

**MASTER PROJECT AGREEMENT**  
**Between**  
**NATIONAL RAILROAD PASSENGER CORPORATION**  
**and**  
**DELAWARE TRANSIT CORPORATION**

This Master Project Agreement ("Agreement") effective as of the 23<sup>rd</sup> day of APRIL, 2013, is by and between National Railroad Passenger Corporation, a District of Columbia corporation, having its principal place of business at 60 Massachusetts Avenue, N.E., Washington, DC 20002 ("Amtrak"), and the Delaware Transportation Authority, acting through the Delaware Transit Corporation, a public benefit corporation constituting a public instrumentality under 2 *Del.C.* §1307 and existing under the laws of the State of Delaware, having its principal place of business at 900 Public Safety Boulevard, Dover, DE 19901 ("DTC"). (DTC and Amtrak are referred to, collectively, as the "Parties" or in the singular as "Party," as the context requires.)

WHEREAS, Amtrak owns certain railroad tracks and associated right-of-way located between Washington, D.C. and New York City (commonly known as the "Northeast Corridor") and also provides intercity passenger rail service over such tracks; and

WHEREAS, pursuant to the terms of the Northeast Corridor Access and Services Agreement between the Parties dated November 1, 1996, as amended (the "Access Agreement"), DTC has the right to have access to that segment of the Northeast Corridor located between Marcus Hook, Pennsylvania and Newark, Delaware for operation of commuter rail service; and

WHEREAS, from time to time, DTC requests that Amtrak perform certain services in support of the planning, design and/or construction phases of certain DTC-sponsored projects on or in the vicinity of the Northeast Corridor; and

WHEREAS, Amtrak is willing to perform such support services in accordance with the terms set forth herein so as to enable DTC to complete its projects; and

WHEREAS, all work arising out of or connected with such projects must be closely and safely integrated with Amtrak's operations along its right-of-way so as not to impede or interfere with said operations; and

WHEREAS, by this Agreement, the Parties desire to establish the terms and conditions pursuant to which they will proceed with planning, design, and construction phases of such projects.

NOW THEREFORE, for and in consideration of the foregoing recitals, which are incorporated in this Agreement by reference, and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Parties, the Parties do hereby agree as follows:

1. **DEFINITIONS.** The following terms shall be defined for the purposes of this Agreement as set forth below:

1.1 **Access Agreement** - The Northeast Corridor Access and Services Agreement between the Parties dated November 1, 1996, as amended.

1.2 **Change Order** - (also referred to herein as a "CO"). A written change to the terms of a Project Initiation form that modifies or adjusts the Estimated Project Cost, the Period of Services, the Description of Services or any other aspect of a Project Initiation form as agreed upon by the Parties. A copy of a sample Change Order is attached hereto as Exhibit B.

1.3 **Contract Documents** - The documents set forth in Section 2.1 of this Agreement.

1.4 **Days** - Such term means calendar days, unless indicated otherwise in the Agreement.

1.5 **Description of Services** - As set forth in the Project Initiation form, a general scope of the services to be performed by Amtrak in support of the Project.

1.6 **Designated Representatives** - The persons appointed by DTC and Amtrak to represent them in connection with a given Project, pursuant to Section 9 of this Agreement. The Designated Representatives for each Project will be identified in the Project Initiation form.

1.7 **Estimated Project Cost (or "EPC")** - As set forth in the applicable Project Initiation form, an estimate of Amtrak's total Project Costs for performing the Services to be undertaken with respect to a given Project.

1.8 **Northeast Corridor** - For purposes of this Agreement only, the railroad tracks and associated right-of-way owned by Amtrak, including the platforms, overhead catenary systems, signal systems and other facilities required for operation of trains, located between Washington, D.C. and New York City.

1.9 **Period of Services** - As set forth in the applicable Project Initiation form, the anticipated period of time for Amtrak to complete its Services in support of a Project or portion thereof, as described in Section 6.2 hereof.

1.10 **Project** - A set of tasks to be completed by DTC pursuant to a Project Initiation form, which may include planning, design and/or construction of improvements on or in the vicinity of the Northeast Corridor.

1.11 **Project Completion Date** - As such term relates to a given Project, the date on which the Project is completed, as agreed to by the Parties and as indicated on the Project Initiation form.

**1.12 Project Costs** – The costs referred to in Section 12 of this Agreement.

**1.13 Project Initiation** - (also referred to herein as a “PI”). A document in which the Parties indicate for each Project various details including: a description of the Project, location of the Project, phase covered by the PI, Services to be performed by Amtrak, Amtrak’s Estimated Project Cost, the Period of Services, schedule and milestones (where appropriate), any special insurance requirements (where applicable), special environmental requirements, and any other special terms and conditions. A copy of a sample Project Initiation form is attached hereto as Exhibit A. When signed by both Parties, a PI is incorporated into the Agreement.

**1.14 Services** - All activities to be performed by Amtrak in support of DTC’s Project pursuant to the Contract Documents. Services may include: a) review of DTC’s plans, drawings, specifications and schedules; b) performance of site inspections; c) providing of services required for protection of railroad traffic, such as flagging, controlled power outages and/or track outages; d) performance of environmental reviews, if necessary; e) preparation/revision of cost estimates; f) construction, relocation and/or modification of railroad facilities and/or infrastructure; and g) performance of such additional related services as may be agreed upon by the Parties as described in the applicable Project Initiation form.

## **2. CONTRACT DOCUMENTS.**

**2.1 Identification.** The Contract Documents for each Project shall consist of the following:

- (a) this Agreement;
- (b) the Project Initiation form and all documents incorporated therein (e.g., plans, specifications, special insurance requirements, schedules); and
- (c) all applicable Change Orders relating to the Project Initiation for that Project.

**2.2 Priority.** In the event of conflict among the Contract Documents, the terms of one shall prevail over another in the following order of priority, from highest to lowest:

- (a) Change Orders;
- (b) the Project Initiation; and
- (c) this Agreement.

