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MICHIGAN CENTRAL RAILROAD CO.

AND

CANADA SOUTHERN RAILWAY CO.

AGREEMENT.

December, 1882.

New York

E. WELLS SACKETT & RANKIN, PRINTERS AND STATIONERS,

56 & 58 WILLIAM STREET.

1882.

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Joliet and Northern Indiana Railroad, the Grand River Valley Railroad, the Kalamazoo and South Haven Railroad, and the Jackson, Lansing and Saginaw Railroad, and is the owner of all the capital stock of the Detroit and Bay City Railroad Company, and works the road of said last mentioned Company under a perpetual agreement, and has an interest in the St. Charles Air Line Railroad ;

And Whereas, the said companies, parties hereto, for the purpose of mutually benefiting the traffic over their lines, and for the economy of the working thereof, have resolved to make the arrangement hereinafter contained for the regulation and interchange of traffic and the working of traffic over the railways of the said companies, and for the division and apportionment of tolls, rates and charges, and for the management of the railways of the said companies, and the running and operation thereof, and all railways in connection therewith, over which the said companies, or either of them, have control, as aforesaid.

Now, Therefore, this agreement, made and entered into as aforesaid, *Witnesseth* as follows, to wit :

I.

The said Canada Company, in consideration of the covenants and agreements by and on the part of the said Michigan Company hereinafter contained, does, on its part, covenant and agree :

FIRST.—That it will, concurrently with the taking effect of this agreement, for the purpose of the working and management of the said roads, as hereinafter provided, transfer and deliver the possession and control of its main line of road hereinbefore described, together with the several lines of branch roads appurtenant thereto, and also all the plant, equipment and property of every kind and

nature appurtenant to the said road, main line and branches, or acquired or held for use in connection therewith, including the transfer ferry boats and other property nominally owned by the said Canada Southern Bridge Company, which may be conveniently used in connection with the working and operation of the lines of railroad covered by this agreement to the said Michigan Company, and will, and does hereby, give to the said Michigan Company the right, at the date above named, to enter upon and take possession of the said road, main line and branches, and the said other property, and thereafter, during the continuance of this agreement, to retain possession thereof, and to maintain, work and operate the said road, in the manner in which it, the said Michigan Company, hereinafter covenants that it will maintain, work and operate the same ; *Provided, however*, that nothing herein contained shall have effect to transfer the ownership of any of the several lines of railway, or branches or appurtenances, or any of the property, real or personal, owned or controlled by the said Canada Company, or to preclude the said Canada Company or the said Bridge Company from disposing of any property owned by said Bridge Company, other than the aforesaid ferry boats and appurtenances.

SECOND.—That it will also, concurrently with the taking effect of this agreement, cause to be transferred to the said Michigan Company the control and management, for the purpose of working and operating the several following roads, to wit :

The Erie and Niagara Railroad, the Michigan Midland and Canada Railroad, and the Toledo, Canada Southern and Detroit Railroad, and that during the continuance of this agreement it will, by the use of the shares of stock of the said several companies owned and controlled by it, continue the said Michigan Company in the control and management of said several roads ; and in case the road of the said Toledo, Canada Southern and Detroit Railway Company shall, during the continuance of this agreement, be sold in

foreclosure of the mortgage resting thereon, it, the said Canada Company, will, if practicable, by the use of the bonds of said Company which it holds, cause said road to be purchased and the title thereof taken and held in such manner as to assure that the said road shall continue to be worked and operated under this agreement.

THIRD.—That it will, during the continuance of this agreement, keep up its corporate organization, and will from time to time, and in due time, perform all acts which it is or may be by law in that behalf required to perform, and will neither do, nor suffer to be done, any act by which its corporate existence, rights and franchises, or either of them, may become subject to forfeiture or impairment; and that it will not, during the continuance of this agreement, part with its interests in, and control of, the several corporations owning the railroads mentioned in the last above paragraph, which interest and control is now represented by its ownership of the bonds and shares of stock of said corporations as hereinbefore recited.

FOURTH.—That its said proprietary road, main line and branches, and the property appurtenant thereto, the possession and control of which it is to so transfer to the said Michigan Company, and each and every part thereof, is free and clear from all encumbrances, except a certain mortgage executed to Augustus Schell and Cornelius Vanderbilt, as mortgagees in trust, to secure the payment of bonds to the aggregate amount of fourteen million dollars (\$14,000,000), and interest semi-annually thereon, to wit, January 1st and July 1st in each year, at the rate of five per cent. per annum, the principal of which bonds will mature January 1st, 1908. And that if any other or further liens or encumbrances, not otherwise provided for, shall be found to exist thereon. or on any part thereof, the said Michigan Company may deduct any sum which it may be compelled to pay by reason thereof from the moneys which, by the terms of this agreement, it, the said Michigan Company, is to pay to it,

the said Canada Company; and that the proceeds of any of the said bonds now remaining unissued shall be applied to the purposes designated in "the Canada Southern Arrangement, Act 1878," passed by the Parliament of Canada, and otherwise designated as 42 Victoria, Chapter 9.

