

**March 2011 Benchmarking Service Bureau Memorandum of Understanding
Between The City University of New York
and the
The City of New York**

RECITALS

WHEREAS, in 2009, the City of New York enacted Local Law 84/2009 (“the Local Law”) requiring that the owners of certain city-owned and private buildings annually benchmark the energy and water use within their buildings (“benchmarking compliance”);

WHEREAS, the Local Law mandates that owners use the online Energy Star Portfolio Manager program (“ESPM”), operated by the United States Environmental Protection Agency (“EPA”), to annually submit their energy and water use and comply with the Local Law;

WHEREAS, the Local Law authorizes the New York City Department of Buildings (“DOB”) to issue violations to those owners who fail to benchmark by May 1 of each year;

WHEREAS, The City University of New York (“CUNY”) has offered courses in the operation of ESPM through its Building Performance Lab (“CUNY BPL”) and, through these courses, has trained students to become proficient in the operation of ESPM;

WHEREAS, DOB and CUNY BPL expect that the public will benefit from a service that will provide individual, over-the-phone assistance to individuals with questions regarding the establishment of an account with ESPM and other general questions concerning ESPM;

WHEREAS, CUNY has entered into an Indemnification and Hold Harmless Agreement (“Agreement”) with the Department of Citywide Administrative Services (“DCAS”) to operate a Benchmarking Service Bureau (“BSB”) in two (2) rooms located on the third floor (“the Premises”) of 80 Centre Street, New York, New York (“80 Centre Street”) to be staffed by CUNY students (“Student Participants”) under the supervision of a CUNY Program Coordinator (“Program Coordinator”) to provide the above-described assistance as a free, public service. A copy of said Agreement, including a Map referencing the Premises, is attached hereto and made a part hereof;

WHEREAS, CUNY BPL will receive funding through a grant from the New York State Energy Research and Development Authority (NYSERDA) to

cover operating expenses to operate the BSB, including but not limited to the salaries and wages of the Program Coordinator and a stipend for the Student-Participants;

WHEREAS, CUNY BPL has requested that DOB provide telephones, computers, and printers to assist CUNY BPL in their operation of the BPL;

NOW, THEREFORE, CUNY and The City of New York ("City"), a municipal corporation of the State of New York, acting through its Department of Buildings ("DOB"), set forth their mutual understanding in the recitals and as follows:

I. GOALS OF THE CUNY BPL'S BENCHMARKING SERVICE BUREAU
CUNY BPL will operate the Benchmarking Service Bureau ("BSB"), a telephone call-center to assist New York City building owners in using ESPM to achieve benchmarking compliance, according to the Local Law.

The BSB will operate from the date of this agreement or the date of the receipt of funding, whichever is later, through the date on which compliance with the Local Law is due in 2011, but, in any event, no later than August 1, 2011, within the Premises at 80 Centre Street. Any of the parties may cancel this agreement with ten (10) days written notice.

II. RESPONSIBILITIES

CUNY's Student-Participants will each have a time commitment of 10 – 12 hours per week for the duration of the BSB. The responsibilities of the City, CUNY and CUNY BPL are listed below.

A. City:

1. Will provide the following equipment, on a loan basis, for use by the Program Coordinator and Student-Participants from date of this agreement or the date of the receipt of funding, whichever is later, through the date on which compliance with the Local Law is due in 2011, but, in any event, no later than August 1, 2011:

- 5- 6 personal computers;
- 1 printer;
- 5- 6 telephones;
- Desks and chairs for 5-6 individuals

Except as provided herein, this equipment shall be used exclusively for the operation of the BSB and not for any other purpose. Nor shall the equipment and other materials provided by the City be removed from the premises. City agrees to undertake any necessary service for the above equipment, to insure that said equipment functions properly, during the time in which the BSB is operational;