**3. SERVICES AND PROJECT INITIATION.** The Parties shall participate in the planning, design and/or construction of all of the Projects in accordance with the Contract Documents applicable to each Project. When the Parties have identified a Project that will require Amtrak’s participation, DTC shall enter into a Project Initiation form with Amtrak for the planning, design and/or construction work, as may be appropriate in view of the phase of work

for each Project. The Project Initiation form shall include the information described in Section 1.13 of this Agreement.

**4. ESTIMATED PROJECT COST ("EPC").**

**4.1** The EPC for costs to be incurred by Amtrak in performance of the Services for each Project shall be set forth in the applicable Project Initiation form.

**4.2** The Parties expressly recognize and acknowledge that the EPC set forth in a PI form represents only an estimate of the Project Costs based on information available to the Parties as of the date of such PI, and that actual Project Costs could be substantially less than or greater than the EPC. Notwithstanding the providing of an EPC, DTC shall be responsible for reimbursing Amtrak for all Project Costs incurred by Amtrak, as described in Section 12 hereof.

**4.3** Amtrak agrees to notify DTC when it becomes aware that its Project Costs are likely to be in excess of the then established EPC by twenty percent (20%) or \$200,000, whichever is less, which notice shall specify the amount and the reasons for such change.

**5. SERVICES TO BE PERFORMED BY AMTRAK.** Amtrak agrees that it will perform, or cause to be performed, all Services agreed to be performed by Amtrak as specified in the PI for each Project. Any significant changes in the Services to be performed shall be documented in a Change Order(s), as described in Section 8 hereof.

**6. PROJECT TIME FRAME.**

**6.1 Commencement Date.**

(a) Amtrak will endeavor to commence Services on a given Project as expeditiously as possible following execution of a PI or by such later date as may be set forth in the PI.

(b) Unless otherwise informed by the other Party in writing, receipt of a fully executed PI shall constitute authorization to proceed with the Services. If Amtrak is not authorized to commence Services within 180 days of execution of a PI, the Parties will review the EPC (and other provisions of the PI) to determine whether any changes are required.

**6.2 Schedule; Period of Services.**

(a) Amtrak and DTC agree to cooperate and to require their contractors to cooperate so as to coordinate their respective schedules in an effort to not delay the Project. However, DTC acknowledges that Amtrak has other work commitments and demands that may preclude Amtrak from performing the Services according to the schedule most advantageous to DTC. Amtrak shall not be liable for any costs or damages attributable to such delays.

(b) The estimated Period of Services for a Project shall be indicated on the PI, along with a description of milestones (where appropriate) that provide an estimated, non-

binding schedule for the performance of the Services. The Parties agree that, during the design phase of a Project, they will cooperate in developing a schedule and milestones (where appropriate) for the construction phase of the Project. With respect to the estimated, non-binding schedules and milestones described in this Section 6.2(b), the Parties specifically agree that no penalties will be assessed or incurred as a result of non-compliance with said schedules and milestones.

(c) Each Party shall notify the other when it becomes aware that a Project is likely to be significantly delayed, which notice shall specify the anticipated length of the delay and the reasons for such delay.

## **7. PROJECT REVIEWS.**

**7.1 Project Review Meetings.** The Parties agree to hold Project reviews at the request of either Party, to be scheduled at the convenience of the Parties.

### **7.2 Amtrak's Review of DTC's Project Documents.**

(a) DTC shall submit all plans, drawings, and specifications ("Documents") relating to a Project to Amtrak for its review and approval and shall resolve all comments relative to the Project to Amtrak's satisfaction. Amtrak shall have a minimum of thirty (30) working days to review any Documents. If Amtrak has not completed its review of such Documents within thirty (30) working days, the Parties shall meet promptly to agree upon a schedule for completion of that review.

(b) Any review of Documents by Amtrak shall be for the purpose of examining the general arrangement, design and details of the Project for potential impact on Amtrak's operations. No review, correction or approval of Documents by Amtrak shall relieve DTC and its contractor(s) from the entire responsibility for errors or omissions in such Documents or for the adequacy thereof. Amtrak assumes no responsibility for and makes no representations or warranties, express or implied, as to the adequacy of the Documents or the Project.

(c) Before Amtrak will review DTC's Documents, DTC shall require its consultants performing design or engineering functions to: (1) execute a copy of the indemnity form attached hereto as Exhibit C and return the form to Amtrak at the address listed in the Notices section of this Agreement; and (2) provide Amtrak with evidence of professional liability insurance in accordance with the requirements set forth in Section 17.2 hereof. Failure by a DTC consultant to execute the indemnity form and provide evidence of professional liability insurance shall, at Amtrak's option, relieve Amtrak from its obligations to perform Services in connection with an individual Project.

## **8. CHANGE ORDERS.**

**8.1 Change Orders Related to the Description of Services.** Either Party may request a change in the Description of Services by submitting a request to the other Party. All requests shall set forth a complete description of the proposed modification and such

other information as may be appropriate or required by other sections of this Agreement. Any significant change in the Description of Services must be mutually agreed upon and promptly confirmed by execution of a Change Order in the form attached hereto as Exhibit B.

**8.2 Rejection of Proposed Change Order.** Either Party shall have the right to refuse to accept any request for a Change Order.

## **9. DESIGNATED REPRESENTATIVES.**

**9.1 DTC's Designated Representative.** DTC's Designated Representative for a given Project will be identified in the PI. He/she will make himself/herself available to confer with Amtrak's Designated Representative on an as-needed basis. DTC's Chief Executive Officer or other authorized official shall have full authority, on behalf of DTC, to execute PIs and Change Orders.

**9.2 Amtrak's Designated Representative.** Amtrak's Designated Representative for a given Project will be identified in the PI. He/she will make himself/herself available to confer with DTC's Designated Representative on an as-needed basis. Amtrak's Chief Engineer shall have full authority, on behalf of Amtrak, to execute PIs and Change Orders.

