

TENDER DOCUMENTS

SECTION 8

GENERAL CONDITIONS

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8.1 INTERPRETATION

8.1.1 In the Contract

8.1.1.1 Not applicable

8.1.1.2 “Affiliate”:

8.1.1.2.1 Person, including, without however being limited to, parent companies, subsidiaries, whether or not wholly or partially owned, as well as a Senior Officer;

8.1.1.2.2 one Person is an affiliate of another Person if:

8.1.1.2.2.1 one Person is controlled by the other Person;

8.1.1.2.2.2 both Persons are controlled by a third Person;

8.1.1.2.2.3 both Persons are under common control; or

8.1.1.2.2.4 each Person is controlled by a third Person and the third Person by whom one Person is controlled is affiliated with the third Person by whom the other Person is controlled;

8.1.1.2.3 indicia of control, whether direct or indirect, exercised or not, include, but are not limited to, common ownership, common management, identity of interests (often found in members of the same family), shared facilities and equipment or common use of employees;

8.1.1.2.4 an affiliate may also exist in instances of an amalgamation or merger. Where at any time two or more corporations (in this provision referred to as the “predecessors”) amalgamate or merge to form a new corporation, the new corporation and any predecessor are deemed to have been Affiliated with each other where they would have been affiliated with each other immediately before that time if:

8.1.1.2.4.1 the new corporation had existed immediately before that time; and

8.1.1.2.4.2 the Persons who were the shareholders of the new corporation immediately after that time had been the shareholders of the new corporation immediately before that time.

8.1.1.3 “Senior Officer”:

8.1.1.3.1 a representative who plays an important role in the establishment of an organization’s policies or is responsible for managing an important aspect of the organization’s activities and, in the case of a body corporate, includes a director, its chief executive officer and its chief financial officer.

- 8.1.1.4 “Contract”: the documents referred to in the *Standard Administrative Conditions*;
- 8.1.1.5 “Control”:
- 8.1.1.5.1 direct control, such as where:
- 8.1.1.5.1.1 a Person controls a body corporate if securities of the body corporate to which are attached more than fifty (50) per cent of the votes that may be cast to elect directors of the body corporate are beneficially owned by the Person and the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the body corporate;
- 8.1.1.5.1.2 a Person controls a corporation that is organized on a cooperative basis if the Person and all of the entities controlled by the Person have the right to exercise more than fifty (50) per cent of the votes that may be cast at an annual meeting or to elect the majority of the directors of the corporation;
- 8.1.1.5.1.3 a Person controls an unincorporated entity, other than a limited partnership, if more than fifty (50) per cent of the ownership interests, however designated, into which the entity is divided are beneficially owned by that Person and the Person is able to direct the business and affairs of the entity;
- 8.1.1.5.1.4 the general partner of a limited partnership controls the limited partnership;
- 8.1.1.5.1.5 a Person controls an entity if the Person has any direct or indirect influence that, if exercised, would result in control in fact of the entity.
- 8.1.1.5.2 deemed control, such as where:
- 8.1.1.5.2.1 a Person who controls an entity is deemed to control any entity that is controlled, or deemed to be controlled, by the entity.
- 8.1.1.5.3 indirect control, such as where:
- 8.1.1.5.3.1 a Person is deemed to control, within the meaning of paragraphs 8.1.1.5.1 or 8.1.1.5.2, an entity where the aggregate of:
- 8.1.1.5.3.1.1 any securities of the entity that are beneficially owned by that Person;
- 8.1.1.5.3.1.2 any securities of the entity that are beneficially owned by any entity controlled by that Person, is such that, if that Person and all of the entities referred to in paragraph 8.1.1.5.3.1.2 that beneficially own securities of the entity were one Person, that Person would control the entity.
- 8.1.1.6 “Contract security”: any security provided to the Owner by the Contractor pursuant to the Contract;

- 8.1.1.7 “Engineer” means any Person authorized to perform, on behalf of the Owner, any of the functions assigned thereto under the Contract including, without however being limited to and as the context requires, any entity retained by the Owner to perform the design of the work or any entity retained by the Owner to carry out the supervision of the work;
- 8.1.1.8 “review by the Engineer”: the Engineer reviews the documents, procedures or requests submitted and grants permission to proceed with the work according to the documents or procedures submitted, or accepts the request submitted. Permission to proceed is granted when the Engineer indicates that no corrections are reported. Permission to proceed may also be granted on the condition that the corrections indicated by the Engineer on the documents be made. The Contractor is not permitted to proceed with the work if the document is rejected or if the review stamp requires that a revised document be submitted.
- 8.1.1.8.1 The review by the Engineer shall in no way relieve the Contractor from full responsibility for the accuracy of the documents and procedures submitted and for its work, and for compliance thereof with the Contract documents and worksite conditions.
- 8.1.1.9 “materials” includes all commodities, articles and things required to be provided by or for the Contractor under the Contract for the purpose of incorporation into the work;
- 8.1.1.10 “person” includes, except where the context otherwise requires, a partnership, proprietorship, firm, joint venture, consortium and corporation;
- 8.1.1.11 “Chief Executive Officer”: the person who holds the position of Chief Executive Officer of The Jacques Cartier and Champlain Bridges Incorporated, and includes a person acting on behalf of the Chief Executive Officer or, if the office is without an incumbent, a person deputizing for the Chief Executive Officer, as well as the persons succeeding him in the office, together with his or their lawfully appointed delegate, and his or their duly appointed representatives for the purposes of the Contract;
- 8.1.1.12 “tooling” includes the tools, implements, machinery, vehicles, buildings, structures and equipment, as well as the commodities, articles and things other than the materials, that are necessary for the performance of the work;
- 8.1.1.13 “subcontractor”: a person to whom the Contractor has, in accordance with Article 8.4, *Subcontracting by Contractor*, entrusted the performance of all or part of the work;
- 8.1.1.14 “superintendent”: the Contractor’s employee designated thereby to perform the duties described in Article 8.19 *Contractor’s Superintendent*;
- 8.1.1.15 “work” includes, subject to any express provision to the contrary in the Contract, anything to be done, provided, delivered or performed by the Contractor in the performance of the Contract.

- 8.1.2 Except as to those appearing on the plans and in the specifications, the headings appearing in the Contract do not form part thereof, but are inserted therein for convenience of reference only.
- 8.1.3 In the interpretation of the plans and specifications, in the event of a conflict or discrepancy between
- 8.1.3.1 the plans and specifications, the specifications shall prevail;
- 8.1.3.2 the plans, the plans drawn to the largest scale shall prevail; and
- 8.1.3.3 dimensions expressed in figures and scaled dimensions, the dimensions expressed in figures shall prevail.

8.2 SUCCESSORS AND ASSIGNS

- 8.2.1 The Contract shall inure to the benefit of and be binding upon the parties hereto and their lawful heirs, executors, administrators, successors and assigns.

8.3 ASSIGNMENT OF CONTRACT

- 8.3.1 The Contractor shall not assign the Contract, in whole or in part, without the written consent of the Owner.

8.4 SUBCONTRACTING BY CONTRACTOR

- 8.4.1 Subject to these *General Conditions*, the Contractor may subcontract any part of the work.
- 8.4.1.1 The Contractor may not, however, subcontract to a contractor that holds a restricted licence within the meaning of the *Building Act* (CQLR c. B-1.1), that is registered in the *register of enterprises ineligible for public contracts* (REIN) within the meaning of the *Act respecting Contracting by Public Bodies* (CQLR c. C-65.1) or that is listed on the *Ineligibility and Suspension List* in accordance with the *Ineligibility and Suspension Policy* issued by Public Services and Procurement Canada (hereinafter "PSPC").
- 8.4.2 The Contractor shall notify the Engineer in writing of its intention to subcontract.
- 8.4.3 The notice referred to in paragraph 8.4.2 shall identify the subcontractor and the portion of the work that the Contractor intends to entrust thereto.
- 8.4.4 The Engineer may object to the proposed subcontracting by notifying the Contractor in writing within six (6) days of the receipt, by the Engineer, of the notice referred to in paragraph 8.4.2.
- 8.4.5 If the Engineer objects to a subcontract under paragraph 8.4.4, the Contractor may not proceed with the proposed subcontract.

- 8.4.6 The Contractor shall not, without the written permission of the Engineer, replace any subcontractor whose services were retained thereby in accordance with these *General Conditions*.
- 8.4.7 Any contract between the Contractor and a subcontractor shall include all the terms and conditions of the Contract that are of general application.
- 8.4.8 Neither the contract between the Contractor and a subcontractor nor the Engineer's consent to such contract shall be construed as relieving the Contractor of any obligation under the Contract or as imposing any liability on the Owner and shall not create a contractual relationship between the Owner and a subcontractor, their representatives or employees.

8.5 MODIFICATIONS

- 8.5.1 No modification or change to any provision of the Contract shall be effective until approved by the Owner and recorded in writing.
- 8.5.2 Upon the commencement of the event giving rise to a modification or change request, the Contractor shall:
- 8.5.2.1 give written notice to the Engineer within the prescribed time or, failing that, as soon as practicable, of its intention to submit a modification request;
 - 8.5.2.2 take all reasonable steps to mitigate any loss or expense and any delay that may be incurred as a result of this event;
 - 8.5.2.3 keep the detailed and complete records containing everything necessary to evaluate the modification request, in accordance with Article 8.51 *Records to be kept by the Contractor*.
- 8.5.3 The Engineer will determine whether there is in fact a modification or change to the Contract and, if so, whether the modification or change increases or decreases the cost of the work to the Contractor.
- 8.5.4 The increase or decrease in the cost of the work shall be calculated in accordance with Articles 8.47 *Additions or Amendments to the Price Table* to 8.50 *Determination of Cost – Failing Negotiation*.
- 8.5.5 The Contractor shall perform the work in accordance with the decisions and directives of the Engineer.
- 8.5.6 If the Contractor fails to keep detailed and complete records of the means by which the modification or change was carried out in accordance with paragraph 8.5.2.3, such failure shall be deemed to be a waiver of any right the Contractor may have had.

8.6 NO IMPLIED OBLIGATIONS

- 8.6.1 No provision or obligation of the Owner shall be implied from the Contract; only the express provisions of the Contract stipulated by the Owner shall be the basis for any right or remedy against the Owner.
- 8.6.2 This Contract cancels and replaces all communications, negotiations and agreements, written or oral, concerning the work that were made prior to the date of the Contract.

8.7 TIME OF THE ESSENCE

- 8.7.1 Time is of the essence of the Contract.

8.8 INDEMNIFICATION BY THE CONTRACTOR

- 8.8.1 The Contractor shall indemnify and save harmless the Owner and His Majesty in Right of Canada from and against all claims, demands, losses, costs, damage, actions, suits or proceedings by any person based upon, arising out of, connected with, occasioned by or attributable to the activities of the Contractor, its employees, agents and subcontractors, as well as of the subcontractors thereof, in the performance of the work under the Contract, including any infringement or alleged infringement of any patent of invention or any other form of intellectual property.
- 8.8.2 For the purposes of paragraph 8.8.1, the term “activities” includes any act or omission, as well as any delay in performing an act.

