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PUBLIC VERSION

August 26, 2021

CSXT/PAR-28

VIA E-FILING

Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
Office of Proceedings
395 E Street, SW
Washington, DC 20423

Re: STB Docket No. FD 36472, CSX Corporation and CSX Transportation, Inc., et al.—Control and Merger—Pan Am Systems, Inc., Pan Am Railways, Inc., Boston and Maine Corporation, Maine Central Railroad Company, Northern Railroad, Pan Am Southern LLC, Portland Terminal Company, Springfield Terminal Railway Company, Stony Brook Railroad Company, and Vermont & Massachusetts Railroad Company

Dear Ms. Brown:

In the Amended and Supplemented Application filed in the above-referenced proceeding on July 1, 2021, Applicants¹ attached in Volume II current versions of agreements relating to PAS governance and operations. Applicants noted that implementation of the NSR Settlement Agreement and the GWI Term Sheet would require revisions to certain of these agreements, and that Applicants would provide the Board with a copy of revised agreements once finalized.

Enclosed for e-filing are public versions of (1) the Amended and Restated CSXT Joint Use Agreement, which modifies the Springfield Terminal Joint Use Agreement, and (2) the Amended and Restated Ayer Switching Agreement, which modifies the Ayer Switching Agreement, each with appropriate redactions that the Board can place in its docket. We are concurrently filing under seal highly confidential versions of these documents. CSX and NSR

¹ The acronyms and defined terms used in this letter are the same as those used in the Amended and Supplemented Application filed in the above-captioned proceeding on July 1, 2021.

Cynthia T. Brown

August 26, 2021

Page 2

have agreed to execute the agreements once CSX consummates the Proposed Transaction and assumes control of Boston & Maine.

Respectfully submitted,

/s/ Anthony J. LaRocca

Anthony J. LaRocca

Peter W. Denton

Sally Mordi

*Attorneys for CSX Corporation and
CSX Transportation, Inc.*

Enclosures

cc: Louis E. Gitomer
All parties of record

REDACTED - TO BE PLACED ON PUBLIC FILE

AMENDED AND RESTATED CSXT JOINT USE AGREEMENT

Amended and Restated CSXT Joint Use Agreement

THIS AMENDED AND RESTATED CSXT JOINT USE AGREEMENT (the "Agreement") is entered into as of this []th day of _____, 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, on [] 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 [date], 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, 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:

"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 NW wye as shown in the drawing attached hereto as Exhibit [x], (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 [], 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 [_____, 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.

"Haulage Rights" shall have the meaning given to that term in Section 2(b).

"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.

"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 this 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 [] 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.

"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.

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

"Waiver Notice" shall have the meaning given to that term in Section 16(e)

(c) Successor Laws.

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

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. 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 "Haulage Rights") between CPF 312 and the Mechanicville Facility [REDACTED] ("Haulage Traffic").

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 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 [] 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 [] 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 [] 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 [] 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 __ 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 (i) 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 [REDACTED]. The foregoing amount of [REDACTED] 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 rerailing, 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
Vice President – Strategic Planning
Norfolk Southern Corporation
650 West Peachtree Street NW
Box []
Atlanta, GA 30308

and

Norfolk Southern Railway Company
c/o Norfolk Southern Corporation
Attn: Senior Director Interline Services
650 West Peachtree Street NW
Box 158
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.

(c) 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

By: _____
Name:
Title:

CSX TRANSPORTATION, INC.

By: _____
Name:
Title:

SPRINGFIELD TERMINAL RAILWAY COMPANY

By: _____
Name:
Title:

INDEX TO APPENDICES

APPENDIX A – MAP OF SUBJECT TRACKAGE

APPENDIX B – COMPENSATION

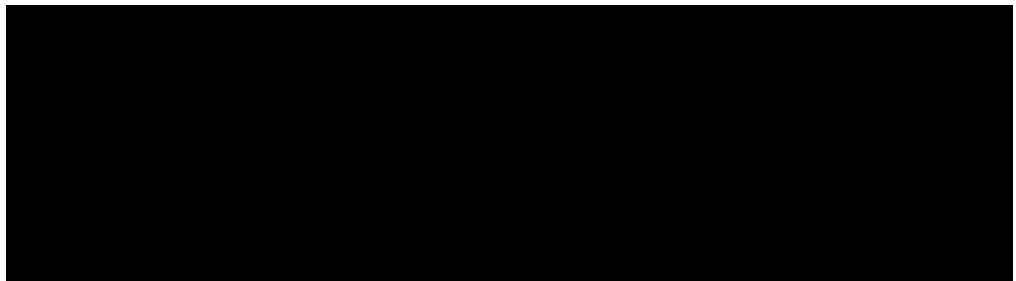
APPENDIX B - COMMERCIAL APPENDIX

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.



(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.

