

## **APPENDIX 'B'**

# **CANADIAN PACIFIC RAILWAY INFORMATION**

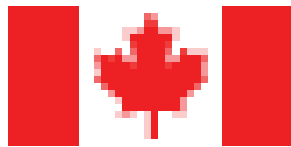
## **APPENDIX 'B' - CANADIAN PACIFIC RAILWAY INFORMATION**

### **DOCUMENTS ENCLOSED**

**Minimum Safety Requirements for Contractor Working on CP Property in Canada  
Canadian Pacific Policy on Use of Electronic Devices  
Sample Construction Agreement**

# CANADIAN PACIFIC

## MINIMUM SAFETY REQUIREMENTS FOR CONTRACTORS WORKING ON CP PROPERTY IN CANADA



Effective September 15, 2010

**No job on our Railway will ever be so important that we can't take the time to do it safely.**

**Work Smart, Stay Safe**

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# Introduction

At Canadian Pacific, safety is an integral part of the way we do business. We expect everyone working on Canadian Pacific's property to be unconditionally committed to safety. Safety must be given top priority and will take precedence over deadlines, production schedules, and all other considerations.

## 1 Application

### 1.1 Application

- 1.1.1 These Minimum Safety Requirements apply to all Contractors and other persons performing Work or otherwise providing services to Canadian Pacific on CP Property in Canada.
- 1.1.2 These Minimum Safety Requirements cannot be waived or altered, in whole or in part, without a prior risk assessment specific to the Work being conducted and written consent has been provided by Manager In Charge.
- 1.1.3 Notwithstanding the foregoing, these Minimum Safety Requirements do not apply to other federally certified railway companies, and provincial railway companies who come under federal jurisdiction through various agreements with Transport Canada, and who only operate trains on CP Property under various trackage or interchange agreements. However, these companies may be subject to CP's Minimum Requirements For Third Party Railway Operators on CP Property.
- 1.1.4 Further notwithstanding the foregoing, these Minimum Safety Requirements may not apply to Work or services provided in CP Property in Canada that are Office Premises, in which case, CP's Minimum Safety Requirements For Contractors Working In CP's Office Premises may apply.

## 2 Definitions and Interpretation

### 2.1 Definitions

- 2.1.1 In these Minimum Safety Requirements, the following capitalized terms shall have the ascribed meaning below:
  - (a) **"Applicable Legislation"** means all applicable legislation, regulations, by-laws, codes, rules, standards, policies, procedures, promulgated by any federal, provincial, and municipal governmental body, including those of its agencies, having authority over CP and, or Contractor in relation to the Work in the matter of health and safety of the person, property and, or the environment;
  - (b) **"Canadian Pacific"** or **"CP"** means Canadian Pacific Railway Company, and its subsidiaries and affiliates, and includes each of their respective directors, officers, employees, agent, and representatives;
  - (c) **"CP Personnel"** means CP's employees, agents, and representatives;
  - (d) **"CP Property"** means any building, facility, yard, track, right of way or other property owned or controlled by CP;
  - (e) **"Contractor"** means the company or person, and their respective employees and authorized agents, representative and subcontractors who are providing goods or services to CP;

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- (f) **“Contractor Personnel”** means the Contractor’s employees, and authorized agents, representative and subcontractors;
- (g) **“Co-mingled Work”** means Work where Contractor Personnel works directly with or in proximity (time or space) to CP Personnel;
- (h) **“Foul of Track”** means being in proximity to a track such that the individual or equipment could be struck by a moving train or track unit, or in any case within 4 feet (1.2 meters) of the outside of the nearest rail;
- (i) **“Hazardous Materials”** means any substance, which is hazardous to persons or property and includes, without limiting the generality of the foregoing:
  - (i) radioactive, explosive, poisonous, or toxic substances;
  - (ii) any substance that if added to any water, would degrade or alter the quality of the water to the extent that it is detrimental to its use by man or by any animal, or plant;
  - (iii) any solid, liquid, gas or odour or combination of any of them that, if emitted into the air, would create or contribute to the creation of a condition of the air that endangers the health, safety, or welfare of persons, or the health of animal life, or causes damage to plant life or to property; and
  - (iv) substances declared to be hazardous, toxic or dangerous under any law or regulation now or hereafter enacted by any governmental authority having jurisdiction.
- (j) **“Manager in Charge”** means a CP manager as designated or otherwise identified by CP as being responsible for overseeing the Work to be performed, such Manager in Charge may include, but is not limited to Local CP Management, Regional Superintendents, Division Engineers, and Project Managers.
- (k) **“Mobile Equipment”** means any motorized and self-propelled equipment, excluding Railway Equipment and highway vehicles, but including, for example, forklifts, tractors, cranes, ATVs, mules, motorized scissor lifts, and similar equipment that are not designed to operate or move on railway tracks;
- (l) **“Office Premises”** means any building, facility, or portion thereof, or other premises, whether owned or controlled by CP, which is used solely for clerical or administrative purposes and which does not contain heavy equipment or machinery, as designated by CP from time to time;
- (m) **“Railway Equipment”** means trains, locomotives, railcars, track units, hi-rail vehicles and any other equipment designed to operate or move on railway tracks;
- (n) **“Safety Management Plan”** means a documented plan which set out how Work is to be conducted in a safe manner, as required by Applicable Legislation and may also be referred to as Occupational Health and Safety Program, or Safety Management System;
- (o) **“Work”** means the provision of products and services and related activities;
- (p) **“Work Site”** means any CP Property where CP Personnel or Contractor Personnel are present, or permitted to be present, while engaged in any Work, including any Railway Equipment, Mobile Equipment and highway vehicles operated by or used to convey a person engaged in such Work.

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**2.2 Interpretation & Application**

- 2.2.1 Where legislation is referred to in these Minimum Safety Requirements, it shall include all amendments and replacements thereto as promulgated from time to time.
- 2.2.2 Where standards, such as those of the Canadian Standards Association, are referred to in these Minimum Safety Requirements, they shall include all amendments and replacements thereof from time to time.
- 2.2.3 Where there is any ambiguity, inconsistencies, or omissions between or among any agreements with CP, expressed or implied; any Applicable Legislations; any applicable CP policies and practices; and any applicable industrial standards and practices, Contractor and Contractor Personnel shall adhere to that which is most stringent and current.

**3 Contractor Compliance & Responsibilities**

**3.1 General Compliance**

- 3.1.1 Contractor shall be fully and solely responsible for ensuring the safety and health of Contractor Personnel and for ensuring that its Work and other activities do not compromise the health and safety of CP Personnel or any other party, the protection of the environment, the protection of CP's property and those of any other party, and do not interfere with the safety of CP's railway operations.
- 3.1.2 Contractor shall comply with and shall ensure all of Contractor Personnel are trained and qualified to safely perform the Work and that they comply with all Applicable Legislation pertaining to the protection against fire, safety, health, and environmental hazards, and with any licence, permits, authorizations issued by the respective authority.
- 3.1.3 Contractor shall comply with and shall ensure all of Contractor Personnel comply with all terms and conditions of all agreements, expressed or implied, between Contractor and CP, and all applicable CP policies and practices.
- 3.1.4 Contractor shall provide Contractor Personnel, at its own expense, any and all safety equipment required to protect against injuries during the performance of the Work and shall ensure that Contractor Personnel are knowledgeable of and utilize safe practices in performing the Work.
- 3.1.5 The Contractor shall have a copy of the following documents at the Work Site at all times, and shall produce them as and when requested by CP:
  - (a) These Minimum Safety Requirements for Contractors Working on CP Property;
  - (b) Licenses, Certifications, permits, training records or other documents required by Applicable Legislation or these Minimum Safety Requirements;
  - (c) Contractor's Safety Management Plan;
  - (d) Contractor's Emergency Information Sheet (see Attachment A); and
  - (e) Any additional documents required by Contract or by agreement with Manager In Charge.

**3.2 Compliance Assurance**

- 3.2.1 CP reserves the right to observe, inspect, test and audit Contractor and Contractor Personnel for compliance with all requirements herein, and to demand and receive all relevant records, documentation, and materials evidencing compliance, at any time, and from time to time.

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- 3.2.2 Failure of the Contractor or Contractor Personnel to comply with any applicable provisions herein may be considered a material breach, and in addition to all other remedies available, CP may without prejudice:
- (a) take over control of that Work or activity;
  - (b) order the Work to stop; and/or
  - (c) order Contractor Personnel to leave CP Property.
- 3.2.3 Upon the earlier of the completion of the Work, the expiration of the applicable agreement, or the request of a Manager In Charge, Contractor and Contractor Personnel shall return all identification, badges, access cards, and decals, issued or provided by CP to the Manager In Charge.

## 4 Safety Management Plans

### 4.1 General Requirements

- 4.1.1 Prior to starting any Work on CP Property, the Contractor must have a written Safety Management Plan that identifies:
- (a) all Applicable Legislation, rules, policies and work practices in relation to the Work being performed;
  - (b) specific hazards that are associated with the Work being performed for CP, for example:
    - (i) Construction, maintenance or inspections of buildings;
    - (ii) Working on or adjacent to railway tracks;
    - (iii) Maintenance or inspection or railway tracks, crossings or signal systems;
    - (iv) Operating Railway Equipment on CP tracks; or
    - (v) Co-mingled Work with CP Personnel; and
  - (c) methods of verifying compliance.
- 4.1.2 The Contractor will provide Manager In Charge with a copy of this Safety Management Plan on reasonable request.

## 5 Safety Training

### 5.1 Minimum Training & Qualifications

- 5.1.1 At its sole cost and expense, Contractor shall ensure that all Contractor Personnel be fully trained and qualified for the Work they will be performing. Contractors and Contractor Personnel shall meet, or exceed, all Applicable Legislation requirements relating to training and qualification.
- 5.1.2 Additionally, Contractor Personnel training and qualification shall meet or exceed all applicable industry standards.

### 5.2 Proof of Training & Qualification

- 5.2.1 Contractor Personnel shall at all times have proof of such training and qualifications and shall produce them as and when requested by the Manager In Charge.

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- 5.2.2 CP reserves the right to inspect qualification certificates, licenses, training records and/or Work-history records for any Contractor Personnel, and, or to be provided with copies thereof, on reasonable request.

## 6 Safety Orientation

### 6.1 General Requirements

- 6.1.1 Prior to beginning Work, all Contractor Personnel shall participate in CP authorized safety orientation, including on-site orientation presented by the Manager In Charge or designate.
- 6.1.2 Any time the scope of Work, location, condition or supervision changes, Contractor Personnel may be required to attend additional safety orientation sessions.
- 6.1.3 In recognition of the successful completion of such safety orientation CP will provide Contractor Personnel with an identification card, or other form of proof of completion as determined by CP from time to time. This identification authorizes the Contractor Personnel access to CP Property for the purposes of conducting Work. The identification card or other form of proof issued by CP shall be worn or be made visible at all times, or produced upon request and cannot be transferred under any circumstances.

## 7 Safety Job Briefing

- 7.1.1 Contractor Personnel shall attend all Job Briefings as and when conducted. Contractor Personnel shall be solely and fully responsible for understanding the content of the Job Briefing, and at a minimum shall:
- (a) have an understanding of the scope of Work to be performed and an appreciation of the nature of the location, environment, and conditions where such Work is to be performed;
  - (b) be aware of specific or unusual hazardous condition, existing or potential and the control measures required to protect against, control, mitigate, or where possible, avoid said hazard; and
  - (c) have an emergency response plan/evacuation procedures.
- 7.1.2 Where Co-Mingled Work is being performed, job briefings must include both CP Personnel and Contractor Personnel, and any other third parties. The job briefing shall identify nature and extent of the interaction between the Work being performed by Contractor Personnel, and those performed by CP Personnel or other third parties. Contractor Personnel shall inform CP Personnel, and any other third parties of known or potential unsafe conditions and hazards that may be created by, resulting from, or inherent in their Work and the corresponding preventative, mitigation, and/or control measures at all job briefings prior to commencing Work, or as soon as Contractor Personnel becomes aware of such conditions.
- 7.1.3 In all situations, all Contractor Personnel are expected to:
- (a) continually identify hazards and assess risk of hazards and to continually and clearly communicate all hazards to the Manager In Charge and to all other parties that may be affected at job briefings, and at any other time as and when appropriate or necessary;
  - (b) take actions that are within their assigned responsibility to eliminate or control hazards

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and risks; and

- (c) immediately notify their supervisor or the Manager In Charge of hazards that pose unacceptable risk that they are unable to eliminate or control.

