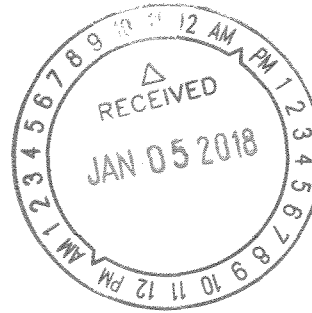


244940

ENTERED
Office of Proceedings
January 5, 2018
Part of
Public Record



VIA OVERNIGHT DELIVERY

January 4, 2018

Hon. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW, Room 100
Washington, DC 20423

Re: Soo Line Railroad Company - Trackage Rights Exemption – BNSF Railway Company
Finance Docket No. 36162

Dear Ms. Brown:

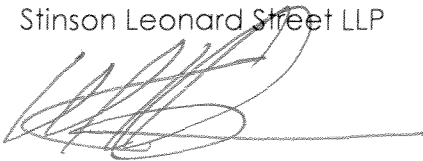
Enclosed for filing in the above-captioned proceeding are an original and ten copies of Soo Line Railroad Company's Verified Notice of Exemption, dated January 4, 2018. Also enclosed in accordance with 49 C.F.R. § 1180.6(a)(6) are twenty (20) unbound copies of the maps submitted as Exhibit 1 to the Notice. A check in the amount of \$1,300, representing the appropriate fee for this filing, is enclosed. Compact disks containing the Notice are also enclosed.

Please acknowledge receipt of this filing by date-stamping the enclosed acknowledgment copy of this letter and returning it in the enclosed postage prepaid envelope.

Please contact me if you have any questions. Thank you for your assistance on this matter.

Sincerely,

Stinson Leonard Street LLP



W. Karl Hansen

Enclosures

FILED
January 5, 2018
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
January 5, 2018
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36162

SOO LINE RAILROAD COMPANY
—TRACKAGE RIGHTS EXEMPTION—
BNSF RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION

W. Karl Hansen
Stinson Leonard Street LLP
50 South Sixth Street, Suite 2600
Minneapolis, MN 55402
(612) 335-7088

Attorneys for Soo Line Railroad Company

Date: January 4, 2018

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36162

SOO LINE RAILROAD COMPANY
—TRACKAGE RIGHTS EXEMPTION—
BNSF RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION

Soo Line Railroad Company ("Soo Line") files this Verified Notice of Exemption pursuant to the class exemption at 49 C.F.R. § 1180.2(d)(7) to renew overhead trackage rights over approximately 137 miles of rail line (the "Line") owned and operated by BNSF Railway Company ("BNSF") between Minneapolis, MN and Superior, WI. The parties intend to enter into a written agreement renewing the overhead trackage rights, which are not sought in a responsive application in a rail consolidation proceeding. A redacted copy of the draft agreement is attached hereto as Exhibit 2.

Pursuant to the Surface Transportation Board's regulations at 49 C.F.R. § 1180.4(g), Soo Line submits the following information.

Section 1180.6(a)(1)(i) – Summary of the Proposed Transaction

The proposed transaction is the renewal of trackage rights granted by agreement dated October 1, 1900 (the "Head of the Lakes Agreement" or "HOL Agreement") among the predecessors of Soo Line and BNSF – the Northern Pacific Railway Company ("Northern Pacific"), the St. Paul and Duluth Railroad Company ("Duluth Company"), and the Chicago, Milwaukee and St. Paul Railway Company ("St. Paul Company"). The HOL Agreement initially

provided the St. Paul Company with access from the Twin Cities of St. Paul and Minneapolis, MN to the "Head of the Lakes" at the Twin Ports of Duluth, MN and Superior, WI via haulage service over the Duluth Company's lines. The HOL Agreement also provided an option for the St. Paul Company to convert its haulage rights to overhead trackage rights, which it exercised on December 31, 1924. The HOL Agreement was modified, amended and supplemented from time to time prior to its assignment to Soo Line in 1985.

On February 19, 1985, Richard B. Ogilvie, trustee of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company ("Milwaukee Road"), successor to the St. Paul Company, assigned the HOL agreement to Soo Line as part of Soo Line's acquisition of the Milwaukee Road's assets. On October 10, 1990, Burlington Northern Railroad Company, as successor to both Northern Pacific and the Duluth Company, and Soo Line entered into a supplemental agreement extending the term of the HOL Agreement for fifteen years beyond its then-current expiration date of October 1, 1999. Since October 2014, Soo Line has continued to operate over the Line on a month-to-month basis pursuant to the terms of the HOL Agreement while the parties negotiated the terms of the renewal agreement. With the draft renewal agreement attached as Exhibit 2, the parties set forth the provisions governing Soo Line's continued operation of its overhead trackage rights on BNSF's line between Minneapolis, MN and Superior, WI.

In this proceeding, Soo Line proposes to renew its trackage rights between the Twin Cities and the Twin Ports that it acquired in the 1985 Milwaukee Road transaction. The new agreement provides Soo Line with two separate routes from Minneapolis that converge on BNSF's Staples Subdivision. The first route is from milepost 11.4+/- on BNSF's Staples Subdivision at or near University Avenue in Minneapolis, MN to the connection at milepost

21.0+/- with BNSF's Hinckley Subdivision near Coon Creek, MN (Hinckley Subdivision milepost 136.9+/-). The second route is over the North Runner Lead from BNSF's Northtown Yard to Soo Line's Shoreham Yard at milepost 11.66+/- on BNSF's St. Paul Subdivision to the connection at milepost 16.25+/- on BNSF's Staples Subdivision and thence to the connection with BNSF's Hinckley Subdivision near Coon Creek, MN. From there, Soo Line's trackage rights continue to the connection at Hinckley Subdivision milepost 11.8+/- with BNSF's Lakes Subdivision in Boylston, WI (Lakes Subdivision milepost 12.6+/-), and thence to Lakes Subdivision milepost 9.4+/- at M&J Junction in Superior, WI, including the BNSF-owned turnout at milepost 10.44+/- to the Saunders Connecting Track.¹

Soo Line Railroad Company's business address is 120 South Sixth Street, Suite 800, Minneapolis, MN 55402. Questions regarding this transaction can be addressed to the counsel identified on the cover page of the Notice.

Section 1180.6(a)(1)(ii) – Consummation Date

This transaction will be consummated on or immediately after the date that the exemption becomes effective.

¹ The renewal agreement does not include the overhead trackage rights between Boylston Junction, WI and Cloquet, MN granted by the 1900 HOL Agreement as amended and supplemented by the May 31, 1972 agreement between Burlington Northern, Inc. and the Milwaukee Road. *See Chi., Milw., St. P. & Pac. R.R. Co.-Trackage Rights-Burlington N., Inc., Between Hinckley, MN and Superior, WI, and between Boylston, WI and Cloquet, MN*, ICC Finance Docket No. 27217 (served Oct. 20, 1975). BNSF currently provides power and crews to move cars in Soo Line's revenue account between Boylston and Cloquet pursuant to the provisions of the 1972 agreement. The parties are concluding negotiation of an agreement whereby BNSF will continue to provide haulage service to Soo Line between Superior and Cloquet. Once the haulage agreement is finalized, Soo Line anticipates initiating a discontinuance proceeding with respect to its trackage rights between Boylston and Cloquet.

Section 1180.6(a)(1)(iii) – Purpose of the Transaction

The purpose of the transaction is to renew the overhead trackage rights agreement governing Soo Line's continued freight rail service between the Twin Cities and the Twin Ports.

Section 1180.6(a)(5) – States in Which the Applicant's Property is Situated

Soo Line operates or possesses property rights in Illinois, Indiana, Kentucky, Michigan, Minnesota, Montana, Ohio, North Dakota, South Dakota, and Wisconsin. The subject trackage rights are located in the States of Minnesota and Wisconsin.

Section 1180.6(a)(6) – Map

A map of the Line is provided as Exhibit 1.

Section 1180.6(a)(7)(ii) – Agreements

A redacted copy of the trackage rights agreement is attached as Exhibit 2.

Section 1180.4(g)(1)(i) – Labor Protection

Although Soo Line does not anticipate that any employees will be adversely affected by this transaction, it recognizes that employees who are adversely affected by this transaction are entitled to protection under the conditions imposed in *Norfolk and W. Ry. Co. -- Trackage Rights -- Burlington N., Inc.*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc. -- Lease and Operate - Cal. W. R.R.*, 360 I.C.C. 653 (1980).

Section 1180.4(g)(2)(i) – Caption Summary

A caption summary of this transaction suitable for publication in the *Federal Register* is attached as Exhibit 3.

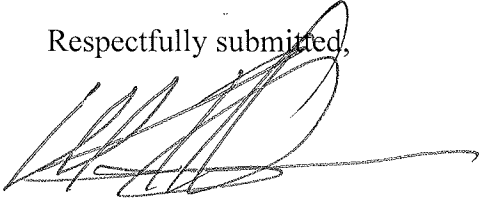
Section 1180.4(g)(3) – Environmental and Historical Documentation

Environmental and historical documentation are not required for this transaction. As provided in 49 C.F.R. § 1105.6(c)(4) and 49 C.F.R. § 1105.8(b)(3), trackage rights do not require preparation of environmental and historical reports and documentation.

Section 1180.4(g)(4) – Interchange commitments

The agreement renewing Soo Line's overhead trackage rights does not impose an interchange commitment.

Respectfully submitted,

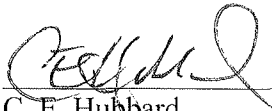
A handwritten signature in black ink, appearing to read 'W. Karl Hansen', written over a horizontal line.

