

**AGREEMENT FOR THE PROVISION OF RAIL PASSENGER SERVICE**

Between The

**NATIONAL RAILROAD PASSENGER CORPORATION**

And The

**STATE OF INDIANA**

**October 1, 2013 Through September 30, 2014**

Indiana EDS No. A249-14-320314/A

THIS AGREEMENT, herein referred to as the "Agreement," is made as of the 1st day of October, 2013 between the National Railroad Passenger Corporation, a corporation organized under federal law and the laws of the District of Columbia and having its principal place of business in Washington, D.C. ("Amtrak") and the State of Indiana acting by and through the Indiana Department of Transportation (the "State" or "INDOT").

WHEREAS, the STATE has determined a need to grant funds to Amtrak to provide rail passenger service as described herein and reasonably expects sufficient funds to be made available to pay for such service, and that it is authorized by law to enter into this Agreement; and

WHEREAS, under Section 209 of the Passenger Rail Investment and Improvement Act of 2008, Pub. L. No. 110-432, 122 Stat. 4848 ("PRIIA"), Congress required, among other things, that Amtrak, in consultation with the relevant states and the District of Columbia, develop and implement a methodology for allocating the operating and capital costs of rail routes of not more than 750 miles outside the segment of the continuous Northeast Corridor railroad line between Boston, Massachusetts and Washington, District of Columbia among the relevant states and the District of Columbia, and Amtrak; and

WHEREAS, Amtrak developed such a methodology in consultation with a group of states, but was unable to achieve the necessary concurrence on the methodology from all relevant states and the District of Columbia as required by PRIIA. Accordingly, on November 21, 2011, Amtrak petitioned the Surface Transportation Board (the "STB") to adopt Amtrak's proposed methodology; and

WHEREAS, in a decision effective April 14, 2012, the STB adopted Amtrak's proposed methodology to meet the requirements of PRIIA (the "Agreed 209 Methodology"), which decision is attached hereto and incorporated herein as **Appendix V**; and

WHEREAS, the purpose of this Agreement is to provide for an Indiana based system of intercity railroad passenger trains in connection with Amtrak's nationwide system; such system to operate for the benefit of Indiana residents and passengers connecting to interstate Amtrak trains; and

WHEREAS, the intercity railroad passenger service covered by this Agreement consists of one round-trip, four days per week (*Hoosier State Service* – Trains 850 and 851) between Chicago, Illinois and Indianapolis, IN, collectively referred to herein as the "Hoosier State Service"; and

WHEREAS, the Hoosier State Service is subject to the Agreed 209 Methodology; and

WHEREAS, the Hoosier State Service plays an important role in the effective operation of Amtrak's Beech Grove, Indiana heavy maintenance shop by ferrying rolling stock between Chicago and Beech Grove; and

WHEREAS, the State of Indiana, in conjunction with certain local units of government that are served by the Hoosier State Service, support a multimodal transportation system that includes passenger rail as a sustainable service option; and

WHEREAS, the State and its local partners have agreed to grant funds to Amtrak to continue operation of rail passenger service on the Hoosier State Service as described herein, and reasonably expects sufficient funds to be made available to pay for such service; and

WHEREAS, though the State and its local partners wish for the Hoosier State Service to continue, the State believes that the current operating and funding model can be improved through collaboration among the State, Amtrak and applicable host freight railroads in order to achieve a viable long-term solution for the successful operation of the Hoosier State Service and passenger rail service in Indiana; and

WHEREAS, the State expects Amtrak work collaboratively with the State, local communities, and other parties as may be mutually agreed upon by Amtrak and the State, to achieve certain measureable improvements to the level of Hoosier State Service (as defined herein) as a return on the tax dollars being invested to continue service;

NOW THEREFORE, the State will grant the funds provided by this Agreement to Amtrak subject to the following conditions:

**Section 1. Service to be Provided and Permissible Expenditures of Funds.**

(a.) Subject to sufficient appropriation of Federal funding for Amtrak, the term of this Agreement is for twelve (12) months commencing October 1, 2013, over the route(s), serving the stations, and substantially in accordance with the schedules and other criteria set forth below next to each route description, with the intermediate stops set forth in **Appendix I** to this Agreement, unless the State gives its prior written approval to any deviation from such parameters. In the event Federal funding for Amtrak

for federal fiscal year 2014 is insufficient to support the national system, Amtrak may terminate this Agreement on thirty (30) days prior written notice to the State. The State may terminate this Agreement on thirty (30) days prior written notice to Amtrak.

(b.) Amtrak shall not be required to provide service on any other route, or to increase any train frequency or train consist, except pursuant to a mutually agreed upon amendment hereto, consistent with the Agreed 209 Methodology.

(c.) Amtrak will make available to the Hoosier State Service sufficient locomotives and cars so as to operate the Service according to the schedules and other criteria established by this Agreement consistent with the funding requirements of the Agreed 209 Methodology. The operating conditions of said locomotives and cars shall be in compliance with standards established under Federal laws and regulations. Amtrak will provide operating crews (including sufficient numbers of employees, as provided under applicable regulations and Amtrak labor agreements), reservation and information services, station facilities and agents at agreed-upon stations in the Hoosier State Service. Any and all station staffing to be implemented during the term of this Agreement shall require mutual written approval of the parties, and must, as applicable, be in full compliance with all existing Amtrak labor agreements. All trains in the Hoosier State Service will be dispatched in a right and ready condition. All trains shall, at a minimum, consist of one locomotive and two passenger coach cars. Coach cars shall have accommodations for passenger hand-carried luggage. Amtrak shall comply with the requirements of the Americans With Disabilities Act in its performance of these services.

(d.) The parties shall cooperate for the purpose of promoting the Hoosier State Service, and shall take such other actions as they may agree are conducive to the provision of the Hoosier State Service on a regular, efficient and economical basis; provided, however, that the State shall have no obligation to contribute moneys for that purpose or for purposes other than those set forth in Section 3 of this Agreement. Amtrak shall advertise and market the Hoosier State Service and may incorporate the Hoosier State Service in its general advertising and promotional programs, as it deems appropriate. Amtrak will, as practical, endeavor to provide the State with advance notice of future promotions and obtain State concurrence on special promotions relating to the Hoosier State Service.

(e.) Amtrak shall insert in all published timetables the following statement: "This service is financed primarily through funds made available by the Indiana Department of Transportation and communities along the route."

(f.) Amtrak's obligations to provide the Hoosier State Service shall not be deemed to be satisfied through the operation of other regularly scheduled interstate trains. This Agreement shall not prevent Amtrak from altering or terminating any other service it provides.

(g.) Amtrak recognizes the State's financial contribution to the provision of the Hoosier State Service and acknowledges the budgetary limitations of the State. Amtrak further recognizes that reducing cost whenever possible is important to the State. Accordingly, the parties acknowledge that it is their mutual objective to provide the citizens of the State with a quality transportation service, operated in a cost effective manner. In accordance with this objective, Amtrak commits that it will endeavor to work with the State to pursue revenue growth and to achieve cost efficiencies and/or cost reduction in the operation of the Hoosier State Service, as appropriate.

**Section 2. Changes Affecting Hoosier State Service.**

(a.) The State may at any time request changes in any aspect of the Hoosier State Service by giving written notice of such request to Amtrak. Such notice shall be faxed and sent registered mail with confirmed delivery and shall contain a proposed date of implementation and information in sufficient detail to support and justify the proposed change. Amtrak's response shall state that it concurs or, in the alternative, give reasons in sufficient detail why it does not concur with the proposed change, such concurrence not to be unreasonably withheld. If Amtrak fails to respond in writing within sixty (60) days of receipt of such notice, it shall be deemed to have concurred in the proposed change. If after consultation the parties cannot agree, either may initiate the dispute resolution provisions of Section 9 hereof.

(b.) Amtrak may at any time request changes in any aspect of the Hoosier State Service by giving written notice of such request to the State. Such notice shall be faxed and sent registered mail with confirmed delivery and shall contain a proposed date of implementation and information in sufficient detail to support and justify the proposed change. The State's response shall state that it concurs or, in the alternative, give reasons in sufficient detail why it does not concur with the proposed change, such concurrence not to be unreasonably withheld. If the State fails to respond in writing within sixty (60) days of receipt of such notice, it shall be deemed to have concurred in the proposed change. If after consultation the parties cannot agree, either may initiate the dispute resolution provisions of Section 9 hereof.

(c.) If Amtrak operation on, or access to or over, required rail lines shall be disrupted or unavailable for any reason, including force majeure as set forth in Section 6 herein, Amtrak may suspend or reroute any part of the Hoosier State Service or use buses instead of trains for so long as such operation or access is disrupted or unavailable. In such cases Amtrak shall take all reasonable measures to promptly notify the State, by telephone at (317) 233-2376, of any such suspension or rerouting or bus usage. Amtrak agrees to involve State in any decisions it reaches with the host railroad should the host railroad refuse to reasonably provide access to its tracks before, during or after a disruption under this section. Amtrak and State also agree to take all reasonable measures to defend Amtrak's right of access to the host railroad's tracks.

(i.) Amtrak and the State agree that they shall cooperate for the purpose of mitigating the impact of service disruptions by alerting passengers, the appropriate stations and the public through appropriate public media.

(d.) Amtrak may at any time, with or without the State's concurrence; make changes in the Hoosier State Service that are, in its opinion, necessary for safety, environmental, or federal regulatory reasons. Amtrak shall promptly notify the State of any such changes. Said changes include, but are not limited to, compliance with rulings by the Federal Railroad Administration, the Department of Homeland Security, the National Transportation Safety Board, the Food and Drug Administration or the Environmental Protection Agency.

(e.) Any changes to the Hoosier State Service made pursuant to subsections (a), (b), (c) or (d) above may, if agreed to in writing between the parties, result in an adjustment of the amounts paid by the State consistent with the Agreed 209 Methodology.

**Section 3. Amount and Timing of Funds by the State.**

(a.) The State shall pay Amtrak the following for operation of the Hoosier State Service each month from October 1, 2013 through September 30, 2014:

(i.) The sum of Two Hundred Forty-Four Thousand and Nine Hundred and Sixteen Dollars (**\$244,916.00**) per month, calculated in accordance with the Agreed 209 Methodology and representing a fixed fee for the entire cost of the service, including Third Party Costs for Fuel, Host Railroad Maintenance of Way, Performance Incentive and Other Costs and Capital Costs – Passenger Service Equipment. The State and Amtrak agree that this amount represents a fixed fee for the Service, mutually agreed upon by the parties and not subject to audit adjustment.

(ii.) The parties further agree that in accordance with the provisions of Section 3(b) below, the State's monthly payment to Amtrak for Hoosier State Service each month from October 1, 2013 through September 30, 2014, as provided by Section 3(a)(i) above, shall be offset, in part, by a monthly credit in the amount of Twenty-One Thousand and Six Hundred and Sixty-Seven Dollars (**\$21,667.00**). The parties further agree that the State shall be entitled to such credit only for each full month of service during which the State-supported Hoosier State Service is operated.

(iii) Capitalized terms shall have the meaning set forth in the Agreed 209 Methodology.

(1.) **Operating Costs – general.** Operating Costs will be calculated according to the Agreed 209 Methodology. Route Costs and Additives, and Third Party Costs shall be

fixed for the term of the Agreement based upon a monthly pro-rata allocation of the amounts specified in Appendix II. Credits for Passenger and Other Allocated Revenues shall be fixed for the duration of the Agreement in the amounts specified in Appendix II. The State and Amtrak agree that the Route Costs and Additives, Third Party Costs and Passenger and Other Allocated Revenues for the Hoosier State Service have been mutually agreed upon by the parties and are not subject to audit adjustment.

(2.) Capital Costs – Passenger Service Equipment. Capital Costs for Passenger Service Equipment are included in this Agreement and will be calculated as a usage fee according to the Agreed 209 Methodology and will be charged to the State on a monthly pro-rata allocation of the amount specified in Appendix III. On or before March 1, 2015, Amtrak shall provide the State with an accounting of the actual and verifiable equipment capital investments made by Amtrak during the period of October 1, 2013 through September 30, 2014 and if applicable, the Continuation Period set forth in Section 3(f), in accordance with the 5-year equipment capital investment program described in the Agreed 209 Methodology, along with the revised FY 2014 Equipment Capital Charge based on that accounting.

