

PURCHASE ORDER TERMS & CONDITIONS

(United States of America)

CANADIAN PACIFIC

1. **Purchase:** Unless this Purchase Order is issued in accordance with an agreement in writing between the parties (the "**Agreement**"), Contractor agrees to sell and CP agrees to purchase the Product in accordance with these Terms & Conditions. "**Product**" means the goods described on any purchase order referenced or attached hereto, together with any related services described thereon or required for the delivery, installation, set-up, testing, servicing or provision of such goods. For greater certainty, all such services ordered or provided in relation to such goods (the "**Services**") shall form part of the Product. Unless this Purchase Order is issued in accordance with an Agreement, these Terms & Conditions shall govern any purchase order to which they are referenced or attached and such purchase order together with these Terms & Conditions shall be collectively referred to as the "**Purchase Order**". Contractor's acceptance of this Purchase Order or the shipment of any goods or materials described in this Purchase Order shall constitute acceptance by Contractor of this Purchase Order and all instructions, terms and conditions herein. For greater clarity, in the event of a conflict or inconsistency between any of the following terms and conditions and any Agreement, the terms of such Agreement shall govern to the extent of the conflict or inconsistency.

2. **Delivery Terms**
 - a. **Delivery:** Contractor shall deliver the Product to CP on the delivery date stated in this Purchase Order. The Product shall be delivered FOB Destination, Freight Prepaid to the destination stated in this Purchase Order. For the purposes of this Purchase Order, "FOB Destination" shall mean that Contractor retains title and control of the Product until it is delivered to the destination stated in this Purchase Order, and "Freight Prepaid" shall mean that Contractor is responsible for all freight charges.

 - b. **Rejection of Product:** Once the Product has been received by CP, CP shall be entitled to inspect it and, at its option, to reject: (a) any of the Product which is defective in materials or workmanship or does not conform to the specifications provided by CP to Contractor; and (b) any oversupplied Product. Contractor shall pay all shipping costs to and from the destination stated in this Purchase Order in relation to any Product that is rejected by CP pursuant to this Section. Such Product shall be at the risk of Contractor, whether held by CP for Contractor or returned. All Product shipped by Contractor as repaired or replacement Product shall be shipped by Contractor FOB Destination, Freight Prepaid, unless otherwise instructed in writing by CP. If any Product is rejected because of failure to conform to specifications, or failure in workmanship or materials, Contractor shall within five days replace the applicable Product with others that comply with specifications and conform in workmanship and materials.

 - c. **Failure to Supply Product:** In the event that Contractor cannot supply the Product as required by this Purchase Order, including meeting the delivery date or any other requirement specified in this Purchase Order, Contractor shall forthwith notify CP's contact person identified in this Purchase Order by e-mail or facsimile. Such notice shall make reference to this Purchase Order and CP's part numbers, if any, and shall state what obligations of Contractor cannot be fulfilled. Upon receipt of such notice, CP may, at its option, terminate this Purchase Order without any further obligation, save for payments for conforming Product delivered prior to such termination. In addition, upon such termination, Contractor shall immediately repay to CP all sums of money, including deposits, paid by CP net of the purchase price of conforming Product delivered prior to cancellation.

- d. **Packing and Shipping:** Contractor shall ensure that:
- i. itemized packing slips, showing the number of this Purchase Order and CP's part numbers, if any, in a conspicuous manner, accompany each shipment of the Product and are solidly affixed on the exterior of the package;
 - ii. all shipments of the Product are made in accordance with all relevant laws, including those relating to hazardous materials. Without limiting the foregoing, Contractor shall ensure all shipments are made with all labels and accompanying documentation required by law, including where applicable a duly completed Material Safety Data Sheet (MSDS);
 - iii. all shipments of the Product are made in accordance with accepted industrial packaging standards, standard packaging quantities and as otherwise specified in this Purchase Order. Without limiting the foregoing, Contractor shall ensure that all pallet load shipments of the Product are strapped or stretch-wrapped in a manner sufficient to maintain the integrity of the load;
 - iv. all packing materials used in connection with the Product are non-toxic and otherwise safe to use and handle, and are constructed of the most "environmentally friendly" materials reasonably available; and
 - v. it routes all shipments according to the transportation instructions set forth in this Purchase Order or as otherwise directed by CP.

