

**Execution Copy**

AMENDED  
SOUTH FLORIDA OPERATING AND MANAGEMENT AGREEMENT

Between State of Florida Department  
of Transportation and CSX Transportation, Inc.

Pertaining to the South Florida Rail Corridor, a Line of  
Railroad Between West Palm  
Beach and Miami, Florida  
and Related Properties

Dated: January <sup>25<sup>th</sup></sup>, 2013

## AMENDED SOUTH FLORIDA OPERATING AND MANAGEMENT AGREEMENT

DEFINITIONS .....	5
Section 1. Description of Use; Commencement Date .....	7
Section 2. Compensation .....	11
Section 3. Operating and Management.....	14
Section 4. Maintenance.....	22
Section 5. Additions, Betterments, Retirements, and Alterations .....	26
Section 6. Revenues.....	28
Section 7. Existing Agreements Pertaining to State Property and CSXT Property.....	29
Section 8. Future Agreements Pertaining to and Uses of the State Property.....	31
Section 9. Taxes, Assessments, and Utilities.....	40
Section 10. Casualty Losses .....	41
Section 11. Abandonment and/or Discontinuance.....	42
Section 12. Compliance With Laws .....	45
Section 13. Liens and Charges .....	46
Section 14. Eminent Domain.....	47
Section 15. Payment of Bills and Records.....	49
Section 16. Default and Breach .....	50
Section 17. Dispute Resolution and Arbitration.....	51
Section 18. Clearing of Wrecks .....	53
Section 19. Liability .....	54
Section 20. Investigation .....	61
Section 21. Insurance.....	62
Section 22. Force Majeure.....	66
Section 23. Extension, Waiver, and Amendment.....	66
Section 24. Notices .....	67
Section 25. Governing Law .....	68
Section 26. Counterparts.....	68
Section 27. Interpretation .....	68
Section 28. Exhibits.....	69
Section 29. Entire Agreement.....	69
Section 30. Waiver .....	69
Section 31. Expenses .....	70
Section 32. Further Assurances .....	70
Section 33. Time of the Essence.....	70

Section 34. Performance of Agreement.....	70
Section 35. Prohibition of Third Party Beneficiaries.....	71
Section 36. Term.....	71
Section 37. Successors and Assigns .....	72
Section 38. CSXT's Right of First Refusal .....	73
Section 39. Incorporation of Recitals .....	75

Exhibits Follow Signature Pages

## AMENDED SOUTH FLORIDA OPERATING AND MANAGEMENT AGREEMENT

THIS AMENDED SOUTH FLORIDA OPERATING AND MANAGEMENT AGREEMENT, as may be further amended (this "Agreement") made as of the \_\_\_th day of January, 2013, by and between STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, whose address is Haydon Burns Building, 605 Suwannee Street, Tallahassee, FL 32399-0450 (hereinafter referred to as "State") and CSX TRANSPORTATION, INC., a Virginia corporation, whose address is 500 Water Street, Jacksonville, FL 32202 (hereinafter referred to as "CSXT"), further amends that certain South Florida Operating And Management Agreement executed between State and CSXT as of December 6, 2007 (the "Execution Date") including all amendments thereto.

WHEREAS, by Contract For Installment Sale and Purchase between State and CSXT dated as of May 11, 1988 (hereinafter referred to as "Contract") State acquired the properties hereinafter described as the State Property over which CSXT possesses an exclusive perpetual easement for the purpose of providing Rail Freight Service thereon; and

WHEREAS, until the "Commencement Date" as hereinafter defined, the operation, maintenance and use of the State Property for the conduct of Rail Freight Service, Intercity Rail Passenger Service and Commuter Rail Services shall continue to be governed by that certain Operating and Management Agreement Phase - A, between State and CSXT, also dated as of May 11, 1988, including all amendments thereto (the "1988 OMAPA"); and

WHEREAS, as of the Commencement Date, the 1988 OMAPA shall terminate by mutual agreement of the parties as herein provided, and the parties hereto desire that the provisions of this Agreement will thereafter govern the conduct of Railroad Operations over the State Property in a manner consistent with the other uses of the State Property, it being the intention of the parties hereto that CSXT remain, and State not become, the rail carrier subject to the Interstate Commerce Act, the ICC Termination Act of 1995, the Railway Labor Act, or any other federal law, as enacted or revised, relating to the provisions of railroad transportation on the properties subject to the CSXT Easement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants hereinafter set forth, the parties hereto, intending to be legally bound, UNDERSTAND AND AGREE AS FOLLOWS:

DEFINITIONS: The following terms and phrases shall be defined as follows for the purposes of this Agreement:

(a) "Commencement Date" shall be the date determined pursuant to Subsection 1(c) of this Agreement, which is the date State commences management, operation (including dispatch), and maintenance of the State Property, and the control and supervision of the occupation, use, and access to the State Property.

(b) "Commencement Date Notice" shall have the meaning given to it in Section 1(c) of this Agreement.

(c) "Commuter Rail Service" shall mean the transportation of commuters and other passengers by rail provided by State or its assignee or designee.

(d) "Contract" shall mean that certain Contract for Installment Sale and Purchase dated May 11, 1988, by and between State and CSXT.

(e) "CSXT Easement" shall mean the exclusive perpetual easement retained by CSXT (as set forth in the Deed), for the purpose of providing Rail Freight Service on the State Property.

(f) "CSXT Property" shall mean all of the rights-of-way and associated property, and all of the tracks, rails, ties, switches, crossings, bridges, trestles, culverts, buildings, structures, facilities, signals, crossing protection devices, communication lines, poles, radio masts and all other improvements or fixtures located on such rights-of-way and property that connect with the State Property and are owned, controlled or used by CSXT, being properties contiguous to the State Property that were not acquired by State under the Contract.

(g) "Deed" or "Deeds" shall have the meaning given to it in Section 1(d) of this Agreement.

(h) "Force Majeure" shall have the meaning given to it in Section 22 of this Agreement.

(i) "FRA" shall mean the Federal Railroad Administration.

(j) “Industry Sidetracks” shall mean sidetracks located on the State Property, owned by a third party and listed in Exhibit B to this Agreement for which State shall have no financial obligation and which are used exclusively by CSXT to provide Rail Freight Service to industries, customers and facilities located along the State Property.

(k) “Intercity Rail Passenger Service” shall mean the transportation of intercity passengers by rail provided by the National Railroad Passenger Corporation, its successors and assigns (hereinafter referred to as “Amtrak”), or as may be provided by others, on the State Property.

(l) “Rail Freight Service” shall mean the transportation by rail of property and movable articles of every kind, character, and description over the State Property, including but not limited to rail freight transportation service to current and future industries, customers and facilities located along the State Property, and supporting activities, over the State Property pursuant to the CSXT Easement and this Agreement, but excluding detour movements of other railroads permitted by State pursuant to Subsection 3(m) hereof.

(m) “Railroad Operations” shall mean Rail Freight Service, Intercity Rail Passenger Service, and Commuter Rail Service.

(n) “Sidetracks” shall mean Industry Sidetracks and State Sidetracks.

(o) “Sidetrack Agreement” shall mean any agreement between CSXT and a shipper, recipient, and/or other user of Rail Freight Services over a Sidetrack that governs the ownership, construction, maintenance, repair, and use of a Sidetrack.

(p) “South Florida Rail Corridor” and “Corridor” shall mean the linear contiguous strip of railroad right of way owned by State, which was acquired by the State from CSXT on May 11, 1988, pursuant to the Contract, together with additional rights of way acquired by State, used for Railroad Operations and for other lawful uses, located in Miami-Dade, Broward, and Palm Beach Counties Florida.

(q) “South Florida Regional Transportation Authority” or “SFRTA” shall have the meaning ascribed by the South Florida Regional Transportation Authority Act, Chapter 343, Part I, Sections 343.51-343.58, Florida Statutes.

(r) “State” shall mean the State of Florida Department of Transportations, its agents, permitted assignees and any successor agency.

(s) “State Property” shall mean all of the rights-of-way and associated property, and all of the tracks, rails, ties, switches, crossings, bridges, trestles, culverts, buildings, structures, facilities, signals, crossing protection devices, communication lines, poles, radio masts and all other improvements or fixtures located on such rights-of-way acquired by State under the Contract (the real estate for which is described in the Deeds), as depicted in Exhibit 1.

(t) “State Sidetracks” shall mean sidetracks on the State Property other than Industry Sidetracks.

(u) “STB” shall mean the federal Surface Transportation Board.

(v) “Trackage” shall mean the railroad tracks located on, in, or below the CSXT Easement area, and all supporting materials, facilities, and structures appurtenant thereto (rails, ties, tie plates, ballast, drainage structures), together with control devices, signals, switches, communication lines, and poles necessary for safe Railroad Operations, whether main, siding, or Sidetracks.

#### Section 1. Description of Use; Commencement Date

(a) Subject to the terms and conditions hereinafter set forth, the State Property shall be used for the conduct of Rail Freight Service, Intercity Rail Passenger Service, and Commuter Rail Service, such services being sometimes collectively referred to herein as “Railroad Operations.” In addition to the foregoing, the State Property may be used for other public and private purposes as hereinafter provided or as may be otherwise mutually agreed by the parties hereto from time to time during the term of this Agreement. CSXT shall have the exclusive right to use the State Property for the exclusive provision of Rail Freight Service thereon, and to operate CSXT’s trains, locomotives, rail cars, and rail equipment thereon with its own crews. Except as is otherwise expressly provided in Section 8 hereof, State shall manage, direct, and control the occupation, use, and access to the State Property in a manner consistent

with the Railroad Operations contemplated under Subsection 1(a) hereof, including, without limitation, the allocation of space on the State Property for each of such Railroad Operations.

(b) It is understood by the parties hereto that, under its management, direction, and control, State shall furnish CSXT adequate facilities including, without limitation, tracks, and yards, and building space (as provided in and subject to the provisions of Exhibit 2), for CSXT's provision of Rail Freight Service on the State Property in substantially the same manner and condition as provided prior to the Commencement Date hereof.

(c) The Commencement Date shall be the date identified by the parties in the notice (the "Commencement Date Notice") issued pursuant to Paragraph (1)(c)(ii) below and shall be the same date as the termination date of the 1988 OMAPA, it being understood that the parties have agreed that the target date for the Commencement Date is June 30, 2014, provided, further that the 1988 OMAPA shall continue to apply to and govern Railroad Operations on the State Property unless and until (X) this Agreement has been duly executed by and delivered to both parties on or before January 31, 2013, (Y) State has communicated to CSXT that the SFRTA has approved the terms and conditions of the Agreement on or before February 28, 2013, and (Z) the Commencement Date has occurred prior to December 31, 2014. In the absence of the events described in both of (Y) and (Z) of this Subsection 1(c) within the time provided therefor, and exclusive of the provisions of Section 5(d), and the obligation of State to increase its insurance under Section 21(b), this Agreement shall be deemed null and void and of no further effect and the 1988 OMAPA shall continue in force according to its terms, including without limitation, the terms and conditions of Section 39 thereof pertaining to the right of either party thereto to elect to terminate the 1988 OMAPA and commence the Operating and Management Agreement - Phase B, dated May 11, 1988, previously executed by the parties. The parties further agree that Railroad Operations on the State Property will not be interrupted or terminated as a consequence of the termination of the aforesaid 1988 OMAPA and that such termination shall not affect the rights and interests of CSXT in the CSXT Easement. During the period of transition from the 1988 OMAPA to this Agreement, the parties hereto will use their best efforts and provide such facilities, equipment, and personnel upon

mutually agreeable terms and conditions as may be necessary to ensure the continuation of economical and efficient Railroad Operations on the State Property. To ensure a safe and orderly transition to this Agreement, the parties shall develop an agreed upon transition and implementation plan at least sixty (60) days prior to the anticipated Commencement Date (which shall include a list of locations and facilities that will no longer be required by CSXT for the performance of maintenance under the 1988 OMAPA).

(i) The Commencement Date shall occur on the date set forth in the Commencement Date Notice, and shall be no earlier than the date on which all of the following are satisfied:

1. The STB shall have found that it does not have jurisdiction over the transaction contemplated in this Agreement, and/or the STB shall not have imposed any conditions, including labor protective conditions, which either party in its sole and absolute discretion deems unacceptable;
2. The parties shall have complied with the conditions, if any, imposed by the STB, in its decision, to the extent required by the STB's decision to be performed prior to the Commencement Date;
3. The implementation of this Agreement shall not have been stayed or enjoined by the STB or by any court;
4. State shall have provided notification to the FRA pursuant to 49 C.F.R. § 213.5(c), if applicable, at least thirty (30) days prior to the Commencement Date;
5. State has all necessary contractors and employees in place and properly trained so as to be ready to satisfactorily perform all duties and responsibilities required hereby and by any applicable law, rules, regulations, and State policy, provided however, in the event of any administrative or civil action resulting in a delay regarding the procurement of any such contractors, this condition shall not be deemed satisfied until such time as the proceedings are completed to the satisfaction of State;
6. The legislation referenced in Section 21 shall be in full force and effect; and
7. The provisions of Subsection 1(c) have been timely fulfilled.

(ii) Upon satisfaction of all items listed in Paragraph (1)(c)(i), above, the parties shall jointly issue the Commencement Date Notice specifying the Commencement Date.

(d) The parties hereby agree that (i) each party has provided the other party with effective notice of its desire to terminate the 1988 OMAPA and (ii) the 1988 OMAPA shall terminate as of the Commencement Date. State and CSXT hereby confirm each to the other their understanding and agreement that upon termination of the 1988 OMAPA as referenced in the Warranty Deeds recorded in 1988 and the Supplemental Warranty Deeds recorded in 1990 (collectively the “Deeds”), the terms of this Agreement shall replace the 1988 OMAPA for all purposes under said Deeds, including the agreement and understanding of the parties that the conveyance made by the Deeds is subject to the terms, conditions, and limitations of this Agreement in lieu of the 1988 OMAPA.

(e) The parties acknowledge that termination of the 1988 OMAPA by mutual agreement as contemplated herein will terminate the provisions thereof pertaining to labor protection. The parties agree that CSXT shall be responsible for its Labor Protection costs, if any, occasioned by the transfer to State of control and performance of dispatch and maintenance contemplated in this Agreement. As used herein, “Labor Protection” shall mean the costs, if any, incurred by CSXT as a result of State’s assumption of control of dispatching and maintenance on the State Property for the protection of the employees of CSXT, which costs may be incurred by CSXT pursuant to a provision of a collective bargaining agreement, bargained by CSXT as a result of the transfer or pursuant to rule, decision or final order of any governmental agency having jurisdiction over the event. If any claim, dispute, litigation, or work stoppage with a CSXT union shall be threatened or pending related to the transaction up to the time of the Commencement Date either party may elect not to proceed with the transaction. Notwithstanding the above, the parties agree that each shall be solely responsible for their respective risks and costs (including defense costs and liability) associated with any challenge to the transactions pursuant to law, a collective bargaining agreement or otherwise (“Labor Challenge”). To assist the State in responding or defending against labor claims by a CSXT employee, upon request of State addressed in writing to CSXT at the address provided in Section 23, CSXT will provide the following information relating to such claimant:

(1) whether the claimant has been dismissed or displaced from a position on CSXT on or after the Commencement Date and (2) the status or disposition of any claim for Labor Protection made by such claimant to CSXT after the Commencement Date. State and CSXT acknowledge a policy of non-interference with respect to labor protective decisions by employees.

(f) Except as otherwise expressly provided herein, and in accordance with Section 39.04 of the 1988 OMAPA, termination of the 1988 OMAPA 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 the 1988 OMAPA prior to the termination thereof.

## Section 2. Compensation

The fees described below shall constitute full and complete consideration to be paid by CSXT to State for all of CSXT's rights and operations (including without limitation, CSXT's rights with respect to the provision of Rail Freight Service on the State Property), and all of State's duties and obligations (including without limitation, State's obligation to procure and maintain the insurance described in Section 21 of this Agreement), under this Agreement and the CSXT Easement with respect to the State Property. The fees shall be computed as follows:

(a) Beginning on a date established in the Commencement Date Notice (the "Fee Commencement Date"), and thereafter for the term of and subject to this Agreement, CSXT shall pay State a usage fee (the "Usage Fee") which shall have two components: a fixed fee component (the "Fixed Fee") and a variable fee component (the "Variable Fee") as follows:

(i) CSXT shall pay State a Fixed Fee of Two Hundred Sixteen Thousand, Six Hundred Sixty-six Dollars and Sixty-six-Cents (\$216,666.66) per calendar month for each month during the term of this Agreement.

(ii) In addition to the Fixed Fee specified in Paragraph 2(a)(i), above, CSXT shall pay State, on a quarterly basis, a Variable Fee of Fifty-two Cents (\$0.52) per car mile for each locomotive and each rail car loaded or empty (including each EOT Unit, business car, passenger car, ballast

car, and rail car used in a work train, but excluding hi-rail equipment and maintenance of way machinery moving on its own wheels) handled on the State Property by CSXT. Each locomotive unit, EOT Unit, business car, passenger car, ballast car, and work train car (but excluding hi-rail equipment and maintenance of way machinery moving on its own wheels), handled by CSXT on the State Property, for the purpose of this Agreement, shall be counted as one car. With respect to articulated units, the number of cars shall be determined by the AAR Car Type Code as defined in the Uniform Machine Language Equipment Register ("UMLER") Specification Manual. The second numeric in the Car Type Code field covering codes "Q" and "S" shall 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 48' containers in each well. Car count data for articulated units is subject to change upon development of technology acceptable to both parties that would accurately separate units by Car Numbers.

