



**STANDARD FORM AGREEMENT BETWEEN OWNER AND
DESIGN PROFESSIONAL
(CONSTRUCTION MANAGER AT RISK EDITION)**

June 1, 2024 Edition

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**STANDARD FORM AGREEMENT BETWEEN OWNER
AND
DESIGN PROFESSIONAL
(CONSTRUCTION MANAGER AT RISK EDITION)**

THIS AGREEMENT "DP Agreement" is made this ____ day of ____ in the year ____ by and between OWNER: **ARIZONA BOARD OF REGENTS** ("ABOR"), for and on behalf of **ARIZONA STATE UNIVERSITY** ("ASU"), located at 1551 S. Rural Road, Tempe, AZ 85281 and **DESIGN PROFESSIONAL FIRM NAME** ("Design Professional" or "DP"), located at _____, for services in connection with the Project listed in Article 1 below.

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

Article 1 Project

1.1 Project Title. _____

1.2 Project Number. xxxxxx

1.3 Project Location. Building xxx, address, city, AZ

1.4 Scope of Services. Defined and described in "Exhibit A – Scope of Services for DP", attached.

1.5 Schedule. Defined and described in "Exhibit A – Scope of Services for DP", attached.

1.6 Fee. For Basic Services, the DP's basic compensation shall be computed on the following basis: The Basic Services fee for all subphases – is _____ dollars (\$_____). Reimbursables expenses, as defined herein, shall not exceed _____ dollars (\$_____). Fee is further defined and described in "Exhibit B – Schedule of Payments".

1.7 Representatives of the Parties, Authority.

1.7.1 Owner's Representatives.

1.7.1.1 Owner designates **Joe Lisiewski, Assistant Vice President and University Architect, ASU, FDM Office of the University Architect, PO Box 875512, Tempe AZ 85287-5512** as the "Owner's Senior Representative", who has the authority and responsibility set forth in this DP Agreement, including the authority and responsibility for avoiding and resolving disputes under Article 12.

1.7.1.2 Owner designates [_____].
(name, title, university name and address)

as the “Design Phase “Representative”, who has the authority and responsibility set forth in this DP Agreement.

1.7.1.3 Owner designates [_____].
(name, title, university name and address)

as the “Construction Phase Representative”, who has the authority and responsibility set forth in this DP Agreement.

1.7.2 DP’s Representatives.

1.7.2.1 DP designates [_____].
(name, title, email, company name and address)

as the “DP’s Senior Representative”, who has the authority and responsibility set forth in this DP Agreement, including the authority and responsibility for avoiding and resolving disputes under Article 12.

1.7.2.2 DP designates [_____].
(name, title, email, company name and address)

as the “Project Management “Representative,” who has the authority and responsibility set forth in this DP Agreement.

1.7.2.3 DP’s Representatives, as approved by the Owner, shall not be replaced without the Owner’s prior written approval.

1.7.2.4 DP warrants and shall ensure that only representatives who are authorized to legally bind DP will sign documents associated with this DP Agreement.

Article 2 DP’s Services and Responsibilities

2.1 General.

2.1.1 Intent. In accordance with ABOR Policy Section 3-803D, Owner intends to enter into a contract for services by a qualified design professional for the architectural and engineering services and construction administration services set forth in “Exhibit A – Scope of Services for DP” (hereinafter the “Scope of Services”), including the Basic Services and the Additional Services (as defined below) (collectively “Professional Services”). The DP shall render the Professional Services in the phases and subphases described in the Scope of Services and shall be coordinated with the services of the Construction Manager at Risk (“CM@Risk”) as described herein and in the “CM@Risk Standard Form Agreement Between Owner CM@Risk” (“CM@Risk Agreement”) which is incorporated by reference. The phases and subphases are to be performed in the sequence set forth in the Scope of Services, and DP shall not proceed with the next phase or subphase in the Scope of Services without prior written authorization from the Owner.

2.1.1.1 Essential Conditions. Due in part to the nature of the work DP is to perform, it is understood that the times for commencing and completing the DP’s Professional Services as specified herein are ESSENTIAL CONDITIONS of this DP Agreement. It is mutually understood and agreed that the Professional Services by DP set forth in this DP Agreement shall be promptly commenced on a date to be specified in a notice to proceed, and in no event later than xxxx (xx)

days after the execution of this DP Agreement, whichever first occurs. Consistent with the Standard of Care set forth in this DP Agreement, all Professional Services shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will assist the CM@Risk to complete the Project within the time set forth in the Scope of Services and pursuant to the “Exhibit B – Schedule of Payments” (“Schedule of Payments”)

2.1.1.2 DP Agreement Documents. The “DP Agreement” is comprised of the following in order of precedence:

2.1.1.2.1 This DP Agreement including Exhibits, as subsequently modified by Amendments, Addenda, or Supplemental Authorizations. Within the Agreement and its Exhibits the following Order of Precedence applies:

- (i) This Agreement
- (ii) Exhibit A – Scope of DP Services (Scope of Services)
- (iii) Exhibit B – Schedule of Payments (Schedule of Payments)
- (iv) Exhibit C – DP Proposal

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

2.1.1.2.3 The DP’s qualifications submission as required by the RFQ, including any clarifications and revisions of the submission.

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

2.1.1.3 Changes.

2.1.1.3.1 The Owner may at any time, by written notice to DP, make changes within the general scope of this DP Agreement including, without limitation, to any one or more of the following: (i) the Scope of Services, including required drawings, designs, or specifications; (ii) method of delivery; (iii) Schedule of Milestones; and (iv) the time for completion.

2.1.1.3.2 If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of this DP Agreement, whether or not identified in the notice, the Owner shall make equitable adjustments to the DP’s Basic Compensation, as defined below, the Milestone Schedule, or the time for completion, or shall otherwise modify this DP Agreement as appropriate.

2.1.1.3.3 The DP must assert its right to an equitable adjustment under this clause within thirty (30) days from the date of receipt of the written notice from the Owner. Owner may, in its sole and absolute discretion, consider and/or deny requests for equitable adjustment that are made more than thirty (30) days from receipt of the written notice, but in any event before final payment under this DP Agreement.

2.1.2 Definitions. Unless otherwise specified, capitalized terms in this DP Agreement have the same meaning as set forth in the General Conditions to the CM@Risk Agreement for the Project, a copy of which has been provided to DP and is incorporated herein by reference. In addition, the following definitions shall apply:

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

2.1.2.2 “CM@Risk Agreement” means the contract (Standard Form of Agreement Between Owner and CM@Risk, including its Exhibit A – CM@Risk General Conditions) between Owner and the CM@Risk or any replacement CM@Risk or, if the Owner terminates the contract with the CM@Risk and elects to proceed using a different contractor it means the contract and general conditions between the Owner and the final contractor. The CM@Risk Agreement and General Conditions are sometimes referred to individually as the “Construction Contract” and its “General Conditions,” respectively.