**10. OPERATION AND MAINTENANCE AFTER COMPLETION.** After the Project Completion Date with respect to a given Project, the continuing maintenance, repair, operation, liabilities and other responsibilities with respect to any improvements made on Amtrak property as part of a Project shall be handled and determined in accordance with applicable provisions of the Access Agreement (or any successor agreement that governs DTC's access to the Northeast Corridor) or any other agreement covering such matters. The Parties acknowledge and agree that certain Projects may entail ongoing operation, maintenance, repair and replacement expenses that require additional consideration, including the sharing of related costs by the Parties, or other special provisions.

## **11. REIMBURSEMENT PROCESS.**

### **11.1 Payment Terms.**

(a) For each Project, Amtrak shall submit to DTC an estimate of the costs which it expects to incur during the current phase of the Project prior to the date that work on that phase is to commence. Each such estimate shall include an estimate of the amount of time that Amtrak will require to complete the services Amtrak is to perform.

(b) Unless the Parties agree upon a different arrangement for a particular Project, for each Project for which Amtrak's EPC is Two Hundred Thousand Dollars (\$200,000) or more, DTC agrees to reimburse Amtrak for all costs Amtrak incurs in connection with a Project in accordance with the following:

(i) In order to ensure payment to Amtrak approximately contemporaneously with its incurring of costs for the performance of its Services, DTC shall make a payment to Amtrak in an amount equal to fifteen percent (15%) of the EPC for an individual Project (the "Deposit"). Amtrak shall present a bill for payment of the Deposit at the time the first invoice for Services performed in connection with a Project is presented.

(ii) Amtrak will invoice DTC as Project Costs are incurred. DTC shall pay all invoices within thirty (30) days of receipt of said invoices. Payments shall be made in full without deduction, setoff or counterclaim. DTC reserves the right to dispute any invoices in the manner outlined in subsection (e) of this section. When the total invoiced amount for a Project reaches ninety percent (90%) of the EPC, the Deposit shall be applied to remainder of Amtrak's invoices for such Project.

(iii) Should a Change Order be executed by the Parties that causes an increase in the amount of the EPC, Amtrak will require that the amount of the Deposit be increased by an amount equal to fifteen percent (15%) of the amount of the Change Order. Amtrak will calculate and invoice DTC for the additional funds to be added to the Deposit. DTC shall pay the invoice for the additional deposit in accordance with subsection 11.1 (b) (ii) above.

(iv) At the conclusion of a Project, when both Parties agree that all Services have been completed and all exceptions have been resolved, the Parties will reconcile the total Project Costs versus the total payments made by DTC, including the Deposit. Should there be any funds paid by DTC in excess of the amount of the Project Costs, Amtrak will return to DTC any unspent amount of the Deposit.

(c) For any Project for which Amtrak's EPC is less than Two Hundred Thousand Dollars (\$200,000), DTC shall reimburse Amtrak for its actual costs of the Project within thirty (30) days of receipt of invoices from Amtrak. Payments shall be made in full without deduction, setoff or counterclaim. DTC reserves the right to dispute any invoices in the manner outlined in subsection (e) of this section.

(d) With each invoice (other than the initial invoice for the Deposit), Amtrak will provide documentation of actual costs incurred for each Project. Documentation shall include Amtrak's Statement of Payroll Costs Report which lists the hours, amounts, dates and names of agreement-covered employees who provided services in connection with a Project. Amtrak shall also provide copies of material invoices, third party service invoices, a report of materials issued from inventory, Amtrak equipment utilization pricing statement, and a statement of other costs and charges, including overheads.

Amtrak will not be required to provide an independent field verification voucher (i.e., Form 2306) to substantiate costs.

(e) Should DTC wish to dispute any invoiced item, it shall provide Amtrak with a written statement as to its objection. Within thirty (30) days thereafter, Amtrak will provide DTC with additional documentation as required demonstrating the accuracy of the billing. The objection shall be considered resolved unless DTC submits, in writing, a statement re-affirming its continued exception to the issue within thirty (30) days of receipt of such additional documentation or explanation. If after receipt of DTC's response, the Parties cannot come to resolution on the issue, such dispute shall be governed by Section 18 of this Agreement. If the resolution of the dispute confirms that DTC should not have paid such amount, Amtrak shall promptly credit such cost on the next invoice submitted to DTC. If no further invoices are to be submitted, Amtrak shall generate a payment to DTC within thirty (30) days of the mutual resolution of such dispute.

**11.2** All payments due from DTC to Amtrak shall be made payable to National Railroad Passenger Corporation, 23615 Network Place – GROUP, Chicago, IL 60673-1236.

**11.3** In the event that DTC fails to pay to Amtrak sums due to it under this Agreement, Amtrak may elect, by delivery of notice to DTC, to immediately cease or suspend all further Services on the affected Project, unless and until DTC pays the entire delinquent sum, together with accrued interest.

**11.4** In the event that DTC fails to make payment to Amtrak when such payment is due under this Agreement, interest shall accrue at the prime interest rate as published in the Wall Street Journal as of the date that the payment would have been due, computed on the unpaid amount from the date such payment would have been due from DTC. However, in no event will the interest rate exceed the maximum rate allowable under 29 Del. C. §6516(d)(4).

## **12. BILLABLE PROJECT COSTS.**

**12.1** DTC shall reimburse Amtrak for all Project Costs. Project Costs may include but are not limited to the following:

(a) Direct labor and management costs for all assigned Amtrak employees for actual hours worked on a Project, including but not limited to: any adjustments, allowances and arbitrary hours in accordance with the then current existing labor agreements; travel costs; overnight accommodations; travel time and mandatory rest time as the result of performing Services hereunder; and Amtrak's then-current overhead rates.

(b) Costs for all materials and supplies required for Services on the Project. Those materials and supplies issued from Amtrak's inventory shall be charged at Amtrak's inventory costs in effect at the time the material or supplies are issued, plus any actual shipping/transportation costs and shipping/transportation cost additives. Those materials and supplies procured by Amtrak (but not issued from Amtrak's inventory) shall be

charged at Amtrak's actual cost incurred, plus any actual shipping/transportation costs. Amtrak's then-current overhead rates shall be added to the cost of all materials and supplies.

