

NOOK APPLICATION TERMS OF SERVICE

Welcome to the NOOK App for Android. The terms of service set out below govern your use of NOOK App and the software contained within it (the "**NOOK App Terms of Service**"), and this is a legally binding agreement made by and between you and NOOK. Other terms and conditions, policies and guidelines may also apply to you to govern your use of the NOOK Service, depending upon how you use and/or access the NOOK Service.

By registering with, using or accessing the NOOK Service in the United States, Canada or a country in Latin America (or anywhere else in the world not mentioned in the next sentence) this agreement is made between you and barnesandnoble.com llc, a Delaware limited liability company. By registering with, using or accessing the NOOK Service in a European Union Member State, Switzerland, Australia or a country in Africa or Asia-Pacific this agreement is made between you and Barnes & Noble International, LLC, a Delaware limited liability company. barnesandnoble.com llc and Barnes & Noble S.à.r.l., together with their parent, subsidiaries and affiliates are collectively referred to herein as "**NOOK**", "we", "our" or "us". For the purposes of these NOOK App Terms of Service, "affiliate(s)" means any entity that controls, is controlled by or is under common control with NOOK.

Please read these NOOK App Terms of Service carefully before using the NOOK App. By using, downloading and installing the NOOK App and/or the NOOK App Service, you acknowledge and agree that you have read, understand and agree to be bound by these NOOK App Terms of Service. If you do not agree to be bound by these NOOK App Terms of Service, you should not download or install the NOOK App or, if already installed, stop using the NOOK App and uninstall it, and cease using the NOOK App Service immediately.

Please note that nothing in these NOOK App Terms of Service affects your mandatory statutory rights under applicable local laws, to the extent that such rights apply to you and cannot be limited or excluded.

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1. DEFINITIONS:

"**Digital Content**" means digital or electronic content or media which is available to you through the NOOK Store and which may be viewed on the NOOK App and NOOK Devices, including eBooks, digital magazines, digital newspapers, digital journals and other periodicals, audiobooks, software applications (including applications developed by NOOK or third parties), and other digital content as determined by us from time to time, but excluding Video Content.

"**Interactive Community**" means services we make available which may enable users to communicate with each other directly and post information and other material that will be visible to other users of the service, or which may otherwise permit users to interact with others howsoever.

"**NOOK App(s)**" means the NOOK software applications for mobile devices, computers or other electronic devices (including any updates or upgrades) that we make available to you.

"**NOOK App Supported Device**" means a mobile, computer or other electronic device which is authorized to and is capable of running and supporting the NOOK App.

"**NOOK Device(s)**" means electronic devices manufactured by or on behalf of NOOK and sold under the NOOK brand.

"**NOOK Library**" means the online digital locker or library hosted in our cloud storage facility where your purchases of Digital Content and/or Video Content are stored and which you may access via the NOOK Website, the NOOK Store, NOOK Device and the NOOK App.

"**NOOK Service**" means collectively the NOOK App, the NOOK Website, the NOOK Store, the NOOK App Service (defined below in Section 2(a)) and NOOK Devices (and any services made available on or by means of NOOK Devices).

"**NOOK Store**" means the NOOK store where you can browse and purchase Digital Content and/or Video Content for the NOOK App or NOOK Devices.

"**NOOK Website(s)**" means any NOOK website which you access from the country in which you are located.

"**Sideloaded Content**" means digital or electronic content that is not made available to you by us, but which can be accessed via the NOOK App, for example ePub (non-DRM) and Adobe PDF files.

"**User Generated Content**" means any information, data, software, photographs, graphs, videos, typefaces, graphics, music, sounds and other material which may be posted on or through the Interactive Community via the NOOK App.

"**Video Content**" means digital versions of movies, television shows and other video content which, depending upon your location, may be made available to you through the NOOK Store and which may be viewed on certain versions of the NOOK App and certain supported NOOK Devices.

