
ARIZONA STATE UNIVERSITY-
STANDARD FORM AGREEMENT BETWEEN OWNER AND CM@RISK
ON THE BASIS OF A GUARANTEED MAXIMUM PRICE
May 8, 2012 Edition

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This “**Agreement**” is made this [redacted] day of [redacted] in the year [redacted], by and between **OWNER: ARIZONA BOARD OF REGENTS** for and on behalf of Arizona State University, located at [redacted], Arizona and **Construction Manager at Risk (CM@RISK):** [redacted], located at [redacted], (each a “Party” or collectively the “Parties”) for services in connection with the following **PROJECT:** (number, name, location, and general description) (the “Project”) [redacted], the Construction Documents for which are or will be prepared by [redacted] (“Design Professional” or “DP”).

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

Article 1 Scope of Work

1.1 CM@Risk shall perform all needed services in the Pre-Construction and Construction Phases of the Project, and provide all material, equipment, tools, and labor necessary to satisfactorily complete all work, deliverables and services described in and reasonably inferable from the Contract Documents (collectively “Scope of Work”, “Project Work” or “the Work”). The Parties agree that this Agreement shall not be effective as a contract for Construction Phase services until such time as the parties agree on a Guaranteed Maximum Price (GMP) and Construction Phase Fee in the form of a written amendment to this Agreement specifically incorporating those contract terms.

[1.1.1 – INSTRUCTION TO DRAFTER – ALTERNATE LANGUAGE BELOW IF SUBPHASING OF PRE-CONSTRUCTION SERVICES IS REQUIRED. THE CLAUSE IS ACCEPTABLE IN FORM, AND DOES NOT NEED TO BE EXPLICITLY APPROVED BY THE ARIZONA BOARD OF REGENTS PRIOR TO NEGOTIATION OF THE AGREEMENT. INSERT PHASE NUMBER I, II, ..., AND TITLE OF SUBPHASE, E.G., “Phase I is defined to include the Programming and Conceptual Design subphases of the Pre-Construction Phase.”

1.1.1 Subphasing of Pre-Construction Phase. Phase I is defined to include the subphases of the Pre-Construction Phase. Phase II is defined to include the subphases of the Pre-Construction Phase. Current Pre-Construction Phase services are authorized for Phase [x] only.

[1.1.2 – INSTRUCTION TO DRAFTER – ALTERNATE LANGUAGE BELOW IF SUBPHASING OF CONSTRUCTION SERVICES IS REQUIRED – BOTH OF THE BELOW CLAUSES ARE ACCEPTABLE IN FORM, BUT USE OF THESE CLAUSES, AND THE CONCEPT OF PHASING WORK OR MULTIPLE GMPs, MUST BE APPROVED BY THE ARIZONA BOARD OF REGENTS PRIOR TO NEGOTIATION OF THE AGREEMENT.]:

1.1.2 Subphasing of Construction Phase. If the Owner elects to do the construction of the Project in phases, the Owner will give written notice to CM@Risk, requesting a phased GMP. The GMP for the phased Scope of Work will be incorporated into the Agreement according to Section 2.1.10 of the “Exhibit A – CM@Risk General Conditions”.

[OR]

The parties agree that the Work may be completed through multiple, phased GMPs which, with the final GMP, will be rolled into one GMP for the Work. If the Owner elects to require CM@Risk to perform the Work in phased GMPs, the Owner will provide written notice to CM@Risk during the Pre-Construction Phase, requesting an initial GMP for an initial limited Scope of Work. The parties shall thereafter agree on another GMP, or series of GMPs, for the remaining portions of the Work, which shall, when the final phased GMP is proposed, be rolled into one GMP for the Work. The phased GMPs for the phased scopes of the Work will be incorporated into the Agreement according to Section 2.1.10 of the “Exhibit A – CM@Risk General Conditions”. The Bidding Contingency for all phases of Work shall not exceed the agreed percentage as stated in Section 7.11.2 of the “Exhibit A – CM@Risk General Conditions”. This Bidding Contingency will be reconciled at the time of completion of each Phase, or at any time deemed necessary by the Owner, at sole discretion of the Owner.

