls.gov](http://www.bls.gov)). In the event that the

applicable index indicates a negative price trend, the College reserves the right to request a reduction in Contract prices equal to the percentage of change. The College reserves the right to not grant price adjustments or to not renew any Contract regardless of price considerations.

**EQUITABLE ADJUSTMENT.** The College may, in its sole and absolute discretion, after receipt of a written request therefor by the Vendor and any other documentation, data or information reasonably requested by the College including with respect to any material change in the allocation of rights, obligations, risks, and liability between the College and the Vendor and the financial, technical, construction, commercial, and economic viability of and consistency with the parties objectives and goals for the project, make an equitable adjustment in the Contract terms or pricing if pricing or availability of supply is affected by extreme and unforeseen volatility in the marketplace, that is, by circumstances that satisfy all the following criteria: (1) the volatility is due to causes wholly beyond the Vendor's control, (2) the volatility affects the marketplace or industry, not just the particular Contract source of supply, (3) the effect on pricing or availability of supply is substantial, and (4) the volatility so affects the Vendor that continued performance of the Contract would result in a substantial loss. The College shall, in its sole and absolute but reasonable discretion, determine whether the aforementioned criteria have been met.

**PURCHASE ORDERS.** All purchase orders shall bear the Contract number, shall be placed by the College directly with the Vendor, and shall be deemed to incorporate by reference the Contract and solicitation terms and conditions. Purchase orders issued pursuant to this Contract must be received by the Vendor in a timely manner. The Vendor is obliged to fill those orders in accordance with the Contract's terms and conditions. Vendors are required to accept purchase orders specifying delivery schedules exceeding the contracted schedule even when such extended delivery will occur after expiration of the Contract. The duration of purchase orders for recurring deliveries of commodities or performance of services shall not exceed the expiration of the Contract by more than twelve (12) months.

**SCOPE OF WORK.**

Vendor represents it is a qualified and experienced company capable of providing full-service, turnkey bookstore operations for the Bookstores. Vendor agrees to perform the services specified under this Contract with that standard of care, skill, and diligence normally provided by a first class, professional organization in the performance of similar services provided to other public colleges, and to perform the services in a timely manner as required by this Contract.

**1. CALENDAR OF OPERATING HOURS.**

Vendor shall maintain a schedule of business operating hours and weeks for the Bookstores in accordance with the College's official calendar to meet the needs of the students, faculty, and staff.

- a. Operating hours shall be extended during each registration period, including the initial two weeks of the College fall and spring semesters, and the first week of each summer session.

- b. Operating hours shall be coordinated with the College's Senior Director of Auxiliary Services.
- c. College shall have final approval on operating hours.

**2. MANAGEMENT AND STAFF.**

Vendor shall staff the Bookstores with experienced and qualified managerial and clerical personnel. During peak "rush" periods, Vendor shall utilize sufficient additional employees at the Bookstores to avoid unnecessary lines and to expedite making educational materials available to students.

- a. Bookstore personnel shall continue to provide services only as long as their work and personal behavior are acceptable to the Vendor and the College. Vendor will comply with requests by College to remove or reassign 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.
- b. All Bookstore employees are Vendor employees.

**3. PERSONNEL/STAFF RELATIONS, WAGES, AND BENEFITS.**

Vendor shall be responsible for the wages and benefits of all its employees at the Bookstores and has the right to set its own wages and benefits in accordance with Florida State Labor Laws. Vendor shall employ Broward College students at the Bookstores whenever feasible.

**4. BOOK ORDERS AND DEADLINES.**

Vendor shall fill orders for books and required supply items from term to term in accordance with textbook and supply adoptions by the faculty.

- a. The Bookstores' manager shall be given notice by the faculty or authorized department designees of the textbook and supply adoptions for all courses offered, in accordance with the applicable Florida statute(s).
- b. Vendor shall be responsible at its cost and expense for contacting in a timely manner all faculty members for their textbook and supply adoptions. The College shall not be responsible for compiling nor maintaining a list of such adoptions.

**5. BOOKSTORE OPERATING EXPENSES.**

Vendor is responsible for paying all operating expenses related to the operation of the Bookstores in accordance with the requirements of this Contract, at Vendor's expense, including those relate to:

- a. The administration and maintenance of all employment and payroll records for Bookstore employees including those pertaining to taxes, withholdings, and other benefits and compensation as required by law.
- b. The financial and accounting administration including sales tax collection, reporting and payment for merchandise sold, except any property, excise or municipal taxes as applicable, on the Bookstores and the building in which the Bookstores are located.
- c. Maintenance, upgrades and repair of technology systems within the Bookstores.
- d. General custodial services including trash removal to a site on-campus designated by the College.
- e. Loss prevention services.
- f. Long distance telephone services, through a vendor selected by Vendor.
- g. Point of sales systems and any integration with, and connection to, the College's network.
- h. All personnel training costs.

**6. SERVICES PROVIDED BY VENDOR**

Vendor shall operate the Bookstores as an independent contractor and with its own credit and preferred vendors, with the facility and equipment agreed upon. The scope requirements include, but is not limited to, selling and renting physical, customized and digital books; supplying merchandise and food items; implementing improved purchasing and delivery methods to enhance customer service; and increase sales across all product categories. Specifically, the services of the Bookstores shall include, but are not limited to, the following:

- a. Vendor shall provide state-of-the art retail bookstore facilities at the Bookstores throughout the Initial Term and any Renewal Terms.
- b. Vendor shall provide excellent customer service to faculty, staff, guests, and customers at the Bookstores.
- c. Vendor shall seek customer feedback on a regular basis and share such feedback with the College Administrator.
- d. Vendor shall sell at the Bookstores various items typically found in college bookstores, including but not limited to books, educational supplies, notebooks, stationery, desk and room accessories, gift items, class and alumni rings and jewelry, and clothing any and items bearing a College emblem, logo, insignia, or other identifying mark. The Vendor shall sell general merchandise at prices competitive in the local area and in the college bookstore industry.

- e. Vendor shall provide 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, textbook rentals, open educational resources (“OER”) available for purchase and materials published or distributed electronically, through the Learning Management System (“LMS”), sold over the Internet, or through hosted commerce links. The Vendor shall provide exclusive on-line services through the Bookstores website including fulfillment of any distance learning material needs during the term of this Contract.
- f. Vendor shall provide exclusive custom publishing services for the College. 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 Bookstores. Complimentary desk copies of course packs shall be provided to faculty members.
- g. Vendor shall provide special book order services for students, faculty, and staff, and make every effort to obtain the earliest possible delivery of such books.
- h. Vendor shall provide charge sales for supplies for College departments and offices. Payments for such charge sales shall be guaranteed by College and paid within thirty (30) days of receiving an invoice from Vendor. Vendor shall provide the following discounts:
  - Vendor shall extend a ten percent (10%) discount to College faculty and staff, as well as a twenty percent (20%) discount on all authorized departmental purchases, on mutually agreed upon categories of campus store product. Exceptions may include adopted textbooks, special orders, sale books, class and alumni rings, computer software, periodicals, discounted merchandise, computer hardware, stamps, bus passes, health and beauty aids, food, snacks, and beverages.
  - Vendor shall offer a twenty percent (20%) discount on all College purchases except, special orders, sale books, class and alumni rings, computer software, periodicals, discounted merchandise, computer hardware, stamps, bus passes, health and beauty aids, food, snacks, and beverages.
  - Vendor shall offer College instructors at least ten percent (10%) discount on special orders and textbooks for academic instructional use.
- i. Vendor will participate with College in new student orientation and alumni and faculty outreach programs. To facilitate these programs, College shall provide Vendor with all enrolled student, parent, alumni and faculty email lists within thirty (30) days of execution of the Contract and no later than August 30 of each contract year thereafter. Such lists are Confidential Information (hereinafter defined) of College and subject to the confidential obligations set forth herein. To the extent the lists include FERPA protected information, Vendor is a designated school official and shall comply with all FERPA requirements and limitations on use. The parties acknowledge and agree that because Vendor based its

financial offer to College in reliance on obtaining such emails each year of the term of the Contract, in the event College does not timely provide Vendor such emails, the parties shall renegotiate the financial terms of the Contract in good faith.

- j. Vendor, in conjunction with College, will implement Vendor's integrative technologies, including but not limited to registration, student financial aid, LMS and AIP integrations, and enrollment feeds.

