

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

**In re**

**BORDERS GROUP, INC., *et al.*,<sup>1</sup>**

**Debtors.**

**Chapter 11**

**Case No. 11-10614 (MG)**

**(Jointly Administered)**

**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 THERETO**

Upon the Motion (the "Motion")<sup>2</sup> of the above-captioned debtors and debtors in possession (the "Debtors") in their respective chapter 11 cases (the "Cases") for Orders Pursuant to Sections 332, 363, 365 and 105 of Title 11 of the United States Code (the "Bankruptcy Code") and Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"): (i) Approving Bidding Procedures With Respect to the Sale of Certain IP Assets, Including Expense Reimbursement for a Stalking Horse Bidder, Setting the Sale Hearing Date, and Appointing a Consumer Privacy Ombudsman; and (ii) Approving and Authorizing the Sale of IP Assets to the Highest and Best Bidder Free and Clear of all Liens, Interests, Claims and Encumbrances and the Assumption and Assignment of Certain Related Executory Contracts, and Waiving the Requirements of Bankruptcy Rules 6004(h) and 6006(d); and upon the Order of this Court dated August 10, 2011 (the "Bidding Procedures Order") approving the Bidding

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Borders Group, Inc. (4588); Borders International Services, Inc. (5075); Borders, Inc. (4285); Borders Direct, LLC (0084); Borders Properties, Inc. (7978); Borders Online, Inc. (8425); Borders Online, LLC (8996); and BGP (UK) Limited.

<sup>2</sup> All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

Procedures in connection with the Sale (as such terms are defined in the Bidding Procedures Order); and upon the Declaration of David Peress dated September 21, 2011, the Declaration of Vivek Bahirwani, dated September 19, 2011, the Declaration of Joseph Hayek in Support of Bid Protection Findings in Proposed Order Authorizing Debtors to Sell Certain IP Assets Free and Clear of All Liens, Interests, Claims and Encumbrances, dated September 20, 2011, the Declaration of Su Peng Yau, dated September 20, 2011 and the Declaration of Daniel Ruffino in Support of Good Faith and Adequate Assurance Findings in Proposed Order Authorizing Debtors to Enter Into Brand License Deed With Pearson Australia Group Pty Limited in Connection with Sale of Debtors' IP Assets, dated September 21, 2011 (collectively, the "Declarations"); and upon the arguments made at the hearings held on August 10, 2011 (the "Bidding Procedures Hearing"), September 22, 2011 and September 26, 2011 (the "Sale Hearing" and, collectively with the Bidding Procedures Hearing, the "Hearings"); and the Court having considered the Motion and the arguments made and evidence proffered or adduced in support of the Motion at the Hearings; and it appearing that the relief requested is in the best interests of the Debtors' estates, their creditors and other parties in interest; and adequate notice of the Motion having been given and it appearing that no other notice need be given; and having heard the objections made, if any, to the relief sought in the Motion; and after due deliberation and sufficient cause therefor,

**IT IS HEREBY FOUND AND DETERMINED THAT:<sup>3</sup>**

A. This Court has jurisdiction to approve the Sale and the transactions contemplated in connection with the Sale, the Agreements and the Specified License Agreements (as each is defined below) (collectively, the "Transaction") pursuant to 28 U.S.C. §§ 157(b) and

---

<sup>3</sup> Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052.

1334 and Standing Order M-61 Referring to Bankruptcy Judges for the Southern District of New York Any and All Proceedings Under Title 11, dated July 10, 1984 (Ward, Acting C.J.).

B. Venue of these cases in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409(a).

C. Approval of the Transaction is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A), (N) and (O). The statutory predicates for the approval of the Transaction are sections 363, 365 and 105 of the Bankruptcy Code and Rules 2002, 6004, 6006 and 9014 of the Bankruptcy Rules.

D. As evidenced by the affidavits of service filed with the Court, proper, timely, adequate and sufficient notice of the Motion, the Transaction and the Sale Hearing has been provided in accordance with sections 363, 365 and 105(a) of the Bankruptcy Code, Bankruptcy Rules 2002, 6004 and 6006 and the applicable Local Rules for the United States Bankruptcy Court for the Southern District of New York and in compliance with the Bidding Procedures Order. No other or further notice of the Motion, the Sale Hearing, the Auction or the Transaction is required.

E. A reasonable opportunity to object or be heard regarding the relief requested in the Motion and the Transaction has been afforded to all parties in interest in the Cases, including the following: (i) the Office of the United States Trustee, (ii) counsel to the DIP Agents, (iii) counsel to the Committee, (iv) all parties who are known to assert a security interest in, lien on or claim against any of the IP Assets, including the Agent, (v) all non-Debtor counterparties to the IP Agreements and (vi) all other applicable parties in interest, including all entities on the 2002 service list as of the date of entry of the Bidding Procedures Order ((i) through (vi) collectively, the “Notice Parties”).

F. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h), the parties may consummate the Transaction immediately upon entry of this Order. Time is of the essence in consummating the Transaction to the Purchaser (as defined below). Accordingly, cause exists to lift the stay to the extent necessary, as contemplated by Bankruptcy Rule 6004(h). To any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, the Court expressly finds that there is no just reason for delay in the implementation of this Order.

G. As demonstrated by: (i) the Declarations; (ii) the testimony and other evidence proffered or adduced at the Hearings; and (iii) the representations of counsel made on the record at the Hearings, the Debtors have marketed the IP Assets, and the Debtors and each of Barnes & Noble, Inc., as the purchaser (together with its affiliates and designees, as applicable, the “Purchaser”), and Pearson Australia Group Pty Ltd (“PAG”), Berjaya Books SDN BHD and Al Maya International Ltd. (FZC), as purchasers of license rights (collectively, the “Licensees” and, with the Purchaser, the “Winning Bidders”), have negotiated the Transaction in a diligent, noncollusive, fair and good faith manner. The Debtors conducted an open and robust marketing and sale process for the IP Assets. The Debtors marketed the IP Assets and conducted the sale process in accordance with the Bidding Procedures Order. The Auction process set forth in the Bidding Procedures Order afforded a full, fair and reasonable opportunity for any person to make a higher or otherwise better offer to purchase the IP Assets. Thirteen Qualified Bidders attended the all-day Auction on September 14, 2011 that resulted in the Debtors selecting the Winning Bidders’ final offers, as embodied in (i) the Asset Purchase Agreement dated as of September 21, 2011 between the Debtors and the Purchaser (the “Purchase Agreement”; together with all other

documents and agreements contemplated thereby or entered into in connection therewith other than the Specified License Agreements (as defined below ), the “Agreements”), attached hereto as Exhibit 1, and (ii) the agreements that grant Specified Licenses (as defined in the Purchase Agreement) to the Licensees (the “Specified License Agreements”), in substantially the form attached hereto as Exhibit 2, as the highest and best offer. Notwithstanding anything else herein to the contrary, the Debtors retain the right to designate a licensee reasonably satisfactory to the Purchaser for the territory of Singapore on the same terms and conditions as the Specified License Agreements as provided and subject to the limitations contained in the Purchase Agreement.

H. The Agreements and the Specified License Agreements constitute the highest and best offer obtainable for the IP Assets that are subject to the Transaction (the “Assets”), and will provide a greater recovery for the Debtors’ stakeholders than would be provided by any available alternative. Thus, prompt consummation of the Transaction contemplated by the Agreements and the Specified License Agreements at this time will serve the best interests of the Debtors, their estates, their creditors and all parties in interest by maximizing the value to be obtained from the Assets.

I. The Debtors have demonstrated both: (a) good, sufficient and sound business purpose and justification for the Transaction because, among other things, the Debtors and their advisors diligently and in good faith analyzed all other available options in connection with the disposition of the Assets and determined that (i) the terms and conditions set forth in the Agreements and the Specified License Agreements, (ii) the transfer by the Debtors to the Winning Bidders of the Assets solely to the extent provided in the Agreements and the Specified License Agreements and (iii) the consideration to be paid as reflected in the Agreements and the

Specified License Agreements are all fair and reasonable and together constitute the highest or otherwise best value obtainable for the Assets; and (b) compelling circumstances exist for the Transaction under section 363 of the Bankruptcy Code before, and outside of, a chapter 11 plan because, among other things, absent the Transaction the value of the Assets will be substantially diminished.

J. A sale of the Assets other than one free and clear of liens, claims, encumbrances, defenses (including, without limitation, rights of setoff and recoupment) and interests, including, without limitation, security interests of whatever kind or nature, mortgages, pledges, deeds of trust, hypothecations, assignments, preferences, debts, easements, charges, suits, licenses, options, rights-of-recovery, judgments, orders and decrees of any court or foreign or domestic governmental entity, taxes (including foreign, state and local taxes), covenants, restrictions, indentures, instruments, leases, options, off-sets, claims for reimbursement, contribution, indemnity or exoneration, successor, product, tax, labor, alter ego and other liabilities, causes of action, contract rights and claims, to the fullest extent of the law, in each case, of any kind or nature, known or unknown, whether pre-petition or post-petition, secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, perfected or unperfected, liquidated or unliquidated, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent, material or non-material, statutory or non-statutory, matured or unmatured, legal or equitable (subject to any exceptions specifically provided in the Agreements, collectively, “Interests”) and without the protections of this Order would impact materially and adversely the Debtors’ estates and would yield substantially less value, with less certainty than any available alternatives. Without the protections afforded to the Winning Bidders under the Bankruptcy Code and this Order, the Winning Bidders would have not offered the consideration

indicated in the Agreements and the Specified License Agreements for the Assets and the Specified Licenses granted thereto. In addition, each entity with an Interest in the Assets (i) has consented to the Transaction or is deemed to have consented to the Transaction, (ii) could be compelled in a legal or equitable proceeding to accept money satisfaction of such interest or (iii) otherwise falls within the provisions of section 363(f) of the Bankruptcy Code and, therefore, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code have been satisfied. Those holders of Interests who did not object, or who withdrew their objections, to the Motion are (i) deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. Holders of Interests are adequately protected by having their Interests, if any, attach to the cash proceeds of the Transaction in the same priority as their pre-petition liens and/or security interests ultimately attributable to the property to which the Interests apply, subject to the terms thereof. Therefore, approval of the Agreements and the Specified License Agreements and the consummation of the Transaction free and clear of Interests is appropriate pursuant to section 363(f) of the Bankruptcy Code and is in the best interests of the Debtors' estates, their creditors and other parties in interest.

K. The consideration to be paid by the Winning Bidders under the Agreements and the Specified License Agreements in connection with the Transaction, was negotiated at arm's length and constitutes reasonably equivalent value and fair and adequate consideration for the Assets under the Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act and the laws of the United States, any state, territory, possession thereof or the District of Columbia (collectively, "Laws"). The terms and conditions set forth in the Agreements and the Specified License Agreements are fair and reasonable under these circumstances and were not entered into for the purpose of, nor do they have the effect of,

hindering, delaying or defrauding any of the Debtors or their creditors under any applicable Laws.

L. Each of the Winning Bidders is not an “insider” (as that term is defined in section 101(31) of the Bankruptcy Code) of any of the Debtors.

M. Each of the Winning Bidders negotiated the terms and conditions of the Transaction in good faith and at arm’s length. Each of the Winning Bidders has acted in good faith in all respects in connection with these Cases and the Transaction in that (i) each of the Winning Bidders recognized that the Debtors were free to negotiate with any other party that expressed interest in consummating the Transaction, (ii) all payments to be made by the Winning Bidders and other agreements or arrangements entered into by the Winning Bidders with the Debtors in connection with the Transaction have been disclosed and (iii) the negotiation and execution of the Agreements and the Specified License Agreements and all other aspects of the Transaction were conducted in good faith. Each of the Winning Bidders purchased or obtained a license in the applicable Assets in “good faith” within the meaning of section 363(m) of the Bankruptcy Code and are, therefore, entitled to the protections afforded thereby.

N. The Debtors and their management actively participated in the sale process and acted in good faith. The sale price of the Transaction was not controlled by an agreement with any bidder, including other potential bidders or any Qualified Bidder at the Auction. Accordingly, neither the Debtors nor any of the Winning Bidders has engaged in any conduct that would cause or permit the Transaction, the Agreements and the Specified License Agreements or any related action to be avoided under section 363(n) of the Bankruptcy Code.

