

LAW OFFICES

JOHN H. BROADLEY & ASSOCIATES, P.C.

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20007

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INTERNET
JBROADLEY@ALUM.MIT.EDU

November 9, 2007

JOHN H. BROADLEY

Honorable Vernon Williams
Secretary
Surface Transportation Board
395 E Street NW
Washington D.C. 20423-0001

FILED
NOV 9 - 2007
SURFACE
TRANSPORTATION BOARD

Re Finance Docket No 35097, Massachusetts Coastal Railroad, LLC -- Notice of
Modified Certificate -- Lines of EOTPW

Dear Mr. Williams

Enclosed for filing in the captioned matter are an original and ten copies of a Notice of Modified Certificate of Public Convenience and Necessity, a CD containing the Notice and the Exhibits thereto (Exhibit B is included in the Notice document itself), and a check for the filing fee of \$1400.00.

I have also enclosed an extra copy of the Notice which I ask that you file stamp and return with our messenger.

If you have any questions concerning this matter, please do not hesitate to call me at the above number.

Yours very truly,

John Broadley

John Broadley

Enclosures

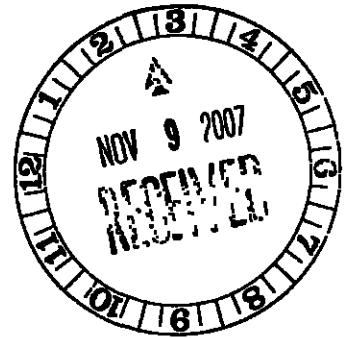
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Office of Proceedings
NOV 9 2007
Part of
Public Record

FEE RECEIVED

NOV 9 - 2007

**BEFORE THE
SURFACE TRANSPORTATION BOARD
Washington, D.C.**



**~~SURFACE~~
TRANSPORTATION BOARD**

Massachusetts Coastal Railroad, LLC -- Notice of
Modified Certificate -- Lines of EOTPW

Finance Docket No 35097

**ENTERED
Office of Proceedings**

NOV 9 2007

**Part of
Public Record**

**NOTICE OF MODIFIED CERTIFICATE
OF PUBLIC CONVENIENCE AND NECESSITY**

The Massachusetts Coastal Railroad, LLC ("MC") hereby gives notice pursuant to 49 CFR 1150.23 that it has entered into a License and Operating Agreement with the Massachusetts Executive Office of Transportation and Public Works ("EOTPW") to operate certain lines in the Commonwealth of Massachusetts owned by EOTPW, and that it is requesting the Board to issue to it a Modified Certificate of Public Convenience and Necessity as authorized by the regulations.

This notice is organized following the requirements of 49 CFR 1150.23. For the Board's convenience the specific requirements of the regulation are set forth in single spaced italic type

1 *The name and address of the operator and, unless the operator is an existing rail carrier*

The name and address of the Operator is

Massachusetts Coastal Railroad, LLC
252 Main Street
Hyannis, MA 02601

FILED

NOV 9 - 2007

**SURFACE
TRANSPORTATION BOARD**

(i) *Its articles of incorporation or, if it is unincorporated, the facts and organizational documents relating to its organization,*

A copy of the articles of organization of the LLC is attached as Exhibit A

(ii) *The names and addresses of all of its officers and directors and a statement indicating any present affiliation each might have with a rail carrier,*

The names and addresses of the officers and directors of MC are set forth on Exhibit B which is attached hereto. None of the officers and directors of MC has any present affiliation with a rail carrier as that term is defined in 49 U.S.C. 10102, except Daniel J. Wahle who is Director of Customer Service--NY/PA Region for Genesee & Wyoming. No Genesee & Wyoming railroads connect with MC, nor does Genesee & Wyoming have an interest in MC.

(iii) *Sufficient information to establish the financial responsibility of the operator*

Attached as Exhibit C is a current balance sheet for Cape Rail, Inc., the parent company of MC.

2 *Information about the prior abandonment, including docket number, status and date of the first decision approving the abandonment.*

The lines in question were abandoned pursuant to Section 304 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 744) and were acquired by the Commonwealth of Massachusetts from the estate of the Penn Central Transportation Company. The Interstate Commerce Commission issued a Modified Certificate to Bay Colony Railroad Corporation for operation of these lines and certain others in Finance Docket No. 29963, served June 29, 1982.

3 *The exact dates of the period of operation which have been agreed upon by the operator and the State which owns the line (if there is any agreement it should be provided).*

MC and EOTPW have agreed that MC will operate the lines for a period of ten years beginning on January 6, 2008. The applicable dates are, therefore, January 6, 2008 to December 31, 2017. The License and Operating Agreement provides for three extension terms of five years each pursuant to written mutual agreement.

A copy of the License and Operating Agreement is attached hereto as Exhibit D.

4 *A description of the service to be performed including, where applicable, a description of*

(i) *The line over which service is to be performed.*

The lines over which service will be performed are

- Buzzards Bay Secondary extending from Middleboro, MA (MP 1 5) to Buzzards Bay, MA (MP 19 9), a distance of approximately 18 4 miles
- Hyannis Secondary extending from Bourne, MA (MP 0 0) to Hyannis, MA (MP 24 3), a distance of approximately 24 3 miles.
- South Dennis Secondary extending from Yarmouth Junction, MA (MP 0 0) to Station Avenue in Yarmouth, MA (MP 2 81), a distance of approximately 2 8 miles
- Falmouth Secondary extending from Bourne, MA (MP 0 0) to Falmouth, MA (MP 6 8), a distance of approximately 6 8 miles
- Watuppa Branch extending from N Dartmouth, MA (MP 6 0) to Westport, MA (MP 10 66), a distance of approximately 4.7 miles
- Dean Street Industrial Track located in Taunton, MA between MP 0 0 and MP 1 5 also located in Taunton, MA, a distance of approximately 1 5 miles

The properties subject to the License and Operating Agreement are more specifically described in Exhibit A to the License and Operating Agreement which is attached hereto as Exhibit D.

ii *All interline connections including the names of the connecting railroads,*

The operated lines will connect at Middleboro, MA, Taunton, MA and North Dartmouth, MA with CSX Transportation, Inc

iii *The nature and extent of all liability insurance coverage, including binder or policy number and name of insurer,*

A copy of a Certificate of Liability Insurance for Cape Rail, parent of MC, is attached as Exhibit E

iv *Any preconditions which shippers must meet to receive service*

There are no preconditions for shippers to receive service

5 *The name and address of any subsidizers.*

There are no subsidies involved in the operation of these lines.

6 *Sufficient information to establish the financial responsibility of any subsidizers (if the subsidizer is a State, the information should show that it has authority to enter into the agreement for subsidized operations).*

Not applicable as there are no subsidies involved

c *The service offered and the applicable rates, charges and conditions must be described in tariffs published by the operator pursuant to the Board's rules.*

MC will comply with the currently applicable rules relating to the availability of service, rates and conditions

WHEREFORE, MC respectfully requests that the Board issue a Modified Certificate of Public Convenience and Necessity pursuant to 49 CFR 1150.21 *et seq*

Respectfully submitted,

MASSACHUSETTS COASTAL RAILROAD, LLC

By John Broadley

John Broadley
John H Broadley & Associates, P C
1054 31st Street NW, Suite 200
Washington, D C. 20007
Tel 202-333-6025
Fax 301-942-0767
E-mail jbroadley@alum.mit.edu

Dated November 9, 2007

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of November 2007 I served a copy of the foregoing NOTICE OF MODIFIED CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY on the following by depositing copies thereof in the United States mail, postage prepaid, addressed as follows

Keith O'Brien, Esq
Baker and Miller
2401 Pennsylvania Avenue, NW
Washington, D C 20036
Attorney for the Executive Office of Transportation and Public Works

Louis P Warchot, Esq
Senior Vice President Law
Association of American Railroads
50 F Street NW
Washington, D C 20001


John Broadley

Dated November 9, 2007

EXHIBIT A
(Articles of Organization of MC)

**CERTIFICATE OF ORGANIZATION
FOR
PCPRR, LLC**

FILED

FEB 03 2006

SECRETARY OF THE COMMONWEALTH
CORPORATIONS DIVISION

1 The name of the Limited Liability Company is **PCPRR, LLC**

2 Office Address where records are maintained is the offices at

**8 Springdale Avenue
Canton, MA 02021**

3 Name and Address for the Resident Agent for Service of Process

**Arthur Goldberg, Esq.
c/o Nathanson & Goldberg
Attorney at Law
Two Oliver Street
Boston, MA 02109**

4 Latest Dissolution Date: **Not Applicable.**

5 Name and Address of Manager(s)

**P. Christopher Podgurski
8 Springdale Avenue
Canton, MA 02021**

6 Name and Address of Person Authorized to Execute Documents for Filing with the Secretary of State:

THE MANAGER LISTED IN NO 5 ABOVE

7. General Character of the Business:

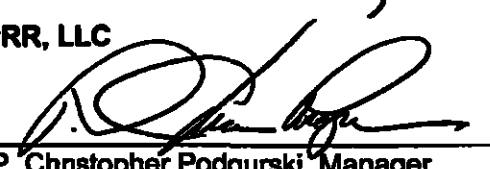
To acquire, manage, and operate a commercial railway business for all purposes a commercial railway is used.

8 Names and Addresses of Persons Authorized to Execute, Acknowledge, Deliver and Record Real Estate Instruments **THE MANAGER LISTED IN NO 5 ABOVE**

WITNESS the execution hereof this 31st day of January, 2006

PCPRR, LLC

By


P. Christopher Podgurski, Manager

968812

Ck.#

17903

The Commonwealth of Massachusetts
Limited Liability Company
(General Laws, Chapter 156C)

Filed this 30th day FEBRUARY, 2006

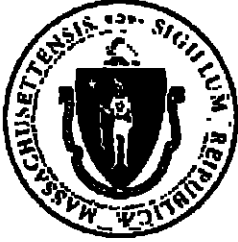
William Francis Galvin

SECRETARY OF THE
2006 FEB - 3 P. 3. 56
COMMONWEALTH DIVISION

WILLIAM FRANCIS GALVIN
SECRETARY OF THE COMMONWEALTH

Melissa Lawless

Phone: 617-4266178



The Commonwealth of Massachusetts
William Francis Galvin

Minimum Fee. \$100.00

Secretary of the Commonwealth
 One Ashburton Place, Boston, Massachusetts 02108-1512
 Telephone (617) 727-9640

Certificate of Amendment

(General Laws, Chapter)

Federal Employer Identification Number 000916099 (must be 9 digits)**The date of filing of the original certificate of organization** 2/3/2006**1 The exact name of the limited liability company is:** MASSACHUSETTS COASTAL RAILROAD LLC**2 Location of its principal office**

No. and Street 252 MAIN ST
 City or Town HYANNIS State MA Zip 02601 Country USA

3 As amended, the general character of business, and if the limited liability company is organized to render professional service, the service to be rendered.**4 The latest date of dissolution, if specified.****5 Name and address of the Resident Agent**

Name ANDREW J REARDON
 No. and Street 252 MAIN ST
 City or Town HYANNIS State MA Zip 02601 Country USA

6 The name and business address of each manager

Title	Individual Name First Middle Last, Suffix	Address (no PO Box) Address, City or Town, State, Zip Code
MANAGER	ANDREW J REARDON	252 MAIN ST HYANNIS MA 02601 USA
MANAGER	JOHN F KENNEDY	252 MAIN ST HYANNIS, MA 02601 USA
MANAGER	P CHRISTOPHER PODGURSKI	252 MAIN ST HYANNIS MA 02601 USA

7. The name and business address of the person in addition to the manager, who is authorized to execute documents to be filed with the Corporations Division, and at least one person shall be named if there are no managers

Title	Individual Name First, Middle, Last, Suffix	Address (no PO Box) Address, City or Town, State, Zip Code
SOC SIGNATORY	ANDREW J REARDON	252 MAIN ST HYANNIS, MA 02601 USA
SOC SIGNATORY	JOHN F KENNEDY	252 MAIN ST HYANNIS, MA 02601 USA
SOC SIGNATORY	P CHRISTOPHER PODGURSKI	252 MAIN ST HYANNIS, MA 02601 USA

8 The name and business address of the person(s) authorized to execute, acknowledge, deliver and record any recordable instrument purporting to affect an interest in real property

Title	Individual Name First, Middle, Last, Suffix	Address (no PO Box) Address, City or Town, State, Zip Code
REAL PROPERTY	ANDREW J REARDON	252 MAIN ST HYANNIS, MA 02601 USA
REAL PROPERTY	P CHRISTOPHER PODGURSKI	252 MAIN ST HYANNIS, MA 02601 USA
REAL PROPERTY	JOHN F KENNEDY	252 MAIN ST HYANNIS, MA 02601 USA

9. Any additional matters the authorized persons determine to include therein

10 State the amendments to the certificate

CHANGED NAME OF LLC TO MASSACHUSETTS COASTAL RAILROAD LLC

CHANGED MAILING ADDRESS TO 252 MAIN ST, HYANNIS, MA 02601

CHANGED RESIDENT AGENT ANDREW J REARDON

ADDED THE FOLLOWING INDIVIDUALS TO SECTION 6,7,8

ANDREW J REARDON AND JOHN F KENNEDY

11 The amendment certificate shall be effective when filed unless a later effective date is specified

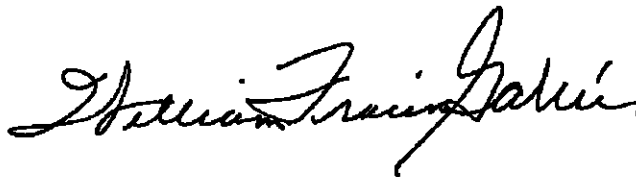
SIGNED UNDER THE PENALTIES OF PERJURY, this 21 Day of February, 2007,

ANDREW J REARDON , Signature of Authorized Signatory.

THE COMMONWEALTH OF MASSACHUSETTS

I hereby certify that, upon examination of this document, duly submitted to me, it appears that the provisions of the General Laws relative to corporations have been complied with, and I hereby approve said articles, and the filing fee having been paid, said articles are

deemed to have been filed with me on
February 21, 2007 3 16 PM

A handwritten signature in black ink, reading "William Francis Galvin". The signature is written in a cursive, flowing style with a large initial 'W' and 'G'.

WILLIAM FRANCIS GALVIN

Secretary of the Commonwealth



The Commonwealth of Massachusetts
William Francis Galvin

Minimum Fee. \$100.00

Secretary of the Commonwealth
One Ashburton Place, Boston, Massachusetts 02108-1512
Telephone (617) 727-9640

Certificate of Amendment

(General Laws, Chapter)

Federal Employer Identification Number 208547083 (must be 9 digits)

The date of filing of the original certificate of organization 2/3/2006

1 a Exact name of the limited liability company MASSACHUSETTS COASTAL RAILROAD LLC

1 b The exact name of the limited liability company as amended, is MASSACHUSETTS COASTAL RAILROAD LLC

2 Location of its principal office

No. and Street 252 MAIN ST
City or Town HYANNIS State MA Zip 02601 Country USA

3. As amended, the general character of business, and if the limited liability company is organized to render professional service, the service to be rendered:

4. The latest date of dissolution, if specified

5 Name and address of the Resident Agent

Name ANDREW J REARDON
No. and Street 252 MAIN ST
City or Town HYANNIS State MA Zip 02601 Country USA

6 The name and business address of each manager

Title	Individual Name First Middle, Last, Suffix	Address (no PO Box) Address City or Town, State Zip Code
MANAGER	ANDREW J REARDON	252 MAIN ST HYANNIS, MA 02601 USA
MANAGER	JOHN F KENNEDY	252 MAIN ST HYANNIS, MA 02601 USA
MANAGER	P CHRISTOPHER PODGURSKI	252 MAIN ST HYANNIS, MA 02601 USA
MANAGER	DANIEL WAHLE	252 MAIN ST HYANNIS, MA 02601 USA
MANAGER	ALFRED E MICHON	252 MAIN ST HYANNIS, MA 02601 USA

7 The name and business address of the person in addition to the manager, who is authorized to execute documents to be filed with the Corporations Division, and at least one person shall be named if there are no managers.

Title	Individual Name First Middle Last Suffix	Address (no PO Box) Address, City or Town, State Zip Code
SOC SIGNATORY	ANDREW J REARDON	252 MAIN ST HYANNIS MA 02601 USA
SOC SIGNATORY	P CHRISTOPHER PODGURSKI	252 MAIN ST HYANNIS MA 02601 USA
SOC SIGNATORY	JOHN F KENNEDY	252 MAIN ST HYANNIS, MA 02601 USA

8 The name and business address of the person(s) authorized to execute, acknowledge, deliver and record any recordable instrument purporting to affect an interest in real property:

Title	Individual Name First, Middle Last, Suffix	Address (no PO Box) Address City or Town State, Zip Code
REAL PROPERTY	ANDREW J REARDON	252 MAIN ST HYANNIS, MA 02601 USA
REAL PROPERTY	P CHRISTOPHER PODGURSKI	252 MAIN ST HYANNIS MA 02601 USA
REAL PROPERTY	JOHN F KENNEDY	252 MAIN ST HYANNIS, MA 02601 USA

9 Any additional matters the authorized persons determine to include therein

10. State the amendments to the certificate:

SECTION 6 - ADDED DANIEL WAHLE AND ALFRED E MICHON AS MANAGERS OF THE LLC

11. The amendment certificate shall be effective when filed unless a later effective date is specified

**SIGNED UNDER THE PENALTIES OF PERJURY, this 6 Day of November, 2007,
ANDREW J REARDON , Signature of Authorized Signatory.**

EXHIBIT B
(Names and Addresses of Officers and Directors)

Title	Name	Address
Manager CFO and Treasurer (Cape Rail)*	Andrew J Reardon	252 Main Street Hyannis, MA 02601
Manager Chairman, CEO, President (Cape Rail)	John F Kennedy	252 Main Street Hyannis, MA 02601
Manager Vice President Safety (Cape Rail)	P Christopher Podgurski	252 Main Street Hyannis, MA 02601
Manager Vice President Marketing (Cape Rail)	Daniel J Wahle	252 Main Street Hyannis, MA 02601
Manager Executive Vice President (Cape Rail)	Alfred E Michon	252 Main Street Hyannis, MA 02601

- Cape Rail, a non-carrier, is the parent company of MC

EXHIBIT C
(Cape Rail Balance Sheet)

Balance Sheet
October 31, 2007

ASSETS

Current Assets		
Operating acct -Rockland Trust	\$	130 81
Cash - Holbrook Coop MM		34,350 44
Lease deposit - NRE		14,143 74
Total Current Assets		48,624 99
Property and Equipment		
Locomotives		247,230 40
Total Property and Equipment		247,230 40
Other Assets		
Investment - Cape Cod Central		673,361 96
Investment - Mass Coastal		50 00
Loan costs		42,084 13
Lease deposit - Residco		10,000 00
Total Other Assets		725,496 09
Total Assets	\$	1,021,351 48

LIABILITIES AND CAPITAL

Current Liabilities		
Accounts payable	\$	7,881 50
Total Current Liabilities		7,881 50
Long-Term Liabilities		
Loan - Rockland Trust		657,667 24
Loan - P Chris Podgurski		252,794 41
Loan - Andrew Reardon		118,729 49
Total Long-Term Liabilities		1,029,191 14
Total Liabilities		1,037,072 64
Capital		
Common stock - Podgurski		30,000 00
Common stock - Reardon		27,500 00
Common stock - Kennedy		17,560 00
Common stock - Michon		2,500 00
Net Income		(93,281 16)
Total Capital		(15,721 16)
Total Liabilities & Capital	\$	1,021,351 48

EXHIBIT D
(License and Operating Agreement)

LICENSE AND OPERATING AGREEMENT

This **LICENSE AND OPERATING AGREEMENT** (the "**Agreement**") is entered into this _____ day of September 2007, by and between the **Commonwealth of Massachusetts** (the "**Commonwealth**"), acting by and through the **Executive Office of Transportation and Public Works**, an instrumentality of the Commonwealth established and acting pursuant to Chapter 6A and Chapter 161C of the Massachusetts General Laws, as amended, with offices at 10 Park Plaza, Room 3170, Boston, Massachusetts, 02116 (hereinafter "**Licensor**" or "**EOTPW**"), and **Massachusetts Coastal Railroad, LLC** ("**Mass Coastal**"), a Massachusetts Limited Liability Company and a wholly owned subsidiary of Cape Rail, Inc., with a usual place of business at 252 Main Street, Hyannis, MA 02601 (hereinafter "**Licensee**" or "**Railroad**")

WHEREAS, EOTPW, on behalf of the Commonwealth of Massachusetts, is the owner of several active railroad corridors in Southeastern Massachusetts, including the Cape Main Line (so-called) extending from Middleboro to Hyannis, and rail segments in Yarmouth, Falmouth, Taunton and North Dartmouth, Massachusetts, as more fully described below and in Exhibit A hereto (collectively, the "**Licensed Properties**").

WHEREAS, Railroad submitted a proposal dated March 14, 2007 to operate rail freight service on and over the Licensed Properties, in response to a Request for Responses issued by EOTPW in December 2006,

WHEREAS, Railroad desires to provide rail freight service on and over the Licensed Properties and EOTPW has lawfully selected Railroad to do so,

WHEREAS, in order to provide for the operation of rail freight service by Railroad on and over the Licensed Properties, the parties desire to enter into this Agreement, setting forth terms and conditions for the management, operation, maintenance and repair of the Licensed Properties by Railroad,

WHEREAS, Licensor's December 2006 RFR contemplated the continuation of certain tourist, excursion, charter and/or other related passenger rail services by Cape Cod Central Railroad, Inc. ("**CCCR**"), and the possible future operation of such passenger rail services by CCCR, the selected Railroad and/or others during the Term of the Operating Agreement;

WHEREAS, Railroad's March 2007 proposal included proposed terms for the operation of tourist, excursion and related railroad passenger services by CCCR, a company affiliated with Railroad through common ownership;

WHEREAS, the parties hereto desire to provide for the operation of certain tourist, excursion, charter and/or other related passenger rail services on a limited, non-exclusive basis, by Railroad's affiliate, CCCR. Railroad and/or other qualified operators during the Term of this Operating Agreement;

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, including the covenants and agreements by the Licensee herein, and intending to be legally bound, the parties hereby agree as follows:

Section I: General Conditions

A License

EOTPW hereby licenses and Railroad contracts with EOTPW to manage, operate, maintain and repair the Licensed Properties identified in Exhibit A hereto, and EOTPW hereby agrees to accord Railroad access to and use of the Licensed Properties for the Permitted Uses described herein, subject to the terms and conditions of this Agreement.

EOTPW reserves to itself all rights and interests not granted to Railroad, including, without limitation the rights described in Section II, the right to permit third parties to use and occupy the Licensed Properties for non-railroad uses, as provided in Section III, and the right to license one or more qualified rail passenger operators to provide rail passenger service over the Licensed Properties, in accordance with Section VIII of this Agreement.

Except as otherwise provided herein, Railroad shall have the exclusive right to use and operate the Licensed Properties for the purpose of providing rail freight service thereon and of performing Railroad's maintenance, repair and other obligations contained herein during the Term of the Agreement, subject to applicable laws and regulations, and to the terms and conditions set forth herein

B Definitions

The following terms shall have the meanings indicated when used herein

"Agreement" shall mean this License and Operating Agreement

"Additional License Fees" shall have the meaning set forth in Section V hereof

"AREMA" shall mean the American Railway Engineering Maintenance Association

"Base License Fee" shall mean the fixed annual payment obligation of Railroad for use of the Licensed Properties, as set forth in Section V

"CFR" shall mean Code of Federal Regulations, as amended from time to time.

"Change of Control of Railroad" shall be deemed to occur if any person or group of persons shall, subsequent to the Effective Date of this License and Operating Agreement, acquire ownership of or the right to vote or direct the voting of shares representing fifty-one (51%) percent or more of the total voting interest of Railroad and/or any entity which owns or controls Railroad.

"Commencement Date" shall mean the date Railroad commences operations of the Licensed Properties for the Permitted Uses, which shall be no later than January 1, 2008 or one hundred (100) calendar days following the Effective Date, whichever is later, except as otherwise provided by written agreement of the parties. The parties acknowledge that the Railroad may commence operations over portions of the Licensed Properties (specific Rail Lines or portions thereof) prior to January 1, 2008, subject to prior written agreement of EOTPW and receipt of appropriate regulatory authority or effective regulatory exemption.

"Commonwealth" shall mean the Commonwealth of Massachusetts.

"Deferred Maintenance" shall mean physical depreciation or deterioration of the Licensed Properties and related assets and facilities due to the failure to perform the requisite maintenance.

"EOTPW" shall mean Executive Office of Transportation and Public Works, acting on behalf of the Commonwealth of Massachusetts, or any successor agency of Commonwealth.

"Effective Date" shall mean the date the Agreement is executed by both Licensee and the Secretary of Transportation.

"Event of Default" shall mean any of the events listed in Section XX hereof.

"Expiration Date" shall mean the date upon which the Initial Term or any Extension Term of the Agreement expires, unless the Term of the Agreement is sooner extended or terminated as provided herein.

"Extension Term(s)" shall have the meaning set forth in Section IV hereof.

"Facilities" shall mean the track, right-of-way, bridges, structures and other physical assets comprising, located on or appurtenant to the Licensed Properties, and any such assets or improvements located on parcels of land associated therewith.

"FRA" shall mean the Federal Railroad Administration of the United States Department of Transportation.

"Improvement" shall mean any permanent, fixed development of land, track or structures through expenditure of money or labor or placement of materials that more than merely replaces, repairs or restores the Licensed Properties to the condition existing as of the Commencement Date, and that increases the value of the Licensed Properties.

"Initial Term" shall mean the initial Term of the Agreement, as set forth in Section IV hereof

"Initial Term Expiration Date" shall mean the Expiration Date of the Initial Term, as set forth in Section IV hereof

"Licensee" shall mean Massachusetts Coastal Railroad, LLC, a Massachusetts Limited Liability Company and a wholly owned subsidiary of Cape Rail, Inc., with a usual place of business at 252 Main Street, Hyannis, MA 02601

"Licensor" shall mean EOTPW or any successor in interest to EOTPW.

"License Fees" shall mean the payment obligations of Railroad as defined in Section V hereof

"Licensed Properties" shall have the meaning set forth in Section II hereof, as more fully described in Exhibit A hereto.

"Maintenance & Repair Work Program" shall mean the approved work program for maintenance and repair of the Licensed Properties by Railroad during the specified period, as described in Section X and Exhibit D of the Agreement

"Maintenance & Repair Requirements" shall mean the requirements for maintenance and repair of the Licensed Properties by Railroad, as described in Section IX and Exhibit C of the Agreement

"M.G.L." shall mean the Massachusetts General Laws.