7.1.4 Where Contractor Personnel are unable to eliminate or control a hazard, Contractor Personnel shall take interim measures to protect people, property, equipment and the environment until the hazard can be properly assessed and appropriate corrective actions taken.

## 8 Applicable Legislation

### 8.1 General Requirements

8.1.1 Contractor and Contractor Personnel shall be solely responsible for identifying and complying with all Applicable Legislation. CP is governed by federal legislations and therefore, Contractors and Contractor Personnel providing Work to CP are likewise required to comply with all Applicable Legislations. At a minimum, Contractor and Contractor Personnel shall comply with the federal legislations set out below which list is intended solely for general guidance, and not as a comprehensive list of all Applicable Legislation.

8.1.2 Additionally, the Railway Association of Canada (RAC) is an industry association which can provide support and guidance on matters related to railway safety and the transportation of dangerous goods.

### 8.2 Transportation of Dangerous Goods

8.2.1 When Work involves the handling or transportation of dangerous goods, that Work must comply with the federal *Transportation of Dangerous Goods Act*, (TDG). Contractor shall be solely responsible for ensuring that all Contractor Personnel who handles, offers for transport and/or transports dangerous goods by any transportation mode be trained and holds a valid training certificate or is working under the direct supervision of someone who is trained and holds a valid training certificate. The training must be based on the Work that the person is expected to perform and the DG that the person is expected to handle, offer for transport or transport.

### 8.3 Canada Labour Code

8.3.1 Where Work is being performed that may create a risk to the health and safety of CP Personnel, Contractor Personnel must comply with Part II of the *Canada Labour Code*.

8.3.2 Additionally, Contractor and Contractor Personnel shall comply with all applicable provisions of the Occupational Health and Safety Regulations (COHS) which are intended to prevent accidents and injuries to employees working for federally regulated companies. Compliance with these regulations may extend to Contractors, depending on the type of Work being done and their proximity to CP Personnel (i.e. Co-mingled Work). Alternatively, provincial occupational health & safety regulations will govern Contractors.

### 8.4 Railway Safety Act

8.4.1 The *Railway Safety Act* (RSA) governs all federally certified railways in Canada and some provincial railways through various agreements with Transport Canada. The RSA addresses all

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matters relating to the construction, alteration, operation, inspection and maintenance of railway works and railway equipment, and contains training and qualification requirements for certain types of Work. When applicable, Contractor and Contractor Personnel shall perform Work in accordance with the RSA, as if directly bound by it.

## **8.5 Environmental Protection Act**

8.5.1 Where Work is being performed that may impact the environment, that Work must comply with all applicable federal and provincial environmental acts and regulations. Some examples of applicable legislations includes the Canadian Environmental Protection Act; Fisheries Act, Navigable Waters Protection Act; Species at Risk Act; Migratory Birds Convention Act; and all corresponding Regulations. Provincial requirements are normally set out in a general Environmental Protection Act which is complemented by numerous regulations addressing more specific areas of concern.

# **9 Security**

## **9.1 Access to CP Property**

9.1.1 All Contractor Personnel must have the following identification in their possession at all times while on CP Property, and present them for review to any Manager In Charge, other CP managers and employees, Police Officer, security guard, or regulatory officer upon request:

- (a) photo identification (e.g. driver's license);
- (b) proof of employment document or card;
- (c) identification card, or other proof of safety orientation issued by CP;
- (d) access pass, issued and signed by a CP manager, where Work requires Contractor Personnel to ride in any locomotive or other non-passenger rolling stock;
- (e) security identification card, where required by CP; and
- (f) building access pass, where required by CP or by a third party having control of the premises.

9.1.2 Contractor shall conduct such background check as is necessary to ensure that Contractor Personnel do not pose a security risk to CP, such security risk includes the risk of the commission of terrorist activities, sabotage, vandalism, theft, and violence. CP reserves the right, at all times, to require that Contractor undertake certain security training and/or perform background checks of Contractor Personnel, prior to allowing such Contractor Personnel to enter onto CP Property.

## **9.2 Security Awareness**

9.2.1 Each Contractor shall have a security awareness program that educates Contractor Personnel to:

- (a) understand the railway security challenges, rules and procedures;
- (b) monitor and report any suspicious persons, activities or objects; and
- (c) stay alert to the environment.

9.2.2 On request CP can make available a copy of CP's Railway Security Awareness program for use by Contractor Personnel.

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**9.3 Firearms & Explosives**

- 9.3.1 Firearms (loaded or empty) are not permitted on CP Property, except for Police officers and other designated government officials when authorized to do so.
- 9.3.2 No explosives will be permitted on CP Property without written approval by the Manager In Charge.

**9.4 Reporting**

- 9.4.1 Contractor Personnel must report any security concern, security incident, criminal activity (known or suspected), suspicious happenings and/or suspicious persons on CP Property to the Manager In Charge or to CP Police Services in accordance with Section 18.

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# 10 Personal Conduct

## 10.1 Drug and Alcohol Prohibition

- 10.1.1 Entry onto CP Property when in possession of, or under the influence of alcohol, intoxicants, narcotics, or controlled substances is strictly prohibited.
- 10.1.2 Additionally, Contractor Personnel shall be free of any condition which may in any way adversely affect alertness, concentration, responsiveness, or the ability react calmly and responsibly to safety hazards.
- 10.1.3 CP reserves the right to request drug tests for Contractor Personnel as and where permitted by law.

## 10.2 Inappropriate Behavior

- 10.2.1 CP is committed to maintaining a Work environment that supports the dignity of all individuals. No person working at CP may be subjected to any form of discrimination or harassment, including sexual harassment.
- 10.2.2 Acts or threats of violence are unacceptable at all times on CP Property. Uttering of threats or committing acts of violence will result in the removal of the responsible Contractor Personnel from CP Property, termination of the Contract, and/or criminal charges.
- 10.2.3 Horseplay, practical jokes, fighting or any other activity that may create a safety hazard will not be tolerated.

## 10.3 Electronic Entertainment and Communication Devices

- 10.3.1 The use of personal entertainment devices, including portable audio and video devices such as compact DVD, CD, and game players, I-pods & MP3 players, is prohibited:
  - (a) while Working on CP Property;
  - (b) while transporting CP Personnel, whether on and off CP Property; and
  - (c) while operating any CP highway vehicles, Railway Equipment or Mobile Equipment, whether on and off CP Property.
- 10.3.2 The use electronic communication devices, including radio, cell phones, Blackberries, walkie-talkies, PDAs, GPS navigation units, Palm Pilots, portable computers and similar devices, is prohibited:
  - (a) while operating a highway vehicle, unless it is stopped and parked in a safe location;
  - (b) while operating or assisting in the operation of any Railway Equipment or Mobile Equipment;
  - (c) while operating power tools, equipment or machinery;
  - (d) when Foul of Track for any reason; or
  - (e) whenever use of such a device creates an unsafe condition.
- 10.3.3 Notwithstanding the foregoing, radios, walkie-talkies, GPS units, and other communication devices authorized by CP Manager in Charge may be used solely for the conduct of business

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where not prohibited by municipal or provincial legislation, and any electronic communication device may be used when it is necessary to communicate an emergency condition.

#### 10.4 Smoking

10.4.1 Smoking is prohibited on all CP Property, and in or on all highway vehicles, Railway Equipment, and Mobile Equipment, except for CP designated outdoor smoking areas.

## 11 Personal Protection

### 11.1 Work Clothing

11.1.1 The Contractor must ensure that Contractor Personnel wear clothing that meets Applicable Legislation and is suitable to perform the Work safely.

### 11.2 Personal Protective Equipment (PPE)

11.2.1 The Contractor shall ensure that Contractor Personnel wear personal protective equipment required by Applicable Legislation, regulations, codes and industry standards as necessary to protect against personal injuries while on Railway property. All personal protective equipment shall be approved by the Canadian Standards Associations (CSA) or by the American National Standards Institute (ANSI), and shall be in good condition and be properly fitted.

11.2.2 The following mandatory personal protective equipment ("PPE") shall be supplied by the Contractor at its own expense, and shall be worn at all times by Contractor Personnel while on CP Property:

- (a) safety hard hat, meeting CSA standard Z94.1;
- (b) safety boots with protective toe caps and soles, meeting CSA standard, Z195 (Green Triangle - Grade 1);
- (c) safety glasses with permanently attached side shields, meeting CSA standard Z94.3;
- (d) high visibility fluorescent outerwear with retro reflective striping (meeting CSA standard Z96 preferred), with such high visibility fluorescent outerwear not covered by other clothing or equipment, except where necessary for safety reasons such as where fall protection or pole climbing equipment is being used; and
- (e) any other PPE as required by Applicable Legislation, CSA standard, or otherwise required to protect Contractor Personnel from injuries.

11.2.3 In addition to the foregoing minimum requirements, the following table contains further recommendations in relation to specific types of PPE:

Type of Protection	Additional Recommendations
Hard Hats	Have hi-visibility characteristics which are not obscure by markings or decals

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Type of Protection	Additional Recommendations
Safety Eyewear	Tinted safety eyewear must meet Canadian Military Spec. J if operating Railway Equipment  Transition lenses are discouraged and should be worn with caution when working in changing light conditions  Personal sunglasses are discouraged and must not be worn when operating Railway Equipment
Safety Footwear	Have defined heels  Be laced and tied securely for ankle support
High-Visibility Apparel	Lime-green is recommended when working on, or near tracks, or when performing Co-mingled Work

11.2.4 Contractor and Contractor Personnel shall be solely and fully responsible for assessing the risks related to the Work and determining whether additional PPE may be required such as:

- (a) Nomex or Proban fire-retardant protective gear when performing certain TDG Work and or handling certain Hazardous Materials or performing specialized Work.
- (b) hearing protection when working in any area where noise exposure levels:
  - (i) are consistently greater than 84 dBA (Lex, 8);
  - (ii) exceed 115 dBA at any time; and
  - (iii) any other Work areas where posted, or so notified by CP management.
- (c) respiratory protection where Contractor Personnel may be exposed to occupational dusts/particulates, fumes, mists, gases and vapors, in which case, in which case Contractors must have a written Respiratory Protection Program that meets or exceeds Applicable Legislation;
- (d) additional eye and face protection meeting CSA standard Z94.3 (i.e. face shields, impact/splash goggles, welding/cutting goggles and welding helmets); and
- (e) fall protection systems and equipment meeting appropriate CSA standards as required by Applicable Legislation and appropriate for the related fall hazards.

## 12 Railway Track Protection

### 12.1 Contractor's Responsibilities for the Protection of Railway Traffic and Property

12.1.1 Where the Work Site is in close proximity to, or is located on, above, or below railway tracks, special attention, care and precautions shall be taken to ensure the safety of all Contractor Personnel, CP Personnel, all other third parties and to protect CP's property and railway operations.

12.1.2 Contractor shall ensure that Contractor Personnel is made aware of all unique and inherent hazards in working near, on, above or below railway tracks and shall ensure that all Contractor Personnel are fully trained and equipped to work safely.

