

FD 34209

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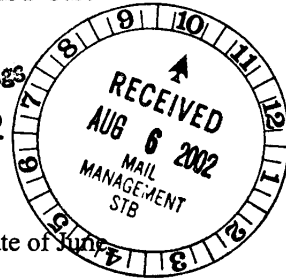
NORFOLK SOUTHERN/CPR AGREEMENT ON NORTHEAST U.S.

RESTRUCTURING

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Office of Proceedings

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Public Record



This Operations Restructuring Agreement is entered into this 27th date of June

2002, by and among Delaware and Hudson Railway Company, Inc., a Delaware corporation, d/b/a Canadian Pacific Railway ("CPR"), Norfolk Southern Railway Company ("Norfolk Southern"), a Virginia corporation, and Pennsylvania Lines LLC ("PRR"), a Delaware limited liability company. CPR and Norfolk Southern are sometimes herein individually referred to as a "Party" and sometimes herein collectively referred to as the "Parties." Unless otherwise expressly provided for in the text of this Agreement, PRR shall not be included in the reference to "Party" or "Parties."

RECITALS

WHEREAS, on the 25th of April 1979, Consolidated Rail Corporation ("Conrail") and the Delaware and Hudson Railway executed a trackage rights agreement (together with such amendments and supplements thereto, the "1979 Agreement");

WHEREAS, CPR is the successor to Delaware and Hudson Railway regarding the portions of the 1979 Agreement applicable to the matters contemplated in this Operations Restructuring Agreement;

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WHEREAS, Norfolk Southern Corporation ("NSC"), parent to Norfolk Southern, has entered into a Transaction Agreement (the "Transaction Agreement") among NSC and CSX Transportation, Inc. ("CSXT"), a wholly-owned subsidiary of CSX Corporation ("CSX"); Norfolk Southern; Conrail Inc. ("CRR"); Conrail, a wholly-owned subsidiary of CRR; and CRR Holdings LLC;

WHEREAS, CSX and NSC have indirectly acquired all the outstanding capital stock of CRR;

WHEREAS, pursuant to the Transaction Agreement, certain assets of CRC have been allocated to PRR, which is a wholly-owned subsidiary of Conrail, to be operated by Norfolk Southern under the terms of an allocated assets operating agreement (the "NSR Operating Agreement") between PRR and Norfolk Southern that, in relevant part, permits Norfolk Southern to enter into transactions as described herein with regard to the assets so allocated, including, but not limited to the 1979 Agreement;

WHEREAS, the NSR Operating Agreement has an original term of twenty-five (25) years from the effective date and two optional renewal terms of five (5) years;

WHEREAS, PRR is agreeable and wishes to consent to the transactions and agreements set forth herein;

WHEREAS, the term of the NSR Operating Agreement may expire before the end of the agreements set forth herein, but PRR is willing to thereafter continue the

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agreement for the remainder of the term of this Agreement pursuant to its terms and conditions;

WHEREAS, CPR and Norfolk Southern entered into a Haulage Agreement dated May 5, 1998 ("1998 Haulage Agreement") for, among other things, CPR to provide to Norfolk Southern certain haulage services between: 1) Harrisburg, PA and Mechanicville, NY; and 2) Binghamton, NY and Mechanicville, NY; and to provide interchange with other rail carriers in the Albany/Mechanicville, NY area, all pursuant to the terms and conditions and as is more specifically set forth therein;

WHEREAS, CPR and Norfolk Southern entered into an Intermodal Haulage Agreement dated April 11, 1999 ("1999 Haulage Agreement") for, among other things, CPR to provide certain haulage services for intermodal traffic between Harrisburg, PA and Mechanicville, NY, all pursuant to the terms and conditions and as is more specifically set forth therein;

WHEREAS, CPR and Norfolk Southern entered into an Interim Haulage Agreement dated June 16, 1999, ("Interim Haulage Agreement") for, among other things, CPR to provide to Norfolk Southern haulage services between Allentown, PA and Binghamton, NY, all pursuant to term and conditions and as is more specifically set forth therein; and

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WHEREAS, CPR does not currently haul any Norfolk Southern to Norfolk Southern Bridge Traffic as Existing Haulage (as those terms are used herein) pursuant to the 1998, 1999 or Interim Haulage Agreements;

WHEREAS, the Reading Blue Mountain and Northern Railroad ("RBMN") has granted, in separate agreements, trackage rights to Norfolk Southern and CPR between Dupont and M&H Junction, PA.

