

**COMPREHENSIVE RAIL AGREEMENT
BETWEEN**

CSX TRANSPORTATION, INC.

and

THE VIRGINIA DEPARTMENT OF RAIL

AND PUBLIC TRANSPORTATION

**Providing for the
Purchase and Sale of Rail Assets,
and the Provision of Passenger and Freight Rail Services**

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Exhibits

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- Exhibit D Service Plan (v 6.0)
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- Exhibit E Infrastructure Improvements
 - E-1 Design, Procurement and Construction Responsibility Matrix
 - E-2 Transforming Rail in Virginia Financial Plan
 - E-3 Project Funding for Unconfirmed Track Separation Distances (Phases 1 and 2)
 - E-4 Confirmed Track Separation Distances Less Than 15 Feet (Phases 1 and 2)

- Exhibit F Third Party Assignment and Assumption Agreement

- Exhibit G Owners' Agreement

- Exhibit H INTENTIONALLY OMITTED

- Exhibit I Inspection Right of Entry Agreement

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Exhibit N	Form of Master Engineering Agreements
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COMPREHENSIVE RAIL AGREEMENT

THIS COMPREHENSIVE RAIL AGREEMENT (as amended, modified or supplemented from time to time, this “**Agreement**”), is made and entered into as of this 26th day of March, 2021, by and between **CSX TRANSPORTATION, INC.**, a Virginia corporation (herein referred to as “**CSXT**”), and the **VIRGINIA DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION**, a political subdivision of the Commonwealth of Virginia (hereinafter referred to as “**DRPT**”). 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 portions of CSXT’s ROW and other rights to specified railroad assets, to design and construct certain improvements within the hereinafter defined Corridor for the benefit of one or both Parties, to increase intercity and commuter passenger trains operating in the Corridor 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**”), summarizing the principal elements of the Transaction; and

WHEREAS, the Parties desire to enter into this Agreement in place of the Term Sheet for the purpose of establishing the definitive terms of their respective rights, responsibilities, and obligations for the consummation of the Transaction.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, do hereby agree as follows:

ARTICLE 1 Preliminary Provisions

1.1 **Definitions.** All capitalized terms used in this Agreement, and not otherwise expressly defined in this Agreement, shall have the respective meanings set forth in Exhibit A (Definitions).

1.2 Purpose and Objectives.

1.2.1 The purpose of this Agreement is to provide the Parties’ obligations, responsibilities and rights with respect to the successful and timely execution of the Transaction.

1.2.2 The Parties have entered into this Agreement to accomplish the following objectives:

(a) to create additional freight and passenger network capacity in the Corridor and to optimize the use of such expanded network in order to continue towards the more complete separation, where feasible, of freight and passenger rail operations within the RF&P Corridor;

(b) after Complete Separation or Maximum Feasible Separation, to allow passenger rail service and freight service to operate side-by-side in the RF&P Corridor on separate dedicated trackage and other infrastructure and facilities where feasible, and at frequencies and on schedules in accordance with the Service Plan with respect to DRPT and CSXT trackage, subject to easement and access rights granted pursuant to the Transaction; and

(c) where separation of passenger and freight services within the RF&P Corridor is not feasible due to (i) constraints in the RF&P Corridor, (ii) in the event of emergencies, construction, repairs, or maintenance, (iii) when required for CSXT to reach a shipper or (iv) when required for DRPT to reach passenger facilities, each Party will have the right to use the other's trackage and other infrastructure and facilities in accordance with the Joint Operating and Maintenance Agreement.

1.3 **Order of Precedence.** This Agreement establishes the rights and obligations of CSXT and DRPT, but does not serve to relieve or release CSXT or DRPT from any of their respective rights, obligations and liabilities arising at any time under any existing agreement CSXT may have with the Commissions or Amtrak, with respect to CSXT's rights, obligations and liabilities, unless said existing agreement is modified or amended to accommodate any such relief or release, the Deeds or the Ancillary Agreements. Except as otherwise expressly provided in this Agreement, if there is any conflict, ambiguity or inconsistency between the provisions of the Deeds, the Ancillary Agreements and this Agreement after Sale Date 1, the order of precedence shall be as follows from highest to lowest:

- Joint Operating and Maintenance Agreement;
- Deeds;
- this Agreement; and
- Ancillary Agreements (other than the Joint Operating and Maintenance Agreement).

1.4 **Interpretation.** This Agreement shall be construed as a whole and in accordance with its fair meaning. Whenever the words "including", "include" or "includes" are used in this Agreement, they shall be interpreted in a non-exclusive manner as though the words "without limitation" immediately followed the same. Masculine, feminine, or neutral gender and the singular and the plural number, shall each be considered to include the other whenever the context so requires. The titles of sections and subsections herein have been inserted as a matter of convenience of reference only and shall not control or affect the meaning or construction of any of the terms or provisions herein.

1.5 **Exhibit and Schedules.** Attached hereto and forming an integral part of this Agreement are Exhibits A – S, all of which are incorporated into this Agreement as fully as if the contents thereof were set out in full herein at each point of reference thereto.

1.6 **Assignment and Assumption by Virginia Passenger Rail Authority.** Effective July 1, 2020, legislation enacted by the Virginia General Assembly and signed by the Governor of Virginia created the Virginia Passenger Rail Authority (“VPRA”). The Parties acknowledge that, as of the date of this Agreement, the necessary executive and administrative actions to permit VPRA to undertake the rights, responsibilities and obligations of DRPT imposed by this Agreement, as of the date of this Agreement, have not been completed, and it is therefore neither practical nor reasonable to have VPRA possess and undertake such rights, responsibilities and obligations as of the date of this Agreement. Accordingly, CSXT agrees and consents to the assignment by DRPT, and the assumption by VPRA, of all of DRPT’s rights, responsibilities and obligations under this Agreement, which assignment and assumption shall be effected by and subject to an Assignment and Assumption Agreement in the form attached hereto as Exhibit P (Form of VPRA Assignment Agreement) (the “VPRA Assignment Agreement”). At and following the effective date of the VPRA Assignment Agreement, all references to DRPT shall mean VPRA unless the context clearly means otherwise. If the VPRA is dissolved, DRPT or another agency or political subdivision of the Commonwealth, as determined by the Commonwealth, that is able to perform all of the responsibilities and obligations of DRPT, will assume all of the responsibilities and obligations of VPRA under this Agreement.

1.7 **Term.** The obligations of this Agreement which by their context or content are intended to survive the applicable Sale Date shall continue to survive and be coterminous with the Term of the Joint Operating and Maintenance Agreement.

1.8 **Cooperation and Good Faith Undertaking.** The Parties agree to communicate regularly and to cooperate in good faith regarding their respective obligations under this Agreement and the Ancillary Agreements.

ARTICLE 2 Sale and Purchase

2.1 **Sale and Purchase.** Subject to and in accordance with the terms and provisions of this Agreement, CSXT agrees to sell to DRPT, and DRPT agrees to purchase from CSXT, those interests of CSXT in the Segments as set forth in and subject to the provisions of ARTICLE 4 (*Conveyance of the Segments*) and the applicable terms and conditions of the Deeds. To the extent any rights, title or interests in and to a Segment that is to be conveyed hereunder is owned by an Affiliate of CSXT, CSXT shall cause such Affiliate to join in execution and delivery of the Deed for such Segment.

2.2 **Purchase Price.** Subject to the conditions precedent set forth in ARTICLE 9 (*Conditions Precedent*), DRPT shall pay the purchase price of FIVE HUNDRED TWENTY FIVE MILLION DOLLARS (\$525,000,000) (the “Purchase Price”) to CSXT for the Segments, payable as follows:

2.2.1 TWO HUNDRED MILLION DOLLARS (\$200,000,000) to be paid at Sale Date 1, which shall occur no later than March 31, 2021;

2.2.2 TWO HUNDRED MILLION DOLLARS (\$200,000,000) to be paid no later than November 30, 2021; and

2.2.3 ONE HUNDRED TWENTY FIVE MILLION DOLLARS (\$125,000,000) to be paid no later than November 30, 2022.

All payments with respect to the Purchase Price hereunder shall be made by wire transfer. In the event that payments under Subsection 2.2.2 and 2.2.3 are not timely made, DRPT agrees any New Trains in the Service Plan shall be suspended, if operating, or the right to operate any New Train shall be suspended if it is not operating, until such time as payment, with applicable interest, has been paid in full.

2.3 **Interest on Overdue Amounts.** Any amount not paid when due pursuant to this Agreement shall bear interest from the date such payment is due until payment is made (after as well as before judgment) at a variable rate per annum at all times equal to the Bank Rate, which interest shall be payable on written demand. Interest will be compounded annually and payable on the date on which the related overdue amount is paid.

2.4 **Prorations.** The following items shall be prorated, adjusted, and apportioned between CSXT and DRPT as of 12:01 a.m. on Sale Date 1, Sale Date 2 and Sale Date 3, as applicable:

2.4.1 With regard to the portions of the Segments located in the Commonwealth of Virginia, the Parties acknowledge that, pursuant to § 58.1-3360 of the Code of Virginia (1950), as amended, CSXT should be relieved from the payment of city, county and town ad valorem taxes from and after the Closing for the sale of each such Segment and therefore no proration of such taxes should be necessary; provided, however, that if, for all or any portion of the period beginning on Sale Date 1 and ending upon the conversion of the Passenger Easement into all of CSXT's right, title and interest in Segment 1 by the recordation of Deeds of Confirmation (the "**Passenger Easement Period**"), any city, county or town in which the RF&P Corridor is located (each, an "**Assessing Jurisdiction**") continues to assess CSXT for ad valorem taxes applicable to the portion of Segment 1 located in such Assessing Jurisdiction, DRPT shall pay to CSXT, within thirty (30) days after receipt from CSXT of a copy of each relevant tax statement issued by such Assessing Jurisdiction, a pro rata share of the ad valorem taxes assessed against the RF&P Corridor in such Assessing Jurisdiction. Such pro rata share of the ad valorem taxes to be paid by DRPT shall equal the sum of (i) as to taxes assessed on "operating land" (as such term is used by the Virginia Department of Taxation ("**VDT**") in its annual statement of assessed value for railroads), the percentage of such taxes obtained by dividing the acreage of the operating land in Segment 1 in such Assessing Jurisdiction by the acreage of the operating land in the RF&P Corridor in such Assessing Jurisdiction, such acreage to be determined from the Enhanced Valuation Maps, (ii) as to taxes assessed on "roadway and track," (as such term is used by VDT), the percentage of such taxes obtained by dividing the miles of roadway and track to be conveyed to DRPT, as described in Exhibit B-4 (*Appurtenant Property*), and located in the Assessing Jurisdiction by the miles of all roadway and track located in the RF&P Corridor in such Assessing Jurisdiction. The ad valorem taxes assessed for any "operating improvements," "telephone, power and water lines," "machinery, furniture & other equipment" and "materials and supplies" (as such terms are used by VDT) located in the RF&P Corridor shall be paid solely by CSXT.

2.4.2 With regard to the portion of Segment 1 located in the District of Columbia and the portion of Segment 2 located in the State of North Carolina, if the applicable law regarding the assessment of ad valorem taxes provides that such portions of such Segments are exempt from the payment of such taxes from and after the Closing for the sale of such Segments to DRPT, such taxes shall not be prorated and CSXT shall be solely responsible for payment of the same if such law requires the taxing authority to refund any such taxes that were paid and are attributable to the period from the applicable Sale Date to the last day of the calendar year or other applicable tax period in which such Sale Date occurs. However, if (i) the applicable law in the District of Columbia or the State of North Carolina does not provide for such exemption or (ii) the applicable law in the District of Columbia or the State of North Carolina provides for such exemption but does not require the taxing authority to refund any such taxes that were paid and are attributable to the period from the applicable Sale Date to the last day of the calendar year or other applicable tax period in which such Sale Date occurs, then ad valorem taxes for the calendar year or other applicable tax period in which the applicable Sale Date occurs shall be prorated between the Parties based on the ad valorem tax bill for the relevant Segment if then available for such year, or if not, then on the basis of the ad valorem tax bill for the immediately preceding year (should such proration prove to be inaccurate on receipt of the ad valorem tax bill for the year of the applicable Sale Date, either CSXT or DRPT, as applicable, shall pay, promptly after written demand from the other Party made within one (1) year after the date of receipt of such tax bill, an amount necessary to correct such malapportionment). Notwithstanding the foregoing if, for all or any portion of the Passenger Easement Period, the District of Columbia continues to assess CSXT for ad valorem taxes applicable to the portion of Segment 1 located in the District of Columbia, DRPT shall pay to CSXT, within thirty (30) days after receipt from CSXT of a copy of each relevant tax statement issued by the District of Columbia, a pro rata share of the ad valorem taxes assessed against the RF&P Corridor in the District of Columbia, such pro rata share to be determined in a manner comparable to the manner in which the pro rata share of such taxes for the portion of the RF&P Corridor in the Commonwealth of Virginia is determined. Only ad valorem taxes assessed by the District of Columbia or the State of North Carolina against roadway and track, or operating land, shall be prorated between the Parties. If the District of Columbia or the State of North Carolina does not break out assessments of railroad property according to such categories, CSXT and DRPT shall estimate the portion of ad valorem assessments attributable thereto.

2.4.3 Any and all other assessments and special assessments of any type for the relevant Segment to the extent applicable to a period that begins before the applicable Sale Date and ends on or after the Sale Date.

2.4.4 All other rental, income taxes, utilities, charges and assessments customarily prorated in commercial real estate transactions in the Richmond, Virginia area.

2.4.5 For the avoidance of doubt, such prorations shall be based on the amounts that otherwise would be payable by CSXT in the absence of the conveyance.

2.5 Transactional Taxes and Fees. Other than any applicable grantor tax, the cost of any recording fees, transactional taxes, transfer taxes, and sales and related taxes or governmentally-imposed fees related to recording the Deeds and Deeds of Confirmation shall be borne solely by DRPT.

2.6 **Grantor Tax.** Unless exempt, CSXT shall be solely responsible for any applicable grantor tax, including those due pursuant to §§ 58.1-802, 58.1-802.3 and 58.1-802.4 of the Code of Virginia upon recordation of a Deed or Deed of Confirmation.

2.7 **BBRC Doswell to Richmond – Notice of Intent to Convey.**

2.7.1 In the event CSXT elects to sell, lease or otherwise convey all or substantially all of CSXT’s interest in the CSXT property from Doswell to Richmond, CSXT will provide DRPT no less than one hundred twenty (120) days’ notice of its intent to do so. In order to provide sufficient time for DRPT to make an offer, during the one hundred twenty (120) day period, CSXT will not enter a binding agreement to sell, lease or otherwise convey all or substantially all of CSXT’s interest in the same.

ARTICLE 3 Closing

3.1 **Time and Place.** Subject to the conditions stated in ARTICLE 9 (*Conditions Precedent*), the date of the Closing for the sale of Segment 1 by CSXT to DRPT (“Sale Date 1”) shall be no later than March 31, 2021, and such Closing shall be held at such place as the Parties may mutually agree. Subject to the conditions stated in ARTICLE 9 (*Conditions Precedent*), the date of the Closing for the sale of Segment 2 from CSXT to DRPT (“Sale Date 2”) shall be such date as the Parties may mutually agree, but not later than November 30, 2022, and such Closing shall be held at such place as the Parties may mutually agree. Subject to the conditions stated in ARTICLE 9 (*Conditions Precedent*), the date of the Closing for the sale of Segment 3 from CSXT to DRPT (“Sale Date 3”) shall be such date as the Parties may mutually agree but not later than November 30, 2021, and such Closing shall be held at such place as the Parties may mutually agree.

3.2 **Delivery of Purchase Price.** DRPT shall deliver the Purchase Price in accordance with the terms of ARTICLE 2 (*Sale and Purchase*).

3.3 **Costs.** Except as otherwise provided herein, CSXT and DRPT shall pay their own costs incurred with respect to the consummation of the Transaction.

