



Contract #UMW 18-797
UNIVERSITY OF MARY WASHINGTON
Commonwealth of Virginia
Standard Contract

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This contract, after execution of the document by both parties, between Barnes & Noble College Booksellers, LLC, hereinafter called the "Contractor" and the Commonwealth of Virginia, University of Mary Washington called the "University" or "UMW" shall become effective July 8, 2019 (Effective Date).

WITNESSETH that the Contractor and the University, in consideration of the mutual covenants, promises and agreements herein contained, agree as follows:

Whereas, the University desires to retain the Contractor, and the Contractor desires to be retained, to operate and manage the Bookstore Retail Operation and its related programs beginning on the Effective Date so that the University shall have the benefit of the experience, skill, and ability of the Contractor in the operation of the Bookstore Retail Operation to the mutual benefit of both the University and Contractor, all upon the terms and conditions set forth in this Contract.

Whereas, Contractor hereby represents and warrants to the University that it has the necessary power and authority to execute and deliver this Contract and to perform its obligations as detailed within. This Contract constitutes the legal, valid and binding agreement of Contractor, enforceable against Contractor in accordance with its terms (except insofar as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting creditors' rights generally, or by principles governing the availability of equitable remedies). Contractor has obtained all applicable permits, rights and licenses required to perform its obligations under this Contract. Contractor is appropriately licensed under Virginia law to perform under this Contract and will perform no services for which a professional license is required by law and for which Contractor is not appropriately licensed. Contractor is financially solvent.

The execution and delivery of this Contract and the consummation of the transactions contemplated hereby will not:

- 1. conflict with or result in a violation of any provision of the charter or bylaws of Contractor, each as amended to date;
2. conflict with, result in a violation or breach of, constitute a default under, give rise to a right of termination or acceleration (with or without notice or the lapse of time or both) pursuant to, or result in being declared void or voidable, any term or provision of any note, bond, mortgage, indenture, lease, license, contract, or other instrument to which Contractor is a party or by which any of its properties or assets are or may be bound; or
3. violate any order, writ, injunction, decree, statute, rule, or regulation applicable to Contractor.

PERIOD OF CONTRACT: July 8, 2019 (Effective Date) through July 7, 2024; with an option to renew for five (5) additional one (1) year terms.

COMPENSATION AND METHOD OF PAYMENT: Will be in accordance with Section IV Financial Structure.

CONTRACT DOCUMENTS: The contract documents shall consist of (in order of precedence):

- A. This signed Contract, and Contract Exhibits A-E, with the scope and terms and conditions as described herein
B. Exhibit S, UMW Hosted Technology Services Addendum (HTSA)

- C. Exhibit R, Profit and Loss Reference to Pro Forma, 11/30/2018
- D. Addenda dated March 31, 2018 and April 5, 2018: Contract Exhibits N and O
- E. RFP solicitation dated March 9, 2018: Contract Exhibit P
- F. Subsequent clarification and presentation dated 5/9/2018, Exhibit M; 5/25/2018, Exhibit L; 6/21/2018, Exhibit K; 8/28/2018, Exhibit J; 10/5/2018, Exhibit I; 10/18/2018, Exhibit H; 10/25/18, Exhibit G
- G. Contractor's proposal dated April 13, 2018: Exhibit Q

**PRECEDENCE OF CONTRACT DOCUMENTS:** In the event that there is a conflict between any of the terms and conditions of this Contract and any of the Incorporated Contract Documents, the terms of this Contract shall apply. In the event that there is any conflict between the Contractor's Proposal and any of the Contractor's negotiation responses and clarifications, or between one or more of the Contractor's negotiation responses and clarification documents, the most recent document shall apply. If there is a conflict between the General Terms and Conditions and the Special Terms and Conditions, the Special Terms and Conditions shall take precedence.

**CONTRACT CLAIMS:** Any contractual claims shall be submitted in accordance with the contractual dispute procedures set forth in the Commonwealth of Virginia Procurement Manual for Institutions of Higher Education and their Vendors.

**I. GOALS OF THE CONTRACT:** The Contractor shall provide, while using the mutually agreed upon latest affordable technology, management of Bookstore/Retail operations. These services shall be provided by the Contractor and measured by the University Contract Administrator in accordance with the University's established contract goals and requirements, detailed herein.

- A. The University Bookstore and/or Retail Operations must provide exceptional service to all constituent communities consistent with the Mission of the University of Mary Washington: to that end, the Contractor shall remain committed to the University's contract goals by providing:
  - 1. Value to customers through superior customer service and shall present unique marketing and public relation opportunities to enhance the image of the University.
  - 2. Appropriate supply of high quality and competitively priced course materials available to students prior to the start of class via Contractor's price match program, which guarantees University of Mary Washington students receive the lowest price possible for course materials.
  - 3. Efficient and effective management practices to enhance and preserve university resources, yielding financial return to the University consistent with terms within the financial section.
  - 4. Services, inventories and retail offerings must meet the campus needs, while reflecting the uniqueness and values of the university.
  - 5. Socially, fiscally, and environmentally sustainable practices; i.e., contractor shall ensure availability of eco-friendly products which include but are not limited to: reusable travel mugs (preferably SS rather than plastic), recycled notebooks, reusable totes, writing instruments made from recycled materials. Shopping bags shall be verifiably biodegradable or of a non-plastic material (*refer to section IV.JJ*).
  - 6. Additional financial contributions to the campus community, such as scholarships and departmental orders at discounted rates as mutually agreed between both parties.
- B. To authenticate that the appropriate level of customer services is being provided to students, faculty and staff, contractor shall provide annual surveys, to be reviewed with contract administrator.

**II. CONTRACT REQUIREMENTS**

**A. Customer Service**

1. The UMW Bookstore must provide the University community with a full range of merchandise and services expected from a flagship academic bookstore.
  - a. The Contractor will operate the facility to meet the needs and demands of both the University and community. The University reserves the right, upon consultation with Contractor, to change the Operating Schedule. Contractor will make no change to the Operating Schedule without the prior written approval of the University Contract Administrator. Contractor understands and accepts that the Store may need to be open and/or staff working during periods when the University is closed. Contractor shall communicate, at least one week prior, such occurrences to the UMW Police Department. Store closings or delays caused by emergencies, including those related to weather, shall be communicated by Contractor to the Contract Administrator as soon as possible.
    - i. *See Contract Exhibit A – Bookstore and Retail Operating Hours*
  - b. The Contractor shall maximize sales by supporting special campus events, including but not limited to the following. Campus events and dates are subject to change.
    - i. RUSH: Saturday and Sunday prior to the start of classes and through the first week of classes each semester. See academic Calendar for specific dates: <https://academics.umw.edu/calendar/>.
      - Sunday – 11am-5pm
      - Monday – Thursday 8am-7pm
      - Friday – 8am-5pm
      - Saturday – 11am-4pm
    - ii. UMW Orientation: January and June (refer to annual academic calendar for specific dates each year).
    - iii. Commencement:
      - Friday Graduate Ceremony – 8am-7pm
      - Saturday Undergraduate Ceremony – 7am-2pm
    - iv. Great Lives Lecture Series
      - January through April
      - Tuesdays and Thursdays
      - 7:30pm-9:30pm
      - <http://www.umw.edu/greatlives/>
    - v. Grad Fair
    - vi. Homecoming
      - At Athletic Field Locations
    - vii. Alumni Events
  - c. Contractor shall maximize sales through additional opportunities around campus, which include but are not limited to:
    - i. Faculty Author Celebrations: Contractor shall carry books for sale that are authored by current faculty of the University and display such titles in prominent locations throughout the bookstore.
    - ii. MLK Lecture
    - iii. Department of English
    - iv. Anderson Center
    - v. Home Basketball Games
    - vi. Volleyball Matches
    - vii. Multicultural Fair
    - viii. Pop-Up Store Events
    - ix. Pop-Up Visiting Vendors
  - d. Contractor shall:

- i. Employ knowledgeable, cross trained staff, available and able to respond to customers' varying inquiries and needs. A manager shall be on duty and present during all hours of operation.
    - ii. Provide a responsive telephone communications system and protocol that provides customers with prompt service and attention to specific questions and requests.
    - iii. Provide a market quality e-commerce system for the purchase of course materials and general merchandise.
    - iv. Provide an electronic means by which faculty may submit and review course material adoptions
    - v. Maintain proactive distribution and posting of store return policies\* as related to varying merchandise. *\*Return policies shall be subject to University approval (refer to Section II.D).*
  - e. The Contractor shall have the responsibility for resolving the complaints of the University community and all customers. Unresolved complaints shall be referred for resolution to the Contract Administrator.
- 2. Contractor shall provide a convenient method for faculty, students and guests to purchase or rent Commencement Regalia in keeping with the university's prescribed commencement requirements and current contracted vendors.
  - a. The Contractor shall make every reasonable effort to supply items requested, regardless of timing of request.
  - b. Any change in regalia, announcements or rings must be coordinated through the UMW Contract Administrator and approved by the UMW Events and Office of the President.
  - c. See *Contract Exhibit B –University Exclusive and Preferred Contracts.*
- 3. University and Departmental Interaction
  - a. The Bookstore Manager or his/her designee is expected to meet at minimum twice annually with Deans, Chairpersons and other faculty members.
  - b. It is understood that the University may establish a Bookstore Advisory Committee. If a Bookstore Advisory Committee is established, the Contractor's store management shall meet at a minimum twice annually with the Bookstore Advisory Committee and with University officials, including the UMW Contract Administrator, to review bookstore operations. The Contractor's store management staff shall work cooperatively with the Bookstore Advisory Committee and with University officials in the development and improvement of the Bookstore programs, services and policies. The Contractor shall make every reasonable effort to comply with requests from the Bookstore Advisory Committee and UMW Contract Administrator for the improvement of the Bookstore's operations.
  - c. Where feasible, the Contractor shall assist the faculty in acquiring desk copies, samples and other related materials necessary for classroom instruction.
  - d. Contractor shall meet monthly with the UMW Contract Administrator with topics that may include but not limited to review of events, staffing, operating reports, average course material prices, marketing and promotional services, profit and loss, customer complaints and successes, invoice processing, revenue reports, potential improvements and other issues identified by UMW and/or the Contractor.
    - i. The University reserves the right to examine at any time any or all records maintained by the contractor and relevant to UMW bookstore. This includes, but is not limited to, sales records, invoices, operating statements and balance sheets.
- 4. The Contractor shall:
  - a. Provide timely reports to faculty members of the status of their orders for books, supplies and other materials for their respective courses, including items discovered to be unavailable, delayed in delivery, new editions, etc.

- b. Provide promotional suggestions to the university to increase university merchandising opportunities and visibility throughout the community.
- c. Offer a professional web-based experience to customers.
- d. Utilize University Exclusive and Preferred Contracts. *(See Contract Exhibit B)*
- e. Contractor shall follow the Non-Instructional Employees Dress Code.

