

Definitions

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Introduction

These Definitions form part of all Underlying Agreements

1.01 Interpretation

For all purposes of the Underlying Agreement, except as otherwise expressly provided or unless the context otherwise requires:

- (a) All references in the Underlying Agreement to designated “articles”, “sections”, “subsections”, “paragraphs” and other subdivisions are to the designated sections, paragraphs and other subdivisions of the Underlying Agreement;
- (b) The words “herein”, “hereof” and “hereunder” and other words of similar import refer to the specific Underlying Agreement as a whole and not to any particular section, article, paragraph or other subdivision;
- (c) The headings are for convenience only and do not form a part of the Underlying Agreement nor are they intended to interpret, define or limit the scope, extent or intent of the Underlying Agreement, or any provisions;
- (d) The word “including”, when following any general statement, term or matter, shall not be construed to limit such general statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter;
- (e) Unless otherwise specifically stated in an Underlying Agreement, all references to currency shall mean Canadian currency, and where otherwise stated only for the Underlying Agreement specifically stating such exception;
- (f) Any reference to any Person shall include and shall be deemed to be a reference to any entity that is a successor to such Person;
- (g) Words importing gender include all genders and words importing the singular include the plural and *vice versa*;
- (h) The words “to the best of the knowledge of” mean, in relation to the Person making such statement, to the best of their knowledge after making such inquiries as are reasonable in the circumstances; and
- (i) Where any inconsistency or conflict exists or arises between the provisions of the main body of the Underlying Agreement, a Schedule, an applicable SOW, the provisions of the main body of the Underlying Agreement shall prevail over the Schedule(s) and SOW; and the Schedule(s) shall prevail over the SOW, to the extent of the inconsistency or conflict.

1.02 Definitions

Herein and in the Underlying Agreement:

“Acceptance Period” means (i) the period of time set forth in a transactional document following the performance of the Services or delivery of Materials, or (ii) where no such acceptance period is provided for in a transactional document, fifteen (15) Business Days following the performance of Service or delivery of Materials, during which CPR may test, accept or reject the Services or Materials.

“Acceptance Test(s)” means the inspection and or testing activity performed by CPR to determine whether a Service or Material meets the requirements, specifications, standards, criteria and expectations of CPR, as may be set forth in the Underlying Agreement and/or applicable transactional document.

“Affiliates” has the meaning set out in the *Business Corporations Act* (Alberta) as amended, revised or substituted from time to time. For greater certainty, in the case of CPR, Affiliates shall include Soo Line Railroad Company, Delaware and Hudson Railway Company, Inc., Dakota Minnesota & Eastern Railroad Company, Central Maine and Quebec Railway Canada Inc., Central Maine and Quebec Railway US Inc. and Canadian Pacific Railway Limited.

“Alberta Time” means Mountain Standard Time or Daylight Saving Time as provided for in the *Daylight Saving Time Act*, R.S.A. 2000, c. D-5 of Alberta.

“Amendments” means to change; to revise; to formally change a statement(s) or wording within a written document.

“Applicable Law” means any applicable laws, codes, legislative acts, regulations, ordinances, rules, rules of court, and orders having jurisdiction over CPR or its Affiliates (as the context requires).

“Approved Expenses” are expenses, including travel and accommodation expenses, to the extent such expenses are in compliance with CPR’s Contractor Travel Expense Guidelines: as are contained at URL:

<http://www.cpr.ca/en/about-cp/selling-to-cp/information-technology/expense-guidelines>

“Bill of Goods” means a list of materials

“Business Day” unless otherwise set out in a transactional document, means Monday through Friday, excluding holidays observed by CPR in the region where the work is being received by CPR or its Affiliates.

“Business Hours” means 08:30 to 16:30 Alberta Time on Business Days.

"Change of Control" means the sale of all or substantially all the assets of a Party; any merger, consolidation or acquisition of a Party with, by or into another corporation, entity or person; or any change in the ownership of more than twenty percent (20%) of the voting capital stock of a Party in one or more related transactions.

"Change Request" is a written request from Supplier to CPR to consider whether certain Services or Materials requested by CPR or proposed to be completed by Supplier are or are about to be outside the scope of the Underlying Agreement, and containing the following information:

- (a) A description of the applicable services or materials together with Supplier's reasons for considering them outside the scope of the SOW;
- (b) An itemized description of the Fees to perform such services or produce such materials;
- (c) Adjustments to the type and number of resources;
- (d) A description of the consequences of performing or not performing the changes including any effects on the Underlying Agreement's scheduling or work plan; and,
- (e) Unless otherwise provided for in a Contract, all Change Requests shall be in the form as provided for at URL: <http://www.cpr.ca/en/about-cp/selling-to-cp/information-technology/change-request>

"Claim" means all claims, suits, demands, awards, actions, proceedings, losses, costs, damages or expenses (including legal costs on a solicitor and own client basis) suffered or incurred by CPR that arise out of, result from, are based upon or are in any way connected with an Underlying Agreement. Without limiting the foregoing, includes a Third Party IPR Claim.

"Code of Business Conduct" or **"Code of Business Ethics"** is a code that outlines the values of the business or organization, how suppliers (including the Supplier) are supposed to approach problems, the ethical principles based on the organization's core values and the standards to which suppliers (including the Supplier) will be held and can be found at URL: <http://www.cpr.ca/en/about-cp/selling-to-cp/information-technology/code-of-business-conduct>

"Commencement Date" means the later of: (i) the Effective, Start or Commencement Date identified in the Underlying Agreement, or (ii) if there is no Effective, Start or Commencement Date in the Underlying Agreement, the last date of signature to the Underlying Agreement;

"Commercial Software" means software of the Supplier or the Supplier's subcontractors or agents (including their Affiliates) that was commercially available

off the shelf prior to the Commencement Date of the Underlying Agreement first introducing the Commercial Software and any patches, fixes, updates, upgrades thereto and new versions thereof.

