

# SECURITIES AND EXCHANGE COMMISSION

## FORM 425

Filing under Securities Act Rule 425 of certain prospectuses and communications in connection with business combination transactions

Filing Date: **2021-03-30**  
SEC Accession No. [0000054480-21-000091](#)

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### SUBJECT COMPANY

#### **KANSAS CITY SOUTHERN**

CIK: **54480** | IRS No.: **440663509** | State of Incorporation: **DE** | Fiscal Year End: **1231**  
Type: **425** | Act: **34** | File No.: **001-04717** | Film No.: **21788039**  
SIC: **4011** Railroads, line-haul operating

Mailing Address  
*427 W 12TH STREET  
KANSAS CITY MO 64105*

Business Address  
*427 W 12TH STREET  
KANSAS CITY MO 64105  
8169831360*

### FILED BY

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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549**

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**FORM 8-K**

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**CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of the  
Securities Exchange Act of 1934**

**Date of Report (Date of earliest event reported): March 24, 2021**

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**KANSAS CITY SOUTHERN**

(Exact name of registrant as specified in its charter)

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<b>Delaware</b>	<b>1-4717</b>	<b>44-0663509</b>
(State or other jurisdiction of incorporation)	(Commission file number)	(IRS Employer Identification Number)

**427 West 12th Street, Kansas City, Missouri 64105**

(Address of principal executive offices) (Zip Code)

**Registrant's telephone number, including area code:**

**(816) 983-1303**

**Not Applicable**

(Former name or former address if changed since last report)

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

**Securities registered pursuant to Section 12(b) of the Act:**

<b>Title of each class</b>	<b>Trading Symbol(s)</b>	<b>Name of each exchange on which registered</b>
<b>Preferred Stock, Par Value \$25 Per Share, 4%, Noncumulative</b>	<b>KSU</b>	<b>New York Stock Exchange</b>
<b>Common Stock, \$.01 Per Share Par Value</b>	<b>KSU</b>	<b>New York Stock Exchange</b>

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

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**Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

As previously reported, on March 21, 2021, Kansas City Southern (the “Company”) entered into an Agreement and Plan of Merger (the “Merger Agreement”) with Canadian Pacific Railway Limited (“Canadian Pacific”). In connection with the transactions contemplated by the Merger Agreement, on March 24, 2021, The Kansas City Southern Railway Company, a subsidiary of the Company, entered into an agreement (each, a “Letter Agreement”) with each of Patrick Ottensmeyer, President and Chief Executive Officer, Michael Upchurch, Executive Vice President and Chief Financial Officer, Jeffrey Songer, Executive Vice President and Chief Operating Officer, Brian Hancock, Executive Vice President and Chief Innovation Officer and Michael Naatz, Executive Vice President and Chief Marketing Officer (each, a “Covered Executive”).

The Letter Agreements revise certain terms of the existing severance agreements with the Covered Executives, including: (1) providing that the protection period for enhanced change in control severance (the “CIC Protection Period”) will run from the date that the Mergers (as defined in the Merger Agreement) occur through the two year anniversary of the date that Canadian Pacific takes control of the Company (the “Control Date”); (2) clarifying that for purposes of determining a Covered Executive’s pro-rata bonus and target bonus component of cash severance, the “target award” will be the greater of the target award for the calendar year in which the Covered Executive’s employment is terminated and the target award for the calendar year in which the change in control occurs and (3) for Mr. Upchurch, establishing the multiple applicable to the base salary and target bonus components of his severance during the CIC Protection Period at three (3) times. In addition, in consideration of certain acknowledgements from the Covered Executives that the occurrence of the Mergers will not, in and of itself, constitute “Good Reason” under the Covered Executives’ severance agreements and that the non-competition period under the severance agreements for each of the Covered Executives other than Mr. Songer will be extended from one to two years, the Letter Agreements provide that in the event that a Covered Executive receives any payments or benefits that are subject to tax under Section 4999 of the Internal Revenue Code, as amended the Covered Executive will receive a payment that puts the Covered Executive in the same after-tax position as though such tax did not apply.

In connection with its efforts to promote retention and incentivize the completion of the Mergers, on March 25, 2021, the Company granted retention awards in the amount of \$1,590,000; \$811,500; \$807,000; \$763,500 and \$763,500 to each of Messrs. Ottensmeyer, Upchurch, Songer, Hancock and Naatz, respectively. Each award will vest and become payable in two installments: (1) 25% on the earlier of (a) the date on which the Mergers occur and (b) December 21, 2021, and (2) 75% on the earlier of (a) ninety (90) days after the Control Date and (b) March 31, 2023, subject, in each case, to the Covered Executive’s continued employment through the applicable vesting dates; *provided, however*, that if the Covered Executive experiences a qualifying termination, then the Covered Executive will be entitled to any then unpaid portion of the Covered Executive’s award.

The foregoing descriptions of the Letter Agreements and the retention awards are qualified in their entirety by reference to the form of Letter Agreement and form of Retention Award Agreement, copies of which are filed as Exhibits 10.1 and 10.2, respectively, herewith and are incorporated by reference herein.

**Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year**

On March 27, 2021, the Company’s Board of Directors amended Section 2 of Article III of the Company’s bylaws to allow the Board to consent to nominations of directors who would have otherwise been ineligible to be nominated for election to the Board as a result of such individual being at or above the retirement age (75) prior to the annual meeting at which such elections are to occur. A copy of the Company’s Bylaws is filed as Exhibit 3.2 herewith and is incorporated by reference herein.



**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits

<b><u>Exhibit No.</u></b>	<b><u>Description</u></b>
3.2	Kansas City Southern Bylaws, as amended and restated effective March 27, 2021
10.1	Form of Letter Agreement, dated March 24, 2021
10.2	Form of Retention Award Agreement, dated March 25, 2021
104	Cover page information from Kansas City Southern's Current Report on Form 8-K filed on March 30, 2021, formatted in iXBRL (Inline Extensible Business Reporting Language) and included as Exhibit 101.

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**SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Kansas City Southern

*Date: March 30, 2021*

By: /s/ Adam J. Godderz

Name: Adam J. Godderz

Title: Senior Vice President - Chief Legal  
Officer & Corporate Secretary

**BYLAWS  
OF  
KANSAS CITY SOUTHERN  
INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE**

**As amended and restated as of March 27, 2021**

These Amended and Restated Bylaws (the “Bylaws”) of Kansas City Southern, a Delaware corporation (the “Corporation”), hereby amend and restate the previous bylaws of the Corporation which are hereby deleted in their entirety and replaced with the following effective on March 27, 2021:

**ARTICLE I**

**CORPORATE OFFICES**

**Section 1. Registered Office.** The registered office of the Corporation shall be fixed in the Corporation’s certificate of incorporation. References in these Bylaws to the certificate of incorporation, as the same shall be amended and/or restated from time to time (the “Certificate”), shall include the terms of any certificate of designations of any series of preferred stock.

**Section 2. Other Offices.** The Corporation also may have offices at such other places, both within and without the State of Delaware, as the Board of Directors of the Corporation (the “Board of Directors”) may from time to time determine or the business of the Corporation may require.

**ARTICLE II**

**MEETINGS OF STOCKHOLDERS**

**Section 1. Place of Meetings.** Meetings of stockholders for any purpose may be held at such time and place, within or without the State of Delaware, as shall be designated by the Board of Directors and stated in the Corporation’s notice of the meeting.

**Section 2. Annual Meetings.** The annual meeting of the stockholders, at which they shall elect directors and transact such other business as may properly be brought before the meeting, shall be held on the first Thursday of May of each year, or such other date and at such time and at such place as shall be designated from time to time by the Board of Directors and stated in the Corporation’s notice of the meeting.

**Section 3. Advance Notice Procedures.** (a) *Advance Notice of Stockholder Business.* To be properly brought before the annual meeting, business must be brought (1) pursuant to the Corporation’s proxy materials with respect to such meeting, (2) by or at the direction of the Board of Directors, or (3) by a stockholder of the Corporation who (A) was a stockholder of record both at the time of giving notice for the meeting and at the time of the meeting and is entitled to vote at the meeting and (B) has timely complied in proper written form with the procedures set forth in this Section 3(a). In addition, for business to be properly brought before an annual meeting by a stockholder, such business must be a proper matter for stockholder action pursuant to these Bylaws and applicable law. Except for proposals properly made in accordance with Rule 14a-8 under the Securities Exchange Act of 1934, and the rules and regulations thereunder (as so amended and inclusive of such rules and regulations) (the “1934 Act”), and included in the notice of meeting given by or at the direction of the Board of Directors, for the avoidance of doubt, clause (3) above shall be the exclusive means for a stockholder to bring business before an annual meeting of stockholders.



(i) For business to be properly brought before an annual meeting by a stockholder pursuant to Section 3(a)(3) above, a stockholder's notice must set forth all information required under this Section 3(a) and must be received by the Secretary of the Corporation at the principal executive offices of the Corporation not earlier than the close of business on the 90th day nor later than the close of business on the 60th day before the one-year anniversary of the date of the preceding year's annual meeting; *provided, however*, that in the event that no annual meeting was held in the previous year or if the date of the annual meeting is advanced by more than 30 days prior to or delayed by more than 60 days after the one-year anniversary of the date of the previous year's annual meeting, then, for notice by the stockholder to be timely, it must be received by the Secretary of the Corporation not earlier than the close of business on the 90th day prior to such annual meeting and not later than the close of business on the later of (i) the 60th day prior to such annual meeting or (ii) the tenth day following the day on which a Public Announcement (as defined

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below) of the date of such annual meeting is first made. In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period for the giving of a stockholder's notice as described in this Section 3(a)(i). "Public Announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or a comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the 1934 Act.

(ii) To be in proper written form, a stockholder's notice to the Secretary of the Corporation must set forth as to each matter of business the stockholder intends to bring before the annual meeting: (1) a brief description of the business intended to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (2) the name and address, as they appear on the Corporation's books, of the stockholder proposing such business and any Stockholder Associated Person (as defined below), (3) the class or series and number of shares of the Corporation that are held of record or are beneficially owned, directly or indirectly, by the stockholder or any Stockholder Associated Person and any Derivative Instruments (as defined below) held or beneficially owned, directly or indirectly, by the stockholder or any Stockholder Associated Person, (4) whether and the extent to which any hedging or other transaction or series of transactions has been entered into by or on behalf of such stockholder or any Stockholder Associated Person with respect to any securities of the Corporation, and a description of any other agreement, arrangement or understanding (including any short position or any borrowing or lending of shares), the effect or intent of which is to mitigate loss to, or to manage the risk or benefit from share price changes for, or to increase or decrease the voting power of, such stockholder or any Stockholder Associated Person with respect to any securities of the Corporation, (5) any proxy, contract, arrangement, understanding or relationship pursuant to which the stockholder or a Stockholder Associated Person has a right to vote any shares of any security of the Corporation, (6) any rights to dividends on the shares of the Corporation beneficially owned by the stockholder or a Stockholder Associated Person that are separated or separable from the underlying shares of the Corporation, (7) any performance-related fees (other than asset-based fees) that the stockholder or a Stockholder Associated Person is entitled to based on any increase or decrease in the value of shares of the Corporation or Derivative Instruments, if any, as of the date of such notice, (8) any material interest of the stockholder or a Stockholder Associated Person in such business and (9) a statement whether such stockholder or any Stockholder Associated Person will deliver a proxy statement and form of proxy to holders of at least the percentage of the Corporation's voting shares required under applicable law to carry the proposal (such information provided and statements made as required by clauses (1) through (9), a "Business Solicitation Statement"). In addition, to be in proper written form, a stockholder's notice to the Secretary of the Corporation must be supplemented not later than ten days following the record date for notice of the meeting to disclose the information contained in clauses (3) through (7) above as of the record date for notice of the meeting. For purposes of this Section 3, a "Stockholder Associated Person" of any stockholder shall mean (i) any person controlling, directly or indirectly, or acting in concert with, such stockholder, (ii) any beneficial owner of shares of stock of the Corporation owned of record or beneficially by such stockholder and on whose behalf the proposal or nomination, as the case may be, is being made, or (iii) any person controlling, controlled by or under common control with such person referred to in the preceding clauses (i) and (ii). For purposes of this Section 3, a "Derivative Instrument" shall mean any option, warrant, convertible security, stock appreciation right or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the Corporation or with a value derived in whole or in part from the value of any class or series of capital stock of the Corporation or otherwise.

(iii) Without exception, no business shall be conducted at any annual meeting except in accordance with the provisions set forth in this Section 3(a) and, if applicable, Section 3(b). In addition, business proposed to be brought by a stockholder may not be brought before the annual meeting if such stockholder or a Stockholder Associated Person, as applicable, takes action contrary to the representations made in the Business Solicitation Statement applicable to such business or if the Business Solicitation Statement applicable to such business contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements therein not misleading. The Chair of the annual meeting shall, if the facts warrant, determine and declare at the annual meeting that business was not properly brought before the annual meeting in accordance with the provisions prescribed by these

Bylaws, and, if the Chair should so determine, he or she shall so declare at the annual meeting that any such business not properly brought before the annual meeting shall not be conducted.

