



**Third Report to Court of
KSV Restructuring Inc. as Receiver of
2806401 Ontario Inc. o/a Allied Track
Services Inc.**

July 4, 2023

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COURT FILE NO.: CV-22-00687383-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)
COMMERCIAL LIST

IN THE MATTER OF THE RECEIVERSHIP OF 2806401 ONTARIO INC. O/A ALLIED
TRACK SERVICES INC., A CORPORATION INCORPORATED UNDER THE LAWS OF
ONTARIO

PRICEWATERHOUSECOOPERS INC. (SOLELY IN ITS CAPACITY AS COURT-
APPOINTED RECEIVER AND MANAGER OF BRIDGING FINANCE INC. AND CERTAIN
RELATED ENTITIES AND INVESTMENT FUNDS)

APPLICANT

- AND -

2806401 ONTARIO INC. O/A ALLIED TRACK SERVICES INC.

RESPONDENT

THIRD REPORT OF KSV RESTRUCTURING INC. AS RECEIVER AND MANAGER OF
2806401 ONTARIO INC. O/A ALLIED TRACK SERVICES INC.

JULY 4, 2023

1.0 Introduction

1. On August 25, 2022 (the "Filing Date"), 2806401 Ontario Inc. o/a Allied Track Services Inc. ("Allied" or the "Company") filed a Notice of Intention to Make a Proposal ("NOI") pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA"). KSV Restructuring Inc. ("KSV") was appointed as the proposal trustee (the "Proposal Trustee").
2. On September 6, 2022, the Ontario Superior Court of Justice (Commercial List) (the "Court") made an Order (the "Interim Receivership Order") appointing KSV as the interim receiver (the "Interim Receiver"), without security, of all of the assets, undertakings and properties of Allied (collectively, the "Property") pursuant to an application brought by the Proposal Trustee under section 47.1 of the BIA. Allied's principal secured creditor, Bridging Finance Inc. ("Bridging"), and its sole shareholder, Bridging Income Fund LP ("Bridging Income"), supported the application.
3. On September 23, 2022, the Court made an order (the "Receivership Order") appointing KSV as the receiver and manager (the "Receiver") of the Property pursuant to an application brought by PricewaterhouseCoopers Inc., in its capacity as Court-appointed Receiver of Bridging (the "Bridging Receiver"). A copy of the Receivership Order is available on the Receiver's case website [here](#).

4. As a result of the Receivership Order, the appointment of the Interim Receiver was terminated.
5. The Company's deadline to file a proposal in the NOI Proceedings was November 8, 2022; however, as no viable proposal was possible, that deadline was allowed to pass. The Company was deemed to have made an assignment in bankruptcy on November 9, 2022. KSV was appointed the Licensed Insolvency Trustee (the "Trustee") of Allied's bankrupt estate, which was affirmed at the first meeting of creditors.
6. On October 28, 2022, the Court made an order (the "Auction Services Approval Order"), which, among other things: a) approved an Auction Services Agreement dated October 17, 2022, as amended (the "ASA"); and b) authorized the Receiver to sell certain leased assets. The Auction Services Approval Order was amended and restated on November 22, 2022, with retroactive effect to October 28, 2022. A copy of the Auction Services Approval Order (as amended and restated) is available [here](#).
7. The auction of the Company's equipment generating net proceeds of approximately \$9.6 million. The Receiver has also recovered approximately \$2.8 million of the accounts receivable owing to Allied.
8. On April 3, 2023, the Court made an order (the "Interim Distribution Order") approving an interim distribution to certain of the Company's creditors, including Canada Revenue Agency, former employees and Bridging. A copy of the Interim Distribution Order is available [here](#). As of the date of this report (the "Report"), the Receiver has distributed approximately \$8.3 million to the Company's creditors.
9. The Receiver has monetized substantially all of the Property other than the balance owing from Canadian National Railway Corporation ("CN"), which was one of the largest customers.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information about the Company and these proceedings;
 - b) summarize the services rendered by the Company to CN and the balance owing for such services by CN;
 - c) recommend that this Court issue an Order directing CN to pay the balance owing to the Company as set out in Section 3 below, without set-off or compensation.

1.2 Currency

1. Unless otherwise noted, all currency references in this Report are to Canadian dollars.

1.3 Restrictions

1. In preparing this Report, the Receiver has relied upon unaudited financial information prepared by the Company's representatives, the books and records of the Company and discussions with representatives of the Company and with its sole shareholder, Bridging Income. The Receiver has not performed an audit or otherwise attempted to verify the accuracy or completeness of the financial information relied on in a manner that complies with Canadian Auditing Standards ("CAS") pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance contemplated under the CAS in respect of such information. Any party wishing to place reliance on the financial information should perform its own diligence.
2. The Receiver accepts no responsibility for any reliance placed by any third party on the Company's financial information presented herein.

1.4 Court Materials

1. Court materials filed in these proceedings are available on the Receiver's website at: <https://www.ksvadvisory.com/experience/case/2806401-ontario-inc.>

2.0 Background

1. The Company was a railroad maintenance service provider, offering track maintenance and repair, construction, bridging, civil engineering, flagging, signalling and related services.
2. The Company operated in Ontario, Alberta, Manitoba and British Columbia.
3. The Company was incorporated on January 8, 2021 by Bridging for the purposes of acting as a stalking horse bidder in the proposal proceedings of a company formerly known as Allied Track Services Inc. ("Old Allied"). Bridging was Old Allied's largest secured creditor.
4. After a sale process in the Old Allied proposal proceedings, the Company's stalking horse bid was determined to be the superior bid, and the Company bought substantially all tangible assets, intellectual property and undertakings of Old Allied in a Court-approved transaction that closed on April 30, 2021 (the "Old Allied Asset Purchase"). This transaction permitted the Company to continue the operations of Old Allied as a going concern and to continue to provide services to its customers, uninterrupted.
5. Also on April 30, 2021, in proceedings unrelated to the Old Allied proposal proceedings, the Court appointed the Bridging Receiver as receiver of Bridging and certain related entities and investment funds pursuant to section 129 of the *Securities Act* (Ontario), upon application by the Ontario Securities Commission. Bridging is presently the Company's largest secured creditor, owed a principal amount of \$15 million at the commencement of the interim receivership proceedings, with interest and costs continuing to accrue, and a related party (Bridging Income) is its sole shareholder.

6. Despite the successful implementation of the Old Allied Asset Purchase in Old Allied's proposal proceeding, the Company continued to generate losses, resulting in the NOI proceeding on August 25, 2022.
7. As a result of personnel departures and stakeholder uncertainty triggered by the NOI proceeding, the Proposal Trustee brought an application under section 47.1 of the BIA seeking the appointment of KSV as Interim Receiver. This was done in order to bring stability to the Company's operations and wind-down, and to facilitate the Company completing certain contracts (the "Service Contracts"). As a result of this application, the Interim Receivership Order was granted on September 6, 2022.
8. As the Interim Receivership Order was intended to be temporary and for other reasons set out in the Proposal Trustee's Second Report to Court dated September 16, 2022 (the "[Second Trustee Report](#)"), Bridging brought an application to appoint KSV as Receiver, which was granted on September 23, 2022.
9. The Company employed approximately 120 individuals as of the Filing Date, including members of LIUNA. The Interim Receiver terminated approximately 60 employees following issuance of the Interim Receivership Order as the Company discontinued all of its projects other than certain contracts for Canadian Pacific Railway ("CP"), one of Allied's largest customers.
10. In November 2022, the Receiver and CP agreed to terminate the contracts as CP transitioned to one of the Company's competitors. The Receiver subsequently terminated the remaining employees. The Company's former Chief Operating Officer has continued to assist with the collection of accounts receivable on a contract basis.
11. Additional information about the Company is provided in the Second Trustee Report.

3.0 CN Balance

1. The Receiver has collected substantially all of the amounts due to the Company other than the balance due from CN.

3.1 CN Invoices

1. As at the Filing Date, the Company's unpaid invoices owing from CN totaled approximately \$2.5 million (the "Invoices"), as set out below by project and location description:

Project	Amount Outstanding
Track MSA Support	\$816,874.05
Spence's Bridge	\$284,937.62
Ashcroft	\$897,792.24
Fort Francis	\$453,013.87 ¹
New Westminster	\$23,489.79
Fort Langley	\$5,815.37
BC South RSIP Crossing	\$19,799.21
Total	\$2,501,722.15

¹ This amount is based on the Company having completed 50% of the project and being entitled to 50% of the \$801,000 (plus HST) contract amount. The Company's progress reports identify that the actual stage of completion was approximately 75%. CN has not provided any information regarding its costs to complete the project.

2. The services provided by the Company to CN are subject to terms and conditions included in a Master Service Agreement dated January 1, 2021 (the “MSA”). A copy of the MSA is provided as Appendix “A”.
3. The Invoices issued in respect of the above relate to labour, materials and equipment provided by the Company for projects that the Company completed, or partially completed in the case of the Fort Francis project, for CN. Summaries of the Invoices are included as Appendix “B”.
4. CN has not provided any information to dispute the balances of any of the Invoices, other than invoices that it says support the Remediation Claim (defined and discussed below) and a comment related to the stage of completion of the Fort Francis project.
5. The Receiver, in consultation with Allied, believes that the amount summarized above is duly owing on the Fort Francis project having regard to the amount of that project that was completed by Allied before its insolvency and wind-down.

3.2 Attempts to Recover the Invoiced Amounts

1. The Receiver and Blake, Cassels & Graydon LLP (“Blakes”), the Receiver’s counsel, have corresponded extensively with CN regarding the outstanding Invoices, including a formal demand letter sent to CN on December 7, 2022. A copy of the Receiver’s demand letter is attached hereto as Appendix “C”. Copies of correspondence between the Receiver and CN are provided as Appendix “D”.

3.3 The Remediation Claim

1. The Receiver had understood up until recently that CN did not dispute the amount owed but was claiming partial setoff of approximately \$1.4 million related to alleged damage caused in April 2021 by Directional Mining and Drilling Ltd. (“DMD”), one of the Company’s subcontractors, at the New Westminster project site.
2. Specifically, CN has alleged that DMD performed boring work that allegedly caused a sinkhole below CN’s rail tracks at the New Westminster project which required CN to remediate the sinkhole at a cost of \$1.4 million (the “Remediation Claim”).
3. The Receiver is not aware of CN having commenced any formal claim or proceedings in respect of the Remediation Claim. Preliminary documentation has been provided to the Receiver to support the Remediation Claim, but the Receiver considers the Remediation Claim to be unliquidated, unproven and does not, as of the date of this Report, have sufficient documentary support to determine its validity.
4. In addition, the Remediation Claim is only in respect of the New Westminster project and is not related to the six other projects included in the Invoices. CN’s outstanding debt to Allied on the New Westminster project is, as summarized above, approximately \$23,500. Accordingly, even if set-off is legitimately available to CN in respect of the Remediation Claim (which is denied by the Receiver), the full scope of the set-off would be limited to \$23,500, not the \$1.4 million that CN is asserting.

5. The Receiver has advised CN that it sees no merit in any set-off or compensation of the unliquidated and unproven Remediation Claim against the indebtedness owing by CN to Allied, and, in particular, no merit or justification in any set-off or compensation against accounts receivables owing in respect of the Invoices.

3.4 Recourse to Insurance

1. Allied maintained an insurance policy issued by certain Lloyd's underwriters (the "Policy"), administered by independent insurance adjusters, Indemnipro Inc. ("IndemniPro"). The Receiver understands from IndemniPro that it was assigned to review the Remediation Claim in June 2021 following a report filed by Allied.
2. Since its appointment, the Receiver has been dealing with IndemniPro and other representatives of the Company's insurers. After considerable correspondence about the claim between the Receiver and IndemniPro, on March 30, 2023, IndemniPro advised the Receiver in writing that the underwriters of the Policy take the position that coverage is not available. A copy of IndemniPro's March 30th letter is attached as Appendix "E".
3. Essentially, IndemniPro and the Policy's underwriters' position is that as: (a) no legal action has been commenced against Allied in respect of the Remediation Claim, the underwriters have no obligations to incur defence costs or provide a defence; and (b) it is likely that the ultimate liability for the Remediation Claim lies with DMD as the at-fault party, it is unlikely that Allied would be found liable for the Remediation Claim in any event.
4. Absent a judgement against Allied for the Remediation Claim amount, the Policy will not cover the alleged liability.

3.5 Jurisdictional Considerations

1. CN has taken the position that the question of set-off (or compensation) is a matter of Quebec law because the MSA is governed by Quebec law. A copy of a May 9, 2023 letter from CN's counsel advising of this jurisdictional position is attached as Appendix "F".
2. The Receiver has consulted with lawyers practicing at Blakes' office in Quebec and its position that set-off (or compensation) is not available to CN for the Remediation Claim is informed by such consultations.
3. The Receiver's factum to be filed in support of the relief requested in this Report will elaborate on the legal tests for set-off and compensation under Ontario and Quebec law, as well as the Receiver's position on the appropriate law governing this dispute. However, under either Ontario or Quebec law, in the Receiver's view, CN is not justified in the set-off (or compensation) claim that it has asserted.