(b.) Amtrak may add units of rolling stock, either locomotives or railcars, to the Hoosier State Service to be transported from Chicago to Indianapolis or from Indianapolis to Chicago (i) for the purpose of moving said rolling stock from or to Amtrak's Beech Grove shop, or (ii) for any purpose other than transporting passengers as part of the Hoosier State Service ("Additional Units"). Amtrak anticipates that it shall add no more than five hundred twenty (520) units to the Hoosier State Service in Fiscal Year 2014. The State shall be permitted to deduct a credit of Twenty-One Thousand and Six Hundred and Sixty-Seven Dollars (\$21,667.00) (or approximately Five Hundred Dollars (\$500.00) per unit) per month from the bill for making the State-supported train available for these movements. Subject to the provisions of Section 3(a)(ii) above, this credit shall be available to the State only for each full month during which the State-supported Hoosier State Service is operated.

(c.) The State shall remit to Amtrak timely monthly payments in accordance with the Payment Schedule set forth in Appendix IV. All monthly payments due under Section 3(a) shall be payable to Amtrak, in full, forty-five (45) days after first of each month for service provided during the preceding month.

(d.) Any such payment that is due on a date that precedes the actual execution of this Agreement shall be due and payable forty-five (45) days after the date of such execution. Except for any such payments due on the date of execution hereof, the State shall remit to Amtrak all contractually due

amounts under Section 3(a) in accordance with the monthly payment schedule specified above and presented in Appendix IV to this Agreement. If the State fails to remit full payment when due, Amtrak may discontinue any or all of the Hoosier State Service after thirty (30) days prior notice in writing to the State.

(e.) Any termination hereunder shall be without prejudice to Amtrak's right to receive payment through the date of actual termination of the Hoosier State Service, and shall be without prejudice to the State's right to receive a credit for movement of Additional Units on the Hoosier State Service for each full month of service for which the Hoosier State Service was operated.

(f.) All payments shall be made in arrears and according to the terms of this Agreement and in conformance with State fiscal policies and procedures and, as required by IC 4-13-2-14.8, by electronic funds transfer to the financial institution designated by Amtrak in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the services that are the subject of this Agreement except as permitted by IC 4-13-2-20.

(g.) In the event the parties fail to reach agreement for operation of the Service for the period beyond September 30, 2014, the parties agree that the terms of this Agreement shall govern continued operation of the Hoosier State Service for a one-time extension period of up to an additional four (4) months ("Continuation Period"). In such event, the State agrees to reimburse Amtrak for the fixed fee, at the level established for the period October 1, 2013 through September 30, 2014, plus a three percent (3%) escalation fee, subject to Section 21 (Funding Cancellation) of this Agreement. Under no circumstances will the Continuation Period extend beyond January 31, 2015.

(h.) From time to time, Amtrak may make updates to the Amtrak Performance Tracking (APT) system which is the basis of many cost allocations within the Agreed 209 Methodology, or may make updates to Operating or Capital Cost forecasts derived from APT data. In the event any such updates are, consistent with the requirements of Section 209 Methodology, determined by Amtrak to warrant the revision of any such costs in a manner that would result in an adjustment of the amounts paid by or to be paid by the State under the terms of this Agreement, Amtrak will notify the State of such adjustment(s) and, subject to mutual agreement of the parties, amend this Agreement accordingly.

(i.) The total amount of funds paid from INDOT to Amtrak under this Agreement shall not exceed the sum of Three Million Six Hundred Five Thousand Dollars (\$3,605,000.00).

#### **Section 4. Indemnity and Defense.**

Amtrak shall assume all liability, defend, indemnify and hold harmless the State of Indiana, INDOT, their officials, and employees from any and all losses or expenses (including reasonable attorney's fees

incurred in enforcing this section), arising from claims, actions, or proceedings for injury to or death of any person or for damage to or loss of any property arising from the operation of the Hoosier State Service. If any claim, action or proceeding shall at any time be brought against the State asserting a liability for such injury, death, damage or loss, the State shall promptly give notice thereof to Amtrak, and Amtrak shall promptly undertake the defense of such claim, action or proceeding. The State agrees to thereafter provide such information and reasonable assistance as Amtrak may request from time to time, provided that all such requests comport with Indiana law. The State shall not provide such indemnification to Amtrak.

**Section 5. Inspections.**

(a.) The State may, at any reasonable time and upon three (3) business days' notice, inspect Amtrak's facilities and equipment used in providing the Hoosier State Service; provided, that such inspection shall comply with all applicable safety rules and regulations and shall not hinder or delay the operation of the service. Subject to compliance with Amtrak's policies on locomotive access, this will include authority to ride the head end or locomotive of State-supported trains for those State employees or approved representatives listed on Appendix VI of this Agreement. Amtrak will provide the State employees or approved representatives authorized under Appendix VI with all necessary safety equipment, other than protective footwear. The State agrees to notify Amtrak in advance of its employees' or approved representatives' intent to ride the head end or locomotive of State-supported trains, and to require that those employees or approved representatives sign a waiver releasing Amtrak from any liability that may result therefrom. The State will provide written notice to Amtrak of any requested changes to this list during the term of this Agreement as soon as possible. Amtrak will provide its approval or rejection of the request as soon as possible.

(b.) Upon ten (10) business days' written notice, Amtrak shall permit the State, or a designated representative, access to inspect all books, records and supporting documents relating to the Hoosier State Service only to verify the payments made and credits applied under Section 8 of this Agreement. Amtrak agrees to cooperate fully with any such audit conducted by the State, and to provide full access to all relevant materials, but only to the extent necessary to verify payments made and credits applied under Section 8 of this Agreement. Amtrak further agrees that all such books, records, and supporting documents shall be maintained by Amtrak and shall be accessible to the State for three (3) years following expiration of the Hoosier State Service provided for in this Agreement. All such financial information made available to the State shall be deemed to be a trade secret, or to contain proprietary, privileged or confidential information. Subject to applicable law, no other use of such information shall be made without Amtrak's express written approval.

(c.) Amtrak shall provide the State with access to daily "Delay Reports" for each train within the

Hoosier State Service. In addition, Amtrak shall also provide the State with monthly on time performance results for the Hoosier State Service, which shall include, without limitation, daily on time performance data for each train listed in Appendix I to include delay by railroad, delay code or causation, minutes of delay and rank of each category in terms of percentage of delay attributed. Amtrak monthly reports will also include daily counts of passengers boarding and alighting at each station, and the daily car count for Hoosier State Service trains. Amtrak will make individual conductor delay reports available to the State upon request and upon five (5) business days notice.

(d.) Amtrak shall make available to the State such ridership data relating to the Hoosier State Service that is available in Amtrak's Data Warehouse system, e.g., passengers carried, revenues and passenger miles, as may be mutually agreed upon by the parties. Such data shall be computed and furnished on a monthly basis. Amtrak shall endeavor to provide such other performance data relating to the Hoosier State Service as may be reasonably available.

#### **Section 6. Force Majeure.**

The obligations of Amtrak hereunder shall be subject to force majeure. Amtrak shall not be liable for any failure to perform, or for any delay or cancellation in connection with the performance of any obligation hereunder, if such failure, delay or cancellation occurs due to causes beyond the control and without fault or negligence of Amtrak, including but not restricted to the following: acts of God; riots, insurrection, terrorism or war; or strikes or picketing. If, because of an event of force majeure, Amtrak is unable to carry out its obligations under this Agreement, then its obligation shall be suspended to the extent made necessary by such force majeure and during its continuance. Amtrak promptly shall give the State written notice of such force majeure with sufficient details as to the extent and probable duration of the effects. Amtrak shall mitigate the effects of such force majeure (other than strikes or lockouts, which shall be wholly at the discretion of Amtrak) insofar as is commercially reasonable, with all reasonable dispatch.

#### **Section 7. Termination.**

In addition to any other provision hereof, this Agreement may be terminated by either party upon one hundred and eighty (180) days' notice to the other. Termination of this Agreement shall be without prejudice to the State's obligation to reimburse Amtrak hereunder for the Hoosier State Service and for any associated capital or other costs, provided until and including the date of termination.

#### **Section 8. Pay For Performance.**

Because timeliness of train operations is of the essence of this Agreement and actual damages to the State as a result of delays or cancellations are not readily calculable, Amtrak shall pay the State, at the end of the Agreement Term the sum of Five Thousand Dollars (**\$5,000.00**) for each Hoosier State Service train that is cancelled (annulled) before departing its origin point, as set forth in Appendix I, for reasons other than those set forth in Section 2(c), 2(d) or Section 6 hereof, and for which substitute transportation

(e.g., bus) is not provided. Amtrak will mitigate the effects of such suspension insofar as is commercially reasonable with all reasonable dispatch. For all service disruptions, Amtrak will coordinate with the State and will alert the passengers and public through appropriate public media.

**Section 9. Dispute Resolution.**

Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, may be settled by arbitration upon written agreement of the parties. If the parties agree in writing, such arbitration shall be administered by the American Arbitration Association under its Commercial Arbitration Rules, and a judgment on the award rendered by the arbitrators may be entered in either the United States District Court for the Southern District of Indiana or the United States District Court for the Northern District of Indiana. If the parties do not agree in writing to submit to arbitration, they may instead participate in mediation or another dispute resolution procedure to resolve any controversy or claim arising out of or relating to this Agreement.

**Section 10. Notices.**

Any notices required by this Agreement or related to the Hoosier State Service provided for under this Agreement by either party shall be in writing and shall be directed to the officials identified herein by personal delivery or by deposit in the United States mail, certified first class delivery. The representatives, and/or addresses set forth herein may be changed at any time by either party by notice in writing to the other.

**For Amtrak:** Chief, State Government - Contracts  
National Railroad Passenger Corporation  
Chicago Union Station  
500 West Jackson Boulevard, 2<sup>nd</sup> Floor  
Chicago IL 60661

**For State:** Indiana Department of Transportation  
Attn: Director of Multimodal Planning and Programs  
100 N. Senate Avenue, Room N758  
Indianapolis, IN 46204-2216

**Section 11. Entire Agreement; Amendment.**

This Agreement constitutes the entire agreement between the parties with respect to the subject of rail passenger service on the route covered herein. There are no agreements, whether express or implied, except as may be expressly set forth herein. All prior agreements and understandings between them with respect to the provision of rail passenger service on the route covered herein on or after the effective date of this Agreement or any renewal thereof are subsumed within this Agreement and any renewal thereof. No change in or modification to this Agreement shall be of any force or effect unless in writing, dated and

executed by duly authorized representatives of the parties, and submitted to the Attorney General of Indiana or his or her authorized representative for approval as to form and legality.

**Section 12. Construction/Governing Laws.**

This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Indiana, without regard to its conflicts of laws rules. Suit, if any, must be brought in the State of Indiana. The parties further agree that the Section headings used in this Agreement are for convenience only and shall not affect the construction of any terms hereof.

**Section 13. Confidentiality.**

State desires that Amtrak disclose to State certain proprietary and confidential commercial and financial information of Amtrak pursuant to this Agreement and the Operations provided hereunder. Except as otherwise provided in this Section 13, the State agrees to keep such confidential information in strict confidence, to maintain adequate security measures to protect the information and to immediately notify Amtrak in writing of any known or suspected disclosure, access or use of the confidential information that is not authorized under this Agreement. Further, State agrees that it and its employees, will not, either during or at any time after the term of this Agreement, publish or disclose to any third party or the public any identified Amtrak proprietary or confidential information of any kind or nature disclosed by Amtrak to State hereunder without the prior written authorization of Amtrak, except as may be required and with written notice to Amtrak prior to disclosure : (i) pursuant to the Indiana Access to Public Records Act, I.C. 5-14-3; or (ii) by order or decree of any court or other governmental body having powers to compel testimony or production of information. This Section shall survive termination or expiration of this Agreement.

**Section 14. Subcontracting.**

Subcontracting, assignment or transfer of all or part of the interests of the State concerning any of the obligations covered by this Agreement is prohibited without prior written consent of the State.