For goods imported into Canada, prior to shipment Contractor shall provide to CP's customs agent designated in this Purchase Order, at the address set forth in this Purchase Order, a Certificate of Origin, Canada Customs Invoice, Commercial Customs Invoice, and/or all other applicable documentation required by applicable laws, including without limitation any applicable international trade Purchase Orders, complete with CP's part numbers, if any.

- e. **Changes:** Contractor shall not make any change to the quantity, class or type of the Product without CP's prior written consent. No changes or modifications to a Purchase Order, the Services or otherwise to this Purchase Order shall be valid unless in writing and signed by both CP and Contractor.
- f. **Price Adjustment:** Regardless of any prices shown in this Purchase Order, Contractor shall adjust its invoice to reflect any decrease in the market price(s) of the Product. Similarly, where the price is based in whole or in part on the cost to Contractor as specified in a published price list, rate, fee, duty or tax and Contractor's cost is subsequently reduced, the price shall be reduced accordingly. In the event of any increase in the market price(s) or costs of the Product, no adjustment to the price shown in this Purchase Order shall be made unless previously agreed to in writing between Contractor and CP.

3. Purchase Price, Invoice, Electronic Data Exchange, SAP Ariba Network and Payment: Subject to Contractor supplying the Product in accordance with the terms of this Purchase Order:

- a. CP shall pay the Purchase Price for the Product to the Contractor (the "Purchase Price") in the amount and manner stated in this Purchase Order.
- b. Contractor shall submit a single invoice for the Product to CP's address shown in this Purchase Order, and the Purchase Price shall be all inclusive (save for taxes) and constitute payment in full for the Product. Contractor's invoice shall indicate the applicable legal CP entity, the applicable sales and use taxes for the Product or Service as separate amounts, and indicate the net taxable value including all applicable discounts. CP shall

not be obligated to pay any taxes to Contractor unless Contractor is registered with the applicable tax authorities and provides its registration number on the invoice. Contractor's invoice (and packing slips and shipping documents, if applicable) shall be in a form reasonably acceptable to CP and shall contain sufficient details to ascertain what Product is being supplied, including the number of this Purchase Order and CP's applicable part numbers, if any. If requested by CP, Contractor shall provide documentation in support of an invoice to CP with form and content reasonably acceptable to CP. CP shall remit payment within forty (40) days of receipt of an invoice prepared in accordance with this Purchase Order (which invoice shall state any discount offered for early payment), PROVIDED always that if CP disputes any portion of the invoice or has in accordance with Section 2 rejected any Product to which the invoice relates, it shall pay such invoice less the disputed amount or value of rejected Product, as the case may be, subject to adjustment (in the case of disputed amounts) upon resolution of the dispute. Non-payment by CP of any amount in dispute shall not alleviate, diminish or modify in any respect Contractor's obligations to perform as required by and in accordance with this Purchase Order. CP shall be entitled to withhold from Contractor any amounts required to be withheld under applicable tax legislation, and any remittance of withholding taxes to the applicable tax authorities shall be deemed to be payment to Contractor.

- c. Unless otherwise provided in this Purchase Order, CP and Contractor agree to conduct business transactions using electronic data interchange ("EDI"). Each party will be solely responsible for all costs it incurs using EDI. It is the responsibility of Contractor to store a complete, chronological record of all EDI messages sent by Contractor to CP and all transmission logs. In the event of a dispute between Contractor and CP regarding the processing or acknowledgment of EDI messages, it is the responsibility of Contractor to ensure the electronic or computer records of the EDI messages and the transmission log shall be readily accessible, are capable of being reproduced in a human readable form, and of being printed, if required by CP.
 - d. Unless otherwise provided in this Agreement, or by CP in writing, CP and Contractor agree to conduct business transactions using SAP Ariba Network ("AN"). CP will not pay Contractor license or configuration fees for the integration, implementation, and usage of AN. Contractors are to be aware that upon crossing a transactional threshold they may incur a charge to transact with CP using AN. Each party shall be solely responsible for all costs it incurs using AN. Payment will be withheld for any non-conformance issues until such time that the issue is resolved. CP requires that Services performed and Goods received into inventory require "acceptance approval" prior to release of payment. It is the responsibility of Contractor to store all documents and complete all requirements needed to conduct transactions with CP and to ensure this information readily accessible if required by CP.
4. **Tax:** Contractor 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 Contractor's obligations in this Purchase Order. Without limiting the foregoing, Contractor 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, insurance and old age pensions, or annuities now or hereafter imposed by any governmental authority with respect to or covered by Contractor or by its subcontractors in the execution of any Services subject to American taxes. Contractor acknowledges that if Contractor is a non-resident as defined by the Internal Revenue Code, CP is required to withhold as required by law. Contractor shall provide written confirmation to CP if it is a non-resident as defined by the Internal Revenue Code. Contractor shall be liable for and shall indemnify CP in accordance with Section 12 in respect of any claims, penalties, interest, or costs made or assessed against CP arising from Contractor's non-compliance with tax laws.
5. **Representations and Warranties:** Contractor represents, warrants and covenants, and acknowledges that CP is relying on such representations, warranties and covenants in entering into this Purchase Order, that:
- a. Contractor has the capacity and is authorized to enter into this Purchase Order and perform its obligations in this Purchase Order;

