

---

**Agreement for Bookstore Services  
between  
Youngstown State University  
and  
Barnes & Noble College Booksellers, LLC**

**1. Engagement of Barnes & Noble:**

Youngstown State University hereby engages Barnes & Noble College Booksellers, LLC (“Barnes & Noble”) to operate and provide services for the bookstore of Youngstown State University (the “Bookstore”) on the terms and subject to the conditions set forth herein, and Barnes & Noble hereby accepts such engagement.

**2. Term, Amendment and Notices:**

This Agreement shall govern the relationship between Youngstown State University and Barnes & Noble with regard to the Bookstore located in the Kilcawley Center for the period of June 1, 2016 through May 31, 2026, with an option to renew the Agreement for up to an additional five (5) years upon agreement of the parties. The parties acknowledge and agree that if the Bookstore is relocated to another location during the term of this Agreement, then the parties shall enter into a mutually agreeable amendment to this Agreement setting forth the specific terms and conditions applicable to the new location of the Bookstore.

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: Neal P. McNally, Vice President for Finance & Business Operations for Youngstown State University located at One University Plaza, Youngstown, OH 44555 and William Maloney for Barnes & Noble College Booksellers, LLC located at 120 Mountain View Blvd, Basking Ridge, NJ 07920 and to: Christopher Peterson, Vice President, Stores located at: 1015 Forbes Avenue, Pittsburgh, PA 15219.

Youngstown State University and Barnes & Noble shall have the right to terminate this Agreement at any time by giving one hundred and twenty (120) days written notice to the other party. Notwithstanding the foregoing, if Barnes & Noble elects to terminate this Agreement then upon written request by Youngstown State University, Barnes & Noble shall continue to operate the Bookstore until such time as Youngstown State University is able to retain a successor operator of the Bookstore, not to exceed one hundred eighty (180) days from the date of Barnes & Noble’s notice to terminate.

**3. Youngstown State University Shall Provide to Barnes & Noble at Youngstown State University’s Expense:**

- a) Heat, light, and air conditioning as reasonably required for operation of the Bookstore.
- b) Office equipment (including computer equipment, cash registers and safes), furniture and fixtures, file cabinets, telephone equipment and wiring, and office machines owned by Youngstown State University and currently available for Bookstore use. Barnes & Noble agrees to accept all items under this Section 3b “AS-IS.”

- 
- c) All repairs and maintenance for the building and the physical structure in which the Bookstore is located.
  - d) Trash removal and extermination services for the Bookstore.
  - e) Eligibility to accept all campus debit or credit card or other financial services made available by Youngstown State University to its students. Barnes & Noble shall provide appropriate interface for these programs. Barnes & Noble may be charged any applicable fees for the acceptance of Pete's Points at the Bookstore for the purchase of food and beverage items.
  - f) The placement of an electronic link to your bookstore's web site on your school's home page.

#### **4. Environmental Matters:**

Youngstown State University and Barnes & Noble shall comply with all environmental laws, ordinances and regulations of all governmental authorities, as now or hereafter enacted, including, without limitation, all laws, ordinances and regulations governing hazardous materials. To the best of its knowledge, Youngstown State 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. Youngstown State University shall be responsible for remedying any health or environmental problem at the Bookstore, other than those caused by Barnes & Noble, and notifying Barnes & Noble accordingly. Barnes & Noble shall reasonably cooperate with Youngstown State University during such remediation efforts.

#### **5. Barnes & Noble Shall Provide to Youngstown State University at Barnes & Noble's Expense:**

Employees, including payroll and payroll system costs, employee benefits, training costs, and employee development paid directly by Barnes & Noble as necessary for the successful operation of the Bookstore.

All operating expenses of the Bookstore including those related to:

- a) Employees, including payroll and payroll system costs, and employee benefits.
- b) Bill paying and accounting, including sales tax collection, reporting and payment for merchandise sold, except any property or municipal taxes on the Bookstore.
- c) Office equipment maintenance, repair and replacement.
- d) General custodial services.
- e) Loss prevention services.
- f) Local and long distance telephone services, through a vendor selected by Barnes & Noble.