**7. VENDORS EXCLUSIVE RIGHTS.**

- a. Vendor shall be designated the exclusive agent to process all campus debit card and financial aid transactions for Bookstore merchandise.
- b. Except as otherwise provided herein, Vendor shall be the exclusive on-campus and internet seller for various items typically found in the Bookstores, including but not limited to books, educational supplies, notebooks, stationery, desk and room accessories, gift items, class and alumni rings and jewelry, and clothing any and items bearing a College emblem, logo, insignia, or other identifying mark. Vendor acknowledges that College retains the right to brand its own general merchandise for marketing and distribution (e.g., promotional and giveaway items) as it sees fit. In the event College 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, Vendor shall have the right of first offer with regard to such opportunities. College shall provide written notice to Vendor of such retail opportunities and Vendor shall inform College by written notice within thirty (30) days whether it desires to offer the same. Should Vendor not be able to provide such retail opportunities in a manner that is comparable with another third party vendor, as determined by College in its sole and reasonable discretion, then College shall have the right to sell or provide the third party product without Vendor involvement.
- c. Except as otherwise provided herein, College shall not contract with any third party to provide any services of the type outlined in this Contract, whether on or off campus, through e-commerce sites, or hyperlinks to alternate sources. College acknowledges and agrees any attempt to circumvent Vendor by providing such services itself or entering into any oral or written agreement or arrangement with a third party for such services and sources could materially and detrimentally impact the revenue stream of this Contract. In such event, the guarantee shall be eliminated and the parties will renegotiate the financial terms of the Contract. Notwithstanding anything to the contrary, the exclusivity provisions herein shall not apply to contracts with other third-party providers that were in place prior to the release of the College's Bookstore Management Services ITN-2023-161-OA dated February 8, 2024. Vendor has been provided information regarding these existing contracts. Additionally, College purchases for the Colleges Library system are not included as part of the scope of this solicitation.
- d. The parties acknowledge and agree (i) Vendor shall be the exclusive retail (e-commerce) entity permitted to either place a link on the LMS or accept sales directly from College students and/or as part of a course charge through the LMS and (ii) College 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 College students and faculty through the LMS. In the event any such third parties place a link on the LMS permitting direct sales of textbooks or course materials to College students in violation of this section, College shall remove and disable such links and retail functionality within ten (10) business days or such additional time as necessary to cure (not to exceed thirty (30) days after receipt of written notice from Vendor that such third parties links are on College's LMS).

- e. Vendor shall be the exclusive agent for the rental and/or sale of graduation caps, gowns, and commencement invitations.
- f. Vendor shall have a non-exclusive right to sell convenience store items, such as food, health and beauty items, and other sundries in the Bookstores as approved by the College.
- g. The College may occasionally authorize the sales, at the Bookstores and other locations, of certain items by other providers other than the Vendor, student groups, or by organizations of the College, provided such sales do not materially impact the Bookstores revenues and College requests and receives permission from Vendor in advance and in writing, which such consent shall not be unreasonably withheld, conditioned, or delayed.

## **8. ADVERTISING.**

- a. If the College accepts advertising for any of its materials or publications that it distributes or makes available to its students including without limitation any course offering lists, or if College permits tabling or other third-party promotional activities at any event sponsored by the College or located on the College campus, the College agrees that:
  - It shall be the Vendor's responsibility to request such advertising, tabling, or other promotional opportunities from the College.
  - Vendor shall have the opportunity to place its desired advertising in such materials and to participate in such tabling or other promotional activities; and
  - College shall not accept advertising in such material form or permit tabling or other promotional activities at any of such events by any seller whose primary business purpose is the sale of college textbooks and/or course materials other than the Vendor.

## **9. BOOKLIST.**

In the course of providing the services contracted for in this Contract, Vendor collects certain information from the faculty on its Course Book Information forms. Vendor also creates a computer database containing, among other things, course book information. These forms and the database are Vendor's proprietary information, created at substantial cost and expense to Vendor and used in connection with its business, the retail sale of textbooks.

Vendor shall provide the booklist to College upon written request, however, College agrees it shall keep the booklist confidential in accordance with the terms of this Contract, shall use it only for internal educational purposes, and shall not disclose it to any third parties unless a public records exception applies or Vendor first provides its written consent.

Subject to the exclusive rights of Vendor as set forth in this Contract, nothing set forth in this paragraph 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.

#### **10. USED BOOK PURCHASE AND RESALE.**

Vendor shall buy books from the College faculty, staff, and students as follows:

- a. When the Vendor has been notified that a book will be used at the College the following semester, Vendor shall purchase (i.e., buy back) the book for fifty percent (50%) of the customer's purchase price, provided the book is a good used copy, until the Vendor has filled the quota it has established for the particular book.
- b. In the absence of such notification, or if the textbook will not be used for the following semester or is to be replaced shortly by a revised edition according to an announcement of the publisher, the book shall be purchased at the wholesale price.
- c. Used books in good condition shall be sold by the Vendor at least twenty-five percent (25%) less than the new selling price.

Customers will be informed at the time of purchase of the buy back terms applicable to textbooks the customer has purchased.

#### **11. REFUNDS AND EXCHANGES.**

Vendor shall offer refunds and exchanges as follows:

##### **11.1 Textbooks**

- a. Vendor shall issue refunds in the original form of payment for textbooks purchased at the Bookstores if returned in the original condition, with an original receipt and within the first week of classes. Within thirty (30) days of the first day of classes for which the textbooks were purchased, textbooks shall be refunded with an original receipt and with a valid proof of add/drop. A full refund in the original form of payment will be provided for digital course materials returned with an original receipt within fourteen (14) days of purchase.

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

- a. Vendor shall issue refunds in the original form of payment for items returned in their original condition, with an original receipt, within fourteen (14) days of purchase (days in this section means days that the Bookstore is open for business). Courseware access codes, audio books, and small electronics may not be returned for a refund but can be exchanged for the same item if defective.

11.3 All Other Merchandise

- a. Vendor shall issue refunds in the original form of payment for any time during the semester for other merchandise purchased at the Bookstores if returned in the original condition with the original receipt. If without a receipt, a store credit shall be issued at the current selling price.
- b. Refunds or exchanges shall not be issued for the following items: food and beverages, unwrapped loose-leaf books, digital content once accessed or activated, eBooks, custom course materials, outlines, study guides, school guides, magazines, and prepaid cards.

**12. POLICY DISPLAY.**

Vendor shall post conspicuously and without equivocation Bookstores policies concerning refunds, buybacks, exchanges, etc. No changes to these policies may be made without the prior written approval of the College.

**13. CHANGE OF LOGO OR CONTRACTED APPAREL PROVIDER/LICENSE.**

Should College change logo or contracted athletic apparel provider/licensee, College will either give Vendor twelve (12) months written notice or shall allow Vendor to automatically deduct from payments due to College, the cost of such unsold merchandise.

**14. SALES MARKUP BASIS.**

Vendor represents that the sale markup basis at the Bookstores shall be as follows:

- a. New textbooks shall be sold at no greater than the publisher's list price or a twenty-five percent (25%) gross margin on net priced books. Net priced books are defined as books purchased from publishers that do not have a publisher's suggested list price or when the publisher's discount to the bookstore is less than twenty percent (20%).
- b. Used textbooks shall be sold at least twenty-five percent (25%) less than the new selling price.
- c. Textbooks purchased from publishers with restrictive (not to be defined as, or applicable to, Custom Publishing) or non-returnable text policies shall be priced at up to a thirty percent (30%) gross margin.

- d. Digital Course Materials and all-inclusive access program shall be sold at a twenty percent (20%) gross margin.
- e. Custom publishing and package pricing shall be at least twenty-five (25%) margins for the first two (2) years of the Contract and beginning in year three (3), the parties shall mutually agree on any increased margin taking into consideration the amount of non-returnable inventory, markdowns and write-offs. Any margin increases made for year three (3) and after shall not exceed one percent (1%) per year and the total margin shall never exceed thirty percent (30%).
- f. Vendor shall set rental fees for each book title, and any given title's fee may vary as a percentage of the retail selling price.
- g. School supplies shall be priced comparable within the Campus Store industry.
- h. Vendor shall provide Microsoft discount programs to faculty and staff as has been historically provided by the College's Bookstores. The parties shall mutually agree on any changes to this discounted program in the future taking into consideration the historical amount of the total annual cost of the discounts.

Vendor shall, upon request, provide proof of conformity to pricing policies as specified herein.

