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June 17, 2013

BY HAND

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

Re: *Chicago, Central & Pacific Railroad Company, Elgin, Joliet and Eastern Railroad Company, Illinois Central Railroad Company, and Wisconsin Central Ltd. – Trackage Rights Exemption – CSX Transportation, Inc. (Docket No. FD 35522 (Sub-No. 2))*

Grand Trunk Western Railroad Company – Acquisition of Operating Easement – CSX Transportation, Inc. (Docket No. FD 35661)

Dear Ms. Brown:

The notice of exemption in Docket No. FD 35522 (Sub-No. 2) (filed August 13, 2012) included, as Exhibit 2, a draft redacted version of the trackage rights agreement relating to the subject transaction. An unredacted version of that draft agreement was simultaneously filed under seal. Enclosed, pursuant to 49 C.F.R. § 1180.6(a)(7)(ii), are redacted and unredacted copies of the trackage rights agreement, as executed on June 7, 2013. These final versions of the agreement are submitted in accordance with the protective order entered by the Board in its decision served September 12, 2012, in Docket Nos. FD 35522, FD 35522 (Sub-No. 1), and FD 35522 (Sub-No. 2). The unredacted copy has been designated as “HIGHLY CONFIDENTIAL” and is being filed under seal with the understanding that it will be kept confidential by the Board in accordance with the terms of the protective order.

Further, we wish to notify the Board that, pursuant to its decision in Docket No. FD 35522 (Sub-No. 2) (served February 8, 2013), the railroads submitting the notice of exemption have consummated their acquisition of the subject trackage rights, over the line of CSX Transportation, Inc. (“CSXT”), that runs between Elsdon, IL (milepost 8.7) and Munster, IN (milepost 31.07).

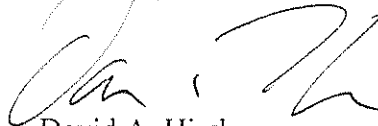
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Finally, we also wish to notify the Board that pursuant to the its decisions in Docket No. FD 35661 (served February 8 and May 9, 2013), Grand Trunk Western Railroad Company has consummated the acquisition of a rail operating easement over approximately 2.1 miles of CSXT's Memphis Terminal Subdivision, between Leewood, Tenn., milepost 00F371.4, and Aulon, Tenn., milepost 00F373.4 (Leewood-Aulon Line), and over the crossings and interlocking at the north (Leewood) and south (Aulon) ends of the Leewood-Aulon Line, as described in the Board's decision of May 9, 2013.

Very truly yours,



David A. Hirsh

*Counsel for Chicago, Central & Pacific Railroad
Company, Elgin, Joliet and Eastern Railway Company,
Illinois Central Railroad Company, and Wisconsin
Central Ltd.*

Enclosure

cc: All Parties of Record

TRACKAGE RIGHTS AGREEMENT

THIS AGREEMENT, entered into as of the 7th day of June, 2013 and to be effective at 8:00 a.m. CST on June 8, 2013, by and between the **CSX TRANSPORTATION, INC.**, (hereinafter referred to as "**CSXT**" or "**OWNER**") and the **WISCONSIN CENTRAL LTD, ILLINOIS CENTRAL RAILROAD COMPANY, ELGIN, JOLIET AND EASTERN RAILROAD COMPANY and CHICAGO, CENTRAL & PACIFIC RAILROAD COMPANY**, (hereinafter collectively, and each of them individually, referred to as "**CN**" or "**USER**"). CSXT and CN are sometimes referred to individually herein as a "Party" and collectively as the "Parties."

WHEREAS, CSXT and Grand Trunk Western Railroad Company, a wholly owned subsidiary of Canadian National Railway Company ("GTW") have entered into the Elsdon Easement Agreement dated as of June 7, 2013, whereby GTW has granted CSXT an exclusive and perpetual railroad operating easement over approximately twenty-two and twenty-two hundredths (22.37) miles of GTW's Elsdon Subdivision extending from Milepost 31.07, located at or near the CSXT connection at Munster, IN to milepost 8.7, located at or near Elsdon, IL, which connects to the southern end of the BNSF Railway Company's ("BNSF") Corwith Yard and GTW's track to Railport (the "Elsdon Easement"); and

WHEREAS, CSXT agrees to grant limited overhead and local trackage rights for the movement of certain freight traffic over the Elsdon Easement, subject to the terms and conditions set forth herein.

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

SECTION 1.0 **GRANT OF TRACKAGE RIGHTS**

1.1 Subject to the terms and conditions herein provided, Owner hereby grants to User the right to operate, in overhead and local trackage rights for the movement of certain CN freight service only, its trains, locomotives, cars, and equipment with its own crews (hereinafter referred to as the "Trackage Rights") over the following segment of Owner's railroad as shown on the plan attached hereto, made a part hereof and marked Exhibit "A" (hereinafter referred to as the "Subject Trackage"):

- Between CN's connection with CSXT at or near Milepost 31.07 in Munster, IN and CSXT's connection to the BNSF and CN at or near Milepost 8.7 at Elsdon, IL on CSXT's Elsdon Subdivision, including (1) all sidings, yard tracks and yard leads now existent or hereafter constructed along the aforesaid tracks to be used hereunder, and (2) right-of-way for the aforesaid tracks, signals, interlocking devices and plants, telegraph and telephone lines, and other appurtenances necessary to the use hereunder of the aforesaid tracks by the Parties, a total distance of approximately 22.37 miles.

