AMENDED AND RESTATED
OPERATING/ACCESS AGREEMENT

Between

CSX TRANSPORTATION, INC.

and

NORTHERN VIRGINIA TRANSPORTATION COMMISSION AND POTOMAC AND RAPPAHANNOCK TRANSPORTATION COMMISSION

CONCERNING COMMUTER RAIL SERVICE
THIS AMENDED AND RESTATE OPERATING ACCESS AGREEMENT, made and entered into this ___ day of ____________, 2021 ("Agreement") is by and between CSX TRANSPORTATION, INC., a corporation organized and existing under the laws of the Commonwealth of Virginia, with a principal place of business at 500 Water Street, Jacksonville, Florida 32202 (hereafter the "Railroad"), and the NORTHERN VIRGINIA TRANSPORTATION COMMISSION and the POTOMAC AND RAPPAHANNOCK TRANSPORTATION COMMISSION, bodies politic and corporate and political subdivisions of the Commonwealth of Virginia, established under the provisions of the Transportation District Act of 1964, as amended, and having principal places of business at 2300 Wilson Boulevard, Suite 620, Arlington, Virginia 22201, and 14700 Potomac Mills Road, Woodbridge, Virginia 22192, respectively (hereinafter, individually, a "Commission" and, collectively, the "Commissions");

EXPLANATORY STATEMENT

A. The Railroad is engaged in the business of providing efficient, reliable freight rail transportation services to industrial and commercial enterprises. The Railroad has the following obligations to its key constituents: (i) to its shippers: to provide high quality, reliable service; (ii) to its employees: to provide a safe place to work where their skills and talents can be fairly and productively utilized; and (iii) to its shareholders:
to engage in efficient operations that will assure superior returns.

B. The Railroad is the owner of a system of railroad lines, including the railroad line between Richmond, Virginia and Washington, D.C. (the “RF&P Subdivision”). The RF&P Subdivision is a fully integrated component of the Railroad’s system and serves as a primary link between its operations in the North and South.

C. The Railroad’s freight rail operations also promote significant economic interests within the Commonwealth of Virginia and thereby enhance the welfare of its citizens. Within the RF&P Subdivision, the Railroad currently serves substantial utilities and business enterprises, annually transporting thousands of carloads of coal, nonmetallic mineral, paper and food and consumer commodities in a safe and environmentally superior manner. It is the Railroad’s intention to attract more traffic off the already overburdened highway system, thus helping ease congestion and reduce pollution.

D. The National Rail Passenger Corporation (“NRPC” or “AMTRAK”) also utilizes the RF&P Subdivision to provide intercity passenger rail services, pursuant to its mandate and authority under Federal Law.

E. The Commissions are engaged in planning and operating a high quality, world-class public transportation rail system, known as the Virginia Railway Express (“VRE”), that is reliable, safe
and economical, with financial assistance from the Commonwealth of Virginia (the “Commonwealth”) and the United States Government through such agencies as the Federal Transit Administration (“FTA”) and the Federal Railroad Administration (“FRA”). The Commissions have become leaders in providing an efficient and environmentally sound alternative to single occupant automobile travel on the overcrowded highway network at a significantly lower cost. By foregoing automobile travel, the Commissions’ commuters make a significant contribution in reducing automobile generated pollution, which is responsible for nearly two-thirds of all air pollution in Northern Virginia. The Commissions’ commuter rail service is an important component of the region’s approach to meeting the air quality standards set by the Federal Government in the Clean Air Act Amendments of 1990. In addition to the mobility provided to the daily commuters and the reduction in air pollution, the Commissions’ commuter service is important to the region’s economy by providing significant, meaningful employment itself, as well as reliable transportation for commuters to and from important employment centers in Washington, D.C. and Northern Virginia. Energy conservation from this mass transit service also reduces dependence on foreign oil.

F. In view of the potential benefits of commuter rail services to the Commonwealth, the Railroad and the Commissions undertook cooperative efforts to initiate certain commuter rail
services within that portion of the RF&P Subdivision between MP 110.0 (RO Interlocking) and MP 53.2 (XR) (the “Commuter Corridor”), pursuant to an Operating/Access Agreement dated December 1, 1989, between Richmond, Fredericksburg and Potomac Railroad Company (the “Original Agreement”). The Original Agreement was to expire on November 30, 1994, but was extended for additional periods until a new agreement was entered into on January 10, 1995 (the “1995 Agreement”).

G. Subsequent to execution of the 1995 Agreement, CSXT assumed and succeeded to the rights and responsibilities of the Consolidated Rail Corporation (“Conrail”) under the Operating Agreement with the Commissions dated December 1, 1989 (the “Conrail Agreement”). This enlarged the RF&P Subdivision to include the former Conrail territory with the Commissions’ operation commuter services between MP CFP 53.2 (XR) (also referred to as Crossroads) and MP CFP 112.3 (Virginia Avenue Interlocking) (also referred to as CP Virginia). Both the 1995 Agreement and the Conrail Agreement have been amended and extended numerous times through to the present by letter agreements and formal agreements, including the Amendment to Operating/Access Agreement, dated January 31, 2002, and the Amended and Restated Operating/Access Agreement, dated July 1, 2011, and the eight amendments thereto (the “Existing Agreement”).
H. Since the start of its operations, the Commissions’ commuter rail service was well received by the public and the Commissions expanded its initial commuter rail service to its current service levels, through amendment of the Existing Agreement, the terms of which included a Corridor Improvement Project to construct a new Third Mainline that would increase the amount of capacity available to both freight and passenger rail traffic in the Commuter Corridor.

I. The Virginia Department of Rail and Public Transportation, an executive department of the Commonwealth of Virginia (“DRPT”) has negotiated with Railroad to purchase portions of Railroad’s right of way and other rights to specified railroad assets, to design and construct certain improvements within the Commuter Corridor, among other locations, for the benefit of one or both Parties, to increase intercity and commuter passenger trains operating in the Commuter Corridor and to address operational matters (the “Transaction”).

J. To implement the Transaction, the Railroad and DRPT have executed the Transaction Agreements.

K. A separate operations and access agreement between DRPT and the Commissions has been executed governing the Commuter Rail Service on Commonwealth-Dispatched Tracks.

L. As part of the Transaction, as certain construction milestones are achieved, as set forth in the Comprehensive Rail
Agreement, the Service Plan, attached hereto as Exhibit A, allows for expansion of the Service.

M. In light of the foregoing, the Railroad and the Commissions desire to amend and restate the Existing Agreement in its entirety as set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties hereto agree as follows:

ARTICLE ONE
DEFINITIONS

1.1 The following terms (except as otherwise expressly provided or unless the context otherwise requires) for all purposes of this Agreement shall have the meanings hereafter specified:

Access Fee: The dollars-per-train-mile compensation rate established in Exhibit C-1 that is multiplied by the scheduled mileage of VRE Trains over the CSXT-Dispatched Tracks, as may be adjusted in accordance with Exhibit C-1. The Access Fee is one component of the Contract Fee.

Amendment Effective Date: Shall be the same date as Sale Date 1, as used in the Comprehensive Rail Agreement.

