

**2010 GEORGIA LEARNING RESOURCES
RECOMMENDATION AGREEMENT
K-12 Fine Arts
K-12 Social Studies
K-12 Health and Physical Education
Grades 9-12 Advanced Mathematical Decision Making Courses
Georgia State Board of Education
1754 Twin Towers East
205 Jesse Hill Jr. Drive, SE
Atlanta, Georgia 30334-5040
(404) 656-0476 and Fax (404) 651-8582**

This document is intended to serve as an Agreement between:

Publisher name: _____
Publisher address: _____

hereinafter known as the "Publisher," and the State Board of Education of the State of Georgia, hereinafter known as "State Board", only upon an affirmative act of approval by the State Board of specific Learning Resources submitted by the Publisher. The State Board's approval is indicated by the signature by the State Board's designee on this Agreement indicating such approval of the Publisher's Textbook/Instructional Materials (hereinafter also referred to as "Learning Resources").

The State Board is authorized by Georgia law, as prescribed in Official Code of Georgia Annotated § 20-2-168(b), and § 20-2-1010 through § 20-2-1014, to recommend textbooks for use in Georgia schools.

The purpose of this agreement is to establish the conditions that must be met for the listing of Learning Resources on the state recommendation list and the price, terms and conditions for the furnishing of Learning Resources to the local boards of education, the State Board, or any employees or agents. It does not create an obligation against the State Board in whole or in part. If a submitted Learning Resource Material does not meet all provisions outlined in this Agreement, the State Board in its discretion need not consider the Learning Resource Material for recommendation.

If the Publisher is an approved publisher, the electronic file created by the submission of the *Official 2010 Learning Resources Submission Form (Form 0221)* and the signed copy of this document by the Publisher and the State Board shall constitute the entire agreement between the State Board and the Publisher.

The period for this agreement is April 1, 2011 through June 30, 2017.

I. LEARNING RESOURCES ELIGIBLE FOR RECOMMENDATION

To be eligible for recommendation consideration, all of the Publisher's Learning Resources submitted in Attachment II (Form 0221) must meet the following conditions:

A. Definition of Learning Resource Material: The Learning Resources must meet the definition contained in State Board Rule 160-4-4-.10 (1)(f).

B. State-Funded Courses: The Learning Resources must be designed for a state-funded K-12 Fine Arts, K-12 Social Studies, K-12 Health and Physical Education, and Grades 9-12 Advanced Mathematical Decision Making Courses, in accordance with State Board Rule 160-4-2-.03. A list of these courses is included in Attachment I, attached hereto and incorporated herein.

C. Georgia Performance Standards/Quality Core Curriculum: The Learning Resources must be correlated to the Georgia Performance Standards.

D. Copyright Date: All Learning Resources must be current and have a copyright date of 2006 or later unless the subject matter has not become outdated. If the State Learning Resources Advisory Committee determines that the content is current and accurate, it may recommend at its sole discretion a Learning Resource Material that has a copyright date earlier than 2006. The Publisher represents and warrants that it owns or has rights to the copyright of all Learning Resources listed in Attachment II (Form 0221).

E. Manufacturing Standards for Non-consumable Books: Any non-consumable pupil book submitted as a textbook or as part of a textbook must meet the specific criteria identified in *The Minimum Manufacturing Standards and Specifications for Textbooks* ("Standards") as developed by the National Association of State Textbook Administrators ("NASTA"), in consultation with the Association of American Publishers and the Book Manufacturers' Institute. The NASTA Standards shall be Georgia's official minimum standards and specifications for non-consumable pupil books. The State Learning Resources Advisory Committee may consider for recommendation textbooks that do not meet the NASTA Standards if there are limited Learning Resources of quality submitted for a specific state-funded course. NASTA Standards may be obtained from: Book Manufacturers' Institute, Two Armand Beach Drive, Suite 1B, Palm Coast, Florida 32137-2612, Telephone: 386-986-4552 or Fax: 386-986-4553 or Email: info@bmiibook.com.

