

**PASSENGER RAIL OPERATIONS AND ACCESS
AGREEMENT**

Between

THE VIRGINIA DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

and

**NORTHERN VIRGINIA TRANSPORTATION COMMISSION AND POTOMAC AND
RAPPAHANNOCK TRANSPORTATION COMMISSION, OWNERS AND
OPERATORS OF THE VIRGINIA RAILWAY EXPRESS**

CONCERNING COMMUTER PASSENGER RAIL SERVICE

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EXHIBIT LIST

EXHIBIT	TITLE
A	<u>THE PLAN</u> (<i>The Northern Virginia and Potomac and Rappahannock Transportation Commissions Commuter Rail Operations Liability Insurance Plan</i>)
B	<u>SERVICE PLAN</u>
C	<u>PLANNED IMPROVEMENTS</u>
D	<u>PASSENGER STATION GROUND LEASE AGREEMENT</u>

PREAMBLE

THIS PASSENGER RAIL OPERATIONS AND ACCESS AGREEMENT ("**Agreement**") is dated March 26, 2021 and is between the (i) the Virginia Department of Rail and Public Transportation, a body corporate and political subdivision of the Commonwealth of Virginia, and (ii) the NORTHERN VIRGINIA TRANSPORTATION COMMISSION and the POTOMAC AND RAPPAHANNOCK TRANSPORTATION COMMISSION, bodies politic and corporate and political subdivisions of the Commonwealth of Virginia, established under the provisions of the Transportation District Act of 1964, as amended, and having principal places of business at 2300 Wilson Boulevard, Suite 620, Arlington, Virginia 22201, and 14700 Potomac Mills Road, Woodbridge, Virginia 22192, respectively (hereinafter, individually, a "**Commission**" and, collectively, the "**Commissions**").

EXPLANATORY STATEMENT

A. Since 1992, the Commissions have been engaged in operating and planning the expansion of a public commuter passenger rail system known as the Virginia Railway Express ("VRE") that operates within the railroad right-of-way, which right-of-way contains certain railroad tracks and other railroad assets, generally between Washington, D.C. and Richmond (the "RF&P Corridor"); the RF&P Corridor is currently owned by CSX Transportation, Inc. ("CSXT").

B. The Commissions currently have in place an Amended and Restated Operating/Access Agreement with CSXT dated July 1, 2011, as amended (the "CSXT Operating Agreement"), which, among other things, permits current VRE commuter passenger rail service within the RF&P Corridor.

C. The Commissions and CSXT, by agreement in 2002, established a corridor improvement program, overseen by a corridor task force which included representatives of the Commonwealth of Virginia, the purpose of which was to identify and fund capital improvement projects in the RF&P Corridor which would increase capacity to enable additional passenger rail service.

D. The Commonwealth of Virginia ("Commonwealth"), acting through the Department, has worked collaboratively with the

Commissions to advance commuter rail service in the RF&P Corridor, and also, beginning in 2009, currently sponsors inter-city passenger rail transportation in the RF&P Corridor through an agreement with the National Railroad Passenger Corporation ("NRPC"), which itself operates its own inter-city passenger rail service in the RF&P Corridor.

E. The Commonwealth, acting through the Department, has entered into a comprehensive rail agreement ("Comprehensive Rail Agreement") with CSXT under which the Commonwealth intends to purchase approximately half of CSXT's interest in the railroad tracks and other railroad assets along the RF&P Corridor (the "Virginia-Acquired RF&P Assets"), splitting the RF&P Corridor longitudinally and sharing it with CSXT.

F. Under the Comprehensive Rail Agreement, the Commonwealth and CSXT intend to execute a series of specific rail infrastructure improvement projects to facilitate the separation of freight and passenger rail services along the RF&P Corridor, where feasible, so the two services may operate side-by-side on separate dedicated railroad tracks and other infrastructure and facilities.

G. By separating freight and passenger operations within the RF&P Corridor, the Commonwealth desires to continue to work collaboratively with the Commissions to facilitate improved inter-

city and commuter passenger rail service between Richmond and Washington, D.C., including continuing to make the Virginia-Acquired RF&P Assets available to the Commissions for VRE operations, and to facilitate the expansion of VRE service.

H. Accordingly, the parties agree to continuation of the Commissions' existing commuter passenger rail service and the terms on which such service will be expanded after the Commonwealth acquires the Virginia-Acquired RF&P Assets, all as more particularly set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties hereto agree as follows:

ARTICLE ONE

DEFINITIONS

1.1 DEFINITIONS. The following terms (except as otherwise expressly provided or unless the context otherwise requires) for all purposes of this Agreement shall have the meanings hereafter specified:

Agreement: Defined in the Preamble.

Claim: Any and all claims, disputes, disagreements, causes of action, demands, suits, or other proceedings, in all cases related in any way to (i) the Commissions' operation of Passenger Station Facilities or (ii) the Commissions' provision of the Service (or failure to provide the Service) under this Agreement.

Commission(s): Defined in the Preamble.

Commonwealth: Defined in paragraph D of the Explanatory Statement.

Comprehensive Rail Agreement: Defined in paragraph E of the Explanatory Statement.

CSXT: Defined in paragraph A of the Explanatory Statement.

CSXT Operating Agreement: Defined in paragraph B of the Explanatory Statement.

CSXT-Retained RF&P Assets: The portion of the RF&P Corridor that is retained by CSXT, whether owned by CSXT or under its primary control through an agreement with a third party owner other than the Commonwealth, the Department, or an agency, authority, or other instrumentality of the Commonwealth.

CSXT Tracks: The railroad tracks that are included within the CSXT-Retained RF&P Assets, including but not limited to signaling facilities.

Department: The Virginia Department of Rail and Public Transportation.

Department-Provided Funding: Defined in Section 5.1(d).

Division: The Division of Risk Management of the Commonwealth of Virginia.

Effective Date: The date the last party to this Agreement executes it by signing the signature page.

Emergency: Any unplanned event within RF&P Corridor that: (i) presents an immediate or imminent threat to the long term integrity of any part of the Tracks or other railroad assets, to the environment, to property adjacent to the RF&P Corridor, or to the safety of rail workers, customers, or passengers; (ii) has jeopardized the safety of rail workers, customers, or passengers;

(iii) is a declared state of emergency pursuant to Commonwealth or federal law, or (iv) is recognized or declared by any law enforcement agency or any other governmental entity as an emergency.

Equipment: The locomotives and cars complying with Section 2.4 of this Agreement which are at any time used by the Commissions, or either of them, or by an agent or Operator, to provide the Service over the Tracks.

Existing Service: The Service existing immediately prior to the Effective Date, and excluding the Planned Additional Service.

Fiscal Year: The fiscal year of the Commissions beginning July 1.

Force Majeure Event: The occurrence of any of the following events that materially and adversely affects the performance of either party's obligations, provided that such events (or effects of such events) could not have been avoided by the exercise of reasonable caution, due diligence, or efforts by the affected party: (a) war (including civil war and revolution), invasion, armed conflict, violent acts of a foreign enemy, military or armed blockage, or military or armed takeover of a project, in each case occurring within the Commonwealth of Virginia; (b) any act of terrorism or sabotage that causes direct physical damage to

Virginia-Acquired RF&P Assets or otherwise directly causes interruption to construction or direct losses during operation; (c) nuclear explosion or contamination, in each case causing direct physical damage to the Virginia-Acquired RF&P Assets or radioactive contamination of them; (d) riot and civil commotion on or in the immediate vicinity of the Virginia-Acquired RF&P Assets; (e) flood, earthquake, hurricane, tornado and other significant storm or weather occurrence, in each case that causes directly physical damage to the Virginia-Acquired RF&P Assets; (f) a pandemic; (g) federal or state declared emergency; and (h) fire or explosion not attributable to the Commissions or any Operator that directly impacts a material element of the physical improvements to the Virginia-Acquired RF&P Assets.

Improvements: Changes in, additions and betterments to the Tracks or other railroad assets within the RF&P Corridor. Improvements are not limited to the Virginia-Acquired RF&P Assets, but may also be made to the CSXT-Retained RF&P Assets.

Losses: With respect to any Virginia Indemnatee, any losses, liabilities, judgments, damages, fees (including the costs of legal defense and other legal fees), penalties, fines, sanctions, charges, or out-of-pocket and documented costs of any kind or nature, or expenses actually suffered or incurred by such Virginia Indemnatee, including as a result of any injury to or death of

persons or damage to or loss of property, as a sanction assessed by a governmental or quasi-governmental entity, in all cases, (i) related in any way to the Commissions' operation of passenger facilities, (ii) related in any way to the Commissions' provision of the Service (or failure to provide the Service) under this Agreement, or (iii) which is exacerbated by the operation of the Service over the Tracks, or by the presence of cars, Equipment, personnel, contractors, agents, or passengers of the Commissions or an Operator on or about the RF&P Corridor.

NRPC: National Railroad Passenger Corporation.

Operator: Any person, firm, corporation, or other legal entity contracting with or utilized by the Commissions to operate all or any part of the Service or to be responsible for providing and supervising on-train personnel for operation of the Equipment and Trains.

Passenger Station Facilities: Passenger stations, station platforms, and certain additional, ancillary facilities located on platforms, including, among others, canopies elevators, stairways, and elevated walkways, and including real property parcels on which such facilities may be located, in all cases owned by the Department and leased to the Commissions for the Commissions to pick up and discharge passengers in their provision of the Service.

The Passenger Station Facilities are listed in the Passenger Station Ground Lease Agreement.

Passenger Station Ground Lease Agreement: The separate *Passenger Station Ground Lease Agreement* between the Commissions and the Department, for the leasing of certain real property for the operation of those Passenger Station Facilities enumerated in **EXHIBIT D** (Passenger Station Ground Lease Agreement), as amended from time to time.

Plan: *The Northern Virginia and Potomac and Rappahannock Transportation Commissions Commuter Rail Operations Liability Insurance Plan* established by the Division in accordance with Section 2.2-1839 of the Code of Virginia, and attached hereto as **EXHIBIT A** (The Plan), as such may be amended from time to time.

Planned Additional Service: The additional commuter passenger rail service (*i.e.*, in addition to the Existing Service) to be added to the Service pursuant to the Comprehensive Rail Agreement by the Department and the Commissions incrementally (i) as the Department acquires the Virginia-Acquired RF&P Assets, and (ii) as the Planned Improvements are completed. The Planned Additional Service is depicted, along with the Existing Service, in **EXHIBIT B** (Service Plan).

Planned Additional Service Long Stop Date: (A) For the first train slot (scheduled to be available in 2021) the date that is thirty-six months after the Department has provided to the Commissions written notice that they may begin such component of the Planned Additional Service, and (B) for any other component(s) of the Planned Additional Service for which the Department has provided to the Commissions written notice that they may begin such component(s) of the Planned Additional Service, the date that is twelve months after such notice.

Planned Improvements: Those Improvements listed in **EXHIBIT C** (Planned Improvements), which the Department intends to carry out, in cooperation with CSXT, and with funding from the Commissions among other sources, after acquiring the Virginia-Acquired RF&P Assets so that the Commissions may incorporate components of the Planned Additional Service.

RF&P Corridor: Defined in paragraph A of the Explanatory Statement, and includes both the Virginia-Acquired RF&P Assets as well as the CSXT-Retained RF&P Assets.

Service: The commuter passenger rail service operating within the RF&P Corridor by the Commissions under the authority granted by the CSXT Operating Agreement and this Agreement. Service includes the movement of Trains operated at the times, between the

mile posts, with the frequencies, and Equipment specified in **EXHIBIT B**, attached hereto, and the movement of Special Trains allowed pursuant to Section 3.2. Service may be amended at any time by written agreement of the parties, including adding components of the Planned Additional Service when permitted under the Comprehensive Rail Agreement.

Special Train: Any Train that is in addition to the regularly-scheduled commuter passenger rail service permitted under this Agreement, such as excursion trains or tourist trains, in each case as may be allowed pursuant to Section 3.2 of this Agreement.

Station Lease Payments: Periodic rental payments paid by the Commissions to the Department under the Passenger Station Ground Lease Agreement.

