

MEMORANDUM OF UNDERSTANDING

By and between

DORMITORY AUTHORITY STATE OF NEW YORK

and

OFFICE OF CANNABIS MANAGEMENT

Acknowledged and Agreed to by

CANNABIS CONTROL BOARD

and

SOCIAL EQUITY SERVICING CORPORATION

This **Memorandum of Understanding**, (the “**Agreement**”) is entered into as of the 31st day of August , 2022, by and between the **Office of Cannabis Management**, (hereinafter referred to as “**OCM**”); and the **Dormitory Authority of the State of New York** (hereinafter referred to as “**DASNY**” and together with **OCM** referred to as “**the Parties**”) and as agreed to and acknowledged by the Cannabis Control Board (“**CCB**”) and the SOCIAL EQUITY SERVICING CORPORATION (“**SESC**”), a DASNY subsidiary;

WITNESSETH:

WHEREAS, pursuant to Article 2, § 8 of Chapter 7-A of the Consolidated Laws of the State of New York (2021-2022 Regular Sessions) (the “**NY Cannabis Law**”), the OCM was established within the Division of Alcoholic Beverage Control as an independent office with the exclusive jurisdiction to exercise by and through its Executive Director the powers and duties provided under the NY Cannabis Law (other than those powers and duties specifically granted to the Cannabis Control Board (“**CCB**”); and

WHEREAS, pursuant to Article 2, §11.9 of the NY Cannabis Law, the OCM Executive Director is authorized to enter into contracts, memoranda of understanding and agreements as deemed appropriate to effectuate the policy and purpose of the NY Cannabis Law; and

WHEREAS, §99-ii of the State Finance Law (“**SFL§ 99-ii**”) provides for the establishment of the New York State Cannabis Revenue Fund (the “**Revenue Fund**”) under the joint custody of the Comptroller and the Commissioner of Taxation and Finance; and

WHEREAS, SFL § 99-ii (3)(d) provides, in part, that up to \$50 million deposited into the Revenue Fund shall be made available, whether directly or indirectly, for investment in a private debt or equity fund selected pursuant to PAL § 1678(32) (“**Private Fund**”) or to cover capital costs associated with establishing conditional adult-use cannabis retail dispensaries (“**RCDs**”) for operation by social equity licensees (“**Selected Licensees**”) duly licensed pursuant to Article 2 of the New York Cannabis law (the “**Retail Cannabis Provisions**”) (collectively referred to as the “**Cannabis Program**”); and

WHEREAS, the State has appropriated \$50 million to be transferred from the State’s General Fund for the uses specified under the Retail Cannabis Provisions and as referenced in the 2022-2023 Aid to Localities Appropriation bill (S8004D, A9003D, p.65-66) (the “**State Funded Amount**”); and

WHEREAS, pursuant to SFL§ 99-ii (2-a), revenues deposited pursuant to section fifteen of the Cannabis Law shall first be used to reimburse the State General Fund for any funds transferred to the Revenue Fund for the purposes of supporting expenditures authorized for the Cannabis Program and as set forth under the provisions of SFL § 99-ii (3)(d).

WHEREAS, the relevant appropriation of the State Funded Amount authorizes DOB to sub-allocate funding for the Cannabis Program to DASNY or more specifically to “any department, agency, or public authority”;

WHEREAS, the State Funded Amount, or a portion thereof, may be sub-allocated to DASNY for use in its funding of capital investments in the Private Fund as well as to pay for all reasonable costs, DASNY or SESC has incurred, that have not been otherwise reimbursed by the Private Fund, to provide technical, professional, financial and legal services to establish the RCDs in accordance with the Retail Cannabis Provisions (“**Unreimbursed Related Costs**”); and

WHEREAS, the Parties share mutual and common interests in connection with the financing of the construction and equipping of RCDs for operation by Selected Licensees and the Cannabis Program and a mutual and common interest in the successful defense or prosecution of potential claims with respect to other persons in any investigations, lawsuits, claims or proceedings arising from, relating to, or otherwise in connection with such financing, leasing, construction, and equipping of RCDs in the pursuit of the state’s public policy goals, which is advancement of a public purpose (collectively, “**Equity Matters**”); and