FIFTH.—That it will, concurrently with the taking effect of this agreement, or as soon thereafter as practicable, cause to be executed its corporate negotiable bonds in such denomination, and made payable at such time subsequent to the date fixed for the termination of this agreement, as the Canada Company may determine, to the aggregate amount of six million dollars, bearing interest at a rate not to exceed five per cent. per annum, payable semi-annually, and secured by a second mortgage upon all its property executed to Augustus Schell and Cornelius Vanderbilt as mortgagees in trust, and will deposit said bonds with the Union Trust Company, and give to said Company authority to sell the same as hereinafter provided. And that it will cause the net proceeds of the sale of said bonds, except as hereinafter otherwise provided, to be expended for the purpose of making additions and improvements to its said railroad and property, the possession of which is to be hereunder given to said Michigan Company, as follows, to wit:

1st. Constructing a branch of said main line of road from some point on the same to the Niagara River.

2d. Constructing or acquiring ownership of a bridge over the Niagara River, and necessary approaches thereto and connections with other roads, and providing terminal facilities for said road in the vicinity of said bridge.

3d. Replacing Kettle Creek Bridge with a permanent double track structure of iron, stone or earthwork.

4th. Laying a second track on the main line of said road between such points as the said Michigan Company may from time to time determine to be necessary for the proper and economical working of the line.

5th. Extending existing branches and constructing new branches, as may be found desirable to reach or develop business.

6th. Increase of the equipment of the road of said Canada Company up to the following standard, to wit, 125 locomotives, 45 first class coaches, 30 second class coaches, 6 baggage, mail and express cars, 25 baggage cars, 3 dining cars, 2,600 box cars, 200 stock cars, 50 oil cars, 500 flat cars, 60 caboose cars, 100 coal cars.

7th. Such other additions and improvements as may from time to time be approved by both parties hereto. The said Canada Company, however, reserves the right to use sufficient of the proceeds of said bonds to pay any indebtedness which it may be held or found to owe the International Bridge Company or other creditors whose claims are now in dispute; and such further sum as may be necessary to carry out the purposes of the Canada Southern Arrangement Act 1878, after the application to such purposes of the fourteen million of bonds authorized by said act; provided, however, that not to exceed one million dollars in amount of said bonds shall be so used.

SIXTH.—That its fixed charges, in the nature of interest upon bonds and rental of leased lines, when the bonds which it has hereinbefore covenanted to issue have been so issued, shall not exceed the sum of one million dollars.

SEVENTH.—That it will, to the extent of its corporate powers, make any and all further and other assurances, conveyances and contracts which may be advised by counsel as necessary to protect the said Michigan Company in the possession of the said railroads and other property hereby transferred, or intended so to be, and will, during the continuance of this agreement, ensure the Michigan Company in the quiet and peaceable possession and control thereof.

Provided, that the Canada Company shall not be liable for any breach of this covenant consequent upon any act of God, war, riots, strikes or other occurrences over which the Canada Company has no control.

II.

The said Michigan Company, in consideration of the foregoing covenants and agreements on the part of the said Canada Company, covenants as follows:

FIRST.—That it will enter into possession of the said railroad of the said Canada Company, and the property appurtenant thereto, when transferred as above provided, and will, during the continuance of this agreement, maintain, manage, work and operate the said roads as hereinafter provided, in like manner and in all respects as it would do if it were the owner thereof (but in the name of the Canada Southern Railway Company), with like charter or statutory rights, privileges, duties and obligations as the said Canada Company now has, and will observe and perform such duties and obligations in the same manner as said Company would be bound to do if this agreement were not made, and that it will neither do, nor omit to do, any act whereby the corporate rights, privileges or franchises of the said Canada Company may become subject to forfeiture or impairment.

SECOND.—That it will not, without the consent of said Canada Company in writing, change the location of any line or branch, or of any part of any line or branch, of either of the roads the possession of which is given to it hereunder by the said Canada Company, nor will it cease to operate any such line or branch without like consent; provided, that nothing herein contained shall be construed to compel the Michigan Company to maintain the crossings of the Detroit River at Grosse Isle after the completion of the

line of the Canada Company from Essex Centre to a point on the Detroit River, opposite Detroit.

