

# Supplementary Conditions

## Cover Sheet and Instructions

APPROVED DOCUMENT – This document is approved by the Office of the President and Office of the General Counsel for use by the Facility and is available on electronic media.

<b>PURPOSE OF DOCUMENT:</b>	Provides a means of specifying varying project conditions without revising the text of the General Conditions.				
<b>CROSS-REFERENCE TO FACILITIES MANUAL:</b>	None				
<b>CONTENTS:</b>	Supplementary Conditions				
<b>FOR USE WITH:</b>	CM/Contractor Contract Documents				
<b>COMPLETED BY:</b>	✓	Filling in	✓	Adding Text	No Data Required
<b>ITS USE IS:</b>	✓	Required		Optional	

**NOTE:** To use the electronic file of this document, you must go to the “Tools” pull down menu in Microsoft Word, select “Options,” select the “View” tab, and then put a check in the box “Hidden text.” Most instructions and alternate language is displayed in hidden text. Do not print the hidden text for the final document.

### Completion Instructions:

1. Notes, suggested text, instructions and other information is formatted using the following methods:
  - Hidden text within brackets. Read the material within the brackets and take the appropriate action (usually inserting text or selecting from a choice of texts.) When printing this document, the default print property will not print the hidden text.
  - Coded instruction within brackets. {This is an example of the format.} The instructions and shading will disappear when the required information is typed.
  - Suggested text is shaded in gray without brackets (see Modifications and Additions below.)
2. **Non-compensable Time Extension for Weather.** The risk to the project for inclement weather is one of the many risks that is addressed in the University contract. The contract now allocates risk of delay in excess of the specified number of days of anticipated adverse weather to the University rather than the CM/Contractor. The number of days specified should not normally exceed the number of days for which adverse weather is anticipated at the project site. This language should be used except for unique projects that cannot be delivered at a date later than the specified Contract Time, without significant hardship to the University. If you contemplate not using the language in the Supplementary Conditions for a "date sensitive" project, please consult the Office of the President.
3. **Phase 1 Time Greater Than 120 Days.** For contracts having a duration for Phase 1 greater than 120 days, the Bidder may be allowed to submit a Bid Bond in the form of either Version A or Version B. See detailed instructions under Article 11.3 of these Supplementary Conditions and also Article 5.2 of the Supplementary Instructions to Bidders.

### Modifications and Additions:

1. Changes to the General Conditions by the Supplementary Conditions require review and approval by the Office of the President before the document is issued to Bidders.
2. Areas shaded in gray, without brackets, represent suggested text that may be modified by the Facility to meet the needs of the Project. **This is an example of the format.** Ensure that any modified or added text is consistent with the Contract Documents.
3. Areas not highlighted in gray, without brackets, shall not be altered without approval of the Office of the President.
4. **Contractor's Pollution Liability (CPL) insurance.** The risk of liability to the University for hazardous material contamination can be managed by requiring the CM/Contractor to provide evidence of insurance coverage for pollution liability and naming the University as an Additional Insured. For projects involving work with hazardous materials, e.g. asbestos abatement, a Facility should normally include such a provision. See the embedded instruction in the Supplementary Conditions. For other projects, a Facility may choose to include this provision if the construction work warrants such pollution coverage and consultation with the campus risk manager is recommended.
5. A provision has been added to address the disclosure of Patient Health Information by Contractor and/or to its third parties on Projects at or near clinics or hospitals. See the instructions and provisions in the Supplementary Conditions that have been updated to add new section 14.1

### Comments:

None

## SUPPLEMENTARY CONDITIONS

### 1. MODIFICATION OF GENERAL CONDITIONS, ARTICLE 3 – CM/CONTRACTOR

3.9.9.1 CM/Contractor shall incorporate in Contract Schedule a work activity of {NUMBER} days representing the time period for the University's Representative to obtain Department of Finance approval of each Bid Package.

