

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

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

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

[INSTRUCTION TO DRAFTER FOR 9.5 – CHOOSE ONE OF THE SETS OF LANGUAGE BELOW. IF USING SECOND SET, INSERT # DAYS IN WORDS AND FIGURES, E.G., “SEVEN (7)” IN PLACE OF “XXXX (XX)”.]

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

[OR]

9.5 The CM@Risk has included xxxx (xx) business days of weather related delays within the Owner-approved project schedule. If the Project experiences related delays beyond the defined amount of xxxx (xx) business days, the CM@Risk shall be entitled to a commensurate extension of time. If fewer than xxxx (xx) weather delay days are approved by the Owner through the duration of the Contract Time, the Substantial Completion date will be advanced by the number of weather delay days not used, but in no case will be advanced to a date earlier than Month Day, Year. Weather related days are defined as days when weather conditions have an adverse effect

on the critical path activities of the construction schedule. CM@Risk shall demonstrate to Owner how the weather conditions are preventing critical path activities from being performed that day.

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

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

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

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

9.9 In the event the CM@Risk gives notice to the Owner of compensable delay alleging that the Owner is responsible for the delay as to which the notice was given and the delay is unreasonable under the circumstances and was not within the contemplation of the Owner and CM@Risk when they entered into the Agreement, the Owner will enter into negotiations with CM@Risk as to CM@Risk's damages, if any.

SECTION 10
CHANGES TO THE CONTRACT SCOPE, PRICE, TIME AND TERMS

10.1 CHANGES.

10.1.1 After the Agreement is signed, modifications to the Agreement, including any changes to GMP, the Contract Time(s), Scope of Work, or terms and conditions of the Agreement may only be made by a written amendment or change order.

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

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

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

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

10.2 CHANGE DIRECTIVES.

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

10.2.2 Owner and CM@Risk shall negotiate, in good faith and as expeditiously as possible, the appropriate adjustments resulting from the change in Work, and agreement reached shall be

effective immediately and memorialized by preparation and execution of an appropriate amendment or change order.

10.3 MINOR CHANGES IN THE WORK.

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

10.4 PRICE, TIME, OR SCOPE OF WORK ADJUSTMENT.

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

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

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

CM@Risk Construction General Conditions,
NTE or as per CM@R Agreement: 5%
Total CM@Risk Markups, NTE: 10%

- 5) The Agreement may include provisions for some situations where larger amounts of Overhead and Construction General Conditions are needed to address extenuating site-related circumstances. However, the combined total Fee (including Profit and Overhead) and Construction General Conditions, including the CM@Risk and all levels or tiers of Subcontractors, shall not exceed twenty-five percent (25%) of the total direct costs of materials, labor, rental equipment and Subcontractor insurance and bonds.
- 6) Subcontractor pricing to CM@Risk, specifically as regards, and in support of CM@Risk amendment or change order with Owner, shall contain, at a minimum, same level of detail as CM@Risk provides in items 1) through 4) above in this Section 10.4.1(b).
- c) Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to facilitate evaluations; provided that such lump sum shall not exceed that amount calculated under (b) above.

10.4.2 Any dispute regarding the pricing methodology or cost of a change shall not relieve the CM@Risk of the obligation to proceed with work on the change directed by the Owner. The cost or credit to the Owner shall be promptly determined by the Owner on the basis of the preceding subsection of these General Conditions and in no event later than ten (10) calendar days after the Work directed has been performed.

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

10.4.4 In the event that Owner and the CM@Risk disagree upon whether CM@Risk is entitled to be paid for any amendment, change order or change directive services required of CM@Risk by Owner, or as to amount of compensation in the event of any other disagreements over the Scope of Work or proposed changes to the Work, Owner and CM@Risk agree to resolve all such disagreements consistent initially with Section 10 of these General Conditions and thereafter if not resolved, in accordance with Section 11. As part of the negotiation process, CM@Risk shall furnish Owner and Design Professional with a good faith estimate of the costs to perform the disputed services or work in accordance with Owner's interpretations. If the parties are unable to agree, and Owner expects CM@Risk to promptly perform the services in accordance with Owner's or Design Professional's interpretations of the documents, CM@Risk shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to CM@Risk directing CM@Risk to proceed and specifying Owner's or Design Professional's interpretation of the services that are to be performed.

