

AGREEMENT

THIS AGREEMENT (this "Agreement") is made as of this [REDACTED] day of [REDACTED], 200[REDACTED], (the "Effective Date") by and between **CSX TRANSPORTATION, INC.** ("Purchaser" or "CSXT") and [REDACTED] ("Seller").

WITNESSETH:

WHEREAS, Purchaser wishes to purchase [REDACTED] from Seller; and

WHEREAS, Seller is willing to sell such [REDACTED] to Purchaser;

NOW, THEREFORE, in consideration of the covenants, conditions and payments hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Price, Quantity, Shipping Instructions, and Payment Terms. Seller will sell to Purchaser [REDACTED] (the "Goods") per CSXT [Crew Pack Specification, Exhibit B, dated [REDACTED], which is incorporated herein and made a part hereof] [RFP [REDACTED], dated [REDACTED]], pursuant to the terms of this Agreement and the price, payment, delivery, and other terms set forth in the Appendix attached hereto and made a part hereof (the "Appendix"). Seller expressly warrants that throughout the Term of this Agreement, the price that Seller charges Purchaser for the Goods shall be no higher than the lowest price that Seller or any of its direct or indirect subsidiaries, parents, or affiliates offers or charges at that time to any other actual or prospective purchaser of substantially similar types and quantities of Goods. The Goods will be shipped [REDACTED], in accordance with the details specified in the Appendix. Nothing contained in this Agreement shall be construed as a commitment by Purchaser to purchase any Goods, or minimum quantity thereof, from Seller.
2. Term. The term of this Agreement shall begin on the Effective Date, and shall end on [REDACTED] (the "Term") unless earlier terminated in accordance with this Agreement.
3. Drawings and Specifications. Copies of all mechanical and general arrangement drawings and changes to specifications are to be submitted to [REDACTED], [title], CSXT, address, for approval. Notwithstanding restrictive legends or invoice terms to the contrary, title to plans, drawings and specifications furnished by Seller to Purchaser with respect to the Goods shall be vested in and remain with Purchaser and may be used by Purchaser for any purpose.
4. Title and Risk of Loss. Title to and risk of loss of all Goods furnished hereunder shall remain with Seller until receipt, inspection, and acceptance of the Goods by Purchaser. Seller warrants that it has clear title to the Goods and that there is no outstanding hostile claim against or security interest in the Goods held by a third party.
5. Non-Disclosure. All information, including but not limited to, financial statements, product information, manufacturing capabilities, passwords, documents, data and business records, which is disclosed to Seller by Purchaser or which Seller observes or comes into contact with during the Term of this Agreement or the provision of any services to Purchaser, whether generated by Purchaser or a customer or contractor of Purchaser, shall be deemed "Confidential Information" and the sole and exclusive property of Purchaser. Seller shall take all reasonable measures to maintain the confidentiality of said Confidential Information by its employees, agents, representatives and couriers.

Seller shall not use the Confidential Information for any purposes other than to perform its obligations hereunder and shall not disclose any Confidential Information to any third party without the prior written consent of Purchaser. Seller acknowledges that all right, title, and interest in and to said Confidential Information, including the right to produce, extract, or exhibit said Confidential Information to any third party and any intellectual property rights relating to said Confidential Information, exist in Purchaser only. Seller shall return such Confidential Information promptly upon the expiration or termination of this Agreement. Notwithstanding any language contained herein to the contrary, Purchaser (and each employee, representative, or other agent of Purchaser) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of this transaction and all materials of any kind (including opinions or other tax analyses) that are provided to Purchaser relating to such treatment and tax structure. In addition, Purchaser may disclose this Agreement, and any information pertaining to or arising from this Agreement and the performance thereof, to Purchaser's insurers, auditors and related personnel.

Seller expressly agrees that Purchaser shall be entitled to injunctive and/or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Section, provided that the foregoing shall not preclude Purchaser from seeking any and all legal and equitable relief to which Purchaser may be entitled as a result of any unauthorized disclosure by Seller. Purchaser shall not have to post bond in connection with any such injunctive relief.