2. USING THE NOOK APP

(a) **The NOOK App, the NOOK App Service and Digital Content/Video Content.** The NOOK App is a software application that is designed to allow you to access and use Digital Content and/or Video Content, depending on the version of NOOK App you use. Certain versions of the NOOK App may also be designed to enable you to browse, preview, search for, purchase and download Digital Content and/or Video Content from the NOOK Store; access the NOOK Website and other websites; interface with social networking sites; and access, use, and participate in other services, features, functions and promotions (each, as may be amended or supplemented howsoever from time to time by NOOK)(all features described in this sentence, collectively, the "**NOOK App Service**").

(b) **Setting up your account.** To use this NOOK App and use most Digital Content and/or Video Content and to access, use and participate in the NOOK App Service, you must first open a NOOK account in accordance with our NOOK Store Terms of Service. Depending upon where you are and how you have access to our NOOK Store, you can open an account either by visiting a NOOK Website or in the setup process for your NOOK Device or directly via certain NOOK Apps.

In certain jurisdictions, you may not need to open a NOOK account to use a NOOK App and use most of the related Digital Content and/or Video Content and to access, use and participate in the NOOK App Service. Instead, you may use a Microsoft (or other third party) account, where applicable, which will be made clear to you during the relevant NOOK App setup process. In such cases, additional terms and conditions may apply (such as those additional terms that may apply to your use of a Microsoft (or other third party) account). Where you do use a Microsoft (or other third party) account

to access a NOOK App, as necessary, references to "NOOK account" as appears in these NOOK App Terms of Service shall be deemed to include any Microsoft (or other third party) account that you use.

Any Digital Content and/or Video Content you purchase (or which is made available to you) from the NOOK Store, will be so purchased (or so made available to you) and used in accordance with our NOOK Store Terms of Service.

(c) **Accessing your Digital Content and/or Video Content.** The NOOK App and/or the NOOK App Service is designed to give you access to your NOOK account and view and store the Digital Content and/or Video Content that you purchase (or which is made available to you) from the NOOK Store in your NOOK Library. When your NOOK App Supported Device is connected to the internet and the NOOK App is running, we will use reasonable efforts to grant you access to your NOOK account via the NOOK App. Temporary interruptions to the NOOK Service may occur for technical reasons (including maintenance, repairs, implementation of new services) which we will use our commercially reasonable efforts to limit. Some Digital Content and/or Video Content may not be available for you to access or use via the NOOK App. Also, please note that certain Digital Content and/or Video Content, such as digital newspapers, digital magazines and digital catalogs, may be set to be automatically deleted, from any or all of your NOOK Library, NOOK Device or NOOK App, after a certain period of time (depending on the Digital Content and/or Video Content). There is also a risk of loss of Digital Content and/or Video Content when you download, access or archive Digital Content and/or Video Content via the NOOK App.

(d) **Setting up Sub Accounts.** Certain NOOK Apps allow you to set up linked or subordinate accounts ("Sub Accounts") for additional users of your NOOK account. Depending on the settings selected, users of a Sub Account may be able to (i) access and/or view Digital and/or Video Content; (ii) use the Interactive Community features and social features; and (iii) make purchases via the NOOK Store. We may limit the number of Sub Accounts you may set up.

To set up a Sub Account, you must first register and/or log in to your NOOK account and follow the guidance for setting up a Sub Account. Both the NOOK account and the Sub Account will have their own username and password. All users are responsible for: (i) keeping their account passwords confidential and secure, and (ii) avoiding unauthorized access to their NOOK account or Sub Account.

Your NOOK account may have access to and control over various aspects of linked Sub Accounts, including (i) access to and availability of Digital and/or Video Content and parental controls; (ii) financial transactions; and (iii) certain communications from us.

Users may be able to make purchases via the NOOK Store using a Sub Account. All transactions made by the Sub Account will be processed using the credit card associated with your NOOK account. Communications from us, including communications about purchases made via the Sub Account, will be sent to your NOOK account and the email address associated with your NOOK account, rather than the user of the Sub Account.

Users of Sub Accounts may be able to make use of the Interactive Community features. Please see Section 2(h) below for more details on use of the Interactive Community. All material or information posted by a user of a Sub Account (for example, posting Digital Content and/or Video Content reviews) will be posted in the name of the NOOK account holder and not the Sub Account holder. Suspension or termination of your NOOK account may result in the suspension and termination of all associated Sub Accounts.