(b) CSXT shall pay the Fixed Fee component of the Usage Fee required under Paragraph 2(a)(i), above, for the current month within thirty (30) days of receipt of State's invoice which shall be submitted to CSXT not earlier than thirty (30) days before the first day of such month. In the event that the Fee Commencement Date or the termination date of this Agreement falls on a date other than the first calendar day of the month, the Fixed Fee component of the Usage Fee required under Paragraph 2(a)(i), above, for the first month and/or the final month as the case may be, shall be prorated based on the number of days in such month. With respect to the Variable Fee component of the Usage Fee required under Paragraph 2(a)(ii), above, CSXT shall furnish to State, care of Secretary, District 4, Florida Department of Transportation, 3400 West Commercial Boulevard, Fort Lauderdale, Florida, within thirty (30) days of the end of each calendar quarter a statement of the number of loaded and empty rail cars as defined in Paragraph 2(a)(ii), above, handled by CSXT over the State Property and the miles traveled by each such car over the State Property during the quarter. CSXT shall pay the aforesaid Variable Fee for

the immediately preceding quarter within thirty (30) days of receipt of State's invoice following the end of such quarter.

(c) The Variable Fee shall be revised upward or downward each year, effective upon each anniversary of the Fee Commencement Date, to compensate for the increase or decrease in the cost of labor and material, excluding fuel, as reflected in the Annual Indexes of Charge-Out Prices and Wage Rates (1977=100), included in "AAR Railroad Cost Indexes" and supplements thereto, issued by the Association of American Railroads ("AAR"). In making such determination, the final "Material prices, wage rates and supplements combined (excluding fuel)" indexes for the East District shall be used. The Variable Fee shall be revised by calculating the percent of increase or decrease in the index of the latest calendar year as related to the index for the previous calendar year and applying that percent to the Variable Fee. For the initial annual adjustment following the Fee Commencement Date the "latest calendar year" shall mean the calendar year following the Fee Commencement Date and the "previous calendar year" shall mean the calendar year in which the Fee Commencement Date occurs.

By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for 2006; "B" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for 2007; "C" to be the Variable Fee; and "D" to be the percent of increase or decrease; the revised Variable Fee stated herein would be revised by the following formula:

$$(1) \quad (B - A)/A = D$$

$$(2) \quad (D \times C) + C = \text{revised Variable Fee, effective upon the anniversary of the Fee Commencement Date of the year being revised.}$$

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 Indexes of Charge-Out Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated

by the parties hereto. In the absence of agreement, the matter shall be resolved pursuant to the dispute resolution procedures of Section 17 hereof, including binding arbitration if necessary.

(d) The parties hereby agree that (10) years from the Fee Commencement Date and every ten (10) years thereafter the parties shall renegotiate the Fixed Fee and adjust the Fixed Fee upward or downward, by considering variables such as inflation or deflation, changes in the volume of Rail Freight Service, Intercity Rail Passenger Service and Commuter Rail Service on the State Property, expansion or contraction of CSXT's use of the State Property and such other factors as may be mutually agreed upon by the parties which affect the reasonable interests of the parties. The parties shall commence such negotiations at least six (6) months prior to each such renegotiation in order to conclude such renegotiation prior to any given ten year anniversary of the Fee Commencement Date. In the event that the parties fail to agree on whether an adjustment in the Fixed Fee is appropriate, or on the amount of such adjustment, the matter shall be resolved pursuant to the dispute resolution procedures of Section 17 hereof, including binding arbitration, if necessary. The parties agree that in the event of a dispute, the prior Fixed Fee shall remain in place until such time as the dispute is resolved. In the event the dispute is not resolved until after the ten year anniversary date (the "Expiring Anniversary Date"), the new Fixed Fee shall be applied with retroactive effect as of the Expiring Anniversary Date, but shall not be applied to any period prior to the Expiring Anniversary Date.

### Section 3. Operation and Management

(a) Subject to the terms and conditions of this Agreement, from and after the Commencement Date hereof, State shall manage, direct, and control all Railroad Operations on the State Property and State shall control the entry and exit of all trains, locomotives, rail cars, and rail equipment and the movement and speed of same to, from and over the State Property. Except as is otherwise expressly provided herein, all rules, special instructions, timetables, practices, regulations, and orders governing operations on the State Property shall be promulgated and issued by State and may be modified and amended by State from time to time during the term of this Agreement; provided, however, that in so

promulgating, issuing, modifying, or amending any such matters, State shall not apply any restriction which precludes CSXT's provision of Rail Freight Service on the State Property. CSXT and State shall each designate a single representative for purposes of coordinating activities between State and CSXT under this Agreement.

(b) State shall furnish, at its sole cost and expense, any and all supervisory personnel, operators, dispatchers and bridge tenders as may be necessary for the conduct of Railroad Operations on the State Property.

(c) State shall provide, at its sole cost and expense, any and all trains, locomotives, rail cars, and rail equipment to be used in the provision of Commuter Rail Service on the State Property and CSXT shall provide, at its sole cost and expense, any and all trains, locomotives, rail cars, and rail equipment to be used in the provision of Rail Freight Service on the State Property. CSXT shall equip, at its sole cost and expense, its trains, locomotives, rail cars, and rail equipment with radios and such other communication and signal devices that comply with the reasonable requirements established by State from time to time during the term of this Agreement for the conduct of Railroad Operations on the State Property. CSXT and State shall comply with the provisions of laws, regulations and rules, including, without limitation, those pertaining to environmental matters, promulgated by any municipality, state or board, commission or agency having appropriate jurisdiction, to the extent such laws, rules, or regulations apply to State or the State Property, respecting the operation and use of the State Property and the operation, condition, inspection and safety of their respective trains, locomotives, rail cars, and rail equipment while such trains, locomotives, rail cars, and rail equipment are being operated on the State Property. In the event that any fine, penalty or liability is imposed upon a party hereto or its officers, agents and employees under any such laws, rules and regulations by any such public authority or court having jurisdiction in the premises which is attributable to the failure of such party to comply with its obligations hereunder, then that party shall pay any and all such fines, penalties and/or liabilities so imposed. In the event a fine, penalty or liability is imposed upon one party which is attributable to the failure of the other party to comply with its obligations hereunder, then the party whose failure to comply

with such obligations shall pay any and all such fines, penalties and/or liabilities so imposed on the other party. Notwithstanding the foregoing provisions, the party upon whom a fine, penalty or liability is being proposed to be imposed shall communicate with the other party and if there is no disagreement between the parties concerning which party's failure is responsible for such fine, penalty or liability that party shall have the right to contest or settle any such fine, penalty or liability. If the parties do not agree which party's failure is responsible for such fine, penalty or liability, either party may, to the extent permitted by law, contest such fine, penalty or liability and, provided the party upon whom the fine, penalty or liability is imposed has given notice to and offered to allow the other party to participate in the contest or negotiation of the fine, penalty or liability, may settle such fine, penalty or liability without prejudice to its right to seek reimbursement from the other party under and subject to this Agreement and pursuant to Section 17. Nothing in this Section 3(c) shall alter, modify or amend Section 19 of this Agreement.

(d) CSXT shall provide employees, at its sole cost and expense, for the operation of its trains, locomotives, rail cars, and rail equipment over the State Property, and State shall provide employees, at its sole cost and expense, for the operation of its trains, locomotives, rail cars, and rail equipment over the State Property. All of CSXT's and State's employees who shall operate trains, locomotives, rail cars, and rail equipment over the State Property shall be qualified by State for operation thereover, and CSXT shall pay to State, within thirty (30) days of receipt of bills therefor, any cost incurred by State in connection with the qualification of such employees of CSXT, as well as the cost incurred by State for furnishing pilots, until such time as such employees of CSXT are deemed by the appropriate examining officer of State to be properly qualified for operation as herein contemplated. As used herein, qualification pertains only to the employee's operation of trains, locomotives, rail cars, and rail equipment on the State Property in accordance with State's operating rules and practices. For purposes of this Subsection 3(d), any employee of CSXT qualified to operate over the State Property on a date prior to the Commencement Date shall be deemed qualified by State for operation over the State Property as herein contemplated as of the Commencement Date. On a date prior to the Commencement Date, CSXT shall provide to the State a

list of the names of all CSXT employees that CSXT certifies to be qualified to operate over the State Property as of that date.

(e) If an employee, agent, or contractor of CSXT working on State Property is alleged to have violated State's safety rules, operating rules, regulations, orders, practices, or instructions, or if an incident occurs which requires an investigation under an applicable collective bargaining agreement to which CSXT is a party, CSXT, shall, unless State has actual notice of such alleged violation, provide notice of such alleged violation to State and, when appropriate, shall conduct an investigation. An officer of State may be present during such investigation. After the investigation is concluded, CSXT shall promptly after the availability thereof, furnish State with two copies of the transcript and a recommendation as to the discipline to be assessed. CSXT's Transportation Officer shall arrange to assess discipline within the applicable time limits. If State recommends dismissal, CSXT reserves the right to bar the employee, agent, or contractor from the State Property in lieu of dismissal.

(f) (1) If such employee, agent, or contractor is barred by CSXT from the State Property, CSXT shall be responsible for any and all claims and expenses because of such action. (2) In a major offense, such as a violation of Rule "G," dishonesty, insubordination, or a serious violation of safety rules, operating rules, regulations, orders, practices, or instructions, wherein State desires to bar CSXT's employee, agent, or contractor from service on the State Property pending an investigation by CSXT, immediate verbal notification shall be given to the appropriate Transportation Officer of CSXT and promptly followed by a written notification, and CSXT shall bar the employee from the State Property. (3) It is understood that State shall reimburse CSXT for all payments CSXT is required to make as a result of a successful challenge (hereinafter "Claim") being made by the employee or his representative as to the discipline when CSXT, at the written request or direction of State, as the case may be, has barred CSXT's employee from the State Property prior to an investigation. CSXT agrees to notify State before committing itself to making payment on any Claim. In the event such Claim is progressed to an Adjustment Board, State shall be given an opportunity to review CSXT'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 CSXT may be required to pay covering vacation allowances, Railroad Retirement taxes, unemployment insurance taxes and any other payroll tax or fringe benefits, and the employee shall be permitted to return to the State Property.

(g) If, by reason of any mechanical failure or for any other cause not resulting from an accident or derailment, a train, locomotive, rail car, or rail equipment of State or CSXT becomes unable to proceed under its own power, or fails to maintain the speed required by State on the State Property, or, if in emergencies, disabled or otherwise defective rail cars, or locomotives are set out of State's or CSXT's trains, then State shall furnish such motive power as it may have available or such other assistance, including, without limitation, the making of repairs, as may be necessary, to haul, help, push or move such trains, locomotives, rail cars, or rail equipment. CSXT shall bear and pay to State the cost and expense incurred by State of rendering any such assistance for CSXT and State shall bear the cost and expense incurred by State of rendering any such assistance for itself. The party bearing the cost and expense as aforesaid, shall be responsible for any and all liability, cost and expense arising out of or connected therewith. Any assistance provided by State to CSXT under this provision shall not be considered providing common carrier freight service by State.

(h) In the event State and CSXT agree that State should provide additional employees for the sole benefit of CSXT, the parties hereto shall enter into a separate agreement under which CSXT shall bear and pay any and all cost and expense for any such additional employees provided by State that would not have been incurred had the additional employees not been provided.

(i) Subject to the terms and conditions of this Agreement, the trains, locomotives, cars and equipment of CSXT, State, and any other present or future user of the State Property or any portion thereof, shall, in the absence of emergency situations, be operated without prejudice or partiality to any party and in such manner, as will afford the economical and efficient manner of movement of all trains, locomotives, rail cars, and rail equipment, within the following operating windows for seven (7) days a week:

1. 5:00 a.m. to 9:00 a.m. (0500 to 0900 hours) and 3:00 p.m. to 7:00 p.m. (1500 to 1900 hours) there shall be a priority window for passenger service, recognizing that rail freight trains may continue to have access to and use of the tracks on the State Property during this window as long as such access and use does not impede or delay Commuter Rail Service.
2. 9:00 a.m. to 3:00 p.m. (0900 to 1500 hours) and 7:00 p.m. to 11:00 p.m. (1900 to 2300 hours) mixed Commuter Rail and Freight Rail Service, which shall be handled through dispatch protocol, that shall be agreed upon by the State and CSXT, depending upon the type of train, time of day and on-time performance of passenger trains and which shall accommodate at least one and one-half (1.5) freight trains per hour in addition to all freight trains operating as of the Commencement Date (based upon the prior ninety (90) day average number of freight trains), and shall recognize the need for future growth in Rail Freight Service, Intercity Rail Passenger Service, and Commuter Rail Service;
3. 11:00 p.m. to 5:00 a.m. the following day (2300 to 0500 hours the following day) – priority given to freight operation recognizing that Commuter Rail Service may continue to have access to and use of the tracks of the State Property during this window as long as such access and use does not impede or delay Rail Freight Service.
4. Betterments and additions, curfew and program work, construction, and signal suspension (the “Work”) will be performed in the hours from 5:00 a.m. to 01:00 a.m. the following day (0500 to 0100 hours the following day) or within other operating windows if the work does not interfere with Freight Rail Service in CSXT’s reasonable judgment. State may perform such Work within other operating windows (1:00 a.m. to 5:00 a.m.) without CSXT’s prior approval provided State maintains at least one track open with functioning signals and grade crossing warning devices for Freight Rail Service adjacent to the track where State’s Work is taking place. State shall not perform Work nor the operation of engineering work trains simultaneously between more than two control points (from one control point to another control point) on the State Property without

obtaining CSXT's prior consent. Other than in case of emergency, track, bridge and signal inspection and maintenance shall be fairly spread over each party's operating window.

5. All the schedules and consists for the above windows shall be discussed in a manner that reflects the arrangement between State and Amtrak, to give priority to on-time Intercity Rail Passenger Service.

(j) State and CSXT understand that operations on the State Property may be interrupted or delayed from time to time during the term of this Agreement due to maintenance of or improvements to the State Property performed in accordance with Section 3(i)(4) of this Agreement or Force Majeure as defined in Section 22 of this Agreement. Except as expressly provided in this Subsection (j), neither party shall have any liability to the other for any loss or damage arising out of or resulting from any such interruption or delay. Except as expressly provided in this Subsection (j), CSXT shall be responsible for any and all liability, cost and expense arising out of or connected with any such interruption or delay to Rail Freight Service and State shall be responsible for any and all liability, cost and expense out of or connected with any such interruption or delay to Commuter Rail Service. In the event that State desires to perform maintenance or make improvements to the State Property which may interfere with or delay CSXT's Rail Freight Service, then State shall in advance thereof notify, advise and consult with CSXT regarding said interference and/or delay; provided, however, that such notification shall not be required in emergency situations.

(k) It is agreed and understood by the parties hereto that State has the option of using its own employees, the SFRTA, its successor, or another third party operator as its agent for the performance of Commuter Rail Service. State shall cause such agent, at no cost or expense to CSXT, to comply with the provisions of this Agreement pertaining to the operation of Commuter Rail Service on the State Property. State shall be responsible for any and all liability, cost and expense arising out of or connected with any act or omission of said agent and said agent shall be considered as State for the purposes of determining between State and CSXT State's assumption and apportionment of liability, cost and expense under this Agreement.

(l) State and CSXT understand that Intercity Rail Passenger Service and the provision of ancillary services with respect to Amtrak on the State Property are governed by the aforementioned Agreement between State and Amtrak. State and CSXT hereby understand and agree that CSXT cannot modify or amend its agreement with Amtrak and cannot enter into new agreements with Amtrak pertaining to Intercity Rail Passenger Service on the State Property, inconsistent with this Agreement, without the prior written consent of State, provided, however, that such consent shall not be required in the event that the amendment is required by law or any agreement in effect as of the date hereof. CSXT shall also notify and consult with State in the event of any change to Amtrak schedules for Amtrak trains operating on the State Property during the periods specified in Subsection 3(i). The foregoing provisions apply only to Intercity Rail Passenger Service as provided by Amtrak, its successors or assigns.

(m) From time to time during the term of this Agreement following the Commencement Date, CSXT shall have the right to operate special and/or excursion trains on or over the State Property carrying CSXT's employees, invitees, and/or passengers, but not the general public. CSXT shall be entitled to or responsible for, as the case may be, any and all fees, rents, charges or income arising out of or connected with such special and/or excursion trains, and such trains shall be considered as trains of CSXT for all purposes under this Agreement, including, without limitation, the provisions of Subsections 2(a) and 19(d) hereof; and for purposes of Section 19 of this Agreement, the aforesaid employees, invitees, and/or passengers of CSXT shall be considered as CSXT's employees. From time to time during the term of this Agreement following the Commencement Date, State shall have the exclusive right to operate special and/or excursion trains on the State Property carrying State's employees, invitees, and/or passengers including the general public. Except in emergencies, third party detours over the State Property shall be by mutual agreement of the parties. State shall be entitled to or responsible for, as the case may be, any and all fees, rents, charges or income arising out of or connected with such detour, special, and/or excursion trains, and such trains shall be considered as trains of State for all purposes under this Agreement, including, without limitation, the provisions of Subsection 19(d) hereof; and for purposes of Section 19 of this Agreement, the aforesaid employees and/or invitees of State shall be considered as Rail

Commuter Passengers. It is understood by the parties hereto that the rights herein granted with respect to special and/or excursion trains shall not be used to expand or modify the provisions of this Agreement pertaining to Rail Freight Service, Commuter Rail Service, or Intercity Rail Passenger Service contemplated under this Agreement.

