

PURCHASE ORDER TERMS & CONDITIONS

This block note applies only to CPR Purchase Orders with numbers starting with a “4”.

The portion of the Purchase Order document that follows the heading **Purchase Order Details** (as contains product description, quantity, unit price, etc.) shall be referred to as the “**Purchase Order Details**”. That portion of the Purchase Order document as follows the heading **General Instructions** shall be referred to as the “**General Instructions**” (as contained in these Purchase Order Terms & Conditions). Collectively, this document as a whole shall be referred to as “**Purchase Order**”.

NOW THEREFORE, in consideration of the mutual promises and the covenants and agreements set forth in this Purchase Order and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Parties, Parties agree as follows:

COUNTER OFFER: TO THE EXTENT SUPPLIER PROVIDES ALTERNATE CONTRACTUAL TERMS IN AN OFFERING DOCUMENT (E.G. IN A QUOTE, PROPOSAL, INVOICE, ETC.), UNLESS THE SAME IS (i) AGREED TO (ii) PHYSICALLY COUNTERSIGNED BY A CPR AUTHORIZED SIGNATORY AND (iii) RETURNED TO SUPPLIER, THIS PURCHASE ORDER SHALL BE DEEMED A COUNTER OFFER, AND SUCH OFFERING DOCUMENT TERMS ARE EXPRESSLY REJECTED. ACCEPTANCE OF THIS COUNTER OFFER SHALL BE DEMONSTRATED BY SUPPLIER COMMENCING EFFORT (EVEN IF SUCH EFFORT IS INTERNAL IN SUPPLIER ORGANIZATION ALONE) RELATED TO: (a) COMMENCING PRODUCTION OR (b) THE SUPPLY OF THE GOODS, MATERIALS, OR SERVICES AS ARE IDENTIFIED IN THIS PURCHASE ORDER.

SUPPLIERS LOCATED IN OR WITH GOODS & SERVICES PROVIDED FROM OR THROUGH THE UNITED STATES: IN ADDITION TO THE TERMS & CONDITIONS REFERENCED ABOVE, IT IS UNDERSTOOD AND AGREED BY THE SUPPLIER THAT SUPPLIES THE GOODS AND SERVICES WITH A VALUE OF MORE THAN \$10,000 (INDIVIDUALLY OR COLLECTIVELY) ARE IN COMPLIANCE WITH THE EQUAL EMPLOYMENT OPPORTUNITY CLAUSES CONTAINED IN SECTION 202 OF EXECUTIVE ORDER 11246 AND TITLE 41, CODE OF FEDERAL REGULATIONS, AND SECTION 503 OF THE REHABILITATION ACT, AS AMENDED, AND 38 U.S.C. 4211 AND 4212.

ARTICLE 1 - DEFINITIONS AND INTERPRETATION

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

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

ARTICLE 2 - SERVICES and MATERIALS PROVIDED BY SUPPLIER

2.01 Scope of Services

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

Except where otherwise agreed to in this Purchase Order, in its provision of the Services and Materials Supplier shall:

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

Supplier's Obligations

- 1. Purchase:** The terms contained in the Purchase Order Details of this Purchase Order (as contains product description, quantity, unit price, payment terms, etc.) shall always govern, whereas, the General Instructions of this Purchase Order (as references these Purchase Order Terms and Conditions) shall only govern to the extent there is no written agreement in place between Supplier and CPR specifically identified to govern this transaction.
- 2. Counter Offer:** In respect of the PO Deliverables, to the extent the Supplier provides alternative contractual terms in an Offering Document, unless the same is physically signed by CPR and returned to Supplier, this Purchase Order shall be deemed a counter offer and such terms are expressly rejected. Acceptance of this counter offer shall be demonstrated by the Supplier commencing effort (even if internal in Supplier organization alone) related to commencing production or supply of the PO Deliverable.
- 3. Compliance with Laws:** Supplier shall comply with all federal, provincial, state, local and municipal laws, regulations, by-laws, orders, related industry best practices, rules, and regulations of any authority having jurisdiction respecting the PO Deliverables, including all laws respecting the import, export, sale and shipping of the PO Deliverables, including Commercial Software and Commercial Software Proprietary Tools, and all Applicable Law.
- 4. Delays:** Supplier shall provide CPR with immediate notice of delay upon becoming aware of any occurrence which delays or, in Supplier's reasonable opinion, may delay Supplier's performance of any Supplier obligation hereunder.
- 5. No Exclusivity:** Supplier acknowledges that it is not the exclusive supplier of the PO Deliverables to CPR and that CPR may, from time to time, purchase PO Deliverables similar or identical from other suppliers at CPR's sole and arbitrary discretion, and that no guarantee of any quantity of PO Deliverables either in volume or dollar value is given or implied by this Purchase Order.
- 6.** If requested by CPR or a third party acting on CPR's behalf, Supplier shall furnish CPR with written documentation from the applicable workers' compensation authorities (or their equivalent) of the jurisdiction(s) (e.g. provinces, territories, states, etc.) where the Supplier is performing its obligations pursuant to this Purchase Order confirming that the Supplier is in good standing with such authorities. Following CPR request, no Supplier invoice shall be payable until such confirmation is received and validated in writing by CPR.