WHEREAS, the Parties seek to pursue their common interests in connection with the Equity Matters as members of a common interest group and to communicate among themselves, share confidential information, strategy, and documents that are privileged or otherwise immune from discovery, while avoiding any suggestion of waiver of the privileged status, immunity, or confidentiality of any such communications, information, documents, or things of any nature or description shared among the Parties; and

WHEREAS, it is the intent of this Agreement to memorialize the understanding by the Parties of their respective rights, responsibilities and undertakings in the establishment of RCDs for operation by Selected Licensees in accordance with the Retail Cannabis Provisions and in the advancement of their mutual and common interests in connection with the Equity Matters:

NOW, THEREFORE, in consideration of these covenants, the parties do hereby agree as follows:

1. **Purpose**

The purpose of this Agreement is to set forth the Parties’ mutual understanding of the terms and conditions under which each Party (and subsidiary thereof, if relevant) has agreed to undertake work and costs associated with the establishment of RCDs under the Cannabis Program.

2. Scope of Services

As authorized under the Retail Cannabis Provisions and the accompanying appropriation funds in an amount of up to \$50mm may be directly suballocated to DASNY¹, to (a) invest in a Private Fund on such terms as provided hereunder and under law and/or (b) cover Unreimbursed Related Costs incurred by DASNY, either directly or through its subsidiary, in the provision or retention of services to advance the establishment, financing, leasing, construction, and equipping of RCDs as provided for under the Retail Cannabis Provisions (“**DASNY Services**”). The DASNY Services include, but are not limited to, the following:

- procurement of a Fund Sponsor, General Partner, Fund Manager, and operating subsidiary thereof for the Private Fund (the “**Fund Operators**”);
- procurement of design/build contractors for buildout of the RCDs;
- sourcing potential locations for establishment of RCDs;
- drafting and negotiating letters of intent with, and issuing requests for information to lease space from, prospective landlords of establishments sourced for use as RCDs;
- initial scoping of costs and work associated with the purchasing, planning, design, construction, reconstruction, rehabilitation, improvement, furnishing, or equipping of RCDs;
- development and negotiation of a construction management agreement (“**CMA**”) outlining the terms and conditions under which DASNY, or a subsidiary thereof, will provide to the Private Fund, as agent or principal, services relating to purchasing, planning, design, construction, reconstruction, rehabilitation, improvement, furnishing or equipping of RCDs;
- development of standard form loan agreement, subject to approval by OCM, and the collateral and other related documentation governing the payment and repayment obligations of the Selected Licensees authorized by the OCM to operate the constructed and equipped RCDs;
- development of standard form lease, sublease and collateral and other related documentation with the lessors of the RCDs and with the Selected Licensees as subtenants of the RCDs;

¹ References to DASNY in this agreement may also refer to the Social Equity Servicing Corporation, the DASNY subsidiary that was created pursuant to PAL §1678(30-32) to perform the services identified in the Scope of Services section of this MOU.

- development of a standard form service agreement outlining the terms and conditions under which a DASNY subsidiary will provide property management, loan servicing, and real estate services;
- establishment of operational infrastructure for the accounting and reporting of all expenditures made from the State Funded Amount provided to DASNY;
- establishment of a subsidiary of DASNY for the purpose of providing construction, real property, property management, loan servicing and other agreed services to the Private Fund or to an operating subsidiary thereof;
- providing the OCM with such assistance as may be requested from time to time;.
- development and negotiation of a limited partnership agreement (“LPA”), and any additional partnership agreements, term sheets, and other related agreements with the Private Fund selected by DASNY in consultation with OCM², governing the terms of investment by DASNY in the Private Fund and the management of such investment by the Private Fund and providing, inter alia, that the Private Fund (or operating subsidiary thereof³) will (1) finance the capital costs for the design, construction and equipping of RCDs for operation by Selected Licensees, (2) enter into lease agreements with the landlords leasing, and the Selected Licensees subleasing, the sites to be used as RCDs, (3) enter into loan agreements, and service the loans, with each Selected Licensee, (4) provide property management and any other services as may be agreed between DASNY and the Private Fund.

3. **DASNY Duties and Responsibilities**

Except as may otherwise be provided herein, DASNY, either acting directly or through its subsidiary SESC, shall assume the following responsibilities with respect to the Cannabis Program:

- (a) Develop a term sheet and standard form of LPA that will set forth the terms for DASNY’s investment in the Private Fund and shall ensure all requisite state approvals have been obtained prior to execution.

