



COMMONWEALTH of VIRGINIA

Virginia Passenger Rail Authority

DJ Stadtler
Executive Director

919 East Main Street, Suite 2400
Richmond, Virginia 23219

(804) 303-8700
www.vpra.virginia.gov

Jennifer DeBruhl
Chairperson

RESOLUTION OF THE VIRGINIA PASSENGER RAIL AUTHORITY BOARD

July 21, 2022

MOTION

Made By: Ms. Bulova Seconded By: Mr. Hall

Action: Motion Carried, Unanimously

Title: Authorization to Enter into Master Funding Agreement for VRE Track Access Fees

WHEREAS, the Northern Virginia Transportation Commission and Potomac and Rappahannock Transportation Commission (collectively, the “Commissions”) operate the commuter passenger rail service known as “Virginia Railway Express”; and

WHEREAS, to operate the Virginia Railway Express service, the Commissions pay compensation to Class I host railroads and the National Railroad Passenger Corporation (Amtrak) for track access, maintenance of right-of-way, dispatch, and other related services (the “Track Access Fees”); and

WHEREAS, historically, the Virginia Department of Rail and Public Transportation has contributed funding to support up to 84% of the Track Access Fees; and

WHEREAS, VPRA, as the Commonwealth entity now charged with promoting, sustaining, and expanding commuter rail service in the Commonwealth now desires to enter into an agreement with the Commissions that would give VPRA the option to contribute funding to the Commissions to support up to 84% of the Track Access Fees each year.

NOW THEREFORE, BE IT RESOLVED, that the Board hereby authorizes the VPRA Executive Director to enter into an agreement with the Commissions providing VPRA the option to support up to 84% of the Track Access Fees each year, in a form substantially similar to the document titled *Master Funding Agreement for VPRA Track Access Elective Contributions for VRE Track Access Fees* attached hereto as **EXHIBIT A**, with any modifications he deems appropriate or necessary.

EXHIBIT A

[SEE ATTACHED]

####

FINAL EXECUTION

MASTER FUNDING AGREEMENT FOR VPRA TRACK ACCESS ELECTIVE
CONTRIBUTIONS FOR
VRE TRACK ACCESS FEES

DATED [●], 2022

between

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

and

VIRGINIA PASSENGER RAIL AUTHORITY

PREAMBLE

This agreement (“**Agreement**”) is between the (i) Northern Virginia Transportation Commission and Potomac and Rappahannock Transportation Commission (collectively, the “**Commissions**”), and (ii) the Virginia Passenger Rail Authority (“**VPRA**” and together with the Commissions, the “**Parties**”).

ARTICLE 1. SCOPE; DEFINITIONS

§ 1.1 *Scope*. This Agreement establishes the general terms and conditions with respect to VPRA’s provision of funding, in its discretion, to the Commissions for the VPRA Track Access Elective Contribution each year.

§ 1.2 *Definitions*. Capitalized terms used in this Agreement have the definition provided to them in **EXHIBIT A** (*Definitions*).

ARTICLE 2. TRACK ACCESS ELECTIVE CONTRIBUTIONS

§ 2.1 In addition to any VPRA-Supplied Funding made available to the Commissions under the Master Funding Agreement for VPRA-Supplied Funding on VRE Projects, VPRA may elect annually to make available to the Commissions all or a portion of the VPRA Track Access Elective Contribution. If VPRA so elects in a given year, then the Parties will enter into a specific addendum to this Agreement for that year (a “**Track Access Payment Addendum**”) under which VPRA will make the applicable VPRA Track Access Elective Contribution available to the Commissions.

§ 2.3 *Conditions to VPRA Track Access Elective Contribution*. VPRA’s funding of Track Access Elective Contributions under this Agreement is subject to:

- (i) appropriation by the General Assembly;
- (ii) for CTB-Controlled Funding Sources, allocation by the CTB; and
- (iii) for any given year, execution by the Parties of a corresponding Track Access Payment Addendum.

FINAL EXECUTION

§ 2.4 Commissions' Funding Duty. The Commissions shall provide funds, as necessary, from sources other than VPRA in an amount sufficient, together with the VPRA Track Access Elective Contribution governed by this Agreement, to assure payment of the total cost of track access fees for which the Commissions are obligated to pay for the year in which the VPRA Track Access Elective Contribution is provided.

