
**NORTHERN ARIZONA UNIVERSITY -
STANDARD FORM AGREEMENT BETWEEN OWNER AND
DESIGN PROFESSIONAL
(CONSTRUCTION MANAGER AT RISK EDITION)
August 1, 2013 Edition**

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TABLE OF CONTENTS

ARTICLES

ARTICLE 1
PROJECT

ARTICLE 2
DP'S SERVICES AND RESPONSIBILITIES

ARTICLE 3
ADDITIONAL SERVICES

ARTICLE 4
REIMBURSABLE EXPENSES

ARTICLE 5
OWNER'S RESPONSIBILITIES

ARTICLE 6
INTENTIONALLY OMITTED

ARTICLE 7
INTENTIONALLY OMITTED

ARTICLE 8
DP'S ACCOUNTING RECORDS

ARTICLE 9
INSURANCE AND INDEMNITY

ARTICLE 10
OWNERSHIP OF DOCUMENTS

ARTICLE 11
NO ASSIGNMENTS

ARTICLE 12
REQUESTS FOR CONTRACTUAL ADJUSTMENTS AND DISPUTE RESOLUTION

ARTICLE 13
TERMINATION OR SUSPENSION

ARTICLE 14
EXTENT OF AGREEMENT

ARTICLE 15
COMPENSATION FOR THE DP'S SERVICES

ARTICLE 16

PROJECT-SPECIFIC PROVISIONS

ARTICLE 17

COMPLIANCE AND LEGAL WORKER REQUIREMENTS

ARTICLE 18

MISCELLANEOUS

EXHIBITS

EXHIBIT A - Scope of Services for Design Professional

EXHIBIT B - Schedule of Payments

EXHIBIT C - Design Professional Proposal Dated [Month Day, Year]

[NOTE TO DRAFTER – DP PROPOSAL SHOULD AT A MINIMUM INCLUDE:

1. LABOR RATES AND HOURS BY LABOR CATEGORY AND SUBPHASE,
2. LIST AND SUMMATION OF ANY REIMBURSABLES
3. EXCLUSIONS/INCLUSIONS VS EXHIBIT A – SCOPE OF SERVICES FOR DP
4. LIST OF KEY PERSONNEL]

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

THIS AGREEMENT is made this [redacted] day of [redacted] in the year [redacted] by and between OWNER: ARIZONA BOARD OF REGENTS (“ABOR”), for and on behalf of Northern Arizona University (“NAU”), located at 575 E. Pine Knoll Dr., Flagstaff, AZ 86011 and [Design Professional Firm Name] (“Design Professional” or “DP”), located at [redacted], 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. [redacted]
- 1.2** Project Number. xx.xxx.xxx
- 1.3** Project Location. Bldg. xxx – xxxxxxxxxxxxxx, [University Name], [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 [redacted] dollars (\$ [redacted]). Reimbursables expenses, as defined herein, shall not exceed [redacted] dollars (\$ [redacted]). 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 **Agnes Drogi, Director of Planning, Design and Construction, Facility Services, NAU, PO Box 5637, Flagstaff, AZ 86011,** as its Senior Representative ("Owner's Senior Representative"), which individual has the authority and responsibility set forth in this Agreement, including the authority and responsibility for avoiding and resolving disputes under Article 12.

1.7.1.2 Owner designates [REDACTED] **NAU, PO Box 5637, Flagstaff, AZ 86011,**

(name, title, university name and address)

as its Design Phase "Representative", which individual has the authority and responsibility set forth in this Agreement.

1.7.1.3 Owner designates [REDACTED] **NAU, PO Box 5637, Flagstaff, AZ 86011,**

(name, title, university name and address)

as its Construction Phase "Representative", which individual has the authority and responsibility set forth in this Agreement.

1.7.2 DP's Representatives.

1.7.2.1 DP designates [REDACTED].

(name, title, company name and address)

as its Senior Representative ("DP's Senior Representative"), which individual has the authority and responsibility set forth in this Agreement, including the authority and responsibility for avoiding and resolving disputes under Article 12.

