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**A. GENERAL TERMS AND CONDITIONS.**

1. **Governing Publications.** Except as otherwise expressly provided herein, this Publication is governed by the provisions of the publications set forth below, including amendments and reissues, in effect on the date(s) of services:

UP Accessorial Tariff	UP 6004-series
Bureau of Explosives	BOE 6000-series
Directory of Hazardous Materials Shipping Description	(Issued by RAILINC)
Official Railroad Station List	OPSL 6000-series
Standard Transportation Commodity Code	STCC 6001-series
Uniform Freight Classification	UFC 6000-series

In the event of any conflict between the terms of this Publication and the publications referenced above, the provisions of this Publication shall govern.

All documents referring to this Publication are also governed by Tariff UP 6004-series in connection with Demurrage, storage, reconsignment, diversion, weighing, overloads, special trains, unit train service terms, and other miscellaneous accessorial services.

2. **Application.** The terms and conditions of this Publication shall apply to all transportation services provided by UP under any Rate Document, all railcars on UP rail lines, and UP Cars. In the event of a conflict between the terms and conditions of this Publication and any Rate Document, the conflicting terms of the applicable Rate Document shall govern. For Interline Shipments, the terms and conditions of service established by each other carrier apply once the Interline Shipment moves onto the rail lines of the other carrier. The terms of this Publication in no way obligate UP to continue ownership, maintenance (including weight standards), or operation of any rail lines.
3. **Modification.** This Publication may be amended or modified by UP at any time by providing notice as required under 49 C.F.R. 1300.4.
4. **Savings Clause.** If any one or more of the provisions contained in this Publication shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Publication, but this Publication shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
5. **Recordkeeping and Audit.** Customer must keep accurate records of Shipments, and UP may inspect Shipment records for the purpose of determining compliance with the terms of this Publication.
6. **Effect of Noncompliance.** UP may reject any Shipment that does not comply with provisions of this Publication. Failure to reject does not make UP responsible for Damages resulting from noncompliance.
7. **Waiver.** The failure by UP to enforce any provisions of this Publication will not be construed as a waiver of the provision and does not preclude subsequent enforcement of the provision.
8. **Force Majeure.** If UP or Customer is unable to meet or is delayed in meeting its obligations as a result of a Force Majeure Event, then the obligations of the affected party(ies) shall be suspended for the duration of the Force Majeure Event.

**B. PAYMENT AND COLLECTION TERMS.**

1. **Payment Terms.** Customer shall pay all freight and other charges billed by UP in accordance with the credit and collection terms set forth in the Uniform Freight Classification 6000-series, Rule 62, as amended from time to time.
- a. Rounding of Distance-Based Transportation Rates. Except as otherwise provided in Rate Documents, when computing mileage for use with distance-based transportation rates, all fractions of total miles will be dropped if less than 0.5 and increased to the next whole mile if equal to or more than 0.5.

- b. Rounding of Fuel Surcharge. Except as otherwise provided in Rate Documents, fractions of dollars resulting from the application of a fuel surcharge will be dropped if less than 50 cents and increased to the next whole dollar if 50 cents or more.
2. **Claims for Overcharges**. Customer must file any claim for overcharges (including duplicate payments) of freight charges in writing with UP within 12 months from the date of the original freight bill. Suits to collect overcharges of freight charges may not be instituted later than three years from the date of the original freight bill. Customer waives any claims for overcharges that do not comply with these time restrictions. Customer waives any claims for overcharges that are less than \$100.00 per freight bill.
3. **Joint and Several Liability**. The liability of the Consignor, Consignee, and beneficial owner of the Shipment for freight charges arising out of the offer and acceptance, through Tender of Shipment by Consignor and through acceptance of delivery by Consignee on behalf of itself or the beneficial owner, is joint and several.
4. **Suit to Collect Charges**. If UP must file suit to collect any amounts owed by Customer, Customer will be responsible for interest from the date of shipment at the maximum rate of interest allowed by law, UP's court costs, and UP's reasonable attorney's fees.

### C. SHIPPING TERMS

1. **Required Documentation**. In order to obtain transportation services, Customer must submit a bill of lading or billing instructions containing all required information under applicable state and federal Governmental Regulation ("Billing Instructions") by appropriate electronic data interchange or web interface. The Billing Instructions must correctly reference the applicable Rate Document's identification number and must contain the appropriate STCC. If UP receives Billing Instructions with no Rate Document or the wrong Rate Document, UP may, in its sole discretion, assess Customer the proper UP rate for the Commodity and route indicated for UP's portion of the move. Rates contained in a contract between UP and Customer will take precedence over and apply instead of publicly available rates covering the same movement. In the event of a conflict between the terms of this Publication and conditions contained in the Billing Instructions, the terms of this Publication will govern. For purposes of determining the date on which a Shipment was made, the waybill date will govern.
2. **Restricted Commodities**.
  - a. Restricted Commodities. UP will not accept the Tender of certain Commodities unless approved by UP's Shipment Quality Department. The list of restricted Commodities can be found at this [link](#).
  - b. Restricted Commodities – Tree Nuts. UP will not accept the Tender of the Commodities found at this [link](#) unless the Commodity is transported in non-permeable containers.
3. **Shipment Movements**. For operating purposes, Interline Shipments may move via alternative gateways. UP reserves the right and has the discretion to handle, sort, and transport railcars in the most efficient, expeditious, and safe manner. Unless specifically prohibited by applicable law or unless specifically agreed to by UP's authorized representative within its Marketing & Sales Department ("Authorized Representative"), UP reserves the right to determine which Commodities and which railcars will be sorted by the use of gravity in UP hump yards. Any request for special handling, including an electronic request for "NH" or "No Hump" or a request sent to another carrier, that has not been specifically agreed to by UP's Authorized Representative is not a condition of carriage on UP.
4. **Dimension and Weight Limitations**. Customer must obtain authorization from UP's Clearance Department before Tendering any Shipment that meets one or more of the following characteristics:
  - a. [Commodity exceeds maximum height of 17 feet above top of rail \(or 15 feet 6 inches above top of rail if moving through the state of California\);](#)
  - b. [Commodity exceeds maximum width of 11 feet \(or 10 feet 10 inches if moving through the state of California\);](#)
  - c. [Commodity exceeds the length of the railcar;](#)
  - d. [Commodity weight exceeds 230,000 pounds; or](#)

- e. [Commodity weight plus the weight of a 4-axle railcar exceeds 268,000 pounds.](#)

If the Shipment originates on UP, Customer must obtain the required authorization by following the process for the particular characteristic provided in the links above. If the Shipment originates on another carrier, Customer must follow that carrier's process for obtaining the required authorization. Shipments Tendered without having received the required authorization may be subject to additional charges for overweight or improperly loaded railcars. For Shipments that originate on UP, UP will assess an administrative fee to prepare and provide a dimensional load clearance file for Shipments that meet characteristics a., b., c., or d. Once Shipments that meet characteristic e. receive the required authorization for a particular Origin, Destination, and route, those Shipments do not require authorization for subsequent movements so long as the Origin, Destination, and route do not change.

- 5. **Rejected Shipments.** Except as otherwise provided in Rate Documents, if a loaded Shipment is rejected and returned to its Origin for reasons not attributable to UP, the following will apply for the return movement:
  - a. The return movement will be subject to the single-car rate from the Destination to the Origin.
  - b. If there is no single-car rate from the Destination to the Origin, the return movement will be subject to the single-car rate from the Origin to the Destination.

#### D. **EQUIPMENT TERMS.**

- 1. **Availability of UP Cars.** Offers to transport are subject to availability of appropriate UP Cars, which will be determined by UP at its sole discretion at the time a UP Car is requested. If UP furnishes a UP Car of insufficient cubical or weight carrying capacity to permit Customer to achieve the required minimum weight provided in a Rate Document, and Customer loads the UP Car, UP will assess the rate provided in the Rate Document. When UP furnishes a UP Car, Customer must inspect the UP Car and reject any UP Car that is not in suitable condition to transport the Commodity.
- 2. **Releasing UP Cars.** With the exception of UP-owned loading securement devices that are part of UP Cars, Customer must completely unload, clean, and properly close and secure doors and hatches prior to releasing UP Cars as empty. If Customer releases a UP Car that is not empty and clean, Customer is responsible for all charges for cleaning the UP Car and transporting the UP Car to the nearest cleaning facility. If Customer is unable to properly close and secure doors and hatches due to wear or damage to the UP Car, Customer must notify UP with a description of the problem for the particular UP Car.
- 3. **Condition of Private Cars.** When Customer uses a Private Car, such Private Car must be in serviceable condition and otherwise fit for the intended purpose of safely transporting Commodity from Origin(s) to Destination(s). If Customer uses a Private Car, Customer shall ensure that the Private Car complies with all applicable rules and regulations for private railcars established by the AAR, DOT, and FRA. Acceptance of Customer's Private Car in interchange by UP will not relieve Customer of its obligation in this Publication and shall not constitute a waiver by UP of Customer's obligations in this Publication. Customer represents and warrants that it has all necessary rights to grant UP the right to use the Private Car, and UP's use of the Private Car will not violate any third party's rights in the Private Car or in any contract that such third party may have with Customer. Nothing in this Section alters or supersedes the AAR Interchange Rules, which exclusively govern responsibility for repairs, defects, damage, or destruction of Private Cars.
- 4. **Mileage Allowance on Private Cars.** Unless otherwise provided in Rate Documents, Customer waives payment of, and UP shall not be liable for, mileage allowances published in Tariff RIC-6007-series, as amended, supplemented, or reissued for the use of a Private Car. Customer represents and warrants that its interest in the Private Car is sufficient to permit it to waive payments of mileage allowances. If the owner of the Private Car, or the person whose reporting marks appear on the Private Car other than Customer, ("Car Owner") makes a claim against UP for payment of mileage allowances that have not been provided for ("Excess Mileage Allowance"), Customer shall either (a) defend and hold UP harmless from such claim, or (b) indemnify and reimburse UP for payment of the Excess Mileage Allowance to the Car Owner.

#### E. **GENERAL LIABILITY.**

- 1. **Customer Responsibility.**

- a. Customer shall load, block, brace, and secure its Shipments in accordance with all applicable Governmental Regulations, UP requirements, and the loading rules of the AAR. Customer and UP may agree to modify the loading rules of the AAR if approved by UP's Shipment Quality Department or, if the Commodity is a Hazardous Material, by UP's Hazardous Materials Management. Customer shall load, block, brace, and secure its Shipments to withstand normal forces experienced during rail transportation. Customer shall provide protection for its Shipments from environmental elements, vandalism, and abrasion, if such protection is desired. Customer shall be responsible for all Damages caused by improper or inadequate loading, unloading, blocking, bracing, securing, or protecting of its Shipments. UP loading requirements are available at this [link](#).
- b. Customer must provide a copy of this Publication or notify any and all other parties involved in any transaction of all the provisions, restrictions, and limitations contained in this Publication; provided that if Customer fails to do so, Customer agrees to defend and indemnify UP for any and all costs associated with claims or lawsuits alleging a lack of knowledge of the terms and conditions of this Publication.

## 2. Indemnity Obligations.

- a. **CUSTOMER IS SOLELY RESPONSIBLE FOR AND SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS UP AGAINST ALL DAMAGES RESULTING FROM ANY SPILL, RESPONSE, MITIGATION, CLEANUP, OR DISPOSAL DUE TO CUSTOMER'S NON-COMPLIANCE WITH THE TERMS AND CONDITIONS CONTAINED IN THIS PUBLICATION.**
- b. **CUSTOMER IS SOLELY RESPONSIBLE FOR AND SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS UP AGAINST ALL DAMAGES DUE TO ANY DEFECT IN A PRIVATE CAR, OR DUE TO THE PRESENCE OF ANY TRACE OF CHEMICALS OR CONTAMINANTS IN THE COMMODITY THAT ARE NOT PROPERLY DESCRIBED IN THE BILLING INSTRUCTIONS.**
- c. **CUSTOMER IS SOLELY RESPONSIBLE FOR AND SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS UP FROM ALL CLAIMS AND LAWSUITS FOR DAMAGES BROUGHT BY ANY PERSON(S) OR ENTITY(IES) ALLEGING PROPERTY LOSS, PERSONAL INJURY, OR DEATH, OR ANY OTHER DAMAGE ARISING OUT OF OR RESULTING FROM ANY ACT OR OMISSION OF CUSTOMER, AND SPECIFICALLY FROM ALL CLAIMS AND LAWSUITS RESULTING FROM CUSTOMER'S FAILURE TO COMPLY WITH THE TERMS AND PROVISIONS CONTAINED IN THIS PUBLICATION, OR CUSTOMER'S FAILURE TO COMPLY WITH APPLICABLE GOVERNMENTAL REGULATIONS RELATING TO UP'S TRANSPORTATION, STORAGE, OR CUSTODY OF THE SUBJECT SHIPMENT.**
- d. **THE INDEMNIFICATION OBLIGATIONS PROVIDED IN THIS SECTION E.2 SHALL APPLY EVEN IF UP IS ACCUSED OR ALLEGED TO HAVE CAUSED DAMAGES THROUGH ITS OWN NEGLIGENCE, NEGLIGENCE PER SE, OR STRICT LIABILITY.**

3. **Limitations on Liability.** In no event shall UP be liable for any special, consequential, indirect, incidental, or punitive damages whatsoever (including, but not limited to, lost profits, business interruption expenses, lost use of equipment, increased equipment rental or replacement cost, and Customer's liability to their own customers for liquidated damages or other damages), even if advised of the possibility of such damages in advance. Any shortfall payments or other liquidated damages set forth in any applicable Rate Document will not be considered special, consequential, indirect, incidental, or punitive damages.

## F. LIABILITY FOR COMMODITY LOSS OR DAMAGE.

### 1. Carmack Liability.

- a. 49 U.S.C. Section 11706 ("Carmack") is the federal statute codifying a rail carrier's liability for loss or damage to cargo carried on most interstate moves. UP offers Customers the option to ship cargo under Carmack liability terms at a higher freight rate. If Customer wants UP to carry a particular Shipment under Carmack liability terms, Customer must affirmatively elect and pay UP for such greater protection on each such Shipment by complying with all of the following conditions:

- i. No less than 72 hours before the loaded Shipment is Tendered for transportation, Customer must notify UP's Shipment Quality Department that Customer elects to purchase Carmack liability protections for the Shipment; and
  - ii. Customer must prepay to UP the higher freight rate for Carmack liability. The higher freight rate will be calculated as the applicable rate in the Rate Document multiplied by 250, or Customer may contact UP's Shipment Quality Department to discuss and obtain the higher freight rate through special pricing authority, which must be approved in writing by UP's Shipment Quality Department before the Shipment is Tendered; and
  - iii. The Billing Instructions that Customer submits to UP must note (1) that the loaded Shipment is moving under 49 U.S.C. Section 11706 liability terms, and (2) that the loaded Shipment is subject to a specific Rate Document.
- b. Customers that do not select Carmack liability by complying with all of the conditions provided under paragraph a. above, expressly acknowledge that UP and Customer have agreed to transport the loaded Shipment at a reduced rate specified in the applicable Rate Document and pursuant to the reduced liability provisions contained in this Publication.
- c. Customer understands that UP's public Rate Documents for specific Commodities, routes, and rates are published in the Customer portion of the UP website and can be viewed, downloaded, or printed by Customer from the UP website. Customer further understands and acknowledges that the UP publications, which are incorporated by reference into all Rate Documents, can also be viewed or downloaded from the UP website, and that if Customer has any difficulty accessing any such documents, Customer may contact UP's Customer Service Department for assistance locating and obtaining such documents from UP's website. Customer further understands and acknowledges that UP's publications, which are incorporated by reference in a Rate Document, will be provided to Customer by UP upon written request by following the procedure set forth under Section G below.
- d. UP will not provide coverage for Commodity loss or damage that occurs while the Commodity is in the possession of an international or a domestic rail carrier in a foreign country. Customers of domestic Shipments traveling into Mexico may, at their option, select Carmack liability protections for UP's portion of the carriage of such Shipments within the U.S. by complying with the conditions provided under paragraph a. above. Carmack liability protection is not available for loaded Shipments that originate in Mexico.