§ 2.5 VPRA Annual Funding Cap. Each Track Access Payment Addendum will establish the applicable VPRA Funding Commitment for the year specified in the Addendum. If the VPRA Funding Commitment is fully expended, VPRA will not be obligated to provide any additional funding for track access fees in that year.

§ 2.6 Incurrence of Fees; No Markup. The Commissions agree that track access fees submitted to VPRA for reimbursement shall be in accordance with the applicable Track Access Payment Addendum and this Agreement. All track access fees for which the Commissions seek reimbursement by VPRA shall be charged at the actual cost(s) to the Commissions, with no markup by the Commissions.

§ 2.7 Requirements for Eligible Track Access Fees. Eligible Track Access Fees must meet the following requirements:

- A. be identified in an associated Track Access Payment Addendum;
- B. be in accordance with the then current operating access agreement(s) under which the Commissions are obligated to pay track access fees;
- C. be actual net fees charged to the Commissions (*i.e.*, the price paid minus any refunds, rebates, salvage, or other items of value received by the Commissions which have the effect of reducing the fees actually incurred and paid);

FINAL EXECUTION

- D. be incurred during the time period specified in the associated Track Access Payment Addendum, which may include costs incurred prior to the execution date of a Track Access Payment Addendum when incurred under a letter of no prejudice or similar document;
- E. comply with 2 C.F.R. Pt. 200 Subpart E;
- F. be documented in accordance with the terms of this Agreement; and
- G. be treated uniformly and consistently under generally accepted accounting principles.

§ 2.8 Process for Reimbursement Payments.

2.8.1. VPRA Track Access Elective Contributions will be distributed to the Commissions on a reimbursement basis. The Commissions shall submit requests for reimbursement using the form (“**Track Access Fee Reimbursement Form**”) attached as **EXHIBIT B** (*Track Access Reimbursement Form*) provided by VPRA as part of each Track Access Payment Addendum. The Commissions shall submit Track Access Fee Reimbursement Forms associated with each applicable Track Access Payment Addendum once a month during the year in which a VPRA Track Access Elective Contribution is being made and within 90 days after incurrence of Eligible Track Access Fee. Track Access Fee Reimbursement Forms must be supported by third-party documentation and VPRA shall have the right to request reasonable additional details needed for VPRA to review each reimbursement request, or for VPRA to satisfy the requirements of VPRA Funding Partners. If the Commissions’ failure to provide any required details results in a VPRA Funding Partner Clawback Event, then the Commissions, and not VPRA, shall be fully responsible to make any associated repayments to the applicable VPRA Funding Partners. The Commissions shall provide information within 30 days of VPRA’s request for additional information. VPRA will reimburse approved Eligible Track Access Fees within 30 days of its receipt and approval of the Commissions’ Track Access Fee Reimbursement Form. The amount of reimbursement provided by VPRA each month shall be equal to the lesser of the amount requested in the Track Access Fee Reimbursement Form or one twelfth (1/12th) of the VPRA Track Access Elective

FINAL EXECUTION

Contributions for that year. The Commissions shall submit their final reimbursement request to VPRA within 90 days of expiration of funding for the applicable Track Access Payment Addendum. The Parties may agree to extend the aforesaid deadlines for required action.

2.8.2. In FY 2023, VRE will pay track access fees in July 2022 prior to VPRA's approval and execution of this Agreement and execution of a Track Access Payment Addendum for FY 2023. Notwithstanding this, VPRA agrees that track access fees paid by VRE in July 2022 prior to execution of the aforesaid documents will be eligible for reimbursement by VPRA upon approval and execution of this Agreement and a Track Access Payment Addendum, and submission of a Track Access Fee Reimbursement Form in compliance with this Agreement.

2.8.3 VPRA acknowledges that there exists an unpaid amount of funds totaling \$703,729.20 that DRPT committed to pay to VRE to reimburse track access fees paid by VRE in FY 2021. VPRA agrees that it will pay the aforesaid amount to VRE within thirty (30) days of execution of this Agreement, which amount shall be in addition to the Eligible Track Access Fees paid to VRE upon receipt of a Track Access Fee Reimbursement Form submitted in accordance with this Agreement and an associated Track Access Payment Addendum.

