

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

NORFOLK SOUTHERN RAILWAY
COMPANY,

Plaintiff,

v.

CSX TRANSPORTATION, INC.,

and

SPRINGFIELD TERMINAL
RAILWAY COMPANY,

Defendants.

C.A. No.:

VERIFIED COMPLAINT

Plaintiff Norfolk Southern Railway Company (“Norfolk Southern”), by counsel, files this Verified Complaint seeking preliminary injunctive relief pending arbitration against CSX Transportation, Inc. (“CSX”) and Springfield Terminal Railway Company (“Springfield Terminal”).

NATURE OF ACTION

1. CSX directly and through its wholly owned subsidiary, Springfield Terminal, is brazenly and repeatedly violating key contract provisions associated with its acquisition of Pan Am Railways, Inc. (“Pan Am Railways”). This, in turn, has had a meaningful negative impact on the financial and service performance of

Pan Am Southern, LLC (“Pan Am Southern”), while at the same time hamstringing Norfolk Southern’s freight railroad access to New England markets.

2. Although the dispute is subject to mandatory and binding arbitration by agreement, Norfolk Southern, on its own behalf and on behalf of Pan Am Southern, is entitled to seek preliminary injunctive relief pending such arbitration to prevent CSX and Springfield Terminal from materially breaching the contractual safeguards that were put in place to allow for equal access and to maintain competitive balance.

PARTIES

3. Norfolk Southern is a Class I railroad incorporated under the laws of the Commonwealth of Virginia, with its principal place of business in Atlanta, Georgia.

4. CSX is also a Class I railroad. CSX is incorporated under the laws of the Commonwealth of Virginia, with its principal place of business in Jacksonville, Florida.

5. As the two largest railroads serving the Eastern half of the United States, CSX and Norfolk Southern are competitors.

6. Springfield Terminal is a Class II railroad. Springfield Terminal is incorporated under the laws of Vermont and is headquartered in Massachusetts. Since June 2022, Springfield Terminal has been controlled by CSX through CSX’s 100% ownership of Springfield Terminal’s parent company, Pan Am Railways.

7. Pan Am Southern is a Class II railroad that owns rail or has trackage rights between Albany, New York and Boston, Massachusetts, and associated railyards, which includes key links for freight railroad service between the New England states and the rest of the nation.

8. Pan Am Southern is jointly and equally owned by CSX and Norfolk Southern. Springfield Terminal currently operates and effectively controls the trackage and facilities of Pan Am Southern.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over this matter as Norfolk Southern seeks a preliminary injunction, which is an equitable remedy appropriately sought in a Court of Chancery, and there is no adequate remedy at law. *See 10 Del. C. §§ 341-342.*

10. Pursuant to Section 14(c)(i) and (c)(ii)(F) of the Amended and Restated CSXT Joint Use Agreement (the “Joint Use Agreement”), CSX and Springfield Terminal have agreed to submit themselves to the jurisdiction of this Court and has waived any objection to venue in this Court. A true and accurate copy of the Joint Use Agreement is attached as Exhibit A.

11. Pursuant to Section 18(i) of the Joint Use Agreement, the laws of the State of Delaware govern the Joint Use Agreement and the causes of action set forth herein.

SUBSTANTIVE ALLEGATIONS

Background Facts

12. Pan Am Railways and its seven subsidiaries¹ provide rail service in the American Northeast, with its rail trackage connecting Connecticut, Massachusetts, New York, Vermont, New Hampshire, and Maine. Pan Am Railways owns and operates a rail network of approximately 800 miles.

13. In 2009, Norfolk Southern and Pan Am Railways created Pan Am Southern, LLC, with Norfolk Southern and Pan Am Railways (through Boston and Maine Corporation) each owning 50% of the new railroad. This transaction was approved by the federal agency responsible for regulating railroads and rail competition, the Surface Transportation Board (the “STB”).

14. Pan Am Southern owns and/or operates over more than 400 miles of track connecting New York, Vermont, Massachusetts, Connecticut, and New Hampshire. It was created to improve the rail infrastructure between Albany, New York, and Ayer, Massachusetts, which is known as the “Patriot Corridor.” Included in the Patriot Corridor is a segment of line and a railyard, the “Ayer Yard,” that

¹ In addition to Springfield Terminal, Pan Am Railways’ subsidiaries included Boston and Maine Corporation, Maine Central Railroad Company, and Portland Terminal Company. Boston & Maine directly and wholly owned Northern Railroad, as well owned a 99.27% interest in Stony Brook Railroad Company and a 98% interest in Vermont & Massachusetts Railroad Company. CSX acquired ownership of these seven subsidiaries through its acquisition of Pan Am Railways.

provides a key link for freight railroad service between New England and the rest of the nation.

15. Pan Am Southern also created new and expanded intermodal and automotive terminal capacity in the Ayer area, including a new automotive terminal at Ayer, Massachusetts, and added capacity at the existing Ayer intermodal terminal. *See* Pan Am Southern, Shipping Options, Norfolk Southern, available at <http://www.nscorp.com/content/nscorp/en/shipping-options/corridors/pan-am-southern.html>; *Norfolk Southern Railway Co., Pan Am Railways, Inc., et al.-Joint Control and Operating/Pooling Agreements-Pan Am Southern LLC*, STB Docket No. 35147 (Decision Mar. 10, 2009) (approving new rail carrier subject to enumerated conditions).

16. Norfolk Southern's investment in Pan Am Southern and, in turn, the Patriot Corridor increased competition in the American Northeast by providing a competitive alternative to CSX's single line access into the Boston area.

17. In particular, intermodal and automotive terminals located near the Ayer Yard allow Norfolk Southern to move intermodal and automotive freight between the Boston area and the rest of the nation in competition to similar services provided by CSX.

18. Since 2009, all operational aspects of Pan Am Southern, including maintenance, pricing, management, train operations, and other railroad functions,

have been handled by Springfield Terminal, a Pan Am Railways subsidiary. Hence, while Norfolk Southern was a 50% owner of Pan Am Southern, operations on Pan Am Southern trackage have been (and continue to be) under the operating control of Pan Am Railways through Springfield Terminal. This operational structure was approved by the STB.

CSX's Acquisition of Pan Am Railways, Subject to Negotiated Agreements

19. In 2019, CSX and Pan Am Railways announced that CSX had agreed to purchase Pan Am Railways, a transaction which would require STB approval.

20. On February 25, 2021, CSX requested that the STB approve the transaction, designating it as a "minor" transaction. The STB, however, found that the transaction was "significant," and required CSX to comply with the heightened procedural, informational, and financial requirements of a significant railroad transaction. *See Decision, CSX Corp. & CSX Transportation, Inc., et al. – Control and Merger – Pan Am Systems, Inc., et al.*, Docket No. FD 36472 et al. (Apr. 14, 2022) ("STB Decision").

21. CSX submitted the "significant" transaction application on April 26, 2021, but on May 26, 2021, the STB rejected it. The STB found "that the application failed to include the information needed to satisfy the market analysis requirement" because the application failed to sufficiently describe "the impacts of the proposed transaction-both adverse and beneficial-on inter- and intramodal competition."

22. CSX submitted an amended and supplemental application on July 1, 2021, which the STB accepted. This amended submission included market analysis and an operating plan. The proposed acquisition was closely analyzed by the STB because of its obvious impact on the competitive balance of rail service in New England. As such, CSX was motivated to resolve concerns regarding competition so as to obtain STB approval.

23. This proposed acquisition put CSX in position to become 50% owner of Pan Am Southern and, more importantly, would allow CSX to control Pan Am Southern's operations through its 100% ownership of Springfield Terminal. Hence, CSX would be able to control the key route, facilities, and personnel for Norfolk Southern's rail service to New England, including Norfolk Southern's access to its intermodal and automotive terminals near the Ayer Yard, which created obvious and substantial competition concerns due to Norfolk Southern's reliance on Pan Am Southern for access to compete with CSX.

24. Norfolk Southern raised these concerns with the STB and ultimately negotiated a set of agreements with CSX to ensure that Pam Am Southern would operate for the benefit of *all* users, including Norfolk Southern, and would not become the catspaw of CSX.

25. CSX's application to the STB was reliant on two important contractual agreements: 1) a Settlement Agreement between CSX and Norfolk Southern (the

“Settlement Agreement”), which included agreement as to terms relating to the operations at Ayer, and 2) a term sheet between CSX, Norfolk Southern, and Genesee & Wyoming, Inc. (“Genesee & Wyoming”) (the “Term Sheet Agreement”). *See* STB Decision 5.

26. As required by the Settlement Agreement, Norfolk Southern submitted four verified notices of exemption under 49 C.F.R. § 1180.2(d)(7) related to four overhead trackage rights agreements. The combination of the four trackage rights agreements would provide Norfolk Southern a new route to move intermodal and automotive freight from Eastern New York to the Ayer Yard (the “Southern Route”). This route would avoid a tunnel constraint present on the Patriot Corridor that limited use of double-stack intermodal service. *See* STB Decision 5-6. The four trackage rights agreements would not take effect until the merger transaction was approved and consummated.

27. As required by the Settlement Agreement, CSX agreed that a third-party railroad operator would take over operation of Pan Am Southern’s trackage from Springfield Terminal to ensure that the trackage would be operated in a competitive manner, *i.e.*, CSX could not use its new ownership position to favor its traffic or take business away from Pan Am Southern. The new operator would be Pittsburg & Shawmut Railroad, LLC d/b/a Berkshire & Eastern Railroad (“Berkshire

& Eastern”), a wholly owned subsidiary of Genesee & Wyoming. *See* STB Decision 7.

28. CSX represented that its acquisition of Pan Am Railways “would serve the public interest and not cause any competitive harm.” To achieve this end, CSX requested that the STB “impose the commitments” in the Settlement Agreement and the Term Sheet Agreement “as conditions to approval of the Merger Transaction.” *See* STB Decision 9.

29. The Settlement Agreement required a series of separate, more articulated agreements that were to become effective upon STB approval.

30. One of the required agreements is the Joint Use Agreement, which was designed to, among other things, govern CSX’s use of Pan Am Southern’s tracks to ensure fair access for Norfolk Southern.

31. In addition to installing Berkshire & Eastern as a third-party operator, which still has not occurred, the Joint Use Agreement imposes guardrails to preclude CSX from using its ownership in Pan Am Southern or Springfield Terminal to advantage CSX’s traffic or disadvantage Norfolk Southern’s or other users’ traffic.

32. In fact, CSX represented to the STB “at the hearing, ‘[o]ur commitment is we are not going to do anything either physically or financially that is going to take away a competitive option that exists today.’” *See* STB Decision 16.

33. CSX further represented to the STB that it could be held to the representations that it made throughout the STB’s transaction approval process. *See* STB Decision 9 (*citing* CSX Reb. 103 (*citing Canadian Nat’l Ry.—Control—Ill. Cent. Corp.* (CN/IC), 4 S.T.B. 122, 187 (1999))).

STB Approval of CSX’s Proposed Acquisition—Subject to Conditions

34. In 2022, based in large part on the agreements between Norfolk Southern and CSX, the STB approved CSX’s acquisition of Pan Am Railways, noting repeatedly CSX’s agreements to assure fair access to the New England market for Norfolk Southern and other users. *See generally* STB Decision.

35. In approving the transaction, the STB explicitly found that CSX’s representations and Norfolk Southern’s interest in requiring CSX to comply with the agreements it made during the transaction negotiations was key to the STB’s approval of the transaction:

- a. “The Board finds that the combination of the NSR Settlement Agreement, in addition to the additional commitments and settlement agreements that CSX has requested be conditions to the overall Merger Transaction, are sufficient to ensure that CSX does not improperly influence [Pan Am Southern] capital decisions in an anticompetitive manner.” *Id.* at 12.

- b. “The Board recognizes that the success of these commitments is partially dependent on [Norfolk Southern] being motivated to prevent CSX from taking actions adverse to [Pan Am Southern’s] interest.” *Id.*
- c. “The evidence in the record suggests that [Norfolk Southern] will have both the ability and the incentive to prevent CSX from taking actions that would impair [Pan Am Southern].” *Id.* at 13.
- d. CSX “agreed to ‘[d]ischarge all commitments and representations made to the [Board in this proceeding] in relation to maintaining the competitive viability of the [Pan Am Southern] or otherwise to mitigating any adverse competitive impacts of the Related Transaction’ and to ‘maintain the competitive viability of the relevant [i.e., Northern] route.’” *Id.* (alternations in original).
- e. “CSX has also committed to route certain carload traffic over the Northern Route for a transitional period.” *Id.*
- f. “CSX will be required to provide reports on [Pan Am Southern] traffic levels over the Northern Route for at least two years as part of the Board’s oversight.” *Id.*

36. The STB also considered that Berkshire & Eastern would have independent rate setting authority to prevent anticompetitive conduct and cause traffic shifts. *Id.* at 15. The STB relied on the fact that for “uncompetitive pricing

and resultant traffic shift to occur, [Norfolk Southern] would have to refrain both from enforcing the terms of the NSR Settlement Agreement and from invoking its purchase rights,” which the STB concluded is “a scenario [that] is unlikely given that, as noted, it finds that [Norfolk Southern] will continue to have a sufficient economic incentive to preserve [Pan Am Southern].” *Id.*

37. The STB additionally considered that Norfolk Southern would receive trackage rights based on the four trackage rights agreements as part of the proposed transaction: “the [STB] regards [Norfolk Southern’s] acquisition of trackage rights for intermodal/automotive traffic over the Southern Route as a procompetitive aspect of the proposed transaction because it could enable [Norfolk Southern] to provide single-line service to Ayer at a lower cost.” *See* STB Decision 21.

38. The STB further relied on CSX’s representation that, pursuant to the Settlement Agreement, which attached an Ayer Operations Protocol, Engineering Planning, and Capacity Roadmap (the “Ayer Operations Protocol”), “CSX and [Norfolk Southern] have established certain principles to strengthen existing operations of the [Pan Am Southern] Network following consummation of these transactions,” which included a “static yard plan,” service metrics (which would need to be submitted to the STB), service goals, and funding. *See* STB Decision 30-31. CSX represented to the STB that CSX did “not plan to perform any switching at Ayer, but instead, will upgrade and use the Rigby Yard in Portland, Me., for

switching, and will pre-block more traffic at the yard in Selkirk, N.Y., which is currently underutilized.” *Id.* at 31.

CSX’s Breach of Its Promises

39. Having received what it wanted—STB approval—CSX has proceeded to break the contractual commitments and promises it made to Norfolk Southern and to the STB to gain that approval. Indeed, CSX has systematically, materially, and to all appearances deliberately breached its promises and representations that its acquisition of Pan Am Railways would have procompetitive effects. Instead, CSX’s actions have had the effect of *harming* Pan Am Southern’s operations and revenues, as well as frustrating and delaying Norfolk Southern’s use of Pan Am Southern tracks and facilities. The concern expressed by Norfolk Southern—and the Department of Justice—that CSX would use its control over Pan Am Railways and hence Springfield Terminal to disadvantage Norfolk Southern—*which CSX promised to Norfolk Southern and the STB that it would not do*—has materialized.

40. For example, CSX represented to the STB that the timeline for transition of Pan Am Southern operations to the independent operator, Berkshire & Eastern, “shouldn’t be more than a few months at the latest.” STB Hearing Tr. 174. Accordingly, the STB’s decision reasonably anticipated a rapid turn-over of operations from Springfield Terminal to Berkshire & Eastern, as reflected in its order to CSX to report within ninety (90) days whether the Berkshire & Eastern had taken

over operations and, if not, why not. However, more than a year after approval of the transaction, the operational transition to Berkshire & Eastern still has not occurred.

41. As described below, the delay in turn-over of operations to Berkshire & Eastern impacts Pan Am Southern customers and has prevented the very competition that the STB envisioned when it approved the transaction. Each day that passes means more days where Springfield Terminal or CSX employees – crews that are to operate Pan Am Southern trains to serve Pan Am Southern customers in competition with CSX – are instead used to operate CSX trains and serve CSX customers. This delay has also significantly hampered retention and recruiting of employees for Pan Am Southern to the detriment of service to the customers of Pan Am Southern.

42. Similarly, CSX promised to plan and fund infrastructure improvements for Pan Am Southern's Ayer Yard but has continually attempted to reduce the amount of promised infrastructure and even after agreeing to the original plan, did not even begin work until over a year after they took control of Springfield Terminal. CSX has committed to complete some of the work by August 31, 2023, 15 months after they took control of the Springfield Terminal. This delay has caused considerable degradation to service and capacity in the Ayer Terminal Area and has

prevented Norfolk Southern, using Pan Am Southern, from effectively competing against CSX.

43. Likewise, key to the STB's approval of CSX's acquisition of Pan Am Railways were the four trackage rights agreements with Norfolk Southern ("Related Transactions") to ensure the pro-competitive effect of the proposed merger. CSX took over operations of Pan Am Railways (including Springfield Terminal) on June 1, 2022, but dragged its heels in finalizing the trackage rights agreements for the Related Transactions. More importantly, CSX has not begun any physical construction that would remove the clearance obstruction on Pan Am Railways that (1) are under their control and (2) are required for Norfolk Southern to get the guaranteed benefits associated with operating its intermodal train over the CSX route. CSX knows that Norfolk Southern operation over its route will improve Norfolk Southern's competitive position in the market, and as such CSX is highly motivated to delay any work on these improvements for as long as it can.

44. Some of CSX's breaches are so obvious and threaten such imminent harm that they require immediate action by this Court pending arbitration. As explained in more detail in the following sections, these breaches include: 1) moving more trains than contractually allowed, which cheats Pan Am Southern out of millions of dollars in revenue, 2) stalling all traffic on a critical segment of Pan Am Southern tracks by doing work at the Ayer Yard on overly long trains, which is

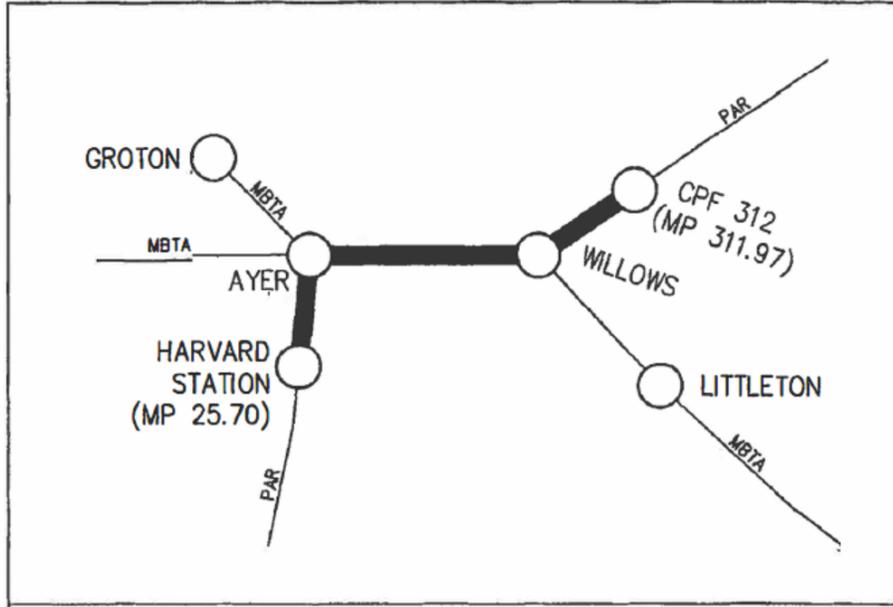
contractually prohibited and 3) self-dealing in the form of using Pan Am Southern resources for the benefit of CSX (not Pan Am Southern), including diversion of work crews paid for by Pan Am Southern to serve CSX operations and using Pan Am Southern's facilities without compensation in ways expressly prohibited by the agreements.

A. Train Frequency

45. CSX contracted in the Joint Use Agreement that it would limit the frequency of train movements on Pam Am Southern's tracks, but it has failed to honor this commitment.

46. Under Section 2(a) of the Joint Use Agreement, Pan Am Southern granted CSX trackage rights ("Trackage Rights") to operate trains with its own crews over "Subject Trackage" of Pan Am Southern, subject to limitations and restrictions provided in the Joint Use Agreement.

47. As depicted in the Joint Use Agreement, the Subject Trackage consists of trackage connecting from a point known as "Harvard Station" to a second point known as "CPF 312."



See Joint Use Agreement, Appendix A – Map of Subject Trackage.

48. The Subject Trackage is an area where multiple lines linking Boston, Massachusetts, Eastern Massachusetts, New Hampshire, and Maine converge.

49. The Subject Trackage provides access to Pan Am Southern’s Ayer Yard, which is critical infrastructure to support traffic moving over the Subject Trackage to and from Boston, Massachusetts, Eastern Massachusetts, New Hampshire, and Maine.