1.2 Reserved

1.3 Such rights shall include the right to enter and exit the Subject Trackage at:

- 1.3.1 CSXT's connection with the CN at or near Milepost 31.07 (Munster) on CSXT's Elsdon Subdivision in Munster, IN.

- 1.3.2 CSXT's connection with the Union Pacific Railroad Company ("UP") at or near Milepost 25.2 (Thornton Junction) on CSXT's Elsdon Subdivision in Thornton, IL.
- 1.3.3 CSXT's connection with CN at or near Milepost 23.2 (CN Jct) on CSXT's Elsdon Subdivision in Harvey, IL.
- 1.3.4 CSXT's connection with CN at or near Milepost 22.6 (CJ) on CSXT's Elsdon Subdivision in Harvey, IL.
- 1.3.5 CSXT's connection with Indiana Harbor Belt Railroad Company ("IHB") at or near Milepost 19.3 (B.I. Jct.) on CSXT's Elsdon Subdivision in Blue Island, IL
- 1.3.6 CSXT's connection with The Belt Railway Company of Chicago ("BRC") at or near Milepost 11.8 (Hayford Junction) on CSXT's Elsdon Subdivision in Chicago, IL.
- 1.3.7 CSXT's connection to CN at or near Milepost 8.7 on CSXT's Elsdon Subdivision in Elsdon, IL.
- 1.3.8 CSXT's connection with BNSF at or near milepost 8.7 on CSXT's Elsdon Subdivision.
- 1.3.9 CSXT's connection with IHB at or near milepost 8.7 on CSXT's Elsdon Subdivision.
- 1.3.10 And any other existing or new location(s) that the Parties may mutually agree upon.

1.4 Mileage Table:

Stations		Munster	Thornton Jct	Harvey	Blue Island	Hayford
	Mileposts	31.07	25.2	22.6	19.3	11.8
Thornton Jct	25.2	5.9		2.6	5.9	13.4
Harvey	22.6	8.5	2.6		3.3	10.8
Blue Island	19.3	11.8	5.9	3.3		7.5
Hayford	11.8	19.3	13.4	10.8	7.5	
Elsdon	8.7	22.4	16.5	13.9	10.6	3.1

SECTION 2.0 USE OF SUBJECT TRACKAGE

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

2.2 Except as may otherwise be provided by this Agreement, User shall not use any part of the Subject Trackage for the purpose of switching, storage or servicing of cars or equipment, or the making or breaking up of trains, except that nothing contained herein shall, upon prior approval of Owner, preclude the emergency use by User of such auxiliary tracks as may be designated by Owner for such purpose.

2.3 Owner shall have exclusive control of the management and operation of the Subject Trackage. User shall not have any claim against Owner for liability on account of loss

or damage of any kind in the event the use of the Subject Trackage by User is interrupted or delayed at any time from any cause.

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

2.5 Owner and User shall work together to establish a schedule for the handling of User's trains.

2.6 User shall be responsible for contacting User's dispatcher and/or the UP, IHB and BRC dispatcher prior to entering the Subject Trackage to insure that User will not be delayed from departing the Subject Trackage at the authorized exit location. User shall ensure that its trains i) have a clear route (or available offline staging capacity) beyond the Subject Trackage; ii) are not staged, held, stored, or parked on the Subject Trackage (except at the direction of Owner), or otherwise unreasonably interfere with the joint use of the Subject Trackage; iii) are staffed with qualified crews that have sufficient hours of service remaining to clear the Subject Trackage; and iv) restore all connection switches on the Subject Trackage for mainline movement on and by Owner (collectively "Clearance Obligations").

2.7 User shall provide Owner with train information via AAR EDI 161 standard format and will include train symbol, estimated time of arrival, train length, tonnage, load/empty count, locomotives, end of train device.

2.8 The rights provided to User under the terms of this Agreement are for the sole purpose of User transporting its own traffic over the Subject Trackage. Nothing herein expressed or implied is intended to or shall be construed to confer upon or to give any person, firm, partnership, corporation or governmental entity other than the User any right or benefit under or by reason of this Agreement. User shall not move traffic for or on behalf of any other party or foreign railroad or under the guise of doing business as User. In the event that User attempts to move traffic for or on behalf of another party or foreign railroad, Owner may refuse to authorize and dispatch User's train.