W. Karl Hansen
Stinson Leonard Street LLP
50 South Sixth Street, Suite 2600
Minneapolis, MN 55402
(612) 335-7088
Attorneys for Soo Line Railroad Company

VERIFICATION

STATE OF MINNESOTA

I, Charles E. Hubbard, declare under penalty of perjury that I am authorized to make this verification on behalf of Soo Line Railroad Company, and that the information included in the foregoing Notice of Exemption and that the contents thereof are true and correct to the best of his knowledge and belief.

A handwritten signature in dark ink, appearing to read "C. E. Hubbard", is written over a horizontal line.

C. E. Hubbard
Director Interline & Passenger-South

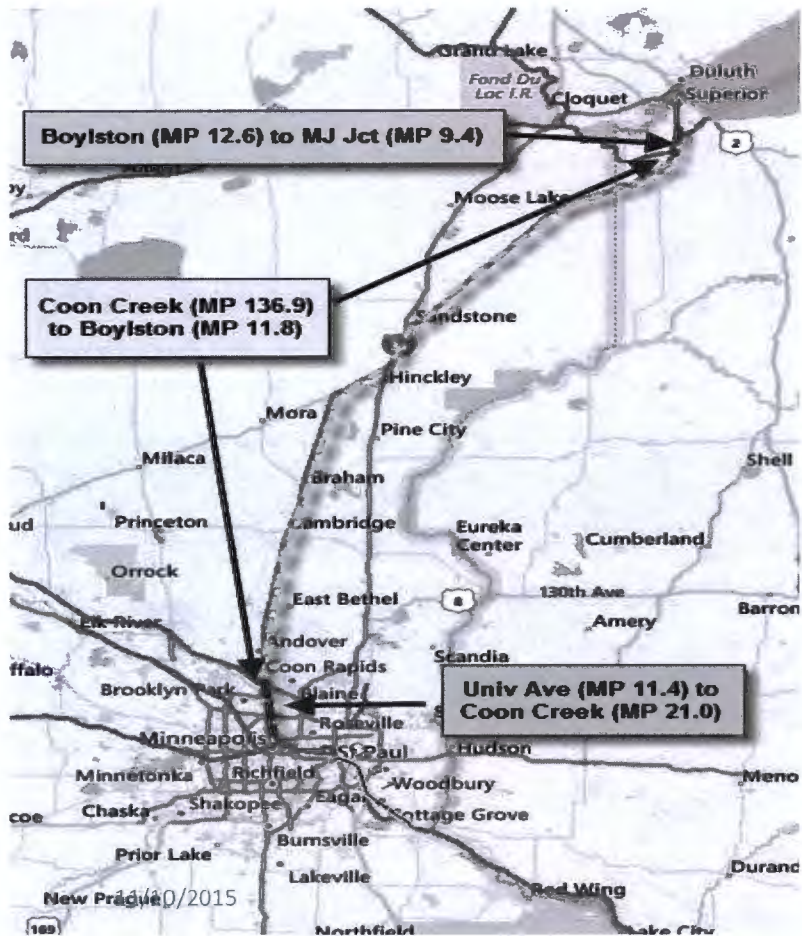
Dated: January 3, 2018

EXHIBIT 1

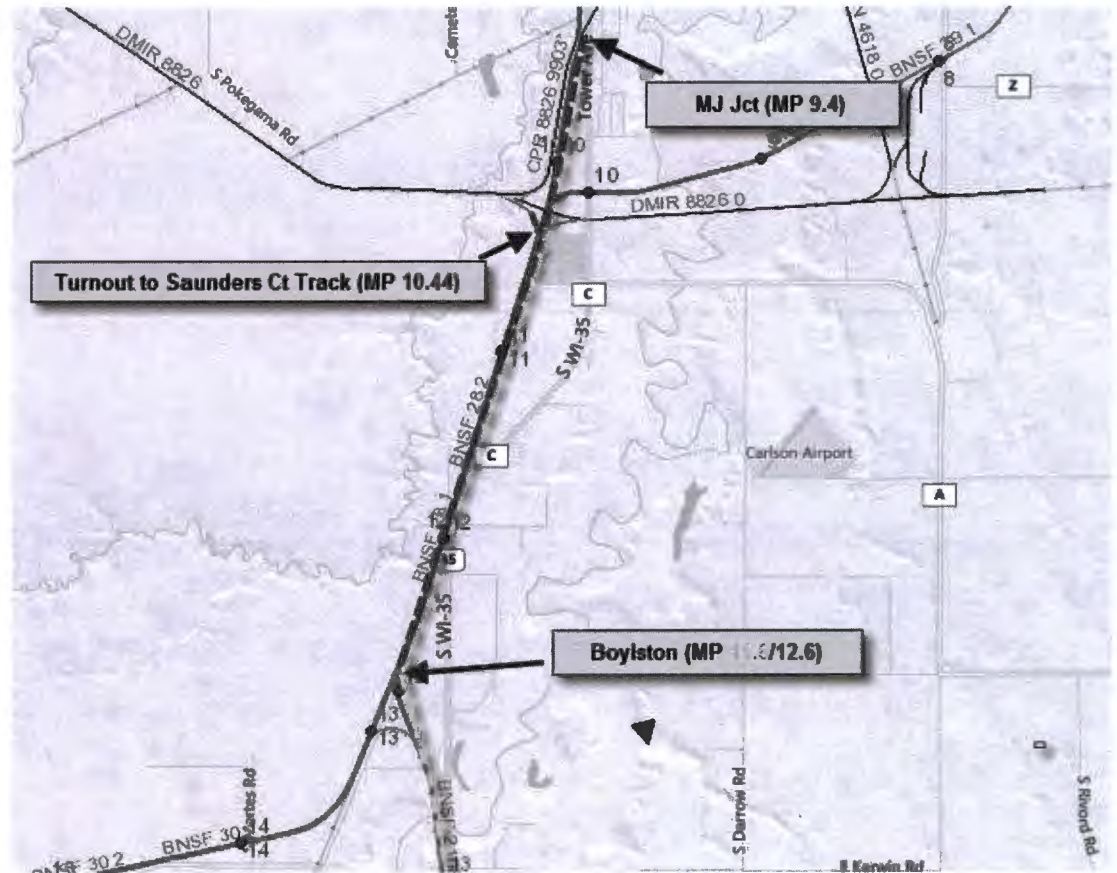
Map

Minneapolis to Superior (MJ Jct) Trackage Rights

Minneapolis to MJ Jct



Boylston to MJ Jct



Minneapolis to Superior (MJ Jct) Trackage Rights North Runner Lead

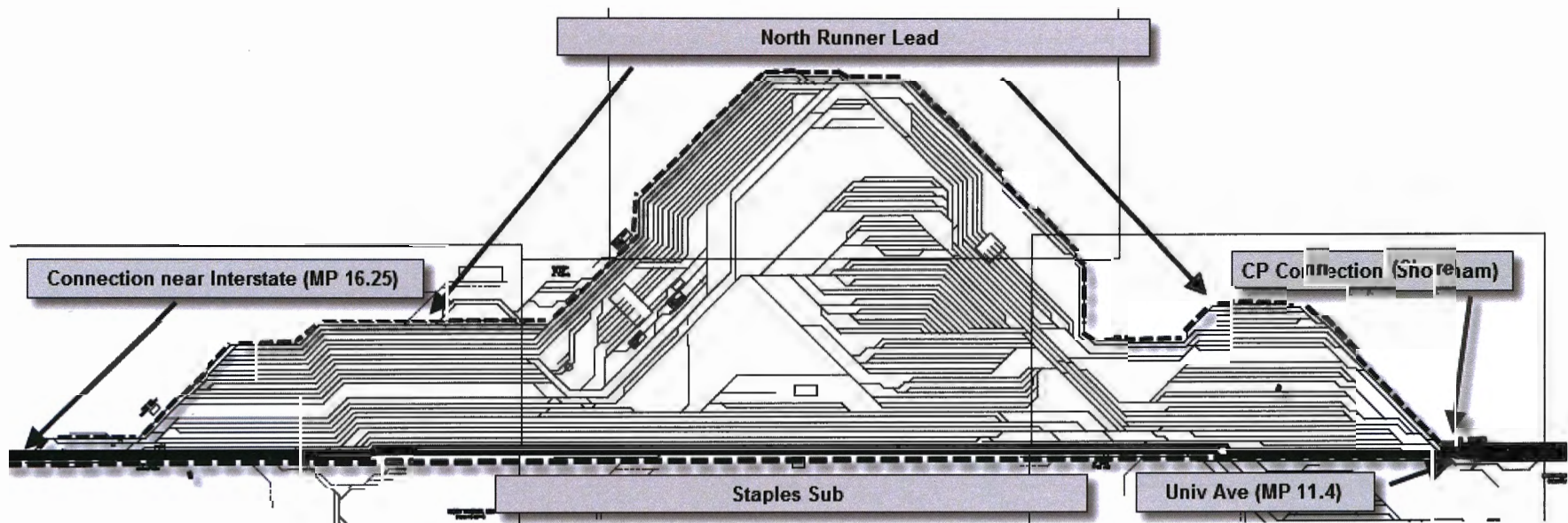


EXHIBIT 2
Trackage Rights Agreement

**TRACKAGE RIGHTS AGREEMENT
BETWEEN MINNEAPOLIS, MN AND SUPERIOR, WI**

THIS TRACKAGE RIGHTS AGREEMENT, (hereinafter called “**Agreement**”) is entered into this _____ of _____ 2017, (“**the Execution Date**”) by and between **BNSF Railway Company**, a Delaware corporation (hereinafter called “**BNSF**” or “**Owner**”) and **Soo Line Railroad Company d/b/a CANADIAN PACIFIC**, a Minnesota corporation (hereinafter called “**CP**” or “**User**”); and

RECITALS:

WHEREAS, the Northern Pacific Railway Company, St. Paul and Duluth Railroad Company, and Burlington Northern Railroad Company, predecessor companies of BNSF, and the Chicago and Milwaukee and St. Paul Railway Company, and Chicago, Milwaukee, St. Paul and Pacific Railroad Company, predecessor companies of CP, entered into an Agreement dated October 1, 1900, as supplemented and amended, granting CP the use of BNSF’s railroad line between Minneapolis, MN and Duluth, MN/Superior, WI as well as access to Cloquet, MN and other provisions (“**HOL Agreement**”);

WHEREAS, the HOL Agreement has expired on its term October 1, 2014 and the parties desire to enter into a new agreement replacing the terms, conditions and provisions of the HOL Agreement subject to the terms and condition set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants, obligations and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

Section 1. DEFINITIONS

Any capitalized terms used in the body of this Agreement but not specifically defined herein shall have the meanings given to such terms in the general conditions (hereinafter called “**General Conditions**”) set forth in **Exhibit “B,”** attached to and made a part of this Agreement.