1.7.2.2 DP designates [REDACTED].

(name, title, company name and address)

as its Project Management "Representative" which individual has the authority and responsibility set forth in this 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 Agreement.

Article 2 DP's Services and Responsibilities

2.1 General.

2.1.1 Intent. In accordance with ABOR Section 3-803D, Northern Arizona University intends to enter into a contract for services by a qualified Design Professional ("DP") for the architectural and engineering services as set forth in "Exhibit A – Scope of Services for DP". The DP's Services shall be rendered in the phases and subphases described in "Exhibit A – Scope of Services for DP" and shall be coordinated with the services of the Construction Manager at Risk ("CM@Risk") as described herein and in the template "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 "Exhibit A – Scope of Services for DP", and DP shall not proceed with the next phase or subphase in "Exhibit A – Scope of Services for DP" 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 time for commencing and completion of the DP's Services as specified herein are ESSENTIAL CONDITIONS of this Agreement. It is mutually understood and agreed that the services by DP set forth in this 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 Agreement, whichever first occurs. Consistent with the Standard of Care set forth in this Agreement,, all DP 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".

2.1.1.2 The "Agreement" is comprised of the following in order of precedence:

2.1.1.2.1 This 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
- (iii) Exhibit B – 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:

[NOTE TO DRAFTER – INSERT LIST OF DOCUMENTS AS APPLICABLE, OR INSERT “N/A”.]

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 Agreement in any one or more of the following: (i) the “Exhibit A – Scope of Services for DP”, 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 Agreement, whether or not identified in the notice, the Owner shall make an equitable adjustment in the DP’s Basic Compensation, as defined below, the Milestone Schedule, time for completion, or modify this Agreement accordingly.

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. However, if, at its sole discretion, the Owner decides that the facts justify it, the Owner may receive and act upon a proposal submitted before final payment of this Agreement.”

2.1.2 Definitions for this Agreement are as set forth in the General Conditions to the CM@Risk Contract for the Project, a copy of which have been provided to DP for this Project and are incorporated herein by reference. In addition, the following definitions shall apply:

2.1.2.1 “CM@Risk” means the CM@Risk and all persons and entities identified as members of the CM@Risk Team in the CM@Risk’s response to the Owner’s RFQ which led to the CM@Risk Agreement and General Conditions with all amendments, and any substitutes permitted under the terms of the CM@Risk Agreement and General Conditions.. The CM@Risk participates in the Pre-Construction Phase as set forth in the CM@Risk Agreement and General Conditions by, among other things, doing Value Engineering, evaluating costs and constructability, preparing schedules, implications of alternate designs and systems and materials

during and after design of the Project. During construction, the CM@Risk assumes all risk for price and schedule under the CM@Risk Agreement and General Conditions and its GMP.

2.1.2.2 “CM@Risk Agreement and General Conditions” 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 the “General Conditions”.

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 and General Conditions 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 and General Conditions.

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 Construction Documents.

2.1.2.10 “Design Professional” is a representative of the Owner for the Project as provided in the Contract Documents, whose Agreement is with the Owner, and a) who is a qualified professional properly licensed in the State of Arizona to furnish applicable design and construction administration services, and b) is not the 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” (Basic Services) is defined as all services described in “Exhibit A – Scope of Services for DP” and this Agreement.

2.1.2.12 “Design Professional Additional Services” (Additional Services) is defined as all services not described in “Exhibit A – Scope of Services for DP” and this Agreement.

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 DP, CM@Risk’s Pre-Construction Phase Fee, the GMP (including CM@Risk’s Construction Phase Fee, Construction Services, Allowances and any and all Contingencies), other Consultants, furniture, fixtures, and equipment, site acquisition, permit fees, management fees, and other incidentals required to achieve Final Completion of the Project.

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 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 its 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 Agreement and the CM@R to realize the goals sought and benefits afforded under this Agreement. Those goals and benefits include the satisfactory and timely completion of the Project and the performance of all obligations described by this Agreement.

