

RAILCAR TRANSLOAD AGREEMENT

This Railcar Transload Agreement ("Agreement") is entered into as of this ___ day of _____, 2020 ("Effective Date") by and between Burlington Junction Railway ("Railroad") and BNSF Logistics ("Customer")

WHEREAS, the City of Rochelle ("City") own the land and rail tracks at a site in Rochelle, IL known as Rochelle Transload Center ("Facilities"); and

WHEREAS, the City of Rochelle Railroad ("CIR") has contracted with Railroad to perform rail switching and other rail administrative services as CIR's designated rail switching carrier on all City track and related property, including, but not limited to, the Facilities; and

WHEREAS, Railroad, as part of its switching duties, may enter into agreements with customers for rail service at the Facilities; and

WHEREAS Customer desires to utilize the services of Railroad to switch and stage railcars at the Facilities for loading and unloading, storing railcars, and loading of trucks (collectively referred to as "Transloading") for various nonhazardous commodities ("Product");

NOW, THEREFORE, for good and valuable consideration. Railroad and Customer agree as follows:

1. **Tender of Railcars.** Customer shall tender railcars to Railroad and Railroad shall accept such railcars for transloading, subject to the terms and conditions of this Agreement.
2. **Term.** This Agreement shall be effective as of the Effective Date first above written and shall terminate six months from the Effective Date ("Term").
3. **General Conditions.** Railroad shall store and spot railcars as follows:
 - a. Customer's railcars shall be per diem free to Railroad. Any railcars subject to per diem or car hire shall be subject to Railroad's Demurrage tariff.
 - b. Customer's railcars held in excess of five (5) days on Railroad's track shall be subject to storage fees per Railroad's Demurrage tariff.
 - c. Railroad shall spot the available railcars at the Facilities to allow Customer to access up railcars at the Facility per Customer's orders or as capacity allows.
 - d. Customer shall have access to the Facilities twenty-four (24) hours a day, seven (7) days a week during the Term.
4. **Railcar Handling Charges.** Customer shall be liable for the following railcar handling charges:
 - a. Revenue railcar movements originating or terminating at Rochelle, Illinois are subject to a switching charge for customers performing Transloading as published in Railroad's switching tariff listed under Transload Customers. BNSF Railway or Union Pacific Railroad may absorb all or a portion of the switching fee as set in their respective price publications.
 - b. Railcars received empty by Railroad and released empty under nonrevenue waybills will be subject to a \$100.00 (one hundred USD) switching charge per railcar.

- c. Railcars which are spotted at Facility but then are requested to be moved to a hold track will be subject to a per railcar charge of \$65.00.
5. **Transloading Charges.** Customer shall be liable for the following transloading charges:
 - a. Blades and Towers: \$300 per component unloaded at Facilities.
 - b. Hubs and Nacells: \$500 per component unloaded at Facilities.
6. **Transloading.** Customer acknowledges that the Facilities are not equipped with truck scales. Unless expressly provided herein, all transloading and weighing of Product shall be the responsibility of Customer its contractors or other representatives of Customer. Customer, its contractors, or its representatives shall utilize safe operating practices when transloading Product at the Facilities.
7. **Maintenance of Facilities.** Railroad shall maintain the Facilities in a condition reasonably fit for the storage and transloading of the railcars and in compliance with all local, state, and federal statutes, ordinances, regulations, and rules. If the Facilities are rendered wholly or partially unusable by fire, flood, or other casualty, Railroad may, at its sole option, repair or replace the Facilities or declare this Agreement terminated. Railroad shall grant Customer reasonable access during normal business hours to inspect the Facilities and the Customer's railcars. Customer assumes no liability for damages to track or Facilities, unless damages result from Customer's acts or omissions and, then, only to the extent not caused by Railroad's acts, omissions, or negligence.
8. **Insurance.** Customer, and any contractors, at its sole cost and expense, shall maintain adequate insurance coverage for itself and all of its personnel to protect Railroad, including its affiliates, from any losses that arise out of the performance of the transloading services or other obligations under this Agreement. Such insurance shall include, at a minimum, the insurance coverages set forth herein. Customer, or any contractors, shall maintain comprehensive insurance coverage for all trucks, trailers, railcars, and other equipment while the same are in Customer's custody and control. Customer, or any contractors, shall maintain comprehensive general liability insurance for injury to person or property, including the Products, and pollution liability, with combined limits of \$2,000,000 million dollars for each occurrence. Customer, or any contractors, shall also maintain workers' compensation insurance in accordance with Illinois law. Customer shall maintain comprehensive automobile liability covering all vehicles it owns, hires or leases in an amount not less than \$1,000,000. Customer, or any contractors, shall name Railroad as an "Additional Insured" on all general liability and automobile liability insurance coverage and any other liability insurance coverage maintained, or which should be maintained, by Customer, or any contractors, for which an "Additional Insured" endorsement is available. Customer shall require its insurers to waive any and all rights of subrogation against Railroad. Customer hereby waives any and all claims against Railroad to the extent the claims are covered by Customer's, or any contractors', insurance. If requested, Customer will promptly provide Railroad with certificates of insurance evidencing its insurance coverage, with the insurer's agreement to provide Railroad with thirty (30) days' prior written notice of any cancellation, expiration, non-renewal or reduction in coverage of any such policy.
9. **Indemnification.** Customer shall be responsible for, and shall indemnify, defend and save harmless Railroad and its parents, subsidiaries, and affiliates, and each of their respective