- b. Contractor has good title to the Product, the right to sell the Product, and all required permits and approvals in respect of the import, sale and shipping of the Product;
- c. the Product is free from any lien or encumbrance in favour of any third party not previously declared in writing to CP;
- d. the Product shall conform to all specifications, drawings, samples or descriptions furnished to or by CP, if any, and shall be merchantable, of good material and workmanship, and free from defect;
- e. Contractor knows of CP's intended use of the Product, and all of the Product has been selected, designed, manufactured or assembled by Contractor based on CP's intended use and shall be fit and sufficient for the particular purpose intended by CP;
- f. Contractor has the right, title or interest to use any information, supplies, patented or copyrighted material, or any other materials, used in the manufacture or supply of the Product and its use of information, supplies, patented or copyrighted material, or any other materials, for the performance of its obligations in this Purchase Order does not result in the disclosure of third-party trade secrets or infringe upon third-party patent, copyright, trademark or intellectual property rights;
- g. Contractor is also providing the warranty (if any) set out in Schedule "B";
- h. Contractor shall, unless otherwise provided in this Purchase Order, provide all the equipment, personnel, supplies, consumables, superintendence and labour necessary to perform its obligations in this Purchase Order;
- i. Contractor has experience in performing its obligations in this Purchase Order and will perform its obligations in this Purchase Order in a safe, efficient, and professional manner in accordance with the terms of this Purchase Order, and in accordance with the Contractor's industry standard, and to the extent that it does not perform in this manner, it shall redo its obligations in this Purchase Order without additional cost to CP;
- j. Contractor has and will maintain all applicable licenses and permits required to perform its obligations in this Purchase Order; and
- k. Contractor shall provide only fully trained and qualified individuals to perform its obligations in this Purchase Order.

To the extent that Contractor does not supply the Product in accordance with this Section or otherwise in accordance with this Purchase Order, Contractor agrees that it shall either replace the Product or cure the relevant defect to the reasonable satisfaction of, and at no additional cost to, CP and shall be liable to CP in accordance with Section 12 for any Claims resulting from Contractor's breach of this Section.

- 6. **Subcontracting:** Contractor shall not subcontract the whole or any part of its obligations hereunder without first receiving the written consent of CP, which consent may be withheld in CP's sole and arbitrary discretion. Where such consent is granted, Contractor shall not be released or relieved from any obligations or liabilities of Contractor in this Purchase Order nor shall CP be prevented from pursuing any legal or equitable remedies it may be entitled to. Contractor shall remain liable and responsible to CP, and shall indemnify CP in accordance with Section 12, for the acts and omissions of any subcontractor and shall ensure that any subcontractor strictly adheres to all terms of this Purchase Order, including any safety and security requirements referred to in this Purchase Order. When requested by CP, Contractor shall provide CP with all details concerning any and all subcontracted work.
- 7. **Delays:** Contractor shall provide CP with notice of delay immediately upon becoming aware of any occurrence which delays or, in Contractor's reasonable opinion, may delay the supply of Product or the performance of any other obligation hereunder.
- 8. **Compliance with Laws:** Contractor shall comply with, and shall ensure its employees, agents, and subcontractors comply with, all applicable federal, provincial, state, and local laws, regulations, by-laws, and all other applicable orders, rules, and regulations of any authority having

jurisdiction respecting the Product, including without restriction all applicable laws respecting the import, export, sale and shipping of the Product, all applicable environmental laws, and all applicable employment standards codes and workers' compensation legislation or equivalent legislation.