2.02 Supplier Personnel – Intentionally Deleted

2.03 Key Personnel – Intentionally Deleted

2.04 Reporting – Intentionally Deleted

ARTICLE 3- PAYMENT

3.01 Fees and Expenses

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

Fees

- a. As set out in this Purchase Order, at the rates set out in this Purchase Order. Unless expressly stated otherwise in this Purchase Order, the fees include all third party costs;
- b. Unless otherwise stated in this Purchase Order, the Fees payable to Supplier do not include any taxes;
- c. Unless otherwise permitted in this Purchase Order, the Supplier shall be solely responsible for the payment of all expenses (including travel expenses) incurred in the performance of this Purchase Order ;
- d. Where approved by CPR in writing, CPR shall reimburse Supplier for all Approved Expenses only in accordance with CPR's Contractor Travel Expense Guideline.

3.02 Billings and Payment

1. Subject to Supplier supplying the PO Deliverables in accordance with the terms of this Purchase Order, CPR shall pay Supplier for the PO Deliverables in the amount and manner stated in this Purchase Order (the "**Purchase Price**"). The Purchase Price shall be all inclusive (save for taxes) and constitute payment in full for the PO Deliverables;
2. Payment of an invoice or receipt of the PO Deliverables by CPR shall not be presumed or deemed a waiver of any rights afforded to CPR (e.g. acceptance periods, service levels, warranties, etc.);
3. CPR reserves the right to:
 - a) Request a refund or credit (which refund or credit shall include all of CPR's associated costs, including transport) for any PO Deliverables that does not meet the service levels, warranties, or specification provided in an Offering Document or this Purchase Order; and,
 - b) Dispute, or reject, any invoice in whole or in part.

Invoice, and Payment:

1. Supplier shall submit a single invoice for the PO Deliverables to CPR's email address at IS_Invoicing@cpr.ca;
2. Supplier's invoice (and packing slips and shipping documents, if applicable) shall be in a form reasonably acceptable to CPR and shall contain sufficient details to ascertain what PO Deliverables is being supplied, including the number of this Purchase Order, and CPR's applicable part numbers, if any;
3. Hardcopy invoices will not be accepted unless agreed to in writing by CPR. If hardcopy invoices are agreed to, they will be sent by post to:

Canadian Pacific Railway Company
ATTN: IS Invoicing Team
Building #1, 7550 Ogden Dale Road SE
Calgary, AB, Canada T2C 4X9