² In accordance with the provisions of PAL §1678 (32)(a)(i), Social Equity Impact Ventures, LLC., was selected as the Fund Operators of the Private Fund.

³ The Private Fund may utilize a wholly owned operating subsidiary for the provision of all or some of the services outlined hereunder and accordingly all references to the Private Fund in this regard shall include such operating subsidiary.

(b) The LPA shall be subject to the approval of the CCB, the DASNY Board and the DOB Director. The LPA shall include terms and conditions provided in PAL § 1678(32)(a)(ii)(3), including, but not limited to an agreement, to the extent allowable by section one of article five of the state Constitution, authorize the comptroller of the state or the state's legally authorized representatives, to access, examine or audit the accounts and books of the Private Fund, in accordance with the referenced Public Authorities Law.

(c) Retain the services of external real estate and legal professionals to assist in identifying potential sites for establishment of RCDs and the negotiation of site leases.

(d) Provide, where appropriate, lessors of prospective sites for RCDs with non-binding expressions of interest that specifically provide for the Private Fund, or DASNY, or its subsidiary as agent for the Private Fund, to be the tenant to master lease the RCD facility.

(e) Develop a standard form lease for execution by and between the Fund Operators, or SESC, as agent for the Private Fund or its operating subsidiary, and each lessor of the RCDs selected.

(f) Develop a standard form sub-lease for execution by and between the Private Fund or SESC, as agent for the Private Fund, and each Selected Licensee operating the RCDs.

(g) Submit a copy of the lease and sublease ("**Lease Agreements**") to OCM for approval of their general terms and through SESC shall inform OCM of any material deviations and material changes that may arise during the course of lease negotiations with the site owners/landlords within a reasonable time, in advance, in order to ensure that the Parties are able to adhere to project timelines.

(h) Manage the construction and equipping of all RCDs. The CMA shall govern the terms of all RCD related purchasing, planning, design, construction, reconstruction, rehabilitation, improvement, furnishing and equipping work undertaken by DASNY, SESC, and/or the contractors/consultants who will be retained to provide such services. The CMA shall be executed by and between the DASNY subsidiary, SESC and the Private Fund, or its operating subsidiary.

(i) Develop a standard form of loan agreement ("**Loan Agreement**") to be executed by and between the Private Fund and each Selected Licensee operating the RCDs. In accordance with PAL § 1678(30)(e), the loans will be non-recourse and the terms of such loans will not include penalties for early termination, but will allow for the inclusion of a make-whole provision, and shall not, at the time the loan is established, exceed the prime lending rate plus 8% (or half the interest rate specified under Banking Law § 14(a)(1)), nor include terms or conditions that would allow for an equity position in the Selected Licensee's RCD business or that would entitle a share in, or claim to, any revenue or profit generated by such business.

(j) Submit a copy of the Loan Agreement to OCM for approval of the general terms of such agreements and, through SESC, shall inform OCM of any material deviations and material changes therefrom that may arise during the course of negotiations with the loan recipient. The form of Loan Agreement will be submitted to OCM a reasonable time in advance in order to ensure that the Parties are able to adhere to project timelines.

(k) Develop a standard form of a property management and loan servicing agreement (“**Loan Servicing Agreement**”). The Loan Servicing Agreement will be prepared for execution by and between the DASNY subsidiary SESC, and the Private Fund, or its operating subsidiary.

(l) Retain external legal and financial advisors to assist internal staff with the creation and negotiation of the LPA, CMA, Fund Service Agreement (as defined below), Lease Agreements, Loan Agreements, and Loan Servicing Agreements and other legal documents for execution by the Selected Licensees and to provide general advisory services in connection with these documents.

(m) Explore and provide the Private Fund with information on general liability and other recommended insurance appropriate for the Private Fund to procure in connection with its build-out and leasing and sub-leasing of RCD properties.

(n) Enter into separate agreements that will govern the terms under which DASNY, or through its subsidiary SESC, will furnish, whether as agent, services to the Private Fund or the Fund’s operating subsidiary shortly after formation of the Private Fund (“**Fund Service Agreement**”).

(o) Provide OCM and DOB, upon request, with a summary report of all costs incurred (“**Cost Summary Report**”) that have not been reimbursed by the Private Fund as described in § 8 below.