§ 2.9 Withholding Reimbursements. VPRA shall have the right, in its sole discretion, to withhold reimbursement for Track Access Fee Reimbursement Forms or line items in Track Access Fee Reimbursement Forms found to be incomplete or not in conformance with the requirements of this Agreement or the associated Track Access Payment Addendum. VPRA will notify the Commissions in writing within 30 days of its receipt of the Commissions' Track Access Fee Reimbursement Form of the basis for withholding total or partial reimbursement and will work with the Commissions to resolve any incomplete or nonconforming items.

§ 2.10 Non-Waiver. Reimbursement by VPRA is not a waiver of VPRA's right to assert that such costs do not comply with this Agreement or the applicable Track Access Payment Addendum.

FINAL EXECUTION

Reimbursement of a cost is not a final decision by VPRA as to validity of that cost as an Eligible Track Access Fee.

§ 2.11 *Repayment Duty.* Any reimbursement paid to the Commissions by VPRA not in accordance with the provisions of this Agreement, associated Track Access Payment Addendum, or federal, Commonwealth, or local law, shall be repaid to VPRA by the Commissions within 60 days of VPRA's written notice to the Commissions of the repayment obligation. In no event shall VPRA seek repayment by the Commissions more than 5 years after payment by VPRA of the final reimbursement request for a Track Access Payment Addendum.

§ 2.12 *Payment to Track Access Hosts; Invoices.* The Commissions are responsible for payment of all third parties providing track access to the Commissions ("**Track Access Hosts**"). The Commissions shall attach copies of Track Access Host invoices or other supporting documentation to each Track Access Fee Reimbursement Form requesting reimbursement from VPRA.

§ 2.13 *Pay When Paid.* Unless the Commissions prepay Track Access Hosts prior to submitting Track Access Fee Reimbursement Forms, the Commissions shall remit payment to Track Access Hosts within five business days of receipt of payment from VPRA. If, for any reason, the Commissions cannot remit payment to one or more Track Access Hosts within five days, the Commissions shall immediately notify the Chief Financial Officer of VPRA ("**CFO**") in writing, inform the CFO of the date the Commissions will remit payment to their Track Access Hosts, and deposit the payment received from VPRA in an interest-bearing account. The Commissions shall use all interest proceeds toward the applicable track access fees, reducing dollar-for-dollar the corresponding VPRA Funding Commitment. Depending upon the Commissions' revised Track Access Host payment date, VPRA may require the Commissions to repay the funds to VPRA, rather than hold them in an interest-bearing account. If the Commissions fail to comply with this provision, VPRA may require the Commissions to prepay Track Access Hosts prior to submitting Track Access Fee Reimbursement Forms.

FINAL EXECUTION

§ 2.14 Maintenance of Books and Records. The Commissions shall maintain all books, accounting records, and any other documents supporting track access fees charged for every Track Access Payment Addendum. The Commissions shall maintain such records for four years from the end of the state fiscal year (June 30) in which the final payment is made.

§ 2.15 Right to Inspect Records. The Commissions shall permit the authorized representatives of VPRA to inspect and audit their records related to the performance of this Agreement, including any Track Access Payment Addendum entered into hereunder. Acceptable records are documents (such as invoices, receipts, etc.) that are the basis of entries on the Track Access Fee Reimbursement Forms. VPRA may require the Commissions to furnish certified reports of all expenditures under any relevant contracts or subcontracts. In no event shall VPRA request to inspect or audit records of the Commissions related to the performance of any Track Access Payment Addendum more than four years from the end of the state fiscal year (June 30) in which the final payment is made for the Track Access Payment Addendum.

§ 2.16 Audit Duties and Rights. The Commissions must follow the requirements of 2 C.F.R. PART 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.” A single audit¹ is required when an entity spends \$750,000 or more of Federal Funds in a year. The Commissions must maintain auditable records and adequate supporting documentation. If the Commissions are spending less than \$750,000 of Federal Funds during any one fiscal year, they are not required to undergo a single audit unless specifically requested by VPRA. VPRA reserves the right to require any recipient of Commonwealth funds to undergo an audit relating to a Track Access Payment Addendum the scope of which will be defined by VPRA. In no event shall VPRA require an

¹ Single Audit is an annual audit where all non-Federal entities that expend \$750,000 or more of Federal awards in a year are required to obtain an annual audit in accordance with the Single Audit Act Amendments of 1996, 31 U.S.C. § 7501 *et seq.*, and applicable U.S. DOT “Single Audit” requirements of 2 C.F.R. pt. 1201, which incorporate by reference 2 C.F.R. part 200.

