
**Agreement for Bookstore Services
between
Texas A&M University
and
Barnes & Noble College Booksellers, Inc.**

1. Engagement of Barnes & Noble:

Texas A&M University, a component of the Texas A&M University System, an agency of the State of Texas ("**University**") hereby engages Barnes & Noble College Booksellers, Inc. ("**Barnes & Noble**") to operate and provide services for the bookstore of **Texas A&M University** (the "**Bookstore**") on the terms and subject to the conditions set forth herein, and Barnes & Noble hereby accepts such engagement.

2. Purpose:

2.01 University engages Barnes & Noble to provide University with full-service academic bookstore to include, but not limited to, the following services:

1. All goods and services reasonably expected from a quality academic bookstore;
2. Sufficient quantity and timely supply of all required textbooks, new and used;
3. Wide selection of current trade, academic, and technical literature;
4. Timely response to orders for special books and other similar items;
5. Price competitiveness with other academic bookstores in the area;
6. Wide selection of other goods as office and art supplies, university insignia, wearing apparel, memorabilia, and other similar goods.

2.02 Barnes & Noble will, when possible, become involved in the academic social and cultural environment of University, offering special merchandising and/or assistance to compliment University's activities and programs.

3. Term, Amendment and Notices:

This agreement shall govern the relationship between Texas A&M University and Barnes & Noble with regard to the Bookstore for the period January 1, 2006 through December 31, 2015.

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: K. Sue Redman, Senior Vice President and CFO for **Texas A&M University** located at 8th Floor Rudder Tower, 1181 TAMU, College Station, TX 77843-1181, and Patrick Maloney, Executive Vice President, for Barnes & Noble College Booksellers, Inc. located at 120 Mountain View Blvd, Basking Ridge, NJ 07920.

4. Operations:

Barnes & Noble shall be responsible for the operation of the following facilities:

1. MSC Bookstore located in the Memorial Student Center complex;
2. Aggie Express convenience store located in the Memorial Student Center complex;
3. Aggie Locker stadium store located in North end zone of Kyle Field;
4. AggieLocker.com internet sales site for athletic apparel;

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5. Portable booths handling novelty sales, including emblematic merchandise licensed by the University and sold in athletic venues.

5. Texas A&M University Shall Provide to Barnes & Noble at Texas A&M University's Expense:

University shall provide, at its expense, reasonable utility services, including domestic hot and cold water, heat, air conditioning, electricity and trash removal. As a reimbursement to the University for providing such services, for each calendar year, Barnes & Noble shall pay the University an amount equal to 1.8% of all gross sales (as defined in paragraph 19). Such payment will be separate from annual commission guarantee and will be payable to University within thirty (30) days of contract anniversary date. Barnes & Noble will be responsible for and pay for all telephone service, including, but not limited to, installation, monthly equipment charges, local and long distance charges and fax charges. Further, University's obligation to provide reasonable utility services shall not include, and University shall not be responsible for, the installation of additional electrical lines, plumbing, drains, fans, duct work, and other similar improvements. It is further agreed and understood that University will not be liable for any loss that may result from the interruption or failure of any such utilities or services to be provided by University.

- a) Office equipment located in MSC Bookstore at time of contract execution.
- b) Provide reasonable repairs and maintenance to the exterior of the Memorial Student Center, in which the Bookstore is located. Notwithstanding the foregoing, University shall not be liable to Barnes & Noble, its agents, employees or invitees for any loss, damage, claims or expenses arising from damage or destruction to any of the University's premises, facilities and improvements, or any portion thereof, or from University's failure to provide maintenance and repairs thereto.
- c) Extermination services for the Bookstore.

6. Environmental Matters:

To the best of its knowledge, Texas A&M University 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. Texas A&M University 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.

7. Barnes & Noble Shall Provide to Texas A&M University at Barnes & Noble's Expense:

All operating expenses of the Bookstore other than those described in Section 3 above, 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.
 - 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) Accept University financial aid vouchers and scholarship charges for Bookstore purchases.
 - h) Accept all major credit cards including, but not limited to, Visa, MasterCard, and American Express.
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- i) Accept cash and personal checks in payment for all purchases upon presentation of proper identification.
 - j) Accept University sponsored debit card program "Aggie Bucks".
 - k) Provide University monthly financial reports documenting gross sales by product category, by venue and sales operations identified in Section 4 above.

8. 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, including public liability, personal injury and product liability, subject to \$3,000,000 limits.
- c) Property Damage Liability Insurance in the amount of \$3,000,000.
- d) Motor Vehicle Liability Insurance with limits of \$100,000 per person, \$300,000 per occurrence, and \$50,000 property damage.

