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**ARIZONA STATE UNIVERSITY**  
**STANDARD FORM AGREEMENT BETWEEN OWNER AND CM@RISK**  
**ON THE BASIS OF A GUARANTEED MAXIMUM PRICE**

**June 1, 2021 Edition**

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This “**Agreement**” is made this \_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_, by and between Owner: **Arizona Board of Regents** (“ABOR”), for and on behalf of **Arizona State University** (“ASU”), located at 1551 S Rural Road, Tempe, AZ 85281, and **Construction Manager at Risk [Contractor Firm Name]** (“**CM@RISK**”), located at \_\_\_\_\_, (each a “Party” or collectively the “Parties”) for services in connection with the following Project: [number, name, location, and general description] (the “**Project**”), the Construction Documents for which are or will be prepared by \_\_\_\_\_ (“**Design Professional**” or “**DP**”).

In consideration for the mutual covenants and obligations contained herein, Owner and CM@Risk agree as set forth herein.

## **Article 1      Scope of Work**

**1.1** CM@Risk shall perform all needed services in the Pre-Construction and Construction Phases of the Project, and provide all material, equipment, tools, and labor necessary to satisfactorily complete all work, deliverables and services described in and reasonably inferable from the Contract Documents (collectively “Scope of Work”, “Project Work” or “the Work”). The Parties agree that this Agreement shall not be effective as a contract for Construction Phase services until such time as the Parties agree on a Guaranteed Maximum Price (GMP) and Construction Phase Fee in the form of a written amendment to this Agreement specifically incorporating those contract terms.

**1.1.1** Subphasing of Pre-Construction Phase. Phase I is defined to include the \_\_\_\_\_ subphases of the Pre-Construction Phase. Phase II is defined to include the \_\_\_\_\_ subphases of the Pre-Construction Phase. Current Pre-Construction Phase services are authorized for Phase [x] only.

**1.1.2** Subphasing of Construction Phase. The CM@Risk shall provide recommendations, during the Pre-Construction Phase, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The CM@Risk shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues. If the Owner elects to do the construction of the Project in phases, the Owner will give written notice to CM@Risk, requesting a phased GMP. The GMP for the phased Scope of Work will be incorporated into the Agreement according to Section 2.1.10 of the “Exhibit A – CM@Risk General Conditions”.

[OR]

The Parties agree that the Work may be completed through multiple, phased GMPs which, with the final GMP, will be rolled into one GMP for the Work. If the Owner elects

to require CM@Risk to perform the Work in phased GMPs, the Owner will provide written notice to CM@Risk during the Pre-Construction Phase, requesting an initial GMP for an initial limited Scope of Work. The Parties shall thereafter agree on another GMP, or series of GMPs, for the remaining portions of the Work, which shall, when the final phased GMP is proposed, be rolled into one GMP for the Work. The phased GMPs for the phased scopes of the Work will be incorporated into the Agreement according to Section 2.1.10 of the “Exhibit A – CM@Risk General Conditions”. The Bidding Contingency for all phases of Work shall not exceed the agreed percentage as stated in Section 7.11.1 of the “Exhibit A – CM@Risk General Conditions”. This Bidding Contingency will be reconciled at the time of completion of each Phase, or at any time deemed necessary by the Owner, at sole discretion of the Owner.

**1.2** The CM@Risk shall provide services for the Pre-Construction Phase in accordance with this Agreement, “Exhibit A – CM@Risk General Conditions”, and “Exhibit B – [CM@Risk’s Company Name] Pre-Construction Services Proposal Dated [Month Day, Year]”.

During the Pre-Construction Phase the CM@Risk shall prepare a cost estimate and provide a GMP, which excludes the Pre-Construction Phase Fee, for the Owner’s review and approval for all the Work required to complete the Project. If the GMP proposed by the CM@Risk is acceptable to the Owner, the Parties agree to execute an amendment to this Agreement, in the form provided on “Exhibit C – Form of Amendment – GMP and Construction Phase Fee” hereto, to establish the GMP and Construction Phase Fee, and to incorporate herein the Construction Documents and other Contract Documents, CM@Risk assumptions and clarifications as may be necessary to define the Scope of Work as in “Exhibit E – Construction Documents”, “Exhibit F – Statement of All Clarifications and Assumptions”, and “Exhibit G – Schedule of Major Milestones” hereto. (If the GMP is not within the Owner’s Project Budget, the Owner reserves the right to terminate this Agreement or act as otherwise provided for in the “Exhibit A – CM@Risk General Conditions”.)

## **Article 2 Contract Documents**

**2.1** The “Contract Documents” are comprised of the following. In the event of a conflict in the Contract Documents, the Contract Documents will be applied in the following order of precedence:

**2.1.1** This Agreement without Exhibits.

**2.1.2** Exhibit A to this Agreement – “CM@Risk General Conditions”.

**2.1.3** Owner’s Project Criteria developed by Owner, and Design Professional program (if any), with the Criteria taking precedence over the program, unless and to the extent specifically modified by one of the subsequent documents.

**2.1.4** Exhibit D – Cost of the Work – Schedule of Values  
Exhibit F – Statement of All Clarifications and Assumptions  
Exhibit G – Schedule of Major Milestones

For the purposes of order of precedence only, these three documents will be treated as one document.

**2.1.5** Exhibit E to this Agreement – “Construction Documents”.

**2.1.6** Exhibit B to this Agreement – “[CM@Risk’s Company Name] Pre-Construction Services Proposal Dated [Month Day, Year], as subsequently modified by addenda, amendments or change orders.

**2.1.7** The following other documents, if any, forming part of the Agreement:

**2.1.8** Owner’s Request for Qualifications (RFQ) including all Addenda, Exhibits and Clarifications.

**2.1.9** The CM@Risk’s qualifications submission, as required by the RFQ, including any clarifications and revisions of the submission.

### **Article 3 Interpretation and Intent**

**3.1** The Contract Documents are complementary and must be interpreted in harmony so as to avoid conflict or ambiguity, with words and phrases interpreted consistent with construction and design industry standards.

**3.2** Terms, words and phrases used in the Contract Documents shall have the meanings as defined in the “Exhibit A – CM@Risk General Conditions” or if not specifically defined, their ordinary and common meaning.

**3.3** The Contract Documents form the entire Agreement between Owner and CM@Risk and by incorporation herein are as fully binding on the Parties as if set forth herein. No oral representations or other agreements have been made by the Parties except as specifically stated in the Contract Documents.

### **Article 4 Ownership of Documents**

**4.1** The Owner, through its separate agreement with the Design Professional, has and shall continue to have ownership of all drawings, specifications, and other documents and electronic data furnished by Design Professional.

**4.2** The Owner shall also have ownership of documents or electronic data similar to those described in Article 4.1 above created by or in the possession of CM@Risk as well as any estimates, schedules, value engineering submissions, or other work product or deliverable furnished by CM@Risk to Owner.

### **Article 5 Contract Time**

**5.1** Owner and CM@Risk mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents. CM@Risk understands that the time(s) for completion(s) set forth in these documents are essential to the Owner and a material consideration for this Agreement.

**5.2** For the Pre-Construction Phase Services the Work and Contract Time shall commence within five (5) days of execution of this Agreement, unless the Parties mutually agree otherwise in writing. For the Construction Phase Services the Work and Contract Time shall commence within five (5) days of CM@Risk’s receipt of Owner’s Notice-to-Proceed (NTP), unless the Parties mutually agree otherwise in writing.

### 5.3 Substantial Completion

**5.3.1** Substantial Completion of the Work (the Substantial Completion Date) shall be achieved no later than [\_\_\_\_\_] (\_\_) calendar days after receipt of the NTP, or by date certain [\_\_\_\_\_] , subject to adjustments in accordance with the Contract Documents.

**5.3.2** Interim milestones and/or Substantial Completion of identified portions or phases of the Work shall be achieved as follows, subject to adjustments in accordance with the Contract Documents: \_\_\_\_\_.

### 5.4 Final Completion

**5.4.1** Final Completion of the Work or portion or phase thereof shall be achieved within [\_\_\_\_\_] (\_\_) calendar days after the date established for Substantial Completion of the Work, or by date certain [\_\_\_\_\_] , unless otherwise mutually agreed by amendment or change order.

**5.4.2** Interim milestones and/or Final Completion of identified portions or phases of the Work shall be achieved as follows, subject to adjustments in accordance with the Contract Documents: \_\_\_\_\_.

**5.5** Liquidated Damages. CM@Risk understands and acknowledges that if Substantial Completion is not achieved by the Substantial Completion Date provided in Article 5.3.1, and Article 5.3.2 above for identified portions or phases of the Work, Owner will suffer damages, which are difficult to accurately quantify and ascertain. CM@Risk agrees that if Substantial Completion for each portion or phase of the Work is not timely achieved, CM@Risk shall pay Owner \_\_\_\_\_ dollars (\$\_\_\_\_\_) per day as liquidated damages, and not as a penalty, for each calendar day that Substantial Completion for each portion or phase extends beyond the Scheduled Substantial Completion Date(s). In addition, if Final Completion is not attained within the time period defined by Article 5.4 above, CM@Risk shall pay Owner \_\_\_\_\_ dollars (\$\_\_\_\_\_) per day as additional liquidated damages, and not as a penalty, for each calendar day that Final Completion extends beyond the required date. The liquidated damages provided for herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature incurred by Owner which are occasioned by any delay in CM@Risk achieving Substantial Completion or Final Completion on or after the established dates.

Notwithstanding anything stated herein, the above-stated liquidated damages shall in no way limit Owner's other rights (e.g. "recovery measures" or termination) or limit Owner's entitlement to damages for any breach other than for delay for which Contractor may be responsible pursuant to the terms of this Agreement or applicable law. If for any reason liquidated damages as set forth in this section are unenforceable, Owner shall be entitled to recover its actual damages sustained as a result of any delay in the completion of this Project.

## **Article 6      Pre-Construction Phase Fee and Guaranteed Maximum Price**

**6.1** Owner shall pay CM@Risk a Pre-Construction Phase Fee for the Pre-Construction Services and a Construction Phase Fee for Construction Phase Services as provided in the Contract Documents. The CM@Risk's Construction Phase Fee, plus the Cost of the Work, Contingencies and Allowances, each as defined in the "Exhibit A – CM@Risk General

Conditions”, will comprise the GMP to be established in compliance with the “Exhibit A – CM@Risk General Conditions”. Unless otherwise agreed to, CM@Risk’s GMP is deemed to include all required taxes (including sales and use taxes), as well as all applicable bond and insurance costs.

**6.1.1** The Pre-Construction Phase Fee, as defined in Section 1.2 of the “Exhibit A – CM@Risk General Conditions”, shall be fixed at \_\_\_\_\_ dollars (\$\_\_\_\_\_).

**6.1.2** The Construction Phase Fee, as defined in Section 1.2 of the “Exhibit A – CM@Risk General Conditions”, shall be a fixed fee, shall be set forth in written amendment to this Agreement described in Article 1.1 above and, if approved by the Owner, shall be incorporated into this Agreement as a fixed dollar fee contract term, subject to any cost or credit adjustments prescribed by General Conditions Section 10.4.

**6.2** If the GMP requires an adjustment due to changes in the Scope of Work during the Construction Phase, the cost of such changes shall be priced under Section 10 of the “Exhibit A – CM@Risk General Conditions”.

**6.3** For Owner-caused construction delays, either agreed to or awarded, CM@Risk will provide all the necessary extended Construction General Conditions for a daily sum as provided for in Sections 9.6 and 10.4 of the “Exhibit A – CM@Risk General Conditions”. The specific amount of extended Construction General Conditions will be determined by the Owner on a case-by-case basis prior to issuance of a change order and must be determined to be fair and reasonable to the satisfaction of the Owner and the Design Professional.

## **Article 7 Procedure for Payment**

**7.1** Progress Payments. For Pre-Construction Services, CM@Risk shall submit to Owner on the last business day of each month CM@Risk’s Application for Payment based on the percentage completed for each Pre-Construction Design Phase as agreed to by the Owner. Payment for CM@Risk’s Construction Services shall be made in accordance with Section 7 of the “Exhibit A – CM@Risk General Conditions”. All costs, which exceed the GMP and are not authorized by change order, are to be paid by the CM@Risk and not the Owner.

**7.2** Record Keeping and Finance Controls. With respect to all Work performed by CM@Risk, its Subcontractors and consultants under this Agreement, CM@Risk, its Subcontractors and any consultants, shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles, and subject to approval by the Owner. During performance of the Work and for five (5) years after Final Payment, the CM@Risk shall retain and shall also require all Subcontractors and any consultants to retain for review and/or audit by the Owner all correspondence, meeting minutes, memoranda, electronic media, books, accounts, reports, files, time cards, material invoices, payrolls, and evidence of all communications, direct and indirect costs and all other matter related to the Work. Upon request by the Owner, a legible copy or the original of any or all such records shall be produced by the CM@Risk at any time during or after the Work as the Owner may request. The CM@Risk shall submit to the Owner upon request all payrolls, reports, estimates, records and any other data concerning Work performed or to be performed and concerning materials supplied or to be supplied, as well as Subcontractor or any consultant payment applications or invoices and such Subcontractor’s or any consultant’s progress payment checks. The

requirements of this Article shall be provided for in all contracts between the CM@Risk and its Subcontractors and any consultants employed by the CM@Risk.

## **Article 8 Termination for Convenience**

**8.1** This Agreement may be terminated for the convenience of Owner as provided for in Section 12.1 of the “Exhibit A – CM@Risk General Conditions”.

## **Article 9 Representatives of the Parties; Authority**

### **9.1 Owner’s Representatives.**

**9.1.1** Owner designates **Thomas Lyons, Assistant Vice President, ASU FDM CPMG, 1551 S Rural Road, Tempe, AZ 85287-5212**, as the “Owner’s Senior Representative”, who has the authority and responsibility set forth in the Contract Documents, including the authority and responsibility for avoiding and resolving disputes under Section 11 of the “Exhibit A – CM@Risk General Conditions”.

**9.1.2** Owner designates **[Name, Title, Email], ASU FDM CPMG, 1551 S Rural Road, Tempe, AZ 85287-5212**, as its “Owner’s Representative(s)”, who has the authority and responsibility set forth in the Contract Documents.

### **9.2 CM@Risk’s Representatives.**

**9.2.1** CM@Risk designates **[Name, Title, Email, Company Name, Address]** as “CM@Risk’s Senior Representative”, who has the authority and responsibility set forth in the Contract Documents, including the authority and responsibility for avoiding and resolving disputes under Section 11 of the “Exhibit A – CM@Risk General Conditions”.

**9.2.2** CM@Risk designates **[Name, Title, Email, Company Name, Address]** as the “CM@Risk Representative,” who has the authority and responsibility set forth in the Contract Documents.

**9.2.3** CM@Risk designates **[Name, Title, Email, Company Name, Address]** as the “Superintendent”, who has the authority and responsibility set forth in the Contract Documents.

**9.2.4** CM@Risk’s Representatives and Superintendent, as approved by the Owner, shall not be replaced without the Owner’s prior written approval.

**9.2.5** CM@Risk warrants and shall ensure that only individuals who are authorized to legally bind CM@Risk will sign documents associated with this Agreement.

## **Article 10 Bonds and Insurance**

**10.1** Prior to, and as a condition for, the CM@Risk to perform Pre-Construction Phase Services, CM@Risk shall procure, deliver and maintain insurance coverage as provided in Section 6 of the “Exhibit A – CM@Risk General Conditions.” Prior to, and as a condition for, CM@Risk to perform Construction Phase Services and Owner issuance of a Notice-To-Proceed, CM@Risk shall procure, deliver and maintain Performance and Payment

Bonds and insurance coverage, as provided in Section 6 of the “Exhibit A – CM@Risk General Conditions.”

**Article 11 Complete Agreement.**

**19.1** This Agreement constitutes the complete and integrated agreement between the Owner and the CM@Risk, and it supersedes all prior negotiations, representations or agreements, either written or oral. Each party acknowledges that it has had an opportunity to review this Agreement with counsel and this document shall be construed fairly and equitably so as to effectuate the intention of the parties irrespective of who is determined to have been the drafter of the document. This Agreement may be amended only by written instrument signed by a duly authorized representative of both parties.

Agreement entered into as of the date and year first written above.

**CM@RISK:**  
[CM@Risk Company Name]  
By Its Authorized Representative

**OWNER:**  
Arizona Board of Regents  
For and on behalf of  
Arizona State University

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Date)

**Exhibit A**  
**CM@Risk General Conditions**  
**Dated June 1, 2025**

**(x pages)**



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**ARIZONA STATE UNIVERSITY**

**EXHIBIT A - CONSTRUCTION MANAGER AT RISK AGREEMENT (CM@RISK)**

**GENERAL CONDITIONS**

**June 1, 2025 Edition**

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- Attachment 3 – Construction Supplier Access and License Agreement (Template)

## Section 1 General

### 1.1 Mutual Obligations.

**1.1.1** Owner and Construction Manager at Risk (CM@Risk) commit, at all times, to cooperate fully with each other, and proceed on the basis of trust, confidence, and good faith to permit each Party to realize the benefits expected and afforded under the Contract Documents, which benefits include the satisfactory and timely completion of the Project and performance of all obligations required by the Contract Documents.

**1.2** Basic Definitions. Contract Documents are those documents noted under Article 2 of **“STANDARD FORM AGREEMENT BETWEEN OWNER AND CM@RISK ON THE BASIS OF A GUARANTEED MAXIMUM PRICE”** (the “Agreement”) and also include, but are not limited to, the Agreement, amendments, change orders, these General Conditions, any supplementary or special conditions referenced in the Agreement and any other items stipulated to as being included in the Contract Documents, including the complete design as accepted by the Owner.

**1.2.1** Intentionally omitted.

**1.2.2** “Allowances” must be identified and provided to the Owner for approval prior to submitting GMP. Allowances are items set forth on “Exhibit D – Cost of the Work – Schedule of Values” to the Agreement as an estimate for the cost of that item of work and to the extent that the Cost of the Work for that item is lesser or greater than the estimate the GMP will be reduced or increased by change order.

**1.2.3** “Bidding Contingency or Construction Contingency” means that part of the Guaranteed Maximum Price (GMP) the CM@Risk may use during the Bidding or Construction Phase, as provided in these General Conditions at Section 7.11.1, to cover any excess of the amount bid by a Subcontractor over the amount for that work in the GMP, legitimate unforeseen construction expenses, or expenses otherwise agreed by Owner and CM@Risk, all subject to Owner’s approval, after GMP has been accepted. Contingency may not be used to cover the cost of any work on the Project after issuance of the Certificate of Final Completion.

**1.2.4** “CM@Risk” means the CM@Risk and all persons and entities identified as members of the CM@Risk Team in the CM@Risk’s response to the Owner’s RFQ which led to the Agreement with all amendments, and any substitutes permitted under the terms of the Agreement, and these General Conditions. The CM@Risk participates in the Pre-Construction Phase as set forth in the Agreement by, among other things, doing value engineering, evaluating costs and constructability, preparing schedules, implications of alternate designs and systems and materials during and after design of the Project. During construction, the CM@Risk assumes all risk for price and schedule under the Agreement and its GMP.

**1.2.5** “Construction Documents” are the Design Documents prepared by the Design Professional for the Project, approved by the Owner as incorporated into the Guaranteed Maximum Price, to be used to construct the Project. All modifications to the Construction Documents must be approved by the Owner, in writing, prior to incorporation into the Agreement.

**1.2.6** “Construction General Conditions” means all on-site Project-specific job costs of CM@Risk not itemized elsewhere in the Contract Documents to support complete construction

of the project. The on-site Project-specific job costs specifically exclude, without limitation, the following:

- a) bonds,
- b) insurance,
- c) items which are included in the Construction Phase Fee, such as:
  - (1) Home (off-site) Expenses,
  - (2) Profit & Overhead,
  - (3) Home Office Personnel such as Corporate Executive, Project Executive & Project Director,
  - (4) Home Office Staff Transportation & Travel Costs,
  - (5) Home Office Accounting & Contract Forms,
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  - (20) Cost of Living Allowance,
  - (21) Marketing Expenses,
  - (22) Corporate Sponsorships and Entertainment, and
  - (23) Promotional or Celebratory Expenses the CM@Risk incurs while performing and completing the Project.

Any Owner-approved meal expense shall not exceed Owner's current policies applicable to Owner's employees, unless Owner specifically authorizes a different reimbursement rate in writing in advance of the incurrence of such expenses. Specifically excluded is any expense for alcohol.

Out-of-town travel, including travel time and living expenses may be included in Construction General Conditions if such travel expense is: (i) necessary to perform the Scope of Work and (ii) pre-authorized and approved by Owner in writing. If approved, compensation for meals and lodging expenses shall be subject to Owner's current travel and business meal policies applicable to Owner's employees, unless Owner specifically authorizes a different reimbursement rate in writing in advance of the incurrence of such expenses.

CM@Risk's subsistence rates shall be negotiated at time of GMP-Setting. Subsistence rates, duration and specific categories of expenses must be determined to be fair and reasonable, and approved in advance, in writing, by Owner.

CM@Risk's allowable labor rates and burdened labor rates within any rates or part of the Construction General Conditions are restricted to direct labor costs, that is, salaries/wages plus

statutory or regulatory required costs (social security, Medicare employee's match, unemployment, etc.) and employee related benefits and expenses (for example, vacations, health insurance, retirement, etc.), as agreed to by Owner and identified in Exhibit F – Statement of All Clarifications and Assumptions. If CM@Risk self-performs Work, self-perform labor rates, and any approved overtime rates, shall follow the policy set forth in Section 2.2.4.8.

In the event that CM@Risk is entitled to reimbursement of expenses under the Contract Documents, CM@Risk shall submit all receipts and any other reasonably required backup documentation to Owner and/or Design Professional within sixty (60) days after such expense is incurred. Owner shall not be required to reimburse CM@Risk for any invoice or receipts for expenses received by Owner or Design Professional after that time.

CM@Risk's Construction General Conditions-type charges may not be listed in the Subcontractors' Schedule of Values, nor will such charges be paid by the Owner.

