

## HEALTH – OWNER INSURED CONSTRUCTION PROJECTS

### Indemnification and Insurance Clauses (to be included in Supplementary Conditions to the CCDC 17 Contracts for Health Care Agencies involved in major projects insured by the Owner)

#### MODIFICATIONS TO GENERAL CONDITIONS

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

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

**(a) Wrap-up Liability Insurance**

- 1) The Owner shall provide, maintain and pay for Commercial General Liability Insurance with a limit of Ten Million Dollars (\$10,000,000.00), inclusive per occurrence, Twenty Million Dollars (\$20,000,000.00) general aggregate for bodily injury, death, and damage to property including loss of use thereof, product/completed operations liability with a limit of Ten Million Dollars (\$10,000,000.00) annual aggregate.
- 2) The insurance shall cover the Owner, Trade Contractors and Trade Subcontractors, Architects, Engineers, Consultants and anyone employed by them to perform a part or parts of the Work but excluding suppliers whose only function is to supply and/or transport products to the project site. The insurance does not extend to any activities, works, jobs or undertakings of the insureds other than those directly related to the Work of this Contract.
- 3) The insurance shall preclude subrogation claims by the insurer against anyone insured hereunder.
- 4) The insurance shall include coverage for:
  - .01 Products and Completed Operations Liability (twenty-four (24) months);
  - .02 Cross Liability (or Severability of Interests);

- .03 Shoring, Blasting, Excavating, Underpinning, Demolition, Piledriving and Caisson Work, Work Below Ground Surface, Tunneling and Grading, as applicable;
  - .04 Limited Pollution Liability (Two Million Dollars (\$2,000,000.00));
  - .05 Broad Form Tenants Legal Liability (One Million Dollars (\$1,000,000.00));
  - .06 Operation of Attached Machinery; and
  - .07 Forest Fire Fighting Expenses (One Million Dollars (\$1,000,000.00)).
- 5) Any applicable deductible shall not exceed Ten Thousand Dollars (\$10,000.00) except with respect to loss or damage arising from hot roofing operations where the deductible shall not exceed Twenty Five Thousand Dollars (\$25,000.00).
- 6) This insurance shall be maintained continuously from commencement of the Project until the date of final certificate for payment is issued or when the insured project is completed and accepted by or on behalf of the Owner, whichever occurs first, plus with respect to completed operations cover a further period of twenty-four (24) months.

**(b) Property Coverage**

- 1) The Owner shall provide, maintain and pay for Course of Construction coverage, against "All Risks" of physical loss or damage, and will cover all materials, property, structures and equipment purchased for, entering into, or forming part of the Work whilst located anywhere within Canada and continental United States of America (excluding Alaska) during construction, erection, installation and testing, but such coverage shall not include coverage for Trade Contractor's equipment of any description. Such coverage shall be maintained until Substantial Performance of the Work. There will be a deductible of Ten Thousand Dollars (\$10,000.00) for each and every occurrence where the project value is Ten Million Dollars (\$10,000,000.00) or less and a deductible of Twenty Five Thousand Dollars (\$25,000.00) for each and every occurrence where the project value is exceeding Ten Million Dollars (\$10,000,000.00) except for the peril of earthquake which shall have a five percent (5%) (subject to minimum Two

Hundred Fifty Thousand Dollars (\$250,000.00)) deductible based upon the total project value insured. A one day waiting period for each month of the estimated project term subject to a minimum waiting period of thirty (30) days shall apply with respect to soft costs.

- 2) The coverage shall include as a protected entity, each Trade Contractor, Trade Subcontractor, Architect or Engineer who is engaged in the Project.
- 3) The coverage will contain a waiver of the Owner's rights of subrogation against all protected entities except where a loss is deemed to have been caused by or resulting from any error in design or any other professional error or omission.
- 4) The Trade Contractor shall, at his own expense, take special precaution to prevent fires occurring in or about the Work and shall observe, and comply with, all insurance policy warranties and all laws and regulations in force respecting fires.

**(c) Automobile Liability Insurance**

The Trade Contractor (or Trade Subcontractors) shall provide, maintain and pay for Automobile Liability Insurance in respect of all owned or leased vehicles if used directly or indirectly in the performance of the Work, subject to limits of not less than Two Million Dollars (\$2,000,000.00) inclusive per occurrence. The insurance shall be placed with such company or companies and in such form and deductibles as may be acceptable to Owner.

**(d) Aircraft and/or Watercraft Liability Insurance**

When applicable, the Trade Contractor (or Trade Subcontractors) shall provide, maintain and pay for liability insurance with respect to owned or non-owned aircraft and watercraft if used directly or indirectly in the performance of the Work, subject to limits of not less than Two Million Dollars (\$2,000,000.00) inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof and including aircraft passenger hazard where applicable. The Owner must be included as an additional insured but only with respect to liability arising out of the Trade Contractor's performance of the Contract. The insurance shall be placed with such company or companies and in such form and deductibles as may be acceptable to Owner.

