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March 31, 2010

VIA ELECTRONIC FILING

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

Re: **Finance Docket No. 35110**
Florida Department of Transportation -- Acquisition
Exemption -- Certain Assets of CSX Transportation, Inc.

Dear Chief Brown:

On April 3, 2009, Florida Department of Transportation ("FDOT") filed a Verified Notice of Exemption and an accompanying Motion to Dismiss in the above-captioned proceeding. By decisions served May 14, 2009, June 19, 2009, August 7, 2009 and January 6, 2010, the Board held this proceeding in abeyance at FDOT's request. FDOT now requests that the Board resume its consideration of this matter, adopt the procedural schedule proposed below, and proceed to a decision on FDOT's pending motion to dismiss as soon as possible.

FDOT proposes to acquire from CSX Transportation, Inc. ("CSXT") certain physical assets of a railroad line and associated right-of-way extending from DeLand to Poinciana in Volusia, Seminole, Orange and Osceola Counties, Florida, a distance of approximately 61.5 miles (the "Orlando Line"). CSXT will retain a permanent, exclusive freight operating easement on the Orlando Line and FDOT will acquire neither the right nor ability to provide or control freight service on the line. Pursuant to Maine DOT -- Acq. Exempt. -- Maine Central R. Co., 8 I.C.C.2d 835 (1991) ("Maine DOT") and its progeny, FDOT filed its Verified Notice of Exemption and accompanying Motion to Dismiss in order to obtain a Board determination that FDOT's acquisition of the physical assets of the Orlando Line is not a transaction subject to the Board's jurisdiction under 49 U.S.C. § 10901 and will not result in FDOT becoming a rail common carrier on the line.

In an Appendix to its motion to dismiss, FDOT submitted several transactional documents between FDOT and CSXT, each dated as of November 30, 2007: a Contract for Sale and Purchase, less its voluminous exhibits (FDOT Appendix, Tab 1); the Central Florida Operating and Management Agreement, or "CFOMA" (FDOT Appendix, Tab 2); and a

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Transition Agreement (FDOT Appendix, Tab 3). A draft Deed, encompassing CSXT's retained freight operating easement and constituting Exhibit 4 to the Contract for Sale and Purchase, also was submitted (FDOT Appendix, Tab 4). FDOT's motion to dismiss demonstrated how these documents satisfied the relevant criteria of Maine DOT and its progeny.

FDOT served its Verified Notice of Exemption, Motion to Dismiss and Appendix on all 57 known shippers on the Orlando Line; on all labor unions representing CSXT employees on the Orlando Line; and on the National Railroad Passenger Corporation and Florida Central Railroad Company, Inc., both existing tenants on the Orlando Line. As the Board has noted, replies to FDOT's motion to dismiss were due by May 7, 2009. See January 6, 2010 Decision at p. 1. Only one party, the Brotherhood of Railroad Signalmen ("BRS"), submitted any responsive pleading to the Board, and by decision served May 7, 2009 BRS was granted an extension of time until May 22, 2009 to reply to FDOT's motion to dismiss.

In the meantime, however, this proceeding was held in abeyance after anticipated enabling legislation for the proposed transaction was not enacted by the Florida state legislature. Such legislation was eventually passed by the Florida Legislature on December 8, 2009 and was signed into law by Governor Crist on December 16, 2009. To implement the legislation, FDOT and CSXT have entered into amendments to the Contract for Sale and Purchase and the Transition Agreement, and have re-executed a slightly revised version of CFOMA. In the interest of a complete record, FDOT is submitting copies of those amending or amended documents as Exhibits 1 through 3 hereto.¹

FDOT does not believe that any of the amendments or revisions relate to or affect the governing criteria of Maine DOT. The amendment to the Contract for Sale and Purchase provides for an escrow closing, removes provisions regarding a parcel of land at Sanford, Florida, grants FDOT easements for two signal houses, and makes date and other conforming changes. FDOT notes that, to reflect recent CSXT signal modifications, the amendment also revises very slightly the milepost limits of the Orlando Line. Amendment, Section 4. If necessary after the Board's ruling on FDOT's motion to dismiss, FDOT will submit an amendment to its notice of exemption reflecting the revised mileposts.

The amendment to the Transition Agreement makes technical dispatching refinements and provides that CSXT will create a Central Florida Dispatcher Desk within approximately one month of closing. Compare FDOT Motion to Dismiss at 11 & n.17. The remaining changes relate to dates and nomenclature. The Dispatching Services Agreement

¹ Exhibit 1 is denominated as the "Second Amendment to the Contract for Sale and Purchase." A prior corrective amendment made a technical correction to Section 14.02 of the Contract for Sale and Purchase.

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attached to the amendment makes only conforming changes to the version previously submitted (FDOT Appendix, Tab 3, Transition Agreement, Appendix C).

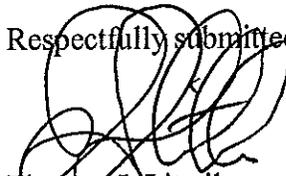
The amended CFOMA makes revisions to Sections 19 (Liability), 20 (Investigation) and 21 (Insurance). None of those sections were cited or relied upon in FDOT's motion to dismiss. The remaining amendments to CFOMA consist solely of conforming date and nomenclature changes; conforming milepost changes in Sections 8(d)(ii) and (e); and a revision of the phone numbers listed in Section 15(c). The section numbering of CFOMA -- and the corresponding citations to CFOMA in FDOT's motion to dismiss -- remain unchanged. Exhibit 1 to CFOMA, the CFCRT Freight Service Plan (Revision 5), is unchanged from the prior version and is not resubmitted here.

FDOT has conferred with counsel for BRS and agreed on the following procedural schedule to govern the remainder of this proceeding:

April 30, 2010	BRS comments on FDOT motion to dismiss due
May 17, 2010	FDOT reply to BRS comments due

FDOT thus respectfully requests that the Board resume its consideration of this matter and adopt the proposed procedural schedule.

Respectfully submitted,



Thomas J. Litwiler
Attorney for Florida Department of Transportation

TJL:tl

Attachments

cc: Richard S. Edelman, Esq.

EXHIBIT 1

**SECOND AMENDMENT
to the
CONTRACT FOR SALE AND PURCHASE**

THIS SECOND AMENDMENT (this "Second Amendment"), made as of March 29th, 2010, by and between STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, ("State") and CSX TRANSPORTATION, INC., ("CSXT"), amends that certain CONTRACT FOR SALE AND PURCHASE dated as of November 30, 2007, by and between State and CSXT, as previously amended (the "Contract").

WHEREAS, the Contract was previously amended by the Corrective Amendment to the Contract dated January 4, 2008 (the "Corrective Amendment"), and

WHEREAS, the Parties desire to further amend the Contract as set forth herein.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants hereinafter set forth, the Parties hereto, intending to be legally bound, agree as follows:

Section 1. Dates, Ten Acre Parcel and Exhibits.

(a) The date of June 30, 2009 appearing in each of Subsection 6.01, 17.01(e) and 17.02(e) of the Contract is hereby amended to December 31, 2010.

(b) The Exhibit Agreement Deadline in Section 23 of the Contract is hereby amended to June 30, 2010.

(c) The text of Section 10.03 is hereby deleted in its entirety and replaced with the following:
"Intentionally Left Blank."

(d) The text of Section 10.05 is hereby deleted in its entirety and replaced with the following:
"Intentionally Left Blank."

(e) The List of Exhibits appearing on page iv of the Contract is hereby amended to replace "Exhibit 21 - Demolition Agreement" with "Exhibit 21 - Escrow Agreement," and to add "Exhibit 22 - Signal House Easements."

Section 2. Escrow Closing.

(a) State and CSXT have agreed that, in the event the State has not obtained final Federal Transit Administration full-funding grant agreement approval for the Central Florida Commuter Rail Transit Project Initial Operating Segment (the "Approval"), on or before the Closing Date set forth in Section 6.01 of the Contract, the parties will engage in an Escrow Closing, on or before August 31, 2010, subject to the satisfaction or waiver of all conditions to the Closing in the Contract by the respective party (the "Escrow Closing"). At said Escrow Closing, State and CSXT shall deliver documents and funds (the "Escrowed Items") to a mutually agreed escrow agent pursuant to the terms of an agreement (the "Escrow Agreement"), to be attached to the Contract as Exhibit 21, specifying the terms and conditions for the release from escrow and delivery of the Escrowed Items under certain circumstances. State and CSXT have agreed that the delivery of the Escrowed Items in consummation of the Closing as contemplated by the Contract shall not occur unless and until State has obtained the Approval, and the respective party has satisfied or waived all of the respective conditions to Closing agreed by State and CSXT in the Escrow Agreement and in the Contract. In the event the Escrowed Items are deposited with the escrow agent and the Closing does not occur by December 31, 2010, the Escrowed Items shall be distributed as provided in the Escrow Agreement. Subject to the satisfaction or waiver of the conditions of the Contract and the Escrow Agreement, the Closing shall occur not later than thirty (30) days following the obtaining by State of the Approval.

