
Brand License Agreement

Barnes & Noble, Inc.

[_____]

DATE: []

PARTIES:

- (1) **Barnes & Noble, Inc.** a company incorporated in the State of Delaware (“**Licensor**”);
- (2) [], a company incorporated under the laws of [] and having its registered office at [] (“**Licensee**”); and

RECITALS:

- (A) Licensor is the registered proprietor of, or has the right to license and/or sub-license, the Trade Marks (as defined below).
- (B) Licensor has agreed to grant Licensee a license to use the Trade Marks on the terms set forth in this Agreement.
- (C) Licensor holds all right, title and interest in and to the registration of the Domain Names (as defined below).
- (D) Licensor has agreed to grant Licensee a license to use the Domain Names on the terms set out in this Agreement.

TERMS AGREED:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions:

In this Agreement, where the context so admits, the following words and expressions shall have the following meanings:

“Agreement” means this Brand License Agreement, as amended, supplemented or modified from time to time;

“Business Day” means a day (excluding Saturday) on which the banks are generally open for business in New York, New York, and [] for the transaction of normal banking business;

“Confidential Information” means in relation to either party, information (whether in written, electronic or oral form) belonging or relating to that party or, in the case of Licensor, belonging to a member of Licensor’s Group or relating to its or their business, affairs, activities, products or services, which is not in the public domain and which (i) either party has advised the other party in writing is of a confidential nature; and (iii) was obtained as a result of the performance of this Agreement;

“Country” means any one of [];

“Domain Names”	means the domain names, short particulars of which are set out in Schedule 3 to this Agreement;
“Effective Date”	means the date of this Agreement;
“Encumbrances”	means any mortgage, charge, pledge, lien, encumbrance, assignment, hypothecation, security interest, title retention, preferential right, trust arrangement, contractual right of set-off or any other security agreement or arrangement in favor of any person;
“Goods “	means the goods set out in Schedule 2 to this Agreement, including those goods set out in Schedule 2 for which the Trade Marks are registered, and including the provision of the goods set out in Schedule 2 using the Domain Names or corresponding website address;
“Government Agency”	means: (i) a government or government department or other body; (ii) a governmental, semi-governmental or judicial person; or (iii) a person (whether autonomous or not) who is charged with the administration of a law;
“Licensee’s Group”	means the group of companies comprising Licensee, any parent company from time to time of Licensee, any subsidiary or affiliate of Licensee or any such parent company, and any other entity bearing a reasonably similar relationship under applicable law, it being understood that “member of Licensee’s Group” shall be construed accordingly;
“Licensor’s Group”	means the group of companies comprising Licensor, any parent company from time to time of Licensor and any subsidiary or affiliate of Licensor or any such parent company, it being understood that “member of Licensor’s Group” shall be construed accordingly;
“North America”	means the United States and its territories and possessions, Canada and Mexico;
“Purchase Agreement”	means that certain Asset Purchase Agreement dated as of September 21, 2011 between the Sellers and Licensor, together with all other documents and agreements contemplated thereby or entered into in connection therewith;
“Sale Order”	means the <i>Order Pursuant to Sections 105, 363 and 365 of the Bankruptcy Code and Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure Approving the Sale of Certain of the Debtors’ IP Assets Free and Clear of All Liens, Interests, Claims and Encumbrances and the Rejection of Certain Executory Contracts Related</i>

Thereto [Docket No. [____]] entered on September [26], 2011 in the Seller's respective cases under chapter 11 of title 11 of the United States Code, consolidated administratively under Case Number 11-10614 (MG) before the United States Bankruptcy Court for the Southern District of New York;

“Seller”

means **Borders, Inc.** and its affiliated debtors and debtors in possession in their respective cases under chapter 11 of title 11 of the United States Code, consolidated administratively under Case Number 11-10614 (MG) before the United States Bankruptcy Court for the Southern District of New York;

“Services”

means the services set out in Schedule 2 to this Agreement, including those services set out in Schedule 2 for which the Trade Marks are registered, and including the provision of the services set out in Schedule 2 using the Domain Names or corresponding website address;

“Sub-Licensee”

means the beneficiary of any sub-license granted pursuant to Section 8.3;

“Tax”

means any value-added or goods and services tax, withholding tax, charge (and associated penalty or interest), rate duty or impost imposed by any Government Agency at any time, but does not include any taxes on income or capital gains;

“Territory”

means [____]; and

“Trade Marks”

means the trade marks, short particulars of which are set out in Schedule 1 to this Agreement;

1.2 In this Agreement, unless the context otherwise requires:

(a) a reference:

- (i) to the singular includes the plural and to the plural includes the singular;
- (ii) to a gender includes all genders;
- (iii) to a document (including this Agreement) is a reference to that document (including any Schedules and Annexes,) as amended, consolidated, supplemented, novated or replaced;
- (iv) to an agreement includes any Agreement, agreement or legally enforceable arrangement or understanding whether written or not;
- (v) to parties means the parties to this Agreement and to a party means a party to this Agreement;
- (vi) to a notice means all notices, approvals, demands, requests, nominations or other communications given by one party to another under or in connection with this Agreement;

- (vii) to a person (including a party) includes:
 - (A) an individual, company, other body corporate, association, partnership, firm, joint venture, trust or Government Agency; and
 - (B) the person's successors, permitted assigns, substitutes, executors and administrators;
- (viii) to a law:
 - (A) includes a reference to any constitutional provision, subordinate legislation, treaty, decree, convention, statute, regulation, rule, ordinance, proclamation, by-law, judgment, rule of common law or equity or rule of any applicable stock exchange; and
 - (B) is a reference to that law as amended, consolidated, supplemented or replaced; and
 - (C) is a reference to any regulation, rule, ordinance, proclamation, by-law or judgment made under that law;
- (ix) to proceedings includes litigation, arbitration, and investigation;
- (x) to a judgement includes an order, injunction, decree, determination or award of any court or tribunal;
- (xi) to time is a reference to New York, New York time;
- (b) headings are for convenience only and are ignored in interpreting this Agreement;
- (c) a warranty, representation, covenant or obligation given or entered into by more than one person binds them jointly and severally;
- (d) if a period of time is specified and dates from, after or before, a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (e) if a payment or other act must (but for this Section) be made or done on a day which is not a Business Day, then it must be made or done on the next Business Day;
- (f) the words **"including"** or **"includes"** mean **"including but not limited to"** or **"including without limitation"**;
- (g) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (h) this Agreement must not be construed adversely to a party solely because that party was responsible for preparing it;
- (i) to \$ or U.S. dollars or USD are references to the lawful currency of the United States of America at the date of this Agreement;
- (j) where any form of Licensor's consent or approval is required, such consent or approval shall not be unreasonably withheld or delayed, unless otherwise specified; and

- (k) without limiting the generality of the term “**affiliate**,” for purposes of this Agreement, one company shall be an “**affiliate**” of another company if they are each controlled by one or more members of the same family.

2. GRANT OF RIGHTS

- 2.1 Subject to the terms and conditions of this Agreement, and in consideration of the payment by Licensee to Seller of a one time payment of \$[_____] USD upon execution of this Agreement, the sufficiency of which Licensor expressly accepts, Licensor grants to Licensee, with effect from the Effective Date and without limit of period and solely to the extent of Licensor’s interests in and rights in respect of the Trade Marks and Domain Names, a sole, exclusive and perpetual:
- (a) license in the Territory to use and apply the Trade Marks on and in relation to the online and “brick and mortar” retail sale of Goods and the provision of Services, or using the Domain Names or corresponding website addresses, including, without limitation, in connection with the development, manufacture, marketing, use, distribution, sale and disposal of the Goods and Services as aforesaid. Such license does not permit Licensee, and Licensee is prohibited, to use and apply the Trade Marks on or in relation to the provision of any goods or services other than the Goods and Services, with the exception of promotional or informational services pertaining to the Goods and Services, via the Internet using any domain name or other electronic media save as aforesaid; and
 - (b) right to use the Domain Names on the Internet in relation to the Goods and Services, including, without limitation, in connection with the development, manufacture, marketing, use, distribution, sale and disposal of the Goods and Services within the Territory. The right to use the Domain Names in this context means the right to use the Domain Names in any manner whatsoever including the right to establish uniform resource locators for each Domain Name, to display at such uniform resource locators such content relating to the Goods and Services as Licensee shall determine in its absolute discretion and to establish email addresses using the Domain Names.
- 2.2 Licensee shall not actively solicit outside the Territory orders (i) in a manner making use of any Trade Mark, or (ii) in any manner for Goods or Services bearing any Trade Mark. Furthermore, Licensee shall make all reasonable efforts not to accept (and shall not knowingly accept) unsolicited orders arising from its use of the Trade Marks or Domain Names within the Territory that will result, directly or indirectly, in Goods or Services destined to be shipped or rendered outside of the Territory, with the exception that Licensee shall have the right to accept limited quantities of unsolicited orders for Goods and Services that are not widely available for purchase by consumers outside of the Territory, only to the extent any such Goods or Services are not sold by Licensor.
- 2.3 Licensee shall at the reasonable request of Licensor, or on its own initiative subject to Sections 3.1(a) and (b) of this Agreement, take any action or make any filing (including without limitation taking actions or making filings in the name of and on behalf of Licensor), and pay any reasonable fees and costs necessary in connection with the registration, maintenance and renewal of the Trade Marks and Domain Names in the Territory (in respect of those Trade Marks and Domain Names which are registered or the subject of an application for registration on the date of this Agreement) and as exclusive licensee shall be entitled to have its interests noted or registered under the applicable law in Territory.
- 2.4 In the event that any Trade Mark is capable of protection by registration, and is not already the subject of an application or applications for registration in any country within the Territory, Licensee shall at its option and its own cost, and provided that this Agreement remains in effect, and to the extent permitted by applicable law, be responsible for the filing

