

**COMMERCIAL GENERAL AND EXCESS LIABILITY INSURANCE BROKER SERVICES
SAMPLE CONTRACT**

A Contract, dated as of [LOI Date], 2021, by and between the **Dormitory Authority of the State of New York** (“**DASNY**” or the “**Owner**”), a body corporate and politic of the State of New York, constituting a public benefit corporation created pursuant to Title 4 of Article 8 of the Public Authorities Law of the State of New York, as amended and having its principal office and place of business at 515 Broadway, Albany, New York, 12207-2964 (the “**DASNY**”), and [_____], whose office is located at _____, (the “**BROKER**”).

WHEREAS, the **BROKER** has been selected through a competitive Discretionary Purchase Request for Proposal process to provide broker and program support services for **DASNY**’s Commercial General and Excess Liability Insurance Broker 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

DASNY 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: BROKERS

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

B. The **BROKER** may propose and engage sub-Brokers, to perform portions of the Services required under this Contract. **DASNY** retains the right to disapprove the proposed sub-Broker and, in such event, the **BROKER** shall propose another sub-Broker 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-Broker. The fees of any sub-Brokers 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-Brokers 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-Brokers 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 (\$0.00). 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 sub-Brokers, within 30 days of receiving approvable sub-Broker 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 (\$0.00).

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.

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 Sub-Brokers
- B. to protect DASNY from the BROKER's or Sub-Brokers 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 Sub-Broker;

ARTICLE VIII: FINAL PAYMENT AND RELEASE

Final payment shall be made to the BROKER upon satisfactory completion at the start of the 4th quarter of the contract. The BROKER will continue to represent DASNY for an additional 3 months following that final payment.

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 throughout the period of this Contract or later, as may be applicable, 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 Insurance Broker services by the Broker or by anyone directly or indirectly employed by it, or by anyone for whose acts it may be liable. The Broker shall not commence work under the Contract until the Broker has obtained all the insurance required under this Article:

1. Workers' Compensation Law Requirements

a. Workers' Compensation - 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 Workers Compensation Insurance. The insurance carrier will provide a completed form as evidence of in-force coverage.
- 2) U-26.3-Certificate of Workers Compensation Insurance from the State Insurance Fund. The State Insurance Fund will 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

- 1) DB-120.1 (September 2015, or most current version) – Certificate of Insurance Coverage under the NYS Disability Benefits Law. The insurance carrier will provide a completed form as evidence of in-force coverage.
- 2) DB-155 (September 2016, or most current version) Certificate of Disability Self Insurance. The NYS Workers' Compensation Board's Self Insurance Office will provide a completed form.

- 3) 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. DASNY 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.ny.gov/content/main/Forms.jsp>. The CE-200 cannot be used for multiple projects. Therefore, a new form must 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.

2. **Commercial General Liability** which names the Dormitory Authority of the State of New York and the Clients as listed in Appendix "C" entitled ADDITIONAL INSURED(S) with per-occurrence limits of not less than Two Million Dollars (\$2,000,000), general aggregate limits of not less than Four Million Dollars (\$4,000,000), products-completed operations aggregate limit of not less than Four Million Dollars (\$4,000,000) and fire damage legal liability limits of not less than One Million Dollars (\$1,000,000). The limits may be provided through a combination of primary and umbrella/excess liability policies. The Broker shall list any deductible or SIR (Self-Insured Retention) and provide a copy of the Additional Insured endorsement.

Coverage shall include, but not be limited to, Blanket contractual liability and Completed Operations coverage for a term of no less than three (3) years.

The policy(ies) must be written or endorsed to be primary and non-contributory as respects the coverages afforded the Additional Insureds and such policy(ies) shall be primary to any other insurance maintained by the DASNY and the Clients. Any other insurance maintained by DASNY and the Clients shall be excess of and shall not contribute with the Broker's or its Sub-Broker's insurance, regardless of the "other insurance" clause contained in DASNY's or the Client's own policy of insurance.

