



MEMORANDUM

To: Chuck Perry

From: Jean Brassfield

Date: October 10, 2022

Re: Reading Horizons Online Licenses

SUBJECT

Accept and approve the NEW AGREEMENT between Broken Arrow Public Schools and Reading Horizons to provide 30 student online licenses for secondary EL students. The total cost to the district is \$3,300.00 to be paid for using ESSER III funds. – Jean Brassfield

SUMMARY

Reading Horizons Elevate online software includes a comprehensive administration system which includes 81 multisensory interactive lessons, vocabulary development with over 13,000 terms, reading library with 280+ reading passages to build fluency and comprehension, and the pronunciation tool. Currently, secondary EL students do not have an online program that provides these resources. The total cost for 30 student licenses is \$3,300.00.

ENCLOSURE/ATTACHMENTS

License Quote/Agreement

FUNDING

ESSER III Funds

RECOMMENDATION

Approve

Reading Horizons Quote

Name	Price	QTY	Subtotal
Reading Horizons Instructional Software			
<p>Reading Horizons Elevate® Software Seats</p> <p>Reading Horizons Elevate® Online Software includes a comprehensive Administration System, Unit References, Interactive Lessons, vocabulary development system with over 1,000 terms, Phonics Library with 200+ words, 30 build fluency and comprehension, and the Personalization tool Reference Materials User Manual. It is necessary to purchase an entry for each student that will access the program. Student may be deleted at any time and replaced with new students. The software is accessible from any computer with an internet connection. Student can access the software on their home computers at no additional charge.</p>	\$110.00	30	\$3,300.00
Total			\$3,300.00

Purchased software seats will renew 12 months after the day your PO is received.

Reading Horizons License and Services Agreement

This Reading Horizons License and Services Agreement (the "Agreement") is made effective as of the date of the last signature on the signature page hereto (the "Effective Date"), between HEC Software, Inc. a Utah corporation d/b/a Reading Horizons ("Vendor") and the undersigned school(s) ("Customer").

Background

- 4.1 Vendor and Customer desire to enter into this Agreement, under which Customer shall obtain a non-exclusive, nontransferable license to use certain computer software (the "Software") and direct instruction materials hereafter referred to as the Works, in object code form and related documentation on certain terms and conditions for the purpose of providing language instruction to Customer's students.
- 4.2 Vendor desires to offer Customer certain services, with respect to The Works, on the terms and conditions set forth herein.

AGREEMENT

NOW THEREFORE, in consideration of the premises hereof, and the mutual obligation herein, the parties hereto, intending to be legally bound, hereby agree as follows:

SECTION 1 Definitions

For the purposes of this Agreement, the following definitions shall apply to the respective bold printed terms:

- 1.1 **The Works.** This term will either refer to Reading Horizons Discovery® online software, and/or Reading Horizons Elevate® online software and/or Reading Horizons Elevate® network software, and/or Reading Horizons Online Professional Development Course, and/or in-person professional development, and/or direct instruction material as indicated on Exhibit A.
- 1.2 **Software.** Software refers to Reading Horizons Discovery® or Reading Horizons Elevate® or Reading Horizons Online Professional Development Course and all associated documentation and other instructions.
- 1.3 **Agreement Term.** An initial term as indicated in Exhibit A, commencing on the Effective Date. Any extensions of the initial term shall be dependent on payment of the annual charges as set forth herein.
- 1.4 **Software Problem.** Any defect or failure of the Software to conform in all material respects to functional specifications, as outlined in the User Manual that accompanies the Software, will be a Software Problem. However, any problem caused by conflicts with other programs and/or hardware installed on the Customer's system or other problems caused by Customer's incorrect use of the

System shall not be a Software Problem.

- 1.5 **Solution.** The correction of a Software Problem is the Solution. Solutions may include a major release (“Releases”), a minor release, or a patch release.
- 1.6 **Enhancement.** Any modification or addition that is intended to improve the Software’s utility, efficiency, or functional capability rather than constituting solely a Solution to a Software Problem.
- 1.7 **Professional Development.** Professional development is defined as training or learning support provided by Vendor to Customer to establish, maintain and advance their skills, knowledge and competencies, specifically as they relate to Reading Horizons products. Professional Development may be formal, informal, in person, and/or virtual.
- 1.8 **Normal Working Hours.** The hours between 8:00 a.m. and 5:00 p.m. Mountain Standard Time on the days Monday through Friday, excluding regularly scheduled federal and state holidays when Utah banks are closed.
- 1.9 **Releases.** New versions of the Software, which include both Software Problem Solutions and major Enhancements.