"MP" shall mean Milepost, as identified on the applicable track chart, timetable and/or valuation plans for the relevant Licensed Property

"Permitted Uses" shall have the meaning set forth at Section III hereof.

"Proposal" shall mean Railroad's proposal dated March 14, 2007, submitted in response to EOTPW's Request for Responses for Railroad Operations over EOTPW Rail Lines in Southeastern Massachusetts, dated December 2006.

"Railroad" shall mean Massachusetts Coastal Railroad, LLC

"Railroad Properties" shall mean all interests in real property owned, leased, operated or controlled by Railroad or any of its affiliated companies, or in which Railroad has an ownership interest, to the extent that such interests abut or connect to the Licensed Properties or affect the use of the Licensed Properties

"Railroad Gross Revenue" shall mean all revenue received by Railroad from all sources, in connection with the use and operation of the Licensed Properties for the Permitted Uses, including freight revenue, trackage rights fees, switching and demurrage fees, storage revenue, net income derived from car rental (fleet) charges, car repair (for Railroad's customers along Licensed Properties), miscellaneous charges, weighing fees, repositioning charges, and other tariff charges derived from the use and operation of the Licensed Properties. For purposes of this Agreement, "Railroad Gross Revenue" shall be deemed to exclude consulting fees, investment and interest income, and revenues derived from software development and licensing, revenues received by affiliated companies, dispatching services and activities involving rail properties other than the Licensed Properties, and other revenues that are not dependent upon and are unrelated to the rights and privileges granted herein.

"STB" shall mean the Surface Transportation Board of the United States Department of Transportation, or any successor board, commission or agency.

"Term" shall mean the Initial Term and any Extension Terms, covering the period from the Commencement Date to the date the Agreement expires or is terminated.

"Track Facilities" shall mean all elements of the track and right-of-way comprising the Licensed Properties, including rail, ties, ballast, structures, and other physical assets comprising, located on or appurtenant to the Licensed Properties, and any such assets or improvements located on parcels of land associated therewith, but excluding Station Facilities, Engine House Facilities and physical assets subject to agreements with third parties.

"Transition Period" shall mean the period between beginning as of the Effective Date and ending as of the Commencement Date, as the same may apply to the Licensed Properties in their entirety or any portion thereof.

C Relationship of the Parties

Railroad is a private enterprise, is an independent contractor, and is not an agent of EOTPW.

Whenever Railroad requires the written approval of EOTPW, the signature of EOTPW's Director of Rail will suffice to validate such written approval. Whenever EOTPW requires the written approval of Railroad, the signature of Railroad's Chief Executive Officer shall suffice to validate such written approval. In all cases in which EOTPW's or Railroad's approval is required, such approval shall not be unreasonably withheld.

Unless otherwise expressly specified herein, with respect to any matter as to which this Agreement requires the prior approval of EOTPW, such approval shall be deemed to be granted in the event that EOTPW does not approve or disapprove the applicable action or request within thirty (30) days after the Railroad requests such EOTPW approval in writing, provided, however, that such tacit approval shall not be deemed effective approval as to any matter involving (1) the adjustment to any key term of this Agreement, (2) any commitment by EOTPW to undertake or fund any project or to consent to any encumbrance upon the Licensed Properties, or (3) any obligation on the part of EOTPW to expend funds.

Notwithstanding the foregoing, in any case in which the circumstances (other than Railroad's unreasonable delay) requires prompt action by EOTPW on a request for approval, Railroad shall, in its notification and request for approval, describe such circumstances and specify the time in which EOTPW's action is required, and EOTPW shall make best efforts to respond in accordance with the circumstances presented. In an extraordinary or emergency situation reasonably requiring immediate action to protect public health or safety, or to protect the Licensed Properties or Railroad Properties from damage, , the Railroad shall notify EOTPW of the emergency situation orally or in writing (pursuant to emergency notification procedures to be agreed upon by the Parties) immediately upon becoming aware of such situation, advise EOTPW of any actions Railroad proposes to take to address or correct such situation, and seek EOTPW's consent to such actions. In the event Railroad is unable to contact EOTPW or the emergency situation requires immediate corrective action, Railroad shall contact EOTPW within twenty-four (24) hours following the emergency occurrence to describe the situation and actions taken by Railroad, and shall, not later than seven (7) business days following the event, transmit a report to EOTPW describing the emergency and Railroad's response actions.

Railroad and EOTPW shall meet at least four (4) times each year to review and discuss freight rail services and related operations, revenues, expenses, maintenance and repair, marketing, and other matters concerning the Licensed Properties, Railroad's operations and/or the Agreement

Railroad shall promptly inform EOTPW, affected shippers, customers, rail operators and other relevant parties of any major action or event related to the Licensed Properties or related rail operations that may affect rail service involving those shippers, customers, operators or other parties as soon as Railroad becomes aware of such action or event. EOTPW will likewise inform Railroad of any problems or concerns relating to the Licensed Properties, Railroad's freight rail service or other matters involving performance under this Agreement

Section II. Licensed Properties

A Licensed Properties

The Licensed Properties shall consist of the properties described in Exhibit A to this Agreement, as the same may be amended from time to time by written agreement duly executed by the parties, subject to the terms and conditions set forth herein and in Licensor's December 2006 RFR, with particular reference to pages 25 to 29 of such RFR.

Unless otherwise specified herein, the Licensed Properties shall include all physical assets, including tracks, bridges, improvements, and all rights and powers necessary or appropriate to operate rail freight service which may be lawfully exercised or engaged on or about the Licensed Properties, including the right to collect revenues accruing from such operations as provided herein

The Licensed Properties are and shall remain throughout the Term the property of Licensor. The rights granted to Licensee herein are and shall remain subject to all licenses, leases, easements and other encumbrances and/or matters of record, as well as to the terms and conditions hereof.

B Additional Licensed Properties

The Commonwealth may from time to time during the Term of this Agreement acquire ownership or control of additional properties located in the vicinity of the Licensed Properties. Upon acquisition of such additional properties by the Commonwealth, EOTPW may, in its sole discretion, offer to license such properties to Railroad for operation as Licensed Properties, upon such terms and conditions as EOTPW deems reasonable and appropriate. Following acceptance by Railroad and subject to written agreement between the parties establishing mutually acceptable terms and conditions governing such properties, the properties shall become "Additional Licensed Properties" under this Agreement. The parties shall execute necessary modifications, amendments or other written instruments to effect applicable changes to the Agreement.

C Condition of Licensed Properties

Railroad acknowledges that it has inspected the Licensed Properties, and accepts the Licensed Properties in their "as is" condition.

EOTPW shall have no obligation to perform any maintenance, repair, improvement or rehabilitation work on or to the Licensed Properties, nor shall EOTPW be obligated to reimburse Railroad for any expenses associated with Railroad's maintenance, repair, improvement or rehabilitation of the Licensed Properties, except as EOTPW may otherwise specifically agree in writing. Railroad acknowledges that EOTPW shall not be obligated to deliver the Licensed Properties to Railroad in any specific condition or in accordance with any standard, and shall not be liable to Railroad for consequences arising from conditions existing as of the Commencement Date.

EOTPW acknowledges that Railroad shall not be liable for (1) conditions existing as of the Commencement Date hereof about which Railroad was not and could not reasonably have become aware prior to execution of this Agreement (i.e., hidden defects), (2) hazardous materials located in or upon the Licensed Properties as of the Commencement Date, or (3) commitments made by EOTPW to third parties in agreements governing operation of the Licensed Properties by others, including commitments regarding reimbursement of certain expenses incurred and compensation for projects undertaken by such third parties in connection with the maintenance and operation of the Licensed Properties. To the extent that EOTPW is legally obligated, pursuant to agreements between EOTPW and such third parties, to require Railroad to compensate such third parties for any such expenses, Railroad hereby agrees to compensate such third parties subject to the prior written agreement by EOTPW to promptly reimburse Railroad for such costs.

The parties acknowledge that the "as is" condition of the Licensed Properties shall be further refined following joint inspections by EOTPW and Railroad, which inspections shall be conducted as soon as practicable following the Effective Date, but no later than thirty (30) days after the Commencement Date

D Control of Licensed Properties

Except as otherwise provided herein, Railroad shall have exclusive control in the operation of rail freight service on and over the Licensed Properties, including the dispatching and control of trains, assignment of available cars in good order, assignment of crews and other employees, and assignment and use of power. Railroad shall use its best efforts to provide such rail freight services, and to facilitate delivery of other authorized rail services over the Licensed Properties in an efficient and reliable manner.

E Use and Operation of Buzzards Bay Railroad Bridge

Railroad shall have the non-exclusive right to use and travel over the Buzzards Bay Railroad Bridge (the "Railroad Bridge") to provide rail freight services which involve crossing the Railroad Bridge.

The U S Army Corps of Engineers ("Army Corps") has agreed to operate and maintain the Railroad Bridge (including the track located thereon) to reasonably accommodate scheduled rail traffic

Railroad shall be responsible for (a) coordinating railroad service schedules, dispatch, operations and signal maintenance activities with EOTPW and Army Corps staff; and (b) operating and maintaining all track, switches, signals and other infrastructure and equipment associated with approaches to the Railroad Bridge, specifically including the signal system that controls approaches to the Railroad Bridge.

The Army Corps has designed and has agreed to fund and supervise an improvement project to replace the existing signal system that controls approaches to the Railroad Bridge with a modern signal system (the "Signal System Project"), subject to availability of funding. Railroad will be expected to (a) operate and maintain the existing signal system until completion of the proposed Signal System Project, (b) coordinate with EOTPW and the Army Corps to provide for operational continuity during construction of the Signal System Project; and (c) operate and maintain the new signal system upon completion of the Signal System Project, all at no cost to EOTPW or the Army Corps

F Limitations and Reservation of Rights

1. General

This Agreement shall not be construed as granting or transferring any ownership interest in the Licensed Properties or related Facilities to Railroad. Any use of the Licensed Properties by Railroad other than the Permitted Uses described herein shall require the prior written permission of EOTPW.

Railroad shall not file any applications or other documents with the STB relating to the operation or use of the Licensed Properties without the prior written consent of EOTPW.

Railroad shall not transfer, sub-license, or sub-contract any of Railroad's rights or obligations hereunder over all or any portion of the Licensed Properties, nor shall Railroad enter into any agreement involving the use, operation, or improvement, including the operation of rail services, the construction or installation of switches, sidetracks, spur tracks or other facilities on or over the Licensed Properties, without the prior written consent of EOTPW.

In the event that Railroad desires to allow any other person or entity access to or entry upon the Licensed Properties for any purpose, Railroad shall obtain EOTPW's prior written approval.

Notwithstanding the foregoing, Railroad may engage sub-contractors not affiliated with Railroad to perform periodic, routine maintenance services such as vegetation management, brush clearing or snow removal, without EOTPW's prior approval. Railroad agrees that it shall identify the maintenance activities it intends to sub-contract to others in Railroad's proposed Maintenance and Repair Work Programs, and that Railroad shall identify such services in its Annual Maintenance and Repair Work Activity Reports.

2. Adjustment, Reconfiguration or Removal of Licensed Properties

Notwithstanding any other provisions of this Agreement, EOTPW reserves the right to adjust, remove, or reconfigure the rail lines and related properties comprising the "Licensed Properties", and to perform certain improvements to the Licensed Properties.

EOTPW reserves the right to adjust the boundaries of the rail lines and related properties comprising the Licensed Properties during the Term of this Agreement, so long as such adjustment does not unreasonably interfere with delivery of freight rail services to customers served by Railroad or substantially and unreasonably increase the cost of providing such services at the time of such adjustment.

EOTPW reserves the right to remove portions of the Licensed Properties governed by this Agreement, as follows: (a) EOTPW may, upon ninety (90) days written notice to Railroad, remove any segment of any rail line over which freight rail service has not been provided for at least two (2) years prior to the date of such notice, and (b) EOTPW may, upon ninety (90) days written notice to Railroad, make reasonable adjustments to the boundaries of the Licensed

Properties governed by this Agreement, so long as the reconfigured boundaries (1) allow for reasonable access to customers actively served by Railroad at the time the boundaries are reconfigured, and (2) do not significantly impact the common carrier rights or obligations of Railroad. EOTPW and Railroad may otherwise agree to adjust, remove or reconfigure the Licensed Properties (or portions thereof) upon mutually acceptable terms.

Railroad agrees to file appropriate notices and documents with the STB, and to notify other parties as necessary to accomplish the removals, adjustments or reconfigurations noted above. EOTPW shall reimburse Railroad for its reasonable administrative costs and direct expenses associated with the preparation and delivery of such filings and notices, so long as such costs are documented to EOTPW's reasonable satisfaction.

3 Discontinuance by Railroad

Railroad shall obtain EOTPW's written consent prior to initiating any action to discontinue rail freight service on any portion of the Licensed Properties, and shall notify EOTPW at least ninety (90) days prior to the date Railroad desires or intends to initiate any such action. Railroad's notification to EOTPW shall identify the portion of the Licensed Properties involved, describe the reasons Railroad seeks approval for such discontinuance, and provide the name, address and contact information of any customer and/or shipper to be affected by the proposed discontinuance. Following receipt of EOTPW's consent to the proposed discontinuance, Railroad shall provide notice to all affected customers and shall fully comply with all regulatory requirements related to such discontinuance, all at Railroad's cost and expense.

Failure of Railroad to comply with this Section II F 3 shall constitute an Event of Default under the Agreement.

4 EOTPW Repair and Improvement Projects

EOTPW may, but shall not be obligated to initiate, implement, fund, oversee or have other involvement in projects and programs to repair and/or improve the Licensed Properties and related facilities, including projects and programs to improve public and/or private crossings, whether such crossings are or proposed to be at grade, undergrade or overhead. While EOTPW anticipates that Railroad would, in most cases, undertake the design and construction of such projects and programs, EOTPW may, from time to time, wish to engage third parties to design and/or construct the improvements. EOTPW therefore reserves the right to contract with Railroad or with qualified third parties, to design and construct improvements to the Licensed Properties, including improvements to track, right-of-way, structures, public or private crossings, and other facilities, under terms deemed acceptable to EOTPW.

In the event that EOTPW proposes to undertake a repair or improvement project or program, EOTPW reserves the right to contract with Railroad or with qualified third parties to design and/or construct the contemplated repairs or improvements, upon terms (including, without limitation, the scope, scheduling, and/or cost of such repairs or improvements) acceptable to EOTPW.

Railroad agrees to accommodate the work in each such case, by making reasonable adjustments to scheduled operations, coordinating dispatch and operations with the contractors selected to perform the work, and making other accommodations reasonably necessary to complete the work without significant impacts to the safe and efficient operation of rail service.

Railroad shall make such accommodations at no expense to EOTPW and its consultants, and at minimal expense to the selected contractor and private parties involved. EOTPW shall reimburse Railroad for the reasonable, necessary, and direct costs and expenses actually incurred by Railroad as a result of the repair or improvement project, in the event Railroad demonstrates that it will incur costs, expenses and/or liabilities sufficient to warrant reimbursement (i.e., costs to Railroad will exceed the value of the benefits to Railroad).

G Other

The parties acknowledge the terms set forth in Licensor's December 2006 RFR, with particular reference to the terms set forth at pages 25 – 29 of the RFR, attached hereto as a part of Exhibit A.

Section III. Use and Enjoyment of Licensed Properties

A Permitted Uses

Railroad shall have the exclusive right to provide rail freight service on the Licensed Properties. Railroad shall also have the right to conduct such other activities as are necessary to provide such rail freight services, satisfy the Maintenance & Repair Requirements and Maintenance & Repair Work Programs as set forth herein, and to perform such other activities specifically permitted by and/or required under this Agreement (the "Permitted Uses").

Railroad agrees that it shall use the Licensed Properties solely for the Permitted Uses and shall procure and maintain all licenses, permits, certifications and approvals necessary therefore, at Railroad's sole cost and expense. Railroad shall provide rail freight service to all customers along the Licensed Properties upon industry accepted commercially reasonable terms, and in compliance with rulings of the STB.

EOTPW reserves the right to license one or more qualified rail passenger operator(s) to provide tourist, excursion, charter or common carrier rail passenger rail service over the Licensed Properties, as provided in Section VIII herein, and to grant such license, lease, easement and other rights to third parties in accordance with this Section III. Railroad agrees to cooperate with EOTPW efforts to provide rail passenger service, including tourist, excursion, charter or common carrier rail passenger transportation, and to promptly evaluate and respond to EOTPW notifications regarding non-railroad uses and activities, provided, however, that Railroad shall be compensated for all reasonable, documented incremental expenses incurred by Railroad as a result of such services, plus reasonable administrative fees to be negotiated in good faith in accordance with this Agreement.

All Railroad Gross Revenue (except as payable to the Commonwealth as set forth herein) and capital and operating expenses associated with Railroad's use, operation, maintenance & repair of the Licensed Properties as permitted herein shall accrue to Railroad, and all capital, operating and other expenses (including any License Fees, Additional Fees, and utility charges, levies, excise and personal property taxes, and other costs and expenses associated with Railroad's use, operation, maintenance, repair and/or improvement of the Licensed Properties) shall be the responsibility of Railroad

B Non-Railroad Uses and Activities

EOTPW reserves the right, upon reasonable prior notification to Railroad, to permit others to use portions of the Licensed Properties for non-railroad purposes, on a temporary or permanent basis. EOTPW agrees that such non-railroad uses shall not interfere with the safe and efficient operation of the Licensed Properties by Railroad for the Permitted Uses

1. Proceeds to Accrue to Commonwealth

EOTPW shall retain the right to the proceeds from all agreements relating to the non-railroad uses of the Licensed Properties existing on the Commencement Date, and shall have the right to convert any existing temporary use of the Licensed Properties to a permanent use. Income derived from such non-railroad uses of the Licensed Properties shall accrue to the Commonwealth

2 Notification to Railroad

EOTPW agrees to notify Railroad (or to require any applicant to notify Railroad) prior to entering into any agreement for non-railroad use of the Licensed Properties, and shall provide Railroad with the opportunity to review and comment upon the proposed non-railroad use and/or activity. Railroad agrees to promptly review the proposed use and/or activity to determine whether the use and activity is consistent with the safe and efficient operation of the Licensed Properties for railroad purposes

3 Railroad Review and Comment

Railroad shall direct any comments regarding the impact of the proposed non-railroad use or activity to EOTPW within thirty (30) days of EOTPW's notification regarding same. Railroad's transmittal shall include Railroad's comments or concerns with respect to the proposed use, as well as any conditions Railroad seeks to impose with regard to the proposed use. Railroad's transmittal shall also identify any charges, fees and/or special costs for which Railroad will require reimbursement. EOTPW agrees to consider any comments received from Railroad in approving, disapproving or requesting modifications to the use or activity proposed, provided such comments are received within thirty (30) days of notification. Railroad's failure to provide comments within the 30-day period shall be deemed to constitute Railroad's consent to the use or activity as proposed

All agreements issued by EOTPW authorizing non-railroad uses and/or activities shall provide that Railroad shall be reimbursed for reasonable administrative and maintenance costs incurred by Railroad arising from such uses and activities. Railroad shall specify the administrative and other costs that apply to the proposed use or activity in its response to the EOTPW notification described above, and, if requested by EOTPW, shall identify the work required and provide a breakdown of related costs. Railroad's administrative and other charges in connection with non-railroad uses and activities involving the Licensed Properties shall be consistent with those customary in the railroad industry with respect to similar activities and uses, and shall reflect Railroad's actual costs and expenses, including reasonable administrative fees, incurred as a result of the applicable use of and/or activity upon the Licensed Properties.

4 Payment of Reimbursement Costs and Other Fees Due Railroad

Railroad shall be solely responsible for collection of payments due Railroad for any Railroad Charges and Fees in connection with administration of requests to use the Licensed Properties for non-railroad uses or activities, and for any installation, maintenance, flagging or other costs associated with such a use. Railroad shall notify EOTPW within thirty (30) days of any failure by a third party to pay such fees in accordance with a license or other written authorization executed by EOTPW, and EOTPW shall cooperate with Railroad and support Railroad's efforts to collect any overdue debts from said third parties.

EOTPW shall require third parties engaged in a non-railroad use of the Licensed Properties to indemnify and hold harmless Railroad from and against all liability from any loss arising from injury or death to persons or damage to property, including the Licensed Properties, which shall arise out of or in any way be connected with such use, irrespective of cause other than negligence or willful misconduct of Railroad.

C Interference With Safe and Efficient Operation of Railroad

Railroad shall notify EOTPW in the event Railroad identifies a non-railroad use that interferes or is likely to interfere with the safe and efficient operation of the Licensed Properties for the Permitted Uses, whether such use or activity existed as of the Commencement Date or is identified or proposed at any time during the Term of this Agreement. Railroad's notification to EOTPW shall include the following information (if available): the name of the party or parties involved and contact information (address and telephone number), location (by Milepost, street name and/or local landmark) of the use / activity, date of any underlying agreement (if known) permitting the relevant party to use the Licensed Properties, the nature of the use and of the interference resulting from such use, and the action requested by Railroad. EOTPW shall consider each such communication on a case-by-case basis, and will work with Railroad and the identified party or parties to remedy the situation in accordance with applicable laws, regulations, and agreements.

Section IV: Agreement Term

The Term of this Agreement shall be comprised of the Initial Term described in this Section IV, including the Transition Period applicable to the Licensed Properties (including any of the EOT Rail Lines or portions thereof), and any Extension Term to which the parties may agree, as set forth herein

A. Initial Term

The Initial Term of the Agreement shall be for a period of ten (10) years, commencing as of 12:01 a.m. on the Commencement Date, which shall be no later than January 1, 2008 or one hundred (100) calendar days following the Effective Date, whichever is later, plus the applicable Transition Period relating to each EOT Rail Line or portion thereof comprising the Licensed Properties, and expiring at 11:59 p.m. on the Initial Term Expiration Date, which shall be December 31, 2017, unless the Agreement is sooner extended or terminated as set forth herein. The parties agree that, for purposes of calculating any payments due hereunder, the Commencement Date shall be deemed to be January 1, 2008.

B. Extension Terms

Railroad and EOTPW may extend the Term of this Agreement for up to three (3) Extension Terms. Each Extension Term shall be for a period of five (5) years, and shall be exercised by mutual written agreement executed by the parties. Each Extension Term shall commence at 12:01 a.m. on the day after the last day of the Initial Term or any previous Extension Term (as applicable) and shall expire at 11:59 p.m. on the fifth anniversary of the day on which the Term in question commences, unless this Agreement is sooner terminated as set forth herein.

C. Notification

Railroad shall notify EOTPW in writing at least one (1) year prior to any Expiration Date, and shall indicate in such notification whether Railroad desires and intends to extend the Term of the Agreement for the applicable Extension Term. Railroad shall, in such notification, identify any terms of the Agreement which Railroad wishes to amend during the applicable Extension Term, and shall describe and explain the basis for such new or amended terms proposed by Railroad. Railroad shall also provide, in such notification, Railroad's proposed Maintenance and Repair Work Program for the applicable Extension Term. Failure by Railroad to provide such notice at least one (1) year prior to any Expiration Date shall be deemed to represent Railroad's desire and intent to terminate the Agreement as of the next applicable Expiration Date. Failure by Railroad to address any proposed amendments to the Agreement in its notification shall be deemed to represent Railroad's desire and intent to be bound by the then current terms of the Agreement. EOTPW may deem Railroad's notice to have been ineffective in the event that Railroad fails to include a proposed Maintenance and Repair Work Program with the above notification.

Provided that EOTPW receives the requisite notification and related documents in a timely fashion, EOTPW shall advise Railroad of its position with respect to such proposed extension within thirty (30) days of receipt of Railroad's notification. EOTPW shall, in its response to Railroad, identify any terms of the Agreement which Railroad wishes to amend during the applicable Extension Term, and shall describe and explain the basis for such new or amended terms proposed by EOTPW. EOTPW shall also, in its response to Railroad, identify a proposed schedule for review and negotiation of the proposed Maintenance & Repair Work Program.

Each party shall have the right to agree to extend the Term of the Agreement for any Extension Term in their sole and absolute discretion, subject to applicable regulations and rulings of the STB or any successor agency having jurisdiction, and no Extension Term shall become effective except upon written agreement of the parties as provided herein. EOTPW may condition its agreement and consent to any Extension Term upon the timely negotiation of mutually acceptable Maintenance & Repair Work Program for the applicable Extension Term.

D. Other

1. Compliance Requirements

EOTPW may require, as a condition of its consent and approval to any Extension Term, that Railroad demonstrate that it is in full compliance with all terms of the Agreement.

Railroad shall provide evidence satisfactory to EOTPW demonstrating that Railroad is in full compliance with the Agreement at the time Railroad provides notice of its desire and intent to extend the Term for any Extension Term. EOTPW may require that Railroad provide additional documents or information reasonably necessary to establish Railroad's compliance with the terms of the Agreement. EOTPW may conduct such inspections and/or audits of the Licensed Properties and related documents as EOTPW may, in its discretion, deem necessary or advisable in order to determine whether Railroad is in compliance with the terms hereof.

As a further condition to its agreement and consent to any Extension Term, EOTPW may require that Railroad reaffirm such compliance (including delivery of such evidence as EOTPW may require) one (1) month prior to any the commencement date of the applicable Extension Term.

2. Modifications

In the event this Agreement is to be renewed or extended for any Extension Term, either party may request, by written notice to the other party, that the terms of the Agreement be modified or amended to reasonably reflect changes in market conditions or other circumstances. Any such request by Railroad must be made with Railroad's notification of its desire or intent to extend the Term, as provided in Section IV. Any such request by EOTPW shall be made in its response to Railroad's notification. The parties agree to negotiate in good faith with respect to any reasonable modifications or amendments proposed by either party, and shall seek to negotiate mutually satisfactory terms, consistent with and to the extent permitted by applicable

laws In the event that the parties cannot agree on the terms of any modifications within ninety (90) days (from the date of Railroad's notification), the parties may reaffirm their desire and intent to extend the Term upon the terms and conditions of the Agreement then governing, or agree to terminate the Agreement, effective as of the applicable Expiration Date or such other date as the parties may agree

Section V: Compensation

Railroad agrees to pay to the Commonwealth the following fees and other compensation during the Term of the Agreement

A Base License Fee Minimum Annual Guarantee

Railroad agrees to pay a Base License Fee in the minimum annual amount of \$40,000, subject to annual increases of 3 % per year

The Base License Fee shall be paid in quarterly installments of \$10,000, subject to the annual increases noted above

Each quarterly payment shall be due and payable on the first day of each quarter during the Term, from and after the Commencement Date The first quarterly payment shall be due upon execution of the Agreement, and the second quarterly payment shall be due upon the first day of the second quarter following the Commencement Date (April 1, 2008). All subsequent payments shall be due and payable upon the first day of each calendar quarter during the Term of the Agreement

B Additional License Fees

(1) Percentage of Specified Railroad Revenues

Railroad shall pay EOTPW, as an Additional License Fee hereunder, five per cent (5%) of all revenues received by Railroad for trackage rights, car storage or other related fees received from third parties for the use of the Licensed Properties, excluding fees received for demurrage and switching, car hire, and services related to accommodation of tourist, excursion and/or related passenger rail operations.

