Agreement

This Agreement (Agreement) is between Suffolk County Community College (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 (County), a municipal corporation of the State of New York, and

PrestoSports (Contractor), a Maryland corporation licensed to do business in the State of New York, having its principal place of business at 451 Hungerford Drive, Suite 608, Rockville, MD 20850.

The parties hereto desire for Contractor to provide access to Software and Contractor's Application Server (Services).

Term of Agreement: March 1, 2011 through February 28, 2014

Total Cost of Agreement: Shall not exceed $12,750.00, as set forth in Exhibit E, attached.

Terms and Conditions: Shall be as set forth in Exhibits A through E attached hereto and made a part hereof.

In Witness Whereof, the parties hereto have executed this Agreement as of the latest date written below.

PrestoSports

By: ______________________________
Name: Serge Kupstadas
Title: CEO
Fed. Tax ID # S1-0556174
Date: ______/____/____

Approved as to Legality: Suffolk County Community College

By: ______________________________
Louis J. Petrizzo
College Deputy General Counsel
Date: ______/____/____

Suffolk County Community College

By: ______________________________
Dr. Shaun L. McKay
President
Date: ______/____/____

Approved: Suffolk County Community College

By: ______________________________
James D. Amoroso
Vice President for Business and Financial Affairs
Date: ______/____/____

Recommended: Suffolk County Community College

By: ______________________________
Frank Ryan
Administrative Director for Business Operations
Date: ______/____/____
List of Exhibits

Exhibit A
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Exhibit A
General Terms and Conditions

Whereas, the College has selected Contractor to provide the services as set forth herein; and

Now therefore, in consideration of the mutual provisions and covenants hereafter set forth, the parties hereto agree as follows:

1. Contractor Responsibilities
   
a. Services

   Contractor shall provide the Services described in Exhibit D, entitled "Description of Services."

   b. Qualifications and Licenses

      To the extent applicable, Contractor specifically represents and warrants that it has and
      shall possess, and that, to the extent applicable, its employees, agents and
      subcontractors have and shall possess, the required education, knowledge, experience
      and character necessary to qualify them individually for the particular duties they
      perform and that Contractor has and shall have, and, to the extent applicable, its
      employees, agents and subcontractors have and shall have, all required authorizations,
      certificates, certifications, registrations, licenses, permits or other approvals required by
      the State, County or other authorities for the Services provided.

2. Term and Termination
   
a. Term

      This Agreement shall cover the period set forth on page one of this Agreement, unless
      sooner terminated as provided below. Upon receipt of a Termination Notice, as that
      term is defined below, Contractor shall promptly discontinue all Services affected,
      unless otherwise directed by the Termination Notice.

   b. Termination for Cause

      i. A failure to maintain the amount and types of insurance required by this
         Agreement may result in immediate termination of this Agreement, in the sole
         discretion of the College.

      ii. Failure to comply with federal, state or local laws, rules, regulations, or College
          or County policies or directives may result in immediate termination of this
          Agreement, in the sole discretion of the College.
iii. If Contractor becomes bankrupt or insolvent or falsifies its records or reports, or misuses its funds from whatever source, the College may terminate this Agreement in whole or in part, effective immediately, or, at its option, effective at a later date specified in the notice of such termination to Contractor.

iv. In the event of a failure on the part of Contractor to observe any of the other terms and conditions of this Agreement, this Agreement may be terminated in whole or in part in writing by the College provided that no such termination shall be effective unless Contractor is given five (5) calendar days' (or longer, at the College’s option) written notice of intent to terminate (Notice of Intent to Terminate), delivered in accordance with the Exhibit entitled “Notices and Contact Persons.” During such five (5) day period, (or longer, at the College’s option) Contractor will be given an opportunity for consultation with the College and an opportunity to cure all failures of its obligations prior to termination by the College. In the event that Contractor has not cured all its failures to fulfill its obligations to the satisfaction of the College by the end of the (5) day period (or longer, at the College’s option), the College may issue a written termination notice (Termination Notice), effective immediately.

d. **Termination for Emergencies**

An emergency or other condition involving possible loss of life, threat to health and safety, destruction of property or other condition deemed to be dangerous, in the sole discretion of the College, may result in immediate termination of this Agreement, in whole or in part.

e. **Termination for Convenience**

The College shall have the right to terminate this Agreement at any time and for any reason deemed to be in its best interest, provided that no such termination shall be effective unless Contractor is given thirty (30) calendar days' prior written notice (Termination Notice). In such event of termination, the College shall pay Contractor for the services rendered through the date of termination.

f. **Payments upon Termination**

i. Upon receiving a Termination Notice, Contractor shall promptly discontinue all services affected unless otherwise directed by the Termination Notice.

ii. The College shall be released from any and all responsibilities and obligations arising from the services provided in accordance with this Agreement, effective as of the date of termination, but the College shall be responsible for payment of all claims for services provided and costs incurred by Contractor prior to termination of this Agreement, that are pursuant to, and after Contractor’s compliance with, the terms and conditions of this Agreement.
iii. Upon termination, Contractor agrees to promptly reimburse to the College the balance of any funds advanced to Contractor by the College. Upon termination, any funds paid to Contractor by the College which were used by Contractor in a manner that failed to comply with the terms and conditions of this Agreement must be promptly reimbursed. If there is no response or if satisfactory repayments are not made, the College may recoup such payments from any amounts due or becoming due to Contractor from the College under this Agreement or otherwise. The provisions of this subparagraph shall survive the expiration or termination of the Agreement.