FINAL EXECUTION

audit relating to a Track Access Payment Addendum more than four years from the end of the state fiscal year (June 30) in which the final payment is made for the Track Access Payment Addendum.

§ 2.17 Corrective Action Plan upon Finding of Non-Compliance. If an independent certified public accountant, other auditor, VPRA, or any other party conducting an authorized audit finds the Commissions to be out of compliance with any provision of this Agreement, Track Access Payment Addendum, or any relevant federal, Commonwealth, or local law or regulation, the Commissions must provide a satisfactory corrective action plan to VPRA within 60 days of notification of that finding. The scope of any audit conducted must include expenditures made by Contractors and any other recipients of pass-through funds.

§ 2.18 Refund Duty. The Commissions agree if any audit finds payments by VPRA were (i) unsupported by acceptable records, or (ii) in violation of any other provisions of this Agreement or associated Track Access Payment Addendum, then within 60 days of VPRA's written notice to the Commissions of such audit findings, the Commissions will promptly refund to VPRA any unsupported payments or payments found in violation.

§ 2.19 Financial Statements. The Commissions must submit audited financial statements to VPRA no later than December 31 of each year covering the immediately prior fiscal year (July 1 – June 30) to:

VPRA Chief Financial Officer
919 East Main Street, Suite 2400
Richmond, VA 23219
steve.pittard@vpra.virginia.gov

§ 2.20 Assignment. Assignment by the Commissions of any portion of this Agreement or of any Track Access Payment Addendum must be preapproved by VPRA in writing.

ARTICLE 3. TERM; ENTIRE AGREEMENT

§ 3.1 Term. This Agreement shall be effective immediately upon its execution.

FINAL EXECUTION

§ 3.2 *Entire Agreement.* This Agreement (inclusive of Exhibits) and executed Track Access Payment Addenda constitute the entire and exclusive agreement among the Parties relating to all specific matters covered therein. All prior or contemporaneous verbal or written agreements, understandings, representations, and/or practices relative to the foregoing are hereby superseded, revoked, and rendered ineffective for any purpose.

ARTICLE 4. NOTICES AND DESIGNATED REPRESENTATIVE

§ 4.1 All notices or communications with respect to this Agreement and associated documents shall be in writing and shall be deemed delivered (i) by hand, upon day of delivery, (ii) by prepaid overnight delivery service, upon the next business day, (iii) by U.S. Mail, certified, postage prepaid, return receipt requested, on the third business day following mailing, or (iv) by electronic mail, upon the day of a reply communication confirming receipt of the notice or communication by the recipient. All notices or communications with respect to this Agreement and associated Projects shall be delivered to the addresses set forth below or such other addresses as may be specified by a Party.

**Designated
Representatives:**

VPRA: VPRA Chief Financial Officer
919 E. Main Street, Suite 2400
Richmond, VA 23219
Email: steve.pittard@vpra.virginia.gov

Commissions: Chief Executive Officer, Virginia Railway Express
1500 King Street, Suite 202
Alexandria, Virginia 22314
Email: rdalton@vre.org

ARTICLE 5. TERMINATION OF TRACK ACCESS PAYMENT ADDENDA

§ 5.1 *Commissions' Termination for Convenience.* At any time, the Commissions may terminate a Track Access Payment Addendum for their convenience by providing written notice to

FINAL EXECUTION

VPRA. The termination will be effective 30 days after VPRA's receipt of the Commissions' notice. Upon such termination, the Commissions may no longer submit Track Access Fee Reimbursement Forms to VPRA pursuant to the Track Access Payment Addendum.

§ 5.2 Commissions' Termination for Cause.

§ 5.2.1 If VPRA is in material breach of a Track Access Payment Addendum, the Commissions may terminate that Track Access Payment Addendum for cause by providing written notice to VPRA stating the reasons therefor.