3.6 Summary

1. The Receiver understands that the Invoices are owing to the Company and has not been provided with evidence by CN to dispute the quantum of the Invoices, or that they are duly owing.
2. Even if CN has a valid set-off or compensation claim, which is denied, such set-off or compensation would be reasonably limited to approximately \$23,500, and at the very most to the \$1.4 million amount of the Remediation Claim. This leaves approximately \$2.48 million² or \$1.1 million owing³, respectively, even if CN's set-off defence is valid (which is denied by the Receiver). CN has no defense to the payment of these amounts.
3. In the Receiver's view, the full \$2,501,722 ought to be paid immediately as the Remediation Claim is not a valid exercise of set-off or compensation. The Receiver is therefore seeking a direction that CN pay such amount to the Receiver without further delay, set-off or compensation.

4.0 Conclusion and Recommendation

1. Based on the foregoing, the Receiver respectfully recommend that this Court make an order granting the relief set out in Section 1.1 (1)(c) of this Report.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.
SOLELY IN ITS CAPACITY AS
COURT-APPOINTED RECEIVER AND MANAGER OF 2806401 ONTARIO INC.
O/A ALLIED TRACK SERVICES INC.
AND NOT IN ITS PERSONAL CAPACITY**

² Being \$2,501,722.15 less \$23,500.

³ Being \$2,501,722.15 less approximately \$1.4 million.

Appendix “A”

Master Service Agreement

This Master Service Agreement is entered into as of January 1 2021 (“**Effective Date**”)

BETWEEN

CANADIAN NATIONAL RAILWAY COMPANY, a corporation constituted under the laws of Canada, with its head office at 935 de La Gauchetière Street West, Montreal, Quebec, H3B 2M9, Canada hereinafter referred to as “CN”)

AND

Allied Track Services Inc., a company constituted under the laws of Canada with its registered office located at 169A South Service Road, Grimsby, Ontario, Canada, L3M 4H6 (hereinafter referred to as “Supplier”)

(individually “Party” and collectively “Parties”).

WHEREAS CN wishes to purchase Services for use in the operation of its business;

WHEREAS Supplier has experience and expertise in certain Services and is thoroughly familiar with all aspects of the Services required hereunder, and is properly qualified as applicable and is equipped, organized and financially able to perform the Services required by CN;

WHEREAS CN has relied on Supplier's experience and expertise in entering into this Agreement;

THEREFORE the Parties have agreed that Supplier will provide and CN will purchase such Services from Supplier pursuant to the terms and conditions contained herein.

1. Definitions

“**Agreement**” means this Master Service Agreement, including the Supplemental Conditions, the Statements of Work, and any attachment thereto;

“**Acceptance**” means the acceptance of the Services as defined in the applicable Supplemental Conditions or Statement of Work;

“**Applicable Taxes**” means Goods and Services Tax (GST), Harmonized Sales Tax (HST), Quebec Sales Tax (QST), Provincial Sales Tax (PST), sales, use, or other similar taxes, which the Supplier is required by applicable laws to collect from CN with respect to the Services provided under this Agreement;

“**Business Day**” means a working day other than weekends and statutory holidays in Quebec;

“**CN Representative**” means the person designated or the person holding the position as indicated, in the Supplemental Conditions or SOW.

“Confidential Information” means commercially or competitively sensitive or proprietary business information and data including information of a commercial, industrial, strategic, operational or technical nature or about information technology and assets; intellectual property; personal identifying information, personal health information, and any information and data that is confidential by its nature, whether it is marked confidential or not, in any form including verbal, paper, electronic, video or voice recording data;

“Delivery Schedule” means the delivery schedule as indicated in the Supplemental Conditions or SOW, if any;

“Environmental Laws” means any law, by-law, order, ordinance, ruling, regulation, permit term, certificate, approval, consent or directive of any applicable federal, provincial or municipal government, governmental department, agency or regulatory authority or any court of competent jurisdiction (i) relating to pollution or the protection of human health or the environment (including workplace health and safety); (ii) dealing with filings, registrations, emissions, discharges, spills, disposal, releases or threatened releases of Hazardous Substances or Solid Waste or materials containing Hazardous Substances or Solid Waste; or (iii) regulating the import, storage, distribution, labeling, sale, use, handling, transport or disposal of a Hazardous Substance;

“Equipment” means all equipment required to perform the Services and all materials, consumables, fuel and lubricants necessary to operate, maintain and repair such equipment, if any;

“Fixed Price Scope” means a scope of Services to be provided by Supplier to CN for which payment is based on a lump sum price or a specified not-to-exceed price, all as described in the applicable Supplemental Conditions or SOW;

“Hazardous Substance” means any substance capable of posing a risk or damage to health, safety, property or the environment including, without limitation, any contaminant, pollutant, dangerous or potentially dangerous substance, noxious substance, toxic substance, hazardous waste, petroleum product or fraction thereof, flammable or explosive material, radioactive material, urea formaldehyde foam insulation, asbestos, polychlorinated biphenyls, polychlorinated biphenyl waste, polychlorinated biphenyl related waste, and any other substance or material now or hereafter declared, defined or deemed to be regulated or controlled under any Environmental Law, including, without limitation, any substance included in Environment Canada’s National Pollutant Release Inventory (NPRI) Substance List as it now exists or may exist in the future;

“Material” means material and its accessories that is ancillary to the Services hereunder as described in Supplemental Conditions or a SOW;

“Personnel” means the employees, suppliers, agents, representatives and subcontractors of Supplier engaged in the supply of Services whose qualifications are further described in the applicable Supplemental Conditions or SOW ;

“Rates” means the rates payable to Supplier for Services, as set out in the applicable Supplemental Conditions or SOW, as updated from time to time by mutual written agreement of the Parties;

“Services” means the supply of services or work performed, including the Material, the Equipment and the deliverables by the Supplier, all as described in the applicable Supplemental Conditions or SOW

“Service Levels” means, if any, the performance standards for the Services as set out in the applicable

Supplemental Conditions or SOW;

“**Solid Waste**” means any garbage, refuse or other discarded material;

“**Statement of Work**” or “**SOW**” means a written document which describes the Services, including but not limited to the scope, CN’s requirements, deliverables, project milestone and dates, Acceptance, associated Rates, as well as any other specific requirements. An example of such document is set forth in the Supplemental Conditions. Any SOW issued by CN and accepted by Supplier shall form an integral part of this Agreement. Additional SOWs may be added from time to time;

“**Supplemental Conditions**” means a written document signed by CN and Supplier which incorporates the terms and conditions of this Agreement and set out additional terms and conditions applicable to the supply of a particular type of Services, including but not limited to, specific Supplier obligations, Rates and Service Levels;

“**Supplier**” means Allied Track Services Inc. and its employees, agents and Personnel; and

“**Taxes**” means any and all taxes, levies, imposts, duties, fees, withholdings, assessments, deductions or charges whatsoever, imposed, assessed, levied or collected by any government, jurisdiction, country or any subdivision or authority thereof, together with interest thereon and penalties with respect thereto, except where stated to the contrary in this Agreement.

“**Time and Material Scope**” means an open-ended scope of Services to be provided by Supplier to CN for which payment is based on actual time and material used, at an agreed upon all-inclusive unit rate, and percentage mark-up, if applicable, all as described in the applicable Supplemental Conditions;

2. Scope and Purpose

This Agreement governs the supply of Services from Supplier to CN as of the Effective Date pursuant to the terms and conditions contained herein in consideration of the payment by CN of the Rates. In the event of any conflict or inconsistency between the terms and conditions of this Agreement, any Supplemental Conditions or any SOW, the order of precedence shall be (i) the terms and conditions in this Agreement, (ii) the Supplemental Conditions and (iii) the SOW. The terms of any other document, including, any waybill, invoice, Rate sheet (as appended hereto) or document produced by Supplier, shall not govern the performance of Services.

Each Supplemental Conditions or Statement of Work may supplement and modify the terms and conditions of this Master Service Agreement for the purposes of the corresponding Supplemental Conditions or Statement of Work, provided its terms expressly identify the Section of this Master Service Agreement that the Supplemental Conditions or Statement of Work purports to modify and expressly states that such Section is superseded.

3. Supplier’s Obligations

- 3.1 Supplier shall supply the Services identified in any Supplemental Conditions or SOW to CN and ensure that the Services meet CN's requirements and are in compliance with the Service Levels, if any.
- 3.2 This Agreement does not require or define minimum or maximum quantities of Services to be purchased. .

- 3.3 Supplier shall communicate with the CN Representative and shall ensure that all problems, escalations or disputes of any nature are conveyed to the CN Representative. Supplier shall advise CN in a timely manner of any issue, hindrance or incident which might impact its ability to deliver the Services, including any event or issue associated with CN.
- 3.4 Without limiting any other obligation of the Supplier in this Agreement, Supplier covenants and agrees that it shall, at its sole cost and expense, observe and otherwise comply with, and cause its sub-contractors and all other occupants of CN's premises to observe and comply with all Environmental Laws. Without limiting the generality of the foregoing, Supplier covenants and agrees that:
- (i) it shall not cause or permit any Hazardous Substance to be brought into, stored, kept or used in or about CN's premises or any part thereof, other than any Hazardous Substance that is used in the ordinary course of the permitted use being carried on at CN's premises and which is stored, kept and used in strict compliance with all Environmental Laws pertaining thereto;
 - (ii) it shall not cause or allow any disposal, emission, discharge or release of Hazardous Substances, Solid Waste, or materials containing Hazardous Substances or Solid Waste onto or from CN's premises, other than where such occurs in the ordinary course of the permitted use being carried on at CN's premises in strict compliance with all Environmental Laws pertaining thereto;
 - (iii) it shall not cause or allow any emission, discharge or release of any unregulated material as a result of the mishandling thereof, which may result in unacceptable environmental condition on, or adjacent to, CN's premises, including, without limitation, the mishandling of products on CN's premises resulting in water of unacceptable quality exiting the premises through the surface drainage system;
 - (iv) it shall not, unless it has first obtained permission from CN in writing to do so, construct or install any underground storage tank on or under CN's premises;
 - (v) on the expiration or earlier termination of this Agreement, Supplemental Conditions or SOW, it shall cause each and every Hazardous Substance or Solid Waste which Supplier has caused or allowed to be disposed of, emitted, discharged or released onto CN's premises to be removed from CN's premises in compliance with all Environmental Laws pertaining thereto; and
 - (vi) it shall assume full responsibility for and implement at its sole expense any investigation, cleanup, or other response action required by this Agreement, Supplemental Conditions or SOW or applicable Environmental Law to be conducted at CN's premises or elsewhere which (a) arises out of or in relation to Services; (b) arises from the actions of any agent, representative, subcontractor, employee or officer of Supplier at CN's premises; (c) arises in connection with the release of any Hazardous Substance or Solid Waste at CN's premises on or after the execution of this Agreement, Supplemental Conditions or SOW; or (d) arises from Supplier's breach of any of the covenants, representations or warranties set forth in this Section. Any response action undertaken by Supplier shall be in accordance with applicable Environmental Law and meet cleanup standards of regulatory authorities with jurisdiction over CN's Premises. Supplier's obligations under this Section paragraph are in addition to and not in lieu of its indemnity obligations under this Agreement and shall not be construed to limit the scope of said indemnity.
- 3.5 Supplier shall provide Personnel who are well-trained, certified as required under Supplemental Conditions or SOW, as applicable, competent and have expertise with respect to the operation of

the Equipment and the Services. While Supplier may select the Personnel to perform under this Agreement, CN reserves the right to request that certain Personnel be replaced for lawful reasons and Supplier shall replace such Personnel and ensure that the replacement Personnel have been trained to take over the Services all at no cost to CN. Personnel are the sole responsibility of Supplier and in no event will be deemed employees of CN. Supplier is responsible to provide all benefits including without limitation workers compensation, insurance, pension and vacation benefits.

- 3.6 In the event Supplier must use Equipment to perform the Services, Supplier shall use Equipment that is in safe condition and good working order. At all times, Equipment is the sole responsibility of Supplier and CN shall have no liability associated with same including when it is on CN property and being stored thereon. Equipment shall conform to CN's height and weight clearance requirements. CN reserves the right to reject any Equipment which in CN's sole judgment does not comply with these requirements.
- 3.7 Supplier shall keep proper accounts and records of its costs, invoices and finances associated with this Agreement. Supplier shall provide CN with reports upon request which shall, at a minimum and if applicable, contain all pertinent information regarding the Services delivered, any delays in the supply of Services or non-compliance with CN's requirements and the anticipated impact, any non-compliance with the Agreement, and all amounts invoiced ("**Reports**"). CN shall advise Supplier of the desired format and may update its reporting requirements from time to time.
- 3.8 Time is of the essence in the performance of this Agreement. If at any time Supplier has reason to believe that the Services will not be performed within the Delivery Schedule, Supplier shall promptly notify CN of the cause and duration of the anticipated delay. CN may, at its option, require Supplier to deliver or perform according to anticipated new delivery schedule (without waiving CN's right to Service Level payment, if any), or CN may cancel the portion of the Supplemental Conditions or SOW relating to Services not performed within the Delivery Schedule.
- 3.9 In the event that the Services do not meet the Service Levels or late performance of the Services, Supplier shall pay the Service Level payments, if any, set out in the applicable Supplemental Conditions or SOW. The Parties recognize that it is difficult to estimate CN's damages in the event of any non-compliance and hence have agreed in advance that these Service Level payments are appropriate compensation for such damages, however in no event are these Service Level payments punitive nor are they CN's exclusive remedy in the event of non-performance.