Barnes & Noble shall obtain and deliver to University certificates evidencing such insurance from its insurers. Barnes & Noble shall save Texas A&M University 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, except for claims caused by Texas A&M University or any of its employees, agents or representatives, for which Texas A&M University shall save Barnes & Noble harmless.

Barnes & Noble's insurance policies for the Bookstore shall name Texas A&M University as an additional insured and loss payee, but only with respect to liability arising out of operations performed for such insured by or on behalf of the name insured. Each insurance policy shall contain covenants requiring thirty (30) days written notice to Texas A&M University before cancellation of such coverage. These policies shall be primary and noncontributing with any insurance carried by Texas A&M University.

9. 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.

10. Management and Staff:

10.01 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.

10.02 Barnes & Noble shall designate the MSC Bookstore as the major center for its manager-in-training program in the State of Texas.

- 10.03 Barnes & Noble shall obtain written consent from University prior to contracting with a subcontractor and any such contract shall be subject to the terms & conditions prescribed by University.
- 10.04 Texas A&M University reserves the right to review and approve those management decisions by Barnes and Noble which may affect Texas A&M University's public image or its programs. These decisions include, but are not limited to, uniforms, signs, advertising, alterations and additions to the Bookstore structure, changes in product offerings, quality and pricing. Barnes and Noble will not, when so notified by Texas A&M University, offer to sell or display items which the University, in its sole discretion, determines should not be sold or displayed in the Bookstore.
- 10.05 University and Barnes & Noble will develop a Management Advisory Board whose membership shall consist of Bookstore management personnel and University faculty, staff and students representing a diverse cross-section of Texas A&M University. Advisory board may meet quarterly but not more frequently than monthly. Advisory board will review Bookstore operations and advise University and Barnes & Noble management on any necessary improvements.

11. 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 Texas A&M University at the Bookstore whenever reasonably possible.

12. 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 Texas A&M University calendar and in mutual agreement with Texas A&M University 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.

13. 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. Texas A&M University shall not be responsible for compiling, nor shall it maintain, a list of such adoptions.

14. 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 Texas A&M University 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), Texas A&M University 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.

15. 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. Services of the Bookstore shall include the following:

- a) The Bookstore shall be Texas A&M University's exclusive buyer and seller of all required, recommended or suggested course materials and tools, including books, and materials published or distributed electronically, or sold over the Internet. As used in this Agreement, "Internet" includes the World Wide Web and any proprietary on-line service (e.g., America On Line). 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 also be Texas A&M University's exclusive "on-campus" 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, jewelry, and clothing, including any and all such items bearing a Texas A&M University emblem, logo, insignia or other identifying mark as well as the sale or rental of comprehensive graduate and academic regalia.
- c) Texas A&M University shall not contract with any third party to provide any services of the type outlined in this agreement on campus grounds or any area within a ten block radius of the campus grounds.
- d) Aggie Express shall also have a non-exclusive right to sell convenience store items such as food, health and beauty items, and other sundries. Barnes and Noble will meet reasonable requests by University to comply with the terms of any existing or forthcoming exclusive beverage contracts.
- e) Barnes & Noble shall provide special book order services for students, faculty, and staff and make every effort to obtain the earliest possible delivery of such books.
- f) Barnes & Noble shall provide charge sales for supplies for Texas A&M University departments and offices at a 20% discount. Payments for such charge sales shall be guaranteed by Texas A&M University and payable within 30 days. Any unpaid balances will be subject to 1% interest per

month. Barnes & Noble shall accept University's departmental purchasing credit cards for supplies at a 20% discount.

- g) Barnes & Noble will allow full-time faculty and staff of Texas A&M University a 15% discount on all merchandise available at the Bookstore except special orders, sale books, computer software, periodicals, discounted merchandise, computer hardware, stamps, health and beauty aids, food snacks, and beverages.
- h) If Texas A&M University 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 Texas A&M University permits tabling or other third-party promotional activities at any event sponsored by Texas A&M University or located on the Texas A&M University campus, Texas A&M University 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) Texas A&M University 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.
- i) Barnes & Noble agrees to make textbooks available to related units of Texas A&M University.
 - 1) Barnes & Noble will rent textbooks to the Texas A&M University Athletic Program for use by student athletes. Barnes and Noble will offer a fixed price for the textbook rentals, which price will remain fixed for a period of one-year. Any price increase in a given year will not exceed 3%, with escalation based on previous year's prices.
 - 2) Barnes and Noble also agrees to make available for purchase, textbooks to support the Texas A&M University Qatar campus. Barnes & Noble will coordinate with TAMU-Qatar Support office to ready book orders for shipment from the campus bookstore shipping area. TAMU Qatar Support Office will be responsible for costs of textbooks and costs of shipping. Barnes and Noble and Texas A&M University will cooperate on other textbook opportunities for entities under the direction of Texas A&M University
- j) Barnes and Noble agrees to assist University in hosting book-signing sessions as they may occur during the performance or other scheduled entertainment event where the performer(s) wish to participate in such a book sale or signing event. This shall be a commissionable sales activity.
- k) Barnes and Noble will operate such venues as the Aggie Locker at Kyle Field and athletic venue trailers for the sale of merchandise. Barnes and Noble and University agree to work cooperatively to enhance sales in these venues.

