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May 10, 2023
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Karl Morell & Associates
440 1st Street, NW, Suite 440
Washington, DC 20001
(202) 595-9045
karlm@karlmorell.com

May 10, 2023

E-FILED

Cynthia Brown
Chief, Section of Administration
Surface Transportation Board
Office of Proceedings
395 E Street, SW
Washington, DC 20423

Re: Finance Docket No. 36686, BOGALUSA AND NORTHERN
RAILWAY, LLC -- CHANGE IN OPERATOR EXEMPTION –
BOGALUSA BAYOU RAILROAD, LLC

Attached for filing is a Verified Notice of Exemption under 49 C.F.R. § 1150.31, Et Seq..
The filing fee of \$2,200 has been tendered electronically via Pay.gov.

If you have any questions, please call me.

Sincerely,



Karl Morell

Enclosures

FEE RECEIVED
May 10, 2023
Surface
Transportation Board

FILED
May 10, 2023
Surface
Transportation Board

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36686

BOGALUSA AND NORTHERN RAILWAY, LLC
-- CHANGE IN OPERATOR EXEMPTION --
BOGALUSA BAYOU RAILROAD, LLC

VERIFIED NOTICE OF EXEMPTION
Pursuant to 49 C.F.R. § 1150.31, Et Seq.

KARL MORELL
Karl Morell and Associates
Suite 440
440 1st Street, N.W.
Washington, D.C. 20001
(202) 595-9045

Attorney for:
BOGALUSA AND NORTHERN
RAIWAY, LLC

Dated: May 10, 2023

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36686

BOGALUSA AND NORTHERN RAILWAY, LLC
-- CHANGE IN OPERATOR EXEMPTION --
BOGALUSA BAYOU RAILROAD, LLC

VERIFIED NOTICE OF EXEMPTION
Pursuant to 49 C.F.R. § 1150.31, Et Seq.

Bogalusa and Northern Railway, LLC (“BNR”), a non-carrier, files this Notice of Exemption pursuant to 49 C.F.R. Part 1150, Subpart D--Exempt Transactions, to permit BNR to acquire from Illinois Central Railroad Company (“IC”) trackage rights over a one mile rail line located in Louisiana.¹ The rail line is currently operated by Bogalusa Bayou Railroad, LLC (“BBRR”) pursuant to a Trackage Rights Agreement between IC and BBRR.²

In support of this Notice of Exemption, BNR submits the following information as required by 49 C.F.R. § 1150.33:

(a) Full name and address of applicant:

Bogalusa and Northern Railway, LLC
9387 Highway 27
Belle Chasse, LA 70037

¹ This transaction is related to Finance Docket No. 36687, *Rio Grande Pacific Corporation – Continuance In Control Exemption – Bogalusa and Northern Railway, LLC*, wherein Rio Grande has concurrently filed a verified notice to continue in control of BNR upon BNR becoming a Class III carrier.

² Finance Docket No. 35880, *Bogalusa Bayou Railroad, LLC – Acquisition of Trackage Rights Exemption Containing Interchange Commitment – Illinois Central Railroad Company (not printed)*, served December 17, 2014.

(b) Applicant's Representative:

Karl Morell
Karl Morell and Associates
Suite 440
440 1st Street, N.W.
Washington, DC 20001
(202) 595-9045

(c) Statement of Agreement:

BNR and IC have entered into a Trackage Rights Agreement.

(d) The operator of the property:

BNR will be the operator of the one mile rail line. IC will also continue to be an operator over the rail line. BNR's operations will replace those of BBRR, which, upon the commencement of BNR's operations, will have no further common carrier status or obligation with respect to the line.

(e) Summary of proposed transaction:

BNR is a new, wholly owned, non-carrier subsidiary of Rio Grande Pacific Corporation. In this proposed transaction, BNR seeks authority to acquire from IC trackage rights over a 1 mile rail line. The Agreement between BNR and IC grants BNR restricted overhead rights over the IC rail line located between milepost 68.85, at Leescreek, LA, and milepost 69.85, at Bogalusa, LA, limited to movements of crude tall oil, crude sulphate turpentine, pulpboard, and recycled paper. A redacted copy of the Trackage Rights Agreement is attached as Exhibit B. A confidential copy of the Agreement is being filed under seal along with a motion for protective order. The transaction will effectuate a change of common carrier operator from BBRR to BNR, under which, coterminous with BNR's commencement of common carrier operations, the current trackage rights agreement among BBRR and IC governing BBRR's operations will terminate and BBRR's common carrier operations will cease.

As may be relevant here, BBRR is aware of the proposed change of operator and concurs in the same.

The name and address of the current operator of the 1 mile line to be replaced by BNR pursuant to this notice of exemption is as follows:

Bogalusa Bayou Railroad, LLC
315 W. 3rd Street
Pittsburg, Kansas 66762

- (1) The name and address of the company owning the subject property:

Illinois Central Railroad Company
17641 South Ashland Ave.
Homewood, IL 60430

- (2) The involved transaction is expected to be consummated on the latter of the effective date of this Notice of Exemption or July 1, 2023.

- (3) BNR will acquire restricted overhead trackage rights over the IC rail line located between milepost 68.85, at Leescreek, LA, and milepost 69.85, at Bogalusa, LA, limited to movements of crude tall oil, crude sulphate turpentine, pulpboard, and recycled paper.

- (4) The length of the rail line over which BNR will acquire trackage rights is 1 mile.

- (f) A map of the trackage rights line is attached as Exhibit A.

- (g) BNR hereby certifies that BNR's projected revenues as a result of this transaction will not result in BNR becoming a Class II or Class I rail carrier. BNR further certifies that the projected annual revenue of BNR will not exceed \$5 million. Consequently, the requirements of 49 C.F.R. § 1150.32(e) do not apply to this transaction.