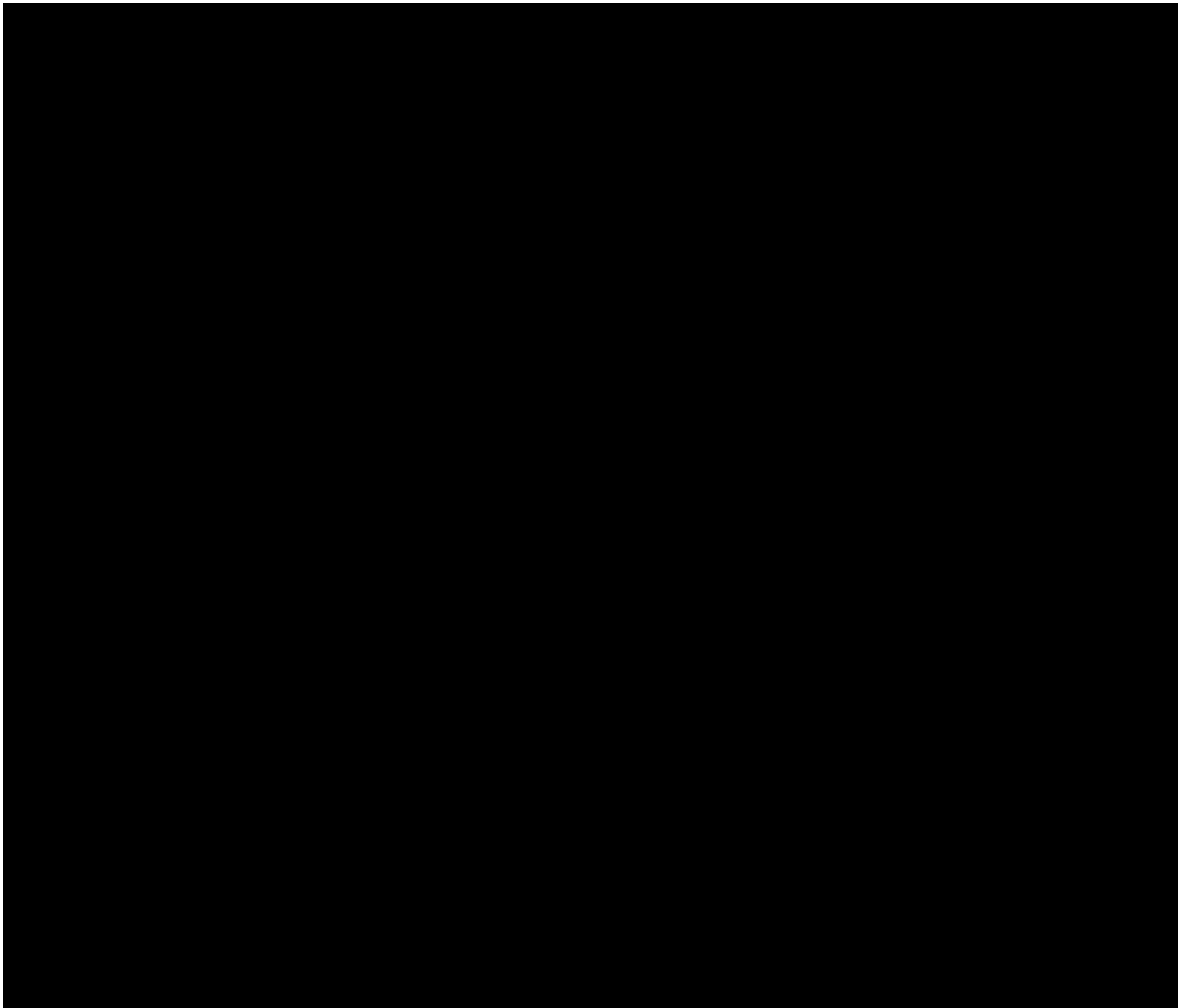
Section 2. Intermodal Haulage Compensation

(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:





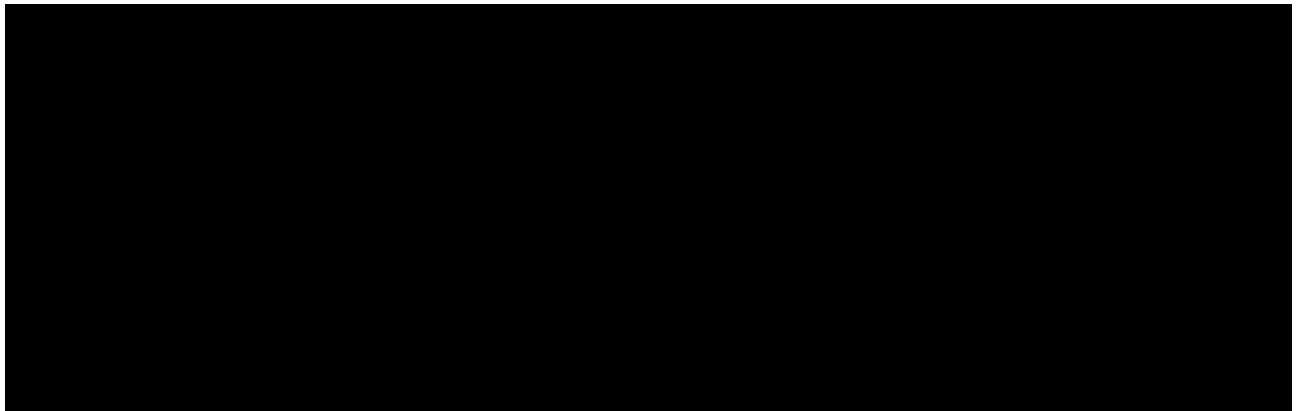
(i) Rate Adjustment

(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:



[REDACTED]

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.