Such fees will be due and payable thirty (30) days following receipt by Railroad.

(2) Percentage of Railroad Gross Revenues

Railroad shall pay EOTPW, as a further Additional License Fee hereunder, five per cent (5%) of Railroad Gross Revenue greater than \$3,000,000 in any fiscal (calendar) year Railroad Gross Revenues will be calculated within 45 days of the end of Railroad's fiscal (calendar) year (by February 15th of the applicable year), and applicable fees to EOTPW shall be paid to EOTPW within 30 days after such calculation (by March 15th of the applicable year).

C Maintenance & Repair Work Programs

Railroad agrees to perform certain maintenance and repair work on and in connection with the Licensed Properties, as further described in Sections IX and X of the Agreement. Railroad agrees to contribute a minimum of 21% of Railroad Gross Revenue to such activities each year, in accordance with the terms of Sections IX and X below and otherwise in accordance with the Agreement.

Railroad's financial obligation as outlined above (21% percent of Railroad Gross Revenue) shall initially be calculated in accordance with Railroad's revenue projections, and shall be adjusted to reflect actual revenues received by Railroad upon receipt of Railroad's Financial Statements, the Annual Maintenance & Repair Activity Reports, and Annual Maintenance & Repair Work Programs for subsequent years. In the event that Railroad contributes more or less than 21% of Railroad Gross Revenue in any given year, in accordance with any approved Maintenance & Repair Work Program, the amount of any additional overpayment or shortfall shall be addressed in the Maintenance & Repair Work Program for the subsequent year, so that Railroad's total contribution over any five (5) year period during the Initial Term and during any Extension Term shall average approximately 21% of Railroad Gross Revenue. The above provisions regarding adjustments to Railroad's contribution to the Maintenance & Repair Work Programs shall not relieve Railroad from the obligation to perform the work described in any approved Annual M&R Work Program, except as otherwise provided by mutual written agreement of the parties.

In the event Railroad fails to perform the maintenance and repair obligations described in Sections IX and X hereof and any applicable Maintenance & Repair Work Program, EOTPW may, upon thirty (30) days written notice to Railroad, elect to carry out such obligations at Railroad's expense, allocate the work element or related value to future Maintenance & Repair Work Programs, or require that Railroad compensate EOTPW for the cash value of the applicable work element, not to exceed 21% of Railroad Gross Revenue, as described herein. Railroad agrees that, in the event that EOTPW elects to receive the value of the applicable work element in cash, Railroad shall transmit such compensation to EOTPW within sixty (60) days of receipt of EOTPW's invoice therefore.

Any payments received by Railroad as reimbursement for damages to the Licensed Properties (including related Facilities) caused by third parties, and any payments or in-kind contributions received by Railroad from any authorized passenger rail operator to off-set the costs of maintenance and repair to the Licensed Properties resulting from passenger rail operations on the Licensed Properties shall be added to Railroad's minimum contribution (21% of Railroad Gross Revenue) described above, and any maintenance and repair work undertaken pursuant to such payments or in-kind contributions shall be in addition to the maintenance and repair work undertaken and funded as described above.

D Payments

All fees and charges shall be due and payable upon the dates specified in this Section, except that, in the event any due date falls on a Saturday, Sunday or holiday, the applicable fee or charge shall be paid upon the next business day following the due date.

All payments shall be made payable to the Commonwealth of Massachusetts, and shall be mailed or delivered to

Executive Office of Transportation and Public Works
Ten Park Plaza, Room 3170
Boston, Massachusetts 02116-3969
Attention Manager of Railroad Properties

EOTPW may, at its option and in its sole discretion, choose to receive payment of any portion of the Base License Fee and/or the Additional License Fees in the form of improvements to the Licensed Properties and/or related Facilities rather than in cash; provided, however, that, EOTPW's election of such option shall in each instance be made in writing, and shall specify the amount of such fees to be allocated to specific work, projects or improvements and any applicable terms associated with such work, project, improvement and the allocation of such funds thereto

E Utility and Use Charges; Additional Fees

Railroad shall pay as an Additional Fee to EOTPW (or to the appropriate utility company, taxing authority or other third party, if billed directly to Railroad), all of Railroad's utility charges, excise or personal property taxes, usage fees or other charges relating to the Licensed Properties or Railroad's activities under this Agreement, and all other charges and amounts payable by or due from Railroad under this Agreement specially assessed against EOTPW as a result of Railroad's use of the Licensed Properties, whether payable initially to EOTPW or to a third party (collectively the "Additional Fees")

Railroad shall be responsible for paying all costs arising out of the installation, use and/or maintenance of utilities, including but not limited to electricity installed, used or maintained by or on behalf of Railroad. If necessary, an electric meter or meters shall be installed at Railroad's expense. Upon EOTPW's request, Railroad shall promptly deliver to EOTPW receipts or other evidence reasonably satisfactory to EOTPW evidencing payment of any Additional Fees payable directly to third parties. All Additional Fees shall be due and payable within thirty (30) days of the date of any invoice therefor.

F Late Payments

In the event any payment required to be paid to EOTPW hereunder is not made when due, Railroad shall pay interest on such overdue amount at the annual rate of eighteen percent (18%) or the highest rate permitted by law, whichever is greater, commencing on the date that such

payment is due. If any check from Railroad is returned to EOTPW for lack of sufficient funds, Railroad shall be charged an administrative fee for such returned check.

G Taxes

Railroad shall be solely responsible for the payment of any taxes, levies, betterments or assessments, fees or charges, whether existing on the Commencement Date or becoming applicable during the Term (including any Extended Term), which may be assessed against Railroad or EOTPW in relation to Railroad's use or operation of the Licensed Properties, any revenue derived by Railroad therefrom, or any equipment or personal property of Railroad located thereon (collectively "Taxes"). Railroad shall pay all Taxes directly to the taxing authority before delinquency and before any fine, interest or penalty shall become due or be imposed by operation of law for their nonpayment. Such payments shall constitute Additional Fees hereunder.

Following payment to the taxing authority, Railroad may contest, in good faith for its own account and at its own expense, the validity or amount of any Taxes, provided Railroad shall (1) notify EOTPW prior to such contest, (2) indemnify EOTPW against any resulting loss, cost and expense which may result from such contest, and (3) at the option of EOTPW, provide security satisfactory to EOTPW with respect to its performance of such indemnification. Railroad shall not permit a lien or encumbrance on the Licensed Properties by reason of failure to pay any of the Taxes.

Section VI. Section Intentionally Deleted

Section VII. Railroad Operations and Services

A General

Railroad shall provide safe, efficient and reliable common carrier and contract carrier rail freight services on and over the Licensed Properties throughout the Term of this Agreement, in a manner consistent with M.G.L. Chapter 161C, customers' reasonable needs, and prudent management practices customary in the industry, and in compliance with this Agreement and applicable regulations, standards, and rulings.

Railroad warrants and agrees that it has the requisite competence, commitment and capacity to carry out the rail operations, deliver the rail services and perform the maintenance and other requirements set forth herein, and that it has received (or will receive prior to the Commencement Date) and will maintain in force all requisite federal, state, and/or local permits, licenses, designations, exemptions and/or approvals, including any certificate, designation, exemption or other authorization pursuant to STB regulations, necessary to carry out the rail operations and other activities contemplated by this Agreement.

B Service Standards

1 Service Levels

Railroad shall provide freight rail service to all customers along the Licensed Properties in accordance with its common carrier responsibilities and obligations and applicable rulings and regulations of the STB (or successor agency) and other governmental bodies having appropriate jurisdiction, including rulings and regulations applicable to the level and frequency of such service. At a minimum, Railroad shall provide rail freight service to each rail line comprising the Licensed Properties at least twice a week, or more frequently to meet customer's reasonable requirements, provided, however, that Railroad may, with the prior written consent of EOTPW, operate less frequently so long the service schedule results in timely and reliable service to shippers and timely interchange with connecting railroads. Notwithstanding the foregoing, Railroad shall not be obligated to operate a scheduled train when there are no cars to be picked up from or delivered to shippers and/or connecting railroads along the Licensed Properties.

Failure by Railroad to provide rail freight service for ten (10) consecutive business days after a customer has requested service or a need has otherwise been established shall constitute an Event of Default hereunder, unless such service is prevented by a force majeure event, or the applicable segment of rail line has been embargoed or discontinued in accordance with the terms of this Agreement.

2. Prompt Delivery

Railroad expressly agrees that, in carrying out its freight rail operations, it shall promptly handle and transport loaded rail cars to and from points of interchange with other carriers, promptly deliver and provide access to empty rail cars, and otherwise transport and place railcars consistent with the obligations of a common carrier.

Except as Railroad and its customer may otherwise agree, all freight rail cars delivered to the Licensed Properties by connecting railroads shall be forwarded by Railroad to their final destination no later than the third business day after said delivery, and the failure to do so will be an event of default hereunder, provided, however, that such failure or delay in delivery shall not be an event of default where such failure or delay is due to a force majeure and the Railroad uses its best efforts to minimize the duration or consequences of any failure or delay and has given EOTPW prompt notice of the occurrence of such a force majeure event.

3. Equipment

Railroad shall ensure that the equipment used in the delivery of freight rail services is properly constructed and maintained, in a safe, clean condition, suitable for transporting the freight carried therein without spillage. Railcars shall be constructed and maintained so as to securely transport the materials carried, without leaks, spillage or otherwise dispersion of freight materials onto the Licensed Properties or abutting properties. Railroad shall immediately remove any materials that leak, spill or otherwise depart from railcars during transport on and

over the Licensed Properties, so as to leave the Licensed Properties and abutting properties in a clean and orderly condition, and free of debris at all times

In the event that Railroad fails to comply with this provision, EOTPW may require that Railroad pay EOTPW, as an Additional Fee, the amount of \$1,000 for each violation of this provision, provided that, EOTPW shall document such violations, and shall provide written warnings to Railroad at least twice in any twelve month period before Railroad shall be required to pay such Additional Fees. Such payments shall constitute an Additional Fee hereunder, and shall be in addition to, and not in lieu of, any fines, damages, or other costs, expenses or liability incurred by Railroad in connection with any regulatory action or claim for damages brought by any party.

4 EOTPW Oversight

EOTPW reserves the right to conduct reviews, inspections, surveys or studies as it may deem appropriate, at its own cost and expense, to monitor Railroad's performance hereunder. Railroad agrees that it shall cooperate fully during the course of such monitoring activities, and that it shall not assess any costs or fees in connection with such reviews, inspections, surveys or studies.

C Railroad Crews

Railroad shall ensure that all rail freight operations are adequately crewed. All train and engine crew shall be properly trained, licensed and/or certified as required by the FRA or any other applicable regulatory authority.

Railroad shall provide EOTPW with the resume and qualifications of those persons in direct responsible charge of track inspection and maintenance on or before the Commencement Date, and within thirty (30) days of written request by EOTPW.

D Operating Rules

Railroad shall operate under the Northeast Operating Rules Advisory Committee (NORAC) rules, or other rules adopted by connecting railroads, and any additional rules and instructions for the operation of its trains and maintenance equipment deemed necessary and/or appropriate by Railroad or the FRA. Railroad shall provide EOTPW with a copy of its operating rules no less than thirty (30) days prior to the Commencement Date and within ten (10) days after any change in same.

Railroad agrees to comply with all applicable rules, regulations and/or reasonable requests of the Federal Aviation Administration (FAA) or other federal, state, or local governmental entity with appropriate regulatory authority, or the Barnstable Municipal Airport (the "Airport") in Hyannis, Massachusetts involving communication, coordination and operation of trains in the vicinity of the Airport. Railroad shall likewise require any passenger or freight railroad authorized to operate on the Licensed Properties to comply with such rules, regulations and/or requests.

E Dispatching

Railroad shall conduct dispatching operations through a communications system that results in uninterrupted, redundant and failsafe train dispatching. Railroad shall conduct dispatch operations from a local base, and shall ensure that, at a minimum, train dispatchers are able to communicate via two-way radio, cellular telephone, and facsimile machine, to ensure that there is a continuous and direct link between the train dispatcher and all trains and other equipment operating over the Licensed Properties, and that all train operations are promptly and properly coordinated with the operation of the Railroad Bridge, any passenger rail operator, and others involved in the railroad operation

Railroad shall conduct all dispatching activities in accordance with applicable federal and state regulations and best management practices in the railroad industry

F. Embargoes

Railroad shall promptly notify EOTPW in writing before any embargo is imposed on traffic to, from or via any point on the Licensed Properties. Such notification shall specify the effective date of the embargo and the reason therefor. Railroad shall not impose any embargo inconsistent with its obligations as a common carrier.

G Code of Conduct

Railroad warrants that it is competent to perform the rail freight services and operations required herein, and that it shall, in performing such services and operations, conform with the best practices in the railroad industry. Railroad shall employ experienced, qualified and competent personnel to perform the work under the Agreement. Neither Railroad nor any of its contractors, sub-contractors or licensees shall enter into any contract, sub-contract or arrangement in connection with the Agreement in which any member, officer or employee of the Commonwealth during his or her tenure or for one (1) year thereafter has any direct or indirect interest. Railroad shall not contract with or have any financial dealings with any person, natural or legal, affiliated with, controlled by, or under common ownership with any employee of the Commonwealth. All parties shall comply with the provisions of the State Ethics Law, M G L c 268A.

In the performance of the Agreement, Railroad is and shall remain in all respects an independent contractor, and neither is nor may act as an agent or employee of the Commonwealth. Railroad shall not be authorized to bind the Commonwealth in any contractual matter or obligate the Commonwealth in any manner whatsoever to any third party. Neither Railroad nor any of its officers, employees or members is entitled to any of the benefits, worker's compensation or emoluments provided by the Commonwealth to its employees.

H Management and Administration

1 General

Railroad shall be solely responsible for the management, administration and oversight associated with the marketing, operating, maintaining and repairing the Licensed Properties as set forth in this Agreement, all at Railroad's own cost and expense

Railroad shall employ all personnel and provide all equipment required to furnish freight railroad and any other approved services under this Agreement.

Railroad shall employ an adequate number of qualified, trained and experienced staff to carry out the management, operations, maintenance and other activities required to deliver safe, efficient and reliable rail freight services, and to maintain the Licensed Properties in compliance with the standards and requirements set forth herein. Railroad shall employ all personnel, and shall provide, through ownership, lease, contract or otherwise, all locomotives, railcars, motor vehicles, and all other equipment and tools necessary to provide uninterrupted service to all customers and to properly maintain the Licensed Properties.

Railroad shall be responsible for negotiating all trackage rights, switching and other agreements with other railroad operators, customers or other parties, as such agreements relate to the use and operation of the Licensed Properties. All trackage rights and side track agreements shall be subject to EOTPW's prior written approval.

Railroad shall, no later than thirty (30) days prior to the Commencement Date and from time to time thereafter, identify a representative to serve as EOTPW's primary contact with respect to administration, coordination and compliance with this Agreement. This representative shall be a person in senior management position with decision-making authority. Railroad shall provide prompt written notification to EOTPW in the event of any change to management or supervisory personnel. In the event that any personnel change involves the departure of an employee from Railroad's organization, Railroad shall advise EOTPW of the actions taken to ensure that Railroad will be able to continue to meet the requirements of this Agreement.

Railroad shall notify EOTPW immediately upon the occurrence of any accident or derailment involving freight or passenger rail operations over the Licensed Properties, and shall include in such notification a description of the accident or derailment event, the cause (if known), personal injuries or significant damage to property or the environment resulting from the event. Railroad shall promptly transmit copies of any documents filed with the FRA or any other regulatory (including police or environmental) body as a result of such accident or derailment.

2 Required Approvals

Railroad shall be responsible for obtaining and maintaining in force any and all federal, state, and/or local permits, licenses, designations and/or approvals, including any certificate, designation or other authorization by the STB, necessary to carry out the rail operations and

other activities identified herein. Copies of such permits, licenses, designations, approvals, certificates, designations or other documents shall be forwarded to EOTPW prior to the Commencement Date. Thereafter, Railroad shall transmit copies of such documents within thirty (30) days of receipt of same by Railroad.

3 Community Relations

The Licensed Properties are situated within both commercial and residential areas in many communities. Railroad must conduct its operations in a manner that avoids or minimizes adverse impacts to the communities. Railroad will be required to take such actions as are reasonably necessary or desirable to minimize impacts to the communities in which railroad operations are conducted.

EOTPW reserves the right, upon sixty (60) days written notice to Railroad, to require Railroad to establish a Community Advisory Committee. The purpose of the Advisory Committee shall be to provide Railroad and EOTPW with advice and feedback regarding Railroad's operations and the quality of the freight railroad and other services provided by Railroad, including (a) discussion and advice regarding potential modifications to the quality and frequency of Railroad's operations and service, (b) formulation of a "Good Neighbor Plan", including procedures for addressing issues and concerns of local communities related to noise, fumes, compliance with environmental and health laws, and maintenance of the track, right-of-way, grade crossings, structures and other appurtenances, (c) discussion and advice regarding the needs of the business community and opportunities for business development, and (d) other matters of concern to EOTPW, Railroad and the local communities.

Unless otherwise agreed by Railroad and EOTPW at the time the Advisory Committee is established, the Advisory Committee shall be composed of seven (7) members, including four (4) members who reside in communities in which the Licensed Properties are situated, and three (3) members who own or operate businesses located within these municipalities. At least two (2) members of the Advisory Committee shall own property that abuts the Licensed Properties. Unless otherwise agreed by Railroad and EOTPW, the Advisory Committee shall meet on a bi-monthly basis.

4 Marketing

Railroad shall be primarily responsible for all marketing and business development activities intended to preserve and expand freight rail services along the Licensed Properties, at Railroad's sole cost and expense.

5 Timetables, Track Charts, and Other Property Records

Railroad shall develop and update timetables, track / program charts and all plans, reports and other documents required by regulation or best practices to operate the Licensed Properties in a safe and prudent manner.

(a) Timetables

Railroad shall transmit a copy of its timetable to EOTPW no later than thirty (30) days after the Commencement Date. Thereafter, Railroad shall submit updated timetables to EOTPW no later than thirty (30) days after (i) Railroad updates its timetable, and/or (ii) EOTPW requests a copy of Railroad's then-current timetable

(b) Track Charts

Railroad shall prepare track charts describing both current condition and program information relating to the Licensed Properties, and shall transmit copies of such track charts to EOTPW no later than the first anniversary of the Commencement Date. Thereafter, Railroad shall submit updated track charts to EOTPW no later than thirty (30) days after (i) Railroad prepares updates any track chart, and/or (ii) EOTPW requests a copy of Railroad's then-current track charts

Track charts shall include, at a minimum, the following information: mileposts, public crossings (grade / OH / UG), private crossings (grade / OH / UG), crossing signal locations, turnouts, sidetracks, switches, slow orders, bridges and culverts, weight ratings for track and ROW, maintenance, repairs & improvements performed since Agreement Commencement Date), and such other information as EOTPW may from time to time reasonably request.

(c) Other Property Records

Railroad shall provide, as EOT may from time to time request, copies of plans and records indicating Railroad's interests in any Railroad Properties (as defined in Section 2 hereof), and other documents relating to the use, operation or condition of the Licensed Properties; provided that such other documents shall not include Railroad's customer or switching agreements

Section VIII. Passenger Rail Services and Operations

A General

Railroad acknowledges that EOTPW has reserved the right to contract with any person or agency (including Railroad) to operate passenger rail service on the Licensed Properties, and that Railroad has agreed to cooperate with any and all efforts by EOTPW to provide for passenger rail service, including tourist, excursion, charter, commuter and/or other passenger rail service, on and over the Licensed Properties

EOTPW has agreed to permit Cape Cod Central Railroad, Inc., a Massachusetts corporation affiliated by common ownership with Railroad, to continue to provide certain tourist, excursion and charter passenger rail services on and over the Licensed Properties in accordance with the

terms and conditions of a separate agreement between EOTPW and CCCR attached hereto as Exhibit G (the "EOTPW / CCCR Operating Agreement" or "Exhibit G") Railroad acknowledges that EOTPW may, by mutual written agreement with Cape Cod Central Railroad, extend the term, adjust the scope of the services and/or expand the operational limits of the service area described in the EOTPW / CCCR Operating Agreement Railroad agrees to accommodate the operations contemplated by the EOTPW / CCCR Operating Agreement and adjustments thereto upon reasonable business terms, consistent with the terms of this Agreement and Railroad's common carrier obligations, and upon financial terms recognizing the reasonable, demonstrable additional costs incurred by Railroad to accommodate such operations

EOTPW further reserves the right to contract with any other person or agency to operate passenger rail service on and over the Licensed Properties throughout the Term of this Agreement Railroad agrees to cooperate with any and all efforts by EOTPW to provide for such passenger rail service on and over the Licensed Properties, and to accommodate such operations upon reasonable business terms, consistent with the terms of this Agreement and Railroad's common carrier obligations, and upon nondiscriminatory financial terms recognizing the reasonable, demonstrable additional costs incurred by Railroad to accommodate such operations Railroad agrees to negotiate fair and reasonable compensation for Railroad's accommodation of such operations

B Common Carrier Passenger Rail Service – Transfer of Certain Rights / Obligations

EOTPW reserves the right to transfer dispatch rights, maintenance responsibilities and/or operational control for selected portions of the Licensed Properties to the MBTA or other qualified railroad operators authorized and designated by EOTPW to provide common carrier passenger rail service over the Licensed Properties, provided, however, that EOTPW agrees to provide twelve (12) months prior written notice of such action to Railroad

Within thirty (30) days following transmittal of the above-referenced written notice to Railroad indicating EOTPW's intent to transfer dispatch rights, maintenance responsibilities and/or operational control for any portion of the Licensed Properties to the MBTA or another qualified railroad operator, EOTPW and Railroad shall commence negotiations regarding possible adjustments to the terms of this Agreement, to address the changed conditions affecting Railroad's freight rail operations and other rights and obligations under the Agreement

The parties agree to discuss and negotiate in good faith with respect to possible adjustments to terms and conditions relating to (1) impacts to freight rail service caused by the development (including construction) and operation of the proposed passenger rail service, (2) freight rail transportation services during construction and upon commencement of the proposed passenger rail service; (3) alternatives for providing freight transportation services to the Railroad's customers during any period when freight rail service is interrupted, (4) costs associated with providing alternative transportation for customers, in the event construction and other development activities result in interruptions to freight rail service, (5) costs which the Railroad will avoid, and costs the passenger rail operator will incur, in connection with the dispatch, maintenance and operation of the subject rail line(s), (6) compensation, if any, to

which the Railroad and/or affected customers may be entitled (in connection with differential cost of providing alternative transportation), (7) compensation, if any, to which EOTPW, its assignee / designee (including the MBTA), or other parties may be entitled (in connection with Railroad's use of the subject rail line(s), as maintained, dispatched and operated by others), and (8) such other matters as the parties may deem reasonable and appropriate

In the event that EOTPW (or its assignee / designee) and Railroad cannot come to a good faith agreement regarding adjustments to the terms of the Agreement within six (6) months from the date of EOTPW's initial written notice referenced above, either EOTPW or Railroad may, upon ninety (90) days' written notice to the other party, terminate the Agreement and the Railroad's rights and obligations as they pertain to the portions of the Licensed Properties involved.

Upon termination of the Railroad's rights and obligations for the specified portion of the Licensed Properties by EOTPW, its assignee / designee, or Railroad, Railroad shall, within ten (10) days of receipt of a request from EOTPW, file documents with the STB and provide such other notifications as necessary to terminate Railroad's rights and obligations to provide freight rail service over the relevant portion of the Licensed Properties

The parties acknowledge that, following termination of Railroad's rights and obligations as outlined above, EOTPW may enter into an agreement with another freight rail operator, to provide freight rail service over the applicable portion of the Licensed Properties

C Tourist, Excursion and Related Passenger Rail Services

Railroad agrees to accommodate the tourist, excursion and related passenger rail operations of Cape Cod Central Railroad described in the EOTPW / CCCR Operating Agreement attached hereto as Exhibit G , and to negotiate and enter into an agreement with CCCR that will allow CCCR to conduct the operations and provide the services described in Exhibit G as set forth in Section VIII A above.

Railroad acknowledges that EOTPW may wish to encourage the continued operation of rail passenger service over the Licensed Properties following the expiration or termination of the EOTPW/CCCR Operating Agreement, or to authorize the operation of additional passenger services over portions of the Licensed Properties by CCCR or others (including Railroad or any other railroad operators, whether or not affiliated with Railroad) Railroad agrees to support and cooperate fully with EOTPW in the development and implementation of such service EOTPW may (to the extent it may lawfully do so), but shall not be obligated to, enter into direct negotiations with a single railroad operator (including Railroad), or solicit competitive proposals before negotiating an agreement for the operation of specified rail passenger services on the Licensed Properties or some portion thereof. Railroad shall have the right, in common with others, to submit a proposal on its own behalf or through a qualified affiliate to provide the specified services through direct negotiations with EOTPW or in response to any such competitive solicitation In entering into any future agreement for the operation of tourist, excursion or related rail passenger services, EOTPW shall take reasonable steps to minimize any interference or disruption to Railroad's use of the Licensed Properties for the Permitted

Uses Railroad agrees to accommodate such passenger rail operations and services in accordance with the terms of this Section VIII and Exhibit H attached hereto

Section IX. Maintenance and Repair Requirements

A General

Railroad shall be solely responsible for maintaining the Licensed Properties in a condition sufficient to ensure the safe operation of freight and/or passenger rail service at the specified FRA Track Class, in compliance with applicable federal, state and local laws, and so as to provide continuous, uninterrupted service to its customers and any operator authorized to provide tourist, excursion or related passenger rail services

Railroad shall maintain the Licensed Properties in a condition that meets or exceeds the FRA Track Class Standards set forth in Exhibit B, and in accordance with the requirements of Exhibit C, applicable regulations and the recommended practices published from time to time by AREMA. At no time shall the condition of the track and right-of-way fall below the minimum standards established by the FRA for the specified class of track, except for temporary conditions arising from unforeseen circumstances (i.e., as a result of storms or other emergency conditions), or as otherwise agreed by written agreement by the Parties

Whenever the Maintenance and Repair Requirements (the "M&R Requirements") establish requirements that exceed the FRA safety standards for the specified class of track, Railroad shall maintain the Track Facilities to meet the more restrictive requirements

During the first year after commencement of operations under this agreement the parties shall work together in establishing recommended practices which shall thereafter be used as guidance in carrying out maintenance and repair requirements hereunder

Except as otherwise specified herein, Railroad shall be responsible for payment of all costs and expenses related to maintenance and repair activities necessary to maintain the Licensed Properties at requisite FRA Track Class standards and in accordance with all other requirements of this Agreement.