3. Indemnification

a. General

Contractor agrees that it shall protect, indemnify and hold harmless the College and/or County and their officers, officials, employees, contractors, agents and other persons 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 acts or omissions or the negligence of Contractor in connection with the services described or referred to in this Agreement. Contractor shall defend the College and/or County and their officers, officials, employees, contractors, agents and other persons in any suit, including appeals, or at the College and/or County’s option, pay reasonable attorney’s fees for defense of any such suit arising out of the acts or omissions or negligence of Contractor, its officers, officials, employees, subcontractors or agents, if any, in connection with the services described or referred to in this Agreement.

b. Federal Copyright Act

Contractor hereby represents and warrants that it will not infringe upon any copyrighted work or material in accordance with the Federal Copyright Act during the performance of this Contract. Furthermore, Contractor agrees that it shall protect, indemnify and hold harmless the College and/or County and their officers, officials, employees, contractors, agents and other persons from and against all liabilities, fines, penalties, actions, damages, claims, demands, judgments, losses, costs, expenses, suits or actions and reasonable attorney’s fees, arising out of the acts or omissions or the negligence of Contractor in connection with the services described or referred to in this Agreement. Contractor shall defend the College and/or County and their officers, officials, employees, contractors, agents and other persons in any suit, including appeals, or, at the College and/or County’s option, pay reasonable attorney’s fees for defense of any such suit arising out of the acts or omissions or negligence of Contractor, its officers, officials, employees, subcontractors, lessees, licensees, invitees or agents, if any, in connection with the services described or referred to in this Agreement.
4. Insurance

a. Contractor agrees to procure, pay the entire premium for and maintain throughout the term of this Agreement, insurance in amounts and types specified by the College and as may be mandated and increased from time to time. Contractor agrees to require that all of its subcontractors, in connection with work performed for Contractor related to this Agreement, procure, pay the entire premium for and maintain throughout the term of this Agreement insurance in amounts and types equal to that specified by the College for Contractor. Unless otherwise specified by the College and agreed to by Contractor, in writing, such insurance shall be as follows:

i. **Commercial General Liability** insurance, including contractual liability coverage, in an amount not less than Two Million Dollars ($2,000,000.00) per occurrence for bodily injury and Two Million Dollars ($2,000,000.00) per occurrence for property damage.

ii. **Automobile Liability** insurance (if any vehicles are used by Contractor in the performance of this Agreement) in an amount not less than Five Hundred Thousand Dollars ($500,000.00) per person, per accident, for bodily injury and not less than One Hundred Thousand Dollars ($100,000.00) for property damage per occurrence.

iii. **Worker's Compensation** and **Employer's Liability** insurance in compliance with all applicable New York State laws and regulations and **Disability Benefits** insurance, if required by law. Contractor shall furnish to the College, prior to its execution of this Agreement, the documentation required by the State of New York Workers' Compensation Board of coverage or exemption from coverage pursuant to §§57 and 220 of the Workers' Compensation Law. In accordance with General Municipal Law §108, this Agreement shall be void and of no effect unless Contractor shall provide and maintain coverage during the term of this Agreement for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

iv. **Professional Liability** insurance in an amount not less than Two Million Dollars ($2,000,000.00) on either a per occurrence or claims made coverage basis.

b. All policies providing such coverage shall be issued by insurance companies with an A.M. Best rating of A- or better.

c. Contractor shall furnish to the College Declaration Pages for each such policy of insurance and upon request, a true and certified original copy of each such policy, evidencing compliance with the aforesaid insurance requirements. In the case of commercial general liability insurance, the College and the County of Suffolk shall be named as additional insureds and Contractor shall furnish a Declaration Page and endorsement page evidencing the College and the County's status as additional
insureds on the policy.

d. Any such Declaration Page, certificate of insurance, policy, endorsement page or other evidence of insurance supplied to the College shall provide for the College and the County of Suffolk to be notified in writing thirty (30) days prior to any cancellation, nonrenewal or material change in the policies. Such Declaration Page, certificate of insurance, policy, endorsement page, other evidence of insurance and any notice of nonrenewal or material change shall be mailed to the College and the County at the addresses set forth in this Agreement in the exhibit entitled “Notices and Contact Persons” or at such other address of which the College and/or the County shall have given Contractor notice in writing.

e. In the event Contractor shall fail to provide the Declaration Page, certificate of insurance, policy, endorsement page or other evidence of insurance, or fails to maintain any insurance required by this Agreement, the College and/or the County may, but shall not be required to, obtain such policies and deduct the cost thereof from payments due Contractor under this Agreement or any other agreement between the College and/or the County and Contractor.

5. **Independent Contractor**

It is expressly agreed that Contractor’s status hereunder is that of an independent contractor. Neither Contractor, nor any person hired by Contractor shall be considered employees of the College and/or the County for any purpose.

6. **Severability**

It is expressly agreed that if any term or provision of this Agreement, or the application thereof to any person or circumstance, shall be held invalid or unenforceable to any extent, the remainder of this Agreement, 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 Agreement shall be valid and shall be enforced to the fullest extent permitted by law.

7. **Merger; No Oral Changes**

It is expressly agreed that this Agreement represents the entire agreement of the parties and that all previous understandings are merged in this Agreement. No modification of this Agreement shall be valid unless written in the form of an Amendment and executed by both parties.
8. **Set-Off Rights**

The College shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include, but not be limited to, the College’s option to withhold, for the purposes of set-off, any moneys due to Contractor under this contract up to any amounts due and owing to the College with regard to this contract and/or any other contract with the College, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the College for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The College shall exercise its set-off rights in accordance with normal College practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the College, its representatives, and only after legal consultation with the College General Counsel.

