

**Florida Polytechnic University  
Board of Trustees  
Finance and Audit Committee  
May 5, 2014**

**Subject:** Approval of the Bookstore Contract

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**Proposed Committee Action**

Approve the proposed contract with Barnes & Noble.

**Background Information**

Two major bookstore providers were offered the opportunity to present bookstore management services contracts to the University to “piggy-back” on for purposes of operating the bookstore on campus. Barnes & Noble was the only provider that presented contracts for consideration. The proposed contract results from piggy-backing on the agreement Barnes & Noble entered into with Santa Fe College in Gainesville, Florida.

The proposed Florida Poly Agreement adjusts the Santa Fe College contract based on our smaller student population (Santa Fe has about 24,000 students) and to exclude the café, as Barnes & Noble will not be operating a café in the bookstore. The Major Terms are set out in the “Summary of Proposed Major Terms”, which are attached and provided as supporting documentation.

In its April 8, 2014 meeting, the Board of Trustees delegated authority to the Finance and Audit Committee to approve the contract with Barnes & Noble.

Staff has projected estimated revenues for contract years 1-5 (see attachment provided) based on investment, scholarships and commissions that will be paid by Barnes & Noble and is recommending that the University enter into the agreement.

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**Supporting Documentation:**

Agreement for Bookstore Management and Related Services between the Florida Polytechnic University Board of Trustees and Barnes & Noble College Booksellers, LLC- DRAFT  
Summary of Proposed Major Terms  
Florida Polytechnic University Bookstore for Contract Years 1-5

**Prepared By:** Gina DeJulio, Vice President & General Counsel and Ray Galleno, Executive Director of Business and Auxiliary Services

**Agreement for Bookstore Management and Related Services  
Between  
The Florida Polytechnic University Board of  
Trustees and  
Barnes & Noble College Booksellers, LLC**

**This Agreement** is entered into by The Florida Polytechnic University Board of Trustees, a public body corporate, hereinafter referred to as "University" and Barnes & Noble College Booksellers, LLC, a Delaware limited liability corporation, registered and authorized to do business in the State of Florida, hereinafter referred to as "Contractor".

The parties agree as follows:

Contractor agrees to perform all bookstore related management services in accordance with the terms and conditions set forth in this agreement (the "Agreement").

**Section 1.0 General Terms & Conditions and Engagement**

The primary purpose of the Agreement is for the Contractor to manage and operate the bookstore on behalf of the University and for the benefit of students, faculty, and staff of the University as shown in Exhibit A to this Agreement. The Contractor is authorized to use the presently designated bookstore area in the Wellness Center, and other areas the University may designate herein or in the future on the University's campuses and centers during the contractual period for management of these areas and for no other purpose.

**1.1 Bookstore Name**

Regardless of the Contractor's business name, the name of the bookstore shall be the "Barnes & Noble at Florida Poly" or whatever other name the University determines.

**1.2 Term**

The effective date of this Agreement is May 12, 2014. The term of this Agreement shall be for a five-year period from May 12, 2014 through May 11, 2019. Upon mutual consent of both parties, the Agreement may be renewed for up to two additional five-year terms. Any renewal shall be executed at least 90 days prior to the current term's expiration unless a lesser time is mutually agreed upon by both parties.

**1.3 Notification**

All notifications shall be sent to the following individuals either by certified mail (return receipt requested) or by e-mail whereby an e-mail confirming receipt is received by the sending party from the receiving party.

**For University:**

Ray Galleno, Director of Auxiliary and  
Business Services  
Florida Polytechnic University  
4700 Research Way  
Lakeland, FL 33805  
E-mail: rgalleno@floridapolytechnic.org

With a copy to:  
General Counsel  
Florida Polytechnic University  
439 S. Florida Avenue, Suite 300  
Lakeland, FL 33801

**For Contractor:**

Vice President, Stores  
UCF Bookstore  
101 Aquarius Agora Drive  
Orlando, FL 32816  
E-mail: bstark@bncollege.com

**1.4 Conflict of Interest**

This Agreement is subject to the provisions of Chapter 112, Florida Statutes. Contractor must disclose the name of any officers, directors, or agents who are, or who become, an employees of Florida Polytechnic University. The Contractor shall not compensate in any manner, directly or indirectly, any officer, agent or employee of the University for any act or service which he/she may do, or perform for, or on behalf of, any officer, agent, or employee of the Contractor. No officer, agent, or employee of the University shall have any interest, directly or indirectly, in any contract or purchase made, or authorized to be made, by anyone for, or on behalf of, the University. The Contractor shall have no interest and shall not acquire any interest that shall conflict in any manner with the performance of the products or services required under this solicitation.

**1.5 Legal Requirements**

Contractor shall comply with all Federal, State, county, and local laws, ordinances, rules, and regulations that in any manner affect the services covered in this Agreement, including but not limited to the Worker's Compensation Act, unemployment compensation, and equal employment opportunity. Contractor shall conduct all services and operations in a safe, efficient, and sanitary manner. Lack of knowledge by the Contractor will in no way be a cause for relief from responsibility.

## **1.6 Patents and Royalties**

The Contractor, without exception, shall indemnify and save harmless Florida Polytechnic University and its employees from liability of any nature or kind, including cost and expenses for or on account of any copyrighted, patented, or unpatented invention, process, article, or other intellectual property manufactured or used in the performance of the Agreement by the Contractor, including any use granted to Florida Polytechnic University. If the Contractor uses any design, device, or materials covered by letters, patent, copyright, or other intellectual property rights, it is mutually understood and agreed without exception that the Contractor shall be responsible for all royalties or costs arising from the use of such design, device, or materials in any way involved in the work.

## **1.7 Advertising**

Contractor agrees not to use the results of this solicitation as a part of any commercial advertising without prior approval from the University's Director of Auxiliary and Business Services.

## **1.8 Indemnification/Hold Harmless Agreement**

The Contractor shall indemnify, keep and hold harmless and defend the Florida Polytechnic University Board of Trustees, Florida Polytechnic University and its employees and agents against any and all liability, claims and costs of whatsoever kind and nature for injury to or death of any person or persons and for loss or damage to any property (University or otherwise) occurring in connection with or in any way incident to or arising out of the occupancy, use, service, operations, or performance of work in connection with this Agreement, resulting in whole or part from the negligent or intentional acts or omissions of Contractor, or any employee, agent or representative of Contractor.

## **1.9 Anti-Discrimination**

The University is committed to an environment that embraces diversity, respects the rights of all individuals, is open and accessible, and is free of harassment and discrimination based on the protected classes listed herein. Contractor agrees not to discriminate against any person on grounds of ethnicity, race, creed, color, religion, age, disability, sex, marital status, national origin, genetic information, political opinions or affiliations, and veteran status. To the extent applicable, the nondiscrimination clause contained in Section 202, Executive Order 11246, as amended by Executive Order 11375, relative to Equal Employment Opportunity for all persons without regard to race, color, religion, sex, or national origin, and the implementing rules and regulations prescribed by the Secretary of Labor, are incorporated herein.

## **1.10 Americans with Disabilities Act**

Contractor shall comply with the Americans with Disabilities Act.

## **1.11 Records Access**

Contractor agrees to allow the University and the public access to any documents, papers, letters, or other materials subject to the provisions of Chapter 119, Florida Statutes, made or received by the Contractor in conjunction with this Agreement. Refusal to comply with this provision shall constitute sufficient cause for termination of the Agreement. All written records received by University in connection with the transaction of official business, including this Agreement may be deemed public records and are subject to the provisions of Ch. 119, Florida Statutes. In addition, if Federal funds are used, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts, and transcriptions.

Further, Contractor shall comply with Florida Statutes Section 119.0701, which requires the following:

1. Contractor must keep and maintain public records that ordinarily and necessarily would be required by the University in order to perform the services herein.
2. Contractor must provide the public access to public records on the same terms and conditions that the University would provide and at the same statutorily authorized cost or as otherwise provided by law.
3. Contractor must ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law.
4. Contractor must meet all requirements for retaining public records and transferring public records to the University at the Contractor's cost upon contract termination. Contractor must destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records subject to this requirement that are stored electronically must be provided to the University in a format that is compatible with the information technology systems of the University.

Contractor shall indemnify and hold the University harmless and be financially responsible for all costs, fees, damages and/or penalties (which may include, but not be limited to, the reasonable costs of enforcement including reasonable attorneys' fees) associated with and/or

as a result of any violation of Florida Statute Section 119.0701 by Contractor, its employees or agents.

### **1.12 Auditing & Records Retention**

The Contractor agrees to maintain books, records, and documents (including electronic storage media) in accordance with generally accepted accounting procedures and practices which sufficiently and properly reflect all revenues and expenditures of funds provided by the University, and agrees to provide a financial and compliance audit to the University or to the Office of the Auditor General and to ensure that all related party transactions are disclosed to the auditor. The Contractor agrees to include all record-keeping requirements on all subcontracts and assignments related to this Agreement.

The Contractor agrees to retain all records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertaining to this Agreement for a period of five years based on transaction date.

Copies of all records and documents shall be made available to the University upon reasonable request. All invoices and documentation must be clear and legible for audit purposes. For the duration of this Agreement, all documents must be retained by the Contractor within the State of Florida. Any records not available at the time of an audit will be deemed unavailable for audit purposes. Violations will be noted and forwarded to the University's legal counsel for review. The Contractor shall cooperate with the University to facilitate the duplication and transfer of any said records or documents during the required retention period. The Contractor shall advise the University of the location of all records pertaining to the Agreement and shall notify the University by e-mail (with proof of receipt by the Executive Director of Auxiliary and Business Services) or certified mail within ten (10) days if/when the records are moved to a new location.

### **1.13 Severability**

The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and shall be construed in all respects as if such invalid or unenforceable provision was omitted, so long as the material purposes of the Agreement can still be determined and effectuated.

