

ONLINE TUTORING SERVICES AGREEMENT

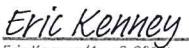
This **ONLINE TUTORING SERVICES AGREEMENT** ("Master Agreement") dated **July 12, 2018** is entered into between **Eastern Kentucky University ("CLIENT")** and NCS Pearson, Inc. operating through its Smarthinking Division, a Minnesota corporation with offices located at 1919 M Street, Suite 600, Washington, DC 20036 (Smarthinking) and "**CLIENT**" (each a "Party", and collectively the "Parties").

I. BILLING INFORMATION	II. TERM
CLIENT: Eastern Kentucky University Attn: Julie Curry Address: 521 Lancaster Ave Commonwealth 1708 Richmond, KY 40475 Phone: (859)622-7441 Fax: Email: Julie.Curry@eku.edu Smarthinking Rep email: Jennifer.Koch@pearson.com	A. Master Agreement Date: July 12, 2018 B. Agreement continues until written notice of termination by either Party at the conclusion of an existing "Statement of Work(s)" as described below. Smarthinking FIN: 41-0850527 <i>Prices guaranteed for 30 days from date of contract initiation.</i>
III. SERVICES:	
<p>A. Smarthinking Tutoring Services. To the extent set forth in a Statement of Work ("SOW") signed by the Parties, Smarthinking shall provide to a person enrolled as a student in Client's institution ("Student") one-to-one online tutoring services ("Smarthinking Tutoring Services"). Smarthinking Tutoring Services shall consist of live and asynchronous tutoring services provided via Smarthinking's Web site, currently located at www.smarthinking.com ("Smarthinking.com"). A full description of the Smarthinking Tutoring Services are described in Appendix A, attached hereto.</p> <p>B. Smarthinking Professional Services To the extent set forth in a SOW signed by the Parties. Smarthinking shall provide to Client professional services ("Smarthinking Professional Services") to support Client's implementation and operation of Smarthinking Tutoring Services at its institution. To the extent set forth in a SOW signed by the parties, Smarthinking shall provide Client with a license to use Smarthinking's proprietary online tutoring platform to enable Students to communicate with Smarthinking's tutors using the Smarthinking platform. A full description of the Smarthinking Professional Services is contained in Appendix B, attached hereto. The Smarthinking Tutoring Services, together with the Smarthinking Professional Services are hereinafter referred to as the "Smarthinking Services".</p> <p>C. Exclusions. Smarthinking shall not be responsible for obtaining or providing any hardware necessary to access or use the Smarthinking Services, including, but not limited to, Internet service, telephones, access lines, modems and computer equipment.</p> <p>Access. Smarthinking will work with Client to identify an appropriate student account access method. Reporting access will also be provided to the Client during setup.</p>	
IV. SCOPE and FEES:	
<p>A. Scope. To the extent set forth in a SOW signed by the parties, Smarthinking shall provide Client with the Smarthinking Services, per the terms set forth in Appendices A and B, and/or as described in any applicable SOW, which shall be attached hereto as Appendix C. All such Appendices and SOWs are incorporated into and made part of this Master Agreement. In the event of any conflict between this Master Agreement and Appendix A or B, the Master Agreement shall control.</p> <p>B. Fees. In consideration of the Smarthinking Services described in a SOW, Client shall pay Smarthinking all fees within thirty (30) days of the Date the SOW is signed by Client. The provisioning of Smarthinking Services is contingent upon full payment. Except as otherwise specified herein or in a SOW: (i) fees are based on Services purchased and not on actual usage; and (ii) payment obligations are non-cancellable and fees paid are non-refundable.</p>	

b) **Payment and Invoicing.** Applicable payment terms are set forth in each Order and fees of each SOW shall be invoiced directly and solely to the Client, based on an invoice provided either annually, quarterly, monthly or at the end of term depending on the SOW. Additional invoice requests will result in an additional administrative fee. (c) **Suspension.** Smarthinking reserves the right to suspend the performance of any or all of its obligations under a specific SOW **immediately without further written notice** if amounts related to such SOW are not paid when due and remain unpaid at the end of such notice period. (d) **Acceleration.** In the event that Client permits a student or user to use tutoring hours before payment is due, then scheduled payments for applicable subsequent months thereunder shall be automatically accelerated to become immediately due and payable, notwithstanding any extended payment terms provided in the applicable SOW.