9. **Non-discrimination in Services**

During the performance of this Agreement:

a. Contractor shall not, on the grounds of race, creed, color, national origin, sex, age, disability, sexual orientation, military status or marital status:

   i. deny any individual any services or other benefits provided pursuant to this Agreement; or

   ii. provide any services or other benefits to an individual that are different, or are provided in a different manner, from those provided to others pursuant to this Agreement; or

   iii. subject an individual to segregation or separate treatment in any matter related to the individual’s receipt of any service(s) or other benefits provided pursuant to this Agreement; or

   iv. restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any services or other benefits provided pursuant to this Agreement; or

   v. treat an individual differently from others in determining whether or not the individual satisfies any eligibility or other requirements or condition which individuals must meet in order to receive any aid, care, service(s) or other benefits provided pursuant to this Agreement.

b. Contractor shall not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, creed, color, national origin, sex, age, disability, sexual orientation, military status or marital status, or have the effect of defeating or substantially impairing accomplishment of the objectives of this Agreement in respect to individuals of a particular race, creed, color, national origin, sex, age, disability, sexual orientation, military status or marital status, in determining:

   i. the types of service(s) or other benefits to be provided, or

   ii. the class of individuals to whom, or the situations in which, such service(s) or other benefits will be provided; or
iii. the class of individuals to be afforded an opportunity to receive services.

10. Nonsectarian Declaration

Contractor agrees that all services performed under this Agreement are secular in nature, that no funds received pursuant to this Agreement will be used for sectarian purposes or to further the advancement of any religion, and that no services performed under this program will discriminate on the basis of religious belief.

11. Governing Law

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.

12. No Implied Waiver

No waiver shall be inferred from any failure or forbearance of the College to enforce any provision of this Agreement in any particular instance or instances, but the same shall otherwise remain in full force and effect notwithstanding any such failure or forbearance.

13. Conflicts of Interest

a. Contractor agrees that it will not during the term of this Agreement engage in any activity that is contrary to and/or in conflict with the goals and purposes of the College and/or the County.

b. Contractor is charged with the duty to disclose to the College and/or the County the existence of any such adverse interests, whether existing or potential. This duty shall continue so long as Contractor is retained on behalf of the College. The determination as to whether or when a conflict exists or may potentially exist shall ultimately be made by the College General Counsel and the County Attorney after full disclosure is obtained.

14. Cooperation on Claims

Each of the parties hereto agrees to render diligently to the other party, without additional compensation, any and all cooperation, that may be required to defend the other party, its employees and designated representatives against any claim, demand or action that may be brought against the other party, its employees or designated representatives in connection with this Agreement.

15. Confidentiality

Any records, reports or other documents of the College and/or the County used by Contractor pursuant to this Agreement or any documents created as a part of this Agreement shall remain
the property of the College and/or the County and shall be kept confidential in accordance with applicable laws, rules and regulations.

16. Assignment and Subcontracting

a. Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of this Agreement, or any of its right, title or interest therein, or its power to execute the Agreement, or assign all or any portion of the monies that may be due or become due hereunder, to any other person or corporation, without the prior consent in writing of the College, and any attempt to do any of the foregoing without such consent shall be of no effect.

b. Contractor shall not enter into subcontracts for any of the work contemplated under this Agreement without obtaining prior written approval of the College. Such subcontracts shall be subject to all of the provisions of this Agreement and to such other conditions and provisions as the College may deem necessary, provided, however, that notwithstanding the foregoing, unless otherwise provided in this Agreement, such prior written approval shall not be required for the purchase of articles, supplies, equipment and services which are incidental to, but necessary for, the performance of the work required under this Agreement. No approval by the College of any subcontract shall provide for the incurrence of any obligation by the College in addition to the total agreed upon price. Contractor shall be responsible for the performance of any subcontractor for the delivery of service.

17. No Intended Third Party Beneficiaries

This Agreement is entered into solely for the benefit of College, County and Contractor. No third party shall be deemed a beneficiary of this Agreement, and no third party shall have the right to make any claim or assert any right under this Agreement.

18. Certification as to Relationships

The parties to this Agreement hereby certify that, other than the funds provided in this Agreement and other valid Agreements with the College and/or the County, there is no known relationship within the third degree of consanguinity, life partner, or business, commercial, economic, or financial relationship between the parties, the signatories to this Agreement, and any partners, members, directors, or shareholders of five percent (5%) (or more) of any party to this Agreement.

19. Publications and Publicity

a. Contractor shall not issue or publish any book, article, report or other publication related to the Services provided pursuant to this Agreement without first obtaining written prior approval from the College. Any such printed matter or other publication shall contain the following statement in clear and legible print:
"This publication is fully or partially funded by Suffolk County Community College and the County of Suffolk."

b. The College shall have the right of prior approval of press releases and any other information provided to the media, in any form, concerning the Services provided pursuant to this Agreement.

20. Copyrights and Patents

a. Copyrights

If the work of Contractor under this Agreement should result in the production of original books, manuals, films or other materials for which a copyright may be granted, Contractor may secure copyright protection. However, the College reserves, and Contractor hereby gives to the College, and to any other municipality or government agency or body designated by the College, a royalty-free, nonexclusive license to produce, reproduce, publish, translate or otherwise use any such materials.

b. Patents

If Contractor under this Agreement makes any discovery or invention in the course of or as a result of work performed under this Agreement, Contractor may apply for and secure for itself patent protection. However, the College reserves, and Contractor hereby gives to the College, and to any other municipality or government agency or body designated by the College, a royalty-free, nonexclusive license to produce or otherwise use any item so discovered or patented.