50. The Joint Use Agreement recognizes the importance of the Subject Trackage to Pan Am Southern’s other users, particularly Norfolk Southern, by protecting Pan Am Southern and Norfolk Southern from acts by CSX to clog or monopolize use of this critical link providing access to New England.

51. Among the limitations and restrictions on CSX's use of the Trackage Rights, and subject to qualifications and exceptions not germane here, Section 3(k)(i) limits CSX to movement of one (1) train pair a day across the Subject Trackage.

52. When CSX moves this one train pair, it pays a nominal trackage fee to Pan Am Southern, which averaged \$16 per car in 2022.

53. Each train that CSX moves in excess of this one train pair under the trackage rights deprives Pan Am Southern of significant revenue. Except for this one train pair, CSX is obligated to move cars using Pan Am Southern, and when this happens, CSX must pay Pan Am Southern's average revenue of \$1,579 per car, which is well in excess of the \$16 average per car trackage fee.

54. Norfolk Southern has discovered at least 58 instances where CSX has exceeded the train limits over a seven-month period from June to December 2022, which equates to approximately \$3.5 million in lost revenue for Pan Am Southern.

B. Excessive Length Trains

55. Among the other limitations and restrictions on CSX's use of the Trackage Rights, Section 3(k)(iv) also generally limits a CSX train moving over the Subject Trackage to a length of 9,000 feet, plus locomotives, provided that the train does not stop or otherwise do work in the Ayer Yard. If CSX wants to do any work on a train in the Ayer Yard, such as setting off or picking up cars, the Joint Use

Agreement requires that the train be no more than 4,750 feet long. The reason for this size limitation is simple: if a train any longer than 4,750 feet does work in the Ayer Yard, the train occupies the one main line track in the yard, effectively shutting down the yard for any other rail movement, and thereby backing up traffic coming into and out of the Ayer Yard, including the traffic of Norfolk Southern and Pan Am Southern.

56. These excessive length trains complicate Pan Am Southern's operations, and disproportionately monopolize the capacity of Pan Am Southern's trackage.

57. Norfolk Southern has documented at least 274 instances where CSX has used excessive length trains, including in the Ayer Yard, in violation of the Joint Use Agreement. There are at least 13 instances of CSX moving trains in excess of the 9,000-foot limit.

58. The operational nightmare created by these breaches is made possible by CSX's control of Springfield Terminal. Springfield Terminal is the dispatcher for the Ayer Yard. Therefore, no trains move into or out of the yard without Springfield Terminal's approval. Since CSX effectively took over control of Springfield Terminal, it has used the Ayer Yard to help CSX's business and, in turn, harm the business of Norfolk Southern and Pan Am Southern.

59. Section 5(a)(i) of the Joint Use Agreement provides that “[d]ispatching of the Subject Trackage shall be conducted in a manner as to afford each of Pan Am Southern, Norfolk Southern, CSXT and Springfield Terminal, and any other present or future use of the Subject Trackage (or any portion thereof), the most economical and efficient movement of its traffic over the Subject Trackage consistent with the demands and needs of other authorized users.”

60. CSX is causing Springfield Terminal to breach its promises of fair and equitable allocation of trackage and yard resources, while at the same time breaching its contractual obligations under the Joint Use Agreement.

C. Self-Dealing

61. Finally, in moving traffic over Pan Am Southern trackage, CSX has engaged in extensive self-dealing, to the financial and competitive detriment of Pan Am Southern and Norfolk Southern.

62. CSX has used Pan Am Southern crews to move CSX interchange traffic. When this occurs, Pan Am Southern – instead of CSX – bears the expense for the crew. Said differently, Pan Am Southern is paying crews to do work for CSX, not Pan Am Southern. CSX’s misappropriation of Pan Am Southern’s crews also creates congestion and delay in the Ayer Yard because the crews who should be working in the yard are instead working for CSX elsewhere.

63. Moreover, a Pan Am Southern Crew that is moving CSX freight in violation of the contracts is a crew that is not moving Pan Am Southern or Norfolk Southern freight. If there were plenty of crews on the Pan Am Southern property, then this issue would have less impact. However, CSX has willfully and purposefully allowed the ranks of Train and Engine employees (conductors and engineers) to atrophy from a monthly average of 84 in May 2022 (the month before the transaction closed) to 66 in July 2023. Further, CSX is not making any meaningful efforts to recruit and train new Train and Engine employees. In other words, when CSX does relinquish operations to Berkshire & Eastern, they will be leaving Pan Am Southern in a fragile state in terms of manpower, which is solely for the strategic competitive benefit of CSX and to the competitive disadvantage of Norfolk Southern.

64. The congestion and delays due to CSX's and Springfield Terminal's breaches have caused Norfolk Southern to lose its goodwill with its customers and have prevented Norfolk Southern from providing the competitive alternative that was envisioned by the STB. Customer service, including delivering the customer's freight in a timely manner, is essential to Norfolk Southern and Pan Am Southern winning and maintaining its customer base. The improper conduct described above causes customer freight to be delayed and imposes a direct financial loss for Pan Am

Southern. This loss is exacerbated by the fact that CSX's conduct prioritizes the movement of its freight, thereby giving it a competitive advantage.

65. As an example of the irreparable harm being suffered by Pan Am Southern, Norfolk Southern and its customers, one joint customer of Norfolk Southern and Pam Am Southern has had its operations repeatedly disrupted by the failure to delivery empty cars and pick up loaded cars as needed, triggering repeated complaints over multiple months to Norfolk Southern and Pan Am Southern about poor service. Another example is a customer whose operations are, as of the submission of this Complaint, at a standstill due to failure to provide timely rail service.

66. Without injunctive relief requiring CSX and Springfield Terminal to comply with their contractual obligations, Norfolk Southern and Pan Am Southern will continue to lose customer goodwill and shippers will be deprived of the expected competitive balance that was the lynchpin of the STB's approval of CSX's acquisition of Pan Am Railways.

Norfolk Southern Has Repeatedly Protested CSX's Breaches, Without Success

67. Since the Pan Am Railways-CSX transaction was consummated on June 1, 2022, and CSX's contractual violations began immediately thereafter, Norfolk Southern has protested CSX's repeated breaches of its promises made as conditions of the STB approval for the merger.

68. For example, in December 2022, Norfolk Southern, with legal counsel, met with CSX, also with legal counsel, to discuss CSX's ongoing violations of its obligations following its acquisition of Pan Am Railways.

69. In May 2023, Norfolk Southern representatives traveled to Jacksonville, Florida to meet with CSX representatives, again to discuss CSX's ongoing violations.

70. In the spring 2023, Norfolk Southern conducted an audit of Pan Am Railways/CSX activity on Pan Am Southern to get specific numbers showing CSX's violations. The audit covered the time period of June 1, 2022 through December 31, 2022.

71. The audit showed that CSX had repeatedly violated the limit of one train pair per day, the prohibition on doing work in the Ayer yard on trains greater than 4,750 feet in length, the 9,000-foot limit on trains, and the prohibition against assigning Pan Am Southern crews to work for CSX. This included:

- a. **58** trains that exceeded the maximum 2 trains per day through Ayer Yard (Norfolk Southern counted the third and higher trains each day);
- b. **274** trains that exceeded either the 9,000-foot limitation or the 4,750-foot limitation;
- c. **261** instances where CSX improperly used Pan Am Southern crews for CSX work without compensation; and

d. **321** instances where CSX improperly delayed its trains at Ayer Yard.

72. On June 9, 2023, Norfolk Southern provided this audit and cover letter to CSX. *See* Email from Mike McClellan to John Patelli, June 9, 2023, attached as Exhibit B.

73. In response to Norfolk Southern's repeated protests regarding CSX's violations, CSX has promised to do better. But CSX continues the violative conduct.

74. Both as 50% owner of Pan Am Southern and as a Class 1 railroad transporting cargo over Pan Am Southern via haulage, Norfolk Southern, and its customers, have suffered and will continue to suffer substantial damages, as well as irreparable harm, as a result of CSX's conduct. On information and belief, CSX's violations will continue unless this Court intervenes.

COUNT I Breach of Contract

75. Norfolk Southern incorporates and realleges the allegations in the preceding paragraphs as if fully set forth herein.

76. Norfolk Southern brings this action to obtain preliminary relief to stop CSX and Springfield Terminal from continuing to squeeze the Pan Am Southern chokepoint to cut off Norfolk Southern's rightful use of Pan Am Southern trackage and facilities to access the New England market, pending final adjudication of all claims for relief for both Pan Am Southern and Norfolk Southern in arbitration.

77. In addition to placing limitations set forth above, the Joint Use Agreement protects Norfolk Southern from CSX's shenanigans by granting Norfolk Southern the right to bring an action to enforce Pan Am Southern's rights, as well as Norfolk Southern's own rights. Moreover, Norfolk Southern has the explicit right to seek preliminary injunctive relief in this Court to enforce the Joint Use Agreement, pending final and binding resolution through arbitration.

78. The Joint Use Agreement is a binding and effective contract by and between Pan Am Southern, Springfield Terminal, and CSX.

79. The first paragraph of the Joint Use Agreement provides that Norfolk Southern "is a third-party beneficiary of this Agreement." Ex. A, at 1. Section 18 of the Joint Use Agreement further provides that Norfolk Southern "shall have third party status solely for purposes of enforcing this Agreement" *Id.* at 26. Therefore, Norfolk Southern is an intended third-party beneficiary of the Joint Use Agreement and has standing to enforce its terms.

80. Section 14(c)(ii) of the Joint Use Agreement provides for "mandatory and binding arbitration" of any "Dispute."

81. In turn, Section 14(a) of the Joint Use Agreement defines a "Dispute" as "any dispute, controversy or claim between the Parties and arising out of or relating to this Agreement or the breach, termination or validity thereof."

82. CSX's failure to abide by the terms of the Joint Use Agreement, and its causing Springfield Terminal to breach the Joint Use Agreement, is a dispute, controversy or claim between the Parties arising out of this Agreement, as to which Norfolk Southern has standing to seek relief on behalf of itself and Pan Am Southern.

83. Section 14(c)(ii)(F) of the Joint Use Agreement provides that "[b]y agreeing to arbitration, the parties do not intend to deprive any Delaware Court of its jurisdiction to issue a pre-arbitral injunction"

84. The Joint Use Agreement expressly equips Norfolk Southern with "third party status ... for the purpose of enforcing this Agreement."

85. As explained above, CSX and Springfield Terminal have breached their obligations under the Joint Use Agreement.

86. The breaches by CSX and Springfield Terminal are directly and proximately causing Norfolk Southern to suffer immediate and irreparable harm and have prevented Norfolk Southern from providing the competitive alternative to CSX, which was a critical competent of the STB's approval of the overall CSX/Pan Am Railways transaction.

87. Delaware law at 10 *Del. C.* §§ 341 and 342 empowers the Court of Chancery to hear and determine all matters and causes in equity, including to provide injunctive and equitable relief where there is not a sufficient remedy available by common law or statute before any other court or jurisdiction of Delaware.

88. Norfolk Southern does not have an adequate remedy at law. The Joint Use Agreement expressly waives the right for Norfolk Southern to seek “any damages hereunder” on its own behalf, so it has no adequate remedy at law for itself under the contact. Further, due to the nature of the breaches, specific damages are difficult to ascertain.

89. Being effectively a violation of various contractual obligations, the STB also does not provide an effective outlet for the harm caused to Norfolk Southern and Pan Am Southern. *See General Railway Corporation d/b/a Iowa Northwestern Railroad--Exemption for Acquisition of Railroad Line--in Osceola and Dickinson Counties, IA*, STB Finance Docket No. 34867, Slip Op. 4 (STB Service Date June 15, 2007) (recognizing STB is not the proper forum to resolve contract issues).

90. Norfolk Southern and Pan Am Southern have and will continue to suffer irreparable harm as a result of Defendants’ breaches unless this Court redresses the harm through injunctive relief. Defendants’ actions threaten to impose irreparable damage on Norfolk Southern and Pan Am Southern, including damage to their goodwill and service relationships with customers due to Defendants causing traffic congestion on Pan Am Southern railways and thereby causing Norfolk Southern and Pan Am Southern’s service to appear slow, inefficient, and unreliable to its customers.

91. The loss of Norfolk Southern's customer goodwill is an irreparable harm that cannot be compensated other than via injunctive relief. \

92. The balance of harms strongly weighs in favor of Norfolk Southern. CSX has and continues, despite Norfolk Southern's protest, to breach promises it made that were essential to obtaining approval of its acquisition of Pan Am Railways from the STB, threaten to impose irreparable damage on Norfolk Southern and on competition for cargo transport in the American Northeast, and harm users of rail services in the New England states by hampering Norfolk Southern's ability to compete for business fully and fairly with CSX.

93. The public interest will be served by this Court issuing an injunction to require Defendants to abide by the representations it made to the STB and negotiated in written contracts. Such an injunction upholds and recognizes the importance of contractual obligations governed by Delaware law and the importance of railroad competition.

WHEREFORE, Plaintiff Norfolk Southern respectfully requests that this Court award it the following relief against CSX and Springfield Terminal, and all persons acting in concert with CSX and Springfield Terminal:

A. Enter a preliminary injunction preventing CSX and Springfield Terminal from continuing to violate the promises CSX made during its acquisition of Pan Am Railways, which includes:

- i. moving trains over 9,000 feet or over 4,750 feet, if the train stops at Ayer yard,
- ii. moving more than one train pair per day,
- iii. self-dealing with Pan Am Southern resources,
- iv. delaying the construction of critical yard and clearance infrastructure, and
- v. violating any other terms of the governing agreements.

B. CSX and Springfield Terminal be directed to file with this Court and to serve upon counsel for Norfolk Southern, within thirty days after entry of any injunction, a written report under oath, setting forth in detail the manner in which CSX and Springfield Terminal have complied with the aforementioned orders;

C. Award Norfolk Southern its costs of suit and reasonable attorneys' fees; and

D. Award Norfolk Southern such other relief as this Court may deem just and proper.

Respectfully submitted,

OF COUNSEL:

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Dated: August 1, 2023

/s/ Christopher B. Chuff
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*Attorneys for Plaintiff Norfolk Southern
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EXHIBIT A

AMENDED AND RESTATED CSXT JOINT USE AGREEMENT

THIS AMENDED AND RESTATED CSXT JOINT USE AGREEMENT (the “Agreement”) is entered into as of this 1st day of June, 2022 (the “Effective Date”), by and among Pan Am Southern LLC, a Delaware limited liability Company (“Pan Am Southern”), Springfield Terminal Railway Company (“Springfield Terminal”), a Vermont corporation, and CSX Transportation, Inc. (“CSXT”), a Virginia corporation. Pan Am Southern, CSXT and Springfield Terminal are referred to individually herein as a “Party” and collectively as the “Parties.” Norfolk Southern Railway Company (“Norfolk Southern”) is a third-party beneficiary of this Agreement.

RECITALS:

WHEREAS, on the 9th day of April, 2009, Pan Am Southern, and Springfield Terminal, entered into the Springfield Terminal Joint Use Agreement that, among other things, provided for Pan Am Southern to grant to Springfield Terminal certain trackage and haulage rights; and

WHEREAS, in a series of filings on July 1, 2021, CSXT, Norfolk Southern, several of the Pan Am System Parties, and Pittsburg & Shamut Railroad, LLC d/b/a Berkshire & Eastern Railroad (“B&E”, and, together with CSXT, Norfolk Southern, and several of the Pan Am System Parties, the “Transaction Parties”), a Class III carrier, sought authority from the Surface Transportation Board (“STB”) to consummate several transactions (the proposed “CSXT Transaction”), including the modification of the grant of the trackage rights as described herein; and

WHEREAS, on April 14, 2022, the STB granted its authorization for the Transaction Parties to effectuate the CSXT Transaction, including the modification of the grant of trackage rights as described herein, as

WHEREAS, Springfield Terminal is currently the contract operator of Pan Am Southern and, pursuant to a Railroad Operating Agreement to become effective as provided therein, Pan Am Southern has contracted with B&E to perform as the contract operator for all railroad operations on behalf of Pan Am Southern, including Pan Am Southern railway operations required pursuant to this Agreement; and

WHEREAS, in connection with the CSXT Transaction, the State of Vermont, acting through its Agency of Transportation (“VTrans”), Trans Rail Holding Company (“Trans Rail”) (on behalf of and for its rail carrier holdings, Vermont Railway, Inc. (“Vermont Railway”), Washington County Railroad Co. (“WCRR”), and Green Mountain Railroad Corporation (“GMRC” and collectively with Trans Rail, Vermont Railway and WCRR, “VRS”), and Norfolk Southern, Genesee & Wyoming Inc. (“GWI”), and CSXT entered into that certain Settlement Agreement dated December 29, 2021 (the “Vermont Settlement Agreement”), a copy of which is attached as Appendix C;

WHEREAS, the Parties now wish to modify the original grant to Springfield Terminal of certain trackage rights and haulage rights in a manner consistent with the terms and conditions hereinafter provided; and

WHEREAS, CSXT and Springfield Terminal may be merged into one another with CSXT as the survivor (the “ST/CSXT Merger”);

NOW, THEREFORE, the Parties hereto, intending to be legally bound, agree as follows:

SECTION 1. DEFINITIONS AND INTERPRETATION

(a) Interpretation Generally.

(i) Unless otherwise defined herein, all words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the railroad industry.

(ii) Each definition in this Agreement includes the singular and the plural, and references in this Agreement to the neuter gender include the masculine and feminine where appropriate. References herein to any agreement or contract mean such agreement or contract as amended. As used in this Agreement, the word “including” means “without limitation”, and the words “herein”, “hereof” and “hereunder” refer to this Agreement as a whole. All dollar amounts stated herein are in United States currency.

(iii) Unless the context requires otherwise, a reference to Pan Am Southern shall be a reference to Pan Am Southern and its Railroad Operator.

(iv) For purposes of this Agreement, as of the Effective Date, Pan Am Southern is not an affiliate of CSXT, Springfield Terminal, B&M or Norfolk Southern.

(b) Capitalized Terms.

All capitalized terms shall have the defined meaning set forth below:

“**2009 Haulage Traffic**” shall have the meaning given to that term in Section 2(b).

“**AAR**” shall mean the Association of American Railroads.

“**Abandonment Notice Period**” shall have the meaning given to that term in Section 16(c).

“**Abandonment Segment**” shall have the meaning given to that term in Section 16(a).

“**Additional Train Pair Mitigations**” shall have the meaning given to that term in Section 3(k)(iii).

“**Agreement**” shall have the meaning given to that term in the introductory paragraph.

“**Anticipated CSXT Infrastructure**” shall consist of switching, side and multiple tracks and shall mean (a) the construction of the so-called “Thoroughfare Storage Track,” (b) powered, heated, switches at the end of the northwest wye as shown in the drawing attached to Exhibit C to the Railroad Operator Agreement, (c) reconfiguration of the southern throat in such a way that the center lead can serve either the intermodal tracks or the running track, (d) the addition of the Future Thoroughfare Track 1, and (e) the reconfiguration of the northern throat of Ayer Yard in such a way that accommodates 2 simultaneous moves of: (i) inbound or one (1) outbound trains through the north end; (ii) merchandise switching and/or (iii) intermodal switching and shall be included in the Static Yard Plan.

“**Automotive Traffic**” shall mean finished automobiles, sport utility vehicles, vans (including minivans), trucks and other vehicles.

“**Ayer Local Infrastructure Improvements**” shall mean those Anticipated CSXT Infrastructure Improvements the Parties have agreed are necessary to allow for the initiation of the Post Ayer Local Infrastructure Improvement Trains identified in Section 3(k)(i) to this Agreement without significant

degradation to then existing service in the Ayer Switching Area and included in a schedule to the Static Yard Plan.

“**Ayer Local Train**” shall mean the CSXT local train or the Springfield Terminal local train permitted to operate between Harvard, MA at Milepost 25.70 and Ayer Yard (or the reverse).

“**Ayer Switching Area**” shall mean the line between Harvard and CPF 312.

“**Ayer Switching Agreement**” shall mean that certain Amended and Restated Ayer Switching Agreement by and between CSXT, Springfield Terminal and Pan Am Southern dated as of June 1, 2022.

“**B&E**” shall have the meaning given to that term in the Recitals.

“**B&E Railroad Operating Agreement**” means the Railroad Operating Agreement, dated as of June 1, 2022, between Pan Am Southern and B&E, generally concerning the railroad operating and administrative services provided by B&E for Pan Am Southern.

“**B&M**” shall mean Boston and Maine Corporation.

“**Bare Chassis**” shall mean a chassis moving on an intermodal rail car without a container.

“**Carload Operating Charges**” shall mean those per carload mile charges imposed on Pan Am Southern to operate freight rail service over the MBTA Segment.