officers, directors, agents, employees and representatives of each as well as the City of Rochelle and CIR and their respective employees and elected or appointed officials (collectively, "Indemnified Parties"), from and against any and all liability, suits, losses, demands, actions, causes of action, fines, penalties, damages and claims of any kind or nature, including, without limitation, reasonable attorney's fees and costs (collectively, "Claims"), which any of the Indemnified Parties may hereafter incur, pay or become responsible for, to the extent arising out of (i) the death or bodily injury to any person (including employees of Customer), (ii) the destruction or damage to property (iii) any violation or alleged violation of any applicable laws (iv) Customer's negligent acts, omissions and/or willful misconduct in performing its obligations under this Agreement, or (v) any breach of this Agreement by Customer.

10. **Force Majeure.** Neither party shall be responsible to the other for a failure to perform hereunder caused by any cause beyond its reasonable control, including, without limitation, acts of God; actions of flood; fire; explosion; strike or labor disputes; riots or civil commotion; terrorism; or compliance with any law, rule, order, regulation or restriction of any governmental body or agency thereof which imposes a new duty upon the party not anticipated as of the Effective Date of this Agreement.
11. **Notices.** All notices sent hereunder shall be sent to the following addresses or at such other address as a party shall direct in writing.

Customer:

Railroad:

12. **Other Terms.**

- a. This Agreement supersedes and terminates as of the Effective Date hereof any other Railcar Storage and/or Transload agreements between the parties relating to the Facilities. This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof. This Agreement is binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.
- b. Customer shall pay any ad valorem, personal property and sales tax which may be levied on the railcars and Product.
- c. This Agreement shall not be assigned by either party without the express written consent of the other, which shall not be unreasonably withheld. No assignment shall relieve the assigning party of its obligations hereunder.
- d. Whenever, in this Agreement, reference is made to either party, such reference shall include all agents, employees, officers, subcontractors, and assigns of such party.
- e. Railroad is an independent contractor and nothing herein shall be construed in a manner to create any agency, partnership, joint venture or employer relationship between Railroad and Customer or any of Customer's employees, subcontractors or other representatives.

- f. This Agreement shall be construed, and the respective rights of the parties shall be determined, in accordance with the laws of the State of Illinois. Any litigation related to this Agreement shall take place in a court of competent jurisdiction in the State of Illinois and the parties hereby waive any rights to object to the jurisdiction, venue or forum thereof. This Agreement's terms and conditions may not be varied by prior, contemporaneous, or subsequent oral agreement. The waiver by either party of any breach of this Agreement by the other party shall not be deemed a waiver of any successive breach of this Agreement.
- g. Either party may terminate this Agreement upon 60 days prior written notice to the other party.

IN WITNESS WHEREOF, the parties have executed this Agreement as written on the Effective Date.

By: _____

Name: _____

Title: _____