Energy Savings Contract

This energy savings contract is between Suffolk County Community College (the "College"), having its principal office at 533 College Road, Selden, New York 11784-2899, a chartered community college (pursuant to New York State Education Law) under the sponsorship of the County of Suffolk, a municipal corporation of the State of New York; and Cenergistic, Inc., a foreign business corporation authorized to conduct business in the State of New York, having its principal office at 5950 Sherry Lane, Suite 900, Dallas, Texas 75225, ("Cenergistic"); and,

Whereas, Cenergistic® delivers customized, comprehensive people-driven energy conservation programs that focus on changing human behavior to help school districts, churches and higher education clients reduce their consumption of energy and water without any equipment upgrades; and,

Whereas, Cenergistic has offered to build and provide a customized energy conservation program for the College that is focused on organizational and behavioral change and is designed with the following goals:

- Save dollars that the College can reinvest in the people it serves;
- Preserve a quality learning environment for the College’s students;
- Conserve energy for a positive impact on the environment; and,
- Increase awareness to empower energy users to be energy savers; and,

Whereas, Cenergistic will help the College pursue these goals through implementation of its energy conservation program. Central to the success of this program is the recognition of shared responsibility between Cenergistic and the College as the program is initiated and implemented. Cenergistic provides extensive resources, education and onsite training, action planning, and other conservation-related services, while the College works cooperatively to implement Cenergistic’s program; and,

Whereas, the College desires to work cooperatively with Cenergistic to pursue these goals through implementation of an energy conservation program; and,

Whereas, by a resolution duly adopted on March 20, 2014, the Board of Trustees of Suffolk County Community College authorized the College President to execute this contract,

Now, therefore, the parties do hereby agree as follows:

1. Program. On August 1, 2014 ("Start Date") Cenergistic shall begin its work on this contract to provide the College with a people-driven energy management program that is customized to enable the College to reduce consumption of energy ("Program").

2. Energy Consultants. A Cenergistic team of energy consultants shall deliver the Program to the College as follows:

   (a) Through Cenergistic’s on-site and ongoing assessments of the College’s facilities and based on Cenergistic’s experience in having assessed thousands of client facilities, Cenergistic’s
energy consultants shall deliver hundreds of recommendations that are specific to the College’s environment.

(b) Cenergistic’s energy consultants shall guide and assist the College’s Program implementation following Cenergistic’s proven methodology, the Cenergistic energy management program.

(c) Cenergistic’s energy consultants will be available and on-call to respond in a reasonable and timely manner as schedules permit, to special problems or questions through the end of the Term (as defined below).

3. **Energy Coordinators.**

(a) **Position.** Program implementation requires a daily focused effort that is led by two (2) College employees – energy coordinators who can make conservation a priority while positively engaging people to conserve energy. The two (2) energy coordinator positions must be full-time and dedicated exclusively to the Program.

(b) **Compensation.** The energy coordinators shall be compensated at a level that is within the range recommended by Cenergistic to attract and retain qualified people (“Compensation”). Cenergistic shall reimburse the College for the compensation costs for the energy coordinators in accordance with the terms of paragraph 7(c) below.

(c) **College Hiring.** Cenergistic shall serve an active and key role to assist and guide the College through its energy coordinator search process - from posting the positions through interviewing candidates. On the Start Date the College and Cenergistic shall promptly begin and then continue this search process in accordance with New York State Civil Service Law and Regulations until mutually acceptable candidates are identified and hired for the energy coordinator positions. Due to the unique nature of the positions, it is preferred that the energy coordinators should be current or retired College employees. However, the College is constrained to follow all Civil Service Rules and Regulations in the hiring of personnel for this title. Cenergistic’s recommendation for the energy coordinator positions will follow the conclusion of the interview processes and are subject to the College’s approval and decision to hire or not hire. Within the permissible requirements of the New York Civil Service Law and Regulations, if the parties mutually agree the person(s) hired as an energy coordinator is not successful or is unable to fulfill the requirements of the position, the parties will work through the process to replace the energy coordinator with an acceptable candidate.

(d) **Education and Training.** Cenergistic’s energy consultants shall train the energy coordinators with the skills essential for Program implementation. Cenergistic’s comprehensive training will primarily be on-site and on-the-job. The energy coordinators must attend the on-site appointments scheduled by Cenergistic and must be receptive and responsive to Cenergistic. Cenergistic shall provide written education and training materials. Furthermore, Cenergistic shall host and the energy coordinators and Program Liaison shall attend three National Training Conferences each year. The College is not required to pay any additional fees to Cenergistic for the materials or the conferences, which are an integral part of the education and training for the College’s Program implementation. Cenergistic shall reimburse the College for the reasonable travel, hotel and meal expenses associated with the energy coordinators’ and Program Liaison’s attendance at the National Training Conferences in accordance with the terms set out in paragraph 7(c) below (collectively “Travel Expenses”).
(e) **Program Liaison.** The College's Executive Director of Sustainability Programs shall serve as the program liaison and primary point of contact for the College on the Program ("Program Liaison"). The Program Liaison should be accessible and responsive to Cenergistic for communication and meetings. Cenergistic will offer education and training for the Program Liaison to effectively serve in the role, with an emphasis that will promote the Program's Liaison's role in reviewing all savings determinations. In the event there is a need for a replacement Program Liaison, Cenergistic and the College will discuss and collaborate on identifying one of the College's senior level business officials to serve in that capacity. The Program Liaison position shall not be vacant for more than thirty (30) consecutive days during the Term of the contract. An interim appointment of a person with comparable authority and qualifications as the prior Program Liaison shall be deemed to satisfy this requirement.