EOTPW shall be primarily responsible for funding and/or performing Improvements to the Licensed Properties. Notwithstanding the foregoing, EOTPW shall not be obligated to fund or perform any Improvements, except as it may specifically agree in accordance with an approved Maintenance and Repair Work Program or other written agreement

Railroad shall have no duty to maintain any real or personal property which has been placed on or within the Licensed Properties pursuant to any license, lease, easement or other agreement between EOTPW and any third person, and which is exclusively related to non-rail uses of the Licensed Properties, unless Railroad undertakes such obligation by written agreement with EOTPW

The FRA Track Class standards identified in Exhibit B may only be changed by written agreement of the parties

B. Routine Maintenance

Railroad shall be solely responsible for any and all Routine Maintenance of the Licensed Properties, and shall carry out said maintenance at its sole cost and expense. For purposes of this Agreement, "Routine Maintenance" shall be deemed to include, at a minimum, those activities required to compensate for wear and tear on the Licensed Properties (including, without limitation, the track, right-of-way, track structures on bridges, and on other structures and facilities thereon and appurtenances thereto) and to ensure the safe and efficient operation of the Licensed Properties as contemplated herein.

"Routine Maintenance" shall include, without limitation track inspection, signal inspection, incidental gauging, switch point adjustment and lubrication, snow removal, joint tightening, incidental replacement and removal of damaged ties and rails, replacement of missing or damaged bolts, vegetation control, and actions required to ensure the safety and security of the Licensed Properties. All Routine Maintenance shall be performed in accordance with applicable regulations, sound practice in the industry, and recommended practices published from time to time by AREMA

C. Other Maintenance and Repairs

Railroad shall perform, in addition to Routine Maintenance, all maintenance and repairs specified in this Section and in any approved Maintenance and Repair Work Program ("M&R Work Program") prepared in accordance with Section X hereof. Railroad shall be solely responsible for all costs and expenses associated with work allocated to Railroad in any approved M&R Work Program

Railroad shall not be responsible for performing other repairs or Improvements to the Track Facilities, except as provided in the M&R Requirements, described in approved M&R Work Programs, or as otherwise agreed in writing by EOTPW and Railroad. Notwithstanding the foregoing, Railroad shall take all necessary and appropriate measures to carry out its maintenance and repair obligations so as to avoid creating the need for capital investment to correct the results of deferred maintenance arising after the Commencement Date hereof, and to avoid or minimize deterioration of the rail assets and facilities upon the Licensed Properties throughout the Term of this Agreement

Railroad shall identify any maintenance, repairs or Improvements Railroad deems necessary to maintain the Licensed Properties to the standards set forth in this Agreement, and shall notify EOTPW in the event Railroad believes the Licensed Properties cannot be maintained to the requisite FRA Track Class standards and other conditions without EOTPW's financial or other participation. EOTPW may, but shall have no obligation to undertake or fund repair and/or Improvement projects or programs in order to achieve or maintain the specified FRA Class Standards and conditions

D Inspection

Railroad shall conduct periodic inspections of the Licensed Properties as required by 49 CFR 213, Subpart F, and other applicable regulations, as amended from time to time. Upon written request from EOTPW, Railroad shall inform EOTPW of the time and place of any inspection and shall permit qualified representatives of EOTPW to accompany Railroad's inspector. Defects noted in Railroad's inspection reports shall be repaired in accordance with FRA standards and AREMA recommended practices.

EOTPW may from time to time request a list of "slow orders" applicable to the Licensed Properties, or request that Railroad identify or respond to observations or findings indicating track conditions below the specified FRA Class standards. Railroad shall include in its response to EOTPW any information obtained by, or conditions observed by, its employees or representatives indicating whether elements of the track, structures or other facilities (including bridges or other structures) on the Licensed Properties require maintenance or repair work. Said response shall specify the date of the inspection, the name of the inspector, milepost limits of the inspection, the nature and location of all FRA defects, any corrective action taken by Railroad, and the date such action was or will be completed.

Whenever Railroad, EOTPW or others perform maintenance, repair or improvements to bridge structures, Railroad shall inspect the affected track and structure following completion of such work, and certify that the bridge and/or track structure meets applicable safety standards. Should Railroad determine that the safety standards have not been achieved, train movements shall not be allowed until Railroad, EOTPW or another responsible party corrects all safety deficiencies.

EOTPW reserves the right to inspect and to permit its authorized representatives to inspect the Licensed Properties, including, without limitation, any maintenance, repair or improvement work, to review the conditions of the track, or to otherwise examine the condition of the Licensed Properties, to ensure compliance with the M&R Requirements throughout the term of the Agreement. If work performed by Railroad or its contractors, partners, agents, or affiliates is found to be substandard or not in accordance with applicable contract or regulatory requirements, Railroad will be responsible for remedying the situation promptly and at its sole cost and expense.

E Public Grade Crossings

Railroad shall provide routine maintenance of all public grade crossings and associated equipment and facilities (including warning and protective devices) existing as of the Commencement Date.

Neither EOTPW, unless authorized by legislation and appropriation, nor Railroad shall be responsible for the installation or maintenance of any additional public grade crossing or grade crossing warning and protective devices; provided, however, that EOTPW may require Railroad to install same for any party which agrees to contribute the entire installation and maintenance cost and expense. EOTPW may elect to install and maintain or engage others to

install and maintain grade crossings, and/or to install and maintain warning devices at locations not currently equipped with crossings and/or devices

F Private Grade Crossings

Railroad shall be responsible for the safe and efficient operation of the Licensed Properties, including rail operations on and over private grade crossings, whether or not such crossings are lawful (as demonstrated a properly documented title or contractual rights). Railroad shall have no duty to maintain or otherwise accommodate private railroad grade crossings in the absence of documentation authorizing such crossing, and, to the extent applicable, providing for such maintenance

In the event that a third party requests a new private grade crossing, Railroad shall review the request to determine whether the request can be reasonably accommodated without impacting the safety or efficiency of Railroad's freight rail operations. In the event that Railroad agrees that the private grade crossing can be so accommodated, and EOTPW agrees to authorize the crossing, Railroad shall provide cost estimates to EOTPW for designing, installing, and maintaining the proposed grade crossing. Should the private party be prepared to fund the grade crossing, EOTPW, Railroad and the third party shall enter into an agreement governing the installation, use and maintenance of the crossing. All design, engineering, construction and maintenance costs associated with the private grade crossing shall be the responsibility of the private party requesting the crossing.

EOTPW and Railroad agree to work cooperatively to identify existing private grade crossings and to share information relating to rights held by the parties using such crossings. The parties likewise agree to work cooperatively to require any party using a crossing without a properly documented legal right to enter into an agreement to authorize such use, and to take other appropriate action regarding the crossing (including repair, improvement or closure of the crossing).

Notwithstanding the foregoing, EOTPW reserves the right to approve or deny any request for a private grade crossing agreement, and to take such actions as EOTPW deems necessary to close and/or remove any unauthorized private grade crossing.

G Non-Track Structures

Railroad shall be responsible for all maintenance and repair to non-track structures on the Licensed Properties used and/or occupied by Railroad, provided, however, that Railroad shall be required to obtain EOTPW's prior written authorization to install, construct, repair or remove such structures.

H Derailments

Railroad shall notify EOTPW immediately via telephone and facsimile or e-mail upon becoming aware of any FRA reportable derailment and shall provide a written description of

the circumstances of the derailment and response actions being taken by Railroad as soon as possible, but no longer than twenty-four (24) hours thereafter

In the event of any derailment, Railroad shall clear the tracks as soon as possible to allow for subsequent train movements. The cost of repairs to track, right-of-way and equipment shall be borne by Railroad unless the cause of the derailment is determined by qualified inspectors to be the result of the negligence of a party or parties other than Railroad

I Encroachments

EOTPW and Railroad agree to work cooperatively to identify unlicensed and unauthorized uses and activities upon the Licensed Properties, to encourage the party responsible for such use or activity to enter into an agreement with EOTPW governing such use, and/or to take other appropriate action regarding such use (including removal of use, activity, structure or other encroachment)

Section X. Maintenance and Repair Work Programs

A. General

The Maintenance and Repair Requirements will be carried out, in part, through mutually acceptable Maintenance and Repair Work Programs ("M&R Work Programs"), which shall identify the type, quantity and estimated cost of the maintenance, repair and/or improvement work that will be undertaken by Railroad, EOTPW and/or others

EOTPW reserves the right to contract with the Railroad or with qualified third parties, to perform repairs and Improvements to the Licensed Properties, including repairs and Improvements to track, right-of-way, structures, or public or private grade crossings, under terms deemed acceptable to EOTPW and otherwise in accordance with applicable laws.

In the event that EOTPW undertakes the design and/or construction of repair or Improvement projects or programs through qualified third parties, Railroad agrees to cooperate with EOTPW and its agents, representatives and contractors in connection with such projects and programs by accommodating access to the Licensed Properties, making reasonable adjustments to scheduled operations, coordinating dispatch and operations with the contractor(s) selected to perform the work, and making other accommodations reasonably necessary to complete the proposed work without interfering with the safe and efficient operation of rail freight service

Railroad shall make reasonable accommodations at no expense to EOTPW, its agents and representatives and contractor(s), except as otherwise agreed by the parties. Railroad shall not be entitled to reimbursement for any costs and expenses other than the reasonable and necessary costs and expenses actually incurred by Railroad in connection with the repair or Improvement project

B Maintenance and Repair Work Programs

Railroad shall prepare a proposed M&R Work Program prior to the Commencement Date, and every five (5) years thereafter, including prior to any Extension Term of the Agreement. Each M&R Work Program shall identify and quantify (as specifically as possible) the elements of maintenance, repair and/or improvement work that Railroad proposes to carry out during the upcoming 5 – year period, and may recommend specific repairs or improvements to be carried out by EOTPW and/or others.

Each M&R Work Program shall be comprised of: (1) a brief written description of the proposed Work Program for the Licensed Properties over the 5-year period, including an explanation of the framework for identifying and prioritizing work elements, and (2) spreadsheets that identify and quantify the track elements involved and associated cost estimates for the Work Program proposed for each rail line. The M&R Work Program must, at a minimum, identify the type of work Railroad proposes to perform, identify and quantify the specific track elements the Work Program will address, and provide a unit cost and estimated total cost for each of the proposed activities and the Work Program as whole. The Work Program should indicate how the work elements have been prioritized, and explain the basis for prioritizing the work.

The M&R Work Programs shall provide a cohesive plan for maintaining and repairing the Rail Lines in accordance with the M&R Requirements. Railroad's M&R Work Programs may also propose additional or alternative work elements or programs consistent with the Railroad's assessment of operational requirements, infrastructure conditions, market conditions and economics involved.

Each M&R Work Program shall specifically address work required (and estimated costs) to achieve the specified FRA Track Class standards or other desired conditions, and shall identify the work to be performed by Railroad and the work Railroad requires, requests and/or recommends that EOTPW or others perform.

EOTPW shall review Railroad's proposed M&R Work Program, and shall discuss the Work Program with Railroad. The parties shall negotiate in good faith to develop a mutually acceptable Work Program for the applicable period that will meet the M&R Requirements and address significant priorities relating to preservation of the rail assets and the safe and efficient operation of rail freight services. In the event the activities described in any proposed M&R Work Program are not likely (in EOTPW's reasonable opinion) to achieve the M&R Requirements established for the relevant rail line or to achieve the goals described above, EOTPW may require Railroad to amend the Work Program to resolve such deficiencies, and resubmit same for EOTPW approval. EOTPW shall have the right to direct Railroad to make adjustments to the M&R Work Program to accomplish the above goals, provided that Railroad shall not be obligated to expend more than the amounts described in Section V hereof, except as otherwise provided by written agreement of the parties.

Each approved Maintenance & Repair Work Program shall be added to the Agreement as a part of the Maintenance & Repair Requirements, and the elements of the Work Program shall be

implemented by Railroad in accordance with the annual planning and review process described in this Section X

The approved M&R Work Programs may be adjusted from time to time, by mutual agreement of the parties, to reflect evolving business and operating conditions along the Licensed Properties. Such changes shall be addressed through the Annual M&R Work Program and M&R Activity Reports.

The M&R Work Program for the first five (5) years of the Term is attached hereto as Exhibit D.

C Annual Maintenance and Repair Work Programs

Railroad shall deliver an Annual Maintenance & Repair Work Program (the "Annual M&R Work Program") to EOTPW as of January 30 of each year during the Term, or such other date as the parties may agree, which shall describe the work Railroad proposes for the upcoming calendar year. Railroad shall deliver a Maintenance & Repair Activity Report ("M&R Activity Report") to EOTPW upon the same date each year of the Term, which shall describe the work completed during the previous year, and shall identify and explain any discrepancies between the Annual M&R Work Program for that year and the activities completed and expenses incurred.

Railroad shall ensure that the Annual M&R Work Program and the M&R Activity Report delivered in any given year have been linked to the approved M&R Work Program, and shall identify those elements that are consistent with and/or diverge from the overall M&R Work Program. EOTPW shall review each of these documents, and shall have the right, following such review, to request clarification of or changes to the Annual M&R Work Program for the upcoming year, to reflect areas which, in the opinion of EOTPW, are necessary or appropriate to meet the M&R Requirements, address more immediate needs and priorities, or to address other reasonable concerns.

Each Annual M&R Work Program shall include a description of all work proposed in the coming year, estimated costs to perform the work, justification for the work proposed, and source of funding for the work. The Annual M&R Work Program shall identify the elements of the proposed work in objective, quantitative terms, and will identify the expected results of the work described, labor costs associated with work performed by Railroad's employees (including such information as EOTPW may reasonably request regarding employee titles, hours allocated to the work item, and other costs associated with employees' time devoted to the work item), costs for consulting and contract services (including the nature of the services to be provided, the basis for the costs estimate, etc.), and costs of materials to be purchased in carrying out the work. Routine Maintenance and related inspection activities shall be addressed as separate elements of each M&R Work Program, as these activities are considered part of line maintenance required by applicable regulations, AREMA Recommended Practices and sound practice in the industry.

EOTPW shall review the Annual M&R Work Program within thirty (30) days of receipt, discuss any concerns with Railroad, and either approve the Work Program as submitted, or request clarification and/or changes to the Program. In the event EOTPW does not comment upon the Annual M&R Work Program within thirty (30) days of receipt, the M&R Work Program will be deemed to have been accepted, provided, however, that EOTPW shall not incur any obligation to expend funds except by EOTPW's prior written consent, and provided further, that Railroad shall have no right to retain ownership of or to be reimbursed for any repairs or Improvements made to the Licensed Properties without EOTPW's prior written consent. In the event that any M&R Work Program is deemed approved due to EOTPW's failure to respond to Railroad's request for approval as set forth herein, EOTPW's tacit approval shall not be deemed to constitute acceptance by EOTPW of any financial or other obligation relating to the projects and programs described in the applicable Work Program. EOTPW's review of the Annual M&R Work Program may include site inspections by EOTPW staff or authorized representatives. Railroad shall, upon request, review the proposed maintenance and/or repair work elements with EOTPW's representatives on-site, at no additional cost to EOTPW or deduction from sums otherwise due EOTPW.

In the event the Annual M&R Work Program for any given year proposes activities that (a) are inconsistent in any material respect with the approved Work Program, (b) will require the expenditure of costs deemed excessive by EOTPW in its reasonable judgment, or (c) are not likely (in EOTPW's opinion) to achieve the M&R Requirements established for the relevant rail line, EOTPW may require Railroad to amend the Work Program to resolve such deficiencies, and resubmit same for EOTPW approval.

In the event that Railroad fails to implement the work activities allocated to Railroad in any approved Annual M&R Work Program, EOTPW may require Railroad to: (1) perform the work identified in the approved Work Program, (2) perform other work which, in EOTPW's reasonable judgment, is required; or (3) make a cash payment to EOTPW in an amount equal to the value of the work proposed but not carried out by Railroad pursuant to the approved Annual Work Program, to resolve such deficiency. Unless otherwise agreed by the parties, Railroad Operator shall correct any deficiencies, perform other work required, or make the requisite cash payment within thirty (30) days of notification by EOTPW. Failure to comply with these requirements will constitute a material breach of the Agreement.

Railroad shall not enter into any contractual agreement with or otherwise compensate Railroad's directors, stockholders, officers or affiliates for the furnishing of equipment or materials to be used in carrying out maintenance, repairs or improvements to the Licensed Properties without the prior written consent of EOTPW, which consent may be granted or withheld in EOTPW's sole discretion.

Railroad shall solicit three (3) or more written quotations for any outsourced maintenance or repair project expected to cost more than \$100,000, unless EOTPW agrees that such solicitation is not required for the relevant project. Railroad shall, upon receipt of EOTPW's written request, solicit three (3) written quotations for any outsourced maintenance or repair project expected to cost more than \$25,000.

D Maintenance and Repair Records

EOTPW shall have the right to inspect and audit Railroad's records pertaining to maintenance and repair work, activities and costs, at any time upon reasonable notice to Railroad and accompanied by a Railroad representative

Section XI. Modifications and Improvements

A General

Except as otherwise provided in an approved M&R Work Program or by other written agreement of the parties, any and all repairs and Improvements to the Licensed Properties shall remain or become the property of EOTPW, and Railroad shall not be entitled to reimbursement or compensation of any kind for any such repairs or Improvements, provided, however, that Railroad shall be entitled to compensation for specific repairs or Improvements, in such amounts and on such terms and conditions as are set forth in an approved M&R Work Program or by other written agreement between the parties

Railroad shall obtain EOTPW's written consent prior to making any Improvement to the Licensed Properties

Railroad shall be entitled to remove Improvements owned by Railroad upon the expiration or sooner termination of the Agreement, to the extent permitted by and in accordance with the terms of the written agreements authorizing such Improvements or by subsequent written agreement

Railroad may, with the written consent of EOTPW, establish or relocate sidetracks or industrial spurs on the Licensed Properties. The cost of materials and construction for new industrial spurs shall be borne by Railroad or by the customer involved. Except as otherwise provided by written agreement, that portion of any sidetrack, spur or other fixture (including switches) located upon the Licensed Properties shall be deemed to be the property of the Commonwealth

B Modifications Using Property Removed or Salvaged

Railroad may, in connection with its use of the Licensed Properties and with the prior written consent of EOTPW, remove, replace or relay elements of the Licensed Properties in the interest of cost or operating efficiency, provided, however, that the continuous and usable line of railroad between the termini in effect on the Commencement Date shall be maintained at all times during the Term

Railroad shall include plans for any removal, replacement, relay or salvage activity in its proposed M&R Work Program, or shall notify EOTPW of its proposed action as the need arises. Railroad shall apply the proceeds from salvaged materials to its Maintenance and Repair Work Program. Any proceeds not applied to the M&R Work Program shall be paid to the Commonwealth

Railroad shall maintain an inventory of track elements removed or salvaged by Railroad, or on Railroad's behalf, including data pertaining to the relevant track materials, the location from which the materials were removed or salvaged, and the location where the materials have been installed or are stored

Railroad shall keep proper accounts of all such transactions in accordance with this Section XI and Section XII.

Section XII. Accounting and Reporting

A General

Railroad shall maintain accounts of the revenue derived from and expenses incurred in connection with the operation and maintenance of the Licensed Properties in accordance with Generally Accepted Accounting Principles

All revenue and expenses attributable to the operation of the Licensed Properties shall be recorded and accrued through the Railroad in compliance with this Agreement. Railroad shall maintain complete, accurate and auditable records for all revenue and expenses associated with Railroad's use, operation, maintenance and repair of the Licensed Properties, in accordance with reporting requirements identified in Exhibit E and shall make such records available for review and inspection by EOTPW upon reasonable notice. Further, all revenue and expenses (including Railroad staff, contractors and consultants) associated with the Licensed Properties must be distinguished from revenues and expenses associated with non-EOTPW property and/or Railroad's other business activities (if any) in Railroad's books and in reports submitted to EOTPW.

Any fees and other amounts due in connection with the use and operation of the Licensed Properties or this Agreement shall be calculated on a cash basis, and shall be calculated without demand, abatement, deduction or offset.

B Reporting

Railroad shall transmit the reports and documents identified in Exhibit E to EOTPW at the times noted and in accordance with the requirements provided therein. All reports and documents shall be addressed to EOTPW's Manager of Railroad Properties, at the address specified in Section XXVII.

Railroad shall place EOTPW's Manager of Railroad Properties on mailing lists and correspondence regarding railroad schedules, system maps, and other like or related materials.

C Books and Records

Railroad agrees to keep books of record and account in which full, true and correct entries will be made of all dealings or transactions that relate to its business. No books or records shall be destroyed during the term of this Agreement, and for two (2) years following the expiration or termination of the Agreement.

Railroad shall maintain all environmental records for a period of seven (7) years, or as required by applicable law or regulation, if such law or regulation requires that the records be retained for a longer period, including but not limited to hazardous waste manifests, accident or spill reports, and permits associated with environmental activities, including vegetation management. Railroad shall make these records available to EOTPW and/or its authorized representatives upon request. Such records shall be maintained beyond the expiration or termination of this Agreement, if necessary to meet the above requirement.

D Inspection of Books, Records and Properties

Railroad shall permit any authorized representative of EOTPW to inspect the Licensed Properties and related facilities, examine Railroad's books of account, records, reports, contracts and any other documents or statements related to Railroad's operations hereunder, and to make copies and extracts, all at such reasonable times and as often as EOTPW may reasonably request. Railroad shall grant such access and allow such inspections at no expense to EOTPW, its consultants or other authorized representatives.

EOTPW and/or its authorized representatives shall, upon Railroad's request, execute a mutually acceptable confidentiality agreement prior to examining such books of account and records, reports, contracts or other documents deemed by Railroad to be confidential. Neither EOTPW nor its authorized representatives shall be obligated to execute a confidentiality agreement prior to inspecting the Licensed Properties, related facilities, or materials relating to the condition, maintenance, repair or operation of the Licensed Properties or related facilities.

Section XIII. Compliance with Laws

Railroad shall conduct all railroad operations, maintenance and other activities associated therewith in compliance with, and shall cause all work performed by its agents or employees to comply with all federal, state and local laws and regulations applicable to freight rail common carriers, and shall operate and maintain the Licensed Properties in compliance with all federal, state and local laws and regulations, including, without limitation, environmental laws, regulations, rules, orders and ordinances. The requirements set forth in this Agreement shall be in addition to such laws, regulations, rules, orders and ordinances. Railroad shall indemnify and hold EOTPW harmless from and against all fines, damages, costs, expenses and other penalties for Railroad's violations thereof.

Section XIV. Environmental Compliance

A General

Railroad shall comply with, and shall cause all services, operations and work performed by its agents or employees to comply with all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations and ordinances, including all applicable environmental statutes, laws, rules orders, regulations and ordinances Railroad shall indemnify and hold harmless EOTPW against all fines, damages, costs, expenses and other penalties for violations thereof.

At a minimum, Railroad shall conduct its operations and activities in compliance with this Agreement and with the following laws and regulations promulgated pursuant thereto the Clean Air Act, 42 U S C. Sec 7401 et seq , the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U S C Sec 9601 et seq ; the Massachusetts Environmental Policy Act (MEPA), M G L c 30, Section 61, the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, M G L c 21E, and all other applicable laws, rules and regulations respecting environmental protection

Railroad shall not dump, flush or in any way introduce any hazardous or toxic substances into or onto the ground, into any septic, sewage or other waste disposal system serving the Licensed Properties; nor shall Railroad generate, store or dispose of any hazardous substances in or on the Licensed Properties or dispose of hazardous substances from the Licensed Properties to any other location without the prior written consent of EOTPW, and then only in compliance with the Resource Conservation and Recovery Act of 1976, as amended, 42 U S C §6901 et seq , the Massachusetts Hazardous Waste Management Act, M G L c 21C, as amended, the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, MGL c. 21E, as amended, and all other applicable codes, regulations, ordinances and laws

Railroad shall notify EOTPW of any incident which would require the filing of a notice under Chapter 232 of the Acts of 1982 and shall comply with the orders and regulations of all governmental authorities with respect to zoning, building, fire, health and other codes, regulations, ordinances or laws applicable to the Licensed Properties "Hazardous Substances" as used in this Section shall mean "hazardous substances" as defined in the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, 42 U S C Section 9601, and regulations adopted pursuant to said Act, and, as used herein, shall also refer to petroleum products, including waste oils

B Environmental Cooperation, Remediation

If, as a result of Railroad's activities hereunder, hazardous materials are discovered on or at the Licensed Properties, Railroad agrees to cooperate with EOTPW in the determination of the party liable for the remediation of the Licensed Properties under applicable federal and/or state law Such cooperation may include the temporary adjustment or termination of the rights granted to Railroad hereunder to the extent necessary to facilitate any such determination EOTPW shall not

be liable for any damages incurred by Railroad as a result of such temporary adjustment or permanent termination. Railroad shall not be liable for remediation of hazardous materials present upon the Licensed Properties or related conditions existing as of the Commencement Date, except as provided by applicable law.

With respect to hazardous materials that either (1) were placed on or accidentally released on or at the Licensed Properties by Railroad or its employees, agents or consultants or by the employees, agents, contractors or consultants of Railroad's contractors or subcontractors or (2) are present on Licensed Properties as a result of the migration of such hazardous materials from land now or previously owned, leased, occupied or operated by Railroad or (3) for which Railroad is a potentially responsible party and to the extent it would be required under Chapter 21E to undertake response actions at its sole cost and expense, Railroad, upon written demand of EOTPW, shall conduct all response actions required by Chapter 21E and the MCP at Railroad's sole cost and expense (or, at EOTPW's election, reimburse EOTPW for the cost and expense incurred by EOTPW in connection with EOTPW's conduct of such response actions, including the hiring of a licensed site professional).

Any such response action, if performed by Railroad, shall be performed in accordance with Chapter 21E, the MCP, any other applicable statutes and regulations, and in accordance with plans and specifications approved by EOTPW, shall be completed in a timely manner to the reasonable satisfaction of EOTPW, and shall allow EOTPW, its licensees, lessees and other grantees to use the Licensed Properties for their present use and for any future transportation use. Railroad shall also be responsible for the reasonable costs incurred by EOTPW in hiring consultants to review, supervise and inspect any plans, specifications, proposed method of work, installation, operation and results.

C Compliance with Environmental and Land Use Regulations

In cases where Railroad is, or claims to be, exempt from federal, state or local environmental or land use regulation, Railroad shall comply with the substance of such regulations on a voluntary basis, and shall cooperate with EOTPW, state environmental agencies, and local communities to address the intent of such regulations when undertaking an activity for which another entity would be required to obtain a permit, or otherwise submit to jurisdiction. Such cooperation shall include, but not be limited to attendance at meetings, preparation and submittal of plans, and adjustment of operations and/or project parameters, to the extent such adjustments do not unreasonably interfere with interstate commerce.