“Commercial Software Proprietary Tools” means any tools owned or exclusively licensed to Supplier, Supplier’s employees, subcontractors or agents that are required to operate, maintain and make modifications to the Commercial Software and any patches, fixes, updates, upgrades thereto and new versions thereof.

“Confidential Information” means CPR Confidential Information or Supplier Confidential Information, or both, as the context requires.

“Confidentiality and Privacy” means:

i. Confidentiality

- a. This shall not be replaced or modified by any terms contained elsewhere in the Contract, including any schedules or purchase orders issued in accordance with the Contract.
- b. This shall survive the expiration or termination of the Contract.
- c. Supplier agrees that all parties related to the Supplier (including the Supplier’s employees, subcontractors and agents) shall:
 - a. Not disclose any CPR Confidential Information to any person except Supplier’s employees, consultants, subcontractors and agents who have a need to know such information consistent with the performance of Supplier’s obligations pursuant to this Contract, but only after such person has properly assumed obligations identical in principle to those in this Section and Supplier ensures that such person at all times complies with those obligations;
 - b. Not use, copy or disclose any Confidential Information, except
 - i. as necessary for the performance or delivery of the Services and Materials,
 - ii. with the prior written authorization of CPR, or
 - iii. as may be required by any applicable laws.
 - c. Adhere to security standards for Confidential Information, including control of access to data and other information, using the same care and discretion as dictated by Leading Industry Practices by providers of similar services maintains for its confidential information, but in no case less than the higher standard (i) employed by CPR or the Supplier for its own Confidential Information, (ii) as may otherwise be specified in the Underlying Agreement, or (iii) as governed by CPR policies.

- d. Prior to allowing any third party access to hardware, including loaner or replacement hardware used by CPR, CPR's employees, subcontractors or agents, Supplier shall:
 - i. Determine whether the hardware contains any CPR Confidential Information or software because of such use; and
 - ii. Contact and follow the instructions of CPR if such information or software is present.
- e. Identify any and all Supplier Confidential Information and specify in writing to CPR what harm could reasonably be expected from its disclosure. CPR does not warrant that this identification will preclude disclosure of Supplier Confidential Information if disclosure is determined to be required under any applicable law or CPR policy.
- f. At CPR's election, return to CPR or destroy any CPR Confidential Information within thirty (30) days of the expiration or termination of the applicable Underlying Agreement. Further, if such information is in electronic format stored on hardware of Supplier or its employees, subcontractors or agents, such information shall be dealt with in accordance with or consistent with the terms of the Underlying Agreement. If requested by CPR, Supplier shall promptly furnish written confirmation of such destruction by an officer of the Supplier.
- g. Subject to the foregoing, disclose CPR Confidential Information only to:
 - i. Employees of Supplier and any corporation, company or other entity that it controls or controls it, but only to the extent that they have a need to know;
 - ii. Its subcontractors and agents but only to the extent that they have a need to know; and
 - iii. Anyone else with CPR's prior written consent, provided that Supplier has an agreement to ensure a similar level of confidentiality with such third party consistent with the requirements of confidentiality set out herein and will enforce such rights as and when requested by CPR..
- d. CPR agrees that it and CPR's employees, subcontractors and agents shall:
 - a. Not use, copy or disclose any Supplier Confidential Information, except (i) as necessary for the performance or delivery of the Services and Materials, (ii) upon written authorization of Supplier, or (iii) as may be required by any applicable law; and
 - b. Maintain security standards for Supplier Confidential Information, including control of access to data and other information, using a care and discretion no less than the standard CPR follows for its own Confidential Information. Despite the foregoing, CPR may disclose Supplier Confidential Information to:
 - i. Employees of CPR who have a need to know;

- ii. CPR's subcontractors and agents; and
 - iii. Anyone else with Supplier's, Supplier's subcontractor's or agent's prior written consent, provided that CPR has a similar agreement of confidentiality with such third party consistent with the requirements of confidentiality set out herein.
- e. Confidential Information must be kept confidential by the Party receiving such Confidential Information (the "**Receiving Party**") the longer of:
 - a. Six (6) years following the end of the Underlying Agreement,
 - b. The time period set out under Applicable Laws, if any; and
 - c. The time the Receiving Party receives such Confidential Information of the other Party (the "**Disclosing Party**") plus six (6) years.
- f. The Receiving Party has no obligation of confidentiality with respect to Confidential Information of the Disclosing Party where:
 - a. The Receiving Party already possesses such Confidential Information without obligation of confidentiality, has developed the Confidential Information independently, or rightfully receives it without obligation of confidentiality from a third party legally entitled to provide such Confidential Information, or
 - b. information already known to the Supplier at the time of disclosure, as shown by prior written evidence or other evidence satisfactory to CPR;
 - c. information that is or becomes generally available to the public other than as a result of disclosure by the Supplier's violation of this CNDA; and,
 - d. Information that CPR authorizes the Supplier to disclose.
- g. Either Party may disclose Confidential Information of the other Party to their respective legal counsel (provided such legal counsel is licensed to practice law in a Canadian or American jurisdiction) who have an obligation to keep that information confidential.
- h. The disclosure of the Disclosing Party's Confidential Information to the Receiving Party does not grant to the Receiving Party (directly or implicitly) any license under any patents, copyrights or Trade Secret Information.
- i. The Supplier represents and warrants that all CPR Confidential Information shall remain in Canada or the United States.
- j. Except as may be required by applicable Canadian (and American laws if a portion of the services being provided under the Underlying Agreement are being performed in the United States of America), no press release or other public announcement relating to the Underlying Agreement shall be issued without the prior written consent of the Parties to the specific content and form of such press

release or announcement. Each Party shall use reasonable efforts to disclose such release or announcement proposed by it to the other Party as soon as reasonably possible and the other Party will use reasonable efforts to approve or otherwise comment on such release or announcement without undue delay.