4. CN's Obligations

- 4.1 CN shall provide Supplier with its requirements regarding the Services and update them by email from time to time or in a SOW.
- 4.2 CN shall pay Supplier for the Services upon Acceptance, in accordance with Section 5, Rates, and Section 6.1, Invoicing.
- 4.3 CN reserves the right to review and inspect the Services to determine if the Services meet its requirements and the Service Levels, if any, and are supplied in accordance with this Agreement. In the event that the Services are not acceptable, CN shall advise Supplier of any deficiencies and Supplier shall diligently correct the deficiencies and re-perform the Services at its cost. In no event will Acceptance of the Services be presumed or deemed, including by payment of an invoice by CN. Neither Acceptance of the Services nor payment by CN relieves Supplier of its obligations or the Warranties set out in Section 10, Representations and Warranties.

5. Rates

- 5.1 The Rates for the Services and all amounts in this Agreement are expressed in the currency stated in any Supplemental Conditions or SOW, or if silent, in Canadian dollars, and are fixed for the Term, unless updated as mutually agreed in writing by the Parties.
- 5.2 The Rates are all-inclusive and include all payment to which Supplier is entitled and no other expenses or costs which Supplier may incur are eligible for payment unless clearly indicated in the applicable Supplemental Conditions or SOW.
- 5.3 Supplier represents and warrants that the Rates are the lowest rates it offers to any customer for Services of similar quantity and quality and that if during the Term it makes lower prices available to another customer for same it shall make such lower prices available to CN and the revised rates will replace the Rates as of the date Supplier made such prices available to another customer. Upon CN's request, Supplier shall provide a certification from its senior finance executive that Supplier is in compliance with its obligation herein.
- 5.4 Supplier warrants that the Rates are market competitive and will remain so throughout the Term. CN may initiate a benchmarking exercise to compare the Rates with rates for services generally available in the relevant markets that are similar to the Services in quantity and quality to determine if the Rates are market competitive. If the Rates are not market competitive, the market competitive prices evidenced by the benchmarking exercise shall replace the Rates immediately and be used on the next invoice. In the event that Supplier chooses not to provide the Services at the revised rates, this constitutes an event of default. This benchmarking exercise will in no case result in an increase of the Rates.

6. Financial Matters

- 6.1 Supplier shall invoice CN in accordance with CN Supplier invoicing instructions as published on the Supplier Portal at www.cn.ca/en/supplier-portal/supplier-portal/invoicing. CN reserves the right to amend these instructions from time to time. Furthermore, CN reserves the right to refuse payment if Supplier's invoices are not in compliance with such instructions. CN reserves the right to offset against amounts owed by Supplier.
- 6.2 Supplier shall issue invoices within thirty (30) days from the completion of the Services. Failing to comply with such requirement may result in delayed or denied payments for which CN will not be responsible for any finance charges.
- 6.3 Any undisputed amount due to Supplier by CN under this Agreement shall be paid in accordance with CN payment terms as published on the Supplier Portal on the CN website at: <http://www.cn.ca/en/supplier-portal/supplier-portal/payment-procedures>. CN reserves the right to amend these terms from time to time. Supplier shall be able to receive payment electronically.
- 6.4 CN has the right to dispute in good faith any invoice, in whole or in part, if it considers that the invoice contains errors, inaccuracies or is incomplete, without being in breach of its payment obligations. CN will pay any amount that is not in dispute. CN shall notify Supplier of such dispute with an explanation and the Parties shall negotiate to reach a resolution.

- 6.5 All Rates and other charges specified in this Agreement are inclusive of all Taxes other than Applicable Taxes. Provided there is no legislation to the contrary, Supplier shall be responsible to collect, remit and pay all Applicable Taxes to the taxing authorities. Invoices shall separately state and identify each of the Applicable Taxes charged to CN and shall include Supplier's GST and QST tax registration numbers, as applicable.
- 6.6 Supplier shall ensure that all Rates and other charges charged to, or passed on to, CN by Supplier in respect of the Agreement be exclusive of any Taxes recoverable by Supplier.
- 6.7 Each Party is responsible to pay its own taxes including without limitation taxes on its income, capital and Personnel.
- 6.8 Supplier represents and warrants to CN that it is registered under the *Excise Tax Act* (Canada) under the following registration numbers: G.S.T./H.S.T.: 105104392RT0001

Supplier represents and warrants to CN that it is not registered under the Québec Sales Tax Act under the following registration numbers

- 6.9 All payments made by CN to Supplier pursuant to the Agreement shall be reduced by any withholding or deduction for, or on account of, any present or future Taxes imposed by or on behalf of the U.S. Government, Canadian Government or any other lawful taxing authority. Notwithstanding anything contained herein to the contrary, Supplier hereby authorizes CN to deduct and withhold from the payments payable hereunder all withholding Taxes which are payable to the Canada Revenue Agency under the Canadian Income Tax Act, to Revenu Québec under the Québec Taxation Act, to the U.S. Government under the U.S. Internal Revenue Code (including Chapter 3, Chapter 4 and Chapter 24 thereof), or to any other lawful government authority, as applicable. Supplier shall not gross up the Rates and other charges to account for the deduction or the withholding.

7. Audit

CN reserves the right to audit Supplier's performance, Reports, files, time cards, records, facilities, processes and invoices pertaining to the Agreement to ensure that Supplier is in compliance with this Agreement, at reasonable intervals or whenever CN reasonably believes that there are irregularities. If a third party auditor is engaged, Supplier shall bear such costs if any discrepancies are found.

8. Term

This Agreement shall take effect on the Effective Date, and remain in force for a period of five (5) years (“**Initial Term**”) unless terminated earlier in accordance with Section 9, Termination. The Agreement shall expire at the end of such Initial Term unless the Agreement is renewed pursuant to one (1) week prior notification from CN to extend the term of this Agreement for a period of one (1) year, under the same terms and conditions. The Agreement shall expire automatically at the end of such Renewal Term (“**Renewal Term**”). The Initial Term and any Renewal Terms shall be referred to as the term (“**Term**”). Each Supplemental Conditions shall have its own term, as mutually agreed by the Parties and stated therein (for each Supplemental Conditions, the “**Supplemental Conditions Term**”). Notwithstanding the foregoing, if performance of Services under Supplemental Conditions or a SOW has not been completed prior to the expiry of the Supplemental Conditions Term, the Agreement shall survive in whole as it relates to such Supplemental Conditions or SOW until performance of Services is completed.

9. Termination

- 9.1 Should either Party breach any of its obligations under this Agreement, the other Party may terminate the Agreement, or the Supplemental Conditions or all or a portion of a specific SOW related to such breach, effective fifteen (15) Business Days following notice from the non-defaulting Party if the non-performance has not been cured within such period and without prejudice to damages that could be claimed by the non-defaulting Party. Either Party may terminate the Agreement, any Supplemental Conditions or all or part of any SOW if the other Party becomes unable to pay its debts in the ordinary course of business; goes into liquidation (other than for the purpose of a genuine amalgamation or restructuring); has a receiver appointed over all or part of its assets; enters into a composition or voluntary arrangement with its creditors; or any similar event occurs in any jurisdiction, all to the extent permitted by law. CN reserves the right to notify Supplier to suspend Services in the event of non-performance during the above cure period.
- 9.2 CN may also terminate the Agreement, any Supplemental Conditions or all or part of any SOW for convenience within fifteen (15) Business Days written notice subject to its obligation to make payment for Services delivered up to the date of termination.
- 9.3 Upon termination of the Agreement, any Supplemental Conditions or all or part of any SOW, Supplier shall cooperate with CN in the termination and transition of Services to CN or CN's third party nominee, including the transfer of all data regarding the Services and Supplier's performance under this Agreement, and shall provide reasonable transition support to ensure the continuity of Services until CN or its third party nominee is operational. Supplier shall promptly deliver to CN all Confidential Information in Supplier's possession, all in accordance with section 11.4, Termination.

10. Representations and Warranties

10.1 Supplier represents and warrants to CN that:

- (i) Supplier will perform in accordance with best-established industry standards and the provisions of this Agreement and provide the Services in a diligent, professional and timely manner;

- (ii) Supplier is competent to perform the Services and has the requisite manpower, skills, expertise and qualifications;
- (iii) Supplier's Personnel have appropriate immigration and working status;
- (iv) the Material shall be free from defects in design, workmanship or materials under normal usage and shall conform to the specifications in the SOW, if any;
- (v) it has full title to and rights in the Material, the Material is non-infringing of all third party intellectual party rights, and Supplier shall ensure that CN has quiet possession of the Material free from any disturbance, charge, lien, security or encumbrance;
- (vi) Supplier shall comply with all applicable laws, regulations, license, permits, authorizations and governmental orders in the jurisdictions where Supplier and its Personnel operate and the Services are delivered, including but not limited to Corruption of Foreign Public Officials Act (Canada), the Fighting Foreign Corruption Act (Canada) and the Foreign Corrupt Practices Act (US) and all applicable local anti-corruption legislation;
- (vii) the Services shall conform to CN's requirements set forth in the applicable Supplemental Conditions or SOW and the relevant industry regulations and are non-infringing of any third party rights, including intellectual property rights if applicable;
- (viii) any software that is used in the supply of Services will not contain any illicit code, time-outs, viruses, Trojan horses, or self-replicating code; and
- (ix) any additional warranties as described in the applicable Supplemental Conditions or SOW, (“Warranties”).

10.2 These Warranties are continuous and extend to new Services that may be added during the Term. Any breach of the above entitles CN, at no additional cost to CN and in a timely manner, to (i) require Supplier to correct the non-performance and repair or replace any Material or part thereof which is defective; or (ii) cancel the Agreement, Supplemental Conditions or a specific SOW, in whole or in part and re-procure from a third party, at Supplier's cost and without penalty to CN; or (iii) request that any non-performing Personnel be replaced.

10.3 **Product Recall.** If Supplier reasonably determines that a recall is advisable based on the fact that physical output of Services create a potential safety hazard or a recall is required by applicable law, Supplier shall promptly inform CN of such fact (a “**Product Recall**”). If required, Supplier shall promptly develop and implement a modification program which shall include all actions required to correct, repair or replace the physical output of Services, including testing, and any actions required by applicable law (a “**Modification Program**”). Supplier and CN shall cooperate with and assist each other in implementing the Modification Program.

To the extent a Product Recall is determined to have been caused by a defect, non-conformance, non-compliance or faulty method, process or procedure, which is the responsibility of Supplier, (A) Supplier shall hold harmless CN from all reasonable costs and expenses incurred in connection with such Modification Program, including all costs related to: (i) investigating or inspecting the affected physical output of Services; (ii) repairing, or where repair is impracticable or impossible,

reperforming the Services; (iii) removing, packing and shipping the recalled Material; and (iv) testing, installing and maintaining repaired, repurchased or replaced Material (collectively, “**Defective Material Costs**”); and (B) with respect to any physical output of Services covered by such Modification Program, the Warranty Period for such physical output of Services shall be the existing Warranty Period for such physical output of Services or one (1) year from implementation of the Modification Program with respect to such physical output of Services, whichever is longer. CN shall not make any statements to the public or a governmental agency relating to such recall or potential safety hazards without Supplier’s prior written consent, unless required by law.

- 10.4 **Serial Defect.** If the same defect, non-conformity or faulty method, process or procedure affects 5% percent or more of the physical output of Services or portion thereof, during any twelve (12) month timeframe, Supplier shall investigate the root cause of such defect or non-conformity to determine whether such defect is due to the same failure mode (“**Serial Defect**”) and provide a report with the results of such root cause investigation to CN. If the Parties determine that a Serial Defect exists, Supplier shall promptly develop and implement a Modification Program, submit it to CN for approval, which approval shall not be unreasonably withheld, and promptly implement it and provide repair and replacement Services, as reasonably requested by CN, during the applicable Service warranty period, at no cost to CN, and hold harmless CN from all reasonable costs and expenses incurred in connection with such Modification Program, including all Defective Material Costs. With respect to any physical output of Services covered by a Modification Program, the Warranty Period for such Services shall be the existing Warranty Period for such Services or twelve (12) months from implementation of the Modification Program with respect to such Services, whichever is longer.

11. Information Protection

11.1 Confidentiality

When a Party discloses Confidential Information (the “Disclosing Party”) to the other Party (the “Recipient”), the Recipient shall keep it confidential and use it only for the purpose of this Agreement. The Recipient shall confine distribution of Confidential Information within its organization to those individuals who have a need to know and ensure that those individuals are aware of Recipient's obligations under this Agreement. No restrictions apply to any information that is independently developed or acquired by the Recipient without breach of this Agreement; was already known to the Recipient on a non-confidential basis; is lawfully received from another source without a breach of the Agreement; becomes a matter of public knowledge without breach of this Agreement or is disclosed by operation of law. The obligations contained in this Section shall continue for a period of two (2) years from the date of termination or for trade secrets, for so long as they remain trade secrets at law.

Confidential Information shall at all times remain the property of the Disclosing Party.