O. No transfer or other disposition of the Assets pursuant to the Agreements and the Specified License Agreements will result in any of the Winning Bidders having any



liability or responsibility (i) for any Interest, (ii) for the satisfaction in any manner of any Interest or (iii) to third parties or the Debtors, except as expressly set forth in the Agreements or the Specified License Agreements. Without limiting the effect or scope of the foregoing, no transfer or other disposition of the Assets pursuant to the Agreements or the Specified License Agreements does or will subject any of the Winning Bidders to any liability for Interests against the Debtors or the Debtors' Interests in such Assets by reason of such transfer under any Laws, including, without limitation, any theory of successor or transferee liability, antitrust, product line, de facto merger or substantial continuity or similar theories. Each of the Winning Bidders (i) is not a continuation of the Debtors or their estates and there is no continuity between any of the Winning Bidders and the Debtors, (ii) is not holding itself out to the public as a continuation of the Debtors and (iii) is not a successor to the Debtors or their estates and the Transaction does not constitute a consolidation, merger or de facto merger of any of the Winning Bidders and the Debtors. The Transaction is not being undertaken for the purpose of escaping liability for the Debtors' debts. Each of the Winning Bidders has given substantial consideration under the Agreements and the Specified License Agreements for the benefit of the holders of liabilities in the Debtors. The consideration given by each of the Winning Bidders constitutes valid and valuable consideration for the releases of any potential claims of successor liability of each of the Winning Bidders, which releases shall be deemed to have been given in favor of each of the Winning Bidders by all holders of liabilities against or Interests in the Debtors or any of the Assets.

P. To the extent not already terminated, each of the following license agreements is an executory contract capable of being rejected by the Debtors under section 365 of the Bankruptcy Code: (i) Brand License Agreement (the "UK & Ireland License Agreement")

dated as of September 21, 2007 by and among Borders, Inc. (as successor to Borders Properties, Inc.), Borders (UK) Limited and Borders Books Ireland Limited; (ii) Brand License Deed (the “Spine License Agreement”) dated as of June 10, 2008 by and between Borders, Inc. (as successor to Borders Properties, Inc.) and Spine NewCo Pty Ltd; (iii) Area Development and Operation Agreement (as amended by the First Amendment to Area Development and Operation Agreement, dated as of June 1, 2009, and the Second Amendment to Area Development and Operation Agreement, dated as of May 1, 2011, the “Al Maya License Agreement”) dated as of April 18, 2006 by and between Borders International Services, Inc. and Al Maya International Ltd (FZC) (“Al Maya”); and (iv) Area Development and Operation Agreement dated as of March 14, 2005 and related agreements (the “Berjaya License Agreement”) by and between Borders International Services, Inc. and Berjaya Books SDN BHD (“Berjaya”).

Q. As contemplated in the Transaction, and subject to the terms of this Order, the sale to the Purchaser of personally identifiable information (as such term is defined in section 101(41A) of the Bankruptcy Code, “PII”) about individuals is consistent with the privacy policy of the Debtors in effect on the date of commencement of the Cases.

R. After appointment of a consumer privacy ombudsman in these Cases, in accordance with section 332 of the Bankruptcy Code, and after giving due consideration to the facts, circumstances and conditions of the Transaction, as well as the report of the consumer privacy ombudsman filed with the Court, no showing was made that the sale of PII contemplated in the Transaction, subject to the terms of this Order, would violate applicable nonbankruptcy law.

S. Each of the Debtors (i) has full corporate or other power to execute, deliver and perform its obligations under the Agreements, (ii) has all of the corporate or other

power and authority necessary to consummate the Transaction and (iii) has taken all actions necessary to duly and validly authorize and approve the Transaction and Agreements.

T. Upon entry of this Order, each of the Agreements and Specified License Agreements is a legal, valid and binding contract between and among the parties thereto and is enforceable in accordance with its terms.

U. As of Closing, the consummation of the Transaction contemplated by the Agreements and Specified License Agreements will be legal, valid and properly authorized under all applicable provisions of the Bankruptcy Code, including Sections 105(a), 363(b), 363(f), 363(m), and 365(a), and all of the applicable requirements of such sections have been complied with in respect of the Transaction. The Debtors will be third-party beneficiaries under the Specified License Agreements with the right to enforce any payment owed by Licensees to Debtors.

V. The Bidding Procedures Order, among other things, authorized the Debtors to designate one or more Qualified Bidders as the Stalking Horse Bidder, and authorizing the Debtors to reimburse the Stalking Horse Bidder up to \$250,000 of documented, reasonable expenses incurred in connection with the promulgation of the Stalking Horse's Qualified Bid;

W. Prior to the Auction, PC Mall, Inc. ("PC Mall") submitted a Qualified Bid. On or about September 13, 2011, the Debtors selected the PC Mall as the Stalking Horse Bidder and its Qualified Bid, as provided in an asset purchase agreement between the Debtors and PC Mall (the "Stalking Horse Purchase Agreement"), as a Stalking Horse bid (the "Stalking Horse Bid"). In connection with the designation of the Stalking Horse Bid, PC Mall, the Debtors and the Committee agreed to PC Mall's proposal that it would waive its right to claim up to \$250,000

in documented, reasonable expenses if it was not the successful purchaser of the assets subject to the Stalking Horse Purchase Agreement and in lieu thereof would accept the right to receive a \$150,000 fee inclusive of all fees and expenses incurred by PC Mall in connection with the promulgation of its Qualified Bid in the event it was not the successful purchaser (the “Termination Fee”). The Termination Fee was negotiated, proposed, and entered into by the Debtors, the Committee and PC Mall without collusion, in good faith, and in accordance with all applicable law, and from arm’s length bargaining positions.

X. At the Auction, PC Mall was designated the Back-Up Bidder, and in connection therewith, PC Mall has required, and the Debtors and the Committee have agreed, that PC Mall is entitled to receive the Termination Fee if it is not ultimately the successful Purchaser. Without the Termination Fee, PC Mall would not have agreed to enter into the Stalking Horse Purchase Agreement and will not agree to remain the designated Back-Up Bidder.

Y. The Termination Fee is an actual and necessary cost and expense of preserving the Debtors’ estates within the meaning of section 503(b) of the Bankruptcy Code, (ii) commensurate to the real and substantial benefit conferred upon the Debtors’ estates by PC Mall; and (iii) was necessary to induce PC Mall to enter into the asset purchase agreement governing the Stalking Horse Bid and remains necessary to induce PC Mall to remain bound as the Back-Up Bidder.

**NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

**A. Motion Granted, Objections Overruled.**

1. The relief requested in the Motion is granted and approved in all respects as provided herein (other than with respect to matters previously approved by the Bidding Procedures Order).

2. Any objections to the Motion or the relief requested therein that have not been withdrawn, waived, or settled, and all reservations of rights included in such objections, are overruled on the merits.

**B. Transaction Approved and Authorized.**

3. The Transaction and the transfer and assignment of the Assets, including the granting of the Specified Licenses, to the applicable Winning Bidder pursuant to the Agreements and Specified License Agreements is hereby approved and authorized in accordance with, and under sections 363(b), 363(f), 363(m) and 365(a) of the Bankruptcy Code.

4. The terms and conditions of the Agreements and the Specified License Agreements and all payments and transactions contemplated thereunder are hereby approved in all respects and incorporated herein. The Debtors are authorized and directed to execute and deliver, and empowered to fully perform under, consummate, and implement the Agreements and the Transaction, together with all additional instruments and documents that may be reasonably necessary or desirable to do so, and to take all further action as may reasonably be requested by any of the Winning Bidders for the purpose of assigning, transferring, granting, conveying and conferring the Assets to each of the Winning Bidders as contemplated in the Agreements and the Specified License Agreements.

5. Pursuant to section 363(f) of the Bankruptcy Code, the Assets may be transferred to the Purchaser, and to the extent applicable, to the Licensees, pursuant to the Transaction, and shall vest the Purchaser, its designees and such Licensees as of the Closing with all rights, title,

privileges and interests of the Debtors and their estates in and to the Assets, free and clear of all Interests, pursuant to the terms of the Agreements and the Specified License Agreements. The transfer of the Assets to the Purchaser, and to the extent applicable, to the Licensees, as provided in the Agreements and the Specified License Agreements will be legal, valid and effective to the fullest extent provided herein.

6. Any Interests shall attach to the proceeds of the Transaction in the order of their priority, with the same validity, force and effect which they previously had against the Assets, subject to the rights and defenses, if any, of the Debtors and their estates with respect thereto, and the proceeds of the Transaction shall be allocated and managed in accordance with any applicable Orders of this Court related thereto and in accordance with the terms of any chapter 11 plan that may be confirmed and effective in these cases.

7. All persons and entities holding Interests are hereby barred and enjoined from asserting such Interests in any manner against any of the Winning Bidders, their successors or assigns, or against the Assets. No person or entity shall interfere with the Purchaser's and, to the extent applicable, the Licensees' title to or use and enjoyment of the Assets on account of the Interests, and each of the Purchaser and Licensees shall be free to sell or otherwise transfer the Assets it acquires in its sole discretion, subject to the provisions of the Agreements and the Specified License Agreements. All persons and entities in possession of any Assets subject to the Transaction are directed to surrender possession of such Assets to the Purchaser or, to the extent applicable, to the Licensees upon demand.

8. This Order shall be construed as, and shall be for any and all purposes, a full and complete general assignment, conveyance and transfer of the Assets or a bill of sale transferring good and marketable title in the Assets to the Purchaser and, to the extent applicable, the

Licensees pursuant to the terms of the Agreements and Specified License Agreements. Each and every federal, state, and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the Transaction and to give effect to the Agreements and the Specified License Agreements.

**C. No Assumed Liabilities.**

9. Each of the Winning Bidders (as a successor entity, successor employer or otherwise) has not acquired and will not acquire or assume or be deemed to have acquired or assumed at Closing any obligations or liabilities of the Debtors whatsoever except as expressly provided in the Agreements and the Specified License Agreements, and all entities are hereby permanently enjoined and restrained from asserting or prosecuting any claim on account of any obligations or liabilities against any of the Winning Bidders or agents on account of the Assets.

10. Except as expressly provided in the Agreements and the Specified License Agreements, neither the Winning Bidders nor their respective successors or assigns shall be obligated or liable, either directly or indirectly, as successor, transferee or otherwise, for any obligations or liabilities of the Debtors or their affiliates (whether under federal or state law or otherwise) as a result of the sale or purchase of the Assets or employment of any employee or former employee of the Debtors. Except as expressly provided in the Agreements and the Specified License Agreements, none of the Winning Bidders nor any of their respective successors and assigns nor the Assets shall be or be deemed to be a successor or successor in interest or responsible person or potentially responsible person to the Debtors or any current or former creditor, employee, equity holder or other party in interest with respect to any liability, and to the extent permitted by applicable law, none shall have any liability (whether under federal or state law or otherwise) for successor liability, including with respect to any liabilities arising from or under products liability, tax, environmental, employment or other applicable law.

**D. Order Binding.**

11. This Order (a) shall be effective as a determination that, upon the Closing of the Transaction, all liabilities of any kind or nature whatsoever existing as to the Assets being sold by the Debtors prior to the Closing of the Transaction have been unconditionally released, discharged, and terminated, and that the conveyances described herein have been effected, and (b) shall be binding upon and shall govern the acts of all entities, including, without limitation all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to the Assets. Upon consummation of the transactions set forth in the Agreements, the Purchaser or its designee shall be authorized to file termination statements or lien terminations in any jurisdiction to remove any record, notice filing or financing statement recorded to attach perfect or otherwise notice any lien or encumbrance that is extinguished or otherwise released pursuant to this Order under Section 363 and the related provisions of the Bankruptcy Code. To the extent provided by Section 525 of the Bankruptcy Code, no governmental unit may revoke or suspend, on account of the filing or pendency of these Cases or the consummation of the Transaction, any permit or license relating to the operation of the Assets sold, transferred, or conveyed to the Winning Bidders.

12. If any person or entity that has filed financing statements, mortgages, construction or mechanic's liens, *lis pendens* or other document or agreement evidencing liens on or Interests in the Assets shall not have delivered to the Debtors prior to the Closing Date, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction,



or releases of any Interests which the person or entity has with respect to the Assets, each such person or entity is hereby directed to deliver all such statements, instruments and releases and the Debtors and the Purchaser are hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity asserting the same and the Purchaser is authorized to file a copy of this Order which, upon filing, shall be conclusive evidence of the release and termination of such interest. Each and every federal, state and local governmental unit is hereby directed to accept any and all documents and instruments necessary or appropriate to give effect to the Transaction.