(f) **Observation and Communication.** The College is the energy coordinators' supervisor and maintains full and final employment authority, e.g. hiring and firing, for these important positions that are subject to high standards and performance expectations. For example, the Cenergistic energy management program calls for routine data entry which is monitored through weekly accountability reporting. Cenergistic shall regularly observe the energy coordinators' fit, skills, tenacity, hard work, leadership, interpersonal relationships, and performance level and results. Cenergistic shall regularly communicate with the Program Liaison concerning the observed performance of the energy coordinators. As a part of these obligations, during the first twelve months of each energy coordinator's service, Cenergistic shall periodically advise the Program Liaison whether that person has shown the qualities to be successful in the position. If Cenergistic and the Program Liaison agree, within the time constraints of Civil Service law, that an employee serving as energy coordinator does not have the qualities to be successful in the position, a replacement energy coordinator will be recruited and hired using the collaborative process and guidelines described in paragraph 3(c). The College Office of Human Resources will be involved in the process of replacement of the energy coordinator(s) to assure compliance with College policies and New York Civil Service and Employment laws.

(g) **Leave Scheduling.** The energy coordinators are expected to spend a majority of time in the College's facilities to drive energy savings; with times outside the instructional day being particularly valuable for the energy coordinators to identify and capture savings opportunities. It is critically important (especially during the first two years of the Program) that the energy coordinators be available for work during times when buildings are unoccupied and have flexibility to work nights, weekends and holidays. To allow for appropriate dialogue, the College should notify and consult with Cenergistic before approving any requests for the energy coordinator's vacation leave or other leave that (1) is in conjunction with College holidays or break periods, or (2) requires an extended absence of more than one week. The College will make the final decision concerning the approval of leave for the energy coordinators.

4. **Program Implementation.** (a) **Prompt Start.** Once the energy coordinators have been hired, the College will promptly begin and then continue to implement the Program according to the terms of this Contract.

(b) **Commitment and Communication.** In Cenergistic's experience, the success of the College's Program implementation will be a function of the demonstrated commitment of the College President and other administrators, e.g. through timely communication of high level support for the Program. The College's administration will take all reasonable and appropriate steps to publicize
the Program to the College community, and communicate its commitment to the Program, including support by the College President and approval of administrative guidelines no later than sixty (60) days after the Start Date, to aid in the Program's implementation. Cenergistic shall provide templates together with support and assistance for the College in its preparation of the guidelines; however, the final contents of such guidelines are within the sole discretion of the College. The College shall communicate these guidelines to its employees, construction contractors and on-site management service providers, if any.

(c) **Semi-Annual Progress Reports.** Cenergistic will either provide or facilitate through the energy coordinators, semi-annual progress reports for the College President, at times mutually agreed.

(d) **Software Tool.** The effective management of energy information is a first step to achieving positive results through accountability. The College will account for energy consumption using a third party software program, EnergyCAP®, with which Cenergistic's energy consultants are knowledgeable and trained to provide support to the College. No later than ninety (90) days after the Start Date, the College must license the EnergyCAP® energy accounting software program from EnergyCAP, Inc, or, if later recommended by Cenergistic to its clients (e.g. because EnergyCAP ceased to be available), an alternative software program with substantially similar functionality ("Software"). The College's cost for the Software is $9,510 per year for the first three years and $3,709 per year thereafter.

(e) **Access, Authority and Control.** The energy coordinators shall have access to the College's systems controls, including the energy management systems ("EMS"), and shall have the authority (in communication and coordination with other College personnel) to make changes so that facilities are not operated outside of the established policy and guidelines. The energy coordinators shall be authorized to: (1) program the EMS including changes in the temperature settings and run times of EMS controlled equipment (e.g. HVAC, water, heating and lighting systems), and (2) change settings and run times for each facility's equipment and systems (e.g. lighting, sewer and water systems, time clocks and thermostats) that are not controlled by the EMS. The College shall provide such access and authority to the energy coordinators within 30 days of the energy coordinators' first day of work. Cenergistic's role as a consultant necessarily means that, as it should be, the College (and not Cenergistic) will maintain exclusive control over and responsibility for College personnel and the operation and condition of all College facilities, areas and equipment.

(f) **No Third Party Interference.** The College shall not allow any third party to interfere with the College's Program implementation, except when required by applicable laws, rules or regulations.

5. **Savings Determination.**

(a) **General.** Energy savings are determined in accordance with the Measurement and Verification Plan ("M & V Plan") attached hereto by comparing measured use at the building level (as defined below) before and after the start of Program implementation, with appropriate adjustments for changes in conditions that are independent of the Program. The simple formulaic expression is:

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\text{Avoided Energy Use (or Savings)} = \text{Adjusted-Baseline Energy} - \text{Reporting-Period Energy } \pm \text{ Non-Routine Adjustments of baseline energy to reporting-period conditions}
\]
The College's savings shall be determined by the College's energy coordinators and Cenergistic using the Software to subtract the energy and other utilities actually used (i.e. consumption: kWh, BTUs, gallons, etc.) in each Performance Year (as defined below) from the use in the Base Year (as defined below), plus or minus any Adjustment Variables (as defined below), and applying the price (based on the blended rate to the College for each type of energy purchased by the College) for each corresponding period ("Savings"). The "Total Savings" means the Savings and any additional verifiable cost containment or avoidances resulting from the Program (e.g. utility refunds received as a result of a Program billing audit), in accordance with current industry-accepted valuation methodology. Savings reports shall be delivered to the Program Liaison for review and verification. The Program Liaison will work diligently to review reported Savings and will present any questions about the savings reports within ten (10) business days of receipt. Cenergistic's projections of Total Savings when using the Program are based upon energy consumption and other data furnished by the College. The "measured use at the building level" means energy and utilities use measured by meters specific to each facility and calculated by the energy coordinators for those facilities that are not directly measured (i.e. not separately metered).Cenergistic's projections of Total Savings when using the Program are based upon energy consumption and other data furnished by the College.

