

WORKERS' COMPENSATION AND AUTO LIABILITY INSURANCE PROGRAM SAMPLE CONTRACT

A Contract is hereby made by and between the Dormitory Authority – State of New York (“DASNY”), having its principal office and place of business at 515 Broadway, Albany, New York, 12207-2964, hereinafter referred to as DASNY, and _____, whose office is located at _____, hereinafter referred to as the CONSULTANT.

WHEREAS, the BROKER has been selected through a competitive Request for Proposal process to provide broker and program support services for DASNY’s Workers’ Compensation and Auto Liability Insurance Program; and

WHEREAS, DASNY and the BROKER have agreed upon an amount for compensation for services requested and authorized under this Contract; and

NOW, THEREFORE, DASNY and the BROKER hereby mutually covenant and agree as follows:

ARTICLE I: BROKER’S SERVICES

The BROKER’S Services shall consist of all the services required by Appendix "A", entitled **SCOPE OF SERVICES OF BROKER**, which is attached to and made a part hereof.

For purposes of this Contract, “Services” shall mean the Original Services, Additional Services and/or Extra Work performed pursuant to this Contract, as the case may be.

ARTICLE II: ADDITIONAL SERVICES

The AUTHORITY reserves the right to direct the BROKER to provide Additional Services and the BROKER shall provide said Additional Services when so directed. Payment for said Additional Services shall be in accordance with Article V.B.

ARTICLE III: EXTRA SERVICES

If the BROKER believes that any work it has been directed to perform is beyond the scope of this Contract and constitutes Extra Services, it shall promptly so notify DASNY in writing. DASNY shall determine whether or not the work is in fact beyond the scope of this Contract and is considered Extra Services. If DASNY determines that the work is Extra Work, this Contract shall be modified to equitably reflect the cost of said Extra Work. Payment shall be made in accordance with Article V.B.

ARTICLE IV: CONSULTANTS

A. DASNY may retain a sub-consultant(s) to furnish services throughout the term of this Contract, and the BROKER shall cooperate with said sub-consultant(s).

B. The BROKER may propose and engage sub-consultants, to perform portions of the Services required under this Contract. DASNY retains the right to disapprove the proposed sub-consultant and, in such event, the BROKER shall propose another sub-consultant for that portion of the required Services. The BROKER shall be responsible to DASNY for the timely and efficient completion of all Services performed by said sub-consultant. The fees of any sub-consultants retained by the BROKER for Services required under Article I shall be deemed covered by the compensation as stipulated in Article V.A.1. The fees of any sub-consultants retained by the BROKER for services required under Article III shall be paid as outlined in Article V.B.

C. The BROKER shall pay its sub-consultants the full amount due them from their proportionate share of each requisition for payment submitted by the BROKER and paid by DASNY. The BROKER shall make said payment no later than seven (7) calendar days from receipt of payment from DASNY.

ARTICLE V: PROVISION FOR PAYMENT

MAXIMUM AMOUNT PAYABLE

DASNY shall pay, and the BROKER agrees to accept, as full compensation for all Services pursuant to this Contract, the not to exceed amount of _____ and 00/100 Dollars (\$ 0). Appendix "B", entitled **SUMMARY OF PAYMENTS**, is attached to and made a part hereof. Payments for Services shall be made quarterly, on a schedule to be determined by the CONSULTANT and approved by DASNY.

The BROKER is required to submit payment requests to DASNY, on behalf of subconsultants, within 30 days of receiving approvable subconsultant invoices.

DASNY may, at its sole discretion deny payment to the Broker for: 1) failure to invoice for services within 90 days of the services being rendered, 2) invoices provided without proper back-up documentation.

A. BROKER'S SERVICES

1. Original Scope of Services

DASNY shall pay, and the BROKER agrees to accept, as compensation for Original Scope of Services pursuant to Appendix "A", which is attached to and made a part hereof, the not to exceed amount of _____ and 00/100 Dollars (\$ 0).

DASNY shall reserve the right to negotiate with the BROKER the method of compensation based upon a methodology agreed upon between the BROKER and DASNY. [NOTE: Contract to be amended accordingly].

2. Payment Milestones

Broker is required to submit invoices at such time as payment is due and owing. First payment shall be made to the Broker at the term of the insurance and second payment shall be made halfway through the policy period.

B. ADDITIONAL AND EXTRA SERVICES

Payment for Additional and Extra Services will be negotiated in good faith by the BROKER and DASNY as a lump sum or on a reimbursable basis pursuant to a written amendment to this Contract.

ARTICLE VI: REIMBURSABLE EXPENSES

N/A

ARTICLE VII: WITHHOLDING OF PAYMENTS

DASNY may withhold from the BROKER any part of any payment as may, in the judgment of DASNY, be necessary:

- A. to assure payment of just claims of any Subconsultants
- B. to protect DASNY from the BROKER's or Subconsultants failure to perform services; and

- C. to protect DASNY from loss due to failure to defend, loss due to injury to persons or damage to property of others caused by the act or neglect of the BROKER or Subconsultant;

ARTICLE IX: OWNER'S PROCEDURE

The BROKER agrees to comply with all procedural requirements of DASNY reasonably inferable from the Scope of Services.

ARTICLE X: INSURANCE

- A. The Broker shall purchase at its own expense and maintain until final acceptance of the Services by DASNY, from a company or companies licensed or authorized to do business in New York State or otherwise acceptable to DASNY, insurance policies containing the following types of coverages and minimum limits of liability protecting from claims which may arise out of or result from the performance or non-performance of services under this Contract For Professional Services by the Broker or by anyone directly or indirectly employed by it, or by anyone for whose acts it may be liable. The ConsBrokerultant shall not commence work under the Contract for Professional Services until the Broker has obtained all the insurance required under this Article:

(i) Workers' Compensation Law Requirements

- (a) Workers' Compensation (including occupational disease) and Employer's Liability New York Statutory Endorsement with a minimum limit of one million Dollars (\$1,000,000) as evidenced by **ONE** of the following (**ACORD certificates are not acceptable**):

- (1) C-105.2 (September 2015, or most current version) - Certificate of NYS Workers' Compensation Insurance. The insurance carrier shall provide a completed form as evidence of in-force coverage.
- (2) U-26.3 (or any replacement) - NYS Insurance Fund Certificate of Workers' Compensation Coverage. The NYS Insurance Fund shall provide a completed form as evidence of in-force coverage.
- (3) GSI-105.2 (2/02 or most current version) - Certificate of Participation in Workers' Compensation Group Board-approved self-insurance. The NYS Workers' Compensation Board's Self Insurance Office or the Contractor's Group Self Insurance Administrator shall provide a completed form.
- (4) SI-12 (5/09 or most current version) - Affidavit Certifying That Compensation Has Been Secured. The NYS Workers' Compensation Board's Self Insurance Office or the Contractor's Self Insurance Administrator shall provide a completed form.