### **1.14 Governing Law and Venue**

This Agreement is executed and entered into in the State of Florida and shall be construed, performed, and enforced in all respects in accordance with the laws, rules and regulations of the State of Florida. Any action hereon or in connection herewith shall be brought in Polk County, Florida.

### **1.15 Termination for Convenience**

Either party may terminate the Agreement, without cause, if at least 180-days' notice is provided to the other party. Any amounts due prior to the termination date shall be paid within 30 days following the termination date. Should the University terminate for convenience, it shall reimburse the Contractor for any amount of the renovation/remodeling investment not yet amortized (see Section 4.5), and any such investment shall remain the property of the University. Should the Contractor terminate for convenience, it shall forfeit any remaining amount of the renovation/remodeling investment not yet amortized, and any such investment shall remain the property of the University.

### **1.16 Termination for Cause**

Failure by a party to perform the material obligations under the Agreement shall result in default or breach of the Agreement and the non-breaching party shall have grounds for termination. All requirements set forth in writing in this Agreement shall be deemed material obligations.

In the event of the Contractor's noncompliance with nondiscrimination clauses, the Americans with Disabilities Act, or with any other such rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further contracts.

In the event of a breach or default of the Agreement, breaching party shall have thirty (30) days to cure such breach unless a greater time is agreed to in writing by both parties. Should the breaching party fail to cure said default or breach within the time prescribed, the Agreement shall terminate. In the event the Agreement is terminated, nothing herein shall prevent either party from seeking all remedies available to it. Should the University terminate for cause, it shall not be required to reimburse the Contractor for any amount of the renovation/remodeling investment not yet amortized (see Section 4.5). In any circumstance, the investment shall remain the property of the University. Should the Contractor terminate for cause, the University shall be required to reimburse any amount of the renovation/remodeling investment not yet amortized. Such payment may be spread out over the remaining amortization period, if desired by the University.

### **1.17 Contractor Insolvency & Bankruptcy**

In the event the Contractor seeks bankruptcy protection, becomes insolvent, or any similar happenstance, the University may immediately terminate the Agreement. If the Agreement is terminated for Contractor insolvency, bankruptcy or similar circumstances, University shall no longer have any obligation for unamortized capital expenditures remaining for remodeling/renovations (if any), and any such investment shall remain the property of the University.

### **1.18 Acquisitions or Mergers**

In the event the Contractor is acquired by another entity or ownership is otherwise transferred (whereby greater than 50% of the Contractor is owned by a new entity), the University shall have the option of continuing the Agreement (if the new ownership will accept the existing Agreement) or terminating the Agreement without penalty. If University chooses to terminate, Contractor shall receive from University remaining unamortized capital expenditures.

### **1.19 University Food and Beverage Exclusivity/Limitations**

When the University has exclusive or limited contracted beverage or food arrangements with other vendors on campus, including any exclusive pouring rights agreements, Contractor agrees to abide by such sales exclusivity or limitations at all University locations. Such exclusivity or limitations are subject to change during the duration of this Agreement and are effective at the time such exclusivity or limitation agreements are finalized. Contractor shall comply with such changes upon their effective date.

Nothing in this section shall prevent Contractor's staff from on-campus consumption of prohibited products purchased outside of the campus.

### **1.20 University and Contractor Property**

Contractor is responsible for keeping all University property under its control in good repair, normal wear and tear expected. This includes paying all repair costs of any University personal property used by the Contractor. (This responsibility does not include repairs to the physical building or real property. See Section 2.2, University Responsibilities, for maintenance the University is responsible for completing.) Contractor shall clearly mark Contractor property installed during the Contract period. Contractor shall replace all University property that becomes damaged due to Contractor or Contractor's customers' actions or omissions if such replacement is desired by the University. Such replaced property shall become property of the University. Contractor shall not dispose of any contaminants including, but not limited to, hazardous or toxic substances, chemicals, or other agents used or produced in Contractor's operations, on University property or on any adjacent state land or in any manner not permitted by law. At the conclusion of the term of the Agreement, Contractor's property shall be removed by Contractor by the last day of the Agreement. Any property not removed shall be considered abandoned and subject to the procedures for disposition in accordance with University regulation, policy and procedure. Any costs incurred by the University for the storage or transport of Contractor's property shall be the responsibility of the Contractor. University shall assume no risk for Contractor's property that remains on University property after the Agreement has concluded. This provision shall survive the Agreement.



### **1.21 Theft**

The parties agree that a strong position shall be taken with regard to pilferage and that firm policies and practices, agreeable to both parties, shall be adopted by Contractor.

### **1.22 Student Organization Textbook Brokering/Exchange/Swap**

Nothing herein shall prevent University-chartered Student Organizations from arranging a "book swap" or similar endeavor whereby students trade textbooks with each other and may directly compensate each other (or swap books without a financial component) for the purpose of lowering the costs of educational materials. The University shall not use this practice as a revenue source for the University. However, Student Organizations may create and maintain the infrastructure (and pay for and recoup costs related to such infrastructure, if any), if desired.

### **1.23 University-Purchased Educational Materials**

**Notwithstanding anything to the contrary, the University shall have the option of procuring and distributing materials from any outside vendor in order to explore various educational materials. This option may or may not include students paying the University directly for such materials. If students are charged for materials, University will work with Contractor on a case-by-case basis to determine if Contractor is able to offer such materials and will give Contractor first right of refusal during the term of this Agreement if Contractor can provide such materials.**

### **1.24 Open Source Materials**

The University has the right to employ any free or no-cost open source materials as desired without Contractor's permission or involvement.

### **1.25 Advertising in Campus Publications**

If the 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 University permits tabling or other third-party promotional activities at any event sponsored by the University or any University-related groups on the University campus, the following applies:

1. University will give the Contractor reasonable advance notice of the deadline for placing such advertising or participating in such tabling or other promotional activities;
2. The Contractor shall be allowed to place its desired advertising in such materials and to participate in such tabling or other promotional activities at Contractor's expense;

3. In the event that the Contractor chooses to place an advertisement or participate in promotional activities, University shall not accept advertising in such material from, or permit other promotional activities at any of such events, by any seller of University textbooks and/or course supplies other than the Contractor. However, if the Contractor elects not to place an advertisement or to participate, other textbook sellers or course suppliers may be permitted to do so at their expense.

Notwithstanding the foregoing, textbook sellers or course suppliers other than Contractor may participate in the University's Vendor Days as set forth in University Rule 2.10.

### **1.26 University Rules/Reporting**

Contractor understands and agrees to follow the University's and the Board of Trustees' rules, regulations, and policies and procedures. Such rules, regulations, policies and procedures, which may be changed from time to time, and can be viewed at the University's website. Contractor further understands that pursuant to Rule FPU-1.004 Non-Discrimination/Equal Opportunity, Contractor and Contractor personnel must report any suspected sexual harassment or violence to the appropriate authorities including the Florida Polytechnic University Police Department, the University's Equal Access/Equal Opportunity Coordinator and Title IX Coordinator.

Contractor understands that current Florida law provides that any person who knows, or has reasonable cause to suspect, that a child is abused, neglected, or abandoned by a parent, legal custodian, caregiver, or other person responsible for the child's welfare shall immediately report such knowledge or suspicion to the Florida Abuse Hotline of the Department of Children and Families at 1-800-962-2873. More information about reporting abuse may be found online at <http://www.dcf.state.fl.us/programs/abuse/index.shtml>. Additionally, Contractor understands that Florida law requires reporting suspected abuse of a child even when the alleged abuser is not the parent or caregiver of the child.

### **1.27 Separation**

At the conclusion of the Agreement, University shall include in the procurement process a requirement that the succeeding contractor shall be responsible for the purchase of existing inventory at its documented cost, with the following exceptions: dated merchandise, damaged merchandise, merchandise inventories in excess of that normally expected to be sold within one year, or new books not fully returnable to the publisher. The requirement shall include that the successor contractor shall purchase Barnes & Noble's rental inventory outstanding at the time of the transition at the buyback value (50% of the retail price).

## **Section 2.0: University Responsibilities**

The University shall provide the following at the University's expense or have responsibility as indicated:

### **2.1 Utilities**

Heat, light, utilities (not including telephone), and air-conditioning as is reasonably required for operation of the bookstore. The University shall not be liable for any losses that may result from interruption of any utilities or other services supplied by the University.

### **2.2 Repairs and Maintenance**

All routine repairs and maintenance for the building and the physical structure in which the Contractor provides services except in connection with any repairs/renovations contemplated in Section 4.5. This includes light bulb or lamp replacement, ceiling tile replacement, and exterior painting.

### **2.3 Trash Removal and Recycling**

Pick-up bagged trash and cardboard boxes placed by Contractor in trash compactors. All cardboard boxes must be broken down by Contractor for recycling and placed in cardboard dumpsters.

### **2.4 Financial Aid Schedule**

University shall provide a schedule of financial aid charging dates and related activities.

### **2.4 Property Taxes**

Property taxes, if any, shall be the responsibility of the University.

### **2.5 Payments**

Items ordered by University Purchase Order shall be guaranteed by the University and shall be payable within 30 days of receipt of a proper invoice. Contractor may charge interest on any such overdue amounts up to the limits defined in accordance with University regulations.

### **2.6 Financial Aid Payments**

Payments due on student financial aid charges that University has authorized to be charged at the bookstore shall be made within 90 days of receipt a proper invoice. Contractor may charge interest on any such overdue amounts up to the limits defined

in Florida Statutes.

## **2.7 Website Link**

University shall place an electronic link to the Contractor's website within the University's web pages.

## **Section 3.0: Contractor Responsibilities**

### **3.1 Textbooks and Educational Materials**

Contractor will offer for sale all educational materials adopted by the University for student purchase subject to the terms and conditions in this Agreement. Subject to the exclusions in Section 3.2 and elsewhere within this Agreement, the Contractor shall be the University's exclusive buyer and seller of all required and recommended course materials, supplies, and tools, including course packs, software, and materials published or distributed electronically, or sold over the internet.