**Section 15. Third Party Contractors.**

(a.) The State may elect to contract with third parties for certain services provided by Amtrak under this Agreement, as specifically set forth below. If State elects to contract with a third party for any of the services described in Section 15(c) below, it will provide ninety (90) days prior written notice to Amtrak of its intent to issue a Request for Proposals (RFP). Amtrak will be permitted to respond to the RFP along with other proposers, who will be qualified by the State at the State's sole discretion. The State shall provide at least ninety (90) days prior written notice to Amtrak of its intention to substitute a third party contractor for any of the Amtrak provided services described below. Within forty-five (45) business days of receipt of such notice, Amtrak shall provide the State with its requirements for indemnity, insurance, labor, regulatory, health and safety obligations. Except as may be prohibited under applicable state or

federal law, the State will encourage the third party contractor to employ furloughed Amtrak employees, if applicable.

(b.) Subject to the provisions of Section 2 (e) above and as specified in Section 15 (c) below, any changes to the Hoosier State Service may, if agreed to in writing between the parties, result in an adjustment of the amounts paid by the State consistent with the Agreed 209 Methodology.

(c.) State, at its sole option, may provide any or all of the following upon completion of an RFP process and selection of a third party contractor ("Contractor"):

i. At any time during the term of this Agreement, the State may decide to introduce food and beverage service for the Amtrak Hoosier State Service. The State shall provide Amtrak with at least ninety (90) days' prior written notice of the proposed date of implementation any food service on Amtrak Hoosier State Service. Such food and beverage service to be provided by the State must meet all federal, state and local laws, rules and regulations relating to food and beverage service, including but not limited to the Food and Drug Administration and Amtrak's Food Service Sanitation and Public Health standards. Revenue generated from the State's Contractor, and any additional Amtrak costs associated with the introduction of food and beverage service aboard Amtrak Hoosier State Service will be addressed in accordance with the terms set forth in a written amendment to this Agreement.

ii. Station staffing, if a Contractor is selected by the State for any unstaffed station, will be provided at the sole expense of the State with no offset in expense, as there is presently no expense for station staffing at unstaffed stations included in this Agreement. Any and all station staffing to be implemented during the term of this Agreement shall require mutual written approval of the parties, and must, as applicable, be in full compliance with all existing Amtrak labor agreements.

iii. Rolling stock, if a Contractor is selected by the State, or if the State purchases rolling stock, such equipment will be provided at the sole expense of the State. In order for State-provided equipment to operate in the Amtrak Hoosier State Service, the rolling stock provided by the State, either through ownership or Contractor(s), must comply fully with all applicable requirements of 49 CFR Part 238 and all other applicable laws and regulations, and by mutual agreement of the parties, must be compatible with Amtrak Hoosier State operations and associated equipment. The State shall provide Amtrak with at least ninety (90) days prior written notice before the planned commencement of utilizing State-owned or leased equipment

in the operation of the Hoosier State Service. Subject to Amtrak's full acceptance of such equipment for use in the operation of the Hoosier State Service, the State shall be provided with a credit against the amounts otherwise payable under Section 3(a)(iii)(2) of this Agreement, in the amount Thirty-Five Thousand, Seven Hundred and Fifty Dollars (**\$35,750.00**) per month, reflecting elimination of the Capital Cost in **Appendix III**. Such credit shall be applicable only for each full month of Hoosier State Service during which no units of Amtrak-owned equipment are provided. In the event that State-provided equipment is not available for the operation of Hoosier State Service, for any reason, and is replaced by Amtrak-owned rolling stock, the credit shall be reduced by the daily Capital Cost amount of One Thousand, One Hundred and Seventy-Five Dollars and Thirty-Five Cents (**\$1,175.35**) for each such day that any unit of Amtrak-owned rolling stock is used for the operation of the Hoosier State Service.

iv. Maintenance and Servicing of State-owned or leased rail equipment, if a Contractor is used by the State, the State will be provided with a credit against the amounts otherwise payable under Section 3(a) of this Agreement, in the amount of Thirty-Nine Thousand, Two Hundred and Fifty Dollars (**\$39,250.00**) per month. In the event that Amtrak must, for any reason, perform maintenance or servicing of the State-owned or leased equipment in the conduct of the daily operation of the Hoosier State Service, such credit shall be reduced by the amount of One Thousand, Two Hundred and Ninety Dollars and Forty-Two Cents (**\$1,290.42**) for each such day for which mechanical forces must provide mechanical maintenance and/or servicing. All such maintenance and servicing of the State-owned or leased rail equipment to be provided by a Contractor will be provided at a non-Amtrak facility and at the sole expense of the State. The State or its Contractor shall be responsible for any host railroad access arrangements to Contractor maintenance facilities. The State shall provide Amtrak at least ninety (90) days' prior written notice prior to planned commencement of equipment maintenance and servicing by a Contractor. Further, the State shall assure throughout the term of this Agreement that the Contractor(s):

1. complies fully with all applicable requirements of 49 CFR Part 238 and all other applicable laws and regulations;
2. maintains the equipment and all components (e.g., heating and cooling systems) in safe and reliable operating condition, performs repairs as needed (including any repairs or modifications required by applicable laws and regulations) and performs housekeeping functions to provide a clean and sanitary condition on the exterior and interior of the equipment, including windows ("Operational Condition");
3. delivers the needed equipment in Operational Condition to Amtrak in a timely

fashion so that Amtrak can meet the schedule set forth in Appendix I:

4. agrees to defend, indemnify and hold harmless Amtrak and any railroad over which State-owned or leased equipment is operated (each an "Operating Railroad"), their respective officers, directors, employees, agents, servants, successors, assigns and subsidiaries (collectively, "Indemnitees"), from and against any and all losses and liabilities, penalties, fines, forfeitures, demands, claims, causes of action, suits, costs, and expenses incidental thereto (including costs of defense and attorneys' fees) (collectively, "Losses"), which any or all of them may hereafter incur, be responsible for or pay as a result of injury, death, disease, or occupational disease ("Personal Injury") to any person (including Contractor's employees), and for damage to or loss (including loss of use) of any property (including property of Contractor's employees and the parties hereto) ("Property Damage"), arising out of or in any degree directly or indirectly caused by or resulting from activities of or services performed by Contractor or Contractor's officers, employees, agents, servants, subcontractors, sub-subcontractors or the employees of any of them, or any other person acting for or by permission of Contractor or Contractor's agents (collectively, "Contractor's Agents"); provided however:
  - (a) Contractor shall be obligated to defend and indemnify the Indemnitees for Losses as a result of Personal Injury to Contractor or Contractor's Agents, or the employees of any of them, and Property Damage to property of Contractor or Contractor's Agents regardless of cause or the negligence of State or Indemnitees.
  - (b) Contractor shall not be obligated to indemnify the Indemnitees for Losses as a result of Personal Injury to Amtrak employees or property damage to property of Amtrak or Amtrak employees regardless of cause or the negligence of Contractor or Contractor's Agents.
  - (c) That with respect to Losses as a result of Personal Injury or Property Damage suffered by any person or entity, other than Contractor or Contractor's Agents or State, Contractor shall not be obligated to indemnify an Indemnitee to the extent such Losses were caused by the negligence, gross negligence or willful misconduct of that Indemnitee.
  - (d) Contractor's duty to indemnify and insure the contractual liabilities assumed in this Subsection 15(c) shall not exceed Two Hundred Million Dollars (\$200,000,000.00) per occurrence and annual aggregate.
5. Where any lack of insurance coverage is due to the Contractor's failure to

procure or maintain insurance of the types and with the minimum limits required by Section 15(c) hereof, Amtrak shall have the right to halt the Service until such lack in insurance is cured. Contractor shall procure endorsements to its general liability policies that provide the following: (1) that Contractor's insurance carrier shall provide sixty (60) days' notice to Contractor, the State, Amtrak and the other Indemnitees before terminating, amending and/or canceling any specific coverages including endorsements required under Sections 15(c)(iv)(4) through 15(c)(iv)(6) hereof for any reason; (2) (a) if any named insured requests cancellation of insurance, Contractor's insurer shall immediately notify Contractor, Amtrak, the State and the Operating Railroads (in the manners and at the locations listed in the next sentence) of such request for cancellation, and (b) such insurance shall not be cancelled unless and until Contractor, Amtrak, the State and the Operating Railroads have given in writing their consent to such cancellation; and (3) that all notice contemplated by this Section shall be provided by certified mail, facsimile transmission, and electronic mail delivered as follows:

For the State: Indiana Department of Transportation  
Attn: Director of Multimodal Planning and Programs  
100 N. Senate Avenue, Room N758  
Indianapolis, IN 46204-2216

For Amtrak: Cathy H. Rawlings  
Director, Risk Management  
National Railroad Passenger Corporation  
60 Massachusetts Avenue, N.E.  
Washington, DC 20002  
Facsimile: (202) 906-2174  
Email: [cathy.rawlings@amtrak.com](mailto:cathy.rawlings@amtrak.com)

For BRC: Mr. Patrick O'Brien, President  
The Belt Railway of Chicago  
6900 S. Central Avenue  
Bedford Park, IL 60638  
Facsimile: (708) 496-4001  
Email: [pobrien@beltrailway.com](mailto:pobrien@beltrailway.com)

For CSX: Mr. Jay Westbrook  
AVP Network Planning & Joint Facility  
CSX Transportation  
500 Water Street, J-315  
Jacksonville, FL 32202  
Facsimile: (904) 359-4807  
Email: [jay\\_westbrook@csx.com](mailto:jay_westbrook@csx.com)

For Metra: Mr. Marly Ryan  
Acting Chief Transportation Officer  
Metra Chicago Transit  
547 W. Jackson Boulevard, 5<sup>th</sup> Floor  
Chicago, IL 60661  
Facsimile: (312) 322-8986  
Email: [mryan@metrarr.com](mailto:mryan@metrarr.com)

For NS: Mr. Mark Owens  
NRPC Operations Officer  
Norfolk Southern Corporation  
Amtrak Operations Box 158  
1200 Peachtree Street, NE  
Atlanta, GA 30309  
Facsimile: (404) 582-5556  
Email: [mmowens@nscorp.com](mailto:mmowens@nscorp.com)

For UP: Ms. Peggy Harris  
NRPC Operations Officer  
Union Pacific Railroad Company  
850 Jones Street  
Omaha, NE 68102  
Facsimile: (402) 636-7871  
Email: [PEHARRIS@up.com](mailto:PEHARRIS@up.com)

6. Procures and maintains, at no cost to Amtrak or any Operating Railroad, during the entire period that it maintains and/or services State-owned or leased rail

equipment, the types of insurance specified below. The Contractor shall submit to Amtrak a certificate of insurance giving evidence of the required coverages prior to commencing work. All insurance shall be procured from insurers authorized to do business in the jurisdiction where operations are to be performed. The Contractor shall require all subcontractors to carry the insurance required herein, or may, at its option, provide the coverage for any or all subcontractors and, if so, the evidence of insurance submitted shall so stipulate. The insurance shall provide for thirty (30) days prior written notice to be given to Amtrak and each Operating Railroad in the event coverage is substantially changed, canceled or non-renewed. If the insurance provided is not in compliance with all the requirements herein, Amtrak maintains the right to cease operation of the Service until proper evidence is provided. Amtrak shall be provided with copies of the applicable policies of insurance, and endorsements or (if policy copies are not available) binders adopting the same prior to October 1, 2013 unless the time for provision of same is extended by the parties. In no event will Amtrak operate the Service until it has received a copy of the contract evidencing Contractor's indemnification obligations to Amtrak and the required evidence of insurance as specified in the preceding sentence. During the term of this Agreement the State shall provide or cause its Contractor to provide copies of policies of insurance (or if unavailable, binders adopting the same) required hereunder upon written request of Amtrak within ten (10) days or such other time as agreed to the parties.

