

EXHIBIT M

JOINT OPERATING AND MAINTENANCE AGREEMENT

BETWEEN

CSX TRANSPORTATION, INC.

and

THE VIRGINIA DEPARTMENT OF RAIL

AND PUBLIC TRANSPORTATION

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JOINT OPERATING AND MAINTENANCE AGREEMENT

THIS JOINT OPERATING AND MAINTENANCE AGREEMENT (as may be amended, modified or supplemented from time to time, this “**Agreement**”) is by and between the **VIRGINIA DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION (“DRPT”)** and **CSX TRANSPORTATION, INC. (“CSXT”)** and is dated and effective as of March __, 2021. CSXT and DRPT hereinafter sometimes may be referred to collectively as the “**Parties**” or individually as a “**Party.**”

RECITALS:

WHEREAS, DRPT desires to provide (i) improved intercity and commuter passenger service in eastern Virginia primarily between Washington, D.C. and Richmond through the separation of freight and passenger operations over railroad rights of way currently owned by, or under the primary control of, CSXT and (ii) improved intercity, commuter passenger, and freight rail services in other areas of Virginia, over specified railroad rights of way also currently owned by, or under the primary control of, CSXT (collectively, “**CSXT’s ROW**”);

WHEREAS, DRPT has negotiated with CSXT to purchase a portion of CSXT’s ROW and other rights to specified railroad assets, to design and construct certain improvements within the hereinafter defined RF&P Corridor for the benefit of one or both Parties, to increase intercity and commuter passenger trains operating in the RF&P Corridor before and after completion of those improvements and to address operational matters (the “**Transaction**”);

WHEREAS, on December 16, 2019, the Parties executed a binding term sheet, subsequently amended on June 29, 2020 and August 31, 2020 (together, the “**Term Sheet**”);

WHEREAS, DRPT also has negotiated with CSXT to purchase that portion of CSXT’s ROW hereinafter defined as Segment 2, and the Parties have agreed that, except where Segment 2 is expressly referenced herein, Segment 2 is not governed by this Agreement;

WHEREAS, DRPT also has negotiated with CSXT to purchase that portion of CSXT’s ROW hereinafter defined as Segment 3;

WHEREAS, to implement the Transaction, the Parties have executed a Comprehensive Rail Agreement;

WHEREAS, the Comprehensive Rail Agreement provides that the Parties enter into a Joint Operating and Maintenance Agreement to define the roles and responsibilities of each Party for the operation of its trains on the RF&P Corridor and Segment 3 and provide for maintenance of the RF&P Corridor and Segment 3; and

WHEREAS, the principles set forth in Section 1.2.2 (*Purpose and Objectives*) of the Comprehensive Rail Agreement apply to this Agreement.

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1. Definitions

When used in this Agreement, the following capitalized terms shall have the following meanings. Additionally, terms capitalized but not defined herein (if any) will have the meaning ascribed to them in the Definitive Agreements.

“**AF Interlocking**” means the Alexandria-Fredericksburg Interlocking at CSXT Milepost CFP 104.3.

“**Agreement**” shall have the meaning ascribed in the Preamble.

“**Amtrak**” means the National Railroad Passenger Corporation and its successors or assigns.

“**Amtrak Fee**” shall have the meaning given to it in the definition of Maintenance and Dispatch Fee.

“**Amtrak Long Distance Trains**” means any intercity passenger rail route or service operated by Amtrak in the Commonwealth of Virginia other than Amtrak Commonwealth-Supported Trains.

“**Amtrak Commonwealth-Supported Trains**” means any intercity passenger rail route or service of not more than 750 miles operated by Amtrak in the Commonwealth of Virginia and funded in part by the Commonwealth pursuant to Section 209 of the Passenger Rail Investment and Improvement Act of 2008, Pub. L. No. 110-432, 122 Stat. 4848.

“**Ancillary Agreements**” means, collectively, the Assignment and Assumption Agreement, VPRA Assignment Agreement, the Inspection Right of Entry Agreement, the Environmental Right of Entry Agreement, this Joint Operating and Maintenance Agreement, and the Engineering and Construction Agreements, as each Ancillary Agreement may be modified, amended or supplemented from time to time.

“**AREMA Recommended Practices**” means American Railway Engineering and Maintenance-of-Way Association recommended practices for the design of Capital Improvements.

“**BBRC**” means the Buckingham Branch Railroad Company.

“**BBRC Lease Agreement**” shall have the meaning ascribed in Exhibit A (Definitions) of the Comprehensive Rail Agreement.

“**Business Day(s)**” means that day that is neither a Saturday, a Sunday nor a day observed as a legal holiday by the Commonwealth of Virginia or the United States Government.

“**Capital Improvement**” or “**Capital Improvements**” means design, construction, renewal, replacement, or material modification or rehabilitation of track, and any structures or things necessary for the support or use thereof, including signals and communications systems, but excluding aesthetic improvements or maintenance work conducted in the ordinary course of business.

“**Commissions**” means the Northern Virginia Transportation Commission and the Potomac and Rappahannock Transportation Commission.

“**Complete Separation**” shall have the meaning ascribed in Section 3.6.1.

“**Comprehensive Rail Agreement**” shall have the meaning ascribed in the Recitals.

“**Corridor**” shall mean, collectively, the RF&P Corridor, Segment 2 and Segment 3.

“**CSXT**” shall have the meaning ascribed in the Preamble.

“**CSXT Engineering Standards**” means the CSXT design and construction standards that CSXT uses when undertaking design and construction projects at its own cost, including the CSXT standards with respect to grades, degree of curvature, clearances or braking distances in effect as of the original execution date of the Term Sheet; *provided*, that CSXT may modify the CSXT Design and Construction Standards from time to time, and *provided, further*, that if the CSXT Design and Construction Standards included in a DRPT Assets Project that has reached thirty percent (30%) design are the then-applicable CSXT Design and Construction Standards, CSXT shall not be entitled to alter, amend or modify the CSXT Design and Construction Standards other than as required by Law, without DRPT’s approval, which shall not be unreasonably withheld, conditioned or delayed. The CSXT Engineering Standards have been separately provided with access as noted in Exhibit A (*Access to CSXT Engineering Standards*).

“**CSXT Operating Rules**” shall mean the rules contained in the then current publication entitled “CSXT Employee Operating Manual.”

“**CSXT-Retained Portion of the RF&P Corridor**” means that portion of the RF&P Corridor not included in Segment 1.

“**CSXT’s ROW**” shall have the meaning ascribed in the Recitals.

“**Definitive Agreements**” shall mean the Comprehensive Rail Agreement and the Ancillary Agreements.

“**Description of Work**” shall have the meaning ascribed in Section 8.2.

“**Dispute**” means any claim, dispute, disagreement or controversy between CSXT and DRPT concerning their respective rights and obligations under this Agreement, including any alleged breach or failure to perform any remedy under this Agreement.

“**DRPT**” shall have the meaning ascribed in the Preamble.

“**DRPT Operating Rules**” shall mean the operating rules adopted pursuant to Section 11.1, as thereafter amended.

“**Effective Date**” shall have the meaning ascribed in the Preamble.

“**Emergency**” means a train collision, grade crossing accident, derailment, track washout, broken rail or switch, structure failure, signal system failure or outage, disabled train or any other condition of track,

signal system or rolling equipment that renders a Party's railroad system inoperable, for the reasonable duration of such inoperability.