**B. Textbook and/or Merchandise Acquisition and Handling**

1. The Contractor shall make all arrangements for delivery, unloading, receiving and storing textbooks and merchandise. The Contractor shall assume all responsibility for receiving and/or handling these shipments.
  - a. The Contractor shall recycle all cardboard and other packing materials related to shipping and receiving in accordance with University procedures and sustainability practices *(refer to section IV.JJ)*.
1. The Contractor shall ensure a timely acquisition of all required, recommended and optional texts in addition to other academic and/or curriculum requirements (lab requirements, etc.); materials will be available on the first day of class provided adoption information is received by the Contractor by the following dates; on or before October 1<sup>st</sup> for the spring semester, on or before March 1<sup>st</sup> for the summer semester(s) and on or before April 1<sup>st</sup> for the fall semester.
  - a. The Contractor shall maintain a sufficient variety and quantity of inventory to satisfy demand, meet, and expand sales goals.
  - b. The University will not be liable whatsoever to the Contractor for loss or damage sustained by the Contractor in the event estimates furnished differ from actual demand.
2. Contractor shall maintain a trade section of relevant study materials, local history, and faculty authors.
3. The Contractor shall maintain faculty communications including but not limited to:
  - a. Contractor shall provide a convenient and efficient technology-based method for faculty to place textbook adoptions.
  - b. Associated marketing, training, and notifications\* regarding course material adoptions are the responsibility of the Contractor.
    - i. Adoption deadlines shall be communicated to faculty as needed throughout the adoption period.
    - ii. Problem titles shall be communicated to faculty as they become known.
    - iii. Viable cost savings adoption options shall be communicated to faculty and provided, as approved by faculty, to benefit students.
    - iv. Contractor shall annually consult with academic departments regarding adoption performance, available services, available course materials formats, and opportunities for savings for students.
    - v. *\*Mass communications via the UMW email "all" email lists must be approved by the Contract Administrator (see Policy on Broadcast Emails).*
4. Upon request, the Contractor shall sell Faculty created or developed course materials required for University courses.
  - a. The Contractor shall be responsible for all costs associated with the duplication of these course materials and shall sell them to students at cost plus gross margin not to exceed 30%.
  - b. Contractor shall use exclusive onsite contractor, University's Copy Center (Contract UCPUMW 16-524), for production of course packs.
  - c. Contractor shall ensure that all course materials sold through the Store comply with all copyright laws, if such a requirement exists. Adhering to copyright laws, securing necessary permissions and

payment of those permissions shall be the sole responsibility of the Contractor. Contractor shall be solely responsible for addressing and resolving any copyright complaint arising from the sale of course materials.

5. The Contractor shall be solely responsible for the disposition of any and all damaged or surplus books and merchandise.
6. The Contractor shall honor University Exclusive and Preferred Contracts. (*See Contract Exhibit B*)

**C. Stafford and Dahlgren Campus Support**

1. Stafford:
  - a. Current UMW Degree Programs utilizing UMW bookstore services include Bachelor of Nursing (BSN), Masters of Business Administration (MBA), Masters of Education (M.Ed) and Masters of Science (MS) in Elementary Education. Contractor shall recognize and maximize sales and marketing opportunities for current and future UMW Degree Programs at the Stafford Campus.
2. Dahlgren:
  - a. The Dahlgren Campus as of this contract start date does not currently offer UMW Degree Programs that use educational materials. Contractor shall recognize and maximize sales and marketing opportunities for future UMW Degree Programs at the Dahlgren Campus. However, should future UMW Degree Programs use educational materials, fulfillment and pricing will align with this contract.

**D. Co-Branding / Marketing**

1. The UMW Bookstore and Retail Operations will be co-branded with the Contractor as mutually agreed between parties.
2. When managing the Store or providing Services, Contractor shall display its name and protected marks in ways acceptable to the University, with approval not being unreasonably withheld.
3. By August 1 of each Contract Year, Contractor shall submit to the University Representative for his/her prior approval, the Store's advertising and marketing plan for the coming academic year. The plan shall describe and confirm that adequate marketing resources are being assigned to the Store. The University reserves the right to require withdrawal of any advertising or marketing item at any time. Contractor may not distribute any bulk advertising or marketing materials to the University community via any medium without prior consent from the UMW Contract Administrator.
4. All advertising, press releases, public announcements and public disclosures by either Party relating to this Contract that include the other Party's marks or language from which the connection of such marks may be inferred or implied, will be coordinated with and subject to the approval by both Parties prior to release.
5. Subject to section L (Logos, Marks and Seals), Contractor shall not, without the prior written approval of the University, indicate provision of sales or services to the University in any of its product literature or advertising, or state in any of its advertising or product literature that the University has purchased or used Contractor's products or services.
6. Contractor must obtain the University's written consent before providing third parties with the University's name as a reference.
7. Contractor shall promote products and services through advertising of graphic images, which include UMW in conjunction with the Contractor logos.
  - a. Contractor shall request graphic approvals through UMW Design Services department.
  - b. Contractor shall coordinate signage external to the bookstore with and gain approval from the UMW Contract Administrator prior to placement of such signage.

8. The Contractor shall bear all costs associated with the design, development, printing and mailing/distribution of UMW-approved marketing materials (e.g., brochures, banners, signs etc.).
9. The Contractor shall provide a well-developed bookstore presence on the Internet. Key webpage components shall include the following, which shall be easy for customers to find:
  - a. Clearly defined store information:
    - i. Up to Date Hours
    - ii. Location
    - iii. Contacts information (phone number and email address) for, at minimum: full-time non-student store personnel, customer service, course materials department
  - b. Easy to find textbook adoption information.
  - c. Intuitive course materials ordering process for students and adoption process for faculty.
  - d. Price comparison tool for course materials reflecting as per format (new, used, rental, and digital).
  - e. Clearly defined and easy to use gift and apparel site will remain current with campus events, seasons, and fashion and technology trends.
  - f. Ability to shop and purchase from one's mobile device.

**E. Textbook, Course Material and/or Merchandise Sales**

1. The Contractor shall offer for sale, high quality and cost-effective course materials and soft goods for the UMW community.
2. The Contractor shall determine and establish the selling price of all items offered for sale in accordance with Section IV.B.
  - a. University's Residence Life policies regarding merchandise that is disallowed in the residence halls shall be taken into consideration when selecting general merchandise for resale. See link for [Items Prohibited in Residence Halls](#).
  - b. The Contractor shall conduct mobile sales operations at various student and athletic events, including but not limited to Commencement, game-days, flash sales and use of pop-up vendors in accordance with the [University's Solicitation Policy \(E.2.9.6\)](#).
3. Contractor shall work in partnership with the University Libraries, Office of Disability Resources (ODR), Division of Teaching and Learning Technologies (DTLT) and all other departments as needed to ensure access to required, recommended and optional course materials to all students.
  - a. The confidential booklist for each term must be supplied to the Libraries and ODR; for internal University use only.
  - b. Special orders for students and ODR shall be facilitated quickly and affordably
4. The Contractor shall provide and/or offer used book inventories for resale, as well as other reduced cost alternatives to the fullest extent possible. Offerings will include but not be limited to new books, used books, rental books, e-books, inclusive access, access cards and bundles; course packs, custom publications, foreign titles and Print-on-demand (POD) titles as adopted by faculty for their courses.
  - a. Contractor shall support delivery of Open Access/Open Educational Resources materials.
  - b. Special orders shall be available to accommodate needs of individual students and departments
    - i. Questions regarding university policy and procedures in regard to special order requests shall be referred to the UMW Contract Administrator.
5. Contractor shall allow full-time faculty, staff and alumni of UMW, with valid identification, a ten-percent (10%) discount on all merchandise available at the Bookstore except adopted textbooks,

special orders, sale books, class and alumni rings, computer software, periodicals, discounted merchandise, computer hardware, stamps, health and beauty aids, food snacks, and beverages. UMW shall be paid commission on these sales.

6. Contractor shall offer a twenty-percent (20%) discount on all authorized (by UMW Contract Administrator) 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. UMW shall be paid commission on these sales.

#### **F. Textbook Buyback**

1. Contractor shall offer a conveniently located textbook buyback at the beginning and end of each semester, including summer. Marketing, funding, logistics and space reservations for the buyback shall be the responsibility of the contractor, and in accordance with campus policies.
2. Contractor shall offer a daily textbook buyback within the Bookstore operation as well as online via MBS at <https://www.mbsdirect.net/buyback/> (or relevant bookstore website).
3. Textbook Buyback Policy
  - a. Contractor shall buy books back from students under the following terms:
    - i. At 50% of the customer's purchase price, if the bookstore has been notified that the book will be used the following term and if the store is not overstocked.
    - ii. In the absence of such notification, or if the book will not be used for the following term or is to be replaced shortly by a revised edition according to an announcement, it shall be purchased at current wholesale price.
4. Custom Buyback
  - a. Contractor shall offer custom buyback, making every effort to purchase back student books for which there is no national wholesale or retail demand.

#### **G. Payment Options**

1. Contractor shall afford to bookstore customers the greatest variety of payment options possible to include but not be limited to:
  - a. Cash
  - b. Valid Check
  - c. Credit Cards
  - d. EagleOne Cards
  - e. Departmental Charges
  - f. Financial Aid: Contractor shall adhere to University policies, procedures, and deadlines associated with monthly charges and Financial Aid.
  - g. Gift Cards – *\*Contractor shall honor existing bookstore gift cards, per Financial Section of this contract.*
  - h. All forms of mobile payments, including but not limited to iPay and Google Pay. *These options may not be available on the Bookstore website.*
2. Any costs associated with accepting each method of payment shall be the sole responsibility of the Contractor.
3. PCI compliance is the sole responsibility of the contractor; the University will not be in PCI scope under the contractor's compliance plan.