16. Used Book Purchase and Resale:

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

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- a) When the Bookstore has been notified that the book will be used at Texas A&M University the following semester: 50% of the selling 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 at the wholesale price.
 - c) Used books in good condition will be sold by Barnes & Noble at 25% less than the new selling price.

17. Policy Posting:

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

18. Repurchase of Inventory:

Texas A&M University 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.

In the event Texas A&M University changes any name or logo used on its insignia merchandise, Texas A&M University agrees to purchase from Bookstore at Bookstore's cost and upon its request, all insignia merchandise with the prior name or logo.

19. Sales Markup Basis:

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

New textbooks will be sold at no greater than (i) the publisher's list price or (ii) a 25% gross margin on net priced books, inclusive of restocking fees, return penalties and freight surcharges. 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 20%.

Used textbooks will be sold at 25% less than the new selling price.

- a) Course packs and textbooks purchased from publishers with restrictive or non-returnable text policies will be priced at up to a 30% gross margin.
- b) School supplies will be priced at or below manufacturers' suggested retail prices.

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

20. Guaranteed Payment / Percentage of Sales:

On an annualized basis, Barnes & Noble will pay Texas A&M University the following guaranteed payment or the applicable percentage of gross sales at the Bookstore, whichever is greater.

Annual Guarantee

The guaranteed commission payment will be equal to the prior year's actual commission or \$1,500,000, whichever is greater. The annual minimum guarantee will increase to \$1,700,000 upon the completion of the West Campus Bookstore.

Percentage of Gross Sales

12% on gross sales up to and including \$11,000,000
13% on gross sales between \$11,000,001 and including \$17,000,000
14% on gross sales over \$17,000,000

In any contract period that is less than a complete year, the payments shall be based on the percentage of gross sales at the Bookstore.

(Gross sales shall be defined as all collected sales at the Bookstore less voids, refunds, sales tax, discounted departmental sales, discounted faculty/staff sales, pass-through income, or other merchandise mutually designated as non-commissionable, etc.)

If annual gross sales of the Bookstore shall materially decline as a result of declining enrollment (i.e. decrease 5% or more), online textbook sales, or other reasons outside of the control of Barnes & Noble, Texas A&M University agrees to negotiate in good faith with Barnes & Noble an appropriate reduction in the payments set forth above.

Barnes & Noble will pay the Athletic Department at Texas A&M University 40% of gross sales over \$375,000 from athletic venues.

Barnes & Noble will pay Texas A&M University a signing bonus of \$500,000 within thirty days of execution of this Agreement.. Barnes and Noble will depreciate this signing bonus on a straight line basis over three years beginning January 1, 2006. Should Texas A&M University terminate this agreement by choice, as described in Section 28.2, prior to December 31, 2008, or if Barnes and Noble should terminate this Agreement for cause as described in Section 28.1 prior to December 31, 2008, Texas A&M University will reimburse Barnes and Noble for the amount of signing bonus not depreciated.

In the event Texas A&M University terminates this agreement for cause as described in Section 28.1 prior to December 31, 2008 or for any reason after December 31, 2008, or Barnes and Noble should terminate this Agreement by choice as described in 28.2, no re-payment of the signing bonus is due Barnes and Noble.

Barnes & Noble will pay Texas A&M University \$100,000 in annual, unrestricted scholarships. The first payment will be made within thirty (30) days of execution of this Agreement with subsequent payments on each January 5th or the next business day should January 5th not fall on a normal business day.

Upon execution of this agreement, Barnes & Noble will forgive University of any debt associated with the undepreciated costs the 2001 MSC Bookstore renovation.

21. Payment Schedule:

Applicable guaranteed payments as set forth above hereof shall be made monthly by Barnes & Noble to Texas A&M University and shall be paid within thirty (30) days after the close of the month in which

they were earned. The final payment for any year shall be made within thirty (30) days after the end of the applicable contract year, and will include any adjustments required by the percentage of gross sales formula set forth above.

Each payment shall be accompanied by a detailed statement of its computation and Barnes & Noble shall furnish supporting documentation to Texas A&M University upon request.