(b) **Baseline Period.** A 12-month baseline period will be established as set out in the attached M & V Plan by Cenergistic and the energy coordinators, in consultation with the College. The Software will be used to establish a baseline period consisting of twelve (12) consecutive months that precede the Start Date ("Base Year"). The College represents that the historical utility usage data provided to Cenergistic for the purpose of savings projections is accurate. If it is later determined that either: (1) there is a variation between the data provided and the accurate utility usage of ± 5% or more; or, (2) changes in the twelve (12) months preceding the Start Date would cause those twelve (12) months to not accurately reflect actual pre-program usage by the College ("variation"), Cenergistic may select as the Base Year an alternate twelve (12) month period from the thirty-six (36) months preceding the Start Date. For new construction, the College's energy coordinators and Cenergistic shall use detailed, calibrated simulation analysis to compile the Base Year.

(c) **Reporting Period.** Each reporting period will be a 12-month period ("Performance Year"). The first Performance Year will begin after the energy coordinators start work and the QuickStart (as defined below) ends ("First Year") and each Performance Year is consecutively named. The "Second Year" means the 12-month reporting period following the end of the First Year, the "Third Year" follows the Second Year, and so on. Using the Software, Savings shall be calculated for each Performance Year in comparison to the Base Year.

(d) **Appropriate Adjustments.** (i) Adjustments to the baseline shall be made in accordance with the M & V Plan to recognize that the operating environment changes in ways that impact energy use but are independent of the Program (e.g. the weather) and function simply to bring energy use in the two time periods to an equivalent set of conditions.

(ii) The Software allows appropriate adjustments to the Base Year, using available data to account for the following factors occurring during the Performance Year that affect the energy used in facilities ("Adjustment Variables"): outside temperature; floor space; occupancy type or schedule; amount, type or use of equipment; number of days in the billing period; energy rates; and reasonably estimated energy loads added or reduced after Program implementation.
(iii) The Software also allows other appropriate adjustments for a more accurate Savings calculation. If the College has experienced abnormal temperatures during the Base Year, a total of thirty-six (36) months of billing information will be used to create a more accurate statistical model for the College. The College shall communicate the College’s energy conservation guidelines to its construction contractors and on-site management service providers, if any. If the guidelines are not substantially followed by these third parties, the College shall not be responsible for such failures and the Savings will be determined with appropriate adjustments. If the College chooses not to substantially implement Cenergist’s water conservation recommendations, the Savings may be determined without including water use. If an energy coordinator position is vacant or an energy coordinator is off-the-job for more than 30 days, Cenergist may require that the Performance Year be suspended until an energy coordinator (with at least initial training) is on-the-job. If a Performance Year is suspended, it will consist of twelve non-consecutive months.

(e) Campus Savings. Cenergist will work with the energy coordinators using the Software to provide a breakdown of Savings for each campus.

6. **Term.** This contract shall be for a term of five (5) years plus the QuickStart period, beginning on the Start Date and ending on the due date for the Performance Fee payment for the last month of the Fifth Performance Year (“Term”).

7. **QuickStart, Fees and Reimbursable Expenses.** (a) **QuickStart.** The College shall not pay any Performance Fees to Cenergist during the QuickStart period, beginning on the Start Date and ending six months after the Start Date, or on such later date as determined by Cenergist (“QuickStart”). In the event the energy coordinators have not been selected by the end of the QuickStart, the parties agree the QuickStart will be extended up to an additional 90 days to allow more time for selection of the energy coordinators.

(b) **Performance Fees.** Cenergist’s Performance Fees are based on the Total Savings the Program achieves during the first five Performance Years (“Fee Period”). For each month during the Fee Period, the College shall pay Cenergist a fee in an amount equal to 50% multiplied by the Total Savings for that month (“Performance Fees”). Cenergist shall submit a Performance Fees billing statement to the College for each month during the Fee Period based upon the Total Savings documentation provided to the Program Liaison in accordance with paragraph 5(a) above. The Performance Fee billing statement shall be submitted to:

Gail E. Vizzini
Vice President of Business and Financial Affairs
Suffolk County Community College
Office of Business and Financial Affairs
533 College Road, NFL 232
Selden, NY 11784

Payment is due no later than 30 days after the College receives the billing statement described above.

(c) **Reimbursable Expenses.** Through the end of the Fifth Year, Cenergist will reimburse the College for the following expenses (“reimbursable expenses”): (1) the Compensation
paid to the energy coordinators, in an amount not to exceed the lesser of (a) if a current employee of the College, the current salary plus 20%, (b) the starting salary for the energy coordinator in accordance with the terms of 3(b) above, or (c) $100,000 per year unless a greater amount is approved by Cenergistic in writing before such expenses are incurred, (2) the reasonable and customary out-of-pocket benefits that are incurred related to the energy coordinators position, in an amount not to exceed the lesser of 25% of the actual salary or $25,000 per year, and (3) the reasonable Travel Expenses that are incurred for the energy coordinators and the Program Liaison to attend Cenergistic's National Training Conferences. Travel Expenses in excess of $1,000 for any National Training Conference, per energy coordinator, are not eligible for reimbursement unless approved by Cenergistic before they are incurred. Raises given to the energy coordinators commensurate with raises provided to other College employees will be considered reimbursable expenses for purposes of this contract. Cenergistic will pay the College for reimbursable expenses after they are incurred in the form of a monthly credit against the Performance Fee amount due from the College for the previous month. Reimbursable expenses incurred during the QuickStart period shall be credited to the College no later than the invoice for the fourth quarterly Performance Fee billing at the end of the first Performance Year.