(b) To effectuate the detailed incorporation of this Second Amendment within the terms of the Contract, the parties agree to timely: (1) further amend the specific provisions of the Contract and any related agreements to the extent appropriate and necessary to reconcile same to fully address and incorporate the agreed Escrow Closing as set forth in Subsection (a), (2) finalize the Escrow Agreement and attach said Escrow Agreement as an exhibit to the Contract, (3) select an escrow agent, and (4) take such other actions as mutually determined to be reasonably necessary to effectuate the intent of this Second Amendment.

Section 3. Title Company Definition.

The definition of "Title Company" in the first sentence of Section 7.03 is hereby amended to First American Title Insurance Company.

Section 4. Limits of the State Property.

(a) Reference to the southern limit of the State Property as Milepost A814.1 (Sta. 42718+10) in Section 1.01(a) of the Contract is hereby amended to Milepost A813.82 (Sta. 42699+64).

(b) Reference to the northern limit of the State Property as Milepost A749.7 (Sta. 39406+75) in Section 1.01(a) of the Contract is hereby amended to Milepost 749.57 (Sta. 39406+75).

Section 5. Signal House Easements. Section 1.01 is amended to: delete "and" after the semicolon at the end of (d), insert a semicolon in place of the period at the end of (e), and add a subsection (f) as follows: "(f) Signal House Easements with respect to Signal Houses located at Columbia Street and Kaley Street as set forth in Exhibit 22 (the "Signal House Easements")."

Section 6. Additional Closing Documents. Section 7.02 is amended to: delete "and" after the semicolon at the end of (h), insert a semicolon in place of the period at the end of (i) and to add new subsections (j), (k), and (l) as follows:

"(j). The Party Wall Agreement attached as Exhibit 20;

(k) The Escrow Agreement attached hereto as Exhibit 21; and

(l) The Signal House Easements attached as Exhibit 22."

Section 7. Additional Recording. Section 7.06 is amended to add: "Within five days of Closing, State shall cause a counterpart of the Party Wall Agreement and Signal House Easements to be recorded in the public records of Orange County, Florida."

Section 8. CSXT Representation.

(a) Subparagraph 11.01(i) of the Contract is hereby amended to insert "; and" in lieu of the semicolon at the end thereof.

(b) Subsection 11.01 is hereby amended to add a new Subparagraph 11.01(j) reading as follows:

"(j) CSXT will invest One Hundred Fifty Million and no/100 Dollars (\$150,000,000.00) in capital expenditures or maintenance related to transportation capacity, facilities or equipment in the State of Florida during the

ten (10) year period following the Closing."

Section 9. Counterparts.

This Second Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

Section 10. No Other Changes.

Other than as expressly set forth above, the terms and conditions of the Contract remain in full force and effect.

[signature page follows]

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 and duly attested, as of the day and year first above written.

Signed and delivered in the Presence of:

CSX TRANSPORTATION, INC., a Virginia corporation

Signed Name: [Signature]

By: [Signature]
(Signed Name)

Print Name: William P. Byrne

Print Name: Peter J. Shudtz

Signed Name: [Signature]

Its: Authorized Agent

Print Name: Lauren A Urtel

Signed and delivered in the Presence of:

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

Signed Name: [Signature]

By: [Signature]
(Signed Name)

Print Name: NORMA MEDINA

Print Name: Noranne Dawas

Signed Name: [Signature]

Its: District Secretary

Print Name: Fredrick Choise

Attest: [Signature]

Print Name: Jennifer Wynn

REVIEWED AND APPROVED AS TO FORM

APPROVED AS TO FINANCIAL TERMS AND FUNDS ARE PROGRAMMED

[Signature]
District Chief Counsel

[Signature]
Office of the Comptroller

Signature Page to Second Amendment to Contract

CITY
COUNTY OF WASHINGTON

I, Laverne Watson Johnson a Notary Public of the State of City of Washington
do certify that, on the date below, before me in said County, personally came
Peter J. SHUFFLE, to me known, and known to me to be the person
whose name is subscribed to the above instrument, who, being by me first duly sworn,
did depose, acknowledge and say that: he resides in WASHINGTON, DC
County; he is a duly authorized agent of CSX Transportation, Inc., the
corporation described in and which executed said instrument; he is fully informed of the
contents of the instrument; he signed his name thereto for said corporation pursuant to
such authority; and the execution of this instrument is the free act and deed of said
corporation; and the conveyance herein is not part of a transaction, sale, lease, exchange
or other transfer or conveyance of all or substantially all of the property and/or assets of
said corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal, this 23rd day
of March, 2010.

Laverne Watson Johnson

Notary Public

My Commission Expires: May 14, 2012

STATE OF FLORIDA
COUNTY OF Volusia

I, NORMA I. MEJIAS, a Notary Public of the State of Florida, do certify
that, on the date below, before me in said County, personally came
NORANNE DOWNS, to me known, and known to me to be the person whose name is
subscribed to the above instrument, who, being by me first duly sworn, did depose,
acknowledge and say that: she resides in Volusia County, Florida; she is Secretary
of Transportation District 5 of the Florida Department of Transportation, the State agency
described in and which executed said instrument; she is fully informed of the contents of
the instrument; she signed her name thereto for said State pursuant to her authority; and
the execution of said instrument is the free act and deed of said State of Florida
Department of Transportation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal, this 29 day
of March, 2010.

NORMA I. MEJIAS

NORMA I. MEJIAS

Notary Public

My Commission Expires:



EXHIBIT 2

FIRST AMENDMENT TO TRANSITION AGREEMENT

THIS FIRST AMENDMENT TO TRANSITION AGREEMENT (the "First Amendment"), made as of the 29th day of March, 2010 (the "First Amendment Effective Date"), by and between STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, ("State") and CSX TRANSPORTATION, INC., a Virginia corporation, ("CSXT") amends that certain TRANSITION AGREEMENT dated as of November 30, 2007, by and between State and CSXT. Except as expressly provided herein or unless the context otherwise requires, capitalized terms have the meanings assigned to such terms in accordance with the Transition Agreement, including Appendix A to the Transition Agreement, "Central Florida Rail Corridor Definitions" and Appendix B to the Transition Agreement, "Transition Agreement Definitions."

WHEREAS, the Transition Agreement provides for the dispatching of Railroad Operations on the State Property during the Transition Period; and

WHEREAS, the parties wish to amend the Transition Agreement as set forth herein.

NOW, THEREFORE, the parties hereby agree to amend the Transition Agreement as follows:

1. (a) The Table of Milestones appearing in Section 2(a) is amended and restated in its entirety to read:

<i>Milestone</i>	<i>Date to be Achieved</i>
(1) Funding of final design, permit applications and long lead items re S-Line improvements.	April 1, 2010
(2) State procurement of design-build-maintain contractors.	May 30, 2010
(3) CSXT target date for the Development Order for the Terminal Facility.	Done
(4) Closing Date and State Management Date.	November 1, 2010
(5) State procurement of temporary dispatch services.	9 months from execution of JRPA – est. December 1, 2010
(6) Anticipated State procurement of permanent dispatch services.	About May 2012
(7) CSXT target date for the completion of the Terminal Facility.	24 months from Closing

<i>Milestone</i>	<i>Date to be Achieved</i>
(8) Commissioning and testing of Commuter Rail System.	May 2012
(9) Revenue Operation Date.	February 2013

(b) The phrase "Effective Date" in Section 2(b) is hereby amended to read "First Amendment Effective Date."