NOW THEREFORE, in consideration of mutual terms, covenants and conditions set forth below, the parties agree as follows:

Section 1. Definitions and Interpretation.

A. Definitions.

For the purpose of this Agreement, defined terms shall have the meaning ascribed thereto in this Agreement. In addition, the following definitions shall govern unless specified to the contrary:

- (1) Any lines described as "Norfolk Southern Lines" shall include lines owned by PRR and operated by Norfolk Southern pursuant to the Operating Agreement.
- (2) Any reference to the "Surface Transportation Board" shall include a reference to any such successor agency of the United States government with jurisdiction over the relevant action, activity or property.

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(3) Any reference to the "Subject Trackage" or "Subject Lines" shall be a reference to that as defined in Section 2 hereof.

(4) Any reference to "CN/IC" shall be a reference to Canadian National Railroad Company and its wholly-owned subsidiary, the Illinois Central Railway Company.

(5) Any reference to "WC" shall be a reference to the Wisconsin Central Division of Canadian National Railway Company.

(6) Any reference to "FAK" shall be a reference to mixed carload freight moving by rail.

(7) Any reference to "Restricted Traffic" shall be a reference to [

]

(8) Any reference to a "Special Train" shall be a reference to a train that requires the Owner to provide special service or special transportation conditions. These special services and special transportation conditions, for illustration, may include, but

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are not limited to, Owner-provided police protection and special train scheduling for dimensional movements.

(9) Any reference to "Norfolk Southern to Norfolk Southern Bridge Traffic" shall be a reference to traffic that Norfolk Southern physically handles at both applicable end points of any of the CPR lines, immediately prior and subsequent to the traffic moving over the CPR Lines.

B. Interpretation.

All words, terms and phrases used in this Operations Restructuring Agreement that are not otherwise defined shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the railroad industry. As used in this Operations Restructuring Agreement, whenever reference is made to the trains, locomotives, cars or equipment of, or in the account of, one of the Parties hereto, such expression means the trains, locomotives, cars and equipment in the possession of or operated by one of the Parties and includes such trains, locomotives, cars and equipment which are owned by, leased to, or in the revenue account of such Party. Whenever such locomotives, cars or equipment are owned or leased by one Party to this Operations Restructuring Agreement and are in the possession or account of the other Party to this Operations Restructuring Agreement, such locomotives, cars and equipment shall be considered those of that other Party under this Operations Restructuring Agreement.

Section 2. Subject Trackage, Norfolk Southern Lines and CPR Lines.

A. Subject Trackage Defined.

Any reference to "Subject Trackage" or "Subject Lines" shall be a reference to all of the following lines, all of which are located in Pennsylvania and/or New York. Such references include all main line trackage, track connections, facilities and appurtenances (but not including yards or commercial facilities, unless otherwise expressly provided for herein), signals and switches, as such facilities and appurtenances, signals and switches are from time to time added to, modified or removed from, at the sole discretion of the "Owner," as that term is used in the following subsections;

(1) Norfolk Southern's track between SK Yard at MP 420.1 and CP BD at MP 213.2 ("NSR Segment 1"), and track that would be covered pursuant to Sections 3.B. and 3.C. hereof ("NSR Segment 2" and "NSR Segment 3", respectively, and, together with NSR Segment 1, the "Norfolk Southern Lines") (each tracks that Norfolk Southern will be deemed to be the "Owner" of and CPR to be the "User" of for the purposes of this agreement); and

(2) CPR's trackage depicted on Exhibit 1 to the Trackage Rights Agreement appended hereto as Appendix A, and incorporated herein, which illustrates CPR trackage between the points designated as Point "A" (CP-Kase at Norfolk Southern's connection with CPR at MP 752.0 of CPR's Freight Main Line ("FML"), near

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Sunbury, Point "B" (CPR's connection with the RBMN, at MP 679.38 of CPR's FML, at Dupont, PA), Point "C" (CPR's connection with the DL, at MP 670.90 of CPR's FML, at Scranton, PA), Point "D" (CP BD at CPR's connection with Norfolk Southern at MP 614.13 of CPR's Binghamton Terminal), Point "E" (CPR's connection with the GTI at MP 476.94 at Crescent, NY), Point "F" (CPR's connection with the GTI at MP 467.40 of CPR's FML, at Mechanicville, NY), Point "G" (MP 482.47 at Mohawk Yard) and the Buffalo Running Track extending between the "End Main Track" on CPR's FML to the connection with Norfolk Southern's No. 1 main track at Point "H" (MP 214.1) (collectively, the "CPR Lines"). CPR will be deemed to be "Owner" of and Norfolk Southern to be the "User" of the CPR Lines for the purposes of this agreement. Each of Points A, B, C, D, E, F, G and H shall be points of permitted entry and exit.