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- 12.1.3 Contractor Personnel shall at all times remain alert to the movement of trains, rolling stock and other Railway Equipment.
- 12.1.4 Contractor Personnel shall be especially alert in yards and terminal areas as
- (a) Railway Equipment that appears to be stationary may be moving;
  - (b) the rate of movement of Railway Equipment may be faster than it appears;
  - (c) Railway Equipment change tracks often; and
  - (d) movements may be occurring simultaneously on adjacent tracks

## **12.2 50 Feet Clearance Requirement**

- 12.2.1 All Work shall be performed as far away from railway tracks as possible.
- 12.2.2 Unless authorized by CP, Contractor Personnel, equipment, and vehicles are not permitted to be within 50 feet of the closest track centerline.
- 12.2.3 In the event Work must be carried out within 50 of the closet track centerline, written authorization must is obtained from the Manager in Charge, and Contractor Personnel must still remain at the maximum practicable distance from all railway tracks at all times.
- 12.2.4 When crossing tracks, Contractor Personnel shall ensure a minimum of 50 feet (approximately 15 metres) separation between standing Railway Equipment, stay at least 15 feet away from the end of the nearest equipment, and look both ways before crossing tracks, and if clear, walk at a right angle to the tracks.

## **12.3 Flagging Protection**

- 12.3.1 When the Work requires Contractor Personnel to be within 50 feet (approximately 15 metres) of any railway tracks, Contractor or Contractor Personnel shall notify and obtain the written approval of the Manager In Charge in advance of the intended start date, and when approved, shall only perform Work strictly in accordance with all terms and conditions of that approval.
- 12.3.2 Unless otherwise indicated by the Manager In Charge, proper protection against the movement of trains, rolling stock and other Railway Equipment shall be deemed required at all times whenever Work or Contractor Personnel must be within 50 feet (approximately 15 metres) of the closet track centerline. Protection may be provided only by a qualified CP employee through use of a flag person, Canadian Railway Operating Rules (CROR) Track Occupancy Protection (TOP), mechanical blue flag protection or other protection methods designated by the Manager In Charge.
- 12.3.3 Where CP determines that flagging is required, then Work must be strictly conducted under the direction of a CP flag person or such other person designated by the Manager In Charge.
- 12.3.4 Contractor Personnel shall ensure that there is clear communication at all times between Contractor Personnel and any CP flag person. Contractor Personnel shall ensure that they are aware of:
- (a) flagging distance limits;
  - (b) time limits; and
  - (c) any adjacent tracks where movement of Railway Equipment may still occur.
- 12.3.5 Contractor Personnel shall not assume that a train movement is being stopped or cleared unless clear communication is received directly from the CP flag person.

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- 12.3.6 A job briefing between the CP flag person and all Contractor Personnel must occur before beginning any Work on or Foul of Track.
- 12.3.7 Blue flag protection is used to indicate that CP or Contractor Personnel are working on, under or between Railway Equipment and movement of trains or other Railway Equipment is prohibited. Blue flags must not be tampered with or obstructed. Blue flags can only be removed by the person or group of persons who originally applied it. Application, use, and removal of blue flags, when appropriate, may only be done under the authorization and guidance of the Manager in Charge.
- 12.3.8 Red flag protection is used to indicate that CP or Contractor Personnel are working on or Foul of Track, or the track is out of service and movement of trains or other Railway Equipment is prohibited. Red flags must not be tampered with or obstructed. Application, use, and removal of red flags, when appropriate, may only be done under the authorization and guidance of the Manager in Charge.

**12.4 Working on or near Tracks**

- 12.4.1 When authorized to perform Work Foul of Track or otherwise be near railway tracks, Contractor Personnel shall ensure at Contractor Personnel, equipment, and vehicles are kept as far away from railway tracks as practicable, and shall at all times:
  - (a) be alert to train movements and shall expect the movement of trains, engines, cars, or other mobile Railway Equipment at any time, on any track, and in any direction, even if they appear to be stationary or in storage;
  - (b) not rely on others to protect them from train movement;
  - (c) stay at least 15 feet (approximately 5 metres) away from the ends of Railway Equipment when crossing the track;
  - (d) ensure a minimum of 50 feet (approximately 15 metres) separation prior to crossing between Railway Equipment;
  - (e) look both ways before crossing tracks, and if clear, walk at a right angle to them.
  - (f) never climb on, under or between Railway Equipment;
  - (g) be aware of the location of structures or obstructions where track clearances are close;
  - (h) not stand on the track in front of an approaching engine, car or other equipment;
  - (i) when possible, stand at least 20 feet back from the track(s) when there is a passing movement of trains, engines, cars, or other mobile Railway Equipment, to prevent injury from flying debris or loose rigging and shall observe the train as it passes and be prepared to take evasive action in the event of an emergency;
  - (j) not stand on or between adjacent tracks in multiple track territory when a train is passing;
  - (k) not walk, stand or sit on the rails, between rails or on the end of ties, unless absolutely necessary. As the rail surface can be extremely slippery, personnel must step over the rails when crossing tracks. Personnel shall also be aware railway ties can also be slippery and that railway ballast can shift while walking on top of it. Situational awareness and use of proper footwear is important;
  - (l) not remain in a vehicle that is within 50 feet of a passing train unless specifically authorized, or where this is not possible, park the vehicle as far away from the tracks as possible and walk to as safe a distance whenever trains pass.
  - (m) keep away from track switches as remotely operated switch points can move

unexpectedly with enough force to crush ballast rock. Personnel shall stay away from any other railway devices they are unsure of. Personnel shall not disturb or foul the ballast at any time.

## **12.5 Equipment on or near tracks**

- 12.5.1 Contractor Personnel shall not be Foul of Track with any piece of equipment without a CP flag person or other authorized track protection;
- 12.5.2 Contractor Personnel shall not move equipment across the tracks except at established road crossings, or unless under the protection and authorization of a CP flagperson and only if the Work Site has been properly prepared for such a move. Tracked equipment will require a CP flagperson any time railroad tracks are crossed.
- 12.5.3 Contractor Personnel shall not move equipment across railroad bridges or through tunnels, except as expressly authorized and only under such conditions as stipulated by the Manager in Charge.
- 12.5.4 Contractor Personnel shall move equipment away from the tracks at least 50 feet, or where not possible, park the equipment as far away from the tracks as possible, and walk to a safe a distance whenever trains pass.
- 12.5.5 Buckets, shovels, and loads on cranes must be lowered to the ground to rest, and cranes without a load must have their load line tightened or retracted to prevent movement, whenever there are passing trains.

## **12.6 Railway Signs, Signals, Flags and other Communication Infrastructure**

- 12.6.1 Signs, signals and flags shall not be obstructed, removed, relocated, disabled or altered in any way without proper authorization and qualification.
- 12.6.2 Only qualified Contractor Personnel who are authorized by CP are permitted to operate switches, derails, electric track mechanisms, signal and communication systems or other track control appliances.
- 12.6.3 Railway pole lines carry electric power and should be treated as any other power lines.

## **12.7 Excavation**

- 12.7.1 Before starting excavation operations, the Contractor shall ascertain that there are no underground wires, fiber optic cables, pipelines or other utilities which could be damaged or, if present, that such installations are properly protected. Fiber optic cables are present on most segments of the right-of-way. Prior to commencing any excavation, the Contractor shall contact the proper authority to obtain the necessary permit and to locate and protect such cables or other underground utilities.
- 12.7.2 Excavations shall not be left unattended unless they are properly protected; and the Manager In Charge shall be notified.

# **13 Workplace Hazardous Materials Information System (WHMIS)**

## **13.1 General Requirements**

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- 13.1.1 If at any time Contractor's Work involves the use, handling, storage, or disposal of Hazardous Materials ("Handling of Hazardous Materials"), Contractor Personnel must inform the Manager in Charge.
- 13.1.2 Contractors shall ensure that all Contractor Personnel are fully trained in the Handling of Hazardous Materials and that Contractor and Contractor Personnel are in full compliance with all Applicable Legislation, and as directed by the Manager In Charge.
- 13.1.3 Contractor Personnel shall have appropriate processes, systems and controls in place to prevent or otherwise mitigate potential environmental, health and safety risks associated with the Handling of Hazardous Materials.

**13.2 Access to MSDS Documents**

- 13.2.1 Prior to beginning any Work that may expose CP Personnel to Hazardous Materials, Contractor or Contractor Personnel shall:
  - (a) provide a copy of the respective Material Safety Data Sheet (MSDS) to the Manager In Charge; and
  - (b) keep a copy of the MSDS at the Work Site and shall such that it is readily available at all times.

**13.3 Hazardous Material Incident or Spill**

- 13.3.1 In the event of a hazardous material incident or spill, the Contractor must:
  - (a) ensure that no Contractor or CP Personnel have or will be exposed;
  - (b) take all reasonable actions to contain the spill;
  - (c) respond in accordance with its emergency response plan; and
  - (d) notify CP immediately in accordance with Section 18.

**14 Operation of Highway Vehicles**

**14.1 Highway Vehicles**

- 14.1.1 The following requirements apply to all highway vehicles, whether operated on CP Property; or used to transport CP Personnel.

**14.2 Regulations and Inspection**

- 14.2.1 Before using a highway vehicle, Contractor Personnel shall:
  - (a) complete a pre-trip inspection;
  - (b) maintain an inspection log;
  - (c) ensure periodic inspections are completed at official testing locations;
  - (d) ensure the vehicle is maintained and in safe operating conditions at all times; and
  - (e) ensure the vehicle is in compliance with applicable motor vehicle regulations and license requirements.
- 14.2.2 Vehicle maintenance, inspection records and logs must be made available to the Manager In

Charge on request.

### **14.3 Vehicle Operator Requirements**

14.3.1 Operation of highway vehicles is restricted to those Contractor Personnel who are licensed, qualified and authorized to do so. Such Contractor Personnel shall be responsible for the safety of all passengers at all time. For greater certainty, such Contractor Personnel shall:

- (a) hold a valid license for the class of vehicle being operated, in accordance with local provincial requirements, and
- (b) strictly comply with all posted traffic signs, signals, and all shall obey all Applicable Legislations; and
- (c) maintain the required driver log, and make the log available to the Manager In Charge on request, and
- (d) comply with the requirements on the use of electronic devices as set out in Section 11.

### **14.4 Driving on CP Property**

14.4.1 In addition to the requirements set out above, while on CP Property, Contractor Personnel shall:

- (a) travel only on designated roadways unless otherwise instructed;
- (b) keep daytime running lights on (if so equipped);
- (c) not exceed 25 km/h (15 mph) unless otherwise posted;
- (d) come to a full stop at all blind corners, rail and roadway crossings;
- (e) yield the right of way to all Mobile Equipment and other non-highway equipment or service vehicles;
- (f) not operate vehicles (or any internal combustion equipment) inside buildings or enclosed structures unless adequate ventilation is provided;
- (g) not park Foul of Track unless on-track protection is provided;
- (h) not leave vehicles running unnecessarily;
- (i) park only in pre-determined or designated areas;
- (j) always use the parking brake (or wheel chocks) when leaving an unoccupied vehicle running; and
- (k) where safe and practicable, back vehicles into marked parking spaces to avoid reverse collisions when exiting.

14.4.2 All Contractor Personnel who will be operating a highway vehicle or Mobile Equipment in any CP intermodal facilities must complete a Driver Safety Orientation program prior to first entry, and from time to time thereafter as directed by the Manager In Charge.

### **14.5 Seat Belts**

14.5.1 Seat belts must always be worn while operating or riding in any equipped vehicle unless Contractor Personnel is actively engaged in inspections requiring said Contractor Personnel to be free of such restraint, and then only when the vehicle is operating at less than 25 km/h (15 mph).

### **14.6 Loads**

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14.6.1 Contractor Personnel shall ensure vehicles are loaded according to weight and dimensional requirements as authorized by provincial regulations and permits, and properly load and secure tools, material, equipment and freight to avoid shifting, falling, leaking or otherwise escaping from vehicles during operation.

#### **14.7 Riding in CP Vehicles**

14.7.1 Contractor Personnel are prohibited from operating or riding in any CP vehicles unless authorized to do so, or in case of emergency.