“**Cars**” means each loaded or empty railroad freight car (including platform and well rail cars) or similar equipment.

“**Clearance File**” shall have the meaning given to that term in Section 5(b).

“**CSXT**” shall have the meaning given to that term in the introductory paragraph.

“**CSXT Cars**” shall mean Cars and Equipment in the revenue and/or car hire account of CSXT.

“**CSXT Overhead Train Pair**” shall mean each pair of CSXT or Springfield Terminal overhead trains permitted to operate per day pursuant to this Agreement.

“**CSXT Traffic**” shall mean traffic in the revenue waybill account of CSXT.

“**CSXT Transaction**” shall mean the acquisition by CSX Corporation and subsidiaries of CSX Corporation of Pan Am and the resulting acquisition of B&M’s interest in PAS, together with all related applications and notices of exemptions filed with the STB on February 25, 2021, and on April 26, 2021, in Finance Docket No. 36472 and its respective subdockets.

“**Effective Date**” shall have the meaning given to that term in the introductory paragraph.

“**End Points**” shall mean: (1) Harvard, MA at Milepost 25.70; and (2) CPF 312 at Milepost 311.97.

“**Equipment**” shall mean and be confined to hi-rail vehicles, track inspection equipment and other non -revenue vehicles and machinery (other than locomotives) capable of being operated on railroad tracks that, at the time of an occurrence, are (i) being operated on the trackage upon which such

occurrence takes place, or (ii) are on the trackage upon which such occurrence takes place, or on the adjoining right-of-way, for the purpose of maintenance or repair thereof or the clearing of wrecks thereon.

“**Exercise Notice**” shall have the meaning given to that term in Section 16(c).

“**FMV**” shall have the meaning given to that term in Section 16(c).

“**Foreign Railroad**” shall mean a railroad that is not a party to this Agreement.

“**Governmental Authority**” shall mean any nation or government, any state or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government or any mediation body or arbitral tribunal, including the STB.

“**GMRC**” shall have the meaning given to that term in the Recitals.

“**GWI**” shall have the meaning given to that term in the Recitals.

“**Haulage Rights**” shall have the meaning given to that term in Section 2(b)(ii).

“**Haulage Traffic**” shall have the meaning given to that term in Section 2(b).

“**Hoosick Haulage Traffic**” shall have the meaning given to that term in Section 2(b).

“**Hazardous Materials**” shall mean any traffic moving on STCC 49- XXX -XX.

“**Hoosick Haulage Rights**” shall have the meaning given to that term in Section 2(c).

“**Initial Trains**” shall have the meaning given to that term in Section 3(k)(i).

“**Intermodal Traffic**” generally shall mean the movement of containers and trailers on rail cars.

“**Intermodal Unit**” shall mean a trailer, container, or a container on a chassis.

“**JOC**” shall mean that Joint Operating Committee of Pan Am Southern established pursuant to the LLC Agreement.

“**JV Transaction Agreements**” shall have the meaning given to that term in the LLC Agreement.

“**LLC Agreement**” shall mean that Limited Liability Company Agreement of Pan Am Southern, by and between Norfolk Southern and B&M, and dated as of April 9, 2009, as amended from time to time.

“**Loss or Damage**” shall have the meaning given to that term in Section 8.

“**Management Committee**” shall mean the Management Committee of Pan Am Southern as provided in the LLC Agreement.

“**MBTA**” shall mean the Massachusetts Bay Transportation Authority.

“**MBTA Segment**” shall mean that line of railroad owned by MBTA between CPF 312, at or near Milepost 311.97+, in the region of Ayer, MA and Milepost 329.55+, near Fitchburg, MA (the “MBTA Segment”), which constitutes a portion of the operating rights included in the Subject Trackage.

“**Mechanicville Facility**” shall mean the Pan Am Southern intermodal and automotive facility in Mechanicville, NY; and

“**Monthly Statement**” shall have the meaning given to that term in Section 7(a).

“**Norfolk Southern**” shall have the meaning given to that term in the introductory paragraph.

“**NS Premium Train Service**” shall mean the Norfolk Southern trackage rights service anticipated by the Notice of Exemption filed in STB Finance Docket Nos. 36472, Sub-Nos. 1 through 4.

“**Pan Am**” shall mean Pan Am Systems, Inc.

“**Pan Am Southern**” shall have the meaning given to that term in the introductory paragraph.

“**Pan Am Southern Cars**” shall mean Cars and Equipment in the revenue and/or car hire account of Pan Am Southern.

“**Pan Am System Parties**” shall mean Pan Am Systems, Inc. and its subsidiaries, including but not limited to B&M, Springfield Terminal, Vermont and Massachusetts Railroad Company, Maine Central Railroad Company, Northern Railroad Company, and Stony Brook Railroad Corporation.

“**PAR – Ayer Turn**” shall mean the CSXT train or the Springfield Terminal train permitted to operate between Milepost CPF 312 and Ayer Yard (or the reverse) for purposes of interchange with Pan Am Southern at Ayer Yard.

“**Parties**” shall have the meaning given to that term in the introductory paragraph.

“**Party**” shall have the meaning given to that term in the introductory paragraph.

“**Person**” shall mean an individual or partnership, corporation, trust, association, limited liability company, Governmental Authority or other entity.

“**Post Ayer Local Infrastructure Improvement Trains**” shall have the meaning given to that term in Section 3(k)(i).

“**Railroad Operating Agreement**” means (i) prior to the effectiveness of the B&E Railroad Operating Agreement, the ST Railroad Operating Agreement, or (ii) on and after the effectiveness of the B&E Railroad Operating Agreement, the B&E Railroad Operating Agreement.

“**Railroad Operator**” means B&E, Springfield Terminal, or such other Person as the Management Committee may designate pursuant to the LLC Agreement and the Railroad Operating Agreement, which shall be responsible for performing day-to-day railroad operations for the Company.

“**Remaining Springfield Terminal**” shall mean those lines owned or operated by Springfield Terminal on April 9, 2009.

“**Significant Change**” with regard to the Static Yard Plan shall mean any change that likely would result in any one of the following train pairs being impacted by more than 90 minutes: (1) NS Intermodal Trains, (2) NS Automotive Service, (3) the Deerfield–Ayer Turn, and/or (4) any CSXT Overhead Train Pair.

“**Springfield Terminal**” shall have the meaning given to that term in the Recitals.

“**Springfield Terminal Cars**” shall mean Cars and Equipment in the revenue and/or car hire account of Springfield Terminal.

“**Springfield Terminal Traffic**” shall mean traffic in the revenue waybill account of Springfield Terminal or CSXT.

“**ST Railroad Operating Agreement**” means the Railroad Operating Agreement, dated as of April 9, 2009, between Pan Am Southern and Springfield Terminal, generally concerning the railroad operating and administrative services provided by Springfield Terminal for Pan Am Southern.

“**Static Yard Plan**” shall mean that plan for all movements to, from and through the Ayer Switching Area to be included in Appendix C to the B&E Railroad Operator Agreement, and shall include, among other things, a schedule identifying the Anticipated CSXT Infrastructure and the Ayer Local Infrastructure Improvements.

“**STB**” shall mean the Surface Transportation Board or any successor entity thereto.

“**ST/CSXT Merger**” shall have the meaning given to that term in the Recitals.

“**Subject Trackage**” shall mean the certain lines of railroad generally running between the End Points as depicted in Appendix A.

“**Subject Traffic**” shall have the meaning given to that term in Section 8(a).

“**Trackage Rights**” shall have the meaning given to that term in Section 2(a)(i).

“**Transaction Parties**” shall have the meaning given to that term in the Recitals.

“**Trans Rail**” shall have the meaning given to that term in the Recitals.

“**Use Invoice**” shall have the meaning given to that term in Section 7(a).

“**Vermont Railway**” shall have the meaning given to that term in the Recitals.

“**Vermont Settlement Agreement**” shall have the meaning given to that term in the Recitals.

“**VRS**” shall have the meaning given to that term in the Recitals.

“**VTrans**” shall have the meaning given to that term in the Recitals.

“**Waiver Notice**” shall have the meaning given to that term in Section 16(e).

“**WCRR**” shall have the meaning given to that term in the Recitals.

(c) Successor Laws.

A reference to any particular statute or regulation shall include a reference to any successor statute or regulation.

(d) Compliance with the Vermont Settlement Agreement.

The Parties acknowledge the terms of the Vermont Settlement Agreement and agree to perform their respective obligations under this Agreement in compliance with the Vermont Settlement Agreement. To the extent compliance with the Vermont Settlement Agreement is in conflict with a provision of this Agreement, the Parties will continue to comply with the Vermont Settlement Agreement and endeavor to modify both their respective performance and the Agreement to the extent necessary to reconcile as nearly as practicable the intent of the provision of this Agreement with the obligation contained in the Vermont Settlement Agreement..

SECTION 2. TRACKAGE RIGHTS AND HAULAGE RIGHTS

(a) Trackage Rights.

(i) Subject to the terms set forth in this Agreement, Pan Am Southern hereby modifies the trackage rights previously granted to Springfield Terminal for the sole purpose of transporting Springfield Terminal Traffic over the Subject Trackage, including the MBTA Segment (collectively, "Trackage Rights"). These rights consist of the right to operate its trains, locomotives, Cars, and Equipment with its own crews over the entirety of the Subject Trackage. CSXT's and Springfield Terminal's use of the Trackage Rights shall be subject to the limitations and restrictions set forth in this Section 2(a) and Section 3. CSXT's trackage rights under this Agreement shall commence upon the ST/CSXT Merger.

(ii) CSXT and Springfield Terminal locomotives and crews operating over the Subject Trackage shall be equipped to communicate with Pan Am Southern on radio frequencies normally used by Pan Am Southern in directing train movements on the Subject Trackage.

(iii) CSXT and Springfield Terminal's operations over the Subject Trackage shall at all times be subject to the direction and control of Pan Am Southern and comply in all respects with the safety rules, operating rules and other regulations of Pan Am Southern.

(iv) CSXT, as to CSXT employees, and Springfield Terminal, as to Springfield Terminal employees, shall make such arrangements with Pan Am Southern as may be required to have all of its employees who shall operate its trains, locomotives, Cars and Equipment over the Subject Trackage qualified for operation thereover. Pan Am Southern shall provide, and shall cause its Railroad Operator to provide, reasonable cooperation and assistance in the qualification of CSXT and Springfield Terminal operating (train and engine) crews for service over the Subject Trackage upon request. CSXT and Springfield Terminal supervisory personnel who have been qualified to operate over the Subject Trackage may qualify other CSXT and Springfield Terminal employees for operation of trains over the Subject Trackage. Employees of CSXT and Springfield Terminal that have been qualified to operate over Pan Am Southern prior to the Effective Date shall be deemed qualified to operate over Pan Am Southern.

(b) Haulage Rights.

(i) Subject to the terms set forth in this Agreement, Pan Am Southern will continue to provide the haulage rights previously granted to Springfield Terminal (collectively, the "2009

Haulage Rights”) between CPF 312 and the Mechanicville Facility for empty or loaded Intermodal Traffic or Automotive Traffic (A) having a prior or subsequent move over the lines of the Remaining Springfield Terminal east of CPF 312 and (B) not having a prior or subsequent move west of the Mechanicville Facility (“2009 Haulage Traffic”).

(ii) Pursuant to the Vermont Settlement Agreement, and subject to the terms set forth in this Agreement, Pan Am Southern will provide haulage rights to CSXT for traffic moving between Rotterdam Junction and Hoosick Junction as provided in Appendix C (the “Hoosick Haulage Rights,” and together with the 2009 Haulage Rights, the “Haulage Rights”).

SECTION 3. USE AND RESTRICTIONS ON USE OF THE SUBJECT TRACKAGE

(a) Cars moving pursuant to this Agreement, regardless of whether the Cars are moving via the Trackage Rights or Haulage Rights, shall at all times remain in the revenue waybill and car hire accounts of Springfield Terminal or CSXT while moving over the tracks of Pan Am Southern.

(b) Pan Am Southern shall not be entitled to any line haul revenue for the handling of Haulage Traffic, or movement of traffic pursuant to the Trackage Rights, nor shall Pan Am Southern participate in the routing of, nor appear in tariffs, waybills or other shipping documents as a participating carrier in connection with, the movement of any of the same.

(c) CSXT’s and Springfield Terminal’s use of Subject Trackage pursuant to the trackage rights grant shall be in common with Pan Am Southern, and other than as explicitly set forth herein, Pan Am Southern’s right to use the Subject Trackage shall not be diminished by this Agreement.

(d) CSXT’s and Springfield Terminal’s operations over the Subject Trackage shall at all times be subject to the direction and control of Pan Am Southern and comply in all respects with the safety rules, operating rules and other regulations of the Pan Am Southern.

(e) In its exercise of the Trackage Rights grant, CSXT and Springfield Terminal may operate trains in either direction over the Subject Trackage.

(f) In its exercise of the Trackage Rights grant, CSXT and Springfield Terminal may use the Trackage Rights only to move traffic:

(i) between the Remaining Springfield Terminal line south of Harvard and the Remaining Springfield Terminal line east of CPF 312;

(ii) between a connection with the Providence and Worcester Railroad at Worcester, MA and the Remaining Springfield Terminal line east of CPF 312;

(iii) for Ayer Local Trains; and

(iv) as provided in Section 3(k) for one CSXT Overhead Train Pair to pick up and set off in Ayer Yard.

(g) Except as provided in Section 3(f)(iii) and Section 3(f)(iv), CSXT and Springfield Terminal may use the Trackage Rights solely to operate its trains in overhead movements. The Trackage Rights shall not include the right to interchange traffic (i) between or among any of the trains covered by Section 3(f); or (ii) between or among any of the trains covered by Section 3(f) and and the PAR-Ayer Turn (or the reverse); or (iii) between or among any PAR-Ayer Turn trains. The Trackage Rights shall

not include the right of ingress and egress to any tracks, switches, turnouts, or other track classifications that connect to any point along the Subject Trackage except the End Points.

(h) Except as may otherwise be permitted by this Agreement, CSXT and Springfield Terminal shall not use any part of the Subject Trackage for the purpose of switching, storage or servicing Cars or Equipment, or the making or breaking up of trains; provided, however, that CSXT and Springfield Terminal may use such auxiliary Subject Trackage as may be designated by the Railroad Operator as necessary for the handling of locomotives or Cars bad ordered en route.

(i) Neither CSXT nor Springfield Terminal may, pursuant to this Agreement, grant haulage rights, trackage rights, or other operating rights of any nature on or over the Subject Trackage to any other Person.

(j) Neither CSXT Cars nor Springfield Terminal Cars shall move on trains transporting Norfolk Southern Intermodal Traffic or Automotive Traffic unless both Norfolk Southern and the JOC consent.

(k) The number and length of CSXT Overhead Train Pairs that CSXT or Springfield Terminal shall be permitted to operate shall be determined by the following:

- (i) Prior to the completion of the Static Yard Plan, and the improvements contemplated therein, CSXT and Springfield Terminal shall be permitted to run each day an aggregated total of one (1) CSXT Overhead Train Pair per day between Harvard and CPF 312 and either (a) one (1) Ayer Local Train or (b) one (1) PAR-Ayer Turn, provided, however, if the CSXT Overhead Train Pair does not set off or pick up at Ayer on any given day, CSXT shall be permitted to run both the Ayer Local Train and the PAR-Ayer Turn that day (the "Initial Trains"). Following the completion of the Static Yard Plan, and the Ayer Local Infrastructure Improvements contemplated therein, CSXT and Springfield Terminal shall be permitted to run each day an aggregated total of one (1) CSXT Overhead Train Pair per day between Harvard and CPF 312, with or without set off or pick up in Ayer, one (1) Ayer Local Train, and one (1) PAR-Ayer Turn (collectively, the "Post Ayer Local Infrastructure Improvement Trains").
- (ii) CSXT and Springfield Terminal shall be permitted to add a second train pair per day for operations between Harvard and CPF 312 under the following terms and conditions:
 - a. Operations must be consistent with the Static Yard Plan.
 - b. Upon notice by CSXT of its intent to add a second CSXT Overhead Train Pair, CSXT and Norfolk Southern will confer on the proposed operation of the new Ayer Static Yard plan that incorporates the second CSXT Overhead Train Pair and agree upon the infrastructure as necessary to ensure that introduction of the second CSXT Overhead Train Pair will not degrade the Levels of Service as defined in Appendix C to the B&E Railroad Operator Agreement expected at the later of: (1) the construction of the Anticipated CSXT Infrastructure, plus the introduction of operations by B&E as Railroad Operator, and the introduction of the NS Premium Train Service; or (2) the contemplated initiation date of the second CSXT Overhead Train Pair. For clarification purposes, actual completion of the construction of the

infrastructure contemplated in Appendix C to the B&E Railroad Operating Agreement is not necessary for CSXT to provide the notice anticipated by this subsection. If the review of the second CSXT Overhead Train Pair indicates a degradation to the then-current operations, then CSXT and Norfolk Southern agree that there are several different tactics available to mitigate potential operational impacts. CSXT and Norfolk Southern will review these several tactics and shall implement, upon mutual agreement, one or more of these to mitigate those potential operational impacts. These tactics include, but are not limited to:

1. Additional infrastructure at CSXT's expense.
 - a. Such infrastructure will be reasonable and will not include assets such as flyovers, etc.
 - b. Infrastructure requirements could be outside of the Ayer Yard limits in order to siphon local freight out of the Ayer Yard (for example, located or intended to siphon local traffic to between Fitchburg and Willow).
 - c. Any infrastructure shall be limited to the cap as defined in Appendix C to the B&E Railroad Operating Agreement.
 2. Increase in speeds through Ayer Yard and/or through the wye.
 3. Modification of the Static Yard Plan, but without creating a Significant Change.
- c. CSXT and Norfolk Southern shall agree upon a mitigation plan within thirty (30) days of concluding the review period. The agreed upon mitigation plan shall have an expected duration for implementation that will take no longer than six (6) months to implement (no more than nine (9) months from Springfield Terminal providing notice of its desire to initiate a second CSXT Overhead Train Pair). Norfolk Southern and Pan Am Southern cooperation and assistance shall not be unreasonably withheld. In no case shall Norfolk Southern or Pan Am Southern prohibit the addition of this second CSXT Overhead Train Pair if all of the above tactics are reasonably deployed in accordance with the above protocol and schedule. In the event of a dispute about the Parties' mitigation efforts, CSXT or Springfield Terminal may operate the second CSXT Overhead Train Pair during the pendency of the dispute.
- d. If (i) within three (3) years of approval and closing of the CSXT Transaction, B&E is no longer the Railroad Operator, or the NS Premium Train Service has not been initiated, or (ii) at any time before the addition of the second CSXT Overhead Train Pair, the agreements relative to both B&E and the NS Premium Train Service have been terminated in accordance with their terms,

Springfield Terminal will not be required to consider their impact on service levels prior to the addition of the second CSXT Overhead Train Pair.

- e. In the event CSXT and Norfolk Southern, acting in good faith, cannot agree at any point during the process set forth in this Section 3(k)(ii)(e), either of CSXT or Norfolk Southern may institute an arbitration proceeding in which each party will submit their respective assessment of the impact (if any) to Ayer Yard operations and their proposal related to mitigation and timeline. Any such arbitration shall be concluded within twelve (12) months after service of notice of intent to institute an arbitration proceeding.
- (iii) CSXT shall be permitted to add additional CSXT Overhead Train Pairs between Harvard and CPF 312, beyond those provided for above, under the following conditions:
- a. CSXT shall provide notice of its intent to evaluate the introduction of such additional train pairs. Notice to evaluate introduction of such additional train pairs shall be given no sooner than three (3) years following the consummation of the Transaction.
 - b. Upon notice by Springfield Terminal of its intention to add an additional train pair beyond those then-currently operated, CSXT and Norfolk Southern will confer and agree upon the proposed operation of a new Ayer Static Yard plan that incorporates the additional train pair and agree upon infrastructure as necessary to ensure that introduction of the operation will not degrade the then-current operations (“Additional Train Pair Mitigations”).
 - c. Evaluation of Additional Train Pair Mitigations will be an operational and engineering exercise that shall not take more than three (3) months.
 - i. If the review of the Additional Train Pair indicates a degradation of the then-current operations, then CSXT and Norfolk Southern will review these several tactics and shall implement one or more of these to mitigate those potential operational impacts:
 - 1. Additional infrastructure to be funded by CSXT or Springfield Terminal;
 - 2. Increase in speeds through Ayer Yard and/or through the wye;
 - 3. Modification of the Static Yard Plan, but without creating a Significant Change; and
 - 4. Reduction in then-current CSXT Overhead Pair Train lengths (but only at CSXT’s discretion).
 - ii. CSXT and Norfolk Southern shall agree upon a mitigation plan within three (3) months of concluding the evaluation. Norfolk Southern and Pan Am Southern cooperation and assistance shall not be unreasonably withheld. If, after a good faith review by the parties

of the mitigation factors, no combination of the above can be accomplished in such a way as to not degrade the then-current operations, then CSXT shall not have the right to add additional trains.