- k. Supplier shall not use CPR's name for any marketing or promotional purposes and not make any public announcements or disclosure in respect of the Underlying Agreement or Supplier's relationship with CPR without first obtaining written consent from CPR, which may be arbitrarily withheld
- l. Except as directly associated with the Services provided by Supplier, the Supplier shall not, in any manner, derive any benefit, directly or indirectly, from the CPR Confidential Information or the use of such CPR Confidential Information, for any purpose. The Supplier agrees not to appropriate for its own use or exploit in any way whatsoever any of the CPR Confidential Information disclosed to it by CPR.

ii. Privacy

- (a) The Parties shall each comply with all Privacy Legislation and provide commercially reasonable assistance to the other Party in order to assist the other Party in meeting its obligations under the Privacy Legislation. Each Party will comply with legislated provisions and time lines for information access and disclosure when requested by the other Party. Upon reasonable notice, each Party shall be entitled to request information from the other Party about its policies and procedures with respect to the Privacy Legislation.
- (b) To protect CPR customer and employee Personal Information received by Supplier, Supplier shall:
 - a. Use such Personal Information only for the purposes of fulfilling its obligations under the Underlying Agreement;
 - b. Not disclose such Personal Information to any Person other than as authorized in writing by CPR or as required by Applicable Law;
 - c. Not have any CPR and CPR customer and employee Personal Information in its control without express written approval by CPR. Without such approval, Supplier undertakes that CPR shall at all times retain control of the Personal Information. To the extent supplied by CPR, the Personal Information supplied by CPR is subject to Privacy Legislation and any and all requests or inquiries received by Supplier for such Personal Information must be immediately directed to CPR;
 - d. At the end of the Term of the Underlying Agreement, return to CPR or destroy all Personal Information related to the Underlying Agreement and provide written confirmation by an officer of the Supplier that all copies have been destroyed;
 - e. At the end of the Term of the Underlying Agreement, return to CPR or destroy all Personal Information related to the Underlying Agreement and

provide written confirmation by an officer of the Supplier that all copies have been destroyed;

- f. For all times Personal Information is in possession of the Supplier, use reasonable security measures to protect such Personal Information against unauthorized access, disclosure, copying, use, or modification, but in no case to a standard less than that the Supplier uses to protect their own Personal Information;
- g. Promptly (i) refer to CPR any individuals seeking access to, or with complaints about, their Personal Information (either in the possession of the Supplier or not), and (ii) notify CPR regarding any such request or complaint;
- h. Require that Supplier Personnel who have access to Personal Information agree to abide by the same restrictions and conditions that apply to Supplier with regard to such Personal Information (and enforce the same on behalf of CPR);
- i. For all records of Personal Information which are disclosed to Supplier under the Underlying Agreement, including those records which are collected, used or stored on behalf of CPR, store them only in Alberta (unless prior written notice is provided to CPR by the Supplier identifying that records of Personal Information shall be stored elsewhere but in no case outside Canada [or, if a portion of Services is being performed in the United States, outside Canada and the United States] and CPR consents in writing to the same); and
- j. Before disclosing to CPR any Personal Information about any individual who is providing or will provide the Services and Materials, Supplier shall obtain the consent of the affected individual. The consent must be in writing, specify to whom the Personal Information can be disclosed, and how the Personal Information can be used. Supplier shall immediately provide such consents to CPR for confirmation and review upon CPR's request.

“Consortium” means two or more services or goods providers who together submit a Proposal.

“Contact Person” means the CPR employee designated to be the only point of contact for the issuing and receiving of documents in an RFx process.

“Contract” means the Underlying Agreement the preamble and all schedules, documents, Transactional Documents, and CNDA's attached to or incorporated by URL reference and forming part of this Contract as from time to time supplemented or amended in writing;

“Contractor” means any party providing Services or Goods where the transaction document (e.g., a Purchase Order, etc.) references the Underlying Agreement (and, therefore, this definition section, by URL).

“CNDA” means Confidentiality and Non-Disclosure Agreement, and includes the recitals and all schedules attached to and forming part of a CNDA.

“CPR” or **“Canadian Pacific”** includes any one of the following companies: (i) Canadian Pacific Railway Company; (ii) Soo Line Railroad Company; (iii) Delaware and Hudson Railway Company, Inc.; (iv) the Dakota, Minnesota & Eastern Railroad Corporation; (v) Central Maine and Quebec Railway Canada Inc.; or (vi) Central Maine and Quebec Railway US Inc., but only to the extent that such company receives a direct benefit from a SOW and only for one term of such SOW.

