

Sample Railway Service Level Agreement – Carload and Bulk Services – Grain Industry

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A. Parties to the Agreement

The first section of the Service Level Agreement (“SLA”) will establish the date on which the agreement was made and will identify the respective parties. A railway company (the “Railway”) will be one party and the other party (the “Shipper”) will be any person or shipper to whom a railway company provides service to, or has a duty to provide suitable and reasonable accommodation to, under Section 113 or 114 of the CTA, and could include any of the following:

- ***Shipper***
- ***Intermediary such as a Freight Broker or Freight Forwarder***
- ***Port Authority***
- ***Marine Terminal Operator***
- ***Inland Terminal Operator***
- ***Transloader or other Receiver***

SERVICE LEVEL AGREEMENT

THIS AGREEMENT is made this ____ day of _____, 20____,

BETWEEN:

[RAILWAY LEGAL NAME]

(hereinafter called the "Railway")

-and-

[SHIPPER LEGAL NAME]

(hereinafter called the "Shipper");

WHEREAS the Railway provides rail transportation services for the hauling of the Shipper’s goods;

AND WHEREAS the Railway and the Shipper have agreed that it is in their respective best interests to establish specific measurable levels and standards concerning the performance of these services;

AND WHEREAS the Railway and the Shipper have agreed to enter into this Service Level Agreement to establish their respective obligations to the other to meet these standards, all on the terms and conditions set out in this agreement.

NOW THEREFORE the parties covenant and agree as follows:

B. Definitions and Interpretation and Term

The next two sections set out the legal definitions and provisions governing the interpretation of the SLA and establish its term.

Note that this section makes reference to a number of schedules to the SLA. These schedules contain the specific definitions of facilities and services that will be covered by the agreement, the details of the dispute resolution process, and the references to appropriate tariffs and other agreements that may apply to the traffic covered by the SLA.

It may be desirable for shippers and railways to incorporate through reference in Schedule C any tariffs that define the railways' business processes for such things as bill of lading documentation and car order processes. However, note that wherever the parties to this agreement wish to have special provisions that differ from those defined in railway tariffs they can do so and under section 11.2 the provisions of the SLA will prevail.

In this agreement the key items that have been defined include the terms that refer to the facilities and service obligations that are outlined in Schedule A.

ARTICLE 1 - DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:

- (a) "Acceptable grain service window" means the number of Days described in Schedule A that the Railway shall be permitted after the week for which empty covered hopper cars for the loading of grain products have been ordered by the Shipper to the date that they are ultimately provided by the Railway.
- (b) "Acceptable rail car substitute" means the specific alternative substitute car type that the Shipper has identified to the Railway in the Shipper's empty rail car orders as being acceptable within the limits established in this agreement.
- (c) "Acceptable transit time range" means the range of time in hours that the Railway is permitted for the movement of the Shipper's rail traffic between the origins and destinations specified in Schedule A. Transit time will start from the earliest of either the actual movement of a car by the Railway from a Shipper facility or the end of the first Service Time on the First Service day of the week occurring after the provision of complete shipping information by the Shipper to the Railway. Transit time will end at the earlier of the actual delivery of the loaded car to the destination or the time of the notification to the destination receiver that the car has arrived at its destination and that the railway is prepared to deliver the car upon the receiver's request.
- (d) "Acceptable weekly percentage bad order" means the maximum percentage of the empty rail cars supplied by the Railway to the Shipper that are unacceptable for loading by the Shipper due to mechanical defects or due to contamination by foreign materials.
- (e) "Act" means the *Canada Transportation Act*, S.C. 1996 c.10, including any amendments thereto and replacements thereof;