Evidence of insurance shall be submitted to:

Cathy H. Rawlings  
Director, Risk Management  
National Railroad Passenger Corporation  
60 Massachusetts Avenue, N.E.  
Washington, DC 20002  
Facsimile: (202) 906-2174  
Email: [cathy.rawlings@amtrak.com](mailto:cathy.rawlings@amtrak.com)

Workers' Compensation Insurance:

A policy complying with the requirements of the statutes of the jurisdiction(s) in which the contract work will be performed, covering all employees of the

Contractor. Employer's Liability coverage with limits of liability of not less than One Million Dollars (\$1,000,000.00) each accident or illness shall be included.  
General Liability Insurance

General Liability Insurance and Excess Liability Insurance:

A policy issued to and covering liability imposed upon the Contractor with respect to all work to be performed and all obligations assumed by the Contractor under the terms of its contract with the State. Products-completed operations, independent subcontractors, and contractual liability coverages are to be included, and all railroad exclusions are to be deleted. If any machinery, equipment, storage containers or anything else that has the potential for releasing contaminants (e.g., fuels, lubricants, etc.) into the environment will be brought onto the job site, the policy shall be endorsed to provide coverage for sudden and accidental pollution. Amtrak and each Operating Railroad are to be designated as additional insureds with respect to operations to be performed in connection with the Contractor's contract with the State. Coverage under this policy, or policies, shall have limits of liability of not less than Two Hundred Million Dollars (\$200,000,000.00) per occurrence, combined single limit for bodily injury (including disease or death), personal injury and property damage (including loss of use) liability, with a Two Hundred Million Dollars (\$200,000,000.00) annual aggregate, and a deductible/retention not exceeding Twenty-Five Thousand Dollars (\$25,000.00) per occurrence to be paid by the Contractor and/or the State.

Automobile Liability Insurance:

A policy issued to and covering the liability of the Contractor arising out of the use of all owned, non-owned, hired, rented or leased vehicles which bear, or are required to bear, license plates according to the laws of the jurisdiction in which they are to be operated, and which are not covered under the Contractor's General Liability Insurance. The policy shall designate Amtrak and each Operating Railroad as additional insureds with respect to operations to be performed in connection with the Contractor's contract with the State. Coverage under this policy (or policies) shall have limits of liability of not less than Five Million Dollars (\$5,000,000.00) per occurrence, combined single limit for bodily injury and property damage liability.

Property Insurance:

A policy issued to the Contractor to protect its interest in the equipment (excluding any State-owned or leased rail equipment) to be used in performance of the Contractor's contract with the State, covering all risks of physical loss or damage to such equipment. The coverage under such policy shall have limits of liability adequate to protect the value of the equipment on a replacement cost basis. Amtrak and each Operating Railroad are to be designated as additional insureds as their interests may appear and the policy shall contain a waiver of subrogation against Amtrak and each Operating Railroad, their respective employees and agents.

Pollution Liability Insurance:

A policy issued to and covering the liability of the Contractor arising out of the pollution or impairment of the environment, including costs of investigation and clean-up, caused by the performance of activity in connection with the Contractor's contract with the State. Amtrak and each Operating Railroad shall be named as additional insureds with respect to operations to be performed by the Contractor, and the policy shall contain a waiver of subrogation against Amtrak each Operating Railroad, their respective employees and agents. Coverage under this policy (or policies) shall have limits of liability of not less than Ten Million Dollars (\$10,000,000.00) each claim. The Contractor may, at its option, cover this pollution liability exposure under its General Liability insurance required above, and if this is done, the certificate of insurance submitted must clearly indicate that these coverages are combined.

IF ANY LIABILITY INSURANCE SPECIFIED ABOVE SHALL BE PROVIDED ON A CLAIMS MADE BASIS THEN, IN ADDITION TO COVERAGE REQUIREMENTS ABOVE, SUCH POLICY SHALL PROVIDE THAT:

The policy retroactive date coincides with or precedes the Contractor's start of work (including subsequent policies purchased as renewals or replacements).

The Contractor will make every effort to maintain similar insurance for at least two years following project completion, including the requirement of adding Amtrak and each Operating Railroad as additional insureds.

If insurance is terminated for any reason, the Contractor agrees to purchase an extended reporting provision of at least two (2) years to report claims arising from work performed in connection with its contract with the State.

The policy allows for reporting of circumstances or incidents that might give rise to future claims.

**Section 16. Employment of Department Personnel.**

Amtrak shall not employ or enter into a contract with any employee of the State for purposes of fulfillment of the terms of this Agreement without the express written consent of the State.

**Section 17. Representatives of INDOT.** INDOT may choose to designate any employee, official, representative or agent, to act on behalf of the State in the performance of any duties or exercise of any rights under this Agreement. However, Amtrak shall have the right of approval of INDOT's selection of any consultant or contractor. Such concurrence shall be in writing and shall not be unreasonably withheld. The State agrees that any consultant or contractor to be hired by INDOT to perform any duties under this Agreement shall not be a competitor or potential competitor of Amtrak (i.e., a provider of passenger rail service). However, this Section 17 shall not be construed to apply to a third party contractor selected through an RFP process as provided under Section 15 of this Agreement.

**Section 18. Status of Contractor.**

Services provided by Amtrak pursuant to this Agreement shall be as an independent contractor and neither Amtrak nor any employee or agent thereof shall be considered to be an employee of the State.

**Section 19. Termination Notice.**

49 U.S.C. subsection 24706(a) requires that at least one hundred and eighty (180) days before "discontinuing service over a route, Amtrak shall give notice of the discontinuance in the way Amtrak decides will give a State, a regional or local authority, or another person the opportunity to agree to share or assume the cost of any part of the train, route or service to be discontinued." Because the availability of State funding upon expiration or termination of this Agreement is not now known, Amtrak and the State agree that this Section does, and will be deemed to, constitute adequate notice under 49 U.S.C. subsection 24706(a) so that the State (and/or others working with the State, such as regional or local authorities) has the opportunity to agree to share or assume the cost of continuing the service provided by Amtrak hereunder upon such expiration or termination. The State concurs with Amtrak's decision that no notice beyond this section need be given.

**Section 20. On-Time Performance.** In accordance with the parties' objective to provide high-quality,

on-time rail passenger services, Amtrak and the State jointly agree to undertake the following initiatives:

(a.) Amtrak and the State shall jointly work to establish annual baseline performance for the Hoosier State Service. Baseline performance shall be established for the following categories: (1) overall OTP; (2) Host Railroad responsible delay minutes; (3) Amtrak responsible delay minutes; (4) equipment related service interruptions; and (5) customer satisfaction. The parties agree to confer within sixty (60) days following execution of this Agreement to establish performance targets, including the On-time Performance target set forth in Section PR11A 213, and thereafter, to confer not less than quarterly to review performance against baseline, and to develop/evaluate potential service and revenue improvement measures.

**Section 21. Funding Cancellation Clause.** In the event the Director of the Indiana Office of Management and Budget makes a written determination that funds are not appropriated or otherwise available to support continuation of Indiana's performance of its obligations under this Agreement, this Agreement shall be canceled. A determination by either Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

Amtrak may seek recovery from the State for any amounts unpaid for services rendered or goods delivered through the date of cancellation, along with all costs flowing from the cancellation, but only to the extent such costs are eligible for reimbursement under this Agreement. Actual costs incurred by Amtrak for labor protection costs as a result of termination of this Agreement shall be considered a cost eligible for reimbursement under this Agreement.

**Section 22. Compliance with Laws.**

(a.) The Parties shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. If a Party violates such rules, laws, regulations and ordinances, the Party shall assume full responsibility for such violations and shall bear any and all costs attributable to the original performance of any correction of such acts. The enactment of any state or federal statute, or the promulgation of regulations thereunder, after execution of this Agreement shall be reviewed by the Parties pursuant to Section 13 above.

(b.) Amtrak represents that, to the best of its knowledge and other than as disclosed to INDOT prior to or contemporaneously with the execution and delivery of this Agreement:

- (i) *Required State of Indiana Payments.* Amtrak is not presently in arrears in payment of its taxes, permit fees or other statutory, regulatory or judicially required payments to the State

of Indiana. Further, Amtrak agrees that any payments in arrears and currently due to the State of Indiana may be withheld from payments due to Amtrak. Additionally, further work or payments may be withheld, delayed, or denied and/or this Agreement suspended until Amtrak becomes current in its payments and has submitted proof of such payment to the State.

(ii) *State of Indiana Actions.* Amtrak certifies that it has no current or outstanding criminal, civil, or enforcement actions initiated by the State of Indiana pending and agrees that it will immediately notify INDOT of any such actions. During the term of such actions, Amtrak agrees that INDOT may delay, withhold, or deny work under any supplement or amendment, change order or other contractual device issued pursuant to this Agreement.

(iii) *Professional Licensing Standards.* Amtrak, its employees and contractors have complied with and shall continue to comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules or regulations governing services to be provided by Amtrak pursuant to this Agreement.

(iv) *Work Specific Standards.* Amtrak and its contractors, if any, have obtained, will obtain and/or will maintain all required permits, licenses, registrations and approvals, as well as comply with all applicable health, safety, and environmental statutes, rules, or regulations in the performance of work activities under this Agreement.

(v) *Secretary of State Registration.* If Amtrak is an entity described in IC Title 23, it is properly registered and owes no outstanding reports with the Indiana Secretary of State. Pursuant to 49 USC 24301(b), Amtrak is authorized to do business in the State of Indiana.

(c.) *Ethics.* Amtrak and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State of Indiana, as set forth in Indiana Code § 4-2-6, *et seq.*, Indiana Code § 4-2-7, *et seq.*, the regulations promulgated thereunder, and Executive Order 05-12, dated January 12, 2005 (collectively, "Ethical Standards"). If Amtrak is not familiar with these ethical requirements, Amtrak should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <<<http://www.in.gov/ethics/>>>. If Amtrak or its agents violate any of the Ethical Standards, INDOT may, at its sole discretion, terminate this Agreement immediately upon notice to Amtrak. In addition, Amtrak may be subject to penalties under Indiana Code §§ 4-2-6 and 4-2-7, and under any other applicable state or federal laws.

**(d.) Telephone Solicitation.** As required by IC 5-22-3-7: (1) Amtrak and any of its principals certify that (A) Amtrak, except for de minimis and nonsystematic violations, has not violated the terms of (i) IC 24-4.7 [Telephone Solicitation Of Consumers], (ii) IC 24-5-12 [Telephone Solicitations] , or (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) Amtrak will not violate the terms of IC 24-4.7 for the duration of the Agreement, even if IC 24-4.7 is preempted by federal law. (2) Amtrak and any principals of Amtrak certify that an affiliate or principal of Amtrak and any agent acting on behalf of Amtrak or on behalf of an affiliate or principal of Amtrak: (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) will not violate the terms of IC 24-4.7 for the duration of the Agreement, even if IC 24-4.7 is preempted by federal law.

**Section 23. Title VI Assurances; Non-Discrimination.**

**(a.)** Pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Parties, with regard to any work performed pursuant to this Agreement, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of contractors, including procurements of materials and leases of equipment. In all solicitations either by competitive bidding or negotiation made by the Parties for work to be performed under a Agreement, including procurements of materials or leases of equipment, each potential contractor or supplier shall be notified by the Party of its obligations relative to nondiscrimination in Federally-assisted programs pursuant to 49 CFR 21, which are herein incorporated by reference and made a part of this Agreement.

**(b.)** The Parties shall not modify work done pursuant to this Agreement in such a manner as to require, on the basis of race, color or national origin, the relocation of any persons. (INDOT's Title VI enforcement will include the following additional grounds: sex, ancestry, age, religion and disability).

**(c.)** The Parties shall not modify work done pursuant to this Agreement in such a manner as to deny reasonable access to and use thereof to any persons on the basis of race, color or national origin. (INDOT's Title VI enforcement will include the following additional grounds: sex, ancestry, age, religion and disability.)

**(d.)** The Parties each agree to comply with such federal laws, regulations, and executive orders prohibiting discrimination as are applicable to each party in the performance of their duties and

obligations hereunder. Nothing in this covenant shall be construed to imply or establish an employment relationship between the Parties.

**Section 24. Severability.** The invalidity of any section, subsection, clause or provision of this Agreement shall not affect the validity of the remaining sections, subsections, clauses or provisions of this contract.

**Section 25. Non-Collusion.** The undersigned attests, subject to the penalties for perjury that the undersigned is the properly authorized representative of Amtrak. Further, to the best of the undersigned's knowledge, neither the undersigned nor any other employee, representative, agent or officer of the Party has entered into or been offered any sum of money or other consideration, either directly or indirectly, for the execution of this Agreement other than that which appears upon the face hereof.

**THE REMAINDER OF THIS PAGE IS LEFT BLANK INTENTIONALLY.**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives in multiple original counterparts as of the day and year first above written.