8.9 INDEMNIFICATION BY THE OWNER

- 8.9.1 The Owner shall, subject to the provisions of the *Crown Liability and Proceedings Act* (RSC 1985, c. C-50), *Patent Act* (RSC 1985, c. P-4) and any other act affecting the rights, powers, privileges or obligations of the Owner, indemnify and save harmless the Contractor from and against all claims, demands, losses, costs, damage, actions, suits or proceedings arising out of the Owner’s activities under the Contract and directly attributable to:
- 8.9.1.1 an absence of title or a defect, actual or alleged, in the Owner’s title to the work site;
or
- 8.9.1.2 an infringement or alleged infringement by the Contractor of any patent of invention or any other form of intellectual property, in the performance of any act for the purposes of the Contract, involving the use of any model, plan, drawing or any other thing provided by the Owner to the Contractor for the purposes of the work.

8.10 NO BRIBE

8.10.1 The Contractor hereby declares that no bribe, gift, benefit or other advantage has been or will be given, promised or offered, directly or indirectly, to any representative or employee of the Owner or of His Majesty in Right of Canada, of whom the Owner is an agent, or to any member of the family of such a representative or employee, for the purpose of influencing the entering into or the administration of the Contract.

8.11 NOTICES

8.11.1 Any notice, consent, order, decision, directive or other communication required to be given in writing to either party in accordance with the Contract shall, subject to paragraph 8.11.4, be deemed to have been actually given:

8.11.1.1 to the Contractor, if delivered personally to the Contractor or to the Contractor's superintendent or, if mailed or e-mailed to the Contractor, at the address and e-mail address indicated on the Contractor's Tender and Terms of Payment Form (Section 7A);

8.11.1.2 to the Owner, if delivered personally to the Engineer or, if mailed or e-mailed to the Engineer, at the address indicated in paragraph 5.5.12 of the *Standard Administrative Conditions*.

8.11.2 Any notice, consent, order, decision, directive or other communication given in accordance with paragraph 8.11.1 shall be deemed to have been received by either party:

8.11.2.1 the day it was delivered, if it was delivered to the recipient personally;

8.11.2.2 the earlier of the day it was received or, if mailed to the recipient, the sixth day after it was mailed; and

8.11.2.3 the day the recipient confirms receipt of the email by a read receipt, if it was sent to the recipient by email.

8.11.3 If delivered personally, the notice will be given to the Contractor or, if the Contractor is a body corporate, partnership or joint venture, to an administration officer or Senior Officer.

8.11.4 In the event of a postal service disruption due to a strike, any notice, consent, order, decision, directive or other communication may be given to the Contractor by email and shall be deemed to have been received thereby within twenty-four (24) hours of being sent.

8.12 MATERIALS, TOOLING AND REAL PROPERTY PROVIDED BY THE OWNER

- 8.12.1 Subject to paragraph 8.12.2, the Contractor shall be liable to the Owner for any loss of or damage to the materials, tooling or real property provided by the Owner or placed thereby in the Contractor's care and control for the purposes of the Contract, whether or not the loss or damage is due to causes beyond the control of the Contractor.
- 8.12.2 The Contractor shall not be liable to the Owner for any loss or damage to the materials, tooling or real property referred to in paragraph 8.12.1, if such loss or damage is due and directly attributable to wear and tear caused by reasonable use.
- 8.12.3 The Contractor shall use the materials, tooling or real property referred to in paragraph 8.12.1 solely for the performance of the Contract and for no other purpose.
- 8.12.4 Where, after having been required to do so by the Engineer, the Contractor has not, within a reasonable time, compensated the Owner for any loss or damage for which the Contractor is liable under paragraph 8.12.1, the Engineer may provide for such loss or damage at the Contractor's expense, and the Contractor shall thereupon be liable to the Owner for the costs incurred in connection therewith, which the Contractor shall pay to the Owner upon request.
- 8.12.5 The Contractor shall keep such records of the materials, tooling and real property referred to in paragraph 8.12.1 as the Engineer may from time to time require and shall, when so required by the Engineer, establish, to the satisfaction of the Engineer, that the materials, tooling and real property are at the place and in the condition in which they ought to be.

8.13 MATERIALS, TOOLING AND REAL PROPERTY THAT HAVE BECOME THE PROPERTY OF THE OWNER

- 8.13.1 All materials and tooling, and all rights of the Contractor in all real property, permits, powers and privileges acquired, used or provided by the Contractor for the Contract shall, from the time of purchase or use thereof, become and continue to be the property of the Owner for the purposes of the work:
- 8.13.1.1 in the case of the materials, until the Engineer declares that they are no longer required for the work; and
- 8.13.1.2 in the case of the tooling, real property, permits, powers and privileges, until the Engineer declares that the Owner's right therein is no longer required for the work.
- 8.13.2 The materials or tooling belonging to the Owner under paragraph 8.13.1 shall not, without the written consent of the Engineer, be removed from the work site, used or disposed of, except for the purposes of the work.

8.13.3 The Owner shall not be liable for any loss of or damage to the materials or tooling referred to in paragraph 8.13.1, however caused, and the Contractor shall be liable for any loss or damage, although such materials or tooling belong to the Owner.

8.14 MUNICIPAL PERMITS

8.14.1 The Contractor shall, within thirty (30) days of the date of the Notice of Contract Award, offer to the municipal government an amount equal to all fees and charges that would be payable to the municipal government for the building permits, as though the work was being performed for a person other than the Owner.

8.14.2 Within ten (10) days of the offer referred to in paragraph 8.14.1, the Contractor shall notify the Engineer of its action and of the amount of such offer, and inform the Engineer whether or not the offer has been accepted by the municipal government.

8.14.3 If the municipal government has not accepted the amount offered under paragraph 8.14.1, the Contractor shall remit such amount to the Owner within six (6) days after the expiration of the time specified in paragraph 8.14.2.

8.14.4 For the purposes of paragraphs 8.14.1 to 8.14.3, the expression "municipal government" means a government that would have jurisdiction to authorize the construction of the structure if it did not belong to the Owner.

8.15 EXECUTION OF THE WORK UNDER THE DIRECTION OF THE ENGINEER

8.15.1 The Contractor shall:

8.15.1.1 allow the Engineer access to both the work and the worksite at all times during the performance of the Contract;

8.15.1.2 provide the Engineer with such information as the Engineer may require concerning the performance of the Contract; and

8.15.1.3 provide the Engineer with all possible assistance in the performance of his duty to ensure that the work is carried out in accordance with the Contract, and in the performance of any other duty and in the exercise of any power vested in or conferred upon him by the Contract.

8.16 COOPERATION WITH OTHER CONTRACTORS

8.16.1 Where, in the opinion of the Engineer, it is necessary to assign other contractors or workers, with or without tooling and materials, either to the work or to the worksite, the Contractor shall, to the satisfaction of the Engineer, give them access to the work or to the worksite and cooperate therewith in the carrying out of their duties and obligations.

8.16.2 If:

- 8.16.2.1 the assignment of other contractors or workers to the work under paragraph 8.16.1 could not reasonably have been foreseen by the Contractor at the time of entering into the Contract; and
- 8.16.2.2 in the opinion of the Engineer, the Contractor has incurred additional expenses in order to comply with paragraph 8.16.1; and
- 8.16.2.3 the Contractor has given the Engineer written notice of its claim prior to the expiration of a period of thirty (30) days after the other contractors or workers have been assigned to the work or to the worksite;

the Owner will reimburse the Contractor for the costs incurred, which shall be calculated in accordance with Articles 8.48 *Determination of Cost – Price Table* to 8.50 *Determination of Cost – Failing Negotiation*, for the additional work, tooling and materials required.

8.17 VERIFICATION OF THE WORK

- 8.17.1 If at any time after the commencement of the work, but before the expiration of the warranty period, the Engineer has reason to believe that the work or any part thereof has not been performed in accordance with the Contract, he may request that a verification of such work be performed by an expert that he will designate.
- 8.17.2 If, as a result of a verification conducted pursuant to paragraph 8.17.1, it is determined that the work has not been performed in accordance with the Contract, the Contractor shall, upon demand, pay to the Owner all reasonable costs and expenses incurred thereby as a result of such verification, in addition to and without prejudice to the Owner's rights and remedies under the Contract, at law or in equity.

8.18 SITE CLEARING

- 8.18.1 Not applicable
- 8.18.2 Prior to the issuance of the Interim Certificate of Completion referred to in paragraph 8.44.1, the Contractor shall remove all tooling and materials that are not required for the completion of the remainder of the work. The Contractor shall also remove all waste and debris and ensure that the work site is clean and suitable for occupancy by the Owner's employees, except as otherwise specified in the Contract.
- 8.18.3 Prior to the issuance of the Final Certificate of Completion referred to in paragraph 8.44.8, the Contractor shall remove from the work site, all excess tooling and materials, as well as all waste and debris.

8.18.4 The Contractor's obligations under paragraphs 8.18.2 and 8.18.3 shall not apply to the waste and debris left by the Owner's employees or by the other contractors and employees thereof referred to in paragraph 8.16.1.

8.19 CONTRACTOR'S SUPERINTENDENT

8.19.1 The Contractor shall, without delay after award of the Contract, designate a superintendent.

8.19.2 The Contractor shall promptly notify the Engineer of the name, address, and telephone number of the superintendent designated under paragraph 8.19.1.

8.19.3 The superintendent designated under paragraph 8.19.1 shall have full responsibility for the Contractor's operations in the performance of the work and is further authorized to receive on behalf of the Contractor any notice, consent, order, directive, decision or other communication that may be given to the Contractor under the Contract.

8.19.4 During working hours and until the issuance of the Interim Certificate of Completion, the Contractor shall maintain a qualified superintendent on the work site.

8.19.5 At the request of the Engineer, the Contractor shall remove any superintendent who, in the opinion of the Engineer, is incompetent or has conducted himself in an improper manner, and the Contractor shall promptly replace the superintendent so removed with another superintendent acceptable to the Engineer.

8.19.6 Subject to paragraph 8.19.5, the Contractor shall not replace the superintendent without the written consent of the Engineer.

8.19.7 In the event of a violation by the Contractor of paragraph 8.19.6, the Engineer may withhold the issuance of any certificate referred to in Article 8.44 *Engineer's Certificates* until the superintendent has been reinstated or another superintendent acceptable to the Engineer has replaced him.

8.20 NATIONAL SECURITY

8.20.1 If the Owner determines that national security so requires, the Owner may direct the Contractor to:

8.20.1.1 provide the Owner with any information on persons hired or to be hired for the purposes of the Contract; and

8.20.1.2 remove from the work site any person whose employment may, in the opinion of the Owner, pose a risk to national security.

8.20.2 Without limiting the generality of paragraph 8.4.7, the contracts which the Contractor may enter into with persons to be assigned to the performance of the work shall contain provisions which will enable the Contractor to discharge any obligation imposed thereupon under Articles 8.19 *Contractor's Superintendent* to 8.21 *Unsuitable Workers*.

8.20.3 The Contractor shall comply with any order given by the Owner pursuant to paragraph 8.20.1.

8.21 UNSUITABLE WORKERS

8.21.1 At the request of the Engineer, the Contractor shall remove from the work any person hired by the Contractor for the purpose of the work who, in the opinion of the Engineer, is incompetent or has conducted himself in an improper manner and the Contractor shall deny access to the work site to any person so removed.

