

UNIVERSITY OF COLORADO BOULDER
SUPPLEMENTAL TERMS AND CONDITIONS TO:

THE CONTRACTOR'S DESIGN/BID/BUILD (D/B/B) AGREEMENT – SC-6.21

SC-6.21

- **Table of Contents, Exhibits – Add the following Exhibits as Follows:**
 - Exhibit G – The General Conditions of the Contractor's Design/Bid/Build (D/B/B) Agreement - SC-6.23*
 - Exhibit H – University of Colorado Boulder Supplemental Terms and Conditions to: The Contractor's Design/Bid/Build (D/B/B) Agreement – SC-6.21*
The General Conditions of the Contractor's Design/Bid/Build (D/B/B) Agreement- SC-6.23

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- **Article 23 – Delete Article 23 F. - Sign, in its entirety**

- **Article 25 – Replace Article 25 in its' entirety with the following:**

The Contractor shall obtain and maintain, at its own expense and for the duration of the contract including any warranty periods under the Contract are satisfied, the insurance coverages set forth below.

By requiring such insurance, the Principal Representative shall not be deemed or construed to have assessed the risk that may be applicable to the Contractor its agents, representatives, employees or subcontractors under this contract. The insurance requirements herein for this Contract in no way limit the indemnity covenants contained in the Contract.

The Principal Representative in no way warrants that the limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees, or subcontractors. The Contractor shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverages. The Contractor is not relieved of any liability or other obligations assumed or pursuant to the Contract by reason of its failure to obtain or maintain insurance

in sufficient amounts, duration, or types.

COVERAGES AND LIMITS OF INSURANCE - Contractor shall provide coverage with limits of liability not less than those stated below.

1. Commercial General Liability – ISO CG 0001 or equivalent.

Coverage to include:

- Premises and Operations
- Explosions, Collapse and Underground Hazards
- Personal / Advertising Injury
- Products / Completed Operations
- Liability assumed under an Insured Contract (including defense costs assumed under contract)
- Independent Contractors
- Designated Construction Projects(s) General Aggregate Limit, ISO CG 2503 (1997 Edition)
- Additional Insured—Owners, Lessees or Contractors Endorsement, ISO Form 2010 (2004 Edition or equivalent)
- Additional Insured—Owners, Lessees or Contractors Endorsement (Completed Operations), ISO CG 2037 (7/2004 Edition or equivalent)
- **The policy shall be endorsed to include the following additional insured language on the Additional Insured Endorsements specified above: “The Regents of the University of Colorado, a Body Corporate, named as an additional insured with respect to liability and defense of suits arising out of the activities performed by, or on behalf of the Contractor, including completed operations”.**
- Commercial General Liability Completed Operations policies must be kept in effect for up to three (3) years after completion of the project. For buildings with a construction cost greater than \$99 million, the Commercial General Liability Completed Operations policies must be kept in effect for up to eight (8) years after the completion of the project.
- **An umbrella and/or excess liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a “following form” basis.**

Liability Limits	General Aggregate	Products/Completed Operation Aggregate	Each Occurrence	Personal/Advertising Injury
Primary General Liability	\$2,000,000	\$2,000,000	\$1,000,000	\$1,000,000
Umbrella or Excess Liability*	\$5,000,000	\$5,000,000	\$5,000,000	\$5,000,000

***Umbrella or Excess Liability does not apply to projects totaling \$500,000 or under.**

2. **Automobile Liability**
Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of this contract

Minimum Limits:

Bodily Injury/Property Damage (Each Accident) \$1,000,000

3. **Workers Compensation**

- *Statutory Benefits (Coverage A)*
- *Employers Liability (Coverage B)*

- a. *This requirement shall not apply when a contractor or subcontractor is exempt under Colorado Workers' Compensation Act., AND when such contractor or subcontractor executes the appropriate sole proprietor waiver form.*

Minimum Limits:

Coverage A (Workers' Compensation)	Statutory
Coverage B (Employers Liability)	
Each accident	\$ 100,000
Disease each employee	\$ 100,000
Disease policy limit	\$ 500,000

4. **Contractors Pollution Liability**

- *Coverage shall apply to sudden and gradual pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, natural gas, waste materials, or other irritants, contaminants, or pollutants (including asbestos). Policy shall cover the Contractor's completed operations.*
- *If the coverage is written on a claims-made basis, the Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning from the time that work under this contract is completed.*
- ***The policy shall be endorsed to include the following as Additional Insureds: The Regents of the University of Colorado, a Body Corporate, named as an additional insured with respect to liability and defense of suits arising out of the activities performed by, or on behalf of the Construction Manager, including completed operations".***
- *Endorsements CA9948 and MCS-90 are required on the Automobile Liability Coverage if the Contractor is transporting any type of hazardous materials.*
- ***Contractors Pollution Liability policies must be kept in effect for up to three (3) years after completion of the project.***

Minimum Limits:

Per Loss	\$ 2,000,000
Aggregate	\$ 2,000,000

5. **Builder's Risk/ Installation Floater**

Unless otherwise provided or instructed by the Principal Representative, the Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the project is located, Builder's Risk Insurance in the amount of the initial contract amount as well as subsequent modifications for the entire project at the site on a replacement cost basis without optional deductibles. This coverage is required for new buildings or additions to existing buildings and for materials and equipment to be installed in existing structures.

