5.1 Bond Requirements.

5.1.1 The Design-Builder, after acceptance of the GMP by the Owner and prior to the start of any Construction Phase Services by the Design-Builder, shall furnish to the Owner performance and payment bonds, satisfactory in form to the Owner each in a penal sum equal to one hundred percent (100%) of the GMP. These surety bonds in the form attached hereto as Attachment 2 to these General Conditions are not to be expressly limited as to time in which action may be instituted against the surety company. The bonds shall be furnished on Owner’s forms and shall be executed by a surety company authorized to do business in the State of Arizona and shall strictly comply with ABOR Policy 3-804E, which policy shall control in the event of any conflict of the Bonds, or either of them with the requirements of these General Conditions. Individual sureties and default type insurance will not be accepted by Owner as a substitute for the requisite Design-Builder performance and payment bonds.

5.1.2 The Owner may require each proposed Subcontractor whose subcontract amount will be $100,000 or more to furnish a performance bond on Owner’s form or on a form approved by Owner, which provides equal or better coverage, for the full amount of its subcontract. This bond shall be obtained by the Subcontractor as a separate entity and the cost shall be included in the Subcontractor’s bid to the Design-Builder. Alternatively, in place of Subcontractor performance bonds, if approved in advance by the Owner, the Design-Builder may provide Subcontractor default protection that is equivalent or better than bonds provided by the Subcontractors. The cost of such default protection shall be included in the GMP.

5.2 Design-Builder’s Insurance Requirements

5.2.1 The Design-Builder shall not commence any Work until it obtains all required insurance and bonds and furnishes satisfactory proof thereof to the Owner. The Design-Builder shall not permit Subcontractors to commence Work until insurance and bond requirements have been complied with by Subcontractor. The Design-Builder shall cause its Subcontractors and Subconsultants to maintain the same minimum scope and limits of insurance as is required of the Design-Builder, unless Owner otherwise agrees in writing to reduce the limits for specifically named Subcontractors and Subconsultants.

5.2.2 Insurance coverage assuring the adequacy of the Design-Builder’s performance and warranty obligations shall be maintained for the full warranty period specified in Section 2.9.1 and any specific guarantee or warranty available by law.

5.3 Minimum Scope and Limits of Insurance

5.3.1 Without limiting any liabilities or any other obligations of the Design-Builder, the Design-
Builder shall provide and maintain, and cause its Subconsultants and Subcontractors to provide and maintain, insurance coverage in forms and with duly licensed or approved non-admitted insurers in the state of Arizona and rated at least A-VII in the current A.M. Best Company ratings. The Owner in no way warrants that the above-required minimum insurer rating is sufficient to protect the Design-Builder or any Subconsultant or Subcontractor from potential insurer insolvency.

5.3.2 Worker's Compensation Insurance. Design-Builder shall procure and maintain worker's compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of the Design-Builder, its employees, or both, engaged in the performance of services under a DB Agreement. Design-Builder shall maintain coverage through Final Completion for all employees engaged in the performance of services under a DB Agreement, and shall maintain coverage through the full warranty period specified herein for all employees that perform services at the project site after Final Completion, and during the full warranty period.

<table>
<thead>
<tr>
<th>Worker’s Compensation</th>
<th>Statutory</th>
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<tbody>
<tr>
<td>Employer’s Liability</td>
<td></td>
</tr>
<tr>
<td>Each Accident</td>
<td>$ 1,000,000</td>
</tr>
<tr>
<td>Disease – Each Employee</td>
<td>$ 1,000,000</td>
</tr>
<tr>
<td>Disease – Policy Limit</td>
<td>$ 1,000,000</td>
</tr>
</tbody>
</table>

Policy shall contain a waiver of subrogation against the State of Arizona, the Arizona Board of Regents, Arizona State University and their officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Design-Builder.

This requirement shall not apply to: Separately, each contractor, Subcontractor or Subconsultant that is exempt under A.R.S. 23-901, and when such contractor, Subcontractor or Subconsultant executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.

5.3.3 Commercial General Liability Insurance. The policy shall be an occurrence form policy and shall include coverage for bodily injury, broad form property damage (including completed operation), personal injury (including coverage for contractual and employee acts), and blanket contractual products. Said policy shall contain a severability of interest provision, and shall not contain any provision which would serve to eliminate third-party action over claims.

