



**EXHIBIT B
GENERAL CONDITIONS
(OPERATING MANUAL FORM)
(SINGLE PROJECT FORM)**

Date (type in) Issued:

Request for Qualifications Number

**OWNER
ARIZONA BOARD OF REGENTS
for and on behalf of
ARIZONA STATE UNIVERSITY**

CMAR

DESIGN PROFESSIONAL

CONSTRUCTION MANAGER AT RISK (CMAR) GENERAL CONDITIONS (OPERATING MANUAL FORM)(MULTIPLE PROJECTS FORM)© NOVEMBER 2008 EDITION

Buyer's Name

TABLE OF CONTENTS

APPENDIX

Appendix A - Specific Terms and Provisions of the General Conditions

ARTICLE 1	<u>GENERAL</u>	
1.1	Definitions	5
1.2	Construction Phase Provisions	6
ARTICLE 2	<u>GENERAL MATTERS AS TO CMAR</u>	6
ARTICLE 3	<u>WARRANTY AND CORRECTION OF DEFECTIVE WORK</u>	
3.1	Warranty	6
3.2	Correction of Defective Work	7
ARTICLE 4	<u>INSURANCE AND BONDS</u>	
4.1	Bond Requirements	
4.2	CMAR's Insurance Must Be in Place	8
4.3	Required Coverages	8
4.4	Copies of Policies	10
4.5	Certificates of Insurance	10
4.6	Owner Remedies Upon Breach of Article 4 by CMAR	10
4.7	Costs Not Chargeable to Owner	10
4.8	Waiver of Rights Against the Owner , the State of Arizona, the Arizona Board of Regents or ASU	10
4.9	Authorization to Obtain Information	11
4.10	Claims Reporting	11
4.11	Self-Insurance	11
ARTICLE 5	<u>INDEMNIFICATION</u>	
5.1	Proprietary Rights, Patent and Copyright Infringement Indemnity	11
5.2	General Indemnity	11
ARTICLE 6	<u>REQUESTS FOR CONTRACTUAL ADJUSTMENTS AND DISPUTE RESOLUTION</u>	
6.1	Requests for Contractual Adjustments and Relief	12
6.2	Claims, Controversies, Dispute and Disagreement Avoidance and Resolution	12
6.3	Judicial Process	13
6.4	Consequential Damages	13
ARTICLE 7	<u>STOP WORK AND TERMINATION</u>	
7.1	Owner's Right to Stop Work or Terminate for Convenience	14
7.2	Owner's Right to Perform and Terminate for Cause	14
7.3	CMAR's Right to Stop Work and Terminate for Cause	15
7.4	Assignment of CMAR's Contracts With Subcontractors	15
ARTICLE 8	<u>MISCELLANEOUS</u>	
8.1	Assignment	15
8.2	Successorship	15
8.3	Governing Law	15
8.4	Severability	16
8.5	No Waiver	16
8.6	Headings	16
8.7	Notice	16
8.8	Non-Appropriation	16
8.9	Conflict of Interest	16
8.10	Nondiscrimination	16
8.11	Assignment of Claims	17

8.12 Disputes..... 17
8.13 Sexual Harassment 17
8.14 Amendments 17
8.15 CMAR Records..... 15
8.16. No Construction Against Drafting Party..... 15

EXHIBIT

Exhibit A – Forms of Performance Bond and Payment Bond 19

APPENDIX A

to

General Conditions

Specific Terms and Provisions of the General Conditions

1. Section 4.3.1: General liability insurance amounts

Commercial general liability insurance, with minimum limits of **\$(Insert applicable dollar amount from left hand column in chart below)** per occurrence, and products and completed operations aggregate limit and general aggregate minimum limit of **\$(Insert applicable dollar amount from right hand column in chart below)**.

Minimum Required Insurance Limits
Based on Total Construction Costs

Construction Budget	General Liability for CMAR	Minimum Aggregate
\$0 - \$1,000,000	\$1,000,000	\$2,000,000
\$1,000,000 to \$5,000,000	\$1,000,000	\$2,000,000
\$5,000,000 to \$10,000,000	\$2,000,000	\$4,000,000
\$10,000,000 to \$20,000,000	\$5,000,000	\$5,000,000
\$20,000,000 to \$30,000,000		
\$30,000,000 to \$40,000,000		
above \$40,000,000	\$10,000,000	\$10,000,000

CMAR

By: _____

Name: _____
(Printed)

Title: _____

Date: _____

OWNER

**ARIZONA BOARD OF REGENTS
on behalf of
ARIZONA STATE UNIVERSITY**

By: _____

Name: _____
(Printed)

Title: _____

Date: _____

OWNER PROJECT MANAGER

Approval by Owner's Facilities Capital Program Management Group project manager:

(Signature)

General Conditions

NOTE: The information that goes in the numbered blank spaces in these General Conditions is in the respective numbered paragraph in Appendix A attached hereto.

ARTICLE 1

GENERAL

1.1 Definitions. The terms defined in the Operating Manual and the other CMAR Design Phase Services Contract Documents (defined in the Operating Manual) and CMAR Construction Contract Documents (defined in the Operating Manual) will have their respective designated meanings when used in these General Conditions.

“**Operating Manual**” means the Operating Manual for Construction Manager at Risk Projects attached as **Exhibit A** to the contract to which these General Conditions are attached as **Exhibit B**.

1.2 Construction Phase Provisions. The provisions in these General Conditions that relate to the Construction Phase and the Construction Work will become operative only if and when **CMAR** and **Owner** execute and deliver the CMAR Construction Contract.

ARTICLE 2

GENERAL MATTERS AS TO CMAR

2.1 None of CMAR Design Phase Services Contract Documents, the CMAR Construction Contract Documents and the DP Contract Documents shall be construed or interpreted to create any contractual relationship between the **CMAR** or any **Subcontractor** and the **DP** or any **DP Consultant**.

2.2 Nothing in the CMAR Design Phase Services Contract Documents or the CMAR Construction Contract Documents shall be construed or interpreted to give any third party any claim or right of action against the **Owner**, the **DP** or **CMAR** which does not otherwise exist without regard to the CMAR Design Phase Services Contract Documents and the CMAR Construction Contract Documents.