**E. Terminated & Rejected Licenses.**

13. The Debtors are hereby authorized and directed, in accordance with the terms of the Agreements, to promptly take all reasonable necessary actions to exercise any and all applicable rights to terminate the license (the “UK & Ireland License”) granted under the UK & Ireland License Agreement. To the extent such termination is not valid or otherwise effective to extinguish the UK & Ireland License under applicable law, the UK & Ireland License Agreement is hereby rejected, in accordance with sections 365 and 105(a) of the Bankruptcy Code, fourteen days after service of this Order and a notice of such rejection, to the extent not terminated, specifically referencing this paragraph 13 upon the licensee of the UK & Ireland License Agreement, unless such licensee files an objection in accordance with the procedures ordered in the Order Granting Debtors’ Omnibus Motion Pursuant to 11 U.S.C. §§ 105(a) and 365(a) and Rules 6006 and 9014 of the Federal Rules of Bankruptcy Procedure for an Order (I) Approving Rejection of Certain Executory Contracts and (II) Authorizing Procedures for the Rejection of Additional Executory Contracts [Docket No. 964] (the “Executory Contract Rejection Order”), in which case the procedures of the Executory Contract Rejection Order shall govern any such objection, except as provided otherwise herein.

14. The Debtors are hereby authorized and directed, in accordance with the terms of the Agreements, to promptly take all reasonable necessary actions to exercise any and all applicable rights to terminate the Spine License Agreement and the license granted thereunder. After the Closing, the Purchaser hereby agrees to reasonably cooperate with PAG to take any and all reasonable and necessary actions to terminate the Spine License Agreement. To the extent such termination is not valid or otherwise effective to extinguish the Spine License Agreement under applicable law, such Spine License Agreement is hereby rejected, in accordance with sections 365 and 105(a) of the Bankruptcy Code, fourteen days after service of this Order and a notice of such rejection, to the extent not terminated, specifically referencing this paragraph 14 upon the licensee of such license agreement, unless such licensee files an objection in accordance with the procedures ordered in the Executory Contract Rejection Order, the procedures of which shall govern any such objection, except as provided otherwise herein.

15. Effective only upon the execution of the Specified License Agreement between Purchaser and Al Maya, the Al Maya License Agreement is hereby rejected, in accordance with sections 365 and 105(a) of the Bankruptcy Code, without further order of the Court. Upon such rejection, each of the Debtors and Al Maya acknowledges and agrees to the termination of the license granted under the Al Maya License Agreement and release each other from any and all Interests that may arise in connection with the Al Maya License Agreement or the rejection thereof.

16. Effective only upon the execution of the Specified License Agreement between Purchaser and Berjaya, the Berjaya License Agreement is hereby rejected, in accordance with sections 365 and 105(a) of the Bankruptcy Code, without further order of the Court. Upon such rejection, each of the Debtors and Berjaya acknowledges and agrees to the termination of the

license granted under the Berjaya License Agreement and release each other from any and all Interests that may arise in connection with the Berjaya License Agreement or the rejection thereof.

**F. Good Faith.**

17. The Transaction is undertaken by the Debtors and the Winning Bidders in good faith, as that term is used in section 363(m) of the Bankruptcy Code and, accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Transaction shall not affect the validity of the Transaction to any of the Winning Bidders, unless such authorization is duly stayed pending such appeal. Each of the Winning Bidders is a good faith purchaser of the Assets, and is entitled to all of the benefits and protections afforded by section 363(m) of the Bankruptcy Code.

**G. Additional PII Transfer Provisions**

18. In addition to the terms specified in the Purchase Agreement, the transfer of the PII of the customers of the Debtors to Purchaser shall be subject to the requirements set forth in Exhibit 3 to this Order, which shall have the same operative effect as if set forth herein.

**H. Other Provisions.**

19. The Termination Fee was and is necessary to the preservation of the value of the estate and is approved and allowed as an administrative expense pursuant to 11 U.S.C. 503(b) and 507(a). In the event that PC Mall is not the successful purchaser of the assets subject to the Stalking Horse Purchase Agreement, the Debtors are hereby authorized and directed to immediately pay PC Mall the Termination Fee out of the sale proceeds of the Transaction contemporaneously with the closing of the Transaction.

20. Each of the Winning Bidders is a party in interest and shall have the ability to appear and be heard on all issues related to this Order, the Transaction, the Agreements, the Specified License Agreements and the various procedures contemplated therein.

21. The Agreements and the Specified License Agreements and related documents may be modified, amended or supplemented by the parties thereto in accordance with the terms thereof without further order of this Court, provided that any such modification, amendment or supplement is not material and adverse to the Debtors.

22. This Order and the terms and provisions of the Agreements and the Specified License Agreements shall be binding on all of the Debtors' creditors (whether known or unknown), the Debtors, each of the Winning Bidders and each of the respective affiliates, successors and assigns thereof, and any affected third parties including, but not limited to, all persons asserting an interest in the Assets, notwithstanding any subsequent appointment of any trustee, party, entity or other fiduciary under any section of the Bankruptcy Code with respect to the forgoing parties, and as to such trustee, party, entity or other fiduciary, such terms and provisions likewise shall be binding. The provisions of this Order and the terms and provisions of the Agreements and the Specified License Agreements, and any actions taken pursuant hereto or thereto shall survive the entry of any order which may be entered confirming or consummating any plan of the Debtors or converting the Debtors' cases from chapter 11 to chapter 7, and the terms and provisions of the Agreements, as well as the rights and interests granted pursuant to this Order and the Agreements, shall continue in these or any superseding cases and shall be binding upon the Debtors, each of the Winning Bidders and their respective successors and permitted assigns, including any trustee or other fiduciary hereafter appointed as a legal representative of the Debtors under chapter 7 or chapter 11 of the Bankruptcy Code. Any

trustee appointed in these cases shall be and hereby is authorized to operate the business of the Debtors to the fullest extent necessary to permit compliance with the terms of this Order and the Agreements and the Specified License Agreements, each of the Winning Bidders and the trustee shall be and hereby are authorized to perform under the Agreements and the Specified License Agreements upon the appointment of the trustee without further order of this Court.

23. No bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to the Transaction.

24. In the event that anything contained in any plan(s) confirmed in these Cases or any order confirming such plan(s) shall conflict with the provisions of this Order or of the Agreements and the Specified License Agreements, this Order shall control.

25. This Court shall retain jurisdiction (i) to enforce and implement the terms and provisions of the Agreements, all amendments thereto, any waivers and consents thereunder, and of each of the agreements executed in connection therewith, (ii) to resolve any disputes arising under or related to the Transaction, Agreements, Interests and Assets, (iii) to interpret, implement and enforce the provisions of this Order and (iv) to protect the Debtors and/or the Winning Bidders against any assertions of Interests.

26. The failure to include specifically any particular provision of the Agreements and the Specified License Agreements in this Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Court that the Agreements and all of their provisions, payments and transactions, be authorized and approved in their entirety. Likewise, all of the provisions of this Order are nonseverable and mutually dependent.

27. Notwithstanding the provisions of Bankruptcy Rule 6004(h), because time is of the essence, this Order shall not be stayed for fourteen (14) days after the entry hereof, but shall be effective and enforceable immediately upon issuance hereof.

28. To the extent that anything contained in this Order explicitly conflicts with a provision in the Agreements and/or any other related agreements, this Order shall govern and control.

Dated: September 27, 2011  
New York, New York

/s/Martin Glenn  
MARTIN GLENN  
United States Bankruptcy Judge

**Exhibit 1**

[Purchase Agreement]

## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “Agreement”), is entered into this \_\_\_ day of September, 2011, by and among (a) BORDERS GROUP, INC., a corporation formed under the laws of the State of Michigan (“Parent”), and BORDERS, INC., a corporation formed under the laws of the State of Colorado (the “Company” and, together with Parent, the “Sellers,” and each, individually, a “Seller”), and (b) BARNES & NOBLE, INC., a corporation formed under the laws of the State of Delaware (the “Buyer”). The Sellers and the Buyer are referred to herein individually as a “Party” and collectively as the “Parties.”

### RECITALS

WHEREAS, the Sellers and certain of their domestic subsidiaries filed voluntary petitions for relief (such domestic subsidiaries, together with the Sellers, the “Seller Group”) under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) on February 16, 2011 in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”), and such bankruptcy cases are being jointly administered under Case No. 11-10614 (MG) and are hereinafter referred to collectively as the “Cases,” and

WHEREAS, each of the Sellers wishes to sell, transfer, convey, assign and deliver to the Buyer, and the Buyer wishes to purchase, assume and acquire, in accordance with Section 363 and the other applicable provisions of the Bankruptcy Code, the Assets (as hereinafter defined) upon the terms and subject to the conditions set forth in this Agreement; and

WHEREAS, subject to the Bankruptcy Court’s entry of the Sale Order (as hereinafter defined), the Buyer shall purchase from the Sellers, and the Sellers shall sell, transfer, convey, assign and deliver to the Buyer, the Assets, upon the terms and subject to the conditions set forth in this Agreement.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties mutually agree as follows:

### ARTICLE 1

#### PURCHASE AND SALE OF ASSETS

1.1 Defined Terms. All capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings set forth for such terms in Article 13.

1.2 Purchase and Sale. Subject to the terms and conditions set forth in this Agreement, the Sellers hereby agree that at the Closing, they shall, and shall cause the other members of the Seller Group to, sell, transfer, convey and assign to the Buyer and the Buyer shall purchase, assume and acquire from the Seller Group, all right, title and interest of the Seller Group in, to and under the following (collectively, the “Assets”), free and clear of all Liens and interests (other than rights under the Specified Licenses and under the Terminated Licenses as such term is defined in Section 8.2(e)):

(a) All of the interests of the Seller Group in and to all U.S. federal, state and foreign trademarks, service marks, trade names, service names, brand names, all trade dress rights, logos and corporate names and general intangibles of a like nature, together with the goodwill associated with any



of the foregoing, and all applications, registrations and renewals thereof, registered in the name of the Seller Group, including the items set forth on Schedule 1.2(a) (the “Transferred Intellectual Property”);

(b) All of the interests of the Seller Group in and rights in respect of the following (to the extent owned and transferable by the Seller Group): the social media accounts set forth on Schedule 1.2(b), including related Internet pages, content and contact/subscriber lists, and any related social media assets;

(c) All claims (including any litigation or arbitration claims and any refunds and deposits), rights, rights of offset or causes of action or choses in action existing now or arising at any time in the future that the Seller Group or their Affiliates may have against, or from (to the extent an asset and not a Liability), any Person relating to the Assets (the “Transferred Claims”), including but not limited to the claims set forth on Schedule 1.2(c), but excluding the claims set forth in Section 1.3(f);

(d) The domain names set forth on Schedule 1.2(d) and any related domain names.

(e) The website content described in Schedule 1.2(e) (to the extent owned and transferable by Seller Group);

(f) The toll-free numbers set forth on Schedule 1.2(f);

(g) All Proprietary Rights in respect of or related to the Transferred Intellectual Property and other Assets, including those relating to the Customer List but excluding any Proprietary Rights in respect of or related to any Excluded Assets;

(h) All of the interests of the Seller Group in any software or source code used for the operation of or related to the websites owned and operated by the Seller Group (to the extent owned and transferable by the Seller Group); provided, however, that the parties acknowledge that such software and/or source code is not sufficient to operate any of the websites owned and operated by the Seller Group; and

(i) Subject to the terms of Section 7.5, the Customer List.

