

# CONTRACT WORKS – BUILDERS RISK

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Throughout this Form the words "you" and "your" refer to the Named Insured shown in the Declaration Page(s). The words "we", "us", and "our" refer to the company providing this insurance.

Words and phrases in bold have a special meaning. Refer to the DEFINITIONS Section.

The titles of sections or paragraphs listed below should not be considered for purposes of interpreting the intent of this Form; these titles have only been inserted for ease of reading.

Various provisions in this Form restrict coverage. Read the entire Form carefully to determine rights, duties and what is and is not covered.

## INDEMNITY AGREEMENT

1. In the event that any of the insured property be lost or damaged by an insured peril, we will pay you for the direct physical loss or direct physical damage so caused to an amount not exceeding whichever is the least of:
  - 1.1. the value of the lost or damaged property as determined in SPECIAL PROVISIONS – Item 2. – Basis of Valuation;
  - 1.2. your interest in the property;
  - 1.3. the amount of insurance shown on the Declaration Page(s) in respect of the property lost or damaged.

The inclusion of more than one person or interest shall not increase our liability.

### 2. ADDITIONAL INSURED

Owners, contractors and subcontractors are recognized as Additional Insureds hereunder to the extent required by any written contract or subcontract made by or for you for the insured project prior to the date of loss or damage to insured property and then only with respect to their financial interest in the insured property. The interests of the following Additional Insureds is limited to their activities at the project site only:

- 2.1. architects;
- 2.2. engineers;
- 2.3. manufacturers;
- 2.4. suppliers. Additional Insureds shall not include suppliers who perform no construction or installation work at the project site;

### 3. INSURED PROPERTY

This Form insures the following items, whether owned by you or by others for which you are contractually liable, for which a limit of insurance is specified on the Declaration Page(s), and only while at the project site:

**Permanent works**

**Landscaping materials**

**Temporary works**

### 4. INSURED PERILS

This Form, except as otherwise provided, insures against all risks of direct physical loss of or direct physical damage to insured property.

## EXCLUSIONS

### 1. EXCLUDED PROPERTY

This Form does not insure direct physical loss of or direct physical damage to:

- 1.1. **Property while Waterborne or on Aircraft**
  - 1.1.1. property while waterborne, from the commencement of loading until completion of discharge, except on a ferry, railway car or transfer barge, all in connection with land transportation;
  - 1.1.2. property that is insured under terms of any marine insurance;
  - 1.1.3. property while aboard or being transported by any aircraft;
- 1.2. **Tools and Equipment**

contractor's and subcontractor's machinery, tools and equipment, including spare parts and accessories whether owned, loaned, hired, or leased other than temporary works;
- 1.3. **Money, Precious Metals and Securities**

money, digital currency, cash cards, bullion, platinum or other precious metals and alloys, securities, stamps, tickets and tokens, evidence of debt or title. This exclusion does not apply to direct physical loss or direct physical damage caused by metals used as refractory lining or catalyst;
- 1.4. **Automobiles, Watercraft and Aircraft**

automobiles, watercraft, amphibious or air cushion vehicles, aircraft, spacecraft, trailers, motors, or other accessories that are or may be attached to or mounted on such property. This exclusion does not apply to office trailers included under temporary works;
- 1.5. **Land and Land Values**

land, land values, water, mineral rights, mineral reserves, or any similar property or part thereof that is located at or below the surface grade of the contiguous land, including but not limited to, the value of cut, fill, and backfill materials at the project site prior to the date the insured project construction commenced. This exclusion does not apply to:

  - 1.5.1. the value of cut, fill and backfill materials purchased for use in the completion of the insured project;
  - 1.5.2. labour, material and equipment charges incurred to move, remove, place, or otherwise handle cut, fill, and back fill materials to the extent such costs are included in the Project Limit;

**1.6. Existing Property**

existing property at the project site, unless the value of same is declared in the **Project Limit** and is shown to be included on the Declaration Page(s);

**1.7. Underground Property**

underground property involved in tunneling and mining, unless otherwise agreed to and declared in the **Project Limit**;

**1.8. Electrical Devices, Appliances or Wiring**

electrical devices, appliances or wiring caused by artificially generated electrical currents, including arcing. This exclusion shall not apply:

- 1.8.1. when the proximate cause of the damage is a peril not otherwise excluded;
- 1.8.2. to loss or damage caused directly by resultant fire or explosion;

**1.9. Data Exclusion**

data;

**1.10. Property Illegally Acquired**

property illegally acquired, kept, stored, or transported; property seized or confiscated for breach of any law or by order of any public authority;

**1.11. Transmission and Distribution Lines**

overhead transmission and distribution lines and their supporting structures once energized at the completion of testing and commissioning.

