

---

**ARIZONA STATE UNIVERSITY  
STANDARD FORM AGREEMENT  
BETWEEN OWNER AND  
XXXXXXXXXX  
For Job Order Contracts  
October 22, 2020**

---

## Table of Contents

<b>STANDARD FORM AGREEMENT BETWEEN OWNER AND CONTRACTOR.....</b>	<b>3</b>
ARTICLE 1 SCOPE OF WORK.....	3
ARTICLE 2 CONTRACT DOCUMENTS.....	3
ARTICLE 3 INTERPRETATION AND INTENT .....	4
ARTICLE 4 OWNERSHIP OF DOCUMENTS .....	5
ARTICLE 5 CONTRACT TIME .....	5
ARTICLE 6 CONTRACT PRICE.....	7
ARTICLE 7 PROCEDURE FOR PAYMENT.....	7
ARTICLE 8 TERMINATION FOR CONVENIENCE.....	7
ARTICLE 9 REPRESENTATIVES OF THE PARTIES; AUTHORITY.....	8
ARTICLE 10 BONDS AND INSURANCE .....	8
ARTICLE 11 SUPPLEMENTAL INFORMATION .....	9
<b>EXHIBIT A – CONTRACTOR GENERAL CONDITIONS.....</b>	<b>10</b>
SECTION 1 GENERAL.....	10
SECTION 2 CONTRACTOR SERVICES AND RESPONSIBILITIES .....	13
SECTION 3 DESIGN PROFESSIONAL’S SERVICES AND RESPONSIBILITIES .....	27
SECTION 4 OWNER’S SERVICES AND RESPONSIBILITIES.....	28
SECTION 5 HAZARDOUS MATERIALS AND SITE CONDITIONS.....	29
SECTION 6 INSURANCE AND BONDS .....	31
SECTION 7 PROGRESS PAYMENTS .....	36
SECTION 8 COMPLETION AND FINAL PAYMENT .....	38
SECTION 9 INDEMNIFICATION .....	40
SECTION 10 TIME AND DELAY .....	41
SECTION 11 CHANGES TO CONTRACT SCOPE, PRICE, TIME AND TERMS .....	43
SECTION 12 REQUESTS FOR CONTRACTUAL ADJUSTMENTS AND DISPUTE RESOLUTION .....	46
SECTION 13 STOP WORK AND TERMINATION .....	47
SECTION 14 MISCELLANEOUS .....	49
<b>ATTACHMENT 1 - PERFORMANCE AND PAYMENT BOND FORMS .....</b>	<b>54</b>

## STANDARD FORM AGREEMENT BETWEEN OWNER AND CONTRACTOR

This "AGREEMENT" is made this \_\_\_ day of \_\_\_\_\_, in the year 2019 by and between Arizona Board of Regents, a body corporate, for and on behalf of Arizona State University ("Owner"), located at 1551 S Rural Road, Tempe, Arizona 85281 and (contractor's full legal name, including state of incorporation), ("Contractor"), located at (address), (each a "Party" or collectively the "Parties"). The terms of this Agreement are to be construed consistently with the other Contract Documents enumerated in Article 2 of this Agreement.

In consideration of the mutual promises of the parties, the Owner and the Contractor agree as set forth herein:

### ARTICLE 1 SCOPE OF WORK

1.1 The Contractor shall perform all needed services and furnish all labor, materials, equipment, tools, supplies and other items necessary to satisfactorily complete all work, deliverables, and services in connection with the following project described as: Job Order Contracting Program (the "Project"), located at the following site: various locations at Arizona State University, in strict accordance with the Construction Documents, to be prepared by a registered design professional ("Design Professional" or "DP"), and all other Contract Documents (collectively "Scope of Work, "Project Work" or "the Work").

### 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:

- a) This Agreement with all Exhibits and Attachments,
- b) Job Orders as issued for specific projects, as subsequently modified by any Change Orders or Amendments, if any.
- c) ASU Project Guidelines current as of the date of each issued project-specific Job Order,
- d) Each project-specific Job Order's Plans and Specifications ("Construction Documents") as subsequently modified by any addenda,
- e) Owner's Request for Proposal ("RFP") including all Addenda, Exhibits and Clarifications.
- f) The Contractor's proposal submission, as required by the RFP, including any clarifications and revisions of the submission.
- g) Owner's Request for Qualifications ("RFQ") including all Addenda, Exhibits and Clarifications.

- h) The Contractor’s qualifications submission, as required by the RFQ, including any clarifications and revisions of the submission.
- i) The following supplemental documents:
  - i. Performance Bond per Arizona Board of Regents Policy 3-804E, for each project-specific Job Order project,
  - ii. Payment Bond per Arizona Board of Regents Policy 3-804E, for each project-specific Job Order project,
  - iii. Certificates of Insurance: General Liability, Workers Compensation, Automobile Liability and Builder's Risk, for each project-specific Job Order,
  - iv. List of Subcontractors, provided at award of each project-specific Job Order,
  - v. Notification and Confirmation of Asbestos/Lead/PCB Containing Building Material on the ASU Campus, for each awarded project-specific Job Order,
  - vi. Construction Permit for each awarded project-specific Job Order, as applicable,
- j) Any other Contract Documents as separately identified on each awarded Job Order, if any.

### **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 – Contractor General Conditions” or if not specifically defined, their ordinary and common meaning.

**3.3** The Contract Documents form the entire Agreement between Owner and Contractor 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.

**3.4** Generally, the Drawings indicate dimensions, positions and details of construction; the Specifications establish criteria and quality for materials and standards for workmanship. All Work shall be performed in a workmanlike manner and all materials used shall be new and of the highest quality and of the type best adapted to their purpose unless otherwise specified.

**3.5** The Agreement may only be changed by written modifications, and the Contractor understands and agrees that if the Contractor proceeds with any work upon verbal request only, Contractor is agreeing by his conduct that such work, or change in the work, constitutes a minor change.

**3.6** 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 Contractor 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.

#### **ARTICLE 4 OWNERSHIP OF DOCUMENTS**

**4.1** The Owner, through this Agreement with the Contractor or its separate agreement(s) 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. Minor design services may be required for some Job Orders that require design services the Contractor shall seek the services of an Arizona registered/licensed professional to prepare plans for permitting.

**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 Contractor as well as any estimates, schedules, value engineering submissions, or other work product or deliverable furnished by Contractor to Owner.

#### **ARTICLE 5 CONTRACT TIME**

**5.1** Owner and Contractor mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents. Contractor 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** The Work and Contract Time shall commence only if and when directed in written Notice to Proceed signed by the Owner, unless the Parties mutually agree otherwise in writing.

**5.3** This Agreement shall be in effect for the time period December 1, 2019 through November 30, 2021 for an initial two (2) year period. Thereafter the term may be extended by mutual written agreement for up to three (3) consecutive one (1) year periods, or the completion date of

Construction Services to be rendered under this Agreement, whichever is later. Owner will review Contractor on performance and competitiveness on an annual basis. Provided however, the Owner reserves the sole right to terminate this Agreement at any time and may offer a new agreement to the Contractor, utilizing the Contractor's RFQ submittal.

**5.4 Substantial Completion.** Substantial Completion of the Work (the Substantial Completion Date), as defined herein, shall be achieved no later than the date identified on each issued project-specific Job Order, subject to adjustments in accordance with the Contract Documents by amendment or change order.

**5.4.1** Interim milestones and/or Substantial Completion of identified portions or phases of the Work shall be achieved as identified on each issued project-specific Job Order, subject to adjustments in accordance with the Contract Documents.

**5.5 Final Completion.** Final Completion of the Work (the Final Completion Date), as defined herein, shall be achieved no later than the date identified on each issued project-specific Job Order, subject to adjustments in accordance with the Contract Documents by amendment or change order.

**5.6 Liquidated Damages.** Contractor understands and acknowledges that if Substantial Completion is not achieved by the Substantial Completion Date, Owner will suffer damages which are difficult to accurately quantify and ascertain. The Contractor agrees that if the Contractor should fail to achieve Substantial Completion by the date set forth in Article 5.4, as extended by any Change Orders, the Contractor agrees to pay and will pay Owner, in addition to all other sums the Contractor may be obligated to pay pursuant to the Contract Documents, the sum identified in each project-specific Job Order as liquidated damages for each calendar day that Substantial Completion extends beyond the scheduled Substantial Completion Date. In addition, if Final Completion is not attained within the time period defined by Article 5.5 above, Contractor shall pay Owner the sum identified in each project-specific Job Order as additional liquidated damages for each calendar day that Final Completion extends beyond the required date. The liquidated damages provided for herein are the Parties' best estimate of Owner's damages for the failure to complete the Project within the time periods required by this Agreement and are not a penalty. Payment of liquidated damages 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 Contractor achieving Substantial Completion or Final Completion on or after the established dates.

These sums for Substantial Completion liquidated damages and Final Completion liquidated damages may be withheld from the balance of the Contract Price as it becomes due. Should liquidated damages exceed the Contract Price due or to become due, then the Contractor shall pay the Owner the difference within three (3) days of receipt of written demand.

## **ARTICLE 6                    CONTRACT PRICE**

**6.1** Subject to increases and decreases for project-specific Job Order Change Orders in accordance with the Contract Documents, the Owner shall pay to the Contractor a Contract Price as identified in each project-specific Job Order, in progress payments as provided in the Contract Documents, not to exceed \$1,999,999.00 per project-specific Job Order (ABOR 3-804).

## **ARTICLE 7                    PROCEDURE FOR PAYMENT**

**7.1     Progress Payments.** Contractor shall separately submit to Owner on the last business day of each month Contractor's Application for Payment, for each project-specific Job Order, based on the percentage of Work completed as agreed to by the Owner, in accordance with Section 7 of the "Exhibit A – Contractor General Conditions".

**7.2     Record Keeping and Finance Controls.** With respect to all Work performed by Contractor, its Subcontractors and Consultants under this Agreement, the Contractor, 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 Contractor 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 Contractor at any time during or after the Work as the Owner may request. The Contractor 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 Contractor and its Subcontractors and any Consultants employed by the Contractor.

## **ARTICLE 8                    TERMINATION FOR CONVENIENCE**

**8.1** This Agreement may be terminated for the convenience of Owner as provided for in Section 13.1 of the "Exhibit A – Contractor General Conditions".

## **ARTICLE 9 REPRESENTATIVES OF THE PARTIES; AUTHORITY**

### **9.1 Owner's Representatives.**

**9.1.1** Owner designates Bruce Jensen, Executive Director, ASU, Capital Programs Management Group, Tempe AZ 85287-5512 as its Senior Representative ("Owner's Senior Representative"), which individual has the authority and responsibility set forth in the Contract Documents, including the authority and responsibility for avoiding and resolving disputes under Section 12 of the "Exhibit A – Contractor General Conditions".