[IF 1.1.1 IS NOT USED, BUT 1.1.2 IS USED, DELETE TEXT OF 1.1.1 AND INSERT “INTENTIONALLY OMITTED” AFTER “1.1.1 SUBPHASING OF PRE-CONSTRUCTION PHASE.”]:

1.2 The CM@Risk shall provide services for the Pre-Construction Phase in accordance with this Agreement, “Exhibit A – CM@Risk General Conditions”, and “Exhibit B – [CM@Risk’s Company Name] Pre-Construction Services Proposal Dated [Month Day, Year]”.

During the Pre-Construction Phase the CM@Risk shall prepare a cost estimate and provide a GMP, using the format set forth in “Exhibit C – Cost of the Work – Schedule of Values” (blank

template), which excludes the Pre-Construction Phase Fee, for the Owner’s review and approval for all the Work required to complete the Project. If the GMP proposed by the CM@Risk is acceptable to the Owner, the Parties agree to execute an amendment to this Agreement, in the form provided on “Exhibit D – Form of Amendment – GMP and Construction Phase Fee” hereto, to establish the GMP and Construction Phase Fee, and to incorporate herein the Design Submission Documents and other Contract Documents, CM@Risk assumptions and clarifications as may be necessary to define the Scope of Work as in “Exhibit E – Design Submission Documents”, “Exhibit F – Statement of All Clarifications and Assumptions”, and “Exhibit G – Schedule of Major Milestones” hereto. (If the GMP is not within the Owner’s Project Budget, the Owner reserves the right to terminate this Agreement or act as otherwise provided for in the “Exhibit A – CM@Risk General Conditions”.)

Article 2 Contract Documents

2.1 The “Contract Documents” are comprised of the following. In the event of a conflict in the Contract Documents, the Contract Documents will be applied in the following order of precedence:

2.1.1 This Agreement without Exhibits.

2.1.2 Exhibit A to this Agreement – “CM@Risk General Conditions”.

2.1.3 Owner’s Project Criteria developed by Owner, and Design Professional program (if any), with the Criteria taking precedence over the program, unless and to the extent specifically modified by one of the subsequent documents..

2.1.4 Exhibit C – Cost of the Work – Schedule of Values
Exhibit F – Statement of All Clarifications and Assumptions
Exhibit G – Schedule of Major Milestones

For the purposes of order of precedence only, these three documents will be treated as one document.

2.1.5 Exhibit E to this Agreement – “Design Submission Documents”.

2.1.6 Exhibit B to this Agreement – “[CM@Risk’s Company Name’s] Pre-Construction Services Proposal dated [Month Day, Year], as subsequently modified by addenda, amendments or change orders.

2.1.7 The following other documents, if any, forming part of the Agreement: [List, for example, Unit Price Schedules, CM@Risk’s Allowances, Owner’s Permit List, if any, and other Contract Documents].

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

2.1.9 The CM@Risk’s qualifications submission, as required by the RFQ, including any clarifications and revisions of the submission.

Article 3 Interpretation and Intent

3.1 The Contract Documents are complementary and must be interpreted in harmony so as to avoid conflict or ambiguity, with words and phrases interpreted consistent with construction and design industry standards.

3.2 Terms, words and phrases used in the Contract Documents shall have the meanings as defined in the “Exhibit A – CM@Risk General Conditions” or if not specifically defined, their ordinary and common meaning.

3.3 The Contract Documents form the entire Agreement between Owner and CM@Risk and by incorporation herein are as fully binding on the parties as if set forth herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

Article 4 Ownership of Documents

4.1 The Owner, through its separate agreement with the Design Professional, has and shall continue to have ownership of all drawings, specifications, and other documents and electronic data furnished by Design Professional.

4.2 The Owner shall also have ownership of documents or electronic data similar to those described in Article 4.1 above created by or in the possession of CM@Risk as well as any estimates, schedules, value engineering submissions, or other work product or deliverable furnished by CM@Risk to Owner.