(b) *Advance Notice of Director Nominations at Annual Meetings.* Notwithstanding anything in these Bylaws to the contrary, only persons who are nominated in accordance with the procedures set forth in this Section 3(b) shall be eligible for election or re-election as directors at an annual meeting of stockholders. Nominations of persons for election or re-election to the Board of Directors shall be made at an annual meeting of stockholders only (1) by or at the direction of the Board of Directors, (2) by a stockholder of the Corporation who (A) was a stockholder of record both at the time of giving notice for the meeting and at the time of the meeting and is entitled to vote at the meeting and (B) has complied with the notice procedures set forth in this Section 3(b) or, (3) with respect to a

qualifying nomination of a Stockholder Nominee at an annual meeting, pursuant to a Proxy Access Notice submitted by an Eligible Stockholder (as such terms are defined in Section 15), properly brought in compliance with Article II, Section 15. The foregoing clauses (2) and (3) shall be the exclusive means for a stockholder to make any nomination of a person or persons for election to the Board of Directors at an annual meeting. In addition to any other applicable requirements, for a nomination to be made by a stockholder, the stockholder must have given timely notice thereof in proper written form to the Secretary of the Corporation.

(i) To comply with clause (2) of Section 3(b) above, notice of a nomination to be made by a stockholder must set forth all information required under this Section 3(b) and must be received by the Secretary of the Corporation at the principal executive offices of the Corporation at the time set forth in, and in accordance with, Section 3(a)(i).

(ii) To be in proper written form for purposes of clause (2) of Section 3(b) above, such stockholder's notice to the Secretary must set forth:

(1) as to each person (a "nominee") whom the stockholder proposes to nominate for election or re-election as a director: (A) the name, age, business address and residence address of the nominee, (B) the principal occupation or employment of the nominee, (C) the class or series and number of shares of the Corporation that are held of record or are beneficially owned, directly or indirectly, by the nominee and any Derivative Instruments that are held of record or are beneficially owned, directly or indirectly, by the nominee, (D) whether and the extent to which any hedging or other transaction or series of transactions has been entered into by or on behalf of the nominee with respect to any securities of the Corporation, and a description of any other agreement, arrangement or understanding (including any short position or any borrowing or lending of shares), the effect or intent of which is to mitigate loss to, or to manage the risk or benefit of share price changes for, or to increase or decrease the voting power of, the nominee, (E) any proxy, contract, arrangement, understanding or relationship pursuant to which the nominee has a right to vote any shares of any security of the Corporation, (F) any rights to dividends on the shares of the Corporation beneficially owned by the nominee that are separated or separable from the underlying shares of the Corporation, (G) any performance-related fees (other than asset-based fees) that the nominee is entitled to, based on any increase or decrease in the value of shares of the Corporation or Derivative Instruments, if any, as of the date of such notice, (H) a description of all arrangements or understandings between the stockholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nominations are to be made by the stockholder, (I) a written statement executed by the nominee acknowledging that as a director of the Corporation, the nominee will owe a fiduciary duty under Delaware law with respect to the Corporation and its stockholders and giving consent to be named in the proxy statement, (J) a fully completed Director's Questionnaire, on the form supplied by the Corporation on its website ([www.kcsouthern.com](http://www.kcsouthern.com)), executed by the nominee, (K) a written representation and agreement that such person (i) is not and will not become a party to (I) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the Corporation, will act or vote on any issue or question (a "Voting Commitment") that has not been disclosed to the Corporation or (2) any Voting Commitment that could limit or interfere with such person's ability to comply, if elected as a director of the Corporation, with such person's fiduciary duties under applicable law, (ii) is not and will not become a party to any agreement, arrangement or reimbursement or indemnification in connection with service or action as a director that has not been disclosed therein, and (iii) in such person's individual capacity and on behalf of any person or entity on whose behalf the nomination is being made, would be in compliance, if elected as a director of the Corporation, and will comply with all applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Corporation, and (iv) will abide by the requirements of Article III, Section 5(b) of these Bylaws; and (L) any other information relating to the nominee that would be required to be disclosed about such nominee if proxies were being solicited for the election or re-election of the nominee as a director, or that is otherwise required, in each case pursuant to Regulation 14A under the 1934 Act (including without limitation the nominee's written consent to being named in the proxy statement, if any, as a nominee and to serving as a director if elected or re-elected, as the case may be); and

(2) as to such stockholder giving notice, (A) the information required to be provided pursuant to clauses (2) through (7) of Section 3(a)(ii) above, and the supplement referenced in the second sentence of Section 3(a)(ii) above (except that the references to “business” in such clauses shall instead refer to nominations of directors for purposes of this paragraph), and (B) a statement whether such stockholder or Stockholder Associated Person will deliver a proxy statement and form of proxy to holders of a number of the Corporation’s voting shares reasonably believed by such stockholder or Stockholder Associated Person to be necessary to elect or re-elect such nominee(s) (such information provided and statements made as required by clauses (A) and (B) above, a “Nominee Solicitation Statement”).

(iii) At the request of the Board of Directors, any person nominated by a stockholder for election or re-election as a director must furnish to the Secretary of the Corporation (1) that information required to be set forth in the stockholder’s notice of

nomination of such person as a director as of a date subsequent to the date on which the notice of such person's nomination was given, (2) such other information as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as an independent director or audit committee financial expert of the Corporation under applicable laws, securities exchange rules or regulations, or any publicly disclosed corporate governance guideline or committee charter of the Corporation and (3) such information as would be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such nominee. In the absence of the furnishing of such information if requested, such stockholder's nomination shall not be considered in proper form pursuant to this Section 3(b).

(iv) Without exception, no person shall be eligible for election or re-election as a director of the Corporation at an annual meeting of stockholders unless nominated in accordance with the provisions set forth in this Section 3(b). In addition, a nominee shall not be eligible for election or re-election if a stockholder or Stockholder Associated Person, as applicable, takes action contrary to the representations made in the Nominee Solicitation Statement applicable to such nominee or if the Nominee Solicitation Statement applicable to such nominee contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements therein not misleading. The Chair of the annual meeting shall, if the facts warrant, determine and declare at the annual meeting that a nomination was not made in accordance with the provisions prescribed by these Bylaws, and if the Chair should so determine, he or she shall so declare at the annual meeting, and the defective nomination shall be disregarded.

(c) *Other Requirements and Rights.* In addition to the foregoing provisions of this Section 3, a stockholder must also comply with all applicable requirements of state law and of the 1934 Act and the rules and regulations thereunder with respect to the matters set forth in this Section 3. Nothing in this Section 3 shall be deemed to affect any rights of:

- (i) a stockholder to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 (or any successor provision) under the 1934 Act;
- (ii) the Corporation to omit a proposal from the Corporation's proxy statement pursuant to Rule 14a-8 (or any successor provision) under the 1934 Act; or
- (iii) the holders of any series of preferred stock if and to the extent provided for under law, the Certificate or these Bylaws.

**Section 4. Notice of Stockholder Meetings.** Whenever stockholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, date and hour of the meeting, the record date for determining the stockholders entitled to vote at the meeting, if such date is different from the record date for determining stockholders entitled to notice of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Except as otherwise provided in the General Corporation Law of the State of Delaware (the "DGCL"), the Certificate or these Bylaws, the written notice of any meeting of stockholders shall be given not fewer than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting.

**Section 5. Quorum.** The holders of a majority of the aggregate voting power of the capital stock issued and outstanding and entitled to vote, present in person or represented by proxy, shall constitute a quorum for the transaction of business at all meetings of the stockholders, except as otherwise required by the DGCL, the Certificate or these Bylaws. Where a separate vote by a class or series or classes or series is required, a majority of the outstanding shares of such class or series or classes or series, present in person or represented by proxy, shall constitute a quorum (as to such class or series) entitled to take action with respect to that vote on that matter, except as otherwise provided by law, the Certificate or these Bylaws. Abstentions and non-votes by brokers are counted as present for purposes of determining a quorum.

If a quorum is not present or represented at any meeting of the stockholders, then either (i) the Chair of the meeting, or (ii) the holders of a majority of the shares entitled to vote at the meeting, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present or represented. At such adjourned meeting at which a quorum is present or represented, any business may be transacted that might have been transacted at the meeting as originally noticed.

**Section 6. Voting.** Each holder of shares of common stock and preferred stock shall be entitled to vote on the basis of one vote for each voting share held by such holder, except as otherwise provided by the Certificate.

Subject to Sections 3, 10 and 15 of this Article II, stockholders shall elect directors of the Corporation at an annual or special meeting of stockholders by the affirmative vote of a majority of the votes cast, in person or by proxy, for or against each director by the holders of outstanding shares of common stock or preferred stock entitled to vote for the election of directors; provided that if the number of nominees, as of the time of mailing of the Corporation's proxy statement with respect to such meeting, exceeds the number of directors to be elected, the stockholders shall instead elect the directors by a plurality vote.

**Section 7. List of Stockholders Entitled to Vote.** The officer who has charge of the stock ledger of the Corporation shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting; *provided, however*, if the record date for determining the stockholders entitled to vote is fewer than ten (10) days before the meeting date, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date. The stockholder list shall be arranged in alphabetical order and show the address of each stockholder and the number of shares registered in the name of each stockholder. The Corporation shall not be required to include electronic mail addresses or other electronic contact information on such list.

**Section 8. Inspectors.** For each meeting of stockholders there may be appointed by the Board of Directors or by the Chair of the meeting three (3) inspectors of election. If any inspector shall fail or be unable to serve as inspector or for any reason be unable to complete his duties, an alternate inspector shall be appointed by the Board of Directors or the Chair of the meeting. The inspectors of election shall examine and canvass the proxies and ballots, and make and submit a signed report of the votes cast at the meeting, which shall be entered at large upon the records.

**Section 9. Inspectors' Oath.** An inspector, before he enters on the duties of his office, shall take and subscribe an oath substantially in the following form before any officer authorized by law to administer oaths:

"I do solemnly swear that I will execute the duties of an inspector of the election now to be held with strict impartiality and according to the best of my ability."

**Section 10. Special Meeting.** (a) Special meetings of the stockholders for any purpose or purposes, unless otherwise prescribed by statute or by the Certificate, may be called only by (1) the Board of Directors, (2) the Chair of the Board of Directors, (3) the Chief Executive Officer (meetings called under (Section 10(a)(1), (2) and (3) are referred to as a "Corporation Requested Special Meeting"), or (4) subject to Section 10(c) below, by the Secretary at the written request in proper form of one or more stockholders of record (a "Stockholder Requested Special Meeting") who have continuously held for at least one year prior to the date such request is delivered to the Secretary a "net long position" (as defined below) in shares of common stock of the Corporation representing in the aggregate at least fifteen percent (15%) of the outstanding shares of common stock of the Corporation (the "Requisite Percent"). Special meetings of the stockholders may not be called by any other person or persons.

(b) (1) "Net long position" of a person shall mean the shares of stock of the Corporation that such person or, if such person is a nominee, custodian or other agent that is holding the shares on behalf of another person (the "beneficial owner"), that such beneficial owner would then be deemed to own pursuant to Rule 200(b) under the 1934 Act (as such Rule is in effect on the date on which the Bylaws are first amended to include this Section 10(b)), excluding, at any time, any shares as to which such stockholder or beneficial owner, as the case may be, does not then have the right to vote or direct the vote and excluding, at any time, any shares as to which such person or beneficial owner (or any Affiliate or Associate of such person or beneficial owner), as the case may be, had directly or indirectly entered into (or caused to be entered into) and not yet terminated a derivative or other agreement, arrangement or understanding that hedges or transfers, in whole or in part, directly or indirectly, any of the economic consequences of ownership of such shares, and further subtracting from any person's ownership of shares at any time such person's (and such person's Affiliates' and Associates') "short position," (as defined pursuant to Rule 14e-4(a) under the 1934 Act (as such Rule is in effect on the date on which



the Bylaws are first amended to include this Section 10(b)). Whether the requesting stockholders have met the requirements of this Section 10(b) and the other provisions of Section 10 shall be determined in good faith by the Board of Directors or its designees, which determination shall be conclusive and binding on the Corporation and the stockholders.

(2) An “Affiliate” of a person shall mean another person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such person.

(3) An “Associate” of a person shall mean (i) any corporation or organization (other than a majority-owned subsidiary of such person) of which such person is an officer or partner or is, directly or indirectly, the beneficial owner of ten percent or more of any class of equity securities; (ii) any trust or other estate in which such person has a substantial beneficial interest or as to which such

person serves as trustee or in a similar fiduciary capacity; and (iii) any relative or spouse of such person, or any relative of such spouse, who has the same home as such person or who is a director or officer of such person or any of its parents or subsidiaries.

