# Risk Pool Plan Template for Project ConsensusDocs Template #2\*

**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. Profitability is further conditioned in part on the IPD Team successfully meeting the Key Performance Indicators set out in this Risk Pool Plan. A portion of the Risk Pool is distributed on an interim basis to the Risk Pool Members at certain milestones, subject to certain conditions. The final value of the Risk Pool is adjusted on the terms of this plan and 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].

***Base Interim Distribution*** means the initial calculation of an interim Profit distribution prior to adjustment based on KPI performance, as described in Section 8.3(a).

***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.

***Design Savings Incentive*** is the adjustment to the Risk Pool as a result of TVD savings, as described in Section 7.2.

***Key Performance Indicators (KPI)*** are those metrics of IPD Team performance described in Section 6.1 and Attachment 1.

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

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

***Shared Savings*** is the amount added to the Risk Pool if after Final Completion the Actual Cost is less than the EMP, as calculated and adjusted per Article 10.

***Wish List*** is the list of possible additional scope items for the Project that Owner would consider adding as a change in the Work if the estimated Actual Cost of the Project is sufficiently reduced below the Expected Cost.

1. RETAINAGE
   1. Owner may hold back a certain percentage of Profit for 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. CONSTRUCTOR’S PROFIT FOR SELF-PERFORMED WORK
   1. For self-performed trade Work performed by Constructor on a cost-plus-fee basis:
      1. Constructor’s trade-level overhead shall be compensated through a [10%] mark-up on Constructor’s trade-level direct Payable Costs, and that trade-level overhead will be part of Constructor’s Payable Costs;
      2. Constructor’s trade-level profit shall be compensated through a [5%] mark-up on Constructor’s trade-level direct and indirect Payable Costs, and that trade-level profit will become part of Constructor’s Profit and thus become part of the Risk Pool.
      3. Where Constructor’s self-performed trade Work to be performed on a cost-plus-fee basis is included within the base scope of Work at the time of the Expected Cost, the Profit amount recited on page 1 of this Risk Pool Plan includes Constructor’s trade-level profit on such self-performed Work. Where Constructor self-performs trade Work as a change in the Work, then the adjustment of the Constructor’s Profit for the trade-level profit for such self-performed Work will use the formula in Section 4.1(b), with the Constructor’s general contractor-level profit adjusted as provided in Section 3.1.

*The following example demonstrates the application of Section 4.1:*

*Assume Constructor’s Change Order Markup is 5% and Constructor is self-performing certain trade Work on a cost-plus-fee basis. If there is a change in Constructor’s self-performed trade Work that is estimated to require $10,000 in direct Payable Costs, then the Change Order would increase the Expected Cost, Target Cost and EMP by $12,126, broken down as follows:*

*$10,000 in direct Payable Costs*

*$ 1,000 for trade-level overhead (i.e., $10,000 \* 10% under Sec. 4.1(a))*

*$ 550 for trade-level profit (added to Constructor’s Profit) (i.e., $11,000 \* 5% under Sec. 4.1(b))*

*$ 576 for general contractor-level profit (added to Constructor’s Profit) (i.e., $11,550 \* 5% under Sec. 3.1(a))*

1. COMPENSATION FOR WARRANTY WORK
   1. This Article 5 governs over Section 12.7 of the Agreement to the extent of any conflicts. The Expected Cost, Target Cost and EMP shall include a warranty reserve that will be deemed fully incurred when determining estimates of the Actual Cost. If Constructor or a Risk Pool Member Subcontractor is required to perform corrective work pursuant to Section 12.7.4 of the Agreement, its Payable Costs for such corrective work will be paid by Owner first from the warranty reserve. If at any point the warranty reserve is fully depleted, such Risk Pool Member’s Payable Costs for corrective work will only be paid by Owner at 50% of such amounts, with such Risk Pool Member bearing the remaining costs of corrective work without reimbursement. If, at the conclusion of the corrective work period in Section 12.7.4 of the Agreement, the warranty reserve contains unspent funds, then the unspent funds will be added to the Risk Pool and the final determination of the Risk Pool and its allocations will be re-calculated under this Risk Pool Plan with true-up payments made among Owner and the Risk Pool Members as needed to reconcile past distributions of the Risk Pool with the final re-calculated amounts.
   2. Notwithstanding anything to the contrary in Article 9 of the Agreement, the Payable Costs of Constructor or a Risk Pool Member Subcontractor in performing corrective Work shall be reimbursable on the terms of Article 5 of this Risk Pool Plan even though incurred after Final Completion.
2. PERIODIC PERFORMANCE EVALUATIONS
   1. The IPD Team will have monthly performance evaluations measured against the agreed Key Performance Indicators (KPI). The KPI categories are:

Timely completion of Work & Services

Collaboration

Appropriate quality (encompassing design quality and workmanship)

Sustainability (both in the design and in construction)

Safety (n/a prior to Construction Phase)

Customer satisfaction

* 1. For the first two months of each quarter, the Core Group will make monthly written assessments of the IPD Team’s performance in each KPI metric and overall. In the last month of each quarter, the Core Group will meet with the Senior Executive Team and project leaders of other IPD Team members to hold more detailed in-person evaluations of the IPD Team's performance during the quarter being completed, measured against the KPI. As part of the quarterly in-person evaluations:
     1. Each IPD Team member performing work or services during that period completes a self-assessment of its own performance and the whole team’s performance during the quarter in relation to the KPI, together with a report of any noteworthy achievements or failures it observed in the performance of other IPD Team members;
     2. The Core Group's written assessment of the quarterly performance is provided to each participating IPD Team member in advance of the in-person evaluation;
     3. Based on both the observations of the Senior Executive Team and the assessments completed by each participating IPD Team member and the Core Group, the Senior Executive Team will rate the entire IPD Team’s performance in that quarter in each KPI metric and overall. At the in-person evaluation, the Senior Executive Team will discuss its assessment with the IPD Team and help the IPD Team set goals for improvement.
  2. If the Core Group cannot unanimously make a monthly assessment, the Senior Executive Team shall make the assessment. If, prior to the final evaluation, the Senior Executive Team cannot unanimously agree on the KPI scoring for an assessment, the KPI scoring is not determined by majority vote, but will be determined on an interim basis by Owner's Senior Executive Team representative. Shortly after Substantial Completion, the IPD Team and Senior Executive Team shall perform a final evaluation of performance against the KPI using the same process for the quarterly in-person evaluations, with the additional step of the Senior Executive Team determining a final overall KPI score for the IPD Team’s performance against the KPI for the entire Project. If the Senior Executive Team cannot agree on the final overall KPI score during the final evaluation, then the final overall KPI score shall be determined by an independent third party construction professional mutually selected by the Core Group. The independent third party construction professional must base the final overall KPI score on just four criteria: the safety performance of the construction team, the overall quality of the design, the overall quality of the installed Work, and how well the Project achieved its sustainability goals.
  3. The KPI performance ratings for each category are scored on a scale from 0-5, as is the overall KPI performance rating. The score sheet attached as Attachment 1 describes qualitatively the behaviors evaluated under each KPI performance metric.

1. TARGET VALUE DESIGN INCENTIVES
   1. Added Scope Incentive.
      1. Owner desires to provide incentive to the IPD Team to innovatively design the Owner’s Program for less than the Expected Cost so that additional scope can be added to the Owner’s Program prior to the EMP. To that end, at any point during the Preconstruction Phase that the IPD Team generates savings during the Preconstruction Phase that sufficiently reduces the estimated Actual Cost of the Project below the Expected Cost, the Core Group will recommend to Owner the addition of specified Wish List items as a change in the Work as provided below, but the actual election to include any Wish List item as a change in the Work is in Owner’s sole discretion.  The initial Wish List is part of the Validation Study. Owner may update the Wish List at any time, and the Core Group may recommend that certain items be added to the Wish List, which Owner, in its sole discretion, may choose to include on the Wish List.
      2. As an incentive for Target Value Design, if at a given point the difference between the estimated Actual Cost and Expected Cost is sufficient to cover [135%] of the estimated Payable Costs of a Wish List item and Owner elects to issue a Change Order adding the Wish List item to the Project, then the Change Order will increase the Risk Pool by [35%] of the estimated Payable Costs of the Wish List item. However, where there is not sufficient savings below the Expected Cost, Owner may still elect at any time to issue a Change Order adding a Wish List item, in which case Profit would be adjusted as provided in Section 3.1.

