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Execution Draft – Redacted Version

TRACKAGE RIGHTS AGREEMENT

THIS TRACKAGE RIGHTS AGREEMENT, made and entered into this _____ day of _____, 2002, by and between The Reading Blue Mountain and Northern Railroad Company ("OWNER"), and Norfolk Southern Railway Company ("USER").

WITNESSETH:

WHEREAS, OWNER owns and operates a line of railroad between Lehighton, Pennsylvania and Dupont, Pennsylvania, via M&H Junction; and

WHEREAS, USER desires and OWNER is agreeable to grant trackage rights over this line of railroad; and

WHEREAS, OWNER previously has provided trackage rights over this line of railroad to Delaware and Hudson Railway Company, Inc., d/b/a Canadian Pacific Railway ("CPR"); but to no other party; and

WHEREAS, USER and CPR have entered into a Northeast U.S. Restructuring Agreement (the "Restructuring Agreement"), dated as of _____, 2002; and

WHEREAS, by this agreement, the parties hereto shall memorialize the terms and conditions pursuant to which OWNER shall grant such trackage rights to USER.

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

SECTION 1. GRANT OF TRACKAGE RIGHTS

(a) Subject to the terms and conditions herein provided, OWNER hereby grants to USER the non-exclusive right to operate its trains, locomotives, cars and equipment with its own crews (hereinafter referred to as "Trackage Rights") over trackage owned and operated by OWNER (hereinafter referred to as "Subject Trackage"), described as:

OWNER's Lehigh Line between MP 119.3 in Lehighton Yard and MP 175.5 in Dupont.

The Subject Trackage shall be considered to include:

- (i) as between MP 119.3 in Lehighton Yard and MP 121.3 in Packerton, only the track designated as "Track 1";
- (ii) as between MP 121.3 in Packerton and MP 130.6 at M&H Junction, only the track designated as "Track 1";
- (iii) as between MP 130.6 at M&H Junction and MP 147.1/CNJ MP 143.8 at Frazer, the single main track;
- (iv) as between MP 147.1/CNJ MP 143.8 at Frazer and MP 152.2 at Crestwood, the single main track;

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- (v) as between MP 152.2 at Crestwood and MP 156.5 at Solomon's Gap, the tracks designated as Track 1 and Track 2;
- (vi) as between MP 156.2 at Solomon's Gap and MP 161.2/LV MP 164.1 at Laurel Run, the single main track; and
- (vii) as between LV MP 164.1 at Laurel Run and MP 175.5 at Dupont, the track designated as Track 1.

All as shown on the drawings attached hereto, made a part hereof, and hereinafter referred to as "Exhibit I."

(b) For determination of compensation, the mileage between M&H Junction and Dupont shall be considered 45.4 miles, the mileage between Lehighton and Dupont shall be considered 56.7 miles, the mileage between Lehighton and Packerton shall be considered 2.0 miles, and the mileage between Lehighton and M&H Junction shall be considered 11.3 miles.

SECTION 2. USE OF SUBJECT TRACKAGE

- (a) USER's use of the Subject Trackage shall be in common with OWNER and any other user of the Subject Trackage, including CPR, and OWNER's right to use the Subject Trackage shall not be diminished by this Trackage Rights Agreement. OWNER shall retain the exclusive right to grant to other persons rights of any nature on the Subject Trackage.
- (b) Except as may be otherwise provided by this Trackage Rights Agreement, USER shall not use any part of the Subject Trackage for the purpose of switching, storage or servicing of cars or equipment, or the making or breaking up of trains, or service to any industry, except that nothing contained herein shall, upon prior approval of OWNER, preclude the emergency use by USER of such auxiliary tracks as may be designated by OWNER for such purposes.
- (c) OWNER shall have exclusive control of the management and operation of the Subject Trackage, excepting that USER shall determine, from time to time and at its option, whether it shall enter/exit the Subject Trackage at M&H Junction or Lehighton. USER shall not have any claim against OWNER for liability account of loss or damage of any kind in the event the use of the Subject Trackage by USER is interrupted or delayed at any time from any cause.
- (d) USER shall not use the rights herein granted to interchange, on the Subject Trackage, cars to or from any party other than OWNER.
- (e) USER shall not use the rights herein granted to move traffic going to or from either the Delaware-Lackawanna Railway Company, Inc. ("DL") or Luzerne and Susquehanna Railway Company ("LS"), or their respective successors or assigns, if such DL or LS traffic is interchanged with USER in the Scranton, Pennsylvania area.

