# Risk Pool Plan Template for Project ConsensusDocs Template #1\*

**Introduction**: The general intent of this Risk Pool Plan is for the Risk Pool Members to (1) put 100% of their Profit at risk for those costs for which the Risk Pool Members are responsible under the Agreement and (2) share in the savings generated by the IPD Team in delivering the Project for an Actual Cost below the EMP. The Risk Pool, to the extent any balance remains, is only distributed to the Risk Pool Members as part of final payment.

**Risk Pool Members & Amounts**:

|  |  |  |  |
| --- | --- | --- | --- |
| Risk Pool Member | Profit | Risk/ Reward % | Change Order Markup |
| Design Professional | $ | % | % |
| [Consultant #1] | $ | % | % |
| [Consultant #2] | $ | % | % |
| [Consultant #3] | $ | % | % |
| Constructor | $ | % | % |
| [Trade #1] | $ | % | % |
| [Trade #2] | $ | % | % |
| [Trade #3] | $ | % | % |
| **Total** | **Risk Pool = $** | **100%** | **n/a** |

**Expected Cost: $**

**Target Cost: $**

Risk Pool Plan terms and conditions are on the following pages.

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1. INTRODUCTION AND DEFINITIONS
   1. The following words and phrases have the following associated meanings in the Risk Pool Plan. Words and phrases defined in the Agreement have the same meanings in this Risk Pool Plan unless otherwise specifically provided below. Unless specifically provided otherwise, section references are to sections in this Risk Pool Plan.

***Agreement*** means [insert name, parties and date of agreement].

***EMP Savings*** is the positive value, if any, resulting from subtracting the Actual Cost from the EMP. If the Actual Cost exceeds the value of the EMP, as adjusted per the Agreement, then the value of EMP Savings is zero dollars.

***Limitation on Liability*** means Section 12.6 of the Agreement.

***Change Order Markup*** is a Risk Pool Member’s maximum percentage mark-up on Payable Costs for a change in the Work or Services in order to adjust Profit, as established on page 1.

***Risk/Reward %*** is the percentage share of each Risk Pool Member in the Risk Pool, as established on page 1.

1. RETAINAGE
   1. Owner shall not pay out any Profit to a Risk Pool Member until after Final Completion, on the terms of this Risk Pool Plan, but shall not hold retention on Payable Costs of a Risk Pool Member except as provided in Section 2.2.
   2. Owner shall retain from Constructor (who shall in turn retain from the applicable Subcontractor) 10% of each Construction Phase progress payment to a non-Risk Pool Member Subcontractor until construction is 50% complete, with no further retainage after that point. Upon Substantial Completion, retainage will be released in the next payment except for a final holdback of 150% of the Core Group’s estimated value of correcting the incomplete Work or Defective Work of that Subcontractor. The final balance of retainage will be included in the final payment to Constructor for final payment to each applicable Subcontractor. Constructor may, with Core Group approval, reduce retainage to zero dollars for selected Subcontractors whose work is complete and accepted.
2. CHANGE ORDERS; ESCALATION
   1. Profit Adjustment for Change Orders.
      1. If a change in the Work or Services triggers an increase to the EMP under Article 15 of the Agreement, then to the extent a Risk Pool Member incurs additional Payable Costs for such change that Risk Pool Member may claim an equitable adjustment to its Profit. The amount of such adjustment will be determined by the Core Group in a Change Order based on the equities of the situation, but may not exceed the amount of the Risk Pool Member’s Change Order Markup multiplied by the estimated or, if the changed Work or Services are completed, the actual Payable Costs for the Risk Pool Member in performing the changed Work or Services.
      2. For deductive changes in a Risk Pool Member’s Work or Services, the Core Group will determine if and to what extent such deductive change will result in a reduction in the Risk Pool Member’s Profit, taking into account whether and to what extent the deductive change is due to innovation or efficiencies by the team, the magnitude of the reduction, whether and to what extent the Owner has directed the change as part of a re-evaluation of the Project Business Case, and the equities of the situation.
   2. Escalation Allowance Adjustments.
      1. The Risk Pool Members’ Profit was determined on the assumption of their estimated amounts of escalation included in the escalation allowance in the Expected Cost. If a Risk Pool Member experiences an increase in its incurred unit prices for labor and materials from the estimated unit prices in the Contract Documents (“escalation”), the Payable Costs associated with that escalation shall be initially funded from the escalation allowance and once the escalation allowance is exhausted shall result in a Change Order increasing the Expected Cost, Target Cost and EMP. In addition, if a Risk Pool Member experiences escalation with a total value in excess of its estimated amount assumed in the escalation allowance, that member shall also receive a Profit adjustment on that additional incremental increase in labor and material costs above the estimated escalation by applying its Change Order Markup to that additional incremental increase in Payable Costs, which Profit adjustment also shall be initially funded from the escalation allowance, and once the escalation allowance is exhausted such Profit adjustment shall result in a Change Order increasing the Expected Cost, Target Cost and EMP. However, no increase to the Expected Cost, Target Cost or EMP for a Risk Pool Member’s Profit due to escalation shall be made to the extent that the Core Group determines that the IPD Team failed to take appropriate measures to protect the Project against foreseeable escalation in that Risk Pool Member’s labor and materials costs.