II. RECOMMENDATION PROCESS TERMS

To submit Learning Resources for recommendation consideration, the Publisher must agree to the following:

A. Deadlines for 2010 State Recommendation: The Publisher must meet the following deadlines:

April 23, 2010: The Publisher **must** submit the data requested in the *Official 2010 Learning Resources Submission Form (Form 0221)*. **Publishers must contact the state textbook coordinator as designated by the State Board in order for changes to be made and posted to the Official 2010 Learning Resources Submission Form (Form 0221).**

April 23, 2010: The Publisher must submit three signed and dated copies of the 2010 *Georgia Learning Resources Recommendation Agreement*.

November, 2010: The State Board will notify publishers of the State Board approval of the recommended list of learning resources for K-12 Fine Arts, K-12 Social Studies, K-12 Health and Physical Education, and Grades 9-12 Advanced Mathematical Decision Making Courses.

Failure to meet any deadline may result in the exclusion of the Publisher from the current recommendation process or in a non-responsive recommendation from the State Learning Resources Advisory Committee to the State Board.

B. Forms to be Submitted: The Publisher must submit, in accordance with Section II.A above, the *Official 2010 Learning Resources Submission Form (Form 0221)* as follows:

1. *Official 2010 Learning Resources Submission Form (Form 0221)* The Publisher must use this form to identify the specific information about the learning resources to be submitted for recommendation. See Attachment II, attached hereto and incorporated herein by reference, for detailed instructions.

C. Interaction with State Learning Resources Advisory Committee and State Board: Publisher and Publisher's representatives shall not contact members of the State Learning Resources Advisory Committee for the purpose of promoting Learning Resources submitted for recommendation from the date that the Publisher notifies the State Board of its intention to participate in a regular or an interim recommendation cycle until the State Board has acted on the committee's recommendations. No member of the State Learning Resources Advisory Committee shall receive any gift, reward, present or emolument from any author, publisher, producer or distributor of Learning Resources except for examination copies. Furthermore, no person, publishing house, or corporation may offer, directly or indirectly, to any member or appointee of the State Board (including the State Advisory Committee) any gift, compensation, or remuneration in accordance with O.C.G.A. § 20-2-10. The State Superintendent of Schools shall have the authority to dismiss any committee member who violates these provisions and to remove from consideration the Learning Resources of the Publisher who violates these provisions.

These provisions will be strictly enforced.

III. TERMS OF RECOMMENDATION

The Publisher must agree to the following terms if the State Board approves the Learning Resources:

A. Guarantee of Durability:

1. Non-consumable Print Learning Resources: Publishers must guarantee that any non-consumable student print learning resources submitted for recommendation will endure six (6) years of normal use and must agree to replace immediately at no cost to the purchasing school system, including shipping charges, any such components of a learning resource that do not stand up to such use.
2. Electronic-based Learning Resources: Publishers must agree to replace immediately at no cost to the purchasing school system, including shipping charges, any electronic-based component of a learning resource that is physically defective or develops physical defects not caused by the user at any time during the period of recommendation.
3. Paperback books, spiral bound and other non-traditional bound Learning Resources:
Publisher will provide replacement copies of these Learning Resources according to the following schedule:
 - i. First year of purchase: Material not withstanding normal usage will be replaced at no charge without any shipping charges to the school district purchasing the Learning Resources.
 - ii. Second year of purchase: Material not withstanding normal usage will be replaced at 50% of the contract price with only 50% of the shipping charges to be paid by the school district purchasing the Learning Resources.
 - iii. Third year of purchase: Material not withstanding normal usage will be replaced at 75% of the contract price with only 75% of the shipping charges to be paid by the school district purchasing the Learning Resources.

B. Guarantee of Price: Publishers must provide the Learning Resources recommended at the prices stipulated on the *Official 2010 Learning Resources Submission Form (Form 0221)* for the period of the agreement to any local school system in Georgia. Shipping costs shall be as provided in paragraphs H and N of this Agreement.

The price for any Learning Resources listed on Form 0221 must not exceed the price offered by the Publisher to **any** other school or school authority for substantially the same Learning Resources during the same recommendation period. (O.C.G.A. § 20-2-1014). Noncompliance may result in the termination of the agreement and the elimination of the Publisher from Learning Resources recommendation cycles and restitution to local school systems of all overpayments.