ARTICLE 3

WARRANTY AND CORRECTION OF DEFECTIVE WORK

3.1 Warranty.

CMAR warrants to **Owner** that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Construction Documents and Contract Documents, of good quality, in conformance with the Construction Documents and the other CMAR Construction Contract Documents and free of defects in materials and workmanship. **CMAR's** warranty obligation excludes defects caused by abuse, alterations or unreasonable failure to maintain the construction by persons other than **CMAR**, **Subcontractors** or others under **CMAR's** control. Nothing in this warranty shall limit any manufacturer's warranty where the warranty provides **Owner** with greater warranty rights than set forth in this **Section 3.1** or the other CMAR Construction Contract Documents. **CMAR** will provide **Owner** with all manufacturers' warranties and operation and maintenance manuals upon Substantial Completion of the Construction Work. **CMAR's** warranty shall be for two (2) years and will commence for all portions of the Construction Work upon Substantial Completion of the entire Construction Work as determined by the **Owner** under the CMAR Construction Contract Documents. If the Project is divided into Work Packages or portions which **Owner** has agreed to accept separately, the warranty for each Work Package or portion of the Project will commence upon Substantial Completion of the last Work Package or portion, as determined by the **Owner** under the CMAR Construction Contract Documents. All statutory or other warranties, express or implied, related to latent defects will remain in force and are not limited by this provision.

3.2 Correction of Defective Work.

3.2.1 If any portion of the Construction Work is covered over contrary to the request of the **DP** or **Owner** or as required by the CMAR Construction Contract Documents or the applicable building standards, it must be uncovered for observation at the **CMAR's** expense if requested by **DP** or **Owner** in writing.

3.2.2 If any portion of the Construction Work, other than those portions required to be inspected or observed by the **DP**, the **Owner** or others, prior to being covered, has been covered over, the **DP** or **Owner** may request that it be uncovered for inspection or observation, as applicable. If such portion is found to be in accordance with the requirements of the Construction Documents and other CMAR Construction Contract Documents, the cost of uncovering it shall be charged to the **Owner** as a Change Order. If such portion is found not to be in accordance with the requirements of the Construction Documents and other CMAR Construction Contract Documents, the **CMAR** shall bear such costs.

3.2.3 **CMAR** agrees to promptly correct any Construction Work that is found not to be in conformance with the Construction Documents and other CMAR Construction Contract Documents, whether previously inspected or observed by the **Owner's** representatives or not unless a specific written waiver of such non-conformance has been provided to the **CMAR** by the **Owner**. This obligation shall continue for a period of two (2) years from the date of Substantial Completion of the entire Work; if the Project is done in Work Packages or portions that the **Owner** has agreed to accept separately, two (2) years from the date of Substantial Completion of the last Work Package or portion as determined by the **Owner** under the CMAR Construction Contract Documents. Nothing in this **Section 3.2.3** shall waive any rights that the **Owner** may have under Arizona law.

3.2.4 Within seven (7) days of receipt of written notice from **Owner** that the Construction Work is not in conformance with the Construction Documents or other CMAR Construction Contract Documents, **CMAR** (except in the case of an emergency or item on the schedule critical path, which will require immediate response) commence correction of such nonconforming Construction Work. This correction will include, without limitation, the correction, removal or replacement of the nonconforming Construction Work and any damage caused to any other parts of the Construction Work affected by the nonconforming Construction Work. If **CMAR** fails to commence the necessary steps within seven (7) Days, at the end of the seven (7) Day period, **Owner**, in addition to any other remedies provided under the CMAR Construction Contract Documents, may provide **CMAR** with notice that **Owner** will commence to correct such nonconforming Construction Work with its own or other forces. **CMAR** shall be responsible for all costs and expenses that **Owner** incurs in remedying any Construction Work not in conformance with the Construction Documents or the other CMAR Construction Contract Documents, including, without limitation, at **Owner's** sole discretion any of **Owner's** own staff time costs and all **DP** or other fees incurred by **Owner**. **Owner** will notify **CMAR** of its intent to make such corrections at or before the commencement of the corrective work.

3.2.5 The two year period referenced in **Section 3.2.3** applies only to the **CMAR's** obligation to correct Construction Work not in conformance with the Construction Documents or Contract Documents and shall not constitute a period of limitations with respect to any other rights or remedies **Owner** may have with respect to **CMAR's** other obligations under the CMAR Construction Contract Documents or under applicable law. **CMAR** acknowledges that, for purposes of statutes of limitations, **Owner** is an instrumentality of the State of Arizona, acting in its sovereign capacity.

ARTICLE 4 INSURANCE AND BONDS

4.1 BOND REQUIREMENTS.

4.1.1 The **CMAR**, before the CMAR Construction Contract is executed by Owner and prior to the start of any Construction Work, shall furnish to the **Owner** satisfactory performance and payment bonds, each in an amount equal to one hundred percent (100%) of the Guaranteed Maximum Price set forth in the CMAR Construction Contract. These bonds shall not to be expressly limited as to the time in which action may be instituted against the surety company. The bonds shall be furnished on **Owner's** forms as set forth in **Exhibit**

A hereto and shall be executed by a surety company holding a certificate of authority to transact a surety business in the State of Arizona issued by the Director of the Arizona Department of Insurance pursuant to **Title 20, Chapter 2, Article 1, Arizona Revised Statutes**, and rated at least A - VII in the current edition of A.M. Best's. The surety bonds shall not be executed by an individual surety or sureties.

4.1.2 The **Owner** may require each proposed **Subcontractor** whose subcontract amount will be \$100,000 or more to furnish a performance bond on the **Owner's** form 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 **CMAR**. If approved in advance by the **Owner**, the **CMAR** may provide **Subcontractor** default protection that is equivalent to or better than bonds provided by **Subcontractors**. The cost of such default protection shall be included in the GMP.

4.2 CMAR'S INSURANCE MUST BE IN PLACE. The **CMAR** shall have in place the insurance coverages described in **Sections 4.3.1, 4.3.2 and 4.3.3** and shall furnish satisfactory proof of insurance to **Owner** before commencing any of the CMAR Design Phase Services, provided that until commencement of the Construction Work the amount of the commercial general liability insurance may be \$1,000,000 per occurrence; products and completed operations aggregate limit and general aggregate minimum limit may be \$2,000,000 per occurrence. The **CMAR** shall not commence any Construction Work until it has obtained ALL required bonds and insurance under this **Article 4**, has delivered the required bonds to **Owner** and has furnished satisfactory proof of insurance to the **Owner**. The **CMAR** shall not permit any **Subcontractor** to commence work on the Project until all insurance requirements have been complied with by the **Subcontractor**. If **CMAR** is a joint venture involving two (2) or more entities, then each independent entity shall satisfy the limits and coverage's specified herein or the joint venture shall be the named insured under each policy.

4.3 REQUIRED COVERAGES. Without limiting any liabilities or any other obligations of the **CMAR**, the **CMAR** shall provide and maintain, and cause each of its **Subcontractors** to provide and maintain) the minimum insurance coverages below in a company or companies lawfully authorized to do business in the State of Arizona, and rated at least A - VII in the current edition of A.M. Best's. Notwithstanding the foregoing, if one or more smaller **Subcontractors** have the various required insurance coverages but in a lower amount than required under this **Section 4.3**, **CMAR** may make a request to **Owner** for approval of the lower amount and **Owner** will make a determination.