#### Section 4. Maintenance

(a) Except as is otherwise expressly provided herein, from and after the Commencement Date hereof State shall have management, direction and control of, and shall perform, or cause to be performed: first, all work of maintaining and repairing the rights-of-way, tracks, State Sidetracks, bridges, communications, signals, including Positive Train Control ("PTC") equipment, and all appurtenances on the State Property in accordance with the standards specified in Subsection (b) hereof; and, second, all work of maintaining buildings on the State Property in a satisfactory condition, normal wear and tear excepted. CSXT shall have management, direction and control of all work of maintaining and repairing the CSXT Property in a condition deemed appropriate by CSXT in its sole judgment and discretion.

i. On the Commencement Date, CSXT will convey to State any tracks described in Exhibit A, attached hereto and incorporated in this Agreement, which tracks, if any shall become State Sidetracks subject to the CSXT Easement. State will, upon the Commencement Date, own both the State Property and the Trackage thereon with the exception of the Industry Sidetracks described in Exhibit B attached hereto and incorporated in this Agreement. The Industry Sidetracks will be permitted to remain on the State Property in accordance with the terms of the Contract, existing agreements, and the provisions of this Agreement. The mutually agreed precise cut points for the State Sidetracks will be at the boundaries of the State Property; and ownership of the Industry Sidetracks will be as set forth at Exhibit B hereto. Exhibits A and B will be provided by the mutual agreement of the parties at least ninety (90) days prior to the Commencement Date.

ii. Concerning maintenance, repair, and replacement of Industry Sidetracks, such responsibilities are generally those of the owners of such Industry Sidetracks. In the event of failure of a

specific industry to maintain any Industry Sidetrack in accordance with applicable standards and regulations, CSXT may elect to cease provision of service over said Industry Sidetrack. CSXT shall comply with Section 11(d) of this Agreement to the extent such provisions are applicable to any such election by CSXT to cease provision of service over an Industry Sidetrack.

(b) In maintaining and repairing the State Property, State shall maintain the rights-of-way, tracks, State Sidetracks, bridges, communications, signals, and all appurtenances to a level consistent with State standards, then current CSXT geometry standards, the American Railway Engineering Maintenance-of-Way Association (A.R.E.M.A.) Manual for Railway Engineering, the best generally accepted industry standards, and all applicable FRA track and signal standards. Where specific conflicts arise between the standards described above then State, in its discretion, may apply the more restrictive standard, provided, however, should the CSXT standard with respect to grades, degree of curvature, clearances or braking distances (the "CSXT Standards"), be more restrictive than any other standard, then State shall apply the more restrictive CSXT Standard. Furthermore:

- (i) the parties agree that the CSXT Standards in place on the Commencement Date shall be the CSXT Standards in effect for the first Annual Period (as defined herein);
- (ii) annually, at least three (3) months prior to the first and each subsequent anniversary of the Commencement Date ("Annual Period"), State shall request, in writing, from CSXT a copy of CSXT's then current CSXT Standards showing any changes (if any) in the CSXT Standards. CSXT shall provide its changes (if any) to State in writing within forty-five (45) days following receipt of State's request. The CSXT Standards provided in response to this section will become the CSXT Standards applicable to maintenance under this Section 4 and the CSXT Standards referenced in Section 5 and Section 8 related to future additions, betterments or alterations starting on the anniversary of the Annual Period. Should CSXT fail to respond within the forty-five (45) day period, the existing CSXT Standards from the prior Annual Period shall apply during the upcoming Annual Period; and

(iii) provided the CSXT Standards included in a contract are the then applicable CSXT Standards, and a contract for the applicable work is awarded, CSXT shall not be entitled to alter, amend or modify the CSXT Standards contained in the contract other than as required by the FRA pursuant to rule or regulation. With respect to longer term projects for additions, betterments or alterations, where standards other than the CSXT Standards defined herein are being developed as the project proceeds, the CSXT Standards existing at the time a particular scope of work or other identifiable contract in which other design and construction standards are made final shall apply and remain in place for the duration of the awarded scope of work or other identifiable contract. Any disputes regarding the use of standards shall be resolved using the procedures in Section 17. State agrees to maintain the mainline on the State Property to achieve at least the FRA Class 4 standard for freight and passenger trains under the FRA's regulations, as amended. The aforesaid standards shall be applied in a manner that generally permits authorized track speeds, subject to temporary and permanent slow orders and speed restrictions that may be reasonably imposed by State or other lawful authority from time to time in a manner consistent with generally accepted industry standards. The speed limits for the tracks specified below are:

	Track	Maximum Authorized Track Speed
Main Track	(Between Milepost SX-964.9 at West Palm Beach and Milepost SX-1036.3 at Hialeah)	79 MPH Passenger and Commuter Traffic 60 MPH Freight Traffic
Main Track	(Between Milepost SX-1036.3 at Hialeah and Milepost SX-1041.12 at Oleander and SX-1036.3 at Hialeah and SX-1041.3 at Miami)	25 MPH All Traffic
Signaled Passing Sidings		30 MPH All Traffic
Industrial and Yard Tracks		10 MPH All Traffic
All Other		In accordance with FDOT operating rules

(c) The maximum authorized track speeds may be changed from time to time during the term of this Agreement by State in accordance with state and federal law and with notice to CSXT providing

CSXT the opportunity to comment on any proposed change, provided, however, that freight and passenger track speeds shall not be lowered without the consent of CSXT. It is understood by the parties hereto that circumstances warranting a change to such track speeds shall include situations in which no further upgrading of the track is necessary (e.g., the modification or removal of local speed restrictions) or in which the parties otherwise agree to a capital improvement.

(d) The maintenance of the State Property in accordance with the aforesaid standards and maximum and minimum authorized track speeds shall be accomplished by State based on State's sole determination of the necessity and scope of work necessary for the maintenance and repair of the State Property, provided, however, that such maintenance and repair conforms with the aforesaid standards and lawfully permits the authorized track speeds.

(e) From time to time, CSXT, upon prior written notice to State, may accompany State on its inspection of the State Property as it deems appropriate to determine State's compliance with its obligations under Subsection 4(b) hereof, and in the event such inspection discloses any defect(s) from the standards set forth in said Subsection 4(b), CSXT may give State notice thereof, in which event State shall correct such defect(s) within the time provided under applicable laws or regulations. In the event State shall fail to correct such defect(s) within the time provided under applicable laws or regulations, CSXT shall have the right, but not the obligation, to cause such defects to be corrected and State shall reimburse CSXT for the entire cost thereof.

(f) State shall have management, direction, and control of and shall perform, or cause to be performed, at its sole cost and expense, all work of maintaining, servicing, fueling, and repairing its trains, locomotives, rail cars, and rail equipment. CSXT shall have management, direction, and control of and shall perform, or cause to be performed, at its sole cost and expense, all work of maintaining, servicing, fueling, and repairing its trains, locomotives, rail cars, and rail equipment. It is understood by the parties hereto that State, without the approval of CSXT, may enter into agreements from time to time with the South Florida Regional Transportation Authority, Amtrak, or others for the maintaining, servicing, fueling, and repairing of State's trains, locomotives, rail cars, and rail equipment, provided,

however, that in the event any such maintenance, service, fueling, or repair is performed on the State Property by a party other than Amtrak, then State shall be responsible for any and all liability, cost and expense arising out of or connected with such maintenance, service, fueling, or repair and said party shall be considered as State for the purposes of determining between State and CSXT, State's assumption and apportionment of liability, cost and expense under this Agreement.

(g) State shall have management, direction, and control of and shall perform, or cause to be performed, at its sole cost and expense, all work of maintaining, improving or repairing the buildings, structures and facilities on State Property as listed or described in Exhibit 2; provided, however, State by separate agreement may provide that certain buildings, structures, and facilities that are to be used by CSXT, whether exclusively or jointly with State, may be maintained, improved, or repaired by CSXT.

(h) Upon the Commencement Date hereof, CSXT shall transfer to State, and State shall assume, the administration and performance of all agreements listed in Exhibit 6 pertaining to the maintenance, repair, and operation of existing roadway and highway crossings, crossing protection devices and railway interlocking and interchange facilities on the State Property and thereafter State may renegotiate, renew, terminate, cancel, or modify any such agreements subject to the terms and conditions of Section 8 hereof. It is understood by the parties hereto that State shall have the right to grant new crossings on the State Property subject to the terms and conditions of Section 8 hereof.

(i) Nothing contained in this Section 4 shall be construed to modify, amend, limit or restrict the provision of Section 19 hereof.

#### Section 5. Additions, Betterments, Retirements, and Alterations

(a) Subject to the provisions of Section 8 hereof, State, from time to time and at its sole cost and expense, may make such changes in, additions and betterments to, or retirements from the State Property: first, as shall, in State's sole judgment, be necessary or desirable for the economical or safe operation thereof; provided, however, that any such addition, betterment, retirement or alteration shall not unreasonably interfere with CSXT's provision of Rail Freight Service on the State Property as

contemplated in Subsection 1(a) of this Agreement or CSXT's operations on the CSXT Easement or CSXT Property, and any retirement to the State Property shall be subject to the mutual agreement of State and CSXT, or as pertaining to Sidetracks in accordance with the provisions of Subsection 11(d); or, second, 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 State Property. The design and construction standards for the foregoing shall be the standards set forth in Section 4(b) of this Agreement.

(b) If the parties mutually agree that changes in or additions and betterments to the State Property, including changes in communication or signal facilities, are required to accommodate CSXT's operations beyond that required by State to accommodate its own operations, State shall construct, or have constructed, the additional facilities or betterments and CSXT shall pay to State the cost and expense thereof, including the annual expense of maintaining, repairing, and renewing such additional facilities or betterments.

(c) The parties agree that CSXT will reimburse State for fifty percent (50%) of the cost of the initial purchase, construction and installation of the wayside communications and signals equipment, comprised of the radios, signal hardware, and wired and wireless infrastructure, necessary to satisfy the FRA PTC regulations promulgated pursuant to the Rail Safety Improvement Act of 2008, as amended, to the extent applicable to the State Property, provided, the cost of maintenance of all such PTC equipment from and after that initial construction will be for State's account. CSXT and State shall cooperate in securing for State and/or SFRTA an initial and subsequent PTC 220, LLC provided spectrum lease (s) upon mutually agreeable terms among the parties to the lease (s).

(d) The parties agree that the bascule bridge over the New River will be replaced by State, at State's sole cost and expense, in accordance with this Subsection 5(d), and the cost and expense thereof shall not be taken into consideration in any future renegotiation of the Usage Fee under Subsection 2(d) hereof, nor in connection with any allocation of expenses under the 1988 OMAPA. The parties mutually agree that (i) the standards and specifications for the bridge replacement shall be those as set forth in

Exhibit 7 hereto; (ii) construction shall begin within ten (10) years of the Execution Date; and (iii) during the construction period, State shall provide for continuation of Rail Freight Service by minimizing the closure of the existing bascule bridge, to the maximum extent possible. Prior to letting any contract that includes construction of the replacement bridge, State shall develop operating protocols for Railroad Operations during construction, which shall identify bridge closure schedules, and which shall be provided to CSXT for review and comment in accordance with Subsection 8(h) hereof. The approved closure schedules shall be included in any contract to construct the replacement bridge. Any closure of the bridge beyond that allowed by the closure schedule set forth in such contract shall be only for safety reasons. Notwithstanding any other provision in this Agreement to the contrary, from and after the Execution Date, in the event extraordinary expenses related to the maintenance or replacement of the bascule bridge over the New River are required or incurred prior to the Commencement Date: (i) the parties agree to negotiate a mutually agreed allocation of those costs; and (ii) in the absence of mutual agreement on the allocation of those costs, either party may terminate this Agreement without further obligation or liability. The parties acknowledge that sufficient consideration for the effectiveness of this Subsection 5(d) as an independent obligation has been exchanged, including but not limited to, the execution of this Agreement by the parties.

#### Section 6. Revenues

(a) CSXT shall establish rates for and be entitled to any and all revenues of whatsoever amount, kind, nature or description howsoever derived from the provision of Rail Freight Service on the State Property and the CSXT Easement and CSXT Property.

(b) State shall establish rates for and be entitled to any and all revenues of whatsoever amount, kind, nature or description howsoever derived from the provision of Commuter Rail Service and other passenger rail service provided by State on the State Property.

(c) The parties hereto understand that Amtrak shall establish rates for and be entitled to any and all revenues of whatsoever amount, kind, nature or description howsoever derived from the provision of Intercity Rail Passenger Service on the State Property pursuant to agreement with State.

(d) In addition to the aforesaid entitlements, State and CSXT shall be entitled to revenues derived from the State Property and CSXT Property as hereinafter provided in Sections 7 and 8 hereof.

#### Section 7. Existing Agreements Pertaining to State Property and CSXT Property

(a) Except as is otherwise expressly provided in Section 3(1) hereof with respect to Amtrak and hereinafter with respect to MCI Telecommunications, Inc. and Lightnet, CSXT has been and shall continue to be entitled to or responsible for, as the case may be, any and all fees, rents, charges or income arising out of or connected with the contracts, agreements, leases, licenses, and easements listed or described in Exhibit 3 hereto as such Exhibit 3 is updated in accordance with Subsection 7(d), and CSXT may renegotiate, renew, terminate, cancel or modify any of the contracts, agreements, licenses, leases or easements listed or described in said Exhibit 3 without the consent of State. Except as may be otherwise provided under this Section 7 and/or Sections 8, 18 and 19 hereof, CSXT shall forever release and discharge State from and against any and all obligations and liabilities arising out of or connected with the aforesaid contracts, agreements, leases, licenses, and easements, and CSXT shall be responsible for any and all obligations, liabilities, costs or expenses arising out of or connected with the aforesaid contracts, agreements, leases, licenses, and easements. Any and all prepaid proceeds, fees, rents, charges or income under the contracts, agreements, leases, licenses, and easements listed or described in Exhibit 3 hereto shall be retained by CSXT, without any interest in or participation by State with respect to same. With respect to MCI Telecommunications, Inc., from and after December 12, 2007, State shall be entitled to renegotiate, renew, terminate, cancel or modify the Operating Agreement between CSXT and MCI with respect to MCI's occupation and use of the State Property and, as between the parties hereto, State shall be entitled to or responsible for, as the case may be, any and all fees, rents, charges or income arising out of or connected therewith from and after the Commencement Date. With respect to Lightnet, from and

after September 18, 2018, State shall be entitled to renegotiate, renew, terminate, cancel or modify the Operating Agreement between CSXT and Lightnet with respect to Lightnet's occupation and use of the State Property and, as between the parties hereto, State shall be entitled to or responsible for, as the case may be, any and all fees, rents, charges or income arising out of or connected therewith from and after the Commencement Date. Except as otherwise provided under Sections 18 and 19 hereof, State shall be responsible for any and all obligations and liabilities arising out of or connected with MCI's and Lightnet's occupation and use of the State Property from and after December 12, 2007 with respect to MCI, and from and after September 19, 2018 with respect to Lightnet. The provisions of this Subsection 7(a) shall not apply to the contracts, agreements, leases, licenses, and easements which are listed or described in Exhibit 4 hereto or Subsection 7(c) hereof or which State may enter into pursuant to Section 8 hereof.

(b) CSXT has previously or does hereby transfer and assign to State the contracts, agreements, leases, licenses, and easements listed or described in Exhibit 4 hereto, and in the event it has not already done so, State shall give notice of such transfer and assignment to the parties to said instruments. From and after May 11, 1988, State shall be entitled to or responsible for, as the case may be, any and all fees, rents, charges or income arising out of or connected with the contracts, agreements, leases, licenses, and easements listed or described in said Exhibit 4. State may renegotiate, renew, terminate, cancel or modify any of the contracts, agreements, leases, licenses, or easements listed or described in said Exhibit 4, subject to the same terms and conditions governing the entry of contracts, agreements, leases, licenses, and easements pursuant to Section 8 hereof. Except as may be otherwise provided under Sections 18 and 19 hereof, State shall be responsible for any and all obligations and liabilities arising from and after the date hereof out of or connected with the aforesaid contracts, agreements, leases, licenses and easements, and State shall be responsible for any and all obligations, liabilities, costs or expenses arising from and after the date hereof out of or connected with the aforesaid contracts, agreements, leases, licenses and easements. Except as otherwise expressly provided in Exhibit 4 hereto with respect to certain agreements therein specified, any and all prepaid proceeds, fees, rents, charges or income (as of May 11, 1988) under

the contracts, agreements, leases, licenses, and easements listed or described in Exhibit 4 hereto have been and shall be retained by CSXT without any interest in or participation by State with respect to same, and CSXT hereby reserves the right to collect any and all fees, rents, charges or income under said instruments which are uncollected as of May 11, 1988 hereof and pertain to the period of time preceding May 11, 1988. Except as otherwise provided above, the provisions of this Subsection 7(b) shall not apply to the contracts, agreements, leases, licenses, and easements which are listed or described in Exhibit 3 hereto or Subsection 7(c) hereof or which State may enter into pursuant to Section 8 hereof.

(c) From and after the Commencement Date, CSXT may renegotiate, renew, terminate, cancel or modify any of its contracts or agreements pertaining to Sidetracks. CSXT also may enter into new agreements pertaining to Sidetracks without the consent of State, subject to the provisions of Subsections 3(i) and 8(e) hereof. Any rental income from Sidetracks that is derived from and after the Commencement Date by CSXT from such contracts or agreements shall be paid to State within thirty (30) days. The provisions of this Subsection 7(c) shall not apply to the contracts, agreements, leases, licenses, or easements listed or described in Exhibits 3 and 4 to the 1988 OMAPA hereto or which State may enter into pursuant to Section 8 hereof. Except as may be otherwise provided under this Subsection 7(c) and/or in Sections 8, 18, and 19 hereof, CSXT shall be responsible for any and all obligations, liabilities, costs or expenses arising out of or connected with the aforesaid contracts or agreements.

