

SERVICES AGREEMENT

CP: 007067291

NAME OF DISTRICT: Readington Township Public Schools
ADDRESS OF DISTRICT: 52 READINGTON RD
WHITEHOUSE STATION, NJ 08889

Date	Days	Description	Cost
September 3, 2019	1	ICLE Senior Fellow Eric Sheninger Keynote	\$6000
Total (All Inclusive)			

Total Cost Includes	
Travel and Expenses	<ul style="list-style-type: none"> - Airfare - Ground transportation - Lodging - Meals - All other travel expenses
Materials	- Instructional materials used during the session (as applicable)

Services Agreement valid for 30 days -

Subject to terms and conditions, located at: <http://www.hmhc.com/common/terms-conditions#hmhstc>

The district referenced above hereby accepts and agrees to the details set forth in this Services Summary, including dates and fees, subject to the terms and conditions.

CLIENT:

Signature: _____

Date: _____

Printed Name: _____

Title: _____

- Is a PO needed in order to pay invoice? ☐ Yes ☐ No
- Is the PO attached? ☐ Yes ☐ No If no, anticipated date of PO: _____
- Please invoice from Houghton Mifflin Harcourt: ☐ Upon delivery of service or ☐ Upfront
- If invoice 'upon delivery of service' is selected, please indicate funding/PO expiration/last date HMH can invoice: _____
- Please return Services Agreement and PO (payable to Houghton Mifflin Harcourt) to:
<mailto:dave.fisk@hnhco.com>
Fax (303) 504-9417

A DIVISION OF



Houghton Mifflin Harcourt.

HMH Services

Terms and Conditions

The ordering or acceptance of any Services (defined below) purchased from Houghton Mifflin Harcourt (HMH) or its applicable subsidiaries or affiliates (collectively, "HMH") by any customer (each a "Customer") shall constitute an agreement to these standard terms and conditions set forth herein. These terms, together with any exhibits, attachments, purchase order, and other referenced or linked documentation, the "Agreement," collectively constitute the sole agreement between the parties relating to the subject matter hereof, except for any agreements, amendments, or waivers agreed to in writing by both HMH and Customer. Any contrary or inconsistent terms to this Agreement appearing on purchase orders, acknowledgments, or other documents of Customer or oral stipulations shall not be binding on HMH.

1. Definitions. Capitalized terms shall be defined as set forth below or elsewhere in this Agreement.

- a. "Customer" means the legal entity identified on the purchasing or registration materials. For purposes of this Agreement, Customer includes affiliates specifically listed in a purchase order or in other purchasing or registration materials. Such affiliates agree to be bound by the terms of this Agreement. Customer is responsible for compliance with the terms of this Agreement by all affiliates, subsidiaries and subdivisions purchasing Services hereunder.
- b. "HMH Materials" means any and all materials provided by HMH in the course of delivering the Services, including without limitation, documentation, training materials, professional development materials, program and technical implementation materials, PowerPoints, handouts, books, and webinars.
- c. "Participant(s)" means affiliates or employees of the Customer who will be engaging in the Services being provided by HMH.
- d. "Purchase Order" means purchase order or other Customer ordering document.
- e. "Services" means the services specified in the purchase order or other ordering documents or Statement of Work(s), which may include training, professional development, coaching, "Getting Started" and implementation training, software integration, software implementation, software development and other engineering work performed by HMH for Customer as agreed to by the parties, under this Agreement.
- f. "Services Date" means a date on which Services are scheduled to be delivered.
- g. "Term" means either
 - i. for Services invoiced upon delivery of the Service, the earlier to expire of (x) the Customer's funding for such Services or (y) twenty-four months from the date of acceptance of this Agreement; or
 - ii. for Services billed in advance of delivery and paid within thirty (30) days after receipt of an invoice, the Term shall be twenty-four months from the date of the acceptance of this Agreement.

Notwithstanding the above, if there is a separate written agreement in place between the parties, the term of such agreement shall be the Term of this Agreement. Under extraordinary circumstances and upon mutual written consent of HMH and Customer, the original term-month Term may be extended for an additional twelve-month period up to the expiration date of the Customer's funding.

2. Purchase Order and Payment Terms. Purchase Order. At least thirty (30) days prior to the first date of Services, Customer shall provide HMH with a Purchase Order. If Customer's purchase practice is not to provide a Purchase Order, Customer agrees that it shall sign a Services

Summary or contract and make prompt payment under the terms set forth herein for all Services delivered to Customer by HMM.