4.3.1 COMMERCIAL GENERAL LIABILITY. Commercial general liability insurance, with minimum limits of \$ (1) per occurrence, and products and completed operations aggregate limit and general aggregate minimum limit of \$ (1) . Coverage shall be at least as broad as the Insurance Service Office, Inc. **Form CG00010196**, issued on an occurrence basis and endorsed to add the State of Arizona, the Arizona Board of Regents, Arizona State University and their regents, officers, officials, agents, employees or volunteers as additional insureds with respect to the CMAR Design Phase Services Contract Documents and if executed, the CMAR Construction Contract Documents as to the acts and omissions of **CMAR** and the acts and omissions of **Subcontractors** and others for which **CMAR** is responsible under applicable law and shall stipulate that the insurance shall be primary, and that any self-insurance or other insurance carried by the State of Arizona, the Arizona Board of Regents, Arizona State University or any of their regents, officers, officials, agents, employees or volunteers shall be excess and not contributory to the insurance provided by **CMAR**. The policy shall include coverage for:

- Bodily injury
- Broad form property damage (including completed operations)
- Personal injury
- Blanket contractual liability
- Products and completed operations and this coverage shall extend for one year past the later of
 - (i) acceptance of the Construction Work under the CMAR Construction Contract Documents or
 - (ii) termination of the CMAR Construction Contract Documents.

4.3.2 BUSINESS AUTOMOBILE LIABILITY. Business automobile liability insurance, with minimum limits of \$1,000,000 per occurrence combined single limit, with Insurance Service Office, Inc. Declarations to include Symbol One (Any Auto) applicable to claims arising from bodily injury, death or property damage arising out of the ownership, maintenance or use of any automobile. The policy shall be endorsed to add the State of

Arizona, the Arizona Board of Regents, Arizona State University and their regents, officers, officials, agents, employees or volunteers as additional insureds with reference to the CMAR Design Phase Services Contract Documents and if executed, the CMAR Construction Contract Documents as to acts and omissions of **CMAR** and acts and omissions of **Subcontractors** and others for which **CMAR** is responsible under applicable law and shall stipulate that the insurance shall be primary, and that any self-insurance or other insurance carried by the State of Arizona, the Arizona Board of Regents, Arizona State University or any of their regents, officers, officials, agents, employees or volunteers shall be excess and not contributory to the insurance provided by **CMAR**.

4.3.3 WORKERS COMPENSATION AND EMPLOYERS LIABILITY. Workers compensation and employers liability insurance as required by the State of Arizona Workers Compensation statutes as follows:

Workers Compensation (Coverage A)	Statutory Arizona benefits
Employers Liability (Coverage B)	\$500,000 each accident
	\$500,000 each employee/disease
	\$1,000,000 policy limit/disease

This policy shall include endorsement for All State coverage for state of hire.

4.3.4 BUILDER'S RISK INSURANCE. Builder's all risk insurance coverage, which shall insure against physical loss or damage to all property incorporated into the Project and shall also insure finished products. Coverage shall also cover the interests of **Owner** and **Subcontractors** with respect to the Project, but it will not cover any machinery, tools, equipment, appliances or other personal property owned, rented or used by the **CMAR** or **Subcontractors** in the performance of the Construction Work which will not become a part of the Work to be accepted by the **Owner**.

The property insurance obtained under this paragraph shall insure against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, false work, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable Legal Requirement, and shall cover reasonable compensation for **Design Professional's** and **CMAR's** services and expenses required as a result of such insured loss. The property insurance shall include physical loss or damage to the Construction Work, including materials and equipment in transit, at the Site or at another location as may be indicated in the **CMAR's** application for payment and approved by **Owner**.

The **CMAR** shall be responsible for the deductible of each loss and shall retain responsibility, per the indemnity provisions of the CMAR Construction Contract Documents for any loss not covered by the builder's risk policy.

4.3.5 PROPERTY INSURANCE. All-risk property insurance coverage covering damages and/or destruction of any and all materials and equipment, which will become part of the Construction Work until such materials or equipment are delivered to the Site of the Work.

4.4. COPIES OF POLICIES. The State of Arizona, the Arizona Board of Regents and Arizona State University shall be provided upon request certified copies of all policies and endorsements.

4.5 CERTIFICATES OF INSURANCE. Certificates of Insurance acceptable to the State of Arizona, the Arizona Board of Regents and Arizona State University shall be issued and delivered prior to commencement of the Design Phase or the Construction Phase as specified in **Section 4.2** and shall identify the CMAR Design Phase Services Contract Documents and if executed, the CMAR Construction Contract Documents; shall include certified copies of endorsements naming the State of Arizona, the Arizona Board of Regents, Arizona State University and their regents, officers, officials, agents, employees or volunteers as additional insureds for liability coverages as to acts and omissions of **CMAR** and acts and omissions of **Subcontractors** and others for which **CMAR** is responsible under applicable law; shall stipulate that liability coverages for the insurance shall be primary; and shall stipulate that any self-insurance or other insurance carried by the State of Arizona, the Arizona Board of Regents, Arizona State University or any of their regents, officers, officials, agents, employees or volunteers shall be excess and not contributory to the insurance provided by **CMAR**. The certificates, insurance

policies and endorsements required by this **Article 4** shall contain a provision that coverages afforded will not be cancelled until at least fifty (50) calendar days prior written notice has been given to **Owner**, the State of Arizona, the Arizona Board of Regents, Arizona State University. All coverages, conditions, limits and endorsements shall remain in full force and effect as required in the CMAR Design Phase Services Contract Documents and if executed the CMAR Construction Contract Documents.

4.6 OWNER REMEDIES UPON BREACH OF INSURANCE PROVISIONS IN THIS ARTICLE 4 BY CMAR.

Failure on the part of **CMAR** to meet the requirements concerning insurance in this **Article 4** shall constitute a material breach of the CMAR Design Phase Services Contract Documents and if executed, the CMAR Construction Contract Documents. Upon this failure, **Owner** may immediately terminate the CMAR Design Phase Services Contract Documents and if executed, the CMAR Construction Contract Documents or, in **Owner's** discretion, procure or renew such insurance and pay any and all premiums in connection therewith. All monies so paid by the **Owner** shall be repaid by **CMAR** upon demand, or the **Owner** may offset the cost of premiums against any monies due to the **CMAR** under the CMAR Design Phase Services Contract Documents and if executed, the CMAR Construction Contract Documents or otherwise.

4.7 COSTS NOT CHARGEABLE TO OWNER. Costs of coverages broader than those required or for limits in excess of those required by this **Article 4** shall not be an Actual Cost of the Construction Work and shall not be charged to the **Owner**.