V. Additional Terms and Conditions. Additional terms and conditions applicable to the use of the Smarthinking Services offered in this Master Agreement can be found at <http://services.smarthinking.com/sowtc>.

NCS Pearson, Inc.:


Eric Kenney

Signature

Eric Kenney

Business Manager

Printed Name and Title

Aug 6, 2018

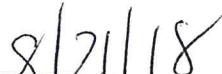
CLIENT:


Andrea Casheill

Signature


Andrea Casheill

Printed Name and Title

 8/21/18

Date Signed by Client

Appendix A: Tutoring Services

A.1 **Tutoring Subject Areas.** Smarthinking's tutoring services consist of online tutoring in the following Tutoring Subject Areas on drop-in, pre-scheduled, and/or asynchronous bases (see www.smarthinking.com for detailed listing of topics covered for each area):

Mathematics (Basic Math - Calculus II)	Writing (for all courses, including ESL)
Statistics	Writing Help
Accounting	Career Writing Support
Economics	Reading
Introductory Finance	Biology
Spanish	Introductory Human Anatomy & Physiology
Physics	Chemistry
Computers and Technology	Organic Chemistry
Nursing	Allied Health

Tutors (Smarthinking's tutors) are available in the above Tutoring Subject Areas. Tutoring Subject Areas are subject to change by Smarthinking, by providing Client with 60-days' notice via email. The hours tutors are available are as determined by Smarthinking at its sole discretion. Tutors' hours are posted on the Smarthinking.com Website.

A.2 **PURCHASE OF BLOCKS OF TUTORING HOURS.** Blocks of tutoring hours may be purchased by Client at the then current rates published by Smarthinking, unless otherwise provided in an executed SOW.

A.3 **Deduction of Purchased Tutoring Hours.** As Students use the Smarthinking Tutoring Services, time is deducted from Client's master account based on the amount of services used. See Time Deduction Table below. Client can monitor Student usage from their administrative account, and Student accounts can be limited by time and/or tutoring subject area. Time is deducted from Client's account according to the following:

Time Deduction Table

Service Used	Charge to Client Account
Dropin tutoring with Smarthinking tutors	Metered to the minute
Submission to online Writing Center	Metered to the minute
Prescheduled Session with tutor	30 minute minimum increments
Asynchronous Question Submission	Metered to the minute

The Time Deduction Table is subject to change by Smarthinking, at its discretion. Client will be provided 60-day notice via email prior to any change.

A.4 Inclusions in Smarthinking Tutoring Services.

- (a) Access to Smarthinking-trained and monitored tutors.
- (b) Account management by an assigned Account Implementation Manager and marketing assistance.
- (c) Use of the Smarthinking online platform for delivery of service by Smarthinking tutors excluding any Platform Licensing services unless included elsewhere in this Appendix A.
- (d) Webinar training by Smarthinking on using the service
- (e) Customer service and technical support for Students and faculty of Client by call-back request form online.
- (f) Unlimited access to available Smarthinking study resources on the Smarthinking.com website.
- (g) Student access for Smarthinking service will depend upon the particulars of the implementation and the options available within the institutional environment. Options include student access via SSO using LTI, a roster upload of designated accounts, or direct access with self-registration.
- (h) Usage Reporting. It is Client's responsibility to designate and control who is to receive administrative access to reports in accordance with Client's regulations on the handling of student data.

Appendix B: Professional Services

Costs, if any, for these services will be set in accord with Smarthinking's then current pricing and written into the SOW.

**B.1 New Customer Set-up, Training & Support for Smarthinking Online Tutoring Services:
\$1500, one-time fee**

- (a) Private labeling of Client's home page with Client logo and color selection.
- (b) Student account creation with Client-designated subjects and services.
- (c) Client administrative account creation with implementation assistance.
- (d) Training: Smarthinking's Account Implementation Manager will work with Client to develop an agenda that reflects current needs and may include sessions focused on introducing Smarthinking to faculty, staff, and/or students, and discussing strategies for using these services to supplement instruction.
- (e) Training materials will be provided at the time of the training.
- (f) Training will occur via the web.

