

**SUPPLEMENTARY CONDITIONS**  
**Standard Construction Document – CCDC 2 – 2020**

**GENERAL**

- SC-1      These Supplementary Conditions (each an “SC”) presuppose the use of the Canadian Construction Association Standard Construction Document CCDC 2 - 2020 – Stipulated Price Contract, including the Agreement between Owner and Contractor, Definitions, and General Conditions (each a “GC”) GC 1 to GC 13 inclusive, in full. These SCs void, supersede or amend the *Contract* between *Owner* and *Contractor*, the Definitions and the General Conditions, as the case may be.
- SC-2      Throughout the *Contract Documents*, reference to the "General Conditions of the Contract" shall imply the inclusion of these SCs.

**AGREEMENT BETWEEN OWNER AND CONTRACTOR**

**ARTICLE A-1      THE WORK**

- SC-3      Delete paragraph 1.3 of Article A-1 and replace it with the following:
- “commence the *Work* by [DATE] and, subject to adjustment in the *Contract Time* as provided for in the *Contract Documents*, attain *Ready-for-Takeover* by [DATE].
- SC-4      Add the following new paragraphs 1.4 and 1.5 to Article A-1:
- “1.4    The *Contractor* shall diligently perform and complete the *Work* in accordance with the *Standard of Care*, all *Applicable Laws* and all terms and conditions of the *Contract Documents*, including the *Construction Schedule*.
- 1.5    The *Contractor* represents that in entering into the *Contract* with the *Owner* for the performance of the *Work*, it has either in accordance with the *Standard of Care* inspected the *Place of the Work* and reviewed for itself all information provided by the *Owner*, the character of the *Work* to be done, and all local conditions, including the position of all registered easements, pole lines, conduits, watermains, sewers and other underground and overground utilities and structures, or that, not having so inspected and reviewed, the *Contractor* has assumed and does hereby assume all risk of conditions now existing or arising in the course of the *Work* that might or could make the *Work*, or any items thereof, more expensive in character, or more onerous to fulfil than was contemplated or known as of the *Effective Date*. For certainty, the *Contractor* shall not be liable for conditions which would not have been ascertainable by a diligent review of the *Place of the Work*, all information provided by the *Owner*, the character of the *Work* to be done, and all local conditions in accordance with the *Standard of Care* prior to the *Effective Date*.”

#### **ARTICLE A-4      CONTRACT PRICE**

SC-5      Add new paragraphs 4.6 to Article A-4 as follows:

- “4.6      The *Contractor* acknowledges that the *Owner* will suffer real and significant losses if the *Contractor* fails to attain *Ready-for-Takeover* by the *Ready-for-Takeover Date*. Therefore, if the *Contractor* fails to achieve *Ready-for-Takeover* by the date that is 10 calendar days after the *Ready-for-Takeover Date* then the *Contractor* shall be liable to the *Owner* for liquidated damages in the amount of \$1500.00 for each day or part day of delay until *Ready-for-Takeover* is achieved. The parties agree that such liquidated damages are not a penalty and represent a reasonable, fair and genuine pre-estimate of losses to the *Owner* anticipated to result from the *Contractor*’s delay in achieving *Ready-for-Takeover* by the *Ready-for-Takeover Date*.”

#### **ARTICLE A-6      RECEIPT AND ADDRESSES FOR NOTICES IN WRITING**

SC-6      Delete paragraph 6.5 of Article A-6 in its entirety and replace it with the following:

- “6.5      Contact information for a party may be changed by *Notice in Writing* to the other party setting out the new contact information in accordance with this Article A-6.”

#### **ARTICLE A-9      RELATIONSHIP OF THE PARTIES**

#### **ARTICLE A-10      PANDEMIC**

#### **ARTICLE A-11      INTERPRETATION AND OTHER MATTERS**

SC-7      Add new Articles A-9, A-10 and A-11 as follows:

##### **“ARTICLE A-9      RELATIONSHIP OF THE PARTIES**

- 9.1      The *Contractor* shall be an independent contractor in performing its obligations under the *Contract*. The *Contract* does not create any agency, partnership, joint venture, fiduciary or other relationship of the *Contractor* with the *Owner* other than the relationship of independent contractor.
- 9.2      No inspection, review, comment, approval, verification, confirmation, certification, acknowledgement or audit pursuant to the provisions of the *Contract* by any *Owner Personnel*, nor any failure of any of them to do so, shall relieve the *Contractor* from performing or fulfilling any of its obligations under the *Contract* or be construed as an acceptance of the *Work* or any part thereof.”

##### **ARTICLE A-10      PANDEMIC**

- 10.1      The parties acknowledge and agree that as of the *Effective Date*:

- .1 the *Pandemic* is on-going and, as a result, *Governmental Authorities*, including the Government of Canada and the Province of Ontario, have implemented *Governmental Responses*; and
  - .2 it is uncertain how long the *Pandemic* and the related *Governmental Responses* will continue and whether there may be a resurgence of *COVID-19* resulting in a *Pandemic Change in Law*.
- 10.2 Except as expressly provided in this *Contract*, each party shall be solely responsible for costs and expenses incurred in performance of its obligations under the *Contract* related to or arising from the *Pandemic* and compliance with *Governmental Responses*, including in respect of the contraction by or infection of *Contractor Personnel* and *Owner Personnel*, as applicable, with *COVID-19* and neither party assumes responsibility whatsoever with respect to any such loss suffered by the other.
- 10.3 In addition to any *Governmental Responses*, the *Contractor* shall comply with any other *Pandemic*-related protocols and guidelines pertaining to the *Work* or *Place of the Work* that may be communicated to the *Contractor* by the *Owner* in writing.
- 10.4 Notwithstanding any other term of this *Contract*, the *Owner* and *Contractor* acknowledge and agree that under no circumstance shall any *Contractor Personnel* be obligated to provide or disclose the personal information of any *Contractor Personnel* to the *Owner* or any other third party.
- 10.5 The *Contractor* expressly acknowledges and agrees that the *Contract Price* and *Contract Time* account for and are inclusive of all costs and impacts to the *Work* resultant or arising from *COVID-19*, any *Governmental Response* and the *Pandemic* to the extent such costs and impacts were known as of the *Effective Date*. For certainty, the *Contractor* acknowledges and agrees that the following impacts of *COVID-19*, the *Pandemic* and *Governmental Responses* to performance of the *Work* were known as of the *Effective Date* and, accordingly, are fully accounted for in the *Contract Price* and *Contract Time*:
- .1 the best practices recommended by the Ontario Ministry of Labour for construction site health and safety during the *Pandemic* in effect at the date of the *Contract*;
  - .2 the need to implement physical distancing;
  - .3 the obligation to monitor workers, personnel and visitors to the *Place of the Work* for illness or *COVID-19* symptoms;
  - .4 the potential for loss of *Contractor Personnel* due to illness, *COVID-19* symptoms or exposure to Persons with same;

- .5 the need to implement procedures for timely reporting (including to the *Owner*) of any illness or *COVID-19* symptoms experienced by workers, personnel or visitors to the *Place of the Work*;
  - .6 the provision of necessary tools, equipment or personal protective equipment to all persons at the *Place of the Work*, including all *Contractor Personnel* and authorized visitors to the *Place of the Work*;
  - .7 the need to install any temporary facilities or structures (such as wash stations); and
  - .8 the need to implement appropriate sanitation and cleaning at the *Place of the Work* and in performance of the *Work*.
- 10.6 The *Owner* reserves the right, in its sole discretion and by *Notice in Writing*, to delay commencement or suspend performance of the *Work*, as applicable, for such time as is reasonably necessary to mitigate or prevent risks to public health and safety resultant from *COVID-19* and the *Pandemic*. Performance of the *Work* by the *Contractor* shall be resumed upon the *Owner*'s provision of fifteen (15) days' written notice to the *Contractor*. The *Contract Time* shall be extended for such reasonable time as agreed by the *Owner* and *Contractor* and any reasonable costs related to the *Work* and directly incurred by the *Contractor* during any such period of delay shall be reimbursed by the *Owner*, except to the extent required or caused by the negligence or breach of this *Contract* by any *Contractor Personnel*. The extension of time shall not be less than the time lost as a result of such delay, unless the *Contractor* agrees to a shorter extension. The parties' agreement regarding such adjustment to the *Contract Time* and reimbursement of reasonable costs shall be set out in a *Change Order*. Otherwise, any dispute in this regard shall be resolved in accordance with PART 8 – DISPUTE RESOLUTION.
- 10.7 Notwithstanding any other provision in the *Contract*, if the *Contractor* is delayed in performing or unable to perform the *Work* as a result of a *Pandemic Change in Law*, then, except to the extent caused by the negligence or breach of this *Contract* by any *Contractor Personnel*, the *Contract Time* shall be extended for such reasonable time as agreed by the *Owner* and *Contractor*. The extension of time shall not be less than the time lost as a result of the *Pandemic Change in Law*, unless the *Contractor* agrees to a shorter extension. The *Contractor* shall not be entitled to payment for any costs incurred as a result of such delays, save and except as expressly provided for in paragraph 10.8 of this Article A-10.
- 10.8 The *Contractor* shall be entitled to payment for the following direct costs it reasonably incurs as a direct result of a *Pandemic Change in Law* provided that such costs have been approved in advance and in writing by the *Owner* and

were not required or caused by the negligence or breach of this *Contract* by any *Contractor Personnel*:

- .1 the *Contractor* being required to purchase, use or provide additional safety-related supplies, including personal protective equipment, in connection with its performance of the *Work*;
- .2 the *Contractor* being required to install additional temporary facilities or structures, including hand washing stations; and
- .3 the costs incurred by the *Contractor* to reasonably mitigate the effect of any delay to performance of the *Work* resultant from a *Pandemic Change in Law*.

10.9 Notwithstanding any other term of this *Contract*:

- .1 the *Contractor* shall not be entitled to any extension of *Contract Time* or to any compensation in respect of any *Pandemic Change in Law* or delay referred to in this Article A-10 to the extent such delay or costs resulted from the *Contractor's* failure to take reasonable steps to mitigate the effect of the delay or *Pandemic Change in Law*, as applicable;
- .2 in no event shall the *Owner* be liable for any costs or damages incurred by the *Contractor* as a result of any *Pandemic Change in Law* or delay referred to in this Article A-10 except as expressly stipulated in this *Contract*, including no liability for: (i) any costs associated with increased labour or material costs; (ii) any costs associated with supply chain impacts or delays; or (iii) any *Consequential Damages*;
- .3 there will be no unjust enrichment from a *Pandemic Change in Law*.

10.10 In all cases where the *Contractor* considers itself entitled to an extension of the *Contract Time* or compensation as a result of *COVID-19*, the *Pandemic* or a *Pandemic Change in Law*, the *Contractor* shall provide the *Owner* with *Notice in Writing* within five (5) *Working Days* of the date on which the *Contractor* knew that it was so impacted. The *Contractor* shall keep detailed records of all resultant additional costs and schedule impacts and shall provide such records to the *Owner*, including with such *Notice in Writing* to the extent available at such time. Additionally, the *Contractor* shall seek the *Owner's* approval in writing in advance of taking any measures to mitigate the impact of *COVID-19*, the *Pandemic* or a *Pandemic Change in Law*."

## ARTICLE A-11 - INTERPRETATION AND OTHER MATTERS

- 11.1 In the *Contract Documents* the word “including” means “including without limitation”, and the word “includes” means “includes without limitation”.
- 11.2 If any provision of the *Contract* is determined to be invalid, illegal or unenforceable in whole or in part, such invalidity, illegality or unenforceability will only apply to such provision or part, as the case may be, and any other part and all other provisions of the *Contract* shall remain in full force and effect. Furthermore, the parties shall endeavour to agree on a provision which reflects insofar as reasonably possible the commercial intentions of the invalid, illegal or unenforceable provision or part.
- 11.3 Each party shall from time to time execute and deliver all such further documents and instruments and do all acts and things as the other party may reasonably require to effectively carry out, better evidence or perfect the full intent and meaning of the *Contract*.
- 11.4 The provisions of the *Contract* which by their nature are continuing shall survive termination of the *Contract*.”

## DEFINITIONS

- SC-8 Amend the definition of ***Consultant*** by adding the following to the end:
- “Notwithstanding the foregoing, where the *Owner* has not engaged a person or entity to act as the “*Consultant*” such that no person or entity is so identified in the Agreement, the *Owner* shall be deemed to be the *Consultant* under the *Contract*.”
- SC-9 Delete the definition of ***Contract Time*** and replace it with the following:
- Contract Time***  
The *Contract Time* is the time from commencement of the *Work* to the date of *Completion* as stipulated in paragraph 1.3 of Article A-1 of the Agreement – THE WORK.”
- SC-10 Amend the definition of ***Other Contractor*** by adding the following to the end after the word “*Project*”:
- “or for other work at the *Place of the Work*”
- SC-11 Amend the definition of ***Payment Legislation*** by adding the following to the end:
- “For certainty, where the *Place of the Work* is in Ontario *Payment Legislation* means the *Construction Act*.”
- SC-12 Amend the definition of *Product* by adding the following to the end:

“For certainty, *Products* include the *Mammography Unit*.”

SC-13 Add the following new definitions:

***Affiliate***

*Affiliate* means, with respect to a *Person*, or *Person* who directly or indirectly controls, is controlled by, or is under direct or indirect common control with, such *Person*, and includes any *Person* in like relation to an *Affiliate*. A *Person* shall be deemed to “control” another *Person* if such *Person* possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other *Person*, whether through the ownership of voting securities, by contract or otherwise; and the term “controlled” shall have a similar meaning.

***AODA***

*AODA* means the *Accessibility for Ontarians with Disabilities Act, 2005*, SO 2005, c. 11, as amended from time to time, or its successor legislation, and includes all regulations enacted thereunder.

***AODA Regulation***

*AODA Regulation* means Ontario Regulation 191/11 – Integrated Accessibility Standards as made under the *AODA*, as may be amended from time to time, or its successor regulation.