2.1.3.2 The Owner, DP, and CM@Risk will hold a mandatory Kick-Off Meeting after execution of both this 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 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 “Exhibit A – Scope of Services for DP” 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 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 arrange 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 "Exhibit A – CM@Risk 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 provide prompt and reasonable cooperation to 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 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 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. No changes of personnel of the DP firm, or of any listed Subconsultant firms, will be allowed 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, unless permitted in writing by the Owner in advance.

2.1.5 Partnering. [INSTRUCTION TO DRAFTER - If PARTNERING IS NOT BEING USED ON THE PROJECT, DELETE ARTICLE 2.1.5 AND INDICATE “NOT USED”.]

2.1.5.1 The Owner, DP, and CM@Risk will meet promptly after execution of the agreement between Owner and CM@Risk to discuss issues affecting the administration of the Work, and to implement the necessary procedures, including submittals and Owner site activity schedules, to permit the Owner, 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 participants. Follow up sessions will occur every three months or as otherwise mutually agreed to ensure that all commitments are updated and being followed by all parties. The cost of this “Partnering” or “Teaming” effort, if invoked by Owner, will be an allowable Project Cost.

2.2 Design Phase. See “Exhibit A – Scope of Services for DP” for scope 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. See “Exhibit A – Scope of Services for DP” for scope for the following subphases of the Construction Phase: Construction Administration, Closeout and Warranty.

2.4 DP’s Professional Responsibilities.

2.4.1 To the maximum extent allowed by law, the DP shall be responsible for and shall indemnify, hold harmless and, if elected by Owner, defend the 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 negligence, recklessness, or intentional wrongful conduct or errors or omissions by DP or DP’s Subconsultants in the performance of the DP’s Basic Services or Additional Services (“Errors and Omissions Amounts”). 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 design services and contract administration called for by this Agreement.

2.4.2 DP agrees that in performing the design professional services to be performed under this Agreement, whether in the Design Phase or Construction Phase, or any subphase, it will apply the technical skills, knowledge and judgment that would be applied by other design

and contract administration professionals in performing similar services as defined in Section 2.1.2.20 of this Agreement and cause all Subconsultants it employs to meet this same criteria and same Standard of Care.

2.4.3 Notwithstanding the contractual and indemnity remedies provided to Owner under the Agreement and applicable law to 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 and/or 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 agrees not to hold DP responsible or liable for an amount equal to two percent (2%) of the GMP in effect at the time of Final Completion for any costs associated with professional errors or omissions of DP. It is understood and agreed that this 2% share shall apply to the aggregate amount of costs for professional errors or omissions and not to each error or omission individually. This 2% share shall not apply to claims for property damage, personal injury, or death, whether incurred by Owner, or third parties.

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 Agreement, DP shall comply with, and shall ensure its work, including but not limited to Basic Services and Additional 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 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 Agreement.

2.4.10 The DP shall prepare and provide all documents in 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), work or products, or 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 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 on whatever Project delivery method it selects and the DP will continue to perform its services under this Agreement with the Owner and any substitute contractor for the construction.

Article 3 Additional Services

3.1 The following additional services shall be provided only when authorized in writing in advance of performance by the Owner and shall be paid for by the Owner 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 Agreement.

(iv) Providing consultation concerning replacement of any work damaged by fire, natural causes or forces majeure during the course of construction.

(v) Retaining 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 arising out of the design and/or CM@Risk construction agreement(s) or the subject matter of those agreements provide for when such proceedings do not relate in any way to possible errors or omissions of the DP.

(viii) Providing staff, professional and otherwise, when directed in writing by Owner, to perform tasks and duties assigned as necessary to prevent slippage in progress schedule and/or timely completion of the construction work.

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 special 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 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 special 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 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 services, 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.

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 referenced 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 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 contract between the Owner and the CM@Risk or contractor. Upon request the Owner will provide the CM@Risk with a copy of the executed 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 Contract Documents, Owner will give prompt written notice thereof to the DP and the CM@Risk.

5.4 If required in "Exhibit A – Scope of Services for DP", or requested in writing by the Owner, Owner will reimburse the DP for the DP's reasonable 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 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, DP shall have no responsibility of the discovery, presence, handling, removal or disposal of, or exposure to persons to hazardous materials in any form, at the Project Site.