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

10.5 EMERGENCIES.

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

SECTION 11

REQUESTS FOR CONTRACTUAL ADJUSTMENTS AND DISPUTE RESOLUTION

11.1 DISPUTE AVOIDANCE AND RESOLUTION.

11.1.1 The parties are fully committed to interacting and working with each other through the course of the Project, and agree to communicate regularly with each other at all times, including attending weekly on-site design and construction status meetings, so as to avoid, eliminate, or minimize any disputes, disagreements, claims, or controversies relating to the Project, (hereinafter "Disputes"). To the extent Disputes arise during the course of the Project that are not otherwise resolved by applicable portions of this Agreement, both CM@Risk and Owner agree to timely 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 CM@Risk'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 CM@Risk knew or should have known of the matter, provided however, a request for adjustment based on time or delay must proceed under Section 9, and a request for adjustment to Contract Price or Contract Time must proceed under Section 10.

11.1.2 In the event a Dispute cannot be resolved through CM@Risk's Representative and Owner's Representative in accordance with Section 11.1.1, the CM@Risk'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 CM@R to pursue the Dispute is to submit the Dispute to Owner in accordance with the applicable provisions of the Arizona Board of Regents' Policy Section 3-809.

11.1.3 The parties understand and agree that the process set forth in Section 11.1, Section 11.2, and in ABOR Policy Section 3-809, provide the sole and exclusive remedy to resolve a Dispute.

OR – LANGUAGE NOT DECIDED YET

11.1.3 The parties understand and agree that the process set forth in Section 11.1, 11.2, and in ABOR Policy Section 3-809, provide the sole and exclusive remedy to resolve a Dispute. The

parties further understand and agree that asserting the Dispute in accordance with Section 11.1.1 and 11.1.2 is integral and essential to the parties' ability to perform their obligations under this Agreement. Failure to properly utilize the procedures in Section 11.1.1 and 11.1.2 exposes the non-utilizing party to damages which are difficult to accurately quantify and ascertain. The Parties agree that failure to properly utilize the procedures in Section 11.1.1 and 11.1.2 will require the non-utilizing party to pay the other party \$_____ as liquidated damages, and not as a penalty.

11.2 ADMINISTRATIVE HEARING PROCESS.

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

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

11.3 CONSEQUENTIAL DAMAGES.

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

11.4 DECISIONS OF DESIGN PROFESSIONAL OR OWNER.

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

SECTION 12 STOP WORK AND TERMINATION

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

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

12.1.2 Upon seven (7) calendar days written notice to CM@Risk, Owner may, without cause and without prejudice to any other right or remedy of Owner, elect to terminate the Agreement for convenience of the Owner. In such case CM@Risk shall be paid (without duplication of any items): a) for completed and accepted Work executed in accordance with Contract Documents prior to the effective date of the termination, including fair and reasonable sums for overhead and profit on such Work; b) for expenses sustained prior to termination in performing services and furnishing labor, materials and equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such

expenses; c) for all claims, costs, losses and damages incurred in settlement of terminated contracts with such Subcontractors, suppliers and others and d) for reasonable expenses directly attributable to termination.

12.1.3 Upon receiving a Notice of Termination for Convenience, the CM@Risk shall proceed as follows: a) stop work as specified in the Notice, b) place no further subcontracts on purchase orders, c) terminate all subcontracts to the extent they relate to the Work terminated, d) assign to the Owner all rights of the CM@Risk under terminated subcontracts, in which case Owner shall have the right to settle or to pay any termination settlement proposal arising out of these terminations, and e) submit complete termination inventory schedules to Owner no later than one hundred twenty (120) calendar days from date of the Notice of Termination.

12.2 OWNER'S RIGHT TO PERFORM AND TERMINATE FOR CAUSE.

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

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

12.2.3 CM@Risk agrees that in the event that Owner terminates the Agreement for cause and such termination is ultimately determined to be improper or wrongful, the Termination for Cause

will be automatically and retroactively converted to a Termination for Convenience and the provisions of Section 12.1 of these General Conditions shall apply.