### **3.2 Exclusions**

Exclusions to Contractor's educational material exclusivity include: University-purchased materials, materials or emerging technologies the Contractor cannot provide (for any reason), materials available only on a platform the Contractor does not (or cannot) support, and/or free materials. None of these items shall be exclusive to the Contractor. If students are charged for materials, University will work with Contractor on a case-by-case basis to determine if Contractor is able to offer such materials and will give Contractor first right of refusal during the term of this Agreement if Contractor can provide such materials.

### **3.3 Course Packs**

Contractor will provide exclusive custom publishing services for course packs. Such services will include the development of course packs for faculty members, securing the appropriate copyright or other intellectual property clearances, printing and binding of course packs, and the distribution and sale of the course packs. Contractor shall provide a complimentary desk copy of each course pack created to the faculty member adopting the course pack.

### **3.4 Required, Recommended, and Contractor-Recommended Materials**

University faculty will submit both required and recommended materials for adoption to the Contractor. Contractor shall make a clear and obvious distinction between faculty-adopted (both required and recommended) materials for a course and all other materials both in its onsite bookstore and online presence. In an effort to relieve confusion between faculty-adopted course materials and other available course

materials, Contractor will locate non-adopted course material separate from adopted material in the onsite and online bookstore.

### **3.5 Exclusive Agent for Financial Aid**

The Contractor may employ a system that allows students to make purchases against their financial aid based on eligibility data obtained from the University. Students can charge authorized materials at the bookstore until a cutoff date set by the Financial Aid Office. The Contractor shall then invoice Financial Aid within the time schedule set by Financial Aid. Payments for charge sales authorized by the Financial Aid office will be guaranteed by the University.

The Contractor must also allow students to charge against vouchers from outside agencies, including but not limited to, the Division of Blind Services and Vocational Rehabilitation. The Contractor will be solely responsible for the billing and collection of such charges.

The Contractor shall be the University's exclusive entity through which students can charge against University-administered financial aid in accordance with Federal laws and guidelines. However, the University may release financial aid directly to any qualified student at any time in accordance with Federal laws and guidelines.

### **3.6 Web Site**

The Contractor shall provide a robust website allowing online purchases of all adopted materials. Upon the University's request, students ordering online shall be able to charge against their financial aid. Students shall have the option of free in-store pickup (if desired) or shipping in accordance with the Shipping & Delivery section below. Contractor may offer incentives for in-store pickup, if desired. Web sales and in-store sales shall be treated equally with regard to commissions, but shall be identified separately on sales reports provided to the University.

### **3.7 Shipping & Delivery**

Contractor shall offer free in-store pickup for all web orders. If the purchaser requests products be shipped to them, Contractor shall charge the following: \$6.95 plus \$1 for each item being shipped, except as indicated below. Contractor and University shall review shipping costs on an annualized basis and mutually agree upon an increase in shipping charges.

Contractor shall arrange for at least one day/time during the first two days of classes of each semester to provide free order distribution at any University centers such as the Florida Polytechnic University's joint campus with Polk State College. Such delivery and distribution to students shall be handled at the Centers by Contractor staff. The day/time shall be clearly indicated on the web site at the time the student places the order. Contractor may provide a cut-off date/time to receive such orders,

but any such cut-off time shall be mutually agreed upon by University and Contractor.

Alternatively, should Contractor not desire to make such free delivery and distribution, Contractor shall provide free shipping directly to recipients who signed up for pickup at the Center. If a student fails to show up for a scheduled pickup, Contractor shall be under no obligation to provide free shipping.

Contractor shall have the flexibility, at any time, to offer free shipping or shipping at a lower rate than what would otherwise be expected or required.

### **3.8 Notice to Check with Professor First**

The Contractor shall post signage recommending students retain their receipts until they have reviewed their materials selection with their professor(s) at, or prior to, the first class. Sufficient warnings will also be placed on materials that contain access codes indicating that using the code will prevent them from receiving a refund (where applicable).

### **3.9 Adoptions**

The Contractor will work with the University to devise the best method of adoption information collection. The Contractor will be responsible for reviewing all adoptions and verifying that the ISBN adopted (where applicable) is, in fact, the desired text. The Contractor shall prepare a report for the University of any known classes/sections for which adoptions have not been received by the deadline (see 3.12 Adoption Deadlines below). The format of the report shall be mutually agreed upon by the Contractor and University, and may change from time to time as needed by either party.

The Contractor will report to faculty the cost to students for any and all adopted materials. For bundled products, the Contractor will inform faculty of both the bundle cost and the cost of individual items in the bundle if they are bought separately.

### **3.10 Adoption List Designee/Public or Third Party Access**

The Contractor will serve as the University's designee for its adoption list and shall be responsible for providing the information in accordance with State of Florida and/or Federal law, specifically including Florida Statutes section 1004.085. Unless otherwise required by law, Contractor may refer any third party to its public web site as the location for such information. Nothing herein shall prevent an off-campus vendor from contacting University faculty for the vendor's own adoption information, but University faculty may refer any such vendors to the Contractor's web site.

### **3.11 Adoption Format**

Contractor will verify what adoption formats are acceptable to University faculty and will indicate as such in store and, to the extent possible, on the web site. If a student purchases the e-book format from the Contractor, but the professor adopts or requires the printed version only, then Contractor shall exchange the e-book for a printed version, providing a credit equal to the cost of the e-book towards the printed version. Such credit opportunity shall only apply if the e-book was purchased from the Contractor.

### **3.12 Adoption Deadlines**

The parties agree that the standard dates for when adoptions are due to the Contractor for a particular term are as follows:

- March 15: Adoption deadline for Summer classes (includes both Summer A and Summer B)
- April 15: Adoption deadline for Fall classes (includes both Fall A and Fall B)
- October 15: Adoption deadline for Spring classes (includes both Spring A and Spring B)

In addition to the parent term, each semester (Summer, Fall, Spring) has an "A" and "B" term which splits the semester in half. Students may take classes in "A" term, "B" term, or the parent term (which covers both "A" and "B" terms for each semester). Contractor may offer later deadlines from time to time, if desired, and if permitted by law. Dates may be revised by agreement of the parties in order to comply with applicable laws.

### **3.13 Sufficient Quantities of Materials**

The Contractor shall assure that all materials adopted prior to an adoption deadline are in stock in sufficient quantity prior to the first day of the term. Any quantity of textbooks or other materials not in stock at this time, but adopted on time, shall be shipped "second-day delivery" or faster, to either the Contractor or directly to the student at the Contractor's expense. Adoptions received after the adoption deadline are not subject to the "second-day" delivery requirement, but the Contractor shall make a good faith effort to assure sufficient quantities are available as soon as possible. Repeated failure to obtain sufficient materials that are adopted prior to the adoption deadline shall be grounds for breach of this Agreement. Regardless of the timing, Contractor shall notify the Vice President of Academic Affairs/designee and the adopting faculty member(s) immediately upon discovering an insufficient quantity of materials. The University expects that Contractor will order course-required textbooks in quantities related to the number of course sections

scheduled and seats filled. To facilitate Contractor's ability to meet this expectation the University will provide the Contractor with access to daily updates of course schedules.

### **3.14 Buy Back**

The Contractor will be responsible for defining buy-back periods and advertising to students and faculty such periods each year. During the designated buy-back periods, the Contractor shall purchase used textbooks, study guides, and vocational books that are in good condition under the following terms:

Contractor shall purchase books at no less than 50 percent of the customer's purchase price if the Contractor has been notified that the book will be used the following term and if the store is not overstocked. In the absence of such notification, or if the book will not be used the following term or if the book is to be replaced shortly by a revised edition according to an announcement by the publisher, Contractor shall purchase used books at no less than the wholesale price.

During the buy-back period, Contractor shall purchase used pocket-sized or pre-priced paperbacks at up to 25% of the selling price. Contractor may extend these terms to non- buyback periods, if desired.

At times other than the designated buy-back period, students shall be allowed to sell textbooks to the Contractor at the rates set forth herein if the University has readopted the book and/or the Contractor has a need to purchase the book for either campus or national needs. The Contractor shall also purchase used textbooks from Florida Polytechnic students not readopted at Florida Polytechnic, at a percentage no less than the highest amount that the Contractor purchases the same book at all other on-campus Contractor accounts where the textbook has not been adopted.

### **3.15 Electronic Educational Materials - Required Information**

Contractor must list the following information both in-store and on its website regarding e-books, e-texts, or other electronic-only materials for sale or lease or license by the Contractor:

- Length of time the purchase will entitle a user to access the material
- Acceptable formats for viewing/using the materials (e.g. e-pub, Windows, MAC OS, iOS, Android, etc.)
- Ability to get a refund once the materials are accessed (if any)



### **3.16 Access Codes and Supplemental Materials Bound with Textbooks**

Any University-adopted materials that include access codes for additional learning materials online must be marked with the following (or similar) warning to prospective buyers:

"Warning: Opening and/or using this access code will remove your ability to return these materials for a refund. Check with your professor prior to using or accessing these materials."

Contractor will assure that any access codes which are part of any adopted learning material also will be made available for sale separately in accordance with the Higher Education Opportunity Act of 2008, Section 133. Likewise, Contractor also will make available for sale separately any supplemental materials bundled with a textbook.

The separate costs of any such access codes for additional learning materials online or supplemental materials normally bundled with a textbook shall be provided upon adoption to the faculty member that adopts such materials.

### **3.17 Textbook Rentals**

Contractor shall offer rentals of popular textbooks (as determined by Contractor) at a reduced rate. If a textbook is offered for rental at any time during a particular financial aid charging period, it must remain so for the duration of the financial aid charging period, regardless of the number of textbooks rented.

Contractor shall allow a renter of a textbook to retain the book at the conclusion of the term for a reasonable additional charge.