Substitute Operating Period: A period of time selected by the Department for up to five years as an initial term, during which the Department contracts with an entity other than the Commissions to provide passenger rail service with respect to unused Planned Additional Service components pursuant to Section 2.10. The Substitute Operating Period may be extended by the Department for successive periods of no longer than one year each. However, if at least one hundred-eighty (180) days prior to either (a) the expiration of an initial up-to-five-year Substitute Operating

Period, or (b) the expiration of any extended Substitute Operating Period, the Commissions confirm they are willing and able to utilize the applicable unused Planned Additional Service components for the Service, then the Department may not extend the applicable Substitute Operating Period beyond the then-current term.

Tracks: The railroad tracks that are included within the Virginia-Acquired RF&P Assets and the CSXT-Retained RF&P Assets, including but not limited to signaling facilities.

Train: A locomotive unit, or more than one unit coupled, with or without cars, whether or not carrying passengers, having not less than 4.0 horsepower per trailing ton, displaying markers or carrying an end of train device, and capable of adhering to the schedule standards specified for the Service.

Trust Fund: The Commuter Rail Operations Liability Insurance Trust Fund administered by the Division pursuant to the Plan.

Virginia Indemnitee(s): The Commonwealth of Virginia, the Department, the Virginia Passenger Rail Authority, and any of the officers, directors, employees, agents, or servants of such entities.

Virginia-Acquired RF&P Assets: The portion of the railroad line between Richmond, Virginia, and Washington, D.C. that is owned (or under its primary control through an agreement with an owner party other than CSXT) by the Commonwealth, the Department, or an agency, authority, or other instrumentality thereof. The Virginia-Acquired RF&P Assets may increase as the Planned Improvements, or other Improvements, are completed and the Commonwealth, the Department, or an agency, authority, or other instrumentality thereof acquires (i) new railroad assets within the RF&P Corridor, or (ii) existing assets from CSXT within the RF&P Corridor.

Virginia Tracks: The railroad tracks that are included within the Virginia-Acquired RF&P Assets, including but not limited to signaling facilities and new railroad tracks constructed by the Commonwealth. The Virginia Tracks shall include such other parallel or related railroad operating facilities of the Commonwealth, the Department, or an agency, authority, or other instrumentality thereof as may at the instruction of the Department from time to time be temporarily used for the operation of the Service. The rail facilities within the definition of Virginia Tracks may be further changed at any time by written agreement of the parties.

VRE: Defined in paragraph A of the Explanatory Statement.

ARTICLE TWO

CONDITIONS

2.1 Other Operating Agreements. The Commissions acknowledge that they have executed the CSXT Operating Agreement and separate agreements with Norfolk Southern Railway and NRPC, which agreements grant the Commissions the right to operate commuter passenger rail service over the lines of each of those railroads. The Commissions shall promptly provide the Department with current copies of such agreements and any subsequent amendments thereto, upon the execution of such agreements or amendments.

2.2 More Favorable Provisions. In the event that the terms and provisions of any agreement described in Section 2.1 shall at any time be interpreted, modified, or amended so as to become more favorable to the named counter-parties than the terms and provisions of this Agreement are to the Department, in the sole judgment of the Department, then the Department may request the Commissions' agreement to modify this Agreement so as to incorporate such interpretation, modification, or amendment, in whole or in part, by amendment to this Agreement.

2.3 Operator. The Commissions shall not self-operate the Service, but shall operate the Service through one or more Operators. The Commissions will be free to select an Operator at their discretion based upon criteria, developed in consultation

with the Department, designed to obtain an Operator qualified to operate trains on property of Class One railroads. An Operator must comply at all times with all applicable provisions of this Agreement. The Commissions shall not have the right to assign this Agreement or any portion hereof to any other person or entity, or to permit any person or entity other than an Operator to exercise such rights or enter upon the property of the Department without the written consent of the Department. The retention of an Operator by the Commissions shall not relieve the Commissions of any of their obligations under this Agreement. If at any time an Operator becomes unacceptable to the Department, the Department shall notify the Commissions and the Parties shall thereafter meet and confer within a reasonable time to develop a mutually-agreed resolution to the objections raised by the Department, which resolution may include removal and replacement of the Operator.

2.4 Inspection of Equipment. The Department shall have no responsibility, but shall have the right, to cause a third party to perform an audit-style inspection (*i.e.*, a spot inspection and not a comprehensive inspection), itself or through a contractor, of any Equipment of the Commissions used in the Service to ensure compliance with this Agreement and federal law. Such inspections shall be at the Department's sole cost and expense, and shall not be done more than once each year. However, the parties agree that

any such inspection shall not be construed to shift any liability for any such Equipment from Commissions to the Department, nor shall any such inspection be construed to reduce the Commissions' duty to indemnify the Virginia Indemnitees under Article Nine. The Department shall have no responsibility to maintain, service, or repair any of the Equipment of the Commissions, but all such Equipment shall at all times comply with applicable federal (including without limitation the federal Locomotive Inspection Act and the Federal Safety Appliance Acts, each as amended, and with all regulations adopted pursuant to either Act), state, and local laws, regulations and requirements.

2.5 Operating and Safety Rules. (a) Operation of the Service shall at all times comply with CSXT's operating rules, safety rules, instructions, and other regulations until such time as Complete Separation or Maximum Feasible Separation (each as defined within the Comprehensive Rail Agreement) is achieved between the Virginia Acquired RF&P Assets and the CSXT-Retained RF&P Assets. At such time, the Department and the Commissions may agree upon specific operating rules that are different than, or supplemental to, CSXT's operating rules. CSXT's operating rules shall continue in effect until different or supplemental rules are agreed upon. The Commissions, an Operator, and all personnel of either who are present on the Equipment at any time shall comply

fully with the applicable laws, regulations or rules, whether federal, state, or local, covering the operation, maintenance, condition, inspection, testing, or safety of personnel or Equipment employed in the maintenance and operation of any of the Trains.

(b) Operating Personnel. The Commissions shall ensure that all persons operating Equipment or Trains over the Tracks are fully competent, trained, and qualified for the tasks they are performing in accordance with standards applicable to operation of trains on property of class one railroads.

(c) Radios. The Commissions, at their sole expenses, shall obtain, install, and maintain, in all locomotives used with Commission's Trains operating over the Tracks, functioning radios to transmit and receive appropriate frequencies, as necessary.

(d) Investigations. Any investigation or hearing concerning the violation of any operating rule or safety rule of the Department by any of the employees of the Commissions or of its Operator may be attended by any official of the Commissions or of the Operator designated by the Commissions.

(e) Right to Exclude Personnel. The Department shall have the right to exclude from the Virginia Tracks or other Virginia-Acquired RF&P Assets any employee of the Commissions or

its Operator found to be in violation of applicable law. The exercise of such right, and any and all Losses that may arise therefrom shall be excluded from the indemnification provisions of Article Nine of this Agreement when such an employee is excluded by the Department.

2.6 Modifications to Service. With respect to the Virginia Tracks, the Department retains exclusive authority to approve or reject, in its sole discretion, any proposed modification of the Service (other than the components of the Planned Additional Service to which the Department is entitled under the Comprehensive Rail Agreement and which are identified as being for commuter rail service) or of its scheduled operations. In addition, the Department retains the right to require the construction of additional Improvements, and appropriate compensation, whenever the Commissions propose modifications to the Service or to its scheduled operations, other than components of the Planned Additional Service, provided such additional Improvements are necessary to enable the requested modifications to the Service or scheduled operations. However, in the event of an Emergency that requires a short-term modification to the Service for which prior approval cannot be obtained reasonably, the Commissions may make such reasonable modifications as are necessary to continue the Service in a safe and reliable manner in coordination with the

entity that is responsible for dispatching the relevant portion of Tracks. If the Commissions implement such a short-term modification, they shall: (i) within 24 hours of the event or occurrence giving rise to the Emergency conditions notify the Department of the Emergency in writing, and (ii) within five business days of the event or occurrence giving rise to the Emergency conditions provide to the Department for its approval or rejection a written plan to continue the Service in a safe and reliable manner for the expected duration of the Emergency condition. Notwithstanding the foregoing, the Commissions shall have the right to annul Trains and to provide less than the full Service for limited periods necessitated by unforeseen circumstances including but not limited to weather events, Equipment malfunctions, conflicts with NRPC, freight, and other trains, and government holidays and work cancellations.

2.6 Regulatory Approvals. In the event that operation of any portion of the Service requires the prior approval of or exemption from regulations by the Surface Transportation Board, the Federal Railroad Administration, or any other governmental agency, securing such approval or exemptions shall be the exclusive responsibility of the Commissions. The Department will make reasonable efforts to support the actions which the Commission may initiate pursuant to this Section.

2.7 Other Trains. The Department shall in no event be responsible for or liable to the Commissions, or its Operator, or any passenger for the consequences of any delays or cancellations of the Service due to conflicts with CSXT's freight service, NRPC's inter-city passenger service, weather, labor difficulties, track or equipment failure, conflicting schedules or missed connections of NRPC trains or of trains of CSXT, or from other causes. Notwithstanding the foregoing, prior to and after the Department obtains corresponding dispatch rights, the Department acknowledges the importance to the Commissions' commuter rail service of on-time performance and agrees to endeavor to provide an average monthly on-time performance of ninety percent (90%) within the Virginia-Acquired RF&P Assets and, to the extent reasonably possible, the RF&P Corridor. In the event an average on-time performance of ninety percent (90%) is not met in any month, the parties shall meet during the next month to discuss the reasons why the aforesaid on-time performance average was not met and what steps can be taken to meet or exceed that average.

2.8 Planned Improvements. After acquiring the Virginia-Acquired RF&P Assets, the Department will endeavor to complete the Planned Improvements as described more completely in **EXHIBIT C**.

2.9 Planned Additional Service. The parties acknowledge and agree that the Comprehensive Rail Agreement makes available

certain future passenger rail service slots identified in **EXHIBIT B** (Service Plan), and that the Department has the right to such slots designated for commuter rail service, subject to the Comprehensive Rail Agreement, and the Department will make available to the Commissions under the terms of this Agreement the additional slots identified in **EXHIBIT B** (Service Plan) for commuter rail service. As the Planned Improvements are completed incrementally, the Department will provide written notice to the Commissions of their right to begin the corresponding components of the Planned Additional Service by using those service slots associated with the completed Planned Improvements. However, the Department does not guarantee the completion of any or all of the Planned Improvements, or the start of the Planned Additional Service and the Planned Additional Service may be suspended under the conditions provided in the Comprehensive Rail Agreement. For the avoidance of doubt, the Commissions shall have no right to commence any component of the Planned Additional Service unless the Department provides written notice to the Commissions that they may begin such component. Upon delivery by the Department to the Commissions of written notice of the completion of certain Planned Improvements and the Commissions' right to begin operating certain components of the Planned Additional Service, the Commissions shall: (i) on or before the Planned Additional Service Long Stop Date, adopt a budget allocating funds to support the

corresponding components of the Planned Additional Service, and (ii) begin such corresponding components of the Planned Additional Service no later than the beginning of the Fiscal Year immediately following the Fiscal Year during which the budget in (i) was adopted. If the conditions of (i) and (ii) in the preceding sentence are not met, the Department may, upon written notice to the Commissions, elect to receive and use the unused Planned Additional Service components for commuter or inter-city passenger rail service. The Department may utilize such components for a Substitute Operating Period. The Commissions and the Department shall work in good faith to agree upon access and use of any Commission-owned passenger rail facilities for such commuter or inter-city passenger rail service during any Substitute Operating Period. If the Commissions do not meet conditions (i) and (ii) above because the Department does not provide the full Department-Provided Funding as provided in Section 5.1(d) in the Fiscal Year in which the Planned Additional Service component(s) is required to begin, then the Commissions' obligation to meet conditions (i) and (ii) shall be tolled until the Fiscal Year in which the full eighty-four percent (84%) Department-Provided Funding is provided.

2.10 Improvements. The Commissions at any time may propose to the Department Improvements to the Virginia-Acquired RF&P Assets. Upon such a proposal being made the parties will confer to discuss

whether to develop such proposed Improvements, cost sharing for such proposed Improvements, and other related issues. However, no Improvements will be made to the Virginia-Acquired RF&P Assets without the express written consent of the Department.