SECTION 2

Scope of Services

- 2.1 During the Agreement Term, Vendor shall render the following services in support of the Software, during the Normal Working Hours:
 - a. Vendor shall maintain a program control center capable of receiving (1) faxed reports (801-295-7088), (2) telephone service calls (800-333-0054), or (3) e- mail requests for service (support@readinghorizons.com).
 - b. Vendor shall maintain a trained staff capable of rendering the services set forth in this Agreement. Vendor reserves the right to access Customer accounts, including data, in order to provide service and support to Customer.
 - c. Vendor shall be responsible for using all reasonable diligence in correcting verifiable and reproducible Software Problems when reported to Vendor in accordance with Vendor’s standard reporting procedures. Vendor shall, within 48 hours of verifying that such Software Problem is present, initiate work toward development of a Solution to the Software Problem. Following completion of the Solution, Vendor shall provide that Solution through a “temporary fix” consisting of sufficient programming and operating instructions to implement the Solution. Vendor shall not be responsible for correcting Software Problems in any version of the Software other than the most recent Release of the Software, provided that Vendor shall continue to support prior Releases superseded by the recent Release for a reasonable period sufficient to allow the Customer to implement the newest Release, not to exceed 90 days. In the event that Vendor provides a Software Solution, the license provided pursuant to this Agreement shall be deemed to include such Software Solution.
 - d. Vendor may, from time to time in its sole discretion, issue new Releases of the Software to its customers generally, which shall include the Customer,

which may contain Solutions to Software Problems and/or Enhancements. Vendor shall provide all Customers the Releases who have agreements with Vendor with a current term, whether that term is the initial term or an extension term upon payment of the annual renewal fee, at no additional charge. Vendor shall provide reasonable assistance to help Customer install and operate each new Release.

- e. In the event that Vendor provides a new Release of the Software, the license provided pursuant to this Agreement shall be deemed to include such new Release subject to terms in Exhibit A.
- f. Subject to space availability, Customer may enroll its personnel in Vendor's training classes, held at Vendor's facility in Utah, for regular or advanced training. Attendees will be subject to applicable training charges.
- g. Vendor may notify customers of Releases, Enhancement, or general information about use and operation of the software via email, phone, or in writing. Customer is responsible for notifying Vendor of changes in contact information or relevant personnel.
- h. Vendor will maintain Internet server equipment to provide electronic storage and Customer access to the Software. Customer will be given one week's notice prior to scheduled maintenance, which Vendor will attempt to schedule outside of Normal Working Hours for the convenience of its customers. Vendor will be responsible for equipment maintenance, data backup, and general virus protection. Occasionally there may be unforeseen disruptions in service. Vendor will take adequate precautions to avoid such disruptions and will work with reasonable diligence to restore service for Customer. In the event that student records need to be restored, Vendor will guarantee accuracy of data within a margin of seven days. Brief disruptions of service for purposes of regular system maintenance or to fix unforeseen server problems shall not constitute a material breach of this Agreement. Vendor agrees to adhere to the additional security measures as outlined in Exhibit B.

2.2 For purchases which include In-Person Professional Development, Customer and Vendor will work together to find mutually agreeable dates and times to fulfill that obligation.

- a. Customer will make reasonable efforts to accommodate Vendor or representatives of the Vendor in scheduling Professional Development sessions.
- b. Unanticipated travel delays or technical difficulties which reasonably delay Professional Development by either party shall not constitute material breach of this Agreement.
- c. In-Person Professional Development days must be scheduled and completed within 365 days of purchase.

SECTION 3 Fees and Charges

3.1 Customer shall pay Vendor:

IN WITNESS WHEREOF, the parties have caused this Reading Horizons Software Agreement to be executed by their duly authorized representatives as set forth below.



