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PUBLIC VERSION

December 29, 2021

CSXT/PAR-47

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. On July 20, 2021, CSX filed the Second Amendment to the Limited Liability Company Agreement of Pan Am Southern LLC. On August 26, 2021, CSX filed (1) the Amended and Restated CSXT Joint Use Agreement, and (2) the Amended and Restated Ayer Switching Agreement.

Enclosed for e-filing is a public version of the Railroad Operating Agreement, with appropriate redactions that the Board can place in its docket. We are concurrently filing under seal a highly confidential version of this document. The parties have agreed to execute the

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.

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agreement after the Board authorizes the transactions that are the subject of the Amended and Supplemented Application and the B&E Petition for Exemption.

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

RAILROAD OPERATING AGREEMENT

THIS RAILROAD OPERATING AGREEMENT (“Agreement”) is made and entered into as of this ____ day of _____ 2022, by and among Pan Am Southern LLC, a Delaware limited liability company (“Pan Am Southern”), Berkshire & Eastern Railroad, a division of Pittsburg & Shawmut Railroad, LLC (“Berkshire & Eastern”), Springfield Terminal Railway Company (“Springfield Terminal”), CSX Transportation, Inc. (“CSXT”) and Norfolk Southern Railway Company (“NSR”). Each of Pan Am Southern, Berkshire & Eastern, Springfield Terminal, CSXT and NSR is sometimes referred to as a “Party” and, collectively, as “Parties.”

RECITALS

WHEREAS, pursuant to an Agreement and Plan of Merger dated as of November 30, 2020, CSXT’s parent company, CSX Corporation (“CSXC”), agreed to acquire Pan Am Systems, Inc. (the “Pan Am Acquisition”), which directly and wholly owns Pan Am Railways, Inc., which in turn directly and wholly owns four rail carriers, including Boston and Maine Corporation (“B&M”) and Springfield Terminal; and

WHEREAS, as a result of the Pan Am Acquisition, CSXT would indirectly acquire a 50% membership interest in Pan Am Southern; and

WHEREAS, NSR, as the holder of the remaining 50% membership interest in Pan Am Southern, and CSXT have agreed for Berkshire & Eastern to replace Springfield Terminal as the Railroad Operator (as defined below) following the consummation of the Pan Am Acquisition and the execution of implementing agreements with labor as provided herein; and

WHEREAS, CSXC and CSXT have filed the Application seeking authorization from the Surface Transportation Board (“STB”) for the Pan Am Acquisition and Berkshire & Eastern has filed a Petition for Exemption, as amended and supplemented, with the STB seeking authority to become the Railroad Operator; and

WHEREAS, CSXC and CSXT have obtained the authorization of the STB to consummate the Pan Am Acquisition and Berkshire & Eastern has received the authorization of the STB to enter into, and perform pursuant to, this Agreement;

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;

WHEREAS, the Parties desire to enter into this Agreement to, among other things, set forth (i) the obligations of Berkshire & Eastern as the Railroad Operator and (ii) the compensation to be paid to Berkshire & Eastern therefor, including the reimbursement of Berkshire & Eastern for certain operating expenses incurred by it on behalf of Pan Am Southern;

NOW, THEREFORE, with reference to the foregoing facts and in consideration of the mutual agreements and understandings set forth herein, the Parties, intending to be legally bound, agree as follows:

SECTION 1. DEFINITIONS

(a) Interpretation Generally.

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.

(b) Capitalized Terms.

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

“AAA” shall have the meaning given to that term in Section 17(c)(ii).

“AAR” shall have the meaning given to that term in Section 9(d)(iii).

“Additional Repair Item” shall have the meaning given to that term in Section 3(a)(ii)(A).

“Administrative Services” shall have the meaning given to that term in Section 2(a)(i).

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

“Ancillary Agreements” shall mean any and all contracts, agreements, leases and licenses pursuant to which third parties have rights with respect to, or otherwise relate to, the Pan Am Southern Assets, including, without limitation, lateral and perpendicular fiber and wire agreements, pipeline agreements, land leases, sale agreements for surplus real property, grant agreements, joint facility agreements with other railroads, agreements with commuter and intercity passenger rail operators, rental agreements, clearance agreements and agreements concerning the performance of any grade crossing facility maintenance, repair and inspection obligations, right of entry agreements, sidetrack or industrial track agreements, track leases, land leases, land and track leases and private grade crossing licenses.

“Application” shall mean the Amended and Supplemented Application submitted by CSXC and CSXT to the STB on July 1, 2021 with respect to, among other things, the Pan Am Acquisition.

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

“Base Fee” shall have the meaning given to that term in Section 10(a)(i).

“Berkshire & Eastern” shall have the meaning given to that term in the introductory paragraph.

“Claim” or “Claims” shall mean any and all claims, demands, damages, losses (including the loss of use), costs (including investigation, remedial and clean-up costs), expenses (including attorneys’, consultants’ or experts’ fees and expenses), judgments, awards, penalties, governmental action (including fines and liens), causes of action, liens, suits or liability of every kind and nature suffered, including for exemplary, special or consequential damages claimed by third parties.

“Cleanup” shall mean all actions, including investigations, required by Law to: (1) cleanup, remove, treat, contain, mitigate or remediate Hazardous Materials in the environment; (2) prevent the Release of Hazardous Materials so that they do not migrate, endanger or threaten to endanger public health or welfare or the environment; (3) perform pre-remedial studies and investigations and post-remedial monitoring, maintenance and care; or (4) respond to any government requests for information or documents in any way relating to cleanup, removal, treatment, containment, mitigation or remediation or potential cleanup, removal, treatment, containment, mitigation or remediation of Hazardous Materials in the environment.

“CSXT” shall have the meaning given to that term in the introductory paragraph and shall include Springfield Terminal from and after the ST/CSXT Merger.

“CSXT Joint Use Agreement” shall mean the Springfield Terminal Joint Use Agreement, dated as of April 9, 2009, pursuant to which, among other things, Pan Am Southern granted certain trackage rights to Springfield Terminal and agreed to provide certain haulage services to Springfield Terminal, as amended by the CSXT Joint Use Agreement, dated as of _____.

“CSXT Member” shall mean B&M or any permitted transferee of its membership interest in Pan Am Southern under the LLC Agreement.

“Delaware Courts” shall have the meaning given to that term in Section 17(c)(i).

“Designated Engineer” shall mean, as to each of NSR, CSXT, Springfield Terminal and Berkshire & Eastern, the engineering representative that is a designated contact for engineering matters relating to this Agreement.

“Direct Costs” shall have the meaning given to it in Section 10(c).

“Dispatch Facilities” shall have the meaning given to it in Section 9(d)(v).

“Dispute” shall have the meaning given to that term in Section 17(a).

“Effective Date” shall have the meaning given to that term in Section 11(a).

“Environmental Claim” means any fine, claim, action, lien, cause of action, investigation or notice by any Person alleging potential liability (including potential liability for Cleanup costs, governmental response costs, natural resources damages, property damages, personal injuries, or penalties) arising out of, based on or resulting from (a) the presence, manufacture, processing,

distribution, use, treatment, storage, Release or threatened Release, disposal, transport or handling, of any Hazardous Materials, or (b) circumstances forming the basis of any violation of any Environmental Law.

“Environmental Laws” means all Laws relating to pollution or protection of human health or the environment, including (a) all Laws relating to Releases or threatened Releases of Hazardous Materials or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, Release, disposal, transport or handling of Hazardous Materials, (b) all Laws relating to record keeping, notification, disclosure and reporting requirements respecting Hazardous Materials, (c) all Laws relating to endangered or threatened species of fish, wildlife and plants and natural resources, (d) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601, et seq., the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, et seq., Federal Water Pollution Control Act, 33 U.S.C. § 1251, et seq., the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. § 11001, et seq., the Clean Air Act, 42 U.S.C. § 7401, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 1471, et seq., the Toxic Substances Control Act, 15 U.S.C. §§ 2601 through 2629, the Oil Pollution Act, 33 U.S.C. § 2701, et seq., the Safe Drinking Water Act, 42 U.S.C. §§ 300f through 300j, the Endangered Species Act, 16 U.S.C. § 1531, et seq., all as currently amended and may be amended from time to time and any successors thereto and the regulations promulgated and any permits or approvals issued thereunder, and (e) similar state and local Laws to the federal statutes in (d) all as currently amended and may be amended from time to time and any successors thereto and the regulations promulgated and any permits or approvals issued thereunder.

“Existing Environmental Matters” means the existing environmental matters agreed upon by Berkshire & Eastern and Pan Am Southern prior to the Effective Date.

“Financial Activities” shall have the meaning given to that term in Section 4(c).

“FRA” shall have the meaning given to that term in Section 3(b).

“Freight Railroad Service” shall have the meaning given to that term in Section 2(a)(i).

“General Manager” shall have the meaning given to that term in Section 2(b).

“Governmental Action” shall mean any applicable law, rule, regulation or ordinance promulgated by any Governmental Authority having jurisdiction.

“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.

“Grade Crossing Facility Maintenance and Repair” shall have the meaning given to that term in Section 3(a)(iii).

“Hazardous Materials” shall mean all substances defined as Hazardous Substances, Oils, Pollutants or Contaminants in the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. § 300.5, or as Hazardous Materials as defined in the Hazardous Materials Transportation Act, 49 U.S.C. § 5102, or as such terms or words of similar import are defined as such by, or regulated as such under, any other Laws relating to pollution or protection of human health or the environment.

“Invoiced Party” shall have the meaning given to that term in Section 14(a).

“Invoicing Party” shall have the meaning given to that term in Section 14(a).

“JOC” shall mean the Joint Operating Committee established by Section 5.3(c) of the LLC Agreement.

“Law” shall mean any US. federal, state or local or foreign statute, law, rule, regulation, ordinance, order, code, policy or rule of common law, now or hereafter in effect and, in each case, as amended, any binding judicial or administrative interpretation thereof by a Governmental Authority or otherwise, including any judicial or administrative order, consent, decree or judgment.

“Lien” shall have the meaning given to that term in Section 9(h)(i).

“Line” shall mean the Pan Am Southern rail lines described in Exhibit A to the Amended Petition for Exemption filed by Berkshire & Eastern with the STB on April 26, 2021 under STB Docket No. FD 36472 (Sub-No. 5).

“LLC Agreement” shall mean the Limited Liability Company Agreement of Pan Am Southern between NSR and B&M, dated as of April 9, 2009, as amended.

“Local Services” shall mean those local services not necessary for completion of the line haul transportation, including, without limitation, loading or unloading, weighing of cars, intra-plant switching, storage or warehousing. The weighing of cars for the purpose of assessing transportation charges shall be a Local Service.

“Local Service Charge” shall mean charges assessed for the provision of Local Services.

“Main Line” shall mean that portion of the Line between Mechanicville, NY at Milepost 467.40, and a connection with Springfield Terminal, or its successor, at Milepost 311.97 near Willows, MA.

“Maintenance and Inspection” shall have the meaning given to that term in Section 3(a)(i)(A).