(d) Billing Audit Contingent Fees. As indicated above, the College shall not pay any Performance Fees during the QuickStart. However, the College shall pay Cenergistic a fee in an amount equal to 50% multiplied by the amount of any refund or credit that the College receives during the QuickStart from a third party provider of energy as a result of a Program billing audit ("Billing Audit Contingent Fees"). Any such credit or refund received during the Fee Period shall be payable according to paragraph 7(b). Cenergistic shall submit a Billing Audit Contingent Fees billing statement at the start of the Fee Period with supporting documentation of the refund or credit that the College received as a result of the Program billing audit to:

Gail E. Vizzini
Vice President of Business and Financial Affairs
Suffolk County Community College
Office of Business and Financial Affairs
533 College Road, NFL 232
Selden, NY 11784

Payment is due no later than 30 days after the College receives the billing statement with support documentation.

(e) Additional Colleges. In the event the College acquires, contracts with, or otherwise becomes responsible for educational services at facilities for another college ("acquired College"), or is requested by another college ("requesting College") to allow one of the energy coordinators to provide energy management support, the College agrees to not share, utilize, or include the Program (including the use or services of the energy coordinators trained by Cenergistic) to any extent, in any facilities in the acquired or requesting college without Cenergistic's express written consent and payment of additional fees as mutually agreed. This provision shall not apply to modular building space leased to Long Island University ("LIU") on any of the College campuses. Any such modular buildings leased to LIU will be excluded from the Program and will not be included in
determining savings from the Program. Because of such exclusion, the College will not share any Cenergistic intellectual property or seek to otherwise implement the program in these buildings.

8. **Program Continuation. No More Fees.** Once the College has paid all fee amounts owed to Cenergistic for the Fee Period and so long as: (i) the parties mutually agree, in writing, to the details concerning the continuation of the Program, and (ii) the College continues to substantially implement the Program, (which shall include maintaining current performance data in the Software) the Program shall continue with no additional fee payments to Cenergistic. During this Program Continuation period the College may continue to implement and utilize the Program but always subject to the College’s continuing obligations in this contract regarding the Proprietary Information (as defined and set out above).

9. **Savings Guarantee.** (a) Cenergistic’s commitment to the quality of the Program is evidenced by Cenergistic’s Savings Guarantee (as defined below). Cenergistic shall reimburse the College for the difference if the College’s Costs (as defined below) exceed its Total Savings, computed from the Start Date to the end of any Performance Year during the Term (“Savings Guarantee”). Due to the cumulative nature of the Savings Guarantee it is necessary to specify that Cenergistic shall not make reimbursement for amounts that Cenergistic has already reimbursed for a prior Performance Year. To be eligible for the Savings Guarantee the College must have employed two energy coordinators as required and substantially implemented the Program. The “College’s Costs” means the total amounts paid for the energy coordinators’ Compensation and Travel Expenses (reduced by any reimbursements by Cenergistic), initial and renewal costs of the Software, the Performance Fees and the Billing Audit Contingent Fees, if any. Cenergistic shall pay the College a required reimbursement no later than 90 days after the results for the prior Performance Year have been finalized by Cenergistic and the College’s energy coordinator. If Cenergistic fails to make a required reimbursement, the College may terminate this contract and recover the amount of the required reimbursement from Cenergistic.

(b) The College shall refund prior reimbursements on the Savings Guarantee to Cenergistic if (1) the Total Savings exceed the College’s Costs, computed from the Start Date to the end of a later month during the Term, or (2) the College exercises its right of Termination for Convenience (as defined below). The College shall pay Cenergistic a required refund: (1) no later than 90 days after the results for such later month have been finalized by Cenergistic and the College’s energy coordinators, or (2) on the effective date of a Termination for Convenience.

10. **College Termination for Convenience, Lack of Substantial Implementation or Non-Appropriations of Funds.**

(a) **Right to Terminate.** As provided in this contract Cenergistic anticipates a long-term relationship and remains committed to the College through the Term. However, the College may terminate this contract for any reason and without cause as provided in this paragraph. Also, Cenergistic may terminate this contract in the event that even after notice and an opportunity to remedy the College is not substantially implementing the Program.

(b) **Termination for Convenience.** To validly exercise its right to terminate during the Term for any reason and without cause (including if there is no appropriation of funding or for any other termination that is not based on Cenergistic’s failure to perform its material obligations under this contract) (a “Termination for Convenience”), the College shall provide Cenergistic with at least sixty
(60) days prior written notice and shall promptly pay Cenergistic a termination fee ("Termination Fee"): as set out in the following schedule:

(i) During or at the end of Performance Year One $600,000,
(ii) During or at the end of Performance Year Two $550,000,
(iii) During or at the end of Performance Year Three $490,000,
(iv) During or at the end of Performance Year Four $440,000,
(v) During Performance Year Five $350,000

Upon a Termination for Convenience, the College shall also pay Cenergistic an amount equal to (1) the unpaid Performance Fees and Billing Audit Contingent Fees, if any, but only through the termination effective date, plus (2) 50% multiplied by the Total Savings for the QuickStart, less all reimbursable expenses incurred through the termination effective date that have not been previously reimbursed. A Termination for Convenience voids the Savings Guarantee. The College’s right to terminate for convenience does not limit the rights and remedies of the College. More specifically, if Cenergistic fails to perform its material obligations under this contract, the College’s legal rights and remedies are not limited by the terms of this paragraph. If the College contends Cenergistic has committed a material breach of the contract, the College will provide written notice to Cenergistic specifically describing the breach and giving Cenergistic a reasonable opportunity and time (not less than 30 days) to cure the claimed breach before taking other action. If the material breach is not remedied by Cenergistic following the notice as set out above, the College may terminate this contract without any obligation to pay a termination fee.