ARTICLE THREE

ACCESS

3.1 Commissions' Access Rights. The Department hereby grants to the Commissions, subject to the terms and conditions of this Agreement, the right to use (i) the Virginia-Acquired RF&P Assets, including the Virginia Tracks, and (ii) those passenger rights that the Department enjoys over the CSXT-Retained RF&P Assets, in both cases with the Trains to provide the Service. Except as provided in Section 2.10 with respect to unused components of the Planned Additional Service, the Commissions shall have the exclusive right to operate commuter rail service using the Virginia-Acquired RF&P Assets, including the Virginia Tracks, and shall be the sole provider of such services on the Virginia-Acquired RF&P Assets, including the Virginia Tracks, unless otherwise agreed by the Commissions and the Department. The Department expressly reserves the right to construct future assets within the Virginia-Acquired RF&P Corridor from which the Commissions may be excluded.

3.2 Special Trains. In addition to the rights stated in Section 3.1 above, the Department may permit the operation of Special Trains by the Commissions in addition to those **EXHIBIT B** (Service Plan), as well as those necessary to qualify an Operator, provide employee training, and test Equipment and Trains, which

permission shall not be unreasonably withheld. The Commissions shall submit their requests for Special Trains in writing to the Department at least seven business days prior to the proposed date of operations. No Special Train shall be run without the prior written agreement of the Department and the Commissions and on reasonable terms and conditions and with such proof of insurance and indemnification as are satisfactory to the Department but not more than those provided for in Article Nine.

3.3 Limitation of Access Rights. The rights granted to the Commissions herein shall relate solely to use of the Virginia Tracks and other Virginia-Acquired RF&P Assets, and those passenger rights that the Department enjoys over the CSXT-Retained RF&P Assets, required for the operation of Trains in the provision of the Service.

3.4 Passenger Station Ground Lease Agreement. Contemporaneously with the execution and delivery of this Agreement, the Department will execute and deliver the Passenger Station Ground Lease Agreement in substantially the form of **EXHIBIT D** (Passenger Station Ground Lease Agreement), whereby the Department will lease to the Commissions certain real property for the operation of each of the Passenger Station Facilities enumerated in that exhibit. It is contemplated that the Passenger Station Ground Lease Agreement may be amended or restated

concerning the construction, maintenance, and use, during the term of this Agreement, of additional Passenger Station Facilities. The Passenger Station Ground Lease Agreement and other amendments or restatements shall impose no liability on the Department (or its officers, agents, or employees).

ARTICLE FOUR

TERM

4.1 Effective Date and Expiration. This Agreement shall become effective and shall commence as of the Effective Date, and unless terminated earlier in accordance with its provisions, or with the written consent of both parties, shall continue in effect until the Commissions cease to operate the Service. At or about the fifth anniversary of this Agreement, representatives of the Commissions and the Department shall meet to review operation of this Agreement and discuss possible modifications thereof. Modifications agreed upon by the parties shall be set forth in a written amendment to this Agreement signed by the parties.

4.2 Termination by Commissions. The Commissions shall have the right to terminate this Agreement only (i) if (whether due to lack of funding, inability to obtain the required insurance, or otherwise) they become unable to provide the Service, and (ii) upon twelve (12) months' prior written notice to the Department. Upon any such termination notice delivered to the Department, the Commissions shall cooperate with the Department, and if the Department elects to procure a replacement entity to provide the Service, use their best efforts to assist the Department to procure such replacement entity, with any necessary modifications to the Service. The Department shall have a right of first refusal (but

not the duty) to purchase any Equipment and/or Passenger Station Facilities sold by the Commissions after the delivery of a termination notice to the Department.

4.3 Liabilities after Termination. Termination or expiration of this Agreement for any cause shall not relieve any of the parties hereto from any obligations or liabilities accrued under this Agreement as of the time such termination becomes effective. Without limiting the foregoing, it is specifically recognized that any obligation on the part of a party to assume financial responsibility, to indemnify and insure or to make a payment of money shall survive termination or expiration of this Agreement. It is further recognized that grant funding providers of the Commissions, including but not limited to the Federal Transit Administration and the Federal Railroad Administration, may retain an interest in Improvements funded in whole or in part with grant funds which interests shall run with the Improvements upon termination or expiration of this Agreement.

ARTICLE FIVE

PAYMENT

5.1 General Premise. (a) The premise upon which the Department and the Commissions have agreed to the Service pursuant to this Agreement is that the Department will permit operation of the Service (i) over the Virginia Tracks and other Virginia-Acquired RF&P Assets, and (ii) subject to those passenger rights that the Department enjoys over the CSXT-Retained RF&P Assets, with the following condition: Virginia Indemnitees will incur no Losses or potential Losses arising from the Service (or failure of Commissions to provide the Service) in any way and the Commissions will indemnify the Virginia Indemnitees against any Losses or potential Losses, and will defend any Claims, related to the Service, in accordance with and as more fully described in Article Nine.

(b) **Compensation for Maintenance and Dispatch.** The Commissions shall pay directly to CSXT compensation for dispatch and maintenance services with respect to the Service on the RF&P Corridor. Prior to the Department undertaking dispatch and maintenance services on any portion of the RF&P Corridor, the Department and the Commissions shall agree on compensation to be paid by the Commissions to the Department with respect to such dispatch and maintenance services.

(c) **Audit.** The basis for the amounts payable to the Department under this Agreement shall be subject to audit or review by either party for up to three years following payment thereof.

(d) **Department-Provided Dispatch and Maintenance Funding.** In its sole discretion, the Department may continue to provide funding for up to eighty-four percent (84%) of compensation paid by the Commissions to CSXT with respect to maintenance, dispatch, and other related services (the "**Department-Provided Funding**").

5.2 Conditional Payments - NRPC. In addition to the payments specified hereinabove, the Commissions shall also pay to the Department monthly, within thirty (30) days of demand when supported by appropriate documentation, that portion of any amounts which the Department shall have been forced to pay to NRPC pursuant to an operating agreement between the Department and NRPC (as it may from time to time be amended) governing the operation of inter-city passenger service over Virginia Tracks which is attributable to the abnormal operation or the malfunction of the Service.

5.3 Other Payments. In addition to the payments specified elsewhere in this Article Five, the Commissions shall also pay to the Department, within thirty (30) days of demand, when supported

by appropriate documentation, any amounts which become due to be so paid pursuant to the provisions of Article Two and Article Nine.

ARTICLE SIX

MAINTENANCE AND DISPATCHING

6.1 Track Maintenance. The Department shall, during the term of this Agreement, cause CSXT or other contractors to maintain the Virginia Tracks in a condition that will accommodate the operation of the Service, and no less than that required to prevent any downgrade to the Virginia Tracks below Class 4 pursuant to 49 C.F.R. § 213.9 (or any successor regulation). However, the Department shall have no duty to maintain the CSXT Tracks, and the Department does not guarantee the condition of the Virginia Tracks or that the Service will not be delayed or interrupted. If the Commissions contend the Department has failed to cause CSXT or other contractors to maintain the Virginia Tracks as anticipated by this Article Six, the Commissions may submit written notice of such contention to the Department, and within 30 days of such written notice the parties shall meet and confer to address and resolve such failure. If such meeting and conference does not finally resolve the issues noticed in the written notice submitted by the Commissions, either party may submit the matter pursuant to the dispute resolution provisions of this Agreement. However, in no event shall such failure, including but not limited to any FRA findings or reports, impose any liability on any of the Virginia Indemnites except as provided by Article Nine hereof with respect to gross negligence, nor shall any such failure absolve the

Commissions of any of the obligations imposed upon them by Article Nine hereof.

6.2 CSXT's Performance of Track Maintenance. The parties acknowledge their mutual expectation that, notwithstanding Section 6.1, CSXT (as a contractor to the Department) will undertake maintenance of all of the Virginia Tracks on behalf of the Department at least until Phase 2 of the Planned Improvements is complete. At such time as the Department decides to procure a contractor other than CSXT to perform Track Maintenance, it shall consult with the Commissions on criteria for contractor selection to the end of ensuring the interests of the Department and the Commissions are protected.

6.3 Clearing Wrecked Equipment. CSXT, in consultation with the Commissions, or the Commissions, as may be agreed upon with CSXT, will clear any crippled, disabled, or wrecked Trains or Equipment of the Commissions impeding traffic on the Virginia Tracks.

6.4 Passenger Station Facilities Maintenance. The Commissions shall be responsible to perform, at their own costs and expense, all maintenance and operation activities with respect to the Passenger Station Facilities used by the Commissions with respect to the Service, except to the extent maintenance

obligations are imposed upon other users of those Passenger Station Facilities, as noted in the Passenger Station Ground Lease Agreement.

6.5 Dispatching. The Department shall, during the term of this Agreement, cause CSXT or other contractors to dispatch the Virginia Tracks. The Parties acknowledge and agree that, because such dispatching services will be undertaken by parties other than the Department, the Department is not able to guarantee any outcomes with respect to such dispatching services. At such time as the Department decides to procure a contractor other than CSXT or NRPC to perform track dispatching, it shall consult with the Commissions on criteria for contractor selection to the end of ensuring the interests of the Department and the Commissions are protected.

ARTICLE SEVEN

CLAIMS SERVICE

7.1 Claims Service. The provision of Claims handling service in connection with any aspect of the Service shall be the exclusive responsibility of the Commissions, and in no event shall the Commissions or its Operator assert any right to require provision of such Claims handling service from the Department or any affiliate thereof.

ARTICLE EIGHT

LAW ENFORCEMENT SERVICES

8.1 Police. The provision of law enforcement services in connection with any aspect of the commuter passenger rail service shall be the exclusive responsibility of the Commissions, and in no event shall the Commissions or any Operator assert any right to require provision of the services of such law enforcement services from the Department. The Department shall be responsible for providing law enforcement services, including the policing of trespassers, on the Virginia Tracks and other Virginia-Acquired RF&P Assets. The Commissions will use reasonable efforts to have the local law enforcement personnel with whom the Commissions work to cooperate with the Department's and CSXT's law enforcement personnel with regard to the Department's and CSXT's policing of trespassers within the RF&P Corridor.

ARTICLE NINE

RISK OF LIABILITY

9.1 General Indemnity and Duty to Defend. The Commissions shall indemnify the Virginia Indemnitees against any Losses or potential Losses by a Virginia Indemnatee, related in any way to or arising from the Commissions' acts or failure to act (i) related in any way to the Commissions' operation of passenger facilities, or (ii) in providing the Service, including, without limitation, for the Commissions' failure to comply with this Agreement or applicable law. The Commissions shall indemnify the Virginia Indemnitees under this Article Nine whether or not such Losses or potential Losses are caused, in whole or in part, by the negligence, regardless of its character or degree, of a Virginia Indemnatee, and whether the damages are compensatory, punitive, or exemplary, provided, however, the Commissions shall not be required to indemnify Commonwealth employees and contractors in their individual capacities with respect to their own gross negligence (*i.e.*, wanton and willful misconduct). In addition, the Commissions shall defend the Virginia Indemnitees against all Claims asserted by third parties against a Virginia Indemnatee (i) related in any way to the Commissions' operation of passenger facilities, (ii) related in any way to or arising from the Commissions' acts or failure to act in providing the Service, or (iii) which are exacerbated by the operation of the Service over

the Tracks, or by the presence of cars, Equipment, personnel, contractors, agents, or passengers of the Commissions or an Operator on or about the RF&P Corridor.

9.2 Commuter Rail Operations Liability Insurance Plan. (a)

To guarantee payment of their obligations under this Article Nine, the Commissions shall, subject to the approval and continuing supervision of the Division, procure and at all times maintain a policy or policies of liability insurance, with annual aggregate limits of at least \$322,864,228.00 (or with such additional limits as may be required by the provisions of Section 9.3 hereof) covering the liability assumed by the Commissions under this Article Nine. Such insurance may consist of a program of self-insurance approved and administered by the Division for up to Five Million Dollars (\$5,000,000.00), with the balance of the coverage (at least \$317,864,228.00 in excess of the \$5,000,000.00 self-insured retention) to be obtained through commercial insurance. All insurance policies shall name the Department as an additional insured, shall provide liability insurance covering the liabilities assumed by the Commissions under this Agreement, and shall be endorsed to provide that the insurance company will give the Department thirty (30) days prior written notice if the policies are to be terminated or modified during the term of this Agreement. The Commissions shall provide the Department with

copies of all commercial insurance policies, including all current endorsements, carried by the Commissions pursuant to this Section 9.2, and a copy of all agreements, including amendments thereto, between the Commissions and the Division relating to the coverage, structure, administration, or funding of the Commissions' insurance program at least ten (10) business days before the commencement of any such policy, including all current endorsements.