**15. GUARANTEED PAYMENT/PERCENTAGE OF SALES (CALCULATED COMMISSION) FOR TRADITIONAL OPERATING MODEL/ FIRST DAY® BY COURSE.**

On an annualized basis, Vendor shall pay the College the greater of the following: the Guaranteed Amount or Calculated Commission.

**Guaranteed Amount**

**Contract Year 1 - \$950,000**

After contract year 1, Vendor shall provide a Guaranteed Amount in all future years of the Contract that will be no less than an amount equal to ninety percent (90%) of the Calculated Commission of the immediately preceding contract year.

**OR**

**Calculated Commissions**

- **12.1% of all Gross Sales of Course Materials up to \$2,500,000; and**
- **14.1% of all Gross Sales of Course Materials over \$2,500,000; and**
- **7.0% of all Gross Sales of First Day® and Digital Products.**

**AND**

- **14.1% of all Gross Sales of General Merchandise up to \$2,500,000; and**
- **16.1% of all Gross Sales of General Merchandise over \$2,500,000.**

If any contract period less than a complete year, payments shall be based on the Bookstores Calculated Commission.

“Gross Sales of Course Materials” is defined as all collected in-store and online/website sales of course materials and Vendor-owned textbook rentals at the campus store, including the amounts earned from processing transactions for publishers related to the consignment of their rental property, and sales of (i) eTextbooks, (ii) pure digital products, and (iii) course materials within the LMS, whether through the First Day® or First Day® Complete programs or any other course material sales outside of such programs, less voids, refunds, Gross Sales of First Day® and Digital Products, sales tax, and handling fees associated with non-return of rental textbooks.

“Gross Sales of General Merchandise” is defined as all collected in-store and online/website sales of general merchandise, including the amounts earned from Vendor’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 twenty percent (20%) initial gross margin and other merchandise mutually designated as non-commissionable.

“Gross Sales of First Day® 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 with the LMS, whether through the First Day® or First Day® Complete programs or any other course material sales outside of such programs, less voids, Gross Sales of Course Materials, refunds, sales tax, and handling fees associated with non-return of rental textbooks.

“Gross Sales” is defined as the sum total of Gross Sales of Course Materials, Gross Sales of General Merchandise and Gross Sales of First Day® and Digital Products.

Offer is based upon Vendor being designated the exclusive retail buyer and seller of all required, recommended or suggested course materials and supplies for the College, including books delivered in all formats (digital, rental, new, or used), course packs, interactive or other courseware, computer software containing learning content, 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. Vendor will provide exclusive online services through the campus store website, including fulfillment of any distance learning materials needs during the term of this agreement.

If annual Gross Sales shall materially decrease (defined as Gross Sales decreased by ten (10) percent or more over the prior year) as a result of legislation, conflicting or other campus

agreements, material changes in the College policy or the business model of the industry (such as digital books or direct publisher sales), removal by College of significant programs or departments, declining enrollment at College (defined as decreased full and part-time student enrollment of 5% or more over the prior year), low or reduced adoptions provided by College or its faculty to Vendor, or other reasons outside the reasonable control of Vendor, the parties agree to meet to review the reason(s) for the material decrease and, if applicable, negotiate in good faith changes in the terms of this Contract to address the reason(s), which may include a reduction in the commission percentages above or the Guaranteed Amount.

**16. ALTERNATIVE FINANCIAL OFFER UPON IMPLEMENTATION OF VENDOR'S FIRST DAY COMPLETE PROGRAM.**

“First Day® Complete” offers the opportunity to seismically shift the course materials paradigm at College by driving market share into your campus store and improving overall affordability for your students. As of the Effective Date, College has not implemented the First Day Complete program.

Should College implement Vendor’s First Day® Complete program after the Effective Date, Vendor and College have substantially agreed to the operational terms and conditions (included herein as Exhibit A-1) and the financial terms and conditions (included herein as Exhibit A-2).

**17. PAYMENT SCHEDULE.**

The Guaranteed Amount or the applicable Calculated Commission as set forth above, as applicable, shall be made quarterly by Vendor to College and shall be paid within thirty (30) days after the close of the quarter in which they were earned. Vendor reserves the right to deduct from commission payments any past due accounts receivable charges that are more than sixty (60) days in arrears, provided that when such receivable charges are paid, commission payments on such amounts shall be paid in the next quarterly payment. 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 sections 15 and 16. In the event a party sends a notice of termination of this Contract to the other party, Vendor shall not make further commission payments until final reconciliation of all payments and costs under this Contract is complete. Vendor shall furnish supporting documentation to College upon request. Vendor shall remit all payments to College under this Contract via ACH.

Each payment shall be accompanied by a detailed statement of its computation and Vendor shall immediately provide supporting documentation to the Senior Director of Auxiliary Services or designee.

**18. TEXTBOOK SCHOLARSHIPS AND/OR UNRESTRICTED DONATIONS.**

Vendor shall provide \$20,000 for annual textbook scholarships and/or annual unrestricted donations for each full contract year during the term of the Contract to be awarded at the discretion of the College.

Payments shall be reported immediately to the Senior Director of Auxiliary Services or designee.

**19. BONUS PAYMENT.**

Vendor shall provide up to a **\$850,000** bonus payment to be used at the discretion of the College. This will be distributed as **\$350,000** in Year 1 and, if the Contract is renewed for an additional five (5) years commencing at the end of the Initial Term, **\$500,000** in Year 6.

Payment of the one-time bonus payment is contingent upon and shall be made within ninety (90) days after, the successful implementation of Vendor's Campus Connect Technologies, including but not limited to registration, student financial aid, and LMS integration, Adoption & Insights Portal, and enrollment feeds, and College providing Vendor all student email addresses (including incoming students) by agreed upon dates.

Vendor shall amortize each bonus payment (if made) on a straight-line basis over the five (5) year period commencing upon payment of the respective bonus. Should this Contract terminate before the end of either five-year amortization period due to College terminating the Contract for convenience or Vendor terminating the Contract for breach thereof by College, then any unpaid installment of the bonus shall not be payable and College shall reimburse Vendor via ACH or Fedwire within thirty (30) days of receiving written request for any amount of the bonus payment not yet amortized.

Bonus payments shall be reported immediately to the Senior Director of Auxiliary Services or designee.

**20. UTILITY CONTRIBUTION.**

Vendor shall contribute **\$60,000** annually, at the beginning of each contract year to be used for utilities payment. Payments shall be reported immediately to the Senior Director of Auxiliary Services or designee. In the event the Contract terminates for any reason during a contract year, College shall provide Vendor a pro rata reimbursement of the utilities payment Vendor made for that year via ACH or Fedwire within thirty (30) days of contract termination.

**21. RENOVATIONS/CAPITAL INVESTMENTS.**

Vendor shall spend no less than **\$350,000** to renovate and fixture the campus store facility, including designing, constructing, and installing proprietary fixtures in the Bookstores ("Fixtures") during the Initial Term. Vendor will provide College a detailed plan, including estimated dates and amounts of how the funds will be spent, within the first year of the Initial Term. Vendor will provide College with detailed documentation of the amounts spent to meet the \$350,000 capital investment.

Vendor will depreciate and amortize this investment on a straight-line basis, commencing when the project is complete, over the Initial Term of this Contract. Should this Contract terminate before the end of the Initial Term due to College terminating the Contract for convenience or Vendor terminating the Contract for a Material Breach thereof by College, then College shall reimburse the Vendor for any amount of the investment not yet depreciated, and the renovations shall remain the property of the College. At the completion of the renovations, Vendor shall provide the College with objective evidence substantiating the expended renovation dollar amount. Vendor acknowledges and agrees that the renovations and investment shall be the sole property of the College at the termination, expiration, or non-renewal of this Contract. Vendor shall own all Fixtures until they are fully depreciated.

**22. FINAL APPROVAL OF RENOVATIONS.**

In order to provide the best possible service for College's students, faculty and other customers, final approval and necessary alterations of any bookstore plans shall be made by the College, whose approval shall not be unreasonably withheld, and in accordance with any applicable College standards and while taking into consideration Vendor's minimum operational and retailing standards. College's approval shall include renovation scheduling. Third party contractors utilized by Vendor to assist with the renovation must be approved in advance by the College.

If College relocates all or any part of one or more of the Bookstores, College will provide Vendor with at least one hundred eighty (180) days advance written notice of the relocation to properly manage transitioning of the facility and business and will reimburse Vendor, via ACH or Fedwire, within thirty (30) days after Vendor's invoice, for Vendor's cost of the relocation.