EOTPW may require Railroad to (1) share its plans with EOTPW and the community, when undertaking an activity for which another entity would be required to obtain a permit or otherwise submit to the relevant jurisdiction, (2) use state or local best management practices when it constructs railroad facilities, (3) implement and fairly apply appropriate precautionary measures at railroad facilities, (4) make representatives available to meet periodically with EOTPW, citizen groups and/or local governmental entities to seek mutually acceptable ways to address local concerns, and (5) submit environmental monitoring or testing information to EOTPW or local government entities for an appropriate period of time after new operations begin.

Railroad shall promptly pay all fines, damages, costs, expenses and other penalties for violations of environmental and land use regulations for which it has been determined to be responsible in accordance with law, and shall indemnify and hold harmless EOTPW against all such fines, damages, costs, expenses and other penalties resulting from or relating to such violations.

EOTPW and/or its authorized representatives may conduct environmental inspections and audits of the Licensed Properties at any and all reasonable times. Such audits may be conducted using the USEPA Environmental Screening Checklist and Workbook for Short Line Railroads, or such other inspection criteria as EOTPW or its representatives may deem necessary or desirable. Railroad shall cooperate fully with such audits, and shall comply with EOTPW's reasonable requests to alter or improve its operating practices based upon the results of such audits. Railroad shall notify EOTPW of any environmental incidents, provide EOTPW with summaries and status updates of any response actions, copies of correspondence with regulatory agencies, documentation of compliance with regulatory programs, and other relevant materials. EOTPW may require Railroad to provide reports regarding Hazardous Materials which Railroad intends to carry or has carried over the Licensed Properties, or which will be or have been stored on the Licensed Properties, to enable EOTPW to evaluate and respond to reasonable health and safety concerns.

Significant activities pertaining to the environmental condition of the Licensed Properties shall also be addressed in the reports identified in Section XII herein and in Exhibit E hereto.

In no event shall Railroad undertake "railyard operations" (such as repair of locomotives, rail cars and other equipment, storage of oil and other hazardous materials, storage of equipment, and similar activities), on the Licensed Properties without EOTPW's prior written consent. EOTPW may condition such consent upon terms EOTPW deems necessary to protect the health and safety of the community, or to accommodate other environmental, land use or operational concerns.

Notwithstanding the foregoing, EOTPW agrees that Railroad may, with the prior written consent of CCCR and subject to the terms of the EOTPW / CCCR Operating Agreement, share use of the Hyannis Engine House for limited railyard operations to the extent and for the uses permitted by the EOTPW / CCCR Operating Agreement, and subject to the applicable terms of this Agreement, including, without limitation, the terms of Sections XII – XIV hereof.

D Other

EOTPW shall have the right to make periodic inspections, upon reasonable notice and (if required by Railroad) accompanied by a Railroad representative, to determine whether Railroad is in compliance with this Section. Railroad shall respond to any reports and/or recommendations resulting from such inspections within sixty (60) days from receipt of same. Railroad shall comply promptly with the recommendations of EOTPW or any insurer, foreseen or unforeseen, ordinary as well as extraordinary, which may be applicable to the Licensed Properties, by reason of Railroad's use thereof. In no event shall Railroad conduct any activity on the Licensed Properties which may give rise to cancellation of any insurance policy or make

any insurance unobtainable The terms and provisions of this Section shall survive the termination of the Agreement

Section XV. Insurance and Indemnification

A Insurance Coverage

Railroad shall maintain in effect during the Term Railroad Liability Insurance in the amount of five million dollars (\$5,000,000), Comprehensive General Public Liability Insurance (including coverage against bodily injury and product liability), Workers Compensation and Employer's Liability Insurance (if, and to the extent required by law), Federal Employers' Liability Insurance (to the limits required by law), All Risk Property Insurance, Automobile Liability and Physical Damage Insurance, Excess Liability Insurance, and such other insurance policies as EOTPW may require. The Commonwealth of Massachusetts, the Executive Office of Transportation and Public Works and, as applicable, the U S Army Corps of Engineers, shall be named as additional insured under any policy of public liability and property damage insurance.

EOTPW may from time to time make reasonable adjustments to the above insurance coverage requirements, in accordance with applicable laws and policies adopted by the Commonwealth, and industry standards.

B Requirements Applicable to Insurance Policies

All insurance policies required under this Section shall be obtained from companies qualified to do business in Commonwealth and in good standing therein. All such policies shall name Commonwealth and EOTPW as additional insureds. Railroad agrees to furnish EOTPW with insurance company certificates of all such insurance and copies of the policies prior to the Commencement Date, and of each renewal policy promptly upon receipt by Railroad. Each such policy shall provide that it shall not be terminated, cancelled or materially modified without at least thirty (30) days' prior written notice to EOTPW.

C Third-Party Insurance Requirements

EOTPW or Railroad, as the case may be, shall require all persons entering upon or permitting work to be performed on the Licensed Properties under any agreement or license, including all persons undertaking any construction program or third parties performing rail passenger service under existing or new agreements and all persons using portions of the Licensed Properties as authorized pursuant to Section III, to the extent permitted by law, to agree to indemnify and hold harmless EOTPW and Railroad, their officers, employees and agents from and against any liability, loss, claims or expenses for death or injury (including Workers' Compensation or Federal Employers Liability Act statutes) to any person or damage to any property (including property of or under the control of EOTPW or Railroad) arising out of any act or omission of said contractor or rail passenger service operator on account of or in connection with the Licensed Properties.

EOTPW or Railroad, as the case may be, shall also require any such person to secure and maintain in effect at all times while on the Licensed Properties, Comprehensive General Liability Insurance and Railroad Protective Liability Insurance with such coverage as may be required for occupancy or use of the Licensed Properties, taking into account the use of the Licensed Properties by Railroad. Such insurance shall be with limits appropriate to the occupancy. Commonwealth, EOTPW and Railroad shall be named insureds on all such insurance policies. In the case of a rail passenger service operator, there shall be a contractual liability insurance insuring such operator against liability under this Section, unless such operator has otherwise satisfied EOTPW and Railroad or such arrangements are subject to an order of the STB.

D Indemnification

Railroad agrees to indemnify and hold harmless EOTPW and the Commonwealth from and against any liability for any losses not fully insured against, arising from injury (including death) to persons or damage to property, including the Licensed Properties, which shall arise out of or be in any way connected with the Licensed Properties and which shall be caused by any act or omission of Railroad or its contractors and/or subcontractors under the Agreement, except those associated with contractors or activities initiated by EOTPW or Commonwealth.

In the event of loss or damage to the Licensed Properties which shall be caused by any act or omission of a third person, all third-party insurance payments shall be made to Commonwealth. Commonwealth shall reimburse Railroad from the proceeds thereof for all costs incurred by Railroad in repairing such damage upon receipt of all documents substantiating such costs.

Section XVI. Conditions Precedent

As conditions precedent to Railroad's and EOTPW's obligations hereunder, the parties acknowledge that the representations and warranties of each party to the Agreement shall be true at and as of the dates specified in the applicable provisions of Section XVII below. In the event Railroad fails to satisfy the representations and warranties made herein, EOTPW may terminate this Agreement without any liability to Railroad for damages or compensation of any kind. Conversely, in the event EOTPW fails to satisfy the representations made herein Railroad may seek to renegotiate the terms of this Agreement or may terminate the Agreement.

Section XVII. Representations and Warranties

Railroad represents and warrants that

- A Railroad is duly organized, validly existing, in good standing and qualified to do business under the laws of Commonwealth as of the Effective Date**

- B** Railroad has full power and authority to enter into the Agreement and to carry out its obligations hereunder as of the Effective Date
- C** Railroad has obtained or will, prior to December 30, 2007, obtain such approvals, authorizations, certifications and designations from federal, state, and other regulatory authorities (including, without limitation, the STB) necessary to undertake its obligations hereunder.
- D** Railroad has entered into or will, prior to the Commencement Date, obtain all necessary agreements with customers and connecting rail carriers to effect financial, operational and administrative interchange of traffic

Section XVIII. Assignability

A Assignment by EOTPW / Commonwealth

EOTPW, acting on behalf of the Commonwealth, expressly reserves the right to assign its rights under the Agreement at any time to any responsible government or transportation authority by giving written notice to Railroad at least ninety (90) days prior to such assignment. Such assignment shall be binding on Railroad and its successors.

B Assignment by Railroad

Railroad shall not assign, sell, lease, transfer, mortgage, pledge or in any way alienate the rights granted to Railroad pursuant to this Agreement without EOTPW's prior written consent. Railroad shall not grant a security interest in Railroad's rights hereunder or sub-license (which term shall be deemed to include the granting of concessions and licenses and the like) all or any portion of the Licensed Properties or suffer or permit the Agreement or any rights hereby created or any other rights arising hereunder to be assigned, transferred or encumbered, in whole or in part, whether voluntarily, involuntarily or by operation of law, or permit the occupancy of the Licensed Properties by anyone other than Railroad. Any attempted assignment, sale, lease, transfer, mortgage, pledge, grant of security interest, sub-license or other encumbrance, except with prior written approval thereof from EOTPW, shall be void. For purposes of this Section XVIII.B, the term "assignment" shall be deemed to include any transfer or attempted transfer of any of Railroad's rights under this Agreement, whether voluntary or involuntary or by operation of law, including any merger or consolidation of Railroad or any change in control of Railroad made without EOTPW's prior written consent.

No assignment, transfer, mortgage, grant of security interest, sub-license or other encumbrance, whether or not approved, and no indulgence granted by EOTPW to any assignee or sub-licensee, shall in any way impair the continuing primary liability (which after an assignment shall be joint and several with the assignee) of Railroad hereunder, and no approval in a particular instance shall be deemed to be a waiver of the obligation to obtain EOTPW's approval in any other case.

EOTPW's consent or approval, if any, to any assignment, transfer, mortgage, pledge or grant of security interest of Railroad's rights under the Agreement, shall be provided in EOTPW's sole discretion and upon such terms as are satisfactory to EOTPW

Railroad shall provide ninety (90) days prior written notice to EOTPW regarding a Change of Control of Railroad. EOTPW shall have the right to terminate this Agreement upon receipt of such notice, unless EOTPW has provided its written consent to the proposed change

Section XIX. No Third Party Benefit

The Agreement shall not be construed to create any beneficial rights in favor of any third party or any right or privilege for the benefit of the general public

Section XX. Events of Default

A The following shall be Events of Default

- 1 Failure of Railroad to pay uncontested License Fees or Additional Fees within thirty (30) days of the date such fees are due,
- 2 Failure of Railroad to provide rail freight service when loaded railcars are available for movement for any consecutive 10-day period (business days), except as provided for in Section VII B 1;
- 3 Action by Railroad requiring EOTPW's prior approval without having first obtained such approval in accordance with the provisions of this Agreement,
- 4 Breach by Railroad of any provision hereof, other than payment of License Fees, and failure to make a diligent effort to cure such default within thirty (30) days after written notice of such breach by EOTPW,
- 5 Filing by Railroad of a petition for bankruptcy, reorganization or arrangement pursuant to the Bankruptcy Reform Act, a general assignment by Railroad for the benefit of creditors, or any similar proceeding, and such petition is not dismissed within sixty (60) days,
- 6 Filing of a lien or other involuntary encumbrance against Railroad's interests hereunder, and such lien or other involuntary encumbrance is not discharged within sixty (60) days thereafter,
- 7 Taking or transfer of Railroad's interests hereunder on execution of other process of law in any action against Railroad other than an action in the nature of eminent domain;

- 8 Final determination by an agency or court of competent jurisdiction that Railroad has violated any applicable environmental statute, regulation or ordinance with respect to the Licensed Properties,
- 9 Failure by Railroad, within thirty (30) days' notice from EOTPW specifying another default or defaults, to commence diligently to correct the default or defaults so specified,
- 10 Subject to Section XXIV, failure by Railroad to notify EOTPW prior to imposing an embargo, or failure to remedy an embargo within sixty (60) days from imposition thereof,
- 11 Indictment for, conviction of, or guilty plea by, any owner or officer of Railroad for a crime involving any of Railroad's operations and/or the Licensed Properties

B Notice and Time to Cure

If any Event of Default shall occur, other than an Event of Default for failure to make any payment due hereunder, and such Event of Default may be cured, the party responsible for such Event of Default shall cure such Event within thirty (30) days of written notice of such Event of Default by the other party, provided, however, that, if the nature of the Event of Default is such that it requires more than 30 days to cure, and the party responsible for such Event of Default immediately initiates appropriate actions to cure such Event of Default and continues to diligently pursue such cure through all reasonable and necessary measures sufficient to produce compliance, the time to cure such Event of Default shall continue until such time as the Event is cured or the defaulting party ceases to diligently pursue such cure. If the defaulting party does not cure the Event of Default or ceases to diligently pursue such cure as provided herein, the breach shall become a Default.

C EOTPW Rights Upon Default

If a Default by Railroad occurs and is not cured within the period provided by Section XX B above, EOTPW and its agents and servants may lawfully, in addition to and not in derogation of any remedies for any preceding breach, immediately or at any time thereafter and without demand or notice and with or without process of law (and, in the event of an emergency, *forcibly if necessary*) enter into and upon the Licensed Properties or any part thereof in the name of the whole, or mail a notice of termination addressed to Railroad, and repossess the same and expel Railroad and those claiming through or under Railroad and remove its and their effects without being deemed guilty of any manner of trespass and without prejudice to any other remedies which might otherwise be used for arrearages of fees or prior breach of covenant; provided, however, that Railroad may be expelled only in accordance with federal laws and regulations governing Railroad's rights and obligations as a common carrier under federal law, and as set forth herein. Upon such entry or mailing of notice of termination, this Agreement shall terminate, Railroad hereby waiving all statutory rights (including, without limitation rights of redemption, if any) to the extent such rights may lawfully be waived.

EOTPW, without notice of Railroad, may remove and store Railroad's property and effects, and those of any person claiming through or under Railroad at the expense and risk of Railroad,

and, if EOTPW so elects, may sell such property and effects at public auction or private sale and apply the net proceeds to the payment of all sums due to EOTPW from Railroad, if any, and pay over the balance, if any, to Railroad

D Specific Performance

If an Event of Default occurs and is not cured within the period provided by Section XX B above, or if either party otherwise fails to perform its obligations under this Agreement, the parties agree that damages may not provide an adequate remedy, and the affected party may seek specific performance of such obligations in a court of competent jurisdiction.

E Remedies

In the event that the Agreement is terminated under any of the provisions contained in Section XX A, Railroad shall pay forthwith to EOTPW, as compensation, any and all amounts due as License Fees or Additional Fees, plus the value of other consideration to be paid or activities to be performed by Railroad during the remainder of the Term, plus EOTPW costs in selecting and commencing operations with another party, plus EOTPW's costs in terminating the Agreement, less any License Fees, Additional Fees and other consideration to be paid and/or activities to be performed by the new party for the remainder of the Term

F. Remedies Cumulative

Except as otherwise expressly provided herein, any and all rights and remedies EOTPW may have under the Agreement and at law and equity shall be cumulative and shall not be deemed inconsistent with each other, and any two or more of all such rights and remedies may be exercised at the same time to the greatest extent permitted by law

G EOTPW Right to Cure Defaults

Unless stated otherwise herein, at any time following thirty (30) days' prior notice to Railroad (except in the case of emergency, when no notice shall be required), EOTPW may (but shall not be obligated to) cure any default of Railroad under the Agreement, and whenever EOTPW so elects, all costs and expenses incurred by EOTPW, including reasonable attorney's fees, in curing a default shall be paid by Railroad to EOTPW on demand, together with interest thereon from the date of payment by EOTPW to the date of payment by Railroad.

H Effect of Waivers of Default

Any consent or permission by EOTPW to any act or omission which otherwise would be a breach of any covenant or condition herein, or any waiver by either party of the breach of any covenant or condition herein, shall not in any way be held or construed (unless expressly so declared) to operate so as to impair the continuing obligation of any covenant or condition herein, or otherwise operate to permit the same or similar acts or omissions except as to the specific instance. The failure of either party to seek redress for violation of, or to insist upon the strict performance of, any covenant or condition of the Agreement shall not be deemed a

waiver of such violation nor prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of an original violation. The receipt and acceptance by EOTPW of License Fees, Additional Fees or other compensation with knowledge of the breach of any covenant of the Agreement shall not be deemed to have been a waiver of such breach by EOTPW or of any of EOTPW's remedies on account thereof, including its right of termination for such default

I No Accord and Satisfaction

No acceptance by EOTPW of a lesser sum than the License Fees, Additional Fees or any other compensation or charge then due shall be deemed to be other than on account of the earliest installment of such fee or charge due, unless EOTPW elects by written notice to Railroad to credit such sum against the most recent installment due. Any endorsement or statement on any check or any letter accompanying any check or payment as fees or other charge shall not be deemed an accord and satisfaction, and EOTPW may accept such check or payment without prejudice to EOTPW's right to recover the balance of such installment or pursue any other remedy under the Agreement or otherwise

Section XXI. Termination

A The Agreement shall terminate upon the occurrence of any of the following events

- 1 Expiration of the Term without prior extension as provided herein**
- 2 Notice of Termination by EOTPW based on an Event of Default, as defined in Section XX A, not cured within the period provided by Section XX B**
- 3 Either party is prevented from honoring its respective commitments hereunder as a result of legislative, judicial or other governmental action, and such party provides a ninety (90) day notice of such event to the other party**
- 4 As to any segment of the Licensed Properties, Railroad has obtained, with EOTPW's prior written consent, all necessary authority from the STB and/or any other agency having jurisdiction to discontinue the operation of freight rail service over such segment. In the event Railroad is so authorized with respect to segments that in the aggregate affect the feasibility of continuing the Agreement in effect, the parties agree to negotiate a termination or revision of the Agreement, as appropriate**
- 5. As to any portion of the Licensed Properties, adjustment or termination by EOTPW in accordance with this Agreement**

B Termination of the Agreement under this Section shall entitle EOTPW to possession of the Licensed Properties, to end the right and duty of Railroad to provide rail freight service hereunder, and to designate another entity to provide such service, all to the extent permitted by applicable STB, FRA and other laws and regulations.

- C** Upon expiration or sooner termination of the Agreement, Railroad shall provide any and all engineering inspections, reports, designs, ratings, repair plans, etc relative to bridges, grade crossings, drainage, and capital improvements that transfer to EOTPW or Commonwealth upon expiration or termination of the Agreement

Railroad shall provide timely notice to all affected shippers affected by such expiration or termination, and other parties, as required, and shall diligently undertake all other requirements of the Agreement and applicable federal and state laws and regulations, in order to provide for the discontinuance or termination of freight rail services by Railroad upon the expiration or sooner termination of this Agreement as to any portion of the Licensed Properties, or upon the discontinuance of any portion of the Licensed Properties, and shall fully comply with all other applicable requirements of federal and state laws and regulations and the Agreement

Within the final year of the Term prior to the Initial Term Expiration Date or applicable Extension Term Expiration Date hereof, or as soon as possible prior to the sooner termination of the Agreement, EOTPW shall conduct a review of documentation and a final inspection of the Licensed Properties to identify any documents which may remain outstanding and any repairs required to be made under the Agreement Railroad shall provide such documents as are required by the Agreement, and shall perform such repairs as EOTPW shall require to the extent such repairs are contemplated by the Maintenance & Repair Requirements and/or Maintenance & Repair Work Programs under the Agreement

- D** Railroad agrees that, upon the expiration or termination of this Agreement, Railroad shall cooperate fully with EOTPW and with any railroad operator selected by EOTPW to provide rail operations on and over the Licensed Properties, and to ensure an orderly transition to any such railroad operator This requirement shall include but not be limited to attending meetings with representatives of EOTPW, responding to reasonable inquiries by EOTPW and its representatives, and accommodating site inspections by EOTPW and representatives of successor candidates, all at no cost to EOTPW or any other third party

During the last year of the Agreement, Railroad shall permit EOTPW, its consultants and other authorized representatives and prospective railroad operators to enter the Licensed Properties for purposes of inspecting the Licensed Properties in anticipation of entering into a new license and operating agreement.

- E** In the event that rail freight traffic falls below 4,000 carloads and/or Railroad Gross Revenue falls below \$2,000,000 for any period of twelve (12) consecutive months, either party may (1) seek to renegotiate the terms of this Agreement, upon written notification to the other party, or (2) terminate the Agreement, upon no less than twelve (12) months prior written notification to the other party
- F** Prior to the expiration or upon the sooner termination of the Agreement or the operation of any portion of the Licensed Properties for any reason, Railroad shall, upon receipt of EOTPW's written request, file documents with the STB and provide notices to third parties necessary to effect the timely discontinuance of rail freight service over the Licensed Properties or the

relevant portion thereof by Railroad Railroad shall cooperate with and assist EOTPW and any railroad operator selected by EOTPW to operate the Licensed Properties to accomplish a smooth transition to such new railroad operator

Section XXII. Yielding Up

At the expiration of the Term or sooner termination of the Agreement, Railroad shall surrender the Licensed Properties, remove all of its property, remove such installations and Improvements made by Railroad as EOTPW may request (consistent with the terms of the Agreement and any written agreement between the parties in connection with such installations or Improvements), repair all damage caused by such removal and yield up the Licensed Properties in the same good order and repair in which Railroad is required to keep and maintain the Licensed Properties hereunder Any property not so removed shall be deemed abandoned and may be removed and disposed of by EOTPW in such manner as EOTPW shall determine appropriate, and Railroad shall pay EOTPW the entire cost and expense incurred by it in effecting such removal and disposition and in making any incidental repairs and replacements to the Licensed Properties, and for any continued use and occupancy during the period after the expiration of the Term and prior to Railroad's performance of its obligations under this Section

Section XXIII. Payment of EOTPW's Cost of Enforcement

Railroad shall pay, on demand, EOTPW's and/or Commonwealth's expenses, including reasonable attorney's fees, incurred in enforcing any obligation or curing any default of Railroad hereunder

Section XXIV. Force Majeure

Each party shall be excused from performance of any of its obligations hereunder where such non-performance is occasioned by any event beyond the non-performing party's control, which shall include, without limitation, any order by a federal, state or local governmental body, agency or instrumentality (other than orders relating to correction by Railroad of its non-compliance with applicable laws and regulations applicable to Railroad's performance hereunder), natural disaster, act(s) of war, civil disorder, vandalism or terrorism, strikes (including strikes on other employers that affect Railroad's ability to perform), lockouts, AAR service orders, actions of other carriers, labor disputes, perils of water including floods, ice, storms or other adverse weather conditions, breakdowns, wrecks, or derailments that cannot be removed within thirty (30) days, provided, however, that the party excused hereunder shall use all reasonable efforts to minimize its non-performance and to overcome, remedy, or remove such event in the shortest practical time A strike, work stoppage, or other labor dispute by Railroad's employees shall not constitute an event beyond Railroad's control if Railroad fails as soon as reasonably possible to proceed to obtain an order of a court or administrative agency of competent jurisdiction to prevent the continuation of same Railroad shall use all reasonable efforts to undertake and complete the repair, restoration or replacement of any property necessary for the provision of the services and activities in accordance with established train schedules, and shall resume normal railroad services and performance of its

other obligations hereunder as soon as reasonably possible. In the event either party fails or refuses to use all reasonable efforts as aforesaid, the continuation of an event beyond the control of such party shall not be deemed an excuse for performance hereunder.

At its option, EOTPW may terminate the Agreement as to the affected portion of the Licensed Properties. Upon such termination, Railroad shall notify all affected shippers of discontinuance of service upon the affected portion and file appropriate documents with the Surface Transportation Board as necessary to discontinue the relevant service.

Section XXV. Dispute Resolution

The parties intend to attempt to resolve all issues, claims and disputes relating to or arising hereunder in an informal manner. Every effort will be made to develop a business resolution to such issues, claims or disputes. To that end, the parties shall each designate a representative in all discussions and negotiations related hereto. EOTPW hereby appoints its Manager of Rail as its representative, and Railroad hereby appoints its Chief Executive Officer as its representative. Either party may, any time at its election, designate a substitute representative.

The dispute resolution process agreed upon by the parties is attached hereto as Exhibit F, and incorporated herein.

Section XXVI. Non-Discrimination and Affirmative Action

A Non-Discrimination Policy

Railroad shall not discriminate against any qualified employee or applicant for employment in a particular function because of race, color, national origin, ancestry, age, sex, sexual orientation, religion, status as a Vietnam Era Veteran, or mental handicap. Railroad agrees to comply with all applicable federal and state statutes, rules and regulations prohibiting discrimination, including Title VI of the Civil Rights Act of 1964, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967; Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, M.G.L. Chapter 151B, and all relevant Administrative Orders and Executive Orders. Railroad also shall obligate its subcontractors to state their intention to comply with such statutes, rules and regulations.

At the request of EOTPW, Railroad shall make available any and all information necessary to determine compliance with these provisions, and shall institute remedies deemed appropriate to maximize the utilization of women and minorities in all sectors of the workforce, consistent with their availability in the state's workforce. Railroad shall develop a plan, and report regularly to EOTPW on its efforts to ensure that minority and women business enterprises have the maximum opportunity to compete and secure work under the Agreement, either as prime contractors or at the subcontractor level. The goal of this plan will be to utilize minority and women owned businesses for a minimum of ten percent (10%) of the total dollar value of its

annual contracting opportunities afforded as a result of Railroad's operations and activities resulting from the Agreement

B Complaints and Claims

If a complaint or claim by employees of Railroad, by sub-contractors employed by Railroad, or by employees of such sub-contractors, alleging violation of such statutes, rules or regulations is presented to the Massachusetts Commission Against Discrimination ("MCAD"), Railroad shall, and shall obligate its sub-contractors to, cooperate with MCAD in the investigation and disposition of such complaint or claim and assume all legal fees in connection with the defense of such claim

C Non-Compliance

In the event of non-compliance with the provisions of this Section by Railroad or Railroad's sub-contractors, EOTPW shall impose such sanctions as it deems appropriate, including without limitation.