- 9. Safety and Security:** Where Contractor is performing its obligations in this Purchase Order on CP property, Contractor shall be responsible for ensuring the safety and security of its agents, employees, and subcontractors, and for ensuring the security of CP's operations as follows:
- a. Contractor shall comply with and shall ensure all of its agents, employees and subcontractors comply with all applicable fire, safety, health, and environmental laws and regulations, including all safety, health and environmental requirements pursuant to any government permit, license, or authorization. Contractor shall be solely responsible for ensuring the safety and health of its agents, employees and subcontractors and for ensuring that its activities do not compromise the safety of CP's operations. Contractor shall provide to its employees, at its own expense, any and all safety gear required to protect against injuries during the performance of any of its obligations in this Purchase Order and shall ensure that its agents, employees, and subcontractors are knowledgeable of and utilize safe practices in the performance of any of its obligations in this Purchase Order, such practices to be at least as stringent as those set out in CP's Minimum Safety Requirements, which is available for viewing at www.cpr.ca.
 - b. Contractor and all of its employees, agents, and subcontractors, shall maintain an active registration with E-VERIFILE (E-RAILSAFE program), or any similar organization(s) being utilized by CP for Contractor safety, security, and insurance compliance, at its own expense. Contractor shall ensure that all agents, employees, and subcontractors, who in the scope of their duties are required to perform Contractor's obligations in this Purchase Order on CP property, have registered with the E-RAILSAFE program and have completed all online safety or security training and background checks as requested by CP or E-VERIFILE. Contractor shall ensure that all of its agents, employees, and subcontractors, carry proof of the E-RAILSAFE program certification at all times while on CP property. CP may, in its sole and arbitrary discretion, exempt the Contractor from the requirements of this paragraph.
 - c. Where applicable, Contractor shall obtain and maintain both a subscription and a satisfactory grade with ISNetworld (www.isnetworld.com), or any similar organization(s) being utilized by CP for Contractor safety, security, and insurance compliance, at its own expense. Failure by the Contractor to obtain or maintain both a subscription and a satisfactory grade with ISNetworld, or any similar organization(s) being utilized by CP for Contractor safety, security, and insurance compliance, shall be an Event of Default under this Purchase Order where such failure continues for more than thirty (30) days after receipt of notice of such breach from CP, ISNetworld, or any similar organization(s) being utilized by CP for Contractor safety, security, and insurance compliance.

Notwithstanding any training that is or is not required by CP, the Contractor shall in all circumstances and at all times be responsible for ensuring the safety and health of its agents, employees, and subcontractors.

- 10. Workers' Compensation:** Where Contractor is required to provide services in conjunction with the Product, Contractor shall upon request from CP, or a third party acting on CP's behalf, furnish CP with written documentation from the applicable workers' compensation authorities, or equivalent authorities, of the state(s) where the Contractor is performing its obligations in this Purchase Order that Contractor, and any of its subcontractors or agents, are in good standing with such authorities. No Contractor invoice shall be payable until such confirmation is received.
- 11. No Exclusivity:** Contractor acknowledges that it is not the exclusive supplier of the Product to CP, and that CP may, from time to time, purchase goods and related services similar or identical to the Product from other suppliers at CP's sole and arbitrary election, and that no guarantee of any quantity of Product either in volume or dollar value is given or implied by this Purchase Order.
- 12. Indemnity and Waiver:** Except to the extent of CP's own negligence, Contractor shall be liable to CP for, and shall indemnify, defend, and save harmless CP from and against, any and all Claims (including legal fees and associated expenses) suffered or incurred by CP that arise out of or result from any act or omission under this Purchase Order, or any breach of this Purchase Order,

by the Contractor, or its subcontractors, including without limitation:

- a. those resulting from any action, suit or proceeding brought by any third party;
- b. those brought or executed in respect of bodily injury (including injury resulting in death) or damage or destruction of property, including CP's property;
- c. those made under workers' compensation legislation;
- d. those legal costs and fines resulting from the failure of Contractor to comply with any applicable laws, regulations, by-laws, rules or orders of any government, authority or body having jurisdiction;
- e. those arising from Product defects and related loss or damage;
- f. those resulting from the release, discharge, seepage or other escape of any substance including chemicals, hazardous or toxic materials, substances, pollutants, contaminants or wastes, whether liquid, gaseous, micro-organic, or of any other nature, which are attributable to Contractor's performance of its obligations in this Purchase Order; and
- g. those brought for actual, alleged, direct or contributory infringement of any patent, trade mark, copyright or industrial property right.