2. (a) Section 4 (c) (1) is amended and restated in its entirety to read:

"Within nine (9) months of the execution and delivery of that certain Joint Rail Project Agreement (Non-Federal), executed contemporaneously with that certain First Amendment to Transition Agreement, (hereinafter referred to as the "Joint Rail Project Agreement (Dispatch Desk)"), CSXT will create the Central Florida Dispatcher Desk, which is a new dispatcher desk for the territory corresponding to the entire approximately 61.5 miles of the State Property:

(i) Northern limits, MP A 749.57 of the State Property; and

(ii) Southern limits, MP A 813.82 of the State Property."

(b) A copy of the Joint Rail Project Agreement (Dispatch Desk) is attached as Appendix 1 to this First Amendment.

3. Section 4 (c) (2) is amended and restated in its entirety to read:

"At the north end of the State Property, the four interlocked signals at CP South DeLand shall be owned and maintained by State. Prior to State assuming dispatch, CP South DeLand crossover shall be controlled by State. To route a train onto the State Property, the CSXT JA Desk dispatcher will coordinate with the Central Florida Dispatcher Desk dispatcher to move the crossover to the required position, then, one of the two southbound signals will be initially requested by the CSXT JA Desk dispatcher. The Central Florida Dispatcher Desk dispatcher will see a computer screen indication that the

signal had been requested but not yet cleared. The Central Florida Dispatcher Desk dispatcher will then request the same signal and, if field conditions permit, the signal will be displayed and the train will have authority to enter the State Property. To route a train from the State Property to the CSXT Property, the Central Florida Dispatcher Desk dispatcher will coordinate with the CSXT JA Desk dispatcher to move the crossover to the required position, then, one of the two northbound signals will be initially requested by the Central Florida Dispatcher Desk dispatcher. CSXT's JA Desk dispatcher will see an indication that the signal has been requested but not yet cleared. The CSXT JA Desk dispatcher will then request the same signal and, if field conditions permit, the signal will be displayed and the train will have authority to enter the CSXT Property. The two dispatchers will communicate via dedicated phone line."

4. Section 4 (c) (3) is amended and restated in its entirety to read:

"Prior to the creation of the Central Florida Dispatcher Desk, CSXT shall retire the existing "back-to-back" automatic (uncontrolled) signals at MP A813.1 and install new "back to back" interlocking ("controlled") signals at MP A813.82 or as close as practicable to the limits of the State Property. After Closing, these two signals shall be owned and maintained by State. The northbound signal shall be controlled by the Central Florida Dispatcher Desk. The southbound signal shall be controlled by CSXT's JA Desk. To route a train onto the State Property, the northbound signal will be initially requested by the CSXT JA Desk dispatcher. The Central Florida Dispatcher Desk dispatcher will see a computer screen indication that the signal has been requested but not yet cleared. The Central Florida Dispatcher Desk dispatcher will then request the same signal and, if field conditions permit, the signal will be displayed and the train will have authority to

enter the State Property. To route a train from the State Property to the CSXT Property, the southbound signal will be initially requested by the Central Florida Dispatcher Desk dispatcher. The CSXT JA Desk dispatcher will see an indication that the signal has been requested but not yet cleared. The CSXT JA Desk dispatcher will then request the same signal and, if field conditions permit, the signal will be displayed and the train will have authority to enter the CSXT Property. The two dispatchers will communicate via a dedicated phone line."

5. Section 4(c)(4) is amended and restated in its entirety to read:

"During the Transition Period, State-funded changes to the existing wayside signaling/interlockings will be limited. If the parties mutually agree, there may be one or more wayside signaling/interlocking field changes, with associated database changes to the US&S system. All field work on the State Property associated with signaling/interlocking will be completed by State contractors. All field work on CSXT Property will be performed by CSXT forces at State's cost and expense, unless State has first obtained written consent from CSXT's Vice-President, Labor Relations, to use State contractors to perform the work. State shall pay CSXT a lump sum of \$650,000.00 for the establishment of the Central Florida Dispatcher Desk, including field and dispatch center modifications at CP South Deland and in the establishment of new back-to-back interlocking controlled signals at MP 813.82.

6. The dates appearing in Section 6(a) are hereby amended to February 2013 with respect to Phase 1 and February 2015 with respect to Phase 2.

7. The definition of "CFOMA" in Appendix A is hereby amended to read: "'CFOMA' shall mean that certain Central Florida Operating and Management Agreement between State and CSXT dated as of November 30, 2007 as may be amended."

8. The definition of "Contract" in Appendix A is hereby amended to read: "'Contract' shall mean that certain Contract For Sale and Purchase by and between State and CSXT dated as of November 30, 2007, as may be amended."

9. The definition of "Transition Agreement" in Appendix A is hereby amended to read: "'Transition Agreement' shall mean that certain Transition Agreement by and between State and CSXT dated as of November 30, 2007, as may be amended."

10. The definition of "Joint Rail Project Agreements" in Appendix B is hereby amended to read: "'Joint Rail Project Agreements' shall mean, collectively, (i) that certain Joint Rail Project Agreement (Non-Federal) entered into by State and CSXT and dated as of November 3, 2006, as may be amended, (ii) that certain Joint Rail Projects Agreement (Dispatch Desk) described in Section 4(c)(1) of this Transition Agreement, as may be amended, and (iii) that certain Roadway Project Agreement described in Section 7(e) of this Transition Agreement, as may be amended."

11. In Appendix B, references to the "AA Desk" shall be amended to refer to the "JA Desk," and references to "2007 Operating Rules" shall be to the then current operating rules.

12. The Dispatching Services Agreement attached as Appendix C to the Transition Agreement shall be disregarded as of the First Amendment Effective Date and deemed to be replaced in its entirety by the Dispatching Services Agreement attached hereto as Appendix 2, as may be amended.

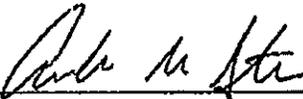
[signature page follows]

Execution Copy

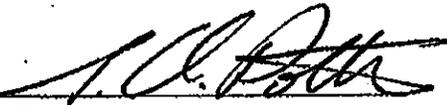
IN WITNESS WHEREOF, CSX TRANSPORTATION, INC. and STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, pursuant to due corporate and statutory authority, have caused their names to be signed to this First Amendment to Transition Agreement by officer(s) or official(s) duly authorized and duly attested as of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

ATTEST

CSXT TRANSPORTATION, INC.



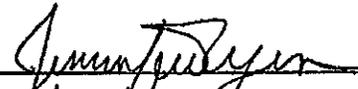
ANDREW M. CUTTER

By: 

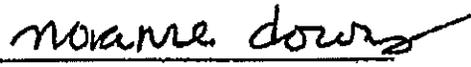
Steven Potter
Its Assistant Vice President,
Network Planning & Joint Facility

ATTEST

STATE OF FLORIDA DEPARTMENT
OF TRANSPORTATION



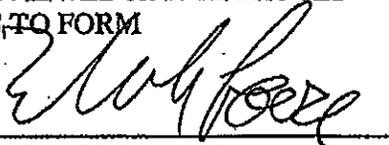
Jennifer Wynn

By: 

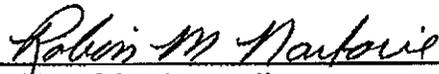
Noranne Downs, P.E.
District Secretary, District 5

REVIEWED AND APPROVED
AS TO FORM

APPROVED AS TO FINANCIAL TERMS
AND FUNDS ARE PROGRAMMED



District Chief Counsel
District 5, Florida Department of Transportation



Office of the Comptroller
Florida Department of Transportation

#6103795_v10

Appendix 2

Agreement No.: _____
Financial Project I.D.: _____
F.E.I.D. No.: _____
Procurement No.: _____
D.M.S. Catalog Class No.: _____

DISPATCHING SERVICES AGREEMENT

THIS DISPATCHING SERVICES AGREEMENT (this "Agreement"), made as of the ____ day of _____, 2010 (the "Execution Date"), 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"). Except as otherwise provided herein or unless the context otherwise requires, capitalized terms have the meanings assigned to such terms in accordance with Appendix A, "Central Florida Rail Corridor Definitions" and Appendix B, "Transition Agreement Definitions."

WHEREAS, CSXT and State have agreed that upon the State Management Date, CSXT shall transfer to State, and State shall implement and be responsible for the operation, maintenance and dispatch of all Railroad Operations on the State Property, with the further agreement that, except as expressly provided herein, CSXT shall perform all dispatching responsibilities during the Transition Period pursuant to a contract with State.

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:

Section 1. Services.