(c) Termination for Lack of Substantial Implementation. If Cenergistic reasonably determines that the College is not substantially implementing the Program, Cenergistic shall give the College written notice of its determination (including specific details supporting Cenergistic’s determination and specific recommendations for appropriate College action) and, at Cenergistic’s election, the Performance Year and payment of the Performance Fees shall be suspended for a period of up to four (4) months as time to remedy. The College shall act within a reasonable time to cure such failure, with curative steps being taken within sixty (60) days after receipt of the written notice referenced above. If the parties are unable to agree on whether the College is substantially implementing the Program, the parties agree to meet to resolve the differences, and if unsuccessful, have the issue mediated as set forth in paragraph 13(k) below. “Substantial implementation of the Program” does not require the College to have implemented the Program in every detail. To “substantially implement” the Program means that the process of implementation is material to the extent that the program functions as intended. It requires that the Program has been implemented in its material elements, or almost fully implemented. Without limiting any provision, term, or obligation contained in this Contract, and further, without limiting any requirement or element of successful implementation, because implementation will be a continual process, but for purposes of illustration only, some examples of elements of successful implementation would include the approval and adoption of appropriate resolution and administrative guidelines, implementation of the administrative guidelines, access and authority to make changes to the EMS by the energy coordinators as set out herein, and accessibility and responsiveness of the Program Liaison (as set out herein). Without limitation, but for purposes of illustration only, some examples of elements that will not be required as part of substantial implementation include: (i) capital improvements, (ii) payment of expenses other than

Cenergistic
5950 Sherry Lane, Suite 900, Dallas Texas 75225
those set out in this contract, or, (iii) setback temperatures outside ASHRAE standards. For purposes of determining savings, savings shall continue to accrue through any suspension period. If Cenergistic reasonably determines the College continues to fail or refuse to substantially implement the Program following such notice and opportunity to remedy (including the opportunity to follow the dispute resolution process set forth in paragraph 13(k) below), then Cenergistic may exercise this right to terminate during the Term on written notice and the College shall promptly pay Cenergistic: (1) a Termination Fee in the amount stated above, plus (2) an amount equal to the unpaid Performance Fees and Billing Audit Contingent Fees, if any, but only through the termination effective date, plus (3) 50% multiplied by the Total Savings for the QuickStart.

(d) **Termination For Cause.** The College may terminate this contract for cause (without obligation to pay a Termination Fee) on written notice to Cenergistic, if Cenergistic commits a material breach of its obligations under this contract and Cenergistic fails to cure such material breach within thirty (30) days after written notice (delivered personally or by certified mail, return receipt requested) from the College specifically describing the breach. “Material breach” means the failure by Cenergistic to substantially fulfill any of the material terms and conditions of this Contract.

(e) **Termination for Non-Appropriation of Funds.** The College’s contractual obligation pursuant to this Contract to pay Cenergistic in any fiscal year of the College is limited to and payable exclusively out of, the College’s available funds for such fiscal year. The College shall have no obligation to fund its financial obligations pursuant to the Contract other than for its current fiscal year; no provision of the Contract shall be construed as creating any other indebtedness or any multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of the College. Cenergistic and the College intend, subject to the other provisions of this Contract, that it will continue from its stated commencement date until at least the end of the fifth performance year, but the Contract shall terminate at the end of the College’s current fiscal year, and at the end of each of its succeeding fiscal years unless the College decides to renew the Contract for the College’s next following fiscal year, and, as a part of its newly adopted budget for such fiscal year, sufficient funds are appropriated by the local appropriating body for such fiscal year to discharge its obligations pursuant to the continued Contract. If this Contract is continued for the next year, no termination fee will be payable for the preceding year.

The College reasonably believes that legally available funds can be obtained in amounts sufficient to pay all of its obligations as required in this Contract, as and when due, during its present and all following fiscal years. The inclusion of a specific appropriation for the renewal of this Contract in the College’s final budget for its next and each following fiscal year shall be evidence of the College’s decision to renew the Contract for that next fiscal year without further action by Cenergistic or the College. If the College decides not to renew the Contract for its next or any following fiscal year, the College shall give written notice of such decision to Cenergistic (and make payment of any sums due, including any termination fees that might be due) not later than 10 days after the approval of its budget by the appropriating body.

