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Office of Proceedings
May 17, 2024
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May 17, 2024

VIA-E-FILE

Ms. Cynthia T. Brown
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Re: CSX Corporation, et al. – Control and Merger – Pan Am Systems, Inc., et al., STB Docket No. FD 36472
Norfolk Southern Railway – Trackage Rights Exemption – CSX Transportation, Inc., STB Docket No. FD 36472 (Sub-No. 1)
Norfolk Southern Railway – Trackage Rights Exemption – Boston & Maine Corp., STB Docket No. FD 36472 (Sub-No. 3)
Norfolk Southern Railway – Trackage Rights Exemption – Pan Am Southern LLC, Docket No. FD 36472 (Sub-No. 4)

Dear Ms. Brown:

Norfolk Southern Railway Company (“NSR”) notifies the Surface Transportation Board (“STB” or “Board”) that as of May 8, 2024, NSR and CSX Transportation, Inc. (“CSXT”) have executed three of the four agreements covering trackage rights granted by the Board in Decision No. 9 served on April 14, 2022, in three related transactions embraced within the Board’s CSX Corporation, et al. – Control and Merger – Pan Am Systems, Inc., et al., Docket No. 36472, proceedings. A protective order was imposed by a decision of the Office of Proceedings served March 3, 2021.

Specifically, pursuant to 49 C.F.R. § 1180.6(a)(7)(ii), NSR hereby submits to the Board a public version (with redactions) and an unredacted highly confidential version (filed under seal) of the following three documents:

- Trackage Rights Agreement between CSX Transportation, Inc. and Norfolk Southern Railway Company, for the movement of one train in each direction per calendar day carrying intermodal and automotive vehicle traffic (the “Subject Traffic”) between Voorheesville, NY and Worcester, MA, as approved by the STB in Norfolk Southern Railway – Trackage Rights Exemption – CSX Transportation, Inc., Docket No. FD 36472 (Sub-No. 1).

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- Trackage Rights Agreement between Boston & Maine Corporation and CSX Transportation, Inc., as successor by merger to Springfield Terminal, Inc. and Norfolk Southern Railway Company, for the movement of the Subject Traffic between Barbers Station, MA and Harvard, MA, as approved by the STB in Norfolk Southern Railway – Trackage Rights Exemption – Boston & Maine Corp., Docket No. FD 36472 (Sub-No. 3).
- Trackage Rights Agreement between Pan Am Southern LLC and Norfolk Southern Railway Company, for the movement of the Subject Traffic between Harvard, MA and Ayer, MA, as approved by the STB in Norfolk Southern Railway – Trackage Rights Exemption – Pan Am Southern LLC, Docket No. FD 36472 (Sub-No. 4).

Not being submitted at this time is the trackage rights agreement between NSR and Providence & Worcester Railroad (“P&W”) for the movement of the Subject Traffic between Worcester and Barbers Station, because that trackage rights agreement continues to be under negotiation. NSR will submit that agreement to the Board upon execution. Overall, the four approved trackage rights agreements will provide NSR with a through route between Voorheesville, NY and Ayer, MA.

The trackage rights agreement between NSR and Boston & Maine Corp. (“B&M”) (Docket No. 36472 (Sub-No. 3)) has different milepost designations than those described in the Board’s Decision No. 9, which described the mileposts as bridging the gap between a connection with the P&W (milepost X 2.92 at Barber, MA), and a connection with the PAS (milepost X 25.0 at Harvard, MA). The agreement includes the same endpoints, but the mileposts have since been changed to WOR 23.0 (which previously was designated as X 2.92) and WOR 1.0 (which previously was designated as X 25.0). The effect of the change in designations reflects a more accurate geosynchronous location of the endpoints, with the measured distance being 0.1 miles shorter, but the effect of that change does not affect the route or continuity of the through trackage rights granted to NSR in Decision No. 9.

Should there be any questions concerning this submission, please contact me directly, either by telephone (202-663-7823) or by email wmullins@mullinslawgroup.net.