For the avoidance of doubt, CN shall have exclusive rights to its Confidential Information, regardless of if it is collected, managed or maintained by Supplier under this Agreement. The Parties shall keep Confidential Information confidential in accordance with the terms and conditions of this Agreement, any Statement of Work and all applicable laws and regulations. In particular, the Parties shall not:

- (i) disclose, display, transmit, distribute, resell, sell, time share or otherwise transfer or make available any Confidential Information to any other person or entity, unless expressly provided otherwise under this Agreement;
- (ii) remove, obscure or modify any markings, labels or any notice of the confidentiality or proprietary rights, including copyright, patent and trademark notices, of a Party or its suppliers from any Confidential Information; or
- (iii) modify, decompile, reverse engineer, disassemble, combine, or reinterpret any Confidential Information, unless expressly authorized by the Disclosing Party

11.2 Information Security Controls

Prior to Supplier accessing CN's IT assets or holding CN's Confidential Information in Supplier systems, Supplier shall implement administrative, physical, technical and information security controls that meet or exceed CN's security requirements as described herein. In addition, at CN's request, Supplier shall provide to CN a current copy of its information security policies, procedures and standards, incident response plan, risk management program, risk assessment reports and logs for audit and archival purposes.

Supplier shall advise CN of the location and country where it stores CN's Confidential Information and shall not move the Confidential Information to another location or country without obtaining prior written consent from CN.

11.2.1. Cybersecurity Certifications, Frameworks and Standards

Supplier must implement a comprehensive and structured approach to protecting CN's Confidential Information including an information security program comprised of policies, standards, procedures and controls that is either aligned with or certified by the current versions of one or more of the following:

- ISO/IEC 27000 series information security standards or certifications
- NIST Cybersecurity Framework
- US Government FedRAMP certification
- Cloud Security Alliance CSA STAR certification
- AICPA SSAE 16 SOC 1 Type 2 Attestation
- AICPA SOC 2 Type 2 Attestation or SSAE 18
- ISAE 3402 Assurance Standard applied to information security
- CSAE 3416 (Canadian equivalent to AICPA SOC 2)

Supplier must evaluate and monitor its exposure to security risks and take appropriate measures to address risks to facilities, Supplier systems, CN IT assets and CN Confidential Information.

11.2.2. Risk Management Programs and Methodologies

Supplier must adopt a comprehensive and structured approach to risk management that identifies and mitigates risks to Supplier systems and cybersecurity which may include:

- ISO/IEC 27005
- ISACA COBIT 5
- NIST SP 800-30
- Information Security Forum IRAM 2

Supplier must evaluate and monitor its exposure to cybersecurity risks and other information security threats through regular review and revision and take appropriate measures to address the risks to Supplier systems, CN's IT assets and CN's Confidential Information.

11.2.3. Security Controls

Supplier must implement the following security controls:

- documented change control processes, including regular release management cycles, preferably following well-known practices such as ITIL
- security patches/fixes and changes to IT assets must be controlled and implemented according to standard change management procedures and approved operational change windows, which, where appropriate, are agreed between CN and Supplier
- development, test, production or backup environments that are physically and logically separated to reduce the risk of unauthorized access or changes to production environments
- controls to prevent changing, copying or altering any CN code without prior written consent
- back-up and retention policies that define frequency of back-ups and retention cycles for all data and environments as required for the performance of the Services in accordance with any agreements for such services
- intrusion detection, prevention, and recovery controls that protect against malicious code and maintain all anti-virus software and signatures current and actively running to detect and remove malware
- detection tools that help protect users from downloading programs or other material from the Internet or use of any type of removable media (including USB, CD/DVD media) on Supplier IT assets that may store, access or process CN Confidential Information unless they have been authenticated as originating from a trusted source and scanned for viruses
- password complexity standards to mitigate weak password threats
- network and physical perimeter security
- secure software development practices (commonly known as S-SDLC) where reasonably necessary
- Supplier must use best practices for the exchange of information, for example, secure managed file transfer services or secure email tools, when exchanging CN Confidential Information with CN or any other Third Party.

11.2.4. Security and Operational Log Management and Access

Supplier systems must be configured with log management capabilities that:

- track security and operational transactions, incidents, activities, access to information or programs, system events such as alerts, console messages and system errors, and detection, prevention, and recovery controls with respect to all aspects of the relationship with CN and services managed by Supplier
- manage log lifecycles and are retained and available for at least eighteen months beyond the business services or relationship purpose, or longer if required by the relevant agreement or laws or regulations

- are protected against tampering and unauthorized access.

11.3 Data Breaches

Supplier shall have processes in place to detect, discover, contain, remediate, and recover from any loss, exfiltration, theft, or the unauthorized access, use, modification, compromise, processing, acquisition or disclosure of CN's Confidential Information in its possession or in any third party system used by Supplier, that may compromise the integrity, confidentiality, or availability of CN's Confidential Information, and any compromise to Supplier's physical, technical, administrative or organizational information security controls that could result in a breach of this Agreement ("Data Breach"). Supplier shall promptly notify CN at 1 514 399 4357 or 1 877 599 2626 of any Data Breach or attack with respect to CN's IT assets.

Supplier shall promptly provide to CN detailed information pertaining to the Data Breach or attack on CN's IT assets, provide assurances to CN that the required security controls are applied to prevent subsequent Data Breaches and attacks and cooperate with CN with respect to the investigation, containment, mitigation and remediation of the Data Breach or attack on CN's IT assets. Supplier shall not make any notifications or disclosures of a Data Breach of CN's Confidential Information. If required by law, contract or industry standards to make a notification or disclosure, Supplier shall first notify CN and coordinate with respect to the content, language and timing.

11.4 Termination of Services

CN's Confidential Information shall only be stored on Supplier systems for so long as it is demonstrably relevant or useful to the supply of Services, but in no event longer than the Term plus the time to return or transfer it, as appropriate. At any time during the Term, CN may request the return or destruction of CN's Confidential Information. The Supplier is responsible to return, transfer or destroy all CN's Confidential Information securely upon request and instruction by CN or termination or expiration of the Agreement. Once CN has validated the integrity of such returned Confidential Information, Supplier will be instructed to purge (securely remove) it from Supplier systems. Upon request, Supplier shall certify in writing to CN that CN's Confidential Information has been returned to CN or disposed of securely.

12. Liability and Indemnification

- 12.1 Supplier shall indemnify and hold harmless CN and its officers, directors, employees, and affiliates (collectively, "CN" for purposes of this Section 12) from any losses, liens, damages, liability, and expenses ("Damages") incurred by CN arising from or related to Supplier's breach of its obligations under this Agreement; any third party claims associated with or arising under this Agreement; or Supplier's access to CN's or CN's affiliates' premises.
- 12.2 In the event that CN has incurred Damages, CN shall notify Supplier and Supplier shall indemnify CN for the Damages and defend and hold harmless CN against any third party legal claims associated with the Damages. No third party claim may be settled without the consent of CN, which consent shall not be unreasonably withheld. However, notwithstanding the foregoing, in no event shall Supplier enter into any settlement agreement requiring or suggesting any admission of liability on the part of CN, its affiliates and their respective employees, directors,

officers, agents, and suppliers.

13. Force Majeure

Notwithstanding anything to the contrary in this Agreement, neither Party shall be liable for delay or non-performance caused by any of the following circumstances when beyond its control: acts of God, explosions, riots, extreme natural disasters, wars, sabotage or terrorism (“Force Majeure”). Should an event of Force Majeure make it impossible for a Party to perform its obligations hereunder, the affected Party shall try to reduce or mitigate the adverse impact of the event. The affected Party shall notify the other Party that it considers an event of Force Majeure has occurred. If the adverse impact cannot be eliminated completely, such non-performance shall be excused for the duration of the event of Force Majeure. However, if the event of Force Majeure lasts more than fifteen (15) Business Days from the original notification, this Agreement, Supplemental Conditions, or SOW affected by the Force Majeure may be terminated in whole or in part by the non-affected Party.

14. Insurance

During the Term, Supplier shall maintain in effect and provide annual written proof of same, the insurance requirements set forth in Schedule I, Insurance, given the nature of the commodities or services supplied, and subject to the jurisdiction. The required limits may be met with a combination of primary and excess/umbrella liability policies.

15. CN Policies

CN is committed to maintaining a safe and respectful working environment for employees and third parties accessing its premises and information systems. CN maintains and updates from time to time policies designed to protect the company, its employees and assets, and third parties, such as CN's Policy to Prevent Workplace Alcohol and Drug Problems (Substance and Alcohol Free Environment Policy in the US), Guidelines Regarding Access to the CN Workplace, Guidelines Regarding Third Party Security and its Code of Business Conduct (together “CN Policies”). All CN Policies which the Supplier must abide by are listed and available at <https://www.cn.ca/en/supplier-portal/supplier-portal/policies-and-guidelines>. Supplier acknowledges having read and agreed to the CN Policies and commits that it will respect and comply with same while on CN premises or while acting for or on CN's behalf.

If Supplier needs to access CN's property to perform any aspect of the work, Supplier shall complete all necessary registration procedures with www.erailsafecanada.com (www.erailsafe.com in the US) prior to entry onto CN's property. Supplier's employees and agents shall successfully complete both on-line training for CN Safety and CN Security Awareness and a mandatory background check prior to entry onto CN's property. Supplier's employees or agents shall qualify for, and make available for inspection to CN's employees or other authorized personnel at all times while on CN property, a photo identification issued by www.erailsafecanada.com (www.erailsafe.com in the US), along with at least one other government-issued form of identification. Supplier shall bear all costs of compliance with the requirements of this Section. CN reserves the right to bar any of Supplier's employees or agents from CN property at any time for any reason. If work will or may foul the track at any time, the Supplier's employees must have completed On-Track Safety training approved by the CN before entering the property.

16. Governing Law and Arbitration

Any dispute between the Parties shall be discussed in good faith in an attempt to resolve the issue

amicably. In the event the dispute is not resolved at the operational level between the Supplier and the CN Representative within ten (10) Business Days, the Parties shall escalate the dispute to their respective senior managements for resolution. If the dispute is still not resolved by senior management within ten (10) Business Days, either Party may refer the dispute to final and binding arbitration pursuant to the Quebec Code of Civil Procedure, except that the arbitration shall be directed by one arbitrator. The arbitration shall take place in Montréal, Québec, Canada and shall be conducted in the English language and the award shall be rendered in English. Each Party shall bear its own costs associated with the arbitration and the Parties shall share the cost of the arbitrator equally. Supplier shall continue to deliver Services during any dispute. This Agreement and all matters regarding its interpretation and enforcement shall be governed by the laws of the Province of Quebec and the federal laws of Canada where applicable.

17. General

- 17.1 This Agreement constitutes the entire understanding and agreement between the Parties regarding the subject matter contained herein and supersedes and replaces all other prior or contemporaneous written or oral communications, or prior practices and understandings regarding same and in particular supersedes any standard terms and conditions, proposals, agreements or purchase orders attached to any document sent or remitted by Supplier unless incorporated herein. This Agreement may not be altered, modified or amended except by a written amendment executed by both Parties.
- 17.2 No waiver of any breach of this Agreement shall be binding or effective unless in writing and no such waiver shall constitute a continuing waiver of the same or similar or other breaches. All rights and remedies are cumulative and (unless otherwise provided) are not exclusive of any rights or remedies provided by law.
- 17.3 The Parties and their respective employees, Personnel, contractors, sub-contractors and agents are independent contractors and nothing herein shall make them agents, employees, partners or co-joint-venturers of the other and there is no joint and several liability. The Parties understand and agree that in no event shall CN be deemed a prime contractor for the purpose of any applicable laws, including but not limited to any Occupational Health and Safety Legislation.
- 17.4 Nothing in this Agreement shall be deemed to confer on Supplier any kind of exclusivity in the supply of similar or dissimilar services unless otherwise agreed between the Parties in writing.
- 17.5 The termination for any reason or expiration of this Agreement shall not relieve either Party from any obligation that may have arisen prior to such termination or expiration or any provision that to give full effect to its meaning needs to survive termination or expiration.
- 17.6 If any provision of this Agreement is held or deemed to be invalid or unenforceable in any jurisdiction, the Parties shall endeavor to amend the provision so as to make it valid and enforceable while reflecting as closely as possible the original intent. The invalidity or unenforceability of such provision shall not affect any other provision of the Agreement.
- 17.7 Neither Party will have the right to assign, transfer, or otherwise dispose of its rights and obligations under this Agreement to any third party without the prior written consent of the other Party.
- 17.8 Supplier shall advise their CN Representative, as further defined in the Supplemental Conditions,

of any subcontractors used in the supply of Services and ensure they are duly qualified in accordance with best-established industry practices. Supplier shall remain liable for its subcontractors acts and omissions.

17.9 All legal notices required or permitted under this Agreement shall be in writing (“Notices”) and will be deemed to have been duly received on the date of (i) signature of the return receipt for registered mail, or (ii) the facsimile confirmation from the sending machine by facsimile when sent by facsimile, or (iii) delivery when delivered in person or by courier.

Notices shall be sent to CN at:

935 de la Gauchetière Street West, Montréal, Québec, Canada, H3B 2M9
Attention: Procurement and Supply Management
Fax: 514 399 8335
cc: General Counsel
Fax: 514 399 5744

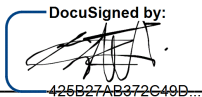
to Supplier at:

169A South Service Road, Grimsby, Onatario, Canada, L3M 4H6
Attention: Rick Middaugh
cc: General Counsel

17.10 This Agreement may be executed in any number of counterparts and delivered by facsimile or electronic mail (PDF), each of which counterparts will together, for all purposes, constitute one and the same instrument, binding on the Parties, and each of which will together be deemed to be an original, notwithstanding that all of the Parties are not signatory to the same counterpart, facsimile or PDF.

Executed by the duly authorized representatives of the Parties.