End of Text for Exhibit A
Exhibit B
Suffolk County Legislative Requirements

1. Contractor's/Vendor's Public Disclosure Statement

Contractor represents and warrants that it has filed with the Comptroller of Suffolk County the verified public disclosure statement required by Suffolk County Administrative Code Article V, Section A5-7 and shall file an update of such statement with the Comptroller on or before the 31st day of January in each year of this Agreement's duration. Contractor acknowledges that such filing is a material, contractual and statutory duty and that the failure to file such statement shall constitute a material breach of this Agreement, for which the College shall be entitled, upon a determination that such breach has occurred, to damages, in addition to all other legal remedies, of fifteen percent (15%) of the amount of the Agreement.

Required Form: Suffolk County Form SCEX 22; entitled “Contractor's/Vendor's Public Disclosure Statement”

2. Living Wage Law

This Agreement is subject to the Living Wage Law of the County of Suffolk. The law requires that, unless specific exemptions apply, all employers (as defined) under service contracts and recipients of County financial assistance (as defined) shall provide payment of a minimum wage to employees as set forth in the Living Wage Law. Such rate shall be adjusted annually pursuant to the terms of the Suffolk County Living Wage Law of the County of Suffolk. Under the provisions of the Living Wage Law, the County shall have the authority, under appropriate circumstances, to terminate this Agreement and to seek other remedies as set forth therein, for violations of this Law.

Contractor represents and warrants that it has read and shall comply with the requirements of Suffolk County Code Chapter 347, Suffolk County Local Law No. 12-2001, the Living Wage Law.

Required Form: Suffolk County Living Wage Form LW-1; entitled “Suffolk County Department of Labor – Living Wage Unit Notice of Application for County Compensation (Contract)”

Suffolk County Living Wage Form LW-38; entitled “Suffolk County Department of Labor – Living Wage Unit Living Wage Certification/Declaration – Subject To Audit”
3. **Use of County Resources to Interfere with Collective Bargaining Activities**

   **Local Law No. 26-2003**

   Contractor represents and warrants that it has read and is familiar with the requirements of Chapter 466, Article 1 of the Suffolk County Local Laws, "Use of County Resources to Interfere with Collective Bargaining Activities." County Contractors (as defined) shall comply with all requirements of Local Law No. 26-2003 including the following prohibitions:

   a. Contractor shall not use County funds to assist, promote, or deter union organizing.

   b. No County funds shall be used to reimburse Contractor for any costs incurred to assist, promote, or deter union organizing.

   c. The County of Suffolk shall not use County funds to assist, promote, or deter union organizing.

   d. No employer shall use County property to hold a meeting with employees or supervisors if the purpose of such meeting is to assist, promote, or deter union organizing.

   If Contractor services are performed on County property, Contractor must adopt a reasonable access agreement, a neutrality agreement, fair communication agreement, nonintimidation agreement and a majority authorization card agreement.

   If Contractor services are for the provision of human services and such services are not to be performed on County property, Contractor must adopt, at the least, a neutrality agreement.

   Under the provisions of Local Law No. 26-2003, the County shall have the authority, under appropriate circumstances, to terminate this Agreement and to seek other remedies as set forth therein, for violations of this Law.

   **Required Form:** Suffolk County Labor Law Form DOL-LO1; entitled "Suffolk County Department of Labor – Labor Mediation Unit Union Organizing Certification/Declaration – Subject to Audit"

4. **Lawful Hiring of Employees Law**

   This Agreement is subject to the Lawful Hiring of Employees Law of the County of Suffolk (Local Law 52-2006). It provides that all covered employers, (as defined), and the owners thereof, as the case may be, that are recipients of compensation from the County through any grant, loan, subsidy, funding, appropriation, payment, tax incentive, contract, subcontract, license agreement, lease or other financial compensation agreement issued by the County or an awarding agency, where such compensation is one hundred percent (100%) funded by the County, shall submit a completed sworn affidavit (under penalty of perjury), the form of which is attached, certifying that they have complied, in good faith, with the requirements of Title 8 of the United States Code Section 1324a with respect to the hiring of covered employees (as defined) and with respect to the alien and nationality status of the owners thereof. The
affidavit shall be executed by an authorized representative of the covered employer or owner, as the case may be; shall be part of any executed contract, subcontract, license agreement, lease or other financial compensation agreement with the County; and shall be made available to the public upon request.

All contractors and subcontractors (as defined) of covered employers, and the owners thereof, as the case may be, that are assigned to perform work in connection with a County contract, subcontract, license agreement, lease or other financial compensation agreement issued by the County or awarding agency, where such compensation is one hundred percent (100%) funded by the County, shall submit to the covered employer a completed sworn affidavit (under penalty of perjury), the form of which is attached, certifying that they have complied, in good faith, with the requirements of Title 8 of the United States Code Section 1324a with respect to the hiring of covered employees and with respect to the alien and nationality status of the owners thereof, as the case may be. The affidavit shall be executed by an authorized representative of the contractor, subcontractor, or owner, as the case may be; shall be part of any executed contract, subcontract, license agreement, lease or other financial compensation agreement between the covered employer and the County; and shall be made available to the public upon request.

An updated affidavit shall be submitted by each such employer, owner, contractor and subcontractor no later than January 1 of each year for the duration of any contract and upon the renewal or amendment of the contract, and whenever a new contractor or subcontractor is hired under the terms of the contract.