CSXT shall provide all train dispatching over the State Property during the term of this Agreement, except as may occur pursuant to Section 7(a) of this Agreement.

Section 2. Term.

This Agreement shall begin upon the Closing Date and shall continue during the Transition Period unless the parties mutually agree upon an earlier termination date. Upon termination of this Agreement, the State's Operation and Maintenance Contractor shall perform all train dispatching over the State Property.

Section 3. Staffing.

(a) CSXT will create a temporary new dispatch desk (territory) at Dufford Control Center in Jacksonville in accordance with the provisions outlined in Subsection 4(c) of the Transition Agreement as amended by the First Amendment to the Transition Agreement. This desk shall be known as the "Central Florida Dispatcher Desk."

(b) CSXT shall not combine the Central Florida Dispatcher Desk with other dispatch desk territories at any time, except in the case of equipment failure or an emergency. Should CSXT combine the Central Florida Dispatcher Desk with any other dispatch desk territory, it shall so inform State by telephone, using the dedicated line identified in Section 4, below, within one (1) hour of the event, indicating the reason for the combination and the expected duration. Prior to the State Management Date, State shall provide CSXT in writing with the responsible person (or position) and telephone number that CSXT is to call as required by the preceding sentence. State may change such information by notice to CSXT in accordance with the Transition Agreement. Within forty-eight (48) hours after the conclusion of such event, CSXT shall submit a written report to the State that fully explains the situation and the measures that

CSXT will be undertaking to avoid any reoccurrence of the event.

(c) CSXT shall qualify six (6) dispatchers on the Central Florida Dispatcher Desk, in order to staff the Central Florida Dispatcher Desk at all times, twenty-four (24) hours per day, seven (7) days per week, weekends and holidays included. CSXT may use dispatchers who have been qualified on the Central Florida Dispatcher Desk on other assignments when not needed for coverage of the Central Florida Dispatcher Desk.

(d) Other than as set forth in Subsection 3(b) above, the Central Florida Dispatcher Desk shall be responsible for direction, supervision and control over the safe and efficient movement of all trains and on-track vehicles and protection of all other on-track activity on the State Property, including but not limited to movement of CSXT freight trains, Amtrak's passenger trains, and FCEN trains. The Central Florida Dispatcher Desk shall be governed by and subject to current operating and safety rules, procedures and regulatory standards of CSXT and FRA, including emergency procedures, as agreed to with State. The Central Florida Dispatcher Desk shall have responsibility for communications for movements prior to operating on the State Property that restricts operations on the State Property.

(e) The Central Florida Dispatcher Desk shall be supervised at all times by qualified CSXT supervisors.

Section 4. Communications with State's Design/Build Contractor.

(a) CSXT shall install a dedicated direct telephone line for the purpose of allowing CSXT supervisors to communicate with the State's Design/Build Contractor's supervisors regarding track outages, Rule 707 provisions and other construction-related coordination of the operations on the State Property. A direct line shall be installed for communication between the Central Florida Dispatcher Desk, when established, and CSXT JA Desk. The Design/Build

Contractor shall not use existing CSXT radio channels for communication between its personnel and CSXT dispatchers at the Central Florida Dispatcher Desk or other controlling desk such as the CSXT JA Desk. However, the existing CSXT communication system will be used for communication between the Design/Build Contractor's Employee in Charge and CSXT dispatchers at the Central Florida Dispatcher Desk or other controlling desk such as the CSXT JA Desk. The Design/Build Contractor shall be governed by and subject to current operating and safety rules, procedures and regulatory standards of CSXT and FRA governing working on track, operating equipment, and working near equipment being operated, including emergency procedures, as agreed to with State.

(b) CSXT and State acknowledge that timely and effective communication between the Design/Build Contractor and the CSXT dispatchers at the Central Florida Dispatcher Desk will facilitate the timely completion of the capital improvements on the State Property. CSXT agrees to minimize the use of automatic train dispatching, interlocked signal fleeting and other dispatching strategies that require long cancellation times in order to provide a track outage or otherwise jeopardize timely response to Design/Build Contractor requests.

Section 5. Compensation.

(a) CSXT shall be paid a monthly fee for its contract dispatching of the State Property in the amount of Fifty-eight Thousand dollars (\$58,000.00) per month for each month of the Transition Period (pro rata for the number of days in the first or last month of the Transition Period). This fee shall be modified by the change in annual CPI on each annual anniversary date of this Agreement.

(b) CSXT shall be paid a one-time qualifying expense of Fifty Thousand Dollars (\$50,000.00). This advance payment has been authorized by the Chief Financial Officer of the

State of Florida under Section 215.422(14), Florida Statutes.

(c) There shall be no payment or reimbursement for travel expenses under this Contract.

Section 6. Applicable Operating Rules.

CSXT shall dispatch the State Property in accordance with the CSXT Operating Rules, as may be modified or amended by CSXT.

Section 7. Transition to Operation and Maintenance Contractor.

(a) Upon termination of this Agreement, the State's Operation and Maintenance Contractor shall perform all train dispatching services over the State Property using a dispatch center and supervisory control system to be built by the State approximately six (6) months prior to the Commencement Date. This will provide time for the State's Design/Build Contractor to place in service all of the new/revised interlockings planned for the State Property. For a period of two (2) months prior to the transfer of dispatch from CSXT to State, State's dispatch center shall operate in "shadow mode," displaying all Central Florida track circuit occupancies, switch positions, signal status and the information described in Section 7(b) below. During the "shadow mode" period, it shall not be possible for State or its Operation and Maintenance Contractor to control any equipment under the control of the CSXT Central Florida Dispatcher Desk. State and CSXT shall mutually agree on a date (the "Cut Over Date") when State and its Operation and Maintenance Contractor will take control of dispatch over the State Property, subject to the possible reversion to CSXT described below. The Cut Over Date will be determined at least one (1) month prior to the planned Cut Over Date. Upon the Cut Over Date, State and its Operation and Maintenance Contractor shall assume dispatch responsibility over the State Property, provided, however, that CSXT shall maintain both staffing and all associated equipment

(including hardware, software and communications equipment) for a period of seven (7) days (the "Cut Over Period") after the Cut Over Date, in case a return to CSXT control is required, and, except for the assumption of dispatch responsibility described above, this Transition Agreement shall remain in full force and effect until the expiration of the Cut Over Period. The Commencement Date shall not occur prior to the expiration of the Cut Over Period. Upon the expiration of the Cut Over Period, CSXT shall maintain all associated equipment (including hardware, software and communications equipment) but without staffing for a period of two (2) months, in case a return to CSXT control is requested by State, provided, however, (i) that State acknowledges that staffing for the Central Florida Dispatcher Desk after the Cut Over Period will not be immediately available, will require re-bidding of the jobs associated with the Central Florida Dispatcher Desk and will incur additional expense to be absorbed by State if State elects to return dispatching responsibility to CSXT, (ii) nothing herein shall require CSXT to accept such return of dispatching responsibility, and (iii) the parties agree that CSXT will not dispatch commuter trains. For the purpose of Section 5 of this Agreement, the Cut Over Period shall be considered part of the Transition Period but the two months after the Cut Over Period referred to above, during which CSXT will maintain the equipment only, shall not be considered part of the Transition Period.

(b) CSXT shall make available to the State real-time data transmission of track circuit occupancy of existing mainline and controlled siding (where applicable) trackage north and south of the State Property for a distance mutually-agreed by the parties, said distance to be a minimum of five (5) miles in each direction. If practicable, train ID's associated with track circuit occupancy shall be provided in the real-time data transmission.

(c) State shall make available to CSXT real-time data transmission of track circuit

occupancy of planned mainline trackage at the north and south ends of the Central Florida Rail Corridor for a distance mutually-agreed by the parties, said distance to be a minimum of five (5) miles in each direction. If practicable, train ID's associated with track circuit occupancy shall be provided in the real-time data transmission.

Section 8. Labor Protection.

CSXT shall be responsible for its Labor Protection costs, if any, occasioned by the provision of services under this Agreement. As used herein, "Labor Protection" shall mean the costs, if any, incurred by CSXT as a result of its provision of the dispatching services described in this Agreement, which costs may be incurred pursuant to the provision of a collective bargaining agreement, bargained by CSXT as a result of this Agreement or pursuant to rule, decision or final order of any governmental agency having jurisdiction thereover. 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 transfer of dispatching to the State's Operations and Maintenance Contractor pursuant to law, a collective bargaining agreement or otherwise ("Labor Challenge"). State and CSXT acknowledge a policy of non-interference with respect to labor protective decisions by employees.

