

TENDER DOCUMENTS

SECTION 8 GENERAL CONDITIONS

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SECTION 8 GENERAL CONDITIONS

GC1 INTERPRETATION

GC1.1 In the Contract

GC1.1.1 Where reference is made to a part of the Contract by means of numbers preceded by letters, the reference shall be construed to be a reference to the particular part of the contract that is identified by that combination of letters and numbers and to any other part of the Contract referred to therein;

GC1.1.2 “Affiliate”:

GC1.1.2.1 person, including, without however being limited to, parent companies, subsidiaries, whether or not wholly or partially owned, as well as a senior officer;

GC1.1.2.2 one person is an affiliate of another person if:

GC1.1.2.2.1 one person is controlled by the other person;

GC1.1.2.2.2 both persons are controlled by a third person;

GC1.1.2.2.3 both persons are under common control; or

GC1.1.2.2.4 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;

GC1.1.2.3 indicia of control, whether direct or indirect, exercised or not, include, but are not limited to, common management, common ownership, identity of interests (often found in members of the same family), shared facilities and equipment or common use of employees;

GC1.1.2.4 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 the amalgamation or merger if:

GC1.1.2.4.1 the new corporation had existed immediately before the amalgamation or merger; and

GC1.1.2.4.2 the persons who were the shareholders of the new corporation immediately after the amalgamation or fusion had been the shareholders of the new corporation immediately before the amalgamation or fusion.

GC1.1.3 “Senior Officer”:

GC1.1.3.1 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.

GC1.1.4 “Contract”: the Contract documents referred to in the *Standard Administrative Conditions*;

GC1.1.5 “Control”:

GC1.1.5.1 direct control, such as where:

GC1.1.5.1.1 a person controls a body corporate if securities of the body corporate to which are attached more than 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;

GC1.1.5.1.2 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 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;

GC1.1.5.1.3 a person controls an unincorporated entity, other than a limited partnership, if more than 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;

GC1.1.5.1.4 the general partner of a limited partnership controls the limited partnership;

GC1.1.5.1.5 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.

GC1.1.5.2 deemed control, such as where:

GC1.1.5.2.1 a person who controls an entity is deemed to control any entity that is controlled, or deemed to be controlled, by the entity.

- GC1.1.5.3 indirect control, such as where:
- GC1.1.5.3.1 a person is deemed to control, within the meaning of paragraphs GC1.1.5.1 or GC1.1.5.2, an entity where the aggregate of:
- GC1.1.5.3.1.1 any securities of the entity that are beneficially owned by that person;
- GC1.1.5.3.1.2 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 GC.1.1.5.3.1.2 that beneficially own securities of the entity were one person, that person would control the entity.
- GC1.1.6 “Contract security”: any security given by the **Contractor** to the **Owner** in accordance with the Contract;
- GC1.1.7 “Engineer”: the officer or employee of the **Owner** who is designated pursuant to the *Standard Administrative Conditions* and includes a person specially authorized by him to perform, on his behalf, any of his functions under the Contract;
- GC1.1.8 “review by the Engineer”: the Engineer reviews 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 noted. Permission to proceed may also be granted conditionally to the implementation of corrections which the Engineer has indicated on the documents. The **Contractor** may not proceed if the document is rejected or the review stamp requires a revised document to be resubmitted.
- GC1.1.8.1 Review by the Engineer does not, in any way, relieve the **Contractor** from full responsibility for the correctness of submitted documents, procedures and of the **Contractor**'s work and their conformity with the Contract documents and the field conditions.
- GC1.1.9 “material” includes all commodities, articles and things required to be furnished by or for the **Contractor** under the Contract for incorporation into the work;
- GC1.1.10 “person” includes, unless the context otherwise requires, a partnership, proprietorship, firm, joint venture, consortium and a corporation;
- GC1.1.11 “President”: the person holding the position of President of The Jacques Cartier and Champlain Bridges Incorporated, and includes a person acting for, or if the office is vacant, in the place of such President, and his successors in the office, and his or their lawful deputy and any of his or their representatives appointed for the purposes of the Contract;

- GC1.1.12 “plant” includes all tools, implements, machinery, vehicles, buildings, structures, equipment and commodities, articles and things other than material, that are necessary for the due performance of the work;
- GC1.1.13 “subcontractor”: a person to whom the **Contractor** has, subject to GC4 *Subcontracting by Contractor*, subcontracted the whole or any part of the work;
- GC1.1.14 “superintendent”: the employee of the **Contractor** who is designated by the **Contractor** to act pursuant to GC19 *Contractor’s Superintendent*;
- GC1.1.15 “work” includes, subject only to any express stipulation in the Contract to the contrary, everything that is necessary to be done, furnished or delivered by the **Contractor** to perform the Contract.
- GC1.2 The headings in the Contract documents, other than in the Drawings and Specifications, form no part of the Contract but are inserted for convenience of reference only.
- GC1.3 In interpreting the Contract, in the event of discrepancies or conflicts between anything in the Drawings and Specifications, and the *General Conditions*, the *General Conditions* govern.
- GC1.4 In interpreting the Drawings and Specifications, in the event of discrepancies or conflicts between
- GC1.4.1 the Specifications and Drawings, the Specifications govern;
- GC1.4.2 the Drawings, the Drawings drawn with the largest scale govern; and
- GC1.4.3 figured dimensions and scaled dimensions, the figured dimensions govern.

GC2 SUCCESSORS AND ASSIGNS

- GC2.1 The Contract shall inure to the benefit of and be binding upon the parties hereto and their lawful heirs, executors, administrators, successors and assigns.

GC3 ASSIGNMENT OF CONTRACT

- GC3.1 The Contract may not be assigned by the **Contractor**, either in whole or in part, without the written consent of the President.

GC4 SUBCONTRACTING BY CONTRACTOR

- GC4.1 Subject to these *General Conditions*, the **Contractor** may subcontract any part of the work.

- GC4.1.1 The **Contractor** shall not however subcontract to a contractor who holds a limited license within the meaning of the *Building Act* (CQLR, c.B-1.1), that is listed in the *Register of Enterprises Ineligible for Public Contracts* (“Registre des entreprises non admissibles aux contrats publics, (RENA)”) 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.
- GC4.2 The **Contractor** shall notify the Engineer in writing of its intention to subcontract.
- GC4.3 A notification referred to in GC4.2 shall identify the part of the work, and the subcontractor with whom it is intended to subcontract.
- GC4.4 The Engineer may object to the intended subcontracting by notifying the **Contractor** in writing within six (6) days of receipt by the Engineer of notification referred to in GC4.2.
- GC4.5 If the Engineer objects to a subcontracting pursuant to GC4.4, the **Contractor** shall not enter into the intended subcontract.
- GC4.6 The **Contractor** shall not, without the written consent of the Engineer, change a subcontractor who has been engaged by it in accordance with these *General Conditions*.
- GC4.7 Every subcontract entered into by the **Contractor** shall adopt all of the terms and conditions of this Contract that are of general application.
- GC4.8 Neither a subcontracting nor the Engineer's consent to a subcontracting by the **Contractor** shall be construed to relieve the **Contractor** from any obligation under the Contract or to impose any liability upon the **Owner**, and cannot create a business contract between the **Owner** and any subcontractor, their representatives or employees.

GC5 AMENDMENTS

- GC5.1 No amendment or change in any of the provisions of the Contract shall have any force or effect until it is reduced to writing.
- GC5.2 The **Contractor** shall, from the outset of the event giving rise to an amendment or change request:
- GC5.2.1 give the Engineer, within the prescribed time limit or, failing that, as soon as possible, a written notice informing him of the **Contractor's** intention to submit an amendment request;
- GC5.2.2 take all reasonable steps to mitigate any loss or expense and any delay that may be incurred as a result of that event;

- GC5.2.3 keep the detailed and full records comprising all that is necessary to assess the amendment request in accordance with GC51 *Records to be kept by Contractor*.
- GC5.3 The Engineer decides whether there is in fact any amendment or change to the Contract and, if so, whether the amendment or change increases or decreases the cost of the work for the **Contractor**.
- GC5.4 The increase or decrease in the cost of the work is calculated in accordance with GC47 *Additions or Amendments to Price Table* to GC50 *Determination of Cost – Failing Negotiation*.
- GC5.5 The **Contractor** shall perform the work in accordance with the decisions and directions of the Engineer.
- GC5.6 If the **Contractor** does not keep detailed and full records of the means used to execute the amendment or change in accordance with GC5.2.3, such failure shall be deemed to be a waiver of any right that it might have had.

GC6 NO IMPLIED OBLIGATIONS

- GC6.1 No implied terms or obligations of any kind by or on behalf of the **Owner** shall arise from anything in the Contract and the express covenants and agreements therein contained and made by the **Owner** are the only covenants and agreements upon which any rights or recourse against the **Owner** are to be founded.
- GC6.2 The Contract supersedes and cancels all communications, negotiations and agreements, written or oral, relating to the work that was made prior to the date of the Contract.

GC7 TIME OF THE ESSENCE

- GC7.1 Time is of the essence of the Contract.

GC8 INDEMNIFICATION BY CONTRACTOR

- GC8.1 The **Contractor** shall indemnify and save the **Owner**, The St-Lawrence Seaway Management Corporation and Her Majesty in right of Canada harmless from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings by whomever made, brought or prosecuted and in any manner based upon, arising out of, related to, occasioned by or attributable to the activities of the **Contractor**, its employees, agents, subcontractors and subcontractors in performing the work including an infringement or an alleged infringement of a patent of invention or any other kind of intellectual property.
- GC8.2 For the purposes of GC8.1, "activities" includes any act improperly carried out, any omission to carry out an act and any delay in carrying out an act.

GC9 INDEMNIFICATION BY THE OWNER

- GC9.1 The **Owner** shall, subject to the *Crown Liability and Preceding Act*, the *Patent Act*, and any other law that affects the **Owner's** rights, powers, privileges or obligations, indemnify and save the **Contractor** harmless from and against all claims, demands, losses, costs, damage, actions, suits or proceedings arising out of its activities under the Contract that are directly attributable to
- GC9.1.1 lack of or a defect in the **Owner's** title to the work site whether real or alleged; or
- GC9.1.2 an infringement or an alleged infringement by the **Contractor** of any patent of invention or any other kind of intellectual property occurring while the **Contractor** was performing any act for the purposes of the Contract employing a model, plan or design or any other thing related to the work that was supplied by the **Owner** to the **Contractor**.