SECTION 3. MISCELLANEOUS SPECIAL PROVISIONS

- (a) When operating over the Subject Trackage, USER's locomotives and crews will be equipped to communicate with OWNER on radio frequencies normally used by OWNER in directing train movements on the Subject Trackage.
- (b) Procedures for qualification and occupancy of the Subject Trackage will be arranged by the local supervision of each party, and the provisions of Section 9 (c) of this Trackage Rights Agreement. All control and usage will be subject to the approval of OWNER's representative or his designee.
- (c) USER shall provide OWNER with a train consist for each train via facsimile until such time that OWNER has implemented an EDI exchange. USER and OWNER will work together in good faith to implement an EDI exchange as soon as possible following the Effective Date.

SECTION 4. COMPENSATION

- (a) The "Base Trackage Rights Charge" to be paid by USER for the Trackage Rights covered by this Trackage Rights Agreement shall be

For purposes of this Agreement, each railroad freight car (including standard flat cars not exceeding ninety-six (96) feet in length), locomotive, caboose or other equipment furnished in substitution of railroad equipment, loaded or empty, shall count as a single rail car. Each articulated freight car shall be counted as one (1) rail car per every four (4) axles of the articulated freight car. A single unit of RoadRailer® equipment (or comparable bimodal freight handling equipment) shall count as one half (1/2) of a rail car. A single unit of Coltainer® equipment, loaded or empty, defined as "an eighty-six (86) foot flat car containing up to four (4) demountable containers, each holding up to twenty-five (25) tons of lading, primarily coal or related commodities," shall count as one rail car. The Current Charge shall be subject to change to reflect any net increase subsequent to the Effective Date of this Trackage Rights Agreement in labor, material and other costs, as more fully set forth below.

- (b) OWNER shall submit a monthly statement to USER which shall list the number of cars and the miles operated for USER's previous month's use of the Subject Trackage, computed in accordance with this Section 4.
- (c) The initial Current Charge shall be the Base Trackage Rights Charge. The Current Charge set forth in Section 4 (a) hereof shall be revised each year, beginning with the bill rendered for the month of July first following the "Effective Date" of this Trackage Rights Agreement, to compensate for the net increase, if any, in the cost of labor and material, excluding fuel, as reflected in the Annual Indexes of Chargeout Prices and Wage Rates (1977=100), included in "AAR Railroad Cost Indexes" and supplements

thereto, issued by the Association of American Railroads ("AAR"). In making such determination, the Final "Material prices, wage rates and supplements combined (excluding fuel)" indexes for the East District shall be used. The Current Charge shall be revised by calculating the percent of increase, if any, in the index for the latest calendar year as related to the index for the calendar year of the "Effective Date" as defined in Section 21(a) ("Base Year") and applying that percentage increase, if any, to the Base Trackage Rights Charge. If the index has not increased, then the Current Charge shall remain the same.

- (d) In the event the base for the Annual Indexes of Charge-Out Prices and Wage Rates issued by the AAR shall be changed from the year 1977 appropriate revision shall be made. If the AAR or any successor organization discontinues publication of the Annual Indexes of Charge-Out Prices and Wage Rates, an appropriate substitute for determining the percentage of net increase shall be negotiated by the parties hereto. In the absence of agreement, the parties shall submit the matter to binding arbitration under terms of Section 16 of this Trackage Rights Agreement.