NATIONAL RAILROAD PASSENGER CORPORATION

  
Joseph Boardman  
President and Chief Executive Officer

Date 10/14/13

Approved As To Form

  
Robin A. McCarthy  
Senior Associate General Counsel  
Amtrak Law Department

STATE OF INDIANA

Indiana Department of Transportation

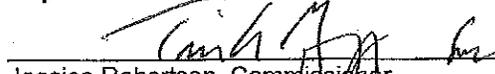
By:

  
Karl B. Browning, Commissioner

Date: 10.21.13

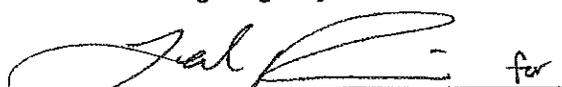
STATE OF INDIANA  
APPROVALS

Department of Administration

  
Jessica Robertson, Commissioner

Date: 10/25/13

State Budget Agency

 for  
Brian E. Bailey, Director

Date: 10/28/2013

Approved as to Form and Legality:

 (FOR)  
Gregory F. Zoeller,  
Attorney General of Indiana

Date: 10/29/13

**APPENDIX I**  
**HOOSIER STATE SERVICE**  
**ROUTES AND STATIONS**

For the Sixteen Month Period of **October 1, 2013 Through September 30, 2014**

Pursuant to Section 1 of the attached Agreement and subject to compliance by the State with the provisions of Section 3 thereof, Amtrak shall provide rail passenger service over the routes set forth below in accordance with the following schedules. This service shall commence on the first day of October 2013.

<b>Train 851, Hoosier State Service Indianapolis, IN to Chicago, IL (Dp Indianapolis Su, Tu, We, Fr)</b>	
Indianapolis, IN (ET)	6:00am
Crawfordsville, IN	6:58am
Lafayette, IN (ET)	7:33am
Rennselaer, IN (CT)	7:38am
Dyer, IN	8:27am
Chicago, IL (CT)	10:05am

<b>Train 850, Hoosier State Service Chicago, IL to Indianapolis, IN (Dp Chicago Su, Mo, We, Fr)</b>	
Chicago, IL (CT)	5:45pm
Dyer, IN	6:58pm
Rennselaer, IN (CT)	7:49pm
Lafayette, IN (ET)	10:00pm
Crawfordsville, IN	10:30pm
Indianapolis, IN (ET)	11:50pm

**APPENDIX II**

**Section 209 Services Operating Pricing**

**Route 54 - Hoosier State Service**

**For the 12 Month Period of October 1, 2013 Thru September 30, 2014 (Note 1)**

<u>Section 209 Line Item</u>	<u>Amount</u>
<b><u>Revenue</u></b>	
Ticket Revenue	\$ 899,000
Food & Beverage	-
Other Revenue	9,000
<b>Total Revenue</b>	<b>\$ 908,000</b>
<b><u>Expenses</u></b>	
<b><u>Third Party Costs</u></b>	
Host Railroad (Maintenance of Way & Performance Incentives)	\$ 410,000
Synthetic Host railroad Charge	-
Fuel and Power	280,000
<b>Subtotal: Third Party Costs</b>	<b>\$ 690,000</b>
<b><u>Route Costs</u></b>	
Train & Engine Crew Labor	\$ 1,170,000
Car & Locomotive Maint. And Turnaround	371,000
OBS - Crew	-
Commissary Provisions	-
Route Advertising	-
Sales Distribution	13,000
Reservations & Call Centers	187,000
Stations - Route	-
Stations - Shared	311,000
Commissions	18,000
Customer Concession	3,000
Connecting Motor Coach	-
Regional/Local Police	6,992
Block & Tower Operations	-
Terminal Yard Operations	35,000
Terminal MoW	12,000
Insurance	48,000
<b>Subtotal: Route Costs</b>	<b>\$ 2,174,992</b>
<b><u>Additives</u></b>	
Marketing	\$ 25,000
T&E	356,000
MoE	100,000
OBS	-
Police	29,000
G&A	43,000
<b>Total: Additives</b>	<b>\$ 553,000</b>
<b>Total Expenses</b>	<b>\$ 3,417,992</b>
<b>Estimated State Operating Payment or (Credit)</b>	<b>\$ 2,509,992</b>

**Note 1:**

Amounts presented above are fixed for the 12 month period of October 1, 2013 through September 30, 2014 subject to the adjustments described in Sections 2(e) and 15 of this Agreement.

APPENDIX III

CAPITAL COSTS – PASSENGER SERVICE EQUIPMENT FOR HOOSIER STATE SERVICE

Hoosier State  
\$ in Thousands (\$00's)

APT\_RT\_54 Forecast Equipment Capital Charge

Mechanical Capital Overhaul Projects	FY 2014 Forecast Cost	APT Stat Qualifier	Daily Units Used	Units Used Percentage	FY 2014 Forecast Equipment Charge	
NPCU Overhaul	\$1,650	SQ EQ CBPC	Cab Car - Bqs Cab/Ccm 2/7/96	0.00	0.00%	\$0
HHP-8 Locomotive Overhauls	\$1,200	SQ EQ EXEH	Electric Loco- Hhp-8 Elect Loco	0.00	0.00%	\$0
AEM-7 AC Locomotive Overhauls	\$2,280	SQ EQ EXAE	Electric Loco - Aem - 7	0.00	0.00%	\$0
P-42 LCPM	\$30,000	SQ EQ DXBD	Diesel Locomotive - P42-8 Loco 1/3/97	1.00	0.65%	\$195
P-32DM LCPM	\$500	SQ EQ DXDM	Diesel Loco - P32-Ar-Dm	0.00	0.00%	\$0
LCPM	\$960	SQ EQ DXBD	Diesel locomotive - P42-8 Loco 1/3/97	1.00	0.65%	\$6
F-59 Overhaul	\$6,600	SQ EQ DXGM	Diesel Locomotive - F59 Diesel Loco	0.00	0.00%	\$0
P-32-8 ED Overhaul	\$3,000	SQ EQ DXBH	Diesel Locomotive - P32-8	0.00	0.00%	\$0
Re-Powering of Switchers at Ivy City	\$35	-	-	-	-	
<b>LOCOMOTIVES</b>	<b>\$46,225</b>					
Surfliner Coach - Overhaul	\$350	SQ EQ OXOC	Pacific Surfliner Equip - Coach Car	0.00	0.00%	\$0
Horizon Coach Overhaul (Level 2)	\$6,930	SQ EQ HVHC	Horizon - Coach	2.00	3.29%	\$228
Horizon Cafe Overhaul	\$1,140	SQ EQ HVHF	Horizon - Food Car	0.00	0.00%	\$0
Surfliner Cab Car - Overhaul	\$450	SQ EQ OXOB	Pacific Surfliner Equip - Cab Car	0.00	0.00%	\$0
Surfliner Custom Coach - Overhaul	\$295	SQ EQ OXOC	Pacific Surfliner Equip - Coach Car	0.00	0.00%	\$0
<b>HORIZON/SURFLINER</b>	<b>\$9,365</b>					
<b>Total Forecast Equipment Capital Charge</b>						<b>\$429</b>

Note 1: Under the provisions of the Agreed 209 Methodology, and Section 3(a) (v) of this Agreement, Route 54 – The Hoosier State has been allocated the estimated Total Forecast Equipment Capital Charge presented above for the twelve month Federal 2014 Fiscal Year of October 1, 2013 through September 30, 2014.

**APPENDIX IV**

**PAYMENT SCHEDULE - FOR THE PERIOD OF OCTOBER 1, 2013 THROUGH SEPTEMBER 30, 2014**

<b>Cost Category</b>	<b>Route 54 The Hoosier State</b>					
<b>OPERATING - FIXED FEE <sup>(1)</sup></b> Total Estimated State Operating Payment for the period of October 1, 2013 through September 30, 2014	\$	2,509,992				
<b>EQUIPMENT CAPITAL USAGE FEE <sup>(2)</sup></b>	\$	429,000				
<b>TOTAL - FIXED FEE &amp; EQUIPMENT CAPITAL</b>	\$	2,938,992				
<b>LESS: CREDIT PER SECTION 3(b)</b>	\$	260,004				
<b>TOTAL PAYMENTS DUE PER SECTION 3</b>	\$	2,678,988				
<b>PAYMENT SCHEDULE</b>						
	<b>Payment Due Date</b>	<b>Monthly Operating Payment Due</b>	<b>Monthly Equipment Payment Due</b>	<b>Total Payment Due Before Credit</b>	<b>Less: Credit Due per Section 3(b)</b>	<b>Total Payment Due After Credit</b>
<b>Service Period:</b>						
October 2013	10/1/2013	\$ 209,166.00	\$ 35,750.00	\$ 244,916.00	\$ 21,667.00	\$ 223,249.00
November 2013	11/1/2013	209,166.00	35,750.00	244,916.00	21,667.00	223,249.00
December 2013	12/1/2013	209,166.00	35,750.00	244,916.00	21,667.00	223,249.00
January 2014	1/1/2014	209,166.00	35,750.00	244,916.00	21,667.00	223,249.00
February 2014	2/1/2014	209,166.00	35,750.00	244,916.00	21,667.00	223,249.00
March 2014	3/1/2014	209,166.00	35,750.00	244,916.00	21,667.00	223,249.00
April 2014	4/1/2014	209,166.00	35,750.00	244,916.00	21,667.00	223,249.00
May 2014	5/1/2014	209,166.00	35,750.00	244,916.00	21,667.00	223,249.00
June 2014	6/1/2014	209,166.00	35,750.00	244,916.00	21,667.00	223,249.00
July 2014	7/1/2014	209,166.00	35,750.00	244,916.00	21,667.00	223,249.00
August 2014	8/1/2014	209,166.00	35,750.00	244,916.00	21,667.00	223,249.00
September 2014	9/1/2014	209,166.00	35,750.00	244,916.00	21,667.00	223,249.00
<b>Total</b>		\$ 2,509,992.00	\$ 429,000.00	\$ 2,938,992.00	\$ 260,004.00	\$ 2,678,988.00
<b>Footnotes:</b>						
<sup>(1)</sup> Fixed Fee payable under the provisions of Section 3(a) (i) for all estimated, non-reimbursed Route Costs, Additives and Third Party Costs.						
<sup>(2)</sup> Estimated Capital Costs for Passenger Service Equipment payable under Section 3(a) (ii) (2)						

**APPENDIX V**

**AGREED 209 METHODOLOGY**

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**DOCUMENTATION TO BE PROVIDED AS A SEPARATE ATTACHMENT**

42257  
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SERVICE DATE—MARCH 15, 2012

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35571

AMTRAK'S PETITION FOR DETERMINATION OF  
PRIIA SECTION 209 COST METHODOLOGY

Decided: March 13, 2012

**Digest:**<sup>1</sup> In accordance with the Passenger Rail Investment and Improvement Act of 2008 (PRIIA), Amtrak and various states have adopted a methodology to establish and allocate costs for state-supported Amtrak routes. Affected states, other than Indiana, have adopted the methodology. The Board finds that the methodology complies with PRIIA.

BACKGROUND

Pursuant to Section 209 of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA),<sup>2</sup> the National Railroad Passenger Corporation (Amtrak) must develop and implement a single, nationwide standardized methodology for establishing and allocating operating and capital costs among the States and Amtrak in connection with the operation of certain Amtrak routes. PRIIA Sec. 209(a). The routes subject to PRIIA Sec. 209(a) include high-speed rail corridors designated by the Secretary of Transportation (other than the Northeast Corridor railroad line, which extends from Boston, Mass., to Washington, D.C.);<sup>3</sup> short-distance corridors and routes currently part of the national rail passenger transportation system that do not exceed 750 miles between their endpoints;<sup>4</sup> and intercity rail routes not included in the national rail passenger transportation system that Amtrak operates on behalf of state or local entities.<sup>5</sup> PRIIA Sec. 209(a) requires Amtrak to consult with the Secretary of Transportation, the governors of

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<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

<sup>2</sup> P.L. 110-432, Div. B, Title II, § 209, codified at 49 U.S.C. § 24101 note.

<sup>3</sup> See 49 U.S.C. § 24102(5)(B). Designated high-speed rail corridors become subject to PRIIA Sec. 209(a) only after regularly scheduled intercity service over a corridor has been established. No such corridors have as yet become subject to PRIIA Section 209(a).