***Applicable Law***

*Applicable Law* means: (a) all laws, constitutions, treaties, statutes, codes, ordinances, orders, decrees, rules, regulations and by-laws which are or become in force during the performance of the *Work* and which relate to the *Owner, Facility, Project* or the *Work*, including the *Construction Act*, the *Environmental Protection Act*, the *OHSA* and the *WSIA*; (b) all judgments, orders, writs, injunctions, decisions, awards and directives of any *Governmental Authority* applicable to the *Owner, Facility, Project* or the *Work*; and (c) all policies, standards, guidelines, notices and protocols of any *Governmental Authority* applicable to the *Owner, Facility, Project* or the *Work*. For greater certainty, *Applicable Law* includes any restrictive covenants registered on title to the *Place of the Work*, the terms and conditions of any permit, authorization, certificate or approval issued by a *Governmental Authority* for the *Facility, Project* or the *Work*, and the terms and conditions of any official plan, zoning by-law, development agreement or site plan agreement related to the *Facility, Project* or the *Work*.

***Arbitration Act***

*Arbitration Act* means the *Arbitration Act, 1991*, SO 1991, c. 17, as amended from time to time, or its successor legislation, and includes all regulations enacted thereunder.

***Background Reports***

*Background Reports* means all reports, information and other documentation prepared by *Owner*, *Consultant*, and third parties referenced in the *Contract Documents* and made available to the Contractor regarding conditions at the *Place of the Work* and/or for performance of the *Work*.

***Claims***

*Claims* means any and all claims, liabilities, expenses, demands, losses, damages, actions, costs (including legal costs), interest, fines, suits, or proceedings of every nature and kind whatsoever.

***Completion***

*Completion* means when the price of completion of the *Work*, including correction of any known defects, is not more than the lesser of (i) one (1%) percent of the *Contract Price*; and (ii) \$5,000, as certified by the *Consultant* in accordance with this *Contract* and the *Payment Legislation*.

***Confidential Information***

*Confidential Information* means this *Contract* and all information or material of the *Owner* that is of a proprietary or confidential nature, whether it is identified as proprietary or confidential or not and whether in written, documentary, graphic, oral, electronic, computer readable and/or any other form whatsoever. *Confidential Information* includes:

- .1 any information concerning or related to this *Contract* or the business or affairs of the *Owner*;
- .2 the prior and future discussions between *Contractor Personnel* and *Owner Personnel* regarding any business transactions between them;
- .3 information concerning intellectual property, financial information, budgets, engineering and technical reports and information, environmental reports, *Project* design information, marketing plans and sales information, know-how, cost, *Deliverables*, architectural information, contractual arrangements including, terms of agreements with the *Owner*, all proprietary business information or personal information;
- .4 information in any way derived by or generated by or which comes to the knowledge of the *Contractor Personnel* from such *Confidential Information*; and
- .5 any *Personal Information*.

With the exception of *Personal Information*, which shall remain *Confidential Information*, the following shall not be considered to be *Confidential Information*:

- .5 information that is or becomes publicly known through no wrongful act of the *Contractor* or *Contractor Personnel*;



- .6 information that the *Contractor* obtains from a third party that has the right to disclose it;
- .7 information that the *Contractor* can establish, by documentary evidence, was already known by the *Contractor* at the time of the initial disclosure of the *Confidential Information* by the *Owner* or *Consultant*; and
- .8 information that the *Contractor* can establish, by documentary evidence, was independently developed by or on behalf of the *Contractor* without reference to the *Confidential Information*.

***Connecting Care Act***

*Connecting Care Act* means the *Connecting Care Act, 2019*, SO 2019, c.5 Sch 1, as amended from time to time, or its successor legislation, and includes all regulations enacted thereunder.

***Consequential Damages***

*Consequential Damages* means (i) any consequential, incidental, special, punitive, exemplary or indirect damages, and (ii) damages of any kind, however caused or characterized, for loss of actual or anticipated revenue or profits, business interruption, loss of reputation, loss of use, loss of business opportunity, increased capital or operating costs, or increased financing costs.

***Construction Act***

*Construction Act* means the *Construction Act*, RSO 1990, c. C.30, as amended from time to time, or its successor legislation, and includes all regulations enacted thereunder.

***Contractor IP***

*Contractor IP* means all designs, processes, ideas, concepts, products, recommendations, suggestions, know-how, technical expertise, methods and all *Intellectual Property Rights* owned or developed by the *Contractor Personnel*.

***Contractor RFP Schedule Submission***

*Contractor RFP Schedule Submission* means the proposed construction schedule submitted by the *Contractor* in its bid response to the *Owner's* Request for Proposals for the *Work* and which is attached hereto as Appendix 2 to the Supplementary Conditions.

***Construction Schedule***

The *Construction Schedule* means the schedule provided by the *Contractor* and approved by the *Consultant* pursuant to subparagraph 3.4.1.1.

***Contractor Personnel***

*Contractor Personnel* means the *Contractor* and all *Subcontractors* and *Suppliers* and any other *Persons* engaged by them to perform or supply any part of the *Work* or the *Contractor's* obligations under this *Contract*, including any employees, partners,

officers, directors, agents, subcontractors, subconsultants, and other *Persons* for whom they are responsible at law.

***COVID-19***

*COVID-19* means the SARS-CoV-2 novel coronavirus that causes the disease known as COVID-19 and includes any mutation or variant of such coronavirus.

***Deliverables***

*Deliverables* means all plans, sketches, designs, drawings, graphic representations, *Submittals*, specifications, notes, data, samples, materials, studies, reports, computer models, scale models, mock-ups, samples, reproducible and other documents and electronic data collected, developed or produced by the *Contractor Personnel* in performance of the *Work*, including all *Intellectual Property Rights* relating thereto, if any.

***Effective Date***

*Effective Date* means the date of this *Contract* as identified on the first page of the *Agreement*.

***Environmental Protection Act***

*Environmental Protection Act* means the *Environmental Protection Act*, RSO 1990, c. E.19, as may be amended from time to time, or its successor legislation, and includes all regulations enacted thereunder.

***Facility***

*Facility* means The Georgian Bay General Hospital.

***FIPPA***

*FIPPA* means the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended from time to time, or its successor legislation, and includes all regulations enacted thereunder.

***Force Majeure Event***

*Force Majeure Event* means any cause or event (other than bankruptcy, insolvency or lack of funds) which prevents performance by the *Contractor* of any of its obligations under the *Contract* in whole or in part and which further meets each of the following criteria: (a) the cause or event and its effects are beyond the *Contractor's* reasonable control; (b) the *Contractor* could not reasonably have prevented, overcome, mitigated or removed the cause or event and its effects by commercially reasonable efforts and due diligence; and (c) the cause or event and its effects do not result from (i) the *Contractor's* bankruptcy, insolvency, lack of funds or impecuniosity, (ii) act, omission or negligence of any *Contractor Personnel*, or (iii) breach of the *Contractor's* obligations under this *Contract*. For certainty, a *Force Majeure Event* shall in no circumstance include (i) *COVID-19*, the *Pandemic* or a *Pandemic Change in Law* (including a *Governmental Response*), (ii) climatic or weather conditions other than abnormally adverse weather conditions, (iii) economic, financial or market

conditions or events, or (iv) death, illness, injury or other incapacitation of any individual worker, employee or independent contractor of any *Contractor Personnel*.

***Governmental Authority***

*Governmental Authority* means (a) any federal, provincial, county, municipal, local or other governmental or public department, court, minister, governor-in-council, cabinet, commission, board, bureau, agency, commissioner, tribunal or instrumentality, (b) any subdivision or authority of any of the foregoing, and (c) any quasi-governmental or private body exercising any regulatory authority under or for the account of any of the foregoing.

***Governmental Response***

*Governmental Response* means legislative amendments, controls, orders, requests and requirements imposed by *Governmental Authorities* in respect of or in response to *COVID-19* or the *Pandemic*. For certainty, *Governmental Response* includes a *Pandemic Change in Law* and the best practices recommended by the Ontario Ministry of Labour for construction site health and safety during the *Pandemic*.

***Intellectual Property Rights***

*Intellectual Property Rights* means all intellectual property rights (including rights in the nature of any copyright, trade mark, trade secret, service mark, design, drawing, patent, know-how, secret process and other similar proprietary rights, whether or not registered) and the rights to the registration of those rights and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these rights (and every renewal or extension of those rights) conferred under statute or common law or equity in any country.

***Local Health System Integration Act***

*Local Health System Integration Act* means the *Local Health System Integration Act, 2006*, SO 2006, c.4, as amended.

***Net Actual Cost***

*Net Actual Cost* means the total cost of all labour and materials identified in paragraph 6.3.7, excluding *Value Added Taxes*, but including all other eligible taxes, and is the amount prior to the application of any mark-up or additional payment rate when determining the cost of the subject work.

***OHSA***

*OHSA* means the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, as amended from time to time, or its successor legislation, and includes all regulations enacted thereunder.

***Owner Personnel***

*Owner Personnel* means the *Owner*, the *Consultant*, all *Other Contractors* and any other *Persons* engaged by them in respect of the *Work*, the *Project* or the *Owner's* obligations under this *Contract*, including any employees, partners, officers, directors,

agents, subcontractors, subconsultants, and other *Persons* for whom they are responsible at law.

***Pandemic***

*Pandemic* means the *COVID-19* pandemic declared by the World Health Organization to be a pandemic on March 11, 2020, and shall include such continuing or resurgent effects of *COVID-19* upon public health as may persist notwithstanding that it may no longer constitute a declared pandemic or other public health emergency as of the *Effective Date*.

***Pandemic Change in Law***

*Pandemic Change in Law* means any change, amendment, modification, repeal or replacement in *Applicable Law* or a *Governmental Response* that: (i) came into effect after the *Effective Date*; (ii) is directly resultant from or related to the *Pandemic* or the occurrence, control or spread of *COVID-19*; and (iii) directly affects performance of the *Work*, including the *Contract Time* or the *Contract Price*. For certainty, a *Pandemic Change in Law* includes any obligation to delay commencement or suspend performance of the *Work* due to a *Governmental Response* coming into effect after the *Effective Date*.

***Person***

*Person* includes an individual, a corporation, a partnership, a trust, an unincorporated organization, a *Governmental Authority*, and the executors, administrators or other legal representatives of an individual in such capacity.

***Personal Information***

*Personal Information* means any information about any individual, in any form, including where there is a serious possibility that the individual could be identified through the use of the information alone or in combination with other information.

***Phase of the Work***

*Phase of the Work* has the meaning given in paragraph 5.4.7.

***Proper Invoice***

*Proper Invoice* means an application for payment that includes each of the elements listed in Appendix 1 to the Supplementary Conditions – Proper Invoice Requirements.

***Proper Invoice Submission Date***

*Proper Invoice Submission Date* has the meaning given in paragraph 5.2.1.

***Public Hospitals Act***

*Public Hospitals Act* means the *Public Hospitals Act*, RSO 1990, c P.40, as amended.

***Ready-for-Takeover Date***

*Ready-for-Takeover Date* means the date set out for achievement of *Ready-for-Takeover* as set out in paragraph 1.3 of Article A-1, as such date may be adjusted in accordance with the *Contract*.

***Submittals***

*Submittals* are documents or items required by the *Contract Documents* to be provided by the *Contractor*, including *Shop Drawings*, samples, models, mock-ups, as-built drawings and operation and maintenance manuals.

***Standard of Care***

*Standard of Care* means the standard of care, competence, skill and diligence that would normally be provided by an experienced and prudent contractor supplying similar work and services for a project of similar size, scope, complexity, quality and prestige as the Project and in the same or similar locality as the Project.

***Warranty Period***

*Warranty Period* has the meaning given in paragraph 12.3.1.

***WSIA***

*WSIA* means the *Workplace Safety and Insurance Act, 1997*, S.O. 1997, c. 16, Sched. A, as amended from time to time, or its successor legislation, and shall include all regulations enacted thereunder.

***WSIB***

*WSIB* means the Workplace Safety & Insurance Board of Ontario, which operates under the authority of the *WSIA*.”

**GENERAL CONDITIONS**

**GC 1.1 CONTRACT DOCUMENTS**

SC-14 Delete paragraphs 1.1.3 and 1.1.4 in their entirety and replace them with the following:

“1.1.3 The *Contractor* shall in accordance with the *Standard of Care* review the *Contract Documents* for the purpose of facilitating co-ordination and execution of the *Work* by the *Contractor*. The *Contractor* shall report promptly to the *Consultant* any ambiguities, design issues or other matters requiring clarification made known to the *Contractor* or that the *Contractor* may discover from such a review.

1.1.4 Except for its obligation to review the *Contract Documents* and report the result pursuant to paragraph 1.1.3, the *Contractor* is not responsible for ambiguities, design issues or other matters requiring clarification in the *Contract Documents* and does not assume any responsibility to the *Owner* or to the *Consultant* for the accuracy of the *Contract Documents*. Without limiting the foregoing, the *Contractor* shall not be liable for any damages or costs resulting from any ambiguities, design issues or other matters requiring

clarification in the *Contract Documents* which the *Contractor* could not reasonably have discovered from such a review in accordance with the *Standard of Care*. If the *Contractor* does discover any ambiguities, design issues or other matters requiring clarification in the *Contract Documents*, the *Contractor* shall notify the *Owner* and *Consultant* in writing and not proceed with the work affected until the *Contractor* has received modified or additional information from the *Consultant* or *Owner* in writing. The impacts of any ambiguities, design issues or other matters requiring clarification in the *Contract Documents*, including to the *Contract Price* and *Contract Time*, shall be addressed by the parties in accordance with Part 6 – CHANGES.”

SC-15 Delete subparagraph 1.1.5.1 in its entirety and replace it with the following:

“.1 the order of priority of documents, from highest to lowest, shall be:

- the Agreement between *Owner* and *Contractor*, as amended by the Supplementary Conditions
- the Definitions, as amended by the Supplementary Conditions
- the General Conditions, as amended by the Supplementary Conditions
- Appendix 1 to the Supplementary Conditions – Proper Invoice Requirements
- Division 01 of the *Specifications*
- technical *Specifications*
- material and finishing schedules
- the *Drawings*
- *Background Reports*
- Appendix 2 to the Supplementary Conditions – Contractor RFP Schedule Submission”

SC-16 Add the following to the end of subparagraph 1.1.6.2 after the words “the *Work*”:

“, except to the extent the *Consultant* is indemnified as a third party beneficiary as provided in subparagraphs 9.2.7.4 and 9.5.3.4 and in paragraph 13.1.1.”