SECTION 3.0 RESTRICTION ON USE

3.1 The Trackage Rights herein granted are granted for the sole purpose of User using same for overhead and local traffic only between the terminals (including those entry and exit locations defined in Section 1.0) of Subject Trackage and User shall not perform any local freight service whatsoever, except as allowed in Section 3.4 at any point located on Subject Trackage.

3.2 The total number of CN trains (including trains operating pursuant to any future trackage rights that Owner grants (by separate agreement) to entities owned by User or owned or affiliated with CN's parent company) operating over the Subject Trackage shall not be limited except that the total number of CN/UP interchange trains using the Subject Trackage between Blue Island (at or near milepost 19.3) and Munster (Milepost 31.07) shall be limited to two (2) train pairs (two (2) trains in each direction) per day (the "CN/UP Interchange Limit"). The CN/UP Interchange Limit shall apply regardless of whether the interchange occurs with CN or with another railroad that is an affiliate of CN, is commonly controlled with CN, controls CN, or is subject to the control of CN, to whom Owner may grant Trackage Rights over the Subject Trackage.

3.3 Subject to the specific provisions of Section 4 of this Agreement with respect to CN/UP interchange trains, CN/UP interchange trains operated by CN will be considered those of the CN for purposes of this trackage rights agreement.

3.4 CN shall be allowed to provide local switching service on the Subject Trackage including but not limited to CN Worldwide Distribution Services (USA) Inc., CN's wholly owned subsidiary customer located on the Subject Trackage in the vicinity of Elsdon.

SECTION 4.0 COMPENSATION

4.1 The factor to be used in calculating payments to be made by User for the Trackage Rights covered by this Agreement shall be [REDACTED] per car mile (hereinafter referred to as the "Base Charge")

4.2 Thereafter and except as provided for in Section 4.3, User will pay Owner a sum computed by multiplying: (i) the Base Charge, as may be revised in accordance with Section 4.8, by (ii) the number of cars, locomotive and caboose units moved by User with its own crews and power over the Subject Trackage, by (iii) the miles identified in Section 1.4 for the applicable move. For purposes of this Agreement, each locomotive unit, each caboose, and each platform of an articulated car shall be counted as one car.

4.3 User shall not be obligated to compensate Owner for movements over the Subject Trackage for the sole purpose of interchanging freight between the Parties.

4.4 CSXT shall charge CN for CN/UP interchange trains operated by CN between Thornton Junction (Milepost 25.2) and Blue Island (Milepost 19.3), approximately 5.9 miles, pursuant to the trackage rights referenced in Section 3.

4.5 There shall be no trackage rights charges or fees for movements over the Subject Trackage for CN/UP interchange trains operated by CN between Thornton Junction (Milepost 25.2) and Munster (Milepost 31.07), approximately 5.9 miles, pursuant to the trackage rights referenced in Section 3.

4.6 With respect to articulate units, the number of cars shall be determined by the AAR Car Type Code as defined in the ULMER Specification Manual. The second character in the Car Type Code field covering codes "Q" and "S" will be the factor in determining the car count for an articulated unit. For example, AAR Car Type Code (S566) would equate to a five (5) car count as these type cars have five wells capable of handling 40' to 53' containers in each well. (Car count data for articulated units are subject to change upon development of technology to separate units by car numbers.)

4.7 User will furnish to Owner, in care of Director, Network Planning, or their designates, at the end of each month, a statement of the number of loaded and empty cars operated over the Subject Trackage during the month. Based on this statement, Owner will render to User a bill, computed in accordance with the provisions of this Section 4, for User's use of the Subject Trackage.

4.8 The Base Charge shall be subject to change to reflect any increases or decreases in labor, material and other costs subsequent to the base year, as hereinafter provided.

- (i) The Base Charge set forth in Section 4.1 of this Agreement shall be revised effective July 1st of each year, beginning retroactively to July 1st, 2010 to compensate for the prior year increase or decrease in the cost of labor and material, excluding fuel, as reflected in Table A, Annual Indices of Charge-Out Prices and Wage Rates (1977=100), Series RCR, included in "AAR Railroad Cost Indexes" and supplements thereto, issued by the Association of American Railroads (hereinafter referred to as "AAR"). In making such determination, the final "Material prices, wage rates and supplements combined (excluding fuel)" index for the East District shall be used.

The Base Charge shall be revised by calculating the percentage of increase or decrease for the year to be revised based on the final index of the most recently completed calendar year as related to the final index of the calendar year prior to the most recently completed calendar year; and applying this percentage of increase or decrease to the current Base Charge to be escalated.

- (ii) By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for the calendar year (2008) prior to the most recently completed calendar year; "B" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for the most recently completed calendar year (2009); and "C" to be the current Base Charge to be escalated; the revised Base Charge would be determined by the following formula:

$$B/A \times C = \text{Revised Base Charge, Rounded to Nearest Whole Cent (5 Mills or More Rounds to Next Cent)}$$

- (iii) In the event the base for the Annual Indexes of Charge-Out Prices and Wage Rates issued by the AAR shall be changed from the year 1977, appropriate revision shall be made. If the AAR or any successor organization discontinues publication of the Annual Indices of Charge-Out Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the Parties. In the absence of agreement, the matter will be referred to the Surface Transportation Board ("STB") for determination. In the event said Board is without jurisdiction to make such a determination, the Parties shall submit the matter to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator so appointed by said Association shall be final and binding upon the Parties. Each party to the arbitration shall pay the compensation, costs, fees, and expenses of its own witnesses, exhibits, and counsel. The compensation, costs, and expenses of the arbitrator shall be borne equally by such parties.