4. Supplier's invoice shall indicate:

- a) the applicable legal CPR entity (in the event no CPR legal entity is named, the default shall be Canadian Pacific Railway Company), and;
 - b) the applicable sales and use taxes for the PO Deliverables as separate amounts and indicate the net taxable value including all applicable discounts.
5. If requested by CPR, Supplier shall provide documentation in support of an invoice to CPR in a form and content acceptable to CPR;
6. CPR shall remit payment within forty (40) days of receipt of an invoice prepared in accordance with this Purchase Order, unless CPR disputes any portion of the invoice in accordance with paragraph 21.01 Delivery Terms CPR shall pay such invoice less the disputed amount subject to adjustment upon resolution of the dispute. Non-payment by CPR of any amount in dispute shall not alleviate, diminish or modify Supplier's obligations to perform as required in this Purchase Order;
7. CPR shall not be obligated to pay any taxes to Supplier unless Supplier is registered with the applicable tax authority and provides its registration number on the invoice;
8. CPR shall be entitled to withhold from Supplier 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 Supplier;
9. **Tax (For Canada):** For the acquisition of PO Deliverables to be consumed in Canada, Supplier shall:
- a) Be liable for and indemnify and reimburse CPR for any Claims made or assessed against CPR arising from Supplier's non-compliance with any applicable tax laws. Upon request, Supplier shall provide to CPR written certification that it has complied with such tax laws. Where applicable, Supplier shall certify to CPR that it has posted PST security, and, to the extent Supplier fails to do so, CPR shall be entitled to withhold the applicable value of PST from its payments to Supplier and remit the same to the responsible authorities;
 - b) Not charge provincial or municipal sales tax on shipments to destinations in the following provinces, and the applicable tax exemption number (shown below) shall appear on the Supplier's invoice(s):
 - a. Saskatchewan: 003770-5
 - b. British Columbia: PST-1001-5810
 - c. Manitoba: 217842-7
 - c) Comply with the *Sarbanes Oxley Act*, 2002 and Canadian equivalent Bill C198/Canadian Securities Administrators rules when they apply and shall, upon demand by CPR, deliver to CPR a certificate showing that Supplier is in compliance;
10. **Tax (For US):** For any PO Deliverables delivered or manufactured in whole or in part in the USA, or the acquisition of the PO Deliverables is to be consumed in the USA, Supplier shall:
- a) Comply with all applicable tax laws including the collection and remittance of any and all applicable taxes, levies, duties, and charges in connection with performing Supplier's obligations in this Purchase Order;
 - b) Without limiting subparagraph (a), Supplier shall be responsible for compliance with and payment of all sales taxes, use taxes, excise taxes, customs 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 Supplier in the execution of any PO Deliverables;
 - c) Acknowledge that if Supplier is a non-resident as defined by the *Internal Revenue Code*, CPR is required to withhold funds as required by law;
 - d) Supplier shall provide written confirmation to CPR if it is a non-resident as defined by the *Income Tax Act* (Canada), or the Supplier is under the tax jurisdiction of the USA;

- e) Be liable for and indemnify CPR in accordance with ARTICLE 13 - INDEMNIFICATION AND NON-SOLICITATION in respect of any Claims, penalties, interest, or costs made or assessed against CPR arising from Supplier's non-compliance with tax laws; and,
- f) Supplier shall at all times comply with all applicable provincial workers' compensation legislation including the *Workers' Compensation Act*, RSA 2000, c W-15 and any American equivalent legislation including those outlined in the paragraphs below when such legislation applies and shall, upon request by CPR, deliver to CPR a certificate from any applicable Workers' Compensation Board (or such other similar organization) [the "**Board**"] showing that Supplier is registered and in good standing with the Board. Supplier's workers compensation account number and the jurisdiction of coverage shall be provided to CPR prior to Supplier commencing work on any site owned, controlled or occupied by CPR;

11. Unless otherwise provided in this Contract, or by CPR in writing, CPR and Supplier agree to conduct business transactions using SAP Ariba Network ("**AN**"). CPR will not pay Supplier license or configuration fees for the integration, implementation, and usage of AN. Suppliers are to be aware that upon crossing a transactional threshold they may incur a charge to transact with CPR 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. CPR requires that Services performed and Goods received into inventory require "acceptance approval" prior to release of payment. It is the responsibility of Supplier to store all documents and complete all requirements needed to conduct transactions with CPR and to ensure this information readily accessible if required by CP.

3.03 Electronic Data Exchange:

If requested by CPR, Supplier undertakes to conduct business transactions using electronic data interchange ("**EDI**"). Each Party will be solely responsible for all costs they incur using EDI. It is the responsibility of Supplier to store a complete, chronological record of all EDI messages sent by Supplier to CPR including transmission logs in the event of a dispute regarding the processing or acknowledgment of EDI messages. It is the responsibility of Supplier 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.

3.04 Verification – Intentionally Deleted

3.05 Disputed Invoices

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

3.06 Records and Audits

The Records and Audits terms are contained in Definitions.