49 C.F.R. 1150.32(b)

BNR has sent a copy of this Change of Operator Notice of Exemption to International Paper, the sole customer on the 1 mile rail line.

(h)(i) The Trackage Rights Agreement between BNR and IC does not contain any provision that would limit interchange with a third-party carrier.

A caption summary, as required by 49 C.F.R. § 1150.34, is attached.

LABOR PROTECTION

BNR is agreeable to the labor protection conditions generally imposed in trackage rights proceedings as found in Norfolk and Western Ry. Co. – Trackage Rights – BN, 354 I.C.C. 605 (1878), as modified by Mendocino Coast Ry., Inc. – Lease and Operate, 360 I.C.C. 653 (1980).

ENVIRONMENTAL AND HISTORIC IMPACTS

BNR is acquiring trackage rights over the rail line from IC for continued rail operations. Further Board approval is required for BNR to discontinue its service over the rail line and there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older. Hence, this Notice of Exemption does not require an historic report under 49 C.F.R. § 1105.8(b)(1).

BNR's acquisition of the restricted overhead trackage rights will not result in significant changes in carrier operations. There will not be a diversion of: (1) more than 1,000 rail carloads a year to motor carriage; or (2) an average of 50 carloads per mile per year for any part of this line to motor carriage. This transaction will not result in: (1) an increase in rail traffic of at least 100 percent or an increase of at least eight trains a day on any segment of the line; (2) an increase of rail yard activity of at least 100 percent; or (3) an average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day. BNR's acquisition of the trackage rights will not affect a Class I or nonattainment area under the Clean Air Act. In any

event, the thresholds of 49 C.F.R. § 1105.7(e)(5)(ii) will not be exceeded. Finally, the transportation of ozone depleting materials is not contemplated. Therefore, no environmental documentation is required under 49 C.F.R. § 1105.6(c)(2).

This action will not significantly affect either the quality of the human environment or energy conservation.

Respectfully submitted,

A handwritten signature in dark ink that reads "Karl Morell". The signature is written in a cursive, slightly slanted style.

KARL MORELL
Karl Morell and Associates
Suite 440
440 1st Street, N.W.
Washington, D.C. 20001
(202) 595-9045

Attorney for:
BOGALUSA AND NORTHERN
RAILWAY, LLC

VERIFICATION

STATE OF Texas)
)
COUNTY OF Tarrant) ss.

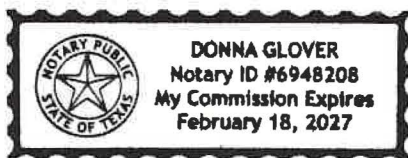
I, Robert L. Bach, being duly sworn depose and state that I am President of Bogalusa and Northern Railway LLC, that I am authorized to make this verification, and that I have read the foregoing Notice of Exemption and know the facts asserted therein are true and accurate as stated to the best of my knowledge, information, and belief.

Robert L. Bach

SUBSCRIBED AND SWORN TO before me this 4th day of May, 2023, in the County of Tarrant, State of Texas.

My Commission Expires: _____

Donna Glover
Notary Public



CERTIFICATE OF SERVICE

The undersigned hereby certifies that this 10th day of May, 2023, I served a copy of the foregoing Notice of Exemption by First Class mail on:

International Paper
401 Avenue U
Bogalusa, LA 70427

A handwritten signature in cursive script that reads "Karl Morell".

