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**VIA ELECTRONIC FILING**

May 1, 2018

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

Re: *In Re National Railroad Passenger Corp.*, STB Docket No. FD 36183

Dear Ms. Brown:

I am attaching for e-filing in the above-captioned proceeding the Verified Reply of the Maryland Transit Administration and Motion to Stay or Dismiss.

Please do not hesitate to contact me with any questions.

Sincerely,



Charles A. Spitulnik

Enclosure

Cc: Neil Gilman, Esq.

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB DOCKET NO. FD 36183**

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**IN RE NATIONAL RAILROAD PASSENGER CORP.**

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**VERIFIED REPLY OF  
THE MARYLAND TRANSIT ADMINISTRATION AND MOTION TO STAY OR  
DISMISS**

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*Counsel for Maryland Transit  
Administration*

Dated: May 1, 2018



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SURFACE TRANSPORTATION BOARD**

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**VERIFIED REPLY OF  
THE MARYLAND TRANSIT ADMINISTRATION AND MOTION TO STAY OR  
DISMISS**

The Maryland Transit Administration (“MTA”) respectfully submits this Reply to the Petition for Relief Pursuant to 49 U.S.C. § 24905 submitted by the National Railroad Passenger Corporation (“Amtrak”) on April 11, 2018 in the above captioned proceeding. In filing its Petition, Amtrak avoids complying with a valid arbitration process to which it agreed freely and with full understanding of the contractual and statutory landscape. Contrary to the terms and intent of its agreement with MTA, and to applicable federal law and policy, Amtrak calls on the Surface Transportation Board (“Board”) to prematurely settle terms that it is contractually required to negotiate in good faith with MTA, and then to arbitrate if negotiations fail. Amtrak’s contentions are baseless. Instead, the Board has the authority and the obligation under the Federal Arbitration Act and terms of the current valid agreement between Amtrak and MTA (collectively, the “Parties”) to stay or dismiss<sup>1</sup> Amtrak’s Petition pending arbitration. MTA requests that the Board do so now.

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<sup>1</sup> There is some disagreement between the federal circuit courts as to whether stay or dismissal is appropriate. See *Katz v. Cellco Partnership*, 794 F.3d 341, 345 (2d Cir. 2015) (discussing circuit split).

## **I. BACKGROUND**

### **A. The Parties and Their Relationship to the Northeast Corridor**

MTA is a modal administration of the Maryland Department of Transportation acting on behalf of the State of Maryland. Among its responsibilities, MTA provides (through contracts with third parties) the Maryland Area Regional Commuter (“MARC”) Train Service, which serves commuters in Washington D.C., in Baltimore, Brunswick, Frederick, Harford County, Maryland, and in Martinsburg, West Virginia. This service includes passenger commuter rail service seven days a week over the portion of the Northeast Corridor (“NEC”) rail line extending between Union Station in Washington D.C. and Perryville, Maryland (“NEC Segment”). The NEC itself is a rail line that runs along the eastern seaboard of the United States connecting large metropolitan areas between Washington D.C. and Boston, Massachusetts. MTA has operated this MARC service on the NEC Segment, referred to as MARC’s “Penn Line”, since it took over the operation from Conrail (as successor to the Pennsylvania Railroad and then the Penn Central Transportation Company) in the early 1980’s.<sup>2</sup>

Amtrak is a corporation established by Congress and organized under the Rail Passenger Service Act, Pub.L. 91-518, 84 Stat.1327 (1970). Amtrak owns most of the NEC, including the NEC Segment, and Union Station in Washington D.C., which it acquired with Congressional assistance in 1976. *See* Railroad Revitalization and Regulatory Reform Act of 1976, Pub.L. 94-

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<sup>2</sup> MARC also provides service on 2 lines owned by CSX Transportation, Inc. (“CSXT”) between Washington and Baltimore’s Camden Station (the “Camden Line”) and Martinsburg, WV and Frederick, MD (the “Brunswick Line”). These services both operate into Union Station as well and as a result the Access Agreement that is the subject of this proceeding also affects, to a limited but crucial extent, the service on the Brunswick and Camden Lines.

210, 90 Stat. 119 (1976). Amtrak and MTA have historically entered into periodic agreements allowing for MTA's access and use of the NEC Segment and Union Station.

## **B. Legislative, Regulatory, and Contractual Efforts to Establish Cost Allocation Along the NEC**

Historically, the various public commuter rail operators have entered into individual agreements with Amtrak for use of and access to the NEC. This resulted in widely diverging terms of use and cost allocation among the parties, a consequence that Congress sought to address in passing the Passenger Rail Investment and Improvement Act of 2008, Pub.L. 110-432 ("PRIIA").

### **1. NEC Cost Allocation Under PRIIA**

Among the reforms that PRIIA brought were a renewed effort to create a fair and uniform means of allocating costs by private agreement between parties along the NEC. *See* PRIIA Sec. 212, codified at 49 U.S.C. § 24905. The entity charged with facilitating this task among stakeholders is the Northeast Corridor Commission ("NEC Commission"), which was established pursuant to Section 212 of PRIIA, Section 24905(a). The NEC Commission is made up of representatives of Amtrak, USDOT, one member for each of the States (including the District of Columbia) on the NEC, and non-voting representatives from the freights and commuter rail carriers using the Corridor. Section 24905(c)(1) requires the NEC Commission to:

(A) develop a standardized policy for determining and allocating costs, revenues, and compensation for Northeast Corridor commuter rail passenger transportation, as defined in section 24102 of this title, on the Northeast Corridor main line between Boston, Massachusetts, and Washington, District of Columbia, and the Northeast Corridor branch lines connecting to Harrisburg, Pennsylvania, Springfield, Massachusetts, and Spuyten Duyvil, New York, that use Amtrak facilities or services or that provide such facilities or services to Amtrak that ensures that—

(i) there is no cross-subsidization of commuter rail passenger, intercity rail passenger, or freight rail transportation;

(ii) each service is assigned the costs incurred only for the benefit of that service, and a proportionate share, based upon factors that reasonably reflect relative use, of costs incurred for the common benefit of more than 1 service; and

(iii) all financial contributions made by an operator of a service that benefit an infrastructure owner other than the operator are considered, including but not limited to, any capital infrastructure investments and in-kind services;

(B) develop a proposed timetable for implementing the policy;

(C) submit the policy and the timetable developed under subparagraph (B) to the Surface Transportation Board, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives;

(D) not later than October 1, 2015, adopt and implement the policy in accordance with the timetable; ....”

Section 24905(c)(2) requires Amtrak and the commuter rail authorities using the NEC to “implement new agreements for usage of facilities or services based on the policy developed under paragraph (1).” (emphasis added). If the entities cannot reach agreement, the “Surface Transportation Board shall determine the appropriate compensation for such usage ....after taking into consideration the policy developed under paragraph 1(A), as applicable.” In addition, under Section 24905(c)(4) the parties to the policy “may request that the Surface Transportation conduct dispute resolution.”

## **2. NEC Commission Cost Policy**

In September, 2015, the NEC Commission approved a policy for cost allocation along the NEC. See Northeast Corridor Commission, Northeast Corridor Commuter and Intercity Rail Cost Allocation Policy (Sept. 17, 2015, as amended March 8, 2018) (“Cost Policy”). The Cost Policy includes a section concerning dispute resolution, Section 2.7, under which it states that “[c]onsistent with the partnership principles this policy establishes, resolving disputes within the Commission’s ordinary business practices and committee functions is strongly preferred.” Section 2.7 of the Cost Policy provides for a process “[t]o resolve disagreements related to the

interpretation and application of the policy” under which an ad-hoc committee may review and recommend a resolution, after which any of the parties may request mediation or alternative dispute resolution, Board resolution of the dispute, or, by mutual agreement of the parties, litigate the issue. The Cost Policy also states that “[f]or issues not related to the policy, dispute resolution provisions within existing agreements will continue to apply. Furthermore, the Cost Policy provides that “the processes described in this policy do not supersede or replace any legal remedies available to the parties.” Cost Policy, Section 2.7 (emphasis added).

Section 4.4 of the Cost Policy addresses the issue of allocation of liability amongst the NEC Commission constituent members. This section provides that the NEC Commission “will develop a new approach to liability provisions no later than March 31, 2018”. Section 4.4 also provides “goals for liability provisions in existing and new agreements”, which include the elimination of “but for” liability and indemnity provisions in favor of “no fault” liability provisions “so that each party takes responsibility for costs associated with their own equipment, employees, and passengers.” Finally, Section 4.4 also provides that “[p]rior to implementation of a Corridor-wide approach and to the extent permitted by state law, operators may amend existing liability arrangements through negotiated agreements consistent with the overall intent of the policy.” Cost Policy, Section 4.4 (emphasis added).

### **C. The Existing Access Agreement Between MTA and Amtrak and Discussions Aimed at Incorporating the New Cost Methodology<sup>3</sup>**

#### **1. The Existing Access Agreement**

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<sup>3</sup> It would be tempting to refer to those discussions with Amtrak as “negotiations” as Amtrak does in its Petition. However, a communication of a mandate in a take-it-or-leave-it fashion does not rise to the level of negotiation which, in common parlance, refers to a give and take between parties concerning issues that are of concern to both of them.

On July 1, 2013, Amtrak and MTA entered into an access agreement for the NEC Segment that originally expired in 2018, which has been amended three times and the term of which has now been extended by agreement of the parties through 2023. Access Agreement Between National Railroad Passenger Corporation and Maryland Transit Administration, Effective as of July 1, 2013, Section 16 (“Access Agreement”), a copy of which is attached to this Reply as **Attachment 1**. The Access Agreement concerns “the right to . . . use the rail facilities on the NEC Segment and the Washington Terminal insofar as may be necessary to enable [MTA] . . . to perform its . . . duties with respect to the operation of MARC Commuter Rail Service . . . .” Access Agreement, Section 2.1.<sup>4</sup>

The Access Agreement contains both cost-allocation and risk-allocation provisions. See Access Agreement, Sections 8 and 10. The Access Agreement’s risk-allocation provisions reflect a form of “but-for” liability allocation that is disfavored under Section 4.4 of the Cost Policy. Together with the cost-allocation and compensation terms, the risk-allocation provisions of the Access Agreement reflect the overall costs that MTA and Amtrak determined they were willing to assume at the time they agreed to those terms.

Section 17 of the Access Agreement concerns dispute resolution. Subsection 17.1 provides that “[i]n the event of a dispute by the Parties over any issue arising under or related to this Agreement, the Parties shall first attempt to resolve the dispute by initiating discussions between themselves as follows . . . .” Access Agreement, Section 17.1 (emphasis added). Subsections 17.1.1 through 17.1.4 provide for a series of dispute resolution steps at escalating levels of authority, up to MTA’s Administrator and Amtrak’s Chief Corridor Development, NEC

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<sup>4</sup> Pursuant to Section 1.35 of the Access Agreement “‘NEC Segment’ means the portion of the NEC that is used for the operation of MARC Commuter Rail Service. As of the date of this Agreement, the NEC Segment is the portion of the NEC between Washington, DC, and Perryville, MD.”

Infrastructure and Investment Development. In the event escalation to this level does not resolve the dispute, “either party may proceed with binding arbitration” by notifying the other of its desire to submit the matter to arbitration. Access Agreement, Sections 17.1.4.3, 17.1.4.1. Thereafter the parties may pursue arbitration according to the procedures set out in Subsections 17.1.4.1 through 17.1.4.8.

During negotiations over the terms of the Access Agreement, both parties were aware of the requirements under PRIIA and the work of the NEC Commission to negotiate a cost-methodology for use of the NEC. Section 16.5 of the Access Agreement reflects this understanding:

The Parties acknowledge that the Northeast Corridor Infrastructure and Operations Advisory Commission (the “NEC Commission”) is developing a standardized formula for determining and allocating costs, revenues and compensation for use of Amtrak’s facilities or services (the “212 Formula”). As required by Section 212 of the Passenger Rail Investment and Infrastructure Act of 2008 (codified at 49 U.S.C. 24905), the Parties agree that upon completion of the NEC Commission’s work and the publication of the 212 Formula, (or if there is a regulatory or judicial proceeding instituted with respect thereto, upon the completion and issuance of a final unappealable order in any such regulatory or judicial proceedings related thereto), the Parties will promptly meet and renegotiate a new compensation arrangement that is based on the 212 Formula.

When negotiating the Access Agreement, Amtrak asked MTA to include a provision that would lead to automatic incorporation of the PRIIA Section 212 policy and any resulting change in the compensation sections of the Access Agreement. MTA declined that suggestion, explaining that any change in the compensation arrangement that would substantially increase MTA’s costs would require approval of the Maryland Board of Public Works. The requirement to renegotiate set forth in Section 16.5 of the Access Agreement resulted from that.

## **2. Discussions Over Incorporating the New Cost Methodology**

Subsequent to issuance of the Cost Policy, MTA and Amtrak engaged in discussions for over two years over proposed amendments to reflect the new compensation arrangement. During this time the Parties spent a significant amount of time working on an analysis of and revision to the compensation due Amtrak.

Throughout these discussions MTA repeatedly requested Amtrak to consider a revision of the liability allocation arrangement in the Access Agreement as part of the renegotiation of the compensation arrangement, and in line with the goals provided in Section 4.4 of the Cost Policy. Specifically, MTA proposed a “no-fault” arrangement described in the Cost Policy. A copy of MTA’s “no fault” proposal is attached hereto as **Attachment 2**. At each meeting, MTA raised the issue of inclusion of the no-fault liability arrangement that it had proposed early on. MTA repeatedly explained that the State required that the liability arrangement must be brought into line with an “allocated” methodology being renegotiated. Amtrak repeatedly deferred the discussion until Amtrak’s team leader finally advised MTA that he had not presented MTA’s proposal to Amtrak leadership and would not. At that point, believing that Amtrak was negotiating in bad faith, MTA declared an impasse in the negotiations.

After a lengthy break, the parties resumed discussion. Amtrak once again submitted its proposed language that would amend the Access Agreement to reflect the principles of the Cost Policy. MTA once again presented its proposal to include the no-fault arrangement that it had been proposing consistently throughout the previous round of discussions. Amtrak refused, stating that the Amtrak leadership insisted on a “clean” agreement, that is, one that included only the issues related to the PRIIA Section 212 compensation formula.

MTA explained again that its leadership could not agree to an arrangement that increased its cost without an agreement that reduces its risk exposure by amending the liability



arrangement that would reduce MTA's risk. MTA explained, consistently and often during the course of these discussions, that the previously negotiated "bur for" liability arrangement was appropriate when the tenant commuter line was paying for costs based on the original, but now disfavored, "avoidable cost" methodology. However, with the advent of a fully allocated cost approach MTA and the officials of the State of Maryland believed that a re-allocation of liability exposure would also be appropriate. Although the NEC Commission apparently agreed, as evidenced by its inclusion of Section 4.4 of the Cost Policy, Amtrak consistently refused to engage on this topic. When Amtrak refused to negotiate on this point, insisting that only the issues it wished to discuss were open for discussion, and describing the no-fault arrangement as "draconian", MTA communicated to Amtrak that Amtrak's refusal to negotiate placed the discussions at an impasse.

Rather than initiating the dispute resolution and arbitration provisions of the Access Agreement, Amtrak initiated this proceeding before the Board.

## **II. ARGUMENT**

### **A. THE FEDERAL ARBITRATION ACT CONFIRMS THAT AMTRAK'S REQUEST TO THIS BOARD IS UNTIMELY.**

#### **1. Respecting Agreements to Arbitrate**

The Federal Arbitration Act (the "Arbitration Act") provides that a "contract evidencing a transaction involving commerce to settle by arbitration any controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. "Commerce" is defined as "commerce among the

several States . . . or in the District of Columbia . . . or between the District of Columbia and any State.” 9 U.S.C. § 1.<sup>5</sup>

The Arbitration Act “establishes a federal policy favoring arbitration, requiring that [the courts] rigorously enforce arbitration agreements.” *Shearson/American Express v. McMahon*, 482 U.S. 220, 226 (1987) (citations and quotations omitted). “The preeminent concern of Congress in passing the [Arbitration Act] was to enforce private agreements into which parties had entered.” *Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. 213, 221 (1985). Where contracts are subject to the Arbitration Act, the Arbitration Act will preempt conflicting state law only “to the extent that [state law] stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *Volt Info. Sciences, Inc. v. Bd. of Trustees of Leland Stanford Jr. Univ.*, 489 U.S. 468, 477 (1989).

## **2. Relationship Between the Arbitration Act and Other Federal Laws**

Pursuant to the terms of the Arbitration Act, a written arbitration provision concerning interstate commerce is enforceable unless otherwise provided under “law or equity”. 9 U.S.C. § 2; *Allied-Bruce Terminix Cos., Inc. v. Dobson*, 513 U.S. 265, 273 (1995). The enforceability of arbitration clauses “is not diminished when a party bound by an agreement raises a claim founded on statutory rights.” *McMahon*, 482 U.S. at 226. There is also no requirement that an arbitration provision needs to “specifically mention the statute giving rise to the claims that a party to the clause seeks to arbitrate.” *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 625 (1985).

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<sup>5</sup> The definition of “commerce” excludes “contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.” 9 U.S.C. § 1. None of these exceptions for employment contracts apply here.

Congress can override the Arbitration Act. In order to do so, however, it must show its intent through either (1) the text of the statute, (2) its legislative history, or (3) an inherent conflict between arbitration and the statute's underlying purposes. *McMahon*, 482 U.S. at 226-27; *Gilmer v. Interstate/Johnson Lane Corp.*, 895 F.2d 195, 197 (4th Cir.1990), *aff'd*, 500 U.S. 20 (1991). The burden of proof that a valid arbitration provision does not supersede statutory or other claims pursuant to the Arbitration Act rests with the party seeking to avoid arbitration. *McMahon*, 482 U.S. at 227.

### **3. The Access Agreement Implicates the Arbitration Act.**

Just as Amtrak views the negotiating process as a one-way street on which it erects the directional signs, so does it view its obligation to comply with the requirements of the Access Agreement. Amtrak seeks to avoid complying with a valid, mandatory arbitration process to which it agreed freely and with full understanding of the contractual and statutory landscape in an attempt to strong-arm MTA in its negotiations regarding use of the NEC. Contrary to the terms and intent of the Access Agreement, as well as applicable federal law and policy, Amtrak calls on the Board to prematurely settle terms that it is statutorily and contractually required to negotiate in good faith with MTA and to refer to arbitration.

An arbitration agreement is subject to the Arbitration Act if it: (1) is in writing and (2) relates to interstate commerce. *See* 9 U.S.C. §§ 1 and 2. Here, Section 17 of the Access Agreement documents the Parties' agreement to arbitrate. Furthermore, the Access Agreement relates to interstate commerce, specifically "the right to . . . use the rail facilities on the NEC Segment", which is physically located in the State of Maryland and the District of Columbia. Access Agreement, Sections 2.1, 1.35.

#### **4. PRIIA Does Not Supersede the Arbitration Act**

A written arbitration agreement that is subject to the Arbitration Act is enforceable so long as there are no grounds at law or in equity for the revocation of the contract. *Dobson*, 513 U.S. at 573. In order for PRIIA to supersede the Arbitration Act, Congress would have had to express its intention either (1) in the text of the statute, (2) in PRIIA's legislative history, or (3) through an inherent conflict between arbitration and the statute's underlying purposes.

*McMahon*, 482 U.S. at 226-27. Although Amtrak claims that Section 24905(c) requires the Board to override the arbitration provisions of the Access Agreement, nothing in the text or legislative history of PRIIA indicates congressional intent to do so. Furthermore, there is no inherent conflict between arbitration and PRIIA's underlying purposes.

PRIIA expresses no indication that PRIIA supersedes the provisions of the Arbitration Act, although Congress could have done so, and has done so in other statutory regimes. *See* 22 U.S.C. § 290k-11 ("The Federal Arbitration Act (9 U.S.C. 1, et seq.) shall not apply to enforcement of awards rendered pursuant to the Convention."); 22 U.S.C. § 1650a (same). Nor does PRIIA anywhere expressly exclude arbitration or invalidate arbitration provisions in contracts more generally. Furthermore, there is nothing in the legislative history of PRIIA indicating an intent to supersede the Arbitration Act or prohibit contractually agreed-to arbitration. *See* H. Rep. No. 110-690 (2008) (discussing bill). The Cost Policy, adopted pursuant to PRIAA, specifically preserves the remedies available to parties under their respective existing agreements. Cost Policy, Section 2.7.

Finally, there is no inherent conflict between arbitration and PRIIA's underlying purposes. Indeed, PRIIA expressly endorses and requires contractual settlement of rights with respect to use of the NEC. *See* 49 U.S.C. § 24905(c)(2) (Amtrak and public authorities . . . shall

implement new agreements for usage of facilities or services based on the [Policy].”). It would be antithetical to read into this provision of PRIIA, which requires negotiation of contractual terms, a prohibition on compliance with previously contractually negotiated arbitration.

Although Section 24905(c)(2) requires the Board to determine the terms in the event the parties fail to implement their agreements, this redress does not preclude the parties from agreeing to arbitrate before coming to the Board. Here, after the adoption of PRIIA in 2008, Amtrak and MTA reached an agreement in 2013 that specifically requires the arbitration of disputes.

Other provisions in PRIIA contradict any argument that PRIIA disfavored arbitration or other means of alternative dispute resolution. Section 24905(c)(4), which allows the Parties to seek dispute resolution assistance from the Board, indicates Congress’s preference for allowing the parties to settle their contractual disputes themselves. This accords with the policy goals of the Arbitration Act, which seek to protect and bolster resolution through non-judicial means. *See McMahon*, 482 U.S. at 226. It also accords with the Board’s own understanding of PRIIA and its agreement with arbitration and other non-judicial means as a preferable means of dispute resolution. *See* 49 C.F.R. §§ 1108.2(a) (stating that the Board “favors the resolution of disputes through the use of mediation and arbitration procedures, in lieu of formal Board proceedings, whenever possible.”), 1109.1 (“The Board favors the resolution of disputes through the use of mediation and arbitration procedures, in lieu of formal Board proceedings, whenever possible.”)

#### **5. The Board Has the Authority and Obligation to Stay or Dismiss Amtrak’s Petition Pursuant to the Arbitration Act**

While the fora most directly addressed in the Arbitration Act are the “courts of the United States”, *see, e.g.* 9 U.S.C. §§ 3 (stay of court proceedings), 4 (petition for failure to arbitrate), federal court precedent and a long list of federal agency decisions make clear that quasi-judicial regulatory agency entities and boards are equally subject to the Arbitration Act, *see, e.g., D.R.*

*Horton, Inc. v. Nat'l Labor Relations Bd.*, 737 F.3d 344 (5th Cir. 2013) (partially reversing NLRB decision for “not giv[ing] proper weight to the Federal Arbitration Act”); *In the Matter of Sullivan v. Science Applications Int’l Corp.*, 2007 DOL SOX LEXIS 102 (2007) (Department of Labor administrative law judge decision staying whistle-blower protection claim sought pursuant to the Sarbanes-Oxley Act of 2002).

Where special courts or quasi-judicial regulatory entities are specifically charged under statute with enforcement of statutory rights, those entities take into account and decide on whether the Arbitration Act requires that they dismiss or stay proceedings pending mandatory arbitration processes between the parties. For instance, whistleblower claims under Section 806 of the Sarbanes-Oxley Act, codified at 18 U.S.C. § 1514A, which require filing a complaint with the Secretary of Labor, *see* 18 U.S.C. § 1514A(b)(1)(A), are subject to the Arbitration Act, and the Department of Labor administrative law judges charged with hearing those cases will determine whether to stay proceedings based on a valid arbitration agreement covered under the Arbitration Act. *See Sullivan*, 2007 DOL SOX LEXIS 102 at \*5 (noting courts that have held under Section 806 of the Sarbanes-Oxley Act that parties be subject to arbitration, and so holding).

**6. The Terms of the Access Agreement and Nature of the Dispute Dictate That the Board Dismiss or Stay the Proceedings Pursuant to the Arbitration Act.**

In order to determine whether to require the parties to arbitrate, the Board must determine (1) whether the parties entered into a valid and enforceable arbitration agreement, and, if so, (2) whether the arbitration agreement encompasses the claims raised in the complaint. *Brown v Dorsey & Whitney, LLP*, 267 F.Supp.2d 61, 70 (D.D.C. 2003).

**(a). The Arbitration Clause in the Access Agreement is Valid and Enforceable**

The agreement to arbitrate “is a matter of contract”, *Nat’l R.R. Passenger Corp. v. Boston & Maine Corp.*, 850 F.2d 756, 759 (D.C. Cir. 1988) (quotations and citations omitted), and thus is a matter of state law, *Volt Info. Sciences, Inc. v. Bd. of Trustees of Leland Stanford Jr. Univ.*, 489 U.S. 468, 474 (1989).

As an initial matter, a reviewing court or agency must determine which state’s contract law applies. *Brown*, 267 F.Supp.2d at 70. The Access Agreement does not contain a choice of law provision, but federal statute confirms that D.C. law applies to contracts between Amtrak and the State of Maryland. 49 U.S.C. § 24301(o). D.C. law clearly supports the concept that written arbitration agreements are valid, enforceable, and irrevocable unless the contract that contains these rights is otherwise invalid. *See* D.C. Code § 16-4406.

The alternative dispute resolution and arbitration provisions provided in Section 17 of the Access Agreement, like the rest of the Access Agreement of which they are a part, are valid and enforceable. The Access Agreement reflects all the necessary elements of a valid and binding agreement, including bargained-for and mutually agreed terms by freely consenting parties within their proper capacities, for access and use of the NEC in consideration of compensation. *See Booker v. Robert Half Int’l, Inc.*, 315 F.Supp.2d 94, 98-99, 100-102 (D.D.C. 2004); Restatement of Contracts 2d §§ 9, 17, 71, 79.

Amtrak has not challenged the validity of the Access Agreement or Section 17, nor can it. As demonstrated above, the arbitration provision of the Access Agreement is not invalidated by PRIIA, or any other federal or state law. Nor are other defenses applicable. For instance, MTA has not evinced an intent to waive the arbitration clause by pursuing litigation or seeking a determination from the Board. *See United States v. Darwin Const. Co.*, 750 F. Supp. 536 538-39

(D.D.C. 1990) (party initiating litigation before seeking arbitration indicated waiver of arbitration clause).

**(b). The Dispute is Subject to the Arbitration Clause**

The Parties also have agreed to arbitrate the dispute at issue. *See Brown*, 267 F.Supp.2d at 80. Section 17.1 of the Access Agreement provides that “[i]n the event of a dispute by the Parties over any issue arising under or related to this Agreement, the Parties shall first attempt to resolve the dispute by initiating discussions between themselves . . . .” Amtrak’s Petition makes clear that the heart of the dispute is compensation for use of the NEC, Amtrak Petition at 1, which is clearly a central element of the Access Agreement terms and precisely what Amtrak and MTA have been discussing for several years, *see* Amtrak Petition at 6-7.

**7. Amtrak Has Failed to Pursue Arbitration Under the Access Agreement**

Rather than pursue the appropriate dispute resolution and arbitration procedures that are carefully detailed under Section 17 of the Access Agreement, Amtrak has instead sought recourse prematurely with the Board. Amtrak has not served MTA with a letter notifying MTA of its intent to do so, thereby initiating procedures under Subsection 17.1.4. As a result, this Board should either stay or dismiss this proceeding pending the outcome of the arbitration required by the Access Agreement.

**B. In The Alternative, If This Board Elects To Proceed To Decision In This Matter, The Access Agreement Imposed Should Reflect Both The Cost Allocation And Liability Allocation Reflected In The Policy.**

MTA continues to assert, as described above, that Amtrak’s approach to this Board is premature. However, if the Board elects, contrary to the language of the Access Agreement, to address the substance of the relief Amtrak seeks, MTA asserts that the agreement should reflect all of the issues addressed in the Policy, not just the single focus that has characterized Amtrak’s



view of how the discussions about implementation of the Cost Policy should proceed. Specifically, along with the inclusion of the cost allocation methodology included in the Cost Policy, any agreement imposed by this Board should include as well a liability allocation arrangement that is consistent with the recommendation of the NEC Commission in Section 4.4 of the Cost Policy.

Unlike Amtrak's approach to its discussions with MTA, the Cost Policy does not view allocation of liability as an issue that is unrelated to the inclusion of the new cost allocation arrangement in the amended Access Agreement. In fact, the NEC Commission stated in the Cost Policy, to which Amtrak as a member of the NEC Commission agreed, that it was establishing:

...the following goals for liability provisions in existing and new agreements:

(1) Eliminate "but for" liability and indemnity provisions and adopt "no fault" liability provisions so that each party takes responsibility for costs associated with their own equipment, employees and passengers. "No fault" arrangements are beneficial because they limit litigation.

....

Prior to implementation of a Corridor-wide approach and to the extent permitted by state law, operators may amend existing liability arrangements through negotiated agreements consistent with the overall intent of the policy.

Cost Policy, Section 4.4 at 32-33.

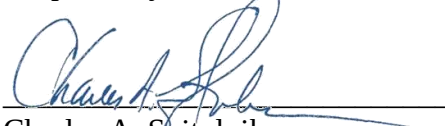
The Cost Policy explains that no-fault provisions require each party to take "responsibility for costs associated with their own equipment, employees and passengers", a concept that is wholly consistent with the allocation of costs for equipment and right-of-way use associated with an operator's use of the NEC that underlies the Cost Policy. Despite the NEC Commission's explicit statement that elimination of "but for" and replacing it with "no-fault" is a goal for liability provisions, Amtrak treats the issue as though it has no place in the discussion of the new agreements to which Section 4.4 explicitly refers. This

Board, if it elects to impose a new agreement rather than allowing the Parties to rely upon the dispute resolution mechanism to which they agreed, should accept the Commission's statement at face value and impose the no-fault liability allocation mechanism that MTA has proposed (a copy of which is attached to this Reply as **Attachment 2**) as part of that agreement.

### III. CONCLUSION

WHEREFORE, in view of the foregoing, MTA respectfully requests that the Board to stay or dismiss Amtrak's Petition pending arbitration.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Charles A. Spitulnik", is written over a horizontal line.

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*Counsel for Maryland Transit  
Administration*

Dated: May 1, 2018

## VERIFICATION

I, James Gillece, Chief of Staff to the Administrator of the Maryland Transit Administration, verify under penalty of perjury that the facts recited in the foregoing Verified Reply of the Maryland Transit Administration are true and correct. Further, I certify that I have personal knowledge of the facts stated therein and that I am authorized to verify these facts stated in the foregoing document.

  
James Gillece

Subscribed and sworn to  
before me this 20<sup>th</sup> day of  
April, 2018.

  
Notary Public

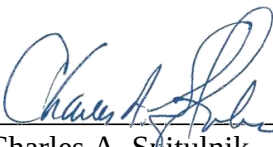
My commission expires: 2-11-2022

**Certificate of Service**

The undersigned hereby certifies that the foregoing Verified Reply of The Maryland Transit Administration and Motion to Stay or Dismiss has been served by first class mail, with postage prepaid, and by email upon:

Neil Gilman, Esq. Hunton Andrews Kurth LLP  
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Dated this 1<sup>st</sup> day of May, 2018.