- iii. In the event CSXT and Norfolk Southern, acting in good faith, cannot agree at any point during the process set forth in this Section 3(k)(iii)(c)(iii), either may institute an arbitration proceeding in which each party will submit their respective assessment of the impact (if any) to Ayer Yard operations and their proposal related to mitigation and timeline. Any such arbitration shall be concluded within twelve (12) months after service of notice of intent to institute an arbitration proceeding.
 - iv. Introduction of the additional CSXT Overhead Train Pair shall be permitted upon implementation of the agreed-upon Additional Train Pair Mitigations (including the conclusion of construction of an agreed-upon or arbitration-compelled infrastructure).
- d. Operations of any additional train pairs will be consistent with the Static Yard Plan.
- (iv) All CSXT Overhead Train Pairs, other than the one CSXT Overhead Train Pair that CSXT decides use to set off or pick up cars in Ayer Yard, shall be restricted to 9,000 feet in length (plus locomotives). The one CSXT Overhead Train Pair that CSXT decides to use to set off or pick up cars in Ayer Yard shall be limited to the clear length of the running track, which, as of the Effective Date of this Agreement, is 4,750 feet. This 4,750 foot limitation shall be increased provided CSXT funds any project to extend the clear length of the running track as contemplated in Appendix C to the B&E Railroad Operating Agreement.
 - (v) CSXT or Springfield Terminal may pick-up or set-off in Ayer Yard with only one of the CSXT Overhead Train Pairs. CSXT may determine from time to time which of the authorized daily overhead train pairs will be the one to set off or pick up in Ayer Yard. Nothing in this subsection 3(k)(iii)(v) shall restrict Springfield Terminal's right to operate the Ayer Local Train pursuant to subsection 3(f)(iii). The pick up or set off in Ayer Yard pursuant to this Subsection 3(k)(iii)(v) is for the purpose of physical interchange of local delivery or receipt of traffic pursuant to the Ayer Switching Agreement, and not for any other purpose.

(l) The Ayer Local Train permitted pursuant to subsection 3(f)(iii) shall be limited to the movement of 1,000 loads and 1,000 empties per year, solely in the revenue waybill account of CSXT or Springfield Terminal to be moved between points south of Harvard, MA at Milepost 25.70 and Ayer Yard. Prior to the initiation of the Post Ayer Local Infrastructure Improvement Trains, CSXT shall provide funding for the Ayer Local Infrastructure Improvements. The pick-up or set-off in Ayer Yard pursuant to this Subsection 3(l) is for the purpose of physical interchange of local delivery or receipt of traffic pursuant to the Ayer Switching Agreement, and not for any other purpose.

SECTION 4. INFRASTRUCTURE

(a) Maintenance.

(i) Except as provided for herein, Pan Am Southern shall be solely responsible for the maintenance, repair, and renewal of the Subject Trackage. Pan Am Southern shall arrange to keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, not to be, as to Hill Yard, less than industry yard standard but in any event not less than Federal Railroad Administration Class 1, and, as to the remainder of the Subject Trackage, less than Federal Railroad Administration Class 2 (or any replacement of it), subject to normal slow orders and the like, but Pan Am Southern does not guarantee the condition of the Subject Trackage or that operations thereover will not be interrupted. Pan Am Southern shall take reasonable steps to ensure that any interruptions will be kept to a minimum and shall use commercially reasonable efforts to avoid such interruptions.

(ii) Existing connections or facilities connecting the trackage owned or operated by CSXT, B&M or Springfield Terminal with those of the Subject Trackage shall continue to be maintained, repaired, and renewed by and at the expense of the party or parties responsible for such maintenance, repair, and renewal under applicable agreements.

(b) Infrastructure Improvements.

Pan Am Southern from time to time may make changes in, additions and betterments to, or retirements from, the Subject Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation of the Subject Trackage or as shall be required by any law, rule, regulation, or ordinance promulgated by any Governmental Authority having jurisdiction, provided that no such retirement shall materially affect operations over the Subject Trackage. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage.

(c) Loss of Use of the Subject Trackage.

(i) Other than as specifically set forth in this Agreement, Springfield Terminal shall not have, pursuant to this Agreement, any claim against Pan Am Southern for liability on account of Loss or Damage of any kind in the event the use of the Subject Trackage by Springfield Terminal is interrupted or delayed at any time by any cause.

(ii) If the Subject Trackage is unavailable for service due to a derailment, line outage or other interruption of service, then Pan Am Southern shall cooperate and consult, and shall cause its Railroad Operator to cooperate and consult, with CSXT, Springfield Terminal and Norfolk Southern in order to address any resulting backlog of trains over a period of time following the resolution of such derailment as may be required to reduce such backlog of trains. The operation of such trains shall be prioritized according to service standard protocols to be developed by the JOC.

SECTION 5. MANAGEMENT AND OPERATIONS

(a) Dispatching.

(i) Pan Am Southern, through its Railroad Operator, shall have exclusive control over the management and dispatching of the Subject Trackage. Dispatching of the Subject

Trackage shall be conducted in a manner as to afford each of Pan Am Southern, Norfolk Southern, CSXT and Springfield Terminal, and any other present or future user of the Subject Trackage (or any portion thereof) the most economical and efficient movement of its traffic over the Subject Trackage consistent with the demands and needs of other authorized users. For the purposes of dispatching, trains of the same class shall be treated with equal priority, with the four (4) classes of trains (in order of priority) being:

- (1) Passenger;
- (2) Unit trains carrying Intermodal Traffic or Automotive Traffic;
- (3) Regular (unit and freight trains not scheduled to set off/pick up en route);
and
- (4) Other (includes trains and equipment that must operate at restricted speeds, i.e., local, work, or other such equipment movements);

provided, that the foregoing in this Section 5(a) is subject to the Pan Am Southern operating plan, including its schedule preferences and operating preferences located in Appendix C to the B&E Railroad Operating Agreement, and

provided further, that in the event of a conflict, the dispatcher shall be empowered to deviate from the priorities set forth herein in order to employ best practices to efficiently move all trains.

(ii) Either CSXT or Springfield Terminal shall have the right to station an employee or agent in the dispatch center operated by Pan Am Southern or its Railroad Operator. Said person shall be present solely as an observer and shall have no authority to control the movement of trains or otherwise interfere with or adjust the operation of trains, Cars or Equipment operating on the Subject Trackage.

(b) Dimensional Loads /Excess Clearance Cars.

In the exercise of the Trackage Rights grant, but not its Haulage Rights grant, CSXT and Springfield Terminal shall have the right to operate all dimensional loads and excess clearance railcars for handling over the Subject Trackage, subject to a clearance file (the "Clearance File") applicable to traffic of Pan Am Southern and all other carriers authorized to operate over the line. Pan Am Southern shall promptly inform CSXT and Springfield Terminal of any changes made to the Clearance File, provided, however, should CSXT be, and for so long as Springfield Terminal shall be, the Railroad Operator, all changes in the Clearance File shall be assumed to have been communicated to CSXT and Springfield Terminal.

(c) Compensation.

CSXT shall cause Pan Am Southern to be compensated for the use of the Subject Trackage in accordance with Appendix B - Compensation.

(d) Mileage, Car Hire and Carload Operating Charges.

All mileage and car hire charges accruing on CSXT Cars and Springfield Terminal Cars on the Subject Trackage shall be assumed by CSXT or Springfield Terminal, respectively and reported and paid by it directly. All Carload Operating Charges shall be paid by Pan Am Southern.

SECTION 6. COMPLIANCE WITH APPLICABLE LAWS AND RULES

(a) CSXT and Springfield Terminal shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other federal and state and local laws, regulations and rules respecting the operation, condition, inspection and safety of its trains, locomotives, cars and equipment while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. CSXT and Springfield Terminal shall indemnify, protect, defend, and save harmless Pan Am Southern and its members, its members' subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against all fines, penalties and liabilities imposed upon Pan Am Southern or its members, its members' subsidiaries or affiliates, or their respective directors, officers, agents and employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable solely to the failure of either CSXT or Springfield Terminal to comply with its obligations in this regard.

(b) CSXT and Springfield Terminal in the use of the Subject Trackage shall comply in all respects with its own safety and general conduct rules, airbrake and train handling rules, and hazardous materials instructions. While using the Subject Trackage, CSXT and Springfield Terminal shall comply in all respects with the operating rules, timetables, equipment handling rules and special instructions of Pan Am Southern, and the movement of CSXT's and Springfield Terminal's trains, locomotives, cars, and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of Pan Am Southern; provided, however, that such operating rules, timetables, and special instructions and orders of the transportation officers of Pan Am Southern shall not unjustly discriminate between the Parties. Pan Am Southern will not make any rule or restriction applying to Springfield Terminal's trains that does not apply equally to Pan Am Southern's trains. All Pan Am Southern trains shall be powered to permit operation at the maximum track speed allowed for the Subject Trackage's class of track.

(c) CSXT and Springfield Terminal shall each make such arrangements with Pan Am Southern as may be required to have all of its employees who shall operate its trains, locomotives, cars, and equipment over the Subject Trackage qualified for operation thereover, and CSXT shall cause Pan Am Southern to be paid, upon receipt of bills therefor, any reasonable cost incurred by Pan Am Southern in connection with the qualification of such employees of either CSXT or Springfield Terminal, as well as the reasonable cost of pilots furnished by Pan Am Southern, until such time as such employees are deemed by the appropriate examining officer of Pan Am Southern to be properly qualified for operation as herein contemplated, such determination not to be unreasonably withheld, conditioned or delayed.

(d) The trains, locomotives, cars and equipment of Pan Am Southern, CSXT, Springfield Terminal, and any other present or future user of the Subject Trackage or any portion thereof, shall be operated without prejudice or partiality to either Party and in such manner as shall afford the most economical and efficient manner of movement of all traffic.

(e) In the event that a train of either CSXT or Springfield Terminal shall be forced to stop on Subject Trackage, and such stoppage is due to insufficient hours of service remaining among its crew, or due to mechanical failure of its equipment, or any other cause not resulting from an accident or derailment, and such train is unable to proceed, or if a train of either CSXT or Springfield Terminal fails to maintain the speed required by Pan Am Southern on the Subject Trackage, or if in emergencies, crippled or otherwise defective cars are set out of its trains on the Subject Trackage, Pan Am Southern shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew the train) as may be necessary to haul, help or push such trains, locomotives or cars, or to

properly move the disabled equipment off the Subject Trackage, and CSXT shall reimburse Pan Am Southern for the actual cost of rendering any such assistance.

(f) If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, Pan Am Southern shall have the option to perform such work, and CSXT shall reimburse Pan Am Southern for the actual cost thereof.

(g) In the event CSXT and Pan Am Southern agree that Pan Am Southern should retain employees or provide additional employees for the sole benefit of either CSXT or Springfield Terminal, the Parties hereto shall enter into a separate agreement under which CSXT shall bear all cost and expense for any such retained or additional employees provided, including without limitation all cost and expense associated with labor protective payments which are made by Pan Am Southern and which would not have been incurred had the retained or additional employees not been provided.

(h) Neither of CSXT's or Springfield Terminal's trains shall include locomotives, Cars or Equipment which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage as contained in the Clearance File maintained by Pan Am Southern, and no train shall contain locomotives, Cars or Equipment which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by Pan Am Southern's operating rules and regulations, without the prior consent of Pan Am Southern. The JOC shall make proper accommodation for exceptions, should that be reasonable, necessary, and practicable.

(i) Pan Am Southern shall have the right to exclude from its tracks any employee of CSXT or Springfield Terminal, except officers, determined by Pan Am Southern to be in violation of Pan Am Southern's rules, regulations, orders, practices, or instructions promulgated in the normal course of business in writing by Pan Am Southern in its timetable or otherwise, and provided in advance to CSXT or Springfield Terminal, as the case may be. The decision to bar any employee of either CSXT or Springfield Terminal from its tracks will not be interpreted as a request for CSXT or Springfield Terminal, as the case may be, to fire the individual(s). CSXT and Springfield Terminal shall release, indemnify, defend, and save harmless Pan Am Southern from and against any and all claims and expenses resulting from such exclusion.

SECTION 7. INVOICES AND PAYMENT OF BILLS

(a) On or before the 15th day of each calendar month during the term of this Agreement, the Railroad Operator shall prepare on behalf of Pan Am Southern a monthly statement setting forth the number of CSXT Cars and Springfield Terminal Cars operated over the Subject Trackage during the month (the "Monthly Statement") and an invoice (the "Use Invoice"). The Monthly Statement shall be in electronic format, and shall contain a detailed list of the CSXT Cars and Springfield Terminal Cars that moved during the subject month, which list shall include, for each Car, information relating to such Cars that Pan Am Southern may reasonably request in connection with accounting for the use of the services and rights provided hereunder. The Monthly Statement and the Use Invoice shall be delivered to CSXT and CSXT shall cause payment to be made to Pan Am Southern within thirty (30) days after the date of receipt of such Use Invoice.

(b) Any dispute regarding the details of a Monthly Statement or amount of a Use Invoice shall be reconciled between the Parties pursuant to Section 14, and any adjustment resulting from such reconciliation shall be reflected in a subsequent Use Invoice. If CSXT disputes any portion of a Use Invoice, it shall nevertheless cause to be paid such Use Invoice in full subject to adjustment upon resolution of the dispute; provided, however, that (i) no exception to any charge in a Use Invoice shall be honored, recognized or considered if filed after the expiration of three (3) years from the date of the Use

Invoice, and (ii) no invoice shall be rendered more than three (3) years (a) after the last day of the calendar month in which the expense covered thereby is incurred, or (b) in the case of charges disputed as to amount or liability, after the amount owed or liability therefor is established. Any claim for the adjustment of a Monthly Statement or Use Invoice shall be deemed to be waived if not made in writing within three (3) years after the date of the relevant Monthly Statement for statement adjustments and the date of the relevant Use Invoice for invoice adjustments.

(c) Pan Am Southern, Norfolk Southern, and CSXT shall each have the right, at its own expense, to audit the records of any other Party pertaining to the use of the Subject Trackage under this Agreement, and any Monthly Statement, Use Invoice or other invoice issued by Pan Am Southern pursuant to this Agreement, provided such audit is initiated at any time within three (3) years of the date of the relevant Use Invoice or other invoice (as applicable) relating to this Agreement. All such audits shall be conducted at reasonable intervals, locations, and times. All such audits shall be prosecuted with reasonable due diligence. Each Party agrees that all information disclosed to it or its representatives in connection with such an audit will be held in strictest confidence and will not be disclosed to any third party (other than to an arbitrator in connection with an arbitration conducted pursuant this Agreement or as required by applicable law). Any adjustment resulting from an audit conducted pursuant to this Section 7(c) with respect to which the Parties are in concurrence shall be reflected in a subsequent Use Invoice.

(d) Invoices rendered pursuant to the provisions of this Agreement, other than Use Invoices, shall include direct labor and material costs, together with the surcharges, overhead percentages, and Equipment rentals as specified by Pan Am Southern at the time any work is performed by Pan Am Southern for either CSXT or Springfield Terminal, or shall include actual costs and expenses, upon mutual agreement of the Parties.

SECTION 8. LIABILITY

As between the Parties hereto, responsibility for all claims, liabilities, demands, actions at law or equity, judgments, settlements, losses, damages and expenses of every character, including any loss or destruction of, or damage to, any property whatsoever, and any injury to or death of any person or persons whomever (including employees of the Parties), resulting from, arising out of, incidental to or occurring in connection with this Agreement (“Loss or Damage”), shall be allocated as follows, without regard to considerations of fault or negligence (except as otherwise specifically provided for hereinafter):

(a) CSXT Cars and Springfield Terminal Cars moving pursuant to this Agreement shall, for the purposes of this Section 8, be referred to, collectively, as “Subject Traffic”. Otherwise, for the purposes of assigning responsibility for Loss or Damage under this Section 8 (including but not limited to Section 8(d)) as between the Parties, the trains, Cars and Equipment of a Foreign Railroad shall be considered to be the trains, Cars and Equipment of Pan Am Southern. By way of illustration only, if, for example, Pan Am Southern were to grant D &H trackage rights pursuant to a trackage rights agreement, then traffic moving pursuant to that D &H trackage rights agreement would be considered Pan Am Southern traffic.

(b) CSXT shall be responsible for: (1) Loss or Damage to Equipment in its revenue waybill account and the lading therein; and (2) to the extent not allocated pursuant to Section 8(c)(1), Loss or Damage arising from or growing out of the negligence or willful misconduct or that of its officers, agents, contractors, or employees of either CSXT or Springfield Terminal, either solely or in conjunction with a third party.

(c) Pan Am Southern shall be responsible for: (1) Loss or Damage to Equipment in its revenue waybill account and the lading therein; and (2) to the extent not allocated pursuant to Section 8(b)(1), Loss or Damage arising from or growing out of its negligence or willful misconduct or that of its officers, agents, contractors (including the Railroad Operator), or employees, either solely or in conjunction with a third party.

(d) Loss or Damage arising from or growing out of the negligence or willful misconduct of both of (i) CSXT and/or Springfield Terminal and (ii) Pan Am Southern (or their respective officers, agents, contractors or employees) shall be borne by the Parties in proportion to their fault.

(e) To the extent responsibility for Loss or Damage is not allocated pursuant to Section 8(b), 8(c), and 8(d) such responsibility for Loss or Damages shall be: (i) borne solely by CSXT and/or Springfield Terminal if the involved trains are handling only Subject Traffic, or (ii) borne by each of (x) Pan Am Southern and (y) CSXT and/or Springfield Terminal, in each case in proportion to the number of Cars in such trains that are moving in that Party's revenue waybill account or car hire account.

(f) Notwithstanding anything to the contrary in Section 8(b), Section 8(c), Section 8(d), and Section 8(e) above, when any damage to or destruction of the environment, including without limitation land, air, water, wildlife, and vegetation, or to third parties from substances transported in Cars or contained in locomotives occurs with one or more trains handling Subject Traffic being involved, then, as between themselves, (i) Pan Am Southern shall be solely responsible for any damage or destruction to the environment and to third parties which results solely from a substance transported in Pan Am Southern Cars and/or contained in a Pan Am Southern locomotive which was released, (ii) CSXT and/or Springfield Terminal shall be solely responsible for any damage or destruction to the environment and to third parties which results solely from a substance transported in Subject Traffic and/or contained in a CSXT and/or Springfield Terminal locomotive which was released, and (iii) responsibility for damage or destruction to the environment and to third parties which results from one or more substances which was (or were) being transported in Cars, Equipment or locomotives in the revenue waybill and car hire accounts of both (x) CSXT and/or Springfield Terminal and (y) Pan Am Southern which was (or were) released shall be borne by the Parties in proportion to the total number of such Cars, Equipment or locomotives in that Party's revenue waybill or car hire account from which there was (or were) such a release.

(g) Notwithstanding anything to the contrary in this Section 8, if: (i) Loss or Damage occurs with one or more trains being involved; (ii) one or more of the involved trains is handling (A) only Subject Traffic or (B) both Subject Traffic and Pan Am Southern Cars; (iii) such Loss or Damage is attributable solely to the Gross Negligence or Willful or Wanton Misconduct of only one of the Parties (or of Springfield Terminal in its role as the Railroad Operator for Pan Am Southern); and (iv) such Gross Negligence or Willful or Wanton Misconduct is the direct or proximate cause of such Loss or Damage, then the Party to which such Gross Negligence or Willful or Wanton Misconduct is attributable shall assume all liability, cost and expense in connection with such Loss or Damage. The Parties agree that, for purposes of this Section 8(g), (1) "Gross Negligence or Willful or Wanton Misconduct" shall be defined as "the intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another; such a gross want of care and regard for the rights of others as to justify the presumption of willfulness and wantonness" and shall include, by definition, acts or omissions of any its employees while under the influence of drugs or alcohol; and (2) Subject Traffic being handled in haulage shall be considered Pan Am Southern Cars.

(h) If any suit or action shall be brought against any Party for Loss or Damage which under the provisions of this Agreement are in whole or in part the responsibility of another Party, said responsible Party shall be notified in writing by the Party sued, and the Party so notified shall have the

right and be obligated to take part in the defense of such suit and shall pay its share of the judgment and the costs and expense incurred in such suit in accordance with the terms of this Section 8.

(i) In every case of death or injury suffered by an employee of one of the Parties, when compensation to such employee or employee's dependents is required to be paid under any present or future state or federal worker's compensation, occupational disease, employers' liability or other law, and one or more of the Parties under provisions of this Agreement is/are required to pay same or a portion of same in installments over a period of time, said Party or Parties shall not be released from paying any such future installment(s) by reason of the termination of this Agreement prior to any of the respective date(s) upon which any such future installments are to be paid.