PROVIDED, HOWEVER, that under no circumstances, while CN is operating over the Subject Trackage pursuant to this Agreement, shall the per car mile rate ever be less than the established Base Charge provided for in this Section 4.1.

User shall not be responsible to Owner for any compensation, charges, or fees for its use of the Subject Trackage pursuant to this Agreement (including CN/UP interchange trains, which shall be considered CN use for this purpose), except as may be specifically provided for in this Agreement.

SECTION 5.0 PAYMENT OF BILLS

5.1 All payments called for under this Agreement shall be made by User within thirty (30) days after receipt of bills therefor. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the Parties shall be adjusted in the accounts of a subsequent month.

5.2 The records of each Party, 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 two (2) years from the date of billing.

5.3 Bills rendered pursuant to the provisions of this Agreement, other than those set forth in Section 4, shall include direct labor and material costs, together with the surcharges, overhead percentages, and equipment rentals in effect at the time any work is performed by Owner for User.

SECTION 6.0 MAINTENANCE OF SUBJECT TRACKAGE

6.1 Owner shall maintain, repair, and renew the Subject Trackage at its own expense and with its own supervision and labor. User accepts the condition of the Subject Trackage AS IS WHERE IS and Owner shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated. Owner does not guarantee that operations over the Subject Trackage will not be interrupted. Owner shall take all reasonable steps to ensure that any interruptions will be kept to a minimum. Furthermore, except as may be otherwise provided in Section 6 and Section 12 hereof, User shall not by reason of failure or neglect on the part of Owner to maintain, repair, or renew the Subject Trackage, have or make any claim or demand against Owner or its parent corporation, 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 User resulting from any such failure or neglect

6.2 Owner shall also perform, at the expense of User, such additional maintenance as User may reasonably require or request.

SECTION 7.0 CONSTRUCTION AND MAINTENANCE OF CONNECTIONS

7.1 Existing connections or facilities which are jointly used by the Parties under existing agreements or practices 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 or practices.

7.2 Any additional connections to the Subject Trackage which may be required by User shall be subject to the Owner's approval (including design), which shall not be unreasonably withheld or delayed, and shall be constructed, maintained, repaired, and renewed as follows:

- (i) User or others shall furnish all labor and material and shall construct, maintain, repair, and renew at its sole cost, liability and expense such portions of the tracks located on the right-of-way of User or others which connect the respective lines of the Parties; and
- (ii) Owner shall furnish all labor and material and shall construct, maintain, repair, and renew at the sole cost, liability and expense of User such portions of the tracks located on the right-of-way of Owner which connect the respective lines of the Parties.
- (iii) Upon termination of this Agreement, Owner may at its option remove such portion of trackage and appurtenances located on property of Owner, at the sole cost and expense of User. The salvage material removed shall be released to User or, as otherwise agreed upon, Owner will credit User the current fair market value for said salvage.

SECTION 8.0 ADDITIONS, RETIREMENTS AND ALTERATIONS

8.1 Owner, from time to time and at its sole cost and expense, may make such changes in, additions and betterments to, and 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.

8.2 If User requests Owner to make changes in or additions and betterments to the Subject Trackage, including without limitation changes in communication or signal facilities, for purposes required to accommodate User's operations beyond that required for Owner's operation, Owner shall make such changes in or additions and betterments to the Subject Trackage and User shall pay to Owner the cost thereof, including the annual expense of maintaining, repairing, and renewing such additional or altered facilities.

SECTION 9.0 MANAGEMENT AND OPERATIONS

9.1 When operating over the Subject Trackage, User's locomotives and crews will be equipped to communicate with Owner on radio frequencies normally used by Owner in directing train movements on the Subject Trackage.

9.2 Procedures for qualification and occupancy of the Subject Trackage will be arranged by the local supervision of each carrier. All control and usage will be subject to the approval of Owner's representative or his designee.

9.3 Before its locomotives enter onto the Subject Trackage, User shall request permission from Owner's dispatcher or other designated representative at Owner's rail traffic control center or such other location as Owner may designate. Further, User shall ascertain that said Subject Trackage is clear and shall await confirmation from said representative that such permission has been issued to allow User's movements on or over the Subject Trackage. Upon completing its operations and clearing the Subject Trackage, User will notify Owner's designated representative that it has completed its operations and that its equipment has cleared the Subject Trackage. Once User has notified Owner's representatives that it has cleared the Subject Trackage, User shall not reenter the Subject Trackage without again obtaining permission from Owner's representative. User shall provide and maintain at its expense all communication facilities needed as may be required by Owner to permit User to use Owner's trackage.