  
\_\_\_\_\_  
Charles A. Spitulnik

# **ATTACHMENT 1**

**ACCESS AGREEMENT BETWEEN  
NATIONAL RAILROAD PASSENGER CORPORATION  
AND  
MARYLAND TRANSIT ADMINISTRATION,  
A MODAL AGENCY OF  
THE MARYLAND DEPARTMENT OF TRANSPORTATION,  
ACTING FOR AND ON BEHALF OF THE STATE OF MARYLAND  
Effective as of July 1, 2013**

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**ACCESS AGREEMENT BETWEEN  
NATIONAL RAILROAD PASSENGER CORPORATION  
AND  
MARYLAND TRANSIT ADMINISTRATION,  
A MODAL AGENCY OF  
THE MARYLAND DEPARTMENT OF TRANSPORTATION,  
ACTING FOR AND ON BEHALF OF THE STATE OF MARYLAND  
Effective As of July 1, 2013**

THIS AGREEMENT is made and entered into this 1<sup>st</sup> day of July, 2013, by and between the National Railroad Passenger Corporation ("Amtrak"), a corporation organized under the Rail Passenger Service Act, Pub.L. 91-518, 84 Stat. 1327 (1970), as amended from time to time, and the Maryland Transit Administration, a modal administration of the Maryland Department of Transportation, acting for and on behalf of the State of Maryland ("MTA" or "the Administration").

WHEREAS, MTA, under the Transportation Article, §§2-103(h) and 7-204(g) of the Annotated Code of Maryland, is duly authorized to enter into agreements to obtain transportation services; and

WHEREAS, MTA and Amtrak are parties to a certain Access Agreement dated July 1, 2008 (the "2008 Access Agreement"), which allows MTA to have access to and use of Amtrak's Northeast Corridor between Perryville, MD, and Washington, D.C., and to have access to and use of Amtrak's wholly-owned Washington Terminal facility for MTA's MARC Commuter Rail Service trains operated on the Northeast Corridor and on tracks owned by CSX Transportation, Inc., all for the operation of MTA's MARC Commuter Rail Service; and

WHEREAS, Amtrak and MTA are also parties to an Agreement for Operations, Equipment Maintenance and Other Services dated July 1, 2008, that provides that Amtrak crews will operate MTA's MARC Penn Line Service trains on the NEC and provide specified equipment maintenance, ticket sales and other related functions; and

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WHEREAS, MTA has requested Amtrak to continue to provide, and Amtrak is willing to continue providing, access to the NEC segment between Perryville and Washington, D.C. and to Washington Terminal for compensation, and to provide dispatching services, electric propulsion power, flagging, police and security services and such other services as may be agreed upon by the parties, that are associated with MTA's access to the NEC and Washington Terminal for the operation of MTA's MARC Commuter Rail Service; and

WHEREAS, the Parties acknowledge the importance of providing a safe, efficient, reliable service for the benefit of the MARC Commuter Rail Service passengers in accordance with the terms of this Agreement; and

WHEREAS, the Parties will execute a new separate agreement governing the provision of operating crews, equipment maintenance, ticket sales and other functions related to the MARC Penn Line Service ("Service Agreement"); and

WHEREAS, Amtrak has executed a Contract Affidavit, a copy of which is attached hereto as **Exhibit A**;

NOW THEREFORE, in consideration of the mutual promises and undertakings and of the compensation set forth herein, the Parties hereto agree as follows:

1. **Definitions**

1.1. The "2008 Access Agreement" shall have the meaning set forth in the third paragraph above of this Agreement.

1.2. "AAR" shall mean the Association of American Railroads.

1.3. "Actual Monthly Other NEC Flat-Rated Charges" shall have the meaning set forth in Section 10.2.

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- 1.4 "Actual Monthly Other Washington Terminal Flat-Rated Charges" shall have the meaning set forth in Section 10.5.
- 1.5 "Actual Monthly Washington Terminal Access Base Fee" shall have the meaning set forth in Section 10.4.
- 1.6 "ADA Costs" shall have the meaning set forth in Section 22.
- 1.7 "Administration" or "MTA" shall have the meaning set forth in the first paragraph above of this Agreement.
- 1.8 "Administration's Energy Administration Fees" shall have the meaning set forth in subsection 10.12.9.1.
- 1.9 "Administration's Energy Costs" shall have the meaning set forth in Section 10.12.8.1.
- 1.10 "Amtrak" shall have the meaning set forth in the first paragraph above of this Agreement.
- 1.11 "Camden and Brunswick Lines" shall mean, with respect to the Camden Line, the line of railroad used in the operation of the trains set forth in **Exhibit C-2** to this Agreement and, with respect to the Brunswick Line, the lines of railroad used in the operation of trains set forth in **Exhibit C-3** to this Agreement.
- 1.12 "Capital Program" shall have the meaning set forth in Section 10.13.8.
- 1.13 "Contract Year" shall mean the period beginning on July 1 of a calendar year and continuing through and including June 30 of the following calendar year.
- 1.14 "CSXT" shall mean CSX Transportation, Inc.
- 1.15 "Electrified Territory" shall mean the territory described in **Exhibit E**.
- 1.16 "Energy Administration Fees" shall have the meaning set forth in Section 10.12.3.

- 1.17 "Energy Costs" shall have the meaning set forth in Section 10.12.3.
- 1.18 "Energy Reimbursement Amount" shall have the meaning set forth in Section 10.12.8.2.
- 1.19 "Equipment" shall mean the rolling stock used in the operation of the MARC Commuter Rail Service, including electric and/or diesel locomotives and coaches (which may include parlor and café cars).
- 1.20 "Existing Leases and Easements" shall have the meaning set forth in Section 2.7 of this Agreement.
- 1.21 "Extra Move" shall mean any MARC train move that is operated outside of the normal operating schedule that supports the MARC Commuter Rail Service for the purpose of (i) Equipment replacement due to a mechanical defect, excluding yard moves, or (ii) qualifying the Administration's third party contractors.
- 1.22 "FELA" shall mean the Federal Employers Liability Act, 45 U.S.C. §51, et seq.
- 1.23 "FTA" shall mean the Federal Transit Administration.
- 1.24 "Joint Benefit Project" shall mean a Project that, when completed, will provide substantive benefit to MTA and to Amtrak or other third party rail operators that Amtrak permits to have access to the NEC. The determination of whether a Project is a Joint Benefit Project or a Sole Benefit Project does not depend upon the source of funds for the Project but upon the nature of the benefits conferred upon completion of the Project. The designation of a Joint Benefit Project will be indicated on any Project Initiation issued pursuant to the Master Project Agreement.
- 1.25 "Joint Benefit Program Management Committee" or "Committee" shall have the meaning set forth in Section 10.13.8.

- 1.26 "Local Distribution Companies" or "LDCs" shall have the meaning set forth in Section 10.12.1 of this Agreement.
- 1.27 "MAA" shall mean the Maryland Aviation Administration, a modal administration of the Maryland Department of Transportation.
- 1.28 "MARC Commuter Rail Operator" shall mean an entity, which may include Amtrak, CSXT or a third party contractor, that provides the train and engine crews for operation of trains in MARC Commuter Rail Service.
- 1.29 "MARC Commuter Rail Service" means the commuter rail service operated under the auspices of the Administration, as of the date of this Agreement, between Washington, DC, and points in Maryland and West Virginia.
- 1.30 "MARC Operations Center" shall mean the MARC facility located at 1515 Washington Boulevard, Baltimore, MD 21230, or such other substitute location as the Administration may advise Amtrak during the term of this Agreement.
- 1.31 "Maryland Growth and Investment Plan" shall mean the plan announced in September 2007, as updated from time to time, by the MTA and the Maryland Department of Transportation for improving services to customers of the MARC Commuter Rail Service through investment in infrastructure and equipment.
- 1.32 "Master Project Agreement" shall mean the agreement of the same title between the Parties dated January 15, 2010, that sets forth the terms and conditions for implementation of projects funded in whole or in part by the Administration pursuant to this or other applicable agreements.
- 1.33 "NEC" or "Northeast Corridor" means, for purposes of this Agreement, the railroad track and associated right-of-way owned by Amtrak, including the platforms,

signal system and other facilities required for the operation of trains, located between Washington D.C. and New York, NY.

1.34 "NEC Base Access Fee" shall be the amount computed pursuant to Section 10.1 of this Agreement.

1.35 "NEC Segment" means the portion of the NEC that is used for the operation of MARC Commuter Rail Service. As of the date of this Agreement, the NEC Segment is the portion of the NEC between Washington, DC, and Perryville, MD.

1.36 "Other NEC Flat-Rated Charges" shall have the meaning set forth in Section 10.2.

1.37 "Other Washington Terminal Flat-Rated Charges" shall mean the amount computed pursuant to Section 10.5 of this Agreement.

1.38 "Parties" shall refer to Amtrak and the Administration.

1.39 "Peak Commuter Periods" shall mean the hours of 5:00 AM through 8:00 AM, Monday through Friday, and 4:00 PM through 7:00 PM, Monday through Friday.

1.40 "Penn Line Service" shall mean the trains operated in MARC Commuter Rail Service on the NEC Segment and originating or terminating at Washington Terminal.

1.41 "Project" shall have the meaning set forth in the Master Project Agreement.

1.42 "Project Initiation" shall have the meaning set forth in the Master Project Agreement.

1.43 "Rail Operators" shall have the meaning set forth in Section 10.12.5.

1.44 "Reconciliation Statement" shall have the meaning set forth in Section 12.1.

1.45 "Reimbursement Percentages" shall have the meaning set forth in Section 10.12.5.



1.46 "Service Agreement" shall mean the new separate agreement to be executed by the Parties governing the provision of operating crews, equipment maintenance, ticket sales and other functions related to the MARC Commuter Rail Service.

1.47 "Sole Benefit Project" shall mean a Project that, when completed, will provide substantive benefit to the Administration but will provide little or no benefit to Amtrak or other third party rail operators that Amtrak permits to have access to the NEC. Examples of Sole Benefit Projects include, but are not limited to, construction or improvements of stations on or adjacent to the NEC that are used solely in the provision of MARC Commuter Rail Service, construction of overhead structures that are used to connect station facilities on either side of the NEC that are used solely in the provision of MARC Commuter Rail Service, and/or construction of facilities that will be used solely by trains operating in MARC Commuter Rail Service. The designation of a Sole Benefit Project will be indicated on any Project Initiation issued pursuant to the Master Project Agreement.

1.48 "Special Train" shall mean any MARC train that is operated outside of the normal operating schedule, is not associated with a scheduled train number, and is not a Test Train or an Extra Move. A "Special Train" is typically associated with an event (e.g., the Presidential Inaugural train).

1.49 "SYSTRA Model" shall have the meaning set forth in Section 10.12.5.

1.50 "SYSTRA Study" shall have the meaning set forth in Section 10.12.5.

1.51 "Test Train" shall mean any MARC train that is operated outside of the normal operating schedule for the purpose of evaluating equipment clearances and performance.

1.52 "Units" shall mean locomotives and cars used in the provision of the MARC Commuter Rail Service.

- 1.53 "Units Scheduled for Storage" shall have the meaning set forth in Section 10.14.
- 1.54 "WUS" shall mean Washington Union Station located in Washington, DC.
- 1.55 "Washington Terminal" shall mean the property owned, leased or controlled by Amtrak and/or The Washington Terminal Company within Washington, DC, including and in the vicinity of Washington Union Station.
- 1.56 "Washington Terminal Access Base Fee" shall have the meaning set forth in Section 10.4.
- 1.57 "Wedge Yard" shall mean the Administration's facility located at the portion of the Washington Terminal that is north of the New York Avenue and northwest of 9<sup>th</sup> Street in Washington, D.C. and which is more fully described in Exhibit A to the Easement Agreement for a Portion of the Wedge Yard in Washington Terminal dated February 2, 2004, between and among the Administration, Amtrak and the Washington Terminal Company, as amended by the parties thereto pursuant to a Supplemental Agreement to the Easement Agreement for a Portion of the Wedge Yard in Washington Terminal dated November 28, 2006.
- 1.58 "Weekday Service" shall mean trains operated in the MARC Commuter Rail Service on Monday, Tuesday, Wednesday, Thursday and Friday, including all holidays that fall on one of those days and on which MARC Commuter Rail Service trains operate.
- 1.59 "Weekend Service" shall mean trains operated in the MARC Commuter Rail Service on Saturday and/or Sunday, including all holidays that fall on one of those days and on which MARC Commuter Rail Service trains operate.
- 1.60 "Willful Misconduct" shall have the meaning set forth in Section 8.3.

2. Access to the NEC, Washington Terminal and Stations

2.1. Amtrak hereby grants to the Administration, its contractors or agents the right to enter upon and have access to and use the rail facilities on the NEC Segment and the Washington Terminal insofar as may be necessary to enable the Administration, its contractors or their agents to perform its or their duties with respect to the operation of MARC Commuter Rail Service to the extent specified in this Agreement.

2.1.1. Administration Supervisory Personnel. The Administration shall provide Amtrak with a list of its employees, contractors or agents assigned to oversee the operation of MARC Commuter Rail Service. Such oversight shall require routine and frequent entry upon the rail facilities owned by Amtrak. Such employees shall be required to attend safety classes conducted by Amtrak if Amtrak so requires, and such oversight activities shall be considered part of the MARC Commuter Rail Service for the purposes of the allocation of liability provisions of Section 8.

2.1.2. Administration Operations Personnel. Subject to the provisions of Sections 20 and 21 hereof, Administration personnel shall also have the right to enter upon Amtrak property for the purpose of performing ticket selling and/or customer services functions, provided mutually satisfactory arrangements can be reached by Amtrak and the Administration.

2.1.3. Other Administration Personnel. The Administration may find it necessary or desirable to have other of its personnel enter upon the rail facilities owned by Amtrak insofar as may be necessary to conduct inspections, studies, surveys and investigations related to MARC Commuter Rail Service and/or this

Agreement. Such entry shall be subject to reasonable notice to Amtrak and subject to the other conditions as set forth in Amtrak's then current "Permit to Enter Upon Property" Agreement, unless Amtrak agrees to waive such conditions.

**2.1.4. Administration Operations and Other Contractors.** Amtrak acknowledges that the Administration may, during the term of this Agreement, enter into agreements with third parties (either CSXT or other third parties) for operation of MARC Commuter Rail Service trains on the lines owned by CSXT or, during the renewal term of this Agreement, for operation of MARC Penn Line Service. Amtrak agrees that the employees and officials of any such third party contractor for the operation of trains shall be permitted to conduct those operations, subject to receipt by Amtrak of confirmation from the Administration that such employees are qualified to operate on Amtrak territory that will be used in the operation of the MARC Commuter Rail Service.

2.1.4.1. The Administration shall provide Amtrak with a list of the contractors and their employees or agents assigned to engage in the operation of MARC Commuter Rail Service. Such employees shall be required to attend safety classes conducted by Amtrak if Amtrak so requires, at the Administration's sole expense. Compensation for such training services shall be in accordance with Section 10.7 and/or 10.21, as applicable. Amtrak has the right but not the responsibility to approve of the Administration's training programs for its third party contractors engaged in operations over the NEC or Washington Terminal. Upon request by Amtrak, the Administration shall provide copies of such

training programs. The granting of such approval by Amtrak shall not relieve the Administration of any responsibilities or liabilities associated with its training programs. For CSXT or any other third party contractors, upon reasonable advance notice from the Administration, Amtrak will provide pilots and training as necessary for operation on Amtrak territory, and will assist the Administration and the third party contractor as necessary, including by allowing reasonable access to the NEC Segment and Washington Terminal to permit timely completion of training, at the Administration's sole expense. Compensation for such pilots and training shall be in accordance with Section 10.7.

2.1.4.2. The Administration understands and agrees that Amtrak may, for cause, require that any MTA or third party contractor employees providing MARC Commuter Rail Service to be prohibited or removed from performance of such services. Should Amtrak choose to prohibit or remove any contract employee for any cause-based reason, Amtrak shall notify the Administration immediately as to the cause. No later than seven (7) days following request from the Administration, Amtrak shall meet with the Administration to review such cause and any further details, subject to applicable confidentiality restrictions. If requested by Amtrak, and consistent with applicable labor agreements, the Administration or the third party contractor will hold employees out of MARC Commuter Rail Service pending a disciplinary hearing into the cause for probation or removal of such employee from performing such services. If the hearing

results in a finding of guilt, the employee shall be barred from MARC Commuter Rail Service upon request from Amtrak. Except as otherwise agreed, if (1) the employee is returned to service as a result of the hearing, (2) an arbitrator rules the discipline assessed was excessive, or (3) discipline assessed is overturned on appeal, Amtrak will bear the cost of any award or settlement for an employee held out of MARC Commuter Rail Service when Amtrak initiated the charge.

2.1.4.3. The Administration, its contractors and/or their agents shall not engage in maintenance of equipment activities, including but not limited to coach cleaning, inspections and running repairs at Amtrak's stations or maintenance facilities. The Administration's engineering design consultants and construction contractors shall not access the NEC or Washington Terminal without a separate, specific agreement with Amtrak to engage in such design or construction activity on Amtrak property.

2.2. Upon mutual agreement of the Parties, the Administration may secure access to additional portions of the NEC. Amtrak acknowledges that the Administration has commenced planning and implementation of the Maryland Growth and Investment Plan, and that the implementation of the improvements pursuant to that Plan will form the basis for permitting the Administration to add to the portion of the NEC Segment that is used in the provision of the MARC Commuter Rail Service.

2.3. The Administration's right of access to the NEC Segment includes the right to have access to and utilize (i) the car wash in Washington Terminal, in consideration of the Administration's investment of joint benefit capital funds in the reconstruction of the

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current Washington Terminal car wash facility, which reconstruction was completed in 2012, and (ii) the stations and/or related station facilities which are owned, leased or operated by Amtrak at WUS, New Carrollton, MD Station, BWI Airport Station (excluding the premises owned by MTA and leased to Amtrak), and Baltimore Penn Station.

2.3.1. In addition to the right to the stations listed in Section 2.3. above, Amtrak may grant the Administration the right to use and have access to other stations or facilities owned by Amtrak on or adjacent to the NEC Segment pursuant to either amendments to this Agreement or to other agreements to be entered into by the Parties from time to time.

2.3.2. The Parties acknowledge that ownership of the previously MAA-owned property at the BWI Airport Station has been transferred to MTA prior to the effective date of this Agreement. In the event that Amtrak relocates its station serving BWI Airport, the Administration shall have access to such relocated station in accordance with the terms of this Agreement. The Parties have engaged in planning for a new BWI station facility, and recognize that in the event a new or expanded facility is opened during the term of this Agreement, that either party may seek adjustment to the monthly fees set forth in Section 10.

2.3.3. The Administration has the responsibility for providing the necessary rolling stock equipment for the MARC Commuter Rail Service. All Equipment operated in the MARC Commuter Rail Service must meet applicable legal and regulatory requirements. Amtrak shall have the unilateral right to require removal from service any Unit of MARC Commuter Rail Service Equipment which does



not meet applicable Amtrak written standards for safety and operation or applicable legal or regulatory requirements. In order to ensure safe, reliable operations, Amtrak shall have the right of review and comment, at least ninety (90) days prior to the commencement of the Administration's procurement process, on the specifications for any new or overhauled equipment that the Administration proposes to operate on the NEC or Washington Terminal. In reviewing such proposed specifications, Amtrak shall advise the Administration of any issues which Amtrak identifies that may adversely affect the ability of the equipment to be operated on the NEC pursuant to this Agreement. In the event a federal, state or local law or regulation is enacted or promulgated after the effective date of this Agreement, that requires modifications or upgrades to the Equipment operated in the MARC Commuter Rail Service, MTA shall be solely responsible for complying with such legal or regulatory requirements.

2.4. The Parties agree that the Administration will compensate Amtrak for storage of its Equipment at Washington Terminal and Baltimore Penn Station. The Parties also agree that the NEC is severely constrained at current service levels and that they will jointly evaluate the available facilities, the impact of existing services on efficient and reliable operations of all parties and the potential need for improved facilities to accommodate increased or modified service that may be requested by the Administration. Amtrak acknowledges that the Administration has commenced planning and implementation of the Maryland Growth and Investment Plan, and that the implementation of the improvements pursuant to that Plan will form the basis for permitting the Administration to increase the number of trains operated and make other



adjustments to the MARC Commuter Rail Service while also addressing capacity constraints on the NEC and at Washington Terminal and Baltimore's Penn Station. The Parties agree that any such changes in the MARC Commuter Rail Service will require the consent of both Parties, as described in Sections 2.2 and 3.1 herein.

2.5. The Parties have reached an agreement granting the Administration an easement on the "Wedge Yard" property, and the Administration has commenced construction of the Wedge Yard facility where equipment can be parked and/or maintained. Until the new facilities are complete, the Parties agree that the Administration shall be allowed to store no more than One Hundred and Four (104) Units of Equipment (cars and locomotives) at the Washington Terminal facility at any time. Compensation for such storage will be in accordance with Section 10.14 below. Upon the opening of the new storage and maintenance facility at the Wedge Yard, Amtrak may reduce the number of Units the Administration is allowed to store at Washington Terminal by the number of Units to be stored at the Wedge Yard (the Parties agree that a minimum number of 25 Units will be stored at Wedge Yard), but in no event will the number of Units the Administration is allowed to store at Washington Terminal be reduced below seventy-two (72) without further agreement of the Parties. Notwithstanding the previous sentence, at any time after July 1, 2015, upon twenty-four (24) months written notice to the Administration, Amtrak may reduce the number of Units the Administration is permitted to store at the Washington Terminal facility.

2.5.1. The Parties acknowledge that, within ninety (90) days of the anticipated opening by the Administration of the new Wedge Yard storage and maintenance facility, the Parties will develop the procedure for operation of the

Administration's trains in the MARC Commuter Rail Service between the Washington Terminal facility and the new Wedge Yard storage and maintenance facility. The intent of the Parties will be to minimize operating expenses to the Administration without compromising Amtrak's operating procedures.

2.6. The Parties acknowledge that Baltimore Penn Station is currently serving as a mid-day layover and overnight storage facility, and that such use is not compatible with planned growth in Amtrak and MARC Commuter Rail Service. The Administration agrees to expeditiously proceed with planning and implementation of an alternative mid-day layover and overnight storage facility, and Amtrak agrees to fully cooperate in such efforts. Further, at any time after July 1, 2015, upon twenty-four (24) months written notice to the Administration, Amtrak may require that the Administration reduce or cease use of Baltimore Penn Station as a mid-day layover and/or overnight storage facility. Notwithstanding the foregoing, once the Administration completes acquisition of all property for and completes the construction of a storage facility north of Baltimore Penn Station, if Amtrak issues notice, the notice required from Amtrak in the previous sentence shall be reduced to six (6) months.

2.7. The Administration and Amtrak are currently parties to the Existing Leases and Easements listed in **Exhibit B** to this Agreement. The granting of any future easements will be subject to Amtrak approval.

3. **Schedule of MARC Operations.**

3.1. The schedules for the operation of the MARC Commuter Rail Service on the NEC Segment and on the CSXT lines, effective July 1, 2013, are attached hereto as **Exhibit C**. Amtrak shall advise the Administration at the earliest possible date of

anticipated changes in the schedules of Amtrak intercity passenger trains operated on the NEC Segment if those changes will also affect the MARC Commuter Rail Service schedules. Amtrak agrees that it shall not unnecessarily change the schedule of its operations in a way that requires a change in the schedule of a MARC commuter train that is operating in the Peak Commuter Periods without first considering reasonable alternatives to such a change. To the extent reasonably necessary to avoid conflicts with Amtrak's existing or future scheduled intercity rail passenger service, the schedules for MARC Commuter Rail Service shall be revised promptly after receipt of sixty (60) days written notice from Amtrak of a change that is to be made in accordance with the provisions of this Section 3.1.

3.1.1. The Parties acknowledge that, based upon past investment and practices, current locomotive operating dynamics, and current train lengths and stopping patterns, the Administration is entitled to operate the following number of peak hour trains between Baltimore and Washington:

3.1.1.1. Morning Peak:

- 1 train departing Baltimore between 4:00 am and 4:59 am
- 3 trains departing Baltimore between 5:00 am – 5:59 am\*
- 3 trains departing Baltimore between 6:00 am – 6:59 am\*
- 3 trains departing Baltimore between 7:00 am – 7:59 am\*

\*One Morning Peak train per hour originates from Perryville

3.1.1.2. Afternoon Peak:

- 4 trains departing Washington between 4:00 pm – 4:59 pm
- 4 trains departing Washington between 5:00 pm – 5:59 pm

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- 2 trains departing Washington between 6:00 pm – 6:59 pm

3.1.2. If the Administration requests additional or modified service during the Peak Commuter Periods, as well as during the mid-day hours, the Parties will determine whether a capacity study is required prior to implementation of that additional service, and the Parties will agree upon the methodology and data that will be used in such a study. The Parties agree that the commuter operating schedules attached as **Exhibit C** are based on diesel operating parameters, so the implementation of all-diesel operations on the MARC Commuter Rail Service does not constitute a modification that will require completion of a capacity study. Amtrak and the Administration will each absorb any internal costs incurred to complete such a study; and the Administration will pay Fifty Percent (50%) of any third-party costs incurred to complete such a study. The Parties acknowledge that any such study will incorporate existing and planned schedules and frequencies of other freight and passenger rail operators on the NEC Segment and Washington Terminal.

3.1.3. The Parties acknowledge that the Administration wishes to begin Weekend Service during the term of this Agreement. Upon request from the Administration, Amtrak agrees to develop a proposal for Weekend Service that can be implemented in the timeframe to be mutually agreed upon, taking into consideration the need for increased staff (including train and engine crews, maintenance of equipment personnel, management and other support staff), capacity constraints at Washington Terminal and the NEC (including existing and planned Amtrak service, and planned track outages for maintenance of way

activities), and equipment availability. The Administration agrees that any schedules proposed by Amtrak for Weekend Service may be subsequently modified or curtailed in order to allow for construction activity related to the Maryland Growth and Investment Plan, or other improvements to the NEC.

4. **Dispatching.**

4.1. Amtrak shall dispatch (i) the trains operating in MARC Penn Line Service, and (ii) all MARC Commuter Rail Service trains operating in Washington Terminal. Amtrak agrees that the procedures for dispatching MARC Penn Line Service trains and all MARC Commuter Rail Service trains operating in Washington Terminal require the dispatchers not to unreasonably discriminate against any trains, including MARC Commuter trains, when making decisions about priority of operations. Amtrak dispatchers shall take all reasonable steps to permit the MARC Commuter Rail Service, Amtrak intercity service, and freight rail service to operate on time, safely and reliably.

4.1.1. Amtrak acknowledges that the Administration has commenced planning and implementation of the Maryland Growth and Investment Plan. Upon receipt of a request from the Administration, the Parties shall promptly identify specific projects and/or improvements to be completed pursuant to that Plan, and/or other projects that may be proposed by other rail operating or funding agencies through the NEC Master Plan that has previously been agreed to among the states in the Northeast Corridor as of the date of this Agreement, and which may be further revised or extended by agreement among the interested parties thereto from time to time, which shall be coordinated with that Plan. The Parties will also identify the impact on MARC Commuter Rail Service that will derive from such projects

and/or improvements. Such impacts may include, but not be limited to, additional peak, off-peak, and weekend service levels, scheduling priorities, and dispatching protocols.

4.1.2. The Parties will implement the following practices in order to address Administration concerns about dispatching practices:

4.1.2.1. On a quarterly basis, the Parties will meet to review on time performance, dispatching performance and service disruptions. These meetings will include the Amtrak General Superintendent – MidAtlantic Division and the MTA Director of MARC and Commuter Bus Services.

4.1.2.2. On an annual basis, or more frequently if requested by either Party, senior management from each Party will meet to review on time performance, dispatching performance and service disruptions. These meetings will include the Amtrak Vice President – Operations or his designee and the MTA Administrator.

5. **Other Services Associated with Access to the NEC and Washington Terminal.**

5.1. **Flagging.**

5.1.1. When requested by the Administration, Amtrak shall provide flagging and other protective services support for the Administration or its contractors or agents when performing repair, maintenance or snow removal services at the stations at Perryville, Edgewood, Martin Airport, West Baltimore, Halethorpe, Odenton, Bowie State, Seabrook, and Aberdeen. The Administration will reimburse Amtrak for these services in accordance with Section 10.8.

5.2. Maintenance of Intertrack Platforms

5.2.1. Amtrak shall perform maintenance and repairs, including removal of snow and ice, on intertrack platforms where such platforms exist at stations on the NEC Segment that are utilized in the MARC Commuter Rail Service. The stations where such platforms are located are: Perryville, Edgewood, Martin Airport, West Baltimore, Halethorpe, Odenton, Bowie State, Seabrook, and Aberdeen. The Administration will reimburse Amtrak for these services in accordance with Section 10.8.

5.2.2. Except as provided in the foregoing Section 5.2.1, the Administration shall retain full responsibility for repair, maintenance and snow removal services at the stations at Perryville, Edgewood, Martin Airport, West Baltimore, Halethorpe, Odenton, Bowie State, Seabrook, and Aberdeen. The areas for which the Administration has responsibility pursuant to the previous sentence include but are not limited to station structures, platforms, premises such as sidewalks and pedestrian underpasses, and other areas as further detailed in the Existing Leases and Easements set forth in Exhibit B.

5.2.3. The Administration will comply with the "MTA Station Maintenance and Snow Removal Safety Procedures," attached as Exhibit F when performing repair, maintenance, or snow removal services. These procedures may be updated by Amtrak with ninety (90) days' advance notice to the Administration.

5.2.3.1. Amtrak will provide Roadway Worker Protection and Electric Traction Protection in accordance with Exhibit F, with costs associated with such work to be reimbursed by the Administration in

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accordance with Section 10.8. Amtrak will also continue to provide maintenance of the track, roadbed, and catenary wires that is not related to the boarding or alighting of passengers.

5.2.3.2. All Administration staff and contractors performing station repair, maintenance, and snow removal work will complete Amtrak's Contractor Safety Training and carry Amtrak-issued proof of such completion while performing such work. Amtrak will provide training to Administration staff and contractors at the Administration's expense, in accordance with Section 10.7.

**5.3. Electric Propulsion**

5.3.1. For so long as the Administration uses electric locomotives in the Penn Line service, Amtrak shall provide electric propulsion power, for the MARC Commuter Rail Service on the NEC Segment and at Washington Terminal to the extent that such rail lines and facilities are included in the Electrified Territory, as identified in Exhibit E entitled "Electrified Territory – Northeast Corridor and Adjacent Rail Lines."

**5.4. Police and Security**

5.4.1. Amtrak police shall patrol the NEC Segment and the stations jointly used by Amtrak and MARC Commuter Rail Service, however, the Administration's police force may patrol and monitor stations used by MARC passengers and MARC Commuter Rail Service trains at the Administration's discretion. The Parties agree that their respective police and security forces shall work cooperatively.

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5.5. Yard Crews

5.5.1. Amtrak yard crews shall remove and re-attach diesel and electric locomotives and passenger coaches from MARC Commuter Rail Service trains during layover periods for fueling, servicing and all required inspections.

5.5.2. Amtrak agrees that the contractor operating MARC Commuter Rail Service Trains on the Camden and Brunswick Lines may move trains operated on those Camden and Brunswick Lines from WUS directly to the MARC Wedge Yard facility, or, in the event Amtrak is no longer the MARC Commuter Rail Operator for the MARC Penn Line Service, then the Administration may use a third party MARC Commuter Rail Operator to move MARC Commuter Rail Service trains between WUS and the MARC Wedge Yard facility when such movement is required for storage and/or maintenance of Equipment, subject to compliance with the provisions of Section 2.1.4 above. The Parties further specifically agree that, within ninety (90) days prior to the opening of the new Administration facility at the Wedge Yard, they will meet to determine whether any amendment to the description of the services provided by Amtrak yard crews and to the compensation to Amtrak for those services is required, and that they will negotiate in good faith and promptly enter into an agreement to reflect those changed circumstances.

