

AGREEMENT

This Agreement is entered into on _____ by and among the Dormitory Authority of the State of New York having its principal office and place of business at 515 Broadway, Albany, New York, (hereinafter referred to as “**DASNY**”), Social Equity Servicing Corporation, a subsidiary of DASNY having its principal place of business at 515 Broadway, Albany, New York (hereinafter referred to as “**SESC**” and together with DASNY as the “**CLIENTS**”) and _____, whose office is located at _____, (hereinafter referred to as the “**FINANCIAL INSTITUTION**”).

WHEREAS, DASNY has solicited proposals for banking services (“**Banking Services**”, as defined hereafter) and as set forth in the Request for Proposal dated September 16, 2022 (hereinafter referred to as the “**RFP**”);

WHEREAS, the FINANCIAL INSTITUTION submitted a proposal (the “**Proposal**”) in response to the RFP indicating its interest to provide Banking Services to DASNY and any of its subsidiaries;

WHEREAS, pursuant to the RFP process and on the basis of the submitted Proposal, DASNY selected the FINANCIAL INSTITUTION to provide the Banking Services to DASNY and any of its subsidiaries;

WHEREAS, SESC is a subsidiary of DASNY interested in receiving the Banking Services of the FINANCIAL INSTITUTION;

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein, the CLIENTS and the FINANCIAL INSTITUTION, intending to be legally bound, hereby as follows:

ARTICLE I: REPRESENTATIONS AND WARRANTIES

The CLIENTS hereby represent, and warrant, which representations and warranties shall be continuing that:

- A. The CLIENTS are duly organized and existing under the laws of the jurisdiction of their organization, with full power to carry on its business as now conducted, to enter into this Agreement and to perform their obligations hereunder;
- B. This Agreement has been duly authorized, executed and delivered by the CLIENTS, constitute a valid and legally binding obligation of the CLIENTS, enforceable in accordance with its terms, and no statute, regulation, rule, order, judgment, or contract binding on the CLIENTS prohibits the CLIENTS’ execution or performance of this Agreement; and
- C. Each CLIENT covenants and represents that (i) neither it nor any of its affiliates, subsidiaries, directors or officers are the target or subject of any sanctions enforced by the US Government, (including, the Office of Foreign Assets Control of the US

Department of the Treasury (“OFAC”), the United Nations Security Council, the European Union, His Majesty’s (HM) Treasury, or other relevant sanctions authority (collectively “Sanctions”); and (ii) neither it nor any of its affiliates, subsidiaries, directors or officers will use any payments made pursuant to this Agreement (i) to fund or facilitate any activities of or business with any person who, at the time of such funding or facilitation, is the subject or target of Sanctions, (ii) to fund or facilitate any activities of or business with any country or territory that is the target or subject of Sanctions, or (iii) in any other manner that will result in a violation of Sanctions by any person.

ARTICLE II: BANKING SERVICES

The FINANCIAL INSTITUTION has agreed to provide Banking Services to the CLIENTS of the type and nature set forth in the RFP, the Proposal, and as required by **Appendix "A"**, entitled **SCOPE OF SERVICES**, which is attached to and made a part hereof (together referred to herein as the “Banking Services”), and may at the option of the parties be amended from time to time to add services at costs so agreed.

The Banking Services shall be provided in accordance with the terms and conditions of this Agreement as may be supplemented hereby as set forth in **Appendix “A.1”**, entitled **ADDITIONAL TERMS & CONDITIONS**. Should any provision in Appendix A.1, be in conflict or inconsistent with this Agreement, this Agreement will govern.

ARTICLE III: TERM OF ENGAGEMENT

Subject to the provisions of Article IV, the term of this Agreement shall commence on [] and shall expire on [], (the “Term”). The Term may be extended by mutual agreement of the parties, for up to four (4) one-year renewal periods, to no later than []].

ARTICLE IV: TERMINATION OR SUSPENSION

A. TERMINATION BY THE CLIENTS

The CLIENTS may terminate this Agreement prior to the expiration of the Term by giving to the FINANCIAL INSTITUTION notice in writing specifying the date of such termination which shall not be less than thirty (30) days after the date of such notice or in accordance with Articles XXI, XXIII, XXIV hereof. Upon termination hereof, the CLIENTS shall pay the FINANCIAL INSTITUTION such compensation as may be due the FINANCIAL INSTITUTION.

B. TERMINATION BY FINANCIAL INSTITUTION

The FINANCIAL INSTITUTION may terminate this Agreement by giving the CLIENTS a notice in writing specifying the date of such termination, which shall be not less than ninety (90) days after the date of such notice. Upon termination hereof, the CLIENTS shall pay the FINANCIAL INSTITUTION such compensation as may be due the FINANCIAL INSTITUTION.

ARTICLE V: CONSULTANTS

The CLIENTS may retain other financial institutions to furnish banking services throughout the term of this Agreement, and the FINANCIAL INSTITUTION shall cooperate with such firms.

The FINANCIAL INSTITUTION may propose and engage, at its sole cost, a third-party ("Subcontractor"), to perform portions of the Banking Services required under this Agreement, provided they satisfy requirements specified in this Agreement. The FINANCIAL INSTITUTION shall be responsible to the CLIENTS for the timely, efficient, and accurate performance of all Banking Services performed by Subcontractor(s) and shall be liable for any failure in their performance. The fees of any Subcontractor(s) retained by the FINANCIAL INSTITUTION for Banking Services required under Article II shall be deemed covered by the compensation as stipulated in Article VI.