### **3.18 Other Items for Sale**

The Contractor shall be the University's exclusive on campus and internet retailer of other items typically sold in University bookstores, such as books, educational supplies, notebooks, stationery, desk and room accessories, gift items, class and alumni rings and jewelry, and apparel, including any and all such items bearing a Florida Polytechnic University logo, trademark, insignia, or other identifying mark. University grants Contractor the nonexclusive right to manufacture items bearing a Florida Polytechnic University logo, trademark, insignia, or other identifying mark. University shall have the right to review and approve any design and product quality proposed by Contractor for all such items provided for sale; the University's failure to respond to a request to review a proposed item within 14 days will be deemed consent to the item. Contractor will consider

requests by the University to offer additional items for sale, including but not limited to higher end items.

Should Florida Polytechnic University change its logo, Florida Polytechnic University will either give Contractor six months prior written notice or will allow Contractor to automatically deduct from commissions due to University the cost of unsold emblematic merchandise as of the date of the change. "On campus" shall mean the main campus grounds as well as any Florida Polytechnic University owned properties and Centers, provided Barnes & Noble has a presence on such additional properties and centers.

The Contractor acknowledges that other off-campus brick-and-mortar and online companies have the right to create, manufacture, purchase and sell Florida Polytechnic University trademarked products licensed by the University, for which the University would receive licensing fees. In keeping with the Contractor's aforementioned exclusivity as the University's official retailer, the University shall only actively promote the sale of trademark inventory provided by the Contractor unless otherwise agreed by the parties. The University further retains the right to create, manufacture, and give away items at no cost for promotional or other purposes that might otherwise be subject to this Agreement.

The University and Contractor further agree to work together in the event that the University wishes to sell licensed merchandise at University events and activities, particularly in cases where Contractor does not wish to sell such items at University events.

The Contractor shall be the exclusive agent for the rental and/or sale of graduation caps and gowns and commencement invitations.

The Contractor shall have exclusive rights to manage all service programs requested by the University that are customarily handled by University bookstores such as magazine subscription and credit card application programs (if permitted by law). Revenue generated from all such programs shall be commissionable (see section 4.3 below).

Provided the University's then-current food services provider agrees, the Contractor shall have the non-exclusive right to sell convenience store items such as food, health and beauty items, and other sundries. Convenience items pricing is to be competitive with the local market. Food and drink offerings must be in compliance with any current or future University food and beverage agreements.

### 3.19

### Pricing

Prices for items sold both in store and on Contractor's website must be identical. When determining the selling price of textbooks, there shall be no add-on fees or surcharges, including those for freight, handling, publisher re-stocking, or similar fees. Pricing formulas will be applied to the actual price listed on the publisher's invoice in order to determine the selling price of a particular textbook/course material.

Pricing shall be as follows:

New textbooks: Priced no greater than the Publisher's List Price or up to a 24 percent 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 where the publisher's discount to Contractor is less than 20 percent).

1. Used textbooks: Priced at least 25 percent less than the selling price for new textbooks.
2. Course Packs/Textbooks from Publishers with Restrictive Policies: Priced not to exceed a 24 percent gross margin.
3. Digital Course Materials: Priced not to exceed a 24 percent gross margin.
4. Rental Textbooks: Contractor shall have flexibility to price rentals competitively, but shall maintain an overall (average) aggregate cost savings of at least 50% off of the new book price.
5. All Other Items: Contractor shall price all other items at or below the manufacturer's suggested retail price. In cases where there is no suggested price, Contractor shall have the flexibility to price in accordance with the local or national marketplace. Contractor shall further have the option to rent items for the purpose of lowering student costs.

Contractor shall have flexibility, if desired, to sell any product at a lower price than indicated above in order to be competitive or react to external market forces.

### **3.20 Graduation Regalia**

The Contractor will supply and account for the return of all rental caps, gowns, and other regalia for students, faculty and staff. The Contractor will order such regalia based on the number of persons measured in sufficient time for the Fall and Spring graduations. The Contractor will distribute the caps and gowns up to and including the time of graduation. Following graduation, the Contractor will accept the return of all rental academic regalia from students, faculty, and staff.

### **3.21 Payment Methods**

Contractor will accept cash, personal checks, debit cards, American Express, Discover, Visa, and MasterCard credit cards, as well as any other payment desired by Contractor. Contractor shall accept any current or future University debit card used to distribute financial aid, including Higher One. Should the University ever switch to a "one card" solution, Contractor will, at its own expense and within a reasonable time, install necessary equipment to accept such a card.

### **3.22 Sales to the University**

Contractor shall accept University purchase orders, and payment for such charge sales shall be in accordance with Section 2.6. All such invoices shall bear the University's purchase order number.

Subject to the exclusions in this Section 3.22, University employees shall receive a 10% discount on purchases from Contractor.

Subject to the exclusions in this Section 3.22, University departments shall receive a 20% discount on purchases from Contractor.

Exclusions: 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.

Despite these exclusions, Contractor may choose to offer employee or department discounts on any of the excluded items at any time, if desired.

### **3.23 Independence from Publishers**

Contractor shall in no way exhibit a preference or otherwise attempt to influence faculty to adopt materials from any specific publisher as opposed to any other publisher.

### **3.24 Calendar and Hours of Operation**

Contractor shall maintain a schedule of operating days/hours in accordance with the official University calendar and in mutual agreement with the University to meet the needs of students, faculty, and staff. Contractor shall have extended hours at the beginning of each major term and at other mutually agreed times. Any hours the Contractor desires to be open beyond the University's standard hours must be pre-approved by the University.

### **3.25 Registration Integration**

The Contractor's enterprise system shall integrate with the University's enterprise system to facilitate an easy ordering system for educational materials. Students shall have an option to purchase their textbooks from the Contractor upon completed registration, subject to standard adoption procedures.

### **3.26 Maintenance and Sanitation**

Contractor shall provide daily housekeeping, custodial, cleaning maintenance, and sanitation service, satisfactory to the University, for the bookstore area, offices and any other area under Contractor use, including the interiors and exteriors of bookstore windows. The equipment and supplies necessary to accomplish these tasks are the responsibility and expense of the Contractor.

### **3.26 Pest Control**

The Contractor is responsible for pest control in all bookstore areas, subject to any University requirements or limitations on the type of pest control.

### **3.27 Security**

The Contractor is responsible for providing security of the areas under Contractor's use as it deems necessary. All costs associated with providing security, including any alarm system and its monitoring will be borne by the Contractor. All costs associated with changing door locks, safes, or combinations of safes will be borne by the Contractor.

The University will not be responsible for any damage, theft or disappearance from the bookstore, storage areas or other areas under Contractor's use resulting from any of the following: break-in or burglary, Contractor's employee theft, acts of God, or other acts beyond the control of the University.

### **3.28 Emergency Access**

The Contractor shall grant emergency access to all areas in its use to University

personnel on a 24-hour basis.

### **3.29 Network, Telephone and Internet**

The Contractor shall provide its own networking, telephone and internet connectivity. All costs related to these services shall be borne by the Contractor.

### **3.30 Staffing and Background Checks**

Contractor must have sufficient staffing to fulfill this Agreement. Contractor, at its own expense, will require its employees, agents and/or volunteers to submit to, and successfully pass to the satisfaction of the University, an appropriate security background investigation and through the E-Verify program, prior to being allowed access to any of the University's facilities to perform those services as set forth in this Agreement. University reserves the right to have Contractor's staff removed from University property when it is determined to be in the best interest of the University, Contractor will assure that any employee, agent or volunteer of the Contractor (or any subcontractor) coming upon the University premises for any reason whatsoever is not a registered sex offender or sexual predator. The Contractor shall not allow any employee to work on University property whose background indicates a potential threat to University property, students, or employees.

### **3.32 Audit at Contractor's Expense**

University shall have the right to require the submittal of an annual independent audit by a Certified Public Accountant at the Contractor's cost during the term of the Agreement. This right shall survive the Agreement up to 12 months past the termination date to allow time for an auditor to assure compliance during the final year of the Agreement.

### **3.33 Operational Expenses & Licenses**

The Contractor shall operate the Bookstore on its own credit and shall furnish at its own expense, all merchandise, equipment, labor, supplies, and services required to perform Contractor's duties and responsibilities as required by this Agreement. Contractor shall secure and pay for any necessary federal, state and local licenses in connection with its services. Contractor will, at its own expense, immediately correct any issues discovered in any governmental health inspection if the issues are under the control of the Contractor as per these terms and conditions.

### **3.34 Risk of Loss**

The Contractor shall be responsible for the risk of loss or damage to inventory located in the bookstore, storage, and any other areas provided

for Contractor use by the University. All costs relevant to purchasing, delivery, and storage of merchandise/inventory shall be the responsibility of the Contractor.

### **3.35 Prohibited Merchandise**

Contractor shall only carry logo imprinted merchandise with logos for Florida Polytechnic University and its partner schools. The University shall inform the Contractor if any other schools enter into partnerships with Florida Polytechnic that would permit the Contractor to carry merchandise with other logos. This restriction also applies for sales via the University Bookstore web site.

Contractor shall not purchase or sell any textbooks or other merchandise specifically marked as free samples not for resale.

### **3.36 Technology Adaption**

The Contractor is expected to adapt to emerging technologies used by the University for educational materials. Because of the unpredictability of future options, the Contractor and University agree to work together in good faith to provide these items. However, notwithstanding anything to the contrary, the University shall have the option of procuring materials from any outside vendor in an effort to experiment with various educational materials if Contractor is unable to provide such materials. If students are charged, University will work with Contractor on a case-by-case basis to determine if Contractor is able to offer such materials and will give Contractor first right of refusal during the term of this Agreement if Contractor can provide such materials.

### **3.36 Technology Sales and Help Desk**

Contractor shall provide a student technology service desk. Students shall be able to purchase technology items at favorable educational pricing, where applicable. In addition, Contractor will provide services such as hardware/software installation and setup (including assistance with connectivity), as well as tune-up, backup, repair, trade-in, and recycling services. The Contractor shall hire University students studying in the University's information technology educational programs to assist with this help desk (subject to Contractor's standard employment screening procedures and approval).