<sup>4</sup> See 49 U.S.C. § 24102(5)(D).

<sup>5</sup> See 49 U.S.C. § 24702.

each affected state, and the Mayor of the District of Columbia (or their representatives). If Amtrak and the states (including the District of Columbia) in which Amtrak operates affected routes do not voluntarily adopt and implement a methodology, then the Board must determine an appropriate methodology within 120 days following submission of the dispute to the Board. PRIIA Sec. 209(c), 49 U.S.C. § 24904(c).

In a petition filed with the Board on November 21, 2011, Amtrak requests the Board, pursuant to PRIIA Section 209(c) and 49 C.F.R. § 1117.1, to: (1) determine that the methodology developed jointly by Amtrak and various states, establishing and allocating costs for state-supported Amtrak routes (Agreed Methodology), is the appropriate methodology under Section 209; and (2) require the full implementation of the Agreed Methodology pursuant to Section 209(c). In its petition and in supplemental filings made on November 23, December 5, and December 6, 2011, Amtrak represents that it engaged in extensive fact-sharing and negotiations with the 19 states affected by PRIIA Section 209 (Covered States) to develop a consensus methodology.<sup>6</sup> Amtrak states further that all but one Covered State – Indiana – have formally agreed to adopt its proposed methodology. According to Amtrak, Indiana declined to accept the consensus methodology but did not provide a reason for its decision or offer an alternative. Rather, in an email sent to Amtrak on November 17, 2011, the Indiana Department of Transportation (INDOT) stated that the Governor’s Office and INDOT “have decided to not sign [Amtrak’s] request” to accept the proposed methodology. Pet., Johnson Decl., Exh. Y.

Our rules required parties served with Amtrak’s petition to file responses within 20 days.<sup>7</sup> Neither Indiana nor any other state or other entity filed comments opposing Amtrak’s petition or the Agreed Methodology. DOT comments that “speedy resolution of Amtrak’s Petition would serve the goals of PRIIA and would benefit the passenger rail network.” Reply at 3.

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<sup>6</sup> Pet., Decl. of Maximillian R. Johnson (Johnson Decl.), ¶ 4 (listing Covered States: California, Connecticut, Illinois, Indiana, Maine, Massachusetts, Michigan, Missouri, New Hampshire, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, Texas, Vermont, Virginia, Washington, and Wisconsin).

<sup>7</sup> Amtrak initially served its petition and supplements on the 19 Covered States because they have an interest in this matter. However, it did not indicate in its petition or supplements that it had served these filings upon the Secretary of Transportation and the District of Columbia. Because the Board believed that the Secretary and the District should be notified of the petition and supplements, the Board directed Amtrak to serve the petition and supplements on the Secretary and the District. Amtrak’s Pet. for Determination of PRIIA Sec. 209 Cost Methodology, FD 35571 (STB served Dec. 15, 2011). In a notice filed with the Board on December 19, 2011 (corrected December 21, 2011), Amtrak notified the Board that it had done so. After requesting and receiving an unopposed, 2-week extension of time in which to respond to Amtrak’s petition and supplements, the U.S. Department of Transportation (DOT) filed a Reply on January 23, 2012.

## DISCUSSION AND CONCLUSIONS

The Board finds that the Agreed Methodology meets the requirements of PRIIA Section 209(a) and should be implemented by Amtrak in accordance with PRIIA Section 209(c). The Agreed Methodology is a single, nationwide standardized methodology for establishing and allocating the operating and capital costs among the States and Amtrak associated with the trains operated on the routes subject to PRIIA Section 209(a). Upon review of the Agreed Methodology and the facts and circumstances surrounding its development, the Board concludes that the Agreed Methodology will: (1) ensure equal treatment in the provision of like services of all States and groups of States; and (2) allocate to each route the costs incurred only for the benefit of that route and a proportionate share, based upon factors that reasonably reflect relative use, of costs incurred for the common benefit of more than one route.

In reaching this decision, the Board notes that allocation of costs “involves judgment on a myriad of facts. It has no claim to an exact science.” United Parcel Serv., Inc. v. United States Postal Serv., 184 F.3d 827, 838 (D.C. Cir. 1999), quoting Colo. Interstate Co. v. FPC, 324 U.S. 581, 589 (1945). Thus, we could find that the Agreed Methodology was an appropriate methodology even if parties had offered a credible alternative. No alternative has been presented. The Agreed Methodology is the product of two years of arm’s length negotiations between Amtrak and the Covered States.<sup>8</sup> The only state that has not accepted the Agreed Methodology has offered no reason why the Board should not find that the Agreed Methodology meets the requirements of PRIIA Section 209.

We note that Section 209 includes the District of Columbia among the States to be consulted in development, and adoption, of a methodology for cost allocation. As required by the Board, Amtrak served the District with its petition and supplements on December 19, 2011. The District has not submitted any filings in this matter.

### Development of the Agreed Methodology

#### I. Amtrak Performance Tracking System

The Amtrak Performance Tracking (APT) system provides the foundation of the Agreed Methodology. The APT was created in 2009 pursuant to the Consolidated Appropriations Act,

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<sup>8</sup> As detailed in the Johnson Decl., ¶¶ 6-90, between March 2010 and October 2011, Amtrak conducted a series of presentations, meetings, and discussions regarding its then-proposed methodology. Each of the Covered States, as well as certain additional states in which Amtrak currently does not operate state-supported routes, participated in these consultations. Amtrak also met with other interested groups including, but not limited to, the Federal Railroad Administration, the Surface Transportation Board (Office of Public Assistance, Governmental Affairs, and Compliance), the American Association of State Highway and Transportation Officials, the States for Passenger Rail Coalition, the John A. Volpe National Transportation Systems Center, and various regional transportation authorities. Id., ¶¶ 7, 8, 18.

2005 (P.L. 108-447), which directed the Secretary of Transportation to develop a methodology for determining the avoidable and fully allocated cost of each Amtrak route. The Federal Railroad Administration was responsible for meeting this requirement and tasked the Volpe National Transportation Systems Center to develop the cost accounting methodology in consultation with Amtrak. The APT tracks approximately 1,600 cost centers and groups all cost centers into mutually exclusive “families” of costs. According to Amtrak, APT “could, with only minor modifications . . . be an ‘appropriate methodology’ under Section 209(a) . . . .” Pet. 12. In negotiation with the Covered States, Amtrak agreed to modify various aspects of APT for incorporation into the Agreed Methodology, to address concerns and unique circumstances in certain States. See Pet. 12-19.

## II. Allocation of Costs to Routes

Relying on the APT, the Agreed Methodology groups costs into a wide range of categories (e.g., maintenance of way, equipment maintenance, general and administrative, and capital) similar to those that freight railroads report in their R-1 annual reports submitted to the Board. The Agreed Methodology links direct costs and other costs closely connected to train operations (for example, train crew labor costs, which are generally associated with operation of a specific route) to trains operating on particular routes. Thus, the Agreed Methodology meets Section 209(a)(2)’s requirement that costs associated with a specific route are fully allocated to that route.

With respect to operating and capital costs that are not attributable solely to a particular route, the Agreed Methodology allocates a proportionate share of these costs to all associated routes based on factors that reasonably reflect relative use. The Covered States organized a State Working Group (SWG), including Indiana, and developed a proposal, accepted by Amtrak, to allocate common costs (referred to as “Support Fees”) as a percentage of various direct route costs. The Agreed Methodology includes Support Fees for six broad categories of costs: train and engine crew labor; maintenance of equipment; on-board services; marketing; system-wide policing; and general and administrative costs. Amtrak and the SWG also negotiated a method to allocate maintenance of way and capital costs. All of the Support Fees are allocated using factors tied to relative use of these six cost categories. There has been no suggestion that the factors used to allocate costs in the Agreed Methodology are inappropriate. Thus, the Board finds that the Agreed Methodology meets Section 209(a)(2)’s requirement regarding the allocation of joint and common costs.

## III. Equal Treatment in the Provision of Like Services of All States and Groups of States

We addressed the cost allocation principles required by PRIIA Section 209(a)(2) before the “equal treatment” requirement of Section 209(a)(1) because, in our view, equal treatment in the provision of like services requires a cost allocation methodology that assigns equivalent costs to the provision of like services. The Agreed Methodology appears to accomplish this requirement by placing each state on an equal footing. All costs directly attributable to or closely associated with a route are fully allocated to that route. Similarly, the use of Support

Fees built on usage-based allocation factors ensures an equitable allocation of those costs that cannot easily be attributed to any single route. Significantly, 18 of the 19 Covered States concur that they will be treated equally under the Agreed Methodology. Indiana, which does not concur, has not provided any reason for us to believe that the Agreed Methodology will treat like services unequally.

Amtrak's Petition states (at 18-19) that, "where a route crosses more than one State, costs associated with that route are allocated among the affected States on a basis to be determined by the affected States themselves." The Board's decision should not be read as finding that future agreements among States regarding the allocation among them of costs assigned to the route by the Agreed Methodology meet the requirements of PRIIA Section 209(a).

The Agreed Methodology provides a single, nationwide standardized methodology for establishing and allocating the operating and capital costs among Amtrak and the States concerning the routes covered by PRIIA Section 209. Because the Board finds that the Agreed Methodology meets the requirements of Section 209(a), the Board orders that: Amtrak and the States implement the Agreed Methodology as set forth in Amtrak's Petition, in accordance with PRIIA Section 209.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Amtrak and the States shall implement the Agreed Methodology as set forth in Amtrak's Petition, in accordance with PRIIA Section 209.
2. This decision is effective on April 14, 2012.
3. A notice of this decision will be published in the Federal Register.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Begeman.

**PRIIA Section 209**  
**Cost Methodology Policy**  
~~August 31, 2011~~  
~~*Final Version*~~

November 20, 2012  
Corrected Version

Note: Periodic review of the APT system revealed a calculation error on the Central Division T&E Additive in the August, 31, 2011 version. The figure has been corrected in red in Appendix E on page 15.

Prepared for PRIIA 209 States and Other Interested States by  
The States Working Group (SWG) and Amtrak:

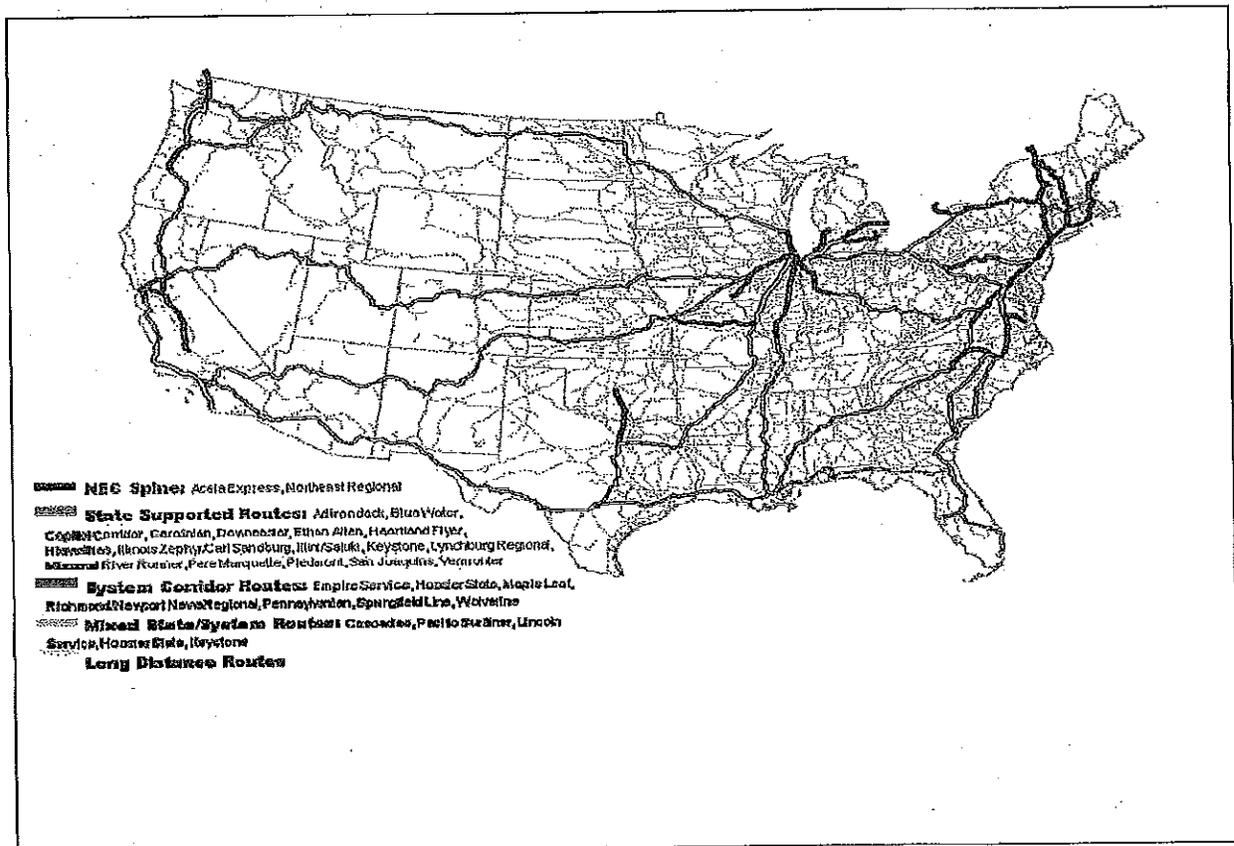
**Passenger Rail Investment and Improvement Act (PRIIA) of 2008  
Section 209 Cost Methodology Policy**