“Maintenance Item” shall have the meaning given to that term in Section 3(a)(i)(A).

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

“MBTA” shall mean the Massachusetts Bay Transportation Authority.

“Monthly Statement” shall have the meaning given to that term in Section 14(a).

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

“NSR Joint Use Agreement” shall mean the Master Norfolk Southern Joint Use Agreement, dated as of April 9, 2009, as amended, pursuant to which, among other things, Pan Am Southern provides certain haulage services to NSR and has committed to certain service standards with regard to the provision of those haulage services.

“Operating Fee Additive Element” shall have the meaning ascribed to that term in Appendix C.

“Pan Am Acquisition” shall have the meaning given to that term in the Recitals.

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

“Pan Am Southern Assets” shall mean the Line and certain other railroad assets owned, leased or held by Pan Am Southern, including by easement or otherwise.

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

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

“Railroad Operator” shall mean the Person selected by Pan Am Southern to operate the Line and the Pan Am Southern Assets.

“Release” shall mean any release, spill, emission, discharge, leaking, pumping, injection, deposit, disposal, or leaching into the environment (including ambient air, surface water, groundwater and surface or subsurface strata) or into or out of any property of any Hazardous Material, including the movement of Hazardous Materials through or in the air, soil, surface water, groundwater or property.

“Required Personnel and Tools” shall have the meaning given to that term in Section 9(d)(ii).

“Rules” shall have the meaning given to that term in Section 17(c)(ii).

“Springfield Terminal” shall have the meaning given to that term in the Recitals and shall mean CSXT from and after the ST/CSXT Merger.

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

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

“Swapped-out Property” shall have the meaning given to that term in Section 9(c).

“Work” shall mean all tasks, duties, obligations, services, requirements and activities of whatever kind or nature, express or implied, direct or incidental, to be performed, and all items tangible and intangible, to be provided by Berkshire & Eastern pursuant to this Agreement.

(c) Construction of Certain Terms and Phrases

Unless the context otherwise requires: (i) words of any gender include each other gender; (ii) words using the singular or plural number also include the plural or singular number, respectively; (iii) the terms “hereof,” “herein,” “hereby” and derivative or similar words refer to this entire Agreement; (iv) the terms “Article” or “Section” refers to the specified Article or Section of this Agreement; (v) the terms “and” and “or” include the term “and/or” when the context is appropriate; and (vi) the terms “include” or “including” also include the words “without limitation” when the context is appropriate. All accounting terms used herein and not expressly defined herein shall have the meanings given to them under generally accepted accounting principles, as in effect in the United States of America. All dollar amounts set forth herein are in United States currency. Whenever this Agreement refers to an Appendix, Exhibit or Schedule attached hereto, the Appendix, Exhibit or Schedule shall be deemed to be incorporated by reference. References herein to any agreement or contract mean such agreement or contract as amended.

SECTION 2. CONTRACTED RAILROAD OPERATOR

(a) Engagement of Berkshire & Eastern as Contracted Railroad Operator.

(i) Pan Am Southern hereby retains and engages Berkshire & Eastern, and Berkshire & Eastern agrees, to become and act as the contracted Railroad Operator for the Line, to manage, administer, supervise, perform and provide all railroad services over the Line (the “Freight Railroad Service”) on behalf of Pan Am Southern, including but not limited to Local Services, maintaining, dispatching and providing transportation rail services over the Line, and to provide all of the management, administration, supervision and performance of all general and administrative services necessary or appropriate to the conduct of the business of Pan Am Southern (“Administrative Services”), including, but not limited to accounting, treasury services, tax services with the returns prepared by a third party tax accountant, legal services, claims handling, information technology services, Ancillary Agreement management, human resources and labor relations services, and the billing and collection of all Local Service Charges and revenues for railroad transportation, marketing and the quotation of rates, on behalf of Pan Am Southern. The Administrative Services also include the performance of all functions assigned to the Railroad

Operator under the LLC Agreement, including without limitation (i) the preparation of the Budget and the Business Plan (each as defined in the LLC Agreement) as provided in Section 5.7(a) of the LLC Agreement and (ii) the performance of accounting functions and preparation and delivery of financial reports as provided in Section 7 of the LLC Agreement.

(ii) It is the intention of the Parties that Section 2(a)(i) be read expansively in order to effectuate the intention of this Agreement as set forth in the Recitals. Notwithstanding the generality of the foregoing, the Freight Railroad Service shall include, among other things, the specific items set forth in Appendix A – Specific Freight Railroad Service Obligations.

(iii) Berkshire & Eastern shall be authorized to negotiate and pay, on behalf of Pan Am Southern, certain costs, invoices and claims (such as payment for freight claims, taxes, or leases or other expenses that Pan Am Southern is obligated to pay). Notwithstanding the foregoing but without intending to modify the foregoing, pursuant to the NSR Joint Use Agreement, Pan Am Southern is not to settle without NSR input certain claims for which NSR provides an indemnification pursuant to that agreement. The provisions of Section 4(a)(iii) of this Agreement dictate the responsibilities that Berkshire & Eastern has with regard to freight claim settlement vis a vis Pan Am Southern. If, as is the case under the NSR Joint Use Agreement, Pan Am Southern has an obligation to consult with NSR with regard to certain claims, the provisions of this Agreement are not meant to modify that consultation requirement, and Berkshire & Eastern, as Pan Am Southern's contractor, is required to comply with that consultation requirement.

(iv) Except pursuant to an Ancillary Agreement in effect on the Effective Date or as otherwise ordered by a Governmental Authority, Berkshire & Eastern shall not, by reason of this Agreement, or its management of the Ancillary Agreements, have any right to permit any Person to operate over the Line without the prior written consent of CSXT and NSR.

(b) General Manager.

(i) Berkshire & Eastern shall appoint an individual ("General Manager") who shall manage and supervise the operation, maintenance and use of the Pan Am Southern Assets in accordance with this Agreement and directives and policies of Pan Am Southern. Berkshire & Eastern shall promptly appoint a new General Manager to fill any vacancy caused by the retirement, removal or otherwise long-term unavailability of the then-current General Manager.

(ii) Subject to the terms of any applicable labor agreement, Pan Am Southern may require that Berkshire & Eastern remove, and Berkshire & Eastern shall promptly remove, the current General Manager at any time for serious misconduct, which shall mean conduct that would make it unreasonable to retain the General Manager as manager of Pan Am Southern's business, including but not limited to conduct such as (A) violation of applicable alcohol or drug use policies, (B) fraud, (C) embezzlement or other act of dishonesty against Pan Am Southern, Springfield Terminal, CSXT or NSR or any of their customers or suppliers, (D) activities willfully undertaken by the General Manager which reflect adversely upon the reputation of Pan Am Southern, CSXT or NSR, (E) refusal to perform or substantial neglect of the responsibilities assigned to the General Manager, (F) any violation of law or rule or regulation of any Governmental Authority which results in serious adverse consequences to Pan Am Southern,

Springfield Terminal, CSXT or NSR, or (G) any material violation of any directive or policy of Pan Am Southern.

SECTION 3. MAINTENANCE OF THE RAILROAD PREMISES

(a) Without intending to limit the provisions of Section 2(a)(i), the Parties intend that the Freight Railroad Services that Berkshire & Eastern shall provide and perform include the following:

(i) Maintenance and Inspection.

(A) Berkshire & Eastern shall provide inspection and maintenance and repair (the “Maintenance and Inspection,” any specified item of which may be referred to as a “Maintenance Item”) of the Line’s right-of-way, track, structures, communications and signals fixtures and appurtenances.

(B) Berkshire & Eastern and Pan Am Southern shall quarterly meet to review the Maintenance and Inspection program and Additional Repair Items, and Berkshire & Eastern and Pan Am Southern shall mutually determine any adjustments thereto.

(ii) Additional Maintenance and Repair.

(A) Berkshire & Eastern shall provide, or cause to be provided, any repair or upgrade item that is not a Maintenance Item (an “Additional Repair Item”) that is required in order to keep the Pan Am Southern Assets (including the Line) in good operating condition.

(B) Such Additional Repair Items include, but are not limited to, any capital maintenance, or other maintenance, repair, upgrade or other additional maintenance items caused by: (I) an unforeseen or unanticipated condition; (II) a casualty loss or damage, including but not limited to a derailment involving any carrier operating on the Line or third-party events such as an automobile accident damaging any portion of a grade crossing, the associated gates, signalization or warning devices; (III) a force majeure event as described in Section 18; (IV) a Governmental Action (including a change in regulatory compliance requirements), mandate, order, judgment or award by a Governmental Authority with jurisdiction over the Line or rail transport thereover, including with respect to positive train control or similar systems; (V) Cleanup required by Governmental Action or by the performance of the Freight Rail Services and Maintenance and Inspection or the Additional Repair Items pursuant to this Agreement; or (VI) other like condition or occurrence, but in any event the Additional Repair Items shall not include those items that are Capital Projects (as defined in the LLC Agreement).

(iii) Capital Projects.

For Capital Projects, CSXT and NSR have reserved for themselves the right to perform such work as agreed between them, either directly or through contractors as permitted under the collective bargaining agreements of CSXT and NSR, or a combination of both; provided that any such Capital Project to be performed by CSXT or NSR shall be completed timely in

accordance with the plan approved by the Management Committee. If CSXT and NSR decline to perform such work, then Berkshire & Eastern shall, or shall cause a contractor approved by Pan Am Southern to, perform such work, subject to the terms of Section 16(b).

(iv) Grade Crossing Facility Maintenance and Repair.

Berkshire & Eastern shall fulfill, or cause to be fulfilled, any grade crossing facility maintenance, repair and inspection obligation (“Grade Crossing Facility Maintenance and Repair”) of Pan Am Southern arising from the creation or maintenance of any public highway-railroad grade crossing or private grade crossing, including any present or future obligations that may arise as a result of the receipt of funding or other support from a Governmental Authority for the grade crossing warning devices or other highway-railroad grade crossing facility pursuant to any agreement governing such facilities.

(b) Minimum Standards.

Berkshire & Eastern shall keep and maintain the Pan Am Southern Assets, including any buildings or other structures in current use or leased or occupied by Berkshire & Eastern on the Effective Date, in good operating condition and repair in a manner consistent with sound, accepted engineering principles and maintain the Main Line of the Line at least to the Federal Railroad Administration (“FRA”) track safety standard (or any successor standard thereto) in effect as of the Effective Date, capable of handling cars of 286,000 lbs.; provided that if any portion of the Main Line of the Line is upgraded to an FRA track safety standard greater than that which was in effect as of the Effective Date, Berkshire & Eastern shall be required to maintain such portion of the Main Line to such greater standard. Berkshire & Eastern shall provide Freight Railroad Services reasonably capable of satisfying the commitments to NSR in the NSR Joint Use Agreement and the commitments to CSXT or Springfield Terminal in the CSXT Joint Use Agreement; provided that the Management Committee shall have approved sufficient capital resources to fund any projects to upgrade or maintain the Line that are necessary to enable Berkshire & Eastern to satisfy such service standards.