- (e) Compensation as described in this Section 4 shall be subject to a

per Agreement Year. In the event of termination or expiration of this Trackage Rights Agreement, the _____ shall be prorated for the number of calendar days from the beginning of that Agreement Year until the termination or expiration date. The _____ will be indexed according to the methodology set forth in Section 4(c) above. The _____ USER pays to OWNER each year, if any, shall be paid with the final payment for the applicable Agreement Year, provided, however, that should this Agreement be terminated prior to the end of an applicable Agreement Year said _____ shall be paid with the final monthly payment.

SECTION 5. PAYMENT OF BILLS

- (a) All payments called for under this Trackage Rights Agreement shall be made within thirty (30) days after the date of the bills therefor. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month. The records of each party hereto, insofar as they pertain to matters covered by this Trackage Rights Agreement, shall be open at all reasonable times to inspection by the other party for a period of three (3) years from the date of billing.
- (b) Bills rendered pursuant to the provisions of this Trackage Rights Agreement, other than those provided for in Section 4, shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals as specified by OWNER at the time any work is performed by OWNER for USER or shall include actual costs and expenses, upon mutual agreement of the parties.

SECTION 6. MAINTENANCE OF SUBJECT TRACKAGE

- (a) OWNER shall maintain, repair and renew the Subject Trackage at its own expense and with its own supervision and labor. OWNER shall keep and maintain the Subject Trackage for speeds consistent with a standard of FRA Class 3 or such lower standards as may be in effect at the time of this Trackage Rights Agreement. OWNER and USER hereby acknowledge and agree that the track designated in Section 1 of this Agreement as Track 1 between Lehighton and M&H Junction currently is maintained for speeds consistent with FRA Class 1, and that such track need only be maintained to Class 1 standards.
- (b)
- (c) OWNER and USER shall conduct a joint inspection prior to commencing the herein granted trackage rights and shall document the standards in effect and any exceptions thereto. USER shall have the right upon reasonable notice to OWNER to request additional joint inspections.
- (d) This Section 6 shall not be affected by the separate Liability Allocation Agreement, as hereinafter defined.

SECTION 7. CONSTRUCTION AND MAINTENANCE OF CONNECTIONS

- (a) Existing connections or facilities which are jointly used by the parties hereto under existing agreements shall continue to be maintained, repaired and renewed by and at the expense of the party or parties responsible for such maintenance, repair and renewal under such agreements.
- (b) If, in the opinion of USER, a new or upgraded connection is required at a point of permitted entry or exit other than the endpoints, or, if in the opinion of USER, other upgrading, including but not limited to switches, power switches, signals,

communications, etc., is required for operational efficiency, then OWNER will, unless such improvement will have a material adverse effect on OWNER's operations, cooperate and USER will be responsible for funding that construction/upgrading at a cost mutually agreed to by USER and OWNER. Such construction/upgrading shall be progressed as follows:

- (i) USER or others shall furnish all labor and material and shall construct such portions of the tracks located on the right-of-way of USER or others which connect the respective lines of the parties hereto.
- (ii) OWNER shall furnish all labor and material and shall construct such portions of the tracks located on the right-of-way operated by OWNER which connect the respective lines of the parties hereto. Upon termination of this Trackage Rights Agreement, OWNER may at its option remove any portion of trackage and appurtenances located on its right-of-way, constructed as a result of this Section 7, at the sole cost and expense of USER.
- (iii) OWNER will maintain, repair and renew the constructed/upgraded portions of the tracks located on the right-of-way operated by OWNER which connect the respective lines of the parties hereto at the sole cost and expense of USER.