**2. EXCLUDED PERILS**

This Form does not insure against costs, and direct physical loss of or direct physical damage caused directly or indirectly:

**2.1. Earthquake**

in whole or in part by earthquake. This exclusion applies whether or not there are one or more other causes or events (whether covered or not) that contribute concurrently or in any sequence to the occasioning of the direct physical loss or direct physical damage, except for direct physical loss or direct physical damage caused directly by resultant fire, explosion, smoke, or **leakage from fire protective equipment**;

Except as provided under Extension of Coverage 12. Property in Transit, this exclusion (2.1.) does not apply to property in transit;

**2.2. Flood**

in whole or in part by flood, including **surface water**, waves, tides, tidal waves, tsunamis, or the breaking out or overflow of any natural or artificial body of water. This exclusion applies whether or not there are one or more other causes or events (whether covered or not) that contribute concurrently or in any sequence to the occasioning of the direct physical loss or direct physical damage, except for direct physical loss or direct physical damage caused directly by resultant fire, explosion, smoke, or **leakage from fire protective equipment**;

**This exclusion (2.2.) does not apply:**

- 2.2.1. to property in transit, except as provided under Extension of Coverage 12. Property in Transit; or
- 2.2.2. to direct physical loss or direct physical damage caused directly by leakage from a **water main**;

**2.3. Defects**

by defects of design, plan, specification, material or workmanship; provided, however, should direct physical loss of or direct physical damage occur to any portion of the insured property containing any of the said defects, the cost or repair, replacement or rectification which is hereby excluded is that cost which would have been incurred to complete the repair, replacement or rectification of insured property had such defects been discovered immediately before the direct physical loss of or direct physical damage occurred and rectified at that time.

For the purpose of this Form and not merely this exclusion, the insured property will not be regarded as lost or damaged solely by virtue of the existence of any defect in design, plan, specification, material, or workmanship in the insured property or any part thereof.

**2.4. Wear and Tear, Frost or Freezing, and Defects**

- 2.4.1. by wear and tear;
- 2.4.2. by rust or corrosion;
- 2.4.3. by frost or freezing;
- 2.4.4. by gradual deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself.

This exclusion (2.4.) does not apply to direct physical loss of or direct physical damage caused directly by an insured peril not otherwise excluded in this Form;

**2.5. Rodents, Insects or Vermin**

by rodents, insects or vermin.

This exclusion (2.5.) does not apply to direct physical loss or direct physical damage caused directly by an insured peril not otherwise excluded in this Form;

**2.6. Dishonest or Criminal Act**

- 2.6.1. by any dishonest or criminal act committed by you, an Additional Insured, or any agent of yours or an Additional Insured, acting alone or in collusion with others (except bailees for hire);
- 2.6.2. by theft or attempted theft committed by any employee of yours or an Additional Insured, acting alone or in collusion with others;
- 2.6.3. by any dishonest or criminal act committed by anyone, except as stated in exclusion 2.6.2., when you, an Additional Insured or any agent of yours or an Additional Insured knew or ought to have known prior to the direct physical loss or direct physical damage, of the dishonest or criminal act;

**2.7. Centrifugal Force, Breakdown**

by centrifugal force, mechanical or electrical breakdown or derangement, in or on the **project site**. This exclusion (2.7.) does not apply to direct physical loss or direct physical damage caused directly by resultant fire;

**2.8. Delay**

by delay, loss of market, or loss of use or occupancy;

**2.9. Penalties or Liquidated Damages**

by penalties or liquidated damages for non-completion of or delay in completion of contract or non-compliance with contract conditions or costs incurred solely in an effort to eliminate or reduce penalties or liquidated damages for which you may be contractually liable;

**2.10. War**

in whole or in part by war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, or military power. This exclusion (2.10.) applies whether or not there are one or more other causes or events (whether covered or not) that contribute concurrently or in any sequence to the occasioning of the direct physical loss or direct physical damage;

**2.11. Settling, Expansion, Shifting, Cracking or Shrinkage**

by settling, expansion, contracting, moving, shifting, cracking or shrinkage of walls, floors, foundations, ceilings or roofs. This exclusion (2.11.) does not apply to direct physical loss or direct physical damage caused directly and concurrently by an insured peril to insured property not otherwise excluded under this Form;

**2.12. Terrorism**

in whole or in part, by **terrorism** or by any activity or decision of a government agency or other entity to prevent, respond to or terminate **terrorism**.

This exclusion (2.12.) applies whether or not there are one or more other causes or events (whether covered or not) that contribute concurrently or in any sequence to the occasioning of the direct physical loss or direct physical damage.

If any portion of this exclusion is found to be invalid, unenforceable, or contrary to statute, the remainder shall remain in full force and effect;

**2.13. Nuclear**

2.13.1. by any nuclear incident (as defined in the *Nuclear Liability and Compensation Act*, any other nuclear liability act, law or statute, or any amending law) or nuclear explosion, except for ensuing direct physical loss or direct physical damage which results directly from fire, lightning, or explosion of natural, coal or manufactured gas;

2.13.2. by contamination by radioactive material;

This exclusion (2.13.) applies whether or not there are one or more other causes or events (whether covered or not) that contribute concurrently or in any sequence to the occasioning of the direct physical loss or direct physical damage;

**2.14. Pollution**

2.14.1. by any actual or alleged spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of **pollutants**, nor the cost or expense of any resulting **clean up**.