11. **Termination Event.** Upon termination of this contract the College shall promptly: (a) return to Cenergistic all written materials marked “Proprietary Information” previously furnished by Cenergistic or accumulated by the College in connection with the Program, including all copies thereof, as well as all database files created using the Software; and (b) cease using the Proprietary Information and implementing the Program.
12. **Proprietary Program and Information.** (a) The College will have access to and use of Cenergistic’s energy management program as well as materials that are copyrighted, trade secrets and other information that is proprietary to Cenergistic (collectively “Proprietary Information”). Furthermore, the Proprietary Information also includes all database files created using the Software, but does not include any information, data or source documents provided by the College. Upon termination, the information, data or source documents provided by the College shall be returned to the College and the College may retain one archival copy of all reports produced by the software during the active term of the Program. If requested, upon termination, Cenergistic will export the raw source data (which shall not include any formulas or proprietary information of Cenergistic) that has been accumulated (price, expenditures for utilities, historical consumption information, etc.) into a spreadsheet to be provided to the College.

(b) Subject to applicable laws, specifically including, but not limited to the New York State Freedom of Information Law (Public Officers Law, Article 6), the College agrees that the Proprietary Information (including all copies) continues to be Cenergistic’s property and should be kept confidential to the full extent permitted by law. The College shall give Cenergistic written notice and an opportunity to respond if the College receives a third party request for Proprietary Information. The College shall not disclose the Proprietary Information to any unauthorized person or use it outside of the College or this contract unless required to do so by law or order of any Court of competent jurisdiction. The College shall assist Cenergistic in the protection of the Proprietary Information. The College’s obligations under this paragraph survive termination of this contract.

(c) In consideration of the education and training provided by Cenergistic, the College’s energy coordinators must agree not to disclose Proprietary Information to third parties or to compete with Cenergistic and must also agree that if they attend any energy conservation user group meetings or participate in other on-line energy group sessions (“event”) not sponsored by Cenergistic, that the energy coordinators will (i) notify Cenergistic of participation prior to the event, and (ii) not share Cenergistic Proprietary Information as part of participation in the event. This agreement with each energy coordinator must be in writing and acceptable to Cenergistic. The College shall have no responsibility or liability for the compliance by the energy coordinators with the agreement referenced in this paragraph, or for any act or omission of the energy coordinators which occurs outside the scope of their public employment duties, including those duties identified in said agreement. However, the parties agree and understand that if, during the hiring process, the prospective energy coordinator refuses to sign the agreement referenced in this paragraph, such refusal will be a declination under the New York Civil Service Law and Regulations and permit the parties to move to the next qualified candidate. The College will issue a directive to the individuals chosen as the energy coordinators that if they attend any event (as defined above), that the energy coordinators will (i) notify Cenergistic of participation prior to the event, and (ii) not share Cenergistic Proprietary Information as part of participation in the event.

13. **Miscellaneous.** (a) This contract constitutes the entire agreement of the parties with respect to the subject matter of this contract. This contract supersedes the parties’ prior communications, requests, responses, proposals, offers and agreements, if any. This contract may be modified only by a writing signed by the parties. Invalidity or unenforceability of one or more provisions of this contract shall not affect any other provision of this contract.
(b) **Indemnification.**

i. Cenergistic, to the extent permitted by law, 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 Cenergistic in connection with the services described or referred to in this Contract. Cenergistic shall defend the College and the County and their officers, officials, employees and consultants, in any suit, including appeals arising out of negligent acts or omissions of Cenergistic, or at the College and/or County's option, pay reasonable attorney's fees for defense of any such suit arising out of the negligent acts or omissions of Cenergistic, its officers, officials, employees, subcontractors or agents, if any, in connection with the services described or referred to in this Contract.

ii. The College, to the extent permitted by law, agrees to indemnify and hold Cenergistic harmless 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 the College in connection with the services described or referred to in this Contract. College shall defend Cenergistic and its officers, officials, employees and consultants, in any suit, including appeals arising out of negligent acts or omissions of the College, or at Cenergistic's option, pay reasonable attorney's fees for defense of any such suit arising out of the negligent acts or omissions of the College, its officers, officials, employees, subcontractors or agents, if any, in connection with the services described or referred to in this Contract.

(c) **Notices Relating to Payments, Reports, or Other Submissions**

Any communication, notice, claim for payment, report, insurance, or other submission necessary or required to be made by the parties regarding this Contract shall be in writing and shall be given to the College or Cenergistic or their designated representative at the following addresses or at such other address that may be specified in writing by the parties and must be delivered as follows:

**For the College**

Gail E. Vizzini  
Vice President for Business and Financial Affairs  
Suffolk County Community College  
533 College Road, NFL 232  
Selden, NY 11784-2899
(d) **Force Majeure.** The parties herein shall not be liable to one another for any failure to perform the obligations set forth in this Contract, provided such failure is due to causes or circumstances beyond the parties' control, including, without limitation, national emergencies, fire, flood, natural disasters, epidemics or catastrophes, acts of God or governmental authorities, insurrection, war, riots, or failure of transportation, communication, or power supply.

(e) **Invalidity of Provision.** It is expressly agreed that if any term or provision of this Contract, or the application thereof to any person or circumstance, shall be held invalid or unenforceable to any extent, the remainder of this Contract, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and every other term and provision of this Contract shall be valid and shall be enforced to the fullest extent permitted by law.

(f) **New York Law Applicable.** This contract 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.

(g) **Insurance.** During the Term, Cenergistic will maintain insurance and upon request after the Start Date, Cenergistic will furnish a certificate of insurance for the following coverage amounts: (1) Worker's Compensation – New York State statutory requirements and benefits; (2) Automobile Liability – $2,000,000.00 per accident, bodily injury and property damage combined; (3) Commercial General Liability – $2,000,000.00 per occurrence and general aggregate, to include
contractual liability, premises operation liability, independent contractor's liability, explosion, collapse and underground property damage, personal liability and products liability. The College and Suffolk County shall be named as additional named insureds on the general liability coverage. Upon request of the College, Cenergistic will produce a certificate of confirmation of the insurance coverage required by this paragraph.