Karl Morell

EXHIBIT A

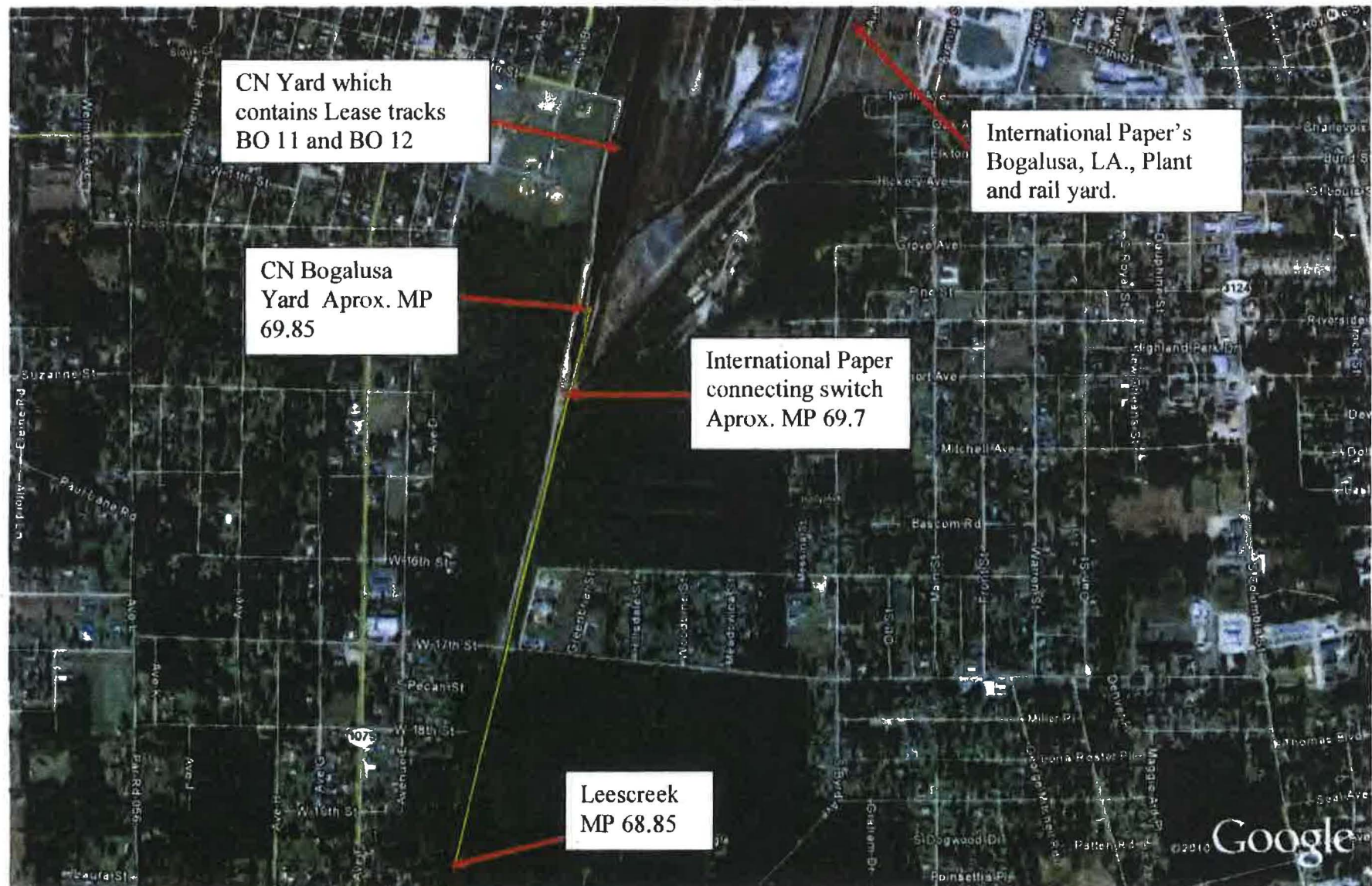


EXHIBIT B

TRACKAGE RIGHTS AGREEMENT

Between

ILLINOIS CENTRAL RAILROAD COMPANY,

(“CN”)

AND

BOGALUSA AND NORTHERN RAILWAY, LLC

(“BNR”)

**Relating to BNR’s limited trackage rights Over CN Owned Trackage between
LEESCREEK, LA and CN’s BOGALUSA YARD in BOGALUSA, LA**

TRACKAGE RIGHTS AGREEMENT

THIS TRACKAGE RIGHTS AGREEMENT ("Agreement"), entered into as of this ____ day of April 2023, by and between **ILLINOIS CENTRAL RAILROAD COMPANY** (hereinafter referred to as "**CN**" or "**Owner**") and **BOGALUSA AND NORTHERN RAILWAY, LLC** (hereinafter referred to as "**BNR**" or "**User**"). CN and BNR are sometimes referred to herein as a "**Party**" and together as "**Parties**".

WHEREAS, User has entered into an agreement with International Paper Company in Bogalusa, LA ("IP Bogalusa") to provide switching services for IP Bogalusa's facility ("IP Bogalusa Switching Agreement"); and

WHEREAS, Owner has entered into an agreement with IP Bogalusa to lease to IP Bogalusa portions of Owner's tracks BO 11 and BO 12 ("Lease Tracks") in Owner's Bogalusa yard in Bogalusa, LA; and

WHEREAS, CN owns or operates a line of railroad from Lees Creek, LA (MP 68.85) to CN's yard in Bogalusa, LA (approximately MP 69.85); and

WHEREAS, User has requested and Owner is agreeable to granting User limited overhead trackage rights for the movement of BNR owned or leased locomotives ("Locomotives") and loaded and empty railcars containing or last contained material that is consigned to or from IP Bogalusa ("Cars") from the connection to IP Bogalusa at approximately Owners MP 69.7 over Owner's segment of railroad between Lees Creek, LA and Owner's yard in Bogalusa, LA; and

NOW THEREFORE, the Parties hereto, intending to be legally bound and subject to the terms and conditions herein contained, agree as follows:

SECTION 1.0 GRANT OF TRACKAGE RIGHTS

1.1 Subject to the terms and conditions herein provided, the Owner hereby grants to User the right to operate, in restricted overhead freight service only, User's Locomotives, Cars and owned or leased maintenance of way equipment ("Equipment") with its own crews (hereinafter referred to as the "Trackage Rights") over the following segments of the Owner's railroad(s) as shown on the plan attached hereto, made a part hereof and marked Exhibit "A" (hereinafter referred to as the "Subject Trackage"):

-) That portion of the Subject Trackage between Milepost 68.85 (Leescreek, LA) and approximately Milepost 69.85 (Bogalusa, LA), on the Owner's Bogalusa Subdivision, a distance of approximately 1.0 (ONE) mile.
-) Such rights shall include (1) all sidings, yard tracks and yard leads now existent or hereafter constructed along the aforesaid tracks to be used hereunder, including the Owner's trackage at Bogalusa necessary for BNR to access the Lease Tracks, and (2) right-of-way for the aforesaid tracks, signals, interlocking devices and plants, telegraph and telephone lines, and other appurtenances necessary to the use hereunder of the aforesaid tracks by the Parties hereto.
-) The total distance of the Subject Trackage is approximately 1(ONE) mile.
-) Such rights shall include the right to enter and exit the Subject Trackage solely at:
 1. The IP Bogalusa's connection(s) to the Subject Trackage, in Bogalusa, LA at or near Milepost 69.7 on the Owner's Bogalusa District.

SECTION 2.0 USE OF SUBJECT TRACKAGE

2.1 User's use of the Subject Trackage shall be in common with the Owner and any other user of the Subject Trackage, and the Owner's right to use the Subject Trackage shall not be diminished by this Agreement. The Owner shall retain the exclusive right to grant to other persons rights of any nature in the Subject Trackage.

2.2 Except as may otherwise be provided by this Agreement, User shall not use any part of the Subject Trackage for the purpose of switching, storage or servicing of cars or equipment, or the making or breaking up of trains, except that nothing contained herein shall, upon prior approval of the Owner, preclude the emergency use by User of such auxiliary tracks as may be designated by the Owner for such purpose.

2.3 The Owner shall have exclusive control of the management and operation of the Subject Trackage. User shall not have any claim against the Owner for liability account of loss or damage of any kind in the event the use of the Subject Trackage by User is interrupted or delayed at any time from any cause.