Article 5 Contract Time

5.1 Owner and CM@Risk mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents. CM@Risk understands that the time(s) for completion(s) set forth in these documents are essential to the Owner and a material consideration for this Agreement.

5.2 For the Pre-Construction Phase Services the Work and Contract Time shall commence within five (5) days of execution of this Agreement, unless the parties mutually agree otherwise

in writing. For the Construction Phase Services the Work and Contract Time shall commence within five (5) days of CM@Risk's receipt of Owner's Notice-to-Proceed (NTP), unless the parties mutually agree otherwise in writing.

5.3 Substantial Completion.

5.3.1 Substantial Completion of the Work (the Substantial Completion Date) shall be achieved no later than [REDACTED ()] calendar days after receipt of the NTP, or by date certain [REDACTED], subject to adjustments in accordance with the Contract Documents. [INSTRUCTION TO DRAFTER – CHOOSE # OF CALENDAR DAYS OR DATE CERTAIN, BUT NOT BOTH].

5.3.2 Interim milestones and/or Substantial Completion of identified portions or phases of the Work shall be achieved as follows, subject to adjustments in accordance with the Contract Documents: [REDACTED]

[INSTRUCTION TO DRAFTER – INSERT "N/A" IF NO INTERIM MILESTONES NOR PHASED SUBSTANTIAL COMPLETION DATES.]

5.4 Final Completion.

5.4.1 Final Completion of the Work or portion or phase thereof shall be achieved within [REDACTED ()] calendar days after the date established for Substantial Completion of the Work, or by date certain [REDACTED], unless otherwise mutually agreed by amendment or change order. [INSTRUCTION TO DRAFTER – CHOOSE # OF CALENDAR DAYS OR DATE CERTAIN, BUT NOT BOTH].

5.4.2 Interim milestones and/or Final Completion of identified portions or phases of the Work shall be achieved as follows, subject to adjustments in accordance with the Contract Documents: [REDACTED]

[INSTRUCTION TO DRAFTER – INSERT "N/A" IF NO PHASED FINAL COMPLETION DATES.]

5.5 **Liquidated Damages.** CM@Risk understands and acknowledges that if Substantial Completion is not achieved by the Substantial Completion Date provided in Article 5.3.1, and Article 5.3.2 above for identified portions or phases of the Work, Owner will suffer damages, which are difficult to accurately quantify and ascertain. CM@Risk agrees that if Substantial Completion for each portion or phase of the Work is not timely achieved, CM@Risk shall pay Owner [REDACTED] dollars (\$ [REDACTED]) per day as liquidated damages for each calendar day that Substantial Completion for each portion or phase extends beyond the Scheduled Substantial Completion Date(s). In addition, if Final Completion is not attained within the time period defined by Article 5.4 above, CM@Risk shall pay Owner [REDACTED] dollars (\$ [REDACTED]) per day

as additional liquidated damages for each calendar day that Final Completion extends beyond the required date. The liquidated damages provided for herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature incurred by Owner which are occasioned by any delay in CM@Risk achieving Substantial Completion or Final Completion on or after the established dates.

[INSTRUCTION TO DRAFTER – UTILIZE LIQUIDATED DAMAGES WORKSHEET FOR LD AMOUNTS]

Article 6 Pre-Construction Phase Fee and Guaranteed Maximum Price

6.1 Owner shall pay CM@Risk a Pre-Construction Phase Fee for the Pre-Construction services and a Construction Phase Fee for Construction services as provided in the Contract Documents. The CM@Risk’s Construction Phase Fee, plus the Cost of the Work, Contingencies and Allowances, each as defined in the “Exhibit A – CM@Risk General Conditions”, will comprise the GMP to be established in compliance with the “Exhibit A – CM@Risk General Conditions”. Unless otherwise agreed to, CM@Risk’s GMP is deemed to include all required sales, use, as well as all applicable bond and insurance costs.

6.1.1 The Pre-Construction Phase Fee, as defined in Section 1.2.24 of the “Exhibit A – CM@Risk General Conditions”, shall be fixed at [REDACTED] dollars (\$[REDACTED]). [INSTRUCTION TO DRAFTER - IF SUBPHASING OF PRE-CONSTRUCTION SERVICES IS REQUIRED, INSERT FEE INFORMATION FOR EACH PHASE, AS DEFINED IN ARTICLE 1.1.1.]