Respectfully submitted,

/s/ **William A. Mullins**

William A. Mullins
Counsel for Norfolk Southern Railway
Company

Enclosures
cc: Parties of Record

TRACKAGE RIGHTS AGREEMENT
Between
PAN AM SOUTHERN LLC
and
NORFOLK SOUTHERN RAILWAY COMPANY

THIS TRACKAGE RIGHTS AGREEMENT (the “Agreement”) entered into as of this 8th day of May 2024, between Pan Am Southern LLC, a Delaware limited liability company, (“PAS”), and Norfolk Southern Railway Company, a Virginia corporation (“NSR” and collectively with PAS, the “Parties”).

WHEREAS, the Parties desire to enter into a formal Trackage Rights Agreement to allow NSR’s movement of one train in each direction per calendar day (a “Train Pair”) carrying intermodal and automotive vehicles traffic no longer than 9,000-feet plus locomotives meeting the clearance requirements of CSX Transportation, Inc. (“CSXT”), not exceeding the siding capacity between CSXT’s line between Schenectady and Harvard, and sufficiently powered to maintain maximum track speed on the Subject Trackage as defined in Article 1 (the “Subject Traffic”) between approximately Harvard, MA, at or near milepost X 25.0, and Ayer, MA, at or near milepost X 28.01, as part of a route between approximately Voorheesville, NY, and Ayer, MA.

WHEREAS, NSR and CSXT have entered a Trackage Rights Agreement dated as of May 8, 2024 to allow NSR’s movement of the Subject Traffic between approximately Voorheesville, NY at or near milepost QG 22.5, and Worcester, MA, at or near milepost QB 44.5.

WHEREAS, NSR and Providence and Worcester Railroad Company have entered a Trackage Rights Agreement dated as of _____, 2024 to allow NSR’s movement of the Subject Traffic between Track 1 extending from the east side of Green Street to the point of merger of said Track 1 and the Main Track so called at milepost 1.05, south of Garden Street, and over the Main Track thereafter from milepost 1.05 to P&W’s Gardner Branch baseline station 153 + 50, which is the point of connection with the tracks of Boston and Maine Corporation (“B&M”) at Barbers Station at milepost 2.90, all such track located in the City of Worcester, Commonwealth of Massachusetts, as part of a route between approximately Voorheesville, NY, and Ayer, MA.

WHEREAS, NSR, B&M, and CSXT, as owner of B&M and successor by merger to Springfield Terminal Railroad Company (“ST”), have entered a Trackage Rights Agreement dated as of May 8, 2024 to allow NSR’s movement of the Subject Traffic between Barbers Station, MA, milepost WOR 23.0 (previously X 2.92) and Harvard, MA, milepost WOR 1.0 (previously X 25.0) (the “B&M Trackage Rights”).

WHEREAS, the trackage rights anticipated herein were approved by the Surface Transportation Board in a decision served April 14, 2022 in Norfolk Southern Railway—Trackage Rights Exemption—Pan Am Southern LLC, Docket No. FD 36472 (Sub-No. 4);

NOW, THEREFORE, PAS and NSR, in consideration of the covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, intending to be legally bound, agree as follows:

ARTICLE 1. GRANT OF TRACKAGE RIGHTS

Subject to the terms and conditions herein provided, PAS hereby grants to NSR the right to operate the Subject Traffic (locomotives, cars, and equipment in NSR's revenue waybill account) with its own crews over the following segments of PAS's railroad (hereinafter referred to as the "Trackage Rights"):

Over PAS's mainline between approximately Harvard, MA (at or near milepost X 25.0) and Ayer, MA, (at or near milepost X 28.01), (inclusive of appurtenant passing tracks and sidings, the "Subject Trackage") (a total distance of approximately 3.01 miles). The grant of Trackage Rights to NSR will be limited to handling the Subject Traffic to/from and across the Subject Trackage.

NSR's use of the Subject Trackage shall be in common with PAS and any other user of the Subject Trackage, and PAS's right to use the Subject Trackage shall not be diminished by this Agreement.

Except as may otherwise be provided by the Trackage Rights, NSR shall not use any part of the Subject Trackage for the purpose of providing haulage to a third party, crew changes, switching, storage, or servicing cars or the making or breaking up of trains, except that nothing contained herein shall, upon prior approval of PAS, preclude the emergency use by NSR of such auxiliary tracks as may be designated by PAS for such purposes.