ARTICLE 4 Conveyance of the Segments

4.1 **Segments.** The Segments are generally described as follows, in each case subject to the other terms and conditions set forth in this Agreement:

(a) **“Segment 1”** consists of those portions of the railroad right of way extending approximately 144.6 miles, as well as associated property, improvements, fixtures and personal property, (i) beginning approximately at CSXT milepost CFP 112.35 and QLZ 137.49/Amtrak 136.49 between Washington Avenue SW and 2nd Street SW in Washington, DC and extending to CSXT milepost CFP 110.1 at the southern terminus of the Long Bridge Project in Arlington County, Virginia, (ii) thence extending from CSXT milepost CFP 110.1 to CSXT milepost CFP 1.0/SRN 4.0 in the City of Richmond, Virginia, (iii) thence extending from CSXT milepost CFP 1.0/SRN 4.0 to CSXT milepost SRN 0.0/S 0.0 at Main Street Station in the City of Richmond, Virginia, (iv) thence extending from CSXT milepost SRN 0.0/S 0.0 to CSXT milepost S 10.9/A 10.7 at Centralia in Chesterfield

County, Virginia and (v) thence extending from CSXT mile post S 10.9/A 10.7 to a connection with the S-Line (Segment 2) approximately at CSXT milepost A 29.04 in Dinwiddie County, Virginia, which are shown as the shaded areas on the Enhanced Valuation Maps (as defined in this Agreement) and identified thereon to be conveyed to DRPT, excluding all improvements thereon except for the Appurtenant Property (as described in Exhibit B-4 (Appurtenant Property) to the this Agreement) and the Passenger Facilities (as described in the Segment 1 Deeds) related thereto;

(b) “**Segment 2**” consists of all of the abandoned railroad right of way extending approximately 75.1 miles beginning at the connection with Segment 1 approximately at CSXT milepost A 29.04 in Dinwiddie County, Virginia and extending approximately to CSXT milepost S 100.1 at Ridgeway, North Carolina; and

(c) “**Segment 3**” consists of all of the railroad right of way extending approximately 164.22 miles beginning approximately at CSXT milepost 276.0 in the town of Clifton Forge in Allegheny County, Virginia and extending approximately to the connection with Segment 1 at CSXT milepost 111.78 at Doswell in Hanover County, Virginia, together with the passenger facilities (as described in the Segment 3 Deed) related thereto but excluding the Excluded Property (as defined in this Agreement).

4.2 **Conveyance of Interests in Segment 1.**

4.2.1 At Sale Date 1, CSXT shall convey to DRPT a permanent easement for rail passenger purposes over and across Segment 1 (the “**Passenger Easement**”) by Deed in the form attached hereto as Exhibit C-1 (Form of Deed for Segment 1 (VA)) and Exhibit C-1A (Form of Deed for Segment 1 (D.C.)) (collectively, the “**Segment 1 Deeds**”), upon and subject to all of the covenants, restrictions, terms and conditions set forth in the Segment 1 Deeds. As provided in Section 4.9 (*Surveys; Deeds of Confirmation*) and in the Segment 1 Deeds, upon the Parties’ entering into a Deed of Confirmation, the Passenger Easement shall convert to a full conveyance of all of CSXT’s right, title and interest in the portion or portions of Segment 1 described in such Deed of Confirmation, subject to a retained, exclusive, permanent freight easement, and otherwise subject to all of the covenants, restrictions, terms and conditions set forth in the Segment 1 Deeds.

4.2.2 Segment 1 shall be legally described in the Segment 1 Deeds by reference to the applicable portions of the RF&P Corridor shown as “PASSENGER RAIL CORRIDOR TO BE CONVEYED TO DRPT” on the enhanced valuation maps listed in Exhibit B-1A (List of Enhanced Valuation Maps (Property)), copies of which shall be initialed and retained by CSXT and DRPT (the “**Enhanced Valuation Maps**”).

4.2.3 The infrastructure improvements shall be constructed as generally shown in Exhibit E (Infrastructure Improvements) (the “**Infrastructure Improvements**”) and on the Enhanced Valuation Maps listed in Exhibit B-1B (Enhanced Valuation Maps (Design)). However, the Parties agree that the location and scope of projects may change or be substituted as provided for under the approved program established by DRPT and set forth in Exhibit E-2 (Transforming Rail in Virginia Financial Plan). DRPT and CSXT have generally agreed to the Confirmed Track Separation Distances on the RF&P Corridor, under which certain Infrastructure Improvements will be located and constructed. DRPT and CSXT agree that 25 feet track separations (based on track

center spacing) from DRPT and CSXT owned tracks is the goal for the RF&P Corridor. For locations on the RF&P Corridor where a track center is designed at less than 25 feet from track owned by DRPT or CSXT, the Parties shall develop an inter-track fencing plan that meets FRA adjacent track worker safety requirements and describes the fencing type to be used and location (which, for the avoidance of doubt, excludes concrete barriers unless otherwise required by applicable Law). The plan will be approved in writing by DRPT and CSXT and implemented prior to DRPT's assumption of maintenance and dispatch under the Joint Operating and Maintenance Agreement. The cost of installing, maintaining and periodic removal and replacement of the fence shall be borne by DRPT. For any tracks constructed by or on behalf of DRPT that are less than 25 feet from CSXT's tracks, to the extent there is any cost of flagging or track protection on the adjacent Party's track that is required by FRA adjacent track worker safety requirements, those costs shall be borne by DRPT.

4.2.3.1 To implement the foregoing, DRPT and CSXT shall use commercially reasonable efforts to reach agreement for Unconfirmed Track Separation Distances and future phases using the purposes and objectives identified in Section 1.2, Exhibit D (Service Plan), the requirements in Section 4.2.3.1(a), the formula identified below in Section 4.2.3.1(b), and the requirements in Section 4.2.3.1(c)-(g), but without contravening any terms in this Agreement, or compromising safety or the efficient operation and maintenance of the RF&P Corridor:

(a) In establishing the Unconfirmed Track Separation Distances in Phases 1 and 2, Exhibit B-1B (Enhanced Valuation Maps (Design)) may be used as a reference. Where it is determined that greater track separations (based on track center spacing shown in such Exhibit B-1B) can be achieved, the tracks will be located and constructed to achieve the greater separations as follows:

(1) except to the extent caused by costs arising from an Unanticipated Condition (Phase 1 and Phase 2), under no circumstance shall the Parties' efforts to achieve any particular track separation distance cause DRPT's estimated costs with respect to any Phase 1 Project or Phase 2 Project to exceed the applicable Project Funding;

(2) DRPT will pursue greater track separations where existing track conveyed to DRPT has a current track separation distance of less than 15 feet by moving such tracks, subject to there being available Project Funding;

(3) where track separations are between 15 feet and 19 feet, DRPT will pursue greater track separations (not to exceed a total track separation of 19 feet), subject to there being available Project Funding available to do so, unless otherwise approved by DRPT;

(4) DRPT will pursue track separations that are greater than 19 feet but less than 25 feet upon mutual agreement of the parties, which shall not be unreasonably withheld, subject to there being available Project Funding available to do so;

(5) DRPT will be permitted to have track separations of less than 15 feet, and horizontal clearances of less than 9 feet, for new tracks at the locations described in Exhibit E-4 (Confirmed Track Separation Distances Less Than 15 Feet (Phases 1 and 2)) only, conditioned upon and subject to the satisfaction of the requirements of Exhibit E-4 (Confirmed Track Separation Distances Less Than 15 Feet (Phases 1 and 2));

(6) Track center spacings for existing tracks shall be at least the track center spacing between such tracks as of January 1, 2021;

(7) Track center spacing for new tracks, other than tracks between DRPT and CSXT tracks, shall be at least the track center spacing required in subparagraph (6) above; and

(8) In the event a greater track separation design would require existing structures to be conveyed to DRPT that are not intended to be conveyed to DRPT under DRPT's baseline design in Exhibit B-1B (Enhanced Valuation Maps (Design)), DRPT shall determine in its sole discretion whether it will accept the conveyance of such structures.

In addition, and subject to the terms and conditions of applicable federal grants, the Project Funding may be redistributed by CSXT among the Phase 1 Projects for which there exist Unconfirmed Track Separation Distances as follows: (i) upon completion of the Phase 1 Projects for which there exist Unconfirmed Track Separation Distances, any remaining balance of the Project Funding for such Phase 1 Projects may be applied to Phase 2 Projects for which there exist Unconfirmed Track Separation Distances and (ii) upon completion of a Phase 2 Project for which there exist Unconfirmed Track Separation Distances, any remaining balance of the Project Funding for such Phase 2 Project (and any remaining balance from Phase 1) may be redistributed by CSXT among the Phase 2 Projects for which there exist Unconfirmed Track Separation Distances.

(b) The baseline design and Estimated Construction Costs for Unconfirmed Track Separation Distances for Projects in Phases 3 and 4 and future phases will be based on a minimum of 19-foot track center spacing, or such lesser track center spacing as determined for the locations set forth in Exhibit S (Track Separation – Phases 3 and 4 and Future Phases). The baseline design will include modifications to any structures included in Section 2 of Exhibit S (Track Separation – Phases 3 and 4 and Future Phases) where it is necessary to modify such structures to allow for a three or four-track railroad corridor. The tracks will be located and constructed to achieve greater separation, as follows:

(1) Where it is determined that greater separation can be achieved at an additional cost that does not exceed 20% of the Estimated Construction Cost for each project within Phases 3 and 4 and future phases, as compared to the baseline design, the tracks will be located and constructed to achieve such greater separation (including locations set forth

in Exhibit S (*Track Separation – Phases 3 and 4 and Future Phases*), provided, however, that on a project-by-project basis, the Estimated Construction Cost will be increased for the anticipated costs to address any Unanticipated Condition (Phase 3, 4, or future phase) resulting from the baseline design but the additional 20% available to achieve greater track separation distances shall continue to be measured as a percentage of the initial Estimated Construction Cost and not the Estimated Construction Cost as adjusted for the Unanticipated Condition (Phase 3, 4 or future phase);

(2) Other than as provided in (6) below, the major obstacles identified in Section 1 of Exhibit S (*Track Separation – Phases 3 and 4 and Future Phases*) will not be modified in order to achieve the greater separation unless the Parties otherwise agree, but the Parties may use the additional 20% to explore methods other than modification of the major obstacles to achieve greater track separation;

(3) Track center spacing shall not be less than 15 feet at any location not included in Exhibit S (*Track Separation – Phases 3 and 4 and Future Phases*);

(4) For locations included in Exhibit S (*Track Separation – Phases 3 and 4 and Future Phases*), including Interstate 95/64 NB and SB - Enhanced Val Map – EV-225:

(A) Track center spacing for new tracks shall be at least 15 feet between DRPT and CSXT tracks;

(B) Track center spacing for existing tracks shall be at least the track center spacing between such tracks as of January 1, 2021, except in the case of Interstate 95/64 NB and SB – Enhanced Val Map – EV-225, where existing track center spacing shall be permitted to be reduced from the track center spacing in effect as of January 1, 2021, provided that any such track center spacing(s) shall not be less than 15 feet without CSXT’s consent; and

(C) Track center spacing for new tracks (other than track center spacing between CSXT and DRPT tracks with respect to new tracks addressed in subsection (A) above) shall be no less than the track center spacing required by subsection (B) above;

(5) The baseline design will be revisited prior to final design of each project in Phases 3 and 4 and future phases, to determine if obstacles identified in Exhibit S (*Track Separation – Phases 3 and 4 and Future Phases*) have been modified or eliminated or if new obstacles similar to those identified in Exhibit S (*Track Separation – Phases 3 and 4 and Future Phases*) have been created by CSXT. Changes or additions to the obstacles identified in Exhibit S (*Track Separation – Phases 3 and 4 and Future*

Phases) will be reflected in the final design of each project in Phases 3 and 4 and future phases;

(6) For any project to add additional tracks between CFP 101.8 and CFP 102.1, the baseline design will include modifications to the retaining walls for the WMATA flyover, subject to approval by the Washington Metropolitan Area Transit Authority.

(c) The design for Unconfirmed Track Separation Distances in Phases 1-4 and future phases will minimize, where feasible, the impacts to passenger station locations (including future station improvements) and will minimize impacts to future improvements. Such future improvements shall be identified during the design phase of an improvement covered under the Engineering and Construction Agreements. In connection with the development of the baseline design, the Parties agree that the DC2RVA Project Record of Decision dated September 5, 2019, and Exhibit B-1C (Enhanced Valuation Maps (Non-binding DRPT Illustration)) can be used as a reference document;

(d) The design for Unconfirmed Track Separation Distances in Phases 1-4 and future phases will seek to minimize impacts to overhead highway bridges and environmental impacts that delay the critical path of construction of the Infrastructure Improvements;

(e) Changes to track geometry must consider CSXT Standards, industry best practices, and impacts to on-going maintenance costs; and

(f) DRPT shall have the ability to design and construct the third and fourth tracks utilizing the land available within the RF&P Corridor as of the Effective Date, provided that because construction on the Retained RF&P Corridor will involve an exchange of track with CSXT, such construction shall require mutual agreement concerning the construction to be done and the improvements to be exchanged by the Parties in return for such construction, such agreement not to be unreasonable withheld, conditioned or delayed, and provided, further, that it shall not be unreasonable for CSXT to withhold agreement if CSXT would not retain the functional equivalent of all existing single and double mainline and shall have the opportunity to construct a second mainline where only one exists as of the Effective Date. The Parties recognize and acknowledge that there may be locations where additional right of way may need to be acquired by DRPT to effectuate subsections (a)-(f) and the Parties will work collaboratively to minimize DRPT's need to do so.

(g) In implementing and carrying out the objectives set forth in subsections (a)-(f), the Parties have established the Project Funding sums for Projects in Phases 1 and 2, and the formula for determining the maximum sum to be incurred by DRPT for Projects in Phases 3 and 4 and future phases. For the avoidance of doubt, the Parties agree that track separations shall be achieved within the sums so established and further agree that DRPT shall have no obligation to spend, and CSXT shall not have the right to assert or to compel DRPT to spend, any amount in excess of the aggregate amount of such

sums in the design and construction of the Projects to accomplish the track separation objectives covered by the provisions of this Section 4.2.3. In addition, DRPT shall have no obligation to achieve, and CSXT shall have no right to assert or to compel DRPT to achieve, track separations greater than 25 feet in Phases 1 through 4 or in any future phases. However, subject to the Master Engineering Agreements and Master Construction Agreements, nothing in this Section 4.2.3 shall be construed to create any duty for CSXT to fund the Projects.

4.2.3.2 At Sale Date 1, as a part of the interests that CSXT shall convey in the Segment 1 Deeds, CSXT shall grant to DRPT a non-exclusive easement to the portion of the RF&P Corridor referred to, and defined as, the Freight Rail Corridor in the Segment 1 Deeds (such easement defined in the Segment 1 Deeds as the “**Subordinate Passenger Rail Easement**”). The Subordinate Passenger Rail Easement shall be set forth in detail in the Segment 1 Deeds.

4.2.3.3 The Parties agree that where there is a shared structure on one Party’s property containing tracks owned by the other Party, the Party on whose property the shared structure is located shall either convey a portion of the structure or provide a permanent easement granting rights to use such shared structure.

4.3 **Conveyance of Interests in Segment 2.** At Sale Date 2, CSXT shall convey to DRPT all of its right, title and interest in Segment 2 by quitclaim deed in the form attached hereto as Exhibit C-2 (Form of Deed for Segment 2 (VA)) and Exhibit C-2A (Form of Deed for Segment 2 (NC))(collectively, the “Segment 2 Deeds”), upon and subject to all of the covenants, restrictions, terms and conditions set forth in the Segment 2 Deeds. Segment 2 shall be legally described in the Segment 2 Deeds by reference to CSXT’s existing valuation maps listed in Exhibit B-2 (List of Segment 2 Valuation Maps), copies of which shall be retained by CSXT and DRPT (the “Segment 2 Valuation Maps”).As provided in the Segment 2 Deeds, such interest shall be subject to a right of first refusal by CSXT to conduct freight services on Segment 2 in the event DRPT permits the restoration of freight rail common carrier service.