[REDACTED]

REDACTED - TO BE PLACED ON PUBLIC FILE

AMENDED AND RESTATED AYER SWITCHING AGREEMENT

AMENDED AND RESTATED AYER SWITCHING AGREEMENT

THIS AMENDED AND RESTATED SWITCHING AGREEMENT (the "Agreement") is entered into this []th day of _____, 2022 (the "Effective Date"), by and between Springfield Terminal Railway Company ("Springfield Terminal"), a Vermont corporation, CSX Transportation, Inc. ("CSXT"), a Virginia corporation, and Pan Am Southern LLC ("Pan Am Southern"), a Delaware limited liability company. Each of Springfield Terminal, CSXT and Pan Am Southern shall be a "Party" to this Agreement and collectively they shall be referred to as the "Parties." Norfolk Southern Railway Company ("Norfolk Southern") is a third-party beneficiary of this Agreement.

WITNESSETH:

WHEREAS, on the 9th day of April, 2009, Pan Am Southern and Springfield Terminal entered into the Ayer Switching Agreement that, among other things, provided for Pan Am Southern to provide to Springfield Terminal certain switching services for the movement of certain traffic that moves in Springfield Terminal's own revenue waybill account ("Springfield Terminal Traffic"); and

WHEREAS, on [] CSXT, Norfolk Southern Railway Company ("Norfolk Southern"), several of the Pan Am System Parties, and Pittsburg & Shamut Railroad, LLC d/b/a Berkshire & Eastern Railroad, a Class III carrier ("B&E", and, together with CSXT, Norfolk Southern, and several of the Pan Am System Parties, the "Transaction Parties"), 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 [date], the STB granted its authorization for the Transaction Parties to effectuate the CSXT Transaction, including the modification of the switching services as described herein, and

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

WHEREAS, the Parties now wish to modify the switching services in a manner consistent with the terms and conditions hereinafter provided including the provision of switching services to both Springfield Terminal and CSXT for certain traffic hereinafter specified; and

WHEREAS, CSXT and Springfield Terminal may be merged into one another with CSXT as the survivor (the "ST/CSXT Merger") whereupon CSXT shall be entitled to all of the rights of Springfield Terminal in this Agreement and references to Springfield Terminal in this Agreement from and after the ST/CSXT Merger shall be deemed to refer to CSXT;

NOW, THEREFORE, the Parties hereto do mutually 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) The Parties acknowledge that B&E, Springfield Terminal, or such other Person as the Management Committee may designate pursuant to this Agreement will be the Railroad Operator for Pan Am Southern pursuant to the Railroad Operating Agreement. 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:

"Anticipated CSXT Infrastructure" shall mean that infrastructure contemplated in Appendix [] to the B&E Railroad Operator Agreement.

"Agreement" shall have the meaning given to that term in the introductory paragraph.

"AAR" shall mean the Association of American Railroads.

"Ayer Automotive Facility" shall mean that facility for the transfer of Automotive Traffic generally located at approximately MP 314 in Ayer, MA.

"Ayer Intermodal Facility" shall mean that facility for the transfer of Intermodal Traffic generally located at approximately MP [] in Ayer, MA.

"Ayer Local Train" shall have the same meaning given to that term in the CSXT Joint Use Agreement.

"B&M" shall mean Boston and Maine Corporation.

"Barbers Switch Traffic" shall mean CSXT Traffic switched to or from Barbers Station without prior or subsequent movement over CPF 312.

"Barbers Switch Traffic Cap" shall have the meaning set forth in Appendix C, Section 2.

"B&E Railroad Operating Agreement" means the Railroad Operating Agreement, dated as of [], 2022], between Pan Am Southern and B&E, generally concerning the railroad operating and administrative services provided by B&E for the Pan Am Southern."

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

"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 Joint Use Agreement" shall mean that certain Amended and Restated CSXT Joint Use Agreement by and between CSXT, Springfield Terminal and Pan Am Southern dated as of [], 2022.

"CSXT Traffic" shall mean traffic that moves in CSXT's own revenue waybill account.

"Delaware Courts" shall have the meaning given to that term in Section 15(c)(i).

"Dispute" shall have the meaning given to that term in Section 15(a).

"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.

"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.

"Indemnified Persons" shall have the meaning given to that term in Section 5(b).

"Industry Location" shall have the meaning given to that term in Section 2(a).

"Intermodal Traffic" shall refer to rail cars loaded with intermodal containers and trailers.

"JOC" shall mean that Joint Operating Committee established pursuant to the LLC Agreement.

"JV Transaction Agreement" shall have the meaning given to that term in the LLC Agreement.

"Line" shall have the meaning given to that term in the Recitals.

"LLC Agreement" shall mean that Limited Liability Company Agreement of Pan Am Southern LLC, by and between Norfolk Southern and B&M, 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 10.

"Management Committee" shall mean the Management Committee of Pan Am Southern as provided in the LLC Agreement.

"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 Recitals.

"Original Springfield Terminal Switch Traffic" shall have the meaning given to that term in Section 2(a).

"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 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 and Stony Brooke Railroad Corporation.

"Parties" shall have the meaning given to that term in the introductory paragraph.

"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.

"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.

"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 this 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.

