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October 6, 2023

By e-filing

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, DC 20024

Re: Alabama & Gulf Coast Railway LLC
– Trackage Rights Exemption –
The Kansas City Southern Railway Company D/B/A Canadian Pacific Kansas City
Docket No. FD 36731

Dear Ms. Brown:

Enclosed for e-filing on behalf of Alabama & Gulf Coast Railway LLC ("AGR") is a Notice of Exemption being filed pursuant to 49 CFR § 1180.2(d)(7) for overhead trackage rights.

AGR is also enclosing, with a request for expedited consideration, a motion for protective order pursuant to 49 CFR § 1104.14(b) to allow for the filing of certain documents that contain confidential or highly confidential commercial terms. With this motion, AGR is filing a Highly Confidential version of the trackage rights agreement.

The relevant filing fee was paid using Pay.gov. Please let me know if there are any questions regarding these filings.

FILED
OCTOBER 6, 2023
SURFACE
TRANSPORTATION BOARD

Sincerely,

Justin J. Marks
Counsel to Alabama & Gulf Coast Railway LLC

Enclosure

FEE RECEIVED
OCTOBER 6, 2023
SURFACE
TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36731

**ALABAMA & GULF COAST RAILWAY LLC
– TRACKAGE RIGHTS EXEMPTION –
THE KANSAS CITY SOUTHERN RAILWAY COMPANY
D/B/A CANADIAN PACIFIC KANSAS CITY**

VERIFIED NOTICE OF EXEMPTION

(color images included)

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*Attorneys for
Alabama & Gulf Coast Railway LLC*

Dated: October 6, 2023

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36731

**ALABAMA & GULF COAST RAILWAY LLC
– TRACKAGE RIGHTS EXEMPTION –
THE KANSAS CITY SOUTHERN RAILWAY COMPANY
D/B/A CANADIAN PACIFIC KANSAS CITY**

VERIFIED NOTICE OF EXEMPTION

Alabama & Gulf Coast Railway LLC (“AGR”), a Class II railroad, files this Verified Notice of Exemption (“Notice”), pursuant to 49 C.F.R. §1180.2(d)(7), for AGR to acquire overhead trackage rights extending from milepost 50.4± near Myrtlewood, AL and milepost 42.0± (the “Subject Trackage”) pursuant to a written trackage rights agreement to be entered into between AGR and The Kansas City Southern Railway Company d/b/a Canadian Pacific Kansas City (“CPKC”).¹ This notice of exemption is being filed contemporaneously with, and is related to, an application being filed in FD 36732 for CPKC to acquire the 50.4-mile rail line referred to herein as the “Western Segment” from Meridian & Bigbee Railroad, L.L.C. (“MNBR”), a corporate affiliate of AGR.² The Subject Trackage is an approximately 8.4-mile portion of the Western Segment.

¹ The milepost references are based on MNBR’s current timetable.

² In FD 36732, Canadian Pacific Kansas City Limited and The Kansas City Southern Railway Company d/b/a CPKC (“CPKC”) are seeking authority to acquire MNBR’s rail line known as the Western Segment. The Western Segment that CPKC is acquiring extends between milepost 0.0 at Meridian, MS and milepost 50.4 at Myrtlewood, AL (the same point as CSXT milepost ORS 779.71 where the Eastern Segment ends).

In FD 36727, CSX Transportation, Inc. is seeking authority to re-acquire the “Eastern Segment” from MNBR. The “Eastern Segment” extends approximately 93.68 miles in two sections.

CPKC has agreed to grant overhead trackage rights to AGR over the Subject Trackage to permit AGR to continue to operate over the Subject Trackage facilitating AGR's continuing interchange with MNB and allowing direct interchange with CSXT (assuming CSXT acquires the Eastern Segment) at Myrtlewood following CPKC's consummation of its acquisition of the Western Segment. AGR does not intend to exercise its authority under this notice unless and until CPKC consummates its acquisition transaction. A map of the Subject Trackage is attached hereto as Exhibit A.

Under 49 C.F.R. § 1180.2(d)(7), the acquisition, renewal, or modification of trackage rights by a rail carrier over the lines owned or operated by any other rail carrier or carriers is exempt if the rights are (i) based on a written agreement, and (ii) not filed or sought in a responsive application in rail consolidation proceedings. The trackage rights covered by this Notice will be based upon a written agreement, a draft copy of which is attached hereto as Exhibit B, and is not being sought in a responsive application in a rail consolidation proceeding. Thus, the class exemption is applicable.

Supporting Information

In accordance with the provisions of 49 C.F.R. §1180.4(g), AGR provides the following information as required by 49 C.F.R. §1180.6(a)(1)(i)-(iii), (a)(5), (a)(6), and (a)(7)(ii):

Segment 1 extends 30.22 miles from milepost XXB 189.00 (some mileposts are not a full mile apart) near Burkville, AL, to milepost XXB 222.00 at the Western Junction station in Dallas County, AL. Segment 2 extends approximately 63.46 miles from milepost OOR 716.26 at the Western Junction station in Dallas County, AL, to milepost ORS 779.71 near Myrtlewood, AL. This notice of exemption is not directly related to or dependent on the consummation of the CSXT acquisition. However, CPKC has indicated that it will not consummate its acquisition of the Western Segment if CSXT does not consummate its reacquisition of the Eastern Segment.

(a)(1)(i) Description of Proposed Transaction

Currently, AGR holds incidental operating rights from Linden to Myrtlewood over MNBR's rail line for purposes of interchange with MNBR. AGR is acquiring these trackage rights from CPKC in order to facilitate AGR's continued interchange with MNBR, and to allow interchange directly with CSXT (assuming CSXT acquires the Eastern Segment) at Myrtlewood upon consummation of CPKC's acquisition of the Western Segment.

The name, business address and telephone number of Applicant are:

Alabama & Gulf Coast Railway LLC
734 Hixon Road (Fountain)
Monroeville, AL 36460

The name, business address and telephone number of counsel to whom questions regarding the transaction can be addressed are:

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(a)(1)(ii) Consummation Date

AGR intends to commence operations under the trackage rights agreement on the effective date of this Notice, or upon consummation of CPKC's acquisition of the Western Segment, whichever is later.

(a)(1)(iii) Purpose of Transaction

CPKC's grant of trackage rights over the Subject Trackage is one component of a larger transaction whereby CPKC is acquiring the Western Segment from MNBR. The trackage rights proposed are necessary to allow AGR and MNBR to continue to interchange at Myrtlewood, and to establish interchange with CSXT (assuming it acquires the Eastern Segment) at that location once the CPKC acquisition of the Western Segment is consummated.

(a)(5) States in which Property of the Applicant is Situated

AGR currently operates in the states of Alabama, Florida, and Mississippi, and the Subject Trackage is located in Alabama.

(a)(6) Map

A map showing the Subject Trackage is attached as Exhibit A.

(a)(7)(ii) Agreement

A draft public version of the Trackage Rights Agreement is attached as Exhibit B, with highly confidential material redacted in accordance with the requested protective order filed together with this Notice. The highly confidential version of the Trackage Rights Agreement is submitted under separate cover. AGR will submit public and highly confidential versions of the executed Trackage Rights Agreement within 10 days of the agreement being executed consistent with 49 CFR § 1180.6(a)(7)(ii).³

Labor Protection

AGR understands that any employees adversely affected by the trackage rights are entitled to protection under the conditions imposed in *Norfolk and Western Railway Company - Trackage*

³ AGR does not expect the Trackage Rights Agreement to be executed until the closing of CPKC's acquisition of the Western Segment following Board approval of the transaction in FD 36732.

Rights - Burlington Northern, Inc., 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Railway, Inc. - Lease and Operate - California Western Railroad*, 360 I.C.C. 653 (1980).

Caption Summary

Attached as Exhibit C is the caption summary required by 49 C.F.R. §1180.4(g)(2)(ii).

Environmental and Historic Documentation

Under 49 C.F.R. §1105.6(c)(4) and 49 C.F.R. §1105.8(b)(3), no environmental or historic documentation is required.

Conclusion

Based on the information provided above, AGR requests that the Board issue a notice of exemption for the trackage rights that are the subject of this Notice.