4.4 **Conveyance of Interests in Segment 3.** At Sale Date 3, CSXT shall convey to DRPT all of its right, title and interest in Segment 3 by quitclaim deed in the form attached hereto as Exhibit C-3 (Form of Deed for Segment 3) (“Segment 3 Deed”), upon and subject to all of the covenants, restrictions, terms and conditions set forth in the Segment 3 Deed. Segment 3 shall be legally described in the Segment 3 Deed by reference to CSXT’s existing valuation maps listed in Exhibit B-3 (List of Segment 3 Valuation Maps), which list of valuation maps shall be recorded with the Segment 3 Deed and copies of which shall be retained by CSXT and DRPT (the “Segment 3 Valuation Maps”).As provided in the Segment 3 Deed, the interest conveyed to DRPT in Segment 3 shall be subject to (i) the BBRC Lease Agreement if the BBRC Lease Agreement is then in effect or (ii) an existing easement for rail freight services (the “Segment 3 Easement”); and that certain operating agreement (the “Segment 3 Operating Agreement”), governing the use and implementation of the Segment 3 Easement, if BBRC and CSXT enter into the Segment 3 Easement and the Segment 3 Operating Agreement on or before Sale Date 3 in place of the BBRC Lease Agreement; and (iii) all of the other covenants, restrictions, terms and conditions set forth in the Segment 3 Deed.

4.5 Passenger Facilities. On Sale Date 1, CSXT shall convey to DRPT all stations, platforms, and other passenger facilities with respect to the RF&P Corridor that are listed in the Segment 1 Deeds and are on the RF&P Corridor, and in accordance with the interests and timing provided for within the Segment 1 Deeds. On Sale Date 3, CSXT shall convey to DRPT all stations, platforms, and other passenger facilities with respect to Segment 3 that are listed in the Segment 3 Deed and are on Segment 3. DRPT shall assist CSXT in obtaining any Consents necessary for the conveyance of any passenger facilities. Any costs associated with obtaining Consents for conveyance of any stations, platforms, and other passenger facilities shall be addressed in a manner consistent with ARTICLE 20 (*Consents*). The lack of Consent or the inability to convey in accordance with this Section 4.5 (*Passenger Facilities*) on any given Sale Date shall not be a condition to Closing nor delay or postpone a Closing, and the Parties will continue after the Sale Date to use reasonable diligence to obtain the necessary Consent and to convey the stations, platforms, and other passenger facilities.

4.5.1 The West Platform in Charlottesville will not be conveyed on Sale Date 3. Upon receipt of written request by DRPT within seven (7) years of Sale Date 3, CSXT will quit claim any interest it may have in the West Platform. Such transfer will be subject to payment by DRPT to CSXT of an amount equal to the real estate taxes on the property between Sale Date 3 and the date transferred to DRPT.

4.6 Utility Services. Within forty-five (45) days following each Sale Date, DRPT shall transfer to itself all water, sewer, and other utility services relating to and serving solely the Segment conveyed on such Sale Date, provided that those utilities that will continue to be used by CSXT on Segment 1 or CSXT or BBRC on Segment 3 shall remain with CSXT or (on Segment 3) with BBRC. DRPT shall reimburse CSXT for any costs incurred for its failure to transfer all such water, sewer, and other utility services with respect to the relevant Segment within such forty-five (45) day period.

4.7 Excluded Property. Unless expressly included in Exhibit B-4 (*Appurtenant Property*), the conveyance to DRPT of CSXT's interest in each Segment shall exclude (i) any and all real property improvements and fixtures located on such Segment, and (ii) any and all non-real property improvements, fixtures and personal property, whether located on such Segment or otherwise, including railroad rolling stock, locomotives, trackmobiles, rear-end warning devices, automobiles, trucks, automotive equipment, machinery, office and computer equipment, radios, furniture, tools, inventories, materials and supplies (collectively, the "**Excluded Property**"). CSXT shall have the right to access and remove from each Segment all non-real property constituting Excluded Property within ninety (90) days after the applicable Sale Date, at its sole expense and without unreasonable interference with DRPT's operations.

4.8 Surplus Property. The surplus parcels shown on Exhibit B-5 (*Surplus Property*), attached hereto and made a part hereof, are specifically excluded from the sale of the Segments to DRPT.

4.9 Surveys; Deeds of Confirmation. DRPT may elect to have plats of surveys prepared by one or more certified land surveyors licensed in Virginia to establish definitively, and to confirm the accuracy of, the boundary lines of Segment 1 (or portions thereof identified by DRPT) as set forth on the Enhanced Valuation Maps (the "**Surveys**"). Such Surveys shall be

submitted to CSXT no later than December 16, 2023 (the “Survey Deadline”). Each Survey shall be prepared in compliance with the minimum requirements set forth in Exhibit C-4 (Survey Requirements) and such other requirements as DRPT may deem appropriate. As the Surveys are prepared in accordance such requirements, DRPT shall submit copies of such Surveys to CSXT for its approval, which approval shall not be unreasonably withheld, conditioned or delayed; *provided*, that any Survey submitted to CSXT that is not approved or rejected within 180 days of receipt of such Survey shall be deemed approved. However, if a submitted survey conflicts with any previously approved surveys, the previous approval will be deemed rescinded, and the new survey as well as the impacted survey(s) shall be subject to approval by CSXT within 180 days of receipt of the submitted survey. Upon CSXT’s approval (or resolution of any Dispute concerning approval pursuant to ARTICLE 24 (*Dispute Resolution*) of this Agreement) of any of the Surveys submitted by DRPT, the Parties shall enter into a deed of confirmation for the portion or portions of Segment 1 shown on such Surveys in the form attached hereto as Exhibit C-5 (Form of Deed of Confirmation (for Rail Corridor Easement (VA))), Exhibit C-5A (Form of Deed of Confirmation for Springfield Flyover Easement), or Exhibit C-5B (Form of Deed of Confirmation for Rail Corridor Easement (DC)), as appropriate (each, a “**Deed of Confirmation**” and, collectively, the “**Deeds of Confirmation**”), confirming, establishing or modifying the boundary lines of Segment 1 as described in the Enhanced Valuation Maps, or the portion or portions thereof covered by such Surveys, to conform to the boundary lines shown by the Surveys, and effecting a conversion of the Passenger Easement over such portion(s) of Segment 1, other than the Springfield Flyover, to such right, title or interest therein as CSXT may have, subject to all of the covenants, restrictions, terms and conditions set forth in the Deed of Confirmation. The Parties agree that multiple Deeds of Confirmation may be executed on a rolling basis as Surveys are submitted and approved for portions of Segment 1; *provided*, that CSXT is not required to review or approve any Survey that was initially submitted to it after the Survey Deadline – but CSXT shall review for approval any Survey re-submitted by DRPT after the Survey Deadline to correct inaccuracies or disputed aspects of such Survey, as long as it was initially submitted to CSXT prior to the Survey Deadline.

4.10 Assignment and Assumption.

4.10.1 On each applicable Sale Date, CSXT and DRPT shall execute a Third Party Assignment and Assumption Agreement with respect to the relevant Segment in a form consistent with Exhibit F (Third Party Assignment and Assumption Agreement), identifying agreements to be assigned or retained by CSXT. For the avoidance of doubt, unless included in an exhibit to the Third Party Assignment and Assumption Agreement, DRPT shall not be assigned nor shall it assume any agreement granting longitudinal rights, billboard rights, cell tower rights, oil and gas rights, mineral rights, and air rights, and similar agreements granting use rights of the Segments to third parties by license or otherwise.

4.10.2 One of the agreements to be retained by CSXT in the Third Party Assignment and Assumption Agreement is that certain lease between CSXT and Bulk Intermodal Distribution Services, Inc. dated January 7, 1997 (the “**Transflo Lease**”), that currently affects a portion of Segment 1 in Acca Yard. At any time during the term of the Joint Operating and Maintenance Agreement, DRPT may request that CSXT cause the Transflo Lease to be revised to realign the tracks associated with the Transflo Lease to allow DRPT to use the property currently burdened by the Transflo Lease for Passenger Rail Operations (the “**Transflo Relocation**”).

CSXT and DRPT shall negotiate the track configuration that would achieve the Transflo Relocation provided that:

4.10.2.1 the Transflo Relocation will be deemed a Project under the Engineering and Construction Agreements and the Engineering and Construction Agreements shall be amended to include the Transflo Relocation.

4.10.2.2 DRPT shall be responsible for all costs of the Transflo Relocation. Engineering costs will be treated as Work Costs under the Master Engineering Agreement (CSXT) and construction costs will be treated as Project Costs under the Master Construction Agreement (CSXT);

4.10.2.3 DRPT will build tracks east of the property currently burdened by the Transflo Lease;

4.10.2.4 the Transflo Relocation must not:

(a) diminish the volume, velocity, throughput or service levels to customers; nor

(b) interfere with the operations of CSXT at or through Acca Yard; nor

(c) alter, modify or diminish CSXT's right to fulfill CSXT's common carrier obligation to serve current and future freight customers at or through Acca Yard.

4.11 Reservations, Restrictions and Rights in Segments. As more particularly set forth in the forms of the Deeds attached hereto and in addition to all of the other reservations, covenants, terms and conditions of the Deeds:

(a) with the exception of Long Bridge, in which CSXT shall retain its current non-exclusive freight easement rights, and the Long Bridge Improvements, in which CSXT's use thereof shall only be for the purpose of accommodating emergencies, construction, repairs or maintenance on its trackage, CSXT shall retain a permanent, exclusive freight easement on Segment 1 as stated in the Segment 1 Deeds. Segment 2 shall be subject to a right of first refusal by CSXT to conduct freight services on Segment 2 in the event DRPT permits the restoration of freight rail common carrier service, as stated in the Segment 2 Deed. Segment 3 shall be subject to the BBRC Lease Agreement or the Segment 3 Easement, as applicable, as stated in the Segment 3 Deed;

(b) the Passenger Easement and any other interest conveyed to DRPT shall only be used by DRPT, its contractors, VRE, Amtrak and any New Operator for passenger rail purposes;

(c) CSXT reserves all rights for existing and future longitudinals, billboards, cell towers, utility, oil and gas, mineral and air rights in the Segments that do not unreasonably interfere with DRPT's permitted use of the Segments, all as more

completely described in the applicable Deed. As used in this Section 4.11(c) (*Reservations, Restrictions and Rights in Segments*), “unreasonably interfere” means that a proposed right would or may impair DRPT’s present or future ability to construct, maintain or operate any planned rail lines within the applicable portion of the Segments. The Parties agree that any such proposed right will not be construed to be an unreasonable interference with DRPT’s aforementioned ability if CSXT can reasonably demonstrate that the conditions, location, track setback and configuration of such proposed rights would meet CSXT’s then current corridor occupancy standards and requirements for its own operating rights of way.

(d) CSXT and DRPT shall have a non-exclusive right to grant fiber longitudinals associated with a public rural broadband initiative on Segment 2 and Segment 3. With respect to all Segments, subject to DRPT securing any necessary third-party approvals, and assuming all environmental risk and cost associated with doing so, DRPT shall have the right to use the airspace above existing and future stations for residential, commercial, and office purposes, and to use airspace above any Segment it acquires to access train stations and platforms and to construct new train stations and platforms, provided that such stations and platforms will not unreasonably interfere with freight operations of CSXT and will be designed consistent with Law and CSXT Standards and CSXT Operating Rules (to the extent CSXT retains, or in the case of Segment 2, possesses and exercises, rights to conduct freight operations), as may be amended from time to time subject to Section 14.8 (*Ancillary Agreement – Engineering and Construction Agreements*).

(e) If CSXT has an unambiguous contractual right, in the discretion of CSXT acting reasonably, to cause a longitudinal occupant of the Corridor to bear the cost of the relocation of its equipment or assets under certain circumstances, then in the event that DRPT requests CSXT in writing to exercise any such right with respect to a specific location and for a specific purpose, and a longitudinal occupant disputes the obligation to relocate its equipment or assets at that location and for that purpose at its expense, CSXT will, either (i) initiate an action against the longitudinal occupant to enforce its rights with respect to that particular request, or (ii) assign CSXT’s rights to cause the longitudinal occupant to relocate as provided in any such contract with respect to any such location to DRPT, on a limited basis, without prejudice to CSXT’s continuing rights under the contract, and only to the extent reasonably necessary and for the duration reasonably required for the purposes of litigation concerning the particular relocation involved, provided, in either case, DRPT shall pay, on an initial and continuing basis, all reasonable costs (including attorney’s fees) of adjudicating any dispute that may arise with the longitudinal occupant with respect to the exercise of CSXT’s rights and any judgment or award against CSXT related thereto. Any such assignment shall terminate upon the resolution of any such litigation by settlement, judgment or award after all appeals, if any. For the avoidance of doubt, the Parties agree that CSXT has an unambiguous contractual right to cause Plantation Pipe Line Company or its successors or assigns to relocate its equipment or assets for the purposes of the Infrastructure Improvements.

4.12 Conveyances by CSXT Subject to Certain Matters. As more particularly set forth in the forms of the Deeds attached hereto and in addition to all of the other reservations,

covenants, terms and conditions of the Deeds, at the applicable Sale Date, CSXT's conveyance of any interest in each Segment to DRPT shall be subject to the following:

(a) Real estate taxes and assessments both general and special, that become due and payable after the applicable Sale Date and subsequent years not yet due and payable as set forth in Section 2.4 (*Prorations*);

(b) Legally applicable building, zoning, subdivision and other federal, state, county, municipal or local Laws, ordinances and regulations;

(c) All existing telecommunications facilities, public and private utilities, reservations, exceptions and restrictions whether or not of record;

(d) Any and all encroachments which might be revealed by a survey meeting applicable Commonwealth minimum technical requirements or by an inspection or proper survey of such Segment;

(e) Any and all existing ways and servitudes, and rights of way, howsoever created, for roads, streets and highways;

(f) All other matters recorded in the real property records in the applicable counties and cities where such Segment is located;

(g) All exclusions, reservations and covenants described in this Agreement;

(h) Any pipes, wires, poles, cables, culverts, drainage courses or systems, or other facilities on or crossing the applicable Segment, together with the rights, if any, of Persons entitled to maintain, repair, renew, replace, use or remove the same;

(i) Agricultural, residential, recreation, commercial or industrial use shall not be permitted, except as provided in Section 4.11(d) (*Reservations, Restrictions and Rights in Segments*);

(j) All existing agreements, leases and easements (including, in the case of Segment 3, the BBRC Lease Agreement or the Segment 3 Easement, as applicable); and

(k) Any encroachments, claims, easements, occupancies, grants, reservations, deed obligations and similar covenants, rights, title defects and other impediments, whether or not recorded and whether or not this Agreement provides actual notice thereof, including without limitation, any rights of Amtrak by operation of Law or otherwise.

4.13 Disclaimer of Title Warranty. CSXT does not represent the quality or character of its title or rights in the interests in the Segments to be conveyed to DRPT pursuant to this Agreement, and with respect to such interests CSXT shall convey, subject to the Parties' obtaining the necessary Consents and all of the other terms and conditions of this Agreement, all of its rights, title and interest, if any, in whatever form it currently exists by quitclaim deed, "AS IS, WHERE

IS,” without warranty, representations, guarantees, statements or information, express or implied, with the Parties acknowledging that such rights, title and interest may include lesser property interests to the extent they may survive the conveyance. CSXT makes no warranties as to the quality of such title, the legal description thereof, the value, design or condition thereof, its merchantability or suitability for any use or purpose or any other matter whatsoever, made to or furnished to DRPT by CSXT or any of its officers, agents or employees, and shall be under no obligation to obtain title beyond that which it currently has. To the extent that CSXT’s title to any Segments consists in whole or in part of railroad easements, and therefore only railroad easements are being acquired by DRPT, DRPT acknowledges that such railroad easements may not survive the consummation of the abandonment of all or a portion of the Segments in accordance with 49 U.S.C. § 10903 and 49 CFR Part 1152 as they may be amended, supplemented, or modified from time to time.