**23. ACCESS TO POINT OF SALE (POS) FINANCIAL AND ACCOUNTING INFORMATION/PCI COMPLIANCE; DATA SECURITY; ACCESSIBILITY; AUDIT.**

The Vendor shall maintain all records, books and documents pertinent to the performance of this Contract in accordance with generally accepted accounting principles. The College and/or its authorized representatives shall have inspection and audit rights to such records during the Term of the Contract and for a period of four (4) years from final payment under this Contract. If the audit reveals that Vendor owes the College any funds, Vendor shall return all funds to the College immediately. If the audit reveals that Vendor owes the College more than \$25,000, Vendor shall pay for the audit. If the audit reveals College owes Vendor any funds, College shall pay for the audit and return all funds to Vendor immediately.

College shall request in writing access to such records and provide at least seven (7) days notice to Vendor. This may include sales information captured by the Vendor's sales processing system (including the Point of Sales (POS) system). This shall be done in accordance with Payment Card Industry (PCI) guidelines that protect cardholder information. Store POS

reports are available by register. All POS activity is verified daily by the Home Office Sales Audit system. In addition, all registers have:

- a. Transaction number controls with further security level restrictions by cashier type.
- b. Electronic journal, receipt, and detail tape provisions, with required PCI protection.
- c. Display window for customer viewing.

When used in the Contract, the term “College” includes all segments of the institution, including the athletic and academic departments.

Records relating to any legal disputes arising from performance under this Contract shall be made available until final disposition of the legal dispute.

#### **24. ADDITIONAL OBLIGATIONS OF COLLEGE.**

- a. An appropriate, safe and habitable Bookstores (i) in a student-centric College-owned building with high foot traffic and in retail-ready condition for ongoing operations (including but not limited to sufficient storage within the Bookstores perimeter and access to a dedicated shipping and receiving area and/or loading dock) and (ii) if Vendor will be providing any renovations hereunder, facility updates in support of Vendor renovations, improvements, and furniture, Fixture (as defined below), and equipment package.
- b. Heat, light, utilities, life safety systems, and air conditioning as is reasonably required for operation of the Bookstores. The term Bookstores as utilized in this section is defined as the physical locations that are engaged in academic retailing and serving the College’s academic community such as students, faculty, guests, and staff.
- c. The Bookstores and the buildings in which the Bookstores are located (“Building”) are in compliance with all applicable laws (including but not limited to the Americans with Disabilities Act), delivered in good condition, and meeting all life safety and building codes and regulations (including but not limited to fire alarms, smoke detectors, fire extinguishers, fire suppression and sprinkler systems, water pressure, plumbing and electrical service) for the intended mercantile and accessory use(s) and occupancy loads.
- d. Office equipment, safe, furniture, fixtures, file cabinets, voice-over-IP (VOIP) telephone equipment and service (including campus telephones and wiring), and campus Wi-Fi within the Bookstores.
- e. All preventative maintenance and repairs for upkeep of the Bookstores and Buildings shell, core, Buildings systems, interior architecture, and architectural finishes of the Bookstores (including but not limited to windows, doors, ceilings systems, vent filter replacement, relamping, life safety, and vertical circulation).

- f. Conduit with pull string, extending campus copper/data and fiber lines from the Buildings' IDF/MDF to the Bookstores server room to support Vendor's connectivity needs.
- g. Trash and mixed recycling (cardboard, paper, glass, aluminum and plastic) and extermination services for the Bookstores.
- h. All financial services made available by College to its students for the purchase of educational materials and other products within the campus store.
- i. The placement of an electronic link to the College's home page, registration system, and within College's LMS to the Bookstores' website.
- j. Property, excise and municipal taxes, as applicable, on the Bookstores and the Buildings in which the campus store is located.
- k. A daily export file with the required SIS student export data (including student email addresses) to support a personal experience for faculty and students and enable Vendor to both provide its products and services to the College, including their Adoption & Insights Portal, and send campus store-related information and personalized content to College's students.
- l. Vendor is currently occupying and operating the Bookstores.

**25. ENVIRONMENTAL MATTERS.**

To the best of its knowledge, the College is not aware of any health or environmental problems which currently exist or are likely to develop in the building or physical facility which houses the Bookstores. College shall be responsible for remedying promptly any health or environmental problem at the Bookstores and buildings housing the Bookstores, other than those caused by Vendor, and notifying Vendor accordingly.

**26. COMPREHENSIVE PROJECTION.**

At the beginning of each annual period occurring during the term of the Contract, Vendor shall provide a comprehensive projection of Gross Sales, operating expenses category including merchandise and labor cost, and net income from operations for each annual period occurring during the term of the Contract.

The Comprehensive Projection of Gross Sales shall be reported to the Senior Director of Auxiliary Services or designee.

**27. MARKETING.**

Vendor shall provide/allocate a **\$20,000** marketing budget annually and spend the same in each full contract year, and prorated for any partial year, for local advertising/promotions and

signage/ecommerce marketing. Payments shall be reported immediately to the Senior Director of Auxiliary Services or designee.

## **28. EXPECTED COLLEGE BENEFITS FROM VENDOR'S SERVICES**

- Support of the Broward College's academic mission by providing efficient and effective textbook/course materials services to students and faculty and easy access and multiple distribution channels for textbooks/course materials.
- Proactive textbook/course materials strategy development that will allow Bookstores to compete effectively in the challenging College bookstore environment.
- Proactive communication and coordination with faculty regarding the use of all types of course materials.
- Creation and implementation of effective strategies to reduce the cost of textbooks/course materials to Broward College Students by offering a strong used textbook program, comprehensive textbook rental program, digital textbook/course materials program, and by utilizing emerging technologies.
- Comprehensive textbook/course materials services that will support all College programs.
- Excellent customer service with minimized transaction and wait times for in-store and online purchases, and efficient processing of all transactions.
- Support for the academic mission the College by providing a general book department that supports faculty and alumni authors, speakers, lectures, and other campus academic and intellectual events.
- Renovation upgrade and the maintenance of a dynamic, exciting retail environment at all locations.
- Development of a comprehensive marketing and promotional strategy that will assist with advancing the Broward College brand.
- Assistance with promoting and branding Broward College by offering a broad selection of emblematic clothing and gift merchandise.
- Outsourced operation of state-of-the-art Broward College Bookstores.
- Exceptional value provided to customers by offering high quality products and services at fair prices and multiple price points.
- Comprehensive online/web development and mail order program strategies.
- State-of-the-art technology for bookstore operations (e.g., point-of-sale, inventory management, Web site, financial aid, registration integration, etc.).

**Exhibit A-1**

**Operational Terms**

**1. First Day® Complete:**

a) In order to expand affordability to students, Broward College (“College”) shall implement the First Day® “Complete Program” (inclusive access) for all [OPTIONAL: undergraduate / graduate] courses beginning with \_\_\_\_\_ semester using a per credit [OR student] pricing format.

(i) Barnes & Noble College (“Vendor”) Responsibilities.

1. Vendor will manage the Complete Program on behalf of College and will be responsible for the procurement of desired textbooks and course materials. Vendor shall fill faculty course material orders (adoptions) for required course materials each term only in accordance with course material adoptions through AIP (or any new adoption tool Vendor introduces) by faculty or authorized department designees that adhere to the schedule below:
  - a. On or before April 1<sup>st</sup> for the fall semester
  - b. On or before October 1<sup>st</sup> for the spring semester
  - c. On or before February 15<sup>th</sup> for the summer semester
2. For any course material adoptions that are not adopted using AIP or turned in by the above deadlines, Vendor will use commercially reasonable efforts to provide such course materials by the first day of the course but cannot guarantee delivery. Course materials will be provided in either rental (new or used) or digital format, at Vendor’s discretion, in order to maintain the value of the Complete Program.
3. At a minimum starting two weeks prior to the deadline, Vendor will provide access to daily reporting on courses without course material adoptions to College’s compliance designee for follow-up with faculty.
4. Two weeks after the end of each semester (“Grace Period”), Vendor will notify College of any Rental Materials not returned by students.
  - a. The list will identify the names of students who have not returned their Rental Materials.
  - b. College will work with Vendor to encourage those students to resolve their accounts with Vendor (e.g., College may place a hold on the student account(s), message student(s) via all available communication methods, etc.) in order to maintain the value of the Complete Program.
  - c. In the event a student does not return Rental Materials, Vendor reserves the right to require student payment of an appropriate rental replacement fee (75% of the new course material selling price) and/or identify the student ineligible for the Complete Program in future semesters.

