

FINAL

**Agreement for Bookstore Operations
between
Northwest Arkansas Community College
and
Barnes & Noble College Booksellers, LLC**

1. Engagement of Barnes & Noble:

Northwest Arkansas Community College hereby engages Barnes & Noble College Booksellers, LLC ("Barnes & Noble") to operate the bookstore of Northwest Arkansas Community College (the "Bookstore") on the terms and subject to the conditions set forth herein, and Barnes & Noble hereby accepts such engagement.

2. Term, Amendment and Notices:

This agreement shall govern the relationship between Northwest Arkansas Community College and Barnes & Noble with regard to the Bookstore for the period July 1, 2012 through June 30, 2023 and from year to year thereafter.

No change, modification or amendment of this agreement shall be valid unless the same shall be in writing and signed by both parties hereto. All notifications shall be sent to the following individual by certified mail: Marty Parsons, Chief Financial Officer for Northwest Arkansas Community College located at One College Drive, Bentonville, AR, 72712 and for Barnes & Noble College Booksellers, LLC located at 120 Mountain View Blvd, Basking Ridge, NJ 07920 and to: Kimberly Otte, Vice President, Stores.

Northwest Arkansas Community College and Barnes & Noble shall have the right to terminate with or without cause this Agreement at any time by giving one hundred and twenty (120) days written notice to the other party.

3. Northwest Arkansas Community College Shall Provide to Barnes & Noble at Northwest Arkansas Community College's Expense:

- a) Heat, light, utilities, and air conditioning as is reasonably required for operation of the Bookstore.
- b) All repairs and maintenance for the building and the physical structure in which the Bookstore is located.
- c) Trash removal (optional-snow removal), and extermination services for the Bookstore.
- d) All debit or credit card or other financial services made available by Northwest Arkansas Community College to its students.
- e) The placement of an electronic link to your bookstore's web site on your school's home page.

4. Environmental Matters:

To the best of its knowledge, Northwest Arkansas Community 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 Bookstore. Northwest Arkansas Community College shall be responsible for remedying promptly any health or environmental problem at the Bookstore, other than those caused by Barnes & Noble, and notifying Barnes & Noble accordingly.

5. Barnes & Noble Shall Provide to Northwest Arkansas Community College at Barnes & Noble's Expense:

All operating expenses of the Bookstore including those related to:

- a) Employees, including payroll and payroll system costs, and employee benefits.
- b) Bill paying and accounting, including sales tax collection, reporting and payment for merchandise sold, except any property or municipal taxes on the bookstore. Northwest Arkansas Community College shall be responsible for any property taxes on personal property owned by Northwest Arkansas Community College. Barnes & Noble shall be responsible for any property taxes on inventory or other personal property owned by Barnes & Noble.
- c) Office equipment maintenance and repair.
- d) General custodial services.
- e) Loss prevention services.
- f) Long distance telephone services, through a vendor selected by Barnes & Noble.
- g) Office equipment (including computer equipment, cash registers and safes), furniture and fixtures, file cabinets, telephone equipment and wiring and telephone service (including campus telephones and campus telephone service), and office machines currently available for Bookstore use.

6. Insurance:

Barnes & Noble shall procure at its own expense, and maintain during the existence of this agreement, the following policies of insurance in connection with the operation of the Bookstore:

- a) Worker's Compensation and Employer's Liability Insurance and such other insurance as may be required under applicable state statutes.
- b) Comprehensive General Liability Insurance subject to \$3,000,000 limits.
- c) Property Damage Liability Insurance in the amount of \$1,000,000.
- d) Motor Vehicle Liability Insurance with limits of \$100,000 per person, \$300,000 per occurrence, and \$50,000 property damage.

At the request of Northwest Arkansas Community College, Barnes & Noble shall obtain and deliver certificates evidencing such insurance from its insurers. Barnes & Noble shall save Northwest

Arkansas Community College harmless from claims which may arise in connection with the operation of the Bookstore facilities specified herein and sales of products or performance of any service under this contract or injuries or death caused by Barnes & Noble vehicles on the Bookstore premises, except for claims caused by Northwest Arkansas Community College or any of its employees, agents or representatives.