"Force Majeure Events" means the occurrence of any of the following events that materially and adversely affects the performance of either CSXT or DRPT, provided that such events (or effects of such events) could not have been avoided by the exercise of reasonable caution, due diligence, or efforts by the affected Party: (a) war (including civil war and revolution), invasion, armed conflict, violent acts of a foreign enemy, military or armed blockage, or military or armed takeover of the RF&P Corridor or Segment 3, in each case occurring within the Commonwealth; (b) any act of terrorism or sabotage that causes direct physical damage to or otherwise directly causes interruption to operation of the RF&P Corridor or Segment 3; (c) nuclear explosion or contamination, in each case causing direct physical damage to the RF&P Corridor or Segment 3 or radioactive contamination of the RF&P Corridor or Segment 3; (d) riot and civil commotion on or in the immediate vicinity of the RF&P Corridor or Segment 3; (e) flood, earthquake, hurricane, tornado and other significant storm or weather occurrence, in each case that causes directly physical damage to the RF&P Corridor or Segment 3; and (f) fire or explosion that directly impacts the RF&P Corridor or Segment 3.

"FRA" means the Federal Railroad Administration.

"Labor Protection Costs" means any and all costs and payments, including, but not limited to, awards of benefits, back pay, penalty pay, allowances and awards of damages of any kind, however they may be denominated, and all arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of employees of a Party, or its corporate affiliates, in connection with the implementation, operation, or termination of this Agreement, whether pursuant to employee protective conditions imposed by a governmental agency as conditions for that agency's approval for any element related to this Agreement, or pursuant to a collective bargaining agreement.

"Law" means any one or more present and future laws, ordinances, rules, regulations, permits, authorizations, orders, judgments, and requirements, to the extent applicable to the Parties, the Transaction, trackage, infrastructure, other facilities, and the Corridor or any portion thereof, including, without limitation, hazardous materials laws, whether or not in the present contemplation of the Parties, including without limitation, all consents or approvals (including regulatory approvals) required to be obtained from, and all rules and regulations of, and all building and zoning laws or, all federal, state, and local governments, authorities, courts, and any other body or bodies exercising similar functions, having or acquiring jurisdiction of, or which may affect or be applicable to, the Corridor or any part thereof and of the trackage, infrastructure, and other facilities thereon.

"Maintenance and Dispatch Fee" shall mean an annual fee payable to CSXT by DRPT during the Transition Period as compensation for dispatching and maintenance services performed by CSXT on DRPT-owned tracks and assets. The fee shall be calculated as follows:

- (a) the VRE Fee for the applicable period, which VRE Fee shall be deemed satisfied by payment of the Contract Fee by the Commissions pursuant to the Operating Agreement (CSXT/Commissions); *plus*

- (b) any per-train mile compensation received by DRPT from Amtrak during the applicable period for DRPT's incremental costs to maintain the DRPT-owned tracks and assets (the "**Amtrak Fee**"),

and in each case, only as applied to DRPT-owned tracks for which CSXT provides dispatching and maintenance services under this Agreement at the time; *plus*

- (c) any cost of maintenance for which DRPT is responsible arising out of the provisions of Section 4.2.3 of the Comprehensive Rail Agreement or similar provisions concerning specific items of maintenance to be assumed by DRPT.

"Maximum Feasible Separation" shall have the meaning ascribed in Section 3.6.1.

"New Operator" means a governmental entity other than the Commissions, providing Commuter Rail Service, operated by a contractor selected by, and under a contract with, such governmental entity subject to the terms of a New Operator Agreement between CSXT and the governmental entity with respect to the relevant commuter train(s).

"New Operator Agreement" means a contract between CSXT and a New Operator with respect to the commuter train(s) to be operated by the New Operator's contractor on the Corridor, the terms of which must be generally consistent with the terms set forth in the Operating Agreement (CSXT/Commissions) and address at a minimum: (i) safety, (ii) operations, (iii) capacity, (iv) compensation and other payments, and (v) liability, including indemnification, as those terms are addressed in the Operating Agreement (CSXT/Commissions) including (if required by applicable Law), the authorization by the Virginia General Assembly, of the indemnity provisions on substantially identical terms as the Operating Agreement (CSXT/Commissions).

"Operating Agreement (CSXT/Amtrak)" means the agreement between CSXT and Amtrak dated June 1, 1999.

"Operating Agreement (CSXT/Commissions)" means that certain Second Amended and Restated Operating/Access Agreement, by and among CSXT and the Commissions concerning the operation of Commuter Rail Service by the Commissions under the Virginia Railway Express name.

"Operating Agreement (DRPT/Amtrak)" shall mean the agreement between DRPT and Amtrak dated the date of its execution.

"Operating Agreement (DRPT/Commissions)" shall mean the agreement between DRPT and the Commissions dated the date of its execution.

"Party" or **"Parties"** shall have the meaning ascribed thereto in the Preamble.

"Passenger Scheduled Operations" shall have the meaning ascribed in Section 3.5.1.

"Performance Managers Committee" shall have the meaning ascribed in Article 12.

"Permitted Assignment" shall have the meaning ascribed in Article 18.

“Phase 1 Projects” means those improvements identified in Comprehensive Rail Agreement Exhibit E (*Infrastructure Improvements*) as being part of Phase 1.

“Phase 2 Projects” means those improvements identified in Comprehensive Rail Agreement Exhibit E (*Infrastructure Improvements*) as being part of Phase 2.

“Phase 3 Projects” means those improvements identified in Comprehensive Rail Agreement Exhibit E (*Infrastructure Improvements*) as being part of Phase 3.

“Phase 4 Projects” means those improvements identified in Comprehensive Rail Agreement Exhibit E (*Infrastructure Improvements*) as being part of Phase 4.

“PTC” means a Positive Train Control System, as prescribed in 49 CFR Part 236, Subpart I, as amended.

“Railroad Construction Agreement” means the agreements between CSXT and DRPT attached to the Comprehensive Rail Agreement Exhibit O-1 (*Form of Master Construction Agreement (CSXT)*) and Exhibit O-2 (*Form of Master Construction Agreement (DRPT)*).

“RF&P Corridor” means the RF&P Corridor (as defined in the Comprehensive Rail Agreement), including Segment 1 (as defined herein) and the CSXT-Retained Portion of the RF&P Corridor (as defined herein).

“Sale Date” means collectively and individually, Sale Date 1 and Sale Date 3.

“Sale Date 1” means the effective date of the permanent easement for rail passenger purposes on Segment 1 (excluding the New Long Bridge Improvements and the Franconia-Springfield Bypass) that CSXT shall convey to DRPT by the Deed of Easement and Conditional Conversion to Full Interest in the form attached to the Comprehensive Rail Agreement as Exhibit C-1 (*Form of Deed for Segment 1 (VA)*).

“Sale Date 3” means the effective date of the quitclaim deed that CSXT shall convey to DRPT all of its right, title and interest in Segment 3 attached to the Comprehensive Rail Agreement as Exhibit C-3 (*Form of Deed for Segment 3*).

“Segment 1” means with respect to this Agreement only, Segment 1 (as defined in the Comprehensive Rail Agreement), together with the Long Bridge Improvements and the Franconia-Springfield Bypass, once each are ready for operations.

“Segment 2” means Segment 2 (as defined in the Comprehensive Rail Agreement).

“Segment 3” means Segment 3 (as defined in the Comprehensive Rail Agreement).

“Service Optimization and Implementation Plan” shall mean the document attached hereto as Exhibit C.

“STB” means the Surface Transportation Board.

“**Suspension Period**” shall have the meaning ascribed in Section **16.3**.

“**Term Sheet**” shall have the meaning ascribed in the Recitals.

“**Transaction**” shall have the meaning ascribed in the Recitals.

“**Transition Period**” means the period beginning on Sale Date 1 and ending on the date determined by the Parties under Section **3.6**.

“**VRE**” means Virginia Railway Express.

“**VRE Fee**” shall mean that portion of the Contract Fee payable by the Commissions to CSXT under the Operating Agreement (CSXT/Commissions) related to VRE trains on DRPT-owned tracks, which tracks are dispatched and maintained by CSXT.

“**VRE Segment**” shall have the meaning ascribed in Section 5.3.

ARTICLE 2. Scope of Agreement

From and after each applicable Sale Date, this Agreement applies to the RF&P Corridor and Segment 3, but does not apply to Segment 2, except where Segment 2 is expressly referenced herein.