3.07 Not to Exceed (“NTE”) Amounts

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

3.08 Early Payment – Intentionally Deleted

3.09 Accept Methods of Payment – Intentionally Deleted

ARTICLE 4 - TERM AND TERMINATION

4.01 Term

1. Acknowledgement by Supplier of this Purchase Order, or Shipment of any PO Deliverables relating to this Purchase Order, shall be deemed acceptance of these Purchase Order Terms & Conditions by the Supplier and shall supersede any wording to the contrary on any subsequent Supplier document or invoice.
2. Unless otherwise terminated earlier in accordance with the provisions of this Purchase Order, this Purchase Order shall commence on the Effective Date and shall remain in full force and effect up to the later of (i) the PO Deliverables being delivered in full, (ii) any applicable warranty period expires, or (iii) payment by CPR of the invoice in full (“**Term**”).

4.02 Renewal Terms – Intentionally Deleted

4.03 Termination

In addition to any other provision in this Purchase Order, CPR (in CPR’s sole and arbitrary discretion) may at any time and without payment of any penalty or damages, cancel the undelivered portion of any PO Deliverables, and terminate this Purchase Order, in whole or in part upon:

- a) providing Supplier with no less than five (5) Business Days' prior written notice specifying therein the effective date of such termination; or
- b) immediately upon an Event of Default, Material Breach or breach of the Confidentiality terms by Supplier;

4.04 FEES PAYABLE – Intentionally Deleted

ARTICLE 5 – INDEPENDENT SUBCONTRACTOR

The Parties agree that Supplier is an independent Supplier, 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 Party as the agent of the other Party or authorize either Party to incur any expenses on behalf of the other Party or to commit the other Party in any way whatsoever. Supplier shall at no time be deemed to be employees, agents, assigns, representatives, and subcontractors of CPR, or be deemed to be under the control or supervision of CPR when carrying out the PO Deliverables. Without the prior written consent of CPR, Supplier shall not carry on any activity that could be construed as being on behalf of CPR.

ARTICLE 6 – ACCEPTANCE PERIOD

The Parties agree that any or all of: the commencement of activity by the Supplier in respect of the PO Deliverables, the submission of an invoice in respect of the PO Deliverables, or the delivery of any

part of the PO Deliverables shall be deemed to be acceptance of this Purchase Order and these Purchase Order Terms and Conditions.

ARTICLE 7- REPRESENTATIONS AND WARRANTIES

7.01 Supplier represents, warrants, covenants, and acknowledges that:

- a) **PO Deliverables:** The Supplier will provide the PO Deliverables in accordance with Leading Industry Practices.

Supplier 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 PO Deliverables and its use of information, supplies, patented or copyrighted material, or any other materials, for the performance of its obligations in this Purchase Order shall and does not result in the disclosure of third-party trade secrets or infringe upon third-party patent, copyright, trademark or intellectual property rights;

- b) **Quality:** The PO Deliverables shall conform to all specifications, drawings, samples or descriptions furnished to or by CPR and shall be merchantable, of good material and workmanship, and be free from any defects or deficiencies in manufacturer workmanship.

Supplier confirms it has been informed and understands CPR's intended use of the PO Deliverables, and all of the PO Deliverables have been selected, designed, manufactured or assembled by Supplier based on CPR's intended use and shall be fit and sufficient for the particular purpose intended by CPR;

- c) **Cooperation:** The Supplier shall (at no additional cost to CPR) exercise best effort to communicate and cooperate with other CPR suppliers as may be required for the provision of the PO Deliverables, including with a view to resolving defects and deficiencies in the PO Deliverables which might reasonably be corrected with such cooperation;

- d) **Supplier Personnel:** The Supplier Personnel providing the PO Deliverables have the education, training, experience and skills, access to resources, systems and processes necessary to safely, diligently and expeditiously provide the PO Deliverables. Supplier further undertakes to continue to upgrade the education, training and skill of Supplier Personnel to maintain its and Supplier Personnel's alignment to Leading Industry Practices;