ARTICLE 5 Title to Segments

5.1 Title Examination. If DRPT conducts a title examination of any Segment and such examination discloses any matters that DRPT determines, in its sole judgment, materially and adversely affect marketability and insurability of title to all or any portion of such Segment (a “Title Objection”), DRPT may: (i) by so notifying CSXT on or before February 10, 2021, terminate this Agreement if any such Title Objection relates to Segment 1, (ii) refuse to accept all, but not less than all, of Segment 2 if any such Title Objection relates to Segment 2 by notifying CSXT on or before thirty (30) days prior to Sale Date 2 and/or (iii) refuse to accept all, but not less than all, of Segment 3 if any such Title Objection relates to Segment 3 by notifying CSXT on or before thirty (30) days prior to Sale Date 3. In the event DRPT refuses to accept either or both of Segment 2 and Segment 3 as permitted hereby, this Agreement shall apply only to those Segments accepted by DRPT. In the event this Agreement is terminated pursuant to this Section 5.1 (*Title Examination*) on account of a Title Objection related to Segment 1, neither Party shall be liable to the other for damages on account of the termination. Upon DRPT’s failure to notify CSXT of its termination of this Agreement or of its refusal to accept all of Segment 2 or all of Segment 3, under and within the timeframe set forth in this Section 5.1 (*Title Examination*), DRPT shall be deemed to have waived any or all adverse title matters and its right to terminate this Agreement or to refuse to accept all of Segment 2 or all of Segment 3 on account thereof. No change in the Purchase Price shall be made as a consequence of any such refusal to accept all of Segment 2 or all of Segment 3.

5.2 Liens and Mortgages. Any mortgages or deeds of trust encumbering a Segment shall be satisfied by CSXT on or before the Sale Date of such Segment, and CSXT will obtain whatever releases are required to free such Segment from all such mortgages or deeds of trust. If any judgment liens, other liens for the payment of money (other than mortgages and deeds of trust) or *lis pendens* encumber a Segment on the applicable Sale Date, CSXT shall, at its option, cause such lien or *lis pendens* to be released, provide a corporate surety bond with respect to such lien or *lis pendens* or execute and deliver to DRPT or its title insurer an indemnity agreement, in form and substances reasonably satisfactory to both Parties, with respect to such liens or *lis pendens*.

5.3 Title Policy. DRPT may, at its expense, elect to obtain a standard A.L.T.A owner’s policy of title insurance pursuant to which title to any Segment shall be insured, provided, however, that procurement of said policy shall not be a condition precedent to Closing. If DRPT elects to obtain such a policy for any Segment, CSXT hereby agrees to execute and deliver at the Sale Date

for such Segment the form of owner's agreement attached hereto as Exhibit G (*Owners' Agreement*).

ARTICLE 6 DRPT Inspection

6.1 **Inspection.** Prior to the later of Sale Date 2, Sale Date 3 or the conversion of the Passenger Easement, and provided such entry is in connection with the furtherance of the purposes of this Agreement with respect to the relevant Segment, DRPT shall have the privilege of entering the Corridor with DRPT's agents, representatives or contractors to inspect, examine, survey and study and make other engineering or landscaping tests or surveys which it may deem necessary with respect to the Segments; *provided, however*, that:

6.1.1 the inspections addressed in this ARTICLE 6 (*DRPT Inspection*) exclude all environmental inspections with respect to the Corridor, all of which shall be governed exclusively by the Environmental ROE;

6.1.2 DRPT executes and delivers to CSXT an Inspection Right of Entry Agreement (the "**Inspection Right of Entry Agreement**"), the form of which is attached as Exhibit I (*Inspection Right of Entry Agreement*);

6.1.3 no grading, test borings or other invasive tests or surveys shall be done and no trees or bushes shall be cut except as authorized under the Inspection Right of Entry Agreement and except for trees and bushes necessary to clear testing for survey purposes;

6.1.4 any formal tests, surveys or studies shall be performed by one or more contractors hired directly or indirectly by DRPT;

6.1.5 no contractor shall be permitted to enter the Corridor unless said contractor first executes and delivers to CSXT the *Entering Contractor Indemnity Agreement* in the form of Exhibit C to the Inspection Right of Entry Agreement, and providing whatever proof of the insurance may be required by the Inspection Right of Entry Agreement;

6.1.6 any inspections or examinations conducted by DRPT's employees and contractors (including subcontractors thereof) shall only be conducted in accordance with the terms of the Inspection Right of Entry Agreement and DRPT shall require its employees and contractors to follow all of CSXT's safety instructions as a condition of entering the Corridor; and

6.1.7 following the applicable Sale Date or conversion of the Passenger Easement, DRPT's rights with respect to the relevant Segment shall be governed by the Joint Operating and Maintenance Agreement.

6.2 **Liability.** CSXT shall in no way be liable or responsible for any activities of DRPT upon the Corridor taken pursuant to this ARTICLE 6 (*DRPT Inspection*). DRPT shall be responsible for any and all claims arising out of its own acts and/or omissions, and those of its employees and contractors, during the performance of inspections or examinations pursuant to this ARTICLE 6 (*DRPT Inspection*); provided, however that this provision is not intended to give nor will it be interpreted as giving, a right of indemnification to CSXT by DRPT, either by contract or by Law, for claims arising out of the performance of this ARTICLE 6 (*DRPT Inspection*),

provided, further, that the claims for which DRPT is responsible shall include the reasonable cost, if any, of CSXT defending itself against claims brought against CSXT arising out of the acts or omissions or willful misconduct of DRPT.

6.3 **Liens.** Should anyone attempt to file a lien against the Corridor by reason of DRPT's activities pursuant to this ARTICLE 6 (*DRPT Inspection*), DRPT shall have the same canceled, satisfied and discharged of record within sixty (60) Business Days after actual notice thereof.

6.4 **Copies.** If requested by CSXT, DRPT shall at no cost to CSXT promptly give CSXT a complete copy of any or all written material containing information about inspections, tests, surveys, studies, examinations, procedures, investigations or reports conducted or prepared pursuant to this ARTICLE 6 (*DRPT Inspection*), with the exception of material protected by the attorney-client privilege and/or work product doctrine or otherwise as required by Law.

6.5 **Due Diligence.** Except with respect to the representations and warranties of CSXT set forth in Section 10.1 (*CSXT's Representations*), DRPT shall rely solely on DRPT's due diligence in determining whether to proceed to Closing.

ARTICLE 7 Subdivision

In the event the conveyance contemplated hereunder shall constitute a subdivision that is not otherwise exempted from local ordinances, and if as a prerequisite to the recording of such conveyance it shall become necessary to comply with applicable subdivision ordinances and regulations; DRPT shall, with reasonable diligence, arrange and pay for the filing of any necessary plat with the appropriate authorities. DRPT shall assume the entire cost of whatever streets, sewers and utilities are required in connection with such subdivision, and will do all other acts and file such other papers as may be necessary to obtain any and all required approvals thereof. CSXT shall execute such reasonable documents and plats as are reasonably necessary to accomplish such subdivision. All costs, expenses, attorneys' fees incurred in complying with any such subdivision ordinances and regulations, including, without limitation, dedication and installation of streets, sewers and utilities, shall be borne solely by DRPT, and DRPT shall be solely responsible for, and pay for, all claims, demands, suits, costs or expenses arising or in any way growing out of any failure by DRPT to fully comply with such subdivision ordinances and regulations, and DRPT hereby releases CSXT from all such claims, demands, suits, costs or expenses.

ARTICLE 8 Casualty and Condemnation.

8.1 **Damage.** The following provisions shall apply upon the occurrence of any Damage:

8.1.1 In the case of any Material Damage, CSXT shall promptly notify DRPT of the Material Damage after CSXT becomes aware of the same.

8.1.2 In the case of Material Damage to Current Operations affecting Segment 1:

8.1.2.1 CSXT shall, within 30 days after the occurrence of such Material Damage, notify DRPT that either (i) CSXT agrees to undertake to repair the rail facilities so

damaged (including any required engineering, design and permitting, the “**Segment 1 Current Operations Repair Work**”) or (ii) CSXT is unable or unwilling to undertake the Segment 1 Current Operations Repair Work.

8.1.2.2 If CSXT agrees to undertake the Segment 1 Current Operations Repair Work and any of such work cannot reasonably be completed by Sale Date 1, the obligation of CSXT to undertake and complete the Segment 1 Current Operations Repair Work shall survive the Closing for Segment 1.

8.1.2.3 If CSXT agrees to undertake the Segment 1 Current Operations Repair Work and thereafter completes the same before Sale Date 1 or is diligently undertaking the same as of Sale Date 1, as applicable, then the Parties shall proceed to Closing for Segment 1 subject to the other terms and conditions of this Agreement.

8.1.2.4 If (i) CSXT agrees to undertake the Segment 1 Current Operations Repair Work but does not complete the same by Sale Date 1 and is not diligently undertaking the Segment 1 Current Operations Repair Work as of Sale Date 1 or (ii) CSXT does not agree to undertake the Segment 1 Current Operations Repair Work, then DRPT may terminate this Agreement.

8.1.3 In the case of Material Damage to Future Operations affecting Segment 1:

8.1.3.1 CSXT shall, within 30 days after the occurrence of such Material Damage, notify DRPT that either (i) CSXT agrees to undertake to restore the damage (including any required engineering, design and permitting, the “**Segment 1 Future Operations Repair Work**”) or (ii) CSXT is unable or unwilling to undertake the Segment 1 Future Operations Repair Work.

8.1.3.2 If CSXT agrees to undertake the Segment 1 Future Operations Repair Work, and any of such work cannot reasonably be completed by Sale Date 1, the obligation of CSXT to undertake and complete the Segment 1 Future Operations Repair Work shall survive the Closing for Segment 1.

8.1.3.3 If CSXT agrees to undertake the Segment 1 Future Operations Repair Work and thereafter completes the same before Sale Date 1 or is diligently undertaking the same as of Sale Date 1, as applicable, then the Parties shall proceed to Closing for Segment 1 subject to the other terms and conditions of this Agreement.

8.1.3.4 If (i) CSXT agrees to undertake the Segment 1 Future Operations Repair Work but does not complete the same by Sale Date 1 and is not diligently undertaking the Segment 1 Future Operations Repair Work as of Sale Date 1 or (ii) CSXT does not agree to undertake the Segment 1 Future Operations Repair Work, DRPT may terminate this Agreement.

8.1.4 In the case of any Material Damage to Passenger Stations:

8.1.4.1 CSXT shall, within 30 days after the occurrence of such Material Damage, notify DRPT that either (i) CSXT agrees to undertake to restore such Damage (including any required engineering, design and permitting, the “**Segment 1 Passenger Station Repair**”

Work”) or (ii) CSXT is unable or unwilling to undertake the Segment 1 Passenger Station Repair Work.

8.1.4.2 If CSXT agrees to undertake the Segment 1 Passenger Station Repair Work and any of such work cannot reasonably be completed by Sale Date 1, the obligation of CSXT to undertake and complete the Segment 1 Passenger Station Repair Work shall survive the Closing for Segment 1.

8.1.4.3 If CSXT agrees to undertake the Segment 1 Passenger Station Repair Work and thereafter completes the same before Sale Date 1 or is diligently undertaking the same as of Sale Date 1, as applicable, then the Parties shall proceed to Closing for Segment 1 subject to the other terms and conditions of this Agreement.

8.1.4.4 If (i) CSXT agrees to undertake the Segment 1 Passenger Station Repair Work but does not complete the same by Sale Date 1 and is not diligently undertaking the Segment 1 Passenger Station Repair Work as of Sale Date 1, as applicable, or (ii) CSXT does not agree to undertake the Segment 1 Passenger Station Repair Work, then DRPT may elect to exclude the affected passenger rail station from its purchase of Segment 1; in such case, DRPT’s obligation to purchase and CSXT’s obligation to sell Segment 1 on Sale Date 1 shall not be affected (other than to exclude the affected passenger rail station from Segment 1).

8.1.5 In the case of any Damage to Segment 2, regardless of the materiality of such Damage, DRPT’s obligation to purchase and CSXT’s obligation to sell Segment 2 on Sale Date 2 shall not be affected.

8.1.6 In the case of Material Damage to Current Operations affecting Segment 3:

8.1.6.1 CSXT shall use good faith efforts to and shall diligently enforce any obligation of BBRC under the BBRC Lease to restore the utility of then current rail operations with respect to Segment 3 (the “**Segment 3 Repair Work**”).

8.1.6.2 The obligation of CSXT to use good faith efforts to and to diligently enforce the obligation of BBRC to undertake and complete the Segment 3 Repair Work shall survive the Closing for Segment 3.

8.1.6.3 If BBRC completes the Segment 3 Repair Work before Sale Date 3 or is diligently undertaking any Segment 3 Repair Work as of Sale Date 3, then the Parties shall proceed to Closing for Segment 3 subject to the other terms and conditions of this Agreement.

8.1.6.4 If BBRC has not completed the Segment 3 Repair Work by Sale Date 3 (or, in the case of Segment 3 Repair Work that cannot reasonably be completed by Sale Date 3, is not diligently undertaking any Segment 3 Repair Work as of Sale Date 3), DRPT may terminate this Agreement as to Segment 3 only.

8.1.7 To the extent that any obligation of CSXT under this Section 8.1 (*Damage*) to repair any Material Damage affecting Segment 1 or to enforce the obligation of BBRC to repair any Material Damage affecting Segment 3 survives the Closing for the sale of such Segment, then after such Closing, DRPT shall have all rights and remedies available under this Agreement or at

law or in equity if CSXT breaches such obligation, including a right of specific performance and a right to recover damages.

8.1.8 The rights and remedies of DRPT set forth in this Section 8.1 (*Damage*) shall be DRPT's sole and exclusive rights and remedies on account of any loss or damage to any Segment by fire or other casualty which occurs before the Closing for the sale of such Segment, and, except as expressly provided in this Section 8.1 (*Damage*), (i) CSXT shall have no obligation to DRPT to repair or restore any such loss or damage, (ii) CSXT shall have no obligation to compensate DRPT for such loss or damage, (iii) DRPT shall have no right to terminate this Agreement or to receive any of CSXT's insurance proceeds on account of any such loss or damage, (iv) DRPT's obligation to purchase and CSXT's obligation to sell such Segment on the applicable Sale Date shall not be affected by such loss or damage and (v) no adjustment shall be made in the amount or due date of the Purchase Price as provided in this Agreement on account of such loss or damage.

8.2 **Condemnation.** The following provisions shall apply upon the occurrence of any Condemnation:

8.2.1 CSXT shall give DRPT notice of the Condemnation promptly after CSXT becomes aware of the same. Before the Closing for the sale of each Segment, CSXT shall not agree to transfer such Segment or any portion thereof (or any interest thereof) in lieu of the exercise of the power of eminent domain without the prior consent of DRPT.

8.2.2 In the case of a Material Condemnation affecting Segment 1, DRPT shall have the option to terminate this Agreement or to proceed to Closing for Segment 1. If DRPT elects to proceed to the Closing for Segment 1, (i) no adjustment shall be made in the amount or due dates of the Purchase Price as provided in this Agreement and (ii) DRPT shall be entitled to receive any Condemnation proceeds attributable to Segment 1 as a result of such Material Condemnation, subject to the rights of any third parties with interests in Segment 1.

8.2.3 In the case of a Condemnation affecting Segment 2, regardless of the materiality of such Condemnation, (i) DRPT's obligation to purchase and CSXT's obligation to sell Segment 2 on Sale Date 2 shall not be affected, (ii) no adjustment shall be made in the amount or due dates of the Purchase Price as provided in this Agreement and (iii) DRPT shall be entitled to receive any Condemnation proceeds attributable to Segment 2 as a result of such Condemnation, subject to the rights of any third parties with interests in Segment 2.

8.2.4 In the case of a Material Condemnation affecting Segment 3, (i) DRPT shall have the option to terminate this Agreement as to Segment 3 only or to proceed to Closing for Segment 3, (ii) no adjustment shall be made in the amount or due dates of the Purchase Price as provided in this Agreement and (iii) if DRPT proceeds to Closing for Segment 3, DRPT shall be entitled to receive any Condemnation proceeds attributable to Segment 3 as a result of such Material Condemnation, subject to the rights of BBRC and any other third parties with interests in Segment 3.