Contractor acknowledges that such filings are a material, contractual and statutory duty and that the failure to file any such statement shall constitute a material breach of this agreement.

Under the provisions of the Lawful Hiring of Employees Law, the County shall have the authority to terminate this Agreement for violations of this Law and to seek other remedies available under the law.

This Agreement is subject to the Lawful Hiring of Employees Law of the County of Suffolk, Suffolk County Code Chapter 234, as more fully set forth in the Exhibit collectively referred to as the "Suffolk County Legislative Requirements." In accordance with this law, Contractor or employer, as the case may be, and any subcontractor or owner, as the case may be, agree to maintain the documentation mandated to be kept by this law on site at all times. Contractor or employer, as the case may be, and any subcontractor or owner, as the case may be, further agree that employee sign-in sheets and register/log books shall be kept on site at all times during working hours and all covered employees, as defined in the law, shall be required to sign such sign in sheets/register/log books to indicate their presence on the site during such working hours.

Contractor represents and warrants that it has read, is in compliance with, and shall comply with the requirements of Suffolk County Code Chapter 234, Suffolk County Local Law No. 52-2006, the Lawful Hiring of Employees Law.
5. **Gratuities**

Contractor represents and warrants that it has not offered or given any gratuity to any official, employee or agent of Suffolk County or New York State or of any political party, with the purpose or intent of securing an agreement or securing favorable treatment with respect to the awarding or amending of an agreement or the making of any determinations with respect to the performance of an agreement, and that the signer of this Agreement has read and is familiar with the provisions of Local Law No. 32-1980 of Suffolk County (Chapter 386 of the Suffolk County Code).

6. **Prohibition Against Contracting with Corporations that Reincorporate Overseas**

Contractor represents that it is in compliance with Suffolk County Administrative Code Article IV, §§A4-13 and A4-14, found in Suffolk County Local Law No. 20-2004, entitled “A Local Law To Amend Local Law No. 5-1993, To Prohibit The County of Suffolk From Contracting With Corporations That Reincorporate Overseas.” Such law provides that no contract for consulting services or goods and services shall be awarded by the County to a business previously incorporated within the U.S.A. that has reincorporated outside the U.S.A.

7. **Child Sexual Abuse Reporting Policy**

Contractor agrees to comply with Chapter 577, Article IV, of the Suffolk County Code, entitled “Child Sexual Abuse Reporting Policy,” as now in effect or amended hereafter or of any other Suffolk County Local Law that may become applicable during the term of this Agreement with regard to child sexual abuse reporting policy.

8. **Non Responsible Bidder**

Contractor represents and warrants that it has read and is familiar with the provisions of Suffolk County Code Chapter 143, Article II, §§143-5 through 143-9. Upon signing this Agreement, Contractor certifies that he, she, it, or they have not been convicted of a criminal offense within the last ten (10) years. The term “conviction” shall mean a finding of guilty after a trial or a plea of guilty to an offense covered under the provision of Section 143-5 of the Suffolk County Code under “Nonresponsible Bidder.”

9. **Use of Funds in Prosecution of Civil Actions Prohibited**

Pursuant to the Suffolk County Code Section §590-3, Contractor represents that it shall not
use any of the moneys received under this Agreement, either directly or indirectly, in connection with the prosecution of any civil action against the County of Suffolk or any of its programs, funded by the County, in part or in whole, in any jurisdiction or any judicial or administrative forum.

10. **Suffolk County Local Laws**

Suffolk County Local Laws, Rules and Regulations can be found on the Suffolk County website at [www.co.suffolk.ny.us](http://www.co.suffolk.ny.us). Click on “Laws of Suffolk County” under “Suffolk County Links”.

**End of Text for Exhibit B**
Exhibit C
Notices and Contact Persons

1. 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 Agreement shall be in writing and shall be given to the College or Contractor 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

James D. Amoroso
Vice President for Business and Financial Affairs
Suffolk County Community College
533 College Road, NFL 232
Selden, NY 11784-2899

For Contractor

At the address set forth on page one of this Agreement, attention of the person who executed this Agreement or such other designee as the parties may agree in writing.

2. Notices Relating to Insurance

Any notice relating to insurance necessary or required to be made by the parties regarding this Agreement shall be in writing and shall be given to the College or Contractor 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

Louis J. Petrizzo
College Deputy General Counsel
Office of Legal Affairs
Suffolk County Community College
533 College Road, NFL230
Selden, NY 11784-2899

For Contractor

At the Address set forth on page one of this Agreement, attention of the person who executed this Agreement or such other designee as the parties may agree in writing.
3. Notices Relating to Termination and/or Litigation

In the event Contractor receives a notice or claim or becomes a party (plaintiff, petitioner, defendant, respondent, third party complainant, third party defendant) to a lawsuit or any legal proceeding related to this Agreement, Contractor shall immediately deliver to the College General Counsel and the County Attorney, at the addresses set forth below, copies of all papers filed by or against Contractor.

Any communication or notice regarding termination shall be in writing and shall be given to the College or Contractor or their designated representative at the following addresses or at such other addresses that may be specified in writing by the parties and must be delivered as follows:

For the College and the County:

Louis J. Petrizzo  
College Deputy General Counsel  
Office of Legal Affairs  
Suffolk County Community College  
533 College Road, NFL 230  
Selden, NY 11784-2899

and

Christine Malafi, County Attorney  
Suffolk County Department of Law  
H. Lee Dennison Building  
100 Veterans Memorial Highway  
Hauppauge, New York 11788

For Contractor:

At the address set forth on page one of this Agreement, attention to the person who executed this Agreement or such other designee as the parties may agree in writing.