If at any point during the agreement period, the Publisher wishes to lower the price on recommended Learning Resources, the Publisher must notify the State Board of the revised prices by updating Form 0221. If the price is lowered during the first year of the recommendation (i.e., April 1, 2011 - March 31, 2012), the Publisher must agree to pay to any school system which has ordered and paid for Learning Resources during this period the difference between the old and new prices.

Upon extension of the adoption cycle by the State Board, the State Board, in its sole discretion, may extend this agreement at the same prices, terms and conditions for a period of up to 365 days.

C. Provision of Teacher Editions: Publishers must agree to furnish each local system, free of charge, **one** teacher's edition for each teacher using classroom quantities of the recommended Learning Resources. *Teacher edition* is defined as "The material that provides the **primary** instruction for the teacher in the use of the Learning Resources." The teacher's edition **must** be listed as Category II in Form 0221 (*Official 2010 Learning Resources Submission Form*) with replacement cost information.

D. Provision of Ancillary/Supplementary Learning Resources and/or Special Pricing: Publishers must identify all Learning Resources intended to be provided on a "free with order" basis on Form 0221 and must offer the publications listed on Form 0221 to each school district at the same rate as is listed on Form 0221. Publishers must provide at no cost to any school systems recommending a Learning Resources and purchasing classroom sets of the Learning Resources, the free ancillary/supplementary Learning Resources identified as Category III in Form 0221. Learning Resources not listed as

Category III cannot be given without cost to any school or school system in the state. The Publisher is responsible for submitting a Form 0221 update within thirty (30) days of any change with respect to the provision of a different ancillary/supplemental Learning Resources to any Georgia school district.

E. Electronic Format Version Required: In accordance with O.C.G.A. § 20-2-1015, publishers must provide an electronic format version of such Learning Resources. The electronic versions must be available on March 1, 2011, and throughout the entire term of the Agreement. All information about the electronic versions must be submitted in the *Official 2010 Learning Resources Submission Form (Form 0221)* by April 23, 2010. Instructions for submission are attached hereto and incorporated herein as Attachment III.

F. Provision of Files for Production of Learning Resources for Students Who are Print Disabled: In accordance with the requirements of the Individuals with Disabilities Education Improvement Act of 2004, Section 1412 (a) (23), Section 1413 (a) (6), Section 1474 (e) (3) and Title III Section 306 (amendment to the copyright act in 17 USC 121), publishers are required to prepare National Instructional Materials Accessibility Standard (NIMAS) compliant files for all printed Learning Resources and related printed core Learning Resources for K-12 classroom use in all content areas. Related printed core materials are defined as printed materials, other than textbooks, designed for use by students in the classroom in conjunction with a textbook and which, together with the textbook are necessary to meet the curriculum requirements for the intended course. The materials should be directly related to the textbook and wherever possible they should be published by the publisher of the textbook. Related core materials do not include materials that are not written and published primarily for use by students in the classroom. These NIMAS files shall be used without penalty or royalty by accessible media producers to produce accessible, specialized formats (i.e. braille, audio, digital, large-print or other versions) of materials for students who are blind or who have other print disabilities.

By agreeing to provide the required NIMAS materials in this contract the publisher agrees to prepare and submit, on or before March 1, 2011 a NIMAS file set of the Learning Resources or related core material to the National Instructional Materials Access Center (NIMAC) that validates and complies with the terms and procedures set forth by the NIMAC. No evaluation or advanced copies will be accepted by NIMAC. Should the vendor be a distributor of the Learning Resources and not the publisher, the distributor agrees to immediately notify the publisher of its obligation to submit the NIMAS file set of the purchased products to NIMAC. Publishers who do not prepare and submit NIMAS files to the NIMAC in accordance with the recommendation process timeline may be removed from the State-Recommended List of Learning Resources, and this agreement may be terminated.

All acceptable Learning Resources revisions as defined in section J (1) of this agreement will be incorporated into the NIMAS file for the book and immediately submitted to the NIMAC.