## 2. **Reduced Commodity Loss or Damage Liability.**

- a. General Provisions. Any matters not covered in this Publication will be governed by the terms of the Uniform Bill of Lading, Carmack, and the provisions contained within 49 C.F.R. 1005 et seq.
- b. Liability as Warehouseman. UP's liability shall be that of warehouseman only for Commodity loss or damage occurring after notice of the arrival of the property at Destination or at the port of export (if intended for export) has been duly sent or given, and after placement of the property for delivery at Destination, or Tender of delivery of the property to the party entitled to receive it, has been made. Except where a service is required as a result of UP's negligence, all property shall be subject to necessary cooperation and bailing at owner's cost. Property not removed by the party entitled to receive it after notice of the arrival of the property at Destination or at the port of export (if intended for export) has been duly sent or given, and after placement of the property for delivery at Destination has been made, may be kept in vessel, car, depot, warehouse or place of delivery of the carrier, subject to the charge for storage imposed by the delivering carrier and to carrier's responsibility as warehouseman, only; or at the option of UP, may be removed to and stored in a public or licensed warehouse at the place of delivery or other available place, at the cost of the owner, and there held without liability on the part of UP, and subject to a lien for all freight and other charges, including a reasonable charge for storage.
- c. Loading and Packaging. In the event of a load shift, when it is determined by UP that there was insufficient or improper blocking and bracing, Customer shall be responsible for Commodity loss or damage and Commodity transfer services. In addition, all charges, administrative, civil fines, storage, and Demurrage are due and payable in full before the railcar or the Commodity is released.



- d. Seals and Security Devices; Shortage. Customer must determine the type of protection necessary to protect its Shipments, including, but not limited to, the use of seals and security devices. UP does not apply seals unless UP becomes aware that a seal is missing or broken, nor does UP determine whether seals or security devices applied by Customer or others on its behalf are appropriate or adequate, except in the case of Commodity contamination. UP does not, in any case, inspect Shipments for seal integrity. In the event that a seal or a security device is broken or missing, the absence or breach of a seal or security device will not create a presumption of Commodity contamination or theft without actual physical evidence. Customer must include documentation of the application of seals or security devices at Origin and the seal number(s) in any claim for Commodity loss or damage relating to contamination. Customer must include documentation of the application of seals or security devices at Origin, the seal number(s), and actual loading and unloading records in any claim for Commodity loss or damage relating to shortage. UP shall not be liable for shortage of Commodity unless there is physical evidence of unauthorized entry into the railcar while it was in the possession of UP; provided that Customer also proves the quantity and condition of the Commodity within the sealed railcar at the time that UP first took possession of the railcar.
- e. Limitations on Liability.
- i. UP's liability for Commodity loss or damage will not exceed the actual amount of physical loss or damage sustained to the Commodity plus any costs reasonably and necessarily incurred through efforts to mitigate the loss or damage. UP will not be liable for:
    - (1) Commodity loss, damage, or delay caused by a Force Majeure Event, inherent quality or characteristic of the Commodity, natural shrinkage, an act or default of Customer or owner, or from Shipments stopped and held in transit at the request of Customer or owner;
    - (2) Special damages, consequential damages, indirect losses, punitive damages, interest, or attorney fees;
    - (3) Suspected contamination to the Commodity;
    - (4) Commodity loss or damage attributable to fluctuations in the market value of the Commodity;
    - (5) Commodity loss or damage, direct or indirect, that results from an interruption of rail service;
    - (6) Commodity loss or damage caused by defects in railcars that could have been discovered by reasonable inspection by Customer prior to loading;
    - (7) Commodity loss, damage, or deterioration resulting from pests or other organisms unless Customer provides evidence that the railcar was treated in accordance with USDA standards; or
    - (8) Brokerage fees, fines, penalties, foreign marine or foreign country freight charges, import duties, or other such charges on the Commodity that is lost, damaged or delayed in domestic rail transportation.
  - ii. Notwithstanding anything to the contrary, with respect to Commodity loss or damage, UP will not be liable for any claims totaling less than \$250.00 per railcar or claims in excess of \$250,000.00 per railcar.
  - iii. Unless a specific delivery date is otherwise agreed to in writing before the Shipment commences, UP will transport a shipment with reasonable dispatch, but not on any particular train or schedule. UP does not guarantee delivery of a shipment on any particular schedule or train. UP will not be liable for delay in the carriage or delivery of the Commodity. UP will not be liable for any Commodity losses attributable to fluctuation in the market value of the Commodity.
  - iv. UP's maximum liability for Commodity loss or damage will not exceed the lower of the amounts of: (1) UP's liability under this Publication, (2) the billing party's liability, (3) the liability of the party Tendering the Commodity to UP, and/or (4) liability under the terms of an ocean bill of lading covering a Shipment of the Commodity of which UP's shipment is a part.
  - v. If a Shipment moves under the terms of a through bill of lading issued by another carrier, such as a trucking or an ocean carrier, and that carrier's contract contains limited liability terms, including, but not limited to, a maximum value per pound or package limitation, UP's liability for Commodity loss or damage will be no greater than the lesser of UP's limitation of liability herein and the limitation of liability as stated on that bill of lading. If Customer wishes to obtain a higher loss or damage limit, Customer has the option of either securing its own insurance to cover the Shipment, or electing to ship the Commodity with UP under Carmack liability terms as described in Section F.1 above. The liabilities and responsibilities of UP and Customer, as defined herein, are independent of the value of the Commodity.

- vi. In case of a quarantine, Commodity may be discharged, at risk and expense of Customer, into a quarantined depot or elsewhere, as required by quarantine regulations or authorities. UP's responsibility will cease when Commodity is so discharged. The Commodity may also be returned to Origin by UP at Customer's expense. Customer is responsible for all expenses arising out of a quarantine. UP will not be liable for loss or damage caused by fumigation, disinfecting, or other acts required by quarantine regulations or authorities even if such acts are performed by UP. UP will not be liable for detention, loss, or damage of any kind occasioned by quarantine or the enforcement of a quarantine. UP will not be liable for any mistake or inaccuracy in any information furnished by UP as to quarantine laws or regulations.
- vii. In the event an act or omission of a party involved in the transportation process is not the sole cause but contributory to any Commodity loss or damage, then each party whose act or omission contributes to any such loss or damage will be liable for that portion of the loss or damage caused by its act or omission.
- f. Additional Limitations on Liability for Perishable Commodities. UP is not liable for temperature, corrosion, or humidity related losses unless Customer (i) uses UP Cars, (ii) requests mechanical protective service, and (iii) follows proper loading and pre-tripping guidelines. Carrier is not liable for deterioration when the amount of deterioration could reasonably be expected to occur during normal rail transport. UP is not liable for any deterioration when refrigeration equipment functions properly, and the Shipment is delivered within one market day of the date (Normal market day) calculated using the published Maximum Allowable Transit Days. The published Maximum Allowable Transit Days will be added to the day of release and/or receipt of Billing Instructions whichever is later. If release and/or receipt of Billing Instructions is received after cutoff time, then the following day will be used for the start of allowable transit days. UP is not liable for freezing damage to Commodity if Customer's requested set temperature is below 40 degrees Fahrenheit. UP is not liable for losses caused by temperature variances when: (1) such variance is within 5 degrees from Customer's requested set temperature; or (2) the temperature of the Commodity when loaded exceeds 5 degrees Fahrenheit of requested set temperature.
- g. Additional Limitation on Liability for Contamination. UP is not liable for contamination related losses unless the Shipment was sealed at Origin, and Customer provides evidence that the following requirements were met:
- i. The seal was a barrier type seal meeting ASTM (American Society for Testing and Materials) standards, a cable seal 1/8 inch in diameter, a high security bolt seal, or their equivalent;
  - ii. All seals were numbered and recorded on the Billing Instructions; and
  - iii. A two-step seal verification process was used that included sealing by one individual and: (1) visual verification of the seal by a different individual; or (2) photographic evidence of the car number, each aperture, and each seal clearly showing the seal integrity and identification marking and the date and time the photograph was taken.
- h. Mexico Specific Provisions. UP is not liable for Commodity loss or damage occurring in Mexico. Unlocated Commodity loss or damage from international land transport Shipments that do not break bulk or are not visibly checked at U.S./Canadian entry/embarkation points are excluded from liability coverage, and claims may be subject to compromise or declination unless clear and convincing evidence exists that damage occurred during the U.S./Canadian rail transport.
- i. Loss Verification, Mitigation of Damages, and Salvage. UP may inspect damaged Shipments of Commodity. If UP notifies Customer of an inspection, as a condition precedent to recovery of any claims for Commodity loss or damage, Customer must promptly notify UP upon discovery of any damage and allow UP or its agent to inspect. Failure of UP to inspect damaged Shipments, for whatever reason, will not relieve the burden of the claiming party to establish that the Commodity was received in a damaged condition, nor will it be considered an admission of liability by UP. Customer must mitigate its damages by accepting the damaged Commodity unless it is totally worthless and is without salvage value. Commodities that are abandoned to UP in an undamaged condition will be sold for the account of whom concerned and salvage proceeds only, less any salvaging expenses incurred, will be remitted to the beneficial owner.

### **3. Filing a Claim for Commodity Loss or Damage.**

- a. Filing a claim for Commodity loss or damage is a condition precedent before a lawsuit for Commodity loss or damage may be filed against UP.



- b. Only a claim filed with UP by the shipper of record can qualify as a valid claim for recovery of amounts sought in connection with Commodity loss or damage to which the claim pertains.
- c. Contents of a Claim. All claims must be written and must include all of the below documentation. UP reserves the right to summarily deny any and all claims submitted that do not contain all or part of the below documentation.
- i. A demand for payment of a specific amount;
  - ii. Information identifying the loaded Shipment, including equipment initials and number, Shipper and receiver's names, shipping date and Commodity;
  - iii. Origin records or certification as to the condition and quantity of the Commodity at the time Tendered to the Origin rail carrier. If shortage is involved, Origin seal records must be furnished;
  - iv. Destination records as to the condition and quantity of the Commodity at the time received from the Destination rail carrier;
  - v. Verification of the amount claimed such as certified invoices and repair bills;
  - vi. Evidence as to the disposition of the damaged Commodity;
  - vii. Evidence that Shipment was loaded in compliance with this Publication and other governing documents; and
  - viii. For fresh fruits and vegetables, origin and destination USDA inspections, or foreign government equivalent.
- d. Procedure For Claim Submission to UP. All Commodity loss and damage claims filed against UP must be filed in writing by filling out an online [Damage Notice or Freight Claim](#).
- e. Timing for a Claim. As a condition precedent for payment of a claim or filing a lawsuit, claims must be filed in writing within nine months of the delivery date or, in the event of non-delivery, a reasonable time for delivery. Such written or electronic communication shall comply with the minimum requirements contained in section 3.a. above and the requirements set forth in 49 C.F.R. 1005.2(b).
4. **Lawsuits and Venue**. There are no intended third party beneficiaries to this contract of carriage All lawsuits for Commodity loss or damage must be filed in the United States District Court in Omaha, Nebraska. If Customer has not elected and paid for Carmack terms to govern the Shipment, Carmack's venue provisions do not apply.
- G. **COMMON CARRIER RATE REQUESTS**. UP will accept common carrier rate requests, as required under 49 U.S.C. Section 11101, only when received on this [form](#), and only when emailed to [commoncarrierrequests@up.com](mailto:commoncarrierrequests@up.com). All other rate requests received will not be deemed a common carrier rate request under 49 U.S.C. Section 11101.
- H. **GLOSSARY OF TERMS**. The following terms shall have the meaning set forth below when used in this Publication or any attachment hereto:
1. "AAR" means the Association of American Railroads, the industry's leading trade organization, which is dedicated to improving the efficiency, safety and service of the railroad industry.
  2. "Commodity" means the goods being shipped under this Publication.
  3. "Consignee" means the party to whom a Shipment is consigned.
  4. "Consignor" means the party in whose name a railcar is ordered for loading, the party consigning a Shipment, or the party who furnishes forwarding instructions.
  5. "Customer" means any Shipper, Consignor, Consignee, the party to whom Shipment is to be physically delivered, or the party primarily responsible for paying the line-haul freight charges for transportation provided by UP.
  6. "Damages" means losses, damages, costs, expenses (including, without limitation, reasonable attorneys' fees, costs of court and other legal or investigative expenses, reasonable consulting fees, costs of environmental clean-up, environmental remediation, emergency responses, evacuations, and damages caused by the release, discharge, escape, or presence of a Commodity that is poisonous or toxic by inhalation), judgments, fines, and penalties.
  7. "Demurrage" means the fee imposed for the extended usage of a UP asset as provided in UP Tariff 6004-series.

8. "Destination" means the location at which the Shipment ends.
9. "DOT" means the U.S. Department of Transportation.
10. "EPA" means the U.S. Environmental Protection Agency.
11. "Force Majeure Event" means an act of God; authority of law or Governmental Regulation; labor dispute; weather impediments; fire; explosion; war; insurrection; threatened or actual act of terrorism; or other like causes beyond one's reasonable control. Downturns in the economy and changes in market conditions are **not** considered a Force Majeure Event. A Force Majeure Event cannot excuse non-compliance with safety requirements and Governmental Regulations.
12. "FRA" means the U.S. Federal Railroad Administration.
13. "Governmental Regulation" means any and all laws, regulations, governmental rules, and orders.
14. "Hazardous Materials" means hazardous materials as defined by the DOT Hazardous Materials Regulations, 49 C.F.R. Section 172.101 and 172.102.
15. "Interline Shipment" means a Shipment that begins on the rail lines of one carrier and ends on the rail lines of another carrier.
16. "Origin" means the location at which the Shipment begins.
17. "Private Car" means a railcar that is not owned, leased, or controlled by a carrier.
18. "Publication" means Tariff UP 1000-series, as amended from time to time.
19. "Rate Document" means any tariff, contract, agreement, or any other document that provides a rate for UP's transportation services. All Rate Documents are subject to this Publication.
20. "Shipment" means any railcar(s) Tendered to UP for transportation.
21. "Shipper" means the person or firm by whom articles are shipped.
22. "STCC" means standard transportation commodity code.
23. "Tender" means the notification of arrival, constructive placement, or actual placement of an empty or loaded railcar at a Customer facility; or the notification by a Consignor or Customer to UP or any other carrier that a railcar is ready for pick-up.
24. "UP" means Union Pacific Railroad Company.
25. "UP Car" means a railcar that is owned, leased, or controlled by UP.