B.2 On-Site Training: \$1500/day

- (a) Smarthinking's account implementation manager will work with Client to develop an agenda that reflects current needs and may include sessions focused on introducing Smarthinking to faculty, staff, and/or students, and discussing strategies for using these services to supplement instruction.
- (b) Training materials will be provided at the time of the training.
- (c) Collateral will be provided that is designed to optimize use of Smarthinking's services.

B.3 Academic Consulting: 1 Hr included with New Customer Set-up Fee

- (a) Individual or Group sessions on how to incorporate Smarthinking Tutoring Services into Client curriculum to improve outcomes and retention. Work beyond the initial one hour consultation may incur a separate fee to be determined based on engagement.
- (b) One hour of Academic Consulting included for new Clients. Included with New Customer Set-Up Fee.

Appendix C-013477
STATEMENT OF WORK (SOW-013477)
(Statement of Work Dated July 12, 2018)

This Statement of Work (SOW) is made under and governed by the Online Tutoring Services Agreement, entered into between **Eastern Kentucky University** (Client) and NCS Pearson, Inc. operating through its Smarthinking Division (Smarthinking) dated **July 12, 2018**. Pricing offered in this SOW is valid until August 15, 2018.

A. Term of SOW:

Start Date: July 1, 2018
End Date: June 30, 2019

Client is purchasing hours stated below at **\$25.00** per hour. Hours must be used within the *Term of SOW*. Unused hours may be rolled over for use in the following twelve (12) month period as outlined in a subsequent SOW that is executed between the parties within 45 days of this SOW End date.

Overages: Any hours used by Client that are in excess of the Total Hours set forth in this SOW shall be invoiced at a rate of **\$25.00** per hour.

B. The following list of purchases and deliverables are agreed to by the Parties:

Online Tutoring Services used:

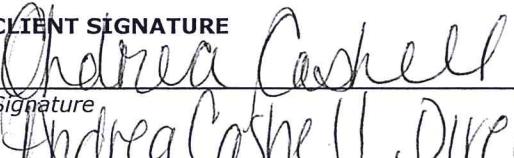
- 600 # of Hours @ \$25.00 per hour ("Total Hours")
- Total Fee for Tutoring Services: \$15,000.00

TOTAL FEES DUE Smarthinking PURSUANT TO THIS SOW: \$15,000.00

Client shall pay Smarthinking all fees within thirty (30) days of receipt of invoice.

BILLING INFORMATION			
CLIENT:	<u>Eastern Kentucky University</u>	Phone:	<u>(859)622-7441</u>
Attn:	<u>Julie Curry</u>	Fax:	<u></u>
Address:	<u>521 Lancaster Ave.</u>	email:	<u>Julie.Curry@eku.edu</u>
		<input type="checkbox"/> I would like to receive additional invoices via email.	

CLIENT SIGNATURE


Signature
Andrea Cashell, Director

Printed Name and Title

8/2/18

Date Signed by Client

859 622 2246

Telephone

I would like to receive any additional invoices via email.

Email Address: _____

PEARSON

Eric Kenney

Eric Kenney (Aug 6, 2018)

Signature

Eric Kenney

Printed Name and Title

Aug 6, 2018

Date

Fax: 206-260-8525

Remit Payment by Check to:

NCS Pearson, Inc.

13036 Collection Center Drive

Chicago, IL 60693

Smarthinking Rep Email: Jennifer.Koch@pearson.com

Terms and Conditions for Online Tutoring Services (SMARTHINKING)

Date: June 8, 2016

1. Term and Termination.

1.1 Term. The Master Agreement shall become effective upon the Effective Date and shall remain in effect during the Term as set forth in the Initial Statement of Work or any subsequent Statement(s) of Work.

1.2 Termination. Either Party may, at its option, terminate the Master Agreement if a material default is not cured within forty-five (45) days after receipt of a written notice of the default. Either Party may, at its discretion, terminate the Master Agreement for convenience with thirty (30) days written notice.