### **3.37 Taxes**

With the exception of real estate taxes, Contractor shall be responsible for any and all taxes and assessments arising out of the bookstore operation including, but not limited to, payroll taxes, sales and use taxes, and income taxes.

### **3.38 Sustainable/Environmentally Friendly Practices**

Contractor will comply with any reasonable sustainable/environmentally friendly initiatives of the University and shall use environmentally friendly practices in its operations.

### **3.39 Refunds & Exchanges**

#### **3.39.1 Textbooks**

Contractor shall provide full refunds in the original form of payment for textbooks purchased at the Florida Polytechnic University Bookstore if returned in the original condition with a valid receipt during a minimum period of the first five days of classes for each term. Within 30 days of the first day of classes, textbooks will be fully refunded in the original form of payment with an original receipt and proof of add/drop.

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

For general reading books, medical and specialty reference books, software, audio, video, and small electronics, Contractor will issue full refunds in the original form of payment if returned in the original condition, with an original receipt and within fourteen (14) days of purchase. Opened software, audio books, DVDs, CDs, music and small electronics may not be returned for a refund, but can be exchanged for the same item if the originally purchased product is defective.

#### **3.39.3 Other Merchandise**

Subject to the exceptions in 3.40.2, 3.40.4 and as otherwise provided in this Agreement, Contractor will issue full refunds for returned merchandise in the original form of payment if returned in the original condition, with an original receipt and within fourteen (14) days of purchase. Opened software, audio books, DVDs, CDs, music and small electronics may not be returned for a refund, but can be exchanged for the same item if defective.

#### **3.40.4 Refund Exclusions**

Refunds or Exchanges will not be issued for the following items: food and beverages, unwrapped loose leaf books, activated eBooks (except in accordance with Section 3.11), custom course materials, outlines, study guides, school guides, magazines and prepaid cards.



### **3.40.5 Refunds at University's Request**

Contractor shall also provide a full refund at Contractor's expense when requested by the University's Executive Director of Business and Auxiliary Services or supervisor thereof. Any such requests shall be made only when special circumstances arise or if University or Contractor error is involved.

### **3.41 Financial Aid Refunds**

Refunds for merchandise purchased with a financial aid authorization must be returned to the University (not the purchaser) by one of the following methods: 1) Contractor payment to the University, 2) issuing a credit invoice to the University, 3) Contractor adjusting the financial aid invoice and clearly indicating the student ID number(s) for those qualifying for a refund, or 4) other method mutually agreed upon between University and Contractor.

### **3.42 Performance Bond**

No performance bond is required for the services provided herein. A performance bond may be required for any renovations in accordance with Section 4.5.

### **3.43 Services for the High School Dual Enrollment Program**

Contractor shall be the distribution point for High School Dual Enrollment (HSDE) textbooks and be responsible for continuing to fill orders after the initial order as needed. Other services include:

- Delivering books for University's HSDE students that may only be taking classes at centers. These books would be packaged individually per student and shipped according to Section 3.7, Shipping and Delivery.

- Accepting the return of any of University's HSDE texts due to students dropping, withdrawing, or changing classes and refunding the University the new or used book price (as the condition warrants) as long as the book will be used in the following semester (in accordance with Contractor's return practices).
- Contractor shall provide University's HSDE Program with invoices, receipts, return receipts, and book certifications on a monthly basis. This accounting shall be by high school, and include student name, student ID, book information, and price.
- Books orders shall be packaged in boxes with the student's name on the outside and certification and receipt inside (when shipped) or outside of the box.
- University's HSDE Program will provide the Contractor with student names, ID numbers, high schools, county, and any other demographic information necessary for Contractor to provide information on adopted books which will allow the University to merge book information with student information and book requests (book certification forms) sent by the HSDE Program office.

### **3.44 Intentionally Deleted**

### **3.45 Insurance**

The Contractor shall provide proof of insurance for the life of the Agreement in the minimum amounts as follows:

Comprehensive General Liability required in the Agreement shall include contractual liability, personal injury liability, property damage and products liability.

Type of Insurance	Minimum(s)
General Liability	
General Aggregate	\$3,000,000
Products Liability	\$1,000,000
Personal Injury Liability	\$1,000,000
Each Occurrence	\$1,000,000
Automobile Liability (Includes owned, non-owned, and hired autos.)	
Combined Single Limit	\$1,000,000
Worker's Compensation	Statutory Limits

Florida Polytechnic University and Florida Polytechnic University Board of Trustees shall be named as certificate holder, additional insured, and loss payee.

These policies shall contain a covenant requiring thirty (30) days' written notice to Florida Polytechnic University before cancellation, reduction or other modification of coverage.

In the event that the Contractor fails to maintain and keep in force the insurance and Worker's Compensation as herein provided, the University shall have the right to cancel and terminate the Agreement for default, forthwith and without notice.

The Contractor shall advise each insuring agency to automatically renew all policies and coverage in force at the start of and resulting from this Agreement until notified coverage requirements are revised. Insurance certificates indicating the required minimum coverage and signed by Florida Resident Agent shall be furnished by the Contractor prior to the Agreement start date and forwarded to the Executive Director of Business and Auxiliary Services, Florida Polytechnic University.

#### **3.46 Gramm Leach Bliley Act**

The Contractor will implement and maintain appropriate safeguards for any customer or student information that comes into its possession as a result of its business relationship with the University as described in this Agreement.

#### **3.47 FERPA**

In accordance with the Family Educational Rights and Privacy Act (FERPA), 20 USC 1232g et seq., 34 CFR Part 99, and Florida Statute sections 1002.225 and 1006.52, the Contractor may be deemed to have a legitimate educational interest in accessing student's education records, and Contractor and its employees shall comply with the non-disclosure and other requirements of all applicable laws and regulations. Contractor shall not use or disclose confidential student information received from or on behalf of the University (or its students) except as permitted or required by the Agreement, as required by law, or as otherwise authorized in writing by the University. Contractor agrees not to use confidential student information for any purpose other than the purpose for which the disclosure was made.

#### **3.48 Removal of Items on Display or For Sale**

Contractor will remove any items on display or for sale if requested to do so by the University.

#### **3.49 Bookstore Feedback**

Contractor shall respond, in a manner satisfactory to the University, to any feedback the University receives regarding Contractor operations if requested to do so by the University.

### **3.50 Bookstore Advisory Committee**

Contractor will participate in the University's Bookstore Advisory Committee (and any appropriate subcommittees thereof), which represents multiple areas of the University and is designed to improve communications and offer suggestions to improve the University's interaction with the Contractor.

## **Section 4.0 Compensation**

### **4.1 Scholarships**

Contractor shall provide **\$5,000** in annual textbook scholarships, to be awarded by University.

### **4.2 Commissions**

On an annualized basis, the Contractor will pay the University the applicable percentage of gross sales at the bookstore as follows:

**8.0% of all gross sales in any contract year where total gross sales are below \$1,500,000**

**10.0% of all gross sales in any contract year where total gross sales are at or above \$1,500,000**

Gross sales shall be defined as all collected sales at the bookstore, including textbook rentals and all sales from the bookstore website, **less** voids, refunds, sales tax, discounted departmental sales, handling fees associated with non-return of rental textbooks, campus debit card fees, computer hardware, discounted faculty/staff sales, pass-through income, bookstore issued scholarship sales, and other merchandise mutually designated as non-commissionable. When Contractor sells digital content as an agent, Contractor's agency fee shall be the applicable gross sales for such digital content, and such agency fee shall be included as part of gross sales.

If annual gross sales of the bookstore shall materially decline as a result of declining enrollment (i.e., decrease 5 percent or more), public legislation, other conflicting campus agreements, material changes in school policies or the business model of the industry, such as digital books, sales directly from the publisher, or other reasons outside of the control of Contractor, University agrees to negotiate in good faith with Contractor an appropriate reduction in the payments set forth above.

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.

During any period of major construction when the bookstore business is meaningfully disrupted by construction, Contractor will pay the University according to the percentage formula only.

#### **4.3 Contractor Reporting and Payment**

Within thirty days following the last day of each monthly accounting period, the Contractor shall submit to the University a detailed statement indicating gross sales and net sales as defined for that month along with payment for commissions. The sales shall be reported in a format agreed to by both parties. The report will include (at a minimum) the categories of new textbooks, used textbooks, general books (trade and reference), school supplies, apparel and insignia/gifts, sundries, computer items and electronics. Internet sales shall be listed separately.

Late payments by Contractor may be assessed a late fee of 1.0% per month. The University further reserves the right to withhold any payment due to the Contractor from the University and apply such payments toward delinquent payments until such time that all delinquent commission amounts are received. In the event that any commission payment is returned as uncollectable, a penalty of fifteen percent (15%) of the payment amount may be imposed at the sole discretion of the University. All penalties are cumulative.

#### **4.4 Renovations & Capital Investment**

Contractor will be provided with a vanilla box space (see attached Exhibit A). The Contractor will spend **\$150,000** to design, construct, equip, and install fixtures to build out space in the Bookstore. The University will not be responsible for any additional cost if build out exceeds the \$150,000. The Contractor will provide proof of the amount of the investment, and depreciate this investment on a straight-line basis for 5 years. Unless otherwise provided in this Agreement, should the University cancel or fail to renew this Agreement before the end of that period, then the University will reimburse the Contractor for any amount of the investment not yet amortized, and fixtures, equipment, etc, will be the property of the University.

Redesigning or remodeling of space (and design fees thereof) will be the responsibility of the Contractor, subject to the approval of, and in conjunction with, the University's Facilities Services Department.

Any renovations, expansions, or remodeling will require insurance, including general liability, auto liability, personal injury, builder's risk, umbrella and worker's compensation (amounts will vary based on the work performed, as determined by the College University). In addition, a performance bond may be required for the project.