2.4 User shall have the right to operate in either direction over the Subject Trackage.

2.5 It is the intent of the Parties that the trains above be operated in accordance with the Owner's scheduled railroad operation, but that business volumes and operational circumstances may cause scheduled trains to be operated early or late.

2.6 The Owner and User agree that the Trackage Rights provided under this Agreement shall be equal to the service the Owner provides for their own rail traffic of similar type and commodity. The Owner shall exercise reasonable diligence in the handling of trains under this Agreement to accomplish the through movement without undue delay. The management, operation, dispatching and maintenance of the Subject Trackage shall, at all times, be under the exclusive direction and control of the Owner, and the movement of trains over and along the Subject Trackage shall at all times be subject to the direction and control of the Owner's authorized representatives and in accordance with such reasonable operating rules as the Owner shall from

time-to-time institute, but the management, operation, dispatching and maintenance of the Subject trackage shall be made on a nondiscriminatory basis, without reference to the ownership irrespective of whether the traffic is that of the Owner or User, except that the dispatching of scheduled trains will be considered superior to both unscheduled trains and scheduled trains operating out of slot for the Parties.

2.7 User shall insure that the locomotives have sufficient fuel to enable User's trains to traverse the Subject Trackage without having to be fueled.

2.8 User's crews when entering the Subject Trackage must have sufficient time in which to traverse the Subject Trackage without having to re-crew. In the case of a mechanical failure, Section 9.8 shall apply as to the re-crewing of User's trains at the Owner's option.

SECTION 3.0 RESTRICTION ON USE

3.1 The trackage rights herein granted are granted for the sole purpose of User using same for the movement of User's Locomotives, Cars and Equipment between the terminals (including those entry and exit locations defined in Section 1.0) of Subject Trackage and User shall not perform any local freight service at any point located on Subject Trackage, nor is User allowed to ingress or egress from any point other than the end points of the Subject Trackage or as otherwise specified in Section 1 hereof. Nothing herein expressed or implied is intended to or shall be construed to confer upon or to give any person, firm, partnership, corporation or governmental entity other than the User any right or benefit under or by reason of this Agreement. User shall not move traffic for or on behalf of any other party or foreign railroad or under the guise of doing business as User.

3.2 User is permitted move or transport Cars containing a substance or material which the United States Secretary of Transportation has determined to be capable of posing an unreasonable risk to health, safety and/or property (Hazardous Materials) when transported in commerce on the Subject Trackage and as further defined in Section 3.3.

3.3 Commodities and STCC's. This Agreement shall be limited to the movement of Cars on the Subject Trackage containing:

- | | | |
|----|----------------------------------|---------------------|
| 1) | <u>Crude Tall Oil</u> | <u>STCC 2861235</u> |
| 2) | <u>Crude Sulphate Turpentine</u> | <u>STCC 4910186</u> |
| 3) | <u>Pulpboard</u> | <u>STCC 2631117</u> |
| 4) | <u>Recycled Paper</u> | <u>STCC 4024115</u> |

SECTION 4.0 COMPENSATION

[

]

SECTION 5.0 PAYMENT OF BILLS

5.1 All payments called for under this Agreement shall be made by User within thirty (30) days after receipt of bills therefore. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the Parties hereto shall be adjusted in the accounts of a subsequent month.

5.2 The records of each Party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other Party for a period of two (2) years from the date of billing.

5.3 Bills rendered pursuant to the provisions of this Agreement, other than those set forth in Section 4, shall include direct labor and material costs, together with the surcharges, overhead percentages, and equipment rentals in effect at the time any work is performed by the Owner for User.

SECTION 6.0 MAINTENANCE OF SUBJECT TRACKAGE

6.1 The Owner shall maintain, repair, and renew the Subject Trackage at its own expense and with its own supervision and labor. The Owner shall keep and maintain the Subject Trackage to Federal Railroad Administration ("FRA") Class 1 standards, but the Owner does not guarantee the condition of the Subject Trackage or that operations there over will not be interrupted. The Owner shall take all reasonable steps to ensure that any interruptions will be kept to a minimum. Furthermore, except as may be otherwise provided in Section 12 hereof, User shall not by reason of failure or neglect on the part of the Owner to maintain, repair, or renew the Subject Trackage, have or make any claim or demand against the Owner or their parent corporation(s), subsidiaries or affiliates, or their respective directors, officers, agents or employees for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by User resulting from any such failure or neglect.

6.2 The Owner shall also perform, at the expense of User, such additional maintenance as User may reasonably require or request.

SECTION 7.0 CONSTRUCTION AND MAINTENANCE OF CONNECTIONS

7.1 Existing connections or facilities which are jointly used by the Parties hereto under existing agreements or practices shall continue to be maintained, repaired, and renewed by and at the expense of the Party or Parties responsible for such maintenance, repair, and renewal under such agreements or practices.

SECTION 8.0 ADDITIONS, RETIREMENTS AND ALTERATIONS

8.1 The Owner, from time to time and at its sole cost and expense, may make such changes in, additions and betterments to, and retirements from the Subject Trackage as shall, in their judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage.

8.2 If User requests the Owner to make changes in or additions and betterments to the Subject Trackage, including without limitation, changes in communication or signal facilities, for purposes required to accommodate User's operations beyond that required for the Owner operation, the Owner shall have the option to either make such changes in or additions and betterments to the Subject Trackage and User shall pay to the Owner the cost thereof, including the annual expense of maintaining, repairing, and renewing such additional or altered facilities, or to deny such request.

SECTION 9.0 MANAGEMENT AND OPERATIONS

9.1 When operating over the Subject Trackage, User's Equipment and crews will be equipped to communicate with the Owner on radio frequencies normally used by the Owner in directing train movements on the Subject Trackage.

