

TRAIN SERVICE AGREEMENT
between
CANADIAN PACIFIC LIMITED and VIA RAIL CANADA INC.

Covering the operation of the following service:

→ Trains 198 and 199 between Victoria and Courtenay, B.C.

January 15, 1990

TRAIN SERVICE AGREEMENT
between
CANADIAN PACIFIC LIMITED and VIA RAIL CANADA INC.

I N D E X

<u>ARTICLE 1 - DEFINITIONS</u>	<u>Page</u>
1.1 "Agency"	2
1.2 "Agreement"	2
1.3 "Appendices"	2
1.4 "CP"	2
1.5 "CP Train"	3
1.6 "Forecast Index"	3
1.7 "Infrastructure"	3
1.8 "Minister"	4
1.9 "Month"	4
1.10 "Passenger Service"	4
1.11 "Passenger Trains"	4
1.12 "Passenger Rolling Stock"	4
1.13 "Train Crews"	4
1.14 "VIA"	5
1.15 "Year"	5
 <u>ARTICLE 2 - INTERPRETATION</u>	
2.1 Gender and Number	5
2.2 Headings	5
2.3 Applicable Law	5
2.4 Severability	6
2.5 Appendices	6
 <u>ARTICLE 3 - OPERATIONS</u>	
3.1 Accommodation of Passenger Trains	6
3.2 Train Control	6
3.3 Train Crews	7
3.4 Compliance with Laws	7
3.5 Investigations	7
3.6 Service Disruptions and Emergencies	8
3.7 Known Delays	9
3.8 Rolling Stock Maintenance	9
3.9 Passenger Train Equipment	9
3.10 Removal of Defective Rolling Stock	10
3.11 Disabled VIA Rolling Stock	10
a) Rescue Power	10
b) Emergency Maintenance	11
c) Removal of Rolling Stock	11
d) Adjustments	11
3.12 Clearing of Wrecks	12
3.13 Transportation Privileges	12

ARTICLE 4 - MAINTENANCE OF INFRASTRUCTURE

4.1 Maintenance of Infrastructure 12 ✓

ARTICLE 5 - IMPROVEMENTS AND MODIFICATIONS TO INFRASTRUCTURE

5.1 Improvements and Modifications by CP 13
5.2 Improvements and Modifications Requested by VIA 13
5.3 Improvements and Modifications to the
Infrastructure not requested by VIA 14 ✓
5.4 Ordered Infrastructure Adjustments 15

ARTICLE 6 - LIABILITY AND INDEMNITY

6.1 Indemnities for Assumed Liabilities 15
6.2 Damages Assumed by Parties 16
6.3 Loss or Injury to Persons on Infrastructure
for Purposes of VIA or CP 16
6.4 Collision between Passenger Train and
CP Train 17
6.5 Damages Caused by Passenger Train or CP Train 17
6.6 Spillage Damage 17
6.7 Collision between Passenger Train and CP Train
elsewhere than on Infrastructure 18
6.8 Collision between Passenger Train and Other Train 18
6.9 Damages arising from Operation of Trains not
otherwise covered 19
6.10 Notification of Suits or Proceedings 19
6.11 Claims for Business Disturbance 20
6.12 Settlement of Claims between CP and VIA 20
6.13 Arbitration Settlement 20

ARTICLE 7 - COMPENSATION

7.1 Compensation 21
7.2 Method of Payment 21
 a) Administration 21
 b) Roadway and Train Control 22
 c) Train Crews 22
7.3 Adjustment to Roadway and Train Control
Payments 23 ✓
7.4 Adjustments to Payments for Train Crew Expenses 24
7.5 Goods and Services Tax 24
7.6 Monthly Statement 25
7.7 Interest on Overdue Amounts 25
7.8 Currency and Method of Payment 26
7.9 Price Indexation 26
7.10 Other Labour Costs 27

ARTICLE 8 - TERM

8.1 Term 28
8.2 Early Termination 28

ARTICLE 9 - GENERAL

9.1	Relationship	28
9.2	Provision of Reports and Information	29
9.3	Notices	29
	a) CP notice	29
	b) VIA notice	30
9.4	Force Majeure	31
9.5	Assignment	31
9.6	Successors and Assigns	31
9.7	Hearings and Representations to the Agency	32
9.8	Confidentiality	32
9.9	Disputes and Arbitration	32
9.10	Collective Agreements	33
9.11	Counterparts	33
9.12	Administration of Agreement	33
9.13	Required Approvals	34
9.14	CP's right to dispose of the Infrastructure	34
9.15	Language	34

Appendix 1 - Passenger Train Schedules and Other Specifications

TRAIN SERVICE AGREEMENT

THIS AGREEMENT dated as of January 15, 1990.

BETWEEN:

CANADIAN PACIFIC LIMITED, a
corporation incorporated under
the Laws of Canada

(hereinafter called "CP")

OF THE FIRST PART

AND:

VIA RAIL CANADA INC., a
corporation incorporated under
the Canada Business Corporations
Act

(hereinafter called "VIA")

OF THE SECOND PART

WHEREAS CP and VIA entered into an Agreement, dated as of September 28, 1978, as amended, (the "Operating Agreement") wherein the parties set forth their respective obligations for the provision, management and operation of selected rail passenger services in Canada; and

WHEREAS VIA passenger trains have heretofore operated over the lines of railway of CP pursuant to and in accordance with the terms and conditions of the Operating Agreement; and

WHEREAS the parties have agreed that as and from the 15th day of January 1990, VIA passenger trains will no longer be operated over the lines of railway of CP pursuant to the Operating Agreement but will be operated pursuant to a new Train Service Agreement, which has been agreed to and implemented; and

A

WHEREAS VIA and CP have agreed that the VIA service on the line between Victoria and Courtenay should be dealt with under a separate agreement;

NOW THEREFORE this Agreement witnesseth that, in consideration of the mutual covenants and agreements hereinafter contained, the parties hereby mutually covenant and agree as follows:

ARTICLE 1 - DEFINITIONS

1.1 **"Agency"**

means the National Transportation Agency of Canada as well as any successor of the said Agency and without limiting the foregoing shall include any successor to the functions thereof established by or pursuant to the National Transportation Act, 1987, Revised Statutes of Canada 1985, chapter 28 (3rd Suppl.);

1.2 **"Agreement"**

means this agreement as amended or supplemented from time to time and the expressions "Article" and "Paragraph" followed by a number or letter mean and refer to the specified Article or Paragraph of this Agreement;

1.3 **"Appendices"**

means the appendices referred to in this Agreement and attached hereto, as amended from time to time;

1.4 **"CP"**

means Canadian Pacific Limited;

1.5 "CP Train"

means the locomotives and/or cars of a train operated by CP (other than a train operated by CP for VIA pursuant to this Agreement);

1.6 "Forecast Index"

means the average of the most recent forecasts, available on November 15 of any year, of the Implicit Price Index Gross Domestic Product (also referred to as GDP Deflator, Implicit G.D.P. Deflator or G.D.P.) as developed from the forecast data published by The Conference Board of Canada, Data Resources of Canada and The WEFA Group (or such replacement of any or all of same as mutually agreed between the parties);

In the event that the Forecast Index for 1990 is not available from the aforementioned published data, the index for 1990 published by Statistics Canada and used by any of the aforementioned forecasting bodies in its development of the Implicit Price Index Gross Domestic Product for the following year shall be deemed to be the Implicit Price Index Gross Domestic Product for the year 1990 published by such forecasting body.

1.7 "Infrastructure"

means the railway track, roadbed and right of way, owned, leased or operated by CP including the signals and other structures and mechanisms that are track-related or are used for the movement or control of Passenger Trains (but not including any rolling stock maintenance, servicing or fuelling facilities or railway station facilities and accesses).

(u)

1.8 "Minister"

means the Minister of Transport of Canada;

1.9 "Month"

means a calendar month;

1.10 "Passenger Service"

means the carriage by rail, by the Passenger Trains, of passengers and their baggage, as well as any other goods which VIA may be legally required to carry on board the Passenger Trains;

1.11 "Passenger Trains"

means VIA trains operating according to the routes, frequencies, schedules, maximum train sizes and weight to power ratios which are set forth in Appendix 1;

1.12 "Passenger Rolling Stock"

means the VIA owned or leased railway rolling stock used on the Passenger Trains;

1.13 "Train Crews"

means train personnel, in CP Rail's opinion, qualified and equipped for the operation of passenger trains over the Infrastructure (including, without restriction, train conductors and assistant-conductors, enginemen, brakemen, baggagemen, locomotive firemen (helpers), trainmen and pilots).

G

1.14 "VIA"

means VIA Rail Canada Inc.;

1.15 "Year"

means a calendar year.

ARTICLE 2 - INTERPRETATION

2.1 Gender and Number

Words importing the singular shall include the plural and vice versa, words importing gender shall include all genders and words importing individuals shall include firms and corporations and vice versa.

2.2 Headings

The Article and Paragraph headings contained in this Agreement are for convenience of reference only and in no way define, limit or enlarge the scope, meaning or intent of this Agreement or in any way affect its interpretation.

2.3 Applicable Law

This Agreement is made under the laws of the Province of Quebec and shall be governed by and construed in accordance with the laws of the Province of Quebec and the laws of Canada applicable in the Province of Quebec.

2.4 Severability

Any provision in this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

2.5 Appendices

Each Appendix to this Agreement is incorporated herein as if fully recited and the parties agree to be bound thereto.

ARTICLE 3 - OPERATIONS

3.1 Accommodation of Passenger Trains

Subject to the provisions of this Agreement, CP shall provide the necessary Infrastructure to allow the operation of the Passenger Trains in accordance with the routes, frequencies, schedules and as otherwise set forth in Appendix 1.

3.2 Train Control

CP shall control the movement of all Passenger Trains over the Infrastructure in such manner as will ensure that the requirements of this Agreement are met.

3.3 Train Crews

CP shall provide train and engine crews for the operation of the Passenger Trains.

3.4 Compliance with Laws

VIA shall comply with the provisions of any and all laws and all regulations and rules of any authority having jurisdiction respecting the operation, condition, inspection and safety of Passenger Trains, locomotives and cars while such trains, locomotives and cars are being operated over the Infrastructure. CP shall comply with the provisions of any and all laws and all regulations and rules of any authority having jurisdiction concerning the operation, condition, inspection and safety of the Infrastructure and of the Passenger Rolling Stock.

Each party hereto shall indemnify and save harmless the other party and its employees from and against all fines and penalties imposed upon the other party or its employees under the said laws, rules and regulations by any public authority or court having jurisdiction, when attributable solely to the failure of such first mentioned party or its employees to comply with its obligations aforementioned in this Paragraph 3.4.

3.5 Investigations

Where CP investigates and reports to the Agency or other authority having jurisdiction, in accordance with Agency General Order No. O-1 as amended and Railway Transport Committee Order No. R-41212 dated October 29, 1987, or any replacement therefor, any accidents or incidents occurring on the Infrastructure which involve a Passenger

Train, CP shall prior to the submission of any such report to the Agency or other authority, provide VIA with such information as is required to be included in such report. Any such information provided to VIA shall be and remain confidential information and shall not be divulged by VIA or its employees to any other person except by order of competent authority or with the express consent of CP. It is understood that such information shall in no event include statements taken from CP employees pursuant to the investigation procedures of the collective agreements to which CP is a party.

3.6 Service Disruptions and Emergencies

If CP is aware or apprehends any condition which may affect the operation of the Passenger Trains and such condition does not constitute an emergency, CP shall notify VIA of such condition as soon as reasonably possible and consult with VIA as to the necessary action to be taken.

If any emergency condition exists, or is imminent, in respect of the operation of the Passenger Trains which, in CP's opinion, render the Infrastructure impassable, unsafe or impractical for use or which otherwise may be detrimental to the safety and welfare of the passengers, then in that event CP shall be entitled immediately to take such action as is necessary to protect the safety and welfare of the passengers and best comply with its undertaking herein, including, without restriction, the detouring of Passenger Trains over other of its lines or the lines of another railway. As soon as reasonably possible, CP shall notify VIA of any such action taken, and thereafter any action shall be as mutually agreed between the parties.

Q

Any out-of-pocket costs incurred by CP by reason of any action taken as aforesaid, which are in excess of the costs which CP would have incurred in the absence of the emergency or disruptive condition, shall be borne by VIA.

3.7 Known Delays

CP shall notify VIA as soon as reasonably possible of any conditions known to CP which will delay any Passenger Train.

3.8 Rolling Stock Maintenance

VIA shall ensure that all Rolling Stock shall be maintained to meet all applicable standards and requirements of any authority having jurisdiction with respect to the safe operation of such Rolling Stock over the Infrastructure, and CP shall have the right to refuse to operate or to allow to be operated over the Infrastructure any Rolling Stock which does not conform to such standards or requirements.

3.9 Passenger Train Equipment

VIA, at its expense, shall equip Passenger Rolling Stock with any equipment, accessory, apparatus or device required by any authority having jurisdiction, and with radios and other communications systems and equipment compatible with radios, systems and equipment used by CP for the conduct of train operations on the Infrastructure, and shall at CP's request provide CP with any information from such VIA equipment and systems in connection with investigations pursuant to Paragraph 3.5.

C.

3.10 Removal of Defective Rolling Stock

When any Rolling Stock while on the Infrastructure is so defective in CP's opinion as to be unsafe for Passenger Train operation or to cause abnormal wear or damage to the Infrastructure, CP may remove such unit from service. As soon as reasonably possible, CP shall notify VIA of any such removal or proposed removal.

3.11 Disabled VIA Rolling Stock

If, by reason of any mechanical failure or for any other cause not resulting from a collision or derailment, a train or locomotive of VIA becomes inoperative and unable to proceed under its own power, or fails to maintain the speed required by CP on the Infrastructure, or, if in emergencies, crippled or otherwise defective cars are set out of Passenger Trains on the Infrastructure, CP may furnish motive power or such other assistance as may be necessary to haul, help or push such trains, locomotives or cars, or to move the disabled Rolling Stock off the Infrastructure and VIA shall pay CP for rendering such assistance, the whole as follows:

a) Rescue Power

CP will provide a rescue locomotive to move a disabled train between Victoria and Courtenay, in which case VIA shall pay to CP the greater of

per mile for each mile the unit operates in rescue service or

. The said mileage shall be computed from the point from which the locomotive is dispatched by CP or removed from a CP train to the point, designated by CP, where the locomotive is returned.

b) Emergency Maintenance

If CP is required by VIA and is able to dispatch personnel and equipment to perform emergency repairs or maintenance on the Rolling Stock, VIA shall pay to CP for such service, in the case of labour at the _____ per hour per employee while such employee is engaged in providing the emergency service to VIA, including travelling to and from the location of the disabled or defective Rolling Stock and subject to a four-hour minimum, and in the case of equipment or parts used or supplied at such rates as are from time to time prescribed in the Schedule "A" directives of the Agency.

c) Removal of Rolling Stock

Defective Rolling Stock, including any Rolling Stock removed from service by CP pursuant to Paragraph 3.10, shall be moved by CP to a location or point designated by VIA. When the damaged or disabled Rolling Stock is moved in a CP freight train, VIA shall pay to CP _____ per equipment mile for any such move, and if it is moved to the mainland, VIA shall pay to CP a sum of _____ for each round trip from Vancouver Island to and from the interchange point between CP and VIA at Sapperton, B.C.

d) Adjustments

The amounts set forth in (a), (b) and (c) above, other than Schedule "A" charges, shall be indexed beginning on January 1, 1991 and from year to year thereafter as provided for in Paragraph 7.9.

3.12 Clearing of Wrecks

In the event of any locomotive, train or car of VIA being derailed or in collision while upon the Infrastructure, the damaged equipment shall be picked up and removed by CP, and VIA shall pay CP for such service in accordance with the Schedule "A" directives of the Agency, as updated from time to time. Where possible, VIA employees may be present and may be consulted concerning the clearing of VIA Rolling Stock.

3.13 Transportation Privileges

VIA shall issue passes authorizing employees of CP whose positions shall be agreed to from time to time to ride Passenger Trains (including locomotives), for purposes in connection with the performance by such employees of services provided by CP pursuant to this Agreement.

CP Rail shall authorize mutually agreed employees of VIA to ride Passenger Train locomotives.

ARTICLE 4 - MAINTENANCE OF INFRASTRUCTURE

4.1 Maintenance of Infrastructure

CP shall maintain the Infrastructure to such extent as is necessary to ensure that the requirements of this Agreement are met.

ARTICLE 5 - IMPROVEMENTS AND MODIFICATIONS TO INFRASTRUCTURE

5.1 Improvements and Modifications by CP

CP may, at its discretion, modify, improve or relocate any part or parts of the Infrastructure and schedule maintenance thereon provided that in planning and carrying out any such work CP shall attempt to minimize the adverse effect of such work upon the operation of Passenger Trains. In the event of a major relocation project which is likely to adversely affect the operation of the Passenger Service, CP shall give VIA as much advance notice of such work as is reasonably possible given the circumstances of the project and shall consult with VIA with a view to minimizing the effects of such relocation on the Passenger Service.

5.2 Improvements and Modifications Requested by VIA

Improvements or Modifications to the Infrastructure requested by VIA shall, subject to the required approval of any competent authority, be effected by CP upon mutual agreement between the parties. Such improvements or modifications shall be made at the expense of VIA unless and to the extent that CP has agreed as a term of such mutual agreement to share in that expense.

CP Rail shall be the sole owner of all such improvements or modifications. In the event that VIA ceases to operate the Passenger Service over any part or parts of the Infrastructure upon which such improvements or modifications were effected, other than as a result of the abandonment by CP of operations over such part or parts of the Infrastructure, and that no other party has taken over the operation of the Passenger Service over the said Infrastructure, CP shall have the right, at its

option, upon written notice, to require VIA to remove, at VIA's risk and expense, all or any part of such improvements or modifications from the Infrastructure and to restore the Infrastructure to the same condition as it was prior to such improvements and modifications being effected and, upon the failure of VIA to so remove the improvements or modifications within a reasonable delay, CP shall have the right to do or cause such work to be done at VIA's risk and expense.

5.3 **Improvements and Modifications to the Infrastructure not Requested by VIA**

VIA shall pay to CP, at such time or times as mutually agreed but in advance, all estimated costs and expenses (excluding any allowance for working capital) to be sustained by CP arising out of any improvements or modifications to the Infrastructure required by order, rule or regulation of any authority having jurisdiction solely for purposes related to the Passenger Service, unless and to the extent that such improvements or modifications were ordered as a result of the failure by CP to maintain the Infrastructure in such condition so as to satisfy its obligations pursuant to Paragraph 4.1 hereof.

As soon as the definitive costs of such improvements or modifications are known, CP shall issue a final invoice therefor to VIA and the parties shall settle any difference between the estimated costs paid by VIA and the final cost as invoiced by CP within thirty (30) days.

5.4 Ordered Infrastructure Adjustments

In the event that any authority having jurisdiction should order any adjustment of the Infrastructure to freight operations, where such adjustment is required by reason of safety, VIA shall compensate CP for all costs related to such adjustment provided that such adjustment work is required only as a result of the discontinuance of Passenger Trains over a CP line of railway, that such work is performed within eighteen (18) months after the date of such discontinuance and that CP provides VIA with supporting documentation for its cost invoice. CP shall credit against the cost of such adjustment work any amount which CP may be entitled to receive from any person or authority as a contribution or subsidy towards the cost of such adjustment work.

ARTICLE 6 - LIABILITY AND INDEMNITY

6.1 Indemnities for Assumed Liabilities

Each party hereto, regardless of any fault or negligence of either party or its employees or howsoever the same shall occur or be caused, will forever indemnify and save harmless the other party and its employees from and against all claims, liabilities or judgments by reason or on account of any injury to or death of any person or of any loss or damage to property, the liability for which is assumed in this Article by such first mentioned party and such first mentioned party hereby agrees to pay, satisfy and discharge any judgment that may be obtained by reason thereof and all costs, charges and expenses payable thereunder.

6.2 Damages Assumed by Parties

Each party hereto, regardless of fault or negligence, shall assume all responsibility, arising out of the operation of a Passenger Train and/or a CP Train on the Infrastructure, for:

- a) loss, damage, injury or death to its employees and loss or damage to property of its employees;
- b) loss or damage to its Train and property;
- c) loss, damage, injury or death to persons on its Train and loss or damage to property of such persons;
- d) loss or damage to property of others on its Train.

6.3 Loss or Injury to Persons on Infrastructure for Purposes of VIA or CP

Except as provided in Paragraph 6.2, when any loss, damage, injury or death is occasioned to any person or to the property of any person who is lawfully upon the Infrastructure or any adjoining railway lands and premises owned, leased, managed or operated by VIA or CP by reason either directly or indirectly of the use of the Infrastructure or said railway lands and premises by or on behalf of one of the parties hereto, all responsibility for such loss, damage, injury or death, as between the parties hereto and regardless of fault or negligence, shall be assumed and borne by such party.

6.4 Collision between Passenger Train and CP Train

In the event of a collision between a Passenger Train and a CP Train upon the Infrastructure, except as provided in Paragraphs 6.2 and 6.3, each party hereto, regardless of fault or negligence:

- a) shall assume all responsibility for loss, damage, injury or death to persons or property which may be caused by reason of any "dangerous goods" (as defined in the Transportation of Dangerous Goods Act, Revised Statutes of Canada 1985, Ch. T-19) ("Dangerous Goods") being transported on its Train for itself or a third party; and
- b) except as provided in a), shall equally assume responsibility for loss, damage, injury or death to persons or property which may be caused by reason of the collision.

6.5 Damages Caused by Passenger Train or CP Train

Except as provided in Paragraphs 6.2, 6.3 and 6.4, each party hereto, regardless of fault or negligence, shall assume all responsibility for loss, damage, injury or death to persons or property which may be caused by its Train operating on the Infrastructure.

6.6 Spillage Damage

Notwithstanding anything in this Agreement, except as provided in Paragraph 6.4, VIA, regardless of fault or negligence, shall assume all responsibility for costs, loss or damage to property of CP or others caused by any spillage or release of fuel, lubricants, contaminants or liquids by VIA, its employees, agents,

Contractors or others arising out of the use of the Infrastructure by or on behalf of VIA, including without limitation the cost of stopping, preventing, limiting and cleaning up such spilled or released contaminant and anything contaminated thereby, as may be ordered by any competent authority, and VIA shall pay any fine imposed by such authority in respect of such spillage or release.

6.7 Collision between Passenger Train and CP Train elsewhere than on Infrastructure

In the event of a collision between a Passenger Train and a CP Train elsewhere than upon the Infrastructure, all responsibility, as between CP and VIA, for any claims arising by reason of the said collision and for loss, damage or injury caused thereby shall be determined and settled in accordance with this Article 6 as if the said collision had occurred on the Infrastructure.

6.8 Collision between Passenger Train and Other Train

In the event of a collision between a Passenger Train and any train other than a CP Train, on the Infrastructure or elsewhere on the lines of CP or any other line to which CP has access in common with one or more other railway companies, all responsibility, as between CP and VIA, for any claims arising by reason of the said collision and for loss, damage or injury caused thereby shall be determined and settled in accordance with this Article 6 as if the said collision had occurred on the Infrastructure between a Passenger Train and a CP Train.

6.9 Damages arising from Operation of Trains not otherwise covered

In the event that any loss, damage, injury or death to persons or property occurs on a Passenger Train or on a CP Train while on the Infrastructure or if damage is done to any such Train or if damage or injury is done to persons or property by such Train or arises out of the operation thereof and such loss, damage, injury or death does not fall within the provisions of Paragraphs 6.2 to 6.8 inclusive, or if the responsibility therefore as set out in those Paragraphs cannot be satisfactorily determined, then in each of such cases, all loss caused thereby regardless of fault or negligence shall be shared equally by CP and VIA.

6.10 Notification of Suits or Proceedings

In case any suit or proceeding shall be commenced by any person or corporation against either party hereto, for or on account of any loss, damage or injury for which the other party hereto is liable under the provisions of this Article 6, the party so sued or proceeded against shall give to the other party reasonable notice in writing of the pendency of such suit or proceeding, and thereupon the other party shall assume the defence of such suit or proceeding and shall save and hold the party so sued harmless from all loss and costs by reason thereof. Neither party hereto shall be bound by any judgment against the other party unless it shall have had reasonable notice that it was so required to defend and has reasonable opportunity to make such defense. When such notice and opportunity has been given, the party notified shall be bound by the judgment as to all matters that could have been litigated in such suit or proceeding.

6.11 Claims for Business Disturbance

Neither party shall under any circumstances arising under the provisions of this Article have any cause of action against the other for loss of income caused by or resulting from interruption or delay to its business howsoever occasioned.

6.12 Settlement of Claims between CP and VIA

The parties shall settle as between themselves any claim for loss or damage according to the terms of this Agreement notwithstanding, except as provided in Paragraph 6.13, any judgment or decree of any court or other tribunal in a proceeding brought by other parties.

6.13 Arbitration Settlement

In case the parties cannot agree under which of the provisions of this Article the loss, damage, injury or expense hereinbefore referred to shall be assumed, charged or borne, the question as to how the said loss, injury or expense was occasioned shall be referred for settlement in the manner provided in Paragraph 9.9, and in all such cases the award upon such reference shall be final in determining the question in dispute and shall prevail over any contrary finding of a court or jury in an action instituted by any third person or company in which both parties hereto are not represented; provided, however, that if both parties are represented the finding of such court or jury shall prevail.

ARTICLE 7 - COMPENSATION

7.1 Compensation

VIA shall pay compensation to CP as hereinafter provided.

7.2 Method of Payment

On January 15, 1990 and on the first banking day of each month thereafter VIA shall for the term of the Agreement pay to CP in advance the charges hereinafter set forth for Administration, Roadway, Train Control and Train Crew Expenses.

a) Administration

The charges for the administration related to the performance of this Agreement by CP shall be as follows:

- i) for January 1990, the amount ;
- ii) for each month of the year 1990 thereafter, the amount ;
- iii) for subsequent years, the amount set forth in (ii) shall be indexed from year to year as provided for in Paragraph 7.9.

C

b) Roadway and Train Control

The charges for use of the Infrastructure and for train control shall be as follows:

- i) for January 1990, the amount for Trains 198 and 199;
- ii) for each month of the year 1990 thereafter, the amount for Trains 198 and 199;
- iii) for subsequent years, the amount set forth in ii) shall be indexed from year to year as provided for in Paragraph 7.9;
- iv) where a Passenger Train will not be operated for one or more consecutive Months, the amount payable in advance by VIA under section ii) or iii) shall be reduced by the applicable amounts set forth in those sections in respect of that Passenger Train, but shall be reinstated from the beginning of the Month during which such Passenger Train is expected to be operated again, if applicable.

c) Train Crew Expenses

VIA shall pay CP for the provision of Train Crews by CP as follows:

- i) for January 1990, the amount for Trains 198 and 199;
- ii) for each month of the year 1990 thereafter, the amount for Trains 198 and 199;

u

- iii) for subsequent years, the amounts set forth in section (ii) shall be indexed from year to year as provided for in Paragraph 7.9;
- iv) where a Passenger Train will not be operated for one or more consecutive Months, the amount payable in advance by VIA under section ii) or iii) shall be reduced by the applicable amounts set forth in those sections in respect of that Passenger Train, but shall be reinstated from the beginning of the Month during which such Passenger Train is expected to be operated again, if applicable.

7.3 Adjustment to Roadway and Train Control Payments

The payments set out in Article 7.2 b) shall be adjusted as follows for every scheduled train trip not operated:

- i) in 1990, by deducting the following amounts:
 - . Train 198 - the sum per trip;
 - . Train 199 - the sum per trip;
- ii) in subsequent years, by deducting the amounts set forth in section i) indexed from year to year as provided for in Paragraph 7.9.

If a trip is commenced but not completed, regardless of cause, the amounts set forth in i) above shall be prorated on the basis of miles not operated as compared to scheduled miles.

C

7.4

Adjustment to Payments for Train Crew Expenses

The payments set out in Paragraph 7.2 (c), with the exception of Paragraph 7.2 (c) (iv), shall be adjusted as follows for every scheduled train trip not operated at least in part:

i) in 1990, by deducting the following amounts:

* Trains 198 or 199 - the sum per trip, provided that the resulting monthly payment for Trains 198 and 199 shall in no event be less ;

ii) in subsequent years, by deducting the amounts set forth in (i) indexed from year to year as provided for in Paragraph 7.9, subject to the minimum monthly payments also set forth in (i), similarly indexed.

7.5

Goods and Services Taxes

In addition to the amounts due to CP under this Agreement, VIA shall pay any applicable value added or goods and services tax which may be imposed on such amounts pursuant to any federal or provincial legislation which is or may be enacted, which tax shall be shown as a separate item on any statement rendered by CP or VIA.

a

7.6 Monthly Statement

On or before the thirtieth (30th) day following the end of each month, VIA shall issue a monthly statement (the "Monthly Statement") setting forth, for such Month:

- a) the payments made pursuant to Paragraphs 7.2 a), 7.2 b) and 7.2 c);
- b) the adjustments made pursuant to Paragraphs 7.3 and 7.4, if any.

Within thirty (30) days of the date of the Monthly Statement, CP shall pay to VIA the adjustment amount set out in b).

CP may, within the thirty (30) day period set forth in the previous paragraph and upon five (5) days' prior notice examine company records maintained by VIA for purposes of verifying the calculation of adjustments under Paragraphs 7.3 and 7.4.

7.7 Interest on Overdue Amounts

Each party shall pay, to the extent legally enforceable, interest at the rate of _____ per annum upon all overdue amounts payable under this Agreement from the due date until payment.

Unless otherwise specified in this Agreement, all amounts payable by one party to the other pursuant to the Agreement shall be due thirty (30) days after the issuance of an invoice therefor.

u

7.8 Currency and Method of Payment

All payments hereunder shall be in lawful currency of Canada and shall be payable, at the option of the payee, either by cheque or by depositing to an account at a bank in Canada designated in writing by such payee.

7.9 Price Indexation

For the purposes of Paragraphs 3.11, 7.2, 7.3 and 7.4, the annual indexation shall be based on the Forecast Index and calculated as follows:

- i) for each subsequent year following 1990, the amounts set forth in Paragraphs 3.11, 7.2, 7.3 and 7.4 shall be indexed by multiplying each such amount by a quotient, the numerator of which shall be the Forecast Index for the subsequent year and the denominator of which shall be the Forecast Index for the year 1990;
- ii) on or before November 30 of 1990 and of each year thereafter, VIA shall furnish to CP a statement setting forth the indexed amounts for the following year, calculated as provided in Paragraphs 3.11, 7.2, 7.3 and 7.4 and indexed as provided in section (i) above and a statement setting forth the development of the Forecast Index for 1990 and for the subsequent year.

G

7.10 Other Labour Costs

To the extent that they are not covered by the Labour Assistance Program or any successor program and are not included in the rates set out in Paragraph 7.2(c) above, VIA shall be financially responsible for all job security and labour protection costs for UTU and BLE employees adversely affected as a result of changes in the Passenger Service following the date of signing of this Agreement.

Without restricting the generality of the foregoing, this will include:

(i) all costs contained in the Collective Agreements between CP and the UTU and the BLE and in Material Change Agreements negotiated between such parties; and

(ii) all labour costs associated with the filling of otherwise unfilled non-essential positions in freight service as a result of employees having reverted to freight service.

At VIA's request, CP shall make available to VIA such records as will enable VIA to ascertain that the aforesaid costs were incurred by CP, that the payments were made to employees eligible thereto, and that CP was not reimbursed for same from another source.

u

ARTICLE 8 - TERM

8.1 Term

This Agreement shall be in effect from January 15, 1990 to December 31, 1992. This Agreement shall be automatically renewed thereafter from year to year unless and until it is terminated by either party upon ninety (90) days' prior written notice of cancellation given to the other party at any time.

8.2 Early Termination

In the event that VIA, having been authorized or directed to do so by a directive or order of the Minister, the Governor in Council or any other competent authority, should cease to operate Passenger Trains on Vancouver Island, this Agreement shall forthwith terminate on the date upon which such directive or order becomes enforceable or effective, as the case may be. VIA shall give CP as much advance notice as possible of such termination, in writing.

ARTICLE 9 - GENERAL

9.1 Relationship

Nothing in this Agreement shall be deemed or construed to constitute any CP employee performing any services in connection herewith as an employee or agent of VIA, nor to grant any right to VIA to supervise or direct any CP employee in the performance of any such Services.

01

9.2 Provision of Reports and Information

Each party hereto, at the written request of the other party, shall provide to the other party such reports, documents, information or assistance as may be reasonably required for the purposes of such other party pursuing or defending claims against third parties arising out of the operation of a Passenger Train and/or CP Train on the Infrastructure, with due regard for the confidentiality of any document or information and provided that the provision of such reports, documents or information would not, in the opinion of the party requested to provide same, adversely affect such party. It is understood that such information shall in no event include statements taken from CP employees pursuant to the investigation procedures of the collective agreements to which CP is a party.

9.3 Notices

Any notice or other writing required or permitted to be given hereunder or for the purposes hereof (hereinafter in this Paragraph called a "notice") to any party shall be sufficiently given if delivered personally, or if sent by prepaid registered mail or if transmitted by telecopy to such party addressed:

a) CP notice

in the case of a notice to CP at:

Canadian Pacific Limited
910 Peel Street
Montreal, Quebec
H3C 3E4

u

Attention: General Manager, Passenger Services

b) VIA notice

in the case of a notice to VIA at:

VIA Rail Canada Inc.
2 Place Ville Marie
Montreal, Quebec
H3B 2C9

Attention: Vice-President and Chief of Transportation

or at such other address as the party to whom such writing is to be given shall have last notified to the party giving the same in the manner provided in this Paragraph. Any notice delivered to the party to whom it is addressed hereinbefore provided shall be deemed to have been given and received on the day it is so delivered at such address, provided that if such day is not a business day then the notice shall be deemed to have been given and received on the business day next following such day. Any notice mailed as aforesaid shall be deemed to have been given and received on the third business day next following the date of its mailing, subject to proof of earlier delivery. Any notice transmitted by telecopy shall be deemed given and received on the first business day after its transmission, unless it is proven to have been acted upon earlier.

u

9.4 **Force Majeure**

If either party hereto is prevented from carrying out any of its obligations hereunder by any event of force majeure (including, without limitation, war, riot, strike or other labour dispute, fire, flood, earthquake or any other fortuitous event which is unforeseen and caused by a superior force which was impossible to resist), then any scheduled time for performance shall be extended for so long as such force majeure continues to prevent the performance of such obligations and any other stated time or delay for performance shall be extended by a period at least equivalent to the time during which the event of force majeure continued. Any party prevented from carrying out any obligations by reason of force majeure shall promptly give the other party notice of the force majeure, including full particulars in respect thereof.

9.5 **Assignment**

The terms and conditions set forth in this Agreement are for the benefit of VIA only, and it is an essential consideration of this Agreement, and one without which CP would not have entered into upon such terms and conditions, that VIA shall not assign this Agreement or any part of its interest therein without CP's written consent given in advance. CP's consent may be withheld arbitrarily.

9.6 **Successors and Assigns**

This Agreement shall be binding upon and enure to the benefit of the parties hereto, their respective successors and permitted assigns.

Q

9.7 Hearings and Representations to the Agency

Each party shall use its best efforts to give the other party reasonable prior written notice of any hearing before the Agency or other authority having jurisdiction with respect to any matter materially affecting the Passenger Service.

9.8 Confidentiality

Each party agrees that all the terms and conditions of this Agreement, and all amounts paid hereunder, shall be and remain confidential information and shall not be divulged to any other person (excluding the Minister) except by order of any authority having jurisdiction or except with the express consent of the other party.

9.9 Disputes and Arbitration

It is the intent of CP and VIA that any dispute which may arise between them, or between employees of each, be resolved as expeditiously as possible, both for the efficient operation and maintenance of the Passenger Service and for the safe and uninterrupted operation and maintenance of CP's rail system. Accordingly, any dispute or difference arising between CP and VIA with reference to the interpretation of this Agreement or as to their respective rights and obligations hereunder, may be referred to arbitration by either party in accordance with the provisions of the Commercial Arbitration Act, Revised Statutes of Canada 1985, chapter 17 (2nd Suppl.). Unless the parties agree otherwise at the time of the referral, the matter shall be heard before a single arbitrator and in the City of Montreal, Province of Quebec. The party against whom the arbitration award is

made shall pay the fee and expenses of the arbitrator. Each party shall pay its own costs.

9.10 Collective Agreements

The parties shall keep each other informed of all collective agreements and other employee relation matters pertaining to the Passenger Service.

Neither party shall require of the other party the performance of services or standards hereunder nor shall it exercise its rights hereunder in a manner which would cause the other party to breach the terms of, or incur penalties under, any collective agreement between such other party and any bargaining agent representing any of its employees.

9.11 Counterparts

This Agreement may be executed by the parties in separate counterparts each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument.

9.12 Administration of Agreement

For the purpose of giving effect to the undertakings herein and facilitate communications between the parties, forthwith upon execution hereof, the parties shall each appoint an Officer with responsibility for the performance of the parties' respective obligations under this Agreement. Each party shall notify the other party of the name of such Officer and the effective date of his appointment and the name and effective appointment date of any replacement of such Officer. The parties may also delegate to specific officers or other members of their

personnel the responsibility to oversee the implementation of specific tasks or aspects of this Agreement.

9.13 Required Approvals

This Agreement shall be conditional upon the approval of the Board of Directors of CP and VIA, the sanction of the Governor-in-Council and any other approvals which may be required by law or by any governmental or other authority having jurisdiction.

9.14 CP's right to dispose of the Infrastructure

Nothing in this Agreement shall prevent or in any manner restrict CP, in its absolute discretion, from selling or transferring all or any part of the Infrastructure or applying for authority to cease operating over any line of railway over which the Passenger Trains are operated, in accordance with the applicable provisions of the National Transportation Act, 1987 or any successor provisions thereto.

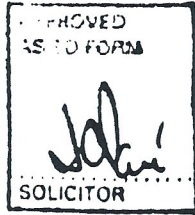
9.15 Language

Les parties aux présentes ont demandé et convenu que le présent contrat et tous les avis et documents s'y rapportant soient rédigés en anglais.

The parties hereto have requested and agreed that this Agreement and all notices and documents related thereto be drafted in the English language.

21

IN WITNESS WHEREOF this Agreement has been duly executed by the parties hereto as of the day and year first above written.



CANADIAN PACIFIC LIMITED



VIA RAIL CANADA INC.

W. H. ...

Charles Mackay

PASSENGER TRAIN SCHEDULE AND OTHER SPECIFICATIONS

TRAIN NO.: 198

EFFECTIVE DATE: JANUARY 15, 1990

SCHEDULE		STATION	STOPS
ARRIVE	LEAVE		
			S - REGULAR F - FLAG
	1315	COURTENAY	
	1330	UNION BAY	F
		BUCKLEY BAY	F
		DEEP BAY	F
	1401	DUNSMUIR	F
	1415	QUALICUM BEACH	F
	1427	PARKSVILLE	S
		NANOOSE BAY	F
	1457	WELLINGTON	F
1507	1522	NANAIMO	F
		STARKS	F
		SOUTH WELLINGTON	F
	1536	CASSIDY	F
	1548	LADYSMITH	F
	1601	CHEMAINUS	F
	1618	HAYWARD	F
	1625	DUNCAN	S
	1633	COWICHAN	F

	HILLBANK	F
1641	COBBLE HILL	F
1648	SHAWNIGAN	F
	STRATHCONA LODGE	F
	CLIFFSIDE	F
1703	MAHAHAT	F
1722	LANGFORD	F
	PALMER	F
1729	ESQUIMALT	F
1745	VICTORIA	

PASSENGER TRAIN SCHEDULE AND OTHER SPECIFICATIONS

TRAIN NO.: 199

EFFECTIVE DATE: JANUARY 15, 1990

SCHEDULE		STATION	STOPS
ARRIVE	LEAVE		
			S - REGULAR F - FLAG
	0815	VICTORIA	
	0829	ESQUIMALT	F
		PALMER	F
	0837	LANGFORD	F
	0858	MALAHAT	F
		CLIFFSIDE	F
		STRATHCONA LODGE	F
	0913	SHAWNIGAN	F
	0920	COBBLE HILL	F
		HILLBANK	F
	0928	COWICHAN	F
	0937	DUNCAN	S
	0941	HAYWARD	F
	0957	CHEMAINUS	F
	1010	LADYSMITH	F
	1020	CASSIDY	F
		SOUTH WELLINGTON	F
		STARKS	F

1040	1100	NANAIMO	F
	1109	WELLINGTON	F
		NANOOSE BAY	F
	1140	PARKSVILLE	S
	1151	QUALICUM BEACH	F
	1204	DUNSMUIR	F
		DEEP BAY	F
		BUCKLEY BAY	F
	1235	UNION BAY	F
1250		COURTENAY	