PAS shall have exclusive control of the management and operation of the Subject Trackage. NSR shall not have any claim against PAS for liability account of loss or damage of any kind in the event the use of the Subject Trackage by NSR is interrupted or delayed at any time from any cause.

NSR's entry to and exit from the Subject Trackage shall be governed by the instructions of PAS's dispatcher.

NSR shall have the right to operate in either direction over the Subject Trackage.

ARTICLE 2. RESERVED

ARTICLE 3. RESTRICTION ON USE

The Trackage Rights herein granted are granted for the sole purpose of NSR using same for transporting the Subject Traffic across the Subject Trackage. NSR shall not perform any local freight service whatsoever at any point located on the Subject Trackage.

ARTICLE 4. MISCELLANEOUS SPECIAL PROVISIONS

- A. When operating over the Subject Trackage, NSR's locomotives and crews shall be equipped to communicate with PAS on radio frequencies normally used by PAS in directing train movements on the Subject Trackage.
- B. Procedures for qualification and occupancy of the Subject Trackage shall be arranged by the local supervision of each carrier, provided, however, that NSR will request and CSXT will grant NSR rights to begin qualifying crews over the route as early as June 1, 2024.
- C. All control and usage shall be subject to the approval of PAS's representative or his or her designee.
- D. Prior to commencing operations over the Subject Trackage, the Parties must complete and place into operation the Projects described in the Project Engineering and Construction Agreement dated May 2, 2023, and the Project Engineering and Construction Agreement dated December 5, 2023.

ARTICLE 5. COMPENSATION

A. {{

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B. {{

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C. {{

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ARTICLE 6. REVISION OF COMPENSATION

Compensation shall be revised pursuant to the terms of the Compensation Provisions.

ARTICLE 7. PAYMENT OF BILLS

- A. All payments called for under this Agreement shall be made by NSR within thirty (30) days after receipt of bills therefore. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the Parties hereto shall be adjusted in the accounts of a subsequent month. The records of each Party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other Party for a period of three (3) years from the date of billing.
- B. Bills rendered pursuant to the provisions of this Agreement, other than those set forth in Article 5, shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals as specified by PAS at the time any work is performed by PAS for NSR.

ARTICLE 8. MAINTENANCE OF SUBJECT TRACKAGE

- A. PAS shall maintain, repair and renew the Subject Trackage with its own supervision and labor. PAS shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, but PAS does not guarantee the condition of the Subject Trackage or that operations thereover shall not be interrupted. PAS shall take all reasonable steps to ensure that any interruptions shall be kept to a minimum. Furthermore, except as may be otherwise provided in Article 14, NSR shall not by reason of failure or neglect on the part of PAS to maintain, repair or renew the Subject Trackage, have or make any claim or demand against PAS or its owners, subsidiaries or affiliates, or their respective directors, officers, agents or employees for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by NSR resulting from any such failure or neglect.
- B. PAS shall perform, at the expense of NSR, such additional maintenance as NSR may reasonably require or request.
- C. Bills rendered pursuant to the provisions of the Trackage Rights, other than those set forth in Article 5, shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals as specified by PAS at the time any work is performed by PAS for NSR.

ARTICLE 9. CONSTRUCTION AND MAINTENANCE OF NEW CONNECTIONS

- A. Existing connections or facilities that are jointly used by the Parties hereto shall continue to be maintained, repaired and renewed by and at the expense of the Party or Parties responsible for such maintenance, repair and renewal under such agreements.
- B. Any additional connections to the Subject Trackage beyond those addressed in Article 4C, which may be required shall be subject to the PAS's approval (including design) and shall be constructed, maintained, repaired and renewed as follows:
 - (i). NSR or others shall furnish all labor and material and shall construct, maintain, repair and renew at its sole cost and expense such portions of the tracks located on the right-of-way of NSR or others which connect the respective lines of the Parties hereto.
 - (ii). PAS shall furnish all labor and material and shall construct, maintain, repair and renew at the sole cost and expense of NSR such portions of the additional tracks located on the right-of-way of PAS which connect the respective lines of the Parties hereto. Upon termination of this Agreement, PAS may at its option remove the portion of such trackage and appurtenances as may be located on property of PAS, at the sole cost and expense of NSR. The salvage material removed shall be released to NSR or, as otherwise agreed upon, PAS shall credit NSR the current fair market value for said salvage.