I. **DEFINITION OF ITEM SYMBOLS.** Changes between versions of this Publication are denoted as follows:

- Addition: A or [a]
- Change: C or [c]
- Decrease: D or [d]
- Increase: I or [i]
- Expired: X or [x]

## ATTACHMENT A

### COAL & PETROLEUM COKE

#### A. GENERAL TERMS AND CONDITIONS.

1. **Application.** The specific terms and conditions contained herein apply on Shipments of Commodities on UP (a) whose STCC begins with the two digits 11 or dried enhanced or beneficiated coal (synthetic coal) if the applicable rates apply to STCC number 29-911-91 (collectively, "Coal"), and (b) whose STCC begins with 29913 ("Pet Coke").
2. **Governing Publications.** This Attachment is attached to and incorporated in the Publication. In the event of a conflict between the terms of this Attachment and the Publication, the terms of this Attachment shall govern. The terms not otherwise defined herein shall have the meanings given to them in the Publication.
3. **Definitions.** The following terms shall have the meaning set forth below when used in this Attachment:
  - a. "NCTA" means National Coal Transportation Association.
  - b. "Ratable Shipments" means monthly Shipments of Coal that are no more than 10% greater or 10% less than 1/12 of the Annual Volume Estimate.
  - c. "Trainset" means a train of Private Cars supplied by the Customer to cycle as a single intact unit between the Origin(s) and Destination(s) specified in the Rate Document.

#### B. COAL SHIPMENT TERMS AND CONDITIONS.

1. **Loading / Weighing.** Customer or Customer's loading operator is responsible for weighing Shipments of Coal at Origins using certified scales. If any loaded train of Coal or portion thereof cannot be weighed due to a scale malfunction, the lading weight per railcar of such loaded train will be determined by averaging the lading weight per railcar of the last 10 loaded trains of Coal weighed at the Origin going to the same Destination prior to the scale malfunction. If fewer than 10 loaded trains of Coal were weighed at the Origin going to the same Destination prior to the scale malfunction, the lading weight per railcar will be determined by averaging the weight per railcar of the loaded trains of Coal containing like railcars weighed at the Origin and going to the same Destination prior to the scale malfunction.
2. **Annual Volume Estimate.** No later than July 1 of each year, Customer must provide UP the number of tons of Coal Customer anticipates to ship from each of its mine producers and Origins in the next calendar year by month ("Annual Volume Estimate"). If Customer begins Shipments during a calendar year, Customer must provide UP an Annual Volume Estimate for the remaining months of that calendar year at least 90 calendar days prior to the first Shipment. Customer may revise its Annual Volume Estimate at any time prior to October 1 of each year. Customer must electronically submit its Annual Volume Estimate via the forecasting tool on UP's secured website.
3. **Monthly Forecasts / Ratable Shipments.** Customer's monthly forecasts submitted under the NCTA tonnage nomination process and the corresponding monthly Shipments must be Ratable Shipments.
4. **Trainsets.** If the Rate Document for the applicable Destination specifies Private Cars, Customer must provide Trainsets of open-top hoppers or gondolas that are compatible with the loading facility and the unloading facility and that have a marked capacity sufficient to meet the minimum lading weight per railcar as specified in the Rate Document for the applicable Destination. Customer must provide a sufficient number of Trainsets to meet its minimum volume requirement specified in the Rate Document (if any); provided, however, that UP, in UP's sole judgment, reserves the right to decide the number of Trainsets that will be in active service.
5. **Railcar Maintenance.** Private Cars moving Coal are subject to UP's Car Maintenance Instruction CMI 950302, which requires a mechanical inspection every 12 months and establishes standards for subsequent repair of identified defects.
6. **Minimum Volume Requirement & Liquidated Damages.** A minimum volume requirement applies only if specified in the Rate Document. If Customer fails to meet its minimum volume requirement due to (i) causes

solely attributable to UP, (ii) limitation of Trainsets by UP, or (iii) a Force Majeure Event, Customer's minimum volume requirement will be reduced to account for such causes, limitations, or events. If Customer fails to satisfy the minimum volume requirement, UP shall be entitled to compensation in the form of liquidated damages in an amount equal to \$5.00 for each shortfall ton. Within 30 days after the end of each minimum volume period, Customer shall send a written statement to UP certifying the aggregate number of tons of Coal on which freight charges were paid under the applicable Rate Document, and whether Customer has met the minimum volume requirement.

7. **Frozen Coal.** In order to reduce the possibility of unloading delays due to frozen Coal during the period from November 15th of each year through March 15th of each succeeding year, Customer or Customer's loading operator shall uniformly treat all Coal loaded into railcars with an industry-approved freeze conditioning agent in the quantity and in accordance with the process recommended by the manufacturer of the freeze conditioning agent used.

C. ADDITIONAL TERMS AND CONDITIONS FOR COAL TRAINS ORIGINATING IN WYOMING.

1. **Required Loading Measures to Mitigate Coal Dust.**

- a. For Coal trains loaded at any Powder River Basin mine for subsequent movement on UP, Customer is responsible for loading cars with Coal in such a way that Coal dust loss in transit from Customer's loaded cars will be reduced by at least 85% as compared to loss of Coal dust from loaded Coal cars where no remedial measures were taken.
- b. Loaded Coal trains will be deemed to be in compliance with the standard in paragraph (a) if the trains meet the specifications in the General Order or Timetable for the Powder River Division, Special Conditions involving Coal Mines issued by BNSF, the rail carrier designated by the ICC/STB as authorized to establish operating rules for the joint line owned by UP and BNSF in the Powder River Basin (the "Operating Rule"). Specifically, either:
- i. Customer or Customer's loading operator must arrange to (A) load uncovered Coal cars in accordance with the profile as published in the BNSF template drawing number 565000 on BNSF's website and (B) properly apply an acceptable topper agent (e.g. surfactant) to the entire surface of Coal in all cars at an effective concentration level and in accordance with manufacturers' specifications. Topper agents and concentration rates currently approved by BNSF, if used in accordance with the manufacturers' specifications, are shown in table below:

Topper Agent <sup>1</sup>	Concentration Rate per Railcar <sup>2</sup>	Total Solution Applied per Railcar <sup>3</sup>
Nalco Dustbind Plus	2.0 gal	20 gal
Midwest SoilSement <sup>4</sup>	1.25 gal	18.75 gal
Midwest SoilSement CCT-CM	0.65 gal	11.65 gal
AKJ Nalco CTS-100C <sup>5</sup>	1.36 gal	15 gal
AKJ Nalco DustLock C <sup>6</sup>	1.14 gal	12.5 gal
Rantech Capture 3000	2.5 lbs	20 gal
MinTech MinTopper S+0150	1.1 gal	20 gal
GE Dustreat DC9163E <sup>7</sup>	0.18 gal	18 gal

Or

- ii. Customer or Customer's loading operator may adopt an alternative Coal dust mitigation plan involving other measures (e.g., compaction or other technology) and profiling in accordance with paragraph (b)(A)

<sup>1</sup> For topper application only.

<sup>2</sup> The amount of topper agent mixed into a solution for each loaded railcar. These concentration rates were established during testing.

<sup>3</sup> The amount of topper agent solution (agent and water) applied to each loaded railcar.

<sup>4</sup> Midwest SoilSement may be produced by diluting Midwest SoilSement CCT-C with water 1:1.9 (water to agent).

<sup>5</sup> AKJ Nalco CTS-100 may be produced by diluting AKJ Nalco CTS-100C with water 10:1 (water to agent) and applied at 15 gallons per railcar.

<sup>6</sup> AKJ Nalco DustLock may be produced by diluting AKJ Nalco DustLock C with water 10:1 (water to agent) and applied at 12.5 gallons per railcar.

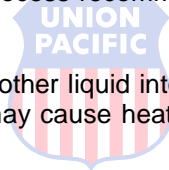
<sup>7</sup> GE Dustreat DC9163E is applied to Coal treated with GE CoalPlus Full Body at 0.1 pounds/ton and 1.5% concentration.

above; provided, however, that Customer or Customer's loading operator must submit test results to BNSF that satisfy BNSF that the alternative proposed compliance measure(s) will result in compliance with paragraph (a).

- c. In order for UP to comply with the Operating Rule regarding Coal dust mitigation measures, Customers must adopt measures to comply with this Section C.1. as soon as practicable.
  - i. Customer must notify UP in writing of the steps it has taken, or directed its loading operator to take, in accordance with this Section C.1. to comply for each mine or load out in the Powder River Basin where Customer anticipates loading Coal into trains that will subsequently be transported on UP. This notice must include the approximate date when those Coal trains will be profiled and a topper agent will be applied.
  - ii. If Customer proposes to comply by using either an alternative topper agent or an alternative measure, the notice to UP should provide a description of the alternative topper agent or measure and when Customer or Customer's loading operator proposes to obtain BNSF's approval of the alternative topper agent or measure. Customer may notify UP of its choice to use an alternative whenever Customer decides that it will demonstrate to BNSF that the alternative should be accepted. Until BNSF notifies Customer and UP in writing that BNSF considers the testing results adequate assurance that the alternative satisfies the standard in this Section C.1., Customer or Customer's loading operator must load its Coal trains in accordance paragraphs (b)(i).

**D. PET COKE SHIPMENT TERMS AND CONDITIONS.**

1. **Frozen Pet Coke.** In order to reduce the possibility of unloading delays due to frozen Pet Coke during the period from November 15th of each year through March 15th of each succeeding year, Customer or Customer's loading operator shall uniformly treat all Pet Coke loaded into railcars with an industry-approved freeze conditioning agent in the quantity and in accordance with the process recommended by the manufacturer of the freeze conditioning agent used.
2. **Loading.** Customer shall not load water or other liquid into railcars with Pet Coke, and Customer shall not load railcars with Pet Coke in any manner that may cause heat damage, which typically occurs at temperature at or exceeding 200 degrees Fahrenheit.
3. **Equipment.** When Customer uses a Private Car for Tendering Pet Coke, Customer shall maintain all steel components in the Private Cars to keep such components free of damage, including corrosion, so that Pet Coke does not leak out of the Private Cars enroute.





## ATTACHMENT B

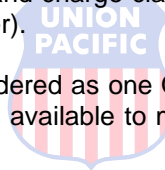
### GRAIN & GRAIN PRODUCTS

#### A. GENERAL TERMS AND CONDITIONS.

1. **Application.** The specific terms and conditions set forth herein apply to Shipments of Grain and Grain Products (collectively, "Commodities").
2. **Governing Publications.** This Attachment is attached to and incorporated in the Publication. In the event of a conflict between the terms of this Attachment and the Publication, the terms of this Attachment shall govern. The terms not otherwise defined herein shall have the meanings given to them in the Publication.

#### B. SPECIAL CO-LOADED SHIPPING TERMS AND CONDITIONS.

1. **Car Loads.** A minimum of 50 carloads must be loaded at each facility. Origin facilities must have sufficient track capacity to accept all cars not to exceed one switch. All cars from involved Origins must be Tendered for Shipment on the same day with each bill of lading endorsed "part of (100 to 110 car) Shipment with (50 or more) cars originating at (name of second Origin)". Co-loading between the following stations will not be permitted: Rockford, ID and Collins, Idaho Falls, Newdale, ID and Collins, ID and Rockford, Idaho Falls, Newdale, ID.
2. **Car Orders.** Orders must be from the same car supply method (either vouchers, guaranteed freight, or general distribution). If general distribution is used, both Origin and Destination must be eligible to order cars. Car order locations are restricted to only those specified in this Attachment or otherwise in the Publication. Customer must place two separate 50 car orders clearly marked as co-load with the same want date and each referencing the other co-load location. Late payment for vouchers will be calculated using the later placement date (e.g. 50 cars delivered on time and 50 cars delivered two days late, then two day late charge would apply to all 100 cars). Guaranteed freight orders can be canceled and charge claimed for all 100 cars if both orders are not filled in the half (even if 50 cars were loaded on one order).
3. **Demurrage.** Co-loaded Origins will be considered as one Origin in applying Demurrage provisions. Free time for loading will not begin until sufficient cars are available to meet the minimum number of cars required for the co-load rate.



- #### C. NON-SPLIT TRAINS. Unit trains must be loaded by one Consignor, at one location, at one Origin, and Tendered for Shipment on one day and on one bill of lading. The Origin facility must have sufficient privately held track to receive and load the entire unit train, not to exceed one switch/trip for placement. The entire unit must be billed to one Destination or connecting line at Destination/gateway named. Destination facilities must have sufficient privately held track on which to accept and unload the entire unit, not to exceed one switch/trip for placement. Shipments must be pre-blocked by Consignor at Origin in units of not less than 25 cars.

- #### D. SPLIT TRAINS. Unit trains must be loaded by one Consignor, at one location, and at one facility. The Origin facility must have sufficient privately held track to receive and load the entire unit train, not to exceed one switch/trip for placement. Shipments may be billed to not more than four Destination facilities, or a combination of Destination facilities and connecting rail carriers at Destination/gateway named. Each Destination facility must have privately held trackage of sufficient capacity on which to receive and unload a minimum of 25 cars and/or privately held trackage of sufficient capacity equal to size of units larger than 25 if so billed/consigned. Shipments must be pre-blocked by Consignor at Origin in units of not less than 25 cars. Blocking units must be from the smallest on the head end to the largest. Billing to be provided for each 25 car unit/block specifying Consignee, final Destination, and complete routing instructions. All billing must be Tendered for Shipment on the same day, with each bill of lading cross-referenced to one another, and with lead car numbers noting they are part of a 75 car or 110 car Shipment. Billing instructions must be furnished to UP through Electronic Data Interchange ("EDI") or through UP's website. Billing instructions must include a reference code of "RB" and the consist size (i.e. 75 or 110) to be protected for freight bill pricing. A complete tariff authority, including item number, is also required. Failure to properly pre-block Shipments or failure to issue billing in accordance with the provisions of this section will result in the assessment of the single car rate. Car supply vouchers cannot be used with split-train service.

E. RATE APPLICATION / SPECIAL FREIGHT CHARGES.

1. **Switching Charge Absorption.** UP may absorb a fixed fee per loaded car of connecting railroad's switching charges as provided in a separate agreement with Customer. Charges not absorbed will be in addition to the line haul charges.

F. SPECIAL COMMODITY TERMS AND CONDITIONS.

1. **Quarantine.** In an effort to prevent the spread of the disease, UP will not accept potentially infected Shipments from a quarantined area that has not been certified as clean by the USDA. A special handling charge of \$950 per car will be imposed on any quarantined Commodity originating within quarantined areas as set forth by the United States Department of Agriculture's Animal and Plant Health Inspection Service or other authorized regulatory body. This charge is effective only if the Shipment originates and/or terminates on UP or an associated short line. The special handling charge is in addition to freight charges. If a Shipper plans to route a Shipment of wheat from a quarantined area via UP, the following must occur: (1) Secure USDA certificate(s); (2) contact UP's Customer Care and Support at 1-800-272-8777, advise Shipper is shipping wheat out of a quarantined area and provide the car numbers and certificate numbers for the cars being shipped; and (3) waybill the car to the originating carrier. The following forms of wheat are covered by the quarantine and require USDA certification:

<u>Description</u>	<u>STCC</u>
Wheat	01-137-10
Durum Wheat	01-137-20
Feed Wheat	01-137-30
Triticale	01-039-40

A special handling charge will be enforced for each car moving from a quarantined area via UP that is not accompanied by a USDA certificate. If a Customer fails to follow the above procedures, a charge of \$10,000 will be assessed in addition to any freight charges, fees, or liability incurred.

