

MAY 10, 2001
cc: Dr. Jennett
Joe M.
Mary Trevino
Maricelda Z.

Barnes & Noble College Bookstores, Inc.

TEXAS WOMAN'S UNIVERSITY BOOKSTORE
P.O. Box 425709
DENTON, TEXAS 76204



May 4, 2001

Jose Garcia
Vice President for Business & Finance
Texas A&M International University
5201 University Blvd.
Laredo, TX 78041-1900

Dear Jose,

Enclosed you will find the signed contract for your file. I appreciate your support of the bookstore and Barnes & Noble College.

I look forward to a strong partnership over the next five years.

Sincerely,

A handwritten signature in black ink, appearing to read "Kim Otte". The signature is written in a cursive, slightly slanted style.

Kim Otte
Regional Vice President

KO/em

Enclosure

**Agreement for Bookstore Services
between
Texas A&M International University
and
Barnes & Noble College Bookstores, Inc.**

1. Engagement of Barnes & Noble:

Texas A&M International University, an agency of the State Texas and a component of the Texas A&M University System and located in Webb County, Texas hereby engages **Barnes & Noble College Bookstores, Inc.** ("**Barnes & Noble**") New York, New York, to operate and provide services for the **bookstore** of Texas A&M International University (the "**Bookstore**") on the terms and subject to the conditions set forth herein, and **Barnes & Noble** hereby accepts such engagement.

All appendices and schedules referenced in this contract as-well-as the Request for Proposal (RFP) issued by the **University** on August 30, 2000 are incorporated herein and made a part of this contract for all purposes. If there is a conflict between the items of this contract and the RFP, the terms of the contract shall govern.

2. Term, Termination and Amendment:

This agreement shall govern the relationship between **Texas A&M International University** and **Barnes & Noble** with regard to the **Bookstore** for the period ~~March 1, 2001 through February 28, 2006~~ with an option to renew for two additional one year periods, unless terminated by either party by giving thirty (30) days written notice to the other party at any time after the first three (3) months of operation of the **Bookstore** by **Barnes & Noble** pursuant to this agreement. Notice of desire to terminate this agreement shall be sent in writing by certified mail to the Contract Administrator named later in this Agreement.

No change, modification or amendment of this agreement shall be valid unless the same shall be in writing and signed by both parties hereto.

3. Texas A&M International University Shall Provide to Barnes & Noble at Texas A&M International University's Expense:

- a. Office equipment, furniture and fixtures, file cabinets, telephone instruments and office machines currently available for **Bookstore** use that is existing **University** property. (Follett equipment not included.)
- b. All repairs and maintenance for the building and the physical structure in which the **Bookstore** is located. Notwithstanding the foregoing, the **University** shall not be liable to the **Bookstore**, its agents, employees, or invitees for any loss, damage, claims or expenses arising from damage or destruction to any of the **University's** premises, facilities and improvements, or any portion thereof, or from **University's** failure to provide maintenance and repairs thereto.
- c. Trash removal.
- d. All debit or credit card or other financial services made available by **Texas A&M International University** to its students. The **Bookstore** will obtain, at their expense, any equipment required to provide these services.
- e. The required keys to enter the **Bookstore** will be provided to employees based on the written approval of the manager. Such request will be made to the **University** Physical Plant department. Upon the termination of employment, the manager will be responsible for insuring that the issued keys are returned to the **University**. The cost for replacing lost keys will be at the same rate as **University** employees are charged.
- f. The **University** will provide parking to the **Bookstore** employees at the same cost and assignment method as available to the **University** employees.

4. Environmental Matters:

To the best of its knowledge, **Texas A&M International University** is not aware of any health or environmental problems which currently exist or are likely to develop in the building or physical facility which houses the **Bookstore**. **Texas A&M International University** shall be responsible for remedying promptly any

health or environmental problem at the **Bookstore**, other than those caused by Barnes & Noble, and notifying Barnes & Noble accordingly.

5. Barnes & Noble Shall Provide to Texas A&M International University at Barnes & Noble's Expense:

All operating expenses of the **Bookstore** other than those described in Section 3 above, including those related to:

- a. Employees, including payroll and payroll system costs, and employee benefits.
- b. Bill paying and accounting, including sales tax reporting and payment.
- c. Office equipment maintenance and repair.
- d. General custodial services.
- e. Loss prevention services.
- f. Pest control services.
- g. Utilities to include telephone, electricity, water and TV cable.

6. Insurance:

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

- a. Worker's Compensation and Employer's Liability Insurance and such other insurance as may be required under applicable state statutes.
- b. Comprehensive General Liability Insurance subject to \$5,000,000 limits.
- c. Property Damage Liability Insurance in the amount of \$1,000,000.