ARTICLE 3. Operations on the RF&P Corridor

3.1 All passenger operations on tracks owned or dispatched by CSXT on the RF&P Corridor shall be subject to (i) the CSXT Operating Rules, and (ii) the Operating Agreement (CSXT/Amtrak) and the Operating Agreement (CSXT/Commissions), respectively, as either may be amended and applicable at any time, and nothing herein shall be interpreted to displace, alter or modify the rights and obligations of Amtrak, the Commissions or CSXT under those agreements with respect to passenger operations on the RF&P Corridor on tracks owned or dispatched by CSXT. Any conflict between this Agreement and the Operating Agreement (CSXT/Amtrak) or the Operating Agreement (CSXT/Commissions) with respect to the rights of Amtrak or the Commissions, respectively, and CSXT, under those agreements with respect to passenger operations on tracks owned or dispatched by CSXT on the RF&P Corridor shall be resolved in favor of the Operating Agreement (CSXT/Amtrak) or the Operating Agreement (CSXT/Commissions). Any amendments to the Operating Agreement (CSXT/Amtrak) or the Operating Agreement (CSXT/Commissions) applicable to passenger operations on the RF&P Corridor shall not unreasonably interfere with the operation of passenger trains thereon. Any issues related to this Section **3.1** may be raised for discussion at the Performance Management Committee in accordance with **Article 12** of this Agreement.

3.2 All passenger operations on tracks dispatched by an entity other than CSXT on the RF&P Corridor shall be subject to (i) the DRPT Operating Rules, and (ii) the Operating Agreement (DRPT/Amtrak) and the Operating Agreement (DRPT/Commissions), respectively, as either may be amended and applicable at any time, and nothing herein shall be interpreted to displace, alter or modify the rights and obligations of Amtrak, the Commissions or DRPT under those agreements with respect to such tracks. Any conflict between this Agreement and the Operating Agreement (DRPT/Amtrak) or the Operating Agreement (DRPT/Commissions) with respect to the rights of Amtrak or the Commissions,

respectively, and DRPT, under those agreements with respect to tracks dispatched by an entity other than CSXT on the RF&P Corridor shall be resolved in favor of the Operating Agreement (DRPT/Amtrak) or the Operating Agreement (DRPT/Commissions). Any amendments to the Operating Agreement (DRPT/Amtrak) or the Operating Agreement (DRPT/Commissions) shall not unreasonably interfere with the operation of freight trains thereon. Any issues related to this Section 3.2 may be raised for discussion at the Performance Management Committee in accordance with **Article 12** of this Agreement.

3.3 CSXT will continue to have the right to operate on the RF&P Corridor other than as expressly set forth in this Section 3.3 or in **Article 4**. Nothing in this Agreement shall alter, modify or diminish CSXT's right to fulfill CSXT's common carrier obligation to serve current and future freight customers on the RF&P Corridor, nor alter, modify or diminish BBRC's common carrier obligation or CSXT's residual common carrier obligation to serve current and future freight customers on Segment 3.

3.4 With respect to the Long Bridge Improvements or the Franconia-Springfield Bypass (once each are ready for operations), prior to Complete Separation or Maximum Feasible Separation, CSXT only shall have the right to operate: (1) during an Emergency; (2) during construction, repairs, or maintenance of CSXT-Retained Portion of the RF&P Corridor; or (3) when necessary for CSXT to reach a shipper. After Complete Separation or Maximum Feasible Separation, CSXT's right to operate on the Long Bridge Improvements or the Franconia-Springfield Bypass will be governed by **Article 4**.

3.5 On Sale Date 1, DRPT shall have the right to conduct passenger operations on the RF&P Corridor through the Commissions, Amtrak, or a New Operator, commensurate with the Passenger Scheduled Operations and subject to DRPT fulfilling its obligations with respect to (a) all required payments from DRPT to CSXT contemplated under the terms of the Comprehensive Rail Agreement, and (b) the completion of the Infrastructure Improvements identified in Exhibit E (*Infrastructure Improvements*) of the Comprehensive Rail Agreement related to the level of passenger operations to be conducted on the RF&P Corridor.

3.5.1 Subject to the Consent of the Commissions and Amtrak, the then-current schedule for Commuter Rail Service and Amtrak intercity service ("**Passenger Scheduled Operations**") will be amended effective on Sale Date 1, to include the additional specified Passenger Scheduled Operations on the RF&P Corridor set forth in Exhibit B (*Passenger Schedules*). Notwithstanding anything to the contrary contained in any notes in Exhibit B (*Passenger Schedules*), the Passenger Scheduled Operations and Exhibit B (*Passenger Schedules*) shall remain subject to this Agreement. Any conflict between the content of Exhibit B (*Passenger Schedules*) and this Agreement, shall be governed by this Agreement.

3.5.2 On completion of the Phase 1 Projects, the additional specified Passenger Scheduled Operations on the RF&P Corridor set forth in Exhibit B (*Passenger Schedules*) shall be permitted.

3.5.3 The Passenger Scheduled Operations permitted on Sale Date 1 and on completion of the Phase 1 projects shall continue provided that DRPT proceeds in good faith and with reasonable diligence in pursuing the design, development, construction, and completion of the Phase 2 Projects, failing which CSXT may elect to suspend new train starts in accordance with Section 12.2.1 (*Service Plan*) of the Comprehensive Rail Agreement until such time as DRPT cures such failure to proceed in good faith and with reasonable diligence in pursuing the design, development, construction, and completion of the Phase 2 Projects. On completion of the Phase 2 Projects, the Passenger Scheduled

Operations permitted on Sale Date 1 and on completion of the Phase 1 projects shall become permanent other than as expressly provided in **Article 16**.

3.5.4 On completion of the Phase 2 Projects, the additional specified Passenger Scheduled Operations on the RF&P Corridor set forth in EXHIBIT B (*Passenger Schedules*) shall be permitted and shall be permanent other than as expressly provided in **Article 16**.

3.5.5 If and when DRPT undertakes and completes the Phase 3 Projects, DRPT shall have the right to add up to fifteen (15) additional permanent VRE roundtrips to Passenger Scheduled Operations on the RF&P Corridor other than as expressly provided in **Article 16**.

3.5.6 If and when DRPT undertakes and completes the Phase 4 Projects, DRPT shall have the right to add unlimited permanent VRE roundtrips to Passenger Scheduled Operations on DRPT owned tracks on Segment 1 in its sole discretion other than as expressly provided in **Article 16**.

3.6 The Parties shall use the following process to establish the end date of the Transition Period.

3.6.1 After completion of the Phase 4 Projects, either Party may provide written notice to the other Party when it reasonably believes the Parties can commence (1) the separation of passenger trains and freight trains (“**Complete Separation**”) or (2) the maximum feasible separation of such passenger trains and freight trains (“**Maximum Feasible Separation**”).

3.6.2 No later than ten (10) Business Days after such notice, the receiving Party shall provide (1) its written notice of concurrence or (2) its written notice of non-concurrence, together with a detailed technical and operational explanation of what additional steps it believes are necessary to commence either Complete Separation or Maximum Feasible Separation. For avoidance of any doubt, neither Party shall be required to make additional Capital Improvements (beyond DRPT’s completion of the Phase 4 Projects) in order to achieve either Complete Separation or Maximum Feasible Separation.

3.6.3 If the responsive notice is concurrence, the end date of the Transition Period shall be the first day of the next month at least ten (10) Business Days after such notice.

3.6.4 If the responsive notice is non-concurrence, within ten (10) Business Days after the responsive notice, the Parties shall meet and confer to (1) review the technical and operational explanation supplied with the responsive notice, (2) negotiate in good faith to establish a complete list of additional technical and operational steps to achieve either Complete Separation or Maximum Feasible Separation and (3) agree on the end date of the Transition Period. If the Parties are not able to agree within thirty (30) days, the matter is subject to Dispute Resolution under **Article 17**.