G. GRAIN CAR ALLOCATION SYSTEM.

1. **General Distribution.** General distribution is used by UP to supply covered hoppers in a systematic manner for loading of whole grains. General distribution may also be used on other railroads reached by reciprocal switch or on participating short line carriers. UP will evaluate covered hopper supply and establish a general distribution status of "open" or "matrix".
  - a. Open. The general distribution status will be open when demand for cars is current or when cars are in storage. Customers can order cars at any time during this status. Each location may have one general distribution order at a time for up to the number of cars the location can spot. When the cars for the first order are placed, that shipping location may place another order.
  - b. Matrix. The general distribution status will be matrix when supply is tight and UP is not able to fill all demand. Customers are not free to order general distribution cars under this status; they will be offered cars as they are available. General distribution uses a matrix to offer cars on a rotation or "turn" basis. The matrix is a listing of all shipping locations that are registered in the Grain Car Allocation System. New Customers that register will be given the next number on the matrix. The matrix is separated into three large geographic regions: Region 1 - Arkansas, Illinois, Louisiana, Missouri, New Mexico, Oklahoma, Texas, Wisconsin (Including Duluth, MN); Region 2 - Colorado, Iowa, Kansas, Minnesota, Nebraska and Wyoming (Including Kansas City and St. Joseph, MO); and Region 3 - Arizona, California, Idaho, Montana, Nevada, Oregon, Utah, and Washington. All shipping locations were assigned a random sequence number when the system was implemented. UP will evaluate car supply and email an offer of cars to the next shipping location(s) on the matrix. The offer is approximately 7 to 14 day advance notice of car availability. Each location will have two days to order all or a portion of the cars their facility is registered to receive. Customer has no obligation to order cars but will not have another opportunity until the next rotation of the matrix or until general distribution is open.
  - c. Ordering General Distribution Cars. Orders can be placed on the UP website. General distribution orders are for immediate delivery; no preferred want dates are accepted. To register or change a location, contact UP Equipment Distribution. Car placements will be made when cars are available and not on a guaranteed basis; no penalties will be applicable to UP for late delivery. General distribution orders that are placed and later

canceled will be subject to the General Distribution Car Order Cancellation Charge as found in UP 4051-4052, Item 70. Cancellation charge will be waived by UP in the event cars are not delivered within 30 days from date ordered. Covered hoppers offered for placement will be Customer/station specific, and no transfers will be allowed.

- 2. Guaranteed Freight Pool.** The Guaranteed Freight Pool program is an agreement between UP and Customers shipping whole grain. Under the agreement, UP guarantees a monthly supply of empty covered hoppers for loading, and the Customer agrees to provide a minimum number of loads of whole grain for each empty supplied. Each agreement is called a Guaranteed Freight Pool, and each participating Customer is called a pool operator. All parties to Guaranteed Freight Pool transactions, including pool operators, Shippers (if different than pool operators), and intermediaries will be subject to the terms outlined in this section. Placement periods will be half-month segments of First Half (FH - 1st through 15th of the month) and Last Half (LH - 16th through the last day of the month).

Pool operators will be required to divide the monthly number of cars guaranteed into half-month segments, with approximately 50% in each half. UP guarantees to place or constructively place covered hoppers by the last day of the applicable shipping half-month period, provided that orders are placed prior to the order deadline, and service levels are not exceeded as described herein. In the event UP fails to place or constructively place cars by the last day of the period, Shippers may cancel the order and claim the Guaranteed Freight Failure to Deliver charge of as found in UP 4051/4052, Item 70.

Shipper must submit an intent to cancel or claim on the website by 3:00 PM Central Time on the last day of the period. Should the last day fall on a Saturday, Sunday, or Railroad Holiday, the Shipper must submit an intent to cancel on the preceding business day. Orders will be canceled on the first day of the following period provided Constructive Placement or Actual Placement has not occurred. If placement has not occurred and the order is canceled, Railroad will process the claim and issue payment. Claims may be tracked on the Railroad website. Cancellation payments shall constitute the full and exclusive remedy to the Shipper for failure of Railroad to provide empty covered hoppers as described above. If cars are not placed during the current half (as described above) and order is not canceled by Shipper, order will roll to the next period. All rules and guarantees for rolled order apply as if the order was for the next period. If Shipper cancels any or all cars on an order that is not subject to Railroad's failure to place or constructively place, as outlined above, or in any way fails to load the cars on the subject order, Railroad will claim from Shipper a "Guaranteed Freight Commitment Shortfall Charge" as described hereinafter. Shortfall Charge will be claimed for each car that Shipper failed to load. Guaranteed Freight Commitment Shortfall Charge payments shall constitute the full and exclusive remedy to Railroad for failure of Shipper to load the number of cars on subject car order. Orders for Guaranteed Freight Pool cars must be placed prior to order deadline to maintain the guarantee. Shortfalls in cars ordered for a given month will result in Railroad claiming from pool operator a Guaranteed Freight Commitment Shortfall Charge as described at the end of this item. Pool operators must place car orders against the total number of cars required by the tenth calendar day preceding the shipping period. Should the tenth day preceding the period fall on a Saturday, Sunday, or Railroad Holiday, the Shipper will have until the next business day to place orders. Applicable tariffs provisions regarding Demurrage will begin on the Actual Placement date or the requested placement date, whichever is later.

Guaranteed freight orders made in unit train quantities (75, 100 or 110) must be shipped as a complete unit train to a single Destination or gateway. Unit orders that are shipped to multiple Destinations or multiple gateways without prior permission will be rated at the single car freight rate.

Requests for a change of shipping location may be made after a car order is placed. Transfers will be allowed at the discretion of Railroad. Car Order Origin Transfers must be requested on the Railroad website. In the event that the guarantee is removed, the guarantee and Commitment Shortfall Charge provisions will be void for only the placement period in which the order is transferred. If the cars are not placed by the end of the placement period, the guarantee is reestablished in the next placement period.

- 3. Car Supply Vouchers.** Car supply vouchers provide all Railroad Customers with a method to obtain a guaranteed supply of covered hoppers for loading of whole grain. Vouchers will be offered each Monday (with some exceptions) in the form of an auction. Vouchers will be offered for guaranteed placement of cars in future placement periods defined as Half Month or Week of. Half Month vouchers will cover two placement periods; First Half (FH - 1st through 15<sup>th</sup> of the month) and Last Half (LH - 16th through last day of the month). Week of vouchers will cover a specified week (Sunday through Thursday). Weekly auctions will be conducted on the Railroad website. Railroad will allocate a specific number of cars for each type of voucher and each region; no

cars will be added to that allocation. The allocated cars will be auctioned off over multiple weeks until all cars are offered or sold. Customers desiring to bid must contact Railroad Equipment Distribution to register. Railroad will only accept bids via the web site. Each lot will specify the number of cars, region and placement period. Bidders will have until 2:00 PM Central Time on the day of the auction to submit a bid. Bids must be in whole US dollars and for \$10 or more. At the close of bidding, all winners will be notified. Notifications will include the voucher number(s), payment amount, due date and remittance instructions. Winning bid amounts will be available via the Railroad website. The payment amount will consist of the total premium bid and \$300 deposit per car. Deposit will be deducted from freight bill when cars are shipped. Customer will have two business days to transfer the total amount due to Railroad's designated bank. All deposits and premiums shall be remitted in US funds. After payment is received, Railroad will issue the voucher(s).

Railroad guarantees to place or constructively place the specified number of covered hopper cars during the specified placement period provided the voucher holder places a car order prior to the order deadline and service levels are not exceeded as herein. In the event Railroad fails to place or constructively place voucher cars by 11:59 PM on the last day of the applicable period, voucher owner may claim a late charge of \$50 per car per day up to a maximum of \$400 per car. The applicable payment will accrue on each day including Saturdays, Sundays, and Holidays and will terminate upon placement or Constructive Placement. Claims must be submitted on Railroad's website. Late claim payments shall constitute the full and exclusive remedy to the voucher holder for failure of Railroad to provide covered hoppers as described on the voucher; however, the voucher entitlement to placement of cars will be honored. All voucher guarantee claims for late placement must be submitted no later than 60 days after car placement or claim will be denied. Vouchers that are not filled within the placement period will count along with all other orders toward the service levels in future periods. On lots that include multiples of single cars, one voucher will be issued with multiple car orders accepted to equal the total number on the voucher. Single car vouchers can be split or combined as needed without charge.

Requests to combine or split vouchers must be entered on the Railroad website. Unit train vouchers cannot be split or shipped in single car quantities. Vouchers may be assigned without prior consent of Railroad. The assignee shall assume all rights, responsibilities and obligations of the assignor. Railroad must be notified of ownership transfers to allow new assignee to order cars. Ownership transfer notifications must be entered on the Railroad website. There is no charge associated with ownership transfers. At the discretion of Railroad, Half Month vouchers may be transferred from one region to another. Requestor will be subject to the voucher Region Change Fee as described at the end of this item. Voucher Region Change Fee must be paid at the time of the region change. Orders for placement of voucher cars must be placed prior to order deadline to maintain the guarantee. If no order is placed prior to the voucher expiration date (see below), then the voucher will be considered canceled and the deposit will be forfeited. Orders must be placed at least seven days prior to the shipping period to maintain the placement guarantee. Shipping location must be within voucher Region Preferred want dates within the placement period to be accepted for all but the last three days of the period. Voucher will expire if no order is placed by the 5th calendar day of the shipping period.

Orders must be placed at least four days prior to the shipping period to maintain the placement guarantee. Should the guarantee order deadline day fall on a Saturday, Sunday, or Railroad Holiday, the car order deadline shall be the next business day. Preferred spotting dates must be within the placement period (Sunday-Thursday). Voucher will expire if no order is placed by the 2nd calendar day of the shipping period.

Applicable tariff provisions regarding Demurrage will begin on the Actual Placement date or the requested placement date, whichever is later. By placing a car order in connection with a UP voucher, the voucher holder warrants that the loading location will accept the cars for placement.

Requests for a change of shipping location may be made after a car order is placed. Transfers within a region will be allowed at the discretion of UP. Requestor will be subject to the Car Order Origin Transfer Fee as found in UP 4051/4052, Item 70. Car Order Origin Transfers must be requested on the UP website. Shipper will be notified if placement guarantee is void. UP reserves the right to void guarantee when transferring orders. In the event that the guarantee is removed, the guarantee provisions will be void for only the placement period in which the order is transferred. If the cars are not placed by the end of the placement period, the guarantee is reestablished in the next placement period.

Customers must use an approved electronic method for billing voucher Shipments and must ensure the voucher number is properly entered on the waybill. Deposits will only be refunded as a reduction of freight charges to the payer of freight. Shipments billed without proper reference to the voucher number will be subject to loss of \$300 deposit. If for any reason the deposit is not deducted from the freight charges, requests for adjustment/correction



must be made within 120 days of freight bill. Requests must be made to UP Equipment Distribution. When Shipments are made in connection with a unit voucher, billing must be from one Origin to one Destination on one bill of lading. Failure to bill the unit in the quantity specified on the voucher will result in forfeiture of the deposit. Half-month voucher Shipments of singles can be made in any size up to 69 cars. Voucher Shipments cannot be combined with other vouchers or other supply methods. Shipments cannot be made with less than 92% of the cars stated on the voucher. In the event of bad order cars, or other circumstances necessitating Shipments being made with less than the number of cars stated on the voucher, reference to the voucher should be made on the original Shipment. On unit trains (Unit Size = 110 cars), the \$300 deposit will be deducted in full at the time of the original Shipment. No reference to the voucher number should be made when shipping follow cars, and no reduction will be made on the freight bill covering these cars. Customer may request approval from Agricultural Products Marketing to move follow cars at the same rate when shipped to the same Destination as the voucher.

Freight bill must be issued by and paid to UP. Failure to provide a line-haul movement or failure to ship whole grains will result in loss of deposit.

4. **Shipments to Mexico.** Customer must indicate border crossings when placing car orders for covered hoppers for Shipment of whole grains and grain products to Mexico. If the car order is not properly identified with the border crossing, UP reserves the right to void the guarantee and charges may apply for the placement period.
5. **Other Guaranteed Freight and Voucher Terms.** When destined to elevators located on other carriers, UP will consider placement to be 24 hours from the time of delivery to the other carrier and no charge will be paid by UP on guaranteed orders when such carrier fails to place the car within the specified time. When a car is placed for loading and rejected by the Shipper, a replacement car will be furnished as promptly as operations permit. No charge will be paid by UP on guaranteed orders for failure to place a substitute car during the specified shipping period. Guarantee involving placement of cars at Origin facilities will be governed by existing track, line, and service capacity at existing service levels. Customer's combined shuttle, cycle, voucher, Guarantee Freight, and General Distribution car orders, along with car orders carried over from prior periods, may not exceed Customer's track capacity and existing service level. Should this situation occur, UP reserves the right to void the placement guarantee on orders that exceed existing track and service levels. In the event Customer's combined orders exceed four units per half, the guarantee provision will not apply to orders in excess of four. These orders will be considered to have exceeded service levels. It is the responsibility of the elevator to communicate with the pool or voucher owner. Orders that exceed service levels and have lost their guarantee may have one of the following options: (1) transferred free of charge to another location; or (2) rolled to the next period. Orders rolled to the next period may reestablish placement guarantees as described in other parts of this section. UP reserves the right to prioritize orders within and between car supply methods including programs not defined in this Attachment. This prioritization may include filling orders that are subject to charges prior to orders where charge exposure has been incurred. Any prioritization shall not affect Customer rights to liquidated damages as provided in this Attachment. UP's consideration of liability on both Guaranteed Freight Pool and voucher claims will be based on the placement of cars that UP applied to a Shipper's car order(s). Empties can be ordered for any registered shipping location as long as UP receives a line haul movement of whole grain. Cross-town switch movements do not qualify as a line haul. Shipments must originate on the rail, on other railroads reached by reciprocal switch, or on participating short line carriers.
6. **Whole Grain Reloading.** Reloading of covered hoppers with whole grains (as listed in this section) will only be allowed at the discretion of the UP with pre-authorization from UP Equipment Distribution. Cars that are reloaded without specific permission will have to be off-loaded and released empty or a \$500 per car charge will be assessed to the party loading cars.