#### **H. Refunds, and Exchanges Policy for In-Store and On-Line Purchases**

1. Textbook Refunds and Exchanges

- a. The Contractor shall issue refunds in the original form of payment for textbooks purchased at the bookstore if returned in original condition, with original receipt and within the first week of classes. Within thirty (30) days of the first day of classes, textbooks shall be refunded with original receipt and with valid proof of add/drop.
  - b. The Contractor shall provide refund for access codes *that it has verified with the publisher* as not having an "activated" status.
2. General Reading Books, Medical and Specialty Reference Books, Software, Audio, Video and Small Electronics
- a. The Contractor shall issue refunds in the original form of payment if returned in original condition, with original receipt and within 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. All Other Merchandise
- a. The Contractor shall issue refunds in the original form of payment any time during the term for other merchandise purchased at the bookstore or online if returned in original condition and with original receipt. If returned without a receipt, a store credit will be issued at the current selling price. Food and beverages, unwrapped loose leaf books, verified as activated eBooks, custom course materials, outlines, study guides, school guides, magazines and prepaid cards are non-returnable.
4. These policies shall be posted in conspicuous places including but not limited to:
- a. Bookstore's website
  - b. Attachments to customer receipt

**I. Contractor Employees and Hiring**

- 1. The Contractor shall provide priority consideration, within its standard recruitment process, to current bookstore personnel for positions available under its operations. Transitioned personnel shall be granted a six (6)-month trial period.
  - a. UMW is responsible for any comp time, leave, or other unpaid benefits earned prior to a UMW employee's transition to the Contractor.
- 2. At no cost to the university, Contractor shall staff the bookstore with experienced and qualified managerial and customer service personnel. During peak "rush" periods, Contractor shall meet Customer Service Expectations (as defined in I.A and II.A).
  - a. The Contractor's thoroughly trained and qualified staff shall be in sufficient quantity to meet the demands of the size of the University during all periods of the academic year.
  - b. Employees shall be cross-trained, able to assist customers in all areas of the operation.
  - c. Personnel policies shall be consistent with all federal, state, and local laws and University directives. Evidence of stated qualifications shall be made available to the University upon request.
  - d. Contractor shall set its own wages and benefits for its Bookstore staff.
- 3. The Contractor's Bookstore Manager shall be approved by the University. Subsequent changes in assignments shall only be made after prior consultation with and approval from UMW's Contract Administrator. Individuals proposed by contractor must have considerable experience in the management of bookstores serving a University Community. This person should also be a good communicator, a proven leader and must exhibit the ability to deal effectively with University students, faculty, staff and guests.

4. To the fullest extent possible, University students, of good academic standing, shall be employed as part of the regular bookstore-staffing schedule. Such employment should be educational as well as remunerative, with the Contractor encouraged to consider internships and other cooperative ventures with academic departments. All University student employees shall be employees of the Contractor, not the University, and all employees shall be clearly informed that they are not University employees.
  - a. Student Employees currently employed by the Bookstore should be interviewed and considered for continued student employment by the Contractor.
5. The Contractor shall provide personnel resources to support UMW before, if requested, as well as during, and after the transition, until a fully dedicated staff is in place.

**J. Compliance**

1. The Contractor shall be required to conform to all pertinent University regulations concerning parking, safety, security and access, publication standards, design standards, etc. Special exceptions may be acceptable upon written mutual consent of both parties. It is the Contractor's responsibility to remain current on all such regulations, policies and procedures.
2. Parking Permit information: All contractor staff shall be required to obtain and display a UMW parking decal.
  - a. Contractor shall be responsible for ensuring its employees adhere to campus parking regulations and pay any incidental fees: <https://adminfinance.umw.edu/parking/>
  - b. Currently there is no cost to Contractors for the parking decal. If, at a future time, UMW assesses a parking fee, Contractors shall be responsible for ensuring their employees adhere to updated campus parking regulations and pay any associated fees.
3. The Contractor shall comply with all applicable federal, state, and local laws and regulations relating to the operation of a retail bookstore including the collection and remittance of sales taxes.
4. Contractor shall ensure appropriate and applicable FERPA (Family Educational Rights and Privacy Act) requirements are maintained.
5. The University reserves the right of prior approval for any and all signs, posters or other bookstore advertisement placed on University premises. Contractor shall adhere to campus policies regarding advertising, adhering to University graphic standards.
  - a. See Brand Standards and Visual Identity Toolkit found on the [University Relations Publications site](#).
  - b. See SAE link for [Publicity](#) and [Tabling](#) Policies.
  - c. See link for closed circuit TV [EagleVision](#).

**K. Bookstore Facility Space, Maintenance and Utilities**

1. The University will provide dedicated space for the bookstore management and operation.
  - a. *See Contract Exhibit C for Current Location Square Footage.*
2. The University will provide the following basic services to the same degree as is standard for other University departments and facilities:
  - a. Cleaning of the external areas where applicable
  - b. Electric (lights and outlets)
  - c. General Building maintenance
  - d. Heating and air conditioning
  - e. Maintenance of University fixtures (not retail fixtures)

- f. Smoke/heat alarms
  - g. Snow removal
  - h. Trash removal from the University's designated point
  - i. Water and sewer
  - j. Telephone equipment and wiring and voice and data lines, including long distance services, *subject to Section II.K.3.a.i.*
  - k. The placement of an electronic link on UMW's home page, registration system, and within UMW's learning management system ("LMS") to the Bookstore's website.
3. Contractor shall be responsible for the following, which must be compatible with and meet university specifications.
- a. The Contractor shall be responsible for the cost of voice and data lines on-site and shall reimburse UMW monthly at the current rate, \$50.00 per line, paid to the University without invoice. (Rates are subject to change per utility charges.)
    - i. The number of lines that the Contractor requires for its operation shall be identified to the UMW Contract Administrator at contract deployment. The Contractor may choose at this time, or at a later time during the term of the contract including all optional renewal terms, to forego the University phone system (equipment and lines) and provide its own phone system and lines, which shall be managed by mutually agreed upon contract modification. Return of UMW equipment (phone units) shall be coordinated with the UMW Contract Administrator.
  - b. Computers
  - c. Copier and Supplies
  - d. Equipment, including but not limited to: Point-of-Sale terminal, and all associated hardware (i.e., credit card readers and scanners, inventory management software, etc.)
  - e. Furniture
  - f. Housekeeping Services
  - g. Internet Connectivity and Hardware
  - h. Parcel Delivery and Freight
    - i. In the event that freight will require delivery to the UMW Central Storeroom and Warehouse, Contractor shall notify the UMW Central Storeroom and Warehouse Manager at least forty-eight (48) hours in advance of delivery.
  - i. Printer and Fax Machines
  - j. Telephone Hardware
  - k. US Mail pertaining to the Bookstore's operation.
  - l. Security Personnel
  - m. Store Security including safes, all security devices and equipment including, but not limited to video surveillance. Reference UMW Board Docs Policy F.8.3 Security Cameras Policy.
    - i. Store Security: Contractor shall, at its expense, be responsible for providing all security personnel and systems needed to secure the Store and its contents.
    - ii. The Contractor shall be responsible for maintaining intrusion alarms and other security devices deemed necessary for the space. The Contractor shall control the distribution of bookstore keys/ entry control devices. However, at least one copy of each stores' keys/entry control devices shall be provided to the University Police for use during emergencies.

- iii. Contractor may use any existing cabling and equipment in the Store as of the Effective Date, but the University cannot guarantee their functionality or serviceability.
4. The Contractor shall be responsible for the proper collection and removal/disposal of all trash, garbage, shipping containers, boxes, skids, etc., from the interior of the bookstore facility and deposited in the appropriate disposal container, e.g. trash/garbage in dumpsters, cardboard flattened and deposited in cardboard recycling containers, etc.
5. Contractor Sanitation Responsibilities:
  - a. All flooring shall be cleaned at least annually by the Contractor. Floors shall maintain an attractive waxed finish where appropriate.
  - b. Walls, ceilings, windows, and vents, should be kept clean and free from dirt, dust and grease at all times. Display and entrance windows and doors shall be cleaned inside and out by the Contractor.
  - c. Contractor shall thoroughly clean all facilities at a minimum the end of each semester (summer included) and when necessary during University scheduled breaks. This includes, but is not limited to, walls, fixtures, furniture, hallways, stairs, receiving dock, offices, rugs, storage rooms and equipment.
  - d. The loading dock shall remain clean and free of debris at all times.

#### **L. Furnishings, Renovations and Maintenance**

1. University will make available for use the current retail furniture and fixtures, office furniture for three offices, file cabinets, campus telephone equipment and wiring, safes, and office machines (minus multi-function device/copier) that are currently available for Bookstore use. The Contractor shall furnish complementary furniture and fixtures necessary for the proper execution of bookstore operations. This shall include, but not be limited to, special merchandising and sales displays, etc.
2. The Contractor shall maintain the space, furniture and equipment in a clean, safe and functional condition to the satisfaction of the University and return space to the University upon contract completion, in the same or better condition as when received, normal wear excluded. The Contractor shall be responsible for cleaning and minor repairs to include but not be limited to floors, doors, doorways, walls, ceilings, windows, all furniture, fixtures, and equipment, including carpeting.
3. The Contractor shall not proceed with any structural modification and/or alterations prior to written University approval. At the commencement of the contract, the Contractor and the University shall perform a joint inspection of the space, furniture and equipment. A written agreement must be reached concerning the condition of each item. At approximately thirty (30) days prior to completion of the contract, the Contractor and the University will perform a similar inspection to determine the Contractor's liability. The Contractor shall be responsible for any replacement and maintenance which was caused by its negligence; normal wear and tear excepted.
  - a. Any designs by the Contractor proposed for renovations/upgrades and/or construction to the existing and/or off campus space and fixtures shall be accompanied by layout examples and must be approved by the University Facilities Management Department (through the UMW Contract Administrator), including, but not limited to those renovations/upgrades in existing University buildings that require a building permit.
  - b. The Contractor shall be responsible for all expenses associated with alterations, maintenance and repair of its assets on/off site.
  - c. If an off-campus location is utilized during any term of the contract, including all potential renewals, the local governing authority must issue any necessary building permits and the contractor should work directly with the appropriate local office.

4. Contractor shall obtain and maintain at its sole expense, and in its name, all necessary licenses and permits required to perform the Services.
5. Contractor shall comply with the University approved architectural rendering(s) of the footprint(s).
6. Taking into account the University's Master Plan, the Contractor shall be flexible in exploring alternate ideas and locations for the bookstore and retail operations.