- General Aggregate $2,000,000
- Products – Completed Operations Aggregate $1,000,000
- Personal and Advertising Injury $1,000,000
- Blanket Contractual Liability – Written and Oral $1,000,000
- Fire Legal Liability $50,000
- Each Occurrence $1,000,000

Design-Builder shall maintain coverage through Final Completion for Design-Builder and all Subcontractors and Subconsultants engaged in the performance of services under a DB Agreement. Design-Builder shall maintain coverage through the full warranty period specified herein for
Design-Builder and cause its Subcontractors that perform services at the Project Site after Final Completion to do the same, during the full warranty period.

The policy shall be endorsed to include the following additional insured language: “The State of Arizona, the Arizona Board of Regents, Arizona State University, and their officers, officials and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Design-Builder".

The policy shall contain a waiver of subrogation against the State of Arizona, the Arizona Board of Regents, Arizona University, and their officers, officials, and employees for losses arising from work performed by or on behalf of the Design-Builder.

Design-Builder agrees that for any project within the City of Phoenix limits it will, in addition to the limits set forth above, procure and maintain a minimum limit for General Aggregate of its Commercial General Liability Insurance policy of at least $5,000,000. Worker’s Compensation Insurance, Commercial General Liability Insurance and Business Automobile Liability Insurance policies shall name the City of Phoenix as an additional insured and will include a waiver of subrogation against the City of Phoenix. This requirement to add the City of Phoenix is in addition to the standard required endorsement as additional insured and waiver of subrogation in each insurance policy listed herein.

5.3.4 Business Automobile Liability Insurance. Design-Builder shall procure and maintain commercial/business automobile liability insurance with a minimum, combined single limit for bodily injury and property damage of not less than $1,000,000.00 each accident with respect to the Design-Builder’s owned, hired, or non-owned vehicles assigned to or used in performance of the services.

If Hazardous Materials or waste are to be transported, the Commercial Automobile Liability insurance shall be endorsed with the MCS-90 endorsement in accordance with applicable legal requirements.

Design-Builder shall maintain coverage through Final Completion for Design-Builder and all Subcontractors engaged in the performance of services under a DB Agreement. Design-Builder shall maintain coverage through the full warranty period specified herein for Design-Builder and cause its Subcontractors that perform services at the project site after Final Completion to do the same, during the full warranty period.

5.3.5 Builder’s Risk Insurance. Design-Builder shall provide and maintain, until written notice of Substantial Completion from the Owner, a Builder’s All Risk Insurance Policy, which will protect the interests of the Owner and contractors of all tiers against loss as specified below. This policy shall provide coverage for 100% of the insurable value of the Work, including any Owner furnished work. The insurance shall provide replacement cost coverage for all real and personal property incorporated into the Work including engineered and project specific false works and formings, while at the project Site, off-site, or in transit. Coverage shall be extended to include soft costs (such as reasonable compensation for Design Professional, Owner and contractors’
services and expenses required as a result of an insured loss, excluding any Liquidated Damages), extra expense, and expediting expense.

The insurance obtained under this Section 5.3.5 shall insure against “all risks” of direct physical loss or damage, including, without duplication of coverage, collapse, earthquake, flood, testing and startup, and ensuing damage as a result of faulty workmanship or material or both.

The policy shall name the State of Arizona, Arizona Board of Regents, and Arizona State University as loss payee for all covered losses as their interests may appear.

The Builder’s Risk policy shall be endorsed waiving the carrier’s right of recovery under subrogation against the Owner, Design-Builder and Subcontractors, for losses covered under the Builder’s Risk policy.

The Design-Builder shall be responsible for the deductible on each loss and shall retain responsibility for any loss not covered by the Builder’s Risk policy.

The Design-Builder shall be solely responsible for any required notice to or consent of the insurer providing the Builder’s Risk coverage a) a covered event or occurrence and b) occupancy of the Work, or a portion thereof, by the Owner.

This insurance shall not cover any contractor’s equipment, including, but not limited to machinery, tools, equipment, or other personal property owned, rented, or used by the Design-Builder or Subcontractors in the performance of their work on the Work, which will not become a part of the Work to be accepted by the Owner.