3.9.9.2 CM/Contractor shall incorporate in Contract Schedule a work activity of {NUMBER} days representing the time period for the University's Representative to obtain approval of each Bid Package Certification. This duration follows and is in addition to the duration in 3.9.10.

3.9.10 The CM/Contractor shall insert, in all Preliminary Contract Schedule(s) and Contract Schedule(s), Work Activity(s) corresponding to each Bid Package immediately following the submittal by CM/Contractor to University of Bid Package Certification and preceding the University issuing a Contract Amendment for the Bid Package. The Work Activity shall be entitled "University Review of Bid Package Certification (Bid Package description)". This Work Activity represents the time required by the University to review the Bid Package Certification and time to resolve any bid protest under the University's Bid Protest Procedures exhibit. The CM/Contractor shall insert a duration of {NUMBER} days for all such work activities. CM/Contractor will not be entitled to an extension of the Contract Time or compensation for delay if:

- .1 the Contract Amendment is issued on or before the expiration of the duration specified above, or
- .2 the decision of the Hearing Officer results in a determination in favor of the protesting party and the CM/Contractor was responsible for the circumstances that resulted in such decision.

### 2. MODIFICATION OF GENERAL CONDITIONS, ARTICLE 3 – CM/CONTRACTOR

3.20.4 The CM/Contractor may elect to bid for Construction Work for Bid Packages that primarily involve the following specific trade(s):

demolition  
concrete  
rough carpentry  
finish carpentry

3.20.5 The CM/Contractor shall provide written notification to University's Representative within {NUMBER} days from the Phase 1 Notice to Proceed date if CM/Contractor, a company CM/Contractor has a financial interest in, or a parent company of CM/Contractor intends to submit a bid to self-perform the work described above.

### 3. MODIFICATION OF GENERAL CONDITIONS, ARTICLE 8 – CONTRACT TIME

Adverse weather in excess of the following number of days will be granted a Contract Time extension pursuant to Article 8.4 of the General Conditions:

Example 1 {If facility elects to specify days on a monthly basis}

January - 6 days

February - 6 days, etc.

Example 2 {If facility elects to specify a total number of days for the entire project}

Total Number of days – 27 days

### 4. MODIFICATION OF GENERAL CONDITIONS, ARTICLE 11 – INSURANCE AND BONDS

Insurance required by Paragraphs 11.1.2.1, 11.1.2.2, and 11.1.2.4 shall be (i) issued by companies with a Best rating of A- or better, and a financial classification of VIII or better (or an equivalent rating by Standard & Poor or Moody's) or (ii) guaranteed, under terms consented to by the University (such consent to not be unreasonably withheld), by companies with a Best rating of A- or better, and a financial classification of VIII or better (or an equivalent rating by Standard & Poor or Moody's). Such insurance shall be written for not less than the following:

		<u>Minimum Requirement</u>
11.1.2.1	Commercial Form General Liability Insurance-Limits of Liability	
	Each Occurrence-Combined Single Limit for Bodily Injury and Property	{\$AMOUNT}
	Products-Completed Operations Aggregate	{\$AMOUNT}
	Personal and Advertising Injury	{\$AMOUNT}
	General Aggregate	{\$AMOUNT}
11.1.2.2	Business Automobile Liability Insurance-Limits of Liability	
	Each Accident-Combined Single Limit for Bodily Injury and Property Damage	{\$AMOUNT}
11.1.2.4	Professional Liability Insurance - Limits of Liability	
	Each Occurrence	{\$AMOUNT}
	General Aggregate	{\$AMOUNT}

Insurance required by Paragraph 11.1.2.3 shall be issued by companies (i) that have a Best rating of B+ or better, and a financial classification of VIII or better (or an equivalent rating by Standard & Poor or Moody's); or (ii) that are acceptable to the University. Such insurance shall be written for not less than the following:

11.1.2.3 WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY –	Minimum Requirement
Worker's Compensation:	(as required by Federal and State of California law).
Employer's Liability:	
Each Employee	\$1,000,000
Each Accident	\$1,000,000
Policy Limit	\$1,000,000

Article 11.2.3 of the General Conditions is replaced in its entirety with the following:

11.2.3 Builder's risk insurance coverage under this Article 11.2 will end on the earliest of any of the following:

- .1 sixty (60) days after the date a Certificate of Occupancy for the entire Project is issued by the University;
- .2 sixty (60) days after the date a Certificate of Occupancy for a part of the Project issued by the University, but coverage will end only for the part of the Project covered by such Certificate of Occupancy; or
- .3 the date of Final Completion established by the University in any Notice of Completion issued by the University.