8.22 INCREASE OR DECREASE IN COSTS

8.22.1 No amount entered in the Price Table shall be increased or decreased by reason of an increase or decrease in the cost of the work resulting from an increase or decrease in the cost of labour, tooling, materials, or fair wage schedules set forth or prescribed in Section 9 *Labour Conditions*.

8.22.2 Notwithstanding paragraph 8.22.1 and Article 8.35 *Changes in Soil Conditions*, any relevant amount entered in the Price Table shall be adjusted in the manner set out in paragraph 8.22.3 where there is a change in a tax imposed under the *Excise Act* (RSC 1985, c. E-14), the *Excise Tax Act* (RSC 1985, c. E-15), the *Old Age Security Act* (RSC 1985, c. O-9), the *Customs Act* (RSC 1985, c. 1 (2nd Supp.)), the *Customs Tariff* or any provincial sales tax act imposing a retail sales tax on the purchase of goods incorporated into real property

8.22.2.1 that occurs after the date on which the Contractor has submitted a tender for the Contract,

8.22.2.2 that applies to the materials, and

8.22.2.3 that affects the cost of such materials to the Contractor.

8.22.3 In the event of a tax change pursuant to paragraph 8.22.2, any relevant amount entered in the Price Table shall be increased or decreased by an amount equal to the amount that, upon review of the records referred to in Article 8.51 *Records to be kept by the Contractor*, represents the increase or decrease, as the case may be, in the costs directly attributable to such change.

8.22.4 For the purposes of paragraph 8.22.2, where a tax change occurs after the date on which the Contractor has submitted a tender but the Minister of Finance had given public notice of the change prior to the date on which the tender was submitted, the tax change shall be deemed to have occurred prior to the date on which the tender was submitted.

8.23 CANADIAN LABOUR AND MATERIALS

- 8.23.1 The Contractor shall, in the performance of the work, use Canadian labour and materials provided they are available, and having regard to the economic requirements and the need to maintain diligent performance of the work.
- 8.23.2 Subject to paragraph 8.23.1, the Contractor shall, in the performance of the work, employ labour from the locality where the work is being performed to the extent to which it is available and, wherever practicable, the Contractor shall use the offices of the Canada Employment Centres for the recruitment of workers.
- 8.23.3 Subject to paragraphs 8.23.1 and 8.23.2, the Contractor shall employ a reasonable proportion of workers who have been on active service in the Canadian Armed Forces and have been honourably discharged therefrom.

8.24 PROTECTION OF WORK AND DOCUMENTS

- 8.24.1 The Contractor shall guard and protect the work, the work site, the Contract, as well as the specifications, plans, drawings, information, materials, tooling and real property, whether or not provided by the Owner to the Contractor, against any loss or damage of any kind and shall not use them, give them away, demolish them, disclose them or dispose thereof without the written consent of the Owner, except as may be absolutely necessary for the performance of the work.
- 8.24.2 If a security rating is assigned to the documents or information given or disclosed to the Contractor, the Contractor shall take all steps directed by the Engineer to ensure the degree of security consistent with such rating.
- 8.24.3 The Contractor shall provide all safety devices and assistance to any person authorized by the Owner to inspect or take safety measures with respect to the work and site thereof.
- 8.24.4 The Engineer may direct the Contractor to do such things and carry out such additional work as, in the opinion of the Engineer, are reasonable and necessary to ensure compliance with paragraphs 8.24.1 to 8.24.3, or to rectify a failure to comply with the obligations of said paragraphs.

8.25 PUBLIC CEREMONIES AND SIGNS

- 8.25.1 The Contractor shall not permit any public ceremony in connection with the work without the permission of the Owner.
- 8.25.2 The Contractor shall not erect or permit the erection of any sign or advertising on the work site or at the location of the work without the approval of the Engineer.

8.26 PRECAUTIONS AGAINST DAMAGE, FIRE AND OTHER HAZARDS

- 8.26.1 The Contractor shall, at its own expense, do all things necessary to ensure that:

- 8.26.1.1 no person is injured, no property is damaged, and no right, easement, or privilege is infringed as a result of the Contractor's activities under the Contract;
 - 8.26.1.2 pedestrian traffic or other traffic on public or private roads or waterways is not unduly impeded, interrupted or endangered either by the work or by the tooling;
 - 8.26.1.3 fire hazards on the worksite or site of the work are eliminated and that, subject to any order that may be given by the Engineer, any fire is promptly brought under control;
 - 8.26.1.4 the health and safety of the persons performing the work are not endangered by the methods or means employed;
 - 8.26.1.5 adequate medical services are available at all times during working hours to all persons performing the work;
 - 8.26.1.6 adequate sanitary measures are taken in respect of both the work and the site thereof; and
 - 8.26.1.7 all stakes, buoys and markers placed on the work site or at the location of the work by or under the direction of the Engineer are protected and are not removed, defaced, altered or destroyed.
- 8.26.2 The Engineer may direct the Contractor to do any thing and construct any additional structure that, in the opinion of the Engineer, is reasonable or necessary to ensure compliance with paragraph 8.26.1 or to rectify a violation of said paragraph.
- 8.26.3 The Contractor shall comply, at its own expense, with any order issued by the Engineer pursuant to paragraph 8.26.2.

8.27 NOT APPLICABLE

8.28 NOT APPLICABLE

8.29 CONTRACT SECURITY

- 8.29.1 The Contractor shall obtain and deposit with the Engineer either or both of the contract securities specified in Section 9 *Contract Security and Insurance Conditions*.
- 8.29.2 If the whole or a part of the contract security referred to in paragraph 8.29.1 is in the form of a security deposit, such deposit shall be dealt with in accordance with Articles 8.43 *Security Deposit – Forfeiture or Return* and 8.45 *Return of Security Deposit* of the *General Conditions*.
- 8.29.3 If a part of the contract security referred to in paragraph 8.29.1 is in the form of a labour and material payment bond, the Contractor shall post a copy of that bond at the location of the work.

8.30 MODIFICATIONS TO THE WORK

8.30.1 Subject to paragraph 8.5 *Modifications*, the Engineer may, at any time before issuing his Final Certificate of Completion,

8.30.1.1 require work or materials in addition to those provided for on the plans and in the specifications; and

8.30.1.2 delete or modify the size, character, quantity, quality, description, location or position of all or any part of the work or materials provided for on the plans and in the specifications, or required in accordance with paragraph 8.30.1.1;

provided that such additional work or materials, deletions or modifications are, in his opinion, consistent with the general scope and intent of the Contract.

8.30.2 The Contractor shall carry out the work in accordance with the orders, deletions and modifications issued from time to time by the Engineer pursuant to paragraph 8.30.1 as if they were part of the plans and specifications.

8.30.3 The Engineer will determine whether what the Contractor has done or failed to do in accordance with an order, deletion, or modification of the Engineer under paragraph 8.30.1 has increased or decreased the cost of the work to the Contractor.

8.30.4 If the Engineer determines, pursuant to paragraph 8.30.3, that there has been an increase in cost to the Contractor, the Owner will pay the Contractor the increased cost that the Contractor had to incur for the additional work. Said cost shall be calculated in accordance with 8.48 *Determination of Cost – Negotiation* to 8.50 *Determination of Cost – Failing Negotiation*.

8.30.5 If the Engineer determines, pursuant to paragraph 8.30.3, that there has been a decrease in cost to the Contractor, the Owner will decrease the amount payable to the Contractor under the Contract by an amount equal to the decrease in cost occasioned by any deletion or modification ordered in accordance with paragraph 8.30.1.2. Said amount shall be calculated in accordance with Article 8.49 *Determination of Cost – Negotiation*.

8.30.6 Paragraphs 8.30.3 to 8.30.5 are applicable only to a Contract or a portion of a Contract for which a Fixed Price Agreement is stipulated.

8.30.7 Any order, deletion or modification referred to in paragraph 8.30.1 shall be in writing, signed by the Engineer and communicated to the Contractor in accordance with paragraph 8.11.2.

8.31 INTERPRETATION OF THE CONTRACT BY THE ENGINEER

- 8.31.1 Prior to the issuance, by the Engineer, of the Final Certificate of Completion referred to in paragraph 8.44.8, the Engineer will rule on any issues concerning the performance of the work or the Contractor's obligations under the Contract and in particular, but without limiting the generality of the foregoing, concerning:
- 8.31.1.1 the meaning of anything in the plans and specifications;
 - 8.31.1.2 the interpretation of the plans and specifications in the event of any error, omission, ambiguity or discrepancy in their wording or intent;
 - 8.31.1.3 the compliance with the requirements of the Contract as to the quantity or quality of the materials that the Contractor provides or intends to provide or of the work that the Contractor carries out or intends to carry out;
 - 8.31.1.4 the sufficiency of the labour, tooling or materials provided by the Contractor for the performance of the work and the Contract, in order to ensure the performance of the work in accordance with the requirements of the Contract and the performance of the Contract in accordance with the provisions thereof;
 - 8.31.1.5 the quantity of any kind of work performed by the Contractor; or
 - 8.31.1.6 the schedule and programming of the various phases of the execution of the work.
- 8.31.2 The decision of the Engineer shall, subject to Article 8.52 *Dispute Resolution Procedure*, be final and binding.
- 8.31.3 The Contractor shall perform the work in accordance with the Engineer's decisions and directives under paragraph 8.31.1 and in accordance with any decisions and directives of the Engineer arising therefrom.

8.32 RECTIFICATION OF DEFECTS IN THE WORK

- 8.32.1 Without restricting the legal guarantees or any other warranties stipulated in the Contract, the Contractor shall, at its own expense:
- 8.32.1.1 rectify any defects and correct any faults that become apparent in the work or that are reported to the Owner as to those parts of the work accepted under the Interim Certificate of Completion referred to in paragraph 8.44.1 within twelve (12) months or such other deadline specified in the *Special Administrative Conditions*. This warranty shall commence on the date shown in the Interim Certificate of Completion as the date of interim acceptance of the work;

- 8.32.1.2 rectify any defects and correct any faults that become apparent in the work or that are reported to the Owner in respect of those parts of the work that were not completed to the satisfaction of the Engineer as described in the Interim Certificate of Completion referred to in paragraph 8.44.1 within twelve (12) months or such other deadline specified in the *Special Administrative Conditions*. This warranty shall commence on the date shown on the Final Certificate of Completion referred to in paragraph 8.44.8 as the date of final acceptance of the work.
- 8.32.2 The Engineer may direct the Contractor to rectify or correct any defects or faults referred to in paragraph 8.32.1 or otherwise covered by any other legal or contractual warranty.
- 8.32.3 The order referred to in paragraph 8.32.2 shall be in writing; it may specify the period of time within which the Contractor must rectify or correct the defect or fault and it shall be given to the Contractor.
- 8.32.4 The Contractor shall rectify the defect or correct the fault referred to in the order given under paragraph 8.32.2 within the time specified therein.

8.33 NON-COMPLIANCE BY CONTRACTOR

- 8.33.1 If the Contractor fails to comply with any decision or directive made or issued by the Engineer under the Contract, the Engineer may use such methods as he may deem expedient to cause to be performed that which the Contractor has failed to perform.
- 8.33.2 The Contractor shall then pay to the Owner, upon demand, all costs, expenses and damage incurred and/or suffered by the Owner as a result of the Contractor's failure to comply with any decisions or directives stipulated in paragraph 8.33.1 and as a result of any method used in the matter by the Engineer pursuant to paragraph 8.33.1.