1.3 Excluded Assets. Notwithstanding anything to the contrary contained herein, expressly excluded from the Assets are all of the right, title and interest of the Seller Group in and to all items not expressly enumerated in Section 1.2, including but not limited to the following (collectively, the “Excluded Assets”):

(a) All claims (including any litigation or arbitration claims and any refunds and deposits), rights, rights of offset or causes of action of the Seller Group or their Affiliates other than Transferred Claims;

(b) All causes of action and claims that may be asserted against the Buyer and all rights of the Sellers under this Agreement or any Ancillary Agreement or any other agreements or instruments otherwise delivered in connection with this Agreement or any Ancillary Agreement;

(c) All of the interests of the Seller Group in any Legacy v.4 IP Addresses;

(d) All of the interests of the Seller Group in hardware, software or source code (other than any source code included in Section 1.2(h));

(e) All of the interests of the Seller Group in and to all Contracts (except to the extent necessary to transfer the Transferred Claims or to transfer the Proprietary Rights to be transferable under Section 1.2(g));

(f) The claims of the Seller Group against Next Jump and/or certain of its affiliates and any other named parties set forth in the matter captioned *Borders, Inc. and Borders Properties, Inc. v. Next Jump, Inc.* Adv. Proc. No. 11-02567 in the Bankruptcy Court; provided, however, the Buyer shall have the right to participate in the prosecution of any claims in equity for injunctive relief related to the Assets and no settlement or stipulation affecting the Assets shall be entered into without the prior written consent of the Buyer, not to be unreasonably withheld. For the avoidance of doubt, any claim whether or not related to the foregoing that first arises from and after the date of the Agreement shall constitute a Transferred Claim, unless otherwise mutually agreed. Seller Group will keep Buyer reasonably informed as to the status of such claim as it relates to the Buyer's rights described above; and

(g) All Avoidance Actions.

## ARTICLE 2

### PURCHASE PRICE AND PAYMENT

2.1 Purchase Price. The consideration to be paid by the Buyer for the sale of the Assets shall consist of Thirteen Million Nine Hundred Thousand Dollars (\$13,900,000.00) (the "Purchase Price"). At the Closing, the Purchase Price shall be paid to the Sellers by wire transfer of immediately available funds in accordance with instructions given by the Sellers to the Buyer.

#### 2.2 Assumed Obligations and Excluded Liabilities

(a) At the Closing, the Buyer shall assume and become responsible for no Liabilities relating to the Assets or otherwise, other than first arising after the Closing Date; provided, however, for the avoidance of doubt, that Liabilities asserted at any time (whether prior to or after the Closing Date) arising out of or in connection with obligations of the Seller Group first arising prior to the Closing Date are not assumed by the Buyer.

(b) Subject to Section 2.2(a), the Buyer shall not be subject to and shall not assume nor be liable for any Liabilities of any kind or nature, whether absolute, contingent, accrued, known or unknown, of the Seller Group (collectively, the "Excluded Liabilities"). All Liabilities of the Seller Group, including any Liabilities related to the Assets, shall be Excluded Liabilities and shall be and remain the Liabilities of the Seller Group, subject to Section 2.2(a).

2.3 Non-Assignable Assets. If any Asset is by its terms or by Applicable Law non-assignable or non-transferable, to the extent such terms are not superseded by the terms of the Sale Order, the Sellers shall use their reasonable best efforts to obtain, or cause to be obtained, on or prior to the Closing, any approvals or consents necessary to convey to the Buyer the benefit thereof. The Buyer shall cooperate with the Sellers in such manner as may be reasonably requested in connection therewith. In the event any consent or approval to an assignment contemplated hereby is not obtained on or prior to the Closing Date, the Sellers shall continue to use reasonable best efforts to obtain any such approval or consent after the Closing Date and the Sellers agree to enter into any appropriate and commercially reasonable arrangement to provide that the Buyer shall receive the Seller Group's interest in the benefits under any such Asset; *provided* that the Buyer shall undertake to pay or satisfy the corresponding liabilities for the enjoyment of such benefit to the extent the Buyer would have been responsible therefor if such consent or approval had been obtained.

2.4 Transfer Taxes. To the extent the transactions contemplated hereby are not exempt under Section 1146 of the Bankruptcy Code, the Buyer shall be liable for and pay any sales and transfer Taxes, filing fees, documentary fees or other Taxes, other than resulting income taxes, payable in connection with the purchase, sale or transfer of the Assets to the Buyer pursuant to this Agreement. The Buyer and the Sellers shall use reasonable best efforts to minimize the amount of all the foregoing Taxes and shall cooperate in providing each other with any appropriate resale exemption certifications, Tax clearance certificates and other similar documentation. The Party that is required by Applicable Law to make the filings, reports, or returns and to handle any audits or controversies with respect to any of the foregoing Taxes shall do so, and the other Party shall cooperate (and make reimbursement) with respect thereto as necessary.

2.5 Allocation of Purchase Price. No later than ninety (90) days after the Closing Date, the Buyer and the Sellers shall mutually agree upon a Tax allocation of the Purchase Price and other relevant items among the Assets in accordance with Section 1060 of the Tax Code and the regulations thereunder and any comparable provision of state or local law. Each of the Parties agrees that it or they shall file a statement (on IRS Form 8594 or other applicable form) setting forth such allocation with its or their federal and applicable state income Tax returns and shall also file such further information or take such further actions as may be necessary to comply with the Treasury Regulations that have been promulgated pursuant to Section 1060 of the Tax Code and similar applicable state laws and regulations.

2.6 Deposit. The Buyer shall, upon the execution of this Agreement, deposit into a segregated escrow account designated by the Sellers an amount equal to 10% of the Purchase Price (i.e., \$1,390,000.00) (the "Deposit"). If the Closing takes place as provided herein, then the Deposit shall be credited against the Purchase Price pursuant to Section 2.1 and paid to the Sellers at the Closing. If this Agreement is terminated in accordance with Article 10 for any reason other than pursuant to Section 10.1(d), then the Sellers shall promptly return the Deposit to the Buyer. If this Agreement is terminated pursuant to Section 10.1(d), the Deposit shall be retained by the Sellers.

### ARTICLE 3

#### CLOSING

3.1 Closing. Consummation of the transactions contemplated hereby (the "Closing") shall occur as soon as practicable on such date as is specified by the Buyer, but in any event not later than two (2) Business Days after the date the conditions to Closing set forth in this Agreement are satisfied or waived (other than those conditions that by their nature are to be satisfied at the Closing), at the offices of Kasowitz, Benson, Torres & Friedman LLP, New York, New York, or at such time and place as the Buyer and the Sellers may otherwise agree. The date on which the Closing actually takes place is referred to in this Agreement as the "Closing Date."

3.2 Deliveries by the Sellers at Closing. At the Closing, the Sellers shall each execute, acknowledge and deliver to the Buyer the following (which events shall occur, each being deemed to have occurred simultaneously with the others):

(a) Trademark, trade name and domain name assignments and other intellectual property assignments in a form reasonably satisfactory to the Buyer and its counsel and the Sellers and their counsel, suitable for recording in the U.S Patent and Trademark Office, pursuant to which the Seller Group shall assign the Transferred Intellectual Property to the Buyer, as well as assignment documents for trademark and/or patent rights in other jurisdictions as reasonably requested by Buyer (the "IP Assignments");

(b) A duly executed Bill of Sale in a form reasonably satisfactory to the Buyer and its counsel and the Sellers and their counsel;

(c) [Reserved];

(d) A copy of the Sale Order;

(e) The officer's certificate described in Section 8.2(a) below;

(f) All other documents, certificates, instruments or writings, including the Ancillary Agreements, reasonably requested by the Buyer in connection herewith, including as necessary or appropriate to convey to the Buyer the Assets.

3.3 Deliveries by the Buyer at Closing. At the Closing, the Buyer shall execute, acknowledge and deliver to the Sellers the following (which events shall occur, each being deemed to have occurred simultaneously with the others):

(a) A duly executed Bill of Sale and the IP Assignments, if any, that call for a signature by the Buyer;

(b) A duly executed Assignment and Assumption Agreement;

(c) The Purchase Price to the Sellers by wire transfer in immediately available funds, net of the Deposit;

(d) A copy of the resolutions adopted by the Buyer's Board of Directors authorizing the transactions contemplated hereby and the consummation thereof, certified by a secretary or assistant secretary of the Buyer to be a true and correct copy;

(e) The officer's certificate described in Section 8.1(a) below;

(f) A certificate of incumbency as to those officers of the Buyer executing instruments in connection with this Agreement;

(g) The Specified Licenses duly executed by the Buyer and the applicable licensees; and

(h) All other documents, certificates, instruments or writings, including the Ancillary Agreements, reasonably requested by the Sellers in connection herewith.

3.4 [Reserved].

3.5 Subsequent Documentation; Further Assurances. The Buyer and the Sellers shall, at any time and from time to time after the Closing Date, upon the reasonable request of the other, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, all such further (a) assignments, transfers and conveyances as may be required for assigning, transferring, granting, conveying, recording and confirming the transactions contemplated hereby, including aiding and assisting the Buyer in collecting and reducing to possession any or all of the Assets and (b) documents and instruments as may be reasonably necessary for the further completion of any of the transactions contemplated hereby, including, without limitation, the Specified Licenses.

## ARTICLE 4

### REPRESENTATIONS AND WARRANTIES OF THE SELLERS

The Seller Group has delivered to Buyer and attached hereto certain disclosure schedules prepared by the Seller Group with numbered sections corresponding to the relevant sections in this Article 4 (the “Sellers’ Disclosure Schedules”), and any exception or qualification set forth in the Sellers’ Disclosure Schedules with respect to a particular representation or warranty contained in this Article 4 shall be deemed to be an exception or qualification with respect to such section of this Article 4. Where an exception or qualification would apply to more than one Section of the Sellers’ Disclosure Schedules, the Seller Group will cross-reference the exception or qualification in each section of the Sellers’ Disclosure Schedules where such reference is necessary to make the representations and warranties true and correct; provided, however, that in the absence of an explicit cross-reference such cross-reference will be deemed made into a different section of the Sellers’ Disclosure Schedules only to the extent that any exception or qualification made elsewhere in the Sellers’ Disclosure Schedules is disclosed in such a way as to make it reasonably apparent from the face of such disclosure that such exception or qualification is applicable to such other section of the Sellers’ Disclosure Schedules as it relates to this Article 4.

The Sellers, jointly and severally, represent that the following are true and correct as of the date hereof and shall be true and correct at the date of the Closing after giving effect to the Sale Order:

4.1 Organization and Power. Each Seller (a) is a corporation duly organized, validly existing and in good standing under the laws of the State of its organization, (b) has all requisite corporate power and authority to carry on its business as currently conducted, and (c) has the requisite corporate power and authority to own, lease, operate or hold the applicable Assets.

4.2 Authority; No Conflicts. Each Seller has the authority to enter into and, subject to approval pursuant to the Sale Order, consummate this Agreement and the Ancillary Agreements, and to consummate the transactions contemplated hereby and thereby. Subject to the approval of the Bankruptcy Court pursuant to the Sale Order, the execution, delivery and performance by each Seller of this Agreement and of the Ancillary Agreements to which it is a party (a) do not and shall not violate or conflict with any provision of the certificate or articles of incorporation or bylaws of such Seller, (b) do not and shall not violate any provision of any Applicable Law or any order, judgment or decree of any Governmental Entity or any Governmental Authority and (c) shall not result in the creation or imposition of any Lien (other than the Specified Licenses) upon any of the Assets.

4.3 Execution and Delivery. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby by the Sellers have been duly authorized by all necessary corporate action, and the execution and performance of the Ancillary Agreements by the Sellers has been or shall be authorized by all necessary corporate action prior to the Closing Date. Subject to Bankruptcy Court approval and entry of an Order of the Bankruptcy Court approving the terms of this Agreement, this Agreement constitutes, and upon execution of each of the Ancillary Agreements such agreements shall constitute, valid and binding obligations of the Sellers, enforceable against the Sellers in accordance with their respective terms.

4.4 Title; Sale Free and Clear of Liens. On the Closing Date, after giving effect to the Sale Order, the Assets shall be transferred to the Buyer free and clear of all Liens, subject to the Specified Licenses and the Terminated Licenses.

4.5 Litigation. Except as set forth on Schedule 4.5, and except for the Cases, there is no claim, litigation, action, arbitration or legal proceeding pending before a Governmental Entity or, to the

Sellers' Knowledge, threatened against the Sellers, relating to the Assets or affecting the Sellers' ability to perform their obligations hereunder. Subject to all of the provisions of the Bankruptcy Code, upon the Closing the Assets will not be subject to any order, writ, judgment, award, injunction or decree of any Governmental Entity that has had or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

4.6 Third Party Approvals. Except for (a) entry of the Sale Order and (b) approvals or consents set forth on Schedule 4.6, the execution, delivery and performance by the Sellers of this Agreement and the consummation of the transactions contemplated hereby do not require any consent, waiver, authorization or approval of, or filings with, any Person (including any Governmental Authority) that has not been obtained or is not deemed to be superseded by applicable provisions of the Bankruptcy Code (the matters described in this Section 4.6, collectively referred to as the "Consents").