- d. Motor Vehicle Liability Insurance with limits of \$100,000 per person, \$300,000 per occurrence and \$50,000 property damage.

At the request of **Texas A&M International University**, **Barnes & Noble** shall obtain and deliver certificates evidencing such insurance from its insurers. **Barnes & Noble** shall save **Texas A&M International University** harmless from claims which may arise in connection with the operation of the **Bookstore** facilities specified herein and sales of products or performance of any service under this contract or injuries or death caused by **Barnes & Noble** vehicles on and immediately adjacent to the **Bookstore** premises, except for claims caused by **Texas A&M International University** or any of its employees, agents or representatives, for which **Texas A&M International University** shall save **Barnes & Noble** harmless, to the extent provided by the laws of the State of Texas.

Barnes & Noble's insurance policies for the **Bookstore** shall name **Texas A&M International University** as an additional insured and loss payee, but only with respect to liability arising out of operations performed for such insured by or on behalf of the name insured, and shall contain covenants requiring thirty (30) days written notice to **Texas A&M International University** before cancellation, reduction, or other modification of such coverage. These policies shall be primary and noncontributing with any insurance carried by **Texas A&M International University** and shall contain a severability of interests clause with respect to gross liability, protecting each named insured as though a separate policy has been issued to each.

7. Compliance With All Laws:

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

8. Management and Staff:

Barnes & Noble shall staff the **Bookstore** with experienced and qualified managerial and clerical personnel. During peak "rush" periods, **Barnes & Noble**

shall utilize sufficient additional employees at the **Bookstore** to avoid unnecessary lines and to expedite making educational materials available to students.

a. **Texas A&M International University Bookstore** personnel shall continue service only so long as their work and personal behavior are acceptable to **Texas A&M International University**. **Barnes & Noble** will comply with written requests by **Texas A&M International University** to remove or reassign store personnel for good cause.

9. Staff Relations, Wages, and Benefits:

Barnes & Noble shall be responsible for the wages and benefits of all of its employees at the **Bookstore**. **Barnes & Noble** will employ students of **Texas A&M International University** at the **Bookstore** whenever reasonably possible.

10. Calendar of Operating Hours:

Barnes & Noble shall maintain a schedule of operating hours and weeks of business for the **Bookstore** in accordance with the official **Texas A&M International University** calendar and in mutual agreement with **Texas A&M International University** in meeting the needs of the students, faculty and staff. **Bookstore** hours will be extended during each registration period, during the first two weeks of the fall and spring semesters, and the first week of each summer session.

11. Book Orders and Deadlines:

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

- a. On or before October 15 for the spring semester.
- b. On or before April 15 for the summer sessions.
- c. On or before April 15 for the fall semester.

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

12. Booklist

In the course of providing the services contracted for in this contract, **Barnes & Noble** collects certain information from the faculty on its Course Book Information forms. **Barnes & Noble** also creates a computer database containing, among other things, course book information. These forms and the database are **Barnes & Noble's** proprietary information, created at substantial cost and expense to **Barnes & Noble** and used in connection with its business, the retail sale of textbooks.

Should **Texas A&M International University** require any information that may be contained within the forms or the database either for its educational purposes, or in order to comply with any public records request where no exemption is available (such as an exemption for commercial information), **Texas A&M International University** understands that it will be responsible for collecting that information from the faculty.

Subject to the "exclusive campus bookseller provision" set forth above, nothing set forth in this paragraph shall be construed to limit in any manner the right of any other off-campus vendor to use its own course book information form to obtain this information from the faculty.

13. Services Expected:

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

- a. The **Bookstore** shall be **Texas A&M International University's** exclusive buyer and seller of all required, recommended or suggested course materials and tools, including books, course packs, computer software, and materials published or distributed electronically, or sold over the Internet. As used in this Agreement, "Internet" includes the

World Wide Web and any proprietary on-line service (e.g., America On Line). **Barnes & Noble** will provide exclusive on-line services through our web site.