**9.1.2** Owner designates To Be Identified in each project-specific Job Order, as its Project Management Representative ("Project Manager" or "Representative"), which individual has the authority and-responsibility set forth in the Contract Documents.

### **9.2 Contractor's Representatives.**

**9.2.1** Contractor designates To Be Identified in each project-specific Job Order, as its Senior Representative ("Contractor's Senior Representative"), which individual has the authority and responsibility set forth in the Contract Documents, including the authority and responsibility for avoiding and resolving disputes under Section 12 of the "Exhibit A – Contractor General Conditions".

**9.2.2** Contractor designates To Be Identified in each project-specific Job Order, as its Project Management Representative ("Representative"), which individual has the authority and responsibility set forth in the Contract Documents.

**9.2.3** Contractor designates To Be Identified in each project-specific Job Order, as its "Construction Superintendent", which individual has the authority and responsibility set forth in the Contract Documents.

**9.2.4** Contractor's Representatives and Construction Superintendent, as approved by the Owner, shall not be replaced without the Owner's prior written approval.

**9.2.5** Contractor warrants and shall ensure that only representatives who are authorized to legally bond Contractor will sign documents associated with this Agreement.

## **ARTICLE 10 BONDS AND INSURANCE**

**10.1** Prior to, and as a condition for the execution of each project-specific Job Order, the Contractor to perform Work, Contractor shall procure, deliver and maintain Performance and Payment Bonds and insurance coverage as provided in Section 6 of the "Exhibit A – Contractor General Conditions".



**ARTICLE 11 SUPPLEMENTAL INFORMATION**

**11.1** This Agreement constitutes the complete and integrated agreement between the Owner and the Contractor, and it supersedes all prior negotiations, representations or agreements, either written or oral.

**11.2** IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date written above.

**CONTRACTOR:**

**Contractor Company Name**

By Its Authorized Representative

**OWNER:**

Arizona Board of Regents  
For and on behalf of  
Arizona State University

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

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

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

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

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

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

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

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

# EXHIBIT A – CONTRACTOR GENERAL CONDITIONS

## SECTION 1 GENERAL

### 1.1 Mutual Obligations.

1.1.1 Owner and Contractor 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.

1.2.1 “Addenda” means clarifications or changes in the Work provided to bidders in writing prior to the public bid on the Contract.

1.2.2 “Allowances” are items set forth on “Exhibit C – 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 “Contract Documents” or “Contract” are those documents noted under Article 2 of the Construction Agreement Between Owner and Contractor (the “Agreement”), and also include, but are not limited to, the Agreement, amendments, project-specific Job Orders, 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.

1.2.4 “Contract Price” for each Job Order is the amount stated in the project-specific Job Order, including authorized adjustments thereto, for the performance of the Work under that Job Order.

1.2.5 “Construction Documents” are the plans and specifications prepared by the Design Professional for the project-specific Job Order, approved by the Owner, and incorporated into the Agreement by reference after such approval, to be used to construct the Project. All modifications to the Construction Documents must be approved by the Owner prior to incorporation into the Agreement. This definition includes the terms Project Specification and Project Manual as well.

1.2.6 “Construction General Conditions”, used in non-pre-priced (Unit Price book) Job Order method, means all on-site Project job costs of Contractor not itemized elsewhere in the Contract Documents but specifically excludes, without limitation, the following:

- a) bonds,
- b) insurance,
- c) items which are included in the Contractor’s Fee, such as:
  - (1) Home (off-site) Expenses,
  - (2) Home Office Personnel such as Corporate Executive, Project Executive & Project Director,
  - (3) Home Office Staff Transportation & Travel Costs,
  - (4) Home Office Accounting & Contract Forms,
  - (5) Legal Expenses,
  - (6) Project Staff Moving Expenses,
  - (7) Off-site Staff Training & Education (unless pre-authorized by Owner, in writing),

- (8) Pre-Mobilization Office Space,
- (9) Off-site Equipment & Supplies,
- (10) Field Office PCs and Commercial Software Purchase/License,
- (11) Forms,
- (12) Contractor Yard not Dedicated to Project,
- (13) Contractor Association Fees, Licenses & Memberships,
- (14) Cost over Contract Price,
- (15) Corrective Work,
- (16) Bonuses,
- (17) Cost of Living Allowance,
- (18) Marketing Expenses,
- (19) Corporate Sponsorships and Entertainment, and
- (20) Promotional or Celebratory Expenses the Contractor incurs while performing and completing the Project.

Owner will not pay for Contractor’s travel, lodging, meal expenses, and/or subsistence.

Contractor’s Fee percentage is restricted to the allowable rates as follows:

<b>Project Value *</b>	<b>JOC Contractor Fee</b>
\$1 - \$49,999	12%
\$50,000 - \$499,999	8%
\$500,000 - \$1.99M	5%
Pre-construction Services	Cap at 1.5%
* Project Fees can be discussed and negotiated with the Project Manager based on the specific project requirements	

Construction General Conditions must include a detailed listing of rental equipment with rental rates and anticipated duration of use, and purchase prices for said equipment.

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 be submitted by the Contractor during the Project negotiation process as a detailed breakdown of itemized costs. Should Construction General Conditions be needed for a project Job Order, utilizing the non-pre-priced method, Construction General Conditions shall be reimbursed as a category of Work within the Schedule of Values based on actual cost or negotiated amounts, as agreed to by Owner.

All excluded expenses the Contractor incurs while performing and completing the Project are not reimbursable as Construction General Conditions, and must be paid out of the Contractor’s Fee.

1.2.7 “Contingency” or “Construction Contingency” means that part of the Contract Price the Contractor may use during the Construction Phase as provided in these General Conditions at Section 7.10, to cover legitimate unforeseen construction expenses, or expenses otherwise agreed by Owner and Contractor, subject to Owner’s approval, after Contract Price 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.

1.2.8 “Contractor” means the Contractor and all persons working for or on behalf of the Contractor, for this Project.

1.2.9 “Contractor’s Fee” includes all costs of Contractor providing off-site management and support for the implementation of the Job Order. The Contractor’s Fee is restricted to the rates set forth in the Contractor’s submission to the RFQ

1.2.10 “Day” means calendar day unless specifically otherwise provided herein or by law.

1.2.11 “Design Professional” (DP) 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 Contractor progress payment applications, and Substantial Completion, if so designated. For purposes of this Agreement only, the term also includes individuals employed by any state university who render such services in connection with the Project.

1.2.12 “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.

1.2.13 “Final Completion” is the date certified by the DP and Owner 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, and c) Owner training/start up activities.

1.2.14 “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.

1.2.15 “Home Office” is defined as the Contractor’s offices not on ASU’s campus.

1.2.16 “Indirect Construction Cost” is the sum of all applicable insurance costs, bond costs and applicable sales or use taxes, and excludes Contractor’s Fee.

1.2.17 “Legal Requirements” include all regulations, policies, procedures and practices of the Arizona Board of Regents and the Owner 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 work performed.

1.2.18 “Modifications” means Agreement or project-specific Job Order change orders or amendments signed by the Owner, or other written amendments signed by both the Owner and the Contractor at or after the execution of the Agreement and/or project-specific Job Order(s), or the DP’s written interpretations or directions for minor changes in the Work. A “minor change” is defined as one having no impact on cost or time or the Owner’s approved design intent, as determined by the Owner.

1.2.19 “Project” means all components of the improvements to be constructed for the Owner, regardless of whether the Work is all or only a portion, under a specific Job Order.

1.2.20 “Punch List” are those minor items of Work identified and listed by Design Professional and agreed to by Owner to be completed by Contractor 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.

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

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

1.2.23 “Substantial Completion” is the date certified by the DP and Owner on which the Contractor’s Work, or an agreed upon portion of the Work, is sufficiently complete, as determined by the 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. In order 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 system must be obtained or completed, as applicable.

1.2.24 “Work” is comprised of all activities required in order to complete the Project as defined by the Project Criteria and Contract Documents, as specified for each project-specific Job Order, including 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 Contractor agree that these provisions set forth their mutual understanding and agreement regarding the Agreement, General Conditions or subjects addressed therein.

## **SECTION 2 CONTRACTOR SERVICES AND RESPONSIBILITIES**

### **2.1 General Services.**

2.1.1. The Contractor shall interact and cooperate fully with the Owner and Design Professional during the project. The Contractor 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.

2.1.2. The Contract Documents do not create any contractual relationship between the Design Professional and the Contractor 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 Contractor which does not otherwise explicitly exist in the Contract Documents.

2.1.3. The Contractor shall only use duly licensed Subcontractors in connection with the Work, as submitted with the bidding documents. Any changes to subcontractors must be approved in writing by Owner.

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

2.1.5. The Contractor 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 Contractor 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.

2.1.6. The Contractor shall be responsible for laying out its own Work and for any damage which may occur to work of any other contractor because of the Contractor's own errors or inaccuracies. The Contractor shall also be responsible for unloading, uncrating, storing and handling all materials and equipment to be erected or placed by it, whether furnished by the Contractor or others.

2.1.7. The Contractor, Subcontractors and Suppliers shall be responsible for taking all appropriate field measurements prior to fabrication and installation of any item. Such measurements shall be taken sufficiently in advance so as to avoid any delay or potential delay. Failure to adhere to this provision shall render such delays the responsibility of the Contractor.

2.1.8. Unless otherwise specifically mentioned, all anchors, bolts, screws, fittings, fillers, hardware, accessories, wiring, conduit, ductwork, trim and other parts required for or in connection with any item or material to make a complete, serviceable, finished and first quality installation shall be furnished and installed as part of the item whether or not expressly called for by the Drawings or Specifications.

2.1.9. All materials shall be shipped and stored and handled in a manner that will afford protection and ensure their being in factory-new condition at the time they are incorporated in the Work. After installation, they shall be properly protected against damage or deterioration until Final Completion of the Project.

Any part of the Work damaged during installation or prior to final acceptance of Work shall be repaired so as to be unnoticeable and to be equal in quality, appearance, serviceability and other respects to an undamaged item or part of the Work. Where this cannot be fully accomplished, the damaged item or part shall be replaced. After installation, all exposed surfaces and parts of an item or of the Work shall be cleaned in a manner that will not damage the finish or any of the parts of the item, so that the completed work is left in first class condition, free of all defects. All damaged or defaced Work shall be repaired or replaced to the Owner's satisfaction at the expense of Contractor.

2.1.10. Contractor shall keep the Site free from debris, trash and construction waste to permit Contractor 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. Contractor 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, that Contractor responsibility to secure, safeguard and protect shall continue until Final Completion and final acceptance.

