

AGREEMENT REGARDING THE DISCONTINUANCE OF FREIGHT RAIL SERVICE OVER CERTAIN RAILROAD LINES IN CUMBERLAND COUNTY, MAINE

THIS AGREEMENT Regarding the Discontinuance of Freight Rail Service Over Certain Railroad Lines in Cumberland County, Maine (this "Agreement") is entered into as of the 10<sup>th</sup> day of June, 2013, by and between St. Lawrence & Atlantic Railroad Company, a Delaware corporation ("SLR"), and the State of Maine, acting by and through its Department of Transportation ("MaineDOT").

WHEREAS, in 2007 and 2010 MaineDOT acquired certain railroad line segments in Cumberland County, Maine (collectively, the "Railroad Line") from SLR, i.e. between Berlin Subdivision milepost 1.74 in Deering, Maine and the town line between New Gloucester, Cumberland County, Maine and Auburn, Androscoggin County, Maine (approximately Berlin Subdivision milepost 25.97); and

WHEREAS, SLR presently holds a freight railroad easement over the Railroad Line, and MaineDOT and SLR are parties to an Operating Agreement dated September 27, 2007, as amended (the "Operating Agreement"), pertaining to the Railroad Line; and

WHEREAS, side letters dated September 27, 2007, and December 30, 2010, that were executed in connection with the acquisition of the Railroad Line (the "Side Letters") provide that if SLR decides to seek authority to terminate its freight operations over any portion of the Railroad Line indefinitely, SLR will seek abandonment, rather than discontinuance, authority from the STB; and

WHEREAS, SLR has informed MaineDOT that SLR would like to seek discontinuance authority to terminate its freight operations over the Railroad Line; and

WHEREAS, MaineDOT is willing to consent to, and will not object to, such discontinuance authority provided that SLR abides by the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements contained in this Agreement, the parties hereby agree as follows:

1. No Objection to Discontinuance. MaineDOT hereby consents to, and shall not object to, SLR's request for authority from the United States Surface Transportation Board (the "STB") to discontinue freight rail service over the Railroad Line.
2. Notice of Discontinuance. SLR shall promptly notify MaineDOT of (i) the date when SLR is granted authority from the STB to discontinue freight rail service over the Railroad Line, and (ii) the date when freight rail service over the Railroad Line is discontinued.
3. Termination of Operating Agreement. Upon the discontinuance of freight rail service over the Railroad Line, the Operating Agreement shall terminate.

4. Inspections of Railroad Line Following Discontinuance. Following the discontinuance of freight rail service over the Railroad Line, SLR shall, at SLR's expense:

- a. Perform monthly hy-rail inspections of the Railroad Line between April 15<sup>th</sup> and December 1<sup>st</sup>; and
- b. Promptly prepare and submit to MaineDOT reports of those inspections.

Such inspections shall continue until either SLR resumes freight rail service over the Railroad Line (as set forth in Paragraph 5) or SLR files the Notice of Abandonment Consummation referenced in Paragraph 7. SLR shall have no liability to MaineDOT arising from the performance of such inspections. For the avoidance of doubt, SLR shall have no obligation to maintain or repair the Railroad Line or the right of way after the discontinuance of freight rail service over the Railroad Line unless SLR resumes freight rail service over the Railroad Line (as set forth in Paragraph 5).

5. Resumption of Freight Rail Service. SLR may file with the STB to resume freight rail service over the Railroad Line at any time prior to filing the Notice of Abandonment Consummation referenced in Paragraph 7; provided, however, that prior to any such resumption of freight rail service the parties shall enter into a new operating agreement, the terms and conditions of which shall be substantially the same as the terms and conditions of the current Operating Agreement. Upon such resumption of freight rail service, this Agreement shall terminate without any further force or effect.

6. Abandonment Authority. Unless SLR in the meantime resumes freight rail service over the Railroad Line (as set forth in Paragraph 5), SLR shall, within 3 years after the discontinuance of freight rail service over the Railroad Line, seek authority from the STB to abandon the Railroad Line. MaineDOT shall not object to the proposed abandonment.

7. Consummation of Abandonment. Once abandonment has been authorized, SLR shall, as promptly as practicable (but in no event later than 60 days after abandonment has been authorized so long as there is no legal impediment to consummation), file a Notice of Abandonment Consummation with the STB. At the same time SLR files the Notice of Abandonment Consummation with the STB, SLR shall provide to MaineDOT a copy of the Notice of Abandonment Consummation so that MaineDOT may record the Notice of Abandonment Consummation in the Cumberland County Registry of Deeds, thereby terminating the freight railroad easement over the Railroad Line.

8. Solicitation of Proposals. If, after SLR files a Notice of Abandonment Consummation, MaineDOT elects to solicit proposals for the operation of freight rail service over the Railroad Line, MaineDOT shall include SLR on the list of potential operators to whom the solicitation is sent. The inclusion of SLR on this list shall not affect SLR's rights under Paragraph 9.