Except to the extent of CP's own negligence, Contractor shall make no claim or demand against CP for any injury (including death), claim, expense, loss or damage to property suffered or sustained by Contractor or any other person which arises out of or is connected with this Purchase Order or anything done or not done as required hereunder, or any other errors or omissions of Contractor, and hereby waives as against CP all such claims and demands.

The onus of establishing that CP was negligent, and the relative extent of that negligence, shall be upon Contractor. CP shall not be deemed to have caused or contributed to a Claim merely by reason of its knowledge, approval or acceptance of the Product, materials, shop drawings, specifications, supplies, equipment, or procedures of Contractor.

For the purposes of this Section, any reference to "CP" shall include CP and its affiliates, together with the directors, officers, employees, representatives and agents of CP and its affiliates; and any reference to "Contractor" shall include Contractor's directors, officers, employees, affiliates, representatives, and agents.

For the purposes of this Section, "Claims" means any and all claims, suits, demands, awards, actions, proceedings, losses, costs, damages, or expenses.

This Section shall not be replaced or modified by any terms contained elsewhere in this Purchase Order, including any schedules attached hereto.

This Section shall survive the expiration or termination of this Purchase Order and shall in no manner limit or restrict the liabilities and obligations of Contractor in this Purchase Order.

13. Insurance: Contractor shall, at its own expense, obtain and maintain, in a form and with an insurance company satisfactory to CP, policies of:

- a. Commercial General Liability 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 property damage, including loss of use thereof. This policy shall by its wording or endorsement include without limitation the following:
 - i. CP 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 the obligations of the Contractor in this Purchase Order;
 - 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 Contractor in this Purchase Order;
 - 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 Contractor and used in regards to this Purchase Order.
 - c. Property "All Risks" insurance covering Contractor's owned property, including Contractor's equipment, where applicable, and property of others in the care, custody, or control of Contractor or for which the Contractor has assumed liability, all including while in transit or storage on a replacement cost basis. With respect to any property of CP, such policy shall contain a loss payee clause in favour of CP.
 - d. Workers Compensation insurance which shall be in strict accordance with the requirements of the most current and applicable state Workers Compensation insurance laws, and Employers' Liability insurance including Occupational Disease insurance with limits of not less than One Million Dollars (\$1,000,000) each accident/each employee, and where appropriate coverage under said policies to be extended for liability under the FELA, USL&H Act and the Jones Act. The Contractor shall, before any services are commenced under this Purchase Order submit written evidence that it has obtained full Workers Compensation insurance coverage for persons whom it employs or may employ in carrying out the services under this Purchase Order. CP and its associated or affiliated companies (and the Directors, Officers, employees, agents and trustees of all of the foregoing) shall be waived of any and all subrogation in the event of injury, death, losses, incidents, claims and potential claims.

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

Contractor agrees that the insurance requirements set out herein shall not limit or restrict its liabilities pursuant to this Purchase Order.

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

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

Contractor shall provide CP with written notice and all reasonable particulars and documents related to any damages, losses, incidents, claims, and potential claims concerning this Purchase Order as soon as practicable after the damage, loss, incident, or claim has been discovered. Contractor 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.

Contractor shall provide a copy of the certificate(s) of insurance evidencing the above Insurance Coverage and may require Contractor to annually provide a copy of updated certificate(s) of insurance evidencing the renewal of the above Insurance Coverage. Where Contractor maintains a registration with ISNetwork, or any similar organization(s) being utilized by CP for Contractor safety, security, and insurance compliance, Contractor shall send such certificate(s) of insurance or notice(s) to ISNetwork, or any similar organization(s) being utilized by CP for Contractor safety, security, and insurance compliance. 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.

