

**MEMORANDUM OF AGREEMENT**  
**BY AND BETWEEN**  
**CSX TRANSPORTATION, INC.**  
**AND THE**  
**PENNSYLVANIA EMERGENCY MANAGEMENT AGENCY**

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THIS MEMORANDUM OF AGREEMENT ("Agreement") is made this 7 day of February, 2014 is by and between CSX TRANSPORTATION, INC. ("CSXT"), a Virginia corporation with principal offices at 500 Water Street, Jacksonville, Florida 32202, and the Pennsylvania Emergency Management Agency ("PEMA"), with principal offices at 2605 Interstate Drive, Harrisburg, Pennsylvania 17110, each of which is referred to herein individually as a "Party" and collectively as the "Parties".

**WITNESSETH**

**WHEREAS**, this Agreement is intended to memorialize the Parties' train information access arrangements ("TIAA") to provide PEMA access to CSXT's Network Operations Workstation ("NOW") for the sole purpose of enabling PEMA to track and monitor hazardous materials rail cars presence in the custody and control of CSXT while in or within the vicinity of the Commonwealth of Pennsylvania in order to provide situational awareness of hazardous materials rail car presence in the Commonwealth, assess threats, actual incidents or accidents involving CSXT trains or hazardous materials rail cars, and to address the preliminary activities associated with such access;

**WHEREAS**, in connection with the TIAA, each Party may provide the other Party with certain sensitive and proprietary information relevant to the providing Party's operations and business;

**WHEREAS**, as a condition to furnishing such information, each Party requires that such information shall be used solely for the intended purpose, and shall receive

confidential treatment from the receiving Party in accordance with the provisions of this Agreement; and

**WHEREAS**, the Parties wish to set forth several understandings with respect to the TIAA in this Agreement:

**NOW, THEREFORE**, in consideration of the foregoing, the parties set forth the following understandings.

### **Part One**

#### **SCOPE**

1. Project: NOW is a computer information system that uses CSXT proprietary software and CSXT proprietary commercial and operating data to enable CSXT railroad operations managers to monitor, from a central location, train location and consist information. The Parties desire and intend to take advantage of the usefulness of the external-use version of NOW to PEMA managers and staff in supporting the core functions of situational awareness, operations monitoring, information assessment, and incident response. Authorized PEMA personnel will be given access via the Internet to CSXT's NOW external-use version solely for the purposes of supporting the core functions enumerated above in the event of a security threat, actual rail incident, or accident involving CSXT trains (as well as commuter and intercity passenger trains operating on CSXT's lines) or hazardous materials rail cars being transported by CSXT. The NOW shall be physically loaded on desktop computers assigned to designated personnel within the PEMA. During the three-year period of this Agreement, CSXT will make NOW available to PEMA in accordance with the terms hereof at CSXT's sole cost and expense, except as otherwise provided herein.

2. Training: Authorized PEMA personnel working with, and receiving information from, CSXT's NOW will be trained by CSXT in use of the NOW system.

CSXT will provide the initial training to PEMA personnel at no cost to PEMA. If additional training is required, the Parties will discuss how training costs will be shared.

3. Notification of Use: PEMA will promptly notify pre-designated CSXT officials of any security threat, actual rail incident or accident involving CSXT trains (as well as commuter and intercity passenger trains operating on CSXT's lines) or hazardous materials rail cars being transported by CSXT with respect to which PEMA personnel utilized the NOW to detect and/or monitor an incident or accident or facilitate the dissemination of information to incident responders and other appropriate governmental incident response agencies, watch centers, or fusion centers. CSXT will identify the officials it wishes to designate and provide PEMA with that information, and update it as necessary.

4. Confidentiality and Use of Information: The information contained in and available from NOW is confidential and proprietary information of CSXT and in some cases is confidential and proprietary information of CSXT customers. The treatment and use of confidential and proprietary information received by either Party pursuant to this Agreement including, without limitation, Section 5 hereof, is essential to the Parties' intended cooperative collaboration in accordance with this Agreement.

5. Permitted Use and Communication of Information:

(A) Permitted Use. PEMA managers and staff may use NOW and the information contained in the system in supporting their core functions of situational awareness, operations monitoring, information assessment, coordination of resources and incident response. The access to NOW under this Agreement will afford designated PEMA personnel access to broad categories of CSXT commercial and operational information not related to those core functions, and it is the expectation of the Parties that such information will not be relevant to the purposes of this Agreement and therefore will not be reviewed, analyzed, or compiled by PEMA.

While striving to maintain the reliability and usefulness of NOW information, CSXT does not represent or warrant that the information accessible via NOW is accurate, complete or current. Both Parties understand and acknowledge that the information available from NOW does not constitute an official CSXT record for purposes of regulatory compliance. The PEMA shall not use NOW or information obtained from it for any purpose not expressly agreed to in this Agreement. The following uses are not permitted, and are grounds for immediate termination of this Agreement and cessation of access: compilation of proprietary data, furnishing of information to other entities (other than as contemplated in Section 5(B)), attempts by any individuals to influence day-to-day railroad operating decisions or practices except through designated management personnel within CSXT's Public Safety, Health and Environment Department, enforcement of any law, regulation, order or other requirement, use in litigation or claims, and zoning reviews.