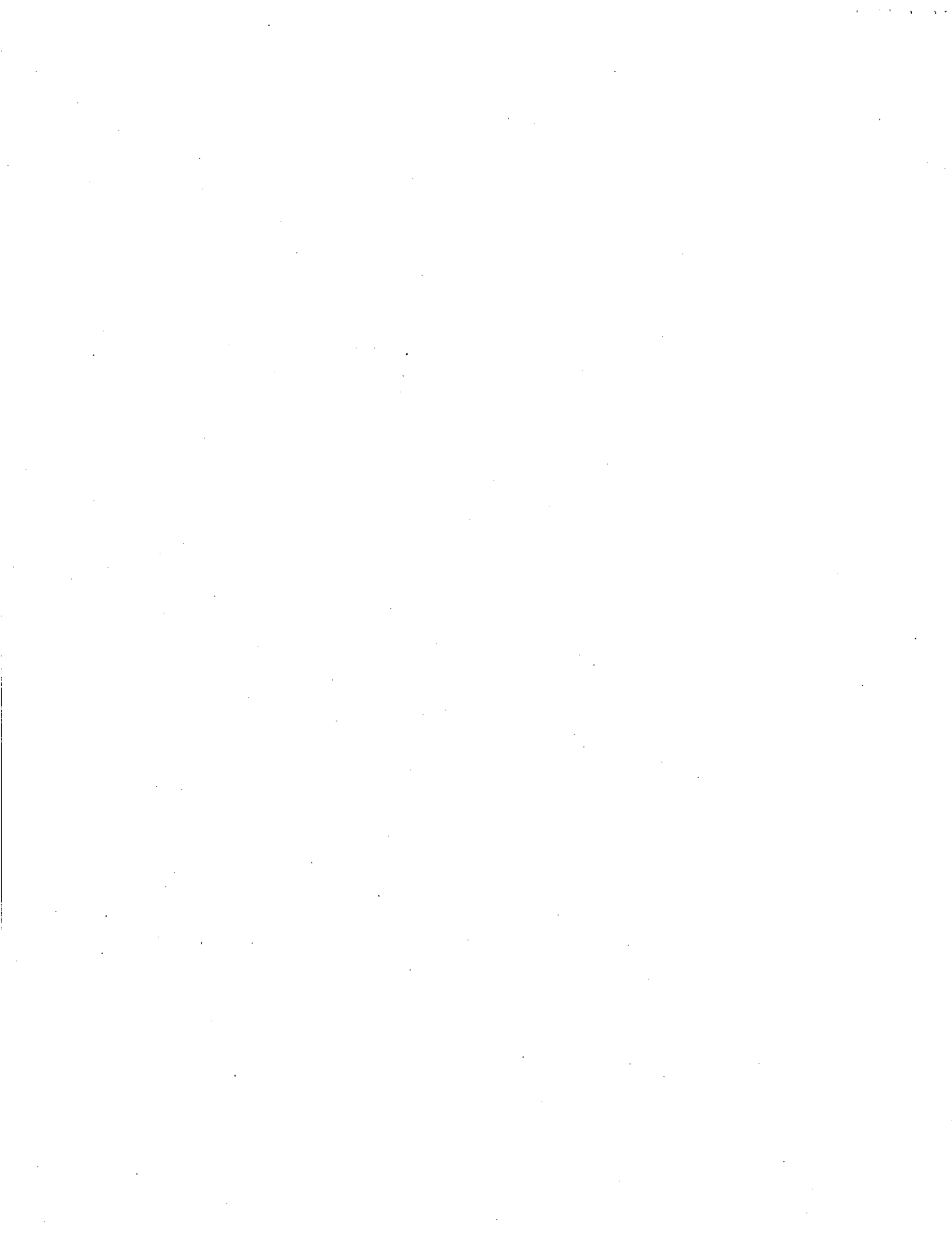
2. Will provide the Program Coordinator and the Student-Participants with DOB computer network IDs and with internet access;
3. Will not provide any financial compensation to either the Program Coordinator or the Student-Participants for any work performed.

B. CUNY:

1. Representing that CUNY is self-insured, CUNY will provide indemnification to the City per the attached Indemnification and Hold Harmless Agreement.

C. CUNY BPL:

1. Will operate a phone-line assistance call center (the "BSB") to assist all callers in familiarizing themselves with the ESPM;
2. Will operate the BSB contingent upon the receipt of funding in the form of a grant from NYSERDA;
3. Shall keep records of phone calls received and shall make such records available to DOB, upon DOB's request;
4. Will provide one (1) supervisor ("Program Coordinator") who shall:
 - Possess a master's degree or equivalent work experience in managing employees, customer service, quality control and data analysis;
 - Remain on-site at all times in which the BSB is operational;
 - Supervise the BSB activities of the Student-Participants;
 - Direct the Student-Participants, as appropriate, in the performance of their assigned tasks;
 - Ensure a safe and professional atmosphere at all times in which the BSB is operational;
5. In the event that the Program Coordinator cannot be on-site for any reason, including but not limited to illness, the BPL's Manager of Training and Compliance ("BPL Manager") shall act as the substitute Program Coordinator in their absence. In the event the BPL Manager is unavailable, the BSB shall not operate during that time. The BSB shall not be operative until either the Program Coordinator or the BPL Manager is available;
6. Expects to provide between 15 – 20 Student-Participants, each of whom agrees to commit between 10-12 hours per week to participate in the BSB. It shall be the responsibility of the CUNY BPL to schedule these Student-Participants so that up to 5-6 Student-Participants will be on-site at 80 Centre Street at all times in which the BSB is operational;
7. Expects to operate the BSB between the hours of 10 AM – 4 PM, Monday through Friday. In the event that CUNY BPL wishes to adjust these hours, the approval of CUNY, DCAS, and DOB shall be required prior to such adjustment;