Upon request of the State Board of Education, or its designee, the Georgia Instructional Materials Center (GIMC), publishers shall provide the GIMC with electronic files of any printed Learning Resource or related printed core Learning Resource for the purpose of producing accessible learning resources for students with disabilities who are not eligible to receive materials produced from NIMAS files obtained through the NIMAC. If a file format appropriate for a particular student with a disability is not available from a publisher, the publisher grants the GIMC permission to create an electronic file of the textbook. Electronic files obtained from the publisher or produced by the GIMC, or its designee, shall be used without penalty or royalty to produce accessible, specialized formats (i.e. braille, audio, digital, large-print or other versions) of materials for students with disabilities.

G. Provision of Files for Production of Materials for Teachers with Disabilities: Upon request of the State Board of Education, or its designee, the Georgia Instructional Materials Center (GIMC), publishers shall provide the GIMC with digital files of teacher editions of adopted Learning Resources in a mutually agreed upon format.

H. Warehousing of Recommended Learning Resources and Teacher Editions: Publishers must warehouse all recommended items listed as Categories I and II in Form 0221 at a location in the state of Georgia, unless otherwise approved by the State Board, for the term of this agreement and must notify the State Board of their Georgia distributor on an annual basis by December 1 or immediately if a change in distributor occurs. Publishers that do not warehouse Learning Resources in Georgia must ship Learning Resources free of shipping charges.

I. Delivery of Recommended Learning Resources and Teacher Editions to Ordering School Systems: Publishers must maintain a sufficient inventory of recommended items listed in Form 0221 in the state of Georgia to guarantee timely

delivery during the agreement period. *Timely delivery* shall mean the receipt of the Learning Resources (Categories I, II, and III) at the local school system delivery address within 15 business days of the receipt of the purchase order by the Publisher or the receipt of the Learning Resources at the local school system delivery address within 30 business days of the receipt of the purchase order by the Publisher for initial orders from school systems of newly recommended Learning Resources. The Publisher must communicate "delayed shipment" status with school systems ordering Learning Resources.

A written order will be executed by the local system superintendent for quantities of recommended items listed as Categories I, II, and III in Form 0221 as needed and such items shall be shipped in a timely manner as described above by the method identified on the order form. Each local board of education shall have responsibility for payment of invoices for Learning Resources purchased under these agreement terms.

J. Submission of Revisions: Publishers must request approval in writing to substitute a revised Learning Resource Material for a Learning Resource Material currently under recommendation. This condition applies to *any change* to the original edition including typographical corrections in the copy. The request must include the revised information, an itemized list of the changes in the revised edition, and one complete set of examination copies of the revised Learning Resource Material and teacher edition and the currently recommended Learning Resource Material and teacher edition. The conditions for substituting a revision of a previously recommended Learning Resource Material are as follows:

1. **The revised edition must be classroom compatible with the original edition.** The revised edition must be submitted within 45 days after the original edition is recommended by the State Board. *Classroom compatible* means that the revised edition can be used in the same classroom with the earlier edition without detriment to either the student using the revised edition or the teacher having students using both editions. The State Board in its sole discretion shall determine if a Learning Resource Material is classroom compatible. Learning Resources that do not meet the requirements for classroom compatibility ***will not*** be considered suitable for substitution. If the revised edition is not classroom compatible, or is not submitted within the 45-day time period, the State Board, in its sole discretion, may accept the edition as a substitute, subject to any conditions.
2. **The revised Learning Resource Material must be substituted at the same price as the currently recommended edition for the remainder of the recommendation period.**

K. Laws and Regulations: The Publisher agrees to adhere to all requirements of Georgia law and State Board rules pertaining to Learning Resources.

L. Intended Third Party Beneficiaries: This Agreement will benefit all local school systems located in the State of Georgia (Local School Systems), and the Local School Systems shall be intended third party beneficiaries. Each Local School System may enforce Publisher's obligations under this Agreement directly and without the need for any consent, assistance, or intervention of the Georgia State Board of Education or any other Local School System.

M. Records Retention: Publisher agrees to make available at all reasonable times during the period set forth below all records relating to this Agreement and/or performance related to this Agreement for inspection or audit by any authorized representative of the State Board or the Georgia State Auditor. Publisher shall preserve and make available its records for a period of four years from the date of final expiration of this Agreement, and for such period, if any, as is required by applicable statute. If the Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of five years from the date of any resulting final settlement. Records which relate to appeals, litigation, or the settlements of claims arising out of the performance of this Agreement, or costs and expenses of any such agreement as to which exception has been taken by the State Auditor or any of his duly authorized representatives, shall be retained by Publisher until such appeals, litigation, claims or exceptions have been resolved.