1.3 Suspension. Without limiting any other rights hereunder, SMARTHINKING reserves the right to immediately suspend its services hereunder if (i) the Client's course or any action of Client or its faculty creates, in SMARTHINKING's reasonable judgment, a risk of liability against SMARTHINKING for infringement of intellectual property, defamation, invasion of privacy or similar complaints, (ii) a Student's actions are reasonably considered by SMARTHINKING to be harmful, abusive, hateful, obscene, or threatening, (iii) Client or its Students distribute user names or passwords in contravention of the Master Agreement.

1.4 Effects of Termination. Upon termination or expiration of the Master Agreement, all rights and licenses granted to Client and its Students shall immediately terminate. In the event of termination or expiration of the Master Agreement, any term or provision of the Master Agreement, or portion thereof, that by its nature survives the termination or expiration of the Master Agreement shall survive and continue in effect and shall inure to the benefit of and be binding upon the Parties and their legal representatives, successors, and assigns.

2. ACCESS CONTROL.

2.1 Distribution. Client is responsible for distributing usernames and passwords to its Students, each of whom is solely responsible for maintaining their confidentiality. SMARTHINKING shall enable Client to create usernames and passwords for student accounts. Client shall notify SMARTHINKING immediately of any unauthorized use of any account or password.

2.2 Access to Archives. Upon expiration of the Master Agreement for any reason, or the end of a term of an SOW, Client's Students shall retain access to their archived tutoring sessions for up to sixty (60) days, and Client shall retain access to archived reports for up to ninety (90) days. During the term of the Master Agreement, Client's Students and Client shall have access to archived tutoring sessions and reports for up to one (1) year.

3. PAYMENT.

3.1 Late Fee. Client shall pay SMARTHINKING a surcharge of one point five percent (1.5%) per month or the maximum rate allowed by law, whichever is less, on any fees not paid when due under the Master Agreement.

3.2 Taxes. If applicable, each Party shall be exclusively liable and bear total responsibility for the payment of any and all taxes due in connection with the sale of products or services under the Master Agreement. All payments due under the Master Agreement or any Statements of Work shall be made without any deduction or withholding, unless such deduction or withholding is required by any applicable law of any relevant governmental revenue authority then in effect. If Client is required to deduct or withhold, Client will promptly notify SMARTHINKING of the requirement, pay the required amount to the relevant governmental authority, provide SMARTHINKING with an official receipt or certified copy or other documentation acceptable to SMARTHINKING evidencing payment, and pay to SMARTHINKING, in addition to the payment to which SMARTHINKING is otherwise entitled under the Master Agreement or any Statements of Work, such additional amount as is necessary to ensure that the net amount actually received by SMARTHINKING equals the full amount SMARTHINKING would have received had no such deduction or withholding been required.

4. MARKETING and SURVEYS.

4.1 As may be permitted by the Client's Rules and Regulations, Client shall make available to its students and faculty implementation materials provided by SMARTHINKING from time to time.

5. Use of SMARTHINKING.COM.

5.1 Terms of Use. Student access to SMARTHINKING.com and the SMARTHINKING Services is governed by the restrictions, rules, or conditions outlined in the **Terms and Conditions** and **Privacy and Purchase Policies** at SMARTHINKING.com, and as may be updated and published from time to time by SMARTHINKING.

6. Intellectual Property.

6.1 Client Course. No title to or ownership of any portion of the Client's course, nor any proprietary or intellectual property rights related therein, shall be transferred by virtue of this Agreement. The Client's course shall remain the Client's sole and exclusive property. Client warrants and represents that its course does not infringe any trademark, trade secret, copyright or U.S. patent.

6.2 SMARTHINKING. No title to or ownership of any portion of SMARTHINKING.com nor the SMARTHINKING Services shall be transferred by virtue of the Master Agreement. SMARTHINKING.com and the SMARTHINKING Services shall remain SMARTHINKING's sole and exclusive property. SMARTHINKING reserves all of its intellectual property and proprietary rights to any information, data or materials generated or gathered as part of the provisioning of SMARTHINKING Services.