5.3.6 Professional Liability Insurance.

<table>
<thead>
<tr>
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<th>$3,000,000</th>
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</thead>
<tbody>
<tr>
<td>Each Claim</td>
<td>$3,000,000</td>
</tr>
<tr>
<td>Annual Aggregate</td>
<td>$3,000,000</td>
</tr>
</tbody>
</table>

These limits may be lowered for DP’s Subconsultants with written approval from Owner.

The policy shall cover negligence, errors and omissions, and lack of ordinary skill for those positions defined in the Scope of Work of a DB Agreement and, except as set forth below, shall be an occurrence form policy.

In the event that the professional liability insurance required by a DB Agreement is written on a claims-made basis, Design-Builder warrants that any retroactive date under the policy shall be no later than the effective date of a DB Agreement, and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time of Final Completion.

Design-Builder is required to maintain unimpaired aggregate limits for this insurance. In the event aggregate limits become impaired by claims or payments during the coverage term required by a DB Agreement, Design-Builder shall notify Owner within 30 days of becoming aware of such impairment, and shall procure additional coverage to restore full aggregate limits. Any new
coverage procured must have a retroactive date no later than the date the original limits became impaired.

Policy shall contain a waiver of subrogation against the State of Arizona, the Arizona Board of Regents, Arizona State University, and their officers, officials, and employees for losses arising from work performed by or on behalf of the Design-Builder.

5.3.7 Umbrella/Excess Liability Insurance. Design-Builder shall procure and maintain Umbrella/Excess insurance covering General, Automobile and Employers Liability in excess of scheduled primary limits, with minimum policy limits as reflected in the table below.

The Umbrella/Excess insurance policy shall include a drop-down provision. In the event of the depletion or exhaustion of the Design-Builder’s underlying policy aggregate(s) by payment of loss, the umbrella/excess policy shall continue for subsequent losses as follows:

In the event of such depletion, it shall continue for subsequent losses as excess insurance over the amount of insurance remaining under the underlying insurance, subject to the policy limits.

In the event of such exhaustion it shall continue for subsequent losses as primary insurance excess of any retention specified in the excess policies.

<table>
<thead>
<tr>
<th>Total Project Budget</th>
<th>Required Excess/Umbrella Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>$0 - $2 M</td>
<td>$0</td>
</tr>
<tr>
<td>$2M - $10M</td>
<td>$2M per occurrence, $2M aggregate</td>
</tr>
<tr>
<td>$10M - $25M</td>
<td>$5M per occurrence, $5M aggregate</td>
</tr>
<tr>
<td>$25M - $100M</td>
<td>$10M per occurrence, $10M aggregate</td>
</tr>
<tr>
<td>Greater than $100M</td>
<td>$25M per occurrence, $25M aggregate</td>
</tr>
</tbody>
</table>

Design-Builder shall maintain Umbrella/Excess Liability coverage through Final Completion for Design-Builder and cause its Subcontractors engaged in the performance of services under a DB Agreement to do the same. Design-Builder shall maintain coverage through the full warranty period specified herein for Design-Builder and all Subcontractors that perform services at the Project Site after Final Completion, during the full warranty period.

5.3.8 Additional Policy Requirements. The policies required by Sections 5.3.3 (Commercial General Liability), Section 5.3.4 (Business Automobile Liability), and Section 5.3.5 (Builder’s Risk) shall include, or be endorsed to include, the following provisions:

The State of Arizona, the Arizona Board of Regents, Arizona State University, and their officers, officials and employees wherever additional insured status is required. Such additional insured shall be covered to the full limits of liability purchased by the Design-Builder, even if those limits of liability are in excess of those required by a DB Agreement.

The Design-Builder’s insurance coverage shall be primary insurance with respect to all other available sources, except for Worker’s Compensation. Any self-insurance or other insurance carried by the State of Arizona, the Arizona Board of Regents, and Arizona State University, their
officers, or employees, if any, shall be excess and not contributory to the insurance provided by the Design-Builder.

Coverage provided by the Design-Builder shall not be limited to the liability assumed under the indemnification provisions of this Contract.

