

COMMERCIAL GENERAL LIABILITY COVERAGE

OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE FORM – COVERAGE FOR OPERATIONS OF DESIGNATED CONTRACTOR

This Endorsement Changes the Policy. Please Read It Carefully.

Certain words and phrases in bold have special meaning as defined below or in the Form to which this endorsement is attached.

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.

This Endorsement is attached to the Commercial General Liability Max Form and is subject to all terms, conditions, limitations and exclusions of such Form.

SECTION I – COVERAGES

BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

- 1.1. We will pay those sums that the Insured becomes legally obligated to pay as **compensatory damages** because of **bodily injury** or **property damage** to which this insurance applies. We will have the right and duty to defend the Insured against any **action** seeking those **compensatory damages**. However, we will have no duty to defend the Insured against any **action** seeking **compensatory damages** for **bodily injury** or **property damage** to which this insurance does not apply. We may, at our discretion, investigate any **occurrence** and settle any claim or **action** that may result. But:
 - 1.1.1. The amount we will pay for **compensatory damages** is limited as described in **SECTION III – LIMITS OF INSURANCE AND DEDUCTIBLES**; and
 - 1.1.2. Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements.No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments.
- 1.2. This insurance applies to **bodily injury** and **property damage** only if:
 - 1.2.1. The **bodily injury** or **property damage** is caused by an **occurrence** and arises out of:
 - 1.2.1.1. Operations performed for you by the **contractor** at the location specified in the Declarations; or
 - 1.2.1.2. Your acts or omissions in connection with the general supervision of such operations;
 - 1.2.2. The **bodily injury** or **property damage** occurs during the policy period; and
 - 1.2.3. Prior to the policy period, no Insured listed under Paragraph 1. of **SECTION II – WHO IS AN INSURED** and no **employee** authorized by you to give or receive notice of an occurrence or claim, knew that the **bodily injury** or **property damage** had occurred, in whole or in part. If such a listed Insured or authorized **employee** knew, prior to the policy period, that the **bodily injury** or **property damage** occurred, then any continuation, change or resumption of such **bodily injury** or **property damage** during or after the policy period will be deemed to have been known prior to the policy period.
- 1.3. **Bodily injury** or **property damage** which occurs during the policy period and was not, prior to the policy period, known to have occurred by any Insured listed under Paragraph 1. of **SECTION II – WHO IS AN INSURED** or any **employee** authorized by you to give or receive notice of an **occurrence** or claim, includes any continuation, change or resumption of that **bodily injury** or **property damage** after the end of the policy period.
- 1.4. **Bodily injury** or **property damage** will be deemed to have been known to have occurred at the earliest time when any Insured listed under Paragraph 1. of **SECTION II – WHO IS AN INSURED** or any **employee** authorized by you to give or receive notice of an **occurrence** or claim:
 - 1.4.1. Reports all, or any part, of the **bodily injury** or **property damage** to us or any other insurer;
 - 1.4.2. Receives a written or verbal demand or claim for **compensatory damages** because of the **bodily injury** or **property damage**; or
 - 1.4.3. Becomes aware by any other means that **bodily injury** or **property damage** has occurred or has begun to occur.
- 1.5. **Compensatory damages** because of **bodily injury** include **compensatory damages** claimed by any person or organization for care, loss of services or death resulting at any time from the **bodily injury**.

2. Exclusions

This insurance does not apply to:

- 2.1. Expected or Intended Injury
Bodily injury or **property damage** expected or intended from the standpoint of the Insured. This exclusion does not apply to **bodily injury** resulting from the use of reasonable force to protect persons or property.
- 2.2. Contractual Liability
Bodily injury or **property damage** for which the Insured is obligated to pay **compensatory damages** by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for **compensatory damages**:
 - 2.2.1. That the Insured would have in the absence of the contract or agreement; or
 - 2.2.2. Assumed in a contract or agreement that is an **insured contract**, provided the **bodily injury** or **property damage** occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an **insured contract**, reasonable legal fees and necessary litigation expenses incurred by or for a party other than an Insured are deemed to be **compensatory damages** because of **bodily injury** or **property damage**, provided:
 - 2.2.2.1. Liability to such party for, or for the cost of, that party's defense has also been assumed in the same **insured contract**; and

2.2.2.2. Such legal fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which **compensatory damages** to which this insurance applies are alleged.