THIRD.—That it will, during the continuance of this agreement, pay, in due season, all taxes and assessments that may, after it so receives possession of said railroad and property, be levied or become chargeable thereon, or upon the said Canada Company, by reason of its ownership thereof; and that it will, from time to time, pay the interest upon the series of bonds issued by said Canada Company and hereinbefore mentioned as the coupons for such interest shall mature, and cause to be surrendered said coupons, canceled, to the Treasurer of said Canada Company, and that it will also, in like manner, pay the interest upon any bonds that said Canada Company may hereafter issue, under the provision in that behalf herein contained, and also the interest upon such bonds as may hereafter be issued by said Canada Company in renewal, or for the retirement of, said bonds herein mentioned, or any of them.

FOURTH.—That it will assume and perform all existing contracts, leases and agreements of the Canada Company which relate to the management and operation of the roads covered by this agreement, and will create no liens or encumbrances upon said railroad or property, or any part thereof, by way of mortgage or otherwise, and will indemnify and save harmless the said Canada Company against all liability, actions, damages and losses which may in any manner arise from or on account of any act or omission of it, the said Michigan Company, its agents and employees; and upon the termination of this agreement, by default or otherwise, will return said road and property in as good condition, in all respects, as when received by it hereunder, and will also surrender to the Canada Company, in good condition, all betterments or improvements made, or new branches constructed, during the continuance of this agreement.

FIFTH.—That it will cause to be maintained, worked and operated the said roads of the said Erie and Niagara,

Michigan Midland and Canada, and Toledo, Canada Southern and Detroit Companies, in such manner as to comply in all respects with the laws and charters applicable thereto, and, so far as practicable, in connection with its own lines of road and the roads of said Canada Company, in such manner as to protect the rights and advance the interests of all parties concerned, and at the termination of this agreement will surrender charge thereof in like good condition as when received; provided, that if the earnings of the road of the Michigan Midland Company shall be insufficient for the expenses of its maintenance and operation, then such expense shall be paid out of the gross revenue hereinafter mentioned.

SIXTH.—That it will at all times keep full, true and accurate accounts of all moneys received and disbursed in and about the premises, and will use and appropriate said moneys as hereinafter provided, and will, as hereinafter provided, render to said Canada Company a statement of such receipts and disbursements, and will permit the Board of Directors of the Canada Company, or such persons as they may appoint, full and ample inspection of all books of accounts and vouchers in anywise appertaining to the maintenance, management and operation of the roads covered by this agreement.

SEVENTH.—That the fixed charges, in the nature of interest upon bonded indebtedness and rental, payable on account of its main line and the several other lines of road controlled by it, as hereinbefore recited, amount to the sum of one million seven hundred twenty-five thousand dollars, and no more.

III.

It is mutually agreed as follows:

FIRST.—The Michigan Company shall manage and operate all the roads and branches covered by this agree-

ment, without discrimination or preference in favor of or against the roads and branches of either Company, parties hereto, and shall, as far as practicable, and as is to the interest of both parties hereto, send over the roads and branches of the Canada Company all railway traffic, the route or direction of which it can control, and which is destined for points which can be reached by the roads of the Canada Company or its connections, and shall maintain and foster the existing South-western connection of the roads of the Canada Company, and all other business, whether through or local, of the Canada Company.

SECOND.—All gross earnings, revenues and receipts derived from the maintenance and operation of the roads covered by this agreement, in so far as the parties hereto are entitled to the benefit of the same, shall be appropriated as follows, to wit :

1st. To the payment of the cost of maintaining in like good condition, and of working and operating the roads of the two companies, including the maintenance and renewal of roadway, plant and equipment, and the payment of taxes and assessments, and the maintenance of organization of both companies.

2d. To the payment of the fixed charges, to wit, interest on bonded debt, including the interest on the second mortgage bonds of the Canada Company, to be issued as herein provided, when so issued, and rental of leased lines, payable by both companies according to their respective covenants hereinbefore contained, and such further fixed charges as may be hereafter created under this agreement.

3d. The residue, if any, shall be divided between the two companies, parties hereto, in the proportion of $33\frac{1}{3}$ per cent. to the said Canada Company, and of $66\frac{2}{3}$ per cent. to the said Michigan Company.

The full term of twenty-one years under this agreement shall be divided into four periods, the first three of which

shall consist of five years each, and the last of which shall consist of six years ; and either of the companies, parties hereto, may, by giving notice in writing to the other party, at least two months before the expiration of each of said first three periods, call for a readjustment of the percentage of net earnings which each is to receive for the next period thereafter ; and, in case the other party neglects or refuses to proceed to consider such readjustment, or the parties cannot agree, the percentage which each party shall receive during the said period shall be settled by arbitration, in the manner provided by the fourteenth clause of the third division of this agreement.