SECTION 4. SPECIFIC ADMINISTRATIVE SERVICES

Without intending to limit the provisions of Section 2(a)(i), the Parties intend that the Administrative Services that Berkshire & Eastern shall provide and perform include the following:

(a) Claims Handling Services.

(i) Berkshire & Eastern shall provide a claims handling service, including but not limited to claims intake and classification, fraud screening, investigation, review and settlement, and litigation support in respect of all claims to which PAS is a party; provided, however, that the Parties acknowledge that claims that arose prior to the Effective Date have been handled by Springfield Terminal and shall be taken over by Berkshire & Eastern, including Existing Environmental Matters; provided, further, that any act or omission of Springfield Terminal as the claims handler prior to the Effective Date shall not be attributed to Berkshire & Eastern. Pan Am Southern shall be responsible for amounts owed to third parties with respect to

such third party claims for which Pan Am Southern is responsible and Berkshire & Eastern shall cause the payment of such amounts from Pan Am Southern's accounts as and when due.

(ii) The Parties agree to cooperate in the defense of claims described above to the extent reasonable and necessary and to execute all documents reasonably required to enable the other Party to recover amounts paid by or on behalf of that Party on account of such claims to persons other than the Parties. For any claims outstanding as of the Effective Date, the Pan Am Southern balance sheet as of the Effective Date shall reflect accruals for any expected liabilities associated with such claims.

(iii) Berkshire & Eastern shall have the authority to settle, on behalf of Pan Am Southern, claims handled under the claims handling service described above; provided that such settlement does not exceed {{ [REDACTED] }} per incident. In all other cases, Berkshire & Eastern shall consult with, and receive approval of, Pan Am Southern, prior to settling any claim pursuant to this Section 4(a).

(b) Ancillary Agreement Management.

(i) Berkshire & Eastern shall handle the administration of, and operate, the Pan Am Southern Assets in compliance with all existing Ancillary Agreements and shall negotiate and manage new Ancillary Agreements. Pan Am Southern, and not Berkshire & Eastern, shall be a party to new Ancillary Agreements. Berkshire & Eastern shall report periodically (but no less often than quarterly) to Pan Am Southern the nature and status of newly proposed and executed Ancillary Agreements. Berkshire & Eastern's management of the Ancillary Agreements shall include the collection and payment of such rents and fees as required under such Ancillary Agreements, the providing and receipt of notices and other communications as required or advisable under such Ancillary Agreements, the performance and receipt of the performance of such other acts including renewals or terminations as may be required or advisable under such Ancillary Agreements, all in accordance with the terms and conditions thereof.

(ii) Any new Ancillary Agreements, or amendments to existing Ancillary Agreements, that are right of entry agreements, sidetrack or industrial track agreements, track leases, combined land and track leases, and private grade crossing licenses (the "Access and Track Agreements") shall be executed by Berkshire & Eastern for and on behalf of Pan Am Southern without approval of the JOC so long as such agreements are documented on standardized forms prepared by Berkshire & Eastern that have been approved by the JOC.

(iii) Any new Ancillary Agreements, or amendments to existing Ancillary Agreements, that are not Access and Track Agreements shall be executed by Berkshire & Eastern for and on behalf of Pan Am Southern without approval of the JOC so long as (A) such agreements are documented on standardized forms prepared by Berkshire & Eastern that have been approved by the JOC, (B) the annual value of such agreement (or any series of related agreements) is less than {{ [REDACTED] }} and (C) such agreements contain a provision allowing Pan Am Southern to terminate such agreement without penalty in less than {{ [REDACTED] }}.

(iv) Any new Ancillary Agreements, or amendments to existing Ancillary Agreements, that are not Access and Track Agreements shall be executed by Berkshire & Eastern for and on behalf of Pan Am Southern, subject to the approval of the JOC, if (A) the annual value of such agreement (or any series of related agreements) is more than {{ [REDACTED] }} or (B) such agreement does not contain a provision allowing Pan Am Southern to terminate such agreement without penalty in less than {{ [REDACTED] }}.

(v) All existing Ancillary Agreements are set forth on Appendix B – Ancillary Agreements attached hereto and copies of which shall have been provided to Berkshire & Eastern no less than sixty (60) days prior to the Effective Date. Within forty-five (45) days following the Effective Date, Pan Am Southern shall conduct a search of its business records in locations where Ancillary Agreements may reasonably be found to confirm there have been no inadvertent omissions and shall provide Berkshire & Eastern with copies of Ancillary Agreements that have not otherwise been provided to Berkshire & Eastern and identified on Appendix B – Ancillary Agreements. Notwithstanding anything to the contrary contained in this Agreement, Berkshire & Eastern shall have no liability, and shall not be deemed to be in breach of its obligations, under this Agreement in connection with any Claim that Pan Am Southern is in breach of an Ancillary Agreement in effect prior to the Effective Date if a copy of the relevant Ancillary Agreement shall not have been provided to Berkshire & Eastern prior to the occurrence of the breach in question.

(vi) For the avoidance of doubt, the foregoing subsections (ii) – (iv) concerning the execution of new Ancillary Agreements is subject to review from time to time by the JOC and may be modified by the JOC upon reasonable advance written notice to Berkshire & Eastern.

(c) Accounting.

Berkshire & Eastern shall keep proper books of record and account in which full and correct entries shall be made of all Pan Am Southern transactions, costs, expenses and revenues (“Financial Activities”), including but not limited to those associated with the management of the Ancillary Agreements, the provision of Local Services, the assessment and collection of demurrage, and the assessment and collection of transportation revenues. Such books of record and account shall be in accordance with then-current generally accepted accounting principles, but in any case, shall be maintained for a period not less than seven (7) years from its creation. All Financial Activities shall be readily identifiable by distinct accounting codes and be reported in a manner that allows Pan Am Southern to comply with its election under Rev. Proc. 2002-65. The books of record and account shall be owned by Pan Am Southern.

(d) MBTA and Other Passenger Service Interface.

Berkshire & Eastern, through the General Manager, shall constitute the primary day-to-day communications and oversight interface between MBTA and other passenger service operators, on the one hand, and Pan Am Southern, on the other hand. The General Manager shall report from time to time, but no less than on a monthly basis, on matters of significant interest to Pan Am Southern regarding the relationship interface under this Section 4(d), including but not limited to matters identified by any member of the Management Committee.

(e) Trackage/Operating Rights Review.

Berkshire & Eastern, through the General Manager, shall constitute the primary day-to-day communications and oversight interface between Pan Am Southern, on the one hand, and the trackage/operating rights landlord, on the other hand. The General Manager shall report from time to time, but no less than on a monthly basis, on matters of significant interest to Pan Am Southern regarding the relationship interface under this Section 4(e), including but not limited to matters identified by any member of the Management Committee.

SECTION 5. ACCESS TO INFORMATION

Subject to the restrictions in this Section 5 and the confidentiality provisions of Section 19(e), CSXT and NSR shall cause Pan Am Southern to provide Berkshire & Eastern with reasonable access to all the officers and employees of CSXT, NSR and Springfield Terminal having knowledge of the operations of Pan Am Southern, and the books and records relating to Pan Am Southern, necessary to enable Berkshire & Eastern to perform its obligations under this Agreement. CSXT and NSR shall cause Pan Am Southern to furnish Berkshire & Eastern with all such information and data, including copies of contracts and other books and records, concerning Pan Am Southern and the operations of Pan Am Southern as Berkshire & Eastern reasonably may request in connection with its obligations under this Agreement. The Parties acknowledge and agree that Berkshire & Eastern may share any such information with those officers and employees of its affiliates that need access to such information to enable Berkshire & Eastern to perform its obligations under this Agreement; provided, however, that Berkshire & Eastern will not share with any Genesee & Wyoming Inc. controlled rail carriers any information regarding rate divisions from connecting railroads that Berkshire & Eastern becomes aware of as a result of operating Pan Am Southern. For the avoidance of doubt, no violation of this provision will be deemed to have occurred in the event any Genesee & Wyoming Inc. controlled rail carrier becomes aware of such rate divisions through the interline settlement system due to such carrier being in the route, which the Parties acknowledge and agree would have been the case even if Berkshire & Eastern was not the contract operator of the Line and the other Pan Am Southern Assets.

SECTION 6. CONTRACTOR INDEMNIFICATION

Berkshire & Eastern shall indemnify, defend and hold harmless Pan Am Southern, its members solely in their capacity as members, and each of the affiliated and subsidiary companies of the foregoing, and each of their respective directors, officers, employees and agents (collectively, the "Indemnified Parties") from and against any and all Claims arising from or in connection with:

(a) (i) any alleged loss of life of or personal injury to the officers, employees or agents of Berkshire & Eastern or the damage to or loss of the property of Berkshire & Eastern, its officers, employees or agents, arising from, incident to or occurring in connection with the performance by Berkshire & Eastern of its obligations under this Agreement or the presence of the officers, employees or agents of Berkshire & Eastern on or around the Line and the other Pan Am Southern Assets, except to the extent resulting from the gross negligence or willful misconduct of CSXT, Springfield Terminal or NSR or any of their respective officers, employees or agents, as

determined in a final, non-appealable decision by a court of competent jurisdiction or arbitration; and

(ii) except with respect to persons and property covered by subsection (a)(i) above, any alleged loss of life of or personal injury to any person or the loss of or damage to any property, including the Line, the other Pan Am Southern Assets and lading, arising from, incident to or in connection with the gross negligence or willful misconduct of Berkshire & Eastern, as determined in a final, non-appealable decision by a court of competent jurisdiction or arbitration, except to the extent resulting from the gross negligence or willful misconduct of CSXT, Springfield Terminal or NSR or any of their respective officers, employees or agents, as determined in a final, non-appealable decision by a court of competent jurisdiction or arbitration.

(b) any violation or alleged violation of any Law, including any Environmental Law, that occurs after the Effective Date of or relating to the Line or the Pan Am Southern Assets, or that results in whole or in part, directly or indirectly, from the activities of Berkshire & Eastern or its officers, agents, employees or subcontractors related in any way to this Agreement or from any other act or omission of Berkshire & Eastern, its officers, agents, employees or subcontractors contributing to such violation, regardless of whether or not such activities, acts or omissions are intentional or negligent, and regardless of any specification by Pan Am Southern without actual knowledge that it might violate any such law, statute, code, ordinance or regulation. For the avoidance of doubt, the indemnity under this Section 6(b) shall apply to Claims that occurred prior to the Effective Date only to the extent any condition is exacerbated by an act or omission of Berkshire & Eastern as described in this Section 6(b).