GC10 NO BRIBE

- GC10.1 The **Contractor** hereby represents that no bribe, gift, benefit, nor other inducement has been nor will be given, promised or offered, directly or indirectly, to any official or employee of the **Owner** or of Her Majesty in right of Canada of whom the **Owner** is an agent, or to a member of the family of such a person, with a view to influencing the entry into the Contract or the administration of the Contract.

GC11 NOTICES

- GC11.1 Any notice, consent, order, decision, direction or other communication required to be given in writing, to any party pursuant to the Contract shall subject to paragraph GC11.4 be deemed to have been effectively given:
- GC11.1.1 to the **Contractor**, if delivered personally to the **Contractor** or the **Contractor's** superintendent, or forwarded by mail or facsimile to the **Contractor** at the address or facsimile indicated in its Tender Forms, or
- GC11.1.2 to the **Owner**, if delivered personally to the Engineer, or forwarded by mail or facsimile to the Engineer at the address or facsimile number set out in paragraph 5.5.13 of the *Standard Administrative Conditions*.
- GC11.2 Any such notice, consent, order, decision, direction or other communication given in accordance with GC11.1 shall be deemed to have been received by either party:
- GC11.2.1 if delivered personally, on the day that it was delivered,
- GC11.2.2 if forwarded by mail, on the earlier of the day it was received and the sixth day after it was mailed, and
- GC11.2.3 if forwarded by facsimile, twenty-four (24) hours after it was transmitted.

- GC11.3 Any notice delivered personally, shall be delivered to the **Contractor** if the **Contractor** is doing business as a sole proprietor or, if the **Contractor** is a partnership or corporation, to an officer thereof.
- GC11.4 Where the postal service is disrupted by a strike, a notice, consent, order, direction, decision or other communication may be given to the **Contractor** by facsimile and shall be deemed to have been received by the **Contractor** twenty-four (24) hours after it was transmitted.

GC12 MATERIAL, PLANT AND REAL PROPERTY SUPPLIED BY OWNER

- GC12.1 Subject to GC12.2, the **Contractor** is liable to the **Owner** for any loss of or damage to material, plant or real property that is supplied or placed in the care, custody and control of the **Contractor** by the **Owner** for use in connection with the Contract, whether or not that loss or damage is attributable to causes beyond the **Contractor's** control.
- GC12.2 The **Contractor** is not liable to the **Owner** for any loss or damage to material, plant or real property referred to in GC12.1 if that loss or damage results from and is directly attributable to reasonable wear and tear.
- GC12.3 The **Contractor** shall not use any material, plant or real property referred to in GC12.1 except for the purposes of performing this Contract.
- GC12.4 When the **Contractor** fails to make good any loss or damage for which it is liable under GC12.1 within a reasonable time after being required to do so by the Engineer, the Engineer may cause the loss or damage to be made good at the **Contractor's** expense, and the **Contractor** shall thereupon be liable to the **Owner** for the cost thereof and shall, on demand, pay to the **Owner** an amount equal to that cost.
- GC12.5 The **Contractor** shall keep such records of all material, plant and real property referred to in GC12.1 as the Engineer from time to time requires and shall satisfy the Engineer, when requested, that such material, plant and real property are at the place and in the condition in which they ought to be.

GC13 MATERIAL, PLANT AND REAL PROPERTY BECOME PROPERTY OF OWNER

- GC13.1 All material and plant and the interest of the **Contractor** in all real property, licences, powers and privileges acquired, used or provided by it for the Contract shall, from the time of their acquisition, use or provision, be the property of the **Owner** for the purposes of the work and they shall continue to be the property of the **Owner**
- GC13.1.1 in the case of material, until the Engineer indicates that he is satisfied that it will not be required for the work, and

- GC13.1.2 in the case of plant, real property, licences, powers and privileges, until the Engineer indicates that he is satisfied that the interest vested in the **Owner** therein is no longer required for the purposes of the work.
- GC13.2 Material or plant that is the property of the **Owner** by virtue of GC13.1 shall not be taken away from the work site or used or disposed of except for the purposes of the work without the written consent of the Engineer.
- GC13.3 The **Owner** is not liable for loss of or damage from any cause to the material or plant referred to in GC13.1 and the **Contractor** is liable for such loss or damage notwithstanding that the material or plant is the property of the **Owner**.

GC14 MUNICIPAL PERMITS

- GC14.1 The **Contractor** shall, within thirty (30) days after the date of the Contract, tender to a municipal authority an amount equal to all fees and charges that would be lawfully payable to that municipal authority in respect of building permits as if the work were being performed for a person other than the **Owner**.
- GC14.2 Within ten (10) days of making a tender pursuant to GC14.1, the **Contractor** shall notify the Engineer of its action and of the amount tendered and whether or not the municipal authority has accepted that amount.
- GC14.3 If the municipal authority does not accept the amount tendered pursuant to GC14.1 the **Contractor** shall pay that amount to the **Owner** within six (6) days after the time stipulated in GC14.2.
- GC14.4 For the purposes of GC14.1 to GC14.3 "municipal authority" means any authority that would have jurisdiction respecting permission to perform the work if the owner were not the **Owner**.

GC15 PERFORMANCE OF WORK UNDER DIRECTION OF ENGINEER

- GC15.1 The **Contractor** shall
- GC15.1.1 permit the Engineer to have access to the work and its site at all times during the performance of the Contract;
- GC15.1.2 furnish the Engineer with such information respecting the performance of the Contract as he may require; and
- GC15.1.3 give the Engineer every possible assistance to enable the Engineer to carry out his duty to see that the work is performed in accordance with the Contract and to carry out any other duties and exercise any powers specially imposed or conferred on the Engineer under the Contract.

GC16 COOPERATION WITH OTHER CONTRACTORS

GC16.1 Where, in the opinion of the Engineer, it is necessary that other contractors or workers with or without plant and material, be sent onto the work or its site, the **Contractor** shall, to the satisfaction of the Engineer, allow them access and cooperate with them in the carrying out of their duties and obligations.

GC16.2 If

GC16.2.1 the sending onto the work or its site of other contractors or workers pursuant to GC16.1 could not have been reasonably foreseen or anticipated by the **Contractor** when entering into the Contract, and

GC16.2.2 the **Contractor** incurs, in the opinion of the Engineer, extra expense in complying with GC16.1, and

GC16.2.3 the **Contractor** has given the Engineer written notice of its claim for the extra expense referred to in GC16.2.2 within thirty (30) days of the date that the other contractors or workers were sent onto the work or its site,

the **Owner** will pay the **Contractor** the cost, calculated in accordance with GC48 *Determination of Cost – Price Table* to GC50 *Determination of Cost – Failing Negotiation*, of the extra labour, plant and material that was necessarily incurred.

GC17 EXAMINATION OF WORK

GC17.1 If, at any time after the commencement of the work but prior to the expiry of the warranty or guarantee period, the Engineer has reason to believe that the work or any part thereof has not been performed in accordance with the Contract, the Engineer may have that work examined by an expert of his choice.

GC17.2 If, as a result of an examination of the work referred to in GC17.1, it is established that the work was not performed in accordance with the Contract, then, in addition to and without limiting or otherwise affecting any of the **Owner's** rights and remedies under the Contract either at law or in equity, the **Contractor** shall pay the **Owner**, on demand, all reasonable costs and expenses that were incurred by the **Owner** in having that examination performed.

GC18 CLEARING OF SITE

GC18.1 The **Contractor** shall maintain the work site in a tidy condition and free from the accumulation of waste material and debris, in accordance with any directions of the Engineer.

- GC18.2 Before the issuance of the Interim Certificate of Completion referred to in GC44.2, the **Contractor** shall remove all the plant and material not required for the performance of the remaining work, and all waste material and other debris, and shall cause the work site to be clean and suitable for occupancy by the **Owner's** employees, unless otherwise stipulated in the Contract.
- GC18.3 Before the issuance of the Final Certificate of Completion referred to in GC44.1, the **Contractor** shall remove from the work and its site all of the surplus plant and material and any waste material and other debris.
- GC18.4 The **Contractor's** obligations described in GC18.1 to GC18.3 do not extend to waste material and other debris caused by the **Owner's** employees or contractors and workers referred to in GC16.1.

GC19 CONTRACTOR'S SUPERINTENDENT

- GC19.1 The **Contractor** shall, forthwith upon the award of the Contract, designate a superintendent.
- GC19.2 The **Contractor** shall forthwith notify the Engineer of the name, address and telephone number of the superintendent designated pursuant to GC19.1.
- GC19.3 The superintendent designated pursuant to GC19.1 shall be in full charge of the operations of the **Contractor** in the performance of the work and is authorized to accept any notice, consent, order, direction, decision or other communication on behalf of the **Contractor** that may be given to the superintendent under the Contract.
- GC19.4 The **Contractor** shall, until the work has been completed, keep a competent superintendent at the work site during working hours.
- GC19.5 The **Contractor** shall, upon the request of the Engineer, remove any superintendent who, in the opinion of the Engineer, is incompetent or has been conducting himself improperly and shall forthwith designate another superintendent who is acceptable to the Engineer.
- GC19.6 Subject to GC19.5, the **Contractor** shall not substitute a superintendent without the written consent of the Engineer.
- GC19.7 A breach by the **Contractor** of GC19.6 entitles the Engineer to refuse to issue any Certificate referred to in GC44 *Engineer's Certificates* until the superintendent has returned to the work site or another superintendent who is acceptable to the Engineer has been substituted.

GC20 NATIONAL SECURITY

- GC20.1 If the President is of the opinion that the work is of a class or kind that involves the national security, he may order the **Contractor**

GC20.1.1 to provide him with any information concerning persons employed or to be employed by it for purposes of the Contract; and

GC20.1.2 to remove any person from the work site if, in the opinion of the President, that person may be a risk to the national security.

GC20.2 The **Contractor** shall, in all contracts with persons who are to be employed in the performance of the Contract, make provision for its performance of any obligation that may be imposed upon it under GC19 *Contractor's Superintendent* to GC21 *Unsuitable Workers*.