Construction General Conditions shall initially be calculated based on an itemized description of on-site Project-specific job costs of CM@Risk, shared with the Owner for review during GMP negotiations, then shall be fixed as a dollar amount as mutually negotiated and agreed by the Parties in writing, subject to any cost or credit adjustments prescribed by these General Conditions Section 10.4. Construction General Conditions will be reimbursed as a category of Work within the Schedule of Values based on negotiated amounts, as agreed to by Owner.

All excluded expenses the CM@Risk incurs while performing and completing the Project are not reimbursable as Construction General Conditions, and must be paid out of the Construction Phase Fee.

**1.2.7** "Construction Phase" – is defined as including but not limited to the following subphases: construction administration, closeout and warranty, and may include some activities that occur after Final Completion.

**1.2.8** "Construction Phase Fee" includes all direct and indirect costs of CM@Risk providing off-site management, supervision and support for the completion of the Work during the Construction Phase, plus associated overhead and profit. The Construction Phase Fee shall initially be calculated not to exceed five (5%) percent of Direct Construction Cost only, and then shall be fixed as a dollar amount as mutually negotiated and agreed to by the Parties in writing, subject to any cost or credit adjustments prescribed by General Conditions Section 10.4

**1.2.9** "Construction Phase Services" includes the services to be performed by CM@Risk under this Agreement during the Construction Phase, including those services identified in Section 2.5.

**1.2.10** "Contract Float" - If the Critical Path Method ("CPM") schedule of the Work anticipates early completion of all or any part of the Work, Contract Float is the number of calendar days between CM@Risk's anticipated date for early completion of all or any such part of the Work and the corresponding specified Contract Time. It is owned jointly by Owner and CM@Risk.

**1.2.11** "Contract Time" is a time set forth in the Contract Documents for any time periods identified.

**1.2.12** "Cost of the Work" (or "Construction Costs") consists of those items of Work which are paid for by the Owner to the CM@Risk, and consists of those categories of Direct Construction

Cost and Indirect Construction Cost set forth as allowable in “Exhibit D – Cost of the Work – Schedule of Values” to the Agreement, throughout the Project up to the time of Final Completion. The *Actual Cost of the Work* is the aggregate amount of actual costs chargeable to the Owner under the provisions of “Exhibit D – Cost of the Work”,.

**1.2.13** “Day” as used in these General Conditions refers to calendar day unless otherwise denoted.

**1.2.14** “Deliverables” - the work product prepared by the CM@Risk within the definition of the Scope of Work in the Agreement. Some of these Deliverables provided by the CM@Risk during the Pre-Construction Phase are the Project Schedule, Schedule of Values, Alternative System Evaluation, Procurement Strategies plus proposed MBE/WBE Utilization, Subcontractor and Supplier bid packages and Agreements.

**1.2.15** “Design Phase” (or “Pre-Construction Phase”) is defined as including but not limited to the following subphases: Program Development, Conceptual Design, Schematic Design, Design Development, GMP-Setting and Construction Documents.

**1.2.16** “Design Professional” is a representative of the Owner for the Project as provided in the Contract Documents, whose Agreement is with the Owner, and a) who is a qualified professional properly licensed in the State of Arizona to furnish applicable design and construction administration services, and b) is not the Agent of the Owner except for the approval and certification of CM@Risk progress payment applications, and Substantial Completion, if so designated.

**1.2.17** “Design Documents” (or “Design Submission Documents”) consist of the Drawings and Specifications prepared at specific phases of the design effort by the Design Professional including Programming, Schematic Design, and Design Development, as well as cost estimates and other documents prepared by the CM@Risk that are submitted for Owner’s approval for each subphase of the Project design services.

**1.2.18** “Direct Construction Cost” is the sum of all applicable Construction General Conditions costs, Subcontractor costs, costs of self-performed work (if approved in writing in advance by Owner), Allowances and Contingencies. Contingencies specifically include Bidding and Construction Contingency.

**1.2.19** “Final Completion” is defined as 100% completion of all Work described by or reasonably inferred from the Project Criteria and Contract Documents, including but not limited to all a) Punch Lists, b) Close-Out Documents, c) Owner training/start up activities, and d) third party commissioning.

**1.2.20** “Guaranteed Maximum Price (GMP)” is the dollar amount that the CM@Risk guarantees to be the maximum amount due from the Owner to the CM@Risk under the Agreement for Construction Phase Services. It is the sum of the Cost of the Work, and the CM@Risk’s Construction Phase Fee. The GMP is subject to additions or deductions due to changes in the Scope of Work. All costs, which exceed the GMP and are not authorized by change order, are to be paid by the CM@Risk and not the Owner.

**1.2.21** “Hazardous Materials” are defined as any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or for which the handling, remediation, or disposal are regulated by applicable Legal Requirements. Where applicable,

the term Hazardous Waste shall have the meaning provided for in Section 1004 of the Solid Waste Disposal Act (42 USC, Section 6903) as may be amended from time to time.

**1.2.22** “Indirect Construction Cost” is the sum of all applicable insurance costs (actual costs or negotiated amounts), bond costs, and applicable sales or use taxes, and excludes the Construction Phase Fee.

**1.2.23** “Legal Requirements” include all regulations, policies, procedures and practices of the Arizona Board of Regents and Arizona State University and all applicable rules, laws, codes, ordinances and regulations of any government or quasi-government entity, federal, state and local having jurisdiction over the Work, the practices involved in the Work, or any other work performed.

**1.2.24** “Open Book Cost” is the Cost of the Work as compiled and recorded in accordance with the provisions of Section 2.1.14 of these General Conditions.

**1.2.25** “Partnering” or “Teaming” is a mutual effort by all parties involved in the Project, principally the Owner, the Design Professional and the CM@Risk, to cooperate and coordinate efforts to achieve the final result intended by the Project Criteria. All involved use their expertise for the benefit of all. Partnering requires flexibility and appreciation of the positions of other parties and willingness to make compromises for the benefit of all. Owner has the exclusive right to decide whether or not to use Partnering on the Project and will indicate its decision on this during the Pre-Construction Phase.

**1.2.26** “Post Construction Survey” is a GIS report of underground utilities required at the completion of the project and must be included per 7.9.2 Conditions Precedent to Final Payment. This report must be provided by an ASU approved ground penetrating radar supplier.

**1.2.27** “Pre-Construction Phase Fee” includes all direct and indirect costs of CM@Risk in providing the Pre-Construction Services until completion of the Construction Documents and the award of all bid packages, plus associated overhead and profit.

**1.2.28** “Pre-Construction Services” includes the services to be performed by CM@Risk under this Agreement during the Pre-Construction Phase, including those services identified in Section 2.2.

**1.2.29** “Project Budget” is the total cost to the Owner for the Project, including the Design Professional, CM@Risk’s Pre-Construction Phase Fee, the GMP (including CM@Risk’s Construction Phase Fee, Construction services, Allowances and any and all Contingencies), other consultants, furniture, fixtures, and equipment, Site acquisition, permit fees, management fees, and other incidentals required to achieve Final Completion of the Project.

**1.2.30** “Project Criteria” are developed by or for Owner to describe Owner’s program, requirements and objectives for the Project, including use, space, price, time, Site, utility, parking, and expandability requirements, as well as all submittal requirements and other requirements affecting CM@Risk’s performance of its Work. The Project Criteria may include conceptual documents, design criteria, performance requirements, and other Project specific technical materials and requirements prepared by or for Owner.

**1.2.31** “Punch List” means those minor items of Work identified and listed by Design Professional and agreed to by Owner to be completed by CM@Risk after Substantial Completion and prior to Final Completion, which do not prevent the Project from being fully used

for the purpose for which it is intended and which will not prevent the issuance of a certificate of occupancy or a favorable review by the State Fire Marshal.

**1.2.32** “Savings” is the difference, if any, between the GMP and the Actual Cost of the Work, and shall be allocated as set forth in Section 7.

**1.2.33** “Site” is the land and other areas on which the Project is located.

**1.2.34** “Subcontractor” (of any tier) is any entity or person who performs a portion of the Work, on- or off-site, directly on behalf of the CM@Risk, including any materials, workers and suppliers, and shall include all employees, agents and authorized representatives of such entities or persons.

**1.2.35** “Substantial Completion” is the date on which CM@Risk’s Work, or an agreed upon portion of the Work, is sufficiently complete, as determined by the Design Professional or Owner’s issuance of a Certificate of Substantial Completion, so that Owner can fully occupy and utilize the Project, or a portion thereof, for the purposes for which it is intended. To achieve Substantial Completion, all Work must be complete except for items included on the approved Punch List. As part of Substantial Completion all required inspections, State Fire Marshal and State Elevator certificates, Boiler inspection, ACC inspection for natural gas lines, and preliminary test and balance of the mechanical systems must be obtained or completed. (Owner retains the right to require inspections of the Work past those inspections required for Substantial Completion, and such inspections may be required through the date of Final Completion).

**1.2.36** “Total Float” is the number of calendar days by which the Work or any part of the Work may be delayed without necessarily extending a pertinent Contract Time. Total Float is by definition at least equal to Contract Float.

**1.2.37** “Value Engineering Proposal” - A modification to the Work proposed by the CM@Risk after the Effective Date of the Agreement for the purpose of reducing the total cost of construction while still delivering a quality and functional Project. Value Engineering is part of the broader goal of obtaining optimum value for each dollar the Owner spends on the Project.

**1.2.38** “Work” is comprised of all activities required to complete the Project as defined by the Project Criteria and Contract Documents, including the Pre-Construction Services and the Construction Phase Services as well as procuring and furnishing all materials, equipment, services, and labor reasonably inferable from the Contract Documents, or from prevailing trade usage and custom.

**1.3** Mutual Understanding. Owner and CM@Risk agree that these provisions set forth their mutual understanding and agreement regarding the Agreement, General Conditions or subjects addressed therein.

**1.3.1** It is understood and agreed that Owner has hired a Design Professional to design the Project.

**1.3.2** CM@Risk understands and agrees that the design for the Project may not be complete at a) the time the GMP is agreed to, and b) at the time of execution of the Agreement.

**1.3.3** CM@Risk commits to cooperate and interact with and advise the Design Professional in producing a completed design for the Project that is acceptable to the Owner, all as more fully described in the Contract Documents.

**1.3.4** When the Design Documents are complete and requisite approvals obtained and they are accepted by the Owner, they shall be incorporated in and become part of the Contract Documents as though they were included at the time of execution of the Agreement.

## **Section 2 CM@Risk's Services and Responsibilities**

### **2.1 General Services.**

**2.1.1** The CM@Risk Representative shall attend all meetings and assist the Owner during the Pre-Construction Phase in accordance with these General Conditions. During the Construction Phase, the CM@Risk Representative, and Superintendent as necessary, shall be at the Site at all times when Work is being performed, and shall have the necessary expertise and experience required to properly supervise the Work. The CM@Risk Representative shall communicate regularly with Owner and Design Professional and shall be vested with the authority to act on behalf of CM@Risk as to all matters. The CM@Risk Representative may only be replaced with the mutual written agreement of Owner and CM@Risk.

**2.1.2** During both the Pre-Construction and Construction Phases the CM@Risk shall provide Owner and Design Professional, on a monthly basis, a written status report detailing the progress of the Work during that month, including whether the Work is proceeding according to Schedule, an updated and current Critical Path Method (CPM) Schedule, an updated and current Work cash flow projection for the duration of the Project, copies of the Superintendent's daily site reports, identification of any discrepancies, conflicts, or ambiguities existing in the Construction Documents that require resolution, whether health and safety issues have arisen in connection with performance of the Work, and whether other matters exist that require resolution so as not to jeopardize CM@Risk's ability to complete the Work for the GMP on schedule and within the Contract Time(s). The CM@Risk's monthly report shall also include a cost tracking report with projected final cost, subcontract amounts and buy-out status and status of Contingency and Allowance usage.

**2.1.3** Within xxxx (xx) days after executing the Agreement, CM@Risk shall prepare and submit to Owner a Critical Path Method Master Schedule (CPM Schedule) for the Work including the activities in the Design Phase and the Construction Phase. The CPM Schedule shall include three (3) weeks of Owner review time for Design Submission Documents at each subphase (progress development, Schematic Design, Design Development and Construction Drawings) and adequate time for Government Agency and for other regulatory-type reviews and for all other necessary approvals. The CPM Schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required and all necessary shutdowns or suspensions of Owner or separate vendor activities on the Site (if any). The CPM Schedule shall allow for multiple bid packages and fast-tracked construction as may be required by Owner and include any contemplated completion date(s) earlier than those required by the Contract Documents.

**2.1.4** The Owner, Design Professional, and CM@Risk will meet promptly after execution of the Agreement to discuss issues affecting the administration of the Work, and to implement the necessary procedures, including submittals and Owner site activity schedules, to permit the Owner, Design Professional, and CM@Risk to perform their respective obligations under the

Contract Documents. These tasks may be implemented by the utilization of a formal “Partnering” or “Teaming” process developed during an initial workshop that will include the CM@Risk, Owner, Design Professional, and their key participants. Follow up sessions will occur every three months or as otherwise mutually agreed to ensure that all commitments are updated and being followed by all parties. The cost of this “Partnering” or “Teaming” effort, if invoked by Owner, will be an allowable Project Cost.

**2.1.5** The CM@Risk shall interact and cooperate fully with the Owner and Design Professional during the Design Phase and Construction Phase so as to keep the Work within the Owner’s budget and schedule limitations.

**2.1.6** The CM@Risk covenants with the Owner to furnish its best skill and judgment and to cooperate with the Design Professional in furthering the interests of the Owner. The CM@Risk agrees to furnish efficient business administration and superintendence and to use its best efforts to timely complete the Work in an expeditious and economical manner consistent with the interest of the Owner.

**2.1.7** The CM@Risk, the Owner, and the Design Professional, called the “Project Team”, shall cooperatively work together during all phases of the Work to achieve timely completion of the Project. The CM@Risk shall provide leadership to the Project Team during the Pre-Construction Phase for all schedule or alternative systems issues and on all matters relating to construction and shall record and distribute minutes of meetings per Section 2.2.4.4. During the Pre-Construction Phase the CM@Risk shall provide to the Owner and the Design Professional a written evaluation of the Owner’s Project Criteria and Project Budget and Schedule, each in relationship to the other with recommendations on the appropriateness of each.

**2.1.8** The Contract Documents do not create any contractual relationship between the Design Professional and the CM@Risk or any separate contractors, consultants, Subcontractors of any sub-tier or suppliers on the Project; nor shall anything contained in the Contract Documents be deemed to give any third party any claim or right of action against the Owner, the Design Professional or CM@Risk, which does not otherwise explicitly exist in the Contract Documents.

**2.1.9** The CM@Risk’s initial Work shall consist of its services in connection with the Pre-Construction Phase. The CM@Risk’s Services in that phase shall be parallel to and coincidental with the Programming, Schematic Design, Design Development, and Construction Document subphases of the Design Professional’s Services. CM@Risk shall prepare an itemized building system type cost estimate at the completion of each design subphase, and at other times as agreed upon by the Project Team, in a format consistent with that used by Design Professional or in a format otherwise mutually agreed upon prior to the cost estimate preparation. CM@Risk shall prepare CSI-formatted cost estimates following the format of “Exhibit D – Cost of the Work – Schedule of Values” to the Agreement, at each submittal phase after the completion of Schematic Design, to verify that applicable portions of the Project are staying within the Owner’s identified budget. It is the obligation of the CM@Risk to keep all Deliverables required of it up to date during the Pre-Construction Phase so that the Project activities will continue uninterrupted while progressing into the Construction Phase.

**2.1.10** During the Pre-Construction Phase, the CM@Risk shall provide a GMP per Article 1.2 of the Agreement, and phased GMPs if required by Article 1.1 of the Agreement. Thereafter, as the Scope of Work is further developed and defined during the Pre-Construction Phase, and costs are established for the Work, the Parties contemplate that the Scope of Work to be

performed by the CM@Risk will be adjusted by amendment or change order to the Agreement. Any such amendment or change order will define the Work to be performed by the CM@Risk under the Agreement, and may amend or add any design submission document that is not within the original Scope of Work undertaken to be performed by the CM@Risk. The GMP and Contract Time will from time to time be adjusted, as may be necessary, due to such change orders or amendments.

**2.1.11** Subject to the other provisions of these General Conditions, execution of the Agreement by the CM@Risk is a representation that the CM@Risk has visited the Site, become familiar with the local and any specific conditions under which the Work is to be performed, and has correlated CM@Risk's observations with the requirements of the Owner's Project Criteria.

**2.1.12** The intent of the Contract Documents is to include all items and services necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. Work not covered in the Contract Documents but deemed necessary for the proper completion of the Work by the Design Professional will be required of CM@Risk unless it is inconsistent with the Contract Documents, or is not reasonably inferable therefrom as being necessary to produce the intended results. Words and abbreviations, which have well known technical or trade meanings, are used in the Contract Documents in accordance with such recognized meanings.

**2.1.13** The organization of the Specifications into division, section, and article, and the arrangement of Drawings shall not obligate or control the CM@Risk in dividing performance of the Work among Subcontractors, or in establishing the extent of the Work to be performed by any one trade.

**2.1.14** With respect to all Work performed by CM@Risk and its Subcontractors and consultants, CM@Risk, its Subcontractors and consultants, shall keep full and detailed accounts and exercise such cost controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and subject to review by Owner. During performance of the Work and for five (5) years after Final Payment, the CM@Risk shall retain and shall also require all Subcontractors and consultants to retain for review or audit, or both, by the Owner all correspondence, meeting minutes, memoranda, electronic media, books, accounts, reports, files, time cards, material invoices, payrolls, and evidence of all communications, direct and indirect costs and all other matters related to the Work. Upon request by the Owner, a legible copy or the original of any or all such records as are described above shall be produced by the CM@Risk at any time during or after the Work as the Owner may request. Upon request the CM@Risk shall submit to the Owner copies of all payrolls, reports, estimates, records, change order costs and data, and any other data concerning Work performed or to be performed, materials supplied or to be supplied, including Subcontractor or consultant payment applications or invoices and such Subcontractor's or consultant's progress payment checks. The requirements of this section shall be provided for in all contracts between the CM@Risk and its Subcontractors and consultants. The Owner may exercise its rights under this Paragraph as often as reasonably necessary in the Owner's sole judgment to assure the Owner has a complete and accurate understanding of all Project costs.

**2.1.15** Any software, device, or hardware that will connect via Wi-Fi network or hardwire to the ASU network will require an [ASU Security Review](#).

## **2.2** Pre-Construction Services.

**2.2.1 Consultation During Project Development.** In addition to the services of the CM@Risk listed in 2.1 above, CM@Risk's Pre-Construction Services shall include, but not be limited to, the services set forth in this Section 2.2 and shall include: participation in team building, formal Partnering or Teaming, development of a project management plan, providing value analysis, constructability and bidability reviews, cash flow projections, estimating/price guarantees, and Subcontractor bid package timing and strategy. These services shall also include, but not be limited to, review of design; advice on Site use, improvements, selection of materials, building systems and equipment; long lead items, and recommendations on construction feasibility, availability of materials and labor, local construction activity as it relates to work schedules, and time requirements for installation and construction.

**2.2.2 Budgeting and Guaranteed Maximum Price.**

**2.2.2.1** The CM@Risk shall provide the Pre-Construction Services for the Pre-Construction Phase Fee identified in the Agreement. That fee will be earned based upon the amount of Design Phase Work completed. That fee shall be billed and payable monthly as a percentage of completion of Pre-Construction Services. The Construction Phase Services of CM@Risk will be provided based upon an Open Book Cost of the Work, plus the separate Construction General Conditions and Construction Phase Fee for CM@Risk identified in the Agreement, which together comprise the GMP as set forth in Section 2.2.2.2 below.

**2.2.2.2** As provided for in Article 1.2 of the Agreement and when the design has sufficiently progressed, the CM@Risk shall propose a GMP for the construction that is to be based on the Cost of the Work. The CM@Risk shall attach to the GMP a list of the Drawings and Specifications used by the CM@Risk in preparing and setting the GMP and also a "Statement of All Clarifications and Assumptions" that the CM@Risk used to supplement the information contained in the Drawings and Specifications CM@Risk has listed. The "Statement of All Clarifications and Assumptions" may, at the discretion of CM@Risk, be shown in the form of Drawings or be in narrative form or a combination of both, but must in any event be complete and detailed.

**2.2.2.3** The Owner will, at its sole discretion, have the option to accept the GMP submitted by CM@Risk, request that CM@Risk submit another GMP, or reject the GMP and terminate all contracts and agreements with the CM@Risk. In the event of such a termination the CM@Risk shall receive payment for services it has provided to date and other reasonable termination costs approved by Owner. In this situation, there shall be no amounts paid for any lost profits, lost opportunity or other similar costs.

**2.2.2.4** Once accepted by the Owner, the GMP may be revised only by an approved amendment or change order.

**2.2.2.5** For any Contingency within the GMP, the criteria for the development of that Contingency must be acceptable to the Owner. Thereafter, the CM@Risk must inform the Owner of any intended usage of the Contingency, with supporting itemized schedule and pricing documentation, to maintain complete records and confirm its appropriate use for the Project.

**2.2.3 Cost Estimates.**

**2.2.3.1** Construction Cost. All estimates of GMP, and the Schedule of Values set forth in the "Exhibit D – Cost of The Work – Schedule of Values" to the Agreement shall include without duplication:

- a) Construction General Conditions;
- b) All labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work;
- c) An entry for "Bidding Contingency or Construction Contingency";
- d) The CM@Risk's Construction Phase Fee;
- e) All bond and insurance premiums at actual cost, or including negotiated amounts for commercial general liability insurance; and
- f) All applicable taxes.

**2.2.3.2** The CM@Risk's estimates of Construction Costs shall not include sums due the Design Professional, the CM@Risk's Pre-Construction Phase Fee, the costs of land, rights of way, financing or other costs which are the responsibility of the Owner.

**2.2.3.3** The CM@Risk, prior to and in preparing its estimates of Construction Costs and providing the GMP, shall consult with the Design Professional to determine, to the extent possible, what materials, equipment, component systems and types of construction are to be included in the Construction Documents and to make recommendations for reasonable adjustments in the Scope of Work, and to include in the Construction Documents alternate items, as are approved by the Owner in writing.