## **15 Tools, Equipment and Machinery**

### **15.1 General Safety Requirements Respecting All Tools, Equipment and Machinery**

15.1.1 Contractor Personnel shall ensure that all tools, equipment, and machinery used be:

- (a) in compliance with all Applicable Legislations
- (b) in good working order, properly serviced and maintained;
- (c) safe for their proposed use and used only for purposes specified by the manufacturer;
- (d) if mobile, equipped with appropriate safety devices (e.g. lights, horns, back-up alarms, safety beacons), and prevented from moving through use of the hand brake, wheel blocking, wheel chocking and/or a derail where applicable.

15.1.2 Use of CP tools by Contractor Personnel is prohibited unless specifically authorized by local CP management.

### **15.2 Lockout – Hazardous Energy Control**

15.2.1 Contractor Personnel shall employ such hazardous energy lockout procedure as required to eliminate the accidental or unexpected start-up, energizing, or release of stored (residual) energy during maintenance, repair and/or servicing activities.

15.2.2 All tools, equipment and machinery must be made safe and isolated from all energy sources rendering the machine, equipment, or process inoperative prior to performing maintenance, repair or servicing related tasks.

15.2.3 No Contractor Personnel can remove any CP applied lock or tag, including bad-order tag.

15.2.4 Notwithstanding the foregoing, if Contractor's Work may create an energy hazard to any CP Personnel, then all affected parties must follow the requirements set forth in CP's Lockout – Hazardous Energy Control Policy and Code of Practice.

15.2.5 If CP Personnel and Contractors are jointly performing maintenance, repair or servicing activities on the same machine, equipment or using the same energy source, then they must apply a multi-lock hasp and individual locks and tags (as per CP's Lockout – Hazardous Energy Control Policy and Code of Practice).

### **15.3 Electrical Safety Requirements**

15.3.1 In addition to the hazardous energy control lockout requirements above, all electrical Work must comply with Applicable Legislation, CSA and National Fire Protection Association (NFPA)

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requirements.

15.3.2 Contractor Personnel Working on electrical systems must:

- (a) if in proximity to CP Personnel, inform them of:
  - (i) existing or potential electrical hazards;
  - (ii) any specific additional personal protective equipment that may be required;
  - (iii) applicable safe Work practices;
  - (iv) applicable emergency and evacuation procedures; and
  - (v) apply lock out procedures as per section above on Lockout – Hazardous Energy.
- (b) have practices, procedures and training that comply with:
  - (i) Applicable sections of CSA-Z462 Workplace Electrical Safety Standards;
  - (ii) Canadian Electrical Code Parts 1 and 2; and
  - (iii) Any other Applicable Legislation; and
- (c) not operate or allow cranes or other mobile equipment to approach closer to any live electrical power line than is permitted by CSA Z150 Standards for mobile cranes.

**15.4 Lifting Devices**

15.4.1 All lifting devices, including but not limited to jacks, cranes, cables, slings and hooks shall:

- (a) meet Applicable Legislation governing design, inspection, maintenance and operation;
- (b) be safety certified and labeled or tagged with load capacity limits where required;
- (c) have sufficient capacity for the planned lift;
- (d) have sufficient footing or support area to properly distribute the load during a lift.

**15.5 Welding and Torch Cutting**

15.5.1 When welding or torch cutting, Contractor Personnel shall:

- (a) be properly trained and qualified;
- (b) ensure that all closed containers have been properly purged;
- (c) direct flame or sparks away from other Workers, equipment and flammable material;
- (d) have a fire extinguisher readily available;
- (e) keep compressed gas and oxygen cylinders stored in a secure, vertical position, with regulators removed and caps applied, labeled properly and located in vented cabinets or other designated locations.

**15.6 Explosive Actuated Tools**

15.6.1 Only Contractor Personnel who are qualified and licensed in accordance with Applicable Legislation, and authorized by CP, may use explosives or explosive actuated tools.

**15.7 Unattended Equipment or Machinery**

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- 15.7.1 Tools, Equipment and Machinery shall not be left unattended at any time and shall not be stored on CP Property, unless expressly permitted pursuant to a written agreement with CP or by the Manager In Charge in writing, and where so permitted, Contractor shall ensure that:
- (a) storage shall be restricted to the designated area, or as otherwise specified by CP.
  - (b) all such tools, equipment and machinery shall be secured in a safe position well clear of all tracks to prevent accidental contact with trains and moving equipment and to not restrict train crew sightlines;
  - (c) as much as possible, tools, equipment and machinery shall be stored in locations out of public view.

## 16 Emergency Response

### 16.1 Emergency Response Plan

- 16.1.1 The Contractor must maintain a current emergency response plan and make it available to CP on request. Emergency response plans must include at a minimum:
- (a) contractor reporting procedures in the event of an incident or spill;
  - (b) emergency response contacts and phone numbers, including phone numbers for CP incident reporting and local CP managers (See Attachment A); and
  - (c) containment measures to be taken in the event of an incident or spill.

### 16.2 Initial Response

- 16.2.1 Initial response to any emergency condition must follow the following sequence:
- (a) protect the safety and security of all individuals and communities
  - (b) provide environmental protection and mitigation
  - (c) conduct incident investigation & evidence preservation
  - (d) restore railway operations

### 16.3 First Aid

- 16.3.1 Contractor Personnel must have sufficient First Aid qualified personnel and the required First Aid kit and any other required First Aid equipment at the Work Site, suitable for the crew size, nature of Work being performed and location, all of which shall, at a minimum, comply with Part II of the Canada Labour Code.

### 16.4 Fire Protection

- 16.4.1 The Contractor must have appropriate fire extinguishers, suitable in type, size and quantity having regards to the nature of Work and Applicable Legislation, readily available at all times on:
- (a) the Work Site; and
  - (b) all Contractor equipment, machinery and highway vehicles.
- 16.4.2 Contractor Personnel shall ensure that all necessary precautions are taken to prevent fires, including the following:

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- (a) storing flammable material (e.g. paper, rubbish, sawdust, oily or greasy rags, etc.) in proper containers;
  - (b) storing and transporting fuel, gasoline or other flammable liquids in approved containers. Use of unapproved containers is prohibited;
  - (c) proper disposal of flammable material daily;
  - (d) prevent static electricity when dispensing or transferring flammable liquids by using proper grounding and bonding techniques;
  - (e) avoid using cutting or welding torches during the last one-half hour of shifts, if possible;
  - (f) taking special precautions with fusees, including:
    - (i) store and transport in approved containers;
    - (ii) do not allow fusees to come in contact with any combustible material, including railway ties or wooden timbers; and
    - (iii) fully extinguish fusees before leaving the location where used;
  - (g) promptly advise CP management of any fire on CP Property; and
  - (h) fully extinguish or provide protection for any fire prior to leaving the Work Site.
- 16.4.3 Contractors Working on the CP right-of-way where a high risk of fire exists (e.g. during rail grinding, rail welding) must have:
- (a) appropriate fire prevention and suppression plans (including emergency numbers for CP, local firefighters and fire control districts); and
  - (b) additional fire fighting equipment and trained Contractor Personnel on site, as required by Applicable Legislation.

## 17 Reportable Accidents, Incidents and Injuries

### 17.1 Reportable Injuries

17.1.1 Reportable injuries include any personal injury to:

- (a) Contractor Personnel;
- (b) any CP Personnel; or
- (c) to any third party on CP Property.

### 17.2 Reportable Accidents

17.2.1 Reportable accidents include any occurrence that results in:

- (a) damage to railway tracks, right of way, buildings or other CP Property;
- (b) damage to Railway Equipment;
- (c) damage to CP highway vehicles;
- (d) release of dangerous goods;
- (e) spill or loss of transported commodities; and
- (f) a threat to the environment.

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### **17.3 Reportable Incidents**

17.3.1 Reportable incidents include:

- (a) unintended movement of Railway Equipment;
- (b) failure to provide track protection for Workers when required;
- (c) movement of Railway Equipment beyond authorized limits;
- (d) operation of Railway Equipment by an unqualified person;
- (e) unauthorized handling of a track switch;
- (f) damage, vandalism or tampering with any railway signals, structures or railway safety device;
- (g) seepage, leakage, spills of, or other contamination from, Hazardous Materials;
- (h) actual, threaten or suspected security related incidents;
- (i) slides, washouts or other on-track obstructions; or
- (j) any occurrence that may disrupt the movement of trains or affect safe rail operations.

## **18 Reporting**

### **18.1 Emergency Reporting**

18.1.1 In the case of an emergency, Contractor Personnel must call:

- (a) 911, where this emergency response system exists, or
- (b) the local police, fire or emergency department; and
- (c) in all cases, also the CP Police Services Communication Center at toll free 1-800-716-9132 from any Canadian or U.S. location.

### **18.2 Accident, Incident, Injury Reporting**

18.2.1 When an accident, incident or injury occurs on CP Property, the Contractor must:

- (a) immediately report it to the Manager In Charge or to the NMC; and
- (b) follow instructions given to protect the scene.

18.2.2 CP does not report Contractor Personnel injuries to WCB. Such WCB reporting remains the Contractor's responsibility.

### **18.3 Information to Report**

18.3.1 Information required with the initial report includes:

- (a) type of incident;
- (b) date and time of occurrence;
- (c) location (mileage, subdivision, building, yard or other physical description);
- (d) identity of person(s) involved or injured (company & name);

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- (e) description of any dangerous goods or Hazardous Materials involved;
- (f) type & unit number of any Railway Equipment or vehicle involved;
- (g) description of occurrence, damage and/or injury, and cause if known;
- (h) description of any emergency response;
- (i) name and contact information of person making the report; and
- (j) such other information that CP may require.

**18.4 Environmental Incidents and Spills**

18.4.1 In the event of an environmental incident or spill that could have a negative impact on the environment, the Contractor must immediately:

- (a) report the incident to the NMC, the Manager In Charge, and the designated CP Contact as per the governing agreement relating to the Work;
- (b) take all reasonable actions to contain the spill;
- (c) respond in accordance with its emergency response plan; and
- (d) provide CP with the following information;
  - (i) description of location and surrounding area, including any sensitive environmental areas nearby (e.g., rivers, parks, sewers);
  - (ii) type and quantity of substance released;
  - (iii) cause of spill or deposit, if known; and
  - (iv) details of any immediate action taken or action proposed to be taken to contain spill and recover substance.

**18.5 Additional Contractor Requirements**

18.5.1 Contractor and Contractor Personnel must:

- (a) ensure an appropriate emergency response is initiated;
- (b) protect any evidence until released by CP Manager In Charge;
- (c) cooperate fully with any CP investigation;
- (d) cooperate with any investigating government agency; and
- (e) notify CP if information is requested by any investigating government agency.

**19 Contractor & Contractor Personnel Acknowledgement**

**19.1 Acknowledgement**

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- 19.1.1 Contractor and Contractor Personnel who Work on CP Property shall be deemed to have read and understood the content of these Minimum Safety Requirements For Contractors While Working On CP Property, as amended from time to time, and to agree to be bound by them.
- 19.1.2 These Minimum Safety Requirements For Contractors While Working On CP Property are subject to change without prior notice. The most current version of these Minimum Safety Requirements can be viewed at [www.cpr.ca](http://www.cpr.ca) or by contacting the Manager In Charge.