Respectfully submitted,



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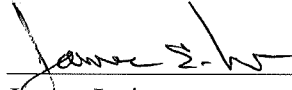
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*Attorneys for
Alabama & Gulf Coast Railway LLC*

Dated: October 6, 2023

VERIFICATION

I hereby verify on behalf of Alabama & Gulf Coast Railway LLC, under penalty of perjury, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verification.



James Irvin
President

Executed on October 6, 2023

EXHIBIT A

MAP

SCHEDULE "A"

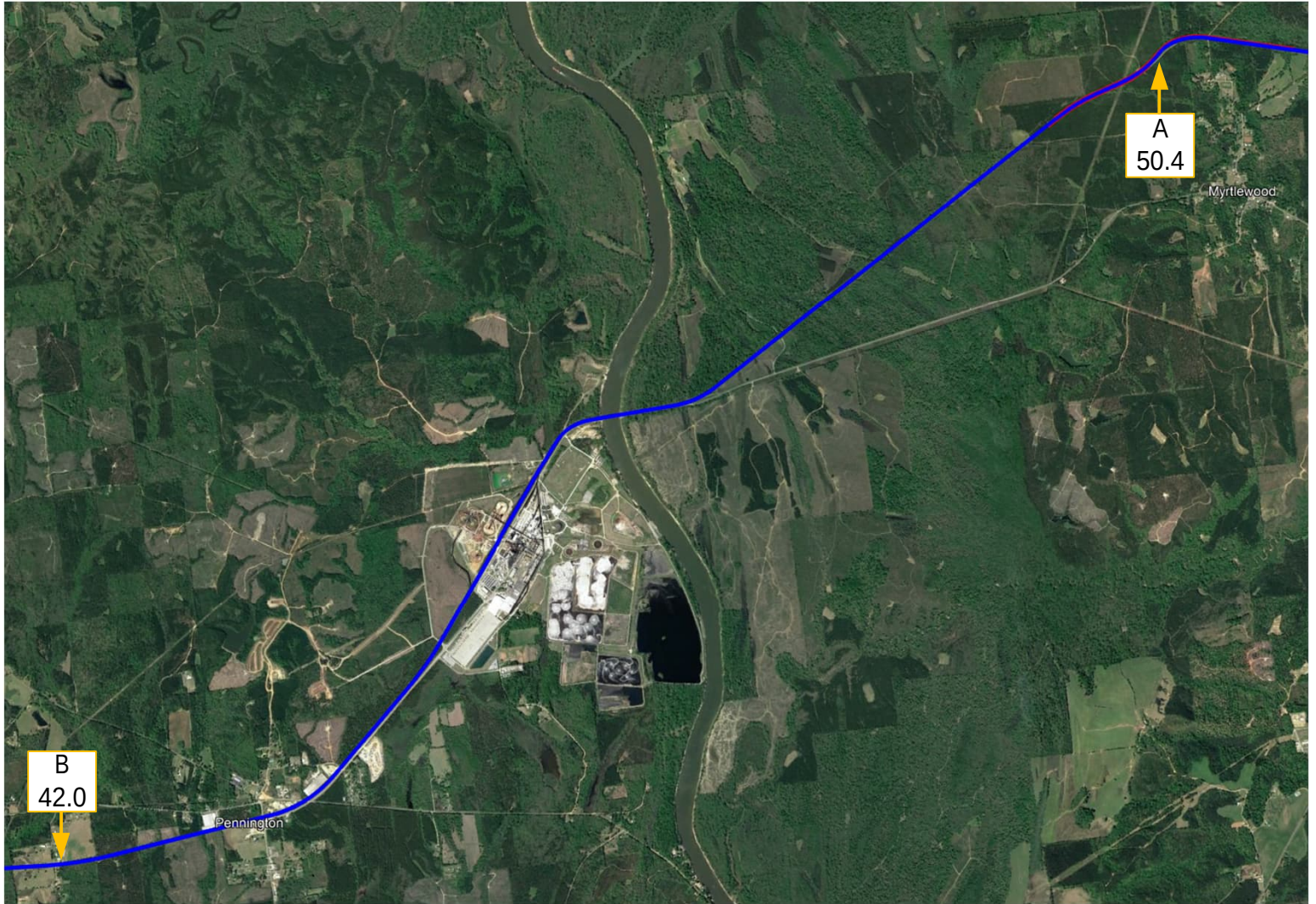


EXHIBIT B

DRAFT TRACKAGE RIGHTS AGREEMENT (PUBLIC VERSION)

TRACKAGE RIGHTS AGREEMENT

THIS AGREEMENT is entered into as of this ____ day of _____, 2024, by and between ALABAMA & GULF COAST RAILWAY LLC, a Delaware limited liability company, hereinafter referred to as "AGR", and THE KANSAS CITY SOUTHERN RAILWAY COMPANY d/b/a CANADIAN PACIFIC KANSAS CITY, hereinafter referred to as "CPKC". Sometimes hereinafter, each may be referred to as a "Party" and sometimes collectively referred to as the "Parties."

WITNESSES THAT WHEREAS:

- A. Meridian & Bigbee Railroad, L.L.C. ("MNBR") has entered into an arrangement with CPKC to sell the line of railroad between MP 0.0+/- in Meridian, MS and MP 50.4+/- in Myrtlewood, AL and with the CSXT for CSXT to repossess and operate the railroad line east of Myrtlewood to Burkville, Alabama;
- B. Pursuant to the Transaction Agreement, dated as of _____, 2023 between Canadian Pacific Railway Company and Genesee & Wyoming Inc. (the "**Transaction Agreement**"), MNBR is retaining certain rights for MNBR's use of the Subject Trackage (as defined below), including for purposes of interchange with AGR in Myrtlewood, AL;
- C. AGR wishes to interchange traffic with MNBR, CSXT and CPKC at Myrtlewood; and
- D. CPKC is willing to grant AGR the use of the Subject Trackage for purposes of interchanging with MNBR, CSXT and CPKC at Myrtlewood.

NOW THEREFORE, in consideration of the premises and of all the mutual covenants herein set forth, the Parties, intending to be legally bound, agree as follows:

ARTICLE 1 **INTERPRETATION**

- 1.1 **Defined Terms.** As used in this Agreement, including the Recitals hereto, the following terms shall have the meanings set out below:
- (a) "**Affiliate**" means with respect to a Party, any person that controls, is controlled by or is under common control with that Party.
 - (b) "**Capital Improvements**" means Improvements which require capital investments and expenditures to materially improve or upgrade the Subject Trackage, as defined by CPKC capital accounting procedures.
 - (c) "**Cars**" means each loaded or empty railway freight car, locomotive or similar equipment, handled by AGR over the Subject Trackage.
 - (d) "**CSXT**" means CSX Transportation, Inc.
 - (e) "**Emergency Response Plan**" means the emergency response plan to be prepared by AGR as described in Article 8.2.

- (f) **“Hazardous Substance”** means any substance which is hazardous to persons or property and includes, without limiting the generality of the foregoing
- (i) radioactive, explosive, poisonous, corrosive, flammable or toxic substances;
 - (ii) substances that endanger the health and safety of persons; and
 - (iii) substances declared to be hazardous, toxic or dangerous under any law or regulation now or hereafter enacted by any governmental authority having jurisdiction.
- (g) **“Improvements”** means any building, structure, trackage or any other work of a physical character.
- (h) **“Operating Plan”** has the meaning set forth in Section 2.2.
- (i) **“Operating Rules”** means CPKC’s operating and safety rules, timetables, special instructions, bulletins, general orders, authoritative directions and amendments, supplements and replacements thereto as communicated from time to time by CPKC’s designated operating officer to AGR’s designated operating officer.
- (j) **“Operating Window”** means the daily time period or periods set forth in the Operating Plan during which AGR may operate on the Subject Trackage.
- (k) **“Subject Trackage”** means CPKC’s trackage between the points designated as Point “A”, being approximately mile post 50.4+/- (based on the current MNBR timetable), and Point “B”, being approximately mile post 42.0+/- (based on the current MNBR timetable), in each case near Myrtlewood, AL as shown in Schedule “A”. The Subject Trackage includes all track, track connections, facilities and appurtenances, signals and switches located between Points “A” and “B” as such facilities and appurtenances, signals and switches are from time to time added to, modified, or removed at the sole discretion of CPKC.
- (l) **“Trackage Rights”** means the non-exclusive rights described in Article 2.1.
- (m) **“Trackage Rights Fee”** means the fees payable by AGR to CPKC described in Article 10.2.
- (n) **“Trains”** means all trains, locomotives, Cars, cabooses and equipment owned, leased, used or otherwise in the possession of, control of or under operation by AGR.

1.2 **Schedules.** The following Schedules are attached to and form a part of this Agreement:

<u>Schedule</u>	<u>Description</u>
A	Subject Trackage Sketch Plan
B	Insurance Coverage
C	Rate Escalation

ARTICLE 2
TRACKAGE RIGHTS

- 2.1 Subject to the terms and conditions herein provided, CPKC hereby grants AGR non-exclusive trackage rights to operate its Trains with its own crews over the Subject Trackage to interchange with, and handle freight rail traffic to and from CSXT, MNBR and CPKC at or near Myrtlewood, AL (the "**Trackage Rights**"). AGR's use of the Subject Trackage shall be in common with CPKC and any other user(s) of the Subject Trackage and the rights of CPKC and such other user(s) to use the Subject Trackage shall not be diminished by this Agreement.
- 2.2 In order to avoid conflicting movements and ensure the safe operation of both Parties on the Subject Trackage, the Trackage rights are subject at all times to the following conditions:
- (a) AGR must operate on the Subject Trackage only during the Operating Windows as established in the Operating Plan, except as may be otherwise agreed to by the Parties;
 - (b) CPKC shall manage the Subject Trackage to facilitate both Parties' operations and provide efficient and non-discriminatory movement of AGR trains for the purpose of AGR's interchange with MNBR, CSXT and CPKC at or near Myrtlewood;
 - (c) AGR's operations on the Subject Trackage are limited to the non-exclusive rights described in Article 2.1 of this Agreement, except as may otherwise be agreed in writing between the Parties; and
 - (d) the Parties shall comply with CPKC's applicable Operating Plan (the "**Operating Plan**").
- 2.3 AGR shall be solely responsible for securing any other operating rights and privileges required to operate its trains to and from the Subject Trackage.

ARTICLE 3
RESTRICTIONS ON USE

- 3.1 The Trackage Rights are only for the interchange of freight traffic with MNBR, CSXT and CPKC as described in Article 2.1 herein. AGR shall not have the right to:
- (a) set off, pick up, or store equipment or switch industries hereinafter located upon all or any part of the Subject Trackage, except as necessary for the handling of locomotives, Cars or cabooses bad ordered en route;
 - (b) serve any industry, team or siding track hereinafter located along the Subject Trackage;
 - (c) permit or admit, without permission in writing from CPKC, any third party to the use of all or any part of the Subject Trackage, nor contract, or make any agreement to provide haulage over the Subject Trackage of Trains or Cars of any third party

which in the normal course of business would not be considered as the Trains or Cars of AGR;

- (d) enter or exit the Subject Trackage at any point other than those designated on Schedule "A" attached hereto;
- (e) interfere with the loading or unloading operations of any shipper located adjacent to the Subject Trackage;
- (f) obstruct or leave any Train or locomotive unattended on the Subject Trackage, or stop its Trains or locomotives on the Subject Trackage except in the case of mechanical failure or emergency;
- (g) construct or alter tracks connecting to the Subject Trackage, including the construction, installation or alteration of any switches from the Subject Trackage without the express written consent of CPKC;
- (h) construct, erect or place, or cause to be constructed, erected or placed on or near the CPKC Trackage any structure, signage, fixture or any other work without the prior written consent of CPKC; or
- (i) fuel locomotives on the Subject Trackage, or load, unload or store any Hazardous Substance on the Subject Trackage, except as permitted under this Agreement and in accordance with the terms and conditions herein.

ARTICLE 4

MAINTENANCE OF CONNECTIONS TO SUBJECT TRackage

- 4.1 Existing connections to the Subject Trackage or related facilities, which are jointly used by AGR and CPKC under other existing agreements with other parties, shall continue to be maintained, repaired and renewed by and at the expense of the Party or Parties responsible for such maintenance, repair and renewal under such agreements.
- 4.2 If, in the opinion of AGR,
 - (a) new or upgraded connections are required for permitting entry to or exit from the Subject Trackage, or,
 - (b) other upgrading, including but not limited to capital capacity, switches, power switches, signals, communications and other works is required for operational efficiency of the AGR service,

then CPKC may, in its sole discretion, acting reasonably, make such Improvements, and AGR shall pay to CPKC the entire cost of such Improvements, including overhead and administrative costs, within 30 days of receiving an invoice. CPKC shall own and maintain the Improvements after installation.

ARTICLE 5
MAINTENANCE OF SUBJECT TRACKAGE

- 5.1 CPKC shall maintain, repair and renew the Subject Trackage with its own supervision and labor forces and shall maintain sufficient access on adjacent roadways as may be necessary for crews to access the Subject Trackage. CPKC shall keep and maintain the Subject Trackage to at least the same condition as the Subject Trackage is in on the date of this Agreement, however, CPKC shall be bound to use only reasonable and customary care, skill and diligence in the maintenance, repair and renewal of the Subject Trackage and CPKC does not guarantee the conditions of the Subject Trackage or that operations over it will not be interrupted. The Parties also acknowledge and agree that in order for CPKC to perform its maintenance obligations, the Subject Trackage will be out of service from time to time for the required work blocks and CPKC shall not be liable to AGR for any loss due to delay or interruption resulting from CPKC's performance of maintenance, repair, or renewal of the Subject Trackage.
- 5.2 AGR's use of the Subject Trackage shall be at its own risk and on an "as is" basis. Notwithstanding any other provision of this Agreement, AGR shall not by reason of failure or neglect on the part of CPKC to maintain, repair or renew the Subject Trackage, have or make any claim or demand against CPKC or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents or employees, for any injury to or death of any person or persons whatsoever, or for any damage to or loss or destruction of any property whatsoever, or for loss of any nature suffered by AGR resulting from such failure or neglect including without limitation any interruption or delay.
- 5.3 Nothing in this Agreement shall preclude CPKC from discontinuing or abandoning rail operations on any part of the Subject Trackage at any time, subject to CPKC fulfilling the applicable requirements set out by the Surface Transportation Board. Upon such discontinuance or abandonment, this Agreement shall automatically terminate as to the portion of the Subject Trackage that has been discontinued. In the event CPKC shall seek regulatory authority to discontinue or abandon rail operations on any part of the Subject Trackage, AGR agrees to cooperate with CPKC and to contemporaneously seek regulatory authority to discontinue AGR's trackage rights over that same part of the Subject Trackage.
- 5.4 CPKC shall not make any changes to the Subject Trackage that prevent or unreasonably interfere with AGR's ability to exercise the Trackage Rights.

ARTICLE 6
OPERATION AND MANAGEMENT OF SUBJECT TRACKAGE

- 6.1 The management and operation of the Subject Trackage shall be under the exclusive direction and control of CPKC. Subject to Section 2.2 and the terms of the Operating Plan, CPKC shall have the unrestricted right to change the management and the operations on and over the Subject Trackage as CPKC, in its sole judgment, may deem necessary, expedient or proper for the operation of the Subject Trackage.
- 6.2 AGR shall comply with all applicable laws, regulations and rules respecting the operation, condition, inspection and safety of its Trains, while such Trains are being operated over the Subject Trackage. Notwithstanding any other provisions herein AGR shall indemnify, protect, defend, and save harmless CPKC and its subsidiaries and affiliates, and all of

their respective directors, officers, agents and employees from and against all fines, penalties and liabilities imposed upon CPKC or its subsidiaries or affiliates, or their respective directors, officers, agents and employees under such laws, regulations and rules by any public authority or court of competent jurisdiction, when attributable solely to the failure of AGR to comply with its obligations in this regard.

- 6.3 When operating over the Subject Trackage, AGR's locomotives and crews shall be equipped with radios that are compatible with CPKC's radios to communicate with CPKC and any other operators on the Subject Trackage on radio frequencies then normally used in directing train movements on the Subject Trackage.
- 6.4 AGR's locomotives shall be adequately powered to maintain the maximum authorized freight speeds as provided by the Operating Rules and equipped with such cab signals, and other safety equipment that is required by law or instruction for the operation over any or all of the Subject Trackage.
- 6.5 Unless CPKC has obtained an exemption for the Subject Trackage, AGR, at its sole expense, shall install and maintain upon its trains, locomotives, cabooses and cars such equipment or devices as may now or in the future be mandated by the Federal Railroad Administration or other governing body having authority, including but not limited to Positive Train Control (PTC) and end of train units (EOT's) with functioning telemetry, for the safe and efficient operation of trains over the Subject Trackage. Unless earlier required by law or regulation, AGR's compliance with such PTC mandate shall not be required sooner than ninety (90) days after the effective date of this Agreement.
- 6.6 The operation of AGR over the Subject Trackage shall at all times be in accordance with the Operating Rules; provided, however, that the Operating Rules shall be reasonable, just and fair between all Parties using the Subject Trackage and shall not unjustly discriminate against any of them.
- 6.7 AGR trains while operating over the Subject Trackage shall not include locomotives, Cars or equipment that exceed the width, height, weight or other restrictions or capacities of the Subject Trackage, and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by the Operating Rules without the prior consent of CPKC.
- 6.8 AGR shall make arrangements with CPKC to have AGR employees who operate on the Subject Trackage qualified for operation thereon. AGR shall pay to CPKC, promptly upon receipt of CPKC's invoice, any cost incurred by CPKC in connection with the qualification of such AGR employees, as well as the cost of pilots furnished by CPKC, until such time as such AGR employees are deemed by the appropriate examining officer of CPKC to be properly qualified for operation as herein contemplated. Notwithstanding anything to the contrary in Section 11, AGR shall indemnify, protect, defend, and save harmless CPKC and its directors, officers, agents and employees from and against all fines, penalties and liabilities imposed on CPKC when attributable to the failure of AGR to comply with the provisions of this section.
- 6.9 CPKC may request an investigation if an AGR employee working on the Subject Trackage is alleged to have violated CPKC's rules, regulations, orders, practices, or instructions, or if an incident occurs which requires an investigation under applicable laws, regulations or agreement rules. AGR will schedule the investigation and notify CPKC's Local

Transportation Officer in the territory. AGR must schedule the investigation within the time limits provided in the applicable agreement on AGR's railroad. CPKC will provide its regulations, supplements, and safety rules to AGR at no cost.

- 6.10 If CPKC requests an investigation, CPKC shall have the right to exclude from the Subject Trackage any employee of AGR, except officers, who CPKC determines to be in violation of CPKC's rules, regulations, orders, practices, or instructions as the result of CPKC's investigation or hearing described below.
- 6.11 In a major offense including, but not limited to, violation of Rule G, dishonesty, insubordination, or a serious violation of operating rules or other offenses of comparable magnitude, wherein CPKC desires to bar AGR 's employee from service on the Subject Trackage pending an investigation by CPKC, immediate verbal notification will be given to the appropriate Transportation Officer of AGR so that proper written notice can be issued to the employee.
- 6.12 If CPKC requests an investigation, an officer of AGR will conduct the investigation, but an officer of CPKC may be present. After the investigation is concluded, a Transportation Officer of AGR will arrange to assess discipline, within the applicable time limits. If CPKC recommends dismissal, AGR reserves the right to change the recommendation to the extent of barring the individual from operating over the Subject Trackage. AGR shall release, indemnify, defend, and save harmless CPKC and its officers, agents and employees from and against any and all claims and expenses resulting from such exclusion.
- 6.13 If the disciplinary action is appealed by the employee of AGR to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of such board or tribunal sustains the employee's position, such employee shall not be barred from service on the Subject Trackage by reason of such occurrence (unless an arbitration concerning such matter is held pursuant to this Agreement and this arbitration upholds CPKC's continued exclusion of such employee).
- 6.14 AGR shall conduct its operations in an efficient manner with a view to maximizing the capacity of the Subject Trackage and ensure that its crews carry out the prompt, efficient and safe movement of AGR Trains over the Subject Trackage.
- 6.15 In the event that a Train of AGR shall be forced to stop on the Subject Trackage due to mechanical failure of AGR's equipment or any other cause not resulting from an accident or derailment, and such Train is unable to proceed, or if a Train of AGR fails to maintain the speed required by CPKC on the Subject Trackage, or if in emergencies, crippled or otherwise defective Cars are set out of AGR's trains on the Subject Trackage, CPKC shall have the option to furnish motive power or such other assistance as may be necessary to haul, help or push such Trains, locomotives or Cars, or to properly move the disabled equipment off the Subject Trackage, and AGR shall reimburse CPKC for the cost of rendering any such assistance.
- 6.16 If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective Cars in order to move them off the Subject Trackage, such work may be done by CPKC, at its option, and AGR shall reimburse CPKC for the cost thereof.
- 6.17 AGR shall maintain the insurance coverage required by Schedule "B" attached hereto.

ARTICLE 7
CLEARING OF WRECKS

- 7.1 Whenever AGR's use of the Subject Trackage requires rerailling, wrecking service or wrecking train service, CPKC shall perform or provide such service, including the repair and restoration of roadbed, track and structures, except that CPKC in its sole discretion may request a third party to perform such rerailling service.
- 7.2 Subject to Article 11, the cost, liability and expense of the foregoing, including without limitation loss of, damage to, or destruction of any property whatsoever and injury to and death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting therefrom, shall be invoiced to AGR and paid by AGR in accordance with the provisions of Article 10 hereof. All locomotives, Cars, and equipment that are owned by or under the management and control of or used by AGR at the time of such wreck shall be promptly delivered to AGR, unless the Parties otherwise agree.

ARTICLE 8
ENVIRONMENTAL

- 8.1 In the event that AGR is required to transport Hazardous Substances over the Subject Trackage, AGR shall:
- (a) comply with all applicable federal, state and municipal laws, rules and regulations including, but not limited to, applicable rules and regulations as set forth by the, Federal Railroad Administration (FRA), the Pipeline and Hazardous Materials Safety Administration (PHMSA), the Surface Transportation Board, and the Association of American Railroads (AAR) respecting the handling and transporting of Hazardous Substances; and
 - (b) ensure its personnel comply with such applicable laws, rules and regulations and meet all the requirements and qualifications for training and certification set forth by such laws.
- 8.2 AGR shall prepare and have at all times, an Emergency Response Plan with respect to its response to incidents or derailments involving Hazardous Substances over the Subject Trackage and upon request provide a copy to CPKC. The Emergency Response Plan must include at a minimum:
- (a) reporting and response procedures in the event of a derailment, accident or spill on the Subject Trackage;
 - (b) emergency response service providers and contacts and their phone numbers; and
 - (c) incident reporting phone numbers including phone numbers for CPKC incident reporting and local CPKC personnel.

- 8.3 In the event any accident or derailment involving AGR rail cars, including rail cars carrying Hazardous Substances shall occur on any segment of the Subject Trackage, AGR agrees to:
- (a) immediately notify local emergency response service providers (including the local fire stations) in accordance with its Emergency Response Plan, and ensure that such local emergency response service providers have appropriate information.
 - (b) immediately report any release, leak, deposit or spill of a Hazardous Substance (e.g. fuel spill from an accident) to CPKC (Network Management Centre -Calgary 1-800-795-7851) and/or such other number as directed by CPKC in writing), whether or not such releases are required to be reported to any federal, state or local authority, and to any regulatory authorities as required by law.
 - (c) promptly respond to an accident, or a leak, spill or deposit of any substance (including without limitation any Hazardous Substance, waste or pollutant), except to the extent such leak, spill or deposit is de minimis in nature and results from the day to day operation of Trains by AGR over the Subject Trackage. AGR shall take all reasonable actions to contain the spill and respond in accordance with its Emergency Response Plan; provided, however that CPKC may elect to reasonably remediate, repair and restore the roadbed, track and related structures impacted by any Hazardous Substance, at the expense of the AGR.
 - (d) provide a written follow-up report to CPKC within five (5) working days of any release, leak, deposit or spill on the Subject Trackage, or any event on or affecting CPKC property which constitutes an offense or is reportable under any laws, by-laws, or regulations relating to the protection of the environment, or is in breach thereof. Such follow-up report will describe the incident, substance and volume released, and measures undertaken or planned to clean up and remove the released substance and any contaminated soil, water and materials and waste.
 - (e) provide CPKC with copies of any and all reports made to any governmental agency that relate to such incidents and/or releases. In addition, AGR shall provide CPKC with a copy of any alleged violation of applicable environmental laws relating to such incident on the Subject Trackage, as well as a copy of any written responses made by AGR to governmental authorities regarding said violations.
 - (f) commence and complete, at CPKC's request, the cleanup, disposal, and remediation of any spill or environmentally unsound condition occurring on the Subject Trackage as a result of AGR's operations over the Subject Trackage. AGR shall completely clean up any such spill or condition; shall dispose of any contaminated soil or waste in a properly licensed disposal facility; and shall replace contaminated soils with clean fill as appropriate under the circumstances. AGR shall demonstrate to CPKC's reasonable satisfaction that any impacted lands and any impacted adjacent lands have been restored to a condition existing immediately prior to the contamination.
 - (g) if AGR and CPKC are in disagreement as to whether any such release has been completely cleaned up, the contaminated soil or waste properly disposed of and replaced with appropriate clean fill, AGR shall retain a reputable environmental

consulting firm to review AGR's activities and report whether AGR has fulfilled its obligations. If AGR's obligations have not been fulfilled, AGR shall take further action as is necessary to rectify any deficiencies and obtain a report from the environmental consultant verifying the same.

- (h) be solely responsible for all costs related to the clean-up and remediation of any releases or incidents resulting from AGR's operations on the Subject Trackage.
- 8.4 CPKC may from time to time perform inspections and environmental, safety, risk and security assessments of the Subject Trackage. CPKC may at any time implement any environmental, safety or security measures, procedures or requirements that it considers necessary or desirable, in its reasonable opinion. CPKC agrees to notify AGR regarding any such measures, procedures or requirements and AGR agrees to cooperate, as necessary, in implementing such measures.
- 8.5 The provisions of this Article 8 shall survive the expiration or earlier termination of this Agreement.

ARTICLE 9 **MILEAGE AND CAR HIRE**

- 9.1 All mileage and car hire charges accruing on cars in AGR's Trains on the Subject Trackage shall be on AGR's account, to be reported and paid by AGR.

ARTICLE 10 **BILLING AND PAYMENT OF CHARGES**

- 10.1 AGR shall on or about the fifteenth (15th) day of each month provide CPKC with an accounting of its use of the Subject Trackage for the prior month. Such accounting shall be furnished to CPKC's Manager Interline Agreements or designated representative and shall include a detailed listing of loaded and empty Car movements over the Subject Trackage. Such detailed listing shall be forwarded to CPKC in an electronic format, and shall include car initial, numbers and contents, date of movements and the points traversed over the Subject Trackage and such other information as CPKC may reasonably request. The Parties shall exchange data on all loaded and empty cars electronically or by any subsequent means as mutually agreed.
- 10.2 The Trackage Rights Fee payable by AGR to CPKC for the Trackage rights shall be as follows:
 - (a) AGR will pay CPKC [REDACTED] escalated pursuant to Article 10.3 herein; [REDACTED]
 - (b) For the purposes of this Article 10.2, "car" shall mean one (1) rail car, whether loaded or empty. In the case of an articulated rail car of two (2) or more platforms, each platform shall be counted as one (1) rail car, whether loaded or empty, subject to modification by mutual agreement of the Parties based upon changes in railroad technology. Each locomotive shall be counted as two (2) cars.

10.3



10.4 The Trackage Rights Fee that AGR is required to pay to CPKC under the provisions of this Agreement is in addition to any and all other costs, expenses and charges specifically provided for in this Agreement.

10.5 The Parties expressly agree that the Trackage Rights Fee to be paid by AGR shall not, in any case, include any cost or expense which may be incurred by CPKC on account of loss of or damage to property, or injury to or death of any person or persons arising out of, or in connection with, the operation by AGR upon or over the Subject Trackage and AGR shall indemnify CPKC as provided for in Articles 8 and 11 herein.

10.6 Invoices rendered pursuant to the provisions of this Agreement, other than the Trackage Rights Fee, shall include direct labor and material costs, together with the customary surcharges, overhead percentages and equipment rentals as specified at the time any work is performed by CPKC for AGR.

10.7 AGR shall pay CPKC within [REDACTED] of its receipt of CPKC's invoice. The payment of invoices by AGR shall not be delayed or payment refused or reduced on the face amount of the invoice rendered due to errors in supporting details which are not material relative to the invoiced amount, but the invoice shall be paid as rendered and exception to charges shall be taken in writing addressed to the officer of CPKC responsible for the issuance of the invoice; provided that no exception to any charge shall be honored, recognized or considered if filed after the expiration of two (2) years from the last day of the calendar month during which the invoice containing said charge was rendered.

10.8 CPKC reserves the right to audit the records and activities of AGR solely for the purpose of verifying AGR's compliance with the provisions of this Agreement. Without limiting the generality of the foregoing, AGR shall keep and maintain true and correct books, records and accounts with respect to its volume of Cars along with any annual statements and summaries, for a period of three (3) years after the Term of this Agreement. AGR shall, upon request of CPKC, make available on reasonable advance notice and during normal business hours and permit CPKC during such period to inspect, make copies of, and audit all such records. If there is any revision to charges as a result of an audit, payment shall be made within thirty (30) days of the audit. The provisions of this Article 10 shall survive the termination of this Agreement.

ARTICLE 11

LIABILITY

As between the Parties, responsibility for any loss or destruction of, or damage to, any property whatsoever, any damage to or destruction of the environment (including without limitation land, air, water, wildlife, and vegetation), and any injury to or death of any person or persons whomever (including employees of AGR and CPKC), resulting from, arising out of, incidental to or occurring in connection with this Agreement (in each case, "**Loss or Damage**"), shall be

allocated as follows, without regard to considerations of fault or negligence (except as otherwise provided in Article 11.8 and Article 11.9 hereof):

11.1 For purposes of this Article 11, the following words shall have the meanings set forth in this Article 11.1:

(a) **"Cars"** shall mean loaded and empty freight cars, trailers and containers (including lading) and locomotives. **"AGR Cars"** shall mean Cars in the revenue and/or car hire account of AGR. **"CPKC Cars"** shall mean Cars in the revenue and/or car hire account of CPKC or a Foreign Railroad.

(b) **"Equipment"** shall mean cabooses, hi-rail vehicles, track inspection equipment and other non-revenue vehicles and machinery (other than locomotives) capable of being operated on railroad tracks that, at the time of an occurrence, are (i) being operated on the trackage upon which such occurrence takes place, or (ii) are located on the trackage upon which such occurrence takes place, or on adjoining right-of-way, for the purpose of maintenance or repair thereof or the clearing of wrecks thereon. **"CPKC Equipment"** shall mean Equipment operated by or in the account of CPKC and **"AGR Equipment"** shall mean Equipment operated by or in the account of AGR.

(c) **"Foreign Railroad"** shall mean a railroad other than (i) AGR or (ii) CPKC and its Affiliates.

11.2 Each Party shall comply with all applicable federal and state laws or regulations, and all applicable rules, regulations or orders promulgated by any municipality, board or commission. If any failure of either Party to comply with such laws, rules, regulations or orders in respect to the use of the Subject Trackage results in any fine, penalty, cost or charge being assessed against the other Party, the Party which failed to comply shall reimburse promptly and indemnify the other Party for such amount.

11.3 The employees of either Party while operating, maintaining or directing operations along the Subject Trackage shall not be considered as joint employees but will remain the sole employees of the operating Party, maintaining Party or the Party directing operations. In the event of any injury or death of a Party's employee on the Subject Trackage regardless of the activity being performed, that Party will assume all Loss or Damage related thereto except as otherwise provided for in Article 11.8 of this Agreement.

11.4 Whenever Loss or Damage occurs as a result of an incident involving only one train, the Party operating such train shall assume and bear all liability for Loss or Damage resulting from or arising out of such incident, including without limitation Loss or Damage to CPKC Cars, CPKC Equipment, AGR Cars, AGR Equipment, third party Cars and Equipment moving on such train, trackage, property and any injury or death of any person or persons.

11.5 Whenever Loss or Damage occurs as a result of an incident involving more than one train, and at least one of such involved trains is a train operated by CPKC, and at least one of such involved trains is a train operated by AGR, then CPKC shall assume and bear all liability for Loss or Damage to Cars and Equipment (including AGR Cars and AGR Equipment) moving on such train(s) operated by CPKC, and AGR shall assume and bear all liability for Loss or Damage to Cars and Equipment (including CPKC Cars and CPKC

Equipment) moving on such train(s) operated by AGR. In such circumstances, as between CPKC and AGR, any Loss or Damage to trackage or to property, and any injury or death of any other person or persons, so occurring shall be allocated equally between CPKC and AGR.

- 11.6 For the purposes of assigning responsibility for Loss or Damage under this Article 11, as between CPKC and AGR, trains, Cars and Equipment of a Foreign Railroad, including passenger trains, shall be considered the trains, Cars and Equipment of CPKC.
- 11.7 **IN NO EVENT AND UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, INDIRECT, SPECIAL OR PUNITIVE DAMAGES.**
- 11.8 Notwithstanding anything to the contrary in this Article 11, whenever Loss or Damage occurs, and such Loss or Damage is attributable solely to the gross negligence or willful or wanton misconduct of only one of the Parties to this Agreement, and such gross negligence or willful or wanton misconduct is the direct or proximate cause of such Loss or Damage, then the Party to which such gross negligence or willful or wanton misconduct is attributable shall assume all liability, cost and expense in connection with such Loss or Damage. The Parties agree that, for purposes of this Article 11.8, "gross negligence or willful or wanton misconduct" shall be defined as "the intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another; such a gross want of care and regard for the rights of others as to justify the presumption of willfulness and wantonness."
- 11.9 Notwithstanding any provision of this Article 11 to the contrary, each Party shall assume and bear all responsibility for any Loss or Damage caused by acts or omissions of any of its employees while under the influence of drugs or alcohol.
- 11.10 If any suit or action shall be brought against any Party for Loss or Damage which under the provisions of this Agreement are in whole or in part the responsibility of the other Party, said responsible Party shall be notified in writing by the Party sued, and the Party so notified shall have the right and be obligated to take part in the defense of such suit and shall pay its share of the judgment and the costs and expense incurred in such suit in accordance with the terms of this Article 11.
- 11.11 In every case of death or injury suffered by an employee of AGR or CPKC, when compensation to such employee or employee's dependents is required to be paid under any present or future state or federal worker's compensation, occupational disease, employers' liability or other law, and one or more of the Parties under provisions of this Agreement is/are required to pay same or a portion of same in installments over a period of time, said Party or Parties shall not be released from paying any such future installment(s) by reason of the expiration or other termination of this Agreement prior to any of the respective date(s) upon which any such future instalments are to be paid.
- 11.12 Whenever any liability, cost or expense is assumed by or allocated to a Party under this Article 11, that Party shall (i) forever protect, defend, indemnify and save harmless the other Party and its Affiliates, and their respective directors, officers, agents and employees

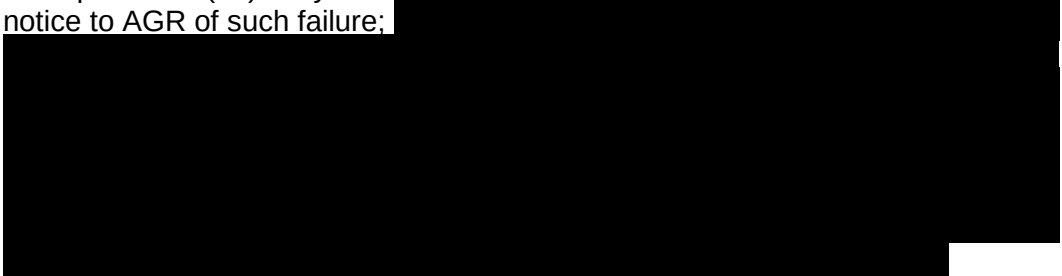
from and against that liability, cost and expense, regardless of whether such liability, cost and expense was caused in whole or in part by the fault, failure, negligence, misconduct, malfeasance or misfeasance of the indemnitees or their directors, officers, agents or employees, and (ii) defend such indemnities against such claims with counsel selected by the responsible Party and reasonably acceptable to the indemnified Party.

- 11.13 Each Party shall investigate, adjust and defend all cargo related claims filed with it in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005, or in accordance with any applicable transportation contract filed pursuant to 49 U.S.C. Section 10709.
- 11.14 All costs and expenses in connection with the investigation, adjustment and defense of any claim or suit (other than cargo-related claims made against a Party by a customer whose traffic was moving in the revenue and/or car hire account of such Party) under this Agreement shall be included as costs and expenses in applying the liability provisions of this Article 11; provided, however, that salaries or wages of full-time agents, full-time attorneys and other full-time employees of any Party engaged directly or indirectly in such work shall be borne by such Party.
- 11.15 No Party shall settle or compromise any claim, demand, suit or cause of action (other than a cargo-related claim filed with it in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005, or in accordance with any applicable transportation contract filed pursuant to 49 U.S.C. Section 10709) for which the other Party has any liability under this Agreement without the concurrence of such other Party if the consideration for such settlement or compromise exceeds Thirty-Five Thousand Dollars (US) (\$35,000).

ARTICLE 12

TERM AND TERMINATION

- 12.1 This Agreement shall be effective the day and the year first written above and shall remain in full force and effect for thirty (30) years (the "**Term**"). Following the Term, this Agreement shall automatically renew for successive five (5) year terms, until terminated by either party on the mutual written agreement of the Parties.
- 12.2 Notwithstanding any other provision in this Agreement, AGR may terminate this Agreement on no less than ninety (90) days prior written notice to CPKC.
- 12.3 CPKC may, at its sole option and without restricting any other legal right or remedy it may have, immediately terminate the Trackage Rights granted AGR under this Agreement upon written notice to AGR if:
- (a) AGR breaches or fails to observe or perform any provision of this Agreement, and such breach continues for a period of [REDACTED]

- (b) AGR fails to maintain any governmental or regulatory approval required in order to conduct railway operations on the Subject Trackage, and such failure continues for a period of (60) sixty calendar days after CPKC shall have first sent written notice to AGR of such failure; 
- (c) AGR becomes insolvent or makes an assignment in bankruptcy or a general assignment for the benefit of creditors or a proposal under any applicable bankruptcy legislation, or if a petition in bankruptcy is filed or presented against AGR, or if AGR otherwise becomes subject to or institutes any proceedings seeking to adjudicate it as bankrupt or insolvent, or if a receiver of any AGR undertaking, property or assets is appointed, or if an order is made or a resolution is passed or proceedings are instituted for the winding up or dissolution of AGR;
- (d) AGR ceases or threatens to cease carrying on its business;
- (e) AGR fails to observe or perform any of the terms of this Agreement where such failure, in the reasonable opinion of CPKC, creates a danger or raises serious safety concerns with respect to CPKC's operations; or
- (f) CPKC obtains authorization to abandon or discontinue service on all or a portion of the Subject Trackage, but solely with respect to the portion so abandoned or discontinued.

12.4 Termination of this Agreement for any reason shall not relieve or release any Party from any obligation assumed or from any liability which may have arisen or been incurred by any Party under the terms of this Agreement prior to the termination hereof.

12.5 In the event of termination of the Trackage Rights over all or a portion of the Subject Trackage, AGR shall cooperate with CPKC in obtaining STB discontinuance authority for the Trackage Rights terminated under this Agreement.

ARTICLE 13

CONFIDENTIALITY

13.1 During the Term and for a period of ten years thereafter, the Parties agree to keep the terms of this Agreement confidential and not to disclose this Agreement or any part thereof to any third party or other entity, for any reason, without the express written consent of the other Party; provided always that (i) AGR may disclose the terms of this Agreement (a) to regulatory authorities or (b) without CPKC's consent in the event AGR, or its controlling shareholder(s), enters into discussions to sell all or a portion of its shares (or other similar transaction) and (ii) that CPKC may disclose the terms of this Agreement without AGR's consent in the event that CPKC enters into discussions to sell, lease or otherwise dispose of all or a portion of the Subject Trackage. Notwithstanding the

foregoing, the Parties may disclose the terms and conditions of this Agreement to any Affiliate, auditor, legal counsel and insurance carrier or broker that needs to know such terms and conditions.