7. Disclaimer of Warranties. SMARTHINKING SERVICES AND SMARTHINKING.COM ARE PROVIDED ON AN "AS IS" OR "AS AVAILABLE" BASIS WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. SMARTHINKING MAKES NO WARRANTY THAT THE SMARTHINKING SERVICES AND SMARTHINKING.COM WILL MEET CLIENT OR STUDENT REQUIREMENTS, OR THAT SMARTHINKING SERVICES OR SMARTHINKING.COM WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE; NOR DOES SMARTHINKING MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF SMARTHINKING SERVICES OR SMARTHINKING.COM OR AS TO THE ACCURACY OR RELIABILITY OF ANY INFORMATION

OBTAINED THROUGH SMARTHINKING.COM OR SMARTHINKING SERVICES. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM SMARTHINKING SHALL CREATE ANY WARRANTY NOT EXPRESSLY MADE IN THIS AGREEMENT.

8. Limitation of Liability. TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, IN NO EVENT SHALL SMARTHINKING BE LIABLE TO CLIENT, STUDENTS OR ANY THIRD PARTY FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, INDIRECT, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES) ARISING OUT OF THE USE OF OR INABILITY TO USE SMARTHINKING.COM OR ANY OF THE SMARTHINKING SERVICES, OR FOR ANY CLAIM BY ANY OTHER PARTY, EVEN IF SMARTHINKING HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9. General Provisions.

9.1 Severability. Should any term or provision of this Agreement be finally determined by a court of competent jurisdiction to be void, invalid, unenforceable or contrary to law or equity, the offending term or provision shall be modified and limited (or if strictly necessary, deleted) only to the extent required to conform to the requirements of law and the remainder of this Agreement (or, as the case may be, the application of such provisions to other circumstances) shall not be affected thereby but rather shall be enforced to the greatest extent permitted by law.

9.2 Relationship of Parties. Nothing contained in this Agreement shall create any partnership or joint venture between the parties. This Agreement is not for the benefit of any third party not a signatory hereto and shall not be deemed to give any right or remedy to any such party whether referred to herein or not.

9.3 Notices. All notices, requests, and other communications hereunder shall be in writing delivered by any of the following: email; personal delivery; first class certified or registered mail; return receipt requested; U.S. Express mail, or an express overnight service (such as Federal Express), addressed to the respective parties at the addresses set forth in this Agreement or to such other person or address as a party hereto shall designate to the other party hereto from time to time in writing forwarded in like manner. Any notice, request, consent, demand or communication given in accordance with the provisions of this paragraph shall be deemed to have been given and effective when actually received.

9.4 Assignment. Client may not assign this Agreement without the prior written consent of SMARTHINKING, which consent shall not be unreasonably delayed or withheld.

9.5 Entire Agreement. This Agreement sets forth all of the promises, agreements, conditions and understandings between the parties respecting the subject matter hereof and supersedes all prior and contemporaneous negotiations, conversations, discussions, correspondence, memoranda, and agreements between the parties concerning the subject matter of this Agreement.

9.6 Updates. These Terms and Conditions may be updated from time to time at the sole and exclusive discretion of Pearson. Any such updated Terms and Conditions shall be published at the following URL: <http://services.smarthinking.com/sowtc>

9.7 Governing Law. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HERETO SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE OF NEW YORK COMMONWEALTH OF KENTUCKY AS IF

EXECUTED AND FULLY PERFORMED THERE, WITHOUT REGARD TO ITS PROVISIONS ON CHOICE OF LAW. EXCLUSIVE JURISDICTION AND VENUE OVER ALL DISPUTES HEREUNDER SHALL BE IN THE FEDERAL AND STATE COURTS OF THE STATE OF NEW YORK COMMONWEALTH OF KENTUCKY LOCATED IN THE COUNTY OF NEW YORK, FRANKLIN.

DK

EK
EK

Aug 23, 2018

Signature: *Eric Kenney*
Eric Kenney (Aug 23, 2018)

Email: eric.kenney@pearson.com