*The following example demonstrates the application of Section 3.2(a):*

*Assume a Risk Pool Member has estimated $100,000 in escalation at the time of the Expected Cost, which is included as part of the overall $500,000 escalation allowance. Assume further that the Risk Pool Member’s Change Order Markup is 15%. If the Risk Pool Member actually experiences escalation totaling $110,000, then the Risk Pool Member’s $110,000 of Payable Costs will be funded from the escalation allowance. In addition, the Risk Pool Member’s Profit would be increased by 15% of the $10,000 incremental additional escalation beyond its $100,000 estimated escalation, for a Profit adjustment of $1,500. This is also funded from the escalation allowance. Assuming that the other Risk Pool Members experience the same amount of escalation as they estimated in the Expected Cost (i.e., $400,000), then the escalation allowance is fully consumed, with the remaining $11,500 in escalation costs (i.e., $500,000 escalation allowance less $510,000 in actual escalation less $1,500 Profit adjustment) to be addressed by Change Order, increasing the Expected Cost, Target Cost and EMP by $11,500.*

* + 1. If a Risk Pool Member experiences less than the full amount of its estimated escalation, the unused amount of that member’s estimate of escalation in the escalation allowance shall be released for use by other Risk Pool Members for escalation at the time that Risk Pool Member is no longer at risk for escalation in its procurement. The Profit of such a Risk Pool Member shall not be decreased unless such unused amount is greater than [20%] of the total estimated amount of escalation for that Risk Pool Member in the escalation allowance, in which case the Profit for such Risk Pool Member shall be decreased by the amount of its Change Order Markup multiplied by the estimated Payable Costs saved by the applicable Risk Pool Member due to lower than estimated escalation.

*The following example demonstrates the application of Section 3.2(b):*

*Assume a Risk Pool Member has estimated $100,000 in escalation at the time of the Expected Cost, which is included as part of the overall $500,000 escalation allowance. Assume further that the Risk Pool Member’s Change Order Markup is 15%. If the Risk Pool Member actually experiences escalation totaling $90,000, then the Risk Pool Member’s $90,000 of Payable Costs will be funded from the escalation allowance. Because the $10,000 of unused escalation is only 10% of its total estimated escalation, there is no reduction in the Risk Pool Member’s Profit. At the same time, the unused $10,000 is released for use by other Risk Pool Members to cover their escalation. Assuming that the other Risk Pool Members experience the same amount of escalation as they estimated in the Expected Cost (i.e., $400,000), then the escalation allowance will have a balance of $10,000 when all procurement activities are complete, resulting in a deductive Change Order to the Expected Cost, Target Cost and EMP of $10,000.*

* + 1. If on a net basis a Risk Pool Member experiences a reduction from its estimated unit prices for labor and materials costs in the Contract Documents to the actual unit prices in effect when it incurs such costs (“de-escalation”), the amount of estimated savings in Payable Costs due to the de-escalation shall be credited to the escalation allowance at the time that Risk Pool Member is no longer at risk for escalation in its procurement. The Profit of such a Risk Pool Member shall be decreased by the amount of its Change Order Markup multiplied by the estimated Payable Costs saved by the applicable Risk Pool Member due to lower than estimated escalation, but the Core Group may further limit the amount of the decrease in Profit to prevent inequity.