4. Notices for all parties (except those related to termination or litigation) should be delivered by first class and certified mail, return receipt requested, in a postpaid envelope or by courier service, or by fax or by email.

Notices related to termination or litigation should be delivered by first class and certified mail, return receipt requested, in a postpaid envelope or by nationally recognized courier service or personally and by first class mail.

5. Notices shall be deemed to have been duly delivered: (i) if mailed, upon the seventh business day after the mailing thereof; or (ii) if by nationally recognized overnight courier service,
upon the first business day subsequent to the transmittal thereof; or (iii) if personally, pursuant to New York Civil Practice Law and Rules Section 311; or (iv) if by fax or email, upon the transmittal thereof. "Business Day" shall be defined as any day except a Saturday, a Sunday, or any day in which commercial banks are required or authorized to close in Suffolk County, New York.

6. Each party shall give prompt written notice to the other party of the appointment of successor(s) to the designated contact person(s) or his or her designated successor(s).

End of Text for Exhibit C
Exhibit D
Description of Services

1. Grant of License

Contractor hereby grants College a nonexclusive license to:

(i) access and execute PrestoSports (Software) on Contractor's hardware and software used to provide the Software (Application Server) over the Internet, and

(ii) transmit data related to College's use of the Software over the Internet.

2. Use and Access

(i) College will have access to the Software and Application Server for the purpose of using the Software for its intended purpose and in accordance with the specifications set forth in any documentation relating to the Software provided by Contractor. Such use and access will be on a continuous 24/7 basis except for interruptions by reason of maintenance or downtime beyond Contractor's reasonable control.

(ii) College will use the Software only for its internal business operations and will not permit the Software to be used by or for the benefit of anyone other than College. College will not have the right to re-license or sell rights to access and/or use the Software or to transfer or assign rights to access or use the Software, except as expressly provided herein. College may not modify, translate, reverse engineer, decompile or create derivative works based upon the Software. College agrees to use the Software in a manner that complies with all applicable laws, including copyright and other intellectual property laws. Contractor expressly reserves all rights not expressly granted to College herein.

(iii) College will not transmit or share identification or password codes to persons other than authorized users, permit the identification or password codes to be cached in proxy servers and accessed by individuals who are not authorized users, or permit access to the Software through a single identification or password code being made available to multiple users on a network.

(iv) See Exhibit F for information on storage and bandwidth limitations.

3. Price and Payment

(i) College will pay Contractor the fees for the license of the Software and access to Contractor's Application Server as set for in Exhibit F.

(ii) The fees for the license of the Software do not include taxes. If Contractor is required to pay or collect any federal, province, state, local or value-added tax on any fees charged under this Agreement, or any other similar taxes or duties levied by any
governmental authority, excluding taxes levied on Contractor's net income, then such
taxes and/or duties will be billed to and paid by College immediately upon receipt of
Contractor's invoice and supporting documentation for the taxes or duties charged.

4. Technical Support

Technical Support is described in detail in Exhibit G.

5. Term and Termination

The initial term of this Agreement will commence on the effective date and will continue for a
period of 3 years.

6. Ownership of Intellectual Property

Title to any proprietary rights in the Software and Contractor's website will remain in and be
the sole and exclusive property of Contractor. College will be the owner of all content created
and posted by College.

7. Warranty and Disclosure

Contractor warrants that the Software is developed and will perform in conformity with
generally prevailing industry standards. College must report any material deficiencies in the
Software to Contractor in writing within thirty (30) days of College's discovery of the defect.
Contractor's exclusive remedy for the breach of the above warranty will be for Contractor to
provide access to replacement Software within a commercially reasonable time. This warranty
is exclusive and is in lieu of all other warranties, whether express or implied, including any
warranties of merchantability or fitness for a particular purpose and any oral or written
representations, proposals or statements made on or prior to the effective date of this
agreement. Developer expressly disclaims all other warranties.

8. Web Hosting Acceptable Use Policy

Web hosting and acceptable use policy is described in detail on the attached Exhibit H.

End of Text for Exhibit D
Exhibit E
Payment Terms and Conditions

1. General Payment Terms
   a. Contractor shall prepare and present an invoice to the College. Invoices shall be documented by sufficient, competent and evidential matter. Payment by the College will be made within thirty (30) days after approval by the College.
   b. Contractor agrees that it shall be entitled to no more than the fees set forth in this Exhibit E for the completion of all work, labor and services contemplated in this Agreement.
   c. The charges payable to Contractor under this Agreement are exclusive of federal, state and local taxes, the College being exempt from payment of such taxes.
   d. The acceptance by Contractor of full payment of all billings made on the final approved under this Agreement shall operate as and shall be a release to the College and/or County from all claims and liability to Contractor, its successors, legal representatives and assigns, for services rendered under this Agreement.

2. Agreement Subject to Appropriation of Funds
   This Agreement is subject to the amount of funds appropriated and any subsequent modifications thereof and no liability shall be incurred by the College and/or the County under this Agreement beyond the amount of funds appropriated for the Services covered by this Agreement.

3. Limit of College’s Obligations
   The maximum amount to be paid by the College as set forth on the cover page of this Agreement shall constitute the full obligation of the College in connection with this Agreement and any matter arising therefrom.