6. Inspection and Acceptance. Without waiver of any express or implied warranties, Purchaser may, at its option, inspect a sample of the Goods at Seller's facilities before full production and report any defects or deficiencies to Seller. Purchaser may, at its option and in lieu of or in addition to the foregoing, inspect each separate lot of the Goods at Seller's facilities upon completion of production of such lot of Goods in order to determine whether to accept such lot, and report any defects or deficiencies found at that time to Seller. In the event that any of the Goods do not meet the required standards, Purchaser reserves the right, in its sole discretion, to reject the unacceptable Goods, without invalidating the entire order, or to cancel the entire order. In the event that Purchaser cancels all or a portion of a given order, Seller shall immediately refund to Purchaser any and all funds paid to Seller in consideration of such rejected Goods. In the event that Purchaser accepts Goods based on inspection at Seller's facilities, but after delivery determines that some or all are defective, Section 8 below will apply.
7. Warranties. Notwithstanding any limitations to the contrary in Seller's invoice and/or sales documentation, Seller expressly warrants that:
 - (a) all Goods will conform to [the CSXT requirements] and any other applicable plans, drawings, specifications or samples furnished by Purchaser, or furnished by Seller and approved and accepted by Purchaser, it being understood that such plans, drawings, specifications or samples, are incorporated by reference and made a part hereof;
 - (b) all Goods will be of merchantable quality, fit and sufficient for the purpose ordered and communicated to Seller, and will be free from latent or patent defects in material and workmanship;
 - (c) all services will be performed in a workmanlike, efficient and safe manner and will conform to standards generally accepted in the trade or industry involved;
 - (d) all Goods are and will be free from any security interest, lien, or encumbrance;
 - (e) Seller is also bound by any other implied warranty that, at the time of execution of this Agreement, prevails in the applicable industry in the United States. All warranties created by this

Agreement or arising by operation of law that affect the rights of the parties are cumulative and should be construed in a manner consistent with one another, but shall not preclude Purchaser's exercise of any rights otherwise provided by law; and

(f) Seller will comply with all safety rules and regulations established by Purchaser.

8. Remedies.

- (a) In addition to the remedies provided to Purchaser under Article 2 of the Uniform Commercial Code as enacted by the State of Florida, if any of the Goods are found within the warranty period provided in the Appendix to be defective in material or workmanship or otherwise not in conformity with the requirements of this Agreement, Purchaser, in addition to any other rights which it may have under warranties or otherwise, shall have the right, at its option
- (i) to revoke acceptance, reject and return such Goods at Seller's expense, in which event conforming Goods shall be provided by Seller at its cost within ten (10) days of such revocation and such replacement Goods shall carry a warranty equivalent to that set forth in the Appendix running from the date of Purchaser's receipt of such replacement Goods; or
 - (ii) notify Seller of noncompliance, defects, or deficiencies in the Goods, which Seller shall repair and/or correct at Seller's expense within ten (10) days of such notice and such repairs shall carry a warranty equivalent to that set forth in the Appendix running from the date of Purchaser's acceptance of such repaired Goods; or
 - (iii) to revoke acceptance, reject and return such Goods at Seller's expense and upon receipt of such Goods, Seller shall issue a refund to Purchaser of the purchase price and delivery freight charges incurred by Purchaser for such Goods; and Purchaser may purchase from a third party replacement Goods of comparable quality and design to the Goods ordered, with Seller being responsible for any costs incurred by Purchaser in purchasing such replacement Goods, including, but not limited to, the cost of such replacement Goods in excess of the costs of comparable Goods purchased from Seller together with shipping charges therefor; or
 - (iv) upon notice to Seller, to take such actions as may be required to cure all defects and/or bring the Goods into conformity with all the requirements of this Agreement, in which event all costs and expenses thereby incurred by Purchaser shall be for Seller's account. Any and all expenses, including but not limited to shipping, manufacturing, materials and labor expenses, incurred by Purchaser in the exercise of its rights under this clause shall be reimbursed by Seller. Efforts by Purchaser to correct defects or deficiencies shall not preclude Purchaser from revoking acceptance and rejecting the Goods under this Section or applicable law where Purchaser's commercially reasonable attempts to correct the defective conditions prove to be unsuccessful.
- (b) All rights and remedies of Purchaser, whether provided by this Agreement or by law, shall be cumulative and may be exercised singly or concurrently.
- (c) In the event that Purchaser invokes the remedy set forth in Section 8(a)(ii), Purchaser shall cooperate in providing reasonable access to the Goods, data and technical assistance (if available) as required to develop and schedule repairs and related testing of modifications or repairs, if necessary, to assist Seller in its correction of the defects or deficiencies in the Goods. Seller will schedule repairs to minimize disruption, loss and inconvenience to Purchaser, or if required, Seller shall, at its expense, arrange for delivery of the Goods to Seller's plant for repair or modification.

- (d) In the event that Seller breaches its warranty that the Goods will be delivered without reservation of any security interest and free from liens held by third parties, Seller shall, if Purchaser does not exercise the rights provided elsewhere in this Section or otherwise provided by law, pay to Purchaser any interest charges and/or finance charges paid by Purchaser for the purpose of releasing the Goods or the document of title to the Goods from any security interest improperly reserved by Seller or held by a third party, together with any attorneys' fees and other costs incurred by Purchaser.