12.2.4 The parties agree that if CM@Risk institutes or has instituted against it a proceeding under the United States Bankruptcy Code, such event may impair or frustrate CM@Risk's performance of its obligations under the Contract Documents. Accordingly, if such event of default occurs, Owner shall be entitled to request CM@Risk, its trustee or other successor, to provide adequate assurance of future performance and CM@Risk agrees such request must be complied with. If CM@Risk fails to comply with such request within ten (10) days after receiving notice of the request, Owner, in addition to any other rights and remedies provided by the Contract Documents, or by law, shall be entitled to terminate the Agreement. Owner shall thereupon be entitled to perform and furnish through itself or through others any such labor, materials or equipment necessary for the completion of the Work and necessary to maintain the Contract Time(s) of performance, and to deduct the costs from any monies due or to become due CM@Risk under the Contract Documents pending receipt of adequate assurances of performance and actual performance in accordance herewith. In the event of any such bankruptcy proceedings, the Agreement shall terminate if CM@Risk rejects the Agreement or if there has been a default under the Contract Documents, and CM@Risk is unable to give adequate assurances that it will perform as provided in the Contract Documents or otherwise is unable to comply with the requirements for assuming the Agreement under the applicable provisions of the Bankruptcy Code.

12.3 CM@RISK'S RIGHT TO STOP WORK AND TERMINATE FOR CAUSE.

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

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

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

SECTION 13
MISCELLANEOUS

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

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

13.3 GOVERNING LAW. Interpretation of the Contract Documents and any and all disputes arising under or in connection with the Project, Work and Contract Documents shall be governed by Arizona Law. 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, CM@Risk agrees to be bound by the Arizona Board of Regents' Procurement Code Dispute Resolution Procedures and by execution of the Agreement waives any objections to those procedures.

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

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

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

13.7 NOTICE. Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (a) if delivered in person to the individual intended to receive such notice; (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.

13.8 NON-APPROPRIATION; NON-AVAILABILITY OF FUNDS. If Owner's performance under this Agreement or funds available for this Project and/or Work are dependent upon (i) the appropriation or allocation of funds by the Arizona Legislature, and if the Legislature fails to appropriate or allot funds necessary for performance of the Project and/or Work, (ii) the sale of bonds or other similar instruments, and if such bonds or other instruments are not sold or proceeds are not available, or (iii) third party gifts, donations or grants, and if such gifts,

donations or grants are not received in whole or in part by Owner; then Owner may provide notice of this to the CM@Risk, and either a) cancel this Agreement without further obligation of Owner except as set forth at the end of this paragraph, or b) delay the Project and/or Work for a period of up to six (6) months (without cost to the Owner), after which date if no such funds are legally available for performance of this Agreement, Owner may cancel this Agreement without further obligation of Owner, except as set forth at the end of this paragraph. If cancellation occurs, Owner shall reimburse CM@Risk for all services authorized and rendered prior to lack of funds in the manner set forth in Section 2.2.2.3.

13.9 CONFLICT OF INTEREST

13.9.1 This Agreement is subject to the provisions of Arizona Revised 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.

13.10 COMPLIANCE AND LEGAL WORKER REQUIREMENTS

13.10.1 The parties shall comply with all applicable state and federal statutes and regulations governing equal employment opportunity, non-discrimination, and immigration. The aforesaid provisions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. CM@Risk shall post in conspicuous places, available for employees and applicants for employment, notices to be provided by the Owner, setting forth the provisions of this nondiscrimination clause and shall insert this provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

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

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

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

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

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

13.12 Intentionally omitted.

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

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

13.15 SCRUTINIZED BUSINESS OPERATIONS. Pursuant to A.R.S. §§ 35-391.06(A) and 35-393.06(B), CM@Risk 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.

13.16 VETERAN'S PREFERENCE. CM@Risk agrees to provide preference in initial employment for U.S. veterans by:

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

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

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

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

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

SECTION 14 SECURITY

[INSTRUCTION TO DRAFTER – SECTION 14 – OPTIONAL LANGUAGE]

14.1 SECURITY.

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

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

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

14.1.4 Additional Owner Rights Regarding Security Inquiries. In addition to the foregoing, Owner reserves the right to: (1) have an employee/prospective employee of CM@Risk be

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

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

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

ATTACHMENT 1

PERFORMANCE AND PAYMENT BOND FORMS

ATTACHMENT 2

AMENDMENT AND CHANGE ORDER PRICING FORMAT – SAMPLE