### **(e) Trade Contractors Pollution Liability Insurance**

When applicable, the Trade Contractor (or Trade Subcontractors) shall provide, maintain and pay for Trade Contractor's Pollution Liability, where the Trade Contractor's performance (or Trade Subcontractors performance) of the Work is associated with hazardous materials clean-up, removal and/or containment, transit and disposal. This insurance must have a limit of liability not less than Two Million Dollars (\$2,000,000.00) inclusive per occurrence insuring against bodily injury, death, and damage to property including loss of use thereof. The Owner must be included as an additional insured but only with respect to liability arising out of the Trade Contractor's performance of the Contract.. Such insurance shall not be impaired by any time element limitations to the pollution event, 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 Trade Contractor as a third party.

If any such insurance is provided on a claims-made basis and that insurance is cancelled or not renewed, such policy must provide a twenty-four (24) month extended reporting period.

- 11.1.2 The description of the Owner arranged insurance described herein is provided on a summary basis only and is not a statement of the actual policy terms and conditions. The Owner does not represent or warrant that the Owner arranged insurance contains insurance for any and all losses. It is the Trade Contractor's responsibility to ascertain the exact nature and extent of coverage provided by the Owner arranged insurance, to review all policies pertaining thereto and to obtain any other insurance that it may be prudent for the Trade Contractor to obtain.

The Trade Contractor shall provide, maintain and pay for any additional insurance which they are required to provide by law or which they consider necessary.

- 11.1.3 The Owner shall, upon request, provide the Trade Contractor with proof of insurance for those coverages and insurances required to be provided by the Owner prior to commencement of the Work and subsequent certified copy of policies within a reasonable time period thereafter.
- 11.1.4 Where applicable, any Trade Contractor insurance required under this section 11.1.1 must be endorsed to provide the Owner with thirty (30) days advance written notice of cancellation, or adverse material change.

- 11.1.5 The Trade Contractor and/or Trade Subcontractors, as may be applicable, shall be responsible for any deductible amounts under the policies of coverage and insurance except for perils of flood and earthquake.
- 11.1.6 The Trade Contractor shall provide the Owner with proof of insurance for those insurances required to be provided by the Trade Contractor prior to the commencement of the Work in the form of a completed certificate of insurance. The Trade Contractor shall also provide a certified copy of any required policies to the Owner upon request. The Trade Contractor must cause all Trade Subcontractors to comply with the insurance requirements outlined herein.
- 11.1.7 The Owner shall not be responsible for injury to the Trade Contractor's employees or for loss or damage to the Trade Contractor's or to the Trade Contractor's employees' machinery, equipment, tools or supplies which may be temporarily used or stored in, on or about the premises during construction and which may, from time to time, or at the termination of the contract, be removed from the premises. The Trade Contractor hereby waives all rights of recourse against the Owner or any other Trade Contractor with regard to damage to the Trade Contractor's property.

**GC 11.2 CONTRACT SECURITY (for projects of One Hundred Fifty Thousand Dollars (\$150,000.00) or greater),** delete entirely and replace with the following:

- 11.2.1 The Trade Contractor 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 BC or another surety company acceptable to the Owner. The Trade Contractor must maintain the bonds in good standing until the fulfilment of the Contract.

**GC 12.1 – INDEMNIFICATION,** delete GC 12.1.1 and 12.1.2 and replace with the following:

**GC 12.1 – INDEMNIFICATION**

- 12.1.1 Without restricting the parties' obligation to indemnify as described in paragraphs 12.1.4 and 12.1.5, and excepting always losses arising out of the independent acts of the party for whom indemnification is sought,

the Owner and the Trade Contractor 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.

12.1.2 The obligation of either party to indemnify as set forth in paragraph 12.1.1 shall be limited as follows:

- .1 In respect to losses suffered by the Owner and the Trade Contractor for which insurance is to be provided by the owner pursuant to GC 11.1 – INSURANCE, the limit of the GENERAL LIABILITY COVERAGE – GC 11.1.1(a) or the limit of the PROPERTY COVERAGE – GC 11.1.1(b) whichever is pertinent to the loss.
- .2 In respect to losses suffered by the Owner and the Trade Contractor for which insurance is not required to be provided by either party in accordance with GC 11.1 – INSURANCE, the greater of the Contract Price as recorded in Article A-4 – CONTRACT PRICE or 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 12.1.2.1 and 12.1.2.2 shall apply.