2.1.2.3 “Construction Costs” (or “Cost of the Work”) consists of those items of Work which are paid for by the Owner to the CM@Risk, and consists of those categories of Direct Construction Costs and Indirect Construction Costs set forth as allowable in Exhibit C to the CM@Risk Agreement. It does not include any design or consulting fees, the CM@Risk’s fees for Design (Preconstruction) Phase services, survey and testing costs, or readily movable furnishings/equipment, unless agreed to in advance in writing by the Owner.

2.1.2.4 “Construction Documents” are the plans and specifications prepared by the DP for the Project, approved by the Owner, and incorporated into the CM@Risk Agreement by reference after such approval, to be used to construct the Project. All amendments and modifications to the Construction Documents must be approved by the Owner prior to incorporation into the CM@Risk Agreement.

2.1.2.5 “Construction Phase” is defined as including the following subphases: construction administration, closeout and warranty, and may include some activities that occur after Final Completion.

2.1.2.6 “Consultant” is an entity or person, other than the CM@Risk or the DP, who performs any design or engineering services directly on behalf of the Owner, and shall include all employees, agents and authorized representatives of such entities or persons.

2.1.2.7 “Contract Time” shall mean the time period for DP’s performance of the Scope of Services and completion of the Project as set forth in the Scope of Services.

2.1.2.8 “Day” refers to the calendar day unless otherwise denoted.

2.1.2.9 “Design Phase” is defined as including but not limited to the following subphases: Program Development, Conceptual Design, Schematic Design, Design Development, GMP-Setting and creation of Construction Documents.

2.1.2.10 “Design Professional” or “DP” refers to the entity set forth in the preamble of this DP Agreement and is a representative of the Owner for the Project as provided in the DP Agreement 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 representative of the Owner except for the approval and certification of CM@Risk progress payment applications, and Substantial Completion, if so designated.

2.1.2.11 “Design Professional Basic Services” or “Basic Services” is defined as all services described in the Scope of Services and this DP Agreement.

2.1.2.12 “Design Professional Additional Services” or “Additional Services” is defined as all services not described in the Scope of Services and this DP Agreement, but that are otherwise requested and authorized by Owner, in writing

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

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

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

2.1.2.16 “Probable Construction Cost” is the estimate of the Construction Costs that is to be prepared by the DP for presentation to the Owner.

2.1.2.17 “Project Budget” is the total cost to the Owner for the Project, including the payments to DP, CM@Risk’s Pre-Construction Phase Fee, the GMP, other Consultants, furniture, fixtures, and equipment, site acquisition, permit fees, management fees, owner-supplied labor, materials and equipment, and other incidentals required to achieve Final Completion of the Project.

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

2.1.2.19 “Punch List” are those minor items of Work identified and listed by DP and agreed to by Owner to be completed by CM@Risk after Substantial Completion and prior to Final Completion, which do not prevent the Project from being fully used for the purpose for which it is intended and which will not prevent the issuance of a certificate of occupancy.

2.1.2.20 “Standard of Care” is the performance standard under which DP shall provide its Professional Services and is defined as: the skill, care and competence exercised by members of the applicable professional discipline currently practicing under similar circumstances. The DP shall perform the Professional Services as expeditiously as is consistent with the Standard of Care and the orderly and timely progress of the Project and Project Schedule.

2.1.2.21 “Subconsultant” is an entity or person who performs any services directly on behalf of the DP, and shall include all employees, agents and authorized representatives of such entities or persons.

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

2.1.2.23 “Substantial Completion” is the date on which CM@Risk’s Work, or an agreed upon portion of the Work, is sufficiently complete, as determined by the DP or Owner’s issuance of a Certificate of Substantial Completion, so that Owner can fully occupy and utilize the Project, or a portion thereof, for the purposes for which it is intended. 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. (Note – The Owner retains the right to require inspections of the Work past those inspections required for Substantial Completion, and such inspections may be required through the date of Final Completion.)

2.1.3 Cooperation.

2.1.3.1 Pursuant to the Standard of Care, Owner and DP will cooperate with each other and with the CM@Risk and others involved in the Project to the maximum extent possible and to proceed on the basis of trust, confidence, and good faith to permit each party to this DP Agreement and the CM@R to realize the goals sought and benefits afforded under this DP Agreement. Those goals and benefits include the satisfactory and timely completion of the Project and the performance of all obligations described by this DP Agreement.

2.1.3.2 The Owner, DP, and CM@Risk will hold a mandatory Kick-Off Meeting after execution of both this DP Agreement and the CM@Risk Agreement to discuss issues affecting the administration of the Project and to implement procedures to permit the Owner, the DP, and the CM@Risk to promptly and efficiently perform their respective obligations under this DP Agreement and the CM@Risk Agreement. At this meeting, the DP, the Owner and the CM@Risk will establish required meetings to discuss ongoing project issues. Written meeting minutes shall be distributed to all attendees in accordance with the “Meetings and Communication” Section of the Scope of Services within two (2) business days after each meeting. Among other matters to be covered at this meeting, the Owner, the DP and the CM@Risk will work out and agree upon procedures for efficient interaction among them during the Design Phase of the Work so that the DP, the CM@Risk and the Owner can thereafter perform efficiently and in a cooperative and mutually supportive manner the activities, functions and obligations contemplated by this DP Agreement and the CM@Risk Agreement. Among other subjects to be covered are:

- (i) Agreeing to a comprehensive and all-inclusive list of goods, materials or equipment that have other than short lead time and arranging to have such items placed on order for timely delivery;
- (ii) Arrangements for collaboration between the DP and the CM@Risk in preparing Design Submission Documents for the Program Development (to the extent needed), Conceptual Design, Schematic Design, Design Development, GMP-Setting and Construction Documents subphases and in submitting each set of Design Submission Documents to the Owner for its review and comments. Also to be agreed upon are arrangements for group discussions by DP, CM@Risk and Owner of the Design Submission Documents, the Program Development documents, the Conceptual Design documents, the Schematic Design documents, the Design Development documents, the GMP-Setting documents and the Construction Documents;
- (iii) Arrangements that encourage frequent informal interaction among the DP, the Owner and the CM@Risk during the Design Phase, especially between submissions of Design Submission Documents under item (ii), including among other activities, the DP resolving constructability or other questions with the CM@Risk and otherwise obtaining the benefit of the CM@Risk's construction knowledge and experience and the DP using that information in its design work on the Project;
- (iv) A schedule for all activities of the CM@Risk, the Owner and the DP to be performed during the Pre-Construction Phase; and
- (v) A prompt review of key contract provisions, schedule goals and coordination concerns, procedures for paperwork processes, and any other items of importance based on the Project's specific attributes.

At the Kick-Off meeting, the Owner and the CM@Risk (with assistance from the DP) will also develop the procedures for pre-qualification of Subcontractors to bid on the bid packages under Article 2.2.4.6.2 of the General Conditions.