8.2.5 The rights and remedies of DRPT set forth in this Section 8.2 (*Condemnation*) shall be DRPT's sole and exclusive rights and remedies on account of any

Condemnation that is commenced or threatened with respect to a Segment or any portion thereof before the Closing for such Segment, and, except as expressly provided in this Section 8.2 (*Condemnation*), (i) CSXT shall have no obligation to undertake any improvements, repair or restoration on account of any such Condemnation, (ii) CSXT shall have no obligation to compensate DRPT for such Condemnation, (iii) DRPT shall have no right to terminate this Agreement or to receive any of the proceeds on account of such Condemnation, (iv) DRPT's obligation to purchase and CSXT's obligation to sell such Segment shall not be affected by such Condemnation and (v) no adjustment shall be made in the amount or due date of the Purchase Price as provided in this Agreement on account of such Condemnation.

8.3 Post-Closing Damage or Condemnation. Nothing contained in this ARTICLE 8 (*Casualty and Condemnation*), shall apply to (i) any loss or damage to any Segment that occurs after the Closing for the sale of such Segment or (ii) any taking of all or any portion of a Segment (or any interest therein) pursuant to the power eminent domain, or a transfer in lieu thereof, that is commenced or threatened after the Closing for the sale of such Segment.

ARTICLE 9 Conditions Precedent

9.1 Conditions Precedent to Effectiveness. Unless otherwise agreed to in writing by the Parties, the effectiveness of this Agreement shall be subject to the following condition:

9.1.1 the Governor of Virginia has approved the Transaction prior to Sale Date 1.

9.2 Conditions Precedent to Closing of Segment 1. Unless otherwise agreed to in writing by the Parties, or waived by the Party entitled to waive, Closing of Segment 1 shall be subject to the fulfillment of the following conditions:

9.2.1 Conditions to CSXT's obligation to close:

9.2.1.1 DRPT has paid the portion of the Purchase Price in accordance with Section 2.2.1 (*Purchase Price*);

9.2.1.2 the representations and warranties of DRPT set forth in Section 10.2 (*DRPT's Representations*) are true and correct in all material respects on and as of Sale Date 1 as if made on and as of such date;

9.2.1.3 no default under the Agreement by DRPT shall have occurred and be continuing;

9.2.1.4 DRPT has executed and made available for delivery the Ancillary Agreements;

9.2.2 Conditions to DRPT's obligation to close:

9.2.2.1 the representations and warranties of CSXT set forth in Section 10.1 (*CSXT's Representations*) are true and correct in all material respects on and as of Sale Date 1 as if made on and as of such date;

9.2.2.2 no default under this Agreement by CSXT shall have occurred and be continuing;

9.2.2.3 CSXT has executed and made available for delivery the Ancillary Agreements and the Segment 1 Deeds;

9.2.3 Conditions on either Party's obligation to close:

9.2.3.1 no change shall have occurred in Law between the Execution Date and Sale Date 1 that would materially adversely affect the ability of CSXT to perform this Agreement or DRPT to provide services as set forth in this Agreement;

9.2.3.2 Congress has enacted legislation permitting the conveyance of a permanent right of way in federal lands to the Commonwealth for the construction of the Long Bridge Improvements;

9.2.3.3 a jurisdictional decision from the STB, confirming that the Transaction does not require STB approval, in accordance with Section 19.2 (*Regulatory Approval*) shall have been served by the STB;

9.2.3.4 all Consents have been obtained and are in force and effect;

9.2.3.5 Amtrak and CSXT have executed and delivered the Amtrak Amendment (Operating Agreement);

9.2.3.6 the Commissions and CSXT have executed and delivered the Operating Agreement (CSXT/Commissions);

9.2.3.7 the Commissions and CSXT have executed and delivered the Amendment to Commissions Master Lease Agreement.

9.3 Conditions Precedent to Closing of Segment 2 and Segment 3. Unless otherwise agreed to in writing by the Parties, the Closing of Segment 2 and the Closing of Segment 3, each separately, shall be subject to the fulfillment of the conditions set forth in Sections 9.2.1 through 9.2.3, respectively, as of the applicable Sale Date, provided that the deed referred to in 9.2.2.3 shall be the applicable Deed for Segment 2 and Segment 3, respectively.

9.4 Conditions Precedent to Conveyance of Amtrak Related Passenger Facilities. Notwithstanding the foregoing, CSXT shall have no obligation to convey Amtrak related passenger facilities unless and until Amtrak and CSXT have executed and delivered the Amtrak Amendment (Lease).

ARTICLE 10 Representations and Warranties

10.1 CSXT's Representations. CSXT hereby represents and warrants to DRPT, as of the Execution Date and at each Sale Date, as follows:

10.1.1 Assessments. To CSXT’s actual knowledge, no assessments have been made against any Segment that are unpaid (except ad valorem taxes for the current year), whether or not they have become liens, which have or would reasonably be expected to have a Material Effect.

10.1.2 Boundary Lines of Land. To CSXT’s actual knowledge, there is no pending litigation, or any dispute or litigation threatened in writing, concerning the location of the boundary lines of any Segment, which has or would reasonably be expected to have a Material Effect.

10.1.3 Notice of Condemnation. Except to the extent that CSXT has notified DRPT of any Condemnation pursuant to Section 8.2 (*Condemnation*), to CSXT’s actual knowledge, there is no Condemnation affecting all or any portion of any Segment.

10.1.4 Knowledge of CSXT. As used herein in this Section 10.1 (*CSXT’s Representations*), exclusive of Section 10.1.13 (*Environmental Liabilities*), the phrase “actual knowledge of CSXT” or similar references shall refer to the actual knowledge of Sean Nesselt, Senior Director – Real Estate, as of the Execution Date and each Sale Date, and after reasonable inquiry of CSXT’s real estate department and law department with regard to the representations made.

10.1.5 Authorization. CSXT has taken all necessary corporate action to authorize the execution of this Agreement, and those Persons executing this Agreement on behalf of CSXT, are authorized to do so; provided, however, that no officer, director, shareholder, beneficial owner, agent or employee of CSXT shall be personally liable for any obligation hereunder.

10.1.6 Good Standing. CSXT is a duly organized and validly existing corporation under the Laws of the Commonwealth and duly authorized and registered to transact business in the Commonwealth.

10.1.7 Binding. This Agreement is a legal, valid and binding agreement of CSXT, enforceable against CSXT in accordance with its terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, reorganization or other similar Laws affecting the enforcement of creditors’ rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered a proceeding in equity or at law).

10.1.8 No Violation. Entering into this Agreement by CSXT is not in violation of any Law.

10.1.9 Third Party Rights. Without altering CSXT’s express disclaimer of any title warranty, nor imposing any obligation upon CSXT other than to provide a quitclaim deed to DRPT at each Sale Date as described in this Agreement, CSXT states that to the actual knowledge of CSXT, no third party has a right to purchase any portion of any Segment.

10.1.10 No Consummated Abandonment. Except as provided in Exhibit J (Abandonments), from December 16, 2019 to present, there have been no consummated abandonments, as that term is used in the ICC Termination Act of 1995, concerning the mainline trackage of CSXT which are part of the property conveyed to DRPT pursuant the applicable Deed.

10.1.11 *Trackage Rights Agreements.* To the actual knowledge of CSXT, the list of Trackage Rights Agreements contained in Exhibit K (*Trackage Rights Agreements*) are all of the Trackage Rights held by other rail carriers on the property conveyed to DRPT pursuant to the applicable Deed. If, after the relevant Sale Date, it is determined that a rail carrier held additional Trackage Rights on any portion of the relevant Segment prior to the Sale Date, and such Trackage Rights still exist, CSXT shall, at its expense, exercise commercially reasonable efforts to cause such Trackage Rights holders to discontinue and release such Trackage Rights, subject to regulatory authority under applicable Law. CSXT shall permit DRPT to review pleadings that CSXT intends to file in order to effectuate these efforts, and DRPT shall bear the cost of its attorneys' fees and other expenses in performing this review.

10.1.12 *Assigned Agreements and Instruments.* To the actual knowledge of CSXT, CSXT is not in material breach of any agreement or instrument that will be assigned to DRPT as part of the applicable Third Party Assignment and Assumptions Agreement.

10.1.13 *Environmental Liabilities.* Other than the matters contained in Exhibit L (*Environmental Liabilities*), as of the date of this Agreement, to the actual knowledge of Daniel Dyer, Senior Manager, Public Safety, Health & Environment Department, based upon his review of CSXT's Railroad Accident Reporting database as of the date of this Agreement, there have been no Releases of Hazardous Materials by CSXT on any Segment that are reportable to a state or federal government agency under Laws which required investigation and/or remediation activities under Law, and such required investigation and/or remediation has not previously concluded.

10.1.14 *Disclaimer.* Other than as expressly set forth in this Section 10.1 (*CSXT's Representations*), CSXT has not and does not hereby make any express or implied representation or warranty or give any indemnification of any kind to DRPT concerning the Corridor.

10.2 DRPT's Representations. DRPT hereby represents and warrants to CSXT, as of the Execution Date and at each Sale Date, as follows:

10.2.1 *Binding.* This Agreement is a legal, valid and binding agreement of DRPT, enforceable against DRPT in accordance with its terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered a proceeding in equity or at law).

10.2.2 *No Violation.* Entering into this Agreement by DRPT is not a violation of any Law or order.

10.2.3 *Authorization.* DRPT has taken all necessary action to authorize the execution of this Agreement, and those Persons executing this Agreement on behalf of DRPT are authorized to do so; *provided, however*, that no officer, director, beneficial owner, agent or employee of DRPT shall be personally liable for any obligation hereunder.

10.2.4 To the actual knowledge of Michael McLaughlin, Chief of Rail Transportation, based upon the Office of the Attorney General's review of any title information

provided to DRPT, DRPT is not aware of any breach by CSXT of any representation or warranty in this Agreement related to Section 10.1.1, 10.1.2, 10.1.3, 10.1.10, 10.1.11 or 10.1.12.

10.3 Sale Date Representations. At any time prior to a Sale Date, either Party may update, supplement or modify its representations and warranties made pursuant to Section 10.1 (*CSXT's Representations*) or Section 10.2 (*DRPT's Representations*), as applicable, with respect to the Segment to which the update, supplement or modification applies by providing notice to the other Party (“Amendment Notice”). If, despite the Amendment Notice, the Party receiving such Amendment Notice chooses to proceed with the sale of the applicable Segment, such action shall constitute acceptance of the Amendment Notice and such Party may not refuse to close with respect to the applicable Segment on grounds that the conditions under ARTICLE 9 (*Conditions Precedent*) are not satisfied. The Party receiving the Amendment Notice may refuse to close on a Segment on grounds that the conditions under ARTICLE 9 (*Conditions Precedent*) are not satisfied if the update, supplement or modification provided in the Amendment Notice contains a disclosure of a fact, condition or effect which has, or is reasonably likely to have a material adverse effect on such Party. If a Party refuses to close on a Segment, neither Party shall have any obligation under this Agreement relating to that Segment. If a Party refuses to close on Segment 1, this Agreement shall terminate.

10.4 Disclosure. DRPT shall be deemed to be aware of and there are deemed to have been disclosed to DRPT as if set forth herein (i) all matters fairly disclosed or contained in this Agreement, (ii) any title report provided to DRPT and (iii) any agreement identified in the Assignment and Assumption Agreement (Third Party) as being assigned to DRPT with respect to an applicable Segment, and CSXT shall not be in breach of any representation or warranty to the extent DRPT is deemed to be aware of the information referred to in this Section 10.4 (*Disclosure*).

10.5 Survival and Breach. CSXT’s and DRPT’s representations and warranties in this ARTICLE 10 (*Representations and Warranties*) shall survive until November 30, 2023.

ARTICLE 11 Additional Covenants

11.1 Encumbrances. CSXT does hereby covenant and agree with respect to the Segments that from and after the Execution Date to the date and time of the last Sale Date, CSXT shall not, without prior written consent of DRPT, convey any portion of a Segment or any rights therein, nor enter into any conveyance or other agreement or amendment to agreement granting to any Person or entity any rights with respect thereto or any part thereof, or any interest whatsoever therein, or any option thereto, unless such conveyance, right or other interest is: (i) an exercise by CSXT of any right reserved by it hereunder, or (ii) in the ordinary course of CSXT’s business with respect to licenses, wirelines and other similar third party occupancies that would not materially adversely affect the ability of DRPT to construct, maintain, or operate any planned rail lines within the applicable Segment as set forth in this Agreement, or (iii) subordinate to the rights of DRPT under this Agreement. Exclusive of the Segment 3 Easement, in the event CSXT intends to convey any portion of a Segment or enter into any agreement for conveyance between the Execution Date and the applicable Sale Date in accordance with clause (iii) in the preceding sentence, CSXT shall provide to DRPT written notice no later than ninety (90) days prior to the consummation of such conveyance or execution of such agreement for DRPT review and approval. In the event DRPT fails to respond to CSXT’s written notice within thirty (30) days following receipt thereof, CSXT’s

notice shall be deemed approved. CSXT further agrees that from and after the Execution Date, and until an applicable Sale Date, CSXT shall not fail to make any payments due to any Person or entity who, as a result of such failure, would have the right to claim any lien rights with respect to any of the Segments or any interest of CSXT therein. CSXT shall have the right to contest any such payment so long as CSXT bonds off any liens filed with respect thereto or provides DRPT with reasonably adequate security with respect thereto.

11.2 Payment of Taxes. Without waiving any right to contest any and all amounts which may be levied against CSXT for ad valorem taxes, or to recover any portion thereof allocable to DRPT, CSXT shall continue to pay all ad valorem taxes for which it is responsible under this Agreement in a timely manner.

11.3 No Third Party Agreement Modifications. As of December 16, 2019, to the extent that any third-party agreement is of a type that will be assigned by CSXT to DRPT as of a Sale Date, CSXT has not, and will not, modify any such third-party agreement in effect as of December 16, 2019, in a way that would have a material adverse effect on the ability of DRPT to provide passenger rail services as set forth in this Agreement.

11.4 Compliance with Contracts. From and after the Execution Date to the relevant Sale Date, CSXT agrees to remain in material compliance with all requirements related to the Third Party Assignment and Assumption Agreement, and make all payments due thereunder and not waive any default thereunder, in each case to the extent that noncompliance would materially and adversely affect the ability of DRPT to provide the rail passenger services as set forth in this Agreement or result in DRPT incurring any obligation to make such payment.

11.5 Environmental Releases. In the event of a material Release of Hazardous Materials from and after the Environmental Due Diligence Period and prior to the relevant Sale Date (“**Material Post DD Release**”), CSXT shall: (i) notify DRPT via email within twenty-four (24) hours of knowledge of the Material Post DD Release and thereafter keep DRPT reasonably informed of the status of any investigation of the Material Post DD Release, and (ii) remediate or cause to be remediated such Material Post DD Release to the extent required by Environmental Laws utilizing institutional and engineering controls to achieve an industrial/commercial level of remediation consistent with the use of the Segments for railroad purposes and the cost for which shall be at CSXT’s sole expense; *provided*, however, that in the event CSXT does not remediate or cause to be remediated any such Material Post DD Release in Segment 2 or Segment 3 to the extent required by Environmental Laws, DRPT may: (i) remediate or cause to be remediated such Material Post DD Release post-Closing to the extent required by Environmental Laws utilizing institutional and engineering controls to achieve an industrial/commercial level of remediation consistent with the use of the Segments for railroad purposes and the cost for such remediation shall be subject to the cost sharing and limitations in Section 16.2.1 (*Remediation*), or (ii) provide CSXT with written notice that DRPT will terminate this Agreement with respect to Segment 2 and/or Segment 3, as applicable, without any adjustment to the Purchase Price. Notwithstanding the foregoing, if CSXT does not remediate or cause to be remediated any such Material Post DD Release to the extent required by Environmental Laws with respect to Segment 1, DRPT shall then have the right to either (a) terminate this Agreement or (b) proceed to Closing and post-Closing CSXT shall remediate or cause to be remediated such Material Post DD Release to the extent required by Environmental Laws utilizing institutional and engineering controls to achieve an

industrial/commercial level of remediation consistent with the use of the Segments for railroad purposes and the cost for which shall be at CSXT's sole expense (*i.e.*, such Segment 1 remediation costs shall be borne by CSXT alone and shall not be subject to the cost sharing principles set forth in Section 16.2.1 (*Remediation*)). In the event CSXT is remediating such Material Post DD Release post-Closing, DRPT will grant CSXT and its contractors access to the area of such Material Post DD Release as reasonably necessary for CSXT to complete such remediation, and will execute such documents in recordable form as may be necessary to document the conclusion of the remediation or to impose engineering or institutional controls related thereto as required by a Governmental Authority asserting jurisdiction over the Material Post DD Release.