and prosecution of such applications in the name of Licensor and the maintenance and renewal of any resulting Trade Mark registrations in such countries within the Territory as it shall nominate. If and to the extent that any such Trade Mark registration is procured, the rights granted to Licensee under this Section 2 shall be deemed to include the right to use and apply the same subject to the terms of this Agreement.

- 2.5 The license granted in Section 2.1(a) of this Agreement is granted only in the specified Territory and conveys no license rights whatsoever outside that Territory, including in North America, and the rights granted in Section 2.1(b) of this Agreement may not be used to sell or offer to sell Goods or Services in North America, except for the limited rights set forth in Section 2.2.
- 2.6 Licensor shall not, so long as this Agreement remains in effect, use or license others to use the Trade Marks on or in relation to any goods or services sold or offered within the Territory.

3. LICENSEE OBLIGATIONS

- 3.1 In addition to its obligations set out elsewhere in this Agreement, Licensee shall during the term of this Agreement:
 - (a) not do, cause or authorize to be done anything which will or would reasonably be expected to impair, damage or be detrimental to the reputation or goodwill associated with Licensor or the Trade Marks or Domain Names, which will or would reasonably be expected to adversely affect the value or validity of the Trade Marks or Domain Names, which would reasonably be expected to bring the Trade Marks or Domain Names into disrepute or which would reasonably be expected to jeopardize or invalidate any registration or application for registration of the Trade Marks or Domain Names or Licensor's title to the Trade Marks or Domain Names (save that Licensor's remedy for any challenge by Licensee to Licensor's ownership of the Trade Marks or Domain Names shall be as set out in Section 9.2(c));
 - (b) not make any representation or do any act which may be taken to indicate that it has any right, title or interest in or to the ownership or use of any of the Trade Marks or Domain Names other than under the terms of this Agreement;
 - (c) not use the Trade Marks or Domain Names on or in relation to any goods or services, other than those included on Schedule 2 or as permitted under Section 2.1, without the express written consent of Licensor;
 - (d) except as provided in Section 2.4, not register, in the Territory or elsewhere, the Domain Names, Trade Marks, business names or any other trade mark, domain name or business name which is in Licensor's reasonable opinion substantially identical with, or deceptively similar to, the Trade Marks or Domain Names or that constitutes any translation thereof into any language spoken in the Territory;
 - (e) upon Licensor's reasonable request, provide all information or assistance, and execute any instrument, that may be necessary or appropriate to register, maintain or renew the registration of the Trade Marks or Domain Names in Licensor's (or its nominee's) name in the Territory;
- 3.2 Nothing in this Agreement will obligate the Licensee to:
 - (a) incur further expenses other than in the nature specified in Sections 2.3 and 3.1;

- (b) seek the Licensor's consent or approval prior to developing the business of Licensee (including opening new stores), provided that the Licensee complies with Section 3.1(a);
 - (c) seek the Licensor's consent or approval prior to sourcing or selling the Goods and Services provided the Licensee complies with Section 3.1(a);
 - (d) seek the Licensor's consent or approval prior to any marketing or promotions using the Trade Marks provided that the Licensee complies with Section 3.1(a);
 - (e) seek the Licensor's consent or approval in connection with any aspect of operating the business of Licensee (including closing or relocating stores within the territory, or subletting space within its stores for third party concessions), provided that the Licensee complies with Sections 3.1(a);
 - (f) not use any trademarks, logos and domain names of any member of Licensee's Group in connection with Licensee's use or any of the Trade Marks or Domain Names; or
 - (g) promote or use any of the Trade Marks or Domain Names in a manner that will or is likely to impair, damage or be detrimental to any of the trademarks or domain names of any member of Licensee's Group.
- 3.3 Licensor agrees that Licensee may, from time to time, notify Licensor of its proposed use of the Trade Marks or Domain Names, including the form, color, style, design and manner of its use, and unless Licensor objects to the proposed use in accordance with Section 19.1 hereof, Licensee shall be entitled to use the same in the manner proposed without being in breach of its obligation under Section 3.1(a) above. If the Licensor notifies the Licensee in writing (including full reasons therefor) that a particular use of the Trade Marks by the Licensee (including in connection with Goods and Services and promotional or marketing materials therefor), in Licensor's reasonable determination and acting in good faith, is contrary to Section 3.1(a), then the Licensee must, as soon as practicable and pending the resolution of any dispute between the parties in connection therewith, cease that particular usage of the Trade Marks. In such circumstances, the parties shall negotiate in good faith to resolve any dispute so as to minimize any disruption to the Licensee's business and to resolve Licensor's concerns.