9. Indemnity.

- (a) Seller shall be liable for and will indemnify and hold harmless Purchaser from any and all claims, liabilities, obligations and causes of action arising from the performance or non-performance of this Agreement, including, without limitation, Seller's services in connection with the Goods, the design, production and delivery of such Goods and any personal injury, death or property damage related thereto, howsoever caused, and shall defend any suit or proceeding brought against Purchaser and shall pay all damages, costs and expenses in connection with such action, including Purchaser's attorneys' fees.
- (b) In addition to the foregoing, Seller shall indemnify, hold harmless and defend Purchaser, its officers, agents, employees, parents, subsidiaries, successors and assigns against any loss, cost, damage or expense including, without limitation, attorneys' fees arising out of any claim or charge for personal injury, death or property damage asserted against Purchaser attributable to a defect or deficiency in the Goods.
- (c) These indemnities shall apply without regard to whether the same arises from breach of contract, breach of warranty, negligence, strict liability, or other tort, and such indemnities shall survive delivery and acceptance of the Goods.

10. Insurance.

- (a) Liability Insurance. Prior to and during any entry by Seller onto the premises of Purchaser, Seller shall purchase and maintain the following insurance coverages: (i) Commercial General Liability Insurance ("CGL"), with contractual liability covering obligations assumed in this Agreement (including any agreements entered into between the parties pursuant hereto) by Seller, providing for available limits of not less than Five Million Dollars (\$5,000,000) single limit, bodily injury and/or property damage combined, for damages arising out of bodily injuries to or death of all persons in each occurrence and for damage to or destruction of property, including the loss of use thereof, in each occurrence, including Federal Employers Liability Act claims against the Purchaser, or other liability arising out of or incidental to railroad operations; (ii) Statutory Workers' Compensation, Employer's Liability Insurance with available limits of not less than One Million Dollars (\$1,000,000) and Occupational Disease Insurance; (iii) if any motor vehicles are used in connection with the work to be performed hereunder (or in connection with any agreements entered into between the parties pursuant hereto), Business Automobile Liability Insurance with limits of not less than Two Million Dollars (\$2,000,000) single limit, bodily injury and/or property damage combined, for damages to or destruction of property including the loss of use thereof, in any one occurrence; and (iv) if professional services are being rendered by Seller, Professional Liability coverage in an amount not less than Two Million Dollars (\$2,000,000). If, in Purchaser's opinion, a higher limit of liability is necessary for any insurance policy required hereunder, Purchaser shall so notify Seller and Seller shall, within thirty (30) days of receipt of such notice, provide a copy of the endorsement to the appropriate policy increasing the liability

coverage to the required limit.

- (b) Policy Requirements. All insurance required hereunder shall be effected by valid and enforceable policies issued by insurer(s) of financial responsibility and authorized to do business in all necessary states, all subject to the reasonable prior approval of Purchaser. Seller's liability insurance policies shall name Purchaser, its parent, affiliates and subsidiaries as additional insureds and will not have any exclusions for liability relating to railroad operations or contractual liability for construction or demolition within fifty (50) feet of Purchaser's tracks by endorsement. Seller's Workers' Compensation and property insurance policies shall include waivers of subrogation rights endorsements in favor of Purchaser. All policies shall contain a provision for thirty (30) days' written notice to Purchaser prior to any expiration or termination of, or any change in, the coverage provided. Seller shall provide Purchaser with at least thirty (30) days' written notice prior to such expiration, termination or change in any insurance coverage. Prior to any entry upon Purchaser's property pursuant to this Agreement and upon Purchaser's request thereafter, Seller shall provide or shall cause its insurer to provide Purchaser with complete certified copies of the liability insurance policies in effect for the Term of this Agreement. The liability assumed by Seller under this Agreement, including, but not limited to, Seller's indemnification obligations, shall not be limited to the insurance coverage stipulated herein.
- (c) Additional Remedy for Failure to Comply. Notwithstanding any contrary provision hereof, and in addition to any other remedy provided herein, in the event that Seller fails during the Term hereof to comply and continue its compliance with the provisions of this Section, Purchaser may, in its sole and absolute discretion, thereafter immediately deny or revoke access to Purchaser's premises. The parties agree that the remedies for Seller's breach of this Section shall control over any provision of this Agreement relating to the ability to cure a breach of this Agreement or relating to dispute resolution.

Irrespective of whether any work is required on Purchaser's premises, Seller shall procure and maintain, at its expense, adequate insurance to cover its risk of loss associated with the Goods before delivery, inspection and acceptance by Purchaser. Evidence of such coverage will be furnished to CSXT upon request.