SECTION 8. ADDITIONS, RETIREMENTS AND ALTERATIONS

- (a) OWNER, from time to time and at its sole cost and expense, may make changes in, additions and betterments to or retirements from the Subject Trackage as shall, in its judgement, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction, provided, however, that OWNER shall not eliminate connections between the Subject Trackage and the lines owned or operated by USER or CPR. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage.
- (b) If the parties agree that changes in or additions and betterments to the Subject Trackage, including changes in communication or signal facilities, are required to accommodate USER's operations beyond that required by OWNER to accommodate its operations, OWNER shall construct the additional or altered facilities and USER shall pay to OWNER the cost thereof, including the annual expense of maintaining, repairing and renewing such additional or altered facilities.
- (c) Any maintenance, repair, construction, connections, additions or alterations performed by OWNER, or any materials furnished or paid for by USER in connection with this Trackage Rights Agreement in general, and Sections 6 through 8 in particular, shall become the sole property of OWNER at the time such work is performed or such materials are furnished, provided, however, that nothing furnished or paid for pursuant to this Section 8(c) shall affect the compensation required to be paid pursuant to Section 4.

SECTION 9. MANAGEMENT AND OPERATIONS

- (a) USER shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other federal and state and local laws, regulations and rules, respecting the operation, condition, inspection and safety of its trains, locomotives, cars and equipment while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage covered by this Trackage Rights Agreement. Notwithstanding the separate Liability Allocation Agreement, USER shall indemnify, protect, defend, and save harmless OWNER and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against all fines, penalties and liabilities imposed upon OWNER and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable to the failure of USER to comply with its obligations in this regard.
- (b) USER, in its use of the Subject Trackage, shall comply in all respects with the safety rules, operating rules and other regulations of OWNER, and the movement of USER's trains, locomotives, cars, and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of OWNER. USER's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage as reflected in Exhibit II of the Liability Allocation Agreement, and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by OWNER's operating rules and regulations without the prior consent of OWNER.
- (c) USER shall make such arrangements with OWNER as may be required to have all of its employees who shall operate its trains, locomotives, cars and equipment over the Subject Trackage qualified for operation thereover, and USER shall pay to OWNER, upon receipt of bills therefor, any cost incurred by OWNER in connection with the qualification of such employees of USER, as well as the cost of pilots furnished by OWNER, until such time as such employees are deemed by the appropriate examining officer of OWNER to be properly qualified for operation as herein contemplated.
- (d) OWNER shall have the right to exclude from its tracks any employee of USER, except officers, determined by OWNER to be in violation of OWNER's rules, regulations, orders, practices, or instructions promulgated in the normal course of business in writing by OWNER in its timetable or otherwise, and provided in advance to USER. USER shall release, indemnify, defend, and save harmless OWNER from and against any and all claims and expenses resulting from such exclusion.
- (e) Dispatching.

- (1) For the purposes of dispatching, Priority Trains (defined below) operated by any user of the Subject Trackage will be given absolute preference over all other trains. Should OWNER have a train that is not a Priority Train on the line at any particular time, OWNER shall clear its line of any such trains in order to accommodate this preference.
 - (2) Subject to subsection (e)(1) above, OWNER shall specify four “windows” (two windows being of no more than one hundred twenty (120) minutes in duration and two windows being of no more than sixty (60) minutes in duration) each day within which its non-Priority Trains will operate (the windows being the same for each of the seven days of the week). The initial windows are set forth in Appendix 2 hereto. To the extent possible, OWNER shall operate its non-Priority Trains during these windows. Any trains of the same class (OWNER’s or otherwise) seeking to enter the Subject Trackage at any time other than during one of these four windows shall be treated with equal priority, with the three classes of trains being:
 - (i) Priority Trains (trains moving intermodal containers and trailers and/or finished automobiles/trucks only);
 - (ii) Regular Trains (unit and freight trains not scheduled to set off/pick up enroute on the Subject Trackage); and
 - (iii) Other Trains (including trains and equipment that must operate at restricted speeds, i.e., local, work, or other such equipment movements).
 - (3) In the event of a conflict, OWNER shall promptly clear the line of any trains of OWNER or of any other USER that is of a lesser priority in order to accommodate the preferences set forth in subsection (e)(2), and otherwise the controlling dispatcher shall be empowered to employ best practices to efficiently move all trains.
 - (4) USER shall provide OWNER with USER’s train schedule, as well as any modifications thereof. OWNER may modify, for a bone fide commercial or operating reason, the windows set forth pursuant to subsection (e)(2) above upon two weeks prior written notice, provided, however, that OWNER and USER shall in good faith seek to resolve any conflicts or near conflicts between OWNER’s windows and USER’s train schedule with due regard to the operating constraints of the other party.
- (f) In the event that a train of USER shall be forced to stop on the Subject Trackage, due to mechanical failure of USER’s equipment, or any cause not resulting from an accident or derailment, and such train is unable to proceed, or if a train of USER fails to maintain the speed required by OWNER on the Subject Trackage, or if in emergencies, crippled or otherwise defective cars are set out of USER’s trains on the Subject Trackage, OWNER