4. PAYMENTS AND RECORDS

- 4.1 All sums payable under this Agreement:
- (a) are quoted exclusive of any Tax which shall be paid in addition upon the provision by Licensor of a valid tax invoice; and
 - (b) shall be made in U.S. dollars to the credit of a bank account to be designated in writing by the applicable payee.
- 4.2 If Licensee fails to pay any sum due under this Agreement by the due date, Licensor shall be entitled to charge interest on that sum at the rate of 2% above the "prime" lending rate from time to time of Bank of America, N.A., or any successor thereto. Such interest shall accrue on a daily basis and be compounded quarterly.
- 4.3 If at any time an applicable law obliges Licensee to make a deduction or withholding in respect of Taxes from a payment to Licensor under this Agreement, Licensee:
- (a) must notify Licensor in writing of the obligation promptly after Licensee becomes aware of it;

- (b) must ensure that the deduction or withholding does not exceed the minimum amount required by law;
- (c) must pay to the relevant Government Agency on time the full amount of the deduction or withholding and promptly deliver to Licensor a copy of any receipt, certificate or other proof of payment; and
- (d) must pay to Licensor, at the time that the payment to Licensor is due, an additional amount that ensures that, after the deduction or withholding is made, Licensor receives a net sum equal to the sum that it would have received if the deduction or withholding had not been made.

5. INTELLECTUAL PROPERTY RIGHTS

5.1 Ownership

- (a) Licensor warrants that, to the extent the transfer contemplated in the Sale Order and Purchase Agreement is effective under applicable law to convey to Licensor valid ownership of the Trade Marks and Domain Names, Licensor is the owner of the Trade Marks and the Domain Names listed in Schedules 1 and 3 and can, without breach of any agreements to which it is a party, enter into, perform and authorize the performance of this Agreement.
- (b) Licensee acknowledges Licensor's ownership of and right to license the Trade Marks and the Domain Names, and acknowledges that Licensee's use of the Trade Marks and Domain Names pursuant to this Agreement shall not give Licensee any right, title or interest in or to the same, save the right to use the same as expressly permitted by this Agreement. Without limitation to the foregoing, Licensee acknowledges and agrees that all goodwill in or associated with the Trade Marks and the Domain Names, including any goodwill generated or arising by or through Licensee's activities under this Agreement, shall accrue for the benefit of and shall belong exclusively to Licensor.

5.2 Infringement of the Trade Marks and Domain Names

- (a) Licensee and Licensor shall as soon as reasonably possible give written notice to the other of any activity which amounts to an infringement of, challenge to or unauthorized use of, any of the Trade Marks or Domain Names which shall come to its notice (including, without limitation, any activity or proceedings commenced in which the ownership, validity or registration of any of the Trade Marks or Domain Names is called into question) providing all details available to it concerning such activity.
- (b) Licensor shall have conduct of all legal proceedings relating to the Trade Marks or Domain Names and shall in its sole discretion take any action as it thinks fit, at its expense, including no action at all, but shall not be obligated to institute any action (including instituting or defending legal proceedings) in respect of any infringement, challenge or unauthorized use of any of the Trade Marks or Domain Names, where, in Licensor's reasonable opinion, formed in good faith and having regard to the interests of Licensee and all other relevant circumstances, the infringement, challenge or unauthorized use does not materially adversely affect Licensee's exercise of the rights and licenses granted under this Agreement.
- (c) Where Licensor takes, or does not take, any action in respect to the infringement of, challenge to or unauthorized use of, any Trade Marks or Domain Names by a third party, Licensor shall make reasonable efforts in good faith not to act in a manner that

would have a material adverse effect on Licensee's exercise of the rights and licenses granted under this Agreement.