Such copy shall be delivered to:

Director
Virginia Department of Rail and Public Transportation
600 East Main Street, Suite 2102
Richmond, VA 23219

Counsel for the Department of Rail and Public Transportation
Transportation Section
Office of the Attorney General
202 North 9th Street
Richmond, VA 23219

(b) **The Plan**. In accordance with Section 2.2-1839 of the Code of Virginia, the Division has established the Plan, a copy of which is attached as **EXHIBIT A** (The Plan). As soon as practicable after the execution of this Agreement, and in all cases prior to the Commissions operating trains on any tracks owned by the Department, the Parties shall cooperate in good faith, working with the Division, to (i) expressly add the Virginia Indemnitees to the Plan as insureds in writing (or collectively as an insured),

whether through an endorsement or through another means satisfactory to the Department, and (ii) amend the Commissions' insurance policies expressly in writing to reflect the Virginia Indemniteses as insureds. Thereafter, the Parties shall collaborate in good faith, working with other stakeholders, to update the Plan itself to reflect current insureds and other details. The Plan is and shall be maintained by the Commissions and administered by the Division. It is the intention of the parties that the Plan provides coverage for all liability which is or may be imposed upon or assumed by the Commissions under this Article Nine. The parties further agree that, subject to the additional criteria set forth in this Article Nine (including, but not limited to Sections 9.2 and 9.3), the Plan is sufficient, as of the date hereof, to fulfill the obligations of the Commissions with respect to the procurement and maintenance of liability insurance pursuant to Section 9.2(a). Subject to the limits of Virginia law, the Commissions' obligation set forth herein is absolute and Commissions shall be obligated to indemnify all Virginia Indemniteses for all Losses, potential Losses, and obligated to defend Claims as set forth in Section 9.1 and 9.2 of this Agreement. The Plan shall not be amended without the approval of the Department as provided in the Plan.

(c) **Plan Reports**. The Commissions shall provide to the Department a copy of all reports which are submitted pursuant to the Plan. The reports to be made pursuant to the Plan shall include the balance sheets and income statements of the Trust Fund.

(d) **Insurance Coverage Floor**. If, at any time, the total insurance coverage applicable to the liabilities assumed by the Commissions under this Article Nine falls below \$322,864,228.00 or, because of pending Claims, is reasonably expected to fall below \$322,864,228.00 (or, in each case, such greater coverage as may be required by the provisions of Section 9.3), or such coverage is otherwise subject to challenge or diminution for any reason (including, without limitation, court decisions or applicable laws or regulations affecting the validity or enforceability of the Plan or this Article Nine), the Commissions will ensure that notice of such fact is provided promptly by the Division to the Commissions, the Department, and the Operator. If the Commissions fail to immediately (*i.e.*, the day of such notice) restore the available insurance coverage to \$322,864,228.00 (or such higher level as may be required by the provisions of Section 9.3), or to otherwise obtain relief from any other causes which may diminish such coverage for any reason, the Service and all rights granted the Commissions under Article Three of this Agreement shall be immediately suspended and shall not be resumed until the full

\$322,864,228.00 in insurance coverage (or such higher levels as may be required by the provisions of Section 9.3) has been obtained; provided, however, the suspension of passenger service shall not occur until after the Department has consulted with the Commissions and determined that the coverage specified herein will not be promptly restored. Any increase in the amount of insurance coverage which results from the application of Section 9.3 shall automatically cause a proportionate adjustment to the limits specified in this Subsection 9.2(d).

(e) Trust Fund. The Division administers the Trust Fund for the purposes of implementing and funding the Commissions' obligations under the Plan and this Article Nine. The Commissions shall ensure that, at all times, the Trust Fund is solvent and adequately funded for the purposes contemplated by this Article Nine, and shall arrange for a review by the Division of the financial condition of such Trust Fund and the commercial insurance and self-insurance maintained under the Plan, from time to time, as requested by the Department. Such review shall include a written certification to the Department that the Trust Fund is solvent, and that if the Plan's insurance program fails to comply with the requirements of this Article Nine, or the Trust Fund is not adequately funded, the Division shall promptly give notice of such fact to the Department, the Commissions, and the Operator.

If the Department determines that the Trust Fund is not adequately funded, the Department may give notice of such fact to the Commissions. If the Commissions fail to immediately (*i.e.*, the day of such notice by the Division or the Department) provide funding in amounts determined by the Division or by the Department to be adequate or obtain the required insurance, the Service and all rights of the Commissions under Article Three of this Agreement shall be immediately suspended until such funding and/or insurance is provided; provided, however, the suspension of the Service shall not occur until after the Department has consulted with the Commissions and determined that adequate funding and/or insurance will not be promptly restored. Notwithstanding the foregoing, in the event that the Division fails to comply with any of the requirements of this Agreement, including but not limited to those set forth in this Article Nine, the Commissions shall take all actions, including the commencement of litigation and/or direct purchase of policies of insurance, to prevent a breach of such requirement.

(f) Material Breach for Failure to Failure to Comply with Insurance Requirements. In the event that the Department determines that either this Article Nine or the Plan (or the insurance coverage provided thereunder) is invalid or unenforceable for any reason, or that the Commissions have

otherwise failed to comply with their obligations under this Article Nine, such determination shall constitute a material breach of this Agreement.

9.3 Increases in Insurance Amounts under the Plan and Liability Limits under the Agreement. (a) If, as a result of any statute enacted by the Commonwealth of Virginia or the federal government, the maximum liability limitation of Commissions is increased to an amount in excess of \$322,864,228.00, then the minimum liability limit of \$322,864,228.00 set forth in Section 9.2 of this Article shall be automatically increased to the new maximum statutory liability of the Commissions and the liability insurance shall be amended to reflect such higher amount. If the exposure of any Virginia Indemnitee to liability under this Agreement or under the Passenger Station Ground Lease Agreement is increased by statute or judicial decision, the limits on the liability of the Commissions pursuant to this Agreement shall be increased proportionately and the limits of the liability insurance carried by the Commissions shall be increased to reflect such increased exposure. As a condition to employing self-insurance to cover such higher amount of increased exposure, the Commissions agree to obtain the advance approval of the Division. In the event the Commissions fail to obtain and maintain the insurance required by this Section for any reason (including the

unavailability of such insurance), then either party shall have the right to suspend the Service immediately upon delivery of written notice to the other.

(b) Review of Claims; Adjustments. At any time during the term of this Agreement, upon the Department's request, the parties hereto will review and evaluate the number and cost of Claims which have been made against the insurance carried by the Commissions, the actual and potential liabilities incurred by the Commissions for death, personal injury, or property damage, any relevant judicial decisions, inflation and current trends in the cost of tort claims, and the likelihood and potential cost of future Claims. Based on this review and evaluation, the parties will determine whether there are reasonable grounds to increase the limits and expand the coverage of the insurance required to be carried by the Commissions under Subsection 9.2(a) and Subsection 9.2(d) hereof. If the parties are unable to agree, the dispute shall be handled pursuant to Article Eleven hereof; provided, however, that in no event shall the liability of the Commissions or the amount of insurance to be carried by the Commissions be reduced below the limits required by Sections 9.2 and 9.3 hereof.

9.4 Passenger Station Ground Lease Agreement; Indemnity.

The rights granted to the Commissions in this Agreement relate to use of the Virginia Tracks for the operation of Trains.

Immediately upon the execution and delivery of this Agreement, the parties shall execute and deliver the Passenger Station Ground Lease Agreement with respect to the Passenger Station Facilities enumerated in **EXHIBIT D** (Passenger Station Ground Lease Agreement). It is contemplated that the Passenger Station Ground Lease Agreement may be amended or restated concerning the construction, maintenance, use, and removal of additional platforms or certain ancillary facilities located on platforms, including, among others, canopies, elevators, stairways, elevated walkways, for the accommodation of the Commissions' passengers. It is understood that the indemnification and insurance provisions of this Article Nine of this Agreement shall apply with respect to such construction, maintenance, use, and removal by the Commissions, any Operator, its or their employees, agents, contractors, passengers, invitees, and the general public of all Passenger Station Facilities used by the Commissions with respect to the Service.

9.5 Environmental Conditions; Indemnity. The Commissions expressly understand and agree that their obligations to indemnify the Virginia Indemnitees under the provisions of this Article Nine also extend to and include the obligation to indemnify against any and all Losses or potential Losses, and to defend Claims suffered by or asserted against a Virginia Indemnitee, as a direct or

indirect result of or due to the presence or escape of any hazardous materials, substances, wastes, or other environmentally regulated substances on or from the Tracks, a Train, or Equipment which presence or escape is attributable in any way to, or is exacerbated by, the operation of the Service over the Tracks or the presence of the Commissions' or any Operator's Equipment, personnel, or passengers on or about the RF&P Corridor.

9.6 Notice of Third-Party Claims. (a) The Department shall give notice to the Division and to the Commissions as soon as reasonably practicable whenever it receives credible notice from any third party that it is the intention of such third party to hold a Virginia Indemnatee responsible for an incident for which the Commissions are potentially liable under Article Nine.

(b) **Duty to Cooperate.** The Department agrees: (1) to cooperate in the defense of Claims of which it gives the Division notice hereunder; (2) to allow the Division, within its sole discretion (and consistent with all legal requirements), to settle or defend any such Claim; and (3) to execute all documents reasonably required to enable the Division to recover amounts paid by the Division on behalf of the Commissions to persons other than the Department.

ARTICLE TEN

RISK OF LABOR CLAIMS

For the avoidance of doubt, under Article Nine, the Commissions will indemnify and defend the Virginia Indemnitees against any Losses or potential Losses flowing from collective bargaining agreements to which the Commissions are a party or employee protective conditions imposed by a governmental agency on the Commissions.

ARTICLE ELEVEN

DISPUTE RESOLUTION

11.1 Efforts to Resolve; Advisory Opinions. The parties hereto shall make every reasonable effort to settle any dispute arising out of this Agreement without resorting to litigation. If the parties so agree, they may retain a disinterested person experienced in railroad operations, or an accountant or attorney if appropriate, to render his or her objective advice and opinions, which shall be advisory only and not binding unless the parties agree in writing to be bound by his or her judgment in a particular instance.

11.2 Legal Actions. Any claims or controversy between the Commissions and the Department, except matters which are within the discretion or judgment of the Department, which cannot be resolved by the parties concerning the interpretation, application, or implementation of this Agreement, may be resolved by either party filing a legal action. All litigation between the parties arising out of or pertaining to this Agreement shall be filed, heard, and decided in either (i) a Virginia Circuit Court with jurisdiction, or (ii) the United States District Court for the Eastern District of Virginia.

11.3 Duty to Continue Performance. Pending final resolution of any dispute, the parties will continue to fulfill their respective obligations under this Agreement.

11.4 Dispute Resolution Costs. Each party shall bear the costs and expenses incurred by it in connection with any litigation, and neither party will seek or accept an award of attorneys' fees or costs incurred in connection with the resolution of a dispute pursuant to this Article Eleven.

ARTICLE TWELVE

MATERIAL BREACH

12.1 Material Breach - Safety. Failure on the part of the Commissions or its Operator to comply with the conditions of Article Two related to safety of operations or as provided in Subsection 2.5(a) of Article Two, or failure to comply with any other conditions of Article Two shall constitute a material breach by the Commissions.

12.2 Material Breach - Plan. Failure on the part of the Commissions to comply with the material provisions of Article Nine hereof, including their obligation to obtain and maintain insurance for the benefit of the Department, shall constitute a material breach by the Commissions.

12.3 Material Breach - General. Failure on the part of the Commissions to substantially comply with any material obligation under this Agreement shall constitute a material breach by the Commissions.