ARTICLE VI: FEES

The Fee Schedule for Basic Banking Services, as described in Section 4.1.1 of the RFP is set forth as **Appendix "B"**, attached hereto.

The fee breakdown for Maximizing Returns Services, as described in Section 4.1.1 of the RFP is set forth as **Appendix "B"**, attached hereto.

ARTICLE VII: HOLD HARMLESS

The FINANCIAL INSTITUTION hereby agrees to indemnify and hold harmless each CLIENT and the CLIENTS' members, officers, employees, or representatives, against all claims arising out of the negligent acts, alleged negligent acts, or failure to act, by the FINANCIAL INSTITUTION and their Subcontractor(s) 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 any of the CLIENTS, or to a CLIENTS' members, officers, employees, or representatives, such CLIENT agrees that the obligation to indemnify and hold harmless shall not be applicable to the portion of any money judgment for which it is responsible, and such CLIENT agrees to pay the FINANCIAL INSTITUTION the percentage of defense costs which the FINANCIAL INSTITUTION incurred based upon an apportionment of its allocated responsibility.

ARTICLE VIII: RIGHT TO AUDIT AND INSPECT RECORDS

The FINANCIAL INSTITUTION shall maintain and shall keep for a period of seven years after the date of expiration of the Term, all records and other data relating to Banking Services provided under this Agreement. The CLIENTS shall have the right to inspect and audit such records.

ARTICLE IX: CONFIDENTIALITY

The FINANCIAL INSTITUTION may (i) centralize in one or more affiliates and subsidiaries certain activities (the “Centralized Functions”), including audit, accounting, administration, risk management, legal, compliance, sales, product communication, relationship management, and the compilation and analysis of information and data regarding CLIENTS (which, for purposes of this provision, includes the name and business contact information for the CLIENTS’ employees and representatives) and the accounts established pursuant to this Agreement (“CLIENTS’ Information”) and (ii) use third party service providers to store, maintain and process CLIENTS’ Information (“Outsourced Functions”). Notwithstanding anything to the contrary contained elsewhere in this Agreement and solely in connection with the Centralized Functions and/or Outsourced Functions, CLIENTS’ consent to the disclosure of, and authorize FINANCIAL INSTITUTION to disclose, CLIENTS’ Information to (i) affiliates of the FINANCIAL INSTITUTION (and their respective officers, directors and employees) and to (ii) third-party service providers (but solely in connection with Outsourced Functions) who are required to maintain the confidentiality of CLIENTS’ Information. CLIENTS also consent to the disclosure of CLIENTS’ Information to governmental and regulatory authorities in jurisdictions where the FINANCIAL INSTITUTION operates and otherwise as required by law.

ARTICLE X: BREACH NOTIFICATION AND DATA SECURITY LAWS COMPLIANCE

The FINANCIAL INSTITUTION shall comply with the applicable provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law § 208) and commencing March 21, 2020, shall also comply with General Business Law § 899-bb.

If the FINANCIAL INSTITUTION learns of any actual or attempted unauthorized access to Information maintained by the FINANCIAL INSTITUTION that would require notification under applicable Law relating to a data breach that involves the CLIENTS’ information, the FINANCIAL INSTITUTION will:

- A. promptly notify the CLIENTS of all details known to the FINANCIAL INSTITUTION and regularly supplement the same with new information as it is discovered;
- B. bear responsibility for the costs of providing notice and credit monitoring services for a period of 12 months to individuals affected by the breach; and
- C. at its cost, assist the CLIENTS in its obligation under applicable Law.

ARTICLE XI: ASSIGNMENT OF AGREEMENT

The FINANCIAL INSTITUTION shall not assign the Agreement in whole or in part without prior written consent of the CLIENTS.

ARTICLE XII: NONDISCRIMINATION

During the performance of this Agreement, the FINANCIAL INSTITUTION agrees as follows:

- A. The FINANCIAL INSTITUTION 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 FINANCIAL INSTITUTION will send to each labor union or representative of workers with which the FINANCIAL INSTITUTION 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 FINANCIAL INSTITUTION'S Agreement under clauses A. through G. (hereinafter called "nondiscrimination clauses"). If the FINANCIAL INSTITUTION was directed to do so by the contracting agency as part of the proposal or negotiation of this Agreement, the FINANCIAL INSTITUTION 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 Agreement 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 FINANCIAL INSTITUTION 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 FINANCIAL INSTITUTION 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 FINANCIAL INSTITUTION will state, in all solicitations or advertisements for employees placed by or on behalf of the FINANCIAL INSTITUTION, 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 FINANCIAL INSTITUTION 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 FINANCIAL INSTITUTION'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 Agreement 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 FINANCIAL INSTITUTION has not complied with these nondiscrimination clauses, and the FINANCIAL INSTITUTION 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 FINANCIAL INSTITUTION satisfies the State Commissioner of Human Rights that the FINANCIAL INSTITUTION 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 FINANCIAL INSTITUTION, and an opportunity has been afforded the FINANCIAL INSTITUTION 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 FINANCIAL INSTITUTION 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 Subcontractor as to operations to be performed within the State of New York. The FINANCIAL INSTITUTION 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 FINANCIAL INSTITUTION becomes involved in or is threatened with litigation with a Subcontractor as a result of said direction by the State Commissioner of Human Rights or the contracting agency, the FINANCIAL INSTITUTION shall promptly so notify the Attorney General, requesting the Attorney General to intervene and protect the interests of the State of New York.