shall have the option to furnish motive power or such other assistance as may be necessary, at USER's expense, to haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off the Subject Trackage, provided, however, that OWNER may ask USER to provide such service(s) and further provided, however, that USER may provide such service(s) at USER's own option should OWNER not do so within a reasonable period of time.

- (g) If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, OWNER shall have the option to perform such work at USER's expense, provided, however, that OWNER may ask USER to provide such service(s) and further provided, however, that USER may provide such service(s) at USER's own option should OWNER not do so within a reasonable period of time.
- (h) In the event OWNER and USER agree in writing that OWNER should retain employees or provide additional employees for the sole benefit of USER, the parties hereto shall enter into a separate agreement under which USER shall bear all cost and expense for any such retained or additional employees provided, including recruitment and training costs, including without limitation all cost and expense associated with labor protective payments which are made by OWNER and which would not have been incurred had the retained or additional employees not been provided.
- (i) Neither party hereto shall require the other party's crews to perform any work beyond that required by its current labor agreements, subject to any modifications that may result from future labor agreements, while said crews are on the other party's property and/or subject to the other party's supervision. Should either party require the other party's crews to perform additional service over and above that contemplated herein, which results in penalty claims being progressed, that party shall reimburse the other party for the cost of all such claims. It is agreed that the party subject to the claims shall notify the other's supervision of such claims so that the movement(s) causing the claim(s) can be corrected to avoid liability.
- (j) USER may enter the Subject Trackage at any time in order to supervise and oversee the compliance with this Section of USER's employees, agents and invitees.

SECTION 10. MILEAGE AND CAR HIRE

All mileage and car hire charges accruing on cars in USER's trains on the Subject Trackage shall be assumed by USER and reported and paid by it directly to the owner of such cars.

SECTION 11. CLEARING OF WRECKS

Whenever USER's use of the Subject Trackage requires rerailling, wrecking service or wrecking train service, OWNER shall have the option to perform or provide such service, including the repair and restoration of roadbed, track and structures, provided, however, that

OWNER may ask USER to provide rerailling, wrecking service or wrecking train service(s) and further provided, however, that USER may provide such rerailling, wrecking service or wrecking train service(s) at USER's own option should OWNER not do so within a reasonable period of time. The cost, liability and expense of the foregoing, including without limitation loss of, damage to, or destruction of any property whatsoever and injury to and death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting therefrom, shall be apportioned in accordance with the provisions of the separate Liability Allocation Agreement attached hereto. All locomotives, cars, and equipment and salvage from the same so picked up and removed which is owned by or under the management and control of or used by USER at the time of such wreck, shall be promptly delivered to USER.

SECTION 12. LIABILITY

USER and OWNER have entered into a separate Liability Allocation Agreement, appearing as Appendix B, which is attached hereto and adopted herein, that allocates liability for (a) personal injury to or death of any person, (b) damage to the real or personal property of any person (including, but not limited to, that of the parties), (c) punitive or exemplary damages, and (d) clean-up and remedial expenses under this Trackage Rights Agreement.