9.2 Procedures for qualification and occupancy of the Subject Trackage will be arranged by the local supervision of each carrier. All control and usage will be subject to the approval of the Owner representative or his designee.

9.3 Before User's Equipment enters the Subject Trackage, User shall request permission from the Owner's designated representative at such location as the Owner may designate or be governed by the Owners current operating rules (CN's US Operating Rules and Timetable) ("Rules") governing movement on the Subject Trackage. Further, User shall ascertain that said Subject Trackage is clear and shall await confirmation from said representative that such permission has been issued to allow User's movements on or over the Subject Trackage unless the Rules apply to the Subject Trackage. Upon completing its operations and clearing the Subject Trackage unless the Rules otherwise do not require, User will notify the Owner's designated representative that it has completed its operations and that its equipment has cleared the Subject Trackage. Once User has notified the Owner's representatives that it has cleared the Subject Trackage, User shall not reenter the Subject Trackage without again obtaining permission from the Owner's representative subject to the rules in place. User shall provide and maintain at its expense all communication facilities needed as may be required by the Owner to permit User to use the Owner's trackage.

9.4 User shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Acts, as amended, and all other federal and state laws, regulations, and rules respecting the operation, condition, inspection, and safety of its trains, Locomotives, Cars, and Equipment while such trains, Locomotives, Cars, and Equipment are being operated over the Subject Trackage. User shall indemnify, protect, defend, and save harmless the Owner and its parent corporation(s), subsidiaries and affiliates, and all of their respective directors, officers, agents, and employees from and against all fines, penalties, and liabilities imposed upon the Owner or its parent corporation(s), subsidiaries and affiliates, and all of their respective

directors, officers, agents, or employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable to the failure of User to comply with its obligations in this regard.

9.5 User, in its use of the Subject Trackage, will comply in all respects with the safety rules, operating rules and other regulations of the Owner, and the movement of User's Equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of the Owner. User's trains shall not include Equipment which exceeds the width, height, weight or other restrictions or capacities of the Subject Trackage as published in Railway Line Clearances, and no train shall contain Equipment which require speed restrictions or other movement restrictions below the authorized freight speeds as provided by the Owner operating rules and regulations without the prior consent of the Owner. User shall indemnify, protect, defend, and save harmless the Owner and its parent corporation(s), subsidiaries and affiliates, and all their directors, officers, agents and employees from and against all liabilities when attributable to the failure of User to comply with the provisions of this subsection.

9.6 All employees of User engaged in or connected with the operations of User on or along the Subject Trackage shall be required to pass periodic examinations on the rules of the Owner related to the Subject Trackage, provided, with respect to such examinations that, upon request of User, the Owner shall qualify one or more of User's supervisory officers on the Owner rules and such supervisory officer or officers so qualified shall examine all employees of User engaged in or connected with User's operations on or along the Subject Trackage. Pending qualification of train and engine crews of User, the Owner shall furnish a pilot or pilots, at the expense of User, as deemed necessary by the Owner, to assist in operating trains of User over the Subject Trackage. User shall pay to the Owner, upon receipt of bills therefore, any cost incurred by the Owner in connection with the qualification of such employees of User, as well as the cost of pilots furnished by the Owner, until such time as such employees are deemed by the appropriate examining officer of the Owner to be properly qualified for operation as herein contemplated.

9.7 If any employee of User shall neglect, refuse or fail to abide by the Owner rules, instructions and restrictions governing the operation on or along the Owner's property, such employee shall, upon written request of the Owner, be prohibited by the Owner from working on the Owner's property. If any 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, User shall promptly hold an investigation in which all Parties concerned shall participate and bear the expense for its officers, counsel, witnesses and employees. Notice of such investigations to User's employees shall be given by User's officers, and such investigation shall be conducted in accordance with the terms and conditions of schedule agreements between User and its employees. If the result of such investigation warrants, such employee shall, upon written request by the Owner, be withdrawn by User from service on the Owner's property, and User shall release and indemnify the Owner from and against any and all claims and expenses because of such withdrawal.

9.8 Due to mechanical inability to proceed under its own power or re-crew User's train on the Subject Trackage, the Owner shall have the option 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 disabled Equipment off the Subject Trackage, and User shall reimburse the Owner for the cost of rendering any such assistance.

9.9 If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective Equipment in order to move them off the Subject Trackage, such work shall be done by the Owner and User shall reimburse the Owner for the cost thereof.

9.10 In the event the Owner and User agree that the Owner should retain employees or provide additional employees for the sole benefit of User, the Owner hereto shall enter into a separate agreement under which User shall bear all cost and expense for any such additional employees, including without limitation all cost and expense associated with labor protective payments which are made by the Owner and which would not have been incurred had the additional employees not been provided.

SECTION 10.0 MILEAGE AND CAR HIRE

10.1 All mileage and car hire charges accruing on Cars in User's account in User's trains on the Subject Trackage shall be assumed by User and reported and paid by it directly to the owners of such Cars.

SECTION 11.0 CLEARING OF WRECKS

11.1 Whenever User's use of the Subject Trackage requires re-railing, wrecking service or wrecking train service, the Owner shall perform such service, including the repair and restoration of roadbed, track, and structures. The cost, liability and expense thereof, including without limitation loss of, damage to, and destruction of any property whatsoever and injury to or death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water wildlife, and vegetation, resulting therefrom, shall be apportioned in accordance with the provisions of Section 12 hereof. All Equipment and salvage from the same so picked up and removed which are owned by or under the management and control of or used by User at the time of such wreck shall be promptly delivered to User.