2.1.3.3 The DP shall cooperate with the Owner and the CM@Risk in the design and construction of the Project and must keep the Project within the Owner's Project Budget and the schedule requirements. The CM@Risk, the Owner, and the DP, called the "Project Team", shall cooperatively work together during all phases of the Project in which they are involved to achieve expedited completion of the Project in accordance with Owner's Project Budget and time constraints. While the CM@Risk shall provide leadership to the Project Team during the Design Phase for all cost, schedule, or constructability review and choice of building systems issues and on all matters relating to construction, the DP is to assist and cooperate on these items to the maximum extent possible.

2.1.3.4 The DP shall promptly and reasonably cooperate with the CM@Risk in the CM@Risk's development of its estimates of Construction Costs and Guaranteed Maximum Price ("GMP").

2.1.3.5 The DP shall evaluate the Owner's preliminary Project Budget with the assistance of the CM@Risk. The Owner shall furnish the DP with the dollar amount within the Owner's Project Budget available for the Work. The DP's estimates of probable Construction

Costs shall not exceed this amount. The amount within the Owner's Project Budget available for Work may be revised only by an Owner-approved written modification of this DP Agreement.

2.1.4 Personnel. A listing of key employees assigned directly to this Project on a day-to-day basis as well as alternates (replacements) has been furnished to and approved by the Owner prior to execution of this DP Agreement and is attached as a part of "Exhibit C – DP Proposal". Any substitutions of assigned personnel shall have prior, written approval by the Owner and shall be proposed from the list of acceptable alternates. Any changes of personnel within the DP firm or any listed Subconsultant firms assigned to the project will require advance written approval of the Owner so long as approved personnel remain employees of the DP firm and/or the listed Subconsultant firm and are capable of performing the required services.

2.1.5 Partnering.

2.1.5.1 The Owner, DP, and CM@Risk will meet promptly after execution of the Construction Contract to discuss issues affecting the administration of the Work and the Professional Services, and to implement the necessary procedures, including submittals and Owner site activity schedules, to permit the Owner, DP, and CM@Risk to perform their respective obligations under the Contract Documents. These tasks may be implemented by the utilization of a formal "Partnering" or "Teaming" process developed during an initial workshop that will include the CM@Risk, Owner, DP, and their key personnel assigned to the project. Follow up sessions will occur every three months or as otherwise mutually agreed to ensure that all commitments are updated and being followed by all parties. The cost of this "Partnering" or "Teaming" effort, if invoked by Owner, will be an allowable Project Cost.

2.2 Design Phase. During the Design Phase, DP will provide the services set forth in the Scope of Services for the following subphases of the Design Phase: Program Development, Conceptual Design, Schematic Design, Design Development, GMP-Setting and Construction Documents.

2.3 Construction Phase. During the Construction Phase, DP will provide the Services set forth in the Scope of Services for the following subphases of the Construction Phase: Construction Administration, Closeout and Warranty.

2.4 DP's Professional Responsibilities.

2.4.1 DP represents that it and the professional staff and Subconsultants it will assign to the project (registrants with the Arizona Board of Technical Registration and others), are fully qualified by education, technical training, and experience as professionals to perform the Professional Services and contract administration called for by this DP Agreement.

2.4.2 DP agrees that in performing the Professional Services it will exercise the Standard of Care and cause its Subconsultants to exercise the same. DP will also cause all Subconsultants it employs to meet this same Standard of Care.

2.4.3 Notwithstanding the contractual and indemnity remedies provided to Owner under the DP Agreement and notwithstanding any applicable law barring recover for any economic loss caused by DP, DP acknowledges that a violation of the Standard of Care causing injury or damage to Owner is actionable and DP agrees that Owner may pursue as a remedy, in addition to any contractual or indemnity remedy, a tort claim for professional negligence against DP.

2.4.4 Although the Owner has the right to make claims in tort for professional negligence against DP, as the lead registrant of the design team for the negligence, recklessness, or intentional wrongful conduct or errors or omissions of DP or any of its Subconsultants, DP agrees it shall also be responsible for and shall indemnify and hold Owner, ABOR, and the State of Arizona harmless from any and all losses, expenses, damages, costs and injuries arising from or resulting from any negligence, recklessness, or intentional wrongful conduct or errors or omissions in the Design Documents prepared by DP or DP's Subconsultants for Owner by the DP or DP's Subconsultants or in the construction administration during the Construction Phase.

2.4.5 Notwithstanding Articles 2.4.1 through 2.4.4, Owner may hold DP responsible or liable for any costs associated with DP's failure to meet the Standard of Care, only to the extent such costs exceed two percent (2%) of the GMP in effect at the time of Final Completion. It is understood and agreed that this 2% share shall apply to the aggregate amount of costs for the failure to meet the Standard of Care and not to each failure individually. This 2% share shall not apply to claims for property damage, personal injury, or death, whether incurred by Owner, or third parties, including without limitation the indemnity obligations in Article 9.14.

Owner shall deliver to DP a list of errors or omissions amounts that Owner has determined it has absorbed or will absorb in whole or in part.

2.4.6 At all times during this DP Agreement, DP shall comply with, and shall ensure its Professional Services comply with, all applicable laws, statutes, ordinances, regulations, rules or codes.

2.4.7 Owner acceptance of the Design Documents provided to it by the DP and the DP's estimates of Probable Construction Cost shall not relieve the DP from any responsibility for errors or omissions in those regards, nor from any other obligation of the DP under this DP Agreement or applicable laws, statutes, ordinances, building codes, rules and regulations, or operation of law.

The DP acknowledges and agrees that approval by the Owner and the CM@Risk and involvement of the CM@Risk and the Owner during the Design Phase (including, without limitation, recommendations by the CM@Risk or Owner as to the design), in no way relieves the DP of responsibility for the Design Documents. The DP, CM@Risk, and the Owner will cooperate in the resolution of such matters so as to minimize any detrimental impact upon the Project. However, such cooperation shall not be deemed a waiver of any rights the Owner may have relating to the DP.

2.4.8 The DP hereby agrees, subject to the Standard of Care, that it shall have the same legal responsibility to the Owner as the Owner has, or may have, to others arising out of, or resulting from, any errors or omissions of the DP.

2.4.9 All Drawings and Specifications shall bear the signature and seal of the DP or the DP's Subconsultants, or both as appropriate. The DP as lead professional shall be fully responsible for all design and administration provided under this DP Agreement.

2.4.10 The DP shall prepare and provide all documents in a form necessary for Owner to obtain any and all approvals required for approval of design and completed construction by all governmental authorities having jurisdiction over the Project and/or designated by the Owner. The Owner will sign applications and pay applicable fees for such governmental approvals.

2.4.11 The DP shall advise and consult with the Owner, if requested by the Owner, on selection of the CM@Risk. Further, the DP shall actively participate in discussions between the Owner and the CM@Risk regarding negotiations about the GMP and its acceptance by Owner. The DP shall review all GMP deliverables and advise Owner of any deficiencies in any GMP documents or proposals submitted by CM@Risk to Owner.