8.34 CHALLENGE OF THE ENGINEER'S DECISIONS

- 8.34.1 The Contractor may, in accordance with Article 8.52 *Dispute Resolution Procedure*, challenge a decision or directive made or issued by the Engineer under the Contract.
- 8.34.2 Any dispute that not resolved by the date of issuance of the last Interim Certificate of Completion shall be dealt with in accordance with paragraphs 8.52.3 et seq.

8.35 CHANGES IN SOIL CONDITIONS

- 8.35.1 Subject to paragraph 8.35.2, no payment other than a payment expressly stipulated in the Contract shall be made by the Owner to the Contractor for any extra expense incurred or for any loss or damage suffered by the Contractor.

- 8.35.2 If the Contractor considers that there is a substantial difference between the information on soil conditions at the location of the work given on the plans and in the specifications or in other documents provided to the Contractor for the preparation of its tender, or a substantial difference between a reasonable assumption made by the Contractor based on such information and the actual conditions encountered by the Contractor at the location of the work during the performance thereof, the Contractor shall, on the day on which the Contractor discovers the soil conditions and before they are altered, give notice thereof in writing to the Engineer.
- 8.35.3 The Engineer will decide whether there is, in fact, such a substantial difference and, if so, whether the change increases or decreases the cost of the work to the Contractor.
- 8.35.4 If, in the opinion of the Engineer, the change increases the cost of the work, the Owner will pay the Contractor an additional amount to be calculated in accordance with Articles 8.47 *Additions or Amendments to the Price Table* to 8.50 *Determination of Cost – Failing Negotiation*.
- 8.35.5 If, in the opinion of the Engineer, the change decreases the cost of the work, the Owner will decrease the amount payable to the Contractor under the Contract by an amount to be determined in accordance with the provisions of Articles 8.47 *Additions or Amendments to the Price Table* to 8.50 *Determination of Cost – Failing Negotiation*.
- 8.35.6 The Contractor shall perform the work in accordance with the decisions and directives of the Engineer.
- 8.35.7 If the Contractor fails to give the notice referred to in paragraph 8.35.2, no extra payment shall be made to the Contractor.

8.36 EXTENSION OF TIME

- 8.36.1 Subject to paragraph 8.36.2, the Engineer may, if he determines that the late completion of the work is due to causes beyond the control of the Contractor and upon request by the Contractor, which shall be submitted prior to the day fixed by the *Special Administrative Conditions* for completion of the work or prior to any other date previously fixed in accordance with this article, extend the time for completion of the work.
- 8.36.2 Any request referred to in paragraph 8.36.1 shall be accompanied by the written consent of the surety company that issued a bond constituting one of the securities of the Contract.

8.37 DAMAGES FOR LATE COMPLETION

- 8.37.1 For the purposes of this article:
- 8.37.1.1 the work shall be deemed to be completed on the day the Engineer issues the Interim Certificate of Completion referred to in paragraph 8.44.1; and

- 8.37.1.2 “period of delay” means the period commencing on the day fixed by the *Special Administrative Conditions* for completion of the work and ending on the day immediately preceding the day of completion, excluding, however, any day that is part of an extension period granted under paragraph 8.36.1 and any other day on which, in the opinion of the Engineer, completion of the work has been delayed by causes beyond the control of the Contractor.
- 8.37.2 If the Contractor does not complete the work on the day specified in the *Special Administrative Conditions* but completes such work at a later date, the Contractor shall pay to the Owner an amount equal to the aggregate of:
- 8.37.2.1 all wages, salaries and travel expenses paid by the Owner to the persons supervising the work during the period of delay;
- 8.37.2.2 the costs incurred by the Owner as a result of the Owner’s inability to use the completed work during the period of delay; and
- 8.37.2.3 all other costs and damages incurred or suffered by the Owner during the period of delay as a result of the non-completion of the work by the scheduled date.
- 8.37.3 If the Owner determines that it is in the public interest to do so, the Owner may waive its right to all or part of any payment due pursuant to paragraph 8.37.2.

8.38 WORK WITHDRAWN FROM THE CONTRACTOR

- 8.38.1 The Owner may, in the following instances and at its sole discretion, by written notice to the Contractor, withdraw from the Contractor all or part of the work and use such means as the Owner deems appropriate to complete the work if the Contractor:
- 8.38.1.1 fails or delays to commence or fails to perform the work diligently and to the satisfaction of the Engineer, within six (6) days after receipt of a notice from the Owner or the Engineer;
- 8.38.1.2 has failed to complete any portion of the work within the time specified in the Contract;
- 8.38.1.3 has become insolvent;
- 8.38.1.4 has committed an act of bankruptcy, is declared bankrupt or has made a general assignment;
- 8.38.1.5 has abandoned the work;
- 8.38.1.6 has assigned the Contract without the consent required by paragraph 8.3.1;
- 8.38.1.7 has otherwise failed to observe or perform any of the provisions of the Contract;

- 8.38.1.8 without limiting the generality of paragraph 8.38.1.7, during the course of the Contract, has its licence restricted within the meaning of the *Building Act* (CQLR c. B-1.1), or is registered in the *register of enterprises ineligible for public contracts* (REIN) within the meaning of the *Act respecting Contracting by Public Bodies* (CQLR c. C-65.1) or on the *Ineligibility and Suspension List* in accordance with the *Ineligibility and Suspension Policy* issued by PSPC; or
- 8.38.1.9 fails to replace a subcontractor retained in derogation of paragraph 8.4.1.1 within the time specified by the Owner.
- 8.38.2 If all or any part of the work has been withdrawn from the Contractor pursuant to paragraph 8.38.1:
- 8.38.2.1 the Contractor shall not, subject to paragraph 8.38.3, be entitled to any other payment that is due and payable; and
- 8.38.2.2 the Contractor shall be liable to pay to the Owner, on demand, an amount equal to all losses and damage suffered by the Owner as a result of the Contractor's failure to complete the work.
- 8.38.3 If all or part of the work withdrawn from the Contractor pursuant to paragraph 8.38.1 is completed by the Owner, the Engineer will determine the amount, if any, of any holdback or progress claim by the Contractor existing at the time the work was withdrawn therefrom that, in the opinion of the Engineer, is not required to ensure the performance of the work or to reimburse the Owner for any loss or damage suffered as a result of the Contractor's default. The Owner may pay the Contractor such amount as may be determined not to be required pursuant to paragraph 8.38.2.

8.39 EFFECT OF THE WITHDRAWAL OF THE WORK FROM THE CONTRACTOR

- 8.39.1 The withdrawal of all or any part of the work from the Contractor pursuant to Article 8.38 *Work Withdrawn from the Contractor* shall not relieve the Contractor of any obligation under the Contract or at law, except for the Contractor's obligation to continue the performance of the portion of the work so withdrawn.
- 8.39.2 If all or any part of the work is withdrawn from the Contractor in accordance with Article 8.38 *Work Withdrawn from the Contractor*, all materials and tooling, as well as the Contractor's interest in all real property, permits, powers and privileges acquired, used or provided by the Contractor for the work shall continue to be the property of the Owner without compensation to the Contractor.
- 8.39.3 If the Engineer certifies that any material, tooling or interest referred to in paragraph 8.39.2 are no longer required for the work and that it is no longer in the interest of the Owner to retain said material, tooling or interest, they will be released to the Contractor.

8.40 SUSPENSION OF THE WORK BY THE OWNER

- 8.40.1 The Owner may, when in its opinion it is in the public interest to do so, require the Contractor to suspend the performance of the work for a specified or indefinite period of time by giving written notice to that effect.
- 8.40.2 Upon receipt of the written notice referred to in paragraph 8.40.1, the Contractor shall suspend all operations except those which, in the opinion of the Engineer, are necessary for the custody and preservation of the work, tooling and materials.
- 8.40.3 During the period of suspension, the Contractor shall not, without the consent of the Engineer, remove from the site of the work any part of the work, tooling and materials.
- 8.40.4 If the period of suspension is of thirty (30) days or less, the Contractor shall resume performance of the work immediately upon the expiration of the period of suspension and will be entitled to payment of the costs, which will be calculated in accordance with Articles 8.48 *Determination of Cost – Price Table* to 8.50 *Determination of Cost – Failing Negotiation*, of the work, tooling and materials that the Contractor had to incur as a result of the suspension of the work.
- 8.40.5 If, at the expiration of a period of suspension of more than thirty (30) days, the Owner and the Contractor agree that the performance of the work will be continued by the Contractor, the Contractor shall resume operations, under the terms and conditions agreed upon between the Contractor and the Owner.
- 8.40.6 If, at the expiration of a period of suspension of more than thirty (30) days, the Owner and the Contractor do not agree that the work will be continued by the Contractor or do not agree on the terms and conditions under which the Contractor will continue to perform the work, the notice of suspension shall be deemed to be a notice of termination in accordance with Article 8.41 *Termination of the Contract*.

8.41 TERMINATION OF THE CONTRACT

- 8.41.1 The Owner may, at any time, terminate the Contract by giving written notice to that effect.
- 8.41.2 Upon receipt of the written notice referred to in paragraph 8.41.1, the Contractor shall cease all operations in the performance of the Contract, subject to any conditions set out in said notice.
- 8.41.3 If the Contract is terminated in accordance with paragraph 8.41.1, the Owner will pay to the Contractor, subject to paragraph 8.41.4, an amount equal to:
- 8.41.3.1 the cost of all labour, tooling and materials provided by the Contractor under the Contract at the date of termination, in respect of a Contract or part of a Contract for which a Unit Price Agreement is specified in the Contract;
- 8.41.3.2 or the lesser of:

- 8.41.3.2.1 the amount, calculated in accordance with Section 7A *Tender and Terms of Payment Form*, that would have been payable to the Contractor if the Contractor had completed the work; and
- 8.41.3.2.2 the amount acknowledged to be owing to the Contractor pursuant to Article 8.49 *Determination of Cost – Negotiation*, in respect of a Contract or part of a Contract for which the Contract provides for a Fixed Price Agreement;

less the aggregate of all amounts already paid to the Contractor by the Owner and all amounts, if any, for which the Contractor is liable to the Owner under the Contract.

- 8.41.4 If the Owner and the Contractor cannot agree on the amount referred to in paragraph 8.41.3, said amount shall be determined in accordance with the method set forth in Article 8.50 *Determination of Cost – Failing Negotiation*.