Section 2. TRACKAGE SUBJECT TO AGREEMENT

CP’s trackage rights under this Agreement shall be as follows:

- A. Minneapolis, MN (University Ave) to Superior, WI (“Minneapolis (University Ave) to Superior Joint Trackage”)**
- a.) BNSF’s Staples Subdivision near University Ave, MN (MP 11.4) and the connection to BNSF’s Hinckley Subdivision near Coon Creek, MN (MP 21.0);
 - b.) BNSF’s Hinckley Subdivision near Coon Creek, MN (MP 136.9) and Boylston, WI (MP 11.8); and

- c.) BNSF's Lakes Subdivision near Boylston, WI (MP 12.6) and M&J Jct., WI (MP 9.4) including the BNSF owned turnout (MP 10.44) to the Saunders Connecting Track.

B. Minneapolis, MN (Shoreham Yard) to Superior, WI ("Minneapolis (Shoreham Yard) to Superior Joint Trackage")

- a.) BNSF's North Runner Lead in BNSF's Northtown Yard in Minneapolis, MN at Shoreham Yard between Milepost 11.66 on BNSF's St. Paul Subdivision and Milepost 16.25 on BNSF's Staples Subdivision;
- b.) BNSF's Staples Subdivision (MP 16.25) and the connection to BNSF's Hinckley Subdivision near Coon Creek, MN (MP 21.0);
- c.) BNSF's Hinckley Subdivision near Coon Creek, MN (MP 136.9) and Boylston, WI (MP 11.8); and
- d.) BNSF's Lakes Subdivision near Boylston, WI (MP 12.6) and M&J Jct., WI (MP 9.4) including the BNSF owned turnout (MP 10.44) to the Saunders Connecting Track.

The BNSF lines and tracks comprising the **Minneapolis (University Ave) to Superior Joint Trackage** and **Minneapolis (Shoreham Yard) to Superior Joint Trackage** for a total of 136.9 miles are shown on **Exhibit "A"** attached to and made a part of this Agreement. The Minneapolis (University Ave) to Superior Joint Trackage and Minneapolis (Shoreham Yard) to Superior Joint Trackage described above and shown on **Exhibit "A"** shall collectively be referred to as the "**Joint Trackage**". "**Joint Trackage**" shall include the track structure of Owner as described in the Agreement including necessary right-of-way and all appurtenances, signals, communications, and facilities of Owner and all Changes in and/or Additions, including any Capacity Improvements, to said track structure now or in the future.

Section 3. GENERAL CONDITIONS, CONFLICTS BETWEEN PROVISIONS

The trackage rights granted in this Agreement are subject to the terms and conditions herein and the General Conditions. In the event there is a conflict between the terms in the body of this Agreement and the General Conditions, then the terms contained in the body of this Agreement shall prevail.

Section 4. GRANT OF TRACKAGE RIGHTS

4.1 Subject to the terms and conditions contained herein, BNSF grants to CP the nonexclusive right to use the Joint Trackage. CP's use of the Joint Trackage shall be in common with BNSF and any other railroad company or companies that use or access the Joint Trackage, now or in the future, pursuant to authorization by BNSF, and shall be contingent on the provision of reasonable advance notice to and coordination with BNSF's personnel.

4.2 The parties understand and agree that CP shall not have the right to:

- (a) Switch industries or transload upon the Joint Trackage; or

- (b) Set out, pick up or store Equipment upon the Joint Trackage, or any part thereof, except as otherwise provided in **Exhibit "B"**; or
- (c) Serve any industry, team or house track, transload, intermodal or auto facility now existing or hereafter located along the Joint Trackage; or
- (d) Permit or admit any third party to use all or any portion of the Joint Trackage, nor have the right to detour trains of any other railroad over or upon the Joint Trackage; or
- (e) Enter into or make a contract or agreement for the handling of CP Equipment over or upon the Joint Trackage, or any portion thereof, or the Equipment of any third party which in the normal course of business would not be considered the Equipment of CP, including but not limited to CP performing haulage services for a third party; provided, however, that the foregoing shall not prevent CP, pursuant to a run-through agreement with any other railroad, from using the locomotives of another railroad as its own under this Agreement; or
- (f) Connect with itself at any location on or along the Joint Trackage except at University Ave in Minneapolis, MN and Saunders, WI (MP 10.44)/MJ Jct., WI when operating over the Minneapolis (University Ave) to Superior, WI Joint Trackage and Minneapolis, MN (Shoreham Yard) and Saunders, WI (MP 10.44)/MJ Jct., WI when operating over the Minneapolis (Shoreham Yard) to Superior Joint Trackage; or
- (g) Connect with any other railroad or other party at any location on or along the Joint Trackage; or
- (h) Build-in to or build out from any point on or along the Joint Trackage; or
- (i) Interchange with any other railroad or other party on or along the Joint Trackage; or
- (j) Provide any passenger service of any kind or handle or operate passenger trains on or along the Joint Trackage; or
- (k) Load or unload cars on or along the Joint Trackage, except as permitted by this Agreement or the General Conditions or incidental to cleaning derailments or other similar emergencies; or
- (l) Stop its trains on or along the Joint Trackage without specific permission or direction of BNSF, except for emergency circumstances; or
- (m) Effect crew changes on or along the Joint Trackage, except as emergency circumstances may require.

4.3 CP agrees to perform its operations (hereinafter called (“**CP Operations**”)) and handle its Equipment in a manner that will not unreasonably interfere with or impair the use of the Joint Trackage by BNSF or other parties.

4.4 CP agrees that trains will be limited based on length, horsepower per trailing ton, gross weight on the rail, and any other restrictions or requirements in effect that govern BNSF operations on the Joint Trackage.

Section 5. ADDITIONAL RIGHTS

CP hereby grants to BNSF the non-exclusive right to use CP’s portion of the connecting track (0513-4338) in the southwest quadrant near Saunders, WI (MP 10.44), (the “**Saunders Connecting Track**”) under the same terms and conditions as set forth herein provided that BNSF shall be considered User and CP shall be considered Owner.

Section 6. COMPENSATION

6.1 In addition to other payments to be made under this Agreement, CP shall pay BNSF [REDACTED] per **Car Mile** (hereinafter called “**Car Mile Rate**”) or [REDACTED] per **GTM** (hereinafter called “**GTM Rate**”) if BNSF elects to convert to a GTM Rate per Section 6.2 below, on a monthly basis for its access to and use of the Joint Trackage. The Car Mile Rate, (or GTM Rate), includes Ordinary Maintenance and Programmed Maintenance, operating expenses, interest rental, depreciation and taxes.

6.2 The parties agree if CP’s average annual gross weight per car changes due to increases in gross weight allowed on the rail, CP traffic mix, and/or CP empty versus loaded car imbalance over the Joint Trackage, that the Car Mile Rate at BNSF’s sole option may be converted to a GTM Rate. The GTM Rate would be rounded to the nearest thousandth of a cent and be subject to the same adjustment index and methodology as provided below in Section 6.7 below.

6.3 In addition to other payments to be made under this Agreement, BNSF shall pay CP a flat rate per month (hereinafter called “**Flat Rate**”) of [REDACTED] for CP’s maintenance of the Saunders Connecting Track. The Flat Rate includes Ordinary Maintenance, Programmed Maintenance, taxes and operating expenses (“**Expenses**”). BNSF shall also pay CP interest rental (“**Interest Rental**”) of [REDACTED] per month for its access and use of the Saunders Connecting Track. The Interest Rental is not subject to adjustment of any kind.

6.4 It is the intent of the parties that the Flat Rate fairly and accurately allocates Expenses of BNSF’s use of the Saunders Connecting Track. The parties agree that in the event either party believes the Flat Rate no longer fairly and accurately allocates the Expenses of BNSF’s use of the Saunders Connecting Track, either party may request modification of the Flat Rate every two (2) years beginning January 1, 2019 by sending written notice to the other party at least ninety (90) days prior to January 1, 2019 or any two (2) year anniversary thereafter.

Absent agreement on mutually acceptable terms within one hundred twenty (120) days after delivery of the written notice to modify, the dispute shall be subject to arbitration as provided in this Agreement.

6.5 The cost and expense of “**Capacity Improvements**” and “**Changes in and/or Additions to**” the Joint Trackage shall be apportioned based on each party's “**Car Mile Handled Proportion**” or, if compensation is based on a GTM Rate, on each party's **GTM Handled Proportion** as provided in Section 7 below.

6.6 For the purposes of computing the Car Miles or GTMs under this Section 6 and Section 7, the parties mutually agree that the distance over the Joint Trackage is 136.9 miles. In the event Capacity Improvements or Changes and/or Additions to the Joint Trackage result in changes to the mileage provided above, then the distances listed above will be adjusted up or down to reflect the new mileage and the new mileage will be used to calculate Car Miles or GTMs effective as of commencement of train operations over such Capacity Improvements or Changes and/or Additions to the Joint Trackage.