ARTICLE XIII: PROVISIONS REQUIRED BY LAW DEEMED INSERTED

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

ARTICLE XIV: COMPLIANCE WITH LAWS, RULES, AND REGULATIONS

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

ARTICLE XV: GOVERNMENT PROVISIONS

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

ARTICLE XVI: STANDARD CLAUSES FOR NYS CONTRACTS

The FINANCIAL INSTITUTION and all Subcontractors shall comply with the Standard Clauses for NYS Contracts, as applicable, and included in this Agreement as **Appendix "D"**.

ARTICLE XVII: COOPERATION

RESERVED.

ARTICLE XVIII: RELATIONSHIP OF THE PARTIES

The relationship created by this Agreement between the CLIENTS and FINANCIAL INSTITUTION is one of independent parties and is in no way to be construed as creating any agency relationship between any of the CLIENTS and the FINANCIAL INSTITUTION nor is it to be construed as, in any way or under any circumstances, creating or appointing the FINANCIAL INSTITUTION as an agent of any of the CLIENTS for any purpose whatsoever.

ARTICLE XIX: SET OFF RIGHTS

In addition to the rights of the FINANCIAL INSTITUTION under applicable law, at any time when a CLIENT shall not have honored any and all of its obligations to the FINANCIAL INSTITUTION, the FINANCIAL INSTITUTION shall have the right without notice to such CLIENT, to retain or set-off, against such obligations of such CLIENT any securities or cash the FINANCIAL INSTITUTION may hold for the account of such CLIENT pursuant to this Agreement. Any such asset of, or obligation to, such CLIENT may be transferred to the FINANCIAL INSTITUTION in order to affect the above rights. The FINANCIAL INSTITUTION'S rights to retain or setoff any such obligations are limited solely to the accounts established pursuant to this agreement by the non-performing CLIENT and shall not include any other accounts the FINANCIAL INSTITUTION may hold for other clients or for affiliates of the non-performing CLIENT.

ARTICLE XX: NYS VENDOR RESPONSIBILITY AND CONTINUING INTEGRITY

- A. The FINANCIAL INSTITUTION shall at all times during the term of this Agreement remain responsive and responsible. The FINANCIAL INSTITUTION shall also monitor each Subcontractor for responsiveness and responsibility at all times during the term of this Agreement. The FINANCIAL INSTITUTION agrees, if requested by the CLIENTS, 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 FINANCIAL INSTITUTION shall immediately notify the CLIENTS of any material or adverse information pertaining to the FINANCIAL INSTITUTION or any Subcontractor, regardless of tier.
- B. The CLIENTS, in their sole discretion, reserves the right to suspend any or all activities under this Agreement, at any time, when they discover information that calls in to question the responsibility of the FINANCIAL INSTITUTION. In the event of such suspension, the FINANCIAL INSTITUTION will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the FINANCIAL INSTITUTION shall comply with the terms of the suspension order. Banking Services activity may resume at such time as the CLIENTS issue a written notice authorizing a resumption of performance under the Agreement.
- C. Notwithstanding any other provision of this Agreement, upon written notice to the FINANCIAL INSTITUTION, and a reasonable opportunity to be heard with the appropriate CLIENTS' officials or staff, the Agreement may be terminated by the CLIENTS at the FINANCIAL INSTITUTION's expense where the FINANCIAL

INSTITUTION is determined by the CLIENTS to be non-responsible. In such event, the CLIENTS may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for the breach.

- D. In selecting a Subcontractor, the FINANCIAL INSTITUTION 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 FINANCIAL INSTITUTION 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 FINANCIAL INSTITUTION 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 FINANCIAL INSTITUTION 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.
- E. In selecting a Subcontractor, the FINANCIAL INSTITUTION 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 the Services.

ARTICLE XXI: PROHIBITED INTERESTS/ETHICAL CONDUCT

- A. Officers and employees of the CLIENTS are bound by Sections 73, 73-a and 74 of the New York State Public Officers Law. In addition, no officer, employee, or FINANCIAL INSTITUTION of or for the CLIENTS' authorized on behalf of the CLIENTS to exercise any legislative, executive, administrative, supervisory, or other similar functions in connection with the Agreement or the Banking Services, shall become personally interested, directly or indirectly, in the Agreement, material supply contract, subcontract, insurance contract, or any other contract pertaining to the Banking Services.
- B. Section 73(5) of the Public Officers Law expressly prohibits the FINANCIAL INSTITUTION, or its agents, from directly or indirectly offering or giving any gift having more than nominal value to an employee of the CLIENTS 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.
- C. In addition to the prohibition of Section 73 (5) of the Public Officers Law, the CLIENTS have a "zero tolerance" policy with respect to the solicitation, acceptance, or receipt of gifts from disqualified sources. Therefore, the FINANCIAL INSTITUTION and its agents should refrain from offering or giving anything of value to the CLIENTS' employees and may not solicit any gift, gratuity, stipend, or thing of value from the FINANCIAL INSTITUTION or its agents. Violations of these gift provisions may be grounds for immediate termination of the Agreement and/or referral for civil action or criminal prosecution.