*The following example demonstrates the application of Section 7.1:*

*Assume the Expected Cost is $15,000,000, the Risk Pool is $500,000, and Owner has two Wish List items: WL#1 – upgrade lobby entrance flooring to marble for estimated Payable Costs of $150,000; and WL#2 – add employee fitness center to 5th floor shell space for estimated Payable Costs of $500,000. During design development, the IPD Team identifies about $700,000 in savings if the Owner elects a different kind of curtainwall system that delivers equivalent building performance and has the added benefit of a superior lifecycle cost. The Core Group agrees to adopt the new system, resulting in an updated estimate of the Actual Cost at $14,300,000. The $700,000 in savings is enough to cover 135% of the estimated Payable Costs for either of the two Wish List items, but not both. Owner elects WL#2, with the result that a Change Order is executed that modifies Owner’s Program to change the curtainwall system, add the employee fitness center and increases the Risk Pool by $175,000 while reducing the Expected Cost by $25,000 (i.e., the difference between the $700,000 savings and the Change Order for WL#2).*

* 1. Design Savings Incentive. If at the time the Parties are ready to agree on the EMP the estimated Actual Cost (after including all Change Orders for elected Wish List items but prior to addressing any Design Savings Incentive) is less than the Expected Cost, then the Risk Pool will be increased by a percentage of the difference using the applicable formula below (and the proposed EMP adjusted accordingly):
     + 1. If the difference is less than or equal to $[500,000], then the Risk Pool will be increased by [0%] of the difference;
       2. If the difference is between $[500,000] and $[1,500,000], then the Risk Pool will be increased by [35%] of the difference;
       3. If the difference is between $[1,500,000] and $[3,00,000], then the Risk Pool will be increased by [40%] of the difference; or
       4. If the difference is more than $[3,000,000], then the Risk Pool will be increased by [50%] of the difference, provided that the total Design Savings Incentive may not exceed [50%] of the pre-adjusted balance of the Risk Pool.

*The following examples demonstrates the application of Section 7.2:*

*Example 1. Assume the Expected Cost is $25,000,000 and the estimated Actual Cost at the time of the EMP is $23,000,000. Since the difference between Expected Cost and estimated Actual Cost is $2,000,000, then $800,000 (i.e., 40% of $2,000,000) is the Design Savings Incentive and is added to the Risk Pool, increasing the proposed EMP accordingly.*

*Example 2. Assume the Expected Cost is $300,000,000, the estimated Actual Cost at the time of the EMP is $270,000,000 and the Risk Pool prior to any Design Savings Incentive is $18,000,000. Since the difference between Expected Cost and estimated Actual Cost is $30,000,000, although the general rule would provide 50% of the difference as a Design Savings Incentive, in this case the Design Savings Incentive would be limited to 50% of the pre-adjusted Risk Pool, resulting in $9,000,000 (i.e., 50% of the $18,000,000 pre-adjusted Risk Pool) being added to the Risk Pool, increasing the proposed EMP accordingly.*

* 1. If there is a Design Savings Incentive earned, the earned amount is not available for interim distributions of Profit, but it held by Owner until after Final Completion and remains at risk pursuant to this Risk Pool Plan.

1. INTERIM DISTRIBUTIONS OF PROFIT
   1. Amount Available. Owner will hold [50%] of the Risk Pool established in this Risk Pool Plan until Final Payment. The balance of the Risk Pool (except for any Design Savings Incentive) will be available for distribution to Risk Pool Members on an interim basis at certain Project milestones if certain conditions are met, as provided below. There are no interim milestone distributions of the Design Savings Incentive.
   2. When Distributed. Attachment 2 establishes certain milestones for interim distributions of Profit to Risk Pool Members. Concurrent with reaching a Profit distribution milestone, the Core Group will update the estimate of the Actual Cost. If the estimated Actual Cost at that milestone is equal to or less than the Expected Cost (during Preconstruction Phase) or EMP (during Construction Phase), then the interim Profit distribution is made on the terms of this Article 8.
   3. Amount of Interim Profit Distribution.
      1. Base Interim Distribution. If the Risk Pool Members are entitled to an interim Profit distribution pursuant to this Article 8, then each Risk Pool Member’s Base Interim Distribution will be calculated as follows: [50%] of its Profit shown in the Risk Pool Plan pro-rated based on the party's percentage completion of its Work or Services, with any prior distributions of Profit to that party then subtracted. Expressed as a formula, Base Interim Distribution = ((Profit \* 50%) \* (percentage completion of Work or Services)) - prior distributions of Profit. Note that this formula means that potential interim Profit distributions that were not fully paid at a previous milestone are in effect deferred until such time, if at all, that the estimated Actual Cost is equal to or less than the Expected Cost (during Preconstruction Phase) or EMP (during Construction Phase) at a future Profit distribution milestone.
      2. Adjusted Interim Distribution. If the Risk Pool Members are entitled to an interim Profit distribution at a milestone, then the Base Interim Distribution will be adjusted based on the IPD Team’s overall KPI score from the most recent quarterly performance assessment, using the applicable formula below. Any Profit not distributed at that milestone due to the KPI adjustment will remain in the Risk Pool and be available for future distribution on the terms of this Risk Pool Plan.