**2.2.3.4** The CM@Risk shall prepare an estimate of Construction Cost as soon as major Project requirements have been identified, and update the estimate for each submittal of the Design Submission Documents specified in Section 1.2.15 of these General Conditions. For all bid packages for Construction, the CM@Risk shall prepare a quantity take-off cost estimate based on CSI formats within two weeks of receipt of applicable documents from the Design Professional. All estimates of Construction Cost shall make allowance for bidding and price escalation. During the Pre-Construction Phase, the CM@Risk shall continually monitor the cost estimates and develop a cost estimate to help assure that the Cost of the Work remains within the applicable portions of the Project Budget or GMP, as applicable. No construction services or Work to be performed under the Agreement shall commence until a GMP is established by the CM@Risk, submitted and accepted by the Owner.

**2.2.3.5** All CM@Risk cost estimates shall be prepared separate and independently from Design Professional estimates and shall be based on quantitative takeoffs whenever possible and shall be completed in sufficient depth and organization to be used in preparing budgets based on sub-trades, combinations of sub-trades, building systems, and bid packages. A lump sum estimate is not acceptable unless it is otherwise agreed to by the Owner and such estimate relates to an actual Subcontractor price or bid.

**2.2.3.6** CM@Risk shall submit all applicable cost estimates to the Design Professional and Owner for review, scope verification and reconciliation with the Design Professional's estimates of cost. If the Design Professional and CM@Risk cannot agree on any individual cost items, then the highest identified cost of either will be utilized and noted as such by the CM@Risk in the submission of the cost estimate to the Owner as part of the design submittal.

**2.2.3.7** After review and scope verification of the cost estimate done by the Design Professional, the CM@Risk shall a) notify the Owner if it appears that the Design Professional estimate of Construction Costs will exceed the applicable portion of the projected Project Budget or GMP as may be applicable, b) satisfactorily demonstrate the accuracy of its estimate in such detail as

shall be reasonably required by the Owner, and c) make reasonable recommendations for corrective action consistent with the Project Budget or GMP, as may be applicable. All such cost estimates must be within Project Budget or GMP as applicable, or include reasonable recommendations for bringing the estimates within the Project Budget or GMP, as applicable, prior to final submission to Owner for review and acceptance. Any costs to correct Design Documents to bring the Project back within the Project Budget or GMP, as applicable, shall not be borne by the CM@Risk, except for the CM@Risk's own costs incurred in re-estimating.

**2.2.3.8 Design Professional/CM@Risk Cooperation:** The Design Professional, by the terms of its agreement with the Owner, is obligated to provide reasonable cooperation to the CM@Risk in the development of estimates of Construction Cost and the GMP. Conversely, the CM@Risk shall provide reasonable cooperation to the Design Professional in the development of estimates of Construction Cost and the GMP. Design Professional and CM@Risk shall reconcile their cost estimates with each other and the Owner no later than seven (7) calendar days after the completion of CM@Risk's estimate or receipt of Design Professional's estimate to assure the Owner that the Project Cost is within the designated budget.

#### **2.2.4 Other Pre-Construction Services.**

**2.2.4.1** The CM@Risk shall review the Drawings and Specifications as they are being prepared, recommending alternative methods whenever design details affect construction feasibility, schedules or cost. However, nothing contained in this section 2.2.4.1 shall be construed to require the CM@Risk to provide design services.

**2.2.4.2** The CM@Risk shall make recommendations to the Owner and the Design Professional regarding the division of work in the Drawings and Specifications to facilitate the bidding and awarding of subcontracts, allowing for phased construction, if applicable, taking into consideration such factors as time of performance, availability of labor, overlapping trade jurisdictions, provisions for temporary facilities, and the like.

**2.2.4.3** Coordinating with the Design Professional, the CM@Risk shall provide a written Constructability Review of all Drawings and Specifications, in a form acceptable to Owner. The Constructability Review shall (a) minimize areas of conflict, errors, omissions, and overlapping of the Work to be performed by the various Subcontractors, (b) confirm that the full Scope of Work has been included in the Drawings, (c) endeavor to minimize cost and Value Engineer Proposals where appropriate, and (d) allow for phased and/or fast-track bid packages and construction, as required. An acceptable and effective Constructability Review is a goal for the CM@Risk and the Owner.

**2.2.4.4** The CM@Risk shall attend all regular meetings with the Owner and Design Professional and such additional meetings as the Owner may request. All regular meetings shall be scheduled by the Design Professional with the prior agreement of the CM@Risk and approval of the Owner. All additional meetings shall be scheduled by the Owner.

At a minimum, the CM@Risk shall attend the following meetings and shall be responsible for leading the meeting or issuing meeting minutes as noted. Additional meetings may be required by Owner, or may be necessary in the normal course of business, and shall not be additionally compensated by the Owner to the CM@Risk unless agreed to in advance in writing by the Owner, and unless the scope of such meetings could not have reasonably been expected given the scope of the Project.

<u>Meeting Minutes</u>	<u>Lead</u>	<u>Frequency</u>	<u>Issue</u>
Kickoff	Owner	One	DP
Partnering	Facilitator	As Needed	Facilitator
OAC – Design Phase	DP	Weekly	DP
Deliverables Format	DP	Once	DP
Presentation of Subphase			
Deliverables to User Groups	DP	As Needed	DP
Plan Review	Owner	Minimum Four	DP
Commissioning	CxA	As Needed	CxA
GMP-Setting	Owner	As Needed	DP
Pre-Construction	Owner	One	DP
OAC – Construction Phase	CM@Risk	Bi-Weekly	CM@Risk
Pre-installation	CM@Risk	As Needed	CM@Risk
Design Related Subject – Before 100% CD Set	DP	As Needed	DP
Design Related Subject – After 100% CD Set	CM@Risk	As Needed	CM@Risk
Closeout	Owner	One	CM@Risk
Others as required by Owner	TBD	TBD	TBD

**2.2.4.5** The CM@Risk shall investigate and recommend materials and equipment that could be purchased directly by the Owner. In providing its recommendations, CM@Risk will consider the impact of any long lead times associated with any materials or equipment needed on the Project and the potential cost-savings from mass purchasing power. In addition, CM@Risk will recommend a schedule for such purchases, after coordination with the Design Professional regarding the timetable for preparation of Construction Documents; and expedite and coordinate delivery of these purchases to facilitate their delivery by the required dates. The CM@Risk shall coordinate with Owner regarding the installation of any such purchased materials and equipment.

**2.2.4.6** Subcontractor Selection.

**2.2.4.6.1** Pre-Construction Phase. If the Owner determines that Integrated Project Delivery (IPD) or Building Information Modeling (BIM) objectives will benefit the Project and it is or will be to the advantage of Owner or the Project to select certain subcontracting trades to participate in the design process during the Pre-Construction Phase, then the following procedures will apply:

- a) CM@Risk will prequalify Subcontractors from the trades needed in the Pre-Construction Phase.
- b) Upon acceptance of the Owner, a Request for Qualifications (RFQ) is requested from pre-qualified Subcontractors by the CM@Risk. The RFQ will request additional qualification information in addition to pricing information, such as labor rates and overhead and profit factors.
- c) The Statement of Qualifications (SOQ) from the Subcontractors will be reviewed by a committee consisting of CM@Risk, Owner and design team members. The qualification and pricing information will be scored by a pre-determined weighted scoring system.

- d) The committee will develop a list of firms that will be interviewed.
- e) The Subcontractors will be interviewed and ranked, and the highest ranked Subcontractor will be selected to provide the services.

For Subcontractors selected for Pre-Construction Services, the CM@Risk must establish to the Owner's satisfaction that the Subcontractor's price submission and subsequent construction costs are reasonable and appropriate, by following the procedures outlined in Section 2.2.4.6.3.

**2.2.4.6.2 Construction Phase.** The CM@Risk shall, with the assistance of the Owner and Design Professional, prepare the necessary and appropriate bidding information, bidding forms, and pre-qualification criteria for bidders; develop Subcontractor interest; establish bidding schedules; advertise for bids; and conduct pre-bid conferences to familiarize bidders with the bidding documents and management techniques and with any special systems, materials, or methods. The CM@Risk shall review all potential Subcontractors with the Owner and Design Professional and obtain Owner's approval of the pre-qualification of any Subcontractor in accordance with the Owner-approved Subcontractor Selection Plan. If the CM@Risk becomes aware, prior to any bid date, that less than three (3) pre-qualified Subcontractors plan to bid any portion of any Bid Package or that anticipated bids from previously approved or pre-qualified Subcontractors are likely to exceed the current Schedule of Values or estimate of Construction Cost, the CM@Risk shall promptly notify the Owner.

**2.2.4.6.3 ABOR Policies.** The CM@Risk's selection of any Subcontractor must comply with ABOR Policy 3-804B (4) and must be based on qualifications alone, or on a combination of qualifications and price selection, but shall not be based on price alone. The CM@Risk shall receive and open bids when advertised, prepare a bid analysis, conduct pre-award conferences, and notify the Owner and Design Professional concerning which bids from pre-qualified Subcontractors will be accepted and awarded. The Owner and Design Professional shall be notified of the time and place of all bid openings and shall be permitted to attend such openings with their representatives and guests. A proposal to accept other than a low lump sum bid shall be justified in writing by the CM@Risk with sufficient detail to satisfy Owner, and be subject to prior written approval by the Owner, with no increase in the GMP. When the CM@Risk proposes to accept a subcontract bid other than the low bid, the CM@Risk must justify such action in writing and obtain written approval from Owner before making the subcontract award. Once approved by Owner, no Subcontractor may be replaced by CM@Risk without Owner's prior approval and any change in cost to CM@Risk will not be a responsibility of Owner and there will be no increase in GMP or contract price by reason of such change of cost. Within ten (10) calendar days after award, one fully executed subcontract for work or services on this Project shall be furnished to Owner together with all special or supplementary conditions applicable to the subcontract work.

#### **2.2.4.7 Intentionally Omitted**

#### **2.2.4.8 CM@Risk Self-Performance.**

**2.2.4.8.1** The CM@Risk must disclose to the Owner, upon initiation of Pre-Construction services, any portions of the Work that are to be considered for potential self-performance. If the CM@Risk indicates it desires to self-perform any portion of the construction work, the following procedures will be followed. The CM@Risk must submit its qualifications to do the listed portion(s) of the construction work to the Owner and if the Owner is satisfied with CM@Risk's qualifications as to that portion of the construction work, the Owner will designate

the CM@Risk as a pre-qualified Subcontractor for that portion of the construction work. A bid package for each portion of the construction work as to which CM@Risk is a pre-qualified Subcontractor will be prepared in the same manner and content as bid packages for Subcontractors in other trades. CM@Risk will submit a proposed price (the "Price Submission") for each of these portions of the construction work. This proposed price shall include labor rates, and certify that sub-sub trades and materials will be bid with a minimum of three pre-qualified bidders. Overtime for self-performed work shall be approved by Owner in writing in advance. Any and all change orders for self-performed work will include only CM@Risk overhead and profit, no Subcontractor overhead and profit will be allowed.

**2.2.4.8.2** To evaluate the CM@Risk's Price Submission on self-performed work, Owner may do any or all of the following at the Owner's discretion: (i) engage an estimator selected by Owner to prepare an independent estimate of this portion of the construction work; (ii) engage the DP or other consultants to do a construction market study to confirm construction market impacts to the cost of this portion of the construction work, or (iii) take other action to evaluate the CM@Risk's Price Submission. In any event, CM@Risk is responsible to establish to the Owner's satisfaction that the CM@Risk's Price Submission is reasonable and appropriate. If the Owner is satisfied that the CM@Risk Price Submission is reasonable and appropriate, the Owner will advise the CM@Risk that the CM@Risk is selected as the Subcontractor for that portion of the construction work.

**2.2.4.8.3** If, at the conclusion of the review of the CM@Risk's proposed price, the Owner is not satisfied that the CM@Risk's Price Submission is reasonable and appropriate, the Owner will so advise the CM@Risk and the CM@Risk will proceed in the following manner: There will be a normal Subcontractor bid competition for selection of the Subcontractor to perform this portion of the construction work, in accordance with the procedures in section 2.2.4.6.2, except that, notwithstanding any other provision of the CM@Risk Design Phase Services Contract Documents to the contrary, (i) the CM@Risk's Price Submission will be the CM@Risk's bid for that portion of the construction work in the Subcontractor bidding process; (ii) the CM@Risk must obtain bids for that portion of the construction work from a minimum of two other pre-qualified Subcontractors, (iii) the Subcontractor bids for that portion of the construction work must be delivered to Owner rather than the CM@Risk, and (iv) the Owner will decide which bid to accept, in accordance with Section 2.2.4.6.2.

## **2.3** Legal Requirements.

**2.3.1** CM@Risk shall perform all Work in accordance with the Legal Requirements and the General Conditions and otherwise shall provide all notices applicable to the Work. It is the responsibility of the CM@Risk during the Pre-Construction Phase to assist the Design Professional and the Owner to ascertain that the Construction Documents under preparation are in compliance with all Legal Requirements.

## **2.4** Government Approvals and Permits.

**2.4.1** Unless otherwise provided in the Contract Documents, CM@Risk has the responsibility to obtain and pay for all necessary permits, approvals, licenses, government charges, plan review fees and inspection fees required for the prosecution of the Work. CM@Risk shall follow all Owner Plan Review, permitting and inspection procedures.

## **2.5** CM@Risk's Construction Phase Services.

**2.5.1** Unless otherwise provided in the Contract Documents to be the responsibility of Owner or of a separate Contractor(s), CM@Risk's Construction Phase Services shall include: team management and coordination, scheduling, cost controls and change order management, submittal process management, subcontracting, field management, safety program, close-out process, and warranty period services. This responsibility shall include providing, through itself or its Subcontractors, all necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities, and other temporary facilities needed to permit CM@Risk to complete construction of all Work consistent with the Construction Documents.

**2.5.2** CM@Risk shall perform all construction work, services and activities efficiently and with the requisite expertise, skill, quality and competence necessary to satisfy the requirements of the Contract Documents. CM@Risk shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

**2.5.3** CM@Risk shall only employ Subcontractors (of any tier) who are properly licensed and fully able and committed to performing the Work in compliance with the Construction Documents and with the same or higher degree of skill, quality and competence as CM@Risk.

**2.5.4** CM@Risk shall be fully responsible for the Work of its Subcontractors and any of their acts and omissions in connection with the performance of their work. Nothing in the Contract Documents is intended or shall be deemed to create any legal or contractual relationship between Owner and a Subcontractor (of any tier). In addition, nothing in the Contract Documents is intended to, or shall be deemed to create any third-party beneficiary rights.

**2.5.5** CM@Risk is responsible for coordinating the activities and Work of all Subcontractors. If Owner is performing other work with separate contractors under Owner's control, CM@Risk agrees to cooperate and coordinate its Work with the work of Owner's separate contractors so that the Project can be completed in an orderly, efficient and coordinated manner reasonably free of significant disruption to any party.

**2.5.5.1** The Owner reserves the right to award other contracts related to the Project, or to perform certain work itself. Any such other work may or may not be known to the Owner or disclosed to the CM@Risk prior to execution of the Agreement. The CM@Risk shall afford the Owner and such other contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall properly coordinate its Work with theirs in such manner as the Owner or Design Professional may direct. The CM@Risk shall also assure at its own cost reasonable access of other contractors to their site and their work.

**2.5.5.2** Upon request of the CM@Risk, the Owner will provide the CM@Risk with a copy of Drawings, Specifications, Schedules or other needed data relating to such other contracts or work as may be necessary to meet CM@Risk's duty to coordinate. The CM@Risk shall thoroughly examine these documents and shall within three (3) business days of completing such examination notify the Owner in writing of any conflicts with the Work to be performed by the CM@Risk. In no event shall such notice be given by CM@Risk so late as to interfere with or delay the Work to be performed by the CM@Risk. Failure of the CM@Risk to request, review, or provide written notice as provided above shall constitute a waiver of any objections or claims the CM@Risk may otherwise have as a result of the necessity to coordinate the CM@Risk's Work with other activities.

**2.5.5.3** Should the CM@Risk sustain any damage through any act or omission of any other such contractor or subcontractor, CM@Risk shall have no claim or cause of action against the Owner for such damage and hereby waives any such claim. The CM@Risk does not waive any claim or cause of action against any other contractor or subcontractor to recover any and all damages sustained by reason of the acts or omissions of such other contractor or subcontractor. The phrase “act or omission” as used in this section shall be defined to include, but not be limited to, any delay on the part of any such other contractor or subcontractor, whether due to negligence, gross negligence, inadvertence or any other cause.

**2.5.5.4** Should the CM@Risk cause damage to the Work or property of any other contractor or subcontractor of the Owner, the CM@Risk shall upon receiving due notice of damage promptly attempt to settle with such other contractor by agreement, repair or otherwise to resolve the dispute. If any such separate contractor sues or initiates a proceeding against the Owner on account of any damage alleged to have been caused the CM@Risk or its Subcontractors, the Owner shall notify the CM@Risk who shall at its own cost defend such proceedings, or pay the costs of the Owner defending such proceedings, and if any judgment or award against the Owner arises therefrom the CM@Risk shall pay or satisfy it and shall reimburse the Owner for all attorney’s fees and court or other costs which the Owner has incurred in connection with the matter.

**2.5.6** CM@Risk shall keep the Site free from debris, trash and construction waste to permit CM@Risk to perform its construction services efficiently, safely, and so as not to interfere with the use of any adjacent land areas, including the reasonable aesthetic appearance of the jobsite and all storage/staging areas. CM@Risk shall also be responsible for and take precautions and measures to fully secure, safeguard and protect the Work during the Construction Phase. Unless previously released of responsibility by Owner, the CM@Risk’s responsibility to secure, safeguard and protect the Work shall continue until Final Completion and final acceptance by the Owner.

**2.5.7** Upon Substantial Completion of the Work, or a portion of the Work, CM@Risk shall remove all debris, materials, waste, equipment, machinery and tools from the Work so as to permit Owner to safely occupy the Work or a portion of the Work for the use for which it is intended.

**2.5.8** Control of The Work.

**2.5.8.1** The CM@Risk shall supervise and direct the Work of its employees and Subcontractors and coordinate the Work with the activities and responsibilities of the Owner and the Design Professional so as to complete the Work in accordance with the Owner’s objectives of cost, time and quality as set forth in the Contract Documents.

**2.5.8.2** The CM@Risk shall establish an on-site organization with lines of authority to carry out the overall plans for completion of the Work.

**2.5.8.3** The CM@Risk shall schedule, notice, conduct, and take and distribute minutes of weekly progress meetings at which the Owner, Design Professional, and CM@Risk can discuss jointly such matters as procedures, progress, and problems.

**2.5.9** Daily Log.

**2.5.9.1** The CM@Risk shall maintain a daily log of construction activities for each calendar day of the Contract Time, using a form pre-approved by the Design Professional. In that log the CM@Risk shall document all activities at the Work Site, including, but not limited to:

- a) Weather conditions showing the high and low temperatures during work hours, the amount of precipitation received on the job Site, and any other weather conditions which adversely affect Work at the Site;
- b) Soil conditions which adversely affect Work at the Site;
- c) The hours of operation by CM@Risk and individual Subcontractor personnel;
- d) The number of CM@Risk and Subcontractor personnel present and working at the Site, by subcontract and trade, and updated schedule activity number;
- e) The equipment active or idle at the Site;
- f) A description of the Work being performed at the Site by updated schedule activity number;
- g) Any delays, disruptions or unusual or special occurrences at the Site;
- h) Materials received at job Site;
- i) A list of all visitors at the Site; and
- j) Any other information deemed relevant as to activities on the Site that day.

**2.5.9.2** The CM@Risk shall provide copies of the daily logs to the Owner on a weekly basis. The daily log shall not constitute written notice to the Owner of any event or occurrence when such notice is required by the Contract Documents.

**2.5.9.3** Any changes affecting previously approved Work shall require prior written approval of the Owner.

#### **2.5.10** Supervision and Construction Procedures.

**2.5.10.1** The CM@Risk shall supervise and direct the Work, using the CM@Risk's best skill and attention. The CM@Risk shall be solely responsible for the coordination and accomplishment of all portions of the Work under the Contract Documents.

**2.5.10.2** The CM@Risk shall be responsible to the Owner for the acts and omissions of the CM@Risk's employees, Subcontractors of all tiers, their agents and employees, and any other persons performing any of the Work or furnishing materials under a contract with the CM@Risk.

**2.5.10.3** The CM@Risk shall not be relieved from its obligation to perform the Work in accordance with the Contract Documents either by the activities or duties of the Design Professional in its administration of this Agreement, or by inspections, tests or approvals required or performed by persons other than the CM@Risk. Nothing contained in this paragraph shall preclude the CM@Risk from asserting any rights it may have under this Agreement in the event of unreasonable delays to the CM@Risk in the conducting of any inspections, test, approvals, or other actions by the Design Professional upon which the CM@Risk is dependent.

**2.5.10.4** The CM@Risk shall employ a competent Owner-approved Superintendent and necessary assistants, who shall be in attendance at the Project Site during the progress of the Work. The CM@Risk shall also employ the CM@Risk Representative (approved by Owner) together with such additional engineering and clerical support as may be reasonably required and appropriate to the stage of construction work. Once designated the Superintendent and Representative of CM@Risk shall not be changed except with the prior consent of the Owner,

unless the Superintendent or Representative proves to be unsatisfactory to the CM@Risk or ceases to be in its employ. The Superintendent and Representative shall represent the CM@Risk and all communications given to the Representative shall be binding on the CM@Risk. All such communications shall be confirmed in writing.

**2.5.10.5** The CM@Risk shall at all times enforce strict discipline and good order among its employees and its Subcontractors' employees, and shall not allow employment on the Work of any unfit person or anyone not skilled in and capable of performing the task assigned to them.

**2.5.10.6** The CM@Risk shall at all times allow the Owner, Design Professional, or any other designated representatives access to the construction work to observe progress and inspect the quality of work and conformance to the Construction Documents.

**2.5.10.7** Any Work required to be inspected by the Design Professional and/or the Owner prior to being covered, which is covered up without prior inspection or without prior consent of the Design Professional and/or the Owner, must be uncovered by the CM@Risk, if requested by the Design Professional or the Owner, and then re-covered at no cost to Owner, notwithstanding the provisions of the following Section.

