

THIS MASTER INFORMATION TECHNOLOGY (IT) SERVICES AGREEMENT
MADE effective as of the Commencement Date.

BETWEEN:

CANADIAN PACIFIC RAILWAY COMPANY

A corporation incorporated pursuant to the laws of Canada
("CPR")

- and -

The Party as defined in a statement of work or other transaction document where such document incorporates by reference the terms of this Contract (each a "**SOW**").
("Supplier")

WHEREAS:

A. Supplier has stated their expertise and is actively engaged in the business of providing the Services and associated Materials as defined in the SOW which forms the subject matter of this Contract;

B. CPR is interested in retaining the Supplier to provide Services (and, where applicable, associated Materials) and Supplier wishes to provide the same to CPR, through the issuance of SOW(s) from time to time; and,

C. These Contract terms shall apply to all SOWs.

NOW THEREFORE, in consideration of the mutual promises and the covenants and agreements set forth in this Contract and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by CPR and the Supplier (collectively the "**Parties**") the Parties agree as follows:

ARTICLE 1 - DEFINITIONS AND INTERPRETATION

1.01 See Definitions, a copy of which can be found at URL:
<http://www.cpr.ca/en/about-cp-site/ISDocuments/151029-Definitions.pdf>,
attached to and forming part of this Contract ("**Definitions**").

ARTICLE 2 - SERVICES and PERSONNEL PROVIDED BY SUPPLIER

2.01 Scope of Services

- (a) In accordance with terms and conditions of this Contract, CPR agrees to purchase, and Supplier agrees to sell, on a non-exclusive basis unless a different arrangement has been defined in the SOW, the Materials (defined below), and services provided by Supplier as each is more particularly set out in a SOW (“**Services**”) and any accompanying physical materials to be provided as part of this Contract or included in a SOW (“**Materials**”).
- (b) Except where otherwise agreed in an SOW, in its provision of the Services and Materials, Supplier shall:
 - a. Follow at a minimum the CPR Program/Project Delivery Methodology, a copy of which can be found at URL:
<http://www.cpr.ca/en/about-cp-site/ISDocuments/Project-Initiative-Governance-Placemat.pdf>

including all associated required templates, and shall use the CPR Program/ Project Delivery System as required; and,
 - b. Follow all reasonable directions from CPR including those indicating the location where the Services are to be performed.

2.02 Supplier Personnel

- (a) The names (or job description) of Supplier employees, subcontractors, assigns or agents (“**Supplier Personnel**”) whom are responsible for providing the Services, and Materials shall be set out in each respective SOW. In addition to the restrictions to the Supplier Personnel as set out in this Contract, additional restrictions relating to Supplier Personnel, if any, may be agreed to by the Parties and thereafter set out in each respective SOW.
- (b) Supplier shall remove any Supplier Personnel upon the request of CPR within the time limit indicated in such request; and
- (c) Supplier shall replace such Supplier Personnel promptly upon receiving request or approval of CPR, which approval shall not be unreasonably withheld. The Supplier shall be responsible for all costs associated with on-boarding and training Supplier Personnel (including those replaced or removed).

2.03 Key Personnel

- (a) In addition to its obligation in respect of Supplier Personnel in Article 2.02 above, where applicable, Supplier shall specifically identify any Supplier Personnel who CPR or Supplier reasonably believes to be essential for

successful completion of the Services or Materials (“**Key Personnel**”). In addition to the forgoing, Key Personnel is deemed to include named Supplier Personnel who spend greater than 25 hours a week averaged over the prior five (5) weeks in relation to the provision of Services or Materials to CPR under a SOW referencing this Contract.

- (b) Upon CPR request, the Supplier shall provide CPR with copies of the resumes of Key Personnel for evaluation and acceptance by CPR. Moreover, CPR reserves the right to interview Key Personnel prior to their engagement under this Contract.
- (c) During the Term of a SOW, except by written agreement of the Parties, the Supplier shall make no substitutions of Key Personnel unless the substitution is necessitated by illness, death, or termination of employment. The Supplier shall notify CPR promptly, but in no case later than five (5) Business Days after the occurrence of any of these events, and provide a detailed explanation of the circumstances necessitating proposed substitutions of Key Personnel.
- (d) In the case of substitution necessitated by illness, death, or termination of employment, Supplier shall promptly replace Key Personnel.
- (e) Proposed replacement Key Personnel shall have equivalent or better qualifications to those of the persons being replaced. Supplier must also provide CPR with copies of the resumes for evaluation by CPR and grant CPR the right to interview such Key Personnel prior to their engagement. Approval of replacement Key Personnel is subject to CPR prior written approval.
- (f) CPR reserves the right to treat the proposed substitution of Key Personnel as a change within the scope of the Change Request process.

2.04 Reporting

Unless otherwise set out in a SOW, Supplier shall submit a written report to CPR monthly during the Term of this Contract for each active SOW including:

- (a) The reports required in a respective SOW;
- (b) A list of the Services completed and Materials delivered to date;
- (c) The time schedule for completion of those portions of the Materials and Services that are, at that time, not completed; and
- (d) Any other information reasonably requested by CPR relating to the provision or completion of the Services and Materials.

ARTICLE 3- PAYMENT

3.01 Fees and Expenses

Subject to Supplier providing the Services and Materials in accordance with the terms of this Contract, CPR agrees to pay Supplier as follows:

(a) Fees

- a. As set out in a SOW, at the rates set out in that SOW. Unless expressly stated otherwise in a SOW, the fees include all third party costs (“**Fees**”);
- b. Unless otherwise stated in a SOW, the Fees payable to Supplier do not include any taxes.

(b) Expenses

- a. Unless otherwise permitted in a SOW (and then only for that SOW), the Supplier shall be solely responsible for the payment of all expenses incurred in the performance of this Contract.
- b. Despite any term to the contrary, CPR shall reimburse Supplier for all Approved Expenses only in accordance with CPR’s Contractor Travel Expense Guideline found at URL:
<http://www.cpr.ca/en/about-cp-site/ISDocuments/141203-Travel-Expense-Guidelines-for-IS-Contractors.pdf>
- c. No **GST**, **HST**, **PST** or other sales tax shall be paid by CPR on Approved Expenses. If Supplier has incurred **GST**, **HST** or **PST** in relation to the Approved Expenses, the Supplier shall be entitled to claim an input tax credit with Canada Revenue Agency or similar taxing authority.