"Rules" shall have the meaning given to that term in Section 15(c)(ii).

"Sanvel Automotive Facility" shall mean facility constructed for the transfer of Automotive Traffic located west of Willows Road in Ayer, MA.

"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 have the meaning given to that term in the Recitals.

"ST Railroad Operating Agreement" means the Railroad Operating Agreement, dated as of April 9, 2009, between the Company and Springfield Terminal, generally concerning the railroad operating and administrative services provided by Springfield Terminal for the Company.

"STB" shall mean the Surface Transportation Board or any successor entity thereto.

"Subject Traffic" shall have the meaning given to that term in Section 10(a).

"Subject Trackage" shall mean the lines of railroad accessed in order to interchange traffic and otherwise perform the services required pursuant to this Agreement.

"ST/CSXT Merger" shall have the meaning given to that term in the Recitals.

"Transaction Agreement" 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).

(c) Successor Laws.

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

SECTION 2. INDUSTRY SWITCHING

(a) Local delivery and receipt of Springfield Terminal Traffic and CSXT Traffic to and from the industry locations specified in Section 2(b) (each hereinafter referred to as an "Industry Location"), located at Ayer, Massachusetts, and certain Intermodal Traffic, described in Section 2(b), in either case for the account of CSXT or Springfield Terminal, as the case may be, is permitted solely through the industrial switching that Pan Am Southern provides pursuant to this Agreement. Pan Am Southern shall provide services as necessary to handle such traffic between said Industry Location and CPF 312 near Willows, Massachusetts ("Original Springfield Terminal Switch Traffic"). Pan Am Southern also will perform switching of Barbers Switch Traffic to or from Industry Locations. Pan Am Southern will use its own crews and locomotives, or those of its contract operator to perform said services.

(b) The Industry Locations are all those industrial and commercial locations served by rail on the attached Ayer Customer Map between CPF 312, Ayer and Shirley line, and Ayer and Harvard line (Appendix B), other than the Sanvel Automotive Facility and the Ayer Automotive Facility. By way of clarification only, and without intending to modify the immediately preceding sentence, the Parties intend that CSXT and Springfield Terminal shall have access, pursuant to this Agreement, to all current and future shipping customers located at the Industry Locations, and that access is not to be restricted to shipping customers existing as of the date of this Agreement, but that neither CSXT nor Springfield Terminal shall have, pursuant to this Agreement, access to the intermodal facility at Ayer, MA other than for Intermodal Traffic having a prior movement over the Remaining Springfield Terminal east of CPF 312.

(c) For revenue purposes, Cars switched under this Agreement shall remain in the account of CSXT or Springfield Terminal, and Pan Am Southern shall not be entitled to any line haul revenue for the handling of such Cars, nor appear in any rates, routes or divisions pertaining to any Cars in the account of Pan Am Southern, except as specified otherwise herein.

(d) CSXT and Springfield Terminal shall assume its own car hire expenses, and Pan Am Southern shall assess and collect all related demurrage charges.

SECTION 3. DELIVERY AND RECEIPT OF CARS

(a) Cars handled under this Agreement shall be considered as having been delivered by one Party to the other when placed on mutually agreed upon trackage designated for such deliveries, accompanied or preceded by the necessary data for forwarding and to ensure delivery and acceptance by the designated representative of the receiving road. Should movements pursuant to this Agreement take the form of an uninterrupted movement of a train operating by CSXT or Springfield Terminal, in part over the Remaining Springfield Terminal beyond an End Point and in part over the lines of Pan Am Southern, at a time when either CSXT or Springfield Terminal is the Railroad Operator for Pan Am Southern, then the Cars handled under this Agreement shall be considered as having been delivered by one Party to the other when the loaded or empty Cars pass an End Point.

(b) CSXT and Pan Am Southern, as to CSXT Traffic, and Springfield Terminal and Pan Am Southern, as to Springfield Terminal Traffic, shall provide each other with suitable information (which may be transferred by paper documents, facsimiles, or electronic means, or by other means, as mutually agreed) necessary for the handling of Cars switched under this Agreement, which will identify for each Car:

- (1) Car initial and number.
- (2) Loaded or empty.
- (3) Destination station and consignee on inbound movements.
- (4) All required hazardous materials information.
- (5) Any other information as agreed between the Parties to be necessary or convenient for the safe, efficient movements of Cars switched under terms of this Agreement.

Should CSXT or Springfield Terminal be the Railroad Operator, this information shall have been deemed to have been provided when assembled by either CSXT or Springfield Terminal, as the case may be.

(c) Pan Am Southern may make repairs to Cars switched under terms of this Agreement as may be necessary for safe transit, and Pan Am Southern may make adjustments to or transfers of lading from crippled, defective or overloaded Cars, as in its determination may be necessary to safely move said Cars. CSXT shall reimburse Pan Am Southern its full cost for repairs, adjustments and lading transfers promptly upon receipt of billing therefore.

(d) With recognition to the limited capacity of the Ayer Intermodal Facility, Pan Am Southern agrees that all capacity at said facility will be dedicated to Norfolk Southern for Intermodal Traffic originating or terminating at points west of the facility, and to CSXT or Springfield Terminal for Intermodal Traffic originating or terminating at points on the Remaining Springfield Terminal.