“CPR Confidential Information” means all data, information, documentation, tangible material and things which record it, relating to, or used in, CPR’s business, whether or not Trade Secret Information, and whether or not owned by CPR, which is not generally known to the public, or to CPR’s suppliers or its competitors, and was disclosed to Supplier by CPR (including parties acting on behalf of CPR). Confidential Information includes:

- a. marketing plans, business plans, strategies, alliances;
- b. forecasts, financial information;
- c. supplier information;
- d. CPR client information, Personal Information of CPR employees, subcontractors, agents, and clients;
- e. technical information, technical data and know-how of CPR relating to existing and proposed products, statistics, analysis, reports, business practices;
- f. Trade Secret Information and proprietary and confidential information of CPR and its strategic partners, but does not include information which:
 - i. is in or comes into the public domain other than as a result of disclosure by the Supplier;
 - ii. was known to or in the Supplier’s possession prior to its being furnished by or on behalf of CPR;
 - iii. becomes available to Supplier from a source other than CPR, provided that such source is not, to the Supplier’s knowledge, bound by an obligation of confidentiality to CPR or another other Person;
 - iv. was independently developed by Supplier without reference to CPR’s Confidential Information.

“CPR’s Contractor Travel Expense Guideline” found at URL:
<http://www.cpr.ca/en/about-cp/selling-to-cp/information-technology/expense-guidelines>

“CPR Indemnitees” includes CPR, CPR’s Affiliates, and their respective current and former officers, directors, employees, agents, successors, agents and assigns.

“CPR Program/Project Delivery Methodology” – document as contained at URL:
<http://www.cpr.ca/en/about-cp/selling-to-cp/information-technology/project-initiative-governance-placemat>

“CSS” means CPR’s IS Contract and Support Services group.

“Cybersecurity” refers to the measures taken to keep electronic information protected, and safe from damage or theft. It is also used to ensure the devices and data are not misused or misappropriated.

“Delivery Conditions” “Deliverable” or **“Deliverables”** has the meaning set out in a Transactional Document.

“Delivery Terms” Unless otherwise stated in a Transactional Document, Parties agree to deliver the Materials Delivery Duty Paid (DDP) as set out in Incoterms 2010 Rules (as published by the International Chamber of Commerce).

For the purposes of clarity; Supplier shall pay all shipping costs to and from CPR.

Delivery shall be at such location and on such date as provided for on a SOW. If no such delivery location or date is found in a SOW, then the Supplier must contact the Contact Person for instructions prior to shipping. In the event no Contact Person is named or reasonably available:

- For deliveries in Canada, the Supplier will ship the Materials to:

**Building #11,
7550 Ogden Dale Road,
Calgary, Alberta
T2C4X9**

- For deliveries in US, the Supplier will ship the Materials to:

**Shoreham Yard, Material Compound, Station #4866,
2800 Central Ave. N.E.,
Minneapolis MN
55418**

Supplier agrees to insure all Materials at full replacement value with CPR as the named beneficiary.

Unless otherwise agreed to by the Parties in writing (and only where such writing specifically references a SOW and the overriding of this Article):

- a. Offloading of the Materials at the import port shall be the Supplier’s cost; and
- b. Transfer of title to all Materials shall occur upon Supplier’s acceptance of a SOW.

Inspection: CPR reserves the right to inspect the PO Deliverables within a reasonable period of time after CPR's receipt. Such reasonable period of time shall in no case be earlier than PO Deliverables installation (if applicable) or delivery and, at CPR's exclusive option, reject:

- a. any of the PO Deliverables which is defective in quality, workmanship or does not conform to its specifications; or
- b. any oversupplied PO Deliverables.

Any rejected PO Deliverables shall be at the risk of Supplier, whether held by CPR for Supplier or returned by CPR.

All PO Deliverables rejected by Supplier shall be picked up by Supplier, at its cost, unless otherwise instructed in writing by CPR.

All PO Deliverables shipped by Supplier as repaired (including replacement PO Deliverables) shall be shipped by Supplier DDP, unless otherwise instructed in writing by CPR.

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

Failure to Supply PO Deliverables: In the event that Supplier cannot supply the PO Deliverables, including meeting the delivery date or any other requirement specified in this Purchase Order, Supplier shall immediately notify CPR's Contact Person (if notice is made orally, such notice shall be repeated to CPR in writing within one (1) Business Day following such oral notice). Notice shall make reference to this Purchase Order 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 CPR may, at CPR's sole and arbitrary option:

- a. Accept partial delivery for any or all PO Deliverables 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 PO Deliverables.

“Disclosing Party” means a party that discloses Confidential Information under an Underlying Agreement (including RFx terms and conditions, etc.).

“EDI Acknowledgment” means an electronic indicator acknowledging receipt of the Data.

“EDI Data” means information transmitted pursuant to Electronic Data Interchange.

“Effective Date” means (i) the date of last signature on the Underlying Agreement, or (ii) the Commencement Date of the Transactional Document first incorporating the Underlying Agreement by reference whichever is earlier

“Electronic Funds Transfer (“EFT”) means the electronic transfer of money from one bank account to another, either within a single financial institution or across multiple institutions, via computer-based systems, without the direct intervention of bank staff.

- The Canadian EFT Enrollment Form can be found at URL:
<http://teams.cpr.ca/Finance/StrategicSourcing/Vendor%20Master%20Request%20Form/EFT%20Enrollment%20Form%20Canada%20April%202016.doc>.

- The US ACH/EFT Enrollment Form can be found at URL:
[http://teams.cpr.ca/Finance/StrategicSourcing/Vendor Master Request Form/EFT-ACH Enrollment Form US April 2016.doc](http://teams.cpr.ca/Finance/StrategicSourcing/Vendor%20Master%20Request%20Form/EFT-ACH%20Enrollment%20Form%20US%20April%202016.doc)

“Evaluation Team” means the individual(s) who will evaluate the Proposals on behalf of CPR.

“Event of Default” means an event that causes an Underlying Agreement to be breached.