(p) Provide, at its option, assistance identifying insurance, security, banking, and/or other operational needs or requirements for the business operations of the RCDs.

(q) Commencing December 30, 2022, and annually thereafter, DASNY shall prepare a report regarding the activities of the Private Fund as identified in PAL §1678(32)(b)(i).

4. **OCM Duties and Responsibilities**

Except as may otherwise be provided herein, OCM shall assume the following responsibilities with respect to the Cannabis Program:

(a) OCM agrees that, in accordance with SFL § 99-ii, the State Funded Amount in the State General Fund, as a sub-direct allocation to DASNY, may be applied and used by DASNY, or the subsidiary thereof, to fund all capital calls relating to its investment in the Private Fund and to reimburse all Unreimbursed Related Costs incurred by DASNY or subsidiary thereof. OCM further agrees that the

revenues from license fees first deposited into the Cannabis Revenue Fund pursuant to the NY Cannabis Law shall be used to repay the State Funded Amount received as provided under SFL § 99-ii in accordance with the provisions of SFL § 99-ii (2-a).

(b) OCM staff has coordinated with DASNY in the selection of the Fund Operators and will continue to cooperate with DASNY in the creation of the related public policy and advisory committees.

(c) OCM identified designated representatives to serve on the selection committee for the procurement of the Fund Operators.

(d) OCM agrees to provide timely review and approval of the terms of the standard form Lease Agreements and the Loan Agreement, and any material deviations or material changes made thereto, upon receipt of such documents in order to ensure that the Parties are able to adhere to project timelines. OCM shall provide such approval or comments thereto within a reasonable time upon receipt, which should not exceed five (5) business days from date of receipt.

(e) OCM agrees that this Agreement is entered into with the understanding that DASNY or SESC, either directly, with support from their external counsel, will be preparing the Loan Agreement, the Lease and Sublease, the CMA, the Loan Servicing Agreement and such additional documents and agreements necessary to conduct DASNY Services performed on behalf of the Private Fund or its operating subsidiary.

(f) OCM will identify a Designated OCM representative(s) to act as a liaison with DASNY and its subsidiary SESC and participate in all future progress meetings with respect to the Cannabis Program. Such contact persons shall have the authority to make certain decisions as applicable and required to aid in the progress of the work effectively and efficiently to be performed with respect to the Cannabis Program and carry out the responsibilities required by this section.

(g) OCM shall, in all respects, be solely responsible for the identification, site assignment, and/or selection of the Selected Licensees in accordance with the conditional adult-use cannabis retail dispensary (CAURD) program.

(h) After receiving CCB approval, OCM shall be responsible for assigning the specific RCD sites to the Selected Licensees and confirming and advising whether the location of such sites comport with the requirements of any OCM rules, regulations, or guidance; provided however, the parties agree that DASNY shall be responsible for the identification and selection of the sites that it shall establish for RCDs.

(i) OCM agrees to provide and inform DASNY and SESC, of the information, such as the relevant rules, regulations, or guidance materials, whether enacted or proposed, as may be required by DASNY or SESC to lawfully establish and maintain the design and construction of the RCDs.

(j) OCM agrees to inspect RCDs as set forth in any applicable rules, regulations, or guidance and to provide direction as set forth in PAL §1678(32)(a)(ii)(2)(G).

(k) OCM may assist DASNY/SESC in identifying insurance, security, banking, and/or other operational/business needs of the RCDs.

(l) OCM agrees to coordinate with DASNY in providing the necessary information required to inform the annual report required pursuant to PAL §1678(32)(b)(i).

5. **The Public Policy Committee.**

(a) The Private Fund shall be both privately managed and controlled but, pursuant to PAL§1678 (32)(a)(ii)(1), will be required to establish a public policy committee, the members of which shall consist of the Chair of the CCB, the Executive Director of OCM, and the President of DASNY (or their respective representatives).

(b) The public policy committee will guide the decisions of the Private Fund (including those made through its operating subsidiary) to achieve the public policy goals. Functions of the Public Policy Committee will include review and approval of the Private Fund’s investment policies, use and distribution of the Private Fund’s investment funds, monitoring the Private Fund’s risk profile, investment activity and performance and such other review and approval functions provided under the provisions of the above referenced PAL and PAL § 1678(32)(a)(ii)(2).

(c) The Parties agree to identify the designated representative(s) who shall be assigned and responsible for all matters relating to this committee.