- (f) "Agreement" means this Service Level Agreement and any instrument or schedule supplemental or ancillary hereto;
- (g) "Day" means calendar day, and for greater certainty includes but is not limited to Saturdays, Sundays and statutory holidays;
- (h) "Dispute" means a dispute between the parties concerning the interpretation of this Agreement or the performance by a party of its obligations under this Agreement;
- (i) "Grain service plan" means the weekly operating plan developed by the Railway for the delivery of covered hopper cars for the loading of grain products which identifies the planned number of empty rail cars and day and time of delivery of these cars for a particular Service week.
- (j) "Minimum percentage daily allocation" means the minimum proportion of the Shipper's empty rail car order that the Railway agrees to supply at a specified location on a specified Service day of week under the terms of this agreement.
- (k) "Person" means a natural person, firm, corporation, trust, partnership, joint venturer, association, unincorporated organization, or government agency and "corporation" shall include "company" and vice versa.
- (l) "Planned grain car spotting time" means the day and time identified in the Grain service plan for the delivery of empty rail cars at shipper facilities identified in Schedule A of this Agreement.
- (m) "Preferred rail car type" means the configuration(s) of rail car type(s) that the Shipper wishes to load at a particular location and which is identified in its empty car orders that are placed by the Shipper with the Railway.
- (n) "Rail Car Spot Capacity" means the number of railcars that the Shipper can accommodate and load on trackage at one of its facilities without additional services from the Railway;
- (o) "Service day " means a Day of the week on which rail service is provided to the Shipper by the Railway;
- (p) "Service times" means the interval of hours during which the Railway and the Shipper agree that railway services will be provided at a specific location on a specific Service day;
- (q) "Service week" means a seven Day period beginning on Sunday at 12:00:00 a.m. through the following Saturday at 11:59:59 p.m.

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

Schedule A – Facilities, Traffic and Services Covered by this Agreement

Schedule B – Commercial Dispute Resolution Provisions

Schedule C – Agreements and Tariffs

1.3 Whenever the singular is used it shall be deemed to extend to and enure and include the plural and when one gender is used, whether masculine, feminine or neuter, it shall include all genders, as the context may require.

- 1.4 The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
- 1.5 The words "herein", "hereof", "hereinbefore", "hereinafter", and "hereto" wherever used in any Article, section, subsection or paragraph in this Agreement, relates to the whole Agreement and not to that Article, section, subsection or paragraph only.
- 1.6 This Agreement shall be governed by the laws of the Province of _____ and the laws of Canada applicable therein. The parties agree that any dispute arising out or in connection with this Agreement which does not fall within the scope of the Dispute Resolution Provisions hereof shall be exclusively and finally settled by the Courts of the Province of _____ and all courts of appeal therefrom.
- 1.7 Any reference in this Agreement to currency or monetary amounts shall be interpreted to be a reference to currency and amounts in Canadian dollars.

ARTICLE 2 - TERM OF AGREEMENT

- 2.1 Notwithstanding its date of execution, this Agreement will become effective as and from [date] (herein called the "Effective Date") and shall continue in full force and effect from the Effective Date until terminated under this Article 2.
- 2.2 This agreement will be terminated on the __th anniversary of the Effective Date, unless otherwise extended by the parties in writing, or terminated at the option of the Shipper under Section 3.3.
- 2.3 Any obligation of a party under this Agreement to pay money to the other party shall survive the termination of this Agreement and remain in force and effect for such period as prescribed by law.

C. *Scope of Agreement*

This section makes reference to Schedule A where the specific traffic and services that are covered by the SLA are defined.

Included in this section is language that provides a process that allows the Shipper to propose the addition or deletion of facilities, traffic or services to or from the agreement.

ARTICLE 3 - SCOPE OF AGREEMENT

- 3.1 The obligations of the parties under this Agreement shall apply to the facilities, traffic and services set out in Schedule A.
- 3.2 The Shipper may propose in writing to the Railway with at least [] Days' advance notice, additions or deletions to the facilities, traffic and services set out in Schedule A. Upon the written acceptance of the Railway of such requested additions or deletions, such acceptance not to be unreasonably withheld or delayed, Schedule A shall be deemed to be amended as of the date of such acceptance.
- 3.3 In the event the Railway does not provide its acceptance of any proposal of the Shipper for additions or deletions to the facilities, traffic and services set out in Schedule A within ten (10) Days of receipt of such Shipper notice, the Shipper may, upon thirty (30) days' notice to the Railway, terminate this Agreement.

D. Service Notification Provisions

In the following two sections the responsibilities of the parties with respect to communication of disruptions to or changes to services are established. This section requires the Railway to notify the shipper if service will not be provided as defined in this agreement. In addition, the Railway is required to provide estimated time of arrival for all cars shipped under the Agreement and to notify the Shipper if the ETA changes by a specified difference, while the car is enroute.

The Agreement also requires either party to notify the other of situations that will materially affect their ability to meet their obligations under the Agreement.