2.4.12 The DP shall advise the Owner on the acceptability of Subcontractors and material suppliers proposed by the CM@Risk. Among other things, DP shall assist the CM@Risk in the pre-qualification of Subcontractors and in the preparation of drawings, specifications and information for the purpose of preparing the Subcontractor bid packages. The DP shall not be responsible for the performance of the CM@Risk, the Construction Contract(s), or for any defects, deficiencies or effects resulting solely from any contractor, subcontractor, manufacturer, supplier, and fabricator retained by the Owner, CM@Risk, or any other third party. Nothing in this DP Agreement shall be construed as giving the DP the responsibility for or the authority to control, direct or supervise construction means or methods.

2.4.13 The DP shall prepare complete and useable plans and specifications for the CM@Risk's use for each portion of the Work to be bid separately and, if the Work is done in phases, complete sets plans and specifications for each phase.

2.4.14 If and to the extent Owner has given its prior approval, DP shall provide written interpretations and clarifications of the Construction Documents requested by the CM@Risk or any potential bidder.

2.4.15 Provide such other reasonable assistance to the CM@Risk as the CM@Risk and Owner request.

2.4.16 All of the above notwithstanding, award of the CM@Risk Contract and approval of the GMP will be made solely by the Owner. Award of the CM@Risk subcontracts will be made solely by the CM@Risk.

2.4.17 If at any time the CM@Risk's estimate of Construction Costs or proposed GMP or the DP's estimate of Probable Construction Costs (after attempted reconciliation between the CM@Risk's Estimate of Construction Costs and the DP's Estimate of Probable Construction Cost, and with the amount within the Owner's Project Budget available for the Cost of the Work) exceeds the amount within Owner's then current Project Budget available for the Cost of the Work, the DP shall promptly and at no cost to the Owner:

2.4.17.1 Revise all or any part of the Project drawings, specifications or both as the Owner may deem advisable for the purpose of reducing the Cost of the Work to be within the allocated line items within the Project Budget.

2.4.17.2 Perform any or all of the services described above as may be necessary to obtain a CM@Risk estimate of Construction Costs and GMP not exceeding the amount within Owner's current Project Budget available for costs of the Work.

2.4.18 If at any time the Owner terminates the CM@Risk Contract for convenience or for other reason, the Owner will have the right to continue the Project with whatever project delivery method it selects and the DP will continue to perform the Professional Services under this DP Agreement with the Owner and any substitute contractor for the construction. Owner will make appropriate changes to the DP Agreement if required.

Article 3 Additional Services

3.1 The following additional services shall be provided by DP only when authorized in writing by Owner before they are performed, and shall be paid for by the Owner in accordance with the terms of this DP Agreement in addition to the DP's compensation for Basic Services:

- (i) Providing financial feasibility or other special studies.
- (ii) Providing services relative to future facilities, systems, and equipment, which are not intended to be constructed during the Construction Administration subphase.
- (iii) Providing interior design and all other similar services required for or in connection with the selection, procurement or installation of movable furniture, furnishings, and related equipment if not expressly stated in this DP Agreement.
- (iv) Providing consultation concerning replacement of any work damaged by fire, natural causes or forces majeure during construction.
- (v) Retaining the services of a competent surveyor or registered engineer or to provide any special inspections or tests, as required by code or prudent practice, during the Construction Administration subphase.
- (vi) Providing additional services arising from the default of the CM@Risk or the default of any of its Subcontractors.
- (vii) Providing assistance required by the Owner in any judicial, quasi-judicial, administrative, or legislative hearings or proceedings relating to the Project.
- (viii) Providing staff, professional and otherwise, when directed in writing by Owner, perform tasks and duties assigned as necessary to prevent slippage in progress schedule and/or timely completion of the construction Work.
- (ix) Providing other reasonable services.

3.2 If the Owner and the DP agree at the pre-construction meeting on more extensive representation at the site during the Construction Administration phase than is described in Article 2, the DP shall provide one or more full-time Project Representatives. Such full-time Project Representatives shall be selected, employed and directed by the DP, and the DP shall be compensated for such services as mutually agreed in writing between the Owner and the DP.

3.3 Any full-time Project Representatives or replacements shall be subject to prior approval by the Owner. The Owner reserves the absolute right to reject or require replacement of any Project Representatives.

3.4 The DP shall not engage, contract with or use the services of any Subconsultants, without obtaining the prior written approval of the Owner. The DP shall submit to the Owner for approval a report of the scope of services to be provided by each such special Subconsultant, with the Owner's acknowledgment thereof. No provision of this DP Agreement and no approval by the Owner of the scope of services to be provided by the Subconsultants shall be construed as an agreement between the Owner and any Subconsultant of the DP or in any way affect the responsibilities of the DP hereunder, and, unless otherwise agreed to in writing by the Owner, the fees of any Subconsultants retained by the DP shall be deemed covered by the Basic Compensation to be paid by the Owner to the DP.

Article 4 Reimbursable Expenses

4.1 The Price for Basic Services includes all expenses that the DP may incur for services, supplies and travel, and as such expenses are not separately reimbursable. DP may request

Owner to reimburse DP for any additional expenses for supplies and travel, provided that expenses associated with such additional travel (mileage, lodging and meals) is subject to Owner's current travel policies applicable to Owner's employees, unless Owner specifically authorizes a different reimbursement rate in writing in advance of the incurrence of such expenses by DP. No markups are allowable on Owner-approved reimbursable expenses. All Owner-approved reimbursable expenses shall be invoiced at and paid at actual cost.

In the event the DP is entitled to reimbursement of expenses under this DP Agreement, DP shall submit all receipts and any other reasonably required backup documentation to Owner within sixty (60) days after such expense is incurred. Owner shall not be required to reimburse DP for expenses received by Owner after that time.

Article 5 Owner's Responsibilities

5.1 The Owner will provide all preliminary information available to Owner regarding the requirements for the Project including budget information and, unless otherwise agreed to in writing, Project Criteria, by the date of the Kick-Off meeting described in Section 2.1.3.2 above. The DP shall notify the Owner in writing if the DP requires additional information and of any information provided by the Owner which the DP believes to be unclear or insufficient for the successful completion of the Project.

5.2 The Owner will designate a representative, as set forth in Section 1.7.1, to act on its behalf with respect to the Project at all relevant times until Final Acceptance. Upon request, the Owner will provide the DP with a copy of the executed CM@Risk Agreement. Upon request the Owner will provide the CM@Risk with an executed copy of this DP Agreement.

5.3 If the Owner should observe or otherwise become aware of any error or omission in the design of the work or any non-conformity with the Design Documents, Owner will give prompt written notice thereof to the DP and the CM@Risk.