- (d) Where Licensor takes any action in respect of the infringement of, challenge to or unauthorized use of, any of the Trade Marks or Domain Names, Licensee acknowledges that Licensor shall be solely responsible for the conduct of such action, including the prosecution, defence or settlement of any legal proceedings, and Licensee shall make no admission as to liability and shall not agree to any settlement or compromise of any action or legal proceedings, and shall at Licensor's expense (subject to Licensor's prior written approval of the same) give Licensor all such assistance as Licensor may reasonably require in connection therewith.
- (e) Should Licensor, within thirty (30) days of becoming aware of any infringement of, challenge to or unauthorized use of any of the Trade Marks or Domain Names, fail to take any action in respect of such infringement, challenge or unauthorized use of which it is advised by Licensee pursuant to Section 5.2(a), Licensee shall be entitled, at its sole cost, to take such action (including instituting or defending legal proceedings) as it thinks fit and to keep any monies awarded or paid in settlement. Licensee shall keep Licensor informed of any progress in respect of the same and shall not make any admission as to liability or agree to any settlement or compromise of any action or legal proceedings without Licensor's prior written consent, such consent not to be unreasonably withheld or delayed.

6. LIABILITY

- 6.1 To the maximum extent permitted by law, this Section 6 prevails over all other Sections and sets forth the entire liability of Licensor, and the sole and exclusive remedies of Licensee in respect of the performance, non-performance, purported performance or delay in performance of this Agreement or otherwise in relation to this Agreement or the entering into or performance of this Agreement.
- 6.2 Save as provided in this Section 6.2 and to the maximum extent permitted by law, Licensor shall not have any liability for any loss of actual or anticipated profit (including loss of profits on contracts), loss of the use of money, loss of anticipated savings, loss of opportunity, loss of goodwill, loss of reputation or for any indirect or consequential loss or damage (whether any such loss or damage was foreseen, foreseeable, known or otherwise) arising out of or relating to this Agreement or any collateral contract (including any liability expressly provided for under this Agreement or arising by reason of the invalidity or unenforceability of any term of this Agreement), whether such liability arises in contract, tort (including negligence) or otherwise.
- 6.3 Licensee shall indemnify Licensor and each member of Licensor's Group and each of their respective directors, officers and employees from and against any and all claims, liabilities, proceedings, costs, damages, losses and expenses (including legal expenses) incurred by any of them as a result of or in connection with (i) the breach of any term of this Agreement; (ii) the breach of any term of any sub-license by Licensee; (iii) or any other negligent or wrongful act by Licensee or any Sub-Licensee, or any of their respective directors, officers, employees, agents or contractors.
- 6.4 Nothing contained in this Agreement shall limit Licensee's liability in respect of this Agreement; and in addition, nothing in this Agreement shall exclude or limit: (i) either party's liability for fraud or actionable misrepresentation with respect to this Agreement; or (ii) any other liability which cannot be limited or excluded by applicable law.

7. CONFIDENTIALITY

- 7.1 Each party shall maintain the confidentiality of the other party's Confidential Information and shall not, without the prior written consent of the other, use, disclose, copy or modify the other party's Confidential Information (or permit others to do so) other than as strictly necessary for the performance of its rights and obligations under this Agreement.
- 7.2 Each party undertakes to disclose the other party's Confidential Information only to those of its directors, officers, employees, agents and contractors to whom, and to the extent to which, such disclosure is necessary for the performance of its rights and obligations under this Agreement and to ensure that such persons are made aware of and agree to observe the obligations in this Section 7.
- 7.3 Each party shall give notice to the other of any unauthorized use or disclosure, or misuse, theft or other loss, of the other party's Confidential Information immediately upon becoming aware of the same.
- 7.4 The provisions of this Section 7 shall not apply to information which:
- (a) is or comes into the public domain through no fault of the recipient, its directors, officers, employees, agents or contractors;
 - (b) is lawfully received from a third party free of any obligation of confidence at the time of its disclosure;
 - (c) was (demonstrably) independently developed by the recipient, its directors, officers, employees, agents or contractors;
 - (d) is required by law, by court or governmental order to be disclosed provided that, to the extent permitted by law, prior to any disclosure, the recipient notifies the disclosing party and, at the disclosing party's request and cost, assists the disclosing party in opposing any such disclosure.
- 7.5 Subject to Section 7.4, terms of this Agreement are confidential and may not be disclosed by either party without the other party's prior written consent. The foregoing notwithstanding, each party may disclose this Agreement to its professional advisors or as necessary to obtain any governmental permits, licenses, or approvals, or to the extent required by legal process or the lawful order of any court of competent jurisdiction or federal, national, state, or local agency having jurisdiction over the disclosing party, or in connection with the enforcement of this Agreement or any other Related Agreements, provided that the disclosing party shall give the other party prior written notice of such disclosure.