11. Intellectual Property. Seller warrants that: (1) that the goods or services purchased hereunder as well as the production, sale and use thereof, do not and will not infringe any third party patents, trademarks or copyrights or other intellectual property; (2) that Seller will at its own expense defend any suit that may arise in with respect thereto; and (3) that Seller will indemnify, defend, and hold harmless the Purchaser, its parents, subsidiaries affiliates, successors, and assigns, agents, employees, directors and the customers, or any of them, from all loss, damages, costs and expenses, including attorneys' fees, which may be incurred on account of the assertion of any infringement by any person. In case the Goods or a part thereof are held to be infringing, or the use of the Goods or a part thereof is enjoined, Seller shall, at Seller's expense, either procure for Purchaser the rights to continue using the Goods, replace the Goods or a part thereof with non-infringing Goods, modify the Goods so that they are non-infringing, or retake to Goods and refund the purchase price and other costs associated with delivery or return of the Goods. If Purchaser is forced to procure substitute non-infringing Goods, Seller shall be liable for any and all costs associated therewith, less any purchase price refund provided by Seller.
12. Waiver. Waiver by the Purchaser of Seller's breach of any term or condition of this Agreement shall not be construed as a waiver of any other term or condition or a future waiver of the waived term or condition.

13. Cancellation.

- (a) Except as provided in this Agreement, Purchaser may cancel this Agreement without penalty or payment of cancellation charges upon ten (10) days prior written notice to Seller if Seller fails to make delivery as specified or within a reasonable time if no time is specified, or fails to comply with any other provisions of this Agreement, except if excused under Section 15.
- (b) Purchaser may cancel this Agreement without penalty or payment of cancellation charges at any time without cause upon giving Seller thirty (30) days prior written notice.
- (c) Upon receipt of any such notice by Seller, Seller shall immediately discontinue all work.
- (d) Cancellation hereunder shall discharge all executory obligations of the parties but shall not affect any right or obligation based on a prior breach or performance of this Agreement nor affect any right or obligation which is intended to survive such cancellation.

14. Labor Matters. If Seller interferes with Purchaser's operations because of a strike, picketing or a work stoppage by Seller's or its subcontractor's employees or a dispute between a union and the Seller or its subcontractor, Purchaser, after twenty-four (24) hour oral or written notice to the Seller, may either employ a substitute or terminate this Agreement. Further, Seller shall be liable for and promptly pay to Purchaser, any additional expense incurred by Purchaser in employing such substitute or terminating the Agreement.

15. Notice of Delay. Seller agrees to notify Purchaser in writing promptly of any factor, occurrence or event coming to its attention that may affect Seller's ability to meet its obligations under this Agreement. Examples of where such notice shall be given, shall include, but not be limited to any loss, reassignment or unavailability of key employees, a *force majeure* event, threat of strike, or major equipment failure, changed requirements, or third party delays.

16. Force Majeure. A party shall be excused from performing its contractual obligations if it is prevented or delayed in such performance by conditions that constitute *force majeure*, such as acts of God, acts of terrorism, acts of the public enemy, labor disturbances, authority of law, fire or explosion, war or warlike act, insurrection, a party's reasonable response (by way of example and not limitation, such as taking evasive action or canceling meetings or events) to a Governmental warning affecting local or national security, or any like causes beyond its control. A party wishing to take advantage of the relief provided in this Section must as soon as practical advise the other party in writing of the existence of the *force majeure* condition and the estimated time of its duration. The parties shall cooperate to ascertain the facts and the effect of the delay on, and make appropriate adjustments where necessary. If a *force majeure* condition continues for more than fifteen (15) days, Purchaser shall have the right to terminate this Agreement immediately upon oral or written notice. During a *force majeure* event, Purchaser shall have the right to hire a third party to perform Seller's duties, and the sums due hereunder shall be reduced by the actual costs of procuring such substitute Goods.

17. Prohibition on Improper Influences. Seller represents that it has not and will not provide any gift, rebate, or other compensation - excluding nominal business entertainment or gifts - to any official, employee, representative, or agent of Purchaser or any of its affiliated or subsidiary companies. Seller further represents that none of its officials or employees are known to be employed by Purchaser or any of its affiliated or subsidiary companies. Seller agrees to promptly notify Purchaser if Seller becomes aware of information requiring modifications to either of the foregoing representations. Seller understands that Purchaser has relied upon the representations set forth in

this Section and that failure to honor them will give Purchaser the right to immediately terminate this Agreement.