(c) A request for a Stockholder Requested Special Meeting must be signed by stockholders (or their duly authorized agents) holding the Requisite Percent and be delivered to the Secretary at the principal executive offices of the Corporation by registered mail, return receipt requested. Such request shall (i) set forth a statement of the specific purpose or purposes of the meeting and the matters proposed to be acted on at such special meeting, (ii) bear the date of signature of each such stockholder (or duly authorized agent) signing the request, (iii) include evidence of the fact and duration of each such stockholder's beneficial ownership of such common stock consistent with that which is required under Regulation 14A under the 1934 Act, (iv) set forth all information relating to each such stockholder that must be disclosed in solicitations of proxies for election of directors in an election contest (even if an election contest is not involved), or is otherwise required, in each case, pursuant to Regulation 14A under the 1934 Act, (v) contain the information required by Article II, Section 3 of these Bylaws, (vi) if the purpose of the Stockholder Requested Meeting includes the election of one or more directors, contain any other information that would be required to be set forth with respect to a proposed nominee pursuant to Article II, Section 3 of these Bylaws, including the completed and signed questionnaire, representation and agreement required by Article II, Section 3(b)(ii)(1)(J) and (K) and (vii) include an acknowledgment by each stockholder and any duly authorized agent that any disposition of shares of common stock of the Corporation as to which such stockholder has a net long position as of the date of delivery of the special meeting request and prior to the date for the Stockholder Requested Special Meeting requested by such stockholder shall constitute a revocation of such request with respect to such shares. In addition, each such stockholder and any duly authorized agent shall promptly provide any other information reasonably requested by the Corporation to allow it to satisfy its obligations under applicable law. Any requesting stockholder may revoke a request for a special meeting at any time by written revocation delivered to the Secretary at the principal executive offices of the Corporation. If, following such revocation at any time before the date of the Stockholder Requested Special Meeting, the remaining requests are from stockholders holding in the aggregate less than the Requisite Percent, the Board of Directors, in its discretion, may cancel the Stockholder Requested Special Meeting.

(d) Notwithstanding the foregoing, the Secretary shall not be required to call a special meeting of stockholders if (i) the Board has called or calls an annual or special meeting of stockholders to be held not later than sixty (60) days after the date on which a valid request has been delivered to the Secretary (the "Delivery Date"); or (ii) the request (A) is received by the Secretary during the period commencing ninety (90) days prior to the first anniversary of the date of the immediately preceding annual meeting and ending on the date of the next annual meeting; (B) contains an item of business identical or substantially similar (a "Similar Item") to an item of business that was presented at any meeting of stockholders held within one hundred and twenty (120) days prior to the Delivery Date (and, for purposes of this clause (B) the election of directors shall be deemed a "Similar Item" with respect to all items of business involving the election or removal of directors or any similar matter); (C) relates to an item of business that is not a proper subject for action by the stockholders of the Corporation under applicable law; (D) was made in a manner that involved a violation of Regulation 14A under the 1934 Act or other applicable law; or (E) does not comply with the provisions of this Section 10.

(e) Any Stockholder Requested Special Meeting shall be held at such date, time and place within or without the state of Delaware as may be fixed by the Board; *provided, however*, that the meeting shall not be held more than one hundred twenty (120) days after receipt of a valid request. In fixing a date, time and place for any Stockholder Requested Special Meeting, the Board of Directors may consider such factors as it deems relevant within the good faith exercise of business judgment, including, without limitation, the nature of the matters to be considered, the facts and circumstances surrounding any request for meeting and any plan of the Board of Directors to call an annual meeting or a special meeting.

(f) Business transacted at any Stockholder Requested Special Meeting shall be limited to the purpose(s) stated in the request; *provided, however*, that nothing herein shall prohibit the Corporation from submitting additional matters to a vote of the stockholders at any Stockholder Requested Special Meeting.

(g) In determining whether special meeting requests have met the requirements of this Section 10, multiple special meeting requests will be considered together only if (i) each special meeting request identifies substantially the same purpose or purposes of the requested special meeting and substantially the same matters proposed to be acted on at the Stockholder Requested Special Meeting (in each case as determined in good faith by the Board of Directors), and (ii) such special meeting requests have been delivered to the Secretary within 60 days of the delivery to the Secretary of the earliest dated special meeting request relating to such item(s) of business.

(h) If none of the stockholders who submitted a special meeting request appears or sends a qualified representative to present the item of business submitted by the stockholders for consideration at the Stockholder Requested Special Meeting, such item of business shall not be submitted for vote of the stockholders at such Stockholder Requested Special Meeting, notwithstanding that proxies in respect of such vote may have been received by the Corporation or such stockholder(s).

(i) The Board of Directors may cancel, postpone or reschedule any previously scheduled special meeting called by the Board of Directors at any time, before or after the notice for such meeting has been sent to stockholders.

(j) Nominations of persons for election to the Board of Directors may be made at a Corporation Requested Special Meeting at which directors are to be elected pursuant to the Corporation's notice of meeting (i) by or at the direction of the Board of Directors or (ii) provided that the Board of Directors has determined that directors shall be elected at such meeting, by any stockholder of the Corporation who (A) is a stockholder of record both at the time of giving notice for the meeting and at the time of the meeting, (B) is entitled to vote at the meeting, and (C) complies with the notice procedures set forth in these Bylaws as to such nomination. The foregoing clause (ii) shall be the exclusive means for a stockholder to make any nomination of a person or persons for election to the Board of Directors at a Corporation Requested Special Meeting. In the event of a Corporation Requested Special Meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder may nominate a person or persons (as the case may be) for election to such position(s) as specified in the Corporation's notice of meeting, if the stockholder's notice required by Article II, Section 3 of these Bylaws with respect to any nomination (including the completed and signed questionnaire, representation and agreement required by Article II, Sections 3(b)(ii)(1)(J) and (K) of these Bylaws) shall be delivered to the Secretary of the Corporation at the principal executive offices of the Corporation not earlier than the close of business on the 90th day prior to the date of such special meeting and not later than the close of business on the 60th day prior to the date of such special meeting or, if later, the tenth day following the day on which Public Announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. The provisions of Article II, Sections 3(b)(iii), 3(b)(iv) and 3(c) shall also apply to any such stockholder nomination. In no event shall any adjournment or postponement of a special meeting or the announcement thereof commence a new time period for the giving of a stockholder's notice as described above.

**Section 11. Organization.** The Chair of the Board of Directors, and in his absence the Chief Executive Officer, the President or one of the Vice Presidents, shall call meetings of the stockholders to order and act as Chair of such meeting. In the absence of all these officers, the Board of Directors may appoint a Chair of the meeting. The Secretary of the Corporation shall act as secretary at all meetings of the stockholders; but the Board of Directors may designate an Assistant Secretary for that purpose before the meeting and, if no such designation shall have been made, then such designation may be made by the Chair of the meeting. The conduct of any meeting of the stockholders shall be governed by such rules, regulations and procedures as the Chair of the meeting, in his sole and exclusive discretion shall determine.

**Section 12. Adjourned Meeting; Notice.** When a meeting is adjourned to another time and/or place, unless these Bylaws otherwise require, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days or a new record date for stockholders entitled to vote is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

**Section 13. Record Dates.** (a) In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors and which record date shall not be more than sixty (60) nor fewer than ten (10) days before the date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it

fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of and to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however*, that the Board of Directors may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

**Section 14. Proxies.** Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder by proxy authorized by an instrument in writing or by a transmission permitted by law filed in accordance with the procedure established for the meeting, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212 of the DGCL. A written proxy may be in the form of a telegram, cablegram, or other means of electronic transmission permitted by law, which results in a writing from such stockholder or by his attorney.

**Section 15. Inclusion of Stockholder Director Nominations in the Corporation's Proxy Materials.** (a) Subject to the terms and conditions set forth in these Bylaws, the Corporation shall include in its proxy materials for an annual meeting of stockholders the name, together with the Required Information (as defined below), of any person nominated for election (the "Stockholder Nominee") to the Board of Directors by a stockholder or group of stockholders that satisfy the requirements of this Section 15, including qualifying as an Eligible Shareholder (as defined in paragraph (e) below) and that expressly elects at the time of providing the written notice required by this Section 15 (a "Proxy Access Notice") to have its nominee included in the Corporation's proxy materials pursuant to this Section 15. For the purposes of this Section 15:

(i) "Voting Stock" shall mean outstanding shares of capital stock of the Corporation entitled to vote generally for the election of directors;

(ii) "Constituent Holder" shall mean any stockholder, collective investment fund included within a Qualifying Fund (as defined in paragraph (e) below) or beneficial holder whose stock ownership is counted for the purposes of qualifying as holding the Proxy Access Request Required Shares (as defined in paragraph (e) below) or qualifying as an Eligible Stockholder (as defined in paragraph (e) below);

(iii) "Affiliate" and "Associate" shall have the meanings ascribed thereto in Article II, Section 10(b); *provided, however*, that the term "partner" as used in the definition of "Associate" shall not include any limited partner that is not involved in the management of the relevant partnership; and

(iv) a stockholder (including any Constituent Holder) shall be deemed to "own" only those outstanding shares of Voting Stock as to which the stockholder itself (or such Constituent Holder itself) possesses both (1) the full voting and investment rights pertaining to the shares and (2) the full economic interest in (including the opportunity for profit and risk of loss on) such shares. The number of shares calculated in accordance with the foregoing clauses (1) and (2) shall be deemed not to include (and to the extent any of the following arrangements have been entered into by Affiliates of the stockholder (or of any Constituent Holder), shall be reduced by) any shares (x) sold by such stockholder or Constituent Holder (or any of either's Affiliates) in any transaction that has not been settled or closed, including any short sale, (y) borrowed by such stockholder or Constituent Holder (or any of either's Affiliates) for any purposes or purchased by such stockholder or Constituent Holder (or any of either's Affiliates) pursuant to an agreement to resell, or (z) subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar agreement entered into by such stockholder or Constituent Holder (or any of either's Affiliates), whether any such instrument or agreement is to be settled with shares or with cash based on the notional amount or value of Voting Stock, in any such case which instrument or agreement has, or is

intended to have, or if exercised by either party thereto would have, the purpose or effect of (A) reducing in any manner, to any extent or at any time in the future, such stockholder's or Constituent Holder's (or either's Affiliate's) full right to vote or direct the voting of any such shares, and/or (B) hedging, offsetting or altering to any degree gain or loss arising from the full economic ownership of such shares by such stockholder or Constituent Holder (or either's Affiliate), other than any such arrangements solely involving an exchange listed multi-industry market index fund in which Voting Stock represents at the time of entry into such arrangement less than 10% of the proportionate value of such index. A stockholder (including any Constituent Holder) shall "own" shares held in the name of a nominee or other intermediary so long as the stockholder itself (or such Constituent Holder itself) retains the right to instruct how the shares are voted with respect to the election of Directors and the right to direct the disposition thereof and possesses the full economic interest in the shares. A stockholder's (including any Constituent Holder's) ownership of shares shall be deemed to continue during any period in which such person has loaned such shares and retained the right

to recall such shares upon giving no more than five days' notice or has delegated any voting power over such shares by means of a proxy, power of attorney or other instrument or arrangement which in all such cases is revocable at any time by the stockholder. The terms "owned," "owning" and other variations of the word "own" shall have correlative meanings.

(b) For purposes of this Section 15, the "Required Information" that the Corporation will include in its proxy statement is (i) the information concerning the Stockholder Nominee and the Eligible Stockholder that the Corporation determines is required to be disclosed in the Corporation's proxy statement by the regulations promulgated under the 1934 Act; and (ii) if the Eligible Stockholder so elects, a Statement (as defined in paragraph (g) below). The Corporation shall also include the name of the Stockholder Nominee in its proxy card. For the avoidance of doubt, and any other provision of these Bylaws notwithstanding, the Corporation may in its sole discretion solicit against, and include in the proxy statement its own statements or other information relating to, any Eligible Stockholder and/or Stockholder Nominee, including any information provided to the Corporation with respect to the foregoing.

(c) To be timely, a stockholder's Proxy Access Notice must be received by the Secretary of the Corporation at the principal executive offices of the Corporation not earlier than the close of business on the 150th day and not later than the close of business on the 120th day before the one-year anniversary of the filing date of the definitive proxy statement for the preceding year's annual meeting. In no event shall any adjournment or postponement of an annual meeting, the date of which has been announced by the Corporation, commence a new time period for the giving of a Proxy Access Notice.

(d) The number of Stockholder Nominees (including Stockholder Nominees that were submitted by an Eligible Stockholder for inclusion in the Corporation's proxy materials pursuant to this Section 15 but either are subsequently withdrawn or that the Board of Directors decides to nominate as Board of Directors' nominees) appearing in the Corporation's proxy materials with respect to an annual meeting of stockholders shall not exceed the greater of (x) two and (y) the largest whole number that does not exceed 20% of the number of directors in office as of the last day on which a Proxy Access Notice may be delivered in accordance with the procedures set forth in this Section 15 (such greater number, the "Permitted Number"); *provided, however*, that the Permitted Number shall be reduced by:

(i) the number of such director candidates for which the Corporation shall have received one or more stockholder notices nominating director candidates pursuant to Article II, Section 3;

(ii) the number of directors in office or director candidates that in either case will be included in the Corporation's proxy materials with respect to such annual meeting as an unopposed (by the Corporation) nominee pursuant to any agreement, arrangement or other understanding with any stockholder or group of stockholders (other than any such agreement, arrangement or understanding entered into in connection with an acquisition of Voting Stock, by such stockholder or group of stockholders, from the Corporation), other than any such director referred to in this clause who at the time of such annual meeting will have served as a director continuously, as a nominee of the Board of Directors, for at least two annual terms, but only to the extent the Permitted Number after such reduction with respect to this clause equals or exceeds one; and

(iii) the number of directors in office that will be included in the Corporation's proxy materials with respect to such annual meeting for whom access to the Corporation's proxy materials was previously provided pursuant to this Section 15, other than any such director referred to in this clause who at the time of such annual meeting will have served as a director continuously, as a nominee of the Board of Directors, for at least two annual terms;

*provided, further*, that in the event the Board of Directors resolves to reduce the size of the Board of Directors effective on or prior to the date of the annual meeting, the Permitted Number shall be calculated based on the number of directors in office as so reduced. In the event that the number of Stockholder Nominees submitted by Eligible Stockholders pursuant to this Section 15 exceeds the Permitted



Number, each Eligible Stockholder will select one Stockholder Nominee for inclusion in the Corporation's proxy materials until the Permitted Number is reached, going in order of the amount (largest to smallest) of shares of Voting Stock each Eligible Stockholder disclosed as owned in its Proxy Access Notice submitted to the Corporation. If the Permitted Number is not reached after each Eligible Stockholder has selected one Stockholder Nominee, this selection process will continue as many times as necessary, following the same order each time, until the Permitted Number is reached.

