



## Access Agreement

This Access Agreement (this “Agreement”) is made and entered into as of \_\_\_\_\_, by \_\_\_\_\_ (“Company”), for the benefit of \_\_\_\_\_ (“Operator”).

### Background

- A. Operator owns, leases, licenses, and/or conducts a business operation on the property known as the \_\_\_\_\_ and located at \_\_\_\_\_ (the “Property”).
- B. Company desires to access the Property for the purpose of \_\_\_\_\_ (the “Purpose”).
- C. Operator is willing to allow Company access to the Property for the Purpose, upon the terms and subject to the conditions set forth in this Agreement and in consideration of the rights made available to Company and the obligations assumed by Company herein.

### Agreement

Company, desiring to be legally bound, hereby agrees as follows:

#### 1. Recitals; Definitions.

1.1 The foregoing background recitals and all exhibits referenced in this Agreement are expressly made a part of this Agreement.

1.2 Definitions. For purposes of this Agreement, the following definitions will apply:

- (a) “Company Parties” means Company and its members, managers, stockholders, directors, officers, employees, agents, contractors (other than the Operator Parties), subcontractors, invitees, visitors or any person accessing or present on the Property under the express or implied invitation of Company, or any person claiming under Company.
- (b) “Environmental Laws” means any federal, state, or local law, statute, ordinance, code, rule, regulation, policy, common law, license, authorization, decision, order, or injunction which pertains to health, safety, any Hazardous Material (as hereinafter defined), or the environment (including but not limited to ground, air, water, or noise pollution or contamination, and underground or above-ground tanks) and will include, without limitation, the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.*, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 *et seq.* (CERCLA); the Hazardous Materials Transportation Act, 49 U.S.C. §1801 *et seq.*; the Federal Water Pollution Control Act, 33 U.S.C. §1251 *et seq.*; the Clean Air Act, 42 U.S.C. §7401 *et seq.*; the Toxic Substances Control Act, 15 U.S.C. §2601 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. §300f *et seq.*; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 *et seq.*, the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 to 136y; the Oil Pollution Act, 33 U.S.C. 2701 *et seq.*; and the Occupational Safety and Health Act, 29 U.S.C. 651 *et seq.*; all as

have been amended from time to time, and any other federal, state, or local environmental requirements, together with all rules, regulations, orders, and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

- (c) “**Hazardous Materials**” means all hazardous, explosive, and toxic and other materials regulated or controlled under any Environmental Laws, including petroleum and substances derived from petroleum.
- (d) “**Liability**” means all claims, liabilities, fines, penalties, costs, damages, losses, deficiencies, liens, cause of actions, suits, demands, judgments and expenses of any kind (including without limitation court costs, reasonable attorneys’ fees, costs of investigation, removal and remediation, and governmental oversight costs).
- (e) “**Operator Parties**” means Operator, its affiliates, the landlord for the Property (if applicable), and each of their respective members, managers, stockholders, managers, officers, directors, employees, representatives, contractors (other than any of the Company Parties), customers, lessors, invitees and agents.

## 2. **Access.**

- 2.1 **Access to the Property.** Company is hereby authorized to enter the Property solely for the Purpose, all at Company’s sole risk and expense, during the normal business hours of the business operations conducted on the Property and subject to the terms and conditions of this Agreement. Company’s route of ingress and egress on the Property to facilitate the Purpose will be solely as designated by Operator to Company.
- 2.2 **Limitation.** The right of access granted to Company by this Agreement (a) is nonexclusive, (b) does not include any rights to construct or install any improvements on the Property without the prior written consent of Operator, and (c) is not to be construed to interfere with or restrict Operator’s paramount right to use Property for Operator’s own business operations.

## 3. **Conduct.**

- 3.1 **Company’s Obligation.** While on the Property, Company will, and will cause each Company Party, to (a) not interfere with Operator’s own business operations, (b) comply with all applicable federal, state and local laws, ordinances, rules and orders of public authorities, including but not limited to the Williams-Steiger Occupational Safety and Health Act of 1970 (OSHA), Department of Transportation rules and regulations, and all Environmental Laws, and (c) abide by all safety, security, operating, and other rules and other policies posted at the Property or of which Operator otherwise makes Company aware.
- 3.2 **Operator’s Right to Exclude.** Company acknowledges that:
  - (a) if Operator determines, in its sole discretion, that any Company Party is acting in an unsafe manner or in violation of this Agreement, Operator may require such Company Party to leave the Property and prohibit such Company Party from accessing the Property; and
  - (b) if Operator determines, in its sole discretion, that any Company vehicle or other Company equipment is unsafe or is being operated in an unsafe manner, Operator may require Company to remove such Company vehicle or equipment from the Property, and prohibit such Company vehicle or equipment from entering the Property.

- 3.3 **Disclaimer of Operator Obligations.** Company acknowledges that Operator will have no responsibility to inspect, oversee or manage Company's vehicles or equipment or any Company Party's activities while on the Property.
- 3.4 **No Liens, Etc.** Company will not permit or suffer to exist any mechanics or materialman's lien of any kind or nature against the Property owned or controlled by Operator for any work done or materials furnished at the instance, request or on behalf of Company. Company will indemnify and hold harmless each of the Operator Parties against any and all liens, claims, demands, costs and expenses of any nature connected with or arising out of such work done or materials furnished. Nothing in this Agreement will be deemed to create a bailment.
4. **Hazardous Material.** At no time may Company bring any Hazardous Materials onto the Property, or allow any Hazardous Materials to be released or deposited over, under, in or on the Property, in a manner that is inconsistent with Operator's business operations conducted on the Property or in conflict with applicable Environmental Laws. Company will remediate, in compliance with applicable Environmental Laws, all Hazardous Materials which are so released or deposited by any Company Party.
5. **Term.** This Agreement will commence on the date first set forth above, and will continue on a month-to-month basis thereafter (the "Term") until the earlier of (a) the time that Operator ceases business operations on the Property or (b) termination of this Agreement by either Company or Operator by providing the other party with written notice of such termination. Upon termination of this Agreement, Company's privilege and permission to access the Property will immediately terminate.
6. **Indemnity.**
- 6.1 **Release of Liability and Indemnity.** To the fullest extent permitted by law, Company hereby releases the Operator Parties from, and will indemnify and hold harmless the Operator Parties against, all Liability (including without limitation Liability (a) for injury or death to persons, including without limitation Operator's and Company's officers and employees, (b) for loss and damage to property belonging to any person, and (c) under any Environmental Laws) arising in any manner from or in connection with a Company Party's acts or omissions or the presence of any Company Party, or any vehicle or equipment owned or operated by a Company Party, on or about the Property. The only Liabilities with respect to which the foregoing obligation to indemnify the Operator Parties do not apply are Liabilities (i) to the extent proximately caused by the gross negligence or willful misconduct of an Operator Party, or (ii) wholly caused by the sole negligence of an Operator Party.
- 6.2 **Scope of Company's Indemnification Obligation.** Company acknowledges that Section 6.1 may obligate Company to indemnify the Operator Parties for their contributory negligence.
- 6.3 **Defense.** Company, upon written notice from Operator, will defend such Liability at Company's expense with counsel satisfactory to Operator, provided that Operator will be entitled to participate in the defense of such Liability and to employ counsel of its choice for such purpose.
- 6.4 **Anti-Indemnification Reformation.** If Company's indemnity obligation under this Agreement is indisputably subject to an applicable anti-indemnification statute such that all or part of this indemnity provision is determined to be invalid, unenforceable, or illegal, any modification or severance of the offending provision or offending part of a provision will be subject to all of the following:

- (a) any indemnification provision or part of any indemnification provision will, at a minimum, require that Company release, indemnify, and hold the Operator Parties harmless from all Liability arising out of this Agreement caused by the negligence, fault, or willful misconduct of a Company Party to the fullest extent permitted by applicable law; and
- (b) if an indemnification provision or part of an indemnification provision is severed, Company will release, indemnify, and hold the Operator Parties harmless from all Liability arising out of this Agreement caused by the negligence, error, omission, fault, or willful misconduct of any Company Party to the fullest extent permitted by applicable law.