3.02 Billings and Payment

- (a) Unless set out in a SOW as payable pursuant to milestone dates or otherwise, Supplier shall invoice CPR monthly in arrears for Fees and Approved Expenses.
- (b) All invoices shall be in a form acceptable to CPR and shall at a minimum clearly indicate:
 - a. invoice number;
 - b. invoice date;
 - c. date(s) that the Service and Materials were provided;

- d. a detailed description of Services and Materials provided;
 - e. itemized invoice amount;
 - f. a cumulative total of Fees for this Contract;
 - g. a total of Fees for each active SOW;
 - h. a total of Approved Expenses to date for each active SOW;
 - i. when provided, reference to CPR internal Contract number;
 - j. applicable sales and non-sales taxes as separate amounts and further separated by jurisdiction;
 - k. the Supplier's sales tax registration numbers; and
 - l. CPR's purchase order number.
- (c) Subject to reasonable CPR verification and the provisions of Article 3.05 – DISPUTED INVOICES, CPR shall pay all undisputed invoice amounts within forty (40) days of the invoice receipt by CPR.
- (d) A Fee (or Fees) shall be deemed waived by the Supplier if not invoiced or demanded in writing within 12 months following the later of:
- (i) the date of the Service (or applicable portion to be invoiced) being provided, or
 - (ii) the earliest date an invoice may be delivered pursuant to the terms of the Contract, a SOW, or a Change Order.
- (e) Supplier shall comply with all applicable commodities and sales tax laws including the collection and remittance of goods and services tax/harmonized sales tax (“**GST/HST**”), Quebec sales tax (“**QST**”), and provincial sales tax (“**PST**”). Notwithstanding the foregoing, where applicable, Supplier shall not charge PST if CPR provides notice to Supplier of a PST exemption.
- (f) Where Supplier provides Services in Saskatchewan or Manitoba and is not a resident in such province, Supplier shall comply with the posting of PST security with the responsible authorities. Supplier shall certify to CPR that it has posted PST security and to the extent Supplier fails to do so, CPR shall be entitled to withhold the applicable value in accordance with the relevant tax legislation.
- (g) Supplier shall comply with all applicable income tax laws, including the withholding of applicable payroll taxes from those of its employees performing Supplier's obligations in this Contract.
- (h) Supplier acknowledges that if Supplier is a non-resident as defined by the *Income Tax Act (Canada)*, CPR may withhold the amounts applicable to a non-resident. Supplier shall confirm to CPR if it is a non-resident as defined by the *Income Tax Act (Canada)*.

- (i) Supplier shall be liable for and shall indemnify CPR in accordance with ARTICLE 13 - INDEMNIFICATION AND NON-SOLICITATION in respect of any claims, penalties, interest, or costs made or assessed against CPR arising from Supplier's non-compliance with tax laws.
- (j) CPR and Supplier shall conduct business transactions using electronic data interchange (“**EDI**”) pursuant to the process identified immediately below. CPR may waive this requirement upon written request by Supplier.
- (k) Supplier shall submit purchase order related invoices through EDI or ORISS.
- (l) Invoices without a purchase order shall be rendered in .pdf format and submitted via email or fax (details of which shall be provided on request).

3.03 Electronic Data Exchange:

CPR and the Supplier agree to conduct business transactions using electronic data interchange “EDI” and the parties agree that the following provisions govern EDI.

(a) Means of Transmission

- i. The Parties will transmit EDI Data directly to one another or through a service provider. Each party will be solely responsible for the cost of any provider with which it contracts.
- ii. Supplier will be liable to the other for the acts or omissions of its provider while transmitting, receiving, storing or handling EDI Data.

(b) Receipt & Acceptance

- i. Proper Receipt. EDI Data will not be deemed to have been properly received and no EDI Data will give rise to any obligation, until accessible to CPR. CPR shall remit payment from date of receipt of EDI Data in accordance with Article 3 - PAYMENT of this Contract.
- ii. Verification. The Supplier is to have in place reasonable controls to assure timely handling of EDI Data. The Supplier will verify the EDI Acknowledgement received by their service provider and will constitute conclusive evidence that EDI Data has been forwarded to CPR’s service provider.

3.04 Verification

If CPR disputes the amount on any invoice, at no cost to CPR, Supplier shall provide timekeeping and other records to prove the accuracy of the invoice to CPR’s reasonable satisfaction.

3.05 Disputed Invoices

In the case of a disputed invoice, CPR will pay the invoice, less the amount in dispute, and prior to the initiation of any form of adversary proceedings, the Supplier and CPR will work together in good faith in accordance with Article 18 – DISPUTE RESOLUTION to resolve their differences with regard to the disputed amount. Late payment and interest charges shall not apply to the amount in dispute until resolution of the dispute.

3.06 Records and Audits

The Records and Audits terms can be found in the Definitions and, like all definitions referenced herein, apply to this Contract.

3.07 Not to Exceed (“NTE”) Amounts

Where a NTE amount is specified in a SOW, the Fees payable under such SOW shall not exceed such agreed NTE amount unless CPR has provided prior written approval using the Change Request process set out in Article 17 – CHANGE REQUEST PROCESS.

3.08 Early Payment

In respect of each invoice, CPR is entitled to a 2% early payment discount if it makes payment within 10 (ten) Business Days from CPR’s receipt of an invoice. The 2% discount is not applicable to any taxes, surcharges, fees, fines, penalties or levies. All invoices shall clearly state both the non-early payment amount and early payment discount amount.

3.09 Electronic Funds Transfer (EFT)

Supplier agrees to accept Electronic Funds Transfer (“**EFT**”) as the vehicle for the payment of Suppliers Invoices. The Canadian EFT Enrollment Form can be found at URL: <http://www.cpr.ca/en/about-cp-site/Documents/canadian-eft-enrollment-form.doc>

ARTICLE 4- TERM AND TERMINATION

4.01 Term

This Contract shall take effect from the Commencement Date and remains in effect concurrent with the term as designated in a SOW (“**Term**”), unless terminated earlier in accordance with this Contract. For greater certainty, each SOW made under this Contract may have a unique length of term, which term shall govern the applicable SOW.

4.02 Renewal Terms

Renewal terms for the Contract, if any, shall be as set out in an Amendment to this Contract.

4.03 Termination

- (a) Without penalty, cost or any charge, CPR may terminate or suspend this Contract or any SOW, without cause, or as a result of a Change of Control, upon fifteen (15) day prior written notice to Supplier.
- (b) Despite any term to the contrary, if this Contract is terminated for any reason:
 - a. if requested by CPR, Supplier must continue to provide all Services and Materials up to the effective date of termination;
 - b. CPR shall only pay Supplier for the Services completed and Materials delivered up to the earlier of effective date of termination or completion of the Services.
- (c) In the event of termination by CPR as a result of Material Breach by the Supplier, in addition to any remedies available at law, the following shall apply:
 - a. To the extent technically and legally feasible, with all assistance from the Supplier CPR may acquire at fair market value, or assume the lease of, any or all-existing hardware and software used in providing the Services.
 - b. For all hardware and software not acquired by CPR through subsection (a) above, the Supplier shall be responsible for re-licensing and assignment costs and the cost of terminating licenses, leases or contracts that are not acquired or assumed by CPR;
 - c. The Supplier shall be responsible for all costs reasonably incurred by CPR relating to displacement or re-deployment of assets, floor space or premises and personnel, which result from termination of this Contract (or any SOW); and
 - d. The Supplier shall be responsible for any additional costs reasonably incurred by CPR related to termination of this Contract or an applicable SOW.
- (d) Termination of this Contract by either Party shall not deprive the other Party of any of its rights, remedies or actions against the other in law or in equity, including damages.
- (e) Upon notice of termination of any SOW, the Supplier shall, if requested by CPR, co-operate with CPR to transition the Materials or Services provided to

CPR under the SOW to CPR or any third parties as determined by CPR. Without limitation, these transition services may include data migration services. Except where such transition is required as a result of Material Breach by the Supplier (which transition shall be governed by the terms found at Article 4.03(c) herein), all such transition services shall be at the Supplier's then current rates for the relevant Services.

