**MUTUAL NON-DISCLOSURE AGREEMENT**

 This Mutual Non-Disclosure Agreement (“**Agreement**”) is made this [\_\_\_] day of [\_\_\_\_\_\_\_\_\_], 2020 (the “**Effective Date**”) by and between the **Dormitory Authority of the State of New York** (“**DASNY**”) and **[Name of Counterparty]**, a [joint venture][limited liability company][corporation] of the State of [State of formation] having its principal place of business located at [Address] (“**Counterparty**”). Hereinafter, DASNY and Counterparty are referred to individually as a “**Party**” or collectively as the “**Parties.**”

1. Purpose of Disclosure. The Parties are willing to disclose information to each other relating to the implementation, training and ongoing support of an Investment, Risk Management and Compliance software platform (the “Project”) beginning in 2021 (the “**Business Relationship**”). The Parties furtherbelieve that in the course of such undertaking it may be necessary to disclose certain information that is confidential and proprietary to each other. In order to protect the interests of both Parties and protect the information alleged by each to be confidential and proprietary, the Parties enter into this Agreement.

2. Definition of Confidential Information. “**Confidential Information**” as used in this Agreement is defined as any and all nonpublic information, without regard to form or method of delivery, that is disclosed by one Party, its board members, officers, directors, employees, and affiliates, or by such Party’s agents or consultants that are under a written obligation of confidentiality to it (collectively, the “**Disclosing Party**”) to the other Party, its respective board members, officers, directors, employees, and affiliates, or to such Party’s agents or consultants that are under a written obligation of confidentiality to it (collectively, the “**Receiving Party**”) that is either:

* 1. Any information that Disclosing Party delivers to Receiving Party marked or described as “Confidential” including, without limitation, data such as inventory, accounting, business projections, business methods, security information, engineering specifications, drawings, analysis, studies, customer lists, and/or other customer information concerning the Business Relationship or the Parties including, but not limited to, any processes, technologies, accounting, purchasing, inventory, energy usage, and/or other information specifically including the initiation of access to information such as may be contained in a data base; or
	2. Any information that a third party should reasonably conclude from the context of disclosure or from a substantive review of the disclosed information is confidential or proprietary to Disclosing Party.

3. Exceptions. Notwithstanding the foregoing, information provided to Receiving Party by Disclosing Party shall not be treated as Confidential Information if Receiving Party can demonstrate that such Confidential Information:

a. was already in the possession of Receiving Party prior to disclosure and was not acquired or obtained from Disclosing Party;

b. was in the public domain as evidenced by printed documentation of a date earlier than the date of disclosure;

c. became part of the public domain through no fault of Receiving Party; or

 d. was obtained in good faith by Receiving Party from an independent source on a non-confidential basis.

4. Permitted Use of Confidential Information. Subject to the terms and conditions contained herein, Disclosing Party agrees to allow Receiving Party access to the Confidential Information for the sole purpose of investigating, evaluating and/or developing the Business Relationship. Notwithstanding anything to the contrary herein, nothing in this Agreement shall be construed to permit Receiving Party to use the Confidential Information, or any information derived therefrom to damage Disclosing Party.

5. Prohibition of Use and Disclosure. Except as detailed in Section 6 of this Agreement, the Parties agree that they will keep all Confidential Information in confidence and not use or disclose any Confidential Information in any manner (directly or indirectly) other than in furtherance of the Business Relationship. Receiving Party shall not use, reveal, publish, transfer or otherwise disclose to any person, corporation or other entity any of the Confidential Information without the prior written consent of Disclosing Party, except Receiving Party may distribute the Confidential Information to its board members, officers, directors, employees, affiliates, agents, and consultants (provided such agents and consultants are under a written obligation of confidentiality to Receiving Party) who have a need to know such Confidential Information in furtherance of the Business Relationship. Any disclosure in violation of the provisions of this Agreement by the foregoing parties shall constitute a breach of this Agreement by Receiving Party. In protecting the sensitive nature of the Confidential Information, Receiving Party shall use the same care and discretion to avoid disclosure, publication or dissemination of the Confidential Information that it uses with its own confidential information, but in no event shall Receiving Party employ a standard of care less than that which is reasonable under the circumstances.

6. Permissible Disclosure. Notwithstanding any other provision hereof, Receiving Party may disclose applicable Confidential Information in the following three circumstances:

a. This Agreement is not intended to and does not place a restriction on any disclosure of Confidential Information by Receiving Party that Receiving Party is legally required to make. In the event that Receiving Party is requested or required (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil or criminal investigative demand or other similar process) to disclose any of the Confidential Information, Receiving Party shall provide Disclosing Party with prompt written notice of any such request or requirement so that Disclosing Party may seek a protective order or other appropriate remedy. If, in the absence of a protective order or other appropriate remedy, Receiving Party is nonetheless legally compelled to disclose Confidential Information, Receiving Party may, without liability hereunder, disclose that portion of the Confidential Information which is legally required to be disclosed, provided that Receiving Party exercises reasonable efforts to preserve the confidentiality of the Confidential Information, including cooperating with Disclosing Party to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information.

b. Notwithstanding the limitations described in Sections 6(a) or 8 herein, DASNY shall have the right without advance notice to disclose any information, Confidential or otherwise, that DASNY deems necessary or desirable in its sole, reasonable discretion to comply with (i) any state or federal securities laws, regulations, orders or decrees, or (ii) any regulatory requirement, law, regulation, document request, order or decree imposed by any commission, board or governmental entity exercising jurisdiction over DASNY.

c. After receipt of written waiver from Disclosing Party specifically authorizing release of Confidential Information, or a portion thereof, Receiving Party may disclose such Confidential Information, subject to compliance with the restrictions as to scope, timing and manner contained in Disclosing Party’s waiver.