Barnes & Noble's insurance policies for the Bookstore shall name Northwest Arkansas Community College as an additional insured, but only with respect to liability arising out of operations performed for such insured by or on behalf of the name insured. These policies shall be primary and noncontributing with any insurance carried by Northwest Arkansas Community College.

7. Compliance with all Laws:

Barnes & Noble shall comply with all laws, ordinances, rules, orders, and regulations of federal, state and municipal governments, and of any and all of their departments, divisions, bureaus, and subdivisions, applicable to the operation of the Bookstore.

8. Management and Staff:

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

- a) Northwest Arkansas Community College Bookstore personnel shall continue service only so long as their work and personal behavior are acceptable to Barnes & Noble and Northwest Arkansas Community College. Barnes & Noble will comply with written requests by Northwest Arkansas Community College to remove or reassign store personnel for good cause.
- b) All Bookstore staff presently working for Northwest Arkansas Community College will be given first consideration for employment with Barnes & Noble at the Bookstore.
- c) Barnes & Noble is an independent contractor and is not legal representative or agent of Northwest Arkansas Community College for any purpose. Northwest Arkansas Community College shall not exercise any control over any of Barnes & Noble's employees, all of who are entirely under the control of Barnes & Noble. Barnes & Noble shall be responsible for the acts and omissions of Barnes & Noble's employees. Barnes & Noble shall, at it own expense, during the term of this Agreement and any extension thereof, maintain full insurance under any Workers Compensation Laws effective in Arkansas covering all persons employed by and working for it in connection with the performance of this Agreement and upon request shall furnish Northwest Arkansas Community College with satisfactory evidence of all maintenance of such insurance. Barnes & Noble accepts exclusive liability for all contributions and payroll taxes required under any law of similar character in any applicable jurisdiction as to all personas employed by and working for it. Nothing contained in this Agreement shall be deemed to create any partnership or joint venture relationship between the parties.

9. Staff Relations, Wages, and Benefits:

Barnes & Noble shall be responsible for the wages and benefits of all of its employees at the Bookstore. Barnes & Noble has the right to set its own wages and benefits. Barnes & Noble will

employ students of Northwest Arkansas Community College at the Bookstore whenever reasonably possible.

10. Calendar of Operating Hours:

Barnes & Noble shall maintain a schedule of operating hours and weeks of business for the Bookstore in accordance with the official Northwest Arkansas Community College calendar and in mutual agreement with Northwest Arkansas Community College in meeting the needs of the students, faculty and staff. Bookstore hours will be extended during each registration period, during the first two weeks of the fall and spring semesters, and the first week of each summer session.

11. Book Orders and Deadlines:

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

- a) On or before October 1 for the spring semester.
- b) On or before March 1 for the summer sessions.
- c) On or before April 1 for the fall semester.

Barnes & Noble shall be responsible, at its cost and expense, for contacting in a timely manner all faculty members for their textbook and supply adoptions. Northwest Arkansas Community College shall not be responsible for compiling, nor shall it maintain, a list of such adoptions.

12. Services Expected:

Barnes & Noble shall operate the Bookstore as an independent contractor and with its own credit and preferred vendors, with the facility and equipment agreed upon. Operations of the Bookstore shall include the following:

- a) The Bookstore shall be Northwest Arkansas Community College's exclusive on campus buyer and seller of all required, recommended or suggested course materials and supplies, including books, course packs, computer software, textbook rentals, and materials published or distributed electronically and/or through learning management systems, or sold over the Internet. As used in this Agreement, "Internet" includes the World Wide Web and any proprietary on-line service. Barnes & Noble will provide exclusive on-line services through our web site and have first right of refusal to fulfill any distance learning material needs during the term of this agreement.
- b) The Bookstore shall be designated the exclusive agent to accept all campus debit card and financial aid transactions for Bookstore merchandise typically sold in college bookstores. Payments for charge sales will be guaranteed by Northwest Arkansas Community College and are payable within 30 days of invoice date.
- c) The Bookstore shall also be Northwest Arkansas Community College's on campus exclusive and Internet seller of other items typically sold in college bookstores, such as books in addition to

those described in (a) above, educational supplies, notebooks, stationery, desk and room accessories, gift items, class and alumni rings and jewelry, and clothing, including any and all such items bearing a Northwest Arkansas Community College emblem, logo, insignia or other identifying mark.