- Covered Cause of Loss: Special Form
- Include Theft and Vandalism
- Labor costs to repair damaged work
- Shall be written for 100% of the completed value (replacement cost basis)
- Deductible maximum is \$50,000.00
- Waiver of Subrogation is to apply
- The Regents of the University of Colorado, a body corporate, shall be added as **Additional Named Insured on Builders Risk.**

1. Policy must provide coverage from the time any covered property becomes the responsibility of the Contractor, and continue without interruption during construction, renovation, or installation, including any time during which the covered property is being transported to the construction installation site, or awaiting installation, whether on or off site.
2. The Policy shall be maintained, unless otherwise provided in the contract documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than the Principal Representative has insurable interest in the property to be covered, whichever is later.
3. The Builder's Risk insurance shall include interests of the Principal Representative, and if applicable, affiliated or associated entities, the General Contractor, subcontractors and sub-tier contractors in the project.
4. Builders' Risk Coverage shall be on a **Special** Covered Cause of Loss Form and shall include theft, vandalism, malicious mischief, collapse, false-work, temporary buildings and debris removal including demolition, increased cost of construction, architect's fees and expenses, flood (including water damage), earthquake, and if applicable, all below and above ground structures, piping, foundations including underground water and sewer mains, piling including the ground on which the structure rests and excavation, backfilling, filling, and grading. Equipment Breakdown Coverage (a.k.a. Boiler & Machinery) shall be included as required by the Contract Documents or by law, which shall specifically cover insured equipment during installation and testing (including hot testing, where applicable). Other coverages may be required if provided in contract documents.
5. The Builders' Risk shall be written for 100% of the completed value (replacement cost basis) of the work being performed. The Builders' Risk shall include the following provisions:
 - a. Replacement Cost Basis - including modification of the valuation clause to cover all costs needed to repair the structure or work (including overhead and profits) and will pay based on the values figured at the time of rebuilding or repairing, not at the time of loss

- b. Modify or delete exclusion pertaining to damage to interior of building caused by an perils insured against are covered; also provide coverage for water damage*
Note, if the addition, or renovation is to an existing building, The Principal Representative requires that the Contractor provide as an option to include the existing building into the Builders' Risk Policy. The Principal Representative shall provide the replacement cost value of the existing building
6. *At the option of the Principal Representative, the Principal Representative may include Soft Costs (including Loss of Use)/Delay in Opening Endorsement under the builder's risk policy. The Principal Representative agrees to provide the necessary exposure base information for quotation by the Builder's Risk carrier. The Principal Representative agrees to pay the premium associated with the Soft Costs coverage, the Principal Representative decides to purchase this coverage.*
7. *The Builders' Risk Policy shall specifically permit occupancy of the building during construction. Partial occupancy or use of the work shall not commence until the insurance company or companies providing insurance have consented to such partial occupancy or use. The Principal Representative and Contractor shall take reasonable steps to obtain consent of the insurance company or companies and delete any provisions with regard to restrictions within any Occupancy Clauses within the Builders' Risk Policy. The Builders' Risk Policy shall remain in force until acceptance of the project by the Principal Representative.*
8. *The deductible shall not exceed \$50,000 and shall be the responsibility of the Contractor except for losses such as flood (not water damage), earthquake, windstorm, tsunami, volcano, etc. Losses in excess of \$50,000 insured shall be adjusted in conjunction with the Principal Representative. Any insurance payments/proceeds shall be made payable to the Principal Representative subject to requirements of any applicable mortgagee clause. The Contractor shall pay subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require subcontractors to make payments to their sub-subcontractors in similar manner.*
- The Principal Representative shall have the authority to adjust and settle any losses in excess of \$50,000 with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Principal Representative exercise of this power. It is expressly agreed that nothing in this section shall be subject to arbitration and any references to arbitration are expressly deleted.*
9. *The Policy shall be amended to show 45 days notice of cancellation. Such notice shall be given to the Principal Representative and Contractor. If requested, the Contractor shall file with the Principal Representative a copy of the policy that includes the insurance coverages required in this section. The policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to the Project.*
- If the Contractor does not intend to purchase such Builder's Risk Insurance required by the Contract and with all of the coverages in the amount described above, the Contractor shall so inform the Principal Representative as stated in writing prior to commencement of the work. The Principal Representative may*

then affect insurance that will protect the interests of the Principal Representative, the General Contractor, Subcontractors and sub-tier contractors in the project. Coverages applying shall be the same as stated above including other coverages that may be required by the Principal Representative. The cost shall be charged to the Contractor. Coverage shall be written for 100% of the completed value of the work being performed, with a deductible not to exceed \$50,000 per occurrence for most projects.