“Fees” means the rates set out in a Transactional Document. Unless expressly stated otherwise in in a Transactional Document, the fees include all expenses and third party costs and expenses.

“Fixed Price” means a definite and predetermined price.

“FOIP” means legislation governing the freedom of information and protection of privacy and includes the *Freedom of Information and Protection or Privacy Act* (Canada).

“Force Majeure Event” unless otherwise set out in an Underlying Agreement, , means the 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 a 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 materially affecting one Party’s obligations.

“Goods” means any accompanying physical good(s) to be provided as part of an Underlying Agreement or included in a Transactional Document.

“Incident” means an event or occurrence.

“Intellectual Property” means:

- a. any trademark, trade names, business names, brand names, domain names, service markets, copyrights, including any performing, author or moral rights, designs, invention, patents, franchises, formulas, process, know-how, technology and related goodwill;
- b. any applications, registrations, issued patents, continuations in part, divisional applications or analogous rights or license rights therefor;
- c. Trade Secret Information; and
- d. all other intellectual or industrial property.

“Intellectual Property Rights” means the ownership of, license or other right to use any Intellectual Property.

“IS” means CPR’s Information Services department.

“Key Personnel” means any Supplier personnel specifically identified who CPR or Supplier reasonably believes to be essential for successful completion of the Services or Materials; for greater certainty, Key Personnel is deemed to be a subset of Supplier Personnel who spend greater than 25 hours a week averaged over the prior five (5) weeks in relation to the provision of Services or Materials to CPR.

“Leading Industry Practices” means the optimum standard of practice attained by exercising that degree of knowledge, skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced supplier whom is an international leader in its industry and is engaged in the same type of undertaking under the same or similar circumstances and which is expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety, expediency, applicable laws, and any applicable industry standards and all applicable professional association standards generally accepted by leading companies in the jurisdiction where the Services and Material are provided.

“Letter of Credit” unless otherwise set out in an Underlying Agreement, RFx or other Transaction Document, means a document from a bank, insurance company or other similar entity guaranteeing that CPR will receive payment of the value of the Performance Security in full as long as the stated Delivery Conditions have been met.

“Manufacturer” means a company or companies that produce equipment.

“Material Breach” means the occurrence of any one (1) or more of the following:

- a. A failure on the part of the Supplier or the Supplier’s employees, contractors or agents to maintain the confidentiality of CPR’s Confidential Information, including any unauthorized access, use, disclosure or loss, including a breach of Confidentiality;
- b. A failure on the part of the Supplier or the Supplier’s employees, contractors or agents to comply with CPR’s safety and security standards, as are identified

- in the Safety and Security paragraph of the Underlying Agreement, including security policies and procedures for CPR's Confidential Information;
- c. The Supplier making an assignment for the benefit of its creditors generally;
 - d. The Supplier filing a petition or making a proposal under the *Bankruptcy and Insolvency Act*, Canada, or similar equivalent legislation of any applicable jurisdiction;
 - e. The Supplier is the subject of a receiving order or a petition filed under the *Bankruptcy and Insolvency Act*, Canada, or such similar equivalent legislation of any applicable jurisdiction (where the Supplier does not contest such receiving order or petition in good faith);
 - f. The Supplier making an application under the *Companies' Creditors Arrangement Act* or similar or equivalent legislation of any applicable jurisdiction;
 - g. The Supplier is subject to any distress or execution levied on its rights under the Underlying Agreement;
 - h. The Supplier ceases or threatens to cease conducting business or in the reasonable opinion of CPR will be unable to continue conducting business;
 - i. The Supplier undergoes a material Change of Control;
 - j. The Supplier is subject to appointment of any receiver, manager, receiver-manager, liquidator or trustee of the property, assets or undertaking of the Supplier pursuant to the terms of a court order or security agreement or similar instrument and such appointment is not revoked or withdrawn within thirty (30) days of the appointment, provided that such period of thirty (30) days shall be extended to one hundred and twenty (120) days after such appointment where the Supplier demonstrates to the reasonable satisfaction of CPR that it is contesting such appointment in good faith;
 - k. The Supplier's breach of the warranties as contained in the Underlying Agreement; The Supplier's breach of its conflict of interest and ethical conduction obligations as contained in the Underlying Agreement;
 - l. The Supplier's breach of obligation of non-assignment as contained in the Underlying Agreement;
 - m. Supplier acts or omissions that result in the personal injury or death of a Person, including that which results in a good faith claim under applicable workers' compensation legislation; and
 - n. The Supplier's failure to comply with its escrow or Letter of Credit obligations, when applicable.

“Materials” include (i) all the working papers, surveys, notes, plans, designs, reports, records, studies, drawings, examinations, assessments, procedures, specifications, evaluations, results, conclusions, interpretations, calculations, analyses, systems, software, source code, documents, writings, programs, hardware, devices, data or any components of these, regardless of how they are represented, stored, produced, or acquired that are to be delivered under the Underlying Agreement or are as described elsewhere in the Underlying Agreement, but excludes Commercial Software,

Commercial Software Proprietary Tools, Pre-existing Work and User Documentation, and (ii) includes Goods;

“Materials, Packing, and Shipping” Supplier shall ensure that:

- a) itemized packing slips, conspicuously showing the SOW number and CPR’s part numbers, if any, accompany each shipment of Materials and are firmly affixed on the exterior of the package;
- b) all shipments of the Materials are made in accordance with Applicable Laws, including those relating to dangerous goods and Workplace Hazardous Material Information Systems (WHMIS). Without limiting the foregoing, Supplier 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;
- c) all shipments of the Materials are made in accordance with accepted industrial packaging standards, standard packaging quantities, and as otherwise specified in a SOW. Without limiting the foregoing, Supplier shall ensure that all pallet load shipments are strapped or stretch-wrapped in a manner sufficient to maintain the integrity of the load;
- d) all packing materials used in connection with the Materials are non-toxic, otherwise safe to use and handle, and are constructed with the most environmentally friendly materials reasonably available; and
- e) Supplier routes all shipments according to the transportation instructions set forth in a SOW or as otherwise directed in writing by CPR.

