

THE R.L. BRYAN COMPANY

CENTRAL TEXTBOOK DEPOSITORY

THIS AGREEMENT is made and entered into as of the ____ day of _____ by and between The R.L. Bryan Company, a South Carolina corporation (the Depository), and _____ (the Publisher).

WITNESSETH:

WHEREAS, the Publisher desires to comply with the state textbook laws and wishes to perfect methods of distribution in the state of South Carolina (the State); and

WHEREAS, the Depository possesses the facilities and the organization capable of handling such distribution in the State, has been approved by The State Board of Education, and is desirous of undertaking such distribution in the State for and on behalf of the Publisher.

NOW THEREFORE, in consideration of the premises, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

A. PUBLISHERS OBLIGATION. The Publisher hereby agrees to assume and perform the following obligations:

1. **Shipment of Stock.** Ship on consignment to the Depository for redistribution, such materials as may be under contract of adoption by the State or subdivisions of the State (the Adopted Materials), and such other materials as the Publisher requests the Depository to distribute (the Non-adopted Materials) (collectively, the Materials), in quantities as determined by the Depository and confirmed by the Publisher, such shipments to remain the property of the Publisher until shipped by the Depository pursuant to the terms of this Agreement. The Publisher may notify the Depository, at any time and without any liability to the Depository pursuant to paragraph (A) (7) or otherwise, that the Publisher no longer desires to have the Depository distribute the Non-adopted Materials. Such termination of the Depository's obligations in connection with Non-adopted Materials shall not be subject to the terms and conditions set forth in paragraph (C) (3). Upon the Publisher's request, the Depository shall return any stock of such Non-adopted Materials, in accordance with paragraph (A) (2).

Other than the liability that the Publisher has assumed in contracts with adopting entities, no liability of any nature, including, without limitation, damages incurred by third parties and lost profits, is assumed or incurred by the Publisher hereunder because of its inability to supply Materials to the Depository.

2. **Returned Stock.** Accept the return of any stock of any Materials, and pay the transportation charges thereon, upon termination for any reason of the contract with the State or any subdivision of the State for such Adopted Materials or, in the case of Non-adopted Materials, if the Publisher no longer desires to distribute them through the Depository, or, in the case of all Materials, upon the termination of this Agreement, provided that the Materials returned shall be in good and saleable condition, free from shelf wear, rubber stamping or other defacements.
3. **Payment of Freight.** Prepay the transportation costs (F.O.B. destination), on all shipments to the Depository.

4. **Taxes and Insurance.** All insurance coverage for Material on Consignment in the Depository will be carried by the Publisher at Publisher's expense. Publisher will be responsible for ad valorem taxes lawfully and properly assessed against the Materials held by the Depository relating to the subject matter of this Agreement.
5. **Invoice.** Render to the Depository memorandum invoices reflecting the net wholesale price of the Publisher's Adopted Materials as stipulated in any contract with the State, or, for Non-adopted Materials, at such other prices as may be determined by the Publisher.
6. **Exchanges.** Allow as a credit to the Depository, when it reports sales at exchange rates either in accordance with the terms of the contract between the Publisher and the State or in accordance with other arrangements regarding Non-adopted Materials, on the quantities of the Publishers' Materials so sold.
7. **Printed Material Service Charge.** Allow the Depository, for all Adopted Materials and Non-adopted Materials, an 8% service charge based on the net wholesale price of the Materials shipped by the Depository to the Publisher's customers. In no event shall the Depository remit to the Publisher less than 92% before adjustment for exchange allowance of the amounts received by the Depository for the Materials based upon the lower of Publisher's then current most favorable wholesale price or the contracted price.

Digital Service Charge. Allow the Depository, for all Adopted Materials, a 2% service charge based on the net wholesale price of the Adopted Materials purchased by the Publisher's customers. In no event shall the Depository remit to the Publisher less than 98% of the amounts received by the Depository for the Adopted Materials purchased based upon the lower of Publisher's then current most favorable wholesale price or the contracted price.