11.6 Ongoing Efforts. From and after the Execution Date, (i) DRPT shall proceed in good faith and with reasonable diligence in undertaking its obligations under this Agreement and the applicable Ancillary Agreements and with respect to the design, development, construction, and completion of the Infrastructure Improvements identified in Exhibit E (*Infrastructure Improvements*) and (ii) CSXT shall cooperate in good faith, and with reasonable diligence, in undertaking its obligations under this Agreement and the applicable Ancillary Agreements with respect to the design, development, construction and completion of such Infrastructure Improvements.

11.7 Survival and Breach. Except as otherwise expressly provided herein, CSXT's and DRPT's covenants in this ARTICLE 11 (*Additional Covenants*) shall survive until the expiration of the Joint Operating and Maintenance Agreement as set forth in ARTICLE 16 of such agreement.

ARTICLE 12 Rail Services after Sale Dates

12.1 Services.

12.1.1 After each Sale Date, and in accordance with the provisions of Section 12.2 (*Service Plan*), DRPT shall have the right to provide the following services in the applicable Segment, subject to the CSXT Operating Rules and the Joint Operating and Maintenance Agreement:

(a) Commuter Rail Service, provided such operations on the portion of the RF&P Corridor that is owned or dispatched by CSXT shall be subject to the terms of the Operating Agreement (CSXT/Commissions) as it may be amended, including as it may be modified as contemplated in ARTICLE 14 (*Companion and Ancillary Agreements*);

(b) Intercity Passenger Rail Service – Commonwealth-Supported, provided by Amtrak, provided such service on any Segment that is owned or dispatched by CSXT shall be pursuant to the Operating Agreement (CSXT/Amtrak) as it may be amended, including as it may be modified as contemplated in ARTICLE 14 (*Companion and Ancillary Agreements*); and

(c) Intercity Passenger Rail Service – Long-Distance provided by Amtrak provided such service on any Segment that is owned or dispatched by CSXT shall be pursuant to the Operating Agreement (CSXT/Amtrak) as it may be amended, including as it may be modified as contemplated in ARTICLE 14 (*Companion and Ancillary Agreements*).

12.1.2 CSXT shall retain the sole right to provide freight service along the Segments, except as provided under the Segment 3 Easement and as the Parties may otherwise agree with respect to Segment 2.

12.1.3 High or Higher Speed Passenger Rail for intercity passenger rail service on Segment 1 and Segment 3, shall be at DRPT's sole expense and subject to track classification, station spacing, track geometry, and CSXT Operating Rules. High or Higher Speed Passenger Rail service on Segment 2 may occur at DRPT's discretion and sole expense and is not subject to CSXT's Operating Rules.

12.2 Service Plan.

12.2.1 The Commuter Rail Service and Intercity Passenger Rail Service set forth in the Service Plan are intended to be permanent in accordance with the Service Plan and to the conditions described therein. If DRPT fails to proceed in good faith and with reasonable diligence in pursuing the design, development, construction, and completion of the Phase 2 Projects, CSXT may elect to suspend any New Trains then in operation, and not start any additional New Trains otherwise called for in the Service Plan, until such time as DRPT cures such failure, after which CSXT shall lift the applicable suspension as soon as practicable. For the avoidance of doubt, Existing Trains shall not be subject to suspension by CSXT solely for failure by DRPT to proceed in good faith and with reasonable diligence in pursuing the design, development, construction, and completion of the Phase 2 Projects, *provided*, however, that nothing in this Section 12.2.1 concerning permanency shall alter, modify, or diminish the rights and remedies available for breach or default under any applicable agreement, including this Agreement, the Joint Operating and Maintenance Agreement, and any Companion Agreement with respect to the suspension of Existing or New Trains to the extent such trains are governed by the applicable agreement.

12.2.2 Upon completion of the Phase 1 Projects, DRPT shall be entitled to begin the corresponding new service in accordance with the Service Plan as set forth in Exhibit D (Service Plan) and the Operating Agreement (CSXT/Commissions) and Operating Agreement (CSXT/Amtrak), respectively, as provided herein.

12.2.3 Upon completion of the Phase 2 Projects, DRPT shall be entitled to begin the corresponding new service in accordance with the Service Plan as set forth in Exhibit D (Service Plan) and the Operating Agreement (CSXT/Commissions) and Operating Agreement (CSXT/Amtrak), respectively, as provided herein.

12.2.4 The Parties shall endeavor to undertake Phases 3 and 4 following completion of the Phase 1 and Phase 2 Infrastructure Improvements described in Exhibit E (Infrastructure Improvements).

12.2.5 The Parties will continue to work diligently to finalize agreement on the trains contemplated by Note 7 in Exhibit D (Service Plan) within nine (9) months of the Effective Date. Specifically, the Parties agree to develop and reach mutual agreement on a modification to Exhibit D (Service Plan v 6.1) to accommodate passenger train movements necessary for passenger trains to serve Main Street Station identified in Exhibit D-1 (Service Plan v 6.1). The

Passenger Schedules in Exhibit D (*Service Plan v 6.0*) shall be in effect and shall remain in effect until:

(a) DRPT has achieved the conditions in Note 7 to Exhibit D (*Service Plan*) associated with Phase 1 (if any), after which the Passenger Schedules in Exhibit D-1 (*Service Plan v 6.1*) shall go into effect immediately for the service corresponding to Phase 1; and

(b) DRPT has achieved the conditions in Note 7 to Exhibit D (*Service Plan*) associated with Phase 2, after which date the entirety of the Passenger Schedules in Exhibit D-1 (*Service Plan v 6.1*) shall go into effect immediately.

ARTICLE 13 Termination

13.1 Termination by DRPT.

13.1.1 DRPT may terminate this Agreement prior to Sale Date 1 under any of the following circumstances:

(a) DRPT elects to terminate this Agreement on account of adverse title matters relating to Segment 1 and so notifies CSXT of its termination in accordance with Section 5.1 (*Title Examination*);

(b) DRPT elects to terminate this Agreement on account of Material Damage affecting Segment 1 in accordance with Section 8.1.2.4 (*Damage*) or Section 8.1.3.4 (*Damage*);

(c) DRPT elects to terminate this Agreement on account of a Material Condemnation affecting Segment 1 in accordance with Section 8.2.2 (*Condemnation*);

(d) DRPT elects to terminate this Agreement because of a material Release of Hazardous Materials on Segment 1 and CSXT elects not to remediate such Release as set forth in Section 11.5 (*Environmental Releases*);

(e) DRPT elects not to close on the Transaction as provided in Section 16.1.2 (*Due Diligence*) based on its environmental studies of the Segments;

(f) The Transaction contemplated by this Agreement has been stayed or enjoined in accordance with Section 19.2.2.3 (*Regulatory Approval*);

(g) Any representations and warranties of CSXT in this Agreement, as updated, supplemented or modified in accordance with Section 10.3 (*Sale Date Representations*) are untrue or any covenants of CSXT in this Agreement that are qualified by materiality are breached or any covenants not qualified by materiality are breached in a manner that has, or is reasonably likely to have, a Material Effect and such condition is not cured by Sale Date 1.

13.1.1.2 Without affecting the amount or due date of the Purchase Price, DRPT may terminate its obligations with respect to Segment 2 and/or Segment 3, as applicable, prior to the relevant Sale Date under any of the following circumstances:

(a) DRPT elects to refuse to accept Segment 2 and/or Segment 3 on account of adverse title matters relating to Segment 2 and/or Segment 3, respectively, and so notifies CSXT of its refusal in accordance with Section 5.1 (*Title Examination*);

(b) DRPT elects to terminate this Agreement as it relates to Segment 3 on account of Material Damage affecting Segment 3 in accordance with Section 8.1.6.4 (*Damage*);

(c) DRPT elects to terminate this Agreement as it relates to Segment 3 on account of a Material Condemnation affecting Segment 3 in accordance with 8.2.4 (*Condemnation*);

(d) DRPT elects to terminate its obligations with respect to Segment 2 and/or Segment 3 because of a material Release of Hazardous Materials on Segment 2 and/or Segment 3 and CSXT elects not to remediate such Release as set forth in Section 11.5 (*Environmental Releases*);

13.1.1.3 Any representations and warranties of CSXT in this Agreement, as updated, supplemented or modified in accordance with Section 10.3 (*Sale Date Representations*) are untrue or any covenants of CSXT in this Agreement that are qualified by materiality are breached or any covenants not qualified by materiality are breached in a manner that has, or is reasonably likely to have, a Material Effect and such condition is not cured by the relevant Sale Date.

13.2 Termination by CSXT.

13.2.1 CSXT may terminate this Agreement prior to Sale Date 1, under any of the following circumstances:

(a) The Transaction contemplated by this Agreement has been stayed or enjoined in accordance with Section 19.2.2.3 (*Regulatory Approval*); or

(b) Any representations and warranties of DRPT in this Agreement, as updated, supplemented or modified in accordance with Section 10.3 (*Sale Date Representations*) are untrue, or any covenants of DRPT in this Agreement are breached in a manner that has, or is reasonably likely to have, a material adverse effect on CSXT, and such condition is not cured by the applicable Sale Date.

13.2.2 CSXT may terminate its obligations with respect to Segment 2 and/or Segment 3, as applicable, prior to the relevant Sale Date under the following circumstance:

(a) Any representations and warranties of DRPT in this Agreement, as updated, supplemented or modified in accordance with Section 10.3 (*Sale Date Representations*) are untrue, or any covenants of DRPT in this Agreement are breached in

a manner that has, or is reasonably likely to have, a material adverse effect on CSXT and such condition is not cured by the applicable Sale Date.

ARTICLE 14 Companion and Ancillary Agreements

14.1 Companion Agreements – Operating Agreement (CSXT/Commissions). DRPT acknowledges that the Amended and Restated Operating/Access Agreement dated July 1, 2011, between CSXT, the Northern Virginia Transportation Commission, and the Potomac and Rappahannock Transportation Commission (together with the Northern Virginia Transportation Commission, the “Commissions”) (“Operating Agreement (CSXT/Commissions)”), as may be amended from time to time which concerns the operation of Commuter Rail Service by the Commissions under the Virginia Railway Express (“VRE”) name, shall not be amended or otherwise altered by this Agreement or the Ancillary Agreements. However, CSXT shall negotiate in good faith with the Commissions to amend the Operating Agreement (CSXT/Commissions) as soon as practicable after execution of this Agreement to account for the Transaction, which amendment shall contain provisions consistent with the terms set forth in Exhibit R (*Core Terms of the Second Amended and Restated Operating/Access Agreement between CSXT and the Commissions*).

14.1.1 CSXT acknowledges that DRPT and the Commonwealth of Virginia are making a historical investment by executing the Transaction, and that one principal purpose of such investment is to increase the VRE Commuter Rail Service within the RF&P Corridor. Accordingly, if the Commissions are in default under the Operating Agreement (CSXT/Commissions), CSXT shall provide to DRPT written notice within five (5) Business Days of actual knowledge of such default. During a VRE Cure Period, CSXT shall not terminate the Operating Agreement (CSXT/Commissions) but may provide to the Commissions notice of its intent to terminate the Operating Agreement (CSXT/Commissions). However, if CSXT otherwise has cause to terminate the Operating Agreement (CSXT/Commissions), CSXT may suspend, as of the date of breach, the VRE-provided Commuter Rail Service and during a VRE Cure Period until such time as the underlying breach or default of the Commissions has been cured, or until the VRE Cure Period has expired without cure, at which time CSXT may continue to suspend service or elect any applicable remedy to which it is entitled.

14.1.2 During any VRE Cure Period, DRPT may (but shall have no obligation), at its sole option and discretion, perform or arrange for the performance of any act, duty, or obligation required of the Commissions under the Operating Agreement (CSXT/Commissions), or remedy any breach of the Commissions thereunder at any time, which performance or remedy by or on behalf of DRPT will be accepted by CSXT in lieu of performance by the Commissions and in satisfaction of the Commissions’ obligations under the Operating Agreement (CSXT/Commissions). To the extent that any breach of the Commissions under the Operating Agreement (CSXT/Commissions) is remedied and/or any payment liabilities or obligations of the Commissions are performed by DRPT under this Section 14.1.2, such action will discharge the relevant liabilities or obligations of the Commissions to CSXT. No such performance by or on behalf of DRPT under this Section 14.1.2 will be construed as an assumption by DRPT, or any person acting on DRPT’s behalf, of any of the covenants, agreements or other obligations of the Commissions under the Operating Agreement (CSXT/Commissions).

14.2 Companion Agreements – Operating Agreement (CSXT/Amtrak). In addition to the Operating Agreement (CSXT/Commissions), CSXT is a party to an operating agreement with Amtrak dated June 1, 1999 (“Operating Agreement (CSXT/Amtrak)”), which may be amended or otherwise altered by CSXT and Amtrak upon mutual agreement of CSXT and Amtrak. The Parties acknowledge that as between CSXT and Amtrak, the Operating Agreement (CSXT/Amtrak) will continue to govern Amtrak passenger train service operating over the Corridor.

14.3 Companion Agreements – Operating Agreement (CSXT/MTA). In addition to the Operating Agreement (CSXT/Commissions), and the Operating Agreement (CSXT/Amtrak), CSXT is a party to an Access Agreement with Maryland Transit Administration (“MTA”) dated June 30, 2010 (“Operating Agreement (CSXT/MTA)”), which may be amended or otherwise altered by CSXT and MTA upon mutual agreement of CSXT and MTA.

14.4 Companion Agreements – Operating Agreement (DRPT/Commissions). In connection with the Transaction, DRPT shall enter into an operating agreement, (the “Operating Agreement (DRPT/Commissions)”) with the Commissions to permit the VRE Commuter Rail Service over Segment 1. Such agreement shall include allocation of liability and indemnification obligations between the respective parties. The Parties acknowledge that as between DRPT and the Commissions, the Operating Agreement (DRPT/Commissions) will govern the VRE Commuter Rail Service as such service operates over Segment 1.

14.5 Companion Agreements – Operating Agreement (DRPT/Amtrak). In connection with the Transaction, DRPT shall enter into an operating agreement (the “Operating Agreement (DRPT/Amtrak)”) with Amtrak to permit Amtrak passenger train service over Segments 1 and 3. Such agreement shall include allocation of liability and indemnification obligations between the respective parties. The Parties acknowledge that as between DRPT and Amtrak, the Operating Agreement (DRPT/Amtrak) will govern Amtrak passenger train service over Segments 1 and 3.

14.6 Additional Commitments Regarding Amtrak and Potential New Operators.

14.6.1 In connection with the Transaction and the agreement described in Section 14.9 (*Ancillary Agreement – Joint Operating and Maintenance Agreement*), the Parties will use commercially reasonable efforts to optimize the use of DRPT trackage and other infrastructure and facilities in the Corridor by Amtrak for passenger rail service, subject to Law. Each Party shall use commercially reasonable efforts to support the other in its negotiations with Amtrak, provided that no Party shall be obligated to support any position or agree to any modification of any agreement existing as of the Effective Date that materially diminishes that Party’s existing rights with respect to safety, capacity, or liability. Following the execution of such agreements, DRPT shall assume the obligation as between CSXT and DRPT to provide access to the Segments for Amtrak intercity rail passenger service and will arrange for operation of such service on its tracks and facilities wherever feasible.