(c) For the avoidance of doubt, Berkshire & Eastern's obligation to indemnify, defend and hold harmless the Indemnified Parties under Sections 6(a)(i) and 6(a)(ii) shall continue unless and until a final determination by a court of competent jurisdiction or arbitration has determined that Berkshire & Eastern is not obligated under this Agreement to indemnify any Indemnified Party; provided, further, that (i) if a final determination is made under Section 6(a)(i) that Berkshire & Eastern is not obligated under this Agreement to indemnify any Indemnified Party, any costs incurred by Berkshire & Eastern under Section 6(a)(i) shall be deemed an expenditure that may be included in the Direct Costs for reimbursement or payment by Pan Am Southern pursuant to Section 10 and (ii) any costs incurred by Berkshire & Eastern under Section 6(a)(ii) shall be deemed an expenditure that may be included in the Direct Costs for reimbursement or payment by Pan Am Southern pursuant to Section 10 until such time that such a final determination is made under Section 6(a)(ii) that Berkshire & Eastern is obligated under this Agreement to indemnify any Indemnified Party, in which case Berkshire & Eastern shall reimburse Pan Am Southern for such costs previously treated as Direct Costs.

(d) To the extent feasible, Berkshire & Eastern shall defend the interests of Pan Am Southern in any Claim arising out of the matters referenced in Section 6(b), and any costs incurred by Berkshire & Eastern shall be deemed an expenditure that may be included in the Direct Costs for reimbursement or payment by Pan Am Southern pursuant to Section 10.

(e) Notwithstanding anything herein to the contrary, the Parties agree that to the extent that there is an Environmental Claim, the Parties will jointly pursue indemnification from any

applicable third parties and to the extent that the effort to obtain any such third party indemnification is not successful, Berkshire & Eastern shall indemnify Pan Am Southern, CSXT and NSR to the extent provided under Section 6(b) as if there is no third party indemnification, except to the extent arising from the gross negligence or willful misconduct of CSXT, Springfield Terminal or NSR or any of their respective officers, employees or agents, as determined in a final, non-appealable decision by a court of competent jurisdiction or arbitration.

(f) As between Berkshire & Eastern, in its capacity as the contract operator of the Line and the other Pan Am Southern Assets, and any of CSXT, Springfield Terminal or NSR, to the extent there is an Ancillary Agreement that governs the allocation of liability between the relevant Parties with respect to a particular incident occurring in connection with the interchange of traffic, the exercise of trackage rights or other operational arrangements, the allocation of liability in such applicable agreement shall control. The indemnification of the Indemnified Parties by Berkshire & Eastern in connection with Pan Am Southern's allocated share of liability under such applicable agreement shall then be governed by this Section 6.

SECTION 7. RELATIONSHIP TO TRANSPORTED TRAFFIC; RATE SETTING AUTHORITY

(a) No freight rail traffic transported over all or any portion of the Pan Am Southern Assets pursuant to this Agreement shall move in the revenue waybill of Berkshire & Eastern.

(b) Berkshire & Eastern shall not, pursuant to this Agreement, in its own name or on its own account or behalf:

- (i) participate or appear in any rates, routes or divisions;
- (ii) establish rates, charges, service terms, routes or divisions, or enter into any transportation contracts; or
- (iii) collect freight revenues or demurrage or detention charges relating to any freight traffic whatsoever that is transported over all or any portion of the Pan Am Southern Assets.

(c) Berkshire & Eastern shall not, pursuant to this Agreement, have any right to require shippers or carriers to provide to it the nature, level or existence of any rates or charges levied against, charged to or otherwise applicable to shippers for traffic that moves over all or any portion of the Pan Am Southern Assets pursuant to the NSR Joint Use Agreement or the CSXT Joint Use Agreement.

(d) Berkshire & Eastern, on behalf of Pan Am Southern, shall establish and charge market-based rates that are sufficient to cover, but not be limited to, the fully allocated costs of Pan Am Southern operations in the aggregate, including the total compensation paid to Berkshire & Eastern as the Railroad Operator and services that are outsourced and not performed by Pan Am Southern. The intent of this provision is to ensure that revenues from Pan Am Southern operations are at least sufficient to cover Pan Am Southern operating costs and capital without a subsidy from its members.

(e) Except to the extent established in the NSR Joint Use Agreement, the rates established and charged by Berkshire & Eastern, on behalf of Pan Am Southern, while not necessarily equal, shall not discriminate as to any rail carrier connecting to Pan Am Southern, except as described below. Berkshire & Eastern shall not use its rate-setting obligation to create a competitive advantage or disadvantage to any rail carrier or between or among any rail carriers connecting to Pan Am Southern. Berkshire & Eastern shall establish and charge rates on behalf of Pan Am Southern that advance the economic interest of Pan Am Southern as an independent rail carrier. Berkshire & Eastern shall not establish or charge rates that are intended to favor the interests of any individual Pan Am Southern member or the separate interests of Berkshire & Eastern's affiliated railroads. In setting non-discriminatory rates, Berkshire & Eastern can consider the relative volume of traffic interchanged with a particular rail carrier, the commodity involved, the mileage traveled, equipment provided and similar operating characteristics, so long as any such rates are reasonably based on cost differences associated with such differences in traffic.

(f) Berkshire & Eastern will ensure that appropriate information barriers are established between the individual responsible for establishing rates for Pan Am Southern and the individuals responsible for establishing rates for Berkshire & Eastern's affiliated railroads, with such individuals being prohibited from sharing rates on specific traffic. The Parties acknowledge and agree that when Berkshire & Eastern handles haulage traffic for other railroads over the Line, Berkshire & Eastern will not be provided information regarding the underlying freight rates (i.e., non-haulage rates) for such traffic.

SECTION 8. ENVIRONMENTAL MATTERS

In performance of its obligations hereunder, Berkshire & Eastern shall comply with all Laws, including Environmental Laws, and all lawful orders and requests of any Governmental Authority including, without limitation, the Resource Conservation and Recovery Act (42 USC § 6901 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act (42 USC § 9601 et seq.) and the Toxic Substances Control Act (15 USC § 2601 et seq.) and all other laws pertaining to the generation, handling, transportation, treatment, release, storage and disposal of municipal, solid, and hazardous materials, substances and wastes, pollutants and contaminants. Berkshire & Eastern shall establish and maintain and, upon request of Pan Am Southern, CSXT or NSR, furnish to Pan Am Southern, CSXT or NSR, as applicable, appropriate records, receipts and documents, papers and any other data or information covering or pertaining to the generation, handling, transportation, treatment, release, storage and disposal of any municipal, solid or hazardous materials, substances and wastes, pollutants and contaminants.

SECTION 9. MISCELLANEOUS PROVISIONS APPLICABLE TO ALL WORK PERFORMED

(a) Right(s) of Entry for Freight Railroad Operations.

Pan Am Southern hereby provides Berkshire & Eastern with access to and use of the Pan Am Southern Assets, under the terms and conditions of this Agreement, for the purposes of providing the Freight Railroad Services and the Administrative Services. Pan Am Southern, its members, or their respective designated representatives, shall have the right to enter upon the Pan

Pan Am Southern Assets upon reasonable notice at any time for the purpose of inspecting and examining the property, the facilities, and the performance of the obligations of Berkshire & Eastern hereunder.

(b) Right(s) of Entry for Administrative Services.

Berkshire & Eastern grants to each of Pan Am Southern, CSXT and NSR access, during normal business hours, to inspect and make copies of any and all books of record and accounts relating to this Agreement, all of which shall be maintained by Berkshire & Eastern at its headquarters in Rochester, NY, or such other location as Berkshire & Eastern shall specify to Pan Am Southern, CSXT and NSR from time to time.

(c) Ownership of Materials.

Any rails, ties and other items of track, signaling equipment or other materials that Berkshire & Eastern installs into the Line in furtherance thereof shall become the property of Pan Am Southern. Any rails, ties and other items of track, signaling equipment or other materials that Berkshire & Eastern removes from the Line in furtherance thereof ("Swapped-out Property") shall remain the property of Pan Am Southern. Notwithstanding the foregoing, Berkshire & Eastern may retain such Swapped-out Property in partial payment for the services provided hereunder, valued at market value; provided that Berkshire & Eastern shall provide a full accounting thereof in accordance with Section 9(g).

(d) Provision of Equipment, Labor and Materials.

(i) Berkshire & Eastern shall furnish, and/or shall cause to be furnished, all labor, materials, supplies, tools and equipment needed to perform the Work.

(ii) Berkshire & Eastern shall be responsible at its own risk for providing, training, maintaining, fueling, servicing, licensing and replacing all employees, equipment and facilities (including training facilities for its employees, locomotives, rolling stock maintenance equipment, office space, computer facilities and equipment and licenses, engineering design and planning, customer service operations and other such personnel, equipment, licenses and property as may be reasonable or required for Berkshire & Eastern's provision of the Freight Railroad Service and the Administrative Services hereunder ("Required Personnel and Tools"). The cost of providing these items either will be included as part of the Base Fee or as a Direct Cost. In its role as Railroad Operator, Berkshire & Eastern shall control and have use of all of the Pan Am Southern Assets, including its rail yards, buildings and repair and maintenance facilities. Notwithstanding that any of the Required Personnel and Tools may be leased, licensed or otherwise held by Berkshire & Eastern, as between Pan Am Southern and Berkshire & Eastern, these Required Personnel and Tools shall be considered the personnel and property of Berkshire & Eastern.

(iii) All equipment provided by Berkshire & Eastern to perform the Work shall be in good operating condition and shall conform to any and all applicable standards prescribed by the Association of American Railroads ("AAR") and the FRA for such type of equipment.

(iv) Berkshire & Eastern shall cooperate with Pan Am Southern to maintain and meet the metric goals established by the JOC pursuant to Section 5.3(c) of the LLC Agreement, upon agreement with Berkshire & Eastern, within three (3) months after the Effective Date; provided that the Parties acknowledge and agree that Pan Am Southern operations prior to the Effective Date shall serve as a baseline to measure future performance.

(v) Notwithstanding anything to the contrary contained herein, during the term of this Agreement for the purposes of performing the dispatching services required under this Agreement, CSXT (or Springfield Terminal) shall provide Berkshire & Eastern, at no cost to Pan Am Southern or Berkshire & Eastern, with a desk, related office facilities and all required equipment, IT, utilities and access as required at Springfield Terminal's existing dispatching center in North Billerica, MA (the "Dispatch Facilities") for so long as CSXT (or Springfield Terminal) also performs dispatch of other CSXT owned or controlled rail lines at that facility. In the event CSXT (or Springfield Terminal) elects to relocate dispatch of other CSXT owned or controlled rail lines (excluding the Pan Am Southern Assets) from that facility, the cost of providing alternative Dispatch Facilities to Berkshire & Eastern shall be assumed by Pan Am Southern, which alternative Dispatch Facilities could be in the then-existing MBTA dispatching center.

(e) Condition of the Line and the Other Pan Am Southern Assets.

Berkshire & Eastern accepts the Pan Am Southern Assets in a "where is, as is" condition, without recourse to Pan Am Southern, for the purposes of fulfilling its obligations hereunder. Pan Am Southern makes no representation or warranty as to the physical condition of the Line and the other Pan Am Southern Assets, or the condition of the legal title thereto, nor does Pan Am Southern make any representation or warranty as to the suitability or fitness of the Line and the other Pan Am Southern Assets for railroad operating purposes or any other purpose. Notwithstanding the foregoing, Pan Am Southern represents and warrants that it has no actual knowledge of any impediment or deficiency in its rights to the Pan Am Southern Assets that would prevent Berkshire & Eastern from performing its obligations under the Agreement; provided that any additional costs incurred by Berkshire & Eastern arising from any such impediment or deficiency shall be deemed Direct Costs; provided, further, that Berkshire & Eastern shall not be deemed to be in default under this Agreement if it is unable to comply with its obligations under this Agreement as a result of any such impediment or deficiency.

(f) Performance of the Work.

(i) Berkshire & Eastern shall use its best efforts to conduct the Freight Railroad Service and the Administrative Services in a manner that meets or exceeds the highest standards attained by competitive services.

(ii) In performing its obligations under this Agreement, Berkshire & Eastern shall, at all times:

(A) act in accordance with its then-current collective bargaining agreements;

(B) observe and comply with any and all requirements of the constituted public authorities and with all applicable federal, state and local statutes, ordinances, regulations and standards applicable to Berkshire & Eastern or its operation of the Pan Am Southern Assets;

(C) obtain all applicable approvals, authorizations, franchises, licenses and permits of any Governmental Authority as may be required;

(D) use no less than the degree of care, skill, accuracy, quality, completeness and effort as it uses in performing the same or similar services on its own behalf;

(E) effectively guard against all accidents on or damages to the Pan Am Southern Assets and its and others' employees, agents and contractors;

(F) ensure that all of its employees, agents and contractors are familiar with, and comply with, all applicable operating, safety and roadway worker rules; and

(G) cooperate with, and permit inspection by, members of the JOC in order to review compliance with this Agreement.

(iii) Safety and Operating Rules.

Berkshire & Eastern shall use the utmost diligence in the prosecution of the Work to effectively guard against all accidents on or damages to the Pan Am Southern Assets in its performance of the Work. Berkshire & Eastern shall adopt its own operating, safety and roadway worker rules governing its performance of the Work, which rules shall be subject to review and approval of the JOC, such approval not to be unreasonably withheld. The Berkshire & Eastern Designated Engineer shall ensure that all persons engaged in the Work are familiar with all applicable Berkshire & Eastern operating, safety and roadway worker rules. Berkshire & Eastern shall require its employees and/or contractors, if any, to comply with all applicable safety requirements contained in the laws, ordinances, rules and regulations of any Governmental Authority having jurisdiction over the Work.

(g) Accounting.

Berkshire & Eastern shall keep proper books of record and account in which full and correct entries shall be made of all Berkshire & Eastern Financial Activities that arise from the rights and obligations of Berkshire & Eastern pursuant to this Agreement. Such books of record and account shall be in accordance with then-current generally accepted accounting principles. All Financial Activities shall be readily identifiable by distinct accounting codes.

(h) Liens.

(i) Berkshire & Eastern shall not create, permit to be created, or permit to remain undischarged, any contingent or actual lien, encumbrance or charge (each, a "Lien") as to

any of the Pan Am Southern Assets that (A) arise out of its obligations under this Agreement, (B) involve services, materials and/or supplies furnished and/or delivered by Berkshire & Eastern or its permitted subcontractors or (C) arise out of any mortgage, conditional sale, security agreement or chattel mortgage.

(ii) Berkshire & Eastern shall, within ten (10) days after acquiring knowledge thereof, provide notice to Pan Am Southern, CSXT and NSR of any Lien against the Line, any part thereof, or any of the Pan Am Southern Assets. Berkshire & Eastern shall, within ten (10) days after demand from Pan Am Southern, CSXT or NSR, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise.

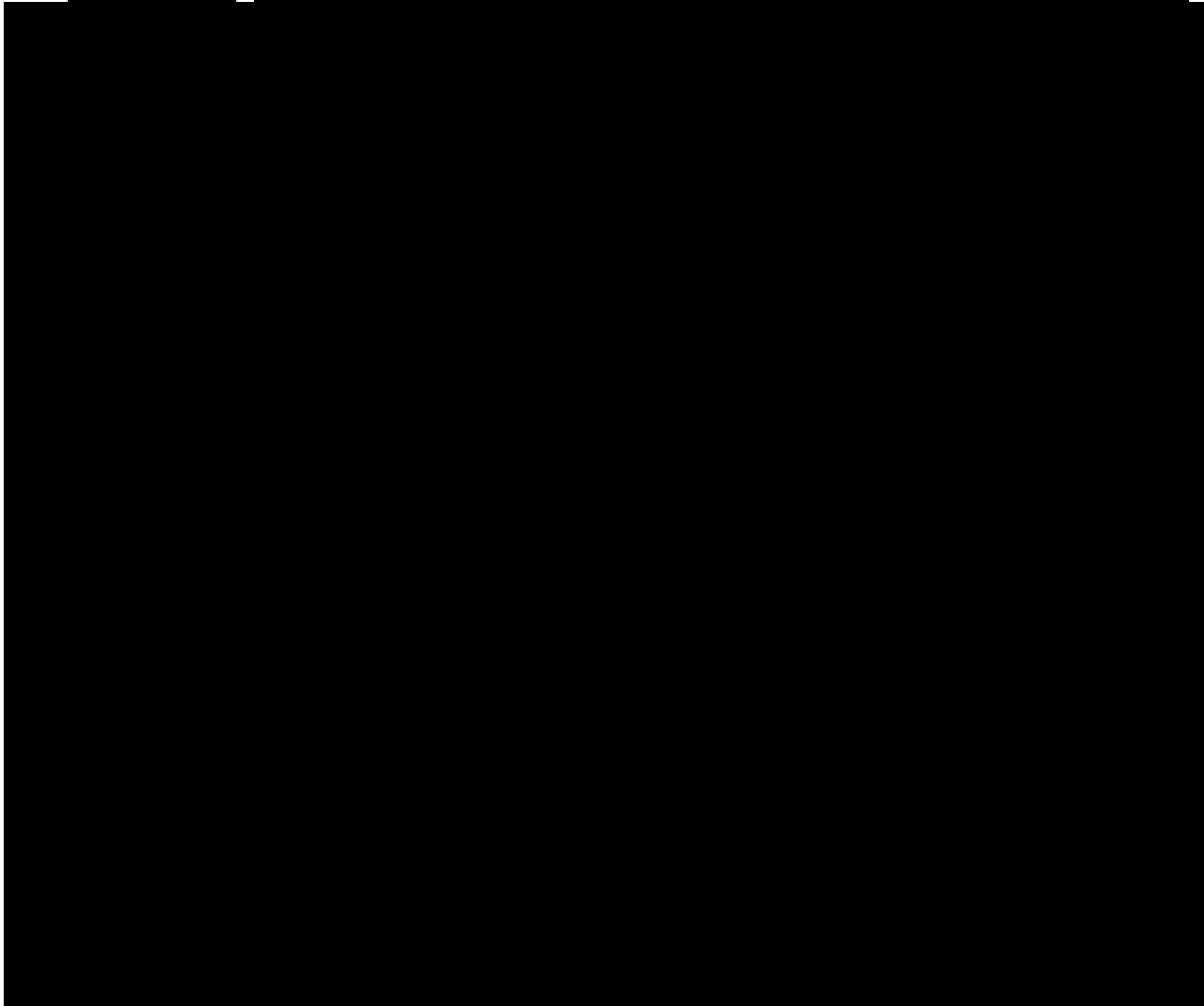
SECTION 10. COMPENSATION

(a) Base Fee.

(i) Pan Am Southern shall pay to Berkshire & Eastern an annual base fee of

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(b) Operating Fee Additive Element.

Pan Am Southern shall pay to Berkshire & Eastern an Operating Fee Additive Element as provided in Appendix E – Operating Fee Additive Element.

(c) Reimbursement of Direct Costs.

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SECTION 11. TERM AND TERMINATION

(a) Effective Date.

This Agreement shall become effective following the latest date of: (i) the date first written above; (ii) following receipt of any required regulatory approvals or exemptions, including from the STB; and (iii) the execution of implementing agreements with labor ("Effective Date"). The Parties shall determine the Effective Date through an exchange of written correspondence.

(b) Term.

This Agreement shall commence on the Effective Date and shall continue for a period of {{ [REDACTED] }}; provided that the term of this Agreement shall renew for successive periods of {{ [REDACTED] }} each, unless either Pan Am Southern or Berkshire & Eastern provides notice of non-renewal in writing no less than {{ [REDACTED] }} before the end of the initial or any renewal term.

(c) Termination.

(i) This Agreement may be terminated by either Pan Am Southern or Berkshire & Eastern following a material breach by the other Party of its obligations under this Agreement that is not cured within thirty (30) days of receipt of notice from the non-breaching Party of such default; provided, however, that, except with respect to any failure to pay money, if such failure cannot reasonably be cured within such thirty (30) day period, this Agreement may not be terminated by reason of such breach for so long as the breaching Party commences a cure within such thirty (30) day period and pursues such cure diligently to completion; provided, further, that in the event a cure is not reasonably achievable, or has not been achieved, within one hundred and twenty (120) days after receipt of notice of the breach, any non-defaulting Party may terminate this Agreement upon no less than thirty (30) days' notice to all Parties.

(ii) This Agreement may be terminated by Pan Am Southern, on no less than one (1) year's prior written notice, if, after the third full calendar year after the Effective Date, Pan Am Southern reasonably determines that the Pan Am Southern Assets are not expected to be operated profitably by Berkshire & Eastern on a long-term and recurring basis.

(iii) Notwithstanding the foregoing, no Party shall be deemed to be in default under this Agreement if that Party, despite its reasonable best efforts, is unable to comply with its obligations under this Agreement as a result of any actions taken by another Party in contravention of Section 19(l).

(d) Post-Termination Payments.

(i) Upon the termination or expiration of this Agreement, except for a termination by Pan Am Southern following an uncured breach of this Agreement by Berkshire & Eastern pursuant to Section 11(c)(i), Berkshire & Eastern shall have the right to sell its dedicated equipment to Pan Am Southern for an amount equal to the lesser of (i) the depreciated book value or (ii) the fair market value of such dedicated equipment.

(ii) Upon the termination (but not expiration) of this Agreement, except for a termination by Pan Am Southern following an uncured breach of this Agreement by Berkshire & Eastern pursuant to Section 11(c)(i), Pan Am Southern shall reimburse Berkshire & Eastern for its demobilization costs, if any, including any related severance or labor protection costs and costs associated with the return and transportation of any dedicated assets, such as equipment, materials and office supplies, if not otherwise sold to Pan Am Southern pursuant to sub-paragraph (i) above. Berkshire & Eastern shall use commercially reasonable efforts to minimize its demobilization costs and shall provide Pan Am Southern with an estimate of such costs following Pan Am Southern's written request.

(e) No Release.

Termination of this Agreement shall not relieve or release any Party 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.

SECTION 12. INDEMNIFICATION

(a) Berkshire & Eastern shall reimburse and indemnify Pan Am Southern, CSXT and NSR for or on account of any breach of this Agreement.

(b) [Reserved].