Section 9. Liability.

Notwithstanding any other provision of this Agreement to the contrary, Section 19 and Section 21 of CFOMA shall govern the liability of the parties hereto whenever any loss of, or damage to or destruction of any property whatsoever or injury to or death of any person or persons whomsoever occurs under this Agreement, with the same force and effect as if set forth herein in full.

Section 10. Standard Provisions.

(a) Before making any additions or deletions to the services described herein, and before undertaking any changes or revisions to such services, the parties shall negotiate any necessary cost changes and shall enter into an amendment covering such services and compensation. Reference herein to this Agreement shall include any amendment(s).

(b) CSXT agrees to provide project schedule progress reports in a format acceptable to State and at intervals established by State. State shall be entitled at all times to be advised, at its request, as to the status of services being done by CSXT and of the details thereof. Coordination shall be maintained by CSXT with representatives of State, or agencies of State interested in the project on behalf of State. Either party to this Agreement may request and be granted a conference.

(c) Except for the approved advance payment, payments by State under this Agreement shall be made after satisfactory performance of the services and within sixty (60) days of receipt by State of a monthly invoice. Invoices for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof.

(d) 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.

(e) The State of Florida, through the Department of Management Services, has instituted MyFloridaMarketPlace, a statewide eProcurement system. Pursuant to Section 287.057(23), Florida Statutes, all payments shall be assessed a transaction fee of one percent (1%), which CSXT shall pay to State. For payments within the State accounting system (FLAIR or its successor), the transaction fee shall, when possible, be automatically deducted from payments to CSXT. If automatic deduction is not possible, CSXT shall pay the transaction fee pursuant to Rule 60A-1.031(2), Florida Administrative Code. By submission of these reports and corresponding payments, CSXT certifies their correctness. All such reports and payments shall be subject to audit by State or its designee. CSXT shall receive a credit for any transaction fee paid by CSXT for the purchase of any item(s) if such item(s) are returned to CSXT through no fault, act, or omission of CSXT. Notwithstanding the foregoing, a transaction fee is non-refundable when an item is requested or returned, or declined, due to CSXT's failure to perform or comply with specifications or requirements of the Agreement.

(f) 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 Customer Hotline, 1-877-693-5236.

(g) Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to State at all times during the period of this Agreement and for three (3) years after final payment for the work pursuant to this Agreement is made. Copies of these documents and records shall be furnished to State upon request. Records of costs incurred shall include CSXT's general accounting records and the project records, together with supporting documents and records of CSXT and all subcontractors performing work on the project, and all other records of CSXT and subcontractors reasonably required by State for a proper audit of project costs.

(h) The Department of Transportation (the "Department"), 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 be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Accordingly, the Department's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature.

(i) CSXT shall carry and keep in force the insurance to the extent required by Section 21(f) of CFOMA.

(j) Section 15(b) of CFOMA concerning public access to documents shall apply to all documents made or received by CSXT on behalf of State under this Agreement with the same force and effect as if set forth herein in full.

(k) CSXT shall comply with all federal, state, and local laws and ordinances applicable to the work or payment for work thereof, and will not discriminate on the grounds of race, color, religion, sex, national origin, age, or disability in the performance of work under this Agreement.

(l) A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity, may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids, proposals, or replies on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of thirty-six (36) months following the date being placed on the convicted vendor list.

(m) An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity, may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids, proposals, or replies on leases of real property to a public entity, may not be awarded, or perform work as a

contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity. .

(n) The Department shall consider the employment by CSXT of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act.

(o) Pursuant to Section 216.347, Florida Statutes, CSXT may not expend any State funds for the purpose of lobbying the Legislature, the judicial branch, or a state agency.

(p) CSXT shall maintain an adequate and competent staff so as to enable CSXT to timely perform under this Agreement and may associate with it such subcontractors, for the purpose of its services hereunder, without additional cost to State, other than those costs within the limits and terms of this Agreement. CSXT is fully responsible for satisfactory completion of all subcontracted work. CSXT, however, shall not sublet, assign, or transfer any work under this Agreement to other than subcontractors specified in the proposal, bid, and/or Agreement without the written consent of State.

(q) CSXT and its employees, agents, representatives, or subcontractors are not employees of the Department and are not entitled to the benefits of State of Florida employees. CSXT agrees to include this provision in all of its subcontracts under this Agreement.

(r) All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

(s) It is understood and agreed by the parties hereto that if any part, term or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Florida, the validity of the remaining portions or provisions shall not be affected, and the rights

and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

(t) This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

(u) The dispute resolution and arbitration process of Section 17 of CFOMA is hereby incorporated into this Agreement.

(v) Time is of the essence as to each and every obligation under this Agreement

(w) The default and breach provisions of Section 16 of CFOMA are hereby incorporated into this Agreement. Venue for any legal proceedings under this Agreement shall be in Leon County, Florida.

[signature page follows]

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.

ATTEST

CSX TRANSPORTATION, INC.

By: _____

ATTEST

STATE OF FLORIDA DEPARTMENT
OF TRANSPORTATION

By: _____

THE AFOREMENTIONED CONTRACT
HAS BEEN REVIEWED AND APPROVED
AS TO FORM

FUNDS ARE APPROVED AND
AVAILABLE

6104341_v5

EXHIBIT 3

Execution Copy

AMENDED

CENTRAL FLORIDA OPERATING AND MANAGEMENT AGREEMENT

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

Pertaining to the Central Florida Rail Corridor, a Line of
Railroad Between Deland, Florida and Poinciana, Florida
and Related Properties

Dated: March 29th, 2010

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AMENDED CENTRAL FLORIDA OPERATING AND MANAGEMENT AGREEMENT

THIS AMENDED CENTRAL FLORIDA OPERATING AND MANAGEMENT AGREEMENT (this "Agreement") dated as of the 29th day of March, 2010 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"), amends that certain Central Florida Operating and Management Agreement executed between State and CSXT as of November 30, 2007 (the "Execution Date"). Except as otherwise expressly provided herein or unless the context otherwise requires, capitalized terms have the meanings assigned to such terms in accordance with Appendix A to this Agreement.

WHEREAS, by Contract For Sale and Purchase dated as of November 30, 2007, as amended (hereinafter referred to as "Contract"), State agreed to acquire and CSXT agreed to sell certain properties therein described (comprising a portion of CSXT's A-Line) upon which railroad freight, commuter and other passenger rail services are to be conducted; and

WHEREAS, under such Contract, CSXT retained, and did not transfer to State, those perpetual easements (the "CSXT Easement" and the "Reserved Easement") over the properties acquired by State as each perpetual easement is described in the Deed; and

WHEREAS, State and CSXT desire to establish in this Agreement the terms and conditions governing the conduct of Railroad Operations over the State Property in a manner consistent with the other uses of the State Property, it being the mutual intention of the parties hereto that State shall not obtain nor assume any common carrier obligation and that CSXT shall remain, and State shall 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 provision of railroad freight 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:

Section 1. Description Of Use.

(a) Subject to the terms and conditions hereinafter set forth, as of the Commencement Date, the State Property shall be used for the conduct of Rail Freight Service, Commuter Rail Service and Intercity Rail Passenger 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 to 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 provision of Rail Freight Service thereon, and to operate CSXT's trains, locomotives, rail cars and rail equipment thereon with its own crews.

(b) 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 accordance with the provisions of Section 3 herein.

(c) 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 bridges, for (i) CSXT's provision of Rail Freight Service on the State Property and (ii) CSXT's performance of its obligations to Amtrak under the Amtrak-CSXT Agreement or as provided by law, in at least

substantially the same condition and in substantially the same manner as provided prior to the Commencement Date hereof (as modified by the Transition Agreement).