§ 5.2.2 VPRA will have 90 days from receipt of the Commissions notice under Section 5.2.1, or such longer time as agreed by the Parties, to cure the material breach ("**VPRA Cure Period**"). If the breach remains uncured at the end of the VPRA Cure Period, the termination shall be effective the day after expiration of the VPRA Cure Period.

§ 5.2.3 If a Track Access Payment Addendum is validly terminated by the Commissions for cause pursuant to this Section 5.2, the Commissions will not be required to repay funds disbursed by VPRA under that Track Access Payment Addendum, provided that such funds were used to pay fees that have been confirmed as Eligible Track Access Fees by a VPRA audit.

§ 5.3 VPRA's Termination for Convenience.

§ 5.3.1 At any time, VPRA may terminate a Track Access Payment Addendum for its convenience by providing written notice of termination to the Commissions. The termination shall be effective 30 days after the Commissions' receipt of VPRA's notice.

§ 5.3.2 If VPRA terminates a Track Access Payment Addendum pursuant to this Section 5.3, the Commissions will not be required to repay funds disbursed by VPRA prior to the effective date of the termination, provided that such funds were used to pay fees that have been confirmed as Eligible Track Access Fees by a VPRA audit. The Commissions may seek reimbursement for Eligible Track Access

FINAL EXECUTION

Fees for which they have not previously sought reimbursement incurred prior to the effective date of the termination.

§ 5.3.3 The Commissions waive all claims for damages and expenses related to a termination by VPRA pursuant to this Section 5.3.

§ 5.4 *VPRA's Termination for Cause.*

§ 5.4.1 VPRA may terminate a Track Access Payment Addendum for cause by written notice to the Commissions upon the Commissions' material breach, insolvency, or assignment for benefit of creditors.

§ 5.4.2 The Commissions shall have 30 days from receipt of VPRA's written notice under Section 5.2.1, or such longer time as agreed by the Parties (the "**Commissions Cure Period**"), to cure the material breach or to or provide assurances acceptable to VPRA of the Commissions' solvency. If the breach remains uncured at the end of the Commissions Cure Period, or if the Commissions fail to provide acceptable assurances of their solvency, the termination shall be effective the day after expiration of the Commissions' Cure Period, except that if the breach cannot be reasonably cured within 30 days and the Commissions have diligently pursued an appropriate cure during the Commissions' Cure Period, then the Commissions' Cure Period shall be extended but in no event shall it be extended by more than 60 additional days.

§ 5.4.3 If VPRA terminates a Track Access Payment Addendum for cause, the Commissions may no longer submit Track Access Fee Reimbursement Forms to VPRA pursuant to the applicable Track Access Payment Addendum, and shall not be entitled to further repayment.

ARTICLE 6. COVENANT AGAINST CONTINGENT FEES

§ 6.1 The Commissions warrants that they have not, and shall not, employ or retain any company or person, other than a bona fide employee working solely for the Commissions, to solicit or secure a Track Access Payment Addendum, and that it has not, and shall not, pay or agree to pay any

FINAL EXECUTION

company or person, other than a bona fide employee working solely for the Commissions, any fee, commission, percentage, brokerage fee, or other considerations, contingent upon or resulting from the award or making of a Track Access Payment Addendum. Upon breach or violation of this Article, VPRA shall have the right to terminate this Agreement or any Track Access Payment Addendum pursuant to Section 5.4 of this Agreement.

ARTICLE 7. NON-DISCRIMINATION

§ 7.1 Contract Awards. In the solicitation or awarding of any contracts directly related to this Agreement or any associated Track Access Payment Addendum, the Commissions shall not discriminate against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by Commonwealth law relating to discrimination in employment.

§ 7.2 Employees. During the performance of this Agreement or any associated Track Access Payment Addendum, the Commissions agree as follows: (i) the Commissions will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by Commonwealth law relating to discrimination in employment; (ii) the Commissions agree to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; (iii) the Commissions, in all solicitations or advertisements for employees placed by or on behalf of the Commissions, will state that the Commissions, where applicable, are an equal opportunity employer. Notices, advertisements, and solicitations placed in accordance with Federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

ARTICLE 8. DRUG-FREE WORKPLACE

§ 8.1 During the performance of this Agreement and any Track Access Payment Addendum, the Commissions agree to (i) provide a drug-free workplace for their employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the

FINAL EXECUTION

unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Commissions that the Commissions maintain a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, “drug-free workplace” means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Agreement.

