

**THIS MASTER INFORMATION TECHNOLOGY
SERVICES AGREEMENT**

For: Information Technology (IT) Permanent Staffing Placement (the “**MITSA**”)

MADE effective as of the Commencement Date.

BETWEEN:

CANADIAN PACIFIC RAILWAY COMPANY

A corporation incorporated pursuant to the laws of Canada

- 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. In their Proposal and other submissions in reply to the IT Permanent Placement RFP, as issued on **March 22, 2019**, Supplier has stated their expertise and is actively engaged in the business of providing the expertise required of them in the RFP and any subsequent services as reflected in a SOW (collectively for this MITSA “**Services**”);
- B. CPR has relied on Supplier’s statements and representations above and is interested in retaining the Supplier to provide Services and Materials and Supplier wishes to provide the same to CPR, through the issuance of a SOW, from time to time; and,
- C. These Contract terms shall apply to all SOWs.
- D. In the event of any inconsistency between the provisions of this Contract and the provisions of any other contract, agreement or Transactional Document, the provisions of this Contract shall prevail.

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 the Parties, the Parties agree as follows:

ARTICLE 1 - DEFINITIONS AND INTERPRETATION

1.01 The Definitions, a copy of which can be found at URL: <http://www.cpr.ca/en/about-cp/selling-to-cp/information-technology/definitions> which terms are deemed to be attached to, included within, and forming part of this Contract (“**Definitions**”).

1.02 “**Canadian Pacific Railway Company**” or “**CPR**” includes any one of the following companies: (i) Canadian Pacific Railway Company; (ii) Soo Line Railroad Company; (iii) Delaware and Hudson Railway Company, Inc.; or (iv) the Dakota, Minnesota &

Eastern Railroad Corporation, but only to the extent that such company receives a direct benefit from a SOW and only for the term of such SOW.

ARTICLE 2 - SERVICES AND MATERIALS PROVIDED BY SUPPLIER

2.01 Scope of Services and Materials

In accordance with the terms and conditions of this Contract, Supplier agrees to sell and CPR agrees to purchase, on a non-exclusive basis unless a different arrangement has been reflected in the SOW, the Services and Materials provided by Supplier as each is more particularly set out in a SOW:

- (a) Except where otherwise agreed to in a SOW, in its provision of the Supplier shall follow all reasonable directions from CPR including those setting out the location where the Services are to be performed.

2.02 Intentionally deleted

2.03 Key Personnel

- (a) Where applicable, the Parties shall specifically identify any Key Personnel who CPR or Supplier reasonably believes to be essential for successful completion of the Services;
- (b) Upon CPR request, Supplier shall provide CPR with copies of the resumes of Key Personnel for evaluation and acceptance by CPR. Moreover, CPR shall be provided the right to interview Key Personnel prior to and during their engagement under this Contract;
- (c) CPR reserves the right to dispute the proposed substitution of Key Personnel in accordance with Article 18 – DISPUTE RESOLUTION.

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 and Materials completed to date;
- (c) The time schedule for completion of any portions of the Services and Materials that are, at that time, not completed; and
- (d) Any other information/reports reasonably requested by CPR relating to the provision or completion of the Services.
- (e) Reports shall include:
 - a. Hiring manager's name and phone number;
 - b. CP cost centre and department;
 - c. New employee's name and title;

- d. Job search reference number;

ARTICLE 3- PAYMENT

3.01 Fees

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

- (a) Fees
 - a. As set out in the SOW, at the rates set out in that SOW. Unless expressly stated otherwise in a SOW, the fees include all third party costs;
 - b. Unless otherwise stated in a SOW, the Fees payable to Supplier do not include any taxes;
 - c. Unless otherwise permitted in a SOW (and then only for that SOW), the Supplier shall be solely responsible for the payment of all expenses (including travel expenses) incurred in the performance of this Contract;