The Supplier agrees to ensure that all Suppliers' personnel engaged in the performance of the PO Deliverables have been subjected to criminal, credit, insurance, reference, security and any other industry background checks to ensure that Supplier Personnel is reliable, competent, lawful, available and properly qualified to provide the PO Deliverables pursuant to this Purchase Order. Upon CPR's written request, Supplier agrees to deliver a written statement certifying to CPR that Supplier has complied with requirements set forth in this paragraph;

- e) **No Material Adverse Effect or Circumstance:** The Supplier confirms that there is no fact or circumstance known to Supplier that may or could reasonably be expected to materially and adversely affect the condition (financial or otherwise), property, assets, liabilities, business, operations, or prospects of the Supplier;

- f) **No Actions:** As at the Effective Date of this Purchase Order, there are no actions, suits, proceedings, or outstanding Claims or demands whatsoever instituted, pending or threatened against Supplier nor are there any facts known to Supplier which could reasonably result in any such actions, suits or proceedings. Following the Effective Date, during the Term of this Purchase Order, Supplier shall immediately notify CPR if an action, suit, proceeding, Claim, or demand whatsoever is instituted, pending or threatened against Supplier which could

reasonably affect Supplier's ability to deliver the PO Deliverables in accordance with the terms of this Purchase Order;

- g) No Untrue Statements:** Neither this Purchase Order nor any document, schedule, list, certificate, declaration under oath or written statement now or hereafter furnished by Supplier to CPR pursuant to this Purchase Order: (a) contains any untrue statement or untrue representation of a material fact, or (b) omits a material fact necessary to make any such statement or representation therein or herein contained not misleading;
- h) Good Standing of Supplier:** Supplier is a Person incorporated/existing in good standing under all Applicable Laws, is authorized to enter into this Purchase Order, and has the capacity and all the permits, licenses and authorizations necessary to carry on its business and perform its obligations;
- i) Execution and Validity of this Purchase Order:** Supplier confirms that the entering into of this Purchase Order, the performance and compliance by Supplier with the terms hereof, and the entering into of the transactions contemplated by this Purchase Order that the performance and compliance with the terms hereof will not:
 - a. Conflict with, violate or result in a breach of any of the terms, conditions or provisions of, or constitute a default under any agreement to which Supplier is a party or by which they are bound;
 - b. Result in a violation by Supplier of any statute, regulation, order, law, ordinance or restriction of Canada or the United States of America, or a province, state, territory or municipality thereof that are applicable to Supplier as a provider of PO Deliverables to CPR; or,
 - c. Result in a violation by Supplier of any judgment, order or decree of any court, board, judicial or quasi-judicial tribunal having jurisdiction over Supplier or Supplier's property or assets.

7.02 Warranty Period

The Warranty Period definition is contained in Definitions

ARTICLE 8- REMEDIES - Intentionally Deleted

8.01 Inability to Complete the Services - Intentionally Deleted

8.02 Rights and Remedies Cumulative - Intentionally Deleted

8.03 Remedies for Warranties - Intentionally Deleted

ARTICLE 9 - FORCE MAJEURE

Neither Party shall be responsible for delays in delivery, nor failures in performance directly resulting from acts or omissions beyond the control of such Party, provided such is without the fault or negligence of said Party. Such acts shall include acts of God or of the public enemy, strikes (and labour disruptions), riots, acts of war, governmental regulations enacted after the fact, fire, flood, lasting communication line failures, lasting power failures, earthquakes, or other disasters, (each a "**Force Majeure Event**"). Upon the occurrence of a Force Majeure Event, the Party whose performance is affected shall immediately notify the other Party of the nature and extent of such condition. However, nothing in this paragraph shall relieve a Party from fulfilling its obligations under this

Purchase Order due to its own financial obligations or self-made condition. The suspension of performance shall be of no greater scope and of no longer duration than is required by the relevant Force Majeure Event and during the suspension CPR will be under no obligation to make payments to a Supplier. Moreover, should the Force Majeure Event(s) persist for more than five (5) Business Days, in addition to any other remedies available to CPR, at any time CPR may terminate the Purchase Order immediately upon written notice to the other Party, without cost, penalty or liability.