Company Name: **CANADIAN NATIONAL RAILWAY COMPANY**

Signature 

Printed Name Vassilios Mandelos

Title Director - Category Engineering

Company Name: **Allied Track Services Inc**

Signature

DocuSigned by:
Rick Middaugh
B809A08DFE884CC...

Rick Middaugh

Printed Name

Commercial Manager

Title

Schedule I, Insurance coverage

- **Commercial General Liability Insurance** - occurrence based - for a minimum limit of **\$10,000,000** per occurrence. The policy shall cover liability for bodily injury including death, property damage or destruction (including loss of use), contingent employers liability, sudden and accidental pollution, product and completed operations, broad form property damage, blanket contractual liability, non-owned automobile and unlicensed vehicles or equipment used or controlled by the Supplier;
- **Automobile Liability Insurance** covering all licensed motor vehicles owned, leased or used by Supplier in the performance of the services for a limit of at least **\$5,000,000** combined per occurrence, for bodily injury, including death, pollution liability and property damage (including loss of use). This policy shall cover risks of loading and unloading;
- **Worker's Compensation Insurance** covering all employees of Supplier engaged in the performance of the services in accordance with the statutory requirements of the relevant province, territory or State; US based Supplier must provide employer's liability for a minimum limit of **\$1,000,000** each accident, each employee disease and each policy limit aggregate for disease;
- **All Risks Contractor's Equipment Insurance** covering construction machinery and equipment used by the Supplier and Sub-Contractors for the performance of the work, shall be in a form acceptable to the Supplier and CN and shall not allow subrogation claims by the Insurers against the Supplier and CN.

The limits required above may be met by a combination of primary and excess/umbrella insurance and cannot be interpreted as limiting the liability of the Supplier.

Prior to signature of this Agreement and upon yearly renewals, Supplier shall provide CN a certificate of insurance evidencing the above and, on all policies where permitted by law, include the following:

- i) specifically include liability for operations within or around railroads and railway tracks;
- ii) a waiver of subrogation in favour of Canadian National Railway Company and its subsidiaries;
- iii) name Canadian National Railway Company and its subsidiaries as additional insured;
- iv) contain severability of interest clause and contain no cross liability exclusion;
- v) contain a clause stating that CN's interests will not be prejudiced in the event the First named insured breaches any warranty of the policy;
- vi) provide a 30-day written notice of cancellation or material change in coverage;
- vii) all insurance policies required in this Agreement must be written by Insurers having an AM Best rating of A- or higher, be primary, not contributory and not concurrent or excess over other valid insurance which may be available to CN.

Appendix “B”

Row Labels	Sum of Submitted Amount	HST Included	
Invoiced	715,666.89	808,703.59	
CNRTU00853748	1,212.40	8,170.47	CNRPI00858263
CNRTU00857792	2,255.70	816,874.05	CNRPI00861310
CNRTU00857984	2,370.20		CNRPI00861309
CNRTU00857999	3,736.54		CNRPI00861307
CNRTU00858007	2,128.30		CNRPI00861305
CNRTU00858015	3,736.54		CNRPI00861302
CNRTU00858022	2,128.30		CNRPI00861299
CNRTU00858031	3,458.76		CNRPI00861295
CNRTU00858036	3,579.70		CNRPI00861284
CNRTU00858040	3,579.70		CNRPI00861279
CNRTU00858054	2,273.91		CNRPI00861645
CNRTU00864027	1,971.42		CNRPI00863289
CNRTU00864060	1,971.42		CNRPI00863286
CNRTU00864064	1,971.42		CNRPI00863292
CNRTU00865751	7,577.40		CNRPI00863170
CNRTU00865766	2,639.64		CNRPI00857460
CNRTU00865779	7,164.24		CNRPI00857461
CNRTU00865806	8,180.46		CNRPI00857462
CNRTU00865814	6,767.40		CNRPI00857463
CNRTU00865892	20,512.48		CNRPI00861369
CNRTU00866317	2,410.94		CNRPI00858801
CNRTU00866327	2,061.85		CNRPI00858803
CNRTU00866332	1,951.57		CNRPI00856167
CNRTU00866339	2,061.85		CNRPI00856164
CNRTU00866345	2,410.94		CNRPI00856163
CNRTU00868952	1,480.60		CNRPI00861188
CNRTU00868992	1,410.70		CNRPI00861186
CNRTU00869023	5,878.25		CNRPI00861185
CNRTU00870442	10,419.20		CNRPI00869079
CNRTU00870471	9,629.24		CNRPI00861283
CNRTU00870512	9,050.13		CNRPI00861287
CNRTU00870588	10,386.55		CNRPI00869077
CNRTU00870595	9,442.13		CNRPI00861292
CNRTU00870609	9,442.13		CNRPI00861296
CNRTU00870615	10,386.55		CNRPI00869076
CNRTU00870631	10,257.92		CNRPI00869075
CNRTU00870832	4,420.62		CNRPI00859591
CNRTU00870842	1,389.58		CNRPI00885209
CNRTU00870861	5,153.56		CNRPI00859606
CNRTU00870878	5,395.18		CNRPI00885207
CNRTU00870881	3,620.58		CNRPI00859603
CNRTU00870892	3,144.97		CNRPI00859607
CNRTU00870899	4,146.29		CNRPI00859608
CNRTU00870906	3,671.54		CNRPI00859619
CNRTU00870912	4,310.38		CNRPI00859618
CNRTU00870919	3,971.36		CNRPI00859623
CNRTU00870928	1,002.10		CNRPI00859630
CNRTU00871079	2,344.64		CNRPI00885205
CNRTU00871084	6,265.97		CNRPI00861317
CNRTU00871125	6,165.10		CNRPI00861314

CNRTU00871138	9,689.74	CNRPI00861318
CNRTU00871165	11,624.20	CNRPI00869074
CNRTU00871178	10,656.97	CNRPI00869073
CNRTU00871189	11,014.94	CNRPI00869071
CNRTU00871196	7,174.33	CNRPI00885206
CNRTU00871204	9,080.48	CNRPI00861325
CNRTU00871231	11,846.76	CNRPI00869070
CNRTU00871272	2,165.08	CNRPI00885210
CNRTU00871320	1,621.86	CNRPI00885216
CNRTU00871333	802.09	CNRPI00885215
CNRTU00871350	1,146.26	CNRPI00891380
CNRTU00871671	1,034.50	CNRPI00891373
CNRTU00871676	1,146.26	CNRPI00891366
CNRTU00871685	1,146.26	CNRPI00891361
CNRTU00871693	1,481.54	CNRPI00891357
CNRTU00871708	1,369.78	CNRPI00891352
CNRTU00871878	2,747.27	CNRPI00885218
CNRTU00871897	1,658.69	CNRPI00884359
CNRTU00871931	5,942.46	CNRPI00885208
CNRTU00872105	2,079.99	CNRPI00885217
CNRTU00872186	1,927.43	CNRPI00884683
CNRTU00872195	2,013.60	CNRPI00884361
CNRTU00872203	2,013.60	CNRPI00884358
CNRTU00872210	2,013.60	CNRPI00884357
CNRTU00872219	1,668.88	CNRPI00884355
CNRTU00872228	2,013.60	CNRPI00884351
CNRTU00872587	10,128.73	CNRPI00895743
CNRTU00872843	11,257.25	CNRPI00895744
CNRTU00872953	11,783.80	CNRPI00895747
CNRTU00872960	12,870.51	CNRPI00897367
CNRTU00873159	9,930.17	CNRPI00884524
CNRTU00873223	10,956.32	CNRPI00897368
CNRTU00873230	10,143.98	CNRPI00897369
CNRTU00873273	11,325.11	CNRPI00897371
CNRTU00873921	1,369.78	CNRPI00885204
CNRTU00873926	1,258.02	CNRPI00885203
CNRTU00873949	1,034.50	CNRPI00885202
CNRTU00874181	1,940.67	CNRPI00884349
CNRTU00874242	1,836.80	CNRPI00884344
CNRTU00874268	1,658.69	CNRPI00884346
CNRTU00875144	1,034.50	CNRPI00879068
CNRTU00875163	1,034.50	CNRPI00879064
CNRTU00875432	1,034.50	CNRPI00889997
CNRTU00875476	1,034.50	CNRPI00889998
CNRTU00875499	1,034.50	CNRPI00889174
CNRTU00875635	1,034.50	CNRPI00889221
CNRTU00875648	1,034.50	CNRPI00889220
CNRTU00875660	1,316.74	CNRPI00889218
CNRTU00875669	1,034.50	CNRPI00889999
CNRTU00875935	856.60	CNRPI00889171
CNRTU00875940	1,034.50	CNRPI00889217
CNRTU00875944	856.60	CNRPI00890002

CNRTU00876867	1,584.36	CNRPI00887739
CNRTU00876917	2,925.18	CNRPI00887740
CNRTU00876943	4,896.60	CNRPI00887742
CNRTU00876965	445.20	CNRPI00887741
CNRTU00878453	650.45	CNRPI00886084
CNRTU00878481	3,937.52	CNRPI00886088
CNRTU00879156	3,099.09	CNRPI00886095
CNRTU00879159	650.45	CNRPI00886085
CNRTU00879267	5,418.46	CNRPI00887743
CNRTU00879282	5,846.48	CNRPI00887744
CNRTU00879289	213.81	CNRPI00887745
CNRTU00879306	7,088.73	CNRPI00887746
CNRTU00879313	187.11	CNRPI00887738
CNRTU00879320	7,544.97	CNRPI00887747
CNRTU00879330	6,929.16	CNRPI00887748
CNRTU00879346	6,659.82	CNRPI00887749
CNRTU00879350	1,995.48	CNRPI00887750
CNRTU00879765	887.00	CNRPI00886390
CNRTU00887734	355.80	CNRPI00884334
CNRTU00887998	1,202.14	CNRPI00884336
CNRTU00888011	1,202.14	CNRPI00884335
CNRTU00888018	1,034.50	CNRPI00879075
CNRTU00888035	1,146.26	CNRPI00879074
CNRTU00888052	1,034.50	CNRPI00879071
CNRTU00888091	355.80	CNRPI00891335
CNRTU00888289	311.33	CNRPI00879049
CNRTU00888324	1,146.26	CNRPI00879046
CNRTU00888389	1,090.38	CNRPI00879040
CNRTU00888405	1,146.26	CNRPI00879035
CNRTU00888505	1,090.38	CNRPI00879030
CNRTU00888507	1,034.50	CNRPI00879005
CNRTU00888510	1,034.50	CNRPI00879027
CNRTU00888514	1,034.50	CNRPI00878986
CNRTU00888536	311.33	CNRPI00881570
CNRTU00888895	1,971.42	CNRPI00881571
CNRTU00888932	1,971.42	CNRPI00881572
CNRTU00888963	1,971.42	CNRPI00881575
CNRTU00889041	1,971.42	CNRPI00881573
CNRTU00889413	1,971.42	CNRPI00881577
CNRTU00889438	1,971.42	CNRPI00881578
CNRTU00889460	1,971.42	CNRPI00881584
CNRTU00889504	1,629.00	CNRPI00881580
CNRTU00892119	1,971.42	CNRPI00881585
CNRTU00892131	2,142.63	CNRPI00881586
CNRTU00892162	2,142.63	CNRPI00881587
CNRTU00892175	2,142.63	CNRPI00881588
CNRTU00892194	2,142.63	CNRPI00881589
CNRTU00893966	1,971.42	CNRPI00881569
CNRTU00895475	1,971.42	CNRPI00882371
CNRTU00895488	1,629.00	CNRPI00882368
CNRTU00895501	1,629.00	CNRPI00882366
CNRTU00895530	2,313.84	CNRPI00886350

CNRTU00895541	2,313.84	CNRPI00886351
CNRTU00895548	2,313.84	CNRPI00886349
CNRTU00895554	2,313.84	CNRPI00886348
CNRTU00895561	2,313.84	CNRPI00890902
CNRTU00895571	2,313.84	CNRPI00886347
CNRTU00895579	887.00	CNRPI00886346
CNRTU00896573	14,508.23	CNRPI00895719
CNRTU00896606	13,208.00	CNRPI00895722
CNRTU00896625	13,261.61	CNRPI00895724
CNRTU00896644	12,174.28	CNRPI00895727
CNRTU00896664	14,448.83	CNRPI00895730
CNRTU00896689	15,595.14	CNRPI00896664
CNRTU00896715	11,364.07	CNRPI00895739
CNRTU00896740	10,927.93	CNRPI00895740
CNRTU00897475	11,565.63	CNRPI00895741
CNRTU00898810	1,768.36	CNRPI00885052
CNRTU00898822	1,743.06	CNRPI00885050
CNRTU00898827	1,434.72	CNRPI00885047
CNRTU00898833	1,576.24	CNRPI00885043
CNRTU00898843	1,293.20	CNRPI00885038
CNRTU00898849	1,434.72	CNRPI00885036
CNRTU00898857	1,434.72	CNRPI00885034
CNRTU00898866	1,543.43	CNRPI00885026
CNRTU00901747	1,569.61	CNRPI00886399
CNRTU00901755	1,569.61	CNRPI00886398
Pending Approval	7,230.50	
CNRTU00897663	4,262.50	CNRPI00943499
CNRTU00900538	742.00	Pending Approval - Resubmitted to Eric Blanchard
CNRTU00900545	1,484.00	Pending Approval - Resubmitted to Eric Blanchard
CNRTU00900551	742.00	Pending Approval - Resubmitted to Eric Blanchard
Total	722,897.39	816,874.05
Plus: Signals:		1,684,848.11
Grand Total		2,501,722.16