IF YOU ARE THE HOLDER OF THE NOOK ACCOUNT REGISTERED WITH YOUR NOOK APP, YOU ARE JOINTLY AND SEVERALLY LEGALLY AND FINANCIALLY RESPONSIBLE FOR ALL ACTIONS ASSOCIATED WITH YOUR NOOK ACCOUNT, INCLUDING ANY SUB ACCOUNTS LINKED TO YOUR NOOK ACCOUNT, AND/OR YOUR NOOK DEVICE OR NOOK APP.

Sub Accounts for Minors. The NOOK App and the NOOK Service in general is designed for and directed towards use by adults (those aged 18 years or above). However, where Sub Accounts are available, you may set up a Sub Account for users under the age of 18 years ("Minor(s)"), provided

that you are the parent or the legal guardian of the Minor for whom you are setting up the Sub Account. When a Minor reaches 18 years of age, they may set up their own NOOK account or continue to use a Sub Account.

Please note that Sub Accounts may enable Minors to browse the entirety of the NOOK Store and make purchases using the credit card associated with your NOOK account. **IF YOU ARE THE HOLDER OF YOUR NOOK ACCOUNT, YOU REMAIN LEGALLY AND FINANCIALLY RESPONSIBLE FOR ALL ACTIONS OF YOUR MINOR RELATING TO THEIR USE OF YOUR NOOK ACCOUNT AND ANY SUB ACCOUNT(S), AS WELL AS ANY PURCHASES THAT YOUR MINOR MAKES THROUGH THE NOOK STORE.** We are not responsible and have no liability for any unauthorized usage by Minors and Minors must obtain the consent of their parent or legal guardian to agree to all applicable Terms of Service and our Privacy Policy.

Some Digital and/or Video Content accessed via the NOOK App or the NOOK Store may not be age- or otherwise appropriate for Minors. You are responsible for monitoring your Minors' access to content that may be objectionable or age inappropriate.

If you permit a Minor to use your NOOK App, NOOK account or to set up a Sub Account, you confirm that you accept these NOOK App Terms of Service, the NOOK Store Terms of Service and our Privacy Policy on behalf of, and all legal and financial responsibility and liability for the actions of, that Minor and you expressly confirm any acts of that Minor. You also consent to that Minor (i) purchasing Digital Content and/or Video Content, (ii) using the credit card that is associated with your NOOK account, and (iii) posting Digital Content and/or Video Content reviews in the NOOK Store or NOOK Website that will be posted in the name of the NOOK account holder.

Depending on where you are domiciled, when you create a Sub Account for a Minor the credit card associated with your NOOK account will be used to verify parental consent required under applicable local law. Your credit card may be charged one cent (\$0.01)(or relevant local currency equivalent) to validate your consent. Other than the one cent (\$0.01) (or relevant local currency equivalent) transaction, there are no fees associated with this process.

If you permit a Minor to use your NOOK App, NOOK account or to set up a Sub Account, you acknowledge that we are not responsible for any personal information that the Minor publicly discloses, intentionally or unintentionally, due to that Minor's ability to post Digital Content and/or Video Content reviews in the NOOK Store or NOOK Website, or by using the internet through the web browser. We recommend that as the parent or legal guardian, you discuss with your Minor the importance of not disclosing his or her full name, address, school or other personally identifying information on the Internet. As the parent or legal guardian, you are responsible for monitoring your Minor's access to your NOOK account, Sub Account and/or NOOK App, as well as any communications made or received by them through or by means of the NOOK Service. Content accessible through the NOOK Service may include third party websites or applications. These third parties have their own privacy and data collection practices. We are not responsible for the actions or policies of such third parties, and you are solely responsible for obtaining information regarding the data privacy practices and terms of use of such third parties and determining whether such are appropriate for a Minor. More information about how we collect and use information relating to Minors can be found in the "Policies for Minors, including children under the age of 13" headed section in our Privacy Policy.