3. **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.
4. **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.
5. **Professional Liability/Errors and Omissions Insurance** with limits of not less than Ten Million Dollars (\$10,000,000) each claim and Ten Million Dollars (\$10,000,000) annual aggregate and subject to a deductible, or self-insured retention, of not more than One Hundred Thousand Dollars (\$100,000.00) per claim or an amount acceptable to DASNY.

The Broker shall purchase as its sole expense Extended Discovery Clause coverage of up to three (3) years after work is completed if coverage is cancelled or not renewed. Written proof of this extended reporting period must be provided to DASNY prior to expiration or cancellation.

6. **Data Breach and Privacy Liability Insurance (Cyber Insurance)** with limits of not less than Two-Million Dollars (\$2,000,000) each claim and Two Million Dollars (\$2,000,000) annual aggregate including coverage for the Broker's failure to protect confidential information or failure of the security of the Broker's computer systems which results in unauthorized access to DASNY's or the Client'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, personally identifiable information, money and securities.

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

Such policy/policies shall name the Dormitory Authority of the State of New York and its Clients as Additional Insureds with respect to claims brought by third parties in connection with work performed by the Broker. Such policy/policies shall also remove any exclusion that restricts or eliminates coverage for claims brought by DASNY or its Clients against the Broker that would otherwise be covered by the policy.

A Certificate of Insurance, indicating the Program, must be submitted, and approved by DASNY prior to the commencement of work. Certificate shall provide evidence of 30 days' written notice prior to the cancellation, non-renewal, or material modification of any policy. Upon request, the Broker shall furnish DASNY with certified copies of each policy.

- B. The Broker shall submit to DASNY or DASNY's designee proof of insurance in such forms as requested and/or deemed acceptable by DASNY, indicating the Contract where applicable, and showing evidence of all insurance required under the Contract. Upon DASNY's request, the Broker shall provide a copy of each insurance policy required by the Contract certified by the insurance carrier as a true and complete copy. DASNY may request such a certified copy of a policy at any time and may make such requests as often as DASNY, in its sole and exclusive discretion, deems necessary. Each request may be for a certified copy of one or more policies. Certificates of insurance, notwithstanding anything to the contrary contained on the Certificate of Insurance, when submitted to DASNY, constitute a warranty by the Broker and its insurance agent or broker, that the insurance coverage described is in effect for the policy term shown.
- i. The Broker shall submit to DASNY or DASNY's designee insurance certificates (Accord 25, or equivalent as determined by DASNY), copies of declaration pages, schedules of forms and endorsements, copies of all named insured endorsements, all endorsements of the policy granting coverage to DASNY and its Clients, and such other documents requested by DASNY as proof of insurance for the Broker. All insurance submittals must be approved by DASNY or DASNY's designee prior to the Broker's commencement of Work.
 - ii. Upon DASNY's request, the Broker shall submit to DASNY or DASNY's designee proof of insurance for one or more Sub-Brokers, in such forms as requested and deemed acceptable by DASNY, indicating the Contract where applicable, and showing evidence of all insurance required under the Contract. Upon DASNY's request, the Broker shall provide a copy of each insurance policy of the Sub-Broker or Sub-Brokers required by the Contract and certified by the insurance carrier as a true and complete copy, DASNY may request such a certified copy of a policy at any time and may make such requests as often as DASNY, in its sole and exclusive discretion, deems necessary. Each request

may be for a certified copy of one or more policies for one or more Sub-Brokers. Certificates of Insurance of the Sub-Brokers, notwithstanding anything to the contrary contained on the Certificate of Insurance, when submitted to DASNY by the Broker, constitute a warranty by the Broker, the Sub-Broker and the Sub-Broker's insurance agent or broker, that the insurance coverage described is in effect for the policy term shown.