**This exclusion (2.14.1.) does not apply:**

2.14.1.1. if the spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of **pollutants** is directly caused by an insured peril not otherwise excluded in this Form; or

2.14.1.2. to direct physical loss or direct physical damage caused directly by an insured peril not otherwise excluded in this Form;

2.14.2. cost or expense for any testing, monitoring, evaluating or assessing of an actual, alleged, potential or threatened spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of **pollutants**;

**2.15. Data Problem**

by a **data problem**;

This exclusion (2.15.) does not apply to direct physical loss or direct physical damage caused directly by resultant fire, explosion of natural, coal or manufactured gas, smoke, **leakage from fire protective equipment** or water damage caused by bursting of frozen pipes and tanks;

**2.16. Fungi and Spores**

This Form does not insure:

2.16.1. direct physical loss or direct physical damage consisting of or caused directly or indirectly, in whole or in part, by any **fungi** or **spores** except as provided in Extension of Coverage 8. Fungi, Wet Rot, Dry Rot or Bacteria Clean Up Expenses;

2.16.2. the cost or expense for any testing, monitoring, evaluating, or assessing of **fungi** or **spores**;

**2.17. Disappearance**

2.17.1. by mysterious disappearance;

2.17.2. by shortage of equipment or materials disclosed on taking inventory;

**2.18. By-Laws**

proximately or remotely, arising in consequence of or contributed to by the enforcement of any by-law, regulation, ordinance or law regulating zoning or the demolition, repair or construction of buildings or structures, which by-law, regulation, ordinance or law makes it impossible to repair or reinstate the property as it was immediately prior to the direct physical loss or direct physical damage, except as provided under Extension of Coverage 2. By-Laws;

**2.19. Cessation of Work**

by cessation of work, whether total or partial, unless such cessation is directly caused by an insured peril and then only to the extent of the coverage provided by this Form for such period of time that, with the exercise of due diligence and dispatch, the direct physical loss or direct physical damage can be repaired or replaced, excluding any period of time during which operations would not normally have been conducted, such as Saturdays, Sundays, holidays, seasonal inactivity, or any scheduled shutdown;

## EXTENSIONS OF COVERAGE

The following Extensions of Coverage shall not increase the limit(s) of insurance applying under this Form which are part of and not in addition to the Project Limit.

An Extension of Coverage below applies only when a limit of insurance is indicated in the Declaration Page(s) for that specific Extension of Coverage.

**1. ARSON AND THEFT REWARD**

In the event of direct physical loss or direct physical damage to the insured property that results from an act of arson or theft, for which coverage is afforded under this Form, we will reimburse you for rewards paid for information directly leading to convictions for the act of arson or theft, or for the recovery of stolen property.

Our liability under this Extension of Coverage shall not be increased by the number of people who provide information.

**2. BY-LAWS**

In the event of direct physical loss or direct physical damage, by an insured peril to **permanent works**, we will pay up to the limit of insurance for Hard Costs as stated in the Declaration Page(s) for:

2.1. any increase in the cost of repairing, replacing, constructing or reconstructing the **permanent works** with one of like height, floor area and style and for like occupancy;

2.2. the cost of demolishing and clearing the site of any undamaged portion of the **permanent works**;

2.3. the loss occasioned by the demolition of any undamaged portion of the **permanent works**;

arising from the enforcement of any by-law, regulation, ordinance or law which regulates zoning or the demolition, repair, or construction of damaged **permanent works**, and is in force at the time of such direct physical loss or direct physical damage.

**This Extension of Coverage does not insure against:**

- 2.4. the enforcement of any by-law, regulation, ordinance, or law which prohibits you from rebuilding or repairing on the same site or adjacent site or prohibits continuance of like occupancy;
- 2.5. the enforcement of any by-law, regulation, ordinance or law which you were legally required to comply with prior to the loss but failed to do so;
- 2.6. direct or indirect loss, damage, cost or expense, arising out of **clean up** resulting from, any actual, alleged, potential or threatened spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of **pollutants**;
- 2.7. direct or indirect loss, damage, cost or expense for any testing, monitoring, evaluating, or assessing of an actual, alleged, potential or threatened spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of **pollutants**;
- 2.8. direct or indirect loss, damage, cost, or expense relating to the removal of asbestos not physically damaged.

**3. DEBRIS REMOVAL**

- 3.1. In the event of direct physical loss or direct physical damage by an insured peril, we will pay for your reasonable and necessary costs to clean up and remove debris:
  - 3.1.1. from the **project site** and within 300 meters of the **project site**;
  - 3.1.2. of other property which is not insured by this Form, but which has been blown by windstorm upon the **project site**;
- 3.2. If you have coverage under Extension of Coverage 10. Off-Site Storage, we will pay your expenses to remove debris from the off-site storage location;
- 3.3. If you have coverage under Extension of Coverage 12. Property in Transit, we will pay your expenses to remove debris from the site of any accident, and within 300 meters of the site of any accident.

**This Extension of Coverage does not apply to costs or expenses:**

- 3.4. to **clean up pollutants** from land or water; or
- 3.5. for testing, monitoring, evaluating, or assessing of an actual, alleged, potential, or threatened spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of **pollutants**.

**4. EXPEDITING EXPENSE**

We shall pay the reasonable and necessary costs and expenses, including overtime, night work, work on public holidays, and the extra cost of express or other rapid means of transportation, incurred as a result of direct physical loss or direct physical damage to insured property by an insured peril, in order to:

- 4.1. make temporary repairs;
- 4.2. expedite permanent repairs;
- 4.3. expedite permanent **replacement** of insured property.

**This Extension of Coverage does not apply to costs or expenses:**

- 4.4. in whole or in part, that are recoverable elsewhere in this Policy; or
- 4.5. for the permanent repair or **replacement** of such damaged insured property.