B. CP Segment 1 and CP Segment 2 Defined.

For the purpose of this agreement, the CPR Lines will be divided into two separate segments: (1) trackage between Sunbury, PA and CP BD, at Binghamton, NY, including Point D (Points A and D) ("CP Segment 1"); and (2) trackage between CP BD at Binghamton, NY, and Mechanicville, not including Point D (Points D and F, inclusive of the Buffalo Running Track ("CP Segment 2"))

Section 3. Trackage Rights.

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A. CPR Grant of Trackage Rights to Norfolk Southern.

CPR grants to Norfolk Southern overhead trackage rights for the movement of Incremental Traffic (defined below) over the CPR Lines, as is more fully reflected in the attached trackage rights agreement set forth in Appendix A. These shall be connective with lines owned, operated or controlled by Norfolk Southern at Binghamton and, except for Restricted Traffic, with RBMN and DL at their respective points of intersection with the CPR Lines.

B. []

Norfolk Southern agrees to []

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]

C. [

]

D. Termination of Trackage Rights.

In the event the trackage rights described above are terminated the User railroad shall not oppose any discontinuance application filed with the STB or any successor agency by the Owner railroad.

Section 4. Existing Haulage Traffic and Incremental Traffic.

A. Existing Haulage Traffic.

1. Defined.

Existing Haulage Traffic is defined generally as the traffic flowing, on average over a month period under the current Norfolk Southern/CPR haulage agreements over the Subject Lines at the time of the finalization of the Term Sheet (February 13, 2002). Specifically, the following flows between either Allentown, Harrisburg or Binghamton

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and Guilford Rail System ("GTT") at Mechanicville (FAK, coal and/or intermodal) will be considered to be "Existing Haulage Traffic" and will be handled in trains manned by CPR crews, unless and to the extent Norfolk Southern traffic for any month exceeds the averages listed (which overage shall thereafter be considered Incremental Traffic), in each case the average listed consisting of loaded and empty traffic moving in both directions:

a. Norfolk Southern [] traffic moving between [

];

b. Norfolk Southern [] traffic moving between [

];

c. Norfolk Southern [] traffic moving between [

];

d. Norfolk Southern [] traffic moving between [

]; and

e. Norfolk Southern [] traffic moving between [

].

2. Typical weekly originated trains.

The parties acknowledge and agree that the current typical weekly originated trains by corridor as of August 1, 2001 are as follows:

- a. [];
- b. []; and
- c. [].

B. Incremental Traffic Defined.

1. Incremental Traffic is all Norfolk Southern traffic moving over the CPR Lines that is not Existing Haulage Traffic, as defined, above.
2. All Norfolk Southern to Norfolk Southern Bridge Traffic is Incremental Traffic. CPR crews shall have no right to this traffic.

C. Movement of Incremental Traffic.

Norfolk Southern shall be permitted to move Incremental Traffic, as defined herein, in haulage trains for operating convenience. No Incremental Traffic moved in haulage trains pursuant to this provision shall lose by that fact the characteristic of being Incremental Traffic, and Norfolk Southern shall have the right to move such traffic

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thereafter as Incremental Traffic in its trackage rights trains. When such Incremental Traffic is being so moved in haulage trains, however, its movement shall be governed by the applicable haulage agreement between the Parties.

Section 5. []

A. []

[]

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]

B. []

[

]

Section 6. Modification of Existing Trackage Rights Charges.

A. Base Trackage Rights Charge.

1. Notwithstanding anything to the contrary in the referenced agreements, the Base Trackage Rights Charge, as hereinafter defined, shall be applied to: (1) CPR traffic moving pursuant to the 1979 Agreement between Buffalo and Binghamton; (2) [

];

and (4) Norfolk Southern traffic moving between Sunbury and Mechanicville/Mohawk via Binghamton, NY in accordance with the Trackage Rights Agreement attached as Appendix A.

2. The Base Trackage Rights Charge shall be [] per car mile for Norfolk Southern trackage rights on CPR Lines, and [] per car mile for CPR trackage rights on Norfolk Southern Lines. The Base Trackage Rights Charge shall be subject to escalation pursuant to Section 6(E) below. For Norfolk Southern trackage rights over CPR lines, and for CPR trackage rights over Norfolk Southern Lines, the parties agree that [

].