6.7 The Car Mile Rate, GTM Rate, and the Flat Rate shall be adjusted July 1, 2017 and each July 1 thereafter, using 100 percent of the AAR's Annual Indexes of Chargeout Prices and Wage Rates (1977=100), for the Western District and specifically by the Material Prices, Wage Rates and Supplements Combined (excluding fuel) (“Index”) for the year 2015, which shall be used as the base year, compared to the calendar year immediately prior to the year in which the change is to be made effective. Thus, the percentage change from the year 2015 to the year 2016 will be used to adjust the charge July 1, 2017.

Additionally, in calculating adjustments, (i) all published values will be rounded to a thousandth of an index point; (ii) all percent change calculations will be rounded to a tenth of a percent; (iii) the Car Mile Rate and the Flat Rate will be rounded to the nearest hundredth of a cent and (iv) the GTM Rate will be rounded to the nearest thousandth of a cent. The parties agree that the rounding rule used will be that any fraction less than one-half will be dropped, while any fraction equal to or greater than one-half will be rounded up to the next higher value.

In the event the AAR (or any successor organization) ceases to publish the Index, the Parties shall determine a substitute index. The substitute index shall be the index that most closely matches the Index. The substitute index shall be used for the remainder of the term of the Original Agreement. If the Parties cannot agree on a substitute index within ninety (90) days after the cancellation of the Index, either Party may submit the matter to be determined by binding arbitration.

All rates/charges/fees will be adjusted up or down depending on the Index, but under no circumstances shall the Car Mile Rate, GTM Rate or the Flat Rate ever decrease below the base rate(s) published herein through application of the adjustment formula provided herein.

6.8 Subject to the clearance file maintained by BNSF and prior to any CP Dimensional Traffic being tendered by CP for movement under this Agreement, CP shall first notify BNSF in writing, giving all pertinent physical facts, and requesting verification. BNSF

shall respond promptly either confirming the physical facts related to the proposed CP Dimensional Traffic specifically identifying the physical facts which would interfere with a planned move. In no event shall BNSF deny to CP the ability to tender specific CP Dimensional Traffic for movement over the Service Area and then subsequently grant approval for the same or similar movement over the same portion of the Service Area in a BNSF or third party train unless CP receives timely notice that the limiting clearance or other reason for denial has been removed. The parties shall cooperate to accommodate all CP Dimensional Traffic, subject to compensation to BNSF for any special services necessary or advisable for the movement thereof at the charge to be assessed by BNSF to CP from time to time to recover all costs incurred by BNSF associated with the movement of such CP Dimensional Traffic.

Section 7. CAPACITY IMPROVEMENTS AND CHANGES IN AND/OR ADDITIONS TO THE JOINT TRACKAGE

7.1 If the event that Legal Requirements require Changes in and/or Additions to the Joint Trackage or, BNSF in its sole judgment determines that Capacity Improvements and/or Additions to the Joint Trackage, including, but not limited to, construction of additional main trackage, crossovers, sidings, powered switches, signal facilities, centralized traffic control, grade separations, and future connections are required for the safe and efficient operation on, over or along the Joint Trackage, then BNSF shall make such Capacity Improvements, Changes in and/or Additions.

7.2 The cost and expense of any Capacity Improvements, Changes in and/or Additions to the Joint Trackage shall be shared by BNSF and User on the basis that the parties' respective number of Car Miles or GTMs operated over the Joint Trackage bear to total number of Car Miles or GTMs operated over the Joint Trackage for the twelve (12) month period immediately prior to the month work on the project is commenced; provided, however, that if User is restricted from using any Capacity Improvements, Changes in and/or Additions to the Joint Trackage, User shall not be required to share in the cost and expense thereof. The use of Joint Trackage by any third party admitted by BNSF shall be attributed to BNSF for purposes of computing respective Car Miles or GTMs for purposes of this Section 7.

7.3 Notwithstanding any provisions to the contrary herein, in the event Owner, in its sole discretion, decides to install Positive Train Control, ("**PTC**") on the Joint Trackage, the cost and expense of PTC installation of assets on and or in the track shall be apportioned between Owner and User based on each party's respective proportion of Car Miles or GTMs operated over the Joint Trackage for the twelve month period prior to the installation of PTC.

7.4 The parties agree that the terms of this Agreement for the cost sharing of PTC do not establish a course of dealing or a course of conduct with respect to any other agreement. The parties further agree that the negotiation, execution, and terms of this Agreement are not related to either party's obligation, contractual or otherwise, to install and/or pay for PTC on any other trackage under any other agreement between the parties.

7.5 If this Agreement is terminated pursuant to the terms and conditions set forth herein, User will not be entitled to any refunds of amounts paid by User for Capacity Improvements, Changes in and/or Additions to the Joint Trackage.

Section 8. INSURANCE

[This Section Intentionally Left Blank]

Section 9. APPLICABLE LAW

This Agreement and any claims, disputes or controversies arising hereunder shall be governed by and construed in accordance with the laws of the state of Minnesota, without regard to its conflicts of laws provisions.

Section 10. GOVERNMENTAL OR REGULATORY APPROVALS

10.1 CP shall be responsible for obtaining, at CP's sole cost and expense, the consent, approval or authority of applicable governmental agencies or departments, including, but not limited to the STB (hereinafter collectively called "**Government Approvals**"), necessary for CP's use and operation on, over or along the Joint Trackage pursuant to this Agreement and Legal Requirements. In the event any applications, petitions or filings by BNSF are required for CP to obtain the necessary Government Approvals pursuant to the preceding sentence, then BNSF will cooperate with CP and undertake and diligently prosecute any applications, petitions or filings by BNSF at BNSF's expense.

10.2 In the event CP is unable to obtain the Government Approval necessary for its use and operation on, over or along the Joint Trackage within a reasonable amount of time, then this Agreement shall immediately terminate. BNSF shall have the right, but not the obligation, to review any CP applications, petitions, filings or requests for the Government Approvals described in this Section. CP shall provide BNSF with advance written copies of any such applications, petitions, filings or requests. The parties further agree that the advance Government Approvals that this Agreement may expire by its terms is a fundamental condition to the effectiveness of this Agreement without which the trackage rights set forth herein shall not be granted to CP and in such event, this Agreement shall immediately terminate.

Section 11. TERM AND TERMINATION

11.1 This Agreement is conditioned upon and becomes effective upon the effective date contained in the necessary Government Approvals consenting to or authorizing the trackage rights granted hereunder.

11.2 Unless terminated earlier pursuant to the terms and conditions set forth herein or the General Conditions, this Agreement shall remain in effect for a period of twenty-five (25) years from the Execution Date of this Agreement (hereinafter called "**Term**").

11.3 Upon the effective date of this Agreement, the HOL Agreement shall automatically terminate. Termination of the HOL Agreement shall not release either party

hereto from any liability or obligation that may have been incurred by or that might have accrued against it thereunder during the term thereof.

Section 12. NOTICES

All notices, demands, requests, submissions and other communications which are required or permitted to be given pursuant to this Agreement shall be given by either party to the other in writing and shall be deemed properly served if delivered by hand, or mailed by overnight courier or by registered or certified mail, return receipt requested, with postage prepaid, to such other party at the address listed below:

If intended for BNSF:

AVP Contracts and Joint Facilities
BNSF Railway Company
2600 Lou Menk Drive
P.O. Box 961034
Fort Worth, Texas 76161-0034
Email: OPRDLJointFacilities@bnsf.com

If intended for CP:

Director – Interline Agreements
Canadian Pacific Railway Company
Building #1
7550 Ogdendale Road SE
Calgary, Alberta, Canada T2C 4X9

with a copy to:

Director Interline & Passenger-South
Canadian Pacific Railway Company
Canadian Pacific Plaza
120 South Sixth Street, Suite 1000
Minneapolis, MN 55402

Notice of address change may be given any time pursuant to the provisions of this Section 12.

Section 13. SURVIVAL

Termination of this Agreement shall not relieve, release or excuse either party hereto from any obligations assumed or from any liability which may have arisen or been incurred by either party under the terms of this Agreement prior to the termination hereof.

Section 14. ENTIRE AGREEMENT

This Agreement together with its exhibits or appendices constitutes the final agreement between the parties concerning the subject matter herein. It is the complete and exclusive

expression of the parties' agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the parties on matters contained in this Agreement are expressly merged into and superseded by this Agreement. The provisions of this Agreement may not be explained, supplemented, or qualified through evidence of trade usage or prior course of dealings. In entering into this Agreement, neither party has relied upon any statement, representation, warranty, or agreement of the other party except for those expressly contained in this Agreement.

Section 15. SEVERABILITY

If any provision in this Agreement is held invalid, illegal or unenforceable, the remaining provisions of this Agreement remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable. If any provision is held invalid, illegal or unenforceable, the parties agree to negotiate a revised or replacement provision.

Section 16. CONFIDENTIALITY

No party shall disclose the financial terms and conditions of this Agreement other than as required by law or as otherwise agreed in writing between the parties. The party making disclosure will notify the other parties in advance of such disclosure.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate the day and year first above written.