8.42 CLAIMS AGAINST AND OBLIGATIONS OF THE CONTRACTOR OR A SUBCONTRACTOR

- 8.42.1 In order to satisfy the claims against the Contractor or a subcontractor arising out of the performance of the Contract, the Owner may, in the circumstances set forth in paragraph 8.42.6, pay any amount that is due the Contractor under the Contract directly to the Contractor's or subcontractor's claimants.
- 8.42.2 A payment made pursuant to paragraph 8.42.1 discharges the Owner's obligation to the Contractor under the Contract to the extent of the amount paid and may be deducted from the amounts due the Contractor under the Contract.
- 8.42.3 The Contractor shall comply with all laws in force in the province in which the work is performed as to payment periods, mandatory holdbacks, the creation and enforcement of suppliers' liens or, in the case of the Province of Quebec, the provisions of the law relating to the legal hypothec for construction .
- 8.42.4 The Contractor shall fulfill all of its legal obligations and shall satisfy all legal claims against the Contractor arising out of the performance of the work, at least as often as the Contract requires the Owner to fulfill its obligations to the Contractor.
- 8.42.5 Upon request of the Engineer, the Contractor shall submit a statement certifying the existence and status of all obligations and claims referred to in paragraph 8.42.4.
- 8.42.6 Paragraph 8.42.1 applies only to written claims, received by the Engineer before payment has been made to the Contractor in accordance with paragraph 7.4.10, and within one hundred and twenty (120) days from the date on which the claimant:
 - 8.42.6.1 should have been paid in full in accordance with the contract between the claimant and the Contractor or between the claimant and a subcontractor, if the claim is for monies withheld in accordance with the claimant's contract or the law; or

8.42.6.2 has performed the last of the services, completed the work or supplied the last of the materials required by its contract, if the claim is not one referred to in paragraph 8.42.6.1.

8.43 SECURITY DEPOSIT – FORFEITURE OR RETURN

8.43.1 If

8.43.1.1 the work is withdrawn from the Contractor in accordance with Article 8.38 *Work Withdrawn from the Contractor*;

8.43.1.2 the Contract is terminated pursuant to Article 8.41 *Termination of Contract*; or

8.43.1.3 the Contractor is in breach of or in default of its obligations under the Contract;

the Owner may convert the security deposit, if any, to its own use.

8.43.2 If the Owner converts the security deposit in accordance with paragraph 8.43.1, the amount so obtained shall be deemed to be repayment of a debt payable by the Contractor to the Owner under the Contract.

8.43.3 The balance of the amount referred to in paragraph 8.43.2, if any, after all costs, losses, damages and claims of the Owner or any third party have been paid, will be paid by the Owner to the Contractor if, in the opinion of the Engineer, it is not required for the purposes of the Contract.

8.44 ENGINEER'S CERTIFICATES

8.44.1 When the following conditions are met and subject to the terms of Article 5.34 *Interim and Final Acceptance of the Work and Holdback of the Standard Administrative Conditions*, the Engineer will issue to the Contractor an Interim Certificate of Completion:

8.44.1.1 the Engineer determines that the work is sufficiently complete to be used for its intended purpose;

8.44.1.2 the estimated value of the work to be corrected and completed does not exceed, subject to paragraph 8.44.2:

8.44.1.2.1 5% of the Contract value if it is less than \$2,000,000 (before taxes) on the date of calculation; or

8.44.1.2.2 2% of the Contract value if it is equal to or greater than \$2,000,000 (before taxes) on the date of calculation.

8.44.1.3 the documents and items to be submitted upon completion of the work have been submitted in accordance with Article 5.30 *Documents and Items to be submitted upon Completion of the Work of the Standard Administrative Conditions*;

- 8.44.1.4 the written warranties required by the Contract have been provided;
- 8.44.1.5 the training required by the Contract documents has been completed and, where applicable, the commissioning of the structure has been completed.
- 8.44.2 If the work or a substantial portion thereof is sufficiently completed to be used for its intended purpose and the work to be completed cannot be completed because of conditions beyond the control of the Contractor, then the value of such work shall be deducted from the calculation made in paragraph 8.44.1 for the purpose of the interim acceptance of the work.
- 8.44.3 The Interim Certificate of Completion referred to in paragraph 8.44.1 shall describe those portions of the work that have not been completed to the satisfaction of the Engineer and specify all that the Contractor shall do:
- 8.44.3.1 so that the Final Certificate of Completion referred to in paragraph 8.44.8 can be issued; and
- 8.44.3.2 prior to the commencement of the warranty period referred to in paragraph 8.32.1.2 as to such portions of the work to be carried out and other things to be performed by the Contractor.
- 8.44.4 The *Special Administrative Conditions* of the Contract may provide for the issuance of several Interim Certificates of Completion, depending on the nature of the work and the circumstances.
- 8.44.5 The Engineer may, in addition to the items specified in the Interim Certificate of Completion referred to in paragraph 8.44.1, require the Contractor to rectify any other portions of the work that have not been completed to the satisfaction of the Engineer and cause any other things necessary for the completion of the work to be done.
- 8.44.6 If the Contract or any part thereof has been the subject of a Unit Price Agreement, the Engineer will measure and record the quantities of work carried out, the tooling provided by the Contractor and the materials used in the performance of the work, and will, at the request of the Contractor, inform the latter of such measurements.
- 8.44.7 The Contractor shall assist and cooperate with the Engineer in the performance of the duties specified in paragraph 8.44.6 and will be entitled to inspect any records kept by the Engineer pursuant to paragraph 8.44.6.
- 8.44.8 When the following conditions are met and subject to the terms of Article 5.34 *Interim and Final Acceptance of the Work and Holdback* of the *Standard Administrative Conditions*, the Engineer will issue to the Contractor a Final Certificate of Completion:
- 8.44.8.1 the defects are corrected;
- 8.44.8.2 no work remains to be completed; and

8.44.8.3 the Contractor has complied with the Contract and with all orders and directives given by the Engineer, to the satisfaction of the Engineer.

8.44.9 After the Engineer has issued the Final Certificate of Completion referred to in paragraph 8.44.8, he will, subject to the application of paragraph 8.44.6, issue a Final Certificate of Measurement.

8.44.10 The Final Certificate of Measurement referred to in paragraph 8.44.9:

8.44.10.1 indicates the total of the measurements referred to in paragraph 8.44.6; and

8.44.10.2 is conclusively binding on the Owner and Contractor with respect to the measurements recorded therein.

8.45 RETURN OF THE SECURITY DEPOSIT

8.45.1 After the issuance of the Interim Certificate of Completion referred to in paragraph 8.44.1 and provided the Contractor has complied with its covenants and obligations under the Contract, the Owner will return to the Contractor all or part of the security deposit, if any, that, in the opinion of the Engineer, is not required for the purposes of the Contract.

8.45.2 Except as otherwise provided in the Contract, upon issuance of the Final Certificate of Completion referred to in paragraph 8.44.8, the Owner will return to the Contractor the balance of any security deposit.

8.46 CLARIFICATION OF THE MEANING OF THE EXPRESSIONS IN ARTICLES 8.47 TO 8.50

8.46.1 In Articles 8.47 Additions or Amendments to the Price Table to 8.50 Determination of Cost – Failing Negotiation:

8.46.1.1 the expression “Price Table” means the table contained in the Contractor’s Tender and Terms of Payment Form (Section 7A), subject to any changes specified in the Notice of Contract Award; and

8.46.1.2 the term “tooling” does not include the tools customarily provided by tradespersons in the performance of their duties.

8.47 ADDITIONS OR AMENDMENTS TO THE PRICE TABLE

8.47.1 Where a Unit Price Agreement applies to the Contract or any part thereof, the Engineer and the Contractor may agree in writing,

- 8.47.1.1 to add to the Price Table categories of work, tooling or materials, measurement units, unit prices and estimates of quantities when certain work, tooling and materials to appear on the Final Certificate of Measurement referred to in paragraph 8.44.9 are not included in any of the categories of work, tooling or materials listed in the Price Table; or
- 8.47.1.2 subject to paragraph 8.47.2, change the unit price set out in the Price Table for any category of work, tooling or material set out therein, where a quantity has been estimated for that category of work, tooling or material and the Final Certificate of Measurement referred to in paragraph 8.44.9 indicates or is likely to indicate that the total quantity of that category of work performed, tooling provided or materials used by the Contractor in the performance of the work is
- 8.47.1.2.1 less than 85% of the total estimated quantity, or
- 8.47.1.2.2 more than 115% of the total estimated quantity.
- 8.47.2 The quantities indicated in the Tender and Terms of Payment Form (Section 7a) may be approximate and may be useful for comparison between tenders; a change in a quantity may not result in a change in its unit price otherwise than in accordance with this Article 8.47 *Additions or Amendments to the Price Table*, and provided that the product of multiplying the unit price of the pay item concerned by the corresponding estimated quantity in the Price Table is greater than 5% of the total tender price.
- 8.47.3 If the Engineer and the Contractor do not agree pursuant to paragraph 8.47.1, the Engineer will determine the category and measurement unit of the work, tooling, and materials, and the unit price shall be determined in accordance with Article 8.50 *Determination of Cost – Failing Negotiation*.
- 8.47.4 In no case shall payment following a change necessitated by paragraph 8.47.1.2.1 exceed the amount that would be due if 85% of the estimated quantity was performed.

8.48 DETERMINATION OF COST – PRICE TABLE

- 8.48.1 Whenever it is necessary for the purposes of the Contract to establish the cost of labour, tooling and materials, the quantity of such labour, tooling or materials, expressed in the unit set forth in the Price Table, shall be multiplied by the price set forth opposite such unit in said Price Table.

8.49 DETERMINATION OF COST – NEGOCIATION

- 8.49.1 If the method of determining the cost provided for in Article 8.48 *Determination of Cost – Price Table* cannot be used because the type or category of labour, tooling and materials involved is not included in the Price Table, the cost of the labour, tooling or materials for the purposes of the Contract shall be the amount agreed upon from time to time between the Contractor and the Engineer.

- 8.49.2 For the purposes of paragraph 8.49.1, the Contractor shall provide to the Engineer, when requested thereby, a detailed estimate of the cost to the Contractor of the labour, tooling and materials referred to in paragraph 8.49.1. The detailed estimate shall contain a sufficient description of the facts and circumstances along with the supporting documents to enable the Engineer to determine whether or not the estimate is fair, and the Contractor shall, for this purpose, provide such other information as the Engineer may require.
- 8.49.3 In determining the cost of the labour, tooling and materials involved, the parties shall refer, as a guide, to the provisions of Article 8.50 *Determination of Cost – Failing Negotiation*, provided, however, that the items of expense described therein shall not constitute a list of expenses inclusive of any modification or change.
- 8.49.4 In this regard, the Contractor shall keep such detailed and complete records as are necessary to document the cost of the labour, tooling and materials involved, in accordance with Article 8.51 *Records to be kept by the Contractor*.