**M. Additional Responsibilities of the Contractor**

1. Contractor Staffing Requirements and Background Screens: Contractor Personnel may have access to sensitive Personally Identifiable Information (PII). The Contractor shall insure that all contractor personnel given access to, or sent to work on properties of the University of Mary Washington are insured; copies of which must be provided to the University prior to the first day of work. All contractor staff considered for full-time or part-time employment on any property owned, leased or otherwise acquired by UMW, shall undergo a background screening, the cost of which shall be incurred by the Contractor, after an offer has been extended, and prior to commencement of work on any UMW property. If Contractor employs the use of a staffing company to provide seasonal or temporary labor to be used in the UMW bookstore operation at any point during any term of the contract, including optional renewals, background screening shall be performed by Contractor's contractor to the same extent as for any full-time or part-time Contractor staff.
  - a. The results of the background checks shall be directed solely to the Contractor, including any criminal convictions. Consideration shall be given to the relationship to the job, how long ago the conviction occurred, the potential risk posed to employees, customers, campus and Contractor, and any other circumstances deemed relevant to the final determination of whether to employ or retain the employee. Conviction information shall be maintained as confidential to the Contractor. If a conviction is found to be relevant to the role and the decision is made not to proceed, the Adverse Action Process shall be commenced, in accordance with the Fair Credit Reporting Act.
  - b. Notwithstanding any other provision herein, and to ensure the safety of students, faculty, staff and facilities, UMW reserves the right to approve or disapprove any contract employee that will work on UMW property. Such request shall be in writing and state the reason. Such reason must be for good cause and may not be for an illegal reason. Disapproval by the University will solely apply to UMW property and should have no bearing on the Contractor's empowerment of an individual outside of UMW.
  - c. Upon request by UMW, Contractor shall periodically provide compliance with its background check processes.
  - d. All Contractor employees shall have a duty to self-disclose any criminal conviction(s) occurring while assigned to the UMW campus. Such disclosure shall be made to the Contractor.
  - e. Screens shall include:
    - i. Enhanced Nationwide Criminal Search; which shall include Social Security Number search, address history, legal name and alias
    - ii. DOJ Sex Offender Search and individual evaluation of results
    - iii. County Criminal Search for all identified counties.
2. Documentation: Contractor shall explain and provide written documentation for non-proprietary and non-confidential operating and back-up processes and procedures, and job descriptions, to the UMW Contract Administrator at the inception of the contract.

**N. Reporting and Deliverables:**

1. Reports provided shall include, but not be limited to;
  - a. Marketing plan review
  - b. Contractor shall provide the following financial data for store, web and mobile sales on a monthly basis:

- i. Net sales for each merchandise category and sales dollars year to date for each merchandise category
  - ii. Operating Expenses in dollars and percentage of sales for key expense categories
  - iii. Net Profit: net profit before taxes in dollars and as a percentage of sales
- 2. At the end of each semester (fall, spring, summer), or upon request of the UMW Contract Administrator, Contractor shall provide:
  - a. Average pricing for each available course materials format.
  - b. A current term course materials list that includes retail pricing for each title in each of its available formats.
- 3. Campus Surveys: Contractor shall perform annual surveys of faculty, staff and students, reporting findings to the UMW Contract Administrator.
  - a. The Contractor shall provide the results of regular and continuous analysis of equipment, technologies, client meetings and satisfaction level feedback including any survey results, marketing opportunities, and any other data applicable to achieve UMW contract goals, on a monthly basis.
- 4. Contractor shall provide University Insights reports annually to the Contract Administrator.
- 5. Contractor shall provide the following Financial Statements by dates indicated:
  - b. Store sales by category, separated by in-store and on-line purchases, by the thirtieth (30th) calendar day of each month of the preceding complete month.
  - c. Profit and loss statement by the thirtieth (30th) calendar day of each month for the preceding complete month.
  - d. Annual shrink and profit and loss statement of the Store's operation, signed by the Contractor's Chief Financial Officer or similar authority, by one hundred and twenty (120) calendar days after the close of each Contract Year.
  - e. If a change is anticipated to the Pro Forma (Contract Exhibit E), Contractor shall provide UMW Contract Administrator a revised projected pro forma, which shall be submitted by February 1st with the final pro forma submitted by May 1st that precedes the next contract year. *Contract Exhibit E* shall serve as the forecast of sales and expenses unless Contractor informs UMW Contract Administrator otherwise as detailed herein.

**O. Technology**

- 1. The Contractor agrees to the UMW Hosted Technology Services Addendum – *See Contract Exhibit S.*

**III. DEPLOYMENT TIMELINE**

- A. Deployment Timeline may fluctuate and shall be coordinated through mutual agreement of both parties.
  - 1. *See Contract Exhibit D: University of Mary Washington Transition Plan*

**IV. FINANCIAL STRUCTURE (See Contract Exhibit E: BN Pro Forma – November 2018)**

- A. **Financial Terms:** Contractor shall not request renegotiation of the financial arrangements at any time throughout the duration of the contract including all potential renewals unless it is deemed by the University to be in its best interest.

1. If after the first full year of operations under this contract, course materials sales decrease by 65%, the parties agree to renegotiate the financial terms of this contract so that they are mutually beneficial to both parties.
2. In the event that the University elects to physically relocate the bookstore, the financial terms in this Contract may be renegotiated by the parties at that time.

**B. Pricing Structures**

1. The Contractor shall determine, establish and clearly mark, in a conspicuous location, the selling price of all items offered for sale provided the following provisions are maintained:
  - a. Dynamic pricing, with the goal of reducing costs for students, shall be employed on all applicable textbooks (aged rental and aged used inventory) and locked in at the beginning of the semester.
  - b. New textbooks shall be sold at or below publisher-suggested retail price with average margin not to exceed 20%.
  - c. Used books shall be sold at or below 75% of the new book retail price, with average margin not to exceed 33%.
  - d. Digital materials shall sell with average margin not exceeding 20%.
  - e. Course pack margins shall not exceed 30%
  - f. Freight must be recorded as an operating expense, and not built into the cost of textbooks and merchandise.
  - g. Gross Margin and Commissionable Sales: Prior to conducting non-commissionable general merchandise sales (20% or less), Contractor shall consult with UMW Contract Administrator for approval. This approval is not required for new textbook sales which are also sold at a 20% margin and are commissionable.
2. Spirit Store:
  - a. The price of each item offered for sale shall not exceed the manufacturer's suggested retail price.
  - b. The Contractor shall clearly mark all items as to their retail price. All prices shall be posted in a conspicuous place.
  - c. Contractor shall adhere to UMW Licensing policy in accordance with Section VI.W, Use of Registered Marks, Logos and Seals.
    - i. Current exemption for State operated bookstore and retail operations shall not apply to this contracted operation.

**C. Financial Contributions and Payments to University (See Contract Exhibit E: BNC Pro Forma)**

1. Total Contractor capital Contributions to UMW shall be One-hundred Seventy-five Thousand dollars (\$175,000), which shall be distributed in two phases. Contractor shall submit a depreciation schedule to the UMW Contract Administrator on a monthly basis for each month of the five (5) year schedule. Contractor shall also provide verification of the expenditures relevant to the improvements; these include, but are not limited to, receipts documenting the expenditures. Once fully depreciated, UMW shall own the investment.
  - a. Phase One: Up to One-hundred and Three Thousand, Three-hundred and Thirty-five Thousand dollars (\$103,335.00) shall be depreciated years one through five (1-5) of the contract at Twenty-thousand, six-hundred and sixty-seven dollars (\$20,667.00) annually. (\$1,722.25 monthly).
  - ii. Projected allocation shall include:
    - a) Up to \$43,394 for operating equipment and security systems to include perimeter security, internal security cameras and electronic article surveillance.

- b) Operating systems: Up to \$43,393 for computer systems to include in-store Point-of-Sale (POS), mobile POS, PC's, printers, and inventory management systems for textbooks, general merchandise, and website platforms.
      - c) Up to \$16,549 (RFP Section VII.B.6, Nebraska Book Company systems obligation)
    - iii. During Phase One, Contractor shall install necessary operating systems and refresh the existing space through merchandising.
      - a) Contractor shall make use of existing fixtures: Removal or disposal of existing fixtures and furnishings shall be coordinated through the Contract Administrator.
    - iv. The remainder of the capital investment shall be applied if/when a decision is made regarding a relocation of the store, within the first five (5) years of the contract.
  - b. Phase Two: Up to \$71,665 (or remainder of capital investment), disposition:
    - i. Annual depreciation shall begin upon investment of these funds into the selected operating location. The investment shall be depreciated annually, between the date of the investment and the end of the five (5) year term. Depreciation shall be reported to the UMW Contract Administrator monthly as part of the operating statement. Once the investment is fully depreciated, UMW shall own the investment.
    - ii. Phase Two allocation of funds shall be determined by mutual agreement between the University and Contractor.
    - iii. Contractor shall amortize the capital investment on a straight-line basis over the initial term of the contract (60 months), commencing (July 8, 2019). Such amortization shall be charged as an operating expense of the operation. Once the investment is fully amortized, (July 7, 2024), UMW shall own the investment.
  - c. Should UMW renew contract in year six (6), and with approval of UMW Contract Administrator, One-hundred thousand dollars (\$100,000) shall be invested by Contractor for store refresh, and that amount may be depreciated over five (5) years; year one and four (4) optional one-year renewals.
  - d. If prior to the complete depreciation of the investment any of the following events should occur, then, UMW shall reimburse the Contractor, within ninety (90) days of receipt of invoice, the undepreciated portion of the investment.
    - i. The Agreement expires;
    - ii. The Agreement is terminated.
  - e. Capital Improvement Amortization and Depreciation Schedule (as applicable): Contractor may depreciate any of its UMW-approved permanent or fixed improvements made on behalf of UMW on a straight-line basis over a five (5) year period. Contractor shall submit an Amortization and Depreciation Schedule to the UMW Contract Administrator, along with appropriate verification which includes but is not limited to receipts and documentation of expenditures relevant to the improvements that shows the value of the reimbursement for each month of the five (5) year schedule. UMW will review and approve the Amortization and Depreciation Schedule or return it with comment for revision. Failure of UMW to approve or return shall not constitute acceptance of the schedule. The Parties understand and agree that the depreciation of permanent or fixed improvements will not commence until such improvements are placed into service.
2. Commitments of Support:
- a. Contractor shall provide \$15,000 annually in years one through five (1-5) of contract term for Student Activities and Engagement (SAE) to be disbursed as deemed by the University.