Commonwealth-Dispatched Tracks: The Commonwealth-Owned Tracks that are dispatched on behalf of DRPT by an entity other than Railroad.
Commonwealth-Owned Tracks: The railroad operating facilities in the Commuter Corridor that are owned by the Commonwealth of Virginia, or an agency or political subdivision thereof, as identified on Exhibit B-2 to this Agreement.

Commuter Corridor: The Railroad’s railroad line between MP CFP 112.3 (Virginia Avenue Interlocking) (also referred to as CP Virginia) and MP CFP 53.2 (XR) (also referred to as Crossroads), it being understood and agreed that this Agreement does not address or contemplate operation of the Service beyond the limits of such railroad line.

Commuter Rail Service: Passenger rail service in an urban area, its suburbs and more distant outlying communities in the applicable greater metropolitan area, excluding (1) urban rapid transit operations not connected to the general railroad system; and (2) any intercity passenger rail route or service operated by NRPC in the Commonwealth of Virginia.

Comprehensive Rail Agreement: That certain Comprehensive Rail Agreement between CSXT and DRPT made and entered into as of March 26, 2021, as may be amended from time to time, the current version of which, as of the execution date of this Agreement, is attached hereto as Exhibit G. CSXT will provide copies of amendments to the Comprehensive Rail Agreement to the Commissions.
**Contract Fee:** The Access Fee and the General Supervision Fee set forth in Exhibit C-1, which compensation is payable by the Commissions to Railroad pursuant to Section 5.1(b) for the operation of the Service over the CSXT-Dispatched Tracks.

**CSXT-Dispatched Tracks:** The railroad operating facilities in the Commuter Corridor that are dispatched and maintained by or on behalf of Railroad, regardless of whether it is CSXT-Owned Tracks or Commonwealth-Owned Tracks. CSXT-Dispatched Tracks includes all CSXT-Owned Tracks and certain Commonwealth-Owned Tracks, including such additional CSXT-Dispatched Tracks as may be constructed as part of the Transaction Agreements that are located between the endpoints described in Exhibit B.

**CSXT-Owned Tracks:** The railroad operating facilities in the Commuter Corridor that are not Commonwealth-Owned Tracks.

**Equipment:** The locomotives and cars complying with Section 2.4 of this Agreement which are at any time used by the Commissions, or either of them, or by an agent or Operator, to provide rail commuter Service over the Railroad’s tracks.

**General Supervision Fee:** The fee for certain Railroad services, such as a VRE Trainmaster, VRE Commuter Desk Specialist, and general and administrative expenses. It is one component of the Contract Fee.
Joint Operating and Maintenance Agreement: That certain Joint Operating and Maintenance Agreement between CSXT and DRPT dated and effective as of March 26, 2021, as may be amended from time to time, the current version of which, as of the execution date of this Agreement, is attached hereto as Exhibit H. CSXT will provide copies of amendments to the Joint Operating and Maintenance Agreement to the Commissions.

Operator: Shall mean any person, firm, corporation or other legal entity contracting with or utilized by the Commissions to operate all or any part of the Service or to be responsible for providing and supervising on-train personnel for operation of the Equipment and Trains. The term may include one or both of the Commissions. An Operator must be approved by and remain subject to the continuing approval of the Railroad.

RF&P Subdivision: The RF&P Subdivision consists of the Railroad’s railroad line between Richmond, Virginia, and Washington, D.C.

Service: The Service shall consist of all Trains, whether occupied or empty, which are used to provide Commuter Rail Service pursuant to the authority granted by this Agreement or the Transaction Agreements, on the Tracks. Service includes the movement of Trains operated at the times identified in Exhibit A to this Agreement, on the Commuter Corridor, and the movement of
Special Trains allowed pursuant to Section 3.1. As the Infrastructure Improvements (as defined in the Comprehensive Rail Agreement) are completed, the Service will be expanded automatically in accordance with Exhibit A, the Comprehensive Rail Agreement, and the Joint Operating and Maintenance Agreement. Service may be amended at any time by written agreement of the parties.

Station Leases: The Station Leases shall consist of the separate Lease Agreements between the Commissions and the Railroad, for the leasing of certain real property for the operation of commuter rail passenger service stations, including those stations enumerated on the annexed Exhibit E, as amended from time to time. Railroad shall continue to make available to the Commissions those passenger facilities listed in Exhibit E under that certain Master Lease Agreement, dated May 6, 2013, as amended, including specifically an amendment made contemporaneously with this Agreement, and as may be amended from time to time.

Tracks: The Tracks subject to this Agreement shall be the CSXT-Dispatched Tracks, including all signaling facilities. The Tracks are shown or described in Exhibit B attached to this Agreement, and may be revised by the parties from time to time. With respect to any obligation of the Commissions wherever
contained in this Agreement to defend, indemnify, protect, save harmless Railroad, or provide insurance with respect to these obligations or for the benefit of Railroad, any reference to Tracks refers to both CSXT-Dispatched Tracks and Commonwealth-Dispatched Tracks.

Train: A Train subject to this Agreement shall consist of a locomotive unit, or more than one unit coupled, with or without cars, whether or not carrying passengers, having not less than 4.0 horsepower per trailing ton, displaying markers or carrying an end of train device, and capable of adhering to the schedule standards specified for the Service.

Transaction Agreements: Means the Comprehensive Rail Agreement, the Joint Operating and Maintenance Agreement, and the Ancillary Agreements, as defined in the Comprehensive Rail Agreement.

Special Train: Specified in Exhibit F, as may be allowed pursuant to Section 3.1 of this Agreement.

VRE Cure Period: Shall mean the thirty(30) day period after Railroad provides written notice to the Commissions that the Commissions are in default of this Agreement, giving rise to Railroad’s right to terminate this Agreement, other than the
payment of amounts due under this Agreement, for which the VRE Cure Period shall be five (5) business days.

**ARTICLE TWO**

**CONDITIONS**

2.1 This Agreement shall supersede and replace the 1995 Agreement and the Conrail Agreement, and shall be effective as of July 1, 2011, for the term hereof. The Commissions acknowledge that they have executed separate agreements with Norfolk Southern Railway and NRPC, which agreements grant the Commissions the right to operate commuter rail service over the lines of each of those railroads. The Commissions shall promptly provide Railroad with current copies of such agreements and any subsequent amendments thereto, upon the execution of such agreements or amendments.

2.2 In the event that the terms and provisions of any agreement described in Section 2.1 shall at any time be interpreted, modified or amended so as to become more favorable to another railroad contracting with the Commissions than the terms and provisions of this Agreement are to Railroad, Railroad may request the Commissions to modify this Agreement so as to incorporate such interpretation, modification or amendment, in whole or in part, by amendment to this Agreement.