#### **Section 5.0 Miscellaneous**

### **5.1 Attorney's Fees & Costs**

Each party shall be responsible for its own attorneys' fees and costs in the event of a dispute arising from this Agreement, except in the event that a court or other judicial body awards fees or costs in accordance with F.S. §57.105 (sanctions for raising unsupported claims or defenses).

### **5.2 Force Majeure**

No default, delay, or failure to perform on the part of Contractor or University shall be considered a default, delay or failure to perform otherwise chargeable hereunder, if such default, delay or failure to perform is due to causes beyond either party's reasonable control including, but not limited to: strikes, lockouts, or inactions of governmental authorities, epidemics, war, embargoes, fire, earthquake, acts of God, or default of common carrier. In the event of such default, delay or failure to perform, any date or times by which either party is otherwise scheduled to perform shall be extended automatically for a period of time equal in duration to the time lost by reason of the excused default, delay or failure to perform.

### **5.3 Disclaimer**

This Agreement is not binding upon either party until it has been signed by a person with a specific delegation of authority to sign on the party's behalf. Each signatory to this Agreement represents and warrants that he or she possesses all necessary capacity and authority to act for, sign, and bind the respective entity or person on whose behalf he is signing.

### **5.4 Entire Agreement**

This Agreement constitutes the entire agreement between the parties, and no addition, modification or amendment shall be effective unless in writing and executed by the parties hereto.

### **5.5 Independent Contractor**

It is understood and agreed that nothing contained herein is intended or should be construed as in any way creating or establishing the relationship of partners between the parties hereto. Contractor is, and shall remain, an independent contractor with respect to all services performed under this agreement. Contractor shall at all times have complete supervision and control over its own agents, volunteers, and employees, and the University shall at all times have complete supervision and control over its own agents, volunteers, and employees.

### **5.6 Surrender of Premises**

Upon the expiration or termination of this Agreement, the Contractor shall vacate the property used for the bookstore operations and shall surrender the property to the

University, in like good order as when received, ordinary wear and tear excepted, with any and all fixtures and equipment owned by the University and any equipment furnished by the Contractor to replace similar equipment which may have become lost, damaged, or destroyed.

In Witness Whereof, the parties have caused this Agreement to be executed effective on the day and year first above written.

**BARNES & NOBLE COLLEGE  
BOOKSELLERS, LLC.**

**THE FLORIDA POLYTECHNIC  
UNIVERSITY BOARD OF TRUSTEES**

\_\_\_\_\_  
Authorized signature

\_\_\_\_\_  
Authorized signature

\_\_\_\_\_  
Print name and title

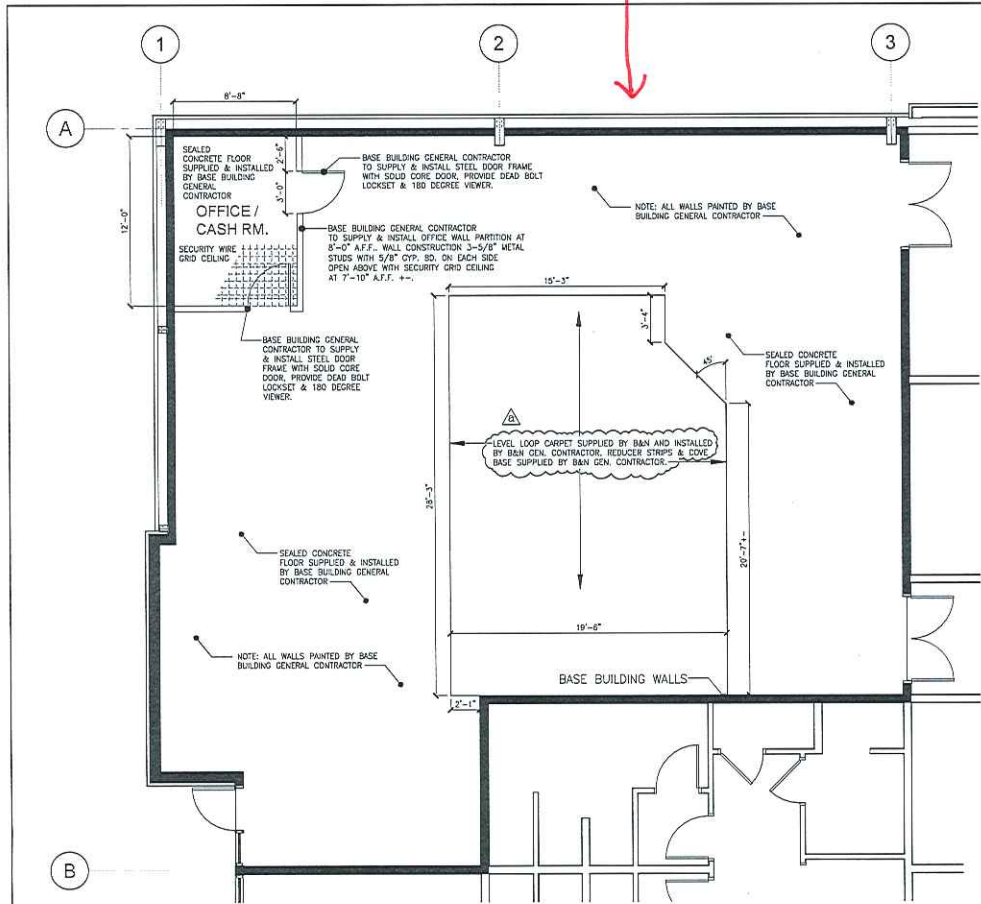
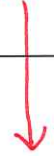
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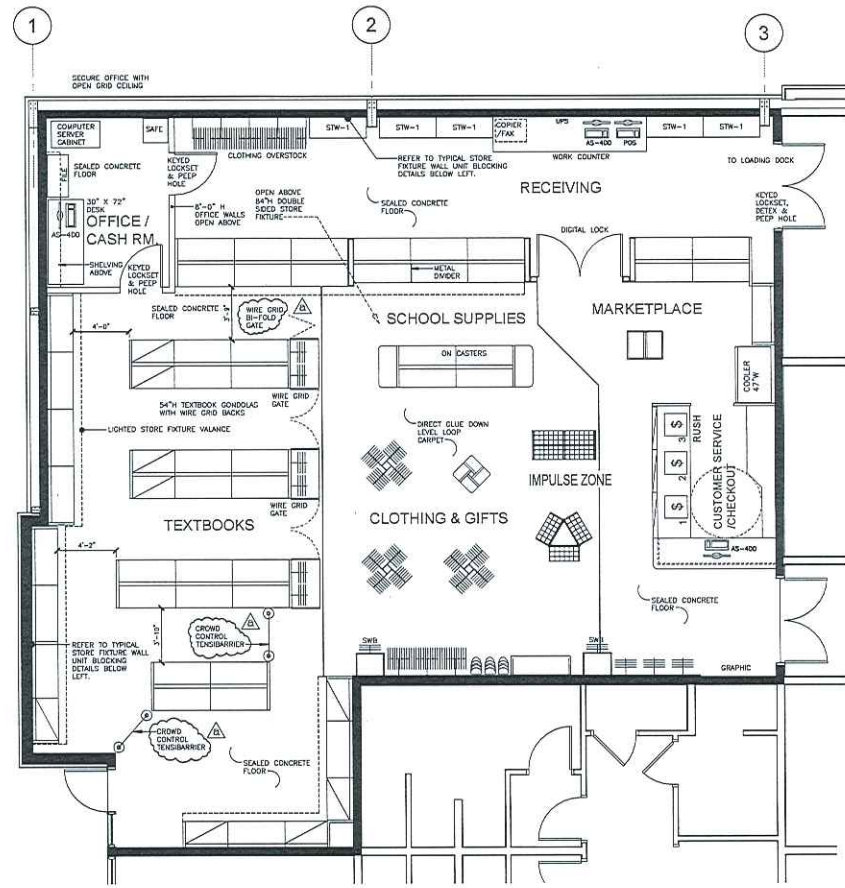
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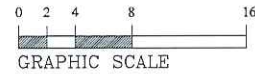
Vanilla Box



SUPPLEMENTAL CONSTRUCTION PLAN  
 SCALE: 1/4" = 1'-0"

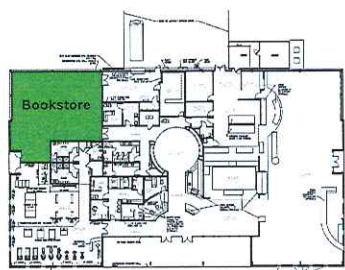


STORE FIXTURE PLAN  
 SCALE: 1/4" = 1'-0"

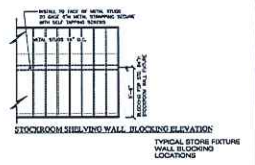
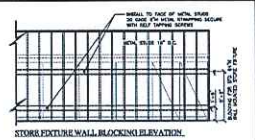


Store Fixture Legend

- 48" W Section
- 36" W Section



Key Plan



DESIGN RESOURCES CO.  
 ARCHITECTS, INTERIORS, EXHIBIT DESIGN, MANUFACTURE  
 2015 PINE HILL, SUIT 100/101, FT. WORTH, TEXAS 76114-1000 354-1110

BARNES & NOBLE  
 COLLEGE BOOKSELLERS

STORE FIXTURE PLAN  
 AND SUPPLEMENTAL  
 CONSTRUCTION PLAN

FLORIDA POLYTECHNIC UNIVERSITY  
 WELLNESS CENTER  
 4700 RESEARCH WAY  
 LAKELAND, FLORIDA 33805-8531

DATE: 3-14-14  
 SCALE:  
 DWG. BY:  
 JOB NO:  
 REV: 4-7-14  
 CLARIFYING NOTES

SHEET NUMBER  
 B-100





**OUTLET LEGEND** Note: wall outlets 18" A.F.F. O.C. unless otherwise noted. All Dimensions On Center. All outlets supplied & installed by Base Building General Contractor unless otherwise noted.