- iii. Upon request of DASNY, the Broker shall submit insurance certificates (Accord 25 or equivalent as determined by DASNY), copies of declaration pages, schedules of forms and endorsements, copies of all named insured endorsements, all endorsements of the policy granting coverage to DASNY and its Clients, and such other documents requested by DASNY as proof of insurance for a Sub-Broker. DASNY may request proof of insurance for one or more Sub-Brokers at the same or at different times and may request proof of insurance for a particular Sub-Broker as often as DASNY, in its sole and exclusive discretion, determines is necessary.
- 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 DASNY.
- 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 Services until authorized to do so by DASNY. Any delay or time lost as a result of the BROKER not having insurance required by this Article shall not give rise to a claim against DASNY or its Clients.
- 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. Neither the procurement nor the maintenance of any type of insurance by DASNY, the BROKER or its sub-Brokers 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.
- G. This Contract may, at the sole option of DASNY, be declared void and of no effect if the BROKER or any sub-Broker fails to comply with the provisions of this Article.
- H. The BROKER and its sub-Broker(s) 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 BROKER shall defend if requested, protect, indemnify and hold harmless DASNY and its Clients 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 Brokers), 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 or its Clients allegedly or actually arising out of or resulting from any negligent act, error or omission or any intentional misconduct (i) of the BROKER; or (ii) of the BROKER's Sub-brokers ; or (iii) of the agents, employees or servants of the BROKER or its sub-brokers. The BROKER shall also indemnify DASNY and its Clients 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 or its Clients, 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 or its Client(s) is responsible, and DASNY agrees to pay the BROKER the percentage of uninsured defense costs that the BROKER incurred based upon an apportionment of DASNY's or its Client'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 Sub-Brokers. DASNY shall have the right to inspect and audit all records and other data of the BROKER and its Sub-Brokers 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 sub-Broker 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 sub-Broker, 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 sub-Broker, the BROKER shall consider whether the proposed sub-Broker 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 sub-Broker, the BROKER shall also consider whether the proposed sub-Broker 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 Contract, “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 Contract;
- (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 Contract; (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.
 - (c) 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.

B. The provisions of the Section shall survive the natural expiration or termination of this Contract.

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

A. The BROKER and Sub-Broker 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 Sub-Broker 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 Contract 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 Appendix D, Section 7 of this Contract.

ARTICLE XVIII – SURVIVAL

All provisions of this Contract that contain continuing obligations shall survive its expiration or termination

ARTICLE XIX – GENERAL PROVISIONS

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

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 Contract, 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 Contract. 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 Contract may be amended only by a written document signed by the BROKER and DASNY.

D. No Third-Party Beneficiaries. This Contract 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 Contract.

E. Governing Law and Jurisdiction. This Contract, 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 Contract will be construed neutrally without any regard as to the party which drafted this Contract. In the event an ambiguity or question of intent or interpretation arises, this Contract 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 Contract.

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 Contract 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 Contract will remain in effect.

J. Compliance with Laws. Each and every provision and clause required by Law to be inserted and incorporated into this Contract shall be deemed inserted and incorporated in this Contract and this Contract 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 two 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 DASNY, however, DASNY may assign the Contract in whole or in part without prior written consent of the BROKER.

ARTICLE XXII: APPENDIX "D" ADDITIONAL ITEMS

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

ARTICLE XXIII: COUNTERPARTS

This agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. The effective date of this Contract shall be the date upon which this agreement is duly executed by both parties.

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SIGNATURES

IN WITNESS WHEREOF, the parties hereto have set their hands as of the date first written above.

Dormitory Authority of the State of New York
515 Broadway
Albany, NY 12207-2964

By _____

Title: Authorized Officer

Date: _____

Firm Name
Firm Address
Firm Address

By _____
Authorized Officer/Signatory

Title _____

Date: _____

NEW YORK STATE ACKNOWLEDGEMENT - DASNY

State of New York)
) SS:

County of _____)

On the _day of _____, in the year _____, before me, the undersigned, personally appeared:

_____ **(NAME)**

personally known to me 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.