- (B) Communication of Information. The Parties contemplate that in the event of an actual incident or accident, PEMA would be the primary point of contact for other governmental incident response agencies to obtain information available from NOW. Notwithstanding any confidentiality commitment in this Agreement, PEMA may use and communicate information available from NOW in responding to questions from incident responders and other appropriate governmental incident response agencies in the event of a credible heightened security threat, or an actual incident or accident involving CSXT trains (as well as commuter and intercity passenger trains operating on CSXT's lines) or hazardous materials rail cars being transported by CSXT. PEMA authorized personnel may use their professional discretion in determining what information may be useful to emergency responders and other appropriate

governmental emergency response, transportation, or homeland security agencies in the event of a credible heightened security threat, actual incidents or accidents as described above, it being the intent of the Parties to provide the maximum assistance possible to those charged with responding to such credible heightened security threats, actual incidents and accidents. It is the intent of the Parties that only information of the nature customarily shared by railroad carriers in accidents and incidents be communicated beyond PEMA. For purposes of this Agreement, the term "credible heightened security threat" means an assessment (other than a generalized threat assessment) by governmental authorities based on actual information that merits a reasonable suspicion that some act by the public enemy may be threatened, even if the assessment does not justify or require a change in the Commonwealth of Pennsylvania' Security Alert level or CSXT's security Alert Level. Information available from NOW shall not be used to respond to inquiries not related to a threat, actual incident or accident such as those contemplated above. PEMA shall refer such other inquiries to CSXT for response.

- (C) Ongoing Consultation. From time to time, the Parties will meet to discuss the information that has been disclosed in response to threats, actual incidents and accidents of the nature described herein, and will explore the feasibility of developing guidelines for disclosure of commercially and operationally sensitive information. In developing guidelines, the Parties will make the interests and needs of first responders their first priority, but also will protect the confidentiality of CSXT's customers' proprietary information.

6. Demonstrations and Drills: Notwithstanding the foregoing, PEMA may (i) demonstrate to U.S. governmental authorities the functionality of NOW, its operation

and capabilities, and its utility in providing timely information to emergency responders, transportation, and other appropriate governmental emergency response or homeland security agencies in the event of an incident or accident, and (ii) with the prior written consent of CSXT, in its sole discretion, use NOW and information available through it for emergency preparedness drills. PEMA shall not use the NOW system or information obtained therefrom for any other purpose except as otherwise expressly authorized in this Agreement.

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7. No Further Obligation: Neither Party is obliged to engage in negotiations relating to continuation or expansion of the TIAA beyond the three-year term specified in this Agreement. Any decision to negotiate or to consummate a longer-term agreement shall be in each Party's sole discretion. Except as expressly provided in this Agreement, each Party shall bear its own costs and expenses incurred in the negotiation, documentation and implementation of this Agreement and the activities contemplated by this Agreement.

8. Term: This Agreement shall be in full force and effect for three years unless either Party provides the other earlier written notice, in its sole and absolute discretion, of its election to terminate this Agreement. Six months prior to the end of the three-year term, the Parties shall meet and confer to determine whether to terminate or extend this Agreement for an additional term. In making such a determination, the Parties may consider all relevant factors including, without limitation: extent of use of NOW, PEMA's evaluation of NOW's utility for its purposes, any inherent technical limitation(s) that may have affected NOW's utility and possible enhancements to NOW that PEMA would consider funding or providing to CSXT in kind.

9. Liability; Injunctive Relief: Neither Party shall have any liability for money or other damages to the other as a result of any matter arising out of or associated in any way with this Agreement, the activities of either hereunder or otherwise. If either Party believes that the other has failed to perform, or is about to breach or is threatening

to breach, any commitment set out herein, its sole remedies shall be for injunctive relief and, in addition, termination of this Agreement immediately at its sole discretion.

10. No Third Party Beneficiaries: This Agreement is for the sole benefit of the Parties, and no third party is intended to be a beneficiary thereof or have any rights as a consequence of this Agreement.

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11. General:

- (A) If any individual term or provision of this Agreement is contrary to or in conflict with any requirement of applicable law, then that term or provision shall be severed herefrom and the remainder of this Agreement shall be binding on the Parties.
- (B) No failure or delay by either Party in exercising any right under this Agreement shall operate as a waiver of that right. There are no understandings, agreements or representations, express or implied, between the Parties with respect to the subject matter of this Agreement that are not specified herein.
- (C) This Agreement may not be amended except by a written document referencing this Agreement that is signed by an authorized representative of each Party.
- (D) All notices under this Agreement shall be in writing and effective when actually delivered in person, by certified or registered mail (postage prepaid, return receipt requested), or by prepaid express delivery service to the relevant undersigned Party at its principal offices set forth in the first paragraph of this Agreement. Such notices to CSXT shall be addressed to the attention of John P. Walsh, Director-Infrastructure Protection, Speed Code J275; such

notices to PEMA shall be addressed to the attention of: Henry Tamanini. Either Party may change its address for notices at any time by written notice to the other as provided herein.