- d) Northwest Arkansas Community College shall not contract with any third party to provide any services of the type outlined in this Agreement whether on or off campus, through e-commerce sites, hyperlinks to alternate sources, or otherwise endorsed or supported by Northwest Arkansas Community College.
- e) Barnes & Noble will have first right of refusal for other retailers that would directly compete with Barnes & Noble's academic retailing program.
- f) The Bookstore shall be the exclusive agent for the rental and/or sale of graduation caps and gowns and commencement invitations.
- g) The Bookstore shall also have a non-exclusive right to sell convenience store items such as food, health and beauty items, and other sundries.
- h) Barnes & Noble will provide exclusive custom publishing for Northwest Arkansas Community 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 Bookstore. Complimentary desk copies of course packs will be provided to faculty members.
- i) Barnes & Noble shall provide special book orders for students, faculty, and staff and make every effort to obtain the earliest possible delivery of such books.
- j) Barnes & Noble shall provide charge sales for supplies for Northwest Arkansas Community College departments and offices. Any unpaid balances will be subject to 1% interest per month.
- k) Barnes & Noble will allow full-time faculty and staff of Northwest Arkansas Community College a 10% discount on all merchandise available at the Bookstore except adopted textbooks, special orders, sale books, class and alumni rings, computer software, periodicals, discounted merchandise, computer hardware, stamps, health and beauty aids, food snacks, and beverages.
- l) Barnes & Noble will offer a 20% discount on all authorized departmental purchases except adopted textbooks, special orders, sale books, class and alumni rings, computer software, periodicals, discounted merchandise, computer hardware, stamps, health and beauty aids, food snacks, and beverages.
- m) If Northwest Arkansas Community 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 list, or if Northwest Arkansas Community College permits tabling or other third-party promotional activities at any event sponsored by Northwest Arkansas Community College or located on the Northwest Arkansas Community College campus, Northwest Arkansas Community College agrees that:
 - (a) it shall give the Bookstore reasonable advance notice of the deadline for placing such advertising or participating in such tabling or other promotional activities;
 - (b) the Bookstore shall have the right to place its desired advertising in such materials and to participate in such tabling or other promotional activities; and

- (c) Northwest Arkansas Community College shall not accept advertising in such material from, or permit tabling or other promotional activities at any of such events by any seller of college textbooks and/or course supplies other than the Bookstore.

13. Booklist:

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

Should Northwest Arkansas Community College require any information that may be contained within the forms or the database either for its educational purposes, or in order to comply with any

public records request where no exemption is available (such as an exemption for commercial information), Northwest Arkansas Community College understands that it will be responsible for collecting that information from the faculty.

Subject to the "exclusive campus bookseller provision" set forth above, 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.

14. Used Book Purchase and Resale:

Barnes and Noble shall buy books from Northwest Arkansas Community College faculty, staff and students at the following prices:

- a) When the Bookstore has been notified that the book will be used at Northwest Arkansas Community College the following semester: 50% of the customer's purchase price (provided the book is a good used copy) until the Bookstore has filled its quota.
- b) In the absence of such notification, or if the book 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 will be purchased at the wholesale price.
- c) Used books in good condition will be sold by Barnes & Noble at 25% less than the new selling price.

15. Refunds and Exchanges:

Barnes & Noble shall offer refunds and exchanges as follows:

- a) Textbooks

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

b) General Merchandise

The Bookstore will issue refunds in the original form of payment any time during the semester for general merchandise purchased at the Bookstore if returned in the original condition and with a valid receipt. If without a receipt, a merchandise credit will be issued at the lowest selling price. Cash back on merchandise credits will not exceed \$10.00.

Refunds or Exchanges will not be issued for the following items: custom course materials, outlines, study guides, school guides, magazines and prepaid cards. Software must be unopened for exchange or refund. Opened software may be exchanged for the identical item only.

16. Policy Posting:

Barnes & Noble shall post conspicuously and without equivocation Bookstore policies concerning refunds, buybacks, and exchanges.

17. Repurchase of Inventory (On hand):

Northwest Arkansas Community College shall repurchase, or require a successor contractor to purchase, Barnes & Noble's inventory at cost in the event of cancellation of this Agreement, in the same manner as purchased by Barnes & Noble.