- 1 in the event of non-compliance by Railroad, termination of the Agreement in accordance with Sections XX and XXI herein; and
- 2 in the event of non-compliance by Railroad's sub-contractors, recommending Railroad withhold payments due such sub-contractor until sub-contractor complies, and/or recommending that Railroad terminate or suspend the sub-contract

D Notice to Employees of Railroad and Sub-Contractors

Railroad shall obligate its sub-contractors to send a notice to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding advising said labor union or worker's representative of Railroad's sub-contractor's commitments under this Section, and shall post copies of the notice in conspicuous places available to employees of and applicants for employment with Railroad

Section XXVII. Miscellaneous

A Entire Agreement

The Agreement expresses the entire agreement between the parties and supersedes all prior oral or written agreements, commitments, or understandings with respect to the matters provided for herein, and no modification hereof shall be binding unless set forth in writing and duly executed by the parties hereto. Notwithstanding the foregoing integration provision, the parties acknowledge that the EOTPW / CCCR Operating Agreement, attached hereto as Exhibit G, is not part of this Agreement and that it is a separate Agreement between EOTPW and Cape Cod Central Railroad, Inc., with legal force independent of this Agreement

B Notices

All notices, demands, requests or other communications which may be or are required to be given, served or sent by either party to the other pursuant hereto shall be in writing and shall be deemed to have been properly given or sent, if sent by registered or certified mail (return receipt requested, with postage prepaid), or by courier, addressed to:

If intended for EOTPW

Executive Office of Transportation
Ten Park Plaza, Suite 3170
Boston, Massachusetts 02116-3969
Attention: Director of Rail

With a copy to
Executive Office of Transportation
Ten Park Plaza, Suite 3170
Boston, Massachusetts 02116-3969
Attention: General Counsel

If intended for Railroad

Massachusetts Coastal Railroad, LLC
252 Main Street
Hyannis, MA 02601

Attention: Chief Executive Officer

Each party may designate by notice in writing a new address to which any notice, demand, request or communication may thereafter be so given, served or sent. Each notice, demand, request or communication to either party in the manner aforesaid shall be deemed sufficiently given, served or sent for all purposes at the time such notice, demand, request or communication shall be either received by the addressee or refused by the addressee upon presentation.

C Binding Agreement

The Agreement shall be binding upon and inure to the benefit of Commonwealth / EOTPW and Railroad, and their successors and assigns.

D Enforcement

If an Event of Default occurs and is not remedied in accordance herewith, the parties agree that damages may not provide an adequate remedy and that EOTPW may seek specific performance in a court having jurisdiction.

E. Severability

If fulfillment of any provision hereof or any transaction related hereto shall involve transcending the limit of validity prescribed by law, then the obligation to be fulfilled shall be reduced to the limits of such validity, and if any clause or provision herein contained operates or would prospectively operate to invalidate the Agreement in whole or in part, then such clause or provision only shall be held ineffective, as though not herein contained, and the remainder of the Agreement shall remain operative and in full force and effect

F. Defects in Title

The rights granted to Railroad in this Agreement are granted only insofar as EOTPW's title to the Licensed Premises permits. EOTPW specifically disavows any implied or other warranty of title, nor shall EOTPW be liable to Railroad for any defects or encumbrances upon the title to the Licensed Properties. Insofar as this Agreement grants Railroad the right to the exclusive use of the Licensed Properties, such rights are solely for the provision of rail freight services as provided herein

G. Headings

Section headings used herein are inserted for convenience of reference only and shall not be deemed to be a part hereof for any purpose

H. Amendment

The Agreement shall be amended only by written agreement signed by both parties

I. Obligations Upon Termination

Termination of the Agreement shall not extinguish the rights of either party to recover sums due under the terms hereof, nor shall it extinguish any action for breach or damages to which either party may otherwise be entitled.

J. Casualty or Taking

In the event that greater than twenty-five percent (25%) of the Licensed Properties or any portion of any rail line or parcel of land comprising the Licensed Properties shall be taken by any public authority or for any public use or destroyed by the action of any public authority ("Taking"), then the Agreement may be terminated by either EOTPW or Railroad as to the involved portion of the Licensed Properties effective on the effective date of the Taking. Such election, which may be made notwithstanding the fact that the entire interest of EOTPW may have been divested, shall be made by the giving of notice by EOTPW or Railroad to the other within thirty (30) days after EOTPW or Railroad, as the case may be, shall receive notice of the Taking. Nothing herein shall be construed as a waiver by Railroad of any rights to just compensation it may assert as a result of such a taking, condemnation, or destruction

In the event the Licensed Properties shall be destroyed by fire or other casualty ("Casualty"), and EOTPW's engineer, consultant or contractor shall determine that it will require in excess of one hundred eighty (180) days from the date of the Casualty to restore the Licensed Properties, the Agreement may be terminated by either EOTPW or Railroad by notice to the other within thirty (30) days after the Casualty

K Governing Law

The Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Massachusetts

IN WITNESS WHEREOF, the parties hereto have caused the Agreement to be duly executed on their behalf, as of the day and year first above written

COMMONWEALTH OF MASSACHUSETTS

acting by and through its

Executive Office of Transportation and Public Works

By

Bernard Cohen

Secretary, Executive Office of Transportation and Public Works

Witness

Approved as to form

EOTPW Counsel

MASSACHUSETTS COASTAL RAILROAD, LLC

By

John F Kennedy

Chief Executive Officer

Witness

EXHIBIT A

Licensed Properties

The Licensed Properties are comprised of the active railroad corridors and related properties described below

Cape Main Line

- | | | |
|--------------------------|----------------------------|-------------------|
| ▪ Buzzards Bay Secondary | Middleboro to Buzzards Bay | 18.4 Miles |
| ▪ Hyannis Secondary | Bourne to Hyannis | <u>24.3 Miles</u> |
| | | ~ 42.7 Miles |

Branch Lines & Industrial Tracks

- | | | |
|--------------------------------|-----------------------------------|------------------|
| ▪ South Dennis Secondary | Yarmouth Junction to Station Ave. | 2.8 Miles |
| ▪ Falmouth Secondary | Bourne to Falmouth | 6.8 Miles |
| ▪ Watuppa Branch | N. Dartmouth to Westport | 4.7 Miles |
| ▪ Dean Street Industrial Track | Taunton | <u>1.5 Miles</u> |
| | | ~ 15.8 Miles |

Total Active Rail Lines ~ 58.5 Miles

EOT's property ownership extends beyond the boundaries noted above in some cases. EOT reserves the right to adjust the boundaries of the Rail Lines and related properties, in accordance with the terms of the License and Operating Agreement

The parties acknowledge that the circumstances involving the Licensed Properties described in EOTPW's December 2006 RFR, with particular reference to pages 25 to 29 of the RFR, which pages are attached hereto and made a part hereof

The following text is replicated from pp 25 – 29 (Section II D) of the Request for Responses for Railroad Operations on and over certain EOTPW Rail Lines in Southeastern Massachusetts

D. Other Operational Conditions and Considerations

1. General

a Rail Lines Included in License / Operating Agreement(s)

EOT reserves the right to adjust the boundaries of the Rail Lines to be subject to the License & Operating Agreement during final negotiations with selected Railroad Operator, or during the term of the License & Operating Agreement, so long as such adjustment does not unreasonably interfere with delivery of freight rail services to customers served by the Railroad Operator at the time of such adjustment.

b Removal / Reconfiguration of Rail Lines & Properties

EOT reserves the right to remove Rail Lines or segments of Rail Lines governed by the License & Operating Agreement, as follows

- (1) EOT may remove any Rail Line or segment of any Rail Line over which freight rail service has not been provided for at least two (2) years prior to the date of removal, in accordance with the terms of the negotiated License & Operating Agreement; and
- (2) EOT may make reasonable adjustments to the boundaries of the Rail Lines or segments of Rail Lines governed by the License & Operating Agreement, so long as the reconfigured layout (a) provides reasonable access to customers actively served by the Railroad Operator at the time the Rail Line is reconfigured, and (b) does not significantly impact the common carrier rights or obligations of the Railroad Operator; and
- (3) EOT and Railroad Operator may otherwise remove or reconfigure Rail Lines (or rail segments) upon mutual agreement

The License & Operating Agreement will be modified to the extent necessary to recognize the adjustments noted above, and the Railroad Operator shall agree to file appropriate notices and documents with the STB, and to notify other parties as necessary to accomplish such adjustments

c Grade Crossing & Other Rail Improvement Projects

EOT expects to periodically initiate, implement, fund, oversee or have other involvement in projects and programs to improve the Rail Lines, including projects and programs to improve public and/or private grade crossings. While EOT anticipates that such projects and programs would typically be undertaken by the selected Railroad Operator, EOT may, from time to time, wish to engage third parties to design and/or construct the improvements.

EOT therefore reserves the right to contract with the selected Railroad Operator or with qualified third parties, to perform improvements to the Rail Lines, including improvements to track, right-of-way, structures, or public or private grade crossings, under terms deemed acceptable to EOT

In the event that EOT wishes to undertake an improvement project or program, and cannot come to agreement with the Railroad Operator as to the terms under which such improvements shall be made (including, without limitation, the scope, scheduling, and/or cost of such improvements), EOT may contract with qualified third parties / contractors to design and construct the contemplated improvements. In each such case, the Railroad Operator will be required to accommodate the work by making reasonable adjustments to scheduled operations, coordinating dispatch and operations with the contractor selected to perform the work, and making other accommodations reasonably necessary to complete the work without significant impacts to the safe and efficient operation of rail service

The Railroad Operator shall make reasonable accommodations at no expense to the Commonwealth / EOT, the selected contractor, or private parties involved, except as otherwise agreed by the parties. The Railroad Operator shall not, in any event, be entitled to reimbursement for any costs and expenses other than the reasonable and necessary costs and expenses actually incurred by the Railroad Operator as a result of the improvement project

d Transition from Bay Colony to Railroad Operator

EOT expects that the selected Railroad Operator will assume responsibility for oversight or implementation of any project or program under construction as of the effective date of the License & Operating Agreement. Respondents should address how they expect to handle the transition with respect to projects that remain in progress as of the date the Railroad Operator commences operations, and any matters that must be addressed in connection with projects that remain ongoing during the transition period

2 Use and Operation of Buzzards Bay Railroad Bridge

Under the terms of the proposed License & Operating Agreement, the Railroad Operator will have the right to use and travel over the Buzzards Bay Railroad Bridge to provide rail services which involve crossing the Railroad Bridge

The Army Corps has agreed to operate and maintain the Railroad Bridge (including the track located on the Bridge) to reasonably accommodate scheduled rail traffic

The Railroad Operator will be responsible for (a) coordinating railroad service schedules, dispatch, operations and signal maintenance activities with EOT and Army Corps staff; and (b) operating and maintaining all track, switches, signals and other infrastructure and equipment associated with approaches to the Railroad Bridge

The Army Corps of Engineers has designed and has agreed to fund and supervise an improvement project to replace the existing signal system that controls approaches to the Railroad Bridge with a modern signal system (the "Signal System Project"), subject to availability of funding. The Railroad Operator will be expected to (a) operate and maintain the existing signal system until completion of the proposed Signal System Project, (b) coordinate with EOT and the Army Corps to provide for operational continuity during construction of the Signal System Project; and (c) operate and maintain the new signal system upon completion of the Signal System Project, at no cost to EOT or the Army Corps

3 Falmouth Secondary

a Shining Sea Rail Trail

In accordance with legislative directives, the Commonwealth has entered into a long-term lease with the Town of Falmouth, which provides for the development and operation of the Shining Sea Bike Path. The lease provides for the development of a Bike Path along a portion of the Falmouth Secondary that has been inactive for many years (from VS 380+00 +/- to the end of EOT-owned rail property in Falmouth)

The lease agreement also contemplates the possible development of a "rail with trail" facility along a segment of the Rail Line that is actively served -- from the southern side of County Road (at approximately VS 362+00 +/-) to a point south of the so-called "Otis Switch" (near Station 380+00 +/-). The design, construction and operation of any rail with trail facilities north of VS 380+00 (+/-) are subject to the prior review and approval of EOT and the Railroad Operator

EOT fully recognizes the difficulties involved in designing, developing and operating "rail with trail" facilities that allow for both the safe and efficient delivery of rail service and the safe enjoyment of the recreational activities contemplated. EOT has, however, agreed to review design plans for the proposed facility, in coordination with the Railroad Operator. Access to the active section of the Line, and any design, construction or operations to be undertaken within or in connection with those areas will be subject to the approval of EOT and the Railroad Operator responsible for providing rail service along the Line. EOT will therefore require the selected Railroad Operator to work cooperatively with EOT and the Town to examine alternatives for the design, construction and operation of the proposed "rail with trail" facility.

The selected Railroad Operator will be required to work cooperatively with EOT and the Town to evaluate the proposed "rail with trail" project. Such cooperation will include the timely review of and comment regarding design documents – including comments regarding whether and under what circumstances the proposed "rail with trail" facilities can be constructed and operated so as to ensure the continued safe and efficient operation of freight rail service along the Line. The Railroad Operator will be required to provide comments within ninety (90) days of receipt of documents.

b Industrial Spur to Upper Cape Regional Transfer Station

The Upper Cape Regional Transfer Station is located along a 2.8 mile track that joins the Falmouth Secondary at approximately MP 6.7, the location of the so-called "Otis Switch". The 2.8 mile of track between the Falmouth Secondary and the Upper Cape Regional Transfer Station is located on property owned by others. EOT does not presently own or have responsibility for maintenance of this track segment. EOT has been advised that the track was formerly designated as a part of the national defense infrastructure, and was previously maintained by the U.S. Government. Bay Colony presently operates and maintains the track as an industrial siding.

4 South Dennis Secondary & Hyannis Secondary

The Towns of Yarmouth and South Dennis seek to develop and operate contiguous segments of a rail trail facility from Station Avenue in Yarmouth (MP 2.81 +/-) to the end of the EOT-owned portion of the South Dennis Secondary Line (MP 5.60 +/-). As this section of the South Dennis Secondary Line has not received rail service for many years, EOT has agreed to work with the Towns to forward the development and operation of the Line segment for alternative transportation use as rail trail facilities. EOT may request that the selected Railroad Operator cooperate with EOT to rail bank this section of the Rail Line, in accordance with applicable regulations and the negotiated License & Operating Agreement.

The Town of Yarmouth also seeks to construct and operate a "rail with trail" facility within and/or adjacent to the active portion of the South Dennis Secondary, from a point near the Yarmouth Transfer Station to Station Avenue (MP 2.81 +/-).

The Towns of Yarmouth and Barnstable have also expressed an interest in developing a "rail with trail" facility within and/or adjacent to the active section of the Hyannis Secondary, from the Yarmouth Junction to the Hyannis Intermodal Transportation Center.

As indicated above, EOT understands that the construction and operation of "rail with trail" facilities must be very carefully reviewed by all parties involved, in order to determine whether, and under what circumstances, rail operations and recreational activities can safely coexist. EOT has indicated a willingness to discuss the feasibility of and possible design options for such a facility with the Towns and any Railroad Operator responsible for operating the Rail Lines. EOT will therefore

expect the selected Railroad Operator to work cooperatively with EOT and the Towns to examine alternatives for the design, construction and operation of a "rail with trail" in the vicinity of the Yarmouth Transfer Station, and along the Hyannis Secondary between the Yarmouth Junction and the Hyannis Intermodal Transportation Center

5 Dean Street Industrial Track

a. Proposed Water Line Installation

EOT expects to enter into an agreement in the near future with a private party who intends to install and maintain a water line and associated infrastructure within the boundaries of the Dean Street Industrial Track. The proposed pipeline will be installed along rail properties owned by EOT and the MBTA, and design documents for the project have been reviewed by the Bay Colony Railroad, the MBTA, and CSXT. As the railroad operator presently responsible for operating this Rail Line, Bay Colony has prepared comments and established conditions for the construction of the pipeline project. The selected Railroad Operator will be expected to accommodate the installation of the proposed water pipeline in a timely, efficient and cost-effective manner, upon terms no less favorable than those established by Bay Colony.

EOT will provide copies of the proposed installation plans and Bay Colony's proposed work program during the Response preparation period. In their Response, Respondents should indicate their consent to the proposed installation, and should either (1) agree to accommodate the proposed project and perform the work outlined by Bay Colony at or below the budget established by Bay Colony; and/or (2) identify alternative approaches and conditions regarding the proposed project.

***Note** All repairs and improvements funded by EOT or any third party will become the property of EOT. The Railroad Operator will not be permitted to credit such repairs and improvements against its commitments in the M&R Work Program, and will not be entitled to any reimbursement or compensation from EOT in connection with the repairs or improvements.*

b. Proposed Passenger Rail Operations

The Dean Street Industrial Track has been programmed for future development and operation as part of the MBTA's extension of commuter rail service to Fall River and New Bedford. The selected Railroad Operator will be expected to work cooperatively with EOT and the MBTA to facilitate the infrastructure improvements and operational adjustments required to accommodate the proposed commuter rail service, in accordance with the process outlined in Section II C above.

EXHIBIT B

FRA Track Class Standards **for** **Licensed Properties**

RAIL LINE / LOCATION				Required FRA Track Class (2007)
Line	From	To	Total Length	
Buzzards Bay Secondary	Middleboro (MP 1.5)	Buzzards Bay (MP 19.9)	18.4 Miles	II
Hyannis Secondary	Bourne (MP 0.0)	Hyannis (MP 24.3)	24.3 Miles	II
South Dennis Secondary	Yarmouth (MP 0.0)	Yarmouth (MP 2.81)	2.8 Miles	I
Falmouth Secondary	Bourne (MP 0.0)	Falmouth (MP 6.8)	6.8 Miles	I
Watuppa Branch	Westport Factory (MP 6.0)	Fall River (MP 10.66)	4.7 Miles	X
Dean Street Industrial	Taunton (MP 0.0)	Taunton (MP 1.5)	1.5 Miles	X

Note All MP references & distances above are approximate

The FRA Track Class Standards noted above may be amended from time to time by mutual written agreement of the parties.

EOT's property ownership extends beyond the boundaries noted above in some cases. EOT reserves the right to adjust the boundaries of the Rail Lines and related properties, in accordance with the terms of the License and Operating Agreement.

EXHIBIT C

Maintenance and Repair Requirements

The Maintenance and Repair Requirements are described in Sections IX and X of this License and Operating Agreement, and are based upon the terms of EOTPW's December 2006 RFR and Railroad's March 2007 Proposal

The Parties have agreed to work together to develop and implement "Recommended Practices" to implement the Maintenance and Repair Requirements, following a full inspection of the Licensed Properties by the Parties as described in the Agreement

EXHIBIT D

Maintenance and Repair Work Program
(Year 1 – 5)

MAINTENANCE REPAIR WORK PROGRAM
(YEARS 1 - 5)
ALL EOT RAIL LINES (58.4 MILES)

MASS COASTAL PROPOSAL REVISED 20 JULY 07										
Part	DESCRIPTION	RAIL LINE							ALL RAIL LINES	
		18 4	24 3	6 8	2 8	1 5	4 6			
1	Mileage								29 2	
	MAINTENANCE (Existing / Proposed Track Class)									
	(Annual Program / Cost Estimate)									
		Buzzards Bay Secondary MCRR	Hyannis Secondary MCRR	Falmouth Secondary MCRR	South Dennis Secondary MCRR	Dean Street Ind'L Track MCRR	Watuppa Branch MCRR			
A&B	Service and Stock Rails	\$0	\$18,304	\$5,824	\$2,486	\$832	\$1,664		\$28,120	
C	Other Rail -- Turnouts & Other Special Work									
D	Joint Ties	\$1,500	\$0	\$0	\$0	\$0	\$0		\$1,500	
E	All Other Ties	\$960	\$6,240	\$2,400	\$1,200	\$720	\$960		\$12,480	
F	Switch Timbers	\$43,680	\$52,800	\$8,160	\$3,120	\$1,680	\$1,920		\$111,360	
G	Te Plates -- DSC Relay Plates	\$4,200	\$6,900	\$600	\$1,200	\$1,500	\$1,500		\$15,900	
H	Joint Bars -- Relay (Including Nuts & Bolts)	\$0	\$0	\$0	\$0	\$0	\$0		\$0	
I	Rail Anchors / Fasteners	\$0	\$0	\$0	\$0	\$0	\$0		\$0	
J	Welding & Grinding -- Turnouts	\$3,450	\$4,830	\$690	\$690	\$1,380	\$1,380		\$12,420	
K	Frogs	\$0	\$0	\$0	\$0	\$0	\$0		\$0	
L	Guardrails	\$0	\$0	\$0	\$0	\$0	\$0		\$0	
M	Switch Points	\$0	\$0	\$0	\$0	\$0	\$0		\$0	
N	Spot Surfacing (Including Ballast)	\$1,250	\$5,000	\$1,250	\$1,250	\$500	\$750		\$10,000	
O	Spot Ditching	\$1,250	\$1,250	\$1,250	\$375	\$250	\$625		\$5,000	
P	Grade Crossing Maintenance	\$1,650	\$3,600	\$600	\$150	\$150	\$150		\$6,300	
Q	Bridge Ties -- Spot Replacement	\$1,500	\$2,000	\$3,500	\$0	\$1,500	\$500		\$9,000	
R	Weed Spraying	\$1,750	\$2,000	\$750	\$250	\$100	\$150		\$5,000	
S	Brush Cutting	\$1,600	\$2,400	\$1,600	\$800	\$800	\$800		\$9,000	
T	Rail Flaw Testing (Ultrasonic)	\$0	\$0	\$0	\$0	\$0	\$0		\$0	
U1	Track Gang-Labor and Supervision	\$52,394	\$97,367	\$35,086	\$14,470	\$7,926	\$10,957		\$218,200	
U2	Track Equipment Rental	\$11,000	\$22,500	\$8,500	\$3,500	\$2,000	\$2,500		\$50,000	
U3	Misc. OTM Materials	\$4,266	\$8,812	\$2,728	\$1,348	\$950	\$984		\$19,118	
	Subtotal	\$130,470	\$234,003	\$72,938	\$30,849	\$20,288	\$24,850		\$513,398	
	U1 OTHER -- Inspection & Maint (Track, Switch, Hwy Signals, Bridges Etc.)	\$41,372	\$84,519	\$23,455	\$7,885	\$9,395	\$8,154		\$174,780	
	U1 OTHER -- Misc (Veg Maintenance Plan / Permitting)	\$460	\$825	\$235	\$85	\$40	\$55		\$1,500	
		\$-	\$-	\$-	\$-	\$-	\$-		\$-	
	Subtotal	\$41,832	\$85,144	\$23,690	\$7,970	\$9,435	\$8,209		\$176,280	
	ANNUAL COST	\$172,302	\$319,147	\$96,628	\$38,819	\$29,723	\$33,059		\$689,678	
	Mileage	18 4	24 3	6 8	2 8	1 5	4 6		29 2	
	COST PER MILE	\$9,384	\$13,134	\$14,210	\$13,864	\$19,815	\$7,187		\$23,619	
	5 YEAR COST	\$861,510	\$1,595,735	\$483,140	\$194,095	\$148,615	\$165,295		\$3,448,390	
	Contingency	\$-	\$-	\$-	\$-	\$-	\$-		\$-	
	5 YEAR SUB-TOTAL	\$861,510	\$1,595,735	\$483,140	\$194,095	\$148,615	\$165,295		\$3,448,390	
	AVG ANNUAL COST	\$172,302	\$319,147	\$96,628	\$38,819	\$29,723	\$33,059		\$689,678	

EXHIBIT E

Reporting Requirements

Railroad shall provide the reports and documents identified below on a monthly, quarterly and/or annual basis, as noted.

▪ Accident & Incident Reports	Upon Occurrence
▪ Signal Failure Reports	Upon Occurrence
▪ Environmental Incident & Activity Reports	Upon Occurrence
▪ Railroad Track Inspection Reports	Upon Request
▪ FRA Inspection Reports	Upon Receipt by Railroad
▪ Form R-3 Reports (as Applicable)	Within 30 Days of Filing
▪ Other Reports Filed with Governmental Entities	Within 30 Days of Filing
▪ Sidetrack Agreements	Within 10 Days of Execution
▪ Trackage Rights Agreements	Within 10 Days of Execution
▪ Contracts with Railroad's Directors, Stockholders or Affiliates	Prior Approval Required
▪ Contracts with Persons or Firms Engaged to Manage, Operate, Maintain or Repair Rail Lines	Within 10 Days of Execution
▪ Documents & Reports Filed with STB	Upon Filing
▪ Quarterly Report of Traffic Volumes	Quarterly
▪	
▪ List of Slow Orders	Upon Occurrence / Quarterly
▪ Report of Property Removed or Salvaged	Upon Occurrence / Quarterly
▪ Annual Maintenance & Repair Work Program	Annually
▪ Maintenance & Repair Activity Report	Annually
▪ Annual Report of Traffic Volumes	Annually
▪ Railroad's Annual Financial Statements	Annually
▪ Environmental Management Report	As Requested / Annually
▪ Updated Timetable & Track / Program Charts	Upon Change / Annually
▪ Evidence of Compliance with Insurance Rqm'ts	Annually
▪ Signal System Reports	Annually
▪ Bridge Inspection Reports	Upon Completion
▪ Marketing Plan	As Requested / Bi-Annually
▪ Affirmative Action Plan / M/WBE Utilization Plan	Annually
▪ M/WBE Utilization Report	Annually

1. Reports & Submittals Due Upon Occurrence

- **Accident / Incident Reports**
Railroad shall notify EOTPW by e-mail, fax or telephone (in accordance with the emergency notification procedures to be agreed upon by the Parties) immediately upon (and in no case more than 24 hours from) becoming aware of the occurrence of any accident on the Licensed Properties, and shall furnish to EOTPW copies of any accident reports submitted to the FRA within three (3) business days of submittal of such reports to the FRA
- **Signal Failure Reports**
Railroad shall furnish EOTPW with copies of any Signal Failure Reports submitted to FRA or any other regulatory body within three (3) business days of submittal of such reports to the applicable agency
- **Environmental Incident & Activity Reports**
Railroad shall notify EOTPW of any environmental incidents that occur on or at the Licensed Properties within 24 hours of the occurrence of such an incident, and shall submit follow-up progress reports describing the incident, the response actions taken or in progress, and the status of the response action. The status reports shall be due upon request by EOTPW, but not later than the end of the month in which the incident occurred, and each month thereafter until the response action has been completed until the matter has been resolved to the satisfaction of Railroad, EOTPW and any regulatory agency involved, in accordance with this Agreement and applicable laws and regulations
- **Railroad Track Inspection Reports**
Railroad shall furnish EOTPW with copies of Railroad's track inspection reports within ten (10) business days of EOTPW's written request for same
- **FRA Inspection Reports**
Railroad shall furnish EOTPW with copies of any reports provided to Railroad following inspection of the Licensed Properties by the FRA, as well as evidence that deficiencies identified in such reports have been rectified. FRA inspection reports shall be furnished to EOTPW within ten (10) business days of receipt of same by Railroad
- **Form R-3 Reports (as Applicable)**
Railroad shall furnish EOTPW with copies of its Form R-3 or other regular reports of its operations filed with the STB within thirty (30) calendar days of such filing
- **Other Reports Filed with Governmental Entities**
Railroad shall furnish EOTPW with copies of other reports relating to the Licensed Properties and related operations which are filed with governmental entities within thirty (30) calendar days of such filing(s)

▪ **Sidetrack Agreements**

All Sidetrack Agreements shall be subject to EOTPW's prior written approval, which shall not be unreasonably withheld. Railroad shall furnish EOTPW with copies of new sidetrack agreements executed by Railroad within ten (10) business days of execution of such agreement(s). In the event the sidetrack agreement is not executed by the parties, Railroad shall provide a written explanation of the proposed and final terms under which the sidetrack will be constructed and operated, which terms shall be subject to EOTPW's prior written approval.