ARTICLE 10. ADDITIONS, RETIREMENTS AND ALTERATIONS

- A. Except as provided in Article 4, PAS, from time to time and at its sole cost and expense may make changes in, additions and betterments to or retirements from the Subject Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage.
- B. Except as provided in Article 4, if the Parties agree that changes in or additions and betterments to the Subject Trackage, including changes in communication or signal facilities, are required to accommodate NSR's operations beyond that required by PAS to accommodate its operations, PAS shall construct the additional or altered facilities and NSR shall pay to PAS the cost thereof, including the annual expense of maintaining, repairing and renewing such additional or altered facilities.

ARTICLE 11. MANAGEMENT AND OPERATIONS

- A. NSR shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other federal and state and local laws, regulations and rules respecting the operation, condition, inspection and safety of its trains, locomotives, cars and equipment while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. NSR shall indemnify, protect, defend, and save harmless PAS and its owners, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against all fines, penalties and liabilities imposed upon PAS or its owners subsidiaries or affiliates, or their respective directors, officers, agents and employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable solely to the failure of NSR to comply with its obligations in this regard.
- B. NSR in its use of the Subject Trackage shall comply in all respects with its own safety and general conduct rules, airbrake and train handling rules, and hazardous materials instructions. While using the Subject Trackage, NSR shall comply in all respects with the operating rules, timetables, equipment handling rules and special instructions of PAS, and the movement of NSR's trains, locomotives, cars, and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of PAS; provided, however, that such operating rules, timetables, and special instructions and orders of the transportation officers of PAS shall not unjustly discriminate between the Parties. PAS will not make any rule or restriction applying to NSR's trains that does not apply equally to PAS's trains. NSR's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage, and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by PAS's operating rules and regulations, without the prior consent of PAS. The Parties shall make proper accommodation for exceptions, should that be reasonable, necessary and practicable. All NSR trains shall be powered to permit operation at the maximum track speed allowed for the Subject Trackage's class of track.
- C. NSR shall make such arrangements with PAS as may be required to have all of its employees who shall operate its trains, locomotives, cars, and equipment over the Subject Trackage qualified for operation thereover, and NSR shall pay to PAS, upon receipt of bills therefor, any reasonable cost incurred by PAS in connection with the qualification of such employees of NSR, as well as the reasonable cost of pilots furnished by PAS, until such time as such employees are deemed by the appropriate examining officer of PAS to be properly qualified for operation as herein contemplated, such determination not to be unreasonably withheld, conditioned or delayed.

- D. The trains, locomotives, cars and equipment of NSR, PAS, and any other present or future user of the Subject Trackage or any portion thereof, shall be operated without prejudice or partiality to either Party and in such manner as shall afford the most economical and efficient manner of movement of all traffic.
- E. In the event that a train of NSR shall be forced to stop on Subject Trackage, and such stoppage is due to insufficient hours of service remaining among NSR's crew, or due to mechanical failure of NSR's equipment, or any other cause not resulting from an accident or derailment, and such train is unable to proceed, or if a train of NSR fails to maintain the speed required by PAS on the Subject Trackage, or if in emergencies, crippled or otherwise defective cars are set out of NSR's trains on the Subject Trackage, PAS shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew NSR's train) as may be necessary to haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off the Subject Trackage, and NSR shall reimburse PAS for the actual cost of rendering any such assistance.
- F. If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, PAS shall have the option to perform such work, and NSR shall reimburse PAS for the actual cost thereof.
- G. {{
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- H. PAS shall have the right to exclude from its tracks any employee of NSR, except officers, determined by PAS to be in violation of PAS's rules, regulations, orders, practices, or instructions promulgated in the normal course of business in writing by PAS in its timetable or otherwise, and provided in advance to NSR. The decision to bar any employee of NSR from its tracks will not be interpreted as a request for NSR to fire the individual(s). NSR shall release, indemnify, defend, and save harmless PAS from and against any and all claims and expenses resulting from such exclusion.