(e) An "Eligible Stockholder" is one or more stockholders of record who own and have owned, or are acting on behalf of one or more beneficial owners who own and have owned (in each case as defined above), in each case continuously for at least three years as of both the date that the Proxy Access Notice is received by the Corporation pursuant to this Section 15, and as of the

record date for determining stockholders eligible to vote at the annual meeting, at least three percent of the aggregate voting power of the Voting Stock (the “Proxy Access Request Required Shares”), and who continue to own the Proxy Access Request Required Shares at all times between the date such Proxy Access Notice is received by the Corporation and the date of the applicable annual meeting, provided that the aggregate number of stockholders, and, if and to the extent that a stockholder is acting on behalf of one or more beneficial owners, of such beneficial owners, whose stock ownership is counted for the purpose of satisfying the foregoing ownership requirement shall not exceed 20. Two or more collective investment funds that are (i) part of the same family of funds or sponsored by the same employer or (ii) a “group of investment companies” as such term is defined in Section 12(d)(1)(G)(ii) of the Investment Company Act of 1940 (a “Qualifying Fund”) shall be treated as one stockholder for the purpose of determining the aggregate number of stockholders in this paragraph (e), provided that each fund included within a Qualifying Fund otherwise meets the requirements set forth in this Section 15. No shares may be attributed to more than one group constituting an Eligible Stockholder under this Section 15 (and, for the avoidance of doubt, no stockholder may be a member of more than one group constituting an Eligible Stockholder). A record holder acting on behalf of one or more beneficial owners will not be counted separately as a stockholder with respect to the shares owned by beneficial owners on whose behalf such record holder has been directed in writing to act, but each such beneficial owner will be counted separately, subject to the other provisions of this paragraph (e), for purposes of determining the number of stockholders whose holdings may be considered as part of an Eligible Stockholder’s holdings. For the avoidance of doubt, Proxy Access Request Required Shares will qualify as such if and only if the beneficial owner of such shares as of the date of the Proxy Access Notice has itself individually beneficially owned such shares continuously for the three-year period ending on that date and through the other applicable dates referred to above (in addition to the other applicable requirements being met).

(f) No later than the final date when a nomination pursuant to this Section 15 may be delivered to the Corporation, an Eligible Stockholder (including each Constituent Holder) must provide the following information in writing to the Secretary of the Corporation:

(i) with respect to each Constituent Holder, the name and address of, and number of shares of Voting Stock owned by, such person;

(ii) one or more written statements from the record holder of the shares (and from each intermediary through which the shares are or have been held during the requisite three-year holding period) verifying that, as of a date within seven calendar days prior to the date the Proxy Access Notice is delivered to the Corporation, such person owns, and has owned continuously for the preceding three years, the Proxy Access Request Required Shares, and such person’s agreement to provide:

(1) within ten days after the record date for the annual meeting, written statements from the record holder and intermediaries verifying such person’s continuous ownership of the Proxy Access Request Required Shares through the record date, together with any additional information reasonably requested to verify such person’s ownership of the Proxy Access Request Required Shares; and

(2) immediate notice if the Eligible Stockholder ceases to own any of the Proxy Access Request Required Shares prior to the date of the applicable annual meeting of stockholders;

(iii) any information relating to such Eligible Stockholder (including any Constituent Holder) and their respective Affiliates or Associates or others acting in concert therewith, and any information relating to such Eligible Stockholder’s Stockholder Nominee(s), in each case that would be required to be disclosed in a proxy statement and form of proxy or other filings required to be made in connection with solicitations of proxies for the election of such Stockholder Nominee(s) in a contested election pursuant to Section 14 of the 1934 Act;

(iv) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among the Eligible Stockholder (including any Constituent Holder) and its or their respective Affiliates and Associates, or others acting in concert therewith, on the one hand, and each of such Eligible Stockholder's Stockholder Nominee(s), and his or her respective Affiliates and Associates, or others acting in concert therewith, on the other hand, including without limitation all information that would be required to be disclosed pursuant to Rule 404 promulgated under Regulation S-K if the Eligible Stockholder (including any Constituent Holder), or any Affiliate or Associate thereof or person acting in concert therewith, were the "registrant" for purposes of such rule and the Stockholder Nominee were a director or executive officer of such registrant;

(v) a representation that such person:

(1) acquired the Proxy Access Request Required Shares in the ordinary course of business and not with the intent to change or influence control of the Corporation, and does not presently have such intent;

(2) has not nominated and will not nominate for election to the Board of Directors at the annual meeting any person other than the Stockholder Nominee(s) being nominated pursuant to this Section 15;

(3) has not engaged and will not engage in, and has not and will not be a “participant” in another person’s, “solicitation” within the meaning of Rule 14a-1(l) under the 1934 Act in support of the election of any individual as a director at the annual meeting other than its Stockholder Nominee(s) or a nominee of the Board of Directors;

(4) will not distribute to any stockholder any form of proxy for the annual meeting other than the form distributed by the Corporation; and

(5) will provide facts, statements and other information in all communications with the Corporation and its stockholders that are and will be true and correct in all material respects and do not and will not omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, and will otherwise comply with all applicable laws, rules and regulations in connection with any actions taken pursuant to this Section 15;

(vi) in the case of a nomination by a group of stockholders that together is such an Eligible Stockholder, the designation by all group members of one group member that is authorized to act on behalf of all members of the nominating stockholder group with respect to the nomination and matters related thereto, including withdrawal of the nomination; and

(vii) an undertaking that such person agrees to:

(1) assume all liability stemming from, and indemnify and hold harmless the Corporation and each of its directors, officers, and employees individually against any liability, loss or damages in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against the Corporation or any of its directors, officers or employees arising out of any legal or regulatory violation arising out of the Eligible Stockholder’s communications with the stockholders of the Corporation or out of the information that the Eligible Stockholder (including such person) provided to the Corporation; and

(2) file with the Securities and Exchange Commission any solicitation by the Eligible Stockholder of stockholders of the Corporation relating to the annual meeting at which the Stockholder Nominee will be nominated.

In addition, no later than the final date when a nomination pursuant to this Section 15 may be delivered to the Corporation, a Qualifying Fund whose stock ownership is counted for purposes of qualifying as an Eligible Stockholder must provide to the Secretary of the Corporation documentation reasonably satisfactory to the Board of Directors that demonstrates that the funds included within the Qualifying Fund satisfy the definition thereof. In order to be considered timely, any information required by this Section 15 to be provided to the Corporation must be supplemented (by delivery to the Secretary of the Corporation) (A) no later than ten days following the record date for the applicable annual meeting, to disclose the foregoing information as of such record date, and (B) no later than the fifth day before the annual meeting, to disclose the foregoing information as of the date that is no earlier than ten days prior to such annual meeting. For the avoidance of doubt, the requirement to update and supplement such information shall not permit any Eligible Stockholder or other person to change or add any proposed Stockholder Nominee or be deemed to cure any defects or limit the remedies (including without limitation under these Bylaws) available to the Corporation relating to any defect.

(g) The Eligible Stockholder may provide to the Secretary of the Corporation, at the time the information required by this Section 15 is originally provided, a written statement for inclusion in the Corporation's proxy statement for the annual meeting, not to exceed 500 words, in support of the candidacy of such Eligible Stockholder's Stockholder Nominee (the "Statement"). Notwithstanding anything to the contrary contained in this Section 15, the Corporation may omit from its proxy materials any information or Statement that it, in good faith, believes is materially false or misleading, omits to state any material fact, or would violate any applicable law or regulation.

(h) No later than the final date when a nomination pursuant to this Section 15 may be delivered to the Corporation, each Stockholder Nominee must provide the information required by Article II, Section 3(b)(ii)(1) and also:

(i) provide an executed agreement, in a form deemed satisfactory by the Board of Directors or its designee (which form shall be provided by the Corporation reasonably promptly upon written request of a stockholder), that such Stockholder Nominee:

(1) consents to being named in the Corporation's proxy statement and form of proxy card (and will not agree to be named in any other person's proxy statement or form of proxy card) as a nominee and to serving as a director of the Corporation if elected;

(2) agrees, if elected, to adhere to the Corporation's Corporate Governance Guidelines and Code of Business Conduct and Ethics and any other publicly available Corporation policies and guidelines applicable to directors; and

(3) is not and will not become a party to any compensatory, payment or other financial agreement, arrangement or understanding with any person or entity in connection with his or her nomination, service or action as a director of the Corporation, or any agreement, arrangement or understanding with any person or entity as to how the Stockholder Nominee would vote or act on any issue or question as a director, in each case that has not been disclosed to the Corporation;

(ii) complete, sign and submit all questionnaires, representations and agreements required by these Bylaws or of the Corporation's directors generally; and

(iii) provide such additional information as necessary to permit the Board of Directors to determine if any of the matters referred to in paragraph (j) below applies and to determine if such Stockholder Nominee has any direct or indirect relationship with the Corporation or is or has been subject to any event specified in Item 401(f) of Regulation S-K (or successor rule) of the Securities and Exchange Commission.

In the event that any information or communications provided by the Eligible Stockholder (or any Constituent Holder) or the Stockholder Nominee to the Corporation or its stockholders ceases to be true and correct in all material respects or omits a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading, each Eligible Stockholder or Stockholder Nominee, as the case may be, shall promptly notify the Secretary of the Corporation of any defect in such previously provided information and of the information that is required to correct any such defect; it being understood for the avoidance of doubt that providing any such notification shall not be deemed to cure any such defect or limit the remedies (including without limitation under these Bylaws) available to the Corporation relating to any such defect.

(i) Any Stockholder Nominee who is included in the Corporation's proxy materials for a particular annual meeting of stockholders but withdraws from or becomes ineligible or unavailable for election at that annual meeting (other than by reason of such Stockholder Nominee's disability or other health reason) will be ineligible to be a Stockholder Nominee pursuant to this Section 15 for the next two annual meetings. Any Stockholder Nominee who is included in the Corporation's proxy statement for a particular annual meeting of stockholders, but subsequently is determined not to satisfy the eligibility requirements of this Section 15 or any other provision of these Bylaws, the Corporation's Certificate of Incorporation or other applicable regulation any time before the annual meeting of stockholders, will not be eligible for election at the relevant annual meeting of stockholders.

(j) The Corporation shall not be required to include, pursuant to this Section 15, a Stockholder Nominee in its proxy materials for any annual meeting of stockholders, or, if the proxy statement already has been filed, to allow the nomination of a Stockholder Nominee, notwithstanding that proxies in respect of such vote may have been received by the Corporation:

(i) who is not independent under the listing standards of the principal U.S. exchange upon which the common stock of the Corporation is listed, any applicable rules of the Securities and Exchange Commission and any publicly disclosed standards used

by the Board of Directors in determining and disclosing independence of the Corporation's directors, in each case as determined by the Board of Directors;

(ii) whose service as a member of the Board of Directors would violate or cause the Corporation to be in violation of these Bylaws, the Corporation's Certificate of Incorporation, the rules and listing standards of the principal U.S. exchange upon which the common stock of the Corporation is traded, or any applicable law, rule or regulation;

(iii) if the Eligible Stockholder (or any Constituent Holder) or applicable nominee otherwise breaches or fails to comply in any material respect with its obligations pursuant to this Section 15 or any agreement, representation or undertaking required by this Section 15; or

(iv) if the Eligible Stockholder ceases to be an Eligible Stockholder for any reason, including but not limited to not owning the Proxy Access Request Required Shares through the date of the applicable annual meeting.

For the purposes of this paragraph (j), clauses (i) and (ii) and, to the extent related to a breach or failure by the Stockholder Nominee, clause (iii) will result in the exclusion from the proxy materials pursuant to this Section 15 of the specific Stockholder Nominee to whom the ineligibility applies, or, if the proxy statement already has been filed, the ineligibility of such Stockholder Nominee to be nominated; *provided, however*, that clause (iv) and, to the extent related to a breach or failure by an Eligible Stockholder (or any Constituent Holder), clause (iii) will result in the Voting Stock owned by such Eligible Stockholder (or Constituent Holder) being excluded from the Proxy Access Request Required Shares (and, if as a result the Proxy Access Notice shall no longer have been filed by an Eligible Stockholder, the exclusion from the proxy materials pursuant to this Section 15 of all of the applicable stockholder's Stockholder Nominees from the applicable annual meeting of stockholders or, if the proxy statement has already been filed, the ineligibility of all of such stockholder's Stockholder Nominees to be nominated).