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

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

14. Audit: Contractor shall keep and maintain true and correct books, records, and accounts with respect to the performance of the Contractor's obligations pursuant to this Purchase Order, along with invoices and monthly summaries, for a period of seven (7) years after the Contractor ceases to supply Product. Contractor shall, upon request of CP, make available and permit CP during such period to inspect, make copies of, and audit such records. If there is any revision to charges as a result of an audit, within thirty (30) days of the audit, Contractor shall pay to CP the full amount of any credit or CP shall pay to Contractor the full amount of any shortfall, as applicable. This Section shall survive the termination of this Purchase Order.

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

16. Confidentiality:

a. Contractor shall:

- i. not make use of any CP Confidential Information for its own personal gain or for any purpose other than is required to perform its obligations pursuant to this Purchase Order;
- ii. not disclose any CP Confidential Information to any person except Contractor's employees, consultants, subcontractors and agents who have a need to know such information consistent with the performance of Contractor's obligations pursuant to this Purchase Order, but only after such person has properly assumed obligations identical in principle to those in this Section and Contractor ensures that such person at all times complies with those obligations;
- iii. employ diligent efforts and exercise reasonable care to hold all CP Confidential Information in the strictest confidence;
- iv. not use CP's name for any marketing or promotional purposes and not make any public announcements or disclosure in respect of this Purchase Order or Contractor's relationship with CP without first obtaining written consent from CP; and
- v. be liable to CP and indemnify CP in accordance with Section 12 for any breach of this Section by Contractor or its employees, consultants, subcontractors or agents.

b. Neither party shall:

- i. disclose the terms of this Purchase Order or amounts paid under it to any person without the other party's written consent, except to a party's employees, professional advisors and insurers who have a need to know such information, but only where the party ensures that such persons are under obligations of confidentiality identical in principle to those in this Section; or
 - ii. disclose the terms of this Purchase Order or amounts paid under it, except in accordance with this Purchase Order and except as required by law, provided that the party from whom disclosure is demanded pursuant to law shall promptly notify the other party of such demand so that the other party has an opportunity to oppose the production.
- c. CP shall not disclose Contractor's information respecting pricing or any information supplied by Contractor that is clearly marked "Confidential" to any person except CP's employees, consultants, subcontractors and agents who have a need to know such information.

For the purposes of this Purchase Order, "CP Confidential Information" shall mean: any and all information, material, or data disclosed to Contractor by CP or its affiliates, or obtained by Contractor in connection with performing its obligations in this Purchase Order, whether orally, or in any written, magnetic, or electronically recorded form, or by drawings, or inspection of parts or equipment, and including without limitation:

- i. information, knowledge or data of an intellectual, technical, scientific, commercial or industrial nature, or of a financial, cost, pricing, or marketing nature relating to the business operations of CP;
 - ii. personal information regarding any CP employee or other individual, which would be protected under any federal, state, or local privacy laws; or
 - iii. any information supplied by CP that is clearly marked "Confidential";
- but not including information in the public domain or information that at the time of disclosure was already known to Contractor on a non-confidential basis.

The parties agree that any violation of this Section is a material breach and that CP may avail itself of any legal or equitable remedies available in the event of such breach.

This Section shall not be replaced or modified by any terms contained elsewhere in this Purchase Order, including any schedules attached hereto.

This Section shall survive the expiration or termination of this Purchase Order.

17. Ownership of Work Product: Except as otherwise provided in this Purchase Order, all reports, designs, drawings, studies, specifications, software, copyrights, inventions and other work product and intellectual property created, produced or arising in connection with this Purchase Order, whether completed or in progress, and regardless of who was involved therewith, shall be owned exclusively by CP and either delivered to CP or made available for inspection by CP. CP's ownership of and title to the foregoing shall arise automatically upon creation of the work product. To the extent Contractor has any title to the foregoing, Contractor shall take and cause to be taken all necessary steps (including a waiver of any moral rights) to transfer title thereto to CP.

18. Termination: Notwithstanding anything in this Purchase Order, CP may at any time and without payment of any penalty or damages, cancel the undelivered portion of any Product and terminate this Purchase Order, in whole or in part, upon at least ninety (90) days' notice in writing to Contractor specifying therein the effective date of such termination; or effective immediately in the case of an Event of Default by Contractor. For the purposes of this Purchase Order, an "Event of Default" shall mean any of the following:

- a. a breach of a material provision of this Purchase Order by Contractor, including without limitation, failure by Contractor to supply any Product in accordance with this Purchase Order or failure to honour any of its covenants in this Purchase Order;
- b. Contractor ceases or threatens to cease conducting business, or in the reasonable

opinion of CP will be unable to continue conducting business;

- c. any petition, proceeding or other action under any law relating to bankruptcy or insolvency is filed or instituted by or against Contractor; or
- d. Contractor subcontracts the performance of any of its obligations in this Purchase Order without the prior written consent of CP or makes an unauthorized assignment of this Purchase Order.