(e) In the event that a party other than CSXT or Springfield Terminal is the Railroad Operator to Pan Am Southern, Pan Am Southern commits to switching a customer facility within forty-eight (48) hours after Pan Am Southern receives notice that the customer has released Cars for movement hereunder, on outbound movements, and within forty-eight (48) hours after Pan Am Southern receives notice of placement for interchange and provision of the information required by Section 3(b), on inbound movements, in each case unless delays in switching are caused by weekends, holidays, customer-caused

actions, or mechanical failures, but no later than seventy-two hours for inbound or outbound movements. Pan Am Southern shall reimburse CSXT for any car hire expenses incurred as a result of failure to provide such switch within said time frame.

SECTION 4. INSPECTION

Pan Am Southern shall not be responsible for making any mechanical inspection of Cars in the account of CSXT or Springfield Terminal switched to and from the Industry Locations.

SECTION 5. COMPLIANCE WITH APPLICABLE LAWS AND RULES

(a) Each of Pan Am Southern, Springfield Terminal and CSXT 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. Pan Am Southern shall indemnify, protect, defend, and save harmless CSXT and Springfield Terminal and each of their respective subsidiaries and affiliates, and all of their respective directors, officers, agents and employees, from and against all fines, penalties and liabilities imposed upon the same under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable solely to the failure of said party to comply with its obligations in this regard. Each of 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 the same under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable solely to the failure of said party to comply with its obligations in this regard.

(b) Each of CSXT and Springfield Terminal, in its 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, each of 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 trains, locomotives, Cars and Equipment 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 CSXT's trains and/or 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 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 and Springfield Terminal, respectively, shall pay to Pan Am Southern, upon receipt of bills therefor, any reasonable cost incurred by Pan Am Southern in connection with the qualification of such employees of CSXT, 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. CSXT or Springfield Terminal supervisory personnel who have been qualified to operate over the Subject

Trackage may qualify other CSXT or Springfield Terminal employees for operation of trains over the Subject Trackage. Employees of CSXT or 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.

(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 the crew, or due to mechanical failure of the 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 of CSXT or Springfield 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 the 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 or both of 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 CSXT's trains nor 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. The decision to bar any employee of CSXT or Springfield Terminal from its tracks will not be interpreted as a request for CSXT or Springfield Terminal 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 6. INTENTIONALLY OMITTED

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 switched 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 were switched 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, provided, however, should either CSXT or Springfield Terminal be the Railroad Operator, the Monthly Statement and the Use Statement shall be considered delivered when prepared.

(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 15, 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 therefore 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 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 CSXT or Springfield Terminal, or shall include actual costs and expenses, upon mutual agreement of the Parties.

SECTION 8. INTERRUPTION; RERAILING

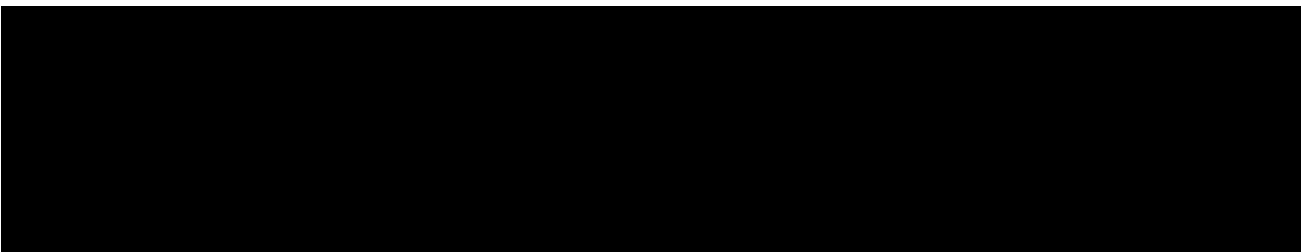
(a) Interruption, Delay. In the event the use of trackage in performing the referenced switching services shall be interrupted or traffic delayed at any time from any cause, no Party shall have any claim against any other Party for liability of any kind from such interruption or delay.

(b) Rerailing. Wrecking. Bad Orders and Repairs.

(i) Whenever CSXT's use or Springfield Terminal's use of the Subject Trackage requires rerailing, 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 and CSXT or 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 10 hereof. Pan Am Southern shall promptly inform CSXT or Springfield Terminal, as the case may be, of its intent to proceed with wrecking service or wrecking train service, and shall permit a representative of CSXT or Springfield Terminal, as the case may be, to be present on the scene, to work in concert with the employees of its Railroad Operator to manage such wrecking service or wrecking train service, provided, however, should either CSXT or Springfield Terminal be the Railroad Operator, no such notice need be provided to CSXT or Springfield Terminal and no additional representatives of CSXT or Springfield Terminal need be present on the scene. 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 or Springfield Terminal, as the case may be.

(b) If any Cars or locomotives of 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, as the case may be. Pan Am Southern may, upon request of CSXT or Springfield Terminal, 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 9. COMPENSATION; MILEAGE AND CAR HIRE



SECTION 10. LIABILITY

As between the Parties hereto, responsibility for all claims, liabilities, demands, actions at law or equity, judgments, settlements, losses, damages, costs (including without limitation reasonable attorney's fees) 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 or the Railroad Operator), 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 10, be referred to, collectively, as "Subject Traffic." Otherwise, for the purposes of assigning responsibility for Loss or Damage under this Section 10 (including but not limited to Section 10(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 and shall be responsible for: (1) Loss or Damage to Equipment in its revenue waybill and the lading therein; and (2) to the extent not allocated pursuant to Section 10(c)(1). Loss or Damage arising from or growing out of its negligence or willful misconduct or that of the 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 and the lading therein; and (2) to the extent not allocated pursuant to Section 10(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 10(b), Section 10(c), and Section 10(d) such responsibility for Loss or Damage 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 or car hire account.