The following article is added to the General Conditions:

11.1.2.4 The Contractor shall obtain, either itself or through the applicable Subcontractor(s) performing Work involving hazardous materials, Contractor's Pollution Liability (CPL) insurance coverage for such Work AND an endorsement to either its CPL or Business Auto policies for transporting or hauling of hazardous materials. The insurance required by this paragraph 11.1.2.4 shall be (i) issued by companies with a Best rating of A- or better, and a financial classification of VIII or better (or an equivalent rating by Standard & Poor or Moody's) or (ii) guaranteed, under terms consented to by the University (such consent to not be unreasonably withheld), by companies with a Best rating of A- or better, and a financial classification of VIII or better (or an equivalent rating by Standard & Poor or Moody's). Such insurance shall be written for not less than the following and include the University as Additional Insured by endorsement:

CONTRACTOR'S POLLUTION LIABILITY - Limits of Liability	Minimum Requirement
Each Occurrence	{\$AMOUNT}
Products-Completed Operations	{\$AMOUNT}
General Aggregate	{\$AMOUNT}

If coverage is provided on a Claims-Made form, Contractor shall evidence coverage to include a three (3)-year Extended Reporting Period beyond completion of such Work. Coverage must extend to Transportation and Hauling of hazardous materials. The University shall require a copy of the policy endorsement noting extension of Transportation coverage. If this extension of coverage is not provided under the Contractor's or applicable Subcontractor's Contractor's Pollution Liability, then the Contractor/Subcontractor shall also be required to evidence the following under its Business Auto policy:

BUSINESS AUTO - Combined Single Limit Per Accident {\$AMOUNT}  
 Covering Transportation and/or Hauling of hazardous materials by amending the pollution exclusion of ISO Form CA 00010 6/92 (or its equivalent) in the following manner:

1. Delete Section a.(1)a.: (Pollution) "being transported or towed away by, or handled for movement into, onto or from the Covered Auto"
2. Delete Section a.(1)b.: "Otherwise in the course of transit by the insured."

Coverage shall include MCS-90 endorsement with the University as Additional Insured and shall be endorsed to specifically limit the reimbursement provisions of the MCS-90 to the Named Insured.

**5. MODIFICATION OF GENERAL CONDITIONS, ARTICLE 11 – INSURANCE AND BONDS**

11.1.10 CM/Contractor may require all Subcontractors added by Contract Amendment to provide insurance meeting the requirements of Article 11 in amounts up to and including the limits specified below. CM/Contractor shall include in its Option Sum - Phase 2 the cost of insurance provided by subcontractors added by Contract Amendment, to the extent the cost results from the CM/Contractor's decision to require insurance exceeding the requirements of Article 11 and/or the specified limits:

Minimum Requirement

Minimum Requirement

11.1.10.1	Commercial Form General Liability Insurance-Limits of Liability	
	Each Occurrence-Combined Single Limit for Bodily Injury and Property	{ \$AMOUNT }
	Products-Completed Operations Aggregate	{ \$AMOUNT }
	Personal and Advertising Injury	{ \$AMOUNT }
	General Aggregate	{ \$AMOUNT }
11.1.10.2	Business Automobile Liability Insurance-Limits of Liability	
	Each Accident-Combined Single Limit for Bodily Injury and Property Damage	{ \$AMOUNT }
11.1.10.3	Workers' Compensation and Employer's Liability Insurance as required by Federal and State of California law.	