4.8 WAIVER OF RIGHTS AGAINST THE OWNER, THE STATE OF ARIZONA, THE ARIZONA BOARD OF REGENTS, ARIZONA STATE UNIVERSITY AND OTHERS.

CMAR hereby waives, and shall cause each **Subcontractor** and each of their respective insurers providing required coverages to waive, their rights of recovery of any damages covered by insurance as provided herein against the **Owner**, the State of Arizona, the Arizona Board of Regents and Arizona State University and their regents, officers, officials, agents, employees and volunteers. Insurance policies procured pursuant hereto shall provide such waivers of subrogation by endorsement or otherwise.

4.9 AUTHORIZATION TO OBTAIN INFORMATION. The **Owner** may, and the **CMAR** hereby authorizes the **Owner** to, request and receive any and all information reasonably considered necessary in the sole discretion of the **Owner** directly from insurance companies utilized by the **CMAR** or any **Subcontractor** in meeting these insurance.

4.10 CLAIMS REPORTING. Any failure to comply with the claims reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policy to protect **Owner**.

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

**ARTICLE 5
INDEMNIFICATION**

5.1 PROPRIETARY RIGHTS, PATENT AND COPYRIGHT INFRINGEMENT INDEMNITY.

5.1.1 If elected by **Owner**, **CMAR** shall defend any action or proceeding brought claiming infringement of any proprietary rights, United States patent or copyright, now or hereafter issued against **Owner**, the State of Arizona, the Arizona Board of Regents or Arizona State University based on any claim regarding the Project, or any part thereof, constructed by **CMAR** or any **Subcontractor** or the operation thereof or use of the Construction Work or any part thereof. **Owner** agrees to give prompt notice in writing to **CMAR** of any such action or proceeding and to provide authority, information and assistance in the defense of it. Regardless of whether or not **Owner** elects to have **CMAR** undertake the defense, **CMAR** shall indemnify and hold harmless **Owner**, the State of Arizona, the Arizona Board of Regents and Arizona State University from and against all damages, liabilities, judgments, costs and expenses (including, without limitation, attorney's fees

and litigation expenses) incurred by or awarded against **Owner**, the State of Arizona, the Arizona Board of Regents or Arizona State University in any such action or proceeding. **CMAR** further agrees to keep **Owner** reasonably informed of all developments in the defense of such actions.

5.1.2 If **Owner** is enjoined from the operation or use of the Project or any part thereof constructed by **CMAR** or any **Subcontractor** in connection with any proprietary rights, patent suit, claim, or proceeding, **CMAR** shall at its sole expense take reasonable steps to procure the right to operate or use the Project or part constructed by **CMAR** or any **Subcontractor**. If **CMAR** cannot so procure the aforesaid right within a reasonable time, **CMAR** shall then, promptly, at **CMAR**'s option and at **CMAR**'s sole expense either (i) modify the Project or part thereof constructed by **CMAR** or any **Subcontractor** so to avoid infringement of any patents, copyrights or other proprietary rights; or (ii) replace the Project or part thereof constructed by **CMAR** or any **Subcontractor** with Construction Work that does not infringe or violate any such proprietary rights, patent or copyright.

5.1.3 Sections 5.1.1 and 5.1.2 above shall not be applicable to any action or proceeding based on infringement or violation of proprietary rights or of patent or copyright (i) relating solely to a particular process or the product of a particular manufacturer specified by **Owner** and such processes or products which are something other than that which has been offered or recommended by **CMAR** to **Owner**; or (ii) arising from modifications to the Construction Work by **Owner** or its agents after acceptance of the Work.

5.1.4 The obligations set forth in this **Section 5.1** shall constitute the sole agreement between the parties relating to liability for infringement or violation of any proprietary rights, patent or copyright.

5.1.5 This **Section 5.1** shall continue in effect indefinitely and shall not terminate upon completion and acceptance of the Work or upon termination or expiration of the CMAR Design Phase Services Contract Documents or if executed, the CMAR Construction Contract Documents.

5.2 GENERAL INDEMNITY.

5.2.1 CMAR shall indemnify, hold harmless and, if elected by **Owner**, defend **Owner**, the State of Arizona, Arizona State University, the Arizona Board of Regents, and their regents, officers, agents and employees from and against any and all claims, demands, losses, damages, costs and expenses (including, without limitation, reasonable attorney's fees and litigation expenses) to the extent arising or resulting from the negligent acts or omissions (including, but not limited to, willful misconduct) of **CMAR**, any **Subcontractor** or any of their officers, employees, agents or independent contractors relating to the Construction Work. This indemnity shall not be construed to include claims, demands, losses, damages, costs and expenses to the extent arising from the negligent acts or omissions of the **Owner** or their regents, officers, agents or employees (other than **CMAR**, its **Subcontractors** and their officers, employees, agents and independent contractors). This indemnity includes, without limitation, (i) personal injury, sickness or death to persons and property damage and (ii) matters described or referred to in **Section 5.2.2** below.

5.2.2 The indemnity in **Section 5.2.1** shall include any and all claims, demands, losses, damages, costs and expenses (including, without limitation, reasonable attorneys' fees and litigation expenses) asserted against **Owner**, the State of Arizona, Arizona State University, the Arizona Board of Regents, and their regents, officers, agents and employees arising from: (i) any violation of Environmental Law or OSHA by **CMAR** or any **Subcontractor** relating to the Project; (ii) any failure by **CMAR** or any **Subcontractor** to perform or comply with of any obligation or requirement in **Section 4** or **Section 3.17** of the Operating Manual, (iii) any CMAR Release of any Hazardous Substance; (iv) any improper disposition of any Hazardous Substance or Hazardous Waste by **CMAR** or any **Subcontractor**; (v) any claim by any officer, employee, agent, independent contractor, authorized representative or worker of **CMAR** or any **Subcontractor** and any claim by any other person of personal injury, death or property damage arising from any CMAR Release of any Hazardous Substance or arising from any failure by **CMAR** or any **Subcontractor** to comply with any Environmental Law or OSHA or **Section 4** or **Section 3.17** of the Operating Manual.

5.2.3 This **Section 5.2** shall continue in effect indefinitely and shall not terminate upon completion and acceptance of the Construction Work or upon termination or expiration of the CMAR Design Phase Services Contract Documents or, if executed, the CMAR Construction Contract Documents.