18. Insolvency. In the event Seller shall file a voluntary petition in bankruptcy, or a petition in bankruptcy shall be filed against Seller, or Seller shall make an assignment for the benefit of its creditors, or Seller shall apply for relief in any form as a debtor under any statute of the United States or laws or regulations of any other governmental authority, or any other proceeding under any statute of the United States or laws or regulations of any other governmental authority seeking the relief or readjustment of Seller's indebtedness shall be commenced, then Purchaser shall have the right to immediately cancel this Agreement or so much of it as has not been completed, without penalty or payment of cancellation charges.
19. Severability. Any provision of this Agreement which is determined to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement.
20. Complete Agreement. This Agreement and each Appendix attached hereto constitute the complete agreement of the parties relating to the matters specified in this Agreement and supersede all prior and contemporaneous representations or agreements with respect to such matters. No oral modifications or waiver of any of the provisions of this Agreement shall be binding on either party.
21. Assignment; Successor and Assigns. Purchaser may assign its rights under this Agreement to any parent, subsidiary or other affiliate. Any assignment of this Agreement by Seller, by operation of law or otherwise, or any interest herein or any payment due or to become due hereunder, without the prior written consent of Purchaser, in Purchaser's sole discretion, shall be void. However, this Agreement shall be binding upon and inure to the benefit of Purchaser, Seller and their respective permitted successors and assigns.
22. Laws.
 - (a) Governing Law. Except as detailed herein, this Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida, without regard to the conflict of laws provisions therein. The parties to this Agreement specifically intend that the provisions of Article 2 of the Uniform Commercial Code of Florida will control as to all aspects of this Agreement and its interpretation, except where inconsistent with the terms of this Agreement.
 - (b) U.S.E.P.A. Toxic Substance Control Act. Seller warrants that every chemical substance constituting or contained in the Goods is not on the list of prohibited chemical substances compiled and published by the Administrator of the U.S.E.P.A. pursuant to the Toxic Substances Control Act ("TSCA") and are otherwise in compliance with this Act.
 - (c) Occupational Safety and Health Act of 1970. Seller warrants that the Goods covered hereby shall, upon delivery to Purchaser, be in compliance with the standards required by the Occupational Safety and Health Act of 1970 ("OSHA"), if any, for such Goods in effect at the time of such delivery, including the provision of Material Safety Data Sheets required by law.
 - (d) Hazardous Material. Materials deemed hazardous will be packaged, marked and shipped by the Seller to comply with all Federal, State and local laws and regulations then in effect and will further comply with any special requirements as might be noted in the Appendix attached. Furthermore, Seller warrants that all Goods or other materials covered hereunder do not contain asbestos or otherwise constitute "asbestos containing material" as defined in OSHA, nor contain prohibited chemical substances under TSCA.

- (e) Nondiscrimination/Diversity. Seller represents that its corporate policies provide for equal opportunities in employment without regard to race, color, religion, gender, age, national origin, disability, or veteran status.
- (f) Taxes. CSXT shall be responsible for the payment and remittance of any sales or use tax, or customs duties (referred to collectively hereafter as "Tax") imposed on this Agreement or the Goods and services to be provided hereunder. CSXT shall not be responsible for Seller's income tax, or any tax imposed on Seller's capital or franchise, or any taxes imposed directly and exclusively upon Seller for which CSXT is not otherwise responsible. Seller agrees to accept any valid tax certificates, including exemption certificates that CSXT submits to Seller with respect to any Tax as satisfying CSXT's obligation under this Section 22(f). Seller and CSXT acknowledge and agree that, to the extent applicable to the Goods hereunder, the parties intend for the payments made under this Agreement to qualify under Florida law (Rule 12A-1.032, F.A.C.), and the similar law of any other taxing jurisdiction, as payments for custom or customized software or other services that are not taxable under Florida's (or the other taxing jurisdictions') sales and use tax regime, and the parties further agree not to take any action inconsistent with this position. If Seller receives a notice or assessment from any taxing jurisdiction claiming that Seller or CSXT is liable for any Tax for which CSXT has agreed to make payment under this Section 22(f), Seller shall so notify CSXT in writing no later than fifteen (15) days of its receipt of the claim. If Seller fails to provide CSXT such notice within the fifteen (15) days, CSXT shall have no obligation to pay the Tax if Seller is liable for the Tax under the law of the taxing jurisdiction. If CSXT has a reasonable basis to contest, protest, or appeal (the "Appeal") the imposition or amount of any Tax, CSXT, at its own expense, may prosecute the Appeal, in which case Seller shall cooperate fully with CSXT including, but not limited to, providing documentation and other information as required for CSXT to settle or sustain the Appeal.
- (g) General Compliance with Laws. Seller warrants and agrees that it has complied and will comply with all applicable laws. Seller agrees to indemnify Purchaser and save Purchaser harmless from any claims, losses, damages, costs and legal expenses (including but not limited to attorneys' fees), resulting from Seller's failure to comply with the foregoing, and in the event of such failure, Purchaser may, in addition to all other rights and remedies Purchaser may have pursuant to this Agreement or otherwise in law or in equity, immediately cancel this Agreement.
23. Arbitration. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled through binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment on the award rendered by the arbitrator(s) may be entered in any court of competent jurisdiction. Exclusive venue for such arbitration shall be Jacksonville, Florida.
24. Independent Contractor. Seller acknowledges that it is an independent contractor and that Purchaser has no control over or ownership interest in any of the Seller's facilities that will be utilized in supplying Goods to Purchaser hereunder. Seller shall indemnify, defend and hold Purchaser harmless from and against any and all liabilities, claims, causes of action (legal or equitable), damages and the like, and Seller shall not assert any such claims, or causes of action against Purchaser, arising from Seller's operations or the conditions at, in or around Seller's facilities at or from which Goods are supplied under this Agreement, including without limitation, any environmental or natural resources damage claims.
25. Audit. Seller agrees to keep full, accurate, and complete books of account and records in sufficient detail, in accordance with generally accepted accounting practices. Seller will retain and not purge financial data and computer files for a period of not less than three (3) years after such data and files