ARTICLE 4 - SERVICE NOTIFICATION PROVISIONS

- 4.1 If the Railway cannot provide customary railway services at the rail stations and on the Service days of the week and at the service times specified in Schedule A, the Railway will notify the Shipper at least [] hours in advance of the earliest time specified in Schedule A for a given service day.
- 4.2 If the Railway provides a grain service plan to the Shipper for the delivery of empty covered hopper cars, the Railway shall notify the shipper [] hours in advance of any planned grain car spotting time if the Railway cannot deliver the total number of cars identified in the grain service plan for any planned grain car spotting time. The railway will also notify the Shipper when the shortfall from the original car order will be supplied.
- 4.3 In the event the Shipper's facilities at the locations specified in Schedule A will not be able to accommodate Railway equipment for the provision of railway services on the Service days of the week and at the service times specified in Schedule A, the Shipper will notify the Railway at least [] hours in advance of the earliest time specified in Schedule A for a given Service day.
- 4.4 If the Railway cannot provide the minimum percentage daily allocation of empty rail cars at a location specified in Schedule A, the Railway will notify the Shipper at least [] hours in advance of the earliest time specified in Schedule A for a given Service day advising of the expected number of cars that will be provided.

(Note: If the Railway's tariffs provide for notification on car supply allocations and if the Shipper is satisfied with the process for such notifications then a clause of this sort may be omitted and the process for notification described in the Railway's tariff may be incorporated by reference in Schedule C of the SLA)

- 4.5 When a loaded railcar is moved from any of the Shipper's facilities specified in Schedule A destined to any of the destinations specified in the transit time standards, the Railway will make available to the Shipper an estimated time of arrival (ETA) of the car at destination. If, while the rail car is in the Railway's possession en route to the destination the Railway's ETA for the car changes by more than [] hours, the railway will notify the shipper of the change in ETA. The Shipper and Railway will agree on the means by which such notification shall take place and whether it will be according to the notification provisions included in this Agreement or by any other such means.
- 4.6 If either party becomes aware of any fact of situation that will have a material effect on their ability to meet any of their obligations under this Agreement, they will notify the other party as soon as such fact or situation is known. Without limiting the generality of the foregoing, and subject always to Article 10, such events as major Railway line outages or disruptions, Shipper production or distribution disruptions,

or pending strikes or lockouts of the employees of either party are considered examples of situations that should be communicated between the parties as soon as they are known.

E. Service Performance

This section of the Agreement will establish any consequences for non-performance of the service standards and obligations established in Schedule A and in Article 4.

The actual level of financial payment for non-performance would be negotiated between the railway and shipper based upon their unique circumstances

ARTICLE 5 - PERFORMANCE OBLIGATIONS AND CONSEQUENCES

- 5.1 Each of the Railway and the Shipper, as the case may be, agrees to perform its respective obligations to the other as set out in this Agreement.
- 5.2 When the Railway does not meet the service obligations established in Schedule A for Local Services, Empty Rail Car Supply, or Transit Time on any traffic covered by this Agreement or if the Railway does not meet its obligations for notification to the Shipper under Article 4, the following shall be payable by the Railway to the Shipper:

<u>Description of Railway Service Failure</u>	<u>Amount Payable to Shipper</u>
(a) Failure of Railway to Notify Shipper of inability to provide local services as per Article 4.1 or a failure of the Railway to notify the Shipper of its plan to recover a car supply shortfall as per Article 4.5 or failure to notify the Shipper of a change in ETA as per Article 4.6.	\$xxx per instance.
(b) Failure to provide minimum percentage daily allocation of railcars other than covered hopper cars for loading grain products.	\$xxx per car for every car below minimum percentage daily allocation.
(c) Failure to provide grain car supply in a service week plus acceptable grain service window	\$xxx for every car not supplied.
(d) Failure to move traffic in accordance with transit time standards.	\$xxx per Day or portion of Day for every car moved in less than or greater than acceptable transit time range.

(e) Failure to meet the acceptable weekly percentage bad order rate.	\$xxx per car for every car, in excess of the acceptable weekly percentage bad order rate, rejected due to unacceptable cleanliness or mechanical condition.
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ARTICLE 6 - PAYMENT AND SETTLEMENT

- 6.1 The Railway shall be responsible for the calculation of monies due to the Shipper under the provisions of Article 5 on a monthly basis, and provide a written statement to the Shipper of such balance within 15 days of the end of each month.
- 6.2 Amounts owing shall be paid by the Railway within 30 Days from the date of the monthly statement.