- b. The Contractor shall provide \$10,000 annually in textbook scholarships to build goodwill and enhance the stores standing with the academic community. University shall report the names of the recipients and corresponding award amounts to the Contractor.
  - c. Contractor shall provide \$25,000 annually in years six through ten (6-10) of contract term for Student Activities and Engagement (SAE) to be disbursed as deemed by the University.
  - d. Commitments of Support shall be:
    - i. Paid upon execution of the contract and on July 1 of each subsequent contract year.
    - ii. Payments shall be made annually without invoice, and deposited by ACH along with a statement clearly defining the period and purpose of the deposit. A copy of the statement and verification of deposit shall be delivered to the UMW Contract Administrator within two (2) business days of the deposit.
3. Payments to University: All payments to the University shall be made without invoice, deposited by ACH, with supporting documentation clearly defining the period and purpose of the deposit, and by the assigned due dates.
- a. \$100,000, annual, cost recovery; made in monthly payments of \$8,333.33 (eight thousand-three hundred and thirty-three dollars and thirty-three cents)
    - i. A copy of the statement and verification of deposit shall be delivered to the Contract Administrator within two (2) business days of the deposit.
    - ii. Payments are due by the 30th of the month for the following month's cost recovery payment
    - iii. End of Fiscal Year Payment due prior to June 30th.
  - b. Commissions to UMW
    - i. Gross Sales is defined as all collected in-store and online/website sales and Contractor-owned textbook rentals at the Bookstore, including the amounts earned from (i) processing transactions for publishers related to the consignment of their rental property, (ii) Contractor's marketing programs and relationships with its brand partners, less voids, refunds, sales tax, handling fees associated with non-return of rental textbooks, approved contractually discounted departmental sales, pass-through income, general merchandise sales at less than a 20% initial gross margin.
    - ii. Gross Sales of First Day and e-Textbooks is defined as all collected in-store, online/website sales, and sales of (i) eTextbooks and (ii) course materials within the LMS through the First Day model less voids, refunds, sales tax and handling fees associated with non-return of rental textbooks.
    - iii. Commissions shall be paid to the University in the period in which they were earned and charged (rather than upon collection date).
    - iv. The Contractor shall furnish the reporting as set forth in Exhibit J, which shall be received within thirty (30) business days of the monthly closing.
    - v. Upon request, the Contractor shall provide other metrics to the University.
    - vi. Contractor shall pay University the greater of, Guaranteed Amount or Calculated Commission:
      - b) Guaranteed Amount Contract Year One: Three-hundred thousand dollars (\$300,000) in monthly payments based on one-twelfth (1/12th) of the annual guarantee (\$25,000 per month)
      - c) Contractor shall provide a Guaranteed Amount in all future years of the contract that will be an amount equal to 90% of the Calculated Sales Commission of the immediately preceding year

OR,

Commission rate = 14.00% of gross sales up to \$2,300,000

Commission rate = 16.00% of gross sales \$2,300,000 and above

Commission on First Day and eTextbooks = 7.00% of gross sales

Monthly payments based on 1/12<sup>th</sup> of the minimum annual guarantee shall be paid by the thirtieth (30<sup>th</sup>) of the month following the month in which the guarantee was earned.

When the calculated commission is greater than the guarantee, Contractor shall pay the balance at the end of the contract year, prior to June 30<sup>th</sup>.

- vii. Payments shall be deposited by ACH along with a statement clearly defining the period and purpose and of the deposit. A copy of the statement and verification of deposit shall be delivered to the UMW Contract Administrator within two (2) business days of the deposit.

**D. Payments to Contractor:** During the term of the contract the Contractor shall ensure that a current taxpayer identification number and certification (Form COV W-9) is on file in the University's Accounts Payable Office. Failure to have a current W-9 on file may delay payment of any invoice(s) submitted. Invoices presented to the UMW Contract Administrator for approval, and subsequently to UMW Accounts Payable Office for payment, are deemed valid only if a current W-9 is on file.

1. Departmental Charges: On a monthly basis, the Contractor shall invoice UMW for departmental expenditures not paid with a UMW charge card. Invoices and any accompanying documentation shall be sent to UMW Contract Administrator within fifteen (15) business days of the closing of the related month.
2. Financial Aid: Within three (3) days of closing the financial aid period, Contractor shall submit an invoice and required documentation to the UMW Contract Administrator. Documentation must also be submitted to UMW's Accounts Receivable Manager, Lee Hall, Rm. 226. Documentation must include but not be limited to Student Banner ID number, First Name, Last Name, Opening Balance, Expenditures, and Closing Balance. Receipts documenting Financial Aid purchases may be required by the University.

**E. Purchase Terms**

3. Inventory

- a. Contractor shall hire at its own expense a professional third-party inventory company to conduct an inventory with representative from both the University and Contractor representative to check and confirm the inventory counts.
  - i. UMW owns inventory until value is paid to UMW in full by contractor; inventory will be paid in full at time of transfer.
  - ii. All inventory valuations shall be at UMW's latest invoice cost.

4. New Textbooks

- a. All new course materials (including but not limited to: access cards, kits, workbooks, course packets, trade and paper books adopted for courses, etc.), in quantities not exceeding course requirements, formally adopted for the following term and on-hand or on order with verifiable PO at the time of inventory will be purchased by Contractor at UMW's latest invoice cost.
- b. All excess textbooks not accepted for return to vendors shall be purchased by Contractor at the current wholesale price.
- c. When determining overstock for adopted textbooks,
  - i. Used and then New inventory shall be purchased at UMW last invoice cost up to the course enrollment needs.

5. Used Textbooks

- a. At the time of inventory, all used textbooks on hand that are formally adopted for the next term and on-hand or on a PO at the time of inventory will be purchased by contractor at UMW's last invoice cost.
  - b. Excess adopted used textbooks shall be purchased by Contractor at current wholesale price.
6. Trade and Paperback, Technical and Reference Books
- a. Trade and paperback books adopted for courses shall be purchased under the terms of New Course Materials inventory
  - b. Remaining trade, paper, technical and reference books in clean and salable condition and less than six months old shall be purchased by contractor at UMW's last invoice cost.
  - c. Books not in clean and salable condition or more than six months old, shall be set aside and purchased by Contractor at a mutually agreed upon price.
7. School Supplies and General Merchandise
- a. All of the merchandise in clean and salable condition, up to a six-month supply, shall be purchased by Contractor at UMW's last invoice cost.
    - i. Including but not limited to soft goods, art supplies, office supplies, general supplies, greeting cards, gifts, convenience store merchandise and any items that the campus store currently stocks shall be purchased from UMW regardless of date or quantity.
    - ii. For large quantities, the Contractor and university shall evaluate the sell through along with the in-stock date to determine Contractor's purchase price.
  - b. Items not in clean and salable condition shall be set aside and purchased by Contractor at a mutually agreeable price.
8. Gift Cards
- a. Contractor shall honor any UMW Bookstore gift cards with a remaining balance and submit an invoice to the University for reimbursement for the outstanding amount. The University will provide a report from the current University Bookstore's Point-of-Sale system in an Excel spreadsheet document upon request from Contractor.
9. UMW Credits
- b. UMW credits shall remain the property of UMW.
  - c. After UMW has attempted to collect outstanding credits from all its vendors, Contractor shall purchase unapplied credit balances from UMW, provided that the vendors agree to transfer them to Contractor's account. For those not transferrable, Contractor may request that UMW make the purchase(s) on Contractor's behalf, and Contractor shall reimburse UMW for those purchases. A purchase order, receiving documentation, and vendor invoice will be required to accompany Contractor invoice in such a case.
- F. Cooperative Contract Use: (See VI.J, "COOPERATIVE PROCUREMENT/ADDITIONAL USERS - USE OF AGREEMENT BY THIRD PARTIES")**
- 1. Collectively the accessing entities to which the contractor is providing Goods and Services will be known as "Accessing Entities" within this agreement.
  - 2. Contractor shall provide Goods and Services to the University, and as requested, all other VASCUPP or Virginia Higher Education Procurement Consortium "VHEPC" member institutions, all other VASCUPP member affiliated entities.

3. Any Accessing Entities, other than the University that desire to utilize this Agreement will enter into a separate negotiation of final terms and selection of Goods and Services specific to their respective Entity.
4. Any Accessing Entities will be responsible for providing Contractor with Tax Exempt certification, as appropriate.

**V. GENERAL TERMS AND CONDITIONS:** <https://adminfinance.umw.edu/procurement/umw-general-terms-conditions/>

**VI. SPECIAL TERMS AND CONDITIONS:**

**A. ACCESSIBILITY:**

To the extent applicable, Contractor shall endeavor to comply with University policies, Federal and State laws and regulations including but not limited to Section 508 of the Rehabilitation Act (29 U.S.C. 794d), the Information Technology Access Act, §§2.2-3500 through 2.2-3504 of the Code of Virginia, as amended, and other regulations promulgated under Title II of The Americans with Disabilities Act, including the most current version of the Web Content Accessibility Guidelines (WCAG) in connection with its services provided to the University. Contractor further warrants that it is committed, and shall remain committed, to promoting and improving accessibility in connection with its services as specified in UMW's IT Accessibility Policy. <https://technology.umw.edu/technology-accessibility/>

1. If such services are not in substantial conformance with applicable federal and state disability laws, policies and regulations as of the contract Effective Date, as identified by the Contractor, or through University testing or assessment, Contractor shall use reasonable efforts to remedy such noncompliance in connection with its services to the reasonable satisfaction of the University.
2. In the event any issues arise regarding Contractor's compliance with applicable federal or state disability laws, policies, and regulations, at any time, during any term of the contract, including all optional renewals, the University may send communications to Contractor as specified in the Notices provision of the contract, requesting cure of such noncompliance in accordance with the terms herein. The Contractor shall respond to these communications within five (5) business days from receipt to the University official identified in the Notices provision of the contract, with a plan, including a timeline for completion, which will bring the Contractor back within substantial compliance as required by the contract. This plan shall require University agreement.

**B. ADDITIONAL (FUTURE) GOODS & SERVICES:**

The University reserves the right to request from the contractor to provide additional Goods and/or Services under similar and market-based pricing, terms, and conditions, and to make modifications or enhancements to existing services. Additional Goods and Services may include other products, components, accessories, subsystems or related services that are newly introduced during the term of the Agreement. Newly introduced additional Services will be provided to the University at favored nations pricing, terms, and conditions.

**C. AUDIT:**

The contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The University, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period. The University, its authorized agents, and/or state auditors shall have full access to and the right to examine any such materials during this period. Any such inspection or audit shall be at the University's sole expense unless such audit reveals that Contractor has, for any reason, materially misrepresented sales and/or operating expenses. In the event that an audit determines that, the statements submitted by Contractor to the University are inaccurate or not in accordance with the terms of this Contract, Contractor agrees to pay

the University all monies owed within twenty (20) calendar days plus interest from the date of delinquency at the rate of 1½% per month. Receipt of such payment shall not preclude the University from pursuing any other right or remedy available under law. In addition, if the audit determines that Contractor has materially misrepresented sales or operating expenses, Contractor shall pay the entire cost of the audit. Any inspection or review by the University does not relieve Contractor of its responsibilities for performing its obligations under this Contract or of any liability arising from Contractor's failure to perform.