12.4 Suspension and Termination for Material Breach. If the Commissions are in material breach of this Agreement, the Department may among other remedies available to it at law or in equity, upon written notice to the Commissions, immediately suspend the Service until the Commissions have effected a cure

with respect to the material breach, or until the Commissions have commenced a cure and are diligently pursuing completion thereof - in either case to the reasonable satisfaction of the Department. Upon any written notice provided by the Department to the Commissions of material breach by the Commissions (and even if the Department has not elected to suspend the Service) the parties shall meet and confer with respect to the cure to be pursued by the Commissions. The Department may terminate this Agreement if the Commissions have failed to cure or to commence a cure and diligently pursue the completion thereof within 180 days of the applicable notice of material breach delivered by the Department. However, even if this Agreement is not terminated, nothing shall compel the Department to lift any suspension of the Service until the Commissions have effected a cure with respect to the applicable material breach, or until the Commissions have commenced a cure and are diligently pursuing completion thereof - in either case to the reasonable satisfaction of the Department.

ARTICLE THIRTEEN

NOTICES

13.1 Notice. Any report, notice, or other communication required or permitted hereunder shall, unless otherwise specified, be in writing and shall be delivered (i) by email with a return email by the recipient acknowledging receipt, (ii) by hand, or (iii) deposited in the United States mail, postage prepaid, addressed as follows:

If to the Department:

Director
Virginia Department of Rail and Public Transportation
600 East Main Street, Suite 2102
Richmond, VA 23219

Counsel for the Department of Rail and Public
Transportation
Transportation Section
Office of the Attorney General
202 North 9th Street
Richmond, VA 23219

If to Commissions:

Chief Executive Officer
Virginia Railway Express
1500 King Street, Suite 202
Alexandria, Virginia 22314

(With a copy to the

County Attorney of Arlington County
2100 Clarendon Boulevard, Suite 403
Arlington, Virginia 22201)

Either party may change the address at which it shall receive communications and notifications hereunder by notifying the other party in writing of such change.

ARTICLE FOURTEEN

MISCELLANEOUS

14.1 Force Majeure. Each party will be excused from performance of any of its obligations hereunder (except Article Nine), to the other party, where such nonperformance is occasioned by a Force Majeure Event, provided that the party excused hereunder shall use all reasonable efforts to minimize its nonperformance and to overcome, remedy or remove such event in the shortest practical time. The Department and the Commissions shall promptly undertake and complete the repair, restoration, or replacement of any their respective property which is necessary for the provision of the Service, or for the performance of any of one another's obligations hereunder which is damaged or destroyed as a result of a Force Majeure Event.

14.2 Headings. The article and section headings herein are for convenience only and shall not affect the construction hereof.

14.3 Written Modifications. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing signed by all of the parties hereto, unless a specific provision hereof expressly permits one party to effect termination, amendment, supplementation, waiver or modification hereunder, in which case

such change shall be made in accordance with the terms of such provision.

14.4 Exhibits. All exhibits attached hereto, and as they may be amended, are integral parts of this Agreement and the provisions set forth in the exhibits shall bind the parties hereto to the same extent as if such provisions had been set forth in their entirety in the main body of this Agreement.

14.5 Severability. In the event that any provision of this Agreement is found to be invalid or unenforceable in any respect, the remaining provisions shall remain in full force and effect as if the unenforceable provision were deleted.

14.6 No Waiver. The failure of either party to insist at any time upon the strict observance or performance of any of the provisions of this Agreement, or to exercise any right or remedy in this Agreement, shall not impair any such right or remedy to be construed as a waiver or relinquishment thereof.

14.7 No Third-Party Beneficiaries. Except (for the purposes of Article Nine only) for those Virginia Indemnitees and the CSXT Indemnitees that are not a party to this Agreement, this Agreement and each and every provision hereof are for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be construed as creating or

increasing any right in any third party to recovery by way of damages or otherwise against either of the parties hereto.

14.8 Assignment. The Department shall assign all of its duties and rights under this Agreement to the Virginia Passenger Rail Authority, without the prior consent of the Commissions. Otherwise, the rights and obligations of the Department and the Commissions hereunder may be assigned only with the prior consent of the other parties.

14.9 Joint and Several Liability - Commissions. While it is understood and agreed that the Commissions shall act together in all matters affecting the Service, the rights and obligations of the Commissions hereunder shall be shared jointly and severally.

14.10 Governing Laws. This Agreement shall be governed by the laws of the Commonwealth of Virginia, without regard for conflict of laws principles.

IN WITNESS WHEREOF, the Department and the Commissions have caused their names to be signed hereto by their officers thereunto duly authorized and their seals, duly attested, to be hereunto affixed as of the day and year first above written.

[SIGNATURES PAGES FOLLOW]

Attest:

VIRGINIA DEPARTMENT OF RAIL AND
PUBLIC TRANSPORTATION

BSDavis
Secretary

By: Jennifer Mitchell
Title: Director

[SIGNATURE PAGE TO PASSENGER RAIL OPERATIONS AND ACCESS AGREEMENT]

Attest:

NORTHERN VIRGINIA TRANSPORTATION
COMMISSION

Carl H. Johnson
Secretary

By: David A. Dett
Title: Chief Executive Officer

Attest:

POTOMAC AND RAPPAHANNOCK
TRANSPORTATION COMMISSION

Carl H. Johnson
Secretary

By: David A. Dett
Title: Chief Executive Officer

[SIGNATURE PAGE TO PASSENGER RAIL OPERATIONS AND ACCESS AGREEMENT]

EXHIBIT A – THE PLAN

NORTHERN VIRGINIA AND POTOMAC AND RAPPAHANNOCK TRANSPORTATION COMMISSIONS COMMUTER RAIL OPERATIONS LIABILITY INSURANCE PLAN

The Department of General Services, Division of Risk Management, in accordance with Section 2.1-526.8:1 of the Code of Virginia (1950), as amended, with the approval of the Governor, hereby establishes the terms and conditions of the Northern Virginia and Potomac and Rappahannock Transportation Commissions (hereinafter the “Commissions”) Liability Insurance Plan (hereinafter the “Plan”) established to fulfill the liabilities created by the indemnification portions of the various Operating and/or Access Agreements entered into between the Commissions and the several Rail Entities as well as direct liabilities of the Commissions arising out of the operation of the Commuter Services.

The Plan and all INSUREDS/INDEMNITEES, as defined herein, agree as follows:

PART A. INSURING AGREEMENT

The Plan will pay on behalf of the INSURED/INDEMNITEE as defined hereafter all sums which the INSURED/INDEMNITEE shall become legally obligated to pay as DAMAGES as a result of OCCURRENCES. Such coverage provided hereunder shall be applicable despite the fact that such liability may have been caused, in whole or in part, by the negligence, regardless of its character or degree, of any employee, agent, or officer of any Rail Entity which has entered into an Agreement with the Commissions for the provision of COMMUTER RAIL SERVICE.

PART B. DEFENSE, SETTLEMENT AND SUPPLEMENTARY PAYMENTS

- 1) The Plan shall have the right and duty to defend any suit against the INSURED/INDEMNITEE seeking DAMAGES on account of such OCCURRENCE for which the Commissions are responsible pursuant to the respective Agreements, even if any of the allegations of the suit are groundless, false, or fraudulent, and may make such investigation and settlement, subject to the provisions of B(2)(b), of any claim or suit as it deems expedient; provided, however, the Plan shall not be obligated to pay any claim or judgment or defend any suit, after the applicable limit of the Plan’s liability has been exhausted by payment of judgments, settlements, or supplementary expense payments, except as provided in Part B(4) below.

With respect to claims for which the Commissions are responsible and which involve litigation against the INSURED/INDEMNITEE, the Commissions will provide, at the Plan’s expense, legal representation. Selection of counsel to represent any INSURED/INDEMNITEE in such litigation shall be determined by the Plan. The INSUREDS/INDEMNITEES may, at their own expense, provide for legal representation with respect to claims which involve litigation against them.

- 2) a) An INSURED/INDEMNITEE shall not, except at his own cost and for his own account, make any payment, admit any liability, settle any claim, assume any obligation, or incur any expense for which the Plan would be liable without the written consent of the Plan except as provided below. Each INSURED/INDEMNITEE, as the case may be, will promptly advise the Plan of claims. The Plan, however, agrees that AMTRAK will handle, subject to the Division of Risk Management's oversight, the investigation and settlement of all claims arising out of the COMMUTER RAIL SERVICE. The Division of Risk Management and AMTRAK will coordinate the investigation of all claims. Specifically, AMTRAK will evaluate each claim it receives upon receipt and provide the Commissions and the Division of Risk Management with an initial report. AMTRAK will also submit, at least semiannually, a report on all claims of which it is aware of indicating status. The Division of Risk Management specifically agrees that AMTRAK has the authority to settle and pay individual claims up to \$10,000.00 for any one claim . Any proposed settlement or payment of a single claim which is in excess of \$10,000 will be submitted to the Division of Risk Management for prior approval.
- 3) The Plan will pay, as supplementary expenses:
 - a) expenses for reasonable attorneys fees incurred in the defense of claims;
 - b) expenses incurred by the INSURED/INDEMNITEES for outside manpower and for other extraordinary expenses of handling individual claims, as set out in the Operating and/or Access Agreements, provided prompt and advance notice of such expenses is provided the Plan;
 - c) costs assessed against the INSURED/INDEMNITEE in any suit covered by the Plan and all interest on the amount of any judgment therein which accrues after entry of the judgment and before the Plan has paid or tendered or deposited in court that part of the judgment;
 - d) premiums on appeal bonds required in any suit covered by the Plan and costs of attachment or similar bonds.
- 4) a) The expenses referred to in subparagraphs 3(a) through 3(d) above shall be in addition to the \$75,000 per claimant limit set out in Part C(1), but shall be included within the limits set out in Part C(2).
 - b) If suit is brought against an INSURED/INDEMNITEE alleging claims not arising out of an OCCURRENCE and for which the Commissions are not responsible together with claims arising out of an Occurrence for which the Commissions are responsible, the INSURED/INDEMNITEE and the Commissions, with the Plan's approval, will agree on a method of allocating equitably the costs of defense described in subparagraphs 3(a) through 3(d) above.

PART C. LIMITS OF LIABILITY

Regardless of the number of (1) INSUREDS/INDEMNITEES under this Plan, (2) persons or organizations who sustain DAMAGES payable under this PLAN, or (3) suits brought on account of insurance afforded by this Plan, the Plan's liability is limited as follows:

- 1) The Plan's liability with respect to any Insured defined in Part E(4)(a) shall not exceed \$75,000.00 per claimant;
- 2) With regard to the liability of any Insured Rail Entity or Liability Assumed by the Commissions by specific contractual indemnity;
 - a) The limit of liability under this Plan, regardless of the number of claims or the number of Insureds, shall not exceed \$200,000,000 as a result of, or arising from, OCCURRENCES in any one ANNUAL TERM.
 - b) This limit of liability required by 2(a) above may be fulfilled by self-insurance, purchased commercial insurance or participation in any alternative insurance mechanism, provided, however, that the extent of liability covered under this Plan shall not be reduced by, or limited to, the coverage provided by any such insurance. The reinstatement of all or any portion of any insurance coverage purchased by the Plan shall not operate to increase the annual aggregate liability of the Commissions under the Plan's self-insurance provisions to a sum in excess of \$200,000,000.
 - c) The Plan shall consist of a \$5 million self-insured retention and the balance of the coverage up to \$200 million shall consist of commercial insurance or participation in any financially sound alternative insurance mechanism. Except for the initial \$5 million self-insurance retention, self-insurance shall be used only to the extent that commercial insurance or alternative insurance mechanisms are not available.
- 3) In the event that the Commuter Rail Operations Liability Insurance Trust Fund created and maintained for the purpose of implementing this Plan is rendered or becomes insolvent, neither the Commonwealth of Virginia, the General Assembly of Virginia nor any department, agency, institution, board, commission or officer, agent or employee, or any of the constituent jurisdictions of either Commission or any officer, agent or employee thereof, shall be liable for any claim that would have been covered under this Plan but for such insolvency. The establishment of this Plan does not, and shall not be deemed or construed to, pledge or obligate the full faith and credit of the Commonwealth of Virginia or any political subdivision thereof.

The determination of such insolvency rests solely with the Department of General Services, Division of Risk Management, and will be communicated promptly to all INSUREDS/INDEMNITEES. The financial status of the Plan shall be reported to the INSUREDS/INDEMNITEES at least semiannually.

PART D. EXCLUSIONS

- 1) The Plan shall not be obligated to make any payment or defend any lawsuit in connection with any claim made against the INSURED/INDEMNITEE:

- a) Based upon or attributed to their gaining in fact any profit, advantage or remuneration to which they were not legally entitled;
- b) Brought about or contributed to by fraud or dishonesty of an INSURED/INDEMNITEE; provided, however, such exclusion shall not be effective unless a judgment or other final adjudication thereof adverse to such INSURED/INDEMNITEE shall establish that acts of active or deliberate dishonesty or fraud committed by such INSURED/INDEMNITEE were material to the cause of action so adjudicated; and further provided that this exclusion shall not apply to any INSURED/INDEMNITEE other than the entity, including its officers and employees, who committed such fraud or dishonesty.
- c) Based on liability arising out of the ownership, maintenance and operation, loading or unloading of vehicles of any kind licensed for use on public highways, except that this exclusion shall not apply to vehicles hired by AMTRAK to provide transportation for commuters due to the necessity which arises on account of an interruption of service due to malfunction of the train, accident or other conditions which require passengers to be transported by means other than trains or hybrid vehicles when not covered by automobile insurance. Any insurance or self-insurance provided by this Plan shall be excess over any other valid and collectable insurance maintained with respect to those hired vehicles.

In no event will any coverage by the Plan accrue to owners or operators of such hired vehicles.

Notwithstanding this exclusion, the Plan shall cover liability arising from a collision between a train and vehicle licensed for use on public highways, which occurs at a grade crossing, or anywhere else on the tracks over which a commuter rail train is being operated.

- d) Based on any injury or death to employees of any INSURED/INDEMNITEE arising out of the COMMUTER RAIL SERVICE, except this exclusion shall not apply to any injury or death to employees of Conrail, RF&P or Southern.
- e) Based on property damage to property owned or leased by the Northern Virginia Transportation Commission or the Potomac and Rappahannock Transportation Commission unless such claim is asserted against one or more of the rail entities named in Part E (4) (b2), (b3) and (b4) and (5) of this Plan.

This exclusion shall not apply to property of any other INSURED/INDEMNITEE or to property of other persons. Further, this exclusion shall not apply to the deductible amount of any property insurance for property owned or leased by the Northern Virginia Transportation Commission and the Potomac and Rappahannock Transportation Commission.

- f) Based on any claims arising from any contract dispute, provided however that this exclusion shall in no way apply to liability assumed by the Commissions by

contract with Rail Entities, namely the National Railroad Passenger Corporation (AMTRAK), Richmond, Fredericksburg & Potomac Railroad Company (RF&P), Southern Railway Company (Southern), and Consolidated Rail Corporation (Conrail).

- g) Any claim for, or arising out of, normal wear or deterioration of roadbed and track, routine personnel requirements, delays, or any other loss or damage attributable to or exacerbated by the normal operations of the COMMUTER RAIL SERVICE, which are taken into account under the compensation provisions of any OPERATING AND/OR ACCESS AGREEMENTS.

PART E. PART E. DEFINITIONS

Whenever used in this Plan, the following words have these meanings:

- 1) ANNUAL TERM - means:

Any twelve month period beginning July 1. If the Commuter Rail Service begins operation, which may or may not be the date that passengers are first transported, other than on 1 July. That period between the date operations begin and the July 1 next ensuing shall constitute an annual term.

- 2) COMMUTER RAIL SERVICE (also known as Contract Service) means all activities relating to the provision of rail passenger service along two lines between a point at or near Fredericksburg, Virginia and the Washington, D.C. Union Station, and between a point at or near Manassas Airport, Virginia and Washington, D.C. Union Station over the railroad tracks of the Richmond, Fredericksburg and Potomac Railroad Company, Southern Railway Company, AMTRAK and Conrail with various intermediate stops. This term includes switching, maintenance, train storage and other services related to the provision of Commuter Rail Service as set forth in the Operating and/or Access Agreements.

- 3) DAMAGES - includes compensatory, liabilities assumed under the Operating and/or Access Agreements--Risk of Liability Article, punitive and equitable damages.

- 4) INSURED - means:

- a) The Northern Virginia Transportation Commission, the Potomac and Rappahannock Transportation Commission, and any other Transportation Commission subject to the Virginia Tort. Claims Act that may become a participant in the Commuter Rail Service operated by or for the Commissions.

- b) 1) the officers and employees of the Northern Virginia Transportation Commission and the Potomac and Rappahannock Transportation Commission;

- 2) the National Railroad Passenger Corporation (AMTRAK), its officers, directors, agents and employees, including the Washington Terminal Company, its officers, directors, agents and employees;
 - 3) The Richmond, Fredericksburg and Potomac Railroad Company (RF&P), the RF&P Corporation, its corporate affiliates, its licensees including entities which have trackage rights with RF&P to the extent RF&P may be liable, its officers, directors, agents and employees; and
 - 4) The Consolidated Rail Corporation (CONRAIL), its corporate affiliates, its licensees including entities which have trackage rights with Conrail to the extent Conrail may be liable, its licensees, officers and employees.
- 5) INDEMNITEE - means Southern Railway Company, its officers, agents, employees and corporate affiliates.
 - 6) OCCURRENCE - means an event or series of events which are attributable in any way to or which are exacerbated by the operation of or the performance of the Commuter Rail Service or to the presence of cars, equipment, personnel or passengers of the Commuter Rail Service on or about the property of any Rail Entity.
 - 7) OPERATING AND/OR ACCESS AGREEMENTS - means Agreements between the Commissions and any railroad for use of its respective facilities and for services to operate the Commuter Rail Service.

PART F. NOTICE OF CLAIM

- 1) The INSURED/INDEMNITEE, as a condition precedent to coverage under this Plan, shall give the Plan notice in writing as soon as practicable of any claim made and shall give the Plan such information and cooperation as it may reasonably require. Such notice shall be given to the Division of Risk Management, Department of General Services, Commonwealth of Virginia.
- 2) If, during the period of coverage, an INSURED/INDEMNITEE receives written or oral notice from any party that it is the intention of such party to hold an INSURED/INDEMNITEE responsible for loss or damage arising from an OCCURRENCE, such INSURED/INDEMNITEE shall, as soon as practicable, give written notice to the Plan of the receipt of such notice, whether or not such notice is expressed in the form of a claim.

PART G. PART G. CONDITIONS

- 1) ACTION UNDER THIS PLAN. No action shall be brought by any INSURED/INDEMNITEE under this Plan unless, as a condition precedent thereto, such INSURED/INDEMNITEE has fully complied with all the terms hereof nor until the amount of the INSURED/INDEMNITEE'S obligation to pay shall have been finally determined either by judgment against the INSURED/INDEMNITEE after actual trial or

by written agreement of the INSURED/INDEMNITEE, the claimant and the Plan. In the event of the bankruptcy or insolvency of the INSURED/INDEMNITEE, the Plan shall not be relieved of the payment of such indemnity hereunder as would have been payable but for such bankruptcy or insolvency.

- 2) ASSIGNMENT. Assignment of interest under this Plan shall not bind the Plan until its consent is endorsed thereon by the Division of Risk Management.
- 3) CHANGES. Notice to any agent or knowledge possessed by any agent or by any other person shall neither effect a waiver or a change in any part of this Plan nor estop the Plan from asserting any right under the terms hereof. No provisions of this Plan may be waived or changed, except by amendment hereto approved in accordance with Section 2.1-526:8.1 of the Code and except with the approval of all INSUREDS/INDEMNITEES.
- 4) SUBROGATION CLAUSE. In the event of any payment under this Plan, the Plan shall be subrogated to the extent of such payment to all rights of recovery therefor, and the INSUREDS/INDEMNITEES shall execute all papers required and shall do everything that may be necessary to secure and preserve such rights including the execution of such documents necessary to enable the Plan effectively to bring suit in the name of the INSURED/INDEMNITEE.
- 5) SETTLEMENT OF DISPUTES.
 - a) To the extent permitted by law, issues that arise about the coverage or operation of this Plan, excluding interpretations or applications of provisions of an Operating and/or Access. Agreement between the Commissions and an INSURED/INDEMNITEE, that cannot be resolved between any INSURED/INDEMNITEE and the Plan, shall be resolved by submitting the matter to arbitration as provided in Part G(5)(b) below.
 - b) Any controversy which is referable to arbitration shall be submitted to disinterested arbitrators, one of which shall be appointed by each disputant; and the arbitrators so chosen shall select a third arbitrator, or such numbers of arbitrators that would result in an uneven number of arbitrators if there are an odd number of disputants, and the decisions of a majority of them shall be final and conclusive between the parties hereto. In case either of the said parties shall fail or refuse to appoint an arbitrator as aforesaid for the period of thirty (30) calendar days after written notice given by the other party to make such appointment, then and in that event, a second arbitrator shall be appointed, upon application of the first arbitrator, by the American Arbitration Association, and the said two arbitrators, so appointed, shall select a third arbitrator, and the three so chosen shall hear and decide such difference or dispute, and their decision, or that of a majority of them, shall be final and conclusive upon the parties hereto. In the event that the appointed arbitrators shall be unable to agree upon a third or such additional arbitrators within thirty (30) days after the appointment of the last of the disputant's arbitrators, as needed to comprise an odd-numbered panel, such additional arbitrator or arbitrators shall

be appointed, upon the application of any party hereto, upon reasonable notice to the other parties, by the American Arbitration Association. If any arbitrator shall decline or fail to act, the party or person by whom he was chosen or appointed, as the case may be, shall appoint another to act in his place.

- c) Each party hereto shall bear the costs and expenses incurred by it in connection with such arbitration, including the cost of the arbitrator appointed by or for it. The parties shall share equally the costs and expenses attributable to the services of the third arbitrator or additional arbitrators provided for herein.
 - d) Any findings made in any other proceeding involving the conduct out of which the dispute arises may be considered by the arbitrators, but shall not be conclusive, unless the arbitrators so determine.
- 6) No person or organization shall have any right under this plan to join the Commonwealth of Virginia, the Division of Risk Management, or any of its employees as a party to any action against an INSURED/INDEMNITEE to determine the liability of the INSURED/INDEMNITEE, nor shall the Commonwealth of Virginia, the Division of Risk Management, or any of its employees be impleaded by the INSURED/INDEMNITEE or its legal representative.

PART H. NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT
(Broad Form)

This endorsement modifies the provisions of this Plan relating to ALL COVERAGE.

It is agreed that:

- 1) This Plan does not apply:
 - A) Under any Liability Coverage,
 - 1) with respect to which an INSURED/INDEMNITEE under this policy is also an INSURED under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an INSURED under any such policy but for its termination upon exhaustion of its limit of liability; or
 - 2) resulting from the HAZARDOUS PROPERTIES OF NUCLEAR MATERIAL and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 954, or any law amendatory thereof, or (b) the INSURED/INDEMNITEE is, or had this policy not been issued would be, entitled to indemnity from the United States of American, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

- B) Liability resulting from the HAZARDOUS PROPERTIES of NUCLEAR MATERIAL, if
- 1) the NUCLEAR MATERIAL a) is at any NUCLEAR FACILITY owned by, or operated by or on behalf of an INSURED/INDEMNITEE or b) has been discharged or dispersed therefrom.
 - 2) the NUCLEAR MATERIAL is contained in SPENT FUEL or WASTE at any time possessed, handled, used, processed, stored, transported, or disposed of by or on behalf of the INSURED/INDEMNITEE, or
 - 3) Any injury or damage arises out of the furnishing by an INSURED/INDEMNITEE of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any NUCLEAR FACILITY, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to damage to such NUCLEAR FACILITY and any property threat.

- 2) As used in this endorsement:

“HAZARDOUS PROPERTIES” include radioactive, toxic or explosive properties.

“NUCLEAR MATERIAL” means SOURCE MATERIAL, SPECIAL NUCLEAR MATERIAL or BY-PRODUCT MATERIAL.