9.4 User shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Acts, as amended, and all other federal and state 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. User shall indemnify, protect, defend, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents, and employees from and against all fines, penalties, and liabilities imposed upon Owner or its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents, or employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable to the failure of User to comply with its obligations in this regard.

9.5 User, in its use of the Subject Trackage, will comply in all respects with the safety rules, operating rules and other regulations of Owner, and the movement of User's trains, locomotives, cars, and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of Owner. User's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage as published in Railway Line Clearances, and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the authorized freight speeds as provided by Owner's operating rules and regulations

without the prior consent of Owner. User shall indemnify, protect, defend, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all their directors, officers, agents and employees from and against all liabilities when attributable to the failure of User to comply with the provisions of this subsection.

9.6 All employees of User engaged in or connected with the operations of User on or along the Subject Trackage shall be required to pass periodic examinations on the rules of Owner related to the Subject Trackage, provided, with respect to such examinations that, upon request of User, Owner shall qualify one or more of User's supervisory officers on Owner's rules and such supervisory officer or officers so qualified shall examine all employees of User engaged in or connected with User's operations on or along the Subject Trackage. Pending qualification of train and engine crews of User, Owner shall furnish a pilot or pilots, at the expense of User, as deemed necessary by Owner, to assist in operating trains of User over the Subject Trackage. User shall pay to Owner, upon receipt of bills therefore, any cost incurred by Owner in connection with the qualification of such employees of User, as well as the cost of pilots furnished by Owner, until such time as such employees are deemed by the appropriate examining officer of Owner to be properly qualified for operation as herein contemplated.

9.7 Owner may request an investigation at its option if User's employee working on Owner's property is alleged to have violated Owner's rules, regulations, orders, practices or instructions, or if an incident occurs which requires an investigation under applicable agreement rules. User will schedule the investigation and notify Owner's Local Transportation Officer in the territory. User's scheduling of the investigation must comply with the time limits provided in the applicable agreement on User's railroad. Owner will provide its regulations, supplements, and safety rules to User at no cost.

9.8 If Owner requests an investigation, Owner shall have the right to exclude from the Subject Trackage any employee of User, except officers, determined by Owner as the result of Owner's investigation or hearing described below, to be in violation of Owner's rules, regulations, orders, practices or instructions.

9.9 In a major offense including, but not limited to, violation of Rule G, dishonesty, insubordination, or a serious violation of operating rules or other offenses of comparable magnitude, wherein Owner desires to bar User's employee from service on Owner's territory pending an investigation by Owner, immediate verbal notification will be given to the appropriate Transportation Officer of User so that proper written notice can be issued to the employee.

9.10 If Owner requests an investigation, an Officer of User will conduct the investigation, but an officer of Owner may be present. After the investigation is concluded, a Transportation Officer of User will arrange to assess discipline, within the applicable time limits. If Owner recommends dismissal, User reserves the right to change the recommendation to the extent of barring the individual from operating over Owner's territory. User shall release, indemnify, defend and save harmless Owner and its officers, agents and employees from and against any and all claims and expenses resulting from such exclusion.

9.11 If the disciplinary action is appealed by the employee of User to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of such board or tribunal sustains the employee's position, such employee shall not be barred from service on the Subject Trackage by reason of such occurrence (unless an arbitration concerning such matter is held pursuant to this Agreement and this arbitration upholds Owner's continued exclusion of such employee).

9.12 It is understood that Owner shall reimburse User for all payments that User might

be required to make as a result of a successful challenge being made by the employee or his representative as to the discipline recommended by Owner and assessed by User. User agrees to notify Owner before committing itself to making payment of any claim. In the event a claim is progressed to an Adjustment Board, Owner will be given an opportunity to review User's submission. Any payments made to employees, as a result of an investigation being "overturned", shall include not only actual wages, but in addition, shall include expenses which User may be required to pay covering vacation allowances, Railroad Retirement taxes, unemployment insurance taxes and any other payroll tax or fringe benefits.

9.13 The trains, locomotives, cars, and equipment of User, Owner, and any other present or future user of the Subject Trackage or any portion thereof shall be operated on a first come, first service basis without prejudice or partiality and in such manner as will afford the most economical and efficient manner of movement of all traffic. Owner does not guarantee or otherwise promise to provide any particular transit or running times over the Subject Trackage. Further, Owner does not guarantee or otherwise promise that operations over the Subject Trackage will not be interrupted. However, Owner shall make best efforts to ensure that any interruptions will be kept to a minimum.

9.14 If by reason of any mechanical failure, insufficient hours of service remaining among User's crew, or for any other cause not resulting from an accident or derailment, a train or locomotive of User becomes stalled or unable to proceed under its own power, or fails to maintain the speed required by Owner on the Subject Trackage, or if in emergencies crippled or otherwise defective cars are set out of User's trains on the Subject Trackage, Owner shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew User'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 User shall reimburse Owner for the cost of rendering any such assistance.