(j) Whenever any liability, cost or expense is assumed by or allocated to a Party under this Section 8, that Party shall: (i) forever protect, defend, indemnify and save harmless the other Party from and against that liability, cost and expense, regardless of whether such liability, cost and expense was caused in whole or in part by the fault, failure, negligence, misconduct, malfeasance or misfeasance of the Party indemnified, or their directors, officers, agents or employees, and (ii) defend such Party against such claims with counsel selected by the responsible Party and reasonably acceptable to the indemnified Party.

(k) Each of Pan Am Southern, CSXT and Springfield Terminal shall investigate, adjust and defend all cargo related claims filed with it in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005, or in accordance with any applicable transportation contract entered into pursuant to 49 U.S.C. Section 10709.

(l) All costs and expenses in connection with the investigation, adjustment and defense of any claim or suit (other than cargo-related claims made against a Party by a customer whose traffic was moving in the revenue and/or car hire account of such Party) under this Agreement shall be included as costs and expenses in applying the liability provisions of this Section 8; provided, however, that salaries or wages of full-time agents, full-time attorneys and other full-time employees of any Party engaged directly or indirectly in such work shall be borne by such Party.

(m) No Party shall settle or compromise any claim, demand, suit or cause of action (other than a cargo-related claim filed with it in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005, or in accordance with any applicable transportation contract entered into pursuant to 49 U.S.C. Section 10709) for which another Party has any liability under this Agreement without the concurrence of such other Party if the consideration for such settlement or compromise exceeds Thirty-Five Thousand Dollars (US) (\$35,000). The foregoing amount of Thirty-Five Thousand Dollars (\$35,000) shall be adjusted annually consistent with the provisions of Section 2(b) and Section 2(c) of Appendix B.

(n) Each Party shall indemnify and hold harmless the other Parties against any and all costs and payments, including benefits, allowances, and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of or lawsuits brought by or on behalf of its own employees or their collective bargaining representatives, either pursuant to employee protective conditions imposed by a governmental agency upon the agency's approval or exemption of this Agreement and operations hereunder or pursuant to a collective bargaining agreement. It is the Parties' intention that each Party shall bear the full costs of protection of its own employees under employee protective conditions that may be imposed, and of grievances filed by its own employees arising under its collective bargaining agreements with its employees. Similarly, each Party agrees to indemnify and hold harmless the other Parties against any and all costs and payments, including judgments, damages, attorneys' fees and litigation expenses, arising out of claims, lawsuits and actions brought by or on behalf of its own employees pursuant to any provision of law, including common law, and based on employment

arising out of the operations covered by this Agreement, except to extent otherwise specifically provided in this Agreement.

SECTION 9. RERAILING, WRECKING, BAD ORDER AND REPAIRS

(a) Whenever either of CSXT's or Springfield Terminal's use of the Subject Trackage requires rerailling, wrecking service or wrecking train service, Pan Am Southern shall perform or provide such service, including the repair and restoration of roadbed, track, and structures so as to minimize the impact on Pan Am Southern, CSXT and Springfield Terminal operations. The cost, liability, and expense of the foregoing, including without limitation loss of, damage to, or destruction of any property whatsoever and injury to and death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting there from, shall be apportioned in accordance with the provisions of Article 14 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which are owned by or under the management and control of or used by CSXT or Springfield Terminal at the time of such wreck, shall be promptly delivered to CSXT.

(b) If any Cars or locomotives of either CSXT or Springfield Terminal are bad ordered en route on the Subject Trackage and it is necessary that they be set out, those Cars or locomotives shall, after being repaired, be picked up by Pan Am Southern, or if agreed upon by the parties, Pan Am Southern will transport them to a mutually acceptable location to be picked up by CSXT or Springfield Terminal. Pan Am Southern may, upon request of CSXT and at the expense of CSXT, unless otherwise provided for in the Field and Office Manuals of the Interchange Rules of the AAR, furnish required labor and material to perform light repairs required to make such bad ordered Cars or locomotives safe and lawful for movement, and billing for this work shall be at rates prescribed in, and submitted pursuant to, the Field and Office Manuals of the Interchange Rules of the AAR.

SECTION 10. FORCE MAJEURE

The obligations, other than payment obligations, of CSXT, Springfield Terminal and Pan Am Southern under this Agreement shall be subject to force majeure (including flood, earthquake, hurricane, tornado, or other such severe weather or climatic condition, riot, wreck, derailment, washout, explosion, Acts of God, act of terrorism and public enemy, war, blockage, insurrection, vandalism or sabotage, fire, strike, lockout or labor dispute, embargoes or AAR service orders, or governmental laws, orders or regulations, and other causes or circumstances beyond the control of the Party invoking such force majeure as an excuse for nonperformance), but only as long as, and to the extent that, such force majeure shall reasonably prevent performance of such obligations by the affected Party. In the event that an event of force majeure impairs either of CSXT's or Springfield Terminal's or Pan Am Southern's ability to fulfill its obligations under this Agreement, said Party shall take all commercially reasonable measures to restore performance of its obligations in a timely manner.

SECTION 11. TERM AND TERMINATION

(a) This Agreement shall commence on the Effective Date and shall continue until terminated by mutual agreement.

(b) Termination of this Agreement shall not relieve or release any Party hereto from any obligations assumed or from any liability which may have arisen or been incurred by such Party under the terms of this Agreement prior to termination hereof, nor shall it terminate any underlying right, or contingent right, of movement pursuant to the trackage rights grant.

SECTION 12. SUCCESSORS AND ASSIGNS.

(a) This Agreement shall inure to the benefit of and be binding upon each of the Parties and their respective successors and permitted assigns. Third party beneficiary status shall inure to the benefit of Norfolk Southern and each of its successors and permitted assigns.

(b) Except as otherwise specifically provided hereinafter, no Party may assign this Agreement, or any of its rights, interests or obligations hereunder, including by operation of law, without the prior consent in writing of the other Parties, which consent may be withheld at the discretion of such other Parties.

(c) In the event of a sale of substantially all of the assets or business of CSXT, or the merger or consolidation of CSXT into or with a firm or corporation not controlled by CSXT, CSXT may, without the prior consent of Pan Am Southern, assign this Agreement to such firm or corporation acquiring substantially all of the assets or business of CSXT, or merging or consolidating with CSXT; provided, however, that such assignment shall not extinguish or (except in the case of merger or consolidation) transfer any liability or obligation of CSXT under this Agreement that existed prior to such assignment. For the avoidance of doubt, the ST/CSXT Merger shall not be considered an assignment governed by this clause.

SECTION 13. NOTICE

Any notice required or permitted to be given by one Party to the other Party under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the Parties may mutually agree, and shall be addressed as follows:

If to Pan Am
Southern: Chairman
Pan Am Southern LLC
c/o

With a copy to
Norfolk Southern: Mike R. McClellan
Senior Vice President - Chief Strategy Officer
650 West Peachtree Street NW
Atlanta, GA 30308

and

Norfolk Southern Corporation
Attn: Senior Director Interline Services
650 West Peachtree Street NW
Atlanta, GA 30308

and

With a copy to
CSXT: CSX Transportation, Inc.
Attn: Director Joint Facilities
500 Water St.
Jacksonville, FL 32202

and

CSX Transportation Law Department
500 Water St.
Jacksonville, FL 32202

If to Springfield
Terminal:

Springfield Terminal Railway Company
c/o CSX Transportation, Inc.
Attn: Director Joint Facilities
500 Water St.,
Jacksonville, FL 32202

With a copy to:

CSX Transportation Law Department
500 Water St.,
Jacksonville, FL 32202

If to CSXT:

CSX Transportation, Inc.
Attn: Head of Business Development
500 Water St.
Jacksonville, FL 32202

With a copy to:

CSX Transportation Law Department
500 Water St.
Jacksonville, FL 32202

Any Party (or Norfolk Southern) may provide notice of changes in the above addressees to the others by personal service or certified mail.

SECTION 14. DISPUTE RESOLUTION

(a) Reference to JOC.

Any dispute, controversy or claim between the Parties and arising out of or relating to this Agreement or the breach, termination or validity thereof (“Dispute”) shall be referred to the JOC (for Pan Am Southern) for resolution and if the Parties are unable to resolve the dispute, it will be referred, in writing, to the Management Committee (for Pan Am Southern) to resolve.

(b) Reference for Formal Dispute Resolution.

Any Dispute not resolved within sixty (60) days after receipt by any of the involved parties of written notice of reference of such Dispute to the Management Committee pursuant to Section 14(a), shall be submitted, by either Party for formal dispute resolution pursuant to Section 14(c).

(c) Formal Dispute Resolution.

(i) Submission to Jurisdiction. Each of the Parties hereby (A) consents to submit itself to the exclusive jurisdiction of any Federal or state court located in the State of Delaware (the “Delaware Courts”) in any action to enforce or in aid of the agreement to arbitrate in Section 14(c)(ii) herein or for provisional relief to maintain the status quo or prevent irreparable harm pending the appointment of the arbitrator, and to the non-exclusive jurisdiction of the Delaware Courts for enforcement of any award issued hereunder, (B) agrees that it will not attempt to deny or defeat such

personal jurisdiction by motion or other request for leave from any such court, and (C) waives any objection based on forum non conveniens or any other objection to venue thereof.

(ii) Dispute Resolution. Each of the Parties stipulates and agrees that any Dispute that is not resolved pursuant to Section 14(a) will be submitted for formal dispute resolution, if at all, to mandatory and binding arbitration, in Washington, D.C., by a single arbitrator, under the Commercial Arbitration Rules and the Large Complex Case Procedures of the AAA then in effect (the “Rules”), under the following terms and conditions:

(A) Selection of Arbitrator. A single independent arbitrator shall be appointed by the AAA using the listing, ranking and striking procedure in the Rules. Any arbitrator appointed by the AAA shall be a retired judge or a practicing attorney with no less than fifteen years of experience with large commercial cases and an experienced arbitrator.

(B) Conduct of Arbitration. The arbitration shall be held and the award shall be issued in Washington, D.C. In addition to money damages, the arbitrator may award any remedy provided for under applicable law and the terms of this Agreement, including, without limitation, specific performance or other forms of injunctive relief. The arbitrator shall apply the law of the State of Delaware to the substance of the Dispute and will have no power or authority, under the rules of the AAA or otherwise, to amend or disregard any provision of this Agreement.

(C) Replacement of Arbitrator. Should the arbitrator refuse or be unable to proceed with arbitration proceedings, a replacement arbitrator will be selected using the same method of selection as the original arbitrator.

(D) Findings and Conclusions. The arbitrator will, after reaching judgment and award, prepare and distribute to the parties a written award including the findings of fact and conclusions of law relevant to such award and containing an opinion setting forth the reasons for the giving or denial of any award.

(E) Time is of the Essence. The arbitrator is hereby instructed that time is of the essence in the arbitration proceeding, and that the arbitrator shall have the right and authority to issue monetary sanctions against any party if, upon a showing that such party is unreasonably delaying the proceeding.

(F) Temporary Equitable Relief. By agreeing to arbitration, the parties do not intend to deprive any Delaware Court of its jurisdiction to issue a pre-arbitral injunction, pre-arbitral attachment, or other order in aid of arbitration proceedings and the enforcement of any award. Without prejudice to such provisional remedies as may be available under the jurisdiction of a Delaware Court, the arbitrator shall have full authority to grant provisional remedies and to direct the parties to request that any court modify or vacate any temporary or preliminary relief issued by such court, and to award money damages for the failure of any party to respect the arbitrator’s orders to that effect.

(G) Consolidation. The parties are committed to the prompt and efficient resolution of Disputes. Accordingly, if more than one Dispute arise under this Agreement and/or any other JV Transaction Agreement, such Disputes may be brought in a single arbitration. If more than one arbitration is brought with respect to Disputes under this Agreement and/or any JV Transaction Agreement, then any party may request that any arbitration or any new Dispute arising under this Agreement or any other JV Transaction Agreement be consolidated into any prior arbitration. The new Dispute or arbitration shall be so consolidated, provided that the arbitrator for the prior (or first filed) arbitration determines that (x) the new Dispute or arbitration presents significant issues of law or fact

common with those in the pending arbitration; (y) no party would be unduly prejudiced and (z) consolidation under such circumstances would not result in undue delay for the prior arbitration. Any order of consolidation issued by such arbitrator shall be final and binding upon the parties. Unless the parties otherwise agree, the arbitrator appointed first in time shall serve as the arbitrator for the consolidated arbitration. The parties waive any right they have to appeal or to seek interpretation, revision or annulment of such order of consolidation under the Rules or in any court. The Parties agree that upon such an order of consolidation, they will promptly dismiss any arbitration brought under this Agreement, the subject of which has been consolidated into another arbitral proceeding.

(H) Discovery. Recognizing the express desire of the parties for an expeditious means of dispute resolution, the arbitrator will allow for limited discovery as may be reasonable under the circumstances.

(I) Costs and Attorneys' Fees. Notwithstanding any rule of the AAA to the contrary, the arbitrators rendering judgment under this Section 14(c)(ii) will have the power to award the costs of the arbitration, including reasonable attorneys' fees and expenses to the prevailing party or parties in the arbitration. In any action to enforce this agreement to arbitrate or any arbitral award rendered hereunder, the court may award costs and attorneys' fees against the party resisting enforcement.

(J) Miscellaneous. The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws. Pending the written decision of the arbitrator, there shall be no interruption in the transaction of business under this Agreement, and all payments in respect thereto shall be made in the same manner as prior to the arising of the dispute until the matter in dispute shall have been fully determined by arbitration, and thereupon such payment or restitution shall be made as required by the written decision of the arbitrator. An arbitrator's award may be appealed in accord with Section 23 of the Uniform Arbitration Act.

(d) As a third-party beneficiary, Norfolk Southern may initiate and prosecute arbitration pursuant to Section 14(b) on behalf of Pan Am Southern. Pan Am Southern, CSXT and Springfield Terminal shall cooperate with Norfolk Southern in the preparation for, and the initiation and prosecution of, such arbitration, at Pan Am Southern's expense.

SECTION 15. CONFIDENTIALITY

Except as provided by law or by rule, order, or regulation of any court or regulatory agency with jurisdiction over the subject matter of this Agreement, or in connection with an audit by the Internal Revenue Service or other tax authority, or as may be necessary or appropriate for a Party hereto to enforce its rights under this Agreement, during the term of this Agreement (including any extensions thereof), and for a period of three (3) years after termination or expiration of this Agreement, the terms and provisions of this Agreement and all information to which access is provided or which is obtained hereunder will be kept confidential and will not be disclosed by either Party to any person other than members, officers, employees, independent auditors, and attorneys, without the prior written approval of the other Party. Notwithstanding anything to the contrary, any Party may disclose this Agreement in connection with an audit by its external auditors, the Internal Revenue Service or other tax authority.

SECTION 16. ABANDONMENT

(a) Pan Am Southern shall have the right, subject to securing any necessary regulatory approval or exemption, to abandon or discontinue service on the Subject Trackage or any portion thereof (the "Abandonment Segment") during the term of this Agreement. Pan Am Southern shall provide CSXT

no less than ninety (90) days prior notice of its intention to seek to abandon or discontinue service over any Abandonment Segment.

(b) If Pan Am Southern elects to abandon or discontinue service over the Subject Trackage (or any portion thereof) pursuant to Section 16(a), this Agreement shall continue to apply in all respects to any remaining portion of the Subject Trackage not abandoned or subject to discontinuance by Pan Am Southern.

(c) Pan Am Southern shall, not less than sixty (60) days prior to any submission to the STB (or successor agency having jurisdiction over said abandonment or discontinuance) of an application or exemption for authority to abandon or discontinue service over an Abandonment Segment(s), first offer CSXT the first right to purchase such Abandonment Segment(s) for fair market value ("FMV") of such Abandonment Segment(s), and on such other terms and conditions as are customary with respect to line sales, which such notice shall specifically identify this Section 16 and the time periods for action hereunder. CSXT shall have forty-five (45) days ("Abandonment Notice Period") within which to advise Pan Am Southern that it will exercise its right to purchase ("Exercise Notice"). If the Parties are unable to agree upon the FMV of the Abandonment Segment(s) that CSXT wishes to purchase, either Party may refer the issue to arbitration pursuant to Section 14, which arbitration shall determine all other issues relating to terms and conditions for the sale not then (at the time of the initiation of the arbitration) agreed to by the Parties. Such arbitration shall be conducted on an expedited basis, with selection of the arbitrators within thirty (30) days of the initiation of arbitration, all submissions to be made by the Parties within sixty (60) days of the initiation of arbitration, and a written decision to be rendered within thirty (30) days following the final submissions of the Parties.

(d) The Parties shall consummate the sale contemplated by this Section 16 within forty-five (45) days of the latest of: (i) the rendering of a written arbitration decision, should issues related to the sale proceed to arbitration; (ii) the execution of a purchase and sale agreement, should the Parties execute the same; and (iii) the grant of authority, or exemption from the need to obtain a grant of authority, from any regulatory body having jurisdiction over the same.

(e) If CSXT elects not to purchase the Abandonment Segment, it shall so advise Pan Am Southern within the same forty-five (45) day Abandonment Notice Period by delivering to Pan Am Southern a notice of waiver of right to purchase said segment ("Waiver Notice"). Failure of CSXT to provide Pan Am Southern (including a copy to Norfolk Southern) with either an Exercise Notice or a Waiver Notice within the aforesaid forty-five (45) day period shall constitute a Waiver Notice.

(f) In the event of a Waiver Notice and CSXT does not purchase the Abandonment Segment pursuant to its rights in this Agreement, CSXT and Springfield Terminal shall promptly file such application, petition or exemption notice as may then be required to obtain regulatory authority or exemption for the Abandonment Segment and for the discontinuance of CSXT's and Springfield Terminal's trackage rights over the Abandonment Segment.

SECTION 17. INDEMNITY COVERAGE

As part of the consideration hereof, each Party hereby agrees that each and all of its indemnity commitments in this Agreement in favor of the other Parties shall also extend to and indemnify the respective members and/or parent corporation, and the subsidiaries and affiliates of such other Party, and all of their respective directors, officers, agents and employees.

SECTION 18. MISCELLANEOUS PROVISIONS

(a) This Agreement and each and every provision hereof are for the exclusive benefit of the Parties hereto. Nothing herein contained shall be taken as creating or increasing any right of any third party to recover by way of damages or otherwise against any of the Parties hereto. Norfolk Southern shall have third party status solely for the purpose of enforcing this Agreement, and not by way of recovery for damages hereunder.

(b) Unless otherwise provided by law, this Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements among the Parties hereto, written or oral, with respect to the subject matter hereof.

(c) No term or provision of this Agreement may be changed, waived, discharged, or terminated except by an instrument in writing and signed by all Parties.

(d) The division of this Agreement into articles, sections, and subsections and the insertion of headings and references are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. Unless the context otherwise requires, all references to articles, sections or subsections are to articles, sections or subsections of this Agreement.

(e) This Agreement is the result of mutual negotiations between the Parties hereto, none of whom shall be considered the drafter for purposes of contract construction.

(f) No consent or waiver, expressed or implied, by a Party of any breach or default by the other Party in the performance by such other Party of its obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance hereunder by such other Party. Failure on the part of a Party to complain of any act or failure of the other Party or to declare the other Party in default, irrespective of how long such failure continues, shall not constitute a waiver by such first mentioned Party of its rights hereunder.

(g) If any provision of this Agreement or the application thereof to any Party hereto or to any circumstance shall be determined by a court of competent jurisdiction to be invalid or unenforceable to any extent or for any reason, the remainder of this Agreement or the application of the provisions thereof to such Party or circumstance, other than those determined to be invalid or unenforceable, shall not be affected thereby and shall be enforced to the fullest extent permitted by law, and the Parties shall promptly enter into such other agreement(s) as their respective legal counsel may deem appropriate in order to replace such invalid or unenforceable provisions in a manner that produces a result which is substantially equivalent to the terms of this Agreement in all material respects.

(h) Nothing herein shall be interpreted as creating an association, partnership, joint venture or other joint undertaking between Pan Am Southern and Springfield Terminal.

(i) THE LAWS OF THE STATE OF DELAWARE SHALL GOVERN THE VALIDITY OF THIS AGREEMENT, THE CONSTRUCTION OF ITS TERMS AND THE INTERPRETATION OF THE RIGHTS AND DUTIES ARISING HEREUNDER WITHOUT REGARD TO ITS PRINCIPLES OF CONFLICTS OF LAWS.

(j) This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such separate counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed effective as of the Effective Date.