**NOTES:**

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**Work Smart, Stay Safe**



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## 20 Attachment A - Emergency Information Sheet

EMERGENCY CONTACT INFORMATION		
EMERGENCY CONTACTS	PHONE	LOCATION
CP Calgary Network Management Center	1-800-795-7851	West of and including Mactier, Ontario.
CP Montreal Operations Centre	1-800-363-3277	East of Mactier, Ontario plus southern Ontario
CP Police Services	1-800-716-9132	
CP Railway Traffic Controller Radio Channel		
Local Police Services		
Local Fire Services:		
Local EMS		
Hospital		
Physician		
Aircraft Service, (if applicable):		
Watercraft Service, (if applicable):		
Other Emergency Services		

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Emergency Evacuation Route

(Describe nearest evacuation assembly location OR Provide sketch on back)

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WORK SITE INFORMATION		
	PHONE	LOCATION
Work Site Location Name		
Railway Subdivision & Mileage		
Address, Number and Street		
Nearest Town		
CP Manager in Charge		
Emergency Site Access Route (Describe route from nearest emergency services location in detail including access roads & physical landmarks OR provide sketch on back.)		
Contractor Supervisor		
Site Telephone		
Certified First Aid Attendant		
Location of First Aid Supplies at Site		
Location of Fire Extinguishing Equipment:		
Location of WHIMS data sheets		
UTILITY INFORMATION		
UTILITIES CONTACT	PHONE	LOCATION
Natural Gas:	( )	
Electrical:	( )	
Fiber Optic Line:	( )	
Water & Sewer:	( )	
Telephone:	( )	
Cable System:	( )	
Qualified employee(s) in:	( )	
Confined Space Entry, (if applicable):	( )	
Equipment requirements for Confined Space Entry, (if applicable):	( )	
Other:		

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# Policy on Use of Electronic Devices

Policy H&S 4320

Approved on: April 13, 2009

Effective Date: June 1, 2009

Revised: March 1, 2011

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## **Policy on the Use of Electronic Devices**

### Scope

This policy applies to all Canadian Pacific (CP) employees, contractors and other persons authorized to be on CP property in Canada and the U.S.

### Purpose

The purpose of this policy is to reduce the risk of injury to employees and the public that may result from inappropriate use of electronic entertainment and communication devices while on duty.

### Compliance

Any person who fails to comply with this policy may be subject to investigation and discipline, up to and including suspension or dismissal.

Note: For purposes of investigating accidents, injuries, Cardinal Rule Violations, and suspected violations of this Policy, employees may be asked to provide records showing the date and times of use of personal communication devices in their possession. Failure to provide the requested records will result in the Company drawing an adverse inference (will assume that the employee was using the personal communication device) in violation of this Policy and/or applicable law, regulation or operating rule. For purposes of these investigations, employees who use or carry personal electronic devices during work hours, on Company property and/or in Company vehicles, even when otherwise permitted by this policy, do so with the understanding that they have a reduced expectation of privacy.

### Application

#### A. Use of Personal Entertainment Devices

Use of Personal Entertainment Devices while on duty or on CP property is prohibited, except when used in an office or other similar locations approved by your supervisor or by the person in charge, or when such a device is installed in a company vehicle..

#### B. Use of Communication Devices

##### 1. When operating a company vehicle

###### a. Hand Held Communication Devices

Hand held communication devices are prohibited from use while operating a company vehicle while it is in motion on any type of road. The vehicle must be stopped in a safe location before the device can be used.

b. Hands Free Communication Devices

Hands free communication devices are permitted for limited use while operating a *company vehicle* if:

1. It is used solely for company business; and
2. It is safe to do so; and
3. The vehicle being operated is NOT on a public roadway in a province, state, or other jurisdiction where such use is in violation of any law or regulation.

Notes: This section on operating a vehicle applies to all employees, contractors and others while on CP property or transporting CP employees.

Vehicle mounted railway radios and GPS units are considered hands free communication devices. However, GPS devices must be programmed only while the vehicle or mobile equipment is completely stopped and in a safe location. Verbal instructions from the device should be used to avoid unnecessary distraction or staring at the screen.

2. Use by Employees Governed By Operating Rules

- a. U.S. *Railroad operating employees* and all other GCOR rules qualified employees must comply with the applicable operating rule and/or Safe Work Procedure when performing any duties governed by those rules.
- b. All Canadian employees performing duties governed by operating rules must comply with CROR General Rule A and applicable System Special Instructions.

3. Use by Employees Not Governed by Operating Rules

- a. When operating, controlling, assisting, or supervising the movement of any *on track equipment* when NOT governed by operating rules, the use of company provided communication devices is prohibited except when:
  - all movements of that equipment are stopped; and
  - the employee is not foul of any track; and
  - the employee confirms with all involved employees that such use will not interfere with any safety related duty.
- b. When operating, controlling, assisting, or supervising the movement of off-track *mobile equipment*, the use of company provided communication devices is prohibited except when:
  - the employee is not foul of any track; and
  - the employee confirms with all involved employees that such use will not interfere with any safety related duty.

- c. When performing *physical work*, as defined by this policy or by local supervision, the use of company provided communication devices is prohibited except when:
- all *physical work* activities are stopped; and
  - the employee is not foul of any track; and
  - the employee confirms with all involved employees that such use will not interfere with any safety related duty.

Note: Company provided communication devices do not apply to devices used for, and directly relating to, safe railway operations (e.g. railway radios).

- d. The use of personal communication devices is prohibited at all times except:
- during a recognized break or meal period in a location that is safe to do so;
  - in locations designated by local supervision and/or signage; or
  - for minimal voice communication, unless otherwise prohibited by applicable laws or regulations, local supervision, and/or signage, and only when:
    - all movements of on track or *mobile equipment*, or *physical work* activities are stopped; and
    - the employee is not foul of any track; and
    - the employee confirms with all involved employees that such use will not interfere with any safety related duty; and
    - the device is immediately turned off and returned to storage when call is complete.

Note: When not in use, personal communication devices must be turned off with any ear pieces removed and stored out of sight in a location designated by the supervisor, but at a minimum not on the person.

## C. Exceptions

A *communication device* may be used:

- a) At any time to transmit an emergency situation or to advise others of an unsafe condition;
- b) By emergency response personnel when it is safe to do so, but only with the permission of the site supervisor; and after a job briefing has been conducted with other affected employees and contractors.
- c) By CP Police at any time;
- d) Except where otherwise prohibited by law or regulation, by passengers in a company vehicle, on track equipment, or mobile equipment only when they are not assisting the operator and the operator agrees it is safe to do so;
- e) In an office, or similar location approved by your supervisor or the person in charge.

## Definitions

Company means Canadian Pacific Railway Company and includes the Soo Line, the Dakota, Minnesota & Eastern, and the Delaware & Hudson Railroad Companies.

Company Vehicle means any owned, leased, rented or private vehicle licensed to operate on public roads when used for company business by any CP employee, contractor or other 3<sup>rd</sup> party authorized to be on CP property.

Communication Device means any electronic device capable of communicating remotely, through oral communications, text messaging, electronic mail, or electronic transmission of any media. This includes but is not limited to cell phones, walkie-talkies, 2-way radios, PDAs, GPS navigation units, Palm Pilots, Blackberrys, portable computers and similar devices.

Foul of track means placement of an individual in such proximity to railway tracks that the individual could be struck by moving equipment, or in any case within 4 ft. (1.2 metres) of the nearest rail.

Mobile equipment means any self-propelled equipment not operating on-track or licensed to operate on the road, including forklifts, trackmobiles, tractors, cranes, ATVs, Mules, and similar equipment.

On track equipment means any locomotive (with or without cars), occupied rail car, or track unit.

Person means any employee, contractor or other person authorized to be on CP property, operating a CP vehicle, or transporting CP employees in the course of business.

Personal Entertainment Device means any personal radio, TV, DVD player, CD player, game player, computer, I-Pod, MP3 player, or similar electronic video or audio entertainment device which may distract a person from safely performing their work. This definition includes any multi-function devices (such as a cellular telephone, Blackberry, etc.) that are capable of similar entertainment functions.

Physical work, for purposes of this policy, means:

- maintenance or inspection of on or off track equipment;
- maintenance or inspection of track, signals, or structures;
- operating power tools or welders;
- working foul of track; or
- similar work where a distraction can put a person or the public at risk, and includes directing or supervising the safe conduct of such work.

Railroad operating employee means an individual who is:

- engaged in or connected with the movement of a train including a hostler,
- a train employee providing commuter or intercity rail passenger transportation, or
- subject to hours of service governing train service employees.

## Roles & Responsibilities

The following roles and responsibilities relating to this policy are outlined below:

All Employees are responsible for:

- Complying with this policy and/or operating rules associated with the use of electronic devices;
- Ensuring that all reasonable effort is taken to work safely;
- Ensuring that at least one person within a work crew has a functional railway provided communication device available for use in an emergency;
- Cautioning other employees observed to be in violation of this policy and/or associated operating rules;
- Promptly reporting any observed violations to their supervisor or RTC;
- Stopping the affected movement or work until the violation is corrected, when it is safe to do so; and
- Reporting incidents and near misses where use of an entertainment or communication device may be a contributing factor.

Supervisors are responsible for:

- Reading, understanding and complying with this policy and associated operating rules;
- Ensuring this policy is communicated and adhered to, within their respective areas of responsibility;
- Ensuring authorized and unauthorized use of electronic devices is discussed in safety meetings and during job briefings;
- Designating appropriate locations for employees to store personal communication devices;
- Designating appropriate locations where personal entertainment and/or communication devices may be safely used by employees
- Communicating this policy and ensuring compliance with contractors, 3<sup>rd</sup> party operators, and others working within their respective areas of responsibility;
- Conducting observations and proficiency tests to ensure compliance;
- Cautioning, mentoring and/or disciplining employees who fail to comply;
- Investigating incidents, violation reports, and near misses where use of an entertainment or communication device may be causal.

Safety, Environment & Regulatory (SER) is responsible for:

- Maintaining an effective policy and operating rules governing the safe use of entertainment and communication devices on the railway;
- Providing technical expertise, interpretations, and job aids required to support this policy;
- Monitoring related proficiency and incident performance;
- Periodically auditing the effectiveness of this policy

Senior Management is responsible for:

- Ensuring the policy on use of electronic devices is communicated and adhered to, within their respective areas;
- Periodically reviewing policy effectiveness;

Workplace Health and Safety Committees (WHSC) are responsible for:

- Reviewing related safety hazard reports;
- Assisting with related incident investigations;
- Recommending appropriate corrective actions to management;
- Ensuring approved corrective actions are implemented and effective;
- Monitoring local performance through peer observations.

## Administration

Policy Name: Policy on Use of Electronic Devices	Policy Number: H&S 4320
Approved by: Health, Safety, Security & Environmental Committee	Effective Date: June 1, 2009
Rail City Policy Location: Safety, Environment & Regulatory	Revision Date: March 1, 2011

## Appendix A      Related Documents & Resources

GCOR rules, Safe Work Procedures, interpretation & Q&A

CROR rules, interpretation & Q&A

Policy 6302 - Business Travel – Private Automobile

Policy 6304 - Business Travel – Car Rentals

Vehicle Fleet Policy & Procedures - COR 4135

Policy H&S 4310, Handling Safety Related Documentation

Signage - Use of Personal Communication Devices  
Prohibited or Permitted

Minimum Safety Requirements for Contractors

## Appendix B Policy - Questions and Answers

- Q1. Are there restrictions on my use of these devices if I am a passenger in a company vehicle?
- A1. They may be used provided you are not assisting the operator and he/she agrees it is safe to do so.
- Q2. I operate a hi-rail truck. How am I to properly conduct my business if I cannot use my radio or cell phone, on either the road or track?
- A2. You may use a company provided radio for business purposes at any time it is safe to do so. Prior to using a company cell phone the movement must be stopped and the call made in accordance with this policy. For more specificity, when operating on-track, the Canadian or U.S. operating rules are applicable. When on the road, the restrictions in this Policy and state or provincial highway vehicle laws apply.
- Note:** An employee is not considered to be foul of track when occupying on-track equipment that is operating under valid track authority.
- Q3. Can I use my personal cell phone if I am a conductor on a train?
- A3. You are prohibited from using a personal cell phone while on duty except under the very limited circumstances identified in the Canadian or US operating rules
- Q4. Are company radios considered communication devices?
- A4. The policy does not apply to railway radios used for company business.
- Q5. My duties involve providing look out or flagging protection. Am I affected by this policy?
- A5. In order to perform these tasks, you would be qualified in the operating rules and are engaged in physical work as defined by this policy so you are therefore bound by the requirements contained in the Canadian or US operating rules.
- Q6. Are company provided devices such as the Automated Inventory Reporting (AIR), RCL beltpack units, ES hand held GPS units, track inspection computers (ETI), and similar equipment considered communication devices covered by this policy?
- A6. Railway radios, RCL units, remote switch controllers and the like are required to operate a safe railway and are exempt from the policy. AIR, ETI, and similar devices that are used as recording and tracking devices not directly related to railway operations are considered communication devices covered by the policy and the operating rules.
- Note -** Hand held GPS units when used on the ground by ES employees to locate track defects are exempt. However, use of hand held GPS units are still prohibited when operating a vehicle.
- Q7. Can you describe acceptable hands free devices?
- A7. Phones that have speaker phone capability, headset/microphone attachments, blue-tooth enabled phones, and On-Star type devices are the most common. Built in or dash mounted GPS devices are also considered to be hands free devices.
- Note –** Hands free devices are still a distraction while driving, due to both dialling and the communication concentration required. Caution must always be exercised with any device. It is recommended that speed dialling features be used when possible, and/or scheduled calls be initiated by the other party.
- Q8. Are GPS devices considered communication devices, in a vehicle or on the track?