SYMBOL	DESCRIPTION
Ⓛ	DUPLEX OUTLET WALL
Ⓚ	QUADRA-PLEX OUTLET WALL
▷ AS-400	DATA OUTLET WALL FOR AS-400 COMPUTER
▷ POS	DATA OUTLET WALL FOR POS (POINTS OF SALES REG.)
▷ T	TELEPHONE OUTLET
▷ PC	PERSONAL COMPUTER
▷ T1	DATA (WAN CIRCUIT) (1 FOR MAIN SYSTEM)
Ⓜ	JUNCTION BOX
---	COMPUTER CABLING AS-400
---	COMPUTER CABLING P.O.S.
S	POWER PANEL FOR SECURITY SYSTEM MOUNT @ 54" A.F.F. O.C., BASE BUILDING GEN. CONTRACTOR TO PROVIDE JUNCTION BOX FOR DEDICATED PHONE LINE.
KB	KEY PAD FOR SECURITY SYSTEM 48" A.F.F. O.C. PROVIDE JUNCTION BOX.
POS SURFACE MOUNT	B&N G.C. TO SUPPLY & INSTALL (PULL FROM EXIST. 'J' BOXES) FLOOR SURFACE MOUNTED OUTLETS @ CHECKOUT COUNTER (3) P.O.S. (3) ELECTRICAL DUPLEX OUTLET PROVIDE PULL STRINGS FOR ALL DATA OUTLETS TYPICAL. (DATA WIRING INSTALLATION BY BARNES & NOBLE DATA CONTR.)
B	SERVICE BUZZER 96" A.F.F.
□	SERVICE BUTTON (BASE BUILDING G.C. TO SUPPLY & INSTALL AT LOADING DOCK (NOT SHOWN))

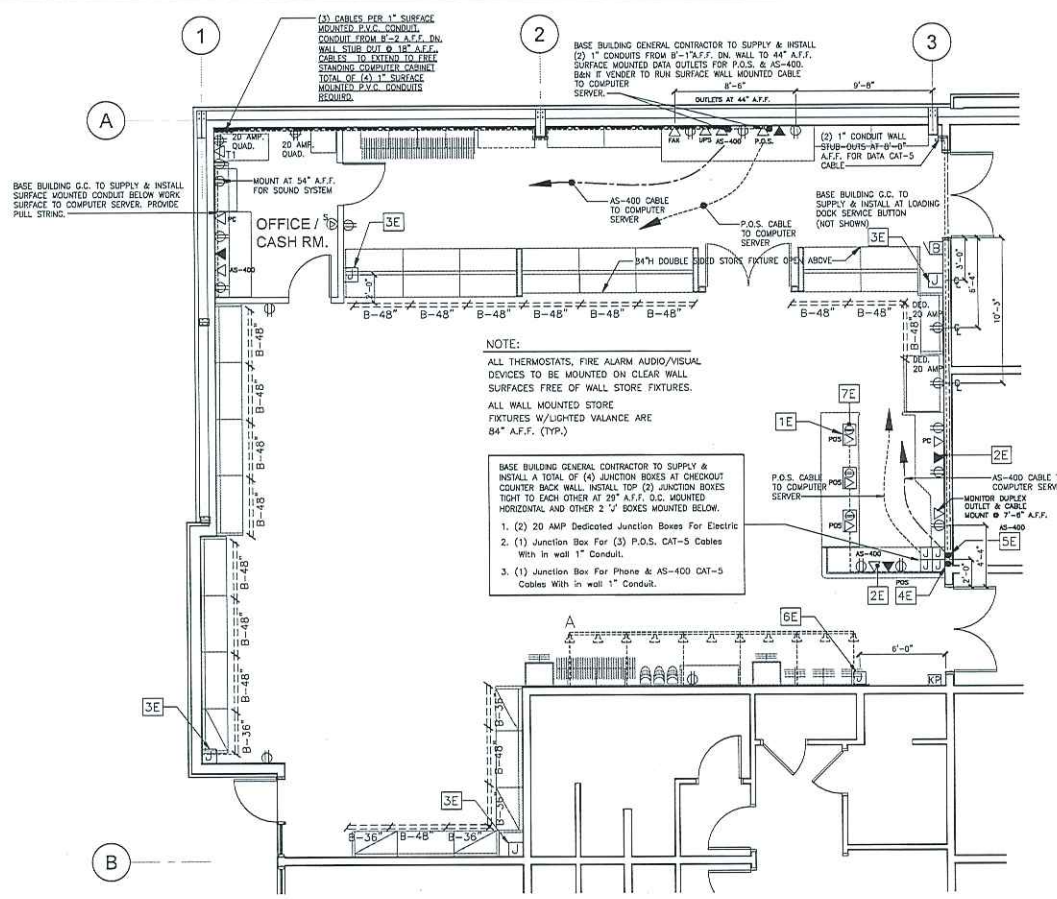
**LIGHT FIXTURE LEGEND (SUPPLIED & INSTALLED BY B&N GEN. CONTR.)**

A	TRACK LIGHT FIXTURE: CONTECH CTL 8038 SATURNA SWITCHED PAR 38 LINE VOLTAGE TRACK FIXTURE CTL-8038-P FINISH WHITE WITH MATCHING WHITE TRACK. LAMP WITH PAR 38 LED17P38V27KFL. SUPPLY & INSTALL CANTILEVER BRACKET FOR TRACK ATTACHMENT.
B	Valance Lighting: Mercury 36" FLUORESCENT STRIP LIGHT FIXTURE MM 225-OCT-P-ELB-UNV. LAMP WITH PHILLIPS F257B/TL735. MERCURY 48" FLUORESCENT STRIP LIGHT FIXTURE MM 232-OCT-C-ELB-ELB-UNV. LAMP WITH PHILLIPS F327B/TL735

**ELECTRICAL & DATA NOTES**

Supplied & installed by Base Building General Contractor unless otherwise noted.

- 1E Electrical outlets for cash register - 2 maximum per circuit.
- 2E Outlet surface mounted to inside of milkwork unit. All wiring in conduits. Outlets to be tight to underside of counter top. (Supplied and installed by B&N Gen. Contr.)
- 3E Supply & install junction box mounted horiz. 7'-4" A.F.F. Approx. size 2 1/2" x 4 1/2" for valance light fixt. Valance light fixt. to be switched next to main ceiling light fixture switches.
- 4E 1" conduit in wall for point of sales (POS) computer cable. Extend up and across to stockroom 8'-0" A.F.F. install pull cords. Junction box mounted horizontal under work surface (typ.) B&N DATA CONTR. TO INSTALL COMPUTER CABLING ONLY.
- 5E 1" conduit in wall for AS-400 computer cable. Extend up and across to stockroom 8'-0" A.F.F. install pull cords. Junction box mounted horizontal under work surface (typ.) B&N DATA CONTR. TO INSTALL COMPUTER CABLING ONLY.
- 6E Supply & install junction box mounted horiz. 8'-4" A.F.F. for track light fixture
- 7E B&N General Contractor to supply & install surface mounted floor outlets & conduits centered under store fixture back base deck. refer to B&N store fixture contractor shop drawings for exact location. Pull elec. wiring and supply data pull cords from supplied 'J' boxes typical.  
B&N DATA CONTR. TO INSTALL COMPUTER CABLING ONLY.

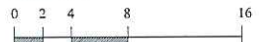


**NOTE:**  
ALL THERMOSTATS, FIRE ALARM AUDIO/VISUAL DEVICES TO BE MOUNTED ON CLEAR WALL SURFACES FREE OF WALL STORE FIXTURES.  
ALL WALL MOUNTED STORE FIXTURES W/LIGHTED VALANCE ARE 84" A.F.F. (TYP.)

BASE BUILDING GENERAL CONTRACTOR TO SUPPLY & INSTALL A TOTAL OF (4) JUNCTION BOXES AT CHECKOUT COUNTER BACK WALL. INSTALL TOP (2) JUNCTION BOXES TIGHT TO EACH OTHER AT 29" A.F.F. O.C. MOUNTED HORIZONTAL AND OTHER 2 "J" BOXES MOUNTED BELOW.  
1. (2) 20 AMP Dedicated Junction Boxes for Electric  
2. (1) Junction Box For (3) P.O.S. CAT-5 Cables With in wall 1" Conduit.  
3. (1) Junction Box For Phone & AS-400 CAT-5 Cables With in wall 1" Conduit.

**OUTLET LOCATION & SUPPLEMENT LIGHT FIXTURE PLAN**

SCALE: 1/4" = 1'-0"



GRAPHIC SCALE

**DESIGN RESOURCES CO.**  
ARCHITECTURAL DESIGN PROJECT MANAGEMENT  
2511 PARK ROAD, SUITE 100, WOODBRIDGE, CT 06414 | PHONE 203-340-1512

**BARNES & NOBLE**  
COLLEGE BOOKSELLERS

OUTLET LOCATION & SUPPLEMENTAL LIGHT FIXTURE PLAN

FLORIDA POLYTECHNIC UNIVERSITY  
WELLNESS CENTER  
4700 RESEARCH WAY  
LAKELAND, FLORIDA 33805-8531

DATE: 3-14-14  
SCALE:  
DWG. BY:  
JOB NO:  
REV:

SHEET NUMBER:  
B-300



**The Florida Polytechnic University Board of Trustees and Barnes & Noble College  
Booksellers, LLC Agreement  
For Management of Bookstore**

Summary of Proposed Major Terms

The University is piggybacking off of Santa Fe College's agreement with Barnes and Noble. The purpose of the Agreement is for the Barnes & Noble to manage and operate the Florida Polytechnic University Bookstore. A summary of the major terms is provided below.

**Bookstore Name.** The bookstore shall be "Barnes & Noble at Florida Poly" or whatever name the University determines it would like to use.