KPI Score Adjustment

0 -100% (i.e., no interim distribution)

1 -75% (i.e., only 25% of Base Interim Distribution is made)

2 -40%

3 -10%

4 or 5 0% (i.e., full Base Interim Distribution is made)

* + 1. Payment of the interim Profit distribution, to the extent allowed under this Article 8, will be requested in the next succeeding application for payment and paid as part of that progress payment.
  1. If Project Under-Performs. If, after 50% completion of the Work of the Construction Phase, it appears likely to Owner in its reasonable judgment that the Risk Pool will have a zero dollar value at Final Completion, then Owner will have no further obligation to make interim Profit distributions and may offset prior Profit distributions against future amounts of Payable Costs submitted by the Parties for reimbursement.

*The following example demonstrates the application of Article 8:*

*Assume the Risk Pool (excluding any Design Savings Incentive) is $4,000,000, the IPD Team has reached the second Profit distribution milestone, and that the overall KPI score from the most recent quarterly performance assessment was 3. Assume further that the Risk Pool Members, their total Profit, the amount of their previous Profit distribution and their percentage completion of Work or Services is as follows:*

|  |  |  |  |
| --- | --- | --- | --- |
| *Risk Pool Member* | *Profit* | *Previously Distributed* | *Percent Complete* |
| *Design Professional* | *$ 1,000,000* | *$120,000* | *60%* |
| *Electrical Engineer* | *$100,000* | *$13,000* | *65%* |
| *Structural Engineer* | *$ 150,000* | *$28,500* | *95%* |
| *Constructor* | *$ 1,400,000* | *$84,000* | *30%* |
| *Mechanical Trade* | *$ 450,000* | *$22,500* | *25%* |
| *Electrical Trade* | *$ 550,000* | *$27,500* | *25%* |
| *Plumbing Trade* | *$ 350,000* | *$17,500* | *25%* |

*Given those assumptions, the Base Interim Distributions for the second Profit distribution would be:*

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| *Risk Pool Member* | *Profit \* 50%* | *Less Previously Distributed* | *% Complete* | *Base Interim Distribution* |
| *Design Professional* | *$ 500,000* | *$120,000* | *60%* | *$180,000* |
| *Electrical Engineer* | *$50,000* | *$13,000* | *65%* | *$19,500* |
| *Structural Engineer* | *$ 75,000* | *$28,500* | *95%* | *$42,750* |
| *Constructor* | *$ 700,000* | *$84,000* | *30%* | *$126,000* |
| *Mechanical Trade* | *$ 225,000* | *$22,500* | *25%* | *$33,750* |
| *Electrical Trade* | *$ 275,000* | *$27,500* | *25%* | *$41,250* |
| *Plumbing Trade* | *$ 175,000* | *$17,500* | *25%* | *$26,250* |

*Based on a KPI score of 3, the Base Interim Distribution would be adjusted by -10%, for interim Profit distributions at this milestone as follows:*

|  |  |
| --- | --- |
| *Risk Pool Member* | *Interim Profit Distribution* |
| *Design Professional* | *$162,000* |
| *Electrical Engineer* | *$17,550* |
| *Structural Engineer* | *$38,475* |
| *Constructor* | *$113,400* |
| *Mechanical Trade* | *$30,375* |
| *Electrical Trade* | *$37,125* |
| *Plumbing Trade* | *$23,625* |

1. 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 and Profit is or becomes a value exceeding the EMP, then Owner may deduct the portion of any payments made in excess of the EMP 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 each bear only their Risk/Reward % of cost overruns charged to the Risk Pool.
2. AFTER FINAL COMPLETION
   1. Sharing in Project Savings. Owner desires to motivate the IPD Team to drive down the Payable Costs by sharing certain construction cost savings. The amount of savings added to the Profit Pool is determined based on the overall amount of savings, as described in Section 10.2.
   2. Determining Base Amount of Shared Savings. After Final Completion as part of the process of determining final payment, the Core Group will calculate the base amount of Shared Savings based on the Actual Cost. If after Final Completion the Actual Cost (after including all Change Orders but prior to addressing any Shared Savings) is less than the EMP, then the base amount of Shared Savings will be the percentage of the difference using the applicable formula below:
      1. If the difference is less than or equal to $[500,000], then the base Shared Savings equals [20%] of the difference;
      2. If the difference is between $[500,000] and $[3,000,000], then the base Shared Savings equals [35%] of the difference;
      3. If the difference is more than $[3,000,000], then the base Shared Savings equals [50%] of the difference, provided that the total base Shared Savings may not exceed [100%] of the pre-adjusted balance of the Risk Pool.
   3. KPI Adjustment. If the Risk Pool Members are entitled to Shared Savings under Section 10.2, then the base amount of Shared Savings will be adjusted based on the IPD Team’s final overall KPI score determined under Section 6.3. The adjustment will be calculated using the applicable formula below and then the adjusted amount of Shared Savings shall be added to the Risk Pool. Any savings on the EMP that are not added to the Risk Pool accrue to Owner.