The following short line carriers are eligible for participation in this system:

- AKDN ACADIANA RAILWAY
- AOK ARKANSAS-OKLAHOMA RAILROAD
- AKMD ARKANSAS MIDLAND RAILROAD
- ATLT AUSTIN, TODD & LADD
- AUAR AUSTIN AREA TERMINAL
- AWRR AUSTIN & WESTERN RAILROAD
- BLMR BLUE MOUNTAIN RAILROAD
- BLR BLACKLANDS RAILROAD
- CFNR CALIFORNIA NORTHERN RAILWAY



- CKRY CENTRAL KANSAS RAILWAY
- DGNO DALLAS GARLAND & NORTHEASTERN RR
- DSRD DELTA SOUTHERN RAILROAD
- IERR EASTERN IDAHO RAILROAD
- IAIS INTERSTATE RAILROAD (HANCOCK, IA ONLY)
- INPR IDAHO NORTHERN & PACIFIC RAILROAD
- KO KANSAS & OKLAHOMA RAILROAD
- KRR KIAMICHI RAILWAY COMPANY
- KSW KANSAS SOUTHWESTERN RAILWAY
- KYLE KYLE RAILROAD COMPANY
- MNA MISSOURI & NORTHERN ARKANSAS RAILROAD
- MNMR MINNESOTA COMMERCIAL RAILWAY COMPANY
- MNRR MODOC NORTHERN RAILWAY COMPANY
- NCRC NEBRASKA CENTRAL RAILROAD
- NEKM NORTHEAST KANSAS & MISSOURI RAILROAD
- OLB OMAHA LINCOLN & BEATRICE
- SEKR SOUTHEAST KANSAS RAILROAD
- SKOL SOUTH KANSAS & OKLAHOMA RAILROAD
- SL SALT LAKE CITY SOUTHERN RAILROAD
- SLC SAN LUIS CENTRAL
- SLGG SIDNEY & LOWE
- SLRG SAN LUIS & RIO GRANDE RAILROAD
- SSC SOUTHERN SWITCHING COMPANY
- TNER TEXAS NORTHEAST RAILROAD
- WCRC WASHINGTON CENTRAL RAILROAD COMPANY
- WSOR WISCONSIN & SOUTHERN RAILROAD
- WTJR WICHITA TILLMAN & JACKSON RAILROAD
- WYCO WYOMING & COLORADO RAILROAD

7. **Force Majeure.** In the event Customer cannot accept the cars it has ordered, or UP cannot deliver cars it has guaranteed due to or as a result of a Force Majeure Event, the obligation of the Customer and UP under this section will be extended at the affected Origin(s) for an equivalent length of time as the condition applies to the affected Origin(s). A change in market conditions or opportunity shall not be considered as a Force Majeure Event justifying suspension or cancellation of either party's obligations. In the event that a force majeure is expected to continue for an extended period of time, either railroad or the Customer may cancel General Distribution Car Orders without charge. With regard to voucher and Guaranteed Pool orders that are affected by these same extended conditions, these orders may be transferred to another Origin without charge.

#### H. PROCESSOR CAR ALLOCATION SYSTEM.

1. **Program Overview.** The Processor Car Allocation System (PCAS) was developed by UP to create a more equitable and transparent covered hopper allocation process that would provide improved shipment forecasting, fleet efficiency, and service. Commodities transported in PCAS are limited to soybean meal and hulls (see STCC Group for commodity listing). The covered hoppers distributed in PCAS are from two UP controlled system pools: the Guaranteed Pool and the General Distribution pool. Processors may maintain their existing privately owned cars and continue to utilize them on UP for loading and transportation of the commodities noted above.
2. **Guaranteed Pool.** UP will commit railroad controlled covered hoppers to the Guaranteed Pool, which will be made available each month for soybean meal and hulls. Customer may participate in the Guaranteed Pool only by executed a contract with UP. Allocation of monthly placements from the UP Guaranteed Pool will be made once annually, 30 days prior to the start of the annual contract period. Each processor will be offered a quantity of guaranteed placements equal to the processors' rolling 12-month average share of UP system equipment for all plants served by UP. Placements will be spread evenly by week each month. If processors decline any part of the allocation offered, UP will offer the declined allocation to other processors. Any balance of the allocation remaining thereafter will be removed from the program for a period of at least one year from the effective date of this Item. Processors will commit to load their accepted allocation of guaranteed placements and be required to divide the monthly number of placements guaranteed into approximately equal weekly segments ("placement period" defined as Sunday through Saturday).

Each processor will be given a one-time option to adjust its monthly Guaranteed Freight commitment for the period beginning six months following the beginning of the annual contract period. Processor must provide a written request for said adjustment no later than four months following the beginning of the annual contract period. Adjustment to a processor's Guaranteed Freight commitment is limited to an increase or decrease of no more than 10% of its Guaranteed Freight commitment for the six-month period noted above. Placements decreased with this adjustment may be offered to other processors, at UP's discretion.

UP agrees to increase individual processor annual allocation by 50% of the incremental increase in total covered hopper car requirements created by physical plant expansions; the balance of the car requirements to be provided from non-railroad controlled covered hoppers. Processors shall provide their UP representative and UP Asset Management with written notice of not less than 60 days of the need for additional UP system equipment to support physical plant expansion needs, along with documentation to substantiate the allocation increase. Processor, UP Representative, and UP Asset Management shall mutually agree to the amount of allocation increase.

Processors to elect at contract signing to either: (1) reduce its annual Guaranteed Freight commitment in line with allowed annual downtime (up to two weeks of commitment reduced); or (2) spread its annual Guaranteed Freight commitment that would otherwise be reduced in #1 above over the balance of the year. Requests made after contract signing will not be considered.

Processors must place car orders against the total number of cars available by 2:00 PM Central Time on Tuesday of the week preceding the designated weekly shipment segment. Should the Tuesday preceding the period fall on a UP holiday, the processor will have until 2:00 PM Central Time the next business day to place an order. No car orders for Guaranteed Pool cars will be accepted after the applicable deadline. Individual car orders cannot exceed the maximum spotting capacity at Origin. Shortfalls in cars ordered for a given week will result in a GFC Shortfall Charge to processor. Car orders must be placed via UP's website. Requests for an Origin transfer after processor car orders are placed will be accepted until 2:00 PM Central Time on the Thursday preceding the designated weekly shipment segment. Transfers will be allowed at the discretion of UP Car Management and will be subject to the Car Order Origin Transfer Fee. UP reserves the right to void guarantee when transferring orders. Processor will be notified if placement guarantee is void. In the event that the guarantee is removed, the guarantee provisions will be void for only the placement period in which the order is transferred. If the cars are not placed by the end of the placements period, the guarantee is reestablished in the next placement period.

Preferred spotting dates within the placement period will be accepted and UP will make every reasonable effort to ensure that cars are placed as close to the preferred spotting date as possible; provided, however, UP reserves the right to place cars at any time within the shipping period. Applicable tariff provisions regarding demurrage will begin on the preferred spotting date or when the cars are furnished, whichever is later. UP will guarantee to place or constructively place covered hoppers by the last day of the applicable shipping period for all orders placed within the times specified above. When destined to processing plants located on foreign lines open to reciprocal switch, or on applicable short line carriers, UP will consider placement to be 24 hours from the time of delivery to the other carrier, and no charge will be paid when such carrier fails to place the car within the specified time.

In the event cars are not delivered on the last day of the period, processors may cancel the orders and claim the Guaranteed Freight Failure to Deliver Charge as found in UP 4053, Item 450. Processor must submit an intent to cancel or claim on the UP website by 5:00 PM Central Time on the last day of the placement period. Should the last day fall on a Saturday, Sunday, or UP holiday, the processor must submit an intent to cancel on the preceding business day. Orders will be cancelled on the first day of the following period, provided that Constructive Placement or Actual Placement has not occurred. If placement has not occurred, and the order is canceled, UP will process the claim and issue payment. Claims may be tracked on the UP website. Cancellation payments shall constitute the full and exclusive remedy to the processor for failure of UP to provide covered hoppers as described above. All orders that are not canceled will roll to the next period, and all rules and guarantees apply as if the order were for the new period. When a car is placed for loading and rejected by the processor, a replacement car will be furnished as promptly as operations permit. No charge will be paid by UP for failure to place a substitute car during the placement period. Guarantee involving placement of cars at Origin facilities will be governed by existing track, line, and service capacity at existing service levels. Customer's combined Guaranteed Pool and General Distribution Pool car orders may not exceed the customer's track capacity and existing service level. Should this situation occur, the UP Guaranteed Pool placement guarantee is void. In addition, cars placed for Guaranteed Pool loading may not be substituted for non-Guaranteed Pool shipments, and cars spotted for non-Guaranteed Pool shipments may not be substituted for Guaranteed Pool

shipments. Substitutions will result in forfeiture of guaranteed placement. Processor will be required to pay to UP a GFC Shortfall Charge for each load that it fails to ship.

Cars placed in accordance with the Guaranteed Pool order shall be loaded and billed in accordance with existing tariff rules with UP receiving a line-haul movement. Guaranteed Pool shipments may be combined with General Distribution Pool shipments. Freight bill must be issued by and paid to UP.

Processor's commitment to load guaranteed cars is tradable, although the guaranteed cars can only be traded for placement at soybean processing facilities listed in the PCAS Origin location group.

UP will allow each processor the option to reduce its annual Guaranteed Pool commitment by an amount equal to or less than two weeks to accommodate plant downtime. Processor is required to provide 15 days notice in writing to UP Car Management and UP Asset Management of their intent to utilize any or all of this grace period.

3. **General Distribution Pool.** General Distribution ("GD") is used by UP to supply covered hoppers in a systematic manner for loading of soybean meal and hulls. UP will evaluate covered hopper supply and establish a General Distribution status of Open or Matrix.
  - a. **Open.** The GD status will be Open when demand for cars is current or when cars are in storage. Customers can order cars at any time during this status. Each location may have one GD order at a time for up to the number of cars the location can spot. The location may place another GD order when the cars for the outstanding order are placed.
  - b. **Matrix.** The GD status will be Matrix when supply is tight and UP is not able to fill all customer demand. Customers will be limited to a monthly maximum of GD cars equal to 20% of their Guaranteed Freight commitment for the month. Customer has no obligation to order GD cars, but the monthly maximum will not carry over from one month to the next.

Orders can be placed on the UP website. GD orders can be placed with a preferred want date, but delivery is not guaranteed by UP.

To register or change a location contact UP Agricultural Products Asset Management.

Car placements will be made when cars are available, not on a guaranteed basis. UP will not be liable for any charges based on car placement date. GD orders that are placed and later canceled will be subject to the General Distribution Car Order Cancellation Charge. Cancellation charges will be waived by UP in the event cars are not delivered within 30 days from date ordered.

Covered hoppers offered for placement will be customer/station specific, and no transfers will be allowed.

Cars placed in accordance with the General Distribution Pool order shall be loaded and billed in accordance with existing tariff terms with UP receiving a line-haul movement.

General Distribution Pool shipments may be combined with Guaranteed Pool shipments. Freight bill must be issued by and paid to UP.

4. **Allocation and Placement Changes.** UP reserves the right to add additional placements to the program and offer them to the processors according to the average share methodology discussed in paragraph 2 of this section; however processors are not obligated to increase their allocations. Additional placements to the program will be split 80% to the Guaranteed Freight pool and 20% to the General Distribution pool.

To accommodate occasional unexpected, intermittent plant production issues, up to an additional seven individual days of Guaranteed Freight commitment reduction will be provided by UP, along with up to seven individual days of General Distribution commitment reduction. The seven individual days of commitment reduction do not have to be taken consecutively, but can be taken as needed throughout the year. This does not include annual downtime discussed in paragraph 2 of this section, and any commitment reduced will not be re-calendarized. Processor to communicate nature of plant production issue with their UP representative, UP Asset Management, and UP Car Management as soon as possible. Processor and UP Asset Management shall mutually agree to the amount of commitment reduced.

5. **Force Majeure.** In the event Customer cannot accept the cars it has ordered, or UP cannot deliver cars it has guaranteed, due to or as a result of a Force Majeure Event, the obligation of the Customer and UP under this section will be extended at the affected Origin(s) for an equivalent length of time as the condition applies to the affected Origin(s). A change in market conditions or opportunity shall not be considered as a Force Majeure Event justifying suspension or cancellation of either party's obligations. In the event that a force majeure is expected to continue for an extended period of time, either UP or the Customer may cancel General Distribution Car Orders without charge. With regard to voucher and Guaranteed Pool orders that are affected by these same extended conditions, these orders may be transferred to another Origin without charge.

I. GRAIN AND FEED SHUTTLE TRAIN PROGRAM.

1. **Grain Shuttle Train Program Terms.** The Shuttle Program will be primarily based on one-year and two-year shuttles. However, three-month and six-month shuttles may be made available. UP will allocate shuttle train capacity through a weekly auction-based format. The Shuttle Program will be administered through agreements with Customers who obtain a shuttle through an auction ("Shuttle Train Operators").

2. **Shuttle Auction Terms.**

- a. Available shuttle capacity, if any, will be auctioned on Mondays from 8:00 AM to 2:00 PM Central Time, or the first business day thereafter if Monday is a UP holiday.
- b. Short term shuttles, when available, will be auctioned for either three-month or six-month terms.
- c. Annual shuttles will be auctioned for either one-year or two-year terms.
- d. Auctions will generally take place between two and four months in advance of the shuttle start time.
- e. Bidding: Customers desiring to bid must contact UP Agricultural Products Asset Management to register. UP will only accept bids via its website. Each auction lot will specify the shuttle start month, term, and number of shuttle trains available. Bidders will have until 2:00 PM Central Time on the day of the auction to submit a bid. Bids must be in whole US dollars and for \$0 or more. Winning bid amounts will be available via the UP website.
- f. Bid Premiums: Premiums will be on a per car basis at two trips per month over the number of months requested. Example: 12 month shuttle x 2 trips x \$5 premium x 100 cars equals \$12,000. No additional premiums will apply if more than two trips are achieved, and no refunds will apply if less than two trips are achieved.
- g. Winners/Payment: At the close of bidding, all winners will be notified with instructions for submitting the premium, if any. Winners will have two business days to transfer the amount due, if any, to UP's designated bank. All deposits and premiums shall be remitted in US funds. After payment is received, UP will forward the shuttle agreement.
- h. Grandfather Clause: Shuttles allocated prior to auction implementation are "grandfathered" and may be terminated or renewed by those Shuttle Train Operators at the terms and provisions in the applicable agreement. If at any time, however, a Shuttle Train Operator operating a grandfathered shuttle chooses to not renew the shuttle agreement, that shuttle will be returned to UP and may be auctioned at UP's discretion.
- i. Auction Renewals: Shuttle train agreements do not automatically renew. If a Shuttle Train Operator wishes to continue operating a shuttle train after the expiration of the agreement, they will be required to win a new auction.