(b) Disability Benefits

DB-120.1 (September 2015, or most current version) – Certificate of Insurance Coverage Under the NYS Disability Benefits Law.

- (1) DB-155 (9/16) - Compliance with Disability Benefits Law. The NYS Workers' Compensation Board's Self Insurance Office will provide a completed form.

- (2) CE-200-Certificate of Attestation of Exemption. (Note: This form will only be accepted as evidence of an exemption from providing Disability Benefits insurance as required by law. The Dormitory Authority will *not* accept this as an exemption from providing Workers' Compensation Insurance.) The Certificate may be obtained from the NYS Workers' Compensation Board's website at <http://www.wcb.state.ny.us>. The CE-200 cannot be used for multiple projects. Therefore, a new form will have to be completed prior to award of any subsequent contracts.

All forms are valid for one year from the date the form is signed/stamped, or until policy expiration, whichever is earlier.

- (ii) Commercial General Liability policy which names the Dormitory Authority of the State of New York as Additional Insured with per-occurrence and aggregate limits of not less than two million dollars (\$2,000,000.00). Coverage shall include Blanket Contractual Liability covering all indemnity obligations, including all indemnity obligations contained in this Contract, and Products Liability and Completed Operations Aggregate limit of \$2,000,000.00 per occurrence and aggregate for a term of no less the three (3) years.

The Broker shall list any deductible or SIR and provide a copy of the additional insured endorsement.

Limits may be provided through a combination of primary and umbrella/excess liability policies.

Policy or policies must be written or endorsed to be primary and non-contributory as respects the coverage afforded the Dormitory Authority of the State of New York and such policy shall be primary to any other insurance maintained by DASNY. Any other insurance maintained by DASNY shall be excess of and shall not contribute with the Broker's or its Subconsultant's insurance, regardless of the "other insurance" clause contained in DASNY's own policy of insurance.

- (ii) If applicable, Commercial Comprehensive Automobile Liability and Property Damage covering all owned, leased, hired and non-owned vehicles used in connection with the Work with combined single limits of not less than one million Dollars (\$1,000,000.00) each person/each accident for bodily injury and property damage.
- (iv) Umbrella and/or Excess Liability policies used to comply with CGL, Automobile Liability and Employers Liability limits shown above may be warranted to be in excess of limits provided by primary CGL, Automobile Liability and Employer's Liability.
- (iiv) Professional Liability/Errors & Omissions, with limits of not less than twenty-five million Dollars (\$5,000,000) each claim/\$5,000,000 annual aggregate, subject to a deductible or self-insured retention of not more than one hundred thousand Dollars (\$100,000) per claim or an amount acceptable to the OWNER.

The BROKER or its subconsultant, as applicable, shall purchase at its sole expense Extended Discovery Clause coverage of up to three (3) years after work is completed if coverage is canceled or not renewed. Written proof of this extended reporting period must be provided to the Authority prior to expiration or cancellation.

- (vi) Data Breach and Privacy Liability Insurance (Cyber Insurance) with limits of not less than Two Million Dollars (\$2,000,000) each claim/(\$2,000,000) annual aggregate including coverage for failure to protect confidential information and failure of the security of the BROKER's computer systems which results in unauthorized access to

DASNY's data.

Said Insurance shall provide coverage for damages arising from, but not limited to the following:

- Breach of duty to protect the security and confidentiality of nonpublic proprietary corporate information;
- Personally, identifiable nonpublic information (e.g., medical, financial, or personal in nature in electronic or non-electronic form);
- Privacy notification costs;
- Regulatory defense and penalties;
- Website media liability; and
- Cyber theft of customer's property, including but not limited to data, PII, money and securities.

Coverage shall be provided for any incremental costs incurred by DASNY to investigate and remediate any data breach that may have exposed DASNY's data and the policy shall include third party coverage for DASNY.

Such policy(ies) shall name the Dormitory Authority of the State of New York as an Additional Insured with respect to claims brought by third parties in connection with work performed by the BROKER. Such policy(ies) shall also remove any exclusion that restricts or eliminates coverage for claims brought by DASNY against the BROKER that would otherwise be covered by the policy(ies).

- B. Prior to award of Contract, two Certificates of Insurance, indicating the Services, must be submitted and approved by the Authority prior to the commencement of Services. It is further agreed that if the insurance policy's term stated on the certificate expires, it is the responsibility of the BROKER to provide an updated certificate of insurance to the Insurance Unit and Contracts Unit 30 days prior to expiration of the insurance. Non-compliance to this request may result in the Authority withholding payment to the BROKER. Certificates shall provide 30 days written notice to the Authority prior to the cancellation, non-renewal, or reduction in the limits of liability of any policy. Upon request, the BROKER shall furnish the Insurance Unit and Construction Contracts Unit with certified copies of each policy. In addition, where applicable, the BROKER shall provide copies of Certificates of Insurance to:

Insurance Unit
DASNY
515 Broadway
Albany, New York 12207-2964

and

Construction Contracts Unit
DASNY
515 Broadway
Albany, New York 12207-2964

Certificate(s) of Insurance, when submitted to DASNY, constitute a warranty by the CONSULTANT that the insurance coverage described is in effect for the policy term shown.

Should the BROKER engage a subconsultant or subcontractor, the same conditions as are applicable to the BROKER under these insurance requirements shall apply to each subconsultant or subcontractor of every tier except as follows:

- [To be determined based on scope and division of work]-language to be clarified in final contract.

Proof thereof shall be supplied to DASNY upon request.