BNSF RAILWAY COMPANY

By: _____

Printed: _____

Title: _____

**SOO LINE RAILROAD COMPANY
d/b/a CANADIAN PACIFIC**

By: _____

Printed: _____

Title: _____

EXHIBIT "B"
GENERAL CONDITIONS
TRACKAGE RIGHTS AGREEMENT

Section 1. DEFINITIONS

To the extent used in this Exhibit "B" and/or the Agreement, the following terms shall have the meanings indicated below:

- 1.1 "**AAR**" shall mean the Association of American Railroads.
- 1.2 "**Agreement**" shall mean that certain Trackage Rights Agreement between Owner and User dated _____, 2017, to which this Exhibit "B" is attached.
- 1.3 "**Annual**" shall mean a calendar year.
- 1.4 "**Capacity Improvements**" shall mean projects or improvements that expressly increase the capacity or through-put over the Joint Trackage or a portion thereof and provide utility beyond ordinary and/or programmed maintenance the cost of which is chargeable in whole or in part to Property Accounts under STB accounting standards in effect as of the effective date of the Agreement.
- 1.5 "**Car**" shall mean one (1) rail car except in the case of an articulated rail car where the number of cars shall be determined by the AAR Car Type Code as defined in the Universal Machine Language Equipment Register Specification Manual or such successor manual, if any. The second character in the Car Type Code field covering codes "Q" and "S" will be factors used to determine the car count for an articulated unit. For example, AAR Car Type Code S566 would be equal to five (5) cars as an articulated rail car with five wells capable of handling 40' to 48' containers in each well. Notwithstanding the foregoing, car count data for articulated units are subject to change upon further development of technology for separate units using car numbers. Each locomotive shall be counted as two (2) cars.
- 1.6 "**Car Mile**" shall mean the distance a Car travels over one (1) mile of track included in the Joint Trackage.
- 1.7 "**Car Mile Handled Proportion**" shall mean the Car Miles handled over the Joint Trackage by or for a party divided by the total number of Car Miles handled by or for all parties using the Joint Trackage, during the same period. For the purpose of computing the Car Miles Handled Proportion, Equipment engaged in work service pertaining to construction, maintenance or operation of the Joint Trackage, Capacity Improvements or Changes in and/or Additions to the Joint Trackage shall not be counted and Car Miles of third parties shall be attributed to the Owner.
- 1.8 "**Changes in and/or Additions to**" shall mean line changes to or realignment of the Joint Trackage or a portion thereof and/or new infrastructure on the Joint Trackage that is not otherwise a replacement for existing infrastructure, the cost of which is chargeable in whole or in

part to Property Accounts (defined below) under STB (defined below) accounting standards in effect as of the effective date of the Agreement.

1.9 "**Dimensional Traffic**" shall mean Equipment that exceeds 17 feet, 0 inches above the top of rail and/or 11 feet, 0 inches wide and/or any freight on a Car exceeding 17 feet, 0 inches above the top of rail and/or 11 feet, 0 inches wide and/or freight that over hangs the end sills of the Car.

1.10 "**Environmental and Safety Requirements**" means and includes all Legal Requirements relating to the protection, preservation or conservation of the environment and/or public or worker health or safety including, without limitation, any Legal Requirements covering the handling, storage, treatment and disposal of Hazardous Materials.

1.11 "**Equipment**" shall mean (i) trains, locomotives, Cars (loaded or empty), intermodal units, and cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks or right-of-way that, at the time of any occurrence, are being operated on, over or along the Joint Trackage, and/or (iii) vehicles and machinery that, at the time of any occurrence, are located on, over or along the Joint Trackage for the purpose of maintenance or repair thereof or the clearing of wrecks thereon.

1.12 "**GTM**" shall mean gross ton mile which is the weight in tons for Equipment and lading transported over one (1) mile of track included in the Joint Trackage.

1.13 "**GTM Handled Proportion**" shall mean the GTMs handled over the Joint Trackage by or for a party divided by the total number of GTMs handled by or for all parties using the Joint Trackage, during the same period. For the purpose of computing such GTMs Handled Proportion, Equipment engaged in work service pertaining to construction, maintenance or operation of the Joint Trackage, Capacity Improvements or Changes in and/or Additions to the Joint Trackage shall not be counted and GTMs of third parties shall be attributed to the Owner.

1.14 "**Hazardous Materials**" shall mean and include all toxic or hazardous substances, pollutants, waste or contaminants to which liability or standards of conduct may be imposed under any Environmental and Safety Requirements including, without limitation, (a) petroleum or petroleum based products or any derivatives or hazardous constituents thereof or any additives thereto, (b) fuels (including motor fuels, diesel, methane and other natural gas), (c) waste oils, lubricating oils and cleaning solvents, (d) ammonia, glycol and freon, (e) any "Hazardous Substances," "Hazardous Materials," "Regulated Substances" or "Toxic Substances," or similarly defined terms, as set forth in any Legal Requirements, and/or (f) any other substances at levels greater than those allowed by applicable Legal Requirements.

1.15 "**Legal Requirements**" means and includes all applicable statutes, laws, rules, regulations, ordinances, orders, codes, permits, licenses, and requirements (including consent decrees, judicial decisions and administrative orders) of all federal, state and local governments, departments, commissions, agencies and boards, including, without limitation, laws, statutes, regulations or rules respecting the operation, condition, inspection or safety of trains,

locomotives, cars and equipment and all applicable Environmental and Safety Requirements, all as amended or supplemented.

1.16 "**Ordinary Maintenance**" shall mean usual and routine work or maintenance performed in the daily upkeep of the Joint Trackage, consistent with industry custom and practice, the cost of which is not chargeable in whole or in part to Property Accounts under STB accounting standards in effect as of the effective date of this Agreement.

1.17 "**Owner**" shall have the meaning given to such term in the Agreement.

1.18 "**Programmed Maintenance**" shall mean work or maintenance that is normally pre-planned, non-periodic and generally involves substantial replacements or renewals of existing assets, the cost of which is chargeable to Property Accounts under STB accounting standards in effect as of the effective date of this Agreement. Further, the replacement or renewal should have the same utility as the asset replaced/renewed, without necessarily reproducing exactly any particular characteristic of the original asset or property.

1.19 "**Property Accounts**" shall mean accounts so designated under the Uniform System of Accounts for Railroad Companies prescribed by the STB, or any replacement of such system prescribed by the applicable federal regulatory agency, if any, and used by the parties hereto.

1.20 "**STB**" shall mean the Surface Transportation Board of the United States Department of Transportation or any successor agency.

1.21 "**User**" shall have the meaning given to such term in the Agreement.

Section 2. MAINTENANCE, ADDITIONS, OPERATION, AND CONTROL

2.1 Owner shall have sole charge of the inspection, maintenance and repair of the Joint Trackage with its own supervisors, labor, materials and equipment. Owner, from time to time, may make such Changes in and/or Additions to the Joint Trackage as shall be required by Legal Requirements or as Owner, in its sole discretion, shall deem necessary. Such Changes in and/or Additions to the Joint Trackage shall become a part of the Joint Trackage or in the case of retirements shall be excluded from the Joint Trackage.

2.2 Intentionally Left Blank

2.3 Owner shall have the exclusive right to perform all construction, inspection, maintenance, repair and renewal of the Joint Trackage. Owner shall make reasonable efforts to ensure that User is given the same advance notice of maintenance plans and schedules as is provided to Owner's personnel.

2.4 The management, control (including dispatching) and maintenance of the Joint Trackage shall, at all times, be under the exclusive direction and control of Owner. Additionally,

the movement of Equipment over and along the Joint Trackage shall at all times be subject to the exclusive direction and control of Owner's authorized representatives and in accordance with such reasonable operating rules as Owner shall from time to time institute (including, without limitation, Owner's General Code of Operating Rules). User shall, at User's sole cost and expense, obtain, install and maintain necessary communication equipment to allow User's Equipment to communicate with Owner's dispatching and signaling facilities. Owner shall provide User with prior notice of the adoption or implementation of new communication or signaling systems on the Joint Trackage which have not generally adopted in the railroad industry as of the date of such adoption or implementation.

2.5 If the use of the Joint Trackage shall at any time be interrupted or traffic thereon or thereover be delayed for any cause, neither party shall have or make any claim against the other for loss, damage or expense caused by or resulting solely from such interruption or delay.

2.6 Owner may from time to time substitute any track or tracks included in the Joint Trackage and delineated on Exhibit "A1" or Exhibit "A2" to the Agreement as long as User is provided with a continuous route of equal utility for the operations of its Equipment between the termini of the Joint Trackage. When substitute tracks are used as provided herein, the terms and conditions of the Agreement shall apply to User's access and use of such substitute tracks as if all movement had been made over the Joint Trackage.

2.7 Unless provided otherwise in the Agreement, each party shall be responsible for furnishing, at its sole cost and expense, all labor, fuel, train supplies and other supplies necessary for the operation of its own Equipment over the Joint Trackage. In the event a party furnishes labor, fuel or train and other supplies to another party, then the receiving party shall promptly, upon receipt of billing therefor, reimburse the furnishing party for its reasonable costs thereof, including customary additives.

2.8 Unless provided otherwise in the Agreement, User shall be responsible for the reporting and payment of any mileage, per diem, use or rental charges accruing on Equipment in User's account on the Joint Trackage. Except as may be specifically provided for in the Agreement, nothing contained herein is intended to change practices with respect to interchange of traffic between the parties or with other carriers on or along the Joint Trackage.

2.9 (a) Except as otherwise may be provided in the Agreement, User shall operate its Equipment over the Joint Trackage with its own employees. Before any employees of User are assigned or permitted to operate Equipment on, over or along the Joint Trackage, and from time to time thereafter as and when reasonably requested by Owner, such employees shall be required to pass the applicable rules examinations required for employees of Owner. User may conduct such examinations upon obtaining Owner's prior written consent. If Owner conducts examinations of User's employees, then User shall pay Owner a reasonable fee for each employee being examined. User shall certify and qualify its locomotive engineers and other employees (including, without limitation, pilots) in compliance with Legal Requirements and the Agreement. User's written program covering certification and qualification of User's employees shall be subject to Owner's review and approval prior to User commencing operations as contemplated herein.

(b) Notwithstanding any examination set forth herein, User shall be responsible for ensuring that its employees are certified and qualified in compliance with Legal Requirements and shall ensure that all its employees engaged in or connected with the operations of User on, over or along the Joint Trackage shall, at all times, be in compliance with Legal Requirements. Unless provided otherwise in the Agreement, pending qualification of train and engine crews of User or as requested by User thereafter, Owner shall furnish a pilot or pilots, at the sole expense of User, as deemed necessary by Owner to assist in operating trains of User on, over or along the Joint Trackage.