(c) Berkshire & Eastern agrees to indemnify, defend and hold harmless Pan Am Southern, CSXT and NSR from and against Claims arising from its failure, or alleged failure, to comply with any of its collective bargaining agreements, without regard as to any contributory actions of Pan Am Southern, CSXT and NSR, except to the extent directed by the JOC to take the action that caused such failure to comply.

(d) [Reserved].

(e) As a part of the consideration hereof, Berkshire & Eastern hereby agrees that each and every one of its indemnity commitments in this Agreement in favor of any other Party shall extend to and indemnify the parent or members (including, as to Pan Am Southern, CSXT and NSR), Norfolk Southern Corporation (on whose behalf, with regard to this Agreement, the Parties agree that NSR may act), CSX Corporation (on whose behalf, with regard to this Agreement, the Parties agree that CSXT may act), subsidiaries and affiliates of such other Party, and all of their respective directors, officers, agents and employees.

(f) Each of the Parties 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 lawsuits, claims or grievances 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 of the Parties 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; provided that CSXT and NSR shall reimburse Berkshire & Eastern for any labor protection costs incurred by Berkshire & Eastern in connection with its entry into, or termination or expiration of, this Agreement, excluding labor protection arising from a termination of this Agreement resulting from a breach of this Agreement by Berkshire & Eastern. Similarly, each Party agrees to indemnify and hold harmless the other Party 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.

(g) **NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY AND REGARDLESS OF THE NATURE OF THE CAUSE OF ACTION (WHETHER IN CONTRACT, TORT OR OTHERWISE), IN NO EVENT SHALL ANY PARTY BE LIABLE UNDER THIS AGREEMENT TO ANY OTHER PARTY FOR ANY INCIDENTAL, SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES WHATSOEVER (INCLUDING BUT NOT LIMITED TO LOST PROFITS, BUSINESS INTERRUPTION EXPENSES, LOST USE OF EQUIPMENT, LIABILITY TO A PARTY'S CUSTOMERS FOR LIQUIDATED DAMAGES OR OTHER DAMAGES) ARISING OUT OF OR RELATED TO THE ACTIVITIES CONTEMPLATED BY THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, UNLESS THE DAMAGES CLAIMED CONSTITUTE DAMAGES CLAIMED BY THIRD PARTIES AGAINST THE INDEMNIFIED PARTY FOR WHICH THE INDEMNIFIED PARTY IS ENTITLED TO INDEMNITY FROM THE INDEMNIFYING PARTY.**

SECTION 13. INSURANCE

Berkshire & Eastern shall name each of Pan Am Southern, CSXT and NSR as an additional named insured under any railroad liability, automotive liability, property, or terrorism insurance policies carried by Berkshire & Eastern that would cover Berkshire & Eastern in its operations or activities related to, on or over the Line or the other Pan Am Southern Assets pursuant to this Agreement.

SECTION 14. INVOICES AND PAYMENT OF BILLS

(a) On or before the 15th day of each calendar month during the term of this Agreement, the Party seeking to provide an invoice to another Party (the "Invoicing Party") shall prepare and deliver to the other Party (the "Invoiced Party") a statement setting forth the charges to be invoiced, the basis for the charges, and any other information relating to such charges that the Invoiced Party may reasonably request in connection with accounting for the use of the services and rights provided hereunder (the "Monthly Statement"). The Invoicing Party shall deliver the Monthly Statement to the Invoiced Party's designee in electronic format, with a copy thereof to CSXT and NSR. The Invoiced Party shall make payment to the Invoicing Party within thirty (30) days after the date of such Monthly Statement, with confirmation of such payment provided to CSXT and NSR.

(b) Any dispute regarding the amount of a Monthly Statement shall be reconciled between the Parties, and any adjustment resulting from such reconciliation shall be reflected in a subsequent Monthly Statement. If the Invoiced Party disputes any portion of a Monthly Statement, it shall nevertheless pay such Monthly Statement in full (unless such dispute involves a material amount in relation to the total amount of such Monthly Statement), subject to adjustment upon resolution of the dispute; provided, however, that (i) no exception to any charge in a Monthly Statement shall be honored, recognized or considered if filed after the expiration of two (2) years

from the date of the Monthly Statement, and (ii) no invoice shall be rendered more than two (2) 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 shall be deemed to be waived if not made in writing within two (2) years after the date of the relevant Monthly Statement.

(c) In no event shall any Party be entitled to a right of offset against amounts due to or from any other Party under this Agreement.

(d) The Parties shall arrange for named individuals at Berkshire & Eastern, or one of its affiliates that is a subsidiary of Genesee & Wyoming Inc., to have access to pay Direct Costs and costs it incurs on behalf of Pan Am Southern directly from Pan Am Southern's bank accounts as these costs are incurred and become due; provided that such access shall (i) require the approval of two (2) Berkshire & Eastern employees or the employees of any such affiliate for any check or series of checks adding up to {{ [REDACTED] }} or more, and will require the approval of only one (1) Berkshire & Eastern employee or the employee of any such affiliate for a check or series of checks adding up to less than {{ [REDACTED] }} and (ii) be revocable at the option of Pan Am Southern upon no less than thirty (30) days' advance written notice to Berkshire & Eastern. In the event of revocation, the Parties will negotiate in good faith to establish an efficient means of payment of costs incurred by Pan Am Southern, including payments to Berkshire & Eastern under this Agreement with the understanding that Berkshire & Eastern is not intended to be a source of working capital for PAS. Berkshire & Eastern shall prepare a forecast of cash flows for Pan Am Southern and Berkshire & Eastern's Direct Costs on an annual basis and update such forecasts on a quarterly basis, which forecasts shall be the basis of Berkshire & Eastern's disbursements from the Pan Am Southern bank accounts. Such forecasts shall be subject to JOC review and approval, such approval not to be unreasonably withheld. The Parties shall work together through the JOC to ensure Pan Am Southern has an appropriate and adequate amount of working capital as required to fund its operations on a recurring basis as of the Effective Date. All disbursements for capital work will be made based on approval of, and consistent with, the capital plan.

SECTION 15. AUDIT

Pan Am Southern, CSXT and NSR shall each have the right, at its own expense, to audit the records of any other Party pertaining to the subject matter of this Agreement, and any invoice issued by Berkshire & Eastern pursuant to this Agreement; provided such audit is initiated at any time within two (2) years of the date of the relevant invoice. All such audits shall be conducted at reasonable intervals, locations and times. All such audits shall be prosecuted with reasonable due diligence. Each 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 to this Agreement or as required by applicable law). Any adjustment resulting from an audit conducted pursuant to this Section 15 with respect to which Berkshire & Eastern, Pan Am Southern, CSXT and NSR are in concurrence shall be reflected in a subsequent invoice.

SECTION 16. STATUS OF BERKSHIRE & EASTERN

(a) In the performance of the services described herein, Berkshire & Eastern shall be an independent contractor of Pan Am Southern. Berkshire & Eastern shall have managerial control with respect to the provision of the Freight Railroad Services and Administrative Services provided hereunder. All personnel of Berkshire & Eastern shall be subject to the direction, supervision and control of Berkshire & Eastern and not Pan Am Southern, CSXT or NSR. Nothing herein shall be interpreted as creating an association, partnership, joint venture or other joint undertaking between Berkshire & Eastern and Pan Am Southern.

(b) For the services provided by Berkshire & Eastern, including the provision of equipment, Berkshire & Eastern may engage the services of subcontractors or agents to the extent consistent with Berkshire & Eastern's collective bargaining agreements.

SECTION 17. 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 resolution and if the parties are unable to resolve the dispute, it will be referred, in writing, to the Management Committee 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 senior management pursuant to Section 17(a), shall be submitted for formal dispute resolution, if at all, by either Party for formal dispute resolution pursuant to Section 17(c).

(c) Formal Dispute Resolution.

(i) Submission to Jurisdiction.

Each of the Parties hereby (i) 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 17(b) 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, (ii) 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 (iii) waives any objection based on forum *non conveniens* or any other objection to venue thereof.

(ii) Dispute Resolution.

Each of the Parties hereby stipulates and agrees that any Dispute that is not resolved pursuant to Section 17(a) will be submitted for formal dispute resolution, if at all, to mandatory, final and binding arbitration, in Washington, D.C., by a single arbitrator, under the Commercial Arbitration Rules and the Large Complex Case Procedures of the American Arbitration Association (“AAA”) then in effect (the “Rules”), under the following terms and conditions:

(iii) 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.

(iv) 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.

(v) 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.

(vi) 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.

(v) 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.

(vi) 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.

(vii) Consolidation.

The Parties are committed to the prompt and efficient resolution of Disputes. Accordingly, if more than one Dispute arises under this Agreement, such Disputes may be brought in a single arbitration. If more than one arbitration is brought with respect to Disputes under such agreements, then any Party may request that any arbitration or any new Dispute arising under this Agreement or the Ancillary 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.

(viii) 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.

(ix) Costs and Attorneys' Fees.

The arbitrators rendering judgment under this Section 17(c) will not have the power to award the costs of the arbitration, including attorneys' fees and expenses, to the prevailing Party or parties in the arbitration. Notwithstanding the foregoing, in any action to enforce this agreement to arbitrate or any arbitral award rendered hereunder, the court may award costs and reasonable attorneys' fees against the Party resisting enforcement.

(x) Miscellaneous.

The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws. Pending the written decision of the arbitrator, there shall be no interruption in the transaction of business under this Agreement, and all payments in respect thereto shall be made in the same manner as prior to the arising of the dispute until the matter in dispute shall have been fully determined by arbitration, and thereupon

such payment or restitution shall be made as required by the written decision of the arbitrator. An arbitrator's award may be appealed in accord with Section 23 of the Uniform Arbitration Act.

(d) Each of CSXT and NSR may initiate and prosecute arbitration pursuant to Section 17(b) on behalf of Pan Am Southern. Pan Am Southern and Berkshire & Eastern shall reasonably cooperate with NSR and CSXT in the Pan Am Southern preparation for, and the initiation and prosecution of, such arbitration, at Pan Am Southern's expense; provided that Berkshire & Eastern shall not be required to take any action that would prejudice its rights under such arbitration.

SECTION 18. FORCE MAJEURE

The obligations, other than payment obligations, of the Parties 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, pandemics, epidemics, 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 a Party's ability to fulfill its obligations to the other Parties under this Agreement, that Party shall use commercially reasonable efforts to restore performance of its obligations in a timely manner.

SECTION 19. MISCELLANEOUS

(a) Notices.

All notices, requests, demands and other communications (collectively, "Notices") given pursuant to this Agreement shall be in writing, and shall be delivered by personal service, courier, overnight delivery service, electronic mail (which must be confirmed) or by United States registered or certified mail, postage prepaid, return receipt requested, to the following addresses:

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

With a copy to NSR
and CSXT

If to NSR:	Mike R. McClellan Vice President – Strategic Planning Norfolk Southern Corporation 650 West Peachtree Street NW Box 7 Atlanta, GA 30308
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With a copy to: Norfolk Southern Railway Company
c/o Norfolk Southern Corporation
Attention: Senior Director Interline Services
650 West Peachtree Street NW
Box 158
Atlanta, GA 30308

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

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

If to Berkshire & Eastern: Leonard Wagner
President
Berkshire & Eastern Railroad
200 Meridian Centre, Suite 270
Rochester, NY 14618
lwagner@gwrr.com

With a copy to: General Counsel
Genesee & Wyoming Inc.
20 West Avenue
Darien, CT 06820
LegalNotices@gwrr.com

Any Notice, other than a Notice sent by registered or certified mail, shall be effective when received; a Notice sent by registered or certified mail, postage prepaid return receipt requested, shall be effective on the earlier of when received or the third day following deposit in the United States mails. Any Party may from time to time change its address for further Notices hereunder by giving notice to the other Parties in the manner prescribed in this Section.