ARTICLE 10- CONFIDENTIALITY

1. The Confidentiality and Privacy terms are contained in Definitions
2. The Parties agree that any violation of this Confidentiality section is a Material Breach and that CPR may avail itself of any legal or equitable remedies available in the event of such breach.
3. Except with a written instrument specifically referencing this Purchase Order and this paragraph and signed by both Parties, this paragraph shall not be replaced or modified by any terms wherever contained (e.g. amendments, invoices, future agreements, or elsewhere in this Purchase Order).

ARTICLE 11- CPR MATERIALS AND TRADEMARKS

11.01 Return of Materials – Intentionally Deleted

11.02 CPR Intellectual Property – Intentionally Deleted

ARTICLE 12- ESCROW – Intentionally Deleted

ARTICLE 13 - INDEMNIFICATION AND NON-SOLICITATION

13.01 General Indemnification

1. **Indemnity and Waiver:** Except to the extent of CPR's own gross and material negligence, Supplier shall be liable to CPR for and shall indemnify, defend, and save harmless CPR and its Affiliates, together with the directors, officers, employees, agents, assigns, representatives, and subcontractors of CPR and its Affiliates, from and against any and all Claims (including legal costs on a solicitor and own client basis) suffered or incurred by CPR that arise out of or result from any act or omission under this Purchase Order, or any breach of this Purchase Order by the Supplier including its directors, officers, employees, agents, affiliates, representatives, assigns and subcontractors, including those:
 - a) resulting from any action, suit or proceeding brought by any third party;
 - b) brought or executed in respect of bodily injury (including injury resulting in death) or damage or destruction of property, including CPR's property, brand, good will, reputation, etc.;
 - c) made under Applicable Laws (including workers' compensation legislation);
 - d) arising from product defects and related loss or damage;
 - e) 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 Supplier's performance of its obligations in this Purchase Order; and

- f) brought for actual, alleged, direct or contributory infringement of any patent, trade mark, copyright or intellectual property right (pending or otherwise).
- 2. EXCEPT TO THE EXTENT OF CPR'S OWN MATERIAL NEGLIGENCE, SUPPLIER SHALL MAKE NO CLAIM OR DEMAND AGAINST CPR FOR ANY INJURY (INCLUDING DEATH), CLAIM, EXPENSE, LOSS OR DAMAGE TO PROPERTY SUFFERED OR SUSTAINED BY SUPPLIER 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 SUPPLIER, AND SUPPLIER HEREBY WAIVES AS AGAINST CPR ALL SUCH CLAIM AND DEMANDS.**
3. For all activity associated with this Purchase Order, the onus of establishing that CPR was negligent, and the extent of that negligence, shall be upon Supplier. CPR shall not be deemed to have caused or contributed to a Claim merely by reason of its knowledge, approval or acceptance of the PO Deliverables (including any related materials and services).
4. Notwithstanding the convention used elsewhere in this Purchase Order, for purposes of this section, (1) any reference to CPR shall include CPR's Affiliates, together with the directors, officers, employees, agents, assigns, representatives, and subcontractors of CPR and its Affiliates; (2) any reference to Supplier shall include Supplier's directors, officers and affiliates, employees, agents, affiliates, representatives, assigns and subcontractors; and (3) any reference to Claim shall mean such term as is defined in Definitions.
- 5. EXCEPT BY WRITTEN INSTRUMENT SPECIFICALLY REFERENCING THIS PARAGRAPH OF THIS PURCHASE ORDER'S TERMS AND CONDITIONS AND SIGNED BY BOTH PARTIES, THIS PARAGRAPH SHALL NOT BE REPLACED OR MODIFIED BY ANY TERMS WHEREVER CONTAINED (E.G. OFFERING DOCUMENTS, TRANSACTIONAL DOCUMENTS, AMENDMENTS, INVOICES, FUTURE AGREEMENTS, OR ELSEWHERE IN THIS PURCHASE ORDER). SUCH ATTEMPTS TO MODIFY OR REPLACE THIS PARAGRAPH'S TERMS AND CONDITIONS SHALL BE DEEMED NULL AND VOID AND SHALL BE READ AS NOT TO EXIST.**
- 6. 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.

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

13.02 Intellectual Property Indemnity

Except as otherwise provided for 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 CPR and either delivered to CPR or made available for inspection by CPR. CPR's ownership of and title to the foregoing shall arise automatically upon creation of the PO Deliverables. To the extent Supplier has any title to the foregoing, Supplier shall take and cause to be taken all necessary steps (including a waiver of any moral rights) to transfer title thereto to CPR.