#### **6. Insurance:**

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

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

At the request of Youngstown State University, Barnes & Noble shall obtain and deliver certificates evidencing such insurance from its insurers. Barnes & Noble shall indemnify and save Youngstown State University, its trustees, administrators, officers, faculty, staff, employees, and agents 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 Agreement or injuries or death caused by Barnes & Noble vehicles on Youngstown State University property, except for claims caused by Youngstown State University's, or those of its trustees, administrators, officers, faculty, staff, employees, or agents, sole acts of negligence and/or gross misconduct. The liability of Youngstown State University shall be subject in all cases to the immunities and limitations of the Ohio Court of Claims Act codified in Chapter 2743 of the Ohio Revised Code and Ohio Revised Code 9.86, as amended. The parties agree that nothing in this provision shall be construed as a waiver of the sovereign immunity of Youngstown State University and/or the State of Ohio beyond the waiver provided in Ohio Revised Code Section 2743.02.

Barnes & Noble's insurance policies for the Bookstore shall name Youngstown State University as an additional insured, but only with respect to liability arising out of operations performed for such insured by or on behalf of the name insured.

#### **7. Compliance with all Laws:**

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

#### **8. Management and Staff:**

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

- a) Barnes & Noble shall make a reasonable and good faith effort to provide Bookstore staff presently working for Youngstown State University with first consideration for employment with Barnes & Noble at the Bookstore with a six month fair trial period.
- b) Youngstown State University Bookstore personnel shall continue service only so long as their work and personal behavior are acceptable to Barnes & Noble and Youngstown State University. Barnes & Noble will comply with written requests by Youngstown State University to remove or reassign Bookstore personnel for good cause. Youngstown State University reserves the right to review the credentials and qualifications of all personnel hired by Barnes & Noble for management positions. Youngstown State University reserves the right to have Barnes & Noble

---

change the Bookstore Manager/Director and other management staff at Youngstown State University's sole discretion.

- c) Barnes & Noble will use its best efforts to employ Youngstown State University students whenever possible.

#### **9. Staff Relations, Wages, and Benefits:**

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

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

Barnes & Noble shall maintain a schedule of operating hours and weeks of business for the Bookstore in accordance with the official Youngstown State University calendar and in mutual agreement with Youngstown State 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, the first week of each summer session, and any other times deemed reasonably necessary by Youngstown State University.

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

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

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

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

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

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

- a) The Bookstore shall be Youngstown State University's exclusive buyer and seller of all required, recommended or suggested course materials and supplies, including books, course packs, computer software, textbook rentals, and materials published or distributed electronically and/or through learning management systems, or sold over the Internet. Barnes & Noble will provide exclusive on-line services through its web site and have first right of refusal to fulfill any distance

---

learning material needs during the term of this Agreement except as precluded by agreement(s) with distance learning service providers in existence prior to this Agreement.

