

Procedure to Resolve Dispute

1. Generally

1.1. In relation to only this Contract, all claims, controversies or disputes the Contractor may have against CUCF, including, without limitation, all claims, controversies or disputes a Subcontractor or a supplier may have in relation to this Contract, (each a “Dispute”) to the extent permitted by law, shall be resolved exclusively by the procedure set forth in this Article. Without limitation, this procedure covers Disputes concerning: (1) the scope of the Work related to this Contract, (2) any direction given by CUCF or any governmental agency, (3) the performance by CUCF of its obligations under this Contract, (4) the interpretation of this Contract or of the Contract Documents, (5) if an amount, and what amount, if any, is to be paid for Work or Extra Work or disputed Work performed in connection with this Contract, (6) every payment to and by the Contractor, (7) the conformity of the Work with this Contract or the acceptability and quality of any portion or all of the Work, and (8) any combination of these. Independent of any other provision, time is of the essence to this procedure. The Contractor and its Subcontractors and suppliers grant CUCF the right to resolve any claim, controversy, or dispute between or amongst them arising under or related to the Contract, their subcontract, or the Project, including, without limitation, the right of CUCF to resolve any of these by direct payment on behalf of the Contractor to a Subcontractor or supplier with a corresponding charge against the Contractor’s balance under this Contract.

1.2. The terms of this Contract shall remain in full force and effect during the period this dispute resolution procedure is being followed with respect to any Dispute. The Contractor agrees to continue to perform its obligations hereunder during this period in accordance with this Contract and as directed by CUCF, including, without limitation, any and all matters covered by the Dispute. Failure of the Contractor to continue without delay to discharge its obligations hereunder, including, without limitation, to perform any Work, disputed Work and Extra Work as directed, shall constitute a material breach of this Contract and a waiver by the Contractor of each Dispute then under review in this procedure.

1.3. During the investigations integral to this procedure, each party shall provide to the other party copies of all information that each provides in response to any requests for information made by the Executive Director of the Department of Design, Construction and Management of CUNY (the “Executive Director”) and by the Vice Chancellor for Facilities Planning, Construction and Management of CUNY (the “Vice Chancellor”).

1.4. In any event the Contractor, either on its own behalf or on behalf of a subcontractor or supplier, fails (a) to submit timely any Notice of Dispute, Dispute Report, Notice of Appeal, or any other information or document required or requested to be provided or (b) to attend without good cause any meeting it is required or requested to attend, pursuant to this procedure, its Dispute shall be deemed waived, and CUCF shall be deemed released of all liability for it.

1.5. As either may deem appropriate from time to time, the Executive Director and Vice Chancellor each may obtain technical and other expertise for assistance in evaluating the information related to a Dispute. Each may use mediation and select as a neutral mediator a CUNY employee, who is from a department or office not under the supervision of the Executive Director or Vice Chancellor, or hire a neutral mediator, who is not employed by CUCF or CUNY; the Contractor agrees to pay CUCF

one-half of any fee for the services of a mediator not employed by CUCF or CUNY. All mediation sessions shall be confidential and the parties agree that no mediation session may be the sole source of any information used in any other forum, such as litigation of the Dispute.

2. Commencement

Within fifteen (15) business days of any act or omission that gives rise to a Dispute, the Contractor, both on its own behalf and on behalf of its subcontractors and suppliers, must submit to the Executive Director written notice of its Dispute. In each such notice, the Contractor must identify (a) the date on which the Dispute arose, and (b) a brief description of it (with the elements specified in (a) and (b) hereof comprising a “Notice of Dispute”). The Contractor may add other information it deems relevant. This notice requirement shall not replace any other notice requirement set forth in this Contract. For cause, the Executive Director may extend in writing by no more than ten (10) business days the period within which the Contractor may file the Notice of Dispute.

3. Filing the Dispute

Within twenty (20) business days after submission of a Notice of Dispute, the Contractor must submit to the Executive Director an original and one copy (a) of a full written description of its Dispute, (b) of the resolution it requests CUCF to adopt, (c) of all documentation related to the Dispute, such as written orders from CUCF, and, as to any resolution that includes a payment of any sum, all supporting documentation that specifies the sum at issue and all computations required to arrive at the sum, and (d) of any other findings or decisions the Contractor asks CUCF to reach (with all of these elements comprising a “Dispute Report”). The Contractor may add other information it deems relevant. For cause, the Executive Director and the Vice Chancellor may extend in writing by no more than ten (10) business days the period within which the Contractor may file the Dispute Report.

4. Investigation, Meetings, and Notice of Appeal

4.1. After receipt of the Dispute Report, the Executive Director shall investigate it, may require additional information from CUCF staff and from the Contractor, and may convene meetings with the Contractor, including the relevant sub-professional, and CUCF staff to resolve the Dispute. The Executive Director may resolve the Dispute by negotiating terms acceptable to both the Contractor and CUCF (a “Negotiated Resolution”). The Executive Director shall put in writing any Negotiated Resolution to be executed by the Contractor and CUCF. Alternatively, after completing this investigation of the Dispute, the Executive Director may issue written findings and resolve the Dispute unilaterally, without negotiation, in a written decision (a “Unilateral Resolution”) that CUCF shall send to the Contractor by certified mail, return receipt requested, and to the CUCF staff for implementation. Any Unilateral Resolution rendered by the Executive Director, and not timely appealed by the Contractor pursuant to the procedure described below, shall be final and binding upon the parties upon expiration of the tenth day after the Contractor receives any such Unilateral Resolution.

4.2. The Contractor, on its own behalf and on behalf of a sub-professional, may request an appeal (a) if the Executive Director is unable to reach a Negotiated Resolution or (b) the Contractor receives a Unilateral Resolution with which the Contractor disagrees. The Contractor must commence any such appeal by submitting a written notice to the Vice Chancellor requesting the Vice Chancellor to

resolve the Dispute or to revise the Unilateral Resolution, as the case may be (“Notice of Appeal”). The Contractor must file the Notice of Appeal within thirty (30) consecutive calendar days after the Executive Director receives the Dispute Report in the case of a failure to reach a Negotiated Resolution or, within ten (10) consecutive calendar days after the Contractor receives any Unilateral Resolution with which the Contractor disagrees. In addition, the Contractor must submit to the Executive Director a copy of the Notice of Appeal.

5. Appeal

After receipt of the Contractor’s Notice of Appeal, the Vice Chancellor shall investigate the Dispute, may require additional information from CUCF staff and from the Contractor, and may meet with the Contractor, including any relevant sub-professional, and CUCF staff to resolve the Dispute. The Vice Chancellor may resolve the Contractor’s Dispute by negotiating terms acceptable to both the Contractor and CUCF. The Vice Chancellor shall put in writing any such resolution to be executed by the Contractor and the CUCF. Alternatively, after completing this investigation of the Dispute, the Vice Chancellor may issue written findings and resolve the Dispute unilaterally, without negotiation, in a written final decision that CUCF shall provide to the Contractor and to the Executive Director for implementation. If the Vice Chancellor is unable to resolve the Dispute within thirty (30) consecutive calendar days of receiving the Notice of Appeal or if within ten (10) consecutive calendar days after the Contractor receives from the Vice Chancellor a written final decision with which the Contractor disagrees, the Contractor, on its own behalf and on behalf of a sub-professional, agrees that its only remedy shall be an appeal pursuant to Article 78 of the Civil Practice Laws and Rules of the State of New York.