SC-17 Add new paragraph 1.1.12 as follows:

“1.1.2 The parties acknowledge and agree that this *Contract* represents the entire agreement between the parties in respect of the *Work* and the *Project* and no document shall form part of the *Contract Document* unless expressly identified in Article A-3. For certainty, no letter of intent, purchase order or work order issued by the *Owner* in respect of any of the *Contract*, the *Work* or

the *Project* shall form part of the *Contract Documents* and no terms or conditions therein, if any, shall be of any force and effect.”

#### **GC 1.4 ASSIGNMENT**

SC-18 Delete paragraph 1.4.1 in its entirety and replace it with the following:

“1.4.1 The *Contractor* shall not assign, transfer or novate all or any part of the *Contract* without the written consent of the *Owner*, which consent may be withheld in the *Owner’s* sole and absolute discretion. The *Owner* may assign, transfer or novate all or a portion of this *Contract* or any right, benefit or interest in all or any portion of this *Contract*, to any *Affiliate* or to any purchaser of all or part of the *Place of the Work* or *Project* in its sole discretion. The *Owner* shall otherwise not assign, transfer or novate all or any portion of the *Contract* without the written consent of the *Contractor*, which consent shall not be unreasonably withheld.”

#### **GC 2.2 ROLE OF THE CONSULTANT**

SC-19 Delete the second sentence in paragraph 2.2.3 in its entirety and replace it with the following:

“The duties, responsibilities and limitations of authority of such project representatives shall be those of the *Consultant* as described in the *Contract Documents*.”

SC-20 In the first line of paragraph 2.2.6, delete the words “Except with respect to GC 5.1 – Financing Information Required by the *Owner*,”.

SC-21 In paragraph 2.2.8:

(1) in both the first and second sentences add the words “, written statements” after the word “interpretations”; and

(2) add the following to the end:

“The *Owner* and the *Contractor* shall waive any claims against the *Consultant* arising out of its making of any interpretations, written statements or findings in accordance with paragraphs 2.2.6, 2.2.7, 2.2.8, and 7.1.2, but only to the extent that any such interpretations, written statements, and findings are made by the *Consultant* in an unbiased manner and in accordance with the *Consultant’s* professional standard of care at law.”

SC-22 In paragraph 2.2.18 delete the word “immediately” and add the following to the end “Notwithstanding the foregoing, while the *Owner* will consider any reasonable objections of the *Contractor*, the *Owner* shall have absolute discretion in its appointment of a new *Consultant*.”

#### **GC 2.3 REVIEW AND INSPECTION OF THE WORK**

- SC-23 In the second sentence of paragraph 2.3.1 add the words “and the *Owner*” immediately following the words “the *Consultant*”.

## **GC 2.4 DEFECTIVE WORK**

- SC-24 Delete paragraph 2.4.1 in its entirety and replace it with the following:

“2.4.1 The *Contractor* shall promptly correct at its expense and in a manner acceptable to the *Owner* and *Consultant* defective work that has been rejected by the *Consultant* or *Owner* as failing to conform to the *Contract Documents* whether or not specifically identified by the *Consultant* or *Owner* and whether or not the defective work was incorporated in the *Work* or the defect is the result of poor workmanship, use of defective products or damage through carelessness or other act or omission of the *Contractor*. The *Contractor* shall prioritize the correction of any defective work which, in the sole discretion of the *Owner*, adversely affects the day-to-day operations of the *Owner*, including as required by paragraph 12.3.4, and shall otherwise prioritize the correction of defective work as required so as not to interfere with, or derogate from, the *Construction Schedule*. Subject to paragraph 2.4.3 and without prejudice to any other right or remedy under this *Contract* or at law and without affecting the warranty period, if the *Contractor* fails to correct such defective work within a reasonable amount of time as determined by the *Consultant*, the *Owner* may have such defective work corrected by its own forces or *Other Contractors* at the *Contractor*’s expense. Any testing (including retesting by the *Owner*) to ensure that the defective work has been corrected and complies with the *Contract Documents* shall also be carried out at the *Contractor*’s expense. The *Contractor* shall not be entitled to any adjustment of the *Contract Time* for correction of defective work and the *Owner* may deduct any expenses incurred pursuant to this paragraph 2.4.1 from any amounts due and owing to the *Contractor* under this *Contract*.”

## **GC 3.1 CONTROL OF THE WORK**

- SC-25 Add new paragraphs 3.1.3 to 3.1.6 as follows:

“3.1.3 Prior to commencing individual fabrication and construction activities, the *Contractor* shall verify, at the *Place of the Work*, all relevant measurements and levels necessary for proper and complete fabrication, assembly and installation of the *Work* and shall further carefully compare such field measurements and conditions with the requirements of the *Contract Documents*. Where such verification is not possible prior to fabrication or construction within the *Contract Time*, or dimensions are not included or contradictions exist, or exact locations are not apparent, the *Contractor* shall immediately notify the *Consultant* in writing and obtain written instructions from the *Consultant* before proceeding with any part of the affected work.



- 3.1.4 To the extent applicable, the *Contractor* shall in consultation with the *Owner* schedule, coordinate and perform the *Work* as required to prevent or, where prevention is not possible, to minimize, any impacts to the *Owner's* continuing business operations.
- 3.1.5 The *Contractor* and its *Subcontractors* shall attend meetings with respect to the *Work* as may be directed by the *Consultant* or *Owner*. The *Contractor* shall not claim any extra compensation for attendance at these meetings. The *Contractor* and its *Subcontractors* shall provide competent representatives to attend such meetings who are authorized to make undertakings on their behalves.
- 3.1.6 Prior to commencement of the *Work* the *Contractor* shall provide to the *Owner* certificates of insurance evidencing coverage as required by this *Contract*, a clearance certificate from the *WSIB* stating that all amounts owed to date have been paid in full, and, if requested by the *Owner* in writing, a copy of the *Contractor's* "notice of project" identifying the *Contractor* as the "constructor" with respect to the *Project* under the *OHSA*."

### **GC 3.2 CONSTRUCTION BY OWNER OR OTHER CONTRACTORS**

- SC-26 In paragraph 3.2.1 add the words "or for other work at the *Place of the Work*" after the words "the *Project*".
- SC-27 Delete subparagraph 3.2.2.1 in its entirety and replace it with the following:
  - "1 cause such *Other Contractors* and *Owner's* own forces to comply with the instructions of the *Contractor* relating to coordination and scheduling of the activities and work of such *Other Contractors* and the *Owner's* own forces at the *Place of the Work* with the *Work* of the *Contract*."

### **GC 3.4 CONSTRUCTION SCHEDULE**

- SC-28 Add the following to the end of paragraph 3.2.3:

"Without limiting the foregoing, the *Contractor* acknowledges and agrees that effective coordination of the *Work* with that of the *Other Contractor* supplying and installing the *Mammography Unit* is essential to successful performance of the *Work* as required by this *Contract* and the *Contractor* shall undertake such coordination and cooperation with such *Other Contractor* as necessary to achieve *Ready-for-Takeover* within the *Contract Time*
- SC-29 Delete paragraph 3.4.1 in its entirety and replace it with the following:
  - "3.4.1 The *Contractor* shall:
    - .1 prepare and submit to the *Owner* and the *Consultant* within 5 *Working Days* of the *Effective Date* a draft construction schedule that: (i) meets all requirements of the *Contract Documents*; (ii) is consistent with the

*Contractor RFP Schedule Submission*; (iii) indicates the timing of the major activities of the *Work*; and (iv) provides sufficient detail of the critical events and their interrelationship to demonstrate the *Work* will be performed in conformity with the *Contract Time*. Upon the *Consultant's* acceptance of such schedule in writing, in consultation with the *Owner*, it shall become the *Construction Schedule*.

- .2 complete the *Work* in accordance with the *Construction Schedule* and provide the expertise and resources, including manpower and *Construction Equipment*, as necessary to maintain progress under the *Construction Schedule*;
- .3 monitor the progress of the *Work* on a bi-weekly basis relative to the *Construction Schedule* and advise the *Consultant* and the *Owner* bi-weekly in writing of any variation from or slippage in performance of the *Work* in accordance with the *Construction Schedule*, together with a detailed explanation of any delays and a plan to mitigate the delay;
- .4 advise the *Consultant* of any revisions required to the *Construction Schedule* as the result of extensions of the *Contract Time* as provided in Article A-10 and Part 6 – CHANGES IN THE WORK;
- .5 update and submit to the *Consultant* and *Owner* an electronic copy of an updated *Construction Schedule* on a monthly basis and upon request by the *Consultant* or *Owner*, which submission shall include a comparison of the updated *Construction Schedule* to the accepted *Construction Schedule*, a summary of actual and forecast progress of the *Work* relative to the *Construction Schedule*, and a description of the basis of and logic for any changes made to the *Construction Schedule* in conformance to requirements of the *Contract Documents*; and
- .6 subject to Article A-10 and Part 6 – CHANGES IN THE WORK, provide overtime work without adjustment to the *Contract Price* if such work is deemed necessary to mitigate delay and/or recoup lost time in order to meet the *Construction Schedule*.”

SC-30 Add new paragraph 3.4.2 as follows:

- “3.4.2 At the time of commencement of the *Work*, the *Contractor* shall prepare for the review and acceptance of the *Owner* and the *Consultant* a schedule indicating the times within the *Construction Schedule* that *Products* specified to be purchased by the *Owner* and installed or connected by the *Contractor* are required to be delivered to the *Place of the Work* to allow for performance of the *Work* within the *Contract Time* and avoid delaying the progress of the *Work*. Such schedule shall also indicate the times within the *Construction Schedule* that the *Mammography Unit* is required to be delivered to the *Place of the Work* and installed by the *Owner's Other*

*Contractor* to allow for performance of the *Work* within the *Contract Time* and avoid delaying the progress of the *Work*.”

### **GC 3.6 SUBCONTRACTORS AND SUPPLIERS**

SC-31 Add the following to paragraph 3.6.2:

“The *Contractor* agrees not to change any such *Subcontractors* without the prior written consent of the *Owner*, such consent not to be unreasonably withheld.”

### **GC 3.7 LABOUR AND PRODUCTS**

SC-32 Add paragraphs 3.7.4 to 3.7.8 as follows:

“3.7.4 All products and materials existing at the *Place of the Work* as of the *Effective Date* shall remain the property of the *Owner*. All *Products* to be incorporated in the *Work* shall become the property of the *Owner* at the earlier of: (i) incorporation of the *Product* into the *Work*; and (ii) payment in whole or in part for the *Product* by the *Owner*. Notwithstanding transfer of title and ownership to the *Owner*, the *Contractor* shall remain responsible for any loss or damage to *Products* until *Ready-for-Takeover* has been achieved.

3.7.5 All *Products* which are specified in the *Contract Documents* by their proprietary names or by part or catalogue numbers, are to form the basis for the specifications of such *Products*. No substitute for any such *Products* may be used without the *Consultant*’s written approval, acting reasonably. Substitutes for *Products* specified in the *Contract Documents* or approved by the *Owner* will be permitted only when: (i) request for the substitution is submitted in sufficient time to permit proper investigation and written approval by the *Consultant*, acting reasonably; and (ii) the specified *Product* has been discontinued, is unavailable or, due to such *Product*’s delivery being on the critical path it cannot be delivered within the time required for performance of the *Work* within the *Contract Time*. When requesting approval for the use of substitutes, the *Contractor* shall include in its submission sufficient details regarding the subject *Product*’s discontinuance, availability or impact on the critical path, as applicable, together with a description of any effect (increase or decrease) that the substitution may have on the *Contract Price* and, if applicable, written approval from all *Governmental Authorities*. No adjustment to the *Contract Time* shall result from the use of substitutes by the *Contractor*.

3.7.6 Where the *Contractor* is of the reasonable opinion that advanced payment for a *Product* is required to secure such *Product*’s timely supply and delivery to the *Place of the Work* in compliance with the *Construction Schedule* and *Contract Time*, the *Contractor* may seek consent from the *Owner* to include application for payment for such *Product* in a *Proper Invoice* prior to its incorporation into the *Work* by *Notice in Writing* to the *Owner* and *Consultant*, which *Notice in Writing* shall include a description of the

circumstances giving rise to the need for such advanced payment and identifying whether the stockpiling or storage of such *Products* at the *Place of the Work* will be required pursuant to paragraph 3.7.7. With any *Proper Invoice* seeking advanced payment (as approved by the *Owner* pursuant to this paragraph 3.7.6), the *Contractor* shall include a receipt with proof of payment for the *Product* or such other documentation as reasonably required by the *Owner* to confirm payment by the *Contractor* for such *Product*. The *Owner* may approve or refuse any request for advanced payment for *Products* in its sole and absolute discretion.

- 3.7.7 No *Products* shall be stockpiled or stored at the *Place of the Work* before their anticipated incorporation into the *Work* unless, in the reasonable opinion of the *Consultant* and the *Owner*, the stockpiling or storage of such *Products* at the *Place of the Work* is feasible and necessary or desirable, including because of advanced payment for such *Products* as approved by the *Owner* pursuant to paragraph 3.7.5, then the *Contractor* shall obtain the prior written approval of the *Owner* for stock piling or storage of *Products* at the *Place of the Work*. The *Contractor* acknowledges and accepts that the *Owner* may not have space for storage of *Products* at the *Place of the Work* and, as such, the *Contractor* agrees that the *Owner* shall not have any obligation to permit the stockpiling or storage of *Products* at the *Place of the Work*. Where the *Owner* does not approve storage of *Products* at the *Place of the Work*, the *Contractor* may elect at its sole cost to store such *Products* at an alternate location. The *Contractor* shall remove all surplus or rejected *Products* from the *Place of the Work*.
- 3.7.8 Where the *Owner* has made payment to the *Contractor* for *Products* prior to their delivery to the *Place of the Work*, at no additional cost to the *Owner*, the *Contractor* shall:
- .1 provide the *Owner* with an executed receipt clearly identifying the *Owner* as the owner of the subject *Products* together with any available identifying information for such *Products*, such as serial numbers;
  - .2 ensure that the *Products* are clearly marked, identified or labelled as being the property of the *Owner* during any storage or transport of such *Products*;
  - .3 ensure that when such *Products* are stored at a location other than the *Place of the Work* they are kept in a segregated location and not intermingled or co-mingled with the property of the *Contractor* or any other person;
  - .4 ensure that the *Owner* and *Consultant* have the right to access, examine and inspect such *Products*; and

- .5 ensure that such *Products* are not subject to any landlord distress rights, security interest or other encumbrance by any person.