SECTION 12.0 LIABILITY

12.1 The responsibility and liability between the Owner and User for: (i) any personal injury or death of any person (including employees of the Parties and third parties), (ii) any real or personal property damage of any person (including property of the Parties and third persons), (iii) any damage or destruction to the environment (including land, air, water, wildlife and vegetation), and (iv) all cleanup and remedial expenses, court costs, litigation expenses and attorney's fees resulting from the use of the Subject Trackage by the Parties to this Agreement or by third party users, all of which are collectively referred to as a "Loss", will be divided as follows:

- (a) If a Loss results from the use of the Subject Trackage solely by the trains, railcars, equipment and/or locomotives of one of the Parties to this Agreement, then that using Party shall be solely responsible for the Loss, even if caused partially or completely by the other Party.

- (b) If a Loss results from the use of the Subject Trackage by the trains, railcars, equipment and/or locomotives of both the BNR and CN, then: (i) BNR and CN shall be solely responsible for any Loss to its own employees, locomotives, railcars, and/or equipment in its own account including lading and (ii) the BNR and CN shall be equally responsible for any Loss to the Subject Trackage and Loss sustained by third parties, regardless of the proportional responsibility between or among them as to the cause of the Loss.

Any damage of the environment, including without limitation land, air, water wildlife, and vegetation, occurs with both the BNR and CN traffic being involved, then as between themselves, (i) the CN shall be solely responsible for any damage or destruction to the environment and to third parties which results solely from a substance transported in such CN traffic and/or the CN locomotive from which there is a release, (ii) BNR shall be solely responsible for any damage or destruction to the environment and to third parties which results solely from a substance transported in such BNR's traffic and/or BNR's locomotive from which there was a release, and (iii) responsibility for damage or destruction to the environment and to third parties which results from one or more substances which was (or were) being transported in equipment in the revenue waybill and car hire accounts or locomotives of both the BNR and CN from which there was a release, shall, to the extent not allocable under subparagraphs (i) and (ii) to the substance released, be shared by the BNR and CN in proportion to the total number of railcars and equipment, in the revenue waybill and car hire account of each Party, or equipment or locomotives of the respective Parties, from which there was such release.

- (c) If a Loss results from the use of the Subject Trackage by trains and Locomotives of both BNR and any other third party user of the Subject trackage not a party to this Agreement, then BNR's responsibility for the Loss shall be apportioned in the manner specified in Subsection (b) with the other third party user being considered the Owner for the purpose of determining BNR's share of that portion of the Loss which it must assume.
- (d) Whenever any liability, cost, or expense is assumed by or apportioned to either Party to this Agreement hereto under the foregoing provisions, that Party shall forever protect, defend, indemnify, and save harmless the other Party to this Agreement and their subsidiaries and affiliates, and all of their respective directors, officers, agents, and employees from and against that liability, cost, and expense assumed by that Party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of the indemnitee or its directors, officers, agents or employees.
- (e) In every case of death or injury suffered by an employee of either Party to this Agreement, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employer's liability, or other law, and any of said Parties under the provisions of this Agreement is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such Party shall not be released from paying any such future installments by reason of the expiration or other termination of

this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

- (f) For purposes of determining liability, pilots furnished by the CN to BNR pursuant to this Agreement shall be considered as the employees of BNR while such employees are on board trains or locomotives of BNR. Furthermore, for purposes of determining liability, pilots furnished by the CN to BNR pursuant to this Agreement shall be considered as the employees of CN while such employees are getting on or off trains or locomotives of BNR.
- (g) If any suit or action shall be brought against any Party for damages which under the provisions of the Agreement are in whole or in part the responsibility of the other Party, said other Party shall be notified in writing by the Party sued, and the Party so notified shall have the right and be obligated to take part in the defense of such suit and shall pay a proportionate part of the judgment and cost, expense and attorneys' fees incurred in such suit according to its liability assumed hereunder.
- (h) In the event of a Loss as set out herein, the Parties to this Agreement shall be bound by the Freight Claim Rules, Principles, and Practices of the Association of American Railroads (AAR) as to the handling of any claims for the loss or damage to lading.
- (i) Notwithstanding the provisions of Section 19.5 of this Agreement, for the purposes of this Section 12 the word "equipment" shall mean and be confined to (i) trains, locomotives, cars and cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks that, at the time of an occurrence, are being operated on the Subject Trackage, and (iii) vehicles and machinery that, at the time of an occurrence, are on the Subject Trackage or its right-of-way for the purpose of the maintenance or repair thereof or the clearing of wrecks thereon.
- (j) For the purpose of determining liability associated with construction, maintenance, repair and renewal of connections as provided in Section 7, all work performed by the Owner shall be deemed performed for the sole benefit of User and, User shall be fully liable for all cost and expense of any and all loss, damage, destruction, injury and death resulting from, arising out of, incidental to or occurring in connection with said construction, maintenance, repair and renewal except when such cost and expense of loss, damage, destruction, injury or death is caused by the sole negligence of the Owner. User shall protect, indemnify, and save harmless the Owner and their parent corporation(s), subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against any and all expense and liability for which User is responsible.

SECTION 13.0 INSURANCE REQUIREMENTS

13.1 At its sole cost and expense, User shall procure and maintain during the term of this Agreement Comprehensive Railroad Liability Insurance in an amount not less than Twenty-Five Million Dollars (\$25,000,000.00) per occurrence with an aggregate limit of not less than Twenty-Five Million Dollars (\$25,000,000.00), for damages arising out of bodily injuries to or death of all persons in any one occurrence and for damage to, or destruction of property, including the loss of use thereof and including environmental damages of any kind, in any one occurrence, including

contractual liability insurance, which covers the Owner and their affiliates as additional insureds. Such insurance coverage must not contain any provisions excluding coverage for injury, loss or damage arising out of or resulting from doing business or undertaking construction or demolition on, near, or adjacent to railroad track or facilities. Furthermore, the insurer must waive all rights of subrogation against the Owner, its parents and affiliates. The policy must contain a cross liability clause. Upon termination or expiration of this Agreement, User shall keep the insurance coverage required herein in place with terms no less than required herein, for a period of five (5) years after termination or expiration of this Agreement.