- C. All insurance required to be procured and maintained must be procured from insurance companies licensed to do business in the State of New York and rated at least A- by A.M. Best and Company, or meet such other requirements as are acceptable to the OWNER.
- D.. At any time that the coverage provisions and limits on the policies required herein do not meet the provisions and limits set forth above, the BROKER shall immediately cease Services. The BROKER shall not resume Work on the Project until authorized to do so by DASNY. Any delay or time lost as a result of the CONSULTANT not having insurance required by this Article shall not give rise to a delay claim or any other claim against the Authority or the Client.
- E. Notwithstanding any other provision in this Article, DASNY may require the BROKER to provide, at the expense of DASNY, any other form or limit of insurance necessary to secure the interests of DASNY.
- F. The BROKER shall secure, pay for, and maintain Property Insurance necessary for protection against the loss of owned, borrowed or rented capital equipment and tools, including any tools owned by employees, and any tools or equipment, borrowed or rented by the BROKER. The requirement to secure and maintain such insurance is solely for the benefit of the BROKER. Failure of the BROKER to secure such insurance or to maintain adequate levels of coverage shall not render DASNY or their agents and employees responsible for any losses; and DASNY, their agents and employees shall have no such Liability.
- G. Neither the procurement nor the maintenance of any type of insurance by the OWNER, the BROKER or its subconsultants shall in any way be construed or deemed to limit, discharge, waive or release the BROKER from any of the obligations or risks accepted by the BROKER or to be a limitation on the nature or extent of said obligations and risks of the BROKER.
- H. This Contract may, at the sole option of DASNY, be declared void and of no effect if the BROKER or any subcontractor or subconsultant fails to comply with the provisions of this Article.
- I. The BROKER and its subconsultants or subcontractors shall not violate, or permit to be violated, any term or condition of their insurance policies, and shall at all times satisfy the safety requirements of DASNY and of the insurance companies issuing such policies.

ARTICLE XI: Indemnification

To the fullest extent permitted by law, the Consultant shall defend if requested, protect, indemnify and hold harmless DASNY from and against any and all liability, loss, claims, demands, suits, costs, fees, interest and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants), by whomsoever brought and regardless of the legal theories upon which premised, including, but not limited to those arising out of bodily injury to, or sickness or death of, any person, or property damage or destruction (including loss of use), which may be imposed upon, incurred by or asserted against DASNY allegedly or actually arising out of or resulting from any negligent act, error or omission or any intentional misconduct (i) of the Consultant; or (ii) of the Consultant's Subconsultants ; or (iii) of the agents, employees or servants of the Consultant or its subconsultants. The Consultant shall also indemnify DASNY for breach of contract not related to professional services.

Upon the conclusion of any such action, proceeding or lawsuit, should a final binding determination of responsibility be made that allocates responsibility to DASNY. DASNY agrees that the obligation to indemnify and hold harmless shall not be applicable to the portion of any uninsured money judgment for which DASNY is responsible, and DASNY agrees to pay the Consultant the percentage of uninsured defense costs that the BROKER incurred based upon an apportionment of DASNY's allocated responsibility.

A. **Intellectual Property Indemnity**

N/A

B. **Non-Exclusivity of Authority's Remedies**

DASNY's selection of one or more remedies for breach of this Contract shall not limit DASNY's right to invoke any other remedy available to DASNY under this Contract or by law.

C. **Waiver of Damages**

The BROKER shall not be entitled to, and hereby waives any monetary claims for or damages arising from or related to, lost profits, lost business opportunities, unabsorbed overhead or any indirect consequential damages.

D. **Interest**

N/A

ARTICLE XII: OWNER'S RIGHT TO AUDIT AND INSPECT RECORDS

The BROKER shall maintain and shall keep for a period of six (6) years after the date of completion of the Services, all records and other data relating to this Contract, including records of Subconsultants. DASNY shall have the right to inspect and audit all records and other data of the BROKER and its Subconsultants relating to the Contract. Any item not supported due to the unavailability of said records shall, at the discretion of DASNY, be disallowed. If payment has already been made, amounts disallowed shall be refunded by the BROKER to DASNY upon demand.

ARTICLE XIII: CONTINUING INTEGRITY

The BROKER shall at all times during the Contract Term remain responsive and responsible. The BROKER shall also monitor each subconsultant or subcontractor for responsiveness and responsibility at all times during the Contract Term. The BROKER agrees, if requested by the President of DASNY or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity. The BROKER shall immediately notify DASNY of a any material or adverse information pertaining to the BROKER or any subconsultant, regardless of tier.

The President of DASNY or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the BROKER. In the event of such suspension, the BROKER will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the BROKER shall comply with the terms of the suspension order. Insurance Services may resume at such time as the President of DASNY or his or her designee issues a written notice authorizing a resumption of performance under this Contract.

Notwithstanding any other provision of this Contract, upon written notice to the BROKER, and a reasonable opportunity to be heard with the appropriate DASNY officials or staff, the Contract may be terminated by the President of DASNY or his or her designee at the BROKER's expense where the BROKER is determined by the President of DASNY or his or her designee to be non- responsible. In such event, the President of DASNY or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for the breach.

In selecting a subcontractor, the BROKER shall consider whether the proposed subcontractor appears on any list of entities debarred or suspended from doing business with a government entity, including the current list of companies or individuals that have been declared ineligible to receive Federal contracts published by the System for Award Management. The BROKER shall not subcontract with any entity on the "List of Employers Ineligible To Bid On

Or Be Awarded Any Public Contract”, published by the NYS Department of Labor Bureau of Public Work. The BROKER shall not subcontract with any entity on the debarment list published by the NYS Workers’ Compensation Board pursuant to Section 141-b of the NYS Workers’ Compensation Law. The BROKER shall not subcontract with any entity on the list of “Non- Responsible Entities” maintained by the NYS Office of General Services pursuant to Executive Order No. 192.

In selecting a subcontractor, the BROKER shall also consider whether the proposed subcontractor has legal authority to do business in New York State and possesses the integrity, experience, qualifications, and organizational and financial capacity to perform Insurance Services under this Contract.

ARTICLE XIV – CONFIDENTIALITY

For the purpose of this Agreement, “Confidential Information” means any non-public information disclosed by a Party (“Disclosing Party”) to the other Party (“Receiving Party”) in any form or medium (whether oral, written, electronic or other) that is identified as confidential at the time of disclosure or disclosed under circumstances that would reasonably indicate the need for confidential treatment. Confidential Information shall include, but is not limited to, technological information such as know-how, software, data, programs, inventions, ideas, processes, formulas, developments, designs, materials, business information such as marketing and selling, budgets, prices and costs, information about the Disclosing Party’s employees, affiliates, suppliers and customers, and trade secrets. Confidential Information does not include information that is: (i) public knowledge at the time of disclosure or thereafter becomes generally known other than through an act of breach or negligence by the Receiving Party; (ii) already known by the Receiving Party prior to its receipt from the Disclosing Party; (iii) independently developed at any time by the Receiving Party without use of or reference to Confidential Information; (iv) rightfully obtained by the Receiving Party from other unrestricted sources.

ARTICLE XV – PROTECTION OF CONFIDENTIAL INFORMATION

A. As a condition of being provided with any disclosure of or access to Disclosing Party’s Confidential Information, the Receiving Party shall:

- (i) not access or use such Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement;
- (ii) not disclose or permit access to such Confidential Information other than to its Representatives who:
 - (1) need to know such Confidential Information for purposes of the Receiving Party’s exercise of its rights or performance of its obligations under and in accordance with this Agreement; (2) have been informed of the confidential nature of the Confidential Information and the Receiving Party’s obligations hereunder and (3) are bound by confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this Section, including the following:
 - (a) safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its sensitive information and in no event less than a reasonable degree of care; and
 - (b) ensure its personnel’s compliance with and be responsible and liable for any of its representatives’ non-compliance with, this Section.

B. If the Receiving Party is compelled by law to disclose any Confidential Information then, to the extent permitted by applicable law, the Receiving Party shall (i) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order; and (ii) provide reasonable assistance to the Disclosing Party, at the Disclosing Party’s sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure.

C. The provisions of the Section shall survive the natural expiration or termination of this Agreement.

ARTICLE XVI --- COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS

A. The BROKER and Subconsultant shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law § 208) and shall also comply with General Business Law § 899- bb.

If the BROKER or Subconsultant learns of any actual or attempted unauthorized access to Information that would require notification under applicable Law relating to a data breach, the BROKER will (1) promptly notify DASNY of all details known to the BROKER and regularly supplement the same with new information as it is discovered; (2) bear responsibility for the costs of providing notice and identity protection services, and (3) at its cost, assist DASNY in its obligation under applicable Law.

ARTICLE XVII – 2005 PROCUREMENT LOBBYING LAW

A. Chapter 1 of the Laws of 2005, as amended by Chapter 596 of the Laws of 2005, requires proposers to affirm their understanding of an agreement to comply with State Finance Law § 139-j (3) and § 139-j (6) (b), certify their compliance with State Finance Law § 139-k disclose prior non-responsibility determinations under State Finance Law § 139-j, and to certify that the information they provide with respect to State Finance Law § 139-j and § 139-k is complete, true and accurate.

At DASNY's request, as required by applicable law, the BROKER shall submit SFL 139 Form I: Professional's Certifications Pursuant to SFL 139-j and 139-k. The information contained in SFL 139 Form I: Professional's Certifications Pursuant to SFL § 139-j and § 139-k will serve as an informational resource to aid Customer in identifying permissible contacts regarding this procurement.

B. DASNY reserves the right to terminate this Agreement in the event it is found that the certification filed by the BROKER in accordance with State Finance Law § 139-j and § 139-k, as such may be amended or modified, was intentionally false or intentionally incomplete, upon such finding, DASNY may exercise its termination right, such termination constituting a termination for cause, by providing written notification to BROKER in accordance with Article II of this Agreement.

ARTICLE XVIII – SURVIVAL

Any Article or Section which should, by its nature, survive expiration or termination shall so survive, including but not limited to Article IV, V, VII, VIII and VIV.

ARTICLE XIX – GENERAL PROVISIONS

A. Entire Agreement. This Agreement, including all exhibits hereto, constitute the entire agreement between DASNY and the BROKER with respect to the subject matter of this Agreement and supersede and replace any prior or contemporaneous understandings and agreements, whether written or oral, with respect to the subject matter of this Agreement.

B. Assignment. The BROKER may not assign any of its rights or obligations hereunder, whether by operation of law or otherwise without DASNY's express, prior written consent, not to be unreasonably withheld. Except that, the BROKER may, without such consent, assign or transfer this Agreement, in whole, pursuant to a transfer of all or substantially all of the BROKER's business and assets, whether by merger, sale of assets, sale of stock, or otherwise provided that the BROKER notifies DASNY in writing of such assignment and

assignee agrees to be responsible for the BROKER's obligations under this Agreement. The BROKER shall not assign the Contract in whole or in part without DASNY's prior written consent, however, DASNY may assign the Contract in whole or in part without prior written consent of the BROKER.

C. Amendment. This Agreement may be amended only by a written document signed by the BROKER and DASNY.

D. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties and their respective permitted successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature under or by reason of this Agreement.

E. Governing Law and Jurisdiction. This Agreement, including its exhibits, shall be governed by laws of New York and each Party agrees to the exclusive jurisdiction of the courts in Albany, New York.

F. Waiver. Any failure by a party hereto to comply with any obligation, agreement, or condition herein may be expressly waived, but such waiver or failure to insist upon strict compliance with such obligation, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

G. Construction. The language in this Agreement will be construed neutrally without any regard as to the party which drafted this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

H. Force Majeure. Neither party will be liable for delay or failure to perform its obligations hereunder caused by an event of natural disaster, casualty, acts of God, riots, terrorism, governmental acts or such other event of similar nature that is beyond the reasonable control of the party seeking to rely in this Section to excuse its delay or failure provided such party did not contribute in any way to such event.

I. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.

J. Compliance with Laws. Each and every provision and clause required by Law to be inserted and incorporated into this Agreement shall be deemed inserted and incorporated in this Agreement and this Agreement as if fully set forth herein shall be construed and shall be enforced as though so inserted and incorporated. Each party shall comply fully with all applicable Laws, rules and regulations.

ARTICLE XX: TIME OF COMPLETION

This Contract shall commence on the Effective Date and the initial end date of this contract shall be _____. However, DASNY may, at its discretion, extend this Contract for up to four additional one-year periods to no later than _____. Such extension shall be granted in writing from DASNY to the BROKER at least thirty (30) days prior to the end date of the Contract.

ARTICLE XXI: ASSIGNMENT

The BROKER shall not assign the Contract in whole or in part without prior written consent of the Authority, however, the Authority may assign the Contract in whole or in part without prior written consent of the BROKER.

ARTICLE XXII: APPENDIX "C" ADDITIONAL ITEMS

Attached to and made a part hereof is Appendix "C", entitled **ADDITIONAL ITEMS**.

IN WITNESS WHEREOF, DASNY has executed this Contract on the _____ day of _____ 20__.

DASNY
515 Broadway
Albany, NY 12207-2964

By _____

Title _____

Date _____

IN WITNESS WHEREOF, the Broker has caused this Contract to be signed by its duly authorized officer on the _____ day of _____ 20__.