9.15 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, such work shall be done by Owner and User shall reimburse Owner for the cost thereof.

9.16 In the event Owner and User agree that Owner should retain employees or provide additional employees for the sole benefit of User, the Parties shall enter into a separate agreement under which User shall bear all cost and expense for any such additional employees, including without limitation all cost and expense associated with labor protective payments which are made by Owner and which would not have been incurred had the additional employees not been provided.

SECTION 10.0 MILEAGE AND CAR HIRE

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

SECTION 11.0 CLEARING OF WRECKS

Whenever User's use of the Subject Trackage requires rerailling, wrecking service or wrecking train service, Owner shall perform such service, including the repair and restoration of roadbed, track, and structures. The cost, liability and expense thereof, including without limitation loss of, damage to, and destruction of any property whatsoever and injury to or death of any person or persons whomsoever or any damage to or destruction of the environment

whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting therefrom, shall be apportioned in accordance with the provisions of Section 12 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 User at the time of such wreck shall be promptly delivered to User.

SECTION 12.0 LIABILITY

12.1 The responsibility and liability between the Parties for: (i) any personal injury or death of any person (including employees of the Parties and third parties), (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, litigation expenses and attorney's fees resulting from the use of the Subject Trackage by the Parties or by third party users, all of which are collectively referred to as a "Loss", will be divided as follows:

- (a) If a Loss results from the use of the Subject Trackage solely by the trains and locomotives of one of the Parties, then that using Party shall be solely responsible for the Loss, even if caused partially or completely by the other Party.
- (b) If a Loss results from the use of the Subject Trackage by the trains and locomotives of both CN and CSXT, then: (i) each of CN and CSXT is solely responsible for any Loss to its own employees, locomotives and equipment in its own account including lading and (ii) CN and CSXT are equally responsible for any Loss to the Subject Trackage and Loss sustained by third parties, regardless of the proportional responsibility between or among them as to the cause of the Loss.
- (c) If a Loss results from the use of the Subject Trackage by trains and locomotives of both CN and any other third party user of the Subject Trackage not a party to this Agreement, then CN's responsibility for the Loss shall be apportioned in the manner specified in Subsection (b) with the other third party user being considered CSXT for the purpose of determining CN's share of that portion of the Loss which it must assume.
- (d) Whenever any liability, cost, or expense is assumed by or apportioned to any Party under the foregoing provisions, that Party shall forever protect, defend, indemnify, and save harmless the other Party and its subsidiaries and affiliates, and all of its respective directors, officers, agents, and employees from and against that liability, cost, and expense 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 any Party, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employer's 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 CSXT to CN pursuant to this Agreement shall be considered as the employees of CN while such employees are on board or getting on or off trains of CN.

- (g) If any suit or action shall be brought against any Party for damages which under the provisions of the 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 cost, 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 Association of American Railroads (AAR) as to the handling of any claims for the loss or damage to lading.
- (i) Notwithstanding the provisions of Section 18.5 of this Agreement, for the purposes of this Section 12 the word "equipment" shall mean and be confined to (i) trains, locomotives, cars and 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 the maintenance or repair thereof or the clearing of wrecks thereon.
- (j) For the purpose of determining liability associated with construction, maintenance, repair and renewal of connections as provided in Section 7, all work performed by Owner shall be deemed performed for the sole benefit of User and, User shall be fully liable for all cost and expense of any and all loss, damage, destruction, injury and death resulting from, arising out of, incidental to or occurring in connection with said construction, maintenance, repair and renewal except when such cost and expense of loss, damage, destruction, injury or death is caused by the sole negligence of Owner. User shall protect, indemnify, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against any and all expense and liability for which User is responsible.

SECTION 13.0 INVESTIGATION AND CLAIMS

13.1 Except as provided in Subsection 13.2 hereof, all claims, injuries, deaths, 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 therefor under the provisions of this Agreement.

13.2 Each Party will investigate, adjust, and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11706 and 49 C.F.R. Part 1005 (or any revised or substitute regulations adopted to modify, supplement or supersede the regulations herein provided), or in accordance with any applicable transportation contract entered into pursuant to 49 U.S.C. Section 10709.

13.3 In the event a claim or suit is asserted against Owner or User 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.

13.4 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 employees, including claim agents, attorneys, and other employees of either Party engaged directly or indirectly in such work shall be borne by such Party.

13.5 Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Part 1005 or similar regulation, 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 exceeds thirty-five thousand dollars (\$35,000).

13.6 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, pursuant to a collective bargaining 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.

13.7 It is understood that nothing in this Section 13 shall modify or waive the conditions, obligations, assumptions or apportionments, or supersede the provisions of Section 12 hereof.

SECTION 14.0 DEFAULT AND TERMINATION

14.1 In the event of any substantial failure on the part of User 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 Owner, Owner shall have the right at its option, after first giving thirty (30) days' written notice thereof by certified mail; and notwithstanding any waiver by Owner of any prior breach thereof, to terminate the Trackage Rights and User's use of the Subject Trackage.

SECTION 15.0 DISPUTE RESOLUTION

15.1 If at any time a question or controversy shall arise between the Parties in connection with this Agreement upon which the Parties cannot agree, either Party shall have the right to require a meeting of designated representatives with authority to settle the matter within 30 days of written notice of a desire to meet; if it cannot be resolved within 30 days of the meeting of the Parties, then the aggrieved Party may demand arbitration. Unless other procedures are agreed to by the Parties, arbitration between the Parties pursuant to this Section 15 shall be governed by the rules and procedures set forth in this Section 15. For all purposes, this Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, regardless of its conflicts of law's principles.

15.2 If the Parties to the dispute are able to agree upon a single competent and disinterested arbitrator within twenty (20) days after written notice by one Party of its desire for arbitration to the other Party, then the question or controversy shall be submitted to and settled by that single arbitrator. Otherwise, any Party (the notifying Party) may notify the other Party (the noticed Party) in writing of its request for arbitration, including with notice its appointment of one arbitrator. Within twenty (20) days after receipt of said notice, the noticed Party shall appoint an arbitrator and notify the notifying Party in writing of such appointment. Should the noticed Party fail within twenty (20) days after receipt of such notice to appoint its arbitrator, said arbitrator may be appointed by the American Arbitration Association, which shall designate said appointment from the CPR Panel of Distinguished Neutrals, or other similar body of competent neutral arbitrators which may be agreed upon between the Parties, upon application by either Party after ten (10) days' written notice to the other Party. The two arbitrators so chosen shall select one additional arbitrator to complete the board. If the arbitrators so chosen fail to agree

upon an additional arbitrator, the same shall, upon application of a Party, be appointed in the same manner hereto before stated.

15.3 Upon selection of the arbitrator(s), said arbitrator(s) shall, with reasonable diligence, determine the questions as disclosed in said notice of arbitration, shall give both Parties reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, may take such evidence as the arbitrator(s) shall deem reasonable or as either Party may submit with witnesses required to be sworn, and hear arguments of counsel or others. If an arbitrator declines or fails to act, the Party (or Parties in the case of a single arbitrator) by whom the arbitrator was chosen or the American Arbitration Association, as the case may be, shall appoint another to act in the arbitrator's place.

15.4 After considering all evidence, testimony and arguments, said single arbitrator or the majority of said board of arbitrators shall promptly state such decision or award and the reasoning for such decision or award in writing which shall be final, binding, and conclusive on all parties to the arbitration when delivered to them. The award rendered by the arbitrator(s) may be entered as a judgment in any court in the United States of America having jurisdiction thereof and enforced as between the Parties without further evidentiary proceeding, the same as entered by the court at the conclusion of a judicial proceeding in which no appeal was taken. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under this Agreement shall continue in the manner and form existing prior to the rise of such question. After delivery of said first decision or award, each Party shall forthwith comply with said first decision or award immediately after receiving it.

15.5 Each Party to the arbitration shall pay all compensation, costs, and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits, and counsel. The compensation, cost, and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by all Parties to the arbitration.

15.6 The Parties may obtain discovery and offer evidence in accordance with the Federal Rules of Civil Procedure Rules 26 - 37, and Federal Rules of Evidence, as each may be amended from time to time.

SECTION 16.0 REGULATORY APPROVAL

16.1 Should implementation of this Agreement require the prior approval and authorization of the STB, User, at its own cost and expense, will initiate and thereafter diligently prosecute an action to obtain such approval and authorization or an exemption therefrom. Owner will assist and support efforts of User to obtain any such required approval and authorization or exemption.

16.2 Each Party shall assume and hold the other Party harmless from all claims by their respective employees predicated on loss of, or adverse impact on, compensation, benefits or working conditions arising from this Agreement or the activities of the Parties hereunder, whether such claims are based on conditions imposed by the STB or predicated on the Railway Labor Act or labor agreements.

SECTION 17.0 ABANDONMENT OF SUBJECT TRACKAGE

17.1 Notwithstanding the provisions of Section 21 of this Agreement, Owner may abandon or discontinue service over the Subject Trackage during the term of this Agreement, or any renewals hereof, upon giving User not less than ninety (90) days' written notice of Owner's intent to abandon or discontinue service. In the event regulatory authority is required to effect

such abandonment or discontinuance of service, User will not interfere with Owner's actions to seek and to exercise such authority. In the event regulatory authority is required for User to discontinue its own operations over the Subject Trackage, User will seek and diligently pursue such regulatory authority at the same time that Owner seeks regulatory authority to abandon or discontinues service over the Subject Trackage, or as soon thereafter as User may do so in accordance with applicable statutes and regulations. User shall exercise its authority to discontinue its operations pursuant to this Agreement upon the date established by Owner for abandonment of or discontinuance over the Subject Trackage by its aforesaid notice to User, or upon the earliest authorized date of exercise of the regulatory authority to discontinue operations, whichever is later. If regulatory authority for discontinuance of User's operations is not required, User shall discontinue its operations hereunder on the date that Owner is authorized to abandon or discontinue service over the Subject Trackage. Upon discontinuance of User's operations, 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. As used herein, Subject Trackage means the entire Subject Trackage or any portion or portions thereof.