**2.5.10.8** CM@Risk shall notify the Owner and Design Professional in writing at least xxxx (xx) business days or xxxx (xx) hours prior to the time at which the Owner or Design Professional must be present to perform an inspection. Failure to provide such notice shall make the CM@Risk solely responsible for all consequences, including backcharges for subsequent re-inspection, of non-inspection and any required access to or uncovering of such Work. The following chart indicates the inspection period resulting from CM@Risk request:

<u>CM@Risk Inspection Request</u>	<u>Owner/Design Professional Inspection Period</u>
Monday	Thursday
Tuesday	Friday
Wednesday	Monday
Thursday	Tuesday
Friday	Wednesday

CM@Risk shall advise the Owner and Design Professional of any additional inspections required by other entities, including but not limited to any Authority Having Jurisdiction (AHJ), and shall follow those entities' required inspections procedures. Failure to provide such notice to the Owner, the Design Professional, or any other entity requiring inspection, shall make the CM@Risk solely responsible for all consequences, including backcharges for subsequent re-inspection, of non-inspection and any required access to or uncovering of such Work.

**2.5.11 Administration.**

**2.5.11.1** Except as may be expressly provided to the contrary in the Contract Documents, the CM@Risk Representative(s), with a primary contact designated, shall forward all communications in writing and all documents simultaneously to the Owner's Representative(s) and the Design Professional's Representative(s) as listed below:

Design Professional's  
Representative(s):  
(NAME, EMAIL)

CM@Risk  
Representative(s):  
(NAME, EMAIL)

Owner's  
Representative(s):  
(NAME, EMAIL)

## **2.5.12 Drawings and Specifications.**

**2.5.12.1** The CM@Risk shall study and compare the Construction Documents prior to beginning work on each phase or portion of the Work and immediately report to the Design Professional and the Owner any material error, inconsistency, conflict, ambiguity, or omission that is discovered.

**2.5.12.2** The Construction Drawings are intended to show general arrangements, design and extent of Work and are not intended to serve as shop drawings. Where required, the CM@Risk shall perform no portion of the Work without having shop drawings, product data or samples approved; any Work performed in violation of this provision will be solely at the CM@Risk's risk regardless of Design Professional's and/or Owner's knowledge of such Work being performed.

**2.5.12.3** In the event of any conflict or ambiguity, the Construction Documents shall be interpreted as being complementary, requiring delivery by CM@Risk of a complete Project, or a designated portion thereof. Any requirement in any one of the Construction Documents is as binding as if it were included in all Construction Documents. In the event of any conflict or ambiguity, perceived or real, the CM@Risk shall request an interpretation by the Design Professional before performing the Work. Generally, the Specifications ("Specifications") address quality, types of materials and contractual conditions while the Drawings ("Drawings") show placement, sizes, and fabrication details of materials. In the event a conflict is discovered in the Construction Documents, the priorities stated below shall govern and control:

- a) Addenda shall govern over all other Construction Documents;
- b) Subsequent addenda shall govern over prior addenda, but only to the extent modified;
- c) In case of conflict between Drawings and Specifications, the Specifications shall govern;
- d) Conflicts within the Drawings:
  - (1) Schedules, when identified as such, shall govern over all other portions of the Drawings.
  - (2) Specific notes shall govern over all other notes and all other portions of the Drawings, except the schedules described in 2.5.12.3.d (1) above.
  - (3) Larger scale drawings shall govern over smaller scale drawings.
  - (4) Figured or numerical dimensions shall govern over dimensions obtained by scaling.
- e) Conflicts within the Specifications: These General Conditions shall govern over all sections of the Specifications except for specific modifications thereto that may be stated in Special Conditions or addenda. No other section of the Specifications shall modify these General Conditions; and
- f) In the event provisions of codes, safety orders, Construction Documents, referenced manufacturer's specifications or industry standards are in conflict, the more restrictive or higher quality shall govern;

**2.5.12.4** In the event of conflict between ASU [Project Guidelines](#) dated March 30, 2026 and the Drawings and Specifications, CM@Risk shall promptly call the conflict to the attention of Owner and Design Professional and the use of such Drawings or Specifications by CM@Risk will be deferred until resolution of the conflict to Owner's satisfaction.

**2.5.12.5** If the Construction Documents are not complete as to any minor detail of a required construction system or with regard to the manner of combining or installing of parts, materials,

or equipment, but there exists an accepted trade standard for good and skillful construction, such detail shall be deemed to be an implied requirement of the Construction Documents in accordance with such standard. That is to say, a) "minor detail" shall include the concept of substantially identical components, where the price of each such component is small even though the aggregate cost or importance is substantial, and shall include a single component which is incidental, even though its cost or importance may be substantial, and b) the quality and quantity of the parts or materials so supplied shall conform to trade standards and be compatible with the type, composition, strength, size, and profile of the parts or materials otherwise set forth in the Construction Documents.

### **2.5.13 Submittals, Drawings and Shop Drawings.**

**2.5.13.1** The CM@Risk shall maintain at the Site, for the use of the Owner and of the Design Professional, one copy of all Drawings, Specifications, bulletins, addenda, amendments or change orders, field orders, approved shop drawings, approved submittals, supplementary instructions, requests for information, catalog data, manufacturers' operating and maintenance instructions, certificates, warranties, guarantees and other contract related documents and their modifications, if any, in good order and marked daily by the CM@Risk to record all approved changes made during construction. All of these shall be turned over to the Design Professional by the CM@Risk at the time of Substantial Completion for the purpose of the Design Professional assembling and correlating the material for use by the Owner. Prior to Substantial Completion, civil as-built drawings, when required, shall be sealed by the engineer of record and include a statement that the constructed finished floor elevation(s) are free from inundation in the approved design storm; the constructed retention systems will dissipate stormwater within 36 hours; and the drainage management system has been constructed in substantial conformance with the approved permit plans and will function as designed.

**2.5.13.2** The CM@Risk shall submit to the Design Professional, with such promptness as to cause no delay in its Work or in the work of any other contractor, all submittals and shop drawings as are required by the Construction Documents, or are necessary to illustrate details of the Work.

**2.5.13.2** Each submittal and shop drawing must be accompanied by a CM@Risk transmittal letter containing a list of the titles and numbers of the shop drawings. Each series shall be numbered consecutively for ready reference. Each submittal and shop drawing shall be marked with the following information:

- a) Date of Submission
- b) Name of Project
- c) Location of Project
- d) Branch of Work (Specification Section)
- e) Project Number
- f) Name of Submitting CM@Risk
- g) Name of Subcontractors
- h) Revision Number

At the request of Owner, identified submittals shall be submitted to Owner for its review concurrent with review of same by Design Professional. During the Construction Phase the CM@Risk shall promptly provide Owner with an electronic copy of all approved submittals.

**2.5.13.4** All Subcontractor submittals and shop drawings shall be reviewed by the CM@Risk prior to being submitted to the Design Professional and each shall bear a written statement by the CM@Risk that the submittals and shop drawings are consistent with the Construction Documents and other Contract Documents or if not totally consistent shall bear a written statement indicating all variances from the Construction Documents and other applicable Documents. Any submittals or shop drawings submitted without the statements will be returned for resubmission; the submittals or shop drawings will be considered as not having been submitted, and any delay caused thereby shall be the CM@Risk's sole responsibility. This review by CM@Risk of Subcontractor submittals and shop drawings shall not be construed as CM@Risk approval of the design therein except that it shall be a representation that the letter accompanying the submittal or shop drawings does indicate all variations from the Construction Documents and other Contract Documents as required by section 2.5.13.5.

**2.5.13.5** The CM@Risk shall include with submittals and shop drawings, a letter to the Design Professional, with concurrent copy to the Owner, indicating all variances from the Design Professional's Drawings and Specifications. Failure to so notify the Design Professional of such variances will be grounds for subsequent rejection of the related Work or materials. If, in the opinion of the Design Professional, the variances are not acceptable, the CM@Risk must furnish the item as specified or as indicated on the Construction Drawings.

**2.5.13.6** It is the CM@Risk's obligation and responsibility to check all of its submittals and shop drawings and to be fully responsible for them and for coordination with connecting Work. Submittals and shop drawings shall indicate in detail all parts of an item of Work, including erection and setting instructions and engagements with Work of other trades or other separate contractors.

**2.5.13.7** By the act of reviewing or submitting submittals and/or shop drawings, the CM@Risk thereby represents to the Owner and Design Professional that it has determined and verified availability, field measurements, field construction criteria, materials, catalog numbers and similar data, or will do so, and that it has checked and coordinated each submittal and/or shop drawing with the requirements of the Work and of the Construction Documents. If any specified material, item or part is not available, the CM@Risk shall so indicate to the Design Professional.

**2.5.13.8** The Design Professional shall review and approve submittals and shop drawings and return them to the CM@Risk within twenty (20) calendar days of receipt unless otherwise previously agreed in writing. For scheduling purposes, the CM@Risk must assume a 20-day review period for each submittal or set of shop drawings, and ten (10) calendar days for resubmittals, except for complex submittals identified by the Design Professional as having significant deficiencies, wherein the resubmittal turnaround time will be within twenty (20) calendar days. If review and approval are delayed beyond twenty (20) calendar days, the Design Professional shall notify the CM@Risk and the Owner in writing stating the reason for the delay. Approval shall not relieve the CM@Risk from the responsibility for variances from the Drawings and Specifications, unless it has been called to the Design Professional's attention, in writing, at the time of submission. Any modification will be approved only if it is in the interest of the Owner to effect an improvement in the Work and does not increase the GMP or Contract Time. Any such modification is subject generally to all other provisions of the Construction Documents, and is without prejudice to any and all rights under any surety bond.

**2.5.13.9** If the Design Professional returns a submittal or shop drawing to the CM@Risk with the notation "rejected", "revise and resubmit", or "approved as noted", the CM@Risk, so as not to delay the Work, shall promptly resubmit a submittal or shop drawing conforming to the

requirements of the Construction Documents and indicating in writing on the submittal or shop drawing and on the transmittal what portions of the resubmittal have been altered in order to meet with the approval of the Design Professional. Any other differences between the resubmittal and the prior submittal shall also be indicated by CM@Risk on the shop drawing and on the resubmittal as a special note.

**2.5.13.10** No extension of Contract Time will be granted to the CM@Risk because of its failure to submit submittals or shop drawings with sufficient time to allow for review, possible resubmittals and approval. Work shall not commence until the CM@Risk has received written approval. The CM@Risk shall furnish prints of its approved submittals and shop drawings to all the Subcontractors whose work is in any way related to the Work. Only prints bearing this approval will be allowed on the Site.

**2.5.14** Product Samples, Tests, and Certificates.

**2.5.14.1** The CM@Risk shall furnish product samples of all items requested or required by the Specifications. product samples shall be properly identified and submitted with such promptness as to cause no delay in Work or in the work of any other contractor and to allow time for consideration by the Design Professional and the Owner. The Design Professional and/or Owner will review product samples in accordance with Section 2.5.13 above.

**2.5.14.2** Each Product Sample must be accompanied by a letter of transmittal containing the following information:

- a) Date of Submission
- b) Name of Project
- c) Location of Project
- d) Branch of Work (Specification Section Number)
- e) Project Number
- f) Name of Submitting CM@Risk
- g) Name of Subcontractor

**2.5.14.3** The CM@Risk shall furnish to the Design Professional a certificate stating that material or equipment submitted by CM@Risk complies with Contract Documents. If a certificate originates with the manufacturer, the CM@Risk shall endorse it and submit it to the Design Professional together with a statement of compliance in its own name.

**2.5.14.4** No tests, inspections or approvals performed or given by the Owner or the Design Professional or others acting for the Owner or any agency of Federal, State or Local government nor any acts or omissions by the Owner or the Design Professional in administering this Agreement shall relieve the CM@Risk from its duty to perform the Work in accordance with the Contract Documents and all applicable law or regulation or code.

**2.5.14.5** Unless the Design Professional is authorized at the time of submittal to return samples at the CM@Risk's expense, rejected samples will be destroyed.

**2.5.14.6** After delivery of materials by CM@Risk, the Design Professional may make such tests, as it deems necessary, with samples required for such tests being furnished by and at the cost of the CM@Risk. Any test is for the benefit of the Owner and shall not relieve CM@Risk of the responsibility for providing quality control measures to assure that Work performed strictly

complies with the Construction Documents. No test shall be construed as implying acceptance of materials, work, workmanship, equipment, accessories or any other item or thing.

**2.5.14.7** Materials, workmanship, equipment or accessories may be rejected on the basis of the test results even though general approval has been previously given. If items have been incorporated in Work, the Design Professional shall have the right to cause their removal and replacement by items meeting Construction Document requirements, with the cost of such removal and replacement being done by the CM@Risk and not the Owner, or to demand and secure appropriate reparation to or price adjustment for the benefit of Owner from the CM@Risk.

**2.5.15** As-Built Drawings.

**2.5.15.1** Prior to Final Payment, the CM@Risk shall complete and turn over to the Design Professional the As-Built Drawings kept current at the Project Site by CM@Risk. Those As-Built Drawings shall consist of a set of drawings which clearly indicate all field changes that were made during contract performance to adapt to field conditions, changes resulting from amendments or change orders and all buried and concealed installation of piping, conduit and utility services. All buried and concealed items both inside and outside the facility shall be accurately located on the As-Built Drawings as to depth and in relationship to not less than two permanent features such as interior or exterior wall faces. The As-Built Drawings shall be clean and all changes, corrections, and dimensions shall be given in a neat and legible manner in a contrasting color. At project completion, projects that add, remove and/or change utility infrastructure of any kind shall require a Post-construction Survey that utilizes subsurface utility engineering (SUE) methods to map utilities in their as-built location and condition. If required the Post-construction Survey shall be performed by a qualified company that is able to deliver findings to ASU in the form of digital maps and geospatial data. CM@Risk shall also provide an electronic file of the As-Built Drawings to Owner in digital form pre-approved by Owner.

**2.5.15.2** With respect to any changes or corrections in the Work which are made subsequent to Substantial Completion, such revisions shall be submitted to the Design Professional for approval prior to Final Payment.

**2.5.16** Schedule and Coordination.

**2.5.16.1** The CM@Risk shall schedule and coordinate the Work of all of its Subcontractors on the Project including their use of the Site. The CM@Risk shall keep the Subcontractors informed of the Project CPM Schedule to enable the Subcontractors to plan and perform their Work properly.

**2.5.16.2** At the time of the submission of the GMP, the CM@Risk shall submit to the Design Professional a detailed CPM Schedule for the Work, which shall provide for the expeditious and practicable execution of the Work. The CPM Schedule shall be consistent with and build upon any previous schedules issued during the Pre-Construction Phase. The CPM Schedule is not to exceed time limits current under the Contract Documents and shall be related to the Work to the extent required by the Contract Documents.

**2.5.16.3** The CPM Schedule required for the performance of the Work shall include reasonable detail including a time scaled network and computer printout in accordance with the following requirements:

- a) no activity shall be longer than twenty-one (21) calendar days (i.e. task line item duration in the CPM Schedule) in length except fabrication and delivery activities;
- b) each activity must be logically tied to another activity to show its interdependency with other activities;
- c) installation activities must be logically tied to submittal/approval, fabrication and delivery;
- d) only a single critical path shall be allowed; and
- e) all activities on the schedule must be clearly designated.

**2.5.16.4** The CM@Risk shall prepare and keep current, for the Design Professional's approval, a timetable for submittals that is coordinated with the CM@Risk's CPM Schedule for the Work and that allows the Design Professional the specified time to review submittals.

**2.5.16.5** The CPM Schedule shall be revised monthly by the CM@Risk to reflect actual conditions in the field and be transmitted monthly to Owner and Design Professional with a Narrative Report including a description of current and anticipated problem areas, delaying factors and their impact and corrective action taken or proposed. This update is to be submitted with each Application for Progress Payment. Owner's review of the CPM Schedule update shall not be construed as relieving CM@Risk of its complete and exclusive control over the means, methods, sequences, and techniques of construction. The CM@Risk understands and agrees that the monthly updated CPM Schedule will be the basis for the analysis and granting or rejection of time extensions in accordance with Section 9 of these General Conditions.

**2.5.16.6** In addition to the monthly CPM Schedule update, the CM@Risk's schedule shall also be revised at appropriate intervals as required by the conditions of the Work or as directed by the Owner or Design Professional with a printed and electronic copy of the revision submitted to the Owner and Design Professional in a format acceptable to the Owner.

**2.5.16.7** The CM@Risk shall perform the Work at all times during the Construction Phase in accordance with the most recent Owner-approved schedule and consistent with the established Contract Time.

**2.5.16.8** It is agreed by the Parties that if the CM@Risk submits an original or updated CPM Schedule which shows that the Project and/or individual milestone(s) for the Project will be completed earlier than required by the adjusted contractual completion date(s), the differences between the forecasted early completion and the required completion shall be considered Project-owned Total Float available for use by both the Owner and the CM@Risk.

**2.5.16.9** It is also agreed by the Parties that since Total Float time within the CPM Schedule is jointly owned, no time extensions will be granted nor delay damages paid by Owner until a critical path activity delay occurs which extends the Work beyond the adjusted contractual completion date. Since float time within the CPM Schedule is jointly owned, it is acknowledged and agreed by CM@Risk that Owner-caused delays on the Project may be offset by Owner-caused time savings which result in a critical path activity savings of time to the CM@Risk. In such an event, the CM@Risk shall not be entitled to receive a time extension or delay damages until all Owner-caused time savings are exhausted and the applicable contractual completion date or milestone date is also exceeded.

**2.5.16.10** It is also agreed that no time extensions shall be granted nor delay damages paid unless the delay is clearly demonstrated by the updated CPM Schedule and the current and supporting narrative as of the month the change was issued or occurred, or the delay took

place, and which delay cannot be mitigated, offset, or eliminated through actions such as revising the intended sequence of Work or other reasonable or industry recognized means of mitigating schedule slippage.

**2.5.16.11** Should the CPM Schedule show the CM@Risk to be thirty (30) days or more behind schedule for the Work as a whole, at any time during construction, CM@Risk shall, upon Owner's request, prepare a "Recovery Schedule" and report to explain and display how CM@Risk intends to regain compliance with the CPM Schedule as soon as practicable.

**2.5.16.12** If Owner reasonably determines that the performance of the Work is behind Schedule such that the CM@Risk will be unable to achieve Substantial Completion of the Work prior to expiration of the Contract Time, the Owner shall have the right, but no obligation, to order the CM@Risk to take corrective measures necessary to expedite the progress of construction, including, without limitation, (i) working additional shifts or overtime, (ii) supplying additional manpower, equipment, and facilities and (iii) other similar measures (collectively "Extraordinary Measures"). The determination of whether the progress of the Work is behind schedule shall take into account any extensions in time to which the CM@Risk is entitled. Owner is hereby permitted to continue use of Extraordinary Measures until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the CM@Risk's compliance with the Schedule. In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the Work, notwithstanding the rights and authority granted in this Subsection 2.5.16.12 or elsewhere in the Contract Documents. CM@Risk shall not be entitled to adjustment in the GMP in connection with Extraordinary Measures required by the Owner under or pursuant to this Subsection. Owner may exercise its rights under or pursuant to this Subsection as frequently as necessary to ensure that the CM@Risk's performance of the Work will comply with the CPM Schedule and the Contract Documents. The cost of Extraordinary Measures will be included in the Cost of the Work.

## **2.6** CM@Risk's Responsibility for Project Safety.

**2.6.1** CM@Risk recognizes the importance of performing its work in the safest manner possible so as to prevent damage, injury or loss to (a) all individuals at or in the vicinity of the Work, whether working or visiting the Project or Campus; (b) all work, including materials and equipment incorporated or stored on- or off-Site; and (c) all property adjacent to the Site. On that basis CM@Risk assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work and will submit a safety plan to Owner and Design Professional at the time of issuance of the Notice to Proceed with the Work. CM@Risk shall, prior to commencing construction, designate a safety manager with the necessary qualifications and experience to supervise the implementation of the plan and the monitoring of all safety precautions and programs related to the Work. The safety manager shall make routine daily inspections of the Work Site, and shall hold at least weekly safety meetings with CM@Risk's personnel and Subcontractors.

**2.6.2** CM@Risk and its Subcontractors shall comply with all Legal Requirements relating to safety, as well as any Owner specific safety requirements set forth in the Contract Documents. CM@Risk will immediately report, in writing, to Owner's Representative and all government or quasi-government authorities having jurisdiction over matters involving the Work, any significant injury, loss, damage or accident occurring at the Site of the Work.

**2.6.3** CM@Risk's responsibility for safety under Section 2.6 is not intended to in any way relieve CM@Risk's Subcontractors (of any tier) from applicable obligations and responsibilities for complying with all Legal Requirements, including those related to health and safety matters, and their taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.

## **2.7** Warranty.

**2.7.1** CM@Risk warrants to Owner that the construction, including all materials and equipment furnished as part of the Work, shall be new, unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. CM@Risk's warranty obligation excludes defects caused by abuse, alterations, or unreasonable failure to maintain work by persons other than CM@Risk, CM@Risk's Subcontractors, or others under CM@Risk's control. Nothing in this warranty by CM@Risk shall limit any manufacturer's warranty that provides Owner with greater warranty rights than set forth in this Section or the Contract Documents.

**2.7.2** CM@Risk will provide Owner with all manufacturers' warranties and Operation and Maintenance Manuals upon the date of Final Completion of the Work. CM@Risk shall provide Owner a two-(2) year warranty for all portions of the Work, which warranty will commence upon Substantial Completion of the Work. All statutory, special, implied, or other warranties, express or implied, related to latent defects, or as noted in the Contract Documents, will remain in force and are not limited or superseded by this provision.

**2.7.3** The Warranties identified herein do not limit or control other remedies available to Owner at law or their limitation periods, if any.

## **2.8** Correction of Defective Work.

**2.8.1** If any portion of the Work is covered over by CM@Risk or its Subcontractor contrary to the request of the Design Professional or Owner or as required by the Construction Documents or the applicable building standards or codes if requested in writing by the Design Professional or Owner, that Work or portion thereof must be promptly uncovered for observation at the CM@Risk's own expense.

**2.8.2** If any portion of the Work, other than those portions required to be inspected by the Design Professional, the Owner or others, prior to being covered, has been covered over, the Design Professional or Owner may request that it be uncovered for observation. If such portion of the Work is found to be in accordance with the requirements of the Construction Documents, the cost of uncovering it shall be charged to the Owner as an amendment or change order. If such portion of the Work is found not to be in compliance with the requirements of the Contract Documents, the CM@Risk shall bear such costs to uncover, remove and replace or repair such defective work and re-cover the work.

**2.8.3** Unless a specific written waiver of such non-conformance has been provided to the CM@Risk, CM@Risk agrees to promptly correct any Work that is found not to be in conformance with the Contract Documents, whether previously inspected by the Owner's representatives or not. This obligation of CM@Risk shall continue for a period of two (2) years from the date of Substantial Completion. Nothing in this section shall waive any other rights or remedy that the Owner may have under Arizona law.

**2.8.4** CM@Risk, upon receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, shall, within seven (7) days (except in the case of an emergency or item on the schedule critical path, which will require immediate response) commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to any other parts of the Work affected by the nonconforming Work. In the event CM@Risk fails to commence the necessary corrective steps within seven (7) days of the Notice, Owner, in addition to any other remedies provided under the Contract Documents, may at the end of the seven (7) day period commence to correct or cause the correction of such nonconforming Work with its own or other forces. CM@Risk shall be responsible for all costs and expenses that Owner incurs in remedying any such Work not in conformance with the Contract Documents, including at Owner's sole discretion, any of its own staff time costs and all Design Professional or other fees incurred. Owner will notify CM@Risk of its intent to make such corrections at or before the commencement of the corrective work.

**2.8.5** The two-year warranty period referenced in Section 2.7 applies only to the CM@Risk's obligation to correct Work not in compliance with the Construction Documents, and shall not constitute a period of limitations with respect to any other rights or remedies Owner may have with respect to CM@Risk's other obligations under the Contract Documents. CM@Risk acknowledges that, for purposes of statutes of limitations, Owner is an instrumentality of the State of Arizona, acting in its sovereign capacity.

### **Section 3 Design Professional's Services and Responsibilities**

**3.1** The Design Professional will be the initial interpreter of the intent and requirements of the Construction Documents. Following a written request from the Owner or CM@Risk, the Design Professional shall promptly provide a written interpretation of the intent or requirements of the Construction Documents. These initial interpretations shall be consistent with the intent of the Contract Documents.

**3.2** The Design Professional will timely review and approve or take other appropriate action upon the CM@Risk's submittals, such as shop drawings, product data and samples, to ensure conformance with the Construction Documents. Such action shall be taken with reasonable promptness as specified so as not to cause delay. The Design Professional's approval of a specific item or component shall not indicate approval of an assembly of which the item is a component.

**3.3** Following consultation with the Owner, the Design Professional will take appropriate action to facilitate issuance of amendments or change orders and may authorize minor changes in the Work as defined in Section 10.3.

**3.4** The Design Professional and Owner will each have authority to reject any Work which does not conform to the Contract Documents and to require special inspection or testing, but may take such action only after consultation with the other. However, neither the authority to act given to the Design Professional and the Owner under this subparagraph nor any decision made by them in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility by them to the CM@Risk, any Subcontractor, any of their agents or employees, or any other person performing any of the Work.

**3.5** Based on its observations of the Work and evaluation of applications for payment the Design Professional will have the responsibility to determine the amounts owed to the

CM@Risk from time to time under and in accordance with Section 7 of these General Conditions and applicable law.

### **3.6 Design Services.**

**3.6.1** Under separate agreement with the Owner, the Design Professional shall submit to Owner all required Design Submission Documents to describe the Project's essential elements. The Design Submissions required of the Design Professional, will include Drawings, Specifications, cost estimates and other documents as may be necessary to fully identify the Project scope and materials. The CM@Risk shall submit detailed cost estimates as part of the design submission to the Owner. At the time of the scheduled submissions, CM@Risk, Design Professional and Owner shall meet and confer about the submission with CM@Risk and Design Professional identifying during the meeting, among other things, the evolution of the design and any significant changes or variances from the requirements of the Contract Documents, or previously submitted design submissions, and, if any, changes in anticipated costs.

**3.6.2** Minutes of these design review meetings will be maintained by Design Professional and provided to all attendees for review. Following the design review meeting, Owner shall review and approve or reject the Design Submission within three (3) weeks from receipt. Owner may reject full or partial design submittals that do not conform with the Owner's Project Criteria, overall Project concepts, and budgets, or for any other reasonable cause consistent with the intent of the Contract Documents. Upon such rejection the Design Professional shall redesign or reengineer the portion of the design rejected. CM@Risk shall revise the cost estimate at no additional cost, such that it meets Owner's requirements. All variances from the Owner's Project Criteria must be approved in writing by the Owner.

**3.6.3** As necessary for the timely completion of the Work, the Design Professional shall submit to Owner for Owner's review and approval or rejection, Construction Documents describing the requirements for construction of the Work. The Owner, Design Professional and CM@Risk shall have design review meetings to discuss Construction Documents consistent with section 3.6.1 above, and Owner shall review and approve or reject the Construction Documents within three (3) weeks of receipt from the Design Professional.

**3.7** The Design Professional will provide administration of this Agreement on behalf of the Owner as described throughout the Agreement and these General Conditions and in Owner's contract with the Design Professional.

**3.8** The Design Professional will be an Owner's representative during construction and until the two (2) year warranty period has expired. All instructions and communications by the Design Professional to the CM@Risk shall be copied to the Owner. The Design Professional will, unless otherwise provided, be the Owner's agent for receipt and processing of CM@Risk's pay applications as described in Section 7 below and otherwise shall have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

## **Section 4 Owner's Services And Responsibilities**

**4.1** Owner shall, throughout the performance of the Agreement, reasonably cooperate with CM@Risk and perform Owner's responsibilities, obligations and services in a timely manner so as not to delay or interfere with CM@Risk's performance of its obligations under the Contract Documents.

**4.2** Owner's Representative shall be responsible for processing and delivery of Owner-supplied information and approvals or rejections in a timely manner to permit CM@Risk to fulfill its obligations under the Contract Documents. Owner's Representative shall also provide CM@Risk with reasonably prompt notice if and when it observes any failure on the part of CM@Risk to fulfill its contractual obligations, including errors, omissions or defects in the CM@Risk's performance of the Work. Failure of the Owner or its representatives to notify the CM@Risk hereunder shall not reduce, change, lessen or alleviate in any way, the duties and obligations of CM@Risk under the Contract Documents.

**4.3** Owner shall provide reviews and approvals or rejections of the CM@Risk's cost estimate portion of the Design Submission within three (3) weeks of receipt of those documents. The Owner shall review documents submitted by the CM@Risk and shall render any decisions pertaining thereto without unreasonable delay.

**4.4** Owner is responsible for all work performed at the Project by parties under the Owner's control other than CM@Risk or Design Professional. Owner shall contractually require such parties to cooperate with, and coordinate their activities with CM@R so as not to unreasonably interfere with CM@Risk's ability to complete its Work in a timely manner, consistent with the Contract Documents.

**4.5** The Owner shall interact and reasonably cooperate with the CM@Risk to keep the Work within the Project Budget or GMP, as may be applicable. To that end, Owner will reasonably consider recommendations of the CM@Risk to redesign the Construction Documents, include deductive alternatives or reductions in the Work (including Value Engineering Proposals), or otherwise modify the Contract Documents. If at any time, it is apparent that the Cost of the Work cannot be kept within the Project Budget or GMP, the Owner may terminate this Agreement in accordance with the Termination for Convenience provisions set forth below.

**4.6** The Owner, acting through the Design Professional and consistent with the Owner's agreement with the Design Professional, shall furnish the CM@Risk a sufficient quantity of documents and information required for the CM@Risk's performance of its Pre-Construction services.

**4.7** Upon request the Owner will provide the CM@Risk with a copy of the executed contract between the Owner and the Design Professional. The Owner will likewise, upon request, provide the Design Professional with a copy of the CM@Risk Agreement, once executed.

## **Section 5 Hazardous Materials And Unforeseen Project Site Conditions**

### **5.1 Hazardous Materials.**

**5.1.1** It is the sole responsibility of the CM@Risk, as part of the agreed upon GMP, to properly remove and dispose of any Hazardous Materials in the Project identified as such in the Contract Documents by the Owner. CM@Risk, upon encountering any Hazardous Materials not identified in the Contract Documents, shall stop Work immediately in the affected area and notify Owner and, if required by any Legal Requirements, all governmental or quasi-governmental entities with jurisdiction over the Project. Owner has responsibility to take the necessary measures required to properly remove and dispose of Hazardous Materials not identified in the Contract Documents as being the responsibility of the CM@Risk.

**5.1.2** CM@Risk will be entitled, in accordance with the provisions of these General Conditions, to an adjustment in the GMP or Contract Time(s) of performance, or both, to the extent that the CM@Risk's costs or time of performance have been adversely and materially impacted by the presence of unforeseen or undisclosed Hazardous Materials.

**5.1.3** Owner is not responsible for Hazardous Materials introduced to the Site by CM@Risk, Subcontractors (of any tier) or anyone else for whom the CM@Risk is responsible unless provision of such Hazardous Materials are called for in the Contract Documents.

**5.1.4** CM@Risk agrees to indemnify, defend and hold harmless Owner and others under Owner's control, and the officers, directors, employees and agents of each of them, from and against all claims, losses, liabilities, costs and expenses, including but not limited to attorney's fees and expenses, arising out of or resulting from CM@Risk's importation, improper handling, storage, abatement, removal or disposal of any Hazardous Materials by CM@Risk.

**5.1.5** Releases of Hazardous Substances. Upon any release of any hazardous substance in connection with the Work, whether relating to a pre-existing condition or acts or omissions of CM@Risk, CM@Risk shall take immediate action reasonably necessary to contain the release and if the hazardous material release is not a CM@Risk release, Owner will pay CM@Risk the reasonable costs incurred by CM@Risk in taking such containment action. Owner may elect to have CM@Risk control and carry out any containment, clean-up, removal and remediation activity needed, provided that if the release is not a CM@Risk release, Owner will be responsible to pay CM@Risk for such CM@Risk containment activities in accordance with Section 10.4 of these General Conditions, including allowance of additional Contract Time thereunder.

## **5.2** Unforeseen Project Site Conditions.

**5.2.1** If CM@Risk encounters, during the performance of its Work, concealed or latent physical conditions or subsurface conditions at the Project which (a) materially differ from the conditions indicated in the Contract Documents; or (b) are of an unusual nature which differ materially from the conditions ordinarily encountered and generally recognized as inherent in the sort of work provided for in the Contract Documents, CM@Risk shall immediately provide written notice to Owner apprising Owner of the unforeseen conditions encountered. CM@Risk shall not disturb or modify such conditions without Owner's prior written consent. Owner shall promptly investigate CM@Risk's notice of an unforeseen Site condition and advise CM@Risk of its findings and determination.

**5.2.2** If the conditions encountered by CM@Risk under Section 5.2.1 are determined by the Owner to be an unforeseen Project Site condition, CM@Risk will be entitled, in accordance with the provisions of these General Conditions, to an adjustment in its GMP and/or Contract Time(s) of performance, to the extent that CM@Risk's cost or time of performance have been adversely impacted by the unforeseen conditions. Adjustments to GMP will be for the actual direct cost impact incurred by CM@Risk to address and resolve the unforeseen conditions.

**5.2.3** No claim by the CM@Risk for an increase in the GMP or in Contract Time(s) shall be considered or allowed by Owner without compliance with the advance notice requirement set forth above, submission of verifiable documentation of specific direct cost impact, and an adequate opportunity for the Owner to investigate. Extensions of Contract Time(s) will be considered and allowed only when based upon submission of an updated CPM Schedule and

supporting narrative showing an actual unavoidable delay to the Project Critical Path due to the unforeseen Project Site conditions.

**5.2.4** In no event shall the Contract Time or GMP be adjusted for conditions that could or should have been identified by the CM@Risk through its investigations or survey of existing conditions prior to submission and establishment of the GMP and the CPM Schedule.

**5.2.5** If Owner determines CM@Risk has no entitlement to an adjustment in GMP or Contract Time for what CM@Risk contends is an unforeseen Project Site condition, CM@Risk may only proceed in pursuit of its position or claim in accordance with the provisions of Section 11 of these General Conditions.

### **5.3** Archeological Conditions.

**5.3.1** If in the course of performing the Work, the CM@Risk, any Subcontractor or other persons or entities under the control of CM@Risk, encounters any Native American burial site or other archeological artifacts are disturbed, the CM@Risk shall notify Owner and suspend any work or activity in the vicinity of the burial site or artifact. Owner will determine with reasonable promptness what action, if any, needs to be taken and advise CM@Risk how to proceed or to adjust the Work. Any claim or need for adjustment in Contract Time or GMP will be handled under 5.2.2 above.

## **Section 6 Insurance And Bonds**

### **6.1** Bond Requirements.

**6.1.1** The CM@Risk, after acceptance of the GMP by the Owner and prior to the start of any Construction Phase Services by the CM@Risk, 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, subject to any limits set forth in ABOR Policy 3-804(E). These surety bonds in the form attached hereto as Attachment 1 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 3-804 E, 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 CM@Risk performance and payment bonds.

**6.1.2** The Owner may require each proposed Subcontractor whose initial 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 CM@Risk. Alternatively, in place of Subcontractor performance bonds, if approved in advance by the Owner, the CM@Risk may provide Subcontractor default protection that is equivalent or better than bonds provided by the Subcontractors. The cost of such bonds or default protection shall be included in the GMP.

**6.2 CM@Risk's Insurance Requirements.**

**6.2.1** The CM@Risk shall not commence any Work until it obtains all required insurance and delivers satisfactory proof thereof to the Owner. The CM@Risk shall not permit Subcontractors to commence Work until applicable insurance requirements have been complied with by Subcontractor.

**6.2.2** Insurance coverage assuring the adequacy of the CM@Risk's performance and warranty obligations shall be maintained for the full warranty period specified in Section 2.7.2 and any specific guarantee or warranty available by law.

**6.3 Minimum Scope And Limits Of Insurance.**

**6.3.1** Without limiting any liabilities or any other obligations of the CM@Risk, the CM@Risk shall provide and maintain, and cause its 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 or the following minimum coverages are sufficient to protect the CM@Risk or any Subcontractor from all insured or insurable risks or from potential insurer insolvency.

**6.3.1.1** The CM@Risk shall cause its subcontractors engaged in the performance of services under this Agreement to provide and maintain appropriate types and amounts of insurance coverage and limits of liability, as determined by CM@Risk and agreed to by Owner, commensurate to the type of work to be performed and exposure to risk. Subcontractor coverage shall be maintained through Final Completion and additionally provided whenever performing services at the project site during the full warranty period. CM@Risk shall provide certification with each payment application that its subcontractors comply with this provision.

**6.3.2 Worker's Compensation Insurance.** CM@Risk shall procure and maintain worker's compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of the CM@Risk, its employees, or both, engaged in the performance of services under this Agreement. CM@Risk shall maintain coverage through Final Completion for all employees engaged in the performance of services under this 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.

Worker's Compensation Employer's Liability	Statutory
Each Accident	\$1,000,000
Disease – Each Employee	\$1,000,000
Disease – Policy Limit	\$1,000,000

The 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 CM@Risk.

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

**6.3.3 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

CM@Risk shall maintain the above-listed coverage limits through the two-year CM@Risk's warranty period specified herein for CM@Risk.

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 CM@Risk".

The 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 CM@Risk.

CM@Risk agrees that for any project within the City of Phoenix limits it will, in addition to the limits set forth above, name the City of Phoenix as an additional insured and will include a waiver of subrogation against the City of Phoenix for Worker's Compensation Insurance, Commercial General Liability Insurance and Business Automobile Liability policies. 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.

**6.3.4 Business Automobile Liability Insurance.** CM@ Risk 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 each accident with respect to the CM@Risk'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.

CM@Risk shall maintain the above-listed coverage limits through the two-year CM@Risk's warranty period specified herein for CM@Risk.

**6.3.5 Builder's Risk Insurance.** CM@Risk 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 6.3.5 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 policy shall be endorsed waiving the carrier's right of recovery under subrogation against the Owner, CM@Risk and Subcontractors, for losses covered under the Builder's Risk policy.

The CM@Risk 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 CM@Risk shall be solely responsible for any required notice to or consent of the insurer providing the Builder's Risk coverage regarding 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 CM@Risk 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.

**6.3.6 Umbrella/Excess Liability Insurance.** CM@Risk 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 CM@Risk'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.

Total Project Budget	Required Excess/Umbrella Limits
\$0 - \$2 M	\$0
\$2M - \$10 M	\$2M per occurrence, \$2M aggregate
\$10M - \$25M	\$5M per occurrence, \$5M aggregate
\$25M - \$100M	\$10M per occurrence, \$10M aggregate
Greater than \$100M	\$25M per occurrence, \$25M aggregate

CM@Risk shall maintain these Umbrella/Excess Liability coverage limits through the two-year CM@Risk's warranty period specified herein for CM@Risk.

**6.3.7 Additional Insurance Requirements.** The policies required in Sections 6.3.3 (Commercial General Liability), 6.3.4 (Business Automobile Liability), 6.3.5 (Builder’s Risk Insurance) 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 CM@ Risk, even if those limits of liability are in excess of those required by this Contract.

The CM@Risk’s insurance coverage shall be primary insurance with respect to all other available sources, except for Worker’s Compensation insurance. 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 CM@Risk.

Coverage provided by the CM@Risk shall not be limited to the liability assumed under the indemnification provisions of this Contract.

**6.3.8 Proof of Insurance.** CM@Risk 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 CM@Risk’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 and must reference the ASU Project Number and Name. All of the above conditions shall be clearly shown on each certificate. Such certificates shall identify this Agreement or be an annual or periodic certificate stating that it covers any and all projects or work performed by the CM@Risk 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 CM@Risk to the Owner as evidenced by a return receipt signed by the Owner. Certificates of insurance must be emailed to [PurchasingConstruction@asu.edu](mailto:PurchasingConstruction@asu.edu). Certificates of Insurance are project specific and must reference RFQ number and name and the Certificate Holder is as follows:

ABOR, the State of Arizona, and Arizona State University  
Purchasing and Business Services  
1551 South Rural Road  
Tempe, AZ 85281

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 this Agreement. Owner shall not be obligated to review same or to advise CM@Risk of any deficiencies in such policies and endorsements, and such receipt shall not relieve CM@Risk from, or be deemed waiver of, Owner's right to insist on strict fulfillment of CM@Risk’s obligations under this Agreement.

**6.3.9 Failure to Provide or Maintain Insurance.** Failure on the part of the CM@Risk to procure or maintain the required insurance shall constitute a material breach of this Agreement upon which the Owner may immediately terminate this 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 CM@Risk 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 CM@Risk from the Owner. Costs for coverages maintained by the CM@Risk in excess of those required hereunder shall not be charged to the Owner unless otherwise agreed to and included in the GMP.

**6.3.10 Authorization to Obtain Information.** The Owner may, and the CM@Risk hereby authorizes the Owner to, request and receive directly from insurance companies utilized by the CM@Risk in meeting the insurance requirements, any and all information reasonably considered necessary in the sole discretion of the Owner.

**6.3.11 Waiver.** CM@Risk and its insurers providing the coverages required 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.

**6.3.12 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.

**6.3.13 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 CM@Risk shall be solely responsible for any deductible and/or self-insured retention, and Owner, at its option, may require the CM@Risk to secure the payment of such deductible or self-insured retention by a surety bond or an irrevocable and unconditional letter of credit.

**6.3.14 Cancellation of Insurance.** In the event any insurance coverage required in this Section 6 for the Work is canceled, reduced, or terminated, CM@Risk agrees to provide notice to Owner and replace the insurance without any lapse of protection to Owner. If such coverage is not replaced, or CM@Risk fails to meet any of the requirements for insurance listed above, Owner may at its option immediately terminate the Agreement between Owner and CM@Risk, 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 CM@Risk upon demand. If CM@Risk fails to pay such premiums, Owner may offset the premium cost plus interest at the legal rate from CM@Risk'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 CM@Risk of its obligation to maintain insurance required under the insurance provisions of this Agreement until the date of Final Completion and/or the expiration of the warranty period as specified in 6.3.2, 6.3.3, 6.3.4, and 6.3.6 above.

**6.3.15 Contractual Obligations.** The stipulation of insurance coverages in this section 6.3 or elsewhere, shall not be construed to limit, qualify, or waive any liabilities or obligations of CM@Risk, assumed or otherwise, under this Agreement.

## **Section 7     Payment**

### **7.1     Guaranteed Maximum Price; Savings.**

**7.1.1** The Owner shall pay the CM@Risk for the CM@Risk's performance of this Agreement and the Work, and the CM@Risk shall accept the Actual Cost of Work plus Construction Phase Fee and General Conditions as payment in full; provided, however, that the sum of the Actual Cost of Work plus the General Conditions and the Construction Phase Fee shall not exceed the

GMP as originally fixed or as adjusted from time to time as provided in these General Conditions.

**7.1.2** Savings shall be calculated and paid upon Final Completion of the Work. All Savings shall be distributed with 100% allocated to Owner. Savings returned to the Owner shall not include return of General Conditions and Construction Phase Fee for the amount of the Savings, but shall include appropriate percentage of bonds and insurance premiums and taxes attributable to the Savings amount. Allocations to GMP for Allowance and Contingency items that remain unused upon Final Completion shall be returned 100% to the Owner.

## **7.2** Schedule of Values.

**7.2.1** Before execution of an Amendment to the Agreement authorizing a Guaranteed Maximum Price and commencement of the Work in the Construction Phase, the Parties shall agree upon, a Schedule of Values, setting forth the various portions of the Work, and the portions of the GMP allocated to each portion of the Work. This Schedule of Values shall be also used as a basis for payment as the Work progresses. Those portions of the Schedule of Values allocable to Work to be performed by Subcontractors of the CM@Risk shall be finalized as and when the Subcontracts are executed. All estimated construction costs not specifically allocated to a Subcontract (including Work self-performed) or to Construction General Conditions shall be allocated to “Bidding Contingency” and shall, upon approval of the Owner, be available for later use by the CM@Risk as Construction Contingency, for reallocation to other line items as provided for in these General Conditions.