ARTICLE 4. Non-Owner Operations on RF&P Corridor After Separation

4.1 Subject to this **Article 4**, following Complete Separation or Maximum Feasible Separation, DRPT will only have the right to operate on CSXT owned tracks on the CSXT-Retained Portion of the RF&P Corridor, and CSXT will only have the right to operate on DRPT owned tracks on Segment 1: (1) to the extent Complete Separation was not achieved; (2) during an Emergency, (3) during construction, repairs, or maintenance of the using Party’s owned portion of the RF&P Corridor or connected or adjacent track or facilities, (4) when necessary for CSXT to reach a shipper or (5) when necessary for DRPT to

reach passenger facilities existing as of the Effective Date or built as part of the improvements described in Comprehensive Rail Agreement Exhibit E (*Infrastructure Improvements*) (collectively the “**Post Separation Operations**”).

4.2 The Post Separation Operations described in Section 4.1 shall be subject to the conditions in Sections 3.1, and 3.2 and the Service Optimization and Implementation Plan.

4.3 Access during Emergencies under Section 4.1(2) shall be permitted and treated the same as other access on tracks owned or dispatched by the other Party under this Agreement. The Parties will work together in good faith to create a plan that accommodates the Party seeking access, while minimizing the duration and impact on the other Party’s operations, and in any event is designed to not unreasonably interfere with the other Party’s operations.

4.4 Operations during construction, repairs, or maintenance under Section 4.1(3) shall be permitted, provided that the Party seeking access to the property of the other Party must give reasonable advance notice to the other Party, along with the desired dates and times of access. The Parties will work together in good faith to create a plan that accommodates the Party seeking access, while minimizing the duration and impact on the other Party’s operations, and in any event is designed to not unreasonably interfere with the other Party’s operations.

ARTICLE 5. Dispatch

5.1 Except as provided in this Article, CSXT shall continue to dispatch all trains on the RF&P Corridor during the Transition Period. If either Party reasonably determines that the CSXT performance of dispatching is not facilitating optimized use of freight and passenger network capacity in the RF&P Corridor, the Parties shall discuss in good faith through the Performance Managers Committee the efficacy of a modification of CSXT dispatching practices and procedures. Neither Party shall be obliged to accept a modification to the CSXT dispatching practices and procedures other than upon mutual agreement of the Parties. DRPT shall pay to CSXT the Maintenance and Dispatch Fee, which compensates CSXT for, among other things, dispatching services provided by CSXT with respect to DRPT-owned tracks.

5.2 On completion of the Phase 1 and Phase 2 Projects, DRPT shall have the right, should it so elect, to dispatch all trains on tracks owned by DRPT on Segment 1 north of AF Interlocking, provided, the assumption of dispatch as provided in this Section 5.2 shall require DRPT to assume maintenance of all DRPT owned property on Segment 1 north of AF Interlocking. Such dispatching shall be subject to the Service Optimization and Implementation Plan.

5.3 If DRPT assumes dispatch of DRPT owned tracks on Segment 1 in accordance with this Agreement, the Service Optimization and Implementation Plan will be amended as provided therein, or CSXT and DRPT will, subject to mutual agreement, establish protocols to allow the dispatchers of DRPT and CSXT to permit trains to enter safely and efficiently onto the trackage and other infrastructure and facilities of CSXT and DRPT on Segment 1 and to allow for optimization of passenger service and freight service on Segment 1.

5.4 Within 180 days after completion of the operating plan for passenger trains on Segment 1 contemplated by the Service Optimization and Implementation Plan, the Parties agree to work, together with Amtrak and the Commissions, to amend the Service Optimization and Implementation Plan to provide for two dispatch trial periods implementing a dispatching strategy by which, during peak-direction

peak-period operations on the VRE-used portion of Segment 1 (the “**VRE Segment**”), late Amtrak trains would not be immediately deployed into the VRE Segment if the result of doing so would cause other passenger trains operating on-time in the VRE Segment to become late, with DRPT assuming responsibility for any and all costs on CSXT by Amtrak or lost incentive opportunities for CSXT from Amtrak, in both cases arising as a consequence of CSXT’s participation in the trial periods. The first trial period will be implemented within twelve (12) months after the Service Optimization and Implementation Plan is amended to provide for the trial periods. The second trial period will be implemented after completion of the Phase 1 and Phase 2 improvements.

5.5 To facilitate a smooth transition of dispatching from CSXT to DRPT, CSXT, DRPT and Amtrak or another designated contractor of DRPT shall commence a ninety (90) day dispatch transition period not later than the completion of the Phase 2 Projects, during which CSXT dispatchers and Amtrak’s or another designated contractor’s dispatcher designees will sit side-by-side at CSXT’s dispatching facilities and both Parties shall use reasonable commercial efforts to ensure a smooth transition of dispatching operation. At either Party’s option the transition period shall be extended for additional 30-day periods provided that if the Parties have been unable to achieve a smooth transition of dispatching operations within the ninety (90) days of the dispatch transition period, the Parties shall discuss in good faith through the Performance Managers Committee to determine how to achieve that transition. If Amtrak has assumed dispatching during the dispatch transition period, under no circumstance shall the transition period last more than ninety (90) days other than upon mutual agreement of the Parties. CSXT shall be reimbursed by DRPT for CSXT’s additional fully loaded costs (if any) of providing the foregoing side-by-side training described above, as well as any physical changes (such as to signal equipment) that may be necessary to facilitate the change in dispatch responsibility. CSXT will provide DRPT with a written cost estimate in advance of the commencement of the dispatch transition period.

5.6 After the Transition Period, DRPT shall have the right to dispatch all trains on tracks owned by DRPT on Segment 1. Such dispatching shall be subject to the Service Optimization and Implementation Plan.

5.7 BBRC presently dispatches Segment 3, pursuant to the BBRC Lease Agreement. It is intended that until and after Sale Date 3, BBRC will continue to do so pursuant to the BBRC Lease Agreement or the Segment 3 Easement and Segment 3 Operating Agreement, as applicable. Upon any cessation of dispatch of Segment 3 by BBRC, then, prior to Sale Date 3, CSXT shall have the right and obligation to do so, and, after Sale Date 3, at the request of DRPT, CSXT will assume dispatch for a transition period not to exceed two (2) years on terms and conditions mutually agreed by the Parties, acting reasonably.

ARTICLE 6. Schedules

6.1 If either Party reasonably determines that the Passenger Schedules are not permitting the Parties to meet the principles set forth in Section 1.2.2 (*Purpose and Objectives*) of the Comprehensive Rail Agreement, the Parties shall negotiate in good faith to modify the Passenger Schedules through the Performance Managers Committee. Except as otherwise provided in this Section **6.1**, neither Party shall be obliged to accept a modification to the Passenger Schedules other than upon mutual agreement of the Parties; provided, however, that (1) at the completion of Phase 2, if DRPT assumes maintenance and dispatch as provided in Section **5.2**, DRPT shall thereafter have the sole right, as between CSXT and DRPT, to modify Passenger Schedules on tracks owned by DRPT on Segment 1 north of AF Interlocking,

provided any such unilateral modifications to the Passenger Schedules shall not include the use of CSXT owned tracks north of AF Interlocking under this Agreement, whether or not otherwise permitted under this Agreement, and (2) at the end of the Transition Period, and declaration of Complete Separation or Maximum Feasible Separation as provided in Section 3.6, if DRPT assumes maintenance and dispatch as provided in Section 5.4, DRPT thereafter shall have the sole right, as between CSXT and DRPT, to modify Passenger Schedules on tracks owned by DRPT on Segment 1, provided any such unilateral modifications to the Passenger Schedules shall not include the use of CSXT owned tracks on Segment 1, whether or not otherwise permitted under this Agreement, and provided further that CSXT shall not be compelled to accept a change in the Passenger Schedules that would violate any then applicable Companion Agreement between CSXT and the Commissions, Amtrak or a new Operator; and subject in each case to CSXT's then current and future common carrier obligation as it relates to serving customers on Segment 1 impacted by such modifications to Passenger Schedules.