**5. EXTRA EXPENSE**

We shall pay the reasonable and necessary extra expenses incurred by you in order to resume and continue, as nearly as practicable, the scheduled progress of undamaged work, but only when such scheduled progress is impaired by direct physical loss or direct physical damage that is insured under this Form and provided that the direct physical loss or direct physical damage exceeds the deductible applicable to that loss or damage.

**This Extension of Coverage does not apply to expenses:**

- 5.1. incurred to overcome delays in the scheduled progress of the work which existed at the time of loss;
- 5.2. incurred to overcome delays in the scheduled progress of the work resulting from causes that are independent of, or which would have occurred in the absence of the insured direct physical loss or direct physical damage;
- 5.3. incurred to comply with any by-law, ordinance or law that regulates zoning, or the demolition, repair, construction, or reconstruction of the insured property, except as provided under Extension of Coverage 2. By-Laws;
- 5.4. incurred for alterations, additions, improvement or other changes in materials, designs, plans, specifications, or the means and methods of construction, including but not limited to, any expense to rectify defects, faults, or deficiencies;
- 5.5. incurred to perform any work, service, function, or other requirement not directly related to the undamaged work;
- 5.6. incurred if the amount of insured direct physical loss or direct physical damage is less than the applicable deductible for such loss or damage;
- 5.7. for additional interest, debt service, business interruption, loss of income, loss of earnings, loss of rents or delay in completion; or
- 5.8. resulting from delay due to your inability to provide sufficient funds for the repair or **replacement** of any loss or damage.

It is a condition precedent to recovery under this Extension of Coverage that you shall use due diligence and dispatch, and shall do and concur in all things necessary to maintain the scheduled progress of the undamaged work that existed immediately prior to the insured direct physical loss or direct physical damage.

**6. FIRE OR POLICE DEPARTMENT SERVICE CHARGES**

This Form is extended to cover service charges assessed when a fire or police department is called to save or protect the insured property from fire or another insured peril at the **project site**.

This Extension of Coverage only provides reimbursement for service charges for which you are liable and which have been received directly from:

- 6.1. your municipal fire or police department; or
- 6.2. a neighbouring municipality's fire department or police department for which there is an inter-municipal agreement.

**7. FIRE SUPPRESSION RECHARGE EXPENSE**

This Form is extended to cover any **fire suppression system** recharge expense (including system inspection expenses) you have incurred due to the leakage or discharge of the fire suppressant within any **fire suppression system** at the **project site**, where such discharge or leakage is caused by or results from an insured peril.

This Extension of Coverage may also be applied to the cost incurred during the policy period of upgrading any **fire suppression system** following direct physical loss or direct physical damage arising out of a fire to which this Form otherwise applies, and that caused such **fire suppression system** to discharge. The cost incurred for upgrading **fire suppression systems** does not apply to any **automatic sprinkler system** designed to protect buildings or their contents.

#### 8. FUNGI, WET ROT, DRY ROT OR BACTERIA CLEAN UP EXPENSES

In the event **fungi**, wet rot, dry rot, or bacteria results directly from an **occurrence** due to an insured peril, we will pay for:

- 8.1. the cost to clean up, remove and dispose **fungi**, wet rot, dry rot, or bacteria from any insured property;
- 8.2. the cost to tear out and replace any part of the insured property when tear out of insured property is necessary to gain access to **fungi**, wet rot, dry rot, or bacteria;
- 8.3. the cost to test for the continued presence of any such **fungi**, wet rot, dry rot, or bacteria, provided there is a reason to believe it is still present after its removal, repair, replacement, or restoration of insured property.

##### Reporting Period

It is a condition precedent to recovery under this Extension of Coverage that all costs insured by this Extension of Coverage must be reasonable and necessary that the **fungi**, wet rot, dry rot, or bacteria was reported to us within thirty (30) days of the direct physical loss or direct physical damage from which it resulted.

#### 9. LAND AND WATER POLLUTANT CLEAN UP EXPENSES

Notwithstanding exclusion 2.14., Pollution, we will pay for the reasonable and necessary expenses incurred by you for the **clean up** of **pollutants** from land or water at the **project site** provided the spill, discharge, emission, dispersal, seepage, leakage, release, migrations, or escape of **pollutants**:

- 9.1. arises directly from direct physical loss or direct physical damage due to an insured peril to insured property at the **project site**;
- 9.2. is sudden, unexpected, and unintended from your standpoint; and
- 9.3. first occurs during the policy period.

##### Reporting Period

It is a condition precedent to recovery under this Extension of Coverage that all expenses insured by this Extension of Coverage must be incurred and reported to us within 180 days of the spill, discharge, emission, dispersal, seepage, leakage, release, migration or escape of **pollutants** for which **clean up** expenses are being claimed.

##### Limit of Insurance

The maximum amount of insurance under this Extension of Coverage during any one annual policy period shall not exceed the aggregate limit of insurance shown on the Declaration Page(s) for this Extension of Coverage.

##### No Automatic Reinstatement

Following a loss under this Extension of Coverage, the limit of insurance specified on the Declaration Page(s) for this Extension of Coverage will be reduced by the amount payable.