PAN AM SOUTHERN LLC

DocuSigned by:
By: Michael McClellan
Name: Michael McClellan
Title: SVP and Chief Strategy Officer

CSX TRANSPORTATION, INC.

DocuSigned by:
By: Tom Tisa
Name: Tom Tisa
Title: Head of Business Development

SPRINGFIELD TERMINAL RAILWAY COMPANY

DocuSigned by:
By: Michael S Burns
Name: Michael S Burns
Title: Corporate Secretary

(Signature Page to CSXT Joint Use Agreement)

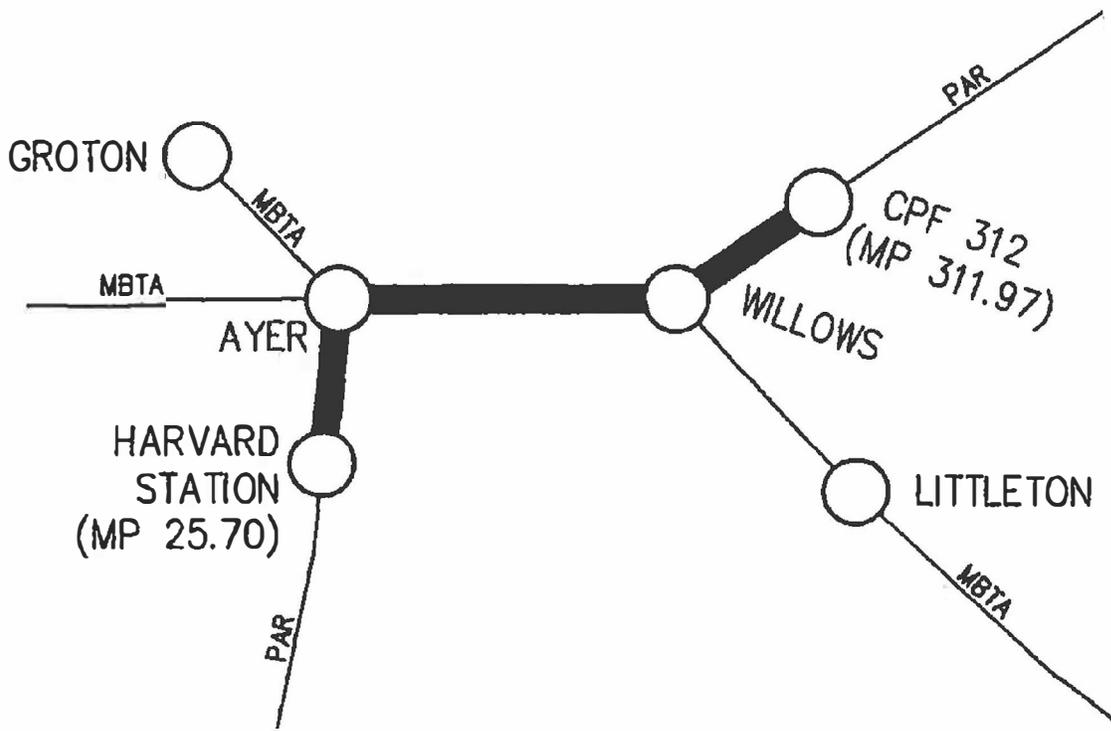
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JV SYSTEM MAP AYER AREA

PAN AM RAILWAYS TRACKAGE RIGHTS

MARCH 24, 2008

LEGEND

█ PAN AM RAILWAYS TRACKAGE RIGHTS

— OTHER TRACK

APPENDIX B - COMMERCIAL APPENDIX

Section 1. Trackage Rights Compensation

(a) Compensation.

CSXT shall cause Pan Am Southern to be compensated for the CSXT and Springfield Terminal use of the Subject Trackage by causing Pan Am Southern to be paid a sum computed by multiplying (i) the Trackage Rights Charge, as hereinafter defined, by (ii) the number of Cars (loaded or empty) and locomotives moved, with multi-platform Cars being counted as one car for each four axles. For the purpose of clarification only, the following movement of CSXT Cars and/or Springfield Terminal Cars shall not be subject to a Trackage Rights Charge: (A) CSXT and Springfield Terminal use of the Subject Trackage for the purpose of effecting either a Rule 11 interchange or an interline revenue waybill interchange, in each case with Pan Am Southern, (B) the PAR – Ayer Turn, or (C) Cars on the CSXT Overhead Train having a prior movement over the Remaining Springfield Terminal east of CPF 312, provided, however, that compensation for Cars on either the Ayer Local Train or the CSXT Overhead Train having a prior movement over the Remaining Springfield Terminal south of Harvard, in each case, that are not included in subsections (A) through (C) in this subsection (a), shall be one-half of the then current Trackage Rights Charge.

(b) The Trackage Rights Charge.

(i) The Trackage Rights Charge shall initially be set at:

(A) \$36.15 for loaded Hazardous Materials traffic;

(B) \$21.69 per loaded car for all traffic other than loaded Hazardous Materials traffic; and

(C) \$7.21 per empty car.

(ii) The Trackage Rights Charge shall be revised upward or downward each year by a “Cost Factor”, beginning with the bill rendered for the month of July, 2022, to compensate for the increase or decrease in the cost of labor and material, as reflected in 100% of the change from one year to the next in the “AAR Railroad Cost Indexes - Table A - Annual Indexes of Charge -out Prices and Wage Rates (1977 =100) - East - Materials, prices, wage rates and supplements combined (excluding fuel) (the “Cost Index”). The Cost Factor shall be calculated for each calendar year by taking the difference between the currently available Cost Index as of January 1, and comparing that Cost Index with the Cost Index for the immediately preceding year. The Cost Factor may be a positive or negative number.

(iii) The Trackage Rights Charge shall be revised by calculating the Cost Factor (essentially the percent of increase or decrease in the index for the latest calendar year as related to the index for the previous calendar year) and applying that percentage to the then current Trackage Rights Charge, provided, however, that under no circumstances shall the Trackage Rights Charge be revised to an amount less than those reflected in subsection (a), above. In computing the adjusted Trackage Rights Charge, any fraction of a cent less than one-half shall be dropped, and any fraction equal to or greater than one-half of a cent shall be increased to the next whole cent.

(c) In addition to any other adjustment to the Trackage Rights Charge described in this Appendix B, should the charges imposed on Pan Am Southern for the use of the MBTA Segment increase year-over-year in a rolling three year average by more than three percent (3 %), then the Trackage Rights Charge shall be increased to reflect such change.

Section 2. Intermodal Haulage Compensation

(a) Compensation.

CSXT shall cause Pan Am Southern to be compensated for the Intermodal Haulage by causing Pan Am Southern to be paid a sum computed by multiplying (i) the Intermodal Haulage Charge, as hereinafter defined, by (ii) the number of units (loaded or empty) moved.

(b) The Intermodal Haulage Charge.

(i) The Intermodal Haulage Charge for CSXT traffic or Springfield Terminal traffic shall initially be set as follows:

<u>Intermodal Equipment</u>	<u>Rate Per Intermodal Unit</u>
Loaded Intermodal Units between CPF 312 and the Mechanicville Facility	\$106.04
Empty Intermodal Units moving between the Mechanicville Facility and CPF 312	\$87.86

(ii) CSXT and Springfield Terminal will be responsible for all flatcar and trailer per diem and mileage.

(iii) Pan Am Southern shall supply its own locomotive power and fuel.

(iv) One to five Bare Chassis in a stacked configuration shall be billed at the Empty Intermodal Unit rate.

(v) Should the number of empty Intermodal platforms be greater than 10% of the total Intermodal platforms tendered by CSXT or Springfield Terminal to move between CPF 312 and Mechanicville in any three (3) consecutive month period, PAS and CSXT shall establish an Empty Intermodal platform pricing additive that further reflects the cost of repositioning equipment between these end points.

(c) Mechanicville Access Fee.

In addition to the Intermodal Haulage Charge, CSXT shall be charged a Mechanicville Access Fee of \$20.00 per lift, covering land rent, taxes, terminal maintenance and other charges not included in Subsection 2(d) and 2(e) below.

(d) Mechanicville Utilities Charges.

The cost of utilities (water, sewer, electricity and the like) shall be annually billed to, and paid by, all users of the Mechanicville Facility in proportion to the unit activity of that user at the Mechanicville Facility.

(e) Other Mechanicville Terminal Services Costs.

Other Mechanicville terminal services costs (such as switching, lifts and the like) shall be monthly billed to, and paid by, all users at cost and, if the cost is not capable of being separately

charged, charged to each user in proportion to the unit activity of that user's use of that relevant terminal service.

(f) Haulage Charge and Mechanicville Access Fee Adjustment.

The Haulage Charge Rate Per Unit charges and the Mechanicville Access Fee Adjustment shall be subject to adjustment as set forth below:

(i) Rate Adjustment

(A) The Rates shall be revised upward or downward each year by a "Cost Factor", beginning with the bill rendered for the month of July 2022, to compensate for the increase or decrease in the cost of labor and material, as reflected in 100% of the change from one year to the next in the "AAR Railroad Cost Indexes - Table A - Annual Indexes of Charge - out Prices and Wage Rates (1977 =100) - East - Materials, prices, wage rates and supplements combined (excluding fuel)" (the "Cost Index"). The Cost Factor shall be calculated for each calendar year by taking the difference between the currently available Cost Index as of January 1, and comparing that Cost Index with the Cost Index for the immediately preceding year. The Cost Factor may be a positive or negative number.

(B) The Rates shall be revised by calculating the Cost Factor (essentially the percent of increase or decrease in the index for the latest calendar year as related to the index for the previous calendar year) and applying that percentage to the then current Rates, provided, however, that under no circumstances shall the Rates be revised to an amount less than those reflected in subsection 2(b)(1) of this Appendix B. In computing the adjusted Rates, any fraction of a cent less than one-half shall be dropped, and any fraction equal to or greater than one-half of a cent shall be increased to the next whole cent.

(C) In the event the base for the Cost Index shall be changed from that in effect at the effective date of this Agreement, an appropriate revision shall be made. If the STB or any successor organization discontinues publication of the "AAR Railroad Cost Indexes", an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto.

(vi) Fuel Surcharge:

Department of Energy's EIA Retail On-Highway Diesel Prices Index Reading	Fuel Surcharge Amount
\$0.00 - \$1.29	0.00%
\$1.30 - \$1.39	1.00%
\$1.40 - \$1.49	2.00%
\$1.50 - \$1.59	3.00%
\$1.60 - \$1.69	4.00%
\$1.70 - \$1.79	5.00%
\$1.80 - \$1.89	6.00%
\$1.90 - \$1.99	7.00%
\$2.00 - \$2.09	8.00%

Etc	Etc
-----	-----

The surcharge will be applied to the intermodal haulage component of the monthly invoice. For a given month, take the average of the DOE's Index value released on each of the Mondays during that month. Using the above scale, determine the appropriate fuel surcharge to apply.

(g) Increase in Fees based upon Volumes.

Should the 2009 Haulage Traffic volumes exceed, on average, twenty (20) revenue loads per week, and if the addition of this freight to the Mechanicville Facility result in a step function increase in fixed costs - e.g. switching, terminal labor, utilities, maintenance, or expansion capital - then PAS and CSXT agree to work together in good faith to develop and assess appropriate per unit, prorated adjustments in access fees for all users that reflect these changes in fixed costs.

Section 3 – Hoosick Haulage Rights Charge¹

Loaded Cars moving between Rotterdam Junction and Hoosick Junction	[*]
Empty Cars moving between Hoosick Junction and Rotterdam Junction	[*]

Pan Am Southern may interchange the Hoosick Haulage Traffic moving pursuant to the Hoosick Haulage Rights with GMRC at East Deerfield Yard on the same terms and conditions as that for moving Hoosick Haulage Traffic between Rotterdam Junction and Hoosick Junction. The determination of the interchange location shall be made by Pan Am Southern from time to time and subject solely to Pan Am Southern's discretion. The Hoosick Haulage Rights shall remain in effect at least for so long as any subsidiary of GWI is operating the Pan Am Southern line extending between Rotterdam Junction and East Deerfield Yard.

****Note to draft:***

- ***This Section 3 and the rates related thereto to be discussed and drafted in accordance with the following from the Vermont Settlement Agreement and input from the commercial teams: “The cost of the haulage shall mirror current interline rates and shall incorporate a fuel surcharge mechanism, with no adjustment for zero mileage per diem car hire traffic and a \$30 adjustment for other than zero mileage per diem car hire traffic, and otherwise on terms and conditions consistent with other haulage services provided pursuant to the Amended CSXT Joint Use Agreement, including but not limited to the allocation of liability and the responsibility for the payment of car hire.”***

¹ Price Stability as defined in the Vermont Settlement Agreement is addressed in the Railroad Operator Agreement with respect to Bellows Falls/PAR destinations rates, however, the Vermont Settlement Agreement also calls for Price Stability with respect to the haulage rates referenced in Section 4(b) of the Vermont Settlement Agreement and covered by this Section 3. Discuss how Price Stability is to be incorporated with respect to this new haulage. “For the purpose of this Agreement, the term “Price Stability” shall mean that pricing for an individual movement shall be consistent with the then-current pricing by car type, commodity and ownership, said pricing shall be adjusted annually by no more than by a mutually agreed-upon index, and that said pricing shall not be, by application of any adjustment factors, set at less than levels currently in effect on the Effective Date.”

APPENDIX C - COPY OF VERMONT SETTLEMENT AGREEMENT

Settlement Agreement

This settlement agreement (this "Settlement Agreement") is entered into this 29th day of December, 2021, by and among the State of Vermont, acting through its Agency of Transportation ("VTrans"), Trans Rail Holding Company ("Trans Rail") (on behalf of and for its rail carrier holdings, Vermont Railway, Inc. ("Vermont Railway"), Washington County Railroad Co. ("WCRR"), and Green Mountain Railroad Corporation ("GMRC" and collectively with Trans Rail, Vermont Railway and WCRR, "VRS"), and Norfolk Southern Railway Company ("Norfolk Southern"), Genesee & Wyoming Inc. ("GWI"), and CSX Transportation, Inc. ("CSXT"). In this Settlement Agreement, VTrans, VRS, Norfolk Southern, GWI and CSXT shall each be referred to individually as a "Party," and collectively as the "Parties".

Recitals

Whereas, on February 25, 2021, CSXT, among others, filed an application in STB Finance Docket No. 36472 (the "CSXT Application") seeking the approval of the U.S. Surface Transportation Board ("STB") for certain transactions including for the acquisition of control of Pan Am Systems, Inc. and certain named subsidiaries (collectively, "Pan Am"), and the merger of certain of the Pan Am railroads into CSXT (the "Proposed Transaction"); and

Whereas, one of the Pan Am railroads to be acquired in the Proposed Transaction is the Boston and Maine Corporation ("B&M"); and

Whereas, B&M and Norfolk Southern each owns a fifty percent (50%) interest in Pan Am Southern LLC ("PAS"); and

Whereas, one of the Pan Am railroads to be acquired in the Proposed Transaction is the Springfield Terminal Railway Company ("ST"); and

Whereas, PAS and ST are parties to the Springfield Terminal Joint Use Agreement dated as of April 9, 2009, granting ST certain trackage and haulage rights as described further therein; and

Whereas, Norfolk Southern and CSXT anticipate that, as part of the implementation of the Proposed Transaction, the Springfield Terminal Joint Use Agreement will be amended and restated as the Amended and Restated CSXT Joint Use Agreement by and among PAS, CSXT and Norfolk Southern to be entered into in connection with the Proposed Transaction (the "Amended CSXT Joint Use Agreement");

Whereas, on February 25, 2021, Pittsburg & Shawmut Railroad, LLC d/b/a Berkshire & Eastern Railroad ("B&E"), a wholly-owned subsidiary of GWI, filed a Petition for Exemption in STB Finance Docket No. 36472 (Sub.-No. 5) (the "B&E Petition") to authorize B&E to serve as the contract operator of the PAS rail lines (the "B&E-PAS Transaction"); and

Whereas, on March 16, 2021, VRS filed certain comments and concerns relating to the B&E-PAS Transaction as described in the B&E Petition for Exemption; and

Whereas, on March 17, 2021, VTrans filed certain comments and concerns relating to the B&E-PAS Transaction described in the B&E Petition for Exemption; and

Whereas, on April 26, 2021, in response to an STB decision served March 25, 2021, CSXT and others filed an amended CSXT Application and B&E filed an Amended Petition for Exemption; and

Whereas, on July 1, 2021, in response to an STB decision served May 26, 2021, CSXT and others filed a further amended CSXT Application (the "Amended CSXT Application") and B&E filed a Supplement to Amended Petition for Exemption (the "Amended B&E Petition"); and

Whereas, the Parties have agreed to resolve the VTrans and VRS concerns by entering into this Settlement Agreement containing the commitments set out below, and will file this Settlement Agreement in STB Docket No. FD 36472 and STB Docket No. FD 36472 (Sub.-No. 5); and

Whereas, the obligations of the Parties to one another contained in this Settlement Agreement are subject to the STB's approval of the B&E-PAS Transaction and each Party obtaining any necessary STB approvals; and

Whereas, where this Settlement Agreement describes an obligation of PAS that CSXT and Norfolk Southern agree to cause PAS to perform after CSXT acquires control of B&M and its 50% interest in PAS; and

Whereas, New England Central Railroad, Inc. ("NECR"), a wholly-owned subsidiary of GWI and an affiliate of B&E, owns and operates railroad lines in Massachusetts, New Hampshire, Connecticut and Vermont, including between White River Junction, Vermont, and Millers Falls, Massachusetts; and

Whereas, GWI is entering into this Settlement Agreement, and agreeing to cause B&E and NECR to take the actions set forth herein, in furtherance of obtaining STB approval for B&E to become the contract operator of the PAS rail lines; and

Whereas, the railroads comprising VRS are wholly-owned subsidiaries of Trans Rail, and own and/or operate railroads in the States of New York, New Hampshire and Vermont;

NOW, THEREFORE, in consideration of the foregoing, and the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties hereby agree as follows:

Section 1. Definitions

Except as otherwise specifically defined herein, all words, terms and phrases used in this Settlement Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the railroad industry.

Section 2. Grant of Trackage Rights to GMRC

(a) White River Junction Trackage Rights

GWJ shall cause NECR to grant to GMRC permanent trackage rights (the "WRJ Trackage Rights") between Bellows Falls, Vermont, and White River Junction, Vermont (the "WRJ Trackage Rights Endpoints"). The WRJ Trackage Rights will be bridge (overhead) trackage rights, with no local service

rights. The WRJ Trackage Rights shall be used by GMRC solely for the purpose of moving traffic in VRS's revenue waybill account between the WRJ Trackage Rights Endpoints. The WRJ Trackage Rights are intended to be permanent, terminable only upon mutual consent of the parties or an uncured event of default. If and only if GMRC no longer operates to and from Bellows Falls, then GMRC shall promptly assign the WRJ Trackage Rights to another VRS railroad operating to and from either of the WRJ Trackage Rights Endpoints. Upon written notice from VTrans that it has selected another rail carrier to provide common carrier rail service on the VTrans owned rail lines currently operated by VRS, GMRC or such successor VRS railroad shall assign the NECR TRA (as defined below) to such third party rail carrier and such third party rail carrier will thereafter become the operator of GMRC's railroad lines and will succeed to GMRC's common carrier obligation on such lines. Such assignment shall become effective on the effective date of the STB authority permitting such successor operator to exercise the WRJ Trackage Rights.

(b) Limited Use Trackage Rights and the PAS Operating Rights

GWJ shall cause NECR to grant to GMRC certain contingent and limited use trackage rights (the "Limited Use Trackage Rights") and CSXT and Norfolk Southern shall cause PAS to grant, to GMRC certain operating rights (the "PAS Operating Rights") for the movement of VRS traffic between (i) Bellows Falls, on the one hand, and (ii) one of two connections with PAS – one being Millers Falls, Massachusetts and the other being East Northfield, Massachusetts, on the other hand (the "Limited Use Trackage Rights Endpoints"), for the sole purpose of interchanging traffic with, or delivering traffic to, PAS in East Deerfield Yard.

The Limited Use Trackage Rights and PAS Operating Rights shall exist only for so long as any GWJ subsidiary or affiliated entity operates the PAS lines as a contract operator or otherwise. The Limited Use Trackage Rights and PAS Operating Rights and the rights extended therein will terminate (i) upon mutual consent of the parties, or (ii) an uncured event of default, or (iii) a GWJ subsidiary or affiliated entity ceases to operate the PAS rail lines as contract operator or otherwise. Should the Limited Use Trackage Rights terminate pursuant to the foregoing, GMRC shall be required to seek discontinuance authority from the STB promptly following written notice from GWJ of such termination. If and only if GMRC no longer operates to and from Bellows Falls, then GMRC shall promptly assign the Limited Use Trackage Rights and PAS Operating Rights to another VRS railroad operating to and from either WRJ Trackage Rights Endpoints. Upon written notice from VTrans that it has selected another rail carrier to provide common carrier rail service on the VTrans owned rail lines currently operated by VRS, GMRC or such successor VRS railroad shall assign the NECR TRA (as defined below) to such third party rail carrier and such third party rail carrier will thereafter become the operator of GMRC's railroad lines and will succeed to GMRC's common carrier obligation on such lines. Such assignment shall become effective on the effective date of the STB authority permitting such successor operator to exercise the WRJ Trackage Rights.