ARTICLE 12. MILEAGE AND CAR HIRE

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

ARTICLE 13. CLEARING OF WRECKS

Whenever NSR's use of the Subject Trackage requires rerailing, wrecking service or wrecking train service, PAS shall perform or provide such service, including the repair and restoration of roadbed, track, and structures so as to minimize the impact on PAS and NSR operations. The cost, liability, and expense of the foregoing, including without limitation loss of, damage to, or destruction of any property whatsoever and injury to and death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting there from, shall be apportioned in accordance with the provisions of Article 14 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which are owned by or under the management and control of or used by PAS at the time of such wreck, shall be promptly delivered to NSR.

ARTICLE 14. LIABILITY

- A. Without changing the responsibility for the provision of emergency services as set forth in Article 13, the responsibility and liability between the Parties for: (i) any personal injury or death of any person (including employees of the Parties and third persons), (ii) any real or personal property damage of any person (including property of the Parties and third persons), (iii) any damage or destruction to the environment (including land, air, water, wildlife and vegetation), and (iv) all cleanup and remedial expenses, court costs, settlements, claims, judgments, litigation expenses, and reasonable attorneys' fees resulting from the use of the Subject Trackage by either Party as described herein, all of which are collectively referred to as a "Loss", shall be allocated as follows:
1. If a Loss results from use of the Subject Trackage involving the trains, locomotives or other units of motive power (hereinafter in Article 14, "Locomotives"), cars, and/or equipment of only one Party, then such Party shall be solely responsible for the Loss, even if caused partially or completely by the other Party.
 2. Losses involving the trains, Locomotives, cars, and/or equipment of both Parties.
 - a. Except as otherwise provided in Subarticle 14.A.2.b, below, if a Loss results from use of the Subject Trackage involving the trains, Locomotives, cars, and/or equipment of both PAS and NSR, then: (A) each Party shall be solely responsible for any Loss to its own employees, trains, Locomotives, equipment, and cars in its own account including lading and (B) responsibility for any Loss to the Subject Trackage and Loss sustained by third parties shall be divided equally between the two Parties, regardless of the proportionate responsibility between them as to the cause of the Loss.

- b. If any damage to the environment, including without limitation land, air, water, wildlife, and vegetation, results from use of the Subject Trackage involving both PAS's and NSR's trains, Locomotives, cars, and/or equipment, then as between themselves, (A) PAS shall be solely responsible for any damage or destruction to the environment and to third parties which results solely from a substance transported in PAS's cars and equipment and/or PAS's Locomotive(s) from which there is a release, (B) NSR shall be solely responsible for any damage or destruction to the environment and to third parties that results solely from a substance transported in NSR's cars and equipment and/or NSR's Locomotive(s) from which there was a release, and (C) PAS and NSR shall be responsible, in proportion to the total number of Locomotives, cars, and/or equipment of each Party from which there was a release, for any damage or destruction to the environment (including exacerbation of existing conditions) and to third parties that results from one or more substances transported in cars or equipment in the revenue waybill and car hire accounts or Locomotives of both PAS and NSR from which there were releases.
- 3. If a Loss results from use of the Subject Trackage involving the trains, Locomotives, cars, and/or equipment only one of the Parties and one or more third parties, then such Party hereto shall be solely responsible for such Loss as between the Parties.
- B. If a Loss occurs other than one resulting from the use of the Subject Trackage by the trains, Locomotives, cars, and/or equipment of either PAS or NSR, then each of PAS and NSR is solely responsible for any Loss to its own employees, trains, Locomotives, cars, and/or equipment, even if caused partially or completely by the other Party.
- C. Except as provided in Subarticle 11.G and Subarticle 18 B, each Party agrees to indemnify and hold harmless the other Party and its parent corporation, subsidiaries and affiliates, and any or all their respective directors, officers, agents and employees from and against any and all costs and payments, including benefits, allowances and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of its own employees pursuant to a collective bargaining agreement. It is the intention of the Parties that each Party shall bear the full costs of grievances filed by its own employees arising under its collective bargaining agreements with its employees. Similarly, each Party agrees to indemnify and hold harmless the other Party against any and all costs and payments, including judgments, damages, attorneys' fees and litigation expenses, arising out of claims, lawsuits and actions brought by or on behalf of its own employees pursuant to any provision of law, including common law, and based on

employment arising out of the operations covered by this Agreement, except to extent otherwise specifically provided in this Agreement.

