

**THE NORTHWEST SEAPORT ALLIANCE & PARTICIPATING CARRIER AGREEMENT
RE: 2023 Northwest Seaport Alliance RAIL CARGO INCENTIVE PROGRAM**

This Agreement is entered into by and between The Northwest Seaport Alliance (“NWSA”) and _____ an ocean carrier (“Participating Carrier”) (each a “Party” and collectively the “Parties”).

RECITALS:

- A. The NWSA is the 7th largest trade gateway in the United States, consisting of the combined marine cargo operations of the Port of Seattle (North Harbor) and the Port of Tacoma (South Harbor).
- B. The Ports/NWSA have invested billions of dollars in their marine cargo facilities and have prospered for many years by attracting cargo that generates jobs and revenue for the region.
- C. Approximately half the cargo that comes through the NWSA is bound for destinations outside of the Puget Sound region (primarily the Midwest).
- D. The NWSA offers this Rail Cargo Incentive Program (“Incentive Program”) to encourage International Ocean Carriers to grow their international rail cargo volumes to and from all inland IPI locations served and/or operated by BNSF and UPRR with the exception of Portland, OR. International rail cargo volumes to and from the ramp locations in Minot, ND, Pocatello, ID, Millersburg, OR and Wallula, WA served by the Union Pacific and/or BNSF are included in the scope of this program.

Wherefore, based on the above, the Parties agree as follows:

1. NWSA Contingent Incentive Program. The NWSA agrees to pay Participating Carrier incentive payments for Qualifying Rail Cargo volume growth through the NWSA gateway and certain identified inland rail ramp locations, expressly conditioned upon the Participating Carrier’s compliance with the terms and conditions provided herein and expressly contingent upon the monthly volume updates as provided by the BNSF Railway Company (“BNSF”) and Union Pacific Railroad (“UPRR”) (collectively “Railroads”) to the NWSA, as described herein. Incentive payments are expressly contingent on (1) the Participating Carrier increasing rail cargo volumes as described herein, (2) the Participating Carrier being current in all accounts with the NWSA prior to receiving any funds through the Incentive Program, and (3) Participating Carrier’s execution of this Agreement, which expressly includes permission for the BNSF, UPRR and NWCS (“Railroads”) to share a monthly report of Participating Carrier rail lifts to the NWSA, as described herein. For purposes of this agreement, a carrier is deemed to be not current in its accounts if it has any accounts with NWSA over 30 days past due on the date that NWSA makes the incentive payments. If a carrier is not current on the date incentive payments are made, the carrier will not be issued an incentive payment and will have 30 days to become current on all accounts in order to be eligible for the incentive payment or otherwise forfeit the incentive payment.

2. Express Scope of Incentive Payment. During the Incentive Program term, the NWSA will pay incentive payments to the Participating Carrier which increase international rail cargo volumes in identified inland rail ramp locations based on a year over year basis and which achieve actual growth as follows:

The BNSF and UPRR (“Railroads”) will supply the NWSA reports showing volume activity for the base period of May 2022 through October 2022 and following six months (November 2022 through April 2023) to reflect all international rail volume to/from marine terminals by Participating Carrier in the NWSA in order to create a base measurement (“Base Measurement”). The Railroads will then provide monthly volume updates by Participating Carrier in order to measure rail cargo growth. The Participating Carrier must increase their total international rail lifts over the corresponding Base Measurement six-month period volumes. The incremental volumes measured will be those moving between NWSA terminals and the inland rail ramps identified in Recital D of this agreement (“Qualifying Rail Volumes”) in order to qualify for the Incentive Program payments. As an example, May 2023 will be compared to May 2022. Import loads, export loads and empty container repositioning rail lifts are included in Qualifying Rail Volumes. Domestic intermodal cargo moving in 53’ intermodal containers is not eligible for this program.

For all Qualifying Rail Volumes over the Base Measurement, the Participating Carrier will receive \$50 per rail lift, through the end of the Incentive Program. Incentive payments will be made within 45 days following the end of the Base Measurement period.

A total of \$3 million has been authorized for the Incentive Program, and the NWSA expects multiple ocean carriers to participate. If eligible volumes across all participating carriers results in an exhaustion of the total authorized funds, the NWSA has no obligation to continue and may close the Incentive Program, making no further payments thereunder. If multiple carriers earn incentives in the period in which the funding for the program is exhausted, NWSA will allocate remaining payments reimbursements to the participating and eligible carriers in an equitable fashion, at NWSA's sole and absolute discretion. The NWSA may seek authorization to increase the program funding level, but is not obligated to do so, nor does NWSA make any representations regarding the availability of additional funds beyond the original authorization.

Timing of a rail lift will be measured by the date on which the Railroads show a container being lifted on or off a rail car at a near-dock facility or interchanged to or from an NWSA on-dock facility. Any discrepancies in reported volumes that are called out by a Participating Carrier within 30 days of receipt of information will be reviewed by NWSA with the Participating Carrier with final resolution determined by the NWSA, in its sole discretion.

3. Permission to Share Volume Reports. Participating Carrier hereby gives permission for Railroads to provide a monthly report of the Participating Carrier’s rail lifts to the NWSA. This will cover both on-dock and near-dock facilities for the Base Measurement period. The report template in Exhibit B of this agreement must be used to submit monthly updates.

4. Term & Termination. The Incentive Program will begin May 1, 2023 and will continue through April 30, 2024. The NWSA reserves the right to cancel or extend the Incentive Program at any time. The

NWSA shall provide notice of termination by email sent to the Participating Carrier Designated Representative identified herein at Paragraph 5. The Participating Carrier may terminate by providing notice of termination by email sent to the NWSA Designated Representative identified herein at Paragraph 5.