A8. See the answer and Note in question 6. Except in this situation, GPS devices are treated the same as cell phones and other communication devices. The use of hand held GPS devices are prohibited while operating vehicles. This would include cell phones or Blackberry devices with GPS capability. Portable GPS devices that are mounted in safe location within a vehicle and function in the same manner as an installed unit are acceptable, with the same restrictions.

**Note 1** – There are recent studies that indicate use of some types of GPS devices can be more of a distraction than cell phones since they also can take the drivers vision off the road. Extreme caution should be exercised when using any GPS device.

**Note 2** – Programming or adjusting any GPS navigation device is prohibited while operating a moving vehicle.

**Note 3** – CP currently does not authorize the local purchase or modification of company vehicles to provide for GPS devices.

Q9. Does “installed in a company vehicle” include when a Personal Entertainment Device such as an i-pod that is connected to a vehicle's power and sound system for purposes of playing music while driving?

A9. These types of device connections are permitted as long as they are playing through the vehicle's sound system and not through personal headsets or ear buds.

Q10. Explain what is meant by a designated location for storing personal cell phones?

A10. Specific acceptable locations are to be designated by the employees' supervisor. For example, employees working in fixed facilities, such as Intermodal or Mechanical, an appropriate and secure location would be the employee's locker. For MOW employees working on track or traveling on the road it may be best kept secure in a truck storage box, glove compartment, lunch box or grip. Train crews and other rules qualified personnel are governed by the revised operating rules. The intent of this policy and rule change is that these personal communication devices are not to be readily accessible while working.

Q11. Can I use my personal cell phone to take calls related to company business or I am I restricted to use of only company provided devices?

A11. There is no distinction made on how a cell phone is used, only whether it is personal or company provided. Any use must be in accordance with the requirements contained in the Canadian or US operating rules or the applicable Core Safety Rules (contained within the Functional Safety Rules and Recommended Practices Manuals) if your are not performing a duty that requires you to be operating rules qualified.

Q12. As a result of this policy, will the company replace my existing company cell phone with one that is hands free?

A12. That depends on the work conducted by each employee and on their manager's expectations. The decision has to be made by your manager whose cost centre will be charged for the cost to upgrade, acquire hands free equipments, or replace your phone.

Q13. I am a conductor who spends considerable time away from my family. Can I leave my personal cellular telephone on to receive incoming calls while on duty?

A13. No, in accordance with the Canadian or US operating rules restrictions, personal cellular phones and other electronic devices must be turned off with any ear pieces removed, stored out of sight in a location not on your person except as otherwise provided for. In the event of an emergency, your family can ensure you are notified through the RTC through use of the 24 hour Emergency Phone Number for the applicable Network Management Centre or Operations Centre as indicated in the Time Table.

- Q14. Can I use the car radio while driving?  
A14. Yes - Car radios, CD players and similar devices that are permanently installed in a vehicle are not considered personal entertainment devices.
- Q15. May an employee in the field use an i-Pod or other device to listen to music while waiting for a work assignment or waiting for a train meet?  
A15. No, these rules read in part, "The use of personal entertainment devices is prohibited".
- Q16. Can I listen to an i-Pod or radio, or watch a DVD player while I am on lunch break?  
A16. A designated lunch room area where no work is being performed should be considered similar to an office environment, and these devices can be used with the supervisor's approval.
- Q17. Can Safety Advisors, H&S Safety Reps. or managers use iPods, laptops or Blackberry devices for presenting safety related information?  
A17. Yes, as long as they comply with all related provisions of this policy.
- Q18. What prompted these restrictions?  
A18. On-track restrictions were prompted by the fatal Metrolink train collision in California in 2008, which also resulted in FRA regulations mandating restrictions within the GCOR operating rules. On-roadway and other restrictions were prompted by an unacceptable number of industry vehicle collisions and injuries related to the use of electronic devices. In 2009, MVA reduction targets became a major corporate safety initiative, along with continued reductions in work related injuries
- Note:** U.S. Railway Operating Employees may also be subject to FRA imposed penalties for operating rule violations.
- Q19. If I operate a track unit or assist in the operation of mobile equipment can I use my personal cell phone to call a family member if required?  
A19. Only during a recognized break or meal period, and only in a designated safe location, and only for minimal voice communication when the track unit and all related work activities are stopped, and only when the employee is not foul of any track and a job briefing with all involved employees confirms such use will not interfere with any safety related duty, and device is immediately turned off and returned to storage when call is complete.
- Q20. If I am working as a ground person assisting in the operation of a mobile crane can I use a company provided cell phone to make a call?  
A20. Yes, but only for minimal voice communication when all work activities are stopped, you are not foul of the track, and it is confirmed through a job briefing with all involved that its use will not interfere with any safety related duty and all physical work activities are suspended until advised otherwise and device is immediately turned off and returned to storage when call is complete.
- Q21. If I am a passenger in a Track Unit may I use a communication device?  
A21. It could still pose a distraction to the operator. You must confirm with the operator that it is safe and he/she agrees to its use.
- Q22. Can exemptions for certain situations be made if a risk assessment has been conducted and not significant risks identified?  
A22. A risk assessment may be used to identify a need or an opportunity to amend a corporate policy but that change must be reviewed and approved by the Health, Safety, Security and Environmental Committee. Local risk assessments cannot take precedence over corporate policy. Note that this policy already provides for some limited exceptions.

- Q23. Who decides when “it is safe to do so” under the exceptions clauses, the employee or supervisor?
- A23. Everyone at CP has responsibility for their own personal safety, that of their fellow employees, and the public. What is reasonably practicable in any given situation is a decision that the affected employee or operator must make. However, this decision will always be subject to review in the investigation process if there is a resulting safety failure. Instructions on permitted usage provided by a supervisor should be followed unless it is clearly in violation of this policy or operating rules, or it would otherwise create an unsafe condition.
- Note 1** – Legal interpretation of “reasonably practicable” in the Canada Labour Code suggests that the risk of an accident or injury must be weighed against the effort, time, and cost of eliminating or avoiding the risk.
- Note 2** – ISROP guidance suggests that “reasonable” would be when another experienced operator who recognizes the risks under the same conditions would likely make the same decision.
- Note 3** – Examples of what should NOT be considered “reasonable” would be talking on a cell phone while driving in high speed, high density traffic (Calgary Deerfoot, Toronto 401, Minneapolis I-94); driving in snowy, icy conditions, driving in poor visibility conditions; or any other time when increased driver attention and improved response times are required.
- Note 4** – When “safe to do so” calls should be kept short with the other participant knowing your circumstances. Conference calls and other scheduled calls while driving should be avoided under all circumstances.
- Q24. Do the vehicle restrictions apply while I am commuting to or from work in a company provided vehicle?
- A24. Yes, these restrictions apply anytime a company vehicle is being operated for any business related reason.
- Q25. Can a supervisor or manager call an engineer’s or track unit operator’s personal cellular telephone while in motion to check if the cellular telephone is off for a proficiency test?
- A25. No, it is not permissible for a supervisor or manager to call the personal cellular telephone of the person controlling the movement or track unit while it is in motion for a proficiency test.
- Q26. If my train or track unit is in motion and the RTC tells me by radio to call the office by cell phone, is it permitted?
- A26. No, that is not permitted in accordance with the operating rules. The railway radio is the primary communication tool that should be used.
- Q27. What if my supervisor tells me to make a call by cell phone while I am operating a vehicle?
- A27. This is not permitted unless you have a hands free device, or you have complied with all of the Exceptions provided in the Policy, or you have first pulled over safely and parked. In any case your supervisor should not be asking you to schedule a call while it is known you will be driving.
- Q28. I am responding to and working at a derailment site and my cell phone is the only immediate method of communications. May I use it or am I in violation of the policy?
- A28. Per the Exceptions in the policy, you may use a cell phone in emergency response situations with permission of the site supervisor. If there is no designated supervisor on site as yet and when it is safe to do so, advise your supervisor and/or RTC that you are using the cell phone so they can remain in contact, and conduct a job briefing with any other employees or contractors working in proximity.

- Q29. I have a need to take pictures of an incident or hazardous condition. Can I use the camera on my cell phone?
- A29. Employees governed by operating rules are prohibited from using personal cell phones or similar devices for taking pictures while on duty.

For all other employees when possible or planned, you should use a conventional camera, while following the same cell phone camera steps as below for ensuring safety.

If you must use your cell phone camera, you must in all cases still comply with the requirements in the policy by stopping the movement or work, staying clear of track, and by conducting a job briefing with all involved employees. Subsequent to taking those pictures, you must turn the phone off and return it to its storage location.

**Note:** All employees are also governed by Policy H&S 4310, Handling Safety Related Documentation. This policy prohibits disclosure or sharing of, among other things, electronic media such as photos to anyone outside of the company, including posting it on the Internet.

- Q30. If I observe use of a communication device that is creating a potentially unsafe situation but which is not prohibited by the rules or policy, what should I do?
- A30. You should immediately rectify the situation if possible and then report it to your supervisor or WHSC in the same manner as any other hazardous condition so that it can be further assessed and/or corrected.
- Q31. If I observe a violation of the policy but do not act on it by cautioning the person and reporting it, what are the consequences?
- A31. You may also be in violation and subject to discipline.
- Q32. Are managers and supervisors required to comply with this policy to the same extent as other employees?
- A32. Yes, all persons on CP property or conducting work for CP are bound by this policy, including both union and management employees. It also extends to contractors, visitors and other persons authorized to be on CP property. For 3<sup>rd</sup> parties not familiar with CP policies, the requirements of this policy must be covered in a job briefing.

**Note:** Whenever supervisors who are monitoring, supervising or otherwise interacting with employees governed by operating rules, those supervisors are also covered by those same rules. At all other times supervisors are governed by the policy

- Q33. What should I do if my personal communication device has an “auto-on” feature?
- A33. You should disable or turn off the “auto on” feature before engaging in situations where personal communication devices are required to be turned off.
- Q34. If I must store my personal phone, how can my family reach me in case of a personal emergency?
- A34. You should always leave your family with an emergency number where you can be reached at work. This might be a local facility phone that is monitored, a supervisor’s company cell phone number, or the NMC emergency number. Supervisors should be posting or communicating appropriate emergency phone numbers, along with locations where personal cell phones can be used and/or stored.
- Q35. I have a company provided cell phone that dial into CP’s radio system and function as a radio (known as 10-4 function). When used in this fashion, is this considered a radio or electronic device per policy?
- A35. It is still a communication device as defined by the policy and use must be in compliance with the policy and the operating rules. How a device is used is not considered in the

definition, similar to cell phone cameras, GPS or other multi-functions available in many phones and other electronic devices.