(ii) College Responsibilities.

1. College shall place the necessary electronic links on its learning management system (LMS) no later than two (2) weeks prior to the start of the term. At least two (2) weeks prior to the start of the term, College shall audit all electronic links on its learning management system (LMS) to ensure they are functional.
  2. If needed, College is solely responsible, at its expense, for providing mutually agreed upon secured space, in addition to space within the Bookstore, for inventory management and student package delivery and pickup for the Complete Program.
  3. By electronic transmission, College shall provide Vendor the course schedule with enrollment information on a daily basis.
  4. Delivered to an SFTP server on a daily basis and in a format provided by Vendor or through an SIS integration, College also shall upload each student's complete course schedule, including associated credit hours, eligibility status for the Complete Program, and any additional data required by Vendor in order to implement the Complete Program. At a minimum, College shall begin dropping the file no later than twelve (12) weeks out from the course start date through the end of the registration period for each course.
- (iii) Joint Responsibilities. College and Vendor shall be jointly responsible for communicating to students all non-returned rental policies. The parties agree to take advantage of College's current or future negotiated pricing and / or discounts with publishers for textbooks and course materials.
- (iv) Included and Excluded Materials.
1. The Complete Program will include only required course materials in print rental or digital formats. The Bookstore, at its sole discretion, will determine which course materials (i) may be retained by a student and (ii) which are considered rentals requiring students to return them at the end of the semester (collectively, "Rental Materials").
  2. The following items are excluded from the Complete Program: adopted school supplies, kits, uniforms, art supplies, calculators, non-required course materials, or items deemed not a textbook. The Complete Program does not include shipping costs for delivery to students outside of the Bookstore or designated locations on campus.
  3. **[OPTIONAL]** The following programs, grade year, or schools are excluded from the Complete Program: \_\_\_\_\_.
- (v) Communications. College and Bookstore will work together to promote understanding of the Complete Program. All communication and marketing regarding the Complete Program will be the joint responsibility of Vendor and College, with College providing outreach and messaging to students in accordance with the timelines and proposed templates provided by Vendor. Vendor will work with College to help educate, promote, and communicate the Complete Program to the students in multiple formats. College shall not issue any external communications, including but not limited to press releases, without the prior written consent of the Corporate Communications department of Vendor.

(vi) Financial Terms.

1. The price per credit per semester for all students shall be \$22.00, which (a) College agrees to pay Vendor via ACH or Fedwire in accordance with this Section 6 notwithstanding any applicable opt-out or other legal obligations of College and (b) the parties hereby acknowledge and agree is an average price across all courses and shall apply regardless of how many or whether course materials are being used in a particular course.
2. No later than the first day of the applicable term / semester (“Initial Payment Due Date”), College shall pay Vendor, via ACH or Fedwire, fifty percent (50%) of the number of credits for students currently enrolled (“Initial Payment”). Notwithstanding any other provision in this Agreement, Vendor will withhold commission and/or other payments due College under this Agreement in the event College does not comply with its payment obligations in this section. Immediately upon demand, College shall pay Vendor a flat late fee of five percent (5%) for any balances of the Initial Payment that remain unpaid more than ten (10) days after the Initial Payment Due Date.
3. College will provide its registrar’s final enrollment information by credit hour [OR student] to Vendor no later than seven (7) days after the census date. Vendor will send a final invoice to College (“Final Invoice”) representing the “true up” remaining balance after the Initial Payment, which Final Invoice will be based on College registrar’s final enrollment information by credit hour [OR student]. College will remit payment of the Final Invoice to Vendor via ACH or Fedwire within ten (10) days of receipt (“Final Payment Due Date”). Notwithstanding any other provision in this Agreement, Vendor will withhold commission and/or other payments due College under this Agreement in the event College does not comply with its payment obligations in this section. Immediately upon demand, College shall pay Vendor a flat late fee of five percent (5%) for any balances of the Final Invoice that remain unpaid more than ten (10) days after the Final Payment Due Date. For avoidance of doubt, the parties acknowledge and agree any revisions to the Initial Payment or Final Invoice shall not extend either the Initial Payment Due Date or the Final Payment Due Date.
  - a. Vendor shall have the right to audit the registrar’s records in the event Vendor reasonably believes the enrollment information reported by College deviates from actual enrollment.
  - b. If the results from the audit prove any final enrollment counts are higher than the counts provided by College, Vendor shall invoice College for the additional charges.
  - c. If the results from the audit prove any final enrollment counts are lower than the counts provided by College, Vendor shall provide a credit to College.
  - d. At no time during an audit shall either party fail to perform their agreed upon services or responsibilities, including payment on outstanding invoices, with regard to the Complete Program.
4. As required by state and local sales tax law and unless College provides to Vendor a copy of its exemption certificate, Vendor shall add sales tax to the price per credit [OR student] set forth in subsection (vi)(1) above. All certificates must be complete and valid. Vendor will accept College’s certificate only if it can do so in good faith or as

otherwise required by state or local law. The parties acknowledge and agree (i) any charges between the College and its students may constitute a separate taxable sale for sales tax purposes and (ii) Vendor neither does or shall provide tax advice on these transactions nor be responsible for any taxes imposed on College by any taxing authority.

5. On an annual basis, the parties agree to mutually evaluate the Complete Program and determine the price per credit [OR student] and other financial terms. The evaluation is based on faculty course materials adopted for the fall and spring semesters, taking into consideration changes in the amount of consumables or to overall title count.
6. In the event College ceases the Complete Program for any reason during the Term, College shall be wholly responsible and shall pay Vendor via ACH or Fedwire within thirty (30) days of receipt of Vendor's invoice for all of Vendor's reasonable and customary Complete Program transition and other costs, including but not limited to employee relocation expenses, inventory purchases, labor costs, system installations, physical and web services, renovation costs, and all other expenses related to transitioning and opening the Bookstore.

Exhibit A-2

Financial Terms and Conditions upon implementation of the First Day Complete Equitable Access Program

“First Day® Complete” offers the opportunity to seismically shift the course materials paradigm at the College by driving market share into the campus store and improving overall affordability for College students. Vendor offers the College the option to implement the First Day® Complete equitable access program at its discretion. Should the College choose to implement the program, the following commission structure shall apply.

- a) Notification of Implementation: the College shall provide written notice to Vendor of its decision to implement the First Day® Complete program. The notice must be submitted no later than ninety (90) days prior to start of each fiscal year, with the program's effective start date to be mutually agreed upon by both parties.
- b) Modification of Financial Terms: Any adjustments to the financial terms based on the implementation of the First Day® Complete program shall be documented in a written amendment to this Contract, signed by both the College and Vendor.

**1. First Day® Complete Guaranteed Payment/Percentage of Sales (Calculated Commission) for First Day® Complete Operating Model.**

On an annualized basis, Vendor shall pay the College the greater of the following: the Guaranteed Amount or the Calculated Commission.

**Guaranteed Amount**

**Contract Year 1 - \$1,000,000**

After contract year 1, Vendor shall provide a Guaranteed Amount in all future years of the Contract that will be no less than an amount equal to ninety percent (90%) of the Calculated Commission of the immediately preceding contract year.

**OR**

**Calculated Commissions**

- **14.1% of all Gross Sales of Course Materials up to \$2,500,000;**
- **15.1% of all Gross Sales of Course Materials over \$2,500,000; and**
- **7.0% of all Gross Sales of First Day® and Digital Products (\*\$22 per credit hour for First Day® Complete).**

**AND**

- **15.1% of all Gross Sales of General Merchandise up to \$2,500,000; and**
- **17.1% of all Gross Sales of General Merchandise over \$2,500,000.**

In any contract period that is less than a complete year, payments shall be based on the Bookstores Calculated Commission.

“Gross Sales of Course Materials” is defined as all collected in-store and online/website sales of course materials and Vendor-owned textbook rentals at the campus store, including the amounts earned from processing transactions for publishers related to the consignment of their rental property, and sales of (i) eTextbooks, (ii) pure digital products, and (iii) course materials within the LMS, whether through the First Day® or First Day® Complete programs or any other course material sales outside of such programs, less voids, refunds, Gross Sales of First Day® and Digital Products, sales tax, and handling fees associated with non-return of rental textbooks.