8.50 DETERMINATION OF COST – FAILING NEGOCIATION

- 8.50.1 If the Contractor and Engineer fail to establish the cost of the labour, tooling and materials in accordance with the methods set forth in Articles 8.47 *Additions or Amendments to the Price Table*, 8.48 *Determination of Cost – Price Table*, or 8.49 *Determination of Cost – Negotiation* for the purposes stated therein, such cost shall equal the aggregate of:
- 8.50.1.1 all fair and reasonable amounts, net of any federal and provincial tax credits, that were actually spent by the Contractor or legally payable thereby for the labour, tooling and materials constituting any of the categories of expenses referred to in paragraph 8.50.2 that are directly attributable to the performance of the Contract; and
- 8.50.1.2 an amount equal to 10% of the Contractor's total expenses referred to in paragraph 8.50.1.1, representing an allowance for profit and for all other costs and expenses, including, notably, financing costs and interest, overhead and head office expenses but excluding the costs and expenses referred to in paragraph 8.50.1.1 or for a category referred to in paragraph 8.50.2.
- 8.50.2 For the purposes of paragraph 8.50.1.1, the categories of allowable expenses in determining the cost of labour, tooling and materials are the following:
- 8.50.2.1 payments made to subcontractors;
- 8.50.2.2 salaries, wages and travel expenses paid to the Contractor's employees specifically assigned to the performance of the work, except salaries, wages, bonuses, living expenses and travel expenses of the Contractor's employees generally assigned to the Contractor's head office or general office, unless such employees are assigned to the work site with the approval of the Engineer;

- 8.50.2.3 contributions payable under a statutory instrument in respect of workers' compensation, employment insurance, pension plan and compensated absences;
 - 8.50.2.4 the cost of rental of tooling or an amount equivalent to such cost if the tooling is owned by the Contractor, was used and was necessary for the performance of the work, provided that such cost or equivalent amount is reasonable and the use of the tooling has been approved by the Engineer;
 - 8.50.2.5 the cost of maintaining and operating the tooling necessary for the performance of the work and the cost of repairs to such tooling which, in the opinion of the Engineer, are necessary for the proper performance of the Contract, excluding any repairs arising from defects existing prior to the assignment of the tooling to the work;
 - 8.50.2.6 payments for the materials required for the work and incorporated thereinto, or for the materials necessary for the performance of the Contract and used therefor;
 - 8.50.2.7 payments for the preparation, delivery, use, erection, installation, inspection, protection and removal of the tooling and materials necessary for the performance of the Contract and used therefor;
 - 8.50.2.8 any other payment made by the Contractor with the approval of the Engineer and necessary for the performance of the Contract.
- 8.50.3 The cost of the labour, tooling and materials involved shall be determined from the actual amount of expense incurred and savings realized by the Contractor in performing the modification or the change.
- 8.50.4 In this regard, the Contractor shall keep such detailed and complete records as are necessary to determine the cost of the labour, tooling and materials involved, in accordance with Article 8.51 *Records to be kept by the Contractor*.

8.51 RECORDS TO BE KEPT BY THE CONTRACTOR

8.51.1 The Contractor shall:

- 8.51.1.1 keep complete records of the estimated and actual cost of the work, calls for tenders, quoted prices, contracts, correspondence, invoices, receipts and supporting documents relating thereto;
- 8.51.1.2 make available to the Owner, for review and inspection, all documents referred to in paragraph 8.51.1.1;
- 8.51.1.3 allow any person referred to in paragraph 8.51.1.2 to make copies of or take extracts from any of the records and documents referred to in paragraph 8.51.1.1; and
- 8.51.1.4 provide the persons referred to in paragraph 8.51.1.2 with such information as they may require from time to time with respect to such records and documents.

- 8.51.2 The records kept by the Contractor in accordance with paragraph 8.51.1.1 shall be kept intact for two (2) years from the date of issuance of the Final Certificate of Completion referred to in paragraph 8.44.8, or until the expiration of such other period as the Owner may determine.
- 8.51.3 The Contractor shall cause all subcontractors, and all other persons directly or indirectly controlled by or affiliated with the Contractor, and all persons directly or indirectly controlling the Contractor, to agree to comply with paragraphs 8.51.1 and 8.51.2 as if they were the Contractor.

8.52 DISPUTE RESOLUTION PROCEDURE

8.52.1 This procedure shall apply to any dispute or disagreement between the Contractor and the Owner concerning the performance of the work or the obligations of the parties under the Contract, and in particular, but without limiting the generality of the foregoing, concerning any decision or directive made or issued by the Engineer under the Contract or by any person specially authorized by the Engineer and who is directly engaged in the supervision of the performance of the work, or in the administration or management of the Contract.

8.52.1.1 The parties agree to maintain open and honest communication throughout the term of the Contract.

8.52.1.2 The parties agree to consult each other and to cooperate in the performance of the work and in the resolution of any disputes or disagreements that may arise.

8.52.1.3 The parties shall attempt, using all reasonable efforts, to resolve their dispute amicably and agree to disclose all facts and to provide all information and documents relevant to facilitating the negotiations, without prejudice to their rights, in a timely and frank manner.

8.52.2 During the performance of the work,

8.52.2.1 if the Contractor considers itself to be aggrieved in any way with respect to the conditions of the Contract, the Contractor shall, in all cases, as soon as practicable but not later than ten (10) days from the date of the decision or directive made or issued by the Engineer, or from the date of the commencement of the difficulty which in the Contractor's opinion warrants a notice of dispute, issue a written notice setting forth the grounds for its grievance. Such notice of dispute shall be signed by the Contractor and communicated to the Owner.

8.52.2.1.1 The notice shall be sufficiently detailed and reasoned to enable the Owner to make any decisions or take any action required by the circumstances.

8.52.2.1.2 The notice shall specify the anticipated changes to the detailed work schedule, even, if applicable, in a preliminary manner.

- 8.52.2.1.3 The notice shall contain a sufficient description of the facts and circumstances giving rise to the grievance to enable the Owner to undertake a review of the grievance and determine whether or not it is justified.
- 8.52.2.1.4 The Contractor shall, to this end, promptly provide such other information as the Owner may require.
- 8.52.2.2 The Contractor and the Owner shall attempt to resolve the dispute during the performance of the work through negotiation. If the persons heretofore responsible for the administration of the Contract are unable to reach agreement, then the parties shall involve one or more officers of the Contractor and one or more senior officers representing the Owner.
- 8.52.2.2.1 The Contractor undertakes to provide any other information or documents required by the Owner within the time stipulated by the Owner or otherwise agreed upon.
- 8.52.2.3 After reviewing the notice of dispute, the Owner will inform the Contractor in writing of its position on the dispute and, where applicable, propose a resolution.
- 8.52.2.3.1 Subject to paragraph 8.52.2.3.2, if the Owner finds the Contractor's grievance to be well-founded, the Owner will reimburse the Contractor for the cost of the additional labour, tooling, and materials necessary to carry out the decision or directive that was the subject of the grievance.
- 8.52.2.3.2 The cost referred to in paragraph 8.52.2.3.1 shall be calculated in accordance with the provisions of Articles 8.47 *Additions or Amendments to the Price Table* to 8.50 *Determination of Cost – Failing Negotiation*.
- 8.52.2.4 When an agreement is reached, the Owner will forward a change order to the Contractor.
- 8.52.2.5 Any dispute not resolved by the date of the issuance of the last Interim Certificate of Completion shall be dealt with in accordance with paragraphs 8.52.3 et seq.
- 8.52.2.6 Any grievance by the Contractor under paragraph 8.52.2 shall not relieve the Contractor from complying with the decision or directive rendered or issued by the Engineer with respect to such grievance:
- 8.52.2.6.1 the grievance shall not be used by the Contractor as a pretext for slowing down the work or ceasing performance of the Contract or any part thereof, including the part in dispute;
- 8.52.2.6.2 if the Contractor challenges in accordance with paragraph 8.52.2, the Contractor's compliance with the decision or directive that was challenged shall not be construed as an admission by the Contractor of the correctness of that decision or directive and may not constitute a plea of inadmissibility if the dispute is eventually referred to mediation, arbitration or a tribunal.

8.52.3 After completion of the work,

8.52.3.1 not later than sixty (60) days from the date of issuance of the last Interim Certificate of Completion, if the Contractor still considers itself to be aggrieved in any way with respect to the conditions of the Contract, the Contractor shall deliver to the Owner a detailed claim which shall set forth and consolidate, for each unresolved dispute, at a minimum the following information and documents:

8.52.3.1.1 a description, a history and an explanation of the dispute indicating when, how and why the problem arose, from the Contractor's point of view, as well as the position taken by the Owner;

8.52.3.1.2 the amount claimed and, if applicable, the details of the methods of calculation used;

8.52.3.1.3 the effect on the detailed schedule of the work through an analysis of the delays using an appropriate methodology;

8.52.3.1.4 all supporting documents to substantiate its representations;

8.52.3.1.5 an affidavit signed by an officer of the Contractor certifying that all information contained therein is true, accurate and complete;

8.52.3.1.6 an undertaking to provide any other information or documents required by the Owner within the time period stipulated thereby.

8.52.3.2 If the Contractor fails to submit a detailed claim within the time specified in paragraph 8.52.3.1, the Contractor shall be deemed not to consider itself aggrieved in any way with respect to the conditions of the Contract, and shall be deemed to expressly release the Owner from any claim relating to the Contract.

8.52.3.3 Following submission of its detailed claim, the Contractor shall provide the Owner, within the time stipulated by the Owner, with any other information or documents required thereby.

8.52.3.4 If, within four (4) months from the date of issuance of the last Interim Certificate of Completion, or within any additional time granted by the Owner, the claim does not contain in a clear, detailed and complete manner, all of the information and documents referred to in paragraph 8.52.3.1, the Contractor's claim will be deemed to be invalid and will be rejected by the Owner.

8.52.3.5 Provided it is clear, accurate and complete, and accompanied by all supporting documents, the Owner will consider the detailed claim submitted by the Contractor.

- 8.52.3.5.1 If the Owner finds the Contractor's detailed claim to be well founded, in whole or in part, the Owner will reimburse the Contractor for the cost of the labour, tooling and materials thus recognized, calculated in accordance with the provisions of Articles 8.47 *Additions or Amendments to the Price Table* to 8.50 *Determination of Cost – Failing Negotiation*.
- 8.52.3.5.2 The Owner will notify the Contractor in writing of its decision within six (6) months from the date of receipt thereby of the last information or document transmitted by the Contractor.
- 8.52.3.6 Notwithstanding paragraph 8.52.3.1, the Contractor shall deliver to the Owner the information and documents relating to an unresolved dispute relating to work performed after the issuance of the last Interim Certificate of Completion referred to in paragraph 8.44.1 no later than sixty (60) days after the issuance of the Final Certificate of Completion referred to in paragraph 8.44.8.

8.52.4 Confidentiality

- 8.52.4.1 Unless otherwise required by law, all information exchanged by the parties and representatives thereof under Article 8.52 *Dispute Resolution Procedure*, by whatever means, shall be exchanged without prejudice and in a confidential manner.
- 8.52.4.2 The parties and their counsels or representatives shall protect the confidentiality of all matters and documents disclosed, except where disclosure thereof is necessary to implement any agreement between the parties or is required by law.
- 8.52.4.3 However, the admissibility or disclosure of evidence that may otherwise be received as evidence or whose production may be required in the course of an examination or arbitral or legal proceedings is not affected by the use of such evidence in the context of Article 8.52 *Dispute Resolution Procedure*.
- 8.52.4.4 Neither party may make a recording, transcript, take minutes or otherwise document a negotiation session.

8.52.5 Subsequent Proceedings

- 8.52.5.1 The parties may not rely on or introduce into evidence in a mediation or arbitral or legal proceeding,
 - 8.52.5.1.1 a document of the other party that cannot otherwise be produced in that proceeding;
 - 8.52.5.1.2 opinions expressed or suggestions made by a party with respect to the possible resolution of the issues in dispute;
 - 8.52.5.1.3 an admission made by a party, during negotiations or otherwise, unless the party making the admission has expressly consented thereto;

8.52.5.1.4 the fact that a party has indicated a willingness to make or accept a proposal or recommendation for resolution.