- b. The **Bookstore** shall be designated the exclusive agent to process all debit card and financial aid transactions for the bookstore.
- c. The **Bookstore** shall also be **Texas A&M International University's** exclusive "on-campus" and Internet seller of other items typically sold in college bookstores, such as books in addition to those described in (a) above, educational supplies, notebooks, stationery, desk and room accessories, gift items, jewelry, and clothing, including any and all such items bearing a **Texas A&M International University** emblem, logo, insignia or other identifying mark. "On-campus" shall mean the campus grounds and any area within a 10-block radius of the campus grounds.
- d. The **Bookstore** shall be the exclusive agent for the rental and/or sale of graduation caps and gowns.
- e. The **Bookstore** shall have exclusive rights to manage all service programs customarily handled by college bookstores such as magazine subscription, telecommunication and credit card application programs. Revenue generated from all such programs shall be commissionable.
- f. The **Bookstore** shall also have a non-exclusive right to sell convenience store items such as food, health and beauty items, and other sundries.
- g. **Barnes & Noble** will provide exclusive custom publishing services for **Texas A&M International University**. Such services will include the development of course packs for faculty members, securing the appropriate copyright clearances, printing and binding of course packs and distribution and sale of the course packs in the **Bookstore**. Complimentary desk copies of course packs will be provided to faculty members.
- h. **Barnes & Noble** shall provide special book order services for students, faculty, and staff and make every effort to obtain the earliest possible delivery of such books.

- i. **Barnes & Noble** shall provide charge sales for supplies for **Texas A&M International University's** departments and offices. Payments for such charge sales shall be guaranteed by **Texas A&M International University** and payable within 60 days. Any balances over 90 days will be subject to 1% interest per month.
- j. **Barnes & Noble** will allow full-time faculty and staff of **Texas A&M International University** a 15% discount on all merchandise available at the **Bookstore** except adopted textbooks, special orders, sale books, computer software, periodicals, discounted merchandise, computer hardware, stamps, health and beauty aids, food snacks, and beverages.
- k. If **Texas A&M International University** accepts advertising for any of its materials or publications that it distributes or makes available to its students, including without limitation any course offering list, or if **Texas A&M International University** permits tabling or other third-party promotional activities at any event sponsored by **Texas A&M International University** or located on the **Texas A&M International University** campus, **Texas A&M International University** agrees that:
 - (a) it shall give the **Bookstore** reasonable advance notice of the deadline for placing such advertising or participating in such tabling or other promotional activities;
 - (b) the **Bookstore** shall have the right to place its desired advertising in such materials and to participate in such tabling or other promotional activities; and
 - (c) **Texas A&M International University** shall not accept advertising in such material from, or permit tabling or other promotional activities at any of such events by any seller of college textbooks and/or course supplies other than the **Bookstore**.
- l. The **Bookstore** agrees to honor all **University** financial aid vouchers and scholarship charges for **bookstore** purchases.

m. All emblem, logo, insignia or other identifying mark items must be reviewed and approved by the Collegiate Licensing Officer located in the Office for Institutional Advancement prior to being added to the **Bookstore** inventory. **Texas A&M International University** is a member of Licensing Resource Group and all suppliers of this type of merchandise to the **Bookstore** must comply with the organizations licensing procedures. The procedures for using merchandise with **University** marks is available from the Collegiate Licensing Officer.

14. Used Book Purchase and Resale:

Barnes and Noble shall buy books from **Texas A&M International University** faculty, staff and students at the following prices:

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

15. Policy Posting:

Barnes & Noble shall post conspicuously and without equivocation **Bookstore** policies concerning refunds, buybacks, and exchanges. The **University** and **Barnes & Noble** will negotiate any policy dealing with refunds, buybacks, and exchanges prior to any posting.

16. Repurchase of Inventory:

Texas A&M International University shall repurchase **Barnes & Noble's** inventory at cost in the event of cancellation of this agreement in the following manner:

a. New Textbooks

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

b. Used Textbooks

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

c. Trade, Paperback, Technical, and Reference Books

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

d. School Supplies and General Merchandise

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

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

17. Sales Markup Basis:

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

- a. New textbooks will be sold at no greater than (i) the publisher's list price or (ii) a 25% gross margin on net priced books, inclusive of restocking fees, return penalties or other surcharges.
- b. Used textbooks will be sold at 25% less than the new selling price.
- c. Course packs and textbooks purchased from publishers with restrictive, non-returnable text policies will be priced at up to a 30% gross margin.
- d. School supplies will be priced at or below manufacturers' suggested retail prices.

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

18. Guaranteed Payment/Percentage of Sales:

On an annualized basis, **Barnes & Noble** will pay **Texas A&M International University** the following guaranteed payment quarterly *or* the applicable percentage of all gross sales at the **Bookstore**, whichever is greater.

\$125,000 annually

or

8.6% of gross sales up to \$1.5 million
10.1% of gross sales over \$1.5 million

In any contract period which is less than a complete year, the payments shall be based on the percentage of gross sales at the **Bookstore**. Percentage payment, if applicable, will be paid within 45 days of the conclusion of the contract year.