### ARTICLE III BOARD OF DIRECTORS

**Section 1. General Powers.** The general management of the business and affairs and all the corporate powers of the Corporation shall be vested in and exercised by its Board of Directors which shall exercise all of the powers of the Corporation except such as are by statute, or by the Certificate or by these Bylaws, conferred upon or reserved to the stockholders. The directors shall act only as a Board of Directors and the individual directors shall have no power as such.

**Section 2. Number, Term and Qualifications.** The number of directors shall not be less than three nor more than eighteen, the exact number of directors to be determined from time to time by resolution adopted by a majority of the whole Board of Directors, and such exact number shall be eighteen until otherwise determined by resolution adopted by a majority of the whole Board of Directors. Directors need not be stockholders.

Subject to the rights of the holders of any Preferred Stock or any series of New Series Preferred Stock to elect Directors:

(a) Commencing with the election of directors at the 2015 Annual Meeting of Stockholders, two classes of directors will remain: (i) the directors in the class that was elected at the 2013 Annual Meeting of Stockholders and having a term that expires at the 2016 Annual Meeting of Stockholders and (ii) the directors in the class that is to be elected at the 2014 Annual Meeting of Stockholders and having a term that expires at the 2017 Annual Meeting of Stockholders. Directors elected at the 2015 Annual Meeting of Stockholders shall be elected for a one-year term expiring at the 2016 Annual Meeting of Stockholders.

(b) Commencing with the election of directors at the 2016 Annual Meeting of the Stockholders, one class of directors will remain; those directors elected at the 2014 Annual Meeting of Stockholders and having a term that expires at the 2017 Annual Meeting of Stockholders. Directors elected at the 2016 Annual Meeting of Stockholders shall be elected for a one-year term expiring at the 2017 Annual Meeting of Stockholders.

(c) From and after the election of directors at the 2017 Annual Meeting of Stockholder, the Board of Directors shall cease to be classified and the directors elected at the 2017 Annual Meeting of Stockholders (and each annual meeting of the stockholders thereafter) shall be elected for a term expiring at the following annual meeting of stockholders.

In the event of any increase or decrease in the authorized number of directors at any time when the Board of Directors is divided into a class or classes: (a) each director then serving shall continue as a director of the class of which he or she is a member until



the expiration of the director's term or the director's death, retirement, resignation, or removal; (b) each newly created directorship on the Board of Directors that results from an increase in the number of directors and any vacancy occurring in the Board of Directors shall be filled only by a majority of the directors then in office, though less than a quorum, pursuant to Section 223 of the Delaware Corporation Law. Any director elected to fill a newly created directorship that results from an increase in the number of directors shall be elected for a term expiring at the next annual meeting of the stockholders, and any director elected to fill a vacancy not resulting from an increase in the number of directors shall have the same remaining term as that of the predecessor director. Current directors serving in a class that was elected for a three-year term at the annual meeting of stockholders from 2012 through 2014 may be removed only for cause. All other directors may be removed either with or without cause.

Unless otherwise approved by the Board of Directors, no person who has attained the age of 75 shall be eligible to be nominated or to serve as a member of the Board of Directors, but any person who shall attain the age of 75 during the term of directorship to which he was elected shall be eligible to serve the remainder of such term. No former Chief Executive Officer of the Company is eligible to be elected or appointed to the Board of Directors.

**Section 3. Election of Directors.** Directors shall be elected at the annual meetings of stockholders by ballot in the manner provided in these Bylaws and the Certificate.

**Section 4. Newly Created Directorships and Vacancies.** Newly created directorships and vacancies which shall occur in the Board of Directors because of death, resignation, disqualification or any other cause, may be filled by a majority of the directors then in office, though less than a quorum, pursuant to Section 223 of the DGCL. Such directors may, by resolution, eliminate any vacant directorship thereby reducing the size of the whole Board of Directors but in no event shall the size of the Board of Directors be reduced to fewer than three directors. No decrease in the Board of Directors shall shorten the term of any incumbent directors.

**Section 5. Resignations.** (a) Any director of the Corporation may resign at any time by giving written notice to the Chair of the Board of Directors or, in his or her absence, the Chief Executive Officer or Secretary. Except for a resignation tendered pursuant to Article III, Section 5(b) of these Bylaws, which shall be governed by the provisions thereof, such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein and, unless otherwise provided therein, the acceptance of such resignation shall not be necessary to make it effective.

(b) In the case of an uncontested election (i.e., an election where the number of persons properly nominated for election as directors at a meeting of stockholders, as of the time of mailing of the Corporation's proxy statement with respect to such meeting, does not exceed the number of directors to be elected at such meeting), any nominee for reelection as a director who does not receive votes "for" his or her election equal to at least a simple majority of the votes cast on the question of such nominee's election (a "Majority Elected Director") shall, following certification of the election results, promptly tender his or her offer of resignation to the Board of Directors. ("Abstentions" will not count as votes cast with respect to a director for purposes of this paragraph.) Such offer shall become effective only if (and at such time as), as set forth below, the Board of Directors accepts such resignation. The Nominating and Corporate Governance Committee shall make a recommendation to the Board of Directors as to whether to accept or reject the tendered resignation, or whether other action should be taken. The Board of Directors shall act on the tendered resignation, taking into account the Nominating and Corporate Governance Committee's recommendation, and publicly disclose (by a press release, a filing with the Securities and Exchange Commission or other broadly disseminated means of communication) its decision regarding the tendered resignation and the rationale behind the decision within 90 days from the date of the certification of the election results. The Nominating and Corporate Governance Committee in making its recommendation, and the Board of Directors in making its decision, may each consider any factors or other information that it considers appropriate and relevant. The director who tenders his or her resignation shall not participate in the recommendation of the Nominating and Corporate Governance Committee or the decision of the Board of Directors with respect to his or her resignation. If a majority of the members of the Nominating and Corporate Governance Committee are not Majority Elected Directors in the same uncontested election, then the independent directors on the Board of Directors will appoint a committee amongst themselves solely for the purpose of considering the tendered resignations and will recommend to the Board of Directors whether to accept or reject each tendered resignation, or whether other action should be taken; this committee may, but need not, consist of all of the independent directors who are Majority Elected Directors. To the extent that one or more directors' resignations are accepted by the Board of Directors, the Nominating and Corporate Governance Committee (or the committee appointed pursuant to the preceding sentence, as the case may be) will recommend to the Board of Directors whether to fill such vacancy or vacancies or to reduce the size of the Board of Directors, and the Board of Directors, in its sole discretion, may fill any such vacancy or vacancies or decrease the size of the Board of Directors pursuant to the provisions of Article III, Section 4 of these Bylaws.

**Section 6. Organization.** The Board of Directors shall hold its organizational meeting as soon as practicable after the Annual Meeting of Stockholders. The Chair of the Board of Directors, or in his absence, a director elected by the remaining directors, shall preside at all meetings of the Board of Directors.

**Section 7. Place of Meetings.** The Board of Directors may hold its meetings, both regular and special, at such place or places, within or without the State of Delaware as determined by the Board of Directors. Members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors, or any committee, by means of a conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

**Section 8. Regular Meetings.** Regular meetings of the Board of Directors may be held without notice at such times and at such places as shall from time to time be determined by the Board of Directors.

**Section 9. Special Meetings.** Special meetings of the Board of Directors may be called at the request of the Chair of the Board of Directors, the Executive Committee, or of the Chief Executive Officer, or of any three members of the Board of Directors. Notice of the time and place of such meeting shall be given either by mail to each director at least three (3) days before such meeting or personally, by telephone, by telegram or by other method of electronic transmission to each director at least twelve (12) hours before such meeting.

**Section 10. Quorum.** A majority of the Board of Directors at a meeting duly assembled shall be necessary to constitute a quorum for the transaction of business except as otherwise provided by statute, by the Certificate or by these Bylaws. The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors. In the absence of a quorum, a majority of the directors present may adjourn the meeting from time to time until a quorum be present, without notice other than by announcement at the meeting.

**Section 11. Report to Stockholders.** The Chair or the Chief Executive Officer shall make a report or statement of the affairs of the Corporation at each regular annual meeting of the stockholders.

**Section 12. Compensation.** The directors may receive reasonable fees to be determined from time to time by the Board of Directors for services actually performed in attending meetings and for other services actually performed and the expenses of attendance, if any, may be allowed for attendance at each regular or special meeting of the Board of Directors. A director who is, at the same time, an officer or employee of the Corporation or of any subsidiary or affiliate, shall not be entitled to receive any compensation or fee for service as a director or as a member of any committee of the Board of Directors.

**Section 13. Consent of Directors in Lieu of Meeting.** Unless otherwise restricted by the Certificate or Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if all members of the Board of Directors or Committee, as the case may be, consent thereto in writing, or by electronic transmission, and the writing or writings or the electronic transmission or transmissions are filed with the minutes of proceedings of the Board of Directors or Committee.

## ARTICLE IV

### COMMITTEES

**Section 1. Committees of Directors.** The Board of Directors may designate one or more committees, each committee to consist of one or more directors of the Corporation, including the following committees:

(a) *Executive Committee: Organization and Powers.* There shall be an Executive Committee to consist of three (3) or more directors, the number of which being fixed from time to time by resolution adopted by a majority vote of the whole Board of Directors. The Chair of the Board of Directors and the Chief Executive Officer shall be members of the Executive Committee. The Board of Directors shall elect the members of the Executive Committee by vote of a majority of the Board of Directors and one member of the Executive Committee shall be elected as Chair by the vote of a majority of the whole Board of Directors. The members of the Executive Committee shall be elected annually at the Board of Directors' organizational meeting or as soon thereafter as possible.

When the Board of Directors is not in session, the Executive Committee shall have and may exercise all the powers of the Board of Directors in the management of the business and affairs of the Corporation in all cases in which specific directions shall not

have been given by the Board of Directors including, but not limited to, the power to declare dividends on the common and preferred stock of the Corporation, and to authorize the seal of the Corporation to be affixed to all papers which may require it. The members of the Executive Committee shall act only as a committee and individual members shall have no power as such.

(b) *Compensation and Organization Committee: Organization and Powers.* There shall be a Compensation and Organization Committee to consist of three (3) or more directors, the number of which being fixed from time to time by resolution adopted by a majority vote of the whole Board of Directors. Each member of this Committee shall be affirmatively determined by a majority vote of the whole Board of Directors to qualify as independent under the New York Stock Exchange listing standards then in effect. The Board of Directors shall elect the members of the Compensation and Organization Committee by vote of a majority of the whole

Board of Directors, and one member of the Compensation and Organization Committee shall be elected its Chair by the vote of a majority of the whole Board of Directors. The members of the Compensation and Organization committee shall be elected annually at the Board of Directors' organizational meeting or as soon thereafter as possible.

The Compensation and Organization Committee shall have the power: to authorize and determine all salaries for the officers and supervisory employees of the Corporation and subsidiary companies as may be prescribed from time to time by resolution adopted by the Board of Directors; to administer the incentive compensation plans of the Corporation, The Kansas City Southern Railway Company and the other subsidiaries of the Corporation in accordance with the powers and authority granted in such plans; and to determine any incentive allowances to be made to officers and staff of the Corporation and its subsidiaries. The Compensation and Organization Committee shall have the power to administer the Employee Stock Purchase Plan of the Corporation under which eligible employees of the Corporation and its subsidiaries and affiliates are permitted to subscribe to and to purchase shares of the Corporation common stock through payroll deductions.

The Compensation and Organization Committee shall have full power: to act as the Stock Option Plan Committee to construe and interpret any stock option plan or similar plan of the Corporation and all options, stock appreciation rights, limited rights and other equity awards granted under this plan or any other plan; to determine the terms and provisions of the respective option agreements and other equity awards, including such terms and provisions as, in the judgment of the Committee, are necessary or desirable to qualify any of the options as "incentive stock options"; to establish and amend rules for its administration; to grant options, stock appreciation rights, limited rights and other equity awards under any stock option plan of the Corporation; to determine and designate the recipients of options, stock appreciation rights, limited rights and other equity awards; to determine and designate the dates that options, stock appreciation rights, limited rights and other equity awards are granted; to determine and designate the number of shares subject to options, stock appreciation rights, limited rights and other equity awards; to determine and designate the option prices and option periods; and to correct any defect or supply any omission or reconcile any inconsistency in any stock option plan of the Corporation or in any option, stock appreciation right, limited right or other equity award to the extent the Committee deems desirable to carry any stock option plan or any option, stock appreciation right, limited right or other equity award into effect.

The Compensation and Organization Committee shall also have the power: to review the consolidated earnings of the Corporation and to make recommendations to the Board of Directors with respect to the allocation of funds to the Corporation's Profit Sharing Plan; and to review the results of the investment program of the Profit Sharing Plan and make reports thereof to the Board of Directors.

(c) *Audit Committee: Organization and Powers.* There shall be an Audit Committee to consist of three (3) or more directors who meet the requirements of the New York Stock Exchange and the Securities and Exchange Commission, the number of which being fixed from time to time by resolution adopted by a majority vote of the whole Board of Directors. The Board of Directors shall elect the members of the Audit Committee by vote of a majority of the whole Board of Directors and one member of the Audit Committee shall be elected as Chair by a vote of a majority of the whole Board of Directors. The members of the Audit Committee shall be appointed by the Board of Directors annually at the Board of Directors' organizational meeting or as soon thereafter as possible.