*Recommended by the State Working Group (SWG) and Amtrak Staff<sup>1</sup>*

FINAL VERSION 8/31/11

**Overview**

Under the provisions of PRIIA Section 209, all short-distance Amtrak corridor services must become state-supported routes and states must pay the proportional costs associated with their respective corridor route. This document describes the "single, nationwide standardized methodology for establishing and allocating the operating and capital costs among the States and Amtrak." This methodology applies to services provided by Amtrak over routes "of no more than 750 miles between endpoints," as described in section 24102(5)(B).



<sup>1</sup> Members of SWG-Amtrak group include: John Bennett, Stephen Gardner, Shayne Gill, Susan Howard, Max Johnson, David Kutrosky, Beth Nachreiner, Kevin Page, Patricia Quinn, and Patrick Simmons

**Appendix A** provides a list of affected routes; **Appendix B** provides the text of Section 209 and related statutes. Currently, approximately 36 of the total 110 corridor routes are either partially or completely supported by Amtrak. Once Section 209 is implemented, all such corridors routes will be priced in a transparent, fair and equitable manner. Amtrak and states were charged with collaboratively creating a cost methodology to establish a basis for sharing operating costs plus an annual capital charge for Amtrak-owned equipment and facilities used for intercity passenger rail service.

This policy statement outlines the methodology Amtrak will use to compute:

- operating expenses for routes using a formulation that defines direct route costs and associated additives, and
- capital charges for the use of Amtrak-owned assets.

The Amtrak Performance Tracking (APT) system — Amtrak's recently-implemented cost accounting system, that is linked to Amtrak's financial and operating systems — provides the cost basis that the SWG and Amtrak used to evaluate options for assigning service area route costs.

The Federal Railroad Administration (FRA) met with the SWG and Amtrak to address the issue of transition assistance to the states during the phase in of the new methodologies for route and capital costs. This policy outlines clearly that states are responsible for the costs associated with the new capital charge. However, the FRA recognizes that states will face a financial burden as they implement the new cost-sharing approach. While the details of transition assistance have not been fully developed, the FRA has committed to working with the states and Amtrak on transition assistance.

#### **Basis for Allocating Costs**

Many railroad costs—both costs directly related to the services provided and those shared among services—are by their nature provided through jointly used crews, crew bases (locations where train crews report for work), support teams/facilities, maintenance facilities, and stations. As such, cost allocation methods and procedures are needed to fairly apportion these costs. The Amtrak Performance Tracking (APT) system will provide the basis for allocating “to each route the costs incurred only for the benefit of that route and a proportionate share, based upon factors that reasonably reflect relative use, of costs incurred for the common benefit of more than one route”.

In some cases, Amtrak and states may agree to use supplemental financial data to adjust the results of APT, including, but not limited to, local systems for measuring fuel consumption that are not available nationally. Pursuant to part (b) of Section 209, if changes to Amtrak's financial systems result in a material change to the results of APT, Amtrak will work with its state partners to update this policy in a manner consistent with the intent of Section 209.

#### **Operating Scenarios**

State-supported routes are classified into three operating scenarios:

**Single State Corridor Trains.** These corridor trains do not cross state lines and do not use the NEC “spine” (Boston-Washington).

**Multi-State Corridor Trains.** For corridor trains that cross state lines but do not use the NEC “spine” (Boston-Washington), the states on the train route shall develop an equitable method for sharing the costs

and revenues from the trains. Amtrak will provide the affected states with information to assist in reaching agreement.

**Base-Increment NEC Corridor Trains (Single- and Multi-State).** In Section 209, the Northeast Corridor (NEC) is defined as “the continuous Northeast Corridor railroad line between Boston, Massachusetts and Washington, District of Columbia” in section 24102(5)(B). Trains having some part of their route both on the NEC and on a state-supported corridor are considered Base-Increment trains. In the case of base-Increment NEC corridor trains, APT allocates costs between the state leg and the NEC leg for accounting purposes in various ways. The allocation explanations for specific expenses are described in the APT documentation available on the FRA website, both in summary in the Main report and in detail in Appendix A.

The following general conditions apply to Base-Increment trains:

- Route Costs (defined below) common to both legs are prorated based on whether costs are incurred on the state leg or on the NEC. For instance, turnaround servicing is allocated by train miles on the NEC and state leg. Non-turnaround maintenance is allocated by both time and mileage-based statistics prorated for the amount of time a train spends on either the NEC or the state leg.
- Trains that travel through multiple states off the NEC shall develop a mutually agreeable method for sharing the costs and revenues of the trains.
- “Through revenue” is revenue from trips with one endpoint on the NEC and one endpoint on the state-supported leg. Through revenue will be credited to the state in one of two ways, to be determined by the state and established in the agreement:
  - Passenger Mile Split. Through revenue will be split between the state and Amtrak proportionate to miles traveled off and on the NEC. Under this method, Amtrak is responsible for all operating and capital costs when the train is on the NEC leg. Capital charges for equipment will be split between the state and Amtrak reflecting service both on and off the NEC, allocated based on the time-based Units Used statistic. Capital charges for fixed assets will be for the state leg only.
  - Through Revenue Plus Passenger Mile Charge. States will continue to be charged costs for the state leg as described above. Through revenue will be credited to the state, along with a charge per passenger mile for the costs of through riders traveling on the NEC. This per passenger mile charge will represent the state’s share of Amtrak’s:
    - Fully allocated NEC operating costs, as pro rated by all available Amtrak Northeast Regional seat miles;
    - Equipment capital overhaul costs, as pro rated by all available Amtrak Northeast Regional seat miles
    - Fully allocated fixed asset Normalized Replacement capital costs as defined in *Appendix C*, pro rated by all available Amtrak NEC seat miles; and
    - 20% of any fixed asset State of Good Repair Backlog capital costs as defined in *Appendix C*, pro rated by all available Amtrak NEC seat miles.

These charges will be fixed for the term of the contract between the state and Amtrak and applied against actual passenger miles. However, this through revenue policy may be amended by Amtrak and the affected states if the outcome of the PRIIA Section 212 cost allocation process requires changes to this policy.

In addition to the operating scenarios described above, some state-supported routes travel for part or all of the entire route on right-of-way owned by Amtrak outside the NEC; these routes are described in *Appendix D*. In these situations, Amtrak will remove the maintenance of way expenses for these segments as allocated in APT, and replace them with a synthetic host railroad charge. This charge is consistent with the costs that are typically charged to Amtrak by host railroads for incremental operating and maintenance. For right of way that Amtrak purchases or assumes maintenance responsibility for not listed in *Appendix D*, Amtrak and the state will negotiate such maintenance and related charges on a case-by-case basis.

### **Methodology for Determining Operating Costs**

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Under the proposed S209 Methodology, the Service Fee will include:

- 100 percent of the "Third Party Costs" associated with its corridor service;
- 100 percent of the verifiable Route Costs associated with its corridor service;
- Support Fees proportional to its corridor service; and,
- Credit for passenger and other allocated revenue, resulting in the Net State Cost.

#### **Third Party Costs:**

Actual Third Party Costs will be charged to the state corridors. Third Party Costs are comprised of:

- Host railroad maintenance of way;
- Host railroad performance payments; and
- Fuel and power charges.

#### **Route Costs:**

Route Costs are operating costs closely associated with the operation of a route. Route Costs can clearly be evaluated and tracked by Amtrak and the states in the direct provision of service on a corridor train. Route operating costs include the following categories as allocated by the APT system:

- Train and engine crew labor
- Car and locomotive maintenance and turnaround service
- On Board Service Labor and provisions (Food Service)
- Route Advertising,
- Sales & Distribution
- Reservations and Call Centers
- Route Stations
- Shared Stations
- Commissions
- Customer Concession
- Connecting Motor Coach
- Local & Regional Police
- Block & Tower operations
- Terminal Maintenance of Way
- Insurance

**Support Fees:**

Some cost categories have an additional level of regional and national support not included in the Route Costs, and therefore also include Support Fees that are proportional to the service provided. Support Fees are determined by applying category-specific additives to an associated route cost or other aspect of service, (i.e. revenue or passenger miles). These additives were developed by converting support cost data from the APT system into rates that would be consistent across all trains in a region, or in some cases, all state-supported trains.

For example, Amtrak provides mechanical support, facilities and services that can reasonably be apportioned between Amtrak's business lines – the Northeast Corridor (NEC) trains, long-distance trains and state-supported trains. The Maintenance of Equipment (MoE) support fee represents the portion of those costs allocated to state-supported trains and is determined by applying an additive rate to the Car & Locomotive Maintenance and Turnaround route cost.

There are six categories of Support Fees are determined as follows:

- Train & Engine Crew Support (T&E): A combination of system and division additives applied to Train & Engine Crew Labor route costs. All corridors will be charged a system additive which is fixed (12.9 percent) and a division additive which is variable (13.5-24.3 percent). The division additive is based on the Amtrak region in which the corridor operates and is linked to the management structure within Amtrak that is responsible for service delivery by train crews. The T&E system additive rate excludes costs from Amtrak's Consolidated National Operations Center (CNOC), which are considered a "backbone" cost.
- Maintenance of Equipment (MoE): A fixed system additive (27 percent) applied to the Car & Locomotive Maintenance and Turnaround Route Cost. The MoE additive rate excludes backshops and fleet engineering costs, which are considered a "backbone" cost.
- On Board Services (OBS): A fixed system additive (10 percent) applied to the OBS Crew & Provisions Route Cost.
- Marketing: A variable regional additive (1.9 - 2.8 percent) applied to total revenue. The marketing additive is based on the degree to which a state corridor is connected to the NEC or to a major Amtrak hub station. Corridors that fall into those categories will have a higher additive associated with Amtrak's higher level of shared marketing in those regions.
- Police: A fixed system additive (\$.005) applied to passenger miles.
- General & Administrative: A fixed system additive (2 percent) applied to Total Route Costs.

The additive rate will remain the same for three years beginning October 2012, unless there is a significant unforeseen event, such as a significant decrease in Amtrak's Federal funding or a significant change to the size of Amtrak's network. A change in the additive rate during the three-year term must be approved by Amtrak and the states. At the end of the three year period, Amtrak will propose adjustments to the additive rates if they are necessary. States and Amtrak must mutually agree on additive rate adjustments.

The table below illustrates the S209 Operating Cost Pricing Methodology. The definitions of cost categories and additives are described in more depth in *Appendix E*.