ARTICLE 7 - REMEDIES ARE EXCLUSIVE

- 7.1 The Shipper and the Railway each agree and acknowledge that the payments provided for under Article 5 hereof shall be the exclusive remedies of the parties for the non-performance by the Railway of its obligations under Article 5 hereof, provided that nothing in this Agreement shall prevent the Shipper from exercising any rights available to it under the Act.
- 7.2 The Shipper and the Railway each agree and acknowledge that in the event that the Railway does not fulfill all of its commitments or perform all of its obligations hereunder, the damages of the Shipper will be difficult to determine. The parties agree that the payments provided for under Article 5 hereof provide for liquidated damages that have been specifically agreed upon by the parties as a reasonable and genuine pre-estimate of the Shipper’s losses and damages for such non-performance, and do not constitute a penalty of any kind.

F. Data Collection and Reporting Responsibilities

This section of the Agreement will establish the processes and framework by which the Railway and the Shipper will exchange information and data to support the implementation of the SLA. This section should clearly establish the obligations of the Railway and the Shipper to provide specific data at prescribed times and in prescribed formats.

It will also establish the obligations of both parties with respect to the use of the data/information and with respect to non-disclosure and maintaining the confidentiality of the data/information.

It would be expected to have specific references for each of the types of data that are required to calculate performance under the service obligations established in Schedule A and in Article 4 of the SLA.

ARTICLE 8 - DATA COLLECTION, REPORTING AND USE

- 8.1 The Railway shall be responsible to provide the Shipper with the data set out below in accordance with the requirements in the following table:

Data Type	Format of Data	Frequency of Delivery	Other
Transit time performance	Microsoft Excel compatible spreadsheet	Monthly no later than the 15 th of the month for car trips that terminated in the previous month.	Each monthly report must provide an identification of all rail cars shipped under the provisions of this Agreement including: <ul style="list-style-type: none"> • Car Initial and Number • Waybill date and number • Origin • Destination • Transit Time • Variance to minimum or maximum transit standard identified in Schedule A • Amount payable to Shipper as per Article 5.
Railroad supplied empty cars (other than hopper cars for grain)	Microsoft Excel compatible spreadsheet	Monthly no later than the 15 th of the month for car orders for placement in the previous month	Each monthly report must include the following information for each location and car type covered by this Agreement: <ul style="list-style-type: none"> • Number of cars ordered by day • Number of cars placed by day • Number of cars allocated by day • Number of cars below minimum percentage daily allocation by day • Amount payable to Shipper as per Article 5.
Railroad supplied empty grain cars	Microsoft Excel compatible spreadsheet	Monthly no later than the 15 th of the month for grain car orders for placement in the previous month	Each monthly report must include the following information for each origin and destination grain car order and car type covered by this Agreement: <ul style="list-style-type: none"> • Number of cars ordered by week • Number of cars placed by week • Number of cars allocated by week in grain service plan • Number of cars supplied in service week plus acceptable grain service window • Amount payable to Shipper as per Article 5.

8.2 The Shipper shall be responsible to provide the Railway with the data set out below in accordance with the requirements in the following table:

Data Type	Format of Data	Frequency of Delivery	Other
Monthly identification of any disputes regarding accuracy or completeness of data supplied by Railway under Article 8.1, for the previous month.	Microsoft Excel compatible spreadsheet	Monthly no later than 15 Days after the receipt of any data provided to the Shipper by the Railway under Article 8.1	Each report should specifically identify any disagreements with the Railway data provided and provide evidence to support the correction of the railway data.
Notification record	Microsoft Excel compatible spreadsheet	Monthly no later than the 15 th of the month for service provided in the previous month. 1	All instances of situations where the Railway was required to notify the Shipper under Article 4 of this agreement where such notification did not take

			place. Amount payable to the Shipper as per Article 5.
Bad order cars rejected by Shipper	Photographs in .jpg or .gif format and text in Microsoft Word or similar format	Within 36 hours of placement of railcars by Railway at Shipper facility	Car number and initial for each railcar rejected and written reason for rejection with accompanying photographs of car to support rejection reason.