The Audit Committee shall have the power and the duty to meet with and consider suggestions from members of management and of the Corporation's internal audit staff, as well as with the Corporation's independent accountants, concerning the financial operations of the Corporation. The Audit Committee shall additionally have the power to review audited financial statements of the Corporation and consider and recommend the employment of, and approve the fee arrangement with, independent accountants for both audit functions and for advisory and other consulting services.

(d) *Nominating and Corporate Governance Committee: Organization and Powers.* There shall be a Nominating and Corporate Governance Committee consisting of three (3) or more directors, the number of which being fixed from time to time by resolution adopted by a majority vote of the whole Board of Directors. Each member of this Committee shall be affirmatively determined by a majority vote of the whole Board of Directors to qualify as independent under the New York Stock Exchange listing standards then in effect. The members of the Nominating and Corporate Governance Committee shall be elected and vacancies filled by the vote of a majority of the whole Board of Directors, and one member of the Nominating and Corporate Governance Committee shall be elected its Chair by the vote of a majority of the whole Board of Directors. The members of the Nominating and Corporate Governance Committee shall be elected by the Board of Directors annually at the Board of Directors' organizational meeting or as soon thereafter as possible.

The primary purposes of this Committee shall be to (i) identify and recommend to the Board of Directors qualified nominees for election to the Board of Directors (whether for election by the stockholders or by the Board of Directors) and (ii) to advise the Board of Directors with respect to the establishment, implementation and evaluation of corporate governance guidelines applicable to the Company. The Committee shall prepare and present to the Board of Directors for approval a written charter setting forth in more detail the duties and responsibilities of the Committee.

(e) *Finance Committee: Organization and Powers.* There shall be a Finance Committee consisting of three (3) or more directors, the number of which shall be fixed from time to time by resolution adopted by a majority vote of the whole Board of Directors, and a majority of the Committee shall be non-officer directors. The Board of Directors shall elect the members of the Finance Committee by vote of a majority of the whole Board of Directors and one member of the Finance Committee shall be elected as Chair by the vote of a majority of the whole Board of Directors. The members of the Finance Committee shall be elected annually at the Board of Directors' organizational meeting or as soon thereafter as possible.

The Finance Committee shall have the power and duty to review and oversee the capital structure of the Corporation and its subsidiaries and to make recommendations relating thereto to the Board of Directors.

**Section 2. Rules, Records, Reports and Charters.** The Committees may make and adopt such rules and regulations governing their proceedings as they may deem proper and which are consistent with the statutes of the State of Delaware, the Certificate and Bylaws. Each Committee shall adopt a charter, to be approved by the Board of Directors and reviewed annually. In addition to the authority, duties and obligations expressly set forth in these Bylaws, the Committees shall have such authority, duties and obligations as shall be set forth in their respective Charters, as approved by the Board of Directors. The Committees shall keep a full and accurate record of all their acts and proceedings and report the same from time to time to the Board of Directors.

**Section 3. Meetings.** Regular meetings of the committees shall be held at such times and at such places as from time to time may be fixed by the committees. Special meetings of the committees may be held at such other times as may in the judgment of the Chair or, he being absent, in the judgment of a member, be necessary. Notice of regular meetings need not be given. Notice of special meetings shall be given to each member by mail not less than three (3) days before the meeting or personally, by telephone, telegram or by other method of electronic transmission to each member not less than twelve (12) hours before the meeting, unless the Chair of the committee, or a member acting in that capacity in his absence, shall deem a shorter notice expedient.

**Section 4. Quorum.** A majority of members of a committee shall constitute a quorum for the transaction of business and the act of a majority of those present shall be the act of the committee (except with respect to the Compensation and Organization Committee, in which any act of the Compensation and Organization Committee when acting as the Stock Option Plan Committee under any stock option plan, must be authorized and approved by at least (3) members).

**Section 5. Subcommittees.** A committee may appoint such subcommittees as it shall deem necessary.

**Section 6. Vacancies.** Any vacancy in a committee shall be filled by a majority of the whole Board of Directors.

**Section 7. Substitute Members.** Whenever at any time a member of any committee shall be absent from a meeting of that committee and it shall be necessary in order to constitute a quorum or, for other reason, it may be deemed expedient or desirable, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously designate a director (subject to the eligibility requirements set forth in Sections 1(b), (c) and (d) of this Article IV above) to serve and act in his stead; and in the event that the absence of a committee member shall be prolonged, such substitute member may, subject to the approval of the committee, continue to act for the term of its duration. A director so designated shall rank as



a duly qualified member of the committee during incumbency, and shall be entitled to participate in its deliberations with the same force and effect as if elected in the manner herein elsewhere provided.

**Section 8. Compensation.** Subject to the provisions of Section 12 of Article III of these Bylaws, each member of any committee may receive a reasonable fee to be fixed by the Board of Directors for services actually performed in attending meetings, and for other services actually performed, and shall receive expenses of attendance, if any actually incurred by him for attendance at any meeting of the committee.

**ARTICLE V**  
**OFFICERS, AGENTS AND EMPLOYEES**

**Section 1. Election of Officers.** The Board of Directors at its annual organizational meeting, shall elect a Chair of the Board of Directors, Chief Executive Officer and President of the Corporation. The Chair of the Board of Directors shall be an independent director (as defined in the New York Stock Exchange listing standards then in effect). The Chief Executive Officer shall be a member of the Board of Directors. The Board of Directors may elect a Chief Operating Officer.

**Section 2. Vice Presidents.** The Board of Directors may, in its discretion, appoint one or more additional Vice Presidents.

**Section 3. Other Officers.** The Board of Directors shall appoint a Secretary, a Treasurer and a General Counsel or Chief Legal Officer and a Chief Accounting Officer. The Board of Directors may also appoint one or more Assistant Secretaries, and one or more Assistant Treasurers.

**Section 4. Powers, Duties and Responsibilities.** The powers, duties and responsibilities of the officers and employees of the Corporation, which are not prescribed by statute, by the Certificate or by these Bylaws, shall be defined in rules or regulations which may be adopted and from time to time modified or changed by the Board of Directors.

**Section 5. Vacancies.** The Board of Directors shall, as soon as practicable, fill any vacancy in the office of Chair of the Board of Directors, Chief Executive Officer or President. Any vacancy in any other office may be filled temporarily by the Chair of the Board of Directors or the Chief Executive Officer or, in case of their temporary incapacity or absence, the President, may make an appointment pro tem and confer on such appointee full power and authority to act in place of any of said officers or appointees so temporarily incapacitated or absent; but such appointment shall be subject to change by the Board of Directors or by the Executive Committee at any regular or special meeting.

**Section 6. Absence from Duty.** No officer or employee of the Corporation shall be absent from duty without the consent of the Chief Executive Officer, the President or the head of the department in which he is employed.

**Section 7. Resignations.** If the Chair is an employee of the Corporation, the Chair may resign at any time by giving written notice to the Board of Directors. If the Corporation has a separate Chair and Chief Executive Officer, the Chief Executive Officer may resign at any time by giving written notice to the Chair. Any other officer may resign at any time by giving written notice to the Chief Executive Officer, President or to the Secretary of the Corporation. Except for a resignation tendered pursuant to Article III, Section 5(b) of these Bylaws, which shall be governed by the provisions thereof, such resignation shall take effect at the date of the receipt of such notice, or at any later time specified therein and, unless otherwise provided therein, the acceptance of such resignation shall not be necessary to make it effective.

**Section 8. Removals.** All officers and agents of the Corporation shall be subject to removal at any time by the affirmative vote of a majority of the members of the Board of Directors present at any meeting. All officers and employees not appointed by the Board of Directors shall hold their offices at the discretion of the Executive Committee or of the officer appointing them.

**Section 9. Term of Office.** The officers of the Corporation shall hold office for one year and until their successors shall have been duly elected or appointed and qualified, or until they shall die, resign or be removed.

**Section 10. Salaries.** The salaries of officers elected or appointed by the Board of Directors or by the Executive Committee, shall be fixed by the Compensation and Organization Committee. The salaries of all other officers and employees shall be fixed by the Chief Executive Officer, or by the President or heads of departments subject to the approval of the Chief Executive Officer; and the

compensation of all officers and employees shall be subject to the control of the Board of Directors or of the Compensation and Organization Committee.

No special compensation shall be paid to any officer or employee unless authorized by the Board of Directors, the Executive Committee or the Compensation and Organization Committee.

## CHAIR OF THE BOARD OF DIRECTORS

**Section 11. Duties.** The Chair of the Board of Directors shall preside at all meetings of the Stockholders and the Board of Directors at which he is present and perform such other duties as the Board of Directors may prescribe. In his absence, the President shall discharge the duties of the Chair of the Board of Directors other than as specified in Article III, Section 6 of these Bylaws.

## CHIEF EXECUTIVE OFFICER

**Section 12. General Powers and Duties.** The Chief Executive Officer shall have the general care, supervision and control of the Corporation's business and operation in all departments under control of the Board of Directors. The Chief Executive Officer shall have such other powers and perform such other duties as the Chair or the Board of Directors may from time to time prescribe and shall perform such other duties as are incidental to the office of the Chief Executive Officer.

**Section 13. Appointments.** Except as otherwise provided by statute, the Certificate, or these Bylaws, the Chief Executive Officer may appoint such additional officers and may employ such persons as he shall deem necessary for the proper management of the business and property of the Corporation.

## PRESIDENT

**Section 14. General Powers and Duties.** The President shall be the ranking officer in the affairs of the Corporation next below the Chief Executive Officer. In the absence or incapacity of the Chief Executive Officer, the President shall discharge the duties and responsibilities of the Chief Executive Officer. The President shall have such powers and perform such duties as shall from time to time be conferred and prescribed by the Chair, the Chief Executive Officer, the Board of Directors, or the Executive Committee.

## VICE PRESIDENTS

**Section 15. Powers and Duties.** The Vice Presidents shall have such powers and perform such duties as shall from time to time be conferred and prescribed by the Chief Executive Officer, the President, the Board of Directors or by the Executive Committee.

## SECRETARY

**Section 16. Duties.** The Secretary, or, in his absence, an Assistant Secretary, shall attend all meetings of the stockholders, of the Board of Directors and of the Executive Committee, and shall record their proceedings. He shall report to the Board of Directors and the Executive Committee and through the respective Chair.

**Section 17. Notice of Meetings.** The Secretary shall give due notice of all meetings of the stockholders and of the Board of Directors and of the Executive Committee, where such notice is required by law, by the Certificate, by these Bylaws, by the Board of Directors or by the Executive Committee.

**Section 18. Custody of Seal, Etc.** The Secretary shall be custodian of the seal of the Corporation and of its records, and of such papers and documents as may be committed to his care by the Board of Directors or of the Executive Committee. He shall have power to affix the seal of the Corporation to instruments to which the same is authorized to be affixed by the Board of Directors or by the Executive Committee, and shall have power to attest the same. He shall perform such other duties as may be assigned to him by the Chair of the Board of Directors, the Chief Executive Officer, the President, the Board of Directors or the Executive Committee, or as may be prescribed in the rules or regulations to be adopted by the Board of Directors.

**Section 19. Duties of Assistant Secretaries.** The Assistant Secretary or Secretaries shall perform such duties as may be assigned to him or them by the Chair of the Board of Directors, the Board of Directors or by the Executive Committee, the Chief Executive Officer, the President or the Secretary, or as may be prescribed in the rules or regulations, if any, to be adopted by the Board of Directors or the Executive Committee; and, when authorized by the Board of Directors or by the Executive Committee, he or they shall have the power to affix the corporate seal to instruments and to attest the same, and to sign the certificates of stock of the Corporation.

## TREASURER

**Section 20. Duties.** The Treasurer, either in person or through competent and faithful assistants, shall receive, keep and disburse all moneys, belonging or coming to the Corporation; he shall keep regular, true and full accounts of all receipts and disbursements, and make detailed reports of the same to the Chief Executive Officer, the President and the Chief Financial Officer and, as requested or when required, to the Board of Directors, Audit Committee, Finance Committee or to the Executive Committee.

**Section 21. Other Duties.** The Treasurer shall perform such other duties in connection with the administration of the financial affairs of the Corporation as the Board of Directors or the Executive Committee shall assign to him or as may be prescribed in the rules or regulations to be adopted by the Board of Directors or the Executive Committee. The Treasurer shall give bond in such amount as shall be required by the Board of Directors or by the Executive Committee. Any Assistant Treasurer appointed pursuant to the provisions of these Bylaws shall also give bond in such amount as shall be required by the Board of Directors or by the Executive Committee.

## GENERAL COUNSEL OR CHIEF LEGAL OFFICER

**Section 22. Duties.** The General Counsel or Chief Legal Officer shall render such legal services and perform such duties as the Board of Directors, Executive Committee, Chair of the Board of Directors, Chief Executive Officer, President or other elected or appointed officer may request from time to time.