13.03 Non-Solicitation - Intentionally Deleted

ARTICLE 14 – INSURANCE

14.01 Insurance

Supplier shall, at its own expense, obtain and maintain during the Term, in a form and with an insurance company satisfactory to CPR, conform and abide to the policies as contained below.

Commercial General Liability (C.G.L.) insurance with a limit of not less than Five Million Dollars (**\$5,000,000**) for any one loss or occurrence for personal injury, bodily injury, or damage to property including loss of use thereof. This policy shall by its wording or endorsement, include without limitation, the following:

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

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

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.

For work performed in the United States of America, confirmation of **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 Contract 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 Contract. CPR 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.

14.02 Performance Security – Intentionally Deleted

ARTICLE 15- SAFETY AND SECURITY

The Safety and Security terms are contained in Definitions.

ARTICLE 16 – EQUIPMENT, PEOPLE, HARDWARE, SOFTWARE – Intentionally Deleted

ARTICLE 17 – CHANGE REQUEST PROCESS

No changes or modifications to this Purchase Order, including all details herein, shall be valid unless in writing and signed by both CPR and Supplier.

ARTICLE 18 – DISPUTE RESOLUTION

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

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

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

18.04 If the Parties' representatives cannot resolve the dispute, CPR or CPR's representative shall make the decision, as it sees fit, in its sole and exclusive opinion. Supplier shall abide by that decision.

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

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

- (a) A decision by CPR to allow this Purchase Order to expire;
- (b) Any claims involving third parties;
- (c) Intellectual Property Right Claims whether initiated by third parties or by the Parties to this Purchase Order;
- (d) A decision by CPR not to approve a subcontractor or an assignment of this Purchase Order under Article 22.07 – NO ASSIGNMENT;
- (e) A decision by CPR to terminate this Purchase Order pursuant to Article 4 - TERM AND TERMINATION; and
- (f) A decision by CPR not to proceed with a Change Request.

ARTICLE 19- CONFLICT OF INTEREST AND ETHICAL CONDUCT

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

19.02 Supplier shall perform the PO Deliverables and conduct its activities in relation to this Purchase Order in a manner consistent at all times with the CPR's Code of Business Conduct.

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

ARTICLE 20 - BUSINESS CONTINUITY and DISASTER RECOVERY – Intentionally Deleted

ARTICLE 21 - DELIVERY OF MATERIALS

For greater certainty, and despite any term to the contrary, shipping charges shall not be reimbursed unless the Supplier's quote identifies "Shipping" or "Freight" charges.

21.01 Delivery Terms

Is as provided in Definitions as "**Delivery Terms**".

21.02 Materials, Packing, and Shipping

Is as provided in Definitions at "**Materials, Packing, and Shipping**".

Shipping Instructions are to be adhered and are as follows:

<https://www.cpr.ca/en/about-cp/selling-to-cp/information-technology/shipping-instructions>

21.03 Price Adjustment

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

ARTICLE 22 - GENERAL

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

22.01 Governing Law

For the consumption of Services and Materials in the United States of America, 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 CPR to take proceedings in any other jurisdiction. The Parties hereby waive any right to a trial by jury.

For all other engagements, this Purchase Order shall be construed and enforced in accordance with, and the rights of the Parties shall be governed by the laws of the Province of Alberta without reference to its choice of law rules. In addition to any arbitration provision contained herein, each of the Parties hereto attorns to the non-exclusive jurisdiction of the courts of the Province of Alberta and the Supreme Court of Canada. The *United Nations Convention on Contracts for the International Sale of Goods* shall not apply to this Purchase Order.

22.02 Costs – Intentionally Deleted

22.03 Set-Off

CPR shall have the right of set-off against any monies owed to Supplier, whether such monies are pursuant to this Purchase Order, or any other agreement, understanding or arrangement CPR may have with Supplier relating to the PO Deliverables herein or any other services, projects or materials.