All deductibles will be assumed by the Contractor. Waiver of Subrogation is to apply against all parties named as insureds, but only to the extent the loss is covered, and Beneficial Occupancy Endorsements are to apply.

If the Principal Representative is damaged by the failure or neglect of the Contractor to purchase or maintain insurance as described above, without so notifying the Principal Representative, then the Contractor shall bear all reasonable costs properly attributable thereto.

ADDITIONAL INSURANCE REQUIREMENTS

1. All insurers must be licensed or approved to do business within the State of Colorado, and unless otherwise specified, all policies must be written on a per occurrence basis.
2. Contractor's insurance carrier should possess a minimum A.M. Best's Insurance Guide rating of A-VI.
3. On insurance policies where the Principal Representative are named as additional insureds, the Principal Representative shall be additional insureds to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.
4. Contractor shall furnish the Principal Representative with certificates of insurance (ACORD form or equivalent approved by the Principal Representative) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and any required endorsements are to be received and approved by the Principal Representative before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.
5. Upon request by the Principal Representative, Contractor must provide a copy of the actual insurance policy effecting coverage(s) required by the contract.
6. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available resources.
7. The Contractor shall advise the Principal Representative in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limit. At their own expense, the Contractor will reinstate the aggregate limits to comply with the minimum requirements and shall furnish to the Principal Representative a new certificate of insurance showing such coverage is in force.
8. Provide a minimum of thirty (30) days advance written notice to the Principal Representative for cancellation, non-renewal, or material changes to policies required under the Contract.
9. Certificate Holder: The Regents of the University of Colorado, University Risk

Management, 1800 Grant Street, Suite 700, Denver, CO 80203.

Failure of the Contractor to fully comply with these requirements during the term of the Contract may be considered a material breach of contract and may be cause for immediate termination of the Contract at the option of the Principal Representative. The Principal Representative reserves the right to negotiate additional specific insurance requirements at the time of the contract award.

Subcontractors

*Contractor's certificate(s) shall include all subcontractors as additional insureds under its policies **or** subcontractors shall maintain separate insurance as determined by the Contractor, however, subcontractor's limits of liability shall not be less than \$1,000,000 per occurrence / \$2,000,000 aggregate.*

Non-Waiver

The parties hereto understand and agree that The Principal Representative is relying on, and does not waive or intend to waive by any provision of this Contract, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, et seq., as from time to time amended, or otherwise available to the Principal Representative or its officers, employees, agents, and volunteers.

Mutual Cooperation

The Principal Representative and Contractor shall cooperate with each other in the collection of any insurance proceeds which may be payable in the event of any loss, including the execution and delivery of any proof of loss or other actions required to effect recovery.

• **Article 26 –Add to the end of the first paragraph:**

The corporate seal utilized on the performance and payment bonds shall be ink stamp or Adobe template or similar such that the corporate seal is visible on electronic copies of the payment and performance bonds.

• **Article 35 - Modify paragraph 35 C 1. as follows:**

1. The Principal Representative represents that it has undertaken an examination of the site of the Work and has determined that there ~~are no~~ may be hazardous substances, as ~~outlined in the Environmental Compliance Document (ECD)~~ and as defined below, which the Contractor could reasonably encounter in its performance of the Work. In the event the Principal Representative so discovers hazardous substances, the Principal Representative shall render harmless such hazards before the Contractor commences the work.

• **Article 53 – Delete Article 53 I. - Statewide Contract Management System, in its entirety**

• **Article 53 – Add the following paragraph to Article 53:**

K. Background Checks

Contractor acknowledges that Contractor's activities may involve heightened risks as a result of access or exposure by Contractor's employees, agents and subcontractors to one or more Sensitive Environments. Contractor expressly acknowledges that Contractor shall take all commercially reasonable measures to mitigate any such risks, which measures may include but are not limited to conducting criminal history checks, financial background checks, or reference checks on employees, agents and subcontractors who will have access to one or

more Sensitive Environments. For purposes of this provision, Sensitive Environment means any situation where Contractor's employees, agents and subcontractors: (a) are engaged in supervision of or exposure to minors or other vulnerable populations; (b) have access to confidential information, which includes any information protected or restricted by law or Principal Representative policy or that is expressly identified by the Principal Representative as confidential information; (c) have access to the Principal Representative's information technology systems; (d) are engaged in activities that involve unique or specialized risks. Contractor shall conduct background checks on employees, agents and subcontractors that have access to campus buildings where students and faculty reside (e.g. residence halls), the Recreation Center, Athletics Facilities and other secured facilities as determined at the sole discretion of the Principal Representative. Upon Principal Representative request, Contractor shall certify in writing that it has complied with this provision and that all employees, agents and subcontractors performing work hereunder have satisfactorily completed Contractor's background check.

End

SAMPLE