- D. To promote a working relationship with the CLIENTS based on ethical business practices, the FINANCIAL INSTITUTION is expected to:
1. furnish all goods, materials and services to the CLIENTS as contractually required and specified;
 2. submit complete and accurate reports to the CLIENTS and its agents as required;
 3. not seek, solicit, demand or accept any information, verbal or written, from the CLIENTS 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 CLIENT-related projects and transactions;
 5. not engage in any course of conduct with the CLIENTS' employees or its agents that constitutes a conflict of interest, in fact or in appearance; and
 6. not offer or give any unlawful gifts or gratuities, or engage in bribery or other criminal activity.
- E. The CLIENTS encourage the FINANCIAL INSTITUTION 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.
- F. Although the FINANCIAL INSTITUTION may employ relatives of the CLIENTS' employees, the CLIENTS must be made aware of such circumstances as soon as possible, preferably in writing, to ensure a conflict-of-interest situation does not arise. The CLIENTS reserve the right to request that the FINANCIAL INSTITUTION modify the work assignment of a relative of the CLIENTS employee where a conflict of interest, or the appearance thereof, is deemed to exist.
- G. The FINANCIAL INSTITUTION may hire former employees of the CLIENT(S). However, as a general rule, former employees may neither appear nor practice before the CLIENTS, nor receive compensation for services rendered on a matter before the CLIENTS, for a period of two years following their separation from service with the CLIENTS. In addition, former employees of the CLIENT(S) are subject to a "lifetime bar" from appearing before the CLIENTS or receiving compensation for services regarding any transaction in which they personally participated, or which was under their active consideration during their tenure with the CLIENT.
- H. The FINANCIAL INSTITUTION agrees to notify the Office of Professional Integrity at 518-257-3378 of any activity by an employee of the CLIENTS that is inconsistent with the contents of this Section.
- I. Any violation of these provisions shall justify termination of this Agreement and may result in the CLIENTS' rejection of the FINANCIAL INSTITUTION's bids or proposals for future contracts.

ARTICLE XXII: COOPERATION WITH INVESTIGATIONS

- A. The FINANCIAL INSTITUTION agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by the Office of Professional Integrity (“OPI”) or any other duly authorized representative of the CLIENTS (the “Representative”).
- B. The FINANCIAL INSTITUTION 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 FINANCIAL INSTITUTION, its subsidiaries and affiliated companies and any other company directly or indirectly controlled by the FINANCIAL INSTITUTION, relating to the FINANCIAL INSTITUTION. These shall include, but not be limited to: payroll and personnel records; cancelled checks; correspondence; memoranda; reports; audits; FINANCIAL INSTITUTION 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 FINANCIAL INSTITUTION shall execute such documents, if any, as are necessary to give the OPI or the Representative access to Agreement-related books, documents or records which are, in whole or part, under control of the FINANCIAL INSTITUTION but not currently in the FINANCIAL INSTITUTION’s physical possession. The FINANCIAL INSTITUTION shall not enter into any agreement with a FINANCIAL INSTITUTION or supplier, in connection with the Agreement, that does not contain a right to audit clause in favor of the CLIENTS. The FINANCIAL INSTITUTION shall assist the OPI or the Representative in obtaining access to past and present FINANCIAL INSTITUTION 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 FINANCIAL INSTITUTIONS and suppliers pertaining to the Agreement, and, if appropriate, enforce the right-to-audit provisions of such agreements.
- C. The FINANCIAL INSTITUTION 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 FINANCIAL INSTITUTION, for purposes of the Agreement.
- D. The FINANCIAL INSTITUTION shall require each Subcontractor to include in all agreements that the Subcontractor may hereinafter enter into with any and all Subcontractors, other financial institutions, in connection with the Agreement, a right-to-audit clause in favor of the CLIENTS conferring rights and powers of the type outlined in this section. The FINANCIAL INSTITUTION shall not enter into any subcontract with a Subcontractor in connection with the Agreement that does not contain such a provision.
- E. The FINANCIAL INSTITUTION shall not make any payments to a Subcontractor, other financial institution or supplier from whom the FINANCIAL INSTITUTION has failed to obtain and supply to the OPI or the Representative complete, accurate and truthful

information in compliance with a request from the OPI or the Representative to the FINANCIAL INSTITUTION.

- F. Any violation of the provisions of this Article shall justify termination of this Agreement and may result in the CLIENTS' rejection of the FINANCIAL INSTITUTION's bids or proposals for future contracts.

ARTICLE XXIII: FALSE STATEMENTS/INFORMATION

False statements, information or data submitted to or relied upon by CLIENTS may result in one or more of the following actions:

- A. Termination of the Agreement
- B. Disapproval of future contracts and sub-contracts
- C. Civil and/or criminal prosecution

ARTICLE XXIV: 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 (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: FINANCIAL INSTITUTION's Certifications Pursuant to SFL § 139-j and § 139-k. The information contained in SFL 139 Form 1: FINANCIAL INSTITUTION's Certifications Pursuant to SFL § 139-j and § 139-k will serve as an informational resource to aid the CLIENTS in making an award determination.
- C. The CLIENTS reserve the right to terminate this Agreement in the event it is found that the certification filed by the FINANCIAL INSTITUTION 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, the CLIENTS may exercise their termination right, such termination constituting a termination for cause, by providing written notification to the FINANCIAL INSTITUTION.

ARTICLE XXV: NONCOMPLIANCE

This Agreement may be terminated immediately by the CLIENTS, with all rights reserved, if the FINANCIAL INSTITUTION fails to comply with its obligations as set forth under this Agreement.

ARTICLE XXVI: COMPLIANCE REPORTS and EQUAL EMPLOYMENT OPPORTUNITY WORKFORCE

The FINANCIAL INSTITUTION and all Subcontractors are required to submit a completed E.O. 162 Workforce Utilization Report for contracts with a total contract value of Twenty-Five Thousand 00/100 Dollars (\$25,000.00) or more. The FINANCIAL INSTITUTION is responsible for collecting reports from each Subcontractor performing work on the contract, ensuring that the Subcontractor(s) submits the report as required. All E.O. 162 Workforce Utilization Reports are to be submitted within 10 days of the end of each quarter. The E.O. 162 Workforce Utilization Report is posted on DASNY's website at <https://www.dasny.org/tools-forms/forms>, and can be found by going to MWSBE – Forms. The completed reports are to be submitted to DASNY's Opportunity Programs Group by emailing the Excel workbook files to EO162Reporting@dasny.org. Hard copies of the reports will not be accepted.

