

## DESIGN-BUILDER CONTROLLED CONSTRUCTION INSURANCE PROJECTS

Insurance, contract security and indemnity risk provisions to be included in Supplementary General Conditions to the CCDC 14 – 2013 Contracts for Health entity projects insured by the Design-Builder with an estimated construction value of less than Five Million Dollars (\$5,000,000).

### MODIFICATIONS TO GENERAL CONDITIONS

**GC 11.1 INSURANCE**, replace entirely with the following:

#### **GC 11.1 - INSURANCE**

Without restricting the generality of GC 12.1—INDEMNIFICATION, insurance and coverage will be arranged and paid for as under-noted:

11.1.1 The *Design-Builder* or the *Consultant* during the term of this *Contract* will provide and maintain Professional (Errors and Omissions) Liability Insurance protecting the *Design-Builder* or the *Consultant* and if applicable the *Consultant's* insurable consultants and their respective servants, agents or employees, against any loss or damage arising out of the professional services rendered by any of them under this *Contract*. Such insurance shall be for an adequate amount acceptable to the *Owner* and shall in any event be not less than One Million Dollars (\$1,000,000) per claim.

*Other Consultants* shall maintain a minimum of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000) Professional (Errors and Omissions) Liability Insurance.

If coverage is provided by the *Consultant*, then such Professional (Errors and Omissions) Liability Insurance will not contain a "Design-Build" exclusion.

11.1.2 **The *Design-Builder* shall, without limiting its obligations or liabilities herein and at its own expense, provide and maintain the following insurance with insurers licensed in British Columbia and in forms and amounts acceptable to the *Owner*:**

**(a) Commercial General Liability Insurance** with a limit of not less than FIVE MILLION DOLLARS (\$5,000,000), inclusive per occurrence against bodily injury and property damage, and the *Owner* is to be added as an additional insured and include a cross liability clause. This insurance shall be primary and not require the sharing of any loss by any insurer of the *Owner*. Such insurance shall include, but not be limited to:

- .01 Premises and Operations Liability;
- .02 Products and Completed Operations Liability (24 months);
- .03 Blanket Written Contractual Liability;
- .04 Contingent Employer's Liability;
- .05 Personal Injury Liability;
- .06 Non-Owned Automobile;
- .07 Employees as Additional Insureds;
- .08 Broad Form Property Damage;
- .09 Elevator and Hoist Liability
- .10 Operation of Attached Machinery

**and where such further risk exists:**

- .11 Shoring, Blasting, Excavating, Underpinning, Demolition, Piledriving, Subsurface and Grading, as applicable;
- .12 Limited Pollution Liability (TWO MILLION DOLLARS (\$2,000,000))
- .13 Broad Form Tenants Legal Liability (ONE MILLION DOLLARS (\$1,000,000))
- .14 Forest Fire Fighting Expenses (ONE MILLION DOLLARS (\$1,000,000))

This insurance shall be maintained continuously from commencement of the *Work* and kept in force until the *Project* is ready for use or is being used for the purpose intended, whichever occurs first, and is so confirmed in writing by the *Design-Builder* in consultation with the *Consultant* and the *Owner*.

- (b) **Automobile Liability Insurance** in respect of each owned or leased vehicle if used directly or indirectly in the performance of the *Work*, subject to limits of not less than TWO MILLION DOLLARS (\$2,000,000) inclusive per occurrence. This insurance shall be maintained continuously from commencement of the *Work* and kept in force until the *Project* is ready for use or is being used for the purpose intended, whichever occurs first, and is so confirmed in writing by the *Design-Builder* in consultation with the *Consultant* and the *Owner*.
- (c) **Owned or Non-Owned Aircraft (including Unmanned Aircraft Vehicles) Liability Insurance** if used directly or indirectly in the performance of the *Work*, subject to limits not less than TWO MILLION DOLLARS (\$2,000,000) inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof and including aircraft passenger hazard where applicable. The insurance will name the *Owner* as an additional insured and include a cross liability clause. This insurance shall be maintained continuously from commencement of the work involving aircraft (including unmanned aircraft vehicles) until such work is completed.
- (d) **Owned or Non-Owned Watercraft Liability Insurance** if used directly or indirectly in the performance of the *Work*, subject to limits of not less than TWO MILLION DOLLARS (\$2,000,000) inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof. The insurance will name the *Owner* as an additional insured and include a cross liability clause. This insurance shall be maintained continuously from commencement of the work involving watercraft until such work is completed.
- (e) **Contractors Pollution Liability Insurance**, where the *Design-Builder's* performance or the *Subcontractor's* performance of the *Work* is associated with hazardous materials clean up, removal and/or containment, transit or disposal. This insurance must have a limit of liability not less than TWO MILLION DOLLARS (\$2,000,000) inclusive per occurrence insuring against bodily injury, death, and damage to property including loss of use thereof.

