

# DISPUTE RESOLUTION PROVISIONS

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The following dispute resolution procedures shall apply for any disputes initiated by the Lessor and these provisions are incorporated by reference in the Lease Agreement:

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### 1. PROCEDURE FOR PRELIMINARY RESOLUTION EFFORTS.

- a. **REQUEST FOR PRELIMINARY RESOLUTION EFFORT (PRE).** A Lessor raising an issue related to a breach of this Lease Agreement or an issue concerning time or money shall file a PRE as a prerequisite for any consideration of the issue by the Division of Facilities Construction and Management ("DFCM" or "Lessee"). The labeling of the notice or request shall not preclude the consideration of the issue by the DFCM.

- b. TIME FOR FILING.** The PRE must be filed in writing with the DFCM Real Estate Section Manager (DFCM Manager) within twenty-one (21) days after Lessor knew or should have known of an event for initiating the Pre. This shall not eliminate any right of the Lessee to the cure period as described in the Lease Agreement.
- c. CONTENT REQUIREMENT.** The PRE shall be required to include in writing to the extent information is reasonably available at the time of such filing:

  - (1) a description of the issue;
  - (2) the potential impact on cost and time or other breach of the lease; and
  - (3) an indication of the relief sought.
- d. SUPPLEMENTATION.** Additional detail of the content requirement above shall be provided later if the detail is not yet available at the initial filing as follows:

  - (1) While the issue is continuing or the impact is being determined, the Lessor shall provide a written updated status report every 30 days or as otherwise reasonably requested by the DFCM Manager; and
  - (2) After the scope of work or other factors addressing the issue are completed, the complete information, including any impacts on time, cost or other relief requested, must be provided to the DFCM Manager within twenty-one (21) days of such completion.
- e. PRE RESOLUTION PROCEDURE.** The DFCM Manager may request additional information and may meet with the parties involved with the issue.
- f. LESSOR REQUIRED TO CONTINUE PERFORMANCE.** Pending the final resolution of the issue, unless otherwise agreed upon in writing by the DFCM Manager, the Lessor shall proceed diligently with performance of the Lease Agreement and the State shall continue to make payments in accordance with the Lease Agreement.
- g. DECISION.** The DFCM Manager shall issue to the Lessor, and any other party brought into the process by the DFCM Manager as being liable to the DFCM, a written decision providing the basis for the decision on the issues presented by all of the parties within thirty (30) days of receipt of all the information required under this Dispute Resolution Section 1. c. and d. above.
- h. DECISION FINAL UNLESS CLAIM SUBMITTED.** The decision by the DFCM Manager shall be final, and not subject to any further administrative or judicial review (not including judicial enforcement) unless a Claim is submitted in accordance with Claim provisions of this Dispute Resolution Section below.
- i. EXTENSION REQUIRES MUTUAL AGREEMENT.** Any time period specified in these PRE provisions may be extended by mutual agreement of the Lessor and the DFCM Manager.

**j. IF DECISION NOT ISSUED.** If the decision is not issued within the thirty (30) day period, including any agreed to extensions, the issue may be pursued as a Claim under the Claim provisions below.

**k. PAYMENT.**

(1) Except as otherwise provided in the Lease Agreement, any final decision where the DFCM is to pay additional monies to the Lessor, shall not be delayed by any PRE, Claim or appeal by another party.

(2) Payment to the Lessor of any final decision shall be made in accordance with the Lease Agreement for the complete performance of the Lessor of its obligations.

(3) Notwithstanding any other provision of the Lease Agreement, payment to the Lessor shall be subject to any set-off, claims or counterclaims of the DFCM.

(4) Any payment or performance determined owing by the Lessor to the DFCM shall be made within thirty (30) days of the determination becoming final.

**2. RESOLUTION OF CLAIM.**

**a. CLAIM.** If the decision on the PRE is not issued within the required timeframe or if the Lessor is not satisfied with the decision, the Lessor or other party brought into the process by the DFCM Manager, may submit a Claim in accordance with this Dispute Resolution Section 2 as a prerequisite for any further consideration by the DFCM or the right to any judicial review of the issue giving rise to the claim.

**b. TIME FOR FILING.** The Claim must be filed in writing promptly with the Director of DFCM (Director), but in no case more than twenty-one (21) days after the decision is issued on the PRE under Dispute Resolution Section 1 g. above or no more than twenty-one (21) days after the decision is not issued under Dispute Resolution Section 1 j. above, whichever is later.

**c. CONTENT REQUIREMENT.** The written Claim shall include:

(1) a description of the issues in dispute;

(2) the basis for the Claim, including documentation and analysis required by the contract and applicable law and rules that allow for the proper determination of the Claim;

(3) a detailed cost estimate for any amount sought, including copies of any related invoices; and

(4) a specific identification of the relief sought.

**d. EXTENSION OF TIME TO SUBMIT DOCUMENTATION.** The time period for submitting documentation and any analysis to support a Claim may be extended by the Director upon written request of the Claimant showing just cause for such extension, which request must be included in the initial Claim submittal.