5. Communications. Any notice, demand, request, consent, approval, or communication that either Party desires or is required to give to the other Party shall be in writing addressed to the other Party at the email addresses below unless otherwise indicated by the Parties to this Agreement. The Parties identify the following Designated Representatives:

NWSA: Ms. Tong Zhu, Chief Commercial & Strategy Officer
Phone: (253) 428-8642
Email: tzhu@nwseaportalliance.com

Participating Carrier: Company Name:
Contact Name/Title:
Phone:
Email:

It is expected that the identified Designated Representatives will communicate frequently, to coordinate the execution of the Incentive Program.

6. Independent Parties. Nothing contained herein shall be construed as creating an employer/employee relationship between the NWSA and any Participating Carrier or individuals participating in the Incentive Program and/or benefiting from the Incentive Program payments. It is understood and agreed that this Agreement is solely for the benefit of the Parties hereto and gives no right to any other party. No joint venture or partnership is formed as a result of this Agreement. No employees or agents of any Party shall be deemed, or represent themselves to be, employees of any of the other Party.

7. Legal obligations. This Agreement does not relieve either Party of any obligation or responsibility imposed upon it by law.

8. Timely Performance. The requirements of this Agreement shall be carried out in a timely manner according to the terms herein.

9. Audit of Records. During the term of this Agreement, and for a period not less than six (6) years from the date of termination, the Parties shall retain all records and accounts pertaining to the work of this Agreement and accounting therefore shall be kept by the Parties and shall be available for inspection and audit by representatives of either Party and any other entity with legal entitlement to review said records. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained by the Parties until all litigation, claims, or audit finding has been resolved, even though such litigation, claim, or audit continues past the six-year (6) retention period. This provision is in addition to and is not intended to supplant, alter or amend records retention requirements established by applicable state and federal laws.

10. Dispute Resolution Process. The Parties' Designated Representatives under Paragraph 5 herein shall use their best efforts to resolve disputes between the Parties, provided however, any discrepancies in reported volumes called out by Participating Carrier within 30 days of receipt of information will be reviewed by NWSA with the Participating Carrier with final resolution determined by the NWSA, in its sole

discretion. For all other disputes, if the Designated Representatives are unable to resolve a dispute, the matter shall be reviewed by the chief executive officer of each Party or their designee to attempt to reach resolution. The Parties agree to exhaust each of these procedural steps before seeking to further resolve the dispute by arbitration. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, which is not resolved by agreement between the Parties, shall be submitted for determination by arbitration. Subject to preliminary resolution requirements of this dispute resolution process, the Parties agree to arbitration of all disputes arising under this agreement in Pierce County, Washington before a single arbitrator using the rules for adjudication of the American Arbitration Association. The arbitrator shall be selected by mutual agreement of the parties, and any such arbitrator shall be an attorney admitted to practice law Washington State.

11. Controlling Law & Venue. This Agreement shall be construed and enforced according to the laws of the State of Washington, and venue for any dispute resolution arising out of this Agreement shall be in Pierce County Washington.

12. Indemnification and Hold Harmless.

A. The Parties release each other from, and shall defend, indemnify, and hold each other and agents, employees, and/or officers harmless from and against all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, made by or on behalf of the other Party and/or its agents, employees, officers, and/or subcontractors, arising out of or in any way related to this Agreement, unless and except to the extent the same be caused in whole or in part by the negligence of a Party or its agents, employees, and/or officers.

B. This Agreement includes a waiver of subrogation against all losses sustained by either Party and/or its agents, employees, officers, subcontractors, and/or insurers, arising out of or related to this Agreement except to the extent the Parties' losses are caused in whole or in part by the negligence of the other Party or its agents, employees, and/or officers.

C. Each Party specifically assumes liability for actions brought by its own employees against the other Party and for that purpose each Party specifically waives, as respects the other Party only, any immunity under the Worker's Compensation Act, RCW Title 51. Both Parties recognize that this waiver was the subject of mutual negotiation.

D. In the event any Party incurs attorney's fees, costs or other legal expenses to enforce the provisions of this Agreement against the other Party, all such fees, costs and expenses shall be recoverable by the prevailing Party.

E. No liability shall attach to any of the Parties by reason of entering into this Agreement except as expressly provided herein.

G. The provisions of this Article shall survive any termination or expiration of this Agreement.

13. Severability. If any term or provision of this Agreement, or its application to any person or circumstance is ruled invalid or unenforceable, the remainder of this Agreement will not be affected and will continue in full force and effect.

14. Entire Agreement/Amendment. This Agreement, together with any documents incorporated by reference shall constitute the entire agreement between the Parties with respect to the Incentive

Program and shall supersede all prior agreements, proposals, understandings, representations, correspondence, or communications relating to the subject matter hereof. No modification or amendment of this Agreement shall be valid and effective unless approved by both parties in writing.

15. Authorization. Each Party warrants that the signers below have authority to bind its respective Party hereto.

WHEREFORE, the parties have executed this Agreement on the dates set forth below.

The Northwest Seaport Alliance

Participating Carrier: _____

John Wolfe
Chief Executive Officer

By:
Its:

Date _____

Date _____

Attachment: **Exhibit A** Payment Information Form.

EXHIBIT A -PAYMENT INFORMATION

Ocean Carrier: _____ Federal ID #: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Contact Name: _____ Phone #: _____

Job Title: _____ Email: _____

Remit to Address (if different from above): _____

City: _____ State: _____ Zip Code: _____

Exhibit B - Monthly report template [to be inserted]