(c) Costs for all third party contract services and for any related additional insurance. Such costs shall be billed at actual cost, plus Amtrak's then-current overhead rates.

(d) Costs for equipment, vehicles, work trains and rolling stock which are leased by Amtrak and required for performance of the Services. Such costs shall be charged at the actual cost of the lease, plus Amtrak's then-current overhead rates.

(e) For Amtrak-owned equipment, vehicles, work trains and rolling stock, reimbursement shall be at the rates published in "Amtrak Rental Rates for Railroad Equipment" as amended periodically. For Amtrak-owned equipment, vehicles, work trains, and rolling stock not specifically itemized therein, reimbursement shall be based on a comparable market rate, plus Amtrak's then-current overhead rates. For purposes of this Section 12.1(e), vehicles or equipment obtained by Amtrak through a GSA Schedule shall be construed as Amtrak-owned.

(f) Start-up costs and/or the cost of training of Amtrak employees (excluding labor which is included in Section 12.1(a) above or in the overhead rates discussed in Section 12.2 below) to the extent required for the Project. Amtrak shall be reimbursed for the actual costs, plus Amtrak's then-current overhead rates.

(g) Retroactive wage and benefit costs shall be reimbursed based on actual costs, plus Amtrak's then-current overhead rates. Retroactive wage and benefit costs (as used herein) are defined as adjustments in agreement-covered wage rates and benefits made subsequent to the performance of Services. DTC's obligation to reimburse Amtrak for such retroactive costs shall survive termination of this Agreement and termination of any PI. Upon completion of any Project, following request by DTC, Amtrak will provide an estimate of potential retroactive wages and benefits for which DTC may be responsible, if such an estimate can be determined at that point in time.

(h) Other actual costs, including but not limited to costs related to securing permits as discussed in Section 27.7 hereof, not included in any other provision of this Agreement, necessary to effectively perform Services under this Agreement shall be charged at actual costs, plus Amtrak's then-current overhead rates.

**12.2** Amtrak's current overhead rates are set forth in Exhibit D hereof. These overhead rates are computed in accordance with Amtrak's accounting policies and procedures. These rates are updated periodically by Amtrak and will be made available to DTC upon request. The rates in effect at the time of performance of Services on a Project shall be the applicable overhead rates.

**12.3** In addition to being reimbursed for the costs described in Section 12.1 above, Amtrak may be paid by DTC a management fee of ten percent (10%) applied to all of the above costs. For example, a management fee may be paid when Services can be performed by a party other than Amtrak, when Services are considered to be time

sensitive, or for any other reason deemed appropriate by the Parties. Each PI shall designate whether a management fee is applicable to the work described therein.

**12.4 Audit.** All cost records and accounts for each Project shall be subject to audit by DTC and Amtrak for a period of three (3) years following final billing under a PI for a Project, but the formulas and methodologies set forth herein shall not be subject to change. Nothing herein shall limit the rights, obligations, authority, or responsibilities of Amtrak's Office of the Inspector General pursuant to the Inspector General Act of 1978, as amended, including the right to seek information by subpoena.

**13. NO OFFSET OR REDUCTION.** DTC recognizes and agrees that, for bills tendered by Amtrak, DTC shall not have the right to use any other amounts due or payable under other contracts or agreements to offset the amounts due and payable to Amtrak in accordance with this Agreement or any PI. Nor shall DTC have the right to offset payments due with respect to a given Project from amounts due with respect to any other Project. In addition, DTC shall not withhold any amount otherwise due Amtrak which it does not dispute. In any case, DTC shall promptly provide notice to Amtrak of any such dispute and the nature and basis of such dispute, and the Parties shall endeavor to promptly resolve such dispute, without adversely affecting Amtrak's other rights and remedies under this Agreement.

**14. NON-APPROPRIATION.**

**14.1** It is expressly agreed by Amtrak that, so long as no default by DTC has occurred hereunder: (a) DTC's obligations to pay any amounts due, in whole or in part, or perform any covenants requiring or resulting in the expenditure of money are contingent and expressly limited to the extent of specific appropriations made to fund a Project under this Agreement; and (b) nothing contained in any other section of this Agreement shall be construed as creating any monetary obligation on the part of DTC beyond such current and specific appropriations.

**14.2** In the event that the Delaware General Assembly or the federal government fails to appropriate or otherwise make available funds necessary to continue an individual Project or necessary for DTC to perform its obligations in connection with such Project, DTC shall promptly notify Amtrak. The PI shall be terminated, as to any obligation of DTC requiring the expenditure of money for which no funds are available, at the end of the last fiscal year for which an appropriation is available or at the exhaustion of funding for the Project, whichever occurs first.

In such event, all obligations of DTC requiring the expenditure of money will cease so long as all payments previously approved or appropriated have been paid, and the PI shall be terminated. Notwithstanding the foregoing, DTC agrees it will use reasonable efforts to obtain authorization and appropriation of such funds including a request for adequate funds to meet its obligations hereunder in full in its next fiscal year budget. DTC shall furnish copies of all documents relating to such requests for adequate funding. The payment of funds under this paragraph shall be the sole remedy available to Amtrak.

14.3 DTC agrees that it will not execute a PI for an individual Project until DTC's funding for the Project has been approved and appropriated and is available for expenditure.

**15. PERMIT TO ENTER.**

15.1 If entry onto, over or under the right-of-way or other property of Amtrak is required for purposes of a Project by DTC's contractors, DTC agrees that the entity seeking entry must notify Amtrak twenty-one days in advance and must execute Amtrak's then-current version of its "Temporary Permit to Enter Upon Property" form.

15.2 If entry onto, over or under the right-of-way or other property of Amtrak is required for purposes of a Project by DTC employees, DTC agrees to provide Amtrak with advance notice of such entry and to comply with Amtrak's operating, security and safety requirements (including but not limited to those safety rules incorporated in the then-current version of Amtrak's "Temporary Permit to Enter Upon Property" form).