“Gross Sales of General Merchandise” is defined as all collected in-store and online/website sales of general merchandise, including the amounts earned from Vendor’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 twenty percent (20%) initial gross margin and other merchandise mutually designated as non-commissionable.

“Gross Sales of First Day® 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 with the LMS, whether through the First Day® or First Day® Complete programs or any other course material sales outside of such programs, less voids, Gross Sales of Course Materials, refunds, sales tax, and handling fees associated with non-return of rental textbooks.

“Gross Sales” is defined as the sum total of Gross Sales of Course Materials, Gross Sales of General Merchandise and Gross Sales of First Day® and Digital Products.

Offer is based upon Vendor being designated the exclusive retail buyer and seller of all required, recommended or suggested course materials and supplies for the College, including books delivered in all formats (digital, rental, new, or used), course packs, interactive or other courseware, computer software containing learning content, 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. Vendor will provide exclusive online services through the campus store website, including fulfillment of any distance learning materials needs during the term of this Agreement.

If annual Gross Sales shall materially decrease (defined as Gross Sales decreased by ten (10) percent or more over the prior year) as a result of legislation, conflicting or other campus agreements, material changes in the College policy or the business model of the industry (such as digital books or direct publisher sales), removal by College of significant programs or departments, declining enrollment at College (defined as decreased full and part-time student enrollment of 5% or more over the prior year), low or reduced adoptions provided by College or its faculty to Vendor, or other reasons outside the reasonable control of Vendor, the Parties agree to meet to review the reason(s) for the material decrease and, if applicable, negotiate in good faith changes in the terms

of this Contract to address the reason(s), which may include a reduction in the commission percentages above or the Guaranteed Amount.

**2. First Day® Complete Textbook Scholarships and/or Unrestricted Donations.**

Under the First Day® Complete model, Vendor shall provide **\$85,000** for annual textbook scholarships and/or annual unrestricted donations for each full contract year during the term of the Contract to be awarded at the discretion of the College.

**3. First Day® Complete Bonus Payment.**

Under the First Day® Complete equitable access model, Vendor shall provide up to an additional **\$650,000** bonus payment. Should the College choose to implement the program beginning fall 2025 and maintain program throughout the Initial Term, the following payment structure shall apply:

- 
- **\$650,000** (or a pro rata thereof) upon implementation of First Day® Complete (depreciation over the remaining Initial Term of the Contract from the time of payment).

Payment of the one-time bonus payment for the First Day® Complete implementation offer is contingent upon and shall be made within ninety (90) days after the successful implementation of Vendor's First Day® Complete program in fall 2025. In the event College does not implement the First Day® Complete program until spring 2026 or at any point thereafter, the \$650,000 bonus payment set forth above shall reduce by a pro rata amount corresponding to the remaining semesters in the Initial Term. Vendor shall amortize the bonus payment on a straight-line basis, commencing from the time of payment, over the remaining Initial Term of the Contract. Should this Contract terminate before the end of the Initial Term due to College terminating the Contract for convenience or Vendor terminating the Contract for breach thereof by College, then any unpaid installment of the bonus shall not be payable and College shall reimburse Vendor via ACH or Fedwire within thirty (30) days of receiving written request for any amount of the bonus payment not yet amortized.

For avoidance of doubt and notwithstanding any other provision in any of the documents comprising the Agreement, (a) Vendor shall pay, so long as the contingencies herein are satisfied, a **\$850,000** bonus payment according to the terms herein and up to an additional **\$650,000** upon implementation of the First Day® Complete program according to the terms herein, (b) the total bonus payments due by Vendor to College hereunder shall not exceed **\$1,500,000**, and (c) the bonus payments outlined in section 19 above shall be payable according to the terms thereof regardless of whether the Complete Program is implemented.

**4. First Day® Complete Utility Contribution**

Vendor shall contribute **\$60,000** annually, at the beginning of each contract year to be used for utilities payment. Payments shall be reported immediately to the Senior Director of Auxiliary Services or designee. In the event the contract terminates for any reason during a contract year, College shall provide Vendor a pro rata reimbursement of the utilities payment Vendor made for that year via ACH or Fedwire within thirty (30) days of contract termination.

**5. First Day® Complete Renovations/Capital Investments**

Under the First Day® Complete model, Vendor shall spend no less than an additional **\$150,000** to renovate and fixture the campus store facility, including designing, constructing, and installing proprietary fixtures in the Bookstores (“Fixtures”) during the Initial Term. Vendor will provide College a detailed plan, including estimated dates and amounts of how the funds will be spent, within the first year of the First Day® Complete program. Vendor will provide College with detailed documentation of the amounts spent to meet the additional \$150,000 capital investment. In the event College does not implement the First Day® Complete program until spring 2026 or at any point thereafter, the additional \$150,000 capital payment set forth above shall reduce by a pro rata amount corresponding to the remaining semesters in the Initial Term.

Vendor will depreciate and amortize this investment on a straight-line basis, commencing when the project is complete, over the Initial Term of this Contract. Should this Contract terminate before the end of the Initial Term due to College terminating the Contract for convenience or Vendor terminating the Contract for a Material Breach thereof by College, then College shall reimburse the Vendor for any amount of the investment not yet depreciated, and the renovations shall remain the property of the College. Vendor shall provide the College with objective evidence substantiating the expended renovation dollar amount. Vendor acknowledges and agrees that the renovations and investment shall be the sole property of the College at the termination, expiration, or non-renewal of this Contract. Vendor shall own all Fixtures until they are fully depreciated.

**6. First Day® Complete Marketing**

Vendor shall provide/allocate a **\$20,000** marketing budget annually and spend the same in each full contract year, and prorated for any partial year, for local advertising/promotions and signage/ecommerce marketing. Payments shall be reported immediately to the Senior Director of Auxiliary Services or designee.

**Contractor Policy Code Acknowledgement  
Exhibit "B"**

Name (Please Print): BARNES & NOBLE COLLEGE BOOKSELLERS LLC

Contract/Work Order/Purchase Order (P.O.) # ITN-2023-161-OA - BOOKSTORE  
MANAGEMENT SERVICES

Contractors, Vendors and Consultants (hereafter referred to collectively as "Contractor(s)") engaged to do business with Broward College ("College") using College equipment and/or working on College premises, property or facilities must comply with the rules and regulations of the College's Policies & Procedures.

As the Contractor's representative, without limitation thereto, I, [Click or tap here to enter text.](#), (Contractor) acknowledge that I have received and reviewed the following:

- ✓ Sexual and Other Workplace Harassment Policy, No. 6Hx2-3.31.
- ✓ Sexual Harassment Procedure, Procedure Manual, No. A6Hx2-3.31.
- ✓ Discrimination, Harassment and Retaliation Policy, No. 6Hx2-3.34.
- ✓ Diversity and Inclusive Excellence Policy, No. 6Hx2-3.44.
- ✓ Workplace Violence Policy, No. 6Hx2-3.40.
- ✓ Drug Free Workplace Policy, No. 6Hx2-3.05.
- ✓ Alcohol on Campus Policy, No. 6Hx2-6.32.
- ✓ Drug Free Workplace Policy, No. 6Hx2-3.05.
- ✓ Regulation of Smoking in Facilities Policy, No. 6Hx2-7.14.
- ✓ Smoking in Facilities Procedure, Procedure Manual, No. A6Hx2-7.14
- ✓ Traffic Rules on Campus, Policy No. 6Hx2-7.13
- ✓ Traffic Rules on Campus Procedure, Procedure Manual, No. A6Hx2-7.13

In the course of conducting business with the College, I understand that Contractors must be aware of and comply with the State of Florida Public Records Law (Chapter 119, Florida Statutes), the Government-in-the-Sunshine Law (Chapter 286.011, Florida Statutes) and the Code of Ethics (Chapter 112, Florida Statutes).

I am aware that Contractors are prohibited from soliciting or lobbying for additional work while engaged to do business with the College. I acknowledge that this behavior interferes with the efficient performance of my responsibilities under the terms of my contractual obligations with the College, and that it may provide me or my company with a competitive advantage. Both my employer and I understand that lobbying for additional work while under contract with the College may eliminate me and/or my company from award of future solicitations.

I recognize and understand that College IT resources, including but not limited to computers, telephones, radios, mobile phones and other communication systems and devices, are the property of the College, and should be used for the purposes of conducting bona fide College business only.