ITEM	Fees
Tier 1 (<10)	XX%
Tier 2 (11-24)	XX%
Tier 3 (>25)	XX%

3.02 Billings and Payment

- (a) Invoices without a purchase order shall be rendered in pdf format and submitted via email to IS_Invoicing@cpr.ca;
- (b) All invoices shall be in a form acceptable to CPR and shall at a minimum clearly indicate:
 - a. the applicable legal CPR entity (in the event no CPR legal entity is named, the default shall be Canadian Pacific Railway Company);
 - b. CPR's purchase order number;
 - c. invoice number;
 - d. invoice date;
 - e. date(s) that the Service were provided;
 - f. a detailed description of Services and Materials provided;
 - g. itemized invoice amount and currency (default Canadian);
 - h. a cumulative total of Fees for this Contract;
 - i. a total of Fees paid, due and yet to be billed for each active SOW;
 - j. a total of Approved Expenses to date for each active SOW;
 - k. when provided, reference to CPR internal Contract number;

- 1. applicable sales and non-sales taxes as separate amounts and further separated by jurisdiction; and,
 - m. the Supplier's sales tax registration numbers;
- (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, or the receipt of the Services and Materials whichever comes later;
- (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 the:
- (i) date of the Service being provided (or applicable portion to be invoiced); or,
 - (ii) earliest date an invoice may be delivered pursuant to the terms of the Contract, a SOW, or a Change Order.
- (f) Supplier shall comply with all applicable tax laws including without limitation, the collection and remittance of any and all applicable taxes, levies, duties, and charges in connection with performing Supplier's obligations in this Contract (including applicable payroll taxes). Without limiting the foregoing, Supplier shall be responsible for compliance with and payment of all sales taxes, use taxes, excise taxes, custom duties and all contributions and taxes for employment compensation except where such employment compensation is for an employee placed by Supplier in accordance with the terms of this Contract following their onboarding, insurance and old age pensions, or annuities now or hereafter imposed by any governmental authority with respect to or covered by Supplier in the execution of any Services and Materials subject to American taxes or applicable jurisdiction;
- (g) 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(h) to withhold the applicable value of PST from its payments to Supplier and remit same to the responsible authorities;
- (h) 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
- (i) No GST, HST, PST or other sales tax shall be paid by CPR on Approved Expenses. If Supplier has incurred GST, HST, PST or other sales tax in relation to the Approved Expenses, the Supplier may claim an input tax credit with Canada Revenue Agency or similar taxing authority;
- (j) Supplier acknowledges that if Supplier is a non-resident as defined by the *Income Tax Act (Canada)*, the *Internal Revenue Code*, or tax code/legislation of an

applicable jurisdiction, CPR may withhold the amounts applicable to a non-resident. Supplier shall confirm to CPR in writing if it is a non-resident as defined by the Income Tax Act (Canada), *the Internal Revenue Code*, or tax code/legislation of an applicable jurisdiction;

- (l) Comply with all applicable workers' compensation legislation including the *Workers' Compensation Act, RSA 2000, c W-15* (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;
- (m) 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, immediately deliver to CPR a certificate showing that Supplier is in compliance.

3.03 Electronic Data Exchange:

If requested by CPR the Supplier undertakes to conduct business transactions using electronic data interchange ("**EDI**") pursuant to the process identified immediately below

Supplier shall submit purchase order related invoices via email to IS_Invoicing@cpr.ca with a copy to Employee_Services@cpr.ca:

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 agreed to in writing by the Parties. Each Party will be solely responsible for the cost and expenses of any provider with which it contracts;
 - ii. Supplier will be liable to CPR 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 received by CPR 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.
 - 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 the same 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 Supplier shall provide timekeeping and other records to prove the accuracy of the invoice to CPR's reasonable satisfaction at no cost to CPR.

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 the disputed invoice. Late payment and interest charges shall not apply to the amount in dispute until final resolution of the dispute.