Upon such termination, Contractor shall immediately re-pay to CP all sums of money, including deposits, paid by CP net of the purchase price of conforming Product delivered prior to termination, and CP shall have no further liability whatsoever to Contractor save for payment for conforming Product delivered prior to termination.

- 19. Assignment:** This Purchase Order is not assignable by Contractor without the prior written consent of CP, which consent may be arbitrarily withheld. Any purported assignment by Contractor of any of its rights, duties, or obligations in this Purchase Order without CP's written consent shall be voidable by CP at its option. Contractor shall not in any event be released from its duties and obligations in this Purchase Order. CP may assign this Purchase Order without obtaining Contractor's consent.

No provision of this Purchase Order 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 Purchase Order 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.

- 20. Binding Effect:** This Purchase Order shall be binding upon and enure to the benefit of each of CP and Contractor and their respective successors and permitted assigns.

- 21. Interpretation:** In this Purchase Order, all references to 'dollars' or '\$' are to American dollars unless stated otherwise. The use of 'CP' and 'CPR' are interchangeable. The insertion of headings is solely for convenience of reference and shall not affect the interpretation of any provision.

- 22. Independent Contractor:** The parties agree that Contractor is an independent contractor, that nothing in this Purchase Order 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 Purchase Order 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. Contractor and its agents, employees, or subcontractors shall at no time be deemed to be agents, employees, or subcontractors of CP, or be deemed to be under the control or supervision of CP when carrying out the Services. Without the prior written consent of CP, Contractor shall not carry on any activity that could be construed as being on behalf of CP.

- 23. Code of Business Ethics:** Contractor undertakes, as a condition of its engagement, to adhere to principles and standards of business conduct consistent with those set forth in CP's Code of Business Ethics, which is available for viewing at www.cpr.ca. CP shall provide a copy of the Code of Business Ethics to Contractor upon request.

- 24. No Waiver:** Neither party shall be deemed to have waived the exercise of any right that it holds pursuant to this Purchase Order unless such waiver is made in writing. No waiver made with respect to any instance involving the exercise of any such right shall be deemed to be a waiver with respect to any other instance involving the exercise of that right or with respect to any other right.

- 25. Notices:** Any notice, consent, demand or other communication that may be or is required to be given pursuant to this Purchase Order shall be in writing and shall be delivered or sent by registered mail, facsimile, or if applicable, e-mail to the address of CP or Contractor, as the case may be, set forth in this Purchase Order. Any notice or other communication contemplated in this Purchase Order shall be deemed to have been given (or received by the other party): (a) on the date sent when sent by confirmed facsimile transmission or e-mail; or (b) three (3) business days after being sent by registered mail to an address set forth in this Purchase Order.

- 26. Governing Law:** This Purchase Order 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 Purchase Order. The parties hereby attorn to the exclusive jurisdiction of the courts of the State of Minnesota, without prejudice to the rights of CP to take proceedings in any other jurisdiction. The parties hereby waive any right to a trial by jury.
- 27. Time of the Essence:** Time shall be of the essence in this Purchase Order.
- 28. Set-Off:** CP shall be entitled at all times to set off at law and/or in equity any amount owing from Contractor to CP against any amount due or owing to Contractor with respect to this Purchase Order.
- 29. Entire Purchase Order; Invoice Terms of No Effect:** This Purchase Order constitutes the entire agreement of the parties concerning its subject matter and no other representation, warranties or agreements, either oral or written, shall be binding upon the parties with respect to the subject matter. This Purchase Order supersedes and invalidates all prior agreements, understandings, negotiations, representations and warranties, whether oral or written, with respect thereto. The terms of this Purchase Order shall supersede any terms attached to any Contractor's invoice, which terms shall not be applicable to this Purchase Order and shall not be considered to be Contractor's exceptions to the terms of this Purchase Order.
- 30. Amendment:** This Purchase Order may not be varied, modified, amended, supplemented, or replaced except by written agreement executed by all parties to this Purchase Order.