3. **Operating Terms.**

- a. Shuttle Train Start-Up: Shuttle Train Operator must provide UP's designated "Shuttle Train Coordinator" a minimum of 10 days advance notice of Origin station for start up of a shuttle train. UP reserves the right to deny Origin loading requests.
- b. Trips per month commitment:

- i. UP will guarantee 2.5 trips per month on all shuttle trains, with the exception of Iowa / Minnesota Origins to PNW Destinations and shipments from any Origin to any Mexico or eastern railroad Destinations.
  - ii. If during any two consecutive month period the train moves between Iowa / Minnesota and the PNW, the guarantee will become two trips per month for those months.
  - iii. If during any two consecutive month period the train moves to any Mexico or eastern railroad Destination, the guarantee will become 1.5 trips per month for those months.
  - iv. Shuttle trips made as part of the Canadian Pacific option will not be subject to the trips per month commitment.
  - v. UP will have the option to add additional train sets to make up any shortfalls in committed trips. In the event UP fails to perform at the guaranteed level during any two consecutive month period, the Shuttle Train Operator may cancel its shuttle agreement without owing any liquidated damages or cancellation charge. If UP fails to perform at the guaranteed level in any month due to service issues caused by a Force Majeure Event, that month will not count towards the two consecutive months.
- c. Next Load Rule: Shuttle Train Coordinator must be notified of the next requested Origin for loading, including a request for a 110 car unit train, eight hours prior to arrival at Destination. Notification must occur during normal business hours (Monday - Friday, 8:00 AM to 4:00 PM Central Time). In the event Shuttle Train Operator fails to notify UP for the next requested Origin eight hours prior to arrival at Destination, a \$2,500 charge will be deducted from the trip incentive for one-year or two-year agreements, or a bill will be submitted to the Shuttle Train Operator for three-month or six-month shuttles. UP reserves the right to deny origin-loading requests.
- d. Diversions: Shuttle Train Operator may receive one diversion of an empty shuttle per trip upon the prior approval of Shuttle Train Coordinator. A \$30 per car charge will be deducted from any shuttle train incentive payments for any additional diversions. UP must receive diversion request 24 hours prior to train arriving at original Destination. UP reserves the right to deny any shuttle train diversion.
- e. Trip Incentives: UP will pay trip incentives only to Shuttle Train Operators as found in UP 4051/4052, Item 80. Claims for payment must be submitted within 60 days following the end of the shuttle agreement term. The Shuttle Trip Report in UP's Unit Train Customer Interface (UTCI) contains all necessary data for a trip incentive claim and may be used as part of the claim invoice.
- f. Train Size: Allowable shuttle train sizes are 75, 100 or 110 cars. UP will maintain the train at the requested size. If due to bad orders or other operating issues, the train arrives short, the rate will be applied as described in the applicable Rate Document. Customer may not reduce the train size without prior approval. Customers failing to ship entire train will be subject to charges outlined in the applicable Rate Document and in addition may be subject to loss of load/unload or trip incentive.
- i. Train Size Adjustment: One-year and two-year Shuttle Train Operators have the option to adjust train size between 75 and 100/110 cars. A charge of \$5,000 per train size adjustment will be deducted from the payment of either the trip, load, or unload incentives when adjusting the size from a 100/110 car train to a 75 car train or from a 75 car train to a 100/110 car train. No charge will be assessed for adjustments from 100 to 110 or from 110 to 100 car trains. Requests must be made to Shuttle Train Coordinator, prior to loaded train departing Origin.
  - ii. Cars will be assigned to a Shuttle Train Operator. Cars in a shuttle may change due to operational necessity.
- g. Canadian Pacific Option: On a case-by-case basis, UP and Canadian Pacific Railway (CP) will allow annual Shuttle Train Operators to load a shuttle at CP Origins for movement to UP shuttle Destinations via CP-UP routes. Shuttle Train Operators desiring to utilize this option should make a request to Shuttle Train Coordinator. Load incentives in this Attachment or the shuttle train agreement will not apply at CP Origins; incentives will be handled per terms specified by CP. UP will pay trip incentives on shuttles loading at CP Origins and unloading at UP shuttle Destinations per terms of this document or the shuttle train agreement, except on such shuttles routed to PNW Destinations.
- h. Mexico Option: Shuttle Train Operators may move shuttles to approved Mexico Destinations. Unload incentives in this document or the shuttle train agreement will apply at Mexican Destinations. All shuttles are subject to Despacho Previo rules as published in tariff UP 6004, Item 8530-series.



#### 4. Six-Month Shuttles.

- a. Option 1: Customers that run two or more annual shuttle trains have the option to request an additional six-month shuttle train (Customer may request one additional six-month set for each two annual sets). Requests for a six-month set must be made to the Shuttle Train Coordinator 30 days prior to the requested start date. Six-month sets must start and end within the 12-month period of the base two sets. For example: a customer that has four annual sets running from October through September could request to run two additional six-month sets during any six-month continuous period, as long as the entire six-month period is completed by the end of September. UP will not pay any trip incentives on six-month shuttle trains. Requests for six-month shuttles will be subject to availability.
- b. Option 2: Customers will have the option to bid on one or more six-month shuttle train. Six-month shuttles will start at a minimum bid of \$100 per car and are not eligible for the trip incentive; however, load/unload incentives will be available. These six-month shuttle trains will be limited in number based on availability.

#### 5. Cancellation Damages. If any Shuttle Train Operator cancels its shuttle prior to the end of its term, Shuttle Train Operator will be required to pay liquidated damages as outlined below for every month, including partial months, remaining in the shuttle agreement.

- a. Annual Shuttle trains: \$650 per car per month.

Example: A one-year, 100 car shuttle is canceled with two months remaining in the term. Therefore, 100 cars x \$650 per car x 2 months equals \$130,000 cancellation liquidated damages that will be due.

- b. Six-Month Shuttle trains Option 1 or 2: \$1,000 per car per month

Example: A six-month, 100 car shuttle is canceled with two months remaining in the term. Therefore, 100 cars x \$1,000 per car x 2 months equals \$200,000 cancellation liquidated damages that will be due.

- c. Partial Month Proration: Shuttle agreements canceled prior to the end of a month are subject to partial month liquidated damages. The termination date will be the date the last loaded train is released plus the estimated transit time from the last Destination back to the prior Origin. Early termination days will be the number of days remaining in the termination month. The partial month damages will be prorated based on the number of early termination days divided by the days in the month times the charge amount.

Example: A train released empty in California on October 15 with an estimated transit time of five days would have an early termination date of October 20. Early termination days would be 11. Calculation would be  $11 / 31 \times \$65,000 = \$23,065$ . However, if the termination date carries over to a subsequent month, then the subsequent month will be charged as a full month (train empty on October 29 and estimated next load date of November 2, then no charge for October, but November would be considered full month).

- d. Reduced Cancellation Damages: Liquidated Damages will be reduced by 50% for Shuttle Train Operators who paid an auction premium of \$200 or more per car on one-year shuttles only.

Example: A Shuttle Train Operators paid a \$200 per car bid premium for a one-year shuttle and decides to cancel with three months remaining on the agreement term. The Shuttle Train Operators is entitled to reduced cancellation terms as follows: \$65,000 per month x 3 months equals \$195,000 x 50% reduction equals \$97,500 cancellation damages that will be due.

#### 6. Shuttle Loading/Unloading Locations.

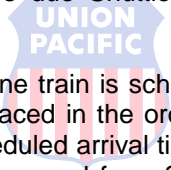
- a. Shuttles must be loaded and unloaded at UP approved facilities. A current listing of approved facilities is available in UP 4052, Item 80.
- b. Shuttle Location Approval: All shuttle train Origins and Destinations must be pre-approved by UP prior to any shipment. To be considered for approval, a facility must be able to accommodate an entire shuttle train with one switch for loading at Origin and one switch for unloading at Destination and must have capacity to handle

UP's road locomotive power unit. All new shuttle Origins and Destinations must meet UP's Rail Industry Access Guidelines.

## 7. Load/Unload Incentives.

- a. For loading incentives to apply, shuttle trains must be accepted for placement upon arrival at the loading facility, loaded, and released to UP, with complete accurate billing that includes actual weights per car, within 15 hours of actual or constructive placement at facility. For unloading incentives to apply, shuttle trains must be accepted for placement upon arrival at the unloading facility, unloaded and released to UP, within 15 hours of actual or constructive placement at facility. Cars must be billed or released electronically all at one time using one of the accepted electronic options. Failure to bill or release a shuttle electronically or to bill or release all cars at one time will result in loss of load or unload incentive.
- b. Facilities served by a carrier other than UP (Offline Facilities): For loading incentives to apply, shuttle train must be interchanged back to UP within 24 hours of initial UP interchange to connecting or serving carrier(s). All cars must have complete accurate billing, including actual weights per car, at the time train is interchanged back to UP. For unloading incentives to apply, shuttle train must be interchanged back to UP within 24 hours of initial UP interchange to connecting or serving carrier(s). All cars must be unloaded and released at the time train is interchanged back to UP. It will be the responsibility of the agreement holder to ensure that all loading and unloading facilities and serving carriers are aware of the conditions of the agreement. Failure, regardless of cause, to return trains to UP within 24 hours of initial interchange may result in loss of load or unload incentives. Failure to bill and/or release a train electronically or to bill or release all cars at one time will result in loss of load or unload incentive.
- c. Train Placement: Eligibility for loading and unloading incentives will be based on train arrival time as reported in UP's Unit Train Customer Interface system (UTCI). If a train is reported as placed at a loading/unloading facility in UTCI but has not physically arrived and/or made available for loading/unloading at the reported time, the loading/unloading facility may report a corrected placement time as provided for in this section. Shuttle Train Operator must report a placement time correction within six hours of the train's actual arrival. If the corrected time differs from the initially reported time by three hours or less, the corrected time must be reported in UTCI. If the corrected time differs from the initially reported time by more than three hours, the corrected time must be reported by contacting the Shuttle Train Coordinator and providing proper documentation. If the actual placement time is within 30 minutes of the initially reported placement time, then a change is not necessary. UP will use the reported placement time as a part of the information needed to determine loading/unloading time when approving incentives. Placement time changes made that do not meet the above requirements will not be considered when approving incentives. This section may not be used to notate granted spot times.
- d. Pre-Release: The facility must report an estimated release time using UTCI not later than three hours prior to the release of empty or loaded shuttle train. If for any reason the release time changes, the facility must update the estimated release time with the new estimated release time using UTCI. In addition, if the estimated release time changes within the last three hours, you must also call the Bulk Desk at 800-726-1104.
- e. Release/Billing: The facility must bill and release all cars using one of UP's accepted electronic options. All bad order and extra empty cars must be reported using UTCI. Failure to report the placement, pre-release, release, or billing and to report bad order cars timely and accurately may result in loss of load or unload incentive.
- f. Train Release: If shuttle train is not ready for release to railroad upon crew and locomotive arrival, a \$2,500 charge will be deducted from any shuttle trainload/unload incentive payments. "For release" includes: all brake hoses coupled; all angle cocks open, except the last car angle cock must be closed; and all cars billed with the actual weight or released empty or released bad order. In addition, all bad orders should be switched out if possible. Extra time may be given to switch out these bad orders with permission from Shuttle Train Coordinator. Shuttle train must be coupled (with air hoses laced) prior to release. Air is not to be introduced into the shuttle train by loader/unloader.
- g. Loading/Unloading Payment: UP will pay loading incentives direct to the loading facility. UP will pay unloading incentives direct to the unloading facility. Payments will be based on data in UTCI. Shuttle Train Coordinator will determine if incentive was earned and post the status in UTCI.

- h. Disputes: Facilities may view and/or dispute the status using UTCI on UP's web site within 30 days from date of rejection. If disputes are not received within 30 days from date of rejection, incentives will not be paid.
  - i. Payment Method: At the end of each month, UP will combine all approved incentives and issue payments. Each payment will have a payment number that can be used to view payment details in UTCI. Facilities may choose payment by check or Electronic Funds Transfer (EFT). To request EFT payments, follow the instructions on Exhibit "B" (available in the Grain Shuttle Train Program section of the UP website). UP will process incentives for payment between the 10th and 20th of each month. Disputed payments that are subsequently approved will be included in the next month's payment cycle.
  - j. Period: Facilities must submit claims to Shuttle Train Coordinator within 90 days from the date of the shuttle release. If claims are not received within 90 days from the shuttle release, incentives will not be paid.
8. **Grain Shuttle Train Delay Charge.** Any Customer activity or request that impedes the movement or placement of a Shuttle Train will result in (i) the loss of one guaranteed turn, and (ii) loss of the applicable loading or unloading incentive, for each occurrence on each train. Additionally, UP will assess shuttle origin loaders or shuttle destination unloaders a delay charge as identified in UP 6004, Item 9622 series, as a result of delays caused by those shippers or receivers. During this time, normal demurrage charges will apply. If train is laid down a second time, UP will assess a second delay charge. Volume Limitation: a limit on the total number of trains that can be placed at an individual facility subject to the provisions of GCAS. The total number of trains will be determined by the mix between Shuttle and Non-Shuttle trains, the shipping history of the facility, and demurrage free-time allowed for non-incented trains. Trains ordered above the limitation will be accepted but will not be subject to the provisions for late placement.
  9. **Reassembly Charge.** UP will bill Shuttle Train Operator a reassembly charge for \$7,000 per set for 100/110 car trains and \$5,000 per set on 75-car trains to rebuild train sets broken at Destination. Any amounts due UP will first be deducted from outstanding trip incentives due Shuttle Train Operator, with any remaining balance billed directly to Shuttle Train Operator.
  10. **Train Scheduling.** In the event more than one train is scheduled to arrive at one Destination too closely to the arrival of another train, the trains must be placed in the order in which they are received. If a facility or Shuttle Train Operator requests a change in the scheduled arrival time(s) that would enable shuttle trains to arrive ahead of other unit trains, without prior confirmed approval from Shuttle Train Coordinator, the facility or Shuttle Train Operator shall forfeit any incentive payment that would otherwise be due.
  11. **Demurrage Exception to Tariff UP 6004.** Demurrage credits cannot be earned on shuttle train equipment.
  12. **Service.** Shuttle Train Operators do not receive a guaranteed service schedule. UP will provide service in the same manner and on the same basis that it provides service to other customers.
  13. **Equipment.** UP does not guarantee supply of UP-owned equipment, but shall furnish such equipment to customer in the same manner and on the same basis that it provides such equipment to any customer that does not have a contract with UP.



J. SPECIAL EQUIPMENT TERMS.

1. **Shortfall.** Any multiple car rate requiring 25 or more cars or 75 or more cars published in the Publication, may apply when at least 92% of such car requirements are fulfilled. Example: 100 cars ordered, 92 cars placed and released as a 100 car unit. The eight remaining cars, when placed and released, will move at a single car rate. The "minimum allowable" provision of this rule can only be invoked if: (1) cars that were placed at the Origin for loading on the Shipper car order have been bad ordered, and replacement cars will not arrive in time; or (2) there were not enough cars furnished in the original Shipper car order, and additional cars to complete the order will not arrive in time to move with the "minimum allowable" group. Shippers may not bill enough cars to fulfill the "minimum allowable" amount and ship the remaining cars to separate individual Destinations. For example, if 75 cars are supplied on an order, Shipper cannot bill 69 cars to one Destination from the Origin and send the balance of 6 cars to one other Destination or to several other Destinations. A charge of \$400 per car will be assessed when cars are billed in violation of this rule.