#### Section 8. Future Agreements Pertaining to and Uses of the State Property

It is understood by the parties hereto that State may use, grant to others the right to use, and convey interests in the State Property, in whole or in part, for any lawful private or public purposes, which will be in addition to the Railroad Operations on the State Property contemplated under Subsection 1(a) of this Agreement. Such additional uses and conveyances of the State Property will be subject to the provisions of the Contract, this Agreement and the CSXT Easement (to the extent that it may apply) and will be undertaken by State in its sole discretion and in a manner consistent with the then current

Commuter Rail Service, Rail Freight Service, and Intercity Rail Passenger Service operations on the State Property.

(a) Except as is otherwise expressly provided in this Agreement and except as is otherwise expressly provided under any contract, agreement, lease, license, easement, reservation or restriction of or pertaining to the State Property in existence as of May 11, 1988, whether or not of record (including, without limitation, those occupancies granted by CSXT and operating agreements entered into by and between CSXT and MCI Telecommunications, Inc., until December 12, 2007, and CSXT and Lightnet, until September 18, 2018, which provide, in part, for exclusive use by Lightnet and MCI of the State Property for fiber optics transmission systems until the specific dates), State shall have the exclusive right: first, to use the State Property on its own behalf for any lawful purpose; and/or, second, to grant and convey to others any and all interests, easements, leases, licenses, or rights of occupancy in, on, under, through, above, across or along the State Property, or any portion thereof; provided, however, that the aforesaid rights of State shall not be used to permit any form of Rail Freight Service on the State Property, or any portion thereof, without CSXT's prior written consent; provided, further, that the aforesaid rights of State shall be exercised: first, in such a manner as not to unreasonably interfere with CSXT's and/or Amtrak's operations on the State Property contemplated under Subsection 1(a) of this Agreement or CSXT's operations on the CSXT Property, and, second, otherwise in conformance with the provisions of this Agreement, including, without limitation, Subsections 8(c) and (d) and Section 38 hereof. State shall be entitled to or responsible for, as the case may be, any and all proceeds, fees, rents, charges or income arising out of or connected with State's rights under this Section 8(a) and CSXT shall have no interest or right of participation in any revenue or income howsoever derived from the enjoyment and use of such rights.

(i) Any future uses or improvements on, under, through, above, across, or along the State Property shall be compatible with the existence and continuation of Railroad Operations, shall not unreasonably interfere with or unreasonably constrain continued Rail Freight Service, Commuter Rail Service or Intercity Rail Passenger Service and shall not include residential use within the

first fifty (50) feet measured from the adjacent Corridor boundary line to the portion of the residential building closest to the Corridor boundary line ("Residential Setback"). The parties agree that associated residential development requirements related to landscaping, irrigation, fencing, walls, drainage and utilities, not reasonably expected to be used by building residents, shall be permitted to occur within the Residential Setback. Any bike paths, sidewalks, parking lots or other amenities reasonably expected to be regularly used by building residents shall not be permitted within the Residential Setback.

(ii) Subject to (i) above, State may use the State Property for Railroad Operations or Incidental Use (as defined in Paragraph 19(a)(ii), hereof), and for any other lawful purpose; however, for any other use of the State Property (that being other than for Railroad Operations or Incidental Use (as defined in Paragraph 19(a)(ii), hereof), the following conditions shall apply: (A) any other use of the State Property by Other Invitees (as defined in Paragraph 19(a)(iii), hereof), if and when allowed by State, State shall assume liability, indemnify, and provide insurance as between State and CSXT, solely and to the extent as provided under and pursuant to Sections 19 and 21 hereof, for any liability, cost, or expense for the loss of, damage to, or destruction of any property and for the injury to or death of any such person or persons that occurs on or about the State Property; and, (B) such other use shall be allowed only in areas where there is either (1) no environmental contamination or (2) where such use would not result in a requirement that environmental remediation be conducted to levels more stringent than that which would be required if such use were for Railroad Operations or Incidental Use (as defined in Paragraph 19(a)(ii), hereof), unless the State agrees to be responsible for any increased liability, cost, and expense for any more stringent environmental remediation resulting from the allowed use over and above that required for Railroad Operations or Incidental Use (as defined in Paragraph 19(a)(ii), hereof) and from any claim or claims made related to any use of the State Property in the absence of such remediation having been performed by State as required.

(iii) State agrees and acknowledges that CSXT will continue to have a substantial interest in enforcement of Paragraphs (8)(a)(i) through (8)(a)(iii) whether or not CSXT retains title to property adjacent to State Property or retains the CSXT Easement.

(b) State shall provide CSXT sixty (60) days written notice prior to each instance in which State either grants or conveys an interest, easement, lease, license or right of occupancy to any other party(ies) pursuant to Subsection 8(a) hereof, or exercises on its own behalf any right, privilege or license pursuant to said Section that requires the performance of any work on the State Property, including, without limitation, the construction modification, alteration or relocation of railroad tracks, signals, fiber optic transmission systems or communication facilities on the State Property, then State shall use its best efforts to cause or permit such work to be effected in a manner consistent with the requirements of the subject interest, easement, lease, license or right of occupancy or the aforesaid exercise of any right, privilege, or license; provided, however, that all such work shall be effected in such a manner as not to unreasonably interfere with CSXT's provision of Rail Freight Service on the State Property contemplated under Subsection 1(a) of this Agreement or CSXT's operations on the CSXT Property and shall be otherwise in conformance with the provisions of this Agreement, including, without limitation, Subsections 8(c) and (d) hereof. Unless otherwise mutually agreed to by the parties hereto, to the extent any of the aforesaid work on the State Property involves the construction, modification, alteration or relocation of railroad tracks, signals, or communication facilities used by CSXT for Railroad Operations, then State shall pay, or cause to be paid, the cost and expense of the aforesaid work, including, without limitation, any and all cost and expense incurred by CSXT and others for the relocation of railroad tracks, signals, fiber optic transmission systems or communications facilities and for the provision of services, materials, employees or equipment in connection with such work. In the event MCI and/or Lightnet bears and pays for any relocation of the fiber optic transmission systems when such relocation is for railroad operational purposes then State shall not be responsible for the cost and expense of such relocation to the extent such cost and expense is borne and paid by MCI and/or Lightnet. The CSXT Easement shall be adjusted, at the sole cost and expense of State, to reflect any changes to the location of the State Property.

(c) Notwithstanding any other provision of this Agreement to the contrary, State shall not, without the prior written consent of CSXT, either: (i) grant or convey to others any interest, easement, lease, license or right of occupancy within the following clearances of any of the below specified tracks now or hereafter located on the State Property or the CSXT Property: (A) Lateral clearances of not less than 10 feet from either side of the centerline of any main track and adjacent sidings and 9 feet from either side of the centerline of any Sidetrack; and (B) Vertical clearances for the entire lateral clearance width aforesaid of not less than 23 feet above the top of each rail of any such track; or (ii) cause or permit the building, construction, alteration, erection, installation, demolition or removal of any structure or facility on the State Property within the following clearances of any track now or hereafter located on the State Property or the CSXT Property: (A) Lateral clearances of not less than 12 feet from either side of the centerline of any track; and (B) Vertical clearances for the entire lateral clearance width of any such track of not less than 23 feet above the top of rail of any such track (the "Specified Clearances"). It is understood by State and CSXT that State has constructed certain platforms for commuter rail service within the Specified Clearances and there exist other facilities on State Property that do not meet the Specified Clearances, for which, to the extent previously approved by CSXT, no further consent from CSXT shall be required. If any proposed facility or structure is to be closer to the track than allowed by the Specified Clearances, State shall submit to CSXT a copy of the plans and specifications for such facility or structure for CSXT's review and approval in accordance with the CSXT Standards then in effect pursuant to Section 4(b) prior to construction, provided, however, that with respect to the following items, the less restrictive of the Specified Clearances, the then current CSXT Standards or the clearances below shall apply:

(I) for overhead highway bridges, a lateral clearance of ten (10) feet from either side of the centerline of any track with a crash wall;

(II) for fences, other than intertrack fences, a lateral clearance of eight (8) feet from either side of the centerline of any track;

(III) for intertrack fences, a site by site review, if a lateral clearance from either side of the centerline of any track is less than seven and one-half (7 ½) feet plus or minus three (3) inches, is desired; and

(IV) for platforms, eight inches (8") ATR and a lateral clearance from either side of the centerline of any track of not less than five feet, one inch (5'1"). A twenty-five inch (25") ATR mini-hi platform located on the eight inch (8") ATR platforms shall have a lateral clearance measured from the centerline of the track of not less than seven feet, six inches (7'6").

(V) The platform clearances in (IV) above shall apply only to platforms constructed along tangent track. Any platform to be constructed along curved track shall comply with the then current CSXT Standards or such other clearances mutually agreed upon between the parties.

State shall submit all plans and specifications for any facilities to be built under the tracks on the State Property for CSXT's review and approval in accordance with CSXT's current engineering specifications for facilities of like type and condition on CSXT's railroad properties. CSXT shall respond to State's submission with written comments in accordance with Subsection 8(h).

(d) CSXT shall have the exclusive right to enter contracts, agreements, leases and licenses: first, with shippers and receivers of freight and others pertaining to provision of Rail Freight Service on the State Property and the CSXT Property, provided, however, that CSXT shall not, without first obtaining State's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed, convey, transfer or assign the CSXT Easement or grant any operating rights over all or any portion of the State Property, to any third party, and provided further that in the case of Florida East Coast Railroad only, CSXT shall not, without first obtaining State's written consent thereto (which consent may be withheld by State in its sole and absolute discretion), convey, transfer or assign any right to operate on or over the State Property, and further provided, that the limitations described above shall not apply to such rights as currently exist pertaining to crossings or interchange or which may be granted by CSXT for detour movements; and second, with Amtrak to the extent provided herein or required by law, and third, with MCI Telecommunications, Inc. and Lightnet, its or their successors and assigns pertaining to fiber

optic transmission systems (subject to the provisions of Subsection 7(a) hereof). CSXT shall be entitled to or responsible for, as the case may be, any and all proceeds, fees, rents, charges or income arising out of or connected with such contracts, agreements, leases and licenses, and State shall have no interest or right of participation in any revenue or income howsoever derived from such contracts, agreements, leases and licenses.

(e) In each instance in which CSXT desires to relocate railroad tracks on the State Property or to construct, erect or install any facility on the State Property, including, without limitation, additional Sidetracks, then prior to the performance of any such work, CSXT shall submit the plans and specifications for same to State for its written approval. State shall provide its written approval of such plans and specifications within sixty (60) days of its receipt of same in the event that the proposed work satisfies the following criteria: first, the proposed work does not unreasonably interfere with the provision of Commuter Rail Service and/or Intercity Rail Passenger Service on the State Property and/or any reasonably foreseeable use of State Property by State, such uses including, without limitation, light rail, high speed rail, highway, road, bridge, utility, or other transportation related uses as determined by State; second, the proposed work is necessary or desirable for the provision of Rail Freight Service, and/or Intercity Rail Passenger Service on the State Property; and, third, CSXT pays, or causes to be paid, any and all cost and expense of the proposed work. In the event that State determines that the proposed work will unreasonably interfere with the aforesaid Commuter Rail Service and/or other uses, then within sixty (60) days of its receipt of the aforesaid plans and specifications, State shall provide written notification thereof to CSXT, which notification shall first, to the extent possible, specify the reasonable conditions, including, without limitation, duration of use and modification(s) to the submitted plans and specifications, that are necessary to permit such work to be performed in a manner that will not unreasonably interfere with the aforesaid commuter and/or other uses or, after exhausting such conditions or modifications, State's reasons for denial of such request, such denial only then being final and not subject to Section 17 hereof. To the extent that the plans and specifications are approved subject to modification(s), then the plans and specifications as so modified shall be submitted to State for its written

approval, which approval State shall provide within thirty (30) days of its receipt of such modified plans and specifications if same comply with State's aforesaid notification to CSXT. Upon completion of any work, CSXT shall notify State thereof and certify to State that the work was performed in accordance with the approved plans and specifications before the relocated tracks or other facilities can be placed into rail service. It is understood by the parties hereto that: the purpose of the aforesaid approval process is to ensure that any work performed on the State Property is done in a manner consistent with State's reasonably foreseeable use(s) for the State Property; that the approval process specified herein shall not be used to unreasonably prohibit CSXT's development of railroad freight business on the State Property; that the CSXT Easement shall be adjusted to reflect the relocation, construction, erection or installation of any tracks or Sidetracks so occurring; and that no additional compensation shall be paid by CSXT or others to State for the use of any State Property under the foregoing provisions.

(f) Except as may be otherwise provided under Section 19 hereof, in each instance during the term of this Agreement in which State either grants or conveys an interest, easement, lease, license or right of occupancy or uses the State Property on its own behalf under the provisions of this Section 8, State shall be responsible for any and all obligations, liabilities, costs and expenses howsoever arising out of or connected therewith. Except as may be otherwise provided under Section 19 hereof, in each instance during the term of this Agreement in which CSXT exercises any right under this Section 8, CSXT shall be responsible for any and all obligations, liabilities, costs and expenses howsoever arising out of or connected therewith.

(g) Nothing contained in this Section 8 shall be construed as granting or conferring to State any right or privilege to use, or permit the use of, CSXT Property for any of the purposes contemplated in this Section 8.

(h) Whenever State wishes to cause or permit the building, construction, alteration, erection, installation, demolition or removal of any State Property, the following procedures shall apply:

- (i) State shall submit to CSXT a copy of the plans and specifications for such facility or structure for CSXT's review. The plans and specifications submitted shall contain sufficient detail to allow meaningful review
- (ii) CSXT shall have thirty (30) days from receipt of such written submittal in which to request additional information or to seek clarification. If CSXT requests such additional information or seeks clarification of the decision, State shall within fifteen (15) days either: (A) supply the additional information or clarification, or (B) notify CSXT that no additional information or clarification is necessary and will not be provided.
- (iii) Within ninety (90) days from receipt of the submission of the plans to CSXT pursuant to Paragraph 1, above or within forty-five (45) days of receipt by CSXT of the additional information or clarification provided by State pursuant to Clause (2)(A), above, or within forty-five (45) days of receipt by CSXT of notification from State that no additional information or clarification will be provided pursuant to Clause (2)(B), above, whichever time frame is later, CSXT shall transmit its written comments to State.
- (iv) If CSXT fails to respond within the ninety (90) days, State may proceed under subparagraph (viii) below.
- (v) If CSXT accepts State's proposed plans, the proposed plan shall become final.
- (vi) If CSXT objects to the proposed plans, it shall set forth with particularity the reasons therefor, and shall identify reasonable alternatives or conditions that would render the proposed plans not objectionable.
- (vii) If State accepts and incorporates CSXT's tendered alternatives or conditions, the proposed plans as so modified shall become final.
- (viii) If CSXT fails to respond or State rejects CSXT's tendered alternatives or conditions, either party may provide the other party with the notice required by Subsection 17(a), Paragraph 1 of this Agreement, and the matter shall be subject to Section 17 of this Agreement, it being understood and agreed that Section 17 of this

Agreement renders binding arbitration inapplicable to certain matters, including, without limitation, matters reserved for mutual agreement of State and CSXT, and it being further understood and agreed that (A) binding arbitration shall apply to any dispute over State's wish to cause or permit the building, construction, alteration, erection, installation, demolition or removal of any State Property as described in this Section 8(h), including without limitation for failure of CSXT to respond as set forth above, and (B) that in any such arbitration the arbitrator or arbitrators shall apply the standards specified in Section 4(b) of this Agreement.

#### Section 9. Taxes, Assessments, and Utilities

(a) It is the intent and understanding of the parties hereto that all services performed by State for CSXT under this Agreement, including, without limitation, those performed under Sections 3, 4, and 5 hereof, are railroad transportation services, and accordingly are exempt from the payment of sales, use, or other taxes by either State or CSXT. In the event any taxes, fees, charges, liens or assessments are imposed upon State for such performance of railroad transportation services for CSXT or the acquisition of property for CSXT by State in conjunction therewith, then same shall be borne and paid by CSXT in their entirety, including, without limitation, any and all interest and penalties thereon.

(b) Except as provided below and in subsection (c) hereof, from and after the Commencement Date hereof State shall initiate, contract for and obtain, in its name, all utility services required on the State Property for the Railroad Operations contemplated under Section 1 of this Agreement, including gas, electricity, telephone, water and sewer connections and services. The cost and expense for such services shall be considered as a cost of maintenance of the State Property.

(c) State shall initiate; contract for and obtain, in its name, all utility services required for the buildings, structures and facilities listed or described in Exhibit 5 of this Agreement including gas, electricity, telephone, water and sewer connections and services and State shall bear and pay directly to the providers of such services all charges for such services as they become due and payable. CSXT shall

not be required to bear any portion of the cost and expense for such services except with respect to buildings, structures, and facilities referenced in Exhibit 2 that are directly attributable to CSXT's use thereof.

#### Section 10. Casualty Losses

In the event that any portion of the State Property is damaged or destroyed by accident, flood, fire, civil disturbance, vandalism, earthquake, storm, sabotage or act of God, and in the further event that repair or replacement is required by State or CSXT for the continued provision of their respective Railroad Operations contemplated under this Agreement, then, in the event a party determines that such repair or replacement should be made for the exclusive benefit of that party, or the parties agree that such repair or replacement is required for the joint use or benefit of State and CSXT, State shall either: (i) repair, or cause to be repaired, that portion of the State Property so damaged or destroyed to substantially the same condition as existed prior to such damage or destruction or (ii) replace, or cause to be replaced, such portion with property of like kind, condition or quality. The cost and expense of such repair or replacement shall be allocated and apportioned between State and CSXT as follows:

(a) The cost and expense of any repair or replacement required for the exclusive use or benefit of State or CSXT shall be borne, paid, and arranged entirely by the party so requiring same.