GC20.3 The **Contractor** shall comply with an order of the President under GC20.1.

GC21 UNSUITABLE WORKERS

GC21.1 The **Contractor** shall, upon the request of the Engineer, remove any person employed by it for purposes of the Contract who, in the opinion of the Engineer, is incompetent or has conducted himself improperly, and the **Contractor** shall not permit a person who has been removed to return to the work site.

GC22 INCREASED OR DECREASED COSTS

GC22.1 No amounts entered in the Price Table shall be increased or decreased by reason of any increase or decrease in the cost of the work that is brought about by an increase or decrease in the cost of labour, plant or material or the wage rates set out in or prescribed pursuant to the *Labour Conditions*.

GC22.2 Notwithstanding GC22.1 and GC35 *Changes in Soil Conditions*, all relevant amounts entered in the Price Table shall be adjusted in the manner provided in GC22.3, if any change in a tax imposed under the *Excise Act, the Excise Tax Act, the Old Age Security Act, the Customs Act* or the *Customs Tariff* or any Provincial Sales Tax legislation imposing a Retail Sales Tax on the purchase of tangible personal property incorporated into Real Property,

GC22.2.1 occurs after the date of the submission by the **Contractor** of its tender for the Contract,

GC22.2.2 applies to material, and

GC22.2.3 affects the cost to the **Contractor** of that material.

GC22.3 If a change referred to in GC22.2 occurs, all relevant amounts entered in the Price Table shall be increased or decreased by an amount equal to the amount that is established by an examination of the relevant records of the **Contractor** referred to in GC51 *Records to be kept by Contractor* to be the increase or decrease in the cost incurred that is directly attributable to that change.

GC22.4 For the purposes of GC22.2, where a tax is changed after the date of submission of the tender but public notice of the change has been given by the Minister of Finance before that date, the change shall be deemed to have occurred before the date of submission of the tender.

GC23 CANADIAN LABOUR AND MATERIAL

GC23.1 The **Contractor** shall use Canadian labour and material in the performance of the work to the full extent to which they are procurable, consistent with proper economy and the expeditious carrying out of the work.

GC23.2 Subject to GC23.1, 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 shall use the offices of the Canada Employment Centres for the recruitment of workers wherever practicable.

GC23.3 Subject to GC23.1 and GC23.2, the **Contractor** shall, in the performance of the work, employ a reasonable proportion of persons who have been on active service with the armed forces of Canada and have been honourably discharged therefrom.

GC24 PROTECTION OF WORK AND DOCUMENTS

GC24.1 The **Contractor** shall guard and protect the work and its site, and protect the Contract, specifications, plans, drawings, information, material, plant and real property, whether or not they are supplied by the **Owner** to the **Contractor**, against loss or damage from any cause, and it shall not use, issue, disclose or dispose of them without the written consent of the President, except as may be essential for the performance of the work.

GC24.2 If any document or information given or disclosed to the **Contractor** is assigned a security rating by the person who gave or disclosed it, the **Contractor** shall take all measures directed by the Engineer to be taken to ensure the maintenance of the degree of security that is ascribed to that rating.

GC24.3 The **Contractor** shall provide all facilities necessary for the purposes of maintaining security, and shall assist any person authorized by the President to inspect or to take security measures in respect of the work and its site.

GC24.4 The Engineer may direct the **Contractor** to do such things and to perform such additional work as the Engineer considers reasonable and necessary to ensure compliance with or to remedy a breach of GC24.1 to GC24.3.

GC25 PUBLIC CEREMONIES AND SIGNS

GC25.1 The **Contractor** shall not permit any public ceremony in connection with the work without the prior consent of the President.

GC25.2 The **Contractor** shall not erect or permit the erection of any sign or advertising on the work site without the prior consent of the Engineer.

GC26 PRECAUTIONS AGAINST DAMAGE, FIRE AND OTHER HAZARDS

GC26.1 The **Contractor** shall, at its own expense, do whatever is necessary to ensure that

GC26.1.1 no person, property, right, easement or privilege is injured, damaged or infringed by reason of the **Contractor's** activities in performing the Contract;

GC26.1.2 pedestrian and other traffic on any public or private road or waterway is not unduly impeded, interrupted or endangered by the performance or existence of the work or plant;

GC26.1.3 fire hazards in or about the work or its site are eliminated and, subject to any direction that may be given by the Engineer, any fire is promptly extinguished;

GC26.1.4 the health and safety of all persons employed in the performance of the work is not endangered by the method or means of its performance;

GC26.1.5 a site at all times during the performance of the work;

GC26.1.6 adequate sanitation measures are taken in respect of the work and its site; and

GC26.1.7 all stakes, buoys and marks placed on the work or its site by or under the authority of the Engineer are protected and are not removed, defaced, altered or destroyed.

GC26.2 The Engineer may direct the **Contractor** to do such things and to perform such additional work as the Engineer considers reasonable and necessary to ensure compliance with or to remedy a breach of GC26.1.

GC26.3 The **Contractor** shall, at its own expense, comply with a direction of the Engineer made under GC26.2.

GC27 INSURANCE

GC27.1 The **Contractor** shall, at its own expense, obtain and maintain insurance contracts in respect of the work and shall provide evidence thereof to the Engineer in accordance with the requirements of Section 11 - *Insurance Conditions*.

GC27.2 The insurance contracts referred to in GC27.1 shall:

GC27.2.1 be in a form, of the nature, in the amounts, for the periods and containing the terms and conditions specified in Section 11 – *Insurance Conditions* and

GC27.2.2 provide for the payment of claims under such insurance contracts in accordance with GC28 *Insurance Proceeds*.

GC28 INSURANCE PROCEEDS

GC28.1 In the case of a claim payable under a Builders' Risk/Installation Floater (All Risk) insurance contract obtained and maintained by the **Contractor** pursuant to GC27 *Insurance*, the proceeds of the claim shall be paid directly to the **Owner**, and

GC28.1.1 the monies so paid shall be held by the **Owner** for the purposes of the Contract, or

GC28.1.2 if the President elects, shall be retained by the **Owner**, in which event they vest in the **Owner** absolutely.

GC28.2 In the case of a claim payable under a Comprehensive General Liability insurance contract obtained and maintained by the **Contractor** pursuant to GC27 *Insurance*, the proceeds of the claim shall be paid by the insurer directly to the claimant.

GC28.3 If an election is made pursuant to GC28.1, the President may cause an audit to be made of the accounts of the **Contractor** and of the **Owner** in respect of the part of the work that was lost, damaged or destroyed for the purposes of establishing the difference, if any, between:

GC28.3.1 the aggregate of the amount of the loss or damage suffered or sustained by the **Owner**, including any costs incurred in respect of the clearing and cleaning of the work site and any other amount that is payable by the **Contractor** to the **Owner** under the Contract, minus any monies retained pursuant to GC28.1.2 and

GC28.3.2 the aggregate of the amounts payable by the **Owner** to the **Contractor** pursuant to the Contract up to the date of the loss or damage.

GC28.4 A difference that is established pursuant to GC28.3, shall be paid forthwith by the party who is determined by the audit to be the debtor to the party who is determined by the audit to be the creditor.

GC28.5 When payment of a deficiency has been made pursuant to GC28.4, all rights and obligations of the **Owner** and the **Contractor** under the Contract shall, with respect only to the part of the work that was the subject of the audit referred to in GC28.3, be deemed to have been expended and discharged.

GC28.6 If an election is not made pursuant to GC28.1.2 the **Contractor** shall, subject to GC28.7, clear and clean the work site and restore and replace the part of the work that was lost, damaged or destroyed at its own expense as if that part of the work had not yet been performed.

- GC28.7 When the **Contractor** clears and cleans the work site and restores and replaces the work referred to in GC28.6, the **Owner** shall pay it out of the monies referred to in GC28.1 so far as they will thereunto extend.
- GC28.8 Subject to GC28.7, payment by the **Owner** pursuant to GC28.7 shall be made in accordance with the Contract but the amount of each payment shall be 100% of the amount claimed, notwithstanding TP4.4.1 and TP4.4.2.

GC29 CONTRACT SECURITY

- GC29.1 The **Contractor** shall obtain and deliver contract security to the Engineer in accordance with the provisions of the *Contract Security Conditions*.
- GC29.2 If the whole or a part of the contract security referred to in GC29.1 is in the form of a security deposit, it shall be held and disposed of in accordance with GC43 *Security Deposit - Forfeiture or Return* and GC45 *Return of Security Deposit*.
- GC29.3 If a part of the contract security referred to in GC29.1 is in the form of a labour and material payment bond, the **Contractor** shall post a copy of that bond on the work site.

GC30 CHANGES IN THE WORK

- GC30.1 Subject to GC5 *Admendments*, the Engineer may, at any time before he issues his Final Certificate of Completion,
- GC30.1.1 order work or material in addition to that provided for in the Drawings and Specifications; and
- GC30.1.2 delete or change the dimensions, character, quantity, quality, description, location or position of the whole or any part of the work or material provided for in the Drawings and Specifications or in any order made pursuant to GC30.1.1,
- if that additional work or material, deletion, or change are, in his opinion, consistent with the general intent of the original Contract.
- GC30.2 The **Contractor** shall perform the work in accordance with such orders, deletions and changes that are made by the Engineer pursuant to GC30.1 from time to time as if they had appeared in and been part of the Drawings and Specifications.
- GC30.3 The Engineer decides whether or not anything done or omitted by the **Contractor** pursuant to an order, deletion or change referred to in GC30.1 increased or decreased the cost of the work to the **Contractor**.

- GC30.4 If the Engineer determines pursuant to GC30.3 that the cost of the work to the **Contractor** has been increased, the **Owner** will pay the **Contractor** the increased cost that the **Contractor** necessarily incurred for the additional work calculated in accordance with GC49 *Determination of Cost – Negotiation* or GC50 *Determination of Cost – Failing Negotiation*.
- GC30.5 If the Engineer determines pursuant to GC30.3 that the cost of the work to the **Contractor** has been decreased, the **Owner** will reduce the amount payable to the **Contractor** under the Contract by an amount equal to the decrease in the cost caused by the deletion or change referred to in GC30.1.2 and calculated in accordance with GC49 *Determination of Cost – Negotiation*.
- GC30.6 GC30.3 to GC30.5 are applicable only to a Contract or a portion of a Contract for which a Fixed Price Arrangement is stipulated in the Contract.
- GC30.7 Any order, deletion or change referred to in GC30.1 shall be in writing, signed by the Engineer and given to the **Contractor** in accordance with GC11.2.