4.04 FEES PAYABLE

Unless otherwise negotiated and discounted in accordance the terms of this Contract, whether this Contract is terminated with or without cause, CPR shall only be responsible for payment of Fees for the Services or Material completed as at the date of termination, on a time spent basis only, and no penalty for termination shall apply to CPR.

ARTICLE 5 - INDEPENDENT SUBCONTRACTOR

5.01 Supplier is an independent contractor for the purposes of this Contract and shall not be deemed to be a servant, employee or agent of CPR. Supplier acknowledges that CPR relies upon the Supplier to manage its affairs and contracting practice to maintain the legal characterization of this Contract as a subcontracting relationship.

ARTICLE 6 - ACCEPTANCE PERIOD

6.01 During the Acceptance Period, CPR shall inspect the Services and Materials and may perform all Acceptance Tests it deems necessary.

6.02 CPR's acceptance of Services and Materials shall be deemed to have occurred upon the earlier of:

- (a) the expiration of the Acceptance Period; and
- (b) CPR's written notification of unqualified acceptance to the Supplier.

6.03 In the event that the Services or Materials, or any portion thereof are not acceptable to CPR, CPR shall promptly notify the Supplier that CPR does not accept the Service or Materials and such notice shall include a list of defects or deficiencies.

6.04 Upon notice from CPR, and at no additional charge to CPR, Supplier shall have seven (7) Business Days to remedy any such defects and deficiencies. Upon remedy, CPR shall have an additional Acceptance Period to perform further Acceptance Tests to confirm the defects and deficiencies have been cured to the reasonable satisfaction of CPR. If CPR again rejects the Services or Materials, or any portion thereof, CPR may, in its sole discretion, elect to:

- (a) extend the period of time for the Supplier to remedy the defect or deficiency;

- (b) revise the SOW and negotiate an appropriate reduction in the Supplier's Fees; or
- (c) return the Materials, obtain a full refund of any amount paid and have no obligation to pay or any further obligations under the SOW or Contract and terminate the SOW or Contract.

ARTICLE 7- REPRESENTATIONS AND WARRANTIES

7.01 Supplier represents and warrants that:

a. Services

The Supplier will perform the Services in a safe, diligent and workmanlike manner and use its professional skill, diligence and care to ensure the Services and Materials are provided and completed pursuant to Leading Industry Practices and the applicable SOW requirements;

b. Quality

The Services and Materials shall be free from any defects or deficiencies in workmanship.

c. Cooperation

The Supplier shall (at no additional cost to CPR) make its best effort to communicate and cooperate with other CPR suppliers as may be required for the provision of the Service and Materials, including with a view to resolving defects and deficiencies in the Services and Materials which might reasonably be corrected with such cooperation.

d. Supplier Personnel

The Supplier Personnel providing the Services have the education, training, experience, skills, and access to resources, systems and processes necessary to safely, diligently and expeditiously provide the Services and Materials. Supplier further undertakes to continue to upgrade the education, training and skill of Supplier Personnel to maintain its Leading Industry Practices.

The Supplier warrants that it has conducted criminal, credit, insurance, reference, security and any other industry standard background checks to ensure that Supplier Personnel are available and properly qualified to provide the Services and Materials.

e. No Material Adverse Effect or Circumstance

As at the Commencement Date, the Supplier confirms that there is no fact or circumstance known to Supplier that may or could reasonably be expected to materially and adversely affect the condition (financial or otherwise), property,

assets, liabilities, business, operations, or prospects of the Supplier, its servants, employees or agents or any combination thereof.

f. No Actions

As at the Commencement Date or any SOW referencing this Contract, there are no actions, suits, proceedings or outstanding Claims or demands whatsoever instituted, pending or threatened against Supplier nor are there any facts known to Supplier which could reasonably be foreseen to result in any such actions, suits or proceedings.

g. No Untrue Statements

Neither this Contract nor any document, schedule, list, certificate, declaration under oath or written statement now or hereafter furnished by Supplier to CPR pursuant to this Contract: (a) contains, or by the hand of the Supplier, its employees, subcontractors or assigns will contain, any untrue statement or untrue representation of a material fact; or, (b) omits, or by the hand of the Supplier will omit, a material fact necessary to make any such statement or representation therein or herein contained not misleading.

h. Good Standing of Supplier

Supplier is a corporation/partnership duly incorporated/existing and in good standing under all applicable and relevant laws, is authorized to enter into this Contract and has all permits, license and authorizations necessary to carry on its business and perform or provide the Services and Materials, including pursuant to the laws governing within the province of Alberta. The corporate officer(s) of Supplier signing this Contract, acting personally, affirm(s) that Supplier has the power and authority to execute this Contract and perform the Services contemplated herein.

i. Execution and Validity of the Contract

The entering into of this Contract and the performance and compliance by Supplier with the terms hereof and the entering into of all transactions contemplated by this Contract and the performance and compliance with the terms hereof will not:

- a. Conflict with, violate or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any Contract to which Supplier is a party or by which they are bound;
- b. Result in a violation by Supplier of any statute, regulation, order, law, ordinance or restriction of Canada or the United States of America, or a province, state, territory or municipality thereof that are applicable to Supplier as a provider of services to CPR;

- c. Result in a violation by Supplier of any judgment, order or decree of any court, judicial or quasi-judicial tribunal having jurisdiction over Supplier or Supplier's property or assets.

7.02 Warranty Period

- (a) Unless otherwise set out in a SOW, Supplier warrants that the Services and Materials shall perform as required by this Contract for a period of one hundred and twenty (120) days beginning on the date upon which the Services and Materials are accepted by CPR pursuant to the acceptance process described in this Contract ("**Warranty Period**").

ARTICLE 8- REMEDIES

8.01 Inability to Complete the Services

- (a) During the provision of the Services or Materials, Supplier shall immediately notify CPR in writing of any circumstances that will preclude Supplier from completing or delivering any of the Services or Materials in the manner proposed. Upon such notice, CPR shall, in its sole discretion, have the option to:
 - a. Approve modifications to the Services or Materials; or
 - b. Terminate this Contract pursuant to Article 4.03 – TERMINATION.
- (b) If Supplier fails to notify CPR of any circumstances that may preclude Supplier from completing any of the Services or Materials in the manner set out in this Contract, the Parties shall enter into good faith discussions as to the amount of discount CPR shall receive on the Fees for the Services or Materials, or such other credit or benefit as CPR may reasonably request.

8.02 Rights and Remedies Cumulative

CPR may from time to time resort to any or all of the rights, relief and remedies available to it as a result of breach of this Contract by Supplier, either by a provision of this Contract or by statute or the general law, all of which rights and remedies are intended to be cumulative and not alternative, and the express provisions hereunder as to certain rights and remedies are not to be interpreted as excluding any other additional rights and remedies available to CPR by statute, contract or common law.