Name of Firm _____

By _____ 1

Title _____

Date _____

- 1 If a **corporation**, signer must be President, Vice-President or other authorized officer.
- If a **Limited Liability Company (LLC)**, signer must be a member or manager.
- If a **Limited Liability Partnership (LLP)**, signer must be a partner.
- If a **Limited Partnership**, signer must be an authorized partner.
- If a **general partnership**, signer must be a partner.
- If a **sole proprietorship**, signer must be the OWNER.

ACKNOWLEDGMENT OF DASNY OFFICER EXECUTING CONTRACT

STATE OF NEW YORK)
COUNTY OF ALBANY) ss:

On the _____ day of _____ in the year 20 ____, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that he/she resides in _____; that he/she is the _____, DASNY, the corporation described in and which executed the foregoing instrument; and that he/she signed his/her name thereto by authority of the Board of said corporation.

Notary Public

ACKNOWLEDGMENT OF BROKER, IF A CORPORATION

STATE OF _____)
COUNTY OF _____) ss:

On the _____ day of _____ in the year 20____, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that he/she/they reside(s) at _____, (include street and street number, if any); that he/she/they is (are) the _____ of _____, the corporation described in and which executed the foregoing instrument; and that he/she/they signed his/her/their name(s) thereto by authority of the Board of Directors of said corporation.

Notary Public

ACKNOWLEDGMENT OF BROKER, IF A PARTNERSHIP, LIMITED LIABILITY COMPANY OR INDIVIDUAL

STATE OF _____)
COUNTY OF _____) ss.:

On the _____ day of _____ in the year 20____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

APPENDIX "A"

SCOPE OF SERVICES

OBJECTIVES

In support of DASNY's Workers Compensation and Auto Liability Insurance Program, the broker shall provide the following services:

Broker Services

Program Placement, including taking the program to market and securing placement with carriers of appropriate size and financial strength ("A-" or better as rated by AM Best) on policy forms with terms and conditions that are equal to, or broader than, the terms and conditions of the expiring policies. The selected broker shall be authorized to represent and assist DASNY in all discussions and transactions with insurers, provided that the broker shall not place any insurance on behalf of DASNY unless authorized to do so in writing by DASNY. These services shall also include the following:

- Throughout the contract term, continue to develop a strong understanding of the various operations of DASNY to ensure that the program provides appropriate insurance coverage.
- Identify issues and exposures, potential gaps in coverage and potential program improvements. As appropriate, bring those to the attention of DASNY immediately.
- Negotiate with insurers on behalf of DASNY and keep DASNY updated on a timely basis and informed of significant developments resulting from those negotiations on a timely basis.
- Provide coverage summaries for all newly placed or renewed policies, along with updates explaining any changes to existing coverage.
- Review policies and endorsements for accuracy and conformity to specifications and negotiated coverages.
- Keep DASNY informed with written reports of significant changes and/or trends in the insurance marketplace and provide DASNY with an annual forecast of market conditions.
- Monitor published financial information pertinent to DASNY's current insurers and alert DASNY when the status of one or more of those insurers falls below minimum financial guidelines.
- As requested, provide a status report summarizing the services provided to date, plans for additional service going forward and any recommendations for the overall program.
- At least 120 days prior to policy expiration, present a recommended plan for program renewal/marketing, including timelines and assignments.
- In the event of any questions regarding the interpretation of the insurance policy placed by the broker, at DASNY's request the broker will represent DASNY in any discussions with the insurance carrier.
- Meet as necessary with DASNY staff, designated by DASNY's Director, Insurance - Finance to discuss strategy and open items.
- Assign a dedicated claim representative to act in the capacity of a consultant to DASNY and as a liaison between DASNY and the insurance carrier's claim representative/adjuster.

- Notify insurance carriers of potential or existing claims against the policy(ies) per procedures established in consultation with DASNY and assist in response to coverage issues raised by the insurers. Monitor those claims until closing and advise DASNY as necessary regarding appropriate handling practices.
- Consult with DASNY regarding claim reporting and handling procedures and offer recommendations to improve those procedures as necessary based on state/federal law and industry best practices.

Administrative Services

- Process or facilitate the processing of certificates of insurance, as requested by DASNY.
- Following placement, deliver binders prior to the expiration of the current policies.
- Follow up with insurance carriers for timely issuance of policies and endorsements.
- Provide DASNY with detailed, accurate invoices, including explanations of rating adjustments, dividends and other factors effecting the calculation of premiums, fees/commissions and other policy expenses.
- Secure carrier loss runs as requested by DASNY.

Claims Management

- Serve as DASNY's representative in all aspects related to claims management.
- Provide complete claims handling and adjustment services of all losses, including initial and ongoing investigation, medical and litigation direction, ongoing supervisory oversight, including cost control efforts through final claim resolution.
- Develop, implement and maintain a claim plan of action including a resolution plan for each claim incurred, including claims which do not result in lost time or permanent disability.
- Provide primary claims case management services including timely payment of medical/indemnity and settlement expenses.
- Promptly establish, monitor and periodically adjust claim reserves in consultation with DASNY's Risk Management Claims Analyst and Director, of Insurance - Finance through the life of each claim, including adequate and appropriate analyses of all reserve's changes.
- Properly document and handle defense of all claims considered non-compensable; assist and advise DASNY, including Insurance, Counsel's Office and others, as directed by the Risk Management Claims Analyst or Director, Insurance - Finance.
- Provide services of Nurse Case Managers and other appropriate medical personnel to advocate for appropriate courses of medical treatment/therapy for injured employees (*Workers' Compensation only*).
- Analyze/evaluate options for settlement and recommend appropriate courses of action to DASNY, including rationale for the recommendation.
- Manage all aspects of reporting to NYS Workers' Compensation Board (*Workers' Compensation only*).
- Conduct Medical Billing Reviews to achieve maximum cost savings for the program (*Workers' Compensation only*).
- Provide access to Preferred Provider networks and advise DASNY and injured employees in the best use of these networks (*Workers' Compensation only*).

- Dedicate a claims team with a single point-of-contact Service Leader as well as consulting attorney(s) who can coordinate advice and/or assistance with DASNY's Counsel's Office.
- Properly maintain pertinent data on all claim payments both current and projected.
- Lead/participate in claims status/planning meetings with DASNY representatives, as requested.
- Provide telephonic and electronic claims reporting systems.
- Provide electronic access to claims status/management systems.
- Provide electronic loss reports in a tailored format mutually agreed upon.