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, CSXT's rights to contract with Amtrak, its successors and assigns with respect to the provision of Intercity Rail Passenger Service on the State Property by same), 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 Transition Agreement (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 One Hundred Four Thousand, One Hundred and Sixty-six Dollars and Sixty-six Cents (\$104,166.66) 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 Thirty-nine Cents (\$0.39) 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, provided, however, that in full and complete consideration of the Variable Fee with respect to Amtrak, CSXT shall pass through to State the funds received by CSXT from Amtrak applicable to the operations by Amtrak on the State Property on a train/mile basis, until such time, if ever, as State and Amtrak enter into a separate agreement as contemplated in Subsection 3(l) of this Agreement, at which time Amtrak operations on the State Property shall no longer be included in the computation of the Variable Fee. 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 5, Florida Department of Transportation, 719 Woodland Boulevard, Deland, FL 32720, 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 Closing, 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 Closing, the "latest calendar year" shall mean the calendar year following the Closing and the "previous calendar year" shall mean the calendar year in which the Closing 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:

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

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

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 that 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

by CSXT, State and Amtrak 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 any and all provisions of laws, regulations and rules, including, without limitation, those pertaining to environmental matters, promulgated by any municipality, state or federal 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 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 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 applicable CSXT labor agreement rules, 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 furnish State with two copies of the transcript and a recommendation as to the discipline to be assessed. CSXT shall arrange to assess discipline within the applicable time limits. If State recommends dismissal, CSXT reserves the right to bar the employee from the State Property in lieu of dismissal.

(f) (1) If such employee 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 operating rules, wherein State desires to bar such employee from the State Property pending an investigation by CSXT, immediate verbal notification shall be given to the appropriate Transportation Officer of CSXT so that proper written notice can be issued to the employee, 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, at the written request or direction of State, as the case may be,

such employee has been barred from the State Property prior to an investigation. CSXT agrees to notify State before making any required payment on any such 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 required to be 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, crippled or otherwise defective rail cars or locomotives are set out of State's or CSXT's trains, then State may 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, provided however that in the event that State is unable to assist, CSXT shall, at its own cost and expense, promptly make such repairs or furnish such motive power as may be necessary to expeditiously haul, help, push or move CSXT trains, locomotives, rail cars or rail equipment off of the State Property and may 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 State trains, locomotives, rail cars or 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. Except as provided in Section 19, 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, including, without limitation, all cost and expense associated with the labor costs, if any, which may be incurred by State and/or CSXT and which 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 10:00 a.m. (0500 to 1000 hours) and 3:00 p.m. to 10:00 p.m. (1500 to 2200 hours) - exclusive passenger operation with no limit on the number of commuter or intercity rail passenger trains.
2. 10:00 a.m. to 3:00 p.m. (1000 to 1500 hours) and 10:00 p.m. to midnight (2200 to 2400 hours) - mixed passenger rail and freight rail. All trains operated during this window shall be handled pursuant to a mutually agreed to dispatch protocol which shall take into account

the type of train, time of day and on time performance of passenger trains. The CFCRT Freight Service Plan (Revision 5) jointly developed by the parties hereto and attached hereto as Exhibit 1 (the "Service Plan") is a mutually agreed to initial operating plan, based upon the proposed build-out by State and the simulation described in Appendix 1 to the Service Plan. The Service Plan is intended to be representative of expected local operations and shall be amended from time to time upon the written request of one party to the other, no less than annually, to determine whether any changes to the Service Plan are necessary to accommodate local rail customer requirements and commuter operations and recognizing the need for future passenger and/or freight growth. Any changes to the Service Plan shall be by mutual agreement of the parties hereto. In the event that the parties hereto cannot agree on the need for any changes to the Service Plan, the dispute shall be resolved pursuant to Section 17 hereof.

3. Midnight to 5:00 a.m. (2400 to 0500 hours the following day) - exclusive freight operation with no limit on the number of freight trains.
4. Betterments and additions, curfew and program work, construction and signal suspension will be performed between the hours from 5:00 a.m. until midnight (0500 to 2400 hours), including weekends. Other than in case of emergency, bridge, track 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 CSXT and/or State and Amtrak, to give priority to on-time Intercity Rail Passenger Service.

From time to time during the term of this Agreement, State and CSXT shall allow reasonable

flexibility in extraordinary circumstances to accommodate the movement of each other's trains on a portion of the State Property during the other party's operating windows to ensure that freight and passenger customer needs and non-revenue passenger train needs are met, provided, however, that no priority shall be assigned to the train being accommodated. The parties agree that Amtrak movements over the State Property shall be accommodated in accordance with the Amtrak-CSXT Agreement or the Amtrak-State Agreement. Except with the prior written consent of State, CSXT special and/or excursion trains permitted under Subsection 3(m) hereof shall be operated during the mixed and exclusive freight operating windows only and each such train shall be counted as a freight movement for purposes of Paragraph 3(i)(2).

(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 arising out of or connected with any such interruption or delay to Commuter Rail Service. In the event that State desires to perform: (i) additions and betterments not in conformity with Section 5 that would interrupt or delay CSXT's Rail Freight Service on the State Property, then prior to the performance or making of such maintenance or improvements, State shall notify CSXT thereof and obtain CSXT's consent therefor, which consent will not be unreasonably withheld or delayed;

provided, however, that such consent shall not be required in emergency situations which pose immediate threat to life or property or prevent the expeditious passage of trains. Failure by State to obtain consent when required under the preceding sentence shall cause State to be responsible for any costs and expenses incurred by CSXT resulting from interruption or delay to Rail Freight Service caused by State performing such maintenance or additions and betterments not in conformity with Section 5.

(k) It is understood by the parties hereto that the State intends to utilize an agent to conduct Commuter Rail Service on the State Property. 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) (i) State and CSXT understand that Intercity Rail Passenger Service and the provision of ancillary services with respect thereto by Amtrak on the State Property are governed by the Amtrak-CSXT Agreement, a copy of which agreement has been furnished to State. Until such time as State enters into a separate contract with Amtrak, State and CSXT hereby understand and agree that CSXT may modify or amend the Amtrak-CSXT Agreement from time to time during the term of this Agreement and may enter into new agreements with Amtrak pertaining to Intercity Rail Passenger Service, all without the consent of State, except as otherwise expressly provided below. CSXT shall obtain the prior written consent of State (which consent shall not be unreasonably withheld, conditioned or delayed) to any such

modification, amendment or new agreement in the event that any such action extends the term of the aforesaid Amtrak-CSXT Agreement governing Amtrak's use of the State Property beyond termination or replacement of the current Amtrak-CSXT Agreement or results in a material decrease in the compensation paid by Amtrak for its use of the State Property, provided, however, that such consent shall not be required in the event that any such action is otherwise required by law or any agreement in effect as of the Commencement Date. 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) hereof where such change would result in interruption or delay to Commuter Rail Service on the State Property.

(ii) It is the understanding of the parties hereto that any agreement for renewal or extension of Amtrak's use of the State Property beyond termination or replacement of the current Amtrak-CSXT Agreement shall be a matter between State and Amtrak, and that 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 any such agreement between State and Amtrak, herein referred to as the Amtrak-State Agreement. CSXT shall have no interest in or right of participation in any revenue or income howsoever derived by State from Amtrak for its use of the State Property under any such agreement, and CSXT shall not be responsible for any cost or expense that may result from any such agreement. In the event that State and Amtrak enter into the Amtrak-State Agreement, then the terms and conditions of this Agreement shall be amended to reflect the changes arising out of or resulting from such agreement. 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 subject to the provisions of Subsection 3(i) hereof to operate non-revenue special and/or excursion trains on or over the State Property carrying CSXT's employees, invitees and/or passengers, provided however that CSXT shall not make such special or excursion trains available to members of the general public. CSXT shall be entitled to or responsible for, as the case may be, any and all fees, rents or charges 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 members of 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 Section 19(d) hereof; and for purposes of Section 19 of this Agreement, the aforesaid State's employees, invitees and/or passengers 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 all work of maintaining and repairing the rights-of-way, tracks, bridges, communications, signals, and all appurtenances on the State Property in accordance with the standards specified in Subsection (b) hereof. 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. CSXT shall be responsible for the maintenance of its sidetracks connecting to the State Property, and shall not operate on sidetracks when CSXT determines such operations would be unsafe. CSXT facilities, including Sidetracks, shall be maintained and repaired by CSXT in accordance with the applicable FRA Track Safety Standards and the Sidetrack Agreement pertaining thereto. In the event that State agrees to maintain or repair Sidetracks at CSXT's request, CSXT shall reimburse State on a quarterly basis for the actual cost of maintaining and repairing such Sidetracks. State shall have no obligation to maintain or repair the CSXT Property or any sidetrack that is not on State Property.

