



“Schedule B”

# Renewable Labour & Material Payment Bond For A Multi-Year Contract

No. \_\_\_\_\_ Bond Amount \$ \_\_\_\_\_

\_\_\_\_\_ as Principal, hereinafter called the Principal, and **TRISURA GUARANTEE INSURANCE COMPANY** a corporation created and existing under the laws of **CANADA** and duly authorized to transact the business of Suretyship in **CANADA** as Surety, hereinafter called the Surety, are held and firmly bound unto \_\_\_\_\_ as Obligee, hereinafter called the Obligee, in the amount of \_\_\_\_\_ dollars (\$) \_\_\_\_\_ ) lawful money of Canada, for the payment of which sum the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS, the Principal has entered into a written multi-year contract with the Obligee, dated the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_ for contract no. \_\_\_\_\_ for the:

for the term \_\_\_\_\_ to \_\_\_\_\_ (hereinafter referred to as the "Contract").

The condition of this obligation is such that, if the Principal shall make payment to all Claimants for all labour and material used or reasonably required for use in the performance of the Contract for that portion of the Contract which corresponds with the Initial Term or Renewal Term, as the case may be, then this obligation shall be null and void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. The term of this Bond is for the period beginning on \_\_\_\_\_ and ending on \_\_\_\_\_ (the "Initial Term"). If requested by the Principal, the Initial Term may be extended, solely at the option of the Surety, for additional one (1) year periods (each a "Renewal Term"). Any such extension of the Initial Term or a Renewal Term shall be effective upon delivery to the Obligee of the Surety's form of renewal certificate signed and sealed by the Principal and the Surety. This Bond shall expire at the end of the Initial Term or, if extended, the end of the Renewal Term.
2. The Surety shall not be liable and no right of action shall accrue on this Bond as a result of:
  - (a) the expiry of the Initial Term or Renewal Term, as the case may be, notwithstanding that such expiry of the term of this Bond may constitute a failure by the Principal, directly or indirectly, pursuant to the Contract; or
  - (b) any default that occurs after, or extends beyond, the expiry of the Initial Term or Renewal Term; as the case may be.
3. A Claimant for the purpose of this Bond is defined as one having a direct contract with the Principal for labour, material, or both, used or reasonably required for use in the performance of the Contract, labour and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment directly applicable to the Contract provided that a person, firm or corporation who rents equipment to the Principal to be used in the performance of the Contract under a contract which provides that all or any part of the rent is to be applied towards the purchase price thereof, shall only be a Claimant to the extent of the prevailing industrial rental value of such equipment for the period during which the equipment was used in the performance of the Contract. The prevailing industrial rental value of equipment shall be determined, insofar as it is practical to do so, by the prevailing rates in the equipment marketplace in which the work is taking place.
4. The Principal and the Surety, hereby jointly and severally agree with the Obligee, as Trustee, that every Claimant who has not been paid as provided for under the terms of its contract with the Principal, before the expiration of a period of ninety (90) days after the date on which the last of such Claimant's work or labour was done or performed or materials were furnished by such Claimant, may as a beneficiary of the trust herein provided for, sue on this Bond, prosecute the suit to final judgment for such sum or sums as may be justly due to such Claimant under the terms of its contract with the Principal for the actual labour, material, or both supplied during the Initial Term or Renewal Term; as the case may be, and have execution thereon. Provided that the Obligee is not obliged to do or take any act, action or proceeding against the Surety on behalf of the Claimants, or any of them, to enforce the provisions of this Bond. If any act, action or proceeding is taken either in the name of the Obligee or by joining the Obligee as a party to such proceeding, then such act, action or proceeding, shall be taken on the understanding and basis that the Claimants, or any of them, who take such act, action or proceeding shall indemnify and save harmless the Obligee against all costs, charges and expenses or liabilities incurred thereon and any loss or damage resulting to the Obligee by reason thereof. Provided still further that, subject to the foregoing terms and conditions, the Claimants, or any of them may use the name of the Obligee to sue on and enforce the provisions of this Bond.
5. Any claim for labour, material, or both under the Bond shall be limited to the actual labour, material, or both supplied during the Initial Term or any Renewal Term as the case may be. For greater certainty, in the event that this Bond is not extended for a Renewal Term(s), the Surety shall only be liable pursuant to this Bond during the Initial Term for labour and material supplied by a Claimant during the Initial Term and shall only be liable pursuant to this Bond during a Renewal Term for labour and material supplied by a Claimant during such Renewal Term.
6. It is a condition precedent to the liability of the Surety under this Bond that a Claimant shall have given written notice as hereinafter set forth to each of the Principal, the Surety and the Obligee, stating with substantial accuracy the amount claimed, and that such Claimant shall have brought suit or action in accordance with this