Signature of Notary

Stamp or seal containing printed name, county of qualification of notary public and expiration date of notary commission

NEW YORK STATE ACKNOWLEDGEMENT – BROKER

State of New York)
) SS:

County of _____)

On the _day of _____, in the year _____, before me, the undersigned, personally appeared:

_____ **(NAME)**

personally known to me 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.

Signature of Notary

Stamp or seal containing printed name, county of qualification of notary public and expiration date of notary commission

APPENDIX "A"

SCOPE OF SERVICES

The BROKER shall provide the following services at a minimum. Additional services of a similar nature may also be required at the request of DASNY and in support of DASNY's programs:

Broker Services

1. Program Placement, which shall include taking the program to market and securing placement with carriers of appropriate size and financial strength 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 and its Clients in all discussions and transactions with insurers, provided that the BROKER shall not place any insurance on behalf of DASNY and/or its Clients unless authorized to do so in writing by DASNY.
2. Throughout the contract term continue to develop a strong understanding of the various operations and relationships between DASNY and its Clients to ensure that the program provides appropriate insurance coverage for the named and additional insured, as their interests may appear.
3. Identify issues and exposures, potential gaps in coverage and potential program improvements. Bring to the attention of DASNY as appropriate.
4. Negotiate with insurers on behalf of DASNY and its Clients and keep DASNY informed of significant developments resulting from those negotiations.
5. Provide coverage summaries for all newly placed or renewed policies, along with updates explaining any changes to existing coverage.
6. Review policies and endorsements for accuracy and conformity to specifications and negotiated coverages.
7. 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.
8. Monitor published financial information for news regarding DASNY's current insurers and alert DASNY when the status of one or more of those insurers falls below minimum financial guidelines.
9. Approximately six months after policy inception, provide a customer service status report summarizing the services provided to date, plans for additional service going forward and any recommendations for the overall liability insurance program.
10. Approximately 120 days prior to policy expiration, present a recommended plan for program renewal/marketing, including timelines and assignments. Pending DASNY's approval of such plan and on a schedule to be determined by DASNY, present the same in presentation to the Clients, as requested.
11. 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 and its Clients in any discussions with the insurance carrier.
12. Meet as necessary with DASNY's key people designated by DASNY's Director, Insurance to discuss strategy and open items.

Claims Services

1. The Broker will assign a dedicated claim representative who will act in the capacity of consultant to DASNY and as liaison between DASNY, its Clients and the insurance carrier.
2. The BROKER will consult with DASNY regarding claim reporting and handling procedures and will offer recommendations to improve those procedures as necessary based on state/federal law and industry best practices.
3. The BROKER will complete an audit of the Third Party Administrator services as requested by DASNY. The purpose of the audit will be to identify potential service and program improvements, identify process or expense inefficiencies and to otherwise measure the services against industry best practices in order to recommend changes that will best suit DASNY's needs.
4. The BROKER shall notify insurance carriers of potential or existing claims against the policy(ies) per procedures established in consultation with DASNY. The BROKER will monitor those claims until closing and will advise DASNY as necessary regarding appropriate handling practices.
5. The BROKER will secure carrier loss runs and participate in claim review/status meetings as requested by DASNY.

Administrative Services

1. Process or facilitate the processing of certificates of insurance, as requested by DASNY.
2. Following placement, deliver binders prior to the expiration of the current policies and as requested.
3. Follow up with insurance carriers for timely issuance of policies and endorsements.
4. 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.

Loss Control/Risk Engineering Services

1. Possess the knowledge and have the capability to conduct inspections/surveys of selected properties to recommend operational and equipment changes that will improve the insurability of properties.
2. At DASNY's request, provide a written loss prevention plan that identifies recommended services.