5.3.9 Proof of Insurance. Design-Builder shall provide to the Owner certificates of insurance (ACORD form or equivalent approved by the Owner) evidencing the coverages required herein as proof that the policies providing the required coverages are in full force and effect prior to the Design-Builder’s performing any work on the premises of the Owner. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All of the above conditions shall be clearly shown on each certificate. Such certificates shall identify a DB Agreement or be an annual or periodic certificate stating that it covers any and all projects or work performed by the Design-Builder during said period. Coverage afforded under the policies will not be canceled, terminated or materially altered until at least thirty (30) days' prior written notice has been provided by the Design-Builder to the Owner as evidenced by a return receipt signed by the Owner. Certificates of insurance should be addressed as follows:

    Arizona Board of Regents, State of Arizona, Arizona State University
    P.O. Box 875212
    Tempe, AZ  85287-5212

If the Design-Builder is a joint venture involving two (2) or more entities, then each independent entity will satisfy the limits and coverages specified here or the joint venture will be named insured under each policy.

Owner has the right to request and to receive, within ten (10) working days, certified copies of any or all of the policies and/or endorsements required in a DB Agreement. Owner shall not be obligated to review same or to advise Design-Builder of any deficiencies in such policies and endorsements, and such receipt shall not relieve Design-Builder from, or be deemed waiver of, Owner's right to insist on strict fulfillment of Design-Builder’s obligations under a DB Agreement.

5.3.10 Failure to Provide or Maintain Insurance. Failure on the part of the Design-Builder to procure or maintain the required insurance shall constitute a material breach of a DB Agreement upon which the Owner may immediately terminate a DB Agreement, or at its discretion procure new or renew such insurance and pay all premiums in connection therewith, and all monies so paid by the Owner shall be repaid by the Design-Builder to the Owner upon demand, or the Owner may offset the cost of such premiums together with interest at the statutory legal rate against any money due the Design-Builder from the Owner. Costs for coverages maintained by the Design-Builder in excess of those required hereunder shall not be charged to the Owner.

5.3.11 Authorization to Obtain Information. The Owner may, and the Design-Builder hereby authorizes the Owner to, request and receive directly from insurance companies utilized by the Design-Builder, in meeting the insurance requirements any and all information reasonably considered necessary in the sole discretion of the Owner.
5.3.12 Waiver. Design-Builder and its insurers providing the coverages above shall and do hereby waive all rights of recovery against the State of Arizona, the Arizona Board of Regents, Arizona State University, and their officers and employees.

5.3.13 Claim Reporting. Any failure to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policy to protect Owner.

5.3.14 Self-insurance. The policies specified herein may provide coverage, which contains deductibles or self-insured retentions. Such deductibles and/or self-insured retentions shall not be applicable with respect to the coverage provided to Owner under such policies. The Design-Builder shall be solely responsible for deductible and/or self-insured retention, and Owner, at its option, may require the Design-Builder to secure the payment of such deductible or self-insured retention by a surety bond or an irrevocable and unconditional letter of credit.

5.3.15 Cancellation of Insurance. In the event any insurance coverage required in their Section 5 for the Work is canceled, reduced, or terminated, Design-Builder agrees to provide notice to Owner and replace the insurance without any lapse of protection to Owner. If such coverage is not replaced, or Design-Builder fails to meet any of the requirements for insurance listed above, Owner may at its option immediately terminate the Agreement between Owner and Design-Builder, or in Owner’s discretion, procure or renew such missing insurance coverage and pay the premiums therefore. Any such premium amounts paid by Owner shall be repaid by Design-Builder upon demand, or Owner if not paid, may offset the premium cost plus interest at the legal rate from Design-Builder’s Final Payment under the Agreement. Except for the Builder’s Risk coverage, the Owner's exercise of its option to occupy and use completed portions of the Work shall not relieve the Design-Builder of its obligation to maintain insurance required under the insurance provisions of a DB Agreement until the date of Final Completion and/or the expiration of the warranty period as specified in 5.3.2, 5.3.3, 5.3.4, and 5.3.7 above.

5.3.16 Contractual Obligations. The stipulation of insurance coverages in this Section 5.3 or elsewhere, shall not be construed to limit, qualify, or waive any liabilities or obligations of Design-Builder, assumed or otherwise, under a DB Agreement.