8. Prior to entering 80 Centre Street, both Program Coordinator and the Student Participants shall present valid CUNY – issued identification to the front door security at 80 Centre Street;
9. In the event of emergency, the Program Coordinator shall contact the 24-hour DCAS Security hotline at 212-669-4300;
10. The tasks for each Student-Participant shall be limited to the following:
 - The Student-Participants should answer each incoming call to the BSB with the following greeting: “Good morning/afternoon, my name is [state name], a Student-Participant with the City University of New York’s Benchmarking Service Bureau. I am required to tell you that I am not an employee of the City of New York, or any City agency and that the information I provide you today is neither a communication nor instructions from the City of New York, or any City agency.”
 - Refer callers to ESPM website for new account registrations and assist clients with registration on the ESPM;
 - Assist callers in familiarizing themselves with basic data points in both their energy use and the ESPM;
 - Assist callers, as they are able, with general issues associated with benchmarking and the ESPM, including but not limited to gross square footage, gross floor area, meter types, and space types;
 - May refer callers to the websites of either DOB or the Mayor’s Office of Long Term Planning and Sustainability (OLTPS);
 - May refer callers who inquire about further benchmarking services, including training, to any government entity or not-for profit organization that can provide further information regarding such services, such as the New York State Energy Research and Development Authority (“NYSERDA”), the New York State chapter of the Association of Energy Engineers (“AEE”), and the Association for Energy Affordability (“AEA”). Any referral must be made with the following caveat: “We cannot recommend or endorse any particular provider.”
 - Will set up voice-mail on the provided phones and will respond to voice-mail messages on the next day of BSB operations;
 - Provide any necessary follow-up, consistent with the above tasks, by a subsequent phone call, in the event that the Student-Participant is unable to answer a question on the initial phone call.
11. The Program Coordinator and the Student-Participants are permitted limited personal use of the Internet in accordance with City policy as long as it does not interfere with the City’s operations or distract the Program Coordinator and/or the Student-Participants from their performance or productivity. The Internet should not be used for casual “surfing” or for entertainment purposes. Conducting a private commercial business using the Premises or 80 Centre Street or any other DOB or City resources is strictly prohibited.

12. Both the Program Coordinator and the Student-Participants shall be prohibited from the following:
- Identifying themselves as an employee or representative of the City of New York, DOB, or any agency of the City of New York;
 - Soliciting or receiving compensation or reward, of any type, other than the NYSERDA-funded salaries, wages, and stipend described above, for services they provide under the auspices of the BSB;
 - Referring or recommending any caller to any private, for-profit provider to complete the benchmarking requirement;
 - Completing the benchmarking report for any caller;
 - Offering assistance to any caller with any matters other than those described supra;
 - Prolonged personal use of the internet or the viewing or sharing of inappropriate material over the internet.
13. Shall notify DOB within twenty-four (24) hours in the event that any of the equipment described above is damaged.


III. CONFIDENTIALITY

The Program Coordinator and the Student-Participants will keep confidential all information obtained during the performance of their work for the BSB, except as provided above.

IV. EFFECTIVE DATE

The Effective Date of this Memorandum of Understanding shall be the last date of execution by the parties to this Memorandum of Understanding.

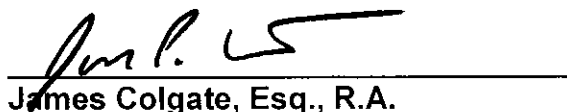
The City University of New York ("CUNY")


Frederick P. Schaffer

Date: 3/4/11

Senior Vice Chancellor for Legal Affairs and General Counsel

The City of New York - Department of Buildings ("DOB")

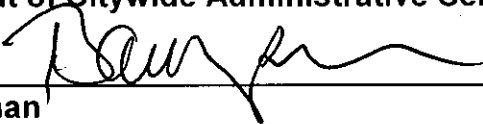

James Colgate, Esq., R.A.

Date: 3/8/11

Assistant Commissioner for Technical Affairs & Code Development

Acknowledged by:

The Department of Citywide Administrative Services ("DCAS")



Barry Gendelman
Assistant Commissioner

Date: 3/9/2011

Approved as to Form:



Steven Stein Cushman, Esq.
Acting Corporation Counsel

Date: 3/10/11

INDEMNIFICATION AND HOLD HARMLESS AGREEMENT

Indemnification and Hold Harmless Agreement made this 4th day of March, 2011 (the "Agreement") between the CITY OF NEW YORK ("CITY"), a municipal corporation of the State of New York, acting through its Department of Citywide Administrative Services, Division of Real Estate Services, having an address at 1 Centre Street, 19th Floor, New York, New York 10007, as Indemnitee and The City University of New York ("CUNY"), organized and operating pursuant to Article 125 of the New York State Education Law, having an address at 535 East 80th Street, New York 10075, as Indemnifier.