4. Specific Payment Terms and Conditions
   See Exhibit F.

End of Text for Exhibit E
PREAMBLE

This Services Agreement accompanies an Application Services Agreement (the "Agreement") that has been executed by the parties. All statements contained in this Services Agreement are subject to the terms and conditions set forth in such Agreement. The terms and conditions set forth in the Agreement control in the event of any inconsistency between such terms and conditions and the matters set forth in this Services Agreement.

1. Project Background

Licensor will redesign and host the athletic website of Suffolk County Community College for three (3) years using the PrestoSports software. The PrestoSports software is a content management system tailored for the needs of athletic organizations. It will allow Licensee to manage an athletic website using a simple administrative website.

2. Scope

<table>
<thead>
<tr>
<th>Schedule</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phase I Planning (Two weeks)</td>
<td>• Introduction to PrestoSports admin system (Licensor)</td>
</tr>
<tr>
<td></td>
<td>• Schedule design call date and time (Licensor and Licensee)</td>
</tr>
<tr>
<td></td>
<td>• Conduct design call (Licensor and Licensee)</td>
</tr>
<tr>
<td></td>
<td>• Review and approve design notes (Licensee)</td>
</tr>
<tr>
<td></td>
<td>• Upload necessary images (Licensee)</td>
</tr>
<tr>
<td></td>
<td>• DNS (Licensor and Licensee)</td>
</tr>
<tr>
<td>Phase II Artistic Design</td>
<td>• Default and training sites shared (Licensor)</td>
</tr>
<tr>
<td>(Two weeks)</td>
<td>• Review of design revisions (two (2) - rounds) and approval (Licensee)</td>
</tr>
<tr>
<td></td>
<td>• For each rendition share with client new design (Licensor)</td>
</tr>
<tr>
<td></td>
<td>• Training (Licensor and Licensee)</td>
</tr>
<tr>
<td></td>
<td>• Data migration (Licensee)</td>
</tr>
<tr>
<td>Phase III - Website Breakdown</td>
<td>• Continued data migration (Licensee)</td>
</tr>
<tr>
<td>(Two weeks)</td>
<td>• Page set up for non-sport pages (Licensor)</td>
</tr>
<tr>
<td></td>
<td>• Site breakdown and implementation of features (Licensor)</td>
</tr>
<tr>
<td>Phase IV - Review and QC</td>
<td>• Continued data migration and training (Licensee)</td>
</tr>
<tr>
<td>(Two weeks)</td>
<td>• Register URL to search engines (Licensor)</td>
</tr>
<tr>
<td></td>
<td>• Implement any unique features (Licensor)</td>
</tr>
<tr>
<td></td>
<td>• QC on site (Licensor)</td>
</tr>
</tbody>
</table>

NOTE: Threeframes noted above are estimates

451 Hungerford Drive, Suite 608, Rockville, Maryland 20850
Phone: 301-789-1807 Email: info@prestosports.com

Licensee’s Initials: __________
3. Project Deliverables
   a. Site setup.
   b. Website graphic design, including two rounds of proofs. Any additional proofs requested will incur an additional cost of $1,000 per round.
   c. Hosting of athletic website with up to 5 GB of space.
   d. Three (3) user accounts to manage the athletics website.

4. Costs

   **Year 1 March 1, 2011 - February 28, 2012**
   
<table>
<thead>
<tr>
<th>Feature</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>PrestoSports website hosting and standard features included in standard package</td>
<td>$4,000.00</td>
</tr>
<tr>
<td>Optional National Advertising - One placement per page (50% to Licensee)</td>
<td>Revenue Share</td>
</tr>
<tr>
<td>TOTAL</td>
<td>$4,000.00</td>
</tr>
</tbody>
</table>

   **Year 2 March 1, 2012 - February 28, 2013**
   
<table>
<thead>
<tr>
<th>Feature</th>
<th>Cost</th>
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</thead>
<tbody>
<tr>
<td>PrestoSports website hosting and standard features included in standard package</td>
<td>$4,250.00</td>
</tr>
<tr>
<td>Optional National Advertising - One placement per page (50% to Licensee)</td>
<td>Revenue Share</td>
</tr>
<tr>
<td>TOTAL</td>
<td>$4,250.00</td>
</tr>
</tbody>
</table>

   **Year 3 March 1, 2013 - February 28, 2014**
   
<table>
<thead>
<tr>
<th>Feature</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>PrestoSports website hosting and standard features included in standard package</td>
<td>$4,500.00</td>
</tr>
<tr>
<td>Optional National Advertising - One placement per page (50% to Licensee)</td>
<td>Revenue Share</td>
</tr>
<tr>
<td>TOTAL</td>
<td>$4,500.00</td>
</tr>
</tbody>
</table>

5. Overages

   Licensee is allocated five (5) GB of space on the Application Server for storage of data necessary for use of the Software. In addition, licensee is provided bandwidth transfer capacity of fifty (50) GB/month. The cost for exceeding the storage allocation is $50.00 per year per one (1) GB of space. The cost for exceeding the bandwidth transfer capacity is $1.00 per GB of overage per month. If Licensee exceeds its storage or bandwidth limit, Licensor must notify Licensee by mail and email that it has exceeded the allowed storage or bandwidth limit.

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Phone: 301-789-1807    Email: info@prestosports.com

Licensee's Initials: _____
Licensee will have 30 days from the date of the notice to address their data size or bandwidth usage before incurring any overage costs.

Additionally, Licensee is granted ten (10) GB of storage space on the new media server for storage of video and podcast files (.flv or .mp3). In addition, Licensee is provided with a monthly transfer of two hundred and fifty (250) GB/month specifically for video playback and podcasting.

6. Invoices

All invoices for the total contract year value will be sent on MARCH 1 of the contract year.

