academicworks Service Agreement

Customer Name			
Suffolk County Community College ("College")			
Street Address	**City**	**State**	**Zip**
533 College Road	Selden	NY	11784

In this Service Agreement (the "Agreement") dated effective February 18, 2015 (the "Effective Date"), College refers to the organization named above and "AcademicWorks" refers to AcademicWorks, Inc., 1609 Shoal Creek Blvd., Suite 302, Austin, Texas 78701. AcademicWorks offers software on a fully hosted basis to assist in automating the application, review, selection, and awarding processes related to scholarships and other forms of student aid.

College agrees to contract for use of the software, subject to the terms of this Agreement. In consideration of the mutual rights and obligations in this Agreement, the parties agree as follows:

1) SERVICES. College contracts with AcademicWorks to perform the services described in the attached Exhibit A (the "Services"). College authorizes AcademicWorks to provide the Services and agrees to pay the associated fees.

2) TERM OF AGREEMENT. This Agreement shall extend for twelve (12) months (the "Initial Term") from the Effective Date of this Agreement (as specified above) and shall automatically renew for subsequent 12-month periods (each, a "Renewal Term"), unless at least thirty (30) days prior to the end of the then-current term, either party gives written notice to the other party of its intent not to renew this Agreement. Either party may terminate this Agreement if the other party commits a material breach of the Agreement and the breach is not cured within thirty (30) days of that party receiving written notice of such breach. Termination does not affect College's obligation to pay for Services already provided by AcademicWorks.

3) GENERAL PROVISIONS.

a) Confidential Information. "Confidential Information" means any proprietary or confidential information as such terms are most broadly defined under common or other applicable law, including College's student information, scholarship and other student aid applicant information, scholarship and other student aid award data, scholarship and other student aid award opportunity requirements, College's and AcademicWorks' forms, AcademicWorks' software, and the terms of this Agreement. Each party agrees that it (i) will not copy or use any of the other party's Confidential Information in any way, except as permitted by this Agreement or as required to achieve the purposes of this Agreement, (ii) will not disclose any of the other party's Confidential Information to any third party, except as required by law or to that party's attorneys and accountants as reasonably necessary, and (iii) will protect the other party's Confidential Information reasonably and at least as well as it protects its own. Information is not Confidential Information if a party can clearly show that it (i) became known to the receiving party prior to receipt from the disclosing party, (ii) has become publicly known, except through breach of this Agreement, or (iii) is independently developed without reference to Confidential Information.

b) FERPA Information. AcademicWorks acknowledges that certain information about College's students is contained in records maintained by AcademicWorks and that this information may be confidential pursuant to the Family and Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232g) ("FERPA") and the College's Student Records Policy, unless written consent is obtained from the College's students, or an exception to such consent is provided under FERPA. Both parties agree to consider such information "Confidential Information" under the terms of this Agreement and to protect these records in accordance with FERPA. To the extent permitted by FERPA or any other applicable law, rule or regulation, nothing contained herein shall be construed as precluding either party from releasing such information to the other so that each can perform its respective responsibilities.

c) Intellectual Property. Except as otherwise provided herein, AcademicWorks has all right, title, and interest to all types of intellectual property, including but not limited to new forms and form modifications, software, trademarks, and other inventions or technical know-how protectable under patent, copyright, and/or trade secret law ("Intellectual Property"), conceived, discovered, and/or developed, in whole or in part, by AcademicWorks in the performance of this Agreement.

d) Limited License. Subject to the terms of this Agreement, AcademicWorks grants College a limited, non-exclusive, non-transferable license to use AcademicWorks's relevant Intellectual Property during the term of this Agreement solely for College's own internal purposes. College shall not sell, market, rent, or re-license any aspect of the Intellectual Property. College obtains no ownership rights or any other rights in the Intellectual Property, other

than those specified herein. College grants AcademicWorks a license to use College's non-confidential information (e.g., statistical information) on a consolidated basis as part of AcademicWorks's overall statistics for marketing and/or analytical purposes.