GC31 INTERPRETATION OF CONTRACT BY ENGINEER

- GC31.1 If, at any time before the Engineer has issued the Final Certificate of Completion referred to in GC44.1, any question arises between the parties about whether anything has been done as required by the Contract or about what the **Contractor** is required by the Contract to do, and, in particular but without limiting the generality of the foregoing, about
- GC31.1.1 the meaning of anything in the Drawings and Specifications;
- GC31.1.2 the meaning to be given to the Drawings and Specifications in case of any error therein, omission therefrom, or obscurity or discrepancy in their wording or intention;
- GC31.1.3 whether or not the quality or quantity of any material or workmanship supplied or proposed to be supplied by the **Contractor** meets the requirements of the Contract;
- GC31.1.4 whether or not the labour, plant or material provided by the **Contractor** for performing the work and carrying out the Contract are adequate to ensure that the work will be performed in accordance with the Contract and that the Contract will be carried out in accordance with its terms;
- GC31.1.5 what quantity of any kind of work has been completed by the **Contractor**, or
- GC31.1.6 the timing and scheduling of the various phases of the performance of the work and,
- GC31.2 in respect of the work, the decision of the Engineer shall, subject to GC52 *Dispute Resolution Procedure*, be final and binding.

GC31.3 The **Contractor** shall perform the work in accordance with any decisions and directions of the Engineer that are made under GC31.1 and in accordance with any consequential decisions and directions given by the Engineer.

GC32 WARRANTY AND RECTIFICATION OF DEFECTS IN WORK

GC32.1 Without restricting any warranty or guarantee implied or imposed by law or contained in the Contract documents, the **Contractor** shall, at its own expense:

GC32.1.1 rectify and make good any defect or fault that appears in the work or comes to the attention of the President with respect to those parts of the work accepted in the framework of the Interim Certificate of Completion referred to in GC44.2 within twelve (12) months from the date of issuance of the Interim Certificate of Completion;

GC32.1.2 rectify and make good any defect or fault that appears in or comes to the attention of the President in connection with those parts of the work that have not been completed to the satisfaction of the Engineer and described in the Interim Certificate of Completion referred to in GC44.2 within twelve (12) months from the date of issuance of the Final Certificate of Completion referred to in GC44.1.

GC32.2 The Engineer may direct the **Contractor** to rectify and make good any defect or fault referred to in GC32.1 or otherwise covered by any other legal or contractual warranty or guarantee.

GC32.3 A direction referred to in GC32.2 shall be in writing, may include a stipulation in respect of the time within which a defect or fault is required to be rectified and made good by the **Contractor**.

GC32.4 The **Contractor** shall rectify and make good any defect or fault described in a direction given pursuant to GC32.2 within the time stipulated therein.

GC33 NON-COMPLIANCE BY CONTRACTOR

GC33.1 If the **Contractor** fails to comply with any decision or direction rendered or issued by the Engineer under the Contract, the Engineer may employ such methods as he deems advisable to do that which the **Contractor** failed to do.

GC33.2 The **Contractor** shall, on demand, pay the **Owner** an amount that is equal to the aggregate of all costs, expenses and damage incurred or sustained by the **Owner** by reason of the **Contractor's** failure to comply with any decision or direction referred to in GC33.1, including the cost of any methods employed by the Engineer pursuant to GC33.1.

GC34 PROTESTING ENGINEER'S DECISIONS

- GC34.1 The **Contractor** may, in accordance with GC52 *Dispute Resolution Procedure*, protest a decision or direction rendered or issued by the Engineer under the Contract.
- GC34.2 Any dispute that is not resolved on the date of issuance of the last Interim Certificate of Completion will be dealt with according to paragraphs GC52.3 et seq.

GC35 CHANGES IN SOIL CONDITIONS

- GC35.1 Subject to GC35.2, no payment, other than a payment that is expressly stipulated in the Contract, shall be made by the **Owner** to the **Contractor** for any extra expense or any loss or damage incurred or sustained by the **Contractor**.
- GC35.2 If the **Contractor** considers that there is a substantial difference between the information relating to soil conditions at the work site that is contained in the Drawings and Specifications or other documents supplied to the **Contractor** for its use in preparing its tender or a reasonable assumption of fact based thereon made by the **Contractor**, and the actual soil conditions encountered by the **Contractor** at the work site during the performance of the work, it shall, on the day that the soil conditions are observed and before they are modified, give written notice to the Engineer thereof.
- GC35.3 The Engineer decides whether there is in fact a substantial difference and, if so, whether the difference increases or decreases the cost of the work for the **Contractor**.
- GC35.4 If, in the opinion of the Engineer, the change increases the cost of the work, the **Owner** will make an extra payment to the **Contractor** in an amount that is calculated in accordance with GC47 *Additions or Amendments to Price Table* to GC50 *Determination of Cost – Failing Negotiation*.
- GC35.5 If, in the opinion of the Engineer, the change decreases the cost of the work, the **Owner** will reduce the amount payable to the **Contractor** under the Contract by an amount determined according to the provisions of GC47 *Additions or Amendments to Price Table* to GC50 *Determination of Cost – Failing Negotiation*.
- GC35.6 The **Contractor** shall perform the work in accordance with the decisions and directions of the Engineer.
- GC35.7 If the **Contractor** fails to give the notice referred to in GC35.2, no extra payment will, in this case, be made thereto.

GC36 EXTENSION OF TIME

- GC36.1 Subject to GC36.2, the Engineer may, on the application of the **Contractor** made before the day fixed by the *Special Administrative Conditions* for completion of the work or before any other date previously fixed under this General Condition, extend the time for its completion by fixing a new date if, in the opinion of the Engineer, causes beyond the control of the **Contractor** have delayed its completion.
- GC36.2 An application referred to in GC36.1 shall be accompanied by the written consent of the bonding company whose bond forms part of the contract security.

GC37 ASSESSMENTS AND DAMAGES FOR LATE COMPLETION

- GC37.1 For the purposes of this General Condition,
- GC37.1.1 the work shall be deemed to be completed on the date that the Interim Certificate of Completion referred to in GC44.2 is issued, and
- GC37.1.2 “period of delay” means the number of days commencing on the day fixed by the *Special Administrative Conditions* for completion of the work and ending on the day immediately preceding the day on which the work is completed but does not include any day within a period of extension granted pursuant to GC36.1, and any other day on which, in the opinion of the Engineer, completion of the work was delayed for reasons beyond the control of the **Contractor**.
- GC37.2 If the **Contractor** does not complete the work by the day fixed for its completion by the *Special Administrative Conditions* but completes it thereafter, the **Contractor** shall pay the **Owner** an amount equal to the aggregate of
- GC37.2.1 all salaries, wages and travelling expenses incurred by the **Owner** in respect of persons overseeing the performance of the work during the period of delay;
- GC37.2.2 the cost incurred by the **Owner** as a result of the inability to use the completed work for the period of delay; and
- GC37.2.3 all other expenses and damages incurred or sustained by the **Owner** during the period of delay as a result of the work not being completed by the day fixed for its completion.
- GC37.3 The President may waive the right of the **Owner** to the whole or any part of the amount payable by the **Contractor** pursuant to GC37.2 if, in the opinion of the President, it is in the public interest to do so.

GC38 TAKING THE WORK OUT OF THE CONTRACTOR'S HANDS

- GC38.1 The President may, at his sole discretion, by giving a notice in writing to the **Contractor** take all or any part of the work out of the **Contractor's** hands, and may employ such means as he sees fit to have the work completed if the **Contractor**
- GC38.1.1 has not, within six (6) days after receiving notice given by the President or the Engineer remedied any delay in the commencement or any default in the diligent performance of the work to the satisfaction of the Engineer;
 - GC38.1.2 has defaulted in the completion of any part of the work within the time fixed for its completion by the Contract;
 - GC38.1.3 has become insolvent;
 - GC38.1.4 has committed an act of bankruptcy, has been declared bankrupt or has made an assignment for the benefit of creditors;
 - GC38.1.5 has abandoned the work;
 - GC38.1.6 has made an assignment of the Contract without the consent required by GC3.1; or
 - GC38.1.7 has otherwise failed to observe or perform any of the provisions of the Contract.
 - GC38.1.8 Without limiting the generality of paragraph GC38.1.7, in the course of the Contract, have its license limited within the meaning of the *Building Act* (CQLR, c. B-1.1) or be named in the *Register of Enterprises Ineligible for Public Contracts* ("Registre des entreprises non admissibles aux contrats publics") (RENA) within the meaning of the *Act Respecting Contracting by Public Bodies* (CQLR, c. C-65.1).
- GC38.2 If the whole or any part of the work is taken out of the **Contractor's** hands pursuant to GC38.1,
- GC38.2.1 the **Contractor's** right to any further payment that is due or accruing due under the Contract is, subject only to GC38.3, extinguished, and
 - GC38.2.2 the **Contractor** is liable to pay the **Owner**, upon demand, an amount that is equal to the amount of all loss and damage incurred or sustained by the **Owner** in respect of the **Contractor's** failure to complete the work.

GC38.3 If the whole or any part of the work that is taken out of the **Contractor's** hands pursuant to GC38.1 is completed by the **Owner**, the Engineer determines the amount, if any, of the holdback or a progress claim that had accrued and was due prior to the date on which the work was taken out of the **Contractor's** hands and that is not required for the purposes of having the work performed or of compensating the **Owner** for any other loss or damage incurred or sustained by reason of the **Contractor's** default. The **Owner** may pay the **Contractor** the amount determined not to be required pursuant to GC38.2.

GC39 EFFECT OF TAKING THE WORK OUT OF THE CONTRACTOR'S HANDS

GC39.1 The taking of the work or any part thereof out of the **Contractor's** hands pursuant to GC38 *Taking the Work Out of the Contractor's Hands* does not operate so as to relieve or discharge it from any obligation under the Contract or imposed upon it by law except the obligation to complete the performance of that part of the work that was taken out of its hands.