5.6. Maintenance and Recapitalization of Sole Benefit Capital Improvements on Amtrak Property. Unless otherwise agreed, for any Sole Benefit Project on Amtrak property undertaken by the Administration, Amtrak shall be responsible for maintenance and recapitalization of such improvements. The Administration shall reimburse Amtrak

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for its costs incurred in performing such maintenance and recapitalization in accordance with Section 10.13.

5.7. **Maintenance and Recapitalization of Joint Benefit Capital Improvements on Amtrak Property.** As part of the execution of a Project Initiation pursuant to the Master Project Agreement, if the Parties have agreed that a project is a Joint Benefit Project, the Administration shall reimburse Amtrak for its share of the cost of maintenance and recapitalization of that Joint Benefit Project that is determined in the Project Initiation for the project, in accordance with Section 10.13.2.

5.8. **Recapitalization of Pre-Existing Infrastructure.** Amtrak shall also recapitalize pre-existing infrastructure, such as utilities, for the sole benefit of the Administration, as agreed to by the Parties in accordance with the Master Project Agreement.

5.9. **Dedicated Support Personnel.** In the performance of its obligations under this Agreement, and in an effort to enhance the quality of delivery of MARC Commuter Rail Service, the Administration and Amtrak have agreed to supplement the workforce supporting the Administration's access to the NEC Segment and Washington Terminal, by providing the dedicated positions set forth in Exhibit G. The Administration agrees to reimburse Amtrak in accordance with Section 10.9.

5.9.1. Amtrak shall seek the Administration's approval of the proposed candidate to replace the following dedicated senior management positions:  
Project Manager and Trainmaster and any similar dedicated MARC Commuter Rail Service operation management position which may be added in the future.  
The Administration shall not unreasonably withhold its approval of any proposed candidate.

5.10 **Required Reports:** Amtrak shall provide to the Administration the reports listed on Exhibit J in accordance with the descriptions therein.

5.11 **Dispatching Feed:** Amtrak shall provide to the Administration real-time access to view the movement of MARC Penn Line Service operations over the NEC Segment at the MARC Operations Center. The display of train movements on monitors for all Amtrak and MARC Penn Line Service operations in the Baltimore/Washington vicinity has been previously set up by Amtrak for onsite use at the MARC Operations Center by Administration personnel. Train data at the MARC Operations Center facility is fed directly from Amtrak's Centralized Electrification and Traffic Control system at the Consolidated National Operations Center. The Administration agrees to reimburse Amtrak in accordance with Section 10.22 below.

6. **Emergency Transportation**

6.1. **Notification.** In the event of a disruption of MARC Commuter Rail Service or a condition that may result in a disruption of MARC Commuter Rail Service, or if it is necessary to annul a MARC Commuter Rail Service train or cancel MARC Commuter Rail Service, Amtrak shall immediately contact the Director of MARC Commuter Rail Service or designee to notify the Administration of the potential or actual disruptions. For the purpose of ensuring a systematic approach to such disruptions, Amtrak shall prepare for the Administration's review and approval (which approval shall not unreasonably be withheld) an emergency communications protocol, which shall guide the actions and determine the required communications upon the occurrence of such a disruption.

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6.2. **MARC Train Failure.** Amtrak will exercise its best efforts to provide substitute rail service or emergency motive power to the Administration for completion of a single trip (or round trip) when en route failure occurs on a MARC Commuter Rail Service train operating on the NEC Segment, and MARC shall pay Amtrak's direct costs, plus all applicable overheads and equipment charges for such assistance.

6.3. **Northeast Corridor Line Closure.** In the event that a situation, either operational or financial, precipitates the closure of the NEC Segment, Amtrak shall consult with the Administration concerning the situation and the possible solutions including, but not limited to, emergency shuttle trains, busing, and additional MARC Commuter Rail Service on the CSXT rail lines.

6.4. **Equipment Rental Agreements.** The Administration or Amtrak may request that the other party furnish equipment for use from time to time in its passenger service operations pursuant to the Reciprocal Equipment Rental Conditions as set forth in **Exhibit D.**

7. **Special Trains and Test Trains.** The Administration may submit requests for operation of additional trains using Administration-owned or leased equipment on a special basis, which requests shall not unreasonably be withheld. Unless otherwise agreed, such request shall be made in writing thirty (30) days prior to the date a Special Train is to operate and fourteen (14) days prior to the date a Test Train is to operate. Amtrak shall make every reasonable effort to permit operation of such Special Trains and Test Trains, provided that the operation thereof shall not unreasonably interfere with existing operations of intercity passenger service, and provided that the Parties have agreed in writing that the Administration will pay Amtrak the costs incident to such operation to the extent not otherwise covered in Section 10 of this Agreement.

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Compensation to Amtrak for access to the NEC Segment or Washington Terminal for Special Trains and Test Trains shall be as specified in Section 10 of this Agreement.

8. **Risk of Liability.**

8.1. Except as provided in Section 8.2, the Administration agrees to indemnify and save harmless Amtrak (including its officers, agents, employees, and subsidiaries) and other third parties to the extent Amtrak is obligated to indemnify or save harmless such third parties, irrespective of negligence or fault of Amtrak or such third parties, for all damage or liability for personal injury, death, or property damage which would not have been incurred but for the existence of MARC Commuter Rail Service; provided, however, that the Administration shall have no responsibility to Amtrak or any other party for injury or death to Amtrak employees engaged directly in the operation of trains in the MARC Commuter Rail Service pursuant to the Service Agreement (if Amtrak is the MARC Commuter Rail Operator) or the provision of other services provided to the Administration in order to facilitate the use of the NEC Segment pursuant to this Agreement. The risk of injury or death and of claims by such Amtrak employees is assumed by Amtrak, and Amtrak agrees to indemnify and hold harmless the Administration against any claims with respect to injury or death of such employees. Compensation for such risk is included in the amounts and rates agreed upon by the parties in this Agreement.

8.2. The Administration's agreement to indemnify and save harmless Amtrak, as set forth in Section 8.1, above, shall not apply to any claim for liability for personal injury or death (a) which is caused by the Willful Misconduct of Amtrak as defined in Section 8.3, or (b) to the extent such liability is covered and paid for by a railroad protective liability

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insurance policy or any other liability insurance policy (i) which is purchased on Amtrak's behalf, (ii) for which Amtrak has made no premium payment, and (iii) which names Amtrak as an insured.

8.3. "Willful Misconduct" is conduct for which there is clear and convincing evidence, as determined by agreement of the Parties or by arbitration pursuant to Section 17 of this Agreement, that the liability arises out of an act or omission by Amtrak in which an employee of Amtrak (including employees of Amtrak's agents and contractors) has a specific awareness of a condition or situation, knows (or should know based on training required for his or her position) that failure to respond to such condition or situation presents a significant danger to persons, and, without regard to the likelihood that serious injury will probably result, consciously elects not to respond to this condition or situation in a manner that will avoid the danger. The limitation on the scope of indemnities in the event Willful Misconduct is alleged or established shall in no way change any duty to defend against claims that is established in this Section.

8.4. Where claims are made against Amtrak and the Administration arising out of the same incident, or against either of them solely, the Parties shall cooperate fully and shall make all of their investigative and claims information available to each other. Any claim for indemnification by Amtrak or the Administration shall not be made a part of any litigation brought by a third party arising out of any claim against Amtrak and/or the Administration. If a dispute arises concerning the scope of Amtrak's or the Administration's indemnity obligations pursuant to this Section 8, such dispute shall be resolved separately pursuant to Section 17 of this Agreement.

8.5 Except for (i) cases involving injury or death to Amtrak employees performing services pursuant to this Agreement, or (ii) claims arising out of the MARC Commuter Rail Service that are required to be handled by CSXT or such other operator that is operating trains on the Camden and Brunswick Lines, claims arising out of the MARC Penn Line Service will be handled in accordance with the procedure specified in Section 2.4 of the Service Agreement.

8.5.1 In the event of termination of the Service Agreement prior to the expiration of the initial or renewal term of this Agreement, the Parties agree that Amtrak shall continue to handle claims arising out of the MARC Penn Line Service in accordance with the compensation arrangement set forth in Section 8.1.8 of the Service Agreement. In addition, the Administration may request that Amtrak handle claims arising out of the operation of MARC trains on the Camden and Brunswick Lines. If Amtrak agrees to handle claims arising out of the operation of MARC trains on the Camden and Brunswick Lines, the Administration shall compensate Amtrak for such services using an arrangement for compensation for such MARC trains operating on the Camden and Brunswick Lines claims handling services that is based on the arrangement described in Section 8.1.8 of the Service Agreement. The Parties acknowledge that the monthly fee component will be negotiated at the time that Amtrak agrees to provide the claims handling services for MARC trains operating on the Camden and Brunswick Lines. The procedures set forth below shall apply for the handling of claims relating

to the MARC Penn Line Service, and, if agreed upon by the Parties, claims arising out of the MARC trains operating on the Camden and Brunswick Lines:

8.5.1.1 With respect to claims for which the Administration is responsible and which involve litigation against Amtrak, Amtrak will provide legal representation at the Administration's expense. Selection of counsel to represent Amtrak in such litigation shall be subject to prior consultation with the Administration.

8.5.1.2 Unless otherwise agreed to by the Parties, if a claim is made only against the Administration:

- (i) the Administration will have the option of either (A) providing legal representation at its own expense with respect to claims for which it is responsible, or (B) asking Amtrak to provide legal representation with reimbursement of actual costs of such representation (with no additive for overhead or G&A or any other additional fee, except the claims service fee that may be agreed upon by the Parties pursuant to Section 8.5.1), provided that such request by the Administration shall be made within twenty (20) days after service of such claim upon the Administration; and
- (ii) it will not be necessary for an Amtrak Claims representative to attend any court proceedings with respect thereto, unless such attendance is specifically requested by the



Administration or its legal representative, or such attendance is compelled by a valid subpoena.

8.5.2 Amtrak shall promptly notify the Administration of any accident or injury that Amtrak reasonably believes may lead to a claim for which the Administration may be responsible. Amtrak shall give prompt notice to the Administration of receipt of any complaint, if Amtrak contends the allegations are covered by the indemnification requirements set forth in Section 8 hereof.

8.5.3 Not less frequently than monthly, Amtrak will advise the Administration of estimated settlement costs for each claim. Any proposed settlement or payment in excess of \$20,000 will be submitted to the Administration for prior approval.

8.5.4 Notwithstanding any of the foregoing, upon its review of the information provided to it about a claim for the cost of which it will be financially responsible, the Administration may direct Amtrak to settle a claim for an amount to be determined at the Administration's sole discretion.

9. **Insurance.**

9.1. **Liability Insurance.** The Administration shall procure and maintain for the duration of this Agreement, liability insurance, with combined single limits for bodily injury and property damage of at least \$200,000,000 per occurrence, with Amtrak and the Administration designated as the named insureds. Such insurance shall cover the Named Insureds' liability for injury or death of persons and damage to property, including coverage for punitive or exemplary damages, arising out of the MARC Commuter Rail

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Service. Such insurance shall not cover Amtrak's employer's liability for injury to Amtrak's employees for which Amtrak is responsible as provided in Section 8.1, and it is specifically agreed that self-insurance provided by the Administration as permitted by the next sentence shall not apply to any liability for personal injury, death, or property damage, that is caused by the Willful Misconduct of Amtrak, as defined in Section 8.3. The Administration shall have the right to self-insure for any part of the insurance procurement up to \$5,000,000 per occurrence. Amtrak shall have the right of approval that the insurance placements and self-insurance arrangements adequately protect Amtrak against liability for bodily injury, death and property damage, which approval shall not be unreasonably withheld. A certified copy of this policy shall be provided to Amtrak upon request.

9.2. **Property Insurance.** The Administration shall procure and maintain for the duration of this Agreement, property insurance covering the rolling stock of the Administration against all risks of physical damage usually covered in a railroad property insurance policy. The Administration's property insurance shall carry limits sufficient to cover the scheduled value of all Administration property used in the MARC Commuter Rail Service. Amtrak shall be named as an additional insured as respects its interest in the Administration's property in Amtrak's care, custody, and control, and the Administration shall cause its property insurer to waive all rights of subrogation against Amtrak. A certified copy of this policy shall be provided to Amtrak upon request.

9.3. **Automobile Insurance.** Amtrak shall procure and maintain for the duration of this Agreement automobile insurance covering the liability of Amtrak and the Administration arising out of the use of owned, rented or leased vehicles, if any, that are

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used by Amtrak for the services Amtrak provides in support of the Administration's access to and use of the NEC pursuant to this Agreement and also covering the physical damage and loss exposure of such vehicles. The automobile insurance shall name the Administration as an additional insured with respect to operations to be performed in connection with this Agreement. Coverage under this policy shall have limits of liability of not less than the greater of (i) the attachment point of the Administration's liability insurance or (ii) Five Million Dollars (\$5,000,000) per occurrence, combined single limits, for bodily injury and property damage liability, as well as physical damage limits sufficient to cover the actual cash value of the covered vehicle.

10. **Compensation.**

10.1. **NEC Base Access Fee.** The Administration shall pay Amtrak the Actual Monthly NEC Base Access Fee to cover NEC access for Weekday Service. The Actual Monthly NEC Base Access Fee is calculated by multiplying the NEC Base Access Fee per Unit mile rate of \$1.49 by the actual Unit miles operated in the month. The \$1.49 NEC Base Access Fee per Unit mile rate amount is derived by dividing 5,345,683 Unit miles into the NEC Base Access Fee equal to \$7,986,483, which is comprised of the following items:

| NEC Base Access Fee Components   | Monthly          | Annual             |
|----------------------------------|------------------|--------------------|
| Maintenance of Way               | \$386,860        | \$4,642,319        |
| Electric Traction Maintenance    | \$53,611         | \$643,331          |
| Train Dispatching                | \$54,682         | \$656,188          |
| Power Directors                  | \$2,261          | \$27,128           |
| NEC Signal Power                 | \$2,528          | \$30,333           |
| Station Maintenance & Operation  | \$73,599         | \$883,193          |
| General Administration & Support | \$91,999         | \$1,103,991        |
| <b>Total NEC Base Access Fee</b> | <b>\$665,540</b> | <b>\$7,986,483</b> |

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10.1.1. In consideration of payment of the Total NEC Base Access Fee, MARC Commuter Rail Service trains (scheduled revenue and deadheads) may operate 5,345,683 Unit (locomotive and car) miles in Weekday Service per Contract Year.

10.1.2. In the event that the number of Unit miles operated in Weekday Service changes from the level described in Section 10.1.1 above, the actual amount paid by the Administration shall be adjusted by \$1.49 per Unit mile covering all of the Unit miles more or less than 5,345,683 based on the computation of the actual Unit miles operated each month as specified in Section 10.1. The actual Unit miles operated in Weekday Service shall be computed at the end of each contract month during the term of this Agreement and at the end of the term of this Agreement.

10.1.3. This Agreement will be amended to incorporate Weekend Service once the Parties agree upon charges and service schedules for Weekend Service.

10.2. **Other NEC Flat-Rated Charges.** The Administration shall pay Amtrak the monthly charge to cover police security on the NEC. The Actual Monthly Other NEC Flat-Rated Charges are calculated by multiplying the Other NEC Flat-Rated Charges per Unit mile rate of \$0.22 by the actual Unit miles operated in the month. The \$0.22 Other NEC Flat-Rated per Unit mile charge is derived by dividing 5,345,683 Unit miles into the Other NEC Flat-Rated Charges of \$1,157,155. In consideration of payment of this amount, MARC Commuter Rail Service trains (scheduled revenue and deadheads) may operate 5,345,683 Unit miles per Contract Year.

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10.2.1. In the event that the number of Unit miles operated in Weekday Service changes from that level, the actual amount paid by the Administration shall be adjusted by \$0.22 per Unit mile covering all of the Unit miles more or less than 5,345,683 based on the computation of the actual Unit miles operated each month as specified in Section 10.2. The actual monthly Unit miles operated in Weekday Service shall be computed at the end of each contract month during the term of this Agreement and at the end of the term of this Agreement.

10.2.2. This Agreement will be amended to incorporate Weekend Service once the Parties agree upon charges and service schedules for Weekend Service.

**10.3. Compensation for NEC Access For Special Trains, Test Trains And Extra Moves.**

10.3.1. The Administration shall pay Amtrak the NEC Base Access Fee of \$1.49 per Unit mile for NEC Access for the operation of Special Trains, Test Trains and Extra Moves on Monday – Friday, and \$1.49 per Unit mile on Saturday and Sunday. These rates are the same rates as are described in Section

10.1.2. Notwithstanding the first sentence of this Section 10.3.1, the Administration shall be permitted to operate up to twelve Special Trains per Contract Year without payment of any charge pursuant to this Section. Amtrak will note any Special Trains in the monthly Unit mile computation.

10.3.2. The Administration shall also pay Amtrak the Other NEC Flat-Rated Charge of \$0.22 per Unit mile for Other NEC Flat-Rated Charges for the operation of Special Trains, Test Trains and Extra Moves. This rate is the same rate as described in Section 10.2 above. The Administration shall be permitted to

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operate up to twelve Special Trains per Contract Year without payment of any charge pursuant to this paragraph.

10.4. Washington Terminal Access Base Fee. The Administration shall pay Amtrak the Actual Monthly Washington Terminal Access Base Fee to cover Washington Terminal access. The Actual Monthly Washington Terminal Access Base Fee is calculated by multiplying the Washington Terminal Access Base Fee per Unit in and out rate of \$47.11 by the actual Units in and out of Washington Terminal in the month. The \$47.11 Washington Terminal Access Base Fee per Unit in and out rate is derived by dividing 143,983 Units into \$6,782,999, which is comprised of the following items:

| Washington Terminal Access Base Fee Components             | Monthly          | Annual             |
|------------------------------------------------------------|------------------|--------------------|
| Maintenance of Way                                         | \$244,606        | \$2,935,271        |
| Electric Traction Maintenance                              | \$4,225          | \$50,701           |
| Train Dispatching                                          | \$15,313         | \$183,751          |
| Signal and Interlocker Operation                           | \$3,357          | \$40,289           |
| Yardmaster                                                 | \$4,085          | \$49,018           |
| Engine Attendants                                          | \$32,568         | \$390,813          |
| Yard Switching                                             | \$51,124         | \$613,485          |
| Station Maintenance & Operation                            | \$141,503        | \$1,698,040        |
| General Administration & Support                           | \$68,469         | \$821,631          |
| <b>Total Estimated Washington Terminal Access Base Fee</b> | <b>\$565,250</b> | <b>\$6,782,999</b> |

10.4.1. In consideration of payment of this amount, MARC Commuter Rail Service trains (scheduled revenue and deadheads) may operate 143,983 Units in Weekday Service in and out of Washington Terminal each Contract Year. In the event that the number of Units operated in Weekday Service changes from that level, the actual amount paid by the Administration for operation of Weekday Service shall be adjusted by \$47.11 per Unit in and out covering all of the Units in and out more or less than 143,983 based on the computation of the actual Units in and out specified in Section 10.4. The actual Units in and out operated in

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Weekday Service shall be computed at the end of each contract month during the term of this Agreement and at the end of the term of this Agreement.

Notwithstanding the foregoing, movements of Equipment between Union Station and the Wedge Yard facility will not be counted as "Units in and out of Washington Terminal" for the purposes of this Agreement. Moreover, the movement of Equipment in non-revenue moves to or from storage outside of Washington Terminal to relieve congestion shall only be charged an "in and out" fee of half the fee for revenue moves, or \$23.55 per Unit in and out of Washington Terminal.

10.4.2. This Agreement will be amended to incorporate Weekend Service once the Parties agree upon charges and service schedules for Weekend Service.

10.4.3. The Parties specifically acknowledge that upon completion of the Administration's Wedge Yard storage and maintenance facility, the services required by the Administration at the Washington Terminal may decrease. As a result, when a schedule for completion of the construction of that facility is complete, the Parties agree that they will negotiate in good faith any applicable reduction in the Washington Terminal Access Base Fee to account for the resulting reduction in services and utilization of space at the Washington Terminal by the Equipment used in the MARC Commuter Rail Service.

10.5. **Other Washington Terminal Flat-Rated Charges.** The Administration shall pay Amtrak the Actual Monthly Other Washington Terminal Flat-Rated Charges to cover police, security, redcaps, porters and ushers at Washington Terminal. The Actual Monthly Other Washington Terminal Flat-Rated Charges are calculated by multiplying



the Other Washington Terminal Flat-Rated Charges per Unit in and out of \$9.49 by the actual Units in and out of Washington Terminal for the month. The \$9.49 Other Washington Terminal Flat-Rated Charge per Unit in and out is derived by dividing 143,983 Units in and out into \$1,366,247, which is comprised of the following items:

| Other Washington Terminal Flat-Rated Charges Components | Monthly          | Annual             |
|---------------------------------------------------------|------------------|--------------------|
| Police Security                                         | \$85,054         | \$1,020,646        |
| Redcaps and Porters                                     | \$19,166         | \$229,993          |
| Ushers                                                  | \$9,634          | \$115,608          |
| <b>Total</b>                                            | <b>\$113,854</b> | <b>\$1,366,247</b> |

10.5.1. In consideration of payment of this amount, MARC Commuter Rail Service trains (scheduled revenue and deadheads) may operate 143,983 Units (locomotives and cars) in and out of Washington Terminal each Contract Year. In the event that the number of Units in and out operated in Weekday Service changes from that level, the actual amount paid by the Administration shall be adjusted by \$9.49 per Unit in and out covering all of the Units in and out more or less than 143,983 based on the computation of the actual Units in and out operated each month as specified in this Section 10.5.1. Notwithstanding the foregoing, movements of Equipment between Union Station and the Wedge Yard facility will not be counted as "Units in and out of Washington Terminal" for the purposes of this Agreement. Moreover, the movement of Equipment in non-revenue moves to or from storage outside of Washington Terminal to relieve congestion will not be charged an "in and out" fee.

10.5.2. This Agreement will be amended to incorporate Weekend Service once the Parties agree upon charges and service schedules for Weekend Service.



10.6. Washington Terminal Access for Special Trains, Test Trains and Extra Moves. The Administration shall pay Amtrak the Washington Terminal Access Base Fee of \$47.11 per Unit in and out operated for Washington Terminal Access for Special Trains, Test Trains and Extra Moves. The rate for Special Trains, Test Trains and Extra Moves operated on Monday – Friday, and \$47.11 per Unit in and out on Saturday and Sunday. These are the same rates as described in Section 10.4. The Administration shall be permitted to operate up to twelve Special Trains per Contract Year without payment of any charge pursuant to this Section 10.6.

10.6.1. The Administration shall also pay Amtrak a rate per Unit in and out operated for Other Washington Terminal Flat-Rated charges for Special Trains, Test Trains and Extra Moves. This rate is derived by dividing the base Other Washington Terminal Flat-Rated Charges established in Section 10.5 by the base allowable Units of 143,983 per Contract Year. The initial rate per Unit is \$9.49 for operation of Special Trains, Test Trains and Extra Moves on Monday through Friday, and \$9.49 for Saturday and Sunday. The Administration shall be permitted to operate up to twelve Special Trains per Contract Year without payment of any charge pursuant to this paragraph.

10.6.2. This Agreement will be amended to incorporate Weekend Service once the Parties agree upon charges and service schedules for Weekend Service.

10.7. **Training Costs.** The Administration shall pay Amtrak for the actual costs plus overheads in accordance with **Exhibit I** based on Amtrak's then-current overhead schedule, plus Amtrak's then-current G&A rate of training of third party contractor

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employees or Administration staff who may require access to the NEC Segment or the Washington Terminal, which may include:

10.7.1. The costs of course development by Amtrak personnel of new programs requested by the Administration.

10.7.2. The cost of course development, training, facilities and other associated costs, when such costs are paid for Amtrak trainers and to third parties and are required specifically for training for MARC Commuter Rail Service.

**10.8. Flagging and Protective Services; Maintenance of Intertrack Platforms.**

When providing the services described in Sections 5.1 and 5.2.1, Amtrak shall be reimbursed by the Administration each month for the actual hourly wages for labor expenses plus Amtrak's published rates set forth in **Exhibit I** for vacation and holiday payments, FELA and overheads, as amended from time to time. A current version of these rates is attached hereto as **Exhibit I**; and these overhead rates shall be adjusted each January 1 based on the revised schedule published by Amtrak at that time. In addition, fringe benefit additives will be assessed at the annual rate established by Amtrak that will be in effect for each Amtrak fiscal year during the term of this Agreement, which annual rate shall be provided to the Administration no later than October 1<sup>st</sup> of each year during the term of this Agreement. During the first three (3) months of the Term of this Agreement, the fringe benefit rate for (i) agreement-covered employee straight-time wages shall be 57.13%; (ii) agreement-covered employee overtime wages shall be 18.35%; and (iii) management employees shall be 83.25%. Monthly invoices will include Amtrak's Statement of Payroll Costs Report which lists the hours, payroll amounts, dates and names of employees who provided services to this project. Amtrak

shall also provide copies of material invoices, third party service invoices, a report of materials issued from inventory, Amtrak equipment utilization pricing statement and a statement of other costs and charges. Amtrak will not provide an independent field verification voucher (i.e. Form 2306) to substantiate monthly invoices.

10.9. **Dedicated Support Personnel.** When providing the services described in Section 5.9, the Administration shall pay Amtrak for the cost of the number of positions actually filled that are dedicated to MARC Commuter Rail Service as set forth in **Exhibit G**. In the event that Amtrak makes available other of its employees whose costs are not otherwise covered elsewhere in this Agreement, the Administration shall pay Amtrak for such costs. Labor costs shall consist of actual salaries and wages (including all allowances and entitlements required by applicable collectively bargained agreements) plus published rates set forth in **Exhibit I** for vacation and holiday payments, FELA and overheads, as amended from time to time. A current version of these rates is attached hereto as **Exhibit I**. In addition, fringe benefit additives will be assessed at the annual rate established by Amtrak that will be in effect for the each Amtrak fiscal year during the term of this Agreement, which annual rate shall be provided to the Administration no later than October 1<sup>st</sup> of each year during the term of this Agreement. During the first three (3) months of the Term of this Agreement, the fringe benefit additive rate for (i) agreement-covered employee straight-time wages shall be 57.13%; (ii) agreement-covered employee overtime wages shall be 18.35%; and (iii) management employees shall be 83.25%.

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10.10. Amtrak Equipment. The Administration shall pay Amtrak for the use of Amtrak equipment in accordance with the Reciprocal Equipment Rental Conditions provisions set forth in Exhibit D.

10.11. On-Time Performance Incentive Payments. The Parties desire to have MARC Commuter Rail Service trains operate at a high level of on-time performance. The Administration shall pay an On-Time Performance Incentive to Amtrak for trains operating in Weekday Service (except Special Trains, Test Trains or Extra Moves) that arrive at their final destination within five minutes and fifty-nine seconds (5'59") of scheduled arrival, in accordance with the following: Each month that the overall on-time performance of Penn Line trains exceeds the following percentages, the Administration will pay Amtrak the corresponding amount for capital investment as described in Section 10.11.1 below:

| <b>OTP%</b> | <b>Capital Incentive</b> |
|-------------|--------------------------|
| 92%         | \$75,000                 |
| 93%         | \$100,000                |
| 94%         | \$125,000                |
| 95%         | \$150,000                |
| 96%         | \$200,000                |
| 97%         | \$250,000                |
| 98%         | \$300,000                |
| 99%         | \$375,000                |

Any train operating in Weekday Service arrives at its final destination more than 5'59" after its scheduled arrival, will not be considered on-time no matter the reason or the cause, whether caused by the Administration or Amtrak. The computation of the foregoing percentages shall be as follows: the numerator shall be the number of Penn Line trains that arrive at their final destination within five minutes and fifty-nine seconds (5'59") of scheduled arrival during a month; the denominator shall be the total number of

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Penn Line trains scheduled to operate in that month. The resulting percentage will not be rounded up.

10.11.1. Amtrak will use the funds paid pursuant to this Section 10.11 for capital projects chosen by Amtrak at Amtrak's sole discretion, provided that such projects are in the state of Maryland or the District of Columbia, and will be of mutual benefit to MARC Commuter Rail Service and Amtrak service. Amtrak may seek MTA's concurrence for use of these funds for projects not in the state of Maryland or the District of Columbia, but will benefit MARC Commuter Rail Service. The projects may be partially funded by other sources. Funds paid to Amtrak pursuant to this Section will remain available to be spent for two full Amtrak fiscal years after the month in which they were earned. Amtrak's fiscal year is the 12 month period from October through September. As an example, any incentive payments to Amtrak for the month of May 2014 will remain available for spending for the period June 2014 through September 2016. No further approvals for the projects funded pursuant to this Section will be required. Amtrak will submit a monthly statement of costs showing the amount spent on each project and amount currently available in the program; statements will not be subject to audit, except as described in Section 10.11.3 below. Upon completion of the PRIIA 212 process described in Section 16.5, below, the Parties will review MTA's obligation to make these On-Time Performance capital investment payments.

10.11.2. When the parties implement Weekend Service, the Parties will discuss any modifications to the On-Time Performance Incentive payment arrangements that may be appropriate at that time.

10.11.3 Upon request from the Administration, Amtrak shall provide sufficient documentation with respect to its use of the funds paid pursuant to Section 10.11.1 above to enable the Administration and its auditors to determine that such funds are being used for the purposes described in this Agreement, and that the costs for the projects for which such funds are being used are computed using Amtrak's actual costs and overhead rates that are applicable pursuant to the Master Project Agreement. Amtrak shall maintain the documentation described in this Section 10.11.3 for three (3) years after the project has been completed.

10.12. Electric Traction Energy Reimbursement. For the provision of electric traction propulsion power pursuant to Section 5.3, the Administration shall compensate Amtrak in accordance with the following:

10.12.1. As of July 1, 2013, the local energy distribution companies providing electric propulsion power to Amtrak in the Electrified Territory include: Consolidated Edison, Inc., PECO Energy Company, Pennsylvania Power & Light Company and Baltimore Gas & Electric Company (the "LDCs"). Amtrak and the Administration acknowledge that the suppliers of electric propulsion power may change from time to time.

10.12.2. The Administration shall pay Amtrak for electric propulsion power costs attributable to the Administration's rail operations in the Electrified Territory, and Amtrak shall provide the Administration monthly with a list of

suppliers and distributors detailing cost and consumption. These costs to be paid by the Administration will be an appropriately allocable portion of the total costs as defined in Sections 10.12.3 and 10.12.5, below.

10.12.3. For the purpose of the Agreement, the costs paid by Amtrak for providing electric propulsion power in the Electrified Territory will be referred to as "Energy Costs" and shall include the following: (i) amounts charged by the LDCs and other power suppliers for electric propulsion power provided to the Electrified Territory, including energy charges, demand charges, costs for frequency converter operations and maintenance, and other applicable fees and charges (collectively referred to as "Power Costs"), and (ii) the legal fees and consultant fees that Amtrak incurs as part of Amtrak's management of the Electrified Territory as well as rate and supply negotiations or litigation with suppliers of electric propulsion power for the Electrified Territory, and consultant fees associated with maintaining, updating, and applying the SYSTRA Model defined below (collectively referred to as "Energy Administration Fees"). Except as provided in the preceding sentence, Energy Costs shall not include Amtrak's cost associated with the operation, maintenance or replacement of facilities owned by Amtrak that are required for the delivery of electric propulsion to and within the Electrified Territory.

10.12.4. The identification, billing and payment of the Administration's allocable portions of Energy Costs will be performed in accordance with the terms of this Agreement.