ARTICLE 6
REQUESTS FOR CONTRACTUAL ADJUSTMENTS AND DISPUTE RESOLUTION

6.1 REQUESTS FOR CONTRACTUAL ADJUSTMENTS AND RELIEF.

If the **CMAR** believes that the CMAR Design Phase Services Contract Documents, or the CMAR Construction Contract Documents if and when they become effective, afford contractual rights to the **CMAR** for an adjustment or for relief in respect of events arising during performance of the Design Phase Services or the Construction Work (including, without limitation, a right to a Change Orders and a right to an adjustment or relief (A) for the acts or omissions of the **Owner** or any other party under the control of the **Owner** for injury or damage to persons or property or (B) for events which affect the Guaranteed Maximum Price or Contract Time(s) or both) the **CMAR** shall provide the **Owner** and the **Design Professional** written notice of its request for an adjustment or for relief. If possible, CMAR will provide this written notice prior to incurring any loss, cost or expense, but in no event later than the times, if any, required by the specific provision(s) of the CMAR Design Phase Services Contract Documents or CMAR Construction Contract Documents, which form the basis of the **CMAR's** request. In the absence of said times, the **CMAR's** request shall, if possible, be made prior to incurring any loss, cost, or expense, but in no event later than seven (7) Days after (i) the occurrence of the event or circumstance giving rise to the request; or (ii) the **CMAR** reasonably should have recognized the event or condition giving rise to the request, whichever time is sooner. The **CMAR's** request shall be in writing and shall include sufficient information to advise the **Owner** and the **Design Professional** of the circumstances or events giving rise to the request for adjustment or relief, the specific applicable contractual provisions, and the factual basis of such request. Any relief or adjustment afforded the **CMAR** relating to the CMAR Design Phase Services Contract Documents shall be set forth in writing executed by **Owner** and **CMAR**. Any relief or adjustment afforded the **CMAR** relating to the CMAR Construction Contract Documents shall be set forth in a written Change Order in accordance with **Section 3.33** of the Operating Manual. Failure to timely request adjustment or relief within the time limits in, or referred in, this **Section 6.1** waives any right to adjustment or relief.

6.2 CLAIMS, CONTROVERSIES, DISPUTE AND DISAGREEMENT AVOIDANCE AND RESOLUTION.

6.2.1 The **CMAR** and the **Owner** are fully committed to working with each other and with the **Design Professional** throughout the Project as set forth in the Operating Manual so as to avoid or minimize claims, controversies, disputes and disagreements.

6.2.2 As to any claims, controversies, disputes and disagreements that may arise during the Project, **CMAR** and **Owner** commit to resolving such matters in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions in Design Phase activities and the Construction Phase activities, including, without limitation, the Construction Work. In the first instance, **CMAR** and **Owner** will attempt to resolve claims, controversies, disputes and disagreements at the field level through discussions between **CMAR Representative** and **Owner Representative**. All of **CMAR's** claims, controversies, disputes and disagreements shall first be referred to the **Owner Representative** by written notice within the time limits set forth in **Section 6.1**. Unless **CMAR** gives written notice in accordance with these time requirements, the claim, controversy, dispute or disagreement is irrevocably waived by **CMAR**.

6.2.3 If the claim, controversy, dispute or disagreement cannot be resolved through **CMAR Representative** and **Owner Representative**, the **CMAR Senior Representative** and **Owner Senior Representative** shall meet within 48 hours of such failure to attempt to resolve the claim, controversy, dispute or disagreement. Prior to any meetings between the Senior Representatives, they will exchange with each other any relevant information that will assist the Senior Representatives in resolving the claim, controversy, dispute or disagreement. If after the meeting the **Owner Senior Representative** or the **CMAR Senior Representative** determines in good faith that the claim, controversy, dispute or disagreement cannot be resolved on terms satisfactory to both parties, the **CMAR** or the **Owner** may submit the claim, controversy, dispute or disagreement to the partnering procedures established under **Section 2.1** or **3.1** of the Operating Manual, as applicable, if **Owner** has elected partnering for this Project. If there are no partnering procedures, or if the partnering procedure fails to produce a mutually-satisfactory resolution, the **CMAR** and the **Owner** will each have the right to submit the claim, controversy, dispute or disagreement to the "Claims or Controversies"

process as defined in **Section 3-809(C) of the Arizona Board of Regents Policy**, as amended or superseded, which shall be the parties sole remedy.

6.2.4 Any dispute, disagreement or ambiguity concerning the duties or obligations of the **CMAR** as described in the CMAR Design Phase Services Contract Documents or the CMAR Construction Contract Documents and the duties or obligations of any **Subcontractor** will be determined as provided in **Sections 6.2.1, 6.2.2 and 6.2.3.**

6.3 JUDICIAL PROCESS.

6.3.1 CMAR and Owner agree that all other parties involved in any claim, controversy, dispute or disagreement relating to the Design Phase activities or the Construction Phase activities (including, without limitation, the Construction Work) may be made parties to any process, proceeding or litigation. To this end, **CMAR and Owner** will include appropriate provisions requiring attendance and participation in any such process, proceeding or litigation in all contracts they execute with other parties in connection with this Project, and **CMAR** will require all **Subcontractors** to include appropriate provisions in all contracts they execute with other parties in connection with this Project. **CMAR and Owner** expressly agree that any dispute resolution proceeding initiated pursuant to the CMAR Design Phase Services Contract Documents or the CMAR Construction Contract Documents may be joined or consolidated with any dispute resolution proceeding involving any other person or entity (i) necessary to resolve the claim, dispute or controversy, or (ii) substantially involved in or affected by such claim, dispute or controversy. **CMAR and Owner** will include appropriate provisions in all contracts they execute with other parties in connection with the Project and **CMAR** will require all **Subcontractors** to include provisions requiring such joinder or consolidation in all contracts they execute with other parties in connection with this Project.

6.3.2 Subject to other provisions in the CMAR Design Phase Services Contract Documents and the CMAR Construction Contract Documents, unless otherwise agreed by **Owner** in writing at the time, the **CMAR** shall carry on the Design Phase activities and the Construction Phase activities (including, without limitation, the Construction Work), as applicable, and maintain its progress during any claims, controversy, dispute or disagreement process or proceeding, and the **Owner** shall continue to make payments to the **CMAR** in accordance with the CMAR Design Phase Services Contract Documents and CMAR Construction Contract Documents of amounts that are not subject to the claim, controversy, dispute or disagreement.

6.4 CONSEQUENTIAL DAMAGES.

EXCEPT AS OTHERWISE PROVIDED FOR IN THE CMAR DESIGN PHASE SERVICES CONTRACT DOCUMENTS AND THE CMAR CONSTRUCTION CONTRACT DOCUMENTS, NEITHER THE OWNER NOR THE CMAR SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSS OF USE AND LOSS OF PROFITS.

ARTICLE 7 STOP WORK AND TERMINATION

7.1 OWNER'S RIGHT TO STOP WORK OR TERMINATE FOR CONVENIENCE.

7.1.1 Owner may, without cause and for its convenience, order **CMAR** in writing to stop or suspend its Design Phase activities or Construction Phase activities (including, without limitation, the Construction Work), as applicable, or terminate the CMAR Design Phase Services Contract Documents or the CMAR Construction Phase Contract Documents or both.