Project No.	Project Name	CNRTQ/U #	%Complete	Original Budget	Revised Budget	CNRPI#	Received	Calc. Holdback	Outstanding (Inc. GST)	Comments
21-534	CN Spences bridge - Beeds Greg-111336	CNRTQ00003671	100%							Clean up work completed, project signed off from Greg Beeds. Waiting
	1. Mile 73.59 – Spences Bridge East – Revise CTC Loc	CNRTU00757220	100%	\$72,206.30	\$72,206	CNRPI00749862	\$68,235.00	\$7,221	\$0	Paid Jan 20
	2. Mile 75.2 – Spences Bridge West – Install New IXS	CNRTU00757221	90%	\$139,381.48	\$139,381	CNRPI00747731	\$131,715.00	\$13,938	\$0	Paid Jan 20
	2. Mile 75.2 – Spences Bridge West – Install New IXS	CNRTU00761997	10%	\$15,486.83	\$15,487	CNRPI00751548	\$0.00	\$1,549	\$14,635.05	Ready to be paid
	3. Mile 76.38 – MP 76.38 Approach – Install New IXS	CNRTU00757222	100%	\$59,555.05	\$59,555	CNRPI00747668	\$56,280.00	\$5,956	-\$0.48	Paid Jan 28
	4. Mile 77.54 – MP 77.54 Intermediate – Install New	CNRTU00761999	100%	\$56,617.46	\$56,617	CNRPI00751549	\$0.00	\$5,662	\$53,503.50	Ready to be paid
	5. Mile 78.7 – MP 78.7 Intermediate – Install New IX	CNRTU00757223	100%	\$56,617.46	\$56,617	CNRPI00747670	\$53,503.00	\$5,662	\$0.50	Paid Jan 28
	6. Mile 79.8 – MP 79.8 Intermediate – Install New IX	CNRTU00762001	100%	\$108,706.55	\$108,707	CNRPI00751561	\$0.00	\$10,871	\$102,727.69	Ready to be paid
	7. Mile 81.02 – MP 81.02 Approach – Install new IXS	CNRTU00757225	100%	\$56,617.46	\$56,617	CNRPI00747667	\$53,503.00	\$5,662	\$0.50	Paid Jan 28
	8. Mile 82.17 – Seddall – Install New IXS CTC Locatio	CNRTU00757224	50%	\$41,530.04	\$41,530	CNRPI00747671	\$39,246.00	\$4,153	-\$0.11	Paid Jan 20
	8. Mile 82.17 – Seddall – Install New IXS CTC Locatio	CNRTU00762006	50%	\$41,530.04	\$41,530	CNRPI00751550	\$0.00	\$4,153	\$39,245.89	Ready to be paid
	9. Mile 88.74 – Morris East – Revise CTC Location	NA	0%	\$58,032.28	\$0	NA	NA	\$0	\$0.00	
	Mile 73.59 – Morris West – Install New IXS CTC Loca	NA	0%	\$129,565.95	\$0	NA	NA	\$0	\$0.00	
	Holdback - ATS Invoice 22296	Not Available in FG			\$64,825		\$0		\$68,066.11	1
	FD #1 Extra work on signal bases due to CN changin	CNRTU00764088	T&M		\$5,305.60	CNRPI00753639	\$0	\$0	\$5,570.88	Ready to be paid
	FD #2 Huge rock removal from track	CNRTU00764107	T&M		\$1,131	CNRPI00753638	\$0	\$0	\$1,187.63	Ready to be paid
	T&M - Materials	CNRTU00771224	T&M		1,295.87	CNRPI00762524	\$1,361	\$0	\$0	Paid Apr 9
	T&M - Materials	CNRTU00765556	T&M		179.96	CNRPI00768828	\$189	\$0	\$0	Paid Apr 9
	TOTAL			\$835,847	\$713,074		\$404,032	\$64,825	\$284,937.62	
21-541/22-536	CN Ashcroft - Wiebe Ryan-150911	CNRTQ00003756	95%							Small amount of changes required,
	1. Mile 47.99 – Ashcroft East – Move Signals	NA	0%	\$88,871	\$0	NA	NA	\$0	\$0	
	2. Mile 51.18 – MP 51.18 Ashcroft West – Install New	CNRTU00764394	100%	\$120,477	\$120,477	CNRPI00757777	\$0	\$12,048	\$113,851.11	Ready to be paid
	3. Mile 51.6 – MP 51.6 Remote – Install New IXS CTC	NA	0%	\$37,639	\$0	NA	NA	\$0	\$0.00	
	4. Mile 53.03 – MP 53.03 Approach – Install New IXS	CNRTU00757751	50%	\$17,359	\$17,359	CNRPI00755225	\$16,404	\$1,736	-\$0.01	Paid Jan 20
	4. Mile 53.03 – MP 53.03 Approach – Install New IXS	CNRTU00764411	50%	\$17,359	\$17,359	CNRPI00757641	\$0	\$1,736	\$16,404.54	Ready to be paid
	5. Mile 54.21 – MP 54.21 Intermediate – Install New	CNRTU00757756	50%	\$17,359	\$17,359	CNRPI00755227	\$16,404	\$1,736	\$0.25	Paid Jan 20
	5. Mile 54.21 – MP 54.21 Intermediate – Install New	CNRTU00757763	50%	\$17,359	\$17,359	CNRPI00755229	\$16,404	\$1,736	\$0.25	Paid Jan 20
	6. Mile 55.37 – MP 55.37 Intermediate – Install New	CNRTU00757765	50%	\$17,359	\$17,359	CNRPI00755230	\$16,404	\$1,736	\$0.25	Paid Jan 20
	6. Mile 55.37 – MP 55.37 Intermediate – Install New	CNRTU00764413	50%	\$17,359	\$17,359	CNRPI00757636	\$16,404	\$1,736	\$0.25	Paid Apr 9
	7. Mile 56.55 – MP 56.55 Approach – Install new IXS	CNRTU00757780	50%	\$17,359	\$17,359	CNRPI00755232	\$0	\$1,736	\$16,404.54	Ready to be paid
	7. Mile 56.55 – MP 56.55 Approach – Install new IXS	CNRTU00764420	50%	\$17,359	\$17,359	CNRPI00757639	\$0	\$1,736	\$16,404.54	Ready to be paid
	8. Mile 57.03 – MP 57.03 Coho Remote – Install Nev	CNRTU00757808	50%	\$73,519	\$73,519	CNRPI00755238	\$69,476	\$7,352	-\$0.01	Paid Jan 20
	8. Mile 57.03 – MP 57.03 Coho Remote – Install Nev	CNRTU00764425	50%	\$73,519	\$73,519	CNRPI00757629	\$0	\$7,352	\$69,475.68	Ready to be paid
	9. Mile 57.47 – MP 57.47 Coho Main – Install New I	CNRTU00757822	50%	\$66,237	\$66,237	CNRPI00755234	\$62,594	\$6,624	\$0.00	Paid Jan 20
	9. Mile 57.47 – MP 57.47 Coho Main – Install New I	CNRTU00764437	50%	\$66,237	\$66,237	CNRPI00757633	\$0	\$6,624	\$62,593.64	Ready to be paid
	Mile 49.36 main service to Mile 59.11 – Plow 7200v	CNRTU00757833	50%	\$316,212	\$316,212	CNRPI00753856	\$298,821	\$31,621	\$0.01	Paid Jan 20
	Mile 49.36 main service to Mile 59.11 – Plow 7200v	CNRTU00764440	50%	\$316,212	\$316,212	CNRPI00755540	\$0	\$31,621	\$298,820.34	Ready to be paid
	Ashcroft Holdback 10% - ATS Invoice 22297	Not Available in FG			\$117,129		\$0		\$122,985.19	2
	FD #2 Generator Work	CNRTU00764637	T&M		16,263.96	CNRPI00755160	\$0	\$0	\$17,077.16	Ready to be paid
	FD #3 - Work Performed at Ashcroft East at Hank Ca	CNRTU00765025	T&M		18,080.52	Rejected	\$0	\$0	\$18,984.55	3
	FD #4 - Disposal of old snow melter bungalows	CNRTU00765028	T&M		913.00	CNRPI00757293	\$0	\$0	\$958.65	Ready to be paid
	FD #5 - Extra work on signal bases due to CN changi	CNRTU00765035	T&M		5,056.29	CNRPI00755059	\$0	\$0	\$5,309.10	Ready to be paid
	T&M - Grading CE606021	CNRTU00763146	T&M		41,796.85	CNRPI00755034	\$0	\$0	\$43,886.69	Ready to be paid
	T&M - Grading CE606021	CNRTU00763155	T&M		53,073.16	CNRPI00755237	\$0	\$0	\$55,726.82	Ready to be paid
	T&M - Grading CE606021	CNRTU00763207	T&M		18,678.57	CNRPI00755031	\$0	\$0	\$19,612.50	Ready to be paid
	T&M - Grading CE606021	CNRTU00763590	T&M		9,587.87	CNRPI00755028	\$0	\$0	\$10,067.26	Ready to be paid
	T&M - Grading CE606021	CNRTU00763725	T&M		8,789.47	CNRPI00755017	\$0	\$0	\$9,228.94	Ready to be paid
	T&M - MP 50.4 Xing	CNRTU00780015	T&M		5,387.97	CNRPI00769623	\$5,657	\$0	\$0.00	Paid Apr 10
	T&M - MP 50.4 Xing	CNRTU00780135	T&M		4,879.50	CNRPI00769622	\$5,123	\$0	\$0.00	Paid Apr 10

T&M - MP 50.4 Xing	CNRTU00780198	T&M	4,244.80	CNRPI00769621	\$4,457	\$0	\$0	Paid Apr 10	
Warren & Co.	CNRTU00833439	T&M	6,235.20	CNRPI00834585	\$6,547	\$0	\$0	Paid July 19	
Schmidt	CNRTU00833509	T&M	1,057.30	CNRPI00819392	\$1,110	\$0	\$0	Paid July 19	
TOTAL			\$1,297,797	\$1,288,416	\$535,806	\$117,129	\$897,792.24		
21-524 - New \New Westminster, BC - Wiebe Ryan-150911									
T&M # 9 - Wiring Materials	CNRTU00767503	T&M	\$4,326	CNRPI00760373	\$0	\$0	\$4,543	Ready to be paid	
T&M - Burried Cable Tape	CNRTU00767518	T&M	\$888	CNRPI00760372	\$0	\$0	\$932	Ready to be paid	
T&M - Sperling Adapter Plates	CNRTU00767538	T&M	\$435	CNRPI00760371	\$0	\$0	\$457	Ready to be paid	
T&M - Fill @ Various Loc	CNRTU00767557	T&M	\$7,769	CNRPI00760370	\$0	\$0	\$8,157	Ready to be paid	
T&M - Fill @ Spruce/Piper Rd	CNRTU00767717	T&M	\$3,111	CNRPI00760369	\$0	\$0	\$3,267	Ready to be paid	
T&M - Fill @ Cariboo Rd	CNRTU00767774	T&M	\$2,398	CNRPI00760368	\$0	\$0	\$2,518	Ready to be paid	
T&M - Fill @ Cumberland	CNRTU00767803	T&M	\$850	CNRPI00760367	\$0	\$0	\$893	Ready to be paid	
T&M - Fill @ Sperling	CNRTU00767809	T&M	\$1,616	CNRPI00760366	\$0	\$0	\$1,697	Ready to be paid	
T&M - Fill @ Fraser River Bridge	CNRTU00767831	T&M	\$978	CNRPI00760365	\$0	\$0	\$1,027	Ready to be paid	
			\$0	\$22,371	\$0	\$0	\$23,489.79		
CNRPE00000331									
21-554 - Fort L Fort Langley Airport Rd Crossing - Wiebe Ryan-1509									
FD #1 - Power & Hydro CTC Install	CNRTU00765022	T&M	5,538.45	CNRPI00755062	\$0	\$0	\$5,815	Ready to be paid	
TOTAL			\$0	\$5,538	\$0	\$0	\$5,815.37		
22-523 BC South RSIP - Witkowskyj, Nick - 168302									
I. Mile 0.20 Yale Sub(Langley Industrial Lead) – Insta	CNRTU00810987	80%	\$248,395					Williams Rd - 100% , Telegraph Rd - 60% (delayed due to CN material and land issues)	
II. Mile 14.25 Lulu Island Industrial Spur - Install new	CNRTU00810979	50%	\$53,212	CNRPI00816518	\$50,285	\$5,321.15	\$0	Paid July 16	
II. Mile 14.25 Lulu Island Industrial Spur - Install new	CNRTU00906706	95%	\$93,347	CNRPI00822458	\$83,802	\$8,867.92	\$0	Paid July 16	
Holdback - ATS Invoice 22298	CNRTQ00004083	5%	\$93,347	CNRPI00945913	\$0	\$466.73	\$4,410.62	Approved by CN	
				CNRPI00945897			\$15,388.59	CNRPE00000331	
			\$239,905	\$165,881	\$134,087	\$14,656	\$19,799.21		
22-542 CN Fort Francis Power - Nazar Darcy-114200									
7200 HV Underground Service	CNRTQ00004183	50%	\$1,895,151.00	\$801,794.00	\$0	\$0		HV Cable & conduit - 90%, transformer pads - 90%, ground grids, poles & LV conduit - 60%, materials - \$206K	
	CNRTU00898495	50%	400,897.23	400,897.23	Rejected	0	0	\$453,013.87	
			\$2,296,048	\$1,202,691		\$0	\$0	\$453,013.87	
Grand Total			\$4,669,597	\$3,397,972	\$1,073,925	\$196,609	\$1,684,848.11		

Appendix “C”



Blake, Cassels & Graydon LLP
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Chris Burr

Partner

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chris.burr@blakes.com

December 7, 2022

VIA EMAIL

Reference: 00025198/000004

Canadian National Railway Company
935 de La Gauchetiere Street West
Montreal, QC H3B 2M9

Attention: Mathieu Bergeron Mathieu.Bergeron@cn.ca
Marco Levesque Marco.Levesque@cn.ca

Dear Messrs Bergeron & Levesque,

Re: Receivables owing to 2806401 Ontario Inc. o/a Allied Track Services (“Allied”)

We are counsel to KSV Restructuring Inc. (“**KSV**”), in its capacity as receiver of Allied (the “**Receiver**”). The Receiver was appointed on September 23, 2022 by order of Mr. Justice Osborne of the Ontario Superior Court (the “**Appointment Order**”). A copy of the Appointment Order, and all other Court materials in the Allied insolvency proceedings, can be found on the Receiver’s website at: <https://www.ksvadvisory.com/experience/case/2806401-ontario-inc>.