8.03 Remedies for Warranties

- (a) If the Services or Materials do not meet the warranties set forth in this Article 8 - REMEDIES, Supplier shall immediately, without cost to CPR, re-perform the Services or correct any defects in the Materials such that the same meets the Acceptance Test as set out at Article 6 ACCEPTANCE PERIOD and elsewhere in this Contract (including SOWs).

- (b) If the Supplier does not remediate a failure to meet the warranties set forth in this Article 8 - REMEDIES within a reasonable period of time, but not to exceed one-hundred and twenty (120) days, CPR may terminate this Contract on five (5) Business Day notice without cost, penalty or liability.
- (c) CPR reserves the right to make, or to cause to be made, the necessary remediation or re-performance of the Services or Material at the sole expense of the Supplier.

ARTICLE 9 - FORCE MAJEURE

9.01 Force Majeure

Neither Party shall be responsible for delays in delivery nor for failures in performance directly resulting from acts or omissions beyond the control of such Party, provided such is without the fault or negligence of said Party. Such acts shall include acts of God or of the public enemy, strikes (and labour disruptions), riots, acts of war, governmental regulations enacted after the fact, fire, flood, lasting communication line failures, lasting power failures, earthquakes, or other disasters, (each a “**Force Majeure Event**”). Upon the occurrence of a Force Majeure Event, the Party whose performance is affected shall immediately notify the other Party of the nature and extent of such condition. However, nothing in this Article shall relieve a party from fulfilling its obligations under this Contract due to its own financial obligations or self-made condition. The suspension of performance shall be of no greater scope and of no longer duration than is required by the relevant Force Majeure Event and during the suspension CPR will be under no obligation to make payments to a Supplier. Moreover, should the Force Majeure Event(s) persist for more than five (5) Business Days, in addition to any other remedies available to CPR, CPR may terminate the Contract immediately upon written notice to the other Party, without cost, penalty or liability. If after the five (5) Business Days, CPR chooses not to terminate the Contract, the Supplier shall perform its obligations including those set out in Article 20 – BUSINESS CONTINUITY.

ARTICLE 10- CONFIDENTIALITY AND PRIVACY

The Confidentiality and Privacy terms are contained in the Definitions.

ARTICLE 11- CPR MATERIALS AND TRADEMARKS

11.01 Return of Materials

Upon termination or expiration of this Contract, Supplier shall promptly return to CPR or destroy all materials (including Materials) relating to the Services provided by CPR to the Supplier, and all copies thereof. If requested by CPR, Supplier shall promptly furnish written confirmation of such destruction by an officer of the Supplier.

11.02 CPR Intellectual Property

- (a) CPR retains all Intellectual Property Rights in CPR's Intellectual Property and all information, materials, or software furnished by CPR to the Supplier.
- (b) Except when otherwise notified by the Supplier, and agreed to by CPR in advance in writing, CPR shall have exclusive ownership in all Materials including Intellectual Property Rights in the Materials that are made, prepared, developed, generated, produced or acquired under or in relation to this Contract by Supplier Personnel when they are developed, delivered or paid for by CPR, whichever occurs first.
- (c) Supplier shall grant CPR a perpetual, fully paid up, royalty-free, irrevocable right to internally use (which internal use shall include third parties providing services for CPR for CPR's benefit) the (i) Pre-existing Work and Commercial Software incorporated in any Materials to be provided to CPR under this Contract, (ii) User Documentation and (iii) Proprietary Tools, upon payment by CPR for such Materials or at completion or termination of this Contract.
- (d) Supplier:
 - a. Irrevocably waives in whole all moral rights in, and
 - b. Shall ensure that its employees, subcontractors and agents irrevocably waive in whole all moral rights to,

Materials, made, prepared, developed, generated, produced, or acquired under this Contract including such Pre-existing Work, User Documentation and Proprietary Tools incorporated into any Materials to be provided to CPR under this Contract. Supplier declares that these waivers shall operate in favour of CPR and CPR's assignees and licensees.
- (e) Upon completion or termination of this Contract, Supplier shall provide CPR a copy of all Pre-existing Work incorporated in any Materials, its source code, User Documentation and Proprietary Tools, and Supplier grants to CPR:
 - a. An irrevocable, non-exclusive, worldwide, perpetual, fully paid up, irrevocable, royalty free license to use, execute, reproduce, display, perform and distribute (internally and externally) copies of the Pre-existing Work included in any Materials, its source code, User Documentation and Proprietary Tools and the right to prepare derivative works based on such Pre-existing Work, source code, User Documentation and Proprietary Tools;
 - b. The right to authorize others to do anything CPR is permitted to do in this Article; and

- c. An irrevocable, non-exclusive, worldwide, fully paid up, royalty free license to use, execute, reproduce, display, perform and distribute internally copies of any Commercial Software included in the Materials to be provided to CPR under this Contract.

ARTICLE 12- ESCROW

This Article 12 - ESCROW is not included as part of this Contract EXCEPT to the extent it is expressly included by reference in a SOW.

12.01 Supplier must, within ten (10) Business Days of the execution of this Contract, enter into a contract (at its own cost) with an escrow agent and maintain a current copy of any Commercial Software, User Documentation, Commercial Software Proprietary Tools and the source code of the Commercial Software (and any other documentation and material that are reasonably necessary for CPR to independently operate the software or tools) in escrow with an escrow agent to be mutually agreed upon by the Parties. Within ten (10) Business Days from the date of any new release of the Commercial Software, Supplier must place an updated copy of the Commercial Software, Commercial Software User Documentation, Commercial Software Proprietary Tools and their source code with the agreed upon escrow agent as this Contract shall be deemed to provide for maintenance or the right of CPR to obtain new releases.

12.02 The contract with the escrow agent provided for in Article 12.01 above must provide that a copy of the Commercial Software, User Documentation, Commercial Software Proprietary Tools and their source code shall be released to CPR by the escrow agent not later than ten (10) Business Days after the occurrence of any one or more of the following triggering events:

- (a) Supplier making an assignment for the benefit of its creditors generally;
- (b) Supplier filing a petition or making a proposal under the *Bankruptcy and Insolvency Act (R.S.C., 1985, c. B-3)*, Canada, or similar equivalent legislation of an applicable jurisdiction;
- (c) Supplier is the subject of a receiving order or a petition filed under the *Bankruptcy and Insolvency Act (R.S.C., 1985, c. B-3)*, or such other applicable legislation and where Supplier does not contest such receiving order or petition in good faith;
- (d) Supplier making an application under the *Companies' Creditors Arrangement Act, R.S.C., 1985, c. C-36*, or similar or equivalent legislation of any applicable jurisdiction;
- (e) Supplier is subject to any distress or execution levied on its rights under the Contract;
- (f) Supplier is subject to appointment of any receiver, manager, receiver-manager, liquidator or trustee of the property, assets or undertaking of Supplier pursuant to the terms of a court order or security contract or

similar instrument and such appointment is not revoked or withdrawn within thirty (30) days of the appointment, provided that such period of thirty (30) days shall be extended to one hundred and twenty (120) days after such appointment where Supplier demonstrates to the reasonable satisfaction of CPR that it is contesting such appointment in good faith; or

- (g) Supplier fails in its performance of maintenance of the Commercial Software, if a SOW provides for maintenance.
- (h) Supplier's company is undergoing a Change of Control.