B. DEPOSITORY'S OBLIGATIONS. In consideration of the covenants of the Publisher contained herein, the Depository hereby agrees to perform the following services for and on behalf of the Publisher:

1. **Maintenance of Facilities and Stock.** Maintain office, shipping, and warehouse facilities sufficient to perform distribution of the Publisher's Materials within the State. The Depository shall maintain the Publisher's inventory in good and saleable condition, free from shelf wear, rubber stamping or other defacement.
2. **Requisition of Stock.** Requisition stock, by means designed by the Publisher from time to time, in quantities and by titles sufficient to satisfy the Publisher's obligations under contracts between the Publisher and the State and otherwise supply adequately the demand within the State, but using all care and judgement not to requisition an amount that would exceed materially such obligations and demand.
3. **Notification Regarding Discrepancies.** Notify the Publisher within thirty (30) days of receipt of the Publisher's stock of any discrepancy as to quantity, quality or condition of stock delivered.
4. **Shipment of Stock.** The Depository will not ship, encumber, or dispose of the Publisher's stock except as authorized herein. The Depository will:
 - (a) receive orders direct from the Publisher's customers or from the Publisher;
 - (b) pick, pack and ship orders and provide standard cartons and ship collect, or add freight charge to the invoice;
 - (c) receive customer returns and provide the Publisher with receiving reports thereon in the

form currently provided to the Publisher; and

- (d) provide customer service and acquire any pertinent information to provide digital access.
5. **Invoicing.** Invoice the Publisher's customers on behalf of the Publisher: (i) for Adopted Materials, in accordance with the Publisher's contracts, and (ii) for Non-adopted Materials, as instructed by the Publisher.
6. **Inventory Losses.** Be responsible for all inventory losses, including any losses resulting from shrinkage or inventory marked or damaged in such a way as to render it unsaleable as new product. (All insurance will be furnished by the Publisher, see paragraph A-4).
7. **Exchanges.** Attend to the collection of Materials displaced by exchange and destroy same, without payment by the Publisher to the Depository of any commission for such service.
8. **Records and Audits.** Keep accurate records and accounts in accordance with generally accepted accounting principles, consistently applied. All of the Depository's records respecting the Publisher, its inventory and the subject matter of this Agreement shall be subject to inspection and audit at all reasonable times by the Publisher or by independent public accountants designated by the Publisher. The Depository shall maintain and make available to the Publisher such records for a period of three years following the termination of this Agreement, or until the Publisher has completed its final inspection and audit, whichever occurs first.
9. **Physical Inventory.**
 - (a) Report quarterly, March 31, June 30, September 30, and December 31. An audited physical inventory is taken for the December report.
 - (b) Allow the Publisher or an agent designated by the Publisher access to all facilities of the Depository and any other locations where the Publisher's Materials are stored by the Depository for inspection from time to time.
10. **Sales.** Report monthly, within 15 days of the end of the preceding month, by title, the units shipped to each customer (designating sales), the unit price and total dollars due thereon at time of settlement. (See B-14-d.)
11. **Financial Statement.** Furnish the Publisher each year, upon completion by Depository's certified public accountant, with certified copies of the Depository's Balance Sheet, financial statements, and other related notes. The Depository also shall permit the Publisher to audit and examine from time to time books and accounts of the Depository necessary to determine the Depository's financial condition. The Depository shall maintain and make available to the Publisher such books and accounts for a period of six months following the termination of this Agreement.
12. **Act as Fiduciary.** Hold the Materials, and all proceeds thereof, in trust as a fiduciary and bailee for the Publisher, depositing and holding said proceeds in account separate from those of the Depository's. Said account may include proceeds collected by the Depository on behalf of other publishers who are parties to an agreement with the Depository substantially similar to this Agreement. The Depository shall maintain said account, or any pro rata share of said account, as a publisher's account for the Publisher, and only in banks that expressly disclaim any interest in or right of offset against the proceeds in said accounts. The Depository shall make available to the Publisher for inspection at the Depository's office biannually, within 15 days of June 30

and December 31 of each year, copies of the bank records and other documentation related to said accounts, in addition to allowing the Publisher or any agent designated by the Publisher access to such records and documentation for inspection from time to time.

13. **Act for Publisher.** Act at all times in the performance of its obligations hereunder in the Publisher's best interests, by, among other things:
 - (a) complying with all laws relating to consignment and distribution;
 - (b) refusing to deal directly or indirectly in any of the Publisher's titles except as directly acquired by the Depository from the Publisher;
 - (c) forwarding to the Publisher any orders for the Publisher's titles that the Depository does not carry in stock;
 - (d) making no substitution of titles of any other publisher upon any order which carries a requisition for the Publisher's titles;
 - (e) immediately notifying the Publisher in case of loss or damage to stock of the Publisher by fire or other cause, determining the amount of loss, furnishing all necessary information for submitting proper claims to the insurance company and any other proper authority, and cooperating fully with the Publisher or an agent designated by the Publisher in its investigation of such loss or damage;
 - (f) maintaining strict neutrality as among the Publisher and other publishers for whom it may act as the depository;
 - (g) treating all information relating to the Publisher's business as confidential and not disclosing any part thereof without the prior written consent of the Publisher except as required by law, and except for information which is or becomes part of the public domain without fault on the part of the Depository or is provided to the Depository by a source other than the Publisher;
 - (h) not representing itself in any way that might reasonably imply a partnership, joint venture or similar relationship with the Publisher;
 - (i) furnishing to the Publisher the addresses of all facilities of the Depository and all locations where the Publisher's Materials are stored by the Depository at any time;
 - (j) posting, filing, recording or registering such notices and executing such instruments as the Publisher or the law may require to protect the Publisher's interests in the Materials in the Depository's possession. The Depository shall promptly send to the Publisher copies of all such notices and instruments; and
 - (k) ensuring that the Materials are maintained free from any liens, security interests or encumbrances, and defending the Materials, and proceeds thereof, against all claims and demands of all persons at any time claiming the same or any interest therein.