8.3 Subject to Section 8.4, each party agrees to the following covenants in respect of all data and information provided to it by the other party in connection with this Agreement, including without limitation data and information provided under this Article 8:

- (a) it shall not use or re-produce the data and information for any purpose whatsoever other than in connection with this Agreement; and
- (b) it shall at all times keep and maintain the data and information strictly confidential; and
- (c) it shall not disclose the information or data to any other person, except only to those of its employees, representatives and advisors needing to use the data and information in connection with this Agreement. Any party making disclosure of the other party's data and information shall inform the employees, representatives and advisors of its confidential nature and of the existence of confidentiality, use and disclosure restrictions of this Agreement.

8.4 The obligations under Section 8.3 shall not apply to a party if the data and information is being used by the Shipper for the limited purposes of dispute resolution as set forth in Article 9 of this Agreement or in making any application under the Act.

G. Dispute Resolution

The following section of the Agreement establishes the processes and framework by which the Railway and the Customer will resolve disputes between them as they relate to the fulfillment of their respective obligations under the Agreement. In this sample agreement, the process for dispute resolution requires the parties to engage in good faith negotiations with respect to any disagreements and if they are unable to resolve a problem in this way, disputes are to be submitted to binding arbitration, the process for which is described in Schedule B.

ARTICLE 9 - DISPUTE RESOLUTION

- 9.1 Each Dispute shall in the first instance be resolved through good faith negotiation of the parties.
- 9.2 If the parties are unable to resolve a Dispute by good faith negotiation, then either party may, upon written notice to the other, submit the Dispute to binding resolution under the provision of Schedule B.

ARTICLE 10 - FORCE MAJEURE

- 10.1 A "Force Majeure" event shall mean any act or event that prevents the non-performing party from performing its obligations under this Agreement, if such act or event is beyond the reasonable control of and not the fault of the non-performing party and such party has been unable to overcome such act or

event by the exercise of due diligence. Force Majeure shall include but not be limited to acts of God, fires, riots, insurrections, or acts of war (whether declared or otherwise).

- 10.2 Without limiting the generality of the foregoing, Force Majeure shall specifically exclude, in the case of the Railway, any disruptions or delays that exist or occur for less than 24 hours in duration, and which normally occur in the rail transportation industry due to factors such as but not limited to: equipment or personnel availability, facility or equipment maintenance activities or minor disruptions to railway service and normal seasonal weather events. Changes to overall Railway traffic levels shall not be considered events of Force Majeure .
- 10.3 The burden of proof as to whether a Force Majeure event has occurred shall be upon the party claiming the Force Majeure.
- 10.4 If either party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure event:
- (a) the non-performing party shall give the other party prompt notice (and in any case not later than twenty-four (24) hours after the non-performing party becomes aware of the occurrence of the Force Majeure event) describing the particulars of the occurrence, including an estimation of its expected duration and probable impact on the performance of such party's obligations hereunder and shall continue to furnish daily reports with respect thereto during the continuation of the Force Majeure event;
 - (b) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure event and in no event shall exceed one (1) Day for each Day of Force Majeure;
 - (c) the non-performing party shall use reasonable efforts to continue to perform its obligations hereunder and to correct or cure the Force Majeure event or condition; and
 - (d) when the non-performing party is able to resume performance of its obligations under this Agreement, that party shall give the other party written notice to that effect and shall promptly resume performance hereunder.

ARTICLE 11 - TARIFF AND REGULATORY MATTERS

- 11.1 **Canada Transportation Act.** The Shipper and the Railway each agree and acknowledge that this Agreement is a “confidential contract” for the purposes of Part III of the Act.
- 11.2 **Tariffs and Other Agreements.** The Shipper and the Railway each agree and acknowledge that as of the Effective Date this Agreement replaces and supersedes any prior agreement or tariff in force and applicable between them concerning the facilities, traffic and services set out in Schedule A, save and except for those agreements or tariffs set out in Schedule C and those commercial agreements set out in Schedule D.

In the event of a conflict or inconsistency between the provisions of this Agreement and the agreements or tariffs set out in Schedule C and Schedule D, the provisions of this Agreement shall prevail to the extent of such conflict or inconsistency.