## 7. **Insurance.**

7.1 **Required Insurance.** Company will maintain at its sole cost at all times as required under this Agreement, the insurance coverage set forth below. If coverage is provided on a claims made basis, the retroactive date of the policy must be prior to Company's access to the Property. The insurance will be provided by insurance companies that have a financial strength rating of at least "A-, VII" as rated by A.M. Best, with full policy limits applying to Operator. The minimum insurance required to be maintained by Company is as follows:

- (a) Worker's Compensation insurance with statutory limits as required by laws applicable to and covering employees of Company;
- (b) Employer's Liability insurance protecting Company against liability in the absence of Worker's Compensation statutory liability or where Worker's Compensation statutory liability does not apply, for employee bodily injury with limits of not less than \$1,000,000 per occurrence;
- (c) Commercial General Liability, umbrella, and excess liability insurance for bodily injury, property damage, personal injury, contractual liability and products and completed operations with limits of not less than \$1,000,000 per occurrence including cross-liability coverage. If Company may bring Hazardous Materials onto the Property, Company must include a "named peril / time element pollution" endorsement on the Commercial General Liability policy with limits of not less than \$5,000,000 per occurrence (or, alternatively, this pollution coverage may be obtained through a separate Contractor's Pollution Legal Liability policy); and
- (d) Automobile Liability insurance including non-owned and hired vehicle coverage and coverage for loading and unloading, with limits of not less than \$2,000,000 combined single limit. If Company may haul Hazardous Materials, an MCS 90 endorsement is required and coverage will include the CA 9948 (Broadened Pollution Liability) endorsement or equivalent, non-owned and hired vehicle coverage and coverage for loading and unloading, with limits of \$5,000,000 combined single limit.

Employer's Liability, Commercial General Liability, and Automobile Liability limits can be achieved through a combination of primary and Excess/Umbrella Liability coverage. If Company utilizes Umbrella or Excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

7.2 **Policy Requirements.** Operator and its subsidiaries and affiliates of any tier, and each such entities' employees, will be named as additional insureds on all such policies, except the Worker's Compensation policy. The additional insured endorsements for the Commercial

General Liability policy will be ISO form CG 20 10 or equivalent coverage. All policies will also be endorsed to waive subrogation against Operator and its subsidiaries and affiliates of any tier and each such entities' employees. Furthermore, all insurance policies will be primary and non-contributory coverage, and not concurrent with, or excess over, any other valid insurance which may be available to Operator. Company will be responsible for payment of any deductibles or self-insured retention for such insurance.

- 7.3 **Insurance Certificates.** Prior to access to the Property and upon request from Operator, Company will provide to Operator acceptable certificates of insurance evidencing the required insurance policies. All certificates must be emailed to: [legal@candorail.com](mailto:legal@candorail.com). Company will provide that Operator receive notification not less than 30 days in advance if there is non-renewal, cancellation, reduction in limit or material change in coverage under any policy. If requested by Operator, Company agrees to provide copies of Company's insurance policies and endorsements for Operator's review. Operator's failure to request, or respond to, any deficient insurance certificate or letter of self-insurance received by Operator will not constitute a waiver of Operator's rights, or Company's insurance obligations. No insurance certificate or other evidence of insurance will serve to amend the insurance requirements herein without prior written consent of Operator.
- 7.4 **Compliance with Insurance Requirements; No Indemnity Limitation.** Company agrees to comply with all terms of the required insurance policies. Any failure of Company to maintain any of the insurance required will be considered a material breach of this Agreement and Operator will have the right, in addition to all other rights, to immediately terminate this Agreement without further cost to Operator. The insurance requirements specified herein are in addition to and separate from any other indemnity obligations imposed by the Agreement. Nothing in this Section 7 will be construed in any manner as waiving, restricting, or limiting the liability of Company for any obligations imposed under this Agreement (including, but not limited to, the requirement of Company to indemnify and hold harmless the Operator Parties under this Agreement).
- 7.5 **Insurance Modifications.** The types of coverages and minimum limits of liability are a separate obligation of Company, and are based on current economic conditions. Operator reserves the right from time to time to require reasonable additions to or increases in such coverage that Operator deems necessary.