Because there is no effective location for the physical interchange of traffic between PAS and GMRC at either Millers Falls or East Northfield, upon commencement of B&E's operation of the PAS rail lines, CSXT and Norfolk Southern shall cause PAS to grant to GMRC the PAS Operating Rights between (i) each of Millers Falls and East Northfield and (ii) East Deerfield Yard solely for the purpose of interchange of traffic with a prior or subsequent move over the Limited Use Trackage Rights.

The PAS Operating Rights over the East Northfield – East Deerfield Yard route will only be available for exercise by GMRC if the Commonwealth of Massachusetts Department of Transportation

(“MassDOT”), as the owner of a portion of the route between East Northfield and Greenfield (the “Greenfield Route”), has granted its written consent to the same (“MassDOT Greenfield Route Consent”). Satisfaction of any MassDOT preconditions to the exercise by GMRC of the PAS Operating Rights over MassDOT-owned trackage shall be the sole responsibility, and at the sole discretion and expense, of GMRC; provided, however, that such preconditions shall not diminish, or require PAS to relinquish, PAS’s rights over such MassDOT-owned trackage. Unless and until MassDOT has provided the MassDOT Greenfield Route Consent and any conditions MassDOT has placed on the use of the Greenfield Route have been satisfied, GMRC shall exercise the Limited Use Trackage Rights solely via the Millers Falls route. GMRC shall be responsible for all costs and liability arising from its use of any MassDOT-owned trackage.

(c) Terms and Conditions of the WRJ Trackage Rights, the Limited Use Trackage Rights and the PAS Operating Rights

The Parties shall provide terms and conditions governing the use of the WRJ Trackage Rights and the Limited Use Trackage Rights in a single trackage rights agreement between NECR and GMRC (the “NECR TRA”). The terms and conditions of the PAS Operating Rights will be reflected in an operating rights and interchange agreement between PAS and GMRC (the “PAS Operating Rights and Interchange Agreement”).

GMRC’s rights pursuant to the NECR TRA and the PAS Operating Rights and Interchange Agreement shall be in common with and not displace or unduly interfere with PAS’s provision of common carrier service over the NECR-owned trackage or the MassDOT-owned trackage. GMRC’s rights shall not otherwise adversely impact the operations of NECR or Amtrak, with the Parties acknowledging and agreeing that NECR will give priority to intercity rail passenger trains of Amtrak to the extent required by Section 402 of the Rail Passenger Service Act and that GMRC will be treated similarly to PAS.

Both the NECR TRA and the PAS Operating Rights and Interchange Agreement shall include, among other terms and conditions, the following:

- a. Interchange and operating rights to effectuate interchange between PAS and GMRC shall take place in East Deerfield Yard pursuant to the PAS Operating Rights and Interchange Agreement.
- b. GMRC may use the Limited Use Trackage Rights and the PAS Operating Rights solely for bridge (overhead) trackage rights for the purpose of moving (i) inbound traffic between (a) Bellows Falls and (b) either of Millers Falls and East Northfield and East Deerfield Yard as the operating interchange location with PAS and (ii) outbound traffic in PAS’s revenue waybill account between Bellows Falls and (b) either of Millers Falls and East Northfield and East Deerfield Yard as the operating interchange location with PAS.
- c. Compensation payable under the trackage rights to be granted pursuant to the NECR TRA and the PAS Operating Rights and Interchange Agreement shall be as follows:
 - i. The rates payable by GMRC to NECR for movement of empty and loaded rail cars, locomotives, work equipment and other items pursuant to the NECR TRA will be equal to the then-current compensation that PAS is required to pay to NECR pursuant to the STB’s decision in Finance Docket No. 35842,

- served October 31, 2017, and shall be subject to the same adjustment provisions.
- ii. There shall be no cost to GMRC for the movement of empty and loaded rail cars, locomotives, work equipment and other items pursuant to the PAS Operating Rights and Interchange Agreement as it pertains to GMRC's use of track between either Millers Falls or East Northfield and East Deerfield Yard.
- d. Insurance requirements and indemnification provisions for the NECR TRA and the PAS Operating Rights and Interchange Agreement shall be as follows:
- i. Under the NECR TRA, GMRC must have an effective railroad liability insurance policy in place, covering the moves sought to be operated, in an amount of at least \$50,000,000 per occurrence. The NECR TRA will provide that the Parties will agree to revisit from time to time the amount of railroad liability insurance required in order to determine whether the minimum level of insurance should be adjusted in light of inflation and other relevant conditions.
 - ii. The insurance required in the PAS Operating Rights and Interchange Agreement shall be conformed to that required by the NECR TRA.
 - iii. The NECR TRA and the PAS Operating Rights and Interchange Agreement shall apply standard industry indemnity language for which insurance is intended to address.
- e. The NECR TRA and the PAS Operating Rights and Interchange Agreement will each establish reasonable minimum crew qualification requirements for GMRC.
- f. The NECR TRA shall include a provision that permits NECR to temporarily suspend the Limited Use Trackage Rights upon (i) written notice to GMRC and the JOC of a strike, work stoppage, work slowdown, reasonably credible threats of such actions, or the occurrence or reasonably credible threat of other similar disruptions of service due to labor disputes on or otherwise affecting NECR or B&E arising from GMRC's exercise of the Limited Use Trackage Rights (hereinafter, a "Labor Action"); and (ii) JOC's affirmative determination, acting reasonably, that the threat is reasonably credible and that a suspension is warranted. NECR and/or B&E shall use reasonable best efforts to avoid the suspension of the Limited Use Trackage Rights, minimize adverse impacts on GMRC and resolve any Labor Action as promptly as practicable. Further, in the event of a Labor Action that would prevent the receipt or delivery of one or more Critical Commodity Rail Cars, as hereinafter defined, the JOC will immediately convene to develop and implement one or more potential solutions (consisting of, among other things, a detour, an off-system alternative service such as a transload, and/or expediting Critical Commodity Cars in the pipeline but not yet in the New England area) that can be offered to the shipper to safely and effectively accomplish getting the affected Critical Commodity to Vermont in a timely manner during the pendency of the Labor Action. VRS shall reasonably cooperate with NECR and/or B&E in resolving any such Labor Action. Trackage rights operations so suspended shall be reinstated upon the earlier of (i) the resolution of the Labor Action or (ii) thirty (30) days; provided that NECR shall be entitled to renew the suspension of such trackage rights for an additional thirty (30) day period upon written notice setting forth the grounds for the renewal received by GMRC and the JOC prior to the expiration of the initial 30-day period, but such suspension shall only be renewed in the event that the JOC, acting reasonably,

determines that threat of a Labor Action remains reasonably credible and that the suspension remains warranted; and provided further that NECR or B&E, as applicable, shall commence legal action to resolve any unresolved Labor Action as soon as reasonably practicable but in any event prior to the expiration of the 30-day renewal period. Notwithstanding the foregoing, the suspension of such trackage rights due to a strike shall not end until the strike has ended and normal operations on the subject line shall have commenced, with the Parties acknowledging and agreeing that NECR will give priority to intercity rail passenger trains of Amtrak to the extent required by Section 402 of the Rail Passenger Service Act and that the resumption of normal operations will be conducted by NECR in such a manner that GMRC will be treated similarly to PAS as operated by B&E.

- g. PAS shall be responsible for the first \$50,000 (the "Labor Claim Threshold") of any time slips or similar claims involving compensation arising under the applicable collective bargaining agreement submitted by the NECR or B&E labor unions ("Labor Claims"), on an annual basis for so long as any GWI subsidiary or affiliated entity operates the PAS lines as a contract operator or otherwise, that result from the grant or GMRC's exercise of the Limited Use Trackage Rights and/or the PAS Operating Rights. GMRC shall be responsible for 50% of the cost of any Labor Claims submitted in excess of the annual Labor Claim Threshold (with PAS responsible for the remaining 50%); provided that GMRC shall be solely responsible for the cost of any Labor Claims submitted by the NECR or B&E labor unions arising from GMRC's exercise of its Discretionary Option Rights. NECR shall be solely responsible for the cost of any Labor Claims arising from GMRC's exercise of the WRJ Trackage Rights. The Labor Claim Threshold shall be adjusted annually at the same time, and in the same manner, as the adjustment for the trackage rights fee payable by GMRC to NECR as described herein.
- h. The parties to the NECR TRA shall agree to a periodic review of the NECR TRA terms and conditions, including insurance, that might require modification based on changes in the regulatory and operational environment on each 10-year anniversary of the effective date thereof.
- i. GMRC may use the Limited Use Trackage Rights and the PAS Operating Rights at GMRC's discretion, subject to the conditions contained in Section 2(d).

(d) The Limited Use Trackage Rights Special Provisions

The Parties have determined that the Limited Use Trackage Rights are intended for occasional, and not consistent and daily, use in part so that GMRC crews can remain qualified to operate over NECR trackage. Therefore, the Parties have provided for GMRC to use the Limited Use Trackage Rights, at its option, a limited number of times per calendar year (the "Discretionary Option Rights"). Further, the Parties have set certain timeframes as a pre-requisite to the use of the Limited Use Trackage Rights other than pursuant to the Discretionary Option Rights (the "Excessive Dwell Option Rights"). Finally, the Parties have determined to allocate certain costs with regard to the use of the Discretionary Option Rights and the Excessive Dwell Option Rights.

(i) Discretionary Option Rights

GMRC may exercise the Discretionary Option Rights up to twenty-six (26) times per calendar year, but not more than three (3) times in any month or more than one (1) time in any week. GMRC

shall provide at least 24 hours' notice to PAS that it intends to exercise its Discretionary Option Rights, and shall obtain the prior approval of PAS, not to be unreasonably withheld or delayed. In exercising these rights, GMRC shall be required to pick up all railcars made available to it by PAS (as operated by B&E or other GWI subsidiary) at East Deerfield Yard that were otherwise destined to be brought by B&E to GMRC at Bellows Falls or Hoosick Junction and bring them north. All such railcars shall be deemed interchanged to, and in the account of, GMRC upon the coupling of the GMRC locomotives to the train consist. Should GMRC choose to exercise these Discretionary Option Rights, all costs of doing so shall be borne by GMRC, except as provided in Section 2(d)(iii) below.

(ii) Excessive Dwell Option Rights

The Parties anticipate that regular PAS service (under operation of B&E or other GWI subsidiary) will consist of the level of service set forth in Appendix A attached hereto for the two service corridors of (a) between Rotterdam Junction/Mechanicville and Hoosick Junction, and (b) between East Deerfield and Bellows Falls/White River Junction. The Parties acknowledge and agree that PAS (as operated by B&E or other GWI subsidiary) would, in most operating environments, maintain no less than 85% of the time over any rolling 90-day period (the "Service Standard"), and that failure to maintain such Service Standard is likely to result in delays in rail service transit resulting from, in this case, the excessive dwell discussed immediately below.

In certain limited circumstances as described herein, therefore, GMRC may elect to exercise the Excessive Dwell Option Rights, but not more than once per calendar day. The circumstances in which the Excessive Dwell Option Rights are exercisable by GMRC are detailed below and differ for inbound traffic and for outbound traffic, as well by commodity. VRS shall reasonably cooperate with PAS and B&E to help resolve any underlying issue causing Excessive Dwell (as defined below) delays.

(A) Inbound Excessive Dwell Option Rights

In order to effectuate these Excessive Dwell Option Rights for inbound traffic to be interchanged from PAS to GMRC at Bellows Falls, the Parties have designated two categories of traffic subject to PAS interchange with GMRC at East Deerfield Yard. The first category of such traffic has been specifically defined by the Parties as propane, heating oil and rock salt arriving in East Deerfield Yard in the winter months (specifically, during the months of October through April) when inventories are critically low based on expected needs (a "Critical Commodity") moving to a destination on a VRS rail line in a railcar (a "Critical Commodity Rail Car"). The second category of such traffic is classified as any other traffic, including propane, heating oil and rock salt other than in the winter months (i.e., October through April) (a "Non-Critical Commodity") moving to a destination on a VRS rail line in a railcar (a "Non-Critical Commodity Rail Car").

GMRC may exercise the Excessive Dwell Option Rights to receive in interchange and move Critical Commodity Rail Cars and Non-Critical Commodity Rail Cars at GMRC's option in the event that such traffic dwells in East Deerfield Yard beyond the time frames described below ("Excessive Dwell"). Should GMRC elect to exercise these inbound Excessive Dwell Option Rights, all costs of doing so shall be borne by GMRC, except as provided in Section 2(d)(iii) below.

A Critical Commodity Rail Car (inbound) experiences Excessive Dwell delays on an inbound move if (i) it dwells in East Deerfield Yard for more than 48 hours, (ii) GMRC notifies B&E in writing of that occurrence, and (iii) the Critical Commodity Rail Car has not thereafter departed from East Deerfield

Yard for purposes of interchange with GMRC at Bellows Falls within 24 hours after receipt of such notice.

A Non-Critical Commodity Rail Car (inbound) experiences Excessive Dwell delays on an inbound move if (i) it dwells in East Deerfield Yard for more than 48 hours, (ii) GMRC notifies B&E of that occurrence, and (iii) the Non-Critical Commodity Rail Car is not thereafter moved from East Deerfield Yard for the purposes of interchange with GMRC at Bellows Falls within 72 hours after receipt of such notice.

In exercising these rights, GMRC shall be required to pick up all Critical Commodity Rail Car(s) and Non-Critical Commodity Rail Car(s), including but not limited to those suffering from Excessive Dwell delays, made available to it by PAS (as operated by B&E or other GWI subsidiary) at East Deerfield Yard that were otherwise destined to be brought by PAS (as operated by B&E or other GWI subsidiary) to GMRC at Bellows Falls or Hoosick Junction. All such railcars shall be deemed interchanged to, and in the account of, GMRC upon the coupling of the GMRC locomotives to the train consist. Should GMRC choose to exercise these inbound Excessive Dwell Option Rights, all costs of doing so shall be borne by GMRC, except as provided in Section 2(d)(iii) below.

In order to exercise these rights with regard to an inbound move, the following process must be followed: (a) VRS must give notice to B&E with the identity of the specific Critical Commodity Rail Car(s) and/or Non-Critical Commodity Rail Car(s) by reporting mark and number at issue (the "Exercise Notice"); (b) the customer(s) must be in a position to accept the Critical Commodity Rail Car(s) and/or Non-Critical Commodity Rail Car(s) upon delivery; (c) the Critical Commodity Rail Car(s) and/or Non-Critical Commodity Rail Car(s) must have dwelled in East Deerfield Yard for more than 48 hours; and (d) PAS (as operated by B&E or other GWI subsidiary) shall have the opportunity to timely deliver such identified Critical Commodity Rail Cars and/or Non-Critical Commodity Rail Car(s) within the 24-hour and 72-hour time periods set forth above.

(B) Outbound Excessive Dwell Option Rights

VRS may also elect to exercise the Excessive Dwell Option Rights with regard to the outbound movement of rail cars that GMRC and Vermont Railway deliver in interchange to PAS at Bellows Falls or Hoosick Junction, as applicable, to East Deerfield for physical interchange to PAS in the event of Excessive Dwell delays following interchange of that traffic to PAS at either Bellows Falls or Hoosick Junction.

A railcar (outbound) experiences Excessive Dwell delays on an outbound move if, after VRS makes such car ready for interchange with PAS (i) it dwells in Bellows Falls or Hoosick Junction for more than 48 hours, (ii) VRS notifies B&E in writing of that occurrence, and (iii) the railcar has not thereafter departed from Bellows Falls or Hoosick Junction, as applicable, for purposes of delivery to East Deerfield Yard within 72 hours after receipt of such notice.

In exercising these rights, GMRC shall be required to pick up all railcars, including but not limited to those suffering from Excessive Dwell delays, made available to it by B&E for interchange at East Deerfield Yard for movement north. All such railcars previously interchanged to PAS by GMRC or Vermont Railway but then delivered by GMRC to East Deerfield Yard pursuant to the Excessive Dwell Option Rights shall remain in the account of PAS and all such railcars picked up by GMRC at East Deerfield Yard shall be interchanged to, and in the account of, GMRC upon the coupling of the GMRC

locomotives to the train consist. Should VRS choose to exercise these outbound Excessive Dwell Option Rights to deliver railcars to East Deerfield Yard, (i) all costs of doing so shall be borne by GMRC, except as provided in Section 2(d)(iii) below, and (ii) any cars delivered by GMRC to East Deerfield Yard shall be deemed to be in the account of GMRC for purposes of allocating liability between the relevant parties to the NECR TRA and the PAS Operating Rights and Interchange Agreement.

In order to exercise outbound Limited Use Trackage Rights, the following process must be followed: (a) VRS must give the Exercise Notice to B&E in writing; (b) such identified railcar(s) must have dwelled for more than 48 hours after being made available for interchange to PAS (as operated by B&E or other GWI subsidiary) at, as the case may be, Bellows Falls or Hoosick Junction; (c) PAS (as operated by B&E or other GWI subsidiary) shall have the opportunity to depart the traffic from Bellows Falls or Hoosick Junction, as applicable, for purposes of delivery to East Deerfield Yard within 72 hours after receipt of such notice.

(iii) Consideration Payable by PAS

The sole consideration payable by PAS to GMRC in connection with GMRC's exercise of the Limited Use Trackage Rights shall be as follows:

- a. If GMRC exercises its Discretionary Option Rights, it shall be entitled to receive a per car fee in the amount of \$78.82 (as adjusted, the "Per Car Fee") for each railcar that it handled and was made available to it at East Deerfield Yard.
- b. If GMRC exercises the Excessive Dwell Option Rights (outbound or inbound), it shall be entitled to receive (i) a train start fee in the amount of \$2,175.00 (as adjusted, the "Train Start Fee") for each exercise of such rights and (ii) a reclaim from PAS of any actual car hire mileage charges assessed by car owners and incurred by GMRC using the Limited Use Trackage Rights while exercising its Excess Dwell Option Rights (but not the Discretionary Option Rights);
- c. If GMRC exercises the inbound Excessive Dwell Option Rights, in addition to the Train Start Fee, it shall be entitled to receive the Per Car Fee for each Critical Commodity Rail Car and Non-Critical Commodity Rail Car, including but not limited to those suffering from Excessive Dwell delays, that it handled and was made available to it at East Deerfield Yard; and
- d. If GMRC exercises the outbound Excessive Dwell Option Rights, in addition to the Train Start Fee, it shall be entitled to receive the Per Car Fee for each railcar, including but not limited to any suffering from Excessive Dwell delays, that it handled and was made available to it at Bellows Falls or Hoosick Junction for delivery to East Deerfield Yard and each railcar, including but not limited to those suffering from Excessive Dwell delays, that it handled and was made available to it at East Deerfield Yard for movement north.
- e. Each of the Per Car Fee and the Train Start Fee shall be adjusted annually at the same time, and in the same manner, as the adjustment for the trackage rights fee payable by GMRC to NECR as described above.
- f. In the event that the monthly average price per gallon of highway diesel fuel (as determined below, the "HDF Average Price") equals or exceeds 338.0 cents, a fuel surcharge will be assessed monthly on the adjusted Per Car Fee ("Fuel Surcharge"). The adjusted Per Car Fee will be increased by 0.50% for every 4¢ per gallon, or portion thereof, by which the HDF Average Price for the calendar month two months prior to the calendar month of shipment exceeds 338.0 cents. The "HDF Average Price" for a month will be the average price for that month of U.S. No. 2 Diesel Retail Sales by All Sellers, as determined and published by the U.

S. Department of Energy, Energy Information Administration ("DOE-EIA")¹. That average price will, in calculating the HDF Average Price, be rounded to the nearest 1/10th of a cent applying conventional rounding principles. If DOE-EIA ceases publication of the above information, VRS will employ a suitable substitute source of price or measure.

Notwithstanding the foregoing, the Per Car Fee shall not be paid by PAS in the event that it advises VRS in writing within 12 hours after receipt of the Exercise Notice that the Critical Commodity Rail Car(s) and/or the Non-Critical Commodity Rail Car(s) experienced Excessive Dwell delays primarily as a result of acts or inaction by VRS, the condition of the Critical Commodity Car(s) and/or the Non-Critical Commodity Rail Car(s), a force majeure event, or the inability of the customer(s) to receive the railcars.