are created. Purchaser will have the right to audit all of Seller's records that relate directly or indirectly to Seller's relations with Purchaser as contemplated by this Agreement. The audit will take place at Seller's place of business and the timing of such audit will be mutually agreed upon. Seller will not be unreasonable in granting timely access to Purchaser or its authorized representatives. Purchaser will have access, without cost, to all accounting, operational, and administrative information of Seller and those who control, produce or are responsible for this information. Records contemplated by this provision include but are not limited to, EDI records with Purchaser, invoicing, receipts from Purchaser, disbursements documents, and other related support documents. During the audit, Purchaser shall have the right to copy information it considers appropriate, using Seller's resources and Purchaser will be responsible to reimburse Seller for Seller's direct out of pocket cost of such resources. The payment by Purchaser of any invoice sent to Purchaser by Seller in accordance with the terms of this Agreement shall not preclude Purchaser from questioning the correctness of said invoice at any time. In addition, if the audit shows that CSXT was invoiced and paid more than Ten-Thousand Dollars (\$10,000) over the amounts it was obligated to pay under this Agreement during the period preceding the audit, then Seller will promptly reimburse CSXT for its reasonable expenses incurred in performing the audit.

26. **Consortium Purchasing.** [Include this section only if applicable.] Seller acknowledges that it benefits from Purchaser obtaining greater quantities of goods and/or services from Seller and has reflected that by granting Purchaser a discount for volume purchases as shown in the price schedule in the Appendix attached hereto. To encourage Purchaser to have third parties purchase goods and/or services from Seller, Seller agrees to allow Purchaser to aggregate its purchases with those of any such third parties, so that Purchaser and such third parties each receive benefit of the volume discounts set forth in the Appendix attached hereto. Purchaser shall forward the name, address, telephone number and the name of the representative of any such third parties, and unless Seller objects in writing within fifteen (15) days thereafter, Seller shall provide the named third party with the goods and/or services upon the same terms and conditions as are contained in this Agreement, and shall aggregate Purchaser's and all such third parties' volume for purpose of determining the prices and discounts of the goods and/or services provided to each of the parties. Notwithstanding the foregoing, Seller agrees that Purchaser and such third parties are independent entities and that with the exception of aggregating purchase volumes (a) Seller shall deal with each such party independently, and (b) Purchaser is not a guarantor or surety for any such third parties and is not responsible in any way for any actions or in-actions of such third parties, including, without limitation, any disputes for non-payment which may arise between Seller and any such third party.
27. **Notices.** All notices required by this Agreement or otherwise shall be in writing, sent to the attention of the following:

For Purchaser:

CSX Transportation, Inc.
500 Water Street (J-430)
Jacksonville, Florida 32202

with a copy to:

Associate General Counsel
CSX Transportation, Inc.
Law Department - J150
500 Water Street, Jacksonville, Florida 32202

For Seller:

or at such other address as a party may indicate in writing as herein provided. Notices shall be deemed given on the earliest of the date received, two (2) business days after delivery to a nationally recognized overnight courier, five (5) business days after proper mailing, or the date that receipt of such notice is rejected or refused. Notwithstanding the foregoing, Seller's invoices may be sent by ordinary mail.

28. Amendments. This Agreement cannot be amended or modified except in writing, signed by or on behalf of the persons to be bound thereby.

29. Advertising. Seller will not use the name of CSXT or any of its affiliates or quote the opinion of any employees thereof or refer thereto directly or indirectly in any promotional literature, news release, advertisement or release to any professional or trade publications without receiving specific written approval for such use or release from CSXT.

30. Survival. Notwithstanding the termination or expiration of this Agreement, and except as otherwise stated in this Agreement, those obligations contained herein that by their terms or nature are intended to survive such termination or expiration shall do so including, as an example and without limitation, Sections 3, 5, 7, 8, 9, 11, 22, 23, 25, 27, and 30, and shall be binding upon the parties and their legal representatives, heirs, successors and assigns.

31. Priority of Documents. In the event of any conflict between any documents exchanged between the parties, the following order of priority shall control: (i) this Agreement; (ii) any Appendix; (iii) any other document incorporated herein by reference; (iv) Purchaser's purchase order; and (v) Seller's invoice.

[Signature Page Follows]

IN WITNESS WHEREOF, each party has caused this Agreement to be properly executed on its behalf as of the date first written above.

SELLER:

[Company]

By: _____
Name: _____
Title: _____

PURCHASER:

CSX TRANSPORTATION, INC.

By: _____
Name: _____
Title: _____

APPENDIX to Agreement between CSX Transportation, Inc. and [REDACTED], dated [REDACTED].