2.3 The Commissions have informed Railroad that they may desire to operate the Service through an agent. Any person, firm,
corporation or other legal entity contracting with or utilized by the Commissions to operate all or any part of the Service on the CSXT-Dispatched Tracks shall be an Operator within the meaning of this Agreement, must be approved in advance by Railroad, which approval shall not be unreasonably withheld, and must at all times during the term of this Agreement remain acceptable to Railroad. If at any time an Operator becomes unacceptable to Railroad, Railroad shall notify the Commissions of such unacceptability and the Commissions shall promptly select a new Operator acceptable to Railroad. An Operator must comply at all times with all applicable provisions of this Agreement. The Commissions shall not have the right to assign this Agreement or any portion hereof to any other person or entity, or to permit any person or entity other than Operator acceptable to Railroad to exercise such rights or enter upon the property of Railroad without the written consent of Railroad. The retention of an Operator by the Commissions shall not relieve the Commissions of any of their obligations under this Agreement.

2.4 (a) Railroad shall have no responsibility, but shall have the right, to inspect any Equipment of the Commissions. Railroad shall have no responsibility to maintain, service or repair any of the Equipment of the Commissions, but all such Equipment shall at all times comply with applicable federal, state and local requirements and with Railroad’s standards for
locomotives and cars permitted to operate over Railroad’s Tracks, which standards, as adopted and revised from time to time by the Railroad in its sole discretion, shall be identified and specified in writing to the Commissions. Upon adoption by Railroad of any revised standards, the Commissions shall be afforded a reasonable notice from Railroad to bring its Equipment into compliance with the revised standards, subject to all requirements of applicable law.

(b) All Equipment used in the Service shall comply with the provisions of the federal Locomotive Inspection Act and the Federal Safety Appliance Acts, as amended, and with all regulations adopted pursuant to either Act. The Commissions and any Operator shall also comply with any other applicable laws, regulations or rules, state or federal, covering the operation, condition, inspection or safety of the Equipment.

(c) The Commissions shall defend, indemnify, protect and save wholly harmless Railroad, its corporate affiliates, and its and their respective officers, directors, agents and employees from all fines, penalties, costs, expenses and liabilities imposed upon or asserted against Railroad, its corporate affiliates or any of its or their officers, agents or employees as a result of an alleged violation by the Commissions or an Operator of either (i) any of the laws, rules and regulations to which reference is made in Subsection 2.4(b) or (ii) any of the terms of this Agreement.
2.5 (a) Operation of the Service on the CSXT-Dispatched Tracks shall at all times comply with the Railroad’s operating rules, safety rules, instructions (including verbal or written directive of the Railroad’s operating officers) and other regulations. The Commissions, an Operator and all personnel of either and of the Railroad who are present on the Equipment at any time shall comply fully with the applicable laws, regulations or rules, whether federal, state or local, covering the operation, maintenance, condition, inspection, testing or safety of personnel or Equipment employed in the maintenance and operation of any of the Trains.

(b) The Commissions shall defend, indemnify, protect and save wholly harmless Railroad, its corporate affiliates and its and their respective officers, director, agents and employees from all fines, penalties, costs, expenses and liabilities imposed upon or asserted against Railroad, its corporate affiliates, or its or their respective officers, directors, agents or employees as the result of an alleged violation by the Commissions or an Operator of any of the laws, rules and regulations to which reference is made in Subsection 2.5(a).

(c) The Commissions shall make such arrangements with Railroad as may be required to ensure that all persons operating Equipment or Trains over the CSXT-Dispatched Tracks must be fully competent, trained and qualified for the tasks they are performing.
All persons operating Equipment or Trains must be approved by and remain subject to approval by the Railroad. Upon the request of the Commissions, Railroad shall provide training appropriate to qualify the Operator’s crew in accordance with then current Federal certification procedures and operating rules of Railroad, and shall conduct periodic orientation sessions with the participation of Railroad’s dispatchers (including the chief dispatcher for the territory) and the Operator’s personnel. The Commissions shall pay to Railroad, promptly upon receipt of bills therefore, all expenses incurred by Railroad for qualifying, testing, and maintaining the qualifications of the Operator’s personnel and conducting the orientation sessions, pursuant to this Section 2.5(c). In addition, the Commissions shall pay to Railroad promptly upon receipt of bills all expenses incurred by Railroad for training Railroad personnel as a result of the Service. Reimbursable costs shall include the costs of all labor furnished by Railroad, including pilots, if any. The labor rates shall be set forth in attached Exhibit C-3 and periodically updated by Railroad.

(d) Whenever the Service shall be modified so as by such modification alone to require a change in Railroad’s Timetables, Railroad will furnish the Commissions or their designee with Timetables, Switch Keys, Operating Rule Books, Safety Rule Books, and any related publications or material deemed
necessary by Railroad, and the Commissions shall pay Railroad the
cost of such related publications or material, including, but not
limited to the actual cost of printing and distributing new
Timetables.

(e) The Commissions, at their sole expenses, shall
obtain, install and maintain, in all locomotives used with
Commission’s Trains operating over the Tracks, functioning radios
to transmit and receive appropriate Railroad frequencies.

(f) Any investigation or hearing concerning the
violation of any operating rule, safety rule or instructions of
Railroad by any of the employees of the Commissions or of its
Operator may be attended by any official of the Commissions and of
the Operator designated by the Commissions, and any such
investigation or hearing shall be conducted in accordance with any
applicable collective bargaining agreements.

(g) Railroad shall have the right to exclude from the
CSXT-Dispatched Tracks or Railroad property any employee of the
Commissions or its Operator determined by Railroad to be in
violation of Railroad’s rules, regulations, orders or
instructions, whether issued by Timetable, bulletin or otherwise.
The Commissions shall indemnify, defend and save wholly harmless
Railroad, its corporate affiliates and its and their respective
officers, agents and employees from and against any and all claims,
liabilities and expenses resulting from such exclusion or from performance by an employee who has been so excluded.

2.6 (a) The Commissions acknowledge that their right to use of the Tracks is subject to Railroad’s rights, as set forth in the Transaction Agreements. The Commissions understand that Railroad heretofore granted rights to use of the Tracks to other railroad companies, to NRPC, and to MCI, Plantation Pipeline, and WilTel (which continue through their successors, as applicable), and that the rights herein granted are subject to such prior rights of others and to such rights as the Railroad has granted or may elect, in its sole discretion (subject to the terms of any then-existing Station Lease), to grant in the future to other persons or corporations. The Commissions’ right to provide Service on the Commuter Corridor is subsumed by and co-extensive with DRPT’s rights to provide Commuter Rail Service over the Commuter Corridor, as limited by this Agreement and the Commissions’ statutory authority. Notwithstanding the foregoing, Railroad acknowledges that the Commissions and Railroad have agreed upon a schedule of operations for the Service as specified in Exhibit A, as such may be amended from time to time under the provisions of this Agreement, much of which Service having been made possible by improvements funded by or on behalf of the Commissions, or which improvements DRPT has agreed to make. The Commissions hereby agree that they will not assert, directly or through any Operator, that
the Trains or the Service is entitled to preference over the Railroad’s freight operations, or over the freight operation of another railroad company entitled to use the Tracks, or over the intercity passenger trains of NRPC, in the use of any part of the Tracks. Railroad hereby agrees that it will make reasonable efforts to secure adherence to the Service specifications set out in Exhibit A, and as it may be amended, on the Tracks subject to this Agreement. In no event shall Railroad suffer any penalty or incur any damage claim for or arising from delays or disruptions in Service for any reason, including, but not limited to, basic or restorative maintenance or improvements undertaken within the Commuter Corridor, conflicting freight or NRPC intercity passenger services.