Upon request of User and at User's sole cost and expense, Owner shall qualify one or more of User's supervisory officers as pilots and such supervisory officer or officers so qualified shall further qualify employees of User engaged in or connected with User's operations on, over or along the Joint Trackage.

2.10 If any employee of User shall neglect, refuse or fail to abide by Owner's rules, instructions and restrictions governing the operation on, over or along the Joint Trackage or Legal Requirements, such employee shall, upon written request of Owner, be prohibited by User from working on, over or along the Joint Trackage. If either party shall deem it necessary to hold a formal investigation to establish such neglect, refusal or failure on the part of any employee of User, then upon such notice presented in writing, Owner and User shall promptly hold a joint investigation in which the parties concerned shall participate and bear the expense for their respective officers, counsel, witnesses and employees participating in such investigation. Notice of investigations to User's employees pursuant to this Section shall be given by User's officers, and such investigations shall be conducted in accordance with the terms and conditions of schedule or labor agreements between User and its employees. If, in the judgment of Owner, the result of any investigation warrants that an employee of User be withdrawn from service on, over or along the Joint Trackage, then User shall withdraw such employee from such service upon Owner's written request for withdrawal. User releases, indemnifies, defends and holds Owner harmless from and against any and all claims and expenses arising from or related to any withdrawal pursuant to this Section.

If the disciplinary action is appealed by an employee of User 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 thereafter be barred from service on, over or along the Joint Trackage.

2.11 If any Equipment of User is bad ordered enroute on the Joint Trackage and (i) it is necessary that it be set out, and (ii) only light repairs to the Equipment are required, then such bad ordered Equipment shall be promptly repaired and removed from the Joint Trackage by User. Owner may, upon request of User and at User's sole cost and expense, furnish the required labor and material and perform light repairs to make such bad ordered Equipment safe for movement. For the sole purpose of determining liability between the parties, the employees and Equipment of Owner shall be considered employees and Equipment of User while performing repairs, moving Equipment or traveling to or from Owner's terminal pursuant to the preceding sentence. However, should Owner's employees after repairing such bad ordered Equipment for

User move directly to perform service for Owner's benefit rather than returning to Owner's terminal, then User's exclusive time and liability will end when Owner's employees depart for work to be performed for Owner's benefit. In the case of repairs by Owner to freight cars in User's account, billing therefor shall be in accordance with the Field and Office Manuals of the Interchange Rules, adopted by the AAR (hereinafter collectively called "Interchange Rules"), in effect on the date of performance of the repairs. Owner shall then prepare and submit billing directly to and collect from the car owner for car owner responsibility items as determined under said Interchange Rules, and Owner shall prepare and submit billing directly to and collect from User for handling line responsibility items as determined under said Interchange Rules. If any car owner refuses or otherwise fails to make payments for car owner responsibility items, then User shall be responsible for paying Owner for such repairs. Repairs to locomotives shall be billed as provided for in Section 3 of these General Conditions.

2.12 If Equipment of User shall become derailed, wrecked, or otherwise disabled while upon the Joint Trackage, it shall be re-railled or cleared by Owner, except that employees of User may, with BNSF's permission, re-rail User's derailed Equipment on the Joint Trackage whenever use of motorized on or off track equipment is not required and prior permission was granted by Owner. Any re-railing of Equipment by User shall be subject to, and User agrees to follow, directions of Owner. Owner reserves the right to determine whether to re-rail or clear Equipment of User when, in the sole judgment of Owner, Owner deems it advisable to do so to minimize delays and interruptions to train movement. The reasonable costs and expenses of re-railing or clearing derailed, wrecked, or disabled Equipment and any Loss or Damage incidental thereto shall be borne by the parties in accordance with Section 5 of these General Conditions. Work and services performed under this Section shall be billed in accordance with Section 3 of these General Conditions.

2.13 In the event Equipment of User shall be forced to stop on the Joint Trackage, and such stoppage is due to insufficient hours of service remaining among User's employees, or due to mechanical failure of User's Equipment (other than bad ordered Equipment subject to light repairs pursuant to Section 2.11), or to any other cause not resulting from an accident or derailment (including the failure of User to promptly repair and clear bad ordered Equipment pursuant to Section 2.11), and such Equipment is unable to proceed, or if a train of User fails to maintain the speed required by Owner on the Joint Trackage, or if, in emergencies, disabled Equipment is set out of User's trains on the Joint Trackage, Owner shall have the option, without prejudice to any other rights or remedies which may be applicable, to furnish motive power or such other assistance (including but not limited to the right to re-crew User's train) as may be necessary to haul, help or push such Equipment, or to properly move the disabled Equipment off the Joint Trackage. The reasonable costs and expenses of rendering such assistance shall be borne by User. Work and services provided under this Section shall be billed in accordance with Section 3 of these General Conditions.

2.14 User shall pay to Owner reasonable expenses incurred by Owner in the issuance of timetables made necessary solely by changes in the running time of trains of User over the Joint Trackage. If changes in running time of trains of Owner or third parties, as well as those of User, require the issuance of timetables, then User shall pay to Owner that proportion of the expenses incurred that one bears to the total number of parties changing the running time of their

trains. If changes in running time of trains of Owner or third parties, but not those of User, require the issuance of timetables, then User shall not be required to pay a proportion of the expenses incurred in connection therewith.

2.15 User, at Owner's request, shall be responsible for reporting to Owner the statistical data called for in the Agreement.

Section 3. BILLING

3.1 User will furnish to Owner on or before the fifteenth (15th) day of each month a statement giving the number of Car Miles or, if compensation is based on a GTM Rate, the number of GTMs operated by User over the Joint Trackage for the preceding month and Owner shall furnish to User the number of Car Miles or, if compensation is based on a GTM Rate, the number of GTMs operated by all parties over the Joint Trackage in a format mutually agreed to by the parties. Such data shall include sufficient detail for the each party to verify the Car Miles or GTMs supplied.

3.2 Invoices and billings under the Agreement shall be in a mutually agreed upon format. Each invoice shall contain sufficient detail to permit computation of payments due thereunder. Invoices shall be prepared according to the rules, additives, and equipment rental rates as published by the Owner. User shall pay Owner, at such location designated by Owner from time to time, all compensation and charges that User is required to pay pursuant to the terms and conditions of the Agreement. User shall pay invoices in United States money within thirty (30) days after the invoice date. Invoices shall include a statement of the amount due and services rendered during the applicable billing time period. In the event that either party hereto shall fail to pay any monies due to the other party hereto within thirty (30) days after the invoice date, then such first party shall pay interest on such unpaid sum from thirty (30) days after its invoice date to the date of payment by such first party at an annual rate equal to (i) the greater of (a) for the period January 1 through June 30, the prime rate last published in the *Wall Street Journal* in the preceding June plus two and one-half percent (2 ½%), or (b) twelve percent (12%), or (ii) the maximum rate permitted by law, whichever is less.

3.3 Errors or disputed items in any invoice shall not be deemed a valid excuse for delaying payment of undisputed portions of such invoice. User shall notify Owner in writing of any errors or disputed items within fifteen (15) days after such receipt of Owner invoices. User and Owner shall work together in good faith to resolve any billing errors or disputes within thirty (30) days of Owner receiving User's written notice setting forth such errors and/or disputes. If the parties are unable to resolve the billing errors or disputes in accordance with this provision, the parties may proceed to arbitration. Notwithstanding the foregoing, no dispute or exception to any invoice shall be honored, recognized, or considered after the expiration of three (3) years from the last day of the calendar month during which the invoice is rendered and no invoice shall be rendered later than three (3) years (i) after the last day of the calendar month in which the expense covered thereby is incurred, or (ii) if in connection with a project for which a roadway completion report is required, after the last day of the calendar month in which the roadway completion report is made covering such project, retroactive up to three (3) years from date of billing, or (iii) in the case of claims disputed as to amount or liability, after the amount is settled

and/or the liability(ies) established. This provision shall not limit the retroactive adjustment of billing made pursuant to exception taken to original accounting by or under authority of the STB or retroactive adjustment of wage rates and settlement of wage claims.

3.3 Books, accounts, and records of each party that are reasonably related to the subject matter of this Agreement shall at all reasonable times be open to inspection by the authorized representatives and agents of the parties.

3.4 If any amount becomes payable by Owner to User under the Agreement, the provisions of Section 3 of this Exhibit "B" shall apply to Owner as the paying party.

3.5 If User fails to make any undisputed payment when due and such failure continues for a period of ten (10) days after notice in writing of such failure is given by Owner to User, or if User fails to cure a User default within the time period set forth below or in the Agreement, then Owner may, as its election, exclude User from using or operating on, over or along the Joint Trackage until such failure is cured by User. The parties also agree that any failure to make any payment which is the subject of arbitration or litigation between the parties shall not be deemed a default hereunder, pending the final decision in such arbitration or litigation. In the event User is excluded from use of the Joint Trackage, User shall surrender to Owner all said Joint Trackage and shall have no claim or demand against Owner for such exclusion.

Owner may waive any default of User hereunder, but no action of Owner in waiving any default shall affect or impair any other rights of Owner resulting therefrom.

Section 4. COMPLIANCE

4.1 With respect to operation of Equipment on, over or along the Joint Trackage, User shall comply with all Legal Requirements. If any failure by User to comply with Legal Requirements shall result in a fine, penalty, cost or charge being imposed or assessed on or against BNSF, BNSF shall give prompt notice of such fine, penalty, cost or charge to User and User shall promptly reimburse, indemnify, defend and hold BNSF harmless from and against any such fine, penalty, cost or charge and all expenses and reasonable attorneys' fees incurred in connection therewith.