##### This Extension of Coverage does not apply to:

- 9.4. expenses for **clean up** away from or beyond the **project site** resulting from any spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of **pollutants**, even if the **pollutants** emanated from the **project site**;
- 9.5. expenses for **clean up** of any spill, discharge, emission, dispersal, seepage, leakage, release, migration or escape of **pollutants** that began before the effective date of this Policy;
- 9.6. fines, penalties, punitive or exemplary damages;
- 9.7. expenses incurred for the **clean up** of **pollutants** at or from any **project site** or location which is or was at any time used by or for you or others for the handling, storage, disposal, processing or treatment of waste;
- 9.8. costs to test for, monitor or assess the existence, concentration, or effects of **pollutants** unless it has been determined that an insured loss has occurred.

##### Other Insurance

Notwithstanding SPECIAL PROVISIONS – Item 11. – Other Insurance, this Extension of Coverage shall apply as excess over any other valid and collectible insurance available to you or any other interested party, unless you have no other valid collectible insurance, in which case this Policy shall be primary.

#### 10. OFF-SITE STORAGE

We will cover, against an insured peril by this Form, insured property anywhere in Canada other than the **project site**, for the temporary storage of insured property, all and only intended to enter into and form part of the completed insured **project** described on the Declaration Page(s), but excluding such property while in transit or in the course of manufacturing or processing on manufacturer's or supplier's site.

#### 11. PROFESSIONAL FEES

In the event of a claim covered by this Form, if we require you to produce and certify particulars or details of your business in order for us to arrive at the amount of the loss payable, we will advise you in writing and we will pay the reasonable and necessary fees charged by auditors, accountants, architects, engineers or other specialists you have retained to meet such requirement.

This Extension of Coverage applies only to reasonable and necessary fees incurred to produce or certify the information that we require in this Extension of Coverage to arrive at the loss payable under this Form.

##### This Extension of Coverage does not include the fees, costs, or expenses with respect to the following:

- 11.1. lawyers, public adjusters, loss appraisers, loss consultants, or any of their associates or subsidiaries;
- 11.2. representatives or employees of any insurance broker or agents, or their associates or subsidiaries.

#### 12. PROPERTY IN TRANSIT

We will cover insured property from direct physical loss or direct physical damage, caused by an insured peril, while in transit, from the loading at the original point of shipment for transit, and continuously during the ordinary course of transit anywhere in Canada or the continental United States of America (excluding Alaska) until the completion of unloading at the **project site** or at a location designated by you and covered by Extension of Coverage 10. Off-Site Storage.

##### This Extension of Coverage does not apply:

- 12.1. for property while waterborne except while being transported on any ferry or in or on railway car or transfer barge in connection with land transportation;
- 12.2. if you enter into any agreement with the carriers, before or after the direct physical loss or direct physical damage, releasing them from liability, whether statutory or common law, or agree that this insurance shall in any way enure to the carrier's benefit. However, you may, without prejudice to this Extension of Coverage accept such bill of lading, receipt or contracts of transportation as are ordinarily issued by carriers containing a limitation as to the value of the insured property.

#### 13. PROTECTION OF INSURED PROPERTY

We shall pay the costs and expenses you incurred to temporarily protect and preserve insured property, but only if such actions and costs are reasonable and necessary due to imminent or actual direct physical loss or direct physical damage to insured property from an insured peril.

This Extension of Coverage does not apply to any costs or expenses for which a claim is or could be made under any other extension of coverage.

#### 14. VALUABLE PAPERS AND RECORDS

We shall pay the extra expense necessarily incurred in the reproduction of your **valuable papers and records**, other than electronic data and the media on which they are stored, as a result of direct physical loss or direct physical damage by an insured peril.

This Extension of Coverage applies only while the **valuable papers and records** are:

- 14.1. at the **project site**;
- 14.2. in transit or temporarily in other premises;
- 14.3. being removed to and while at a place of safety because of imminent danger of direct physical loss or direct physical damage and while being returned from such place.

## SPECIAL PROVISIONS

The following Special Provisions apply to this Form. In the event of conflict between these Special Provisions and any other provision contained under the General Conditions which are attached to this Policy, these Special Provisions shall govern, unless they conflict with Statutory Conditions. Notwithstanding the foregoing, should any portion of these Special Provisions be found to be invalid, unenforceable, or contrary to statute, the remainder shall remain in force and effect.

#### 1. LIMIT OF INSURANCE

- 1.1. Our total liability for any one **occurrence** shall not exceed the **Project Limit** stated in the Declaration Page(s), subject to any applicable limit, aggregate limit, or sub-limit of insurance shown on the Declaration Page(s);
- 1.2. We shall only be liable for our proportionate share of any direct physical loss or direct physical damage covered under this Form and any applicable limits of insurance or aggregate limit of insurance. The limit of insurance under the EXTENSIONS OF COVERAGE Section are included within and not in addition to the **Project Limit**;
- 1.3. If a limit of insurance is shown on the Declaration Page(s) as an Aggregate, the maximum amount of direct physical loss or direct physical damage payable in any one policy period, regardless of the number of **occurrences** within the same policy period, is the Aggregate limit of insurance shown on the Declaration Page(s).