(b) Any proposed modification of the Service or of its scheduled operations, will be determined in accordance with Article 3 hereof. Railroad retains exclusive authority to approve or reject, in its sole discretion, appropriate modifications to the Contract Fee whenever the Commissions propose modifications to the Service or to its scheduled operations, other than the additional Service contemplated by Exhibit A.

(c) The Commissions acknowledge that DRPT and Railroad have agreed to establish one or more coordination or management committees, the terms of which are governed by the Joint Operating and Maintenance Agreement. The Commissions will participate in
such committees as provided in the Joint Operating and Maintenance Agreement, and the current Joint Operations Committee provided for in the Existing Agreement will dissolve.

2.7 In the event that operation of the Service requires the prior approval of or exemption from regulations by the Surface Transportation Board, the Federal Railroad Administration or any other governmental agency, securing such approval or exemptions shall be the exclusive responsibility of the Commissions. The Commissions shall not commence the Service, either in their own behalf or by means of any third party Operator, until any such approval or exemptions becomes effective. To the extent Railroad deems appropriate, Railroad will make reasonable efforts to support the actions which the Commission may initiate pursuant to this Section.

2.8 Railroad shall at all times have exclusive control of the management of all operations over the CSXT-Dispatched Tracks. The Commissions recognize that delays or cancellations of the Service due to conflicts with Railroad’s freight service, NRPC’s intercity passenger service, weather, labor difficulties, track or equipment failure, conflicting schedules or missed connections of NRPC trains, of trains of Railroad, or trains of other railroads entitled to use of the Tracks, or from other causes, are probable. Although Railroad will make reasonable efforts to avoid such delays or cancellations, Railroad shall in no event be responsible for or
liable to the Commissions, or its Operator, or any passenger for the consequences of any such delay or cancellation.

2.9 Maintenance of the Tracks will be performed in accordance with the Joint Operating and Maintenance Agreement. Performance by Railroad of its maintenance obligations will occasionally result in delays or cancellations of operations of the commuter rail passenger service. Delays or cancellations so occasioned will not relieve the Commissions of any obligations herein set forth, or give rise to any rights in the Commissions not otherwise set forth herein.

2.10 Clearing of wrecks will be governed by Article 10 of the Joint Operating and Maintenance Agreement unless otherwise agreed upon by Railroad and the Commissions, with the written consent of DRPT.

2.11 If during the term of this Agreement the CSXT-Owned Tracks should be appropriated or otherwise acquired, in whole or in part, by a governmental body or agency thereof, or by a quasi-public body, all awards or compensation for the CSXT-Owned Tracks or parts thereof resulting from such appropriation or acquisition shall be paid to Railroad subject to the provisions of this Agreement concerning the reimbursement of any federal interest in the CSXT-Owned Tracks. The Commissions shall be entitled to participate in condemnation proceedings to seek recovery of compensation attributable to property which it owns to the extent
permissible under applicable law. In the event of a partial appropriation or acquisition as herein contemplated, the parties hereto shall endeavor to reach agreement as to the appropriate adjustment, if any, to the Contract Fee. In the event agreement is not reached, the issue shall be resolved in accordance with the provisions of Article Eleven.

ARTICLE THREE

ACCESS

3.1 Railroad hereby grants to the Commissions, subject to the terms and conditions of this Agreement, the right to use the Tracks with the Commissions’ Trains in the provision of the Service, including the Special Trains, set forth in Exhibit A. With the written consent of the Railroad, and subject to such terms and conditions as the Railroad may prescribe, the Commissions may operate test trains and trains required for employee training. In addition, Railroad may allow, at its sole discretion, the operation of Special Trains by the Commissions in addition to those in Exhibit A, upon the Commissions’ request, at the rates set forth on the annexed Exhibit F and upon such other terms and conditions (including, without limitation, the same provisions for and evidence of such indemnification and insurance applicable to other Trains in the Service), as the Railroad may require in its sole discretion.
3.2 The rights granted to the Commissions herein shall relate solely to use of the Tracks of Railroad for the operation of Trains in the provision of the Service. Station Leases regarding the facilities listed in Exhibit E are addressed in a separate Master Lease Agreement.

ARTICLE FOUR

TERM

4.1 The Term of this Agreement commenced as of July 1, 2011 and, as of the Amendment Effective Date, shall be coterminous with the Joint Operating and Maintenance Agreement.

4.2 Termination of this Agreement for any cause shall not relieve any of the parties hereto from any obligations or liabilities accrued under this Agreement as of the time such termination becomes effective. Without limiting the generality of the foregoing, it is specifically recognized that any obligation on the part of a party to assume financial responsibility, to indemnify and insure or to make a payment of money shall survive termination of this Agreement.

ARTICLE FIVE

PAYMENT

5.1 (a) The premise upon which Railroad and the Commissions have agreed to the continuation of the Service pursuant to this Agreement is that Railroad will permit operation of the Service with the following conditions: (1) the Commissions will make
payment to Railroad of the Contract Fee pursuant to Section 5.1(b);
and (2) the Railroad (and its licensees, its corporate affiliates and its and their respective officers, agents and employees) will incur no liability or losses from the operation of the Service. Any such claims for recovery of costs incurred or lost revenue must be raised by Railroad within 90 days of such event by written notice to the Commissions as defined in Article 13. The Commissions, therefore, hereby undertake to hold harmless Railroad (which term, as used in this Section 5.1, shall include Railroad, its licensees, its corporate affiliates, and its and their respective officers, agents and employees) against all losses, costs, expenses, obligations, maintenance or discontinuance of the Service. The enumeration of any such costs or expenses and inclusion of provisions requiring payment to or indemnification of Railroad by the Commissions for such expenses, costs and risks elsewhere in this Agreement shall in no way diminish the liability of the Commissions to compensate or indemnify Railroad for any such costs, liabilities, expenses or obligations as hereafter occur, it being the intent of the parties that Railroad be fully protected, indemnified and made whole by the Commissions against any such costs, expenses, liabilities and obligations so caused or so exacerbated, whether or not specifically described in this Agreement.
(b) In addition to such other sums which accrue under other provisions of this Agreement, the Commissions agree to pay Railroad the Contract Fee in accordance with Exhibit C-1 of this Agreement. The Commissions shall pay the Railroad each month an Access Fee of $28.26 per train mile on the CSXT-Dispatched Tracks. The Access Fee may be escalated annually pursuant to Section 5.1(d) below, but otherwise will not be adjusted except by mutual agreement of the parties. The parties acknowledge that, as the Commonwealth undertakes those Infrastructure Improvements set forth in Exhibit E to the Comprehensive Rail Agreement, the Commissions intend to shift incrementally the primary operation of the Service from CSXT-Dispatched Tracks to Commonwealth-Dispatched Tracks, thereby reducing the total number of train miles of CSXT-Dispatched Tracks used by the Commissions to operate the Service. Accordingly, during the life of this Agreement, the parties anticipate that the total amount of compensation paid by the Commissions to Railroad will likely decrease over time, even though the Access Fee may escalate annually pursuant to Section 5.1(d) below.

(c) Upon the Commissions’ request, Railroad may agree to accept an annual payment of the Contract Fee with an appropriate discount and such other terms that are mutually acceptable to the parties.
(d) On and after July 1, 2021, the Access Fee may be increased annually by Railroad during the term of this Agreement on each July 1st by the greater of the following amounts:

(i) four percent (4%) per year, calculated on the Access Fee in effect the previous year; or

(ii) the increase in the CPI Urban Wage Earners and Clerical Workers for Washington, D.C. – Maryland – Virginia.

(e) Payment of the Contract Fee shall be made no less than five (5) days prior to the first day of each month by wire transfer to such account as Railroad designates in writing to the Commissions.

(f) The amounts payable to the Railroad under this Agreement shall be subject to audit or review for up to three years following payment thereof. Notwithstanding the foregoing, the Contract Fee shall be subject to audit and review only to the extent necessary to verify the number of train miles for the purpose of its variable component.

5.2 In addition to the payments specified hereinabove, the Commissions shall also pay to Railroad monthly, within thirty (30) days of demand when supported by appropriate documentation, any amounts which Railroad shall have failed to earn from or been forced to pay to NRPC pursuant to Appendix V (as it may from time to time be amended) of the Basic Agreement between Railroad and NRPC governing the operation of intercity passenger service over
lines of Railroad and attributable to the presence of Equipment, personnel, passengers or property of the Commissions or of an Operator or to the normal or abnormal operation or to the malfunction of the Service while on the CSXT-Dispatched Tracks.

5.3 In addition to the payments specified elsewhere in this Article Five, the Commissions shall also pay to Railroad, within thirty (30) days of demand, when supported by appropriate documentation, any amounts which become due to be so paid pursuant to the provisions of Article Two, Article Seven, Article Eight and Article Nine. Railroad’s reimbursable labor costs shall utilize the approved public rate for overhead percentages that Railroad uses for all such projects.

In addition to the payments specified hereinabove, the Commissions shall also pay to Railroad monthly, within thirty (30) days of receipt by VRE of an invoice, when supported by appropriate documentation, expenses incurred by Railroad for maintenance costs pursuant to the provisions of Section 6.2 hereof.

5.4 Invoices for amounts due to Railroad under this Agreement shall be prepared substantially in accordance with the format annexed to this Agreement as Exhibit C-2, as it may be changed from time to time by Railroad.

5.5 If Railroad is at any time required by law, rule, regulation or ordinance or by order of a court or of any administrative agency to give the commuter rail service priority
over Railroad’s freight operations or NRPC’s intercity passenger service on the CSXT-Dispatched Tracks, the Railroad shall be entitled to terminate this Agreement immediately upon delivery of written notice to the Commissions, unless the Commissions provide Railroad with a legally binding and effective waiver of all such priority as it may relate to the Service and indemnification against all liability attributable to or arising from the Commissions’ waiver of, and Railroad’s failure to comply within the otherwise applicable priority requirements, which waiver and indemnification shall be in form and substance acceptable to Railroad in Railroad’s sole judgment. Should an event occur which triggers Railroad’s rights under this Section 5.6, both parties shall attempt to negotiate, in good faith, a suitable amendment to this Agreement which might avoid the need, in the sole discretion of the Railroad, to exercise its right to immediately terminate this Agreement pursuant to this Section 5.6.

ARTICLE SIX

MAINTENANCE

6.1 Subject to the provisions of Sections 2.7, 2.8 and 2.9 hereof, and excepting force majeure, Railroad shall, during the term of this Agreement, keep and maintain the Tracks as provided in the Joint Operating and Maintenance Agreement. Railroad does not guarantee the condition of the Tracks or that the Service will not be delayed or interrupted. Failure on the part of the Railroad
to maintain the Tracks as required in this Article Six, including but not limited to any FRA findings or reports, shall in no event impose any liability on the Railroad (or its licensees, its corporate affiliates, or its or their respective officers, agents or employees), nor shall any such failure absolve the Commissions of any of the obligations imposed upon them by Article Nine hereof.

6.2 The Commissions shall reimburse the Railroad for actual maintenance and inspection costs of certain Tracks, constructed primarily for the use and benefit of VRE (VRE Crossroads Lead, VRE L’Enfant South Storage Track), as specified in Exhibit B.

ARTICLE SEVEN

CLAIMS SERVICE

7.1 The provision of claims handling service in connection with any aspect of the commuter rail service shall be the exclusive responsibility of the Commissions, and in no event shall the Commissions or its Operator assert any right to require provision of such service from the Railroad or any affiliate thereof.

ARTICLE EIGHT

RAILROAD POLICE

8.1 The provision of the services of railroad police or law enforcement personnel in connection with any aspect of the commuter rail service shall be the exclusive responsibility of the Commissions, and in no event shall the Commissions or any Operator
assert any right to require provision of the services of such railroad police or law enforcement personnel from the Railroad of any affiliate thereof.

ARTICLE NINE

RISK OF LIABILITY

9.1 (a) The Commissions shall protect, defend, indemnify and save harmless Railroad from any loss, cost or expense incurred by Railroad (including, but not limited to, lost incentives, penalties, detour and rerouting expenses), and all liability for death, personal injury or property damage, (including, but not limited to, the property and employees of Railroad, which is attributable in any way to, or which is exacerbated by, the operation of the Service over the CSXT-Dispatched Tracks and the Commonwealth-Dispatched Tracks, or to the presence of cars, equipment, personnel, contractors, agents or passengers of the Commissions or an Operator on or about the Commuter Corridor. The Commissions shall indemnify and save Railroad harmless under this Article Nine whether or not such death, injury or damage is caused, in whole or in part, by the negligence, regardless of its character or degree, of Railroad, and whether the damages are compensatory, punitive or exemplary, provided, that the liability of the Commissions under this Article Nine shall not exceed Three Hundred and Twenty Two Million, Eight Hundred and Sixty Four Thousand and Two Hundred and Twenty Eight Dollars ($322,864,228.00) (or such
greater sum as may be required by the provisions of Section 9.2 hereof) in any one calendar year.

(b) To guarantee payment of their obligations under this Article Nine, the Commissions shall, subject to the approval and continuing supervision of the Division of Risk Management of the Commonwealth of Virginia (the “Division”), procure and at all times maintain a policy or policies of liability insurance, with annual aggregate limits of at least Three Hundred and Twenty Two Million, Eight Hundred and Sixty Four Thousand and Two Hundred and Twenty Eight Dollars ($322,864,228.00) (or with such additional limits as may be required by the provisions of Section 9.2 hereof covering the liability assumed by the Commissions under this Article Nine. Such insurance may consist of a program of self-insurance approved and administered by the Division for up to Five Million Dollars ($5,000,000.00), with the balance of the coverage (at least $317,864,228.00 in excess of the $5 million self-insured retention) to be obtained through commercial insurance. All insurance policies shall name Railroad as an insured, shall provide liability insurance covering the liabilities assumed by the Commissions under this Agreement, and shall be endorsed to provide that the insurance company will give Railroad thirty (30) days prior written notice if the policies are to be terminated or modified during the term of this Agreement. The Commissions shall provide Railroad with copies of all commercial insurance policies,
including all current endorsements, carried by the Commissions pursuant to this Section 9.1, and a copy of all agreements, including amendments thereto, between the Commissions and the Division relating to the coverage, structure, administration or funding of the Commissions’ insurance program at least ten (10) business days before the expiration of any such policy, including all current endorsements. Such copy shall be delivered to:

CSX Transportation, Inc.
500 Water Street
Jacksonville, Florida 32202
Attention: Director - Insurance
(with a copy to its General Counsel at the same address as set forth above).