- b) The Bookstore shall be designated the exclusive party to accept all financial aid transactions for Bookstore merchandise typically sold in college bookstores. Barnes & Noble shall accept book vouchers, pursuant to procedures agreed to by the parties, from students that are designated by Youngstown State University as satisfying federal guidelines for receiving book vouchers. Payments for departmental charge sales will be guaranteed by Youngstown State University and are payable within 45 days of invoice date.
- c) Barnes & Noble shall have the exclusive right to operate a full-service bookstore located on the Youngstown State University campus. Youngstown State University shall grant to Barnes & Noble the right to sell Youngstown State University licensed products; however, that right is not exclusive. Barnes & Noble shall only sell licensed products that have been previously approved for the producer to manufacture. While it is the intent of Youngstown State University for the Bookstore to offer all goods and services normally found in college or university bookstores, and any additional services as may be required by Youngstown State University during the term of this Agreement, Barnes & Noble may be prohibited from selling certain items, primarily food and beverage items, for which other contractors or Youngstown State University units have already been granted exclusive rights. Barnes & Noble shall agree to withdraw promptly from display or sale any item which Youngstown State University requests in writing not to be sold in the Bookstore. Such a Youngstown State University request shall not be made arbitrarily or capriciously. Barnes & Noble shall be provided the opportunity to file a request for reconsideration of the request to withdraw an item with appropriate Youngstown State University officers.
- d) With the exception of agreement(s) or relationship(s) with other service providers in existence prior to this Agreement, Youngstown State University shall not contract with any third party to provide any services of the type outlined in this Agreement whether on or off campus, through e-commerce sites, hyperlinks to alternate sources, or otherwise endorsed or supported by Youngstown State University.
- e) Youngstown State University acknowledges and agrees any attempt to circumvent Barnes & Noble by entering into an agreement, partnership, joint venture, memorandum of understanding, or any other verbal or written arrangement with a third party could materially and detrimentally impact the revenue stream of this Agreement and the assumptions and circumstances on which this Agreement is based. In such event, the guarantee shall be eliminated immediately and the parties agree to discuss the renegotiation of the financial terms of the Agreement.
- f) The Bookstore shall be the exclusive agent for the rental and/or sale of graduation caps and gowns and commencement invitations.
- g) The Bookstore shall also have a non-exclusive right to sell convenience store items such as food, health and beauty items, and other sundries.
- h) Except as precluded by agreement(s) with other custom publishing service providers in existence prior to this Agreement, Barnes & Noble will provide non-exclusive custom publishing services for Youngstown State University. Such services will include the development of course packs for faculty members, securing the appropriate copyright clearances, printing and binding of course packs and distribution and sale of the course packs in the Bookstore. Complimentary desk copies of course packs will be provided to faculty members.

- 
- i) Barnes & Noble shall provide special book order services for students, faculty, and staff and make every effort to obtain the earliest possible delivery of such books.
  - j) Barnes & Noble shall provide charge sales for supplies for Youngstown State University departments and offices. Payments for such charge sales shall be guaranteed by Youngstown State University and payable within 45 days.
  - k) Barnes & Noble will provide faculty and staff of Youngstown State University with a 20% discount on transactions over \$5.00 on all merchandise available at the Bookstore except adopted textbooks, special orders, sale books, class and alumni rings, computer software, periodicals, discounted merchandise, computer hardware, stamps, health and beauty aids, food snacks, and beverages. Barnes & Noble may provide additional discounts for selected merchandise involving special Youngstown State University related events. Furthermore, Barnes & Noble will provide members of the Youngstown State University Alumni Society with a 10% discount on Youngstown State University apparel items available at the Bookstore. These discounts only apply to purchases made in the Bookstore and do not extend to online purchases.
  - l) Barnes & Noble will offer a 20% discount on all authorized departmental purchases except adopted textbooks, special orders, sale books, class and alumni rings, computer software, periodicals, discounted merchandise, computer hardware, stamps, health and beauty aids, food snacks, and beverages.
  - m) Youngstown State University shall not permit tabling or other promotional activities by any seller of college textbooks and/or course supplies other than the Bookstore at any event sponsored by Youngstown State University or located on the Youngstown State University campus.
  - n) Barnes & Noble will act as the Youngstown State University's partner in new student orientation, alumni and faculty outreach through the Igniting the New Student Connection, Igniting the Alumni Connection and Igniting the Faculty Connection programs. To facilitate these programs, Barnes & Noble may request e-mail lists for enrolled students, parents, alumni and faculty on an as-needed basis. All such requests are subject to approval by Youngstown State University's Vice-President for Finance and Business Operations. Youngstown State University will, if the request has been approved, provide such lists to Barnes & Noble. Barnes & Noble shall not sell or distribute any of said lists to third parties.