6.2 DRPT shall have the right to operate (through Amtrak, the Commissions, or a New Operator) passenger trains in either direction on Segment 1, Segment 2, and/or Segment 3, in any combination; provided that when any such trains operate on a Segment, they are subject to all terms of this Agreement applicable to the applicable Segment, including the Operating Agreement (CSXT/Amtrak), Operating Agreement (CSXT/Commissions), Companion Agreement (CSXT/BBRC) respectively, and the Passenger Schedules.

6.2.1 Any such additional passenger trains on Segment 3 are conditioned upon an analysis of safety and necessary infrastructure, if any, and that any infrastructure that is determined to be necessary by DRPT, acting reasonably, is implemented prior to such additional service.

(i) Increased passenger operations on Segment 3 shall be subject to and not unreasonably interfere with BBRC's and CSXT's right to satisfy any applicable common carrier obligation.

(ii) Additional passenger operations on Segment 3 shall be subject to the BBRC Lease Agreement, Segment 3 Easement, or Segment 3 Operating Agreement, as may be applicable, provided, however, that the Parties further agree that no extension of the BBRC Lease Agreement beyond 2034, or new lease agreement, that is applicable to Segment 3, shall be permitted unless the provisions granting BBRC, or any applicable assignee, an approval right over implementation of passenger trains have been removed, subject to the conditions imposed by this Section 6.2.3.

6.2.2 The Parties will bear their own costs for any analysis undertaken pursuant to Section 6.2.1.

6.2.3 No analysis or agreement of the Parties shall be required in the cases of passenger trains on Segment 2.

ARTICLE 7. Maintenance

7.1 CSXT shall maintain Segment 1 during the Transition Period, provided that DRPT shall (1) maintain the Long Bridge Improvements; (2) maintain the Franconia-Springfield Bypass; and

(3) maintain DRPT owned property on Segment 1 north of AF Interlocking if DRPT has elected to dispatch tracks owned by DRPT on Segment 1 north of AF Interlocking pursuant to Section 5.2.

7.2 DRPT shall bear financial responsibility for all maintenance conducted by CSXT on Segment 1 during the Transition Period. That responsibility shall be deemed satisfied by the payment of the Contract Fee by the Commissions to CSXT and the Amtrak Fee to CSXT.

7.3 After the Transition Period, DRPT will assume responsibility, directly or through a contractor, for all maintenance on all DRPT owned property on Segment 1; provided that CSXT will continue to maintain the entire length of all cross-overs that cross shared property lines on Segment 1, subject to reimbursement by DRPT for fifty percent (50%) of the cost of such maintenance. Additionally, DRPT shall reimburse CSXT for the pro-rata cost of any assets used by DRPT (whether or not owned by DRPT), that CSXT maintains, including, as an example but not limitation, culverts, bridges, and wayside signals.

7.4 CSXT shall cause BBRC to maintain Segment 3 and assume all maintenance expenses on Segment 3 pursuant to the BBRC Lease Agreement for the duration of the BBRC Lease Agreement or the Segment 3 Easement and Segment 3 Operating Agreement, as applicable. In the event the BBRC Lease Agreement terminates prior to the effectiveness of the Segment 3 Easement and the Segment 3 Operating Agreement, all maintenance expenses on Segment 3 shall be borne by DRPT, unless CSXT is operating on Segment 3, in which case CSXT shall be responsible to DRPT for a reasonable and customary use (not access) charge, to be mutually agreed, to offset maintenance costs associated with CSXT's use of Segment 3, such agreement by either Party not to be unreasonably withheld, conditioned or delayed. In the event the Segment 3 Easement and the Segment 3 Operating agreement are in effect, those agreements shall govern the maintenance of Segment 3.

7.4.1 Other than excursion trains and business cars operated by CSXT, or such passenger operations as are permitted under the BBRC Lease Agreement or the Segment 3 Easement and the Segment 3 Operating Agreement, as of the Execution Date, CSXT shall have no right to conduct passenger rail service or passenger operations or admit a third party or BBRC to do so on any portion of the Corridor except with DRPT's written consent, which consent shall not be unreasonably withheld, conditioned, or delayed.

7.5 Tracks and facilities on Segment 1 shall be maintained to the higher of the level required by Law for the applicable track use on Sale Date 1 or CSXT Engineering Standards; provided that during the Transition Period DRPT shall have the right (at its cost per Section 7.2) to have CSXT maintain the portion of Segment 1 maintained by CSXT to a higher standard. Segment 3 shall be maintained to the level required by Law for the applicable track use on Sale Date 1.

7.6 Each Party shall maintain drainage on the RF&P Corridor, Segment 3, and adjacent properties owned by such Party, in each case existing as of the applicable Sale Date, in such a manner as not to impair adjacent railroad operating property of the other Party, and not to redirect or increase the quantity or velocity of surface water runoff or any streams into any other lands and facilities of the other Party. If either Party makes improvements or modifies drainage, such Party will construct and maintain, in accordance with all applicable Law, an adequate drainage system from such improvement or modification to the nearest public drainage or storm sewer system (or other such system not owned by the other Party), to prevent the discharge of roof, surface, stream, and other drainage waters onto the property

of the other Party. Nothing in this Section 7.6 shall require CSXT to correct any condition existing as of the applicable Sale Date 1 or arising as a result of the construction by DRPT of the Infrastructure Improvements.

7.7 Each Party shall maintain that portion of the existing slope and toe of slope located on the RF&P Corridor, Segment 3, and adjacent properties owned by such Party, in each case existing as of the applicable Sale Date, in such a manner as to ensure that the slope does not fall, slide, undermine or trespass upon other lands and facilities of the other Party. Nothing in this Section 7.7 shall require CSXT to correct any condition existing as of the applicable Sale Date or arising as a result of the construction by DRPT of the Infrastructure Improvements.

7.8 Upon reasonable request by DRPT, and at DRPT's expense, CSXT shall make available to DRPT reports or other records created by CSXT after Sale Date 1 in the performance of maintenance under this Agreement of DRPT-owned assets that (i) demonstrate the condition of DRPT-owned assets, or (ii) demonstrate actual work performed by CSXT or a CSXT contractor on DRPT-owned assets.

ARTICLE 8. Capital Improvements

8.1 This Article applies to Capital Improvements to the RF&P Corridor that are not listed in the Comprehensive Rail Agreement Exhibit E (*Infrastructure Improvements*).

8.2 The Party that wants Capital Improvements shall submit plans for track and other rail facility additions, modifications, or betterments and a proposed schedule for the same (“**Description of Work**”) to the other Party. The reviewing Party shall have sixty (60) days to review the Description of Work, provide comments and propose any changes it reasonably deems necessary to ensure that the Capital Improvements (1) do not materially interfere with the reviewing Party's operating rights (2) can be operated in accordance with the applicable Operating Rules and (3) are not inconsistent with the CSXT Engineering Standards, FRA regulations, or AREMA Recommended Practices. CSXT may modify the CSXT Engineering Standards from time to time, provided, that once a Capital Improvement designed in accord with the CSXT Engineering Standards pursuant to this **Article 8** has reached thirty percent (30%) design, any change made in the CSXT Engineering Standards shall not be applicable to such Capital Improvement other than as required by Law.

8.3 Within sixty (60) days of receipt of the reviewing Party's comments, the proponent Party shall prepare and submit a revised Description of Work that agrees or disagrees with the reviewing Party's comments and proposed changes together with comments or changes it believes will allow the foregoing qualifications to be achieved. This process shall be repeated until the Parties agree on the Description of Work, which agreement or any material change to an agreed-to Description of Work, shall not be unreasonably withheld, conditioned or delayed, and subject to **Article 17**; provided, however, that, the proponent Party shall make the owning Party whole with respect to any accelerated replacement of the structure and reimburse the owning Party for all reasonable costs of re-routing traffic while maintaining then current timely freight or passenger service during the Capital Improvement.

