

CONTRACT

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

WHEREAS, **DASNY** has solicited bids for Commvault Consulting Services as set forth in the Information for Bidders dated June 7, 2022 (the “**BID**”);

WHEREAS, the **CONSULTANT** submitted a proposal in response to the **BID** (the “**Proposal**”)

WHEREAS, pursuant to the **BID** process, the **CONSULTANT** was selected to provide the Commvault Consulting Services;

WHEREAS, **DASNY** has requested the **CONSULTANT** and the **CONSULTANT** has agreed to provide Commvault Consulting services;

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

ARTICLE I: CONSULTANT’S SERVICES

The **CONSULTANT** has agreed to provide Commvault Consulting services of the type and nature set forth in the Bid, the Bid Response and as required by **Attachment “B”**, entitled **SCOPE OF SERVICES**, which is attached to and made a part hereof.

ARTICLE II: TERM

The term of this Contract shall commence on [] and shall expire on [], (the “**Term**”). The **Term** may be extended by mutual agreement of the parties. **DASNY** may terminate this Contract prior to the expiration of the **Term** upon 30 days prior written notice to the **CONSULTANT**.

ARTICLE III: FEE SCHEDULE – CONSULTING SERVICES/ANCILLARY SERVICES

The Fee Schedule – Consulting Services, as described in the Bid Breakdown & Schedule is set forth as **Attachment A**, attached hereto.

ARTICLE IV: INSURANCE

A. The CONSULTANT shall purchase at its own expense and maintain throughout the Term, 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 or by anyone directly or indirectly employed by it, or by anyone for whose acts it may be liable. The CONSULTANT shall not provide services under this Contract until the CONSULTANT has obtained all the insurance required under this Article:

(i) Workers' Compensation Law Requirements

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

(1) C-105.2 (September 2007, 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/SI-12-Certificate of Workers Compensation Self Insurance. The NYS Workers' Compensation Board's Self Insurance Office or the contractor's Group Self Insurance Administrator will provide a completed form.

(b) Disability Benefits

(1) DB-120.1 (May 2006, 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-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 www.wcb.state.ny.us/content/main/forms.htm. The CE-200 cannot be used for multiple projects. Therefore, a new form will have to be completed prior to award of any subsequent contracts.

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

- (ii) Commercial General Liability which names DASNY, and the State of New York as listed in Appendix "D", entitled **ADDITIONAL INSUREDS**, of this Contract for CONSULTANT Services with per-occurrence and aggregate limits of not less than two million Dollars (\$2,000,000.00). The CONSULTANT shall list any deductible or SIR and provide a copy of the endorsement.

Coverage shall include Blanket Contractual liability covering all indemnity agreements, including all indemnity obligations contained in this Contract, and Products Liability and Completed Operations Aggregate limit of \$2,000,000 per occurrence and aggregate for a term of no less than three (3) years.

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

Policy or policies must be written or endorsed to be primary and non-contributory as respects the coverage afforded the Additional Insureds and such policy shall be primary to any other insurance maintained by DASNY. Any other insurance maintained by DASNY shall be excess of and shall not contribute with the CONSULTANT's or its subCONSULTANT's or subcontractor's insurance, regardless of the "other insurance" clause contained in DASNY's own policy of insurance.

- (iii) 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.

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.

- (iv) Technical Errors and Omissions/Professional Liability Insurance and Cyber Risk Insurance with a limit of not less than One Million Dollars (\$1,000,000) and subject to a deductible, or self-insured retention, of not more than One Hundred Thousand Dollars (\$100,000.00) per claim. Such policy(ies) shall include the Dormitory Authority – State of New York as Additional Insured with respect to claims brought by third parties in connection with work performed by the Proposer. Such policy(ies) shall also remove any

exclusion that restricts or eliminates coverage for claims brought by DASNY against the Proposer that would otherwise be covered by the policy. The cyber risk policy shall provide coverage for any incremental costs incurred by DASNY to investigate and remediate any data breach that may have exposed DASNY's data. The policy should provide third party coverage for both DASNY and our clients.

- B. Prior to award of Contract, two Certificates of Insurance must be submitted and approved by DASNY prior to the commencement of the Term. It is further agreed that if the insurance policy's term stated on the certificate expires, it is the responsibility of the CONSULTANT to provide an updated certificate of insurance to Contracts Unit 30 days prior to expiration of the insurance. Certificates shall provide 30 days written notice to DASNY prior to the cancellation, non-renewal, or reduction in the limits of liability of any policy. Upon request, the CONSULTANT shall furnish DASNY with certified copies of each policy. Certificates are to be forwarded to:

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

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

Should the CONSULTANT engage a subCONSULTANT or subcontractor, the same conditions as are applicable to the CONSULTANT under these insurance requirements shall apply to each subCONSULTANT or subcontractor of every tier.