8. ASSIGNMENT AND SUB-LICENSING

- 8.1 Licensor may freely assign or otherwise transfer or deal with any or all of its rights or obligations under this Agreement without recourse to Licensee save that Licensor shall ensure that any purchaser of the Trade Marks or Domain Names shall as a condition of such purchase take an assignment or novation of this Agreement to the extent of the interests of Licensee and Licensee's entitlement to the exercise of the rights and licenses granted under this Agreement shall not be adversely affected thereby.
- 8.2 Except as provided in Section 8.3, Licensee shall not assign, transfer, encumber or otherwise deal with or transfer any of its rights or obligations under this Agreement without the prior written consent of Licensor, which consent shall not be unreasonably withheld or delayed.

8.3 Licensee may sub-license any or all of the rights and licenses granted to it under this Agreement provided that:

- (a) the Sub-Licensee has agreed in writing to be bound by the terms of this Agreement, and Licensee obtains prior written consent from Licensor, which consent may not be unreasonably withheld or delayed (it being understood that the Licensee can, in accordance with local practices in each Country in the Territory, sub-license to entities that are operationally controlled by the Licensee and/or its affiliates and the Licensor's consent for any such sub-licenses is hereby granted, subject to the Licensee's compliance with the remainder of Section 8.3);
- (b) the appointment of any sub-licensee is on terms which specifically afford to Licensor no less protection of its proprietary interests than that afforded by the terms of this Agreement and which ensure that the scope of rights and licenses granted to sub-licensees does not exceed the scope of rights and licenses granted to Licensee under this Agreement;
- (c) all such sub-licenses shall include a term permitting Licensee, at Licensor's option, a right to terminate or to assign the sub-license to Licensor, on termination of this Agreement; and
- (d) Licensee must notify Licensor, promptly after Licensee becomes aware, of any action or failure to take any action by any Sub-Licensee where such act or omission would constitute a material breach of this Agreement if it were taken by, or were the responsibility of, Licensee.

8.4 Either party may grant to its financiers from time to time (or any security trustee on their behalf) Encumbrances over their rights under this agreement.

9. TERM AND TERMINATION

9.1 This Agreement shall commence on the Effective Date and, unless earlier terminated in accordance with this Section 9, shall continue in full force and effect without limit of period, that is to say, in perpetuity.

9.2 Licensor may terminate this Agreement immediately at any time by written notice to Licensee only if:

- (a) Licensee commits a material breach of this Agreement (including any breach of its payment obligations under this Agreement) that is not remediable, or if remediable, it has failed to remedy within thirty (30) days of receiving written notice requiring it to do so;
- (b) Licensee ceases to do business, becomes unable to pay its debts as they fall due, becomes or is deemed insolvent, has a receiver, manager, administrator, administrative receiver or similar officer appointed in respect of the whole or any part of its assets or business, makes any composition or arrangement with its creditors, takes or suffers any similar action in consequence of debt, an order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction), enters into liquidation whether compulsorily or voluntarily or any equivalent or similar action or proceeding is taken or suffered in any jurisdiction; or shall cease to carry on business;
- (c) Licensee challenges or disputes or takes any step inconsistent with the validity or ownership of any of the Trade Marks or Domain Names, including by taking any

action either directly or indirectly to oppose the renewal of or to cancel any registration of the Trade Marks or Domain Names;

- (d) Licensee ceases throughout the entire territory to use the Trade Marks or Domain Names in relation to the Goods and Services for a continuous period of two (2) years or longer if reasonable due to circumstances within the Territory and agreed upon by Licensor and Licensee (for avoidance of doubt, if the Licensee or any permitted Sub-Licensee uses the Trade Marks or Domain Names in any Country within the Territory during any applicable period then this Section 9.2(d) shall not be triggered);
- (e) Licensee acts in a manner which results in material damage to the reputation of the Trade Marks or Domain Names; or
- (f) any Sub-Licensee takes any action or fails to take any action where such act or omission would constitute a material breach of this Agreement if taken by, or were the responsibility of, Licensee, and the result of such act or omission is not remediable or, if it is remediable, neither Licensee or the Sub-Licensee has remedied within ninety (90) days of Licensee notifying Licensor of the relevant breach. For purposes of this Section 9.2(f), it shall be an acceptable remedy for Licensee to terminate the sub-license.