Transitional and Return to Work Program - (*Workers' Compensation only*)

- Review all lost-time injuries for potential transitional work opportunities.
- Assist DASNY in identifying appropriate transitional assignments and creating appropriate job descriptions in a unionized environment.
- Work with injured employees' physicians, therapists and other medical providers to clarify restrictions, determine appropriate use of transitional assignments and advocate for an ongoing treatment/therapy program aimed at continuous medical improvement.
- Assist DASNY in monitoring and modifying task assignments/job descriptions in order to ensure an injured employee's progressive recovery.
- Assist DASNY in developing Return to Work/Transitional Duty educational programs for administrators, supervisors and employees.

Other Services/Program Elements - (*Workers' Compensation only*)

- Provide ergonomic loss control programs including on-site evaluations (services are required of both the broker and the insurance carrier).
- Provide technical loss control assistance including the services of ACGIH-accredited and other technical specialists.
- Develop written safety programs and guidelines as well as tools, software and materials needed to support those programs.

APPENDIX "B"

SUMMARY OF PAYMENTS

MAXIMUM AMOUNT PAYABLE

NTE

A. BROKER's SERVICES

NTE

i. Original Scope of Services

LS

Payments requisitions/invoices shall include appropriate supporting documentation as may be requested by DASNY.

NTE = Not to Exceed

LS = Lump Sum

APPENDIX "C"

ADDITIONAL ITEMS

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1. **NONDISCRIMINATION**

During the performance of this Contract, the BROKER agrees as follows:

- A. The BROKER will not discriminate against any employees or applicant for employment because of race, creed, color, sex, national origin, age, disability, or marital status.
- B. If directed to do so by the Commissioner of Human Rights, the BROKER will send to each labor union or representative of workers with which the BROKER has or is bound by a collective bargaining or other agreement or understanding, a notice, to be provided by the State Commissioner of Human Rights, advising said labor union or representative of the BROKER's Contract under clauses A. through G. (hereinafter called "nondiscrimination clauses"). If the BROKER was directed to do so by the contracting agency as part of the proposal or negotiation of this Contract, the BROKER shall request said labor union or representative to furnish a written statement that said labor union or representative will not discriminate because of race, creed, color, sex, national origin, age, disability, or marital status, and that said labor union or representative will cooperate, within the limits of its legal and contractual authority, in the implementation of the policy and provisions of these nondiscrimination clauses and that it consents and agrees that recruitment, employment, and the terms and conditions of employment under this Contract shall be in accordance with the purposes and provisions of these nondiscrimination clauses. If said labor union or representative fails or refuses to comply with said request that it furnish such a statement, the BROKER shall promptly notify the State Commissioner of Human Rights of said failure or refusal.
- C. If directed to do so by the Commissioner of Human Rights, the BROKER will post and keep posted in conspicuous places, available to employees and applicants for employment, notices to be provided by the State Commissioner of Human Rights setting forth the substance of the provisions of clauses A. and B. and such provisions of the State's laws against discrimination as the State Commissioner of Human Rights shall determine.
- D. The BROKER will state, in all solicitations or advertisements for employees placed by or on behalf of the BROKER, that all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, sex, national origin, age, disability, or marital status.
- E. The BROKER will comply with the provisions of Sections 290-299 of the Executive Law and with the Civil Rights Laws, will furnish all information and reports deemed necessary by the State Commissioner of Human Rights under these nondiscrimination clauses and said sections of the Executive Law, and will permit access to the BROKER's books, records, and accounts by the State Commissioner of Human Rights, the Attorney General, and the Commissioner of Labor of the State of New York for the purpose of investigation to ascertain compliance with these nondiscrimination clauses and said sections of the Executive Law and Civil Rights Laws.
- F. This Contract may be forthwith canceled, terminated, or suspended in whole or in part, by the contracting agency upon the basis of a finding made by the State Commissioner of Human Rights that the BROKER has not complied with these nondiscrimination clauses, and the BROKER may be declared ineligible for future contracts made by or on behalf of the State or public authority or agency of the State, until the BROKER satisfies the State Commissioner of Human Rights that the BROKER has established and is carrying out a program in conformity with the provisions of these nondiscrimination clauses. Said finding shall be made by the State Commissioner of Human Rights after conciliation efforts by the Commissioner have failed to achieve compliance with these nondiscrimination clauses and after a verified complaint has been filed with the Commissioner, notice thereof has been given to the BROKER, and an opportunity has been afforded the BROKER to be heard

publicly in accordance with the Executive Law. Said sanctions may be imposed and remedies invoked independently of or in addition to sanctions and remedies otherwise provided by law.

- G. The BROKER will include the provisions of clauses A. through F. in every subcontract or purchase order in such a manner that said provisions will be binding upon each Sub-consultant or vendor as to operations to be performed within the State of New York. The BROKER will take such action in enforcing said provisions of said subcontract or purchase order as the State Commissioner of Human Rights or the contracting agency may direct, including sanctions or remedies for non-compliance. If the BROKER becomes involved in or is threatened with litigation with a Sub-consultant or vendor as a result of said direction by the State Commissioner of Human Rights or the contracting agency, the BROKER shall promptly so notify the Attorney General, requesting the Attorney General to intervene and protect the interests of the State of New York.

2. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted into this Contract shall be deemed to be inserted herein and this Contract shall read and shall be enforced as though so included.

3. COMPLIANCE WITH LAWS, RULES, AND REGULATIONS

The BROKER shall comply fully with all applicable laws, rules, and regulations.

4. TERMINATION OR SUSPENSION

A. Termination for Cause

If the BROKER defaults by failing to substantially perform, in accordance with the terms of this Contract for BROKER Services, as determined by DASNY, DASNY may give written notice to the BROKER (i) terminating this Contract for BROKER Services effective seven (7) calendar days from the date of notice; or (ii) setting forth the nature of the default and requesting the BROKER initiate cure within seven (7) calendar days from the date of notice. At any time thereafter, if the BROKER fails to initiate cure upon the request of DASNY and continue such cure until complete, DASNY may give notice to the BROKER of immediate termination. If DASNY terminates this Contract for BROKER Services pursuant to this paragraph, and it is subsequently determined by a court of competent jurisdiction that the BROKER was not in default, then in such event said termination shall be deemed a termination for convenience as set forth in Paragraph B of this Article.

B. Termination for Convenience or Suspension of Project

DASNY may at any time give written notice to the BROKER terminating this Contract for BROKER Services, in whole or in part, for DASNY'S convenience and without cause. If DASNY terminates this Contract for BROKER Services, the BROKER shall immediately reduce its staff, services and outstanding commitments in order to minimize the cost of termination or suspension.