### **13. Booklist:**

In the course of providing the services contracted for in this Agreement, 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 Youngstown State 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), Youngstown State 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.

**14. Used Book Purchase and Resale:**

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

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

**15. Refunds and Exchanges:**

Barnes & Noble shall offer refunds and exchanges as follows:

- a) Textbooks

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

- b) General Reading Books, Medical and Specialty Reference Books, Software, Audio, Video, & Small Electronics

The Bookstore will issue refunds in the original form of payment if returned in the original 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.

- c) All Other Merchandise

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

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

**16. Policy Posting:**

---

---

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

### **17. Purchase of Inventory:**

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

#### **a) New Textbooks**

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

#### **b) Used Textbooks**

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

#### **c) Trade, Paperback, Technical, and Reference Books**

1. All trade, paperback, technical and reference books in clean and saleable condition, less than 6 months old, will be purchased by Barnes & Noble at Youngstown State University's cost.
2. Books not in clean and saleable condition will be set aside and purchased by Barnes & Noble at a mutually agreeable price.

#### **d) School Supplies and General Merchandise**

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

1. All of the above supplies and merchandise in clean and saleable condition, up to a 6 month supply, will be purchased by Barnes & Noble at Youngstown State University's cost.
2. Items not in clean and saleable condition will be set aside and purchased by Barnes & Noble at a mutually agreeable price.

#### **e) Payment for Inventory**



---

Barnes & Noble will pay Youngstown State University for all inventory in two equal payments: 50% within 60 days after the completion of a physical inventory, and 50% within 120 days after the completion of that inventory.

**18. Repurchase of Inventory (On hand):**

Youngstown State University shall repurchase, or require a successor contractor to purchase, Barnes & Noble's inventory at cost in the event of cancellation of this Agreement (provided such cancellation is not due to Barnes & Noble's breach of this Agreement), in the same manner as purchased by Barnes & Noble.

Should Youngstown State University change logo or contracted athletic apparel provider/licensee, Youngstown State University will either give Barnes & Noble six months written notice or will allow Barnes & Noble to automatically deduct from commissions due the cost of unsold emblematic merchandise.

**19. Repurchase of Inventory (Outstanding rentals):**

In the event of cancellation of this Agreement (provided such cancellation is not due to Barnes & Noble's breach of this Agreement), Youngstown State University shall purchase, or require a successor contractor to purchase, Barnes & Noble's rental inventory outstanding at the time of the transition, at the buyback value (50% of the retail price).

**20. Sales Markup Basis:**

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

- a) 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%.
- b) Used textbooks will be sold at 25% less than the new selling price.
- c) Course packs and textbooks purchased from publishers with restrictive or non-returnable text policies will be priced at up to a 30% gross margin.
- d) Barnes & Noble will be setting rental fees for each title, and any given title's fee may vary as a percentage of the retail selling price.
- e) School supplies will be priced at or below manufacturers' suggested retail prices.

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

**21. Guaranteed Amount / Calculated Commission:**

On an annualized basis, Barnes & Noble will pay Youngstown State University the greater of the following:

---

(A) Guaranteed Amount or (B) Calculated Commission.

**A. Guaranteed Amount:**

Contract Year 1: \$675,000

Barnes & Noble will provide a Guaranteed Amount in all future years of this Agreement that will be an amount equal to ninety percent (90%) of the Calculated Commission of the immediately preceding year.

**B. Calculated Commission:**

**Gross Sales excluding Digital Course Materials**

12% of all gross sales up to \$6,000,000

13% of all gross sales from \$6,000,000 to \$8,000,000

14% of all gross sales over \$8,000,000

In any contract period that is less than a complete year, payments shall be based on the calculated commission.