13.2 The insurance shall be evidenced by a current certificate furnished by User to the Owner no later than User's return of the executed original of this Agreement. Subsequently, annual renewal certificates of insurance shall be promptly furnished by User to the Owner upon the Owner's request. All of the required endorsements shall be stated on the certificate of insurance that is provided to the Owner. User shall provide thirty (30) day advance notice to the Owner of termination of the policy.

13.3 Failure by User to provide evidence of insurance as required by this Section 13 shall entitle, but not require, the Owner to terminate this Agreement immediately, if User fails to cure the default within ten (10) days after receipt of written notice. Acceptance of a certificate that does not comply with this Section 13 shall not operate as a waiver of any obligation hereunder.

13.4 The fact that insurance is obtained by User shall not be deemed to release or diminish the liability of User hereunder, including, without limitation, liability under the indemnity or defense provisions of this Agreement. Damages recoverable by the Owner shall not be limited by the amount of the required insurance coverage hereunder.

13.5 Owner reserves the right, but is not obligated, to increase the insurance limits should the number of loaded Cars containing Hazardous Materials, subject to this Agreement, increase above one hundred sixty (160) Cars per year of Hazardous Materials. User shall obtain the increased insurance levels within fourteen (14) days of Owner's request and shall provide Owner with an updated certificate of insurance containing the updated policy limits.

SECTION 14.0 INVESTIGATION AND CLAIMS

14.1 Except as provided in Subsection 14.2 hereof, all claims, injuries, deaths, property damages, and losses arising out of or connected with this Agreement shall be investigated, adjusted, and defended by the Party bearing the liability, cost, and expense therefor under the provisions of this Agreement.

14.2 Each Party will investigate, adjust, and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11706 and 49 C.F.R. Part 1005 (or any revised or substitute regulations adopted to modify, supplement or supersede the regulations herein provided), or in accordance with any applicable transportation contract entered into pursuant to 49 U.S.C. Section 10709.

14.3 In the event a claim or suit is asserted against the Owner or User which is the other's duty hereunder to investigate, adjust, or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment, and defense of such claim or suit.

14.4 All costs and expenses in connection with the investigation, adjustment, and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time employees, including claim agents, attorneys, and other employees of the Party engaged directly or indirectly in such work shall be borne by such Party.

14.5 Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Part 1005 or similar regulation, no Party shall settle or compromise any claim, demand, suit, or cause of action for which the other Party have any liability under this Agreement without the concurrence of such other Party if the consideration for such settlement or compromise exceeds thirty-five thousand dollars (\$35,000).

14.6 Each Party agrees to indemnify and hold harmless the other Party and their respective stockholders and its parent corporation(s), subsidiaries and affiliates, and all their respective directors, officers, agents and employees from and against any and all costs and payments, including benefits, allowances and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of its own employees, or those of its subsidiaries, either pursuant to employee protective conditions imposed by a governmental agency as conditions for that agency's approval of the Agreement, or pursuant to a collective bargaining agreement. It is the intention of the Parties that each Party shall bear the full costs of protection of its own employees under employee protective conditions which may be imposed, and of grievances filed by its own employees arising under its collective bargaining agreements with its employees.

14.7 It is understood that nothing in this Section 14 shall modify or waive the conditions, obligations, assumptions or apportionments, or supersede the provisions of Section 12 hereof.

SECTION 15.0 DEFAULT AND TERMINATION

15.1 In the event of any substantial failure on the part of User to perform its obligations under this Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from the Owner, the Owner shall have the right at their option, after first giving thirty (30) days' written notice thereof by certified mail; and notwithstanding any waiver by the Owner of any prior breach thereof, to terminate the Trackage Rights and User's use of the Subject Trackage. The exercise of such right by the Owner shall not impair its rights under this Agreement or any cause or causes of action it may have against User for the recovery of damages.

SECTION 16.0 UNIFORM DISPUTE RESOLUTION PROCESS

16.1 All disputes between the Owner and User arising out of or relating to this Agreement shall be resolved first by negotiations between certain agreed officers on each Party, then by mediation and finally by binding arbitration, in Washington, D.C. by a single arbitrator, under the Commercial Arbitration Rules and the large complex case procedures of the American Arbitration Association. The Owner and User shall agree upon the terms of the dispute resolution process and be exclusively governed by such process, except that it shall not preclude provisional equitable or other provisional judicial relief to prevent irreparable harm or to preserve the status quo by enforcing the provisions of this Agreement pending resolution of disputes. The arbitration

provision shall also provide for the consolidation of disputes or arbitrations if there are issues of fact or law common to the proceedings so that a consolidation proceeding would be more efficient than separate proceedings.

SECTION 17.0 REGULATORY APPROVAL

17.1 Should implementation of this Agreement require the prior approval and authorization of the Surface Transportation Board ("STB"), User, at its own cost and expense, will initiate and thereafter diligently prosecute an action to obtain such approval and authorization or an exemption therefrom. The Owner will assist and support efforts of User to obtain any such required approval and authorization or exemption.

17.2 Each Party shall assume and hold the other Party harmless from all employee claims predicated on loss of, or adverse impact on, compensation, benefits or working conditions arising from this Agreement or the activities of the Parties hereunder, whether such claims are based on conditions imposed by the STB or predicated on the Railway Labor Act or labor agreements.