ARTICLE XXVII: INVALID PROVISIONS

If any term or provision of the Agreement 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 Agreement, 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 Agreement shall be valid and be enforced to the fullest extent permitted by law.

ARTICLE XXVIII – NOTICE

Except as stated otherwise in this Agreement, any notice or other communication under this Agreement which is required to be in writing shall specifically reference that it is a notice to be given under this Agreement and be delivered as follows:

RESERVED.

ARTICLE XXIX: SURVIVAL

Any Article or Section which should, by its nature, survive expiration or termination shall so survive, including but not limited to Article VII, VIII, IX, and XI.

SIGNATURES

IN WITNESS WHEREOF, the [CLIENTS] and the FINANCIAL INSTITUTION have executed this Agreement on the _____ day of _____
___20__.

[]

By _____

Title _____

Date _____

[]

By _____

Title _____

Date _____

SAMPLE AGREEMENT

ACKNOWLEDGMENT OF CLIENTS' 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 _____, [CLIENT], 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 FINANCIAL INSITUTION

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

APPENDIX "A"

SCOPE OF SERVICES

Banking Services of the type and nature set forth in the RFP, the Proposal, and agreed upon by the CLIENTS and the FINANCIAL INSTITUTION

SAMPLE AGREEMENT

APPENDIX "A.1"

ADDITIONAL TERMS & CONDITIONS

RESERVED.

SAMPLE AGREEMENT

APPENDIX "B"

FEES

The Fee Schedule for Basic Banking Services, as described in Section 4.1.1 of the RFP and the Proposal.

The fee breakdown for Maximizing Returns Services, as described in Section 4.1.1 of the RFP and the Proposal.

SAMPLE AGREEMENT

APPENDIX "C"

INSURANCE

A. GENERAL INSURANCE PROVISIONS

(i). The FINANCIAL INSTITUTION and their Subcontractor(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 the CLIENTS and of the insurance companies issuing such policies.

(ii). The FINANCIAL INSTITUTION and their Subcontractor(s) shall maintain in force all insurance required to be procured by them under this Agreement for Banking Services until all required services are complete per written notification to the FINANCIAL INSTITUTION by the CLIENTS except where this Agreement for Banking Services requires an insurance policy to be maintained for a period beyond completion of services in which case the FINANCIAL INSTITUTION and their Subcontractor(s) shall maintain such insurance policy in force for the specified period beyond completion of services.

(iii). All insurance required to be procured and maintained by the FINANCIAL INSTITUTION and their Subcontractor(s) under this Agreement for Banking Services shall:

- (a) be procured from insurance companies licensed to do business in the State of New York by the NYS Department of Financial Services and rated at least A- by A.M. Best and Company or meet such other requirements as are acceptable to the CLIENTS in its sole and exclusive discretion.
- (b) include a provision or endorsement that the policy shall not be canceled, materially changed, or not renewed without at least thirty (30) calendar days written notice to the CLIENTS except for non-payment in which case notice to the CLIENTS shall be provided as required by law.
- (c) include a provision or endorsement that at least thirty (30) calendar days prior to the expiration of the policy, evidence from the carrier of renewal or replacement of the policy by the carrier, with terms and limits no less favorable than the expiring policy, or written notice from the carrier that the policy will not be renewed or replaced by the carrier, shall be delivered to the CLIENTS.
- (d) be written on an occurrence basis except where this Agreement for Banking Services explicitly allows otherwise.
- (e) include a provision or endorsement that the CLIENTS shall not be responsible for any claim expenses and loss payments within the deductible, or the self-insured retention and that the FINANCIAL INSTITUTIONS or Subcontractor shall be solely responsible for all claim expenses and loss payments within the deductible or self-insured retention.
- (f) at any time, provide proof, acceptable to the CLIENTS in its sole

discretion, that the FINANCIAL INSTITUTION or Subcontractor has assets or security sufficient to satisfy all deductible or self-insured obligations under such insurance policy for which the FINANCIAL INSTITUTION or Subcontractor may be liable under the claims pending or reasonably possible against the FINANCIAL INSTITUTION or Subcontractor at the time the CLIENTS require the proof. A failure of the FINANCIAL INSTITUTION or Subcontractor to provide such proof is a failure of the FINANCIAL INSTITUTION or Subcontractor to maintain the insurance required by the Agreement for Banking Services or to provide the CLIENTS with evidence of valid and in-force insurance coverage required by the Agreement for Banking Services.

(g) include a provision or endorsement that there shall be no right of subrogation against the CLIENTS. If any of the FINANCIAL INSTITUTION's policies or any of the policies of any Subcontractor prohibit such a waiver of subrogation, the FINANCIAL INSTITUTION or Subcontractor shall secure the necessary permission to grant this waiver of subrogation. Any and all such permission shall be confirmed by a manuscript endorsement to the relevant insurance policy or policies and a certified copy of the endorsement shall be provided to the CLIENTS.