GC39.2 If the work or any part thereof is taken out of the **Contractor's** hands pursuant to GC38 *Taking the Work Out of the Contractor's Hands*, all plant and material and the interest of the **Contractor** in all real property, licences, powers and privileges acquired, used or provided by the **Contractor** under the Contract shall continue to be the property of the **Owner** without compensation to the **Contractor**.

GC39.3 When the Engineer certifies that any plant, material, or any interest of the **Contractor** referred to in GC39.2 is no longer required for the purposes of the work, or that it is not in the interests of the **Owner** to retain that plant, material, or interest, it shall revert to the **Contractor**.

GC40 SUSPENSION OF WORK BY PRESIDENT

GC40.1 The President may, when in his opinion it is in the public interest to do so, require the **Contractor** to suspend performance of the work either for a specified or an unspecified period by giving a notice of suspension in writing to the **Contractor**.

GC40.2 When a notice referred to in GC40.1 is received by the **Contractor**, it shall suspend all operations in respect of the work except those that, in the opinion of the Engineer, are necessary for the care and preservation of the work, plant and material.

GC40.3 The **Contractor** shall not, during a period of suspension, remove any part of the work, plant or material from its site without the consent of the Engineer.

GC40.4 If a period of suspension is thirty (30) days or less, the **Contractor** shall, upon the expiration of that period, resume the performance of the work and it is entitled to be paid the extra cost, calculated in accordance with GC48 *Determination of Cost – Price Table* to GC50 *Determination of Cost – Failing Negotiation* of any labour, plant and material necessarily incurred by it as a result of the suspension.

- GC40.5 If, upon the expiration of a period of suspension of more than thirty (30) days, the President and the **Contractor** agree that the performance of the work will be continued by the **Contractor**, the **Contractor** shall resume performance of the work subject to any terms and conditions agreed upon by the President and the **Contractor**.
- GC40.6 If, upon the expiration of a period of suspension of more than thirty (30) days, the President and the **Contractor** do not agree that performance of the work will be continued by the **Contractor** or upon the terms and conditions under which the **Contractor** will continue the work, the notice of suspension shall be deemed to be a notice of termination pursuant to GC41 *Termination of Contract*.

GC41 TERMINATION OF CONTRACT

- GC41.1 The President may terminate the Contract at any time by giving a notice of termination in writing to the **Contractor**.
- GC41.2 When a notice referred to in GC41.1 is received by the **Contractor**, it shall, subject to any conditions stipulated in the notice, forthwith cease all operations in performance of the Contract.
- GC41.3 If the Contract is terminated pursuant to GC41.1 the **Owner** will pay the **Contractor**, subject to GC41.4, an amount equal to
- GC41.3.1 the cost to the **Contractor** of all labour, plant and material supplied by it under the Contract up to the date of termination in respect of a Contract or part thereof for which a Unit Price Arrangement is stipulated in the Contract,
- GC41.3.2 or the lesser of
- GC41.3.2.1 an amount, calculated in accordance with the Terms of Payment, that would have been payable to the **Contractor** had it completed the work, and
- GC41.3.2.2 an amount that is determined to be due to the **Contractor** pursuant to GC49 *Determination of Cost – Negotiation* in respect of a Contract or part thereof for which a Fixed Price Arrangement is stipulated in the Contract,
- less the aggregate of all amounts that were paid to the **Contractor** by the **Owner** and all amounts if there is any that are due to the **Owner** from the **Contractor** pursuant to the Contract.
- GC41.4 If the **Owner** and the **Contractor** are unable to agree about an amount referred to in GC41.3 that amount shall be determined by the method referred to in GC50 *Determination of Cost – Failing Negotiation*.

GC42 CLAIMS AGAINST AND OBLIGATIONS OF THE CONTRACTOR OR SUBCONTRACTOR

- GC42.1 The **Owner** may, in order to satisfy lawful claims against the **Contractor** or a subcontractor arising out of the performance of the Contract, pay in accordance with GC42.6, any amount that is due to the **Contractor** pursuant to the Contract directly to the claimants against the **Contractor** or the subcontractor.
- GC42.2 A payment made pursuant to GC42.1 is, to the extent of the payment, a discharge of the **Owner's** liability to the **Contractor** under the Contract and may be deducted from the amounts payable to the **Contractor** under the Contract.
- GC42.3 To the extent that the circumstances of the work being performed for the **Owner** permit, the **Contractor** shall comply with all laws in force in the province where the work is being performed relating to payment periods, mandatory holdbacks, and creation and enforcement of mechanics' liens or, in respect of the Province of Quebec, the law relating to construction legal hypothecs.
- GC42.4 The **Contractor** shall discharge all its lawful obligations and shall satisfy all lawful claims against it arising out of the performance of the work at least as often as the Contract requires the **Owner** to pay the **Contractor**.
- GC42.5 The **Contractor** shall, whenever requested to do so by the Engineer, make a statutory declaration deposing to the existence and condition of any obligations and claims referred to in GC42.4.
- GC42.6 GC42.1 shall only apply to claims and obligations that have been received by the Engineer in writing before payment to the **Contractor** pursuant to TP4.10 and within one hundred and twenty (120) days after a claimant
- GC42.6.1 should have been paid in full under his contract with the **Contractor** or a subcontractor where the claim is for money that was lawfully required to be held back from the claimant either by contract or by law; or
- GC42.6.2 performed the last of the service, work or labour, or furnished the last of the material pursuant to his contract with the **Contractor** or subcontractor, where the claim is not for money referred to in GC42.6.1.

GC43 SECURITY DEPOSIT - FORFEITURE OR RETURN

- GC43.1 If
- GC43.1.1 the work is taken out of the **Contractor's** hands pursuant to GC38 *Taking the Work Out of the Contractor's Hands*,
- GC43.1.2 the Contract is terminated pursuant to GC41 *Termination of Contract*, or

GC43.1.3 the **Contractor** is in breach of or in default under the Contract,

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

GC43.2 If the **Owner** converts the contract security pursuant to GC43.1, the amount realized shall be deemed to be an amount due to the **Owner** by the **Contractor** under the Contract.

GC43.3 Any balance of an amount referred to in GC43.2 that remains after payment of all costs, losses, damage and claims of the **Owner** or others shall 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.

GC44 ENGINEER'S CERTIFICATES

GC44.1 On the date that

GC44.1.1 the work has been completed, and

GC44.1.2 the **Contractor** has complied with the Contract and all orders and directions made pursuant thereto,

both to the satisfaction of the Engineer, the Engineer issues a Final Certificate of Completion to the **Contractor**.

GC44.2 If the Engineer is satisfied that the work is sufficiently complete to be acceptable for use by the **Owner**, he may, at any time before he issues the Final Certificate of Completion referred to in GC44.1, issue an Interim Certificate of Completion to the **Contractor**.

GC44.3 The Interim Certificate of Completion referred to in GC44.2 shall describe the parts of the work not completed to the satisfaction of the Engineer and all things that must be done by the **Contractor**:

GC44.3.1 so that the Final Certificate of Completion referred to in GC44.1 will be issued, and

GC44.3.2 before the twelve (12) month warranty period referred to in GC32.1.2 shall commence for the said parts and all the said things to be executed by the **Contractor**.

GC44.4 The Engineer may, in addition to the parts of the work described in the Interim Certificate of Completion referred to in GC44.2, require the **Contractor** to rectify any other parts of the work not completed to his satisfaction and to do any other things that are necessary for the satisfactory completion of the work.

GC44.5 If the Contract or a part thereof is subject to a Unit Price Arrangement, the Engineer measures and records the quantities of labour, plant and material, performed, used and supplied by the **Contractor** in performing the work and shall, at the request of the **Contractor**, inform it of those measurements.

GC44.6 The **Contractor** shall assist and co-operate with the Engineer in the performance of its duties referred to in GC44.5 and shall be entitled to inspect any record made by the Engineer pursuant to GC44.5.

GC44.7 After the Engineer has issued the Final Certificate of Completion referred to in GC44.1, he shall, if GC44.5 applies, issue a Final Certificate of Measurement.

GC44.8 A Final Certificate of Measurement referred to in GC44.7 shall

GC44.8.1 contain the aggregate of all measurements of quantities referred to in GC44.5, and

GC44.8.2 be binding upon and conclusive between the **Owner** and the **Contractor** as to the quantities referred to therein.

GC45 RETURN OF SECURITY DEPOSIT

GC45.1 After the Interim Certificate of Completion referred to in GC44.2 has been issued, the **Owner** will, if the **Contractor** has conformed to its commitment and obligations, return to the **Contractor** all or any part of the security deposit that, in the opinion of the Engineer, is not required for the purposes of the Contract.

GC45.2 After the Final Certificate of Completion referred to in GC44.1 has been issued, the **Owner** will return to the **Contractor** the remainder of any security deposit unless the Contract stipulates otherwise.

GC46 CLARIFICATION OF TERMS IN GC47 TO GC50

GC46.1 For the purposes of GC47 *Additions or Amendments to Price Table* to GC50 *Determination of Cost – Failing Negotiation*,

GC46.1.1 “Price Table” means the table contained in the **Contractor**’s Tender Forms, subject to any amendment mentioned in the Notice of Contract Award, and

GC46.1.2 “plant” does not include tools customarily provided by a tradesman in practicing his trade.

GC47 ADDITIONS OR AMENDMENTS TO PRICE TABLE

GC47.1 Where a Unit Price Arrangement applies to the Contract or a part thereof the Engineer and the **Contractor** may, by an agreement in writing,

- GC47.1.1 add classes of labour, plant or material, and units of measurement, prices per unit and estimated quantities to the Price Table if any labour, plant or material that is to be included in the Final Certificate of Measurement referred to in GC44.7 is not included in any class of labour, plant or material set out in the Price Table, or
- GC47.1.2 subject to GC47.2, amend a price per unit set out in the Price Table for any class of labour, plant or material included therein if an estimated quantity is set out therein for that class of labour, plant or material, and the Final Certificate of Measurement referred to in GC44.7 shows or is expected to show that the total quantity of that class of labour, plant or material actually performed, used or supplied by the **Contractor** in performing the work is
- GC47.1.2.1 less than 85% of that estimated total quantity; or
- GC47.1.2.2 in excess of 115% of that estimated total quantity.
- GC47.2 The quantities of the Tender Forms may be approximate and may be useful for the purposes of comparing tenders; a variation in a quantity may lead to the modification of its unit price solely in accordance with clause GC47 *Additions or Amendments to Price Table* on condition the result of multiplying the unit price in the tender by the corresponding quantity in the tender exceeds the total price tendered for the work by more than 5%.
- GC47.3 If the Engineer and the **Contractor** do not agree as contemplated in GC47.1, the Engineer determines the class and the unit of measurement of the labour, plant or material and the price per unit therefor shall be determined in accordance with GC50 *Determination of Cost – Failing Negotiation*.
- GC47.4 The payment for an amendment that is made necessary by GC47.1.2.1 shall in no case exceed the amount which would be payable if 85% of the estimated quantity was performed.