7.1.2 In the event of a stoppage or suspension of the **CMAR's** Construction Phase activities (including, without limitation, the Construction Work), the **CMAR** may seek an adjustment of the Guaranteed Maximum Price or Contract Time(s) or both under **Section 3.33** to the extent that the Construction Work has been

adversely impacted by any suspension or stoppage of the Construction Work by **Owner**, unless actions or inactions of the **CMAR** or a **Subcontractor** are the cause of the **Owner** stopping the Construction Work.

7.1.3 As to termination for convenience, the **Owner** will give the **CMAR** seven (7) Days prior written notice of termination. In the event of termination for convenience during the Design Phase, **Owner** shall pay **CMAR** a pro-rated portion of the CMAR Design Phase Services Fee. If the termination date occurs during the Construction Phase, **Owner** shall pay **CMAR** for any Construction Work executed, for cost or expense necessarily incurred in connection with any Construction Work completed to date, and for reasonable costs or expenses attributable to such termination, including, without limitation, demobilization costs and the pro-rated portion of the CMAR Construction Phase Fee based upon the Construction Work completed.

7.2 OWNER'S RIGHT TO TERMINATE THE CMAR FOR CAUSE AND, DURING THE CONSTRUCTION PHASE, TO PERFORM THE CONSTRUCTION WORK.

7.2.1 If during the Design Phase, **CMAR** persistently fails to perform its obligations under the CMAR Design Phase Services Contract Documents, **Owner** shall provide written notice to **CMAR** and **CMAR** shall have seven (7) days to commence to cure, diligently pursue the cure and completely cure the default within a reasonable time. After these seven (7) days, in addition to any other rights and remedies provided in the CMAR Design Phase Services Contract Documents or by law, **Owner** may (i) provide or to arrange for others to provide the services that **CMAR** was to perform under the CMAR Design Phase Services Contract Documents, or (ii) to terminate the employment of **CMAR** for any or all of the services under the CMAR Design Phase Services Contract Documents and take possession of all Estimates of Construction Costs and any other documents prepared by **CMAR** relating to the Project, or (iii) both. In the event of such termination, **CMAR** shall be entitled to receive payment of the **CMAR** Design Phase Services Fee for the Design Phase Services properly performed by **CMAR**, less such amounts that **CMAR** owes to **Owner** in respect of **CMAR's** breach of the CMAR Design Phase Services Contract Documents. If the amount **CMAR** owes **Owner** in respect of the breach exceeds the unpaid amount owing by **Owner** to **CMAR**, upon demand by **Owner** **CMAR** shall immediately pay the difference to **Owner**.

7.2.2 If during the Construction Phase, **CMAR** persistently fails to (i) provide a sufficient number of skilled workers or the materials required by the Construction Documents or both; (ii) comply with applicable Legal Requirements; (iii) timely pay, without cause, its **Subcontractors**; (iv) prosecute the Construction Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s) as may be adjusted as provided in the CMAR Construction Contract Documents; or (v) otherwise perform the Construction Work or any other obligations under with the CMAR Construction Contract Documents, **Owner** shall have the right, in addition to any other rights and remedies provided in the CMAR Construction Contract Documents or by law, after seven (7) Days written notice to **CMAR** and **CMAR's** failure to commence to cure, diligently pursue the cure and completely cure the default within a reasonable time, to (i) perform and furnish through itself or through others any such labor, materials, or Construction Work, and to deduct the cost thereof from any monies due or to become due to **CMAR** under the CMAR Construction Contract Documents; or (ii) terminate the employment of **CMAR** for all or any portion of the Construction Work; enter upon the Site and take possession, for the purpose of completing the Construction Work, of all materials, equipment scaffolds, tools, appliances, and other items thereon, all of which **CMAR** hereby transfers, assigns and sets over to **Owner** for such purpose; and to employ any person or persons to complete the Construction Work and provide all of the required labor, services, materials, equipment and other items; or (iii) both. In the event of such termination, **CMAR** shall be entitled to be paid only for all Construction Work properly performed prior to its default and only if adequate funds are available as set forth herein. If **Owner's** cost and expense of completing the Construction Work exceeds the Guaranteed Maximum Price, then **CMAR** or its surety shall pay the difference to **Owner**. Such costs and expense shall include, not only the cost of completing the Construction Work to the satisfaction of **Owner** and of performing and furnishing all labor, materials, services, tools, equipment and other items required in the CMAR Construction Contract Documents, but also losses, damages, costs and expense, including, without limitation, attorney's fees and expenses incurred in connection with the procurement and defending claims arising from **CMAR's** default.

7.2.3 **CMAR** and **Owner** agree that if the **Owner** terminates the **CMAR's** performance under the Design Phase Services Contract Documents or the CMAR Construction Contract Documents for cause and such

termination is finally determined to be improper, the termination for cause will be converted to a termination for convenience and the provisions of **Section 7.1** shall apply.

7.2.4 The parties agree that if **CMAR** institutes or has instituted against it a case under the United States Bankruptcy Code, such event may impair or frustrate **CMAR's** performance of its obligations under the CMAR Design Phase Services Contract Documents and the CMAR Construction Contract Documents. Accordingly, should such event occur, **Owner** shall be entitled to request **CMAR**, its trustee or other successor, to provide adequate assurance of future performance. If **CMAR** fails to comply with such request within seven (7) Days after receiving notice of the request, **Owner**, in addition to any other rights and remedies provided by the CMAR Design Phase Services Contract Documents, the CMAR Construction Contract Documents or by law, shall be entitled to terminate the CMAR Design Phase Services Contract Documents and the CMAR Construction Contract Documents, as applicable. **Owner** shall be entitled to perform and furnish through itself or through others any such services and such labor, materials or equipment necessary for the completion of the Design Phase Services or the Construction Work and necessary to maintain the Contract Time(s), and to deduct the costs incurred from any monies due or to become due **CMAR** under the CMAR Design Phase Services Contract Documents and CMAR Construction Contract Documents pending receipt of adequate assurances of performance and actual performance in accordance herewith. In the event of such bankruptcy proceedings, the CMAR Design Phase Services Contract Documents and CMAR Construction Contract Documents shall terminate if **CMAR** rejects them or if there has been a default thereunder and **CMAR** is unable to give adequate assurances that it will perform as provided in the CMAR Design Phase Services Contract Documents and CMAR Construction Contract Documents or **CMAR** is otherwise unable to comply with the requirements for assuming the CMAR Design Phase Services Contract Documents and CMAR Construction Contract Documents, as applicable, under the applicable provisions of the Bankruptcy Code.

