

**Agreement for the
Commercial Resolution of Disputes (“CDR”)**

Between

**Canadian National Railway Company (“CN”), a
company legally constituted pursuant to the Canada
Corporations Act**

And

**the Customer signatory to this Agreement
 (“Customer”)**

Whereas CN and the Customer believe that it is in the best interest of both parties that disputes arising as hereinafter described (the “Dispute”) be resolved in a commercial manner;

Whereas CN and the Customer agree to enter into mandatory mediation with the intention of reaching a consensual resolution of their Disputes;

Whereas CN and the Customer agree that, in the event the Dispute is not resolved through the mediation process, the Customer can elect to submit the Dispute to binding arbitration or to seek resolution of the Dispute using recourses available under the *Canada Transportation Act*;

Whereas CN and the Customer have agreed to set out the process for mediation and arbitration for resolution of the Dispute;

Now therefore, the parties agree as follows:

1. Term:

This Agreement is effective the date of signature by the parties, until ● *(to be agreed)*.

2. Scope:

- a) This Agreement applies to disagreements arising from the following:
 - i. the linehaul rates for the movement of goods that could be the subject of a final offer arbitration proceeding pursuant to section 161 of the *Canada Transportation Act*;
 - ii. the level of service to be provided by CN to the Customer pursuant to sections 113 to 115 of the *Canada Transportation Act*;

- iii. the application of railway tariffs for the provision of the incidental services set out in Appendix II;

hereinafter collectively referred to as the “Disputes”.

- b) For greater clarity, the parties agree that this Agreement applies to the Disputes identified in paragraph a) for which the parties have not otherwise provided a dispute resolution mechanism.

3. Components of the CDR process

The CDR process set out in this Agreement is a two-step confidential process with the first step being mandatory mediation in accordance with paragraph 4, and the second optional step being binding commercial arbitration in accordance with paragraph 5 hereof. Accordingly, in the event of a Dispute that could not be resolved through direct negotiation, the parties will proceed as follows:

4. Mandatory mediation

Prior to initiating any other recourse in connection with any Dispute the parties agree to enter into mediation with the intention of reaching a consensual resolution of their Dispute.

- a) The mediation shall be carried out in accordance with and pursuant to the mediation process established by the Canadian Transportation Agency.
- b) The timeline for completion of the mediation will be fifteen (15) working days from the date of the appointment of the mediator by the Agency and the mediation session shall not exceed two (2) days unless otherwise agreed by the parties.
- c) The mediation shall be held at a mutually agreed location or, failing agreement, at the Agency’s offices.
- d) 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 mediator.

5. Election by Customer

In the event that the Dispute is not fully resolved at the end of the mediation process, the Customer may elect to :

- submit the matter to binding arbitration in accordance with paragraph 6, or
- exercise any recourse available pursuant to the *Canada Transportation Act* to resolve the dispute such as final offer arbitration or level of service complaint.

6. Binding arbitration

- a) The arbitration shall commence and be carried out in accordance with the Rules attached as Appendix I.
- b) If an arbitrator is appointed by the Agency, the arbitration shall be held in the Agency's offices. In all other cases, the arbitration shall be held in a location agreed to by the parties.
- c) 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.
- d) Unless otherwise agreed by the parties, the award of the Arbitrator would become part of a confidential agreement between the parties in respect of disputes relating to matters set out in paragraph 2 a) i) and ii).

7. Guidelines for arbitrator

7.1 Linehaul rate dispute resolution:

The Arbitrator may select the rate proposed by CN or by the Customer or choose to establish a rate between the rate proposed by CN and the Customer.

In choosing or establishing the rate, the Arbitrator shall consider the reasonableness of the proposed rates in relation to the market conditions. For greater clarity, the market conditions do not include the Customer's manufacturing costs, the Customer's product selling price nor such other factors not relevant or related to the transportation market.

Prior to making a determination, the Arbitrator shall consider whether the Customer has the choice of another railway, either through direct physical connection or through traffic solicitation rights by agreement between the railways (e.g. the BCR Open Gateway Rates) or interswitching.

In such event, the Arbitrator shall select CN's proposed rates.

The award shall apply for a one-year period from the date of the application unless the Customer has specified in its application that it requests the award to be applicable for a two-year period.

7.2 Level of service matters:

In determining a complaint regarding level of service, the Arbitrator shall consider whether the Customer is requesting a service covered by CN common carrier obligation, as provided for in sections 113 to 115 of the *Canada Transportation Act* or a premium service, that is a service over and above such obligation.

The award shall apply for a period of one year from the date of the application.

7.3 Application of tariff for incidental services:

In determining the correctness of the application of the various incidental service tariff items, the Arbitrator shall base the award on the facts presented and be guided by the wording of the tariff items and cannot amend the tariff rates nor the tariff conditions.