(h) include a provision or endorsement that the coverage afforded the CLIENTS under such policy shall be primary and non-contributory and that such policy shall be primary to any other insurance policy maintained by the CLIENTS. Any other insurance policy maintained by the CLIENTS shall be in excess of and shall not contribute with the FINANCIAL INSTITUTION's or Subcontractor's insurance policy, regardless of the "other insurance" clause contained in each of the CLIENT'S own policy of insurance or the FINANCIAL INSTITUTION's or Subcontractor's insurance policies.

(x). Any Contract Documents, including but not limited to the Request for Proposal may require the FINANCIAL INSTITUTION and Subcontractors to provide at its or their expense any other form or limit of insurance necessary to secure the interests of the CLIENTS.

(xii). Neither the procurement nor the maintenance of any type of insurance by the CLIENTS and the FINANCIAL INSTITUTION shall in any way be construed or deemed to limit, discharge, waive or release the FINANCIAL INSTITUTION or any Subcontractor from any of the obligations or risks accepted by the FINANCIAL INSTITUTION and their Subcontractor(s) or to be a limitation on the nature or extent of said obligations and risks or to be a limitation of any obligation to defend, indemnify, hold harmless and procure insurance for the CLIENTS.

(xiii). All provisions of General Terms and Conditions Appendix D: Insurance are to the fullest extent permitted by law. One purpose of this Agreement for Banking Services is to allocate, to the fullest extent permitted by law, all risk of loss to the FINANCIAL INSTITUTION, each Subcontractor, and the insurers of each. Each insurance company from which the CLIENTS have directly purchased an insurance policy is a third-party beneficiary of the FINANCIAL

INSTITUTION's and each Subcontractor's obligations to procure insurance.

(xiv). The FINANCIAL INSTITUTION is responsible for ensuring that each Subcontractor obtains and maintains in the required amount each type of insurance policy required by this Agreement for Banking Services and that such insurance policy provides the CLIENTS with the coverage required by this Agreement for Banking Services.

(xv). The FINANCIAL INSTITUTION agrees and acknowledges that, because the FINANCIAL INSTITUTION (and not the CLIENTS) is responsible for performance of the duties and obligations set forth in this Agreement for Banking Services for completion of the Services, the FINANCIAL INSTITUTION, through the use of insurance, intends to allocate all losses to such insurance to protect itself and the CLIENTS.

B. SUBMISSION OF INSURANCE

(i) The CLIENTS will not execute the Agreement for Banking Services unless the FINANCIAL INSTITUTION shall submit to the CLIENTS proof of insurance in such forms as requested and deemed acceptable by the CLIENTS, indicating the Services, and showing evidence of all insurance required under the Agreement for Banking Services. Upon the CLIENTS' request, the FINANCIAL INSTITUTION shall provide a copy of each insurance policy required by the Agreement for Banking Services certified by the insurance carrier as a true and complete copy. The CLIENTS may request such a certified copy of a policy at any time and may make such requests as often as the CLIENTS, in their 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 the CLIENTS, constitute a warranty by the FINANCIAL INSTITUTION and its insurance agent or broker, that the insurance coverage described is in effect for the policy term shown.

(ii) The FINANCIAL INSTITUTION shall submit to the CLIENTS insurance certificates (Accord 25, or equivalent as determined by the CLIENTS), copies of declaration pages, schedules of forms and endorsements, copies of all named insured endorsements, all endorsements of the policy granting coverage to the CLIENTS, and such other documents requested by the CLIENTS as proof of insurance for the FINANCIAL INSTITUTION. All insurance submittals must be approved by the CLIENTS prior to the FINANCIAL INSTITUTION's commencement of Services.

(iii) Upon the CLIENTS' request, the FINANCIAL INSTITUTION shall submit to the CLIENTS proof of insurance for one or more Subcontractors, in such forms as requested and deemed acceptable by the CLIENTS, indicating the Services, and showing evidence of all insurance required under the Agreement for Banking Services. Upon request by the CLIENTS, the FINANCIAL INSTITUTION shall provide a copy of each insurance policy of the Subcontractor(s) required by the Agreement for Banking Services and certified by the insurance carrier as a true and complete copy. The CLIENTS may request such a certified copy of a policy at any time and may make such requests as often as the CLIENTS, in their sole and exclusive discretion, deems necessary. Each request may be for a certified copy of one or more policies for one or more Subcontractors. Certificates of insurance of the

Subcontractor, notwithstanding anything to the contrary contained on the Certificate of Insurance, when submitted to the CLIENTS by the FINANCIAL INSTITUTION, constitute a warranty by the FINANCIAL INSTITUTION, the Subcontractor and the Subcontractor's insurance agent or broker, that the insurance coverage described is in effect for the policy term shown.

(iv) Upon request of the CLIENTS made any time after bids are opened, the FINANCIAL INSTITUTION shall submit insurance certificates (Accord 25, or equivalent as determined by the CLIENTS), copies of declaration pages, schedules of forms and endorsements, copies of all named insured endorsements, all endorsements of the policy granting coverage to the CLIENTS, and such other documents requested by the CLIENTS as proof of insurance for a Subcontractor. The CLIENTS may request proof of insurance for one or more Subcontractor at the same or at different times and may request proof of insurance for a particular Subcontractor as often as the CLIENTS, in their sole and exclusive discretion, determines is necessary.