- a. **Services Logistics Detail.** No less than thirty (30) days before a Services Date, Customer shall provide to HMM the following information: shipping address for materials, the address and other pertinent details (e.g., room number) of Services delivery sites, and the number of Participants for each day of Services to be delivered. HMM reserves the right to charge Customer expedited shipping charges if additional shipping or handling charges are incurred by HMM, or to reschedule the Services without penalty, as a result of Customer's failure to provide the necessary information within this timeframe.
 - b. **Payment Terms.** Unless an alternative billing schedule has been agreed to by the parties, all fees are due and payable no later than thirty (30) days after each consulting day is delivered and invoiced or thirty (30) days after receipt of an invoice for Services billed in advance of delivery. Late payments shall be subject to a 1% monthly finance charge.
3. **Services Delivery Dates: Scheduling, Rescheduling and Cancellation.** Dates To Be Determined. Dates "to be determined" ("TBD Dates") must be delivered within the Term of this Agreement. Fees paid for any TBD Dates not consumed within the Term will be forfeited by the Customer. When scheduling TBD Dates, the Customer shall contact HMM at least six (6) weeks prior to the first day on which the Customer would like the Services to begin. HMM cannot guarantee availability of dates for specific consultants.
- a. **Date Changes/Rescheduling.**
 - i. Services Dates, once scheduled, may be changed only upon the mutual agreement of HMM and the Customer. In addition to rescheduling fees, any change to the dates or the type of Services herein may change the fees that will be charged.
 - ii. Any date change requests must be received by HMM from the Customer no less than thirty (30) days prior to the scheduled Services Date. All rescheduled Services Dates must be delivered within the Term of this Agreement. All rescheduled Services Dates not consumed within the Term of this Agreement will be forfeited by the Customer and no refund of any prepaid fees shall be given.
 - iii. For any Services Date changes made at any time by Customer for any reason, Customer shall reimburse HMM 100% of any out-of-pocket travel or other ancillary costs spent by HMM in connection with preparation for providing the Services in accordance with this Agreement (e.g., travel already booked).
 - b. **Cancellation.**
 - i. Customer may terminate this Agreement and/or cancel Services without incurring any cancellation fee prior to the scheduling of a Services Date or assignment of the consultant delivering the Services by providing HMM no less than thirty (30) days' written notice prior to the Services Date.
 - ii. Cancellations received from Customer less than thirty (30) days prior to the Services Date shall result in payment by Customer of a cancellation fee of 50% of the fees for the cancelled Services. Cancellations received from Customer less than seven (7) days in advance of the Services Date shall result in payment by Customer of a cancellation fee of 75% of the fees for the cancelled Services.
 - iii. Cancellations received from Customer less than 24 hours prior to the Services Date, or if Customer is absent from the scheduled Service ("no-show"), shall result in payment by Customer of a cancellation fee of 100% of the fees for the cancelled Services.
 - iv. If a cancellation involves more than one Service Date, any cancellation fees shall be prorated accordingly. In all cases, Customer shall pay for any Services actually delivered.

- v. For any cancellation of Services Dates at any time for any reason, Customer shall reimburse HMH 100% of any out-of-pocket travel or other ancillary costs spent by HMH in connection with preparation for providing the Services in accordance with this Agreement (e.g., travel already booked).
 - c. Technical Support and Integration Work. The foregoing rescheduling and cancellation terms may not apply to technical support and integration work. Rescheduling and cancellation terms for such work shall be provided by HMH in conjunction with such work.
- 4. **Force Majeure.** Services may be cancelled or rescheduled without penalty by either Customer or HMH because of a natural disaster, terrorist attack, act of God, war, civil commotion, strikes, labor disputes, or other unforeseeable circumstance that is beyond the control of either HMH or Customer and makes it impossible to hold the scheduled Services.
- 5. **Confidentiality.** Customer acknowledges that in the course of performing the Services under this Agreement, representatives of HMH may disclose certain confidential information to Customer. All concepts, work, materials, and related information disclosed to Customer by any person acting on behalf of HMH are proprietary and confidential information of HMH. Customer acknowledges this and agrees not to disclose any such concepts, work, material or related information to any other parties, or to make any use of the HMH Materials other than the use that is intended by HMH through its provision of the Services.
- 6. **Ownership and Use of Services.** HMH owns and retains all right, title and interest in and to HMH Materials, software, documentation, training and implementation materials, methodology, names of the Services, all parts of the presentations and other materials provided in connection with HMH Services (collectively, "HMH IP"). HMH grants to Customer a personal, nonexclusive license to use the HMH IP for its own non-commercial, incidental use as contemplated herein. Big Ideas Learning, LLC owns all right, title, and interest in all materials supplied by Big Ideas ("Big Ideas Materials") to the Customer and to the Participants as part of the Services. Customer and the Participants are strictly prohibited from reproduction or distribution of the HMH Materials, HMH IP or Big Ideas Materials without prior written permission from HMH. Customer and Participants may not make use of the HMH Materials, HMH IP or Big Ideas Materials in any manner other than the use intended by HMH through its provision of the Services. All data of the Customer is the property of the Customer.
 - a. The trademarks MATH SOLUTIONS, INTERNATIONAL CENTER FOR LEADERSHIP IN EDUCATION, HOUGHTON MIFFLIN HARCOURT, THE LEADERSHIP AND LEARNING CENTER, the names of the courses, and all parts of the presentations and the materials for the courses are owned solely by Houghton Mifflin Harcourt Publishing Company with all rights, including reproduction rights and copyrights, reserved to Houghton Mifflin Harcourt Publishing Company.
 - b. No part of the Services or any related materials may be videotaped, audio taped, photographed or in any way copied, excerpted, reproduced or distributed without the prior written consent of HMH. Participants must also refrain from using their cell phones and other electronic devices during the presentation of the Services. To ensure the quality of the Services for other Participants, Participants may be asked to leave if they engage in this activity.
- 7. **Independent Contractor.** HMH and Customer are not partners or joint venturers and nothing contained herein shall be construed as creating an employment, partnership, joint venture, agency, or any other relationship whatsoever, except that of independent contractors, between HMH and Customer.
- 8. **Disclaimer of Warranties and Indemnities; Limitation of Liability.** ALL SERVICES ARE PROVIDED ON AN "AS IS" BASIS, AND HMH EXPRESSLY EXCLUDES THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT. TO THE EXTENT PERMITTED BY LAW, CUSTOMER

AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS HMH AND ITS PARENT, AFFILIATES, SUCCESSORS AND ASSIGNS AND THEIR RESPECTIVE OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ANY AND ALL LOSSES, COSTS AND EXPENSES (INCLUDING REASONABLE OUTSIDE ATTORNEYS' FEES AND EXPENSES) INCURRED IN DEFENDING ANY CLAIM, JUDGMENT OR PROCEEDING RELATING TO OR ARISING OUT OF: (I) CUSTOMER'S BREACH OR ALLEGED BREACH OF ITS REPRESENTATIONS, WARRANTIES, OBLIGATIONS AND AGREEMENTS CONTAINED IN THESE TERMS; AND/OR (II) THE DISTRIBUTION, RESALE AND PROMOTION OF SERVICES BY CUSTOMER. HMH WILL HAVE THE RIGHT TO CONTROL THE DEFENSE AND SETTLEMENT OF ANY CLAIMS SUBJECT TO INDEMNIFICATION HEREIN. HMH SHALL HAVE NEITHER LIABILITY NOR RESPONSIBILITY TO ANY PERSON OR ENTITY WITH RESPECT TO ANY LOSS OR DAMAGE ARISING FROM THE SERVICES, INCLUDING, WITHOUT LIMITATION, HMH'S FAILURE OR ALLEGED FAILURE TO FILL ORDERS BY CUSTOMER IN WHOLE OR IN PART. HMH DOES NOT GUARANTEE THAT ANY SERVICES WILL BE DELIVERED ERROR-FREE OR UNINTERRUPTED. HMH DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. HMH SHALL NOT BE LIABLE FOR ANY DAMAGES TO COMPUTERS, COMMUNICATION SYSTEMS, DATA OR SERVICES THAT MAY ARISE AS A RESULT OF THE USE OF SERVICES. IN NO EVENT SHALL HMH BE LIABLE TO CUSTOMER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER IN TORT, CONTRACT, STRICT LIABILITY, WARRANTY OR OTHERWISE, AND REGARDLESS OF ANY NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL HMH'S TOTAL AGGREGATE LIABILITY IN CONTRACT, TORT OR OTHERWISE ARISING OUT OF OR IN CONNECTION WITH THESE TERMS EXCEED THE FEES PAID OR PAYABLE BY CUSTOMER DURING THE MOST RECENT TWELVE (12) MONTH PERIOD PRIOR TO THE CLAIM.

9. **Jurisdiction, Venue, Choice of Law.** THE STATE COURTS OF THE COMMONWEALTH OF MASSACHUSETTS SITTING IN SUFFOLK COUNTY AND, IF THE JURISDICTIONAL PREREQUISITES EXIST AT THE TIME, THE UNITED STATES DISTRICT COURT FOR MASSACHUSETTS SHALL HAVE THE SOLE AND EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY DISPUTE OR CONTROVERSY ARISING UNDER OR CONCERNING THIS CONTRACT. THIS CONTRACT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HERETO SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF MASSACHUSETTS, WITHOUT REFERENCE TO ITS PRINCIPLES OF CONFLICTS OF LAWS, EXCEPT THAT FOR GOVERNMENTAL CUSTOMERS IN THE UNITED STATES THESE TERMS SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE IN WHICH THE GOVERNMENT AGENCY CUSTOMER IS LOCATED.
10. **Entire Agreement and Amendment.** This Agreement, including any attachments or exhibits, other than any terms and conditions applying to the provision of product support and hosting services, constitutes the entire agreement between the parties concerning the Services, and can only be amended by a writing signed by authorized representatives of HMH and Customer