B. Extraordinary Line-Specific Roadway Capital Expenditures.

1. [

]. Nothing herein shall be interpreted as requiring the Owner to undertake any such projects.

2. [

]

3. [

]

4. [

]

5. [

]

c. []

[

]

D. []

[

]

E. Base Trackage Rights Escalation.

1. The Trackage Rights Charge shall be subject to change to reflect increases or decreases in labor, material and other costs subsequent to the year 2001,

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hereinafter referred to as the Base Calendar Year. The Trackage Rights Charge shall be adjusted upward or downward effective July 1 of each year beginning with the year 2003 to compensate for one hundred percent (100%) of the increase or decrease in the cost of labor and material, excluding fuel as reflected in the Annual Indices of Charge-Out Prices and Wage Rates (1977 = 100), Series RCR, included in the "AAR Railroad Cost Recovery Index" and supplement thereto, issued by the AAR (as hereinafter defined). In making such determination, the final "Material prices, wage rates and supplements combined (excluding fuel)" index for the Eastern District shall be used. No such adjustment shall reduce the charges below the levels of the original Base Trackage Rights Charge.

2. The first annual adjustment to the Trackage Rights Charge shall be computed by calculating the percentage of increase or decrease in the final index published for the calendar year immediately prior to the year to be escalated, as related to the index for the Base Calendar Year (2001). This factor shall then be applied to the Base Trackage Rights Charge.

3. By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (excluding fuel) final index figure for (2001) Eastern District; "B" to be the "Material prices, wage rates and supplements combined (excluding fuel) final index figure for (2002) Eastern District; "C" to be the Base Trackage Rights

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Charge; "D" to be the percent of increase or decrease; then the revised Base Trackage

Rights Charge would be determined by the following formula:

- a. $(B - A)/A = D$
- b. $(D \times C) + C = \text{revised charge effective July 1 of the year being revised.}$

4. In the event the base for the "Annual Indices of Charge out Prices and Wage Rates" issued by the Association of American Railroads ("AAR") shall be changed from the year 1977, appropriate revision shall be made. If the AAR or any successor organization discontinues the "Annual Indices of Charge out Prices and Wage Rates," an equitable replacement for determining the percentage of increase or decrease shall be negotiated by the Parties hereto. In the absence of agreement, the Parties shall submit the matter to binding arbitration.

Section 7. Haulage Cost Formula and Cost Adjustment and Escalation.

A. []

For the purpose of this Agreement, [

], subject to annual

adjustments as identified in Section 7.C.2.

B. Rescue Locomotives.

In the event that a Norfolk Southern locomotive in Norfolk Southern's horse power hours ("HPH") account on a haulage train fails on CPR lines, CPR will supply rescue locomotive(s), but only upon prior notification to Norfolk Southern. Norfolk Southern will compensate CPR for any rescue locomotive so supplied [

]. This provision does not grant the right for one Party to use the other Party's locomotives other than specifically provided for herein.

C. Compensation for Haulage.

1. [

]. CPR haulage charges shall apply to haulage performed by CPR for Norfolk Southern under the 1998 Haulage Agreement and the Interim Haulage Agreement.

2. [] included within this section shall be subject to annual AAR Rail Cost Recovery ("RCR") rate adjustments every July 1 in accordance with the procedures and base years set forth in Section 6(E). The escalation of the [

] shall be subject to increases or decreases in the final Wage Rates and Supplements index for the Eastern District.

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D. [].

[

]. Said [] shall be

subject to standard cost escalation provisions set forth in Section 6(E) with the exception

that the final "Material prices, wage rates and supplements combined (including fuel)"

index for the Eastern District shall apply to the escalation of said [

].

E. [].

[

]

F. Locomotive Accounting.

1. Norfolk Southern Locomotives.

[

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1

2. [

]

3. [

]

4. Adjustments to Pro Rata Contributions.

The parties agree to consult with the other in good faith with regard to adjustments to the allocations and contributions to the foregoing based on their relative per car mile amounts per corridor over the prior year. Any adjustments made to the HPH adjustments shall be made on a percentage basis, not necessarily upon a per locomotive basis. Any such adjustments, which shall be implemented only when mutually agreed upon, shall be prospective only.

G. EOT Accounting (End-Of-Train telemetry device)

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At present, CPR and Norfolk Southern are both subscribing roads to the AAR/Industry Code of Rules for EOT Telemetry Devices (the "EOT Agreement") and the EOT interchanges between the Parties on run-through trains are governed by the EOT Agreement; however, the EOT liability between the Parties under this Agreement shall be governed as follows:

1. [

]

Section 8. Operating Plan.