22.04 Notices

1. All disclosures, notices or other documents required or permitted to be given pursuant to this Purchase Order shall be in writing and shall be sufficiently given if delivered by hand or through a reputable courier service or, if to CPR by e-mail at IS_ContractManagement@cpr.ca at the addresses defined on this Purchase Order or to such other address as may be provided in writing from time to time:

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

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

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

All notices received in accordance with this Article shall be deemed to have been received by Canadian Pacific Railway

2. Until notice of change of address has been given in the manner provided in this paragraph, notices shall be addressed to Canadian Pacific Railway at:

Canadian Pacific Railway Company

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

Calgary, AB, T2C 4X9 Canada

Attention: Managing Director, Contract and Support Services

22.05 Counterparts and Facsimile – Intentionally Deleted

22.06 Entire Contract

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 this 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 Supplier's Offering Document, which terms shall not be applicable to this Purchase Order and shall not be considered to be Supplier's exceptions to the terms of this Purchase Order.

22.07 No Assignment

This Purchase Order is not assignable by Supplier without the prior written consent of CPR (which consent may be withheld in CPR's sole and arbitrary discretion). Any purported assignment by Supplier of any of its rights, duties, or obligations in this Purchase Order, without CPR's written consent shall be voidable by CPR at its option. Supplier shall not in any event be released from its duties and obligations in this Purchase Order. CPR may assign this Purchase Order without obtaining Supplier'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.

22.08 Binding Nature of Contract

This Purchase Order shall be binding upon and enure to the benefit of each of CPR and Supplier and their respective successors and permitted assigns

22.09 Amendments

Except with both Parties' written agreement, this Purchase Order may not be varied, modified, amended, supplemented, or replaced without specifically referencing this Purchase Order and which paragraph(s) is being varied, modified, amended, supplemented, or replaced and such agreement is executed by the Parties' authorized representatives.

22.10 Time of the Essence

Time shall be of the essence in this Contract.

22.11 Further Assurances – Intentionally Deleted

22.12 Provisions Severable

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

22.13 Sub-contractors and Agents – Intentionally Deleted

22.14 Documentation required for Work – Intentionally Deleted

22.15 Financial Responsibility – Intentionally Deleted

22.16 Software Maintenance Renewal – Intentionally Deleted

22.17 Non Merger and Survival

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

- (a) Article 1: Definitions and Interpretation
- (b) Article 4: Term and Termination

- (c) Article 7: Representations and Warranties
- (d) Article 8: Remedies
- (e) Article 10: Confidentiality and Privacy
- (f) Article 11: CPR Materials and Trademarks
- (g) Article 13: Indemnification
- (h) Article 14: INSURANCE
- (i) Article 15: Safety and Security
- (j) Article 18: Dispute Resolution
- (k) Article 19: Conflict of Interest and Ethical Conduct
- (l) Article 21: DELIVERY OF MATERIALS
- (m) Article 22: General

22.18 Language Laws (Quebec)

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

22.19 Data Management – Intentionally Deleted

22.20 Liens

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

22.21 Contract Referenced Documents

If a document referenced on this page via URL cannot be retrieved on-line, prior to accepting this Purchase Order, Supplier must request a copy of the same to (IS_Contract_Management@cpr.ca) and ensure receipt. It is understood by the Parties that the referenced document may be updated/amended by CPR from time-to-time and, therefore, Supplier shall ensure monitoring of the site for updates. Failure to receive a copy of the referenced document shall not waive (or otherwise excuse) Supplier from adhering to the terms and requirements set out in such documents.

22.22 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.

22.23 Subcontracting

Supplier shall not subcontract, or further re-subcontract, in whole or any part of its obligations hereunder without receiving advance written consent from CPR (which consent may be withheld in CPR's sole and arbitrary discretion). Where such consent is granted, Supplier shall not be released or relieved from any obligations or liabilities in this Purchase Order nor shall CPR be prevented from pursuing any legal or equitable remedies it may be entitled to. Supplier shall remain liable and responsible to CPR, and shall indemnify CPR in accordance with paragraph 13.01 subsection 1 - Indemnity and Waiver, for the acts and omissions of any subcontractor and shall ensure that such subcontractor(s) strictly adheres to all terms of this Purchase Order (including Safety and Security requirements).

When requested by CPR, Supplier shall provide CPR with all details concerning subcontracted work.

- 30 -