14. **Reports.** Report, in writing, to the Publisher within 15 days of the quarters of each year, as of close of business for those dates, respectively, said reports to set forth:
 - (a) the quantities and the value at the net wholesale prices of all Materials of the Publisher in the Depository's facilities at the time of the last previous report.

- (b) the invoices and credits for Materials of the Publisher received from the Publisher or from customers or returned to the Publisher by the Depository since the last report, at net wholesale prices.
 - (c) the quantities and value, at net wholesale prices, of the Publisher's Materials at the Depository's facilities at the date of the current report.
 - (c) the difference between ((a) plus (b)) less (c) above (computed at the above indicated prices), less the service charge and exchange credit provided for in paragraphs (A) (6) and (A) (7), to be the amount due the Publisher.
15. **Remittances.** Remit to the Publisher:
- (a) within 5 days following the collection of amounts due from the State, together with the detailed accounting, all amounts collected by the Depository on behalf of the Publisher, less the service charge and exchange credit provided for in paragraphs (A) (6) and (A) (7); and
 - (b) within 60 days from the termination of this Agreement, and thereafter within 10 days of the Depository's receipt thereof, any amounts due to the Publisher. The Depository shall have the authority to extend credit to the Publisher's local customers, provided that, prior to the extension of such credit, the Depository agrees to guaranty all payments due in connection with such extension of credit.
16. **Submission of Reports.** A copy of each report submitted to the Publisher pursuant to paragraphs (B) (10) through (B) (16) (inclusive) shall be sent to the Publisher or such other person as the Publisher designates in writing from time to time.
17. **Assignment.** The Depository will not sell, transfer, convey, assign or encumber by way of mortgage or otherwise or in any way dispose of its interest in this Agreement, or any part thereof, without the prior written consent of the Publisher.
18. **Payroll Taxes.** Neither the Depository nor any of the individuals employed by the Depository in any way or for any purpose is an employee of the Publisher. The Depository accepts sole and exclusive liability for any payroll taxes and contributions imposed by the Federal Social Security Act and any corresponding state and local laws with respect to the Depository, and will indemnify and hold harmless the Publisher from and against any liability, loss, costs or expenses, including attorneys' fees, incurred by the Publisher relating to or arising out of a breach of the foregoing covenant.
19. **Taxes.** Pay all taxes lawfully and properly levied against the Depository, except ad valorem taxes payable by the Publisher pursuant to paragraph (A) (4) above.

C. MISCELLANEOUS.

1. This Agreement supersedes all previous agreements between the Depository and the Publisher and constitutes the entire agreement between the parties.
2. This Agreement shall continue in full force and effect unless and until terminated as herein provided.
3. This Agreement may be terminated by either party, without cause, upon sixty (60) days written notice, delivered in accordance with paragraph (C) (8), except that such termination cannot be effective between March 31st and November 30th of any year without the written consent of

the other party.