## 8. **Miscellaneous.**

- 8.1 **Governing Law.** This Agreement will be governed by and will be construed in accordance with the substantive laws of the State of Delaware, without reference to principles governing choice or conflicts of laws.
- 8.2 **Severability.** If any provisions or portions of this Agreement will to any extent be held to be invalid or unenforceable, the remainder of this Agreement or the application of other portions thereof will not be affected thereby, and each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law, so long as the intent of the Company and Operator can be maintained. Upon a determination that any term or provision is invalid, illegal, or unenforceable, the court may modify this Agreement to effect the original intent of the parties as closely as possible in order that each provision of this Agreement will be valid and enforceable to the greatest extent possible.
- 8.3 **Waiver and Consent.** A waiver or consent of Operator, express or implied, to or of any breach by Company in the performance by Company of its obligations with respect to this Agreement is not a consent or waiver by Operator to or of any other breach in the performance by Company

of the same or any other obligations of Company with respect to this Agreement. Failure on the part of Operator to complain of any act of Company or to declare Company in breach with respect to this Agreement, irrespective of how long that failure continues, does not constitute a waiver by Operator of its rights with respect to that default until the applicable statute-of-limitations period has run.

8.4 **No Assignment.** Company may not assign or delegate its obligations under this Agreement without the prior written consent of Operator.

8.5 **Notice.** Any notice required or permitted by this Agreement must be in writing and will be deemed to have been delivered: (a) when received if delivered personally; (b) on the next business day when sent by overnight courier (which is confirmed by written verification of receipt); or (c) three (3) business days after being sent by certified or registered mail, return receipt requested. Notice must be sent to the following addresses or such other address as either Company or Operator may specify in writing:

If to Company:

\_\_\_\_\_  
Attention: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Operator:

Cando Rail & Terminals (U.S.) LLC  
Attention: \_\_\_\_\_  
412 Marion Street – 3<sup>rd</sup> Floor  
Winnipeg, Manitoba, Canada R2H 0V5

With a copy to:

Cando Rail & Terminals  
Attention: Legal  
412 Marion Street – 3<sup>rd</sup> Floor  
Winnipeg, Manitoba, Canada R2H 0V5

8.6 **Section Headings.** The Section headings contained in this Agreement are used only as a matter of convenience and are neither to be considered part of this Agreement nor to be used in determining the intent of the parties.

8.7 **Entire Agreement.** This Agreement, which includes the recitals, together with any attached exhibits, constitutes the entire agreement hereto with respect to the subject matter contained herein, and there are no covenants, terms or conditions, express or implied, other than set forth or referred to herein. This Agreement supersedes all prior agreements executed by either Company or Operator relating to Company’s right to access the Property. Neither Operator nor Company may amend, modify or cancel this Agreement except by a written agreement signed

- by both parties.
- 8.8 **Conflict of Interest.** Company will not pay any commission, fee, or rebate to an employee of Operator or favor an employee of Operator with any gift or entertainment of significant value.
- 8.9 **Binding Nature.** This Agreement is binding on, and will inure to the benefit of, Company and its successors and permitted assigns. This Agreement, including Company's right to access the Property, is deemed accepted by Operator and will be binding on Operator immediately upon any Company Party accessing the Property, and will inure to the benefit of Operator and its successors and assigns.
- 8.10 **Electronic Signatures.** Execution of this Agreement by an electronic form of signature that is an exact copy of the original signature, or by other electronic means intended to preserve the original graphic and pictorial appearance of a document, will be deemed to be, and will have the same effect as, execution by original signature. An electronic signature (i.e., any electronic sound, symbol, or process attached to or logically associated with this Agreement and executed or adopted by Company with the intent to sign this Agreement), if used by Company on this Agreement, is intended to authenticate this writing and to have the same force and effect as a manual signature.

[Signatures follow on next page]

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement, for the benefit of Operator, as of the day and year first above written.

COMPANY

By: \_\_\_\_\_  
Name:  
Title:

OPERATOR

By: \_\_\_\_\_  
Name:  
Title:

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