Supplier acknowledges and agrees that in the event that its escrow obligations are triggered by CPR, that the non-solicitation obligations in Article 13.03 - NON-SOLICITATION below shall be suspended.

ARTICLE 13 - INDEMNIFICATION AND NON-SOLICITATION

13.01 General Indemnification

Supplier agrees to indemnify and hold harmless CPR its Affiliates, and their respective current and former officers, directors, employees, agents, successors and assigns ("**CPR Indemnitees**") from and against:

- (a) any Claim, arising or resulting from Supplier acts or omissions relating to the provision of the Services and Materials; and
- (b) Claims which may be brought against CPR by any third party relating to the provision of Services and Materials under this Contract, (each a "**Third Party Claim**").

13.02 Intellectual Property Indemnity

- (a) In the case of Third Party Claim(s) that any Services and Materials, Commercial Software or Pre-existing Work included in any Materials to be provided to CPR under this Contract, as well as any User Documentation, Proprietary Tools delivered to CPR by Supplier Personnel under this Contract infringes upon Intellectual Property Rights enforceable in Mexico, China, Canada or the United States (each a "**Third Party IPR Claim**"), Supplier will defend CPR Indemnitees against such Third Party IPR Claim or Claims at Supplier's sole expense. Supplier further agrees to indemnify and hold CPR Indemnitees harmless and shall pay all costs, damages and legal fees that a court finally awards or are included in a settlement agreed to by Supplier, provided that CPR:
 - (i) Promptly notifies Supplier in writing of the Third Party IPR Claim; and

- (ii) Reasonably cooperates with Supplier, and allows Supplier to control, with CPR's participation, the defense and any related settlement negotiations.
- (b) If a Third Party IPR Claim is made or appears likely to be made, CPR agrees to permit Supplier to enable CPR, at Supplier's sole cost, with CPR's agreement, to continue to use the Materials or to provide CPR with a non-infringing replacement or modification which meets the specifications and functionality required for the Materials in this Contract. If Supplier determines that none of these alternatives is reasonably available, without limiting any of CPR's additional rights under this Contract, CPR shall return the Materials to Supplier on Supplier's written request and Supplier shall pay CPR, upon CPR's return of the Materials, all reasonable costs incurred by CPR, its officers, directors, employees, agents, successors and assigns as a result of the Intellectual Property Right infringement allegation.
- (c) Supplier has no obligation regarding any Third Party IPR Claim based upon any of the following:
 - a. CPR's modification of the Materials or use of software Materials in other than the operating environment specified for the software;
 - b. The combination, operation or use of the Materials with any programs, hardware or software that Supplier did not provide, unless Supplier has specifically approved the other programs, hardware or software for such combination, operation or use;
 - c. Compliance with CPR's written requirements for the Materials and which Supplier has advised CPR in writing with reasons that Article 13.02(a) will not apply with CPR's written requirement; or
 - d. Infringement by anything provided first by CPR for use in creating the Materials.
- (d) If there is a Third Party IPR Claim that the Materials delivered by Supplier or Supplier's subcontractors or agents infringes any Intellectual Property Right or any other proprietary right enforceable in Canada or the United States and the alleged infringement is based upon compliance with CPR's written requirements for such Materials and provided that Supplier has advised CPR in writing in advance of a 3rd party IPR claim with reasons that Article 13.02(a) will not apply with CPR's written requirement, then CPR will defend Supplier against the claim at CPR's expense. In this regard, CPR will pay all costs, damages and legal fees that a court finally awards or are included in a settlement agreed to by CPR, provided that Supplier (i) promptly notifies CPR in writing of the claim; and (ii) cooperates with CPR in, and allows CPR to control, with Supplier's participation, the defense and any related settlement negotiations.
- (e) If a Third Party IPR Claim described in Article 13.02(d) is made or appears likely to be made, Supplier agrees to permit CPR to enable Supplier, at

CPR's sole cost to continue to use the Materials or to provide Supplier with a non-infringing replacement or modification which meets the specifications and functionality required for the Materials in this Contract. If CPR determines that none of these alternatives is reasonably available, without limiting any of the Supplier's rights under this Contract or otherwise, the Supplier shall return the Materials to CPR on CPR's written request and CPR shall pay the Supplier, upon the Suppliers' return of the Materials, all reasonable costs incurred by the Supplier, its officers, directors, employees, agents, successors and assigns as a result of the actual or alleged Intellectual Property Right infringement.

- (f) CPR has no obligation regarding any Third Party IPR Claim based on any of the following:
 - a. Supplier's modification of the Materials or use of software Materials in other than the operating environment specified for the software;
 - b. The combination, operation or use of the Materials with any programs, hardware or software that CPR did not provide, unless CPR has specifically approved of the other programs, hardware, or software for such combination, operation or use;
 - c. Compliance with Supplier's written requirements for the Materials; or
 - d. Infringement by anything provided first by Supplier for use in creating the Materials, except to the extent such infringement arises from compliance with CPR's requirements for the Materials and which Supplier has advised CPR in advance in writing with reasons that Article 13.02(a) will not apply with CPR's written requirement.

- (g) Neither party shall have any obligation under any settlement made without its written consent.

13.03 Non-Solicitation

During the Term of this Contract and for a period of twelve (12) months following the later expiry or termination of this Contract or a related SOW, the Supplier, its employees, subcontractors and agents agree not to solicit for employment any person employed by CPR during the Term of this Contract. The Supplier shall gain written agreement from its employees, subcontractors and agents confirming their understanding and acceptance of this requirement upon request by CPR and shall enforce the same for the benefit of CPR. In the event the Supplier fails to comply with this provision, the Supplier, in addition to any other remedy available at law, shall pay to CPR an amount equal to 50% of the employee's annual salary as measured (and extrapolated) from the salary of the employee on their last date with CPR; provided, however, that nothing contained herein will prevent a Party from hiring any such employee who responds to a general hiring program conducted in the ordinary course of business not specifically directed to such employees.

ARTICLE 14 – INSURANCE AND PERFORMANCE SECURITY

14.01 Insurance

Supplier shall, at its own expense, obtain and maintain during the Term, in a form and with an insurance company satisfactory to CPR, policies of:

(a) **Commercial General Liability (C.G.L)** insurance with a limit of not less than Five Million Dollars (\$5,000,000) for any one loss or occurrence for personal injury, bodily injury, or damage to property including loss of use thereof. This policy shall by its wording or endorsement include the following:

- (i) CPR and its associated or affiliated subsidiaries (and the Directors, Officers, employees, agents and trustees of all of the foregoing) as an additional insured with respect to obligations of the Supplier in this Contract;
- (ii) "cross liability" or "severability of interest" clause which shall have the effect of insuring each entity named in the policy as an insured in the same manner and to the same extent as if a separate policy had been issued to each;
- (iii) blanket contractual liability, including the insurable liabilities assumed by the Supplier in this Contract;
- (iv) broad form products and completed operations;
- (v) sudden and accidental pollution liability, if applicable;
- (vi) non-owned auto liability;
- (vii) employer's liability; and
- (viii) shall not exclude operations on or in the vicinity of the railway right of way, if applicable.