If the gross earnings and receipts in any year are insufficient to meet the payments provided for in the above clauses numbered first and second, then the said Michigan Company may pay and retain the amount of such deficiency out of future earnings and receipts.

THIRD.—The said Michigan Company shall cause separate accounts to be kept of the business of the said Erie and Niagara, Michigan Midland and Canada, and the Toledo, Canada Southern and Detroit Companies respectively, and also of the business of the Canada Southern Bridge Company, if any business shall be carried on in its name, or under its franchises, in such manner as to be able to make all necessary and proper reports of such business, and of the earnings and expenses of each of said companies ; and any revenues which the said Canada Company shall be entitled to receive, on account of interest upon bonds or dividends upon the stock of either of said companies, which it, the said Canada Company, now owns, or which it may hereafter acquire under the Canada Southern Arrangement Act or otherwise with the proceeds of its said second mortgage bonds (which may be used for that purpose with the consent of the parties hereto), shall constitute a portion of the gross revenue to be appropriated as heretofore provided.

FOURTH.—Operating expenses under this agreement shall be as said terms are defined by Section 2 of the said Canada Southern Arrangement Act 1878, and shall include custom house expenses at the National boundary lines, and such other disbursements usually charged to operating expenses by railroad companies in Canada and the United States.

FIFTH.—If the amount of the fixed charges now payable by either company as hereinbefore stated and covenanted shall at any time be reduced, the party whose fixed charges are so reduced shall receive the sole benefit of such reduction.

SIXTH.—If the fixed charges of either party are increased for the purpose of permanent improvements, of a nature to increase, and made for the purpose of increasing, the earning capacity of the property, such increase of fixed charges shall be paid out of the gross revenue of the two companies; provided, however, that such increase of fixed charges shall not be so paid unless created with the assent of both parties hereto, and provided further, that nothing herein contained shall be construed to prevent the Michigan Company from promoting the construction of other lines of road, not competitive to the lines covered by this agreement, and aiding such construction by its credit.

SEVENTH.—The bonds which the said Canada Company has hereinbefore covenanted to execute and deposit with the Union Trust Company, shall be sold from time to time by said Trust Company, upon the joint request, in writing, of the parties hereto, and the proceeds thereof shall be placed by said Trust Company to the joint credit of the Treasurers of said parties, and shall be paid out only upon checks or drafts of the Treasurer of the said Canada Company, countersigned by the Treasurer of said Michigan Company; and the additions and improvements, to the making of which the said Canada Company has hereinbefore covenanted that

the proceeds of said bonds shall be applied, shall be made as follows, to wit: the construction of said branch to Niagara River, and of said Kettle Creek Bridge, shall be entered upon presently, that is to say, as soon as money for that purpose can be realized from the sale of bonds as above provided, and the construction of the said bridge over the Niagara River as soon as the necessary authority in that behalf can be obtained. Said second track shall be laid, and additions to equipment obtained and branches constructed or extended, from time to time, upon the request of the said Michigan Company; provided, that if any disagreement shall arise between the parties with reference to the time at which any of said improvements or additions shall be made, or with reference to any other question under this provision, the matter so in disagreement shall be submitted to, and determined by, arbitrators, under the general provisions upon that subject hereinafter contained.

EIGHTH.—If, after the said Canada Company's equipment has been increased, as hereinbefore provided, an increase of equipment shall become necessary, such increase may be made and paid for from gross earnings, and such increase of equipment shall be apportioned between the two companies, as owners, in the same proportion as net earnings are to be divided between said companies under this agreement; provided, that such equipment shall not be so increased and paid for out of the earnings of any one year to an amount to exceed two hundred and fifty thousand dollars, without the consent of the Directors of said Canada Company, or by determination of arbitrators that such increase is necessary.

NINTH.—Terminal facilities for the Toledo, Canada Southern and Detroit Company may be acquired in the name of said company, and payment therefor made from its separate earnings, and said Canada Company will cause the necessary corporate action in that regard to be taken by

said Toledo, Canada Southern and Detroit Company, on request of said Michigan Company.

TENTH.—If the said Michigan Company shall in any manner be deprived of the control of either of the roads included in this agreement, the percentage of the net revenue of the party now having control of, and placing the same under, this agreement, shall be proportionately reduced, as the parties hereto may agree; and, failing such agreement, the amount of such reduction shall be determined by arbitration, under the general provisions in that behalf hereinafter contained.

ELEVENTH.—Any floating indebtedness of the said companies, parties hereto, respectively, existing at the time this agreement takes effect, shall, unless other provision be made therefor, be paid by said Michigan Company out of current receipts, and the amount of each Company's indebtedness so paid shall be charged against and deducted from the net earnings to which it may become entitled; provided, that no such indebtedness of the Canada Company shall be paid, except upon certificate and by direction of its Treasurer. Any such existing indebtedness of either of the other companies in this agreement mentioned, shall be paid out of the earnings of such companies, and in the event of the earnings of such Company's roads not being sufficient to pay such existing debt, then the Michigan Company may pay the same out of the gross revenues of the roads covered by this agreement, and charge the amount against the future earnings of the Company whose debt is so paid. All traffic earnings, due either of the companies mentioned herein, unpaid at the date of this agreement, shall be collected by said Michigan Company, and carried to the credit of the Company entitled to the same.

TWELFTH.—The fiscal year under this agreement shall begin on the 1st day of January, and shall end on the 31st day of December, and the Michigan Company shall render

accounts semi-annually before the 1st of March and the 1st of September in each year; such accounts shall show in detail the gross earnings of the lines of each Company, the operating expenses in detail, the fixed charges paid, and any other information necessary to a true understanding of the accounts for the preceding half fiscal year, and shall also, on such 1st day of March and September in each year, pay to the Treasurer of the Canada Company the amount of the net earnings to which it is entitled under the terms of this agreement.

THIRTEENTH.—An inventory and appraisalment shall be made, and attached hereto, of the locomotives, cars and other movable property owned and used in connection with the said railroads of the said Canada Company at the time this agreement goes into operation, with a statement of the condition of the same, and at the termination of this agreement the said Michigan Company shall return to said Canada Company the property designated in such inventory and in like condition, or an equivalent in like property, or shall pay the value thereof.

FOURTEENTH.—In case any disagreement shall arise between the parties hereto in reference to the proper construction of this instrument, or with reference to the rights, privileges or obligations of either party thereunder, the Directors or Executive Committee of each party shall, from time to time, as may be necessary, choose one person (disinterested between the parties), and the two persons so chosen shall choose a third, and the said three persons shall, on reasonable notice in writing to the parties herein, determine any such matter of disagreement; and the parties hereto shall abide by and comply with any decision so made by said three persons, or a majority of them. In case either party shall neglect or refuse to choose a person to act as aforesaid, after twenty days' notice in writing from the other party to make such choice, the party giving such notice may choose two disinterested persons, and the two so chosen

shall choose the third to act with them. And if, by any award made by the decision of arbitrators at any time chosen and acting hereunder, the said Canada Company is required to do any act, or to pay or expend any sum of money, and said Company shall refuse or neglect to comply with such decision for thirty days after it is required to comply therewith, said Michigan Company may do such act or make the required payment or expenditure, and retain the amount thereof out of the first moneys which thereafter may become payable to said Canada Company; and any award made hereunder shall be enforceable in the courts of the State of Michigan or of the Province of Ontario.

FIFTEENTH.—This agreement shall take effect on the 1st day of January, 1883, and shall continue for the term of twenty-one years, and shall bind the successors and assigns of the respective parties hereto; provided, however, that if either of the said parties shall make default, in any substantial and material respect, in the performance of the covenants and agreements on its part herein contained, and such default shall continue for more than three months after demand of performance by the other party, such other party may, at its option, declare this agreement rescinded; and, in case the default shall be on the part of said Michigan Company, and such option shall be exercised by said Canada Company, it may re-enter upon and take possession of all and singular the said roads and property hereby transferred, together with any additions and betterments which have been made thereto, and may also recover from said Michigan Company all moneys then due from it hereunder; and in case said default is on the part of said Canada Company, and said option is exercised by said Michigan Company, it may surrender the possession of the roads and property received hereunder, including additions and betterments, and thereupon all of its obligations in the premises shall cease; or in case of such default by either party, the other party, instead of declaring this agreement rescinded, may have its proper

action in the courts to enforce its provisions, or to recover damages for their violation; provided, however, that this agreement is to be construed liberally and in such manner as to operate equitably between the parties for the accomplishment of the purposes intended, and neither party shall have the right to declare the same rescinded on account of any alleged default of the other party, unless such default is admitted, or has been determined to exist by arbitrators chosen under the provision on that subject hereinbefore contained, and the party so in default has neglected for thirty days after such admission or determination to make good such default.

In Witness Whereof, the parties hereto have caused this agreement to be executed.