Bond, as set out in sub-clauses 6 (b) and 6 (c) below. Accordingly, no suit or action shall be commenced hereunder by any Claimant:

- a) unless such notice shall be served by mailing the same by registered mail to the Principal, the Surety and the Obligee, at any place where an office is regularly maintained for the transaction of business by such persons or served in any manner in which legal process may be served in the Province or Territory in which the subject matter of the Contract is located. Such notice shall be given within the earlier of:
    - i) one hundred and twenty (120) days after the date upon which such Claimant did, or performed, the last of the work or labour or furnished the last of the materials for which such claim is made under the Claimant's contract with the Principal; and
    - ii) one hundred and twenty (120) days following the expiry of the Initial Term or the Renewal Term during which the Claimant did or performed the service, work or labour or furnished materials for which such claim is made;
  - b) after the expiration of one (1) year following the expiry of the Initial Term or the Renewal Term during which the Claimant did or performed the service, work or labour or furnished materials for which such claim is made;
  - c) other than in a Court of competent jurisdiction in the Province or Territory in which the work described in the Contract is to be installed or delivered as the case may be and not elsewhere, and the parties hereto agree to submit to the jurisdiction of such Court.
7. The Surety agrees not to take advantage of Article 2365 of the Civil Code of the Province of Quebec in the event that, by an act or an omission of a Claimant, the Surety can no longer be subrogated in the rights, hypothec and privileges of said Claimant.
  8. Any material change in the contract between the Principal and the Obligee shall not prejudice the rights or interest of any Claimant under this Bond, who is not instrumental in bringing about or has not caused such change.
  9. The Amount of this Bond shall be reduced by, and to the extent of any payment or payments made in good faith, and in accordance with the provisions hereof, inclusive of the payment by the Surety of claims made under the applicable lien legislation or legislation relating to legal hypothecs, whether or not such claim is presented under and against this Bond.
  10. The Bond Amount is not and shall not be deemed to be cumulative in the event the Bond is extended for a Renewal Term(s). The Surety shall not be liable for a greater sum than the Bond Amount.

IN WITNESS WHEREOF, the Principal and the Surety have Signed and Sealed this Bond this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

SIGNED and SEALED  
in the presence of

\_\_\_\_\_  
*Signature* (Seal)

**TRISURA GUARANTEE INSURANCE COMPANY**

\_\_\_\_\_  
(Seal)  
, Attorney-in-Fact

**Vancouver Office**  
1055 West Georgia St.  
Suite 3020, Box 11160  
Vancouver, BC V6E 3R5  
Tel: (604) 688-5641  
Fax: (604) 688-5826

**Calgary Office**  
421 7<sup>th</sup> Avenue SW  
Suite 3730  
Calgary, Alberta, T2P 4K9  
Tel: (403) 663-3343  
Fax: (416) 214-9597

**Toronto Office**  
333 Bay St.  
Suite 1610  
Toronto, ON M5H 2R2  
Tel: (416) 214-2555  
Fax: (416) 214-9597

**Montréal Office**  
1501 McGill College Ave  
Suite 1620  
Montréal, QC H3A 3M8  
Tel: (514) 845-4555  
Fax: (514) 845-6876

**Halifax Office**  
201 Brownlow Ave  
Suite 4  
Dartmouth, NS B3B 1W2  
Tel: (902) 468-6889  
Fax: (416) 214-9597