(c) In accordance with Section 2.2-1839 of the Code of Virginia, the Division has established the Northern Virginia and Potomac Rappahannock Transportation Commissions Commuter Rail Operations Liability Insurance Plan, a copy of which is annexed as Exhibit D (the “Plan”). The Plan is and shall be maintained by the Commissions and administered by the Division in accordance with Section 15.2-4518 of the Virginia Code and constitutes a “liability policy” for the purposes of that Section and Section 15.2-4526 of the Virginia Code. It is the intention of the parties that the Plan provides coverage for all liability which is or may
be imposed upon or assumed by the Commissions under this Article Nine. The parties further agree that, subject to the additional criteria set forth in this Article Nine (including, but not limited to Sections 9.1(b), 9.1(d) and 9.2), the Plan is sufficient, as of the date hereof, to fulfill the obligations of the Commissions with respect to the procurement and maintenance of liability insurance pursuant to Section 9.1(b). Notwithstanding the terms and conditions of the Plan and subject to the limits of Virginia law, the Commissions’ obligation set forth herein is absolute and Commissions shall be fully obligated to fully indemnify Railroad for all claims as set forth in Section 9.1 of this Agreement. The Plan shall not be amended without the agreement of the Railroad evidenced by amendment of this Agreement.

(d) The Commissions shall provide to Railroad a copy of all reports which are submitted pursuant to Part B(2) (b) of the Plan. The reports to be made pursuant to Part C(3) of the Plan shall include the balance sheets and income statements of the Trust Fund (as defined by Section 9.1(f)).

(e) If, at any time, the total insurance coverage applicable to the liabilities assumed by the Commissions under this Article Nine falls below Three Hundred and Twenty Two Million, Eight Hundred and Sixty Four Thousand and Two Hundred and Twenty Eight Dollars ($322,864,228.00) or, because of pending claims, is reasonably expected to fall below Three Hundred and Twenty Two
Million, Eight Hundred and Sixty Four Thousand and Two Hundred and Twenty Eight Dollars ($322,864,228.00) (or, in each case, such greater coverage as may be required by the provisions of Section 9.2), or such coverage is otherwise subject to challenge or diminution for any reason (including, without limitation, court decisions or applicable laws or regulations affecting the validity or enforceability of the Plan or this Article Nine), notice of such fact shall be given promptly by the Division to the Commissions, the Railroad and the Operator. If the Commissions fail to immediately (i.e., the day of such notice) restore the available insurance coverage to Three Hundred and Twenty Two Million, Eight Hundred and Sixty Four Thousand and Two Hundred and Twenty Eight Dollars ($322,864,228.00) (or such higher level as may be required by the provisions of Section 9.2), or to otherwise obtain relief from any other causes which may diminish such coverage for any reason, the Service and all rights granted the Commissions under Article Three of this Agreement shall immediately cease and shall not be resumed until the full Three Hundred and Twenty Two Million, Eight Hundred and Sixty Four Thousand and Two Hundred and Twenty Eight Dollars ($322,864,228.00) in insurance coverage (or such higher levels as may be required by the provisions of Section 9.2) has been obtained; provided, however, the cessation of passenger service shall not occur until after the Railroad has consulted with the
Commissions and determined, in its sole judgment, that the coverage specified herein will not be promptly restored; and provided further that the Service and all rights granted the Commissions under Article Three of this Agreement shall immediately cease at any time the total insurance coverage falls below $317,864,228.00. Any determination by Railroad under this subparagraph (e) shall be conclusive and not subject to challenge by the Commissions.

(f) Pursuant to the Plan, the Division administers the Commuter Rail Operations Liability Insurance Trust Fund (the “Trust Fund”) for the purposes of implementing and funding the Commissions’ obligations under the Plan and this Article Nine. The Commissions shall ensure that, at all times, the Trust Fund is solvent and adequately funded for the purposes contemplated by this Article Nine, and shall arrange for a review by the Division of the financial condition of such Trust Fund and the commercial insurance and self-insurance maintained under the Plan, from time to time, as requested by Railroad. Such review shall include a written certification to Railroad that the Trust Fund is solvent, and that the Plan’s insurance program fails to comply with the requirements of this Article Nine, or that the Trust Fund is not adequately funded, the Division shall promptly give notice of such fact to Railroad, the Commissions and the Operator. If Railroad determines that the Trust Fund is not adequately funded, Railroad may give notice of such fact to the Commissions. If the
Commissions fails to immediately (i.e., the day of such notice by the Division or Railroad) provide funding in amounts determined by the Division or by Railroad to be adequate or obtain the required insurance, the Service and all rights of the Commissions under Article Three of this Agreement shall immediately cease until such funding and/or insurance is provided; provided, however, the cessation of passenger service shall not occur until after the Railroad has consulted with the Commissions and determined, in its sole judgment, that adequate funding and/or insurance will not be promptly restored. Any determination by Railroad under this subparagraph (f) shall be conclusive and not subject to challenge by the Commissions. Notwithstanding the foregoing, in the event that the Division fails to comply with any of the requirements of this Agreement, including but not limited to those set forth in this Article 9, the Commissions shall take all actions, including the commencement of litigation and/or direct purchase of policies of insurance, to prevent a breach of such requirement.

(g) In the event that Railroad determines, in its sole judgment, that either this Article Nine or the Plan (or the insurance coverage provided thereunder) is invalid or unenforceable for any reason, or that the Commissions have otherwise failed to comply with its obligations under this Article Nine, such determination shall constitute a default pursuant to Section 12.2 of this Agreement. Any determination by railroad
under this subparagraph (g) shall be conclusive and not subject to challenge by the Commissions.

(h) The term “Railroad,” as used in this Article Nine, shall include not only CSX Transportation, Inc., but also its licensees, corporate affiliates and its and their respective officers, directors, agents and employees.

(i) The Commissions policy or policies of liability insurance shall include coverage for Terrorism and Sabotage.

9.2 (a) If, as a result of any statute enacted by the Commonwealth of Virginia or the Federal Government, the minimum liability limitation of Commissions is increased to an amount in excess of $322,864,228.00, the amount of liability insurance that Commissions are required to procure and maintain in order to guarantee its obligations under this Article or to the general public, is increased to an amount in excess of $322,864,228.00, then the minimum liability limit of $322,864,228.00 (or higher amount if increased pursuant to subparagraph 9.2(b) below) set forth in Section 9.1 of this Article shall be automatically increased and the liability insurance shall be amended to reflect such higher amount. If the exposure of the Railroad to liability under this Agreement or under the Station Leases is increased by statute or judicial decision, the limits on the liability of the Commissions pursuant to this Agreement shall be increased proportionately and the limits of the liability insurance carried
by the Commissions shall be increased to reflect such increased exposure. As a condition to employing self-insurance to cover such higher amount of increased exposure, the Commissions agree to obtain the advance approval of both the Railroad and the Division. In the event the Commissions fail to obtain and maintain the insurance required by this Section for any reason (including the unavailability of such insurance), then either party shall have the right to terminate this Agreement by delivery of written notice to the other.