Article 6 Intentionally Omitted

Article 7 Intentionally Omitted

Article 8 DP's Accounting Records

8.1 The DP's records pertaining to its services on the Project 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 Agreement for a similar period of five years.

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 Work until it obtains all required insurance and delivers satisfactory proof thereof to the Owner. The DP shall not permit Subconsultants to commence Work until applicable insurance requirements have been complied with by Subconsultants.

Insurance coverage as required by this 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 of the DP, its employees, or both, engaged in the performance of services under this Agreement. DP shall maintain coverage through Final Completion for all employees engaged in the performance of services under this Agreement.

| | |
|-------------------------|-------------|
| Worker’s Compensation | Statutory |
| Employer’s Liability | |
| Each Accident | \$ 500,000 |
| Disease – Each Employee | \$ 500,000 |
| 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, Northern Arizona University and their officers, officials, agents, and employees for losses arising from work 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 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, Northern Arizona 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, Northern Arizona University, and their officers, officials, and employees for losses arising from work performed by or on behalf of the DP

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 services.

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

The policy shall be endorsed to contain a waiver of subrogation against the State of Arizona, the Arizona Board of Regents, Northern Arizona 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, Northern Arizona 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 Scope of Work of this Contract 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 Contract 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 Contract, 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 Contract, 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, Northern Arizona 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 LEFT BLANK

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 Contract.

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 work 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. Such certificates shall identify this Agreement or be an annual or periodic

certificate stating that it covers any and all projects or work performed by the DP during said period. Certificates of insurance should be addressed as follows:

Arizona Board of Regents, State of Arizona and Northern Arizona University
PO Box 5637
Flagstaff, AZ 86011

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 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 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 Agreement upon which the Owner may immediately terminate this Agreement, or at its discretion procure new or renew such insurance and pay all premiums in connection therewith, and all monies so paid by the Owner shall be repaid by the DP to the Owner upon demand, or the Owner may offset the cost of such premiums together with interest at the statutory legal rate against any money due the 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, Northern Arizona 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 Agreement.

9.14 Indemnity. To the maximum extent allowed by law, DP shall indemnify, defend, save and hold harmless the State of Arizona, the Arizona Board of Regents, and Northern Arizona University and their officers, officials, agents, and employees (hereinafter referred to as “Indemnitee”) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys’ fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as “Claims”) for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property to the extent caused, or alleged to be caused, by the negligence, 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 performance of the Work or this Agreement, or in connection with the Project or defects in the Work. 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 contract, the DP agrees to waive all rights of subrogation against the State of Arizona, the Arizona Board of Regents, Northern Arizona University, and their officers, officials, agents and employees for losses arising from the work performed by the DP for the State of Arizona.

9.14.1 DP shall defend any action or proceeding brought against Owner based on any assertion or claim that the Construction Documents, any services provided by the DP, 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 use of the Construction Documents, DP 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 services, so to avoid infringement of any Proprietary Rights; or

(b) replace said Construction Documents or DP 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 cost of the work 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 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 Construction 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 Agreement, the DP transfers 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 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 Agreement, both DP and Owner agree to timely resolving such Disputes in an amicable, professional, and expeditious manner at the lowest possible level so as to avoid unnecessary costs, delays, and disruptions to the Work. To this end, the DP’s Representative shall refer the Dispute to the Owner’s Representative by written notice of same, not more than seven (7) calendar days from the occurrence of the event which gives rise to the Dispute, or not more than seven (7) calendar days from the date that the 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 Agreement. Failure to properly utilize the procedures in Section 12.1.1 and 12.1.2 exposes the non-utilizing party to damages which are difficult to accurately quantify and ascertain. The Parties agree that failure to properly utilize the procedures in Section 12.1.1 and 12.1.2 will require the non-utilizing party to pay the other party **ten thousand and 00/100 Dollars (\$10,000.00)** as liquidated damages, and not as a penalty. The damages awarded pursuant to this section shall be in addition to and not in lieu of other damages provided for under this Agreement.