SECTION 18.0 ABANDONMENT OF SUBJECT TRACKAGE

18.1 Notwithstanding any other provision of this Agreement, the Owner may abandon the Subject Trackage during the term of this Agreement, or any renewals hereof, upon giving User not less than ninety (90) days' written notice of the Owner intent to abandon. In the event regulatory authority is required to effect such abandonment, User will not interfere with the Owner's actions to seek and to exercise such authority. In the event regulatory authority is required for User to discontinue its own operations over the Subject Trackage, User will seek and diligently pursue such regulatory authority at the same time that the Owner seeks regulatory authority to abandon the Subject Trackage, or as soon thereafter as User may do so in accordance with applicable statutes and regulations, unless User intends to acquire the Subject Trackage from the Owner pursuant to 49 U.S.C. Section 10904 or other similar provision. User hereby expressly reserves the right pursuant to 49 U.S.C. Section 10904 or any similar provision which may be in effect to subsidize operations on or to acquire the Subject Trackage. Unless User or another party acquires the Subject Trackage for continued rail use or subsidizes the Owner's operations thereon, User shall exercise its authority to discontinue its operations pursuant to this Agreement upon the date established by the Owner for abandonment of the Subject Trackage by its aforesaid notice to User, or upon the earliest authorized date of exercise of the regulatory authority to discontinue operations, whichever is later. If regulatory authority for discontinuance of User's operations is not required, User shall discontinue its operations hereunder on the date that the Owner is authorized to abandon the Subject Trackage. Upon discontinuance of User's operations, this Agreement shall terminate and be of no further force and effect, except that termination of this Agreement shall not relieve or release any Party hereto from any obligations assumed or from any liability which may have arisen or been incurred prior to said termination. As used herein, Subject Trackage means the entire Subject Trackage or any portion or portions thereof.

SECTION 19.0 GENERAL PROVISIONS

19.1 This Agreement and each and every provision hereof are 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 party to recover by way of damages or otherwise against any of the Parties hereto.

19.2 All Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

19.3 This Agreement and the attachments annexed hereto and integrated herewith contain the entire agreement of the Parties hereto and supersede any and all oral understandings between the Parties.

19.4 No term or provision of this Agreement may be changed, waived, discharged, or terminated except by an instrument in writing signed by the Parties to this Agreement.

19.5 As used in this Agreement, whenever reference is made to the trains, locomotives, railcars, or equipment of, or in the account of, one of the Parties hereto such expression means the trains, locomotives, railcars, or equipment in the possession of or operated by one of the Parties and includes such trains, locomotives, railcars, or equipment which are owned by, leased to, or in the account of such Party. Whenever such locomotives, railcars or equipment are owned or leased by one Party to this Agreement and are in the possession or account of the other Party to this Agreement, such locomotives, railcars, and equipment shall be considered those of the other Party under this Agreement.

19.6 All words, terms, and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms, and phrases in the railroad industry.

19.7 This Agreement is the result of mutual negotiations of the Parties hereto, neither of whom shall be considered the drafter for purposes of contract construction.

19.8 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 hereto to enforce its rights under this Agreement, during the initial and any renewal term of this Agreement, all commercial information to which access is provided or obtained hereunder will be kept confidential and will not be disclosed by either the Owner or User to any party other than the Owner and User's affiliates and the respective officers, employees, and attorneys of those affiliates, without the prior written approval of the other Party.

SECTION 20.0 SUCCESSORS AND ASSIGNS

20.1 No Party hereto may assign this Agreement, in whole or in part, or any rights granted herein, or delegate to another party any duties hereunder, except a subsidiary, or an affiliate, without the prior written consent of the other Party. Any transfer, assignment, or delegation of this Agreement, or of any rights or duties herein granted or imposed, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void, and at the option of the Party whose written consent should have been obtained, this Agreement may be terminated. Subject to this Section, this Agreement shall be binding upon and inure to the benefits of the Parties hereto, their successors and assigns

SECTION 21.0 NOTICE

21.1 Any notice required or permitted to be given by one Party to the other under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the Parties may mutually agree, and shall be addressed as follows:

If intended for CN:

Sr Director Interline Services
17641 South Ashland Ave
Homewood, IL 60430

If intended for BNR:

Tres Meyer
Vice President Operations
Rio Grande Pacific Corporation
6100 Southwest Blvd., Suite 320
Fort Worth, TX 76109

21.2 Any Party may provide changes in the above addresses to the other Party by personal service or certified mail.

SECTION 22.0 COMMENCEMENT, TERM AND TERMINATION

22.1 This Agreement shall take effect on the date User commences operations over the Subject Trackage (which date is referred to herein as the "Commencement Date"). The Commencement Date shall not be prior to the effective date of any required regulatory approvals, and shall be evidenced by an exchange of correspondence between the appropriate operating officers of the Parties hereto.

22.2 This Agreement shall continue in full force and effect for a period of three (3) years from the Commencement Date provided, however that:

- (i) the Parties shall have the right to terminate this Agreement upon giving sixty (60) days' advance written notice to the other Party.
- (ii) the Parties mutually agree in writing to extend the term of the Agreement beyond three (3) years.

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

22.4 Upon termination or non-renewal of this Agreement, or upon termination or non-renewal of IP Bogalusa Switching Agreement, or for any other reason, User shall within thirty (30) days initiate and thereafter diligently prosecute any action to assign this Agreement to another party of IP Bogalusa's choosing as provided for in Section 20, and obtain approval from the Surface

Transportation Board (STB) or other regulatory body having jurisdiction authorizing discontinuance of the Trackage Rights herein granted. If User fails to assign and file with the STB within 30 days, User hereby expressly authorizes the Owner to file with the STB, or other regulatory body having jurisdiction, on behalf of User to abandon or discontinue the Trackage Rights granted hereunder, and User further agrees to reimburse the Owner for all costs incurred.

SECTION 23.0 GOVERNING LAWS

The terms of this Trackage Rights Agreement shall be governed by and construed in accordance with the laws of the State of Louisiana.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in duplicate as of the day and year first hereinabove written.

WITNESS

ILLINOIS CENTRAL RAILROAD COMPANY

By:_____

Its: Sr Director Interline Services

Date: _____

WITNESS

BOGALUSA AND NORTHERN RAILWAY, LLC

By:_____

Its: Managing Member

Date: _____

EXHIBIT A