GC48 DETERMINATION OF COST – PRICE TABLE

- GC48.1 Whenever, for the purposes of the Contract it is necessary to determine the cost of labour, plant or material, it shall be determined by multiplying the quantity of that labour, plant or material expressed in the unit set out in column 3 of the Price Table by the price of that unit set out in column 4 of the Price Table.

GC49 DETERMINATION OF COST – NEGOTIATION

- GC49.1 If the method described in GC48 *Determination of Cost – Price Table* cannot be used because the labour, plant or material is of a kind or class that is not set out in the Price Table, the cost of that labour, plant or material for the purposes of the Contract shall be the amount agreed upon from time to time by the **Contractor** and the Engineer.

- GC49.2 For the purposes of GC49.1, the **Contractor**, when requested by the Engineer, shall provide the Engineer with a detailed estimate of the cost to it of the labour, plant and material referred to in GC49.1. The detailed estimate shall contain a sufficient description of the facts and circumstances, as well as the supporting documentation, in order for the Engineer to be able to determine whether the estimate is fair or not, and the **Contractor** shall, for this purpose, provide any other information that may be required by the Engineer.
- GC49.3 In order to establish the cost of the work, plant and materials involved, the parties shall refer to the provisions of GC50 *Determination of Cost – Failing Negotiation* as a guide, but the expense items therein described shall not, however, constitute a list of expense that are inclusive to any amendment or change.
- GC49.4 In this regard, the **Contractor** shall keep the detailed and full records necessary to document the cost of the work, plant and materials involved, in accordance with GC51 *Records to be kept by Contractor*.

GC50 DETERMINATION OF COST – FAILING NEGOTIATION

- GC50.1 If the **Contractor** and the Engineer or the methods described in GC47 *Additions or Amendments to Price Table*, GC48 *Determination of Cost – Price Table*, or GC49 *Determination of Cost – Negotiation* fail for any reason to achieve a determination of the cost of labour, plant and material for the purposes referred to therein, that cost shall be equal to the aggregate of:
- GC50.1.1 all reasonable and proper amounts, net of all Federal and Provincial tax credits, actually expended or legally payable by the **Contractor** in respect of the labour, plant or material that falls within one of the classes of expenditure described in GC50.2 that are directly attributable to the performance of the Contract, and
- GC50.1.2 an allowance for profit and all other expenditures or costs, including overhead, general administration costs, financing and interest charges, and every other cost, charge and expense, but not including those referred to in GC50.1.1 or of a class referred to in GC50.2, in an amount that is equal to 10% of the sum of the expenses referred to in GC50.1.1.
- GC50.2 For purposes of GC50.1.1 the classes of expenditure that may be taken into account in determining the cost of labour, plant and material are,
- GC50.2.1 payments to subcontractors;
- GC50.2.2 wages, salaries and travelling expenses of employees of the **Contractor** while they are actually and properly engaged on the work, other than wages, salaries, bonuses, living and travelling expenses of personnel of the **Contractor** generally employed at the head office or at a general office of the **Contractor** unless they are engaged at the work site with the approval of the Engineer;

- GC50.2.3 assessments payable under any statutory authority relating to workers' compensation, unemployment insurance, pension plan or holidays with pay;
- GC50.2.4 rent that is paid for plant or an amount equivalent to the said rent if the plant is owned by the **Contractor** that is necessary for and used in the performance of the work, if the rent or the equivalent amount is reasonable and use of that plant has been approved by the Engineer;
- GC50.2.5 payments for maintaining and operating plant necessary for and used in the performance of the work, and payments for effecting such repairs thereto as, in the opinion of the Engineer, are necessary to the proper performance of the Contract other than payments for any repairs to the plant arising out of defects existing before its allocation to the work;
- GC50.2.6 payments for material that is necessary for and incorporated in the work, or that is necessary for and consumed in the performance of the Contract;
- GC50.2.7 payments for preparation, delivery, handling, erection, installation, inspection, protection and removal of the plant and material necessary for and used in the performance of the Contract;
- GC50.2.8 any other payments made by the **Contractor** with the approval of the Engineer that are necessary for the performance of the Contract.
- GC50.3 The cost of the work, plant and materials involved shall be determined on the basis of the actual expenses incurred and the savings made by the **Contractor** in the execution of the amendment or change.
- GC50.4 In this regard, the **Contractor** shall keep the detailed and full records necessary to document the cost of the work, plant and materials involved, in accordance with GC51 *Records to be kept by Contractor*.

GC51 RECORDS TO BE KEPT BY CONTRACTOR

- GC51.1 The **Contractor** shall
- GC51.1.1 maintain full records of its estimated and actual cost of the work together with all tender calls, quoted prices, Contracts, correspondence, invoices, receipts and vouchers relating thereto;
- GC51.1.2 make all records and material referred to in GC51.1.1 available to audit and inspection by the President and the Director, Finance and Administration or Audit personnel of the **Owner** or by persons acting on behalf of either or both of them, when requested;
- GC51.1.3 allow any of the persons referred to in GC51.1.2 to make copies of and to take extracts from any of the records and material referred to in GC51.1.1; and

- GC51.1.4 furnish any person referred to in GC51.1.2 with any information he may require from time to time in connection with such records and material.
- GC51.2 The records maintained by the **Contractor** pursuant to GC51.1.1 shall be kept intact by the **Contractor** until the expiration of two (2) years after the date that the Final Certificate of Completion referred to in GC44.1 was issued or until the expiration of such other period of time as the President may direct.
- GC51.3 The **Contractor** must see to that all subcontractors and all other persons directly or indirectly controlled by or affiliated with the **Contractor** and all persons directly or indirectly having control of the **Contractor** to comply with GC51.1 and GC51.2 as if they were the **Contractor**.

GC52 DISPUTE RESOLUTION PROCEDURE

- GC52.1 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 direction rendered or issued by the Engineer under the Contract or by any person specially authorized by the Engineer and who directly supervises the execution of the work or the administration or management of the Contract.
- GC52.1.1 The parties agree to maintain open and honest communication throughout the performance of the Contract.
- GC52.1.2 The parties agree to consult and co-operate with each other in the performance of the work and the resolution of problems or differences that may arise.
- GC52.1.3 The parties shall make all reasonable efforts to resolve their dispute by amicable negotiations and agree to provide, without prejudice to their rights, frank, candid and timely disclosure of all relevant facts, information and documents to facilitate the negotiations.
- GC52.2 During the performance of the work,
- GC52.2.1 if the **Contractor** considers itself aggrieved in any way by the terms of the Contract, it shall, in all cases, as soon as possible but no later than ten (10) days of the date on which the decision or direction was rendered or issued by the Engineer, or of the date of commencement of the difficulty which, in its opinion, warrants a notice of dispute, issue a written notice setting forth and giving the reasons for the grievance. This notice of dispute shall be signed by the **Contractor** and communicated to the **Owner**.
- GC52.2.1.1 The notice must be sufficiently detailed and substantiated to enable the **Owner** to make the decisions or take the actions required under the circumstances.

- GC52.2.1.2 The notice shall specify the anticipated changes to the detailed work schedule, even, where applicable, in a preliminary manner.
- GC52.2.1.3 The notice shall contain a sufficient description of the facts and circumstances that substantiate the grievance in order for the **Owner** to be able to undertake the review and determine whether the grievance is justified or not.
- GC52.2.1.4 To that end, the **Contractor** shall promptly provide any other information that the **Owner** may require.
- GC52.2.2 The **Contractor** and the **Owner** shall attempt to settle a dispute that arises during the course of the work through negotiations. If the persons who, up to that point, have assumed the administration of the Contract are unable to reach an agreement, the parties shall then involve at least one officer of the **Contractor** and at least one senior manager representing the **Owner**.
- GC52.2.2.1 The **Contractor** undertakes to provide any other information or document required by the **Owner** within the period thereby stipulated or otherwise agreed upon.
- GC52.2.3 After having reviewed the notice of dispute, the **Owner** informs the **Contractor** in writing of its position on the dispute and, where applicable, proposes a settlement solution to the **Contractor**.
- GC52.2.3.1 Subject to GC52.2.3.2, if the **Owner** determines that the **Contractor's** grievance is well founded, it will reimburse the **Contractor** for the cost of the work, plant and additional materials incurred by the **Contractor** in carrying out the decision or direction that was the subject of the grievance.
- GC52.2.3.2 The cost mentioned in GC52.2.3.1 shall be calculated in accordance with the provisions of GC47 *Additions or Amendments to Price Table* to GC50 *Determination of Cost – Failing Negotiation*.
- GC52.2.4 When an agreement is reached, the **Owner** transmits a rider to the **Contractor**.
- GC52.2.5 Any dispute that is still outstanding on the date of issuance of the last Interim Certificate of Completion will be dealt with according to GC52.3 et seq.
- GC52.2.6 Any grievance by the **Contractor** under GC52.2 does not relieve the **Contractor** from complying with the decision or direction rendered or issued by the Engineer in respect of this grievance:
- GC52.2.6.1 the grievance may not be used as a pretext for the **Contractor** to slow down the progress of the work or cease the performance of the Contract or any part thereof, even that part that is the subject of the dispute;

GC52.2.6.2 if the **Contractor** protests pursuant to GC52.2, any compliance by the **Contractor** with the decision or direction that was protested shall not be construed as an admission by the **Contractor** of the correctness of that decision or direction and may not constitute a plea of inadmissibility if the dispute is eventually referred to mediation, to arbitration or to a tribunal.