C. Payment In Case Of Termination or Suspension of Project

- 1. If this Contract for BROKER Services is terminated by DASNY pursuant to Paragraph 7A above, no further payment shall be made to the BROKER except at DASNY'S discretion. At such time, the BROKER'S compensation shall, at DASNY'S option, be calculated (i) subject to the last sentence of this Subparagraph, on the basis of services actually performed and approved by DASNY and expenses actually incurred

from the date of the last approved payment up to the effective termination date; or (ii) on the basis of the payment terms set forth elsewhere herein. In either case, the BROKER's compensation shall be reduced by all costs and damages incurred by DASNY as a result of the default of the BROKER.

2. If this Contract For Professional Services is (i) terminated by DASNY pursuant to Paragraph 7B above; or (ii) suspended more than four (4) months by DASNY pursuant to Paragraph 7B above, the BROKER's compensation shall be calculated on the basis of services actually performed and approved by DASNY and expenses actually incurred from the date of the last approved payment up to the effective termination or suspension date and reasonable costs associated with termination or suspension. In no event shall the BROKER be entitled to compensation in excess of the amounts referenced in Appendix "B".

3. If this Contract for BROKER Services is suspended less than four (4) months by DASNY pursuant to Paragraph 7B above, the BROKER specifically agrees that such suspension, interruption or delay of the performance of the services pursuant to this item shall not increase the cost of the BROKER Services.

5. SUSPENSION OR ALTERATION

- A. DASNY may order the BROKER in writing to suspend, delay, or interrupt performance of all or any part or the Work for a reasonable period of time as DASNY may determine.
- C. The BROKER specifically agrees that such suspension, interruption, or delay of the performance of the Work pursuant to this Item shall not increase the BROKER's compensation.
- D.

6. LAWS OF THE STATE OF NEW YORK

This Contract shall be governed by the Laws of the State of New York.

7. COOPERATION

The BROKER shall render any assistance which DASNY may require with respect to any claim or action in any way relating to the BROKER's services during or subsequent to the the term of this Contract including, without limitation, review of claims, preparation of technical reports and, at DASNY's request, participation in negotiations both before and after it has otherwise completed performance of the Contract, and without any additional compensation therefore.

8. DEATH OF THE BROKER

If the BROKER is an individual and that BROKER shall die prior to the said completed performance of this Contract, then the payment to the estate of said BROKER, pursuant to this Contract, shall be made as if the Scope of Services or any part thereof had been suspended or altered on the date of the death of the BROKER. If the BROKER is a partnership and a partner shall die prior to the completed performance of this Contract, DASNY, in DASNY's discretion, may deem the Scope of Services or any part thereof, suspended or altered on the date of said death or any date thereafter which DASNY selects, and the payment to the estate of the deceased BROKER or the partnership, pursuant to this Contract, shall be made as if the Scope of Services or

any part thereof had been suspended or altered on the date of said death or such other date thereafter selected by DASNY. DASNY shall have the right to the immediate possession of all files of the BROKER relating to the Scope of Services, all plans and specifications in regard to the Scope of Services, and shall have a right to retain the services of another BROKER to complete the Scope of Services.

9. OWNER- BROKER RELATIONSHIP

The relationship created by this Contract between DASNY and BROKER is one of independent contractor and it is in no way to be construed as creating any agency or employment relationship between DASNY and the BROKER .

10. PROTECTION OF LIVES AND HEALTH

Each BROKER and Subconsultant shall comply fully with all applicable provisions of the laws of the State of New York, the United States of America, and with all applicable rules and regulations, adopted or promulgated, by agencies or municipalities of the State of New York or the United States of America. The BROKER's and Subconsultant's attention is specifically called to the applicable rules and regulations, codes, bulletins and to the standards imposed under the Federal Occupational Safety and Health Act of 1970, as amended.

11. NYS VENDOR RESPONSIBILITY QUESTIONNAIRE

- A. In order to assist DASNY in determining the responsibility and reliability of the vendor selected for the Contract and to effectuate the directives of Executive Order No. 125, the Council of Contracting Agencies has adopted procedures to collect and exchange relevant information among Contracting Agencies.
- B. When directed by DASNY, prior to the award of any Contract valued at \$10,000 or more, the selected vendor shall, within ten days following either oral or written notice that it must comply, submit, in the form provided by DASNY, a duly executed NYS Vendor Responsibility Questionnaire to DASNY at the following address:

DASNY
NYS Vendor Responsibility Questionnaire Officer
Procurement Department
515 Broadway
Albany, New York 12207

- C. The information contained in the NYS Vendor Responsibility Questionnaire will serve as an informational resource to aid DASNY in making an award determination.

12. PROHIBITED INTERESTS/ETHICAL CONDUCT - BROKERS

- A. Officers and employees of DASNY are bound by Sections 73, 73-a and 74 of the *New York State Public Officers Law*. In addition, no officer, employee, Consultant, attorney, engineer, inspector or BROKER of or for DASNY authorized on behalf of DASNY to exercise any legislative, executive, administrative, supervisory or other similar functions in connection with the Contract or the Scope of Services, shall become personally interested, directly or indirectly, in the Contract, material supply contract, subcontract, insurance contract, or any other contract pertaining to the Scope of Services.
- B. Section 73(5) of the *Public Officers Law* expressly prohibits the BROKER, or its agents, from directly or indirectly offering or giving any gift having more than nominal value to an employee of DASNY under circumstances in which it could be reasonably inferred the gift was intended to influence the employee in the performance of their official duties,

could reasonably be expected to influence the employee in the performance of their official duties, or was intended as a reward for the employee's official action.

In addition to the prohibition of Section 73 (5) of the Public Officers Law, DASNY has a "zero tolerance" policy with respect to the solicitation, acceptance or receipt of gifts from disqualified sources. Therefore, the BROKER and its agents should refrain from offering or giving anything of value to an employee of DASNY. Employees of DASNY may not solicit any gift, gratuity, stipend or thing of value from the BROKER or its agents. Violations of these gift provisions may be grounds for immediate Contract termination and/or referral for civil action or criminal prosecution.