- e. **LESSOR REQUIRED TO CONTINUE PERFORMANCE.** Pending the final determination of the Claim, including any judicial review or appeal process, and unless otherwise agreed upon in writing by the Director, the Lessor shall proceed diligently with performance of its responsibilities and obligations under the Lease Agreement and the State shall continue to make payments in accordance with the Lease Agreement.
- f. **AGREEMENT OF CLAIMANT ON METHOD AND PERSON(S) EVALUATING THE CLAIM.** The Director shall first attempt to reach agreement with the Claimant on the method and person(s) to evaluate the Claim. If such agreement cannot be made within fourteen (14) days of filing of the Claim, the Director shall select the method and person(s), considering the purpose of this rule as stated in Utah Administrative Code Rule R23-26-1. Unless agreed to by the Director and the Claimant, any selected person shall not have a conflict of interest or appearance of impropriety. Any party and the person(s) evaluating the Claim has a duty to promptly raise any circumstances regarding a conflict of interest or appearance of impropriety. If such a reasonable objection is raised, and unless otherwise agreed to by the Director and the Claimant, the Director shall take appropriate action to eliminate the conflict of interest or appearance of impropriety. The dispute resolution methods and person(s) may include any of the following:
- (1) A single expert and/or hearing officer qualified in the field that is the subject of the Claim;
  - (2) An expert panel, consisting of members that are qualified in a field that is the subject of the Claim;
  - (3) An arbitration process which may be binding if agreed to by the parties to the Claim;
  - (4) A mediator; or
  - (5) Any other method that best accomplishes the purpose of Section R23-26-1.
- g. **THE EVALUATION PROCESS, TIMEFRAMES OF EVALUATOR(S), DIRECTOR'S DETERMINATION, ADMINISTRATIVE APPEAL TO THE EXECUTIVE DIRECTOR AND JUDICIAL REVIEW.** The Claim shall be evaluated, the timeframe for specific events related to the person(s) evaluating the Claim, the Director's determination, any appeal to the Executive Director and any judicial review shall be subject to the provisions of Utah Administrative Code Rules R23-26-5(8), R23-26-5(9), R23-26-6 and R23-26-8.
- h. **PROCESS PREREQUISITE FOR FURTHER CONSIDERATION OR JUDICIAL REVIEW.** The administrative appeal to the Executive Director is a prerequisite for any further consideration by the State of Utah, or to judicial review of the issue giving rise to the Claim. It shall be considered that the Lessor, or another party brought into the process by the DFCM, has not exhausted its administrative remedies if such an administrative appeal is not undertaken.
- i. **PAYMENT OF CLAIM.**
- (1) When a stand alone component of a Claim has received a final determination, and is no longer subject to review or appeal, that amount shall be paid in accordance with the payment provisions of the Lease Agreement or judicial order.

- (2) When the entire Claim has received a final determination, and is no longer subject to review or appeal, the full amount shall be paid within fourteen (14) days of the date of the final determination unless the work (including responsibilities and obligations of the Lessor under the Lease Agreement) or services has not been completed, in which case the amount shall be paid in accordance with the payment provisions of the Lease Agreement to the point that the work or services is completed.
- (3) The final determination date is the earlier of the date upon which the Claimant accepted the settlement in writing with an executed customary release document and waived its rights of appeal, or the expiration of the appeal period, with no appeal filed, or the determination made resulting from the final appeal.
- (4) Any final determination where the DFCM is to pay additional monies to the Lessor shall not be delayed by any appeal or request for judicial review by another party brought into the process by the DFCM as being liable to the DFCM.
- (5) Notwithstanding any other provision of the Lease Agreement, payment of all or part of a Claim is subject to any set-off, claims or counterclaims of the DFCM.
- (6) The execution of a customary release document related to any payment may be required as a condition of making the payment.

**j. CLAIM FEE; ALLOCATION OF COSTS OF CLAIM RESOLUTION PROCESS.**

- (1) In order to file a Claim, a Lessor must pay a \$1500 filing fee to the DFCM.
- (2) Unless otherwise agreed to by the parties to the Claim, the costs of resolving the Claim shall be allocated among the parties on the same proportionate basis as the determination of financial responsibility for the Claim.
- (3) The costs of resolving the Claim that are subject to allocation include the Lessor's filing fee, the costs of any person(s) evaluating the Claim, the costs of making any required record of the process, and any additional testing or inspection procured to investigate and/or evaluate the Claim.
- (4) Each party is responsible for its own attorney fees.

**k. ALTERNATIVE PROCEDURES.** To the extent otherwise permitted by law, if all parties to a Claim agree in writing, a protocol for resolving a Claim may be used that differs from the process described in the Lease Agreement.

**l. IMPACT ON FUTURE SELECTIONS.**

- (1) The presentation of a good faith and non-frivolous issue or Claim shall not be considered by the DFCM's selection process for a future award of a lease or other contract by DFCM; and

(2) The submission of a bad faith and frivolous issue or Claim or the failure by a Lessor to facilitate resolution of a Claim, may be considered in the DFCM's evaluation of performance and may affect the future award of a lease or other contract by DFCM.

**m. REPORT TO BUILDING BOARD.** The DFCM may report on the claim to the Utah State Building Board.