ARTICLE 12 - GENERAL

- 12.1 **Amendments in Writing.** This Agreement may not be amended unless agreed to in writing by both parties.
- 12.2 **Time of the Essence.** Time is of the essence of this Agreement.
- 12.3 **No Waiver.** Failure or delay on the part of either of the parties in exercising any right, power or privilege hereunder shall not operate as a waiver thereof. No waiver of any right, power or privilege by a party shall limit or affect that party's rights with respect to any breach of this Agreement by the other party.
- 12.4 **Notice.** All notices and other communication provided for in this Agreement will be in writing, will be given by personal delivery or sent by e-mail or facsimile, to the applicable addresses, e-mails or facsimile numbers set out in this section, or to addresses or facsimile numbers which a party may from time to time designate to the other parties. Any such communication will be deemed to have been validly and effectively given on the date of such delivery, if such date is a business day and such delivery has been made during the normal business hours of the recipient; otherwise, it will be deemed to have been validly and effectively given on the business day next following such date of delivery, except in the case of e-mail or facsimile, in which case a printed confirmation of transmission to the facsimile number or the receipt and opening of e-mail provided by the party to whom the facsimile is sent shall be conclusive evidence that the facsimile transmission or e-mail has been received by that party.. The applicable addresses, e-mails or facsimile numbers for each of the parties are:

SHIPPER:

RAILWAY:

- 12.5 **Further Assurances.** The parties hereto agree to execute and deliver such further and other documents and perform and cause to be performed such further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement. Without limiting the generality of the foregoing, the parties agree that all requests for information by one of the parties, with respect to the matters governed by this Agreement, shall be answered by the other party with due diligence.
- 12.6 **No Assignment.** This Agreement may not be assigned by either party without the prior written consent of the other party, which consent may be refused in the other party's sole discretion.
- 12.7 **Binding Effect.** Subject to the restrictions on assignment herein contained, this Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.
- 12.8 **Severability.** Each provision of this Agreement is intended to be severable. If any provision hereof is illegal or invalid, such illegality or invalidity will not affect the validity of the remainder hereof.
- 12.9 **Counterpart Execution.** This Agreement may be executed in any number of counterparts (either originally or by facsimile) with the same effect as if all parties hereto had signed the same document. All such counterparts will be construed together and will constitute one and the same agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement or caused it to be executed on their behalf by their duly authorized signing officers as of the day and year first above written.

SHIPPER LEGAL NAME

Per: _____

Name:

Title:

Per: _____

Name:

Title:

RAILWAY LEGAL NAME

Per: _____

Name:

Title:

Per: _____

Name:

Title:

Schedule A

Traffic and Services Covered by this Agreement

1. Local service schedules

Rail Station Name	Service Days of Week	Service Times

2. Railroad supplied empty rail cars (other than covered hopper cars for grain products)

Rail Station Name	Preferred Rail Car Type	Acceptable Rail Car Substitutes	Maximum Rail Car Spot Capacity	Minimum Percentage Daily Allocation	Acceptable Weekly Percentage Bad Order

3. Railroad supplied empty covered hopper cars for grain products.

Rail Origin Station Name	Maximum Rail Car Spot Capacity	Acceptable grain service window	Acceptable Weekly Percentage Bad Order

4. Transit time standards

Origin	Destination	Consignee	Acceptable transit time range in hours

Schedule B

Commercial Dispute Resolution (“CDR”) Provisions

1. **Scope** The CDR provisions in this Schedule shall apply to all Disputes.. No arbitration or other proceeding under this CDR shall result in or lead to amendment, alteration, expansion, contraction or any other change to the terms and conditions set out in this Agreement.

2. **Binding Arbitration**

Either Party may commence the arbitration process by giving notice in writing to the other Party of the Dispute and proposing the name of one or more persons suggested to be an arbitrator of the Dispute. The other Party may then agree to one of the arbitrators proposed or may suggest other candidates to act as arbitrator. In the event that the Parties have agreed upon a list of potential arbitrators the Parties shall be at liberty, acting unanimously, to select a particular arbitrator or panel of arbitrators from that list. If the Parties cannot agree on a specific arbitrator or arbitrators, an arbitrator or arbitrators shall be appointed in accordance with the process agreed upon by the Parties

If the Parties cannot agree on an arbitrator or a panel of arbitrators, a list of potential arbitrators or a process for selecting an arbitrator then the Party first giving notice of desire to arbitrate shall file an application for the appointment of a single arbitrator to the superior court of the province which governs the contractual relationship between the Parties . The application shall clearly define the Dispute, the Parties involved and the relief sought. Upon application, the court shall have due regard to any qualifications required of the arbitrator by the agreement of the Parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator. In such case, the arbitration shall be held at a location to be agreed to by the Parties or, failing agreement, at a location designated by the arbitrator.