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VENDOR:

HEC Software, Inc.
a Utah corporation d/b/a Reading Horizons

By: _____

Print Name: _____

Vendor's Authorized Agent

Date: _____

CUSTOMER:

Print Name
of School(s): _____

Signature: _____

Print Name of
Authorized Agent: _____

Print Title of
Authorized Agent: _____

Date: _____

Implementation Date: _____

SECTION 5

Disclaimer of Warranty and Limitation of Liability

- 5.1 Except as expressly set forth in this Agreement, including but not limited to Exhibit A, Vendor expressly disclaims any and all warranties concerning the Software, any Vendor Programs, or the services to be rendered hereunder, whether expressed or implied, including (without limitation) any warranty of merchantability or fitness for a particular purpose.
- 5.2 In no event shall Vendor's cumulative liability for any claim arising in connection with this Agreement exceed the lesser of the total fees and charge paid to Vendor by the Customer within the last 12 months. In no event shall Vendor be liable for any lost profits, indirect, consequential, special, exemplary, or incidental damages of whatever kind and however caused, even if Vendor knew or should have known of the possibility of such damages.
- 5.3 No action, whether based on contract, strict liability, or tort, including any action based on negligence, arising out of the performance of services under this Agreement, may be brought by either party more than four years after such cause of action accrued, except that an action for nonpayment may be brought within two years of the date of the last payment.

SECTION 6

Termination

- 6.1 This Agreement may be terminated, as follows:
- a. This Agreement may be terminated by either party upon the expiration of the initial term of the Agreement, provided that at least 90 days' prior written notice is given to the other party; or
 - b. This Agreement may be terminated by either party upon 30 days' prior written notice that the other party has materially breached the provisions of this Agreement and such breaching party has not cured such breach within such notice period.
- 6.2 Following termination of the Agreement, the license granted herein shall immediately and automatically terminate, and Vendor shall immediately invoice Customer for all accrued fees and charges and all reimbursable expenses, and Customer shall pay the invoiced amount immediately upon receipt of such invoice. Any amount not paid within 30 days after the invoice date shall bear interest at the rate of five percent (5%) per month.

SECTION 7

Miscellaneous

- 7.1 Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms. The parties further agree that this is the complete and exclusive statement of the Agreement of the parties with respect to the subject matter hereof and that it supersedes and merges all prior proposals, understandings, and agreements, whether oral or written, between the parties with

respect to the subject matter hereof. This Agreement may not be modified except by a written instrument duly executed by the parties hereto. Exhibit A and Exhibit B are expressly incorporated into the Agreement and constitute part of its terms. Any purchase orders generated by either party are expressly incorporated into the Agreement.

- 7.2 This Agreement and the parties' obligations hereunder shall be governed, construed, and enforced in accordance with the laws of the state of Utah and any proceeding brought to enforce or litigate this Agreement shall be brought in the Utah state or federal courts located in Salt Lake County.
- 7.3 In the event any proceeding or lawsuit is brought by either party in connection with this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorney's fees from the other party.
- 7.4 In the event that any provision of this Agreement is held invalid, illegal, or unenforceable, the remaining provisions shall be enforced to the maximum extent permitted by applicable law. No waiver shall be effective without the written consent of the waiving party.
- 7.5 Neither party may assign its rights or duties under this Agreement without the prior written consent of the other party, except to a successor of all or substantially all of its business and properties or to an affiliated entity held under common control with the party.
- 7.6 The waiver by either party of any term or condition of this Agreement shall not be deemed to constitute a continuing waiver thereof nor of any further or additional right that such party may hold under this Agreement.
- 7.7 This Agreement and any exhibit hereto may be amended or modified only in writing and with both parties signing such amendment or modification.
- 7.8 This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but when taken together shall constitute a single instrument. This Agreement may be executed and delivered electronically and shall be valid and binding as an original.
- 7.9 Acceptance of this Agreement may be manifested by executing the Agreement, by Customer sending a purchase order to Vendor, or by Customer sending payment to Vendor.

[signatures follow on the next page]

EXHIBIT A
Reading Horizons License and Services Agreement

1. The Works shall include:
 - Reading Horizons Elevate® Student Entry Licenses
2. The Agreement term shall be one year from 9/20/2022. Vendor shall invoice Customer for the annual charges on the one-year anniversary of the Effective Date of the Agreement. Customer will have 30 days to pay the charges upon invoice. Customers who do not pay charges within 30 days of invoice will be subject to fees and charges as outlined in section 3.2 of the Agreement. Vendor reserves the right to change its rate schedule per the Agreement.
3. The use of the Software network or online student entries, or online teacher entries, will be left to the discretion of Customer; including the deletion of old students and reentering of new students. Customer does not have permission to allow student access to online student entries at institutions of learning for which the Participation Fee has not been paid (i.e. at sites not set forth above in this Exhibit A).