PRICE, PAYMENT and DELIVERY TERMS

1. Delivery Terms:

Agreement prices for the Goods are FOB: _____. By attachment hereto as Exhibit A, the CSX Transportation Purchasing & Materials Statement of Policy and Procedure, No. P&M-220 (Routing Instructions), as amended from time to time, is made a part of this agreement. Suppliers who do not comply with these routing instructions will be solely responsible for the cost of using an unapproved carrier.

Orders will be shipped by Seller within ____ hours after receipt of the purchase order.

2. Payment Terms:

Purchaser will receive a 2% discount on Seller's invoice if payment is remitted to Seller within fifteen (15) days of receipt of Seller's invoice, otherwise Purchaser will pay the net amount within forty-five (45) days of receipt of Seller's invoice.

3. Warranty:

Seller shall warrant the Goods in accordance with this Agreement for one (1) year from the date of final acceptance by Purchaser, or if the Goods are manufactured by a third-party then Seller shall ensure that the third-party's warranty of the Goods is transferred to Purchaser.

4. Quality Certification:

Seller shall maintain a quality system at the manufacturing facility during the Term of the Agreement. The quality system is to be industry recognized and current by either NAPM or ISO Quality Certification.

5. Price:

[specify prices] These prices are fixed through the Term of the Agreement, except to the extent that Seller is required to lower prices to Purchaser pursuant to Section 1 of the Agreement.

6. Volume Discounts: [insert if applicable]

Exhibit A

CSX Purchasing & Materials No. P&M-220

I. Purpose

The purpose of this policy is to provide guidance to CSXT employees concerning the movement of purchased material from suppliers and the distribution of company material to using locations.

II. Scope

This policy applies to all suppliers and CSXT employees engaged in the movement of company material.

III. General

- A. Purchasing & Materials is accountable for delivering material to field locations within required service times and by the most cost-effective means available. The two basic elements affecting transportation costs are quantity and timing. These elements must be balanced against one another to obtain the best service and lowest total cost for CSXT.
- B. For large quantities of material such as wheels, shipping via rail is the most economical mode on a cost per pound basis. However, shipping via rail is not economically feasible for small quantities and, depending on the route, may not always meet delivery time requirements.
- C. Expedited shipments are very costly regardless of quantity. A shipment requiring delivery within 6 hours may cost more than \$1,000 while the same shipment may cost \$100 if given 24 hours for delivery and only \$20 if given 48 hours. The economic benefit of expedited delivery must always be considered prior to expediting shipments.
- D. Whenever quantities are sufficient and time allows, company rail or intermodal services are to be utilized for the movement of company material from outside suppliers as well as internally to field locations. Internal rail shipments of company material, as well as rail shipments from outside suppliers originating on CSXT, move at cost over the CSXT system.
- E. If quantities are insufficient or rail/intermodal cannot meet the necessary delivery schedule, a less economical but more expedient mode such as trucking must be utilized. CSXT uses the strategy of maximizing volume with one carrier for each mode of transportation. Modes consist of express mail, package, less-than-truckload (LTL), truckload, specialized and expedited shipments. Using only one carrier for one or more modes and maximizing the impact of our volume with that carrier has proved to be a successful negotiating tool for pricing and improved service.
- F. Carriers are selected from each mode using best purchasing practices including the mentored champion process, competitive bidding and negotiation as appropriate.
- G. Routing instructions from the Purchasing & Materials Logistics Group apply to the shipment of company material controlled by CSXT and only those approved and contracted carriers are to be used.

- H. When shipments originate at the supplier the contract with the supplier shall state where title transfers and who pays for the freight. Negotiating contracts with the terms: “FOB Destination, Freight Collect” is preferred. FOB Destination places ownership of the material with the supplier until the material is delivered and accepted. Unless the contract specifies otherwise, CSXT may refuse the shipment if the material is received in an unacceptable condition, and refused material becomes the responsibility of the supplier at the supplier’s expense.