9. Right of First Refusal.

- a. If, after SLR files a Notice of Abandonment Consummation, MaineDOT elects to lease the Railroad Line to a freight rail operator for the operation of freight rail service, SLR shall have a right of first refusal to enter into a lease and operating agreement with MaineDOT on the same terms and conditions that MaineDOT negotiates with a third-party freight rail operator.
- b. If SLR elects to exercise its right of first refusal, SLR shall (i) so notify MaineDOT within 30 days after receipt from MaineDOT of a copy of the lease and operating agreement that MaineDOT has negotiated with the third-party freight rail operator, and (ii) execute a lease and operating agreement with MaineDOT within 30 days after SLR sends its notice of exercise to MaineDOT. Failure by SLR to execute a lease and operating agreement with MaineDOT within the stated time shall be deemed a waiver of SLR's right of first refusal.
- c. SLR's right of first refusal shall apply only to the first lease and operating agreement that MaineDOT negotiates after SLR files the Notice of Abandonment Consummation with the STB, and SLR's right of first refusal shall not extend to any subsequent lease and operating agreement; provided that such first lease and operating agreement (i) is actually entered into by MaineDOT and the third-party freight rail operator, and (ii) has a term of no less than 10 years.
- d. SLR's right of first refusal shall not extend to any sale of the Railroad Line.
- e. Unless previously terminated, SLR's right of first refusal shall terminate upon: (i) a sale of the Railroad Line; (ii) SLR no longer being controlled, directly or indirectly, by Genesee & Wyoming Inc.; or (iii) a sale by SLR of SLR's connecting railroad line segment in Auburn, Androscoggin County, Maine that is the subject of the Passenger Operating Agreement between MaineDOT and SLR dated December 30, 2010 (the "Passenger Operating Agreement").

10. Interchange Agreement. If MaineDOT enters into a lease and operating agreement with a third-party freight rail operator in accordance with this Agreement, or if MaineDOT sells the Railroad Line to a third-party freight operator, SLR shall (i) negotiate in good faith to reach a mutually acceptable interchange agreement with that freight rail operator governing the interchange of freight rail cars at a mutually convenient location, and (ii) facilitate the timely and efficient interchange of freight rail cars at that location in accordance with the terms and conditions of such interchange agreement.

11. Assignment. Neither this Agreement nor any right, interest or obligation under this Agreement may be assigned by any party, by operation of law or otherwise, without



the prior written consent of the other party, and any attempted assignment without the prior written consent of the other party shall be void; provided, however, that SLR shall assign this Agreement and SLR's rights (other than its right of first refusal, which shall terminate in accordance with Paragraph 9(e)(iii)) and obligations hereunder to any successor owner of SLR's connecting railroad line segment in Auburn, Androscoggin County, Maine that is the subject of the Passenger Operating Agreement.

12. Side Letters. To the extent that this Agreement is inconsistent with the Side Letters, this Agreement supersedes the Side Letters; provided, however, that if this Agreement terminates due to the resumption of freight rail service by SLR over the Railroad Line (as set forth in Paragraph 5), the Side Letters thereafter shall be reinstated and once again be in full force and effect, as if this Agreement had not been entered into.

13. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Maine (without regard to conflicts-of-laws principles that would require the application of any other law).

14. Amendment. This Agreement may be amended, modified or supplemented only by a written instrument executed by MaineDOT and SLR.

15. No Waiver. Neither the failure nor any delay on the part of any party to this Agreement to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and signed by the party asserted to have granted such waiver.

16. Counterparts. This Agreement may be signed in any number of identical counterparts, each of which shall be an original (including signatures delivered via facsimile or electronic mail) with the same effect as if the signatures thereto and hereto were upon the same instrument. The parties hereto may deliver this Agreement by facsimile or electronic mail and each party shall be permitted to rely upon the signatures so transmitted to the same extent and effect as if they were original signatures. This Agreement shall become effective when each party hereto shall have received a counterpart hereof signed by each other party hereto.

17. Notices. All notices, requests and other communications hereunder must be in writing and will be deemed to have been duly given only if delivered personally against written receipt or by facsimile transmission or mailed by prepaid first class mail, return receipt requested, or mailed by overnight courier prepaid to the parties at the following addresses or facsimile numbers:



(a) If to MaineDOT:

Director, Rail Program  
Maine Department of Transportation  
16 State House Station  
Augusta, Maine 04333-0016  
Facsimile No.: (207) 624-3561

(b) If to SLR, to:

General Manager  
St. Lawrence & Atlantic Railroad Company  
415 Rodman Road  
Auburn, Maine 04210  
Facsimile No.: (207) 782-5857

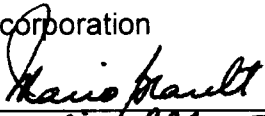
All such notices, requests and other communications will: (i) if delivered personally to the address as provided above, be deemed given upon delivery; (ii) if delivered by facsimile transmission to the facsimile number as provided above, be deemed given upon facsimile confirmation; (iii) if delivered by mail in the manner described above to the address as provided above, be deemed given upon the earlier of the third business day following mailing or upon receipt; and (iv) if delivered by overnight courier to the address as provided above, be deemed given upon the earlier of the first business day following the date sent by such overnight courier or upon receipt. Either party from time to time may change its address, facsimile number or other information for the purpose of notices to that party by giving notice specifying such change to the other party hereto.

18. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future law, and if the rights or obligations of any party hereto under this Agreement will not be materially and adversely affected thereby, (i) such provision will be fully severable, (ii) this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, (iii) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom, and (iv) in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

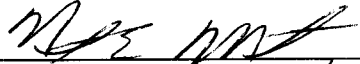


IN WITNESS WHEREOF, SLR and MaineDOT have caused this Agreement to be executed as of the day and year first above written.

ST. LAWRENCE & ATLANTIC RAILROAD COMPANY,  
a Delaware corporation

By:   
Name: MARIO BRAULT  
Title: PRESIDENT

THE STATE OF MAINE,  
acting by and through its Department of Transportation

By:   
Name: Nathan E. Moulton  
Title: Director, Rail Program