(b) The cost and expense of any repair or replacement required for the joint use or benefit of State and CSXT shall be borne, paid, and arranged by State and CSXT on a mutually agreeable basis.

(c) Nothing in this Section 10 referring to an "accident" shall alter or modify the liability provisions of Section 19, or the insurance provisions of Section 21, and whenever any loss of, damage to or destruction of State Property occurs as a result of an accident involving the trains, locomotives, rail cars or rail equipment of, or on the account of State, CSXT, or any other railroad (including, without limitation, Amtrak and/or a detouring railroad), the provisions of Sections 19 and 21 shall govern the liability for the repair or replacement of State Property.

#### Section 11. Abandonment and/or Discontinuance

(a) From time to time during the term of this Agreement and notwithstanding any other provision of this Agreement to the contrary, CSXT may seek from the STB appropriate regulatory authority, including without limitation, exemption from the requirements to obtain such authority, to abandon and/or discontinue Rail Freight Service over all or any portion of the State Property. In the event CSXT seeks and obtains such regulatory authority, then the following terms and conditions shall apply:

(i) State may offer financial assistance to CSXT, in accordance with applicable statutory and regulatory provisions, to enable Rail Freight Service to be continued over the State Property or portion thereof so involved with such abandonment or discontinuance. In the event that such offer of financial assistance complies with applicable statutory and regulatory provisions governing such offers, then CSXT shall accept such offer and shall continue Rail Freight Service on the State Property or portion so involved pursuant to the terms and conditions of such offer. In the event that CSXT believes that such offer does not comport with such applicable statutory and regulatory provisions, then CSXT shall promptly advise State of CSXT's non-acceptance of such offer, and State shall either: (A) seek to have the STB establish the terms and conditions governing the offer of financial assistance, subject to CSXT's participation in any such establishment, or (B) withdraw its offer of financial assistance. In the event that State so seeks to have the terms and conditions established by the STB and the terms and conditions so established are acceptable to State, then State shall so advise CSXT, and CSXT shall continue the Rail Freight Service over the State Property or portion thereof so involved in accordance with the terms and conditions so established by the STB. In the event that CSXT should receive an offer as aforesaid from State and one (1) or more offer(s) to purchase the CSXT Easement or subsidize the provision of Rail Freight Service on State Property, or portion involved, from any other person, then CSXT shall exercise its statutory right to select State as the offeror with whom CSXT desires to transact business, subject to all of the aforesaid provisions governing the acceptability of State's offer and the STB's establishment of terms and conditions in the event of CSXT's non-

acceptance of State's offer, provided, however, that if State's offer is to purchase the CSXT Easement or portion involved, State shall have the right, without the consent of CSXT, to transfer the CSXT Easement or portion involved to a third party in compliance with any STB requirements.

(ii) In the event that: (A) State declines or fails to make an offer of financial assistance to CSXT, as aforesaid; (B) State declines or fails to accept the terms and conditions established by the STB, as aforesaid; (C) State withdraws its offer of financial assistance; or (D) the agreement governing the continuation of Rail Freight Service under such financial assistance terminates by expiration of its term or otherwise, then CSXT may exercise, in whole or in part, the regulatory authority obtained by it for the abandonment or discontinuance of service on the State Property, or portion thereof, so involved. In the event that CSXT exercises the regulatory authority so obtained, then (1) this Agreement and the CSXT Easement shall automatically terminate and be of no further force and effect with respect to the State Property, or portion thereof, with respect to which CSXT exercises such regulatory authority and, except to the extent so terminated, this Agreement and the CSXT Easement shall remain in full force and effect; and (2) CSXT shall bear the conditions, if any, imposed by the STB on CSXT to protect the interests of CSXT's employees in the abandonment or discontinuance application or petition brought by CSXT under applicable statutory and regulatory provisions.

(b) Nothing contained in this Section 11 shall be construed as precluding CSXT's assignment of this Agreement and the CSXT Easement, in lieu of CSXT's aforesaid abandonment or discontinuance, to any person in accordance with the provisions of Section 37 hereof, provided, however, that any such assignment shall be made subject to the provisions of this Section 11.

(c) As used in this Section 11, the term "applicable statutory and regulatory provisions" means 49 U.S.C. § 10903 et seq. and 49 C.F.R. Part 1152 and the STB's interpretations thereof as of the date of this Agreement. In the event that during the term of this Agreement such statutory and/or regulatory provisions are modified or amended in substantial respect or are repealed, then the parties hereto shall

supplement and amend the provisions of this Section 11 in order to continue in effect substantially the same rights and obligations herein contained.

(d) The foregoing provisions of Subsections 11(a) through 11(c), inclusive, pertain to abandonments or discontinuances subject to the STB's jurisdiction. As of the date hereof, the abandonment or discontinuance of sidetracks are statutorily exempt from the need to obtain abandonment or discontinuance authority from the STB's jurisdiction. In the event that at any time during the term of this Agreement any Sidetrack located on the State Property is not used by CSXT for the purpose of providing Rail Freight Service or Intercity Rail Passenger Service for a period of thirty (30) consecutive months, then either party shall so notify the other party and State may notify CSXT of State's desire that such Sidetrack, including the track switch(es) connecting such Sidetrack to the mainline or siding be removed. In the event State so requests, then CSXT shall within (60) days contact the shipper or last known user of such Sidetrack and determine whether use of such Sidetrack in the future for Rail Freight Service is reasonably foreseeable. If such use is not reasonably foreseeable, CSXT shall exercise all rights of cancellation under any contract or agreement pertaining to such Sidetrack and shall use reasonable efforts to secure from the owner thereof the right to remove such Sidetrack, and upon the date said contract or agreement is canceled this Agreement and the CSXT Easement, only insofar as they pertain to said Sidetrack, shall automatically terminate and be of no further force or effect and State shall be free to remove such State Sidetracks and to require CSXT to remove or cause to be removed such Industry Sidetracks at State's cost and expense (or to obtain CSXT's consent to allow State to remove such Industry Sidetracks) and the materials so removed shall be made available to the owner thereof. If no such contract or agreement exists, then upon the date of State's aforesaid notice, this Agreement and the CSXT Easement, only insofar as they pertain to said Sidetrack, shall automatically terminate and be of no further force or effect and State shall be free to remove such State Sidetracks and to require CSXT to use reasonable efforts to secure any consent required from a third party to remove, and to remove or cause to be removed such Industry Sidetracks at State's cost and expense (or to obtain CSXT's consent to allow State to remove such Industry Sidetracks) and the materials so removed shall be made available to the

owner thereof. Except to the extent so terminated, this Agreement and the CSXT Easement, shall remain in full force and effect. Nothing contained herein shall preclude State and CSXT from mutually agreeing to the removal of any such Sidetrack prior to the expiration of said thirty (30) month period.

Section 12. Compliance With Laws

(a) During the term of this Agreement, State and CSXT shall comply, at their respective sole cost and expense, with all laws, orders, rules and regulations, to the extent such laws, rules, or regulations apply to State or to the State Property governing the maintenance and repair of the State Property, including, without limitation, those pertaining to environmental matters, that are promulgated by any municipality, state or federal government, board, commission or agency having appropriate jurisdiction, to the extent such laws, orders, rules, or regulations apply to State or the State Property, and except as otherwise provided in Exhibit 10 to the Contract.

Either party shall have the right to contest by appropriate legal proceedings, at its sole cost and expense, the validity and applicability of any law, order, rule or regulation of a nature referred to above. To the extent permissible, compliance with such law, order, rule or regulation may be postponed until the final determination of any such proceedings, provided that all such proceedings shall be prosecuted with all due diligence and dispatch on the part of the party hereto contesting same.

(b) Neither party hereto shall permit the State Property to be used by the public without restriction or in such manner as might reasonably tend to impair State's title to the State Property or CSXT's rights and interests therein as contemplated under this Agreement and the CSXT Easement. The foregoing: (i) shall not be construed to limit or restrict the rights and interests of the parties hereto as provided in this Agreement; and (ii) shall not in any way restrict the public use of the State Property or the CSXT Property in the normal conduct of the three classes of Railroad Operations contemplated under Subsection 1(a) of this Agreement.

(c) Whenever State or CSXT enters into any new instrument referred to in Sections 7 or 8 hereof that grants to others a right to occupy or use the State Property then the party hereto entering into such

new instrument shall provide therein that the person so occupying or using the State Property shall comply with all applicable federal, state and local laws, regulations and ordinances respecting such occupancy or use.

(d) Notwithstanding any other provision of this Agreement, in compliance with Florida Statutes, Section 339.135(6)(a), the following language and provisions thereof are hereby made a part of this Agreement:

The Department [Department of Transportation], during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the Comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the Department which are for an amount in excess of \$25,000.00 and which have a term for a period of more than 1 year.

### Section 13. Liens and Charges

CSXT shall not cause or create any lien, claim, mortgage or charge of any nature whatsoever, including, without limitation, mechanics' or material supplier's liens (hereinafter in this Section collectively referred to as "charge") to be asserted against or claimed against the State Property for any reason and State shall not cause or create any charge to be asserted against the State Property which would interfere with or restrict the CSXT Easement. If any such charge shall at any time be claimed against the State Property, then the following provisions shall apply:

(a) The party hereto causing or creating such charge shall cause same to be discharged of record within thirty (30) days of the later of either: (i) the filing or attachment of same; or (ii) the date that the creating party has actual notice of such filing or attachment. If the party causing or creating such charge fails to discharge same within such period, then, except as is otherwise expressly provided in Subsection 13(b) hereof, the other party hereto may discharge the same by paying the amount claimed to be due without inquiry into the validity of the same. Any amount

paid by the party discharging the charge and all cost and expense incurred in connection therewith, including, without limitation, reasonable attorney's fees, together with interest thereon at the maximum rate allowed by law from the date of payment, shall be paid by the party causing or creating the charge to the party discharging same within thirty (30) days of the discharging party's submission of a bill therefor.

(b) Notwithstanding the foregoing provisions, the party causing or creating a charge shall have the right to contest or settle any such charge, provided, however, that within thirty (30) days of the later of either: (i) the filing or attachment of the charge, or (ii) the date that the causing or creating party has actual knowledge of such filing or attachment, the causing or creating party shall give written notice to the other party hereto of the causing or creating party's intention to contest or settle such charge. In the event that the party causing or creating the charge complies with the foregoing provisions, then the other party shall not pay, remove or otherwise proceed to discharge any such charge.

#### Section 14. Eminent Domain

The parties hereto understand that the exercise of any lawful authority for condemnation, expropriation or seizure with respect to the State Property, at least insofar as it pertains to the CSXT Easement, would be subject to the jurisdiction of the STB under 49 U.S.C. §10903, et seq., prior to the occurrence of any taking as hereinafter described. In the event that at any time during the term of this Agreement the whole or any part of the State Property shall be taken by any lawful power by the exercise of the right of eminent domain for any public or quasi-public purpose, the following provisions shall be applicable:

(a) Taking of Whole. If such proceeding shall result in the taking of the whole, then each party hereto shall have the unilateral right, upon written notice to the other and subject to the securing of any and all necessary governmental approvals, to terminate this Agreement in its entirety and the term hereof shall terminate and expire on the date title to the State Property vests in the condemning authority, and the

Usage Fee and any other sums or charges provided in this Agreement shall be adjusted as of the date of such vesting.

(b) Taking of Part. If such proceeding shall result in the taking of less than all of the State Property and does not materially interfere with either State's or CSXT's use of the State Property as contemplated under Subsection 1(a) hereof, then this Agreement shall continue for the balance of its term as to the part of the State Property remaining and the Usage Fee and any other sums or charges provided in this Agreement shall only be adjusted as of the date of such taking to reflect any increase in CSXT's costs or a decrease in CSXT's revenue as a result of the taking so occurring.

(c) Temporary Taking. If the temporary use of the whole or any part of the State Property shall be taken at any time during the term of this Agreement for any public or quasi-public purpose, the party receiving notice thereof shall give prompt notice thereof to the other party and this Agreement shall be adjusted as of the date of such taking to reflect the taking so occurring. For purposes of this Subsection 14(c), temporary taking shall include all use or occupation of all or any portions of the State Property that shall not exceed ninety (90) consecutive days of use or occupation. In the event that such temporary taking shall exceed such ninety (90) day period, then either State or CSXT may elect to treat such taking in accordance with the provisions of Subsections 14(a), (b) and (d) hereof.

(d) Awards. Except as otherwise expressly provided in this Section 14, State shall be entitled to any and all funds payable for the total or partial taking of the State Property without any participation by CSXT; provided, however, that nothing contained herein shall be construed to preclude CSXT from prosecuting any claim directly against the condemning authority for loss of its business, or depreciation to, damage to, or cost of removal of, or for the value of the CSXT Easement, and any other interests or properties belonging to CSXT, including, without limitation, the CSXT Property; and, provided, further, that nothing contained herein shall be construed to create any interest or entitlement in State to any and all funds payable to CSXT for such total or partial taking of the State Property or any taking of the CSXT Property.

(e) Each party hereto shall provide prompt notice to the other party of any eminent domain proceeding involving the State Property. Each party shall be entitled to participate in any such proceeding, at its own cost and expense, and to consult with the other party, its attorneys, and experts. State and CSXT shall make all reasonable efforts to cooperate with each other in the defense of such proceedings and to use their best efforts to ensure the continued use of the State Property for the Railroad Operations contemplated under Subsection 1(a) of this Agreement.

(f) The provisions of this Section 14 shall apply to and govern all takings involving the State Property by exercise of the right of eminent domain as aforesaid.

(g) Nothing contained herein shall preclude State from exercising its eminent domain powers for any purpose with respect to the State Property, provided, that, such exercise shall not modify, amend, limit or restrict the CSXT Easement or the rights and obligations of the parties hereto under this Agreement and, provided, further, that any such exercise shall be done at no cost or expense to CSXT.

#### Section 15. Payment of Bills and Records

(a) Except as otherwise expressly provided in this Agreement, all payments called for under this Agreement shall be made by the party hereto obligated to pay same within thirty (30) days after its receipt of a bill therefor. In cases of a bona fide dispute those portions of the billings which are undisputed, shall be paid in accordance with the time period set forth above, and any dispute reconciled by the parties hereto shall be promptly adjusted in the accounts of the subsequent months. All bills submitted shall be in sufficient form for pre-audit and post-audit thereof of the services performed, and shall indicate, to the extent applicable, the dates of the occurrences and time expended therefor. All bills shall be signed by a person who can represent that the costs and expenditures contained in said bill are true and correct to the best of that person's knowledge or belief.

(b) The books, records and accounts of each party hereto, insofar as they pertain to the State Property and this Agreement, shall be open to inspection by the other, upon reasonable request during normal business hours, at the offices of the parties hereto. If so instructed by State, CSXT shall allow

public access to all such books, records and accounts subject to the provisions of Chapter 119, Florida Statutes, and made or received by CSXT on behalf of State in conjunction with this Agreement.

(c) In the event CSXT fails to make, when due, any payment to State under this Agreement, then State, to the extent permitted by law, may set off the amount due from CSXT against any payment that is owed by State to CSXT under this Agreement. Payments by State to CSXT shall be subject to Section 215.422, Florida Statutes (2007), which provides, among other things, State has twenty (20) days to deliver a request for payment (voucher) to the Department of Financial Services. The twenty (20) days are measured from the latter of the date the invoice is received or the services are received. If a payment is not available within forty (40) days, a separate interest penalty as established pursuant to Section 215.422, Florida Statutes, shall be due and payable, in addition to the invoice amount, to CSXT. Interest penalties of less than one (1) dollar shall not be enforced unless CSXT requests payment. Invoices which have to be returned to CSXT because of CSXT preparation errors shall result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to State. A vendor ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The vendor ombudsman may be contacted at (850) 413-5516 or by calling the Division of Consumer Services at 1-877-693-5236.

#### Section 16. Default and Breach

(a) In the event of a default or breach by either party hereto of any of its obligations under this Agreement, the party in default or breach shall cure such default or breach within sixty (60) days of notice to it from the other party of such default or breach; and provided, however, that, except as may be otherwise expressly provided in this Agreement, the party in default or breach, shall be responsible for any and all liability, cost and expense arising out of or connected with such default or breach during the period of such cure; and provided, further, that nothing contained in this Section 16 shall be construed to modify or amend the provisions of Section 19 hereof or to limit or restrict a party's rights thereunder.

(b) The parties hereto expressly acknowledge that the nature and purpose of this Agreement is such that damages may not be an adequate remedy for any default or breach so occurring; that equitable relief, such as injunction, mandatory or otherwise, may be necessary in the event a party fails to cure a breach or default so occurring; and that, except with respect to the seeking of such equitable relief, any and all controversies arising out of or connected with any default or breach, so occurring shall be resolved exclusively by dispute resolution and arbitration in accordance with the provisions of Section 17 hereof. Nothing contained in this Section 16 shall be construed to limit or restrict the parties' rights and obligations under Section 36 hereof.

#### Section 17. Dispute Resolution and Arbitration

It is the desire and intent of the parties to avoid, if possible, the expense and delay inherent in litigation; therefore, CSXT and State agree that whenever a party cannot resolve an issue with the other party, both parties will engage in the alternative dispute resolution process described below. This dispute resolution process consists of two steps: executive level negotiations as set forth in Subsection 17(a), and arbitration as set forth in Subsection 17(b).