4.7 Transferred Intellectual Property. Except as set forth on Schedule 4.7, the Seller Group has not been notified in writing prior to the date of this Agreement that any of the Transferred Intellectual Property is or may be infringing any trade secrets, trademarks, trade names, service marks, service names or copyrights of any third party and, to the Knowledge of the Sellers, there is no continuing infringement of the Transferred Intellectual Property by other Persons. Except as set forth on Schedule 4.7, the Seller Group as of the date of this Agreement is not bound by any outstanding judgment, injunction, order or decree restricting the use of the Transferred Intellectual Property, and any issued trademark, service mark and copyright registrations and URLs listed on Schedule 1.2(a) have not lapsed, expired or been cancelled.

4.8 Broker or Finder. Except as set forth on Schedule 4.8, no Person assisted in or brought about the negotiation of this Agreement, or the subject matter of the transactions contemplated hereby, in the capacity of broker, agent, or finder or in any similar capacity on behalf of the Sellers, and no commission or other compensation is or shall be due or owed from any of the Sellers to any Person with respect to the purchase and sale of the Assets.

4.9 DISCLAIMER OF REPRESENTATIONS AND WARRANTIES. THE ASSETS ARE BEING TRANSFERRED IN "AS IS", "WHERE IS" CONDITION AND NEITHER THE SELLERS NOR ANY EMPLOYEES, DIRECTORS, OFFICERS, SHAREHOLDERS OR REPRESENTATIVES OF THE SELLERS MAKE ANY REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, AT LAW OR IN EQUITY, RELATING TO THE SELLER GROUP OR THE ASSETS OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT.

4.10 Intellectual Property.

(a) After giving effect to the Sale Order or any notice of rejection filed prior to the date of the Sale Order, except as set forth on Section 4.10(a) of the Sellers' Disclosure Schedules, the execution, delivery and performance of this Agreement and the Seller Documents, and the consummation of the transaction contemplated hereby and thereby, will not, to the Sellers' Knowledge, constitute a material breach of any Contract involving any Assets, nor cause the forfeiture or termination of any Assets.

(b) After giving effect to the Sale Order or any notice of rejection filed prior to the date of the Sale Order, Section 4.10(b) of the Sellers' Disclosure Schedules sets forth a complete and accurate list of any Contract pursuant to which any third party is authorized to use any of the Assets (the

“Seller Licenses”). Each of the Seller Licenses is valid and enforceable against the Seller Group, and, to the Sellers’ Knowledge, the other party or parties thereto, in accordance with its terms.

4.11 Termination of Representations and Warranties Upon Closing. The representations and warranties of the Sellers in this Agreement and each Ancillary Agreement shall not survive the Closing Date and shall be null and void ab initio and of no further force or effect immediately after the Closing Date.

## ARTICLE 5

### REPRESENTATIONS AND WARRANTIES OF THE BUYER

The Buyer represents and warrants to the Sellers that the following are true and correct as of the date hereof and shall be true and correct at the date of the Closing:

5.1 Organization and Power. The Buyer (a) is a duly organized, validly existing entity under the laws and in good standing in the state of its organization, (b) has all requisite power and authority to carry on the business in which it is now engaged, and (c) has taken all action required by Applicable Law, and by the Buyer’s organizational documents, to authorize the execution and delivery of this Agreement, and the purchase of the Assets and execution and delivery of the Specified Licenses in accordance with this Agreement.

5.2 Authority; No Conflicts. The Buyer has the requisite power and authority (including full limited liability company power and authority) to execute this Agreement and each Ancillary Agreement to which the Buyer is a party and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by the Buyer of this Agreement and each Ancillary Agreement to which the Buyer is a party (a) do not and shall not violate or conflict with any provision of the certificate of formation or limited liability company agreement of the Buyer, and (b) do not and shall not violate any provision of any Applicable Law or any order, judgment or decree of any Governmental Entity or any Governmental Authority.

5.3 Execution and Delivery. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby has been duly authorized by all necessary corporate action on the part of the Buyer, and the execution and performance of each Ancillary Agreement to which the Buyer is a party has been or shall be authorized by all necessary corporate action on the part of the Buyer prior to the Closing Date. This Agreement constitutes, and upon execution by the Buyer of each of the Ancillary Agreements to which it is a party, such agreements shall constitute, valid and binding obligations of the Buyer, enforceable against the Buyer in accordance with their respective terms, except as limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors’ rights generally and (ii) general equitable principles.

5.4 Litigation. There is no claim, litigation, action or legal proceeding before a Governmental Entity or, to the Buyer’s knowledge, threatened against the Buyer, adversely affecting the Buyer’s ability to perform its obligations hereunder. There are no bankruptcy, reorganization or arrangement proceedings pending, being contemplated by or, to the Buyer’s knowledge, threatened against the Buyer.

5.5 Condition of Assets. The Buyer (i) is purchasing the Assets in “as is”, “where is” condition, and (ii) is relying solely on its own existing knowledge and inspection of the Assets and that it has completed its due diligence inspection in respect of the Assets. The Buyer expressly acknowledges

that the Sellers are not making any representations or warranties regarding the Assets (except as specifically provided for in this Agreement or any of the Ancillary Agreements).

5.6 Sufficient Funds. The Buyer has available, and will have available as of the Closing Date, funds sufficient to pay the Purchase Price and to perform its other obligations under this Agreement and the Ancillary Agreements.

5.7 No Brokers. The Buyer has not utilized the services of or contracted or dealt with a broker or finder in connection with any of the transactions contemplated by this Agreement, including the Buyer's purchase of the Assets or any portion thereof, and no commission or other compensation is or shall be due or owed from the Buyer to any Person with respect to the purchase and sale of the Assets.

5.8 Termination of Representations and Warranties Upon Closing. The representations and warranties of the Buyer in this Agreement and each Ancillary Agreement to which the Buyer is a party shall not survive the Closing Date and shall be null and void ab initio and of no further force or effect immediately after the Closing Date.

## ARTICLE 6

### COVENANTS OF THE SELLERS

Each Seller covenants and agrees with the Buyer that:

6.1 Reasonable Best Efforts.

(a) Each Seller shall use its reasonable best efforts to cause, to the extent within such Sellers' control, the conditions set forth in Article 8 to be satisfied and to facilitate and cause the consummation of the transactions contemplated hereby.

(b) Each of the Sellers shall take all actions, including appropriate service and notice of pleadings, in form and substance reasonably satisfactory to the Buyer, needed to obtain a Sale Order that authorizes, orders and effects a sale of all of the Assets free and clear of all Excluded Liabilities and Liens and other interests.

6.2 Sale Order. The Sellers, having filed the Debtors' Motion (the "IP Sale Motion") for Orders Pursuant to Sections 332, 363, 365 and 105 of Title 11 of the United States Code and Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure: (i) Approving Bidding Procedures With Respect to Sale of Certain IP Assets, Including Expense Reimbursement for a Stalking Horse Bidder, Setting the Sale Hearing Date, and Appointing a Consumer Privacy Ombudsman; and (ii) Approving and Authorizing the Sale of IP Assets to the Highest and Best Bidder Free and Clear of all Liens, Interests, Claims and Encumbrances and the Assumption and Assignment of Certain Related Executory Contracts and Waiving the Requirements of Bankruptcy Rules 6004(h) and 6006(d) and obtained entry of the Order Pursuant to Sections 332, 363, 365 and 105 of the Bankruptcy Code and Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure Approving Bidding Procedures in Connection with the Sale of the Debtors' IP Assets Free and Clear of all Liens, Interest, Claims and Encumbrances, which, among other things, set a hearing to approve a sale of the Assets for September 20, 2011, shall use their reasonable best efforts to file any further motion or other pleading for approval of the Sale Order as soon as possible so as to obtain the entry by the Bankruptcy Court of the Sale Order no later than September 30, 2011. The Sellers shall, with the cooperation of the Buyer, diligently prosecute the IP Sale Motion, and seek to obtain entry of the Sale Order, and the Sellers shall make all reasonable efforts to deliver to the Buyer prior to filing, and as early in advance as is practicable to permit adequate and reasonable time for the Buyer and its



counsel to review and comment, copies of all proposed pleadings, motions, notices, statements schedules, applications, reports and other papers to be filed by the Sellers in connection with such motions and relief requested therein.

6.3 Notice to the Buyer. Each Seller agrees to promptly notify the Buyer in writing of any information it obtains or becomes aware of that would indicate that a representation and warranty of the Sellers made herein or in any Schedule hereto is not correct in all material respects or that any of the conditions to Closing shall not be satisfied or reasonably likely will not be satisfied.

6.4 Consents and Approvals. The Sellers shall use their reasonable best efforts to obtain all Consents required, including any required by the Bankruptcy Code or other Applicable Law, to be obtained by the Sellers or the other members of the Seller Group to effect the transactions contemplated hereby. Without limiting the foregoing, as soon as practicable after the date of this Agreement, the Sellers shall make or cause to be made all such further filings and submissions, and take or cause to be taken such further action, as may reasonably be required in connection therewith on a timely basis.

6.5 Customer List. Each Seller shall use its reasonable best efforts to address matters related to the conveyance of any Customer List or any portion thereof identified by the Sale Order.

6.6 Public Statements. From the date hereof through the Closing Date, no public release or announcement concerning the transactions contemplated by this Agreement shall be issued by any Sellers or other members of the Seller Group or the Buyer without the prior consent of the Seller Group or the Buyer, as the case may be (which consent shall not be unreasonably withheld), except as such release or announcement may be required by Applicable Law, in which case the party required to make the release or announcement shall allow the other reasonable time to comment on such release or announcement in advance of such issuance; provided, however, that the Sellers may, in consultation with the Buyer, make internal announcements to their respective employees that are consistent with the parties' prior public disclosures regarding the transactions contemplated by this Agreement after reasonable prior notice to and consultation with the Buyer. Nothing in this Section 6.6 or elsewhere in this Agreement shall limit or be deemed to limit any member of the Seller Group's right or ability to make disclosures in connection with the Cases or the Buyer's right or ability to make disclosures in connection with any regulatory obligation.

6.7 Employees. Notwithstanding any of the terms and conditions to the contrary herein or in that confidentiality letter between the Buyer and the Sellers, dated April 21, 2011 (the "Confidentiality Agreement"), the Buyer and any of its Affiliates may (i) request a list from Sellers or other members of the Seller Group of former officers or employees of Sellers or other members of the Seller Group primarily related to the Business, and (ii) solicit any current or former officer or employee of Sellers or other members of the Seller Group primarily related to the Business for the purpose of discussing the potential retention of such individuals by the Buyer or any of its Affiliates following the Closing.

6.8 Access to Information. From the date hereof until the Closing Date, each of the Sellers and other members of the Seller Group shall afford to the Buyer and its authorized personnel and representatives reasonable access during normal business hours to make such reasonable investigation of the Assets, and such examination of the relevant books and records of the Assets as the Buyer may reasonably request and to discuss the affairs, finances and accounts related to the Assets with the designated personnel thereof. Any such investigation or examination shall be conducted at times reasonably acceptable to Sellers and upon reasonable prior notice to Sellers identifying any personnel of Sellers or other members of the Seller Group with whom the Buyer desires to discuss the above referenced matters. Sellers may designate any Person to be present for any such discussion. To the extent reasonably practical, from the date hereof until the Closing Date, the Sellers shall promptly inform the Buyer of any and all material matters that arise during such period affecting the Assets of which the

Sellers have Knowledge. Notwithstanding anything herein to the contrary, no such investigation or examination shall be permitted to the extent that it would require the Sellers or any Affiliate to disclose information subject to attorney-client privilege or conflict with any confidentiality obligations to which the Sellers or any members of the Seller Group are bound, from which the Sellers will use commercially reasonable efforts to be released.

6.9 Transferred Intellectual Property Maintenance. From the date hereof to the Closing Date, the Sellers shall use commercially reasonable efforts in the ordinary course of business to protect and preserve the Transferred Intellectual Property.

6.10 Cessation of Use, Removal of Marks.

(a) The Seller Group shall cease all use of the name “Borders” for direct marketing, promotion or sales purposes to customers identified through use of the Customer List as of the date of the Closing. The Seller Group shall cease all use of the name “Borders” for marketing, promotion or sales purposes to the general public, except for a period of forty-five (45) days immediately following the Closing Date and solely insofar as may be required in connection with the winding down of Seller Group’s business and the prosecution of the Cases.