Any insurance required under this clause 11.1.2 (e) must name the *Owner* as an additional insured, but only with respect to liability arising out of the *Design-Builder* or the *Subcontractor's* performance of the *Work*. Such insurance must include sudden and accidental and gradual pollution events for third party liability including ongoing and completed operations and shall not be impaired by any, biological contaminants (without limitation, mould and bacteria), asbestos, or lead exclusions. Any 'insured vs.

insured' exclusion shall not prejudice coverage for the *Owner* and shall not affect the *Owner's* ability to bring suit against the *Design-Builder* as a third party.

This insurance shall be maintained continuously from commencement of the work involving hazardous materials clean-up, removal and/or containment, transit and disposal until such work is completed and including a twenty-four (24) month extended reporting period if any such insurance is provided on a claims-made basis.

**(f) Hot Roofing or Installation of Hot Membranes**

If the project is a renovation involving hot roofing work or installation of hot membranes, the contractor will provide, maintain and pay for a liability policy insuring hot roofing or installation of hot membrane operations with a limit of not less than TWO MILLION DOLLARS (\$2,000,000) inclusive per occurrence against bodily injury and property damage. This insurance will name the *Owner* as an additional insured and include a cross liability clause. Such insurance shall include, but not be limited to:

- .01 Premises and Operations Liability;
- .02 Products and Completed Operations;
- .03 Owner's and Contractor's Protective Liability;
- .04 Blanket Written Contractual Liability;
- .05 Contingent Employer's Liability;
- .06 Personal Injury Liability;
- .07 Non-Owned Automobile Liability;
- .08 Cross Liability;
- .09 Employees as Additional Insureds; and
- .10 Broad Form Property Damage.

This insurance shall be maintained continuously from commencement of hot roofing or installation of hot membrane work until such work is completed.

**(a) Property Insurance** which shall cover, on a replacement cost basis, all property, of every description, to be used in the construction of the *Work*, against "All Risks" of physical loss or damage, including earthquake and flood, while such property is being transported to the site, and thereafter throughout erection, installation and testing. This insurance shall be maintained continuously from commencement of the *Work* and kept in force until the *Project* is ready for use or is being used for the purpose intended, whichever occurs first, and is confirmed in writing by the *Design-Builder* in consultation with the *Consultant* and the *Owner*. Such insurance shall extend to protect the interest of the *Owner*, and shall contain a waiver of subrogation against the *Owner*.

- 11.1.3 Any insurance required under clauses 11.1.1 and 11.1.2 (a), (c), (d), (e), (f) and (g) must be endorsed to provide the *Owner* with 30 days' advance written notice of cancellation.
- 11.1.4 As may be applicable, the *Design-Builder* must cause all *Subcontractors* to comply with the insurance requirements outlined in clauses 11.1.1 and 11.1.2 (a) (b), (c), (d), (e), (f) and (g).
- 11.1.5 The *Design-Builder* will also provide, maintain and pay for any other insurance that the *Design-Builder* is required by law to carry, or which the *Design-Builder* considers necessary.
- 11.1.6 All the foregoing insurance shall be primary and not require the sharing of any loss by any insurer of the *Owner*.