3.7.9 The *Contractor* and *Owner* acknowledge and agree that the *Mammography* is to be supplied and installed by an *Other Contractor*. Without limiting the *Contractor*'s obligations under this *Contract* in respect of *Products*, *Other Contractors* and the *Work*, the *Contractor* shall coordinate its performance of the *Work* with such *Other Contractor* and shall perform the *Work* as required so as to cause no damage to the *Mammography Unit*."

### **GC 3.8 SHOP DRAWINGS**

- SC-33 Add the words "AND OTHER SUBMITTALS" to the title of GC 3.8 after the words "SHOP DRAWINGS".
- SC-34 Add the words "and other *Submittals*" after the words "*Shop Drawings*" in paragraphs 3.8.1, 3.8.2, 3.8.3, 3.8.3.2, 3.8.5, 3.8.6, and 3.8.7.

### **GC 3.9 CLEAN-UP**

### **GC 3.10 DOCUMENTS AT THE SITE**

### **GC 3.11 USE OF THE WORK**

### **GC 3.12 CUTTING AND REMEDIAL WORK**

- SC-35 Add the following new GC 3.9 CLEAN-UP, GC 3.10 DOCUMENTS AT THE SITE; GC 3.11 USE OF THE WORK, and GC 3.12 CUTTING AND REMEDIAL WORK:

#### **"GC 3.9 CLEAN-UP**

- 3.9.1 The *Contractor* shall maintain the *Work* in a safe and tidy condition and free from the accumulation of waste products and debris, other than that caused by the *Owner Personnel*, *Other Contractors* or their employees.
- 3.9.2 Before applying for *Substantial Performance* as provided in GC 5.4 – SUBSTANTIAL PERFORMANCE OF THE WORK AND PAYMENT OF HOLDBACK, the *Contractor* shall remove waste products and debris, other than that resulting from the work of *Owner Personnel*, *Other Contractors* or their employees and shall leave the *Place of the Work* clean and suitable for use and occupancy by the *Owner*. The *Contractor* shall remove materials, tools, *Construction Equipment*, and *Temporary Work* not required for the performance of the remaining work.

- 3.9.3 Prior to submitting its *Proper Invoice* for final payment, the *Contractor* shall remove any remaining materials, tools, *Construction Equipment*, *Temporary Work*, and waste products and debris, other than those resulting from the work of *Owner Personnel*, *Other Contractors* or their employees.
- 3.9.4 All debris and waste resulting from the *Work* shall be removed from the *Place of the Work* expeditiously and shall be disposed of in accordance with the *Contract Documents* and *Applicable Law*. Salvage or materials from the *Work* shall not be sold at or near the *Place of the Work*.
- 3.9.5 In the event that the *Owner* or any *Governmental Authority* orders, instructs or requests that the *Owner* or *Contractor* clean-up the *Place of the Work* or any property adjacent to or in proximity to the *Place of the Work*, the *Contractor* shall be responsible for the prompt completion of such clean-up activities at its sole cost, provided that the requirement for such clean-up is related to or arises from the *Work* and except to the extent such clean-up is required due to the work of *Owner Personnel*, *Other Contractors* or their employees.
- 3.9.6 The *Owner* shall have the right to back charge the costs of cleaning required to be performed by the *Contractor* pursuant to this GC 3.9 if not done by the *Contractor* within forty eight (48) hours of receipt of written notice from the *Owner* or *Consultant*.”

### **GC 3.10 DOCUMENTS AT THE SITE**

- 3.10.1 The *Contractor* shall keep one copy of current *Contract Documents*, submittals, reports, and records of meetings at the *Place of the Work*, in good order and available to the *Owner* and the *Consultant*.

### **GC 3.11 USE OF THE WORK**

- 3.11.1 The *Contractor* shall confine *Construction Equipment*, *Temporary Work*, storage of *Products*, waste products and debris, and operations of *Contractor Personnel* to limits indicated by laws, ordinances, permits, or the *Contract Documents* and shall not unreasonably encumber the *Place of the Work*.

### **GC 3.12 CUTTING AND REMEDIAL WORK**

- 3.12.1 The *Contractor* shall perform the cutting and remedial work required to make the affected parts of the *Work* come together properly.
- 3.12.2 The *Contractor* shall co-ordinate the *Work* to ensure that the cutting and remedial work is kept to a minimum.
- 3.12.3 Cutting and remedial work shall be performed by specialists familiar with the *Products* affected and shall be performed in a manner to neither damage nor endanger the *Work*.”

#### **GC 4.1 CASH ALLOWANCES PAYMENT**

SC-36 Delete paragraph 4.1.7 in its entirety and replace it with the following:

“4.1.7 At the commencement of the *Work*, the *Contractor* shall prepare for the review and acceptance of the *Owner* and the *Consultant* a schedule indicating the times within the *Construction Schedule* that items called for under cash allowances are required to be delivered to the *Place of the Work* to avoid delaying the progress of the *Work*.”

SC-37 Add new paragraph 4.1.8 in as follows:

“4.1.8 The *Owner* reserves the right to call, or to have the *Contractor* call, for competitive bids for portions of the *Work* to be paid for from cash allowances.”

#### **GC 4.2 CONTINGENCY ALLOWANCE**

SC-38 Add the following to the end of paragraph 4.2.4:

“For certainty, prior to *Contractor*’s submission of its *Proper Invoice* for final payment the *Contract Price* shall be reduced by the amount of any contingency allowance not authorized for expenditure under paragraph 4.2.3.”

#### **GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER**

SC-39 Delete GC 5.1 in its entirety.

#### **GC 5.2 APPLICATIONS FOR PAYMENT**

SC-40 Delete paragraph 5.2.1 in its entirety and replace it with the following:

“5.2.1 The *Contractor* shall submit a *Proper Invoice* to the *Consultant* and the *Owner* on account as provided in Article A-5 of the Agreement monthly as the *Work* progresses. As a requirement for a *Proper Invoice* each *Proper Invoice* shall be submitted on the 5<sup>th</sup> *Working Day* of the month (the “***Proper Invoice Submission Date***”) and shall contain all information and documentation required for a *Proper Invoice* as stipulated in Appendix 1 – Proper Invoice Requirements. The *Proper Invoice* shall be for the value of the *Work* performed up to the end of the subject monthly payment period. All *Proper Invoices* shall be submitted by email to the *Owner* and *Consultant* at the email addresses for receipt of *Notice in Writing* and all such email messages shall include:

- .1 the sender’s name, address, telephone number, fax number, if any, and e-mail address;
- .2 the date and time of transmission; and

- .3 the name and telephone number of a person to contact in the event of a transmission problem.

Where a *Proper Invoice* is given by email between 4:00 p.m. and midnight, it shall be deemed to have been given on the following day. Where a *Proper Invoice* is received by the *Owner* on a day that is not the *Proper Invoice Submission Date*, such *Proper Invoice* shall be deemed to have been received by the *Owner* on the next *Proper Invoice Submission Date*.”

- SC-41 Delete paragraph 5.2.2 in its entirety.
- SC-42 In paragraph 5.2.3 add the words “in a *Proper Invoice*” after the words “The amount claimed”.
- SC-43 Delete paragraph 5.2.4 in its entirety and replace it with the following:
- “5.2.4 At least 15 calendar days before submission of its first *Proper Invoice* the *Contractor* shall submit to the *Consultant*, in a form acceptable to the *Owner* and *Consultant*, acting reasonably, a schedule of values for the parts of the *Work*, aggregating the total amount of the *Contract Price*, so as to facilitate evaluation of *Proper Invoices*.”
- SC-44 Amend paragraph 5.2.6 by replacing the words “Applications for payment” with the words “*Proper Invoices*”.
- SC-45 Delete paragraph 5.2.7 in its entirety.
- GC 5.3 PAYMENT**
- SC-46 In paragraph 5.3.1 replace the words “an application for payment” with “a *Proper Invoice*”.
- SC-47 Delete subparagraph 5.3.1.1 in its entirety and replace it with the following:
- “.1 If the *Consultant*, in consultation with the *Owner*, determines that an amount different than that applied for is properly due, the *Owner* or *Consultant* shall issue a “Notice of Non-Payment” pursuant to the *Construction Act* on behalf of the *Owner*.”
- SC-48 Delete subparagraph 5.3.1.2 in its entirety and replace it with the following:
- “.2 Subject to any “Notice of Non-Payment” issued pursuant to the *Construction Act* on behalf of the *Owner*, the *Owner* shall make payment to the *Contractor* on account as provided in Article A-5 of the Agreement – PAYMENT no later than twenty-eight (28) calendar days from the *Proper Invoice Submission Date* of such *Proper Invoice* and, in any event, in compliance with the *Payment Legislation*.”
- SC-49 Add new paragraphs 5.3.2 to 5.3.5 as follows:



- “5.3.2 If the *Contractor* fails to provide any element of a *Proper Invoice*, including a statutory declaration or the workers’ compensation clearance certificate, the application for payment will not constitute a *Proper Invoice* and the *Owner* shall not be required to make payment to the *Contractor* until a complete *Proper Invoice* is submitted.
- 5.3.3 The *Contractor* shall have no entitlement to payment and no *Proper Invoice* may be submitted for changes in the *Work* without a written *Change Order* issued by the *Owner*.
- 5.3.4 The *Owner* may withhold from payment amounts as determined by the *Owner* or *Consultant*, acting reasonably, to ensure correction of defective work and may also provide for the retention of amounts in addition to the statutory holdback provided for in the *Contract* sufficient to protect the *Owner* against all liens of which the *Owner* has notice.
- 5.3.5 Following receipt by the *Contractor* of statutory declarations from *Suppliers* or *Subcontractors* of any tier, the *Contractor* shall promptly provide the *Owner* and *Consultant* with copies of such statutory declarations.”

**GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK AND PAYMENT OF HOLDBACK**

SC-50 Delete all paragraphs of GC 5.4 in their entirety and replace them with the following:

- “5.4.1 When the *Contractor* considers that *Substantial Performance of the Work* has been achieved, or if permitted by the *Payment Legislation* a designated portion of the *Work* which the *Owner* agrees to accept separately is substantially performed, the *Contractor* shall, within five (5) *Working Days*, deliver to the *Consultant* and to the *Owner* a written application for a review by the *Consultant* to establish *Substantial Performance of the Work* or substantial performance of the designated portion of the *Work*, which application shall include the following:
- a. A comprehensive list of work to be completed or corrected including all deficient or defective work identified by the *Owner* and *Consultant* and the cost for completion and correction of such work,
  - b. A list of work which cannot be performed for reasons beyond the control of the *Contractor* including the proposed date for completion of such work and the cost for completion of such work,
  - c. A declaration to the effect that:
    - i. the *Contract* is substantially performed,
    - ii. the performance of the balance of the *Contract* is in progress, and

- iii. where the balance of the *Contract*, or a part or parts thereof cannot be performed forthwith, but must be deferred for reasons beyond the control of the *Contractor*, the balance of the *Contract* shall be completed by a fixed date,
- d. All documentation required pursuant to GC 10.4 – WORKERS’ COMPENSATION, including a clearance certificate from the *WSIB* stating that all amounts owed to the date of *Substantial Performance of the Work* have been paid in full,
- e. A statutory declaration using the latest CCDC 9A form of “Statutory Declaration of Progress Payment Distribution by Contractor”,
- f. A list of all outstanding or potential *Claims* of the *Contractor* under the *Contract* as of the date of its application for *Substantial Performance of the Work*. For certainty, the provision of this list shall in no way relieve the *Contractor* of its notice obligations under the *Contract* for any *Claim*,
- g. A statement identifying the value of *Work* done to the proposed date of *Substantial Performance of the Work* together with all documentation reasonably required by the *Owner* and *Consultant* to determine the value of same, and
- h. A statement showing the amount of holdback monies due for release and payment when all liens that may be claimed against such holdback have expired or been satisfied, discharged or otherwise provided for under the *Payment Legislation*.

Failure to include an item on the list does not alter the responsibility of the *Contractor* to complete the *Contract*.

5.4.2 The *Consultant* will review the *Work* to certify or verify the validity of the application and shall promptly, and in any event, no later than 15 *Working Days* after receipt of the *Contractor*’s application:

- .1 advise the *Contractor* in writing that the *Work* or the designated portion of the *Work* is not substantially performed and give reasons why, or
- .2 state the date of *Substantial Performance of the Work* or a designated portion of the *Work* in a certificate and issue a copy of that certificate to each of the *Owner* and the *Contractor*.

For certainty, the *Contract Price* to be used in determining achievement of *Substantial Performance of the Work* shall be the *Contract Price* as amended by any *Change Orders* issued as of the date such determination is being made and shall not include any anticipated changes to the *Contract Price* not yet confirmed by *Change Order*, including in respect of any cash allowances or contingencies.

- 5.4.3 Within no more than 7 calendar days following receipt of the certificate from the *Consultant* pursuant to paragraph 5.4.2, the *Contractor* shall cause such certificate to be published in accordance with the requirements of the *Payment Legislation* and the *Contractor* shall issue to the *Owner* and *Consultant* an application for release of the holdback. The *Contractor's* application for release of the holdback application shall include:
- .1 a copy of the advertisement containing the certificate of *Substantial Performance of the Work* placed by the *Contractor* in the appropriate construction trade newspaper;
  - .2 a declaration that no written notices of lien have been received by the *Contractor*;
  - .3 all documentation required pursuant to GC 10.4 – WORKERS' COMPENSATION, including a clearance certificate from the *WSIB* stating that all amounts owed to the date of *Substantial Performance of the Work* have been paid in full; and
  - .4 a statutory declaration using the latest CCDC 9A form of "Statutory Declaration of Progress Payment Distribution by Contractor".

Except to the extent required by *Payment Legislation*, such application for release of the holdback shall not constitute an application for payment that is subject to *Proper Invoice* requirements. All holdback amounts prescribed by the *Payment Legislation* shall become due and payable to the *Contractor* following expiration of the holdback period stipulated in the *Payment Legislation* provided that all liens that may be claimed against the holdback have expired or been satisfied, discharged or otherwise provided for as required by the *Payment Legislation*.

- 5.4.4 There shall be no progressive release of holdback for a portion of the *Work* pursuant to any applicable *Payment Legislation*.
- 5.4.5 The *Owner* may refuse to pay some or all of the lien holdback amount provided that the *Owner* complies with any applicable requirements of the *Payment Legislation*.
- 5.4.6 No payment of holdback shall be made unless and until any liens have been satisfied, discharged or otherwise provided for under the *Payment Legislation*. Notwithstanding any such payment, the *Contractor* shall ensure that all *Work* and *Products* are protected pending *Completion* and be responsible for the correction of defects or *Work* not performed regardless of whether or not such was apparent when such payment was made."