7.3 CMAR'S RIGHT TO STOP DESIGN PHASE SERVICES OR CONSTRUCTION WORK AND TERMINATE FOR CAUSE.

7.3.1 **CMAR** may, in addition to any other rights afforded under the CMAR Design Phase Services Contract Documents, the CMAR Construction Contract Documents or by law, either stop performing the Design Phase Services or the Construction Work, as applicable, or terminate the CMAR Design Phase Services Contract Documents and CMAR Construction Contract Documents, as applicable, for cause upon **Owner's** failure to pay an amount in excess of \$100,000 dollars properly due to **CMAR** as a payment for the Design Phase Services or the Construction Work under the CMAR Design Phase Services Contract Documents or the CMAR Construction Contract Documents, as applicable, provided that before taking any such action **CMAR** has given **Owner** the written notice specified in **Section 7.3.2** and the **Owner** has not cured within the specified seven (7) Day period.

7.3.2 Should the events set forth in **Section 7.3.1** occur, **CMAR** shall provide **Owner** with written notice describing the events set forth in **Section 7.3.1** that have occurred and that it is **CMAR's** intention to take action authorized for **CMAR** under **Section 7.3.1** if said events are not cured within seven (7) Days from **Owner's** receipt of **CMAR's** notice. If **CMAR** elects to stop performing the Design Phase Services or the Construction Work and if the events set forth in **Section 7.3.1** are continuing, **CMAR** may later indicate its intention to terminate the CMAR Design Phase Services Contract Documents and the CMAR Construction Contract Documents, as applicable, by providing **Owner** with the seven (7) Days required written notice and opportunity to cure.

7.3.3 If **CMAR** elects to stop Construction Work under **Section 7.3.1** and **7.3.2**, **CMAR** shall be entitled to make a claim for adjustment to the Guaranteed Maximum Price and Contract Time(s) to the extent it has been adversely impacted by the stoppage of the Construction Work. If **CMAR** elects to terminate the CMAR Design Phase Services Contract Documents or the CMAR Construction Contract Documents for the reasons permitted under **Sections 7.3.1** and **7.3.2**, **CMAR** shall be entitled to recover the same costs it would be permitted to recover had **Owner** terminated them for its convenience under **Section 7.1**.

7.4 ASSIGNMENT OF CMAR'S CONTRACTS WITH SUBCONTRACTORS. If the CMAR Construction Contract Documents are terminated for any reason, at the election of **Owner** which **Owner** may exercise as to each **Subcontractor** agreement individually, **CMAR's** agreements with **Subcontractors** shall, at **Owner's** option

and without further action by **CMAR**, be assigned to **Owner**; provided, however, that **Owner** shall have no liability for any pre-existing acts, omissions or defaults by **CMAR** under such agreements and as to such matters the sole recourse of **Subcontractors** shall be against **CMAR**.

ARTICLE 8 MISCELLANEOUS

8.1 ASSIGNMENT. Without the written consent of the other, neither **CMAR** nor **Owner** may assign, transfer, or sublet any portion or part of the Design Phase Services or the Construction Work or any of its respective obligations under the **CMAR** Design Phase Services Contract Documents or the **CMAR** Construction Contract Documents.

8.2 SUCCESSORSHIP. The provisions of the **CMAR** Design Phase Services Contract Documents and the **CMAR** Construction Contract Documents shall be binding upon the parties, their employees, agents, heirs, successors and assigns.

8.3 GOVERNING LAW. Interpretation of the **CMAR** Design Phase Services Contract Documents, the **CMAR** Construction Contract Documents and any and all claims, controversies, disagreements and disputes arising under or in connection with the Project, the Design Phase Services, the Construction Work, the **CMAR** Design Phase Services Contract Documents or the **CMAR** Construction Contract Documents shall be governed by the law of the State of Arizona, without giving effect to conflicts of law principles. No suit or action shall be commenced by any claimant other than in the Arizona Superior Court in Maricopa County, Arizona, and only after all contractual and administrative claims, controversies, dispute and disagreement resolution procedures have been fulfilled. By submitting a proposal or its qualifications and also by executing the **CMAR** Design Phase Services Contract Documents and the **CMAR** Construction Contract Documents, **CMAR** agrees to be bound by **Section 3-809(C) of the Arizona Board of Regents Policy** containing procedures for claims controversies, disagreements and disputes and waives any objections to those procedures.

8.4 SEVERABILITY. If any provision or any part of a provision of the **CMAR** Design Phase Services Contract Documents or the **CMAR** Construction 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 **CMAR** Design Phase Services Contract Documents and **CMAR** Construction Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

8.5 NO WAIVER. The failure of either **CMAR** or **Owner** to insist, in any one or more instances, on the performance or timely performance of any of the obligations required by the **CMAR** Design Phase Services Contract Documents or the **CMAR** Construction Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to any other performance or obligation.

8.6 HEADINGS. The headings used in the **CMAR** Design Phase Services Contract Documents and the **CMAR** Construction Contract Documents are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

8.7 NOTICE. Whenever the **CMAR** Design Phase Services Contract Documents or the **CMAR** Construction Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice; (ii) if delivered or sent by registered or certified mail, postage prepaid to the address indicated at the end of these General Conditions three (3) Days after mailing; or (iii) if transmitted by facsimile, at the time stated in a machine generated confirmation that notice was received at the number of the intended recipient.

8.8 NON-APPROPRIATION.

8.8.1 If funds either appropriated by the Legislature of the State of Arizona or otherwise allocated to perform the Design Phase Services or the Construction Work become unavailable for payments by the **Owner** under

the CMAR Design Phase Services Contract Documents or the CMAR Construction Contract Documents, the **Owner** may delay the Design Phase Services or the Construction Work for a period up to six (6) months. If no funds are legally available after six (6) months, the CMAR Design Phase Services Contract Documents and/or the CMAR Construction Contract Documents, then in effect, may be terminated by **Owner** at its option. In case of any such delay by **Owner**, **CMAR** may suspend performing the Design Phase Services or the Construction Work, as applicable, under **Section 7.3** but **CMAR** may not terminate the CMAR Design Phase Services Contract Documents or the CMAR Construction Contract Documents under **Section 7.3**.

8.8.2 If funding for this Project is dependent on the sale of revenue bonds or other debt instruments and if bonds or other instruments are not sold or proceeds are not available for this Project, the **Owner** may terminate the CMAR Design Phase Services Contract Documents and/or the CMAR Construction Contract Documents, then in effect. If such a termination occurs, the **Owner** shall reimburse **CMAR** for services rendered and non-cancelable commitments made prior to the termination on the same basis as if **Owner** had terminated for convenience under **Section 7.1**.