(b) At any time during the term of this Agreement, upon Railroad’s request, the parties hereto will review and evaluate the number and cost of claims which have been made against the insurance carried by the Commissions, the actual and potential liabilities incurred by the Commissions for death, personal injury or property damage, any relevant judicial decisions, inflation and current trends in the cost of tort claims, and the likelihood and potential cost of future claims. Based on this review and evaluation, the parties will determine whether there are reasonable grounds to increase the limit of the Commissions’ liability under Subsection 9.1(a) or to increase the limits and expand the coverage of the insurance required to be carried by the Commissions under Subsection 9.1(b) and Subsection 9.1(d) hereof. If the parties are unable to agree, the dispute shall be resolved in accordance with the provisions of Article Eleven; provided,
however, that in no event shall the liability of the Commissions or the amount of insurance to be carried by the Commissions be reduced below the limits required by Section 9.1 hereof. Any increase in the amount of insurance coverage which results from the application of this Section 9.2 shall automatically cause a proportionate adjustment to the limits specified in Subsection 9.1(e) hereof.

9.3 Immediately upon the execution and delivery of this Agreement, the parties shall execute and deliver a Station Lease with respect to the station Facilities enumerated in the annexed Exhibit E. It is contemplated that an additional agreement (including Station Leases and amendments thereto) may be entered into between Commissions and Railroad concerning the construction, maintenance, use and removal of certain ancillary facilities, including, among others, stations, platforms, canopies, parking areas and depots, for the accommodation of the Commissions’ employees, and particularly passengers. It is understood that the indemnification and insurance provisions of this Article Nine of this Agreement shall apply with respect to such construction, maintenance, use and removal by the Commissions, any Operator, its or their employees, agents, contractors, passengers, invitees and the general public of any such facilities.

9.4 The Commissions expressly understand and agree that their obligations to indemnify Railroad and hold Railroad harmless
under the provisions of this Article Nine also extend to and include the obligation to indemnify and hold Railroad harmless from and against any and all damages (including punitive and exemplary damages), penalties, losses, fines, claims, liens, suits, liabilities, costs (including cleanup costs), judgments and expenses (including attorneys, consultants or expert fees and expenses) of every kind and nature suffered by or asserted against Railroad as a direct or indirect result of or due to the presence or escape of any hazardous materials, substances, wastes or other environmentally regulated substances on or from the Tracks, a Train or Equipment which presence or escape is attributable in any way to, or is exacerbated by, the operation of the Service over the Tracks or the presence of the Commissions’ or any Operator’s Equipment, personnel or passengers on or about Railroad’s property.

9.5 (a) Railroad shall give notice to the Division of Risk Management and to the Commissions as soon as reasonably practicable whenever the Railroad receives credible notice from any party that it is the intention of such party to hold Railroad responsible for an incident for which the Commissions are potentially liable under Section 9.1 hereof.

(b) Railroad agrees: (1) to cooperate in the defense of claims of which it gives the Division of Risk Management notice hereunder; (2) to allow the Division of Risk Management, within
its sole discretion, to settle or defend any such claim; and (3) to execute all documents reasonably required to enable the Division of Risk Management to recover amounts paid by the Division of Risk Management on behalf of the Commissions to persons other than Railroad.

**ARTICLE TEN**

**RISK OF LABOR CLAIMS**

10.1 The Commissions will indemnify and hold harmless Railroad, its corporate affiliates, and its and their respective officers, agents and employees against any and all costs and payments, including, but not limited to, awards of benefits, back pay, penalty pay, allowances and awards of damages of any kind, however they may be denominated, and all arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of employees of Railroad, or its corporate affiliates in connection with the implementation, operation or termination of the Service, whether pursuant to employee protective conditions imposed by a governmental agency as conditions for that agency’s approval or exemption of the Service or this Agreement, or pursuant to a collective bargaining agreement.

**ARTICLE ELEVEN**

**DISPUTE RESOLUTION**
Disputes will be resolved in accordance with Article 24 of the Comprehensive Rail Agreement, as if the Commissions were Railroad’s counterparty to that agreement. However, for disputes not involving DRPT, and not reasonably anticipated to involve DRPT, with CSXT’s consent, which will not be unreasonably withheld, mediation may take place in Alexandria, Virginia.

ARTICLE TWELVE

DEFAULT

12.1 The following items shall be considered a default by the Commissions under this Agreement:

(a) Failure on the part of the Commissions or its Operator to comply with the conditions of Article Two related to safety of operations or as provided in Subsection 2.5(a) of Article Two.

(b) Failure on the part of the Commissions to comply with any of the provisions of Article Nine hereof or the Plan.

(c) Failure on the part of the Commissions to replace any Operator which becomes unacceptable to Railroad within a reasonable time following notice.

(d) Failure of the Commissions timely to make any payment required to be made to Railroad under any provision of this Agreement.

(e) Failure on the part of the Commissions to substantially comply with any of its obligations under this Agreement.

12.2 If the Commissions are in default under this Agreement, CSXT shall provide to the Commissions written notice within five
(5) business days of actual knowledge of such default. During a VRE Cure Period, CSXT shall not terminate this Agreement but may provide to the Commissions notice of its intent to terminate this Agreement. However, if CSXT otherwise has cause to terminate this Agreement, CSXT may suspend, as of the date of breach, the Service during a VRE Cure Period until such time as the underlying breach or default of the Commissions has been cured, or until the VRE Cure Period has expired without cure, at which time CSXT may continue to suspend service or elect any applicable remedy to which it is entitled.

12.3 The parties acknowledge that, under Article 14 of the Comprehensive Rail Agreement, DRPT has the right, but not the obligation, to cure defaults by the Commissions under this Agreement before Railroad may terminate this Agreement.

12.4 Failure on the part of Railroad to substantially comply with its obligations under Article Six of this Agreement shall constitute a default by Railroad giving the Commission the right to terminate this Agreement on ten (10) days prior written notice.