8.4 If the proponent Party is not the owner of the property on which the Capital Improvement will be built and the owning Party can reasonably demonstrate that the Capital Improvements will increase the cost and expense of maintenance of the property on which the Capital Improvements will be built, then except as the Parties may otherwise agree, the proponent Party's authority to construct the Capital

Improvements shall be conditioned on an agreement between the Parties regarding the proponent Party's payment of such increased maintenance cost and expense.

8.5 Unless otherwise agreed, the owning Party shall perform, or cause to be performed, all Capital Improvements described in the Description of Work in accordance therewith. The reviewing Party shall have the right to inspect the as-built Capital Improvements to confirm material compliance with the Description of Work.

8.6 The cost and expense of the Capital Improvements (including the cost of any required permits and approvals and the cost and expense of reviewing any Description of Work by either Party at any stage and the inspection of the as-built Capital Improvement by either Party) shall be borne by the proponent Party; provided that if the Parties agree to jointly develop a Capital Improvement, the cost and expense of a Capital Improvement (including the cost of any required permits and approvals and incremental maintenance) shall be borne in proportion to the use of the Capital Improvement pursuant to a formula to be agreed by the Parties in advance of the work and in such case each Party shall assume its own cost and expense of reviewing any Description of Work at any stage and its inspection of the as-built Capital Improvement.

8.7 In the event jointly owned infrastructure is damaged by causes not attributable to a Party or a person for whom a Party is responsible, and such infrastructure is necessary for freight or passenger operations, the Parties shall repair or replace the infrastructure on terms agreed to by the Parties pursuant to the process described in Section **8.3**, including the obligation not to unreasonably withhold, condition or delay such agreement and subject to **Article 17**.

ARTICLE 9. Labor

The Parties will share CSXT's Labor Protection Costs as follows: (i) CSXT will bear the first \$100,000; (ii) DRPT will bear the next \$100,000; (iii) the Parties will each bear 50% of additional Labor Protection Costs, provided further that DRPT's liability for such Labor Protection Costs shall be capped at \$250,000 in the aggregate.

ARTICLE 10. Clearing of Wrecks

10.1 During the Transition Period, if by reason of any mechanical failure, accident, derailment or any other cause, a train or locomotive becomes stalled and unable to proceed under its own power on Segment 1, or if in emergencies crippled or otherwise defective cars are separated from their trains while on Segment 1, CSXT promptly shall furnish motive power or such other assistance as may be necessary to haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off Segment 1. DRPT shall reimburse CSXT for direct costs incurred in rendering any such assistance with respect to Amtrak or VRE trains (but not CSXT trains or the trains of any party admitted to Segment 1 by CSXT).

10.2 After the Transition Period, if by reason of any mechanical failure, accident, derailment, or any other cause:

10.2.1 a CSXT train or locomotive (or the train or locomotive of any party admitted to Segment 1 by CSXT) becomes stalled and unable to proceed under its own power on Segment 1, or if in emergencies crippled or otherwise defective cars are separated from CSXT trains (or trains of any party admitted to Segment 1 by CSXT) on Segment 1, DRPT shall have the option of allowing CSXT to furnish motive power or such other assistance as may be necessary to haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off Segment 1, or DRPT may perform or arrange for the performance of such necessary functions after providing reasonable notice to CSXT. CSXT shall reimburse DRPT for direct costs incurred in rendering any such assistance. DRPT shall promptly perform or arrange for the performance of the same such necessary functions with respect to Amtrak and VRE trains and at the cost and expense of entities other than CSXT.

10.2.2 a train or locomotive (other than a CSXT train or locomotive) becomes stalled and unable to proceed under its own power on the CSXT-Retained Portion of the RF&P Corridor, or if in emergencies crippled or otherwise defective cars are separated from trains on the CSXT-Retained Portion of the RF&P Corridor, CSXT promptly shall furnish motive power or such other assistance as may be necessary to haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off the CSXT-Retained Portion of the RF&P Corridor at the cost and expense of DRPT, without prejudice to DRPT's right to be reimbursed by the entity to which such assistance has been provided.

10.3 After Sale Date 3, if by reason of any mechanical failure, accident, derailment or any other cause, a train or locomotive becomes stalled and unable to proceed under its own power on Segment 3, or if in emergencies crippled or otherwise defective cars are separated from their trains on Segment 3, CSXT shall promptly furnish, or cause BBRC to promptly furnish, motive power or such other assistance as may be necessary to haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off Segment 3. DRPT shall reimburse CSXT for direct costs incurred in rendering any such assistance with respect to Amtrak trains (but not BBRC or CSXT trains), except to the extent Amtrak is obligated to pay such costs.

10.4 The liability, cost and expense of the foregoing not otherwise provided for in this **Article 10**, including, without limitation, loss of, damage to or destruction of any property whatsoever and injury to or death of any person or persons whomsoever resulting therefrom, shall be allocated and apportioned in accordance with the Operating Agreement (CSXT/Commissions) or the Operating Agreement (CSXT/Amtrak), respectively.

10.5 All trains, locomotives, rail cars, and rail equipment and salvage from the recovery operations provided for in this Article shall be promptly delivered to the operator or owner.

ARTICLE 11. Federal Railroad Administration Matters

11.1 In advance of Sale Date 1, DRPT will cause the Commissions or a New Operator of Commuter Rail Service to adopt the CSXT Operating Rules as the DRPT operating rules (the "**DRPT Operating Rules**") and file a copy of the rules with the FRA. Thereafter, DRPT shall have the right to amend the DRPT Operating Rules, provided that any amendments shall not unreasonably interfere with CSXT operations on Segment 1 or Segment 3 and shall be subject to review and approval of CSXT, which approval shall not be unreasonably withheld, conditioned or delayed.

11.2 DRPT shall comply with the notice provisions of 49 C.F.R. §213.5 and §237.3 at least thirty (30) days prior to an applicable Sale Date.

11.3 During the Transition Period, the Parties will specify the transfer, if any, of any other safety regulatory responsibilities.

11.4 Unless the FRA requires a different allocation: (i) CSXT shall be the host railroad for Positive Train Control (“PTC”) with respect to track being dispatched by CSXT, and (ii) DRPT or its contractor (at DRPT’s sole discretion) shall be the host railroad for PTC with respect to track being dispatched by DRPT or its contractor. Other than as provided in the previous sentence, during the Transition Period, the Parties will work closely with the FRA to establish: (a) whether separate allocation of host railroad responsibility is possible and practical; (b) where the back office operations and support for the RF&P Corridor’s PTC system will be housed and maintained; and (c) how the Parties will manage and allocate responsibility for the data generated by the operation of the PTC system on the RF&P Corridor. DRPT or its contractor shall be responsible for the cost to install, maintain, and operate all necessary equipment, including signal, wayside communications, and wireless infrastructure, as well as back office operations, to satisfy all obligations under all applicable FRA PTC regulations whenever (i) DRPT assumes the right to dispatch as provided in this Agreement, including north of AF Interlocking after Phase 2 as provided in Section 5.2, or (ii) passenger operations require any additional PTC equipment not existing on Segment 1 or Segment 3 on the applicable Sale Date, even if CSXT is dispatching the relevant track.

ARTICLE 12. Performance Managers Committee

The Parties shall form a committee consisting of at least two (2) representatives of each party, as well as one member from each of Amtrak and the Commissions (the “**Performance Managers Committee**”). Unless otherwise agreed, the Performance Managers Committee shall meet monthly (in person or telephonically) and more often when necessary to address issues between the Parties that require prompt resolution. The Performance Managers Committee shall be a forum for the Parties to share information, discuss matters submitted by one Party to the other Party for review and/or approval, and progress resolution of any issues between the Parties with respect to this Agreement. Without limiting the generality of the foregoing, either Party may raise in good faith any topic relevant to the RF&P Corridor or Segment 3 and the other Party shall be obligated to consider such topic in good faith, provided, however, that neither Party shall be obligated by the Performance Management Committee to amend this Agreement other than upon mutual agreement of the Parties.

ARTICLE 13. Insurance

13.1 Passenger Operations. DRPT shall require VRE, Amtrak and any New Operator under the Operating Agreement (DRPT/Commissions), Operating Agreement (DRPT/Amtrak), and any New Operator Agreement to acquire and maintain the level and types of insurance with respect to any operations they may conduct on Segment 1, Segment 2, or Segment 3 as are required for the Commissions and Amtrak in the Operating Agreement (CSXT/Amtrak) and Operating Agreement (CSXT/Commissions). In any such policy acquired for operations on Segment 1, Segment 2, or Segment 3, DRPT and CSXT shall be additional insureds or indemnitees.

13.2 Freight Operations. As of the date hereof, CSXT maintains system-wide premises and liability insurance (which covers, inter alia, its operations on the Corridor) with limits that it has concluded are sufficient to cover any costs or liabilities that CSXT may incur as a result of its operations on the Corridor and includes deductibles or self-assumed amounts that are reasonable and prudent for a freight railroad of similar size and operations. CSXT, at its sole cost and expense, shall maintain insurance with limits that it determines to be adequate during the entire term of this Agreement. DRPT shall be named as an additional insured on premises and liability policies acquired and maintained by CSXT pertaining to the Corridor. In the event that CSXT assigns this Agreement to any person, firm, partnership or corporation that is not affiliated with CSXT, then as a condition to the conduct of operations by such person, firm, partnership or corporation on Segment 1, DRPT may require such entity to maintain during the remainder of the term of this Agreement insurance having a limit of Thirty Million Dollars (\$30,000,000) combined single limit for personal injury and property damage per occurrence, with deductibles or self-assumed amounts not in excess of One Million Dollars (\$1,000,000). To the extent and in the event mutually agreeable to DRPT and such other entity, the aforesaid limits and/or amounts of insurance required of such other entity may be changed from time to time during the term of this Agreement. DRPT shall be named as an additional insured on any such policies maintained by such entity.

13.3 DRPT Obligations. The Parties acknowledge that insurance coverage and liability and indemnification related to passenger operations on the Corridor are addressed in the Operating Agreement (CSXT/Amtrak), Operating Agreement (CSXT/Commissions), the Operating Agreement (DRPT/Commissions), and the Operating Agreement (DRPT/Amtrak). In addition, DRPT shall purchase and maintain Premises Liability coverage and a Contingent Railroad Liability Insurance Policy with combined limits of Fifteen Million Dollars (\$15,000,000) per occurrence and Thirty Million Dollars (\$30,000,000) policy annual aggregate and a Pollution DIC policy with limits of \$10,000,000 per incident. CSXT shall be an additional insured on any such policies acquired and maintained by DRPT.

ARTICLE 14. Invoices and Payment

14.1 All invoices shall be delivered to a Party in accordance with **Article 19** of this Agreement. All payments shall be made by wire transfer according to instructions supplied on the invoice.

14.2 In the event that a Party fails to pay an invoice within 30 days, the paying Party shall also pay the other Party interest at the rate of ½ of 1.0% per month late charge on the delinquent sum until paid in full. Interest would begin accruing upon one-hundred twenty (120) days after due date of the specific invoice.

14.3 With respect to payments by DRPT, CSXT shall provide reports as required based on the particular funding source for each project by the Federal Funding Accountability and Transparency Act for the Projects. Reimbursement to CSXT shall also be subject to the guidance contained in 2 CFR § 170 (<http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf>) and Office of Management and Budget (OMB).

ARTICLE 15. Independent Contractors; Use of Third-Party Contractors

15.1 In the performance of obligations or duties under this Agreement the Parties are independent contractors and neither Party shall be deemed to be an agent of the other Party.

15.2 The Parties shall have the right to exercise their rights or meet their obligations under this Agreement either directly or through third-party contractors, subject to the express provisions of Section 14.6.2 (*Additional Commitments Regarding Amtrak and Potential New Operators*) of the Comprehensive Rail Agreement with respect to a New Operator of passenger service. Unless expressly required in this Agreement or in the Comprehensive Rail Agreement, either Party's use of a third-party contractor shall be in its sole discretion and shall not require the consent of the other Party but shall require that any such contractor (a) comply in full with the obligations of any and all applicable related agreements, including but not limited to this Agreement, and (b) agree to defend, indemnify and hold harmless the other Party to this Agreement. The use of a third-party contractor does not relieve the Party from its obligations under this Agreement and does not establish any privity of contract between a third-party contractor and the other Party to this Agreement.

ARTICLE 16. Term, Default, and Termination

16.1 If Amtrak is abolished or otherwise ceases to exist without a designated successor or assign, DRPT shall be deemed to be the successor to Amtrak for purposes of this Agreement and shall have the right to operate passenger trains on the same or shorter routes and at the same frequencies as the former Amtrak Commonwealth-Supported Trains in lieu of Amtrak through the Commissions or a New Operator subject to a New Operator Agreement, except that for the avoidance of doubt, compensation for such trains shall be equivalent to that under the then current Operating Agreement (CSXT/Commissions) and provided that no such service shall be operated unless: (i) the statutory cap on passenger claims under title 49 USC § 28103 remains substantially unchanged and applicable to such operations; or (ii) effective federal or Virginia General Assembly legislative approval of a statutory cap on passenger claims equivalent to that of 49 USC § 28103 as in effect on Sale Date 1, including any escalation factor, has been enacted with respect to the Commissions or the New Operator, as applicable, and is applicable to such operations.

16.2 This Agreement shall have a term of one hundred (100) years, commencing on Sale Date 1.

16.3 If DRPT has not established a New Operator under a New Operator Agreement pursuant to Section 3.6 by the date of termination or expiration of the Operating Agreement (CSXT/Commissions), Commuter Rail Service shall be suspended until such time as a New Operator Agreement is in place. CSXT shall have the right to terminate this Agreement with respect to Commuter Rail Service upon termination or expiration of the Operating Agreement (CSXT/Commissions) if DRPT has not established a New Operator under a New Operator Agreement pursuant to Section 3.6 within two years of the date of termination or expiration of the Operating Agreement (CSXT/Commissions) (the "**Suspension Period**"), provided, further that during the Suspension Period, DRPT (or its contractor) shall continue to operate, maintain, and dispatch, or reimburse CSXT for operating, maintaining, or dispatching, such portions of the RF&P Corridor in accordance with this Agreement and in a manner that enables CSXT to perform its common carrier obligations and places CSXT in no less favorable a position than it would have been had the Commuter Rail Service not been suspended (it being understood and agreed by the Parties that during the Suspension Period (i) the track access fees may be modified to achieve the forgoing result and (ii) any such compensation shall account for any costs avoided by CSXT arising from the suspension of the Commuter Rail Service), failing any of which, CSXT may terminate this Agreement with respect to Commuter Rail Service prior to the expiration of the Suspension Period. This Agreement shall terminate with respect to Intercity Passenger Service upon termination or expiration of the Operating Agreement

(CSXT/Amtrak), provided, however, that if Amtrak and CSXT continue to operate under the terms of an expired Operating Agreement (CSXT/Amtrak) or Amtrak and CSXT operate under compensation and terms prescribed by the Surface Transportation Board, no expiration or termination of the Operating Agreement (CSXT/Amtrak) shall be deemed to have occurred for purposes of this section. In the event of expiration or termination of the Operating Agreement (CSXT/Amtrak), DRPT shall have the same rights it would have under Section 16.1 if Amtrak were abolished or otherwise ceased to exist without a designated successor or assign.

16.4 A Party shall be in default under this Agreement if it has breached a material term and such breach remains uncured and continuing for thirty (30) days after receipt of notice of such material breach from the other Party. In the event of default, the Party not in default shall have remedies available at law or in equity, except as provided in Section 16.5.