(b) **Automobile Liability** insurance covering bodily injury and property damage in an amount not less than Two Million Dollars (\$2,000,000) per accident, covering the ownership, use and operation of any motor vehicles and trailers which are owned, leased or controlled by the Supplier and used in regards to this Contract.

(c) **Professional Liability** Insurance in the amount of Five Million (\$5,000,000) any one loss or occurrence. If this policy is written on a "claims-made" basis it shall remain in effect for no less than twelve (12) months after the expiry or termination of the Contract.

(collectively, "**Insurance Coverage**").

Supplier agrees that the insurance requirements set out herein shall not limit or restrict its liabilities pursuant to this Contract.

The Insurance Coverage required to be maintained pursuant to this Contract shall be primary and not excess of any other insurance that may be available.

The Insurance Coverage shall be endorsed to provide CPR with not less than thirty (30) days written notice in advance of cancellation, material change, or amendments restricting coverage.

Supplier shall provide CPR with written notice and all reasonable particulars and documents related to any damages, losses, incidents, claims, and potential claims concerning this Contract as soon as practicable after the damage, loss, incident, or claim has been discovered. Supplier is responsible for any deductible and excluded loss under any insurance policy. The deductible in any insurance policy shall not exceed such maximum amount that a reasonably prudent business person would consider reasonable.

Supplier shall provide a copy of the certificate(s) of insurance evidencing the above Insurance Coverage and may require Supplier to annually provide CPR with a copy of updated certificate(s) of insurance evidencing the renewal of the above Insurance Coverage. Where Supplier maintains a registration with ISNetworld, or any similar organization(s) being utilized by CPR for Supplier safety, security, and insurance compliance during the Term, Supplier shall send such certificate(s) of insurance or notice(s) to ISNetworld, or any similar organization(s) being utilized by CPR for Supplier safety, security, and insurance compliance during the Term. For all other cases, such certificate(s) of insurance or notice(s) shall be sent via email to cprail@ebix.com or via fax to (770) 325-6378.

CPR shall have no obligation to examine such certificate(s) or to advise Supplier if its Insurance Coverage is not in compliance with this Contract. Acceptance of any certificate(s) which are not compliant with the requirements set out herein shall in no way whatsoever imply that CPR has waived its insurance requirements.

CPR reserves the right to maintain the Insurance Coverage in good standing at Supplier's expense and to require Supplier to obtain additional insurance where, in CPR's reasonable opinion, the circumstances so warrant. If the Supplier fails to maintain the Insurance Coverage required in this Contract, CPR may, at its option, terminate this Contract without notice.

14.02 Performance Security

This Article 14.02 - Performance Security is not included as part of this Contract EXCEPT to the extent it is expressly included by reference in a related SOW or otherwise agreed to in writing by the Parties.

- (a) Within ten (10) Business Days of Execution Date, Supplier shall provide CPR with an irrevocable, unconditional Letter of Credit or Performance Bond ("**Performance Security**"). The Performance Security shall be in the form of and from a recognized Canadian financial institution or surety company in the amount as agreed to in writing by the parties or, if no amount is agreed to, \$100,000 (Canadian funds) payable to CPR.
- (b) Before any call can be made against the Performance Security for an alleged Supplier default under this Contract or if Supplier is alleged to have not completed the contracted for Services and Materials, CPR shall notify

Supplier of the anticipated call on the Performance Security and the parties shall have up to fifteen (15) Business Days to attempt to resolve any disagreement. If a resolution cannot be achieved within the fifteen (15) Business Days period, and Supplier is in default of this Contract other than this Article, then CPR may call on the Performance Security (“**Delivery Conditions**”). For greater certainty, CPR is not required to obtain the decision of a judge or any other independent third party that Supplier is actually in default before calling on the Performance Security pursuant to the prior sentence. The amount called and paid for under the Performance Security is not a form of liquidated damages nor to be a windfall to CPR and may require an adjustment on the final determination of the damages mutually agreed in writing by the Parties or by an arbiter having competent jurisdiction over the matter.

(c) CPR may also call for payment under the Performance Security if Supplier fails, ten (10) Business Days prior to the expiration date of the Performance Security or replacement thereof, to deliver to CPR a replacement Performance Security in the same amount as originally provided.

(d) The Performance Security shall be kept in place for the later of the expiration of the Contract or an associated SOW.

ARTICLE 15- SAFETY AND SECURITY

The Safety and Security terms are contained in the Definitions.

ARTICLE 16 - COMPUTER FACILITIES

16.01 If Supplier wishes to use:

(a) CPR computer hardware and software facilities for a longer period of time than required or permitted by this Contract;

(b) Different facilities; or

(c) CPR computer hardware and software facilities for a use other than that stated in a SOW or a request for proposal,

Supplier must obtain the prior written approval of CPR which CPR may withhold in its sole and arbitrary discretion. If approval is denied by CPR or if the requested hardware or software is unavailable, for any reason, the Services and Materials shall still be completed by Supplier by the agreed-upon date.

ARTICLE 17 – CHANGE REQUEST PROCESS

17.01 At no cost to CPR, Supplier shall immediately submit to CPR a Change Request in the form set out in URL:

<http://www.cpr.ca/en/about-cp-site/ISDocuments/150204-Change-Request.docx>

if:

(a) CPR requests Supplier to perform a service or to produce certain materials which Supplier reasonably considers outside the scope of a SOW; and

(b) Subject to Article 21.15 – FINANCIAL RESPONSIBILITY, Supplier is of the opinion that some aspect of the Services or the Materials will fall outside the scope of a SOW.

17.02 The Change Request shall contain the following information:

(a) A description of the applicable services or materials together with Supplier's reasons for considering them outside the scope of the SOW;

(b) An itemized description of the Fees to perform such services or produce such materials;

(c) Adjustments to the type and number of resources; and

(d) A description of the consequences of performing or not performing the services or the materials including any effects on this Contract or the SOW's scheduling or work plan.

17.03 CPR shall determine whether the services or materials set out in the Change Request are within or outside the scope of a SOW.

17.04 If CPR considers the services or materials specified in the Change Request within the scope of a SOW, CPR shall provide Supplier with written notice and Supplier shall complete these tasks at no additional cost to CPR. However, the Supplier may raise CPR's decision as a dispute in accordance with Article 18.04 provided the Supplier at all times continues to perform the Services without delay and await a favorable decision before invoicing CPR for the additional services or materials.

17.05 If CPR considers the services or materials specified in the Change Request outside the scope of a SOW, CPR may:

(a) Decide not to have such services or materials completed;

(b) Have a third party complete some or all of such services or materials; or

(c) Request Supplier to complete some or all of the tasks such services or materials at a mutually agreed upon cost and Supplier agrees to complete such out of scope services and materials in accordance with the terms set out in this Contract.