10.12.5. Amtrak and the Rail Operators identified in Exhibit E jointly funded a study, performed by SYSTRA Consulting, Inc. ("SYSTRA"), which examined the usage of and made demand projections for electric propulsion power for Amtrak and the Rail Operators in the Electrified Territory. On October 20, 2005, SYSTRA issued a report entitled "Energy Management: Usage/Capacity Study 2004, Final Report" ("SYSTRA Study"). The SYSTRA Study included the development of a model ("SYSTRA Model") which (i) identifies the total and relative electric propulsion usage in the Electrified Territory for Amtrak and each Rail Operator, and (ii) generates allocated demand projections for Amtrak and each Rail Operator based on their respective operating schedules in the Electrified Territory and other aspects of their operations. As used herein, the term "SYSTRA Model" shall include any adjustments to the original model when agreed upon by Amtrak and the Rail Operators in the future. Of the total electric propulsion power consumed in the Electrified Territory, the allocable portions consumed by Amtrak and each Rail Operator were determined as a result of the initial application of the SYSTRA Model. These allocable portions were stated as percentages ("Reimbursement Percentages") of the total consumption. The SYSTRA Study was repeated and a new report issued on June 15, 2009 entitled "2008 Amtrak Energy Usage and Capacity Study". Based upon the results of the SYSTRA Study, effective on June 15, 2009, the Administration's Reimbursement Percentage was 3.18%. Amtrak and the Rail Operators identified in Exhibit E have jointly funded a third SYSTRA Study whose results were published in the study titled "Amtrak Energy Usage and

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Capacity Study, 2011 Study Report," dated November 9, 2012 (the "SYSTRA 2011 Study"). Based upon the results of that Study, the Administration's Reimbursement Percentage is 3.60 %.

10.12.6. Approximately every three years, Amtrak and the Rail Operators identified in Exhibit E will collaborate to reapply the SYSTRA Model to the then current circumstances in order to recalculate the allocation of the total electric propulsion power consumption and establish new Reimbursement Percentages for Amtrak and the Rail Operators. Such calculations shall be based on the total projected consumption for all rail operations in the Electrified Territory, based on the agreed-upon timetables reflecting Amtrak and each Rail Operator's train operations. Any revision to a Reimbursement Percentage which results from this planned reapplication of the SYSTRA Model will become effective on the month following the issuance of the recently completed Final SYSTRA Study report.

10.12.7. Amtrak or the Administration may also request an interim change in the Administration's Reimbursement Percentage to reflect service changes to be instituted by any or all Rail Operators subsequent to the most recent SYSTRA Model results. The party seeking an interim change must make the request in writing no later than two (2) months prior to the next planned change in timetables, schedules and/or Equipment. Unless otherwise agreed, the determination of an interim change in the Reimbursement Percentage shall be made using the SYSTRA Model. The party requesting an interim change will pay the cost, if any, incurred in performing the calculation. An interim adjustment to the Reimbursement Percentage shall be implemented only if the requesting party

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can demonstrate that the Administration's projected share of total kilowatt hour consumption would decrease or increase by at least four percent. (For example, four percent of the Administration's initial Reimbursement Percentage of 3.51 is 0.14, so the Reimbursement Percentage must be shown to change to 3.37% or less, or to 3.65% or more). Any interim change to a Reimbursement Percentage will become effective with the date of the schedule change.

**10.12.8. Administration's Payment of Energy Costs.**

10.12.8.1. The allocable portion of Amtrak's monthly Energy Costs that is to be paid by the Administration ("Administration's Energy Costs") will be billed by Amtrak to the Administration on a monthly basis, in accordance with the terms presented in the paragraphs below and in this Agreement.

10.12.8.2. As of January 1, 2013, the Administration's Reimbursement Percentage is 3.6 %, which shall be used to compute the estimated monthly baseline amount ("Energy Reimbursement Amount"). The Energy Reimbursement Amount shall be budgeted each year as provided for in Section 12, based on the most recent 12 months of actual Energy Costs. The Energy Reimbursement Amount shall also be recalculated when the Administration's Reimbursement Percentage is changed pursuant to Sections 10.12.6 or 10.12.7 of this Section. Adjustments will be made quarterly based on actual costs incurred, as provided in Section 12.1.

10.12.9. Administration's Payment of Energy Administration Fees.

10.12.9.1. The allocable portion of Amtrak's Energy Administration Fees that is to be paid by the Administration ("Administration's Energy Administration Fees") will be calculated by multiplying the amount of Amtrak's actual, billed Energy Administration Fees by the Administration's Reimbursement Percentage that is in effect at the time that Amtrak paid the Energy Administration Fees.

10.12.9.2. Amtrak will inform the Administration at least quarterly on the status of negotiations with electric propulsion power suppliers and shall provide the Administration more frequent updates if the Administration so requests.

10.12.9.3. Amtrak and the Administration will cooperate to obtain favorable actions in negotiations and/or participation in regulatory proceedings in order to minimize the rates and charges for electric propulsion power consumed in the operations in the Electrified Territory.

10.13. Recapitalization Costs. The Administration recognizes that Amtrak will incur additional capital costs related to recapitalization and system enhancements to maintain or increase reliability of passenger service operations on the NEC and Washington Terminal. The Administration agrees to compensate Amtrak for such capital costs Amtrak incurs only for the benefit of the Administration, which capital costs have been agreed to by the Administration, plus Thirty Five Million Dollars (\$35,000,000) as the Administration's share of such joint benefit capital costs incurred in the State of Maryland, the Washington Terminal and the NEC Segment for the period July 1, 2013

through June 30, 2018, payable as follows: July 1, 2013 – June 30, 2014: \$7.0 million; July 1, 2014 – June 30, 2015: \$7.0 million; July 1, 2015 – June 30, 2016: \$7.0 million; July 1, 2016 – June 30, 2017: \$7.0 million; July 1, 2017 – June 30, 2018: \$7.0 million.

10.13.1. In addition to the foregoing, if by December 31, 2016, Amtrak has spent \$21 million of the capital funds to be made available pursuant to the foregoing Section 10.13 and all of the funds remaining from the 2008 Access Agreement, then the Administration will make available an additional \$2.0 million for such projects in the fifth Contract Year (2017 – 2018).

10.13.2. If by December 31, 2016, Amtrak has spent only \$19 million of the capital funds to be made available pursuant to the foregoing Section 10.13 and all of the funds remaining from the 2008 Access Agreement, then the Administration will make available an additional \$1.5 million for such projects in the fifth year (2017 – 2018). If by December 31, 2016, Amtrak has spent only \$17 million of the capital funds to be made available pursuant to the foregoing Section 10.13 and all of the funds remaining from the 2008 Access Agreement, then the Administration will make available an additional \$1.0 million for such projects in the fifth Contract Year (2017 – 2018). If by December 31, 2016, Amtrak has spent only \$15 million of the capital funds to be made available pursuant to the foregoing Section 10.13 and all of the funds remaining from the 2008 Access Agreement, then the Administration will make available an additional \$.5 million for such projects in the fifth Contract Year (2017 – 2018).

10.13.3. Except as provided in Section 10.13.8.1, below, if in any year of the term of this Agreement, Amtrak does not expend the amount of capital for

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joint benefit capital projects that are described in Section 10.13.8, the obligation to provide capital funds in the subsequent year of the term of this Agreement shall be reduced as follows:

(i) If the amount expended is Thirty Percent – Thirty Nine Percent (30% - 39%) less than the agreed upon \$7 million, then the amount of the Administration's capital obligation during the next year of the term of this Agreement shall be reduced by 15% to \$5.95 million;

(ii) If the amount expended is Forty Percent – Forty Nine Percent (40% - 49%) less than the agreed upon \$7 million, then the amount of the Administration's capital obligation during the next year of the term of this Agreement shall be reduced by 20% to \$5.6 million;

(iii) If the amount expended is Fifty Percent – Fifty Nine Percent (50% - 59%) less than the agreed upon \$7 million, then the amount of the Administration's capital obligation during the next year of the term of this Agreement shall be reduced by 25% to \$5.25 million;

(iv) If the amount expended is Sixty Percent – Sixty Nine Percent (60% - 69%) less than the agreed upon \$7 million, then the amount of the Administration's capital obligation during the next year of the term of this Agreement shall be reduced by 30% to \$4.9 million;

(v) If the amount expended is more than Seventy Percent (70%) less than the agreed upon \$7 million, then the amount of the Administration's capital obligation during the next year of the term of this Agreement shall be reduced by 35% to \$4.55 million;

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10.13.4. In the event of an extension of the term of this Agreement for an additional five (5) year term as provided in Section 16.1, the Parties shall agree upon the amount of contribution by the Administration for recapitalization and system enhancements to be paid during that second five year term, and shall take the results of the work of the NEC Commission on the 212 formula into account in determining the amount, if any, of such additional payments.

10.13.5. Any funds that the Administration promised to make available to Amtrak pursuant to the 2008 Access Agreement shall remain available for use by Amtrak during the term of this Agreement. A list of the projects to be completed using the funds remaining under the 2008 Access Agreement is attached hereto as **Exhibit H**. To the extent the funds made available pursuant to this Section remain available after completion of the projects listed in **Exhibit H**, the Parties will determine the Projects for which such funds will be used.

10.13.6. It is understood that work on Joint Benefit Projects commenced or approved in one Contract Year may actually be performed in another year, and the Administration's share of costs may therefore need to be paid in a year subsequent to the year for which it has agreed to make a contribution, including beyond the term of this Agreement. Funds that the Administration agrees to provide in a period pursuant to this subsection shall remain available for projects authorized or commenced within the term of this Agreement.

10.13.7. The amounts stated in this Section 10.13 shall not be adjusted pursuant to Section 10.18.

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10.13.8. The Administration and Amtrak will agree to the joint benefit capital program ("Capital Program") to be undertaken pursuant to this Agreement, which shall include proposed capital work and a fund plan for each project by Contract Year. The Parties will endeavor to finalize the Capital Program for each year as far in advance as possible through the establishment of a Joint Benefit Program Management Committee (hereinafter "Committee") composed of three (3) members each from Amtrak and the Administration. The three members from the Administration shall be: the MTA Chief Engineer; the MTA Director MARC and Commuter Bus Services; and the MTA Manager of Capital Programming. The three members from Amtrak shall be: Senior Director, NEC Customer Management & Sales; General Superintendent, Mid-Atlantic Division; and Deputy Chief Engineer-Construction. In the event of changes in the organizational structure of either Party that results in a change in the title of the individual(s) on the Committee for that Party, that Party shall notify the other promptly and no amendment to this Agreement shall be required to effect the change in the titles of the representative(s). In finalizing each year's Capital Program, the Committee shall give priority to projects related to bringing to a state of good repair certain functional elements of the NEC Segment and Washington Terminal. When finalized, the Capital Program for each year shall be reduced to writing and signed by the Parties. Amtrak shall maintain sufficient documentation that the capital work has been performed and that the Administration's contributions are properly and fully expended. If the Administration and Amtrak, as represented in the Committee, do not agree on the

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Capital Program for a year within thirty (30) days prior to the start of the year, then the chief executive of Amtrak and the Administrator of the Administration, or each of their designees, shall discuss and seek to reach mutual agreement on the Capital Program for such year.

10.13.8.1. If the reason that Amtrak is unable to expend the funds agreed upon in Section 10.13.1 is a failure of the Committee to agree upon a list of capital projects, then the reduction in available capital funds in the subsequent fiscal year that is described in Section 10.13.3 shall not occur.

10.13.9. In the determination of costs and charges assessed by Amtrak for any capital projects funded pursuant to this Agreement, Amtrak shall use a G&A rate of 6% for all Sole Benefit Projects, and shall charge the Administration a G&A rate of 5% on any Joint Benefit Projects.

10.14. **Storage Fee.** The Administration will pay Amtrak a storage fee of Four Hundred Twenty Dollars (\$420.00) per Unit per month for every Unit scheduled to be stored at Washington Terminal and Baltimore Penn Station for more than four continuous hours per day ("Units Scheduled for Storage"). Prior to the commencement of the term of this Agreement, the Parties will agree upon a monthly fixed fee based on the Administration's anticipated scheduled need for storage. No credit will be offered if daily service variations require less space. Notwithstanding the preceding sentence, upon the opening of the Wedge Yard, or in the event that the Administration is able to secure other locations for storage of Units and thus reduce the anticipated scheduled need for storage, the Administration shall advise Amtrak of the revised number of Units Scheduled for Storage, and the monthly storage fee will be adjusted to reflect the reduction, to be

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effective in the first month following the actual reduction as described in the Administration's notice to Amtrak.

10.14.1. The Parties will meet to review storage needs whenever modifications to MARC Commuter Rail Service schedules or consist lengths are discussed. Any change in Units Scheduled for Storage will require the written agreement of the Parties by amendment to this Agreement.

10.14.2. MTA may request additional storage on a temporary basis with a predetermined end date. If approved by Amtrak, MTA will be charged an additional per-Unit, per-day charge of \$13.81. Temporary increases will not require a contract amendment.

10.14.3. Any Units in queue for servicing at Amtrak's Ivy City S&I facility will not be considered Units Scheduled for Storage.

10.14.4. Amtrak will use storage fees collected for Units Scheduled for Storage at Washington Terminal for capital projects at Washington Terminal that are described in the Washington Union Station Master Plan, and collected for Units Scheduled for Storage at Baltimore Penn Station for capital projects at Baltimore Penn Station chosen at Amtrak's sole discretion. If Amtrak's planning for the future configuration of the facilities at Washington Terminal has not advanced to a point where plans are sufficiently specific by the time that funds are made available to Amtrak pursuant to this Section 10.14, then the Parties shall meet and agree upon a different basis for Amtrak's determination of projects for which it can use such funds.

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10.14.5. Funds paid pursuant to this Section will remain available to be spent for two full Amtrak fiscal years after the month in which they were paid to Amtrak. Amtrak's fiscal year is the 12 month period from October through September. As example, any storage fee payments to Amtrak for the month of May 2014 will remain available for spending for the period June 2014 through September 2016. Any project paid for solely using funds paid pursuant to this section will not be subject to the Master Project Agreement or any other approval process. Amtrak will submit a monthly statement of costs showing the amount spent on each project and the amount currently available from the storage fee payments.

10.14.6. In order to phase in the storage fee, and allow time for MTA to secure alternative storage facilities for the Equipment to be stored in Washington Terminal, a credit for up to 72 Units will be applied to the Washington Terminal monthly fixed fee, according to the following schedule:

- 100% credit for the period July 1, 2013 - June 30, 2015
- 50% credit for the period July 1, 2015 - June 30, 2016
- No credit will be offered at any time for any storage above 72 Units.

For the purposes of clarification only, the Parties hereby confirm that the foregoing reference to "up to 72 Units" does not imply that Amtrak may reduce the number of Units that the Administration may store at Washington Terminal below 72, except as provided in the last sentence of Section 2.5 above, but is intended to acknowledge that if the Administration does reduce the number below 72 during the first three years of the term of this Agreement, the number of Units

for which the Administration will be charged the storage fee will be the number of Units actually stored there.

10.14.7. In order to phase in the storage fee, and allow time for MTA to secure alternative storage facilities for the Equipment to be stored at Baltimore Penn Station, a credit for up to 46 Units will be applied to the Baltimore monthly fixed fee, according to the following schedule:

- 100% credit for the period July 1, 2013 - June 30, 2015
- 50% credit for the period July 1, 2015 - June 30, 2016
- No credit will be offered at any time for any storage above the current 46 Units

10.15. Maryland Growth and Investment Plan. In addition to the capital funds to be provided to Amtrak pursuant to Section 10.13, above, the Parties acknowledge that the Administration has commenced planning and implementation of the Maryland Growth and Investment Plan, and that approximately Fifty Million Dollars (\$50 million) for further capital improvements will be available to Amtrak pursuant to that Plan. The Parties acknowledge further their intention to specify the projects to be performed using the funds made available as part of the Maryland Growth and Investment Plan, and to specify as well the enhancements to the MARC Commuter Rail Service that will be made following commitment of funds and/or completion of projects, all as agreed by the Parties.

10.15.1. For any Sole Benefit Project undertaken by the Administration, for which Amtrak is responsible for the performance of maintenance and recapitalization, Amtrak shall be reimbursed by the Administration each month for the actual hourly wages for labor expenses as well as material costs, plus

Amtrak's then current overhead rates, a current version of which is attached hereto as Exhibit I and a 6% G&A additive. Monthly invoices will include Amtrak's Statement of Payroll Costs Report which lists the hours, payroll amounts, dates and names of employees who provided services to such Sole Benefit Project. Amtrak shall also provide copies of material invoices, third party service invoices, a report of materials issued from inventory, Amtrak equipment utilization pricing statement and a statement of other costs and charges. Amtrak will not provide an independent field verification voucher (i.e. Form 2306) to substantiate monthly invoices.

10.15.1.1. In the event that Amtrak begins to consistently use a track, structure, platform or other facility that was initially determined by the Parties to be a Sole Benefit Project, then that Project shall be re-designated by the Parties as a Joint Benefit Project. The Parties shall promptly agree upon an allocation of maintenance costs for that Project, and it shall thereafter be treated as a Joint Benefit Project for the purposes of this Agreement. In the event that a third party that Amtrak allows to have access to the NEC Segment (which may include but would not be limited to a freight railroad) begins to consistently use a track, structure, platform or other facility that was initially determined by the Parties to be a Sole Benefit Project, then the Parties shall promptly renegotiate the allocation of maintenance costs for the Project.

10.15.2. For any Joint Benefit Project undertaken by the Administration for which Amtrak is responsible for performance of the maintenance following

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completion of the Project, Amtrak shall be reimbursed for the Administration's share of the actual hourly wages for labor expenses as well as material costs, plus Amtrak's then current overhead rates, a current version of which is attached hereto as **Exhibit I** and a 5% G&A additive. The Administration's share of the costs described in the previous sentence shall be that percentage that is determined in the Project Initiation for that improvement pursuant to the Master Project Agreement. Monthly invoices will include Amtrak's Statement of Payroll Costs Report which lists the hours, payroll amounts, dates and names of employees who provided services to such Joint Benefit Project. Amtrak shall also provide copies of material invoices, third party service invoices, a report of materials issued from inventory, Amtrak equipment utilization pricing statement and a statement of other costs and charges. Amtrak will not provide an independent field verification voucher (i.e. Form 2306) to substantiate monthly invoices.

10.15.2.1. In the event that Amtrak ceases to use a track, structure, platform or other facility that was initially determined by the Parties to be a Joint Benefit Project, then that Project shall be re-designated by the Parties as a Sole Benefit Project. Should the Administration require Amtrak to continue to maintain such Project, the Administration will reimburse Amtrak for its actual costs plus all applicable overheads in performing such maintenance services. In the event that a third party that Amtrak allows to have access to the NEC Segment (which may include but would not be limited to a freight railroad) ceases to consistently use a

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track, structure, platform or other facility that was initially determined by the Parties to be a Joint Benefit Project, then the Parties shall promptly renegotiate the allocation of maintenance costs for the Project.

10.16. **Wedge Yard Support Maintenance and Utilities.** Any maintenance or recapitalization work required to support the Wedge Yard shall be reimbursed by the Administration each month for the actual hourly wages for labor expenses plus Amtrak's published overhead rate and G&A at the rate of 6%. All invoices submitted to the Administration for payment shall include a clear description of work performed and number of hours worked by day. Additional documentation will be provided upon request. The cost of utilities consumed shall be reimbursed by the Administration in accordance with Exhibit D-1 of the Wedge Yard Utility License Agreement dated July 15, 2011.

10.17. **Payment Terms.** Payments to Amtrak pursuant to this Agreement shall be made no later than thirty (30) days after the Administration's receipt of a proper invoice from Amtrak. Charges for late payment of invoices, other than as prescribed by Title 15, subtitle 1 of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland, with respect to regulated public utilities, as applicable, are prohibited.

10.18. **Cost and Price Changes.** The dollar amounts in Sections 10.1 through 10.6, 10.21 and 10.22 shall be adjusted July 1 of each year based on the percentage change in the Association of American Railroads (AAR) Quarterly Index of Chargeout Prices and Wage Rates (Table C), East, "material, prices, wage rates and supplements combined (excluding fuel)" index in effect for the first quarter of that calendar year compared to the

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same index in effect for the first quarter of 2013. The 2013 first quarter index value is 477.1. The first adjustment will be made effective July 1, 2014.

**10.19. Retroactive Wage and Benefit Costs.** The Administration shall pay Amtrak for retroactive wage and benefit costs (i.e., adjustments made subsequent to performance of the work). Such costs shall be reimbursed based on actual costs, and will apply to those services that are reimbursed on an actual cost basis. As of the effective date of this Agreement, the items to which this section applies are Sections 10.7, 10.8, 10.9, 10.15.1, 10.15.2 and 10.16. The Administration's obligation to reimburse Amtrak for such retroactive costs shall survive termination of this Agreement. When reimbursing Amtrak for such retroactive wages, the Administration shall only be required to pay Amtrak for actual costs incurred. For any retroactive wages paid for services rendered in years prior to the then-current Contract Year, the Administration shall only be required to pay fringe benefit costs actually added to the retroactive wages related to those prior years. For any retroactive wages paid that are for services rendered during the then-current Contract Year, fringe benefit costs and overhead additives will be calculated based on Amtrak's then-current rates if such retroactive wages were included in Amtrak's then current fringe benefit and overhead calculations. Any other costs being requested for reimbursement, must be costs actually incurred by Amtrak related to retroactive wages and must be supported by documentation showing actual expenditure of such costs. Amtrak shall submit an invoice to the Administration for any costs described in this section within six (6) months of the actual payment to Amtrak employees that gives rise to the obligation for a retroactive payment.

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10.20 Quik Trak Machines. The Administration shall pay to Amtrak the sum of \$1000 per month per machine, except at the Germantown Station where the Administration has installed a second such machine at which Germantown Station location the per machine rate shall be \$825 per month, for use of the Quik Trak machines in accordance with a Quik Trak terms and conditions in the form attached hereto as **Exhibit K**. If the Parties agree to add a second Quik Trak machine at any other location(s) or add a Quik Trak machine at a new location, the Parties will negotiate a price for the machines at such other location(s) or new location(s) to be co-terminus with the new lease agreement referred to in Section 10.20.1 below and on terms otherwise consistent with the terms set forth in **Exhibit K**. This payment will not be subject to either G&A, or any other additives, or to any adjustment pursuant to Section 10.18 of this Agreement.

10.20.1 The Parties agree that they will terminate all lease agreements for Quik Trak machines that may have been in effect prior to the Effective Date of this Agreement and that they will enter into new lease agreements that are consistent with the terms set forth in **Exhibit K** and that will have an effective date of July 1, 2013 and an expiration date of June 30, 2018.

10.21 Crew Qualifications. The Administration shall pay Amtrak \$5,400 for each engineer qualified by Amtrak, and \$1,890 for each conductor qualified by Amtrak to operate over the NEC Segment and Washington Terminal pursuant to Section 2.1.4 above. These rates apply only to engineers and conductors with previous Class I railroad operating experience. In addition to the fees described in the first sentence, the Administration will pay Amtrak \$1,220 for each new hire third party engineer and each third party conductor qualified by Amtrak who have no previous Class I railroad



operating experience. The costs referred to in this Section 10.21 are separate from those training costs referred to in Section 10.7 above.

10.22 **Dispatching Feed.** The Administration shall pay Amtrak \$300 per month for access to the dispatching feed referred to in Section 5.11 above at the MARC Operations Center. If the Parties agree to add dispatching feed access at any other location(s), the Parties will negotiate a price for dispatching feed access at such other location(s). The amount referred to in this Section 10.22 will be subject to annual indexing as set forth in Section 10.18 above.

11. **Availability of Funds**

The Parties recognize that the Administration's obligations to pay or indemnify Amtrak pursuant to this Agreement are limited to the extent that funds are available through budgetary appropriations to meet such obligations. The Parties specifically agree, however, that in the event that the Administration asserts or it is determined that the Administration cannot meet an obligation arising under the Agreement because sufficient funds are not available, Amtrak shall have the right to terminate access to the NEC Segment and Washington Terminal for use in operation of the MARC Commuter Rail Service upon the conclusion of the period for which funds have already been paid to Amtrak pursuant to Section 12, below. Such access shall not be restored pursuant to this Agreement or otherwise until the Administration has paid to Amtrak with interest at the rate permitted under Maryland law, the funds necessary to meet such payment or indemnification obligations pursuant to this Agreement and to reimburse Amtrak any reasonable amounts Amtrak was required to expend for termination and/or restoration of services as a result of the Administration's lack of funds.

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12. Actual Payment

No later than May 1 of each year, Amtrak will provide the Administration with a proposed annual budget for the next Contract Year. No later than June 1 of each year, the Parties shall agree upon an annual budget for the next Contract Year representing all Compensation that will be due to Amtrak under Section 10. In the event of significant changes in operations and resulting expenses, the Parties will jointly develop revisions to the budget. The Administration shall pay Amtrak on the fifteenth day of each service month an estimated amount which is one twelfth of the annual budget. Amtrak shall submit at least thirty (30) days prior to the due date for each estimated payment a statement of charges showing the amount to be paid pursuant to the previous sentence.

12.1. Within forty (40) days after the end of the month, Amtrak shall provide the Administration with copies of documents showing the actual Unit miles and actual costs incurred during that month, except that the Administration's Energy Costs defined in Section 10.12 shall be shown for the prior month. Then, within forty-five (45) days after the close of each calendar quarter, Amtrak shall provide a statement of actual Unit miles, actual number of Units in and out and actual charges, and any additional supporting documentation in the form acceptable to the Administration showing the actual Unit miles, actual number of Units in and out and actual amounts due pursuant to Section 10, including incentive payments earned and/or cross leasing payments/credits pursuant to Section 6.4, if any, during the quarter just ended (the "Reconciliation Statement"), except that the Administration's Energy Costs shall be shown for the most recent three (3) months available. Should the Administration request documentation which deviates from Amtrak's standard formats, the Administration shall pay Amtrak for any additional costs

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incurred. If the Reconciliation Statement shows that the Administration owes money to Amtrak, then Amtrak will issue an invoice to the Administration showing the amount due. If the Reconciliation Statement shows that Amtrak owes money to the Administration, the next regular monthly payment to Amtrak shall be decreased by the amount of money that Amtrak owes back to the Administration for that quarter. The regular monthly payments that will be adjusted to reflect the Reconciliation Statement will be the payments made in the months of September and December, then March and June of each year of the term of this Agreement. Within seven (7) months following the end of the term of this Agreement, Amtrak will provide a final Reconciliation Statement to the Administration. Except as provided for in Section 10.19 above, a final adjustment payment, either to Amtrak or to the Administration depending on the Reconciliation Statement, will be made within thirty (30) days after the date of the final Reconciliation Statement.

**13. Payment Disputes**

In the event that either party shall disagree with a Reconciliation Statement with respect to the determination of actual costs, revenues, or incentive payments earned which has been submitted in accordance with Section 12, or capital costs for recapitalization and system enhancements to the NEC and Washington Terminal, the party in disagreement shall timely pay any undisputed amount of the invoice or requested fee, charge or cost, and promptly notify and provide to the other party a written statement setting forth the nature and basis for the disagreement and also enumerating those aspects and amounts, if any, of such statements or determinations which are not in dispute. The Parties will confer promptly for the purpose of resolving any disputed amounts. Should no resolution be achieved, the Parties will submit the

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matter for resolution in accordance with Section 17 of this Agreement. Any disputed amount which is required to be paid or repaid by either party as a result of such dispute resolution process shall bear interest at the rate provided by Maryland law, which shall apply to late payments under this Agreement from both the Administration and Amtrak.

14. **Disruption of Service**

The Parties agree that in the event of the temporary cessation of the MARC Commuter Rail Service due to a Force Majeure event as defined in Section 18, the Administration's obligation to compensate Amtrak for charges during the period of time that the cessation of the MARC Commuter Rail Service occurs shall be modified as provided in this Section 14. The Administration shall be obligated to pay any direct costs which are incurred during the period of disruption. In addition to any direct costs incurred, for the first five (5) weekdays of non-operation, the Administration shall pay Amtrak \$46,851 per day for flat-rated charges, and shall pay \$35,138 thereafter for flat-rated charges for each weekday of non-operation for a maximum period of fifteen (15) additional weekdays following the fifth weekday on which the disruption occurred. The Parties will agree on an appropriate amount due Amtrak for flat-rated charges covering subsequent periods. However, in the event the disruption is caused by a work stoppage by Amtrak employees, beginning with the sixth day of a period of disruption caused by a work stoppage by Amtrak employees, the Administration shall pay to Amtrak a percentage of \$35,138 that is attributable to the costs incurred by Amtrak that are related to the MARC Commuter Rail Service for any employees who continue to work during the period of work stoppage. The Parties shall determine the percentage by determining which craft(s) is/are continuing to work during the work stoppage and calculating the percentage of the monthly flat rated charges that

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are attributable to the work performed by the employees in that/those craft(s). These amounts shall be changed subject to the indexation provision set forth in Section 10.18.

**15. Records**

Amtrak will maintain appropriate financial, accounting and operating records for each year of the term of this Agreement that reflect the costs associated with Amtrak's performance of services in accordance with this Agreement for a period of three years following the conclusion of each such year. Upon request of the Administration, Amtrak will maintain and make available, to the extent practicable, such additional financial, accounting, and operational records as may be required to enable the Administration to monitor and/or to comply with the reporting requirements of any governmental entity having regulatory or financial responsibility with respect to the MARC Commuter Rail Service.

**16. Term and Termination**

16.1. The term of this Agreement shall be for five (5) years, with either Party having the option to extend the term for an additional five (5) year period by serving notice eighteen (18) months in advance of the conclusion of the initial five (5) year term. The Parties specifically acknowledge that a notice to extend the term that includes a request for modification of the methods of calculating compensation payable to Amtrak hereunder will provide the other party with the option to seek renegotiation of any other term of this Agreement.

16.2. This Agreement may be terminated upon sixty (60) days' written notice by the Administration whenever the Administration determines that it will not have sufficient funds to pay for the MARC Commuter Rail Service as required by Section 11 or that such termination is in the best interest of the State. Amtrak may terminate this

Agreement immediately if it determines that it is no longer capable of providing access to the NEC Segment or Washington Terminal due to the unavailability of sufficient funds to continue operating the Northeast Corridor; provided that Amtrak shall consult with the Administration concerning potential funding problems and shall notify the Administration as soon as possible upon learning of any governmental action which makes it likely that sufficient funds will not be available.

16.3. Upon notice of termination from the Administration as provided in Section 16.2, Amtrak will:

- (i) Take immediate action to discontinue its work and demobilize its work force in an orderly fashion to minimize the recurring costs chargeable to the Administration.
- (ii) Take such action as may be necessary to protect the property of the State of Maryland, place no further orders or subcontracts, assign to the Administration in the manner and to the extent directed by the Administration all of the right, title and interest in property under the orders or subcontracts terminated.
- (iii) Transfer title to the Administration of all materials, equipment, data, drawings, specifications, reports, estimates, and such other information accumulated by Amtrak in performing this Agreement, the cost of which Amtrak has been or will be reimbursed under this Agreement.

16.4. Upon termination of the Agreement, all rights and obligations of the Parties hereunder will terminate except for rights and obligations, whether liquidated, determined, contingent or otherwise, which had arisen prior to or as a result of such

termination. To the extent that certain costs are incurred by Amtrak prior to or as a result of the termination pursuant to this Section 16, the Administration shall be obligated to pay Amtrak costs of termination incurred thereafter which are directly attributable to the orderly cessation of the MARC Commuter Rail Service.

16.5. The Parties acknowledge that the Northeast Corridor Infrastructure and Operations Advisory Commission (the "NEC Commission") is developing a standardized formula for determining and allocating costs, revenues and compensation for use of Amtrak's facilities or services (the "212 Formula"). As required by Section 212 of the Passenger Rail Investment and Infrastructure Act of 2008 (codified at 49 U.S.C. 24905), the Parties agree that upon completion of the NEC Commission's work and the publication of the 212 Formula, (or if there is a regulatory or judicial proceeding instituted with respect thereto, upon the completion and issuance of a final unappealable order in any such regulatory or judicial proceedings related thereto), the Parties will promptly meet and renegotiate a new compensation arrangement that is based on the 212 Formula.

**17. Dispute Resolution**

17.1. In the event of a dispute by the Parties over any issue arising under or related to this Agreement, the Parties shall first attempt to resolve the dispute by initiating discussions between themselves as follows:

17.1.1. The dispute shall first be discussed between the Administration's Director of MARC Train and Commuter Bus Services and Amtrak's Superintendent of Commuter Services;



17.1.2. If the discussion between those two individuals does not lead to a resolution of the dispute within thirty (30) days of the date the matter is first presented as a dispute, the matter shall be discussed by the Administration's appropriate Deputy Administrator and the Chief Corridor Development, NEC Infrastructure and Investment Development; and

17.1.3. If the discussion between those two individuals does not lead to a resolution of the dispute within sixty (60) days, the matter shall be discussed between the Administration's Administrator and Amtrak's Chief Corridor Development, NEC Infrastructure and Investment Development.

17.1.4. If the discussion between those two individuals does not lead to resolution of the dispute within sixty (60) days, either party may proceed with binding arbitration in the following manner:

17.1.4.1. The Party wishing to initiate arbitration shall notify the other in writing of its potential desire to submit the matter to arbitration within six (6) months after the date that it learns of the circumstances that give rise to the dispute. Such notice shall contain a statement of the issues and shall designate one arbitrator.

17.1.4.2. Within fifteen (15) days of such notice, the other Party shall respond in writing by designating a second arbitrator.

17.1.4.3. Within fifteen (15) days of designation of the second arbitrator, the two arbitrators designated as aforesaid shall appoint a third arbitrator to serve as chairman. If the two arbitrators so designated fail to appoint a third arbitrator within the time provided herein, or if a Party fails



to appoint an arbitrator within the time provided for herein, either Party may request the Chief Judge of the United States District Court for the district in which the said Party's principal office is located to appoint an additional arbitrator.

17.1.4.4. The arbitrators shall promptly hear and decide the issues submitted to them in accordance with the rules for commercial arbitration of the American Arbitration Association, giving to both Parties reasonable notice of the time and place of hearing.

17.1.4.5. The arbitrators, or a majority of them, shall promptly render their decision and award in writing to the Parties.

17.1.4.6. Any arbitration award rendered hereunder shall be final and binding upon the Parties. Judgment upon any such arbitration award may be entered in any United States District Court having jurisdiction over the Parties.

17.1.4.7. Each Party shall bear its own costs and expenses of arbitration, including the cost of any expenses of the arbitrator designated by it. The fees of the chairman and any other remaining expenses of the arbitrators shall be borne equally by the Parties.

17.1.4.8. The Parties agree that every reasonable effort shall be made to obtain the prompt resolution of disputes which are submitted to arbitration pursuant to this Agreement. The Parties further specifically agree that neither Party shall be entitled to delay the arbitration process significantly by insisting on the application of extensive procedural steps

or other actions which cannot clearly be expected to improve the ability of the arbitrators to render a reasonable and fair decision, and agree further that reasonable discovery requests shall not be barred by the foregoing.

17.2. In the event of a dispute arising under or related to an invoice or request seeking payment of any kind under this Agreement the Party disputing that amount shall timely pay any undisputed amount of the invoice or requested fee, charge or cost.

17.2.1. In the event of such a dispute, only the disputed portion of the invoice and/or request for payment shall be subject to the dispute resolution process under this Section 17.2.

17.2.2. The Party disputing an amount set forth in an invoice shall not be required to pay the disputed amount pending resolution of the process described in this Section 17.2. Payment of or receipt of the undisputed amount may not be construed to be any admission by either Party regarding any matter arising from the disputed amount. Further, payment of or receipt of the undisputed amount does not preclude recovery of any or all of the amount paid if it is subsequently determined that a dispute exists as to the paid portion.

17.3. Pending resolution of a dispute as set forth under this Section 17, the Parties shall proceed diligently with the performance of this Agreement in accordance with its terms.

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18. Force Majeure

Amtrak will be excused from performance of any of its obligations hereunder, where such non-performance is occasioned by any event beyond its control which shall include, without limitation, any order, rule, or regulation of any federal, state, or local government body, agent or instrumentality, work stoppage, accident, natural disaster, or severe weather.

19. Compliance with Laws

19.1. Amtrak represents and warrants that:

19.1.1. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;

19.1.2. It is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Agreement;

19.1.3. It shall comply with all federal, State, and local laws, regulations, and ordinances applicable to its activities and obligations under this Agreement; and

19.1.4. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Agreement.

20. Non-violation of Labor Agreements

Nothing contained in this Agreement will require Amtrak to perform any service or take any action which would violate any term or condition of any then current labor agreement

between Amtrak and any organization representing any of Amtrak's employees or applicable to Amtrak by reason of operation of law. Amtrak will not be in default of this Agreement or any covenant or obligation contained herein by reason of any act or failure to act which is required by the terms of such agreements.

21. **Labor Protection, Including 13(c) Issues**

The Administration will assume the cost of any labor protection obligation resulting from ordinances or legislation enacted in the future by local, state or federal governments which affect labor protection rights of Amtrak employees assigned to MARC Commuter Rail Service. In such an event, Amtrak will pursue efforts to negotiate agreements with its employees or their representatives to minimize the impact of such labor protection obligation or cost to the Administration.

22. **ADA Compliance**

Except as otherwise provided in an agreement between the Parties, the Administration and Amtrak will reach agreement on the Administration's proportionate share of the capital costs incurred by Amtrak to ensure accessibility as required by the Americans with Disabilities Act and implementing DOT regulations ("ADA Costs") for the following shared-use stations: Washington Terminal, Aberdeen, New Carrollton, BWI, and Baltimore. The Administration shall be obligated to pay, without contribution from Amtrak, any ADA Costs at other stations on the NEC owned by, used solely by, or controlled by the Administration. Amtrak shall keep the Administration fully informed concerning any information or plans that Amtrak has that may require the Administration to pay ADA Costs at Amtrak-owned stations.

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23. Non-discrimination and Other Legal Requirements

23.1. Amtrak will comply with all applicable state and federal laws and regulations pertaining to non-discrimination in employment, and with applicable federal laws concerning environmental quality. Amtrak will include a similar requirement with respect to non-discrimination in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

23.2. Amtrak agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry or disability of a qualified individual with a disability; (b) to include a provision similar to that contained in subsection (a), above, in any subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

23.3. In the event of Amtrak's non-compliance with the non-discrimination provisions of this Section, Amtrak shall hold the Administration harmless from any suits, liability, or damages resulting from Amtrak's non-compliance. Non-compliance with provisions of this Section may result in termination of this Agreement as provided in Section 16.

24. Non-Hiring of Employees

No employee of the State of Maryland, or any department, commission, agency, or branch thereof, whose duties as such employee include matters relating to or affecting the subject matter of this Agreement, will, while such employee, become or be an employee of Amtrak.

25. Audit

25.1. The Administration will have the right to inspect, examine, and audit all financial books, records, and accounts of Amtrak which support the actual variable costs billed and revenues collected under this Agreement. Flat-rated compensation and fixed payment amounts are not subject to audit, with the exception of the application of the AAR Index as set forth in Section 10.18 to such flat-rated values. Amtrak will retain all such books, records, and accounts for a period of three (3) years following the end of the each Contract Year of this Agreement. This right to inspect, examine, and audit shall extend to auditors of FTA and any other government agencies requiring access to Amtrak records relating to the services provided by Amtrak in support of the Administration's access to the NEC Segment under this Agreement, when requested by the Administration. Once an audit has been completed by the Administration, a letter shall be sent to Amtrak setting forth the results of the audit. Items to which the Administration does not take exception will be considered closed for the period unless Amtrak indicates in writing within ninety (90) days of the receipt of the Administration's letter that certain cost items may be subject to future retroactive settlement(s) or adjustment(s). In this case, any items identified by Amtrak related to unionized labor agreements to be ratified shall be held open until the actual settlement(s) or adjustment(s) occurs, and such Amtrak claims for retroactive unionized labor agreement settlements or adjustments shall survive termination of this Agreement.

25.2. The Parties shall work diligently to resolve and closeout audits in a timely manner. In the event the Parties are unable to resolve an open audit within 120 days of receipt of an audit report, the Parties will rely on the provisions of Section 17.

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26. Notices

Any request, demand, authorization, direction, notice, consent, waiver, or other document provided or permitted by this Agreement to be made upon, given or furnished to, or filed with one party by the other party will be in writing and will be delivered by hand or be deposited in the mails of the United States, postage prepaid in an envelope addressed as follows:

If to Amtrak:

Senior Director – NEC Customer Management and Sales  
NEC Infrastructure and Investment Development  
National Railroad Passenger Corporation  
30th Street Station  
30th and Market Streets  
Philadelphia PA 19104

With Copy to:

Superintendent - Commuter Services  
National Railroad Passenger Corporation  
REA Building  
900 Second Street, N.E.  
Washington, D.C. 20002

If to the Administration:

Director and Chief Operating Officer  
Office of MARC Train and Commuter Bus Services  
Maryland Transit Administration  
1515 Washington Boulevard, Building #1  
Baltimore, Maryland 21230

Either party may change the address by notifying the other party of such change.

27. Assignment

This Agreement may not be assigned by Amtrak or the Administration without the express written consent of the other party.

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28. Severability

If any term, covenant, condition, or provision (or part thereof) of this Agreement or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision (or remainder thereof) to term, covenant, condition, and provision of this Agreement will be valid and enforced to the fullest extent permitted by law unless the term, covenant, condition, or provision or part thereof declared invalid or unenforceable is so fundamental to the Agreement that the remainder of the Agreement, standing alone, does not represent a meeting of the minds of the Parties.

29. Entire Agreement

No oral statement or prior written matter will have any force or effect. The Parties hereby acknowledge that they are not relying on any representations or agreements other than those contained in this Agreement. This Agreement will not be modified except in writing subscribed to by both Parties.

[Signatures appear on the following page.]

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by  
their respective duly authorized representatives.

NATIONAL RAILROAD PASSENGER CORPORATION

By: [Signature]  
Name: Joseph Boardman  
Title: President & Chief Executive Officer  
Date: 5/22/13

APPROVED AS TO FORM:

By: [Signature]  
Elissa E. Gallo  
Associate General Counsel (Amtrak)

MARYLAND TRANSIT ADMINISTRATION

By: [Signature]  
Name: Raligh Wells  
Title: Administrator  
Date: 5/30/13

FUNDS AVAILABLE:

[Signature]

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: [Signature]

List of Exhibits

- Exhibit A: Contract Affidavit
- Exhibit B: List of Existing Leases and Easements
- Exhibit C: Schedules –  
C-1: NEC (Penn Line)  
C-2: Camden Line  
C-3: Brunswick Line
- Exhibit D: Equipment Rental Conditions
- Exhibit E: Electrified Territory – Northeast Corridor and Adjacent Rail Lines
- Exhibit F: MTA Station Maintenance and Snow Removal Safety Procedures
- Exhibit G: Dedicated Support Personnel
- Exhibit H: Capital Projects to be completed using funds from the 2008 Access Agreement
- Exhibit I: Labor Rates and Additives
- Exhibit J: Required Reports
- Exhibit K: Quik Trak Terms & Conditions

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**Exhibit A**

**Contract Affidavit**

**CONTRACT AFFIDAVIT**

**A. AUTHORITY**

**I HEREBY AFFIRM THAT:**

I, am the President and Chief Executive Officer and the duly authorized representative of **NATIONAL RAILROAD PASSENGER CORPORATION (Amtrak)**, and that I possess the legal authority to make this Affidavit on behalf of myself and the business for which I am acting.

**B. CERTIFICATION OF REGISTRATION OR QUALIFICATION WITH THE STATE  
DEPARTMENT OF ASSESSMENTS AND TAXATION**

**I FURTHER AFFIRM THAT:**

1. Amtrak is a District of Columbia corporation created pursuant to federal statute that is not subject to state taxation and does not file annual reports with states. Amtrak will accept service of process on its Corporate Secretary at:

Name: Eleanor D. Acheson

Address: 60 Massachusetts Avenue, N.E., Washington, DC 20002

2. Except as validly contested, the business has paid, or has arranged for payment of, all taxes due to the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Employment Security Administration, as applicable, and will have paid all withholding taxes due to the State of Maryland prior to final settlement.

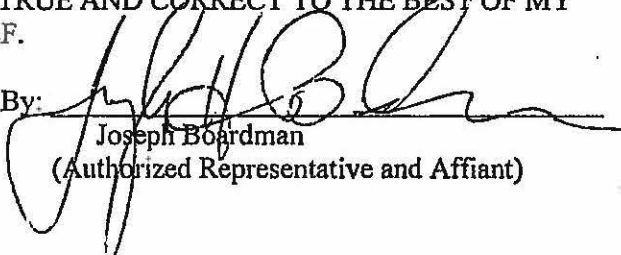
**C. CERTAIN AFFIRMATIONS VALID**

**I FURTHER AFFIRM THAT:**

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgements contained in that certain Bid/Proposal Affidavit dated Not Applicable, 20\_\_, and executed by me for the purpose of obtaining the contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: 5/22/13

By: 

Joseph Boardman  
(Authorized Representative and Affiant)

**APPROVED AS TO FORM:**

BY: 

Counsel for National Railroad  
Passenger Corporation  
Elissa E. Gallo  
Associate General Counsel (Amtrak)

## **Exhibit B**

### **List of Existing Leases and Easements**

**Exhibit B**

**LIST OF LEASES AND EASEMENTS  
BETWEEN  
MTA AND AMTRAK  
(as of April 15, 2013)**

- (1) April 1, 1991 Lease Agreement for the stations at Perryville, Aberdeen, Edgewood and Glenn L. Martin (Maryland).
  - (a) First Amendment to Lease Agreement dated February 22, 2012
  - (b) Second Amendment to Lease Agreement dated March 20, 2013
- (2) Pipe and wire agreement for 50 years.
- (3) Perpetual easement for property dated October 1996 at Mile Post 96.
- (4) Deed of Easement dated July 31, 1986 for operating commuter rail service, a perpetual easement to use certain railroad station properties at six (6) MARC Stations including; Seabrook, Bowie, Jericho Park, Odenton, Halethorpe and West Baltimore.
  - (a) First Amendment to Deed of Easement dated February 22, 2012
  - (b) Second Amendment to Deed of Easement dated March 20, 2013
- (5) Easement Agreement dated October 30, 1996 for the Penn Station Light Rail Station.
  - (a) First Amendment to this Easement Agreement dated March 11, 1998.
  - (b) Second Amendment to this Easement Agreement dated March 20, 2013
- (6) Easement dated February 2, 2004 with Amtrak for the Wedge Yard for use in connection with the MARC Washington Mid-Day Storage Yard Project. The easement area totals 2.74 acres of unimproved land.
- (7) Supplemental Agreement to the Easement Agreement for a portion of the Wedge Yard in Washington Terminal, date November 28, 2006.
- (8) Easement Agreement for Halethorpe MARC Station in Baltimore County MD dated December 21, 2006. The easement area consists of 69,573 square feet.
- (9) Easement Agreement for Property in the vicinity of BWI Airport Rail Station dated January 29, 2007.

## **Exhibit C**

**Schedules – C-1: NEC (Penn Line)**

**C-2: Camden Line**

**C-3: Brunswick Line**

Penn Line schedule as of May 15, 2013

|                 |        |         |      |     |                   |     |                   |     |                   |                   |      |      |      |      |      |      |      |      |      |     |
|-----------------|--------|---------|------|-----|-------------------|-----|-------------------|-----|-------------------|-------------------|------|------|------|------|------|------|------|------|------|-----|
| Train number    |        |         |      |     | Stored<br>Martins |     | Stored<br>Martins |     |                   |                   |      |      |      |      |      |      |      |      |      |     |
|                 | 401    | 403     | 505  | 407 | DH 613            | 409 | 511               | 413 | 415               | 517               | A151 | 419  | 421  | A181 | 523  | 425  | 427  | 429  | 431  | 433 |
|                 | AM     | AM      | AM   | AM  | AM                | AM  | AM                | AM  |                   | AM                |      | AM   | AM   |      | AM   | AM   | AM   | AM   | AM   | PM  |
| Stations        | S/Q    | Q       | S/Q  | S/Q |                   |     | S/Q               | Q   |                   | S/Q               |      | S/Q  | S/Q  |      | S    |      | S    |      | S    | S   |
|                 |        |         |      |     |                   |     |                   |     |                   |                   |      |      |      |      |      |      |      |      |      |     |
| Perryville      |        |         | 440  |     |                   |     | 540               |     |                   | 630               | 650  |      |      |      | 810  |      |      |      |      |     |
| Aberdeen        |        |         | 448  |     |                   |     | 548               |     |                   | 638               | 657  |      |      | 835  | 818  |      |      |      |      |     |
| Edgewood        |        |         | 458  |     |                   |     | 558               |     |                   | 648               | 705  |      |      |      | 827  |      |      |      |      |     |
| Martins Airport |        |         | 510  |     | 540               |     | 610               |     |                   | 70                |      |      |      |      | 839  |      |      |      |      |     |
|                 |        |         |      |     |                   |     |                   |     |                   |                   |      |      |      |      |      |      |      |      |      |     |
| Baltimore       | 430    | 500     | 524  | 550 | 600               | 613 | 625               | 645 | 700               | 715               | 732  | 740  | 810  | Y    | 905  | 925  | 1030 | 1135 | 1235 | 135 |
| W. Baltimre     | 437    | 507     | 531  | 557 |                   | 620 | 633               | 652 | 707               | 723               |      | 747  | 817  |      | 911  | 932  | 1036 | 1142 | 1242 | 142 |
| Halethorpe      | 443    | 513     | 537  | 603 |                   | 627 | 639               | 658 | 713               | 729               |      | 753  | 823  |      | 917  | 937  | 1041 | 1147 | 1247 | 147 |
| BWI             | 448    | 518     | 542  | 609 |                   | 633 | 645               | 705 | 720               | 735               | 747  | 758  | 829  | Y    | 922  | 942  | 1047 | 1152 | 1252 | 152 |
| Odenton         | 456    | 526     | 550  | 618 |                   | 641 | 653               | 713 | 728               | 743               |      | 805  | 836  |      | 930  | 950  | 1055 | 1200 | 1259 | 159 |
| Bowie           | 503    | 533     | 556  | 625 |                   |     | 700               | 720 | 735               | S                 |      | 812  | 843  |      | 936  | 956  | 1101 | 1206 | 105  | 205 |
| Seabrook        | 511    | 540     | 604  | 632 |                   |     | 707               | 727 | 742               | S                 |      | 818  | 850  |      | 942  | 1002 | 1106 | 1212 | 111  | 211 |
| New Carrollton  | 515    | 544     | 608  | 637 |                   | 654 | 711               | 732 | 746               | 751               | X    | 822  | 854  | Y    | 946  | 1006 | 1110 | 1216 | 115  | 215 |
| Washington      | 530    | 557     | 622  | 650 |                   | 708 | 726               | 745 | 800               | 807               | 815  | 837  | 908  | 944  | 1005 | 1020 | 1126 | 1230 | 130  | 230 |
|                 |        |         |      |     |                   |     |                   |     |                   |                   |      |      |      |      |      |      |      |      |      |     |
|                 |        |         |      |     |                   |     |                   |     |                   |                   |      |      |      |      |      |      |      |      |      |     |
| Train Number    | DH 550 | DH 552  | 554  | 400 | 502               | 404 | 406               | 408 | 610               | 610               | 412  | 414  | 416  | 418  | 520  | 422  | 424  | A148 | 426  | 428 |
|                 |        | Stored  |      | S   |                   | S   |                   |     | S                 | S                 |      | S    | S    |      | S    |      | S    |      | S/Q  | Q   |
| Station         |        | Martins |      |     |                   |     |                   |     |                   |                   |      |      |      |      |      |      |      |      |      |     |
|                 |        |         | BRAC |     |                   |     |                   |     |                   |                   |      |      |      |      |      |      |      |      |      |     |
| Washington      |        |         |      | 550 | 615               | 635 | 710               | 720 | 750               | 820               | 905  | 930  | 1030 | 1120 | 1220 | 120  | 220  | z302 | 323  | 410 |
| New Carrollton  |        |         |      | 601 | 626               | 646 | 721               |     | 800               | 830               | 916  | 940  | 1041 | 1131 | 1231 | 131  | 231  | z313 | 334  | 421 |
| Seabrook        |        |         |      | 606 | 630               |     | 725               |     | 805               | 834               | 920  | 944  | 1045 | 1136 | 1235 | 135  | 235  |      | 339  | 426 |
| Bowie           |        |         |      | 612 | 636               |     | 731               |     | 811               | 840               | 926  | 950  | 1051 | 1142 | 1241 | 142  | 242  |      | 345  | 432 |
| Odenton         |        |         |      | 619 | 643               | 700 | 738               |     | 820               | 847               | 933  | 956  | 1057 | 1148 | 1248 | 149  | 249  |      | 352  | 439 |
| BWI             |        |         |      | 627 | 652               | 707 | 747               |     | 828               | 858               | 941  | 1005 | 1108 | 1158 | 1257 | 153  | 258  | z329 | 402  |     |
| Halethorpe      |        |         |      |     |                   |     | 752               |     | L834              | L901              | L946 | 1011 | 1112 | 1203 | L102 | 203  | 303  |      | L407 |     |
| W. Baltimore    |        |         |      |     |                   |     |                   |     | L842              | L908              | L953 | 1019 | 1120 | 1210 | L109 | 210  | 310  |      | L414 |     |
| Baltimore       | 345    |         | 540  | 645 | 710               | 726 | 805               | 757 | 853               | 915               | 1003 | 1030 | 1130 | 1220 | 125  | 220  | 320  | z345 | 426  | 505 |
|                 |        |         |      |     |                   |     |                   |     |                   |                   |      |      |      |      |      |      |      |      |      |     |
| Martins         |        | 505     |      |     | L722              |     |                   |     | T918              | d940              |      |      |      |      | L138 |      |      |      |      |     |
| Edgewood        |        |         | L558 |     | L733              |     |                   |     | Stored<br>Martins | Stored<br>Martins |      |      |      |      | L150 |      |      |      |      |     |
| Aberdeen        |        |         | L606 |     | L742              |     |                   |     |                   |                   |      |      |      |      | L159 |      |      | z409 |      |     |
| Perryville      | 420    | 530     | 615  |     | 754               |     |                   |     |                   |                   |      |      |      |      | 214  |      |      |      |      |     |

Dead head trains

BRAC trains



|                 |      |      |         |      |         |      |         |      |     |      |      |       |        |      |        |      |        |
|-----------------|------|------|---------|------|---------|------|---------|------|-----|------|------|-------|--------|------|--------|------|--------|
|                 |      |      |         |      |         |      |         |      |     |      |      |       |        |      |        |      |        |
|                 |      |      |         |      |         |      |         |      |     |      | BRAC |       |        |      |        |      |        |
| Train number    | 435  | 537  | DH 679  | 439  | 641     | 443  | 445     | 447  | A85 | 449  | 579  | 451   | DH 583 | A137 | DH 585 | 453  | DH 587 |
|                 | PM   | PM   | PM      | PM   | PM      | PM   | PM      | PM   | PM  | PM   |      | PM    | PM     | PM   | PM     | PM   | PM     |
| Stations        | S    | S    | DHD     |      |         | S    |         |      |     | S    |      |       |        |      |        |      |        |
|                 |      |      |         |      |         |      |         |      |     |      |      |       |        |      |        |      |        |
| Perryville      |      | 230  |         |      |         |      |         |      |     |      | 625  |       | 720    |      | 835    |      | 1105   |
| Aberdeen        |      | 237  | Stored  |      | Stored  |      |         |      | 519 |      | 633  |       |        |      |        |      |        |
| Edgewood        |      | 246  | Martins |      | Martins |      |         |      |     |      | 642  |       |        |      |        |      |        |
| Martins Airport |      | 257  | 324     |      | 350     |      |         |      |     |      | 652  |       |        |      |        |      |        |
|                 |      |      |         |      |         |      |         |      |     |      |      |       |        |      |        |      |        |
| Baltimore       | 235  | 320  |         | 345  | 415     | 450  | 525     | 550  | 542 | 623  | 708  | 735   | 750    | 857  | 908    | 915  | 1135   |
| W. Baltimre     | 241  | S    |         | 351  |         | S    | 631     |      |     | S    |      |       |        |      |        | 922  |        |
| Halethorpe      | 246  | S    |         | 356  |         | S    | 536     |      |     |      |      |       |        |      |        | 927  |        |
| BWI             | 252  | 334  |         | 402  | 429     | 504  | 541     | 603  |     | 640  |      | 759   |        | 900  |        | 932  |        |
| Odenton         | 300  | S    |         | 409  | 437     | 511  | 548     |      |     | 647  |      | 758   |        |      |        | 940  |        |
| Bowie           | 306  | S    |         | 415  | 443     | 517  | 554     |      |     | 653  |      | 804   |        |      |        | 946  |        |
| Seabrook        | 312  | S    |         | 422  |         | 523  | 601     |      |     |      |      |       |        |      |        | 952  |        |
| New Carrollton  | 316  | 351  |         | 426  | 451     | 527  | 605     | 621  |     | 701  |      | 813   |        | d923 |        | 956  |        |
| Washington      | 330  | 407  | 414     | 440  | 505     | 540  | 621     | 635  |     | 715  |      | 827   |        | 942  |        | 1010 |        |
|                 |      |      |         |      |         |      |         |      |     |      |      |       |        |      |        |      |        |
|                 |      |      |         |      |         |      |         |      |     |      |      |       |        |      |        |      |        |
| Train Number    | 430  | 532  | 634     | 536  | 438     | 440  | 642     | 544  | 446 | A188 | 448  | 548   | 452    |      |        |      |        |
|                 | Q    | S/Q  | S/Q     | S/Q  | Q       | S/Q  | S/Q     | S/Q  | S/Q |      | S/Q  |       |        |      |        |      |        |
| Station         |      |      |         |      |         |      |         |      |     |      |      |       |        |      |        |      |        |
|                 |      |      |         |      |         |      |         |      |     |      |      |       |        |      |        |      |        |
| Washington      | 420  | 425  | 440     | 510  | 520     | 525  | 550     | 623  | 640 | z710 | 740  | 900   | 1030   |      |        |      |        |
| New Carrollton  |      | 436  | 451     | 521  |         | 537  | 601     | 634  | 651 | z721 | 751  | 911   | 1041   |      |        |      |        |
| Seabrook        |      | 441  | 455     | S    |         | 541  | 605     | 638  | 655 |      | 755  | 915   | 1045   |      |        |      |        |
| Bowie           |      | 448  | 501     | S    |         | 548  | 611     | 644  | 701 |      | 801  | 921   | 1051   |      |        |      |        |
| Odenton         |      | 456  | 509     | L535 |         | 556  | 618     | 651  | 709 |      | 808  | 928   | 1057   |      |        |      |        |
| BWI             | 448  | S    | 518     | S    | 548     | 605  | 627     | 700  | 718 | z717 | 817  | 937   | 1108   |      |        |      |        |
| Halethorpe      | L453 | S    | 524     | L546 |         | L611 | L635    | 706  | 725 |      | L823 | 943   | d1111  |      |        |      |        |
| W. Baltimore    | L501 | S    | 532     | S    | L556    | 624  | L645    | 713  | 732 |      | L833 | 951   | d1118  |      |        |      |        |
| Baltimore       | 511  | 520  | 541     | 600  | 606     | 634  | 655     | 723  | 742 | z754 | 843  | 1002  | 1129   |      |        |      |        |
|                 |      |      |         |      |         |      |         |      |     |      |      |       |        |      |        |      |        |
|                 |      |      |         |      |         |      |         |      |     |      |      |       |        |      |        |      |        |
| Martins         |      | 533  | d608    | L612 |         |      | T720    | L736 |     |      |      | L1014 |        |      |        |      |        |
| Edgewood        |      | L552 | Stored  | L624 |         |      | Stored  | L750 |     |      |      | L1029 |        |      |        |      |        |
| Aberdeen        |      | L602 | Martins | L633 |         |      | Martins | L800 |     | z818 |      | L1040 |        |      |        |      |        |
| Perryville      |      | 613  |         | 646  |         |      |         | 813  |     |      |      | 1050  |        |      |        |      |        |

Dead head train:

BRAC trains

## Camden Line Schedule as of May 15, 2013

| Train Number             | AM   |      |      |      |      |      | PM   |      |      |
|--------------------------|------|------|------|------|------|------|------|------|------|
|                          | 841  | 843  | 845  | 847  | 849  | 851  | 853  | 855  | 857  |
| Baltimore/Camden station | S/Q  | Q    | S/Q  | Q    | S/Q  | S/Q  | S    |      | S    |
| St. Denis                | 500  | 530  | 610  | 630  | 710  | 805  | 330  | 520  | 615  |
| Dorsey                   | f511 |      | S    | 641  |      | 816  |      |      |      |
| Jessup                   | 518  | 547  | 628  | 650  | 729  | 825  | 348  | 538  | 633  |
| Savage                   | S    |      | S    | f653 |      |      |      |      |      |
| Laurel Racetrack         | 525  | 554  | 634  | 658  | 737  | 832  | 355  | 545  | 640  |
| Laurel                   |      |      |      |      |      |      | f359 | f549 | f644 |
| Muirkirk                 | 531  | 600  | 640  | 705  | 744  | 838  | 401  | 551  | 646  |
| Greenbelt                | 536  | 606  | 646  | 711  | 749  | 844  | 406  | 556  | 651  |
| College Park             | 542  |      | 653  | 717  |      | 850  | 410  | 602  | 657  |
| Riverdale                |      |      | 658  | 721  | L801 | 854  | L413 | 606  | 701  |
| Washington               | L551 |      | L704 | L728 |      | L901 |      | L613 | L708 |
|                          | 603  | 629  | 718  | 744  | 821  | 912  | 440  | 628  | 723  |
|                          |      |      |      |      |      |      |      |      |      |
|                          |      | AM   |      |      |      |      | PM   |      |      |
| Train Numbers            | 840  | 842  | 844  |      | 846  | 848  | 850  | 852  | 854  |
|                          | S    |      | S    |      | S/Q  | Q    | Q    | S/Q  | Q    |
| Washington               | 632  | 700  | 800  |      | 413  | 443  | 522  | 553  | 655  |
| Riverdale                | 642  | 710  | S    |      |      | 453  | 532  | S    | 705  |
| College Park             | 644  | 712  | 811  |      | 424  | 456  | 534  | S    | 707  |
| Greenbelt                | 649  | 717  | 816  |      |      | 501  | 539  | S    | 712  |
| Muirkirk                 | 655  | 723  | 822  |      | 432  | 507  | 545  | 610  | 718  |
| Laurel                   | 702  | 730  | 829  |      | 439  | 514  | 552  | 617  | 725  |
| Laurel Racetrack         |      |      |      |      |      |      |      |      |      |
| Savage                   | 708  | 736  | 835  |      | 445  | 520  | 558  | 623  | 731  |
| Jessup                   |      |      |      |      |      |      | f601 | S    |      |
| Dorsey                   | L719 | L747 | L846 |      | L457 | L532 | L612 | L635 | L742 |
| St. Denis                |      |      |      |      |      | d542 | d634 | S    | d751 |
| Baltimore/Camden Station | 743  | 812  | 908  |      | 525  | 600  | 641  | 706  | 803  |

Total Trains 18

## Brunswick Line Schedule as of May 15, 2013

### AM

| Train Number       | 870  | 890  | 872  | 874  | 892  | 876  | 878  | 894  | 880  | 884    |
|--------------------|------|------|------|------|------|------|------|------|------|--------|
|                    | S/Q  | Q    | Q    | S/Q  | S/Q  | Q    | S/Q  | S/Q  | S/Q  |        |
| Martinsburg, WV.   |      |      | 500  | 525  |      |      | 625  |      |      |        |
| Duffields          |      |      | 516  | 541  |      |      | 641  |      |      |        |
| Harpers Ferry      |      |      | 525  | 550  |      |      | 650  |      |      |        |
| Brunswick          | 450  |      | 540  | 605  |      | 640  | 705  |      | 745  | 830    |
| Frederick          |      | 500  |      |      | 605  |      |      | 710  |      |        |
| Monocacy           |      | 506  |      |      | 611  |      |      | 716  |      |        |
| Point Of Rocks     | 500  |      | 550  | 615  |      | 650  | 715  |      | 755  |        |
| Dickerson          | f506 | 532  |      |      | 637  |      |      |      | 802  |        |
| Barnesville        | 511  |      | 601  | 625  |      | 700  | 725  |      | 808  |        |
| Boys               | f516 | f538 |      |      | f643 |      |      |      | f813 |        |
| Germantown         | 523  | 545  | 611  | 635  | 654  | 711  | 734  | 751  | 819  |        |
| Metropolitan Grove | 528  | 550  | 617  | 641  | 700  | 716  | 739  | 757  | 824  |        |
| Gaithersburg       | 534  | 555  | 623  | 647  | 706  | 723  | 745  | 804  | 830  | Dead   |
| Washington Grove   | f536 |      | f625 |      |      | f725 |      |      | f833 | Head   |
| Rockville          | 545  | 603  | 632  | 655  | 717  | 734  | 754  | 812  | 841  | Friday |
| Garrett Park       |      | 608  |      |      | 722  | 740  |      | 817  | 846  | only   |
| Kensington         | 552  |      | 639  | 702  | 727  | 745  |      | 821  | 850  |        |
| Silver Spring      | L603 | L620 | L649 | L713 | L735 | L756 | L809 | L832 | L901 |        |
|                    |      |      |      |      |      |      |      |      |      |        |
| Washington, DC.    | 623  | 640  | 709  | 735  | 756  | 815  | 832  | 852  | 921  | 930    |

### PM

| Train Number  | 871  | 873 | 891 | 875 | 877 | 893 | 879 | 881 | 895 | 883 |
|---------------|------|-----|-----|-----|-----|-----|-----|-----|-----|-----|
|               | S/Q  | S/Q | S/Q | Q   | S/Q | S/Q | Q   | S/Q | Q   | Q   |
| Washington    | 130  | 330 | 345 | 425 | 455 | 520 | 540 | 620 | 640 | 725 |
| Silver Spring | 143  | 344 | 359 | 438 | 509 | 534 | 554 | 634 | 653 | 737 |
| Kensington    | f148 | 350 |     | 444 | 514 | 640 | 600 | 640 | 659 | 742 |

[illegible]

## **Exhibit D**

### **Equipment Rental Conditions**

## EXHIBIT D

### RECIPROCAL EQUIPMENT RENTAL CONDITIONS

Each party desires to make selected passenger car and locomotive equipment available to the other for use from time to time in their respective rail operations or for other sponsored events. Each party owns equipment which it may be able to make available to the other party from time to time on a temporary basis for such use. Each party is willing to provide selected equipment to the other party for compensation, and the parties agree that the level of compensation is based on equipment use of less than thirty (30) consecutive days' duration. The owner and user of the equipment shall be called the lessor and lessee respectively in this Exhibit D.