ARTICLE 9. SMALL, WOMEN, AND MINORITY (SWAM) BUSINESSES

§ 9.1 The Commissions are encouraged to seek and use Small, Women, and Minority (“SWAM”) enterprises in relation to any Track Access Payment Addendum issued pursuant to this Agreement. § 2.2-4310 of the *Code of Virginia* (1950), as amended, addresses SWAM enterprises.

ARTICLE 10. PERSONS WITH DISABILITIES

§ 10.1 The Commissions and their agents, employees, assigns, or successors, and Contractors, shall comply with the provisions of the Virginians with Disabilities Act (§ 51.5-40 through § 51.5-46 of the *Code of Virginia* (1950), as amended), the terms of which are incorporated herein by reference.

ARTICLE 11. NONRESTRICTIVE CLAUSES

§ 11.1 The Commissions’ solicitation documents will be based upon clear and accurate descriptions of the technical requirements for the material, product, or service to be procured. The descriptions will not contain features that unduly restrict competition.

ARTICLE 12. SPECIAL CAPITAL PROVISIONS

§ 12.1 Useful Life. The Commissions agree that the equipment and facilities funded under this Agreement shall remain in service in the area and be used for the purpose for which they were purchased for the duration of their Useful Life. If any such equipment or facilities are not used for the intended purpose defined in the Track Access Payment Addendum during the applicable Useful Life, the Commissions shall immediately notify VPRA. The Parties shall thereafter work together to ensure the equipment or facilities are used for public transportation purposes for the remainder of the applicable Useful Life.

ARTICLE 13. MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law and Venue. This Agreement and any Track Access Payment Addendum shall, in all respects, be governed by the laws of the Commonwealth without giving effect to its principles of conflicts of law. Nothing in this Agreement or any Track Access Payment Addendum shall constitute a waiver of sovereign immunity by either Party. Any legal action concerning this Agreement, or any Track Access Payment Addendum shall be brought in the City of Richmond Circuit Court of the Commonwealth.

§ 13.2 Compliance with Laws. The Parties shall comply with all requirements specified in this Agreement, each Track Access Payment Addendum, and all applicable Federal, State, and local laws and regulations.

§ 1.3 Severability. If any term or provision of this Agreement or any Track Access Payment Addendum is determined to be invalid, illegal, or unenforceable, it shall not affect the legality, validity, or enforceability of any other part of this Agreement, and the remaining parts of this Agreement or any Track Access Payment Addendum shall be binding upon the Parties.

§ 13.4 Successors and Assigns. All provisions of this Agreement and any Track Access Payment Addendum shall be binding upon the Parties and their respective successors and assigns.

FINAL EXECUTION

§ 13.5 Grant Requirements. VPRA may develop written grant administration requirements, and upon doing so, shall provide them to the Commissions for their review prior to their application to this Agreement.

§ 13.6 Interest. Any repayment by the Commissions to VPRA for VPRA Track Access Elective Contributions under this Agreement shall also require the payment of interest using the prevailing statutory legal rate of interest established by the General Assembly, calculated from the date reimbursement was made by VPRA to date of repayment by the Commissions.

§ 13.7 Joint and Several Liability of Commissions. While it is understood and agreed that the Commissions shall act together in all matters related to the performance of this Agreement, the rights and obligations of the Commissions hereunder shall be shared jointly and severally.

ARTICLE 14. UNAUTHORIZED ALIENS

§ 14.1 The Commissions certify that they do not, and that they shall not, during the performance of this Agreement and any Track Access Payment Addendum, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986 (the “**Act**”).

(This space intentionally left blank)

FINAL EXECUTION

IN TESTIMONY THEREOF, the Parties have caused this Agreement to be executed, each by its duly authorized officer.