## CHIEF ACCOUNTING OFFICER

**Section 23. Duties.** The Chief Accounting Officer shall have charge of the Accounting Department. He shall have the supervision and management of all accounts of the Corporation, and shall prescribe, enforce and maintain the system of bookkeeping, and the books, blanks, etc., for keeping the accounts of the Corporation. He shall have the cooperation of all departments. He shall keep regular sets of books, showing a complete record of the general business transactions of the Corporation, and for that purpose shall receive from the Treasurer, Assistant Treasurers and agents of the Corporation such daily or other reports of receipts and disbursements as he may require.

**Section 24. Custody of Contracts.** The Chief Accounting Officer shall have the custody of all written contracts and other similar written instruments to which the Corporation is a party.

**Section 25. Statements by Chief Accounting Officer.** The Chief Accounting Officer shall render such statements of the affairs of the Corporation, shown by his books and records, as may be required for the information of the Board of Directors or of the Executive Committee, and shall by proper distribution and classification of the accounts under his charge, be prepared to furnish such reports as may be required by the Chair of the Board of Directors, the Chief Executive Officer, the President, the Board of Directors, and the Executive Committee, or any state or federal official.

## ARTICLE VI

### CERTIFICATE OF STOCK

**Section 1. Provision for Issue, Transfer and Registration.** The Board of Directors shall provide for the issue, transfer and registration of the capital stock of the Corporation in the City of New York or elsewhere, and for that purpose may appoint the necessary officers, transfer agents and registrars of transfers.

**Section 2. Uncertificated Stock; Certificates of Stock.** The shares of common stock and preferred stock of the Corporation shall be represented by certificates, unless and until the officers of the Corporation provide for the issuance of some or all of any or all classes or series of such stock to be issued as uncertificated shares. Every holder of stock in the Corporation represented by a certificate shall be entitled to have a certificate, signed by, or in the name of the Corporation by, the Chair, the President or a Vice President and the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the Corporation, certifying the number of shares owned.

**Section 3. Facsimile Signatures of Certificates.** The signature of any officer, transfer agent, or registrar on a certificate for shares of the Corporation may be facsimile. In case any officer, transfer agent or registrar who has signed, or whose facsimile signature has been used on, any such certificate or certificates shall cease to be such officer, transfer agent or registrar of the

Corporation, whether because of death, resignation or otherwise, before such certificate or certificates have been delivered by the Corporation, such certificate or certificates may nevertheless be adopted by the Corporation and be issued and delivered as though the person or persons who signed such certificate or certificates or whose facsimile signature or signatures have been used thereon had not ceased to be such officer, transfer agent or registrar of the Corporation. Record shall be kept by the Transfer Agent of the number of each certificate, the date thereof, the name of the person owning the shares represented thereby, and the number of shares. Every certificate surrendered to the Corporation for transfer or exchange shall be canceled by perforation or otherwise with the date of cancellation indicated thereon.

**Section 4. Lost, Stolen or Destroyed Certificates.** Except as provided in this Section 4, no new certificates for stock shall be issued to replace a previously issued certificate unless the latter is surrendered to the Corporation and cancelled at the same time. The Corporation may issue a new certificate of stock or uncertificated stock in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate or such owner's legal representative, to give the Corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

**Section 5. Transfer of Stock.** Transfer of stock of the capital stock of the Corporation shall be made only on the books of the Corporation by the holder thereof, or by his attorney thereunto authorized by a power of attorney duly executed and filed with the Transfer Agent of the Corporation, and on surrender for cancellation of the certificate or certificates for such shares represented by certificates. A person in whose name shares of stock stand on the books of the Corporation and no one else shall be deemed the owner thereof as regards the Corporation.

**Section 6. Registrar and Transfer Agent.** The Corporation shall at all times maintain a registrar, which shall in every case be a bank or trust company, and a transfer agent, to be appointed by the Board of Directors, in accordance with the requirements of the New York Stock Exchange, and registration and transfer of the Corporation's stock certificates shall be in accordance with the rules and regulations of said stock exchange. The Board of Directors may also make such additional rules and regulations as it may deem expedient concerning the issue, transfer and registration of shares of the capital stock of the Corporation.

**Section 7. Closing of Transfer Books; Record Date.** The Board of Directors may close the stock transfer books of the Corporation for a period not more than sixty (60) days nor less than ten (10) days preceding the date of any meeting of stockholders or the date for payment of any dividend or the date for the allotment of rights or the date when any change or conversion or exchange of capital stock shall go into effect. In lieu of closing the stock transfer books as aforesaid, the Board of Directors may fix a record date as set forth in Article II, Section 13.

## ARTICLE VII

### SEAL

**Section 1.** The authorized seal shall have inscribed thereon the name of the Corporation, the year of incorporation and the name of the state of incorporation. The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise applied.

## ARTICLE VIII

### FISCAL YEAR

**Section 1.** The fiscal year of the Corporation shall commence on the first day of January of each year.



## ARTICLE IX

### NOTICES

**Section 1. Form of Notice.** Where notice, other than by publication, is required to be given by Delaware law, the Certificate or Bylaws, notice to directors and stockholders shall not be construed to mean personal notice, but such notice may be given in writing, by mail, addressed to such directors or stockholders at such address as appears on the books of the Corporation. Notice by mail shall be deemed to be given at the time when the same shall be mailed. Notice to directors may also be given personally, by telephone, by telegram, by electronic transmission or in such other manner as may be provided in these Bylaws.

**Section 2. Waiver of Notice.** Whenever any notice is required to be given under the provisions of the statutes or of the Certificate or of these Bylaws, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated herein, shall be deemed equivalent thereto.

## ARTICLE X

### INDEMNIFICATION, AMENDMENTS AND MISCELLANEOUS

**Section 1. Indemnification.** (a) *Indemnity.* Each person who at any time is, or shall have been, a director, officer or employee of the Corporation, and is threatened to be or is made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is, or was, a director, officer or employee of the Corporation, or served at the request of the Corporation as a director, officer, employee or trustee of another corporation, partnership, joint venture, trust or other enterprise, shall be indemnified against expense (including attorneys' fees), judgment, fines and amounts paid in settlement actually and reasonably incurred by him in connection with any such action, suit or proceeding to the full extent provided under Section 145 of the DGCL. The foregoing right of indemnification shall in no way be exclusive of any other rights of indemnification to which any such director, officer, employee may be entitled, under any Bylaw, agreement, vote of stockholders or disinterested directors or otherwise.

(b) *Insurance.* The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL, *provided* that such insurance is commercially available at reasonable expense.

(c) *Indemnification of Others.* The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification, and rights to be paid by the Corporation the expenses incurred in defending any proceeding in advance of its final disposition, to any agent of the Corporation to the fullest extent of the provisions of this Bylaw with respect to the indemnification and advancement of expenses of directors, officers and employees of the Corporation.

(d) *Advancement of Expenses.* The right to indemnification conferred on directors and officers in this Bylaw shall be a contract right and shall include the right to have the Corporation pay the expenses incurred in defending any such proceeding in advance of its final disposition; provided, however, that if the DGCL so requires, the payment of such expenses incurred by a director or officer in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such person while a director or officer, including, without limitation, service to an employee benefit plan) in advance of the final disposition of a proceeding, shall be made only upon delivery to the Corporation of an undertaking by or on behalf of such director or officer to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal that such director or officer is not entitled to be indemnified under this Bylaw or otherwise.

**Section 2. Amendments.** These Bylaws may be altered, amended or repealed by a vote of a majority of the whole Board of Directors at any meeting of the Board of Directors. The Board of Directors in its discretion may, but need not, submit any proposed alteration, amendment or repeal of the Bylaws to the stockholders at any regular or special meeting of the stockholders for their adoption or rejection; *provided* notice of the proposed alteration, amendment or repeal be contained in the notice of such stockholders' meeting.

**Section 3. Proxies.** Unless otherwise provided by resolution of the Board of Directors, the Chief Executive Officer or, in his absence or disability, the President, from time to time in the name and on behalf of the Corporation: may appoint an attorney or attorneys, agent

or agents of the Corporation (who may be or include himself), in the name and on behalf of the Corporation to cast the votes which the Corporation may be entitled to cast as a stockholder or otherwise in any other corporation any of whose stock or other securities may be held by the Corporation, at meetings of the holders of the stock or other securities of such other corporations or to consent in writing to any action by such other corporation; may instruct the person or persons so appointed as to the manner of casting such votes or giving such consent; and may execute or cause to be executed in the name and on behalf of the Corporation and under its corporate seal all such written proxies or other instruments as may be necessary or proper to evidence the appointment of such attorneys and agents.

**AMENDMENT TO  
SEVERANCE AGREEMENT**

This Amendment (this “Amendment”) is entered into as of March 24, 2021 (“Effective Date”), by and between The Kansas City Southern Railway Company (the “Company”) and [EXECUTIVE NAME] (“Executive”).

**Recitals**

WHEREAS, the Company and Executive entered into a Severance Agreement on June 17, 2019 (as amended and restated from time to time, the “Severance Agreement”), setting forth the terms and conditions of Executive’s employment with the Company;

WHEREAS, the Company and Executive desire to amend certain terms and conditions of the Severance Agreement as set forth herein; and

WHEREAS, reference is made to the Agreement and Plan of Merger, dated as of March 21, 2021, (“Merger Agreement”), by and among Canadian Pacific Railway Limited (“Parent”), Cygnus Merger Sub 1 Corporation (“Surviving Merger Sub”), Cygnus Merger Sub 2 Corporation (the “First Merger Sub”), and Kansas City Southern;

**Agreement**

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements set forth herein, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and Executive, intending to be legally bound hereby, agree as follows:

Section 1. **Definitions.**

(a) Capitalized terms used in this Amendment and not otherwise defined herein shall have the respective meanings given to them in the Severance Agreement.

(b) The definition of “Accrued Current Year Bonus” in the Severance Agreement is amended and restated as set forth below:

“Accrued Current Year Bonus” means (1) with respect to a General Severance, the bonus amount Executive would have received under the Kansas City Southern Annual Incentive Plan (or any successor annual, short-term incentive plan) based upon the actual achieved level of performance for the calendar year in which Executive was terminated and as if Executive had remained employed through the end of the performance period, which such amount shall be multiplied by a fraction the numerator of which is the number of days in the calendar year Executive was employed (including Executive’s date of termination) and the denominator of



which is 365; and (2) with respect to a CIC Severance, Executive's Target Award for the calendar year in which Executive is terminated (or the year in which the Change in Control occurs, if greater), which such amount shall be multiplied by a fraction the numerator of which is the number of days in the calendar year Executive was employed (including Executive's date of termination) and the denominator of which is 365.

(c) The definition of "Change in Control" in the Severance Agreement is amended by adding the following sentence at the end of the definition.

For the avoidance of doubt, the occurrence of the First Effective Time (as defined in the Merger Agreement) shall constitute a Change in Control.

(d) The definition of "Severance Bonus" in the Severance Agreement is amended and restated as set forth below:

"Severance Bonus" means Executive's Target Award for the calendar year in which Executive is terminated, or to the extent greater and solely in the event of a CIC Severance, Executive's Target Award for the calendar year in which the Change in Control occurs.

Section 2. Protection Period. Section 3(a)(ii) of the Severance Agreement is amended and restated in its entirety as set forth below:

(ii) If Executive's employment is terminated during the period commencing on the date on which the First Effective Time (as defined in the Merger Agreement) occurs and ending on the two-year anniversary of the Control Date (as defined in the Merger Agreement) (such period, the "Protection Period") and such termination is by the Company without Cause or by Executive for Good Reason (a "CIC Severance"), Executive shall be entitled to an amount equal to two times Executive's Total Severance Cash Compensation, which shall be paid in substantially equal installments in accordance with the Company's regular payroll practices over a period of twelve (12) months commencing on the payment commencement date of the severance benefits described below in Paragraph 3(e) below. For the sake of clarity, any termination by the Company without Cause occurring after the Protection Period shall be a General Severance, not a CIC Severance. No severance benefits under this Agreement are available

for a termination by Executive for Good Reason occurring after the Protection Period (or where no Change in Control has occurred).

Section 3. Acknowledgment Regarding Good Reason. Executive acknowledges and agrees that the occurrence of the First Effective Time and the fact that Kansas City Southern, the Company's parent company, ceases to be a public company as a result of such transaction shall not, in and of themselves constitute "Good Reason" under prong (iii) or (iv) of the definition of Good Reason.

Section 4. Double Trigger Vesting. Section 3(f) of the Severance Agreement is amended by deleting the words "or CIC Severance". Upon a CIC Severance, any unvested equity awards (including any awards into which such unvested equity awards convert and including any cash-based awards granted in lieu of equity awards) granted to Executive prior to the Control Date that are unvested as of the date of the CIC Severance immediately shall vest. In the event of any inconsistency between the equity plan and award agreements under which the grants were awarded and the terms of this Amendment, this Amendment shall govern and control.

Section 5. Make Whole. Section 4(b) of the Severance Agreement is amended and restated as set forth below:

(b)(i) In the event it shall be determined pursuant to Section 4(b)(ii) below that any Payment (as defined below) would be subject to the Excise Tax (as defined below), then the Executive shall be entitled to receive from the Company an additional payment (the "Gross-Up Payment") in an amount such that after payment by the Executive of all taxes (including any interest or penalties imposed with respect to such taxes), including, without limitation, any income taxes (and any interest and penalties imposed with respect thereto) and Excise Tax imposed upon the Gross-Up Payment, but excluding any taxes and penalties imposed pursuant to Section 409A of the Internal Revenue Code of 1986, as amended (the "Code"), the Executive retains an amount of the Gross-Up Payment equal to the Excise Tax imposed upon the Payments. The Company's obligation to make Gross-Up Payments under this Section 4(b) shall not be conditioned upon the Executive's termination of employment.