Prior to the appointment of the Receiver, on August 25, 2022, Allied filed a Notice of Intention to Make a Proposal pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act* (the “**BIA**”), and KSV was appointed as the proposal trustee (the “**Proposal Trustee**”). Subsequently, on September 6, 2022, the Ontario Superior Court of Justice (Commercial List) made an order appointing KSV as the interim receiver (the “**Interim Receiver**”), without security, of all of the assets, undertakings and properties of Allied pursuant to an application brought by the Proposal Trustee under section 47.1 of the BIA. As above, the Receiver was appointed on September 23, 2022, which appointment automatically discharged the Interim Receiver. Allied was subsequently deemed to have filed an assignment in bankruptcy on November 9, 2022, and KSV was appointed as trustee in bankruptcy.

The Receiver understands that prior to Allied’s commencement of insolvency proceedings on August 25, 2022, Allied was engaged in the following seven projects with Canadian National Railway Company (“**CN**”), in both its signals and its track businesses (collectively, the “**Projects**”):

Track

1. 22-030 CN Track MSA Support - **CNRTQ00003364**

24598227.1



Signals

1. 21-534 - CN Spence's Bridge - **CNRTQ00003671**
2. 21-541 - CN Ashcroft - **CNRTQ00003756**
3. 22-542 - CN Fort Francis - **CNRTQ00004183**
4. 21-524 - CN New Westminster - **CNRTQ00003432**
5. 21-554 - CN Fort Langley - **CNRTQ00003830**
6. 22-523 - CN BC South RSIP Crossing - **CNRTQ00004083**

We are advised by Allied that the following amounts remain outstanding and duly owing under each of the Projects, as further broken down with supporting invoices in the enclosed .pdf:

Project	Amount Outstanding	Comments
Track MSA Support	\$826,146.57	\$506,405.47 has been invoiced and \$319,741.10 is pending in Field Glass ("FG")
Spence's Bridge	\$284,937.62	\$216,871.06 has been invoiced in FG and \$68,066.11 is Holdback
Ashcroft	\$897,792.24	\$774,807.05 has been invoiced and \$18,984.55 is rejected in FG, \$122,985.19 is Holdback
Fort Francis	\$453,013.87	\$453,013.87 is rejected in FG. This amount represents 50% of the work
New Westminster	\$23,489.79	All amounts invoiced
Fort Langley	\$5,815.37	All amounts invoiced
BC South RSIP Crossing	\$19,799.21	\$4,410.62 is pending approval in FG and \$15,388.59 is Holdback
Total	\$2,510,994.67	

The Receiver's mandate is, among other things, to collect accounts receivable duly owing to Allied. Accordingly, the Receiver hereby requires payment in the amount of \$2,510,994.67 in full satisfaction of the outstanding invoices (the "**Indebtedness**").

We understand that CN has asserted a claim against Allied in the amount of \$1,383,611.91 on account of damages that are alleged to have occurred at the New Westminster Project on or about April 5, 2021 (the "**Insurance Claim**"). The Receiver is in the process of assessing the Insurance Claim, including by engaging in discussions with consultants to Allied. At this point, it appears to the Receiver that the Insurance Claim is properly a matter for Allied's and/or CN's insurers, and the Receiver sees no merit in any set-off of the Insurance Claim against the Indebtedness (and certainly no merit in any set-off against receivables owing in respect of Projects other than the New Westminster Project). We will be following up separately with further correspondence regarding the Insurance Claim.

If the Indebtedness is not paid in full, or arrangements for the payment of the Indebtedness acceptable to the Receiver are not made, on or before **Monday, December 19, 2022**, we have been instructed to pursue the recovery of the Indebtedness in the Allied receivership proceedings. We trust that such

24598227.1



enforcement steps will not be necessary, and that the repayment of the Indebtedness will be made, or arrangements for the repayment of the Indebtedness will be agreed, in accordance with this letter.

* * * * *

We look forward to your prompt response. Given the complexities of some of the Projects and outstanding invoices, we would be happy to schedule a call with you to discuss the foregoing at your convenience.

The Receiver reserves all of its rights and remedies in the interim.

Regards,

Chris Burr

Cc: Receiver

Appendix “D”

Mitch Vininsky

From: Mitch Vininsky
Sent: March 28, 2023 12:36 PM
To: Jamey Craig; Nicolas Lessard
Cc: Mathieu Bergeron; Chris Burr (chris.burr@blakes.com); Marco Levesque
Subject: RE: CNRPI review

Can we please get an update on this, particularly the holdbacks?



Mitch Vininsky
Managing Director

T 416.932.6013
M 416.254.4912
W www.ksvadvisory.com

From: Jamey Craig <jamey.craig@alliedtrack.ca>
Sent: Tuesday, February 28, 2023 7:15 AM
To: Nicolas Lessard <Nicolas.Lessard@cn.ca>
Cc: Mathieu Bergeron <Mathieu.Bergeron@cn.ca>; Mitch Vininsky <mvininsky@ksvadvisory.com>; Chris Burr (chris.burr@blakes.com) <chris.burr@blakes.com>; Marco Levesque <Marco.Levesque@cn.ca>
Subject: CNRPI review

Dear Nicolas

See below the updated notes to the January 31, 2023 email. The only changes are;

1. Track CNRTU00897663 - Invoiced CNRPI00943499
2. Signals CNRTU00906706 - Invoiced CNRPI00945913 - BC South RSIP 5%
3. Signals CNRTQ00004083 - Invoiced CNRPI00945897 - HB CNRPE00000331 - BC South RSIP

I have attached the updated summary sheet for a reference as well.

We need to keep this moving forward. Can we have a call to discuss these outstanding amounts?

Thanks

Jamey Craig, P. Eng

Chief Operating Officer - **Track**

905-302-3460

From: Jamey Craig <jamey.craig@alliedtrack.ca>

Sent: January 31, 2023 2:26 PM

To: Nicolas Lessard <Nicolas.Lessard@cn.ca>; Marco Levesque <Marco.Levesque@cn.ca>

Cc: Mathieu Bergeron <Mathieu.Bergeron@cn.ca>; Mitch Vininsky <mvininsky@ksvadvisory.com>; Roman Malmas <Roman.Malmas@alliedtrack.ca>; Chris Burr (chris.burr@blakes.com) <chris.burr@blakes.com>

Subject: Re: CNRPI review

Dear Nicholas & Marco

Below is a copy of my email from Jan 25th, **updated Feb 28, 2023**, detailing the status of each for **HB**, **CNRTU pending approval**, & **Rejected** waiting for review and approval. It appears that the CN persons to be contacted are **Ryan Wiebe** & **Greg Banks** for all open items excluding the hold backs. Do you want me to contact them direct and start a conversation?

Signals

1. Spences Bridge - Email sent Greg Beeds c/w Progres Report on Jan 20th. Requesting 100% sign off on this form - no response. We need this form signed off so I can upload this to FG, then CN can process the **HB - \$68,066.11**
2. Ashcroft - I sent the information on FG to **Ryan Wiebe**. As noted on the spreadsheet for Ashcroft, Item 1 was cancelled by CN. Field Directive #3 **\$18,984.55** was **rejected again by** Ryan. This FD was T&M work related to work on Item 1. We need sign off on the Progress Report sent Ryan so we can invoice for **HB - \$122,985.19**.
3. New Westminster - All approved for payment.
4. Fort Langley - All approved for payment.
5. BC South RSIP - 5% for Williams Road Mile 14.25 invoiced in FG - \$4,420.63. The HB has also been approved in FG - \$15,388.59.
6. Fort Francis - Needs a further discussion with CN. **Rejected**. The value of this contract is \$801,794.00. Allied has claimed for 50% of the work. The majority of the material was already supplied for the entire project.

Track - 4 Pending Approvals

1. CNRTU00897663 - Invoiced CNRPI00943499 - \$4,262.50
2. **CNRTU00900538** - Pending approval - sent to Eric Blanchard as per Greg Banks
3. **CNRTU00900545** - Pending approval - sent to Eric Blanchard as per Greg Banks
4. **CNRTU00900551** - Resent to Eric Blanchard as per Greg Banks - **rejected again**

Please let me know how to proceed on the above. Can you let us know the status of the **HB's**?

Thanks

Jamey Craig, P. Eng

Chief Operating Officer - **Track**

905-302-3460

From: Nicolas Lessard <Nicolas.Lessard@cn.ca>

Sent: January 31, 2023 11:18 AM

To: Jamey Craig <jamey.craig@alliedtrack.ca>; Marco Levesque <Marco.Levesque@cn.ca>

Cc: Mathieu Bergeron <Mathieu.Bergeron@cn.ca>; Mitch Vininsky <mvininsky@ksvadvisory.com>; Roman Malmas <Roman.Malmas@alliedtrack.ca>; Chris Burr (chris.burr@blakes.com) <chris.burr@blakes.com>

Subject: RE: CNRPI review

Hi Jamey,

I believe the overall situation is pretty clear.

Is there someone in contact with CN employee responsible for the rejected and awaiting approvals RTU's?

I know for the holdback they are working at it.

Thank you,



Nicolas Lessard

System Manager, Accounts Payable | Disbursements

Directeur système, comptes fournisseurs | Débours

T: 514-399-6059 |

[What's New at CN](#) | [Quoi de neuf au CN](#)

From: Jamey Craig <jamey.craig@alliedtrack.ca>

Sent: Friday, January 27, 2023 3:16 PM

To: Marco Levesque <Marco.Levesque@cn.ca>; Nicolas Lessard <Nicolas.Lessard@cn.ca>

Cc: Mathieu Bergeron <Mathieu.Bergeron@cn.ca>; Mitch Vininsky <mvininsky@ksvadvisory.com>; Roman Malmas <Roman.Malmas@alliedtrack.ca>; Chris Burr (chris.burr@blakes.com) <chris.burr@blakes.com>

Subject: Re: CNRPI review

CAUTION: This email originated from outside CN: DO NOT click links or open attachments unless you recognize the sender AND KNOW the content is safe.

AVERTISSEMENT : ce courriel provient d'une source externe au CN : NE CLIQUEZ SUR AUCUN lien ou pièce jointe à moins de reconnaître l'expéditeur et d

Dear Marco & Nicolas

Please find attached the Allied review of your CNRPI file. We have verified that invoices that have been paid are not part of the Allied Outstanding summary. The main part missing from the 'Left to Pay' are the HB's, rejected and waiting to be approved amounts. Below is a quick summary.

1. Left to be paid = \$1.8M
2. Not on CN's list = \$0.7M - Holdbacks, rejected RTU's and waiting for approval RTU's - All as noted on the Allied spreadsheet.
3. Total owing = \$2.5M - \$1.3M = \$1.2M due now to Allied

Nicolas if you want to discuss in detail the spreadsheets with Roman and myself, please let me know and we can get on a Team's call.

Thanks

Jamey Craig, P. Eng

Chief Operating Officer - **Track**

905-302-3460



From: Marco Levesque <Marco.Levesque@cn.ca>

Sent: January 26, 2023 8:38 AM

To: Nicolas Lessard <Nicolas.Lessard@cn.ca>; Mitch Vininsky <mvininsky@ksvadvisory.com>; Jamey Craig <jamey.craig@alliedtrack.ca>; Roman Malmas <Roman.Malmas@alliedtrack.ca>

Cc: Mathieu Bergeron <Mathieu.Bergeron@cn.ca>

Subject: RE: CNRPI review

To all

Nicolas made me realize that for the total payout the following would apply:

Total invoice files submitted and validated:	\$2.9M
Invoice in file already paid:	\$1.1M
Left to pay:	\$1.8M
Credit owed to CN	(\$1.3M)
Net Payout to KSV / Allied:	\$0.5M

Best Regards



Marco Levesque

Sr Manager Engineering Materials &
Equipment Procurement & Supply Management

T: **514-399-6971** | C: **514-378-1258**

[What's New at CN](#) | [Quoi de neuf au CN](#)

From: Marco Levesque <Marco.Levesque@cn.ca>

Sent: Thursday, January 26, 2023 7:11 AM

To: Nicolas Lessard <Nicolas.Lessard@cn.ca>; Mitch Vininsky <mvininsky@ksvadvisory.com>;

jamey.craig@alliedtrack.ca; Roman.Malmas@alliedtrack.ca

Cc: Mathieu Bergeron <Mathieu.Bergeron@cn.ca>

Subject: Re: CNRPI review

Thanks Nicolas

Also to resume our discussions.