A. Initial Operating Plan

1. The initial operating plan is contemplated as set forth below.

(a) Norfolk Southern will reroute trains [

] Not more than ninety (90) days later, trains [

] These trains will operate on trackage rights on

CPR and will be considered Incremental Traffic.

(b) Trains [

]

(c) Trains [

] Nothing herein is to be interpreted as describing how the Taylor intermodal and CPR Voorheesville traffic will be handled following the expiration or termination of those agreements.

(d) Norfolk Southern will route its [

]

(e) CPR will deliver blocked CPR-Buffalo-Norfolk Southern interchange at Bison Yard, Buffalo commensurate with the initiation of Train [

]. Norfolk Southern agrees to connect the traffic to train [

]. The

Parties shall revisit this item if volume drops to levels insufficient to permit efficient operations.

2. Should either Party modify this plan for reasons other than significant economic or significant operating conditions, the other Party may serve written notice to cancel this Agreement with six (6) months written notice to the other Party.

B. Dispatching Priority.

1. For the purposes of dispatching, Owner's and User's trains of the same class to be treated with equal priority, with the three classes of trains being:

- (a) Priority (intermodal/automotive only)
- (b) Regular (unit and freight trains not scheduled to set off/pick up enroute).
- (c) Other (Includes trains and equipment that must operate at restricted speeds, i.e., local, work, or other such equipment movements).

2. In the event of a conflict, the controlling dispatcher shall be empowered to employ best practices to efficiently move all trains.

C. Startup.

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Norfolk Southern will reroute trains [] as soon as practicable after final Norfolk Southern CPR agreements are executed, and trains [

]. The target date for the reroutes is August 1, 2002. Necessary preliminary steps include obtaining labor implementing agreements, putting Norfolk Southern T&E forces in place, and (depending on route selection south of Scranton) installation of warning devices at grade crossings in Stroudsburg, PA.

D. Short Term Operating Contingencies.

All routings in this Agreement shall be subject to short term operating contingencies.

E. CPR Haulage Service Provision.

CPR agrees to provide its haulage services on agreed-upon schedules. Holiday shut-downs are subject to mutual agreement. Should CPR be unable to provide crews for haulage trains, it shall immediately notify Norfolk Southern, and Norfolk Southern and CPR shall address these circumstances on an exception basis.

F. Maintenance of Subject Trackage.

1. Generally.

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(a) Owner shall maintain, repair and renew the Subject Trackage at its own expense and with its own supervision and labor. Owner shall keep and maintain the Subject Trackage for speeds consistent with a standard of FRA Class 3 or such lower standards as may have been in effect on February 13, 2002, [

] and maximum speeds thereunder. In the event that total car miles operated by both Parties fall below calendar year 2001 total (Norfolk Southern and CPR combined on all line segments covered by this Agreement) car miles during any twelve (12) month period, the parties hereto shall reopen this Section 8(F)(1) to review the need for track maintenance at a FRA Class 3 standard and renegotiate suitable terms in good faith.

(b) Except as otherwise provided for herein, the construction, maintenance, repair and renewal of the Subject Trackage together with the discretion to add, modify, or remove facilities and appurtenances, signals and switches along the Subject Trackage shall be at the exclusive cost and expense, and under the exclusive direction and control, of the Owner. Except with regard to Extraordinary Line-Specific Capital Expenditure projects, or as otherwise provided for herein, the Owner shall make any additions, modifications, or removals to or along the Subject Trackage which the Owner deems necessary or desirable for safe, efficient, and economical use of the Subject Trackage by the Parties, and such additions or modifications shall become part of the

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Subject Trackage upon completion of construction, provided, however, that CPR shall not eliminate any connections within its control between the CPR Lines and the lines owned or operated by Norfolk Southern, the RBMN or the DL. Except with regard to Extraordinary Line-Specific Capital Expenditure projects, if the User requests construction of any additional connections or other additions or improvements to the Subject Trackage, including but not limited to switches, power switches, signals and communications appurtenances, which, in the opinion of User, are required for operational efficiency, the Owner will, unless such connection, addition or improvement will have a material adverse effect on Owner's operations, cooperate and User will be responsible for funding the project at actual cost or a cost mutually agreed upon by Owner and User. Such projects will be progressed as follows:

- (i) User or others shall furnish all labor and material and shall construct, maintain, repair and renew at its expense such portions of the project located on the right-of-way of User or others which connect with the Owners lines.
- (ii) Owner shall furnish all labor and material and shall construct, maintain, repair and renew at the sole cost and expense of User such portions of the tracks located on the right-of-way owned or operated by Owner that connect with the respective lines of the Parties. Upon termination of this

Agreement, Owner may, at its option, and at the sole cost and expense of User, remove such portion of trackage and appurtenances located on property owned or operated by Owner. The salvage material removed shall be released to User or, if otherwise agreed upon, Owner will credit User the current fair market value for said salvage.