4.2 User also agrees to comply fully with all Environmental and Safety Requirements. User shall not treat or dispose of Hazardous Materials on the Joint Trackage. User further agrees to furnish Owner (if requested) with proof, satisfactory to Owner that User is in compliance with this Section 4.

User shall be responsible for filing any reports required under Legal Requirements for any derailment, accident, incident, vandalism, bad ordered Equipment, wreck (hereinafter collectively called, for purposes of Section 4 and Section 5, "**Derailment**") involving Hazardous Materials on or along any segment of the Joint trackage in connection with User's Equipment and/or Equipment operated by or on behalf of User. User shall advise Owner and the owner/shipper of the Hazardous Materials involved in the Derailment immediately.

In the event of a Derailment, Owner shall assume responsibility for cleaning up any release of Hazardous Materials from User's Equipment in accordance with all Legal Requirements. User may have representatives at the scene of the Derailment to observe and provide information and recommendations concerning the characteristics of the released Hazardous Materials, if any, and the cleanup effort. Any costs related to the cleanup and removal of Hazardous Materials shall be governed by Section 5 of these General Conditions.

If a Hazardous Materials release is caused by a Derailment involving Equipment of User, or by Equipment operated by User, and such release results in the contamination of real property or water on, along or adjacent to the Joint Trackage (whether such real property or water is owned by Owner or a third party), then Owner shall assume initial responsibility for emergency cleanup of such Hazardous Materials so as to mitigate further damage. After Owner's initial cleanup efforts, User shall be responsible for performing the appropriate remedial measures in compliance with Legal Requirements. Any costs associated with cleaning up real property or water on, along or adjacent to the Joint Trackage contaminated by Hazardous Materials shall be governed by Section 5 of these General Conditions.

If Hazardous Materials must be transferred to undamaged Equipment or trucks as a result of a release caused by a Derailment involving Equipment of User, or by Equipment operated by or on behalf of User, User shall perform the transfer; PROVIDED, HOWEVER, that if the Hazardous Materials are in damaged Equipment that is blocking the Joint Trackage, Owner, at its option, may transfer the Hazardous Materials and any costs associated with such transfer shall be governed by Section 5 of these General Conditions. Transfers of Hazardous Materials by User shall only be conducted after being authorized by Owner.

4.3 The total cost of clearing a Derailment, cleaning up any Hazardous Materials released during such Derailment, and/or repairing the Joint Trackage or any other property damaged thereby shall be borne by the party or parties liable therefor in accordance with Section 5 of these General Conditions.

4.4 In the event of release of Hazardous Materials caused by faulty Equipment or third parties, cleanup will be conducted as stated in Section 4 of these General Conditions.

Section 5. LIABILITY

5.1 **General.** The provisions of this Section 5 shall apply only as between the parties hereto and are solely for their benefit. Notwithstanding anything contained in this Section 5, no provisions hereof shall be deemed to deprive Owner or User of the right to enforce or shall otherwise restrict any remedies to which they would otherwise be entitled under other provisions of the Agreement as a result of the other party's failure to perform or observe any other obligation or duty created by this Agreement. The provisions of this Section 5 shall apply as between the parties hereto irrespective of the terms of any other agreements between the parties hereto and other railroads using the Joint Trackage, and the allocation of liabilities provided for herein shall control as between the parties hereto.

5.2 **Definitions and Covenants.** The parties agree that for the purposes of this Section 5, the following definitions shall apply:

(a) **"Loss or Damage"** shall mean, without limitation, all claims, liability, cost, and expense of every character including, but not limited to, amounts paid or to be paid under any State or Federal compensation law (including without limitation, the Federal Employer's Liability Act) incident to loss or destruction of or damage to property (including property of the parties hereto and property being transported by the parties) and injury to and death of persons arising from the operation by the parties hereto on, over or along the Joint Trackage. Loss or Damage shall also include all costs and expenses incidental to any claims, suits, demands and judgments (including attorneys' fees, court costs and other costs of investigation and litigation), the expense of clearing wrecked or derailed Equipment and the costs of environmental protection, mitigation or clean up necessitated by such wreck or Derailments and any liabilities for any third party claims for personal injury or death, property damage, natural resource damage, or any penalties, judgments or fines associated with a release of any contaminants resulting from such wreck or Derailment. Loss or Damage shall be reduced by any amount recovered from third parties.

(b) **"Employee(s)"** of a party shall mean all officers, agents, employees and contractors of that party.

(c) For the sole purpose of determining liability between the parties under this Section 5, (i) Equipment of foreign lines admitted to or being detoured over the Joint Trackage, and all persons engaged in moving such Equipment, shall be considered the Equipment and employees of the party hereto under whose detour agreement or other auspices such movement is being made; and (ii) Equipment of a party shall include Equipment owned, leased, controlled, or in the account of such party.

5.3 **Reimbursement and Defense.** The parties agree that:

(a) Each party hereto shall promptly pay for any Loss or Damage arising out of or connected with the liability assumed by such party under the provisions of this Section 5, and shall indemnify, defend and hold the other party harmless from and against such Loss or Damage. If any suit or suits shall be brought against either of the parties hereto and any judgment or judgment shall be recovered which said party is compelled to pay, and the other party shall under the provisions of the Agreement be solely liable therefor, then the party which is so liable shall promptly repay on demand the other party for any monies which it may have been required to pay, whether in the way of Loss or Damage, costs, fees or other expenses; and if the Loss or Damage in such case or cases is joint or allocated between the parties to the Agreement, the party defendant paying the same or any costs, fees or other expenses shall be reimbursed by the other party as allocated pursuant to this Agreement.

(b) Each party hereto shall have the sole right to settle, or cause to be settled for it, all claims, and the sole right to defend or cause to be defended all suits, for Loss or Damage for which such party is solely liable under the provisions of this Section 5.

(c) Each party shall provide written notice to the other party of any accidents or events resulting in Loss or Damage within seven (7) days of its discovery or receipt of notification of such occurrence.

(d) If any claim, suit or action shall be brought against any party for Loss or Damage which under the provisions of this Section are in whole or in part the responsibility of the other party, said responsible party shall be notified in writing by the party to whom the claim is presented or 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 Loss or Damage. No party hereto shall be conclusively bound by any judgments against the other party, unless the former party shall have had reasonable notice requiring or permitting it to investigate and defend and reasonable opportunity to make such defense. When such notice and opportunity shall have been given, the party so notified and the other party shall be conclusively bound by the judgment as to all matters which could have been litigated in such suit, including without limitation a determination of the relative or comparative fault of each.

(e) No party shall settle or compromise any Loss or Damage for which the other party has any liability without the concurrence of such other party if the consideration for such settlement or compromise exceeds [REDACTED].

5.4 **Wrecks and Derailment.** The cost and expense of repairing bad ordered Equipment, clearing wrecks or otherwise disabled Equipment or rerailling Equipment (and the costs of repair or renewal of damaged Joint Trackage or adjacent properties) shall be borne in accordance with Section 5.5. All employees or Equipment, while engaged in, en route to or from, or otherwise incident to operating wrecker or work trains clearing wrecks, disabled Equipment or Derailments or engaged in repair or renewal of the Joint Trackage subsequent to any such wreck, disability or Derailment, shall be deemed to be employees or Equipment of the party whose Equipment was wrecked, disabled or derailed.

5.5 **Allocation of Liability for Loss or Damage.**

Allocation of liability for Loss or Damage shall be allocated between the parties as follows:

(a) **Loss or Damage Attributable Solely to Gross Negligence or Willful or Wanton Misconduct of One Party.** If 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 section, "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."

(b) **Loss or Damage Without Regard to Fault or Negligence.** Except as set forth in Sections 5.5(a) and 5.5(d), allocation of liability for Loss or Damage shall be allocated between the parties as follows without regard to fault or negligence:

(1) If Loss or Damage occurs involving solely the Equipment or Employees of one of the parties, then that party shall be solely responsible for such Loss or Damage, even if caused partially or completely by another party.

(2) If Loss or Damage occurs involving the Equipment and/or Employees of both CP and BNSF, then (i) CP and BNSF each shall be solely responsible for any Loss or Damage to its own Employees and Equipment, and (ii) the parties shall each be responsible for fifty percent (50%) of the Loss or Damage to the Joint Trackage and associated facilities and any Loss or Damage sustained by third parties, regardless of the proportionate responsibility between them as to the cause of the Loss or Damage.

(3) If Loss or Damage occurs without either party involved, such Loss or Damage shall be apportioned on the basis of the percentage of each party's Car Miles or, if compensation is based on a GTM Rate, each party's GTMs operated over the Joint Trackage in the twelve (12) month period ending immediately prior to the month in which such Loss or Damage occurred, or if the month of occurrence cannot be determined, the month in which the Loss or Damage was first discovered. In the event that compensation changes from Car Mile Rate to a GTM Rate during the aforementioned twelve (12) month period, Loss or Damage shall be apportioned on the basis of each party's Car Miles. In the case the incident occurs or is discovered in the first twelve (12) months of the Agreement, the proportionate usage shall be determined by Car Miles operated over the first twelve (12) month period in which the Agreement is in effect.

(c) Notwithstanding anything to the contrary in this Section 5.5, when any damage to or destruction of the environment, including without limitation land, air, water, wildlife, and vegetation, occurs with one or more trains of the parties involved, then, as between themselves, the parties agree that (i) CP shall be solely responsible for any damage or destruction to the environment and to third parties which results solely from a substance transported in CP Equipment from which there was a release, (ii) BNSF shall be solely responsible for any damage or destruction to the environment and to third parties which results solely from a substance transported in BNSF Equipment from which there was a release, and (iii) CP and BNSF shall be responsible, in proportion to the total number of pieces of Equipment of each party from which there was a release, for any damage or destruction to the environment and to third parties which results solely from one or more substances transported in both CP Equipment and BNSF Equipment from which there was a release.