(e) ***Sideloaded Content.*** Some versions and/or features of the NOOK App and/or NOOK App Services may enable you to upload, use and read Sideloaded Content for your personal use. Where this is available, there is a risk that you may lose your Sideloaded Content when you upload or access it via the NOOK App. You should keep a backup copy of your Sideloaded content at all times; we are not responsible for any loss of Sideloaded Content that may occur (except to the extent required by applicable local laws, for gross negligence or willful misconduct). You represent and warrant that you have all rights (including intellectual property rights) necessary to copy, use and access the Sideloaded Content via the NOOK App; we have no responsibility with respect to your use of the Sideloaded Content.

(f) **Social Features and Third Party Sites.** The NOOK App and/or NOOK App Services may contain certain social features, such as access to third party social networking sites or features (for example Facebook), that allow you to post, publish, communicate or share information with other people (for example, book reviews, book annotations etc.). The NOOK App and/or NOOK App Services may also contain direct in-app links to third party websites. Use of third party websites or third party social networking sites or features will be subject to third party or other terms and conditions. Any information posted, published, communicated or shared with third party websites or social networking sites or features is shared at your own risk. You are solely responsible for any privacy settings on any third party websites or social networking sites or features accessed via the NOOK App and/or NOOK App Services.

(g) **No Responsibility for Digital Content and Video Content.** The NOOK App Service is designed to permit you access to a wide variety of Digital Content and Video Content, some of which may be inappropriate for, or offensive to, some readers and viewers. We do not exercise any editorial control over the Digital Content or Video Content. We provide only the NOOK App and the NOOK App Service, which are intended to allow you access to the Digital Content and Video Content. Under no circumstance will we be liable for any loss, damage or harm caused by your access to or reliance on the Digital Content or Video Content. You must determine whether the Digital Content or Video Content accessed through the NOOK App and/or NOOK App Service is appropriate, useful, accurate and complete. Your use of the Digital Content and Video Content and the NOOK App Service is solely at your own risk. For Video Content: Where our third party content providers have provided us with age ratings information we will make such information available to you. However, we cannot guarantee the accuracy of such age ratings information or of the descriptions or categories of Video Content provided for your convenience.

(h) **Interactive Community.** Some versions or features of the NOOK App and/or NOOK App Service may enable you to communicate with other users and post information and other material, including your own User Generated Content, via the Interactive Community. You are using Interactive Community services if, for example, you view or participate in, post a review, create a list, create a profile, submit any User Generated Content, or otherwise participate in any interactive feature.

Interactive Community services may be used only for lawful purposes in accordance with these NOOK App Terms of Service. If you are using our Interactive Community services, and post, publish or communicate any User Generated Content on or through the Interactive Community services, please choose carefully the information that you post and/or provide to other users. You may not post on or transmit through the NOOK App and/or NOOK App Services any unlawful, harmful, threatening, abusive, harassing, defamatory, vulgar, obscene, sexually explicit, profane, hateful, racially, ethnically or otherwise objectionable material of any kind, including any material that encourages conduct that would constitute a criminal offense, give rise to civil liability or otherwise violate any law, rule or regulation of the local laws applicable to you or applicable in the country in which the material is posted. We reserve the right, in our sole discretion, to reject, refuse to post or remove any posting or other User Generated Content (including private messages) from you, or to deny, restrict, suspend or terminate access to all or any part of the Interactive Community services at any time, for any or no reason, without prior notice or explanation and without liability.

We reserve the right, in our sole discretion, to remove your profile and/or deny, restrict, suspend or terminate your access to all or any part of the Interactive Community services for any reason.

If you become aware of misuse of the Interactive Community services, including any unlawful, harmful, threatening, abusive, harassing, defamatory, vulgar, obscene, sexually explicit, profane, hateful, racially, ethnically or otherwise objectionable material of any kind, material that encourages conduct that would constitute a criminal offense, give rise to civil liability or otherwise violates any applicable law, please activate the "Flag" feature on the page in question or otherwise contact us.