IV. THE FOLLOWING INSTRUCTIONS APPLY TO SUPPLIERS AND CSXT FIELD PERSONNEL WHEN SHIPPING MATERIALS FOR CSXT.

A. GENERAL:

1. Safety – It is your responsibility to make sure that all shipments are handled, loaded and unloaded with safety as the first priority. Each shipment, loading, or unloading assignment starts with knowledge of the task and a job briefing that includes all personnel involved. Remember that no job is so urgent that we cannot take the time to do it safely.
2. PPE – CSXT has a required policy for the wearing of Personal Protective Equipment (PPE) for contractors, truck drivers, service and delivery personnel, customers, visitors and employees while on company property. All personnel and contractors must wear protective eyewear, hard hats, steel-toed safety shoes, long pants, and shirts with sleeves. Finger rings, necklaces, bracelets or other jewelry shall be removed prior to entering CSXT property. Hearing protection must be used in areas marked “Hearing Protection Required.” Access to CSXT buildings, offices, platforms and ramps should be limited to main aisles and those areas marked as green “safe walkways.” Work areas and red zones should be avoided if possible.
3. Vehicle Operation – When on CSXT property, drivers must operate their vehicles within the posted speed limit and obey all traffic indicators including yield and stop signs. Drivers must not operate over a railroad grade crossing unless it is safe to do so and must be alert for movement of trains, locomotives, cars or other railroad equipment at all times, in all directions, on all tracks. Grade crossings in yards may not have active warning devices. It is the driver’s responsibility to cross any tracks safely. Do not cross tracks ahead of moving railroad equipment.
4. Working Near Tracks – Drivers should not perform any duties within fifteen feet (15’) of any railroad operating track without first contacting CSXT for permission to do so; CSXT will then advise the driver under what conditions and precautions the driver may perform his/her duties near said track.
5. Environmental – All materials must be handled and shipped in compliance with all government regulations and company policy. Hazardous materials must be properly placarded and noted on the bill of lading. Important: Do not ship hazardous materials by an air carrier. This includes fuel in any quantity or used injectors or other components containing fuel or fuel residue. Hazardous materials should only be shipped according to CSXT procedures. If you do not know such procedures, find out first, before you ship. Heavy fines can be levied against the company and individual violators.
6. Accountability – Each shipment request must include a CSXT reference number to identify responsibility. The bill of lading and freight invoice must include a Purchase

Order Number, PROJECT and TASK code, an AFE number, an OUTSIDE PARTY (OP) number or a CSXT ORACLE EXPENDITURE ORGANIZATION provided by the person making the shipment request.

- B. **ROUTING:** The mode of shipment refers to the type of carrier selected to move a shipment. The mode is divided into the categories listed below. Choosing the correct mode of transportation can be more important than choosing the correct carrier when trying to contract for the lowest overall cost. As an example, using a truckload expedite carrier for a 25 lb. package for a 500 mile trip will cost \$800. UPS Freight (formerly Overnite Transportation) can deliver the same package for \$55 and DHL Express for \$90. The expedite truck can deliver at 05:00 AM. DHL by 10:30 AM and UPS Freight by noon. The earlier delivery time for the expedited truck costs CSX \$130 per hour to receive the shipment 5 hours earlier. It is easy to see how using the right mode can save cost for CSX. If you have questions about the correct mode call the logistics department at 904-359-3535.
- **Rail Shipments** – Orders for cars should be placed through SHIPCSX, a web-based order placement facility. Instructions on how to become a registered user of SHIPCSX can be obtained from the SHIPCSX Help Desk at 877-744-7279 option #2, then option #1. Any supplier site that is off line may order cars by calling (904) 359-3132 or (904) 359-1056.
 - **Truckload, Expedite Shipments or Other Specialized Moves** – All shipments are required to be scheduled through the All Freight International (AFI) Shipment Coordination Desk at 1-888-525-3203 or 1-800-929-5895. All shipments should be routed FOB Shipping Point Freight Collect. **Use trucks for expedited packages or expedited Less-than-Truck-Load (LTL) shipments only when there is no other choice. This service can cost 10 times or more of the cost of DHL Express or UPS Freight unless the volume of the shipment approaches truckload capacity.**
 - **Work Equipment, Over Dimension, Signal Containers and Bridge Ties** – These shipments should be tendered to H&W Trucking (Best Cartage): 800-826-3560
 - **LTL Shipments** – These shipments should be tendered to UPS Freight (formerly Overnite Transportation) and routed FOB Shipping Point Freight Collect. Shipments can be tendered using UPS Freight's website at www.upsfreight.com Contact your local UPS Freight terminal for assistance. The 24/7 emergency contact number for UPS Freight central dispatch is 800-874-8002, option 3.
 - **Small Package Shipments** – All package shipments should be shipped: UPS Consignee Billing or DHL Express Collect if Air Express Service is necessary. Ship UPS for ground shipments less than \$55 in freight charges or less than 125 pounds only. If charges are more than \$55 or 125 pounds, ship UPS Freight LTL.
 - **Shipments from CSXT to Suppliers** – Generally, shipments from CSXT locations to suppliers will be shipped PREPAID. However, when returning material to suppliers due to the supplier's error such as overfilled orders, incorrect material delivered, defective material or wrong location, return shipments should be shipped COLLECT unless the contract specifies otherwise.
 - **Non-Compliance** – Compliance with these routing instructions is essential to the CSXT logistics program and our budget for transportation services. Careful consideration has been given to the best overall service and cost as part of a broad logistics strategy. Since CSXT no longer employs a third party logistics provider to manage carriers and

pay freight bills, we no longer have a process in place to pay carriers other than those contracted above.

- Suppliers who do not comply with CSXT's routing instructions may be held responsible for the payment and cost of using **an unapproved** carrier.