(h) **Confidentiality of College Information.** Any records, reports or other documents of the College used by Cenergistic pursuant to this contract shall remain the property of the College and shall be kept confidential in accordance with applicable laws, rules or regulations.

(i) **Non-Discrimination.** Cenergistic shall comply with all applicable federal, state and local laws, rules and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, handicap or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this contract are incorporated by this reference.

(j) **Dispute Resolution.** Open communication and cooperation of the parties is vital to the success of the Program and to the settlement of disputes if they arise. If a dispute persists, either party may suggest an executive meeting for review and resolution. The party suggesting the meeting should identify the issues in dispute and coordinate a face-to-face meeting at the College to review the issues and solution options. The executive officer for each party who has full authority to discuss the issues and commit to effective solutions shall attend and participate in the meeting. Also, those persons with firsthand knowledge of the issues must be available for the meeting. If the above process is not successful, prior to instituting legal action, the parties agree to mediate their dispute with a mutually agreeable mediator. No dispute under this contract shall be subject to litigation proceedings prior to completing the meeting, except for an action to seek injunctive relief.

Each party is signing this contract on the date stated under that party's signature.

**Suffolk County Community College**  
By: [Signature]  
Name: Dr. Shaun L. McKay  
Title: President  
Date: 7/11/14

**CENERGISTIC, INC.**  
By: [Signature]  
Name: John Bernard  
Title: President  
Date: July 9, 2014

Suffolk County CC, NY - COLLEGE TKR MES 5yr CONTRACT v.10 (PLC) 070914
MEASUREMENT AND VERIFICATION PLAN

This Measurement & Verification Plan ("M&V Plan") is prepared for Suffolk County Community College (the "Organization") by Cenergistic and is agreed to by the parties as the M&V plan in accordance with the protocols of the International Performance Measurement and Verification Protocol ("IPMVP") for the energy program delivered by Cenergistic pursuant to the contract with a Start Date of August 1, 2014.

This M&V Plan is prepared in accordance with Chapter 5 of IPMVP Volume 1 (EVO 10000-1:2012).

The IPMVP guideline, developed and maintained by the nonprofit Efficiency Valuation Organization (see www.EVO-World.org), is the most current and widely-recognized guideline promulgated by a non-profit and impartial source. The IPMVP is the product of an international consortium of volunteers working together to create a "protocol that would help determine energy savings from energy efficiency projects in a consistent and reliable manner."

IPMVP includes guidance for many types of energy management initiatives and circumstances; not all guidance is applicable in all cases. The purpose of this M&V Plan is to document how the M&V guidance contained within IPMVP will be specifically applied to this contract. In cases of variance between specific provisions of IPMVP and this M&V Plan, this Plan takes precedence.

1. ECM Intent  The energy conservation measures ("ECMs") reduce electricity, gas, water and other energy usage and cost, depending on the specific facility. Many varied ECMs will be used to achieve the savings. ECMs will be operational in nature (not equipment, facility or hardware retrofits) and are generally categorized as turning off energy-using systems when not necessary, setting back energy-using systems when possible, and improving efficiency of energy-using systems when in use. Space conditions, during both occupied and unoccupied periods, will change as necessary to comply with the organization's published energy policy and administration guidelines.

2. Selected IPMVP Option and Measurement Boundary  IPMVP Option C (Whole Facility) will be used for savings determination because it is the most appropriate M&V method for total facility energy reduction when all energy-using systems are affected and ECMs cannot be isolated, submetered or simulated by computer model. Option C was also chosen because many ECMs will be involved, and some of them cannot be directly measured. Utility meters for electricity, gas, heating oil, fuel oil, water and sewer will be included in the savings M&V for the organization. Together, these meters will account for all energy use by each facility. The total savings is the sum of savings for each facility. The measurement boundary includes all facilities and infrastructure owned and leased by the Organization.

3. Baseline: Period, Energy and Conditions  Using the Software (as defined in the contract, hereinafter "Software"), a baseline period shall be established for each meter consisting of 12 consecutive months that precede the energy program Start Date. Normally this will be the 12 months immediately prior to start date, but under circumstances described in the contract, an alternate 12-month period may be chosen.

The baseline data for each meter will be defined and available in the M&V Software upon import and preparation of the data for each meter & facility. The Software also includes static factors such as weather and building size. Included in the baseline data will be an identification of the baseline
period, baseline energy consumption and demand data, other independent and relevant variable data, and other static factors (i.e. occupancy type, building information such as square footage, etc.). Other baseline data may be included and/or supplemented as agreed by the parties. Daily mean temperature weather data will be obtained from a nationally-recognized service using NOAA-originated data.

4. Reporting Period  Each reporting period will be a 12 month period called a “Performance Year”. The Performance Year begins according to the terms of the contract.

5. Basis for Adjustment  Energy savings are determined by comparing measured use before and after the start of Program implementation, after making appropriate adjustments for changes in conditions that are independent of the Program. Since savings are to be reported as “cost avoidance”, under reporting period conditions, IPMVP Equation 1b will be used. This method quantifies how savings in a given reporting period is determined, relative to what energy use would have been without the ECMs in place. Equation 1b defines how baseline period energy needs to be adjusted to reporting period conditions.

\[
\text{Avoided Energy Use (or Savings)} = \text{Adjusted-Baseline Energy} - \text{Reporting-Period Energy} \\
\pm \text{Non-Routine Adjustments of baseline energy to reporting-period conditions}
\]

In addition, savings may be accrued due to one-time actions such as identification of utility billing errors leading to refunds, rebates, rate changes, and other measures that do not reduce energy usage but do reduce Organization’s out of pocket utility costs.