Notwithstanding the foregoing and to the maximum extent permitted by applicable local law, we assume no responsibility for ongoing monitoring of the Interactive Community or for removal or editing of any User Generated Content, even after receiving notice. We assume no liability for any action or inaction with respect to conduct, communication or User Generated Content within the

Interactive Community. You are solely responsible for all activities that occur within the Interactive Community.

The Interactive Community is not designed for use by Minors. No children under the age of 13 are permitted to register or create user profiles, and individuals aged between 13 and 18 must participate in the Interactive Community only under the supervision of a parent or legal guardian. Numerous informational and commercial resources (such as computer hardware, software or filtering services) are available to help parents keep their children safe online. If you are interested in learning more about these resources, information is available at many sites providing information on such protections. We do not specifically sponsor or endorse any of these sites or their services.

You may not post User Generated Content that: (i) involves the transmission of "junk mail", "chain letters" or unsolicited mass mailing, instant messaging, "spimming" or "spamming"; (ii) contains restricted or password-only access pages or hidden pages or images (those not linked to or from another accessible page); (iii) solicits passwords or personal identifying information for commercial or unlawful purposes from other users; (iv) involves commercial activities and/or sales such as contests, sweepstakes, barter, advertising or pyramid schemes; (v) includes a photograph or video of another person that you have posted without that person's consent; (vi) circumvents or modifies, or attempts to circumvent or modify, or encourages or assists any other person in circumventing or modifying any security technology or software that is part of the NOOK App and/or NOOK App Services; (vii) involves the use of viruses, bots, worms or any other computer code, files or programs that may interrupt, destroy or limit the functionality of any computer software or hardware, or otherwise may permit the unauthorized use of or access to a computer or a computer network; (viii) covers or obscures the banner advertisements on your personal profile page; (ix) involves any automated use of the NOOK App, such as using scripts to add friends or send comments or messages; (x) interferes with, disrupts or creates an undue burden on the NOOK App and/or NOOK App Services or the networks or services connected to the Interactive Community services; (xi) impersonates or attempts to impersonate another Interactive Community user, person or entity; (xii) uses the account, username or password of another Interactive Community user at any time or discloses your password to any third party or permits any third party to access your account; (xiii) sells or otherwise transfers your profile; (xiv) uses any information obtained from the NOOK Website or Interactive Community in order to harass, abuse or harm another person or entity, or attempts to do the same.

Interactive Community users may upload to or otherwise submit to us for distribution on the Interactive Community and the NOOK Website (i) User Generated Content that is not subject to any copyright or other proprietary rights restrictions; or (ii) User Generated Content which the owner or licensor of any relevant rights has given express authorization for us to distribute over the Internet. You may not upload, embed, post, e-mail, transmit or otherwise make available any material that infringes any copyright, patent, trademark, trade secret or other proprietary rights of any person or entity. Any copyrighted or other proprietary User Generated Content distributed with the consent of a copyright owner should contain a phrase such as "Copyright, owned by [name of owner]; used by permission". We are entitled to presume that all User Generated Content conforms to the foregoing requirements. The unauthorized submission of copyrighted or other proprietary User Generated Content is illegal and could subject the user to personal liability for damages in a civil suit as well as criminal prosecution. Interactive Community users assume all liability for any damage resulting from any infringement of copyright or proprietary rights, or for any other harm arising from an unauthorized submission or submission of User Generated Content. We assume no liability for any damage resulting from any infringement of copyright or proprietary rights, or from any other harm arising from any User Generated Content. By submitting User Generated Content within the Interactive Community, you automatically grant us, or represent and warrant that the owner or authorized licensor of such User Generated Content has expressly granted us, for the full period of copyright (and any renewals and extensions thereof), (and to the maximum extent permitted by applicable local law), a perpetual, royalty-free and irrevocable right and license to use, reproduce, publish, translate, sub-license, copy, modify, delete, enhance and distribute the User Generated Content in whole or in part worldwide and/or to incorporate such User Generated Content in other works in any form, media or technology now known or hereafter developed, together with a full waiver of all moral rights therein (to the maximum extent permitted by applicable law). Subject to this grant, you, as owner or authorized licensor (as applicable) of User Generated Content submitted to us, retain any and all rights which may exist for such User Generated Content.

Where we decide in our sole discretion to terminate or suspend your NOOK account or your access to all or part of the NOOK Service, NOOK App, NOOK App Service and/or your NOOK Library in accordance with Section 4 below (Termination), we may decide, in our sole discretion, to remove any User Generated Content you have submitted to the Interactive Community. To the maximum extent permitted by applicable local law, all our liability (as well as the liability of our directors, employees or other representatives) for any loss whatsoever arising from our removing or editing the User Generated Content is excluded.

(i) **Notice and Take Down Procedure For Claims of Infringement.** If you believe in good faith that materials contained on the NOOK App, within any part of the NOOK App Service or posted to the Interactive Community, including Digital Content and/or Video Content and User Generated Content, infringe your rights (for example, your copyright), you (or your agent or representative) may send us a notice requesting that the material be removed or access to it blocked. The notice must include the following information (i) a physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed; (ii) identification of the work claimed to have been infringed (or if multiple works are covered by a single notification, a representative list of such works); (iii) identification of the material that is claimed to be infringing or the subject of infringing activity, and information reasonably sufficient to enable us to locate the material on the NOOK App, within the NOOK App Service or the Interactive Community; (iv) your name, address, telephone number and e-mail address; (v) a statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the rights-holder, its agent or representative or the law; and (vi) a statement that the information in the notification is accurate, and under penalty of perjury (where applicable in accordance with applicable local laws), that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed. If you are seeking to send us such a notice with respect to a non-exclusive right, you must comply with the foregoing sections (i)-(vi), but in addition provide evidence to us on what basis you have the right to allege infringement and make a complaint.

If you are sending a notice or counter-notice pursuant to the United States Digital Millennium Copyright Act of 1998 (the "**DMCA**"), then it must meet the then-current statutory requirements imposed by the DMCA; see <http://www.loc.gov/copyright> for details. If you believe in good faith that a notice of copyright infringement has been wrongly filed against you, the DMCA permits you to send us a counter-notice. Full details of our copyright policy under the DMCA is available on the NOOK Website.

Notices and counter-notices with respect to the NOOK App should be sent to: IP Agent, barnesandnoble.com llc, 122 Fifth Avenue, New York, New York 10011, USA at DMCANOTICE@Barnesandnoble.com. Giving false, misleading or inaccurate information in a notice or counter-notice may result in civil and/or criminal liability. We suggest that you consult your legal advisor before filing a notice or counter-notice.

(j) **Age of Users.** Unless otherwise specifically noted in the features made available to you, the NOOK App is designed for and directed towards use by adults (those aged 18 years or above). No children under the age of 13 are permitted to use the NOOK App and/or the NOOK App Service. Individuals aged between 13 and 18 are not permitted to use the NOOK App and/or the NOOK App Service without the consent of parents or legal guardians. Minors are not permitted to use the NOOK App and/or the NOOK App Service without the supervision of a parent or legal guardian and Minors should review these NOOK App Terms of Service with a parent or legal guardian to ensure that they understand them.

(k) **Privacy.** You agree that any personal information collected, used or disclosed regarding you or your use of the NOOK App and/or the NOOK App Service will be held and used in accordance with our Privacy Policy as such may be updated or modified from time to time. Without limitation, we will collect, use and/or disclose information regarding you and your use of your NOOK App and the NOOK App Service in order to: (i) provide the NOOK App Service to you; (ii) permit you to engage in activities that you initiate through the NOOK App Service, such as purchasing Digital Content and

Video Content and reviewing products; and (iii) analyze, operate, support, maintain and improve the NOOK App or the NOOK App Service.

Our Privacy Policy also sets out our policy concerning 'cookies' and similar technologies that can personally identify you. The current Privacy Policy posted to our NOOK Website applies to you when you open a NOOK account or otherwise access or use our NOOK Website, services, applications or tools, however we make commercially reasonable endeavors to update the version of the Privacy Policy included on your NOOK App. It is your responsibility to read the current Privacy Policy, so please check it periodically. Please note that any information you provide to a third party via the NOOK App (for example through any third party social networking sites or third party websites) will be subject to the privacy notice or similar terms of that third party and not our Privacy Policy.

The current Privacy Policy posted to our NOOK Website also applies to you when you open a Sub Account. Where you open a Sub Account for another user, you confirm that you have that user's consent to do so and for their data to be processed by us (including data on Minors, where applicable) in accordance with our Privacy Policy.

(l) **Software Updates.** In order to keep your software and NOOK App features up-to-date, from time to time the NOOK App and/or the NOOK App Service may be provided with updates, modifications, additions, or upgrades (some of which may be implemented automatically). It is your responsibility to verify that you are using the most up-to-date version of the NOOK App available.

(m) **Security.** We employ measures designed to ensure the security of the NOOK App Service in accordance with applicable laws, but, as provided below, make no guarantees in this regard.

(n) **NO SUPPORT.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LOCAL LAWS, WE HAVE NO OBLIGATION TO MAINTAIN OR SUPPORT THE NOOK APP AND NOOK APP SERVICE. YOUR ABILITY TO ACCESS CERTAIN DIGITAL CONTENT AND/OR VIDEO CONTENT FROM A GIVEN SOURCE MAY DEPEND ON YOUR OBTAINING AND INSTALLING UPDATED VERSIONS OF NOOK APP. IN RARE INSTANCES, UPDATES, MODIFICATIONS, ADDITIONS OR UPGRADES MAY CAUSE DATA LOSS OR OTHER ISSUES. YOU ARE SOLELY RESPONSIBLE FOR REGULARLY BACKING UP THE DATA STORED ON YOUR NOOK APP SUPPORTED DEVICE TO PREVENT THIS FROM OCCURRING.

(o) **Internet Connectivity Charges.** Internet connectivity is required to use certain features of the NOOK App and/or the NOOK App Service, which may include downloading and/or streaming Digital Content and/or Video Content to your NOOK App Supported Device, archiving Digital Content and/or Video Content and accessing the Interactive Community or social features. Any access fees or charges applicable to your internet connectivity are solely your responsibility. Certain internet service providers, including wireless carriers, may charge fees for data connections based on the total amount of data you access. Some Digital Content and/or Video Content may include large amounts of data, and we are in no way responsible for the fees charged by or policies of internet service providers or others with whom you contract for such access.

3. LICENSE TO USE THE NOOK APP

(a) **License.** Subject to these NOOK App Terms of Service, we hereby grant you a limited, revocable, non-exclusive, non-transferable license to: (i) install and use a single copy of the NOOK App on any NOOK App Supported Device you own or control, solely to access, view and/or purchase Digital Content and/or Video Content for your personal use; (ii) make personal, non-commercial use of the NOOK App Service. You can make one (1) copy of the NOOK App as necessary for backup or archive purposes.

(b) **Restrictions and Prohibited Conduct.** Except as may be expressly permitted by these NOOK App Terms of Service and to the maximum extent permitted by applicable local law, you may not, directly or indirectly: (i) use the NOOK App on any device other than a NOOK App Supported Device; (ii) use, copy, reproduce, modify, distribute copies of, display publicly or transmit the NOOK App; (iii) open, service or tamper with the NOOK App, disassemble, reverse engineer, emulate, decompile, tamper with, create derivative works from the NOOK App or the Digital or Video Content or otherwise