(f) Notwithstanding anything to the contrary in Section 10(b), Section 10(c), Section 10(d), and Section 10(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 Cars 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 Cars and/or contained in a CSXT 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 10, 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 Cars or (B) both Subject Traffic Cars 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 to this Agreement (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 10(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 Cars 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 10.

(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 10, 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, Springfield Terminal and CSXT 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 10; 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 [REDACTED]. The foregoing amount of [REDACTED] shall be adjusted annually in accordance with the provisions of Section (b) of Appendix A.

SECTION 11. EMPLOYEE CLAIMS

Each Party agrees to indemnify and hold harmless the other Party 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 its own employees, either pursuant to employee protective conditions imposed by a governmental agency as conditions for that agency's approval of this Agreement and operations hereunder, or pursuant to a collective bargaining agreement. It is the intention of the Parties that each Party shall bear the full costs of protection of its own employees under employee protective conditions which 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 12. 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 of commercial access to the Industry Locations.

SECTION 13. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties hereto. Third party beneficiary status shall inure to the benefit of Norfolk Southern and each of its successors and permitted assigns. No Party hereto shall transfer or assign this Agreement, or any of its rights, interests, or obligations hereunder, to any person, firm or corporation without obtaining the prior written consent of the other Party. For the avoidance of doubt, the ST/CSXT Merger shall not be considered an assignment governed by this clause.

SECTION 14. MISCELLANEOUS

(a) Notices. Any notice, payment, demand, or communication required or permitted to be given by any provision of this Agreement shall be in writing and shall be deemed to have been delivered, given, and received for all purposes (i) if delivered personally to the Person or to an officer of the Person to whom the same is directed or (ii) when the same is actually received, if sent either by express delivery

service or registered or certified mail, postage and charges prepaid and return receipt requested, or by facsimile, if such facsimile is followed by a hard copy of the facsimile communication sent promptly thereafter by registered or certified mail, postage and charges prepaid, addressed as follows or to such other address as such Person may from time to time specify, by notice to the other Party:

If to Pan Am Chairman
Southern: Pan Am Southern LLC

With a copy to Mike R. McClellan
Norfolk Southern: Vice President – Strategic Planning
 650 West Peachtree Street NW
 Box []
 Atlanta, GA 30308

and

Norfolk Southern Railway Company
c/o Norfolk Southern Corporation
Attn: Senior Director Interline Services
650 West Peachtree Street NW
Box []
Atlanta, GA 30308

and

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

and

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

If to Springfield Springfield Terminal Railway Company
Terminal: 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: Director Joint Facilities

500 Water St.
Jacksonville, FL 32202

With a copy to: CSX Transportation Law Department
500 Water St.
Jacksonville, FL 32202:

(b) Headings. Section and other headings contained in this Agreement are for reference purposes only and are not intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any provision hereof.

(c) Prior Agreements. 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.

(d) Severability. Every provision of this Agreement is intended to be severable, and, if any term or provision of this Agreement is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity or legality of the remainder of this Agreement.

(e) Incorporation by Reference. Every exhibit and other appendix attached to this Agreement and referred to herein is incorporated in this Agreement by reference unless this Agreement expressly otherwise provides.

(f) Counterpart Execution. This Agreement may be executed in any number of counterparts with the same effect as if both Parties had signed the same document. All counterparts shall be construed together and shall constitute one agreement.

(g) Third Party Beneficiaries. Except as provided in this Section 14(g), this Agreement shall not benefit or create any right or cause of action in or on behalf of any person other than 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.

(h) GOVERNING LAW. 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.

(k) 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, 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 any 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 or as otherwise required by applicable law.

(l) Amendment, Consent and Waiver. No term or provisions of this Agreement may be changed, waived, discharged, or terminated except by an instrument in writing signed by both parties to

this Agreement. 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.

(m) Interpretation. 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.

(n) Records. The records of each Party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other Party.

SECTION 15. 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 15(a), shall be submitted for formal dispute resolution, if at all, by either Party for formal dispute resolution pursuant to Section 15(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 15(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 15(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 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 other 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 15(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.

(c) As a third-party beneficiary, Norfolk Southern may initiate and prosecute arbitration pursuant to Section 15(b) on behalf of Pan Am Southern. Pan Am Southern, Springfield Terminal and CSXT shall cooperate with Norfolk Southern in the Pan Am Southern preparation for, and the initiation and prosecution of, such arbitration, at Pan Am Southern's expense.

SECTION 16. INDEMNITY COVERAGE

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

SECTION 17. FORCE MAJEURE

The obligations, other than payment obligations, of the Parties to this Agreement shall be subject to force majeure (consisting of flood, earthquake, hurricane, tornado, or other such severe weather or climatic condition, riot, accident, 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, Federal Railroad Administration orders, or governmental laws, orders or regulations, 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 Party's ability to fulfill its obligations to any of the other Parties under this Agreement, said Party shall take all commercially reasonable measures to restore performance of its obligations in a timely manner.