(d) DASNY agrees to include provisions in the agreement with the Fund Operator, which will require that the Fund Operator provide Committee members with access to all required and necessary information to meet the mandates identified in PAL § 1678(32)(a)(ii)(1).

6. **DASNY’s Private Fund Investment**

DASNY shall make its investment in the Private Fund subject to the terms and conditions specified in the governing LPA. It is anticipated that there will be a first phase of investment (“**First Phase**”) documented under the LPA in which DASNY, and the General Partner will purchase all the outstanding limited partnership interests in the Private Fund with DASNY retaining a subordinated minority position *vis-a-vis* the other limited partner. It is further anticipated that there will be a second phase of investment (“**Second**

Phase”) in which the LPA will include terms for investment by other private limited partners with DASNY retaining a subordinated limited partnership interest.

(a) In connection with the First Phase, the Parties agree that:

- i. A portion of the State Funded Amount, as set forth in the LPA, may be sub-allocated for direct transfer to DASNY to fund this initial capital call (the “**Initial Tranche Investment**”);
- ii. DASNY shall fund its Initial Tranche Investment through the requisition of payment from the State Funded Amount;
- iii. During the First Phase, the Private Fund will solely use all raised capital to establish RCDs up to and not exceeding the amount represented by the Initial Tranche Investment made by DASNY; and
- iv. In the event that any portion of the Initial Tranche Investment is required to be advanced to DASNY directly to reimburse capital and ancillary costs incurred by DASNY, or the subsidiary, such amounts will be deemed to be a credit of the State’s Initial Tranche Investment.

(b) In connection with the Second Phase and all subsequent closings, the Parties agree that:

- i. A portion of the State Funded Amount in an amount up to the net difference between \$50mm and the sum of the aggregate capital previously invested by DASNY in the Private Fund and all Unreimbursed Related Costs to such date may be sub-allocated for direct transfer to DASNY upon requisition thereof to fund a capital call at such time;
- ii. DASNY shall continue to maintain a minority limited partnership interest (not including any contribution to a reserve account for the Private Fund) of all capital contributed;
- iii. At the closing of the Second Phase, the Private Fund shall reimburse or provide DASNY with a credit for all, or a portion of the Unreimbursed Related Costs incurred, and should such Second Phase not occur, the Parties agree that DASNY may requisition reimbursement of all Unreimbursed Related Costs at such time from the State Funded Amount; and
- iv. The closing for the Second Phase is anticipated to occur no later than December 1, 2022 and should such Second Phase not occur by such date DASNY shall promptly notify OCM and DOB;
- v. Upon full capitalization of the Private Fund, if the total capital called by the Private Fund from DASNY is less than the State Funded Amount received by DASNY, DASNY shall transfer to the OCM the difference between these two amounts.

- vi. DASNY shall transfer to the OCM the proportionate amount of scheduled interest payments and principal repayments, if any, it receives from the Private Fund as a return on its investment.
- vii. During the Second Phase, the Private Fund will use all raised capital to establish the next group of RCDs.

7. **Term of Agreement**

This Agreement shall remain in effect for one year after the dissolution of the Private Fund. Indemnification provisions and provisions regarding payment of fees contained in this Agreement shall survive any termination of this Agreement.

8. **Payment of DASNY Costs**⁴

(a) All costs related to DASNY and/or SESC staff, providing DASNY Services hereunder will be computed on a time and hourly rate basis using the actual rates of pay and established overhead for the employees providing such DASNY Services. The overhead rate includes, but is not limited to, the costs of the following items: administrative costs, indirect salaries, related non-personal services costs and fringe benefits. DASNY may also bill for any other project related non-personal service expenses as approved by OCM or the Private Fund, as applicable.

(b) DASNY will provide a summary or accounting of Unreimbursed Related Costs of DASNY Services incurred prior to execution of the LPA to OCM for review and payment, which payment(s) shall be made from the State Funded Amount.

(c) For any expenses incurred after execution of the LPA and prior to Fund capitalization, DASNY will provide to OCM an additional summary of costs incurred for services rendered by DASNY staff and outside consultants engaged by DASNY for the purposes of providing the DASNY Services hereunder in accordance with contracts entered into with such consultants for such services.