1. After verification CN confirms outstanding amounts provided by KSV/Allied. Only missing 2 invoices for a total value of 9K.
2. CN team is working with field to get 6 holdbacks released.
3. Have received back-up that was sent to the Allied insurance that was transmitted to by CN Claims team.
4. CN does not want to be subject to insurance resolution with KSV/Allied, therefore CN is willing to pay \$2.9M less the \$1.3M of claim.

Actions:

1. CN to finalize releasing Hold Back with field (Nicolas / Marco)
2. To confirm that KSV / Allied will accept to credit \$1.3M from outstanding invoices (Mitch)
3. Next meeting to be scheduled by KSV when KSV / Allied will have reached a decision. (Mitch)

Best Regards



Marco Levesque

Sr Manager Engineering Materials &
Equipment Procurement & Supply Management

T: **514-399-6971** | C: **514-378-1258**

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De : Nicolas Lessard <Nicolas.Lessard@cn.ca>

Envoyé : Wednesday, January 25, 2023 3:23:36 PM

À : Mitch Vininsky <mvininsky@ksvadvisory.com>; jamey.craig@alliedtrack.ca <jamey.craig@alliedtrack.ca>;
Roman.Malmas@alliedtrack.ca <Roman.Malmas@alliedtrack.ca>

Cc : Marco Levesque <Marco.Levesque@cn.ca>; Mathieu Bergeron <Mathieu.Bergeron@cn.ca>

Objet : CNRPI review

Hi,

Here's the file with the review of the CNRPI provided by KSV/Allied.

CNRPI that are not on your side:

CNRPI00858263

CNRPI00857461

Thank you,



Nicolas Lessard

System Manager, Accounts Payable | Disbursements

Directeur système, comptes fournisseurs | Débours

T: **514-399-6059** |

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Appendix “E”

Direct Line: 514-789-8888
E-mail: joey.dubois@scm.ca

March 30, 2023

WITHOUT PREJUDICE

Mr. Mitch Vininsky
KSV Advisory Group
220 Bay Street, 13th Floor, PO Box 20,
Toronto, Ontario,
M5J 2W4

By e-mail: mvininsky@ksvadvisory.com

Re: Insured: Allied Track Services Inc., 2409889 Ontario Inc. and AV Rail Contracting Ltd.
Claim No.: 24110-001055 DZF
UMR No.: B1161P20A370103G
Policy No.: P20A370103G (the "Policy")
Policy Limit: \$25,000,000.00
Policy Term: January 24, 2020 to January 24, 2021

Dear Mr. Vininsky,

We are the independent insurance adjusters for Certain Lloyd's Underwriters ("Underwriters") who issued the above-noted Policy to Allied Track Services Inc. ("Allied").

We understand that you act as Trustee in Bankruptcy for Allied Track Services Inc. ("Allied"). We further understand that you have requested payment of approximately \$1.4M under the Policy as compensation for a similar amount that Canadian National Railway Company ("CN") has withheld from payments otherwise owing to Allied for services. We have been told that CN has refused to make this payment to Allied because CN alleges the work was done improperly and has resulted in loss and damage to CN which CN has unilaterally chosen to "set off" against the amounts owing.

We regret to inform you of Underwriters' position that there is no coverage under the Policy in the present circumstances. Underwriters' reasoning is set out below.

A. Background:

We understand the background to this matter to be as follows:

1. Allied is an Ontario-based provider of railroad construction, maintenance and signal services throughout Canada;
2. In 2021, Allied entered into a contract with CN to replace and upgrade existing Signals and Communications infrastructure between Mile 143.5 to Mile 151.80 on the New Westminster Subdivision (the "Initial Agreement");

3. The Initial Agreement was altered slightly in October 2021. The Initial Agreement incorporated by reference a Master Services Agreement between the parties;
4. The Master Services Agreement warranted in relevant part:
 - a. Clause 10.1: that Allied would carry out its work in accordance with industry standards and provide diligent, professional and timely services; and
 - b. Clause 12.1: Allied would indemnify CN when CN incurs loss arising from or related to Allied's breach of obligations under the agreement;
5. In January 2021, Allied made inquiries with BC OneCall concerning buried utility lines at a depth of 0.3 to 1 meter. The OneCall inquiries yielded no concerns with the proposed digging that would be part of the work;
6. The required hole had to be bored (rather than dug) due to CN's policies. Allied subcontracted with Directional Mining and Drilling Ltd. ("DMD") to carry out this work. Allied shared the utilities search results with DMD prior to the commencement of boring;
7. For reasons unknown to Allied, DMD bored to a depth of 1.5 meters in carrying out their work;
8. DMD's boring resulted in a sinkhole below CN's tracks (the "damage"). CN claims it cost \$1.4M to remediate the damage. CN has since refused to pay Allied's outstanding fees, having chosen to "set off" the claimed damages against it.
9. To date, no legal action has been commenced by CN against Allied as a result of the damage.
10. We understand that Allied denies any legal responsibility for the damage claimed by CN and is of the view that any responsibility must rest with DMD.

B. The Policy:

The Policy provides General Liability (CGL) Coverage subject to certain conditions, limitations and exclusions.

The CGL coverage insuring agreement provides:

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as "compensatory damages" because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "action" seeking those "compensatory damages". However, we will have no duty to defend the insured against any "action" seeking "compensatory damages" for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "action" that may result. But:

- (1) The amount we will pay for "compensatory damages" is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A, B or D or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A, B and D.

The term "action" is defined as:

2. "Action" means a civil proceeding in which "compensatory damages" because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Action" includes:
 - a. An arbitration proceeding in which such "compensatory damages" are claimed and to which the insured must submit or does submit with our consent; or
 - b. Any other alternative dispute resolution proceeding in which such "compensatory damages" are claimed and to which the insured submits with our consent.

The Policy contains certain exclusions. Among them is a contractual liability exclusion which removes coverage for:

b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay "compensatory damages" by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for "compensatory damages":

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable legal fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be "compensatory damages" because of "bodily injury" or "property damage", provided:
 - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
 - (b) Such legal fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which "compensatory damages" to which this insurance applies are alleged.

The term "insured contract" is defined as:

15. "Insured contract" means:
 - a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
 - b. A sidetrack agreement;
 - c. An easement or license agreement in connection with vehicle or pedestrian private railroad crossings at grade;
 - d. Any other easement agreement;
 - e. An obligation, as required by ordinance or bylaw, to indemnify a municipality, except in connection with work for a municipality;
 - f. An elevator maintenance agreement;
 - g. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "compensatory damages" because of "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

C. Coverage position:

In essence, the CGL insuring agreement creates two types of obligations for Underwriters:

The first is to defend the insured against any “action” seeking “compensatory damages” the insured becomes legally obligated to pay because of (among other things) “property damage”.

The second is to indemnify the insured for covered sums that the insured “becomes legally obligated to pay” as compensatory damages.

Importantly, the insuring agreement goes on to say “*No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A, B, and D.*” None of those payments are applicable or arise here.

In the absence of a legal action, Underwriters do not have any obligations to incur defense costs or provide a defense.

In terms of indemnity, the legal obligation that gives rise to the right to indemnity arises only when there is a judgment of a court or an agreed upon settlement. There is no “legal obligation” when the insured has potential exposure to a claim as is the case here – particularly where (as here) liability is disputed. Rather, legal obligations arise upon adjudication or mutual compromise. No such obligations are presented here.

It is also important to note Allied’s view (with which we agree in principle) that DMD is likely to be the at-fault party in the circumstances, if indeed there is one. Thus, even if an action was filed and the claim proceeded to trial, it is unlikely that Allied would be found legally obligated to pay any damages.

Underwriters also appreciate that CN might have a contractual claim against Allied that it would not have against DMD.

Underwriters also note that CN could possibly assert a claim against Allied for breach of the Initial Agreement/Master Services Agreement, rather than in tort (i.e. negligence). If that is the case, then the Policy’s exclusion for contractual liability, set out above, will likely operate to exclude coverage.

We appreciate that you are simply trying to obtain the best result for the creditors of Allied. However, the fact of the bankruptcy does not alter the legal relationship between Allied and its insurer, or change the fact that if CN was not paid a portion of its fee accounts, the proper approach would be to commence a legal action itself. This is not the purpose of liability insurance.

Please note that this letter does not amend or replace any provisions of the Policy, which remain in full force and effect. Nothing contained in this letter shall be construed as a waiver and Underwriters specifically reserve all their rights and defences under the Policy, including the right to rely on all Policy provisions, conditions, limitations and exclusions, as well as rules of law or equity not referred to in this letter.

Underwriters’ coverage position is based on the information provided to date. Accordingly, if you have information you have not already provided or wish to correct or supplement any of the information we have summarized in this letter, please provide such additional information or corrections to us. In the event that new or different information comes to light, Underwriters reserve the right to review and, if necessary, to revise or supplement their coverage position accordingly.

Should you have any further questions regarding this correspondence or if you have any further information which you believe might alter the position taken by Underwriters, please contact us as soon as possible.

Yours very truly,



JOEY DUBOIS, B.SC., CIP
Claims Adjuster, V.P. Specialty Risk Division
JD/lb

cc: Allied Track Services Inc.
Att'n: Mr. Jamey Craig (jamey.craig@alliedtrack.ca)

Blakes
Att'n: Mr. Chris Burr (chris.burr@blakes.com)

Appendix “F”



McCarthy Tétrault LLP
Suite 2500
1000 De La Gauchetière Street West
Montréal (Québec) H3B 0A2
Canada
Tel: 514-397-4100
Fax: 514-875-6246

Gabriel Faure
Partner
Direct Line: 514 397-4182
Email: gfaure@mccarthy.ca

May 9, 2023

By email (chris.burr@blakes.com)

Chris Burr
Blake, Cassels & Graydon LLP
199 Bay Street
Suite 4000
Toronto ON M5L 1A9

Re: Bankruptcy and receivership proceedings of 2806401 Ontario Inc. d/b/a Allied Track Services (Allied)

Dear Colleague:

We act as legal counsel for Canadian National Railway Company (**CN**) in the above-captioned matter and have been instructed to send you this letter.

We make reference to your letters dated December 7, 2022 and April 21, 2023 (your **April Letter**) addressed to CN, and to our meeting of May 3rd, 2023. Pursuant to your April Letter you advised CN that KSV Restructuring Inc., in its capacity as receiver and licensed insolvency trustee of Allied (the **Trustee**), has determined it necessary to commence a claim against CN for the amounts allegedly remaining owed to Allied by CN under each of the Projects (as this term is defined in your April Letter), totalling \$2,501,722.15.

As you are aware, CN had a damage claim arising from work done by Allied in April 2021, which caused sinkholes below CN's tracks at the New Westminster Project. Allied drilled through a City of Burnaby storm sewer which caused a rupture in the pipe. This has resulted in two sinkholes directly underneath the North Shore Industrial Lead that heads to the North Shore of Vancouver. The size of the sinkholes was such that they could have caused a derailment. The costs incurred by CN to remediate the sinkholes amounted to \$1,383,611.91.

CN retained Allied's services pursuant to a Master Service Agreement dated January 1st, 2021 (the **Master Service Agreement**). With respect to the New Westminster Project, a specific Statement of Work for a Fixed Pricing Scope entered into between Allied and CN on February 11, 2021 (the **New Westminster SOW**). Pursuant to its first paragraph, the New Westminster SOW is governed by and incorporated by reference into the Master Service Agreement. Pursuant to paragraph 16 of the Master Service Agreement, all matters regarding interpretation and enforcement of the Master Service Agreement are governed by the laws of the Province of Quebec and the federal laws of Canada where applicable.

Under the *Civil Code of Québec*, compensation is effected automatically, by the sole operation of law, upon coexistence of debts that are certain, liquid and exigible.¹ Compensation is effected

¹ Article 1673 CCQ.

regardless of the cause of the obligation that has given rise to the debt, provided that the claim does not result from an act performed with intention to harm.²

On May 12, 2021, CN sent to Allied by email a claim letter advising Mr. Rick Middaugh that CN had undergone an emergency investigation and that the costs estimated to conduct the required repair work amounted to approximately \$1,001,250.

On March 1st, 2022, CN sent to Allied a Claim Bill detailing the products and services supplied to CN to repair the damages arising from work done by Allied in April 2021 at the New Westminster Project (the **CN Claim**), and requiring payment of the aggregate amount of those products and services of \$1,383,611.91. At the latest on March 1st, 2022, the CN Claim against Allied became liquid and exigible, since its amount had become determined with certainty, and any amount owed or becoming owed to Allied by CN was automatically compensated with the CN Claim up to an amount of \$1,383,611.91.

The fact that Allied's insurer refused to confirm coverage of the CN Claim at the present time has no impact on compensation.

CN hereby expressly reserves all of the rights and remedies available to it. We remain available to further discuss this matter.

Yours truly,

A handwritten signature in black ink, appearing to read 'Gabriel Faure', written in a cursive style.

Gabriel Faure
Partner

cc: Canadian National Railway Company

² Article 1676 CCQ.