KPI Score Adjustment

0 -100% (i.e., no Shared Savings added to Risk Pool)

1 -75% (i.e., only 25% of base Shared Savings added to Risk Pool)

2 -40%

3 0% (i.e., base amount of Shared Savings added to Risk Pool)

4 +25% (i.e., 125% of base Shared Savings added to Risk Pool)

5 +50% (i.e., 150% of base Shared Savings added to Risk Pool)

*The following examples demonstrates the application of Sections 10.2 and 10.3:*

*Example 1. Assume the EMP is $75,000,000, the Actual Cost (prior to addressing Shared Savings) upon Final Completion is $73,000,000, and the IPD Team’s cumulative overall KPI score is 2. Since the difference between EMP and Actual Cost is $2,000,000, then $700,000 (i.e., 35% of $2,000,000) is the base amount of Shared Savings. With an overall KPI score of 2, the Shared Savings is then reduced by 40%, so that only $420,000 is added to the Risk Pool, with the remaining $1,580,000 of savings accruing to Owner.*

*Example 2. Assume the EMP is $300,000,000, the Actual Cost (prior to addressing Shared Savings) upon Final Completion is $260,000,000, the Risk Pool prior to any Shared Savings is $18,000,000, and the IPD Team’s cumulative overall KPI score is 4. Since the difference between Expected Cost and Actual Cost is $40,000,000, although the general rule would provide 50% of the difference as Shared Savings, in this case the total base Shared Savings would be limited to 100% of the pre-adjusted Risk Pool, or $18,000,000. With an overall KPI score of 4, the Shared Savings is then increased by 25%, so that $22,500,000 (i.e., $18M + (25% of $18M)) of Shared Savings is added to the Risk Pool, with the remaining $17,500,000 of savings accruing to Owner.*

* 1. Final Distribution of Risk Pool. Subject to the other provisions of this Risk Pool Plan, if the final value of the Risk Pool has a positive balance, then each Risk Pool Member is entitled to its Risk/Reward % of the Risk Pool. After subtracting any previous Profit distributions, 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.
  2. Clawback. If the total amount of Profit distributions already made exceeds the value of the Risk Pool, then, to the extent that Owner has not offset such amounts against other amounts owed, each Risk Pool Member shall pay Owner promptly the overage.

1. 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 instead 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 11.1 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 any Design Savings Incentive or Shared Savings). Nothing in this Section 11.2 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.

**Attachment 1**

**KPI Scorecard**

**Key Performance Indicators**

The Core Group and Senior Executive Team will evaluate team performance under 6 Key Performance Indicators:

* Timely completion of Work & Services
* Collaboration
* Appropriate quality (encompassing design quality and workmanship)
* Sustainability
* Safety (n/a prior to Construction Phase)
* Customer Satisfaction

Each KPI is illustrated with certain factors to demonstrate the key behaviors evaluated under each KPI category.

**Timely completion of Work & Services**. Key behaviors for consideration:

* Collaboratively create and comply with a realistic project schedule that is appropriately adjusted for changes in scope or direction. Core Group “owns” the project schedule and participates in the development, monitoring and reporting against agreed schedule
* Develop and maintain list of schedule assumptions
* Confirm that the Owner understands all assumptions in the project schedule for key milestones and decision dates
* Team uses commitment-based planning and scheduling system
* Timely updates to project schedule milestones utilizing a standardized scheduling platform
* Work and decisions are made at last responsible moment and in keeping with commitments
* Constraints to timely performance are forecasted, monitored and incorporated into look-ahead plan for removal
* When a team member loses confidence in ability to meet a commitment by agreed time, it promptly notifies affected team members and cooperates in re-planning work for good of project