ARTICLE 14
DISPUTE RESOLUTION

14.1 The Parties agree that all disputes concerning the interpretation and application of the terms of this Agreement shall be resolved as follows:

- (a) First, by referral to the appropriate senior officers of the Parties for discussion, with the aim of reaching a mutually acceptable resolution; and
- (b) Second, if the dispute cannot be resolved through discussion between such senior officers of the Parties within thirty (30) days of such referral, then either Party may refer the matter to binding arbitration by a single arbitrator conducted under the Commercial Arbitration Rules of the American Arbitration Association. The arbitrator shall be experienced in railroad matters and transportation law. The decision of the arbitrator shall be rendered within ninety (90) days of the Parties' submissions and shall be final and conclusive upon the Parties. Each Party shall pay the compensation, costs, fees and expenses of its own witnesses, experts and counsel. The compensation, costs and expenses of the arbitrator, if any, shall be borne equally by the Parties. The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws. Pending the award of the arbitrator, there shall be no interruption in the transaction of business under this Agreement, and all payments in respect thereto shall be made in the same manner as prior to the arising of the dispute until the matter in dispute shall have been fully determined by arbitration, and thereupon such payment or restitution shall be made as required by the decision of the arbitrator. Notification of a Party's intent to invoke arbitration is to be made in writing as prescribed in Article 15.1 herein.

ARTICLE 15
NOTICES

15.1 Any notice request, demand or other document required or permitted hereunder shall be in writing and shall be mailed by a recognized overnight courier service, by first-class, registered or certified mail, return receipt requested, postage prepaid, or transmitted by hand delivery or e-mail transmission (if an e-mail address is provided), addressed as follows:

- (a) if to CPKC:

Canadian Pacific Kansas City
Building 1
7550 Ogden Dale Road SE
Calgary, AB T2C 4X9 Canada
Attention: Chief Operating Officer

with a copy to:

Canadian Pacific Kansas City
Building 1
7550 Ogden Dale Road SE
Calgary, AB T2C 4X9
Attention: Chief Legal Officer

(b) if to AGR:

Alabama & Gulf Coast Railway LLC
13901 Sutton Park Drive South, Suite 270
Jacksonville, FL 32224
Attention: President
E-mail: LegalNotices@gwrr.com

with a copy to:

Genesee & Wyoming Inc.
20 West Avenue
Darien, CT 06820
Attention: General Counsel
E-mail: LegalNotices@gwrr.com

Any notice, if given by courier, shall be deemed to have been given or made on the date delivered. Either Party may provide changes to its address or addressees by furnishing a notice of such change to the other Party, in the same manner as provided above for all other written notices.

ARTICLE 16

SUCCESSORS AND ASSIGNS

- 16.1 The rights, benefits, obligations or liabilities of AGR under this Agreement are personal to AGR and may not be assigned or subcontracted by AGR without the prior written consent of CPKC, which CPKC may withhold in its sole discretion, or grant upon such terms and conditions as CPKC deems in its sole discretion to be necessary or desirable in the circumstances. Any assignment or subcontracting by AGR of any right, benefit, obligation or liability of AGR under this Agreement, absent such prior written consent, shall be void.
- 16.2 Notwithstanding Article 16.1, the assignment of this Agreement to an Affiliate of AGR will not require CPKC's consent but will require prior written notice to CPKC. In such case, the Affiliate will be bound by all the terms and conditions of this Agreement.
- 16.3 CPKC may assign any or all of its rights, benefits, obligations or liabilities under this Agreement with notice to AGR.

ARTICLE 17
REGULATORY APPROVAL

- 17.1 Should this Agreement require the prior approval of the Surface Transportation Board ("STB"), AGR will initiate and thereafter diligently pursue, at its own cost and expense, an appropriate application to secure such approval.
- 17.2 The Parties shall assume and hold one another harmless from all employee claims predicated on loss of, or adverse impact on, compensation, benefits or working conditions arising from this Agreement or the activities of the Parties hereunder, where such claims are predicated on labor protective conditions imposed by the Surface Transportation Board or its predecessor.

ARTICLE 18
GOVERNING LAW

- 18.1 This Agreement shall be governed and interpreted in accordance with the laws of the State of New York without regard to conflict of law rules.

ARTICLE 19
FORCE MAJEURE

- 19.1 A Party's duties and obligations under this Agreement shall be excused and a Party shall not be liable to the other Party for any delay, loss or damage resulting from circumstances or causes beyond its reasonable control including, without limitation: an Act of God, inclement weather conditions, storms, blizzard, flood, washout, avalanche, snow slide, rockslide, earthquake, expropriation, fire or explosion, natural catastrophe of any kind, strike, lockout, walkout or other labor dispute; war; vandalism or sabotage, riot, or other civil commotion, insurrection, act of terrorism or other violence, derailment, track outage, labor shortage, electric utility power outage, locomotive or fuel shortage; any law, order or requirement of any governmental agency or authority; epidemic or quarantine restriction; blockade; embargo or AAR service order; closure of origin or destination for any reason. Force majeure declarations by either Party may be limited to specific origins or destinations or railroad routes to more specifically identify the force majeure event. The Party declaring force majeure shall promptly notify the other Party of the nature of the condition and the commencement and cessation thereof.

ARTICLE 20
GENERAL

- 20.1 Nothing in this Agreement shall limit the right of CPKC to admit other companies to use, operate, dispatch or maintain the Subject Trackage or any Party thereof on such terms and conditions as are satisfactory to CPKC.
- 20.2 All headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.
- 20.3 In this Agreement where the context so requires, the singular of any word includes the plural, and vice versa, the use of any term is generally applicable to any gender and, where applicable, to a corporation.

- 20.4 References to a "Person" shall include individuals, corporations, partnerships, associations, bodies politic and other entities, all as may be applicable in the context.
- 20.5 All words, terms and phrases used in this Agreement and not otherwise defined herein shall be construed in accordance with the generally accepted definition or meaning of such words, terms or phrases in the North American railroad industry.
- 20.6 This Agreement may not be modified or amended except in writing and executed by AGR and CPKC.
- 20.7 No waiver of any provision of this Agreement will be effective unless in writing signed by the appropriate Party, and then only in the specific instance and for the specific purpose given.
- 20.8 This Agreement constitutes the entire understanding between the Parties with respect to the subject matter hereof and supersedes all negotiations, representations, prior discussions and prior agreements and memorandums between the Parties relating to the subject matter hereof.
- 20.9 This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

Signature page follows.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in duplicate, each part being an original, as of the day and year first above written.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY
d/b/a CANADIAN PACIFIC KANSAS CITY