**CONSTRUCTION AGREEMENT**  
(smaller projects)

This Agreement executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

BETWEEN:

**CANADIAN PACIFIC RAILWAY COMPANY**, a company duly incorporated under the laws of Canada and having its head office in the Road Authority of Calgary in Province of Alberta ("**CP**")

AND:

**[ROAD AUTHORITY]** a municipality incorporated under the laws of the Province of \_\_\_\_\_ (the "**Road Authority**")

WHEREAS:

- A. CP is an inter-provincial, federally regulated railway. CP's railway operations, right-of-way and facilities are subject to the jurisdiction, decisions and orders of the Canadian Transportation Agency and Transport Canada, and subject to federal legislation including the *Canada Transportation Act*, and the *Railway Safety Act*.
- B. CP's railway line known as the \_\_\_\_\_ subdivision passes through the municipal boundaries of the Road Authority [at \_\_\_ in the Province of \_\_\_\_\_].
- C. In order to facilitate road development, the Road Authority wishes to construct, reconstruct or expand [an at-grade] road crossing to carry vehicular traffic over and across CP's railway line and related infrastructure at or near Mile \_\_\_ of CP's \_\_\_ Subdivision (the "**Crossing**" as defined herein).
- D. The Parties acknowledge that pursuant to the *Railway Safety Act*, and its regulations, the safety of the public, their respective employees and CP's railway operations must be of paramount importance at all times during the term of this Agreement

**NOW THEREFORE**, for good and valuable consideration, receipt and sufficiency of which is acknowledged, the Parties agree as follows:

**ARTICLE 1 - DEFINITIONS AND SCHEDULES**

1.1 **Definitions.** In this Agreement the following words and phrases shall have the meanings set out:

- a) "**Agreement**" means this agreement, the recitals hereto and all schedules and plans attached hereto;
- b) "**Construction Project**" means all works and undertakings related to the Crossing to be carried out by the Parties as set out in Schedule "A";
- c) "**Crossing**" means the road crossing and related works and improvements including approaches, the crossing surface, [signs, crossing warning systems etc.] on, over or adjacent to CP's railway line (at or near Mile \_\_\_ of CP's \_\_\_ Subdivision, and the Railway Lands as shown in Schedule "A", and to be further detailed in the Project Plans

- d) **“Proponent”** means the “proponent” who has proposed the construction or alteration of a railway work pursuant to the *Railway Safety Act*;
- e) **“Railway Lands”** means the railway right-of-way lands owned by CP at [insert city/town] located at approximately Mile \* CP's \* Subdivision, including all railway lines and infrastructure, subject to the Construction Project, all as more particularly shown outlined in green on the plan attached hereto and marked as Schedule "A";
- f) **Road Authority**” means the Road Authority, its employees, agents, contractors and subcontractors;

1.2 **Schedules.** The following schedules are attached to this Agreement:

Schedule “A” - Preliminary Plans/Scope of Construction Project

Schedule “B” – Road Authority Work

Schedule “C” – CP Work

Schedule “D” – Access Protocols, Safety and Security

## **ARTICLE 2 - COMMENCEMENT OF CROSSING PROJECT**

2.1 **Regulatory Requirements.** The Road Authority will be responsible for obtaining all approvals and permits unless otherwise specified in CP’s Work - Schedule C. The Road Authority shall fulfill all responsibilities of the Proponent under the *Railway Safety Act* including preparing and serving all notices of proposed railway works as required under the *Railway Safety Act*, for the Construction Project.

2.2 **Project Plans.** Prior to commencement of the Construction Project on Railway Lands, the Road Authority shall provide the following to CP:

- a) a detailed scope of work confirming all necessary activities to be undertaken, including CP Work and Road Authority Work;
- b) a construction schedule for the Construction Project;
- c) engineering drawings, designs and specifications for the Construction Project to be stamped by a professional engineer, as required by CP, including
  - (i) alignment, profile, general arrangement and structural plans for the Crossing (including drainage flows and confirmation that drainage will be directed to a location off of the Railway Lands);
  - (ii) Utility Crossing encasement plans, if any;
  - (iii) Temporary Construction Road Crossing plan, including proposed crossing surface materials etc. to avoid damage to CP’s tracks, if required; and

- (iv) Detailed plans regarding Utility Works including Third Party Fibre Systems and CP owned fibre optic, signal or other communications systems that require protection and/or relocation. shall not interfere with any Utility Works, including Third Party Fibre Systems, facilities, structures or improvements on Railway Lands
- d) confirmation of quantity of materials required, storage of materials and the party responsible for providing specific materials;
- e) proposed location(s) for access to the Project Site, and safety and security measures for proposed access locations to preclude any access by the public. provisions for protective structures (including without limitation fencing or netting) to preclude construction materials, waste or debris from falling onto railway tracks; and
- f) any other details, plans or information required by CP.

(collectively the "**Project Plans**").

2.3 **Commencement of Construction.** No construction work on Railway Lands shall commence until Road Authority has received confirmation from CP that:

- a) CP has reviewed the Project Plans and CP requirements have been included to CP's satisfaction;
- b) all requirements referred to in Section 2.1 have been fulfilled or obtained; and
- c) Road Authority is in compliance with the Access protocols in Schedule "D".

### ARTICLE 3 - ROAD AUTHORITY WORK

3.1 **Road Authority Work.** The Road Authority shall carry out or cause its contractors to carry out the Road Authority Work in Schedule "B", any and all necessary or desirable work other than the CP Work as may be required to complete the Construction Project. The Road Authority shall carry out all Road Authority Work in good and workmanlike manner and in accordance with the Project Plans, Access Protocols and Safety and Security Requirements.

3.2 **Changes to Road Authority Work.** CP may make changes to the Road Authority Work and the Project Plans (including the construction schedule and/or any other construction specifications) by prior notice to the Road Authority to ensure that the Construction Project is carried out and completed i) in accordance with all applicable laws, regulations, circulars, standards, conditions and requirements of regulatory authorities having jurisdiction, including Transport Canada and the Canadian Transportation Agency to the satisfaction of CP's engineering and operating requirements; ii) in accordance with CP's labour agreements; and iii) in a manner that ensures safe, continuous, uninterrupted and unhindered Railway Operations. Without limiting the generality the foregoing, CP may, upon notice to the Road Authority prior to the commencement of the Construction Project, re-allocate items identified under the Road Authority Work to be part of the CP Work in order to comply with the foregoing requirements. Whenever possible, CP will use all commercially reasonable efforts to advise the Road Authority in advance of such re-allocation of the Road Authority Work.

3.3 **Cost of the Road Authority's Work.** All of the Road Authority Work, including that which arises from changes made by CP under Section 3.2, shall be carried out at the sole cost and expense of the Road Authority.



- 3.4 **As is.** The Road Authority hereby accepts the Construction Project site on the Railway Lands in its existing condition, on an "as is" basis and hereby waives, against CP, all rights and recourses of any nature whatsoever in respect of any defects within the crossing area including any adverse soil conditions. CP makes no representation or warranty with respect to the condition, nature, composition, use (past, present or future) of the Railway Lands, or the accuracy or completeness of any materials or information provided by CP.

#### ARTICLE 4 - CP WORK

- 4.1 **CP Work.** CP shall carry out or cause its contractors to carry out, at the Road Authority's sole cost and expense, the CP Work set forth in Schedule "C", and any other Work expressly agreed to in writing by CP or re-allocated by CP pursuant to Section 3.2, such Work being necessary in addition to the Road Authority Work to complete the Construction Project. The CP Work shall be carried out in accordance with the requirements of all regulatory authorities having jurisdiction, including Transport Canada, to the customary engineering and operating requirements of CP, and in a manner that ensures safe, continuous, uninterrupted and unhindered Railway Operations.
- 4.2 **Changes to CP Work.** CP may make changes to the CP Work by prior notice to the Road Authority, provided that such changes are necessary in addition to the Road Authority Work to complete the Construction Project in accordance with this Agreement. For greater certainty, any additional CP Work arising from any such changes shall remain at the cost and expense of the Road Authority.
- 4.3 **Quality of Work.** CP shall, as between the Parties, be the sole judge of the adequacy and quality of the CP Work and Road Authority Work, and in the event of any dispute with regard thereto the decision of CP shall be final.
- 4.4 **Payment by the Road Authority for CP Work.** CP shall periodically provide invoices to the Road Authority for the CP Work. Each such invoice shall constitute a requisition for payment, and the Road Authority shall pay the full amount reflected in each invoice forthwith upon receipt. CP shall prepare all invoices for the CP Work on the basis of rates and charges set by the "Guide to Railway Charges for Crossing Maintenance and Construction" published by the Canadian Transportation Agency effective July 1, 2009 (as updated from time to time).

#### ARTICLE 5 – INDEMNITY

- 5.1 **No Claim or Demand.** Road Authority shall make no claim or demand against CP or any of its employees, officers, agents, contractors and invitees for any injury, including injury resulting in death, loss or damage to property suffered or sustained by Road Authority or its employees, officers or agents, or by any other person or corporation, which is based upon, arises out of or is connected with the Construction Project, or anything done or maintained hereunder or anything not done or maintained as required under this Agreement and hereby waives, as against CP and its employees, officers, agents, contractors and invitees, all such claims or demands.
- 5.2 **Indemnity by Road Authority.** Road Authority shall indemnify and save harmless CP and its employees, officers, agents, contractors and invitees from and against any and all:
- a) claims under workers' compensation legislation;
  - b) claims, demands, awards, actions and proceedings by whomsoever made, brought or prosecuted;
  - c) loss, damages or expenses (including reasonable legal fees and expenses on a solicitor and own client basis) suffered or incurred by CP and its employees, officers, agents,

contractors and invitees including injuries, as well as those resulting in death and damage to or destruction of CP property or third party property (including without limitation, engines, rolling stock and all other equipment and their contents); and

- d) fines, penalties, expenses and costs (including environmental costs) incurred or sustained by CP,

which are based upon, arise out of or are connected with the Construction Project, the Crossing, this Agreement or anything done or maintained hereunder or anything not done or maintained as required hereunder, or attributable Road Authority or its Personnel.

- 5.3 **Indemnity for Faulty Construction.** Without limiting the generality of subsections 5.1 and 5.2 herein, Road Authority shall indemnify and save harmless CP from and against any liability, costs or expense which CP may suffer resulting from inadequate or faulty construction with respect to the Construction Project.

## **ARTICLE 6 - INSURANCE**

6.1 Road Authority shall, at its own expense, obtain and maintain or cause to be obtained and maintained during the term of this Agreement, policies of:

- a) Commercial General Liability (C.G.L) insurance \$\_\_\_\_\_ with a limit of not less than one hundred million dollars (\$100,000,000) **[NTD: Confirm]** any one loss or occurrence and in the aggregate for personal injury, bodily injury or damage to property including loss of use thereof. This policy shall by its wording or by endorsement include but not be limited to the following:
  - i) name CP as an additional insured;
  - ii) "cross liability" or "severability of interest" clause which shall have the effect of insuring each entity named in the policy as an insured in the same manner and to the same extent as if a separate policy had been issued to each;
  - iii) non-owned auto liability; and
  - iv) shall not exclude operations on or in the vicinity of the railway right of way, if applicable.
- b) Automobile Liability insurance covering bodily injury and property damage in an amount not less than \_\_\_\_ million dollars (\$\_,000,000) per accident, covering the ownership, use and operation of any motor vehicles and trailers which are owned, leased or controlled by Road Authority and used in regards to this Agreement.
- c) Environmental Impairment Liability insurance, if applicable, with CP included as an additional insured with a limit of not less than \_\_\_\_ million dollars (\$\_,000,000) any one loss or occurrence and in the annual aggregate.
- d) Workers' Compensation – the Road Authority will provide written advice from the Workers' Compensation Board of Alberta, evidencing that Road Authority and any contractors have complied in all respects with the Workers Compensation Act (Alberta).

6.2 The Road Authority shall upon request from CP, provide CP with a copy of the certificate(s) of insurance evidencing the above insurances. CP may at its option require the Road Authority to annually provide CP with a copy of updated certificate(s) of insurance evidencing the renewal of the above insurances. The Road Authority agrees that the insurance coverages required to be

maintained by it under the provisions of this Agreement shall not limit or restrict its liabilities under this Agreement.