2.1.11. Upon Substantial Completion of the Work, or a portion of the Work, Contractor 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 in which it is intended. If the Contractor fails to clean up at the completion of the work, the Owner may do so and the cost thereof shall be charged to the Contractor.

2.1.12. 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. Consultation During Project Development.**

In addition to the services of the Contractor listed throughout this Agreement, Contractor's Pre-Construction Services may include but not be limited to: Development of a Project Management Plan, Provide Value Analysis, Constructability and Bidability Reviews, Cash Flow Projections, Estimating/Price Guarantees, and Subcontractor Bid Package Timing and Strategy. These services may 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.

Should Pre-Construction services be required, Owner shall pay Contractor a Pre-Construction Phase Fee for the Pre-Construction services, as negotiated and authorized per project-specific Job Order.

## **2.3 Progress and Scheduling.**

2.3.1 For each project-specific Job Order issued, the Contractor shall prepare and submit to the Owner and the DP a Schedule of Values allocating the Contract Price among the various portions of the Work, by Division, for purposes of progress payments. The Schedule of Values shall be substantially equivalent to AIA Forms G702 and G703 or as specified by Owner. In addition, the Contractor shall submit a construction progress schedule for the Work as part of each Job Order Proposal, in full accordance with the requirements and provisions located in the Contract Documents.

2.3.2 The Contractor shall also furnish the Owner and DP with a Narrative Report corresponding with each monthly update which shall include a description of current and anticipated problem areas, delaying factors and their impact, fragmentary networks (fragnet) of delays, and an explanation of corrective action taken or proposed. If the Project is behind schedule in any month, the Contractor's Narrative Report shall indicate precisely what measures it will take in the next thirty (30) days to put the Work back on schedule.

2.3.3 The Contractor shall be responsible to prepare, submit and maintain the schedules and Narrative Reports indicated above, and the failure to do so may be considered a material breach of this Contract. Any additional or unanticipated cost or expense required to maintain the schedules shall be solely the Contractor's obligation and shall not be charged to the Owner.

2.3.4 The Contractor shall employ and supply a sufficient force of workers, material and equipment, and shall prosecute the Work with such diligence so as to maintain the rate of progress indicated on the Progress Schedule, to prevent work stoppage, and to ensure completion of the Project within the Contract Time.

2.3.5 Upon Owner's request, as a condition precedent to the release of retained funds, the Contractor shall, after Substantial Completion of the work has been achieved, submit a final

Contractor's Construction Schedule which accurately reflects the manner in which the project was constructed and includes actual start and completion dates for all activities on the Construction Schedule.

2.3.6 The date of commencement of the Work under each Job Order is the date established in the Notice to Proceed.

## **2.4 Legal Requirements.**

2.4.1 Contractor shall perform all Work in accordance with all applicable Legal Requirements and the Contract Documents and otherwise shall provide all notices applicable to the Work.

## **2.5 Government Approvals and Permits.**

2.5.1 Unless otherwise provided in the Contract Documents, Contractor has the responsibility to obtain and pay for all necessary permits, approvals, licenses, government charges, and inspection fees required for the prosecution of the Work, and shall immediately send electronic copies to the Owner and DP. Contractor shall follow all of Owner's permitting and inspection procedures. The Contractor shall be responsible for complying with all applicable Federal, State and local laws, codes, notice requirements, and regulations applicable to the site and prosecution of the Work. Contractor shall be responsible for and pay any costs associated with or arising from any non-compliance.

2.5.2 The Contractor shall pay all taxes for and related to the Work or its portion thereof which are legally in force at the time the Job Order proposal is submitted, whether or not yet effective.

## **2.6 Construction and Superintendence by the Contractor.**

2.6.1 The Contractor 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. The Contractor 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.

2.6.2 The Contractor shall competently and thoroughly direct and superintend all of the Work and shall be solely responsible for all construction safety, means, methods, sequences and techniques of construction. It shall coordinate and schedule all Work under this Agreement, the performance of all its employees, Subcontractors, and Suppliers, and the timely procurement of all necessary labor, materials, equipment, supplies, and all else needed to do the Work. The Contractor shall establish an on-site organization with lines of authority in order to carry out the overall plans for completion of the Work.

2.6.3 The Contractor 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 Superintendent and Representative shall represent the Contractor and all communications given to the Representative shall be binding on the Contractor. All such communications shall be confirmed in writing.

2.6.4 The Contractor 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. In addition, if the Contractor receives written notice from the Owner to dismiss any unskilled or unfit subcontractors or employees or one who is a hindrance to proper or timely execution of the Work,



the Contractor shall dismiss those subcontractors or employees and agrees to replace those dismissed without delay to the Project and at no additional cost to the Owner.

2.6.5 The Contractor shall be responsible to the Owner for the acts and omissions of the Contractor'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 Contractor.

2.6.6 The Contractor 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 Contractor. Nothing contained in this paragraph shall preclude the Contractor from asserting any rights it may have under this Agreement in the event of unreasonable delays to the Contractor in the conducting of any inspections, test, approvals, or other actions by the Design Professional upon which the Contractor is dependent.

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

2.6.8 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 Contractor prior to execution of a project-specific Job Order. The Contractor 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 Contractor shall also assure at its own cost reasonable access of other contractors to their site and their work.

2.6.8.1 Upon request of the Contractor, the Owner will provide the Contractor with a copy of Drawings, Specifications, Schedules or other needed data relating to such other contracts or work as may be necessary to meet Contractor's duty to coordinate. The Contractor 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 Contractor. In no event shall such notice be given by Contractor so late as to interfere with or delay the Work to be performed by the Contractor. Failure of the Contractor to request, review, or provide written notice as provided above shall constitute a waiver of any objections or claims the Contractor may otherwise have as a result of the necessity to coordinate the Contractor's Work with other activities.

2.6.8.2 Should the Contractor sustain any damage through any act or omission of any other such contractor or Subcontractor, Contractor shall have no claim or cause of action against the Owner for such damage and hereby waives any such claim. The Contractor 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.

2.6.8.3 Should the Contractor cause damage to the Work or property of any other contractor or Subcontractor of the Owner, the Contractor 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 Contractor or its Subcontractors, the Owner shall notify

the Contractor 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 Contractor 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.

#### 2.6.9 Subcontracts.

2.6.9.1 The Contractor shall supply with its proposal to the Owner a written list of all proposed subcontractors and suppliers. The Owner will reply to the Contractor in writing stating whether the Owner or the DP, after due investigation, has any objection to any such proposed subcontractor or supplier. The Contractor shall not employ any subcontractor or supplier against whom the Owner or the DP has reasonable objection.

2.6.9.2 All work performed for the Contractor by a subcontractor shall be pursuant to an appropriate written agreement which specifically binds the subcontractor to all applicable terms and conditions of the Contract Documents, but no contractual relationship shall exist between any subcontractor or supplier of any tier and the Owner, unless the Owner invokes the assignment provisions of the following subsection. Upon request, the Contractor shall provide fully executed electronic copies of any subcontracts and purchase orders to the Owner.

2.6.9.3 The Contractor hereby assigns to the Owner (and its assigns) all its interest in any subcontracts and purchase orders now existing or hereinafter entered into by the Contractor for performance of any part of the Work, which assignment will be effective upon termination of the Agreement by the Owner and only as to those subcontracts and purchase orders which the Owner assumes in writing. All subcontracts and purchase orders shall provide that they are freely assignable by the Contractor to the Owner and its assigns. Such assignment is part of the consideration to the Owner for entering into this Agreement with the Contractor and may not be withdrawn prior to Final Completion.

2.6.9.4 Subcontractor Selection. The Contractor's selection of any Subcontractor must comply with ABOR Policy 3-804 B (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.

2.6.9.4.1 Pre-Construction Phase. If 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, as well as provide Construction Services during the Construction Phase, then the following procedures will apply:

a) JOC Contractor prequalifies 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 JOC Contractor. 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 JOC Contractor, 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.

2.6.9.4.2 Construction Phase. The Contractor 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 Contractor 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 Contractor 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 Contractor shall promptly notify the Owner.

2.6.9.4.3. ABOR Policies. The Contractor's selection of any Subcontractor must comply with ABOR Policy 3-804 B (3) 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 Contractor 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. When the Contractor proposes to accept a subcontract bid other than the low bid, the Contractor 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 Contractor without Owner's prior approval and any change in cost to Contractor will not be a responsibility of Owner and there will be no increase in price by reason of such change of cost. Within ten (10) calendar days after award, one fully executed subcontract for work or services on the Job Order project shall be furnished to Owner together with all special or supplementary conditions applicable to the subcontract work.

For Subcontractors selected in this manner, the Contractor must establish to the Owner's satisfaction that the Subcontractor's price submission is reasonable and appropriate, by following the procedures outlined above.

#### 2.6.10 Contractor Self-Performance.

2.6.10.1 The Contractor 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 Contractor indicates it desires to self-perform any portion of the construction work, the following procedures will be followed:

2.6.10.1.1 For non-pre-priced work, a bid package for each portion of the construction work as to which Contractor will self-perform work will be prepared in the same manner and content as bid packages for Subcontractors in other trades. Contractor will submit a proposed price 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 (3) 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.

2.6.10.2 In order to evaluate the Contractor'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 Contractor's price submission. In any event, Contractor is responsible to establish to the Owner's satisfaction that the Contractor's price submission is reasonable and appropriate. If

the Owner is satisfied that the Contractor price submission is reasonable and appropriate, the Owner will advise the Contractor that the Contractor is selected as Subcontractor for the respective portion of the construction work.

2.6.10.3 If, at the conclusion of the review of the Contractor's proposed price, the Owner is not satisfied that the Contractor's price submission is reasonable and appropriate, the Owner will so advise the Contractor and the Contractor 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 2.6.9.4.3, except that, notwithstanding any other provision of the Contractor Pre-Construction Services Contract Documents to the contrary, (i) the Contractor's price submission will be the Contractor's bid for that portion of the in the Subcontractor bidding process; (ii) the Contractor 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 Contractor, and (iv) the Owner will decide which Subcontractor bid to accept, in accordance with Section 2.6.9.4.3.

## **2.7 Inspections.**

2.7.1 Inspections, tests, measurements, or other acts of the Owner and/or the DP are for the purpose of assisting the Owner and/or the DP in determining that the Work, materials, rate of progress, and quantities comply with the Contract Documents and/or Contractor's requests for payment. These acts or functions shall not relieve the Contractor from performing the Work in full compliance with contract requirements nor relieve the Contractor from any of the quality, compliance and responsibility for the Work assigned to it by the Contract Documents. No inspection by the Owner and/or the DP shall constitute or imply acceptance or waiver of rights.

2.7.2 The Contractor shall at all times allow the Owner, Design Professional, or any other designated representatives access to the construction work, including materials being fabricated or stored off site, to observe progress and inspect the quality of work and conformance to the Construction Documents.

2.7.3 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 Contractor, if requested by the Design Professional or the Owner, and then recovered at no cost to Owner, notwithstanding the provisions of the following Section.

2.7.4 Nonconforming Work or materials may be rejected and Contractor shall correct such rejected Work without additional compensation, even if the Work or materials have been previously inspected or accepted by the Owner and/or the DP or even if the Owner and/or the DP failed to observe the unsuitable Work or materials.

2.7.5 Contractor shall follow the inspection procedure outlined in the "Inspection Procedure" document, located under "Inspections" at <https://cfo.asu.edu/fdm-bldg-permit-requirements>.

Contractor 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 Contractor solely

responsible for all consequences, including backcharges for subsequent re-inspection, of non-inspection and any required access to or uncovering of such Work.

## **2.8 Daily Log.**

2.8.1 The Contractor 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 Contractor 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 Contractor and individual Subcontractor personnel;
- d) The number of Contractor 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; and
- i) A list of all visitors at the Site.
- j) Any other relevant information deemed relevant as to activities on the Site that day.

2.8.2 The Contractor shall provide electronic 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.

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

## **2.9 Communications.**

2.9.1 All project notices, requests, instructions, modifications, approvals, and claims must be in writing, unless expressly specified otherwise in the Agreement.

2.9.2 Electronic copies of all such communications from the Contractor to the DP shall be delivered to the Owner.

2.9.3 Communications will be deemed to have been made if delivered in person, emailed, or if mailed to the address designated in the Agreement or otherwise agreed upon by the parties.

## **2.10 Drawings and Specifications.**

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

2.10.2 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 Contractor 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 Contractor's risk regardless of Design Professional's and/or Owner's knowledge of such Work being performed.

2.10.3 In the event of any conflict or ambiguity, the Construction Documents shall be interpreted as being complementary, requiring delivery by Contractor of a complete Project, or designated portion thereof. Any requirement occurring in any one of the Construction Documents is as binding as though occurring in all Construction Documents. In the event of any conflict or ambiguity, perceived or real, the Contractor shall request an interpretation by the Design Professional before performing the Work. Generally, the Specifications address quality, types of materials and contractual conditions while the 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 2.10.3.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.

2.10.4 In the event of conflict between Owner's Technical Standards and/or Project Guidelines, and the Drawings and Specifications, Contractor shall promptly call the conflict to the attention of Owner and Design Professional and use of such Drawing by Contractor deferred until resolution of the conflict to Owner's satisfaction.

2.10.5 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 through 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.

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

2.11.1 The Contractor shall maintain at the Site, for the use of the Owner and of the Design Professional, one (1) 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 Contractor to record all approved changes made during construction. All of these shall be turned over to the Design Professional by the Contractor at the time of Substantial Completion for the purpose of the Design Professional assembling and correlating the material for use by the Owner.

2.11.2 The Contractor 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.

2.11.3 Each Submittal and Shop Drawing must be accompanied by a Contractor 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 Contractor
- g) Name of Subcontractors
- h) Revision Number

2.11.4 Submittals identified by Owner shall be submitted to Owner for its review concurrent with review of same by Design Professional. During Construction Phase Contractor shall promptly provide Owner with an electronic copy of all approved submittals.

2.11.5 All Subcontractor Submittals and Shop Drawings shall be reviewed by the Contractor prior to being submitted to the Design Professional and each shall bear a written statement by the Contractor 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 Contractor's sole responsibility. This review by Contractor of Subcontractor Submittals and Shop Drawings shall not be construed as Contractor 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 2.11.6.

2.11.6 The Contractor 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 Contractor must furnish the item as specified or as indicated on the Construction Drawings.

2.11.7 It is the Contractor'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.

2.11.8 By approving or submitting Submittals and/or Shop Drawings, the Contractor thereby represents 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 Contract Documents. If any specified material item or part is not available, the Contractor shall so indicate to the DP.

2.11.9 The Design Professional shall review and approve Submittals and Shop Drawings and return them to the Contractor, unless otherwise previously agreed in writing. For scheduling purposes, the Contractor must assume a review period of at least ten (10) business days for each Submittal or set of Shop Drawings, and at least ten (10) business 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) days. If review and approval are delayed beyond the number of days specified, the Design Professional shall notify the Contractor and the Owner in writing stating the reason for the delay. Approval shall not relieve the Contractor 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 Contract Price 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.

2.11.10 If the Design Professional returns a Submittal or Shop Drawing to the Contractor with the notation "rejected", "revise and resubmit", or "approved as noted", the Contractor, 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 Contractor on the Shop Drawing and on the resubmittal as a special note.

2.11.11 No extension of contract time will be granted to the Contractor because of its failure to submit Submittals or Shop Drawings in ample time to allow for review, possible resubmittals and approval. Fabrication of Work shall not commence until the Contractor has received written approval. The Contractor 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.

## **2.12 Product Samples, Tests, and Certificates.**

2.12.1 The Contractor 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 DP and the Owner. The DP and/or Owner will review Product Samples in accordance with Section 2.11 above.

2.12.2 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 Contractor
- g) Name of Subcontractor

2.12.3 The Contractor shall furnish to the DP a certificate stating that material or equipment submitted complies with Contract Documents. If a certificate originates with the manufacturer, the Contractor shall endorse it and submit it to the DP together with a statement of compliance in its own name.

2.12.4 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 Contractor from its duty to perform the Work in accordance with the Contract Documents and all applicable law or regulation or code.

2.12.5 Unless the Design Professional is authorized at the time of submittal to return samples at the Contractor's expense, rejected samples will be destroyed.

2.12.6 After delivery of materials by Contractor, 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 Contractor. Any test is for the benefit of the Owner and shall not relieve Contractor 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.

2.12.7 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 therefore being borne by the Contractor and not the Owner, or to demand and secure appropriate reparation to or price adjustment for the benefit of Owner from the Contractor.

### **2.13 As-Built Drawings.**

2.13.1 Prior to Final Payment, the Contractor shall complete and turn over to the Design Professional the As-Built Drawings kept current at the Project Site by Contractor. 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 (2) 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. Contractor shall also provide an electronic file of the As-Built Drawings to Owner in digital form pre-approved by Owner.

2.13.2 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.

## **2.14 Contractor's Responsibility for Project Safety.**

2.14.1 Contractor 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 Contractor assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work and will submit a Safety Plan complete form to Owner and Design Professional at the time of issuance of the Notice to Proceed with the Work, upon Owner request. Contractor 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 Contractor's personnel and Subcontractors.

2.14.2 Contractor 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. Contractor will immediately report, in writing, to Owner's Representative and all government or quasi-government authorities having jurisdiction over matters involving the Work, any injury, loss, damage or accident occurring at the Site of the Work.

2.14.3 Contractor's responsibility for safety under Section 2.14 is not intended to in any way relieve Contractor'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.

## **2.15 Warranty.**

2.15.1 Contractor 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. Contractor's warranty obligation excludes defects caused by abuse, alterations, or unreasonable failure to maintain work by persons other than Contractor, Contractor's Subcontractors, or others under Contractor's control. Nothing in this warranty by Contractor shall limit any manufacturer's warranty, which provides Owner with greater warranty rights than set forth in this Section or the Contract Documents.

2.15.2 Contractor will provide Owner with all manufacturers' warranties and Operation and Maintenance Manuals upon the date of Substantial Completion of the Work. Contractor 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, 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.

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

## **2.16 Correction of Defective Work.**

2.16.1 If any portion of the Work is covered over by Contractor 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 Contractor's own expense.

2.16.2 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 Contractor shall bear such costs to uncover and remove and replace or repair.

2.16.3 Unless a specific written waiver of such non-conformance has been provided to the Contractor, Contractor 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 Contractor 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.

2.16.4 Contractor, 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 Contractor 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. Contractor 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 Contractor of its intent to make such corrections at or before the commencement of the corrective work.

2.16.5 The two-(2)year warranty period referenced in Section 2.15 applies only to the Contractor'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 Contractor's other obligations under the Contract Documents. Contractor 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 is the individual or legal entity identified in the Contract Documents and/or otherwise designated by the Owner who is retained by the Owner to design and/or oversee the Project. For purposes of this Agreement only, the term also includes individuals employed by Arizona State University who render such services in connection with the Project.

**3.2**     The DP shall have the right, responsibility and authority to carry out the specific duties required of the DP, as described herein and in the Agreement(s) between the DP and the Owner,

including any amendments thereto. Any such amendments shall be in writing and furnished to the Contractor.

**3.3** The DP will visit the site as it is deemed by the DP or Owner to be appropriate in order to advise the Owner as to the quality and progress of the construction. The Contractor shall cooperate with the DP in all respects in this regard, including attending meetings as requested.

**3.4** The Design Professional will be the initial interpreter of the intent and requirements of the Construction Documents. The Design Professional shall render written initial interpretations with reasonable promptness following a written request from the Owner or the Contractor in that regard. These initial interpretations shall be consistent with the intent of the Contract Documents.

**3.5** The Design Professional will timely review and approve or take other appropriate action upon the Contractor's submittals, such as Shop Drawings, Product Data and Samples, for conformance with the Construction Documents. Such action shall be taken with reasonable promptness as specified so as to cause no 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.

**3.6** 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 11.3.

**3.7** 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 Contractor, any Subcontractor, any of their agents or employees, or any other person performing any of the Work.

**3.8** 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 Contractor from time to time under and in accordance with the Contract Documents, including Section 7 of these General Conditions and applicable law.

## **SECTION 4 OWNER'S SERVICES AND RESPONSIBILITIES**

**4.1** Owner shall, throughout the performance of the Agreement, cooperate with Contractor and perform Owner's responsibilities, obligations and services in a timely manner so as not to delay or interfere with Contractor'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 Contractor to fulfill its obligations under the Contract Documents. Owner's Representative shall also provide Contractor with reasonably prompt notice if and when it observes any failure on the part of Contractor to fulfill its contractual obligations, including errors, omissions or defects in the Contractor's performance of its Work. Failure of the Owner or its representatives to notify the Contractor hereunder shall not reduce, change, lessen or alleviate in any way, the duties and obligations of Contractor under the Contract Documents.

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

## **SECTION 5 HAZARDOUS MATERIALS AND SITE CONDITIONS**

### **5.1 Hazardous Materials.**

5.1.1 It is the sole responsibility of ASU and its approved third party asbestos abatement contractor to properly remove and dispose of any Hazardous Materials in the Project identified as such in the Contract Documents by the Owner. Contractor, 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 applicable rules, 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 Contractor.

5.1.2 Contractor will be entitled, in accordance with the provisions of these General Conditions, to an adjustment in the Contract Price or Contract Time(s) of performance, or both, to the extent that the Contractor'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 Contractor, Subcontractors (of any tier) or anyone else for whom the Contractor is responsible unless provision of such Hazardous Materials are called for in the Contract Documents, or has called for the removal of any such Hazardous Materials.

5.1.4 Contractor 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 Contractor's importation, improper handling, storage, abatement, removal or disposal of any Hazardous Materials by Contractor.

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 Contractor, Contractor shall take immediate action reasonably necessary to contain the release. Owner may elect to have Contractor control and carry out any containment, clean-up, removal and remediation activity needed, provided that if the release is not a Contractor release, Owner will be responsible to pay Contractor for such Contractor containment activities in accordance with Section 11.4 of these General Conditions, including allowance of additional Contract Time thereunder.

5.1.6 Prior to award of a Job Order, the Contractor is required to review and sign the Notification and Confirmation of Asbestos/Lead/PCB Containing Building Material on the ASU Campus.

### **5.2 Site Conditions.**

5.2.1 The Contractor shall thoroughly acquaint himself with all available information concerning the conditions of the Work and is responsible for correctly and fully estimating the difficulty and cost of successfully performing the Work.

5.2.2 The Contractor acknowledges that it has thoroughly examined the site, plans and specifications, boring data and all other soils information and as-built data made available and by submission of the project-specific Job Order proposal herein avows that it has satisfied itself as to the character, quality and quantity of surface and subsurface materials or existing obstacles to be encountered. The Contractor acknowledges that boring data and other soils information and as-built data made available is only a general indication of materials and/or conditions likely to be found adjacent to holes bored or in existing structures or facilities or other areas. If the Contractor determines that the information is erroneous, inadequate or ambiguous, it shall immediately report its conclusions to the Owner in writing. If the Contractor determines that the information is erroneous, inadequate, or ambiguous, and after reporting its conclusions to the Owner, remains dissatisfied or uninformed, the Contractor shall refrain from submitting a project-specific Job Order proposal, or if the Contractor does submit a proposal, the Contractor shall be deemed to have waived any claim it may have as the result of the alleged erroneous, inadequate, or ambiguous information.

### **5.3 Unforeseen Project Site Conditions.**

5.3.1 Contractor shall immediately provide written notice to Owner apprising Owner of unforeseen conditions encountered, including:

- a) Subsurface or latent physical conditions encountered at the site which differ materially from those indicated in the Contract Documents and which were not known by the Contractor or could not have been discovered by careful examination and investigation of the information available at bid time and the site, and which could adversely affect the timely performance of the Work or its cost or;
- b) Unknown and unexpected physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered in the locale or generally recognized as inherent in the sort of work provided for in the Contract Documents.

The Contractor shall not disturb or modify such conditions without Owner's prior written consent.

5.3.2 The DP and/or the Owner shall within ten (10) days or such other reasonable time as necessary, investigate the conditions discovered. If the DP and/or the Owner find that conditions are so materially different as to support an equitable adjustment in the Contract Price or the Contract Time, this will be done by written Change Order or Amendment. If the DP and/or the Owner determine that no Change Order or Amendment will be issued, the Contractor shall continue with the Work at no additional cost.

5.3.3 No claim by the Contractor for an increase in the Contract Price or Contract Time hereunder shall be allowed without proper advance notice and an adequate opportunity for the Owner to investigate.

5.3.4 In no event shall the Contract Time or Contract Price be adjusted for conditions that could have and should have been identified by the Contractor through its investigations or survey of existing conditions prior to bid submission.

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

### **5.4 Archaeological Conditions.**

5.4.1 If in the course of performing the Work, the Contractor, any Subcontractor or other persons or entities under the control of Contractor, encounters any Native American burial site or other

archeological artifacts are disturbed, the Contractor shall notify Owner and suspend any work or activity in the vicinity of the burial site or artifact. Owner will determine with reasonable preemption what action, if any, needs to be taken and advise Contractor how to proceed or to adjust the Work. Any claim or need for adjustment in Contract Time or Contract Price will be handled under 5.3 above.

## **SECTION 6 INSURANCE AND BONDS**

### **6.1 Bond Requirements.**

6.1.1 Prior to the execution of each project-specific Job Order, the Contractor 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 project-specific Job Order Contract Price. 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 Contractor performance and payment bonds.

6.1.2 The Owner may require each proposed Subcontractor whose subcontract amount will be \$100,000 or more to furnish a performance bond on Owner's form or on a form approved by Owner, which provides equal or better coverage, for the full amount of its subcontract. This bond shall be obtained by the Subcontractor as a separate entity and the cost shall be included in the Subcontractor's bid to the Contractor. Alternatively, in place of Subcontractor performance bonds, if approved in advance by the Owner, the Contractor 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 bid and Contract Price.

### **6.2 Contractor Insurance Requirements.**

6.2.1 The Contractor shall not commence any Work until it obtains all required insurance and furnishes satisfactory proof to the Owner. The Contractor shall not permit any Subcontractor to commence work on the Project until all bond and insurance requirements have been complied with by the Subcontractor.

6.2.2 Insurance coverage assuring the adequacy of the Contractor's performance and warranty obligations shall be maintained for the full warranty period specified in Section 2.15.2 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 Contractor, the Contractor 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 is sufficient to protect the Contractor or any Subcontractor from all insured or insurable risks or from potential insurer insolvency.

6.3.2 **Worker's Compensation Insurance.** Contractor shall procure and maintain worker's compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of the Contractor, its employees, or both, engaged in the performance of services under this Agreement. Contractor 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	Statutory
Employer’s Liability	
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 Contractor.

Contractor agrees that for any project within the City of Phoenix limits, the Worker’s Compensation Insurance policy will include a waiver of subrogation against the City of Phoenix. This requirement to add the City of Phoenix is in addition to the required waiver of subrogation in each insurance policy listed herein.

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.

	<b>All Projects Not In Phoenix</b>	<b>ASU Projects Downtown Phoenix</b>
• Each Occurrence	\$1,000,000	\$1,000,000
• General Aggregate	\$2,000,000	\$5,000,000
• Products – Completed Operations Aggregate	\$1,000,000	\$1,000,000
• Personal and Advertising Injury	\$1,000,000	\$1,000,000
• Blanket Contractual Liability – Written and Oral	\$1,000,000	\$1,000,000
• Fire Legal Liability	\$ 50,000	\$ 50,000

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

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



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 Contractor.

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

**6.3.4 Business Automobile Liability Insurance.** Contractor 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 Contractor's owned, hired, or non-owned vehicles assigned to or used in performance of the services.

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

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

Contractor agrees that for any project within the City of Phoenix the Business Automobile Liability Insurance policy shall name the City of Phoenix as an additional insured and will include a waiver of subrogation against the City of Phoenix. This requirement to add the City of Phoenix is in addition to the standard required endorsement as additional insured and waiver of subrogation in each insurance policy listed herein.

**6.3.5 Builder's Risk Insurance.** Contractor 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 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, Contractor and Subcontractors, for losses covered under the Builder's Risk policy.

The Contractor 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 Contractor 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 Contractor 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.

Contractor agrees that for any project within the City of Phoenix limits the Builder's Risk Insurance policy shall name the City of Phoenix as an additional insured and will include a waiver of subrogation against the City of Phoenix. This requirement to add the City of Phoenix is in addition to the standard required endorsement as additional insured and waiver of subrogation in each insurance policy listed herein.

**6.3.6 Umbrella/Excess Liability Insurance.** Contractor 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 Contractor'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

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

**6.3.7 Additional Insurance Requirements.** The policies required in Articles 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 Contractor, even if those limits of liability are in excess of those required by this Agreement.

The Contractor'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 Contractor.

Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Agreement.

**6.3.8 Proof of Insurance.** Contractor 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 Contractor's performing any work on the premises of the Owner. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All of the above conditions shall be clearly shown on each certificate. Such certificates shall identify this Agreement or be an annual or periodic certificate stating that it covers any and all projects or work performed by the Contractor 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 Contractor to the Owner as evidenced by a return receipt signed by the Owner. Certificates of insurance should be addressed as follows:

Arizona Board of Regents, State of Arizona and Arizona State University  
Purchasing and Business Services  
Construction Services  
PO Box 875212  
Tempe, AZ 85287-5212

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 Contractor of any deficiencies in such policies and endorsements, and such receipt shall not relieve Contractor from, or be deemed waiver of, Owner's right to insist on strict fulfillment of Contractor's obligations under this Agreement.

**6.3.9 Failure to Provide or Maintain Insurance.** Failure on the part of the Contractor 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 Contractor 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 Contractor from the Owner. Costs for coverages maintained by the Contractor in excess of those required hereunder shall not be charged to the Owner.

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

**6.3.11 Waiver.** Contractor 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, the City of Phoenix [if applicable], 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 Contractor shall be solely responsible for deductible and/or self-insured retention, and Owner, at its option, may require the Contractor 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 is canceled, reduced, or terminated, Contractor agrees to provide notice to Owner and replace the insurance without any lapse of protection to Owner. If such coverage is not replaced, or Contractor fails to meet any of the requirements for insurance listed above, Owner may at its option immediately terminate the Agreement between Owner and Contractor, 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 Contractor upon demand, or Owner if not paid, may offset the premium cost plus interest at the legal rate from Contractor'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 Contractor 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 Sections 6.3.2, 6.3.3, and 6.3.4 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 Contractor, assumed or otherwise, under this Agreement.

## **SECTION 7                    PROGRESS PAYMENTS**

7.1 Each project-specific Job Order shall be invoiced and paid separately. Payments on account of the project-specific Job Order Contract Price will be made monthly as Work progresses, as evidenced by the percent complete identified in the Schedule of Values, as submitted with each Payment Application. Payment Applications, covering labor, material, equipment, supplies, and other items completed, delivered or suitably stored on site during a period ending on the last calendar day of each month, shall be submitted electronically to the DP and the Owner by the Contractor on the Owner's Contractor Payment Application Form within five (5) days after end of the period. Payment Applications shall be notarized, shall be supported by such data substantiating

the Contractor's right to payment as the Owner or the DP may require as is provided. All payments shall be subject to any offset provisions of the Agreement.

7.2 Each payment made to the Contractor shall be on account of the total amount payable to the Contractor, and title to all Work covered by a paid partial payment shall thereupon pass to the Owner. Nothing in this section shall be construed as relieving the Contractor from the sole responsibility for care and protection of materials and Work upon which payments have been made, for restoration of any damaged Work, or as a waiver of the right of the Owner to require fulfillment of all terms of Contract Documents.

7.3 The Design Professional, within seven (7) days after receipt of Contractor 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 Agreement. All items in the payment application not made the subject of the written detailed finding of the Design Professional on non-approval shall be deemed approved.

7.4 The issuance of a Certificate for Payment will constitute a representation by the DP to the Owner, based on DP's observations at the site and the data comprising the Application for Payment, that the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in his certificate); and that the Contractor is entitled to payment in the amount certified. However, by issuing a Certificate of Payment, the DP shall not thereby be deemed to represent that the DP has made any examination to ascertain how or for what purpose the Contractor has used the monies previously paid on account of the Contract Price.

7.5 Payment may be withheld in whole or in part to protect the Owner on account of:

- a) Unsatisfactory job progress as determined by the Owner.
- b) Defective Work or materials not remedied.
- c) Disputed Work or materials.
- d) Claims or other encumbrances filed or reasonable evidence indicating probable filing of claims or other encumbrances by Subcontractors or Suppliers, or others.
- e) Failure of the Contractor to make payment to Subcontractors or Suppliers within seven (7) days after receipt of each progress payment.
- f) A reasonable doubt as determined by the Owner that the Work can be completed for the unpaid balance of the Contract Price or within the Contract Time.
- g) The Contractor's failure to perform any of its contractual obligations under the Contractor Documents, or any other agreement with the Owner.
- h) Deficiencies or claims asserted by Owner against Contractor arising from any other project.

7.6 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 the amount due on the progress payment application to the Contractor.

7.7 Within sixty (60) calendar days after the issuance of the Certificate of Final Completion and receipt by Owner of all other documents required from Contractor by the Agreement Documents, all amounts shall be paid to Contractor as part of Final Payment provided however; a) the Final Payment shall not become due from Owner until the Contractor delivers to the Owner

all items per Section 8.2.2 requirements, including full and final unconditional releases in statutory form from all Subcontractors and major Suppliers acknowledging their having received payment in full. Any claim filed thereafter shall be the responsibility of the Contractor, and b) if any claim does remain unsatisfied after all payments are made by Owner, the Contractor 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.

**7.8 Payment for on-site and off-site materials.** Progress Payment shall be made when due to Contractor 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 Contractor for materials and equipment suitably stored off the Site, conditioned upon the Contractor furnishing satisfactory evidence to the Owner that (a) title to the materials and equipment will pass to the Owner upon payment for same; and (b) there are no claims of third parties; and (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.

**7.9** The Contractor 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 Contractor 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 Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, 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.

**7.10 Contingencies.** If required by the request for Job Order proposal issued by the Owner for the Work, the Contract price shall include a contingency, to cover legitimate unforeseen construction expenses, or expenses otherwise agreed by Owner and Contractor, subject to Owner's approval, after Contract Price 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. At the completion of the project-specific Job Order, all unused contingency shall be returned to Owner, via a deductive change order.

**7.11 Allowances.** If required by the request for Job Order proposal issued by the Owner for the Work, the Contract price shall include an allowance or allowances as specified in the request for bids. The Contractor's price for the Work shall include all of the Contractor's costs associated with such allowance or allowances. If the actual costs to the Contractor of such allowance or allowances is different from the specified sum, increases or decreases in the cost of the allowance and associated Contractor's cost shall be adjusted in accordance with Section 11 of this Agreement.

## **SECTION 8 COMPLETION AND FINAL PAYMENT**

### **8.1 Substantial Completion.**

**8.1.1** When the Contractor requests a Substantial Completion Inspection for the Work or a designated portion thereof, the DP and the Owner shall determine the validity of the request. A list of items to be completed or corrected shall be prepared by the Contractor and presented to the Owner and the DP with the request for inspection ("Punch List"). By submitting a request for Substantial Completion Inspection the Contractor thereby certifies that it has performed a thorough inspection of the Project in preparing the list of items to be completed or corrected, has consulted with its subcontractors, and that the remaining incomplete or defective work shall be completed within thirty (30) days of submission of the request. The Owner or the DP or both shall evaluate

the Contractor's request and list of uncompleted items and, if appropriate in their judgment, add to or delete items from the list necessary to complete the work. The failure to include items on any punch list shall not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. By submitting a request for Substantial Completion Inspection, the Contractor thereby certifies that the remaining incomplete or defective Work required by the Contract Documents shall be completed within thirty (30) days.

8.1.2 If the DP and/or the Owner, on the basis of Substantial Completion inspection, determine that the Work has been substantially completed in accordance with the Contract Documents, then the DP will prepare a Certificate of Substantial Completion, which shall establish the date of Substantial Completion; shall state the responsibilities of the Contractor for remaining punch list items, maintenance, heat and utilities, security, and damage to the work; and shall fix the time, not to exceed thirty (30) days, within which the Contractor shall complete the punch list. The Certificate of Substantial Completion shall be submitted by the DP to the Owner and the Contractor for their written acceptance of the responsibilities assigned to them in such Certificate. The Project shall not be deemed substantially complete until the Certificate is issued irrespective of Owner occupancy. The Contractor shall reimburse the Owner, via a deductive Change Order, any and all reinspection costs, including trip charges, beyond the second inspection for Substantial Completion.

8.1.3 At the Owner's written request, Project Closeout Documents normally required for submission by the Contractor to the Owner for Substantial Completion may include, but are not limited to:

- a) Fire Marshal Acceptance Alarm/Sprinkler and State Fire Marshal Acceptance Report
- b) State Elevator Inspection Report
- c) Insurance Carrier Certificate for Boiler Inspection
- d) Preliminary Balance Report
- e) Preliminary As-Builts
- f) Attic Stock
- g) Substantial Completion Project Inspection
- h) Punch List Issued
- i) Certificate of Substantial Completion
- j) Schedule of Required Maintenance

## **8.2 Final Completion and Final Payment.**

8.2.1 Completion of all outstanding Work items noted in the Substantial Completion Punch List for the Work, or relevant portion thereof, and other Agreement requirements as required 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 copy of all Contractor General Conditions and Purchase Orders not previously provided, completion of test and balance report and all commissioning reports, as applicable.

8.2.2 Conditions Precedent to Final Payment. Final Payment shall not become due until such time as Contractor 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-Builts (one (1) electronic copy);
- l) Any required Owner training provided by Contractor;
- m) Final Test & Balance Report sealed by professional, if applicable;
- n) Commissioning completed and reports received, if applicable;
- o) 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
- p) Any other items identified by Owner, which are listed in Owner's Final Project Completion Checklist and agreed to by Contractor in Contract Documents, to be received by Owner.

8.2.3 If, after Substantial Completion of the Work has been achieved, Final Completion is materially delayed through no fault of the Contractor, 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 Contractor, and without terminating the project-specific Job Order, make payment to Contractor of the balance due for that portion of the Work fully completed.

8.2.4 Acceptance of Final Payment by the Contractor shall constitute a waiver of all affirmative claims by the Contractor in connection with the project-specific Job Order and performing 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.

## **SECTION 9 INDEMNIFICATION**

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

9.1.1 Contractor 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 Contractor of any such action or proceeding and to provide authority, information and assistance in the defense of same. Contractor shall defend, indemnify and hold harmless Owner from and against all damages and costs, including attorney's fees, awarded against Owner or Contractor in any such action or proceeding. Contractor further agrees to keep Owner informed of all developments in the defense of such actions or proceedings.



9.1.2 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, Contractor shall at its sole expense take reasonable steps to procure the right or license to operate or use the Work. If Contractor cannot so procure the aforesaid right within a reasonable time, Contractor shall then, promptly, at Contractor's option and at Contractor'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.

9.1.3 Sections 9.1.1 and 9.1.2 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 Contractor to Owner; or (b) arising from modifications to the Work by Owner or its agents after acceptance of the Work.

9.1.4 In addition to the other obligations of the Contractor under this Section 9.1, Contractor 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.

## **9.2 General Indemnity.**

9.2.1 Contractor 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 financial loss incurred by the Indemnitee caused, or alleged to be caused, by the negligence, acts or omissions of Contractor 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 federal, state or local law, statute, ordinance, rule, regulation or court decree. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this Agreement, the Contractor 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 Contractor for the State of Arizona.

## **SECTION 10 TIME AND DELAY**

10.1 The Contractor 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. Contractor agrees that it will commence performance of the Work, achieve Substantial and Final Completion of the Work, and achieve any interim Milestones for Substantial Completion in compliance with all contractual time requirements.

10.2 It also is agreed that 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.

10.3 Failure of the Contractor to achieve the completion dates for Substantial or Final Completion set forth in the Agreement will result in the assessment of Liquidated Damages as required by the Agreement. The per day amount for Liquidated Damages provided for in the project-specific Job Order shall be paid for each and every calendar day that the Contractor is not in full compliance with the time(s) stipulated in the Agreement for completing the Work. The Liquidated Damages per day amount is fixed and agreed upon by and between the Contractor 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.

10.4 If the Contractor 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, due to acts, omissions, conditions, events, or circumstances beyond its reasonable control or prevention and due to no legal fault of its own or those for whom Contractor 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 Contractor to an extension of the Contract Time(s), include acts or omissions of Owner, or anyone under Owner's control, including changes made by separate contractors in the Work by Owner, unforeseeable Project Site conditions, wars, floods, labor disputes, unusual delay in transportation and unusually adverse weather conditions.

10.5 Notice of any delay in performance of the Work which Contractor attributes to the Owner shall be made by Contractor in writing to the Design Professional and Owner immediately but in no event later than twenty-four (24) hours after discovery of the event giving rise to the delay. The Contractor 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 indicate 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 continuing, the Contractor must give written notice every month at the same time it submits the updated progress Narrative Report to the DP.

10.6 Within fifteen (15) calendar days after the elimination of any such delay, the Contractor shall, unless the time is extended and contract 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 Contractor does not timely comply with the notice and documentation requirements set forth in this Section, the Contractor's claim for delay is barred.

10.7 In the event the Contractor gives notice to the Owner of compensable delay alleging that the Owner is responsible for the delay as to which the notice was given and the delay is unreasonable under the circumstances and was not within the contemplation of the Owner and Contractor when they entered into the project-specific Job Order, the Owner will enter into negotiations with Contractor as to Contractor's damages, if any.

10.8 It is agreed that no time extensions shall be granted nor delay damages paid unless the delay is clearly demonstrated by the updated Construction Schedule current as of the month the change was issued or the delay occurred and which delay cannot be mitigated, offset, or eliminated through such actions as revising the intended sequence of work or other reasonable means.