Gross sales is defined as all collected sales at the Bookstore, including textbook rentals and sales from your Bookstore website, less voids, refunds, sales tax, discounted departmental sales, handling fees associated with non-return of rental textbooks, campus debit card fees, discounted faculty/staff sales as specified in Section 12k, pass-through income, Bookstore issued scholarship sales, merchandise sales at less than a 20% gross margin, such as Apple computers, Apple hardware and publisher courseware for First Day Program and for course fee model content, and other merchandise mutually designated as non-commissionable.

**22. Payment Schedule:**

The applicable Calculated Commission as set forth above hereof shall be made quarterly by Barnes & Noble to Youngstown State University and shall be paid within thirty (30) days after the close of the quarter 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 calculation set forth above.

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

**23. Textbook Scholarships:**

Barnes & Noble will provide \$10,000 for annual textbook scholarships to be awarded at the discretion of Youngstown State University. This payment shall be made annually on or before August 1st.

**24. Additional Donations:**

In addition, Barnes & Noble will provide \$10,000 for annual donations to support Youngstown State University programs and special events. This payment shall be made annually on or before August 1st.

---

**25. Athletics Corporate Sponsorship**

Barnes & Noble will maintain an annual corporate marketing sponsorship with the Youngstown State University Athletics Department of at least \$10,000 each year of this Agreement. This payment shall be made annually on or before August 1st.

**26. Signing Bonus:**

Barnes & Noble will provide a \$100,000 one-time signing bonus to be used at the discretion of Youngstown State University. This bonus shall be paid within thirty (30) days of the effective date of this Agreement.

**27. Sales Representation:**

Youngstown State University has represented to Barnes & Noble that sales for the year ended 2014 were \$4,700,430 net of all refunds, voids, sales tax, low or no margin sales, and discounts provided to customers. This figure includes sales in all locations for which Barnes & Noble will assume operations. Since the Barnes & Noble financial offer is based on this figure and maintaining the existing business and programs, Barnes & Noble would expect to renegotiate its financial offer if the reported sales are found to be in error or materially inaccurate.

**28. Renovations:**

Barnes & Noble will spend up to **\$1,015,000** to design, construct, equip, and install fixtures (collectively "Renovations") in the Bookstore (the final and documented total of such expenditures are referred to in this Section as "Renovation Costs"). Barnes & Noble's commitment to spend up to \$1,015,00 for Renovations shall apply cumulatively to Renovations at the present location of the Bookstore, and if applicable, Renovations at any other alternative location of the Bookstore. Barnes & Noble shall provide Youngstown State University with an accounting of the Renovation Costs. Barnes & Noble will depreciate the Renovation Costs on a straight-line basis over the 10 year period of this Agreement. Should Youngstown State University terminate this Agreement other than for cause before the end of that period, then Youngstown State University shall reimburse Barnes & Noble for any amount of the Renovation Costs not yet depreciated.

The Barnes & Noble "Vanilla Box" definition included with the bookstore proposal is incorporated as part of this Agreement.

**29. Final Approval of Renovations:**

Barnes & Noble will work with representatives from Youngstown State University to establish consensus upfront on scope, budget, timeline, and divisions of responsibility for design and construction of Renovations at the Bookstore. Barnes & Noble will obtain schematic design approval for all Renovations from Youngstown State University's Vice President for Finance and Business Operations prior to preparing a set of construction documents. The final construction documents and Renovation Costs will be submitted for review and approval to the Vice President for Finance and Business Operations prior to commencing work. In order to provide the best possible service for Youngstown State 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. The naming of the Bookstore, including placement of appropriate bookstore signage, is subject to approval by Youngstown State University.

**30. Force Majeure:**

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

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

Youngstown State University shall be provided access, with sufficient notice, to the Bookstore accounting records. This may include sales information captured by Barnes & Noble's POS system. This will be done in compliance with PCI guidelines that protect card holder information. Store POS reports are available by register. All POS activity is verified daily by the Home Office Sales Audit system. In addition, all registers have:

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

**32. Benefit and Binding Effect:**

This Agreement shall be binding upon and shall inure to the benefit of Youngstown State University and Barnes & Noble and their successors and assigns.