6.3 The Road Authority agrees that the insurance coverages required to be maintained by it under the provisions of this Agreement shall not limit or restrict its liabilities under this Agreement.

#### **ARTICLE 7 - TERM AND TERMINATION**

7.1 **Term.** This Agreement shall be effective as of the date written above and continue in effect until:

- a) the parties have completed a joint inspection of the Construction Project and agreed that all Work has been completed to their satisfaction; and
  - b) CP has received full and final payment of all amounts owed pursuant to this Agreement
- at which time this Agreement shall expire.

7.2 **Termination by the Road Authority.** The Parties agree that the Road Authority may terminate this Agreement if any approvals as described in Section 2.1 are not obtained to the Road Authority's satisfaction, upon the Road Authority providing CP with sixty (60) days prior written notice, and providing CP with compensation for any materials ordered or similar expenses incurred.

7.3 **Termination by CP.** The Parties agree that CP may terminate this Agreement:

- a) if the Road Authority fails to construct the Crossing in accordance with the Project Plans, and such failure is a material breach that will endanger or impede CP's Railway Operations; or
- b) Road Authority has failed to pay CP any amount due and owing under this Agreement and failed to cure such default within 30 days after receiving notice of such default from CP,

and if such default continues for a period of thirty (30) days after CP has provided written notice of such default to the Road Authority. Upon such termination, Road Authority shall provide CP with compensation for any expenses incurred related to the Construction Project including materials ordered, and all expenses necessary to return the Railway Lands to their condition prior to commencement of construction including removing any alterations or improvements to land.

#### **ARTICLE 8 - COMMUNICATIONS**

8.1 **Notices.** Any notice, consent, demand or other communication that may be or is required to be given pursuant to this Agreement shall be in writing and shall be delivered or sent by courier, facsimile or other form of electronic communication to the address of CP or the Road Authority as follows:

**To CP:** Canadian Pacific Railway Company  
[Suite 700, 401 – 9th Avenue S.W.  
Calgary, Alberta T2P 4Z4]

Attention:  
Telephone:  
Facsimile:  
E-Mail:

**To the Road Authority:**

Road Authority of Calgary  
Attention:  
Telephone:  
Facsimile:  
E-Mail:

Any notice or other communication contemplated herein shall be deemed to have been given (or received by the other Party): (a) on the date sent when sent by confirmed facsimile transmission or other electronic transmission; or (b) on the date delivered when sent by courier to an address set forth herein. Either Party may change its contact information for service by notice in writing to the other Party.

- 8.2 **Reports.** The Road Authority shall provide on a monthly basis and more often as appropriate with regard to circumstances, a report on the status and progress of all aspects of the Construction Project that may affect the subject-matter of this Agreement. Such aspects may include, for example and without limitation, environmental and regulatory approvals, land purchases, public consultations, construction schedules and changes to the Work.

**ARTICLE 9 - GENERAL**

- 9.1 **Agreements.** The Parties agree that this Agreement forms the entire agreement between CP and the Road Authority with respect to the Construction Project contemplated herein and supersedes all prior verbal or written understandings and agreements; and therefore there are no agreements, representations, warranties or conditions relating to or affecting the matters set out herein except as expressed in this Agreement. However, Upon completion, the Parties agree to enter CP's crossing agreement or modify the existing crossing agreement(s) for this Crossing. The Road Authority shall cooperate with CP as necessary and prepare all drawings for each such crossing agreement(s) as required due to the Construction Project. CP will be responsible to file such agreements with the Canadian Transportation Agency. Such agreements shall reflect, without limitation, the allocation of responsibility for costs related to such Crossing.
- 9.2 **No Modification.** This Agreement may not be modified or amended except in writing signed by the Parties.
- 9.3 **Assignment and Subcontracting.** This Agreement may only be assigned by the Road Authority with the prior written consent of CP. The Road Authority may, with the prior written consent of CP, arrange to have any of the obligations of this Agreement carried out by subcontractors or consultants, PROVIDED THAT in the event the Road Authority does so, the Road Authority shall remain liable for and shall not be released or relieved of any of the obligations and liabilities assumed under this Agreement.
- 9.4 **Time of the Essence.** Time is of the essence in all aspects and provisions of this Agreement.
- 9.5 **Enurement.** This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.
- 9.6 **No Waiver.** Neither Party shall be deemed to have waived the exercise of any right that it holds under this Agreement unless such waiver is made in writing. No waiver made with respect to any instance involving the exercise of any such right shall be deemed to be a waiver with respect to any other instance involving the exercise of that right or with respect to any other right.

9.7 **Governing Law.** This Agreement shall be governed and interpreted in accordance with the laws of the Province of Manitoba and the federal laws of Canada applicable therein, and except as expressly contemplated herein, the Parties attorn to the jurisdiction of the Courts of Manitoba.

9.8 **Execution.** The Parties may execute this Agreement by facsimile or other electronic means and in separate counterparts each of which when so executed and delivered shall be an original, and all such counterparts taken together shall constitute one instrument.

IN WITNESS WHEREOF the Parties have caused their duly authorized officers to execute this Agreement as evidenced below to be effective as of the date first above written.

**CANADIAN PACIFIC RAILWAY COMPANY**

Per: \_\_\_\_\_

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**THE ROAD AUTHORITY**

Per: \_\_\_\_\_

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**SCHEDULE "A" TO CONSTRUCTION AGREEMENT dated \_\_\_\_ day of \_\_\_\_\_, 20\_\_  
between the Canadian Pacific Railway Company and The Road Authority**

**SCOPE OF CONSTRUCTION PROJECT AND PRELIMINARY PLANS**

**SCHEDULE "B" TO CONSTRUCTION AGREEMENT dated \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
between the Canadian Pacific Railway Company and The Road Authority**

**ROAD AUTHORITY WORK**

**SCHEDULE "C" TO THE CONSTRUCTION AGREEMENT dated \_\_\_\_ day of \_\_\_\_\_, 2009  
between the Canadian Pacific Railway Company and The Road Authority o**

**CP WORK**



**SCHEDULE "D" TO THE CONSTRUCTION AGREEMENT dated \_\_\_ day of \_\_\_\_\_, 20\_\_  
between the Canadian Pacific Railway Company and The Road Authority**

**ACCESS PROTOCOLS, SAFETY AND SECURITY REQUIREMENTS**

1. **Access Protocols.** In order to ensure compliance with Safety Laws, the safety of Road Authority Personnel, CP's employees and Railway Operations, the Road Authority's access to Railway Lands will be subject to the following conditions:
  - i) the Road Authority shall deliver notice to CP by contacting CP's designated representative not less than five (5) business days prior (or such longer period as CP may reasonably determine from time to time to ensure flagging protection and all safety measures can be scheduled) to the date upon which the Road Authority seeks to enter upon the Railway Lands, together with such other information as CP may reasonably require;
  - ii) no work of any nature shall be undertaken without scheduled flagging protection, unless otherwise agreed in writing by CP. The Parties acknowledge that CP has limited resources available for flagging protection and that flagging protection is subject to the availability of qualified flagpersons who must be allocated by CP across its service area for ongoing Railway Operations and other concurrent construction and maintenance projects. As a result, a maximum of two (2) flagpersons will be available for the Construction Project, for a maximum of forty (40) hours per week per flagperson (including travel time to the Project Site), Monday through Friday. CP will not grant any requests to provide flagpersons to work any additional days, hours or overtime on the Construction Project.
  - iii) the Road Authority shall contact CP's "Call Before You Dig desk" at 1-888-248-4410 not less than five (5) business days prior to the proposed access date to determine the location of any of CP Utility Works or structures under or on the Railway Lands; and
  - iv) the Road Authority shall provide notice to and obtain consents from owners of Utility Works (including Third Party Fibre Systems) who may be affected by the Construction Project, including those third parties who are required to give consents to protect and/or relocate such utilities;

(collectively, the "**Access Protocols**").
2. **Safety and Security Requirements.** In addition to the Access Protocols, the Parties agree that any Work carried out on Railway Lands will be subject to the following safety and security conditions:
  - a) The Road Authority shall be solely responsible for ensuring the safety and health of its Personnel and for compliance with all Applicable Laws including Safety Laws and requirements for occupational health and safety pursuant to the *Workers Compensation Act* (Alberta).
  - b) CP may require Road Authority to ensure its contractors and subcontractors performing work on the Railway Lands comply with CP's security requirements in order to comply with regulatory directives and requirements.

- c) The Road Authority shall, at its sole cost, adhere to CP Safety Requirements and such other applicable safety stipulations and rules as communicated by CP from time to time, and ensure that it has a Safety and Emergency Response Plan which includes practices and procedures that are at least as stringent and comprehensive as the CP Safety Requirements. Road Authority shall ensure that it has appropriate systems and controls in place to avoid or mitigate potential environmental, health and safety risks with respect to the Project Site and any adjacent lands and watercourses, including silt fences, spill kits and erosion controls
- d) The Road Authority shall be responsible for developing, implementing and maintaining its own Safety and Emergency Response Plan for the Project Site for its Personnel and for ensuring that such Personnel understand and comply with the practices and procedures set out in such plan. In addition to the minimum requirements stipulated in Subsection 2 c), the Safety and Emergency Response Plan must include:
- (1) reporting and response procedures in the event of an incident or accident;
  - (2) emergency response service providers and contacts and their phone numbers; and
  - (3) incident reporting phone numbers, including phone numbers for CP incident reporting and local CP personnel.

Road Authority shall be solely responsible for all costs related to the clean-up and remediation of any releases or incidents resulting from the Road Authority's Work or any of its related activities on the Railway Lands

- e) The Road Authority shall adhere to the directions of any CP flagpersons, inspectors and supervisory personnel (including engineering and technical support) as CP may require to supervise any Work on Railway Lands. Instructions may include orders with respect to security restrictions, safety requirements or emergency situations.
- f) Notwithstanding CP's consent to commence construction and provide access in Article 1, if an Emergency Situation arises over, on or under the Railway Lands (including derailment or an emergency situation with any Utility Works), or the presence of the Road Authority or their activities are causing a danger to Railway Operations, (an "**Interference**") CP may direct that the Road Authority and its Personnel exit from the Railway Lands for such period of time as CP deems appropriate. In CP's sole opinion, any Interference caused by the Road Authority must be remedied to CP's satisfaction prior to CP allowing the Road Authority and its Personnel to resume access onto the Railway Lands. CP shall not be responsible for any costs incurred by the Road Authority or any of their Personnel for any delays to the Construction Project, construction schedule or construction costs due to an evacuation or shutdown pursuant to this Section.
- g) Any machinery or equipment used for the Construction Project must meet applicable safety regulations and requirements. The Road Authority shall not store any fuel, oil or lubricants on the Railway Lands or permit any fuelling or servicing of any machinery or equipment on Railway Lands.
- h) The Road Authority shall, at its sole cost and expense, locate and protect any and all Utility Works owned by CP or any third parties under, on or above the Railway Lands, including Third Party Fibre Systems. The Road Authority shall not attach any Overpass facilities or structures to Utility Works except with the express written consent of the

owner. The Road Authority agrees to maintain a three (3) foot separation from all Utility Works except with the express written consent of CP and the owner of the Utility Works. If any Work is to be carried out in the vicinity of Third Party Fibre Systems, the Road Authority further agrees to ensure a fibre optic locate is undertaken and that a Third Party Fibre System representative is present during any such Work.

- i) The Road Authority shall not cause, suffer or permit the use of the Project Site or Railway Lands by any person other than the Road Authority Personnel required to be on or about the Project Site for the purposes of completing the Construction Project.
- j) The Road Authority shall be solely responsible, at its own cost and expense, for the installation and maintenance of construction security fences and lockable gates, as directed by CP. The Road Authority shall keep gates locked, except when entering or exiting from the Railway Lands, to secure the site from entry by members of the public and trespassers.
- k) The Road Authority shall ensure that its Personnel entering onto the Project Site display proper identification for security purposes.