“SOURCE MATERIAL”, “SPECIAL NUCLEAR MATERIAL”, and “BY-PRODUCT MATERIAL” have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

“SPENT FUEL” means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a NUCLEAR REACTOR.

“WASTE” means any waste material (a) containing by-product material other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its SOURCE MATERIAL content, and (b) resulting from the operation by any person or organization of any NUCLEAR FACILITY included under the first two paragraphs of the definition of NUCLEAR FACILITY.

“NUCLEAR FACILITY” means

- a) any NUCLEAR REACTOR.
- b) any equipment or device designed or used for
 - (1) separating the isotopes of uranium or plutonium,
 - (2) processing or utilizing SPENT FUEL, or (3) handling, processing, or packaging WASTE.

- c) any equipment or device used for the processing, fabricating or alloying of SPECIAL NUCLEAR MATERIAL if at any time the total amount of such material in the custody of the INSURED/INDEMNITEE at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235.
- d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of WASTE.

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

“NUCLEAR REACTOR” means any apparatus designed or used to sustain, nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

“DAMAGE” includes all forms of radioactive contamination of property.

IN WITNESS WHEREOF, this Plan has been executed this _____ day of December, 1989.

APPROVED:

Don W. LeMond, Director
Division of Risk Management

Wendell L. Seldon, Director
Department of General Services

APPROVED BY THE GOVERNOR:

Secretary of Administration, pursuant
to the authority of Executive Order 25
(Revised), dated November 14, 1986

EXHIBIT B - SERVICE PLAN

EXHIBIT C – PLANNED IMPROVEMENTS

Project Name	Project Limits
L’Enfant Fourth Track and Station Improvements	CFP 112.2 – CFP 111.5
New Long Bridge for Passenger Rail	CFP 111.5 – CFP 110.1
Alexandria Fourth Track	CFP 110.1 – CFP 104.3
Franconia Springfield Bypass	CFP 98.8 – CFP 96.2
Railroad Bridge Over Newington Road	CFP 96.2 – CFP 95.1
Franconia to Lorton Third Track	CFP 95.1 – CFP 92.3
Railroad Bridge Over Route 1	CFP 91.1 – CFP 90.1
Neabsco Creek to Woodbridge Third Track – Siding D	CFP 88.7 - CFP 84.8
Aquia Creek Third Track – Siding E	CFP 70.7 – CFP 68.1
Potomac Creek Third Track – Siding A	CFP 65.2 – CFP 61.3
Crossroads Third Track – Siding F	CFP 52.8 – CFP 48.7
Woodford to Milford Third Track – Siding B	CFP 43.5 – CFP 40.4
Hanover Third Track – Siding C	CFP 18.7 – CFP 15.5

EXHIBIT D

PASSENGER STATION GROUND LEASE AGREEMENT

THIS PASSENGER STATION GROUND LEASE AGREEMENT (“Lease Agreement”) is made and entered into this ___ day of March, 2021, by and between the VIRGINIA DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION (“DRPT”) as Lessor, and THE NORTHERN VIRGINIA TRANSPORTATION COMMISSION and THE POTOMAC AND RAPPAHANNOCK TRANSPORTATION COMMISSION, jointly and severally, as Lessee, bodies politic and corporate and political subdivisions of the Commonwealth of Virginia, established under provisions of the Transportation District Act of 1964, as amended (each a “Commission” and, collectively, the “Commissions”).

WITNESSETH:

WHEREAS, DRPT is the owner of certain interests in real estate in the Commonwealth of Virginia and other improvements on such land; and

WHEREAS, the real estate acquired by DRPT included, among improvements, passenger rail facility improvements made by the Commissions (“VRE Stations Sites”) and passenger rail facility improvements made prior to the start of the Commissions’ commuter rail service in 1992 (“Legacy Station Sites”); and

WHEREAS, the parties have entered into a Passenger Rail Operations and Access Agreement dated March ___, 2021 (the “Operating Agreement”) under which they have agreed to enter into this Lease Agreement; and

WHEREAS, the purpose of this Lease Agreement is to set forth the terms and conditions on which the Commissions shall lease certain real property and certain improvements owned by DRPT, including the Legacy Station Sites, from DRPT, for the construction, maintenance, and operation of commuter rail facilities.

NOW THEREFORE, for and in consideration of the rents or sums of money hereinafter agreed to be paid by the Commissions, and of the covenants upon the part of the Commissions to be kept and performed, as hereinafter expressed, it is agreed between the parties hereto as follows:

1. PREMISES

Subject to the terms of this Lease Agreement, DRPT hereby leases to the Commissions the rights described herein to each of the properties more particularly described on Appendix A, as amended from time to time (hereinafter referred to collectively, as the “Premises” and, individually, either as a VRE Station Site or a Legacy Station Site). The parties may agree, from time to time, to amend this Lease Agreement to provide for the leasing of additional property by DRPT to the Commissions. In such event, any such additional property shall also be referred to as a “VRE Station Site,” the term “Premises” shall include such additional property, and the rent due hereunder shall be adjusted accordingly, as provided by Section 3(c) hereof. In addition to the Premises, DRPT hereby leases to the Commissions the property located at 9400 Crossroads

Parkway, Fredericksburg, Virginia 22408, and used as part of the Commissions' storage and maintenance facility, and more particularly described on Appendix C (hereinafter referred to as the "Crossroads Property").

2. TERM

(a) This Lease Agreement shall become effective as of March ____, 2021 (the "Commencement Date") and shall continue in effect for the life of, and be coterminous with, the Operating Agreement. The period between the Commencement Date and the expiration or early termination of this Lease Agreement shall be the "Term."

(b) At any time during the Term, either party may deliver notice to the other party of such party's wish to arrange a meeting of representatives of the Commissions and DRPT to review this Lease Agreement and to discuss possible modifications thereof. However, neither DRPT nor the Commissions shall be obligated to modify this Lease Agreement, except as provided in Section 3.

3. RENT

(a) During the Term, the Commissions will pay to DRPT rental amounts as shown on Appendix B on a yearly basis for the use and occupancy of the Premises, which rental shall be payable in arrears. The Commissions will pay to DRPT the rental amounts shown on Appendix B for use and occupancy of the Crossroads Property. Rental payments will be due during the month of July covering the annual period between (i) July 1 of the immediately-prior calendar year, and (ii) June 30 of the then-current calendar year.

(b) In the event of the addition of property to this Lease Agreement pursuant to Section 1, Appendix B shall be amended to reflect the annual rent attributable to such property, and the Commissions shall pay prorated annual rent proportional to the partial year the Commissions had use of such property under this Lease Agreement.

(c) **[reserved]**

(d) **[reserved]**

(e) During the Term, if the Commissions' use of the Premises materially changes or if DRPT otherwise deems it necessary to adjust the rental amounts, then DRPT may provide written notice to the Commissions no later than 180 days prior to the beginning of the Commissions' next-occurring fiscal year that DRPT intends to modify the annual rental amounts upon the start of such upcoming fiscal year. Thereafter, the parties may meet and confer in good faith with respect to the appropriate modifications to the annual rental amounts. However, after such meeting and conference, DRPT, acting reasonably, shall have the unilateral right to modify the annual rental amounts for the upcoming fiscal year and shall notify the Commissions of its final determination with respect to such modifications no later than 60 days prior to the beginning of the fiscal year during which the modifications will take effect. In no event shall the annual rental amount for any component of the Premises exceed the rental amount paid by the Commissions to CSXT with respect to such component of the Premises as of December 1, 2020, escalated by three percent (3%) on each anniversary of December 1, 2020.

(f) If the Commissions shall default in the payment of rent for a period of thirty (30) days after the same shall be due as herein provided, the Commissions shall pay DRPT a late charge at the rate of one and one-half percent (1.5%) per month on the amount in default until all defaults in payments are cured. Any subsequent rent shall be applied first toward any unpaid penalty amounts and payments in default, then the balance, if any, shall be applied toward such subsequent rent obligations then due. The provisions of this Subsection (f) of Section 3 shall be in addition to the rights of DRPT provided in Section 12 hereof.

(g) Acceptance of rent by DRPT, even though the Commissions are in default of other terms of this Lease Agreement, shall not be deemed a waiver by DRPT of a default of any other provision of this Lease Agreement.

4. USE

(a) The Commissions will occupy and use the Premises only for the purposes permitted by this Section 4. No assignment or sublease of this Lease Agreement or any part of the term shall be made by the Commissions without the prior written consent of DRPT, which consent may be withheld for any reason. Occupation, use and possession of the VRE Station Sites shall be by the Commissions and those to whom the Commissions grant permission to occupy and use the Premises, and no other person or corporation. Occupation, use and possession of the Legacy Station Sites shall be by the Commissions and those to whom the DRPT grants permission to occupy and use the Legacy Station Sites.

(b) Unauthorized use by the Commissions of the Premises or DRPT's adjoining property, if any, shall constitute a default and, at the option of DRPT, shall be cause for termination in accordance with Section 12(a) hereof.

(c) The Premises shall be used by the Commissions solely for the construction of the commuter rail station and related facilities and improvements, and subject to the provisions of Section 7 hereof, the maintenance and operation of such improvements and the Premises, and the embarking and debarking of passengers on the Virginia Railway Express (as defined in the Operating Agreement) commuter service and the passengers of other passenger rail service providers permitted by the Commissions to use the VRE Station Sites. In addition, portions of the VRE Station Sites may be used for commercial activities including but not limited to the following: (1) passenger ticket sales by a vending-type machine and (2) newspaper and periodicals vending sales, provided such activities do not unreasonably interfere with DRPT's use of its property or pose an unreasonably safety risk to freight or passenger rail operations.

5. USE OF PROPERTY; HAZARDOUS SUBSTANCE

(a) The Commissions shall not cause or permit any Hazardous Substance to be used, stored, generated or disposed of on or in the Premises by the Commissions, their agents, employees, contractors or invitees, without first obtaining DRPT's written consent, which consent may be withheld for any reason. The Commissions shall indemnify and hold harmless the "Virginia Indemnitees" (as defined in the Operating Agreement), pursuant to the terms of Section 10 hereof, from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses, arising from the use, generation or disposal of Hazardous Substances or the contamination of the

Premises in any manner caused or permitted by the Commissions, the Operator (as defined in the Operating and Access Agreement), or the Commissions' passengers or invitees. This indemnification includes, without limitation, any and all costs incurred by DRPT because of any investigation of the Premises or any cleanup, removal or restoration mandated by a federal, state, or local agency or political subdivision. Without limitation of the foregoing, if the Commissions cause or permit the presence of any Hazardous Substance on the Premises that results in contamination, the Commissions shall promptly, at their sole expense, take any and all necessary actions to return the Premises to the condition reasonably equivalent to that existing on the Premises at the commencement of the Lease term. The Commissions shall first obtain DRPT's approval for any such remedial action; however, this requirement shall not limit the Commissions' right to take immediate remedial action to mitigate damages caused by Hazardous Substances.

(b) As used herein, "Hazardous Substance" means any substance that is toxic, ignitable, reactive or corrosive and that is regulated by any local government, the Commonwealth of Virginia, or the United States government. "Hazardous Substance" includes any and all materials or substances that are defined as "hazardous waste", "extremely hazardous waste" or a "hazardous substance" pursuant to state, federal, or local governmental law. "Hazardous Substance" includes, but it not restricted to, asbestos, polychlorinated biphenyls (PCBs), petroleum, solvents, printing inks, pesticides, solvents, and leads.

6. RIGHTS RESERVED BY DRPT

(a) DRPT reserves unto itself, its licensees, successors and assigns: (1) working in coordination with the Commissions and subject to their consent, the right to use the airspace above existing and future stations owned by DRPT for residential, commercial, and office purposes, and to use airspace above any Segment it acquires to access train stations and platforms and to construct new train stations and platforms; and (2) the right to enter, or to have its contractors enter, upon the Premises after reasonable advance notice except in the event emergency circumstances necessitate lesser notice in which case notice practicable under the circumstances shall be provided, for the purpose of maintaining and operating railroad track or tracks, signal and communication facilities and any other DRPT owned apparatus, equipment and facilities located on or adjacent to the Premises.

(b) In its exercise of the rights reserved in Section 6(a), DRPT shall use its best efforts not to unreasonably interfere with the Commissions' use of the Premises. If DRPT believes that it will significantly interfere with the Commissions' use of the Premises, DRPT will give the Commissions as much advance notice as is practicable under the circumstances.