##### (a) Executive Level Resolution of Disputes

(1) Notice and Response. A party may give the other party written notice of any dispute not resolved in the normal course of business. Within five (5) business days after delivery of the notice, the receiving party shall submit to the disputing party a written response. The notice and the response shall include, (i) a statement of the position of the party delivering the notice of dispute or the response, as the case may be, and a summary of arguments supporting its position, and, (ii) the name and title of the executive who will represent that party in the negotiation to resolve the dispute and of any other person who will accompany the executive.

(2) Negotiation Process. Within ten (10) business days after delivery of the disputing party's notice, the executives of both parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. The parties will cooperate

with respect to reasonable requests for information made by one party to the other, subject to each party's discretion with respect to confidential, proprietary or other non-public information. In an effort to facilitate the negotiation process, such executives may agree to have an unrelated third party moderate and facilitate the negotiations, or may refer the matter to a panel of experts for resolution or recommendation. If a negotiator intends to be accompanied at a meeting by an attorney, the other negotiator shall be given at least three (3) business days notice of such intention and may also be accompanied by an attorney.

(3) Termination of Negotiations. If the dispute has not been resolved within ninety (90) calendar days after delivery of the disputing party's notice; or if the parties fail to meet within twenty (20) calendar days after delivery of the disputing party's notice; or if a panel of experts, having been determined to be appropriate as provided in this Subsection 17(a) fails to provide a recommendation within sixty (60) days of the parties' request for a recommendation; or if within sixty (60) days after receipt of a recommendation of a panel of experts the parties fail to resolve the dispute; either party may give written notice to the other party declaring the negotiation process terminated.

(4) Obligation of Parties. The parties regard the obligations to notify the other party of a dispute and to negotiate such dispute pursuant to this Subsections 17(a) and (b) hereof as an essential provision of this Agreement and one that is legally binding on each of them. In case of a violation of such obligation by either party, the other may bring an action to seek enforcement of such obligation in a court of law pursuant to Section 25 hereof.

(5) Payment of Fees And Costs. Each party shall each bear its own costs and expenses incurred in connection with any negotiations and dispute resolution.

(6) Failure to Resolve Dispute. Upon failure to resolve any dispute in accordance in this Subsection 17(a), the parties shall engage in arbitration pursuant to Subsection 17(b), unless the parties otherwise agree to engage in mediation or other dispute resolution processes at their discretion.

(b) Arbitration

1. Except as is otherwise provided in Paragraph 17(b)2. hereof, any controversy under this Agreement that is not resolved pursuant to Subsection 17(a) shall be settled in accordance with the Commercial Arbitration Rules of the American Arbitration Association and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Arbitration shall be held at a mutually convenient location, and in the event the parties cannot agree, then at a location specified by the arbitrator(s). It is the intent of the parties hereto that the agreement to arbitrate contained in this Section shall be valid and irrevocable, shall extend to disputes as to whether particular disagreements are arbitrable, and shall be specifically enforceable by either of the parties hereto from and after the date of this Agreement. In interpreting this Agreement and resolving any dispute hereunder, the arbitrator(s) shall apply the laws of the State of Florida. In the event of arbitration, each party hereto shall pay the compensation, costs, fees and expenses of its own witnesses, exhibits and counsel. The compensation, costs, fees and expenses of the arbitrator(s) and the American Arbitration Association shall be paid equally by State and CSXT.

2. It is understood and agreed by State and CSXT that the provisions of Subsection 17(b) are not applicable to and shall not be used: first, to alter, amend, change, modify, add to or subtract from any of the provisions of this Agreement, except to the extent mutually agreed to by State and CSXT in the submission of the matter to arbitration; second, to resolve any matter subject to the judgment or discretion of one party to this Agreement; and, third, except as is otherwise expressly provided herein, to resolve any matter reserved for mutual agreement of State and CSXT.

#### Section 18. Clearing of Wrecks

Whenever State's or CSXT's use of the State Property requires rerailling, wrecking service or wrecking train service, State shall be responsible for the performance of such service, including, without limitation, the repair and restoration of roadbed, track and structures. CSXT shall assist State in the performance of such service to the extent requested by State. The liability, cost and expense of the foregoing, including, without limitation, loss of, damage to or destruction of any property whatsoever and

injury to or death of any person or persons whomsoever resulting therefrom, shall be allocated and apportioned in accordance with the provisions of Section 19 hereof. All trains, locomotives, rail cars, and rail equipment and salvage from the same so picked up and removed which is owned by CSXT shall be promptly delivered to it. State shall perform the services under this Section 18 in an expeditious manner in order to restore rail service on the line.

#### Section 19. Liability

(a) Notwithstanding any other provision of this Agreement to the contrary, the following words and terms shall have the following meanings for purposes of this Section 19:

(i) The term "Rail Commuter Passenger(s)" shall mean and include any and all persons, ticketed or unticketed, using the Commuter Rail Service or any Incidental Use on the State Property: first, while on board trains, locomotives, rail cars, or rail equipment employed in Commuter Rail Service and/or entraining and detraining therefrom; second, while on or about the State Property for any purpose related to the Commuter Rail Service, including, without limitation, parking, inquiring about Commuter Rail Service or purchasing tickets therefor and coming to, waiting for, leaving from and/or observing rail commuter or other trains, locomotives, rail cars, or rail equipment; and, third, while on or about the State Property for any purpose related to any Incidental Use thereof. The term Rail Commuter Passenger(s) shall also mean and include any and all persons meeting, assisting or in the company of any person described in the immediately preceding sentence.

(ii) The term "Incidental Use" shall mean certain ancillary uses of the State Property conducted for the convenience and comfort of users of Commuter Rail Service which shall include, without limitation, such activities as restaurants, kiosks and retail facilities, the purpose and function of which are to serve the needs of users of Commuter Rail Service.

(iii) The term "Other Invitee" shall mean any person or persons described in Section 8(a)(ii) of this Agreement, other than those persons on the State Property for Railroad Operations or Incidental Use

as defined in Paragraph 19(a)(ii), hereof. Other Invitee shall also mean and include any and all persons meeting, assisting or in the company of any person described in the immediately preceding sentence.

(iv) The term "Limited Covered Accident(s)" means a collision directly between the trains, locomotives, rail cars, or rail equipment of the State and CSXT only, where the collision is caused by or arises from the willful misconduct of CSXT or its subsidiaries, its agents, licensees, employees, officers, or directors or where punitive damages or exemplary damages are awarded due to the conduct of CSXT or its subsidiaries, its agents, licensees, employees, officers, or directors.

(b) Notwithstanding any other provision of this Agreement to the contrary, whenever any liability, cost or expense is to be assumed by, borne by or apportioned to a party hereto under any of the provisions of this Section 19, then that party shall forever protect, defend, indemnify and hold harmless the other party, its officers, agents and employees, from and against that liability, cost, and expense, assumed by that party or apportioned to it, regardless of whether or not the loss, damage, destruction, injury or death giving rise to any such liability, cost or expense is caused in whole or in part and to whatever nature or degree by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of that party, the other party, or its or their officers, agents and employees, and/or any other person or persons whomsoever.

(c) Except as is otherwise expressly provided by the last sentence of this Subsection 19(c) or Paragraph 19(c)(i), whenever any loss of, damage to or destruction of any property whatsoever or injury to or death of any person or persons whomsoever occurs on or about the State Property, including, without limitation, any loss, damage, destruction, injury or death of or to State's contractors, agents or employees, Rail Commuter Passengers, Other Invitees, trespassers on the State Property and/or any other person on, about or crossing the State Property at highway or roadway crossings or elsewhere by automobile, truck, foot or otherwise, then any and all liability, cost and expense for the loss, damage, destruction, injury or death so occurring shall be borne entirely by State. The foregoing provisions of this Subsection 19(c) shall not apply to or govern occurrences covered by Subsection 19(d) hereof.

(i) The parties specifically acknowledge and agree that, in the event of a Limited Covered Accident, State shall have no duty to indemnify or hold harmless CSXT from damages or expenses (aggregate per occurrence) up to the amount of the deductible or self-assumed amount allowed by Section 21 (b) and actually in force at the time of the Limited Covered Accident, provided, however that, except as otherwise expressly provided by Paragraph 19(d)(iv), State shall indemnify and hold harmless CSXT from all damages and expenses above the amount of the deductible or self-assumed amount allowed by Section 21(b) and actually in force at the time of the Limited Covered Accident (aggregate per occurrence) regardless of the basis of such claims or occurrences, including willful misconduct or punitive or exemplary damages. If State incurs any damages, fees, costs, or expenses in connection with a claim relating to a Limited Covered Accident, CSXT shall reimburse State for all damages, fees, costs and expenses, up to the amount of the deductible or self-assumed amount allowed by Section 21(b) and actually in force at the time of the Limited Covered Accident (aggregate per occurrence) incurred in the defense or settlement of such a claim, action or demand, which amounts shall count toward CSXT's maximum responsibility under this Paragraph 19(c)(i), provided that if the settlement amount does not exceed the deductible or self-assumed amount allowed by Section 21 (b), CSXT shall have no duty to indemnify State for the damages, fees, costs and expenses if such settlement has not been approved in writing by CSXT, which approval by CSXT shall not be unreasonably withheld.

(d) The following provisions shall govern the liability, cost and expense and the responsibility of the parties hereto, as between themselves, therefor arising out of, resulting from or connected with the movement of trains, locomotives, rail cars and rail equipment on the State Property (without limiting the application of this Subsection 19(d) to any other incident or occurrence, for the avoidance of doubt, an occurrence involving a train, locomotive, rail car or rail equipment of or in the account of either party on one hand, and on the other hand, either (i) a third party at a highway or grade crossing on the State Property or (ii) a trespasser, shall be governed by Subsection 19(d)(ii) or 19(d)(iii) as applicable):

i. Except as is otherwise expressly provided in Paragraph 19(c)(i), it is the specific and express intent of CSXT and State that State shall be solely responsible for liability, howsoever arising, without

limitation, to Rail Commuter Passengers and Other Invitees, and as between CSXT and State whenever Rail Commuter Passengers or Other Invitees suffer any loss, damage, injury or death arising out of, resulting from or connected with any occurrence covered by this Subsection 19(d), then except as is otherwise expressly provided in Paragraph 19(c)(i), State shall be solely responsible for and assume, without recourse against CSXT, any and all liability, cost and expense therefor.

ii. Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever (including, without limitation, Rail Commuter Passengers or Other Invitees), occurs with the trains, locomotives, rail cars or rail equipment of, or in the account of, only State being involved, then State shall assume all liability therefor, and bear all cost and expense in connection therewith, including, without limitation, all cost and expense referred to in Section 18 hereof.

iii. Whenever any loss of, damage to or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, occurs with the trains, locomotives, rail cars or rail equipment of, or in the account of, only CSXT being involved, then (except for the liability, cost and expense for loss, damage, injury or death to Rail Commuter Passengers or Other Invitees, the liability, cost and expense for which will be solely assumed by State, as aforesaid in Paragraph 19(d)(i)), CSXT shall assume all liability therefor, and bear all cost and expense in connection therewith, including without limitation, all cost and expense referred to in Section 18 hereof.

iv. Whenever any loss of, damage to or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever (including, without limitation, Rail Commuter Passengers or Other Invitees), occurs with the trains, locomotives, rail cars or rail equipment of, or in the account of, both State and CSXT being involved, then: (A) State and CSXT shall separately assume and bear all liability, cost and expense for loss of, damage to or destruction of trains, locomotives, rail cars (including, without limitation, lading) and rail equipment operated by each of them; (B) State shall assume and bear all liability, cost and expense for injury to and death of Rail Commuter Passengers, Other Invitees and State's officers, agents, contractors and employees except as set forth in Paragraph 19(c)(i); (C) CSXT shall assume and bear all liability, cost and expense for injury to and death of CSXT's officers, agents,

contractors and employees; and (D) State and CSXT shall equally assume and bear all liability, cost and expense for injury to or death of any person (including, without limitation, trespassers) not referenced in Subparagraph 19(d)(iv)(B) or 19(d)(iv)(C) and for loss of, damage to and destruction of all other property not referenced in Subparagraph 19(d)(iv)(A) (including, without limitation, the State Property) so occurring, including, without limitation, all cost and expense referred to in Section 18 hereof, provided, however, that this Subparagraph 19(d)(iv)(D) shall be ineffective and shall not apply to any injury to or death of any person or persons on or about the State Property in connection with, arising from or related to, Intercity Rail Passenger Service, including, without limitation, passengers and any person or persons aboard, waiting for, boarding or alighting from trains operated by Amtrak (including, without limitation, any person or persons assisting or accompanying any of the foregoing passengers or persons).

v. Except as provided in Paragraph 19(d)(vi) below, whenever any loss of, damage to or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever (including, without limitation, Rail Commuter Passengers or Other Invitees), occurs with the trains, locomotives, rail cars or rail equipment of, or in the account of, (A) both CSXT and any other railroad using the State Property being involved (including, without limitation) Amtrak and/or any detouring railroad), or (B) both State and any other railroad (other than CSXT) using the State Property being involved, (including, without limitation) Amtrak and/or any detouring railroad), then Amtrak and/or any other such railroad, shall be considered as State for the purpose of determining between State and CSXT, CSXT's assumption and apportionment of liability, cost and expense under Paragraph 19(d)(iv) above, provided, however, where the event is as described in Subparagraph 19(d)(v)(B), where no CSXT train is involved, then Subparagraph 19(d)(iv)(D) shall not apply.

vi. Whenever any loss of, damage to or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever (including, without limitation, Rail Commuter Passengers or Other Invitees), occurs with the trains, locomotives, rail cars or rail equipment of, or in the account of, State, CSXT and any other railroad (including, without limitation, Amtrak and/or a detouring railroad) using the State Property being involved, then State and Amtrak and/or any other such railroad shall be

jointly considered as State and a single party to this Agreement for the purpose of determining the assumption and apportionment of liability, cost and expense between CSXT and State under Paragraph 19(d)(iv) above, provided, however, that CSXT's share of that liability, cost and expense that is to be borne equally by State and CSXT under said Subparagraph 19(d)(iv)(D), above, shall be reduced from one-half (1/2) to one-third (1/3) of such liability, cost and expense in the event that such other railroad bears and pays to State one-third (1/3) or more of the aforesaid liability, cost and expense. The division of liability expressed in this Paragraph 19(d)(vi) applies only to that cost and expense that is to be borne equally by State and CSXT under Subparagraph 19(d)(iv)(D) and shall be ineffective and shall not apply to any Rail Commuter Passenger, Other Invitee or other person referenced in Subparagraph 19(d)(iv)(B) or Subparagraph 19(d)(iv)(C), or any injury to or death of any person or persons on or about the State Property in connection with, arising from or related to, Intercity Rail Passenger Service, including, without limitation, passengers and any person or persons aboard, waiting for, boarding or alighting from trains operated by Amtrak (including, without limitation, any person or persons assisting or accompanying any of the foregoing passengers or persons). Nothing contained in the aforesaid proviso shall be construed as limiting or modifying either party's respective obligation to assume and bear all liability, cost and expense for: (A) loss of, damage to or destruction of the trains, locomotives, rail cars and rail equipment operated by that party; and (B) injury to and death of that party's officers, agents, contractors and employees; all as provided in said Paragraph 19(d)(iv).

vii. Notwithstanding any other provision of this Agreement to the contrary, for the purposes of this Subsection 19(d), the term "rail equipment" shall mean and be confined to maintenance of way and work train equipment and other vehicles and machinery (such as hi-rail trucks) which are designed for operation on and are being operated on railroad tracks on the State Property at the time of any occurrence under said Subsection 19(d).

viii. For purposes of this Subsection 19(d), pilots furnished by State to CSXT pursuant to Subsection 3(d) of this Agreement shall be considered as the employees of CSXT.

ix. For purposes of this Subsection 19(d), the term "person" shall include, without limitation, the employee(s) of a party hereto and the term "employee(s)" shall mean and include: (A) employees of a party hereto; (B) for each party hereto, the invitee(s) to the State Property of each such party, excluding Rail Commuter Passengers and Other Invitees; and (C) for CSXT, the employees of MCI and Lightnet while on the State Property pursuant to the agreements between CSXT and MCI and CSXT and Lightnet referred to in Section 7(a) hereof until such time, if any, that State enters into agreements with MCI and/or Lightnet pursuant to said Section 7(a), at which time said employees shall be considered as employees of State.

(e) In every case of death or injury suffered by an employee of either State or CSXT, when compensation to such employee or employee's dependents is required to be paid under any workers' 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 assignment, 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) The parties hereto understand that liability pertaining to interruptions and delays is governed by Subsection 3(j) hereof.

(g) Each provision of this Section 19 shall be interpreted so as to be effective and valid. In the event, however, that any provision of this Section 19 shall, for any reason, be held invalid, illegal or unenforceable in any respect, then this Section 19 shall be construed as if such provision had never been contained herein in order to effect to the fullest extent the purposes of this Section 19 and the intentions of the parties with respect thereto.

(h) Nothing expressed or implied in this Section 19, including, without limitation, Paragraphs 19(d)(v) and (vi) hereof is intended to or shall be construed to: (A) confer upon or to give any person, firm, partnership, corporation or governmental entity other than the parties hereto, their respective legal representatives, successors or assigns any right or benefit under or by reason of this Section 19, or (B)

limit or restrict either party hereto from seeking damages, redress or other relief from any person, firm, partnership, corporation or governmental entity other than the parties hereto, their respective legal representatives, successors or assigns.

(i) No provision in this Agreement shall constitute or be construed to constitute a waiver of State's sovereign immunity for tort and the parties hereto recognize and agree that the insurance and self-retention fund required under Section 21 below shall be the extent and sole source upon which State's liability under this Section 19 rests beyond that provided under the limited waiver of sovereign immunity contained in Section 768.28, Florida Statutes.