(b) Entire Agreement.

Unless otherwise provided by law, this Agreement, including any attached exhibits and schedules, contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter of this Agreement, and supersedes all any and all prior discussions, negotiations, commitments, agreements and understandings, whether oral or otherwise, related to the subject matter of this Agreement are hereby merged herein. Nothing in this Agreement, express or implied, is intended to confer upon any Person other than the Parties any rights or remedies under or by way of this Agreement.

(c) Assignment.

Except as otherwise set forth herein, Berkshire & Eastern may not assign its rights or obligations under this Agreement, and any attempted or purported assignment or any delegation of Berkshire & Eastern's duties or obligations arising under this Agreement to any third party or entity shall be deemed to be null and void and shall constitute a material breach by Berkshire & Eastern of its duties and obligations under this Agreement.

(d) Extension; Waiver and Amendment.

Any agreement on the part of a Party to any extension or waiver shall be valid if set forth in writing in an instrument signed by or on behalf of such Party. The waiver by any Party of a breach of this Agreement shall not operate or be construed as a waiver of any subsequent breach. This Agreement may be amended only by a written agreement executed by all of the Parties.

(e) 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 as may be necessary or appropriate for a Party 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 any Party to any person other than members, officers, employees, and attorneys, without the prior written approval of the other Parties. 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.

(f) 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 WITHOUT REGARD TO ITS PRINCIPLES OF CONFLICTS OF LAWS.

(g) Judicial Interpretation.

Should any provision of this Agreement require judicial interpretation, it is agreed that a court or other tribunal interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against any Person by reason of the rule of construction that a document is to be construed more strictly against the Person who itself or through its agent prepared the same, it being agreed that all Parties have participated in the preparation of this Agreement.

(h) No Third Party Beneficiaries.

Except as expressly provided in this Agreement, this Agreement shall not benefit or create any right or cause of action in or on behalf of any Person other than the Parties; provided, however, that this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the Parties and their respective successors and permitted assigns.

(i) Captions.

The various captions of this Agreement are for reference only and shall not be considered or referred to in resolving questions of interpretation of this Agreement.

(j) Counterparts.

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

(k) Costs and Attorneys' Fees.

Whether or not the transactions contemplated hereby are consummated, each of the Parties shall bear and pay all costs and expenses incurred by it or on its behalf in connection with the transactions contemplated hereunder, including fees and expenses of its own financial or other consultants, investment bankers, accountants and counsel.

(l) Good Faith and Fair Dealing.

The Parties agree to deal with one another on matters related to this Agreement fairly, honestly and in good faith. “Good Faith” means honesty in fact and observance of reasonable commercial standards and customs of fair dealing in the transportation industry generally and of the intermodal, automotive and railroad transportation industry in particular.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date first above written.

BERKSHIRE & EASTERN RAILROAD, a
division of Pittsburg & Shawmut Railroad,
LLC

By: _____
Name:
Title:

PAN AM SOUTHERN LLC

By: _____
Name:
Title:

NORFOLK SOUTHERN RAILWAY
COMPANY

By: _____
Name:
Title:

CSX TRANSPORTATION, INC.

By: _____
Name:
Title:

SPRINGFIELD TERMINAL RAILWAY
COMPANY

By: _____
Name:
Title:

INDEX TO APPENDICES

- Appendix A. Specific Freight Railroad Service Obligations
- Appendix B. Ancillary Agreements
- Appendix C. Ayer Yard Operations
- Appendix D. Base Fee Services
- Appendix E. Operating Fee Additive Element

APPENDIX A - SPECIFIC FREIGHT RAILROAD SERVICE OBLIGATIONS

Without intending to limit the provisions of Section 2(a)(i), the Freight Railroad Service shall include, among other things, the following specific items:

- (a) the provision of haulage services and access for trackage rights as required of Pan Am Southern pursuant to the NSR Joint Use Agreement;
- (b) consultation with the JOC;
- (c) the development and provision of schedules and timetables for regularly scheduled trains operating over the Line, as well as any proposed modifications thereto;
- (d) keep and maintain the Pan Am Southern Assets, including the Line, in good operating condition and repair in a manner consistent with sound, accepted engineering principles and in reasonably good condition for the use herein contemplated, taking all reasonable steps to ensure that any interruptions in service will be kept to a minimum;
- (e) perform full customer accountability services (tracking services) for freight rail shipments moved by Berkshire & Eastern pursuant to this Agreement, including but not limited to car accounting and tracing, and claims handling services;
- (f) provide any and all training to its employees, contractors or agents as is necessary and advisable for Berkshire & Eastern to perform its obligations under this Agreement;
- (g) provide dispatching, scheduling and traffic movement control, switching and yard services, for all trains over the Line, without discrimination at any time in favor of or against any Party except as may be set forth in the NSR Joint Use Agreement or the CSXT Joint Use Agreement, or otherwise as is set forth in accordance with written policies and priorities of freight, type of railcar, size of train and train destinations as may be established from time to time by the General Manager in consultation and with the approval of Pan Am Southern; and
- (h) weigh railcars that require weighing and fuel, sand and service locomotives requiring fueling, sanding and/or servicing;
- (i) provide such labor and materials as may be required to perform, and perform, light repairs on bad ordered railcars as may be necessary to make such railcars legal and safe for movement, or, for any such bad ordered railcars that cannot reasonably be made legal and safe for movement, and arrange for the appropriate removal of the affected railcar in accordance with the car owner's instructions;
- (j) provide special services from time to time as is requested by Pan Am Southern with respect to trains, locomotives and railcars; and

(k) provide rerailing, wrecking service or wrecking train service as may be required, including the repair and restoration of roadbed, track, structures and the environment, as promptly as possible.

APPENDIX B – ANCILLARY AGREEMENTS

APPENDIX C – AYER YARD OPERATIONS²

² To be inserted when finalized.

APPENDIX D - BASE FEE SERVICES

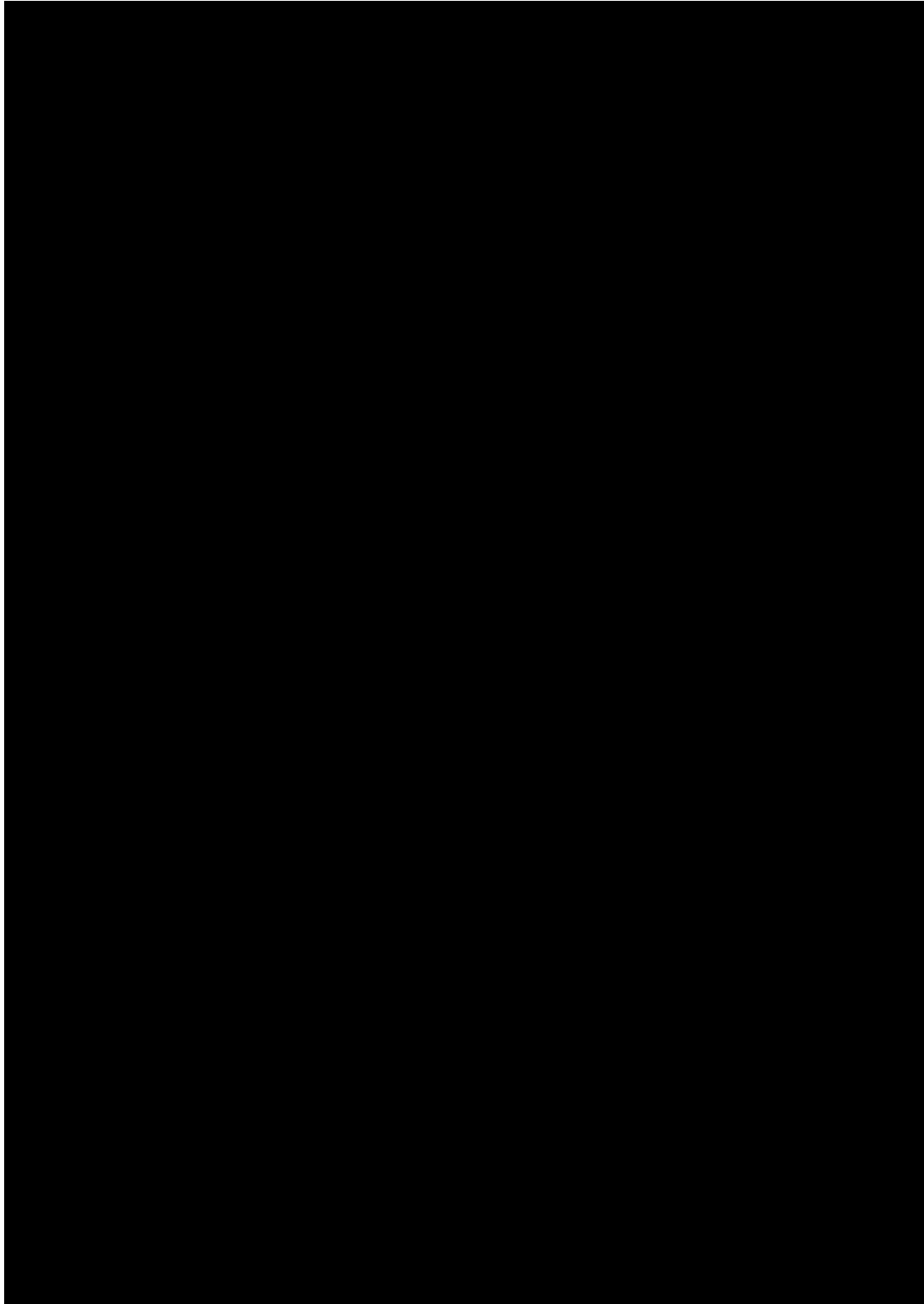
The services provided by Berkshire & Eastern to Pan Am Southern for which Berkshire & Eastern receives the Base Fee as compensation therefor (the “Base Fee Services”) are to include