By: _____

Name: _____

Title: _____

ALABAMA & GULF COAST RAILWAY LLC

By: _____

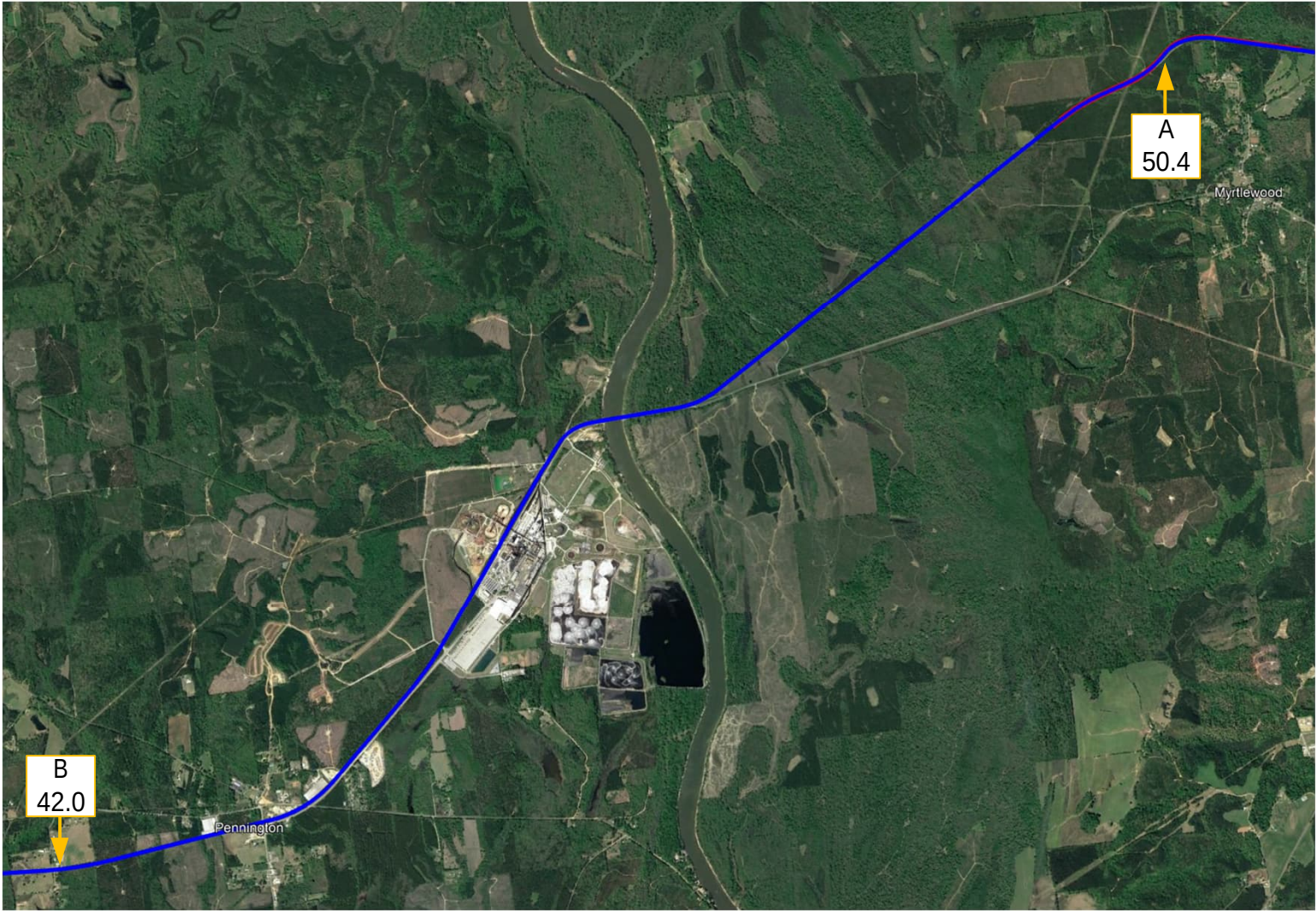
Name: _____

Title: _____

SCHEDULE "A"

Subject Trackage

SCHEDULE "A"



SCHEDULE "B"

Insurance Coverage

1.1 AGR, at its sole cost and expense, shall take out and keep in full force and effect and pay all premiums for, throughout the term and during such other time as this Agreement remains in force, the following insurances:

- (a) Railroad Liability insurance with a limit of not less than [REDACTED] for any one loss or occurrence for personal injury, bodily injury, or damage to third party, including but not limited to CPKC property including loss of use thereof. This policy shall by its wording or by endorsement include but not be limited to the following:
 - (i) CPKC and its associated or affiliated companies (and the directors, officers, employees, agents and trustees of all of the foregoing) as an additional insured with respect to obligations of AGR under this Agreement and incidental thereto;
 - (ii) "cross liability" or "severability of interest" clause which shall have the effect of insuring each entity named in the policy as an insured in the same manner and to the same extent as if a separate policy had been issued to each;
 - (iii) blanket contractual liability, to include the insurable liabilities assumed by AGR under this Agreement;
 - (iv) shall not exclude operations on or in the vicinity of the railway right of way, if applicable;
 - (v) products and completed operations;
 - (vi) insure against all Federal Employer's Liability Act claims for liability arising out of AGR's operations under this Agreement; and
 - (vii) sudden and accidental pollution, or named perils pollution including the release or dispersal of pollutants as a result of a collision, overturning or derailment of any vehicle or railway rolling stock.
- (b) Automobile Liability insurance covering bodily injury and property damage in an amount not less than [REDACTED] per accident, covering the ownership, use and operation (including the loading and unloading) of any motor vehicles and trailers which are owned, non-owned, leased or controlled by AGR and used in regards to this Agreement.
- (c) "All Risks" property insurance covering AGR's owned property and the property of CPKC in the care, custody, or control of AGR, or for which AGR has assumed liability, on a replacement cost basis. With respect to the property of CPKC, such policy shall contain a loss payable clause in favor of CPKC, and include CPKC as an additional insured.

Not more frequently than once every three years, at such times as AGR's policies are subject to renewal, AGR or CPKC may request reasonable changes to the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices and conditions in the insurance industry.

AGR agrees that the insurance it maintains is primary and not excess of any other insurance that may be available. AGR shall waive any and all subrogation in the event of injury, death, losses, incidents, claims and potential claims where permissible under the insurance policies required under this Agreement.

AGR shall provide CPKC with written notice and all reasonable particulars and documents related to any damages, losses, incidents, claims and potential claims concerning this Agreement as soon as practicable after the damage, loss, incident or claim has been discovered. AGR is responsible for any deductible and excluded loss under the insurance.

If AGR fails to maintain the insurance required under this Agreement, CPKC may at its option suspend the Trackage Rights retained by AGR under this Agreement upon no less than five (5) days' prior written notice.

1.2 **Replacement Insurance**

If the insurance procured by AGR pursuant to this Schedule A takes the form of a claims made policy and is cancelled or allowed to expire without renewal, AGR shall provide evidence of replacement insurance that provides coverage as required by Section 1.1. Such coverage must be retroactive to the original inception date of the cancelled or non-renewed policy. AGR further agrees to promptly give notice to CPKC's Manager Interline Agreements of any claim or notice of incident, or notice of potential claim related to this Agreement, that is required to be reported to AGR's liability insurance company.

1.3 **Notice to CPKC**

Each policy of insurance obtained by AGR pursuant to Section 1.1 shall contain provisions requiring that the insurance carrier to endeavor to give CPKC, through its Manager Interline Agreements, at least 30 days' notice in writing of any proposed cancellation of any policy AGR is required to maintain pursuant to this Schedule B. Such notice shall be by registered mail to the specific attention of: Canadian Pacific Railway Company, Att. Director of Risk Management, 7550 Ogden Dale Road SE, Calgary AB, T2Z 3L2. Alternatively, such notice can be sent by email to cpkc@ebix.com.

1.4 **Certificate of Insurance**

All policies of insurance stipulated in this Schedule A will be with insurers with a minimum A.M. Best Rating of "A- VII" and in a form satisfactory to CPKC, and AGR will see that a copy of all certificates of insurance are delivered to CPKC prior to the date that AGR commences operations and prior to any insurance renewal thereof. CPKC shall have no obligation to examine such certificate(s) or to advise AGR in the event its insurances are not in compliance herewith. Acceptance of such certificate(s)

which are not compliant with the stipulated coverages shall in no way whatsoever imply that CPKC has waived its insurance requirements.

1.5 **No Limitation**

Neither compliance with the requirements of this Schedule A nor CPKC's approval of the terms and conditions of any such policy will in any way limit or modify the obligation of AGR to provide specific insurance coverage as required by Section 1.1 of this Schedule A. The insurance coverage acquired by AGR pursuant to this Schedule A shall not in any manner restrict or limit the liabilities assumed by AGR under this Agreement.

SCHEDULE "C"
Rate Escalation

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

EXHIBIT C

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

Docket No. FD 36731

**ALABAMA & GULF COAST RAILWAY LLC
– TRACKAGE RIGHTS–
THE KANSAS CITY SOUTHERN RAILWAY COMPANY
D/B/A CANADIAN PACIFIC KANSAS CITY**

Alabama & Gulf Coast Railway LLC (“AGR”), a Class II railroad, files this Verified Notice of Exemption (“Notice”), pursuant to 49 C.F.R. § 1180.2(d)(7), for AGR to acquire overhead trackage rights extending from milepost 50.4± near Myrtlewood, AL and milepost 42.0± (the “Subject Trackage”) pursuant to a written trackage rights agreement to be entered into between AGR and The Kansas City Southern Railway Company d/b/a Canadian Pacific Kansas City (“CPKC”). The Subject Trackage will extend approximately 8.4 miles and is a portion of a 50.4-mile rail line known as the “Western Segment” that CPKC is seeking to acquire from Meridian & Bigbee Railroad, L.L.C. (“MNBR”), an affiliate of AGR, in the related proceeding docketed at STB Finance Docket No. 36732.

CPKC has agreed to grant overhead trackage rights to AGR over the Subject Trackage to permit AGR to continue to operate over the Subject Trackage facilitating AGR’s continued interchange with MNBR and allowing interchange with CSX Transportation, Inc., at Myrtlewood following CPKC’s consummation of its acquisition of the Western Segment. AGR does not intend

to exercise its authority under this notice unless and until CPKC consummates its acquisition of the Western Segment.

This notice is filed under 49 C.F.R. § 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated:

By the Board, Mai T. Dinh, Director, Office of Proceedings