SECTION 13. CLAIMS

(a) USER and OWNER have entered into a separate Liability Allocation Agreement, appearing as Appendix B, which is attached hereto and adopted herein, that allocates liability for freight claims.

(b) Each party shall indemnify and hold harmless the other party against any and all costs and payments, including benefits, allowances, and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of or lawsuits brought by or on behalf of its own employees or their collective bargaining representatives, either pursuant to employee protective conditions imposed by a governmental agency upon the agency's approval or exemption of this Trackage Rights Agreement and operations hereunder or pursuant to a collective bargaining agreement. Except as provided in Sections 9(h) and 9(i), it is the parties' intention that each party shall bear the full costs of protection of its own employees under employee protective conditions that may be imposed, and of grievances filed by its own employees arising under its collective bargaining agreements with its employees.

SECTION 14. INSURANCE

(a) OWNER shall procure and maintain in effect during the life of this Trackage Rights Agreement a policy or policies of insurance covering the liability to which it is or may be subject pursuant to this Trackage Rights Agreement. Such insurance shall provide minimum limits of Five Million Dollars (\$5,000,000) per occurrence but may be subject to an annual aggregate limit of Five Million Dollars (\$5,000,000) and a per occurrence deductible not in excess of Two-hundred-fifty Thousand Dollars (\$250,000).

- (b) If the insurance provided under this Section 14 takes the form of a Claims Made Policy, OWNER agrees to purchase whatever supplemental coverage may be necessary to provide continuous coverage of its potential liability under this Trackage Rights Agreement, with annual occurrence and annual aggregate limits no less than those required hereunder, for a period of time at least five (5) years following the termination of this Trackage Rights Agreement. OWNER further agrees to immediately give written notice to the Director Risk Management, Norfolk Southern Corporation, Three Commercial Place, Norfolk, Virginia 23510-2191, of any claim or notice of incident or notice of potential claim that is required to be reported to its liability insurance company.
- (c) USER may request an increase in the amount of insurance coverage required by this Section 14, or changes in the terms and conditions of the policy or policies, which OWNER will evaluate in good faith.
- (d) Every policy of insurance obtained by OWNER pursuant to the requirements of this Section 14 shall contain provisions requiring that the insurance carriers give USER at least thirty (30) days notice, in writing, of any proposed policy cancellation and of any material modification of the terms and conditions of the policy. The terms and conditions of each policy of insurance obtained by OWNER to satisfy the requirements of this Section 14 will be subject to the approval of USER.
- (e) Within thirty (30) days of execution of this Trackage Rights Agreement, OWNER will furnish to the above referenced Director Risk Management an accurate copy of each policy of insurance obtained pursuant to the requirements of this Trackage Rights Agreement. Compliance with this requirement will not relieve OWNER of any other obligation under this Trackage Rights Agreement and will in no way limit or modify OWNER's obligation to provide the specific insurance coverage required by this Trackage Rights Agreement. Evidence of subsequent renewal of such insurance or of any material change must be furnished to the above referenced Director Risk Management as stipulated in Section 14(b) above.

SECTION 15. DEFAULT AND TERMINATION

In the event of any substantial failure on the part of a party to perform its obligations provided under the terms of this Trackage Rights Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from the non-defaulting party, the non-defaulting party shall have the right at its option, after first giving thirty (30) days written notice thereof by certified mail, and notwithstanding any waiver by the non-defaulting party of any prior breach thereof, to terminate this Trackage Rights Agreement. The exercise of such right by the non-defaulting party shall not impair its rights under this Trackage Rights Agreement or any cause or causes of action it may have against the defaulting party for the recovery of damages.