C. INSURANCE PROVIDED BY THE FINANCIAL INSTITUTION

(i.) Prior to award of the Agreement for Banking Services, the FINANCIAL INSTITUTION shall procure, at its sole cost and expense, and shall maintain in force at all times required by this Agreement for Banking Services all of the insurance required under this Agreement for Banking Services. Each Subcontractor shall procure, at its sole cost and expense, prior to the FINANCIAL INSTITUTION submitting to the CLIENTS the name of such Subcontractor and prior to such Subcontractor commencing performance of any of the Services, and each Subcontractor shall maintain in force at all times required by this Agreement for Banking Services all of the insurance required under this Agreement for Banking Services. The insurance that the FINANCIAL INSTITUTION and each Subcontractor shall procure and maintain under this Agreement for Banking Services includes, but is not limited to, the following:

(a). **Workers' Compensation (including occupational disease) and Employer's Liability** insurance. Full New York State Workers' Compensation and Employer's Liability coverage shall be provided and evidenced by one of the following certificates (**Acord certificates are not acceptable**):

1. C-105.2 (September '15, or most current version) - Certificate of NYS Workers' Compensation Insurance Coverage. The insurance carrier shall provide a completed form as evidence of in-force coverage.
2. U-26.3 – (or any replacement) NYS Insurance Fund Certificate of Workers' Compensation Coverage. The NYS Insurance Fund shall 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 FINANCIAL INSTITUTION'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 FINANCIAL INSTITUTION's Self Insurance Administrator shall provide a completed form.
- (b). **Disability Benefits insurance.** Full New York State Disability Benefits coverage for the benefit of such employees as are required to be covered by the New York State Disability Benefits Law shall be provided and evidenced by one of the following certificates:
1. DB-120.1 (September 15, or most current version) - Certificate of Insurance Coverage Under the NYS Disability Benefits Law.
 2. DB-155 (9/16) – Compliance with Disability Benefits Law. The NYS Workers' Compensation Board's Self Insurance Office shall 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. The Dormitory Authority of the State of New York will not accept this as an exemption from providing Worker's Compensation Insurance.) The Certificate may be obtained from the NYS Workers Compensation Board's website at <http://www.wcb.state.ny.us>.
- (c). **Commercial General Liability (CGL) insurance.** The CGL insurance policy shall cover the liability of the FINANCIAL INSTITUTION or Subcontractor for bodily injury, property damage, and personal/advertising injury arising from performance of the Services under this Agreement. The limits under such policy shall not be less than the following: the limit for each occurrence shall be at least \$2,000,000; the general aggregate limit shall be at least \$4,000,000; the personal and advertising injury limit shall be at least \$1,000,000; the Fire Damage Legal Liability shall be at least \$1,000,000; and the Products Completed Operations limit shall be at least \$4,000,000. The limits may be provided through a combination of primary and umbrella and/or excess liability policies. Coverage shall provide and encompass at least the following:
1. If the FINANCIAL INSTITUTION or Subcontractor proposes the use of a policy other than the ISO form CG 00 01 12 07, the FINANCIAL INSTITUTION or Subcontractor shall provide the proposed policy to the CLIENTS which, in its sole and exclusive discretion, will determine whether the proposed policy provides equivalent coverage. The FINANCIAL INSTITUTION or Subcontractor shall pay the CLIENTS any attorney fees

and other costs incurred by the CLIENTS in determining whether the proposed policy provides equivalent coverage. The CLIENTS will select the attorney providing advice on the proposed policy.

2. ISO Endorsement Forms CG 20 10 04 13 and CG 20 37 04 13, or their equivalents, specifically naming as additional insureds the Dormitory Authority, Client, any other entities as required by the FINANCIAL INSTITUTION's Contract Documents, and for form CG 20 37 04 13 or its equivalent. In the event said endorsements or equivalents are not able to be provided, the CLIENTS may accept, at the CLIENTS' sole discretion, CG 20 38 04 13 or its equivalent or other manuscript endorsements providing equivalent coverage.
3. If the FINANCIAL INSTITUTION or Subcontractor proposes the use of an endorsement or endorsements other than the ISO Endorsement Forms CG 20 10 04 13 and CG 20 37 04 13, the FINANCIAL INSTITUTION or Subcontractor shall provide the proposed endorsement(s) to the CLIENTS which, in their sole and exclusive discretion, will determine whether the proposed endorsements provide equivalent coverage. The FINANCIAL INSTITUTION and Subcontractor shall pay the CLIENTS any attorney fees and other costs incurred by the CLIENTS in determining whether the proposed endorsements provide equivalent coverage. The CLIENTS will select the attorney providing advice on the proposed endorsements.
4. Additional insured status for the CLIENTS and any other entities as required by the FINANCIAL INSTITUTION shall apply during the course of performance of the Services.
5. The policy provisions required by this Agreement for Banking Services.
6. Independent financial institutions/Subcontractors.
7. Blanket Written Contractual Liability covering all indemnity agreements, including all indemnity obligations contained in the Agreement for Banking Services, and covering tort liability of another assumed in a contract.
8. Products and completed operations coverage for a term no less than three years commencing after the required services are complete per written notification to the FINANCIAL INSTITUTION by the CLIENTS.
9. Premises liability.

10. Defense and/or indemnification obligations, including obligations assumed under this Agreement for Banking Services.
11. Cross liability for additional insureds.
12. FINANCIAL INSTITUTION and Subcontractor means and methods.
13. Liability resulting from Section 240 or Section 241 of the NYS Labor Law.
14. ISO Endorsement CG 25 03 11 85 or its equivalent applying the policy's general aggregate limit.
15. The maximum deductible or self-insured retention shall be \$50,000.
16. No endorsement or provision in the policy shall exclude coverage for the CLIENTS, for any liability when the injured party is an employee of FINANCIAL INSTITUTION or any Subcontractor.
17. No endorsement or provision in the policy shall require privity of contract between the CLIENTS and Subcontractor or between the CLIENTS and the FINANCIAL INSTITUTION or Subcontractor in order for the CLIENTS have coverage as an insured on such insurance policy.
18. No endorsement or provision in the policy shall have a height limitation or exclusion.
19. No endorsement or provision in the policy shall have a classification exclusion with respect to services performed for the CLIENTS.
20. The CLIENTS shall be covered for any and all liability arising out of acts or omissions of the FINANCIAL INSTITUTION and any Subcontractor.