**16. SAFETY AND SECURITY REQUIREMENTS.**

16.1 DTC shall require that when work is being done on, over, under or immediately adjacent to Amtrak's property by DTC or its contractors, all operations affecting Amtrak property, facilities or the safe and uninterrupted operation of its trains shall be carried out in accordance with Amtrak's then-current version of its "Specifications Regarding Safety and Protection of Railroad Traffic and Property," a copy of which will be provided to DTC.

16.2 DTC and its contractors shall comply with all Amtrak security requirements.

**17. INSURANCE.**

17.1 DTC's contractors shall provide and maintain in force during the course of each Project, at no cost to Amtrak, insurance as specified in the then-current version of Amtrak's "Insurance Requirements", a copy of which will be provided to DTC. DTC and its contractors shall furnish evidence of such policies to Amtrak prior to entering upon Amtrak property.

17.2 In addition, DTC's contractors who perform design or engineering functions in support of a Project shall provide and maintain in force during the course of the Project, at no cost to Amtrak, professional liability insurance covering the liability of the DTC's contractors for any and all errors or omissions committed by DTC's contractors, agents or employees, in the performance of the Project work, regardless of the type of damages. The coverage shall be maintained during the term of the Project and for at least three years following completion of all operations to be performed. The policy shall have limits of liability of not less than Two Million Dollars (\$2,000,000) per claim and Two Million Dollars (\$2,000,000) in the annual aggregate, unless otherwise provided in the PI for an individual Project. Such policy shall provide: (a) a policy retroactive date that coincides with or precedes the contractor's start of work (including subsequent policies purchased as renewals or replacements); (b) that if the insurance is terminated for any

reason, contractor agrees to purchase an extended reporting provision of at least three years to report claims arising from work that is being performed; and (c) for reporting of circumstances or incidents that might give rise to future claims. DTC shall require its contractors performing design or engineering functions to provide Amtrak with a certificate of insurance evidencing the insurance coverage required hereunder. Amtrak will not progress the Services until it has received such certificate.

**17.3** In the event that Amtrak performs any force account work in connection with a Project, then Amtrak shall provide force account insurance with a limit of Ten Million Dollars (\$10,000,000) covering Amtrak's collective bargaining agreement covered employees' direct labor at the then-current Amtrak force account rate. Amtrak has the right to self-insure part or all of this and any other risks assigned to Amtrak, and may include in the EPC for all Projects charges for this insurance and for other reasonable risk-related insurance and self-insurance charges that Amtrak deems necessary under the circumstances.

**17.4** Any modifications to the insurance requirements set forth in this Section 17 for a particular Project shall be set forth in the PI for the Project.

## **18. DISPUTE RESOLUTION.**

**18.1** Internal Process. In the event of a dispute, claim or controversy between the Parties relating to the interpretation, application, or implementation of this Agreement or any PI ("Dispute"), the Designated Representatives shall attempt to resolve the Dispute. If the Designated Representatives cannot resolve the Dispute within fifteen (15) days, then the Designated Representatives shall submit the Dispute to the Chief Engineer for each Party. If the Chief Engineers cannot resolve the Dispute within fifteen (15) days, then the Dispute will be submitted to Amtrak's Vice President of Operations and DTC's Chief Executive Officer. If they are unable to resolve the Dispute within sixty (60) days, the Parties agree to follow the external dispute resolution process set forth in Section 18.2 hereof.

**18.2** External Process. If a Dispute cannot be resolved following the internal dispute resolution process outlined in Section 18.1 hereof, the Dispute shall be submitted to binding arbitration in the following manner:

- (a) The Party wishing to initiate arbitration shall notify the other in writing of its desire to submit the matter to arbitration. Such notice shall contain a statement of the issues and shall designate one arbitrator.
- (b) Within fifteen days of such notice, the other Party shall respond in writing by designating a second arbitrator.
- (c) Within fifteen days of designation of the second arbitrator, the two arbitrators designated as aforesaid shall appoint a third arbitrator to serve as chairman. If the two arbitrators so designated fail to appoint a third arbitrator within the time provided herein, the initiating party may request the Chief Judge of the United States District Court for the district in which the said Party's principal office is located to appoint a third arbitrator. It

is the preference of the Parties that the third arbitrator has its offices in the District of Columbia, Maryland, Delaware, Pennsylvania, or New Jersey.

(d) Arbitrators shall promptly hear and decide the issues submitted to them. In the absence of a specific contrary agreement by the Parties, the arbitrators shall act in accordance with the rules for commercial arbitration of the American Arbitration Association, giving to both Parties reasonable notice of the time and place of hearing.

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

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

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

(h) Every reasonable effort shall be made to obtain the prompt resolution of disputes, which are submitted to arbitration pursuant to this Agreement. The Parties further specifically agree that neither Party shall be entitled to delay the arbitration process significantly by insisting on the application of extensive procedural steps or other actions which cannot clearly be expected to improve the ability of the arbitrators to render a reasonable and fair decision.

## **19. TERMINATION OF A PROJECT.**

**19.1 Termination of a Project by DTC.** A Project under this Agreement may be terminated by DTC upon sixty (60) days' written notice whenever DTC determines (a) that it will not have funds to pay the Project Costs for the continuation of work on that Project, or (b) that such termination is in the best interest of the State of Delaware.

**19.2 Cost Recovery.** When a Project is terminated by DTC, it may be impractical for Amtrak to immediately stop performing Services. Accordingly, in such instance, Amtrak may continue to perform Services until it has reached a point where it may reasonably and safely suspend the Services. DTC shall continue to reimburse Amtrak as per the terms of the Contract Documents for all costs incurred by Amtrak as a result of the Project up to the time of termination of the Project, plus all costs reasonably incurred by Amtrak to terminate existing contracts, discontinue the Services and restore the worksite to a safe and fully functional condition.

### **19.3 Consequences of Termination.**

(a) In the event of the termination by DTC of any individual Project for any reason, Amtrak's only remaining obligation to DTC shall be to refund to DTC payments made to Amtrak in excess of Project Costs actually incurred by Amtrak.