▪ **Trackage Rights and Other Agreements**

All trackage rights and other agreements pertaining to the use, operation or occupancy of the Licensed Properties by any party other than Railroad, including agreements with individuals or firms affiliated with Railroad, shall be subject to EOTPW's prior written approval. Railroad shall furnish EOTPW with copies of new trackage rights, operating or other agreements executed by Railroad within ten (10) business days of execution of such agreement(s). In the event the applicable agreement is not executed by the parties, Railroad shall provide a written explanation of the proposed and final terms of the agreement, which terms shall be subject to EOTPW's prior written approval.

▪ **Contracts with Railroad's Directors, Stockholders or Affiliates**

Railroad shall, promptly upon receipt of EOTPW's written request, furnish to EOTPW copies of such contracts executed by Railroad and any of Railroad's Directors, Stockholders or Affiliates (whether individuals or firms) which are subject to EOTPW's prior consent in accordance with Section XC of the Agreement.

▪ **Contracts with Persons or Firms Engaged to Manage, Operate, Maintain or Repair the Rail Lines (Licensed Properties)**

Railroad shall furnish EOTPW with copies of any contracts (other than employment contracts) executed by Railroad and any individual or firm engaged by Railroad to manage and/or operate the Licensed Properties, or to perform any maintenance or repair work on the Licensed Properties or related facilities, within ten (10) business days of execution of such contract(s).

▪ **Slow Orders**

Railroad shall provide EOTPW with a list of "slow orders" imposed as of the Commencement Date, notify EOTPW upon the removal of any existing and imposition of any new "slow order", and provide, at EOTPW's request, any supporting documentation indicating a track condition below the required FRA Track Class Standards.

2. Reports & Submittals Due Quarterly

Unless otherwise stated, each of the reports described below shall be transmitted to EOTPW on a quarterly basis, within thirty (30) days of the end of each calendar quarter

- **Traffic Volume Reports**

Traffic Volume Reports shall include the following information for each month during the relevant quarter, by Rail Line Cars Inbound (empty & full), Cars Outbound (empty & full), and Total Cars moved; Product Types moved; and Total Revenue

- **Reports of Property Removed or Salvaged**

Reports of Property Removed or Salvaged from the Licensed Properties shall identify: (1) As to removal of materials: the date(s), location(s), type(s) and amount of material removed, (2) As to disposition of materials removed the date(s), location(s), type(s) and amount(s) of materials (a) installed on the Licensed Properties, (b) stored, (c) sold to a third party, and/or (d) otherwise disposed of Each report shall provide a complete accounting of material removed and the disposition of such material as of the end of the quarter Such report shall include copies of receipts for any material sold to third parties, and shall account for the use of the proceeds of such sale

3. Reports & Submittals Due Annually

- **Railroad's Annual Financial Statements**

Railroad shall submit copies of its Annual Financial Statements and annual reports to stockholders, including income statements and balance sheets, within ninety (90) days of the end of Railroad's fiscal year Unless otherwise agreed by the parties, such annual reports shall be compiled by an independent firm of certified public accountants selected by Railroad EOTPW reserves the right to audit Railroad's financial records and reports, including, without limitation, Railroad's records used to determine revenues and costs relating to Railroad's Annual Financial Statements, and to require that the Railroad submit audited and certified financial statements periodically during the Term.

Separate auditable records must be maintained for all revenue and expenses (including staff, contractors and consultants) associated with Railroad's use and operation of the Licensed Properties, and must be distinguished in books and reports submitted to EOTPW from revenues and expenses associated with non-EOTPW property and/or those business activities which are wholly unrelated to the use and operation of the Licensed Properties

All revenue and expenses which result from the operation of the Licensed Properties must be recorded and accrued through Railroad under agreement with EOTPW. Separate auditable records must be maintained for all revenue and expenses associated with the operation of the Licensed Properties. The License Fee(s) (Base License Fee and Additional License Fees) associated with the use of the Licensed Properties shall be calculated on a cash basis, except as otherwise agreed by the parties, and shall be calculated without demand, abatement, deduction or offset.

▪ **Annual Report of Traffic Volumes**

Railroad shall submit an Annual Report of Traffic Volumes to EOTPW within thirty (30) days of the end of each calendar year during the Term. The Annual Report shall include the information described above (for quarterly Traffic Volume Reports) for each month and the annual total for the relevant year.

▪ **Evidence of Compliance with Insurance Requirements**

Railroad shall submit evidence with the insurance requirements set forth in Section XV of this Agreement. Such evidence shall include the delivery certificates of all required insurance and, if so requested by EOTPW, copies of the policies therefor. Certificates of insurance shall be delivered on an annual basis, or as required to demonstrate continuous coverage of the types and in the amounts required. Certificates of insurance for renewal policies shall be submitted to EOTPW at least thirty (30) days prior to the expiration of the policies they renew. All policies of insurance shall name the Commonwealth of Massachusetts and the Executive Office of Transportation and Public Works as additional insured.

▪ **Annual Maintenance & Repair Work Program (Current Year)**

Railroad shall transmit a proposed Annual Maintenance & Repair Work Program to EOTPW on or before January 30 of each year during the Term. The Annual Maintenance & Repair Work Program shall describe the maintenance and repair activities proposed for the upcoming calendar year, as part of an ongoing effort to implement the long-term Maintenance & Repair Work Program and comply with the Maintenance & Repair Requirements. The Annual Maintenance & Repair Work Program shall include the information described in Sections IX and X of this Agreement.

▪ **Maintenance & Repair Activity Report (Previous Year)**

Railroad shall transmit a Maintenance & Repair Activity Report to EOTPW on or before January 30 of each year during the Term. The Maintenance & Repair Activity Report shall describe the maintenance and repair activities undertaken and completed during the previous calendar year, in accordance with the previous year's approved Annual Maintenance & Repair Work Program. The Maintenance & Repair Activity Report shall include the information described in Sections IX, X and XI of this Agreement, and shall (1) describe the Maintenance and Improvement activities and work elements completed during the previous year, the cost of work elements associated with Improvements, and the relationship of the

work element to the work described in the approved Plan for that year; (2) compare the Maintenance and Repair activities undertaken during the previous year to the activities set forth in the approved Plan for that year, (3) identify all variances in the type of work performed and/or (in the case of Improvements) the cost of such work, from the Plan for the year in which the work was performed, and explain the reasons for such variances

The Report shall include a summary of all significant maintenance, repairs and improvements performed during the previous year, and identify the Party who funded and/or performed such work. This summary shall include the following information, particularly in the case of Projects or Improvements addressed in the M&R Work Program: (1) description of the work, (2) date work completed, (3) approximate useful life of the work element, (4) total cost of the work, (5) cost expended to date, and (6) method and source of financing the work. The Report shall also identify all work elements which are or will be owned by Railroad or for which Railroad is or may be entitled to be compensated pursuant to this Agreement, for purposes of financing and depreciating expenses associated with such work, and shall identify (7) the approximate Depreciated Value of the work element as of December 31 of the previous year, and (8) any funds (as reimbursement or otherwise) to which Railroad is or will be entitled, and the date upon which Railroad shall be entitled to receive such funds

Railroad shall provide interim status reports with respect to the Maintenance and Repair Work Program and related activities upon EOTPW's written request

▪ **Environmental Management Report**

Unless otherwise agreed by the parties, Railroad shall submit an Environmental Management Report to EOTPW on or before January 30 of each year during the Term. The Environmental Management Report shall summarize environmental management activities completed in the previous year, and shall include the information described at Section XIV of this Agreement

▪ **Timetable & Track / Program Charts**

Railroad shall transmit an updated timetable and track charts to EOTPW no later than thirty (30) days after (i) Railroad prepares updates its timetable or any track chart, and/or (ii) EOTPW requests a copy of Railroad's then-current timetable or track charts. Unless otherwise agreed by the parties, Railroad shall submit updated timetable and track charts with the submittal of its Maintenance & Repair Work Program information due on January 30 of each year during the Term

- **Signal System Reports**
On or before January 30 of each year during the Term, Railroad shall furnish EOTPW with copies of any Signal System Reports submitted to the FRA or any other regulatory body during the previous calendar year. Railroad shall also furnish EOTPW with a copy of any such Report within ten (10) days of EOTPW's request.
- **Bridge Inspection Reports**
Railroad shall arrange for the annual inspection of all bridges along the Licensed Properties by a qualified civil engineer, and the preparation of a report describing the bridge structure, the weight ratings of bridge structure, the findings and results of the inspection, and all other matters required by applicable regulations (the "Bridge Inspection Report"). Railroad shall deliver three (3) copies of such Bridge Inspection Report to EOTPW within thirty (30) days of receipt of same by Railroad.
- **Marketing Plan**
Upon request by EOTPW, but no more frequently than annually, Railroad shall submit a copy of its Marketing Plan for the upcoming year to EOTPW. The Marketing Plan shall review the elements of the Railroad's marketing efforts during the previous year and describe results achieved. The Plan shall describe Railroad's marketing strategy for the coming year, including target markets, opportunities for and anticipated constraints to expanding freight rail service, sources of competition, opportunities for joint marketing, and results implementation of the Plan is expected to achieve. At Railroad's option, the Marketing Plan may also recommend actions which EOTPW or other state and/or municipal governmental entities could take to enhance Railroad's marketing efforts or improve economic activity within the area(s) served by the Licensed Properties.
- **Affirmative Action Plan / M/WBE Utilization Plan**
Railroad shall submit an annual update of its Affirmative Action / M/WBE Utilization Plan to EOTPW, along with Railroad's transmittal of Railroad's Annual Financial Statements. The goal of this plan will be to utilize minority and women owned businesses for a specific percentage of the total dollar value of its annual contracting opportunities afforded as a result of Railroad's operations and activities resulting from this Agreement.
- **M/WBE Utilization Report**
Railroad shall submit an M/WBE Utilization Report to EOTPW along with its Annual Financial Statements. The Utilization Report shall include a statement of Railroad's M/WBE utilization goals, activities undertaken by Railroad during the period to achieve the stated goals, and both the dollar amount and percentage of overall expenditures made for services or supplies provided by M/WBE companies.

EXHIBIT F

Dispute Resolution

A General

Except with respect to an asserted default that EOTPW determines in good faith will result in immediate and irreparable injury to EOTPW, the parties intend to attempt to resolve all issues, claims and disputes relating to or arising hereunder in an informal manner. Every effort will be made to develop a business resolution to such issues, claims or disputes. To that end, the parties shall each designate a representative in all discussions and negotiations related hereto. EOTPW hereby appoints its Director of Rail as its representative, and Railroad hereby appoints its Chief Executive Officer as its representative. Either party may, any time at its election, designate a substitute representative.

B Informal Dispute Resolution Process

The parties shall attempt to resolve any issue, claim or dispute relating to or arising hereunder through informal communications between their representatives and/or authorized staff prior to proceeding with the formal dispute resolution procedures set forth below. The informal dispute resolution procedure shall occur as promptly as practicable under the circumstances, but shall not continue for more than sixty (60) days from the time any issue, claim or dispute is first brought to the attention of the other party by the designated representative or other authorized representative of the party raising the claim or dispute. If an issue, claim or dispute cannot be resolved informally within this period, it may be referred to the formal dispute resolution process set forth below.

C Formal Dispute Resolution Process

The formal dispute resolution process shall be conducted in accordance with the procedure outlined below:

- 1 Each issue, claim or dispute ("Dispute") shall be set forth in writing by the representative of the party raising the Dispute and shall be mailed to the person or persons designated in Section XXVII B of the Agreement, with a copy to the other party's representative.
- 2 Within twenty-one (21) days of the date of the mailing, the representatives shall meet to discuss a resolution of the Dispute.
- 3 If the Dispute is resolved prior to or as a result of such a meeting, the representatives shall jointly prepare and sign a written statement outlining the Dispute and the terms of resolution thereof.

- 4 If the Dispute cannot be resolved within forty-five (45) days of the date of the mailing referred to in Paragraph C 1 above, the parties shall promptly prepare a joint statement identifying all unresolved issues in the Dispute, and either party may refer the Dispute to mediation as set forth below. The representatives may adjust these deadlines as mutually agreed, but in no event shall a Dispute remain without resolution for more than sixty (60) days from the date of the mailing referred to in Paragraph C 1 above.

In the event that neither party requests mediation within sixty (60) days from the date the formal dispute resolution process has commenced (unless the above deadlines have been adjusted in writing and signed by both parties), the dispute resolution process shall be deemed to have been completed and the dispute resolved to the satisfaction of both parties.

D Mediation

Unless a party serves upon the party requesting mediation a written objection to mediation, in which case the provisions of Paragraph E shall apply, the parties shall attempt to agree upon a neutral mediator within thirty (30) days of a request for mediation. The mediator shall be selected from the Center for Professional Responsibility ("CPR") Panel of Neutrals and shall have extensive experience in a field appropriate to the dispute. If the parties cannot agree, the CPR shall designate a neutral mediator who has such experience. The parties shall share equally in the fees and costs of the mediator. The parties agree that they will participate in good faith in such mediation proceeding until

- 1 the mediator prepares a written statement resolving the Dispute,
- 2 the mediator concludes and informs the parties in writing that further mediation efforts would not be useful,
- 3 the parties agree in writing that an impasse has been reached, or
- 4 sixty (60) days from the date the matter was referred to the mediator (unless the parties agree in writing to extend such period),

whichever is earliest

E Arbitration

Any Dispute which cannot be resolved by the parties in accordance with Sections A through D of this Exhibit F shall be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, except as those rules may be modified by this Agreement. The arbitration proceeding shall be held in Boston, Massachusetts or such other location as the parties may mutually agree. The parties shall attempt to agree upon one arbitrator who has technical expertise and experience with respect to the issue or issues in the Dispute. If the parties are unable to agree upon an arbitrator within thirty (30) days, they shall ask the American Short Line and Regional Railroad Association to recommend an arbitrator, or request that the American Arbitration Association designate an arbitrator. The decision of the arbitrator shall be final and conclusive upon the parties hereto and shall be enforceable in a court of competent

jurisdiction Each party to the arbitration shall pay the compensative costs, fees and expenses of its own witnesses, exhibits and counsel The compensative costs of the arbitrator shall be borne equally by the parties hereto The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal law or antitrust law

F Legal Representation

If any party intends to be accompanied by an attorney at any of the stages described in Paragraphs B – E above, the other party shall be given written notice of such intention at least five (5) business days prior to the date on which discussions or mediation is to take place, and may also be accompanied by an attorney

G Legal Proceedings

Neither party hereto shall initiate legal proceedings with respect to a particular Dispute until the earlier of

- 1 completion of the stages set forth in Sections B – E above, or
- 2 expiration of the maximum period established above for all stages,

The parties agree further that they will not raise as a defense to any claims based upon or arising out of a Dispute, a failure by the other party to initiate legal proceedings within the period of any applicable statute of limitations, provided such litigation is brought within sixty (60) days of the completion of the process set forth herein All negotiations and discussions that are a part of the mediation process shall be confidential and shall be treated as settlement negotiations for purposes of any subsequent litigation among the parties

H Effect of Events of Default

Except as provided herein, nothing herein shall be construed to delay or in any way detract from EOTPW's rights upon an Event of Default, including, without limitation, the right to terminate the Agreement, the right to cure a default at Railroad's expense, and the rights set forth in Section XX C of the Agreement. Except with respect to any dispute as to an asserted default that will result in an immediate and irreparable injury to EOTPW, the invocation and implementation of the dispute resolution procedures set forth in Paragraphs A-E shall stay the effect of any asserted default until ten (10) days following the completion of such procedures

EXHIBIT G

LICENSE AGREEMENT

This **LICENSE AGREEMENT** (the "License") is entered into this ____ day of _____ 2007, by and between the **Commonwealth of Massachusetts** (the "Commonwealth"), acting by and through the **Executive Office of Transportation and Public Works**, an instrumentality of the Commonwealth established and acting pursuant to Chapter 6A and Chapter 161C of the Massachusetts General Laws, as amended, with offices at 10 Park Plaza, Room 3170, Boston, Massachusetts, 02116 (hereinafter "EOTPW"), and **Cape Cod Central Railroad, Inc.** a Massachusetts corporation and a wholly owned subsidiary of Cape Rail, Inc., with a usual place of business at 252 Main Street, Hyannis, MA 02601 (hereinafter "Operator")

WHEREAS, EOTPW, on behalf of the Commonwealth of Massachusetts, is the owner of several active railroad corridors and related properties and facilities in Southeastern Massachusetts, as more fully described below and in Exhibit A hereto (the "Service Area")

WHEREAS, Operator has provided certain seasonal tourist railroad and related passenger services over a portion of the Licensed Properties pursuant to a certain License Agreement dated December 21, 1998 (the "1998 License"),

WHEREAS, the term of the 1998 License expires on December 21, 2008,

WHEREAS, Operator is affiliated with the Massachusetts Coastal Railroad, LLC a Massachusetts Limited Liability Corporation, and a wholly owned subsidiary of Cape Rail, Inc ("Railroad"),

WHEREAS, Railroad submitted a proposal dated March 14, 2007 to operate rail freight service on and over the Licensed Properties and additional rail properties owned by the Commonwealth by and through EOTPW, in response to a Request for Responses issued by EOTPW in December 2006,

WHEREAS, Railroad's March 2007 proposal included proposed terms for the operation of tourist, excursion and related railroad passenger services by Operator, a company affiliated with Railroad through common ownership,

WHEREAS, in order to provide for the operation of such railroad passenger services by Operator, the parties desire to enter into this Agreement, setting forth terms and conditions for the operation of such services by Operator,

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, including the covenants and agreements made by the Operator herein, and intending to be legally bound, the parties hereby agree as follows

Section 1: License

EOTPW, insofar as it has the legal right to do so and subject to the terms and conditions set forth herein, hereby grants to Operator a non-exclusive license to provide the Services over railroad properties and facilities owned by EOTPW and designated by EOTPW, in its sole discretion, as available for operation for such Services

Section 2: Definitions

"Engine House Facilities" shall mean the engine house and rail yard access thereto located in Hyannis, Massachusetts

"Facilities" shall mean the Track Facilities, Station Facilities and/or Engine House Facilities referenced herein, as applicable

"Operator" shall mean Cape Cod Central Railroad, Inc , a Massachusetts corporation and a wholly owned subsidiary of Cape Rail, Inc , with a usual place of business at 252 Main Street, Hyannis, MA 02601

"Railroad" shall mean the railroad or railroad(s) designated from time to time by EOTPW to dispatch, maintain and operate the railroad properties designated within the Service Area As of the effective date of this License, Railroad shall mean the Massachusetts Coastal Railroad, LLC, a Massachusetts Limited Liability Company and a wholly owned subsidiary of Cape Rail, Inc and affiliate of Operator, with a usual place of business at 252 Main Street, Hyannis, MA 02601

"Services" shall mean the operation of **tourist passenger railroad services** within the Service Area, in accordance with the schedule or schedules to be submitted from time to time by Operator and approved by EOTPW as provided herein The term "Services" as used herein shall be deemed to include any "Special Services" authorized and approved by EOTPW from time to time in accordance with the terms set forth herein

"Service Area" shall mean the EOTPW-owned rail properties designated by EOTPW from time to time, in its sole discretion, as being available for the operation of the Services permitted herein, as located and described in Exhibit A hereto,

"Special Services" shall mean the operation of **corporate and other group charter (including dinner charter) services** within the Service Area, as authorized and approved by EOTPW from time to time in accordance with the terms set forth herein

"Station Facilities" shall mean the stations and areas appurtenant to the Track Facilities located in Barnstable and Sandwich, Massachusetts

"Term" shall mean a period of five (5) years, commencing as of January 1, 2008 and expiring as of December 31, 2012, unless sooner terminated or extended as set forth herein

"Track Facilities" shall mean the track and right-of-way comprising the EOT-owned rail lines along and within the Service Area

Section 3: Services and Operations

A. General

Operator's License shall extend only to the use and operation of the Service Area described herein to provide the Services, and shall be subject at all times to the terms and conditions set forth herein. The rights granted to Operator are and shall at all times remain non-exclusive and shall not be deemed to limit EOTPW's rights to contract with other parties (or comply with existing contracts) for the use of the Facilities for freight service, regularly scheduled commuter rail service or additional forms of freight and / or passenger railroad service

B Services

Operator's license to provide railroad passenger services shall be limited to the Services described in Section 2 above, including such Special Services and other services and operations as EOTPW may from time to time authorize

Operator may, upon no less than seven (7) days written notice to EOTPW and with the prior approval of Railroad, operate the Special Services over the Track Facilities during the Term of this License; provided, however, that EOTPW may, at its sole discretion and upon seven (7) days written notification, require that Operator obtain EOTPW's prior written consent for the operation of any subsequent Special Service during the Term of this License. The parties may adjust the nature and scope of Services (including Special Services) licensed hereunder by written agreement duly executed by the parties

C Service Area

Operator may provide the Services (including any previously approved Special Services) only within the Service Area. The parties may expand or otherwise adjust the boundaries of the Service Area by written agreement duly executed by the parties

D Operations

1 General

Operator shall provide safe, reliable and high-quality Services, using properly maintained equipment and qualified and properly trained employees. Operator shall at all times conduct its operations in a safe manner, take all precautions which are reasonable or necessary to safeguard against risk, make regular safety inspections of its equipment and the Facilities within the Service Area, all in compliance with all applicable laws and regulations governing the operation and maintenance of railroads and equipment

involved in providing the Services, including, without limitation, regulations of the Federal Railroad Administration and the federal Office of Safety and Health Administration

2 Equipment

Prior to commencing the Services , Operator shall provide to EOTPW a complete inventory of all equipment to be used in providing the Services, including, without limitation, locomotives, coaches and communications equipment

3 Agreement with Railroad

Operator shall enter into and shall maintain in effect throughout the Term of the License a contract with Railroad to provide for the maintenance by Railroad of the Track Facilities and any other Facilities used, occupied or operated by Operator, payment by Operator of charges sufficient to cover incremental costs to Railroad associated with track maintenance and other expenditures resulting from Operator's operation of the Services, joint use of the Facilities for operation of the Services by Operator and for freight service by Railroad, and allocation of liability between Operator and Railroad with respect to such joint use Operator shall provide EOTPW with a copy of such contract between Operator and Railroad and any amendments thereto, and shall, upon request by EOTPW, provide EOTPW with evidence that such contract remains in effect and that Operator is not in default with respect to payments due or other obligations thereunder throughout the Term of the License Operator may not commence the Services contemplated hereunder prior until EOTPW has received a copy of such contract between Operator and Railroad

4 Track Facilities

Operator may use and operate the Track Facilities within the Service Area (as the same may from time to time be amended) as provided herein throughout the Term of this License.

5 Station Facilities

Operator may use the Station Facilities within the Service Area as provided herein

Operator shall ensure that the Station Facilities and related parking facilities are properly maintained and landscaped and that the Stations include the facilities necessary to accommodate the needs of patrons, including, without limitation, shelters, benches, trash receptacles at the Hyannis (Barnstable) and Sandwich Stations and lavatories at the Hyannis Station

6. Engine House Facilities

Operator may use the Engine House Facilities at Hyannis, Massachusetts as provided herein, and may enter into an agreement with Railroad to provide for the shared use of such facilities, subject to the prior written approval of EOTPW.

7. Inspections

EOTPW shall have the right at any time and from time to time to enter upon the Track, Station and/or Engine House Facilities in order to inspect the condition of the same. EOTPW or another agency of the Commonwealth may from time to time conduct such safety and quality inspections and reviews of Operator's equipment and operations in connection with the Services as EOTPW or such other agency may determine to be necessary or desirable, which reviews may, at the discretion of EOTPW or such agency, encompass all aspects of the Service, including, without limitation, Operator's record of safety, passenger satisfaction, revenues, costs, response to community concerns and overall performance.

Section 4: Term

The Term of this License shall be as set forth in Section 2 above, unless the Term is sooner terminated or extended as provided herein. The parties may extend the Term of the License upon written agreement duly executed by the parties.

Operator shall have the right to use and operate the Track Facilities within the Service Area throughout the Term of this License, except to the extent the Term or the Service Area are adjusted as provided herein.

Operator shall have the right to use and operate the Station Facilities and Engine House Facilities as set forth in Section 3 above, unless such rights are sooner terminated or extended as provided herein.

The Parties may extend the Term of this Agreement by mutual written agreement duly executed by the Parties.

Section 5: Compensation

A License Fees

Operator agrees to pay to EOTPW the following License Fees as compensation for use of the Facilities to provide the Services.

Operator shall pay EOTPW an annual License Fee in the minimum amount of \$10,000.00, subject to annual increases of 3% per year. The Base License Fee shall be due and payable as of January 1st of each year during the Term.

The parties may adjust the License Fee due hereunder by mutual written agreement, in the event that the Operator's use and operation of the Services, the Service Area, or the Facilities change during the Term of the License, or in the event that there is another significant change in circumstances involving the operations licensed hereunder.