3.06 Records and Audits

The Records and Audits terms are contained in Definitions.

3.07 Not to Exceed (“NTE”) Amounts

Where an NTE amount is specified in a SOW, the Fees payable under such SOW shall not exceed such agreed NTE amount unless CPR provides prior written approval.

3.08 Early Payment

In respect of each invoice, CPR shall receive a 2% early payment discount if CPR makes payment within 10 (ten) Business Days from the date the invoice is received by CPR, or the receipt of the Services and Materials whichever comes later. 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 Accept Methods of Payment

As and when requested by CPR, Supplier agrees to accept one of the following methods of payment for Suppliers Invoices:

- (a) Electronic Funds Transfer (“**EFT**”)
- (b) cheque
- (c) wire transfer
- (d) credit card

ARTICLE 4 - TERM AND TERMINATION

4.01 Term

The term of this engagement shall be thirty-six (36) months and, with agreement of the Supplier, may include either unilateral or bilateral options to extend.

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, upon fifteen (15) day prior written notice to Supplier.

- (b) In the event of termination by CPR as a result of Material Breach by the Supplier, in addition to any remedies available to CPR 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 sub article (a) above, the Supplier shall be responsible for all 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.
- (c) 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;
- (d) Upon notice of termination of any SOW, the Supplier shall, if requested by CPR, co-operate with CPR to transition the Services and Materials 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 include 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 with the terms of this Contract, whether this Contract is terminated with or without cause, the maximum Fee CPR shall be responsible for is payment for the Services or Material completed to 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 The parties agree that Supplier is an independent contractor, that nothing in this Contract shall be construed as establishing or implying a relationship of master and servant between the parties, or any joint venture or partnership between the parties, and that nothing in this Contract shall be deemed to constitute either of the parties as the agent of the other party or authorize either party to incur any expenses on behalf of the other party or to commit the other party in any way whatsoever. Supplier and its agents, employees, or subcontractors shall at no time be deemed to be agents, employees, or subcontractors of

CPR, or be deemed to be under the control or supervision of CPR when carrying out the performance of its obligations in this Contract. Without the prior written consent of CPR, Supplier shall not carry on any activity that could be construed as being on behalf of CP. Supplier is in complete control of the means and methods of accomplishing its work.

Supplier shall perform the Services and Materials and provide the Product hereunder according to the Supplier's own manner and methods, and within by its own means and employees, free from any supervision or control by CPR. Supplier will be given general directions and instructions regarding CPR Provided Parts and the Product that Supplier has agreed to provide under this Contract, but Supplier shall have the exclusive right and duty to control the work of its employees and direct their compliance with Supplier required safety, security, and other work related policies and procedures unless Suppliers employees are performing Services on CPR property, in which case CPR's safety, security and other work related policies or instructions shall apply. It is the intent of this Contract to exclude inferences of CPR's direction or control over the Services or Materials provided in this Contract.

ARTICLE 6 - ACCEPTANCE PERIOD

6.01 During the Acceptance Period, CPR reserves the right to 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; or,
- (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 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 and exclusive 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

Failure to inspect by CPR shall in no way whatsoever imply waiver by CPR to Supplier representations and warranties contained herein.

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 and shall conform to all specifications, drawings, samples or descriptions furnished to or by CPR.

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 to provide the Service including 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 and Materials 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 necessary to maintain Leading Industry Practices status.

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 securely, safely, efficiently and in accordance with the terms of the Contract.

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 Personnel or any combination thereof. Moreover, Supplier undertakes to immediately update CPR in the event of a detrimental change occurring in this regard.

f. No Actions

As at the Commencement Date of any SOW, the Supplier confirms that 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. Moreover, Supplier undertakes to immediately update CPR in the event of a detrimental change occurring in this regard.