7. Payment

Payment is due thirty (30) days after date of invoice. Licensee may not withhold any amounts due hereunder and Licensor reserves the right to cease work without prejudice if amounts are not paid when due. Any late payment will be subject to any costs of collection (including reasonable legal fees) and will bear interest at the rate of one and a half (1.5) percent per month or fraction thereof until paid.
SERVICE LEVEL AGREEMENT

This Service Level Agreement ("Agreement") sets forth the details regarding the level of service and technical support that apply when Licensee’s account is in good financial standing.

1. Downtime

   a. For purposes of this Agreement, a Unit of Downtime is one period of at least one (1) hour during which access to Licensee's website is unavailable because of problems with hardware or system software. Downtime does not include (i) problems caused by factors outside of Licensor's reasonable control, (ii) problems resulting from any actions or inactions by Licensee or any third party, (iii) problems resulting from Licensee's equipment and/or third party equipment not within Licensor sole control, or (iv) network unavailability during scheduled maintenance of Licensor network and/or web servers.

   b. In any calendar month, Licensor guarantees that Downtime will not exceed four (4) Units of Downtime excluding, however, regularly scheduled maintenance. Any regularly scheduled maintenance will be performed during the hours of 2am & 8 am EST. Licensor works to ensure the functioning of all web servers through continuous monitoring by Licensor's staff.

   c. If Downtime exceeds four (4) Units of Downtime in any calendar month, Licensor will, upon Licensee's written request, credit Licensee's account (a "Downtime Credit") in an amount equal to the pro-rata price for one (1) day of service, for each instance of Downtime as that term is defined herein.

   d. To receive Downtime Credit, Licensee must request such credit by sending an email to support@prestosports.com within seven (7) days after the occurrence of Downtime. The aggregate maximum number of Downtime Credits to be issued for any and all instances of Downtime occurring in a single calendar month will not exceed seven (7). Downtime Credits will be applied upon issue of the first invoice following the request for Downtime Credit, unless the Downtime occurs in Licensee's final month of service. In such case, a refund for the dollar value of the Downtime Credit will be mailed to Licensee within thirty (30) days of the expiration of Licensee's service agreement.

2. Technical Support

A member of Licensor's technical support help desk staff will be available to assist Licensee with problems and questions regarding the hosting services. Licensor will supply telephone and/or email support to Licensee regarding the hosting services 8 am & 5 pm ET. Additional on-call support is given to Licensee during non-business hours, nights, weekends and all holidays.

Licensee may contact Licensor's technical support help desk via email at support@prestosports.com, or by telephone at 301.656.5504. Licensor may, from time to time, develop additional methods for Licensee to contact the help desk, and will make information regarding such methods available at Licensor's website.

451 Hungerford Drive, Suite 608, Rockville, Maryland 20850
Phone: 301-789-1807 Email: info@prestosports.com

Licensee's Initials: ______
WEB HOSTING ACCEPTABLE USE POLICY

This Acceptable Use Policy sets forth guidelines relating to the types of content that Licensee may upload to the website under Licensee’s agreement with Licensor for web hosting services (the "Services"). Licensor may remove any materials that, in its sole discretion, may be illegal, may subject it to liability, or which may violate this Acceptable Use Policy. Licensor will cooperate with legal authorities in the investigation of any suspected or alleged crime or civil wrong arising from any use of the Services. Licensee’s violation of this Acceptable Use Policy may result in the suspension or termination of either Licensee’s access to the Services and/or Licensee’s account or other actions as detailed in the Application Service Agreement.

1. Acceptable Use

The following constitute violations of this Acceptable Use Policy:

a. Using the Services to transmit or post any material that contains or contains links to nudity, pornography, adult content, sexual content, or extreme violence.

b. Using the Services to transmit or post any material that, intentionally or unintentionally, violates any applicable local, state, national or international law, or any rules or regulations promulgated there under.

c. Using the Services to harm, or attempt to harm, minors in any way.

d. Using the Services to transmit or post any material that harasses, threatens or encourages bodily harm or destruction of property.

e. Using the Services to make fraudulent misrepresentations or offers including but not limited to offers relating to "pyramid schemes" and "Ponzi schemes."

f. Using the Services to access, or to attempt to access, the accounts of others, or to penetrate, or attempt to penetrate, security measures of Licensor or another entity’s computer software or hardware, electronic communications system or telecommunications system, whether or not the intrusion results in the corruption or loss of data.

g. Using the Services to transmit or post any material that infringes any copyright, trademark, patent, trade secret or other proprietary rights of any third party, including, but not limited to, the unauthorized copying and/or distribution of copyrighted material, the digitization and distribution of photographs from magazines, books, music, video or other copyrighted sources, and the unauthorized transmittal of copyrighted software.

h. Using the Services to collect, or attempt to collect, personal information about third parties without their knowledge or consent.

i. Reselling the Services without the prior written authorization of Licensor.
j. Using the Services to send (unsolicited commercial email) spam.

k. Using the Services for any activity that adversely affects the ability of other people or systems to use the Services or the Internet. This includes but is not limited to "denial of service" (DoS) attacks against another network host or individual user. Interference with or disruption of other network users, network services or network equipment is prohibited.

2. Reporting of Violations of This Acceptable Use Policy

Licensor requests that anyone who believes that there has been a violation of this Acceptable Use Policy to immediately send an email detailing such violation to support@prestosports.com.

3. Revisions to This Acceptable Use Policy

Licensor may revise, amend or modify this Acceptable Use Policy at any time and in any manner.