SECTION 16. ARBITRATION

Any dispute, controversy or claim (or any failure by the parties to agree on a matter as to

which this Trackage Rights Agreement expressly or implicitly contemplates subsequent agreement by the parties, except for matters left to the sole discretion of a party) arising out of or relating to this Trackage Rights Agreement, or the breach, termination or validity hereof, shall be finally settled through binding arbitration by a sole, disinterested arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitrator shall be jointly selected by the parties but, if the parties do not agree on an arbitrator within thirty (30) days after demand for arbitration is made by a party, they shall request that the arbitrator be designated by the American Arbitration Association. The award of the arbitrator shall be final and conclusive upon the parties. Each party to the arbitration shall pay the compensation, costs, fees and expenses of its own witnesses, experts and counsel. The compensation and any costs and expenses of the arbitrator shall be borne equally by the parties. The arbitrator shall have the power to require the performance of acts found to be required by this Trackage Rights Agreement, and to require the cessation or nonperformance of acts found to be prohibited by this Trackage Rights Agreement. The arbitrator shall not have the power to award consequential or punitive damages. The arbitrator's award shall be binding and conclusive upon the parties to the fullest extent permitted by law. Judgment upon the award rendered may be entered in any court having jurisdiction thereof, which court may award appropriate relief at law or in equity. All proceedings relating to any such arbitration, and all testimony, written submissions and award, of the arbitrator therein, shall be private and confidential as among the parties, and shall not be disclosed to any other party, except as required by law and except as reasonably necessary to prosecute or defend any judicial action to enforce, vacate or modify such arbitration award. The parties to any dispute subject to this provision may, from time to time, agree to an alternative dispute resolution provider other than the American Arbitration Association, but the parties shall be under no obligation to do so.

SECTION 17. SUCCESSORS AND ASSIGNS

Neither this Trackage Rights Agreement (including the documents and instruments referred to herein) nor any of the rights, interests or obligations hereunder, shall be assigned by either party, including by operation of law, without the prior written consent of the other party. This Trackage Rights Agreement may not be assigned independently of the assignment of the Liability Allocation Agreement.

SECTION 18. NOTICE

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

If to OWNER:

Vice President – Real Estate
Reading Blue Mountain and Northern Railroad Company
1 Railroad Boulevard
P. O. Box 218

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Port Clinton, Pennsylvania 19549

If to USER:

Vice President Transportation Operations
Norfolk Southern Railway Company
Three Commercial Place
Norfolk, Virginia 23510-2191

Either party may provide changes in the above addresses to the other party by personal service or U. S. mail.

SECTION 19. GENERAL PROVISIONS

- (a) This Trackage Rights Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any other party. Nothing herein contained shall be taken as creating or increasing any right of any other party to recover by way of damages or otherwise against either of the parties hereto.
- (b) This Trackage Rights Agreement contains the entire understanding of the parties hereto and supersedes any and all oral understandings between the parties.
- (c) No term or provision of this Trackage Rights Agreement may be changed, waived, discharged or terminated except by an instrument in writing and signed by both parties to this Trackage Rights Agreement.
- (d) All words, terms and phrases used in this Trackage Rights Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the railroad industry.
- (e) All section headings are inserted for convenience only and shall not affect any interpretation of this Trackage Rights Agreement.
- (f) As used in this Trackage Rights Agreement, whenever reference is made to the trains, locomotives, cars or equipment of, one of the parties hereto, such expression means the trains, locomotives, cars and equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars and equipment which are owned by, or leased to such party. Whenever such locomotives, cars or equipment are owned or leased by one party to this Trackage Rights Agreement and are in the possession or account of the other party to this Trackage Rights Agreement, such locomotives, cars and equipment shall be considered those of the other party under this Trackage Rights Agreement.
- (g) This Trackage Rights Agreement is the result of mutual negotiations of the parties hereto, none of whom shall be considered the drafter for purposes of contract construction.