7. Duration of Confidentiality Obligations. Confidential Information disclosed pursuant to this Agreement shall be subject to the terms of this Agreement for two (2) years following the Effective Date.

8. Nondisclosure of Existence of Business Relationship. Without limiting the applicability of Section 6 of this Agreement, the Parties agree that they will not disclose to any person or entity the fact that Confidential Information has been made available hereunder, that discussion or negotiations are taking place concerning a possible transaction involving the Parties, or otherwise disclose any of the terms, conditions or other facts with respect to the Business Relationship, including the status thereof.

9. Return of Confidential Information. If either Party decides that it does not wish to proceed further with the Business Relationship, it will promptly give notice of that decision to the other Party in writing. In such an event, or at any time upon the written request of Disclosing Party for any reason, Receiving Party will, if directed by Disclosing Party, promptly deliver at its own expense to Disclosing Party all requested Confidential Information and copies thereof (and will delete all corresponding data entries in its databases) furnished to Receiving Party by or on behalf of Disclosing Party. Notwithstanding the foregoing, DASNY may retain one (1) copy of such solely for archival purposes. In the event of such decision or request, all other Confidential Information received by Receiving Party not returned to Disclosing Party shall be destroyed in a reasonable manner and no copy thereof (regardless of format) shall be retained by Receiving Party. Upon destruction of Confidential Information, Receiving Party shall (if requested) provide a certificate of destruction signed by an authorized representative of Receiving Party. Materials developed by Receiving Party in the normal course of business that utilize the Confidential Information, including forecasts, surveys and projections, may be retained by Receiving Party subject to the terms of this Agreement. Notwithstanding the return or destruction of the Confidential Information, the Parties will continue to be bound by their obligations of confidentiality and the other obligations hereunder as each agrees that these terms survive the termination of the Agreement and/or the decision by either Party not to seek furtherance of the Business Relationship.

10. No Obligation to Disclose. This Agreement does not constitute or create any obligation of either Party to provide any information, Confidential or otherwise, to the other, but merely defines the rights, duties and obligations of the Parties with respect to the disclosed Confidential Information. Under no circumstance is either Party obligated pursuant to this Agreement to disclose or make available any information, including any Confidential Information that such Party in its sole discretion determines not to disclose.

11. No Representation. Although the Parties hereto have endeavored to include information in the Confidential Information which they believe to be relevant for the purpose of the Business Relationship, neither makes any representation or warranty as to the accuracy or completeness of the Confidential Information merely by entering into this Agreement.

12. No License. All Confidential Information is and shall remain the property of Disclosing Party. Neither this Agreement nor any disclosure of information, Confidential or otherwise, hereunder grants Receiving Party (a) any right or license under any trademark trade secret, copyright or patent now or hereafter owned or controlled by Disclosing Party, or (b) any express or implied right to any invention, discovery or improvement, whether patentable or not, that may be disclosed in the Confidential Information.

13. Remedies. The Parties each acknowledge that a breach of this Agreement would cause irreparable harm to the non-breaching Party, which harm could not be adequately compensated for by damages, and, accordingly, in the event of such breach, each Party acknowledges and agrees that the non-breaching Party shall be entitled to injunctive relief without bond, which relief shall be in addition to and not in derogation of any other remedies which may be available to the non-breaching Party either in equity or at law.

14. General Provisions.

a. This Agreement does not require either Party to enter into a transaction, nor does it create or imply any joint venture, association, partnership or other formal business or agency arrangement between the Parties.

b. This Agreement shall be binding upon the Parties and their respective successors, and lawful assigns; provided, however, that none of the benefits of this Agreement shall be assigned (whether by operation of law, sale of securities or assets, merger or otherwise) in whole or in part without the prior written approval of the other Party, which consent shall not be unreasonably withheld. Any other attempted assignment of this Agreement shall be void.

c. The validity, operation, and performance of this Agreement shall be governed by and construed in accordance with the laws (disregarding conflicts of law rules) of the state of New York, with venue lying in Albany County.

d. No amendment, modification or waiver of the terms or conditions of this Agreement shall be binding unless the same shall be in writing and duly executed by the Parties.

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

f. If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

g. This Agreement contains the complete and entire understanding between the Parties on the subject matter agreed upon and supersedes all discussions, proposals, understandings or agreements, oral or written, relating to the same subject matter.

h. This Agreement may be executed in counterparts, each of which when executed by the requisite parties shall be deemed to be a complete original Agreement.  An electronic (PDF) or facsimile copy of the executed Agreement or counterpart shall be deemed, and shall have the same legal force and effect as, an original document.

 IN WITNESS WHEREOF, the individuals executing this Agreement, represent and warrant that they are authorized to execute this Agreement on behalf of the Parties for whom they sign, as of the Effective Date.

**DORMITORY AUTHORITY OF THE [COUNTERPARTY]**

**STATE OF NEW YORK**

By: By:\_\_\_\_\_\_\_\_\_\_\_\_

Name: Name:

Title: Title:

CH2\21824161.1