6.1.2 The Construction Phase Fee, as defined in Section 1.2.7 of the “Exhibit A – CM@Risk General Conditions”, shall be a fixed fee, shall be set forth in written amendment to this Agreement described in Article 1.1 above and, if approved by the Owner, shall be incorporated into this Agreement as a fixed dollar fee contract term.

6.2 If the GMP requires an adjustment due to changes in the Scope of Work during the Construction Phase, the cost of such changes shall be priced under Section 10 of the “Exhibit A – CM@Risk General Conditions”.

6.3 For Owner-caused construction delays, either agreed to or awarded, CM@Risk will provide all the necessary extended Construction General Conditions for a daily sum as provided for in Sections 9.6 and 10.4 of the “Exhibit A – CM@Risk General Conditions”. The specific amount of extended Construction General Conditions will be determined by the Owner on a case-by-case basis prior to issuance of a change order and must be determined to be fair and reasonable to the satisfaction of the Owner and the Design Professional.

Article 7 Procedure for Payment

7.1 Progress Payments. For Pre-Construction Services, CM@Risk shall submit to Owner on the last business day of each month CM@Risk’s Application for Payment based on the percentage completed for each Pre-Construction Design Phase as agreed to by the Owner. Payment for CM@Risk’s Construction Services shall be made in accordance with Section 7 of the “Exhibit A – CM@Risk General Conditions”. All costs, which exceed the GMP and are not authorized by change order, are to be paid by the CM@Risk and not the Owner.

7.2 Record Keeping and Finance Controls. With respect to all Work performed by CM@Risk, its Subcontractors and Consultants under this Agreement, CM@Risk, its Subcontractors and any Consultants, shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles, and subject to approval by the Owner. During performance of the Work and for five (5) years after Final Payment, the CM@Risk shall retain and shall also require all Subcontractors and any Consultants to retain for review and/or audit by the Owner all correspondence, meeting minutes, memoranda, electronic media, books, accounts, reports, files, time cards, material invoices, payrolls, and evidence of all communications, direct and indirect costs and all other matter related to the Work. Upon request by the Owner, a legible copy or the original of any or all such records shall be produced by the CM@Risk at any time during or after the Work as the Owner may request. The CM@Risk shall submit to the Owner upon request all payrolls, reports, estimates, records and any other data concerning Work performed or to be performed and concerning materials supplied or to be supplied, as well as Subcontractor or any Consultant payment applications or invoices and such Subcontractor’s or any Consultant’s progress payment checks. The requirements of this Article shall be provided for in all contracts between the CM@Risk and its Subcontractors and any Consultants employed by the CM@Risk.

Article 8 Termination for Convenience

8.1 This Agreement may be terminated for the convenience of Owner as provided for in Section 12.1 of the “Exhibit A – CM@Risk General Conditions”.

Article 9 Representatives of the Parties; Authority

9.1 Owner’s Representatives.

9.1.1 Owner designates [REDACTED].
(name, title, university name and address)

as its **Construction Phase Senior Representative (“Owner’s Senior Representative”)**, which individual has the authority and responsibility set forth in the Contract Documents, including the authority and responsibility for avoiding and resolving disputes under Section 11 of the “Exhibit A – CM@Risk General Conditions”.

9.1.2 Owner designates [REDACTED].
(name, title, university name and address)

as its **Design Phase “Representative”**, which individual has the authority and responsibility set forth in the Contract Documents.

9.1.3 Owner designates [REDACTED].
(name, title, university name and address)

as its **Construction Phase “Representative”**, which individual has the authority and responsibility set forth in the Contract Documents.

9.2 CM@Risk’s Representatives.

9.2.1 CM@Risk designates [REDACTED].
(name, title, company name and address)

as its **Senior Representative (“CM@Risk’s Senior Representative”)**, which individual has the authority and responsibility set forth in the Contract Documents, including the authority and responsibility for avoiding and resolving disputes under Section 11 of the “Exhibit A – CM@Risk General Conditions”.