17.2 User may seek discontinuance authority at any time, regardless of whether Owner has or is seeking abandonment authority.

SECTION 18.0 GENERAL PROVISIONS

18.1 This Agreement and each and every provision hereof are for the exclusive benefit of the Parties and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third party to recover by way of damages or otherwise against either of the Parties.

18.2 All Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

18.3 This Agreement and the attachments annexed hereto and integrated herewith contain the entire agreement of the Parties and supersede any and all oral understandings between the Parties.

18.4 No term or provision of this Agreement may be changed, waived, discharged, or terminated except by an instrument in writing signed by both Parties.

18.5 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 such expression means the trains, locomotives, cars, or equipment in the possession of or operated by one of the Parties and includes such trains, locomotives, cars, or 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 and are in the possession or account of the other Party, such locomotives, cars, and equipment shall be considered those of the other Party under this Agreement.

18.6 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.

18.7 This Agreement is the result of mutual negotiations of the Parties, neither of whom shall be considered the drafter for purposes of contract construction.

18.8 Except as provided by law or by rule, order, or regulation of any court or regulatory agency with jurisdiction over the subject matter of this Agreement or as may be

necessary or appropriate for a Party to enforce its rights under this Agreement, during the initial and any renewal term of this Agreement, all commercial information to which access is provided or obtained hereunder will be kept confidential and will not be disclosed by either CN or CSXT to any party other than CN's and CSXT's affiliates and the respective officers, employees, and attorneys of those affiliates, without the prior written approval of the other Party.

SECTION 19.0 SUCCESSORS AND ASSIGNS

19.1 This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties. No Party shall transfer or assign this Agreement, or any of its rights, interests, or obligations hereunder, by merger or otherwise, to any person, firm, or corporation without obtaining the prior written consent of the other Party provided, however, such consent shall not be unreasonably withheld.

SECTION 20.0 NOTICE

20.1 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 mutually agree, and shall be addressed as follows:

If to Owner:

Director, Network Planning
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202

If to User:

Region Director Contracts and Administration
CN
17641 South Ashland Avenue
Homewood, IL 60430

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

SECTION 21.0 COMMENCEMENT, TERM AND TERMINATION

21.1 This Agreement shall take effect immediately upon the later of (i) CSXT's acquisition of the Elsdon Easement, or (ii) the effective date of any required regulatory approvals, and shall be evidenced by an exchange of correspondence between the appropriate operating officers of the Parties. The date that User commences operations over the Subject Trackage pursuant to this Agreement shall be referred to herein as the "Commencement Date", and shall be evidenced by an exchange of correspondence between the appropriate officers of the Parties.

21.2 This Agreement shall continue in full force and effect for a period of twenty (20) year(s) from the Commencement Date, and shall continue in full force and effect, subject to renewal by either Party, for an unlimited number of additional ten (10) year terms, provided, however, CN has the right to terminate this Agreement upon giving CSXT a thirty (30) day advance written Notice.

21.3 Termination of this Agreement shall not relieve or release either Party from any obligations 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.

21.4 Upon termination or non-renewal of this Agreement for any reason, User shall within sixty (60) days initiate and thereafter diligently prosecute any action to obtain approval from the STB or other regulatory body having jurisdiction authorizing abandonment or discontinuance of the Trackage Rights herein granted. If User fails to file within (60) days, User hereby expressly authorizes Owner to file with the STB, or other regulatory body having jurisdiction, on behalf of User to abandon or discontinue the Trackage Rights granted hereunder, and User further agrees to reimburse Owner for all reasonable costs incurred in doing so.

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in duplicate as of the day and year first hereinabove written.

**WISCONSIN CENTRAL LTD,
ILLINOIS CENTRAL RAILROAD COMPANY
ELGIN, JOLIET AND EASTERN RAILROAD COMPANY
CHICAGO, CENTRAL & PACIFIC RAILROAD COMPANY**

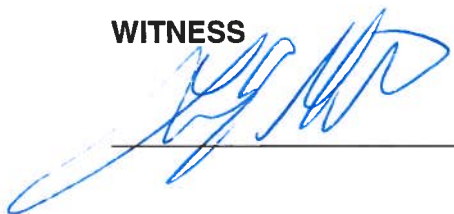
WITNESS



By: 

**Paul E. Ladue
Region Director Contracts & Administration**

WITNESS



CSX TRANSPORTATION, INC.

By: 

Name: LAWRENCE L RATCLIFFE

Title: DIRECTOR - NETWORK PLANNING

Exhibit A