attempt to discover the source code of the NOOK App or the technology used to provide NOOK App, or attempt to reduce the NOOK App to human-readable form; (iv) bypass, modify, defeat, tamper with or circumvent any of the security features of the NOOK App and/or the NOOK App Service, including altering any digital rights management ("DRM") functionality of the NOOK App and/or the NOOK App Service; (v) share access to the NOOK App, whether through a network, resale or other means; (vi) transfer the NOOK App (or any individual component thereof) from one device to another device or computer; (vii) infringe, violate, or interfere with any patent, trademark, trade secret, copyright, right of publicity or any other right of any party; (viii) violate any law, rule or regulation of the local laws applicable to you in your use of the NOOK App; (ix) sublicense, assign in whole or in part, rent, lease, lend, resell or in any way transfer any rights to all or any portion of the NOOK App and/or the NOOK App Service to any third party, except as expressly permitted by these NOOK App Terms of Service or applicable third-party license agreement; (x) broadcast, transmit or distribute the Digital Content and/or Video Content in any manner, such as online streaming or making the Digital Content and/or Video Content available for download; (xi) interfere with or damage the NOOK App and/or the NOOK App Service, including, through the use of viruses, cancel bots, Trojan horses, harmful code, flood pings, denial of service attacks, packet or IP spoofing, forged routing or electronic mail address information or similar methods or technology; (xii) violate any third-party contract or policy governing the NOOK App or Digital Content and/or Video Content; (xiii) delete, destroy or alter in any manner the proprietary rights notices, markings and legends appearing on the Digital Content and/or Video Content or NOOK App; or (xiv) assist or encourage any third party in engaging in any activity prohibited by these NOOK App Terms of Service, the NOOK Store Terms of Service or any applicable local laws or regulations.

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Any claim or controversy at law or equity arising from, relating to, or connected with these NOOK App Terms of Service (each a "Claim") will be resolved through binding arbitration conducted by telephone, online or based solely upon written submissions where no in-person appearance is required. In such cases, the arbitration will be administered by the American Arbitration Association under its Commercial Arbitration Rules (including the Supplementary Procedures for Consumer-Related Disputes, if applicable), and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The place of arbitration shall be New York or, where limited by applicable local law, the country of your domicile. Notwithstanding this Section 6, we may bring a Claim for injunctive or other equitable relief in any court of competent jurisdiction as necessary to enforce our intellectual property rights or those of our affiliates, suppliers, or licensors. Any Claim will be arbitrated or litigated, as the case may be, on an individual basis and shall not be consolidated with any Claim of any other party whether through class action proceedings, class arbitration proceedings or otherwise. **EACH OF THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING OUT OF, RELATING TO OR IN CONNECTION WITH THESE NOOK APP TERMS OF SERVICE. FURTHER, EACH PARTY CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF EITHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH PARTY WOULD NOT, IN THE EVENT OF SUCH LITIGATION, SEEK TO ENFORCE THIS WAIVER OF RIGHT TO JURY TRIAL PROVISION.** Each of the parties acknowledges that this Section 6 is a material inducement for the other party to enter into these NOOK App Terms of Service. You acknowledge and agree that, regardless of any statute or law to the contrary, any Claim or cause of action you may have arising out of, relating to, or in connection with these NOOK App Terms of Service must be filed within one (1) calendar year after such Claim or cause of action arises, or forever be barred.

For purposes of any Claim that is not subject to the arbitration procedures in Section 6 above, we both agree to the governing law and jurisdiction as set out in Section 7(j) below.

7. GENERAL

(a) **Interpretation**. Headings used in these NOOK App Terms of Service are for reference only and shall not affect the meaning of any terms. "Including" means "including, without limitation". The singular includes the plural and vice versa. These NOOK App Terms of Service are binding upon each party and its successors and permitted assigns.

(b) **Entire Agreement.** Except for any additional terms that apply to your use of the NOOK App and/or the NOOK App Service as we may notify or make available to you, this is the entire understanding between you and us regarding the use of the NOOK App and/or the NOOK App Service, and supersedes all prior and contemporaneous agreements and understandings between you and us regarding this subject matter.

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(e) **No Waiver.** Our failure or delay to exercise or enforce any right, remedy or provision of these NOOK App Terms of Service or by law will not operate as a waiver of such right, remedy or provision.

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(j) **Governing Law; Jurisdiction**

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Subject to Section 6 (Dispute Resolution) above and applicable local laws, we both agree that the federal and state courts of New York County, New York shall have the exclusive jurisdiction to settle any dispute or claim arising out of or in connection with these NOOK App Terms of Service or their subject matter.

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Subject to Section 6 (Dispute Resolution) above and applicable local laws, we both agree that the courts of the judicial district of Luxembourg City shall have the non-exclusive jurisdiction to settle any dispute or claim arising out of or in connection with these NOOK App Terms of Service or their subject matter.

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