9.3 Licensee, in its sole and absolute discretion, may terminate this Agreement by written notice to the Licensor.

9.4 Upon termination of this Agreement for any reason pursuant to Section 9.2:

- (a) all rights and licenses granted to Licensee under this Agreement shall within 90 days cease, and Licensee shall, subject to the remainder of this Section 9.4, cease all activities authorized by this Agreement and Licensee shall not thereafter use or apply any of the Domain Names or any of the Trade Marks or any marks or domain names which are substantially identical with, or deceptively similar to, the Domain Names or the Trade Marks and shall ensure that any Sub-Licensee(s) do likewise;
- (b) Licensee shall ensure that all references to the Trade Marks or Domain Names on its or its Sub-Licensee's premises, vehicles, business documents or other documents or materials of any nature are removed and shall remove any reference to the Trade Marks in its company and/or trading name; and
- (c) Subject to Section 7.4, each party shall promptly return and procure the return to the other party, or, at the other party's direction, destroy, all property of the other party (including without limitation all Confidential Information) then in its possession, custody or control and shall not retain any copies of the same.

To the extent that the Agreement is terminated as a result of a breach of this Agreement pursuant to Sections 9.2(a), (e) or (f) and such breach is localized to a specific Country or to less than all Countries within the Territory, this Agreement shall be terminated pursuant to Section 9.2 with respect only to such specific Country or Countries, and the obligations under this Section 9.4 shall be limited to such specific Country or Countries.

9.5 Termination of this Agreement for any reason shall be without prejudice to any rights or remedies available to, or any obligations or liabilities accrued to, either party at the effective date of termination and shall not affect any sub-licenses granted by Licensee pursuant to the terms of this Agreement.

10. NOTICES

10.1 Any notice, demand or other communication (“**Notice**”) to be given by one party to the other party under this Agreement shall be in writing and signed by or on behalf of the party giving it. It shall be served by sending it by fax to the number set out in Section 10.2 or delivering it by hand, or sending it by pre-paid recorded delivery or special delivery, to the address set out in Section 10.2 and in each case marked for the attention of the relevant addressee set out in Section 10.2 (or as otherwise notified from time to time in accordance with the provisions of this Section 10). Any notice so served by hand, fax or post shall be deemed to have been duly given:

(a) in the case of delivery by hand or post, when delivered;

(b) in the case of fax, at the time of transmission;

provided that in each case where delivery by hand, post, or fax occurs after 6pm on a Business Day or on a day which is not a Business Day, service shall be deemed to occur at 9am on the next following Business Day.

References to time in this Section are to local time in the country of the addressee.

10.2 The address and fax numbers of the parties for the purpose of Section 10.1 are as follows:

Licensor

Address: Barnes & Noble, Inc.
122 Fifth Avenue
New York, NY 10011

Fax: +1 (212) 463-5683

For the attention of: Gene DeFelice
General Counsel

Licensee

Address: [_____]

Fax:

For the attention of: [the Managing Director]

With a copy to:

Address:

Fax:

For the attention of:

10.3 A party may notify the other party to this Agreement of a change to its name, relevant addressee, address or fax number for the purposes of this Section 10 provided that, such notice shall only be effective on:

- (a) the date specified in the notice as the date on which the change is to take place; or
- (b) if no date is specified or the date specified is less than five (5) Business Days after the date on which notice is given, the date following five (5) Business Days after notice of any change has been given.

10.4 In proving such service it shall be sufficient to prove that the envelope containing such notice was properly addressed and delivered either to the address shown thereon or that the facsimile transmission was made and a facsimile transmission confirmation report was received, as the case may be.

11. NO PARTNERSHIP OR AGENCY

No provision of this Agreement creates a partnership between the parties or makes a party the agent of the other party for any purpose. A party has no authority to bind, to contract in the name of or to create a liability for the other party in any way or for any purpose and neither party shall hold itself out as having authority to do the same.

12. INVALID OR UNENFORCEABLE PROVISIONS

12.1 If a provision of this Agreement is invalid or unenforceable in a jurisdiction:

- (a) it is to be read down or severed in that jurisdiction to the extent of the invalidity or unenforceability; and
- (b) it does not affect the validity or enforceability of:
 - (i) that provision in another jurisdiction; or
 - (ii) the remaining provisions.

13. WAIVER AND EXERCISE OF RIGHTS

- (a) A waiver by a party of a provision or of a right under this Agreement is binding on the party granting the waiver only if it is given in writing and is signed by the party or an officer of the party granting the waiver.
- (b) A waiver is effective only in the specific instance and for the specific purpose for which it is given.
- (c) A single or partial exercise of a right by a party does not preclude another or further exercise of that right or the exercise of another right.
- (d) Failure by a party to exercise or delay in exercising a right does not prevent its exercise or operate as a waiver.