(d) DASNY will provide OCM and the Fund Operators with a summary detail of all Unreimbursed Related Costs with specific notation of costs and expenses related to DASNY and/or DASNY subsidiary staff incurred prior to the commencement of the Second Phase. Together, the costs related to DASNY staff and/or DASNY subsidiary staff, calculations and invoices related to outside consultants shall be incorporated into a Cost Summary Report for purposes of requisitioning reimbursement

⁴ OCM may consult with the Division of Budget in the review and payment of DASNY costs.

for such costs. Additional information related to such costs and expenditures will be made to the Fund Operators and OCM.

(e) In the event that there are costs incurred by or imposed on DASNY, or the DASNY subsidiary, in connection with the provision of DASNY Services, including costs related to dissolution of the LP, but which are not specifically incorporated into either this Agreement or the agreements between DASNY, or the DASNY subsidiary, and the Private Fund, or paid by the Fund, DASNY will submit a Cost Summary Report detailing such costs for approval of and payment by OCM, which payment(s) shall be made from the State Funded Amount and pursuant to a suballocation of such funds.

(f) DASNY may also establish and maintain an account to be designated "**Fund Account**" for the Cannabis Program. All interest earned on the Account shall be applied to pay costs of the projects for the Cannabis Program. DASNY may draw on the Fund Account only to make direct payments from the Fund Account to vendors for project costs that are immediately due and owing. Upon creation of the Fund, and payment of such expenditures (including any claims of DASNY), DASNY shall transfer any unspent funds in the Fund Account to the Fund and any amounts expended or paid by OCM, which payments shall be made from the State Funded Amount.

(g) DASNY will include a provision in the LPA which reflects that payments for Unreimbursed Related Costs shall be deemed to be a credit towards the state's investment into the Private Fund.

(h) DASNY shall maintain an appropriate, permanent set of accounting records of DASNY and/or SESC in connection with the Cannabis Program that shall be made available to the Fund Operators, OCM, or their designated agents, upon request.⁵ The records shall be kept for the balance of the calendar year in which they are made and for six (6) additional years thereafter.

9. **Cooperation and Joint Responsibilities**

(a) The Parties hereby agree to cooperate to the best of their ability with each other and with other involved third parties, if any, with respect to resolution of issues involving the DASNY Services. In the event the Parties are unable to agree on the resolution of a dispute hereunder at the staff level, the President of DASNY or his or her designee, and the Designated OCM Official, or his or her designees, will meet within five (5) business days of either party's request therefore, to resolve the dispute. In the event that the President of DASNY, Designated OCM Official, or their designees are unable to resolve the dispute at

⁵ All summaries or accounting of Unreimbursed Related Costs submitted for payment of DASNY or SESC expenses as described in this Section 8 may be submitted to DOB and CCB for review.

such meeting, the Parties hereby agree to refer any and all issues with respect to the DASNY Services to the Public Policy Committee.

(b) The Parties hereby agree to cooperate with each other in the resolution of any community opposition to the Cannabis Program or the Equity Matters.

(c) The Parties hereby agree to cooperate with each other when a party is the subject of or participant to an investigation or audit.

(d) The Parties agree to meet regularly, no less than bimonthly, to provide updates regarding the work, roles and responsibilities that each respective party is undertaking in connection with the Cannabis Program.

10. **Independent Contractor**

With respect to any DASNY Services carried out in connection with this Agreement, neither DASNY nor its subsidiary shall be the agent of the CCB or OCM nor shall DASNY represent to any person, foundation, group, organization or government entity that it is acting as agent for the CCB or OCM or that it is entitled in any way to act on behalf of the CCB or OCM or to incur obligations on behalf of the CCB or OCM unless expressly authorized to do so by the CCB and OCM in writing.

11. **Prohibition of Assignment**

This Agreement is intended to secure the services of DASNY because of its ability and reputation, none of DASNY's duties under this Agreement shall be assigned, subcontracted, or transferred without the prior written consent of OCM other than in connection with services to be provided pursuant to contracts with external consultants selected by DASNY or the DASNY subsidiary created pursuant to PAL §1678(30-32).

12. **Project Officers**

(a) OCM agrees to designate an OCM Project Officer to communicate to DASNY and/or SESC OCM's directives relating to DASNY and SESC's performance of its obligations under this Agreement. All reports, vouchers for payment and issues of interpretation or direction relating to this Agreement shall be directed to the OCM Project Officer(s), or to such persons who may be designated by OCM in writing to assist the OCM Project Officer.