GC52.3 After the completion of the work,

GC52.3.1 if the **Contractor** still considers itself aggrieved in any way by the terms of the Contract, the **Contractor** shall, no later than sixty (60) days from the date of issuance of the last Interim Certificate of Completion, deliver to the **Owner** a detailed claim setting forth and regrouping, without limitation, the following information and documents for each outstanding dispute:

GC52.3.1.1 a description, history and explanation of the dispute as to when, how and why the problem occurred, from the **Contractor's** point of view, as well as the position taken by the **Owner**;

GC52.3.1.2 the amount claimed and, where applicable, details of the calculation methods used;

GC52.3.1.3 the effects on the detailed work schedule, determined by means of a delay analysis performed according to an appropriate methodology;

GC52.3.1.4 all supporting documentation in support of its representations;

GC52.3.1.5 an affidavit, signed by an officer of the **Contractor**, certifying that all information therein contained is true, correct and complete;

GC52.3.1.6 an undertaking to provide any other information or documents required by the **Owner** within the period thereby stipulated.

GC52.3.2 if the **Contractor** fails to submit a detailed claim within the time limit stipulated in GC52.3.1, the **Contractor** shall be deemed not to consider being aggrieved in any way by the terms of the Contract and shall be deemed to expressly hold the **Owner** harmless against any claim relating to the Contract.

GC52.3.3 Following the submission of its detailed claim, the **Contractor** shall provide the **Owner**, within the period specified by the latter, with any other information or document required by the **Owner**.

GC52.3.4 If, within four (4) months from the date of issuance of the last Interim Certificate of Completion, or within any additional period granted by the **Owner**, the claim does not contain all information and documents referred to in GC52.3.1 in a clear, detailed and complete manner, the **Contractor's** claim will be deemed inadmissible and will be rejected by the **Owner**.

GC52.3.5 To the extent that the detailed claim is clear, precise and complete, and accompanied by all supporting documentation, the **Owner** will study the detailed claim submitted by the **Contractor**.

GC52.3.5.1 If the **Owner** determines that the **Contractor's** detailed claim is well founded, in whole or in part, it will reimburse the **Contractor** for the cost of the work, plant and materials, calculated in accordance with the provisions of GC47 *Additions or Amendments to Price Table* to GC50 *Determination of Cost – Failing Negotiation*.

GC52.3.5.2 The **Owner** will inform the **Contractor** in writing of its decision within six (6) months from the date of receipt by the **Owner** of the last information or document transmitted by the **Contractor**.

GC52.3.6 Notwithstanding GC52.3.1, the **Contractor** shall, within sixty (60) days following the issuance of the Final Certificate of Completion referred to in paragraph GC44.2, provide the **Owner** with the information and documents concerning an outstanding dispute relating to work performed after the issuance of the last Interim Certificate of Completion referred to in paragraph GC44.1.

GC52.4 Confidentiality

GC52.4.1 Unless otherwise required by law, all information exchanged by the parties and representatives thereof under GC52 *Dispute Resolution Procedure*, by whatever means, shall be without prejudice and in a confidential manner.

GC52.4.2 The parties and their legal advisers or representatives shall protect the confidentiality of all matters and documents disclosed, except where disclosure thereof is necessary for the implementation of any agreement entered into by the parties or required by law.

GC52.4.3 However, the admissibility or disclosure of evidence which 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 this evidence in the context of GC52 *Dispute Resolution Procedure*.

GC52.4.4 Neither party shall make a recording or transcript, record minutes or otherwise document a negotiation session.

GC52.5 Subsequent Proceedings

GC52.5.1 The parties shall not rely on or introduce as evidence, in any mediation or any arbitral or judicial proceeding,

GC52.5.1.1 any documents of other parties that are not otherwise producible in the course of such proceedings;

- GC52.5.1.2 any views expressed or suggestions made by any party in respect of a possible settlement of the issues in dispute;
- GC52.5.1.3 any admission made by any party, during negotiations or otherwise, unless the admitting party has expressly consented thereto;
- GC52.5.1.4 the fact that any party has indicated a willingness to make or accept a proposal or recommendation for settlement.
- GC52.5.2 Any proposal or offer of settlement, 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 remove it completely.

GC52.6 Mediation and Arbitration

- GC52.6.1 The parties agree to consider the use of mediation or arbitration before resorting to legal action to settle any dispute that has not been resolved under GC52.3.
- GC52.6.2 In this regard, the parties agree to meet to examine whether one of these means of settlement, or any other private dispute resolution, should be used to settle any outstanding dispute.
- GC52.6.3 If the parties agree to submit any outstanding dispute to arbitration, the arbitral proceedings shall be governed and conducted in accordance with the *Commercial Arbitration Act* (R.S.C. 1985, c. 17 (2nd Supp.)).

GC52.7 Legal Proceedings

- GC52.7.1 Subject to the provisions of GC52.3.2, either party may bring such legal action or proceedings as it deems appropriate, including, without limiting the scope of the foregoing, any legal action that it could have instituted immediately, had it not been for the provisions of this *GC52 Dispute Resolution Procedure*.

GC53 CONFLICT OF INTEREST

- GC53.1 It is a term of this Contract that no individual, for whom 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* apply, shall derive a direct benefit from this Contract unless that individual is in compliance with the applicable post-employment provisions.

GC54 CONTRACTOR STATUS

- GC54.1 The **Contractor** shall be engaged under the Contract as an independent contractor.

GC54.2 The **Contractor** and any employee of the said **Contractor** is not engaged under the Contract as an employee, servant or agent of the **Owner**.

GC54.3 For the purposes of GC54.1 and GC54.2, the **Contractor** shall be solely responsible for any and all payments and deductions required to be made by law including those required by Canada or Québec Pension Plans, Unemployment Insurance, Worker's Compensation or Income Tax.

GC55 HUMAN REMAINS, ARCHAEOLOGICAL REMAINS AND ITEMS OF HISTORICAL OR SCIENTIFIC INTEREST

GC55.1 For the purposes of this clause:

GC55.1.1 "human remains" means the whole or any part of a deceased human being, irrespective of the time that has elapsed since death;

GC55.1.2 "archaeological remains" are items, artifacts or things made, modified or used by human beings in antiquity and may include, but not be limited to stone, wood or iron structures or monuments, dump deposits, bone artifacts, weapons, tools, coins and pottery;

GC55.1.3 "items of historical or scientific interest" are naturally occurring or manufactured objects or things of any age that are not archaeological remains but may be of interest to society because of their historical or scientific significance, value, rarity, natural beauty or other quality;

GC55.2 If, during the course of the work, the **Contractor** encounters any object, item or thing which is described in GC55.1, or which resembles any object, item or thing described in GC55.1, the **Contractor** shall

GC55.2.1 take all reasonable steps, including stopping work in the affected area, to protect and preserve the object, item or thing;

GC55.2.2 immediately notify the Engineer of the circumstances in writing, and

GC55.2.3 take all reasonable steps to minimize additional costs which may accrue as a result of any work stoppage.

GC55.3 Upon receipt of a notification in accordance with GC55.2.2, the Engineer shall, in a timely manner, determine whether the object, item or thing is one described in, or contemplated by, GC55.1, and shall notify the **Contractor** in writing of any action to be performed, or work to be carried out by, the **Contractor** as a result of the Engineer's determination.

- GC55.4 The Engineer may, at any time, enlist the services of experts, particularly an archaeologist or historian as appropriate, to assist in the investigation, examination, taking of measurements or other such recordings, placing of permanent protection around or removing of the object, item or thing encountered by the **Contractor**, and monitoring in case of further discoveries, and the **Contractor** shall, to the satisfaction of the Engineer, allow them access and cooperate with them in the carrying out of their duties and obligations.
- GC55.5 Human remains, archaeological remains and items of historic or scientific interest encountered at the site of the work shall remain the property of the **Owner**.
- GC55.6 Except as may be otherwise provided for in the Contract, the provisions of GC30 *Changes in the work* shall apply.

GC56 CONTAMINATED SITE CONDITIONS

- GC56.1 For the purposes of this clause, a contaminated site condition exists when toxic, radioactive or other hazardous substances or materials, or other pollutants, are found to be present at the site of the work to the extent that they constitute a hazard, or potential hazard, to the environment, property, or the health and safety of any person.
- GC56.2 If the **Contractor** encounters a contaminated site condition, or has reasonable grounds to believe that a contaminated site condition exists at the site of the work, the **Contractor** shall:
- GC56.2.1 take all reasonable steps, including stopping the work, to ensure that no person suffers injury, sickness or death, and that neither property nor the environment is injured or destroyed as a result of the contaminated site conditions;
- GC56.2.2 immediately notify the Engineer of the circumstances in writing;
- GC56.2.3 take all reasonable steps to minimize additional costs which may accrue as a result of any work stoppage.
- GC56.3 Upon receipt of a notification in accordance with GC56.2.2, the Engineer shall, in a timely manner, determine whether a contaminated site condition as described in, or contemplated by GC56.1 exists, and shall notify the **Contractor** in writing of any action to be taken, or work to be performed, by the **Contractor** as a result of the Engineer's determination.
- GC56.4 If the **Contractor's** services are required by the Engineer, the **Contractor** shall follow the direction of the Engineer with regard to any excavation, treatment and disposal of the contaminated substances or materials.

GC56.5 The Engineer may at any time, and at the Engineer's sole discretion, enlist the services of experts and specialty contractors to assist in determining the existence of, and the extent and treatment of the contaminated site conditions, and the **Contractor** shall, to the satisfaction of the Engineer, allow them access and cooperate with them in the carrying out of their duties and obligations.

GC56.6 Except as may be otherwise provided for in the Contract, the provisions of GC30 *Changes in the work* shall apply.

GC57 APPLICABLE LAWS

GC57.1 The **Contractor** shall comply with all legislative and regulatory provisions whether federal, provincial or municipal applicable to the performance of the work.

GC57.2 Unless otherwise provided in the Contract, the **Contractor** shall obtain all permits and hold all certificates and licences for the performance of the work.