**33. 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 Youngstown State University includes all segments of the institution including all alumni, athletic and academic departments.

**34. 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.

**35. Confidentiality:**

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

**36. Use of Trademarks:**

Neither party shall use or permit the use of the other party's name, logos, or trademarks in advertising or marketing the Bookstore or the services provided hereunder without the prior approval of the other party.

**37. Assignment or Sublicensing:**

Except as expressly provided herein, neither Youngstown State University nor Barnes & Noble shall assign, transfer or subcontract any rights or obligation under this Agreement in whole or part without the prior written consent of the other party. Any assignment, transfer or subcontract without such consent shall be deemed void and of no effect. Notwithstanding the foregoing, Barnes & Noble shall be permitted to assign this Agreement, in whole or in part, to its parent corporation or any existing or future subsidiaries or affiliated companies or a successor-in-interest by merger or acquisition upon written notice to Youngstown State University.

**38. Governing Law:**

This Agreement shall be governed in accordance with the laws of the State of Ohio.

**39. Bookstore, License of Premises:**

(a) Barnes & Noble shall operate the Bookstore in accordance with the terms of Youngstown State University RFP #16-12615, Barnes and Noble's Response to the RFP and this Agreement.

(b) The term "Premises" as used in this Agreement shall mean the certain retail space on Youngstown State University's campus as more particularly described in Exhibit A to this Agreement. The parties may, by mutual agreement, establish a different or additional Bookstore location(s) by amending Exhibit A in accordance with Section 41 of this Agreement.

(c) Subject to the terms and conditions of this Agreement, Youngstown State University grants to Barnes & Noble a temporary, exclusive and non-assignable license, for the term of this Agreement, to enter the Premises so that Barnes & Noble, and its agents, employees, representatives, advisors, consultants, contractors and subcontractors may operate the Bookstore in accordance with the requirements of this Agreement.

(d) Except as otherwise stated in this Agreement, no legal title, leasehold or other interest in the Premises or appurtenances thereto shall be deemed or construed to have been created or vested in Barnes & Noble by anything contained in this Agreement.

(e) Except as otherwise stated in this Agreement, Barnes & Noble acknowledges and agrees that it has inspected the premises, knows the condition thereof, and accepts the same "AS-IS," "WHERE IS," "WITH ALL FAULTS" without express or implied warranties or representations of any kind whatsoever, including, without limitation, warranties or representations with respect to environmental matters, fitness for a particular purpose or merchantability.

**40. ATM**

Youngstown State University or its current banking partner shall have the exclusive right to install, maintain and solely profit from the placement of an ATM in the Bookstore. The ATM placement will be close to the front entrance and main registers.

**41. Entire Agreement:**

This Agreement, which also incorporates by reference the terms of Youngstown State University RFP #16-121615 and Barnes & Noble's Response to the RFP, constitutes the entire agreement between the parties and fully supersedes any and all prior agreements or understandings, written or oral, between the parties pertaining to the matters set forth herein. This Agreement shall not be amended, modified, or changed unless such amendment is (i) in writing; (ii) refers to this Agreement; and (iii) executed by an authorized representative of each party. In the event of a conflict between the terms of this Agreement, the terms of RFP #16-121615 and/or the terms of Barnes & Noble's Response to the RFP, the following order of preference shall apply: this Agreement, RFP #16-121615 and Barnes & Noble's Response to the RFP.