*The following example demonstrates the application of Section 3.2(c):*

*Assume a Risk Pool Member has estimated $100,000 in escalation at the time of the Expected Cost, which is included as part of the overall $500,000 escalation allowance. Assume further that the Risk Pool Member’s Change Order Markup is 15%. If the Risk Pool Member actually experiences a net de-escalation in its labor and materials unit pricing, so that no amount of its estimated $100,000 in escalation is used and the Risk Pool Member saves $10,000 in Payable Costs, then the Risk Pool Member’s $100,000 of estimated escalation in the escalation allowance is released for use by other Risk Pool Members for escalation. In addition, the $10,000 of de-escalation savings is credited to the escalation allowance, increasing it to $510,000. The Risk Pool Member’s Profit is also reduced by 15% of the $110,000 in reduced Payable Costs (i.e., the unused $100,000 of estimated escalation plus the de-escalation savings of $10,000), for a deductive adjustment of $16,500 to that member’s Profit. If the Core Group agrees that it would be unfair to reduce that member’s Profit by the full $16,500, it may approve a lesser reduction. Assuming that the other Risk Pool Members experience the same amount of escalation as they estimated in the Expected Cost (i.e., $400,000), then the escalation allowance will have a balance of $110,000 when all procurement activities are complete, resulting in a deductive Change Order to the Expected Cost, Target Cost and EMP of $110,000. In addition, the Expected Cost, Target Cost and EMP would be reduced by the amount of the deductive adjustment to that member’s Profit, which would be another $16,500 reduction or else a smaller amount approved by the Core Group in the interests of fairness.*

* + 1. Any deductive adjustment to the Expected Cost, Target Cost and EMP due to a remaining balance in the escalation allowance shall be made at the point in time when all Payable Costs of Risk Pool Members are no longer subject to the risk of escalation in their procurement or earlier if approved by the Core Group.
  1. Other Allowance Adjustments. If the Expected Cost contains other allowances, the affected Risk Pool Members’ Profit was determined on the rough estimates of cost for the assumed scope included in such allowances. At the time that an allowance amount is reconciled by Change Order, the Profit of the affected Risk Pool Members shall be adjusted alongside their Payable Costs, with the amount of Profit adjustment calculated on the amount of the applicable Risk Pool Member’s Change Order Markup multiplied by the increase or decrease (as applicable) in the Payable Costs for that Risk Pool Member to perform the allowance Work or Services.
  2. Re-calculation of Risk/Reward Shares. The Risk/Reward % of each Risk Pool Member will be automatically recalculated based on the revised Profit amounts of the Risk Pool Members following a change in the Work or Services or other Change Order so that each Risk Pool Member has a Risk/Reward % equal to the ratio of its revised Profit amount to the total amount in the Risk Pool. The Core Group shall notify each Risk Pool Member of every Change Order adjusting Profit.