8.52.5.2 Any proposal or offer of resolution, whether accepted or not, is made subject to the respective rights of the parties, without prejudice or admission of liability. The Owner reserves the right to modify it and even to withdraw it completely.

8.52.6 Mediation and Arbitration

8.52.6.1 The parties agree to consider mediation or arbitration before resorting to judicial action to resolve any dispute that has not been resolved under paragraph 8.52.3.

8.52.6.2 To that end, the parties agree to meet to consider the advisability of using one of these methods of dispute resolution, or any other private dispute resolution method, to resolve any unresolved dispute.

8.52.6.3 If the parties agree to submit any unresolved dispute to arbitration, the arbitration proceedings shall be governed and conducted in accordance with the *Commercial Arbitration Act* (RSC 1985, c.17 (2nd Supp.)).

8.52.7 Legal Proceedings

8.52.7.1 Subject to the provisions of paragraph 8.52.3.2, either party may bring such legal action or proceedings as it deems appropriate, including, without limiting the foregoing, any legal action that it could have immediately brought, had it not been for the provisions of this Article 8.52 *Dispute Resolution Procedure*.

8.53 CONFLICT OF INTEREST

8.53.1 It is understood that a person who is subject to the post-employment provisions of the Conflict of Interest and Post-Employment Code for Public Office Holders or the Values and Ethics Code for the Public Sector cannot derive any direct benefit from this Contract, unless that person complies with the applicable post-employment provisions.

8.54 CONTRACTOR'S STATUS

8.54.1 The Contractor will be retained under the Contract as an independent contractor.

8.54.2 The Contractor and any employee thereof is not retained under the Contract as an employee, servant or agent of the Owner.

8.54.3 For the purposes of paragraphs 8.54.1 and 8.54.2, the Contractor shall be solely responsible for all payments and deductions required by law, including those required by the Canada Pension Plan, Québec Pension Plan, Employment Insurance, Workers' Compensation or Income Tax.

8.55 HUMAN REMAINS, ARCHAEOLOGICAL REMAINS AND OBJECTS OF HISTORICAL OR SCIENTIFIC INTEREST

8.55.1 The following definitions apply to this article:

8.55.1.1 “human remains” means all or part of a human corpse, regardless of the time elapsed since death;

8.55.1.2 archaeological remains” means items, artefacts or objects made, modified or used by human beings in the past, which may, notably, include stone, wood or iron structures or monuments, discarded objects, bone artefacts, weapons, tools, coins and pottery;

8.55.1.3 “objects of historical or scientific interest” means objects or things of natural or artificial origin of any period which are not archaeological remains but which may be of some interest to society because of their historical or scientific significance, value, rarity, natural beauty or some other quality

8.55.2 If during the course of the work, the Contractor discovers any object, item or thing that is described in paragraph 8.55.1 or that resembles any object, item or thing described in paragraph 8.55.1, the Contractor shall:

8.55.2.1 take all reasonable steps, including stopping work in the affected area, to protect and preserve said object, item or thing;

8.55.2.2 immediately notify the Engineer in writing of the situation; and

8.55.2.3 take all reasonable steps necessary to mitigate any additional costs that may result from any work stoppage.

8.55.3 Upon receipt of a notice transmitted in accordance with paragraph 8.55.2.2, the Engineer shall, in a timely manner, determine whether the object, item or thing either corresponds to the description given in paragraph 8.55.1 or is covered by said paragraph, and indicate to the Contractor, in writing, the action or work to be undertaken as a result of his determination.

8.55.4 The Engineer, may at any time, retain the services of experts, particularly archaeologists or historians, where appropriate, to assist him in the investigation, examination, measurement or recording of other data, the installation of permanent protective devices or the relocation of the object, item or thing discovered by the Contractor, as well as the monitoring to be carried out with respect to the possibility of subsequent discoveries. The Contractor shall, to the satisfaction of the Engineer, allow them access to the site and co-operate with them in the performance of their duties and obligations.

8.55.5 Human remains, archaeological remains objects of historical or scientific interest shall remain the property of the Owner.

8.55.6 Except as otherwise provided in the Contract, the provisions of Article 8.30 *Modifications to the Work* apply.

8.56 CONTAMINATED SITE CONDITION

8.56.1 For the purposes of this article, a contaminated site condition exists when toxic, radioactive or hazardous substances or materials, or other pollutants are present at the work site in quantities or concentrations high enough to constitute an actual or potential hazard to the environment, property, or the health and safety of any person.

8.56.2 If the Contractor identifies a contaminated site condition or has reasonable cause to believe that a contaminated site condition exists at the work site, the Contractor shall:

8.56.2.1 take all reasonable steps, including stopping work, to prevent such contaminated site condition from resulting in any injury, illness or death, or damage to property or the environment;

8.56.2.2 immediately notify the Engineer in writing of the situation;

8.56.2.3 take all reasonable steps necessary to mitigate any additional costs that may result from any work stoppage.

8.56.3 Upon receipt of a notice transmitted in accordance with paragraph 8.56.2.2, the Engineer will, in a timely manner, determine whether a contaminated site condition exists that either corresponds to the description given in paragraph 8.56.1 or is covered by said paragraph, and indicate in writing to the Contractor the action or work to be undertaken as a result of his determination.

8.56.4 If the Engineer deems it necessary to retain the services of the Contractor, the Contractor shall follow the directives given thereto by the Engineer as to the excavation, treatment and disposal of the contaminated substances or materials.

8.56.5 The Engineer may at any time retain the services of experts and specialized contractors to assist him in determining the existence and extent of the contamination as well as the appropriate action to be taken. The Contractor shall, to the satisfaction of the Engineer, allow them access to the site and co-operate with them in the performance of their duties and obligations.

8.56.6 Except as otherwise provided in the Contract, the provisions of Article 8.30 *Modifications to the Work* apply.

8.57 APPLICABLE LAWS

8.57.1 The Contractor shall comply with all federal, provincial, territorial and municipal legislative and regulatory provisions applicable to the performance of the work.

8.57.2 Except as otherwise provided in the Contract, the Contractor shall obtain all permits, certificates and licences relating to the performance of the work.

8.58 INTEGRITY PROVISIONS – CONTRACT

8.58.1 Statement

8.58.1.1 The Contractor undertakes to comply with the terms of this Article 8.58 relating to integrity, which is rooted, with some modifications, in the *Ineligibility and Suspension Policy* issued by PSPC and available at: <https://www.tpsqc-pwgsc.gc.ca/ci-if/politique-policy-eng.html>. The Contractor further undertakes to comply with the excerpts from the *Code of Conduct for Procurement* issued by PSPC, which excerpts are attached in Appendix 2-II *Instructions to Tenderers*, and to comply with the Owner's *Code of Conduct and Ethics for Suppliers*, available at: https://jacquescartierchamplain.ca/site/assets/files/5755/code-of-conduct-and-ethics-for-suppliers_final_20220908.pdf.

8.58.1.2 The Contractor certifies that it understands that the commission of certain acts or offences and the fact of having pleaded guilty to or having been convicted of certain offences, the making of a false declaration in its tender or under the Contract, or the failure to keep up to date the information required hereunder may result in a withdrawal of the work for default pursuant to Article 8.38 *Work Withdrawn from the Contractor*. If the Contractor has made a false declaration in its tender or under the Contract, fails to keep up to date the information required hereunder or if the Contractor or any of the Contractor's Affiliates fails to remain free and clear of the convictions specified in this Article 8.58 relating to integrity during the term of the Contract, the Contractor will be considered in default and the Owner will have the right to withdraw the work from the Contractor under Article 8.38 *Work Withdrawn from the Contractor*. The Contractor acknowledges that a withdrawal of the work does not restrict the right of the Owner to exercise any other remedies available thereto against the Contractor and the Contractor agrees to immediately remit the advance payments made.

8.58.2 List of Names

8.58.2.1 In accordance with Article 2.24.3 *List of Names* of Section 2 *Instructions to Tenderers*, the Contractor shall immediately inform the Owner, in writing, of any changes in the list of the names of the directors and of the owners during the term of the Contract.

8.58.3 Verification of Information

8.58.3.1 The Contractor certifies that it is informed, and that its Affiliates are informed, that the Owner may, at any time during the term of the Contract, verify the information provided by the Contractor, notably the information on the acts, convictions and conditional or absolute discharges specified in this Article 8.58 relating to integrity. The Owner may request further information, consent forms and other evidence proving the Contractor's identity and eligibility to continue the Contract with the Owner.

8.58.4 Lobbying Act

8.58.4.1 The Contractor certifies that neither the Contractor nor any of the Contractor's Affiliates have, at any time during the term of the Contract, been convicted of or pleaded guilty to an offence pursuant to paragraph 14(1), with respect to sections 5 or 7 of the *Lobbying Act* (RSC 1985, c. 44 (4th Supp.)).

8.58.5 Canadian Offences Resulting in a Legal Incapacity

8.58.5.1 The Contractor certifies that neither the Contractor nor any of the Contractor's Affiliates have been convicted of or pleaded guilty to an offence under any of the following provisions, which would result in a legal incapacity as defined by paragraph 750 (3) of the *Criminal Code* (RSC 1985, c. C-46) and for which they have not received pardon or obtained discharge in accordance with Article 8.58.10 *Canadian Pardons and Discharges*:

8.58.5.1.1 subsection 80(1)d) (False entry, certificate or return), subsection 80(2) (Fraud against His Majesty) or section 154.01 (Fraud against His Majesty) of the *Financial Administration Act* (RSC 1985, c. F-11), or

8.58.5.1.2 section 121 (Frauds on the government and Contractor subscribing to election fund), section 124 (Selling or purchasing office), section 380 (Fraud) for fraud committed against His Majesty or section 418 (Selling defective stores to His Majesty) of the *Criminal Code* (RSC 1985, c. C-46).

8.58.5.2 The Contractor certifies that it has not been convicted of or pleaded guilty to an offence under the provisions of paragraph 8.58.5.1 and has not directed, influenced, authorized, assented to, acquiesced in or participated in the commission or omission of the acts or offences that would render the Contractor's Affiliate ineligible to be awarded the Contract in accordance with paragraph 8.58.5.1.