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 any untrue statement or untrue representation of a material fact; or, (b) omits, or 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, standards, industry related professional associations, consumer reporting agencies, and 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. 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 Supplier is 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; and,
- c. Result in a violation by Supplier of any judgment, order or decree of any court, judicial, quasi-judicial tribunal or other authority having jurisdiction over Supplier or Supplier's property or assets.

j. Cybersecurity

The Supplier warrants that it has the necessary Cybersecurity protocol pursuant to CPR's Cybersecurity Requirements document at the time of execution of this contract and thereafter for the remainder of the Term.

The Supplier warrants that the validity and correctness of its answers provided to CPR's Third Party Questionnaire for the Term of the Contract.

7.02 Warranty Period

Supplier shall conform to and abide by the Warranty Period terms as are contained in Definitions.

7.03 Warranty

Supplier shall assign to CPR, at CPR's request and to the extent that they are assignable, any warranties applicable to goods or services provided by third parties that are supplied by Supplier to CPR.

ARTICLE 8- REMEDIES

8.01 Inability to Complete the Services

- a) In the event that Supplier cannot supply the Services or Materials, including meeting the delivery date or any other requirement specified in a SOW, Supplier shall immediately notify CPR's Contact Person (if Notice is made orally, additional Notice shall be provided to CPR in writing within one (1) Business Day following such oral Notice). Notice shall make reference to a SOW and CPR's part numbers (if any) and shall state what obligations of Supplier cannot be fulfilled. Upon receipt of such Notice, in addition to the termination rights set out at Article 4 - TERM AND TERMINATION, CPR may, at CPR's sole and exclusive option:
 - a) Accept partial delivery for any or all Materials delivered prior to such termination provided CPR pays Supplier a proportionate share of the invoice; or
 - b) Negotiate alternative terms with the Supplier.

In addition to any other rights afforded CPR at law, Supplier shall be responsible to CPR for all costs and damages resulting from Supplier's delay or delivery of defective Materials;

- b) If Supplier fails to notify CPR of any circumstances that may preclude Supplier from completing any of the Services and Materials in the manner set out in this Contract, the Parties shall enter into good faith discussions as to the amount of a 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 effect any or all of the rights, relief and remedies available to it as a result of breach of this Contract by Supplier, including remedies provided for in a provision of this Contract, any SOW, or by statute or the common 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 and Materials do not meet the warranties set forth in this Article 7 - REPRESENTATIONS AND WARRANTIES, Supplier shall immediately, without cost to CPR, re-perform the Services and 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 ARTICLE 7- REPRESENTATIONS AND WARRANTIES within a reasonable period of time, but never 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 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. 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, at any time CPR may terminate the Contract immediately upon written notice to the other Party, without cost, penalty or liability.

ARTICLE 10- CONFIDENTIALITY AND PRIVACY

Supplier shall conform and abide to the Confidentiality and Privacy terms as contained in 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 and Materials 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 Services and 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 to 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 Supplier Personnel 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 13 - INDEMNIFICATION AND NON-SOLICITATION

13.01 General Indemnification

Supplier agrees to indemnify, defend 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**").
- (c) In the event of a claim against CPR by Supplier, CPR's obligations under this Section shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Supplier or its agents or subcontractors

- under applicable workers' compensation acts, disability benefits acts or other employee benefits acts.
- (d) CPR shall not be deemed to have caused or contributed to a Claim merely by reason of its knowledge, approval or acceptance of the Services, specifications, or procedures of Supplier.
 - (e) This Section shall not be replaced or modified by any terms contained elsewhere in this Contract, including any schedules attached hereto or purchase orders issued in accordance with this Contract.
 - (f) This Section shall survive after the expiration or termination of this Contract and shall in no manner limit or restrict the liabilities and obligations of Supplier in this Contract.