(Gross sales shall be defined as all sales at the **Bookstore** less voids, refunds, sales tax, discounted sales, such as departmental sales, discounted faculty/staff sales, pass-through income and any uncollected sales, etc.)

If annual gross sales of the **Bookstore** shall materially decline as a result of declining enrollment (i.e. decrease 5% or more), online textbook sales, or other reasons outside of the control of **Barnes & Noble, Texas A&M International University** agrees to negotiate in good faith with **Barnes & Noble** an appropriate reduction in the guaranteed payments and applicable percentages set forth above.

During any period of major construction when the **Bookstore** is meaningfully disrupted by construction, **Barnes & Noble** will pay the school according to the percentage formula only.

19. Sales Representation:

Texas A&M International University has represented to **Barnes & Noble** that sales for the years ended 1999 were \$1,204,000, net of all refunds, voids, sales tax, and discounts provided to customers. These sales include sales in all locations for which **Barnes & Noble** will assume operations. Since the **Barnes & Noble** financial offer is based on this figure, **Barnes & Noble** would expect to renegotiate its financial offer if the reported sales are found to be in error or materially inaccurate.

20. Renovations:

Barnes & Noble will spend up to \$150,000 to design, construct, equip, and install fixtures in the **Bookstore**. Until such time as the new site is available, **Bookstore** will continue operations in the temporary location in Killam Library.

Barnes & Noble will depreciate this investment on a straight-line basis over the five-year contract period. Should **Texas A&M International University** cancel or fail to renew this agreement before the end of that period, then to the extent provided by the laws of the State of Texas, **Texas A&M International University** shall reimburse **Barnes & Noble** for any amount of the investment not yet depreciated.

21. Payment Schedule:

Applicable guaranteed payments as set forth above hereof shall be made quarterly by **Barnes & Noble** to **Texas A&M International University** and shall be paid within thirty (30) days after the close of the quarter in which they were earned. The final payment for any year shall be made within thirty (30) days after the end of the applicable contract year, and will include any adjustments required by the percentage of gross sales formula set forth above.

Each payment shall be accompanied by a detailed statement of its computation and **Barnes & Noble** shall furnish supporting documentation to **Texas A&M International University** upon request.

22. Access to Accounting Records and Cash Registers:

Texas A&M International University shall have full access at all times to the **Bookstore** accounting records, including all cash registers at the **Bookstore** being used by **Barnes & Noble**, with or without notice. **Barnes and Noble** will provide monthly financial reports to the Vice President for Finance and Administration. Cash register control totals will be used to verify the cash sales reported. In addition, all registers shall have:

- a. Cumulative, non-resettable counters of either the total reset-clearings or the total cumulative activity.
- b. Receipt and detail tape provisions.
- c. A display window for customer viewing.

23. Benefit and Binding Effect:

This agreement shall be binding upon and shall inure to the benefit of **Texas A&M International University** and **Barnes & Noble** and their successors and assigns.

24. Headings; Interpretation:

The headings used in this agreement are for convenience only and do not constitute substantive matter to be considered in construing its terms. The use in this agreement of the terms "include," "includes," "including," and "such as" shall be deemed in all cases to be followed by the words "without limitation."

When used in this agreement **Texas A&M International University** includes all segments of the institution including all alumni, athletic and academic departments.

25. Severability:

The presence in the text of this agreement of any clause, sentence, provision, paragraph or article held to be invalid, illegal or ineffective by a court of competent jurisdiction shall not impair, invalidate or nullify the remainder of the agreement. The effect of any such holding shall be confined to the portion so held invalid.

26. Notice:

University designates the Vice President for Finance and Administration, 5201 University Blvd., Laredo, Texas 78041, as the Contract Administrator. **Barnes & Noble College Bookstore** designates Kim Otte, Regional Vice President, Texas Woman's University, PO Box 425709, Denton, TX 76204, as its Contract Administrator. All required or requested notices, comments, and consents shall be directed to said Administrator.

27. Assignment:

This agreement may not be assigned by either party except upon written approval of both parties.

28. Force Majeure:

Neither party to this contract shall be responsible for losses resulting from the failure to perform any terms or provisions of this Agreement if the failure is attributable to natural phenomena, fire, disorder, or other condition beyond the

reasonable control of the of the party whose performance is impaired thereby, and which, by the exercise of reasonable diligence, such party is unable to prevent, provided however, that monies payable at the times of such circumstances shall be payable as required by the terms of the Agreement.