SECTION 20. INDEMNITY COVERAGE

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

SECTION 21. TERM AND TERMINATION

- (a) This Trackage Rights Agreement shall become effective following the date first written; following receipt of any required regulatory approvals; following the expiration of any time periods required by the issuance of labor notices by USER; and following an exchange of correspondence between the operating officers of the parties establishing a date to commence operations (“Effective Date”), and shall remain in full force and effect until July 31, 2021, unless otherwise extended beyond that date by mutual agreement of the Parties
- (b) An “Agreement Year” shall be the 365-day period beginning on the Effective Date and each anniversary thereafter, except during Leap Years, when an additional day shall be added.
- (c) During the first Agreement Year, USER may terminate the Trackage Rights Agreement upon thirty (30) days notice. After the third Agreement Year, USER may terminate the Trackage Rights Agreement upon one hundred eighty (180) days notice.
- (d) Should either party to the NS/CPR Restructuring Agreement give the other party to that agreement notice that the NS/CPR Restructuring Agreement is to be terminated, then USER shall give OWNER one hundred eighty (180) days notice of termination of this Trackage Rights Agreement, provided, however, that this Trackage Rights Agreement shall not terminate pursuant to this subsection unless the NS/CPR Restructuring Agreement terminates as well.
- (e) Should CPR terminate its rights to operate over the Subject Trackage, then OWNER shall give USER one hundred eighty (180) days notice, during which time OWNER and USER shall negotiate in good faith to renegotiate this agreement in order to cover the costs of OWNER’s dispatching that were being covered by CPR under its then-terminated agreement.
- (f) Termination of this Trackage Rights Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred by such party under the terms of this Trackage Rights Agreement prior to termination hereof.
- (g) USER agrees upon termination of this Trackage Rights Agreement to file an application with the proper regulatory authority seeking approval of the discontinuance of its operations over the Subject Trackage.

SECTION 22. REGULATORY APPROVAL

Should implementation of this Trackage Rights Agreement require the prior approval of the Surface Transportation Board or other regulatory authority, USER at its own cost and expense will initiate and thereafter diligently pursue an appropriate application or petition to secure such approval. USER shall provide a draft of any such application and petition to OWNER for OWNER's review prior to filing, and OWNER will assist and support efforts of USER to meet the requirements of this Section 22.

SECTION 23. ABANDONMENT OF SUBJECT TRACKAGE

Notwithstanding the provisions of Section 21 of this Trackage Rights Agreement, OWNER may abandon all or a portion of the Subject Trackage during the term of this Trackage Rights Agreement, upon giving USER not less than one hundred twenty (120) days notice of OWNER's intent to abandon. In the event regulatory authority is required to effect such abandonment, USER will not interfere with OWNER's actions to seek and to exercise such authority. In the event regulatory authority is required for USER to discontinue its own operations over the Subject Trackage, USER will seek such regulatory authority at the same time that OWNER seeks regulatory authority to abandon the Subject Trackage. OWNER and USER will exercise the abandonment and discontinuance authority within the time periods permitted by applicable law following the date OWNER and USER obtain the aforementioned regulatory authority, but in no case will USER be required to exercise its discontinuance authority prior to the date that OWNER exercises its abandonment authority. Upon the date established by OWNER for abandonment of the Subject Trackage by its aforesaid notice to USER or upon the above-specified date of exercise of the regulatory authority to discontinue operations, whichever is later, this Trackage Rights Agreement shall terminate and be of no further force and effect, except that termination of this Trackage Rights Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred prior to said termination. As used herein, Subject Trackage means the entire Subject Trackage or any portion or portions thereof.

SECTION 24. EXECUTION IN COUNTERPARTS

This Trackage Rights Agreement may be executed in several counterparts, each of which will be deemed an original, and such counterparts shall constitute one and the same instrument.

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

WITNESS: READING BLUE MOUNTAIN AND NORTHERN
RAILROAD COMPANY

By: _____
As to RBMN. James G. Raffa, Vice President – Real Estate

Execution Draft – Redacted Version

WITNESS: NORFOLK SOUTHERN RAILWAY COMPANY

As to NSR. By: _____
James W. McClellan, Vice President