

APPENDIX B

STANDARD CLAUSES FOR HIGHER EDUCATION CAPITAL MATCHING GRANT PROGRAM CONTRACTS

The parties, the Contractor and the College, to the attached agreement (the “Contract”) acknowledge that the performance of their obligations under the Contract must comply with the requirements of Part U of chapter 63 of the Laws of 2005, as amended, including, by reference, the applicable provisions of Article 9 of the State Finance Law, Article 15-A of the Executive Law and Articles 8, 9 and 10 of the Labor Law. In order to insure such compliance, the Contractor and the College hereby agree to be bound by all such requirements. The following clauses, which are intended to either explain such requirements or to add additional requirements, are hereby made part of the Contract. The numbered clauses which follow are not intended to be a complete listing of the requirements referenced above:

1. **GOVERNING LAW.** The Contract shall be governed by the laws of the State of New York.
2. **APPROVAL BY THE STATE.** In accordance with Part U of Chapter 63 of the Laws of 2005, as amended, the Contract is subject to the approval of the Comptroller of the State of New York, and, as to form, by the Attorney General of the State of New York.
3. **NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, the Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the College and any attempts to assign the Contract without the College’s written consent are null and void.
4. **RECORDS.** The Contractor and the College shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under the Contract (hereinafter, collectively, “the Records”). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, shall have access to the Records during normal business hours at an office of the Contractor or at the College within the State of New York or, if no such office is available, at a mutually agreeable venue within the State, for the term specified above for the purposes of inspection, auditing and copying.
5. **INDEMNIFICATION.** Neither the HECap Board, DASNY, nor the State of New York shall in any event whatsoever be liable for any injury or damage, cost or expense of any nature whatsoever that occurs as a result of or in any way in connection with the Project and the College hereby agrees to indemnify and hold harmless the HECap Board, DASNY, and the State and their respective agents, officers, employees and directors (collectively, the “Indemnitees”) from and against any and all such liability and any other liability for injury or damage, cost or expense resulting from the payment of the Grant by the HECap Board to the College or use of the Project in any manner, including in a manner which, if the bonds are issued on a tax-exempt basis, (i) results in the interest on the bonds issued by DASNY the

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proceeds of which were used to fund the Grant (the “Bonds”) to be includable in gross income for federal income tax purposes or (ii) gives rise to an allegation against DASNY by a governmental agency or authority, which DASNY defends that the interest on the Bonds is includable in gross income for federal income tax purposes, other than that caused by the gross negligence or the willful misconduct of the Indemnitees.

6. **CONFLICTING TERMS.** In the event of a conflict between the terms of the Contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix B, the terms of Appendix A: Standard Clauses for NYS Contracts (attached), shall control.
7. **WAGE AND HOURS PROVISIONS.** In accordance with Part U of Chapter 63 of the Laws of 2005, as amended, the Contractor and the College agree to comply with the requirements of Articles 8, 9 and 10 of the New York State Labor Law. Neither Contractor’s employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.
8. **MINORITY AND WOMEN OWNED BUSINESS REQUIREMENTS.** In accordance with Part U of Chapter 63 of the Laws of 2005, as amended, the Contractor and the College agree to comply with the requirements of Article 15-A of the New York Executive Law.