(d) Notwithstanding any provision of this Section 5.5 to the contrary, each party shall assume and bear all responsibility for any Loss or Damage caused by acts or omissions of any its employees while under the influence of drugs or alcohol. An FRA positive test for drugs or an FRA alcohol test of .04 or greater shall establish that an employee was "under the influence of drugs or alcohol" for the purposes of this Agreement.

Section 6. ARBITRATION

6.1 If at any time a question or controversy shall arise between the parties hereto in connection with this Agreement upon which the parties cannot agree, either party shall have the right to require a meeting of designated representatives with authority to settle the matter within thirty (30) days of written notice of a desire to meet; if it cannot be resolved within thirty (30) days of the meeting of the parties, then the aggrieved party may demand arbitration. Unless other procedures are agreed to by the parties, arbitration between the parties shall be governed by the rules and procedures set forth in this Section 6. The parties intend that any dispute arising out of this Agreement that cannot be resolved through negotiation as provided above must be resolved through binding arbitration as set forth in this Section 6.

6.2 If the parties to the dispute are able to agree upon a single competent and disinterested arbitrator within twenty (20) days after written notice by one party of its desire for arbitration to the other party, then the question or controversy shall be submitted to and settled by that single arbitrator. Otherwise, any party (the notifying party) may notify the other party (the noticed party) in writing of its request for arbitration and nominating one arbitrator. Within twenty (20) days after receipt of said notice, the noticed party shall appoint an arbitrator and notify the notifying party in writing of such appointment. Should the noticed party fail within twenty (20) days after receipt of such notice to name its arbitrator, said arbitrator may be appointed by the American Arbitration Association, which shall designate said appointment from the Conflict Prevention and Resolution ("CPR") Panel of Distinguished Neutrals, or other similar body of competent neutral arbitrators which may be agreed upon between the parties, upon application by either party after ten (10) days' written notice to the other party. The two arbitrators so chosen shall select one additional arbitrator to complete the board. If the arbitrators so chosen fail to agree upon an additional arbitrator, the same shall, upon application of a party, be appointed in the same manner hereto before stated.

6.3 Upon selection of the arbitrator(s), said arbitrator(s) shall, with reasonable diligence, determine the questions as disclosed in said notice of arbitration, shall give both parties reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, may take such evidence as the arbitrator(s) shall deem reasonable or as either party may submit with witnesses required to be sworn, and hear arguments of counsel or others. In no event shall the arbitrator(s) have authority to award indirect, special, consequential, punitive or exemplary damages. If an arbitrator declines or fails to act, the party (or parties in the case of a single arbitrator) by whom the arbitrator was chosen or the American Arbitration Association, as the case may be, shall appoint another to act in the arbitrator's place.

6.4 After considering all evidence, testimony and arguments, said single arbitrator or the majority of said board of arbitrators shall promptly state such decision or award and the reasoning for such decision or award in writing which shall be final, binding, and conclusive on all parties to the arbitration when delivered to them. The award rendered by the arbitrator(s) may be entered as a judgment in any court in the United States of America having jurisdiction thereof and enforced as between the parties without further evidentiary proceeding, the same as entered

by the court at the conclusion of a judicial proceeding in which no appeal was taken. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under this Agreement shall continue in the manner and form existing prior to the rise of such question. After delivery of said first decision or award, each party shall forthwith comply with said first decision or award immediately after receiving it.

6.5 Each party to the arbitration shall pay all compensation, costs, and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits, and counsel. The compensation, cost, and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by all parties to the arbitration.

6.6 The parties may obtain discovery and offer evidence in accordance with the Federal Rules of Civil Procedure Rules 26 - 37, and Federal Rules of Evidence, as each may be amended from time to time.

6.7 Interest computed annually, at a rate equal to the Prime Rate plus two (2) percentage points (or the maximum interest allowed by applicable law, if lower), shall be applied to any and all arbitration awards requiring the payment of money and shall be calculated from thirty (30) days following the date of the applicable arbitration decision. For purposes of this Section 6, the term "**Prime Rate**" shall mean the minimum commercial lending rate charged by banks to their most credit-worthy customers for short-term loans, as published daily in the Wall Street Journal.

Section 7. ABANDONMENT

7.1 In the event Owner shall be involuntarily dispossessed, including by threat of condemnation by competent public authority, of the right to operate upon and/or maintain any portion of its Joint Trackage and Owner fails or declines to replace said Joint Trackage, Owner shall have no obligation hereunder to provide tracks in replacement of such Joint Trackage for User's use, and User shall have and shall make no claim of any kind, legal or otherwise, against Owner for failure to provide such Joint Trackage for User's use.

7.2 To the extent that Owner may lawfully do so, Owner reserves to itself the exclusive right, exercisable at any time during the life of the Agreement without concurrence of User, to elect to abandon all or any part of the Joint Trackage by giving six (6) months' prior written notice of such abandonment to User .

7.3 Owner and User each shall be responsible for and shall bear labor claims, and employee protection payable to, its own respective employees (and employees of its respective affiliated companies) including any amounts that either Owner or User may be required to pay to its own respective employees pursuant to labor protective conditions imposed by the STB.

Section 8. CATASTROPHIC EXPENSE

Catastrophic expense to the Joint Trackage, such as, but not limited to, that arising from fire, flood, earthquake or other acts of God, or acts of vandalism, riots, insurrection, terrorist attack or events of a similar nature, for any amount in excess of [REDACTED] for each occurrence shall be billed to User in addition to the amounts billed pursuant to Section 6 and Section 7 of the Agreement and apportioned on the basis of the parties' Car Miles or, if compensation is based on a GTM Rate, on the parties' GTMs operated over the Joint Trackage for the twelve (12) month period ending immediately prior to the first day of the month of such occurrence, or if occurring prior to the first twelve (12) months of permanent User operations for the twelve (12) month period immediately after the month the event occurred. In the event that compensation changes from Car Mile Rate to a GTM Rate during the twelve (12) month period ending immediately prior to the first day of the month of such occurrence, catastrophic expense to the Joint Trackage shall be apportioned on the basis of the parties' Car Miles.

Section 9. ASSIGNMENT

This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the parties hereto. User shall not assign, transfer, convey or sublease any interest in this Agreement (by contract or by operation of law) or undertake any transaction or series of transactions which would result in a transfer of this Agreement or any interest therein, in whole or in part, without Owner's prior written consent. Notwithstanding anything to the contrary herein, Owner may assign this Agreement without obtaining User's consent. In the event of an authorized assignment, the Agreement and the operating rights hereunder shall be binding upon the successors and assigns of the parties.

Section 10. DEFAULT

10.1 Notwithstanding the provisions of Section 3 of these General Conditions, any party hereto claiming a default of any of the provisions of the Agreement (including these General Conditions) shall furnish the other party with written notice of such default, including specific information regarding the default and the particular Section or Sections of the Agreement which have allegedly been breached, along with a demand or request specifying the desired curative action.

10.2 If the default continues and is not cured for an additional period of thirty (30) days after receipt of such written notice and demand, or reasonable steps have not been nor continue to be taken to remedy a failure or default which cannot reasonably be remedied within said thirty (30) day period, then either party shall have the right to terminate the Agreement upon sixty (60) days written notice to the other party for material default and/or pursue any other rights or remedies under this Agreement or available at law or in equity.

10.3 Failure of a party to claim a default shall not constitute a waiver of such default. Either party hereto entitled to claim default may waive any such default, but no action by such

party in waiving such default shall extend to or be taken to effect any subsequent defaults or impair the rights of either party hereto resulting therefrom.

Section 11. OTHER CONSIDERATIONS

11.1 The Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third person to recover by way of damages or otherwise against any of the parties hereto.

11.2 All amendments, supplements, modifications to and waivers of the terms of this Agreement shall be in writing and signed by authorized representatives to the parties hereto.

11.3 All section headings are inserted for convenience only and shall not affect any construction or interpretation of the Agreement.

11.4 Reference to any agency or other organization shall include any successor agency or organization, and reference to any index or methodology (e.g., RCAF-U, URCS, etc.), if such index or methodology ceases to exist or is no longer available, shall include any substantially similar index or methodology selected by the parties or, if the parties fail to agree on such, one determined by binding arbitration under Section 6 of these General Conditions.

11.5 The terms of this Agreement have been arrived after considerable arms-length negotiation and mutual review of the parties, and the parties agree that none of the provisions herein shall be deemed or presumed to be construed against either party, regardless of which party drafted all or part of the terms of this Agreement.

END OF EXHIBIT "B"

EXHIBIT 3

Caption Summary

Surface Transportation Board

Notice of Exemption

Finance Docket No. 36162

SOO LINE RAILROAD COMPANY
—TRACKAGE RIGHTS—
BNSF RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION

BNSF Railway Company (BNSF) has agreed to grant overhead trackage rights to Soo Line Railroad Company (Soo Line) between Minneapolis, MN and Superior, WI from milepost 11.4+/- on BNSF's Staples Subdivision and milepost 11.66+/- on BNSF's St. Paul Subdivision in Minneapolis to milepost 9.4+/- on BNSF's Lakes Subdivision at M&J Jct. in Superior, WI, including the BNSF- owned turnout at milepost 10.44+/- to the Saunders Connecting Track.

The purpose of the transaction is renewal of the overhead trackage rights agreement governing Soo Line's continued freight rail service between Minneapolis and Superior. Soo Line obtained the trackage rights in its 1985 acquisition of the assets of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company. This transaction will be consummated on or immediately after the effective date of this Notice of Exemption.

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 automatically stay the transaction.

governing Soo Line's continued freight rail service

Dated:

By the Board,

Rachel D. Campbell
Director, Office of Proceedings.