(b) Subject to Section 6.10(a), after the expiration of such period but in no event for a period in excess of one hundred eighty (180) days following the Closing Date, the Seller Group may continue to use the name “Borders” to prosecute the Cases and effectuate the winding down of its operations, provided, that upon the expiration of such one hundred eighty (180) day period, the Sellers shall, within thirty (30) days after request of the Buyer, cause each entity in the Seller Group to change its names to a name that is not (and that is not confusingly similar to) “Borders” and will provide the Buyer with such consents as may be necessary to permit the Buyer or its designee to use the corporate name.

## ARTICLE 7

### COVENANTS OF THE BUYER

The Buyer covenants and agrees with the Sellers that:

7.1 Reasonable Best Efforts. The Buyer shall use its reasonable best efforts to cause, to the extent within the Buyer’s control, the conditions set forth in Article 8 to be satisfied and to facilitate and cause the consummation of the transactions contemplated hereby.

7.2 Notice to the Sellers. The Buyer agrees to promptly notify the Sellers in writing of any information the Buyer obtains or becomes aware of that would indicate that a representation and warranty of the Buyer made herein or in any Schedule hereto is not correct in all material respects.

7.3 Bankruptcy Court Approval and Related Matters. The Buyer acknowledges and agrees to Article 11 and shall use reasonable best efforts to assist the Sellers in obtaining any orders necessary to consummate the transactions contemplated hereby and any orders ancillary hereto and agree to provide the Sellers with information necessary to obtain such orders.

7.4 Confidentiality. The Buyer shall maintain the Confidential Information in accordance with the terms of the Confidentiality Agreement. In the event the Closing does not occur for any reason, the Buyer shall immediately return to the Sellers or destroy all copies and recordings of the Confidential Information in their possession or under their control in accordance with the terms of the Confidentiality Agreement.

7.5 Privacy. On or prior to the Closing Date, the Buyer agrees to adopt a written policy with respect to protection of the confidentiality of personally identifiable information regarding the customers and employees of the Seller Group and other Persons not affiliated with the Seller Group substantially similar in all material respects to those included in the written privacy policies of the Seller Group in effect as of the date of this Agreement. From and after the Closing Date, the Buyer shall comply with such policy, or such successor policies adopted by Buyer from time to time, and Applicable Law with respect to the protection of such personally identifiable information. Prior to making any material change to these privacy policies with respect to the personally identifiable information or the use or disclosure thereof different from that specified in the Buyer policies then in effect, the Buyer agrees (a) to notify the Persons whose personally identifiable information is included in the Assets by mail or email and afford such persons the opportunity to opt-out of the changes to the privacy policy or the new uses of their information; (b) to employ appropriate information security controls and procedures (technical, operational, and managerial) to protect their information; and (c) to abide by all Applicable Laws.

## ARTICLE 8

### CONDITIONS TO CLOSING

8.1 Sellers' Conditions to Closing. The obligations of the Sellers at the Closing are subject, at the option of the Sellers, to the satisfaction at or prior to the Closing of the following conditions:

(a) All representations and warranties of the Buyer contained in this Agreement shall be true in all material respects at and as of the Closing and the Buyer shall have performed and satisfied all material obligations in all material respects required by this Agreement to be performed and satisfied by the Buyer at or prior to the Closing. The Buyer shall have provided the Sellers with certificates executed by a responsible officer of the Buyer to such effect;

(b) All material Consents legally required to be obtained by the Sellers for the Closing shall have been obtained; and

(c) The Buyer shall have executed and delivered the documents required to be executed and delivered pursuant to Section 3.3.

8.2 Buyer's Conditions to Closing. The obligations of the Buyer to consummate the transactions contemplated hereby at the Closing are subject, at the option of the Buyer, to the satisfaction at or prior to the Closing of the following conditions:

(a) All representations and warranties of the Sellers contained in this Agreement and the Ancillary Agreements shall be true in all material respects at and as of the Closing and the Sellers shall have performed and satisfied in all material respects all obligations required by this Agreement and the Ancillary Agreements to be performed and satisfied by the Sellers at or prior to the Closing. The Sellers shall have provided the Buyer with certificates executed by a responsible officer of the Sellers to such effect;

(b) All material Consents legally required to be obtained by the Sellers for the Closing shall have been obtained;

(c) The Sellers shall have executed and delivered the documents required to be executed and delivered pursuant to Section 3.2;

(d) The Sale Order shall not impose any material additional requirement on the Buyer not otherwise required by the terms of this Agreement; and

(e) The Seller Group shall have obtained Bankruptcy Court approval and shall have taken all necessary actions to reject or terminate the licenses specified in the Seller Group's *Notice of Winning Bidders of IP Assets* filed with the Bankruptcy Court on September 15, 2011 (the "Terminated Licenses"), and the only licenses for or relating to any of the Assets shall be the Terminated Licenses or as otherwise disclosed on Schedule 4.10(b); provided, however, that the effectiveness of the termination of any Terminated License shall not be a condition to Closing.

8.3 Conditions of the Parties to Closing. The obligations of the Parties to consummate the transactions contemplated hereby at the Closing are further subject to the satisfaction at or prior to the Closing of the following conditions, which conditions are not subject to waiver:

(a) No stay or injunction shall have been obtained by a court of competent jurisdiction restraining, prohibiting or declaring illegal the purchase and sale contemplated by this Agreement; and

(b) The Bankruptcy Court shall have entered the Sale Order with the required findings and determinations identified in Article 13 and any other Orders necessary to permit and consummate the transactions contemplated by this Agreement, the Sale Order and each such other Order to be in form and substance reasonably satisfactory to the Parties.

## ARTICLE 9

### ADDITIONAL OBLIGATIONS AFTER CLOSING

The Parties shall have the following additional obligations after the Closing:

9.1 Execution; Delivery of Instruments and Assistance. The Sellers and the Buyer shall each execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such instruments and take such other actions as may be necessary or advisable to carry out their obligations under this Agreement and under any document, certificate or other instrument delivered pursuant hereto or thereto or required by Applicable Law.

9.2 Access to Records. From and after the Closing Date, the Buyer shall afford the Sellers, the Official Committee of Unsecured Creditors appointed in the Sellers' Cases and any trustee appointed in the Sellers' Cases, and their respective counsel, accountants and other representatives access, on reasonable notice and during reasonable business hours, to review and make copies of any computer records sold by the Seller Group hereunder to the extent reasonably necessary in connection with winding down the estates of the Sellers' or in order to comply with obligations under applicable law.

9.3 Rejection or Termination of Contracts. Sellers shall reject or terminate as soon as reasonably practicable but in no event later than the effective date of a Chapter 11 plan any Contracts that may authorize the use of the Assets. The parties acknowledge that the effective termination date of certain of the Terminated Licenses may not occur until after the Closing. From and after the Closing, the Buyer and the Sellers shall reasonably cooperate with each other to effectuate the termination of any such Terminated Licenses.

## ARTICLE 10

### TERMINATION

10.1 Termination. This Agreement may be terminated as follows:

(a) At any time by the mutual written agreement of the Sellers and the Buyer;

(b) By the Sellers or the Buyer, at their respective sole election, in the event that the Closing shall not have occurred on or before September 30, 2011 (or such later date as may be ordered by the Bankruptcy Court so long as such date is not later than December 30, 2011); *provided* that the Party seeking to terminate shall not be entitled to terminate this Agreement pursuant to this Section 10.1(b) if the failure of the Closing to occur on or prior to such date results primarily from such Party itself or themselves materially breaching any representation, warranty or covenant contained in this Agreement;

(c) By the Buyer, at its sole election, in the event of a material breach of this Agreement by the Sellers that has not been cured, or if any representation or warranty of the Seller shall have become untrue in any material respect, in either case such that such breach or untruth is incapable of being cured, by September 30, 2011; and

(d) By the Sellers, at their sole election, in the event of a material breach of this Agreement by the Buyer that has not been cured, or if any representation or warranty of the Buyer shall have become untrue in any material respect, in either case such that such breach or untruth is incapable of being cured, by September 30, 2011.

10.2 Effect of Termination. Upon the termination of this Agreement in accordance with Section 10.1, the Parties shall be relieved of any further obligations or liability under this Agreement other than (a) confidentiality obligations contained in Section 7.4; (b) any obligations for breach of this Agreement occurring prior to such termination; or (c) the Buyer's right to refund of and the Seller's obligation to refund the Deposit to the Buyer, or the Sellers' right to retain the Deposit, in each case as described in Section 2.6.

## ARTICLE 11

### BANKRUPTCY COURT APPROVAL

11.1 Bankruptcy Court Approval. The Seller Group and Buyer each acknowledges that the obligations of the Sellers under this Agreement and the transactions contemplated hereby are contingent upon the approval and authorization of the Bankruptcy Court.

## ARTICLE 12

### GENERAL PROVISIONS

12.1 Notice. All notices hereunder shall be in writing, dated and signed by the Party giving the same. Each notice shall be either (a) delivered in person to the address of the Party for whom it is intended at the address of such Party as shown below, (b) delivered to the United States Postal Service in a secure and sealed envelope or other suitable wrapper addressed to the Party for whom it is intended at the address of such Party as provided below, with sufficient postage affixed, certified or registered mail, return receipt requested, (c) sent by facsimile with a confirmation sheet, or (d) delivered to a nationally recognized overnight courier service that traces any such notice. The effective date of such notice shall

be the date of delivery in the event of delivery in accordance with (a) or (c) and five (5) days after deposit in the U.S. Mail in the event of delivery in accordance with (b). The address at which any Party hereto is to receive notice may be changed from time to time by such Party by giving notice of the new address to all other parties hereto. The addresses of the Parties, until changed in accordance with the foregoing, are:

The Sellers:                    Borders Group, Inc.  
   100 Phoenix Drive  
   Ann Arbor, Michigan 48108  
   Attn: Matthew A. Chosid, Esq.  
   Facsimile: (734) 477-1370

And copies (which shall not constitute notice) to:

Kasowitz, Benson, Torres & Friedman LLP  
1633 Broadway  
New York, New York 10019  
Attn: Andrew K. Glenn, Esq.  
Facsimile: (212) 506-1800

Streambank, LLC  
97 Chapel Street, 3<sup>rd</sup> Floor  
Needham, Massachusetts 02492  
Attn: David Peress  
Facsimile: (781) 651-4272

And to counsel for the Official Committee of Unsecured Creditors of Sellers at:

Lowenstein Sandler PC  
65 Livingston Avenue  
Roseland, New Jersey 07068  
Attn: Bruce Buechler, Esq.  
Facsimile: (973) 597-2309

The Buyer:                    Barnes & Noble, Inc.  
   122 Fifth Avenue  
   New York, New York 10011  
   Attn: Eugene V. DeFelice, Esq.  
   Facsimile: (212) 463-5683

And a copy (which shall not constitute notice) to:

Cravath, Swaine & Moore LLP  
Worldwide Plaza  
825 Eighth Avenue  
New York, New York 10019  
Attn: Paul H. Zumbro, Esq.  
   Andrew R. Thompson, Esq.

12.2 Amendment. This Agreement may not be amended nor any rights hereunder waived except by an instrument in writing signed by the Parties and, if required by Applicable Law, by the Official Committee of Unsecured Creditors appointed in the Sellers' Cases.

12.3 Payment of Costs. Except as otherwise set forth herein, the Parties shall each pay their own costs incurred in negotiating this Agreement and in consummating the transactions contemplated hereby, including any fees or commission payable to any party representing them in connection with arranging or negotiating this Agreement and transactions contemplated hereby.

12.4 Headings. The headings of the sections of this Agreement are for convenience or reference only and shall not affect any of the provisions of this Agreement.

12.5 References. References made in this Agreement, including use of a pronoun, shall be deemed to include, where applicable, masculine, feminine, singular or plural, individuals, partnerships or corporations.

12.6 Applicable Law. This Agreement and the transactions contemplated hereby shall be construed in accordance with and governed by the laws of the State of New York. Each of the Parties agrees that any proceeding brought to enforce the rights and obligations of any Party under this Agreement (including the schedules attached hereto) or any Ancillary Agreement shall be commenced and maintained exclusively in the Bankruptcy Court and that the Bankruptcy Court shall have exclusive jurisdiction over any such proceeding.