## **7.3** Applications for Progress Payment.

**7.3.1** CM@Risk shall deliver to Design Professional (or such other person as is designated by Owner) on the last business Day of each month a sworn application for progress payment in the format specified by Owner in “Exhibit D – Cost of the Work – Schedule of Values” to the Agreement. A copy of the pay application shall be concurrently provided to Owner. Each such application for payment shall be based on the Schedule of Values and be in an amount determined by the percentage of completion of the Work in the month being billed. It shall show the percentage of completion of each category of the Work performed in the billing period. The payment application shall be accompanied (as separate documents) by (a) an updated CPM Schedule and narrative schedule update report as provided for herein, and (b) conditional lien waivers from each Subcontractor or supplier entitled to progress payment thereunder. In addition, the CM@Risk shall provide the following documentation upon specific request by Owner: a) a written accounting in a form agreed to by CM@Risk and Owner of the Cost of Work completed, b) a report by CM@Risk on Subcontractor buy-out status, contract sums, and Subcontractor pay applications.

**7.3.2** The CM@Risk Construction Phase Fee and Construction General Conditions shall be paid monthly in accordance with the percentage of completion of the Work. The amount approved and paid for progress achieved in the month billed for shall not constitute final acceptance of the Work and is subject to final adjustment at the time of final acceptance and Final Payment so as to fully comply with, and not exceed, the GMP.

**7.3.3** The Design Professional, within seven (7) days after receipt of CM@Risk application for progress payment, and no later, will either issue to Owner (a) a certificate of approval for payment of such amount as is invoiced in the payment application, or (b) specific written findings setting forth those items in detail in the estimate of the Work in the pay application that

are not approved for payment under the contract. Any items that are not specifically identified by the Design Professional as not approved, with written detailed findings, shall be deemed approved.

**7.3.4** As to any items not approved for payment, Owner may withhold an amount from the progress payment to be made for the time period billed for a sufficient sum to pay the expenses Owner reasonably expects to incur in correcting the deficiency set forth in the written finding issued by the Design Professional or Owner.

#### **7.4** Payment and Retainage.

**7.4.1** Within fourteen (14) days following the receipt of the Design Professional certificate of approval for payment and the written detailed findings of items not approved, if any, the Owner shall pay to the CM@Risk the amount due on the progress payment application. However, the payment shall be limited to 90% of the approved value of the construction work in place and the value of materials suitably stored in accordance with Section 7.6.1 below of these General Conditions during the month being billed. The remaining 10% shall be retained by the Owner until the Contract is 50% complete at which time the retainage shall be reduced to no more than 5%; provided that: (a) the CM@Risk is making satisfactory progress on the Contract; and (b) in the Owner's sole judgment, there is no specific cause or claim requiring a greater amount than 5% to be retained. Thereafter, the Owner shall pay the CM@Risk 95% of the value of the construction work and materials on approved progress billings, unless and until it determines satisfactory progress is not being made, at which time the 10% Retainage may be reinstated. Such 10% reinstatement would be 10% of the total contract value of construction work in place and materials stored. The Owner's determination concerning the satisfactory progress of the Work for retainage adjustment purposes shall be final.

**7.4.2** Within sixty (60) calendar days after the issuance of the Certificate of Final Completion and receipt by Owner of all other documents required from CM@Risk by the Contract Documents, all retained amounts shall be paid to CM@Risk as part of Final Payment provided however; a) the Final Payment shall not become due from Owner until the CM@Risk delivers to the Owner all items set forth in Section 7.9.2, including full and final unconditional releases in statutory form from all Subcontractors and major Suppliers acknowledging that they have received payment in full. Any claim filed thereafter shall be the responsibility of the CM@Risk, and b) if any claim does remain unsatisfied after all payments are made by Owner, the CM@Risk shall immediately upon demand refund to the Owner all monies that the latter may be compelled to pay in discharging such unsatisfied claim including all costs, interest and attorneys' fees.

#### **7.5** Early Release of Subcontractor Retainage.

**7.5.1** If a Subcontractor has completed its portion of the Work (including all Punch List items) pursuant to its subcontract, the CM@Risk may request the Owner to disburse the amount of Retainage allocable to such Subcontractor, after delivering to the Owner, when required by the Owner, consent to such disbursement from such Subcontractor's surety, in a form satisfactory to the Owner, and a final lien release from the Subcontractor. If the Owner is satisfied that the Subcontractor's work has been fully and finally completed in accordance with the Contract Documents, the Owner may disburse said Retainage to CM@Risk for payment over to the Subcontractor, however, the two-year warranty period with respect to such Subcontractor work shall not commence until Substantial Completion of the entire Work.

## **7.6 Payment for On-Site and Off-Site Materials.**

**7.6.1** Progress Payment shall be made when due to CM@Risk on account of materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work. Payment may be similarly made to CM@Risk for materials and equipment suitably stored off the Site, conditioned upon the CM@Risk furnishing satisfactory evidence to the Owner that (a) title to the materials and equipment will pass to the Owner upon payment for same; (b) there are no claims of third parties; (c) the materials and equipment are adequately insured for full replacement value plus delivery; and (d) such other matters as the Owner may reasonably request in order to protect its interests.

## **7.7 Ownership of Construction Work.**

**7.7.1** The CM@Risk warrants that title to all construction work included in an Application for Progress Payment shall pass to the Owner no later than the time of payment therefore. The CM@Risk further warrants and represents to Owner that upon submittal of an Application for Payment, all construction work for which Applications for Payment have been previously issued and payments received from the Owner shall, to the best of the CM@Risk's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the CM@Risk, its Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

## **7.8 Substantial Completion.**

**7.8.1** When the CM@Risk believes the Work, or a portion thereof which the Owner wants to accept separately and agrees to do so, is Substantially Complete, as defined in Section 1.2 above, the CM@Risk shall notify the Owner and the Design Professional and submit to the Owner and Design Professional a comprehensive list of items to be completed or corrected as to that Work or all Work. Within five (5) business days of receipt of the CM@Risk's notice and list, the Owner, the Design Professional and CM@Risk will jointly make an inspection of the Project to determine whether Substantial Completion has in fact occurred. If it is determined by the Owner that the Work, or the relevant portion thereof, is Substantially Complete, the Owner shall issue the Punch List and the Certificate of Substantial Completion stating the date of Substantial Completion which certificate shall be executed by the Owner, the Design Professional and the CM@Risk. The CM@Risk shall thereupon proceed promptly to complete or correct Punch List items. Failure to include an item on the Punch List does not alleviate or alter the responsibility of the CM@Risk to complete all Work in accordance with the Contract Documents.

## **7.9 Final Completion and Final Payment.**

**7.9.1** CM@Risk must complete all outstanding Work items noted in the Substantial Completion "Punch List" for the Work, or relevant portion thereof, and satisfy other Contract requirements as set forth in the Contract Documents in order for Owner to certify Final Completion. Requirements for this certification also include, but are not limited to, equipment operating training for Owner and submission and approval by Owner of all Record and Close Out Documents and copies of all Construction General Conditions and Purchase Orders not previously provided, completion of test and balance reports and all commissioning reports.

**7.9.2 Conditions Precedent to Final Payment.** Neither Final Payment nor any final release of Retainage shall become due until such time as CM@Risk submits to the Owner:

- a) An affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by the Owner) have been paid or otherwise satisfied by Contractor;
- b) A certificate evidencing that insurance required by the Contract Documents to remain in force after Final Payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) calendar days' prior written notice has been given to the Owner;
- c) Consent of Surety to Final Payment;
- d) Unconditional waivers of lien in statutory form from all Subcontractors, material suppliers, or other persons or entities having provided labor, materials and equipment relating to the Work;
- e) If required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract Documents;
- f) All Project warranty documents, including special manufacturers warranties;
- g) Final Subcontractor List;
- h) All approved Submittals and Shop Drawings (electronic copy);
- i) Schedule of Required Maintenance;
- j) Operation and Maintenance Manuals (one (1) electronic copy);
- k) As-Built (AutoCAD file, one electronic copy, one full-size paper set of plans, and, if required the BIM Model);
- l) Projects that add, remove and/or change utility infrastructure of any kind shall require a Post-construction Survey that utilizes subsurface utility engineering (SUE) methods to map utilities in their as-built location and condition. If required, the Post-construction Survey shall be performed by a qualified company that is able to deliver findings to ASU in the form of digital maps and geospatial data;
- m) Any required Owner training provided by Contractor;
- n) Final Test & Balance Report sealed by professional, if applicable;
- o) Commissioning completed and reports received, if applicable;
- p) All ASU keys have been returned, and the key return form has been signed by ASU Building Access Services and submitted to the ASU Project Manager; and
- q) Transmittal letter with Attic Stock quantities and location
- r) Final Net Asset Log (Equipment, Tools, and Unused Materials)
- s) Receipts for Deliveries of Project-Owned Assets (Equipment, Tools, and Unused Materials)
- t) Final Rent vs Buy Analysis & Fair Market Comparison of Equipment and Tools
- u) Checklist and agreed to by Contractor in Contract Documents, to be received by Owner
- v) Any other items identified by Owner, which are listed in Owner's Final Project Completion.

**7.9.3** If, after Substantial Completion of the Work has been achieved, Final Completion is materially delayed through no fault of the CM@Risk, or by the issuance of additional change orders or change directives by the Owner, the Owner may at its sole discretion, upon request of the CM@Risk, and without terminating the Agreement, make payment to CM@Risk of the balance due for that portion of the Work fully completed. If the remaining balance for Work not fully completed is less than the Retainage, and if bonds have been furnished, the written consent of surety to payment for that portion of the Work fully completed shall be delivered by

the CM@Risk to the Owner, and such payment shall be made under the terms and conditions governing Final Payment, except that such payment shall not constitute a waiver of claims by either the CM@Risk or the Owner.

**7.9.4** Acceptance of Final Payment by the CM@Risk shall constitute a waiver of all affirmative claims by the CM@Risk in connection with the Agreement and performance of the Project. The making of the Final Payment by the Owner shall constitute a waiver of claims by the Owner, except those arising from (a) liens, claims, security interests and encumbrances arising out of the Work after Final Payment; (b) latent defects which the Owner becomes aware of after Final Payment; or (c) the terms of warranties required by the Contract Documents and other rights provided under Arizona law.

## **7.10** Allowances.

**7.10.1** The CM@Risk shall include in the GMP all Allowances stated in the Contract Documents. Allowances must be identified and provided to the Owner for approval prior to submitting GMP.

Items covered by Allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the CM@Risk shall not be required to employ persons or entities against which the CM@Risk makes reasonable objection. Unless otherwise provided in the Contract Documents:

- a) Materials and equipment under an Allowance shall be selected by the Owner within a reasonable time frame as defined in the Owner approved Project CPM Schedule;
- b) Allowances shall cover the cost to the CM@Risk of materials and equipment delivered at the Site and all required taxes, less applicable trade discounts;
- c) Allowances shall not include professional or construction fees, Construction General Conditions, or bond or insurance premiums;
- d) Allowances shall cover CM@Risk's costs for unloading and handling at the Site, labor, installation costs and other expenses;
- e) Whenever costs are more than or less than Allowances, the GMP may be adjusted accordingly by amendment or change order in accordance with provisions of Section 10. The amount of the amendment or change order shall reflect the difference between actual costs and the Allowances plus Fee on such difference in accordance with Section 10 hereof if the actual costs are greater than the Allowances.

## **7.11** Contingencies.

**7.11.1** The CM@Risk and the Owner acknowledge that the GMP contains a line item for a "Bidding Contingency or Construction Contingency". On a monthly basis, after finalization (i.e., "buyout" or subcontractor contract issuance) of a line item, the Schedule of Values will be adjusted to reflect the actual amount. Contingencies shall not be carried in line item amounts after finalization. The Bidding Contingency, upon approval of the Owner, shall be for the CM@Risk's use and shall be increased by amounts not expended on other line item bid packages and shall decrease by additional amounts required to be expended on other line item bid packages. Following completion of all contract execution by Subcontractors (Project finalization), Bidding Contingency shall become Construction Contingency and CM@Risk may use this Construction Contingency for legitimate unforeseen construction expenses, or

expenses otherwise agreed to by Owner and CM@Risk, subject to Owner's approval, as evidenced by a fully executed Construction Contingency Use Authorization.

Contingency shall not be used for General Conditions unless approved in writing by the Owner.

CM@Risk shall submit detailed monthly reports to Owner indicating how the Construction Contingency was used in the reporting period, and the status of the Construction Contingency. The Owner has the authority to reject any use of the Construction Contingency after it has been submitted if the Owner believes in its reasonable judgment that some or all of the amount included in the use of the Construction Contingency is not a legitimate expense for the Project. Upon the Owner's rejection of a Construction Contingency use, the CM@Risk will thereupon credit the Construction Contingency amount back to the Construction Contingency in the next subsequent payment request. Any amounts remaining in "Bidding Contingency or Construction Contingency" at Final Completion shall be deemed Savings and will be allocated to Owner as such. Should the "Bidding Contingency or Construction Contingency" be exhausted prior to award of all the bid packages, any subsequent overruns in bid package costs shall be the CM@Risk's sole responsibility, with no additional compensation due thereon from the Owner.

**7.11.2** Intentionally omitted.

**7.11.3** Upon award of each bid package, the difference between the CM@Risk's estimated Cost of the Work contained within the bid package, exclusive of contingency, versus the actual award cost thereof as determined by the bidding and award of the package shall be promptly calculated. If the award cost exceeds the CM@Risk's estimated cost in the GMP, any necessary portion of the Bidding Contingency shall be applied, subject to Owner's approval, to cover any overrun and any underrun amount shall be used to increase the Bidding Contingency.

**7.11.4** CM@Risk will include an explicit requirement that change orders between CM@Risk and the Subcontractors will be priced consistent with the requirement of Section 10 of these General Conditions with adequate itemized change order pricing regardless of whether or not there is a comparable change order between CM@Risk and the Owner. In addition, CM@Risk shall retain, and make available to Owner upon request, all bid documents including requests for proposals, requests for quotes, and bid responses from both successful and unsuccessful bidding Subcontractors.

## **Section 8 Indemnification**

### **8.1 Proprietary Rights, Patent and Copyright Infringement.**

**8.1.1** CM@Risk shall defend any action or proceeding brought against Owner based on any assertion or claim that the Work, or any part thereof, or the operation thereof or use of the Work or any part thereof, constitutes infringement of any third party proprietary rights, trademark, patent or copyright, now or hereafter issued ("Proprietary Rights"). Owner agrees to give prompt notice in writing to CM@Risk of any such action or proceeding and to provide authority, information and assistance in the defense of same. CM@Risk shall defend, indemnify and hold harmless Owner from and against all damages and costs, including attorney's fees, awarded against Owner or CM@Risk in any such action or proceeding. CM@Risk further agrees to keep Owner informed of all developments in the defense of such actions or proceedings.

**8.1.2** In the event that Owner is enjoined from the operations or use of the Work, or any part thereof in connection with any claim of infringed proprietary rights, CM@Risk shall at its sole

expense take reasonable steps to procure the right or license to operate or use the Work. If CM@Risk cannot so procure the aforesaid right within a reasonable time, CM@Risk shall then, promptly, at CM@Risk's option and at CM@Risk's expense and in consultation with owner, (a) modify the Work so to avoid infringement of any Proprietary Rights; or (b) replace said Work with Work that does not infringe or violate any such Proprietary Rights.

**8.1.3** Sections 8.1.1 and 8.1.2 above shall not be applicable to any action or proceeding based on infringement or violation of a Proprietary Right, (a) relating solely to a particular process or the product of a particular manufacturer specified by Owner and such processes or products are something other than that which has been offered or recommended by CM@Risk to Owner; or (b) arising from modifications to the Work by Owner or its agents after acceptance of the Work.

**8.1.4** In addition to the other obligations of the CM@Risk under this Section 8.1, CM@Risk will be responsible for delays and for increases in the cost of the work associated with or arising out of any claim of infringed Property Rights.

## **8.2** General Indemnity.

**8.2.1** CM@Risk shall indemnify, defend, save and hold harmless the State of Arizona, the Arizona Board of Regents, and Arizona State University and their officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), loss or damage to tangible or intangible property, or other financial loss incurred by the Indemnitee caused, or alleged to be caused, by the negligence, acts or omissions of CM@Risk or any of its owners, officers, directors, agents, employees or Subcontractors, arising out of or in any way related to the performance of the Work or this Agreement, or defects in the Work, or any materials supplied. This indemnity includes any claim or amount arising out of or recovered under the workers' compensation law or arising out of the failure of such contractor to conform to any Legal Requirement or court decree. It is agreed that CM@Risk will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the CM@Risk agrees to waive all rights 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 the Work performed by the CM@Risk for the State of Arizona.

**8.2.2** CM@Risk shall, without any delay, discharge or cause to be discharged any mechanic's liens or notice of intent to file a mechanic's lien against the Project of the Site filed by any of its laborers, Subcontractors, Sub-subcontractors, Suppliers, material man, or anyone else acting or claiming to act through the CM@Risk and shall defend, indemnify and hold Indemnitee harmless from and against all costs, expenses, or damages from the same, including reasonable attorney's fees and expenses and expert fees, regarding such lien, notice or claim of lien, together with interest thereon. If the CM@Risk shall fail to promptly discharge or cause to be discharged the same to Owner's complete satisfaction, Owner may do so and charge the cost thereof to CM@Risk. CM@Risk shall be entitled to utilize statutory procedures for bonding off liens to satisfy the requirements of this Section. Notwithstanding the foregoing, CM@Risk shall not be responsible for discharging, defending against, or indemnifying against such lien if the lien was filed as a direct result of the Owner's failure to pay an amount properly due and owing to CM@Risk under the Contract Documents.

## **Section 9 Time and Delay**

**9.1** The CM@Risk and Owner both recognize and acknowledge that any time limits set forth in the Contract Documents for performance are of the essence of this Agreement. CM@Risk agrees that it will commence performance of the Work, achieve Substantial and Final Completion of the Work, and achieve any interim milestones for Substantial and Final Completion, in compliance with all contractual time requirements.

**9.2** Time is of the essence of each and every part of the Contract Documents and of the Specifications wherein a definite and certain length of time is fixed for the performance of any act or activity whatsoever. Where, under the Contract Documents additional time is allowed for the completion of any Work, the new time limit fixed by such extension shall also be of the essence of this Agreement.

**9.3** Failure of the CM@Risk to achieve the completion dates for Substantial or Final Completion set forth in the Agreement will result in the assessment of Liquidated Damages as provided in the Agreement. The per diem amount for Liquidated Damages provided for in the Agreement shall be paid for each and every calendar day that the CM@Risk is not in full compliance with the time(s) stipulated in the Agreement for completing the Work. The Liquidated Damages per diem amount is fixed and agreed upon by and between the CM@Risk and Owner because of the impracticality and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain. Any such sums may be withheld by the Owner from Final Payment due hereunder or from retainage.

**9.4** If CM@Risk is delayed in the performance of the Work, and such delay actually and directly delays a timely achievement of a critical path activity, element or component, based upon an analysis of the current CPM Schedule, due to acts, omissions, conditions, events, or circumstances beyond CM@Risk's control or prevention and due to no legal fault of its own or those for whom CM@Risk is responsible under the terms of the Contract Documents, the time for Substantial Completion of the Work, and to the extent applicable, any interim milestones or Substantial Completion dates for portions of the Work, shall be extended by written amendment or change order for the amount of time attributable to such events or circumstances. By way of example only, such acts, omissions, conditions, events, and circumstances which would entitle CM@Risk to an extension of the Contract Time(s), include acts or omissions of Owner, or anyone under Owner's control, including separate contractors hired by Owner, unforeseeable Project Site conditions, wars, floods, labor disputes, unusual delay in transportation and unusually adverse weather conditions.

**9.5** The CM@Risk has included a specified number of days of weather related delays within the CPM Schedule which the Owner has approved and that number of days is incorporated herein by reference. If the Project experiences weather-related delays beyond the contractually specified number of weather days, the CM@Risk shall be entitled to a commensurate extension of time.

[OR]

**9.5** The CM@Risk has included xxxx (xx) business days of weather related delays within the Owner-approved project schedule. If fewer than xxxx (xx) weather delay days are approved by the Owner through the duration of the Contract Time, the Substantial Completion date will be advanced by the number of weather delay days not used, but in no case will be advanced to a date earlier than Month Day, Year. Weather related days are defined as days when weather

conditions have an adverse effect on the critical path activities of the construction schedule. CM@Risk shall demonstrate to Owner how the weather conditions are preventing critical path activities from being performed that day. All weather related delay days shall be Uncompensable Delays.

Notwithstanding Section 9.4, should all xxxx (xx) weather delay days permitted under the CPM Schedule be exhausted, additional weather delay days will be granted only if the three conditions following conditions have been met: 1) the weather conditions were abnormal and unusually severe for the particular Project location and time period, 2) the weather conditions could not have been reasonably anticipated, and 3) the weather conditions had a material adverse effect on the scheduled construction. Variations of the weather are always expected, and delays resulting in variations typical to a project's location are not excusable. The Design Professional will first determine if a CM@Risk requested weather related delay meets the requirements set forth herein. All the weather related delays to the schedule, including the use of any weather days reserved in the CPM Schedule, must be approved by the Owner.

**9.6** CM@Risk shall be entitled to an appropriate adjustment of its GMP for extended Construction General Conditions only for mutually determined delays to the CPM Schedule directly caused by the actions, omissions or inactions of the Owner and upon proof of the actual, direct additional cost to the CM@Risk for such delays.

**9.7** Notice of any delay in performance of the Work which CM@Risk attributes to the Owner must be made by CM@Risk in writing to the Design Professional and Owner immediately but in no event later than 24 hours after discovery of the event giving rise to the delay. The CM@Risk shall then provide additional details concerning the delay in writing to the Design Professional and the Owner within seven (7) calendar days from the delay notice. Failure to satisfy each of these time requirements shall absolutely bar any and all later delay claims. The detailed notice shall identify the cause of the delay, and the anticipated length of the delay in reasonable detail, the probable effect of such delay upon the progress and Cost of the Work, and possible mitigation plans. If the cause of the delay is ongoing, the CM@Risk must give further detailed notice every month at the same time it submits the updated Project Status Report to the Design Professional.