5.4 If required in the Scope of Services or requested in writing by the Owner, Owner will reimburse the DP for the DP's reasonable actual cost for retaining surveyors, engineers, or other Subconsultants in connection with the following items, provided such information is specifically requested by the DP or the Owner and the necessity and cost is approved by the Owner in writing before it is incurred:

5.4.1 Survey of Existing Site Conditions. A complete and accurate survey of the building site and existing improvements including but not limited to the grades and lines of streets, pavements, and adjoining properties, contours of the building site, and full information as to sewer, water, gas, electrical service, telephone lines, or other utilities.

5.4.2 Report on Subsurface Investigations. Professional recommendations regarding local conditions accompanied by test borings, or test pits, soil bearing values, percolation tests, air and water pollution tests, ground corrosion and resistivity tests including necessary operations for determining subsoil, air and water conditions, and chemical, mechanical, laboratory or other tests.

5.4.3 All other tests required by mutual agreement between the Owner and DP. The surveys, reports, tests, and any other information described under this Article shall be obtained by the DP, unless otherwise specified by written amendment to this DP Agreement. In the event

such information is furnished by the Owner, the DP, consistent with the Standard of Care and unless otherwise specifically provided herein, shall carefully examine them and advise the Owner of any inadequacies or deficiencies.

5.4.4 Unless otherwise required by the Standard of Care or this DP Agreement, DP shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure to persons of hazardous materials in any form, at the Project Site.

Article 6 Compensation for the DP's Services

6.1 Payment for Basic Services and Reimbursable Expenses.

6.1.1 Payments for Basic Services and Reimbursable Expenses shall be pursuant to the Schedule of Payments, attached hereto, and incorporated herein. Payments to DP by Owner shall be made monthly to DP, within thirty (30) days after the Owner receives the DP's properly itemized Statement for Basic Services and Reimbursable Expenses in such form and accompanied by such supporting documentation as Owner may direct. If the Owner determines that any amounts requested by the DP are not due or are not sufficiently documented, the Owner will furnish the DP with notice of the reasons for withholding payment along with the Owner's payment on account of the balance of the statement. Amounts withheld will be paid upon proper resubmission.

6.1.2 For Basic Services, the DP's basic compensation shall be as set forth in Article 1.6, Fee.

6.1.3 When DP's basic compensation is based on a stipulated sum, the payments for Basic Services shall be allocated to each phase or subphase in accordance with Contract Time, and the Schedule of Payments.

6.1.4 When any part of the Project is deleted or otherwise not constructed, compensation for such portions of the Project shall be payable to the extent services are performed on such portions in accordance with the schedule set forth in the Schedule of Payments.

6.1.5 If and to the extent that the time initially established for completion of the Construction Administration Subphase of the Project is exceeded or extended beyond the established completion date through no fault of the DP as determined by the Owner, compensation for Basic Services required for such extended period of administration of the CM@Risk Agreement shall be computed and paid as set forth in Article 6.2 "Payment for Additional Services".

6.1.6 DP shall pay to each of its Subconsultants within thirty (30) days of receipt of its monthly payment from Owner, that amount properly due and payable to said Subconsultant for services performed within the payment period. DP shall, by an appropriate agreement with each of its Subconsultants, require each such Subconsultant to make payments to its Sub-subconsultants in a similar manner. Upon request of the Owner, DP shall furnish documentary evidence of compliance with these payment provisions.

6.2 Payment for Additional Services

6.2.1 Payments for Additional Services shall be made monthly, within thirty (30) days after the Owner receives the DP's properly itemized statement for additional services in such form and accompanied by such supporting documentation as Owner may direct and at such rates as have been previously agreed upon. If the Owner determines that any amounts requested by the DP are not due or are not sufficiently documented, the Owner will furnish the DP with notice of the reasons for withholding payment along with the Owner's payment on account of the balance of the statement. Amounts not paid may be resubmitted with proper documentation.

6.2.2 For such Additional Services as are in the nature of project undertakings beyond that specified for Basic Services, as approved in writing by the Owner, the DP's compensation shall be as follows: As per the hourly rates as listed in "Exhibit C – DP Proposal".

6.2.3 Intentionally omitted.

6.2.4 For all Additional Services, as approved in writing by the Owner, the DP's compensation will be computed using one or more of the following:

- (i) Mutually agreed upon adjustments to the Stipulated Sum computed using the hourly rates as listed in "Exhibit C - DP Proposal",
- (ii) A negotiated Fixed Fee amount, or
- (iii) Other mutually agreed upon basis.

Article 7 Intentionally Omitted

Article 8 DP's Accounting Records

8.1 The DP's records pertaining to its the Professional Services shall be kept on a generally recognized accounting basis and shall be available to the Owner or his authorized representative upon request for a period of five years from the date of Final Payment to the CM@Risk.

8.2 The DP shall retain and require its Subconsultants to retain, for inspection and audit by the Owner, all books, accounts, reports, files and other records relating to the negotiation and performance of this DP Agreement for a period of five years from the date of Final Payment to the CM@Risk.

8.3 Upon request by the Owner, the original or a legible copy of the originals of all such accounting records shall be produced by the DP or Subconsultants at the address designated by the Owner.

Article 9 Insurance and Indemnity against Liability

The DP shall not commence any of the Professional Services until it obtains all required insurance and delivers to the Owner the certificates of insurance or other proof required by this DP Agreement. The DP shall not permit Subconsultants to commence Work until Subconsultants have complied with all applicable insurance requirements.

Insurance coverage as required by this DP Agreement shall be maintained until Final Completion of the Project, for the period(s) specified herein, and any longer specific periods set forth in the Contract Documents or available by law.

9.1 Minimum Scope and Limits of Insurance. Without limiting any liabilities or any other obligations of the DP, the DP shall provide and maintain, and cause its Subconsultants to provide and maintain, insurance coverage in such types and amounts as requested by Owner 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. DP shall provide Owner with certificates of insurance showing Subconsultant’s insurance if requested by Owner. The Owner in no way warrants that the above-required minimum insurer rating is sufficient to protect the DP or any Subconsultant from potential insurer insolvency.

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

| | |
|-------------------------|--------------|
| 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 be endorsed to 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 the Professional Services performed by or on behalf of the DP.

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

9.3 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 contractual products. Said policy shall be endorsed to contain a severability of interest provision, and shall not contain any provision which would serve to eliminate third-party action over claims. DP shall maintain coverage through Final Completion for DP and shall require all Subconsultants engaged in the performance of services under this DP Agreement to do the same.

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

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 DP".

The policy shall be endorsed to 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 DP.

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

9.4 Business Automobile Liability Insurance.

| | |
|---------------|-------------|
| Each Accident | \$1,000,000 |
|---------------|-------------|

DP 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 DP's owned, hired, or non-owned vehicles assigned to or used in performance of the Professional Services.

DP shall maintain coverage through Final Completion for DP and all Subconsultants engaged in the performance of services under this DP Agreement.

The policy shall be endorsed to 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 DP.

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 DP".