(signature page follows)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

PAN AM SOUTHERN LLC

By: _____
Name:
Title:

CSX TRANSPORTATION, INC.

By: _____
Name:
Title:

SPRINGFIELD TERMINAL RAILWAY COMPANY

By: _____
Name:
Title:

(Signature page to Amended and Restated Ayer Switching Agreement)

APPENDIX A. COMPENSATION

(a) The Switching Charge shall be set for 2021 as follows to or from the Industrial Locations, and the Ayer Intermodal Facility, as is relevant per the applicable traffic:

- (1) Original Springfield Terminal Switch Traffic other than Intermodal Traffic – [REDACTED] per revenue waybilled railcar, plus any applicable surcharge, as may be provided pursuant to Section (c) of this Appendix A (the “Original Springfield Terminal Switching Charge.”)
- (2) Intermodal Traffic to or from Ayer Intermodal Facility -- [REDACTED] per unit (container or trailer) handled by Pan Am Southern, plus any directly applicable lift costs (the “Intermodal Switching Charge”).
- (3) Barbers Switch Traffic:
 - a. [REDACTED] per revenue waybilled railcar, plus any applicable surcharge, as may be provided pursuant to Section (c) of this Appendix A, for the first 1,000 cars moved in any calendar year.
 - b. [REDACTED] per revenue waybilled railcar, plus any applicable surcharge, as may be provided pursuant to Section (c) of this Appendix A, for each railcar in excess of the first 1,000 cars moved in any calendar year (collectively with the charge in Section (a)(3)a. above, the “Barbers Switching Charges”).
 - c. The number of cars moved in the calendar year set forth in Section (a)(3)a. and (a)(3)b. above shall be prorated for the first year, but not the last year, of the effectiveness of this Agreement.

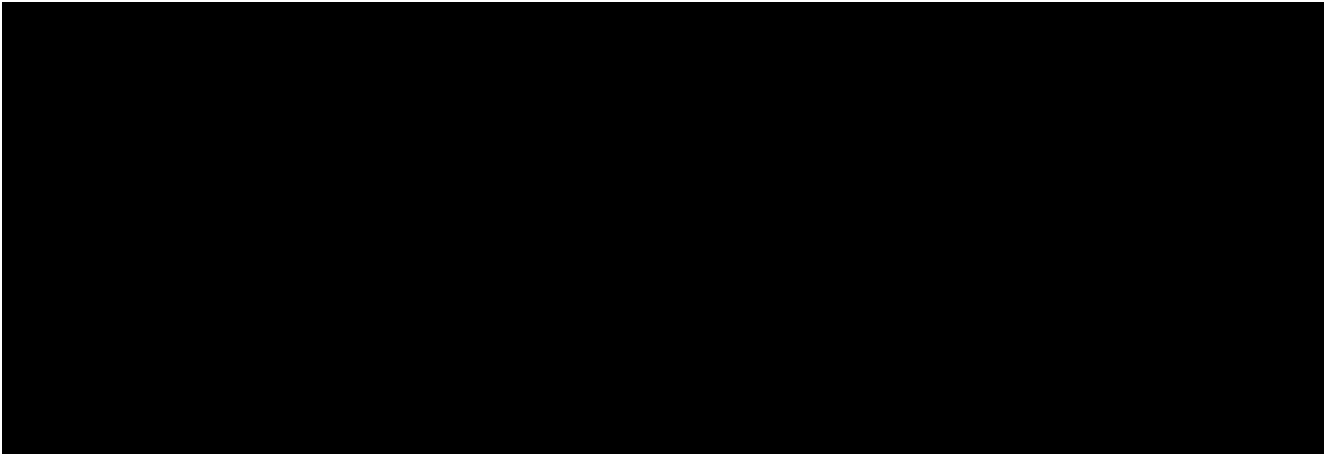
(b) Switching Charge Adjustment

(1) The applicable Switching 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 Chargeout 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.

(2) The applicable Switching 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 applicable Switching Charge, provided, however, that under no circumstances shall the applicable Switching Charge be revised to an amount less than those reflected in subsection (a), above. In computing the adjusted Switching Charges, 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.

(3) 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.

(c) Fuel Surcharge:



The surcharge will be applied to the overall 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.