(c) **[reserved]**.

(d) In the event that DRPT grants rights to, or enters into agreements with, easement grantees, licensees, or other third parties affecting the Premises, subsequent to the date of this Lease Agreement, such rights and agreements shall be consistent with, and shall not unreasonably interfere with, the Commissions' existing use of the affected Premises under this Lease Agreement. The Commissions shall not be responsible for any costs or expenses incurred in the exercise of the aforesaid rights, including those that would not have been necessary but for the Commissions use and occupation of the Premises.

7. IMPROVEMENTS AND ALTERATIONS

(a) Unless otherwise agreed by the parties, any improvements to or alterations of the VRE Station Sites shall be made by, and at the expense of the Commissions, but only with prior written approval of DRPT which approval shall not be unreasonably withheld. All such improvements and alterations shall be made in a good and workmanlike manner and in compliance with all applicable laws and regulations, and shall conform to the plans and specifications approved by DRPT. The Commissions will secure all necessary permits or licenses in any way connected with said improvements or structures and will pay any and all taxes levied against such improvements or structures; said improvements or structures being the sole property of the Commissions. The Commissions shall also be responsible for taxes, licenses, permits, etc., required in connection with any business conducted by or for the Commissions on the Premises. If in DRPT's sole discretion the use of a flagman is required for the construction and maintenance of any improvements or the Premises, the Commissions shall provide a flagman at the Commissions' expense.

(b) The Commissions shall pay the full amount of any and all taxes levied or assessed on account of personal property placed on the Premises by the Commissions and any penalties in connection therewith. The Commissions shall be responsible for all listing and other duties in connection with the taxation of said improvements and personal property.

8. CONDITION AND MAINTENANCE

The Commissions have inspected the Premises prior to execution of this Lease Agreement and accept the Premises as is. The Commissions shall maintain the VRE Station Sites, including all improvements and any structures thereon, in accordance with the transit asset management standards promulgated by the Federal Transit Administration. The Commissions shall maintain the Legacy Station Sites, in whole or in part, according to the allocation of maintenance responsibilities described in other agreements with third parties. The VRE Station Sites and any improvements or structures hereafter erected by the Commissions on the VRE Station Sites or the Legacy Station Sites shall be maintained by and at the Commissions' sole expense.

9. UTILITIES

The Commissions shall pay for all utilities incident to its use and occupation of the Premises, including special or other tax assessments related thereto. DRPT will cooperate, at no cost to the Commissions, in the expeditious approval of utilities located on the Premises necessary for the Commissions' use and occupation of the Premises.

10. RISK OF LIABILITY AND INSURANCE

It is understood and agreed that, as contemplated by Article 9 of the Operating Agreement, the Commissions' obligation to indemnify and insure Virginia Indemnites pursuant to the provisions of Article 9 of the Operating Agreement (which provisions shall survive for the purposes of this Lease Agreement notwithstanding the prior expiration or termination of the Operating Agreement) shall extend to and include all losses, costs, expenses, damages and liability which is attributable to, or exacerbated by, the construction, maintenance, and use of the Premises

and all improvements to the Premises and all other activities undertaken on or about the Premises by the Commissions, any Operator (as defined by the Operating Agreement), and their respective employees, agents, contractors, passengers, and invitees.

11. CONDEMNATION

In the event a VRE Station Site is condemned by public authority through the exercise of eminent domain, or is sold to or acquired by any public authority under threat of condemnation, thereupon vesting the title in said public authority, this Lease Agreement shall immediately terminate with respect to such VRE Station Site. In such event, the Commissions shall have no claim or right to share in compensation attributable to DRPT's property and improvements other than for improvements made at the cost of the Commissions. The foregoing shall in no manner limit the Commissions' right to all compensation for and damages to all structures, other improvements and the contents thereof owned or placed by the Commissions, or in which the Commissions have any interest, which are attributable to the exercise of eminent domain or other acquisition by a public authority. DRPT shall not be liable for any inconvenience or damage to the Commissions caused by the aforesaid action of a public authority.

12. TERMINATION

(a) If the Commissions shall default in the timely payment of any installment of rent, or shall fail to keep and perform any of its covenants and agreements herein contained, and if any such default shall continue for a period of thirty (30) days from the date the Commissions receive written notice from DRPT to cure such default, or in the alternative, the Commissions fail to undertake such measures within such 30 days as will reasonably cure such default, the Commissions' rights under this Lease Agreement may be suspended by written notice of DRPT and such suspension shall be lifted by DRPT upon the cure of such breach to DRPT's reasonable satisfaction, or upon earlier written notice of DRPT.

(b) Upon expiration or termination of the Operating Agreement, unless otherwise agreed by the parties, the Commissions shall promptly vacate the Premises and remove therefrom all structures, other improvements and contents thereof owned or placed thereon or therein by the Commissions, or in which the Commissions have any interest, including the debris from the removal thereof, and restore the Premises to a condition satisfactory to DRPT, all to be completed at the Commissions' cost and expense within twelve (12) months after the date of said termination. It is hereby agreed that the standard for such restoration shall be a condition equal to or better than that of the Premises on the date such Premises were first leased to the Commissions, reasonable wear and tear of structures excluded, but specifically including a requirement for grading and seeding of disturbed areas. In the event of failure of the Commissions to comply, after specific notice to the Commissions, all such structures, improvements and contents thereof are to be considered and treated as having been abandoned by the Commissions and, at the option of DRPT, the ownership of same is to be considered surrendered to DRPT, to be removed, used, destroyed or otherwise as DRPT sees fit and without waiving or reducing the right of DRPT, hereby agreed to, to seek and obtain judgment against the Commissions for any delinquent rental payment, or for any expense and damages resulting from failure of the Commissions to keep and perform its covenants and agreements herein contained.

(c) Termination or expiration of this Lease Agreement shall not deprive DRPT or the Commissions of any other action or remedy against the other which existed prior to such termination. It is expressly understood and agreed that the provisions of Section 10, the obligations of the Commissions to pay amounts accrued under this Lease Agreement, and the provisions of Section 12(b) shall survive the termination or expiration of this Lease Agreement for any reason.

13. DAMAGE OR DESTRUCTION BY FIRE OR NATURAL CAUSES

(a) If during the Term, one or more of the station sites on the Premises are damaged by fires, floods, windstorms, earthquakes, explosions, hurricanes, tornadoes, strikes, acts of public enemy, incidences of terrorism, wars or riots, civil disturbances, acts of God, or other casualty, so that the same are rendered unsuitable for the operation of the Commissions' business, and if said station sites cannot be repaired within one hundred eighty (180) days from the time of said damage, then this Lease Agreement shall terminate with respect to the locations so damaged or destroyed, as of the date of such damage or destruction. In such event, the parties shall amend this Lease Agreement to remove the damaged or destroyed station sites from the description of the Premises in Appendix A, with a corresponding reduction in the rent. However, if the Premises can with reasonable diligence be repaired, or a repair commenced, within one hundred eighty (180) days, the station sites shall be, by the Commissions, repaired as quickly as is reasonably possible, and this Lease Agreement shall remain in full force and effect.

(b) No compensation or claim or diminution of rent will be allowed or paid by DRPT by reason of inconvenience, annoyance, or injury to business arising from the necessity of repairing the Premises or any portion thereof, however the necessity may occur. The Commissions understand and agree that for this reason they will have adequate insurance available to protect their interests in the event of such a casualty.

14. LIMITATIONS

Any approval or permission given by DRPT hereunder or failure of DRPT to object to work done on the Premises or use made thereof, including but not limited to the failure of DRPT to object to any material used or method of construction, or plans and specifications for any improvements to, or replacements, restorations or alterations of the Premises, shall not be construed as an admission of responsibility by DRPT, or as a waiver of any obligations of the Commissions under this Lease Agreement.

15. GENERAL PROVISIONS

(a) This Lease Agreement shall be governed by and construed under the laws of the Commonwealth of Virginia, without regard for conflict of laws principles.

(b) This Lease Agreement may be amended only by a written instrument executed and delivered by both parties.

(c) This Lease Agreement, including Appendices annexed to this Lease Agreement, and including the Operating Agreement, constitutes the entire agreement of the parties with respect to its subject matter and supersedes all prior or contemporaneous, oral or written, agreements or understandings with respect to such subject matter.

(d) This Lease Agreement shall be binding upon and inure to the benefit of the parties' respective successors and assigns; provided, however, that the Commissions may not assign or sublease the Premises or improvements to the Premises, without the prior written consent of DRPT, which consent may be withheld for any reason.

(e) All notices, requests, consents and approvals required or permitted under this Lease Agreement shall be in writing and shall be deemed delivered upon personal delivery or upon mailing to the parties at the addresses set forth below or such other addresses as the parties may designate by delivery of prior notice to the other party:

If to DRPT:

Director
Virginia Department of Rail and Public Transportation
600 East Main Street, Suite 2102
Richmond, VA 23219

With a copy to:

Counsel for the Department of Rail and Public Transportation
Transportation Section
Office of the Attorney General
202 North 9th Street
Richmond, VA 23219

If to the Commissions:

Chief Executive Officer
Virginia Railway Express
1500 King Street, Suite 202
Alexandria, Virginia 22314

With a copy to:

County Attorney of Arlington County
2100 Clarendon Boulevard, Suite 403
Arlington, Virginia 22201)

(f) Each Commission shall be jointly and severally liable for payment of rent and other sums due under this Lease Agreement, and for performance of all other terms and conditions of this Lease Agreement. DRPT may exercise any or all remedies it may have against either or both Commissions.

(g) This Lease Agreement shall be assigned by DRPT to the Virginia Passenger Rail Authority to undertake DRPT's obligations and activities contemplated by this Lease Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Master Lease Agreement as of the day and year first above written.

[SIGNATURE PAGES TO FOLLOW]

VIRGINIA DEPARTMENT OF RAIL AND PUBLIC
TRANSPORTATION, LESSOR

By: _____

Name: _____

Title: _____

[SIGNATURE PAGE TO PASSENGER STATION GROUND LEASE AGREEMENT]

NORTHERN VIRGINIA
TRANSPORTATION COMMISSION, LESSEE

By: _____
Name: _____
Title: _____

POTOMAC AND RAPPAHANNOCK
TRANSPORTATION COMMISSION, LESSEE

By: _____
Name: _____
Title: _____

[SIGNATURE PAGE TO PASSENGER STATION GROUND LEASE AGREEMENT]

APPENDIX A

STATION SITE	ADDRESS	LEASED FACILITIES	EXHIBIT¹
Leeland	275 Leeland Road Falmouth, VA 22405	Land	
Brooke	1721 Brooke Road Stafford, VA 22554	Land	
Rippon	15511 Farm Creek Drive Woodbridge, VA 22191	Land	
Woodbridge	1040 Express Way Woodbridge, VA 22191	Land ² ; East and West Platforms	
Fredericksburg	200 Lafayette Boulevard Fredericksburg, VA 22401	Station Building; East and West Platforms; Land	
Quantico	550 Railroad Avenue Quantico, VA 22134	Station Building and Land ³	
Lorton	8990 Lorton Station Boulevard Lorton, VA 22079	Land	
Franconia-Springfield	6880 Frontier Drive Springfield, VA 22150	Land	
Crystal City	1503 Crystal Drive Arlington, VA 22202	Land	
Alexandria	110 Callahan Drive Alexandria, VA 22301	East Platform; Land	
L'Enfant	6th and 7th Street at C Street, SW Washington, DC 20024	Land	
L'Enfant Storage Tracks	Washington, DC	Land	
Spotsylvania	9442 Crossroads Parkway Fredericksburg, VA 22408	Land	

¹ NTD: Parties to incorporate descriptive exhibits for each station site.

² NTD: CSX to retain land under platform on CSX-retained side of corridor.

³ NTD: CSX to retain land under platform on CSX-retained side of corridor.

APPENDIX - B

ANNUAL RENTAL AMOUNTS

Annual rental amounts shall be one dollar per year per station site, and for the Crossroads Property, unless and until such rental amounts are modified according to the terms of the Lease Agreement.

APPENDIX C
CROSSROADS PROPERTY