(e). **Umbrella and/or Excess Liability insurance.** When the limits of the CGL or Employers' Liability policies procured are insufficient to meet the limits specified in the preceding sections, Commercial Umbrella or Excess Liability policies shall be procured and maintained provided, however, that the total amount of insurance coverage is at least equal to the requirements specified in the preceding sections. The Commercial Umbrella or Excess Liability policies shall follow the same form as the CGL and Employers Liability insurance policies required in the preceding sections. The Umbrella and/or Excess Liability policies shall be primary to any other insurance maintained by the CLIENTS or any other additional insured. Any other insurance maintained by the CLIENTS, or any other additional insured shall be in excess of and shall not contribute with the FINANCIAL INSTITUTION's or Subcontractor's Umbrella or Excess Liability insurance policies, regardless of the "other insurance" clause contained in the CLIENTS' or other

additional insured's own policy of insurance or the FINANCIAL INSTITUTION's or Subcontractor's insurance policies.

- (f). **Errors and Omissions Liability insurance.** The FINANCIAL INSTITUTION and any Subcontractor performing any services in connection with this Agreement for Banking Services shall procure and maintain Errors and Omissions Liability Insurance, as applicable, for the Banking Services with a minimum insurance limit of not less than two (2) million dollars issued to and covering damage for liability imposed on the FINANCIAL INSTITUTION or Subcontractor by this Agreement for Banking Services or law arising out of any negligent act, error, or omission in the rendering of or failure to render Banking Services required by this Agreement for Banking Services. This insurance may be issued on a claims-made policy form and shall be maintained for no less than three (3) years after the required services are complete per written notification to the FINANCIAL INSTITUTION by the CLIENTS. The policy, at the sole expense of the FINANCIAL INSTITUTION or Subcontractor, shall have extended Discovery Clause coverage of at least three (3) years after the required services are complete per written notification to the FINANCIAL INSTITUTION by the CLIENTS if the policy is cancelled or not renewed. The maximum deductible or self-insured retention is \$100,000.
- (g). **Data Breach and Privacy Liability Insurance (Cyber Insurance).** The FINANCIAL INSTITUTION and any Subcontractor performing any services in connection with this Agreement for Banking Services shall procure and maintain Data Breach and Privacy Liability Insurance, as applicable, for the Banking Services with a minimum insurance limit of not less than two (2) million dollars issued to and covering liability imposed on the FINANCIAL INSTITUTION or Subcontractor by this Agreement for Banking Services or law arising out of any failure to protect confidential information and failure of the security of the FINANCIAL INSTITUTION's computer systems or CLIENTS' systems due to the actions of the FINANCIAL INSTITUTION which results in unauthorized access to the Agency or its data. Said Insurance shall provide coverage for damages arising from, but not limited to the following:
1. Breach of duty to protect the security and confidentiality of nonpublic proprietary corporate information;
 2. Personally identifiable information (PII) (e.g., medical, financial, or personal in nature in electronic or non-electronic form);
 3. Privacy notification costs;
 4. Regulatory defense and penalties;
 5. Website media liability; and

6. Cyber theft of customer's property, including but not limited to money and securities.

(h). **Commercial Crime insurance.** The FINANCIAL INSTITUTION and any Subcontractor performing any services in connection with this Agreement for Banking Services shall procure and maintain crime insurance, as applicable, for the services with a minimum insurance limit of not less \$10M issued to and covering loss of money, securities, property or other assets resulting from acts such as theft, fraud, forgery, and social engineering (impersonation) by the employees or third parties of the FINANCIAL INSTITUTION or Subcontractor providing services under this Agreement for Banking Services.

(ii). Notwithstanding any other provision of the Agreement for Banking Services to the contrary and to the fullest extent permitted by law, FINANCIAL INSTITUTION shall be liable for all costs and fees, including counsel fees, incurred by or on behalf of the CLIENTS in any action brought by or against the CLIENTS concerning insurance coverage owed to the CLIENTS by any insurer for which FINANCIAL INSTITUTION or any Subcontractor represented that the CLIENTS would be an insured or would benefit in any way if a claim was brought against the CLIENTS.

D. INSURANCE EXPIRATION

(i). All insurance certificates are valid for one (1) year from the date the certificate is signed/stamped, or until policy expiration, whichever is earlier. The FINANCIAL INSTITUTION shall be responsible to submit updated insurance certificates to the CLIENTS thirty (30) calendar days prior to any insurance certificate expiration date.

APPENDIX "C.1"

ADDITIONAL INSUREDS

DASNY
State of New York
SESC
State of New York
Office of Cannabis Management
Cannabis Control Board
New York Social Equity Cannabis Investment Fund, LP
NYSECIF Operating Company, LLC

SAMPLE AGREEMENT

APPENDIX "D"

STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment, or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee, or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void.

Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a

contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither

it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the

Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such

office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting

to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it

has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict.

Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the

State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017

212-803-2414

email: mwbecertification@esd.ny.gov

<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

- (a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
- (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and
- (d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain.

NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this

provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS. To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made

under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

26. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the “Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012” (“Prohibited Entities List”) posted at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.