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 INSUREDS

Dormitory Authority of the State of New York

State University of New York

State of New York

City University of New York

City University Construction Fund

New York State Department of Health

Helen Hayes Hospital

New York State Veterans’ Homes at:

Oxford

St. Albans

Batavia

Montrose

David Axelrod Institute

Dormitory Authority of the State of New York Corporate Headquarters Condominium

495 Broadway Associates, LLC

NGHP Holding Corporation

Atlantic Avenue Healthcare Property Holding Corporation

APPENDIX "D"

ADDITIONAL ITEMS

TABLE OF CONTENTS

1.	LABOR LAW PROVISIONS	14
2.	NONDISCRIMINATION	14
3.	PROVISIONS REQUIRED BY LAW DEEMED INSERTED	14
4.	COMPLIANCE WITH LAWS, RULES, AND REGULATIONS	14
5.	CONTRACT DEEMED EXECUTORY	14
6.	OWNERSHIP OF DOCUMENTS	14
7.	TERMINATION OR SUSPENSION	14
8.	SUSPENSION OR ALTERATION	14
9.	LAWS OF THE STATE OF NEW YORK	14
10.	CODES	14
11.	GOVERNMENT PROVISIONS	14
12.	COOPERATION	14
13.	LATE PAYMENT	14
14.	DEATH OF THE CONSULTANT	14
15.	OWNER-CONSULTANT RELATIONSHIP	14
16.	PROTECTION OF LIVES AND HEALTH	14
17.	NYS VENDOR RESPONSIBILITY QUESTIONNAIRE	14
18.	PROHIBITED INTERESTS/ETHICAL CONDUCT - CONSULTANTS	14
19.	COOPERATION WITH INVESTIGATIONS	14
20.	FALSE STATEMENTS/INFORMATION	14
21.	INVALID PROVISIONS	14
22.	CONFLICTING TERMS	14
23.	2005 PROCUREMENT LOBBYING LAW	14
24.	NONCOMPLIANCE	14

1. LABOR LAW PROVISIONS

- A. It is hereby agreed that all applicable provisions of the Labor Law of the State of New York shall be carried out in performance of the Work.
- B. The BROKER specifically agrees, as required by Labor Law, Sections 220 and 220-d as amended, that:
- 1) no laborer, workmen, or mechanic, in the employ of the BROKER, Sub-Broker, or other person doing or contracting to do the whole or any part of the work contemplated by this Contract shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week, except in the emergencies set forth in the Labor Law;
 - 2) the wages paid for legal day's work shall be not less than the prevailing rate of wages as defined by law;
 - 3) the minimum hourly rate of wages to be paid shall be not less than that stated in this Contract and shall be designated by the Commissioner of Labor of the State of New York; and
 - 4) the BROKER and every Sub-Broker shall post in a prominent and accessible place on the Site, a legible statement of all minimum wage rates and supplements to be paid or provided for the various classes of laborers and mechanics to be engaged in the Work and all deductions, if any, required by law to be made from unpaid wages actually earned by the laborers and mechanics so engaged.
- C. The minimum wage rates, if any, herein specified for apprentices shall apply only to persons working with the tools of the trade that said persons are learning under the direct supervision of journeyman mechanics. Except as otherwise required by law, the number of apprentices in each trade or occupation employed by the BROKER or any Sub-Broker shall not exceed the number submitted by the applicable standards of the New York State Department of Labor, or, in the absence of said standards, the number permitted under the usual practice prevailing between the unions and the employer's association of the respective trades or occupations.
- D. All employees of the BROKER and each Sub-Broker shall be paid in accordance with the provisions of the Labor Law. Certified payroll copies shall be provided to DASNY upon request.
- E. The BROKER agrees that, in case of underpayment of wages to any worker engaged in the Work by the BROKER or any Sub-Broker, DASNY shall withhold from the BROKER, out of payments due, an amount sufficient to pay said worker the difference between the wages required to be paid under this Contract and rates actually paid said worker for the total number of hours worked and that DASNY may disburse said amount so withheld by DASNY for and on account of the BROKER to the employees to whom said amount is due. The BROKER further agrees that the amount to be withheld pursuant to this paragraph may be in addition to the percentages to be retained by DASNY pursuant to other provisions of this Contract.
- F. Pursuant to subdivision 3 of section 220 and section 220-d of the Labor Law this Contract may be forfeited and no sum paid for any work done thereunder on a second conviction for willfully paying less than:

- 1) the stipulated wage scale as set forth in Labor Law; Section 220, subdivision 3, as amended, or
 - 2) less than the stipulated minimum hourly wage scale as specified in Labor Law, Section 220-d, as amended.
- G. The BROKER specifically agrees, as required by the Labor Law, Section 220-e, as amended, that:
- 1) in the hiring of employees for the performance of work under this Contract or any subcontract hereunder, or for the manufacture, sale, or distribution of materials, equipment, or supplies hereunder, but limited to operation performed within the territorial limits of the State of New York, no BROKER, nor any person acting on behalf of said BROKER or Sub-Broker, shall by reason of race, creed, color, sex, or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;
 - 2) no BROKER, nor any person on behalf of said BROKER or Sub-Broker shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Contract on account of race, creed, color, sex, or national origin;
 - 3) there may be deducted from the amount payable to the BROKER, by DASNY under this Contract, a penalty of Fifty and 00/100 Dollars (\$50.00) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the terms of this Contract; and
 - 4) this Contract may be canceled or terminated by DASNY and all money due or to become due hereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this section of this Contract.
- H. The BROKER specifically agrees to certify its payrolls and keep these certified records on site and available and provide copies to DASNY upon request.

2. 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-Broker 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-Broker 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.

3. **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.

4. **COMPLIANCE WITH LAWS, RULES, AND REGULATIONS**

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

5. **CONTRACT DEEMED EXECUTORY**

The BROKER agrees that the Contract shall be deemed executory to the extent of moneys available from either (i) the proceeds of bonds issued by DASNY for the Contract, or (ii) moneys made available by the Client for the Contract, or (iii) other non-Authority moneys made available from whatever source specifically for the Contract and no liability shall be incurred by DASNY beyond moneys available therefore.

6. **OWNERSHIP OF DOCUMENTS**

Original drawings and specifications will become the property of DASNY, and the BROKER may not use the drawings and specifications for any purpose not relating to the Project without DASNY's consent. The BROKER may retain such reproductions of drawings and specifications as the BROKER may reasonably require. Upon completion of the Work or any early termination of this Contract, the BROKER will promptly furnish DASNY with the complete set of original record prints. All such original drawings and specifications shall become the property of DASNY who may use them, without the BROKER's permission, for any proper purpose including, but not limited to, additions to or completion of the Project.

7. **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 Professional Services, as determined by DASNY, DASNY may give written notice to the BROKER (i) terminating this Contract for Professional Services effective seven (7) calendar days from the date of notice; or (ii) setting forth the nature of the default and requesting the CONSULTANT 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 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 or suspending the Service, in whole or in part, for DASNY'S convenience and without cause. If DASNY terminates this Contract or suspends the Service, 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 is terminated by DASNY pursuant to Paragraph 7A above, no further payment shall be made to the BROKER until completion of the Service. 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 invoice 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

2. result of the default of the BROKER.

2. If this Contract 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 invoice 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 Contract Price.

3. If this Contract 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 Services.

4. Time of completion set forth in writing may be extended to such time as DASNY determines shall compensate for the time lost by the suspension, interruption or delay; such determination shall be set forth in writing by DASNY.

8. SUSPENSION OR ALTERATION

- A. DASNY may order the BROKER in writing to suspend, delay, or interrupt performance of all or any part of the Services for a reasonable period of time as DASNY may determine. The order shall contain the reason or reasons for issuance.
- B. Upon receipt of a suspension order, the BROKER shall, as soon as practicable, cease performance of the Service as ordered and take immediate affirmative measures to protect such Service from loss or damage.
- C. The BROKER specifically agrees that such suspension, interruption, or delay of the performance of the Service pursuant to this Item shall not increase the cost of this Contract.
- D. Time of Completion of the Work may be extended to such time as DASNY determines shall compensate for the time lost by the suspension, interruption, or delay, such determination to be set forth in writing.

