

CCDC 2 & CCDC 41

Overview of Amendments to CCDC 2 & CCDC 41 (2020)

As construction continues to evolve, the risk allocation of traditional construction evolves with it. On December 14, 2020 release of new amendments to the CCDC 2 (2008) and subsequently CCDC 41 will have contractors taking a closer look at their contracts and evaluating their risk profile. You as the contractor need to engage with your risk professionals to understand the impacts of what is coming.

Changes as a whole

Various contract clauses, definitions, and sections have been expanded on or relocated to other parts of the contract when comparing CCDC (2008) to CCDC (2020). This ranges from an expansion of language surrounding supply and install to prerequisites to final payment. These changes have been brought into effect to assist all project stakeholders.

CCDC 2 (2020)

CCDC 2 is a contract between the Owner and the Contractor. It is the CCDC flagship contract and in many ways forms the basis of other CCDC contracts. Several changes have been incorporated many do not impact the operational risk, but impact project risk. A key amendment to risk encompasses change from **Substantial Completion** to **Ready for Takeover**. The change to **Ready for Takeover** helps ensure that the proper steps to confirm construction has been completed where previous verbiage surrounding **Substantial Completion** lacked. However, it is critical to understand that **Substantial Completion** will continue to be the milestone for a contractor's release of holdback as this is part of local legislation. A contractors' overall understanding **Ready for Takeover** will be paramount to confirm completion of the contract and where your risk as a stakeholder has concluded. Given this change it may cause confusion for stakeholders on when project specific insurance coverages can lapse and the operational risk will step in.

It should be noted the addition of the Ready for Takeover condition has further impacts on Warranty, Indemnification and Waiver of Claims contractual conditions. Both Indemnification and Waiver of Claim provisions have been changed to have the **Ready for Takeover** as the trigger date. In addition to the alteration of the trigger date, the obligations under the indemnification provision were altered stating that neither party shall have any liability to the other for indirect, consequential, punitive or exemplary damages. Reviewing this section with your risk professional is imperative to confirm no gaps in coverage between your project risk and operational risk.

CCDC 41 – CCDC Insurance Requirements (2020) Amendments

Changes in the CCDC 2 (2020) verbiage subsequently changed CCDC 41. Various changes to limits of liability, deductibles, addition of coverage, and wording surrounding deductibles has been amended. It is important to understand that not just CCDC 2 contracts are effected by the CCDC 41 change as other contracts also reference the CCDC 41. Contracts that reference CCDC 41 include (but are not limited to) CCDC 5B, CCDC 14, CCDC 17, as well as some provincial subcontract forms.

General Liability

Required limits have increased from \$5,000,000 to \$10,000,000 and a deductible not exceeding \$10,000. Previously, the deductible had been noted at \$5,000. The deductible may be increased provided that there is satisfactory proof of *financial capability* by the Contractor to the Owner. This section of coverage is to be maintained for one year from the date of **Ready for Takeover**, and the completed operations hazard will need to be in effect for an ongoing basis of 6 years after **Ready for Takeover**.

Automobile, Aircraft, and Watercraft Liability

Required limits have increased from \$5,000,000 to \$10,000,000 inclusive of bodily injury, death and damage to property, covering all vehicles owned and leased by the Contractor. This section of coverage is to be maintained for one year from the date of **Ready for Takeover**. For manned Aircraft or Watercraft, required limits have increased from \$5,000,000 to \$10,000,000 inclusive of bodily injury, death and damage to property when used directly or indirectly in performance of the work.

Unmanned Aerial Vehicle Liability (Coverage Addition)

Where a project requires an Unmanned Aerial Vehicle (UAV) the required limit for owned and non-owned aircraft liability shall have limits of no less than \$5,000,000 inclusive of bodily injury, death and damage to property. It does not matter if the UAV is utilized direct or indirect in the scope of operations, but if utilized this coverage must be evidenced.

“Broad form” Property (Deductible increase)

“Broad form” Property (also known as Builders’ Risk) kept the verbiage the same outside of one key change. The key change on this requirement is surrounding the increase in deductible from \$5,000 to \$10,000. Like the General Liability, the deductible may be increased provided that there is satisfactory proof of *financial capability* by the Contractor to the Owner.

Contractors’ Pollution Liability (Coverage Addition)

Contractors’ Pollution Liability is now required with a \$5,000,000 **per occurrence** limitation for bodily injury, death and damage to property. The **per occurrence** verbiage is key as some contractors have policies written on a **claims-made and reported**.

Moving forward

These changes that have been set out by CCDC are not intended as a mandate for certain coverages, but have been implemented to show the evolution of construction and previous means and methods have been outgrown. For example, the change in limits regarding the General Liability is not showing that coverage in excess of \$10,000,000 is needed but is more on the recognition that a \$5,000,000 is simply not adequate. This also applies to the recognition of Contractors’ Pollution Liability being a valuable coverage to stakeholders in the event of a loss.

Overall, these changes have been implemented to show the evolution of construction and the risk associated. As a project stakeholder it is critical to your risk that these changes are understood.

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