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2019 PAS Operating Expenses

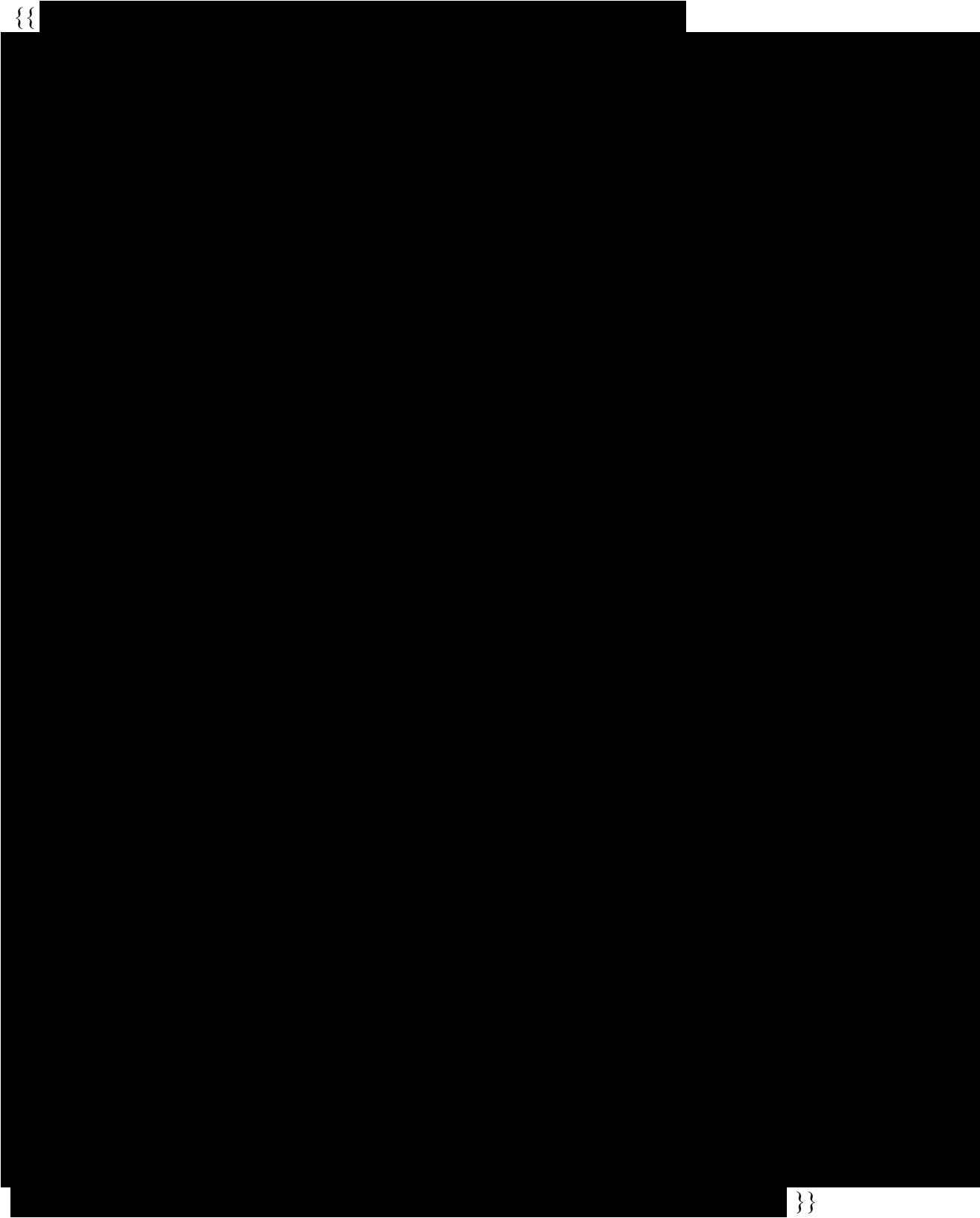
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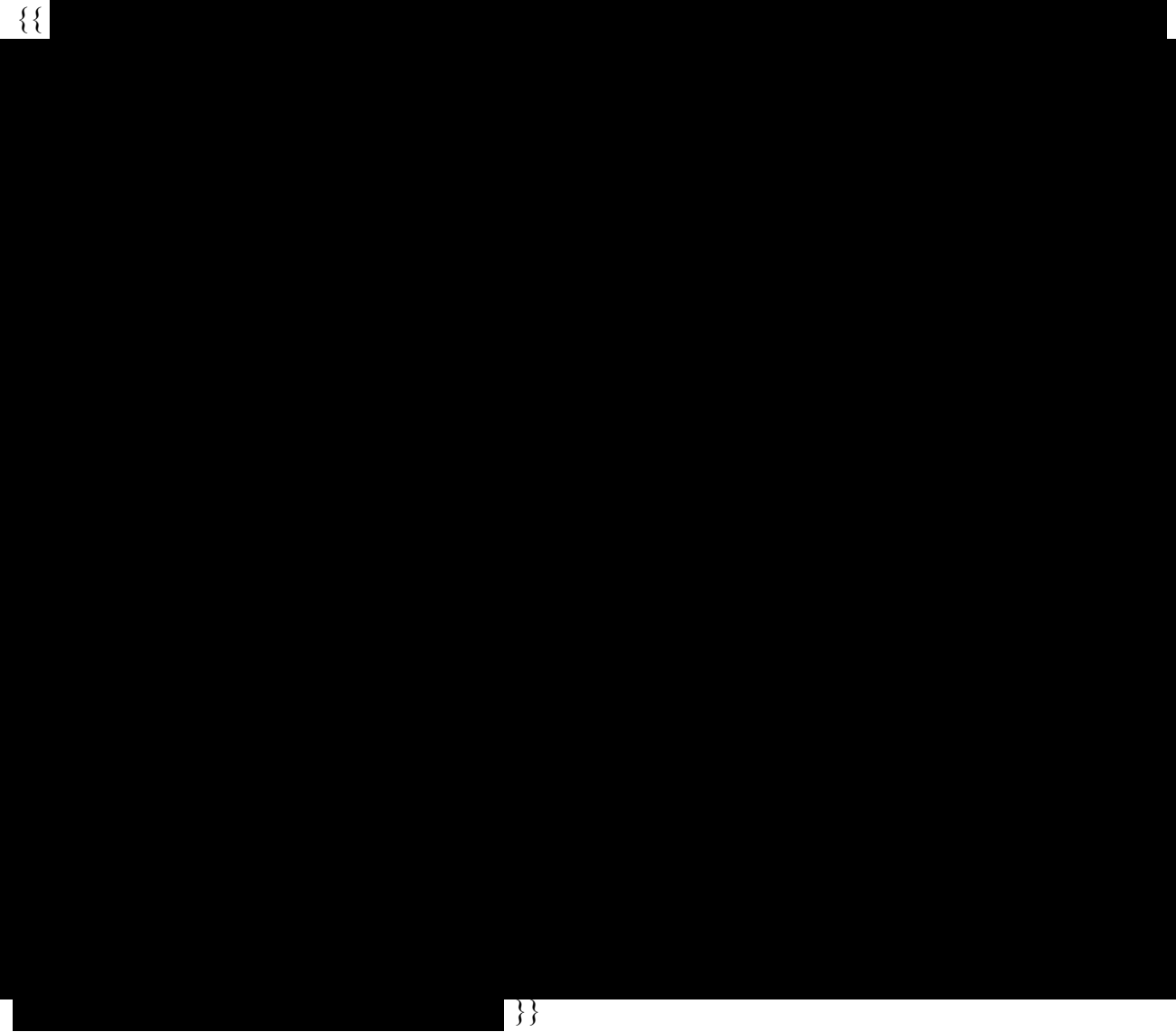
APPENDIX E - OPERATING FEE ADDITIVE ELEMENT

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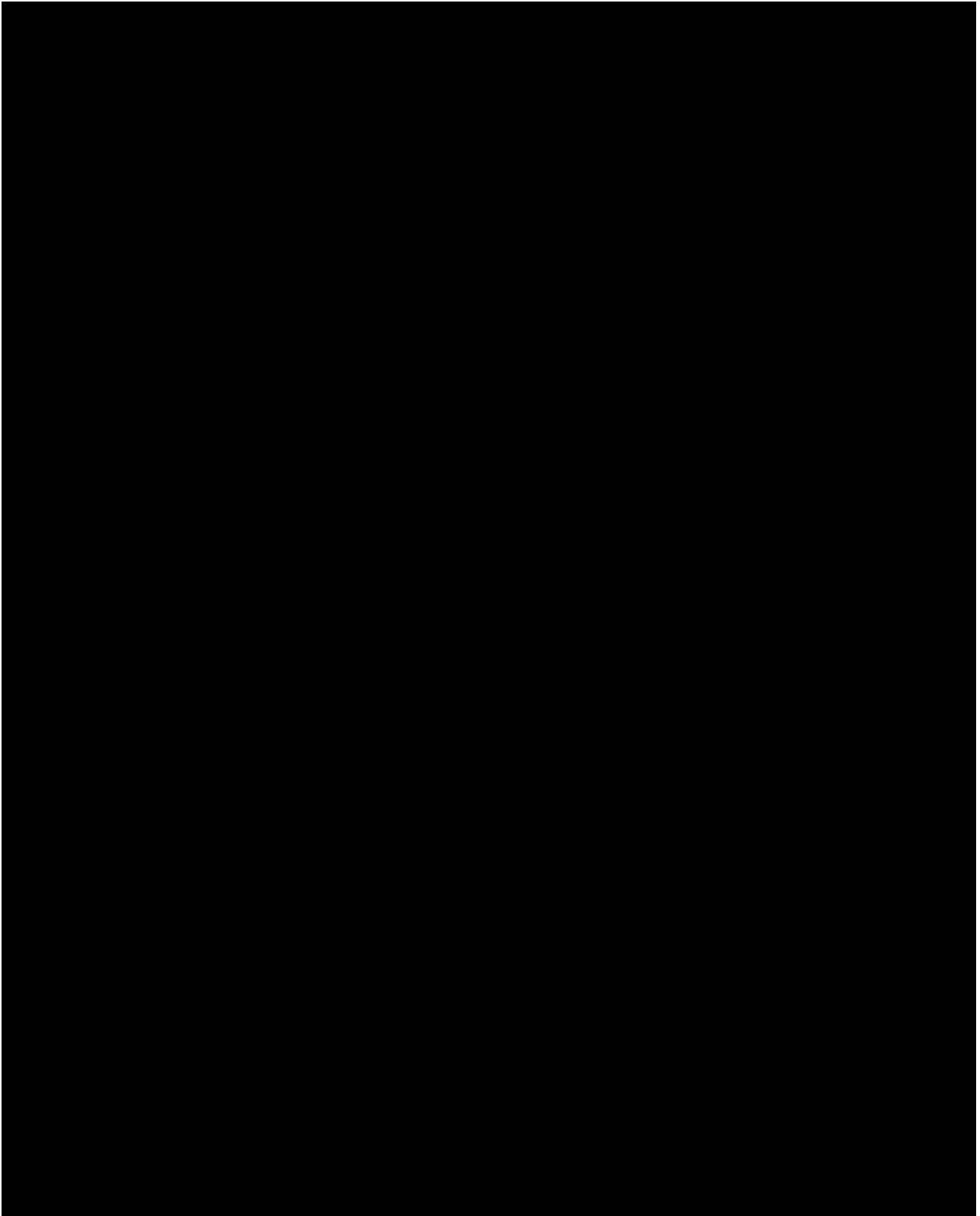
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CERTIFICATE OF SERVICE

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.*

December 29, 2021