- 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 B+ by A.M. Best and Company, or meet such other requirements as are acceptable to DASNY.
- D. Should the CONSULTANT fail to provide or maintain any insurance required by this contract, DASNY may, after providing written notice to the CONSULTANT, purchase insurance complying with the requirements of this Article and charge back such purchase to the CONSULTANT.
- E. 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 CONSULTANT shall immediately notify DASNY.
- F. Notwithstanding any other provision in this Article, DASNY may require the CONSULTANT to provide, at the expense of DASNY, any other form or limit of insurance necessary to secure the interests of DASNY.
- G. Neither the procurement nor the maintenance of any type of insurance by DASNY, the CONSULTANT, its subCONSULTANTS, or subcontractors shall in any way be

construed or deemed to limit, discharge, waive or release the CONSULTANT from any of the obligations or risks accepted by the CONSULTANT or to be a limitation on the nature or extent of said obligations and risks of the CONSULTANT.

- H. This Contract may, at the sole option of DASNY, be declared void and of no effect if the CONSULTANT or any subcontractor or subCONSULTANT fails to comply with the provisions of this Article.
- I. The CONSULTANT and its subCONSULTANTS or subcontractors shall not violate, or permit to be violated, any term or condition of their insurance policies, and shall at all times satisfy the safety requirements of DASNY and of the insurance companies issuing such policies.

ARTICLE V: HOLD HARMLESS

The CONSULTANT hereby agrees to indemnify and hold harmless DASNY or DASNY's members, officers, employees, or representatives, against all claims arising out of the negligent acts, alleged negligent acts, or failure to act, by the CONSULTANT and shall pay any judgment or expense, including interest, imposed against any of them for injury, wrongful death or property damage, and to defend and pay the costs and expenses thereof, any action, proceeding or lawsuit brought against the parties indemnified and held harmless herein.

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

ARTICLE V: DASNY'S RIGHT TO AUDIT AND INSPECT RECORDS

The CONSULTANT shall maintain and shall keep for a period of six years after the date of expiration of the Term, all records and other data relating to Consulting Services provided under this Contract. DASNY shall have the right to inspect and audit such records.

ARTICLE VI – CONTINUING INTEGRITY

The CONSULTANT shall at all times during the Contract Term remain responsive and responsible. The CONSULTANT shall also monitor each subconsultant or subcontractor for responsiveness and responsibility at all times during the Contract Term. The CONSULTANT 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 CONSULTANT shall immediately notify DASNY of any material or adverse information pertaining to the CONSULTANT or any subconsultant, regardless of tier.

The President of DASNY or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers

information that calls in to question the responsibility of the CONSULTANT. In the event of such suspension, the CONSULTANT will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the CONSULTANT shall comply with the terms of the suspension order. CONSULTANTing 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 CONSULTANT, 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 CONSULTANT's expense where the CONSULTANT is determined by the President of DASNY or his or her designee to be non-responsible. In such event, the President of DASNY or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for the breach.

In selecting a subcontractor, the CONSULTANT shall consider whether the proposed subcontractor appears on any list of entities debarred or suspended from doing business with a government entity, including the current list of companies or individuals that have been declared ineligible to receive Federal contracts published by the System for Award Management. The CONSULTANT 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 CONSULTANT 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 CONSULTANT shall not subcontract with any entity on the list of "Non-Responsible Entities" maintained by the NYS Office of General Services pursuant to Executive Order No. 192.

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

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

DORMITORY AUTHORITY OF THE STATE OF NEW YORK

515 Broadway
Albany, NY 12207-2964

By _____

Title _____

Date _____

[]

By _____

Title _____

Date _____

ACKNOWLEDGMENT OF DASNY OFFICER EXECUTING CONTRACT

STATE OF NEW YORK)
COUNTY OF ALBANY) ss:

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

Notary Public _____

ACKNOWLEDGMENT OF CONSULTANT

STATE OF _____)
COUNTY OF _____) ss:

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

Notary Public _____

ATTACHMENT "A"

Bid Breakdown &

Schedule

ATTACHMENT "B"

Scope of Services