Any Train Start Fees and Per Car Fees payable to GMRC shall be invoiced monthly and shall be paid by PAS within thirty (30) days after receipt of the invoice therefor. For the avoidance of doubt, there shall be no adjustment to the rate received by PAS for traffic handled by GMRC pursuant to its exercise of the Limited Use Trackage Rights.

Section 3. Protection of Commercially Sensitive Information relating to PAS Traffic

The Parties acknowledge that, in the performance of its obligations as the contract operator of the PAS rail lines, B&E (on behalf of PAS) will be performing haulage services for CSXT and Norfolk Southern for interchange to and from VRS. Further, B&E will be interchanging, on behalf of PAS, traffic to and from other rail carriers that connect with the PAS rail lines. CSXT, Norfolk Southern and GWI shall not permit B&E to share with any other rail carrier not in the route, including but not limited to any GWI subsidiary railroads not in the route, any VRS rate divisions, shipper or consignee identity, origin and destination points and commodities and volumes (the "Restricted Information") that come into its possession as a result of or in connection with its contract operation of PAS. The provisions of this Section 3 shall continue for so long as B&E remains a subsidiary of GWI, or any other GWI related entity serves as the contract operator of the PAS rail lines, and for a period of five (5) years thereafter. GWI shall cause B&E to, and VRS shall, reasonably cooperate to develop a specific mechanism for B&E to attest to its compliance with the provisions of this Section 3. Notwithstanding anything to the contrary contained herein, the Parties acknowledge and agree that B&E shall be permitted to (a) have access to the minimum waybill data (Transportation Waybill) required for the safe and legal movement of railcars, (b) share Transportation Waybill data with NECR in connection with the use of PAS's trackage rights over NECR and (c) share the Restricted Information with other rail carriers in connection with preparing a rate requested by a shipper or to otherwise facilitate interline movements with other rail carriers in the route.

Section 4. Haulage Services

(a) Norfolk Southern Haulage between Mechanicville and Hoosick Junction

Norfolk Southern and CSXT agree to cause PAS to modify the Norfolk Southern haulage service for Norfolk Southern traffic between Mechanicville and Hoosick Junction, currently provided pursuant to

¹ The referenced DOE-EIA publication can currently be found at www.eia.doe.gov. On the home page select "Petroleum;" under "Prices" select "Weekly Retail Gasoline and Diesel Prices;" for the "Area" select "U.S.;" for the "Period" select "Monthly;" then refer to the data on the line entitled "Diesel (On-Highway)." Monthly data is normally published Wednesday after the last Monday of a given month.

the Master Norfolk Southern Joint Use Agreement, to permit interchange with GMRC at East Deerfield Yard on current terms and conditions. The determination of the interchange location shall be made by PAS from time to time and subject solely to PAS's discretion. Norfolk Southern and CSXT agree to cause PAS to provide Price Stability² for so long as any GWI subsidiary operates the PAS rail lines as a contract operator or otherwise.

Such haulage arrangement shall remain in effect at least for so long as any GWI subsidiary is operating the PAS line extending between Mechanicville and East Deerfield Yard.

(b) CSXT Haulage between Rotterdam Junction and Hoosick Junction

Norfolk Southern and CSXT agree to cause PAS to amend the Amended CSXT Joint Use Agreement to establish certain haulage rights for traffic moving in the CSXT revenue waybill account between Rotterdam Junction and Hoosick Junction. PAS may interchange the traffic moving pursuant to this haulage service with GMRC at East Deerfield Yard on the same terms and conditions as that for moving the traffic between Rotterdam Junction and Hoosick Junction. The determination of the interchange location shall be made by PAS from time to time and subject solely to PAS's discretion. Norfolk Southern and CSXT agree to cause PAS to provide Price Stability for so long as any GWI subsidiary operates the PAS rail lines as a contract operator or otherwise.

The cost of the haulage shall mirror current interline rates and shall incorporate a fuel surcharge mechanism, with no adjustment for zero mileage per diem car hire traffic and a \$30 adjustment for other than zero mileage per diem car hire traffic, and otherwise on terms and conditions consistent with other haulage services provided pursuant to the Amended CSXT Joint Use Agreement, including but not limited to the allocation of liability and the responsibility for the payment of car hire.

Such haulage arrangement shall remain in effect at least for so long as any GWI subsidiary is operating the PAS line extending between Rotterdam Junction and East Deerfield Yard.

Section 5. Price Stability on Bellows Falls Interline Rates

Norfolk Southern and CSXT agree to cause PAS, through the actions of B&E, to provide Price Stability for interline traffic moving over PAS between Bellows Falls and PAR destinations and origins, for so long as B&E or any GWI subsidiary operates the PAS rail lines as a contract operator or otherwise.

Section 6. Intentionally Omitted.

Section 7. Consultation with the Joint Operating Committee

PAS has established an operations-level Joint Operating Committee, consisting of equal representation from CSXT and Norfolk Southern (the "JOC"), that is charged with reviewing B&E's railroad operations, safety, service, maintenance and engineering, and other matters related to the operation of PAS. Upon the written request of the JOC, VRS and/or VTrans, the JOC will meet and confer

² For the purpose of this agreement, the term "Price Stability" shall mean that pricing for an individual movement shall be consistent with the then-current pricing by car type, commodity and ownership, said pricing shall be adjusted annually by no more than by a mutually agreed-upon index, and that said pricing shall not be, by application of any adjustment factors, set at less than levels currently in effect on the Effective Date.

with either or both of VRS (or an individual railroad in the VRS corporate family, as applicable) and VTrans from time to time to address service concerns or conditions adversely impacting or delaying VRS freight (each, a “VRS/VTrans Service Meeting”). The JOC, on the one hand, and VRS or VTrans, on the other hand, will give the other a written request to hold such a VRS/VTrans Service Meeting, along with a brief description of the subject(s) to be discussed. The Parties shall hold the VRS/VTrans Service Meeting no later than 14 days after the requesting party issues the meeting request. Notwithstanding the foregoing, PAS will identify two JOC representatives (one from CSXT and one from Norfolk Southern) as VRS/VTrans liaisons for the resolution of time-sensitive VRS/VTrans issues which do not lend themselves to the formal process described above. The JOC, VRS and/or VTrans will work in good faith to promptly resolve identified concerns or conditions. In order to effectively implement this provision, within thirty (30) days of the effective date of the commencement of B&E’s operation of the PAS rail lines, PAS shall provide to VRS and VTrans the contact information for members of the JOC, and VRS and VTrans will provide to the JOC the contact information of its respective designated representative for the purpose of carrying out the rights and obligations of this provision.

Section 8. Non-opposition to the Proposed Transaction

The Parties acknowledge that this Settlement Agreement has been negotiated and is entered into with regard to STB proceedings now underway concerning the Amended CSXT Application and the Amended B&E Petition.

Upon execution of this Settlement Agreement, VRS will file a statement with the STB, reasonably satisfactory to CSXT and B&E, stating that VRS is withdrawing its opposition to the transactions encompassed by the Amended CSXT Application and the Amended B&E Petition; provided, however, that the STB must impose the terms and conditions of this Settlement Agreement as a condition to approval of the Amended CSXT Application and the Amended B&E Petition.

VTrans hereby states that this Settlement Agreement resolves and addresses the concerns that it has earlier raised with the STB, that VTrans will withdraw its earlier comments filed with the STB, and that VTrans will take a neutral position before the STB on the Amended CSXT Application and the Amended B&E Petition, conditioned upon the STB imposing the terms and conditions of this Settlement Agreement. VTrans agrees to inform the STB that it does not oppose the transaction promptly following the execution and delivery of this Agreement by the Parties.

The obligations of the Parties contained in this Settlement Agreement are subject to the STB’s approval of the Amended CSXT Application and/or the Amended B&E Petition and the receipt of any additional STB authority required in order to fulfill the assumption of rights and obligations set forth herein. Each Party shall act in good faith and use reasonable efforts to meet its respective obligations under this Settlement Agreement.

If the STB conditions its approval of the Amended CSXT Application and/or the Amended B&E Petition upon either (a) the grant of trackage rights to either or both of GMRC (or another VRS rail carrier) and VTrans between any point and either Springfield, Massachusetts or Palmer, Massachusetts, or (b) upon the right of VRS to exercise trackage rights between Bellows Falls and East Deerfield (or Millers Falls or East Northfield) without the limitations described in Section 2 above or on a permanent basis, or anywhere else on the Connecticut River Line over PAS or NECR (except for the WRJ Trackage Rights) (collectively, the “Defined STB VRS Conditions”), then GMRC shall have its choice of two actions:

- (1) Reject the Defined STB VRS Conditions and proceed with implementing the settlement conditions set forth herein (including, but not limited to the WRJ Trackage Rights, the Limited Use Trackage Rights and PAS Operating Rights); or
- (2) Accept the Defined STB VRS Conditions further conditioned on the right of any of CSXT, Norfolk Southern, and/or GWI (on behalf of B&E and NECR), in each case acting in their respective sole discretion, to void any or all portions of this Settlement Agreement and the rights and protections set forth herein for the benefit of VRS, and the Parties further agree in that situation to revise this Settlement Agreement to remove the voided sections.

Section 9. Definitive Documentation.

The Parties agree that, upon execution of this Settlement Agreement, the Parties will promptly commence and diligently pursue the finalization of the definitive agreements and amendments to existing agreements necessary to implement the terms contained in this Settlement Agreement including but not limited to the NECR TRA and the PAS Operating Rights and Interchange Agreement, with the intention of the Parties to complete those two documents prior to the service of the STB decisions concerning the transactions encompassed by the Amended CSXT Application and the Amended B&E Petition. If the NECR TRA is finalized prior to the service of said STB decisions, GMRC shall prepare and file, at its cost, with the STB a Notice of Exemption to effectuate the NECR TRA, contingent on consummation of the transactions encompassed by the Amended CSXT Application and the Amended B&E Petition. Should the Parties not conclude the definitive agreements by the start-up of B&E's operations, then the Parties hereby agree and commit themselves to present the unresolved issue(s) to STB-sponsored and managed mediation and, failing resolution, STB-sponsored and managed arbitration for the prescription of appropriate terms and conditions for the agreement or agreements that have not yet been concluded, with each involved party responsible for its costs of such a proceeding or proceedings. GMRC shall prepare and file, at its cost, a Notice of Exemption to effectuate the resulting NECR TRA.

Section 10. Void.

The Parties agree that this Settlement Agreement and all contents herein shall be void if (a) either or both of the amended CSXT Application and the Amended B&E Petition is denied by the STB, (b) the Proposed Transaction is not consummated, or (c) B&E or another GWI-controlled carrier does not assume operation of the PAS rail lines as a contract operator or otherwise.

Section 11. Governing Law.

Except to the extent governed by federal law, this Settlement Agreement shall be governed by and construed in accordance with the laws of the State of Vermont, without regard to conflict of law principles, and all disputes arising hereunder, aside from those arising from inability to complete the trackage rights and any other agreements contemplated hereunder (which shall be handled pursuant to Section 10) may be adjudicated in the state or federal courts located in the State of Vermont, or otherwise pursuant to mutual agreement of the parties thereto.

Section 12. Counterparts.

This Settlement Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original but together shall constitute but one and the same instrument.

Section 13. Confidentiality.

Except to the extent provided herein, required by applicable law, or as authorized or directed by a court order from a Court of competent jurisdiction, the Parties agree to refrain from disclosing, and to maintain the confidentiality of any information exchanged between the Parties for the purpose of complying with this Settlement Agreement, and will not directly or indirectly publish, discuss, or reveal any such information.

Section 14. Severability.

If any provision of this Settlement Agreement is held to be illegal, invalid or unenforceable under any present or future law, and if the rights or obligations of any Party under this Settlement Agreement will not be materially and adversely affected thereby, (i) such provision will be fully severable, (ii) this Settlement Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, (iii) the remaining provisions of this Settlement Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom and (iv) in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Settlement Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

Section 15. Entire Agreement; Successors.

This Settlement Agreement contains the entire and only agreement between the Parties concerning the subject matter hereof. No modification, renewal, extension, termination or waiver of this Settlement Agreement or any of the provisions herein contained shall be binding upon any Party unless made in writing and signed by a duly authorized representative of such Party. This Settlement Agreement shall be binding upon the Parties and their successors and assigns.

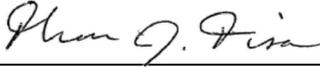
Section 16. Hoosick Junction Interchange Infrastructure Improvement Project

Norfolk Southern, CSXT, VTrans and Vermont Railway acknowledge past progress on, and public funding efforts for, expanding Hoosick Junction interchange facilities and capacity. Norfolk Southern and CSXT agree to cause PAS, through B&E, to continue reasonable efforts to progress Hoosick Junction interchange infrastructure improvements and public funding initiatives, in accordance with existing agreements between PAS and the State of New York's Department of Transportation, without unreasonable delay and in a manner so as not to jeopardize public funding or timely project completion as contemplated by such agreements. VTrans and Vermont Railway agree to support such efforts.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties, intending to be legally bound hereby, have executed this Settlement Agreement as of the date first written above.

CSX TRANSPORTATION, INC., a Virginia corporation

By: 
(signature)
Name: Thomas J. Tisa
(print name)
Title: Head of Business Development
(print title)

NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation

By: 
(signature)
Name: Michael R. McClellan
(print name)
Title: Vice President
(print title)

GENESEE & WYOMING INC., a Delaware corporation

By: 
(signature)
Name: Matthew O. Walsh
(print name)
Title: Executive Vice President, Global Corp. Dev.
(print title)

TRANS RAIL HOLDING COMPANY, a Vermont corporation
VERMONT RAILWAY, INC., a Vermont corporation
GREEN MOUNTAIN RAILROAD CORPORATION, a Vermont corporation
WASHINGTON COUNTY RAILROAD COMPANY, a Vermont corporation

By: 
(signature)
Name: Selden Houghton
(print name)
Title: President
(print title)

FINAL VERSION

STATE OF VERMONT,
AGENCY OF TRANSPORTATION

By: Joe Flynn
(signature)

Name: Joe Flynn
(print name)

Title: Secretary of Transportation
(print title)

Appendix A

Anticipated Service Levels

Service Tier	Annual Volume (Loaded CL's) (a)	Anticipated Service Days/week
1	Less than 2,000	3
2	2001 – 3750	4
3	3750+	5

Notes:

- (a) The anticipated service levels set forth in this table apply separately by lane to traffic moving between: (i) Mechanicville and Hoosick Junction; (ii) White River Junction and East Deerfield; (iii) Bellows Falls and East Deerfield; and (iv) Rotterdam Junction and Hoosick Junction.

EXHIBIT B

Wheatley, Emily L.

From: McClellan, Michael R. <Michael.McClellan@nscorp.com>
Sent: Friday, June 9, 2023 1:43 PM
To: Patelli, John
Cc: Pelkey, Sean; Chouest, Hanna; Tisa, Tom; Marques, Jason; chip.meador@nscorp.com
Subject: NS Audit Results and Letter - Pan Am Southern
Attachments: PAS Audit Detail June 7.xlsx; CSX Audit Letter June 7 2023.pdf

John,

Please see attached letter and spreadsheet.

Mike

Mike McClellan
Sr. Vice President & Chief Strategy Officer
Norfolk Southern
757-615-6824

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

NORFOLK SOUTHERN RAILWAY
COMPANY,

Plaintiff,

v.

CSX TRANSPORTATION, INC.,

and

SPRINGFIELD TERMINAL
RAILWAY COMPANY,

Defendants.

C.A. No.:

VERIFICATION

COUNTY OF Fulton)
STATE OF Georgia) ss.

I, Frank B. Meador, III, being duly sworn, state as follows:

1. I am Director Strategic Planning of Norfolk Southern Railway Company ("NS"), and I have authority to make this Verification in my capacity on behalf of NS.

2. I have read the Verified Complaint and verify that the matters contained therein are true as they concern the Plaintiff's acts and deeds, and so far as they relate to the acts and deeds of any other person, are believed to be true to the best of my knowledge, information, and belief.

3. I declare under penalty of perjury under the law of Delaware that the foregoing is true and correct.

Frank B. Meador III

Frank B. Meador, III
Director Strategic Planning
Norfolk Southern Railway Company

Sworn and subscribed before me
This 26 day of July 2023.

Patricia B. Henderson

Notary Public

Patricia B Henderson
Notary Public
Fayette County, Georgia
My Commission Expires 10/26/2024

SUPPLEMENTAL INFORMATION PURSUANT TO RULE 3(A)
OF THE RULES OF THE COURT OF CHANCERY

The information contained herein is for the use by the Court for statistical and administrative purposes. Nothing in this document shall be deemed binding for purposes of the merits of the case.

1. Case caption: **Norfolk Southern Railway Company v. CSX Transportation, Inc., and Springfield Terminal Railway Company.**

2. Date filed: **August 1, 2023.**

3. Name and address of counsel for plaintiff(s): **Christopher B. Chuff, Esq., Emily L. Wheatley, Esq; Troutman Pepper Hamilton Sanders, LLP, Hercules Plaza, Suite 5100, 1313 N. Market Street, P.O. Box 1709, Wilmington, DE 19899.**

4. Short statement and nature of claim(s) asserted: **Plaintiff asserts a breach of contract claim and seeks a preliminary injunction in relation to Defendants' interference with a railway transportation agreement.**

5. Substantive field of law involved (check one):

<input type="checkbox"/> Administrative law	<input type="checkbox"/> Labor law	<input type="checkbox"/> Trusts, Wills and Estates
<input checked="" type="checkbox"/> Commercial law	<input type="checkbox"/> Real Property	<input type="checkbox"/> Consent trust petitions
<input type="checkbox"/> Constitutional law	<input type="checkbox"/> 348 Deed Restriction	<input type="checkbox"/> Partition
<input type="checkbox"/> Corporation law	<input type="checkbox"/> Zoning	<input type="checkbox"/> Rapid Arbitration (Rules 96,97)
<input type="checkbox"/> Trade secrets/trade mark/or other intellectual property		<input type="checkbox"/> Other

6. Identify any related cases, including any Register of Wills matter. This question is intended to promote jurisdiction efficiency by assigning cases involving similar parties or issues to a single judicial officer. By signing this form, an attorney represents that the attorney has done reasonable diligence sufficient to respond to this question. **Not applicable.**

7. State all bases for the court's exercise of subject matter jurisdiction by citing to the relevant statute. Specify if 8 *Del. C.* § 111, 6 *Del. C.* § 17-111, or 6 *Del. C.* § 18-111. State if the case seeks monetary relief, even if secondarily or in the alternative, under a merger agreement, asset purchase agreement, or equity purchase agreement. **This Court has subject matter jurisdiction over this dispute under 10 *Del. C.* § 341.**

8. If the complaint initiates a summary proceeding under Sections 8 *Del. C.* §§ 145(k), 205, 211(c), 220, or comparable statutes, check here . (If #8 is checked, you must either (i) file a motion to expedite with a proposed form of order identifying the schedule requested or (ii) submit a letter stating that you do not seek an expedited schedule and the reason(s)—*e.g.*, you have filed to preserve standing and do not seek immediate relief.)

9. If the complaint is accompanied by a request for a temporary restraining order, a preliminary injunction, a status quo order, or expedited proceedings other than in a summary proceeding, check here . (If #9 is checked, a motion to expedite must accompany the transaction with a proposed form of order identifying the schedule requested.)

10. If counsel believe that the case should not be assigned to a Magistrate in the first instance, check here and attach a statement of good cause.

/s/ *Christopher B. Chuff* (# 5729)
Signature of Attorney of Record & Bar ID

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

NORFOLK SOUTHERN RAILWAY
COMPANY,

Plaintiff,

v.

CSX TRANSPORTATION, INC.,

and

SPRINGFIELD TERMINAL
RAILWAY COMPANY,

Defendants.

C.A. No.:

STATEMENT OF GOOD CAUSE

In response to Item 10 of the Supplemental Information Sheet, I am counsel of record for Plaintiff Norfolk Southern Railway Company, and I believe that this matter is appropriate for assignment to the Chancellor or a Vice Chancellor, rather than to a Magistrate, because it involves time sensitive interpretation of complex railway transportation agreements in connection with Plaintiff's request for a preliminary injunction.

[SIGNATURE ON NEXT PAGE]

Respectfully submitted,

OF COUNSEL:

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(pro hac vice forthcoming)
Michael E. Lacy
(pro hac vice forthcoming)
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Dated: August 1, 2023

/s/ Christopher B. Chuff

Christopher B. Chuff (Del. Bar No. 5729)
Emily L. Wheatley (Del. Bar No. 6383)
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*Attorneys for Plaintiff Norfolk Southern
Railway Company*

WORDS: 63