ARTICLE 18 - DISPUTE RESOLUTION

18.01 CPR hereby appoints its Managing Director Contract Support Services or their delegate as CPR's representative for the purposes of this Article.

18.02 Supplier undertakes to provide its named representative for the purposes of this Article within five (5) business days following Contract execution or deemed execution.

18.03 The Parties shall use reasonable effort to resolve any dispute under this Contract via a meeting between CPR's representative for this Contract and Supplier's representative.

18.04 If the Parties' representatives cannot resolve the dispute, CPR or CPR's representative shall make a decision.

18.05 If Supplier disagrees with CPR's decision under Article 18.04, Supplier shall have ten (10) Business Days from the date of receipt of CPR's decision to provide written notice to CPR requiring the matter be submitted for arbitration or Supplier shall be deemed to have accepted CPR's decision which shall then be final and binding upon both parties. All arbitrations shall be held in Calgary, Alberta before a single arbitrator to be mutually agreed upon. If the Parties cannot agree on an arbitrator within fifteen (15) Business Days of the receipt of CPR's decision under Article 18.04, either Party may apply, to a Justice of the Court of Queen's Bench of Alberta to have an arbitrator appointed. Both parties shall present evidence to the arbitrator within ten (10) Business Days after the appointment of the arbitrator or such date as may be selected by the arbitrator. To the extent practicable, the decision of the arbitrator shall be issued within thirty (30) days after the arbitrator is appointed. Except as modified in this Contract, the provisions of the *Arbitration Act* of Alberta, as amended, modified or substituted from time to time shall govern the arbitration process.

18.06 Despite any other provision of this Contract, unless otherwise agreed to by the Parties in writing, the following matters are excluded from arbitration:

- (a) A decision by CPR to allow this Contract to expire;
- (b) Any claims involving third parties;
- (c) Intellectual Property Right Claims whether initiated by third parties or by the Parties to this Contract;
- (d) A decision by CPR not to approve a subcontractor or an assignment of this Contract under Article 21.08 – NO ASSIGNMENT;
- (e) A decision by CPR to terminate this Contract pursuant to Article 4 - TERM AND TERMINATION; and
- (f) A decision by CPR not to proceed with a Change Request.

ARTICLE 19- CONFLICT OF INTEREST AND ETHICAL CONDUCT

19.01 In the event Supplier becomes aware of any matter that causes or is likely to cause a conflict of interest in relation to Supplier's performance under this Contract, Supplier shall immediately disclose such matter to CPR in writing. Upon making such disclosure Supplier shall not commence or continue performance of the Services, without the written consent of CPR.

19.02 Supplier shall perform the Services and conduct its activities in relation to this Contract in a manner consistent at all times with the CPR's Code of Business Conduct detailed at URL:

<http://www.cpr.ca/en/about-cp-site/ISDocuments/150209-Supplier-Code-of-Business-Conduct.pdf>

("Code of Business Ethics").

In the event that CPR is of the opinion that Supplier is not in compliance with the requirements of this Article 19.02 or the Code of Business Ethics, CPR may immediately terminate this Contract with no penalty or additional cost to CPR.

ARTICLE 20 - BUSINESS CONTINUITY and DISASTER RECOVERY

Unless otherwise agreed to in writing by the Parties, the Supplier shall be responsible for business continuity and disaster recovery planning, testing and implementation and execution, as more fully set forth in the Supplier's business continuity/disaster recovery plan. Supplier shall send a copy of its business continuity/disaster recovery plan for review by CPR within ten (10) days of receipt of written notice to the Supplier by CPR. Supplier's business continuity/disaster recovery plan will, at a minimum:

- (a) address all critical functions and operation used by CPR;
- (b) specify recovery time frames for each critical function and operation used by CPR;
- (c) be thoroughly tested at least annually; and
- (d) be updated (with all updates provided to CPR promptly) not less than once annually.

Supplier shall provide immediate notice to CPR of the occurrence of any actual Force Majeure Event for which the Supplier invokes its business continuity/disaster recovery plan.

ARTICLE 21 - GENERAL

21.01 Governing Law

This Contract shall be construed and enforced in accordance with, and the rights of the Parties shall be governed by the laws of the Province of Alberta without reference to its choice of law rules. In addition to any arbitration provision contained herein,

each of the Parties hereto attorns to the non-exclusive jurisdiction of the courts of the Province of Alberta and the Supreme Court of Canada.

21.02 Statutory Compliance and Taxes

Supplier shall:

- (a) Comply with the provisions of all laws, now in force or in force after the signing of this Contract, that expressly or by implication apply to Supplier in its provision of the Services and Material.

Supplier shall be liable for and indemnify and reimburse CPR for any Claims made or assessed against CPR arising from Supplier's non-compliance with any applicable tax laws. Upon request by CPR, Supplier shall provide to CPR certification that it has complied with such tax laws. Where applicable, Supplier shall certify to CPR that it has posted PST security as indicated above and, to the extent Supplier fails to do so, CPR shall be entitled pursuant to Article 3.02(g) to withhold the applicable value of PST from its payments to Supplier and remit same to the responsible authorities.

- (b) Comply with all applicable provincial workers' compensation legislation including the *Workers' Compensation Act, RSA 2000, c W-15* and American equivalent legislation (including successor legislation) when such legislation applies and shall, upon demand by CPR, deliver to CPR a certificate from the Workers' Compensation Board showing that Supplier is registered and in good standing with the Board. Supplier's workers compensation account number and the jurisdiction of coverage shall be provided to CPR prior to Supplier commencing work on any site owned, controlled or occupied by CPR

- (c) **Provincial Sales Tax:** The Supplier shall not charge provincial or municipal sales tax on shipments to destinations in the following provinces, and the applicable tax exemption number (shown below) shall appear on the Supplier's invoice(s):

- a. Saskatchewan: 003770-5
- b. British Columbia: PST-1001-5810
- c. Manitoba: 217842-7

- (d) Comply with the *Sarbanes Oxley Act, 2002* and Canadian equivalent Bill C198/Canadian Securities Administrators rules when they apply and shall, upon demand by CPR, deliver to CPR a certificate showing that Supplier is in compliance.

21.03 Costs

Except as set out herein, each Party hereto shall be responsible for and shall pay its own costs incurred by it in respect of any transaction governed by this Contract and associated SOWs.

21.04 Set-Off

CPR shall have the right of set-off against any monies owed to Supplier under this Contract, any amount, merchandise or service that:

(a) may be due to CPR; or

(b) may be due as a result of an overpayment from CPR to Supplier;

whether such monies are pursuant to this Contract, or any other contract, understanding or arrangement CPR may have with Supplier, relating to the Services herein or any other services, projects or materials.

21.05 Notices

All disclosures, notices or other documents required or permitted to be given pursuant to this Contract shall be in writing and shall be sufficiently given if delivered by hand or reputable courier service or by fax at the addresses defined on the SOW or to such other address as may be provided from time to time:

Any notice or other document will be deemed to have been given and received:

(a) if delivered by hand or by courier, on the first Business Day following the date on which it was delivered; and

(b) Any party may, from time to time, change its address for service by giving notice to the other Party in accordance with the provisions in this paragraph.