12. Counterparts: This Agreement may be executed in multiple counterparts, with each counterpart being deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

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## Part Two

### MUTUAL NON-DISCLOSURE AGREEMENT

13. Confidentiality: Subject to the provisions of this Agreement, PEMA shall at all times safeguard all confidential, proprietary or trade secret information which may hereafter be provided by or on behalf of CSXT through any form of communication, either directly or indirectly, in connection with this Agreement ("Confidential Information") and shall not disclose, distribute or disseminate the Confidential Information, or any documents, studies, reports or information derived therefrom, to any third party, except as may be expressly provided herein. Confidential Information does not include information that: (i) is or becomes generally available to the public other than as a result of a wrongful disclosure by PEMA; (ii) is lawfully received by PEMA from a third party having the right to disseminate the information, without notice of any restriction against its further disclosure; (iii) PEMA already knew prior to its receipt thereof, the prior knowledge of which it can document by written records which existed prior to such receipt; or (iv) is generated independently by PEMA from sources other than the Confidential Information without violating any obligations under this Agreement. PEMA may disclose Confidential Information: (i) if CSXT provides express prior written consent; or (ii) when so required by order of a court of competent jurisdiction or similar requirement of a governmental agency, so long as PEMA provides CSXT with prior written notice of such order or requirement and an opportunity to respond to such order or requirement as soon as reasonably practicable.

14. Compliance with Governing Federal Law: CSXT is subject to the confidentiality provisions of 49 U.S.C. Section 11904, unlawful disclosure of information, which requires that a rail carrier observe the confidentiality of certain shipper and consignee information where use of such information may be used to the detriment of the shipper or consignee, or may disclose improperly to a competitor the business transactions of the shipper or consignee. PEMA shall act in a manner respectful and supportive of CSXT's foregoing legal obligations. PEMA shall treat as exempt from the Pennsylvania Right to Know Law's mandate of release any information that would reveal confidential and proprietary information of CSXT or CSXT customers. In addition, PEMA shall treat as exempt from the Pennsylvania Right to Know Law's mandate of release any information received via NOW that constitutes Sensitive Security Information (SSI) under either 49 U.S.C. Section 40119(b) or 49 U.S.C. Section 114(s), as implemented by 49 C.F.R. parts 15 and 1520 protecting against unauthorized disclosure of SSI.

15. Disclosure: The existence of the TIAA itself is not confidential, and the Parties may describe it to interested individuals and organizations. However, neither Party shall make any media releases or formal public announcements or formal disclosures relating to the TIAA unless the other Party provides prior express written consent thereto.

16. PEMA agrees to make each of its employees who will have access to NOW and any Confidential Information aware of the confidentiality and limitations of use provisions set forth in this Agreement. PEMA shall require each such employee to sign and accept the terms of a standard individual Confidentiality Agreement, in substantially the form set forth in Attachment 1 hereto. PEMA shall advise CSXT promptly and in writing of the names and titles of such employees and will maintain the originals of the individual Confidentiality Agreements in its records.

17. General: NOTWITHSTANDING THAT THE PARTIES EXCHANGE CONFIDENTIAL INFORMATION HEREUNDER IN GOOD FAITH, EACH PARTY EXPRESSLY DISCLAIMS ANY WARRANTIES OR REPRESENTATIONS WHATSOEVER WITH RESPECT TO SUCH CONFIDENTIAL INFORMATION, AND NEITHER PARTY SHALL HAVE ANY LIABILITY TO THE OTHER PARTY RESULTING FROM THE OTHER PARTY'S USE OF SUCH INFORMATION.

IN WITNESS WHEREOF, the Parties to this Agreement hereby confirm the understandings set forth in this Agreement by signing and accepting this Agreement in the spaces provided below, all as of the date first set forth above.

**CSX Transportation, Inc.**

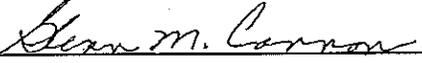
By: 

Name: Howard R. Elliott

Title: Vice President – Public Safety,  
Health and Environment

Date: January 13, 2014

**Pennsylvania Emergency Management Agency**

By: 

Name: Glenn M. Cannon

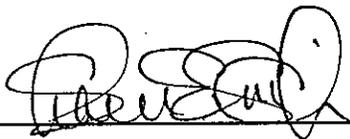
Title: Director

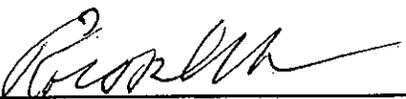
Date: January 17, 2014

PEMA OLC: 

**Office of General Counsel**

**Office of Attorney General**

By: 

By: 

Date: 1/27/14

Date: 2/7/14