14.6.2 Other than as set forth in Section 14.6.3, CSXT acknowledges that commuter trains reflected in the Service Plan as set forth in Exhibit D (*Service Plan*) may be operated under the auspices of a governmental entity other than DRPT (a “**New Operator**”),

including commuter trains operated by a contractor selected by, and under a contract with, such New Operator. Such contract shall be subject to the terms of an agreement between CSXT and the New Operator (a “**New Operator Agreement**”), with respect to the relevant commuter train(s) with such terms generally consistent with the terms set forth in the Operating Agreement (CSXT/Commissions). Such terms must 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). For the avoidance of doubt, the Parties agree that the New Operator will not operate any such commuter rail trains, but will arrange for such operations with its contractor and CSXT will contract with the New Operator and not the contractor.

14.6.3 The Parties agree that Maryland Transit Authority may be a New Operator provided:

(a) CSXT and MTA have reached a mutually agreeable amendment to the existing Operating Agreement (CSXT/MTA) addressing the operation of MTA trains in the Commonwealth, including (i) safety, (ii) operations, (iii) capacity, (iv) compensation and other payments under the Operating Agreement (CSXT/Commissions), and (v) liability, insurance and indemnification including, if required by applicable Law, legislative authorization of the indemnity provisions on substantially identical terms as the Operating Agreement (CSXT/MTA).

(b) MTA trains may only be operated in lieu of, and not in addition to, a slot on the Service Plan, subject to the receipt by CSXT in writing at least thirty (30) days in advance of any proposed MTA train of (i) the identification of the slot; and (ii) any necessary consents from the Commissions, Amtrak or a New Operator to the operation of the MTA train in lieu of the then current user of that slot.

14.7 Companion Agreement – Buckingham Branch Lease Agreement; Segment 3 Easement.

14.7.1 The Parties acknowledge that Segment 3 shall remain subject to the BBRC Lease Agreement or Segment 3 Easement, as applicable, without charge for the use thereof.

14.7.2 CSXT’s use of Segment 3 shall be governed by the reservations of CSXT’s rights under the BBRC Lease Agreement or Segment 3 Easement Agreement, as applicable, and any succeeding or similar agreement and CSXT shall have no separate payment obligation to DRPT for such use while such agreement and any succeeding agreement is in effect.

14.7.3 CSXT shall have the right to convey its rights and obligations under the BBRC Lease Agreement or Segment 3 Easement (should the Segment 3 Easement revert to CSXT), to a third party and modify or renew the BBRC Lease Agreement or Segment 3 Easement, as applicable, with another freight rail common carrier or another transferee subject to regulatory authority as provided by applicable Law.

14.8 Ancillary Agreement – Engineering and Construction Agreements.

14.8.1 In connection with the Transaction, and in order to support interoperability as and when provided in the Definitive Agreements, the Parties shall enter into Engineering and Construction Agreements substantially in the forms attached as Exhibit N and Exhibit O.

14.8.2 As set forth in Exhibit E-1 (*Design, Procurement and Construction Responsibility Matrix*), the Parties have agreed to assign preliminary responsibility for the design and construction of the Project components pursuant to the terms of the Engineering and Construction Agreements. Such Exhibit E-1 (*Design, Procurement and Construction Responsibility Matrix*) also sets forth the Parties' preliminary agreements as to the procurement and Project delivery methods for each Project component.

14.8.3 The Parties acknowledge and agree that the preliminary responsibilities for design and construction, the procurement, and Project delivery methods for the Project components set forth in Exhibit E-1 (*Design, Procurement and Construction Responsibility Matrix*) reflect the Parties' intentions as of the date of this Agreement. The Parties further agree and acknowledge that the design and construction of the Infrastructure Improvements may be more efficiently and effectively undertaken through modification of such preliminary allocation of responsibilities. In the event the Parties determine that modification of these allocations of responsibility and procurement and Project delivery methods is warranted, all such modifications shall be undertaken pursuant to the protocol set forth in the following provisions.

14.8.3.1 In the event either Party believes modification of the responsibilities for design and construction and the procurement and Project delivery methods, or any of each individual activity, for a Project component as set forth in Exhibit E-1 (*Design, Procurement and Construction Responsibility Matrix*) is warranted, and possible to still comply with the Law, CSXT Standards, and CSXT Operating Rules, such Party shall provide written notice to the other Party. Such written notice shall identify with sufficient specificity the Project component and the matters for which the modification is being proposed.

14.8.3.2 Upon receipt of such written notice, the receiving Party shall acknowledge receipt and the Parties shall meet and confer regarding the proposed modification(s). Following the Parties' meet and confer undertaking, the modification(s) shall be made if the Parties mutually agree. If the Parties do not mutually agree, or mutually agree there is uncertainty as to the benefits of the modification, either Party may pursue the dispute resolution process of ARTICLE 24 (*Dispute Resolution*) or the Parties shall undertake the design and construction of the Infrastructure Improvements as set forth in Exhibit E-1 (*Design, Procurement and Construction Responsibility Matrix*), as it then may exist.

14.9 Ancillary Agreement – Joint Operating and Maintenance Agreement. In connection with the Transaction, the Parties shall enter into a “Joint Operating and Maintenance Agreement” in the form attached as Exhibit M (*Joint Operating and Maintenance Agreement*). As provided therein, operation of freight and passenger service shall be governed by the Joint Operating and Maintenance Agreement.

ARTICLE 15 **Operations.**

15.1 **Dispatch.** During the Transition Period, the Parties agree that dispatch of all trains on Segment 1 and Segment 3 shall be governed by the Joint Operating and Maintenance Agreement.

15.2 **New Operators.** Operations by parties other than DRPT or CSXT shall be governed by the Joint Operating and Maintenance Agreement.

15.3 **Non-Owner Operations on RF&P Corridor After Separation.** After Complete Separation or Maximum Feasible Separation, the Parties shall have the rights to operate as provided in Section 15.3 (*Non-Owner Operations on RF&P Corridor After Separation*) of the Joint Operating and Maintenance Agreement.

15.4 **Operations on Segments 3.** Subject to Section 14.7 (*Companion Agreement – Buckingham Branch Lease Agreement; Segment 3 Easement*), future operations by DRPT on Segment 3 shall be governed by the Joint Operating and Maintenance Agreement.

ARTICLE 16 **Environmental**

16.1 **Due Diligence.**

16.1.1 Until December 31, 2020 (the “**Environmental Due Diligence Period**”), DRPT may continue to perform environmental due diligence on the Corridor in accordance with the Environmental ROE.

16.1.2 DRPT shall have no obligation to close on the Transaction in the event that, in its sole discretion, DRPT determines that the environmental condition of the Segments, or any portion thereof, is unsatisfactory for any reason, provided the determination not to close, which must be with respect to all Segments, is communicated to CSXT by written notice prior to the expiration of the Environmental Due Diligence Period.

16.2 **Remediation.**

16.2.1 CSXT shall remain liable for, and shall reimburse DRPT for, fifty percent (50%) of the actual out of pocket costs incurred for Remediation during the first ten (10) years after the applicable Sale Date, with respect to the property conveyed upon such Sale Date, upon the following conditions:

(a) DRPT shall pay for the other fifty percent (50%) of such Remediation costs;

(b) DRPT shall have provided CSXT with all reasonably requested relevant information regarding the nature and extent of the condition requiring Remediation and reasonable documentation as to the costs of Remediation;

(c) CSXT’s total aggregate reimbursement for Remediation hereunder shall not exceed seven million dollars (\$7,000,000);

(d) CSXT shall not be responsible for any single Remediation claim or occurrence costing less than fifty thousand dollars (\$50,000);

(e) CSXT's obligations for reimbursement shall cease and be null and void from and after ten (10) years after the applicable Sale Date for property conveyed;

(f) DRPT shall have the right to allocate CSXT's contribution for Remediation to such portions of the Segments as DRPT may elect in its sole and absolute discretion;

(g) CSXT's responsibility for Remediation shall be limited as provided in this Section 16.2 (*Remediation*). DRPT shall be solely responsible for any costs and expenses for any Remediation beyond CSXT's reimbursement obligations set forth in this Section 16.2 (*Remediation*).

16.3 Claims Against Third Parties. The Parties reserve any and all rights that they may have against third parties under Law, including but not limited to the presence or release of Hazardous Materials in, on, under, from, to or about the Corridor. In the event that a third party brings a contribution claim against CSXT relating to a claim against that third party brought by DRPT, any payments by CSXT with respect to such third party contribution claims shall reduce, on a dollar for dollar basis, the maximum contribution by CSXT described herein.

ARTICLE 17 Insurance

17.1 Generally. Each Party shall provide and maintain throughout the life of the Definitive Agreements insurance in the kinds and amounts specified in such agreements. Such insurance may be obtained from one or more insurers: (i) licensed to transact insurance business in the Commonwealth and (ii) with a current Best Rating of A:VII or better or a comparable successor rating.

17.2 Self-Insurance. Subject to the provisions of Section 17.1, each Party may self-insure for a portion of the liabilities it assumes under the Definitive Agreements. In such cases, the Parties shall agree upon an amount of self-insured retention allowed for each Party and shall require that each Party certify annually to the availability of funds to satisfy the amount of the self-insured retention (which may not be identical for each Party).

17.3 Operating Agreement (CSXT/Commissions). Nothing in this Agreement or the Ancillary Agreements shall alter or modify the insurance obligations set forth in the Operating Agreement (CSXT/Commissions) and the applicability of that insurance to the Commuter Rail Service governed by the Operating Agreement (CSXT/Commissions).

ARTICLE 18 Indemnification

18.1 Terms. Notwithstanding any other provision of this Agreement to the contrary, the following terms shall have the meanings set forth below for the purposes of this ARTICLE 18 (*Indemnification*).

18.1.1 “**Amtrak Liabilities**” means those categories of losses and claims for which Amtrak has a duty to indemnify CSXT pursuant to the Operating Agreement (CSXT/Amtrak).

18.1.2 “**BBRC Liabilities**” means those categories of losses and claims for which BBRC has a duty to indemnify CSXT pursuant to the BBRC Lease or BBRC Easement.

18.1.3 “**Commissions Liabilities**” means those categories of losses and claims for which the Commissions have a duty to indemnify CSXT pursuant to the Operating Agreement (CSXT/Commissions).

18.1.4 “**Commonwealth Indemnitees**” means the Commonwealth of Virginia (excluding the Commissions) and DRPT and any of the officers, directors, employees, agents, successors, or assigns of such entities.

18.1.5 “**CSXT Indemnitees**” means CSXT, any Affiliate of CSXT, and any of the officers, directors, shareholders, employees, agents, successors, or assigns of such entities.

18.1.6 “**CSXT Train Incident**” means any accident, collision, or wreck involving trains, locomotives, rail cars, or Rail Equipment of, or in account of CSXT on Segment 1 or Segment 3.

18.1.7 “**New Operator Liabilities**” means those categories of losses and claims for which any New Operator has a duty to indemnify CSXT pursuant to a New Operator Agreement.

18.1.8 “**Rail Equipment**” means any maintenance of way and work train equipment and other vehicles and machinery (such as hi-rail trucks) which are designed for operation on and are being operated on railroad tracks on Segment 1 or Segment 3.

18.1.9 “**Rail Passenger(s)**” shall mean and include any and all persons, ticketed or unticketed, using the Commuter Rail Service, Intercity Rail Passenger Service - Commonwealth Support or Intercity Rail Passenger Service - Long Distance (collectively referred to as “**Intercity Rail Passenger Service**”) on the RF&P Corridor or Segment 3: first, while on board trains, locomotives, rail cars, or Rail Equipment employed in Commuter Rail Service or any Intercity Rail Passenger Service and/or entraining and detraining therefrom; second, while on or about the RF&P Corridor for any purpose related to the Commuter Rail Service or any Intercity Rail Passenger Service, including, without limitation, parking, inquiring about Commuter Rail Service or any Intercity Rail Passenger Service or purchasing tickets therefor and coming to, waiting for, leaving from and/or observing rail commuter or other trains, locomotives, rail cars, or Rail Equipment; and, third, while on or about the RF&P Corridor for any purpose related to the convenience and comfort of users of Commuter Rail Service or any Intercity Rail Passenger Service which shall include, without limitation, such activities as restaurants, kiosks and retail facilities, the purpose and function of which are to serve the needs of users of Commuter Rail Service or any Intercity Rail Passenger Service. The term Rail Passenger(s) shall also mean and include any and all persons meeting, assisting or in the company of any person described in the immediately preceding sentence.

18.2 CSXT Liability. After the conveyance of Segment 1 or Segment 3 to DRPT, CSXT will continue to conduct freight operations over both Segment 1 and Segment 3, respectively. Accordingly, subject to Section 18.4 (*Limitation on CSXT Indemnity*), from and after the applicable Sale Date, CSXT agrees to indemnify, defend and hold harmless the Commonwealth Indemnitees against losses or claims, regardless of fault:

18.2.1 arising from a CSXT Train Incident on Segment 1 or Segment 3 to the extent that it results in (or is alleged to result in):

18.2.1.1 any loss, damage, injury, or death of CSXT employees, CSXT property, or CSXT lading;

18.2.1.2 any loss, damage, injury, or death of third-parties on or about Segment 1 or 3 (including without limitation vehicles and occupants at grade crossings, pedestrians and corridor occupants present on Segment 1 or Segment 3 pursuant to a license, easement, or other right of access granted by CSXT); and

18.2.1.3 any loss or damage to DRPT-owned rail assets (including without limitation, tracks, structures, and passenger facilities).

18.2.2 For the avoidance of doubt, CSXT's obligation to indemnify, defend and hold harmless the Commonwealth Indemnitees under this Section 18.2 (*CSXT Liability*), does not include losses or claims for a Release of Hazardous Materials, which instead is addressed under Section 18.3 (*Losses or Claims for a Release of Hazardous Materials*).

18.3 Losses or Claims for a Release of Hazardous Materials. In the event CSXT freight operations result in a Release of Hazardous Materials, CSXT shall remediate or cause to be remediated such Release of Hazardous Materials to the extent required by Environmental Laws utilizing institutional and engineering controls to achieve an industrial/commercial level of remediation consistent with the use of the Segments for railroad purposes, the initial cost for which shall be borne by CSXT; provided, however, that CSXT shall remain entitled to pursue any right or remedy to which it is entitled at law or equity against any person or entity, including DRPT, for the recovery of such cost, and damages, if any, sustained by CSXT, provided, further that if CSXT is determined, by final judgement, after all appeals, to be at fault for the Release of Hazardous Materials, CSXT shall indemnify, but not defend, DRPT for the categories of loss or damage identified in Section 18.2.1.1-18.2.1.3, proximately caused by the Release of Hazardous Materials.

18.4 Limitation on CSXT Indemnity. Notwithstanding Section 18.2 (*CSXT Liability*) or Section 18.3 (*Losses or Claims for a Release of Hazardous Materials*), CSXT has no duty to indemnify, defend or hold harmless the Commonwealth Indemnitees against (i) Commission Liabilities, (ii) Amtrak Liabilities, (iii) BBRC Liabilities, (iv) New Operator Liabilities, or (v) any loss for which DRPT is entitled to indemnity under any DRPT agreement with any entity other than CSXT. Nothing in Section 18.2 (*CSXT Liability*) or Section 18.3 (*Losses or Claims for a Release of Hazardous Materials*) is intended to reduce, enlarge, or modify CSXT's right to indemnity under the Operating Agreement (CSXT/Commissions), Operating Agreement (CSXT/Amtrak), BBRC Lease Agreement, or any New Operator Agreement. CSXT's right to

indemnity from the Commissions, Amtrak, BBRC, or any New Operator shall be governed by the provisions of the applicable agreement between CSXT and the corresponding entity.

