



## Master Service Agreement

This Master Services Agreement ("Agreement") is made as of the date of last signature below ("Effective Date") between Tutor.com, Inc. ("Tutor.com") and Black Hawk College ("Customer").

1. Services. Tutor.com will provide to Customer and its Users the online tutoring services ("Services") set forth in service orders ("Service Orders"), the first of which is attached hereto as Exhibit A and each of which is part of this Agreement. "User" means students who are properly registered to attend classes at Customer. Tutor.com provides the Services through its proprietary online classroom ("Online Classroom"), and during the term of this Agreement and subject to the terms and conditions of this Agreement, Tutor.com grants Customer and its Users the non-exclusive, non-transferable right to access the Online Classroom in connection with the Services.

2. Setup. Tutor.com will set up the Services for launch on a date mutually agreeable to the parties. Customer will provide Tutor.com with all information and other cooperation needed to set up and launch the Services.

3. Payment. The fees for the Services will be set forth in Services Orders and will be invoiced in accordance with the Service Orders. Customer will pay invoices within 30 days of the invoice date unless otherwise specified in the Service Orders. Tutor.com may suspend the Services if any amounts remain unpaid 30 days after the due date. All fees are net of taxes, except for taxes on Tutor.com's income. If Customer is exempt from taxes, Customer will provide its tax exemption certificate.

4. Representations and Warranties.

- a. Each party represents and warrants to the other that (i) it will comply with all applicable laws and regulations in connection with its performance under this Agreement and (ii) the individual signing this Agreement on its behalf has the authority to do so.
- b. Tutor.com represents and warrants that it will perform the Services in a professional manner in accordance with industry standards. Customer's sole remedy for a breach of this warranty is re-performance of the particular Services that breached the warranty at no additional charge.
- c. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE SERVICES AND THE ONLINE CLASSROOM ARE PROVIDED "AS IS" AND TUTOR.COM EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. TUTOR.COM MAKES NO WARRANTY THAT THE SERVICES OR THE ONLINE CLASSROOM WILL MEET CUSTOMER'S REQUIREMENTS OR WILL WORK IN COMBINATION WITH ANY HARDWARE OR APPLICATIONS PROVIDED BY THIRD PARTIES, THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT ALL DEFECTS IN THE SERVICES OR THE ONLINE CLASSROOM WILL BE CORRECTED.

5. Term and Termination.

- a. The term of this Agreement is from the Effective Date through the date of termination by either party. Either party may terminate this Agreement upon 30 days prior written notice to the other if no Service Order is in effect.
  - b. Either party may terminate this Agreement (or any Service Order) upon written notice to the other if the other party commits a material breach of this Agreement (or the Service Order) that remains uncured for 30 days following written notice of the breach.
6. User Information. Tutor.com will not disclose to any third party any personally identifiable information of a User without first obtaining Customer's prior written consent, except as otherwise provided in Tutor.com's privacy policy. Subject to the foregoing, Tutor.com is entitled to use such information in accordance with applicable law and its privacy policy.
7. Certain Obligations and Restrictions.
  - a. Customer is responsible for the compliance of its Users with this Agreement. Customer will not allow the Services or the Online Classroom to be used by any person who is not a User. Customer will notify Tutor.com promptly of any known or suspected breach of Tutor.com's rights to the Services or the Online Classroom that comes to its attention and will reasonably cooperate in Tutor.com's efforts to protect its rights.
  - b. Customer will not (i) use, copy, create derivative works of, display, or modify the Services (including any content available through the Services) or the Online Classroom except as permitted by this Agreement, or (ii) decompile, reverse engineer, or otherwise attempt to discover any source code of the Online Classroom.
  - c. Customer will not upload to or distribute or publish through the Online Classroom any content (i) which is libelous, defamatory, threatening, or otherwise unlawful, (ii) which is obscene or pornographic, (iii) which violates any person's privacy or publicity rights, or (iv) which violates the intellectual property or other proprietary rights of any person.
  - d. Customer will not (i) attempt to gain unauthorized access to the Services or the Online Classroom or use or access the Services or the Online Classroom in a way intended to avoid fees, (ii) interfere with or disrupt the the Services or the Online Classroom or (iii) upload to or distribute through the Online Classroom any viruses, Trojan horses, worms, or other similar programs.
  - e. All marketing and other communications by Customer that refer to the Services (which include but are not limited to Tutor.com, Live Homework Help®, and SkillsCenter resource library), as well as all Customer web pages that refer to or link to the Service site, must include the "Tutor.com" logo or the words "Powered by Tutor.com", and include the ® symbol. Customer will not delete or alter the copyright, trademark, or other proprietary notices of Tutor.com appearing on the Services or the Online Classroom.
8. LIMITATION OF LIABILITY. EXCEPT FOR A BREACH OF SECTION 10 OR A BREACH OF TUTOR.COM'S INTELLECTUAL PROPERTY RIGHTS, NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR SPECIAL DAMAGES RELATING TO THIS AGREEMENT, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR AN AGREED REMEDY FAILS OF ITS ESSENTIAL PURPOSE. TUTOR.COM'S AGGREGATE LIABILITY FOR ALL CLAIMS RELATING TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, WILL NOT EXCEED

THE AMOUNTS ACTUALLY RECEIVED BY TUTOR.COM UNDER THIS AGREEMENT IN THE 12 MONTHS PRECEDING SUCH CLAIM.