I recognize and understand that no remote access technology or device is to be attached to College IT resources or the information technology systems infrastructure to effect access without the

express authorization of the IT Department Director or Information Technology Senior Advisor or their duly authorized delegates. Non-College equipment or other resources used by me to connect to College IT resources, systems or services will be subject to the same laws, rules and regulations as College-owned IT resources.

I am aware that College IT resources are the property of the College, and as a result, I have no right to privacy or expectation of privacy when using and/or connecting to College IT resources. I am aware that the College may audit, access, and review all data and/or communications transmitted through or residing on College IT resources or any equipment or resources attached thereto, including e-mail and voicemail messages, at any time. I am aware that use of passwords or encryption does not restrict the College's right to access or disclose such communications, and that the College shall disclose the information to third parties as required by law.

When authorized to do so, I accept all risks and responsibilities associated with using and/or connecting non-College resources or equipment to College IT resources. **In regard to such non-College resources or equipment, I agree to the following:**

- ✓ In the event of a security breach, I authorize the College to take immediate action to reduce the College's exposure.
- ✓ I further authorize the College to perform inspections as deemed necessary to ensure the safety and security of College data and/or IT resources, and to ensure that any software or other similar intellectual property is duly licensed for use.
- ✓ I understand the College will require virus-detection software in accordance with its own specifications, and I agree to comply.
- ✓ I indemnify and hold the College harmless from theft or damage incurred while on College properties or premises, subject to the terms of the Federal Tort Claims Act.

Information or work products or related derivative works developed by me specifically for the College, whether or not reduced to writing by me, constitute works made for hire to the extent permissible by law and will become the sole property of the College, including all intellectual property rights thereto. I acknowledge that the College claims sole ownership and rights to all such materials.

I am aware that the College's Policies and Procedures and any other College practices are subject to change or modification by the College, solely at its discretion, as deemed appropriate and necessary. I understand that no supervisor or other official of the College has the authority to enter into any agreement with Contractors, or to make any agreement contrary to the foregoing.

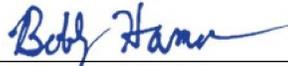
I acknowledge that I have read and understand the above, and I agree to accept the terms and conditions as a stipulation of my services or contractual obligations to the College. This Acknowledgement shall be considered an integral part of Contract/Work Order/P.O. # ITN-2023-161-OA - BOOKSTORE MANAGEMENT SERVICES. Any violation of this Acknowledgement shall be considered a breach of the foregoing Contract/Work Order/P.O. as well as a violation of College policies. I am aware that if I violate these mandates, penalties may include disciplinary action up to and including immediate termination of my services and/or Contract/Work Order/P.O. with the College, and the College may pursue whatever other legal remedies are available to it pursuant to the terms of the Contract/Work Order/Purchase Order.

BARNES & NOBLE  
COLLEGE BOOKSELLERS  
LLC

\_\_\_\_\_  
Contractor Name (Print)

Bobby Hamous

\_\_\_\_\_  
Authorized Representative  
(Print)



\_\_\_\_\_  
Signature

January 6, 2025

\_\_\_\_\_  
Date

EXHIBIT "C"  
TO CONTRACT FOR SERVICES

**SPECIAL PROVISIONS**

The purpose of this Exhibit "C" is to delineate any and all changes, deletions and/or additions to the Contract for Services agreement. In the event of any conflict between this Exhibit "C" and any other provision specified in this Contract, this Exhibit "C" shall take precedence.

**1. INVOICES AND PAYMENTS.**

Add the following Paragraph:

All payments by either Party to the other must be made via ACH or Fedwire. Payments will be made quarterly and paid within thirty (30) days after the close of the quarter or month in which they were earned.

**2. INDEMNIFICATION**

Replace the section with the following Paragraphs:

For value received, the Vendor shall indemnify and hold the College, its officers, directors, board of trustees, agents, assigns, and employees harmless from third party liabilities, damages, losses and costs, including, but not limited to reasonable attorneys' fees, to the extent caused by the negligence, recklessness or intentionally wrongful conduct of the Vendor and other persons employed or utilized by the Vendor in the performance of the Contract. The Vendor further acknowledges that it is solely responsible for ensuring its compliance and the compliance of its subcontractors, suppliers, agents, assigns, invitees and employees with the terms of this Contract. This paragraph shall survive the expiration or termination of this Contract.

Except for indemnification obligations, breach of confidentiality obligations or Vendor's breach of its payment obligations under this Contract, each Party's total liability under this Contract shall in no event exceed \$1,000,000.00. 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, revenue or profit, or other economic losses) even if such Party was advised of the possibility of such damages.

**3. INDEMNIFICATION FOR INFRINGEMENT OF ANY INTELLECTUAL PROPERTY CLAIMS.**

Delete in its entirety and replace with the following:

For value received, the Vendor shall indemnify and hold the College, its officers, directors, board of trustees, agents, assigns, and employees harmless from third party claims, liabilities, damages, losses and costs, including, but not limited to reasonable attorneys' fees for any claim or lawsuit brought alleging infringement of any intellectual property right associated with Vendor's performance under this Contract, including its use, development or provision of any software, books, articles, or any other materials. Vendor is solely responsible for ensuring its compliance and the compliance of its subcontractors, suppliers, agents, assigns, invitees and employees with the terms of this Contract. This paragraph shall survive the expiration or termination of this Contract.

#### **4. TERMINATION FOR DEFAULT and 5. TERMINATION FOR CONVENIENCE.**

Delete both in their entirety and replace with the following:

#### **4. TERMINATION**

##### **A. Termination for Material Breach**

A "Material Breach" of this Contract by Vendor or College is defined as any substantial, unexcused non-performance by failing to perform an act that is an important part of the transaction or performing an act substantially inconsistent with the terms and conditions of the Contract. Material Breach includes, but is not limited, to the following:

1. Vendor closing Bookstores without cause and without prior notice and approval from College;
2. Vendor is more than 60 days delinquent on paying the required payments under the Contract;
3. Vendor materially misrepresents Gross Sales or Calculated Commissions;
4. Vendor misuses Confidential Information; and
5. Vendor increases pricing without cause and without prior notification and approval from College.

If either Party materially fails to fulfill its obligations under this Contract (the "Defaulting Party"), the "Non-Defaulting Party" shall provide written notice of the deficiency by forwarding a Cure Notice citing the specific nature of the Material Breach. The Defaulting Party shall have thirty (30) days to cure the breach; provided however, if the default cannot be cured within thirty (30) days and the Defaulting Party is attempting in good faith to cure the default, the time period shall be extended for a reasonable period of time, not to exceed ninety (90) days after the date of the written Cure Notice. If the Defaulting Party fails to cure the breach within the thirty (30) day or ninety (90) day period, whichever is applicable, the Non-Defaulting Party may immediately terminate this Contract, in addition to exercising whatever legal and/or equitable remedies it chooses regarding the breach of contract.

##### **B. Termination for Convenience**

The College may terminate this Contract with or without cause at any time for convenience upon 180 calendar days' prior written notice to the Vendor. The Vendor may terminate this Contract with or without cause at any time for convenience upon 180 calendar days' prior written notice to the College.

In the event of termination for convenience, a Party shall compensate the other Party for all amounts due through the date of termination in accordance with the Statement of Work, which is attached hereto and incorporated herein as Exhibit "A." The Parties shall be relieved of any and all future obligations hereunder, including but not limited to lost profits and consequential damages, under this Contract.

### **C. Other Obligations upon Termination**

Repurchase of Inventory (On hand):

College shall repurchase, or require a successor contractor to purchase, Vendor's inventory at cost in the event of any termination, expiration, or non-renewal of this Agreement for any reason, in the same manner as purchased by Vendor.

Repurchase of Inventory (Outstanding rentals):

In the event of any termination, expiration, or non-renewal of this agreement for any reason, College shall purchase, or require a successor contractor to purchase, Vendor's rental inventory outstanding at the time of the transition, at the buyback value (50% of the retail price).

In the event of termination of this Contract for any reason, College shall provide (a) a secure space in or near the Campus store during the last two (2) weeks of the then-current term or semester to allow Vendor to collect from students all outstanding rented textbooks, including those on consignment owned by the publishers and (b) reasonable support related to such returns, including but not limited to communications to students.

In the event College terminates this Contract for any reason (other than Vendor's default continuing beyond applicable notice and cure periods) within one (1) year of the Effective Date, College shall be wholly responsible and shall pay Vendor via ACH or Fedwire within thirty (30) days of receipt of Vendor's invoice for all of Vendor's reasonable and customary transition costs, including but not limited to employee relocation expenses, inventory purchases (in accordance with the calculations above), labor costs, system installations, physical and web services, renovation costs, and all other expenses related to transitioning and opening the Bookstore.