(b) DASNY designates Paul Koopman (the "DASNY Project Officer(s)") and John Savona (the "SESC Project Officer") . All communications regarding reports, vouchers for payments and issues of interpretation or direction relating to this Agreement shall be directed to the DASNY Project Officer or

SESC Project Officer, or to such persons who may be designated by these entities in writing to assist the Project Officer(s). The Parties may designate new Project Officers at any time, without formally modifying this Agreement. If a party designates a new Project Officer, it shall promptly inform the other party.

13. **Agreement Modifications**

Any modification to this Agreement must be in writing and signed by each of the Parties hereto.

14. **Termination**

This Agreement may be terminated at any time upon mutual written agreement of the Parties upon notice given as provided in this Agreement. Upon such termination, provisions regarding indemnification and payment of fees contained herein shall survive termination. This Agreement may be terminated immediately by either party if State funds expected to be authorized for purposes of this Agreement become unavailable for payment of costs incurred for DASNY Services performed. Applicable provisions of this Agreement may continue in full force and effect should alternative, private funds become available for such purposes upon agreement by the Parties. All payment obligations due hereunder shall survive termination of this Agreement.

15. **Indemnification of DASNY**

OCM/CCB agrees to indemnify and hold DASNY and SESC harmless from and against all claims, liability, damages, demands, costs, judgments, fees including costs of litigation and public or private attorney's fees, for loss or damage to property of, or any injury to, or death of, any or all persons arising out of, in connection with, or resulting from OCM's or the CCB's responsibilities under this Agreement or challenges to the conditional adult-use cannabis retail dispensary (CAURD) program, CAURD rules, regulations or guidance, including *inter alia*, challenges to regulations, selection, site designation and/or prioritization of the Selected Licensees, to the extent that such injuries, death or property damage are not caused by the negligent, grossly negligent, or reckless acts or omissions or intentionally wrongful acts or omissions of DASNY, SESC or either entity's members, officers, agents representatives or employees, and to the extent that said loss or damage are attributable to such entities' members, officers, and employees while acting within the course and scope of their employment.

DASNY agrees to give OCM/CCB and the Attorney General prompt notice in writing of the initiation of each such claim or action covered by this paragraph and to consult with OCM and the Attorney General and to obtain their written consent prior to adjusting or settling any such action or proceeding.

Upon the conclusion of any such action, proceeding or lawsuit, should a final binding determination of responsibility be made which allocates the responsibility to DASNY, its officers, employees, or agents, on the basis of its or their negligent, grossly negligent, or reckless acts or omissions or intentionally wrongful acts or omissions, DASNY agrees that the obligation to indemnify and hold harmless shall not be applicable to the portion of any money judgment or other liabilities for which DASNY or its officers, agents, or employees are responsible.

16. Indemnification of OCM/CCB

DASNY agrees to indemnify and hold OCM and CCB harmless from and against all claims, liability, damages, demands, costs, judgments, fees including reasonable costs of litigation and public or private attorney's fees, for loss or damage to property of, or any injury to, or death of, any or all persons arising out of, in connection with, or resulting from DASNY responsibilities under this Agreement or more specifically, the DASNY Services, to the extent that such injuries, death or property damage are not caused by the negligent, grossly negligent, or reckless acts or omissions or intentionally wrongful acts or omissions of OCM, the CCB or their members, officers, agents, representatives or employees, and to the extent that said loss or damage are attributable to the negligence of such entity's members, officers and employees while acting within the course and scope of their employment.

Upon the conclusion of any such action, proceeding or lawsuit, should a final binding determination of responsibility be made which allocates the responsibility to OCM, its officers or employees on the basis of its or their negligent, grossly negligent, or reckless acts or omissions or intentionally wrongful acts or omissions, OCM agrees that the obligation to indemnify and hold harmless shall not be applicable to the portion of any money judgment or other liabilities for which OCM or its officers, agents, or employees are responsible.