**Collaboration**. Key behaviors for consideration:

* Team members make decisions based on what’s best for the project
* Team members implement Choosing By Advantages (CBA) and A3 decision-making processes for significant decisions
* Co-located team members are in the “Big Room” when they have committed to be there
* Establish & implement effective on-boarding for new team members
* IPD Team members perform responsibilities per the most current Responsibility Matrix
* Meetings focus on identifying and solving problems rather than blaming responsible parties
* Deal with issues at the meeting – no private dissent. Call out and resolve dissent when discovered.
* Team focuses on fixing processes with the biggest gaps between actual and expected results.
* Core Group makes decisions unanimously, minimizing impasses that need to be escalated to Senior Executive Team
* Demonstrate forthright honesty while maintaining respect to fellow team members
* Team members seek ways to help other team members outside their company
* Team creates times and spaces for celebration of successes and sharing lessons learned

**Appropriate quality** (design & construction). Key behaviors for consideration:

* Effectively involve user groups from Owner in design process
* Implement right project scope at the right cost through the rigorous application of Target Value Design and set-based design
* TVD protocols are established and followed
* TVD clusters have established value propositions that guide their work
* Team members implement Choosing By Advantages (CBA) and A3 decision-making processes for significant design choices
* Team members regularly review and implement protocols and measures from BIM addendum
* Questions and information requests are resolved through direct communications, with RFIs issued afterward to document answers for future reference
* Develop & implement Built-in Quality plan
* Track and report on the time required for rework during design and construction.
* Implement counter-measures to improve quality after earlier quality issues detected

**Sustainability (design and construction)**. Key behaviors for consideration:

* Owner’s sustainability criteria in the Validation Report are explored by IPD Team in one or more sustainability workshops or charrettes
* Core Group develops and implements a sustainability plan to achieve Project’s sustainability goals
* IPD Team appropriately considers issues of sustainability in its TVD process alongside other Project values
* Good sustainability ideas that advance Project goals are brought forward for consideration regardless of whether they count towards a third party certification of sustainable design
* Construction team implements effective construction waste management plan

**Safety**. Key behaviors for consideration:

* Team leaders regularly and sincerely emphasize safety principles to team members and visitors
* Effective communication and implementation of contents of project’s safety program
* Common safety issues are anticipated by team leaders and addressed in safety meetings
* Core Group regularly reviews common industry safety metrics on Project and holds team members accountable for safe performance
* Each OSHA recordable incident is reviewed by Core Group and specific counter-measures are developed to prevent repeats of similar incidents
* Any safety issue reported by a team member, even if no harm occurs, is reviewed and addressed by Core Group
* Develop & implement a construction operations quality plan (5S plan)

**Customer Satisfaction**. Key behaviors for consideration:

* IPD Team behavior demonstrates Project-first thinking and commitment
* Project issues are brought to Core Group’s attention early for attention rather than delayed in hopes it goes away
* Core Group updates budget, change log, risk register, and projected savings on a regular basis to allow Owner ability to timely elect Wish List items and plan for change orders
* IPD Team’s performance in areas outside of cost, schedule or quality (which are measured and accounted for elsewhere) provide satisfaction or delight to key Owner representatives

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**KPI Scorecard**

In evaluating IPD Team performance under the Key Performance Indicators, the evaluators will use the following scorecard.

[Circle score on each category]

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **KPI Category** | Superior Performance | Above-Average | Average | Below-Average | Poor |
|  |  |  |  |  |  |
| **Timely completion of Work & Services** | 5 | 4 | 3 | 2 | 1 |
| **Collaboration** | 5 | 4 | 3 | 2 | 1 |
| **Appropriate quality** (design & construction) | 5 | 4 | 3 | 2 | 1 |
| **Sustainability** (design & construction) | 5 | 4 | 3 | 2 | 1 |
| **Safety** (n/a prior to Construction Phase) | 5 | 4 | 3 | 2 | 1 |
| **Customer Satisfaction** | 5 | 4 | 3 | 2 | 1 |
|  |  |  |  |  |  |
| **Overall KPI Score** (average of all categories): | **5** | **4** | **3** | **2** | **1** |

**Attachment 2**

**Schedule of Interim Profit Distribution Milestones**

[Milestone 1: Submission of Construction Documents for Permit]

[Milestone 2: 100% Completion of Foundations]

[Milestone 3: 50% Completion of Structural Steel]

[Milestone 4: Topping Out]

[Milestone 5: Building Fully Closed In]

[Milestone 6: Substantial Completion]