21.06 Counterparts and Facsimile

Any SOW referencing itself to be part of this Contract may be executed in two or more counterparts, transmitted by hand, mail, facsimile or e-mail, each of which shall be deemed an original and all of which together shall be deemed to constitute one and the same contract.

21.07 Entire Contract

This Contract, constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes all previous contracts and there are no oral statements, representations, warranties, undertakings or agreements between the Parties modifying the provisions of this Contract.

21.08 No Assignment

Supplier shall not assign, subcontract or otherwise dispose of any of its rights, obligations, or interests in this Contract, without first getting the written approval of CPR, which approval may be unreasonably withheld at the discretion of CPR.

21.09 Binding Nature of Contract and No Assignment

This Contract shall enure to the benefit of and shall be binding upon the Parties hereto together with their successors and permitted assigns.

21.10 Amendments

This Contract including any SOW referencing itself to be part of this Contract shall not be amended except if in writing and agreed to by both Parties. Otherwise, no alteration, purported change or amendment, waiver, or cancellation shall be valid or binding on either Party, including any terms contained on a Supplier invoice or other transactional document.

21.11 Time of the Essence

Time shall be of the essence in this Contract.

21.12 Further Assurances

The Parties covenant and agree to do such things and execute such further documents, contracts and assurances as may be necessary or advisable from time to time in order to carry out the terms and conditions of this Contract in accordance with their true intent.

21.13 Provisions Severable

If any provision of this Contract is held to be invalid, unenforceable or illegal, such provision shall be deemed to be independent and severable from the remaining provisions of this Contract and the remaining provisions of this Contract shall not be affected and shall be valid and enforceable to the full extent permitted by law.

21.14 Sub-contractors and Agents

The Supplier shall:

- (a) Ensure that its employees comply with the provisions of this Contract, and
- (b) Enter into written contracts with its subcontractors and agents which contracts require such subcontractors and agents to comply with the provisions of this Contract consistent with the obligations imposed on the Supplier and enforce the same on request by CPR.

21.15 Documentation required to Work in Canada

The Supplier is responsible to promptly provide all documentation required by the Government of Canada, including the necessary documents to permit the Supplier's employees, agents, subcontractors and assigns to perform the Services in Canada. The Supplier is responsible for all costs associated with Suppliers employees, agents, subcontractors and assigns.

21.16 Financial Responsibility

Financial responsibility reasonably related to a particular function lies with the Party who has the responsibility of performing that function unless otherwise indicated in this Contract or any SOW referencing itself to be part of this Contract.

Should any services or materials be reasonably required in and for the proper performance and provision of the Services which:

- (a) are not expressly or completely described in this Contract, and
- (b) are required for the proper performance and provision of the Services,

such services or materials shall be deemed to be implied and required by this Contract or any SOW referencing itself to be part of this Contract, and Supplier shall, at its expense, furnish such materials and perform such services as if they were specifically described in this Contract; provided that if at any time during the first thirty (30) days after an applicable SOW, Supplier identifies costs that could not reasonably have been foreseen by a person skilled in the provisioning of the Services, then Supplier may, in a Change Request proposal, propose a change in the price which reflects such costs.

21.17 Non Merger and Survival

In addition to Articles specifically identified not to merge in this Contract, this Contract shall continue during the Warranty Period and despite any other provision of this Contract, those Articles which by their nature continue after the conclusion or termination of this Contract shall continue after such conclusion or termination, including:

- (a) Article 1: Definitions and Interpretation
- (b) Article 3.06: Records and Audit
- (c) Article 3.08: Early Payment
- (d) Article 7: Representations and Warranties
- (e) Article 8: Remedies
- (f) Article 10: Confidentiality and Privacy
- (g) Article 11: CPR Materials and Trademarks
- (h) Article 12: Escrow (if applicable)
- (i) Article 13: Indemnification and Non-Solicitation
- (j) Article 14.02: Performance Security (if applicable)
- (k) Article 15: Safety and Security
- (l) Article 18: Dispute Resolution
- (m) Article 19: Conflict of Interest and Ethical Conduct
- (n) Article 21: General

21.18 Rights and Remedies Cumulative

The rights, remedies and privileges of the Parties under this Contract or any SOW referencing itself to be part of this Contract are cumulative and any one or more may be exercised.

21.19 Language Laws

The parties have requested and agreed that this Contract be drafted in the English language. *Les parties aux présentes ont demandé que le présent Contrat soit rédigé dans la langue anglaise.*

21.20 Data Management

Supplier shall, at CPR's expense, promptly provide a copy of all or a portion of CPR data (complete and unaltered), on such media as requested by CPR, in a form and format reasonable acceptable to CPR, and upon media and in a form and format that Supplier is able to produce copies:

- a) upon CPR's request from time to time, or
- b) upon the termination or expiration of this Contract, provided that in case of a Termination by CPR for material breach, Supplier shall provide the CPR data at Supplier's expense

Further, Supplier shall return or destroy confidential CPR information at CPR's option and expense:

- a) as specified in a request from CPR from time to time, or
- b) upon the termination or expiration of this Contract, provided that in case of a Termination by CPR for material breach, Supplier shall return or destroy the confidential information at Supplier's expense.

and warrant in writing that the same has been returned or destroyed. The Supplier shall never refuse for any reason, including, but not limited to, CPR's breach of this Contract, to provide CPR with copies of the CPR Data or return or destroy (at CPR's option from time to time) any CPR data. Supplier hereby expressly agrees that CPR may obtain injunctive relief (including specific performance) to enforce this clause. Notwithstanding the foregoing, if it is not technically feasible due to security requirements agreed to by the parties or if the Operating Environments is undergoing repair or maintenance that temporarily prevents the return or destruction of CPR data or the making of copies, the Supplier will be temporarily relieved from returning or destroying CPR data or providing CPR with copies of CPR data.

21.21 LIENS

Supplier shall keep all property and premises of CPR free from any and all laborers', materialmen's, and mechanics' liens, and similar claims or encumbrances which are attributable to Supplier's performance of its obligations in this Contract ("**Lien**"). To the fullest extent permitted by law, Supplier waives all rights of any Lien against the property and premises of CPR. Supplier fails to release and discharge any Lien against the property or premises of CPR within five (5) days of receiving notice from CPR, CPR may, at its option, take any and all steps to discharge or release the Lien, or otherwise deal with the Lien claimant, and Supplier shall pay CPR any and all costs and expenses of CPR in so doing, including reasonable legal fees and expenses incurred by CPR. Notwithstanding any provision of this Contract to the contrary, CPR shall be entitled to hold back from fees otherwise payable to Supplier all such amounts as CPR may be required to holdback pursuant to any applicable federal, provincial or state legislation in respect of liens and similar claims and encumbrances.

21.22 CONTRACT REFERENCED DOCUMENTS

If a document referenced in this Contract by URL cannot be sourced online, the party requiring such document shall send an e-mail message to IS_Contract_Management@cpr.ca requesting a hard copy of the same. Failure to receive a copy of the referenced document shall not waive (or otherwise excuse) Supplier from adhering to the terms and requirements set out in such documents.