For Materials imported into Canada or the US, prior to shipment Supplier shall provide to CPR’s customs agent designated in a SOW, at the address set forth in a SOW, a Certificate of Origin, Canada Customs Invoice, Commercial Customs Invoice, and all other applicable documentation required by Applicable Laws, complete with CPR’s part numbers, if any. If CPR’s designated customs agent contact information and address is not provided in a SOW, then, by default, it shall be deemed to be as provided for in the Shipping Instructions.

“Modified RFX Process Proposal” means that in the event no compliant Proposals are submitted in response to the RFX, CPR reserves the right to re-issue the RFX under a Modified RFX Process.

“must”, “mandatory”, “required”, “shall” means a requirement that must be met in a substantially unaltered form (i) in an Underlying Agreement, or Transaction Document, and (ii) in order for the Proposal to receive consideration. The determination of what is substantially unaltered shall be made by CPR in its exclusive discretion.

“Notice” means a written email or letter from CPR’s Contact Person.

“Optional” means a requirement not considered essential, but for which preference may be given.

“ORISS” means the Online Rail Industry Supply System: refer to the www.ORISS.com website.

“Pass-through contractor” shall mean: any individual solicited by CPR from a source other than the Supplier where CPR requires that Supplier contract for such sub-contractor(s) for CPR’s benefit.

“Parties” means the parties to the Underlying Agreement collectively, and **“Party”** means one party to the Underlying Agreement individually.

“Performance Security” means a performance bond (or similar instrument) that is provided by a third party for a stated amount, payable in the event that the beneficiary incurs loss as a result of good or service provider’s breach in an identified manner(s).

“Person” includes an individual, a partnership, a corporation, a trust, an unincorporated association, the government of any country or political subdivision thereof and any agency or division of such government, and any other entity or association.

“Personal Information” means personal information as such is defined in applicable Privacy Legislation and also means information about an identifiable individual, and includes:

- a. the individual’s name, home address or home telephone number;
- b. an identifying number, symbol or other particular assigned to the individual;
- c. information about the individual’s health and health care history including information about a physical or mental disability;
- d. information about the individual’s educational, financial, employment or criminal history, including criminal records where a pardon has been given; but shall not include Personal Information that may reasonably be considered business contact information.

“PIPA” means the *Protect IP Act*: a bill presented in the US Senate which is intended to enable the US Justice Department to act against websites anywhere in the world if they were thought to be breaking US copyright laws.

“Pre-existing Work” means all parts of Materials, Commercial Software, or Commercial Software Proprietary Tools that were first created outside the scope of the Underlying Agreement by Supplier, Supplier’s employees, subcontractors or agents (including their Affiliates) and which were in existence prior to the earliest Commencement Date.

“Privacy Legislation” means all legislation governing CPR relating to privacy or protection of Personal Information.

“Prime Proponent” means a Vendor in a Consortium that is responsible for the provision of all Services and Materials and is accountable for all terms and conditions of the Underlying Agreement.

“Prime Vendor” means a Vendor in a Consortium that is responsible for the provision of all Services and Materials and is accountable for all terms and conditions of the Underlying Agreement.

“Proposal” means a Vendor’s response to the RFX and includes all the Vendor’s related attachments and presentation materials.

“Proposer” or “Proponent” means any individual, business, Supplier or Contractor who submits a Proposal to CPR.

“Proprietary Tools” means any tools owned exclusively by Supplier, Supplier’s employees, subcontractors or agents that are required to operate, maintain and make modifications to the Pre-existing Work and any updates thereto and new versions thereof.

“Receiving Party” has the definition as provided for in the Confidentiality and Privacy section herein.

“Records” means CPR information including Personal Information, proprietary information and confidential information.

“Records and Audits” means

i. Records

Supplier shall:

Keep and maintain complete and accurate books, records, and accounts of all charges, expenditures and commitments relating to the Underlying Agreement in accordance with principles generally accepted in Canada, as recommended in the Handbook of the Canadian Institute of Chartered Accountants, and in accordance with principles generally accepted in the US and, on demand, promptly provide to CPR these documents to examine, audit and take copies and extracts at no additional cost to CPR.

Keep and maintain complete and accurate books, records and accounts of CPR’s service order requests and incident and problem resolution issues including: details in respect of all customer service order and problem inquiries; average time required to resolve issues; and data required to perform long-term trend analysis of operating

activity to the extent that Supplier provides such information as a standard part of the Services and as set out in the specific Service Schedule;

Keep and maintain complete and accurate books, records and accounts of security breaches, major outages or internal control incidents, or other security related events to the extent that Supplier provides such information as a standard part of the Services and as set out in the specific Service Schedule; and

Keep the documents referred to in subparagraphs (a) to (c) for 7 years following the later of completion or termination of the Underlying Agreement or transactional document.

ii. Audits

Audits – General

Supplier shall keep and maintain true and correct books, records, and accounts with respect to the Goods and Services, along with invoices and monthly summaries, for a period of five (5) years after the Supplier ceases to supply Goods and Services. Supplier shall, upon request of CPR, make available and permit CPR during such period to inspect, make copies of, and audit such records; provided, however, such inspection and audit shall be limited to records pertaining to Supplier's pricing and quantities for Goods and Services provided under the Contract and shall not include any financial records, payroll records, or other similar records of Supplier. If there is any revision to charges as a result of an audit, within thirty (30) days of the audit, Supplier shall pay to CPR the full amount of any credit or CPR shall pay to Supplier the full amount of any shortfall, as applicable. CPR's inspection and audit under this Section shall be subject to its obligations of confidentiality to Supplier as set forth in the Contract.