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

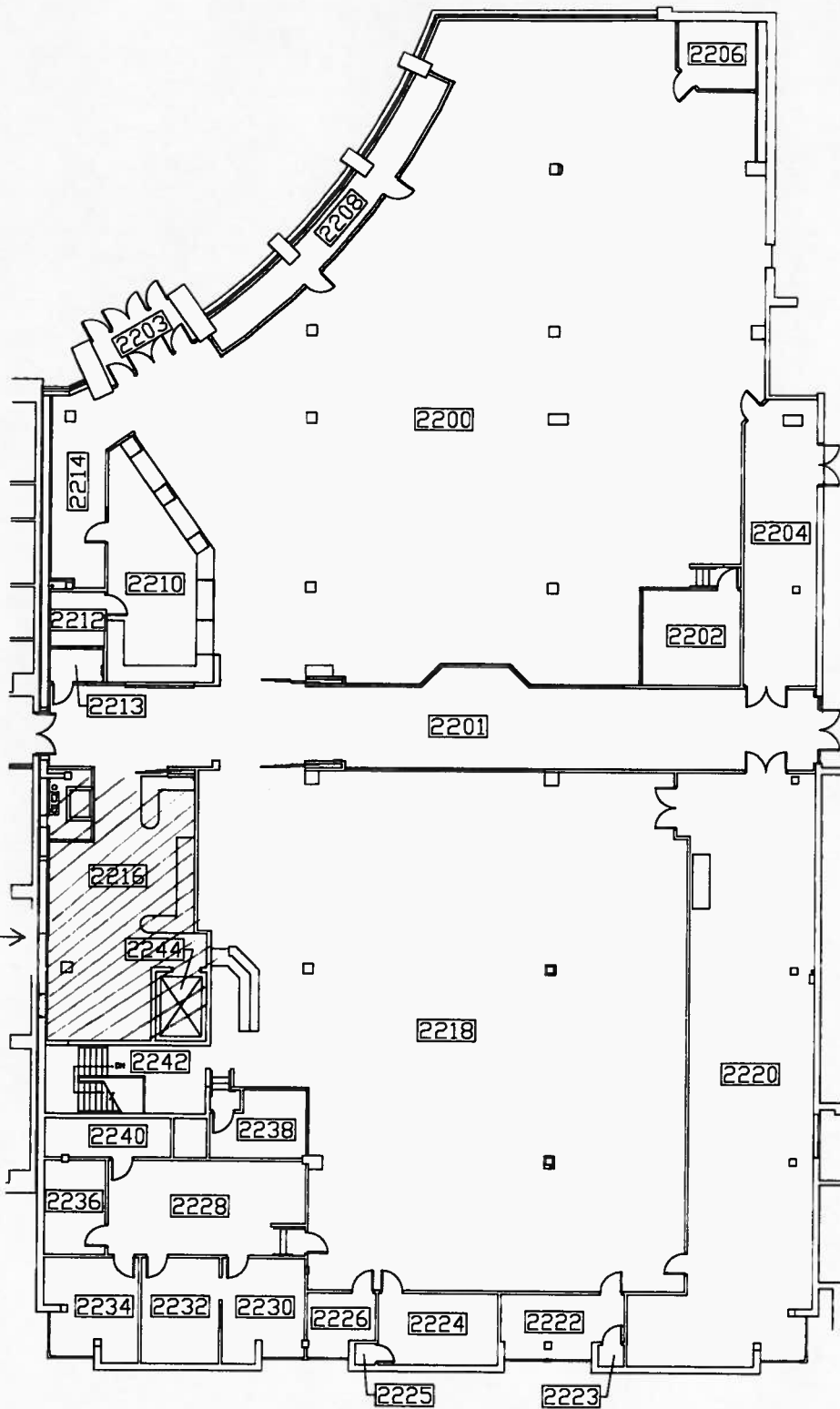
**Youngstown State University**

By: Neal P. McNally  
Name: Neal P. McNally  
Title: Vice President for Finance  
Date: May 19, 2016

**Barnes & Noble College Booksellers, LLC**

By: Christopher Peterson  
Name: Christopher Peterson  
Title: Vice President, Stores  
Date: May 19, 2016

# EXHIBIT A



2216 and 2244  
not included in Premises

1

YSU BOOKSTORE

SECOND FLOOR PLAN

SCALE : 1/16" = 1'-0"