9.5 Professional Liability Insurance.

Limits:

| | |
|------------------|-------------|
| Each Claim | \$3,000,000 |
| Annual Aggregate | \$3,000,000 |

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

9.5.1 The policy shall cover negligence, errors and omissions, and lack of ordinary skill for those positions defined in the DP Agreement, including the Scope of Work and, except as set forth in section 9.5.2, shall be an occurrence form policy.

9.5.2 In the event that the professional liability insurance required by this DP Agreement is written on a claims-made basis, DP warrants that any retroactive date under the policy shall be no later than the effective date of this DP Agreement, and that either continuous coverage will be

maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time of Final Completion.

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

9.5.4 The policy shall be endorsed to 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 DP.

9.6 Additional Insurance Requirements.

9.6.1 Intentionally omitted.

9.6.2 The DP'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 the University, their officers, or employees, if any, shall be excess and not contributory to the insurance provided by the DP.

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

9.7 Proof of Insurance. DP shall provide to the Owner certificates of insurance (ACORD form or equivalent approved by the Owner) evidencing the coverages and endorsements required herein as proof that the policies providing the required coverages and endorsements are in force and effect prior to the DP's performing any of the Professional Services on behalf of the Owner. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf and must reference the ASU Project Number and Name. Such certificates shall identify this DP Agreement or be an annual or periodic certificate stating that it covers any and all projects or work performed by the DP during said period. Certificates of insurance should be emailed to PurchasingConstruction@asu.edu and the Certificate Holder is as follows:

ABOR, State of Arizona, and Arizona State University
PO Box 875212
Tempe, AZ 85287-5212

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

9.8 Cancellation or Failure to Provide or Maintain Insurance. In the event any insurance coverage required in this Article 9 is canceled, reduced, or terminated, DP agrees to provide notice to Owner within 30 days and replace the insurance without any lapse of protection to

Owner. Failure on the part of the DP to procure or maintain the required insurance shall constitute a material breach of this DP Agreement upon which the Owner may immediately terminate this DP 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 DP to the Owner upon demand (with interest), or the Owner may offset the cost of such premiums together with interest at the statutory legal rate against any money due the DP from the Owner. Costs for coverages maintained by the DP in excess of those required hereunder shall not be charged to the Owner.

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

9.10 Waiver. DP and its insurers providing the coverages required above shall and do hereby waive all rights of recovery against the State of Arizona, the Arizona Board of Regents, Arizona State University, and their officers and employees.

9.11 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.

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

9.13 Contractual Obligations. The stipulation of insurance coverages in this Article 9 or elsewhere, shall not be construed to limit, qualify, or waive any liabilities or obligations of DP, assumed or otherwise, under this DP Agreement.

9.14 Indemnity. To the maximum extent allowed by law, DP shall indemnify, defend, save and hold harmless Owner, the State of Arizona, and the Arizona Board of Regents and their respective officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, demands, 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), or loss or damage to tangible or intangible property to the extent caused, or alleged to be caused, by the failure to meet the Standard of Care, recklessness, or intentional wrongful conduct or errors or omissions by DP or DP's Subconsultants or any of their respective owners, officers, directors, agents, or employees, arising out of the Professional Services, this DP Agreement, or in connection with the Project or defects in the Professional Services. 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 DP or contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is agreed that DP will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this DP Agreement, the DP agrees to waive all rights of subrogation against Owner, the State of Arizona and the Arizona Board of Regents and their respective officers, officials, agents and employees for losses arising from the work performed by the DP for the State of Arizona.

To the maximum extent allowed by law, the DP shall be responsible for and shall indemnify, defend, save and hold harmless Owner, the Arizona Board of Regents, and the State of Arizona from any and all claims, demands, losses, damages, liabilities, costs and expenses to the extent alleged to arise or result from any failure to meet the Standard of Care, recklessness, or intentional wrongful conduct or errors or omissions by DP or DP's Subconsultants in the performance of the DP's Professional Services ("Errors and Omissions Amounts").

9.14.1 DP shall defend any action or proceeding brought against Owner based on any assertion or claim that the Design Documents, the Professional Services, 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 DP of any such action or proceeding and to provide authority, information and assistance in the defense of same. DP shall defend, indemnify and hold harmless Owner from and against all damages and costs, including attorney's fees, awarded against Owner or DP in any such action or proceeding. DP further agrees to keep Owner informed of all developments in the defense of such actions or proceedings.

9.14.2 In the event that Owner is enjoined from the use of any Design Documents, DP Professional Services, or any part thereof in connection with any claim of infringed Proprietary Rights, DP shall at its sole expense take reasonable steps to procure the right or license to operate or use same. If DP cannot so procure the aforesaid right within a reasonable time, DP shall then, promptly, at DP's option and at DP's expense and in consultation with Owner (a) modify the Construction Documents, or DP Professional Services, so to avoid infringement of any Proprietary Rights; or (b) replace said Construction Documents or DP Professional Services, or any part thereof with work that does not infringe or violate any such Proprietary Rights.

9.14.3 Sections 9.14.1 and 9.14.2 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 DP to Owner; or (b) arising from modifications to the Work by Owner or its agents after acceptance of the Work.

9.14.4 In addition to the other obligations of DP under this section 9.14, DP will be responsible for delays and for increases in the Owner's costs to complete the Project, to the extent caused by allegations that DP infringed proprietary rights of others.

Article 10 Ownership of Documents

10.1 The plans, drawings, specifications, notes, reports, renderings, final models, design concepts and images, and all other documents and items to be prepared and furnished by the DP pursuant to this DP Agreement shall be the property of the Owner, including the right to use same on Owner's other projects without additional cost to the Owner. The DP shall maintain for its file copies of those documents, drawings and/or other products required by law or the standards of professional practices.

10.2 In the case of reuse or modification of the Design Documents by the Owner, the DP's name and seal shall be removed, and the DP shall not be liable to the Owner or third parties in their reuse.

10.3 By execution of this DP Agreement, the DP transfers and hereby assigns all copyright, ownership, and other intellectual property interest in the Construction Documents and the completed Project to the Owner and further agrees to execute any separate assignment agreement necessary to implement such transfer. DP may use on other projects any standard details and other parts of the Construction Documents not prepared exclusively for Owner.

Article 11 No Assignments

11.1 The DP shall not assign, sublet or delegate his obligations under this DP Agreement without the prior written consent of the Owner and the Owner may withhold such consent for any reason.

Article 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 weekly on-site design and construction status meetings, so as to avoid, eliminate, or minimize any disputes, disagreements, claims, or controversies relating to the Project, (hereinafter "Disputes"). To the extent Disputes arise during the course of the Project that are not otherwise resolved by applicable portions of this DP Agreement, both DP and Owner will attempt to resolve such Disputes in an amicable, professional, and expeditious manner at the lowest possible level so as to avoid unnecessary costs, delays, and disruptions to the Work. To this end, the DP's Representative shall refer the Dispute to the Owner's Design Phase Representative or Construction Phase 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 DP knew or should have known of the matter.