9.2.2 CM@Risk designates [REDACTED].
(name, title, company name and address)

as its **Project Management “Representative”** which individual has the authority and responsibility set forth in the Contract Documents.

9.2.3 CM@Risk designates [REDACTED].
(name, title, company name and address)

as its **“Construction Superintendent”**, which individual has the authority and responsibility set forth in the Contract Documents.

9.2.4 CM@Risk’s Representatives and Construction Superintendent, as approved by the Owner, shall not be replaced without the Owner’s prior written approval.

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

Article 10 Bonds and Insurance

10.1 Prior to, and as a condition for, the CM@Risk to perform Pre-Construction Phase Services, CM@Risk shall procure, deliver and maintain insurance coverage as provided in Section 6 of the “Exhibit A – CM@Risk General Conditions”. Prior to, and as a condition for, CM@Risk to perform Construction Phase Services and Owner issuance of a Notice-To-Proceed, CM@Risk shall procure, deliver and maintain Performance and Payment Bonds and insurance coverage, as provided in Section 6 of the “Exhibit A – CM@Risk General Conditions”.

CM@RISK:

OWNER:

[CM@Risk Company Name]
By Its Authorized Representative

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

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

(Date)

(Date)

EXHIBIT A
CM@Risk General Conditions
dated [Month Day, Year]

(x pages)

[INSTRUCTION TO DRAFTER – ATTACH COMPLETED CM@RISK GENERAL CONDITIONS
DOCUMENT AT TIME OF MAIN AGREEMENT.]

EXHIBIT B
[CM@Risk's Company Name] Pre-Construction Phase Proposal
dated [Month Day, Year]

(x pages)

[INSTRUCTION TO DRAFTER – ATTACH FINAL CM@RISK PRE-CONSTRUCTION SERVICES
PROPOSAL TIME OF MAIN AGREEMENT.]

EXHIBIT C
Cost of the Work – Schedule of Values (blank template)

(Twelve (12) pages - template)

(TBD pages – final document)

[INSTRUCTION TO DRAFTER – ATTACH BLANK TEMPLATE EXHIBIT C HERE. DO NOT
INSERT ANY INFORMATION IN THE TEMPLATE DOCUMENT AT TIME OF MAIN
AGREEMENT.]

EXHIBIT D
Form of Amendment - GMP and Construction Phase Fee

(Two (2) pages - template)
(TBD pages – final document)

[INSTRUCTION TO DRAFTER – ATTACH BLANK TEMPLATE EXHIBIT D HERE. DO NOT
INSERT ANY INFORMATION IN THE TEMPLATE DOCUMENT AT TIME OF MAIN
AGREEMENT.]

EXHIBIT E

(To be Incorporated by Amendment - Design Submission Documents necessary to define Scope of Work and Deliverables for the Construction Phase Services, including plans, designs, drawings, specifications and other required Contract Documents)

(TBD pages)

[INSTRUCTION TO DRAFTER – THIS EXHIBIT COVER PAGE IS FOR REFERENCE ONLY AT TIME OF MAIN AGREEMENT. THE ACTUAL DOCUMENT WILL BE ATTACHED VIA AMENDMENT AT TIME OF GMP.]

EXHIBIT F
(To be Incorporated by Amendment – Statement of All Clarifications and Assumptions)

(TBD pages)

[INSTRUCTION TO DRAFTER – THIS EXHIBIT COVER PAGE IS FOR REFERENCE ONLY AT TIME OF MAIN AGREEMENT. THE ACTUAL DOCUMENT WILL BE ATTACHED VIA AMENDMENT AT TIME OF GMP.]

EXHIBIT G
(To be Incorporated by Amendment - the Schedule of Major Milestones)

(TBD pages)

[INSTRUCTION TO DRAFTER – THIS EXHIBIT COVER PAGE IS FOR REFERENCE ONLY AT TIME OF MAIN AGREEMENT. THE ACTUAL DOCUMENT WILL BE ATTACHED VIA AMENDMENT AT TIME OF GMP.]