(ii) Subject to the provisions of Section 4(b)(iii), all determinations required to be made under this Section 4(b), including whether and when a Gross-Up Payment is required and the amount of such Gross-Up Payment and the assumptions to be utilized in arriving at such determination, shall be made by the Golden Parachute Tax Solutions LLC

(the “Designated Firm”). The Designated Firm shall provide detailed supporting calculations both to the Company and the Executive within 15 business days of the receipt of notice from the Executive that there has been a Payment, or such earlier time as is requested by the Company. All fees and expenses of the Designated Firm shall be borne solely by the Company. Any determination by the Designated Firm shall be binding upon the Company and the Executive. As a result of the uncertainty in the application of Section 4999 of the Code at the time of the initial determination by the Designated Firm hereunder as to whether a Gross-Up Payment should be made, it is possible that Gross-Up Payments that were not made by the Company should have been made (the “Underpayment”), consistent with the calculations required to be made hereunder. In the event that the Company exhausts its remedies pursuant to Section 4(b)(iii) and the Executive thereafter is required to make a payment of any Excise Tax, the Designated Firm shall determine the amount of the Underpayment that has occurred and any such Underpayment shall be promptly paid by the Company to or for the benefit of the Executive.

(iii) The Executive shall notify the Company in writing of any claim by the Internal Revenue Service that, if successful, would require the payment by the Company of the Gross-Up Payment. Such notification shall be given as soon as practicable but no later than ten business days after the Executive is informed in writing of such claim. The Executive shall apprise the Company of the nature of such claim and the date on which such claim is requested to be paid. The Executive shall not pay such claim prior to the expiration of the 30-day period following the date on which the Executive gives such notice to the Company (or such shorter period ending on the date that any payment of taxes with respect to such claim is due). If the Company notifies the Executive in writing prior to the expiration of such period that the Company desires to contest such claim, the Executive shall:

(A) give the Company any information reasonably requested by the Company relating to such claim,



(B) take such action in connection with contesting such claim as the Company shall reasonably request in writing from time to time, including, without limitation, accepting legal representation with respect to such claim by an attorney reasonably selected by the Company,

(C) cooperate with the Company in good faith in order effectively to contest such claim, and

(D) permit the Company to participate in any proceedings relating to such claim;

provided, however, that the Company shall bear and pay directly all costs and expenses (including additional interest and penalties, but excluding taxes and penalties imposed pursuant to Code Section 409A) incurred in connection with such contest and shall indemnify and hold the Executive harmless, on an after-tax basis, for any Excise Tax or income tax (including interest and penalties related thereto, but excluding taxes and penalties imposed pursuant to Code Section 409A) imposed as a result of such contest. Without limitation on the foregoing provisions of this Section 4(b)(iii), the Company shall control all proceedings taken in connection with such contest and, at its sole discretion, may pursue or forgo any and all administrative appeals, proceedings, hearings and conferences with the applicable taxing authority in respect of such claim and may, at its sole discretion, either pay the tax claimed to the appropriate taxing authority on behalf of the Executive and direct the Executive to sue for a refund or contest the claim in any permissible manner, and the Executive agrees to prosecute such contest to a determination before any administrative tribunal, in a court of initial jurisdiction and in one or more appellate courts, as the Company shall determine; provided, however, that if the Company pays such claim and directs the Executive to sue for a refund, the Company shall indemnify and hold the Executive harmless, on an after-tax basis, from any Excise Tax or income tax (including interest or penalties with respect thereto, but excluding taxes and penalties imposed pursuant to Code Section 409A) imposed with respect to such payment or with respect to any imputed income in connection with such payment; and further provided that any extension of the statute of limitations relating to payment of taxes for the

taxable year of the Executive with respect to which such contested amount is claimed to be due is limited solely to such contested amount.

Furthermore, the Company's control of the contest shall be limited to issues with respect to which the Gross-Up Payment would be payable hereunder and the Executive shall be entitled to settle or contest, as the case may be, any other issue raised by the Internal Revenue Service or any other taxing authority.

(iv) If, after the receipt by the Executive of a Gross-Up Payment or payment by the Company of an amount on the Executive's behalf pursuant to Section 4(b)(iii), the Executive becomes entitled to receive any refund with respect to the Excise Tax to which such Gross-Up Payment relates or with respect to the payment of such claim pursuant to Section 4(b)(iii), the Executive shall (subject to the Company's complying with the requirements of Section 4(b)(iii) to the extent applicable) promptly pay to the Company the amount of such refund (together with any interest paid or credited thereon after taxes applicable thereto). If, after payment by the Company of an amount on the Executive's behalf pursuant to Section 4(b)(iii), a determination is made that the Executive shall not be entitled to any refund with respect to such claim and the Company does not notify the Executive in writing of its intent to contest such denial of refund prior to the expiration of 30 days after such determination, then the amount of such payment shall offset, to the extent thereof, the amount of any Gross-Up Payment required to be paid.

(v) Any Gross-Up Payment, as determined pursuant to this Section 4(b), shall be paid by the Company to the Executive within five days of the receipt of the Designated Firm's determination; provided that the Gross-Up Payment shall in all events be paid no later than the end of the Executive's taxable year next following the Executive's taxable year in which the Excise Tax (and any income or other related taxes or interest or penalties thereon) on a Payment are remitted to the Internal Revenue Service or any other applicable taxing authority or, in the case of amounts relating to a claim described in Section 4(b)(iii) that does not result in the remittance of any federal, state, local and foreign income, excise, social security and other taxes, the calendar year in which the claim is finally settled or otherwise resolved. Notwithstanding any other provision

of this Section 4(b), the Company may, in its sole discretion, withhold and pay to the Internal Revenue Service or any other applicable taxing authority, for the benefit of the Executive, all or any portion of the Gross-Up Payment, and the Executive hereby consents to such withholding.

(vi) The following terms shall have the following meanings for purposes of this Section 4(b).

(A) “Excise Tax” shall mean the excise tax imposed by Section 4999 of the Code, together with any interest or penalties imposed with respect to such excise tax.

(B) A “Payment” shall mean any payment or distribution in the nature of compensation (within the meaning of Section 280G(b)(2) of the Code) to or for the benefit of the Executive that constitutes a “parachute payment” under Section 280G(b)(2) of the Code as a result of the Mergers (as defined in the Merger Agreement).

Section 6. Non-Compete Extension. In consideration of the benefits provided to Executive pursuant to the Severance Agreement (as amended hereby), Section 7(b) of the Severance Agreement is amended by replacing the words “one (1) year” with the words “two (2) years”.

Section 7. Effectiveness of Amendment. This Amendment shall be effective as of the Effective Date. As of and after the Effective Date, all references to the Severance Agreement, including the terms “this Agreement,” “hereof,” “herein” and the like contained in the Severance Agreement, shall mean and be deemed to be references to the Severance Agreement as amended by the terms of this Amendment. From and after the Effective Date, the Severance Agreement shall remain in full force and effect in accordance with its terms, as such terms are amended by the terms of this Amendment. Notwithstanding the foregoing, this Amendment will be null and void in the event that the Merger Agreement is terminated without the consummation of the Mergers (as defined in the Merger Agreement).

Section 8. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of Missouri, without regard to provisions governing conflicts of laws.

Section 9. Successor and Assigns. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, in accordance with the Severance Agreement.

Section 10. Headings. The headings in this Amendment are included for convenience of reference only and do not define, limit, explain or modify this Amendment or its interpretation, construction or meaning and are in no way to be construed as a part of this Amendment.

Section 11. Counterparts. This Amendment may be executed in any number of counterparts (including counterparts executed by less than all parties hereto), each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. A signed copy of this Amendment delivered by PDF, facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Amendment.

Section 12. Entire Agreement. The Severance Agreement, as amended by this Amendment, sets forth the entire agreement and understanding of the parties hereto with respect to the subject matter thereof and hereof and supersedes in their entirety all prior and contemporaneous written and oral agreements, arrangements, understandings, negotiations, communications, covenants, representations and warranties among the parties hereto relating to such subject matter.

*(Remainder of page intentionally left blank. The next page is the Signature Page)*

**SIGNATURE PAGE**

IN WITNESS WHEREOF, this Amendment to the Severance Agreement has been executed and delivered by or on behalf of the parties hereto as of the Effective Date.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

\_\_\_\_\_  
By: Adam J. Godderz  
Title: Senior Vice President – Chief Legal Officer

[EXECUTIVE NAME] \_\_\_\_\_



March 25, 2021

**Re: Retention Bonus**

Dear [EMPLOYEE]:

As you know, Kansas City Southern (the “*Company*”) has agreed to be acquired by Canadian Pacific Railway Limited (“*Parent*”) (the “*Merger*”) pursuant to that certain Agreement and Plan of Merger, by and among the Company, Parent, Cygnus Merger Sub 1 Corporation (“*Surviving Merger Sub*”), and Cygnus Merger Sub 2 Corporation (“*First Merger Sub*”), dated as of March 21, 2021 (the “*Merger Agreement*”). Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to them as set forth in the Merger Agreement. Because your leadership is very important to the successful execution of our strategic plans, the Company is prepared to offer you the incentive arrangement described below to ensure that the Company will have the benefit of your continued employment and your strong commitment to the Company.

You will be entitled to a retention bonus equal to \$ \_\_\_\_\_ (the “*Retention Bonus*”), payable in two installments as follows: (1) 25% on the earlier of: (a) the date that the Voting Trust Transaction is completed or (b) the date that is nine months following the public announcement of the Merger, and (2) 75% on the earlier of: (a) ninety (90) days after the STB Final Approval, or March 31, 2023, subject in each case to your continued employment through the applicable payment dates; provided, however, that if you experience a Qualifying Termination on or after the completion of the Voting Trust Transaction, you will be entitled to payment of any unpaid portion of the Retention Bonus no later than five business days following such Qualifying Termination. Except as specifically provided in the immediately preceding sentence, if your employment with the Company terminates for any reason, you will forfeit any right to receive the Retention Bonus.

For purposes of this letter:

(a) “*Cause*” means, for an individual who is party to an agreement with the Company that defines Cause, Cause as defined in such agreement, or, for any other individual, : (i) your conviction for committing an act of fraud, embezzlement, theft, or any other act constituting a felony involving moral turpitude or causing material damage or injury, financial or otherwise, to the Company, (ii) a demonstrably willful and deliberate act or failure to act which is committed in bad faith, without reasonable belief that such action or inaction is in the best interests of the Company, which causes material damage or injury, financial or otherwise, to the Company (but only if such act or inaction is not remedied within 15 business days of your receipt of written notice from the Company which describes the act or inaction in reasonable detail), or (iii) your consistent gross neglect of duties or consistent wanton negligence by you in the performance of your duties (but only if such neglect or negligence is not remedied within a reasonable remedial period after your receipt of written notice from the Company which describes such neglect or negligence in reasonable detail and specifies the remedial period).



(b) “**Good Reason**” means, for an individual who is party to an agreement with the Company that defines Good Reason, Good Reason as defined in such agreement, or, for any other individual, the occurrence of any of the following events without your written consent: (i) a material reduction in your total direct compensation, or (ii) a relocation of your principal place of employment by more than fifty (50) miles; provided that your resignation shall be considered to be for “Good Reason” only if (x) you provide notice to the Company of the act or omission constituting Good Reason within thirty (30) days following the occurrence of such act or omission, (y) the Company fails to remedy such act or omission within thirty (30) days following receipt of such notice, and (z) you resign within thirty (30) days after the end of such cure period.

(c) “**Qualifying Termination**” means a termination of your employment (i) by the Company without Cause, or (ii) by you for Good Reason.

You acknowledge that, except as may otherwise be provided under any other written agreement between you and the Company, your employment is “at will” and may be terminated by either you or the Company at any time and for any reason.

This letter may not be amended or modified, except by an agreement in writing signed by you and the Company. This letter shall be binding upon any successor of the Company or its businesses (whether direct or indirect, by purchase, merger, consolidation or otherwise), in the same manner and to the same extent that the Company would be obligated under this letter if no succession had taken place. The term “Company,” as used in this letter, shall mean the Company as hereinbefore defined and any successor or assignee to the business or assets which by reason hereof becomes bound by this letter.

This letter shall be governed by, and construed in accordance with, the laws of the State of Missouri, without reference to its conflict of law rules. All benefits hereunder are subject to withholding for applicable income and payroll taxes or otherwise as required by law.

Please be mindful of the fact that the Company has made this retention bonus opportunity available to a select group of employees of the Company. Please keep confidential the fact that you have received this letter as well as the contents of this letter.

We look forward to a very promising future. In order to be eligible to receive these benefits, it is important that you sign this letter and return it to Lora Cheatum as soon as practicable.

Very truly yours,

By: \_\_\_\_\_  
Title:\_\_\_

Accepted and Acknowledged:

\_\_\_\_\_  
Name: \_\_\_\_\_