RATE REQUIREMENT

MINIMUM ALLOWABLE

25 Cars	23 Cars
50 Cars	46 Cars
75 Cars	69 Cars
110 Cars	92 Cars

2. **C114/C314 Equipment.** When Customer receives C114 or C314 equipment (also known as C5 equipment), and the rail lines from and/or to Origin and Destination are not approved for gross weights in excess of 263,000 lbs., Customer must provide to Customer Care and Support the certified or estimated Origin weights for each individual car on the bill of lading for whole grain or grain product. For Shipments consisting of 23 cars or greater, the Origin weights must be provided for all the cars on the bill of lading not only the C114 cars.
3. **Buffer Cars.** Buffer cars are to be supplied and maintained by the Shipper and must pass rail car inspections. Failure of railcar to meet inspections will result in UP reserving its right of refusal to provide train service. Buffer cars are considered non-revenue cars when moved within an ethanol train. Mileage allowance payment will not apply. Buffer cars are to be placed between the locomotive engine and ethanol cars as required by governmental regulations. This applies to both loaded and empty last contained cars. Two loaded buffer cars are required. The one buffer car will be in place at the head end of the train. Buffer cars must meet the following requirements:
  - a. Must be a boxcar, covered hopper, gondola or tank car. The buffer cannot be a flat car.
  - b. Must have a high-strength coupler (Grade E coupler).
  - c. The length of the car must be at least 45 feet and not greater than 75 feet.
  - d. Must be loaded with a non-hazardous inert material that does not shift in train service.
  - e. Gross weight of car must be a minimum of 45 tons.

It is the responsibility of the Shipper to provide buffer cars that are in good mechanical condition. If a car fails inspection, UP retains the right to refuse to provide train service.

4. **Sweep Trains.** Unit and sweep train Origin and Destination locations must be pre-approved by UP. Once Origin and/or Destination locations are approved, it is the Customer's responsibility to schedule trains within UP's Car Forecast System. Sweep rates apply when cars are shipped and billed in conjunction from two approved Origins to form a unit train to a single approved Destination. Each Origin must provide a minimum of 25 cars from each plant Origin to create a unit train with a minimum 97 cars.

- K. **FOOD TRANSPORTATION.** Customer is responsible for compliance with all applicable food safety requirements and obligations including, but not limited to, requirements and obligations imposed by the Food Safety Modernization Act, the Sanitary Food Transportation Act and regulations promulgated under these Acts. UP does not agree to assume any responsibility under these statutes or rules unless written consent is obtained from a UP representative at the Vice President level or above, and UP may not be included in Customer's food safety plan. Customer is responsible for ensuring that rail cars meet Customer's food safety requirements.

## ATTACHMENT C

### HAZARDOUS MATERIALS & TIH

#### A. GENERAL TERMS AND CONDITIONS.

1. **Application.** The specific terms and conditions set forth herein apply to Shipments of: (a) hazardous materials as defined by the DOT Hazardous Materials Regulations ("HMR"), 49 C.F.R. Section 172.101 and 172.102; (b) poisonous by inhalation or toxic by inhalation materials as defined by the DOT HMR, 49 C.F.R. Section 171.8; (c) materials that are classified by the DOT as a hazardous substance in DOT HMR, 49 C.F.R. Section 173.31(f)(2) due to the environmentally sensitive nature of the material; and (d) infectious substances (etiologic agents) subject to DOT HMR as a Division 6.2 material.
2. **Governing Publications.** This Attachment is attached to and incorporated in the Publication. In the event of a conflict between the terms of this Attachment and the Publication, the terms of this Attachment shall govern. Terms not otherwise defined herein shall have the meanings given to them in the Publication.
3. **Definitions.** The following terms shall have the meaning set forth below when used in this Attachment:
  - a. "Hazardous Materials" means hazardous materials as defined by the DOT HMR, 49 C.F.R. Section 172.101 and 172.102. All TIH is included within the definition of Hazardous Materials.
  - b. "Liabilities" means any and all claims, liens, causes of action, suits, demands, losses, damages (including without limitation special and consequential damages), costs, fines, penalties, judgments, and expenses (including without limitation attorneys' fees, costs of court and other legal or investigative expenses, consulting fees, costs of remediation, costs of emergency responses and evacuations, and government oversight costs).
  - c. "TIH" means (i) poisonous by inhalation or toxic by inhalation materials as defined by the DOT HMR, 49 C.F.R. Section 171.8, (ii) materials that are classified by the DOT as a hazardous substance in DOT HMR, 49 C.F.R. Section 173.31(f)(2) due to the environmentally sensitive nature of the material, and (iii) infectious substances (etiologic agents) subject to DOT HMR as a Division 6.2 material.
  - d. "TIH Liabilities" or "TIH LIABILITIES" means Liabilities caused, whether in whole or in part, by the release, discharge, escape, or presence of TIH and which would not have been made, brought, or imposed but for such release, discharge, escape, or presence of TIH.

#### B. HAZARDOUS MATERIALS SHIPMENT TERMS AND CONDITIONS.

1. **Required Documentation.** In order to obtain transportation services for Hazardous Materials, Customer shall properly describe the Hazardous Materials in the Billing Instructions as required in the HMR. If UP is the first transporting carrier of the Shipment of Hazardous Materials, Customer shall certify that the Shipment is properly classified, described, packaged, marked and labeled, and is in proper condition for transportation in accordance with DOT regulations.
2. **Restrictions on the Transportation of Certain Commodities.** If federal, state, or local governments ban, restrict or otherwise prohibit the transportation of Hazardous Materials through their jurisdiction, and UP is required to re-route the Shipment of Hazardous Materials, Customer shall be responsible for any costs or expenses incurred by UP, including, without limitation, costs associated with labor, equipment, fuel, additional switching operations, or increased UP terminal dwell time. Any such incurred costs and expenses will be in addition to the freight rates set forth in the applicable Rate Document. If there is not an applicable freight rate in for the re-route, UP will establish a revised freight rate reflecting the revised movement and Customer shall pay the revised freight rate.
3. **Hazardous Conditions.** UP reserves the right to inspect Customer's loading or unloading facility upon five days' advance written notification. If UP determines the area of UP's operation is contaminated with toxic or hazardous substances, UP shall be relieved of its obligation to transport any additional railcars to or from the facility until the area has been remediated to UP's satisfaction.



4. **Remediation / Cooperation.** If UP notifies Customer of a leakage, release, spill, or other discharge of Hazardous Materials while being transported by UP, Customer must provide prompt advice with respect to the proper method of cleanup, disposal, and other remedial actions to take with respect to such leakage, release, spill, or other discharge. UP and Customer will cooperate fully to the extent reasonably necessary to expeditiously and prudently abate or eliminate any hazard. Nothing in this paragraph alters any indemnity obligations provided in the Publication or this Attachment.

C. ADDITIONAL CRUDE OIL AND DIESEL FUEL PRODUCTS TERMS AND CONDITIONS.

1. **Transfer of Ultra-Low and Low Sulfur Diesel Fuel Products.** All transferors of ultra-low and low sulfur diesel fuel products shipping via UP rail lines, railcars, rail yards, terminals, and other UP facilities are solely responsible for compliance with all applicable Governmental Regulations, including, without limitation, EPA regulations. Such responsibility shall include, but not be limited to: (a) quantification of volume and designation of intended use and sulfur content; (b) registration of all transfer facilities on the distribution pathway; (c) preparation of all transfer documents throughout the distribution process; and (d) all record-keeping and reporting requirements. UP will not assume or otherwise accept responsibility for transferor's failure to comply with the EPA regulations.

D. ADDITIONAL TIH TERMS AND CONDITIONS.

1. **TIH Indemnity Obligations; Sole Negligence.**

- a. **UP SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS CUSTOMER, ITS PARENT, AND AFFILIATED COMPANIES AND ITS AND THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS ("CUSTOMER INDEMNIFIED PARTIES") FROM AND AGAINST ANY AND ALL TIH LIABILITIES CAUSED BY UP'S SOLE NEGLIGENCE OR FAULT IN UP'S PERFORMANCE OF TRANSPORTATION SERVICES.**
- b. **CUSTOMER SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS UP, ITS PARENT, AND AFFILIATED COMPANIES AND ITS AND THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS ("UP INDEMNIFIED PARTIES") FROM AND AGAINST ANY AND ALL TIH LIABILITIES EXCEPT TIH LIABILITIES:**
- i. **CAUSED BY THE SOLE NEGLIGENCE OR FAULT OF UP;**
  - ii. **CAUSED BY THE NEGLIGENCE OR FAULT OF ANOTHER RAIL CARRIER THAT PARTICIPATED IN THE TRANSPORTATION; OR**
  - iii. **ALLOCATED TO THE UP UNDER SECTION D.2.a.**
- c. **CUSTOMER'S OBLIGATIONS UNDER SECTION D.1 MAY ARISE WHEN TIH LIABILITIES ARE CAUSED BY THE FOLLOWING TYPES OF EVENTS, WHICH ARE DESCRIBED ONLY FOR PURPOSES OF ILLUSTRATION, AND NOT FOR PURPOSES OF LIMITATION:**
- i. **FAILURE OF OR DEFECT IN PRIVATE CARS TENDERED BY CUSTOMER FOR THE TRANSPORTATION OF TIH;**
  - ii. **LOADING, SEALING, AND SECURING TIH IN PRIVATE CARS TENDERED BY CUSTOMER FOR TRANSPORTATION OF TIH;**
  - iii. **UNLOADING, TRANSFERRING, DELIVERING, TREATING, DUMPING, STORING, OR DISPOSING TIH NOT CAUSED BY THE SOLE OR CONCURRING NEGLIGENCE OR FAULT OF UP; AND**
  - iv. **INCIDENTS FOR WHICH UP IS HELD STRICTLY LIABLE FOR TIH LIABILITIES NOT CAUSED, EITHER IN WHOLE OR IN PART, BY THE SOLE OR CONCURRING NEGLIGENCE OR FAULT OF UP.**
- d. **ANY INDEMNIFIED PARTY SHALL, AT THE EXPENSE OF THE INDEMNIFYING PARTY, COOPERATE WITH AND TAKE ALL SUCH ACTIONS AS THE INDEMNIFYING PARTY MAY REASONABLY REQUEST TO ASSIST THE INDEMNIFYING PARTY IN THE INVESTIGATION AND DEFENSE OF ACTUAL, ALLEGED, OR THREATENED TIH LIABILITIES.**

2. **TIH Indemnity Obligations; Joint, Contributory, or Concurring Negligence.**

- a. **WHEN TIH LIABILITIES ARE CAUSED, IN WHOLE OR IN PART, BY THE JOINT, CONTRIBUTORY, OR CONCURRING NEGLIGENCE OR FAULT OF**

- i. UP AND CUSTOMER;
- ii. UP AND ANY OTHER PARTY; OR
- iii. UP, CUSTOMER, AND ANY OTHER PARTY,

RESPONSIBILITY FOR TIH LIABILITIES SHALL BE ADJUDICATED UNDER PRINCIPLES OF COMPARATIVE FAULT IN WHICH THE TRIER OF FACT SHALL DETERMINE THE PERCENTAGE OF RESPONSIBILITY FOR EACH NEGLIGENT OR AT FAULT PARTY.

- b. UP SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS CUSTOMER INDEMNIFIED PARTIES FOR TIH LIABILITIES ALLOCATED TO UP IN PROPORTION TO UP'S PERCENTAGE OF RESPONSIBILITY DETERMINED UNDER SECTION D.2.a.
- c. CUSTOMER SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS UP INDEMNIFIED PARTIES FOR ALL TIH LIABILITIES NOT ALLOCATED TO UP UNDER SECTION D.2.a., EXCEPT TIH LIABILITIES TO THE EXTENT CAUSED BY THE NEGLIGENCE OR FAULT OF ANOTHER RAIL CARRIER THAT PARTICIPATED IN THE TRANSPORTATION.
- d. ANY INDEMNIFIED PARTY SHALL, AT THE EXPENSE OF THE INDEMNIFYING PARTY, COOPERATE WITH AND TAKE ALL SUCH ACTIONS AS THE INDEMNIFYING PARTY MAY REASONABLY REQUEST TO ASSIST THE INDEMNIFYING PARTY IN THE INVESTIGATION AND DEFENSE OF ACTUAL, ALLEGED, OR THREATENED TIH LIABILITIES.
- e. NEITHER UP NOR CUSTOMER MAY REDUCE ITS PERCENTAGE OF RESPONSIBILITY DETERMINED UNDER SECTION D.2.a. OR ITS RESPONSIBILITY FOR TIH LIABILITIES BY AGREEMENT OR SETTLEMENT WITH ANY OTHER PARTY OR CLAIMANT.

3. **TIH Indemnity Obligations; Enforceability.**

- a. UP AND CUSTOMER INTEND TO MEET THE REQUIREMENTS OF THE EXPRESS NEGLIGENCE TEST UNDER CERTAIN STATE LAWS. THE INDEMNIFICATION PROVISIONS AND ALLOCATIONS OF RESPONSIBILITY SET FORTH IN SECTIONS D.1 AND D.2 OF THIS ATTACHMENT SHALL APPLY EVEN IF THE TIH LIABILITIES ARE ALLEGED TO HAVE BEEN CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENCE, NEGLIGENCE PER SE, OR STRICT LIABILITY OF THE INDEMNIFIED PARTY.

4. **TIH Insurance.**

- a. If Customer Tenders TIH to UP, Customer agrees to keep in force General Liability Insurance (containing Broad Form Contractual Liability) and Pollution Legal Liability Insurance that provides protections against pollution from any occurrence involving Customer's Commodity with minimum policy limits of not less than \$25 million per occurrence, and Customer shall name UP as additional insured on such insurance for TIH Liabilities arising under this Attachment.
- b. Customer will also maintain statutory Workers' Compensation and Employers' Liability Insurance, which shall include a waiver of subrogation in favor of UP to the extent of TIH Liabilities and indemnities assumed by Customer under this Attachment.
- c. Customer is not allowed to self-insure without the prior written consent of UP. If granted, financial responsibility for TIH Liabilities of Customer must be covered directly by Customer in lieu of insurance. Any and all TIH Liabilities of Customer that would otherwise, in accordance with the provisions of this Attachment, be covered by Customer's insurance will be covered as if Customer elected not to include deductible, self-insured retention, or other financial responsibility for claims.

**ATTACHMENT D**  
**PERISHABLE & FOOD**

A. **GENERAL TERMS AND CONDITIONS.**

1. **Application.** The specific terms and conditions set forth herein apply to Shipments **of any refrigerated or frozen commodity** (collectively, "Commodities").
2. **Governing Publications.** This Attachment is attached to and incorporated in the Publication. In the event of a conflict between the terms of this Attachment and the Publication, the terms of this Attachment shall govern. The terms not otherwise defined herein shall have the meanings given to them in the Publication.

B. **FOOD SAFETY.** Customer is responsible for compliance with all applicable food safety requirements and obligations, including, but not limited to, requirements and obligations imposed by the Food Safety Modernization Act, the Sanitary Food Transportation Act, and regulations promulgated under these Acts. UP does not agree to assume any responsibility under these statutes or rules unless written consent is obtained from a UP representative at the Vice President level or above, and UP may not be included in Customer's food safety plan. Customer is responsible for ensuring that rail cars meet Customer's food safety requirements.

C. **REFRIGERATED AND FROZEN SHIPMENTS.** This section applies Shipments of refrigerated and frozen Refrigerated transported in UP Cars.

1. **Conditions Of Perishable Freight Not Guaranteed.** UP does not undertake to overcome the inherent tendency of Commodities to deteriorate or decay, but merely to retard such deterioration or decay insofar as may be accomplished by reasonable mechanical protective service of the kind and extent requested.