6. Analysis Procedure  The Software performs the cost avoidance analysis procedure. The Software allows appropriate routine and non-routine adjustments to the baseline period, using available data to account for the following factors occurring during the reporting period that affect the energy used in facilities: number of days in the billing period, energy unit cost, and reasonably estimated energy loads added or reduced after Program implementation due to such factors as outside temperature; floor space; occupancy type or schedule; amount, type or use of equipment; facility construction/renovation; and energy management software. The Software also allows other appropriate adjustments for a more accurate Savings calculation. If the organization has experienced abnormal temperatures during the baseline period, a total of 36 months of billing information can be used to create a more representative statistical baseline. If the organization’s energy conservation guidelines are not substantially followed by its construction contractors or on-site management service providers, if any, the Savings can be estimated with appropriate engineering calculations and baseline adjustments.

The Software adheres to the IPMVP guidelines. IMPVP is not exhaustive in its guidance; in some situations engineering judgment must be used. Calculations are supervised by licensed Professional Engineers, Certified Measurement and Verification Professionals and Certified Energy Managers.
7. Energy Prices  Reporting of cost avoidance will value the energy use avoided at the then-current unit cost for each meter, each period. Prices will be calculated by the Software for each month. The price applied for each utility is the realized price, based on the blended rate to the Organization for each type of energy purchased by the organization, taking into account consumption and all charges from the utility provider.

8. Meter Specifications  Utility company meters used for billing are the only meters used. Exception: For heating oil stored in tanks, dip measurements recorded by the organization or by the provider may be used. In master-metered campus situations, submeters may be necessary for accurate identification of building by building energy usage.

9. Monitoring responsibilities  Energy data from utility bills will be recorded in the Software as set out in the contract. The Software captures weather information necessary for calculating and applying adjustments. Changes to the baseline conditions, such as facility size, occupancy or equipment changes, will be documented in the Software. Responsibility for collection, entry, calculation and accuracy of the data in the Software is the responsibility of the Energy coordinator(s) under the supervision of Cenergistic.

10. Expected Accuracy  The accuracy of data capture of the utility billing data and entry of that data into the Software is expected to be verified 100% (± 2%) via reports that reconcile data with utility bill accounts payable to ensure the quality of the data entered, to ensure consistency with previous billing, elimination of gaps or duplicate entries, and reasonable protection against user errors in data entry. Statistical accuracy of the Software’s routine weather adjustment process uses industry-standard linear regression techniques and is evaluated on a meter-by-meter basis. Data analysis does not involve sampling since the actual data, as entered into the Software, is used for any savings calculations. The accuracy of the Software’s calculations has been validated empirically against the Department of Energy’s ENERGY STAR program, which benchmarks buildings’ performance. The calculations of the Software are consistent with ENERGY STAR results in determining increase in building energy utilization index (EUI – Energy usage per square foot per year).

11. Budget  The cost of M&V includes the Software cost, as defined in the contract, plus a portion of the Energy coordinator’s time. The Software cost is defined in the contract. More time will be required early in the energy program by the Energy coordinator as the baselines are determined and the Energy coordinator becomes familiar with the Software and the process for entering data and determining savings. Once the utility bills have been entered, the baseline has been determined and the Energy coordinator has become familiar with the Software and the process, subsequently, the savings determination process and its review with operating and administrative staff is expected to require approximately 5% of an Energy coordinator’s time, across all meters and facilities for the organization.

12. Report Format  Cost avoidance will be calculated on a monthly basis as set out in the contract. Cost avoidance reports will be prepared and provided at least semi-annually to the organization. Cost avoidance calculations will commence with a formal data release occurring approximately five months after the Energy coordinator is in place. Cost avoidance reports will include results from the Software and show energy as well as expenditure savings versus the baseline. Cost avoidance reports have different formats for different audiences, but in general show usage and cost for: baseline actual, baseline adjusted to reporting period conditions,
reporting period actual, and calculated cost avoidance (adjusted baseline minus reporting period actual).

13. Quality Assurance  The primary risks in this M&V process are listed below with specific quality assurance steps that will be used to address each.

- Utility companies sometimes estimate meter readings instead of actually reading the meter. Any such estimate will be self-corrected by a subsequent month “true-up” when the meter is actually read. When an estimate is detected, the Energy coordinator will attempt to validate the utility company estimate to reflect actual usage until an actual reading is made, and then adjust data to smooth out anomalies created by estimates.

- Undetected changes happen to buildings, their operation, or use and those undetected changes may not be reflected in the reported savings. The procedures described in Section 9 minimize the chance of any such impact and ensure that any unimplemented baseline change has minimal effect.

- Data entry by the Energy coordinator may put incorrect data into the Software. Cenergistic along with the Energy coordinator together review this data regularly to find such errors, and complete routine error-checking procedures within the Software to find and fix them.

The parties agree this M & V plan will be modified as mutually agreed to reflect changes that occur or additional data that may be obtained.

This M & V plan has been developed for Suffolk County Community College by the following qualified professional.

CENERGISTIC INC.

[Signature]

JOE PECHACEK

VICE PRESIDENT, PROCESS QUALITY

CERTIFIED ENERGY MANAGER (CEM)

CERTIFIED MEASUREMENT AND VERIFICATION PROFESSIONAL (CMVP)

CERTIFIED BUILDING ENERGY SIMULATION ANALYST (BESA)