e) Transferability. Neither party may transfer, assign, or otherwise dispose of this Agreement, or any of its rights or obligations hereunder, without the prior written consent of the other party, except that AcademicWorks may assign this Agreement to any successor to all or substantially all of its assets or business, whether by merger, sale of assets, sale of stock, reorganization or otherwise.

f) Independent Contractor. The relationship of AcademicWorks and College established by this Agreement is that of independent contractor, and nothing contained in this Agreement shall be construed to (i) give either party the power to direct or control the day-to-day activities of the other, (ii) establish AcademicWorks as a scholarship or student aid award consultant to College, (iii) establish the parties as partners, franchisee-franchiser, co-owners or otherwise as participants in a joint or common undertaking, or (iv) otherwise give rise to any fiduciary obligations between the parties.

g) Force Majeure. Except for payment of fees, non-performance by either party will be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the control and not caused by the negligence of the non-performing party.

h) Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all previous agreements or representations, oral or written. Except as otherwise provided herein, this Agreement may not be modified except in writing signed by an authorized representative of each party. Both parties acknowledge having read the terms and conditions set forth in this Agreement and all attachments hereto, understand all terms and conditions, and agree to be bound thereby. The titles of sections and subsections are for convenience only and are not to be used in construing any term herein.

i) Counterparts and Facsimile Signature. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed by facsimile signature.

j) Partial Invalidity/Severability. In case any one or more of the provisions contained in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed, so far as is reasonable and possible, as if such invalid, illegal, or unenforceable provision or provisions had never been contained herein or in a manner that is reasonable and reflects the intent of the parties hereto.

k) New York Law Applicable. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to conflict of laws. Venues shall be designated in Suffolk County, New York or the United States District Court for the Eastern District of New York.\

l) Insurance. During the Initial Term and any Renewal Terms, AcademicWorks will maintain insurance, including umbrella policies, and furnish a certificate of insurance to the College for the following coverage amounts: 1) Commercial General Liability – $2,000,000.00 per occurrence and general aggregate, to include contractual liability, and naming the College and the County of Suffolk as additional insureds; (2) Professional Liability insurance - $1,000,000.00 per occurrence or upon a claims made basis; (3) Worker's Compensation – New York State statutory requirements and benefits; (2) Automobile Liability (if any vehicles are used by the AcademicWorks in the performance of this Agreement) – $1,000,000.00 per accident, bodily injury and property damage combined.

4) WARRANTIES, RESPONSIBILITIES, AND LIMITATIONS.

a) Limited Warranty. AcademicWorks warrants that AcademicWorks will use commercially reasonable efforts to fulfill its obligations under this Agreement. AcademicWorks does not warrant that its Services are or will be error free. AcademicWorks further does not warrant that its electronic files containing information pertaining to College and/or College's students are not susceptible to intrusion, attack or computer virus infection, but given the confidential nature of much of this data, AcademicWorks will use commercially reasonable efforts to insure and safeguard the security of this data. EXCEPT FOR THE LIMITED WARRANTY DESCRIBED IN THIS

SECTION AND TO THE EXTENT ALLOWED BY APPLICABLE LAW, ACADEMICWORKS MAKES NO OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, AND EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, GOOD TITLE, SATISFACTORY QUALITY OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.

b) Exclusive Remedies. For any breach of the warranties set forth above, AcademicWorks's entire liability and College's exclusive remedy shall be correction of the errors that cause the breach, or if AcademicWorks is unable to provide Services as warranted, College shall be entitled to credit for the fees for the non-performing Services for the period of non-performance.

c) No Liability for College Procedures. AcademicWorks carries out procedures specified solely by College, and AcademicWorks expressly denies all liability for AcademicWorks's implementation of College's procedures including, but not limited to, College's scholarship or other student aid screening requirements. College is solely responsible for determining the scope and extent of the Services provided by AcademicWorks, and College is entirely responsible for reviewing the Services provided by AcademicWorks on College's behalf to ensure compliance with College's procedures. AcademicWorks makes no attempt to determine or advise as to whether College's procedures comply with any statutory or regulatory requirements, including but not limited to any statutory or regulatory requirements related to distributing student information, awarding scholarship or other student aid awards to students, or any federal, state or local statutes or regulations governing the use or disclosure of student or scholarship and other student aid applicant information. To the extent, however, that College's procedures or criteria clearly violate any of these laws, AcademicWorks reserves the right to refuse to implement such procedures or requirements. Furthermore, College is solely responsible for ensuring that all applicant profile information or student data imported into the AcademicWorks System is the information or data of the applicant or student for whom the information or data is imported.