**9.8** Within fifteen (15) calendar days after the elimination of any such delay, the CM@Risk shall, unless the time is extended by an appropriate change order or amendment signed by the Owner, submit further documentation concerning the delay and, if appropriate, a formal written request requesting an extension of time for such delay and any compensation sought for the delay. The written request for time extension shall state the cause of the delay, the number of days of extension requested and the compensation sought and provide a fully documented analysis of the critical path schedule, including a "fragnet" and any other data demonstrating a delay in the critical path of the Work or individual milestone or the overall Project completion. If the CM@Risk does not timely comply with the notice and documentation requirements set forth in this Section 9.8, the CM@Risk's claim for delay is barred.

## **Section 10 Changes to The Contract Scope, Price, Time and Terms**

### **10.1 Changes.**

**10.1.1** After the Agreement is signed, modifications to the Agreement, including any changes to GMP, the Contract Time(s), Scope of Work, or terms and conditions of the Agreement may only

be made by a written amendment or change order executed by the Parties, except as provided for in Section 10.2.

**10.1.2** The CM@Risk shall not proceed with the Work on any change involving an increase or decrease in cost or time without receiving prior written authorization from the Owner, and CM@Risk must proceed in accordance with the procedures set forth in this Section 10. The Owner's right to make changes in the Work shall not invalidate this Agreement, relieve the CM@Risk of any responsibility or require the Owner give notice to the surety. Any other requirement of notice to the surety of a change in the Work shall be the sole responsibility of the CM@Risk. If the CM@Risk proceeds with any change involving an increase or decrease in cost or time without written authorization from Owner as required by this paragraph, the CM@Risk hereby waives all rights or claims CM@Risk may have in connection with or as a result of the change.

**10.1.3** An amendment or change order is a written instrument issued after execution of the Agreement, signed by the Owner and CM@Risk, stating their agreement upon the following, as applicable:

- a) The scope of the change in the Work;
- b) The amount of the adjustment, if any, to the GMP;
- c) The extent of the adjustment, if any, to the Contract Time(s) for performance set forth in the Contract Documents; and
- d) Changes to the terms and conditions of the Agreement.

**10.1.4** All changes in the Work authorized by an amendment or change order shall be performed under the applicable terms of the Contract Documents, and Owner and CM@Risk shall negotiate in good faith and as expeditiously as possible on the appropriate adjustments, if any, in Contract Time or GMP. No GMP adjustment on account of a change order shall include the CM@Risk's or Subcontractor's profit, fee, home office overhead or a formula allocation of indirect costs except as allowed in Section 10.4.1 below unless otherwise specifically allowed under these General Conditions.

## **10.2** Change Directives.

**10.2.1** A "Change Directive" is a written order prepared by the Design Professional and signed by Owner, directing a change in the Work at a point in time prior to agreement on an adjustment in GMP or the Contract Time(s) of performance or both. By issuance of a written change directive, Owner, at any time, may make any such changes within the general scope of the Agreement or issue additional instructions, require additional or modified Work, or direct deletion of Work. Upon receipt of a change directive, the CM@Risk shall promptly proceed with the change in the Work and promptly advise the Owner of the CM@Risk's agreement or disagreement with the proposed method of adjustment for GMP or the Contract Time or both.

**10.2.2** Owner and CM@Risk shall negotiate, in good faith and as expeditiously as possible, the appropriate adjustments resulting from the Change Directive, and agreement reached shall be effective immediately and memorialized by preparation and execution of an appropriate amendment or change order. If the Parties fail to reach an agreement, the CM@Risk shall be entitled to proceed in accordance with Section 11 of this Agreement.

**10.3 Minor Changes in The Work.**

**10.3.1** Design Professional may make minor changes in the Work consistent with the intent of the Contract Documents providing such changes do not involve an adjustment in the GMP or Contract Time(s) of performance and do not materially affect or alter the design, quality, or performance. The Design Professional shall promptly inform Owner, in writing, of any such changes, and verify that CM@Risk has recorded such changes on the As-Built Documents.

**10.4 Price, Time, or Scope of Work Adjustment.**

**10.4.1** The cost of or credit to the Owner resulting from a change order, amendment, or Change Directive shall be determined in one or more of the following ways:

- a) By unit prices stated in the Contract Documents;
- b) By cost, as defined below and described in Attachment 2 to these General Conditions, properly itemized and supported by sufficient data reduced to meaningful unit prices for each assembled component of the Work in order to facilitate evaluation. Such costs shall be itemized by crafts as defined within the Schedule of Values, submitted in a format approved by the Owner, and limited to items directly allocable to the change in the Work:
  - 1) Cost of materials, including delivery;
  - 2) Cost of labor, fully-burdened, including, but not limited to, payroll taxes, social security, unemployment insurance, vacation and fringe benefits required by agreement or routinely paid by CM@Risk, and worker’s compensation insurance, but excluding Subcontractor’s labor;
  - 3) Rental value of equipment and machinery to be established by rental receipts and not to exceed reasonable and customary rates for the locale of the Work. For owned equipment, CM@Risk must prove reasonable rental rate pursuant to actual ownership costs.
  - 4) As a guideline, on a not-to-exceed (“NTE”) percentage of Direct Construction Cost only basis, the following overhead, Construction General Conditions and fee percentages shall be utilized, and shall be fixed as a dollar amount, unless otherwise established in the Agreement, or otherwise mutually agreed upon and documented in the amendment or change order description:

Subcontractor Fee (Home Office OH and Profit):	5%
Subcontractor General Conditions, NTE:	<u>10%</u>
Total Subcontractor Markups, NTE:	15%
CM@Risk Fee (Home Office OH and Profit), NTE or as per CM@Risk Agreement:	5%
CM@Risk Construction General Conditions, NTE or as per CM@R Agreement:	<u>5%</u>
Total CM@Risk Markups, NTE:	10%

- 5) The Agreement may involve situations where larger amounts of Overhead and Construction General Conditions are needed to address extenuating site-related circumstances. However, as a guideline, the combined total Fee (including Profit and Overhead) and Construction General Conditions, including the CM@Risk and all levels or tiers of Subcontractors, shall generally not exceed twenty-seven percent (27%) of the total direct costs of materials, labor, rental equipment and Subcontractor insurance and bonds.
- 6) Subcontractor pricing to CM@Risk, specifically as regards, and in support of a CM@Risk amendment or change order with Owner, shall contain, at a minimum, the same level of detail as CM@Risk provides in items 1) through 4) above in this Section 10.4.1(b).
- c) Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to facilitate audit; provided that such lump sum shall not exceed that amount calculated under (b) above.

**10.4.2** Any dispute regarding the pricing methodology or cost of a change shall not relieve the CM@Risk of the obligation to proceed with work on the change directed by the Owner. The cost or credit to the Owner shall be promptly determined by the Owner in accordance with this Agreement.

**10.4.3** An Owner approved written amendment or change order, once fully executed by Owner and CM@Risk shall be full and final settlement of all entitlement claims for direct, indirect, delay, disruption, inefficiency, productivity and any other consequential costs related to items covered or affected, as well as for related delays. Any such claim not presented by the CM@Risk for inclusion in the amendment or change order prior to signature is irrevocably waived.

**10.4.4** In the event of any disagreement between Owner and the CM@Risk regarding: i) whether CM@Risk is entitled to payment as a result of any amendment, change order or change directive ; ii) the amount of compensation in the event of any other disagreements over the Scope of Work or proposed changes to the Work, or iii) an extension of time for completion of the Work, Owner and CM@Risk agree to resolve all such disagreements consistent initially with Section 10 of these General Conditions and thereafter if not resolved, in accordance with Section 11. As part of the negotiation process, CM@Risk shall furnish Owner and Design Professional with a good faith estimate of the costs to perform the disputed services or work in accordance with Owner's interpretations. If the Parties are unable to agree, and Owner expects CM@Risk to promptly perform the services in accordance with Owner's or Design Professional's interpretations of the documents, CM@Risk shall proceed to perform the disputed services, conditioned upon Owner issuing a written Change Directive to CM@Risk directing CM@Risk to proceed and specifying Owner's or Design Professional's interpretation of the services that are to be performed.

**10.4.5** The requirements set forth above as to CM@Risk providing detailed, itemized pricing on Subcontractor change orders is fully applicable to change orders from CM@Risk to Subcontractor where there are no comparable amendments or change orders between Owner and CM@Risk.

## 10.5 Emergencies.

**10.5.1** In any emergency affecting the immediate safety of persons or property, CM@Risk shall promptly act, at its discretion, to prevent or minimize threatened damage, injury or loss. Any increase in the GMP or Contract Time(s) of performance or both claimed by CM@Risk on account of emergency work shall be determined as provided in Section 10.4.

## **Section 11 Requests for Contractual Adjustments and Dispute Resolution**

### **11.1 Dispute Avoidance and Resolution.**

**11.1.1** The Parties are fully committed to interacting and working with each other through the course of the Project, and agree to communicate regularly with each other at all times, including attending weekly on-site design and construction status meetings, so as to avoid, eliminate, or minimize any disputes, disagreements, claims, or controversies relating to the Project (hereinafter “Disputes”). To the extent Disputes occur or arise during the course of the Project that are not otherwise resolved by applicable portions of this Agreement, both CM@Risk and Owner agree to timely resolve such Disputes in an amicable, professional, and expeditious manner at the lowest possible level so as to avoid unnecessary costs, delays, and disruptions to the Work. To this end, the CM@Risk Representative shall refer the Dispute to the Owner’s Representative by written notice of same, not more than seven (7) calendar days from the occurrence of the event which gives rise to the Dispute, or not more than seven (7) calendar days from the date that the CM@Risk knew or should have known of the matter, provided however, a request for adjustment based on time or delay must proceed under Section 9, and a request for adjustment to Contract Price or Contract Time must proceed under Section 10.

**11.1.2** If the Representatives are unable to resolve a dispute pursuant to Section 11.1.1, the Representatives will promptly provide notice to the CM@Risk’s and Owner’s Senior Representatives of such failure. The CM@Risk’s Senior Representative and Owner’s Senior Representative shall meet within 48 hours of such notice and shall attempt to resolve the Dispute. The Parties agree that prior to any meetings between the Senior Representatives, they will timely exchange with each other all relevant documents and information that will assist the Senior Representatives in resolving the Dispute. The Senior Representatives shall have seven (7) calendar days from the time they first met to resolve the Dispute. If the Senior Representatives, after meeting in good faith, determine that the Dispute cannot be resolved by them on terms satisfactory to both Parties, the Parties agree that the sole remedy for CM@R to pursue the Dispute is to submit the Dispute to Owner in accordance with the applicable provisions of the Arizona Board of Regents’ Policy Section 3-809.

**11.1.3** The Parties understand and agree that the processes set forth in Section 11.1, 11.2, and in ABOR Policy Section 3-809, provide the sole and exclusive remedy to resolve a Dispute. The Parties further understand and agree that providing notice of the Dispute to the other party in accordance with Sections 11.1.1 and 11.1.2 is integral and essential to the Parties’ ability to perform their obligations under this Agreement. Failure to properly utilize the procedures in Section 11.1.1 and 11.1.2 exposes the non-utilizing party to damages which are difficult to accurately quantify and ascertain. The Parties agree that failure to properly utilize the procedures in Section 11.1.1 and 11.1.2 will require the non-utilizing party to pay the other party **ten thousand and 00/100 Dollars (\$10,000.00)** as liquidated damages, and not as a penalty. The damages awarded pursuant to this section shall be in addition to and not in lieu of other damages provided for under this Agreement.

## 11.2 Administrative Hearing Process.

11.2.1 CM@Risk and Owner agree that all other parties involved in the Project can be made parties to the administrative process called for by Section 3-809 and to this end, both CM@Risk and Owner will include appropriate provisions in all contracts they execute with other parties in connection with the Project requiring attendance and participation by those other parties in any such administrative proceeding.

11.2.2 Unless otherwise agreed in writing, the CM@Risk shall carry on the Work and maintain its progress during the course of any unresolved Dispute, and the Owner shall continue to make payments as they fall due to the CM@Risk in accordance with the Contract Documents.

**11.3 Consequential Damages. EXCEPT AS OTHERWISE PROVIDED FOR HEREIN, NEITHER THE OWNER NOR THE CM@RISK SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES ARISING OUT OF BREACH OF CONTRACT, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS.**

11.4 Decisions of Design Professional or Owner. Any failure of the Design Professional or Owner to make a decision within the time limits set forth herein shall not be construed as an agreement to all or any part of the CM@Risk's claim for relief.

11.5 Disputes Arising After Project Completion. Claims involving defective design or construction work discovered after Final Completion shall be resolved in accordance with this Section, as applicable, and ABOR Policy 3-809.

## Section 12 Stop Work and Termination

### 12.1 Owner's Right to Stop Work or Terminate for Convenience.

12.1.1 Owner at any time may, without cause and for its convenience, order CM@Risk in writing to stop or suspend its Work, for a period not to exceed sixty (60) calendar days. CM@Risk may seek an adjustment of the GMP or Time(s) of performance or both under Section 9 and 10 of the General Conditions to the extent that its work has been adversely impacted by any such suspension or stoppage of work by Owner, unless actions, omissions or inactions of the CM@Risk are the cause of the Owner stopping or suspending the Work.

12.1.2 Upon seven (7) calendar day's written notice to CM@Risk, Owner may, without cause and without prejudice to any other right or remedy of Owner, elect to terminate the Agreement for convenience of the Owner. In such case CM@Risk shall be paid (without duplication of any items): a) for completed and accepted Work performed in accordance with Contract Documents prior to the effective date of the termination, including fair and reasonable sums for overhead and profit on such Work; b) for expenses incurred prior to termination in performing services and furnishing labor, materials and equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and c) for all claims, costs, losses and damages incurred in settlement of terminated contracts with Subcontractors, suppliers and others.

12.1.3 Upon receiving a Notice of Termination for Convenience, the CM@Risk shall proceed as follows: a) stop work as specified in the Notice, b) award no further subcontracts, c) terminate all subcontracts to the extent they relate to the Work terminated, d) assign to the Owner all rights of the CM@Risk under terminated subcontracts, in which case Owner shall have the right to settle

or to pay any termination settlement proposal arising out of these terminations, and e) submit complete termination inventory schedules to Owner no later than one hundred twenty (120) calendar days from date of the Notice of Termination.

## **12.2 Owner's Right to Perform and Terminate for Cause.**

**12.2.1** If CM@Risk consistently fails to (a) provide a sufficient number of skilled workers or the materials required by the Construction Documents; (b) comply with applicable Legal Requirements; (c) pay, without cause, its Subcontractors or suppliers; (d) prosecute the Work with promptness and diligence to ensure that the Work is completed within the Contract Time(s) as may be from time to time adjusted; or (e) otherwise perform the Work and its obligations in compliance with the Contract Documents, Owner shall, in addition to any other rights and remedies provided in the Contract Documents or by law, have the right to perform or terminate as set forth herein. Owner shall provide written notice of default to CM@Risk and if CM@Risk fails to cure the default within seven (7) days of such written notice, Owner shall have the right, to (i) perform and furnish through itself or through others it selects any such labor, materials, or Work, and to deduct the cost thereof from any monies due or to become due to CM@Risk under the Contract Documents; or (ii) terminate the Agreement with CM@Risk for all or any portion of the Work, enter upon the premises and take possession, for the purpose of completing the Work, of all job-owned materials, equipment scaffolds, tools, appliances, and other items thereon, all of which CM@Risk hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items; or (iii) both. Upon exercising its right to Terminate for Cause for any reason set forth above, Owner, at its discretion, may also exercise the right to have each or any of CM@Risk's Subcontractor and supply agreements assigned to Owner, or Owner's nominee, provided however, Owner should have no responsibility or liability for acts or omission of CM@Risk under such Agreements and the sole recourse of Subcontractors for events occurring before termination of this Agreement shall be against CM@Risk.

**12.2.2** In the event of such Termination for Cause, CM@Risk shall not be entitled to recover any further payment until the Work is completed and shall then only be entitled to be paid for all Work performed prior to its date of default minus costs incurred by Owner to complete the Project, as set forth below, to the extent those costs exceed the GMP. In the event Owner's cost and expense of completing CM@Risk's Work shall exceed the GMP, then CM@Risk or its surety shall promptly pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work to the satisfaction of Owner and of performing and furnishing all labor, services, tools, equipment and other items required in the Contract Documents, but also losses, damages, costs and expenses, including consultant and attorney's fees and expenses incurred in connection with the re-procurement and defending claims, arising from or related to CM@Risk's default.

**12.2.3** CM@Risk agrees that in the event that Owner terminates the Agreement for cause and such termination is ultimately determined to be improper or wrongful, the sole and exclusive remedy shall be that the Termination for Cause will be automatically and retroactively converted to a Termination for Convenience and the provisions of Section 12.1 of these General Conditions shall apply.

**12.2.4** The Parties agree that if CM@Risk institutes or has instituted against it a proceeding under the United States Bankruptcy Code, such event may impair or frustrate CM@Risk's performance of its obligations under the Contract Documents. Accordingly, if such event of

default occurs, Owner shall be entitled to request CM@Risk, its trustee or other successor, to provide adequate assurance of future performance and CM@Risk agrees such request must be complied with. If CM@Risk fails to comply with such request, to the satisfaction of Owner, within ten (10) days after receiving notice of the request, Owner, in addition to any other rights and remedies provided by the Contract Documents, or by law, shall be entitled to terminate the Agreement as a Termination for Cause described in Sections 12.2.1 and 12.2.2 above and shall be entitled to pursue the remedies set forth in those Sections. Owner shall thereupon be entitled to perform and furnish through itself or through others any such labor, materials or equipment necessary for the completion of the Work and necessary to maintain the Contract Time(s) of performance, and to deduct the costs from any monies due or to become due CM@Risk under the Contract Documents. In the event of any such bankruptcy proceedings, the Agreement shall terminate if CM@Risk rejects the Agreement or if there has been a default under the Contract Documents, and CM@Risk is unable to give adequate assurances that it will perform as provided in the Contract Documents, to the satisfaction of Owner, or otherwise is unable to comply with the requirements for assuming the Agreement under the applicable provisions of the Bankruptcy Code.

### **12.3 CM@Risk's Right to Stop Work and Terminate for Cause.**

**12.3.1** CM@Risk may, in addition to any other rights afforded it under the Contract Documents or by applicable law, either stop work or terminate the Agreement for cause upon Owner's failure to timely pay an amount in excess of \$100,000 dollars properly due to CM@Risk under any CM@Risk Application for Payment. In this regard, CM@Risk shall provide Owner with written notice indicating that such non-payment condition has occurred, and that it is CM@Risk's intention to only stop work or terminate the Agreement if the non-payment condition is not cured within seven (7) calendar days from Owner's receipt of CM@Risk's notice. In the event that CM@Risk elects to only stop work, it may nonetheless later indicate its intention to terminate the Agreement by providing Owner with written notice that CM@Risk will terminate the Agreement within seven (7) calendar days from receipt of CM@Risk's notice; unless the alleged cause of termination is cured in the interim.

**12.3.2** In the event CM@Risk properly and lawfully elects to stop work under Section 12.3.1 for non-payment and then resumes work, CM@Risk shall be entitled to make a claim for adjustment to the GMP and Contract Time(s) of performance to the extent CM@Risk has been adversely impacted by the stoppage of work. In the event that CM@Risk elects to terminate the Agreement on the basis permitted under section 12.3.1, CM@Risk shall be entitled to recover the same costs it would be permitted to recover had Owner terminated this Agreement for its convenience under Section 12.1 of these General Conditions.

**12.4** If the Agreement is terminated for any of the reasons set forth above, CM@Risk's agreements with its Subcontractors and suppliers, at Owner's option and without further action by CM@Risk, shall be assigned to Owner; provided however, that Owner shall have no liability for any pre-existing acts or omissions or default by CM@Risk under such agreements and the sole recourse of such Subcontractors and suppliers for any such events shall be against CM@Risk.

## **Section 13 Miscellaneous**

**13.1 Assignment Prohibited.** Neither CM@Risk nor Owner may, without the written consent of the other, assign, transfer, or sublet any portion or part of the Work or the obligations required by a Party under the Contract Documents.

**13.2 Successorship.** The provisions of these General Conditions and the other Contract Documents shall be binding upon the Parties, their employees, agents, heirs, successors and assigns.

**13.3 Governing Law.** Interpretation of the Contract Documents and any and all disputes arising under or in connection with the Project, Work and Contract Documents shall be governed by Arizona Law. Any lawsuit or action arising out of, relating to or pertaining to this Agreement shall be brought in the Arizona Superior Court in the County in which Owner is located, and only after all contractual and Arizona Board of Regents administrative procedures have been exhausted. By submitting a proposal, CM@Risk agrees to be bound by the Arizona Board of Regents' procurement code dispute resolution procedures and by execution of the Agreement waives any objections to those procedures.

**13.4 Severability.** If any provision or any part of a provision of the Contract Documents, or any legal authority mentioned herein, shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to applicable laws by any authority having jurisdiction, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect, to the fullest extent permitted by law, as if the unenforceable provision or part were deleted.

**13.5 No Waiver.** Except as otherwise provided herein, the failure of either CM@Risk or Owner to insist, in any one or more instances, on the performance or timely performance of any of the obligations required by the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to any other performance or obligation.