- C. To promote a working relationship with DASNY based on ethical business practices, the BROKER is expected to:
- 1) furnish all goods, materials and services to DASNY as contractually required and specified,
 - 2) submit complete and accurate reports to DASNY and its agents as required,
 - 3) not seek, solicit, demand or accept any information, verbal or written, from DASNY or its agents that provides an unfair advantage over a competitor,
 - 4) not engage in any activity or course of conduct that restricts open and fair competition on DASNY-related projects and transactions,
 - 5) not engage in any course of conduct with DASNY employees or its agents that constitutes a conflict of interest, in fact or in appearance, and
 - 6) not offer or give any unlawful gifts or gratuities or engage in bribery or other criminal activity.
- D. DASNY encourages the BROKER to advance and support ethical business conduct and practices among its directors, officers and employees, preferably through the adoption of corporate ethics awareness training programs and written codes of conduct.
- E. Although the BROKER may employ relatives of DASNY employees, DASNY must be made aware of such circumstances as soon as possible, preferably in writing, to ensure a conflict of interest situation does not arise. DASNY reserves the right to request that the BROKER modify the work assignment of a relative of an DASNY employee where a conflict of interest, or the appearance thereof, is deemed to exist.
- F. The BROKER may hire former employees of DASNY. However, as a general rule, former employees of DASNY may neither appear nor practice before DASNY, nor receive compensation for services rendered on a matter before DASNY, for a period of *two years* following their separation from service with DASNY. In addition, former employees of DASNY are subject to a "*lifetime bar*" from appearing before DASNY or receiving compensation for services regarding any transaction in which they personally participated or which was under their active consideration during their tenure with DASNY.
- G. The BROKER agrees to notify DASNY's Office of Professional Integrity at 518-257-3193 of any activity by an employee of DASNY that is inconsistent with the contents of this Section.
- H. Any violation of these provisions shall justify termination of this Contract and may result in DASNY's rejection of the BROKER's bids or proposals for future contracts.

13. COOPERATION WITH INVESTIGATIONS

The BROKER agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by the Office of Professional Integrity ("OPI") of DASNY or any other duly authorized representative of DASNY ("Representative").

The BROKER shall grant the OPI or the Representative the right to examine all books, records, files, accounts, computer records, documents and correspondence, including electronically-stored information, in the possession or control of the BROKER, its subsidiaries and affiliated companies and any other company directly or indirectly controlled by the BROKER, relating to the BROKER. These shall include, but not be limited to: Subcontracts; bid files; payroll and personnel records; cancelled checks; correspondence; memoranda; reports; audits; vendor qualification records; original estimate files; change order/amendment estimate files; detailed worksheets; Subcontractor, BROKER and supplier proposals for both successful and unsuccessful bids; back-charge logs; any records detailing cash, trade, or volume discounts earned; insurance proceeds, rebates or dividends received; payroll and personnel records; tax returns, and the supporting documentation for the aforesaid books and records. At the OPI's or the Representative's request, said materials shall be provided in a computer readable format, where available. At the request of the OPI or the Representative, the BROKER shall execute such documents, if any, as are necessary to give the OPI or the Representative access to Contract-related books, documents or records which are, in whole or part, under control of the BROKER but not currently in the BROKER's physical possession. The BROKER shall not enter into any agreement with a Subcontractor, BROKER or supplier, in connection with the Contract, that does not contain a right to audit clause in favor of DASNY. The BROKER shall assist the OPI or the Representative in obtaining access to past and present Subcontractor, BROKER and supplier amendment/change order files (including detailed documentation covering negotiated settlements), accounts, computer records, documents, correspondence, and any other books and records in the possession of Subcontractors, BROKERS and suppliers pertaining to the Contract, and, if appropriate, enforce the right-to-audit provisions of such agreements.

The BROKER shall assist the OPI or the Representative in obtaining access to, interviews with, and information from all former and current persons employed and/or retained by the BROKER, for purposes of the Contract.

The BROKER shall require each Subcontractor to include in all agreements that the Subcontractor may hereinafter enter into with any and all Subcontractors, BROKERS and suppliers, in connection with the Contract, a right-to-audit clause in favor of DASNY conferring rights and powers of the type outlined in this section. The BROKER shall not enter into any Subcontract with a Subcontractor in connection with the Contract that does not contain such a provision.

The BROKER shall not make any payments to a Subcontractor, BROKER or supplier from whom the BROKER has failed to obtain and supply to the OIA or the Representative complete, accurate and truthful information in compliance with a request from the OPI or the Representative to the BROKER.

Any violation of the provisions of this Article shall justify termination of this Contract and may result in DASNY's rejection of the BROKER's bids or proposals for future contracts.

14. FALSE STATEMENTS/INFORMATION

- A. False statements, information or data submitted on or with requests/invoices for payment may result in one or more of the following actions:
 - 1) Termination of the Contract
 - 2) Disapproval of future contracts and sub-contracts
 - 3) Withholding of final payment on the Contract
 - 4) Civil and/or criminal prosecution

- B. These provisions are solely for the benefit of DASNY, and any action or non-action hereunder by DASNY shall not give rise to any liability on the part of DASNY.

15. INVALID PROVISIONS

If any term or provision of the Contract or the application thereof to any person, firm or corporation, or circumstance shall, to any extent, be determined to be invalid or unenforceable, the remainder of the Contract, or the application of such terms or provisions to persons, firms or corporations, or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each term or provision of the Contract shall be valid and be enforced to the fullest extent permitted by law.

16. CONFLICTING TERMS

In the event of a conflict between or among any parts of the Contract, including Appendices thereto, the better quality, greater quantity, or more costly part shall govern, unless DASNY directs otherwise.

17. 2005 PROCUREMENT LOBBYING LAW

- A. Chapter 1 of the Laws of 2005, as amended by Chapter 596 of the Laws of 2005, requires proposers to affirm their understanding of and agreement to comply with State Finance Law § 139-j (3) and § 139-j (6) (b), certify their compliance with State Finance Law § 139-k (5), disclose prior non-responsibility determinations under State Finance Law § 139-j, and to certify that the information they provide with respect to State Finance Law § 139-j and § 139-k is complete, true and accurate.
- B. For any contract \$15,000 or more each proposer shall submit, with its proposal, on the form provided herewith, *SFL 139 Form 1: Professional's Certifications Pursuant to SFL § 139-j and § 139-k*. The information contained in *SFL 139 Form 1: Professional's Certifications Pursuant to SFL § 139-j and § 139-k* will serve as an informational resource to aid DASNY in making an award determination.
- C. DASNY reserves the right to terminate this contract in the event it is found that the certification filed by the Professional in accordance with State Finance Law § 139-j and § 139-k, as such may be amended or modified, was intentionally false or intentionally incomplete. Upon such finding, DASNY may exercise its termination right, such termination constituting a termination for cause, by providing written notification to the Professional in accordance with the terms of Article 5.1 of this Contract – Termination for Cause.

18. NONCOMPLIANCE

This Contract may be void and of no effect unless the BROKER complies with each of the provisions of these **ADDITIONAL ITEMS**.