**D. TERMINATION / CANCELLATION OF CONTRACT:**

1. Termination by either Party without cause: This Contract may be terminated by either Party without cause by providing the other Party notice, per Notices Section of Terms and Conditions, by January 1 of any Contract Year for termination to be effective the following June 30<sup>th</sup>. Such termination shall be subject to the provisions of the amortization schedule located in section R.1.
2. Termination by either Party for Cause\*:
  - a. Substandard Performance: If either Party shall be in default in the performance of any material covenant, promise, term, or condition of this Contract, and (i) such default is not cured within thirty (30) calendar days after written notice of default is given by the Party not in default, or (ii) if such default is of a nature that it cannot be cured within thirty (30) calendar days, and the Party in default shall not have promptly commenced curing such default within such thirty (30) calendar day period or shall not thereafter proceed to cure such default with reasonable diligence in good faith without interruption except for causes beyond its control.
  - b. Failure to Make Payments: If either Party shall be in default in the making of any payments required to be made hereunder to the Party not in default and such defaults not cured within thirty (30) calendar days after notice thereof is given by the Party not in default.
  - c. Failure to comply with contract terms and conditions.  
*\*Non-renewal of this Contract at the end of the Term shall not constitute termination for cause.*
3. Termination by either Party for Cause: In addition to the foregoing, each party shall have the right to terminate this Contract immediately if the other party:
  - a. Acts in a grossly negligent manner or commits intentionally dishonest acts.
  - b. Initiates bankruptcy or liquidation, becomes bankrupt, makes a general assignment for the benefit of creditors, takes the benefit of any insolvency act, or has a receiver or trustee in bankruptcy appointed for all or a portion of Contractor's property.
  - c. Fails to maintain top health, safety, and sanitation inspection ratings.
  - d. Fails to maintain all licenses and permits required by applicable law or the Contract.
  - e. Fails to pay any required taxes.
  - f. Fails to comply with all applicable federal, state, and local laws and regulations.
  - g. Causes the University, in its reasonable discretion, to suffer material adverse publicity or material negative impact on its reputation.
4. Conciliation of Performance issues: If the University believes that Contractor's performance has been substandard, prior to issuing any notice of default, the University shall document Contractor's performance and submit such documentation for review and corrective action. Upon the request of the University, a meeting may be called between the Parties where instances of alleged substandard performance will be discussed and a plan for corrective action shall be developed and implemented. The University, in its reasonable discretion, shall approve in writing the plan for corrective action. The University may terminate the Contract immediately if: (i) University does not agree to the plan developed by Contractor; (ii) University, in its reasonable discretion, determines that implementation of the corrective plan by Contractor is substandard; or (iii) University, in its reasonable discretion, determines that Contractor has failed to implement the corrective plan in a timely manner.
5. Rights Prior to Termination: Termination of the Contract shall not affect any right of either Party that accrued prior to such termination.
6. Reimbursement for Depreciated book value of Contractor improvements: The following conditions shall apply should this Contract and any extension thereof be terminated prior to the full depreciation of Contractor -paid Improvements:

- a. Termination for Cause by University: The University will not pay Contractor for the depreciated book value of Contractor's permanent or fixed Improvements.
  - b. Termination for Cause by Contractor: The University will pay Contractor for the depreciated book value of Contractor's permanent or fixed Improvements.
  - c. Termination without cause by University: The University will pay Contractor for the depreciated book value of Contractor's permanent or fixed Improvements.
  - d. Termination without cause by Contractor: The University will not pay Contractor for the depreciated book value of Contractor's permanent or fixed Improvements.
7. Continued Operation after Termination / Smooth Transition: If this Contract is terminated for any reason other than those described above, Contractor agrees, at the University's option, to continue operation of the Store in accordance with the terms and conditions of the Contract until a replacement store management company or the University itself is able to commence operations, provided this interim period does not exceed six (6) months from the Termination Date. Upon termination of the Contract, Contractor agrees to assist with a smooth transition of the Store's Services to the University or replacement Services provider. Contractor agrees to:
- a. Assist the University in development of a termination and transition plan.
  - b. Train replacement personnel to use any non-proprietary equipment, software, or process that is to be transferred.
  - c. Catalog existing procedures and inventory.
  - d. Document and explain to UMW Contract Administrator any existing non-proprietary operating procedures, job descriptions, and backup procedures to University employees or a replacement Services provider.
  - e. Catalog inventory.
  - f. To exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor;
  - g. To make all University owned facilities, equipment, and data available to any successor at an appropriate time prior to the expiration of the contract to facilitate transition to successor; and
  - h. That the University Contracting Officer shall have final authority to resolve disputes related to the transition of the contract from the Contractor to its successor.
8. In the instance of a contract termination UMW will repurchase or require a new contractor to purchase inventory under the same terms as purchased by contractor from UMW.
9. The Contractor shall be reimbursed for all reasonable, pre-approved phase-in/phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract. All phase-in/phase-out work fees must be approved by the UMW Contract Administrator in writing prior to commencement of said work.
10. Immediately after the Termination, Contractor shall remove from the selling floor of the Store all of its equipment and merchandise not purchased by the University or replacement Services provider and leave the Store in similar or better condition than it was found upon the Effective Date, normal wear and tear excepted. Within thirty (30) calendar days of the termination, Contractor shall remove all its equipment and merchandise not purchased by the University or replacement Services provider from the Store. If Contractor should fail to remove such property, the University may:
- a. Consider such property abandoned and do with it as the University so chooses;
  - b. Move such property into storage and charge the Contractor for the costs of such moving and storage; or
  - c. Assign such property to the Store's replacement management company, which may use it for whatever purpose it chooses.
  - d. In the event of termination of this Agreement for any reason, University will provide (i) a secure space in or near the Bookstore during the last two weeks of the then-current term or semester to allow Contractor to collect from students outstanding textbooks on consignment owned by the publishers and (2) reasonable support related to such returns, including but not limited to communications to students. Alternatively, if University chooses not to provide such space and support, University shall assume and be wholly responsible for all of Contractor's liability to the publishers related to the

textbooks on consignment during the applicable term or semester, including but not limited to financial obligations with regard to the returns or non-returns of textbooks.

**E. COMPLETE CONTRACT:**

This Contract (including the Exhibits hereto, each of which is incorporated herein by reference) constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, between the Parties with respect to the subject matter hereof. There are no representations, understandings, or agreements relating to this Contract that are not fully expressed in this Contract.

**F. EXHIBITS:**

The Exhibits A through S (with intentional exclusion of "F") are incorporated in this Contract to the same extent as if set forth in full herein.

**G. SEVERABILITY:**

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

**H. TITLES and CAPTIONS:**

The article, section and subsection titles and captions contained in this Contract are for convenience purposes only. They shall not be deemed a part of the Contract and in no way define, limit, extend, or describe the scope or intent of any provisions hereof.

**I. CONTRACT ADMINISTRATION:**

The Director of Business Services, or designee, will perform as Contract Administrator for this UMW Contract. The UMW Contract Administrator shall use all powers under the contract to enforce its faithfulness and performance in conjunction with the University's Procurement Services Department. The UMW Contract Administrator shall determine the amount, quantity, acceptability, and fitness of all aspects of the services and shall decide all other questions in connection with the services. The UMW Contract Administrator shall not have the authority to approve changes in the services which alter the concept or which call for an extension of the contract term. Any and all modifications made to the contract must be authorized by the University's Procurement Services Department through an executed two-party written modification to the contract.

**J. COOPERATIVE PROCUREMENT/ADDITIONAL USERS - USE OF AGREEMENT BY THIRD PARTIES:**

It is the intent of this solicitation and resulting contract(s) to allow for cooperative procurement. Accordingly, any public body (to include government/state agencies, political subdivisions, etc.), cooperative purchasing organizations, public or private health or educational institutions, or any University affiliated agency and/or corporation may access any resulting contract if authorized by the Contractor. Use of this Agreement does not preclude any participating entity from using other agreements or competitive processes.

1. Participation in this cooperative procurement is strictly voluntary. If authorized by the Contractor(s), the resultant contract(s) will be extended to the entities indicated above to purchase goods and services in accordance with contract terms. As a separate contractual relationship, the participating entity will place its own orders directly with the contractor(s) and shall fully and independently administer its use of the contract(s) to include contractual disputes, invoicing and payments without direct administration from the University. No modification of this contract or execution of a separate agreement is required to participate; however, the participating entity and the contractor may modify the terms and conditions of this contract to accommodate specific governing laws, regulations, policies, and business goals required by the

participating entity. Any such modification will apply solely between the participating entity and the Contractor.

2. The Contractor will notify the University in writing of any such entities accessing this Contract. The Contractor will provide semi-annual usage reports for all entities accessing the Contract. The University shall not be held liable for any costs or damages incurred by any other participating entity as a result of any authorization by the Contractor to extend the Contract. It is understood and agreed that the University is not responsible for the acts or omissions of any entity, and will not be considered in default of the Contract no matter the circumstances.
3. The Contractor is strongly encouraged to offer additional discounts to all contract participants as the result of increasing aggregated spend among all entities accessing the contract. A plan for extending deeper discounts among all contract participants will be requested during negotiations.

**K. NOTICES:**

Any official legal notice, demand, request, consent, approval or communication required by this Agreement to be provided in writing by either party, shall be addressed to the University or Contractor at their respective addresses entered below. These notices shall be sent via certified mail, return receipt requested, or nationally recognized overnight courier service; and shall be considered by the sender received within five (5) days of delivery to the U.S. Postal Service, or via the stamped evidence of delivery, whichever occurs first. Any unofficial notices or communications may be sent via electronic mail.

If to the University:  
University of Mary Washington  
Attn.: Procurement Services  
1301 College Avenue  
Fredericksburg, VA 22401

If to the Contractor:  
Chris Peterson  
Barnes & Noble College  
1015 Forbes Avenue  
Pittsburg, PA 15219

Courtesy copy to:  
Barnes & Noble College  
120 Mountainview Blvd.  
Basking Ridge, NJ 07920  
Attn.: Legal Dept.

**L. RENEWAL OF CONTRACT:**

This contract may be renewed by the University upon written agreement of both parties for five (5) successive one year periods, under the terms of the current contract, and at a reasonable time (approximately 90 days) prior to the expiration.

**M. COMPLIANCE WITH LAWS:**

Contractor and University 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 their performance under this Agreement.

1. Contractor will conform to the applicable provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act, and §10 of the Rules Governing Procurement, Chapter 2, Exhibit J, Attachment 1.
2. Provisions in Contracts over \$10,000: Contractor understands and accepts the following provisions:
  - a. Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, or disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of Contractor. Contractor agrees to post in conspicuous

places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

- b. Any contractor, in all solicitations or advertisements for employees placed by or on behalf of Contractor, will state that such contractor is an equal opportunity employer.
  - c. Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting these requirements.
3. Subcontracts: Contractor will include the provisions of sections A and B above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
  4. Compliance with Law: Contractor shall comply with all applicable federal, state and local laws, rules and regulations in the performance of this Contract.
  5. Also see section C: Anti-Discrimination of the UMW Mandatory General Terms and Conditions

**N. TITLE IX:**

Educational institutions that receive federal financial assistance are covered by Title IX of the Education Amendments of 1972. In compliance with Title IX, the University of Mary Washington prohibits discrimination in employment as well as in all programs and activities on the basis of sex.

The University of Mary Washington's Policy on Sexual and Gender Based Harassment and Other Forms of Interpersonal Violence can be found at <http://diversity.umw.edu/title-ix/files/2016/09/Policy-on-Sexual-and-Gender-Based-Harassment-and-Other-Forms-of-Interpersonal-Violence-03.18.pdf>.