#### Section 20. Investigation

(a) Except as provided in Subsection (b) 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 including, without limitation, State's obligation to investigate any and all such claims, injuries, deaths, property damages and losses involving Rail Commuter Passengers or Other Invitees. For avoidance of doubt, the parties agree that State shall have the obligation to investigate any and all such claims, injuries, deaths, property damages and losses involving Rail Commuter Passengers or Other Invitees, notwithstanding CSXT's potential liability pursuant to Paragraph 19(c)(i).

(b) CSXT will investigate, adjust and defend all freight loss and damage claims filed with it in accordance with applicable provisions of law and all claims, injuries and deaths of CSXT's employees, for which either CSXT or State solely or CSXT and State jointly may have any liability under the provisions of this Agreement.

(c) The party hereto receiving notice of the filing of a claim will promptly notify the other party of such filing where liability therefor may be joint or that of the other party hereto. State and CSXT will cooperate with each other in all such investigations, adjustments and defenses, and State and CSXT will provide each other, upon request therefor, a copy of all documents and written communications and

produce witnesses, experts or exhibits in their employment or control to assist in the preparation and defense of any such claim and/or litigation with respect thereto.

(d) In the event a claim or suit is asserted against any party which is another'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, and the party relieved of duties in respect of such claim or suit shall cooperate as requested by the party investigating, adjusting or defending said claim or suit.

(e) 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.

(f) CSXT shall not settle or compromise any claim, demand, suit or cause of action of any CSXT employee for which State has any liability under this Agreement without the concurrence of State if the consideration for such settlement or compromise exceeds Fifty Thousand and no/100 Dollars (\$50,000.00).

(g) It is understood that nothing in this Section 20 shall modify or waive the conditions, obligations, assumptions, or apportionments provided in Section 19 or elsewhere in this Agreement.

#### Section 21. Insurance

It is understood by the parties hereto that the provisions of this Section 21 are designed to establish parity between the parties and are based upon their financial ability to meet various obligations for which each of them is responsible under the various liability provisions of this Agreement. Toward this end, the parties shall review, on an annual basis, the provisions of this Section 21 and use their reasonable best efforts to agree upon any modifications thereto that may be appropriate due to changed circumstances. In the absence of any such agreement, the provisions of this Section 21 shall remain in full force and effect.

(a) Pursuant to the 1987-89 General Appropriations Act, Specific Appropriation 1724, State established a self-insurance retention fund which Act's Summary Statement of Intent indicates is for the purpose of paying the deductible limit established in insurance policies obtained for Commuter Rail Service on the State Property. Accordingly, and notwithstanding any provision of this Agreement to the contrary, State has purchased insurance and has established and shall maintain an adequate self-insurance retention fund which will cover claims and liabilities for loss, damage, injury or death arising out of or connected with this Agreement, including, without limitation, State's contractual liabilities under this Agreement, in the amounts and as provided for in Subsection 21(b) hereof. The parties hereto recognize that said insurance and fund shall be the extent and sole source upon which State's liability and/or indemnification under this Agreement rests beyond that provided under the limited waiver of sovereign immunity contained in the aforesaid Florida Statutes until an insurance policy is established, as authorized pursuant to Section 341.302, Florida Statutes. In accordance with Section 341.302, Florida Statutes, State shall purchase insurance and establish and maintain an adequate, segregated self-insurance retention fund which will cover claims and liabilities for loss, damage, injury or death arising out of or connected with this Agreement, including, without limitation, State's contractual liabilities under this Agreement, in the amounts and as provided for in Subsection 21(b) hereof. The parties hereto recognize that said insurance and fund shall be the extent and sole source upon which State's liability and/or indemnification under this Agreement rests beyond that provided under the limited waiver of sovereign immunity for tort contained in Section 768.28, Florida Statutes. The obtaining of such policy of insurance and the establishment of said fund by State is a condition precedent to the commencement of this Agreement pursuant to Subsection 1(c) above, and the continued effect of Section 341.302, Florida Statutes, and obtaining and maintenance of said insurance and fund in full force and effect shall thereafter throughout the term of this Agreement be considered a condition subsequent to the continuation of Commuter Rail Service on the State Property. In the event that the obligations of State set forth in Section 19 and 21 of this Agreement become ineffective for any reason, or the insurance policy is canceled for any reason and/or the deductibles or self-assumed amounts of said insurance policy is unfunded, in the opinion of

CSXT, then State shall immediately cease operation of any and all Commuter Rail Service on the State Property until such time, if any, that the obligations of State under Section 19 and Section 21 of this Agreement become fully effective again and/or State shall obtain and thereafter maintain insurance in like amount and coverage protection to that described in this Section 21 and/or replenish the fund, as the case may be. It is understood and agreed by the parties hereto that State's cessation of Commuter Rail Service on the State Property, as aforesaid, shall not in any manner modify, amend, limit or restrict the CSXT Easement or CSXT's rights hereunder with respect to the provision of Rail Freight Service and/or Intercity Rail Passenger Service on the State Property, and shall not modify or amend any other obligation of State under this Agreement.

(b) State, at its sole cost and expense, shall procure no later than December 31, 2013, and maintain during the entire term of this Agreement, liability insurance covering CSXT as a named insured as agreed and provided in the terms and conditions of Subsection 21(a) hereof. The said liability insurance shall have a limit of not less than Two Hundred Million and no/100 Dollars (\$200,000,000.00) combined single limit for personal injury and property damage per occurrence, with deductibles or self-assumed amounts not in excess of Ten Million and No/100 Dollars (\$10,000,000.00). The said liability coverage within its terms and conditions shall extend coverage to CSXT for third party personal injury and property damage and shall not exclude punitive damages. Coverage shall provide employer's liability coverage to CSXT for liabilities incurred to employees involved with this Agreement under any applicable employee liability regime, including without limitation, the Federal Employers Liability Act.

(c) State shall furnish CSXT's insurance department, 500 Water Street, C-907, Jacksonville, FL 32202, a certified copy of the liability insurance policy for CSXT's approval, which approval will not be unreasonably withheld. The policy shall be endorsed to provide for not less than sixty (60) days' notice to CSXT prior to termination of or change in the coverage.

(d) In the event that any operating practice of CSXT jeopardizes the obtaining and maintaining of the insurance policies required of State hereunder, then, upon reasonable request and notice from State (which notice shall include all communications with respect to the offending operating practice between

State and its insurance carrier), CSXT shall modify the offending operating practice in a manner sufficient to obtain or maintain such insurance, provided that in no event shall CSXT be required to adopt a practice that is not consistent with generally accepted operating practices in the railroad industry. As used herein, the term "operating practice" shall exclude any practice that would require CSXT to modify any facilities and/or equipment, unless the cost and expense of such modifications to facilities and /or equipment are borne and paid entirely by State.

(e) The amount of insurance required of State under this Section 21 shall be adjusted from time to time during the term of this Agreement to reflect the effects of inflation and such other matters as may be mutually agreed upon by the parties hereto and at such times the parties may also adjust the deductible or self-assumed amounts. The parties hereto recognize that the amount of insurance required of State herein reflects the risks attendant with Commuter Rail Service and such amount shall be adjusted by mutual agreement of the parties during any period during the term of this Agreement that such Commuter Rail Service may be suspended or canceled. The parties hereto also recognize that the amount of insurance required herein of State reflects the risks attendant with the indemnification provided by State under the legislation described herein and reflected in Sections 19 and 21, hereof.

(f) As of the Execution Date, CSXT maintains system-wide insurance (which covers, inter alia, its Rail Freight Service on the State Property) with a limit in excess of Two Hundred Million and No/100 Dollars (\$200,000,000.00) and deductibles or self-assumed amounts of Twenty-five Million and No/100 Dollars (\$25,000,000.00). It is understood by the parties hereto that from time to time during the term of this Agreement CSXT may, at its option, change the limits, coverage and deductibles or self-assumed amounts of its aforesaid insurance. In the event that CSXT assigns this Agreement pursuant to the provisions of Section 37 hereof to any person, firm, partnership or corporation that is not affiliated with CSXT, then: first, the amount of insurance required of State under Subsections (a) and (b) hereof may, at State's option, be reduced to a limit of Thirty Million and No/100 Dollars (\$30,000,000.00), and, second, as a condition to the conduct of operations by such person, firm, partnership or corporation on the State Property, State may, at its option, require such entity to maintain during the remainder of the term of this

Agreement insurance having a limit of Thirty Million and no/100 Dollars (\$30,000,000.00) combined single limit for personal injury and property damage per occurrence, with deductibles or self-assumed amounts not in excess of One Million and no/100 Dollars (\$1,000,000.00). To the extent and in the event mutually agreeable to State and such other entity, the aforesaid limits and/or amounts of insurance required of State and such other entity may be changed from time to time during the term of this Agreement.

#### Section 22. Force Majeure

Whenever a period of time is provided in this Agreement for either party to do or perform any act or thing, said party shall not be liable or responsible for any delays due to strike, embargo, derailment, lockout, casualty, fire, flood, weather condition, earthquake, act of God, war, terrorism or threatened acts of terrorism, court order, work stoppage, nuclear incident, riot, civil disturbance, public disorder, criminal act of other entities, governmental regulation or control, governmental or judicial restraint or other such causes beyond the reasonable control of said party (collectively, "Force Majeure"); and in any such event of Force Majeure, said time period shall be extended for the amount of time said party is so delayed, provided that this Section 22 shall not be construed to affect the responsibilities of said party hereunder to do or perform such act or thing once such event of Force Majeure has been removed.

#### Section 23. Extension, Waiver, and Amendment

(a) This Agreement may be amended or modified at any time and in any and all respects only by an instrument in writing executed by both of the parties hereto.

(b) In each instance in which either State or CSXT is entitled to any benefit hereunder, State or CSXT, as the case may be, may: (i) extend the time for the performance of any of the obligations or other acts of the other party hereto; (ii) waive, in whole or in part, any inaccuracy in or breach of the representations, warranties and covenants of the other party hereto contained herein; and (iii) waive, in whole or in part, compliance with any of the terms and conditions of this Agreement by the other party

hereto. Any agreement on the part of either State or CSXT to any such extension or waiver shall be valid only if set forth in an instrument in writing signed and delivered on behalf of such party.

Section 24. Notices

(a) Any and all notices or other communications hereunder shall be in writing and shall be deemed given if delivered personally or through the United States Postal Service, certified mail postage prepaid, or received by facsimile telephone transmission or other electronic transmission (provided that an original of the electronically transmitted document is delivered within five (5) days after the document was electronically transmitted) upon the date so delivered to or received by the person to which it is addressed at the following addresses:

If to CSXT, to:

President  
CSX Transportation, Inc.  
500 Water Street  
Jacksonville, FL 32202

with a copy to:

Peter J. Shudtz  
CSX Corporation  
Suite 560, National Place  
1331 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

If to State:

Secretary of Transportation  
Florida Department of Transportation Haydon Burns Building  
605 Suwannee Street  
Tallahassee, FL 32399-0450

with copy to:

State Public Transportation and Modal Administrator  
Florida Department of Transportation  
Haydon Burns Building  
605 Suwannee Street  
Tallahassee, FL 32399-0450

(b) Either party to this Agreement may provide changes to its address or addressees by furnishing a notice of such change to the other party to this Agreement, in the same manner as provided above for all other notices.

#### Section 25. Governing Law

It is the intention of the parties hereto that the laws of the State of Florida shall govern the validity of this Agreement, the construction of its terms, and the interpretation of the rights and duties of the parties hereto. Venue for any legal proceedings under this Agreement shall be in Leon County, Florida.

#### Section 26. Counterparts

This Agreement may be executed in two or more counterparts, including counterparts transmitted by facsimile or electronic transmission, each of which shall be an original as against any party whose signature appears thereon and all of which together shall constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as signatories each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

#### Section 27. Interpretation

State and CSXT acknowledge that the language used in this Agreement is language developed and chosen by both parties to express their mutual intent and no rule of strict construction shall be applied against either party hereto. The headings in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other genders whether used in the masculine or feminine or neuter gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein", "hereof", "hereby", "hereunder" and "hereinafter" refer to this Agreement as a whole and not

to the particular sentence, paragraph or section where they appear, unless the context otherwise requires. All words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition of such words, terms and phrases in the railroad industry, except that in the event of any inconsistency between such definition and any definition set forth in this Agreement, the latter shall govern. Whenever reference is made to a Section of this Agreement, such reference is to the Section as a whole, including all of the subsections and subparagraphs of such Section, unless the reference is expressly made to a particular subsection or subparagraph of such Section.

#### Section 28. Exhibits

All exhibits attached hereto are hereby incorporated by reference into, and made a part of, this Agreement, provided, however, the parties recognize that Exhibits 1, 2, 3, 4, 5, and 6 need to be revised and will be updated, and Exhibits A and B are to be added pursuant to Section 4 prior to the Commencement Date, and therefore agree that upon completion and agreement to each exhibit, that each such exhibit shall be appended hereto and incorporated by reference herein.

#### Section 29. Entire Agreement

This Agreement constitutes the entire Agreement between the parties hereto with respect to the subject matter hereof, and supersedes all other prior agreements and understandings, both written and oral, between the parties hereto with respect to the subject matter hereof, including, without limitation, the 1988 OMAPA and that certain Non-binding Term Sheet dated as of August 2, 2006

#### Section 30. Waiver

Neither the failure to exercise nor any delay in exercising on the part of either party hereto any exception, reservation, right, privilege, license, remedy or power under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any exception, reservation, right, privilege, license, remedy or power under this Agreement preclude any other or further exercise of the same or of

any other exception, reservation, right, privilege, license, remedy or power, nor shall any waiver of any exception, reservation, right, privilege, license, remedy or power with respect to any occurrence be construed as a waiver of such exception, reservation, right, privilege, license, remedy or power with respect to any other occurrence.

#### Section 31. Expenses

Except to the extent otherwise expressly provided in this Agreement, any and all expenses incurred by either party hereto in connection with this Agreement and the transactions contemplated hereby shall be borne by the party incurring such expenses.

#### Section 32. Further Assurances

Both parties hereto shall exert their reasonable best efforts to fulfill all conditions and obligations of such party under this Agreement.

#### Section 33. Time of the Essence

It is understood and agreed by the parties hereto that the prompt and timely performance of all obligations, responsibilities and conditions under this Agreement is of the essence of this Agreement.

#### Section 34. Performance of Agreement

Except as is otherwise expressly provided in this Agreement, where any service is required or permitted of either party to this Agreement, the performance of such service may be delegated to such agent, contractor or employee as either such party may designate; provided, however, that nothing contained herein shall be construed as creating or diminishing any right in State or CSXT or to cause a transfer, release or discharge of any or all of State's or CSXT's obligations under this Agreement. State understands that a substantial portion of CSXT's employees are covered by collective bargaining

agreements that govern the terms and conditions of their employment with CSXT, including, without limitation, rates of pay and scope of work.

Section 35. Prohibition of Third Party Beneficiaries

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 parties hereto and their respective legal representatives, successors or assigns any right or benefit under or by reason of this Agreement; provided, however that nothing contained in the foregoing provision shall be construed to limit or restrict the enjoyment and use of the rights contained in Sections 7 and 8 of this Agreement and the Exhibits hereto or any other party's(ies') enjoyment and use of any and all of the rights that may be granted or conferred to such other party(ies) by contract(s), agreement(s), lease(s) license(s) or easement(s) entered into between State or CSXT and such other party(ies) pursuant to Sections 7 and 8 hereof and the Exhibits hereto.

Section 36. Term

(a) Subject to Section 1(c), this Agreement shall be effective as of the Execution Date, provided, however, that the terms and conditions of the 1988 OMAPA shall continue to apply to and govern Railroad Operations on the State Property until the Commencement Date hereof, which Commencement Date shall be simultaneous with the termination date of the 1988 OMAPA. Subject to Section 1(c), this Agreement shall continue in effect until such time as CSXT, its successors or assigns, secures and exercises appropriate regulatory authority to abandon and/or discontinue operations over the State Property, or in the event that such authority is not required, until such time as CSXT, its successors or assigns, gives six (6) months' prior written notice of termination of this Agreement. It is understood by the parties hereto that this Agreement may be terminated, in part, upon the securing of the aforesaid authority or the giving of the aforesaid notice, as the case may be, as it pertains to a portion of the State Property.

(b) Termination of this Agreement, in whole or in part, 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, including without limitation, State's obligations with respect to the bridge over the New River as set forth in Section 5(d), and State's obligation to increase its insurance under Section 21(b). The foregoing provision shall apply whether or not it is so expressly stated elsewhere in this Agreement where a right of termination, in whole or in part, is expressly accorded either or both of the parties hereto.

#### Section 37. Successors and Assigns

(a) This Agreement and all of its terms, conditions, covenants, rights and obligations herein contained shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns, subject to the following: at any time during the term of this Agreement: (i) State shall not convey any interest in the State Property underlying the CSXT Easement to any person, firm, partnership, corporation or governmental entity unless State has first complied with Section 38 of this Agreement and, (ii) as a condition to such conveyance, this Agreement is assigned to the party acquiring such property to the extent of the conveyance so involved. CSXT shall not transfer the CSXT Easement, in whole or in part, to any person, firm, partnership, corporation or governmental entity unless, CSXT shall have first obtained the prior written consent of State (which consent shall not be unreasonably withheld, conditioned, or delayed), and as a condition to such transfer, this Agreement is assigned to the party acquiring such CSXT Easement to the extent of the transfer so involved.