2.3. Work Completed or Put To Intended Use:

Bodily injury or property damage which occurs after the earlier of the following times:

- 2.3.1. When all **work** on the project (other than service, maintenance or repairs) to be performed for you by the **contractor** at the site of the covered operations has been completed; or
- 2.3.2. When that portion of the **contractor's work**, out of which the injury or damage arises, has been put to its intended use by any person or organization, other than another contractor or subcontractor working directly or indirectly for the **contractor** or as part of the same project.

2.4. Acts or Omissions by You and Your Employees

Bodily injury or property damage arising out of you, or your **employees**, acts or omissions other than general supervision of **work** performed for you by the **contractor**.

2.5. Workers' Compensation and Similar Laws

Any obligation of the Insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

2.6. Employer's Liability

Bodily injury to:

- 2.6.1. An **employee** of the Insured arising out of an act in the course of:
 - 2.6.1.1. Employment by the Insured; or
 - 2.6.1.2. Performing duties related to the conduct of the Insured's business; or
- 2.6.2. The spouse, child, parent, brother or sister of that employee as a consequence of sub-paragraph 2.6.1. above.

This exclusion applies whether the Insured may be liable as an employer or in any other capacity and to any obligation to share **compensatory damages** with or repay someone else who must pay **compensatory damages** because of the injury.

This exclusion does not apply to liability assumed by the Insured under an **insured contract**.

2.7. Damage to Property

Property damage to:

- 2.7.1. Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- 2.7.2. Property loaned to you;
- 2.7.3. Personal property in the care, custody or control of the Insured including but not limited to:
 - 2.7.3.1. Property held by you for sale or entrusted to you for storage or safekeeping;
 - 2.7.3.2. Property being on premises that is owned or rented by you for the purpose of having operations performed on such property by the Insured;
- 2.7.4. **Work** performed for you by the **contractor**.

2.8. War

Bodily injury or property damage, however caused, arising, directly or indirectly, out of:

- 2.8.1. War, including undeclared or civil war;
- 2.8.2. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- 2.8.3. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

2.9. Mobile Equipment

Bodily injury or property damage arising out of the use of mobile equipment in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

2.10. Pollution

2.10.1. **Bodily injury or property damage** arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **pollutants**:

- 2.10.1.1. At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any Insured. However, this subparagraph does not apply to:
 - 2.10.1.1.1. **Bodily injury** if sustained within a building and caused by smoke, fumes, vapour or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;
 - 2.10.1.1.2. **Bodily injury or property damage** arising out of heat, smoke or fumes from, or fire extinguishing substances used to fight, a **hostile fire**;
- 2.10.1.2. At or from any premises, site or location which is or was at any time used by or for any Insured or others for the handling, storage, disposal, processing or treatment of waste;
- 2.10.1.3. Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
 - 2.10.1.3.1. Any Insured; or
 - 2.10.1.3.2. Any person or organization for whom you may be legally responsible; or
- 2.10.1.4. At or from any premises, site or location on which any Insured or any contractors or subcontractors working directly or indirectly on any Insured's behalf are performing operations if the **pollutants** are brought on or to the premises, site or location in connection with such operations by such Insured, contractor or subcontractor. However, this sub-paragraph does not apply to:
 - 2.10.1.4.1. **Bodily injury or property damage** arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of mobile equipment or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the **bodily injury or property damage** arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such Insured, contractor or subcontractor;
 - 2.10.1.4.2. **Bodily injury or property damage** sustained within a building and caused by the release of gases, fumes or vapours from materials brought into that building in connection with operations being performed by or on behalf of any Insured; or
 - 2.10.1.4.3. **Bodily injury or property damage** arising out of heat, smoke or fumes from, or fire extinguishing substances used to fight, a **hostile fire**;

2.10.1.5. At or from any premises, site or location on which any Insured or any contractors or subcontractors working directly or indirectly on any Insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **pollutants**.

2.10.2. Any loss, cost or expense arising out of any:

2.10.2.1. Request, demand, order or statutory or regulatory requirement that any Insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **pollutants**; or

2.10.2.2. Claim or **action** by or on behalf of a governmental authority for **compensatory damages** because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of **pollutants**.

However, this paragraph does not apply to liability for **compensatory damages** because of **property damage** that the Insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or **action** by or on behalf of a governmental authority.

2.11. Damage to Impaired Property or Property Not Physically Injured:

Property damage to impaired property or property that has not been physically injured, arising out of:

2.11.1. A **defect, deficiency, inadequacy or dangerous condition in work** performed for you by the **contractor**; or

2.11.2. A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to **work** performed for you by the **contractor**.

2.12. Electronic data: **Compensatory damages** arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

However, this exclusion does not apply to **bodily injury**.