#### 2. BASIS OF VALUATION

The value of the insured property shall be determined as follows:

- 2.1. **permanent works, landscape materials** and off-site storage:
  - 2.1.1. if repaired or replaced with due diligence and dispatch, the lesser of the cost to repair or replace at the same site, with material of like kind, capacity, size, quality and function, plus allowance for **contractor's** and **subcontractor's** reasonable overhead and profit in the same proportion as that included in the original contract for the **insured project** but the margin of profit shall not include materials and supplies which have not entered into construction at the time of insured direct physical loss or direct physical damage;
  - 2.1.2. if not repaired or replaced with due diligence and dispatch, the valuation shall be on an **actual cash value** basis;
- 2.2. **temporary works**: the lesser of the cost to repair or replace **temporary works**, but not exceeding the **actual cash value** of such lost or damaged **temporary works**;
- 2.3. property of others for which you are legally responsible:
  - 2.3.1. for new property, the lesser of the cost to repair or replace the lost or damaged property of others with material of like kind, capacity, size, quality and function, less betterments, or the property owner's cost;
  - 2.3.2. for property not new or is not repaired or replaced the valuation shall be on an **actual cash value** basis.
- 2.4. property in transit:
  - 2.4.1. with an invoice, the actual invoice cost including prepaid freight and such costs and charges since shipment that may have accrued and become legally due thereon and all premiums under this Policy shall be paid on this basis;
  - 2.4.2. without an invoice, the **actual cash value** of the insured property at the point of destination on the day of the insured direct physical loss or direct physical damage;
- 2.5. **valuable papers and records**:
  - 2.5.1. the cost of blank materials for reproducing the records;
  - 2.5.2. the cost of labour to transcribe or copy the records when there is a duplicate;
- 2.6. all other insured property under this Form for which no specific conditions have been set out: the **actual cash value** at the time and place of direct physical loss or direct physical damage, but not exceeding what it would then cost to repair or replace with material of like kind, capacity, size and quality.

#### 3. DEDUCTIBLE

- 3.1. We shall be liable for the amount by which the direct physical loss or direct physical damage caused by an insured peril exceeds the amount of the deductible specified in the Declaration Page(s) in any one **occurrence**;
- 3.2. Where a percentage deductible is specified in the Declaration Page(s), the amount of the deductible shall be that percentage multiplied by the value of the **insured project** at the time and date of the direct physical loss or direct physical damage;
- 3.3. If both a dollar amount and a percentage deductible are shown on the Declaration Page(s), the larger of the two deductibles shall apply;
- 3.4. Should any **occurrence** give rise to the application of more than one deductible amount, only the highest single deductible will be applied.

#### 4. ESCALATION PROVISION

In the event of a total loss, we will pay up to an additional 10% of the limit of insurance for Hard Costs specified on the Declaration Page(s) to cover increases in cost of labour, materials or changes in construction specifications. We will not pay any additional amounts:

- 4.1. unless the insured property sustaining such loss is replaced with due diligence and dispatch after the loss;
- 4.2. for increases in costs related to Extension of Coverage 2. By-Laws.

#### 5. PERMISSIONS

We hereby grant permission for you to immediately carry out necessary and reasonable repairs for damage to the insured property where the damage does not exceed \$50,000. If such damage is insured by this Form, we will reimburse you for your proportion of the actual cost of such repairs, subject to the deductible and any applicable limit of insurance stated on the Declaration Page(s). Nothing in this condition shall be deemed to have waived your requirement to provide us with notice of loss as soon as practicable.

#### 6. GUARANTEE, WARRANTY

In the event where a written or implied guarantee or warranty of any manufacturer or supplier would apply to an insured direct physical loss or direct physical damage, coverage under this Form shall apply only in excess of the amount recovered under any such guarantee or warranty.

This paragraph 6. Guarantee, Warranty applies whether or not the written or implied guarantee or warranty is from a manufacturer or supplier named as an Additional Insured.



## 7. SUBROGATION

In the event of any payment or assuming liability for payment under this Form, we shall be subrogated to the extent of such payment to all of your rights of recovery from any other persons, organizations, and entities.

### Your obligation

To secure our and any other interest in recovery, you will:

- 7.1. cooperate with us and any other interested parties to execute and deliver instruments and papers and do whatever else is necessary;
- 7.2. do nothing after the loss to prejudice such rights.

### Enforcement

We may bring action in your name to enforce such rights, except that we will have no rights of subrogation against:

- 7.3. any person, corporation, or entity that is also insured by this Policy; or
- 7.4. any person, corporation, or entity that you have waived your right of subrogation against, in writing, prior to loss.

Notwithstanding the foregoing, it is a condition of this Policy that we shall be subrogated to all your rights of recovery:

- 7.5. for any loss or damage arising out of the performance of, or failure to perform, professional services including due to any error, omission, deficiency or action of any architect, engineer, consultant or sub-consultant, or by any person or entity employed by them, or by any others for whose acts they are legally liable;
- 7.6. against any manufacturer or supplier of machinery, equipment or other property, that has agreed to remedy loss or damage under a guarantee or warranty, or other contractual agreement, whether expressed or implied;

whether or not named as an Additional Insured.

### Expenses and Payment

The expense of obtaining the recovery will be deducted from any recovery. We will be paid in proportion to our interests with any excess remitted to you. If there is no recovery, the expense for bringing any applicable proceeding will be proportionately shared between those parties who had instituted the proceeding.

## 8. OTHER DUTIES AND RESPONSIBILITIES

### To Additional Insureds

It is understood and agreed that you have obtained this Form and paid the premium on your own behalf as well as the Additional Insureds for the exclusive purpose of permitting suit or action under this Form. We acknowledge and agree, as evidenced by our acceptance of the premium paid, that any person, corporation, or entity coming within the description of an Additional Insured may enforce its rights at any time subsequent to the issuance of this Form for the purpose of entitlement to coverage granted by its terms for good consideration.