#### Section 1- Obligation

Each party agrees to provide selected equipment to the other party when it is available and when requested or authorized. When necessary, such request by the lessee may be made verbally, and shall be confirmed in writing. This equipment made available by either party will be in "as-is" condition. In no event shall either party furnish individual pieces of equipment for any period in excess of thirty (30) consecutive days pursuant to this Agreement. Such extended use shall be subject to separate negotiation. The lessee shall

redeliver the equipment to lessor when requested to meet lessor's own equipment requirements. All equipment used pursuant to this Exhibit shall be redelivered to lessor in as good condition as when delivered, ordinary wear and tear excepted.

The Administration or its agent may operate the equipment in its commuter passenger rail services or Administration sponsored special train(s) and shall comply with all governmental laws and regulations with respect to the use and operation of rail passenger equipment.

Amtrak may operate the equipment in its intercity rail passenger service between Washington, DC and Boston, Massachusetts, and shall comply with all governmental laws and regulations with respect to the use and operation of rail passenger equipment. Subject to the suitability of the Administration's equipment for operation elsewhere, Amtrak may, with the concurrence of the Administration, use the Administration's equipment on short notice when required for operation of trains in an emergency pursuant to an agreement with the United States Government.

## Section 2 – Possession of Equipment

For the purpose of this Agreement, the lessee shall be deemed to be in possession of the equipment from the date and time of delivery at Washington Union Station or Baltimore Penn Station until the date and time of redelivery to lessor. At the request of either party, the Administration and Amtrak shall jointly inspect the equipment prior to the delivery and redelivery. Following such joint inspection, the Administration and Amtrak shall execute a Certificate of Delivery or Redelivery in the form set forth in Attachment A to this Exhibit D, noting the condition of the equipment and any damage other than normal wear and tear as of the time of delivery or redelivery.

## Section 3 – Equipment Maintenance

The lessee agrees to perform or have performed at its sole cost and expense the routine maintenance the equipment may require while the equipment is in its possession. Such routine maintenance will be performed in accordance with the lessor's standards. Except as provided in the preceding sentences, the equipment shall be maintained by and at the sole cost and expense of the lessor and shall be delivered to the lessee in good order, condition, and repair, ordinary wear and tear excepted, in accordance with lessor's mechanical standards. The



lessee agrees to make no modifications to the equipment or alter the road number of the equipment without the prior written consent of lessor.

#### Section 4 – Equipment Operation

The lessee shall furnish at its own expense, all fuel, electricity, oil, lubricants, and supplies necessary for the proper operation of the equipment while in its possession. The lessee agrees to permit the lessor or its representatives to inspect the equipment at any time while the equipment is in its possession.

#### Section 5 – Equipment Rental Rates and Associated Costs

For the use of the equipment, the lessee agrees to pay the daily rental rates specified in Attachment B and Attachment C to this Exhibit D for each calendar day or portion thereof that a piece of equipment is in its possession. Upon thirty (30) days' written notice to the other, either party may revise the rental rates specified in Attachment B and Attachment C. For the purposes of determining the rental payments, the lessor agrees that the daily rental rates shall commence with the date and time the equipment is delivered to the lessee and shall continue through the date and time that the equipment is redelivered to lessor. Any portion of a day in which the equipment is used shall count as a full day's rental.

The lessee agrees to pay any taxes, licenses, or permits whatsoever levied on the equipment growing out of use thereof under this Agreement. The lessee agrees to assume the cost of any penalties assessed by national, state, or local civil authorities, including but not limited to penalties for failure to provide licenses or permits, or for misuse of the equipment under applicable laws and regulations while the equipment was in its possession.

#### Section 6 – Actual Payment

For costs or credits relating to equipment leases, the total monthly cost or credit will be shown on the monthly statement as a separate line item and paid quarterly as a part of the quarterly reconciliation invoice.

#### Section 7 – Equipment Claims and Expenses

In the event of any loss, theft, damage, or destruction of the equipment exceeding \$1,000, the lessee, while in possession hereunder, shall promptly notify the lessor. The lessor shall promptly repair or arrange to have repaired such damage or destruction at the expense of the lessee. The lessee agrees to continue to pay rent for such equipment for the first five (5) days subsequent to the damage; provided, however, that if such equipment is damaged beyond economical repair, the lessee

agrees to pay an amount equal to the cost of replacement of such equipment, and the use of such equipment pursuant to this Agreement shall terminate. The parties agree that said cost of replacement of the respective equipment is set forth in Attachment B and Attachment C.

When repairs to the equipment are made, the lessor shall submit an itemized bill, detailing material used, labor expended, and other charges, if any. In the event of a dispute over the reasonableness of such bill, or a dispute over whether the equipment is damaged beyond economical repair, then the parties shall cause an inspection to be made by a representative of a mutually acceptable qualified engineering firm, whose decision shall be final. The cost of such inspection shall be borne solely by the lessee.

Attachment A

CERTIFICATE OF DELIVERY/REDELIVERY

The undersigned certify that they have this  
date \_\_\_\_\_, jointly inspected Car/Locomotive No.  
\_\_\_\_\_ in preparation for Delivery/Redelivery to  
\_\_\_\_\_ from \_\_\_\_\_. All defects not  
occasioned by fair wear and tear have been noted below:

| Location on Car/Locomotive | Defect |
|----------------------------|--------|
| _____                      | _____  |
| _____                      | _____  |
| _____                      | _____  |
| _____                      | _____  |
| _____                      | _____  |
| _____                      | _____  |
| _____                      | _____  |
| _____                      | _____  |
| _____                      | _____  |

\_\_\_\_\_  
Inspector for the Administration

\_\_\_\_\_  
Inspector for Amtrak

\_\_\_\_\_  
Location of Inspection

Attachment B

EQUIPMENT RENTAL RATES FOR AMTRAK-OWNED EQUIPMENT

| <u>CARS</u>        | <u>DAILY<br/>RENTAL</u> | <u>COST OF<br/>REPLACEMENT</u> |
|--------------------|-------------------------|--------------------------------|
| Amfleet I Coach    | \$ 451                  | \$1,931,579                    |
| <u>LOCOMOTIVES</u> |                         |                                |
| AEM-7              | \$1,609                 | \$5,150,878                    |
| HHP                | \$1,932                 | \$7,726,315                    |
| Road Diesel        | \$ 966                  | \$2,575,439                    |

The rental rates specified in this Attachment B shall be revised as specified by Amtrak upon 30 days' notice to the Administration

Revised: \_\_\_\_\_

Effective: July 1, 2013

Attachment C

EQUIPMENT RENTAL RATES FOR ADMINISTRATION-OWNED EQUIPMENT

| <u>CARS</u>    | <u>DAILY<br/>RENTAL</u> | <u>COST OF<br/>REPLACEMENT</u> |
|----------------|-------------------------|--------------------------------|
| MARC II Coach  | \$ 515                  | \$1,609,649                    |
| MARC III Coach | \$ 773                  | \$3,219,298                    |

LOCOMOTIVES

|             |         |             |
|-------------|---------|-------------|
| AEM-7       | \$1,609 | \$5,150,878 |
| HHP         | \$1,932 | \$7,726,315 |
| Road Diesel | \$ 966  | \$2,575,439 |

The rental rates specified in this Attachment C shall be revised as specified by the Administration upon 30 days' notice to Amtrak.

Revised: \_\_\_\_\_

Effective: July 1, 2013

## **Exhibit E**

### **Electrified Territory – Northeast Corridor and Adjacent Rail Lines**

Exhibit E

Electrified Territory - Northeast Corridor and Adjacent Rail  
Lines

| Route Segments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Rail Operators<br>Using Route<br>Segment     |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------|
| I. NORTHEAST CORRIDOR<br><br>Washington Terminal to Gate Interlocking<br>(includes Sunnyside Yard)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Amtrak, NJ<br>Transit, SEPTA,<br>DTC, MARC   |
| II. ADJACENT RAIL LINES<br><br>A. Harrisburg Line, Zoo Interlocking to<br>Harrisburg<br><br>B. Airport Line, Phil Interlocking to<br>Terminal E;<br>Media/Elwyn Line, NEC to Elwyn;<br>Bala Cynwyd Line, Harrisburg Line to Cynwyd;<br>Chestnut Hill West Line, North Philadelphia<br>to Chestnut Hill West;<br>Center City Tunnel, 30 <sup>th</sup> Street Station to<br>Girard Ave. phase break near Temple<br>University Station<br><br>C. Morris & Essex Lines, Swift Interlocking<br>to Kearny Connection phase break near Kearny<br>Junction Interlocking;<br>North Jersey Coast Line, Union Interlocking<br>to NJT 60 Hz. phase break near Matawan;<br>Princeton Line, Princeton Junction to<br>Princeton | Amtrak, SEPTA<br><br>SEPTA<br><br>NJ Transit |



## **Exhibit F**

# **MTA Station Maintenance and Snow Removal Safety Procedures**

## **EXHIBIT F (v. 3/5/13)**

### **MTA STATION MAINTENANCE AND SNOW REMOVAL SAFETY PROCEDURES**

For the safety of all passengers, employees and railroad operations, the following procedures and guidelines apply to Maryland Transit Administration (MTA) maintained stations at Perryville, Aberdeen, Edgewood, Martin Airport, West Baltimore, Halethorpe, Odenton, Bowie State, and Seabrook. When either MTA forces or MTA contractors are performing station maintenance and snow removal services on high- or low-level platforms and other station areas, the following general guidelines should be used to implement Roadway Worker Protection (RWP) and Electric Traction (ET) Protection:

When possible, work should be performed outside the yellow safety lines (the fouling envelope). When work is performed without fouling the safety lines, RWP and ET Protection generally is not required. The fouling envelope should be considered as within three feet from edge of platform.

If personnel and/or powered/non-powered equipment will enter the fouling envelope, then RWP protection is required.

If personnel or powered/non-powered equipment will be or has the potential to be within fifteen feet of the high voltage wires, ET Protection is required.

If MTA will be performing modifications to the station platforms that may affect horizontal and vertical clearances these proposed modifications must be reviewed and approved by Amtrak's Deputy Chief Engineer Construction in advance of such modifications.

If any station maintenance work by MTA has the potential for disturbing the track structure and roadbed, MTA must notify and receive approval from Amtrak's Deputy Chief Engineer Construction in advance of the work and shall not enter the roadbed unless proper RWP protection is provided. Amtrak may also require a qualified track foreman inspect track.

When powered/non-powered equipment (scissor/man-lift, scaffolding, snow blower, or other such machine) is being utilized as part of the work on the platform, the following criteria should be used by MTA to evaluate the need for additional protection:

1. Can the piece of equipment traverse the platform and perform the work without entering the fouling area.
2. Can the work be done more expediently if the track is removed from service. (If so, then additional controls may need to be placed on the contractor by MTA to ensure that they do not take any short cuts.)

**EXHIBIT F (v. 3/5/13)**

**MTA STATION MAINTENANCE AND SNOW REMOVAL  
SAFETY PROCEDURES**

**Safety Training and Notifications**

All MTA forces and MTA contractors, prior to performing station maintenance and snow removal work shall be required to successfully complete Amtrak's Contractor Orientation Training course and carry Amtrak-issued proof of such completion while performing maintenance and snow removal services. This safety class will be conducted on-line via an approved Amtrak website, [www.amtrakcontractor.com](http://www.amtrakcontractor.com). To request Amtrak Safety Training contact the Office of Amtrak Employee Development, 30<sup>th</sup> Street Station, Philadelphia, PA 19104 (215.349.1553). Questions regarding the clarification of training requirements may be directed to the Director of System Safety-Engineering in writing at:

Director of System Safety-Engineering  
Box 15, 30<sup>th</sup> Street Station, 3<sup>rd</sup> Floor  
2955 Market Street  
Philadelphia, PA 19104

All MTA forces and MTA contractors shall be responsible for ensuring that all of their employees have completed the required training prior to entering Amtrak property.

The course includes a test which must be successfully completed by each MTA employee and/or MTA contractor employee, as applicable. Each participant will be given three (3) opportunities to pass the test. If unable to pass on the 3<sup>rd</sup> attempt, the participant will be unable to retake the test for 30 days. Upon completion of the course, MTA employees and/or MTA contractor employees, as applicable, will be issued a temporary completion certificate and must upload a current photograph in order to receive a contractor identification badge. This temporary certificate of completion must be carried by the MTA employees and/or MTA contractors, as applicable, until their badge has been received. The temporary certificate of completion will be good for three weeks from date of issue. Once the permitted badge is received the badge must be worn/displayed on the outermost garment, above the waist, at all times while on Amtrak property.

All costs of complying with Amtrak's safety training requirements shall be at the sole expense of MTA. MTA and MTA contractors shall appoint a qualified person as their Safety Representative. He/she shall continuously assure that all individuals comply with Amtrak's safety requirements.

If station maintenance functions require entering the roadbed, including intertrack emergency platforms, a temporary "Permit to Enter" Amtrak property will be required in addition to RWP protection and is issued by the Office of Amtrak's Deputy Chief Engineer Construction in Philadelphia, PA.

MTA will notify the Office of Amtrak's Mid-Atlantic Division Engineer, 30<sup>th</sup> Street Station, Philadelphia, PA 19104 (215.349.2832 or 2838) if either RWP or ET Protection services will be required, with at least 48 hours notice.

In Emergency situations, Amtrak will endeavor to provide such protection with less than 48 hours notice. The Amtrak emergency contact is the CE/TC Trouble Desk (215.349.2272)

The above related only to the nine leased station area referenced above. When MTA or its contractor is planning to work on other Amtrak property or adjacent to Amtrak property, MTA must contact the Office of Amtrak's Deputy Chief Engineer Construction, Box 64, 30<sup>th</sup> Street Station, Philadelphia, PA 19104 (215.349.1750) to initiate the appropriate Agreement and Permit process.

#### **Amtrak accounting information**

As information, Amtrak forces will use the following work order numbers for billing purposes:

I/O 4100, WBS B.EN/100035.0002, Work Order -882700  
Perryville, Aberdeen, Edgewood

I/O 4100, WBS B.EN. 100035.0001, Work Order -882701  
Martins, West Baltimore  
Halethorpe, Odenton  
Bowie State, Seabrook.

## **Exhibit G**

### **Dedicated Support Personnel**

## DEDICATED SUPPORT PERSONNEL\*\*

| <u>EXEMPT POSITIONS</u>         | <u>NO. OF<br/>POSITIONS</u> |
|---------------------------------|-----------------------------|
| Coordinator Customer Services   | 3                           |
| Project Manager*                | 1                           |
| Trainmaster                     | 1                           |
| <br><u>NON-EXEMPT POSITIONS</u> |                             |
| Usher                           | <u>3</u>                    |
| <br>TOTAL                       | <br>8                       |

Notes: \*50% of the Project Manager position will be dedicated to, and billed to, the joint benefit Capital Program. The other 50% of this position will be dedicated to advancing sole MARC benefit projects, and will be billed via the annual budget and quarterly Reconciliation Statement process identified in Section 12.

\*\*The parties may agree to reallocate these positions by mutual written consent.

## **Exhibit H**

**Capital Projects to be completed using funds  
from the 2008 Access Agreement**

**Exhibit H - Capital Projects to be Completed Using Funds from the 2006 Access Agreement -Based on Projects Approved as of May 21, 2013**

Total Program Value through June 30, 2013 71,400,000

Actual Spending through April 30, 2013 53,334,809

| Other Approved Projects - Projected Additional Spending                                       | Status   | Funding Agreement in Place | Approved Cost Estimate | Allocated but Unspent |            |
|-----------------------------------------------------------------------------------------------|----------|----------------------------|------------------------|-----------------------|------------|
| Hanson Interlocking                                                                           | Active   | PI # 9                     | 10,000,000             | 7,368,426             |            |
| Washington Union Station Platform Paving - Design and Construction                            | Active   | 2006 Letter Agreement      | 6,340,185              | 2,879,494             |            |
| Baltimore Penn Station - Platform 2 Stairway and Canopy*                                      | Deferred | 2006 Letter Agreement      | 2,700,000              | 2,357,692             |            |
| Washington Union Station - Public Address System                                              | Active   | 2012 Letter Agreement      | 1,100,000              | 50,627                |            |
| Baltimore Station Restrooms - Design Phase                                                    | Active   | PI 12                      | 275,000                | 99,890                |            |
|                                                                                               |          | 50% Access agreement -     |                        |                       |            |
| Program Oversight                                                                             | Active   | 50% Joint Benefit Program  | 323,648                | 109,103               |            |
| MARC Station Surveys - Flagging Support                                                       | Active   | Access Agreement           | 84,959                 | 39,959                |            |
| BWI Static Signage                                                                            | Active   | 2012 Letter Agreement      | 103,009                | 72,495                |            |
| Washington Union Station Master Plan - Phase 1 Planning                                       | Active   | 2010 Letter Agreement      | 214,664                | 12,775                |            |
| Baltimore Penn Station Restroom - Construction Phase                                          | Active   | PI # 24                    | 543,890                | 543,890               |            |
| Restroom Tile Renewal - Baltimore, BWI, New Carrollton                                        | Closed   | 2012 Letter Agreement      | 40,000                 | 5,107                 |            |
|                                                                                               |          |                            |                        |                       | 13,539,458 |
| Total Value of Completed and Obligated Projects                                               |          |                            |                        |                       | 66,874,267 |
| Added Value by Deferring Baltimore Penn Station - Platform 2 Stairway and Canopy Construction |          |                            |                        |                       | 2,357,692  |
| Program Funding Available for New Projects                                                    |          |                            |                        |                       | 6,883,425  |

\*\$342,308 total spent prior to project deferral; remaining amount returned to available funds for new projects



## **Exhibit I**

### **Labor Rates and Additives**

**NATIONAL RAILROAD PASSENGER CORPORATION  
MARYLAND TRANSIT ADMINISTRATION (MTA)  
MARC OPERATING AGREEMENT & ACCESS AGREEMENT DEDICATED LABOR  
MARC FISCAL YEAR 2014 (July 1, 2013 to June 30, 2014)  
OVERHEAD ADDITIVE RATES**

**EXHIBIT I**

|                            | <b>Jul - Sep<br/>2013</b> | <b>Oct - Dec<br/>2013</b> | <b>Jan - Jun<br/>2014</b> |
|----------------------------|---------------------------|---------------------------|---------------------------|
| <b>Management *</b>        | 83.25%                    | 83.25%                    | 83.25%                    |
| <b>Agreement S.T. *</b>    | 57.13%                    | 57.13%                    | 57.13%                    |
| <b>Agreement O.T. *</b>    | 18.35%                    | 18.35%                    | 18.35%                    |
| <b>FELA **</b>             | 5.39%                     | 5.39%                     | 5.39%                     |
| <b>G&amp;A</b>             | 6.00%                     | 6.00%                     | 6.00%                     |
| <b>Vacation/Holiday **</b> | 16.20%                    | 16.20%                    | 16.20%                    |
| <b>WAS Maint of Equip</b>  | 52.00%                    | 52.00%                    | 52.00%                    |
| <b>BAL Maint of Equip</b>  | 7.00%                     | 7.00%                     | 7.00%                     |
| <b>Equipment Materials</b> | 10.00%                    | 10.00%                    | 10.00%                    |
| <b>Freight **</b>          | 3.73%                     | 3.73%                     | 3.73%                     |
| <b>Fuel</b>                | 5.00%                     | 5.00%                     | 5.00%                     |
| <b>T&amp;E Crew</b>        | 11.00%                    | 11.00%                    | 11.00%                    |

\* The fringe benefit additives will be assessed at the annual rate established by Amtrak that will be in effect for each Amtrak fiscal year. The annual rate will be provided to the MTA no later than October 1 of each year. The rates for the period July - September 2013 are as stated above.

\*\* The FELA, vacation and holiday and freight rates will be updated on January 1, 2014 and each January 1 during the contract term. Amtrak will provide MTA with an updated rate schedule that reflects any rate changes.

**NATIONAL RAILROAD PASSENGER CORPORATION  
OVERHEAD ADDITIVE RATES FOR USE WITH MARYLAND TRANSIT ADMINISTRATION ACCESS AGREEMENT JOINT BENEFIT CAPITAL PROJECTS,  
ACCESS AGREEMENT NON-DEDICATED LABOR AND SOLE BENEFIT MTA PROJECTS  
EFFECTIVE JULY 1, 2013**

**NOTE: THE G&A ADDITIVE RATE FOR SOLE BENEFIT MTA PROJECTS IS 6.00%**

|                                    | SYSTEM<br>OVERHEAD | DIVISION /<br>FIELD<br>OVERHEAD | TRAINING<br>OVERHEAD | VACATION<br>& HOLIDAY | FORCE<br>ACCOUNT<br>INSURANCE | JUL - SEP 2013<br>FRINGE<br>BENEFITS (1) | TOTAL<br>ADDITIVE<br>FOR LABOR | G&A<br>(2) | MATERIAL<br>HANDLING<br>ADDITIVE | LABOR<br>COMPOSITE | MATERIAL<br>HANDLING<br>COMPOSITE |
|------------------------------------|--------------------|---------------------------------|----------------------|-----------------------|-------------------------------|------------------------------------------|--------------------------------|------------|----------------------------------|--------------------|-----------------------------------|
| <b>MOW MID-ATLANTIC DIVISION</b>   |                    |                                 |                      |                       |                               |                                          |                                |            |                                  |                    |                                   |
| MOW Straight Time Labor            | 31.29%             | 50.76%                          | 7.77%                | 16.20%                | 16.00%                        | 57.13%                                   | 179.14%                        | 5.00%      | 11.84%                           | 193.10%            | 17.43%                            |
| MOW Over Time Labor                | 31.29%             | 50.76%                          | 7.77%                | 16.20%                | 16.00%                        | 18.35%                                   | 140.36%                        | 5.00%      | 11.84%                           | 152.38%            | 17.43%                            |
| <b>SYSTEM GANGS</b>                |                    |                                 |                      |                       |                               |                                          |                                |            |                                  |                    |                                   |
| Straight Time Labor                | 31.29%             | 44.80%                          | 7.77%                | 16.20%                | 16.00%                        | 57.13%                                   | 173.18%                        | 5.00%      | 11.84%                           | 186.84%            | 17.43%                            |
| Over Time Labor                    | 31.29%             | 44.80%                          | 7.77%                | 16.20%                | 16.00%                        | 18.35%                                   | 134.40%                        | 5.00%      | 11.84%                           | 146.12%            | 17.43%                            |
| <b>EXEMPT LABOR</b>                |                    |                                 |                      |                       |                               |                                          |                                |            |                                  |                    |                                   |
| Straight Time Labor                | 29.96%             | 17.73%                          |                      | 18.83%                |                               | 83.25%                                   | 149.78%                        | 5.00%      | 11.84%                           | 162.27%            | 17.43%                            |
| <b>MOE WASHINGTON SHOP</b>         |                    |                                 |                      |                       |                               |                                          |                                |            |                                  |                    |                                   |
| MOE Straight Time Labor            | 23.96%             | 70.72%                          | 3.67%                | 16.20%                | 16.00%                        | 57.13%                                   | 187.68%                        | 5.00%      | 11.84%                           | 202.06%            | 17.43%                            |
| MOE Over Time Labor                | 23.96%             | 70.72%                          | 3.67%                | 16.20%                | 16.00%                        | 18.35%                                   | 148.90%                        | 5.00%      | 11.84%                           | 161.34%            | 17.43%                            |
| <b>BEAR SHOP</b>                   |                    |                                 |                      |                       |                               |                                          |                                |            |                                  |                    |                                   |
| MOE Straight Time Labor            | 23.96%             | 65.85%                          | 3.67%                | 16.20%                | 16.00%                        | 57.13%                                   | 182.81%                        | 5.00%      | 11.84%                           | 196.95%            | 17.43%                            |
| MOE Over Time Labor                | 23.96%             | 65.85%                          | 3.67%                | 16.20%                | 16.00%                        | 18.35%                                   | 144.03%                        | 5.00%      | 11.84%                           | 156.23%            | 17.43%                            |
| <b>WILMINGTON SHOP</b>             |                    |                                 |                      |                       |                               |                                          |                                |            |                                  |                    |                                   |
| MOE Straight Time Labor            | 23.96%             | 113.04%                         | 3.67%                | 16.20%                | 16.00%                        | 57.13%                                   | 230.00%                        | 5.00%      | 11.84%                           | 246.50%            | 17.43%                            |
| MOE Over Time Labor                | 23.96%             | 113.04%                         | 3.67%                | 16.20%                | 16.00%                        | 18.35%                                   | 191.22%                        | 5.00%      | 11.84%                           | 205.78%            | 17.43%                            |
| <b>TRANS MID-ATLANTIC DIVISION</b> |                    |                                 |                      |                       |                               |                                          |                                |            |                                  |                    |                                   |
| TRANS T&E Straight Time Labor      | 26.56%             | 49.54%                          | 2.09%                | 16.20%                | 16.00%                        | 57.13%                                   | 167.52%                        | 5.00%      | 11.84%                           | 180.89%            | 17.43%                            |
| TRANS T&E Over Time Labor          | 26.56%             | 49.54%                          | 2.09%                | 16.20%                | 16.00%                        | 18.35%                                   | 128.74%                        | 5.00%      | 11.84%                           | 140.17%            | 17.43%                            |

**FREIGHT ADDITIVE OF 3.73% WILL BE APPLIED TO ALL APPLICABLE MECHANICAL MATERIAL EXPENSES**

(1) The fringe benefit additives will be assessed at the annual rate established by Amtrak that will be in effect for each Amtrak fiscal year. The annual rate will be provided to the MTA no later than October 1 of each year. The rates for the period July - September 2013 are as stated above.

(2) The G&A additive rate applied to MTA sole benefit projects is 6%

\*\* The FELA, vacation and holiday and freight rates will be updated on January 1, 2014 and each January 1 during the contract term. Amtrak will provide MTA with an updated rate schedule that reflects any rate changes.

**Exhibit J**

**Required Reports**

## Exhibit J – Required Reports - Amtrak Access Agreement

3/1/2013 - This list captures current reports in use during the contract period 7/1/08 – 6/30/13. This is a living document and will be revised as new reports are used or replaced.

| ID | Report                              | Description                                                                                                           | Current Amtrak File Name                                                                                                                                                                                                                                   | Comments/Follow Up Questions                                                                              |
|----|-------------------------------------|-----------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------|
| 1  | Mileage and Units                   | Summarizes daily mileage and units by train for Amtrak and CSX. Current process is verified daily, weekly and monthly | Month 20XX DAILY COUNTS-AMTRAK INPUT.xls                                                                                                                                                                                                                   |                                                                                                           |
| 2  | Joint Benefit Project Status Report | Project Description and Status                                                                                        | PSR 201212 Month Final.xls                                                                                                                                                                                                                                 |                                                                                                           |
| 3  | Joint Benefit YTD                   | Estimate by Project, amount invoiced, and amount remaining                                                            | qJointVentureInvoicesDec2012.pdf                                                                                                                                                                                                                           |                                                                                                           |
| 4  | MTA Project Total Invoice Report    | Monthly Invoiced amounts by project                                                                                   | qyInvoiceDetailsDec2012.pdf                                                                                                                                                                                                                                |                                                                                                           |
| 5  | Capital Summary Report              | PI, Project Manager                                                                                                   | Jt Benefit PI Listing_ Project Tracking Report_ xxxxxx.xls                                                                                                                                                                                                 |                                                                                                           |
| 6  | Electric Propulsion                 | Consumption and costs by vendor and user                                                                              | FYxx - South.xlsx                                                                                                                                                                                                                                          |                                                                                                           |
| 7  | OTP                                 | Monthly Summary of Scheduled Trains and Trains on time                                                                | Month xx 20xx-final.xls*                                                                                                                                                                                                                                   |                                                                                                           |
| 8  | Meeting Minutes                     | Amtrak Prepares Meeting Minutes                                                                                       | Varies by Meeting<br>Example – Monthly Financial "Amtrak MTA Financial Meeting Minutes Month xx 20xx.docx"                                                                                                                                                 |                                                                                                           |
| 9  | Additives and Overheads**           | Includes Labor fringes, overheads, G&A, material and handling, other related MTA MARC, MTA or state rates             | <ul style="list-style-type: none"> <li>• Mid Atlantic IC rates.xlsx</li> <li>• MTA_OH Rates_MTA Project_Agreement_Qtr x .2012.xlsx</li> <li>• MTA_GCAP_Rates.xls</li> <li>• CYXX Mid Atlantic IC rates.xlsx</li> <li>• CYXX DivisionOHRates.xls</li> </ul> | Amtrak will coordinate with MTA is providing this. (certain rates are updated annually, others quarterly) |
| 10 | New – Storage units                 |                                                                                                                       |                                                                                                                                                                                                                                                            |                                                                                                           |
| 11 | New – Storage Compensation          |                                                                                                                       |                                                                                                                                                                                                                                                            |                                                                                                           |

\*Suggestion to include a description such as OTP in the file name

\*\*These are reports we have received. We request one consolidated report going forward.