- D. Whenever any Loss is assumed by or apportioned to a Party under the foregoing provisions, that Party shall forever protect, defend, indemnify, and save harmless the other Party and its parent corporation, subsidiaries and affiliates, and any and all of their respective directors, officers, agents, and employees from and against such Loss assumed by that Party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of the indemnitee or its directors, officers agents, or employees.
- E. In every case of death or injury suffered by an employee of either NSR or PAS, when compensation to such employees or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employers' liability or other law, and either of said Parties, under the provisions of this Agreement, is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such Party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.
- F. For purposes of determining liability, pilots furnished by PAS to NSR pursuant to this Agreement shall be considered as the employees of NSR while such employees are on duty as pilots for NSR.
- G. If any suit or action shall be brought against either Party for damages which under the provisions of this Agreement are in whole or in part the responsibility of the other Party, said other Party shall be notified in writing by the Party sued, and the Party so notified shall have the right and be obligated to take part in the defense of such suit and shall pay a proportionate part of the judgment and costs, expense and attorneys' fees incurred in such suit according to its liability assumed hereunder.
- H. In the event of a Loss as set out herein, the Parties shall be bound by the Freight Claim Rules, Principles, and Practices of the AAR as to the handling of any claims for the loss or damage to lading.
- I. Notwithstanding any provision of this Agreement to the contrary, for the purpose of this Article 14, the word "equipment" shall mean and be confined to (i) cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks that, at the time of an occurrence, are being operated on the Subject Trackage, and (iii) vehicles and machinery that, at the time of an occurrence, are on the Subject Trackage or its right of way for the purpose of maintenance or repair thereof or the clearing of wrecks thereon.
- J. Notwithstanding any and all of the forgoing provisions of this Article 14, in the event a Loss occurs while the Subject Trackage is being used by PAS and/or NSR,

and such Loss is attributable solely to the willful or wanton negligence of only one of the Parties to this Agreement, then the Party which was so willfully or wantonly negligent shall be solely responsible for such Loss. The Parties shall submit disputes involving the determination of whether a Loss is attributable solely to the willful or wanton negligence of one of the Parties to this Agreement, but no other disputes under this Agreement, to binding arbitration under the commercial arbitration rules of the American Arbitration Association.

- K. Notwithstanding any provision of this Agreement to the contrary and regardless of the nature of the cause of action (whether in contract, tort or otherwise), in no event shall either Party be liable to the other Party for any incidental, special, indirect, consequential or punitive damages whatsoever (including but not limited to lost profits, business interruption expenses, lost use of equipment, liability to a Party's customers for liquidated damages or other damages) arising out of or related to the activities contemplated by this Agreement, even if advised of the possibility of such damages. Except as otherwise provided in Subarticle 14.G and 15.D hereof, under no circumstances shall either Party be entitled to recover its attorneys' fees and legal cost and expenses from the other Party for a dispute arising out of this Agreement.

ARTICLE 15. CLAIMS

- A. Except as provided in Subarticle B below, all claims, injuries, death, and property damages and losses arising out of or connected with this Agreement shall be investigated, adjusted, and defended by the Party bearing the liability, cost, and expense therefore under the provisions of this Agreement.
- B. Each Party shall investigate, adjust, and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11706.
- C. In the event a claim or suit is asserted against PAS or NSR which is the other's duty hereunder to investigate, adjust or defend, then, unless otherwise agreed, such other Party shall, upon request, take over the investigation, adjustment and defense of such claim or suit.
- D. All costs and expenses in connection with the investigation, adjustment and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time agents, full-time attorneys and other full-time employees of either Party engaged directly or indirectly in such work shall be borne by such Party.
- E. Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11706, neither Party shall settle or compromise any claim, demand, suit or cause of action for which the other Party has any liability under this Agreement

without the concurrence of such other Party if the consideration for such settlement or compromise exceed. {{ }}

- F. Each Party agrees to indemnify and hold harmless the other Party and its parent corporation, subsidiaries and affiliates, and all their respective directors, officers, agents and employees from and against any and all costs and payments, including benefits, allowances and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of its own employees, either pursuant to a collective bargaining agreement or employee protective conditions imposed by a governmental agency upon the agency's approval or exemption of this Agreement. It is the intention of the Parties that each Party shall bear the full costs of protection of its own employees under employee protective conditions which may be imposed, and of grievances filed by its own employee arising under its collective bargaining agreements with its employees.
- G. It is understood that nothing in this Article 15 shall modify or waive the conditions, obligations, assumptions, or apportionments provided in Article 14.