12.1.2 In the event a Dispute cannot be resolved through DP's Representative and Owner's Representative in accordance with Section 12.1.1, the DP's Senior Representative and Owner's Senior Representative shall meet within 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 DP 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 DP 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.

In addition to other available remedies, 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 DP Agreement.

12.2 Administrative Process.

12.2.1 DP and Owner agree that all other parties involved in the Project, including but not limited to the CM@Risk, can be made parties to the administrative process called for by Section 3-809 and to this end, both DP 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 DP shall carry on the Work and maintain its progress during the course of any unresolved Dispute, and the Owner shall continue to make payments of undisputed amounts as they fall due to the DP in accordance with the Contract Documents.

12.3 Decisions of Owner.

Any failure of the Owner to make a decision within the time limits set forth herein shall not be construed as an acquiescence in all or any part of the DP's claim for relief.

Article 13 Termination or Suspension

13.1 The Owner may suspend or terminate the Project at any time, for any reason, for the convenience of the Owner. Upon written notice of suspension or termination the DP shall immediately cease all work and not incur any further costs or expenses except as expressly permitted by the Owner in writing. If the Project is suspended for more than one calendar year through no fault of the DP, the DP shall be paid for work actually performed and this DP Agreement shall terminate. Otherwise, the DP shall recommence work upon written notice from the Owner and this DP Agreement shall remain in full force and effect.

13.2 The Owner may terminate this DP Agreement without penalty or further obligation pursuant to A.R.S. § 38-511 if any person significantly involved in initiating, negotiating, securing, drafting or creating the DP Agreement on behalf of the Owner is or becomes, at any time while the DP Agreement or any extension of the DP Agreement is in effect, an employee of or Subconsultant to the DP with respect to the subject matter of the DP Agreement. Such termination shall be effective when written notice from the Owner is received by the DP, unless the notice specifies a later time.

13.3 If Owner's performance under this DP Agreement or funds available for this Project and/or Work are dependent upon (i) the appropriation or allocation of funds by the Arizona Legislature, and if the Legislature fails to appropriate or allot funds necessary for performance of the Project and/or Work, (ii) the sale of bonds or other similar instruments, and if such bonds or other instruments are not sold or proceeds are not available, or (iii) third party gifts, donations or grants, and if such gifts, donations or grants are not received in whole or in part by Owner; then Owner may provide notice of this to the DP, and either a) cancel this DP Agreement without further obligation of Owner except as set forth at the end of this paragraph, or b) delay the Project and/or Work for a period of up to six (6) months (without cost to the Owner), after which date if no such

funds are legally available for performance of this DP Agreement, Owner may cancel this DP Agreement without further obligation of Owner, except as set forth at the end of this paragraph. If cancellation occurs, Owner shall reimburse DP for all Professional Services authorized and rendered prior to the cancellation.

13.4 The Owner may, by written notice to the DP, terminate this DP Agreement if it is found by the Owner that improper gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the DP or any agent or representative of the DP to any officer or employee of the State of Arizona, the Arizona Board of Regents, or Arizona State University.

13.5 In the event of termination or cancellation of this DP Agreement, which is not the fault of the DP, the Owner shall pay to the DP only the compensation properly due for Professional Services DP properly performed on the Project and which were accepted by the Owner prior to the termination date and Reimbursable Expenses incurred as provided hereunder. Any post-termination wrap-up costs must be approved by the Owner in writing in advance of their commitment or expenditure or DP specifically waives all rights to claim such post-termination costs not pre-approved hereunder.

13.6 This DP Agreement may be terminated by either party for default upon the defaulting party's failure to cure a material breach within seven (7) days after written notice by the non-defaulting party specifying the nature of the default.

13.7 At or prior to the termination date, all Drawings, Specifications, and other design, bidding or construction administration documents then available shall be provided by the DP to the Owner.

Article 14 Extent of Agreement

14.1 This DP Agreement constitutes the complete and integrated agreement between the Owner and the DP, and it supersedes all prior negotiations, representations or agreements, either written or oral. This DP Agreement may be amended only by written instrument signed by a duly authorized representative of both parties.

Article 15 Intentionally Omitted

Article 16 Project-Specific Provisions

16.1 Any additional provisions to the foregoing for this Project must be and are described in "Exhibit A – Scope of Services for DP".

Article 17 Compliance and Legal Worker Requirements

17.1 Compliance.

17.1.1 The parties shall comply with all applicable state and federal statutes and regulations governing equal employment opportunity, non-discrimination, and immigration. In addition, the DP agrees to actively recruit in accordance with any affirmative action programs applicable to DP. 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. The DP shall post in conspicuous places, available for employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause and shall insert this provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

17.2 Legal Worker Requirements.

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

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

17.2.3 In addition to other audit provisions contained in this DP Agreement, the Owner retains the right to audit and inspect the papers of any DP or Subconsultant's employees who perform services to ensure that the DP or Subconsultant is complying with the warranty requirements of this Article.

Article 18 Miscellaneous

18.1 Non-discrimination. 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.**

18.2 Payments are owed, were properly submitted and that have not been made to the DP within thirty (30) days of the due date, shall thereafter bear interest at the legal rate prevailing in the State of Arizona, as established at A.R.S. § 44-1201, as amended or superseded.

18.3 Intentionally Omitted.

18.4 Severability. If any provision or any part of a provision of the DP Agreement 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 DP Agreement, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

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

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

18.7 Governing Law. Interpretation of the DP Agreement and any and all disputes arising under or in connection with this DP Agreement shall be governed by Arizona Law. No suit or action shall be commenced hereunder by any claimant other than in the Arizona Superior Court in the County where Owner or the Project are located, and only after all contractual and Arizona Board of Regents administrative procedures have been exhausted. By submitting a proposal, DP agrees to be bound by the Arizona Board of Regents' Procurement Code Dispute Resolution Procedures and by execution of the DP Agreement waives any objections to those procedures.

18.8 Notice. Whenever the DP Agreement requires 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 DP 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; or if d) if delivered by other means mutually agreed upon by the parties.

18.9 Headings. The headings used in this DP Agreement are for ease of reference only and shall not be in any way be construed to limit or alter the meaning of any provision.

18.10 No Waiver. The failure of either DP or Owner to insist, in any one or more instances, on the performance or timely performance of any of the obligations required by this DP Agreement, shall not be construed as a waiver or relinquishment of such obligation or right with respect to any other performance or obligation

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

18.12 Successorship. The provisions of this DP Agreement shall be binding upon the parties, their employees, agents, heirs, successors and assigns.

18.13 ASU Weapons Policy. The university prohibits the use, possession, display, or storage of any weapon, explosive device, or fireworks on all land and buildings owned, leased, or under the control of the university or its affiliated or related entities, in all university residential facilities

(whether managed by the university or another entity), in all university vehicles, and at all university or university-affiliate sponsored events and activities, except as provided in §12-781 of the Arizona Revised Statutes or unless written permission is given by the ASU Police Department (ASU PD). Notification by vendors to all persons or entities who are employees, officers, subcontractors, consultants, agents, guests, invitees, or licensees of vendor (Vendor Parties) of the [ASU Weapons Policy](#) is a condition and requirement of the contract. Vendor further agrees to enforce this contractual requirement against all Vendor Parties.