(b) In maintaining and repairing the State Property, State shall maintain the rights-of-way, tracks, bridges, communications, signals, and all appurtenances to a level consistent with State standards, then current CSXT's 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 be more restrictive than any other standard, then State shall apply the more restrictive CSXT standard. Upon request, the parties shall update one another as their respective standards may change from time to time. Any dispute 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 track 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.

(c) The maximum authorized track speeds may be changed from time to time during the term of this Agreement by State, 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, may conduct such inspection of the State Property as it deems appropriate to determine State's compliance with its obligations under Subsection (b) hereof,

provided, however, CSXT shall endeavor in good faith to schedule its inspections in a way that will enable it, upon prior written notice to State, to accompany State on its inspection of the State Property 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, with notice to CSXT but without the approval of CSXT, may enter into agreements from time to time with the Central Florida Commuter Rail Commission, 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, 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) As provided in Section 7.08 of the Contract, upon the Closing Date as specified therein,

CSXT shall assign to State and State shall assume all of the agreements listed or described in Exhibit 9 therein and all rights and obligations under such 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 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.

(h) Nothing contained in this Section 4 shall be construed to modify, amend, limit or restrict the provisions 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 and/or Amtrak's provision of Intercity Rail Passenger Service on the State Property as contemplated in Subsection 1(a) of this Agreement or CSXT's operations on the CSXT Easement or the 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 and such retirements shall be

excluded from the State Property. The design and construction standards for the foregoing shall be subject to the mutual approval of the parties hereto or determined in accordance with Subsection 8(i) hereof. Once the agreed standards are included in a contract and a contract for the applicable work is awarded, CSXT shall not be entitled to alter, amend or modify the standards contained in the contract other than for safety reasons.

(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.

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 by Amtrak on the State Property.

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

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

(a) The parties have addressed in the Contract the manner in which any and all fees, rents, charges or income arising out of or connected with the contracts, agreements, leases, licenses, intangible rights and easements listed or described in the Contract shall be governed.

(b) 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(f) 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. Except as may be otherwise provided under this Subsection 7(b) 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, 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, including Subsection 1(a), and the CSXT Easement and will be undertaken by State in its sole discretion and in a manner consistent with the then current Commuter Rail Service, Rail Freight Services, and Intercity Rail Passenger Service 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 the date hereof, whether or not of record including, without limitation, fiber optic occupancies, 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 in such a manner as not to unreasonably interfere with CSXT's provision of Rail Freight Service and/or Amtrak's provision of Intercity Rail Passenger 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) and 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 Subsection 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.

(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 Subsection, that requires or permits any construction, erection or installation on the State Property, or any portion thereof.

(c) In 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 Subsection 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 and/or Amtrak's provision of Intercity Rail Passenger 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, this Subsection (c) and Subsection 8(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 and/or Amtrak for Railroad Operations, then State shall bear, pay, or cause to be paid, the entire 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 a fiber optic occupant 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 a fiber optic occupant. 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.

(d) (i) Notwithstanding any other provision of this Agreement to the contrary, State shall not, without the prior written consent of CSXT, either: (A) 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: (1.) 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 (2.) 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 (B) 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: (1.) Lateral clearances of not less than 12 feet from either side

of the centerline of any track; and (2.) 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. Nothing in this Subsection (d) shall require State to alter, replace or remove any structure or facility on the State Property that as of the Closing Date as defined in the Contract does not comply with such clearances.

(ii) It is understood by State and CSXT that State shall construct certain platforms for Commuter Rail Service, provided, however, such platforms shall be constructed in accordance with the following clearances:

(A) North of the junction with the Stanton Spur, between Milepost 800 and Milepost 749.57, all platforms shall be fifteen inches (15") ATR and provide a lateral clearance measured from the centerline of the track of not less than five feet, six inches (5' 6"),

(B) South of the junction with the Stanton Spur, between Milepost 800 and Milepost A813.82, all platforms shall not exceed eight inches (8") ATR and provide a lateral clearance measured from the centerline of the track of not less than seven feet, six inches (7' 6").

(C) The platform clearances in (A) and (B) above shall apply only to platforms constructed along tangent track. Any platform to be constructed along curved track shall comply with CSXT's then current clearance requirements or such other clearances as the parties shall mutually agree.

(D) The parties acknowledge an issue with the canopy clearance at the Ocala station. State agrees to obtain a resolution of the issue with the concurrence of the owner of the station within a reasonable time from the Execution Date. In the event that the canopy

issue at Ocala cannot be resolved between State and the owner of the station within a reasonable time from the Execution Date, the platform clearance standards of Subparagraph (d)(ii)(B) shall apply to the entire line.

(iii) State shall submit all plans and specifications for each such platform to CSXT for its review and approval as to its compliance with the above clearance standards. CSXT shall respond with written comments in accordance with Subsection 8(i)

(iv) 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 then 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(i).

(e) CSXT shall have the exclusive right to enter into contracts, agreements, leases and licenses: first, with shippers and receivers of freight and others pertaining to the provision of Rail Freight Service on the State Property and the CSXT Property, provided, however, that CSXT shall not, without first obtaining the State's 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 (other than such rights as currently exist pertaining to interchange or locomotive run-through); second, with Amtrak, its successors and assigns, pertaining to Amtrak's provision of Intercity Rail Passenger Service on the State Property and the CSXT Property (subject to the provisions of Subsection 3(1) hereof); and, third, with fiber optic occupants, or their successors and assigns pertaining to fiber optic transmission systems to be located on the State Property that would extend onto CSXT Property north of Milepost A749.57 (Sta.

39406+75), at or near Deland, FL and/or south of Milepost A813.82 (Sta. 42699+64), at or near Poinciana, FL. CSXT shall collect any and all proceeds, fees, rents, charges or income arising out of or connected with such contracts, agreements, leases and licenses, and CSXT shall pay to State on a periodic basis prorated amounts received by CSXT after the date of this Agreement on a per mile proration (that is, if the subject agreement relates to 200 miles of rail corridor, and 43 miles is within the State Property, CSXT shall deliver to State on a periodic basis 43/200th of the amounts received by CSXT under the subject agreement). Further, any such agreement shall be subject to a Joint Use Agreement which shall be entered into between CSXT and State similar to the Joint Use Agreement entered into at Closing as provided in the Contract of Sale. State shall have the exclusive right to enter into contracts, agreements, leases and licenses with fiber optic occupants pertaining to fiber optic transmission systems to be located on the State Property that would not extend onto CSXT Property north of Milepost A749.57 (Sta. 39406+75), at or near Deland, FL and/or south of Milepost A813.82 (Sta. 42699+64), at or near Poinciana, FL and State shall be entitled to or be 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 CSXT shall have no interest or right of participation in any revenue or income howsoever derived from such interests, agreements, leases or licenses.

(f) 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 (within the City of Orlando, from approximately milepost 787 to milepost 792.5, at State's sole risk and expense, and without impairment to rail freight operations remaining on the State Property or at Kaley Yard, such system to be designed and constructed to provide adequate clearances and the necessary physical separation from the "conventional" rail system utilized by freight and intercity and commuter passenger trains and shall comply with mutually agreed design and construction standards), high speed rail, highway, road, bridge, utility, or other transportation related uses as determined by the State; second, the proposed work is necessary or desirable for the provision of Rail Freight Service and/or Amtrak's provision of 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 Rail Service 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.

(g) 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 and as modified or supplemented by any applicable Joint Use Agreement, 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.

(h) 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.

(i) 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 (i), above or within forty-five (45) days of receipt by CSXT of the additional information or clarification provided by State pursuant to Clause (ii)(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 (ii)(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 on 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) 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.

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, terrorism, 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 the 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, FCEN, 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 Rail Freight Service on 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 the 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 such 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 Rail Freight 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. 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 Amtrak's provision of 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 sixty (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 upon the date said contract or agreement is cancelled, this Agreement, only insofar as it pertains to said Sidetrack, shall automatically terminate and be of no further force and effect and State shall be free to require CSXT to remove such Sidetracks at State's cost and expense (or to obtain CSXT's consent to allow State to remove such Sidetrack) and the materials so removed shall be made available to CSXT or such local third party as CSXT shall designate in writing. If no such contract or agreement exists, then upon the date of State's aforesaid notice, this Agreement, only insofar as it pertains to said Sidetrack, shall automatically terminate and be of no further force and effect, and State shall be free to require CSXT to remove such Sidetracks at State's cost and expense (or to obtain CSXT's consent to allow State to remove such Sidetrack) and the materials so removed shall

be made available to CSXT or such local third party as CSXT shall designate in writing. 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 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 set forth in the Environmental Agreement. 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, and, provided, further, that the party contesting same shall be responsible for any and all liability, cost and expense arising out of or connected with any such contest.