**NORTHERN VIRGINIA
TRANSPORTATION
COMMISSION**

**POTOMAC AND
RAPPAHANNOCK
TRANSPORTATION
COMMISSION**

**VIRGINIA PASSENGER RA
AUTHORITY**

BY: _____

BY: _____

BY: _____

TITLE: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

DATE: _____

EXHIBIT A
DEFINITIONS

1. “**Act**” is defined in Section 10.1.
2. “**Agreement**” is defined in the Preamble.
3. “**CFO**” is defined in Section 2.13.
4. “**Commonwealth**” shall mean the Commonwealth of Virginia.
5. “**CTB**” shall mean the Commonwealth Transportation Board.
6. “**CTB-Controlled Funding Sources**” shall mean funding sources that are controlled and allocated by the CTB.
7. “**Commissions**” is defined in the Preamble.
8. “**Commissions Cure Period**” is defined in Section 5.4.2.
9. “**Commissions Funding Commitment**” shall mean the funding from sources controlled by the Commissions, which funding has been committed by the Commissions to payment of track access fees.
10. “**Eligible Track Access Fees**” shall mean track access fees incurred by the Commissions that meet the requirements set forth in Section 2.7.
11. “**Federal Funds**” shall mean funds whose original source are a federal government entity, including such funds that may originate with such and entity and flow through VPRA and/or the CTB before being provided to the Commissions.
12. “**General Assembly**” shall mean the Virginia General Assembly.
13. “**Parties**” is defined in the Preamble.
14. “**Track Access Fee Reimbursement Form**” is defined in Section 2.8.
15. “**SWAM**” is defined in Section 9.1.
16. “**Track Access Host**” is defined in Section 2.12.

FINAL EXECUTION

17. **“Track Access Payment Addendum”** shall mean an addendum to this Agreement entered into by the Parties, under which VPRA commits to provide the VPRA Track Access Elective Contribution (or a portion thereof) for a particular one-year period as defined in Section 2.1.
18. **“Useful Life”** shall mean for each individual asset (*e.g.*, equipment and facilities), twenty (20) years running from the date such asset is placed into service, or any longer period that may be required by a VPRA Funding Partner.
19. **“VPRA”** is defined in the Preamble.
20. **“VPRA Cure Period”** is defined in Section 5.2.2.
21. **“VPRA Funding Commitment”** shall mean the maximum amount of a VPRA Track Access Elective Contribution that is available for payment of the Commissions’ track access fees in a given year, and which is established in a corresponding Track Access Payment Addendum.
22. **“VPRA Funding Partner”** shall mean any entity, including a federal or Commonwealth agency, authority, or institution, other than the Commissions and VPRA, that provides funding in support of a VPRA Track Access Elective Contribution, which funding flows through VPRA and is made available to the Commissions in support of a Track Access Payment Addendum, including when VPRA provides funding to the Commissions before VPRA subsequently seeks reimbursement from the applicable federal or Commonwealth entity.
23. **“VPRA Funding Partner Clawback Event”** shall mean any scenario in which a VPRA Funding Partner demands repayment of any or all funding provided by such VPRA Funding Partner in support of a VPRA Track Access Elective Contribution, which demand is based on a failure of one or both of the Parties to comply with applicable law, regulations, or other requirements related to the provided funding.
24. **“VPRA Track Access Elective Contribution”** shall mean up to eighty-four percent (84%) of the compensation paid by the Commissions to Class I host railroads and the National Railroad Passenger Corporation (Amtrak) with respect to maintenance of right-of-way, dispatch, and other related services (with the portion of such elective contribution supporting payments by the Commissions to CSX Transportation, Inc. referred to as the “Department-Provided Funding” in section 5.1(d) of the Passenger Rail Operations and Access Agreement between the Virginia Department of Rail and Public Transportation (“DRPT”) and the Commissions, dated March 26, 2021, thereafter assigned by DRPT to VPRA, as such may be amended from time to time).

FINAL EXECUTION

EXHIBIT B

TRACK ACCESS FEE REIMBURSEMENT FORM

[SEE ATTACHED FORM]



Track Access Fee Reimbursement Form

Organization Name: _____

EIN: _____

Invoice Date _____

Invoice # _____

Track Host: _____

	Federal	State	Local	Total
	%	%	%	100%
Total Contract Amount	\$	\$	\$	\$
Total of Previous Payments	\$	\$	\$	\$
Total Expended This Period	\$	\$	\$	\$
Balance Remaining After This Invoice	\$	\$	\$	\$
Total Reimbursable Amount for This Invoice	\$			

I certify that the grantee agency has incurred expenses in accordance with the project agreement and that these funds have not been previously requested.

Grantee Authorized Signature _____

VPRA Staff Notes

Program Administrator _____

Invoice Status _____

Comments: