CONFIDENTIAL CLOSE CALL REPORTING SYSTEM
IMPLEMENTING MEMORANDUM OF UNDERSTANDING
NORTHERN PLAINS RAILROAD, INC.

NOVEMBER 5, 2019

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Article 1. Parties to Confidential Close Call Reporting System Implementing Memorandum of Understanding (C^3RS/IMOU) (Parties)

A. **Federal Railroad Administration (FRA):** an administration in the Department of Transportation charged with carrying out all railroad safety laws of the United States under 49 United States Code (USC) Section 103 and 49 Code of Federal Regulations (CFR) § 1.89.

B. **Northern Plains Railroad, Inc. (NPR):** A common carrier railroad.

C. **Northern Plains Rail Services (NPRS)** A subsidiary of NPR.

Article 2. Purpose

The Parties are voluntarily entering into this C^3RS/IMOU with the intent to improve the safety of railroad operations.

The objectives for close call reporting are:

- The accumulation of confidential data on currently unreported or under reported unsafe events;
- Event analysis of reported data by Peer Review Teams (PRT);
- Identification of corrective actions by the Parties to remedy identified safety hazards;
- Provision of assistance by FRA in its safety oversight role; and
- Publication of general trends and statistics by government agencies.

Article 3. Boundaries of the Program

The boundaries of the Program are anywhere NPR/NPRS employees perform activities in support of NPR railroad operations.

Article 3.1 Applicability

The C^3RS/IMOU will apply to all NPR/NPRS employees who are represented by the Parties described in Article 1 and governed by the signatories to this C^3RS/IMOU, including employees in training or probationary status. Employees must submit an accepted C^3RS report, subject to conditions in Article 7.1 of this C^3RS/IMOU, to have protection from discipline from NPR and/or FRA civil enforcement. Additionally, NPR will be exempt from FRA civil enforcement under the same terms as these individuals for accepted C^3RS reports. This C^3RS/IMOU does not alter or modify any Collective Bargaining Agreement.

Article 3.2 Other Covered Employees – Tenant Host Operations

If other railroads with active C^3RS IMOUs operate on NPR trackage, the host railroad IMOU governs.

Article 4. Definitions

Adverse Consequences means the negative impacts that may result from a human error or system failure.

Certification means the qualification and certification of locomotive engineers under 49 CFR Part 240 and the qualification and certification of conductors under 49 CFR Part 242.

Close Call or a **Reported Close Call** is an opportunity to improve the safety of activities in support of NPR railroad operations in a situation or incident that has a potential for more serious *adverse consequences* to railroad safety. The reported close call represents a situation in which an ongoing sequence of events was stopped (except as outlined in Article 6.4) from developing further, preventing the occurrence of potentially serious safety-related consequences. Fatalities and personal injuries do not fall into the category of a close call, and will continue to be reported and handled under the current NPR rules and FRA regulations, or any subsequent revisions to NPR rules and/or FRA regulations.

Consensus is the voluntary agreement of all representatives.

Corrective Action is an action taken by NPR in response to the PRT's recommendations concerning emerging trends and reported safety events.

Discipline is any NPR action that would result in a materially adverse employment action like documented verbal conferences, written counseling, written warnings, suspension, termination, demotion, etc.

Event Recorder is any device designed to resist tampering, that monitors and records data on employee activities, equipment operation, track occupancy, record of protection, time, distance, video, and voice recordings, etc.

FRA Safety Inspector means an FRA safety inspector, a state inspector participating in railroad safety investigative and surveillance activities under 49 C.F.R. Part 212, or any other official duly authorized by FRA.

Hazardous material is a commodity designated as a hazardous material by 49 CFR Part 172.

Immediate Work Group means members of the same work group involved in the same operational tasks. The determination, however, is not to be based merely on proximity, but on functionality as well.

Need to Know means when government employees and contractors may have access to information only if it is necessary for Program management and programmatic evaluation and analysis. This "need to know" will be administered by the National Aeronautical Space Administration (NASA) and permission granted by the NASA Program manager.

Peer Review Team or **PRT** is a problem-solving team consisting of local representatives for the primary stakeholders to this C^3RS/IMOU, including FRA and NPR. The PRT may also include a NASA representative.

PRT Support Team is a team of NPR-appointed representatives that helps the PRT review and implement corrective actions based upon the analysis of close call reports. FRA representatives may participate in the PRT Support Team when requested by NPR.

Railroad Operations means the movement of equipment over rails.

Real-Time Observation means a direct visual observance by an FRA Safety Inspector or NPR Manager/Supervisor of a violation of FRA regulations or NPR's operating procedures or practices, including visual observances that occur during operational testing performed by NPR supervisors or management.

Train Accident/Incident Reporting Threshold is the monetary accident reporting threshold defined in 49 CFR § 225.19(c).

Article 5. Confidentiality

NASA shall act as the owner of the data NPR employee(s) report under this C^3RS/IMOU and shall protect the confidentiality of this information through its own governance.

After all relevant data about a reported close call event, including the C^3RS report and all other information collected by NASA that is relevant to the reported event, have been compiled into a unified document, NASA will develop a de-identified document for further analysis by the PRT. NASA will de-identify this record so that the employee(s)'s identity and any third party reference, including anyone mentioned in the original C^3RS report, can no longer be determined through direct or indirect means.

NASA shall protect the following information from disclosure when provided in a close call report:

1. The employee close call report form and the content of that form;
2. The name of the employee who submits a close call report;
3. The name of any other employee mentioned in the close call report;
4. The name of the railroad involved in the close call report; and

5. Information that would make it obvious that only a few (fewer than three), easily-identifiable people could have made the close call report, such as exact location and time of a close call, or description of specific, rarely used equipment models.

6. If NASA is unable to protect the confidentiality of the reporter, the report will not be forwarded to the PRT.

The confidentiality of the information collected during this Program will be preserved beyond the cancellation and/or end of this Program.

Article 5.1 Access to Confidential Data

In the interest of providing the best measures for maintaining the confidentiality of the data, all internal NASA program staff will be granted access to confidential internal use data on a "need to know" basis and for the purposes of completing their work assignments. Internal Program staff includes NASA federal employees and NASA agents. For this Program, NASA agents may include NASA contractors assigned to this Program. The PRT assigned to this Program will have access to de-identified reports and PRT work products.

Article 6. Reporting Procedures

When an employee of NPR covered by this C^3RS/IMOU observes a safety problem or experiences a close call event, he or she should report the problem or event and describe it in detail to NASA. NASA has developed a close call report form that requests information about the date, time, location, contributing factors, actions taken, and potential consequences of an event, along with any other information necessary to fully describe the event or perceived safety problem. NASA has a process for electronic submission or download of report forms at: http://c3rs.arc.nasa.gov/report/electronic.html.

A separate close call report form is required for each safety problem or close call event experienced during a tour of duty. The employee will complete the report form, either paper or electronic, and submit it based on the instructions on the form. NPR will make forms available at work locations. NASA will mail a receipt to the employee.

If NASA determines the initial report contains insufficient information to determine acceptance, the report may receive provisional acceptance. Final eligibility for receipt issuance will be determined when the NASA rail safety expert obtains more information from the employee. NASA may call the reporting employee for further information and the reporting employee is encouraged to provide information. If, based on evidence, the close call report is accepted as valid by NASA, a receipt is issued to the reporting employee via United States Postal Service.

Any record of such receipt will not be available in the NASA close calls reporting system. If an employee facing discipline has lost or misplaced the receipt, the reporting employee may request a verification letter from NASA. This letter will be provided whenever possible. However, there is no guarantee that NASA can provide a verification letter, since

NASA does not store any identifying information about the employee who submitted the report.

Once accepted, NASA will evaluate and de-identify the close call form. NASA will then provide the de-identified information to the PRT for evaluation.

The reporting of close call events is neither intended to circumvent nor meant to be a substitute for any existing NPR safety programs or reporting procedures. Rather, it is intended to be an additional tool for improving safety.

Article 6.1 Criteria for Close Call Report Acceptance

Reports will be accepted for any condition or event that an employee perceives as potentially resulting in adverse consequences to the safety of railroad operations. An employee should report any concern about one's own safety or someone else's safety that involves activities supporting railroad operations.

Each close call report must contain sufficiently detailed information about an event so NASA can evaluate it. An interviewer may call the employee(s) to obtain more information about the event. If in doubt, the interviewer will err on the side of accepting the report. NASA will conduct the first screening and the PRT the second screening.

The following types of reports shall be rejected during the initial screening process:

1. Any train accident/incident that meets the Train Accident/Incident Reporting Threshold;

2. Any reported event that caused or is alleged to have caused any injury, illness, or medical treatment of any kind to any person (including passengers) involved in the event;

3. Reports unrelated to the safety of activities performed in support of railroad operations;

4. Acts of sabotage and other willful violations/acts or criminal offenses, including use of alcohol and prohibited controlled substances; and

5. An event resulting in an identifiable release of a hazardous material.

The following types of reports may be rejected during the initial screening process:

1. Reports that do not include sufficient information when the reporting employee(s) does not accept a follow-up call when contacted;

2. Personal grievances, such as a rejected time slip or perception of unfairness by a supervisor.

Article 6.2 Conditions Under Which a Reporting Employee is Not Protected from Railroad Discipline, Railroad Revocation of Certification, or Other FRA Civil Enforcement

NPR employees included in this C^3RS/IMOU receive no protection from railroad discipline, railroad revocation of certification, or other FRA civil enforcement when one or more of the following conditions occur:

1. The employee's action or lack of action was intended to damage NPR or another entity's operations or equipment or to injure other individuals, or intentionally placed others in danger (for example, sabotage);

2. The employee's action or lack of action involved a criminal offense;

3. The employee's behavior involved alcohol use, substance abuse, or inappropriate use of controlled substances;

4. The report is rejected under Article 6.1;

5. The event resulted in any type of train accident/incident that meets or exceeds the Train Accident/Incident Reporting Threshold;

6. The event caused or is alleged to have caused any fatality, injury, illness, or medical treatment of any kind to any person (including passengers) involved in the event;

7. The event resulted in an identifiable release of a hazardous material; or

8. The event is a Real Time Observation by a NPR Manager/Supervisor or an FRA Safety Inspector, including operational testing conducted by a NPR supervisor or management.

FRA will also afford the same protection from civil enforcement action to NPR, as that afforded to a NPR employee covered by this C^3RS/IMOU, for any incident for which an accepted close call report is filed. Likewise, if an employee report falls under one of the exceptions listed in Article 6.2 and the employee is not afforded protection, NPR will also not receive protection from FRA enforcement action.

Article 6.3 Time Limits to File Report and Receive Protection from NPR Discipline, Railroad Revocation of Certification, or Other FRA Civil Enforcement

To receive protection from NPR discipline, revocation of certification, and/or other FRA civil enforcement, an employee with knowledge of the incident must submit a written (either paper or electronic) close call report to NASA within three business days (Monday – Friday), of the event. For example, an event that occurs at 3:00 a.m. on a Tuesday must be reported by 11:59 p.m. of that Friday. If the event occurs on Saturday at 3:00 a.m. it must be reported by 11:59 p.m. on Wednesday. Saturday and Sunday or Federally observed holidays are not included in the calculation of business days.

Article 6.4 Special Criteria for Known Event Reporting

This article does not modify NPR incident investigation or Alcohol and Drug Testing policy, or supersede any non-FRA Federal or State regulatory requirements (e.g., regulatory requirements promulgated by the Occupational Safety and Health Administration (OSHA)). This article does not include or cover events that are part of real time observations by a NPR Manager/Supervisor or FRA Safety Inspector, including operational testing conducted by a NPR supervisor or management.

Events below the FRA Train Accident/Incident Reporting Threshold that do not involve an fatality, injury, illness, or medical treatment, but would require managerial notification and/or protection under NPR policy or operating rules, shall be considered eligible close call events. Examples of close call events that must be reported immediately to management/supervisor include, but are not limited to: mishaps when loading or unloading a rail car, tank car, baggage car, auto car, or flat car, incomplete job briefings, improper roadway worker protection, roadway worker nearly struck by moving train, run-through switches, minor derailments, and on board electronic monitoring device activations. To facilitate analysis of such events, an employee will provide notification of the event to NPR management/supervisor (foreman) without undue delay. A C^3RS report will be completed and submitted to NASA within the time limits set forth in Article 6.3.

NPR agrees it will not initiate any discipline, written warnings, or written counseling for an event reported to and accepted by NASA as a close call.

NASA will provide a receipt for the close call report as proof of an accepted report. The employee must allow NPR to review the receipt, when requested.

Article 7. Purpose for Protection from Railroad Discipline, Revocation of Certification, or Other FRA Civil Enforcement

The main purpose of this Program is for the Parties to learn more about the safety risks they face. An important element of the Program is the shielding of employee(s) from NPR discipline, revocation of certification, or other FRA civil enforcement potentially arising from events reported under this system. An additional concern is the need to also shield NPR from FRA civil enforcement potentially arising from events reported under this system.

Confidential close call reporting protects the identity of the person disclosing information. The PRT is able to use the information to learn about systemic problems and to educate all Parties. The reporting of close calls will foster an environment that enables the Parties involved to understand systemic failures and implement improvements.

Article 7.1 Conditions under Which a Reporting Employee(s) is Protected from Railroad Discipline, Revocation of Certification, or Other FRA Civil Enforcement

Except as provided for in Article 6.2, NPR employees covered by this C^3RS/IMOU who report close calls or who are involved in close call events under Article 6 that are reported by Immediate Work Group members will be protected from railroad discipline, revocation of certification, or other FRA civil enforcement.

If an employee is unaware that a close call event has occurred and was properly reported by any other work group member, upon notification, the employee may then complete and submit a close call report following Article 6.3 and receive the same protections as the work group member who reported the close call. All employees who submit a close call report will be protected from railroad discipline, revocation of certification, or other FRA civil enforcement provided the reports are submitted under Article 6 and Article 6.3.

An employee who has received protection from railroad discipline, revocation of certification, or other FRA civil enforcement by submitting a close call report will not be required to appear as a witness in an investigation of an employee who did not file a close call report.

FRA will not require NPR to revoke the certification of the protected employee if the event meets both of the following two conditions:

1. The employee's action or lack of action was not intended to cause damage and/or injury to NPR operations, equipment, property, or personnel; to any other entities' property, equipment, or personnel; or to a person; and

2. The employee reports the close call event within the time limits set forth in Article 6.3, and the report is accepted as provided in Article 6.1.

Employee protection from railroad discipline, revocation of certification, or other FRA civil enforcement requires that the same above two conditions apply.

Employees who file an accepted close call report are protected from railroad discipline, revocation of certification, or other FRA civil enforcement arising from the retrospective discovery of events involving violations of operating practices/departmental rules and procedures involving the event reported, including failure to report the event to management as required by any railroad rule. This includes the retrospective (as opposed to real-time) use or review of event recorder data.

Article 7.2 Conditions under Which NPR is Protected from FRA Civil Enforcement

FRA will also afford the same protection from civil enforcement action to NPR, as that afforded to a NPR employee covered by this C^3RS/IMOU, for any event for which an accepted close call report is filed. Likewise, if an employee report falls under one of the exceptions listed in Article 6.2 and the employee is not afforded protection, NPR will also not receive protection from FRA civil enforcement action.

Article 7.3 Conditions That are Required for Real-Time Observations

When a real-time observation is made by a NPR Manager/Supervisor under Article 6.2 item 8, the observed employee must be informed of the observation as soon as possible, but not to exceed two hours from the time of the observation of event.

An event may also be considered a real-time observation upon notification by an observing FRA Safety Inspector to the observed employee(s) or the railroad as soon as possible after observing the violation of FRA regulations or NPR's operating procedures or practices. The FRA Safety Inspector will document the time, date, location, and a description of the observation on a FRA Inspection Report (6180.96 Report). The FRA Safety Inspector will provide a copy of the Inspection Report to the appropriate railroad officer preferably on the same day, but no later than 24 hours after the observation.

Article 8. How Employee(s) Notify NPR or FRA of Protection from Railroad Discipline, Revocation of Certification, or Other FRA Civil Enforcement

When NPR initiates an investigation of an unsafe event or condition and an employee(s) indicates that the event or condition has been reported consistent with this C^3RS/IMOU, the time limits for pursuing discipline will be put in abeyance if necessary, pending a confirmation receipt from NASA.

When a receipt is available for review, the employee must present it to the railroad manager. If the NPR manager can determine the receipt applies to the event, the investigation will be closed. If the Parties do not agree that the receipt is applicable to the event, the employee(s) will present a copy of the receipt to the PRT, who will then accept or reject the receipt as proof of an accepted report of the event in question.

If the PRT accepts the receipt, charges and/or assessed discipline, including any revocation of certification, will be dismissed and all lost time will be paid. If the PRT rejects the

receipt, the PRT will advise the NPR manager and the time limits for initiating disciplinary proceedings may commence. In such cases, no Party may use nor reference the close call report in the subsequent disciplinary proceedings.

Upon receiving notice of FRA civil enforcement for an event covered by an accepted close call report, the employee(s) will present the receipt to the FRA for assistance in resolving the notice consistent with this C^3RS/IMOU.

Article 9. Use of Data

All Parties to this C^3RS/IMOU agree to use the information they acquire only for positive purposes to improve railroad safety. This could include new or modified training, assessing risk and allocating resources to address those risks, and learning why these close calls are taking place.

Article 10. Reserved

Article 11. Stakeholders

The primary organizations that will be involved in the Program are:

- FRA's Office of Railroad Safety;
- NASA;
- NPR/NPRS;
- PRT; and
- PRT Support Team.

Article 12. Stakeholders' Responsibilities in Support of the C^3RS/IMOU

The rights, roles, and responsibilities set forth in this C^3RS/IMOU apply only to Parties, the Parties' employees, and Stakeholders participating in the Program under this C^3RS/IMOU.

Article 12.1 FRA's Responsibilities in Support of the C^3RS/IMOU

FRA will oversee the scope and quality of the work. Experience gained from other modes has indicated that the willingness of persons to submit a close call report depends to a large degree on preserving the confidentiality of NPR, the reporting employee(s), and immediate co-workers named in those reports. FRA will not seek, and NASA will not release to FRA, any information that might reveal the identity of such persons, organizations, locations or events mentioned in close call reports.

Specific FRA responsibilities include the following activities:

- Fund the Program if Congress appropriates funds for the Program. The duration of the Program is dependent upon continued Congressional funding. As provided in Article 14, any party may terminate their participation in the Program at any time.

- FRA may assign personnel to assist the PRT to analyze and summarize emerging trends and recommend corrective actions.

- Work with NASA to ensure that NASA's responsibilities outlined in Articles 5 and 5.1 are fulfilled.

Article 12.2 NASA Responsibility in Support of the C^3RS/IMOU

NASA's responsibility in support of the C^3RS/IMOU is to manage the C^3RS and protect the confidentiality of the data. FRA will work with NASA to ensure its responsibilities outlined in Article 5 and 5.1 are fulfilled. NASA's responsibility to protect the confidential information as outlined in this C^3RS/IMOU will be governed by a separate Interagency Agreement (IA) between FRA and NASA providing for the development of a railroad safety reporting system. The performance of this C^3RS/IMOU is contingent upon the finalization and execution of the IA between FRA and NASA.

Article 12.3 NPR Responsibilities in Support of the C^3RS/IMOU

NPR shall not have any access to nor seek any NASA data that might reveal the identity of employee(s) or individuals mentioned in a close call report. By participating in the Program, NPR will:

- Commit to the support and use of the C^3RS at all levels of the organization;

- Consult on the high-level implementation plan with all NPR's Senior Managers;

- Ensure NPR senior management and supervisors cannot preempt their respective representative's decision-making discretion for an event reported;

- Use the information collected from the Program for the purpose of improving safety. NPR agrees not to use the information reported for the purpose of disciplining, decertifying, or disqualifying employee(s) except for those circumstances covered in Article 6.1 and 6.2;

- Use the PRT recommended corrective actions to evaluate and implement corrective actions in a timely manner as recommended by a consensus of the PRT and the PRT Support Team;

- Develop a communications plan for sharing findings with its employee(s) in order to help achieve success in this Program;

- Travel for PRT members to attend the Annual User Group meeting will be at the discretion of NPR.

Article 12.4 Reserved

Article 12.5 Peer Review Team's Responsibilities in Support of the C^3RS/IMOU

The PRT's primary responsibility will be to accept for review de-identified close call reports from NASA, and to identify and analyze multiple reports in order to:

- Identify and analyze emerging patterns or trends in close calls, relate those to corrective actions taken by NPR, and advise and assist with the implementation of corrective actions;

- Create, review, and discuss a summary report comprised of the individual close call reports, emerging trends, identified root causes, and suggested corrective actions; and

- Assess the association between emerging patterns or trends in close calls and relate those to corrective actions taken by NPR.