**6. MODIFICATION OF GENERAL CONDITIONS ARTICLE 11 – INSURANCE AND BONDS**

If CM/Contractor submits Bid Security on the form of Bid Bond Version B, Article 11.3 of the General Conditions is replaced in its entirety with the following revised Article 11.3 (see also Article 5.2 – Supplementary Instructions to Bidders) :

**11.3 PERFORMANCE BOND AND PAYMENT BOND**

11.3.1 CM/Contractor shall furnish bonds covering the faithful performance of the Contract (Performance Bond) and payment of obligations arising thereunder (Payment Bond) on the forms contained in the Exhibits.

11.3.2 The Payment Bond and Performance Bond shall each be in the amount of the Phase 1 Contract Sum.

11.3.3 The Payment Bond and Performance Bond shall be increased so that each is in the amount of the Anticipated Contract Value less the Phase 1 Contract Sum. The CM/Contractor shall provide the increased Payment Bond and the increased Performance Bond within ten (10) days of Notice of Intent.

If thereafter the Contract Sum exceeds the Anticipated Contract Value less the Phase 1 Contract Sum, CM/Contractor shall furnish supplemental Payment and Performance Bonds in an amount equal to any increase in the Contract Sum above the Anticipated Contract Value.

11.3.4 CM/Contractor shall promptly furnish such additional security as may be required by University to protect its interests and those interests of persons or firms supplying labor or materials to the Construction Work.

11.3.5 Surety companies used by CM/Contractor shall be, on the date the Contract is signed by University, an admitted surety insurer (as defined in the California Code of Civil Procedure Section 995.120).

11.3.6 The premiums for the Payment Bond and Performance Bond shall be paid by CM/Contractor.

11.3.7 If CM/Contractor fails to furnish the increased performance and payment bonds required hereunder

within 10 days of the University's issuance of the Notice of Intent, University may:

.1 Elect to not exercise its Option for Phase 2 and not award a contract for Construction Work to another contractor, in which case the CM/Contractor shall pay to the University, as liquidated damages, \$250,000, or

.2 Elect to not exercise its Option for Phase 2 and award a contract for the Construction Work to another contractor, in which case the CM/Contractor shall pay to the University the difference between the amount of the Option Sum Phase 2 and the larger amount for which University procures the Work, plus liquidated damages at the rate specified in Article 6 of the Agreement, for each day of delay, beyond the 10 days for furnishing the increased payment and performance bonds, in awarding a contract for the Construction Work to another contractor, or

.3 Elect to exercise its Option for Phase 2, after the CM/Contractor furnishes the payment and performance bonds, in which case the CM/Contractor shall pay to the University liquidated damages at the rate specified in Article 6 of the Agreement, for each day of delay beyond the 10 days for furnishing the increased payment and performance bonds.

## 7. MODIFICATION OF GENERAL CONDITIONS ARTICLE 14.1

### 14.1. PATIENT HEALTH INFORMATION

**Contractor acknowledges that its employees, agents, subcontractors, consultants and others acting on its behalf may come into contact with Patient Health Information ("PHI") while performing work at the Project Site. This contact is most likely rare and brief (e.g. walking through a clinic where patient files may be visible, overhearing conversations between physicians while working or touring a hospital, noticing a relative or acquaintance receiving treatment in a University facility, etc.). Contractor shall immediately notify University Representative of any such contact. Any and all forms of PHI should not be examined closer, copied, photographed, recorded in any manner, distributed or shared. Contractor will adopt procedures to ensure that its employees, agents and subcontractors refrain from such activity. If Contractor, its employees, agents or subcontractors do further examine, copy, photograph, record in any manner, distribute or share this information, Contractor will report such actions immediately to the University Representative. Contractor will immediately take all steps necessary to stop any such actions and will ensure that no further violations of this contractual responsibility will occur. Contractor will report to University Representative within five (5) days after Contractor gives University Representative notice of the event/action of the steps taken to prevent future occurrences.**