12.7 Entire Agreement. This Agreement, the Schedules attached hereto, and the Ancillary Agreements (in each case incorporated herein by this reference) contain the entire agreement and understanding of the Parties hereto with respect to the transactions contemplated hereby, and supersede any and all prior agreement, arrangements, and understandings, whether oral or written, between the Parties.

12.8 Authorization of Parent as Representative of the Sellers.

(a) By entering into and executing this Agreement, the Sellers irrevocably appoint Parent as their agent, effective as of the date hereof, and authorize and empower Parent to fulfill the role of the Sellers' representative hereunder, and each Seller appoints Parent as such Person's true and lawful attorney in fact and agent, for all purposes necessary or desirable in order for Parent to take all actions contemplated by this Agreement, with the ability to execute and deliver all instruments, certificates and other documents of every kind incident to the foregoing to all intents and purposes and with the same effect as such Seller could do personally, including to give and receive notices and communications; to object to such deliveries, to agree to, negotiate, enter into settlements and compromises of, and comply with orders of courts with respect to such claims; and to take all actions necessary or appropriate in the judgment of Parent for the accomplishment of the foregoing. The power of attorney granted in this Section 12.8 is coupled with an interest and is irrevocable.

(b) The Buyer shall be entitled to rely exclusively upon any communication given or other action taken by Parent pursuant to this Agreement, and shall not be liable for any action taken or not taken in good faith reliance on a communication or other instruction from Parent.

12.9 Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the Parties and, except as otherwise prohibited, their respective successors and assigns. Nothing contained in this Agreement, or implied herefrom, is intended to confer upon any Person other than the Parties any benefits, rights, or remedies.

12.10 Assignment. No Party may assign all or any portion of its respective rights or delegate any portion of its duties hereunder without (a) the approval of the Bankruptcy Court and (b) the written consent of the other Parties and the Official Committee of Unsecured Creditors appointed in the Sellers' Cases; *provided* that the Buyer may assign this Agreement in whole or in part to any direct or indirect subsidiary of the Buyer so long as the Buyer retains its obligations under this Agreement, subject to the terms and conditions hereof, to effect the consummation of the transactions contemplated hereby. All of the terms, provisions and conditions of this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors, assigns and legal representatives.

12.11 Severability. If a court of competent jurisdiction determines that any provision of this Agreement is void, illegal or unenforceable, the other provisions of this Agreement shall remain in full force and effect and the provisions that are determined to be void, illegal or unenforceable shall be limited so that they shall remain in effect to the extent permissible by Applicable Law.

12.12 Publicity. Prior to the Closing, no Party shall issue any press release or similar public announcement concerning the transactions contemplated hereby or the contents of this Agreement without the prior written consent of the other Parties, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, nothing in this Section 12.12 shall preclude any Party (or Person controlling such Party) from making disclosures required by Applicable Law or Governmental Authority (or of any applicable stock or securities exchange or otherwise), or appropriate filings with the Bankruptcy Court in connection with the Cases or necessary and proper in conjunction with the filing of any Tax return or other document required to be filed with any Governmental Authority; *provided* that if practicable the Party required to make the release or statement shall allow the other Party reasonable time to comment on such release or statement in advance of such issuance.

12.13 Construction. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local or foreign statute shall be deemed to refer to such statute as amended and to all rules and regulations promulgated thereunder, unless the context requires otherwise. The word "include" or "including" means include or including, without limitation. All references in this Agreement to Sections and Schedules shall be deemed references to Sections of, and Schedules to, this Agreement unless the context shall otherwise require.

12.14 Specific Performance. Each Party acknowledges that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed by such Party in accordance with their specific terms or were otherwise breached by such Party. Each Party accordingly agrees that, prior to the termination of this Agreement pursuant to Article 10, in addition to any other remedy to which the other Parties are entitled at law or in equity, the other Parties are entitled to injunctive relief to prevent breaches of this Agreement by such Party and otherwise to enforce specifically the provisions of this Agreement against such Party. Each Party expressly waives any requirement that any other Party obtain any bond or provide any indemnity in connection with any action seeking injunctive relief or specific enforcement of the provisions of this Agreement.



## ARTICLE 13

### DEFINITIONS

“Affiliate” shall mean, with respect to any Person, any direct or indirect subsidiary or such Person, and any other Person that directly, or through one or more intermediaries, controls or is controlled by or is under common control with such first Person.

“Agreement” shall have the meaning set forth in the Preamble.

“Ancillary Agreements” shall mean any ancillary agreements hereto to which each Party is or may be a party.

“Applicable Law” shall mean, with respect to any Person, any federal, state or local law (including common law), statute, code, ordinance, rule, regulation, or other requirement enacted, promulgated, issued or entered by a Governmental Authority, that is applicable to such Person or its business, properties or assets.

“Assets” shall have the meaning set forth in Section 1.2.

“Avoidance Actions” shall mean any and all actions which a trustee, debtor-in-possession or other appropriate party in interest may assert on behalf of the Sellers or their estate under applicable state statute or Chapter 5 of the Bankruptcy Code, including actions under one or more provisions of Sections 542, 543, 544, 545, 546, 547, 548, 549, 550, 551 and 553.

“Bankruptcy Code” shall have the meaning set forth in the Recitals.

“Bankruptcy Court” shall have the meaning set forth in the Recitals.

“Business” means the entirety of that portion of the business of the Seller Group and their respective Affiliates that is comprised of the ownership and/or operation of Borders commercial websites, including, without limitation, www.borders.com, all of which websites are listed in the annexed Schedules under Section 1.2, it being understood that such ownership and operation includes, without limitation, the advertising, promotion, marketing, transfer and sale of goods and services, and entry into agreements and arrangements with customers, suppliers, service providers and other parties in connection therewith.

“Business Day” shall mean any day other than Saturday, Sunday or any day on which banking institutions in the United States are closed either under Applicable Law or action of any Governmental Authority.

“Buyer” shall have the meaning set forth in the Preamble.

“Cases” shall have the meaning set forth in the Recitals.

“Closing” shall have the meaning set forth in Section 3.1.

“Closing Date” shall have the meaning set forth in Section 3.1.

“Company” shall have the meaning set forth in the Preamble.

“Confidentiality Agreement” shall have the meaning set forth in Section 7.4.

“Confidential Information” shall have the meaning set forth for “Evaluation Material” as such term is defined in the Confidentiality Agreement.

“Consents” shall have the meaning set forth in Section 4.6.

“Contract” shall mean any agreement, arrangement, contract, lease, purchase order, sale order or commitment, or any series of related agreements, arrangements, contracts, leases, purchase orders, sale orders, or commitments.

“Customer List” shall mean all customer data and membership lists of the Seller Group, including, without limitation, contact information (including seven-digit telephone number) and email addresses and purchasing history and related information, in digital or any other recorded form, with respect to the customers, rewards and loyalty program participants and gift card holders, including information regarding purchasing tendencies, but shall exclude gift card information, credit and debit card information, social security numbers, telephone area codes, records of individuals whose addresses are outside the United States, cookie information, non-aggregate clickstream data and printed records of customer data and membership lists.

“Deposit” shall have the meaning set forth in Section 2.6.

“Excluded Assets” shall have the meaning set forth in Section 1.3.

“Excluded Liabilities” shall have the meaning set forth in Section 2.2(b).

“Governmental Approvals” shall mean those approvals, authorizations, confirmations, consents, exemptions and orders from Governmental Authorities and the making of all necessary registrations and filings (including filings with Governmental Authorities) and the taking of all reasonable steps as may be necessary to consummate the transactions contemplated hereby under Applicable Law.

“Governmental Authority” shall mean any national, federal, state, provincial, local or foreign government, or any subdivision, agency, instrumentality, authority, department, commission, board or bureau thereof, or any federal, state, provincial, local or foreign court, tribunal, or arbitrator, including the Bankruptcy Court.

“Governmental Entity” shall mean any court, administrative agency or commission or other governmental authority or instrumentality, domestic or foreign.

“IP Assignments” shall have the meaning set forth in Section 3.2(a).

“IP Sale Motion” shall have the meaning set forth in Section 6.2.

“Knowledge of the Sellers” (or “the Sellers’ Knowledge”) shall mean the actual knowledge of the officers of the Sellers listed on Schedule 13.1, after reasonable inquiry.

“Liabilities” means, as to any Person, all debts, adverse claims, liabilities, commitments, responsibilities and obligations of any kind or nature whatsoever, direct, indirect, absolute or contingent, matured or unmatured of such Person, whether accrued, vested or otherwise, whether known or unknown, foreseen or unforeseen, and whether or not actually reflected, or required to be reflected, in such Person’s balance sheets or other books and records.

“Liens” shall mean any liens (including any inchoate liens and any liens for Taxes, materialmen, laborer, or mechanics’ liens, judgment liens, liens imposed by operation of law, contractual liens, and liens arising out of or resulting from any employment agreements, employee benefits plans or laws, or collective bargaining agreements), encumbrances, burdens, claims, demands, judgments, orders, writs, injunctions, decrees, and arbitral awards, attachments, charges, security interests, mortgages, deeds of trust, pledges, hypothecations, adverse claims of title, preferential rights of purchase and/or first refusal rights, options, contracts for sale, transfer, or other disposition, and any claims or rights of any kind, description or nature whatsoever of or in favor of any creditors, Governmental Entities, or other Persons, whether or not any of the above arose, accrued, or relate to any time periods before or after the filing of the Cases, and whether or not a Chapter 11 or Chapter 7 trustee is hereafter appointed in the Cases for any reason.

“Material Adverse Effect” shall mean with respect to the Assets, any event or occurrence which shall materially and adversely affect the Assets, taken in each case as a whole; *provided* that any (a) change in general economic or industry-wide conditions, or (b) adverse effect that is solely the result of the execution or announcement of this Agreement or the transactions contemplated hereby or the consummation thereof, shall not be taken into account for purposes of determining a Material Adverse Effect hereunder.

“Order” shall mean any writ, judgment, decree, injunction or similar order, writ, ruling, directive or other requirement of any Governmental Entity (in each case whether preliminary or final).

“Parent” shall have the meaning set forth in the Preamble.

“Party” and “Parties” shall have the meanings set forth in the Preamble.

“Person” shall mean any individual, corporation, partnership, joint venture, trust, limited liability company, business association, Governmental Entity or other entity.

“Proprietary Rights” shall mean all intellectual property rights or proprietary rights of Seller relating to the Transferred Intellectual Property. Notwithstanding the foregoing, Proprietary Rights do not include an assumption of any Contracts. For the avoidance of doubt, Proprietary Rights do not include the Transferred Intellectual Property.

“Purchase Price” shall have the meaning set forth in Section 2.1.