ARTICLE 16. INSURANCE

During the term hereof, NSR shall be self-insured.

ARTICLE 17. DEFAULT AND TERMINATION

In the event of any substantial failure on the part of NSR to perform its obligations under this Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from PAS, PAS shall have the right at its option, after first giving thirty (30) days written notice thereof by certified mail, and notwithstanding any waiver by PAS of any prior breach thereof, to terminate the Trackage Rights and NSR's use of the Subject Trackage, subject to any regulatory approval or exemption that may be required under governing law. The exercise of such right by PAS shall not impair its rights under this Agreement or any cause or causes of action it may have against NSR for the recovery of damages.

ARTICLE 18. REGULATORY APPROVAL

- A. Should the Trackage Rights require the prior approval of the STB, NSR at its own cost and expense shall initiate and thereafter diligently pursue an appropriate application or petition to secure such approval. PAS shall assist and support efforts of NSR to secure any necessary STB approval of this Agreement.
- B. Should the STB at any time during the term of this Agreement impose any labor protective conditions upon the exemption of this Agreement from regulation, NSR, solely, shall be responsible for any and all payments in satisfaction of such conditions, including paying labor protection costs for adversely impacted employees, specifically NSR employees and any PAS employee on a PAS line (or

any CSXT employee on a PAS line in the event CSXT is acting as PAS operator at the time) adversely impacted as a result of rerouting the Subject Traffic off of PAS.

ARTICLE 19. ABANDONMENT OF SUBJECT TRACKAGE

Notwithstanding the provisions of Article 20, PAS may abandon or discontinue service over the Subject Trackage during the term of this Agreement or any renewals thereof, upon giving NSR not less than ninety (90) days' notice of PAS's intent to abandon or discontinue service. In the event regulatory authority is required to effect such abandonment or discontinuance, NSR shall not interfere with PAS's actions to seek and to exercise such authority. In the event regulatory authority is required for NSR to discontinue its own operations over the Subject Trackage, NSR shall seek and exercise such regulatory authority at the same time that PAS seeks regulatory authority to abandon or discontinue service over the Subject Trackage. PAS and NSR shall exercise the abandonment and discontinuance authority within thirty (30) days from the date PAS and NSR obtain the aforementioned regulatory authority. Upon the date established by PAS for discontinuance of the Subject Trackage by its aforesaid notice to NSR or upon the above specified date of exercise of the regulatory authority to discontinue operations, whichever is later, this Agreement shall terminate and be of no further force and effect, except that termination of this Agreement shall not relieve or release either Party hereto from any obligations assumed or from any liability which may have arisen or been incurred prior to said termination. The foregoing provisions shall govern the Parties hereto notwithstanding the provisions of 49 U.S.C. Section 10904 or any other provisions of law. As used herein, Subject Trackage means the entire Subject Trackage or any portion or portions thereof.

Except as otherwise expressly agreed in writing, in the event any actions taken by the Parties under this Article 19 result in an obligation imposed by any competent authority on either or both Parties hereto to protect the interests of affected employees, the responsibility for bearing the cost thereof shall be borne by the Party which is the employer of the affected employee or employees, notwithstanding the manner in which said cost may be apportioned in any order or decision imposing the protection.

ARTICLE 20. TERM

- A. This Agreement shall be effective on the later of the day and year first above written or the date an STB decision granting or exempting the Trackage Rights becomes effective, and shall remain in effect until terminated by NSR upon sixty (60) days advance written notice to PAS of its intent to terminate this Agreement or until NSR receives authority to discontinue the rights herein granted, whichever occurs first.
- B. In the event of the implementation of an NSR merger with another Class I railroad, the trackage rights will be subject to termination by PAS with four years advance notification, or the time that it takes to clear the Hoosac Tunnel, whichever is shorter. If PAS chooses to terminate the trackage rights within 20 years of NSR's

commencement of running the Subject Traffic, PAS will be required to reimburse for the actual, documented costs of the infrastructure improvements described in Article 4.C. If PAS is the first to implement a merger with another Class I, the trackage rights will not be subject to termination.