14. AMENDMENT

14.1 This Agreement may be amended only by a document signed by all parties.

15. COUNTERPARTS

- 15.1 This Agreement may be signed in counterparts and all counterparts taken together constitute one and the same document.

16. FURTHER ASSURANCES

- 16.1 Each party must, at its own expense, whenever requested by another party, promptly do or arrange for others to do everything reasonably necessary to give full effect to this Agreement and the transactions contemplated by this Agreement.

17. ENTIRE AGREEMENT

- 17.1 This Agreement represents the whole and only agreement between the parties in relation to the Trade Marks and the Domain Names and supersedes any previous agreement (whether written or oral) between all or any of the parties in relation to the subject matter of any such document.

18. RIGHTS CUMULATIVE

- 18.1 The rights, remedies and powers of the parties under this Agreement are cumulative and not exclusive of any rights, remedies or powers provided to the parties by law.

19. CONSENTS AND APPROVALS

- 19.1 A party may give its approval or consent conditionally or unconditionally unless this Agreement expressly provides otherwise. In response to any request for approval or consent under the terms of this Agreement, each party shall communicate its approval or disapproval, or consent or non-consent, to the other party in writing within twenty-one (21) days of receipt of the request. If either party fails to provide written notice of its disapproval or non-consent to the other within such 21-day period, it shall be deemed to have given its approval or consent.

20. SERVICE OF PROCESS

- 20.1 Each party agrees that a document required to be served in proceedings about this Agreement may be served:
- (a) if originating process or a subpoena to be served on a company or registered body by being sent by post to or left at its registered office, and in all other cases at its address for service of notices under Section 10; or
 - (b) in any other way permitted by law.

21. CURRENCY CONVERSION

- 21.1 For the purpose of converting amounts specified in one currency into another currency where required, the rate of exchange to be used in converting amounts specified in one currency into another currency shall be the New York closing rate for exchanges between those currencies quoted in the Wall Street Journal for the nearest Business Day for which that rate is so quoted prior to the date of the conversion.

22. GOVERNING LAW

- 22.1 THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HERETO SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

23. OTHER

- 23.1 Licensor and Licensee each represents and warrants that it is a company duly organized, validly existing and in good standing under the respective laws of the territory in which it is incorporated, and that it has all requisite power and authority to enter into and perform this Agreement in accordance with its terms and provisions.

24. PRIOR TERMINATED LICENSE

- 24.1 Subject to the prior valid and effective grant of all rights and interests under this Brand Licence Agreement,

- (a) Licensee acknowledges the termination of that certain [*existing license agreement applicable to the Territory*] ("Original License Agreement") by and between [_____] and [_____] ("Original Licensee") dated as of [_____] granting a license (the "Original License") to use the Trade Marks and Domain Names in the Territory;
- (b) to the extent Licensee has any interest in or rights in respect of the Original License or the Original License Agreement, or to any extent it is otherwise capable of doing so, Licensee hereby consents to the termination of the Original License and disclaims and waives, effective the date hereof, any interest in and rights in respect thereof, including, without limitation, under the Original License Agreement and as assignee or sub-licensee of, or successor in interest to, the Original Licensee, as against Licensor, the Trade Marks and Domain Names (notwithstanding the foregoing, nothing herein shall be deemed to construe Licensee as an authorized assignee or successor to the Original Licensee); and
- (c) notwithstanding any other provision of this Agreement, Licensee shall, upon request of Licensor, promptly do or arrange for others to do everything reasonably necessary to give full effect to the termination of the Original License.

To the extent that the Original Licensee has the right to continue to use any of the Trade Marks during a run-off period that is concurrent with the term of this Agreement, the parties agree that such run-off period does not affect Licensee's rights hereunder.

25. THIRD PARTY BENEFICIARY

- 25.1 Borders, Inc., Borders Group, Inc. and their affiliates shall be third party beneficiaries to Section 24.1 and the right to receive payment under the provisions of Section 2.1.

IN WITNESS WHEREOF, the parties have entered into this Brand License Agreement as of the date first written above.

Signed for and on behalf of
Barnes & Noble, Inc.
by its duly authorized representative

in the presence of:

Signature of authorized representative

Name of authorized representative
(please print)

Signed for and on behalf of
[_____]
by its duly authorized representative

in the presence of:

Signature of authorized representative

Name of authorized representative
(please print)