ARTICLE THIRTEEN

NOTICES

13.1 Any report, notice or other communication required or permitted hereunder shall, unless otherwise specified, be in writing and shall be delivered by hand or deposited in the United States mail, postage prepaid, addressed as follows:
If to Railroad:

CSX Transportation, Inc.
500 Water Street
Jacksonville, Florida 32202
Attention: Assistant Vice President – Passenger Services
(with a copy to its General Counsel at the same address as set forth above)

If to Commissions:

Chief Executive Officer
Virginia Railway Express
1500 King Street, Suite 202
Alexandria, Virginia 22314

(With a copy to the
County Attorney of Arlington County
2100 Clarendon Boulevard, Suite 403
Arlington, Virginia 22201)

Either party may change the address at which it shall receive communications and notifications hereunder by notifying the other party in writing of such change.
ARTICLE FOURTEEN

MISCELLANEOUS

14.1 Force Majeure. Each party will be excused from performance of any of its obligations hereunder (except Article Nine), to the other party, where such nonperformance is occasioned by any event beyond its control, which shall include, without limitation, any order, rule or regulations of any federal, state or local government body, agent or instrumentality, work stoppage, accident, natural disaster or civil disorder, provided that the party excused hereunder shall use all reasonable efforts to minimize its nonperformance and to overcome, remedy or remove such event in the shortest practical time. Railroad shall promptly undertake and complete the repair, restoration or replacement of any property which is necessary for the provision of the Service, or for the performance of any of the Railroad’s other obligations hereunder which is damaged or destroyed as a result of the force majeure occurrence, subject to the Commissions’ agreement to reimburse Railroad for the full cost of such repair, restoration or replacement.

14.2 The article and section headings herein are for convenience only and shall not affect the construction hereof. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing signed by all of the parties.
hereto, unless a specific provision hereof expressly permits one party to effect termination, amendment, supplementation, waiver or modification hereunder, in which case such change shall be made in accordance with the terms of such provision. All exhibits attached hereto, and as they may be amended, are integral parts of this Agreement and the provisions set forth in the exhibits shall bind the parties hereto to the same extent as if such provisions had been set forth in their entirety in the main body of this Agreement.

14.3 In the event that any material provision of this Agreement is found to be invalid or unenforceable in any respect, either party may immediately terminate this Agreement by delivery of written notice to the other party.

14.4 The failure of either party to insist at any time upon the strict observance or performance of any of the provisions of this Agreement, or to exercise any right or remedy in this Agreement, shall not impair any such right or remedy to be construed as a waiver or relinquishment thereof.

14.5 This Agreement and each and every provision hereof are for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be construed as creating or increasing any right in any third party to recovery by way of damages or otherwise against either of the parties hereto.
14.6 The rights and obligations of the Railroad and the Commissions hereunder may be assigned only with the prior consent of the other party, except in the event of dissolution, merger or other even terminating the existence of either the Railroad as a corporate entity or one or both of the Commissions, as bodies politic, in which case the rights and obligations of either party hereunder shall be assumed by the party’s successor and assigns.

14.7 While it is understood and agreed that the Commissions shall act together in all matters affecting the Service, the rights and obligations of the Commissions hereunder shall be shared jointly and severally.

14.8 This Agreement shall be governed by the laws of the Commonwealth of Virginia.

14.9 CSXT and DRPT have agreed to certain rights and obligations in the Transaction Agreements with respect to dispatching (Article 5 of the Joint Operating and Maintenance Agreement), maintenance (Article 7 of the Joint Operating and Maintenance Agreement), capital improvements (Article 8 of the Joint Operating and Maintenance Agreement, Exhibit E of the Comprehensive Rail Agreement), clearing of wrecks (Article 10 of the Joint Operating and Maintenance Agreement), construction and engineering (the Master Engineering Agreement (CSXT), Master Engineering Agreement (DRPT), Master Development and Construction Agreement (CSXT), and Master Development and Construction Agreement (DRPT)).
Agreement (DRPT)), all of which will apply to the Commuter Corridor. These cited portions of the Transaction Agreements will govern in the event of a conflict with this Agreement.

Except as provided in the previous paragraph, or as otherwise expressly set forth herein, in the event of a conflict between this Agreement, as amended and any of the Transaction Agreements, this Agreement will govern, provided, however, for the avoidance of doubt, Articles 7, 9 and 10 of this Agreement, and any obligation of the Commissions wherever contained in this Agreement to defend, indemnify, protect, save harmless Railroad, or provide insurance with respect to these obligations or for the benefit of Railroad, will control in the event of any conflict between the Transaction Agreements and this Agreement.

14.10 The parties acknowledge that the action or inactions of DRPT pursuant to the Transaction Agreements may impact the rights and obligations of the Commissions under this Agreement. The Commissions consent to the terms hereof.

14.11 Effective July 1, 2020, legislation enacted by the Virginia General Assembly and signed by the Governor of Virginia created the Virginia Passenger Rail Authority (“VPRA”). The Parties acknowledge that, as of the date of this Agreement, the necessary executive and administrative actions to permit VPRA to undertake the rights, responsibilities and obligations of DRPT imposed by the Transaction Agreements, as of the date of this
Agreement, have not been completed, and it is therefore neither practical nor reasonable to have VPRA possess and undertake such rights, responsibilities and obligations as of the date of this Amendment. Accordingly, the Commissions agree and consent to the future assignment by DRPT, and the assumption by VPRA, of all of DRPT’s rights, responsibilities and obligations under the Transaction Agreements (memorialized in an assignment and assumption agreement). Following the effective date of such assignment and assumption agreement, all references to DRPT in this Agreement shall mean VPRA unless context clearly means otherwise. In the event VRPA is dissolved, the references to DRPT shall again refer to DRPT.
IN WITNESS WHEREOF, the Railroad and Commissions have caused their names to be signed hereto by their officers thereunto duly authorized and their seals, duly attested, to be hereunto affixed as of the day and year first above written.

Attest: CSX TRANSPORTATION, INC.

__________________________ By: __________________________
Secretary Title:

Attest: NORTHERN VIRGINIA TRANSPORTATION COMMISSION and POTOMAC AND RAPPAHANNOCK TRANSPORTATION COMMISSION

__________________________ By: __________________________
Secretary Title:
EXHIBIT A

SERVICE PLAN

[TO COME ONCE FINALIZED]
EXHIBIT B

CSXT-DISPATCHED TRACKS

[TO COME FROM CSXT]
EXHIBIT B-2

COMMONWEALTH-OWNED TRACKS

[TO COME]
EXHIBIT C-1

CONTRACT FEE

[TO COME ONCE FINALIZED]
EXHIBIT C-2

SAMPLE INVOICE

CSX Appendix and Invoice Format
Invoice for Virginia Railway Express Operations
Jul-20

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| Access Fee                                       | 630,691.78 |

| Contract Fee Total                               | 664,069.54 |

| SUPPLIED SERVICES                                |            |
| Communications Monthly Charge: TBD               |            |
| Expenses: TBD                                    |            |
| Special Trains: TBD                              |            |
| Sub Total: $                                     |            |

TOTAL DUE: $664,069.54
EXHIBIT C-3

LABOR RATES

[TO BE ATTACHED]
EXHIBIT D

NORTHERN VIRGINIA AND POTOMAC RAPPAHANNOCK TRANSPORTATION COMMISSIONS COMMUTER RAIL OPERATIONS LIABILITY INSURANCE PLAN

[TO BE ATTACHED]
EXHIBIT E

PASSENGER FACILITIES

[TO COME FROM CSXT AFTER AMENDMENT TO LEASE]
EXHIBIT G

COMPREHENSIVE RAIL AGREEMENT

[TO COME ONCE FINALIZED]
EXHIBIT H

JOINT OPERATING AND MAINTENANCE AGREEMENT

[TO COME ONCE FINALIZED]