16.5 A Party shall have the right to terminate this Agreement only if it is found in a final decision by a court of competent jurisdiction that the other Party has materially breached this Agreement, and such breach remains uncured and continuing for thirty (30) days after the effective date of such decision, provided, however, that nothing herein shall be interpreted to prevent a Party from seeking immediate equitable or injunctive relief upon notice to the defaulting Party in the event a Party fails to perform a material obligation under this Agreement.

16.6 No termination of this Agreement shall release either Party from any liability or obligation under this Agreement resulting from any acts, omissions, or events prior to the date of such termination or cancellation.

ARTICLE 17. Dispute Resolution

All Disputes arising out of or relating to this Agreement that are not otherwise resolved by the Parties must be resolved in accordance with Article 24 (*Dispute Resolution*) of the Comprehensive Rail Agreement.

ARTICLE 18. Assignment

Upon notice to CSXT, but without the consent or approval of CSXT, this Agreement may be assigned by DRPT to the Virginia Passenger Rail Authority or to another agency of the Commonwealth or to an authority or commission authorized by the Virginia General Assembly or the Governor of Virginia, provided, however, all other assignments may be made only with the written consent of CSXT, which consent may be withheld for any reason. Upon notice to DRPT, but without the consent or approval of DRPT, this Agreement may be assigned by CSXT in connection with a transaction under Section 14.7 (*Companion Agreement – Buckingham Branch Lease Agreement; Segment 3 Easement*) of the Comprehensive Rail Agreement or (i) in connection with the sale of all or substantially all of CSXT's assets, or (ii) in a merger or restructuring event (each a "**Permitted Assignment**"). CSXT expressly reserves the right to assign or delegate all or any part of CSXT's rights and duties hereunder to one or more third parties, provided, however, that any such assignment and/or delegation (other than a Permitted Assignment) shall be subject to the consent of DRPT, which consent may not be withheld or delayed unreasonably.

ARTICLE 19. Notices

All communications, notices, consents, and approvals required or permitted by this Agreement shall be in writing and shall be deemed delivered upon (1) email with a confirmed receipt, (2) personal delivery, upon the expiration of three (3) days following mailing by first class U.S. mail, certified, postage prepaid, return receipt requested, or (4) the next business day following delivery by a nationally recognized overnight carrier, to the Party at the addresses set forth below, or such other addresses as either Party may designate by delivery of prior notice to the other Party:

If to CSXT

Mailing Address
CSX Transportation, Inc.
500 Water Street
Jacksonville, Florida 32202
Attention: Senior Director, Passenger Operations
Andy_Daly@csx.com

With a copy to:
CSX Transportation, Inc.
500 Water Street
J-150
Jacksonville, Florida 32202
Attn: Assistant General Counsel
E-mail: sean_craig@csx.com
Phone: (904) 366-5005

If to DRPT

Virginia Department of Passenger Rail Transportation
600 E. Main St.
21st Floor
Richmond, VA 23219
Attn: Director
E-mail: j.mitchell@drpt.virginia.gov
Phone (804) 786-4440

With a Copy to:
Office of the Attorney General
202 N. 9th St.
Richmond, VA 23219
Attn: Transportation Section Chief
E-mail: jwhitlock@oag.va.us
Phone (804) 786-3748

ARTICLE 20. Indemnity

There are hereby incorporated the Indemnification provisions set forth in Article 18 (*Indemnification*) of the Comprehensive Rail Agreement, as though fully set forth herein. All matters between the Parties under this Agreement that implicate the matters contained in Article 18 (*Indemnification*) of the Comprehensive Rail Agreement shall be resolved in accordance with such Article 18 (*Indemnification*).

ARTICLE 21. Miscellaneous

21.1 Disadvantaged Business Enterprises (DBE). In any subcontract related to activities under this Agreement, each Party agrees to include appropriate provisions regarding the utilization of Disadvantaged Business Enterprises as required in Title 49 Part 26 of the Code of Federal Regulations.

21.2 Discrimination in Employment. Each Party agrees: (a) it will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, and it will post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; and (b) in all solicitations or advertisements for employees placed by or on its behalf, it will state that it is an equal opportunity employer; provided that notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.

21.3 Governing Law; Venue. This Agreement shall be construed and interpreted under the laws of the United States of America and the Commonwealth of Virginia exclusive of its choice of law rules. The Parties further agree that the venue of all legal and equitable proceedings related to disputes under this Agreement shall be situated in the applicable work county in Virginia, and the Parties agree to submit to the personal jurisdiction of any State or Federal court situated in the applicable work county in Virginia.

21.4 Remedies Cumulative. Except as otherwise expressly provided herein, all rights, powers and privileges conferred hereunder upon the Parties hereto shall be cumulative and in addition to all other rights, powers, and remedies hereunder and those available at Law or in equity. All such rights, powers and remedies may be exercised separately or at once, and no exercise of any right, power or remedy shall be construed to be an election of remedies or shall preclude the future exercise of any or all other rights, powers and remedies granted hereunder or available at law or in equity, except as expressly provided herein.

21.5 Compliance with Laws. Each Party shall be responsible for compliance with any Law that applies to its operations, and shall bear the costs of any fines or penalties imposed by authorities with jurisdiction over the operation for failure to comply with any such Law.

21.6 No Waiver. Except as otherwise expressly provided herein, neither the failure of either Party to exercise any power given such party hereunder or to insist upon strict compliance by the other Party with its obligations hereunder, nor any custom or practice of the Parties at variance with the terms hereof, shall constitute a waiver of either Party's right to demand exact compliance with the terms hereof.

21.7 Entire Agreement. This Agreement (including all Exhibits, which are all a part of the Agreement) contains the entire agreement of the Parties hereto with respect to the subject matter hereof, and no representations, inducements, promises or agreements, oral or otherwise, between the Parties not embodied herein or incorporated herein by reference with respect to the subject matter hereof, shall be of

any force or effect. Any previous agreements or understandings among the Parties regarding the subject matter hereof, including the Term Sheet, are merged into and superseded by this Agreement.

21.8 Binding Effect: Benefit. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns, but shall not inure to the benefit of any other entity or other person.

21.9 Amendments. No amendment to this Agreement shall be binding on the Parties hereto unless such amendment is in writing and is executed by the Party against whom enforcement of such amendment is sought.

21.10 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same instrument.

21.11 Severability. The Parties agree that if any part, term or provision of this Agreement is held to be illegal or in conflict with any Law, such provision shall be severable, with the remaining provisions remaining valid and enforceable.

21.12 Force Majeure. Neither Party shall be held responsible to the other for delays caused by Force Majeure Events nor shall such delays be deemed a breach or default under this Agreement. In no event, however, shall Force Majeure Events excuse DRPT from its obligation to make payments to CSXT under this Agreement.

21.13 Ethics. The Parties acknowledge that Commonwealth procurement professionals are subject to §2.2-4367 et seq. of the Code of Virginia: Ethics in Public Contracting and State and Local Government Conflict of Interests Act (§2.2-3100 et seq.), the Virginia Governmental Frauds Act (§18.2-498.1 et seq.) and Articles 2 (§18.2-438 et seq.) and 3 (§18.2-446 et seq.) of Chapter 10 of Title 18.2.

[SIGNATURE PAGE TO FOLLOW]

CSX TRANSPORTATION, INC.

By: _____

Print/Type Name: _____

Print/Type Title: _____

VIRGINIA DEPARTMENT OF RAIL AND PUBLIC
TRANSPORTATION

By: _____

Print/Type Name: _____

Print/Type Title: _____

[SIGNATURE PAGE TO JOINT OPERATING AND MAINTENANCE AGREEMENT]

EXHIBIT A

To be made available electronically by request to:

Will Roseborough
Director Project Management – CSX Transportation
904-359-1048
Will_Roseborough@csx.com