Each Party will be responsible for its own costs and both Parties will share equally in the costs of, and the services provided by the arbitrator or the panel or arbitrators, as the case may be.

The jurisdiction of the arbitrator or panel of arbitrators selected or appointed shall be limited to interpretation and application of the Agreement. Under no circumstance shall an arbitrator or a panel of arbitrators amend, alter, expand, contract or change in any way the terms of the Agreement. In respect of service Disputes, if the arbitrator determines that Carrier has failed to meet its service obligations, the jurisdiction of the arbitrator shall be limited to directing that Carrier to meet its service obligations insofar as they are within Carrier’s ability and the arbitrator may not directly or indirectly determine or order that Carrier construct anything or acquire cars, locomotives or other assets.

The award of an arbitrator under these CDR provisions shall be final and binding on the Parties.

The arbitration shall be conducted in accordance with the following Rules herein.

Rules Governing Arbitration

1. **Interpretation**

- 1.1 **Definitions** In addition to the definitions contained in the Agreement, the following terms shall have the following meanings:

- a) "Arbitrator" shall mean the person or persons appointed to arbitrate the Dispute.
 - b) "Business Day" shall mean Monday to Friday only (excluding Canadian statutory holidays and any provincial statutory holiday in the province in which the arbitration is held).
 - c) "Party" means a Party to a Dispute.
 - d) "Representative" means the solicitor or an authorized representative of the Party.
 - e) "Rules" means the rules governing the arbitration set out in this Schedule B.

- 1.2 These Rules apply whether the Arbitrator is selected by a court of competent jurisdiction or by the Parties.

- 1.3 These Rules shall be interpreted liberally and in such a way so as to provide the Parties with the most just and equitable outcome.

- 1.4 In these Rules, where there is a reference to a number of days between two events, they shall be counted by excluding the first day and including the last day on which the event takes place.

2. **Agreement of Parties**

- 2.1 These Rules may be varied at any time by agreement between the Parties.
- 2.2 In the event that any provision of these Rules is in conflict with any applicable law from which the Parties cannot derogate, the provisions of that law shall prevail.
- 3. Initiating Arbitration**
- 3.1 A Party may commence an arbitration under the Agreement and these Rules by giving notice in writing to the other Party of the Dispute and filing a written submission, containing the information set out in Section 5.1 below, to arbitrate under these Rules with an agreed upon Arbitrator; or where there is no agreed upon Arbitrator, applying to the superior court of the province to which the Dispute relates or which governs the contractual relationship between the Parties for the appointment of an Arbitrator.
- 3.2 The written submission shall contain the information prescribed in Section 5.1 a) of these Rules..
- 4. Pre-Hearing Conference**
- 4.1 Prior to commencing the arbitration, the Arbitrator will convene within twenty (20) business days from his or her appointment, a pre-arbitration conference call in order to prepare an arbitration agenda concerning the procedure to be used in the arbitration proceedings and appropriate timetables to be used.
- 4.2 The pre-arbitration conference call agenda shall include:
- a) identification of the issues in Dispute(not the arguments to be presented),
 - b) procedure to be followed,
 - c) fees and costs,
 - d) timelines and procedural steps, and
 - e) location of the hearing.
- 4.3 The Arbitrator shall record any agreements or orders made at the pre-arbitration conference and shall send a copy of that document to each of the Parties.
- 5. Exchange of Statements**
- 5.1 Each Party shall prepare an arbitration statement, as follows:
- a) the claimant shall deliver a written statement simultaneously to the respondent and the Arbitrator which statement should include:
 - i) a description of all matters and amounts being claimed,
 - ii) the facts supporting the claim(s) made,
 - iii) the issues to be determined,
 - iv) the relief or remedy sought, and
 - v) a summary of the important legal principles to be applied and the key authorities to be relied upon;
 - b) on receipt of the claimant's statement, the respondent shall deliver a written statement of defence, containing the information listed above, together with any claim or counterclaim as set off; and
 - c) on receipt of the respondent's statement of counterclaim, the claimant may deliver a written reply.
- 5.2 Subject to the direction of the Arbitrator, each Party shall deliver the documents upon which it intends to rely with each of the above statements.
- 6. Privacy and Confidentiality of Arbitration**
- 6.1 The arbitration is private and confidential. The Parties and their Representatives and expert witnesses shall attend the arbitration. All other persons may only attend with the consent of the Parties and the Arbitrator.
- 6.2 All hearings, meetings, and communications as well as all documents and exhibits filed shall be private and confidential as between the Parties and the Arbitrator.
- 6.3 The Arbitrator shall not be compelled to appear as a witness or expert in any pending or future adversarial or judicial proceeding involving any one or more of the Parties or relating in any way to the subject matter of the arbitration.
- 7. Powers and Duties of Arbitrator**
- 7.1 Without limiting the generality of any other rule which confers jurisdiction or powers on the Arbitrator, and unless the Parties at any time agree otherwise, the Arbitrator may:

- a) order an adjournment of the proceedings from time to time;
- b) make a partial award;
- c) make an interim order or award on any matter with respect to which it may make a final award;
- d) order inspection of documents, exhibits or other property, including a view or physical inspection of property;
- e) at any time extend or abridge a period of time fixed or determined by it, or any period of time required in these Rules;
- f) make interim and other orders, including settling of matters at the pre-hearing meeting, that do not deal with the issues in Dispute; and
- g) order that any Party or witness shall be examined on oath or affirmation, and may for that purpose administer any necessary oath or take any necessary affirmation.

8. Rights of the Parties

8.1 As well as the specific rights set out in these Rules, the Parties have, as between themselves, any right which they would have under the applicable law.

8.2 The Parties also have the following rights:

- a) the right to have a full opportunity to present their case;
- b) the right to be treated equally and fairly in an arbitration; and
- c) the right to a just, speedy and economic determination of the proceeding on its merits.

9. Conduct of the Hearing

9.1 The Arbitrator shall, in consultation with the Parties, set the dates for the hearings and for any discovery processes that the Arbitrator may require or decide upon the application of a Party..

9.2 Each Party shall have the onus of proving the facts on which it relies.

9.3 In deciding issues of admissibility, relevance and materiality of evidence, the Arbitrator shall be guided by but not be required to apply the rules of evidence.

9.4 The Arbitrator may direct the order of proceeding, divide the proceedings into stages, and exclude repetitive or irrelevant testimony, limit or refuse to receive the evidence of a witness of fact or opinion, or direct the Parties to address specific issues, the determination of which may dispose of some or all of the Dispute.

9.5 In order to limit the time spent at the hearing, the Parties should ensure that the Arbitrator has up-to-date copies of:

- a) the record;
- b) the agreed documents;
- c) an agreed facts and/or agreed "will say" statements;
- d) any demonstrative aid necessary to properly understand the issues; and
- e) memoranda of fact and law and authorities books, where necessary.

The material should be delivered as soon as possible in accordance with the directions of the Arbitrator, but no less than five (5) business days before the hearing.

10. The Award

10.1 The Arbitrator shall deliver an award promptly following completion of the arbitration.

10.2 The award shall be signed and shall set out:

- a) the nature of the claim;
- b) the facts;
- c) the issues;
- d) the law;
- e) the decision; and
- f) the relief awarded.

11. Costs

11.1 Costs, which shall be shared equally by the Parties, shall include:

- a) the fees of the Arbitrator which shall be separately determined and stated for each member of the arbitral panel (if applicable), together with reasonable travel and other expenses incurred by the Arbitrator; and

- b) the administration fees, and the expenses incurred by the Parties for the conduct of the arbitration such as recording of the proceedings, hearing facilities, etc.

For greater certainty, no Party shall be entitled to claim or be awarded its costs of preparation and attendance, which costs each Party shall bear.

12. Amendments and Corrections to the Award

- 12.1 On the application of a Party or on the Arbitrator's own initiative, an Arbitrator may amend an award to correct:
 - a) a clerical or typographical error,
 - b) an accidental error, slip, omission or similar mistake, or
 - c) an arithmetical error made in a computation.
- 12.2 An application by a Party under paragraph 12(1) must be made within fifteen (15) days after the Party is notified of the award.

13. Termination of Arbitration

- 13.1 Arbitration shall be terminated:
 - a) by agreement between the Parties, or
 - b) if a settlement is reached between the Parties during the arbitration and prior to the award being delivered to the Parties.

Schedule C

Tariffs and Agreements