N. Shipping: Except as provided in Paragraph H, prices quoted are FOB destination, freight prepaid and charged back. Any freight charges will be added to the invoice as a separate item. Freight charges may not exceed the actual freight charges to vendor and shall never exceed 5% of total cost. The purchasing school system is not responsible for Learning Resources lost in shipping. There will be no "handling" charges.

O. Inquiries and Complaints: Publisher shall submit a substantive written response to any State Board and/or Local School System written inquiries and/or complaints regarding goods or services to be provided under any contract with the State Board. Such response shall be postmarked within thirty days of receipt of such inquiry and/or complaint unless

additional time is negotiated by the parties in interest. The State Textbook Coordinator, as designated by the State Board, shall be copied on any written response to a Local School System.

P. Amendments: No modifications or alteration of this Contract will be valid or effective unless each modification or alteration is made as an amendment to this Contract and signed by both parties.

Q. Termination for Cause. The occurrence of any one or more of the following events shall constitute cause for the State Board to declare the Publisher in default of its obligations under the Contract:

- (i) The Publisher fails to deliver or has delivered nonconforming Services or Product or fails to perform, to the State Board's satisfaction or based upon complaints of Local School Systems, any material requirement of the Agreement or is in violation of a material provision of the Agreement;
- (ii) The State Board determines that satisfactory performance of the Agreement is substantially endangered or that a default is likely to occur;
- (iii) The Publisher fails to make substantial and timely progress toward performance of the Agreement;
- (iv) The Publisher becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; the Publisher terminates or suspends its business; or the State Board reasonably believes that the Publisher has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;
- (v) The Publisher has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of the Agreement;
- (vi) The Publisher has engaged in conduct that has or may expose the State Board or Local School Systems to liability, as determined in the State Board's sole discretion; or
- (vii) The Publisher has infringed any patent, trademark, copyright, trade dress or any other intellectual property rights of the State Board, the State, or a third party.

R. Notice of Default. If there is a default event caused by the Publisher, the State Board or Local School System shall provide written notice to the Publisher requesting that the breach or noncompliance be remedied within the period of time specified in the written notice to the Publisher. If the breach or noncompliance is not remedied within the period of time specified in the written notice, the State Board or Local School System, as appropriate, may:

- (i) Immediately terminate the Agreement without additional written notice; and/or
- (ii) Enforce the terms and conditions of the Agreement and seek any legal or equitable remedies; and/or
- (iii) Exclude the Publisher and/or its Learning Resources from consideration for inclusion in future *Georgia Learning Resources Guides* or of any resources recommended pursuant to O.C.G.A. § 20-2-101 and eliminate the Publisher from future participation in Georgia State Learning Resources Recommendation Cycle and Process.

AGREEMENT

By this signature I acknowledge that I have been notified of and agree to the terms and conditions contained in this 2010 *Georgia Learning Resources Recommendation Agreement* and the three attachments. I understand that violation of these provisions by the Publisher or any of its agents or employees may result in the exclusion of the Publisher and/or its Learning Resources from consideration for inclusion in future *Georgia Learning Resources Guides* or of any resources recommended pursuant to O.C.G.A. § 20-2-1012, the elimination of the Publisher from future participation in Georgia state Learning Resources Recommendation Cycle and Process, and the termination of this agreement.

PUBLISHER

(Signature)

Date

Name: _____

Title: _____

Publisher: _____

ACCEPTED BY THE STATE BOARD OF EDUCATION ON _____

The following signature indicates acceptance on behalf of the State Board of Education of the specific Learning Resources as marked "Recommended" on Attachment II (Form 0221):

STATE BOARD OF EDUCATION OF THE STATE OF GEORGIA

(Signature)

Date

Scott Austensen
Deputy Superintendent for Finance and Business Operations
Federal EIN: 58-6002042
Georgia Department of Education