## **GC 5.5 FINAL PAYMENT**

SC-51 Delete paragraphs 5.5.1 to 5.5.4 in their entirety and replace them with the following:

- “5.5.1 When the *Contractor* considers that *Completion* has been achieved, the *Contractor* shall submit a draft application for final payment within no more than five (5) *Working Days* of the claimed date of *Completion* and shall submit a *Proper Invoice* to the *Owner* and *Consultant* for final payment no earlier than five (5) *Working Days* after submission of such draft application for final payment.
- 5.5.2 The *Consultant* will review the *Work* to certify or verify achievement of *Completion* and shall promptly, and in any event, no later than ten (10) calendar days after receipt of the *Contractor*’s *Proper Invoice* for final payment:
- .1 advise the *Contractor* in writing that *Completion* has not been achieved and give reasons why, or
  - .2 state the date of *Completion* (as determined by the *Consultant*) in a certificate and issue a copy of that certificate to each of the *Owner* and the *Contractor*.
- 5.5.3 Payment of a *Proper Invoice* for final payment shall be made by the *Owner* in accordance with paragraph 5.3.1.2. All holdback amounts for finishing work prescribed by the *Payment Legislation* shall become due and payable to the *Contractor* following expiration of the holdback period stipulated in the *Payment Legislation* provided that all liens that may be claimed against such holdback have expired or been satisfied, discharged or otherwise provided for as required by the *Payment Legislation*.
- 5.5.4 For certainty, all references in the *Contract Documents* to final payment or a *Proper Invoice* for final payment shall refer to the *Proper Invoice* submitted by the *Contractor* and payment to be made by the *Owner* under the *Contract* following achievement of *Completion* or following the date of termination of the *Contract* or the *Contractor*’s right to continue with the *Work*.”

## **GC 5.8 SET-OFF**

SC-52 Add new GC 5.8 SET-OFF as follows:

### **“GC 5.8 SET-OFF**

- 5.8.1 Notwithstanding any other provision in the *Contract* and subject to the provisions of the *Payment Legislation*, if the *Owner* has made an overpayment on any previous *Proper Invoice*, if the *Contractor* is in default under the *Contract* (including any failure to correct deficiencies as required by the *Contract*), if any amount is due and owing by the *Contractor* to the *Owner* under this *Contract*, or if the *Contractor* has not paid undisputed amounts due to *Contractor Personnel*, then without prejudice to any other right or remedy, the *Owner* may withhold or set-off payment from the

*Contractor* of the amount reasonably necessary to protect the *Owner* from loss or damage arising from such event.”

## **GC 6.2 CHANGE ORDER**

SC-53 Add new paragraph 6.2.1A as follows:

“6.2.1A If the *Contractor* is of the opinion that any direction or instruction received from the *Consultant* or the *Owner*, including any *Supplemental Instruction*, constitutes a proposed change in the *Work*, it shall give the *Consultant* and *Owner Notice in Writing* of such change within 5 *Working Days*, which notice shall include a written description of the alleged change in the *Work*, including a description of the anticipated impact to the *Contract Price* and *Contract Time* and all available supporting documentation. The *Consultant* will promptly investigate such alleged change in the *Work* and make a finding. If the finding is that such direction or instruction does constitute a change for which adjustment of the *Contract Price* and *Contract Time* is justified under the *Contract*, then, if the *Owner* does not dispute such finding within the time stipulated in Part 8 – DISPUTE RESOLUTION, the *Consultant* will issue appropriate instructions for a change in the *Work* as provided in paragraph 6.2.1. If the finding is that the direction or instruction does not constitute a change for which adjustment of the *Contract Price* or *Contract Time* is justified under the *Contract*, the *Consultant* shall provide its reasons for such finding in writing to the *Owner* and *Contractor* and the *Contractor* shall proceed with the affected *Work*, including implementation of the subject direction or instruction, and may dispute the finding of the *Consultant* under this paragraph 6.2.1A in accordance with PART 8 – DISPUTE RESOLUTION. For certainty, the *Contractor* shall not delay in its implementation of the subject direction or instruction or performance of any affected *Work* while the *Consultant* investigates the alleged change and makes a finding pursuant to this paragraph 6.2.1A.”

SC-54 Add new paragraphs 6.2.3 to 6.2.5 as follows:

- “6.2.3 The *Contractor* shall prepare and submit to the *Consultant* and the *Owner* all details and supporting documentation regarding impacts of a proposed change to the *Contract Price* and *Contract Time* within ten (10) *Working Days* after notice of the proposed change is given to the *Contractor* under paragraph 6.2.1 and otherwise within five (5) *Working Days* of such details and supporting documentation becoming known or available, as applicable.
- 6.2.4 Unless otherwise agreed by the parties, the adjustment in the *Contract Price* for any change shall be determined in accordance with paragraphs 6.3.6 and 6.3.7.

- 6.2.5 A *Change Order* shall be a final determination and adjustment to the *Contract Time*, and *Contract Price* in respect of the subject change and there shall be no further adjustments to the *Contract Time* or *Contract Price* or compensation or payment of any kind whatsoever based on the aggregate number, scope or value of changes in the *Work* whether resulting from *Change Orders* or *Change Directives*.”

### **GC 6.3 CHANGE DIRECTIVE**

SC-55 Delete subparagraph 6.3.6.3 in its entirety and replace it with the following:

- “.3 Subject to subparagraph 6.3.6.4, in respect of the *Contractor*’s percentage fee, the *Contractor* shall be entitled to apply mark-ups as follows to the actual costs of performing the work attributable to the change as determined in accordance with paragraph 6.3.7 (exclusive of *Value Added Taxes*), which mark-ups include the *Contractor*’s fee for profit and overhead (including profit and overhead of all *Contractor Personnel*):
- i. for *Contractor*’s own work: a mark-up in an amount of no more than 15% of the *Net Actual Cost* of the *Contractor*’s own work
  - ii. for *Subcontractor*’s own work: a mark-up in an amount of no more than 15% of the *Net Actual Cost* of the *Subcontractor*’s own work; and
  - iii. *Contractor*’s mark-up on *Subcontractor*’s own work: a mark-up in an amount of not more than 10% of the *Net Actual Cost* of the *Subcontractor*’s own work.

For certainty, no further mark-up shall be applied to any costs attributable to the change, including in respect of profit and overhead for *Contractor Personnel*, and regardless of the extent to which the subject work is assigned or sublet to others. If *Work* is assigned or sublet to an associate, as defined by the *Securities Act*, RSO 1990, c. S.5, as amended, no mark-up whatsoever shall be applied.”

SC-56 Add new subparagraphs 6.3.6.4 and 6.3.6.5 as follows:

- “.4 In no event shall the maximum aggregate mark-up applied by all levels of contract for overhead and profit pursuant to subparagraph 6.3.6.3 exceed 30% of the total *Net Actual Cost* of approved change.
- .5 Where the *Owner* and *Contractor* agree in writing to a rate and pricing schedule, to the extent applicable such rate and pricing schedule will be used to determine the cost of the *Contractor*’s actual expenditures and savings under paragraph 6.3.7.”

SC-57 Add new paragraph 6.3.14 as follows:

“6.3.14 Without limiting the *Contractor*’s obligations under this GC 6.3, for valuation of any *Change Directive* the *Contractor* shall provide the *Owner* and *Consultant* with detailed itemized breakdowns of all actual expenditures itemized in 6.3.7 and incurred in respect of the change, including detailed, substantiated time sheets, purchase orders, receipts or cost vouchers from *Subcontractors* and *Suppliers* and such other documentation as reasonably required by the *Owner* and *Consultant* to determine the actual expenditures incurred by the *Contractor* attributable to the change.”

#### **GC 6.4 CONCEALED OR UNKNOWN CONDITIONS**

SC-58 Amend subparagraphs 6.4.1.1 and 6.4.1.2 by adding the following after the words “*Contract Documents*” in each subparagraph:

“and which would not have been readily apparent prior to the *Contractor*’s commencement of the performance of the *Work* from review of the *Contract Documents* and *Place of the Work* by the *Contractor* as required by the *Contract Documents*, including pursuant to paragraph 1.5 of Article A-5 and paragraph 1.1.3 of GC 1.1”

#### **GC 6.5 DELAYS**

SC-59 Add the following to the end of paragraph 6.5.2:

“Notwithstanding the foregoing, (i) where the stop work order was issued as a result of or due to a *Force Majeure Event* this paragraph 6.5.2 shall not apply and the *Contractor*’s entitlement to adjustment of the *Contract Time* or *Contract Price* shall be governed by paragraph 6.5.3, and (ii) where the stop work order was issued as a result of or due to *COVID-19*, the *Pandemic* or a *Pandemic Change in Law*, including a *Governmental Response*, and was not the result of an act or fault of any *Contractor Personnel*, directly or indirectly, this paragraph 6.5.2 shall not apply and the *Contractor*’s entitlement to adjustment of the *Contract Time* or *Contract Price* shall be governed by the provisions of Article A-10 hereof.”

SC-60 Delete paragraph 6.5.3 in its entirety and replace it with the following:

“6.5.3 If the *Contractor* is delayed in the performance of the *Work* by a *Force Majeure Event*, including:

- .1 labour disputes, strikes, lock-outs (including lock-outs decreed or recommended for its members by a recognized contractors’ association, of which the *Contractor* is a member or to which the *Contractor* is otherwise bound),
- .2 fire, unusual delay by common carriers or unavoidable casualties, or



.3 abnormally adverse weather conditions,

then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Contractor*. The extension of time shall not be less than the time lost as the result of the event causing the delay, unless the *Contractor* agrees to a shorter extension. Except to the extent such delays result from actions by *Owner Personnel*, the *Contractor* shall only be entitled to payment for costs directly incurred with the *Owner's* written approval to protect the *Work* and secure the *Place of the Work* during the period of such delay and to mitigate the impacts of such delay to performance of the *Work* within the *Contract Time*. For certainty, in the event of delay caused by or resultant from *COVID-19*, the *Pandemic* or a *Pandemic Change in Law*, including a *Governmental Response*, this paragraph 6.5.3 shall not apply and the *Contractor's* entitlement to adjustment of the *Contract Time* or *Contract Price* shall be governed by the provisions of Article A-10 hereof."

SC-61 Delete paragraph 6.5.4 in its entirety and replace it with the following:

"6.5.4 Upon the occurrence of any event that may cause delay to performance of the *Work* the *Contractor* shall promptly give the *Owner* verbal notice of such delay event. No extension shall be made for delay unless *Notice in Writing* of the cause of delay is given to the *Consultant* and *Owner* not later than 10 *Working Days* after the commencement of the delay. In the case of a continuing cause of delay only one *Notice in Writing* shall be necessary."

SC-62 Delete paragraph 6.5.5 in its entirety and replace it with the following:

"6.5.5 No adjustment to the *Contract Time* shall be made because of failure of the *Consultant* to furnish instructions unless the *Consultant* has failed to furnish such instructions within the time stipulated in any schedule agreed-to by the parties for submission and return of *Shop Drawings* and *Submittals* and the *Contractor* has given at least two (2) *Working Days' Notice in Writing* to the *Consultant* and *Owner* of the date for upon which such instructions are required."

## **GC 6.6 CLAIMS FOR A CHANGE IN CONTRACT PRICE**

SC-63 Delete paragraph 6.6.1 in its entirety and replace it with the following:

"6.6.1 If the *Contractor* intends to make a claim for an increase to the *Contract Price* the *Contractor* shall give *Notice in Writing* of intent to claim to the *Owner* and to the *Consultant* within five (5) *Working Days* of commencement of the event or series of events giving rise to such claim. Notwithstanding the foregoing, any claim for adjustment to the *Contract Price* resultant from *COVID-19*, the *Pandemic* or a *Pandemic Change in Law*, including a *Governmental Response*, shall be governed by the provisions of Article A-10 and this GC 6.6 shall not apply."



SC-64 Delete paragraphs 6.6.3 and 6.6.4 in their entirety and replace them with the following:

“6.6.3 The party making a claim pursuant to this GC 6.6 shall prepare and submit to the *Consultant* and other party in writing all available details and supporting documentation regarding the claim not later than ten (10) *Working Days* after commencement of the event or series of events giving rise to such claim and shall thereafter submit all such details and supporting documentation within five (5) *Working Days* of such details and supporting documentation becoming known or available, as applicable. For certainty, the supporting documentation to be submitted shall include all evidence reasonably required by the *Consultant* to make a finding and all such supporting documentation shall be prepared at the applicable party’s own cost.

6.6.4 Without limiting paragraph 6.6.3, where the event or series of events giving rise to the claim has a continuing effect, the detailed account submitted under paragraph 6.6.3 shall be considered to be an interim account and the party making the claim shall, weekly or bi-weekly as the *Consultant* may reasonably require, submit further written interim accounts giving the accumulated amount of the claim and any further grounds upon which it is based. The party making the claim shall submit a final account within five (5) *Working Days* of the end of the effects resulting from the event or series of events.”

SC-65 Add new paragraph 6.6.7 as follows:

“6.6.7 Where the party making a claim fails to provide notice or details and supporting documentation within the time stipulated in this GC 6.6 and such failure prevents the *Consultant* or other party from mitigating or minimizing *Claims* resultant from the event or series of events giving rise to such claim or otherwise causes the other party loss or damage, then the party making the claim shall be barred from bringing the subject claim.”

**GC 7.1 OWNER’S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR’S RIGHT TO CONTINUE WITH THE WORK, OR TERMINATE THE CONTRACT**

SC-66 Delete subparagraph 7.1.5.1 in its entirety and replace it with the following:

“.1 take possession of the *Work* and *Products* at the *Place of the Work*; subject to the rights of third parties, utilize the *Construction Equipment* and *Temporary Work* at the *Place of the Work*; require the *Contractor* to transfer, novate or assign all agreements with *Subcontractors* and *Suppliers* in respect of the *Work* to the *Owner* or other contractors designated by the *Owner*; finish the *Work* by whatever method the *Owner* may consider expedient, but without undue delay or expense,”

SC-67 In subparagraph 7.1.5.4 delete the words “warranty period” and replace them with the words “*Warranty Period*”.