(b) Notwithstanding the termination of any or all Projects or the associated Contract Documents, the provisions of Sections 20 and 21 shall survive.

## 20. INDEMNIFICATION.

**20.1 General.** DTC shall defend, indemnify and hold harmless Amtrak, its officers, directors, employees, agents, servants, successors, assigns and subsidiaries (the "Indemnified Parties"), irrespective of negligence or fault on the part of the Indemnified Parties, from and against any and all losses and liabilities, penalties, fines, forfeitures, demands, claims, causes of action, suits, costs and expenses incidental thereto (including cost of defense and attorney's fees), which any or all of the Indemnified Parties may hereafter incur, be responsible for, or pay as a result of:

- i. injury, death, disease, or occupational disease to any person (excluding only the employees of Amtrak for which Amtrak purchased force account insurance pursuant to Section 17 of this Agreement), or
- ii. damage (including environmental contamination and loss of use) to or loss of any property, including property of Amtrak

arising out of or in any degree directly or indirectly caused by or resulting from activities of or work performed by DTC, its officers, employees, agents, servants, contractors, subcontractors, or any other person acting for or by permission of DTC. DTC's obligation under this section shall be limited to the amount of insurance acquired pursuant to 2 Del. C. §1329. DTC represents that, for the term of the Agreement, it will carry no less than the minimum insurance requirements as set forth in 2 Del. C. §1329. The foregoing obligation shall not be limited by the existence of any insurance policy or by any limitation on the amount or type of damages, compensation, or benefits payable by or for DTC's contractors or subcontractors, and shall survive termination of the Agreement for any reason.

**20.2 DTC's Contractors.** If any of DTC's contractors' work is to be performed on, over or under Amtrak property, it will be necessary for such contractors to execute Amtrak's then-current version of its "Temporary Permit to Enter Upon Property" form, as provided for in Section 15 hereof. The permit contains the relevant indemnification obligations.

**20.3 DTC's Contractors who Perform Design or Engineering Functions.** DTC agrees to have its contractors who perform design or engineering functions in support of a Project defend, indemnify and hold harmless Amtrak from all damages caused by errors or omissions in their work or in the work of their subcontractors, agents or employees. Such contractors must execute a copy of the indemnification form attached hereto as Exhibit C and return the form to Amtrak at the address listed in Section 26 hereof. The additional indemnification obligations of DTC contractors who enter upon Amtrak property are set forth in Subsection 20.2 above.

## 21. ENVIRONMENTAL MATTERS.

**21.1** DTC shall not disturb any soil or perform any environmental and/or geotechnical testing on any Amtrak property in connection with a Project for any reason without: (i) notifying Amtrak of its desire to do so; (ii) discussing the nature and extent of the proposed soil disturbance or testing with Amtrak's Environmental Department; (iii) presenting a proposed testing and sample collection and analysis plan to

Amtrak for its review and approval; (iv) obtaining the express written permission of Amtrak to conduct the agreed-to soil disturbance and/or testing; and (v) indicating if any such test results require either notification or submission to a federal, state or local regulatory agency. Amtrak shall have the right, but not the obligation, to be present at any and all such soil disturbance and testing and to take split samples.

**21.2** DTC shall immediately provide Amtrak with a copy of the test results at no cost to Amtrak.

**21.3** Any contractor engaged by DTC to disturb the soil and/or perform environmental and/or geotechnical testing on Amtrak property shall execute Amtrak's Temporary Permit to Enter Upon Property before performing such work.

**21.4** DTC, its contractors and agents shall comply with all applicable federal, state and local laws, regulations, ordinances, and orders concerning the environment and/or waste generation and disposal. At all times, they shall employ Best Management Practices (BMPs) in connection with the performance of their work. As used herein, the term "BMPs" means effective, practical, structural or nonstructural methods which prevent or reduce the movement of sediment, nutrients, pesticides and other pollutants from the land to surface and/or ground water, or which otherwise protect water quality from potential adverse effects.

**21.5** If the soil disturbance or the environmental or geotechnical tests performed in connection with a Project (whether performed during the design, construction and/or post-construction phases of the Project) indicate contamination of Amtrak property (or property adjoining Amtrak property) at levels requiring reporting, further investigation, testing, monitoring and/or remediation ("Environmental Activities"), all such Environmental Activities shall be at the sole cost and expense of DTC, regardless of the extent thereof, and regardless of whether any action of DTC (or its contractors or agents) caused or contributed to the contamination or condition.

**21.6** DTC shall promptly inform Amtrak of all communications with any governmental authority relating to any such Environmental Activities, and Amtrak shall be invited to attend any relevant meetings. DTC shall provide Amtrak with all plans and/or submissions for any such Environmental Activities and Amtrak shall have the right to approve such plans and/or submissions prior to their implementation. DTC will promptly provide Amtrak with a copy of any waste manifests, and such waste manifests shall in no event identify Amtrak as a generator. Amtrak reserves the right to require DTC to provide to Amtrak a copy of the results of any further tests conducted by or for DTC on any such wastes. Amtrak also reserves the right to review and approve the disposal site for any such wastes.

**21.7** Amtrak retains the right to alter, suspend, cancel or otherwise modify DTC's work schedule pending the resolution of any of the above environmental issues. Amtrak shall not be held responsible for any claims related to any such changes in DTC's

schedules, including without limitation, claims related to damages resulting from any such delays or cancellations.

**21.8** Amtrak may notify DTC of any known or suspected noncompliance with the foregoing provisions and the action to be taken. DTC shall, after receipt of such notice, promptly take corrective action. If DTC fails or refuses to comply promptly, Amtrak may issue an order stopping all or part of the Project work until satisfactory corrective action has been taken. In addition, Amtrak may immediately undertake necessary corrective actions; the cost and expense of all such actions shall be borne by DTC. No claims by DTC for reimbursement related to costs and expenses charged to DTC for corrective actions undertaken by Amtrak, nor time lost due to any such orders, shall be made the subject of a claim for excess costs or damages by DTC.