The PRT will function using, but not limited to, the following guidelines:

- PRT representatives will represent their constituency's perspectives when reviewing or forming a comprehensive view of close call events;

- The PRT will develop a handbook for PRT governance and succession planning. The PRT can change the handbook as conditions warrant;

- The PRT will meet on a required basis, after agreeing to a schedule that considers the availability of PRT members. The PRT may adjust the meeting frequency as needed;

- The PRT conducts business only when a quorum is present. A quorum is defined within the PRT handbook;

- The members of the PRT are encouraged to consult with their peers or industry experts for guidance on complex or sensitive matters – where more information is desired to make an informed decision. The use of subject matter experts is encouraged;

- The PRT will conduct its own event analysis driven by the NASA report;

- Each representative is empowered to offer possible sources of risk, error recovery mechanisms, and corrective actions. Diverse perspectives are expected and encouraged. The PRT's opinions reflect a collaborative decision-making process among all PRT representatives;

- The PRT makes its decisions using consensus when assigning root causes and proposing corrective actions. It does not require that all members believe that a particular decision is the best one. Instead, all representatives' positions are given a proper hearing and are addressed, and a decision is one that all can accept;

- If there is a dispute concerning the application of this C^3RS/IMOU, the Parties to this C^3RS/IMOU are encouraged to use interest based problem solving techniques to resolve the matter internally. PRTs may contact the FRA C^3RS implementation team for assistance if the matter cannot be resolved internally;

- The PRT will protect the confidentiality of the reporting employee(s). The PRT will not disclose any information that would make it possible to identify the reporting employee(s) mentioned in the close call report to any person or entity. All Parties also agree to protect the confidentiality of any and all data, analysis, findings and recommendations related to this C^3RS/IMOU. The confidentiality of this information will survive in perpetuity.

Article 12.6 PRT Support Team Roles and Responsibilities

The PRT Support Team's responsibilities include:

- Support the PRT during implementation of PRT recommendations;

- Provide continuing Program support;

- Evaluate and implement corrective actions the PRT recommends in a timely manner;

- Review PRT decisions and provide feedback to the PRT, parties, and other stakeholders;

- Report corrective actions NPR implements to the PRT or report why no action was taken; and

- Report on the measured effectiveness of corrective actions to the PRT.

Article 12.7 Reserved

Article 13. Modifications

Modifications to this C^3RS/IMOU may be proposed at any time during the period of performance by any Party, and shall become effective upon written approval by all Parties.

Article 14. Program Duration/Employee(s) Protections

This C^3RS/IMOU will be in effect until cancelled as outlined below. Cancellation of participation is subject to the following restrictions:

- Parties to this C^3RS/IMOU may cancel their respective participation with a 45 day written notice to all Parties;

- The termination or modification of the Program will not adversely affect anyone who acted in compliance with the terms of the Program in effect at the time of that action; i.e., if the C^3RS/IMOU is terminated, all reports and investigations that were in progress will be handled under the provisions of the Program until they are completed. Employee(s) reporting close call events under this Program will remain protected from NPR discipline, revocation of certification, or other FRA civil enforcement for reported events,

- Should any party serve the appropriate cancellation notice, all Parties commit to meet within the 45-day period to seek resolution to avoid cancellation; and

- The confidentiality provided under this C^3RS/IMOU survives its cancellation.

Article 15. Record Keeping

To ensure compliance, all records and documents relating to this Program, including any documentation from the PRT, shall be kept in a manner prescribed by NPR.

Article 16. C^{3}RS/IMOU Signatures

The Parties below approve this Implementing Memorandum of Agreement and the principles of the Confidential Close Call Reporting System.

Jesse J. Chalich
President and CEO - NPR

12/3/19
Date

Michael Bachmeier
AVP Safety - NPR

11/27/2019
Date

Eric Hegstrom
Assistant Manager Safety - NPR

12/3/19
Date

Karl Alexy
FRA Associate Administrator for Railroad Safety/
Chief Safety Officer

12/9/19
Date