SC-68 Add a new subparagraph 7.1.5.5 as follows:

“5 set-off against any amount payable to the *Contractor* under the *Contract* all amounts payable by the *Contractor* to the *Owner*.”

SC-69 Add a new paragraphs 7.1.7 and 7.1.8 as follows:

“7.1.7 The *Owner* shall not be liable to the *Contractor* for any *Consequential Damages* arising from termination pursuant to this GC 7.1.

7.1.8 The *Contractor* shall submit to the *Owner* and *Consultant* a *Proper Invoice* for final payment no later than 45 calendar days after the date of termination.”

## **GC 7.2 CONTRACTOR’S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT**

SC-70 Delete paragraph 7.2.2 in its entirety.

SC-71 Delete subparagraphs 7.2.3.1 and 7.2.3.2 in their entirety.

SC-72 In subparagraph 7.2.3.4 delete the words “except for GC 5.1 FINANCIAL INFORMATION REQUIRED OF THE OWNER.”

SC-73 In paragraph 7.2.4, delete “5 *Working Days*” from the second line and replace with “fifteen (15) *Working Days*”, and add the following to the end of the paragraph:

“The *Owner* shall be deemed not to be in default of its obligations under the *Contract* if it is taking active steps to remedy the default but cannot reasonably do so within the said fifteen (15) *Working Day* period.”

SC-74 In paragraph 7.2.5, delete the words “including reasonable profit” and replace them with the words “to the date of termination” and add the words “, but shall not be entitled to compensation for any *Consequential Damages*” after the words “termination of the *Contract*”.

SC-75 Add new paragraph 7.2.6 as follows:

“7.2.6 The *Contractor*’s claim for compensation under this GC 7.2 shall be submitted to the *Owner* and *Consultant* in the form of a *Proper Invoice* for final payment no later than 45 calendar days after the date of termination.”

## **GC 7.3 TERMINATION FOR CONVENIENCE**

SC-76 Add new GC 7.3 TERMINATION FOR CONVENIENCE as follows:

### **“GC 7.3 TERMINATION FOR CONVENIENCE**

- 7.3.1 The *Owner* may in its sole discretion terminate the *Contractor*’s right to continue with the *Work* in whole or in part or this *Contract* for any reason, including without cause or for convenience, at any time by giving at least 30 calendar days’ *Notice in Writing* of such termination to the *Contractor* specifying the date of termination.
- 7.3.2 In the event of termination pursuant to paragraph 7.3.1, the *Contractor* shall be entitled to be paid for all work performed to the date of termination, for loss sustained upon *Products* and *Construction Equipment*, and such other damages as the *Contractor* may have sustained as a direct result of such termination, but shall not be entitled to compensation for any *Consequential Damages*. The *Contractor*’s claim for such compensation shall be submitted to the *Owner* and *Consultant* in the form of a *Proper Invoice* for final payment no later than 45 calendar days after the date of termination.”

### **GC 8.1 AUTHORITY OF THE CONSULTANT**

SC-77 In paragraph 8.1.2 delete the words “paragraph 8.1.3 and paragraphs 8.3.3 to 8.3.8 of”.

SC-78 In paragraph 8.1.3, add the following after the first sentence:

“The *Contractor* shall continue performance of the *Work* notwithstanding any such dispute and shall ensure all other *Contractor Personnel* also do so.”

### **GC 8.2 ADJUDICATION**

SC-79 Delete paragraph 8.2.1 in its entirety and replace it with the following:

“8.2.1 Nothing in this *Contract* shall be deemed to affect the rights of the parties to resolve any dispute by adjudication as may be provided for by applicable legislation. Further, in addition to the matters that may be referred to adjudication pursuant to the *Payment Legislation*, the parties agree that any dispute relating to costs resultant from termination of the *Contract* or of the *Contractor*’s right to continue with the *Work* or payments due and owing in the event of or following any such termination may be referred by either party to adjudication. For certainty, no dispute regarding the validity of any such termination may be referred to adjudication and any such dispute shall be resolved in accordance with GC 8.3.”

SC-80 Add new paragraph 8.2.2 as follows:

“8.2.2 To the extent permitted by the *Construction Act* and except as required for performance of the parties’ obligations under this *Contract* or exercise of their rights under the *Construction Act*, any adjudication in respect of the *Contract* and *Project*, including all documentation and materials

exchanged and any resultant award or order issued by an adjudicator, shall be confidential as between the parties.”

### **GC 8.3            NEGOTIATION, MEDIATION AND ARBITRATION**

SC-81        Delete paragraph 8.3.2 in its entirety and replace it with the following:

“8.3.2    For any finding of the *Consultant* under GC 2.2 – ROLE OF THE CONSULTANT that is clearly identified as a finding for the purposes of this paragraph 8.3.2 of the *Contract*, a party shall be conclusively deemed to have accepted such finding and to have expressly waived and released the other party from any claims in respect of the particular matter dealt with in that finding unless, within 15 *Working Days* after receipt of that finding, the party sends a *Notice in Writing* of dispute to the other party and to the *Consultant*, which contains the particulars of the matter in dispute and the relevant provisions of the *Contract Documents*.”

SC-82        Add the following new paragraphs 8.3.9 to 8.3.13:

“8.3.9    Within five *Working Days* of the termination of the mediation pursuant to paragraph 8.3.5, the *Owner* and the *Contractor* shall give the *Consultant* a written notice containing:

- .1        a copy of supplementary conditions 8.3.9 to 8.3.14 of this *Contract*, and;
- .2        a description of any claims or issues which the *Contractor* or the *Owner*, as the case may be, wishes to raise in relation to the *Consultant* arising out of the issues in dispute in the arbitration.

8.3.10    The *Owner* and the *Contractor* agree that the *Consultant* may elect to become a full party to the arbitration under paragraph 8.3.6 if the *Consultant*:

- .1        has a vested or contingent financial interest in the outcome of the arbitration;
- .2        gives the notice of election to the *Owner* and the *Contractor* within ten (10) *Working Days* of receipt of the notice under paragraph 8.3.9;
- .3        agrees to be a party to the arbitration within the meaning of the rules referred to in paragraph 8.3.6, and,
- .4        agrees to be bound by the arbitral award made in the arbitration.

8.3.11    Without limiting and subject to the *Owner* and *Contractor*’s rights under paragraph 8.3.12 to challenge whether the *Consultant* has satisfied the requirements of paragraph 8.3.10, if an election is made under paragraph 8.3.10:

- .1 the *Owner* or *Contractor* may request particulars and evidence of the *Consultant's* vested or contingent financial interest in the outcome of the arbitration;
- .2 the *Consultant* shall participate in the appointment of the arbitrator; and,
- .3 notwithstanding the rules referred to in paragraph 8.3.6, the time period for reaching agreement on the appointment of the arbitrator shall begin to run from the date the respondent receives a copy of the notice of arbitration.

8.3.12 The arbitrator in the arbitration in which the *Consultant* has elected under paragraph 8.3.10 to become a full party may:

- .1 on application of the *Owner* or the *Contractor*, determine whether the *Consultant* has satisfied the requirements of paragraph 8.3.10, and;
- .2 make any procedural order considered necessary to facilitate the addition of the *Consultant* as a party to the arbitration.

8.3.13 The provisions of paragraph 8.3.9 shall apply (with all appropriate changes being made) to written notice to be given by the *Consultant* to any sub-consultant.”

## **GC 9.1 PROTECTION OF WORK AND PROPERTY**

SC-83 Amend subparagraph 9.1.1.1 by adding the following to the end:

“which the *Contractor* could not have discovered from review as required by the *Contract Documents*, including paragraph 1.1.3 of GC 1.1”

SC-84 Delete paragraph 9.1.1.2 in its entirety and replace it with the following:

“.2 negligent acts or omissions of any *Owner Personnel*.”

SC-85 Delete paragraph 9.1.2 in its entirety and replace it with the following:

“9.1.2 Before commencing any *Work*, the *Contractor* shall determine the locations of all underground utilities and structures indicated in the *Contract Documents*, or that are reasonably discoverable from inspection of the *Place of the Work* as required by the *Contract Documents*, including paragraph 1.5 of Article A-1.”

SC-86 Add new paragraphs 9.1.5 and 9.1.6 as follows:

“9.1.5 The *Contractor* shall cooperate in all respects, at no cost to the *Owner*, to provide accommodation and safe access to the *Place of the Work* or portions

thereof as the *Owner Personnel* may require from time to time and as may be required by utility providers with equipment or operations located at the *Place of the Work*.

- 9.1.6 No *Owner Personnel* shall have any liability for the safeguarding or protection of, or for the loss, theft, damage, destruction, or disappearance of, any *Construction Equipment, Products, Temporary Work* or other tangible property or materials located at the *Place of the Work*, except to the extent caused by their own negligence.”

## **GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES**

- SC-87 In paragraph 9.2.3 delete the first word “The” and replace it with the following:

“Without limiting any of the *Contractor*’s obligations under this *Contract*, including for overall health and safety at the *Place of the Work*, the”

- SC-88 Add the following words to paragraph 9.2.6 after the word “responsible”:

“or whether any toxic or hazardous substances or materials already at the *Place of the Work* (and which were then harmless or stored, contained or otherwise dealt with in accordance with *Applicable Laws*) were dealt with by the *Contractor* or anyone for whom the *Contractor* is responsible in a manner which does not comply with legal and regulatory requirements, or which threatens human health and safety or the environment or material damage to the property of the *Owner* or others,”

- SC-89 Add the words “and the *Consultant*” after the word “*Contractor*” in subparagraph 9.2.7.4.

- SC-90 Add the following words to paragraph 9.2.8 after the word “responsible”:

“or that any toxic or hazardous substances or materials already at the *Place of the Work* (and which were then harmless or stored, contained or otherwise dealt with in accordance with *Applicable Laws*) were dealt with by the *Contractor* or anyone for whom the *Contractor* is responsible in a manner which does not comply with legal and regulatory requirements, or which threatens human health and safety or the environment or material damage to the property of the *Owner* or others,”

## **GC 9.4 CONSTRUCTION SAFETY**

- SC-91 Delete paragraph 9.4.1 in its entirety and replace it with the following:

“9.4.1 The *Contractor* shall be solely responsible for: (i) construction health and safety at the *Place of the Work*, including all responsibilities of the “constructor” under the *OHSA*; (ii) compliance with the rules, regulations, and practices required by *Applicable Laws*, including the *OHSA*; and (iii)

initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the *Work*. The *Contractor* shall file the requisite “notice of project” and list itself as the “constructor” with respect to the *Project*.”

SC-92 Delete paragraph 9.4.4 in its entirety and replace it with the following:

“9.4.4 The *Owner* shall cause the *Owner Personnel* to comply with all health and safety precautions and programs established by the *Contractor* at the *Place of the Work*, including by requiring such compliance in any contracts with *Owner Personnel*.”

SC-93 Add the following new paragraphs 9.4.6 to 9.4.11:

“9.4.6 The *Contractor* shall provide appropriate health and safety instruction and training to all *Contractor Personnel* (to the extent same have access to the *Place of the Work*) before the *Work* is commenced.

9.4.7 The *Contractor* and each *Subcontractor* having an accident or incident at the *Place of the Work*, as prescribed under the *OHSA*, shall promptly notify the *Owner* and the *Consultant*.

9.4.8 Prior to commencement of the *Work*, and again at any time upon request by the *Owner*, the *Contractor* shall provide the *Owner* with information and evidence regarding compliance with its obligations relating to health and safety under this *Contract* (including compliance with paragraph 3.1.6, GC9.4 and paragraph 10.2.4), which evidence shall include: (i) a copy of the *Contractor*’s “notice of project” identifying the *Contractor* as the “constructor” with respect to the *Project* under the *OHSA*; (ii) a copy of all “Form 1000s” obtained by the *Contractor* from *Contractor Personnel* as required by the *OHSA*; (iii) a copy of all health and safety plans and programs prepared by the *Contractor* in respect of the *Place of the Work* and/or performance of the *Work*; (iv) a copy of the *Contractor*’s subcontracts with *Contractor Personnel*; (v) copies of training logs and meeting minutes relating to health and safety at the *Place of the Work* and/or in performance of the *Work*; (v) copies of any and all documentation filed by or submitted to any *Governmental Authority* by any *Contractor Personnel* in respect of the *Project*, the *Work* or the *Place of the Work*, including any accident or incident reports; and (vi) any other documentation relating to the *Contractor*’s health and safety obligations under this *Contract* as may be reasonably requested by the *Owner*.

9.4.9 The *Contractor* represents that it has the experience, knowledge and expertise in respect of construction health and safety necessary for performance of the *Work* and all obligations under this *Contract* in accordance with all *Applicable Laws*, including as necessary to undertake all obligations of the “constructor” under the *OHSA* and to provide for

compliance with all requirements of the *OHS*A applicable to the *Place of the Work* and performance of the *Work*. The *Contractor* further acknowledges that the *Owner* does not have such knowledge, experience and expertise and are accordingly relying upon the *Contractor* in this respect.

9.4.10 The *Contractor* shall indemnify and save harmless all *Owner Personnel* from and against any and all *Claims* arising out of any safety infractions committed by any *Contractor Personnel* or resulting from any failure by the *Contractor* to fulfill its obligations under paragraph 3.1.6, paragraph 10.2.4 and/or this PART 9 – PROTECTION OF PERSONS AND PROPERTY.

9.4.11 The provisions of this GC 9.4 shall survive the completion of the *Work* or the termination of the *Contract* for any reason whatsoever.”

## **GC 9.5 MOULD**

SC-94 Add the words “and the *Consultant*” after the word “*Contractor*” in subparagraph 9.5.3.4.

## **GC 10.1 TAXES AND DUTIES**

SC-95 Add new paragraph 10.1.3 as follows:

“10.1.3 The *Owner* shall be entitled to all available refunds or rebates of all taxes and custom duties applicable to the *Contract*, and the *Contractor* shall cooperate with the *Owner* in ascertaining the amount of such tax and custom duties and if necessary claim on its own behalf and transfer to the *Owner* or facilitate a direct claim by the *Owner* for any such available refund or rebate.”

## **GC 10.2 LAWS, NOTICES, PERMITS, AND FEES**

SC-96 Replace all reference to “laws” and “applicable laws” in GC 10.2 with “*Applicable Laws*”.