## **SECTION 11 CHANGES TO CONTRACT SCOPE, PRICE, TIME AND TERMS**

### **11.1 Changes.**

11.1.1 After the Agreement is signed, modifications to the Agreement, modifications to any project-specific Job Order, including modifications to Contract Price, 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.

11.1.2 The Contractor 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. Contractor must proceed in accordance with the procedures set forth in this Section 11. The Owner's right to make changes in the Work shall not invalidate this Agreement, relieve the Contractor 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 Contractor. If the Contractor proceeds with any change involving an increase or decrease in cost or time without written authorization from Owner as required by this paragraph, the Contractor hereby waives all rights or claims Contractor may have in connection with or as a result of the change.

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

- a) Scope of the change in the Work;
- b) The amount of the adjustment, if any, to the Contract Price;
- 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.

11.1.4 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 Contractor shall negotiate in good faith and as expeditiously as possible on the appropriate adjustments, if any, in Contract Time or Contract Price. No Contract Price adjustment on account of a change order shall include the Contractor's or Subcontractor's profit, fee, home office overhead or a formula allocation of indirect costs except as allowed in Section 11.4.1 below unless otherwise specifically allowed under these General Conditions.

### **11.2 Change Directives.**

11.2.1 A change directive is a written order, prepared on the Owner's Construction Change Directive ("CCD") form, and signed by Owner, directing a change in the Work at a point in time prior to agreement on an adjustment in Contract Price 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 Contractor shall promptly proceed with the change in the Work and promptly advise the Owner of the Contractor's agreement or disagreement with the proposed method of adjustment for Contract Price or the Contract Time or both.

11.2.2 Owner and Contractor shall negotiate, in good faith and as expeditiously as possible, the appropriate adjustments resulting from the change in Work, and agreement reached shall be effective immediately and memorialized by preparation and execution of an appropriate amendment or change order.

### **11.3 Minor Changes In The Work.**

11.3.1 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 Contract Price 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 Contractor has recorded such changes on the As-Built Documents.

### **11.4 Price, Time, Or Scope Of Work Adjustment.**

11.4.1 The cost of or credit to the Owner resulting from a change in the Work shall be determined in one or more of the following ways:

- a) By unit prices from the Unit Price Book specified, as calculated below:
  - 1) Direct Construction Costs, calculated as the direct extension of the number of units and the unit prices. Unit prices, from an Owner-approved unit price book (i.e. RSMeans™), are not subject to further overhead and profit adjustments.
  - 2) The Contractor's coefficient, as previously approved by Owner, will then be applied as a factor of the Direct Construction Costs.
- b) By cost, as defined below, 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 Division 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) Contractor's cost of materials, including delivery, without Contractor's markup. Upon Owner request, Contractor may be required to substantiate material costs with supplier invoices and/or purchase orders;
  - 2) Contractor's 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 Contractor, and worker's or workman's compensation insurance, but excluding Subcontractor labor. Upon Owner request, Contractor may be required to provide a breakdown of hourly rates showing the base rate and all burdens;
  - 3) Contractor's General Conditions percentage of not to exceed five percent (5%) of 1 plus 2 above; the parties agree that this mark-up shall fully cover all Contractor overhead and supervision;
  - 4) Rental value of equipment and machinery to be established by rental receipts and not to exceed reasonable and customary rates for the location of the Work. For owned equipment, Contractor must prove reasonable rental rate pursuant to actual ownership costs;
  - 5) Cost of Subcontracted work calculated as below;
    - i. Subcontractor's cost of materials, including delivery, without Subcontractor's markup. Upon Owner request, subcontractor may be required to substantiate material costs with supplier invoices and/or purchase orders.
    - ii. Subcontractor's 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 Subcontractor, and worker's or workman's compensation insurance. Upon Owner request,

- subcontractor will show breakdown of hourly rates showing the base rate and all burdens;
- iii. Subcontractor General Conditions percentage of not to exceed five percent (5%) of 5.i. and 5.ii. above; the parties agree that this mark-up shall fully cover all Subcontractor overhead and supervision;
  - iv. 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, subcontractor must prove reasonable rental rate pursuant to actual ownership costs;
  - v. Subcontractor Overhead and Profit on items 5.i. through 5.iv. above, not to exceed five percent (5%) of the value of such work calculated above. This sum shall exclude the cost attributable to bonds, insurance and taxes, as necessary (see items 5.vi. and 5.vii. below).
  - vi. Insurance and bond premiums (if applicable), not to exceed a total of 2%;
- 6) Contractor's Overhead and Profit on items 1 through 5 above, at the rate established in RFQ response. This sum shall exclude the cost attributable to bonds, insurance and taxes (in items 7 and 8 below). The Parties hereby agree that this fee includes all Contractor overhead and profit on subcontractor work;
  - 7) Insurance and bond premiums, not to exceed a total of two percent (2%), unless backup is provided to and deemed sufficient by Owner justifying a different rate;
  - 8) Sales tax at full value;
- c) By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to facilitate evaluations; provided that such lump sum shall not exceed that amount calculated under (b) above.

The amount Owner pays Contractor for subcontracted work will be the same amount Contractor pays for subcontracted work.

11.4.2 Any dispute regarding the pricing methodology or cost of a change shall not relieve the Contractor 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 on the basis of the preceding subsection of these General Conditions and in no event later than ten (10) calendar days after the Work directed has been performed.

11.4.3 An Owner approved written amendment or change order 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 Contractor for inclusion in the amendment or change order prior to signature is irrevocably waived.

11.4.4 In the event that Owner and the Contractor disagree upon whether Contractor is entitled to be paid for any amendment, change order or change directive services required of Contractor by Owner, or as to amount of compensation in the event of any other disagreements over the Scope of Work or proposed changes to the Work, Owner and Contractor agree to resolve all such disagreements consistent initially with Section 11 of these General Conditions and thereafter if not resolved, in accordance with Section 12. As part of the negotiation process, Contractor 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 Contractor to promptly perform the services in accordance with Owner's or Design Professional's interpretations of the documents, Contractor shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Contractor directing

Contractor to proceed and specifying Owner's or Design Professional's interpretation of the services that are to be performed.

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

### **11.5 Emergencies.**

11.5.1 In any emergency affecting the safety of persons or property, Contractor shall promptly act, at its discretion, to prevent threatened damage, injury or loss. Any increase in the Contract Price or Contract Time(s) of performance or both claimed by Contractor on account of emergency work shall be determined as provided in this Section.

## **SECTION 12 REQUESTS FOR CONTRACTUAL ADJUSTMENTS AND DISPUTE RESOLUTION**

### **12.1 Dispute Avoidance And Resolution.**

12.1.1 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 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 arise during the course of the Project that are not otherwise resolved by applicable portions of this Agreement, both Contractor and Owner agree to timely resolving 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 Contractor's 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 Contractor knew or should have known of the matter, provided however, a request for adjustment based on time or delay must proceed under Section 10, and a request for adjustment to Contract Price or Contract Time must proceed under Section 11.

12.1.2 In the event a Dispute cannot be resolved through Contractor's Representative and Owner's Representative in accordance with Section 12.1.1, the Contractor's Senior Representative and Owner's Senior Representative shall meet within forty-eight (48) hours of such field level failure to 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 Contractor 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.

12.1.3 The parties understand and agree that the process set forth in Section 12.1, 12.2, and in ABOR Policy Section 3-809, provide the sole and exclusive remedy to resolve a Dispute. The parties further understand and agree that asserting the Dispute in accordance with Section 12.1.1 and 12.1.2 is integral and essential to the parties' ability to perform their obligations under this Agreement. Failure to properly utilize the procedures in Section 12.1.1 and 12.1.2 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 12.1.1 and 12.1.2 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.

## **12.2 Administrative Hearing Process.**

12.2.1 Contractor and Owner agree that all other parties involved in the Project can be made parties to the administrative process called for by ABOR Policy Section 3-809 and to this end, both Contractor 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.

12.2.2 Unless otherwise agreed in writing, the Contractor 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 Contractor in accordance with the Contract Documents.

## **12.3 CONSEQUENTIAL DAMAGES.**

**EXCEPT AS OTHERWISE PROVIDED FOR HEREIN, NEITHER THE OWNER NOR THE CONTRACTOR 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.**

## **12.4 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 acquiescence in all or in any part of the Contractor's claim for relief.

# **SECTION 13 STOP WORK AND TERMINATION**

## **13.1 Owner's Right To Stop Work Or Terminate For Convenience.**

13.1.1 Owner at any time may, without cause and for its convenience, order Contractor in writing to stop or suspend its Work, for a period not to exceed sixty (60) calendar days in that event. Contractor may seek an adjustment of the Contract Price or Contract Time(s) of performance or both under Section 11 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 Contractor are the cause of the Owner stopping or suspending the Work.

13.1.2 Upon seven (7) calendar days written notice to Contractor, 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 Contractor shall be paid (without duplication of any items): a) for completed and accepted Work executed 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 sustained 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; c) for all claims, costs, losses and damages incurred in settlement of terminated contracts with such Subcontractors, suppliers and others and d) for reasonable expenses directly attributable to termination.

13.1.3 Upon receiving a Notice of Termination for Convenience, the Contractor shall proceed as follows: a) stop work as specified in the Notice, b) place no further subcontracts on purchase orders, c) terminate all subcontracts to the extent they relate to the Work terminated, d) assign to

the Owner all rights of the Contractor 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.

### **13.2 Owner's Right To Perform And Terminate For Cause.**

13.2.1 If Contractor persistently fails to (a) provide a sufficient number of skilled workers; or the materials required by the Construction Documents or both; (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 by 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 have the right, in addition to any other rights and remedies provided in the Contract Documents or by law, after seven (7) days written notice of default to Contractor and Contractor's failure to cure within trial period, 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 Contractor under the Contract Documents; or (ii) terminate the Agreement with Contractor for all or any portion of the Work, enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment scaffolds, tools, appliances, and other items thereon, all of which Contractor 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 Contractor's Subcontractor and supply agreements assigned by Owner, or Owner's nominee, provided however, Owner should have no responsibility or liability for acts or omission of Contractor under such Agreements and the sole recourse of Subcontractors on pre-termination events shall be against Contractor.

13.2.2 In the event of such termination for cause, Contractor 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 exceeding the Contract Price as described below. In the event Owner's cost and expense of completing Contractor's Work shall exceed the Contract Price, then Contractor 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 expense, including consultant and attorney's fees and expenses incurred in connection with the re-procurement and defending claims, arising from or related to Contractor's default.

13.2.3 Contractor agrees that in the event that Owner terminates the Agreement for cause and such termination is ultimately determined to be improper or wrongful, the Termination for Cause will be automatically and retroactively converted to a Termination for Convenience and the provisions of Section 13.1 of these General Conditions shall apply.