The award shall apply for the period under dispute.

For Canadian National Railway

For the Customer

Appendix I – 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 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.

1(2) These Rules apply whether the Arbitrator is appointed by the Agency or selected by the Parties pursuant to a list of potential arbitrators.

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) The Customer may commence an arbitration under the Agreement and these Rules by filing two copies of a written submission to arbitrate under these Rules, signed by the Customer:

- a. in accordance with the process agreed upon where the parties have agreed to a list of potential arbitrators and a process for selecting an arbitrator from that list; or
- b. where there is no agreed-to list of arbitrators and process, with the Agency.

Where the arbitration is in respect of a dispute specified in paragraph 2.a)i) (linehaul rates for the movement of goods) of the Agreement, the statement shall specify whether the Customer requests the award to be applicable for a two-year period.

4. Appointment of Arbitrator(s)

4(1) In the event that the Parties have agreed on a list of potential arbitrators the parties shall be at liberty, acting unanimously, to select a particular arbitrator from that list. If the parties cannot agree on a specific arbitrator, an arbitrator shall be appointed in accordance with the process agreed to by the parties.

4(2) In the absence of an agreed-to list of arbitrators and process, the Parties shall request the Agency to appoint an arbitrator from among its members or senior staff.

5. Pre-Hearing Conference

5(1) Prior to commencing the arbitration, the Arbitrator will convene within (5) business days from its 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.

5(2) The pre-arbitration conference call agenda may include:

- (a) identification of the issues in dispute, (not the arguments to presented)
- (b) procedure to be followed,
- (c) fees and costs,
- (d) timelines and procedural steps
- (e) location of the hearing.

5(3) The Arbitrator shall record any agreements or orders made at the pre-arbitration conference and shall send an electronic copy of that document to each of the Parties.

6. Exchange of Statements

6(1) Each Party shall prepare an Arbitration Statement, as follows :

a) The claimant shall deliver a written statement 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;
- 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 defense, containing the information listed above, together with any claim or counterclaim as set off.

c) On receipt of the respondent's statement of counterclaim, the claimant may deliver a written reply.

6(2) Arbitration Statements shall be exchanged between the Parties and a copy shall be delivered to the Arbitrator at least twenty-one (21) business days before the arbitration date.

6(3) 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.

7. Privacy and Confidentiality of Arbitration

7(1) The arbitration is private and confidential. The Parties and their representatives shall attend the arbitration. All other persons may only attend with the consent of the Parties and the Arbitrator.

7(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.

7(3) Neither the Arbitrator nor any of the Agency members or employees involved in the arbitration proceedings shall 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.

8. Powers and Duties of Arbitrator

8(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;
- (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.

9. Rights of the Parties

9(1) As well as the specific rights set out in these Rules, the parties have, as between themselves, any right that they would have under the applicable law.

9(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;
- (c) the right to a just, speedy and economic determination of the proceeding on its merits.

10. Conduct of the Hearing

10(1) The Arbitrator shall, in consultation with the Parties, set the dates for the hearings.

10(2) Each Party shall prove the facts on which it relies.

10(3) In deciding issues of relevance and materiality of evidence, the Arbitrator shall be guided by but not be required to apply the rules of evidence.

10(4) The Arbitrator may direct the order of proceeding, divide the proceedings into stages, 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.

10(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;
- (e) memoranda of fact and law and authorities books, where necessary.

The material should be delivered as soon as possible but no less than five (5) business days before the hearing.

11. The Award

11(1) The Arbitrator shall deliver an award no later than sixty (60) days after the pre-hearing conference in respect of Disputes under paragraph 2.a)i) (linehaul rates for the movement of goods) and 2.a)ii) (level of service) of the Agreement.

In respect of Disputes under paragraph 2.a)iii) (application of incidental charges) of the Agreement, the Arbitrator shall deliver an award within ninety (90) days after the pre-hearing conference.

11(2) The award shall be signed and shall set out:

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

12. Costs

12(1) Costs include:

- (a) the fees of the Arbitrator together with reasonable travel and other expenses incurred by the tribunal;
- (b) the administration fees, and the expenses incurred by the Agency or the Parties for the conduct of the arbitration such as the recording of the proceedings, hearing facilities, etc.

13. Amendments and Corrections to the Award

13(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.

13(2) An application by a Party under paragraph 13(1) must be made within fifteen (15) days after the Party is notified of the award.

14. Termination of Arbitration

14(1) Arbitration shall be terminated:

- (a) by agreement between the Parties, or
- (b) if a settlement is reached during the arbitration between the Parties.

Appendix II – Incidental Services Tariff

CN 9000
CN 9002
CN 9003
CN 9004
CN 9008