As used in this exclusion, electronic data means information, facts or programs in any form or representations of information or concepts in any form stored as or on, created or used on, or transmitted to or from computer or data processing software (including systems and application software), memory devices, data processing devices or any other media that are used with electronically controlled equipment.

SUPPLEMENTARY PAYMENTS

1. We will pay, with respect to any claim we investigate or settle, or any **action** against an Insured we defend:

- 1.1. All expenses we incur.
- 1.2. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which this insurance applies. We do not have to furnish these bonds.
- 1.3. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- 1.4. All reasonable expenses incurred by the Insured at our request to assist us in the investigation or defense of the claim or **action**, including actual loss of earnings up to \$250 a day because of time off from work.
- 1.5. All court costs taxed against the Insured in the **action**. However, these payments do not include legal fees or lawyers' expenses taxed against the Insured.
- 1.6. Prejudgment interest awarded against the Insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- 1.7. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.
- 1.8. Expenses incurred by the insured for first aid administered to others at the time of an accident for **bodily injury** to which this insurance applies.

These payments will not reduce the limits of insurance.

1. If we defend an insured against an action and an indemnitee of the Insured is also named as a party to the **action**, we will defend that indemnitee if all of the following conditions are met:

- 1.1. The **action** against the indemnitee seeks **compensatory damages** for which the Insured has assumed the liability of the indemnitee in a contract or agreement that is an **insured contract**;
- 1.2. This insurance applies to such liability assumed by the Insured;
- 1.3. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the Insured in the same **insured contract**;
- 1.4. The allegations in the **action** and the information we know about the **occurrence** are such that no conflict appears to exist between the interests of the Insured and the interests of the indemnitee;
- 1.5. The indemnitee and the Insured ask us to conduct and control the defense of that indemnitee against such **action** and agree that we can assign the same counsel to defend the Insured and the indemnitee; and
- 1.6. The indemnitee:
 - 1.6.1. Agrees in writing to:
 - 1.6.1.1. Cooperate with us in the investigation, settlement or defense of the **action**;
 - 1.6.1.2. Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the **action**;
 - 1.6.1.3. Notify any other insurer whose coverage is available to the indemnitee; and
 - 1.6.1.4. Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
 - 1.6.2. Provides us with written authorization to:
 - 1.6.2.1. Obtain records and other information related to the **action**; and
 - 1.6.2.2. Conduct and control the defense of the indemnitee in such **action**.

So long as the above conditions are met, legal fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of sub-paragraph 2.2.2. of **SECTION 1 – COVERAGES – BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, such payments will not be deemed to be **compensatory damages** for **bodily injury** and **property damage** and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for legal fees and necessary litigation expenses as Supplementary Payments ends when we have used up the applicable limit of insurance in the payment of judgments or settlements or the conditions set forth above, or the terms of the agreement described in sub-paragraph 2.6. above, are no longer met.

SECTION II – WHO IS AN INSURED

1. If you are designated in the Declarations as:
 - 1.1. An individual, you and your spouse are Insureds.
 - 1.2. A partnership or joint venture, you are an Insured. Your members, your partners, and their spouses are also Insureds, but only with respect to their duties as partners or members of a joint venture.
 - 1.3. A limited liability company, you are an Insured. Your members are also Insureds, but only with respect to their duties as members of a limited liability company. Your managers are Insureds, but only with respect to their duties as your managers.
 - 1.4. An organization other than a partnership, joint venture or limited liability company, you are an Insured. Your executive officers and directors are Insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
2. Each of the following is also an Insured:
 - 2.1. Any person (other than your **employee**) or any organization while acting as your real estate manager.
 - 2.2. Any person or organization having proper temporary custody of your property if you die, but only:
 - 2.2.1. With respect to liability arising out of the maintenance or use of that property; and
 - 2.2.2. Until your legal representative has been appointed.
 - 2.3. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage.

No person or organization is an Insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

SECTION III – LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
 - 1.1. Insureds;
 - 1.2. Claims made or **actions** brought; or
 - 1.3. Persons or organizations making claims or bringing **actions**.
2. The Aggregate Limit is the most we will pay for the sum of **compensatory damages** because of all **bodily injury and property damage**.
3. Subject to sub-paragraph 2. above, the Each Occurrence Limit is the most we will pay for the sum of **compensatory damages** because of all **bodily injury and property damage** arising out of any one **occurrence**.