Should school change logo or contracted athletic apparel provider/licensee, school will either give Barnes & Noble six months written notice.

18. Repurchase of Inventory (Outstanding rentals):

In the event of cancellation of this Agreement, Northwest Arkansas Community College shall purchase, or require a successor contractor to purchase, Barnes & Noble's rental inventory outstanding at the time of the transition, at the buyback value (50% of the retail price).

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]



24. Final Approval of Renovations:

In order to provide the best possible service for Northwest Arkansas Community College's students, faculty and other customers, final approval and necessary alterations of any bookstore plans will be granted to Barnes & Noble to ensure they meet with Barnes & Noble's minimum operational and retailing standards.

25. Force Majeure:

Barnes & Noble and Northwest Arkansas Community College shall be excused for the period of any delay in performance of any obligations hereunder when prevented from doing do by the wrongful or negligent acts or omissions of the other party or by causes beyond either party's control, which shall include all labor disputes, civil disturbance, reasonably unforeseeable weather conditions, war, invasions, military or usurped power, sabotage, governmental regulations or controls (including bona fide delays in obtaining building and similar permits and approvals), fires or other casualty, or acts of God.

26. Access to Point of Sale (POS) Financial and Accounting Information:

Northwest Arkansas Community College shall be provided access, with sufficient notice, to the Bookstore accounting records. This may include sales information captured by our POS system. This will be done in compliance with PCI guidelines that protect card holder 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.

27. Benefit and Binding Effect:

This agreement shall be binding upon and shall inure to the benefit of Northwest Arkansas Community College and Barnes & Noble and their successors and assigns.

28. Headings; Interpretation:

The headings used in this agreement are for convenience only and do not constitute substantive matter to be considered in construing its terms. The use in this agreement of the terms "include", "includes", "including", and "such as" shall be deemed in all cases to be followed by the words "without limitation".

When used in this agreement Northwest Arkansas Community College includes all segments of the institution including all alumni, athletic and academic departments.

29. Severability:

The presence in the text of this agreement of any clause, sentence, provision, paragraph or article held to be invalid, illegal or ineffective by a court of competent jurisdiction shall not impair, invalidate or nullify the remainder of this agreement. The effect of any such holding shall be confined to the portion so held invalid.

30. Confidentiality:

Each party agrees that the financial and other terms of this agreement shall be kept confidential and such terms may be disclosed to a third party only as required by law, including any public record disclosure law (but only after giving effect to all applicable exemptions), or as necessary to perform the terms of this agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands as at the day and year written below.

Northwest Arkansas Community College

By: _____

Marty Parsons

Name: Marty Parsons

Title: Chief Financial Officer

Date: _____

3/14/12

Becky Panwitz

*BECKY PANWITZ
PRESIDENT*

Barnes & Noble College Booksellers, LLC

By: _____

Kimberly Otte

Name: Kimberly Otte

Title: Vice President, Stores

Date: _____

12 March 2012

BARNES & NOBLE

COLLEGE BOOKSELLERS

**Amendment to Contract
Between
Northwest Arkansas Community College
and
Barnes & Noble College Booksellers, LLC**

The current contract between Northwest Arkansas Community College and Barnes & Noble College Booksellers is amended by removing the following language:

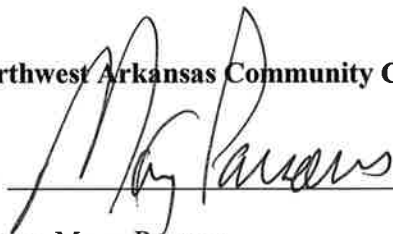
12. Services Expected:

(c) Northwest Arkansas Community College shall not accept advertising in such material from, or permit tabling or other promotional activities at any of such events by any seller of college textbooks and/or course supplies other than the Bookstore.

All other terms and conditions shall remain the same.

IN WITNESS WHEREOF, the parties hereto have set their hands as at the day and year written below.

Northwest Arkansas Community College

By: 

Name: Marty Parsons

Title: Chief Financial Officer

Date: 5/1/12

Barnes & Noble College Booksellers, LLC

By: 

Name: Kimberly Otte

Title: Vice President, Stores

Date: 13 April 2012