- 11.1.7 The *Design-Builder* will provide the *Owner* with proof of insurance for those insurances required to be provided by the *Design-Builder* prior to the commencement of the *Work* in the form of a completed Certificate of Insurance and will also provide a certified copy of any required policies upon request.
- 11.1.8 The *Owner* will not be responsible for injury to the *Design-Builder's* employees or for loss or damage to the *Design-Builder's* or to the *Design-Builder's* employees' machinery, equipment, tools or supplies which may be temporarily used or stored in, on or about the project site during construction and which may, from time to time, or at the termination of this *Contract*, be removed from the project site. The *Design-Builder* hereby waives all rights of recourse against the *Owner* with regard to damage to the *Design-Builder's* property.
- 11.1.9 If the *Design-Builder* fails to provide, maintain and pay for insurance as required by this schedule, other than automobile liability insurance, the *Owner* may obtain and pay for the required insurance, the cost of which will be payable on demand by the *Owner*. The *Owner* may offset such amounts from any monies due to the *Design-Builder* if not paid within 15 days.

**GC 11.2 CONTRACT SECURITY (for projects of One Hundred Fifty Thousand (\$150,000) or greater)**, delete entirely and replace with the following:

**GC 11.2 – CONTRACT SECURITY**

- 11.2.1 The *Design-Builder* shall prior to commencement of the *Work* furnish performance and labour and material payment bonds within fourteen (14) days of the date of this *Contract*. Each bond must be in a sum equal to 50% of the total *Contract Price*. The bonds must be issued on the latest CCDC-221 or CCDC-222 approved forms or other such forms approved by the Surety Association of Canada and issued by a surety company registered in the Province of British Columbia or another surety company acceptable to the *Owner*. The *Design-Builder* must maintain the bonds in good standing until the fulfilment of the *Contract*.

**GC 12.2 INDEMNIFICATION, delete GC 12.2.1 and 12.2.2** and replace with the following:

**GC 12.2 – INDEMNIFICATION**

- 12.2.1 Without restricting the parties' obligation to indemnify as described in paragraphs 12.1.4 and 12.1.5, and excepting always losses caused or contributed to by the acts of the party for whom indemnification is sought, the *Owner* and the *Design-Builder* shall each indemnify and hold harmless the other from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings whether in respect to losses suffered by them or in respect to claims by third parties that arise out of, or are attributable in any respect to their involvement as parties to this *Contract*, provided such claims are:
- .1 caused by:
    - (1) the acts or omissions of the party from whom indemnification is sought or anyone for whose acts or omissions that party is liable, or;
    - (2) a failure of the party to the *Contract* from whom indemnification is sought to fulfill its terms or conditions; and

.2 made by *Notice in Writing* within such periods as prescribed by the Limitation Act of the Province of British Columbia.

12.2.2 The obligation of either party to indemnify as set forth in paragraph 12.2.1 shall be limited as follows:

- .1 In respect to losses suffered by the *Owner* and the *Design-Builder* for which insurance is to be provided by the *Design-Builder* pursuant to GC 11.1 – INSURANCE, the limit of:
  - (1) Commercial General Liability coverage – GC 11.1.2(a); or
  - (2) Property Insurance – GC 11.1.2 (g)whichever is pertinent to the loss.
- .2 In respect to losses suffered by the *Owner* and the *Design-Builder* for which insurance is not required to be provided by either party in accordance with GC 11.1 – INSURANCE, the greater of:
  - (1) the *Contract Price* as recorded in Article A-4 – CONTRACT PRICE or;
  - (2) TWO MILLION DOLLARS (\$2,000,000.00),but in no event shall the sum be greater than TWENTY MILLION DOLLARS (\$20,000,000.00).
- .3 In respect to claims by third parties for direct loss resulting from bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, the obligation to indemnify is without limit. In respect to all other claims for indemnity as a result of claims advanced by third parties, the limits of indemnity set forth in paragraphs 12.2.2.1 and 12.2.2.2 shall apply.

**GC 12.3 LIMITATION OF LIABILITY FOR DESIGN SERVICES**, delete entirely and replace with the following:

**GC 12.3 – LIMITATION OF LIABILITY FOR DESIGN SERVICES**

12.3.1 Notwithstanding any other provisions of this *Contract*, the *Design-Builder's* liability for claims which the *Owner* may have against the *Design-Builder*, including the *Design-Builder's* officers, directors, employees and representatives, that arise out of, or are related to, the *Design Services*, shall be limited to claims arising from errors, omissions, or negligent performance of *Design Services* by the *Consultant* or *Other Consultant*.