1. COMPENSATION FOR WARRANTY WORK
   1. Notwithstanding anything to the contrary in Section 12.7 of the Agreement, the Parties have agreed that Constructor and its Subcontractors that are Risk Pool Members should be compensated for their services associated with correcting Defective Work during the period described in Section 12.7.4 of the Agreement. To this end, Constructor and those applicable Subcontractors may each include a stipulated sum for its warranty services as a line item in the Expected Cost, Target Cost and EMP, in amounts approved by the Core Group. Such stipulated sum will be a Payable Cost of the applicable Risk Pool Member, but shall not be billed nor paid until its application for payment following Substantial Completion.
2. PROFIT AND INCENTIVES AT RISK
   1. All of the Risk Pool is at risk pursuant to the terms of this Risk Pool Plan and the Agreement. If Owner pays Payable Costs and at the time of payment the total amount of invoiced Payable Costs plus the Risk Pool is or becomes a value exceeding the EMP, then Owner may deduct the excess amount from the Risk Pool up to and until the value of the Risk Pool is zero. If the Risk Pool is exhausted, Owner remains responsible to compensate the Risk Pool Members (by direct payment to the Design Professional or Constructor, as applicable, who shall be responsible for paying their respective subcontractors and consultants) for Payable Costs until Final Completion on the terms of the Agreement.
   2. If, pursuant to Section 10.5 of the Agreement, Payable Costs are funded from the Risk Pool, the amounts so deducted from the Risk Pool will be charged to the overall Risk Pool amount rather than to any single Risk Pool Member or subset of Risk Pool Members. The intent is that all Risk Pool Members bear their Risk/Reward % of cost overruns charged to the Risk Pool.
3. FINANCIAL INCENTIVE PROGRAM
   1. Shared Savings. After Final Completion as part of the process of determining final payment, the Core Group will calculate the EMP Savings, if any, that is added to the Risk Pool. If the Actual Cost at Final Completion is less than the EMP, then [50%] of the EMP Savings will be added to the Risk Pool. If the final value of the Risk Pool after Final Completion is greater than zero dollars, each Risk Pool Member is then entitled to its Risk/Reward % of the Risk Pool.
   2. Payment. Owner will pay the applicable amounts of the final value of the Risk Pool to the Parties as part of final payment, and the Parties will each be separately responsible to pay out the Risk Pool amounts due to any other Risk Pool Members with whom they are in contract. If the Risk Pool has a zero dollar value, Owner will reimburse the Payable Costs incurred by Risk Pool Members in accordance with the Agreement, but no Profit will be earned.
4. UPON TERMINATION OF RISK POOL MEMBER
   1. Termination for Convenience. If a Risk Pool Member is terminated for convenience during the Preconstruction Phase, then Owner will promptly pay the terminated member a pro-rated amount of its Profit based on its percentage completion of work or services on the effective date of termination. If a Risk Pool Member is terminated for convenience after the EMP is established, then Owner shall promptly pay to such terminated member its Risk/Reward % of the Risk Pool as reasonably estimated by the Core Group on the effective date of termination. If the reasonably estimated value of the Risk Pool on the effective date of termination is zero dollars, then the terminated Risk Pool Member shall have no claim on any amount of Profit or distribution from the Risk Pool. Nothing in this Section 7.1 limits the applicability of the Limitation on Liability.
   2. Termination for Default. If a Risk Pool Member is terminated for default, no amount of Profit will be disbursed to such terminated Risk Pool Member until after Final Completion. At the time of termination, the terminated Risk Pool Member's Risk/Reward % of the value of the Risk Pool as reasonably estimated by the Core Group on the effective date of termination will be converted to a dollar value, not to exceed in total the value of such terminated Risk Pool Member's Profit established in this Risk Pool Plan pro-rated to the date of termination based on the percentage completion of such member's work or services. After Final Completion, the terminated Risk Pool Member will be entitled to the converted dollar value, but Owner will have the right to offset the amount of Owner’s costs incurred because of such terminated Risk Pool Member's default to the extent allowed by the Agreement. If the reasonably estimated value of the Risk Pool on the effective date of termination is zero dollars, then the terminated Risk Pool Member shall have no claim on any amount of Profit or distribution from the Risk Pool (including EMP Savings). Nothing in this Section 7.2 limits the applicability of the Limitation on Liability or Owner’s remedies for a Risk Pool Member’s default.
   3. Estimating Value of Profit Pool. In determining the estimated value of the Risk Pool at the effective date of termination, the Core Group must use the estimate of the Actual Cost made at the time closest to the effective date of termination.
   4. Adjustment of Shares. After the termination of a Risk Pool Member, the Risk/Reward % of the remaining Risk Pool Members will be adjusted as mutually agreed by the remaining Risk Pool Members and any new Risk Pool Member(s) brought on to replace the terminated member.

END OF RISK POOL PLAN