9. LAWS OF THE STATE OF NEW YORK

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

10. CODES

Unless otherwise directed by DASNY, the BROKER shall comply with all applicable codes and regulations required by law. Without limiting the generality of the foregoing, compliance with codes and regulations shall include, but shall not be limited to, those of the following which are applicable:

- A. Administrative Codes
- B. Zoning Resolutions
- C. State Building Code, NYS Uniform Fire Prevention and Building Code, latest edition
- D. Local Zoning Ordinances
- E. Local Building Codes
- F. State Hospital Code

If Federal Aid is obtained for any facilities described herein, then any and all regulations imposed by the participating Federal Agency shall be complied with in the performance of this Contract.

11. GOVERNMENT PROVISIONS

The BROKER shall comply with any applicable provisions or Acts of Congress, rules, regulations, and requirements of the Government of the United State of America. If there is a grant of money or loan of money by the Government of the United States of America for the Service, then the BROKER shall furnish any information and provide any assistance which DASNY deemed necessary for the preparation of any certificates, reports, or materials required as a result of obtaining said grant or loan.

12. 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 completion of the Services including, without limitation, review of claims, preparation of technical reports and participation in negotiations both before and after it has otherwise completed performance of the Contract and without any additional compensation therefore.

13. LATE PAYMENT

Timeliness of payment and any interest to be paid to the BROKER for late payment shall be governed by Section 2880 of the Public Authorities Law, to the extent required by law.

14. 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 Service 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 Service 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 Service 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 Service, all plans and specifications in regard to the Service, and shall have a right to retain the services of another BROKER to complete the Service. If the BROKER is a professional or other corporation, then this paragraph shall not be applicable.

15. 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 relationship between DASNY and the BROKER nor is it to be construed as, in any way or under any circumstances, creating or appointing the BROKER as an agent of DASNY for any purpose whatsoever.

16. PROTECTION OF LIVES AND HEALTH

Each BROKER and Sub-Broker 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 SubBroker's attention is specifically called to the applicable rules and regulations, codes, and bulletins of the New York State Department of Labor and to the standards imposed under the Federal Occupational Safety and Health Act of 1970, as amended. The BROKER shall report on compliance to DASNY or DASNY's Representative.

17. **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.

The Owner requires the BROKER to file the VRQ online via the New York State VendRep System (the "System") and submit a copy of the certification page to DASNY. To enroll in and use the System, see the System Instructions at http://www.osc.state.ny.us/vendrep/vendor_index.htm or go directly to the VendRep System online at <https://portal.osc.state.ny.us>. The BROKER must provide their New York State Vendor Identification Number when enrolling. To request assignment of a Vendor ID or for System assistance, contact the Office of the State Comptroller's ("OSC") Help Desk at 866-370-4672 or 518- 408-4672 or by email at ciohelpdesk@osc.state.ny.us.

18. **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 Service, shall become personally interested, directly or indirectly, in the Contract, material supply contract, subcontract, insurance contract, or any other contract pertaining to the Service.
- 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)
 - 6) 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
 - 7) 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.

19. 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 or Sub-Broker, 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, Sub-Broker, 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, Sub-Broker, 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, Sub-Brokers, 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 Sub-Broker to include in all agreements that the Sub-Broker may hereinafter enter into with any and all Subcontractors, Sub-Brokers, 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 or Sub-Broker in connection with the Contract that does not contain such a provision.

The BROKER shall not make any payments to a Subcontractor, Sub-Broker, 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.

20. FALSE STATEMENTS/INFORMATION

- A. False statements, information or data submitted on or with applications 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.

21. 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.

22. 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.

23. 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 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 the BROKER in accordance with the terms of Article 5.1 of this Contract – Termination for Cause.

24. NONCOMPLIANCE

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