- C. PAS may petition the STB for a power of attorney to file discontinuance on NSR's behalf upon termination should NSR not file within 180 days of the timeframe set forth in Article 20.B.
- D. NSR shall be liable for complying with the requirements and costs of any labor protection imposed by the STB as a condition to the discontinuance.
- E. Termination of this Agreement shall not relieve or release either Party hereto from any obligation assumed or from any liability which may have arisen or been incurred by either Party under the terms of this Agreement prior to the termination hereof.

ARTICLE 21. FORCE MAJEURE

PAS shall not be responsible to NSR for delays or failure to perform under this Agreement if such delays or failure to perform are covered by circumstances beyond its control, including, but not limited to, Acts of God, floods, storms, earthquakes, hurricanes, tornadoes, or other severe weather or climatic conditions, acts of public enemy, war, blockade, insurrection, actual or threatened acts of terrorism, vandalism or sabotage, fire, accident, wreck, derailment, washout or explosion, strike, lockout or labor disputes experienced by the Parties hereto, embargoes or AAR service orders; Federal Railroad Administration (FRA) orders, or governmental laws, orders or regulations.

ARTICLE 22. RESERVED

ARTICLE 23. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and assigns, by merger or otherwise, of the Parties hereto. Neither Party hereto shall transfer or assign this Agreement, or any of its rights, interests or obligations hereunder, to any person, firm, or corporation without obtaining the prior written consent of the other Party to this Agreement.

ARTICLE 24. NOTICE

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

If to PAS: [_____]
Pan Am Southern, LLC

If to NSR: Norfolk Southern Railway Company
c/o Norfolk Southern Corporation
Attn: Senior Director Interline Services
650 W Peachtree St NW
Atlanta, GA 30308

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

ARTICLE 25. GENERAL PROVISIONS

- A. This Agreement and each and every provision hereof is for the exclusive benefit of the Parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right of any third party to recover by way of damages or otherwise against either of the Parties hereto.
- B. This Agreement contains the entire understanding of the Parties hereto and supersedes any and all oral understandings between the Parties.
- C. No term or provision of this Agreement may be changed, waived, discharged or terminated except by an instrument in writing and signed by both Parties to this Agreement.
- D. All words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the railroad industry.
- E. All Article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.
- F. As used in this Agreement, whenever reference is made to the trains, locomotives, cars or equipment of, or in the account of, one of the Parties hereto, such expression means the trains, locomotives, cars and equipment in the possession of or operated by one of the Parties and includes such trains, locomotives, cars and equipment which are owned by, leased to, or in the account of such Party. Whenever such locomotives, cars or equipment are owned or leased by one Party to this Agreement and are in the possession or account of the other Party to this Agreement, such locomotives, cars, and equipment shall be considered those of the other Party under this Agreement.
- G. This Agreement is the result of mutual negotiations of the Parties hereto, neither of

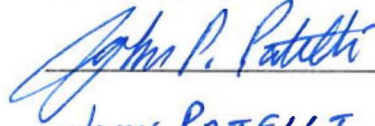
whom shall be considered the drafter for purposes of contract construction.

- H. Neither Party hereto may disclose the provisions of this Agreement to a third party, excluding a parent, subsidiary or affiliate company, without the written consent of the other Party, except as otherwise required by law, regulation or ruling.

Remainder of page intentionally left blank
Signature Page to follow

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

PAN AM SOUTHERN LLC



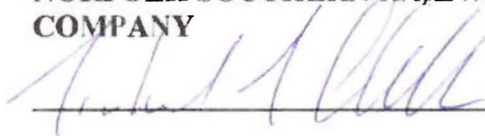
JOHN PATELLI

Name

Authorized Agent

Title

**NORFOLK SOUTHERN RAILWAY
COMPANY**



Michael McClellan

Name

SVP and Chief Strategy Officer

Title