17. Use of Confidential Information

The Parties acknowledge that pursuant to this Agreement, each Party may receive access to confidential and proprietary information not readily available to the public (the "Confidential Information") which may be proprietary in nature. The receiving Party shall protect the Confidential Information of the disclosing Party with at least the same level of care as it protects its own Confidential Information of similar nature, but not less than a reasonable level of care. Each Party further agrees that it will not at any time (during the term hereof or thereafter) use Confidential Information of another Party or the Fund for any purpose other than to carry out its duties and obligations or exercise its rights under this Agreement, except

as otherwise required by law or judicial order. If the receiving Party receives a request to disclose Confidential Information, unless legally required not to disclose such request, the receiving Party shall: promptly notify the disclosing Party; consult with the disclosing Party on resisting or narrowing disclosure; disclose only such portion of the Confidential Information that the receiving Party is advised by its legal counsel is legally required to be disclosed; and cooperate with the disclosing Party in its efforts to obtain a protective order or other relief to prevent the disclosure of the Confidential Information.

18. No Waiver

No failure or delay by any Party in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial waiver thereof preclude any other or further exercise thereof or the exercise of any other right or remedy hereunder.

19. Notices

All notices required to be sent by either party under this Agreement shall be in writing, and shall be sent via registered or certified mail, return receipt requested or shall be delivered by hand with the sender receiving a written receipt. The date of such notices shall be deemed to be the date of receipt of such notice established by the written receipt of the recipient.

Notices to be sent to OCM shall, unless stated otherwise, be sent to:

Christopher Alexander, OCM Executive Director, or a designee

Christopher.Alexander@ocm.ny.gov

And a copy to CCB representative at:

Tremaine Wright, CCB Board Chair

Tremaine.wright@ocm.ny.gov

Notices to be sent to DASNY shall, unless stated otherwise, be sent to:

Paul Koopman, DASNY Vice President
Dormitory Authority of the State of New York
515 Broadway
Albany, New York 12207
PKoopman@DASNY.org

With a copy to DASNY General Counsel at:
R. Nadine Fontaine, Esq.
Dormitory Authority of the State of New York
515 Broadway
Albany, New York
nfontaine@DASNY.org

20. **Provisions required by law deemed inserted**

Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed inserted therein and this Agreement shall read and shall be enforced as though so included therein.

21. **Compliance with all laws, rules, and regulations**

DASNY and OCM shall comply fully with all applicable laws, rules, and regulations.

22. **Invalid provisions**

If any term or provision of this Agreement shall, to any extent, be determined to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each term of provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

23. **No joint venture, agency, or partnership**

The relationship created by this Agreement between DASNY, and the CCB, and OCM is one of an independent contractor and its client and the Parties hereto state that they do not intend to create by this Agreement a joint venture, agency, or partnership relationship between them.

24. **No third-party rights**

Nothing in the Agreement shall create or give to third parties any claim or right of action against DASNY, the CCB, or OCM beyond such as may legally exist irrespective of this Agreement.

25. **Counterpart signatures**

This Agreement may be executed in any number of counterparts, each of which shall constitute an original, and which counterparts together shall constitute one and the same instrument.

26. **Additional provisions**

This Agreement is and shall be deemed to be a contract entered into pursuant to the laws of the State of New York and shall in all respects be governed, construed, applied, and enforced in accordance with the laws of the state of New York without reference to the New York choice of law provisions.

The section headings of this Agreement are for convenience of reference only and in no way define, limit, or describe the scope or intent of this Agreement.

27. **Entirety of the Agreement**

This Agreement, including those documents expressly included by reference by the terms of this Agreement, contains all the terms and conditions agreed upon by the Parties. No other understanding, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Parties hereto.

[THIS SECTION/PAGE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the Parties hereunto have signed this Agreement and this Agreement is effective as of the date and year first written above.

DORMITORY AUTHORITY OF THE STATE OF NEW YORK

By: Paul Koopman, V.P.
Name: Paul Koopman
Title:
Date: ~~August~~, 2022 September 6, 2022

OFFICE OF CANNABIS MANAGEMENT

By: C.T. Alexander
Name: Christopher Alexander
Title: Executive Director
Date: September 2, 2022

As agreed to and acknowledged by:

CANNABIS CONTROL BOARD

By: Tremaine Wright
Name: Tremaine Wright
Title: Board Chair
Date: September 2, 2022

As agreed to and acknowledged by:

SOCIAL EQUITY SERVICING CORPORATION

By: Paul Koopman, V.P.
Name: Paul Koopman
Title: Vice President
Date: ~~August~~, 2022 September 6, 2022