13.2.4 The parties agree that if Contractor institutes or has instituted against it a proceeding under the United States Bankruptcy Code, such event may impair or frustrate Contractor's performance of its obligations under the Contract Documents. Accordingly, if such event of default occurs, Owner shall be entitled to request Contractor, its trustee or other successor, to provide adequate assurance of future performance and Contractor agrees such request must be complied with. If Contractor fails to comply with such request 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. 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 Contractor under the Contract Documents pending receipt of adequate assurances of performance and actual performance in accordance herewith. In the event of any such bankruptcy proceedings, the Agreement shall terminate if Contractor rejects the Agreement or if there has been a default under the Contract Documents, and Contractor is unable to give adequate assurances that it will perform as provided in the Contract Documents or otherwise is unable to comply with the requirements for assuming the Agreement under the applicable provisions of the Bankruptcy Code.

### **13.3 Contractor's Right To Stop Work And Terminate For Cause.**

13.3.1 Contractor 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 Owners failure to timely pay an amount in excess of **one hundred thousand and no/100 Dollars (\$100,000.00)** properly due to Contractor under any Contractor Application for Payment. In this regard Contractor shall provide Owner with written notice indicating that such non-payment condition has occurred, and that it is Contractor'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 Contractor's notice. In the event that Contractor elects to only stop work, it may nonetheless later indicate its intention to terminate the Agreement by providing Owner with written notice that Contractor will terminate the Agreement within seven (7) calendar days from receipt of Contractor's notice; unless the alleged cause of termination is cured in the interim.

13.3.2 In the event Contractor properly and lawfully elects to stop work under Section 13.3.1 for non-payment and then resumes work, Contractor shall be entitled to make a claim for adjustment to the Contract Price and Contract Time(s) of performance to the extent Contractor has been adversely impacted by the stoppage of work. In the event that Contractor elects to terminate the Agreement on the basis permitted under Section 13.3.1, Contractor shall be entitled to recover the same costs it would be permitted to recover had Owner terminated this Agreement for its convenience under Section 13.1 of these General Conditions.

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

## **SECTION 14 MISCELLANEOUS**

**14.1 Assignment Prohibited.** Neither Contractor 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.

**14.2 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.

**14.3 Severability.** If any provision or any part of a provision of the Contract Documents 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 as if the unenforceable provision or part were deleted.

**14.5 No Waiver.** The failure of either Contractor 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.

**14.6 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.

**14.7 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; (b) if delivered or sent by registered or certified mail, postage prepaid to the address indicated in the Agreement; (c) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the number of the intended recipient.

#### **14.8 Compliance With Authorized Presence Requirements**

14.8.1 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. Contractor shall post in conspicuous places, available for employees and applicants for employment, notices to be provided by the Owner, setting forth the provisions of this nondiscrimination clause and shall insert this provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

14.8.2 As required by A.R.S. § 41 4401, Owner is prohibited from awarding a contract to any contractor or subcontractor that fails to comply with A.R.S. § 23 214(A) (verification of employee eligibility through the e-verify program). Contractor warrants that it and its subcontractors comply fully with all applicable federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23 214(A). A breach of the foregoing warranty will be deemed a material breach of this Agreement that is subject to penalties up to and including termination of the Agreement. Owner retains the legal right to inspect the papers of any contractor or subcontractor employee who works hereunder to ensure that the contractor or subcontractor is complying with the warranty stated above.

14.8.3 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.

14.8.4 In addition to other audit provision contained in this Agreement, the Owner retains the right to audit and inspect the papers of any Contractor or Subcontractor's employees who perform Work to ensure that the Contractor or Subcontractor is complying with the warranty requirements of this Section.

14.8.5 Contractor shall make a good faith effort to ensure that not less than fifteen percent (15%) of the Work performed under this Agreement is performed by a small business as defined in A.R.S.

§ 41-1001. The Contractor shall report to the Owner the dollar value of the Work performed under this provision. Upon Owner's request, documentation evidencing Contractor's compliance with this provision shall be furnished in a form acceptable to Owner as a condition precedent to Final Payment.

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

**14.10 Sexual Harassment.** The Contractor 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.

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

**14.12 Veteran's Preference.** Contractor 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 twenty-four (24) months of continuous active duty, must have served continuously for twenty-four (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.

**14.13 Nondiscrimination.** The Parties will comply with all applicable state and federal laws, rules, regulations, and executive orders governing equal employment opportunity, immigration, and nondiscrimination, including the Americans with Disabilities Act. **If applicable, the parties will 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.**

**14.14 Equal Opportunity Clause.** The Provisions of Section 202 of Executive Order 11246 are incorporated herein by reference and will be applicable to this Agreement unless this Agreement is exempted under the rules, regulations or orders of the Secretary of Labor.

**14.15 Conflict of Interest.** In accordance with Arizona Revised Statutes (“A.R.S.”) § 38 511, Owner may cancel this Agreement within three (3) years after the execution of this Agreement without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting, or creating this Agreement on behalf of Owner, at any time while this Agreement or any extension thereof is in effect, is an employee or agent of any other party to this Agreement in any capacity or a consultant to any other party with respect to the subject matter of this Agreement.

**14.16 Anti-Kickback.** In compliance with FAR 52.203-7, Owner has in place and follows procedures designed to prevent and detect violations of the Anti-Kickback Act of 1986 in its operations and direct business relationships.

**14.17 Gratuities.** Owner may, by written notice to the Contractor, cancel this Agreement if it is found by Owner that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the State of Arizona with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such contract. If Owner cancels this Agreement pursuant to this provision, Owner will be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Contractor in providing such gratuities.

**14.18 Governing Law and Venue.** This Agreement will be governed by the laws of the State of Arizona without regard to any conflicts of laws principles. Owner’s obligations hereunder are subject to the regulations/policies of the Arizona Board of Regents. Any proceeding arising out of or relating to this Agreement will be conducted in Maricopa County, Arizona. Each party waives any objection it may now or hereafter have to this venue or to convenience of forum.

**14.19 Arbitration in Superior Court.** In the event of litigation, as required by A.R.S. § 12-1518, the parties agree to make use of arbitration in all contracts that are subject to mandatory arbitration pursuant to rules adopted under A.R.S. § 12-133.

**14.20 Dispute Resolution.** If a dispute arises under this Agreement, the parties will exhaust all applicable administrative remedies provided for under Arizona Board of Regents Policy 3-809.

**14.21 Assignment of Anti-Trust Overcharge Claims.** In actual economic practice overcharges resulting from anti-trust violations are in fact borne by the ultimate purchaser; therefore, Contractor hereby assigns to Owner any and all claims for such overcharges.

**14.22 Records.** To the extent required by A.R.S. § 35-214, Contractor will retain all records relating to this Agreement. Contractor will make those records available at all reasonable times

for inspection and audit by Owner or the Auditor General of the State of Arizona during the term of this Agreement and for a period of five (5) years after the completion of this Agreement. The records will be provided at Arizona State University, Tempe, Arizona, or another location designated by Owner on reasonable notice to Contractor.

**14.23 ASU Names and Marks.** Contractor will not use any names, service marks, trademarks, trade names, logos, or other identifying names, domain names, or identifying marks of Owner (the “ASU Marks”), without in each case, the prior written consent of Owner. Contractor’s use of any ASU Marks must comply with Owner’s requirements, which can be found at <http://commguide.asu.edu/>, as they may be amended from time to time, including using the ® indication of a registered trademark where applicable. All of Contractor’s uses of the ASU Marks and all goodwill therefrom, will inure to the benefit of Owner.

**14.24 Failure of Legislature to appropriate.** In accordance with A.R.S. § 35-154, if Owner’s performance under this Agreement depends on the appropriation of funds by the Arizona Legislature, and if the Legislature fails to appropriate the funds necessary for performance, then Owner may provide written notice of this to Contractor and cancel this Agreement without further obligation of Owner. Appropriation is a legislative act and is beyond the control of Owner.

**14.25 Weapons, Explosive Devices and Fireworks.** Owner 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 Owner or its affiliated or related entities, in all Owner residential facilities (whether managed by Owner or another contractor), in all Owner vehicles, and at all Owner or Owner affiliate sponsored events and activities, except as provided in A.R.S. § 12 781 or unless written permission is given by the Chief of the Owner Police Department or a designated representative. Notification by Contractor to all persons or entities who are employees, officers, subcontractors, consultants, agents, guests, invitees or licensees of Contractor (“Contractor Notification Parties”) of this policy is a condition and requirement of this Agreement. Contractor further agrees to enforce this contractual requirement against all Contractor Notification Parties. Owner’s policy may be accessed through the following web page: <http://www.asu.edu/aad/manuals/pdp/pdp201-05.html>.

**14.26 Tobacco-Free University.** ASU is tobacco-free (<https://eoss.asu.edu/tobaccofree>).

**14.27 Debarment and Suspension.** Contractor warrants to Owner that neither Contractor nor any of Contractor’s employees, contractors, subcontractors, or agents, either directly or indirectly or through subcontractors, have been suspended, excluded from participation in, or penalized by any Federal or State procurement, nonprocurement or reimbursement program. Contractor affirms that it has confirmed the above statement by checking the List of Parties Excluded From Federal Procurement and Nonprocurement Programs (<https://www.sam.gov/index.html/#1#1>) within one-hundred (180) days prior to commencing Services or providing Deliverables. Contractor will provide immediate written notice to Owner upon the subsequent exclusion of Contractor or any of Contractor’s employees, contractors, subcontractors, or agents, or upon learning of any investigation or proposed action that could result in such exclusion.

**14.28 Independent Contractor Status.** Contractor will be an independent contractor. Neither Contractor, nor any of Contractor’s employees, agents, or subcontractors, or their employees or subcontractors, will be employees, agents, partners, or joint venturers of Owner, and Owner will not provide any employee benefits to any of them, including but not limited to worker’s compensation coverage. Owner will not make deductions from any amounts payable to Contractor for taxes. Taxes for any amounts paid to Contractor will be the sole responsibility of Contractor.

# ATTACHMENT 1 - PERFORMANCE AND PAYMENT BOND FORMS

SECTION 00050 - 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 Obligee), 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 Obligee, dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, to construct and complete Project Number \_\_\_\_\_ / Project 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

SECTION 00050 - ARIZONA BOARD OF REGENTS PAYMENT 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 Project Number \_\_\_\_\_ / Project 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 promptly pay all monies due to all persons supplying labor or materials to him/her or his/her subcontractors in the prosecution of the work provided for in said contract, then this obligation shall be void, otherwise to remain in full force and effect.

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