2. **Frozen Commodities.** Customer must place on shipping order, and billing carrier must place on waybill, the following notation:

"Mechanical Protective Service - Frozen Commodity, Maintain Temperature of Zero Degrees Fahrenheit or Lower."



The following instruction must also be placed on waybill when appropriate:

"Special Instructions: Commodity temperature at time of loading \_\_\_\_\_degrees Fahrenheit. Carrier not obligated to reduce this temperature enroute."

3. **Refrigerated Commodities.** Customer must place on shipping order, and billing carrier must place on waybill, the following notation:

"Mechanical Protective Service - Non-Frozen Commodity, Rule 710, Precooled Load, Optimum Temperature Inside Car \_\_\_\_\_Degrees Fahrenheit." or

"Mechanical Protective Service - Non-Frozen Commodity, Rule 710, Non-Precooled Load, Optimum Temperature Inside Car \_\_\_\_\_Degrees Fahrenheit."

The following instructions must also be placed on waybill when appropriate:

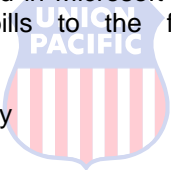
"Special Instructions: Commodity temperature at time of loading \_\_\_\_\_ degrees Fahrenheit. Carrier not obligated to reduce this temperature enroute." NOTE: The lowest optimum temperature allowable on non-frozen Commodities will be 25 degrees above zero Fahrenheit.

4. **Bills For Service by Other Railroads.**

- a. The handling railroad is responsible for the inspection, servicing, and repair of loaded "ARMN" marked cars in their possession. It is their decision as to whether or not they dispatch their own qualified mechanics or call a UP representative to make repairs. Since "ARMN" marked cars are equipped with UP refrigeration equipment,

UP's recommendation is to have repair work performed by authorized UP personnel. In the case of emergency, and when necessary to protect a shipment, it is permissible to have repairs made by any qualified mechanic.

- b. Refrigerant, anti-freeze, and supplies for, and repairs to, refrigeration units shall be billed as set forth in AAR interchange rules. Bills may be submitted through the AAR billing system, or when work is performed by authorized UP personnel, the vendor may submit the billing directly to UP. Any charges for labor, material or supplies that is not billable under AAR rules, or not related to the mechanical defect or cause of failure, may be billed back to the handling railroad, unless work has been authorized by UP .
- c. The handling railroad is responsible for the pre-trip inspection made prior to releasing mechanical cars for loading on the handling road for the purpose of testing diesel/refrigeration unit to determine that it is functioning satisfactorily or in need of repairs.
- d. Bills for fuel must be rendered against UP on the basis of actual fuel cost paid by handling railroad and/or its subsidiaries. No bills for fuel will be honored by UP if not received by UP within 120 days from the date of the fueling service.
- e. UP will not pay for fuel supplied to empty cars unless the car is reloaded by the handling railroad and destined to a UP line haul move.
- f. UP will not be responsible for fuel charges on loaded cycles in which UP is not a line haul carrier.
- g. Bills for fuel supplied to refrigerated cars must show railroad/subsidiary name, invoice number, invoice date, fuel supplier, fuel date, fuel location (city & state), car initial and number, load or empty status, the prior fuel level reading before filling car, gallons of fuel supplied, price per gallon, taxes, miscellaneous charges, total amount of charges due, and comments (used to note customer site fueling and if loaded car is pre-tripped). The above information must be submitted in Microsoft Office Excel format consisting of the columns stated below. Send electronic copies of bills to the following email address at UP for processing: [upfuelbills@up.com](mailto:upfuelbills@up.com).



Railroad or Subsidiary  
Invoice Number  
Invoice Date  
Fuel Supplier  
Fuel Date Fuel  
Location (City & State)  
Car Initial Car Number  
Load /Empty  
Prior Fuel Reading  
Gallons Supplied  
Price / Gallon  
Taxes  
Misc. Charges  
Total Charges  
Comments

- i. Fuel supplied to mechanical reefers must be Ultra Low Sulfur (non-road) diesel meeting the latest revision of ASTM D-975 Diesel Fuel Oil Specifications.
- ii. For optimum operating results, the following schedule should be observed when it is necessary to supply fuel to a mechanical car:

FROM: October 16 to March 15:  
Grade No. 1 Diesel Fuel  
Flash Point 125 degrees F or Legal  
Pour Point -15 degrees F or 10 degrees F below anticipated ambient temperature  
Cetane Number 45 Minimum

FROM: March 16 to October 15:  
Grade No. 2-D Diesel Fuel

Flash Point 125 degrees F or Legal  
Pour Point Maximum 0 degrees  
Cetane Number 45 Minimum  
Sulphur 0.5 Maximum

- h. Fuel tickets are subject to audit upon request. Fuel tickets must be retained for a period of three years and should include complete car initial and number, date of fueling, location of fueling (city/state), number of gallons pumped, price per gallon, total charges, and all information as outlined in paragraph 5 above. Fuel tickets must be electronically metered.
- i. Fuel invoice discrepancies will be handled in accordance with AAR Rule 112.H Processing and Auditing Regulations of the AAR office manual.





## ATTACHMENT E

### WASTE

#### A. GENERAL TERMS AND CONDITIONS.

1. **Application.** The specific terms and conditions set forth herein apply to Shipments of Waste as defined in this Attachment and Shipments bearing STCC 48-series commodity code identification numbers.
2. **Governing Publications.** This Attachment is attached to and incorporated in the Publication. In the event of a conflict between the terms of this Attachment and the Publication, the terms of this Attachment shall govern. The terms not otherwise defined herein shall have the meanings given to them in the Publication.

#### B. WASTE.

1. **Waste** means (i) waste defined or characterized as hazardous waste under the Resource Conservation and Recovery Act (RCRA) 42 U.S.C. S. 6901 et seq., or the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. S. 9601 et seq., as each may be amended from time to time, and regulations promulgated thereunder; (ii) all polychlorinated biphenyl (PCB) or PCB-contaminated waste; (iii) all waste defined or characterized as hazardous, chemical, industrial or special waste by either the principal agency of any state of the United States having jurisdiction over hazardous waste transported under the Publication or the principal agency of any foreign jurisdiction with respect to hazardous waste generated from outside the United States and transported under the Publication; provided that the term "Waste" is intended to mean and include those substances which are not normally expected to be disposed of by employing generally accepted sanitary landfill disposal methods; and (iv) specifically includes, without limitation: (A) materials in drums, containers, intermediate bulk containers, bulk bags, or bulk of thorium in the form of sands, tailings, sludges, and sediments; (B) materials in the form of inorganic rubble from building removals; (C) materials in the form of site soils and other materials; (D) materials are, at maximum, DOT classifications, "Radioactive Materials" or "Low Specific Activity (LSA)" as defined in 49 C.F.R. Subpart 173; and (E) radioactive material subject to DOT HMR as a Class 7 material.
2. **Release of Waste.** In the event of an incident during transportation over UP's lines under this Attachment involving a "hazardous waste discharge" (as that phrase is defined in 40 C.F.R. Section 260.10(a)(13)), or "release" of a "hazardous substance" in "reportable quantities" (as those terms are defined by CERCLA, any regulations promulgated pursuant thereto, and Section 311 of the Clean Water Act), UP shall immediately notify Customer, and each party shall take immediate action as is required under 40 C.F.R. Part 263, Subpart C (Sections 263.30 and 263.31), and 40 C.F.R. Parts 264 and 265, Subpart D (Sections 264.56 and 265.56), and any other applicable federal or state Governmental Regulations, including the notification of the proper federal and state authorities. UP shall be capable of implementing emergency procedures in the event of a "hazardous waste discharge" or a "release" of Waste occurring during transportation.
3. **Non-Conforming Waste.** If, subsequent to UP's acceptance of Waste for transportation, it is determined that such Waste does not conform to the definition of Waste set forth in this Attachment, as well as the appropriate manifest and shipping documents accompanying such Shipment, or in the event the designated facility refuses to accept delivery of Waste for any reason, such Waste shall be considered to be "Nonconforming Waste". Customer shall furnish a revised manifest within 24 hours, excluding Saturdays, Sundays and legal holidays. In the event Customer fails, within the specified time, to provide the revised manifest and instruct UP as to the Destination and description of the Nonconforming Waste, UP shall be authorized to return the Nonconforming Waste to the applicable Origin or transport Nonconforming Waste to an alternate Destination, said transportation shall be deemed to be at Customer's sole discretion and expense. If Nonconforming Waste is returned to Origin, it shall be at the same rate the Customer was charged for the inbound movement. If Nonconforming Waste has not reached its Destination and is returned to the applicable Origin or is transported to an alternate Destination, the transportation rate shall be made at the applicable tariff rate in effect on the date movement occurs, absent prior agreement otherwise between the parties. Customer shall be solely responsible for paying any applicable Demurrage, detention, hold, storage, penalties, or additional transportation charges related to the handling of the Nonconforming Waste including, but not limited to, any costs incurred by UP. Customer is further responsible for the preparation of any further shipping documents required by federal, state or local Governmental Regulations. In the event that any governmental agency or court prohibits UP from delivering Nonconforming Waste to an alternate Destination or returning such Nonconforming Waste to the applicable Origin, then Customer shall be responsible for all costs (including attorneys' fees) incurred by UP and defend, indemnify, and hold harmless UP

from and against any claims made against UP by any third parties or governmental agencies resulting from the prohibition of delivery.

4. Customer assumes all liability for ensuring all measurable Waste residue is removed from the equipment in compliance with the requirements for contamination control described in 49 CFR 173.443 prior to release of the equipment to UP.
5. Customer shall select the disposal facility to which Waste Shipments are to be transported ("Designated Facility"). Customer acknowledges that UP has not participated in, nor taken any active interest in the site selection for the storage or disposal of any Waste. Customer warrants that it has and will maintain in effect all applicable federal, state and local permits and licenses required for the operation of Designated Facility owned or operated by Customer. If delivery is to a Designated Facility not owned or operated by Customer, Customer warrants that it has selected such Designated Facility based on its determination made after reasonable and diligent inquiry that such facility has in effect all applicable federal, state and local permits and licenses required for operation.

#### C. DOCUMENTATION OF WASTE.

Waste transported by UP must be accurately described in the Billing Instructions. Waste must be accompanied by all required shipping documents and be properly marked, labeled, and placarded as required by applicable federal, state and local laws and regulations. Waste must be accompanied by hazardous waste manifests as required by applicable federal, state and local laws and regulations. In particular, but without limiting the generality of the foregoing, the following federal hazardous waste manifest, recordkeeping and reporting obligations shall apply:

1. 40 C.F.R. Part 262 Subparts B and D, to be the obligation of Customer;
2. 40 C.F.R. Part 263 Subpart B, to be the obligation of each UP, as its interests may appear;
3. 40 C.F.R. Part 264 Subpart E or Part 265 Subpart E, as the case may be, to be the obligation of Customer;
4. 49 C.F.R. S. 172.205, to be the obligation of Customer, or UP, as their respective interests may appear;
5. 49 C.F.R. Part 174, to be the obligation of Customer or UP, as their respective interests may appear; and
6. With regard to polychlorinated biphenyls (PCBs), 40 C.F.R. Part 761 Subparts C, J and K to be the obligation of Customer or UP as their respective interests may appear.

In addition to manifests and other documentation, Customer shall, upon UP's request, provide UP with accurate and descriptive chemical and physical data on the character of the Waste to be transported prior to actual shipment.

#### D. INCIDENTS AND CREDITS.

1. In the event of an incident involving a "hazardous waste discharge" (as that phrase is defined in 40 C.F.R. Section 260.10(a)(13)), or "release" of a "hazardous substance" in "reportable quantities" (as those terms are defined by CERCLA, any regulations promulgated pursuant thereto, and Section 311 of the Clean Water Act, UP shall immediately notify Customer, and each party shall take immediate action as is required under 40 C.F.R. Part 263, Subpart C (Sections 263.30 and 263.31)), and 40 C.F.R. Parts 264 and 265, Subpart D (Sections 264.56 and 265.56), and any other applicable federal or state laws, rules or regulations, including the notification of the proper federal and state authorities.
2. UP shall be capable of implementing emergency procedures in the event of a "hazardous waste discharge" or a "release" of Waste occurring during transportation. Such emergency procedures shall conform with all applicable legal and regulatory requirements and provide for the control and clean up of the discharge so that any hazard to human health or the environment can be expeditiously eliminated. In the event of a "hazardous waste discharge" or "release" of Waste occurring on Customer property, Customer shall invoke its own emergency plan to control and clean up the discharge.
3. Regardless of where a "hazardous waste discharge" or a "release" occurs, both parties shall cooperate fully to the extent reasonably necessary to expeditiously and prudently abate or eliminate any hazard; PROVIDED, HOWEVER, that nothing contained in this paragraph shall alter Customer's responsibilities and obligations nor UP's responsibilities and obligations under this Publication.
4. In any such incident where the expenses of clean up are the obligation of UP under the terms of this Publication, Customer shall, upon request of UP and to the extent it is authorized by law and regulation: (1) accept for disposal Waste being disposed of by UP as a result of the clean up ("UP's Clean up Waste"), subject to the parties' mutual agreement on the cost of disposal for additional Waste beyond the original Waste; and (2) credit

against UP's disposal costs for UP's Clean up Waste any monies already collectible by Customer from other parties for the original disposal of the Waste involved in the incident.

5. In any such incident where the expenses of clean up are the obligation of Customer, UP shall, upon request of Customer and to the extent it is authorized by law and regulation: (1) transport Waste being disposed of by Customer as a result of the clean up ("Customer's Clean up Waste"); and (2) credit against Customer's transportation costs for Customer's Clean up Waste any monies already payable by Customer to UP for the original transportation of the Waste involved in the incident.

#### E. INSURANCE PROVISIONS.

1. Before Tendering any Shipment of Waste, Customer must obtain, and thereafter keep in force, General Liability Insurance (containing Broad form contractual Liability) AND Pollution Legal Liability Insurance with minimum policy limits not less than \$2 million per occurrence and name UP as additional insured.
2. Customer is not allowed to self-insure without the prior written consent of UP. If granted, any deductible, self-insured retention or other financial responsibility for claims must be covered directly by Customer in lieu of insurance. Any and all UP liabilities that would otherwise, in accordance with the provisions of this Publication, be covered by Customer's insurance will be covered as if Customer elected not to include deductible, self-insured retention or other financial responsibility for claims. By Customer's signature on the Acknowledgement of Receipt and Acceptance of Terms, found at this [link](#), Customer represents and warrants that it is and will maintain the ability to be financially responsible for the required coverage's as set forth in the insurance requirements, found at this [link](#).
3. Customer must furnish certification of Insurance at the time Customer executes and tenders the Acknowledgement of Receipt and Acceptance of Terms to UP. The certificate of Insurance shall provide evidence of the required coverage, endorsements, and amendments set forth in the insurance requirements. Additionally, the certificate(s) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify UP in writing of any cancellation or material alteration. Upon request from UP, a certified duplicate original of any required policy shall be furnished. In the event Customer cancels or materially changes or reduces its coverage UP reserves the right, at its sole discretion, to terminate any Agreement(s) subject to this Publication in the name of Customer or its designated agent(s) on fifteen (15) days written notice.