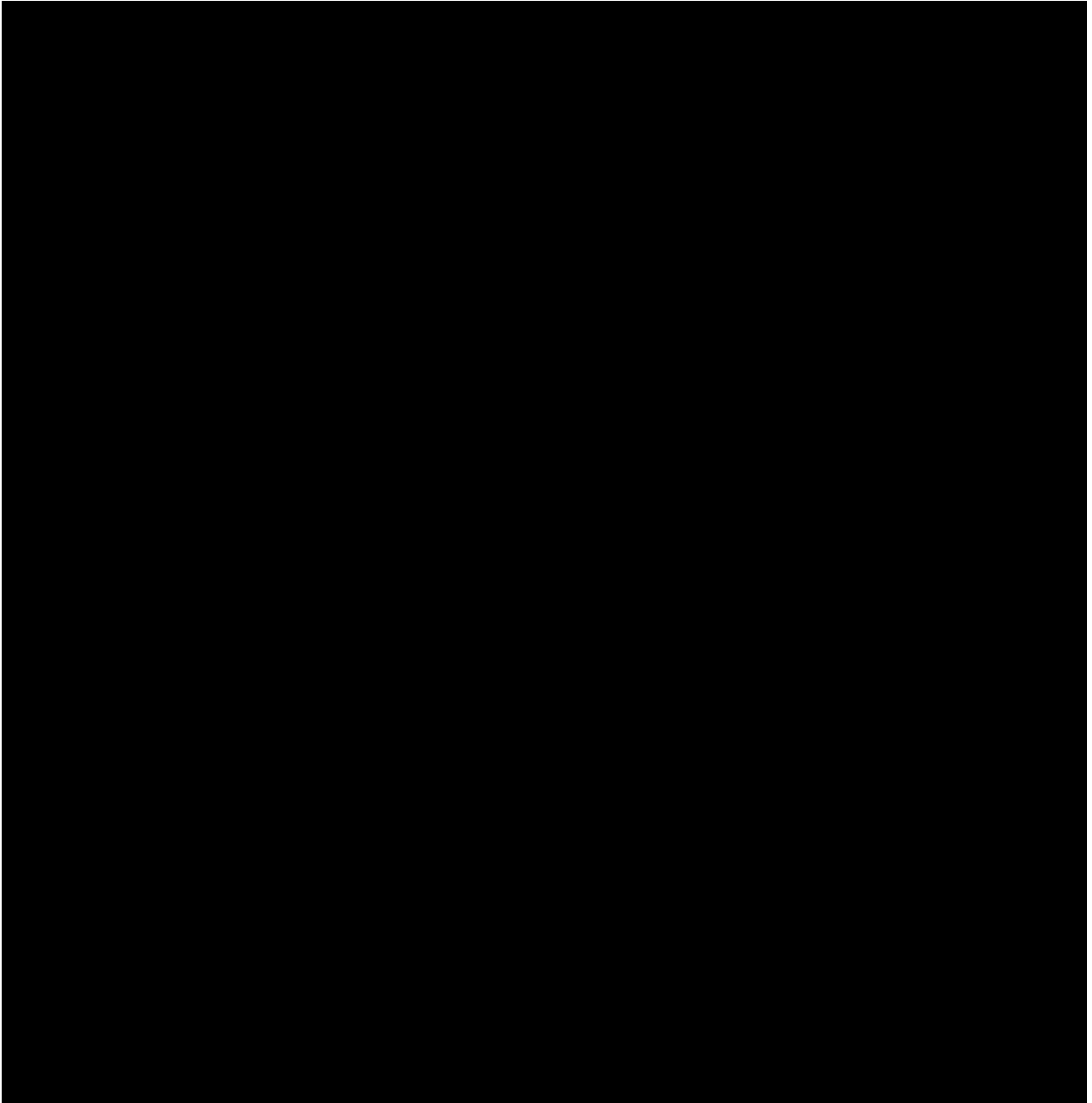
(d) Pan Am Southern shall keep and maintain an accurate account of all loaded Cars handled by it for the account of CSXT and Springfield Terminal, and shall at the end of each month, render an itemized bill, computed in accordance with the provisions herein, to CSXT for payment, provided, however, that for so long as either CSXT or Springfield Terminal is the Railroad Operator, the bill shall be deemed delivered when prepared.

(e) Ayer Intermodal Facility Use Fee. Prior to the operation of the NSR Premium Trains, or January 1, 2023, whichever is earlier, Norfolk Southern, CSXT and the Railroad Operator will negotiate an Ayer Intermodal Facility Use Fee that will include compensation for the land, assets, maintenance and switching of the facility, regardless of whether the Norfolk Southern (or CSXT from the north) is using the facility. This updated Ayer Intermodal Facility Use Fee shall be effective upon mutual agreement, but in any event no later than January 1, 2023. In no case shall this fee exceed [REDACTED] per container, and the fee may be graduated for CSXT and Norfolk Southern based on total volume. This fee shall be in addition to (1) trackage rights fees between Barbers Station and Ayer, (2) any lift and associated fees incurred at the terminal, and (3) the applicable Switching Charge.

(f) CSXT shall cause payment to be made within thirty (30) days from receipt thereof, and any errors or omissions in such bills shall be adjusted in subsequent billing.

APPENDIX B. AYER CUSTOMER MAP

APPENDIX C. CONFIDENTIAL COMMERCIAL APPENDIX



CERTIFICATE OF SERVICE

I hereby certify that I have caused this Letter in Docket No. FD-36472, *CSX Corporation and CSX Transportation, Inc.—Control and Merger—Pan Am Systems, Inc., Pan Am Railways, Inc., Boston and Maine Corporation, Maine Central Railroad Company, Northern Railroad, Pan Am Southern LLC, Portland Terminal Company, Springfield Terminal Railway Company, Stony Brook Railroad Company, and Vermont & Massachusetts Railroad Company*, to be served electronically or by first class mail, postage pre-paid, on all parties of record in this proceeding.

/s/ Sally Mordi

Sally Mordi
*Attorney for CSX Corporation and
CSX Transportation, Inc.*

August 26, 2021