2. Capital Maintenance other than Extraordinary Line-Specific Capital Projects.

Capital related expenditures, other than Extraordinary Line-Specific Capital Projects, shall be the exclusive responsibility and obligation of the Owner unless previously agreed to in writing by both Parties.

3. []

[

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]

4. Periodic Meetings.

During the first year from the commencement date of this Agreement, duly authorized representatives of Owner and User shall meet at least once to conduct a joint inspection of the Subject Trackage and to review maintenance and capital spending plans. Thereafter the parties shall meet as necessary, following thirty (30) days advance written notice by any Party hereto, to conduct joint inspections, review maintenance and capital spending plans and resolve any disputes concerning maintenance of the Subject Trackage.

Section 9. Intermodal.

A. [

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B. [].

[

]

C. [].

[

]

Section 10. Term.

The Initial Term of this Agreement shall be five (5) years from the date of first written above (the "Effective Date"). This Agreement shall be automatically renewed for subsequent five (5) year Renewal Terms, unless canceled by one of the Parties at any time during the Renewal Terms on 180 days notice. Nothing in this Section 10 is meant to abrogate or modify any other right that either Party has to terminate this Agreement pursuant to its terms.

Section 11. Effect on Other Agreements.

This Agreement is intended to modify certain terms and conditions of certain existing agreements, arbitration awards and settlement agreements, but only as long as the Agreement is in effect, and only as to the specific terms and conditions set forth herein. Once this Agreement expires or is terminated, the replaced terms and conditions are reactivated as they were when replaced. Any compensation rates that fluctuate with time will continue to fluctuate while this Agreement is in place, so that if/when they once again become effective, such rates will be at the level they would have been at had this Agreement never become effective. Norfolk Southern recognizes and reaffirms Section 15 of the 1998 Haulage Agreement and Section 16 of the 1999 Haulage Agreement.

Section 12. Arbitration and Default.

(a) In the event of any dispute between the Parties with reference to this Operations Restructuring Agreement or any of the appendices hereto, they shall undertake in good faith to resolve the dispute. If such dispute is not resolved to the satisfaction of the Parties within thirty (30) days, either Party may submit the dispute to arbitration, with written notice to the other Party, conducted in accordance with the Commercial Rules of Arbitration of the American Arbitration Association. The award of the arbitrator shall be final and conclusive upon the Parties. Each Party to the arbitration shall pay the compensation, costs, fees and expenses of its own witnesses, experts and counsel, with the compensation of and any costs and expenses of the arbitrator shall be borne equally by the Parties. The arbitrator shall not have the power to award consequential or punitive damages or attorneys' fees or to determine violations of criminal laws or antitrust laws. Pending the award of the arbitrator, there shall be no interruption in the transaction of business or the performance of the respective Parties' obligations hereunder, and all payments in respect thereto shall be made in the same manner as existed prior to the arising of the dispute until the matter in dispute shall have been fully determined by arbitration.

(b) If a Party continues, for a more than a reasonable period of time following the service of an arbitration decision arising from an arbitration held pursuant to Section 12(a), actions that were adjudicated in said arbitration and found to be by such arbitration

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to be a default of this Agreement, then said Party may be considered in default of this Agreement. The non-defaulting Party shall have the right, at its option to give notice of default to the defaulting Party and the non-defaulting Party's intent to terminate this Agreement unless the default is subsequently cured (unless, following the service of said arbitration decision, the non-defaulting Party shall, in writing, waive non-compliance with the arbitration decision, in which case the non-defaulting Party shall not have a right to give said notice of default absent a subsequent arbitration proceeding). The notice of default must: (1) be in writing; (2) specifically reference the arbitration decision in question; (3) specifically state the actions of the defaulting Party that the non-defaulting Party believes are inconsistent with that decision; and (4) specify the date by which a cure must be reached in order to avoid termination of the Agreement (the "Termination Date"), which date may not be less than sixty (60) days from the date of transmittal of the notice of default. Should said default continue beyond such Termination Date, and should the defaulting Party not effect a cure of said default (or in the case of a default the cure of which would take more than sixty (60) days to effect, be diligently and good faith be pursuing such cure), then the non-defaulting Party may terminate this Agreement. The non-defaulting Party shall not, by exercising said right to terminate this Agreement, impair its rights under this Agreement or any rights of action for the recovery of damages, provided, however, that the parties agree that such damages shall not include

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consequential, special or punitive damages or attorneys' fees, and such further rights shall not include the right for determination of violations of criminal laws or antitrust laws.