This shall survive the termination of the Contract.

CPR shall have the right to conduct, or have its nominee conduct (subject to signing a reasonable and appropriate confidentiality agreement, to be no more restrictive than the obligations contained in the Underlying Agreement), audits in accordance with the provisions of this document. CPR shall not engage a competitor of Supplier to conduct any audit provided for in the Underlying Agreement. For event driven audits, CPR shall provide Supplier with reasonable notice. All audits will be conducted during Business Hours, unless the nature of the audit requires after-hours access or as otherwise agreed by the Parties. When conducting audits, CPR, or its nominee, shall not unreasonably interfere with Supplier's performance of the Services. Except as otherwise expressly provided in the Underlying Agreement, each Party shall bear its own internal expenses related to the audit and CPR shall bear its own expenses in relation to the retention of any external auditor that it chooses to retain. Supplier shall, at no cost to CPR: (a) co-operate with and assist CPR and/or its nominee, in any audits carried out pursuant to the Underlying

Agreement; (b) make available, on a timely basis, the information reasonably required to conduct such audits; and (c) subject to Supplier's reasonable security requirements, permit access to Supplier's Facilities and infrastructure (provided that this right of access will not apply to Supplier's Facilities or infrastructure to which access is reasonably restricted) as reasonably required to conduct such audits. CPR and its auditors shall not be entitled to audit data or information, including Personal Information, of other customers or clients of Supplier, nor any confidential information of Supplier that is not relevant for the purposes of an audit. All information provided by Supplier in connection with the conduct of an audit, as well as the results of any audit, shall constitute Confidential Information.

Security and Privacy Audits

CPR, or its nominee, subject to Supplier's reasonable access security requirements, may conduct an annual audit to verify Supplier's compliance with Supplier's obligations under the headings: Safety and Security; Privacy; Cybersecurity or otherwise to ensure compliance with Underlying Agreement terms. In addition to alternative remedies available to CPR, if CPR or its nominee identifies any non-compliance by Supplier with such obligations, Supplier shall implement such additional practices as are required for Supplier to properly perform its obligations.

Financial Audits

CPR, or its nominee, may, for the purpose of verifying Fees, conduct a financial audit of any financial records in respect of the provision of the Services, not more than once per year, and for a period of two years after termination or expiry of the Underlying Agreement. Such audits may include financial reconciliation of invoiced amounts for charges and expenses and unit rates.

Contract Compliance Audits

CPR, or its nominee, may conduct contract compliance audits for the purposes of verifying that Supplier is complying with its obligations under the Underlying Agreement including verifying that Supplier is providing the Services and meeting the Service Levels and complying with its Service Level obligations under each respective Service Schedule.

If a contract compliance audit identifies non-compliance, the Parties will discuss such non-compliance and its materiality, and Supplier shall present a plan to remedy the non-compliance in order to comply with the requirements of the Underlying Agreement CPR agrees that a general contract compliance audit will be initiated no more than once per year provided that follow up activities required by non-compliance may be conducted on an as required basis.

Event Driven Audits

At any time during the Term, CPR, or its nominee, may perform an event driven audit where it has reasonable grounds to believe that an event has occurred which constitutes a breach of the Underlying Agreement

Supplier Audit Information

Supplier shall promptly make available to CPR, and to entities that regulate CPR pursuant to Applicable Laws, at no additional charge, the materially relevant findings from any external review or external audit conducted by Supplier, or its Affiliates, to the extent that it is relevant to the Services. This will include the results of any SSAE16/CSAE3416 audit, and SOC 1 Type 2 audit report and compliance with Sarbanes-Oxley (SOX), Bill C-198 (C-SOX) regulatory requirements. By executing the Underlying Agreement Supplier represents and warrants to CPR that Supplier achieved final certification required by the U.S. SOX Act of 2002 regarding internal controls over financial reporting for the year ending December 31, 2013 and that continued compliance with and certification under SOX shall form an integral part of the ongoing financial reporting program at Supplier during the Term.

Audits and Inspections of Subcontractors

Supplier shall ensure that the CPR audit and inspection rights described herein are included in all subcontracts entered into after the starting date of the Services and shall enforce such rights for the benefit of CPR.

“Renewal Terms” (if any) shall be as set out in an Amendment to the Underlying Agreement.

“Representatives” means each Party’s directors, officers, employees, affiliates, subcontractors, agents, consultants and advisors.

“RFx” means **“Request for Proposals”, “RFP”, “Request for Quotes”, “RFQ”, Request for Information”, and “RFI”**; the solicitation for Services or Materials and includes any attached or referenced addendums, appendices, schedules and exhibits.

“RFx Contact” means the CPR employee designated to be the only point of contact for the issuing and receiving of documents in an RFx process.

“RFx Terms” includes those terms and conditions as contained in the RFx Document and RFx Terms & Conditions and any terms referenced by these Definitions. In the event of conflict the terms as defined in the RFx Document takes priority over the RFx Terms & Conditions and Definitions. The RFx Terms takes priority over the Definitions.