**21.9** Any modifications to the environmental requirements set forth in this Section 21 for a particular Project shall be set forth in the PI for the Project.

**21.10** The foregoing provisions shall survive termination of this Agreement.

**22. LABOR AGREEMENTS.** This Agreement shall not require Amtrak to contravene the provisions of any of its labor agreements. In the event of a conflict or inconsistency between this Agreement and such labor agreements, the labor agreements shall control as to such provision. Any delay in the progress of a Project relating to such conflict or inconsistency shall not create any liability for or additional cost to Amtrak.

**23. COMPLIANCE WITH LAWS AND AMTRAK STANDARDS.**

**23.1** DTC shall comply with all applicable federal, state and local laws, regulations and requirements ("laws") including, but not limited to, the Americans with Disabilities Act. DTC shall require that its contractors comply with the same laws.

**23.2** DTC shall cause its contractors to perform all work hereunder in accordance with Amtrak's standards, copies of which will be provided to DTC.

**24. RIGHTS, POWERS OR REMEDIES AVAILABLE.**

**24.1** No failure on the part of either Party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies of the Parties provided herein are cumulative and not exclusive of any remedies provided for by law.

**24.2** Nothing in this Agreement shall be deemed to create any right in any person not a Party hereto other than permitted successors and assigns of a Party hereto, and this Agreement shall not be construed in any respect to be a contract in whole or in part for the benefit of a third party except as aforesaid.

**24.3** No recourse shall be had by DTC for any claim against any officer, director, stockholder, employee or agent of Amtrak alleging personal liability on the part of such person with respect to performance of Amtrak's obligations under this Agreement.

**24.4** DTC represents that there are no legal or other restrictions on its ability to perform all of its obligations as may be set forth in this Agreement.

**25. TERM.** The initial term of this Agreement shall begin on the date first above written and shall remain in effect through and including December 31, 2016. Thereafter, the Agreement will remain in effect until terminated by either Party on one hundred and twenty (120) days advance notice in writing. If a Project that is being administered pursuant to the terms of this Agreement is still ongoing at the expiration of the term of this Agreement, the terms and conditions of this Agreement and any PI entered into by the Parties pursuant to this Agreement shall continue to govern the obligations of the Parties with respect to that Project until its completion.

**26. NOTICES.** All notices or communications with respect to this Agreement, shall be in writing and shall be deemed delivered upon delivery by hand, upon the next business day if sent prepaid by Federal Express (or comparable overnight delivery service), or on the third business day following mailing by U.S. Mail, certified, postage prepaid, return receipt requested, to the addresses set forth below or such other addresses as may be specified by delivery of prior notice by a Party to the other Party:

DTC: Delaware Transit Corporation  
900 Public Safety Boulevard  
Dover, DE 19901  
Attention: Chief Executive Officer

Amtrak: National Railroad Passenger Corporation  
30<sup>th</sup> Street Station  
2955 Market Street  
Philadelphia, PA 19104  
Attention: Chief Engineer

**27. MISCELLANEOUS.**

**27.1 Successors and Assigns.** Except as otherwise provided by this Agreement, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties hereto, except that neither Party shall assign or transfer this Agreement or any of its rights hereunder to any person, firm, or corporation without obtaining the prior written consent of the other, which consent shall not be unreasonably withheld.

**27.2 Complete Understanding.** The Parties agree that the Contract Documents embody the complete understanding of the Parties with respect to the planning, design and construction of Projects and supersede other prior or contemporaneous, written or oral agreements, understandings and negotiations with respect to such matters.

**27.3 Amendment.** This Agreement and the other Contract Documents may be amended only by a written instrument signed by both Parties. PIs and COs shall be executed and delivered by the Parties, and shall be given full force and effect under this Agreement. If the Parties should fail to enforce their respective rights under this Agreement or the other Contract Documents, or fail to insist upon the performance of the other Party's obligations, such failure shall not be construed as a permanent waiver of either Parties' rights or obligations as stated in this Agreement or the other Contract Documents.

**27.4 Severability.** The provisions of this Agreement are severable and it is the intention of the Parties hereto that if this Agreement cannot take effect in its entirety because of the final judgment of any court of competent jurisdiction holding invalid any part or parts thereof, the remaining provisions of the Agreement will be given full force and effect as completely as if the part or parts held invalid had not been included therein.

**27.5 Governing Law.** This Agreement shall be governed by and construed under the laws of the District of Columbia, except to the extent that Delaware law shall prevail as applied to the sovereign immunity of DTC.

**27.6 Qualifications of Contractors.** DTC and its contractors shall ensure that all subcontractors, agents or employees possess the experience, knowledge and character necessary to qualify them individually for the particular duties they perform.

**27.7 Permits, Licenses, Easements, Leases and Approvals.** DTC shall secure all permits, licenses, easements, leases and approvals which may be required in connection with the performance of its work hereunder, unless such permit, license, easement, lease or approval specifically requires that it be obtained by Amtrak.

**27.8 Authority.** DTC hereby covenants that it has full power and authority to enter into the Agreement upon the terms and conditions as set forth herein, and each of the persons executing this Agreement on behalf of DTC does hereby covenant and warrant that DTC is a duly authorized and existing corporate authority existing under the laws of the State of Delaware, that it has full authority to enter into this Agreement, and that each person signing on behalf of the corporation is authorized to do so.

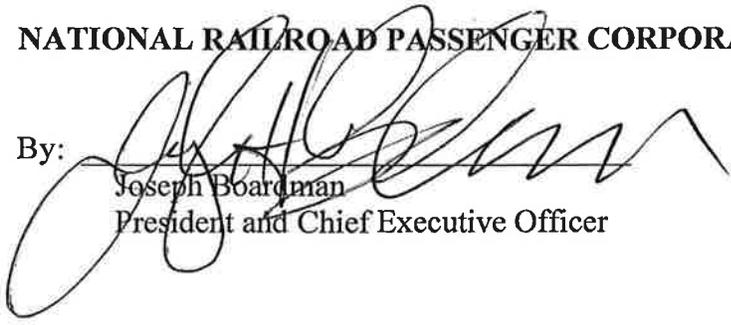
**27.9** If required by Amtrak, DTC shall submit plans to the Federal Railroad Administration for its review and comments for those elements involving passenger boarding and platform configuration.