### In Event of Loss or Damage

In case of any loss or damage out of which a claim may arise under this Form, you must take all reasonable and necessary steps to salvage the insured property or to protect the insured property from further damage. You must not incur any costs or expense (other than at your own cost or expense) without our explicit approval beforehand or as explicitly allowed by this Policy. You must offer us all assistance and cooperation during the investigation and adjusting of any claim.

## 9. REINSTATEMENT OF LIMIT AFTER LOSS

Loss under any item of this Form shall not reduce the applicable limit of insurance unless an aggregate limit of insurance per policy period is stated to apply on the Declaration Page(s).

## 10. VERIFICATION OF VALUES, INSPECTION AND AUDIT

Our right to inspect or examine the insured property and books and records related to the **insured project** under the General Condition form does not waive nor in any manner affect any of the terms or conditions of this Form. Books, records and such policies relate to any insured property are to be kept in such a manner that the total cost of the **insured project** and the exact amount of any loss or damage for which a claim is made can be accurately determined. Our right to make inspections, the inspections themselves, and any related reports we create shall not constitute an undertaking on behalf of or for your benefit or any other person or entity. Such inspections are strictly for information purposes only with respect to our underwriting of this Form and do not warrant or indicate in any way that the **insured project** or the **project site** is healthful or safe. We will have no liability to you or any other person or entity because of any inspection or failure to inspect.

## 11. OTHER INSURANCE

If, on the happening of any direct physical loss or direct physical damage to insured property by this Form, there is in force any other insurance covering the same interest, this Form shall be primary insurance.

Permission is hereby granted to you to place excess insurance against any of the insured perils.

## 12. PREMIUM PAYABLE AND PREMIUM ADJUSTMENT

The premium stated on the Declaration Page(s) is a deposit premium. It is calculated on the estimated completed value of the **insured project** at an adjustment rate based upon the estimated period of the **insured project** stated on the Declaration Page(s). Such deposit premium is to be due and payable at the commencement of work, and is subject to adjustment back, to the inception date of this Form.

Within sixty (60) days after the termination or expiration of this Policy, you shall report to us the:

- 12.1. actual completed contract price and the value of any property not included in such completed contract price and was included as insured property; or
- 12.2. total completed value of the **insured project** in absence of a completed contract price.

The actual earned premium shall be calculated from the inception date of this Form on the completed contract price or total contract value so reported at the rate for the period of the **insured project** shown on the Declaration Page(s). If the actual earned premium exceeds the deposit premium, you shall pay us the amount of such excess. If the actual earned premium is less than the deposit premium we shall refund you the amount of the difference, but not exceeding 20% of the deposit premium.

## 13. EXTENSION OF POLICY PERIOD

The policy period may be extended at your request and upon our acceptance, subject to rates, terms, and conditions to be agreed.

## 14. TERRITORIAL LIMITS

Except as otherwise provided, this Form only covers insured property within Canada.

## 15. CESSATION OF COVERAGE

This Form ceases to insure, in whole or in part, the **insured project**:

- 15.1. on the commencement of use or occupancy thereof, unless such use or occupancy is for:
  - 15.1.1. construction purposes;
  - 15.1.2. habitation, office, banking, retail, or parking purposes;
  - 15.1.3. installing, testing and commissioning or storing of equipment or machinery forming part of the **insured project**;
  - 15.1.4. continuation of operations by the owner or tenant when the **insured project** consists of renovations or additions to **existing property** subject to the continuation of operations having been disclosed to us and us having accepted such continued use or occupancy;

15.2. when **project site** is left unattended for more than thirty (30) consecutive days or when construction activity has ceased for more than thirty (30) consecutive days;

15.3. on the expiry of this Policy;

whichever first occurs.

#### 16. BREACH OF CONDITIONS

If you do not comply with a condition of this insurance, any claim for subsequent direct physical loss or direct physical damage is not recoverable.

We will not deny a claim for this reason unless we prove that the non-compliance caused or contributed to the direct physical loss or direct physical damage. Coverage will not be affected if you fail to comply with a condition in part of the **project site** over which you have no control.