8.58.6 Canadian Offences

8.58.6.1 The Contractor certifies:

8.58.6.1.1 that neither the Contractor nor any of the Contractor's Affiliates have, at any time during the term of the Contract, been convicted of or pleaded guilty to an offence under any of the following provisions that would render them ineligible to be awarded the Contract pursuant to this Article 8.58 relating to integrity and for which they have not received pardon or obtained discharge in accordance with Article 8.58.10 *Canadian Pardons and Discharges*:

- 8.58.6.1.1.1 section 119 (Bribery of judicial officers, etc.), section 120 (Bribery of officers), section 346 (Extortion), sections 366 to 368 (Forgery and other offences resembling forgery), section 382 (Fraudulent manipulation of stock exchange transactions), section 382.1 (Prohibited insider trading), section 397 (Falsification of books and documents), section 422 (Criminal breach of contract), section 426 (Secret commissions), section 462.31 (Laundering proceeds of crime), or sections 467.11 to 467.13 (Participation in activities of criminal organization) of the *Criminal Code* (RSC 1985, c. C-46), or
- 8.58.6.1.1.2 section 45 (Conspiracies, agreements or arrangements between competitors), section 46 (Foreign directives), section 47 (Bid rigging), section 49 (Agreements or arrangements of federal financial institutions), section 52 (False or misleading representation), or section 53 (Deceptive notice of winning a prize) of the *Competition Act* (RSC (1985), c. C-34), or
- 8.58.6.1.1.3 section 239 (False or deceptive statements) of the *Income Tax Act* (RSC 1985, c. 1 (5th Supp.)), or
- 8.58.6.1.1.4 section 327 (False or deceptive statements) of the *Excise Tax Act* (RSC 1985, c. E-15), or
- 8.58.6.1.1.5 section 3 (Bribing a foreign public official), section 4 (Accounting) or section 5 (Offence committed outside Canada) of the *Corruption of Foreign Public Officials Act* (SC 1998, c. 34), or
- 8.58.6.1.1.6 section 5 (Trafficking in substance), section 6 (Importing and exporting), or 7 (Production of substance) of the *Controlled Drugs and Substances Act* (SC 1999, c. 19), or
- 8.58.6.1.2 that the Contractor has not been convicted of or pleaded guilty to an offence under the provisions of paragraph 8.58.6.1.1 and has not directed, influenced, authorized, assented to, acquiesced in or participated in the commission or omission of the acts or offences that would render the Contractor's Affiliate ineligible to be awarded the Contract in accordance with paragraph 8.58.6.1.1.

8.58.7 Foreign Offences

8.58.7.1 The Contractor certifies:

- 8.58.7.1.1 that neither the Contractor nor any of the Contractor's Affiliates have, at any time during the term of the Contract, been convicted of or pleaded guilty to an offence in a jurisdiction other than Canada that would, in the Owner's opinion, be similar to an offence described in Articles 8.58.4 *Lobbying Act*, 8.58.5 *Canadian Offences Resulting in a Legal Incapacity* and 8.58.6 *Canadian Offences*, and for which they have not received pardon or obtained discharge in accordance with Article 8.58.11 *Foreign Pardons and Discharges* and that:

- 8.58.7.1.1.1 the court before which the Contractor or Affiliates thereof appeared acted within the court's jurisdiction;
- 8.58.7.1.1.2 the Contractor or Affiliates thereof appeared during the court's proceedings or submitted to the court's jurisdiction;
- 8.58.7.1.1.3 the court's decision was not obtained by fraud; and
- 8.58.7.1.1.4 the Contractor or Affiliates thereof were entitled to present to the court every defence that the Contractor or Affiliates thereof would have been entitled to present had the proceeding been tried in Canada; or
- 8.58.7.1.2 that the Contractor has not been convicted of or pleaded guilty to an offence under the provisions of paragraph 8.58.7.1.1 and has not directed, influenced, authorized, assented to, acquiesced in or participated in the commission or omission of the acts or offences that would render the Contractor's Affiliate ineligible to be awarded the Contract in accordance with paragraph 8.58.7.1.1.

8.58.8 Default by the Contractor

- 8.58.8.1 The Contractor certifies that it understands that if the Contractor or any of the Contractor's Affiliates has been convicted of or pleaded guilty to an offence or held responsible for an act as described in Articles 8.58.4 *Lobbying Act*, 8.58.5 *Canadian Offences Resulting in a Legal Incapacity*, 8.58.6 *Canadian Offences* and 8.58.7 *Foreign Offences*, the Contractor will be considered in default and the Owner will have the right to withdraw the work from the Contractor under Article 8.38 *Work Withdrawn from the Contractor*.
- 8.58.8.2 The Contractor further certifies that it understands that if, at any time during the term of the Contract, the Contractor is listed on the Ineligibility and Suspension List in accordance with the *Ineligibility and Suspension Policy* issued by PSPC, the Contractor will be considered in default and the Owner will have the right to withdraw the work from the Contractor under Article 8.38 *Work Withdrawn from the Contractor*.
- 8.58.8.3 The Contractor certifies that it understands that if, at any time during the term of the Contract, the Owner determines that the Contractor is a successor to a company that would be ineligible to be awarded the Contract in the circumstances described in Article 2.12.8 *Anti-Avoidance Provisions* of Section 2 *Instructions to Tenderers*, the Contractor will be considered in default and the Owner will have the right to withdraw the work from the Contractor under Article 8.38 *Work Withdrawn from the Contractor*.

8.58.9 Declaration of Convicted Offences

- 8.58.9.1 The Contractor understands that it has an on-going obligation to immediately report to the Owner any conviction or guilty plea as a result of an offence or act as listed in Articles 8.58.4 *Lobbying Act*, 8.58.5 *Canadian Offences Resulting in a Legal Incapacity*, 8.58.6 *Canadian Offences* and 8.58.7 *Foreign Offences*.

8.58.10 Canadian Pardons and Discharges

- 8.58.10.1 The commission of an act or offence or the fact of having pleaded guilty to or been convicted of an offence or of an act as listed in Articles 8.58.4 *Lobbying Act*, 8.58.5 *Canadian Offences Resulting in a Legal Incapacity* and 8.58.6 *Canadian Offences* will not result in a withdrawal of the work under Article 8.38 *Work Withdrawn from the Contractor* if the Contractor or any of the Contractor's Affiliates:
- 8.58.10.1.1 has been granted an absolute discharge in respect of the offence, or a conditional discharge in respect of the offence and that those conditions have been satisfied;
 - 8.58.10.1.2 has been granted a pardon under His Majesty's royal prerogative of mercy;
 - 8.58.10.1.3 has been granted a pardon under section 748 of the *Criminal Code* (RSC 1985, c. C-46);
 - 8.58.10.1.4 has received a suspension notification under the *Criminal Records Act* (RSC 1985, c. C-47);
 - 8.58.10.1.5 has been granted a pardon under the *Criminal Records Act* (RSC 1985, c. C-47) – as that Act read immediately before the day section 165 of the *Safe Streets and Communities Act* came into force (SC 2012, c. 1).

8.58.11 Foreign Pardons and Discharges

- 8.58.11.1 The commission, outside Canada, of an act or offence or the fact of having pleaded guilty to or been convicted of an offence or of an act committed outside Canada as listed in Article 8.58.7 *Foreign Offences* will not result in a withdrawal of the work under Article 8.38 *Work Withdrawn from the Contractor* if the Contractor or any of the Contractor's Affiliates benefited from foreign measures that the Owner considers to be similar in nature to the Canadian pardon or to the conditional or absolute discharge, record suspension or restoration of the rights by the Governor in Council.

8.58.12 Subcontractors' Obligations

- 8.58.12.1 The Contractor certifies that the contracts entered into with its subcontractors include provisions relating to integrity that are similar to those imposed in this Article 8.58 relating to integrity, and that its subcontractors comply therewith. Any failure by the Contractor to comply with this paragraph 8.58.12 may, without however being limited thereto, result in the Contractor being required to replace a subcontractor in accordance with Article 8.4 *Subcontracting by Contractor*.

8.59 CONFIDENTIALITY

- 8.59.1 The Contractor shall keep confidential all information provided to the Contractor by or on behalf of the Owner in connection with the Contract, including the confidential information or the information protected by intellectual property rights owned by third parties, as well as the information conceived, generated or produced by the Contractor in the performance of the Contract where the copyright or any other intellectual property rights therein are owned by the Owner under the Contract.
- 8.59.1.1 The Contractor shall not disclose such information without the written authorization of the Owner.
- 8.59.1.2 The Contractor may disclose to a subcontractor any information necessary to perform the subcontract, provided that the subcontractor agrees to keep such information confidential and to use for the purpose of performing the subcontract.
- 8.59.1.3 The Contractor shall not, among other things, discuss, provide information, or express opinions on any matter relating to the Contract without the written authorization of the Owner.
- 8.59.2 The Contractor agrees to use any information provided thereto by or on behalf of the Owner only for the purposes of the Contract. The Contractor acknowledges that such information shall remain the property of the Owner or of the third party, as the case may be.
- 8.59.2.1 Except as otherwise provided in the Contract, the Contractor shall destroy, upon completion of the work under the Contract, upon termination of the Contract or at any other earlier time at the request of the Owner, all such information and all copies, drafts, working papers and notes containing such information.
- 8.59.3 Subject to the *Access to Information Act* (RSC 1985, c. A-1), and subject to the Owner's rights under the Contract to communicate or disclose, the Owner shall not communicate or disclose outside its organization or the Government of Canada any information delivered to the Owner under the Contract that belongs to the Contractor or to the subcontractor.
- 8.59.4 The obligations of the parties under this article do not extend to the following information:
- 8.59.4.1 information that is publicly available from a source other than the other party; or
- 8.59.4.2 information disclosed to another party by a source other than the other party, except where the party knows that the source has undertaken to the other party not to disclose the information; or
- 8.59.4.3 information generated by another party without using the other party's information.

8.60 SIGNS, ADVERTISEMENT AND INQUIRIES

8.60.1 Except for such identification signs as may be required by law, the Contractor shall not place or permit the placing of any sign, advertisement or poster on the work site without the prior written permission of the Owner.

8.60.1.1 The Contractor shall not disseminate to the public, including social networking platforms, the Owner's name and logo, or any images or videos in connection with the Contract, except with the written permission of the Owner.

8.60.1.2 Any inquiries regarding the worksite or the work received from any written or electronic media or from persons external to the worksite shall be referred to the Owner.

8.61 INTELLECTUAL PROPERTY

8.61.1 Authorization

8.61.1.1 The Contractor shall obtain, at its own expense, all necessary authorizations to use any materials, tooling and processes that are patented or subject to patent or licence in connection with the performance of the work and the maintenance and repair of the structures under the Contract.

8.61.2 Ownership of Technical Documents, Prototypes and Inventions

8.61.2.1 The technical documents and prototypes produced by the Contractor for the performance of the work under the Contract shall be and remain the property of the Owner. The Contractor shall report to the Engineer, in the manner prescribed by the Engineer, with respect to such documents and prototypes.

8.61.2.2 The technical documents shall bear the following copyright notice:

“©THE JACQUES CARTIER AND CHAMPLAIN BRIDGES INCORPORATED 20__”

8.61.2.3 The technical information and inventions conceived, developed or first applied during the performance of the work under the Contract shall be the property of the Owner. The Contractor shall have no rights therein or thereto. The Contractor shall not disclose or use such information or invention other than in the performance of the work under the Contract, nor shall the Contractor sell to others any article in which such information or invention has been applied.

8.61.2.4 The expression “technical documents” includes the drawings, plans, reports, photographs, specifications, software components, surveys, calculations and other data, information and documents collected, collated, drawn or developed, including computer printouts.

8.61.2.5 The term “invention” means any development, process, machine, fabrication or composition of matter or any improvement thereof.

8.61.2.6 The term “prototype” refers to a model, a mock-up, a sample or a first copy.

8.62 PERFORMANCE EVALUATION

8.62.1 In order to ensure that the services rendered by the Contractor meet the Owner's expectations, evaluations of the Contractor's performance will be conducted during the performance of the work and upon completion thereof. For this purpose, the Owner will complete the *Performance Evaluation Form*, a copy of which is appended hereto and which may be changed at the Owner's discretion.

END OF SECTION