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) 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, and Supplier Personnel agrees not to solicit for employment any person employed by CPR during the Term of this Contract. The Supplier shall gain written agreement from Supplier Personnel 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 based upon the salary of the employee on their last date with CPR;

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 Two Million Dollars (**\$ 2,000,000**) 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 without limitation, 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;
 - (vi) non-owned auto liability;
 - (vii) shall not exclude property damage due to explosion, collapse, and underground hazards;

- (viii) contingent employer's liability; and,
- (ix) shall not exclude operations on or in the vicinity of the railway right of way.
- (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 not less than Two Million (**\$ 2,000,000**) any one loss or occurrence. If this policy is written on a "claims-made" basis it shall remain in effect for no less than twenty four (24) months after the expiry or termination of the Contract.

ARTICLE 15- INTENTIONALLY DELETED

ARTICLE 16 - EQUIPMENT, PEOPLE, HARDWARE, SOFTWARE

16.01 If Supplier wishes to use:

- (a) CPR equipment, people, hardware, and software for a longer period of time than required or permitted by this Contract;
- (b) Different facilities; or
- (c) CPR equipment, people hardware, and software 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 equipment, people, 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

If:

- (a) CPR requests Supplier to perform a service or to produce certain materials which Supplier reasonably considers outside the scope of a SOW; or
- (a) Subject to Article 22.16 – FINANCIAL RESPONSIBILITY, Supplier is of the opinion that some aspect of the Services or the Materials will fall outside the scope of a SOW;
- (b) At no cost to CPR, Supplier shall immediately submit to CPR a Change Request.

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 any additional 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 additional services or additional 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 shall at all times continue to perform the Services and Materials 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) Terminate the Contract in accordance to 4.03 Termination;
- (c) Have a third party complete some or all of such services or materials; or
- (d) 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 First level - 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 the decision, as it sees fit, in its sole and exclusive opinion. Supplier shall abide by that decision.

18.05 Second level - 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 22.08 – 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 Materials and conduct its activities in relation to this Contract in a manner consistent at all times with the CPR's Code of Business Conduct.

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 Conduct, CPR may immediately terminate this Contract with no penalty or additional cost to CPR.

ARTICLE 20- INTENTIONALLY DELETED

ARTICLE 21 - DELIVERY OF MATERIALS

21.01 - Intentionally Deleted

21.02 - Intentionally Deleted

21.03 Price Adjustment

Regardless of any prices shown in a respective SOW, Supplier shall notify CPR and adjust its invoice to proportionately reflect any decrease in the market price(s) of the Materials. Similarly, where the price is based in whole or in part on the cost to Supplier as specified in a published price list, rate, fee, duty or tax and Supplier's cost is subsequently reduced, CPR's price shall be reduced proportionately. In the event of any increase in the market price(s) or costs of the Materials, no adjustment to the price shown in a SOW shall be made unless previously agreed to in writing between Supplier and CPR.

ARTICLE 22 - GENERAL

Supplier shall comply with the provisions of all laws now in force or that may come into force that expressly or by implication apply to the Supplier in relation to this Contract.

22.01 Governing Law

For the consumption of Services and Materials in the United States of America, this Contract shall be governed by and interpreted in accordance with the laws of the State of Minnesota and the federal laws of the United States of America applicable therein, excluding any conflict of laws rules that may apply therein. The *United Nations Convention on Contracts for the International Sale of Goods* shall not apply to this Contract. The Parties hereby attorn to the exclusive jurisdiction of the courts of the State of Minnesota, without prejudice to the rights of CPR to take proceedings in any other jurisdiction. The Parties hereby waive any right to a trial by jury.

For all other engagements, 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. The *United Nations Convention on Contracts for the International Sale of Goods* shall not apply to this Contract.

22.02 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.

22.03 Set-Off

CPR shall have the right of set-off against any monies owed to Supplier under this Contract, for 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 herein or any other services, projects or Materials.

22.04 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 through a reputable courier service or, if to CPR by e-mail at IS_ContractManagement@cpr.ca at the addresses defined on the Contract, Purchase Order, a SOW or to such other address as may be provided in writing from time to time:

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

(a) if delivered by hand, by courier or by e-mail, 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 Article.