If you designate more than one project in the Declarations, the Aggregate Limit shall apply separately to each project.

The Limits of Insurance of this Coverage apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION IV – ADDITIONAL CONDITIONS

The following are added to the General Conditions form or the Commercial Policy Conditions and Statutory Conditions form:

1. **Cancellation**

We will also mail or deliver our notices to the **contractor's** last mailing address known to us. If this Coverage is cancelled, we will send the **contractor** any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
2. **Books and Records**

The Insurer and its authorized representatives also shall have the right to examine the **contractor's** books and records related to the subject matter of this insurance at any time during the period of this Policy and the three subsequent years.
3. **Other insurance – Liability Insurance**

The insurance afforded by this Coverage is primary insurance and we will not seek contribution from any other insurance available to you unless the other insurance is provided by a contractor other than the designated **contractor** for the same operation and job location designated in the Declarations, in which case this insurance is excess insurance. We will share with other insurance as described in the General Conditions.
4. **Premiums**

The **Contractor**:

 - 4.1. Is responsible for the payment of all premiums; and
 - 4.2. Will be the payee for any return premiums we pay.
5. **Premium Audit**
 - 5.1. Where the premium shown for this Coverage is a deposit premium, the Insurer will compute the earned premium for that period at the close of each audit period. Audit premiums are due and payable on notice to the **contractor**.
 - 5.2. If the sum of the advance and audit premiums paid for the policy term is greater than the earned premium, the Insurer will return the excess attributable to this Coverage to the **contractor** subject to the retention of the minimum premium shown in the Declarations of this Policy.
 - 5.3. The **contractor** must keep records of the information we need for premium computation, and send us copies at such times as we may request.

SECTION V – DEFINITIONS

1. **Action** means a civil proceeding, brought in Canada, the United States of America (including its territories and possessions) or Puerto Rico, in which **compensatory damages** because of **bodily injury** or **property damage** to which this insurance applies are alleged. **Action** includes:
 - 1.1. An arbitration proceeding in which such **compensatory damages** are claimed and to which the Insured must submit or does submit with our consent; or
 - 1.2. Any other alternative dispute resolution proceeding in which such **compensatory damages** are claimed and to which the Insured submits with our consent.
2. **Bodily injury** means bodily or mental injury, sickness, disease, disability or shock sustained by a person, including death resulting at any time.
3. **Compensatory damages** means damages due or awarded in payment for actual injury or economic loss. **Compensatory damages** does not include punitive or exemplary damages or the multiple portion of any multiplied damage award.
4. **Contractor** means the contractor designated in the Declarations.
5. **Employee** includes a **leased worker** and a **temporary worker**.
6. **Executive officer** means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
7. **Hostile fire** means one which becomes uncontrollable or breaks out from where it was intended to be.
8. **Impaired property** means tangible property, other than work performed for you, that cannot be used or is less useful because:
 - 8.1. It incorporates work performed for you that is known or thought to be defective, deficient, inadequate or dangerous; or
 - 8.2. You have failed to fulfill the terms of a contract or agreement;if such property can be restored to use by the repair, replacement, adjustment or removal of the work performed for you or your fulfilling the terms of the contract or agreement.
9. **Insured contract** means:
 - 9.1. A lease of premises;
 - 9.2. A sidetrack agreement;
 - 9.3. Any easement or license agreement in connection with vehicle or pedestrian private railroad crossings at grade;
 - 9.4. Any other easement agreement;
 - 9.5. An obligation, as required by ordinance or bylaw, to indemnify a municipality, except in connection with work for a municipality; or
 - 9.6. An elevator maintenance agreement;
 - 9.7. A declaration of co-ownership.
10. **Leased worker** means a person leased to you by a labour leasing firm under an agreement between you and the labour leasing firm, to perform duties related to the conduct of your business. **Leased worker** does not include a **temporary worker**.
11. **Occurrence** means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
12. **Pollutants** mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
13. **Property damage** means:
 - 13.1. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
 - 13.2. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the **occurrence** that caused it.For the purposes of this insurance, electronic data is not tangible property.
As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from, computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
14. **Temporary worker** means a person who is furnished to you to substitute for a permanent **employee** on leave or to meet seasonal or short-term workload conditions.
15. **Work** includes materials, parts or equipment furnished in connection with the operations.

All other terms and conditions of the Policy remain unchanged.