d) College's Responsibility. To the extent permitted by applicable law, College will be responsible for and will reimburse AcademicWorks for all costs and expenses incurred by AcademicWorks (including, without limitation, reasonable attorney's fees, expenses of litigation and damages) arising from College's or its officers' or employees' negligence, AcademicWorks's implementation of College's procedures in accordance with this Agreement, the violation by College's procedures of any applicable statutory or regulatory requirements, or a claim by any of College's scholarship or other student aid applicants or any other student or prospective student arising from College's procedures or the acts or omissions of College's officers, employees or agents.

e) AcademicWorks' Responsibility. AcademicWorks, to the extent permitted by law and subject to the limitations set forth in Section 4(f) of this Agreement, agrees that it shall indemnify and hold harmless the College and the County of Suffolk ("County") and their officers, officials, employees and consultants from and against all liabilities, fines, penalties, actions, damages, claims, demands, judgments, losses, costs, expenses, suits or actions and reasonable attorneys' fees, arising out of the negligent acts or omissions of AcademicWorks in connection with the services described or referred to in this Agreement. Subject to the limitations set forth in Section 4(f) of this Agreement, AcademicWorks shall pay reasonable attorney's fees for the defense of the College and the County and their officers, officials, employees and consultants, in any suit, including appeals, arising out of the negligent acts or omissions of AcademicWorks, its officers, officials, employees, subcontractors or agents, if any, in connection with the services described or referred to in this Agreement.

f) AcademicWorks's Limited Liability. College agrees that regardless of the form of any claim College may have under this Agreement or otherwise, AcademicWorks's liability for damages to College will not exceed three (3) times the fees paid by College under this Agreement for the twelve (12) months immediately preceding the date on which the claim arose. AcademicWorks will not be liable for damages arising from any breach, unauthorized access, misuse of, or intrusion into College's data residing on AcademicWorks's equipment. ACADEMICWORKS WILL NOT BE LIABLE OR RESPONSIBLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES, SUCH AS, BUT NOT LIMITED TO, LOSS OF PROFITS RESULTING FROM THE USE OF THE SERVICES, OR ARISING OUT OF ANY BREACH OF THIS AGREEMENT OR THE LIMITED WARRANTY, EVEN IF ACADEMICWORKS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

2/18/15		2/17/15	
Authorized College Signature	Date	AcademicWorks Signature	Date
Dr. Shaun L. McKay	President	Joe Price	President + General Counsel
Printed Name	Title	Printed Name	Title

Exhibit A

1) **PRIMARY CONTACT.** The primary College contact for this Service is:

College Contact Name	Phone	E-mail
Joanne Braxton	(631) 451-4737	braxtoj@sunysuffolk.edu

2) **SERVICE.** AcademicWorks will provide the following services for College, collectively the "AcademicWorks System":

   a. Scholarship Module. AcademicWorks will establish and maintain an automated Internet based system (the "Scholarship Module") for accepting and processing College scholarship and other student aid applications. AcademicWorks will provide and maintain the systems established to provide this service, including maintenance of all computer hardware and software. The Scholarship Module shall provide the following functions: a.) allow students to complete and submit a scholarship or other student aid application on-line; b.) allow student applicants to review the status of their application on-line; c.) allow College's staff to electronically screen applicants for minimum qualifications using scholarship or other student aid award specific qualification questions; d.) allow College's staff to electronically assign applicants to appropriate reviewers; e.) allow College's staff to create up to 400 scholarship or other student aid opportunities within the Scholarship Module (Upon College's request to create additional scholarship or other student aid opportunities within the Scholarship Module, AcademicWorks will determine an adjusted annual Service Fee based on the number of additional opportunities being created); f.) allow College's staff to utilize up to 1 organizational application within the Scholarship Module (Upon College's request to use additional organizational applications within the Scholarship Module, AcademicWorks will determine an adjusted annual Service Fee based on the number of additional organizational applications being requested); g.) allow College's staff and other appropriate reviewers to review applications and other documents submitted by applicants on-line; and h.) allow student applicants to review requirements for and accept scholarship or other student aid awards on-line.

3) **TECHNICAL SUPPORT.** AcademicWorks will provide e-mail and toll-free telephone technical support for up to 3 individuals specified by College. Normal technical support hours will be 9:00 am - 5:00 pm central time, Monday-Friday, excluding certain nationally recognized holidays. Additionally, a 24-hour, 7-day a week toll free telephone number will be available for the reporting of emergency situations.

4) **TRAINING.** AcademicWorks will provide training in the use of the AcademicWorks System as follows:

   a. Scholarship Module Training. AcademicWorks will provide a comprehensive one-time training session in the use and maintenance of the Scholarship Module for up to 3 members of College's staff. This one-time training will be conducted remotely via web conference.

   b. Onsite Training. Upon request, AcademicWorks will conduct College's one-time training for College's administrative users at College's location for approximately one (1) day. If College requests onsite training, a one-time Onsite Training Fee of $2,500, which includes all costs associated with this training (travel, meals, materials, etc.), will be due upon execution of this Agreement. This is an optional service.

   c. Cancellation. If College cancels any confirmed onsite appointment within three weeks of the scheduled date, College must reimburse AcademicWorks all associated travel costs already incurred (including airfare).

5) **APPLICANT PROFILE INFORMATION IMPORTS.** Under the terms of this Agreement and in exchange for the annual Service Fee specified below, College will have the ability to import applicant profile information from College's student information system into the AcademicWorks System for each student who logs into the AcademicWorks System and verifies his or her account. Upon request and at no additional charge to College, AcademicWorks will create an automated data import routine to import this applicant profile information from College's student information system into the AcademicWorks System. If College utilizes an automated data import routine, College will be responsible for providing AcademicWorks with a data file that has no more than one hundred and fifty (150) columns of data in CSV (comma separated values) format prior to the execution of the routine. Regardless of whether College imports applicant profile information manually or through an automated data import routine, College may import a file of applicant profile information that has no more than one hundred and fifty (150) columns of data into the AcademicWorks system no more than one time per calendar day. If requested, AcademicWorks can provide College with the ability to import applicant profile information into the AcademicWorks System for College's entire student population without requiring that each student must log into the AcademicWorks System to verify his or her account. Upon College's request for this additional service, AcademicWorks will

determine an adjusted annual Service Fee based on the size of College's student population.

6) **IMPLEMENTATION.** The Scholarship Module implementation process will consist of a series of telephone conference calls between College and AcademicWorks. The total cost of the implementation process is included in the Implementation Fee specified below.

7) **DATA DOWNLOAD.** Anytime within thirty (30) days after the effective date of termination of this Agreement, upon College's request, AcademicWorks will make available to College a complete file of College's data.

8) **FEES.** A one-time Implementation Fee of $7,000 covering implementation of the AcademicWorks System and an annual Service Fee of $10,500 covering service for the Initial Term are due upon execution of this Agreement. An annual Service Fee due and payable by the College thereafter will be due for each Renewal Term no later than 30 days before the first day of such Renewal Term. Such annual Service Fee may be increased by no more than five percent (5%) of the Service Fee charged the College for the preceding Term. AcademicWorks will submit an invoice to College at least 60 days before the expiration of the Initial Term or any Renewal Term for the annual Service Fee for the Renewal Term following such expiration.

9) **OTHER TERMS AND CONDITIONS.** AcademicWorks reserves the right to charge the College additional fees for services requested by the College which are outside the scope of this Agreement. Any such additional services shall be memorialized by a writing signed by both parties hereto.