## DEFINITIONS

1. **ACTUAL CASH VALUE** means the lesser of the cost to repair or replace the insured property less any depreciation. The following will be considered in determining depreciation:
  - 1.1. the condition immediately before the loss or damage;
  - 1.2. the resale value immediately before the loss or damage;
  - 1.3. the normal life expectancy; and
  - 1.4. obsolescence.
2. **AUTOMATIC SPRINKLER SYSTEM** means a system that consists of an integrated network of piping designed in accordance with fire protection engineering standards that includes a water supply source, a water control valve, a water flow alarm and a drain. The system shall be activated by heat from a fire that automatically discharges water over the fire area.
3. **CASH CARDS** means cards designed to store a cash value by electronic means as a mode of payment, without a personal identification number and without direct access to a bank or other account.
4. **CLEAN UP** means the removal, containment, treatment, decontamination, detoxification, stabilization, neutralization or remediation of **pollutants**, including testing which is integral to the aforementioned processes.
5. **CONTRACTOR** shall mean any person, entity or corporation not being a Named Insured, entering into a contract with or agreeing with or being requested by the Named Insured to provide, supply or lease work, services, materials, or equipment or any combination thereof, in connection with the **insured project**.
6. **DATA** means representations of information or concepts, in any form.
7. **DATA PROBLEM** means:
  - 7.1. erasure, destruction, corruption, misappropriation, misinterpretation of **data**;
  - 7.2. error in creating, amending, entering, deleting or using **data**;
  - 7.3. inability to receive, transmit or use **data**.
8. **EXISTING PROPERTY** means buildings or permanent structures, including equipment used to maintain or service the buildings or structures that existed prior to the commencement of the **insured project**.
9. **FIRE PROTECTIVE EQUIPMENT** includes tanks, **water mains**, hydrants, valves and any other apparatus whether used solely for fire protection or jointly for fire protection and for other purposes, but does not include:
  - 9.1. branch piping from a joint system where such branches are used entirely for purposes other than fire protection;
  - 9.2. any **water mains** or appurtenances located outside of the **project site** and forming a part of the public water distribution system;
  - 9.3. any pond or reservoir in which water is impounded by a dam.
10. **FIRE SUPPRESSION SYSTEM** means special fire suppression equipment, which is not water based and has been designed and installed to conform with National Fire Protection Association guidelines.
11. **FUNGI** includes, but is not limited to, any form or type of mold, yeast, mushroom, or mildew whether or not allergenic, pathogenic, or toxigenic and any substance, vapour or gas produced by, emitted from or arising out of any **fungi** or **spores** or resultant mycotoxins, allergens, or pathogens.
12. **INSURED PROJECT** means materials and work which you have contracted for, or are contractually obligated to perform, in accordance with a written contract for construction and as described on the Declaration Page(s).
13. **LANDSCAPING MATERIALS** means growing trees, plants, shrubs, grass, lawns, flowers, vegetative roofs, and other **landscaping materials** to be installed and made a permanent part of the **insured project**.
14. **LEAKAGE FROM FIRE PROTECTIVE EQUIPMENT** means:
  - 14.1. the leakage or discharge of water or other substances from;
  - 14.2. the collapse of;
  - 14.3. the rupture due to freezing of;**fire protective equipment** for the **project site** or for adjoining structures.
15. **OCCURRENCE** shall mean any one loss, disaster or casualty or series of losses, disasters or casualties arising out of one event. If the same event continues for a period of time, the event shall be deemed one **occurrence**. If the inception of the loss commences prior to the date of the expiration of this Policy, then we will be liable for any loss incurred after the expiration of this Policy if caused by this event.
16. **PERMANENT WORKS** means property in course of construction, erection, fabrication, completion, installation, reconstruction, renovation or repair all to enter into and form part of the completed **insured project**, including expendable materials and supplies, not otherwise excluded, necessary to complete the **insured project**;
17. **POLLUTANTS** means any solid, liquid, gaseous or thermal irritant or contaminant, including odour, vapour, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned, or reclaimed.
18. **PROJECT LIMIT** means the total value of all insured property which will become part of or be expended in the **insured project** which includes any limit of insurance for:
  - 18.1. Hard Costs;
  - 18.2. Soft Costs; and
  - 18.3. Delay in Start-Up;as stated on the Declaration Page(s).
19. **PROJECT SITE** means the location of the **insured project** stated in the Declaration Page(s).

20. **REPLACEMENT** includes repair, construction, or reconstruction with new property of like kind and quality.
21. **REPLACEMENT COST** means whichever is the least of the cost of replacing, repairing, constructing or reconstructing the insured property on the same **project site** with new property of like kind and quality and for like occupancy without deduction for depreciation or for necessary and reasonable professional fees or **contractors** and **subcontractors** overhead and profit.
22. **SPORES** includes, but is not limited to, one or more reproductive particles or microscopic fragments produced by, emitted from or arising out of any **fungi**.
23. **SUBCONTRACTOR** shall mean
- 23.1. any person, entity, or corporation entering into a contract with any **contractor**, and
  - 23.2. any person, firm or corporation entering into a contract derived through any such contract with a **contractor** to provide, supply or lease work, services, materials or equipment, or any combination thereof, in connection with the **insured project**.
24. **SURFACE WATER** means water or natural precipitation temporarily diffused over the surface of the ground.
25. **TEMPORARY WORKS** means temporary buildings, site offices or office trailers, plus any of the following:
- 25.1. scaffolding other than mechanical lifts, falsework, forms;
  - 25.2. cribbing, fencing, hoardings, shoring, cofferdams;
  - 25.3. excavation, site preparation and similar work;
  - 25.4. temporary utilities, dewatering systems, protective equipment, signs, and similar temporary property incidental to completion of the **insured project**.
- provided that the value of such property is included in the limit of insurance and then only to the extent that **replacement** or restoration is necessary to complete the **insured project**.
26. **TERRORISM** means an ideologically motivated unlawful act or acts, including but not limited to the use of violence or force or threat of violence or force, committed by or on behalf of any group, organization, or government for the purpose of influencing any government or instilling fear in the public or a section of the public.
27. **VALUABLE PAPERS AND RECORDS** means written, printed, or otherwise inscribed documents and records, including books, maps, films, electronic recordings (excluding programs and instructions used in your data processing operations), drawings, abstracts, deeds, mortgages, and manuscripts, but excluding money or securities.
28. **WATER MAIN** means piping of a public potable water distribution system exclusively.