29. Exclusivity:

The **Bookstore** recognizes that student organizations hold T-shirt sales, book sales, art and craft sales, and similar fund-raising events. The **Bookstore** recognizes the right of the **University** to approve such events in accordance with **University** policy.

30. University Right:

The **University** will have the right to review and approve those management decisions which may affect **University** programs or public image. Such decisions might include: signs, advertising, and changes in product offerings and quality and pricing of certain products.

31. Independent Contractor:

The **Bookstore** is an independent contractor and not an employee of the **University**. The **Bookstore's** acts or representation with respect to third parties are not binding on the **University**.

32. Dispute Resolution:

(1) The dispute resolution process provided for in Chapter 2260 of the Government Code shall be used, as further described herein, by the **University** and contractor, Inc. to attempt to resolve any claim for breach of contract made by the contractor.

(a) A contractor's claim for breach of this contract the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260, subchapter B, of the government Code. To initiate the process, the contractor shall submit written notice, as required by subchapter B, to the Vice President for Finance and Administration of the **University**. Said notice shall specifically state that the provisions of Chapter 2260, subchapter B, are being invoked. A copy for the notice shall also be given to all other representative of the **University** and the contractor otherwise **Texas A&M International University** is entitled to notice under the parties'

contract. Compliance by the contractor with subchapter B is a condition precedent to the filing of a contested case proceeding under Chapter 2260, subchapter C, of the Government Code.

(b) The contested case process provided in Chapter 2260, subchapter C, of the Government Code is the contractor's sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by the **University** if the parties are unable to resolve their disputes under subparagraph (A) of this paragraph.

(c) Compliance with the contested case process provided in subchapter C is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code. Neither the execution of this contract by the **University** nor any other conduct of any representative of the **University** relating to the contract shall be considered a waiver of sovereign immunity to suit.

(d) The submission, processing and resolution of the contractor's claim is governed by the published rules adopted by the Attorney General pursuant to Chapter 2260, as currently effective, hereafter enacted or subsequently amended.

(e) Neither the occurrence of an event nor the pendency of a claim constitutes grounds for the suspension of performance by the contractor, in whole or in part.

(f) The designated individual responsible on behalf of the **University** for examining any claim and conducting any negotiations related thereto as required under 2260.052 of H.B. of the 76th Legislature shall be the Chief Financial Officer, Mr. Jose Garcia.

33. Liens:

The **Bookstore** shall indemnify and save the **University** harmless and shall keep the **University** property free and clear from all claims and liens asserted by any person, firm, corporation, or business association for any reason arising out of the furnishing of services or materials by or to the **Bookstore**.

34. Access to Facilities:

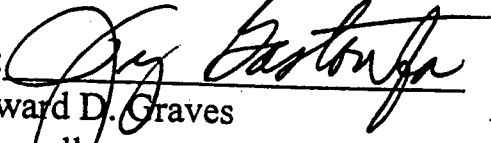
The **Bookstore** will permit the designated **University** administrator or designee to inspect any and all areas of the **Bookstore** during normal operating hours and at any time in the event of an emergency.

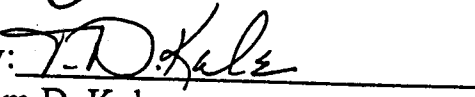
35. Bookstore Use of University Property:

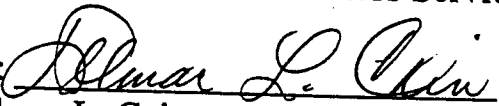
The **University** shall retain title to all property which it furnishes to the **Bookstore** upon commencement of the contract. The **Bookstore** shall use such property only in the performance of this Agreement unless the **University** authorizes otherwise in writing. The **Bookstore** shall not use or remove any other property which it purchases for use in the **Bookstore** without the prior written approval of the **University**.

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

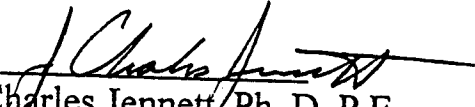
Texas A&M University System

By: 
Howard D. Graves
Chancellor

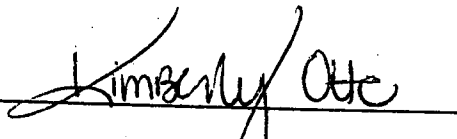
By: 
Tom D. Kale
Vice Chancellor for Business Services

By: 
Delmar L. Cain
General Counsel

Texas A&M International University

By: 
J. Charles Jennett, Ph. D, P.E.

Barnes & Noble College Bookstores, Inc.

By: 
Name: Kimberly Otte

Title: Regional Vice President

Date: 4 May 2001

BN:lo: ver. MSW. May1, 2000