Section 13. Miscellaneous.

A. Fueling at Binghamton.

CPR agrees that it will not fuel Norfolk Southern locomotives at Binghamton unless necessary and will do so only after notification to Norfolk Southern.

B. Record Retention.

Each Party shall retain records pertinent to operations pursuant to this Agreement for a period of three years, and shall make such data available to the other Party at their normal place of maintenance upon reasonable notice.

C. Failure of Further Agreement.

Upon failure of the Parties or PRR to arrive at agreement required by this Agreement, the Parties and PRR agree to the imposition of such agreement on standard industry terms as determined through arbitration.

D. US Dollars.

All amounts are in U.S. dollars.

E. Car Counts.

For the purposes of trackage rights compensation, haulage compensation, and pro rata determinations under this Agreement, cars subject to this Agreement (FAK, intermodal, coal) shall be counted for the purpose of the payment of charges regardless of whether they are loaded or empty, and articulated cars will be counted as one car for every 4 axles.

F. Effect of this Agreement on Existing Agreements.

Existing agreements remain in effect except as modified herein.

G. Retroactivity of Trackage Rights and Haulage Charges.

Trackage rights and haulage charges are retroactive to [].

H. Labor Protection Costs.

Norfolk Southern and CPR shall bear their own labor protection costs, unless otherwise allocated by Section 15 of the May 5, 1998 haulage agreement or Section 16 of the April 11, 1999 agreement.

I. Open Southern Tier Issues.

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The parties agree to use best efforts to resolve open Southern Tier (Buffalo-Binghamton) issues prior to June 30, 2002.

J. Oversight Committee.

For the mutual benefit of the Parties, CPR and Norfolk Southern shall collectively form a oversight committee to address both operational and contractual inquiries in connection with joint operations in the Northeast United States. This committee shall meet on an as needed basis.

K. Notices.

All notices required to be given under this Agreement shall be in writing, signed by or on behalf of the Party or PRR giving the same, and transmitted to the addresses shown on Appendix B or such successor addresses as that Party or PRR may specify by notice hereunder. Such notices shall be transmitted by United States registered or certified mail return receipt requested, or by telegram or fax, with confirmed receipt, addressed to the officers and addresses shown on Appendix B. All notices shall be effective on day following confirmed receipt of the letter, telegram, or fax.

L. Entire Agreement.

This Agreement, which by incorporation includes the fully executed new agreements or modifications to existing agreements contemplated herein, constitute the entire agreement between the Parties and PRR as to the subject matter hereof, and supersede all previous oral or written understandings, agreements and commitments as to the subject matter hereof. This Agreement may not be modified, changed or altered except by written agreement signed by authorized representatives of the Parties and PRR.

M. Enforcement.

Delay or failure by either Party or PRR to enforce any term or condition of this Agreement shall not be deemed a waiver of enforcement or further enforcement of that or any other term or condition. The consent or approval by either Party or PRR to or of any act by the other Party or PRR of a nature requiring consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act. All rights and remedies conferred under this Agreement or by any other instrument or law shall be cumulative and may be exercised singularly or concurrently.

N. Severability.

Each and every clause of this Agreement shall be severable from each other. In the event that any particular clause herein shall be held invalid and null and void in any judicial proceeding, such finding shall have no effect on the remaining clauses.

O. Governing Law.

This Agreement is subject to, and shall be construed and enforced in accordance with, the laws of the State of New York (excluding the principles thereof governing conflicts or choice of law).

P. No Third Party Beneficiaries.

This Agreement is made solely and specifically among and for the benefit of the Parties and PRR, and their respective successors and permitted assigns and no other person or party shall have any right, interest or claim hereunder or be entitled to any benefits under or on account of this Agreement whether as a third party beneficiary or otherwise.

Q. Time of the Essence.

Time is of the essence in the performance of each Party and PRR's obligations under this Agreement.

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the advance written consent of Owner, in their respective sole options, signed by an authorized officer. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of successors and permitted assigns of the Parties and PRR.

V. Commencement Date.

The Commencement Date for any trackage rights granted pursuant to this Agreement shall be the effective date of any decision or notice of exemption served by the Surface Transportation Board authorizing the consummation hereof and the expiration of any required labor notice period related thereto. Insofar as this Agreement is concerned, that day shall be known as the "Commencement Date".