(b) The provisions of this Agreement pertaining to State's right of prior consent to CSXT's assignment thereof shall not apply to any assignment by CSXT of this Agreement, in whole or in part, or any of CSXT's rights, interests or obligations hereunder to any person, firm, partnership or corporation now or hereafter affiliated with CSXT; provided, however, that such affiliated entity, its successors and assigns, shall take such assignment subject to the aforesaid provisions pertaining to State's right of consent to any subsequent assignment (which consent shall not be unreasonably withheld, conditioned or

delayed); and, provided, further, that CSXT unconditionally guarantees to State the performance of all obligations of CSXT under this Agreement by any such affiliate. The provisions of this Agreement pertaining to CSXT's right of first refusal shall not apply to any assignment by State of this Agreement, in whole or in part, or any of State's rights, interests or obligations hereunder to any other agency of State or local governmental agency in the State of Florida; provided, however, that such agency, its successors and assigns, shall take such assignment subject to the aforesaid provisions pertaining to CSXT's right of first refusal to the extent applicable at the time of such assignment; and, provided, further, that State unconditionally guarantees to CSXT the performance of all obligations of State under this Agreement by any such agency or any other assignee hereunder.

(c) Except as is otherwise provided in Subsection (d) hereof, any assignment of this Agreement, in whole or in part, by CSXT, its successors or assigns, shall release and discharge CSXT: (i) from the performance of its obligations and covenants under this Agreement, or with respect to the part hereof so assigned, as the case may be, from and after the date of such assignment, and (ii) from any liability, cost and expense arising out of or connected with this Agreement, or with respect to the part thereof so assigned, as the case may be, from and after the date of such assignment; provided, however, that any such assignment by CSXT shall be made by CSXT in strict accordance with and subject to the provisions set forth in this Section 37 relating to the assignment of this Agreement.

(d) Assignment of this Agreement, in whole or in part, shall not relieve or release either party hereto from any obligation assumed or from any liability which may have arisen or been incurred by such party under the terms of this Agreement prior to the assignment hereof. The foregoing provision shall apply whether or not it is so expressly stated elsewhere in this Agreement where a right of assignment, in whole or in part, is expressly accorded either or both parties.

#### Section 38. CSXT's Right of First Refusal

(a) If at any time or from time to time during the term of this Agreement, State receives from a ready, willing and able purchaser a bona fide written offer acceptable to State for the acquisition of

State's rights, interests and obligations in the State Property underlying the CSXT Easement and this Agreement, in whole or in part, then State shall formally notify CSXT of such offer and provide CSXT a true copy of such offer. (If State believes that negotiations with a prospective offeror may lead to State's receipt of a bona fide offer for the aforesaid acquisition, then State shall advise CSXT to that effect prior to State's giving CSXT the aforesaid formal notification.) As a consequence of State's acceptance of such offer, CSXT shall have a right of first refusal to acquire State's rights, interests and obligations in the State Property underlying the CSXT Easement and this Agreement, upon the same terms and conditions, including, without limitation, compensation, set forth in the aforesaid bona fide offer acceptable to State. (In the event that the aforesaid offer's terms and conditions include an exchange of property in lieu of cash, then a cash equivalent acceptable to the offeror and State shall also be set forth in said bona fide offer.) CSXT shall exercise its aforesaid right of first refusal herein granted by giving written notice thereof to State within forty-five (45) days of State's aforesaid formal notice to CSXT. CSXT's aforesaid right of first refusal shall be subject to any preferential right(s) for the acquisition of State's rights, interests and obligations in the State Property underlying the CSXT Easement and this Agreement that may exist from time to time during the term of this Agreement under any and all federal, state or local law(s).

(b) In the event that CSXT declines or fails, for any reason, to exercise its aforesaid right of first refusal, or in the event that CSXT exercises said right but is unable, for any reason, to consummate the acquisition and/or assignment in accordance with the terms and conditions of the bona fide offer, then CSXT's aforesaid right of first refusal as it pertains to such offer shall automatically terminate and be of no further force and effect.

(c) CSXT's aforesaid right of first refusal shall not apply to any transfer or assignment of State's rights, interests and obligations in the State Property underlying the CSXT Easement and this Agreement, in whole or in part, to any other agency of the State of Florida or local governmental agency in the State of Florida; provided, however, that such agency, its successors and assigns, shall take such transfer or assignment subject to the aforesaid provisions pertaining to CSXT's right of first refusal to the extent

applicable at the time of such transfer or assignment; and, provided, further, that State unconditionally guarantees to CSXT the performance of all obligations of State under this Agreement by any such agency.

(d) The rights, interests and obligations of State and CSXT under this Section 38 shall be in addition to their respective rights, interests and obligations under Section 11 hereof

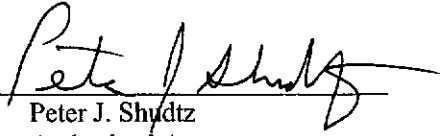
Section 39.     Incorporation of Recitals

The recitals to this Agreement are true and correct and are hereby incorporated herein.

[Signatures appear on the following page.]

IN WITNESS WHEREOF, CSX TRANSPORTATION, INC. and STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, pursuant to due corporate and statutory authority, have caused their names to be signed hereto by officer(s) or official(s) hereunto duly authorized, duly attested, to be hereunto affixed as of the day and year first above written.

CSX TRANSPORTATION, INC.

By:   
Peter J. Shultz  
Authorized Agent

(Signature page to Amended South Florida Operating and Management Agreement)

IN WITNESS WHEREOF, CSX TRANSPORTATION, INC. and STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, pursuant to due corporate and statutory authority, have caused their names to be signed hereto by officer(s) or official(s) hereunto duly authorized, duly attested, to be hereunto affixed as of the day and year first above written.

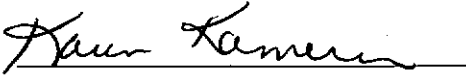
STATE OF FLORIDA DEPARTMENT  
OF TRANSPORTATION

By: 

James A. Wolfe, P.E.  
District Four Secretary

APPROVED AS TO FINANCIAL  
TERMS AND FUNDS ARE  
PROGRAMMED

LEGAL REVIEW:



  
OFFICE OF THE COMPTROLLER

(Signature page to Amended South Florida Operating and Management Agreement)

## EXHIBITS

[To be updated per Section 28]

- Exhibit 1. Description of Real Property, as described in Exhibit 1 to the Contract for Installment Sale and Purchase, dated May 11, 1988, including the Railroad Valuation Map Line Sheets identified therein in 1988; and the description of Parcel 101 as described in Exhibit A to that certain Quitclaim Deed between CSXT and FDOT dated as of November 10, 2006, including the two Right of Way Plans attached thereto.
- Exhibit 2. List of buildings, structures, and facilities.
- Exhibit 3. Contracts to be retained by CSXT.
- Exhibit 4. Contracts, Agreements, Leases, Licenses, and Easements Assigned to State.
- Exhibit 5. Utility Services for Buildings, Structures, and Facilities Transferred to State.
- Exhibit 6. Agreements pertaining to the maintenance, repair and operation of existing roadway and highway crossings, crossing protection devices and railway interlocking and interchange facilities on the State Property
- Exhibit 7. Design, Engineering, and Construction Standards and Specifications for the New River Bascule Bridge Replacement.
- Exhibit A. Sidetracks to be Conveyed to State on Commencement Date
- Exhibit B. Industry Sidetracks

115

1

EXHIBIT 1

DESCRIPTION OF REAL PROPERTY

That certain land situate, lying and being in the Counties of Palm Beach, Broward and Dade, State of Florida, hereinafter designated "the Premises," more particularly described as follows:

A line of railroad, underlying land and property and appurtenant facilities, COMMENCING at Railroad Valuation Station 10499+53, at or near Railroad Mile Post SX-965, West Palm Beach, Palm Beach County, Florida, and extending in a southerly direction through Broward County, Florida, and terminating at Railroad Valuation Station 14331+90, at or near Railroad Mile Post SX-1037, Hialeah, Dade County, Florida; PLUS the River Spur between Railroad Valuation Station 14282+67, at or near Railroad Mile Post SX-1037, Hialeah, Dade County, Florida, and Railroad Valuation Station 14518+10, at or near Railroad Mile Post SX-1041, Miami, Dade County, Florida; PLUS the Oleander Branch between Railroad Valuation Station 14292+53, at or near Railroad Mile Post SXH-1037, Hialeah, Dade County, Florida, and Railroad Valuation Station 14523+94.6, at or near Railroad Mile Post SXH-1041, Oleander, Dade County, Florida; ALL hereafter designated "the Premises"; as shown generally on Railroad Valuation Map Line Sheets, Exhibits A-1, A-2 and A-3, attached hereto and incorporated herein; as further described in Exhibits B-1, B-2 and B-3 and as more particularly

described by crosshatching on Railroad Valuation Section V-5FL/L27; Maps 50, 51, S-51-A, S-51-B, S-51-C, 52 and S-52 and Railroad Valuation Section V-7FL/L29, Maps 1, S-1, 2, 3, 4, 5, 6, 7, 8, S-8, S-8A, 9, 10, S-10, 11, S-11, 12, 13, S-13, 14, S-14, S-14-A, 15, SL-15-A, ST-15-A, S-15-B, S-15-C, S-15-D, 16, S-16-A, S-16-B, S-16-C, S-16-D, S-16-E, 17, S-17-A, S-17-B, S-17-C, S-17-D, 18 and 19, each of which consists of four (4) segmented parts, herein after referred to as "Valuation Maps," attached hereto and incorporated herein and containing 1,128.715 acres, more or less (427.823 acres, more or less, in Palm Beach County; 327.993 acres, more or less, in Broward County; and 372.899 acres, more or less, in Dade County).

EXCLUDING all parcels shown and designated on Exhibits C-1, C-2 and C-3, which are not crosshatched on the Valuation Maps, and EXCEPTING unto Grantor all right, title and interest in and to those parcels shown and designated on Exhibits, D-1, D-2 and D-3, which are not crosshatched on the Valuation Maps.

NOTE: The Exhibits referred to above are set forth as Exhibits to the Deed recorded at the Official Records Book 15424 Page 0731 of Public Records of Broward County.

## EXHIBIT A

Description of property at: Palm Beach County, Florida  
To: State of Florida Department of Transportation  
CSXT Deed File No.:

### Description of Premises

Parcel No. 101 State Road 710 Palm Beach County Description

A parcel of land located in Section 31, Township 42 South, Range 43 East, and Section 36, Township 42 South, Range 42 East, Palm Beach County, Florida, being more particularly described as follows:

Commence at a found concrete monument with a Palm Beach County Brass Disk marking the North ¼ Corner of said Section 36; thence South 01°53'29" West along the Westerly line of the Northeast ¼, a distance of 48.14 feet to a point on the Baseline of Survey for State Road 710 (Beeline Highway), as shown on the Florida Department of Transportation Right of Way Map for Section No. 93310-2504; thence South 53°41'25" East along said Baseline of Survey, a distance of 3,206.34 feet; thence South 36°18'35" West, a distance of 56.00 feet to a point on the Southerly Existing Right of Way Line for said State Road 710 (Beeline Highway) and the POINT OF BEGINNING; thence South 53°41'25" East along said Southerly Existing Right of Way Line, a distance of 1,938.85 feet; thence South 36°18'35" West, a distance of 16.57 feet to the beginning of a curve concave Northeasterly, having a chord bearing of North 55°05'37" West and a radius of 2,145.48 feet from a tangent bearing of North 56°29'49" West, through a central angle of 02°48'24", an arc distance of 105.10 feet to the end of said curve; thence North 53°41'25" West, a distance of 211.13 feet; thence South 36°18'35" West, a distance of 3.85 feet; thence North 53°41'25" West, a distance of 563.29 feet; thence North 36°28'15" East, a distance of 3.94 feet to the beginning of a curve, concave Northeasterly, having a chord bearing of North 52°58'51" West and a radius of 22,969.31 feet; thence Northwesterly along said curve, through a central angle of 01°05'49", an arc distance of 439.77 feet to the end of said curve; thence North 52°25'56" West, a distance of 619.81 feet to the POINT OF BEGINNING.

Containing 0.703 acres, more or less.

BEING a portion of the property acquired by Seaboard Coast Line Railroad, a predecessor of Grantor, from

On December 29, 1982, the Seaboard Coast Line Railroad Company merged with the Louisville and Nashville Railroad Company and the name of the surviving corporation changed to Seaboard System Railroad, Inc. On July 1, 1986, Seaboard System Railroad, Inc. changed its name to CSX Transportation, Inc.

# 4094582\_v2

Florida Department of Transportation  
District Four Right of Way  
3400 W. Commercial Boulevard  
Ft. Lauderdale, Florida 33309-3421

This deed is a transfer of property under threat of  
condemnation & is immune from payment of  
Documentary Stamp Taxes

## Exhibit 7

### I. DESIGN REQUIREMENTS – NEW RIVER BASCULE RAIL BRIDGE REPLACEMENT

The design services shall be in compliance with all applicable Manuals and Guidelines including the Department, FHWA, AASHTO, AREMA standards, FRA, CSXT operating rules, CSXT Signal Standards, CSXT Track Standards and additional requirements specified in this document. Except to the extent inconsistent with the specific provisions in this document, the current edition, including updates, of the following Manuals and Guidelines shall be used in the performance of this work.

Where a conflict exists between FDOT and CSXT standards and any other listed standard, the higher standard will control. If the higher standard is unclear, then FDOT standards will apply to the bridge structure and CSXT standards will apply to track, signal, and communication systems. During the design process, any changes or amendments to such standards may be proposed by either party and will be subject to approval by the other party, which such approval shall not be unreasonably withheld.

#### A. Structures Plans:

Design in accordance with the following documents:

1. American Railway Engineering and Maintenance-of-Way Association (AREMA), Manual for Railway Engineering
2. Florida Department of Transportation Roadway Plans Preparation Manuals  
<http://www.dot.state.fl.us/rddesign/PPMManual/PPM.htm>
3. Florida Department of Transportation Structures Manual including Temporary Design Bulletins  
<http://www.dot.state.fl.us/structures/manlib.htm>
4. Florida Department of Transportation Soils and Foundations Handbook  
<http://www.dot.state.fl.us/structures/Manuals/SFH.pdf>
5. Florida Department of Transportation Design Standards  
<http://www.dot.state.fl.us/rddesign/DesignStandards/Standards.htm>
6. Florida Department of Transportation Computer Aided Design and Drafting (CADD) Production Criteria Handbook Roadway Standards  
<http://www.dot.state.fl.us/ecso/downloads/publications/CriterialHandBook/>
7. Florida Department of Transportation Production Criteria Handbook CADD Structures Standards  
<http://www.dot.state.fl.us/ecso/downloads/publications/CriterialHandBook/>
8. Standard Specifications for Road and Bridge Construction 2007  
<http://www.dot.state.fl.us/specificationsoffice/2007BK/TOC.htm>

#### B. Track Plans:

Design in accordance with the following documents:

1. American Railway Engineering and Maintenance-of-Way Association (AREMA), Manual for Railway Engineering
2. Florida Department of Transportation Roadway Plans Preparation Manuals  
<http://www.dot.state.fl.us/rddesign/PPMManual/PPM.htm>

3. CSXT Roadway and Track Standards
  4. U.S. Department of Transportation, Federal Railroad Administration (FRA) Track Safety Standards
  5. Florida Department of Transportation Soils and Foundations Handbook  
<http://www.dot.state.fl.us/structures/Manuals/SFH.pdf>
  6. Florida Department of Transportation Design Standards  
<http://www.dot.state.fl.us/rddesign/DesignStandards/Standards.htm>
  7. Florida Department of Transportation Computer Aided Design and Drafting (CADD) Production Criteria Handbook Roadway Standards  
<http://www.dot.state.fl.us/ccso/downloads/publications/CriteriaHandBook/>
  8. Florida Department of Transportation Production Criteria Handbook CADD Structures Standards  
<http://www.dot.state.fl.us/ccso/downloads/publications/CriteriaHandBook/>
  9. Standard Specifications for Road and Bridge Construction 2007 (Written as Supplemental Specifications to Standard Specifications for Road and Bridge Construction 2007)  
<http://www.dot.state.fl.us/specificationsoffice/2007BK/TOC.htm>
  10. CSXT Standard Specifications and Special Specifications
- C. Bridge Construction Specifications:** the bridge shall be constructed in accordance with Standard Specifications for Road and Bridge Construction 2007.  
<http://www.dot.state.fl.us/specificationsoffice/2007BK/TOC.htm>
- D. Track Construction Specifications:** the track, signals, and communications shall be constructed in accordance with:
1. CSXT Roadway, Track, Signal and Communication Standard Specifications and Special Specifications
  2. U.S. Department of Transportation, Federal Railroad Administration (FRA) Track Safety Standards
  3. American Railway Engineering and Maintenance-of-Way Association (AREMA), Manual for Railway Engineering
- E. Continuation of Freight Operations:** The Department will minimize the closure of the existing bascule bridge, to the maximum extent possible. Bridge closures for extended work to occur within period from 8:00 PM (2000 hours) Friday to 5:00 PM (1700 hours) Sunday, and daily outages worked under flag protection from 7:00 am (0700 hours) to 7:00 pm (1900 hours), with a four (4) hours uninterrupted work window during this twelve (12) hour period and up to eight (8) freight trains being allowed to operate through the remainder. Safety will be the only consideration for additional closures of the bridge.

Exhibits Related to Sidetracks

Exhibit A

Sidetracks to be Conveyed to State on Commencement Date

[To be updated per Section 28]

Exhibit B

Industry Sidetracks

[To be updated per Section 28]

AGREEMENT #	INDUSTRY	INDUSTRY OWNERSHIP WITHIN R.O.W.	MILEPOST

Note: Drawings defining the referenced trackage are attached hereto and incorporated herein as a part of this Exhibit.