## **Exhibit K**

### **Quik-Trak Terms & Conditions**

**TERMS FOR  
QUIK TRAK LEASE AGREEMENTS  
BETWEEN  
NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)  
AND  
MARYLAND TRANSIT ADMINISTRATION (LESSEE)**

(1) Agreement and Parties:

Quik Trak Lease Agreement ("Agreement") between MARYLAND TRANSIT ADMINISTRATION ("LESSEE" or "MTA"), an agency with its principal place of business located at 6 St. Paul Street, Baltimore, Maryland 21202; NATIONAL RAILROAD PASSENGER CORPORATION, a corporation organized under the laws of the District of Columbia, with its principal place of business located at 60 Massachusetts Avenue, N.E., Washington, DC 20002 ("Amtrak").

(2) Introductory ("Whereas") Clauses:

- LESSEE desires to lease from Amtrak one or more Quik Trak self-service ticketing machines (the "Equipment") and to have Amtrak provide installation, maintenance and support services for the Equipment; and
- *[[This paragraph to be used only in the initial agreement replacing leases in effect on June 30, 2013]* The Parties have entered into [a] Quik Trak Lease Agreement[s] dated [insert date] (the "Existing Agreement[s]") which the Parties intend to terminate and supersede with the Agreement.
- Amtrak has agreed to [continue to] provide the Equipment and Services specified herein, in accordance with the terms and conditions of the Agreement.

(3) Equipment.

- (a) Amtrak shall lease to MTA [N] Quik Trak self-service ticketing machines (the "Equipment").
- (b) Provided Amtrak provides LESSEE with a copy of the software license to Amtrak from the Equipment manufacturer (cost and pricing information may be redacted), LESSEE's use of this Equipment will be subject to the terms of such software license, and LESSEE hereby agrees to abide by and honor such terms.
- (c) LESSEE shall insure the Equipment as set forth in Section 17 herein.

- (d) So long as LESSEE complies with the terms and conditions of the Agreement, LESSEE shall be entitled to the use and possession of the Equipment according to the terms hereof without interference by Amtrak.
  - (e) The Equipment is, and at all times shall remain, the sole and exclusive property of Amtrak. Title to the Equipment shall remain with Amtrak. LESSEE shall have no right, title, or interest therein, except whatever rights of use are expressly set forth in the Agreement. LESSEE agrees to execute, acknowledge and/or deliver to Amtrak any documents or instruments reasonably requested by Amtrak, for the purpose of protecting Amtrak's title to the Equipment. LESSEE shall not sell, rent, lend, transfer or otherwise, directly or indirectly, create, incur, assume or suffer to exist any levies, liens, or other encumbrance on or with respect to the Equipment.
  - (f) LESSEE further agrees to permit Amtrak to enter upon LESSEE's premises (or wherever the Equipment may be located) at any reasonable time and upon reasonable notice to inspect the Equipment.
- (4) Installation, Maintenance and Support Services. Amtrak agrees to provide for LESSEE the installation, maintenance and support service specified in the Scope of Services, attached hereto and incorporated herein as Attachment A. At Amtrak's discretion, Amtrak may subcontract any or all of the Services to be provided.
- (5) LESSEE's Responsibilities Related to Installation. LESSEE is responsible for providing a suitable space and location for the Equipment and all site preparation work in accordance with the Equipment requirements provided by Amtrak, including a suitable environment (e.g., temperature, humidity, protection from the elements) as required to facilitate Equipment operation. All site preparation work must be completed by LESSEE and inspected by Amtrak prior to delivery of the Equipment. LESSEE is responsible for installing all required cables, electric, and communications and data lines from its source to the designated wall. Once installed, the Equipment may not be moved without the prior written consent of Amtrak.
- (6) LESSEE agrees to use the Equipment in a manner consistent with the design and intended use of the Equipment and shall not otherwise misuse such Equipment.
- (7) Pricing/Payment.
- (a) LESSEE shall pay to Amtrak the Lease Payment and Equipment Installation Fee upon installation of the Equipment, as well as Monthly Service Fees for the Equipment as specified in Attachment A.



- (b) LESSEE shall pay any and all taxes, assessments, charges, license and permit fees whatsoever levied on use of the Equipment or growing out of the use hereof, including but not limited to, any taxes payable to any federal, state or local taxing authorities.
  - (c) LESSEE shall be responsible for the cost of any penalties assessed by federal, LESSEE or local authorities, including but not limited to penalties for failure to obtain or provide licenses or permits, or for misuse of the Equipment under applicable laws and regulations arising out of the possession, operation, maintenance or use of the Equipment by LESSEE or its customers.
  - (d) Additional training and supplies will be provided to LESSEE at the rates set forth in Attachment A.
  - (e) LESSEE shall be responsible for all mobilization and other costs incurred by Amtrak in the event that LESSEE fails to meet its obligations hereunder. Prices reflected in the Agreement do not include any changes or additions to Amtrak's responsibilities as specified in the Scope of Services. Any such additional work shall be performed only upon mutual agreement and negotiation of additional charges.
  - (f) The prices reflected herein are contingent upon timely performance by LESSEE of its obligations set forth hereunder.
  - (g) Monthly Service Fees shall continue until the later of the date of expiration or termination of the Agreement or the date the Equipment is returned to Amtrak in the same condition as when it was delivered to LESSEE.
  - (h) All payments shall be made without deduction, setoff or counterclaim.
  - (i) Unless otherwise specified in Attachment A, all payments for Services rendered under the Agreement shall be made to Amtrak within thirty (30) days from the date of invoice. Invoices for Services rendered shall be mailed to LESSEE monthly.
  - (j) Late payments shall be subject to an interest charge at the rate of the lesser of (i) one and one-half percent (1-1/2%) per month from the due date, or (ii) the rate permitted at the time under District of Columbia law. The late payment charge is for costs related to untimely payment and shall not be deemed an interest payment.
- (8) Period of Performance. The term of the Agreement shall begin on the date stated in the Agreement and shall continue until and including June 30, 2018, after which the Agreement shall expire unless renewed or further extended by mutual written agreement. The obligations of LESSEE under the Agreement shall continue so long as the Equipment is in LESSEE's possession. If Amtrak agrees to lease additional Equipment to MTA after July 1, 2013, then the term of any Agreement for such additional Equipment shall begin on the date stated in the Agreement and continue until and

including June 30, 2018, after which the Agreement shall expire unless renewed or further extended by mutual written agreement.

- (9) Force Majeure. Neither party shall be liable to the other for any delay in delivery, or failure to deliver, due to any cause beyond its control, including but not limited to fires, floods, strikes, or other labor disputes, accidents, acts of sabotage, riots, procedure or priorities granted at the request or for the benefit, directly or indirectly, of the federal or state government or any sub-division or agency thereof, delay in transportation or lack of transportation, restrictions imposed by federal, state or other governmental legislation or rules or regulations thereof. In the event of any delay, Amtrak shall not be liable for any consequential, special or contingent damages, whether or not caused by a Force Majeure event.
- (10) Confidentiality. During the course of performance of the Services covered by the Agreement, LESSEE may gain access to Amtrak's confidential or proprietary information, including without limitation, valuable trade secrets and know-how, research, product plans, business plans, operations, services, markets, analyses, software, systems, inventions, policies, procedures, processes, technology, designs, drawings, engineering data and other Amtrak business information ("Confidential Information"). LESSEE agrees at all times during the term of the Agreement and thereafter to hold in strictest confidence and not to copy or use any Amtrak Confidential Information for any purpose whatsoever. Upon termination or expiration of the Agreement, LESSEE shall certify that it retains no such information in any form. This Confidentiality Section shall survive the termination or expiration of the Agreement.
- (11) Limited Warranty and Disclaimer of Warranty. Amtrak warrants only that the installation, maintenance and support services provided shall be performed in a workmanlike manner. If a defect in Amtrak's workmanship is discovered within one (1) year from the first date of installation, LESSEE must immediately notify Amtrak in writing of the nature of the defect and the date discovered. If Amtrak agrees that there is a defect in its workmanship, Amtrak shall re-perform the Services at no additional cost to LESSEE and such re-performance shall be LESSEE's sole and exclusive remedy. Amtrak's liability under this limited warranty does not include the cost of replacement materials, parts or equipment. This warranty does not cover any damage due to accident, misuse, negligence or abnormal use. This warranty does not cover any defects resulting from errors or inaccuracies in the procedures or other documentation provided to Amtrak by LESSEE.

THE QUIK TRAK EQUIPMENT PROVIDED HEREUNDER IS PROVIDED BY AMTRAK AS-IS. AMTRAK EXPRESSLY DISCLAIMS ANY AND ALL OTHER

WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, THE ADEQUACY, OPERATION OR PERFORMANCE OF THE EQUIPMENT, OR CONFORMITY OF THE EQUIPMENT TO ANY SPECIFICATIONS OR LEGAL REQUIREMENTS, ALL OF WHICH ARE EXPRESSLY DISCLAIMED WITH RESPECT TO THE EQUIPMENT AND SERVICES PROVIDED UNDER THE AGREEMENT. ADDITIONALLY, AMTRAK MAKES NO WARRANTY OR REPRESENTATION WHATSOEVER, STATUTORY, EXPRESS, OR IMPLIED, WITH REGARD TO THE QUALITY, OPERABILITY, RELIABILITY, OR MAINTAINABILITY OF THE EQUIPMENT OR ANY PORTION THEREOF.

- (12) Alterations. Without the prior written consent of Amtrak, LESSEE shall not make any alterations, modifications, or improvements to the Equipment. All authorized alterations to the Equipment shall belong to and become the property of Amtrak automatically and immediately upon the making of such alterations. LESSEE shall not alter or allow any other party to alter the Equipment number and shall not allow the name of any other person, association, or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership.
- (13) Manner of Use; Notice of Accidents. LESSEE shall comply with the manufacturer's recommendations and warranty requirements and with all laws, ordinances, codes, and regulations relating to the possession, use, operation and maintenance of the Equipment and any materials used in connection therewith. LESSEE shall instruct its employees/operators in the safe operation of the Equipment and any materials used in connection therewith, and shall be solely responsible for its safe operation and for the safety of its employees/operators. LESSEE shall notify Amtrak immediately of any accidents resulting in significant personal injury or property damage that may arise as a result of the use, operation or maintenance of the Equipment.
- (14) Indemnification.
  - (a) Except as provided in Section 14(b), LESSEE agrees to indemnify and save harmless Amtrak (including its officers, agents, employees, and subsidiaries) and other third parties to the extent Amtrak is obligated to indemnify or save harmless such third parties, irrespective of negligence or fault of Amtrak or such third parties, for all damage or liability for personal injury, death, or property damage which would not have been incurred but for the use of the Equipment, provided, however, that LESSEE shall have no responsibility to Amtrak or any other party for injury or death to Amtrak employees engaged directly in the operation of

trains in the MARC Commuter Rail Service or provision of other services to MTA pursuant to the [Access Agreement or the Services Agreement between the Parties as such agreement(s) may be titled and in effect on the date of the Quik Trak Lease Agreement]. The risk of injury or death and of claims by such Amtrak employees is assumed by Amtrak, and Amtrak agrees to indemnify and hold harmless LESSEE against any claims with respect to injury or death of such employees.

- (b) LESSEE's agreement to indemnify and save harmless Amtrak, as set forth in Section 14(a), above, shall not apply to any claim for liability for personal injury or death (i) which is caused by the Willful Misconduct of Amtrak as defined in Section 14(c); or (ii) to the extent such liability is covered and paid for by a railroad protective liability insurance policy or any other liability insurance policy (x) which is purchased on Amtrak's behalf, (y) for which Amtrak has made no premium payment, and (z) which names Amtrak as an insured.
- (c) "Willful Misconduct" is conduct for which there is clear and convincing evidence, as determined by agreement of the Parties or by the dispute resolution process described in Section 18 of the Agreement, that the liability arises out of an act or omission by Amtrak in which an employee of Amtrak (including employees of Amtrak's agents and contractors) has a specific awareness of a condition or situation, knows (or should know based on training required for his or her position) that failure to respond to such condition or situation presents a significant danger to persons, and, without regard to the likelihood that serious injury will probably result, consciously elects not to respond to this condition or situation in a manner that will avoid the danger. The limitation on the scope of indemnities in the event Willful Misconduct is alleged or established shall in no way change any duty to defend against claims that is established in this Section.
- (d) This Indemnification Section shall survive the termination or expiration of the Agreement.

- (15) Risk of Loss. Once the Equipment has been delivered to LESSEE's designated installation site, LESSEE assumes all risk of loss, theft, and damage, including vandalism, to the Equipment. In the event of any loss, theft or damage, LESSEE shall immediately notify Amtrak and shall, at Amtrak's direction, immediately repair or replace the Equipment at LESSEE's expense. Amtrak shall have the right to conduct its own investigation or inspection to make the final determination as to the status of the Equipment. Amtrak may, at its sole discretion, choose to perform all or any portion of such repairs itself, in which event LESSEE shall reimburse Amtrak for any expenses Amtrak incurs, including without limitation, all internal costs, in connection therewith. Monthly service fee payments will continue to be made during this period of repair/replacement.



However, if the Equipment is lost or stolen, or the Equipment is destroyed or damaged beyond economical repair, LESSEE shall pay to Amtrak all costs incurred in replacing the Equipment. Such payment shall be made within fifteen (15) days of written notice from Amtrak, and late payments shall be subject to interest charges as set forth in the Agreement.

- (16) Limitation on Liability. Except as otherwise expressly provided in the Agreement, neither Amtrak nor any of its subcontractors shall be subject to any obligations or liabilities, whether arising out of breach of contract or warranty, tort (including negligence) or other theories of law with respect to the Services rendered by Amtrak or its subcontractors pursuant to the Agreement, or any undertakings, acts or omissions related thereto. In no event shall Amtrak or its subcontractors be liable for property losses or personal injury damages, penalties, lost profits, lost revenue, lost goodwill, lost business or economic opportunity, or any other indirect, consequential, incidental, exemplary, special or punitive damages arising out of or relating to performance of Services by Amtrak or its subcontractors pursuant to the Agreement, even if advised in advance of the possibility of such damages. This limitation applies to causes of action or claims in the aggregate, including without limitation breach of contract, breach of warranty, indemnity, negligence, strict liability, misrepresentation and torts. LESSEE acknowledges and agrees that the pricing of the Services that are the subject of the Agreement reflects the intent of the parties to limit Amtrak's liability as provided herein.
- (17) Insurance. LESSEE shall procure and maintain, at its own cost and expense, during the entire term of the Agreement, Property Insurance covering the full replacement value of the Equipment. Coverage shall be on an all-risk, completed value basis (including the full value of the vehicles), including labor, and all materials in place, on site, in storage, off-site or in transit. In addition, LESSEE shall procure an Installation Floater covering the site preparation work and the value of the Equipment prior to completion of all installation work. National Railroad Passenger Corporation shall be named as an additional insured. LESSEE shall submit to Amtrak a certificate of insurance giving evidence of the coverage required hereunder.
- (18) Dispute Resolution. The parties shall attempt to settle any claim or controversy arising out of the Agreement in good faith. In the event that any dispute arises in connection with any matter under the Agreement, the dispute will be referred to a senior-level manager of each party who shall promptly endeavor to resolve the dispute in a timely manner. The parties shall not commence any legal action regarding any disputed matter, except with respect to matters under Section 10 entitled "Confidentiality," until at least thirty (30) days following the initiation of dispute resolution.

- (19) Risk Allocation. LESSEE and Amtrak expressly acknowledge and agree that the limitations and exclusions contained herein represent the parties' agreement as to the allocation of risk between the parties in connection with Amtrak's obligations under the Agreement. The payments payable to Amtrak in connection herewith reflect this allocation of risk and the exclusion of consequential damages and disclaimer of warranties in the Agreement. LESSEE's subcontractors, agents or customers are neither parties to nor intended beneficiaries of the Agreement.
- (20) Governing Law, Jurisdiction and Venue. The Agreement shall be governed by and construed in accordance with the laws of the District of Columbia, excluding that portion of District of Columbia law relating to the application of laws of another jurisdiction. Sole, exclusive and personal jurisdiction and venue for any action brought by either party under the Agreement shall be in the appropriate federal or local court of the District of Columbia.
- (21) Termination. Either party may terminate the Agreement upon sixty (60) days' notice to the other party. In the event that LESSEE terminates the Agreement for any reason, LESSEE will reimburse Amtrak for Services rendered, costs incurred, and fees earned by Amtrak through the effective date of said termination.
- (22) Return of Equipment. Upon termination or expiration of the Agreement, LESSEE shall immediately return the Equipment, at LESSEE's expense and risk, to Amtrak in as good a condition as when delivered to LESSEE, normal wear and tear expected. If LESSEE fails to immediately return the Equipment, Amtrak has the right, without further notice or demand, to immediately resume possession of the Equipment and to enter the premises wherever the Equipment may be, with or without legal process, and take and carry away the Equipment, all at LESSEE's sole cost and expense.
- (23) Audit and Records. LESSEE agrees to keep and maintain and make available to Amtrak for the duration of the Agreement and for one year thereafter, any and all records of LESSEE's use, operation, inspection, repairs and maintenance of the Equipment. Amtrak and/or its Office of Inspector General shall have the right of access to and/or copies of any such records upon demand, at no additional expense to Amtrak.
- (24) Assignment. LESSEE shall not transfer or assign the Agreement, or any interest, right or obligation herein, nor shall it permit use or possession of the Equipment by any third party, without the prior express written consent of Amtrak.

- (25) Entire Agreement. The Agreement, including all attachments and documents incorporated herein by reference, constitutes the entire agreement of the parties. No amendments or changes to the Agreement shall be effective unless it is in writing and signed by duly authorized representatives of both parties.
- (26) *[This paragraph to be used only in the initial agreement replacing leases in effect on June 30, 2013]* Termination of Existing Agreements. The Existing Agreement[s] are hereby terminated and are superseded with the Agreement. Any such Existing Agreement is hereby deemed to have been terminated as of the commencement of the term of the Agreement; provided, however, that any right or obligation in such Existing Agreement which, either explicitly or by its nature, would ordinarily survive the termination of the Existing Agreement (such as the obligation to make an outstanding payment) shall survive the termination of the Existing Agreement until it is satisfied.

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## ATTACHMENT A

### Scope of Services

#### Equipment Installation:

Amtrak currently provides to LESSEE Seventeen (17) Quik Trak self-service ticketing machines. Amtrak shall be responsible for acquisition of any additional agreed-upon machines, delivery to any additional agreed-upon locations, installation at agreed-upon locations, and connection to LESSEE-installed wiring at each station. Amtrak shall also be responsible for the maintenance and management of the Amtrak-supplied communication lines connecting the said machines to Amtrak's reservation system.

Amtrak shall provide one (1) day of training at each station where additional agreed-upon machines are installed.

Amtrak shall provide initial ticket stock of one (1) box of tickets (currently one box contains 1,350 tickets) each at each station where additional agreed-upon machines are installed.

The locations where Quik Trak machines are currently installed and maintained by Amtrak are: Camden, Brunswick, Dorsey, Edgewood, Gaithersburg, Germantown (2), Halethorpe, Kensington, Laurel, Monocacy, Martinsburg, Martins Airport, Perryville, Rockville, Silver Springs, and Savage.

#### Support Services:

Amtrak shall provide support maintenance of the self-service ticketing system, including all Amtrak-supplied communications lines, wiring and connections, and access to IBM's 24 hour-per-day Help Desk. Repairs necessitated by normal system operation will be performed at no additional charge to LESSEE. LESSEE will be billed separately for any and all repairs necessitated by accident, misuse, negligence, or abnormal use of the system.

#### **Additional Services:**

Amtrak will provide additional training and ticket stock to LESSEE at the rates outlined below.



**Rates:**

Lease Payment and Equipment Installation Fee: Per additional agreed-upon machine, indoor  
model: to be negotiated at time of acquisition  
Per additional agreed-upon machine,  
outdoor model: to be negotiated at time of acquisition

Monthly Service Fee for existing machines (further described in Section 10.20 of the 2013  
Access Agreement between Amtrak and MTA)

Through June 30, 2018: \$1,000 per machine at all existing locations  
identified above, except Germantown  
Through June 30, 2018: \$825.00 per machine at Germantown only

Additional Training: Negotiated at time of acquisition

Additional Ticket Stock: \$25.52 per box of 1,350 tickets

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# **Amendment No. 1 to the Access Agreement**

Amendment No. 1  
to  
Master Project Agreement  
Between  
National Railroad Passenger Corporation  
and  
Maryland Transit Administration

This Amendment No. 1 is made as of March 25 2016, 2015 ("Effective Date") by and between the National Railroad Passenger Corporation ("Amtrak") and the Maryland Transit Administration ("MTA" or "the Administration") (collectively, "Parties"), and amends the Master Project Agreement dated January 15, 2010 between the parties ("Master Project Agreement"). Capitalized terms not defined herein shall have the meanings set forth in the Master Project Agreement.

WHEREAS, the Parties established the terms and conditions pursuant to which they may proceed with planning, design, and construction of projects pursuant to the terms and conditions set forth in the Master Project Agreement; and

WHEREAS, the Parties have agreed to make certain changes in the Master Project Agreement and such changes are specified herein; and

WHEREAS, pursuant to the terms of the Access Agreement between the Parties dated July 1, 2013 ("the Access Agreement"), MTA has the right to have access to that segment of the Northeast Corridor located between Union Station in Washington, D.C. and Perryville, Maryland, for operation of its MARC Commuter Rail Service; and

WHEREAS, the Parties have agreed in the Access Agreement to provide funding for various Joint Benefit and Sole Benefit Projects (as defined in that Agreement), and have agreed to use the Master Project Agreement to establish the procedures for administering such projects, including the process and requirements for payment for the work to be completed.

NOW, THEREFORE, in consideration of the mutual promises and of other good and valuable consideration the sufficiency of which is hereby acknowledged, and incorporating the above recitals, Amtrak and MTA agree as follows:

- 1) Section 14.1.(a). is hereby amended by adding the following at the end of the final sentence before the period ("."): "... as shown on the then-current version of **Exhibit D.**"

- 2) Section 14.1.(a) is hereby amended by adding the following subsections 14.1.(a).(i) and 14.1.(a).(ii):

“(i) In the determination of costs and charges assessed by Amtrak for any capital projects funded pursuant to this Agreement, Amtrak shall use a G&A rate of 6% for all Sole Benefit Projects, and shall charge the Administration a G&A rate of 5% on any Joint Benefit Projects.

ii) For all Joint Benefit Projects, the then-current Amtrak FELA (the Federal Employers Liability Act, 45 U.S.C. §51, et seq) additive will be applied to labor costs related to Joint Benefit Projects. For Sole Benefit Projects, Amtrak will apply additives for FELA or Force Account Insurance in accordance with Section 18.3.”

- 3) Section 14 is hereby amended by adding the following as new Section 14.1(g)(i):

“The overhead rates reimbursable to Amtrak by the Administration for retroactive wage, bonus and other lump sum payments shall reflect actual out-of-pocket costs incurred by Amtrak as well as the flat-rated costs set forth in (i) and (ii) below. The following overhead additives will apply to any future retroactive wage, bonus and lump sum payments:

(i) the incrementally calculated overhead rates for variable rate overhead items (*i.e.*, the fringe benefits additive would include the Railroad Retirement Tax Act (RTTA) portion of the rate currently billed to Administration contracts, but would not include FELA, health insurance, or other such overhead rates based on actual costs that are currently billed under these agreements); and

(ii) any contractually-defined fixed overhead rates (*i.e.*, the Train and Engine Crew Additive as set forth in Section 8.1.6 of the Services Agreement; the Maintenance of Equipment Overhead as set forth in Section 8.1.3 of the Services Agreement and the Equipment/Materials/Fuel Additive as set forth in Section 8.1.4 of the Services Agreement).”

- 4) Section 18.3 of the Master Project Agreement is hereby amended by adding the following at the end of this Section:

“The then-current Amtrak FELA (the Federal Employers Liability Act, 45 U.S.C. §51, et seq) additive will be applied to labor costs related to future Joint Benefit Projects. The Force Account Insurance additive will continue to be applied to labor costs related to all Sole Benefit Projects. The FELA additive will not be retroactively applied to any existing Joint Benefit Project as of the Effective Date of Amendment No. 1 to the Master Project Agreement.”

- 5) Section 24.7 is hereby amended by adding the following language at the end of the second sentence:

"The initial term of this Agreement having expired on June 30, 2013 and having been extended in accordance with the previous sentence, the Parties hereby agree that the term is now extended through June 30, 2018. After that date, if the term of the Access Agreement between the Parties that was effective as of July 1, 2013, is extended beyond June 30, 2018, then the term of this Agreement shall remain in effect for the remaining term of that agreement, and shall thereafter remain in effect until terminated by either Party on six (6) months advance notice in writing."

6) This Amendment shall be effective on the date it has been executed by both Parties.

7) Except as expressly modified herein, all other terms and conditions of the Master Project Agreement shall remain in full force and effect.

[Signatures on next page]

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IN WITNESS WHEREOF, the Parties have caused this Amendment No. 1 to be executed by their respective duly authorized representatives.

NATIONAL RAILROAD PASSENGER CORPORATION

By: Margaret R. Reid  
Name: Joseph H. Boardman  
Title: President and Chief Executive Officer  
Date: Aug 14, 2015

APPROVED AS TO FORM:

By: Elissa P. Gallo, Associate General Counsel

MARYLAND TRANSIT ADMINISTRATION

By: [Signature]  
Name: Paul W. Comfort  
Title: Administrator  
Date: 2/3/16

FUNDS AVAILABLE

APPROVED AS TO FORM:

By: [Signature]  
T. Byron Smith  
Assistant Attorney General and Principal Counsel

# **Amendment No. 2 to the Access Agreement**

Amendment No. 2  
to  
Access Agreement  
between  
National Railroad Passenger Corporation  
and  
Maryland Transit Administration

This Amendment No. 2 is made as of March 23, 2014 (the "Effective Date") by and between the National Railroad Passenger Corporation ("Amtrak") and the Maryland Transit Administration ("MTA" or "the Administration"), and amends the Access Agreement dated July 1, 2013 between the parties, as amended by Amendment No. 1 dated as of December 7, 2013 ("Access Agreement"). Capitalized terms not defined herein shall have the meanings set forth in the Access Agreement.

WHEREAS, Amtrak currently provides MTA with access to Washington Terminal and portions of the Northeast Corridor ("NEC") for the provision of MARC commuter rail service pursuant to the terms and conditions set forth in the Access Agreement; and

WHEREAS, the Parties have agreed to make certain changes in the Access Agreement and such changes are specified herein.

NOW, THEREFORE, in consideration of the mutual promises and of other good and valuable consideration the sufficiency of which is hereby acknowledged, and incorporating the above recitals, Amtrak and MTA agree as follows:

- 1) Section 10.13 is hereby amended by adding the following subsection 10.13.10:

10.13.10. The funds described in this Section 10.13 as Recapitalization Costs are the funds that are used to fund the Sole Benefit Projects and Joint Benefit Projects for which compensation is paid pursuant to the Master Project Agreement. The Master Project Agreement governs the process for administering such Joint Benefit and Sole Benefit Projects, including the process and requirements for payment for the work to be completed.

- 2) Section 10.15.1 of the Access Agreement is hereby amended by adding the following at the end of this Section:

"For all invoices issued after March 27, 2014, the Force Account Insurance additive will continue to be applied to labor costs related to all Sole Benefit Projects."

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- 3) Section 10.15.2 of the Access Agreement is hereby amended by adding the following at the end of this Section:

“The then-current Amtrak FELA (the Federal Employers Liability Act, 45 U.S.C. §51, et seq) additive will be applied to labor costs related to future Joint Benefit Projects. The FELA additive will not be retroactively applied to any existing Joint Benefit Project as of the Effective Date of Amendment No. 2 to the Access Agreement.”

- 4) The Access Agreement is hereby amended by adding the following as new Section 10.19.1:

“The overhead rates reimbursable to Amtrak by the Administration for retroactive wage, bonus and other lump sum payments shall reflect actual out-of-pocket costs incurred by Amtrak as well as the flat-rated costs set forth in (i) and (ii) below. The following overhead additives will apply to any future retroactive wage, bonus and lump sum payments:

(i) the incrementally calculated overhead rates for variable rate overhead items (*i.e.*, the fringe benefits additive would include the Railroad Retirement Tax Act (RRTA) portion of the rate currently billed to Administration contracts, but would not include FELA, health insurance, or other such overhead rates based on actual costs that are currently billed under these agreements); and

(ii) any contractually-defined fixed overhead rates (*i.e.*, the Train and Engine Crew Additive as set forth in Section 8.1.6 of the Services Agreement; the Maintenance of Equipment Overhead as set forth in Section 8.1.3 of the Services Agreement and the Equipment/Materials/Fuel Additive as set forth in Section 8.1.4 of the Services Agreement).”

- 5) The Access Agreement is hereby amended by adding the following as a new Section 10.23:

**10.23 Force Account Insurance.** The Parties acknowledge and agree that Amtrak performs services for the Administration and is compensated by the Administration for those services on a “force account” basis pursuant to the Project Initiation document agreed upon by the Parties pursuant to the Master Project Agreement, and that Amtrak secures separate force account insurance, or self-insures, at its discretion, for such work. The costs for which the Administration will reimburse Amtrak for those projects are set forth in **Exhibit I**.

- 6) **Exhibit I** is replaced in its entirety with the revised **Exhibit I** dated as of the Effective Date, a copy of which is attached to this Amendment No. 2.

- 7) This Amendment shall be effective upon its approval by the Maryland Board of Public Works, if required, and on the date it has been executed by both Parties.

8) Except as expressly modified herein, all other terms and conditions of the Access Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have caused this Amendment No. 2 to be executed by their respective duly authorized representatives.