“Safety and Security”

Where Supplier is performing the Services on CPR property, Supplier shall be responsible for ensuring the safety and security of its agents, employees, and subcontractors, and for ensuring the security of CPR’s operations as follows:

- (a) Supplier 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. Supplier 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 CPR’s operations. Supplier 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 the Contract 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 Underlying Agreement, such practices to be at least as stringent as those set out in CPR’s Minimum Safety Requirements, a copy of which can be found at URL:

Minimum Requirements for Contractors in CP Property (Canada):

<http://www.cpr.ca/en/about-cp-site/Documents/safety-requirements-contractors-Canada.pdf>

Minimum Requirements for Contractors in CP Property (US):

<http://www.cpr.ca/en/about-cp-site/Documents/safety-requirements-contractors-US.pdf>

- (b) Supplier and all of its employees, agents, and subcontractors, shall maintain an active registration with E-VERIFILE Canada (E-RAILSAFE program), or any similar organization(s) being utilized by CPR for Supplier safety, security, and insurance compliance during the Term, at its own expense. Supplier shall ensure that all agents, employees, and subcontractors, who in the scope of their duties are required to perform Supplier’s obligations in this Underlying Agreement on CPR property, have registered with the E-RAILSAFE program and have completed all online safety or security training and background checks as requested by CPR or E-VERIFILE Canada. Supplier shall ensure that all of its agents, employees, and subcontractors carry proof of the E-RAILSAFE program certification at all times while on CPR property. Following Supplier written request, CPR may, in its sole and arbitrary discretion, exempt the Supplier from the requirements of this paragraph.
- (c) Supplier shall obtain and maintain both a subscription and a satisfactory grade with ISNetworld (www.isnetworld.com), or any similar organization(s) being utilized by CPR for Supplier safety, security, and insurance compliance during the Term, at its own expense. Failure by the Supplier to obtain or maintain both a subscription and a satisfactory grade with ISNetworld, or any similar

organization(s) being utilized by CPR for Supplier safety, security, and insurance compliance during the Term, shall be an Event of Default under this Underlying Agreement where such failure continues for more than thirty (30) days after receipt of notice of such breach from CPR, ISNetwork, or any similar organization(s) being utilized by CPR for Supplier safety, security, and insurance compliance during the Term.

Notwithstanding any training that is or is not required by CPR, the Supplier shall in all circumstances and at all times be responsible for ensuring the safety and health of its Supplier Personnel.

“Services” means services provided by a Supplier as each is more particularly detailed in a Transactional Document.

“Shipping Instructions” as defined at URL: <http://www.cpr.ca/en/about-cp/selling-to-cp/information-technology/shipping-instructions>

“should”, “desirable”, “may” means a provision having a significant degree of importance to the objectives of the RFx.

“SOW Services” has the meaning set out in a respective Transactional Document.

“Statement of Work” or **“SOW”** means each individual statement of work or other document incorporating work by the Supplier referenced to be part of the Contract.

“Successful Vendor” means the Proponent selected by CPR to perform the Services. For the purposes of an RFx a Successful Vendor shall be subject to the requirements as apply to a Supplier.

“Supplier” has the meaning provided for in the header of the Underlying Agreement, and includes a Proponent; or the Party as defined in a Transactional Document, Underlying Agreement, Amendment, or an RFx Document. For clarity, a Successful Vendor will become a Supplier when it enters into an Underlying Agreement.

“Supplier Confidential Information” means information, supplied in confidence, concerning the Supplier and/or third parties or any of the business or activities of the Supplier and/or third parties and which is identified in writing as confidential and acquired by CPR directly as a result of participation in the Underlying Agreement.

“Supplier Facilities” means a permanent, semi-permanent, or temporary commercial or industrial property such as a building, plant, or structure, that is owned, rented or leased by a Supplier.

“Supplier Personnel” mean Supplier’s employees, subcontractors, sub-suppliers, assigns and agents.

“Term” means the Underlying Agreement shall take effect from the Commencement Date and remains in effect concurrent with the term designated in a Transactional

Document so referencing the Underlying Agreement, unless terminated earlier in accordance with the Underlying Agreement.

“Trade Secret Information” means documents and other tangible materials and things which record it which has economic value, actual or potential, from not being known by others who could obtain economic value from its disclosure or use; and is the subject of reasonable efforts to maintain its secrecy.

“Transaction Document” means an agreement (including a Contract) and the preamble and all schedules, documents, Transactional Documents, and CNDA’s attached to or incorporated by URL reference and forming part of the agreement as from time to time supplemented or amended in writing, identifying the purchase by a CPR (including its Affiliates) of work, material or goods from a Supplier.

“Underlying Agreement” means any document (including a Contract, Statement or Work (SOW), etc.) that expressly adopts these definitions.

“URL” Means Uniform Resource Locator.

“User Documentation” means any documentation that describes the Pre-existing Work and, when used in conjunction with its source code, enables the user to operate, maintain and make modifications to the Pre-existing Work and includes the identification of any necessary tools that are not Proprietary Tools and any updates thereto and new versions thereof.

“Vendor” means an individual, organization or a Consortium responding (or taking part in a response) to the RFX with a Proposal.

“Warranty Period” is the period of time during which the Supplier warrants that the Services and Materials shall perform as described by the Underlying Agreement or associated Transactional Document and, if no Warranty Period is provided for in the Underlying Agreement or associated Transactional Document, is deemed to be a period of one hundred and twenty (120) days beginning on the date upon which the Services and Materials are accepted by CPR pursuant to the acceptance process described in the Underlying Agreement or Transactional Document.