WITNESSETH

WHEREAS CITY is the owner in fee of the properties described as Block 166 , Lot 27 , in the borough of Manhattan, also known by its street designation 80 Centre Street, New York, New York 10007; and

WHEREAS, the "Premises" are two (2) rooms located on the third floor of 80 Centre Street, as highlighted in the map attached hereto and made a part hereof as Exhibit A;

WHEREAS, CUNY seeks to operate a Benchmarking Service Bureau assisting homeowners in "benchmarking" their energy use for 2010: and

WHEREAS, CITY has agreed to permit CUNY to operate the proposed call center on the Premises; and

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth, the parties hereto agree as set forth in the initial paragraph and the recitals and as follows:

1. CUNY is permitted by City to use the Premises commencing the date of this Agreement through the period as provided for in the March 2011 Benchmarking Service Bureau Memorandum of Understanding ("MOU") between the City University of New York and the City of New York, during normal business hours, for the purpose of operating a Benchmarking

Service Bureau ("BSB") to assist homeowners in "benchmarking" their energy use for 2010, as more fully set forth in the MOU.

2. CUNY covenants and agrees that to the extent permitted by law it shall forever:

Defend, indemnify and hold harmless CITY, its agents, representatives and employees from and against any and all risk of loss, damage or injury to person or property, **including but not limited to** any computers, printers and telephones used pursuant to this Agreement, related to this Agreement and the MOU and agrees that CITY, its agents, servants and employees shall be free from all liabilities and claims for damage and/or suits for or by reason of any injury or death to any person or property, of any kind whatsoever, whether to the person or property of CUNY, its agents, servants or employees, or of third persons, for any cause or causes whatsoever which may occur or arise only in relation to the MOU and during the Term of this Agreement. To the fullest extent allowed by law, CUNY agrees to indemnify and hold CITY harmless from any and all claims, actions, suits, proceedings, costs, losses, expenses, damages and liabilities, including attorney's fees, however occurring, arising out of or in any way related to CUNY's use of the Premises, or by any acts of omission or negligence on the part of CUNY or any of its agents, contractors, employees, or sublicensees, or by the execution of this Agreement, or which occur or arise only in relation to the MOU and during the Term of this Agreement.

To the fullest extent of the law, defend, indemnify and hold harmless CITY, its agents, representatives, and employees from and against any and all liens and encumbrances which may be placed, filed or recorded against the Premises as a result of work or other activities of any nature performed at the Premises by or on behalf of CUNY, whether pursuant to this Agreement or the MOU and, when, as, and if, any such lien or encumbrance is placed, filed or recorded against the Premises, to remove, satisfy or otherwise discharge the same.

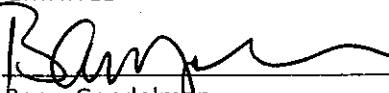
Should CUNY dispute the validity of any such lien or encumbrance placed, filed or recorded against the Premises, in lieu of removing, satisfying or discharging the same, CUNY may, at CITY's discretion and in a form satisfactory in scope and substance to CITY, furnish a bond or bonds in connection therewith. Such bond or bonds shall be in such form and amount as shall be approved by CITY, in its sole discretion.

Nothing in this Agreement shall be construed to relieve the CITY from responsibility to CUNY for any loss or damage caused CUNY wholly or in part by the negligent acts or omissions of the CITY; except, however, that the CITY shall not be responsible for any portion of such loss or damage which is recovered or recoverable by CUNY from any insurance covering such loss or damage caused, or for any portion of such loss or damage against which CUNY is indemnified or insured.

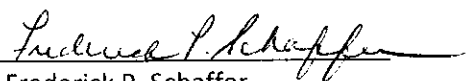
CUNY shall notify CITY of any damage or accident within twenty-four (24) hours of any occurrence on the Premises during CUNY's use of the Premises.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date hereinabove set forth.

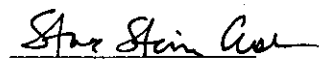
THE CITY OF NEW YORK
DEPARTMENT OF CITYWIDE
ADMINISTRATIVE SERVICES
DIVISION OF REAL ESTATE SERVICES
INDEMNITEE

By: 
Barry Gendelman
Assistant Commissioner

THE CITY UNIVERSITY OF NEW YORK
INDEMNIFIER

By: 
Frederick P. Schaffer
Senior Vice Chancellor for Legal Affairs
and General Counsel

Approved as to Form


Steve Stein Cushman
Acting Corporation Counsel

Date: 3/10/11