**27.10** This Agreement is intended to apply to DTC-sponsored projects funded entirely by DTC. In the event the Parties identify a joint benefit project for which Amtrak would be willing to make a funding contribution, the Parties will jointly determine whether this Agreement can be modified as necessary to allow for such event or whether a separate agreement will be required.

IN WITNESS WHEREOF, the Parties agree to be bound as evidenced by the signatures below.

**NATIONAL RAILROAD PASSENGER CORPORATION**

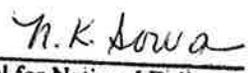
By:



Joseph Boardman  
President and Chief Executive Officer

**APPROVED AS TO FORM:**

**BY:**



**Counsel for National Railroad  
Passenger Corporation**

**DELAWARE TRANSIT CORPORATION**

By:



Lauren L. Skiver  
Chief Executive Officer

**PROJECT INITIATION FORM (P.I.)**  
**Amtrak – DTC Master Project Agreement**

1. Project Initiation Form Number: \_\_\_\_\_ Date: \_\_\_\_\_

2. Project Name: \_\_\_\_\_

3. Description of DTC's Project: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

4. Location: \_\_\_\_\_

5. Phase covered by this PI: (Planning, Design or Construction): \_\_\_\_\_

6. Description of Services to be Performed by Amtrak: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

7. Amtrak's Estimated Project Cost: \$ \_\_\_\_\_

8. Management Fee: \_\_\_\_\_ Yes \_\_\_\_\_ No (Check one)

9. Period of Services (est.): From: \_\_\_\_\_ To: \_\_\_\_\_

10. Schedule, Milestones (where appropriate): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

11. Attachments (Plans, Specifications, Cost Estimate Detail, etc.):

\_\_\_\_\_

\_\_\_\_\_

12. Special Insurance Requirements (See section 17.4 of Agreement):

\_\_\_\_\_

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13. Special Environmental Requirements (See section 21.9 of Agreement):

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14. DTC Project Charge No: \_\_\_\_\_ 15. Amtrak WBS No: \_\_\_\_\_

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***Designated Project Representatives***

For DTC:

For Amtrak:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

---

***Approval and Authorization***

For DTC:

For Amtrak:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

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***Close Out Data***

Project Completion Date: \_\_\_\_\_

Final Cost: \_\_\_\_\_

**CHANGE ORDER FORM (C.O.)**  
**Amtrak – DTC Master Project Agreement**

1. P.I. No. \_\_\_\_\_ Change Order No.: \_\_\_\_\_ Date: \_\_\_\_\_

2. Project Name: \_\_\_\_\_

3. Location: \_\_\_\_\_

4. Description of Change:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Amtrak's Estimated Project Cost:

Prior Estimated Project Cost of Amtrak: \$ \_\_\_\_\_

C.O. Amount: \$ \_\_\_\_\_

New Total Estimated Project Cost of Amtrak: \$ \_\_\_\_\_

6. Period of Services (est.): From: \_\_\_\_\_ To: \_\_\_\_\_

7. Attachments: (Plans, Specifications, Cost Estimate Detail, etc.)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. DTC Project Charge No: \_\_\_\_\_

9. Amtrak WBS No: \_\_\_\_\_

---

***Designated Project Representatives***

10. For DTC:

11. For Amtrak:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

---

***Approval and Authorization***

For DTC:

For Amtrak:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

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***Close Out Data***

Completed on: \_\_\_\_\_

Final Cost: \_\_\_\_\_

**EXHIBIT C**

**INDEMNITY FROM CONTRACTORS PERFORMING  
DESIGN OR ENGINEERING FUNCTIONS**

This form is to be copied, executed by a duly-authorized representative, and returned to Amtrak at the address specified in the Agreement. Amtrak will not review any documents until this form has been received.

\_\_\_\_\_ (“Contractor”) hereby agrees to release and further agrees to defend, indemnify and hold harmless Amtrak (its directors, officers, employees, affiliates, successors in interest, contractors, subcontractors, insurers, agents, representatives and any other affected railroad), from all liability, damages and losses (including all costs and attorneys’ fees) which in any way arise out of or are caused by the performance of its design or engineering work, or the design or engineering work of its subcontractors, agents, or employees (including errors or omissions in such work) relating to the ...[*insert description of project*] located ...[*insert location of project*]. The foregoing obligation shall not be limited by the existence of any insurance policy or by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or its subcontractors or agents, and shall survive the termination of this Agreement for any reason.

Witness: \_\_\_\_\_

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

**DULY AUTHORIZED**

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

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

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

Date: \_\_\_\_\_

NATIONAL RAILROAD PASSENGER CORPORATION  
 OVERHEAD ADDITIVE RATES FOR USE WITH THE DELAWARE TRANSIT CORPORATION MASTER PROJECT AGREEMENT  
 EFFECTIVE JANUARY 1, 2013

EXHIBIT D

LOCATION	Avg FY2013											
	SYSTEM OVERHEAD	DIVISION OVERHEAD	VACATION & HOLIDAY	FAI	FRINGE BENEFITS	S/T	O/T	G&A	S/T LABOR COMPOSITE	O/T LABOR COMPOSITE	MATERIAL HANDLING ADDITIVE	MATERIAL HANDLING COMPOSITE
MID ATLANTIC DIVISION												
NON-EXEMPT LABOR	31.29%	58.53%	16.20%	16.00%	57.47%	20.10%	6.76%	198.38%	158.49%	11.84%	19.40%	
EXEMPT LABOR	29.96%	17.73%	18.83%	n/a	83.17%	n/a	6.76%	166.57%	n/a	11.84%	19.40%	