9. Proprietary Rights. Tutor.com retains all rights, title, and interest in and to all aspects of the Services, including but not limited to the Online Classroom and any changes to or derivative works of the Services or the Online Classroom.

10. Confidentiality.

- a. Except as otherwise provided in this Agreement, each party will retain the other party's Confidential Information (as defined below) in strict confidence, will use the other party's Confidential Information only for purposes of this Agreement, and will not disclose the other party's Confidential Information without the other party's prior written consent, provided that the receiving party may disclose the disclosing party's Confidential Information to the receiving party's or its affiliates' personnel and contractors who need to know such Confidential Information and who are bound by confidentiality obligations at least as restrictive as those in this Agreement. If there is a breach of this Section 10, the disclosing party may suffer irreparable harm and will therefore be entitled to obtain injunctive relief in addition to any other available rights and remedies.
- b. "Confidential Information" means the terms of this Agreement and all information, materials, or technology provided by a party to the other party that is marked as "Confidential" or "Proprietary," or that, under the circumstances taken as a whole, would be reasonably deemed to be confidential. "Confidential Information" does not include information which (i) is or becomes generally available to the public other than as a result of the breach of this Agreement by the receiving party, (ii) is independently developed by the receiving party, (iii) was rightfully within the receiving party's possession prior to disclosure by the disclosing party, (iv) is received from a third party which was not bound by a confidentiality obligation with respect to such information, or (v) is legally required to be disclosed, provided that the receiving party will notify the disclosing party before disclosing the Confidential Information.

11. Notices. Any notice under this Agreement will be in writing and be deemed given if: (i) personally delivered; (ii) sent by overnight courier, with proof of delivery; (iii) sent by registered or certified U.S. mail, return receipt requested, or (iv) delivered by email, to the parties as set forth below.

If to Tutor.com:  
Tutor.com, Inc.  
110 E. 42<sup>nd</sup> Street, 7<sup>th</sup> Floor  
New York, NY 10017  
Attn: Legal Department  
Email: legal@review.com

If to Customer:  
Black Hawk College  
6600 34<sup>th</sup> Avenue  
Moline, IL 61265  
Attn: Lisa Hansen  
hansenl@bhc.edu

12. Miscellaneous Provisions. If there is a conflict between this Agreement and any Service Order, this Agreement will control unless the Service Order expressly provides otherwise. No provision of this Agreement will be deemed waived unless waived in writing. Sections 3, 6, 7, 8, 9, 10, 11, and 12 and any other provisions which would reasonably be expected to survive the termination of this Agreement will so survive. The terms in any purchase order (other than the services, quantities, and prices) will not be binding on Tutor.com. Neither party will be responsible for any delay in performance or failure to perform due to causes beyond its reasonable control. No joint venture, partnership, employment or agency relationship exists between the parties as a result of this Agreement. This Agreement may not be assigned by either

party without the prior written consent of the other party; provided that Tutor.com may assign its rights and obligations under this Agreement to an affiliate or in connection with a merger, reorganization, consolidation, or sale of all or substantially all of its stock or assets. Subject to the preceding sentence, this Agreement shall be binding upon the parties and their permitted successors and assigns. There are no intended third party beneficiaries of this Agreement. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. This Agreement will be governed by the laws of the state where Customer is located, without regard to its conflicts of law principles. If any provision of this Agreement is held to be invalid or unenforceable, then such provision will be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision, with the other provisions remaining in full force and effect. This Agreement comprises the entire agreement between the parties concerning the subject matter of this Agreement and supersedes all prior or contemporaneous oral or written negotiations, understandings, and agreements.

Accepted and agreed to by:

**Tutor.com, Inc.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Customer**

*Sandi White*

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Sandi White

GM & VP

07/01/2019

**EXHIBIT A****INITIAL SERVICE ORDER UNDER MASTER SERVICE AGREEMENT**

This order for the online tutoring services listed below constitutes a Service Order under the Master Service Agreement to which this order is attached between Tutor.com, Inc. ("Tutor.com") and Black Hawk College ("Customer").