SC-97 Delete paragraph 10.2.5 in its entirety and replace it with the following:

“10.2.5 Subject to compliance with its obligations under paragraph 1.5 of Article A-5 and paragraph 1.1.3 of GC 1.1, the *Contractor* shall not be responsible for verifying that the *Contract Documents* are in compliance with *Applicable Laws*. If the *Contract Documents* are at variance therewith, or if, subsequent to the *Effective Date*, changes are made to *Applicable Laws* which require modification to the *Contract Documents*, the *Contractor* shall advise the *Consultant* in writing requesting direction immediately upon such variance or change becoming known. The *Consultant* will issue the changes required to the *Contract Documents* as provided in GC 6.1 – OWNER’S RIGHT TO



MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.”

SC-98 Delete paragraph 10.2.7 in its entirety and replace it with the following:

“10.2.7 If, subsequent to the *Effective Date*, changes are made to *Applicable Laws* which affect the cost of the *Work*, either party may submit a claim in accordance with the requirements of GC 6.6 – CLAIMS FOR A CHANGE IN CONTRACT PRICE. Notwithstanding the foregoing, any claim for adjustment to the *Contract Price* resultant from *COVID-19*, the *Pandemic* or a *Pandemic Change in Law*, including a *Governmental Response*, shall be governed by the provisions of Article A-10 and this paragraph 10.2.7 and GC 6.6 shall not apply.”

**GC 10.4 WORKERS’ COMPENSATION**

SC-99 In paragraph 10.4.1, replace the word “applications for payment” with the words “*Proper Invoices*”.

SC-100 Add new paragraphs 10.4.2 and 10.4.3 as follows:

“10.4.2 At any time during the term of the *Contract*, when requested by the *Owner*, the *Contractor* shall provide such evidence of compliance by the *Contractor* and *Subcontractors*.

10.4.3 The *Contractor* shall indemnify and hold harmless the *Owner* and its directors, officers and employees from and against all *Claims* by any *Contractor Personnel* with respect to workers’ compensation insurance claims. This indemnity shall survive the completion of the *Work* or the termination of the *Contract* for any reason whatsoever.”

**GC 11.2 CONTRACT SECURITY**

SC-101 Add new GC 11.2 CONTRACT SECURITY as follows:

**“GC 11.2 CONTRACT SECURITY**

11.2.1 *Contractor* shall provide a performance bond and a labour and materials payment bond, each issued by a bonding company acceptable to the *Owner* and licensed to issue such instruments in the *Province of Ontario*, as follows:

.1 A performance bond in the amount equal to 50% of the *Contract Price*, which shall be provided in Form 32: Performance Bond under Section 85.1 of the *Construction Act*, and

- .2 A labour and material payment bond in the amount equal to 50% of the *Contract Price*, which shall be provided in Form 31: Labour and Material Payment Bond under Section 85.1 of the *Construction Act*.”

## **GC 12.1 READY-FOR-TAKEOVER**

- SC-102 Amend subparagraph 12.1.1.2 by adding the following to the end:
- “and, where possible, evidence of certification by all permit-issuing authorities, indicating approval of all permitted installations.”
- SC-103 Amend subparagraph 12.1.1.3 by adding the words “has been completed by the *Contractor*” at the end.
- SC-104 Amend subparagraph 12.1.1.4 by deleting the word “immediate”.
- SC-105 Amend subparagraph 12.1.1.6 by adding the words “and commissioning” after the word “testing”.
- SC-106 In subparagraph 12.1.1.8 delete the word “scheduled” and replace it with the word “completed” and delete the words “, acting reasonably”.
- SC-107 Add a new subparagraph 12.1.1.9 as follows:
- “.9 successful commissioning of the *Mammography Unit*.”
- SC-108 In paragraph 12.1.4 delete the words “10 calendar days” and replace them with the words “10 *Working Days*”.

## **GC 12.2 EARLY OCCUPANCY BY THE OWNER**

- SC-109 Delete subparagraphs 12.2.3.2 and 12.2.3.3 in their entirety and replace them as follows:
- “.2 The *Owner* shall, at any and all times, have the right to enter, occupy and use the *Work* in whole or in part before completion of the *Contract*. Such entry, occupation or use shall not be considered as acceptance of the *Work* nor in any way relieve or limit the responsibilities and liabilities of the *Contractor* under the *Contract* nor affect the warranty period.
- .3 For certainty, and notwithstanding occupancy by the *Owner* of a part or entirety of the *Work* before *Ready-for-Takeover* has been attained:

- .1 the *Contractor* shall continue to be liable for the care of such part or entirety of the *Work* except that the *Owner* shall become responsible for preventative maintenance and shall be liable for any loss or damage caused by its negligence or fault; and
- .2 the warranty period shall be as set out in paragraph 12.3.1 of GC 12.3 – WARRANTY.”

SC-110 Delete paragraph 12.2.4 in its entirety and replace it with the following:

“12.2.4 Without limiting paragraph 12.2.3, the *Contractor* shall not unreasonably interfere with such use or operation of the *Work* and *Project* by the *Owner*. The *Contractor*, in completing its obligations under the *Contract*, shall, at its own cost, take all reasonable measures to minimize the effect thereof on such use or operation.”

### **GC 12.3 WARRANTY**

SC-111 Delete paragraph 12.3.1 and replace it with the following:

“12.3.1 The warranty period under the *Contract* is:

- .1 one year from the date when *Ready-for-Takeover* has been achieved or the date of termination of the *Contract* or the *Contractor*’s right to continue with the *Work*; or
- .2 such longer warranty period established in the *Contract Documents* for extended warranties,

(the “***Warranty Period***”).”

SC-112 Amend paragraphs 12.3.3 and 12.3.6 by deleting the words “one year warranty period” wherever they appear and replace them with the words “*Warranty Period*”.

SC-113 Delete paragraph 12.3.4 in its entirety and replace with the following:

“12.3.4 Subject to paragraph 12.3.2, within 15 *Working Days* of receipt of *Notice in Writing* pursuant to paragraph 12.3.3 (or within such other reasonable time as determined by the *Consultant*) the *Contractor* shall correct, at the *Contractor*’s expense, any defects or deficiencies in the *Work* which appear prior to and during the *Warranty Period* and shall complete such correction as expeditiously as possible, except that where the deficiency prevents maintaining security at the *Place of the Work* or prevents continued operation or functionality of systems essential to the ongoing business or operations of any *Owner Personnel* as determined at the sole discretion of the *Owner*, all necessary corrections and/or installations of temporary replacements shall be carried out immediately as an emergency service. Should the *Contractor* fail to provide this emergency service within 48

hours of a request being made during the normal business hours of the *Contractor*, the *Owner* shall be authorized to carry out all necessary repairs or replacements at the *Contractor*'s expense and deduct all costs of so doing from the any amounts due and owing to the *Contractor* and, if required, otherwise recover all costs of so doing as a debt due and payable by the *Contractor* upon demand. No such action by the *Owner* shall waive or release the *Contractor* of its obligations under this *Contract*, including any warranty obligations."

SC-114 Delete paragraph 12.3.5 and replace it with the following:

"12.3.5 The *Contractor* shall correct or pay for damage resulting from corrections made under the requirements of this GC 12.3. If the *Contractor* fails to correct defects or deficiencies in the *Work* or other damage resulting from such corrections within 15 *Working Days* after receiving written notification of the defect or deficiency or damage from the *Owner* or the *Consultant*, the *Owner* may (whether itself or through others) make such corrections at the *Contractor*'s expense and deduct all costs of so doing from any amounts due and owing to the *Contractor* and, if required, otherwise recover all costs of so doing as a debt due and payable by the *Contractor* upon demand."

SC-115 Add new paragraphs 12.3.7 and 12.3.8 as follows:

"12.3.7 Where manufacturers offer, as a general policy, extended warranties on their *Products* or other greater benefits than those called for in the specifications, the *Contractor* shall obtain the benefit of such extended warranties for the *Owner*. The *Contractor* shall ensure that all warranties, guarantees or other obligations for *Work* or *Products* performed or supplied by any *Contractor Personnel* in connection with the *Work* are obtained and available for the direct benefit of the *Owner*. In the alternative, the *Contractor* shall assign to the *Owner* all warranties, guarantees or other obligations for *Work* or *Products* performed or supplied by any *Contractor Personnel* and such assignment shall be with the consent of the assigning party, where required by law, or by the terms of that *Person*'s contract. Such assignment shall be in addition to, and shall in no way limit, the warranty rights of the *Owner* under the *Contract Documents*.

12.3.8 Specified warranty periods shall not be construed as limiting the provisions of GC 13.1 –INDEMNIFICATION. Payment of holdback amounts and final payment shall not relieve the *Contractor*'s responsibility for correction of any other deficiencies or incomplete items, at no additional cost to the *Owner* pursuant to this GC12.3 – WARRANTY."

## **GC 13.1 INDEMNIFICATION**

SC-116 Delete paragraph 13.1.1 and replace it with the following :

“13.1.1 The *Contractor* shall indemnify and save harmless the *Owner Personnel* from and against any and all *Claims* arising out of the negligence, errors, omissions, fraud or willful misconduct of the *Contractor Personnel* attributable to or connected with the *Contractor*’s performance or non-performance of its obligations pursuant to this *Contract* except to the extent that such *Claims* are attributable or caused by the negligence of any *Owner Personnel*. This indemnity shall survive the expiration or earlier termination of this *Contract* and continue in full force and effect.”

SC-117 In paragraph 13.1.2 delete the words “The obligation of either party to indemnify as set forth in paragraph 13.1.1” and replace them with the words “The liability of either party under this *Contract*”.

SC-118 Add the following to the end of subparagraph 13.1.2.1:

“For certainty, each party’s liability for losses suffered by the other party for which insurance is to be provided by them pursuant to GC 11.1 – INSURANCE shall not be less in the aggregate than the total amounts of the minimum insurance limits for one occurrence for each policy of insurance as stipulated in GC 11.1 – INSURANCE as is applicable to the subject *Claims*.”

SC-119 In subparagraph 13.1.2.3 delete the words “and neither party shall have any liability to the other for indirect, consequential, punitive or exemplary damages”.

SC-120 Add new paragraph 13.1.7 as follows:

“13.1.7 The *Owner Personnel* shall have no liability under this *Contract* or in respect of the *Work* or the *Project* for any *Consequential Damages*.”

#### **GC 14.1 CONSTRUCTION LIENS**

#### **GC 15.1 OWNERSHIP AND CONFIDENTIALITY**

#### **GC 16.1 FREEDOM OF INFORMATION**

#### **GC 17.1 HOSPITAL RELATED PROVISIONS**

#### **GC 18.1 AODA REQUIREMENTS**

#### **GC 19.1 ANTI-RACIST, ANTI-DISCRIMINATION AND ANTI-OPPRESSION COMMITMENT**

SC-121 Add the following new GC 14.1 CONSTRUCTION LIENS, GC 15.1 OWNERSHIP AND CONFIDENTIALITY, GC 16.1 FREEDOM OF INFORMATION, GC 17.1 HOSPITAL RELATED PROVISIONS, GC 18.1 AODA REQUIREMENTS and GC

19.1 ANTI-RACIST, ANTI-DISCRIMINATION AND ANTI-OPPRESSION  
COMMITMENT:

**“GC 14.1 CONSTRUCTION LIENS**

- 14.1.1 In the event that a lien arising from the performance of the *Work* is registered against the *Place of the Work* or *Project* or the *Owner's* interest in the *Place of the Work* or *Project*, the *Contractor* shall, within seven (7) calendar days, at its sole expense, vacate or discharge the lien from title to the *Place of the Work*. If the lien is merely vacated, the *Contractor* shall, if requested, undertake the *Owner's* defence of any subsequent lawsuit commenced in respect of the lien at the *Contractor's* sole expense. The *Owner* shall have the right to be represented by advisory counsel and other professionals, at its own expense, and shall be kept fully informed by the *Contractor* of the proceeding at all stages thereof whether or not so represented.
- 14.1.2 If the *Contractor* fails or refuses to vacate or discharge a construction lien within the time prescribed above, the *Owner* shall, at its option, be entitled to take all steps necessary to vacate and/or discharge the lien, and all costs incurred by the *Owner* in so doing (including legal fees on a solicitor and client basis and any payment which may ultimately be made out of or pursuant to security posted to vacate the lien) shall be for the account of the *Contractor*, and the *Owner* may deduct such amounts from any amounts otherwise due or owing to the *Contractor*. If the *Owner* vacates the lien, it shall be entitled to retain all amounts it would be required to retain pursuant to the *Payment Legislation* if the lien had not been vacated.
- 14.1.3 Without limiting the generality of the foregoing, the *Contractor* shall indemnify the *Owner* for all costs (including legal fees on a solicitor and client basis) they may occur in connection with the claim of lien or subsequent lawsuit brought in connection with the lien, or in connection with any other claim or lawsuit brought against the *Owner* by any *Contractor Personnel*.
- 14.1.4 This GC 14.1 – CONSTRUCTION LIENS does not apply to liens filed by *Contractor Personnel* that are claimed as a result of any default by the *Owner* to make payments to the *Contractor* in accordance with the terms of the *Contract*.

**GC 15.1 OWNERSHIP AND CONFIDENTIALITY**

- 15.1.1 Subject to and without limiting paragraph 3.7.5, all *Work*, including all *Products* and all portions thereof, shall be the property of the *Owner*.
- 15.1.2 The *Contractor* grants to the *Owner* an irrevocable, perpetual, worldwide, and exclusive royalty-free license to use the *Deliverables*, including all *Contractor IP* therein, for the *Project*, including: (i) for completion of the

*Project* and *Work* in the event of early termination of the *Contract*; and (ii) for the future repair, use, occupancy, expansion, operation, maintenance, and/or modification to the *Project* and *Work*. The licence shall be assignable and transferable by the *Owner* to any *Affiliate* and to any purchaser of all or part of the *Place of the Work* or *Project* provided that such *Person* assumes and agrees in writing to all limitations of use set out herein. The *Owner* may use the *Deliverables* for the purposes provided in this paragraph 15.1.2 whether or not this *Contract* is terminated, provided only that the *Owner* pays the compensation due and owing to the *Contractor* pursuant to this *Contract*. The *Deliverables* may not be reproduced for use for other projects by either party without the express written permission of the other party. The *Contractor* shall ensure that all moral rights to the *Deliverables* have been waived, including by all *Contractor Personnel*. Copies of all *Deliverables* shall be handed over by the *Contractor* to the *Owner* upon the earlier of termination of this *Contract* and submission of the *Contractor's Proper Invoice* for final payment. The *Contractor* agrees to obtain such rights from all *Contractor Personnel* as required so that the *Contractor* can grant the above-noted license.