**Term.** The initial term of this Agreement shall be for a five-year period from May 12, 2014 through May 11, 2019 and may be renewed for up to two additional five-year terms.

**Termination for Convenience.** Either party may terminate the Agreement, without cause, by providing least 180-days' notice.

**Termination for Cause.** The breaching party has thirty (30) days to cure the breach; if they fail to cure the breach the Agreement will terminate.

**Separation.** At the conclusion of the Agreement, the successor bookstore provider will be responsible for purchasing Barnes & Noble's existing inventory at its documented cost, with certain exceptions.

**Compensation.** Barnes & Noble will provide the following compensation to the University:

- 1. Commissions.** Barnes & Noble will pay the University the applicable percentage of gross sales at the bookstore as follows:

**8.0% of all gross sales in any contract year where total gross sales are below \$1,500,000**

**10.0% of all gross sales in any contract year where total gross sales are at or above \$1,500,000**

If annual gross sales of the bookstore materially decline as a result of declining enrollment (i.e., decrease 5 percent or more), public legislation, other conflicting campus agreements, material changes in University policies or the business model of the industry, such as digital books, sales directly from the publisher, or other reasons outside of the control of Barnes & Noble, the University will negotiate in good faith with Barnes & Noble to determine an appropriate reduction in the commission rates.

- 2. Renovations & Capital Investment.** Barnes & Noble will spend **\$150,000** to design, construct, equip, and install fixtures to build out space in the Bookstore. Barnes & Noble will provide proof of the amount of the investment, and depreciate the investment on a straight-line basis for 5 years.

If the University terminates the contract for convenience, it will reimburse Barnes & Noble for the unamortized renovation/remodeling investment. If the University terminates for cause, it will not reimburse the Barnes & Noble for the unamortized renovation/remodeling investment.

If Barnes & Noble terminates the contract for convenience, it shall forfeit the unamortized renovation/remodeling investment. If Barnes & Noble terminates for cause, the University will reimburse the unamortized renovation/remodeling investment; however, the University may spread out the payment over the remaining amortization period.

In any event, renovations are the property of the University.

- 3. Scholarships.** Barnes & Noble will provide \$5,000 in annual textbook scholarships, to be awarded by University.

**University's Responsibilities.** The University shall provide utilities (excluding telephone) for operation of the bookstore; routine repairs and maintenance of the building; and trash removal and recycling. The University shall also place an electronic link to the Barnes & Noble's website within the University's web pages.

**Barnes & Noble's Responsibilities.** Barnes & Noble will:

1. Offer for **sale all educational materials** adopted by the University for student purchase.
2. Secure the appropriate copyright or other intellectual property clearances for **course packs**; print, bind, distribute and sell the course packs; and provide a complimentary desk copy of each course pack to the faculty member adopting the course pack.
3. Provide a **robust website** allowing online purchases of all adopted materials. Students shall have the option of free in-store pickup or paid shipping.
4. Review all **adoptions**, verify the ISBN, prepare a report for the University of any known classes/sections for which adoptions have not been received by the deadline, and report to faculty the cost to students for any and all adopted materials.
5. Act as the University's designee for its **adoption list** and provide the necessary information in accordance with applicable law.
6. Buy used textbooks, study guides, and vocational books that are in good condition during the designated **buy-back periods**.
7. Offer **rentals of popular textbooks** at a reduced rate and allow a renter to permanently retain the book for a reasonable additional charge.

8. Offer **other items** typically sold in University bookstores, such as books, educational supplies, notebooks, stationery, desk and room accessories, gift items, class and alumni rings and jewelry, and apparel, including any and all such items bearing a Florida Polytechnic University logo, trademark, insignia, or other identifying mark.
9. Rent and/or sale **graduation caps and gowns** and commencement invitations.
10. Manage all **service programs** customarily handled by University bookstores such as magazine subscription, telecommunication and credit card application programs, if any.
11. Sell **convenience store items** such as food, health and beauty items, and other sundries.
12. Provide a **student technology service desk**. Students will be able to purchase technology items at favorable educational pricing, where applicable. In addition, Barnes & Noble will provide services such as hardware/software installation and setup (including assistance with connectivity), as well as tune-up, backup, repair, trade-in, and recycling services. Barnes & Noble will **hire University information technology students** to assist with the help desk.
13. Provide daily housekeeping, custodial, cleaning maintenance, sanitation service, pest control, security, network, telephone and internet for areas being used by Barnes & Noble.

**Pricing.** Pricing formulas will be applied to the actual price listed on the publisher's invoice in order to determine the selling price of a particular textbook/course material, with no add-on fees or surcharges. Prices for items sold both in store and on Barnes & Noble's website will be identical. University departments will generally receive a 20% discount on purchases from Barnes & Noble, with certain exclusions.

**Calendar and Hours of Operation.** Barnes & Noble and the University will determine the schedule of operating days/hours, and there will be extended hours at the beginning of each major term.

**Registration Integration.** The Barnes & Noble's enterprise system shall integrate with the University's enterprise system to facilitate an easy ordering system for educational materials.

**Staffing and Background Checks.** Barnes & Noble employees, agents and/or volunteers will be subject to security background checks and the E-Verify program prior to providing services at the University's facilities; Barnes & Noble shall not allow any employee to work on University property whose background indicates a potential threat to University property, students, or employees. In addition, the University may require that Barnes & Noble's remove specific staff from University property when it is determined to be in the best interest of the University.

**Technology Adaption.** Barnes & Noble is expected to adapt to emerging technologies used by the University for educational materials.

**Bookstore Advisory Committee.** Barnes & Noble will participate in the University's Bookstore

Advisory Committee to improve communications and offer suggestions to improve the University's interaction with the Barnes & Noble.

**Exclusivity Provisions.** The exclusivity provisions of the contract are as follows:

1. Subject to certain exclusions, Barnes & Noble is the University's **exclusive buyer and seller of all required and recommended course materials, supplies, and tools, including course packs, software, and materials published or distributed electronically, or sold over the internet.**

**Exclusions** to Barnes & Noble's educational material exclusivity include:

- a. University-purchased materials,
- b. materials or emerging technologies that Barnes & Noble cannot provide (for any reason),
- c. materials available only on a platform the Barnes & Noble does not (or cannot) support, and/or
- d. free materials.

None of these items shall be exclusive to Barnes & Noble. If students are charged for materials, University will work with Barnes & Noble on a case-by- case basis to determine if Barnes & Noble is able to offer such materials and will give Barnes & Noble **first right of refusal** during the term of this Agreement if Barnes & Noble can provide such materials.

Student Organizations are permitted to arrange "**book swaps**" or similar endeavors.

The University has the option of procuring and distributing materials from any outside vendor in order to explore various educational materials.

The University has the right to employ any free or no-cost open source materials as desired without Barnes & Noble's permission or involvement.

2. **Student Charges against Financial Aid Distribution.** Barnes & Noble shall be the University's **exclusive entity through which students can charge against University-administered financial aid** in accordance with Federal laws and guidelines. However, the University may release financial aid directly to any qualified student at any time in accordance with Federal laws and guidelines.
3. **Advertising in Campus Publications.** If the University accepts advertising for any of its materials or publications that it distributes or makes available to its students, including course offering list, or if University permits tabling or other third-party promotional activities at events sponsored by the University or located on the University campus, Barnes & Noble will be given reasonable advance notice; Barnes & Noble will be allowed to participate at its own expense; and if Barnes & Noble chooses to participate, University will not allow other sellers of textbooks and/or course supplies to participate.
4. Barnes & Noble will provide exclusive custom publishing services for **course packs**.

5. Barnes & Noble shall be the University's **exclusive on campus and internet retailer** of other items typically sold in University bookstores, such as books, educational supplies, notebooks, stationery, desk and room accessories, gift items, class and alumni rings and jewelry, and apparel, including any and all such items bearing a Florida Polytechnic University logo, trademark, insignia, or other identifying mark.

The University grants Barnes & Noble the nonexclusive right to manufacture items bearing a Florida Polytechnic University logo, trademark, insignia, or other identifying mark. University shall have the right to review and approve any design and product quality proposed by Barnes & Noble for all such items provided for sale.

Barnes & Noble acknowledges that other off-campus brick-and-mortar and online companies have the right to create, manufacture, purchase and sell Florida Polytechnic University trademarked products licensed by the University, for which the University would receive licensing fees. In keeping with Barnes & Noble's aforementioned **exclusivity as the University's official retailer**, the University shall only actively promote the sale of trademark inventory provided by Barnes & Noble unless otherwise agreed by the parties. The University further retains the right to create, manufacture, and give away items at no cost for promotional or other purposes that might otherwise be subject to this agreement.

6. **Graduation Caps and Gowns.** Barnes & Noble shall be the **exclusive agent** for the rental and/or sale of graduation caps and gowns and commencement invitations.
7. **Service Programs.** Barnes & Noble shall have **exclusive rights to manage all service programs** customarily handled by University bookstores such as magazine subscription, telecommunication and credit card application programs, if any.

## Florida Polytechnic University Bookstore For Contract Years 1 - 5

	Year 1	Year 2	Year 3	Year 4	Year 5	Total
<b>Investment</b>	\$ 150,000	\$ -	\$ -	\$ -	\$ -	\$ 150,000
<b>Scholarships</b>	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 25,000
<b>Commissions</b>	\$ 16,000	\$ 31,296	\$ 44,960	\$ 58,208	\$ 68,704	\$ 219,168
<b>Total</b>	\$ 171,000	\$ 36,296	\$ 49,960	\$ 63,208	\$ 73,704	\$ 394,168

	Year 1	Year 2	Year 3	Year 4	Year 5
<b>Head Count</b>	500	978	1,405	1,819	2,147
<b>Estimated Sales</b>	\$ 200,000	\$ 391,200	\$ 562,000	\$ 727,600	\$ 858,800

(a) Estimated sales based on Head Count X \$400

(b) Commissions based on 8% of the estimated sales