All notices received by Canadian Pacific Railway Company in accordance with this Article shall be deemed to have been received by Canadian Pacific Railway Company, Soo Line Railroad Company, Dakota, Minnesota & Eastern Railroad Corporation, and Delaware and Hudson Railway Company, Inc.

Until notice of change of address has been given in the manner provided in this paragraph, notices shall be addressed to Canadian Pacific Railway Company, Soo Line Railroad Company, Dakota, Minnesota & Eastern Railroad Corporation, or Delaware and Hudson Railway Company, Inc., or all, at:

Canadian Pacific Railway Company

Building #1, 7550 Ogden Dale Road S.E.,

Calgary, AB, T2C 4X9 Canada

Attention: Managing Director, Contract and Support Services

All notices received by Canadian Pacific Railway Company in accordance with this paragraph shall be deemed to have been received by Canadian Pacific Railway Company, Soo Line Railroad Company, Dakota, Minnesota & Eastern Railroad Corporation, and Delaware and Hudson Railway Company, Inc.

22.05 Counterparts and Facsimile

Any SOW 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.

22.06 Entire Contract

This Contract constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes all previous agreement (written or oral). In addition, there are and shall be no oral statements, representations, warranties, undertakings or agreements between the Parties modifying the provisions of this Contract unless, (i) it is in writing (ii) it is signed by CPR, (iii) such modification expressly identifies that it is intended to modify this Contract and (iv) it specifically references the section(s) being modified.

The resulting Contract from any RFP process shall import by reference all representations and warranties made in a Supplier's proposal except where a Supplier's representation or warranty conflicts with the terms contained in this Contract in which case this Contract shall govern and the conflicting term in the Supplier's proposal shall have no force and affect.

22.07 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 withheld in CPR's sole and arbitrary discretion. Any purported assignment by Supplier of any of its rights, duties, or obligations in this Contract, without CPR's written consent shall be voidable by CPR at its option. Supplier shall not in any event be released from its duties and obligations in this Contract. CPR may assign this Contract without obtaining Supplier's consent.

No provision of this Contract shall in any way enure to the benefit of any third person (including the public at large) so as to constitute any such person a third party beneficiary of this Contract or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a Party hereto.

22.08 Binding Nature of Contract

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

22.09 Amendments

This Contract, including any SOW, 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.

22.10 Time of the Essence

Time shall be of the essence in this Contract.

22.11 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.

22.12 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 remain valid and enforceable to the full extent permitted by law.

22.13 Sub-contractors and Agents

In addition to the requirements set out elsewhere, the Supplier shall:

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

22.14 Documentation required for Work

The Supplier is responsible to promptly provide all documentation required by either the Government of Canada or the Government of the USA, including the necessary documents to permit the Supplier to perform the Services in either Canada or US. The Supplier is responsible for all associated costs.

22.15 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.

Should any services or materials be reasonably required in and for the proper performance 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, 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 following the commencement of 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.

22.16 - Intentionally Deleted

22.17 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 13: Indemnification and Non-Solicitation
- (i) Article 18: Dispute Resolution
- (j) Article 19: Conflict of Interest and Ethical Conduct
- (k) Article 22: General

22.18 Language Laws (Quebec)

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.*

22.19 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 CPR Confidential 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 CPR 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.

22.20 LIENS

Supplier shall keep all property 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 of CP. If Supplier fails to release and discharge any Lien against the property of CPR within five (5) business days of receiving notice from CPR, CPR may, at its option, 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 holdback from fees otherwise payable to Supplier under this Contract 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 related to this Contract.

22.21 CONTRACT REFERENCED DOCUMENTS

If a document referenced in this Contract by URL cannot be sourced online, please send an e-mail message to IS_Contract_Management@cpr.ca to request a hard copy of the same. Failure to request or 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.

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