“Sale Order” shall mean the Order of the Bankruptcy Court entered pursuant to Bankruptcy Code Sections 363 and 365 that approves the sale of the Assets to the Buyer pursuant to the terms and conditions of this Agreement and the provisions of the Bankruptcy Code (including Bankruptcy Code Section 363). The Sale Order shall find, determine and order, to the Buyer’s reasonable satisfaction, at least the following:

The procedures set forth in the Bidding Procedures Order were substantively fair to all parties. The Sellers conducted the sale process (including the Auction) in accordance with the procedures set forth in the Bidding Procedures Order;

Reasonable notice of the sale of the Assets and a reasonable opportunity to object or be heard with respect to the rejection or termination of the Terminated Licenses has been afforded to all interested persons and entities;

Subject only to entry of the Sale Order, the Sellers have (i) full power and authority to execute the Agreement, (ii) all of the power and authority necessary to consummate the transactions contemplated by the Agreement, and (iii) taken all company action necessary to authorize and approve such transactions;

This Sale Order and consummation of the Sale are supported by good business reasons and will serve the best interests of the Sellers, their estates, and creditors by maximizing the values obtained from Sale Assets;

The Agreement was negotiated, proposed, and entered into by the Buyer without collusion, in good faith, and from an arm's length bargaining position. There is no insider relationship between affiliates of the Buyer and the Sellers. The Sellers and the Buyer have not engaged in any conduct that would cause or permit the Sale Agreement to be avoided under section 363(n) of the Bankruptcy Code;

The Buyer is a good faith purchaser under section 363(m) of the Bankruptcy Code and as such is entitled to all of the protections afforded thereby, and has acted in good faith in all respects in connection with this proceeding, in that: (i) the Buyer, in acquiring the Assets, recognized that the Sellers were free to deal with other parties in interest; (ii) the Buyer agreed to provisions in the Agreement which would enable the Sellers to accept a higher and better offer; (iii) the Buyer in no way induced or caused the Chapter 11 filing of any of the Debtors, including the Sellers; (iv) all payments to be made by the Buyer and other agreements entered into between the Buyer and the Sellers in connection with the Sale have been disclosed; (v) the negotiation and execution of the Agreement and related agreements was in good faith and an arm's length transaction; and (vi) the disclosure requirements required by Local Rule 6004-1 have been satisfied;

The consideration to be paid by the Buyer to the Sellers for the Assets is fair and reasonable, is the highest or otherwise best offer for the Sale Assets, and constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act, and any similar laws of any state or jurisdiction whose law is applicable to the sale;

The consummation of the Sale pursuant to the Agreement will be a legal, valid, and effective sale of the Assets to the Buyer and will vest the Buyer with all of the Sellers' right, title, and interest in and to the Assets, free and clear of all Liens and claims (as defined in section 101(5) of the Bankruptcy Code), in accordance with section 363(f) of the Bankruptcy Code, because one or more of the standards set forth in sections 363(f)(1)-(5) of the Bankruptcy Code has been satisfied;

The automatic stay of section 362(a) of the Bankruptcy Code shall not apply to and otherwise shall not prevent the exercise or performance by any party of its rights or obligations under the Agreement, including, without limitation, with respect to any cash held in escrow pursuant to the provisions thereof; and

Without limiting the generality of the other provisions of this Sale Order, and to the extent provided by federal law, the Buyer, under no circumstances, shall be deemed to be a successor of the Sellers. Accordingly, the Buyer shall have no successor or vicarious liabilities of any kind with respect to Sale Assets and all persons and entities shall be hereby enjoined from asserting any such claims against the Buyer.

“Seller” or “Sellers” shall have the meaning set forth in the Preamble.

“Sellers’ Disclosure Schedules” shall have the meaning set forth in the first paragraph of Article 4.

“Seller Group” shall have the meaning set forth the Recitals.

“Sellers Licenses” shall have the meaning set forth in Section 4(d).

“Specified Licenses” shall mean new trademark, trade dress and domain name licenses, in each case in a form reasonably acceptable to the Buyer and the Sellers, creating no obligations of the licensor other than to grant a perpetual, fully-paid up, royalty-free license (provided the licensee shall be obligated for any maintenance fees imposed by applicable Governmental Authorities) to use and apply the applicable “Borders” trademark in relation to the sale of goods and services as specified therein within the applicable territory, with respect to (i) Australia and New Zealand, (ii) Singapore, (iii) Malaysia and (iv) certain Persian Gulf Countries including the United Arab Emirates. The Seller Group shall receive the amount paid by the licensee to obtain the fully-paid up, royalty-free license contemplated under the Specified Licenses and the Buyer shall direct each licensee to pay such fees directly to the account of the Seller Group and, to the extent Buyer actually receives payment of such amounts, promptly transfer same to the Sellers.

“Tax” or “Taxes” shall mean (a) all taxes, charges, fees, levies, penalties or other assessments of any kind whatsoever imposed by an federal, state, local or foreign taxing authority, including, but not limited to, income, excise, property, sales, transfer, franchise, payroll, withholding, social security or other taxes, whether computed on a separate or consolidated, unitary or combined basis or in any other manner, including any interest, penalties or additions attributable thereto or (b) liability for the payment of any amounts of the type described in clause (a) above as a result of being a party to any agreement or any express or implied obligation to indemnify or otherwise succeed to the liability of any other Person.

“Tax Code” shall mean the Internal Revenue Code of 1986, as it has been and may be amended.

“Transferred Claims” shall have the meaning set forth in Section 1.2(d).

“Transferred Intellectual Property” shall mean have the meaning set forth in Section 1.2(a).

“Treasury Regulations” shall mean the federal income Tax regulations promulgated under the Tax Code, as amended, including any temporary and proposed regulations.

*Remainder of Page Intentionally Left Blank.  
Signature Pages Follow.*

This Asset Purchase Agreement is executed by the Parties on the date set forth above.

SELLERS:

BORDERS GROUP, INC.

By: \_\_\_\_\_

Name: Holly Felder Etlin

Title: President

BORDERS, INC.

By: \_\_\_\_\_

Name: Holly Felder Etlin

Title: President

BUYER:

BARNES & NOBLE, INC.

By: \_\_\_\_\_

Name: Gene DeFelice, Esq.

Title: Vice President, General Counsel and  
Corporate Secretary

*Signature Page to Asset Purchase Agreement*

## SELLERS' DISCLOSURE SCHEDULES

**Exhibit 2**

[Specified License Agreements]



---

# 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 [ ];

<b>“Domain Names”</b>	means the domain names, short particulars of which are set out in Schedule 3 to this Agreement;
<b>“Effective Date”</b>	means the date of this Agreement;
<b>“Encumbrances”</b>	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;
<b>“Goods “</b>	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;
<b>“Government Agency”</b>	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;
<b>“Licensee’s Group”</b>	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 <b>“member of Licensee’s Group”</b> shall be construed accordingly;
<b>“Licensor’s Group”</b>	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 <b>“member of Licensor’s Group”</b> shall be construed accordingly;
<b>“North America”</b>	means the United States and its territories and possessions, Canada and Mexico;
<b>“Purchase Agreement”</b>	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;
<b>“Sale Order”</b>	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)

**SCHEDULE 1**  
**THE TRADE MARKS**

## **SCHEDULE 2**

### **GOODS AND SERVICES**

#### **A. Services:**

Retail book, gift, stationery, entertainment and informational services, including the retailing of books, eBooks, eReaders, magazines, calendars, stationery, pre-recorded books and newspapers; pre-recorded music in various forms, DVDs, video cassettes, pre-recorded video in various forms and multimedia and ancillary book search services;

Retail music services, including the retail of pre-recorded music in various forms such as audio tapes and CDs;

Retail record store services, including the retail of pre-recorded video tape and DVDs;

Retail mail order services, including the retail of books, magazines, calendars, stationery, toys, games, pre-recorded books, CD-ROMS, pre-recorded video tapes, DVDs, pre-recorded music and records through catalogues and newsletters;

Dine-in and carry-out restaurant services and café services;

Frequent patron programs;

Any other services registered by Licensor under the Trade Marks in the Territory; and

Such other services as may be approved by Licensor.

#### **B. Goods**

Books, magazines, calendars, gifts, stationery, toys, games, pre-recorded books and newspapers; pre-recorded music in various forms and prerecorded video in various forms;

Music-related products, tote bags, electronic gift cards, multimedia products including storage devices, eReaders, stationery and gift items;

Any other goods registered by Licensor under the Trade Marks in the Territory; and

Such other goods as may be approved by Licensor.

**SCHEDULE 3**  
**THE DOMAIN NAMES**

**Exhibit 3**

[Additional PII Transfer Provisions]

### 1. Transfer and Opt Out

Subject to paragraph 2 below, all PII of Debtors (including subject matter information relating to PII under the VPPA but not including title information thereunder) shall be transferred to the Buyer in accordance with the terms of the Purchase Agreement, regardless of (a) when collected, (b) whether the customer previously opted out of receiving marketing messages from Debtor or (c) any other consideration, provided however, that prior requests by consumers who are Debtor customers to opt out of receiving marketing messages from the Debtor will be honored by the Buyer after the transfer, even if the consumer does not opt out of the general transfer of the information, unless the consumer is also a Buyer customer and did not opt-out of marketing messages.

Buyer will provide all consumers who are Debtors customers whose PII is so transferred with the right to opt out of the transfer.

### 2. PII under VPPA

Title information will not be transferred; only subject matter information will be transferred (subject to the general opt-out right described above). Such subject matter information will be used exclusively for marketing goods and services directly to consumers. For clarity, all PII not covered under the VPPA and customer names, e-mail addresses and other data unrelated to the title of audio visual materials will be transferred.

### 3. Mechanics/Timing of Transfer and Opt-Out

Subject to paragraph 2 above, all PII to be transferred will be transferred to Buyer at the closing (on or prior to 9/30/11).

On or within one business day after the closing date, Buyer will cause an e-mail (the “opt-out notice”) to be sent to all former Borders customers whose PII was transferred notifying them of the transfer and that they have the right to opt out. The Buyer will provide the Committee and the Consumer Privacy Ombudsman with an advance copy of the opt-out notice and the opportunity to provide comments thereon, which the Buyer will consider in its good faith discretion. The opt-out notice must clearly and conspicuously disclose (a) the transfer of the PII and the opportunity to opt out; (b) the PII will be subject to Barnes & Noble privacy policy on the date of the transfer (which is subject by its terms to change from time to time); and (c) the subject matter of DVD and other video purchases will be part of the transferred information. The e-mail may contain whatever “customer friendly” content (including discounts or other promotional offers) as Buyer deems appropriate in its sole discretion, and shall contain a link to the Barnes & Noble privacy policy.

Opt-out period will be a period of 15 calendar days from the opt-out notice.

In order to provide practicable privacy protections for Borders' customers whose e-mail address is not live and who did not receive notice via e-mail (the PII of those customers, hereafter "specified transferred PII"), notice of transfer and opt out right will also be prominently and continuously displayed in a clear and conspicuous fashion on both Barnes & Noble (www.barnesandnoble.com) and Borders (www.borders.com) websites for a period of 30 calendar days from the date of first display. These Borders customers will have 30 days from the date of first display to opt out by contacting Buyer in accordance with the directions specified in the opt-out notice.

During the opt-out period, Buyer will not use any of the transferred PII for any purpose other than to verify transfer of data from Debtors to Buyer and to conduct the opt-out process and will employ appropriate information control procedures to segregate the transferred PII from other PII possessed by Buyer. For clarity, Buyer may verify that the data transferred is the data that it contemplated to be transferred under the Agreement and the segregation may be within the same database but separate tables.

Promptly (and in any event within 5 calendar days after the end of the opt-out period) Buyer will purge all transferred PII for any Borders customer who has timely exercised his or her opt-out right (for greater certainty, Buyer is NOT required to purge any PII it possessed with respect to any customer who was a Barnes & Noble customer prior to the transfer of the Borders customer PII; ONLY the PII received from Borders must be purged).

Notice of transfer and opt out right will also be published in the *USA Today* in a clear and conspicuous fashion in a full-page notice (the costs of which will be split 50/50 by Buyer and Debtors), which notice shall include at least all the information required in the opt-out email discussed above.

Buyer will not use any of the specified transferred PII for any purpose other than to verify transfer of data from Debtors to Buyer and to conduct the opt-out process described herein during the period of 15 calendar days from the date of first display of website/*USA Today* notice of transfer and opt-out right and will purge all specified transferred PII for any Borders customer who has exercised his or her opt-out right in the 30-day specified transferred PII notice period in accordance with the timing specified in the second preceding paragraph (subject to the "for greater certainty" parenthetical therein).

Barnes & Noble will safeguard all PII in a manner consistent with industry standard data security protections and applicable information security laws.

Barnes & Noble will purge any PII for which it determines it has or may have no reasonable business need.

Buyer shall submit to the Court an affidavit of compliance substantially in the form of Annex I hereto certifying as to its compliance with the requirements set forth in this section 3 reasonably promptly following the latest date by which all opt-out PII must be purged per the foregoing paragraphs.



UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re:

BORDERS GROUP, INC., et al.,

Debtors.

Chapter 11

Case No. 11-10614 (MG)

Jointly Administered

**AFFIDAVIT OF COMPLIANCE**

I, Marc Parrish, being duly sworn, state the following:

1. I hold the position of VP Retention and Loyalty Marketing, barnesandnoble.com LLC, of Barnes & Noble, Inc. (“Barnes & Noble”).
2. As specified in the *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 Thereto* [Docket No. \_\_\_\_] (the “Sale Order”), approved by the Court on September [26], 2011, this Affidavit is being provided to verify compliance by Barnes & Noble with Section 18 of the Sale Order.
3. Barnes & Noble has complied in all material respects with the requirements of Section 18 of the Sale Order.

\_\_\_\_\_  
Affiant

Sworn to and subscribed before me this [\_\_] day of November, 2011.

\_\_\_\_\_  
Notary Public