18.14 Supplemental Requirements. The requirements below apply to ASU's Capital Projects in excess of \$2,000,000.00. The DP(CMAR) will comply with the Owner's following requirements as they apply to the DP(CMAR) and Sub-consultants. DP(CMAR) complete Supplemental Requirements Quarterly Form at end of each fiscal quarter and submit to their ASU Construction Project Manager. Contractor will work with ASU Purchasing Construction Staff regarding completion of the spreadsheet and resolution of any problems. The instructions for completing the Supplemental Requirements Quarterly Form are located at [Purchasing Construction](#).

The requirements for the DP(CMAR) and each Sub-consultant are:

- 18.14.1** The Owner, the DP(CMAR) and each Sub-consultant shall include small businesses and disadvantaged business enterprises in the design and engineering of the Project so long as this would result in services that are comparable in quality and would not result in a material increase in the costs of the Project.
- 18.14.2** A Disadvantaged business is a business that is a Woman Owned Business [WBE], or is a Minority Owned Business [MBE], or is a Handicapped Veteran Owned Business (HV) or is a Disadvantaged/Disabled owned Business [DBE].
- 18.14.3** A Small Business can either be certified or can self-certify that they either have less than One Hundred (100) employees or were under \$4,000,000 in revenue in the previous year. They can be a Federally Certified Small Business.
- 18.14.4** The DP(CMAR) and each Sub-consultant must comply with all state and Federal laws and employees need to be legal Arizona residents. The DP(CMAR) and each Sub-consultant will provide compliance by completing the Supplemental Requirements Quarterly Form.
- 18.14.5** Health Insurance: The DP(CMAR) and each Sub-consultant are required to provide health insurance for their full-time employees and to make health insurance coverage available to dependents and to employees who are not full-time but are assigned to the project.
- 18.14.6** Any failure by DP, or a DP Consultant to comply with these requirements in this Section or the applicable Final Plan will be a material breach of the DP(CMAR) Contract Documents, as applicable, and the Owner will have all rights and remedies upon occurrence of a material breach (including, without limitation, termination).
- 18.14.7** Anything in the DP(CMAR) Contract Documents to the contrary notwithstanding, compliance in full by the DP(CMAR) and each Sub-consultant with the DP(CMAR) Final Plan and the requirements in this Section are conditions precedent of:
 - a) Each progress payment under the DP(CMAR) Contract Documents, and
 - b) Final Completion and Final Payment under the DP(CMAR) Contract Documents.

This Section 18.14 is one of provisions that DP(CMAR) and DP are obligated to include in its contracts with DP Consultants, respectively, and that DP Consultants at each level are required to include in their contracts with DP Consultants of the next level.

18.15 Air Pollution Emergency Proclamation. In accordance with an executive order titled 'Air Pollution Emergency Proclamation' modified by the Governor of Arizona on July 16, 1996, ASU requests that all products used in the performance of any contract that results from this solicitation be of low- or no-content of reactive organic compounds to the maximum extent possible.

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

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

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

18.18 ASU Sustainable Facility Policies. ASU has the following environmentally-friendly policies affecting university facilities:

- a. All new campus construction will be built to at least the U.S. Green Building Council's LEED Silver standard or equivalent.
- b. Adopt an energy-efficient appliance purchasing policy requiring purchase of ENERGY STAR certified products in all areas for which such ratings exist.
- c. Begin purchasing or producing at least 15% of the institution's electricity consumption from renewable sources.
- d. Adopt measures to reduce waste.

Arizona has three executive orders which provide for the following:

1. Executive Order 2004-28: Implementation of 5% Water Use Reduction Plan. The order required state agencies to reduce water use by 5% between FY 04 and FY 05. This executive order also reiterates HB 2276, which requires state agencies to install, when reasonable to do so, water free urinals when constructing new buildings.
2. Executive Order 2005-05: Implementing Renewable Energy and Energy Efficiency in New State Buildings. Requires that new, state-funded facilities be designed and constructed to derive at least 10% of their energy from renewable resources and; that all new buildings include new energy-efficient standards and; that all new state-funded buildings meet or exceed LEED Silver certification.
3. Executive Order 2007-03: Improving Air Quality. Requires that all state agencies: cease the use of leaf blowers, gasoline powered lawn mowers, and all other pollution causing landscape maintenance equipment; use only low emission gas cans; to require buyers of state agency lands to mitigate pollutants; to mitigate construction pollutants and suppress construction dust; to give incentives to bidders that use equipment retrofitted with diesel retrofit kits, newer clean diesel technologies, biodiesel, or other fuels known to be cleaner than petroleum diesel.

The Arizona Corporation Commission voted Oct. 31, 2006, to require that 15 percent of the state's energy production will come from renewable energy resources by 2025.

18.19 ASU Names and Marks. DP will not use any names, service marks, trademarks, trade names, logos, or other identifying names, domain names, or identifying marks of ASU (the “ASU Marks”), without in each case, the prior written consent of ASU. DP’s use of any ASU Marks must comply with ASU’s requirements including using the ® indication of a registered trademark where applicable

18.20 Tobacco-Free University. ASU is tobacco-free.

18.21 Arbitration in Superior Court. Notice is hereby given, that 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.

18.22 Complete Agreement. This DP Agreement constitutes the complete and integrated agreement between the Owner and the DP, and it supersedes all prior negotiations, representations or agreements, either written or oral. Each party acknowledges that it has had an opportunity to review this DP Agreement with counsel and this document shall be construed fairly and equitably so as to effectuate the intention of the parties irrespective of who is determined to have been the drafter of the document.

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

DP:
[DP Company Name]
By Its Authorized Representative

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

(Signature)

(Signature)

(Name)

(Name)

(Title)

(Title)

(Date)

(Date)

EXHIBIT A
SCOPE OF SERVICES FOR DP
(x pages)

EXHIBIT B

SCHEDULE OF PAYMENTS

Specific payments to DP are subject to and will be made following DP's completion of the following order of milestones in accordance with the Contract Time:

| | Milestone Activity | Fee |
|-----|--------------------------------------|---------------|
| 1. | Program Development Subphase | |
| 2. | Conceptual Design Subphase | |
| 3. | Schematic Design Subphase | |
| 4. | Design Development Subphase | |
| 5. | GMP-Setting Subphase | |
| 6. | Construction Documents Subphase | |
| 7. | Construction Administration Subphase | |
| 8. | Closeout Subphase | |
| 9. | Warranty Subphase | |
| 10. | Reimbursable Expenses | |
| | | |
| | Total | \$0.00 |

EXHIBIT C

DP PROPOSAL

[DP Firm Name] Proposal Dated [Month Day, Year]

(x pages)