- 15.1.3 The *Contractor* agrees to ensure that it shall, both during and following the term of the *Contract*, maintain the confidentiality and security of all *Confidential Information* and that it shall not directly or indirectly disclose, destroy, exploit, or use any *Confidential Information* except where required by law, without first obtaining the written consent of the *Owner*. The *Contractor* may disclose any portion of the *Contract Documents* or any other information provided to the *Contractor* by the *Owner* to any other *Contractor Personnel* if the *Contractor* discloses only such information as is necessary to fulfill the purposes of the *Contract* and the *Contractor* has included a commensurate confidentiality provision in its contract with such *Contractor Personnel*. The *Contractor* acknowledges that it will comply with all requirements of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c.5, as amended.
- 15.1.4 If any *Contractor Personnel* is required to disclose *Confidential Information* under a valid order of a *Governmental Authority*, the *Contractor* shall: (i) provide the *Owner* with immediate written notice of any request for disclosure; (ii) cooperate with the *Owner* in its efforts to resist or minimize the *Confidential Information* required to be disclosed; and (iii) take such steps as are reasonably necessary and available to maintain the confidentiality of the information by the *Contractor*.
- 15.1.5 The *Contractor* acknowledges that disclosure or use of *Confidential Information*, including *Personal Information*, in violation of this *Contract* could cause irreparable harm to the *Owner* for which monetary damages may be difficult to ascertain or be an inadequate remedy. The *Contractor* therefore agrees that the *Owner* shall have the right, in addition to its other rights and remedies, to seek injunctive relief for any violation of its

confidentiality obligations under this GC 15.1 – OWNERSHIP AND CONFIDENTIALITY.

- 15.1.6 This GC 15.1 – OWNERSHIP AND CONFIDENTIALITY shall survive the completion of the *Work* or the termination of the *Contract* for any reason whatsoever.

#### **GC 16.1 FREEDOM OF INFORMATION & DISCLOSURE**

- 16.1.1 Without limiting the foregoing, the *Owner* represents to *Contractor*, and *Contractor* acknowledges, that the *Owner* is bound by *FIPPA* and that the law might compel the *Owner* to disclose certain *Confidential Information*. The *Owner* is not required to take steps to oppose or prevent, or assist the *Contractor* in opposing or preventing, any disclosure of information, including *Confidential Information*, which, in the opinion of the *Owner's* counsel, is legally required to be disclosed. *Contractor* shall assist and comply with any notice provided under *FIPPA* respecting an access request that the *Owner* has received, including providing records and information to the *Owner* that the *Owner* deems to be within its control for the purposes of this *Contract*. If *Contractor* is legally compelled to disclose *Confidential Information*, for example through court order, warrant, or under applicable legislation, *Contractor* shall promptly notify the *Owner* prior to disclosure of any such *Confidential Information* so that the *Owner* has an opportunity, in their sole discretion, to oppose disclosure through any available processes.”

#### **GC 17.1 HOSPITAL RELATED PROVISIONS**

- 17.1.1 The *Contractor* recognizes and understands that the *Owner* is a public hospital under the *Public Hospitals Act*, which (as of the *Effective Date*) is managed pursuant to the *Local Health System Integration Act*, and is also subject to the *Connecting Care Act*. The *Owner* is therefore subject to a highly regulated legal and operational environment. Without limiting the generality of any other provision in the *Contract*, the *Contractor* shall provide reasonable co-operation and assistance to the *Owner* during any evaluations of the *Work* (including, without limitation, any post-occupancy evaluation required by the Ministry of Health) and in obtaining required regulatory approvals prior to using the *Work* (including, without limitation, any approvals required by the *Public Hospitals Act*).
- 17.1.2 Nothing in this *Contract* shall in any way fetter the right, authority and discretion of the *Owner* as a public hospital under the *Public Hospitals Act* in fulfilling its statutory or other functions under *Applicable Laws*, including under the *Public Hospitals Act* and the *Local Health System Integration Act* and in accordance with the *Facility's* by-laws. The



*Contractor* understands and agrees that nothing in this *Contract* shall preclude the *Owner's* board of directors or trustees from performing, discharging or exercising its duties, responsibilities and powers under *Applicable Laws*, including under the *Public Hospitals Act* and the *Local Health System Integration Act* and in accordance with the *Facility's* by-laws. The *Contractor* further agrees that it shall comply with all written directions issued by or on behalf of the *Owner's* board of directors from time to time and, as appropriate, such written directions will be implemented by way of a *Change Order* or *Change Directive* as provided in GC 6.2 - CHANGE ORDER and GC 6.3 - CHANGE DIRECTIVE

- 17.1.3 The *Contractor* acknowledges that the *Facility* must remain in operation during the performance of the *Work*, except as specifically permitted by the *Owner*, and that the *Contractor* will, without additional cost to the *Owner*, carry out, perform and coordinate the performance of the *Work* to minimize interference to the on-going operation of the *Facility*, including the delivery of quality patient care. The *Contractor* further acknowledges that in performance of the *Work* it will comply with any requirements stipulated in the *Contract Documents* as to: (i) the manner in which the *Work* is to be performed in respect of minimizing disturbance to the *Facility*, including in respect to noise, dust control and access to the *Place of the Work*; (ii) those portions of the *Work* which are to be carried out within the *Facility*; and/or (iii) those portions of the *Work* where connections are being made to the *Facility*.
- 17.1.4 The *Contractor* acknowledges that the security and safety of the patients, employees and other occupants of the existing *Facility* is paramount. If any *Contractor Personnel* is determined by the *Owner* to be a concern for the security or safety of such patients, employees or occupants, the *Owner* may require that the *Contractor* replace such *Contractor Personnel*.
- 17.1.5 The *Contractor* recognizes that part of the *Work* may consists of the renovation of existing buildings and structures or the addition of a structure to an existing building and that the provision of patient care during construction is a priority for the *Owner*. The *Contractor* shall comply with the reasonable instructions provided by the *Owner* (including, without limitation, the *Owner's* infection control practitioner) in regard to patient care and the operation and use of the *Facility* during the performance of the *Work*. Any costs incurred by the *Contractor* in complying with the said instructions shall be part of the *Contract Price*.
- 17.1.6 Notwithstanding any other provision in the *Contract*, paramountcy of access must be given to emergency vehicles and no *Claim* may be made by the *Contractor* for any delay in the performance of the *Work* as a result of any temporary lack of access to the *Place of Work* resulting from this

paramountcy of access by emergency vehicles, provided that the *Owner* will use commercially reasonable efforts to avoid and to limit the duration of any temporary lack of access for this reason.

- 17.1.7 The *Owner* has the authority, but without the obligation, to stop the *Work* in any circumstance affecting the safety of life or property or otherwise may cause an unsafe condition for the operation of the existing *Facility*. The *Contractor* shall abide by the *Owner's* instructions to stop the *Work* and to any related instructions pertaining to the circumstance without any increase in the *Contract Price* and extension in the *Contract Time* if such circumstance was caused by any *Contractor Personnel*.
- 17.1.8 The *Contractor* shall, and shall cause all other *Contractor Personnel* to, comply with hospital policies and procedures including, without limitation, environmental requirements, outbreak memorandums, infection control measures and safety and emergency preparedness guidelines which are or come into force (including, without limitation, those forming part of the *Contract Documents*) as such documents are amended by the *Owner* from time to time, provided that a material amendment to the hospital policies and procedures by the *Owner* after the *Effective Date* which gives rise to a significant change in the *Work* shall be dealt with in accordance PART 6 – CHANGES IN THE WORK.

#### **GC 18.1 AODA REQUIREMENTS**

- 18.1 Pursuant to Sections 7 and 80.49 of the *AODA Regulation*, the *Contractor* shall ensure that all *Contractor Personnel* (including their respective employees, agents and volunteers) receive training about the provision of the goods and services contemplated herein to persons with disabilities. Such training shall be provided in accordance with sections 7 and 80.49 of the *AODA Regulation* and shall include, without limitation, a review of the purposes of the *AODA* and the requirements of the *AODA Regulation*, as well as instruction regarding all matters set out in section 7 and 80.49 of the *AODA Regulation*. When requested by the *Owner*, the *Contractor* shall provide reasonable evidence that all such persons have been trained as required under *AODA* as well as any documentation regarding training policies, practices and procedures.

#### **GC 19.1 ANTI-RACIST, ANTI-DISCRIMINATION AND ANTI-OPPRESSION COMMITMENT**

- 19.1 The *Contractor* acknowledges and agrees that:

- .1 historically marginalized groups in our communities often encounter barriers and inequities to full access and participation;
  - .2 the diversity of relevant stakeholders contributes to the growth, enrichment and strength of our communities;
  - .3 during the term of this *Contract* the *Contractor* will aim to ensure that all appropriate stakeholders receive fair and equitable treatment including access and opportunity to participate with dignity and respect, and enjoy an environment that is free from racism and other forms of discrimination and/or oppression; and
  - .4 the *Contractor* supports the dismantling all forms of racism, discrimination and oppression in its organization, including in its own operations, program, and governance structures.
- 19.2 In the event that the *Owner* or *Consultant*, each acting reasonably, becomes aware that the *Contractor* or any *Contractor Personnel* are acting in a manner that is in conflict with the representations set out in this GC 19, then the *Owner* may terminate the *Contract* or the *Contractor's* right to continue with the *Work* and paragraph 7.1.5 shall apply in respect of any such termination.”

***[END OF SUPPLEMENTARY CONDITIONS. APPENDICES FOLLOW.]***

## **APPENDIX 1 TO THE SUPPLEMENTARY CONDITIONS PROPER INVOICE REQUIREMENTS**

Each *Proper Invoice* submitted by the *Contractor* shall include the following:

- The *Contractor's* name and address;
- The *Proper Invoice Submission Date*;
- The period during which the services, products or materials were supplied;
- Identification of the *Contract* and any applicable *Change Order* (being the authority under which the subject work, services, products or materials were supplied);
- A description of the subject work, services, products or materials supplied (including quantity where appropriate);
- The amount payable for the subject work, services, products or materials supplied and the payment terms;
- The name, title, telephone number and mailing address of the person to whom payment is to be sent;
- A statement based on the schedule of values submitted pursuant to paragraph 5.2.4;
- A copy of the current *Construction Schedule* and of any look-ahead schedule required by the *Contract Documents*;
- A copy of the *Contractor's* current and up-to-date certificate of insurance evidencing compliance with GC 11.1.
- Where payment is requested for *Products* delivered to the *Place of the Work* but not yet incorporated into the *Work*, evidence as reasonably required by the *Consultant* to establish the value and delivery of such *Products*;
- Where payment for *Products* prior to their delivery to the *Place of the Work* is approved by the Owner pursuant to paragraph 3.7.7, evidence as the *Consultant* and *Owner* may reasonably require to establish (i) the value of such *Products*; (ii) compliance with paragraph 3.7.8; and (iii) that such *Products* have been ordered by the *Contractor* for the *Project* and are being manufactured, transported or stored prior to their delivery to the *Place of the Work*;
- All documentation required pursuant to GC 10.4 – WORKERS' COMPENSATION, including a clearance certificate from the *WSIB* stating that all amounts owed to date have been paid in full;

- For each *Proper Invoice* submitted after the first, a statutory declaration using the latest CCDC 9A form of “Statutory Declaration of Progress Payment Distribution by Contractor”;
- For a *Proper Invoice* submitted in respect of final payment:
  - copies of all *Deliverables*, including as-built drawings, and copies of all warranties, guarantees and operation and maintenance manuals related to the *Work*, in hard copy and electronic format as requested by the *Owner*; and
  - an executed final waiver and release in the form attached as Exhibit A to this Appendix 1.
- Any other supporting documents required by the *Contract Documents*.

**[Exhibit A to this Appendix 1 follow]**

**EXHIBIT A TO APPENDIX 1 TO THE SUPPLEMENTARY CONDITIONS  
FORM OF FINAL WAIVER AND RELEASE**

TO: [OWNER NAME AND ADDRESS] (“*Owner*”)

FROM: [CONTRACTOR NAME AND ADDRESS] (“*Contractor*”)

DATE OF APPLICATION

FOR FINAL PAYMENT: [●]

RE: CCDC 2 – 2020 Stipulated Price Contract dated [●] (the “*Contract*”)

Except for *Claims* for which *Notice in Writing* has been received by the *Owner* from the *Contractor* prior to the date of the *Contractor*’s application for final payment under the *Contract* (including all such *Claims* listed herein) or *Claims* which the *Contractor* could not reasonably have knowledge of on such date (including the *Contractor*’s claim for any amounts expressly held back by the *Owner* under the *Contract*, including in respect of any unpaid *Warranty Security*), the *Contractor* acknowledges and agrees that:

1. the *Contractor* does not have and will not make any *Claim* for additional compensation under the *Contract*, including without limitation for extras, changes or delays, or any other *Claim* whatsoever against the *Owner Personnel* in connection with the *Contract*, the *Project*, or the *Work*;
2. the final payment made by the *Owner* shall be received by the *Contractor* in full and final settlement of the balance due to the *Contractor* under the *Contract* and of any and all *Claims* of the *Contractor* in connection with the *Contract* (except only for the *Contractor*’s claim for any amounts expressly held back by the *Owner* under the *Contract*, including in respect of any unpaid *Warranty Security*); and
3. the *Contractor* gives receipt of full discharge and waives its rights to any and all *Claims* not submitted as of the date of its application for final payment under the *Contract*.

As of the date of this Waiver and Release the *Contractor* has given the *Owner Notice in Writing* of the following *Claims*:

1. [LIST TO BE COMPLETED BY CONTRACTOR]

For certainty, all terms not defined herein shall have the meaning given in the *Contract*.

[CONTRACTOR NAME]

\_\_\_\_\_  
*I/we have authority to bind the company*

\_\_\_\_\_  
*I/we have authority to bind the company*

**APPENDIX 2 TO THE SUPPLEMENTARY CONDITIONS  
CONTRACTOR RFP SCHEDULE SUBMISSION**

Refer to Tri-Phase Inc.'s submission to RFP CW24741- Georgian Bay General Hospital  
Mammography Suite Renovation