**13.6 Headings.** The headings used in these General Conditions or used in any other Contract Document are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

**13.7 Notice.** Whenever the Contract Documents require that notice be provided to the other Party, notice will be deemed to have been validly given (a) if delivered in person to the individual intended to receive such notice; or (b) if delivered or sent by registered or certified mail, postage prepaid to the address indicated in the Agreement;

**13.8 Non-Appropriation; Non-Availability of Funds.** If Owner's performance under this Agreement or funds available for this Project and/or Work are dependent upon (i) the appropriation or allocation of funds by the Arizona Legislature, and if the Legislature fails to appropriate or allot funds necessary for performance of the Project and/or Work, (ii) the sale of bonds or other similar instruments, and if such bonds or other instruments are not sold or proceeds are not available, or (iii) third party gifts, donations or grants, and if such gifts, donations or grants are not received in whole or in part by Owner; then Owner may provide notice of this to the CM@Risk, and either a) cancel this Agreement without further obligation of Owner except as set forth at the end of this paragraph, or b) delay the Project and/or Work for a period of up to six (6) months (without cost to the Owner), after which date if no such funds are legally available for performance of this Agreement, Owner may cancel this Agreement without further obligation of Owner, except as set forth at the end of this paragraph. If Owner cancels the Agreement pursuant to this Section 13.8, Owner shall reimburse CM@Risk for all services authorized and rendered prior to Owner's delivery to CM@Risk of notice of lack of funds pursuant to this Section, in the manner set forth in Section 2.2.2.3.

### **13.9** Conflict of Interest.

**13.9.1** This Agreement is subject to the provisions of Arizona Revised Statutes §38-511 and the Arizona Board of Regents may, within three years after its execution, cancel this Agreement without penalty or further obligation if any person significantly involved in negotiating, drafting, securing or obtaining this Agreement for or on behalf of the Arizona Board of Regents becomes an employee or agent in any capacity of any other party or a consultant to any other party with reference to the subject matter of this Agreement while the Agreement or any extension hereof is in effect.

### **13.10** Compliance and Legal Worker Requirements.

**13.10.1** The Parties shall comply with all applicable state and federal statutes and regulations governing equal employment opportunity, non-discrimination, and immigration. The aforesaid provisions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

**13.10.2** CM@Risk warrants that it is in compliance with all federal immigration laws and regulations that relate to its employees. Pursuant to Arizona Revised Statutes § 41-4401, the CM@Risk warrants that it is in compliance with the state law requirement that employers in Arizona verify the employment eligibility of employees, hired after December 31, 2007, through the federal E-verify program or any successor program. CM@Risk shall be responsible for all costs associated with compliance with such programs. The warranty requirements of this Section shall apply to all Subcontractors, and the CM@Risk shall require each Subcontractor to warrant compliance with the provisions of this section. This section is not applicable where the CM@Risk is a governmental entity nor is the CM@Risk required to pass this provision through to Subcontractors and sub-subcontractors who are governmental entities.

**13.10.3** A breach of any of the warranties required under this section shall be deemed a material breach of this Agreement subject to penalties, including termination for cause.

**13.10.4** In addition to other audit provisions contained in this Agreement, the Owner retains the right to audit and inspect such documents of any CM@Risk or Subcontractor's employees who perform Work to ensure that the CM@Risk or Subcontractor is complying with the warranty requirements of this Section.

**13.10.5** CM@Risk shall make a good faith effort to ensure that not less than 15% of the Work performed under this Agreement is performed by a small business as defined in A.R.S. § 41-1001. The CM@Risk shall report to the Owner the dollar value of the Work performed under this provision. Upon Owner's request, documentation evidencing CM@Risk's compliance with this provision shall be furnished in a form acceptable to Owner as a condition precedent to Final Payment.

**13.11** Assignment of Overcharge Claims. The Owner and CM@Risk recognize that in actual economic practice overcharges resulting from antitrust violations are in fact borne by Owner. Therefore, the CM@Risk hereby assigns to Owner any and all claims for such overcharges that may vest in CM@Risk during performance of the Project and for three (3) years after final acceptance. The CM@Risk in all subcontracts shall require all Subcontractors to likewise assign all claims for overcharges to the Owner.

**13.12 Equality.** The CM@Risk and all Subcontractors shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

**13.13 Sexual Harassment.** The CM@Risk shall comply with the Owner's current policy regarding sexual harassment. The Owner prohibits sexual harassment by any person on Owner's premises or at any Owner-affiliated functions or facilities.

**13.14 Modification of Agreement.** The Contract Documents may not be changed, altered, or modified in any way except in writing (by amendment or change order per Section 2.1.10) and signed by a duly authorized representative of both Parties.

**13.15 Veteran's Preference.** CM@Risk agrees to provide preference in initial employment for U.S. veterans by:

- Adding points to the raw score of a numerically scored screening instrument, or
- Hiring a veteran if, at the conclusion of the search process, a veteran is one of a number of comparably qualified candidates.

For purposes of this certification, "veteran" means: an honorably separated person (honorable or general discharge) who served on active duty (not active duty for training) in the Armed Forces:

- During any war declared by Congress;
- During the period April 28, 1952 through July 1, 1955;
- For more than one hundred eighty (180) consecutive calendar days, any part of which occurred after January 31, 1955, and before October 15, 1976;
- During the Gulf War period beginning August 2, 1990, and ending January 2, 1992; or
- For more than one hundred eighty (180) consecutive calendar days, any part of which occurred during the period beginning September 11, 2001, and ending on the date prescribed by Presidential proclamation or by law as the last day of Operation Iraqi Freedom; or
- In a campaign or expedition for which a campaign medal has been authorized, such as El Salvador, Lebanon, Granada, Panama, Southwest Asia, Somalia, and Haiti.

Medal holders and Gulf War veterans who originally enlisted after September 7, 1980, or entered on active duty on or after October 14, 1982, without having previously completed 24 months of continuous active duty, must have served continuously for 24 months or the full period called or ordered to active duty. Effective on October 1, 1980, military retirees at or above the rank of major or equivalent, are not entitled to preference unless they qualify as disabled veterans.

**13.16 ASU Weapons Policy.** The university prohibits the use, possession, display, or storage of any weapon, explosive device, or fireworks on all land and buildings owned, leased, or under the control of the university or its affiliated or related entities, in all university residential facilities (whether managed by the university or another entity), in all university vehicles, and at all university or university-affiliate sponsored events and activities, except as provided in §12-781 of the Arizona Revised Statutes or unless written permission is given by the ASU Police Department (ASU PD). Notification by vendors to all persons or entities who are employees,

officers, subcontractors, consultants, agents, guests, invitees, or licensees of vendors (Vendor Parties) of this policy is a condition and requirement of the contract. Vendor further agrees to enforce this contractual requirement against all Vendor Parties, refer to the [ASU Weapons Policy](#).

**13.17 Small Business.** ASU is committed to the development of small businesses as defined in ARS 41-1001. If subcontracting is necessary, the successful contractor will make every effort to use small businesses in the performance of any contract resulting from this Request for Qualifications.

**13.18 Supplemental Requirements.** The requirements below apply to ASU's Capital Projects in excess of \$2,000,000.00. The CM@Risk will comply with the Owner's following requirements as they apply to CM@Risk and Subcontractors. CM@Risk and Subcontractors will complete ASU [Supplemental Requirements](#) to be submitted at the end of each fiscal quarter. CM@Risk will work with ASU Purchasing Construction Staff regarding completion of the forms and resolution of any problems.

A. The requirements for the CM@RISK and each Subcontractor are:

- The Owner, the Contractor, and each Subcontractor shall include small businesses, as defined in ARS 41-1001, in the design, engineering and construction of the Project so long as this would result in services that are comparable in quality and would not result in a material increase in costs of the Project.
- The CM@RISK and each Major and Minor Subcontractor must comply with all state and Federal laws and employees need to be legal Arizona residents. The CM@RISK and subcontractors will provide compliance by completing the Supplemental Requirements Quarterly Form. The CM@RISK and each Major and Minor Subcontractor are required to use workers who are legal US and Arizona residents to do the Construction Work to the extent persons with the necessary and appropriate skills are reasonably available.

B. The requirements for the CM@RISK and each Major Subcontractor are:

- "Major Subcontractor" means the Subcontractors that, due to the nature of the construction work, comprise a critical or essential element of the construction such that the amount of the contract is equal to or greater than 10% or \$200,000 of the construction budget, whichever is greater. Examples, include, but are not limited to such trades as steel, concrete, plumbing, HVAC, and electrical, excavation/site work, or any other subcontractor trade that is a major subcontractor due to the nature of the construction work in a particular Project.
- The CM@RISK and each Major Subcontractor are required to provide health insurance for their full-time employees and to make health insurance coverage available to dependents and to employees who are not full-time, but are assigned to the project.

**13.19 Air Pollution Emergency Proclamation.** In accordance with an executive order titled 'Air Pollution Emergency Proclamation' modified by the Governor of Arizona on July 16, 1996, ASU requests that all products used in the performance of any contract that results from this

solicitation be of low- or no-content of reactive organic compounds to the maximum extent possible.

**13.20 Waste Containers.** Contractors using waste containers must use and order them through ASU Grounds Maintenance Department. Anytime a waste container is ordered a review will be done at that time to see if a metal recycling container would also be applicable and if so, would be provided to the project at no charge as long as this container is not contaminated with other refuse.

**13.21 Sustainability.** Arizona State University is dedicated to acquiring products and services that meet Sustainability requirements for the purpose of judging Sustainability the following description applies:

A process of current or developing business practices and technologies that restore and enhance the environment by supplying products and services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance or disposal of the product or service.

**13.22 ASU Sustainable Facility Policies.** Refer to the ASU [Project Guidelines](#).

**13.23 Complete Agreement.** This Agreement constitutes the complete and integrated agreement between the Owner and the CM@Risk, and it supersedes all prior negotiations, representations or agreements, either written or oral.

**13.24 Software Access.** CM@Risk agrees to sign, and will cause its subcontractors to sign the Construction Access and License Agreement, in the form attached as Attachment 3, if the CM@Risk or the subcontractor will either directly or indirectly (by providing equipment that will be: i) providing, purchasing, or leasing software (or processing a software renewal) to or for University; ii) creating any software or code for University; iii) accessing University's information systems; iv) given access to, receiving, storing, or analyzing any electronic data or information that is provided by or received from University (excepting standard construction plans, drawings, or specifications); or v) hosting or managing by infrastructure outside of the University (including in the cloud), any electronic data or information that is provided by or received from University (excepting standard construction plans, drawings, or specifications).

**13.25 No Boycott of Israel.** As required by ARS §§35-393 and 35-393.01, CM@Risk certifies that it is not currently engaged in a boycott of Israel and will not engage in a boycott of Israel during the term of this Agreement.

## **Section 14 Security**

### **14.1 Security.**

**14.1.1 CM@Risk and Subcontractor Employee Security Inquiries.** The Parties acknowledge that security measures required in this Section are necessary in order to preserve and protect the public health, safety and welfare. In addition to the specific measures set forth below, CM@Risk shall take such other measures as it deems reasonable and necessary to further preserve and protect the public health, safety and welfare.

**14.1.2 Security Inquiries.** CM@Risk acknowledges that all of the employees that it provides pursuant to this Agreement shall be subject to background and security checks and screening ("Security Inquiries"). CM@Risk shall perform all such security inquiries and shall make the results available to Owner for all employees considered for performing work (including supervision and oversight) under this Agreement. Owner may make further security inquiries. Whether or not further security inquiries are made by Owner, Owner may, at its sole, absolute and unfettered discretion, accept or reject any or all of the employees proposed by CM@Risk for performing work under this Agreement. Employees rejected by Owner for performing services under this Owner Agreement may still be engaged by CM@Risk for other work not involving the Owner. An employee rejected for work under this Agreement shall not be proposed to perform work under other Owner contracts or engagements without Owner's prior approval.

**14.1.3 Criteria for Evaluating Security Inquiries.** Criteria shall be prepared by CM@Risk and provided to the Owner for review and adoption. Once formally adopted by Owner, criteria for excluding an individual from performing work under this Agreement shall be communicated by Owner to CM@Risk and used by CM@Risk as a factor in making its decision. Prior to such adoption, CM@Risk shall use its best judgment in making its decision using, among other criteria, applicable law, administrative regulations of federal, state and local agencies concerned with work performed under this Agreement, specific local concerns that deal with the specific work and work location(s) of the Project, and standards used by Owner in evaluating its own personnel.

**14.1.4 Additional Owner Rights Regarding Security Inquiries.** In addition to the foregoing, Owner reserves the right to: (1) have an employee/prospective employee of CM@Risk be required to provide fingerprints and execute such other documentation as may be necessary to obtain criminal justice information as required by law; (2) act on newly acquired information whether or not such information should have been previously discovered; (3) unilaterally change its standards and criteria relative to the acceptability of CM@Risk's employees and/or prospective employees; and, (4) object, at any time and for any reason, to an employee of CM@Risk performing work (including supervision and oversight) under this Agreement.

**14.1.5 Terms of This Provision Applicable to all of CM@Risk Contracts and Subcontracts.** CM@Risk shall include the terms of this Section 14 for employee background and security checks and screening in all contracts and subcontracts at all levels for work performed under this Agreement, including supervision and oversight.

**14.1.6 Materiality of Security Inquiry Provisions.** The Security Inquiry provisions of this Agreement, as set forth above, are material to Owner's entry into this Agreement and any breach thereof by CM@Risk may, at Owner's option, sole and unfettered discretion, be considered to be a breach of contract of sufficient magnitude to terminate this Agreement. Such termination shall subject CM@Risk to liability for its breach of contract.

**Attachment 1**

**Performance And Payment Bond Forms (Templates)**

**(2 pages)**

ARIZONA BOARD OF REGENTS **PERFORMANCE BOND**  
PURSUANT TO BOARD OF REGENTS POLICY 3-804E

(Penalty of this bond must be 100% of the Contract Amount)

KNOW ALL MEN BY THESE PRESENTS:

That, \_\_\_\_\_ (hereinafter called the Principal), as Principal, and \_\_\_\_\_ a corporation organized and existing under the laws of the State of \_\_\_\_\_, with its principal office in the City of \_\_\_\_\_ (hereinafter called the Surety), as Surety, are held and firmly bound unto the Arizona Board of Regents, (hereinafter called the Oblige), in the amount of \_\_\_\_\_ dollars (\$\_\_\_\_\_), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Oblige, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, to construct and complete a certain work described as \_\_\_\_\_ (project number and name) \_\_\_\_\_ which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall faithfully perform and fulfill all the undertakings, covenants, terms, conditions and agreements of said contract during the original term of said contract and any extension thereof, with or without notice to the Surety and during the life of any guaranty required under the contract, and shall also perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the Surety being hereby waived; then the above obligation shall be void, otherwise to remain in full force and effect and Surety shall be obligated to perform if Principal fails to perform.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Board of Regents Policy Section 3-804E, and all liabilities on this bond shall be determined in accordance with the provisions of the section, to the same extent as if copied at length herein.

The prevailing party in a suit on this bond, including any appeal thereof, shall recover as a part of his judgment such reasonable attorneys' fees as may be fixed by a judge of the Court.

Witness our hands this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
PRINCIPAL SEAL

\_\_\_\_\_  
SURETY SEAL

BY: \_\_\_\_\_

BY: \_\_\_\_\_

\_\_\_\_\_  
Bond Number

\_\_\_\_\_  
Agent Name & Telephone

\_\_\_\_\_  
Bonding Company & Telephone

\_\_\_\_\_  
Agent Address

\_\_\_\_\_  
Bonding Company Address



## Attachment 2

### Amendment And Change Order Pricing Format (Sample)

Reference Section 10.4.1

		<u>Work by Subcontractor</u>		<u>Work by CM@Risk</u>
a.	Cost of Materials	\$ 2,000.00		\$ 4,000.00***
b.	Cost of Labor	\$ 1,000.00		\$ 2,000.00***
c.	Rental Value of Equipment	\$ 250.00		\$ 500.00
d.	Subcontracted Work (from line k)			<u>\$ 3,828.83</u>
e.	Subtotal	<u>\$ 3,250.00</u>		\$10,328.83
f.	Construction General Conditions (Subcontractor – assume 10% of line e & CM@Risk assume 5% of line e) *	\$ 325.00		\$ 516.44
g.	Subtotal	\$ 3,575.00		
h.	Subcontractor Fee (assumes 5% of line g)	<u>\$ 178.75</u>		
i.	Subtotal	\$ 3,753.75		
j.	Subcontractor Insurance (and bond, if applicable, assumes 2% of line i) **	<u>\$ 75.07</u>		
k.	Subtotal - Subcontracted Work	\$ 3,828.83		
l.	Direct Construction Cost			\$10,845.27
m.	CM@Risk Fee (assumes 5% of Direct Construction Cost per CM@Risk General Conditions' Section 1.2.8)			\$ 542.26
n.	Contractor Bonds and Insurance (assumes 2% of Direct Construction Cost) **			<u>\$ 216.91</u>
o.	Subtotal			\$11,604.44
p.	Tax (assumes 6% of line o)			<u>\$ 696.27</u>
q.	<b>Total Cost of Change Order Work</b>			<b>\$12,300.71</b>

\* Construction General Conditions cannot exceed 10% of the total of material and labor for Subcontractor work, and cannot exceed 5% to CM@Risk for the total of self-performed and Subcontractor work.

\*\* Cannot exceed 2% without documentation of additional cost.

\*\*\* CM@Risk's work, if applicable.

#### **Required Assumptions:**

- (1) Not all Amendments or Change Orders will have work involving both Subcontractors and the CM@Risk. In each case, only the appropriate categories of costs and percentages will be utilized.
- (2) Deductive Amendments or Change Orders utilize the same format and method of cost/credit determination including application of all deductive fees and markups. Where a change involves both, added costs and credits, the net addition or credit amount shall be determined independently for each Subcontractor and the CM@Risk prior to the application of Fee, Bond and Insurance costs, and Tax.
- (3) Payment for Bonds will be for the CM@Risk only, as required by the Contract Documents, unless the Owner has required bonding of Subcontractor(s) in accordance with the Exhibit A – CM@Risk General Conditions. Unless otherwise indicated in the Contract Documents, Subcontractor liability insurance is required and such costs are allowable.

- (4) The final Change Order amounts shall be fixed dollar amounts (not percentages) and shall be rounded to the nearest whole dollar.
- (5) Entries for lines a., b., and c. shall be supported by and developed from documentation provided with the Amendment or Change Order cost proposal.
- (6) Entries for lines j., m., n. and p. shall be actual percentages based on and supported by records of the applicable Subcontractor and/or CM@Risk. The percentages shown above for these lines are assumed values for purposes of illustration only.
- (7) As a guideline, the combined total Fee/Profit, and Construction General Conditions, including the CM@Risk and all levels or tiers of Subcontractors, shall generally not exceed twenty-seven percent (27%) of the total direct cost of items a., b., c., and j.
- (8) Note that all percentages used in the sample calculation above are for illustration purposes only. Actual percentages may vary per contract requirements.

**Attachment 3**

**Construction Supplier Access And License Agreement (Template)**

**(5 pages)**

**Exhibit B**  
**[CM@Risk's Company Name] Pre-Construction Phase Proposal**  
**Dated [Month Day, Year]**

**(x pages)**

**Exhibit C**  
**Form of Amendment - GMP and Construction Phase Fee**  
**(2 pages - template)**

**PROJECT # AND NAME  
AMENDMENT #**

This Amendment to that certain Standard Form Agreement dated \_\_\_\_\_ by and between the Arizona Board of Regents on behalf of Arizona State University and [CM@Risk Company Name] (CM@Risk) for services, deliverables and work related to Project No.\_\_\_\_, Project Name: \_\_\_\_\_, (the “Agreement”).

1. This Amendment #\_\_ establishes a Guaranteed Maximum Price (GMP) and Construction Phase Fee for Construction Services and incorporates such terms into the Agreement, making the Agreement effective for Construction Phase Services:
  - a. The total fee for Construction Phase Services, which is included in the Guaranteed Maximum Price (GMP) as defined under the Agreement, shall be fixed at \_\_\_\_\_ dollars (\$\_\_\_\_\_).
  - b. The Guaranteed Maximum Price (GMP) for Construction Services, as defined under the Agreement, shall be \_\_\_\_\_ dollars (\$\_\_\_\_\_).
  - c. The total compensation under the Agreement, as amended by this Amendment, shall be:

	<b>Pre-Construction Phase</b>	<b>Construction Phase</b>	<b>Total</b>
<b>Original Agreement</b>			
Fees	\$0.00	\$0.00	\$0.00
<b>Previous Change Orders</b>			
Fees	\$0.00	\$0.00	\$0.00
<b>This Amendment</b>			
Fees	\$0.00	\$0.00	\$0.00
<b>Total Including This Amendment</b>			
Fees	\$0.00	\$0.00	\$0.00

2. ADD “Exhibit D – [CM@Risk’s Company Name] Cost of the Work – Schedule of Values” Dated [Month, Day, Year] (x pages), attached herein.
3. ADD “Exhibit E – Construction Documents necessary to define Scope of Work and deliverables for the Construction Phase Services, including plans, designs, drawings, specifications and other required Contract Documents” Dated [Month, Day, Year] (x pages), attached herein.
4. ADD “Exhibit F - Statement of All Clarifications and Assumptions” Dated [Month, Day, Year] (x pages), attached herein.

5. ADD "Exhibit G – Schedule of Major Milestones" Dated [Month, Day, Year] (x pages), attached herein.
6. All other provisions, terms and conditions of the Agreement shall remain unchanged and in full effect.

**IN WITNESS WHEREOF**, the Parties hereto have duly executed this Amendment, effective as of the date first written above.

**OWNER**

Arizona Board of Regents  
on behalf of Arizona State University

**CM@RISK**

[CM@Risk Company Name]  
By Its Authorized Representative:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**DESIGN PROFESSIONAL**

[DP Company Name]  
By Its Authorized Representative:

\_\_\_\_\_  
Signature (Reviewed in accordance with the "Agreement Between Owner and Design Professional" Section 4.8.1.14 of Exhibit A "Scope of Services for the Design Professional")

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**Exhibit D**  
**Cost of the Work – Schedule of Values**

**(TBD pages – To be Incorporated by Amendment)**

**Exhibit E**  
**Construction Documents (necessary to define Scope of Work and Deliverables for  
the Construction Phase Services, including plans, designs, drawings,  
specifications and other required Contract Documents)**

**(TBD pages - To be Incorporated by Amendment)**

**Exhibit F**  
**Statement of All Clarifications and Assumptions**  
**(TBD pages - To be Incorporated by Amendment)**

**Exhibit G**  
**Schedule of Major Milestones**

**(TBD pages - To be Incorporated by Amendment)**