### **6. AUDIT.**

Delete in its entirety. See Paragraph 22 of Exhibit A.

### **11. COLLEGE'S TAX EXEMPTION.**

Replace with the following:

The Vendor shall not utilize the College's tax exemption certificate number issued pursuant to Sales and Use Tax Law, Chapter 212, Florida Statutes, when purchasing materials used to fulfill its contractual obligations with the College. The Vendor shall be responsible and liable for the

payment of all applicable FICA/Social Security and other taxes for its employees resulting from this Contract.

## **12. ASSIGNMENT/GUARANTOR.**

Delete in its entirety and replace with the following:

Neither party shall assign (whether by operation of law or otherwise), delegate or otherwise transfer any rights or obligations under this Contract, in whole or in part, without the prior written consent of the other party. Any assignment or transfer without such consent shall be deemed void and of no effect. Notwithstanding the foregoing, either party may assign this Contract upon written notice to the other party (but without the prior written consent of the other party) to (i) any entity controlled by, controlling, or under common control with the assigning party or (ii) 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. 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 Vendor or required by this Contract shall not be construed as subcontracts, assignments, or delegations.

Further, the Vendor shall not pledge the College's credit or make the College a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. Pledging the College's credit shall also be construed to include the use of "factoring agents" or the practice of selling business accounts receivables to a third party at a discount for the purpose of obtaining funding which is also expressly prohibited.

## **16. COMPLIANCE**

Delete in its entirety and replace with the following:

The College, the Vendor, and each of their employees, subcontractors or assigns shall comply with all applicable federal, state, and local laws and regulations relating to the performance of the Contract.

To the extent Vendor receives education records from College under this Contract, Vendor shall comply with applicable state and federal privacy laws and regulations, including the applicable provisions of the Family Education Rights and Privacy Act, 20 U.S.C. § 1232g and its implementing regulations ("FERPA"). Specifically, for purposes of this Contract, Vendor is designated as a "school official" with "legitimate educational interests" in the "education records" provided by College to Vendor hereunder (as each such term is defined under FERPA) and shall comply with the applicable FERPA provisions imposed on "school officials". Vendor shall not (1) 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 Contract) except as permitted or required by law, or (2) disclose any such education records to a third party except as provided for in this Contract, required by law, or authorized in writing by College or the applicable student. For the avoidance of doubt, College is solely responsible for complying with FERPA's requirements with respect to annual notification of rights to its students.

**21. COMPENSATION/CONSIDERATION.**

Delete in its entirety as it is not applicable.

**23. OWNERSHIP OF WORK.**

Delete in its entirety as it is not applicable.

**24. COMPLIANCE/LICENSES.**

Delete in its entirety and replace with the following:

The Vendor, its employees, subcontractors or assigns, shall obtain, at its own expense, all licenses, permits and other authorizations necessary to comply with all applicable federal, state and local laws and regulations relating to the performance of the Contract. The Vendor is also responsible for compliance with all applicable labor and employment laws as well as all applicable federal, state, and local discrimination laws. The Vendor is solely responsible for compliance with all applicable labor and tax laws pertaining to its officers, agents, and Vendor employees and shall indemnify and hold the College harmless from any failure by Vendor to comply with such laws and this indemnification obligation shall survive the expiration or earlier termination of the Contract.

**29. BACKGROUND CHECKS.**

Delete third sentence in its entirety and replace with the following:

Vendor shall conduct thorough background checks for all of the Vendor’s part-time, full-time and seasonal employees or hired workers who will be working on any College site.

**34. CONFIDENTIALITY.**

Add this Section in its entirety:

During the Term, each party may be provided financial information or marketing information and other information that is otherwise of value to the disclosing party and not generally known to third parties, including information required to be protected by law, including education records protected under the Family Educational Rights Privacy Act (“FERPA”) and the PCI-CSS. In order for such information to be treated as “Confidential Information” hereunder it shall be provided to the other party in writing and shall be marked by the party providing the information as “confidential”. Each party may use the Confidential Information of the other party only in connection with the specific duties authorized by this Contract and shall not, directly or indirectly, use, copy, disclose, or disseminate to any other person or entity any Confidential Information. Each party agrees to protect the confidentiality of the Confidential Information in the same manner that it protects its own confidential information but with no less than a reasonable standard of care. The obligations set forth herein shall not apply to any Confidential Information that becomes

known to the public through lawful means and without violation of any law or agreement not to disclose such Confidential Information.

Each party further agrees it shall cause its personnel and representatives with access to the other party's Confidential Information to agree to be bound by this Section. 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. A party may disclose Confidential Information without violating this Contract if the party is required by an interrogatory, subpoena, civil investigative demand, or similar process, or by law, including the Florida public records laws, to disclose any Confidential Information, provided that, to the extent legally permissible, such party shall promptly provide written notice to the other party so the other party may seek to avoid or minimize the required disclosure. This Contract shall not be considered Confidential Information.

### **35. MISCELLANEOUS LEGAL TERMS.**

Add this Section in its entirety:

- a) Independent Parties. The relationship established under this Contract between College and Vendor is that of independent third parties. This Contract 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 Contract, neither party nor its employees, agents, or subcontractors has any authority to bind or act on behalf of the other party. Nothing in this Contract shall be construed to create any borrowed servant, joint employment or leased employee status between the parties or their respective employees or agents.
- b) Marks. The names, trademarks, and logos of each party are the exclusive property of such party, and each party reserves all rights in and to its own marks. Each party shall use the marks of the other party only in connection with its performance under this Contract, provided, however, Vendor may use College's name in any of its legally required public filings.
- c) Disclaimer. EXCEPT AS MAY BE EXPRESSLY PROVIDED FOR IN THIS CONTRACT, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO ITS PERFORMANCE UNDER THIS CONTRACT, 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. VENDOR WILL NOT BE LIABLE IN ANY WAY RELATED TO ANY THIRD-PARTY WEBSITES OR THIRD-PARTY CONTENT, DATA, APPLICATIONS OR SYSTEMS.

- d) Notices. All notices pursuant to this Contract shall be sent to the following individuals by (i) certified mail or overnight delivery service and (ii) email (or to such other address or email address as a party may designate in compliance with this section):

College:

John Thornton, Acting Vice Provost, Academic Operations  
3501 Davie Road  
Davie, FL 33314

With copy to:  
Office of the General Counsel  
111 East Las Olas Boulevard – Room 523  
Fort Lauderdale, FL 33301

Barnes & Noble College Booksellers, LLC:

Vice President, Stores  
120 Mountainview Blvd.  
Basking Ridge, NJ 07920  
Attn: Field Vice President  
terr1office@bncollege.com

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

- e) 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 Contract and carry out its provisions. Whenever this Contract requires or contemplates any action, consent, or approval, such party shall act reasonably and in good faith and (unless the Contract expressly allows exercise of a party's sole discretion) shall not unreasonably withhold or delay such action, consent, or approval.
- f) Remedies. Unless otherwise specified in this Contract, 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 Contract, and may be pursued separately or concurrently as such party determines. Termination of this Contract will not relieve any party from any liability for any breach or obligation of this Contract occurring prior to termination.
- g) Survival. The provisions of this Contract which, by their nature, are required for the full interpretation of the Contract or may be enforced subsequent to its termination (including, but not limited to, repurchase of inventory, indemnification, confidentiality, and limitation

of liability) will survive and will not be affected by the termination of this Contract regardless of the reason for termination.

- h) Authority. Each party represents and warrants (i) it has all right, power, and authority to enter into this Contract and to fully perform its obligations hereunder, (ii) the execution and delivery of this Contract 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 Contract constitutes a valid and binding obligation enforceable against it in accordance with the terms hereof, and (iv) the execution, delivery, and performance of this Contract 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.
- i) No Third Party Beneficiaries.. This Contract is enforceable only by College and Vendor. There are no third party beneficiaries under or pursuant to the terms of this Contract.
- j) Signatures and Counterparts. This Contract may be executed electronically and in two or more counterparts, each of which will be deemed an original, but which together will constitute one and the same Contract. Counterparts and signed copies may be transmitted via electronic means and shall constitute originals for all purposes.

BC APPROVED

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

VENDOR APPROVED

By: Bobby Hamer \_\_\_\_\_ Date: 1/6/25 \_\_\_\_\_