(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 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 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 materialmen'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; provided further, that the causing or creating party shall be responsible for any and all liability, cost and expense arising out of or connected with such charge, including, without limitation, reasonable attorney's fees; and, provided, further, that the causing or creating party shall diligently prosecute the contesting or settlement of 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 cost or 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 portion 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) All State payments to CSXT called for under this Agreement shall be made by State in accordance with State's standard vendor invoice payment procedures. Except as otherwise expressly provided in this Agreement, all CSXT payments to State called for under this Agreement shall be made by CSXT 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 pursuant to Section 287.058, Florida Statutes, 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, 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 1 (850) 413-5516 or by calling the Customer Hotline, 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; 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 either 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; and 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 hereto to avoid, if possible, the expense and delay inherent in litigation; therefore, CSXT and the 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 resolution of disputes 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 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 with 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 re-railing, 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 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, FCEN, 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, FCEN, Amtrak and/or any detouring railroad), then FCEN and/or 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, FCEN, Amtrak and/or a detouring railroad) using the State Property being involved, then FCEN and/or 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, which shall include the employees of parties to agreements referred

to in Subsection 7(a) hereof as further described in the Contract, excluding Rail Commuter Passengers and Other Invitees.

(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 workmen's compensation, occupational disease, employer's liability or other law, and either of said parties, under the provisions of this Agreement, is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the 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) 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 and the commencement of Commuter Rail Service on the State Property, 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 and shall 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 Section 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 date hereof, 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 deductibility 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 deductibility 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. Shutz
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, provided that in the event of any inconsistency between such definition and any definition set forth in Appendix A hereto, 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, paragraph, 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.

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, that certain Non-binding Term Sheet dated as of August 2, 2006 and the Transition Agreement dated as of November 30, 2007.

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) This Agreement shall become effective on the Commencement Date, and shall continue in effect until such time as CSXT, its successors or assigns, secures and exercises appropriate regulatory authority to abandon and/or discontinue all Rail Freight Service on 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. 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 Easement to the extent of the transfer so involved.

(b) The provisions of this Agreement pertaining to State's prior consent to any assignment by CSXT 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 forever 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 shall be made in strict accordance with and subject to the provisions set forth in this Section 37 relating to the assignment of this Agreement, including, without limitation, the provisions governing the State's right to consent to such assignment, provided such consent may not be unreasonably withheld, conditioned or delayed.

(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 with 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 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.

[Signature page follows]

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.

ATTEST
Lauren A. Urtel
Lauren A. Urtel
William P. Byrne
William P. Byrne

CSX TRANSPORTATION, INC.
By: [Signature]

ATTEST
Jennifer Wynn
Jennifer Wynn
Frederick Hoese
Frederick Hoese

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
By: no name down

THE AFOREMENTIONED CONTRACT HAS BEEN REVIEWED AND APPROVED AS TO FORM
Frederick Hoese

APPROVED AS TO FINANCIAL TERMS AND FUNDS ARE PROGRAMMED
~~FUNDS ARE APPROVED AND~~
~~XXXXXXXXXX~~
Robin M. Nafine

[Signature Page to Amended Central Florida Operating and Management Agreement]

APPENDIX A

Definitions Common to the Amended Central Florida Operating and Management Agreement, the Transition Agreement and the Master Projects Agreement

“AAR” shall mean the Association of American Railroads.

“Amtrak” shall mean the National Railroad Passenger Corporation, its successors and assigns.

“Amtrak Agreement” or “Amtrak-CSXT Agreement” shall mean the Agreement dated June 1, 1999, and all supplements thereto, such agreement and supplements being between CSXT and Amtrak.

“Amtrak-State Agreement” shall mean an agreement, if any, entered into by Amtrak and State pertaining to Intercity Rail Passenger Service on the State Property.

“Ancillary Agreements” shall have the meaning given to it in Section 14.01 of the Contract.

“Central Florida Commuter Rail Transit System” or “Commuter Rail System” shall mean the Fixed-Guideway Transportation System developed, implemented, operated and maintained by State that will run from DeLand in the County of Volusia through Seminole County and Orange County (including the City of Orlando) to Poinciana in Osceola County on the State Property.

“CFOMA” shall mean that certain Central Florida Operating and Management Agreement dated as of November 30, 2007 by and between State and CSXT, as may be amended.

“Closing Date” shall mean the date upon which the conveyance of the State Property from CSXT to State is effectuated in accordance with the Contract.

“Commencement Date” shall be the date upon which the CFOMA shall become effective.

“Commuter Rail Service” shall mean the transportation of commuters and other passengers by rail provided by State or its assignee or designee.

“Contract” shall mean that certain Contract For Sale and Purchase dated as of November 30, 2007 by and between State and CSXT, as may be amended.

“CSXT” shall mean CSX Transportation, Inc., a Virginia corporation.

“CSXT Easement” shall have the meaning given to it in the Deed attached as Exhibit 4 of the Contract.

“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.

“Deed” shall mean the deed appearing as Exhibit 4 of the Contract.

“Effective Date” shall (in any respective agreement) mean the date the agreement becomes effective.

“EOT Unit” shall mean a caboose or other non-revenue rail car in a freight train for the use of the train’s crew during certain switching operations.

“Execution Date” shall mean (in each respective agreement) the date on which the agreement is executed by all parties.

“FCEN” shall mean the Florida Central Railroad Company, its successors and assigns,

which as of the Execution Date operates over a portion of the State Property pursuant to certain agreements between CSXT and FCEN but shall, as of the Commencement Date, have entered into a separate agreement with State.

“Fee Commencement Date” shall mean the date that CSXT shall begin paying the Usage Fee as provided in Subsection 5(a)(3) of the Transition Agreement.

“Fixed Fee” shall have the meaning given to it in Subsection 2(a) of the CFOMA.

“Fixed-Guideway Transportation System” shall have the meaning given to it in Subsection 341.031(2), Florida Statutes.

“Force Majeure” shall have the meaning given to it in Section 22 of the CFOMA.

“FRA” shall mean the Federal Railroad Administration.

“FTA” shall mean the Federal Transit Administration.

“Incidental Use” shall have the meaning given to it in Subsection 19(a)(ii) of the CFOMA.

“Intercity Rail Passenger Service” shall mean the transportation of intercity passengers by rail provided by Amtrak, or as may be provided by others, on the State Property.

“Master Projects Agreement” shall mean that certain agreement to be entered into between State and CSXT, as may be amended.

“Non-Binding Consolidated Term Sheet” shall mean that certain Non-Binding Consolidated Term Sheet entered into by State and CSXT and dated as of August 2, 2006.

“Rail Commuter Passenger(s)” shall have the meaning given to it in Subsection 19(a)(i) of the CFOMA.

“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 the CFOMA, but excluding detour movements of other railroads permitted by State pursuant to Subsection 3(m) of the CFOMA.

“Railroad Operations” shall have the meaning given to it in Subsection 1(a) of the CFOMA.

“Reserved Easement” shall have the meaning given to it in the Deed.

“Service Plan” shall mean the CFCRT Freight Service Plan (Revision 5) attached as Exhibit 1 to the CFOMA.

“Sidetrack” shall mean tracks on the State Property, owned by CSXT or a third party, approximately one hundred and fifty feet (150’) from or beyond the switch in the main line (with precise cut points to be mutually agreed to), 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.

“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

“State” shall mean the State of Florida Department of Transportation.

“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 thereto, being all of the properties acquired by State under the Contract (the real estate for which is described in Exhibit 1 to the Contract) or acquired by State and used

by State for the placement of railroad tracks for Railroad Operations.

“STB” shall mean the federal Surface Transportation Board.

“Transition Agreement” shall mean that certain Transition Agreement dated as of November 30, 2007 by and between State and CSXT, as may be amended.

“UMLER” shall mean the Uniform Machine Language Equipment Register.

“Usage Fee” shall have the meaning given to it in Subsection 2(a) of the CFOMA.

“Variable Fee” shall have the meaning given to it in Subsection 2(a) of the CFOMA.

Exhibits

Exhibit 1 CFCRT Freight Service Plan (Revision 5)

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