18.5 Remedies at Law or in Equity. Nothing in this ARTICLE 18 (*Indemnification*) shall in any way preclude either Party from pursuing remedies at law or in equity against the other Party to recover for damages arising from the acts or omissions of the other Party on the RF&P Corridor or Segment 3, provided, for the avoidance of doubt, that no Commonwealth Indemnatee shall pursue any action or remedy against any CSXT Indemnatee for any liability, regardless of fault, for any losses or claims within the scope of limitations on CSXT's indemnity obligations in Section 18.4 (*Limitation on CSXT Indemnity*), including, without limitation, losses or claims for personal injury or death of any Rail Passenger.

18.6 DRPT Liability. DRPT shall not operate directly any passenger, commuter, or other rail service. Accordingly, DRPT shall obtain, for the benefit of itself and CSXT the following protections:

18.6.1 DRPT shall cause all of its contractors on Segment 1 and Segment 3 other than the Commissions, Amtrak and any New Operator, to indemnify, defend and hold harmless CSXT Indemnitees, regardless of fault, on terms no less favorable to CSXT than those (i) set forth in Section 18.2 (*CSXT Liability*) are to DRPT or (ii) to which DRPT is entitled under any indemnity agreement with the contractor; and

18.6.2 DRPT shall obtain and maintain insurance in lieu of indemnity in coverages and amounts as set forth in the Joint Operating and Maintenance Agreement for loss, damage, injury, or death of persons or property on Segment 1 or Segment 3, and shall name CSXT as an additional insured with respect to such coverage.

ARTICLE 19 Compliance with Laws

19.1 General. Each Party shall be responsible for compliance with any Laws that apply to its operations, and shall bear, except as may be specified in the Definitive Agreements, the costs of any fines or penalties imposed by authorities with jurisdiction over the operation for failure to comply with any such regulations. Subject to the foregoing, to the extent permitted by Law, DRPT may delegate responsibility for compliance with any such Law to the passenger operator(s) using the trackage and other infrastructure facilities conveyed to DRPT. No such delegation by DRPT shall relieve DRPT of its liabilities to CSXT under this Agreement or any Definitive Agreement.

19.2 Regulatory Approval. DRPT and CSXT shall take all reasonably necessary steps to secure the determination of the STB that the STB has no jurisdiction over any of the transactions contemplated in this Agreement, or over any of the transactions contemplated in any Ancillary Agreement.

19.2.1 The Parties agree that they shall cooperate with each other in connection with all filings made with the STB and that neither Party shall make any filing with the STB related to this Transaction without first having delivered a copy of such filing to the other Party at least three (3) days before such filing is made. DRPT shall file a notice of exemption and motion to dismiss the notice in order to secure an STB decision that the transactions contemplated in this

Agreement, or in any of the transactions contemplated in any Ancillary Agreement contemplated by this Agreement are not subject to STB decision.

19.2.2 Either Party shall have the unilateral right to terminate and rescind this Agreement prior to the Closing, if:

19.2.2.1 the STB shall have found any of the transactions contemplated in this Agreement require STB authorization; and

19.2.2.2 the STB shall have imposed any conditions, including labor protective conditions, which either Party in its sole and absolute discretion deems unacceptable; or

19.2.2.3 any of the transactions shall have been stayed or enjoined by the STB or by any court; or

19.2.2.4 any claim, litigation, labor dispute or work stoppage shall be threatened or pending in connection with any of the transactions contemplated in this Agreement and any agreement to be executed in connection herewith.

19.3 Legislative Approval. The Parties agree to take all reasonably necessary steps, including cooperation with one another, to secure any and all legislative approvals necessary for the consummation of the Transaction.

ARTICLE 20 Consents

Any costs associated with (i) obtaining Consent from Amtrak and (ii) filing and other administrative fees charged by STB associated with obtaining the approval described in Section 19.2 (*Regulatory Approval*) shall be the responsibility of DRPT. Otherwise, any costs associated with obtaining Consent from a Governmental Authority shall be shared equally between the Parties; *provided*, however, this provision shall not apply to legal fees or consultant fees associated with obtaining the approval described in Section 19.2 (*Regulatory Approval*) and 19.3 (*Legislative Approval*), which legal and consultant fees shall be borne by each Party for itself, respectively.

ARTICLE 21 Funding Agreements

The Parties agree to work cooperatively and creatively to reach agreements as may be required for DRPT to satisfy the requirements of Amtrak or any federal or state agency that provides funds in support of the Transaction. Notwithstanding the foregoing, nothing in this Agreement or the Ancillary Agreements, expressed or implied, shall be construed as to commit CSXT to accept any future proposed federal investments in the Corridor or to agree to any service outcome in any agreement.

ARTICLE 22 Assignment

22.1 Assignment by DRPT. In addition, and subject, to the provisions of Section 1.6 (*Assignment and Assumption by Virginia Passenger Rail Authority*), this Agreement may be

assigned by DRPT to another agency of the Commonwealth or to an authority or commission authorized by the Virginia General Assembly or the Governor of Virginia to undertake DRPT's obligation and the activities contemplated by this Agreement and all Ancillary Agreements.

22.2 Tax Deferred Exchange by CSXT. CSXT expressly reserves the right, at its option, to consummate the sale of its interest in any or all of the Segments or in any one or more portions of the Segments (the "Exchange Property") as a tax deferred, like-kind exchange pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended (the "Tax Deferred Exchange"). If CSXT elects to undertake a Tax Deferred Exchange, (a) CSXT shall so notify DRPT and, on or before the Closing for the Exchange Property, CSXT shall assign its rights and duties under this Agreement relating to the Exchange Property to a qualified intermediary as defined by Treasury Regulation Section 1.1031(k)-1(g)(4) and as selected by CSXT, and DRPT hereby consents to such assignment, (b) DRPT shall cooperate as reasonably requested by CSXT in the Tax Deferred Exchange, including paying the Purchase Price or any portion thereof into a qualified escrow or qualified trust account at the Closing, executing and delivering all documents which reasonably may be required to effectuate the Tax Deferred Exchange and treating the qualified intermediary as the valid assignee of CSXT's interest hereunder with respect to the Exchange Property, (c) CSXT shall pay any additional costs and shall be responsible for any additional liabilities, claims and damages that would not otherwise have been incurred by DRPT had CSXT not consummated the sale of the Exchange Property through a Tax Deferred Exchange and (d) the Tax Deferred Exchange shall not reduce or modify any of CSXT's obligations to DRPT or any of DRPT's rights and remedies under this Agreement.

22.3 Other Assignments by CSXT. CSXT expressly reserves the right to assign or delegate all or any part of CSXT's rights and duties hereunder with respect to all or any of the Segments to one or more third parties, including without limitation, (i) in connection with the sale of all or substantially all of CSXT's assets, (ii) in a merger or restructuring event or (iii) in a transaction pursuant to Section 14.7.3 (*Companion Agreement – Buckingham Branch Lease Agreement; Segment 3 Easement*) (any of the foregoing CSXT assignments described in clauses (i) through (iii) or in connection with a Tax Deferred Exchange, a "Permitted Assignment"), provided, however, that except for a Permitted Assignment, any such assignment and/or delegation shall be subject to the consent of DRPT, such consent not to be withheld or delayed unreasonably.

ARTICLE 23 Brokerage Commission

All negotiations relative to this Agreement and the purchase and sale of the rights and interests in the Corridor have been conducted between CSXT and DRPT without the intervention of any Person or other party as agent or broker. CSXT and DRPT each warrant and represent to the other that there are and will be no broker's commissions or fees payable in connection with this Agreement or the purchase and sale of the rights and interests in the Corridor by reason of their respective dealings, negotiations or communications. DRPT agrees to pay for all claims, demands, actions and judgments of any and all brokers, agents and other intermediaries alleging a commission, fee or other payment to be owing by reason of DRPT's dealings, negotiations or communications in connection with this Agreement or the purchase and sale of the rights and interests in the Corridor. CSXT agrees to pay for all claims, demands, actions and judgments of any and all brokers, agents and other intermediaries alleging a commission, fee or other payment

to be owing by reason of CSXT's dealings, negotiations or communications in connection with this Agreement or the purchase and sale of the rights and interests in the Corridor.

ARTICLE 24 Dispute Resolution

24.1 Generally.

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

24.1.2 Upon the occurrence of any Dispute that is not otherwise resolved by the Parties:

(a) the Parties must first use all reasonable efforts to resolve the Dispute through a Senior Representative Negotiation in accordance with Section 24.2 (*Senior Representative Negotiations*); and

(b) if the Parties fail to achieve a resolution through a Senior Representative Negotiation, before either Party may institute legal action against the other in connection with the Dispute, the Parties must first attempt to resolve the Dispute by referring the matter to a Mediation in accordance with Section 24.3 (*Mediation*).

24.2 Senior Representative Negotiations.

24.2.1 If either Party notifies the other Party of a Dispute, senior representatives of each Party (with authority to make decisions for the respective Parties) must meet and use all reasonable efforts to resolve the Dispute ("**Senior Representative Negotiations**").

24.2.2 The Senior Representative Negotiation must commence within seven (7) days of receipt of notification from a Party initiating a Dispute and will not exceed thirty (30) consecutive days (or such longer period agreed by the Parties).

24.2.3 Statements, materials and information prepared for, made or presented at, or otherwise derived from a Senior Representative Negotiation (including any meeting of the senior representatives) are privileged and confidential and may not be used as evidence in any proceedings.

24.2.4 If the Senior Representative Negotiation resolves the Dispute, the Parties must record the resolution in writing.

24.3 Mediation.

24.3.1 If the Parties are unable to come to a resolution through Senior Representative Negotiations, then the Parties shall submit such Dispute to mediation proceedings (a "**Mediation**"). Mediation is intended to assist the Parties in resolving Disputes over the correct interpretation of this Agreement.

24.3.2 The mediator must be selected by mutual agreement of the Parties or, if an agreement cannot be reached by the Parties within seven (7) Business Days of submission of the Dispute to Mediation, the mediator must be selected by the American Arbitration Association (“AAA”) in accordance with its Commercial Industry Mediation Rules and Procedures then in effect. Any mediator selected by mutual agreement of the Parties or through the AAA selection process must have no current or ongoing relationship with either Party (or an Affiliate of either Party). The Parties agree that only one (1) mediator shall be selected as the AAA mediator.

24.3.3 Each Mediation must:

(a) be administered in accordance with AAA’s Commercial Industry Mediation Rules and Procedures then in effect;

(b) be held in Richmond, Virginia, unless the Parties mutually agree, in writing, to the Mediation being held in a different location;

(c) be concluded within thirty (30) days of the date of selection of the mediator, or within such other time period as may be agreed by the Parties (acting reasonably having regard to the nature of the Dispute).

24.3.4 The Parties shall share the mediator’s fee and any filing or administrative fees equally.

24.3.5 No mediator will be empowered to render a binding decision as to any Dispute. Any Mediation will be nonbinding.

24.4 **Forum and Venue.** Any and all Disputes arising out of or in connection with this Agreement, or any performances made hereunder that are not otherwise resolved through Senior Representative Negotiations or Mediation, shall be brought, and any judicial proceeding shall take place, only in the Circuit Court of the City of Richmond, Virginia or the United States District Court for the Eastern District of Virginia, Richmond Division. CSXT accepts the personal jurisdiction of such court and waives all jurisdiction and venue-related defenses to the maintenance of such actions.

24.5 **Discretion and Agreement.** Certain matters in this Agreement and the Ancillary Agreements have been reserved to the discretion of one Party or the mutual agreement of the Parties. With respect to such matters, the Parties agree that any and all Disputes brought in a judicial proceeding pursuant to the provisions of Section 24.4 (*Forum and Venue*) shall be subject to the following standards of review:

(a) except as set forth in (b) below, the standard of review to be utilized by a court adjudicating such a Dispute shall be based on whether a Party acted in a manner that was arbitrary or capricious, or failed to comply with its obligations under Section 1.8 (*Cooperation and Good Faith Undertakings*), which, for the avoidance of doubt, the Parties agree shall not impose, under this subsection (a), a reasonableness standard with respect to matters reserved to the discretion of one Party or the mutual agreement of the Parties, when (1) granting or denying a consent or approval subject to its discretion or (2) agreeing or disagreeing to a matter subject to the mutual agreement of the Parties; and

(b) with respect to matters in which a Party's discretion to act or the Parties' mutual agreement is qualified by an express agreement to either, or both, (1) act in a commercially reasonable manner or (2) not unreasonably withhold, condition or delay an approval, consent or mutual agreement, the standard of review to be utilized by a court in adjudicating such a Dispute shall be based on whether a Party or the Parties, as applicable, acted in a commercially reasonable manner, or has or have failed to comply with its or their obligations under Section 1.8 (*Cooperation and Good Faith Undertakings*).

24.6 Similar Provisions. Each Ancillary Agreement shall contain similar provisions not inconsistent with this ARTICLE 24 (*Dispute Resolution*).

ARTICLE 25 Notices

Notice under this Agreement shall be in writing and sent by Registered or Certified Mail, Return Receipt Requested, or by courier, express or overnight delivery, and by confirmed e-mail.

The date such notice shall be deemed to have been given shall be the Business Day of receipt if received during business hours, the first Business Day after the Business Day of receipt if received after business hours on the preceding Business Day, the first Business Day after the date sent by courier, express or overnight ("next day delivery") service, or the third Business Day after the date of the postmark on the envelope if mailed, whichever occurs first.

If to CSXT:

CSX Transportation, Inc.
c/o Real Estate – J-180
500 Water Street, 12th Floor
Jacksonville, FL 32202
Attn: Dona Jadwin
E-mail: Dona_Jadwin@csx.com
Phone: (904) 279-4263

With a Copy to:

CSX Transportation, Inc.
c/o Law Department – J-150
500 Water Street, 14th Floor
Jacksonville, FL 32202
Attn: Assistant General Counsel
E-mail: sean.craig@csx.com
Phone: (904) 366-5005

If to DRPT:

Virginia Department of Rail and
Public 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 26 Miscellaneous

26.1 **Governing Law.** This Agreement shall be construed and interpreted under the Laws of the United States of America and the Commonwealth.

26.2 **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.

26.3 **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.

26.4 **Condemnation.** No provision of this Agreement shall be construed to limit or expand the power of eminent domain vested in either Party by Law.

26.5 **Entire Agreement.** Except as the Parties may otherwise agree in writing, this Agreement (including all exhibits, which are to be considered a part of the Agreement) contains the entire agreement of the Parties hereto with respect to the purchase and sale of the rights and interests in the Corridor and 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 shall be of any force or effect. Any previous agreements or understandings among the Parties regarding the subject matter hereof, including, without limitation, the Term Sheet, are merged into and superseded by this Agreement.

26.6 **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective personal representatives, successors and assigns.

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

26.8 **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.

26.9 **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.

26.10 **Availability of Funds for DRPT's Performance.** Payments by DRPT of amounts due and owing by DRPT pursuant to, and accruing from, this Agreement shall be subject to and dependent upon appropriation being made from time to time by the Virginia General Assembly and allocation by the Commonwealth Transportation Board. Because such appropriation is outside the control of DRPT, any failure to appropriate funds by the Virginia General Assembly, in and of itself, will not constitute a default by DRPT under this Agreement, but CSXT shall be entitled to all rights and remedies available to it under this Agreement at Law or in equity from the non-payment of amounts due and accruing from this Agreement as if the failure to make such payments were a default.

26.11 **Time is of the Essence.** With respect to Section 2.2 (*Purchase Price*), Section 5.1 (*Title Examination*), Section 16.1 (*Due Diligence*), and any cure period, time is of the essence.

[Remainder of page intentionally left blank]

EXECUTED by DRPT and CSXT as of the date first written above.

**VIRGINIA DEPARTMENT OF RAIL
AND PUBLIC TRANSPORTATION**

By: _____

Name: _____

Title: _____

CSX TRANSPORTATION, INC.

By:  _____

Name: Christina W. Bottomley

Title: Head of Real Estate

EXECUTED by DRPT and CSXT as of the date first written above.

**VIRGINIA DEPARTMENT OF RAIL
AND PUBLIC TRANSPORTATION**

By: Jennifer L. Mitchell

Name: Jennifer L. Mitchell

Title: Director

CSX TRANSPORTATION, INC.

By: _____

Name: _____

Title: _____