NATIONAL RAILROAD PASSENGER CORPORATION

By: Margaret Boardman  
Name: Joseph H. Boardman  
Title: President and Chief Executive Officer  
Date: Aug 14, 2015

APPROVED AS TO FORM:

By: Elissa E. Gallo  
Elissa E. Gallo, Associate General Counsel  
MARYLAND TRANSIT ADMINISTRATION

By: [Signature]  
Name: Paul W. Comfort  
Title: Administrator  
Date: 2/3/16

FUNDS AVAILABLE

APPROVED AS TO FORM:

By: T. Byron Smith  
T. Byron Smith  
Assistant Attorney General and Principal Counsel

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**NATIONAL RAILROAD PASSENGER CORPORATION  
MARYLAND TRANSIT ADMINISTRATION (MTA)  
MARC OPERATING AGREEMENT & ACCESS AGREEMENT DEDICATED LABOR  
MARC FISCAL YEAR 2015 (July 1, 2014 to June 30, 2015)  
OVERHEAD ADDITIVE RATES**

**EXHIBIT I**

**UPDATED 10/1/14: FRINGE BENEFIT RATES UPDATED TO REFLECT AVERAGE FISCAL YEAR 2015 FRINGE BENEFIT RATES**

|                            | <b>Jul - Sep<br/>2014</b> | <b>Oct - Dec<br/>2014</b> | <b>Jan - Sep<br/>2015</b> |
|----------------------------|---------------------------|---------------------------|---------------------------|
| <b>Management *</b>        | 66.57%                    | 60.29%                    | 60.29%                    |
| <b>Agreement S.T. *</b>    | 52.08%                    | 50.09%                    | 50.09%                    |
| <b>Agreement O.T. *</b>    | 18.29%                    | 18.66%                    | 18.66%                    |
| <b>FELA **</b>             | 5.05%                     | 5.05%                     | 5.10%                     |
| <b>G&amp;A</b>             | 6.00%                     | 6.00%                     | 6.00%                     |
| <b>Vacation/Holiday **</b> | 15.94%                    | 15.94%                    | 16.53%                    |
| <b>WAS Maint of Equip</b>  | 52.00%                    | 52.00%                    | 52.00%                    |
| <b>BAL Maint of Equip</b>  | 7.00%                     | 7.00%                     | 7.00%                     |
| <b>Equipment Materials</b> | 10.00%                    | 10.00%                    | 10.00%                    |
| <b>Freight</b>             | 4.00%                     | 4.00%                     | 4.00%                     |
| <b>Fuel</b>                | 5.00%                     | 5.00%                     | 5.00%                     |
| <b>T&amp;E Crew</b>        | 11.00%                    | 11.00%                    | 11.00%                    |

\* The fringe benefit additives will be assessed at the annual rate established by Amtrak that will be in effect for each Amtrak fiscal year. The annual rate will be provided to the MTA no later than October 1 of each year.

\*\* The FELA and vacation and holiday will be updated on January 1, 2015 and each January 1 during the contract term. Amtrak will provide MTA with an updated rate schedule that reflects any rate changes.

TM 

NATIONAL RAILROAD PASSENGER CORPORATION  
OVERHEAD ADDITIVE RATES FOR USE WITH MARYLAND TRANSIT ADMINISTRATION ACCESS AGREEMENT JOINT BENEFIT CAPITAL PROJECTS,  
ACCESS AGREEMENT NON-DEDICATED LABOR AND SOLE BENEFIT MTA PROJECTS  
EFFECTIVE JANUARY 1, 2015

EXHIBIT I

UPDATED 10/1/14: FRINGE BENEFIT RATES UPDATED TO REFLECT AVERAGE FISCAL YEAR 2015 FRINGE BENEFIT RATES

NOTE: THE G&A ADDITIVE RATE FOR SOLE BENEFIT MTA PROJECTS IS 6.00%

|                                    | SYSTEM<br>OVERHEAD               | DIVISION /<br>FIELD<br>OVERHEAD | TRAINING<br>OVERHEAD                    | VACATION<br>& HOLIDAY              | FORCE<br>ACCOUNT<br>INSURANCE | OCT - SEP 2015<br>FRINGE<br>BENEFITS | TOTAL<br>ADDITIVE<br>FOR LABOR       | G&A<br>(1)                     | MATERIAL<br>HANDLING<br>ADDITIVE | LABOR<br>COMPOSITE               | MATERIAL<br>HANDLING<br>COMPOSITE |                       |
|------------------------------------|----------------------------------|---------------------------------|-----------------------------------------|------------------------------------|-------------------------------|--------------------------------------|--------------------------------------|--------------------------------|----------------------------------|----------------------------------|-----------------------------------|-----------------------|
| MOW MID-ATLANTIC DIVISION          |                                  |                                 |                                         |                                    |                               |                                      |                                      |                                |                                  |                                  |                                   |                       |
| MOW Straight Time Labor            | 25.90%                           | 49.42%                          | 7.13%                                   | 16.53%                             | 16.00%                        | 50.09%                               | 165.08%                              | 5.00%                          | 9.55%                            | 178.34%                          | 15.03%                            |                       |
| MOW Over Time Labor                | 25.90%                           | 49.42%                          | 7.13%                                   | 16.53%                             | 16.00%                        | 18.66%                               | 133.65%                              | 5.00%                          | 9.55%                            | 145.33%                          | 15.03%                            |                       |
| SYSTEM GANGS                       |                                  |                                 |                                         |                                    |                               |                                      |                                      |                                |                                  |                                  |                                   |                       |
| Straight Time Labor                | 25.90%                           | 30.79%                          | 7.13%                                   | 16.53%                             | 16.00%                        | 50.09%                               | 146.45%                              | 5.00%                          | 9.55%                            | 158.77%                          | 15.03%                            |                       |
| Over Time Labor                    | 25.90%                           | 30.79%                          | 7.13%                                   | 16.53%                             | 16.00%                        | 18.66%                               | 115.02%                              | 5.00%                          | 9.55%                            | 125.77%                          | 15.03%                            |                       |
| EXEMPT LABOR                       |                                  |                                 |                                         |                                    |                               |                                      |                                      |                                |                                  |                                  |                                   |                       |
| Straight Time Labor                | 24.82%                           | 16.01%                          |                                         | 17.73%                             |                               | 60.29%                               | 118.86%                              | 5.00%                          | 9.55%                            | 129.80%                          | 15.03%                            |                       |
| BEAR SHOP                          |                                  |                                 |                                         |                                    |                               |                                      |                                      |                                |                                  |                                  |                                   |                       |
| MOE Straight Time Labor            | 15.24%                           | 68.96%                          | 7.08%                                   | 16.53%                             | 16.00%                        | 50.09%                               | 173.92%                              | 5.00%                          | 9.55%                            | 187.61%                          | 15.03%                            |                       |
| MOE Over Time Labor                | 15.24%                           | 68.96%                          | 7.08%                                   | 16.53%                             | 16.00%                        | 18.66%                               | 142.49%                              | 5.00%                          | 9.55%                            | 154.61%                          | 15.03%                            |                       |
| WILMINGTON SHOP                    |                                  |                                 |                                         |                                    |                               |                                      |                                      |                                |                                  |                                  |                                   |                       |
| MOE Straight Time Labor            | 15.24%                           | 182.11%                         | 7.08%                                   | 16.53%                             | 16.00%                        | 50.09%                               | 287.06%                              | 5.00%                          | 9.55%                            | 306.41%                          | 15.03%                            |                       |
| MOE Over Time Labor                | 15.24%                           | 182.11%                         | 7.08%                                   | 16.53%                             | 16.00%                        | 18.66%                               | 255.63%                              | 5.00%                          | 9.55%                            | 273.41%                          | 15.03%                            |                       |
|                                    |                                  |                                 |                                         |                                    |                               |                                      |                                      |                                |                                  |                                  |                                   |                       |
|                                    | MECHANICAL<br>SYSTEM<br>OVERHEAD | GENERAL<br>MANAGER<br>OVERHEAD  | MECHANICAL<br>DIVISION/SHOP<br>OVERHEAD | TRAINING<br>OVERHEAD               | VACATION<br>& HOLIDAY         | FORCE<br>ACCOUNT<br>INSURANCE        | OCT - SEP 2015<br>FRINGE<br>BENEFITS | TOTAL<br>ADDITIVE<br>FOR LABOR | G&A                              | MATERIAL<br>HANDLING<br>ADDITIVE | LABOR<br>COMPOSITE                | MATERIAL<br>COMPOSITE |
| MOE WASHINGTON SHOP                |                                  |                                 |                                         |                                    |                               |                                      |                                      |                                |                                  |                                  |                                   |                       |
| MOE Straight Time Labor            | 15.24%                           | 14.85%                          | 82.72%                                  | 2.98%                              | 16.53%                        | 16.00%                               | 50.09%                               | 198.41%                        | 5.00%                            | 9.55%                            | 213.33%                           | 15.03%                |
| MOE Over Time Labor                | 15.24%                           | 14.85%                          | 82.72%                                  | 2.98%                              | 16.53%                        | 16.00%                               | 18.66%                               | 166.98%                        | 5.00%                            | 9.55%                            | 180.33%                           | 15.03%                |
|                                    |                                  |                                 |                                         |                                    |                               |                                      |                                      |                                |                                  |                                  |                                   |                       |
|                                    | VP OPERATIONS<br>OVERHEAD        | GENERAL<br>MANAGER<br>OVERHEAD  | DIVISION /<br>FIELD<br>OVERHEAD         | OPERATIONS<br>TRAINING<br>OVERHEAD | VACATION<br>& HOLIDAY         | FORCE<br>ACCOUNT<br>INSURANCE        | OCT - SEP 2015<br>FRINGE<br>BENEFITS | TOTAL<br>ADDITIVE<br>FOR LABOR | G&A                              | MATERIAL<br>HANDLING<br>ADDITIVE | LABOR<br>COMPOSITE                | MATERIAL<br>COMPOSITE |
| NORTHEAST CORRIDOR GM OPS          |                                  |                                 |                                         |                                    |                               |                                      |                                      |                                |                                  |                                  |                                   |                       |
| Transportation Straight Time Labor | 16.52%                           | 14.85%                          | 34.01%                                  | 2.98%                              | 16.53%                        | 16.00%                               | 50.09%                               | 150.98%                        | 5.00%                            | 9.55%                            | 163.53%                           | 15.03%                |
| Transportation Over Time Labor     | 16.52%                           | 14.85%                          | 34.01%                                  | 2.98%                              | 16.53%                        | 16.00%                               | 18.66%                               | 119.55%                        | 5.00%                            | 9.55%                            | 130.53%                           | 15.03%                |

A FIXED FREIGHT ADDITIVE OF 4.00% WILL BE APPLIED TO ALL APPLICABLE MECHANICAL MATERIAL EXPENSES

(1) The G&A additive rate applied to MTA sole benefit projects is 6%

\*\* The fringe benefit additives will be assessed at the annual rate established by Amtrak that will be in effect for each Amtrak fiscal year. The other overhead rates will be updated each January 1 during the contract term. Amtrak will provide MTA with an updated rate schedule that reflects any rate changes.

*WJ*  
*JP*

# **Amendment No. 3 to the Access Agreement**

Amendment No. 3  
to  
Agreement for Operations, Equipment Maintenance and Other Services  
between  
National Railroad Passenger Corporation  
and  
Maryland Transit Administration

This Amendment No. 3 is made as of March 23, 2016 (the "Effective Date") by and between the National Railroad Passenger Corporation ("Amtrak") and the Maryland Transit Administration ("MTA" or "the Administration"), and amends the Agreement for Operations, Equipment Maintenance and Other Services dated July 1, 2013 between the parties, as amended by Amendment No. 1 dated as of December 7, 2013 ("Amendment No. 1") and Amendment No. 2 dated as of March 23, 2015 <sup>2016</sup> ("Services Agreement"). Capitalized terms not defined herein shall have the meanings set forth in the Services Agreement.

WHEREAS, Amtrak currently provides MTA with MARC commuter rail operating services pursuant to the terms and conditions set forth in the Services Agreement; and

WHEREAS, MTA has proposed the addition of two round trip weekday trains on the Camden Line identified as Trains #844, #848, #853, and # 857 (the "New Camden Line Trains") which will require access into and out of Washington Union Terminal; and

WHEREAS, the Parties have agreed to replace **Exhibit H-2** to the Services Agreement to reflect the New Camden Line Trains, as specified herein; and

WHEREAS, the Parties have agreed to modify the train consists size of the Weekend Service trains; and

WHEREAS, the Parties have agreed to make certain changes in the Services Agreement and the Exhibits thereto in order to reflect the New Camden Line Trains and the train consist size change, and such changes are specified herein.

NOW, THEREFORE, in consideration of the mutual promises and of other good and valuable consideration the sufficiency of which is hereby acknowledged, and incorporating the above recitals, Amtrak and MTA agree as follows:

- 1) In accordance with Paragraph 10 of Amendment No.1, the Parties agree to modify the current train consists for the remaining term of the Services Agreement as follows:



On both Saturdays and Sundays, the trains will operate with up to six (6) cars plus locomotive(s). The Administration will notify Amtrak no later than Thursday of each week of the expected number of cars to be operated on each train in Weekend Service on the coming weekend, up to the maximum of six (6) cars plus locomotive(s) per train.

- 2) **Exhibit H-2** is replaced in its entirety with revised **Exhibit H-2** effective March 9, 2015, attached hereto and incorporated herein by reference.
- 3) Except as expressly modified herein, all other terms and conditions of the Services Agreement shall remain in full force and effect.

**[SIGNATURES APPEAR ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, the Parties have caused this Amendment No. 3 to be executed by their respective duly authorized representatives.

NATIONAL RAILROAD PASSENGER CORPORATION

By: Margaret Boardman  
Name: Joseph H. Boardman  
Title: President and Chief Executive Officer  
Date: Aug 14, 2015

APPROVED AS TO FORM:

By: Elissa E. Gallo  
Elissa E. Gallo, Associate General Counsel

MARYLAND TRANSIT ADMINISTRATION

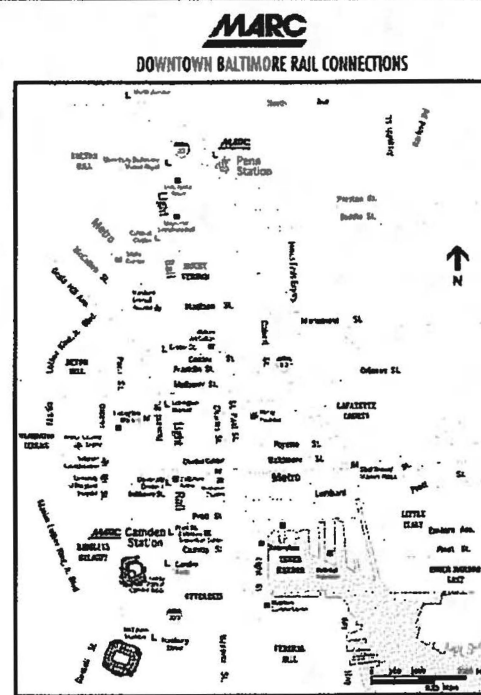
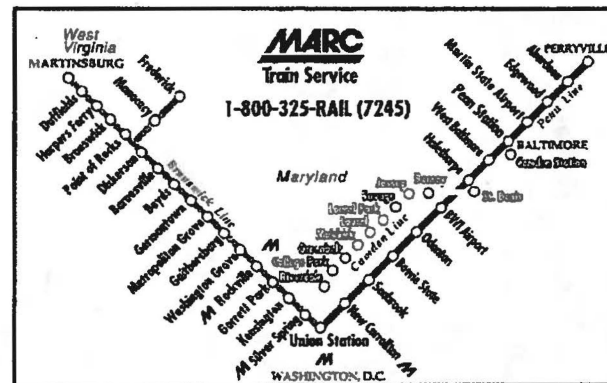
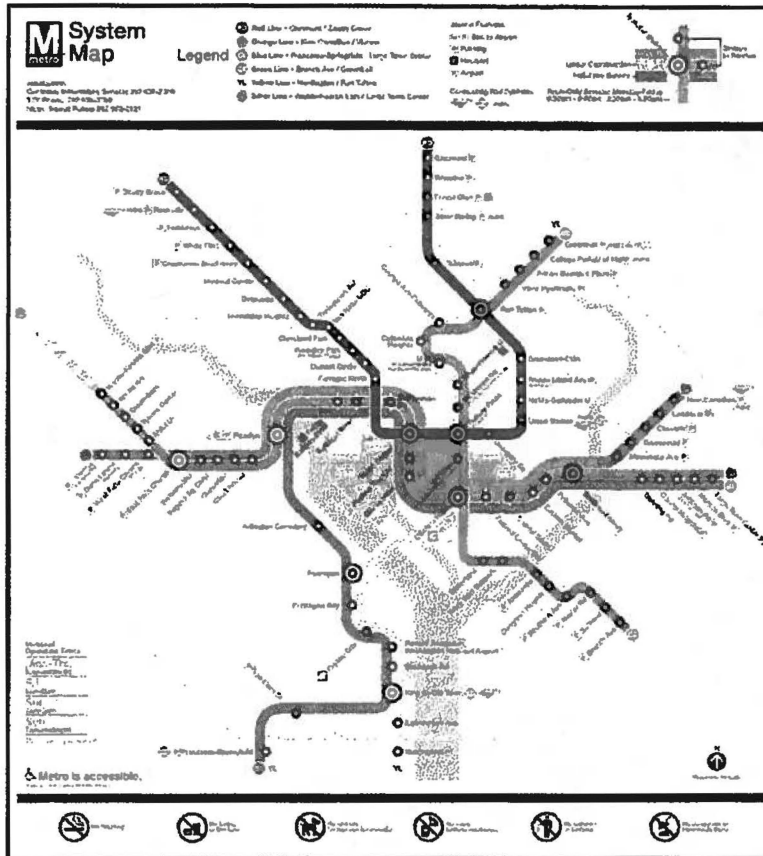
By: [Signature]  
Name: Paul Confort  
Title: MTA Administrator  
Date: 2/3/16

FUNDS AVAILABLE

APPROVED AS TO FORM:

By: [Signature]





**NEW! EARLIER PM DEPARTURE FROM UNION STATION!**

**EFFECTIVE MARCH 9, 2015**

# CAMDEN LINE MARC TRAIN

MARYLAND TRANSIT ADMINISTRATION  
**BALTIMORE/CAMDEN STATION  
TO WASHINGTON D.C.**

**WEEKDAY SERVICE**

**SERVING: CAMDEN STATION  
ST. DENIS  
DORSEY  
JESSUP  
SAVAGE  
LAUREL  
MUIRKIRK  
GREENBELT  
COLLEGE PARK  
RIVERDALE  
UNION STATION**



tel: 410-539-5000  
www.mta.maryland.gov  
**YOUR RIDE IS HERE.**

**MTA Maryland**  
Maryland Department of Transportation

(Revised)  
Exhibit H-2

**MTA Maryland**

**Maryland Department of Transportation**

**MARC**

# **CAMDEN LINE - EASTBOUND**

Monday through Friday ONLY

| Train Number             | 840   | 842   | 844   | 846   | 848  | 850  | 852   | 854   | 856  | 858   | 860  |
|--------------------------|-------|-------|-------|-------|------|------|-------|-------|------|-------|------|
|                          | S     |       |       | S     | Q    | S/Q  | S/Q   | Q     | S/Q  | Q     | S/Q  |
| WASHINGTON               | 6:32  | 7:00  | 7:40  | 8:00  | 3:30 | 4:13 | 4:43  | 5:22  | 5:53 | 6:55  | 7:45 |
| RIVERDALE                | 6:42  | 7:10  |       | S     |      |      | 4:53  | 5:32  | S    | 7:05  | 7:55 |
| COLLEGE PARK             | 6:44  | 7:12  | 7:50  | 8:11  | 3:41 | 4:24 | 4:56  | 5:34  | 6:04 | 7:07  | 7:58 |
| GREENBELT                | 6:49  | 7:17  | 7:55  | 8:16  |      |      | 5:01  | 5:39  | S    | 7:12  | 8:01 |
| MUIRKIRK                 | 6:55  | 7:23  | 8:00  | 8:22  | 3:48 | 4:32 | 5:07  | 5:45  | 6:12 | 7:18  | 8:07 |
| LAUREL                   | 7:02  | 7:30  | 8:07  | 8:29  | 3:55 | 4:39 | 5:14  | 5:52  | 6:19 | 7:25  | 8:13 |
| LAUREL RACETRACK         |       |       |       |       |      |      |       |       |      |       |      |
| SAVAGE                   | 7:08  | 7:36  | 8:13  | 8:35  | 4:01 | 4:45 | 5:20  | 5:58  | 6:25 | 7:31  | 8:18 |
| JESSUP                   |       |       |       |       |      |      |       | 16:01 | S    |       |      |
| DORSEY                   | 17:19 | 17:47 | 18:24 | 18:46 | 4:15 | 4:57 | 5:32  | 6:12  | 6:37 | 7:42  | 8:29 |
| ST. DENIS                |       |       |       |       | —    |      | 16:32 | 16:34 | S    | 17:51 |      |
| BALTIMORE/CAMDEN STATION | 7:43  | 8:12  | 8:46  | 9:08  | —    | 5:25 | 6:00  | 6:41  | 7:08 | 8:03  | 8:55 |

CHECK THE FINE PRINT: This line has special conditions.

Tickets purchased onboard at a station with a Ticket Vending Machine are subject to a \$3.00 penalty.

# **CAMDEN LINE - WESTBOUND**

Monday through Friday ONLY

| Train Number             | 841   | 843  | 845   | 847   | 849   | 851   | 853   | 855   | 857   | 859   |
|--------------------------|-------|------|-------|-------|-------|-------|-------|-------|-------|-------|
|                          | S/Q   | Q    | S/Q   | Q     | S/Q   | S/Q   | S     |       |       | S     |
| BALTIMORE/CAMDEN STATION | 5:00  | 5:30 | 6:10  | 6:30  | 7:10  | 8:05  | 3:40  | —     | 5:20  | 6:15  |
| ST. DENIS                | 15:11 |      | S     | 6:41  |       | 8:16  |       | —     |       |       |
| DORSEY                   | 5:18  | 5:47 | 6:28  | 6:50  | 7:29  | 8:23  | 3:58  | 4:45  | 5:38  | 6:33  |
| JESSUP                   | S     |      | S     | 16:53 |       |       |       |       |       |       |
| SAVAGE                   | 5:25  | 5:54 | 6:34  | 6:58  | 7:37  | 8:32  | 4:05  | 4:52  | 5:45  | 6:40  |
| LAUREL RACETRACK         |       |      |       |       |       |       | 16:09 |       | 15:49 | 16:44 |
| LAUREL                   | 5:31  | 6:00 | 6:40  | 7:05  | 7:44  | 8:38  | 4:11  | 4:58  | 5:51  | 6:46  |
| MUIRKIRK                 | 5:36  | 6:06 | 6:46  | 7:11  | 7:49  | 8:44  | 4:16  | 5:03  | 5:56  | 6:51  |
| GREENBELT                | 5:42  |      | 6:53  | 7:17  |       | 8:50  | 4:22  |       | 6:02  | 6:57  |
| COLLEGE PARK             | 5:46  |      | 6:58  | 7:21  | 18:01 | 8:54  | 14:26 | 15:15 | 6:06  | 7:01  |
| RIVERDALE                | 15:51 |      | 17:04 | 17:28 |       | 19:01 |       |       | 16:13 | 17:08 |
| WASHINGTON               | 6:05  | 6:29 | 7:18  | 7:44  | 8:21  | 9:12  | 4:50  | 5:30  | 6:28  | 7:23  |

CHECK THE FINE PRINT: This line has special conditions.

Tickets purchased onboard at a station with a Ticket Vending Machine are subject to a \$3.00 penalty.

CHECK THE FINE PRINT • This area contains special information and instructions.

- D** Train will stop to discharge passengers only. Passengers must notify conductor upon boarding.
- F** Flag stop at this station: trains will pick up passengers standing on platform, and visible to engineer. Trains will discharge passengers at this station if passengers have notified conductor upon boarding.
- L** Train may leave 5 minutes early.
- Q** Trains operate with a "Quiet Commute" car. No cell phones, electronic devices that make noise or loud conversations. We request a library-like atmosphere in the "Quiet Commute" car. This car is adjacent to the locomotive.

- S** ONLY trains designated with an S at the top of the column will operate when limited service conditions or special circumstances warrant. On days of heavy snowfall or other severe weather, MARC will operate this special schedule. Stops marked with an S will be made when this schedule is in effect.

There will be no MARC Camden Line train service on New Year's Day, Martin Luther King Jr. Day, Presidents Day, Memorial Day (observed), Independence Day, Labor Day, Columbus Day (observed), Thanksgiving Day, the Friday after Thanksgiving, and Christmas Day. MARC reserves the right to operate no service, or the "S" schedule, on Veterans Day and the week between Christmas and New Year's Days. Contact MARC for further information.

## **Have a backup plan to get to Union Station!**

It's the five words all MARC passengers dread to hear: "Delays on the Red Line". The following Metrobus routes all serve Union Station and come from various points in the city; download the schedules at [www.wmata.com](http://www.wmata.com)

**96 - Woodley Park - Adams Morgan - U Street - Union Station**

**D6 - Dupont Circle - Farragut North and West (K Street) - Metro Center (E Street) - Judiciary Square - Union Station**

**X1 - Foggy Bottom - Federal Triangle - North Capitol and Massachusetts Avenue (1 block from Union Station)**

**REMEMBER:** MARC weekly or Monthly passes are good for complementary travel on all Washington Metrobuses.

In addition, the DC Circulator [www.dccirculator.com](http://www.dccirculator.com) provides two routes serving Union Station. Please note that MARC passes are not honored on the DC Circulator; the fare is \$1.00 exact change or SmartTrip card.

## **Dorsey Connections via MTA Commuter Bus 201**

| PENN LINE TRAIN NUMBER            | 520    | 548    |
|-----------------------------------|--------|--------|
| Washington                        | 12:20p | 9:00p  |
| BWI Airport Rail Station (arrive) | 12:57p | 9:37p  |
| BWI Airport Rail Station (depart) | 1:00p  | 10:00p |
| Arundel Mills Mall                | 1:18p  | 10:18p |
| Dorsey MARC Station               | 1:25p  | 10:25p |

MARC passengers ride free on the 201 bus; show driver ticket receipt or pass. MARC tickets/passes are restricted to travel between BWI and Dorsey. Travel west of Dorsey requires payment of full fare. Buses will not wait for late Penn Line Trains; the next 201 bus operates one hour later.

## **CONNECTING TRANSIT SERVICES**

Many other transit agencies provide connecting bus service that stops at or near Camden Line Stations. These can be especially useful if you need to return home during the middle of the day or late in the evening.

### **RIVERDALE**

Prince Georges County "The Bus" Route #14. Service between Prince Georges Plaza Metro station and Riverdale. <http://www.princegeorgescountymd.gov/sites/PublicWorks/Transit/TheBus/Pages/default.aspx>

### **GREENBELT & LAUREL**

Washington Metrobus #89 (rush hour) and #89M (midday). Service between Greenbelt Metro/MARC station and Laurel. #89 now offers two later evening departures from Greenbelt after the last Camden Line train. [www.wmata.com](http://www.wmata.com)

### **COLLEGE PARK, MUIRKIRK & LAUREL**

Regional Transportation Authority Route 302/G. Service between College Park Metro/MARC station, Muirkirk and Laurel Mall. <http://mdtrip.org/ProviderSchedulesMaps/User/363.aspx>

### **LAUREL, SAVAGE, AND DORSEY**

Regional Transportation Authority Route 409/Purple. Service between Laurel, Savage, and Dorsey stations along Route 1. <http://mdtrip.org/ProviderSchedulesMaps/User/363.aspx>

### **DORSEY**

Regional Transportation Authority Route 501/Silver. Service between BWI Marshall Airport Rail Station and Dorsey MARC Station. <http://mdtrip.org/ProviderSchedulesMaps/User/363.aspx>

### **CAMDEN STATION**

MTA Local and Commuter Bus, numerous routes serving downtown Baltimore and suburbs. Also, MTA Light Rail. Among numerous destinations both north and south of Baltimore, Light Rail provides shuttle service between Camden Station and Penn Station. [www.mta.maryland.gov](http://www.mta.maryland.gov)

Amtrak

# **ATTACHMENT 2**

**DRAFT OF NO-FAULT LIABILITY ALLOCATION LANGUAGE FOR MTA –  
AMTRAK ACCESS AND SERVICES/OPERATING AGREEMENTS**

8.1 Except as provided in Section 8.3, in an incident involving the trains of both Parties, each Party agrees to bear all costs or claims for all damage or liability for personal injury, death, or property damage to its own passengers, invitees, equipment, facilities or other property, irrespective of the fault or negligence of either Party. Each Party (the “Indemnifying Party”) shall indemnify and save harmless the other (including its officers, agents, employees, and subsidiaries, as applicable) (hereinafter, an “Indemnified Party”), for all costs or claims for which the Indemnifying Party agrees to bear responsibility pursuant to the preceding sentence.

8.2 The Administration shall have no responsibility to Amtrak or any other party for injury or death to Amtrak employees engaged directly in the operation of trains in the MARC Commuter Rail Service pursuant to the Service Agreement (if Amtrak is the MARC Commuter Rail Operator) or the provision of other services provided to the Administration in order to facilitate the use of the NEC Segment pursuant to this Agreement. The risk of injury or death and of claims by such Amtrak employees is assumed by Amtrak, and Amtrak agrees to indemnify and hold harmless the Administration against any claims with respect to injury or death of such employees. Compensation for such risk is included in the amounts and rates agreed upon by the parties in this Agreement.

8.3 A party’s agreement to indemnify and save harmless the other, as set forth in Section 8.1, above, shall not apply to any claim for liability for personal injury or death (a) which is caused by the Willful Misconduct (as defined in Section 8.4) of the Indemnified Party, or (b) to the extent such liability is covered and paid for by a railroad protective liability insurance policy or any other liability insurance policy (i) which is purchased on the Indemnified Party’s

behalf, (ii) for which the Indemnified Party has made no premium payment, and (iii) which names the Indemnified Party as an insured.

8.4 “Willful Misconduct” is conduct for which there is clear and convincing evidence, as determined by agreement of the Parties or by arbitration pursuant to Section 17 of this Agreement, that the liability arises out of an act or omission by the Party in which an employee of the Party (including employees of the Party’s agents and contractors) has a specific awareness of a condition or situation, knows (or should know based on training required for his or her position) that failure to respond to such condition or situation presents a significant danger to persons, and, without regard to the likelihood that serious injury will probably result, consciously elects not to respond to this condition or situation in a manner that will avoid the danger. The limitation on the scope of indemnities in the event Willful Misconduct is alleged or established shall in no way change any duty to defend against claims that is established in this Section.

8.5 Except as provided in Section 8.2, in the event of an incident in which the train of only one Party is involved, that Party shall indemnify and hold harmless the other for all costs or claims for all damage or liability for personal injury, death, or property damage to its own passengers, invitees, equipment, facilities (if any) or other property, or any property owned by the other Party, arising out of that incident. If one Party is using the equipment of the other pursuant to an arrangement described in Section 6.4 and Exhibit D of this Agreement, then that property shall be considered for the purposes of this Section 8.5 to be the property of the Party in whose train the equipment is in operation.

8.6 In the event of an incident involving the trains of both Parties, in addition to the allocation of liability between the Parties set forth in Section 8.1, the Parties shall share equally in the costs or claims for all damage or liability for personal injury, death, or property damage to

a third party's employees, passengers (if any), invitees, equipment, facilities or other property arising out of that incident. For the purposes of this Section 8, the trains, equipment or employees of a freight railroad using the NEC pursuant to an agreement with Amtrak shall be considered to be trains, equipment or employees of Amtrak.

8.7 Where claims are made against Amtrak and the Administration arising out of the same incident, or against either of them solely, the Parties shall cooperate fully and shall make all of their investigative and claims information available to each other. Any claim for indemnification by Amtrak or the Administration shall not be made a part of any litigation brought by a third party arising out of any claim against Amtrak and/or the Administration. If a dispute arises concerning the scope of Amtrak's or the Administration's indemnity obligations pursuant to this Section 8, such dispute shall be resolved separately pursuant to Section 17 of this Agreement.