<b>Customer Primary Contact Information</b>	<b>Tutor.com Primary Contact Information</b>
Name: Lisa Hansen	Name: Marcy Melanson
Customer: Black Hawk College	Address: Tutor.com
Address: 6600 34 <sup>th</sup> Avenue	Address: 110 E. 42 <sup>nd</sup> Street, 7 <sup>th</sup> Floor
City, St, Zip: Moline, IL 61265	City, St, Zip: New York, NY 10017
Telephone:	Telephone: 347-405-2953
Email: hansenl@bhc.edu	Email: marcy.melanson@tutor.com

<b>Customer Billing Contact Information</b>	<b>Tutor.com Billing Contact Information</b>
Name: Lisa Hansen	Name: Customer Invoicing
Customer: Black Hawk College	Telephone: 800-444-0189
Address: 6600 34 <sup>th</sup> Avenue	Email: customerinvoicing@tutor.com
City, St, Zip: Moline, IL 61265	
Telephone:	
Email: hansenl@bhc.edu	

**Ordered Services:** Tutor.com agrees to provide Customer the Services listed below.

<b>Description of Services</b>	<b>Start Date</b>	<b>End Date</b>	<b>Number of Hours (if applicable)</b>	<b>Price</b>
<b>Live, One-To-One Customized Tutoring Services:*</b> <ul style="list-style-type: none"> <li>Tutor.com for Higher Education (English) 24 Hours a day**</li> <li>Tutor.com for Higher Education (Spanish) (Hours: 2:00 pm – 2:00am ET)</li> <li>WriteTutor™ Writing Center</li> </ul>	7/01/2019	6/30/2020		\$26.50/Hour
Premium Subject Coverage: Nursing				included
Predictive Insights				included
Custom Integration				N/A
<b>Not to exceed 547 hours of tutoring</b>				
<b>Total***</b>				<b>To be billed monthly</b>

\*As of the Effective Date of the Agreement, the Services are offered 361 days of each standard year, and 362 days of each leap year. The Services are unavailable on January 1, July 4, Thanksgiving Day, and December 25. On those holidays the

Services close beginning at 2:00 a.m. and they reopen at 2:00 a.m. on the following day (all times Eastern). Tutor.com may change the availability of Services and will notify Customer of any changes.

**\*\* Newer subjects may have more limited hours**

**\*\*\***During the term of this Service Order, additional sessions or hours in excess of the number set forth in this Service Order may be purchased under this Service Order by Customer for the then-current term at a rate of \$26.50/Hour by an email from Customer's Authorized Representative (identified below) to Tutor.com's Primary Contact at his/her email address set forth above, setting forth the number of additional sessions or hours being purchased. Such purchase will be deemed accepted, and may be invoiced, upon Tutor.com's provision of the additional sessions or hours to Customer's Users in excess of the originally ordered number. For purposes of this Service Order, Customer's Authorized Representative will be Lisa Hansen. Customer may change Customer's Authorized Representative by providing notice to Tutor.com in accordance with the Agreement.

**Term:** The initial term of this Service Order will be from the Start Date to the End Date listed above. This Service Order will automatically renew for additional, successive 1 year renewal terms unless either party notifies the other in writing no less than 30 days prior to the end of the then-current term that this Service Order will terminate at the end of the then-current term.

**Fees:** Customer agrees to pay Tutor.com the fees set forth in this Service Order, which do not include taxes. Tutor.com reserves the right to change the fees for any renewal term by giving Customer written notice of such change no later than 45 days prior to the end of the then-current term. If Tutor.com increases such fees for a renewal term, Customer will have the right to terminate this Service Order by giving written notice to Tutor.com within 15 days following Customer's receipt of such notice of fee change. **Taxes, if applicable, will be included in the invoice sent by Tutor.com to Customer unless Customer provides a tax exemption certificate.**

**Invoicing and Payment:** Tutor.com will invoice Customer in the initial term and any renewal term of this Service Order upon execution of the Agreement and upon the start date of the renewal term, respectively, unless different payment terms are specified here: \_\_\_\_\_.

Customer will send payments to: Tutor.com, 62996 Collection Center Drive, Chicago, IL 60693-0629.



If Customer requires a purchase order to order the Services, Customer will specify here:  
\_\_\_\_ [check if purchase order is required].



# Signature Certificate

Document Ref.: TXWCZ-LUSYV-78J4Y-TAANR

Document signed by:

	<p><b>Sandi White</b> Verified E-mail: <b>sandi.white@tutor.com</b></p> <p>IP: 174.237.129.243      Date: 01 Jul 2019 21:57:36 UTC</p>	<p><i>Sandi White</i></p> 
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Document completed by all parties on:  
**01 Jul 2019 21:57:36 UTC**

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Signed with PandaDoc.com

PandaDoc is the document platform that boosts your company's revenue by accelerating the way it transacts.