22. Renovations:

Should Texas A&M University make the decision to proceed with the concept of a west campus bookstore facility, Barnes & Noble commits **\$3,500,000** for purposes including, but not limited to, its design, construction, equipping, and installation of fixtures. .. Texas A&M University will, in writing, notify Barnes and Noble of Texas A&M University's intent regarding the construction of a West Campus Bookstore within one year from the date of signature. Barnes and Noble and Texas A&M University will then negotiate a separate written agreement outlining the respective rights and obligations of each party related to the construction of a West Campus Bookstore.

23. Final Approval of Renovations

In order to provide the best possible service for Texas A&M University'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.

24. Access to Accounting Records and Cash Registers:

Texas A&M University shall have full access at all times to the Bookstore accounting records, including all cash registers at the Bookstore being used by Barnes & Noble, with or without notice. Cash register control totals will be used to verify the cash sales reported. In addition, all registers shall have:

- a) Cumulative, non-resettable counters of either the total reset-clearings or the total cumulative activity.
- b) Receipt and detail tape provisions.
- c) Display window for customer viewing.

25. Benefit and Binding Effect:

This agreement shall be binding upon and shall inure to the benefit of Texas A&M University and Barnes & Noble and their successors and assigns.

26. 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 Texas A&M University includes all segments of the institution including all alumni, athletic and academic departments.

27. 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.

28. Alternative Dispute Resolution

This agreement shall be governed and construed in accordance with the laws of the State of Texas. In accordance with Texas Education Code Chp 85.18, venue is in Brazos County, Texas. Additionally, in accordance with Texas Government Code Chp 2260, the following is incorporated herein for all purposes:

1. The dispute resolution process provided for in Chapter 2260 of the Texas Government Code shall be used, as further described herein, by Texas A&M University, and Barnes & Noble to attempt to resolve any claim for breach of contract made by Barnes & Noble:

(A) Barnes & Noble's claim for breach of this contract that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260, subchapter B, of the Texas Government Code. To initiate the process, Barnes & Noble shall submit written notice, as required by subchapter B, to Robert T. Bisor, Associate Vice President for Finance. Said notice shall specifically state that the provisions of Chapter 2260, subchapter B, are being invoked. A copy of the notice shall also be given to all other representatives of Texas A&M University and Barnes & Noble otherwise entitled to notice under the parties' contract. Compliance by Barnes & Noble with subchapter B is a condition precedent to the filing of a contested case proceeding under Chapter 2260, subchapter C, of the Texas Government Code.

(B) The contested case process provided in Chapter 2260, subchapter C, of the Texas Government Code is Barnes & Noble's sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by Texas A&M University if the parties are unable to resolve their disputes under subparagraph (A) of this paragraph.

(C) Compliance with the contested case process provided in subchapter C is a condition precedent to seeking consent to sue from the Legislature under Ch. 107 of the Civil Practices and Remedies Code. Neither the execution of this contract by Texas A&M University nor any conduct of any representative of Texas A&M University thereafter shall be considered a waiver of sovereign immunity to suit.

2. The submission, processing, and resolution of Barnes & Noble's claim is governed by the published rules as adopted by the Office of the Attorney General of the State of Texas pursuant to Chapter 2260 as currently effective, hereafter enacted or subsequently amended. . These rules are found at 1 TAC, Ch. 68.

3. Neither the occurrence of an event nor the pendency of a claim constitutes grounds for the suspension of performance by Barnes & Noble, in whole or in part.

4. The designated individual responsible on behalf of Texas A&M University for examining any claim or counterclaim and conducting any negotiations related thereto, as required under §2260.052 of the Texas Government Code shall be Robert T. Bisor, Associate Vice President for Finance.

29. Termination.

29.1 Termination for cause. Either party may terminate this Agreement for failure of the other party to perform operations identified in Section 4 above, pursuant to the terms of this Agreement by providing thirty (30) days written notice, provided however that in the event the failure to perform is cured within ten (10) business days to the reasonable satisfaction of the aggrieved party, this Agreement shall not terminate.

29.2 Termination by choice. Either party may terminate this Agreement for any reason upon ninety (90) days written notice to the other party. In the event University is in receipt of funds from Barnes and Noble for the construction of the West Campus Bookstore, then University agrees to reimburse Barnes and Noble for any amount not yet depreciated in accordance with the 10-year straight line depreciation method outlined in Section 21. Such reimbursement will be paid to Barnes & Noble on or before ninety (90) days from the effective date of termination. It is specifically understood no reimbursement is due Barnes and Noble should the Agreement be terminated for cause as described in 28.1 above.

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

Texas A&M University

By: *K. Sue Redman*
Name: K. Sue Redman
Title: Senior Vice President & CFO
Date: *12-15-05*

Barnes & Noble College Booksellers, Inc.

By: *Kimberly Otte*
Name: Kimberly Otte
Title: Vice President
Date: *24 January 2005*