8.9 CONFLICT OF INTEREST.

8.9.1 The CMAR Design Phase Services Contract Documents and the CMAR Construction Contract Documents are subject to the provisions of **Arizona Revised Statutes Section 38-511** and the **Owner** may cancel the CMAR Design Phase Services Contract Documents and/or the CMAR Construction Contract Documents then in effect without penalty or further obligation if any person significantly involved in negotiating, drafting, securing or obtaining the CMAR Design Phase Services Contract Documents and/or the CMAR Construction Contract Documents, then in effect for or on behalf of the **Owner** becomes an employee or agent in any capacity of any other party or a consultant to any other party with an interest in the subject matter of the CMAR Design Phase Services Contract Documents and/or the CMAR Construction Contract Documents, then in effect while the CMAR Design Phase Services Contract Documents and/or the CMAR Construction Contract Documents, then in effect or any extension thereof is in effect.

8.10 NONDISCRIMINATION.

8.10.1 In connection with the performance of the Design Phase Services and the Construction Work under the CMAR Design Phase Services Contract Documents and/or the CMAR Construction Contract Documents, then in effect, the **CMAR** agrees to observe Arizona Executive Order 99-4 and all applicable Arizona and Federal Laws (including, without limitation, the Americans With Disabilities Act). **CMAR** further agrees not to discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin or handicap, except to the extent such discrimination is not prohibited by pertinent State or Federal law or Executive Order. In addition, the **CMAR** agrees to actively recruit in accordance with any affirmative action programs applicable to the **CMAR**. 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. **CMAR** 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 agreements with **Subcontractors**, except subcontracts for standard commercial supplies or raw materials.

8.10.2 The **CMAR** shall make a good-faith effort to ensure that not less than 15% of the Construction Work performed under the CMAR Construction Contract Documents is performed by a small business as defined in **A.R.S. § 41-1001(20)**. The **CMAR** shall report to the **Owner** the value of the Construction Work performed under this provision. Upon **Owner's** request, documentation evidencing **CMAR's** compliance with this provision shall be furnished in a format acceptable to **Owner** as a condition precedent to final payment.

8.11 ASSIGNMENT OF CLAIMS. The **Owner** and **CMAR** recognize that in actual economic practice overcharges resulting from antitrust violations are in fact borne by **Owner**. Therefore, the **CMAR** hereby assigns to **Owner** any and all claims for such overcharges. The **CMAR** in all subcontracts shall require all **Subcontractors** to likewise assign all claims for overcharges to the **Owner**.

8.12 DISPUTES. Any failure of the **Design Professional** or the **Owner** to make a decision within the time limit set forth shall not be construed as acquiescence in all or any part of any **CMAR** claim for relief.

8.13 SEXUAL HARASSMENT. The **CMAR** 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.

8.14 AMENDMENTS. The CMAR Design Phase Services Contract Documents and CMAR Construction Contract Documents may not be changed, altered, or amended in any way except in writing signed by duly authorized representatives of **CMAR** and **Owner**.

8.15 CMAR RECORDS. To the extent required by **Section 35-214, Arizona Revised Statutes**, **CMAR** agrees to retain all records relating to the CMAR Design Phase Services Contract Documents and the CMAR Construction Contract Documents. **CMAR** agrees to 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 the CMAR Design Phase Services Contract Documents and CMAR Construction Contract Documents and for a period of five (5) years after the completion of the CMAR Design Phase Services Contract Documents and CMAR Construction Contract Documents. The records shall be provided at Arizona State University, Tempe, Arizona, or another location designated by **Owner** upon reasonable notice to **CMAR**.

8.16 NO CONSTRUCTION AGAINST DRAFTING PARTY. Each party acknowledges that it has had an opportunity to review the CMAR Design Phase Services Contract Documents and the CMAR Construction Contract Documents with counsel, and such documents shall not be construed against any party that is determined to have been the drafter of the documents.

CMAR

OWNER

**ARIZONA BOARD OF REGENTS
on behalf of
ARIZONA STATE UNIVERSITY**

By: _____

By: _____

Name: _____
(Printed)

Name: _____
(Printed)

Title: _____

Title: _____

Date: _____

Date: _____

Address for notices to **CMAR**:

FAX: _____

Addresses for notices to **Owner**:

FAX: _____

With a required copy to:

Paul J. Ward, Esq.
General Counsel
Office of General Counsel
P.O. Box 872003
Tempe, AZ 85287-2003

FAX: (480) 965-0984

EXHIBIT A

TO

GENERAL CONDITIONS

FORMS OF PERFORMANCE BOND AND PAYMENT BOND

[Note: The actual forms of Performance Bond and the Payment Bond must be in the following form or in such other form as is acceptable to **Owner** and the surety issuing the bond.]

ARIZONA BOARD OF REGENTS
PERFORMANCE BOND
PURSUANT TO BOARD OF REGENTS POLICY 3-804D
(Penalty of this bond must be 100% of the contract amount)

KNOW ALL MEN BY THESE PRESENTS:

THAT, _____, (hereinafter called 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 _____ (\$ _____) 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 _____, to construct and complete a certain work described as _____, ASU PROJECT NUMBER _____, 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 guarantee or warranty required under or specified in said 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 obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Arizona Board of Regents Policy Section 3-804E, and all liabilities on this bond shall be determined in accordance with the provisions of this section, to the 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.

Anything in this bond to the contrary notwithstanding, the performance covered by this bond is limited to the construction to be performed under said contract and does not include any design phase services, finance services, maintenance services, operations services or any other related services included in said contract. Terms used in this paragraph that are defined or used in Arizona Board of Regents Policy Section 3-801 or any successor provision will have the respective definitions in that section or will be interpreted according to their use in that section, respectively.

Witness our hands this ____ day of _____, 20_____.

Principal Seal

By _____

Surety Seal

By _____

ARIZONA BOARD OF REGENTS
PAYMENT BOND
PURSUANT TO BOARD OF REGENTS POLICY 3-804D
(Penalty of this bond must be 100% of the contract amount)

KNOW ALL MEN BY THESE PRESENTS:

THAT, _____, (hereinafter called 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 _____ (\$ _____) 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 _____, to construct and complete a certain work described as _____, ASU PROJECT NUMBER _____, 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 or his **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 Arizona Board of Regents Policy Section 3-804E, and all liabilities on this bond shall be determined in accordance with the provisions of this section, to the 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.

Anything in this bond to the contrary notwithstanding, the performance covered by this bond is limited to the construction to be performed under said contract and does not include any design phase services, finance services, maintenance services, operations services or any other related services included in said contract. Terms used in this paragraph that are defined or used in Arizona Board of Regents Policy Section 3-801 or any successor provision will have the respective definitions in that section or will be interpreted according to their use in that section, respectively.

Witness our hands this ____ day of _____, 20_____.

Principal Seal

By _____

Surety Seal

By _____