**O. LICENSES and PERMITS:**

Contractor shall obtain and maintain at its sole expense, and in its name, all necessary licenses and permits required to perform the Services.

- P. TAXES:** Contractor shall be solely responsible for any and all tax obligations imposed upon it under federal, state or local law associated with this contract, including the collection and timely payment of all applicable taxes, as well as those that may be levied after the Effective Date. The parties understand that sales to the University would be expected to be exempt from state sales tax where the University is deemed to be the purchaser under state or local sales tax law. Contractor agrees that it shall not seek any reimbursement from the University of taxes imposed upon it under applicable law. Sales to the University are normally exempt from state sales tax. State sales and use tax certificates of exemption, Form ST -12, will be issued by the University upon request. Notwithstanding the provisions of Section IV above, to the extent permitted by applicable law, the University shall indemnify the Contractor for all sales taxes, interest and penalties to the extent that these are imposed on the Contractor on any transaction where (1) the Contractor does not collect sales tax at the request of the University and (2) any state taxing authority determines that the purchase by the University was not exempt from sales tax under applicable law.

**Q. EXTRA CHARGES PROHIBITED:**

Contractor invoices shall be complete; and shall include all applicable fees; late charges invoked by the Contractor shall not be honored or paid. These charges, for example, shall include but not be limited to fees invoked by the Contractor for the use of the credit card for payment of invoices.

**R. INDEMNIFICATION:**

Contractor agrees to indemnify, defend and hold harmless the University as an agency of the Commonwealth of Virginia, its officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the contractor/any services of any kind or nature furnished by the contractor, provided that such liability is not attributable to the sole negligence of the using agency or to failure of the using agency to use the materials, goods, or equipment in the manner already and permanently described by the contractor on the materials, goods or equipment delivered.

1. To the extent permitted by law, University agrees to indemnify, defend and hold harmless the Contractor, its officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by University's performance under this Agreement.

**S. INDEPENDENT CONTRACTOR RELATIONSHIP:**

In performing any and all of the services to be provided under this contract, the Contractor shall at all times and for all purposes be and remain an independent contractor. In no case and under no circumstances shall the Contractor or any of its employees, including but not limited to those of its employees actually performing any of the services, have authority to make any representations or commitments on behalf of the University or be considered the agent of the University for any purpose whatsoever. No persons engaged by the Contractor in connection with the provision of Services shall be considered employees of the University. As between the parties, the Contractor shall be responsible for hiring, supervising, training and instructing those individuals performing the services and shall pay any required state and federal taxes on behalf of such persons and provide them with any legally required employee benefits.

**T. PRIME CONTRACTOR RESPONSIBILITIES:**

The Contractor shall be responsible for completely supervising and directing the work under this contract and all contractors that Contractor may utilize, using Contractor's best skill and attention. Contractors that perform work under this contract shall be responsible to the Contractor. The Contractor agrees that it is as responsible for the acts and omissions of its Contractors as it is for the acts and omissions of its own employees, when each is acting in the course and scope of their agency or employment, as the case may be.

1. **SUBCONTRACTS:** No portion of the work shall be subcontracted by the Contractor without prior written consent of the University. In the event that the Contractor desires to subcontract some part of the work specified herein, (e.g. actual retail operations of bookstore, or management positions within the operation), the Contractor shall furnish the UMW Contract Administrator the names, qualifications and experience of their proposed subcontractors. All Contractor's contractors shall be identified to the UMW Police Department while working on UMW campus(es).
2. **SMALL BUSINESS CONTRACTING:** Except with respect to course materials, Contractor will make reasonable efforts to maximize DSBSD-certified small business participation through a competitive bid process while fulfilling Bookstore operational needs for the University.
3. Contractor shall pay its outside vendors or subcontractors in a timely manner consistent with each vendor's payment terms.

**U. STANDARDS OF CONDUCT IN THE WORKPLACE:**

The University of Mary Washington, an agency of the Commonwealth of Virginia, strictly forbids harassment of any employee, applicant for employment, vendor, contractor or volunteer in the workplace, on the basis of an individual's race, sex, color, national origin, religion, sexual orientation, age, veteran status, political affiliation or disability. The Commonwealth will not tolerate any form of retaliation directed against an employee or third party who either complains about harassment or who participates in any investigation concerning harassment. [http://web1.dhrm.virginia.gov/itech/hrpolicy/pol1\\_80.html](http://web1.dhrm.virginia.gov/itech/hrpolicy/pol1_80.html). Pursuant to the authority provided in Chapter 10 and 12, Title 2.2 of the Code of Virginia.

**V. SAFETY:**

The provisions of all rules and regulations regarding safety as adopted by the Safety Codes Board of the Commonwealth of Virginia issued by the Department of Labor and Industry under Title 40.1 of the Code of Virginia, or any updates, shall apply to all work under this contract. The Contractor shall provide a copy of his/her company safety plan and appropriate material safety data sheets to the University's Safety and Environmental Health Office upon request. Submitted material shall be maintained current during the term of the contract. At the discretion of the University, Contractor personnel may be required to attend a safety orientation briefing to be conducted by the University at a location selected by the University prior to performing work at the University.

**W. USE OF REGISTERED MARKS, LOGOS and SEALS:**

The names, trademarks, and logos of each party are the exclusive property of such party, and each party reserves all rights in and to its own marks. Each party shall use the marks of the other party only in connection with its performance under this Agreement, provided, however, Contractor may use University's name in any of its required public filings. The University shall grant to Contractor the right to sell University-licensed products and use the University's name, seals and logos; however, the right is not exclusive. Contractor understands and accepts that the University's trademarks are owned solely and exclusively by the University, and Contractor agrees to use such trademarks only in the form and manner and with the appropriate legends as prescribed by the University. All use of trademarks shall inure to the benefit of the University. (ref. <https://adminfinance.umw.edu/business-services/licensing/>)

**X. DISCLOSURES:**

Contractor is responsible for the University's compliance with the Higher Education Opportunity Act of 2008 as it applies to disclosure of information related to course-required and course-recommended textbooks and supplemental materials and retail price information. The University will support the efforts of the Contractor to obtain the listing of required, recommended and optional course materials by the following dates:

1. Summer Terms: March 15
2. Fall Term: April 1
3. Spring Term: October 15

**Y. E-VERIFY PROGRAM:**

EFFECTIVE 12/1/2013: Pursuant to the Code of Virginia, §2.2-4308.2., any employer with more than an average of fifty (50) employees for the previous twelve (12) months entering into a contract in excess of \$50,000 with any agency of the Commonwealth to perform work or provide services pursuant to such contract shall register and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing work pursuant to such public contract. Any such employer who fails to comply with these provisions shall be debarred from contracting with any agency of the Commonwealth for a period up to one year. Such debarment shall cease upon the employer's registration and participation in the E-Verify program. If requested, the employer shall present a copy of their Maintain Company page from E-Verify to prove that they are enrolled in E-Verify.

**Z. MERCHANDISING RIGHTS: The University understands that it is in both parties' interest that the UMW Bookstore be the exclusive retail bookstore operation for the campus. UMW will make best efforts for Contractor to have the exclusive rights on the University's campus(es) in accordance with the *University Retail Policy and Contract Exhibit B*. to:**

1. Operate retail locations, physical and web-based, for the sale, rental, and/or distribution of textbooks and course-required or course-recommended materials and supplies, including custom publishing services and delivery of digital content.
2. Operate retail locations, physical and web-based for the sale of other items typically sold in college bookstores, including educational supplies, notebooks, stationery, desk and room accessories, gift items, clothing, and including such items that bear a University emblem, logo, insignia or other identifying mark.
3. Contractor will provide exclusive on-line services through the Bookstore website. BNC shall have right of first refusal with respect to fulfillment of distance learning material needs for UMW Degree Programs during the term of this contract.
4. Remove electronic links to third parties that directly compete with the core business of the bookstore. For example, in the event that Contractor identifies a link on the University's LMS or syllabus that directs or permits students to purchase course related materials other than from Contractor, Contractor shall notify the University, which shall promptly remove and/or disable the link. The University shall otherwise use reasonable efforts to prohibit faculty, and administrators from directing students to purchase textbooks, course materials, trade and reference books from any vendor other than the Contractor.
5. Be the only University – approved buyer of used books from students on campus.
6. Offer right of first refusal to the Contractor for sale of goods traditionally sold in campus bookstores. For example only, student clubs will often purchase tee-shirts for fundraising purposes.

7. See *Contract Exhibit B: University Exclusive and Preferred Contracts* for exclusivity exceptions. Upon execution of this contract, Barnes & Noble College Booksellers, LLC, shall be listed as a UMW vendor per the terms of this contract, referenced in *Exhibit B*.

**AA. NON-EXCLUSIVITY:**

Contractor's exclusive rights do not include merchandise and services currently sold elsewhere within the University by departments or student organizations, or through other existing agreements or contracts, so long as these groups or agreements do not contract with an outside third party (e.g. Publisher, Amazon, Chegg, etc.). The University, in its sole discretion, now and in the future, shall retain the right to provide other retail operations on campus, operated directly or through other contractual arrangements. However, such other retail operations will not unreasonably compete with the primary merchandise categories typically found in university bookstores, either in-store or on-line.

1. State Contract Restrictions: The Commonwealth of Virginia requires use of certain state contract items by University departments. Contractor understands and accepts that University departments are not permitted to use state funds to purchase such items from the Store if they are found on state contracts.