W. Payment of Bills.

The payment of bills shall not be delayed or payment refused or reduced on the face amount of bill rendered because of errors in supporting details which are not material relative to the billed amount, but bill shall be paid as rendered and exception to charges shall be taken in writing addressed to the officer of Owner responsible for the issuance of the bill; provided, however, that no exception to any charge shall be honored, recognized or considered if filed after the expiration of three (3) years from the last day of the calendar month during which the bill containing said charge was rendered.

Section 15. STB Approval.

Should this Agreement or the trackage rights agreements arising herefrom require the prior approval or authorization of the Surface Transportation Board ("STB") or any other regulatory agency for its implementation, in whole or in part, then:

1. Norfolk Southern, at its own cost and expense, shall promptly initiate and diligently pursue an appropriate application or petition to obtain that regulatory approval or authorization with regard to the trackage rights granted in accordance with Section 3.A. hereof; and

2. CPR, at its own cost and expense, shall promptly initiate and diligently pursue an appropriate application or petition to obtain that regulatory approval or authorization with regard to [

].

The Party responsible for filing with the STB (the "Filing Party") shall provide the other parties (each a "Supporting Party") a copy of the application or petition prior to its

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filing with sufficient lead time to enable the Supporting Parties to review and comment thereupon.

Section 16. Eminent Domain.

If during the term of this Agreement, the Subject Lines or any part thereof are appropriated by a governmental body or agency thereof or by a quasi-public body, all awards or compensation for such appropriation or acquisition will be paid solely to the Owning Line, any of the Parties shall be free to make any claim against the appropriating or acquiring entity for the amount of any damage done to them, respectively, as a result of the appropriation or acquisition, and the Agreement will terminate as to such property as of the date of the appropriation or acquisition. In the case of a partial taking that materially interferes with any Party's operations over the Subject Trackage, the Agreement will terminate.

Section 17. PRR Consent.

PRR hereby consents, to the extent required, to the grants of rights and to the modifications to existing agreements, all as described herein. To the extent an action would be required of PRR to give full and complete effect to this Agreement, but this Agreement fails to provide a reference to PRR, PRR nevertheless agrees to perform said action. If the Operating Agreement expires prior to the expiration of this Agreement,

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PRR hereby agrees to abide by the terms and conditions of this Agreement as if it were Norfolk Southern.

Section 18. Confidentiality.

Except as provided by law or by rule, order, or regulation of any court or regulatory agency with jurisdiction over the subject matter of this Agreement, or as may be necessary or appropriate for a Party or PRR hereto to enforce its rights under this Agreement, during the initial and any renewal term of this Agreement and during three (3) years after termination or expiration of this Agreement, the terms and provisions of this Agreement and all information to which access is provided or obtained hereunder will be kept confidential and will not be disclosed by CPR, Norfolk Southern or PRR to any party other than CPR's and Norfolk Southern's parent and affiliates and the respective officers, employees, and attorneys of those affiliates, without the prior written approval of the other parties.

Section 19. Force Majeure.

A. Whenever a period of time is provided in this Agreement for either Party to perform any act or service, said Party shall not be liable or responsible for any delays due to or resulting from circumstances beyond its control ("force majeure"), including but

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

Witness: Delaware and Hudson Railway Company, Inc.
d/b/a Canadian Pacific Railway

As to CPR By: _____
(Title)

Witness: Norfolk Southern Railway Company

As to Norfolk Southern By: _____
(Title)

Witness: Pennsylvania Lines LLC

As to PRR By: _____
(Title)

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APPENDIX A

Trackage Right – Norfolk Southern on CPR Lines

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Appendix B

NOTICES

Any notice required or permitted to be given by one Party to the others under this

Agreement shall be addressed as follows:

To Norfolk Southern and/or PRR:

Norfolk Southern Railway Company
Vice President Transportation Operations
Three Commercial Place
Norfolk, VA 233510-2191

Copy to: Norfolk Southern Railway Company
Director Joint Facilities
185 Spring Street, S. W.
Box 158
Atlanta, GA 30303

To CPR: AVP – Service Design & Interline Management
Canadian Pacific Railway
Gulf Canada Square
401 9th Avenue SW
Calgary, Alberta Canada T2P 4Z4

Copy To: Manager Interline Agreements
Canadian Pacific Railway
Gulf Canada Square
401 9th Avenue SW
Calgary, Alberta Canada T2P 4Z4