12.2 Administrative 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 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 Agreement shall terminate. Otherwise, the DP shall recommence work upon written notice from the Owner and this Agreement shall remain in full force and effect.

13.2 The Owner may terminate this 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 Agreement on behalf of the Owner is or becomes, at any time while the Agreement or any extension of the Agreement is in effect, an employee of or Subconsultant to the DP with respect to the subject matter of the 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 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 Agreement without further obligation of Owner except as set forth at the end of this paragraph, or b) delay the Project and/or Work for a period of up to six (6) months (without cost to the Owner), after which date if no such funds are legally available for performance of this Agreement, Owner may cancel this Agreement without further obligation of Owner, except as set forth at the end of this paragraph. If

cancellation occurs, Owner shall reimburse DP for all services authorized and rendered prior to lack of funds.

13.4 The Owner may, by written notice to the DP, terminate this 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 Northern Arizona University.

13.5 In the event of termination which is not the fault of the DP, the Owner shall pay to the DP only the compensation properly due for services properly performed on the Project and 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 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 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 Agreement may be amended only by written instrument signed by a duly authorized representative of both parties.

Article 15 Compensation for the DP's Services

15.1 Payment for Basic Services and Reimbursable Expenses.

15.1.1 Payments for Basic Services and Reimbursable Expenses shall be pursuant to the "Exhibit B – 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.

15.1.2 For Basic Services, the DP's Basic Compensation shall be as set forth in Article 1.6, Fee.

15.1.3 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 "Exhibit B – Schedule of Payments".

15.1.4 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 "Exhibit B – Schedule of Payments".

15.1.5 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 Construction Agreement shall be computed and paid as set forth in Article 15.2 "Payment for Additional Services".

15.1.6 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.

15.2 Payment for Additional Services.

15.2.1 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.

15.2.2 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".

15.2.3 Intentionally omitted.

15.2.4 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 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 Agreement subject to penalties, including termination for cause.

17.2.3 In addition to other audit provisions contained in this 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 Intentionally omitted.

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 Scrutinized Business Operations. Pursuant to A.R.S. §§ 35-391.06(A) and 35-393.06(B), DP certifies that it does not have a "scrutinized" business operation in either Sudan or Iran, as that term is defined in A.R.S. §§ 35-391(15) and 35-393(12), respectively.

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

18.7 Governing Law. Interpretation of the Agreement and any and all disputes arising under or in connection with this 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 and 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 Agreement waives any objections to those procedures.

18.8 Notice. Whenever the 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 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 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 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 Agreement shall be binding upon the parties, their employees, agents, heirs, successors and assigns.

18.13 Complete Agreement. This 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 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

(Signature)

(Printed Name)

(Title)

(Date)

OWNER:

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

(Signature)

(Printed Name)

(Title)

(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 Number | Activity | Payment |
|------------------|---|---------------------|
| 1. | <u>Program Development Subphase</u> | <u>\$ xxxxxx.00</u> |
| 2. | <u>Conceptual Design Subphase</u> | <u>\$ xxxxxx.00</u> |
| 3. | <u>Schematic Design Subphase</u> | <u>\$ xxxxxx.00</u> |
| 4. | <u>Design Development Subphase</u> | <u>\$ xxxxxx.00</u> |
| 5. | <u>GMP-Setting Subphase</u> | <u>\$ xxxxxx.00</u> |
| 6. | <u>Construction Documents Subphase</u> | <u>\$ xxxxxx.00</u> |
| 7. | <u>Construction Administration Subphase</u> | <u>\$ xxxxxx.00</u> |
| 8. | <u>Closeout Subphase</u> | <u>\$ xxxxxx.00</u> |
| 9. | <u>Warranty Subphase</u> | <u>\$ xxxxxx.00</u> |
| 10. | <u>Reimbursable Expenses</u> | <u>\$ xxxxxx.00</u> |
| | <u>Total:</u> | <u>\$ xxxxxx.00</u> |

EXHIBIT C

DP PROPOSAL

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

(x pages)