**BB. INSURANCE COVERAGES AND LIMITS REQUIRED:**

The following insurance requirements shall apply during Contractor's management of the Store:

1. Insurance Procurement: Contractor and all of Contractor's subcontractors shall only procure insurance coverage from insurance companies authorized to sell insurance in the Commonwealth of Virginia by the Virginia State Corporation Commission.
2. Limits: Contractor and all of Contractor's subcontractors shall procure and maintain at their sole expense the following insurance to protect them from claims for personal injury, bodily injury, and/or property damage that may arise from its operations under this Contract with the University.
3. Commercial general liability with site-specific coverage limits of liability no less than:
  - a. \$1,000,000 each occurrence bodily injury and property damage,
  - b. \$5,000,000 general aggregate limit for bodily injury and property damage,
  - c. \$1,000,000 personal and advertising injury,
  - d. \$1,000,000 products and completed operations aggregate,
  - e. \$ 250,000 fire damage legal liability,
  - f. \$ 10,000 per person medical payments.
4. Automobile liability providing coverage for owned, non-owned and hired vehicles with limits of liability no less than \$1,000,000 combined single limit per accident for bodily injury and property damage.
5. Worker's compensation / employer's liability with limits of liability no less than: Worker's compensation at statutory requirements and benefits Employer's liability at \$500,000 bodily injury by accident, \$500,000 disease – each employee, \$500,000 disease - aggregate.
6. Umbrella/excess liability with limits of liability no less than \$5,000,000 each occurrence with a \$20,000,000 general aggregate limit. The schedule of underlying insurance on this policy shall list both the commercial general liability policy and the automobile liability policy.
7. Property Protection: Contractor shall maintain the following insurance during the full term of this Contract:
  - a. Personal property - Replacement cost fire and extended coverage insurance, with vandalism, malicious mischief and sprinkler leakage endorsements, in an amount sufficient to cover full replacement costs of all Contractor's personal property, fixtures, inventory, equipment, and Contractor's improvements.
8. Business income or interruption insurance in the amount of \$1,000,000 or thirty (30) calendar days loss of income plus salaries, whichever is less.
9. Additional Insured: The University, its subsidiaries, officers, directors, trustees, and employees shall be named as additional insured under the commercial general liability insurance policy, the umbrella/excess liability, and the automobile liability policy. Such insurance purchased by Contractor for the benefit of the University shall state that it is the primary insurance coverage and any other insurance or risk pooling protection afforded to the University shall be considered excess to the insurance purchased by Contractor.
10. Insurance Ratings: The insurance companies used by Contractor must be rated by A. M. Best Company as at least A-, VI and authorized to do business in the State of Virginia. The certificate must indicate that the liability insurance is written on an "occurrence" form. Claims made on policy forms are not acceptable.

11. **Notice of Cancellation:** Insurance certificates must state that the University will receive written notice from the insurer in the event of any policy cancellation or termination.
12. **Rights of Subrogation:** The insurer shall agree to waive all rights of subrogation against the University and its subsidiaries, officers, directors, trustees, and employees. Certificates of insurance shall be delivered to the University within thirty (30) calendar days following the date of execution of the Contract, but no later than the Effective Date, whichever is earlier.
13. **Adequate Proof of Insurance:** In case of failure to deliver adequate or appropriate insurance as described above, the University reserves the right to secure such policies or services as described above and hold Contractor responsible for the costs of said policies or services or to terminate the Contract.
14. **Coverage for University -owned Furniture, Fixtures and Equipment (FF&E):** The University will provide insurance coverage only on University -owned FF&E at the Store or other service locations
15. **Notice of Representation:** The University makes no representation that the limits or forms of coverage of insurance specified in this Contract are adequate to cover Contractor's property or obligations herein.
16. **Risk:** Contractor shall not do, or permit anything to be done, at any place where Services are provided, nor bring or keep in these areas anything that would in any way increase any insurance rate or premium on the buildings and operations of the University, or that would constitute a nuisance or create a dangerous or hazardous condition.

**CC. ENVIRONMENTAL LIABILITY:**

Any costs or expenses associated with environmentally related violations of the law, the creation or maintenance of a nuisance, or release of hazardous substances, including, but not limited to, the cost of any clean-up activities, removals, remediation, responses, damages, fines, administrative or civil penalties or charges imposed on and caused by the Contractor, whether because of actions or suits by any government or regulatory agency or by any private party, as a result of the storage, accumulation or release of any hazardous substances, or any noncompliance with or failure to meet any federal, state, or local standards, requirements, law, statutes, regulations or the law of nuisance by Contractor (or by its agents, officers, employees, subcontractors, consultants, sub-consultants, or any other persons, corporations or legal entities employed, utilized or retained by Contractor) in the performance of this Contract or related activities, shall be paid by the Contractor. The University represents and warrants that to the best of its knowledge, the University is not aware of any health or environmental problems that currently exist or are likely to develop in the current buildings housing the Bookstore. Should the Bookstore relocate to any other building(s) on campus, the University will evaluate and mitigate as necessary for the safety of occupants. The University shall be responsible for remedying promptly any health or environmental problem identified at the Bookstore(s) (e.g., asbestos and mold), other than those caused by Contractor, and shall notify Contractor accordingly. This paragraph shall survive the termination, cancellation or expiration of this Contract.

**DD. FAIR LABOR RESPONSIBILITIES:**

Contractor will comply with all University policies pertaining to fair labor standards and will take active steps to ensure procurement of merchandise from manufacturers that support fundamental human rights, including fair labor practices and the elimination of sweatshop labor.

**EE. LABELING OF HAZARDOUS SUBSTANCES:**

If the items or products used by the Contractor in the performance of this Contract are "Hazardous Substances" as defined by § 1261 of Title 15 of the United States Code (U.S.C.) or "Pesticides" as defined in § 136 of Title 7 of the United States Code, then the Contractor, certifies such items or products shall be properly labeled as required by the foregoing sections and that by delivering the items or products the Contractor does not violate any of the prohibitions of Title 15 U.S.C. § 1263 or Title 7 U.S.C. § 136.

**FF. MAINTENANCE MANUALS:**

The contractor shall provide with each piece of equipment an operations and maintenance manual with wiring diagrams, parts list, and a copy of all warranties.

**GG. OPERATING VEHICLES ON UMW CAMPUS:**

Operating vehicles on sidewalks, plazas and areas heavily used by pedestrians is prohibited unless authorized by the University.

**HH. PROHIBITED ITEMS:**

The University shall have the right, at any time, to require Contractor to remove promptly from the Store any item or items, including without limitation, merchandise, line of merchandise, signs, displays, or exhibits, which, in the University's sole discretion, are not permitted within the terms of this Contract or the Lease.

**II. SUSTAINABILITY and UNIVERSITY RECYCLING POLICY:**

It shall be the policy of the University of Mary Washington to support and encourage conservation and recycling efforts by vendors, students, faculty and staff, as stated by the University's Sustainability Mission.

1. The University is dedicated to sustainability initiatives, protection, and preservation of the environment. Therefore, the Contractor should acquire products and services that are ecologically sensitive, help restore or enhance the environment, and/or have reduced negative effect on human health and the environment when compared with similar products or services.

**JJ. THEFT or OTHER CRIMINAL BEHAVIOR:**

Contractor shall not arrest or prosecute University students, faculty, or staff suspected of theft or other criminal activity without prior consultation with and approval from the University Representative and/or the University's Police department. Contractor is solely responsible for all investigations related to thefts, damages, or losses that occur in the Store, as well as for reimbursement due customers for losses or damages they incur there.

**KK. DELIVERY AND STORAGE:**

It shall be the responsibility of the contractor to make all arrangements for delivery, unloading, receiving and storing materials in the building during the term of the contract and all renewals. The university will not assume any responsibility for receiving these shipments. Contractor shall check with the owner and make necessary arrangements for security and storage space in the building during the term of the contract and all renewals.

**LL. WORK SITE DAMAGES AND PROTECTION OF PERSONS AND PROPERTY:**

The Contractor agrees to take every precaution at all times for the protection of persons and property, including employees, students, and the public. Any damage, including damages to finished surfaces, resulting from the performance of this contract shall be repaired to the University's satisfaction at the Contractor's expense. Any damage to existing utilities, equipment or finished surfaces resulting from the performance of this contract shall be repaired to the University's satisfaction at the contractor's expense.

1. Damages and Losses: Contractor shall be financially responsible for any loss or damage to property owned by the University or others that is in Contractor's possession or control, or is caused by Contractor or its employees or agents in the course and scope of their employment.

**MM. WORK SITE USE:**

The Contractor expressly undertakes, either directly or through its subcontractors:

1. To comply with the regulations governing the operation of premises and to perform its contract in such a manner as not to interrupt or interfere with the operation of any existing activity on the premises or at the location of work.
2. To store all apparatus, materials, supplies and equipment in such orderly fashion at the site of the work as will not unduly interfere with the progress of the work or the University's use of the facilities.
3. To place upon the work or any part thereof only such loads as are consistent with the safety of that portion of the work.
4. To clean up frequently all refuse, rubbish, scrap materials, and debris caused by operations.
5. To perform contract in such a manner as not to interrupt or interfere with the operation of any existing activity on the premises or with the work of any contractor.
6. Vehicle parking shall be permitted in designated areas. Contractor shall obtain approval through the Contract Administrator for parking in other areas.

**NN. ASBESTOS:**

Whenever and wherever during the course of performing any work under this contract, if the Contractor discovers the presence of asbestos or suspects that asbestos is present, it shall stop the work immediately, secure the area, notify the UMW Contract Administrator, and await positive identification of the suspect material. During the downtime in such a case, the Contractor shall not disturb any surrounding surfaces but shall protect the area with suitable dust covers. In the event the Contractor is delayed due to the discovery of asbestos or suspected asbestos, then a mutually agreed extension of time to perform the work shall be allowed the Contractor but without additional compensation due to the time extension. The University is responsible for any remediation (reference Environmental Liability, above.)

**OO. FIRE MARSHALL REQUIREMENT:**

Absolutely no items are to be left/stored in hallways, stairways or blocking any egress.

**PP. FLAME RETARDANT CERTIFICATE:**

Contractor shall submit a certification in writing to the Procurement Office that all materials used in fabricating draperies, curtains, and similar hanging textiles are inherently flame retardant or have been treated to meet NFPA Standard 701 (latest version), large or small scale test.

**CONTRACT EXHIBITS:**

- A. Bookstore and Retail Operating Hours
- B. University Exclusive and Preferred Contracts
- C. Current Location Square Footage
- D. UMW Transition Plan
- E. BNC Pro Forma November 2018
- F. BNC Presentation Boards 10.25.18 *\*Exhibit F Intentionally omitted.*
- G. Co. Brand 10.25.18
- H. BNC Negotiation Response 10.18.18
- I. BNC Negotiation Response 10.15.18
- J. BNC Negotiation Response 8.28.18
- K. BNC Proposal Clarifications 6.21.18
- L. BNC Proposal Clarifications 5.25.18
- M. BNC Proposal Clarifications 5.09.18
- N. RFP Addendum 1
- O. RFP Addendum 2
- P. Original RFP Solicitation
- Q. Vendor Proposal
- R. Profit and Loss Reference to Pro Forma 11.30.18
- S. Hosted Technology Services Addendum

*Note: This public body does not discriminate against faith-based organizations in accordance with §36 of the Governing Rules (§23-38.88) or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any basis prohibited by state law relating to discrimination in employment.*

PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS CONTAINED HEREIN:

**CONTRACTOR**

Signature: Paula Eardley

Printed Name: Paula Eardley

Title: Vice President Campus Relations

Date: 4/1/19

FEI/FIN#: 27-0884085

Phone: 917/838-7075

Email: peardley@bncollege.com

**UNIVERSITY OF MARY WASHINGTON**

Signature: Melva A. H. Kishpaugh

Printed Name: Melva A. H. Kishpaugh

Title: Director, Procurement Services

Date: 4/4/2019