B Payments

Each payment hereunder shall be tendered not later than 11 00 A.M. (Boston time) on the day when due, by check or wire transfer to EOTPW at its address at Ten Park Plaza, Room 3170, Boston, MA 02116, attention Fiscal Department, or by wire transfer to such bank account as EOTPW may designate to Operator, in immediately available funds

Operator hereby authorizes EOTPW to charge an escrow account of the type hereinafter referred to, or to draw under a letter of credit of the type hereinafter referred to, for any amount due hereunder. All payments not made by Operator on the date when due shall bear interest at a rate per annum equal to 1% above the Prime Rate as quoted in the "Money Rates" section of The Wall Street Journal from time to time

EOTPW may, at its option and in its sole discretion, choose to receive payment of any portion of the License Fee and/or the Additional License Fee in the form of improvements to the Facilities rather than in cash, provided, however, that, EOTPW's election of such option shall in each instance be made in writing

C Security

As security for payment of amounts due hereunder, Operator shall provide to EOTPW one of the following:

- (1) deposit to a cash collateral account designated by EOTPW of a sum at all times at least equal to one year's License Fee, or
- (2) a standby letter of credit naming EOTPW as the sole beneficiary available by sight draft and a statement by EOTPW that Operator has failed to make a payment due hereunder or that the issuer hereof has failed to renew such letter of credit for the next succeeding calendar year in which this License is in effect in the minimum undrawn amount outstanding from time to time at least equal to one year's Base License Fee, or
- (3) a payment bond issued by a surety company licensed to do business in the Commonwealth in form and substance satisfactory to EOTPW in an amount at all times at least equal to one year's License Fee

Section 6: Operator's Covenants

Operator covenants and agrees that Operator shall, throughout the term of this License

- A Provide a high quality, safe tourist passenger railroad service as detailed in Exhibit B, in full compliance with this License,
- B Meet all performance, safety and training standards and requirements imposed by applicable state and federal laws and regulations and by this License, including, but not

limited to, the Quality Assurance Program and the System Safety Program detailed in Exhibit B,

- C Maintain all equipment and property necessary to provide the Services in accordance with this License and all applicable laws and regulations,
- D Provide personnel having the appropriate operational, maintenance and management expertise and qualifications to provide the Services,
- E Carry the insurance coverage required and provide evidence of same as provided in Section 11 herein,
- F Carry out such other functions and obligations as may be required in order to provide the Services pursuant to this License,
- G. Investigate and respond to all inquiries from EOTPW and assist EOTPW in responding to all complaints, comments and questions from passengers, vendors, the general public and state and federal regulatory authorities,
- H Comply with all applicable federal, state and local laws and regulations in effect from time to time, including, without limitation, those relating to affirmative action, handicapped accessibility, the environment, and safety requirements of the Federal Railroad Administration or the Massachusetts Department of Telecommunications and Energy or any successor agency Operator shall assume and be liable for all costs and expenses incurred in connection with such compliance, and shall be solely responsible for such compliance, without any liability on the part of EOTPW,
- I Maintain sufficient financial resources to discharge any obligations hereunder; and
- J Permit EOTPW and the Commonwealth, and their respective auditors, employees and agents to have access to Operator's books, records and premises for the purposes of verifying compliance by Operator with the provisions of this License and payment of the License Fees due hereunder

Section 7: Reporting

Operator shall provide the following documents and reports to EOTPW throughout the Term of the License

- A As soon as available, and in any event by May 15th of each year, Operator shall furnish a copy of its financial statements, including Operator's balance sheet as of the end of Operator's prior fiscal year (which shall be deemed to have ended December 31st of the previous calendar year), and a statement of income, retained earnings and cash flows of Operator for such fiscal year, compiled by a certified public accountant, as well as a copy of Operator's federal signed tax return for such fiscal year,

- B** Within ten (10) business days of the occurrence of any Default or Event of Default or the commencement of any proceeding or litigation which, if determined against the Operator, could have a material adverse effect on its business or financial condition, notice of the same and, as to any Default or Event of Default, a written statement of the steps being taken by the Operator to cure the same,
- C** Copies of all reports that Operator files with the Federal Railroad Administration or any other governmental body having jurisdiction over the operation of the Services,
- D** Quarterly, within thirty (30) days after the end of each calendar quarter, records as to maintenance of the equipment used to provide the Services and as to the maintenance of the Track Facilities, Station Facilities and Engine House Facilities as are then applicable, as required by Section ____, including a report as to the condition of the Facilities and any necessary repairs thereto or replacements thereof,
- E** A certification as to ticket sales by Operator, to be submitted annually with Operator's financial statements, and at such times as EOTPW may otherwise request,
- F** Information respecting the participation of minority/women business enterprises (M/WBEs) in the provision of the Services by Operator as EOTPW may from time to time reasonably request,
- G.** Annually, on or before March 1st of each year in which Operator provides the Services (including the first year of the Term), a summary of customer satisfaction surveys covering a minimum of 10% of Operator's paying customers for the Services during the preceding year in which the Services were provided,
- H** Minutes of meetings with Advisory Committee at such times as EOTPW may request
- I** Description of any accident involving Operator or claims brought against Operator relating to the operations, activities or Facilities referenced herein
- J** Such other information respecting the operations or financial condition of Operator, expenses incurred in, and revenues derived from the Services and operations permitted by this License as EOTPW may from time to time reasonably request.

Operator's obligation to provide financial information to EOTPW pursuant to this License shall continue in effect for a period of three years after the last day on which Operator provides the Services, and Operator shall retain its accounting and other records pertaining thereto for such period notwithstanding the termination of this License or the rights and privileges granted to Operator hereunder

Section 8: Advisory Committee

Operator shall, within thirty (30) days of EOTPW's written request, create a seven member Advisory Committee (the "Committee") to provide advice and feedback to Operator and EOTPW with respect to the quality and operation of the Services. The Committee shall be composed of residents of the communities comprising the Service Area and owners or operators of businesses located in such towns. At least two members of the Committee shall be owners of property that abuts the Facilities used in connection with the Services.

Operator and the Committee shall meet as often as needed or as requested by EOTPW or a majority of Committee members. Notwithstanding the foregoing, Operator shall meet with the Committee at least once during the month of March or April (prior to commencement of the Services in each year in which the Services are to be provided), once during the month of October or November (at the conclusion of Operator's season), and at such additional times as may be requested by Operator, a majority of the Committee members, or EOTPW.

The purpose of the Committee shall be to formulate a system of procedures substantially similar to Operator's "Good Neighbor Plan" detailed in Exhibit B for addressing issues and concerns of Cape Cod communities that relate to the operation of the Services, including such issues as noise, fumes, compliance with environmental and health laws, and maintenance of the Track, the Stations and related rights-of-way. The Committee shall report to Operator on potential modifications to the quality or frequency of the Services as it deems appropriate. Written inspection reports shall be made available to the Committee.

Section 9: Improvements

Operator may, with the prior written consent of EOTPW and, if required by EOTPW, the Cape Cod Regional Transit Authority, make improvements to the Engine House Facilities located in Hyannis consisting of utilities, water, a loading dock and a temporary station, at its own cost and expense. Operator may, with the prior written consent of EOTPW, make improvements to the Sandwich Station consisting of utilities and a temporary station, at its own cost and expense. Any improvements shall become the property of EOTPW at expiration of this License or the termination of Operator's license hereunder.

Section 10: Conditions

- A** Prior to the execution of this License, Operator shall provide the following to EOTPW, in form and substance satisfactory to EOTPW and its counsel:
 - 1** evidence of sufficient financial resources available to discharge any anticipated obligations hereunder,
 - 2** evidence that Operator has taken all necessary corporate action to authorize the execution, delivery and performance in accordance with the terms of this License and the granting of the security referred to in Section 5;

- 3 delivery to EOTPW of the security required by Section 5, and
- 4 evidence that Operator has obtained the insurance coverage required by Section 11

B Operator shall also provide the following to EOTPW, in form and substance satisfactory to EOTPW and its counsel

- 1 within thirty (30) days after the execution of this License, evidence that Operator has entered into the contract with Railroad, as required by Section 3 in the form of a signed copy of the same,
- 2 such other documents, instruments or materials as EOTPW may reasonably require

In the event that Operator fails to provide EOTPW with such items in a timely fashion, EOTPW may terminate the License and the rights and privileges granted hereby

Section 11: Indemnification and Insurance

A Indemnification

It is understood and agreed between EOTPW and Operator that, as part of the consideration for this License and the right and permissions granted hereunder, Operator hereby releases EOTPW and the Commonwealth, and hereby waives any right to request or demand damages from EOTPW or the Commonwealth, for or on account of loss of any kind or description, including, without limitation, any claim for injury to Operator's property, personnel or passengers, Operator's employees, officers, directors, agents or contractors, the property or passengers of other railroads, or other persons or entities (including any and all third parties such as trespassers, persons on public or private ways, or licensees of EOTPW or the Commonwealth), or for the loss of or interference with Operator's rail connections, arising out of or in connection with Operator's provision of the Services or use of the Facilities pursuant to this License, except for losses attributable to the gross negligence or willful misconduct of EOTPW or the Commonwealth

Operator further covenants and agrees to and shall at all times indemnify, defend, protect and hold EOTPW and the Commonwealth harmless from and against any and all charges which EOTPW may directly or indirectly suffer, sustain or be subject to by reason of or on account of the operation by Operator of the Services or its use of the Facilities, regardless of whether such losses and damages are suffered or sustained by Operator, its employees, officers, directors, agents or contractors, other railroads, other persons or entities or passengers of Operator or other railroads including, without limitation, injuries to any and all third parties such as trespassers, persons on public or private ways, licensees of EOTPW or the Commonwealth, who may seek to hold EOTPW or the Commonwealth liable therefor, except for losses attributable to the gross negligence or willful misconduct of EOTPW or the Commonwealth

As part of the consideration for this License, Operator covenants and agrees that no assessment, tax or charge of any kind shall be made against EOTPW or the Commonwealth or the property of either by reason of the operation of the Services. Operator further covenants and agrees to pay promptly to EOTPW or the Commonwealth, as the case may be, upon delivery to Operator of any statement or invoice rendered therefor, the full amount of any such assessment, tax or charge that may at any time be levied, charged, assessed or imposed against EOTPW, the Commonwealth or the property of either by reason of the operation of the Services by Operator.

Operator shall promptly notify EOTPW if a claim is made or brought against Operator, and shall indicate in such notification whether, in Operator's reasonable opinion, EOTPW or the Commonwealth may be liable pursuant to such claim. EOTPW or the Commonwealth shall be permitted to participate in the defense of any claim concerning which it may incur liability by counsel of its choosing, but at the cost and expense of Operator.

It is understood and agreed that neither EOTPW nor the Commonwealth makes any representation or warranty as to the condition of the Facilities subject to the license granted hereby, including without limitation, any hazardous wastes or hazardous materials present on the date hereof. The liability of the parties hereto with respect to the condition shall be determined in accordance with applicable law.

B. Insurance

Operator shall provide throughout the Term of this License such insurance coverage as EOTPW may require generally of licensees and tenants from time to time. Said insurance shall be in limits of not less than Five Million Dollars (\$5,000,000) for bodily injury, Five Million Dollars (\$5,000,000) for property damage, and Five Million Dollars (\$5,000,000) for personal injury, and shall be in a form acceptable to EOTPW, with the Commonwealth named therein as an additional insured. In addition, Operator shall carry in force Worker's Compensation and Employer's Liability Insurance as required by law. Operator shall furnish to EOTPW complete copies of all such insurance policies. All such policies shall be endorsed to provide not less than ten (10) days' notice to EOTPW of any cancellation thereof and of any material change in coverage. The providing of said insurance coverage shall not be deemed a limitation on the liability of Operator as provided in this License, but shall be additional security therefore.

Section 12: Damage

Operator shall be responsible for any damage to the Facilities or rights-of-way of EOTPW appurtenant thereto (reasonable wear and tear excepted) arising from or as a result of the Operator's use and operation thereof or any other act or omission by Operator or any of its employees, officers, directors, agents or contractors. In the event of any such damage, Operator agrees to pay to EOTPW on demand the full cost and expense of repairing or restoring such Facilities or rights-of-way, and EOTPW shall determine the amount of any such cost or expense in its sole discretion reasonably exercised

Section 13: EOTPW Discretion

The rights and privileges granted hereby shall be exercised by Operator subject to the prior and paramount right of EOTPW and the Commonwealth, in their absolute discretion, to operate their property or to make or change any policy pertaining to such property, including without limitation the Facilities referenced herein. Operator consents to any such change in policy and completely releases EOTPW and the Commonwealth from any and all liability whatsoever resulting from the exercise of such rights

EOTPW shall make good faith efforts to notify Operator one (1) year in advance of any change in policy that may affect Operator's use of the Facilities (or any portion thereof) or Operator's ability to provide the Services. Should Operator determine that such change of policy materially affects Operator's ability to provide the Services as set forth herein, Operator may terminate this License at any time within ninety (90) days of receipt of notice from EOTPW of such change in policy

Section 14: Events of Default

The following events shall be deemed Events of Default or conditions of Default, as the case may be

- a unexcused failure of Operator to provide the scheduled service in accordance with the Service Plan without EOTPW's prior approval, which failure continues for a period of ten consecutive days or for any ten (10) days in a thirty (30) day period, or
- b failure of Operator to make payment of any amount due hereunder continuing for five (5) business days after the date when such payment was due, or
- c failure of Operator to perform any covenant or condition on its part to be performed hereunder, and, except for failure to make any payment when due, such failure continues for a period of thirty (30) days following written notice of same, or

- d if Operator shall become insolvent or shall fail to be able to pay its debts as they come due, or if a receiver or a trustee shall be appointed for Operator or any substantial part of its property, or if an involuntary case is filed against Operator under the Bankruptcy Code without its consent and such appointment or case is not dismissed within thirty (30) days, or
- e if Operator shall file a voluntary case under the Bankruptcy Code or any other law regarding the liquidation or reorganization of debts, or if Operator shall make a general assignment or trust mortgage for the benefit of creditors, or
- f if any representation or warranty made by or on behalf of Operator or any of its officers to EOTPW shall prove to be false or inaccurate in any material respect, or
- g. failure of Operator to maintain in effect the security required under Section 5 hereof, or the failure of Operator to reinstate such security within five (5) business days after all or any part of such security is applied to Operator's payment obligations to EOTPW, or
- h failure of Operator to comply with applicable laws

The occurrence of any such event prior to the giving of any required notice or the expiration of any applicable grace period shall constitute an "Event of Default", and continuation of such Event or condition after the giving of any required notice or the expiration of any applicable grace or cure period shall constitute a "Default"

Section 15: Termination

Should the Secretary of Transportation determine, which determination shall be made in good faith in his or her absolute and sole discretion, that the continued operation of the Services by the Operator is not in the public interest, EOTPW may terminate this License and the license of Operator and its rights and privileges granted hereunder, upon ninety (90) days' written notice. Such notice shall be effective upon the expiration of such ninety (90) days' notice, at which time the License Agreement and the license of Operator and its rights and privileges granted hereunder shall cease and terminate. Operator acknowledges EOTPW's right and authority to make such a determination, and completely releases EOTPW and the Commonwealth from any and all liability whatsoever from the exercise of such rights.

EOTPW may terminate or suspend this License by providing written notice to Operator stating the grounds for EOTPW's action, in the form of a telegram, mailgram, hand-carried letter, or other appropriate means, if EOTPW determines that immediate action is necessary to protect state funds or property. Such termination ("Emergency Termination") shall be effective upon receipt by Operator.

EOTPW may terminate this License, and the license of Operator and its rights and privileges granted hereunder, for cause upon the occurrence of any of Event of Default or Default, as the case may be, set forth in Section 14 hereof.

Operator shall have the right to terminate this License upon ninety (90) days' written notice

Section 16: Remedies

- A Upon the occurrence of any Event of Default, EOTPW may take steps to obtain a substitute provider for the Service notwithstanding any term or provision hereof. Upon the occurrence of any Default, EOTPW may (i) apply any security held by EOTPW to the payment of Operator's obligations hereunder, and (ii) terminate this License and Operator's license hereunder by notice in writing to Operator, whereupon this License and such license shall absolutely cease and terminate. Any such termination shall not relieve Operator of its obligation to make payment of License or supplemental fees due pursuant hereto that have accrued prior to the date of such termination.
- B Notwithstanding the foregoing, in the event that Operator fails at any time to comply with any federal, state or local laws or regulations as required by Section 6 of this License, or fails to comply with any other term of this License, as determined by EOTPW in its reasonable discretion, EOTPW may, so long as any such non-compliance continues, suspend Operator's license granted pursuant to this License until Operator's violation of the same is cured, and during any such period of suspension all rights of Operator shall cease without any liability on the part of EOTPW or the Commonwealth.
- C The remedies set forth in this Section 15 are cumulative and in addition to any other remedy at law or in equity otherwise available to EOTPW or the Commonwealth, and the exercise by EOTPW of one or more of such remedies or the failure on the part of EOTPW to exercise any remedy provided for hereunder shall not prejudice EOTPW's right to exercise any remedy from time to time and as often as it may deem necessary during the term of this License.

Section 17: Restoration

At the termination of this License, Operator shall restore the Facilities and any other applicable EOTPW property to the greater of the conditions existing as of December 21, 1998 (the Effective Date of the 1998 Agreement), or as improved since December 21, 1998 and during the Term hereof, and shall remove all of Operator's personal property and debris from the Facilities or other EOTPW property which is the subject of this License. Should Operator not perform such restoration upon termination of this License, EOTPW or its agents may perform any and all necessary restoration at the sole expense of Operator. Any personal property not so removed by EOTPW and disposed of without any liability in EOTPW for such removal and disposition, all at the sole expense of Operator.

Section 18: Force Majeure

The obligations of the parties hereunder, except for Operator's payment obligations, shall be subject to force majeure and will be excused from any non-financial obligations under this License where non-performance is occasioned by conditions of circumstances beyond the non-performing party's control (which shall include natural disaster, act of war, civil disorder, labor dispute, riot, flood, extremes of weather, explosion, fire disaster, accident, terrorism and other causes or circumstances beyond the reasonable control of the party claiming such force majeure as an excuse for nonperformance), but only so long as, and to the extent that, such force majeure shall prevent performance of such obligations. In any event, a declaration of this force majeure provision shall automatically terminate 48 hours after declaration. To the extent that a condition continues beyond the initial 48 hour period and continues to meet the intent of this Section 18, a subsequent force majeure may be declared. In the event that a party fails or refuses to use reasonable efforts to eliminate or mitigate the effects of an event initially beyond its control, the continuation of such an event or circumstance shall not be deemed an excuse for performance hereunder.

Section 19: Dispute Resolution

- A** The parties agree to make a good faith effort to resolve any dispute, claim, or controversy between them relating to the interpretation, application or implementation of this License. Any such dispute, claim, or controversy that cannot be resolved by agreement may be submitted to arbitration, as provided below.
- B** In the event that the parties are unable to resolve a dispute, claim or controversy informally through negotiations, arbitration shall be available at the option of either party. If a party elects arbitration and one of the parties unreasonably delays the expeditious conclusion of same, the aggrieved party may proceed with other remedies available at law.
- C** If arbitration is undertaken by the parties, the matter in dispute shall be submitted to the American Arbitration Association and shall be conducted in accordance with the rules and procedures of the American Arbitration Association, unless the parties otherwise agree. If an issue in dispute could impact the timely operation of the Service, the matter shall be subject to expedited proceedings before the American Arbitration Association at the request of either party.
- D** Each party hereto shall bear the cost and expenses incurred by it in connection with such arbitration and both parties shall share equally the costs and expenses attributable to the services of the American Arbitration Association.
- E** If either party wishes to confirm or vacate the arbitrator's decision it may, after receipt of such decision, institute an action in the Superior Court for Suffolk County, Massachusetts, or the Superior Court of such other County as the Parties may mutually agree.

Section 20: Notices

All notices required or provided for hereunder shall be in writing and shall be addressed to the parties as follows

If to EOTPW

Executive Office of Transportation and Public Works
Ten Park Plaza, Room 3170
Boston, MA 02116-3969
Attn Bernard Cohen, Secretary

With a copy to its general counsel, and Director of Rail

If to Operator

Chief Executive Officer
Cape Cod Central Railroad, Inc
252 Main Street
Hyannis, MA 02601

Any notice sent by telefacsimile shall be sent to the parties at the following numbers

If to EOTPW	(617) 973-8032
If to Operator	(508) 771-1335

Any notice given hereunder shall be deemed given when delivered to either party by hand or sent by telefacsimile, one day after delivery to a reputable overnight courier service or sent by U S Express Mail, and three days after deposit with the U S. Mails, postage prepaid, for delivery by another class of service

Section 21: Assignment

Operator may not assign or transfer its rights under this License to any person or contract or subcontract with third parties, whether or not such parties are affiliated with Operator, for the performance of the rights, privileges granted Operator or the obligations of Operator hereunder without EOTPW's prior written consent, which shall be granted in EOTPW's sole and absolute discretion. Any attempted assignment, transfer, pledge, grant of interest, or sub-license or other encumbrance, except with the prior written approval of EOTPW, shall be void.

Operator shall not liquidate, dissolve, merge, consolidate or change the form of its business organization without the prior written consent of EOTPW, which consent shall not be unreasonably delayed or withheld

Section 23. No Third Party Benefit

This License shall not be construed to create any beneficial rights in favor of any third party or any right or privilege for the benefit of the general public

Section 22: Miscellaneous

- A This License may be executed by the parties hereto individually or in any combination of the parties hereto in several separate counterparts, each of which shall be an original and all of which taken together shall constitute one and the same agreement
- B Whenever any payment to be made hereunder shall be stated due on a Saturday, Sunday or a public holiday of the Commonwealth (any other day being a "Business Day", such payment may be made on the next succeeding Business Day and such extension of time shall in such case be included in computing interest
- C This License and the documents executed in connection herewith represent the entire understanding of the parties hereto with respect to the transactions contemplated hereby. No amendment or waiver of any provision of this License, nor consent to any departure by the Operator therefrom, shall in any event be effective unless the same shall be in writing and signed by EOTPW, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given
- D The terms and provisions of this License shall inure to the benefit of any assignee or transferee of or successor agency to EOTPW, and in the event of such transfer or assignment, the rights and privileges herein conferred upon EOTPW shall automatically extend to and be vested in the transferee, assignee, or successor of EOTPW, all subject to the terms and conditions hereof. Operator may not assign or transfer any of its rights or obligations hereunder without EOTPW's prior written consent.
- E All covenants, agreements, representations and warranties made herein or in other documents delivered by or on behalf of Operator pursuant to or in connection herewith shall be deemed to have been relied upon by EOTPW, notwithstanding any investigation heretofore or hereafter made by EOTPW, and shall survive the execution and delivery of this License. All statements contained in any certificate or other paper delivered to EOTPW at any time hereafter by or on behalf of Operator pursuant hereto shall constitute representations and warranties by Operator hereunder.
- F This License and the documents and instruments referred to herein, and all rights and obligations thereunder, including matters of construction, validity and performance, shall be governed by the laws of the Commonwealth of Massachusetts

In witness whereof, the Commonwealth, acting by and through EOTPW, and Operator have caused this License Agreement to be duly executed and delivered as of the day and year first written above

CAPE COD CENTRAL RAILROAD, INC.

By _____
John F Kennedy,
Chief Executive Officer

Dated _____

THE COMMONWEALTH OF MASSACHUSETTS
Acting by and through the
EXECUTIVE OFFICE OF TRANSPORTATION AND PUBLIC WORKS

By _____
Bernard Cohen, Secretary

Dated _____

Approved as to form

EOTPW General Counsel

EXHIBIT H

Railroad Charges and Fees

Railroad proposes to base its charges EOTPW or third parties (as applicable) upon the following schedule of charges and fees for review of license and other non-railroad occupancy requests, and for design, construction and maintenance activities involving grade crossings, siding installations, and improvements requested by and/or to be funded / undertaken by third parties. Railroad and EOTPW acknowledge that Railroad may make reasonable adjustments to the rates and charges described below in accordance with changes to the consumer price index ("CPI") and standard industry practice, provided, however, that any increase that exceeds the CPI shall be subject to EOTPW's prior written consent.

Category	Hourly Rate
Maintenance and Construction	
Foreman / Supervisor	\$ 60 - \$ 70
Crane / Backhoe / Machine Operator	\$ 50 - \$ 60
Signal Maintenance	\$ 55 - \$ 65
Mechanic	\$ 50 - \$ 60
Laborer	\$ 45 - \$ 50
Flagging	\$ 45 - \$ 50
Engineering / Review	\$125 - \$150
Administration	\$ 35 - \$ 45
Program Management	\$175 - \$200

Passenger Rail Services & Operations	\$\$ / Car Mile
Tourist, Excursion & Related Passenger Rail Services	\$0.45

Railroad agrees that the charges to be applied in connection with passenger rail services and operations shall reflect the incremental costs to Railroad for accommodation of the such services and operations, and that the car-mile charges noted above cover and include reimbursement of all expenses to which Railroad may be entitled in connection with the referenced passenger rail services and operations (whether such services are provided by a company affiliated with Railroad or otherwise), including incremental expenses incurred by Railroad for track inspection, maintenance, dispatching, administration and all other expenses.

EXHIBIT E
(Certificate of Liability Insurance)

Policy Number RRGL-1001-2

ACORD CERTIFICATE OF LIABILITY INSURANCEDATE (MM/DD/YY)
6/20/2007**PRODUCER**

Railroad Insur. Services of New England
90 Veterans Park Road
Claremont NH 03743
(603) 842-2756
Fax 5428656

EMPIRE I.S.

INSURED

NORTHEAST RAIL COALITION

and group member CCCR
CAPE COD CENTRAL RAILROAD, INC
252 Main Street
Hyannis, MA 02601

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION
ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE
HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR
ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

INSURER A: ESSEX INSURANCE COMPANY
INSURER B:
INSURER C:
INSURER D:
INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS

TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
GENERAL LIABILITY				EACH OCCURRENCE \$5,000,000
☒ COMMERCIAL GENERAL LIABILITY				FIRE DAMAGE (Any one loss) \$50,000
☒ CLAIMS MADE OCCUR				MCD EXP (Any one person) \$
☒ Railroad Liab.	RRGL-1001-2	6/15/2007	6/15/2008	PERSONAL & ADV INJURY \$5,000,000
GEN'L AGGREGATE LIMIT APPLIES PER				GENERAL AGGREGATE \$10,000,000
☒ POLICY				PRODUCTS - COMP/DP AGG \$5,000,000
AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (Per accident) \$1,000,000
ANY AUTO				BODILY INJURY (Per person) \$
ALL OWNED AUTOS				BODILY INJURY (Per accident) \$
SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident) \$
☒ HIRED AUTOS				
☒ NON-OWNED AUTOS				
☒ RENOA Endorsement	RRGL-1001-2	6/15/2007	6/15/2008	
GARAGE LIABILITY				AUTO ONLY EA ACCIDENT \$
ANY AUTO				OTHER THAN EA ACC \$
EXCESS LIABILITY				AUTO ONLY AGG \$
OCCUR CLAIMS MADE				EACH OCCURRENCE \$
DEDUCTIBLE				AGGREGATE \$
RETENTION \$				\$
WORKERS COMPENSATION AND EMPLOYERS LIABILITY				WC STATUTORY LIMITS OTHER \$
OTHER				\$1 EACH ACCIDENT \$
A Liquor Liability	RRGL-1001-2	6/15/2007	6/15/2008	\$1 DISEASE - EA EMPLOYER \$
				\$1 DISEASE POLICY LIMIT \$
				Special Limit \$1,000,000
				Aggregate \$2,000,000

DESCRIPTION OF OPERATIONS/LOCATION/VEHICLE/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

The following Certificate Holder is an Additional Insured but only in respect to liability arising out of the operations of the Named Insured. (Terrorism Risk Coverage Included in Policy)

(*) Except 10 days Notice for non-payment of premium.

CERTIFICATE HOLDER☒ ADDITIONAL INSURED; INSURER LETTER**CANCELLATION**

CAPE RAIL INC.
252 Maine Street
Hyannis MA 02601

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30* DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Signature

William A. Lippel