4. Notwithstanding the foregoing, the Publisher may, at any time, terminate this Agreement immediately in the event that:
 - (a) the Depository is in breach of any term or condition of this Agreement, and such breach continues unremedied for a period of 30 days following written notice by the Publisher thereof;
 - (b) the Depository attempts to assign this Agreement or any rights hereunder without the Publisher's prior written consent;
 - (c) there is a change in ownership of the Depository or a majority of the equity interest in the Depository is sold to an entity or person without the Publisher's prior written consent.
 - (d) the Depository ceases to function as a going concern or ceases to be, or to conduct its operation in the normal course of business as, a distributor of education materials;
 - (e) the Depository is generally not paying its debts as they become due, or shall file, or consent by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, or shall make an assignment for the benefit of its creditors, or shall consent to the appointment of a custodian, receiver, trustee or other officer with similar powers for itself or for any substantial part of its property, or shall be adjudicated insolvent or be liquidated, or shall take corporate action for the purpose of any of the foregoing; or
 - (f) the Depository fails to obtain or loses its State approval to operate as a depository in the State or to otherwise perform its obligations hereunder.
5. The Depository hereby agrees to forward to the Publisher or the Publisher's designee any orders it receives for the Publisher's Materials after the termination of this Agreement for a period of one year following such termination.
6. The Depository covenants, represents and warrants that it does not, and shall not, during the term of this Agreement, purchase from the Publisher, other publishers or any other supplier, any of the Publisher's Materials for resale; otherwise deal in the Publisher's Materials (except as an agent for the Publisher); perform any sales or promotional functions relating to the Publisher's Materials, other publishers, or any other supplier; attempt to influence in any way the adoption or purchase of any materials or maintain any position with respect to any adoption or purchase other than a position of strict neutrality; fulfill orders for the Publisher's Materials with anything other than the Publisher's Materials as supplied by the Publisher under this Agreement; or perform any act prejudicial to the interest of the Publisher.
7.
 - (a) The Depository shall hold harmless and indemnify the Publisher from and against any and all forfeitures, damages, suits, claims, penalties, liabilities, judgements and costs and expenses (including reasonable attorneys' fees) arising or resulting from any breach or alleged breach of the representations and warranties set forth herein or any claim, suit or demand arising out of the Depository's failure or refusal to fulfill its obligations under this Agreement.
 - (b) The Publisher may elect either to undertake the defense of any suit, proceeding, action, demand or claim (hereinafter referred to as claim) brought against it which falls within the indemnity provision set forth in subparagraph (a) of this paragraph 7, with counsel

of its own choosing, or to notify the Depository to undertake the defense. In either case, the Depository shall bear the reasonable costs and expenses of such defense, and any settlement or judgement thereof. The Depository shall give the Publisher prompt notice of any claims or facts or circumstances likely to give rise to any claims for which the Publisher is entitled to indemnification. In the event the Depository undertakes the defense of a claim, the Depository cannot settle such claim without the prior written approval of the Publisher.

- (c) The Publisher shall hold harmless and indemnify the Depository from and against any and all forfeitures, damages, suits, claims, penalties, liabilities, judgements and costs and expenses (including reasonable attorneys' fees) arising or resulting from any breach or alleged breach of the representations and warranties set forth herein or any claim, suit or demand arising out of the Publisher's failure or refusal to fulfill its obligations under this Agreement.
- (d) The Depository may elect either to undertake the defense of any suit, proceeding, action, demand or claim (hereinafter referred to as claim) brought against it which falls within the indemnity provision set forth in subparagraph (c) of this paragraph 7, with counsel of its own choosing, or to notify the Publisher to undertake the defense. In either case, the Publisher shall bear the reasonable costs and expenses of such defense, and any settlement or judgement thereof. The Publisher shall give the Depository prompt notice of any claims or facts or circumstances likely to give rise to any claims for which the Depository is entitled to indemnification. In the event the Publisher undertakes the defense of a claim, the Publisher cannot settle such claim without the prior written approval of the Depository.

8. All notices and communications required to be given hereunder shall be in writing, and delivered by hand, or by certified mail, or by commercial overnight courier at the following address. If to the Depository:

The R.L. Bryan Company
301 Greystone Boulevard
Post Office Drawer 368
Columbia, South Carolina 29202-0368
Attention: Chris D. Christiansen

If to the Publisher:

or to such other addresses designated in writing by one party to the other by notice deemed given. Such notice shall be deemed given when received.

- 9. No waiver of any term, provision or condition of this Agreement, whether by conduct or otherwise, shall be deemed to be or construed as a waiver of any other term, provision or condition, nor shall any waiver of any default or breach of this Agreement be deemed to be or construed as a waiver of any other default or breach.
- 10. This Agreement shall continue in full force and effect until terminated as provided herein, for the attached list of Adopted Material for the duration of the State contract and extension.

11. The parties hereby agree that any entity controlling, controlled by or under common control with the Publisher may become a party to this Agreement upon the execution by such entity and the Depository of an Additional Agreement in the form of Exhibit A hereto. References in this Agreement to Publisher shall be deemed to include each additional party. The obligations of each party as a Publisher shall be several and not joint and shall apply solely to its publications.
12. This Agreement shall be construed under and be governed in all respect by the internal laws, and not the laws pertaining to choice or conflicts of laws, of the State of South Carolina.
13. The use of the singular in this Agreement shall be deemed to be and include the plural and vice versa, as the context may require.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

THE R.L. BRYAN COMPANY

By: _____

Name Chris D. Christiansen

Title Chairman/CEO

PUBLISHER

By: _____

Name: _____

Title: _____