GC58 INTEGRITY PROVISIONS – CONTRACT

GC58.1 Statement

GC58.1.1 The **Contractor** undertakes to comply with the terms of GC58 relating to integrity, which is rooted, with some modifications, in the *Ineligibility and Suspension Policy* issued by Public Services and Procurement Canada (hereinafter "PSPC") and attached in Appendix 2-II of Section 2 *Instructions to the Tenderer*. The **Contractor** further undertakes to comply with the excerpts from the *Code of Conduct for Procurement* issued by PSPC and attached in Appendix 2-III of Section 2 *Instructions to the Tenderer*.

GC58.1.2 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, a false statement in its tender under the Contract or failure to keep up to date the information required herein may result in a withdrawal of the work for default under GC38 *Taking the Work out of the Contractor's Hands*. In the event that the **Contractor** has made a false statement in its tender or under the Contract, fails to keep up to date the information required herein or if the **Contractor** or any of the **Contractor's** affiliates fails to remain free and clear of the convictions specified in GC58 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 GC38 *Taking the Work out of the Contractor's Hands*. The **Contractor** acknowledges that a withdrawal of the work does not restrict the right of the **Owner** to exercise any other remedies available to the latter against the **Contractor** and the **Contractor** agrees to immediately remit the advance payments made.

GC58.2 List of Names

GC58.2.1 In accordance with Article 2.12.3 *List of Names* of Section 2 *Instructions to the Tenderer*, 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.

GC58.3 Verification of Information

GC58.3.1 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 GC58 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**.

GC58.4 Lobbying Act

GC58.4.1 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* (R.S.C., 1985, c. 44 (4th Supp.)).

GC58.5 Canadian Offences Resulting in a Legal Incapacity

GC58.5.1 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 of Canada* (R.S.C., 1985, c. C-46) and for which they have not received pardon or obtained discharge in accordance with paragraph GC58.10 *Canadian Pardons and Discharges*:

GC58.5.1.1 subsection 80(1)d) (*False entry, certificate or return*), subsection 80(2) (*Fraud against Her Majesty*) or section 154.01 (*Fraud against Her Majesty*) of the *Financial Administration Act* (R.S.C., 1985, c. F-11); or

GC58.5.1.2 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 Her Majesty or section 418 (*Selling defective stores to Her Majesty*) of the *Criminal Code* (R.S.C., 1985, c. C-46); or

GC58.5.2 The **Contractor** certifies that it has not been convicted of or pleaded guilty to an offence under the provisions described in paragraph GC58.5.1 and has not directed, influenced, authorized, acquiesced in, assented to 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 under paragraph GC58.5.1.

GC58.6 Canadian Offences

GC58.6.1 The **Contractor** certifies:

- GC58.6.1.1 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 under this GC58 relating to integrity and for which they have not received pardon or obtained discharge in accordance with paragraph GC58.10 *Canadian Pardons and Discharges*:
- GC58.6.1.1.1 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* (R.S.C., 1985, c. C-46); or
- GC58.6.1.1.2 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* (R.S.C., (1985), c. C-34); or
- GC58.6.1.1.3 section 239 (*False or deceptive statements*) of the *Income Tax Act* (R.S.C., 1985, c. 1 (5th Supp.)); or
- GC58.6.1.1.4 section 327 (*False or deceptive statements*) of the *Excise Tax Act* (R.S.C., 1985, c. E-25); or
- GC58.6.1.1.5 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* (S.C., 1998, c. 34); or
- GC58.6.1.1.6 section 5 (*Trafficking in substance*), section 6 (*Importing and exporting*), or section 7 (*Production of substance*) of the *Controlled Drugs and Substance Act* (S.C., 1999, c. 19); or
- GC58.6.1.2 that the **Contractor** has not been convicted of or pleaded guilty to an offence under the provisions described in paragraph GC58.6.1.1 and has not directed, influenced, authorized, acquiesced in, assented to 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 under paragraph GC58.6.1.1.

GC58.7 Foreign Offences

GC58.7.1 The **Contractor** certifies:

- GC58.7.1.1 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 paragraphs GC58.4 *Lobbying Act*, GC58.5 *Canadian Offences Resulting in a Legal Incapacity* and GC58.6 *Canadian Offences*, and for which they have not received pardon or obtained discharge in accordance with paragraph GC58.11 *Foreign Pardons* and that:
- GC58.7.1.1.1 the court before which the **Contractor** or the **Contractor's** affiliates thereof appeared acted within the court's jurisdiction;
- GC58.7.1.1.2 the **Contractor** or the **Contractor's** affiliates thereof appeared during the court's proceedings or submitted to the court's jurisdiction;
- GC58.7.1.1.3 the court's decision was not obtained by fraud; and
- GC58.7.1.1.4 the **Contractor** or the **Contractor's** affiliates were entitled to present to the court every defence that the **Contractor** or **Contractor's** affiliates would have been entitled to present had the proceeding been tried in Canada; or
- GC58.7.1.2 that the **Contractor** has not been been convicted of or pleaded guilty to an offence covered by the provisions described in paragraph GC58.7.1.1 and has not directed, influenced, authorized, acquiesced in, assented to 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 under paragraph GC58.7.1.1.

GC58.8 Default of the Contractor

- GC58.8.1 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 paragraphs GC58.4 *Lobbying Act*, GC58.5 *Canadian Offences Resulting in a Legal Incapacity*, GC58.6 *Canadian Offences* and GC58.7 *Foreign Offences*, the **Contractor** will be considered in default and the **Owner** will have the right to withdraw the work from the **Contractor** under GC38 *Taking the Work out of the Contractor's Hands*.
- GC58.8.2 The **Contractor** also 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* attached in Appendix 2-II of Section 2 *Instructions to the Tenderer*, the **Contractor** will be considered in default and the **Owner** will have the right to withdraw the work from the **Contractor** under GC38 *Taking the Work out of the Contractor's Hands*.

GC58.8.3 The **Contractor** certifies that it understands that if, at any time during 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 paragraph 2.13.7. *Anti-Avoidance Provisions* of Section 2 *Instructions to the Tenderer*, the **Contractor** will be considered in default and the **Owner** will have the right to withdraw the work from the **Contractor** under GC38 *Taking the Work out of the Contractor's Hands*.

GC58.9 Declaration of Convicted Offences

GC58.9.1 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 paragraphs GC58.4 *Lobbying Act*, GC58.5 *Canadian Offences Resulting in a Legal Incapacity*, GC58.6 *Canadian Offences* and GC58.7 *Foreign Offences*.

GC58.10 Canadian Pardons and Discharges

GC58.10.1 The commission of an act or offence or the fact of having pleaded guilty to or having been convicted of an offence or act as listed in paragraphs GC58.4 *Lobbying Act*, GC58.5 *Canadian Offences Resulting in a Legal Incapacity* or GC58.6 *Canadian Offences* will not result in the work being withdrawn under GC38 *Taking the Work out of the Contractor's Hands*, if the **Contractor** or any of the **Contractor's** affiliates:

GC58.10.1.1 has been granted an absolute discharge in respect of the offence, or a conditional discharge in respect of the offence and those conditions have been satisfied;

GC58.10.1.2 has been granted a pardon under Her Majesty's royal prerogative of mercy;

GC58.10.1.3 has been granted a pardon under section 748 of the *Criminal Code* (R.S.C., 1985, c. C-46);

GC58.10.1.4 has received a record of suspension ordered under the *Criminal Records Act* (R.S.C., 1985, c. C-47);

GC58.10.1.5 has been granted a pardon under the *Criminal Records Act* (R.S.C., 1985, c. C-47) – as that Act read immediately before the day section 165 of the *Safe Streets and Communities Act* came into force (S.C., 2012, c. 1).

GC58.11 Foreign Pardons

GC58.11.1 The commission, abroad, of an act or offence or the fact of having pleaded guilty to or having been convicted of an offence or act abroad as listed in paragraph GC58.7 *Foreign Offences* will not result in the work being withdrawn under GC38 *Taking the Work out of the Contractor's Hands*, 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.

GC58.12 Subcontractors' Obligations

GC58.12.1 The **Contractor** certifies that the contracts entered into with its subcontractors comprise provisions relating to integrity that are similar to those imposed in GC58 relating to integrity, and that its subcontractors comply thereto. Any failure by the **Contractor** to comply with this paragraph GC58.12 may, without however being limited thereto, result in the obligation for the **Contractor** to replace a subcontractor in accordance with GC4 *Subcontracting by Contractor*.

GC59 CONFIDENTIALITY

GC59.1 The **Contractor** shall keep confidential all information provided to the **Contractor** by or on behalf of the **Owner** in connection with the Contract, including any information that is confidential or proprietary to third parties, and all information conceived, developed or produced by the **Contractor** as part of the Contract when copyright or any other intellectual property rights in such information belongs to the **Owner** under the Contract.

GC59.1.1 The **Contractor** shall not disclose any such information without the written permission of the **Owner**.

GC59.1.2 The **Contractor** may disclose to a subcontractor any information necessary to perform the subcontract as long as the subcontractor agrees to keep the information confidential and that it will be used only to perform the subcontract.

GC59.1.3 The **Contractor** shall not, among other things, discuss, report on or given an opinion concerning any matter relating to the Contract without the written consent of the **Owner**.

GC59.2 The **Contractor** agrees to use any information provided to the **Contractor** by or on behalf of the **Owner** only for the purposes of the Contract. The **Contractor** acknowledges that all this information remains the property of the **Owner** or the third party, as the case may be.

GC59.2.1 Unless provided otherwise in the Contract, the **Contractor** shall deliver to the **Owner** all such information, together with every copy, draft, working paper and note that contains such information, upon completion or termination of the Contract or at such earlier time as the **Owner** may require.

GC59.3 Subject to the *Access to Information Act*, R.S.C. 1985, c. A-1 and to any right of the **Owner** under the Contract to release or disclose, the **Owner** shall not release or disclose outside its organization or the Government of Canada any information delivered to the **Owner** under the Contract that is proprietary to the **Contractor** or a subcontractor.

GC59.4 The obligations of the parties set out in this article do not apply to the following information:

GC59.4.1 information which is publicly available from a source other than the other party; or

GC59.4.2 information which is or becomes known to a party from a source other than the other party, except any source that is known to be under an obligation to the other party not to disclose the information; or

GC59.4.3 information which is developed by a party without use of the information of the other party.

END OF SECTION