**S209 Operating Cost Pricing Methodology**

<b>ROUTE COSTS</b>	<b>+</b>	<b>SUPPORT FEE</b>	<b>=</b>	<b>OPERATING COSTS</b>
Train & Engine Crew Labor		<i>T&amp;E Route x (Division Additive* + System Additive (12.9%))</i>	=	Total Train & Engine Crew Labor
Car & Locomotive Maintenance & Turnaround	+	<i>Car &amp; Loco Route Cost X System Additive (27%)</i>	=	Total Maintenance of Equipment
On Board Service (OBS) Crew & Provisions	+	<i>OBS Route Cost x 10% OBS Additive</i>	=	Total On Board Services
Route Advertising			=	Total Route Advertising
Sales & Distribution	+	<i>Marketing Additive* x Passenger and Allocated Revenue*</i>	=	Total Sales & Marketing
Reservations & Call Centers			=	Total Res & Call Center
Stations – Route			=	Total Route Stations
Station – Shared			=	Total Shared Stations
Commissions			=	Total Commissions
Customer Concessions			=	Total Concessions
Connecting Motor Coach			=	Total Motor Coach
Regional/Local Police	+	<i>Passenger Miles x Police Additive (\$0.005)</i>	=	Total Police & Security
Terminal Yard Operations			=	Total Terminal Yard Ops
Terminal Maintenance of Way			=	Total Terminal MoW
Insurance			=	Total Insurance
<b>Total Route Costs (Sum of Above)</b>	+	<i>Total Route Costs x General &amp; Administration Additive (2%)</i>	=	General & Administrative
				<b>Route Service Fee (Sum of Above)</b>
		<i>Host RR Maintenance of Way + Host RR Performance + Fuel &amp; Power</i>	+	3 <sup>rd</sup> Party Costs
			=	<b>Total Operating Costs (Service Fee + 3<sup>rd</sup> Party Costs)</b>
			-	Less Passenger and Other Allocated Revenue
			=	<b>NET STATE COST</b>

\*Denotes variable additive. Reference Appendix E

**Passenger and Other Allocated Revenue**

Passenger revenues include ticket revenue and food and beverage revenue attributable to a particular route. Other Allocated Revenue includes miscellaneous revenue related to a route’s passenger train operations, such as ticket by mail fees, loyalty marketing revenue, commissions from sales of third-party services during the reservations process (call/Internet “tipping”), package express where applicable, and other.

**Optional Services and Pricing**

States may wish to independently contract with alternative service providers for some services rather than Amtrak. For example, states may contract directly with vendors for food service, equipment maintenance, and other components of their services. Working with independent service providers may have an impact on the

level of service that Amtrak can provide for a state. In these cases, costs that are not incurred by Amtrak would not be included in cost estimates or service reimbursements.

### **Operating Surplus**

In the case where a route achieves an operating surplus, that route's surplus funds will be applied as follows: first, to operating payments for other routes supported by that state; second, to equipment capital charges for that state; third, for agreed upon fixed asset capital charges for that state; fourth, for future operating and capital payments by that state.

### **Methodology for Determining Capital Costs**

Amtrak makes substantial capital investments in equipment (rolling stock) and other fixed assets needed to deliver passenger rail services. Under this policy, Amtrak will charge states for a share of these investments proportional to their use in state-supported services. Based on Section 209 requirements, the capital charge, or capital use charge<sup>2</sup>, will be allocated to each route; each sponsoring state is responsible for funding its capital charge. Amtrak will work with states to find federal and other sources of funds to assist with the capital charge.

The capital charge will be forward looking and investment-based. Amtrak will assess an annual capital charge to each state for the following asset types:

- Equipment – existing and new Amtrak-owned;
  - For existing rolling stock, states will be charged a pro rata share, based on Units Used, of capital overhauls performed on the equipment classes they use to assure the assets remain FRA compliant and in a state of good repair
  - For rolling stock procured in the future by Amtrak, states will be charged a pro rata share of the purchase price, financing cost, and capital overhauls reflecting costs paid by Amtrak
  - Capital equipment charges will vary from year to year based on the life cycle maintenance plan associated with the equipment type.
- Other Amtrak fixed assets, including joint stations and Amtrak-owned rights of way;
  - This policy contains no formula-based fixed asset capital charge for Amtrak's other fixed assets such as stations and other facilities. Because of the unique nature of the fixed assets on each route, Amtrak and the states will develop an investment plan to maintain fixed assets in a state of good repair on a case-by-case basis during contract negotiation. States and Amtrak, as necessary, will be responsible for their pro rata share of any capital investments required on these Amtrak owned assets based on usage of these assets by state-supported and other users such as Amtrak long distance and/or commuter.
  - Amtrak will work with states to jointly identify and prioritize route-specific capital projects
- Other investments in assets not owned by Amtrak but required to maintain or enhance service.
  - Some routes make use of assets owned by third parties such as host railroads or state and local governments. States and Amtrak, as necessary, will be responsible for their pro rata share of any capital investments required on these non-Amtrak owned assets based on usage of these assets by state-supported and other users such as Amtrak long distance and/or commuter.

<sup>2</sup> Depending on specific state needs, the charge for capital investment on a state corridor can be characterized as a capital charge, or a capital use charge. For purposes of this document, the term "capital charge" encompasses both characterizations.

A complete description of capital cost categories is included in *Appendix E*.

Amtrak will develop a defined five-year investment program in cooperation with each state that describes the capital investments to be made over the period and the payments expected from the states throughout the period to support the five-year capital program. The program will be adjusted as needed in each annual contract update.

The five-year program would include detailed, verifiable program work elements to be accomplished by Amtrak in support of state services annually. In the case of investments/overhauls for equipment used in multiple routes, a sharing relationship will be negotiated at the beginning of each fiscal year based on the route's actual use of equipment as recorded by the APT system and adjusted for any changes in service expected in the upcoming year.

Amtrak will use the best available data to provide the state with an estimate for its capital charge prior to signing an agreement for state supported service. At the end of the contract period, Amtrak will reconcile that estimate to the actual capital investment by that equipment type and a state's use of equipment, as previously determined in each state's annual contract.

In cases where Amtrak spent less on capital programs than planned, Amtrak will apply a credit balance to future years' capital charges. In cases where Amtrak spent more on capital programs than planned, there will be no adjustment to the current year's charge but an adjustment will be made on the subsequent year's charge based on look forward investment strategies.

Amtrak will include the capital charge as a component of each state's Annual Operating Support Agreement. This capital charge will equal each state's pro rata share of the overhaul work described above. States may pay this amount from operating or capital funds, depending on a state's individual financial policies and/or grant sources.

The timing of the billing for capital charges will depend on the timing of the planned capital expenditures. The monthly cash flow for the equipment charge would be determined as part of the development of the Annual Operating Support Agreement.

#### **Attribution of Previous State Capital Investments on the Amtrak Network**

Some states have made capital contributions to Amtrak assets in association with their services. For Amtrak-owned equipment, states will be credited for the net present value of past capital investments in Amtrak equipment at the time of Section 209 implementation. This will compensate States for investments they have made in pooled assets used by multiple routes. These past equipment investments by States will allow all routes using that equipment type to schedule future capital replacements at a later date than would have been the case without the prior state investment. Amtrak will work with states to calculate the value of past capital investments in a mutually agreeable way.

For fixed assets, whether owned by Amtrak or other third parties, the capital charge is based on planned investments, not past depreciation, and represents the funding needed to make the agreed-upon investments to sustain existing service levels. As a result, any credit that reduces the capital charge would reduce the funds available for investment, create a funding gap, and prevent the needed investment. Therefore, credit towards future fixed asset capital charges cannot be given within the framework of the Section 209 policy for prior investments made by a state in Amtrak or third party assets. Notwithstanding the inability to fund a fixed asset credit, past State investments in Amtrak or other fixed assets should result in a longer service life for the asset,

and a resulting reduction and/or deferral in the amount of future capital investments, as well as maintaining and/or improving a route's operating performance.

### **Forecasts of Funding Requirements for State Supported Contracts**

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Amtrak develops five-year revenue and cost forecasts as part of its annual business planning process. For each state-supported route, Amtrak will estimate projected costs for the contract period and share them with states. For existing services that are not changing in the forecast period, Amtrak will rely on historical APT data together with out-year cost forecasts provided by Amtrak to predict the results. In cases where service levels (frequencies, schedule changes, etc.) are changing, Amtrak will forecast revenue and expense changes using ridership, revenue, and cost estimation models which are directly related to the expected changes in service levels.

### **State Corridor-Amtrak Contract Template**

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Amtrak and the SWG developed a contract template for states and Amtrak to use as they work together to develop their contract for services. The contract template addresses the key issues that states and Amtrak must discuss and address in some fashion to develop their agreements for the contract period. The contract template can be customized to reflect state differences. *Appendix F* outlines the proposed contract template

### **Transition from Prior Costing Methodologies**

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Section 209 of PRIIA requires that the new methodology be fully implemented by October 16, 2013 -- that date closely aligns with the beginning of Federal Fiscal Year (FFY) 2014 on October 1, 2013. States may transition to the Section 209 methodology at a mutually agreed upon time prior to October 1, 2013 provided this transition does not result in a reduction in net forecasted state payments to Amtrak compared to that State's prior methodology. Otherwise, all states will transition to the Section 209 methodology effective October 1, 2013.

FRA staff met with the Amtrak and the SWG several times during the course of Section 209 methodology development. The FRA recognizes that the implementation of the new methodology will require increased financial support from states. FRA staff have committed to continuing their work with Amtrak and the states to develop a possible transition assistance plan to ease the impact of Section 209 on the affected states. The states, Amtrak and FRA recognize that any transition plan will need to ultimately be addressed by Congress.

**Appendix A: Routes Affected by PRIA Section 209**

	Route Miles <sup>3</sup>	State-Supported FY10 <sup>4</sup>	System Trains	State-Supported per PRIA Sec 209
<b>Single-State<sup>5</sup></b>				
Empire Service	461	-	Yes	Yes
Lincoln Service (Chi-St. Louis)	284	Yes	Partial	Yes
Illini/Saluki	310	Yes	-	Yes
Illinois Zephyr/Carl Sandburg	258	Yes	-	Yes
Pacific Surfliner	350	Yes	Partial	Yes
Capitols	168	Yes	-	Yes
San Joaquins	315	Yes	-	Yes
River Runner (KC-St. Louis)	283	Yes	-	Yes
Piedmont	173	Yes	-	Yes
<b>Multi-State (Non-NEC)</b>				
Ethan Allen Express	241	Yes	-	Yes
Maple Leaf	545	-	Yes	Yes
Downeaster	116	Yes	-	Yes
Hiawatha	86	Yes	-	Yes
Wolverines	304	-	Yes	Yes
Heartland Flyer	208	Yes	-	Yes
Cascades	467	Yes	Partial	Yes
Adirondack	381	Yes	-	Yes
Blue Water	319	Yes	-	Yes
Hoosier State	196	-	Yes	Yes
Pere Marquette	176	Yes	-	Yes
<b>NEC Base-Increment (Single and Multi-State)<sup>6</sup></b>				
Vermont	611	Yes	-	Yes
New Haven – Springfield	63	-	Yes	Yes
Keystone Service	195	Yes	Partial	Yes
Boston/New Haven-Lynchburg	173	Yes	-	Yes
Washington-Richmond	187	Yes	Partial	Yes
Pennsylvanian	353	-	Yes	Yes
Carolinian	479	Yes	-	Yes

<sup>3</sup> For routes with multiple frequencies having different origins and destinations, represents the longest rail trip possible on multiple trains.

<sup>4</sup> FY10 State support does not include capital payment, or in some cases, all trains on a route.

<sup>5</sup> Routes with 95% or more route miles in one state are considered single state.

<sup>6</sup> Excludes route miles on NEC.

## Appendix B: Relevant Legislation

### SEC. 209. STATE-SUPPORTED ROUTES.

(a) IN GENERAL.—Within 2 years after the date of enactment of this Act, the Amtrak Board of Directors, in consultation with the Secretary, the governors of each relevant State, and the Mayor of the District of Columbia, or entities representing those officials, shall develop and implement a single, nationwide standardized methodology for establishing and allocating the operating and capital costs among the States and Amtrak associated with trains operated on each of the routes described in section 24102(5)(B) and (D) and section 24702 that—

- (1) ensures, within 5 years after the date of enactment of this Act, equal treatment in the provision of like services of all States and groups of States (including the District of Columbia); and
- (2) allocates to each route the costs incurred only for the benefit of that route and a proportionate share, based upon factors that reasonably reflect relative use, of costs incurred for the common benefit of more than 1 route.

(b) REVISIONS.—The Amtrak Board of Directors, in consultation with the Secretary, the governors of each relevant State, and the Mayor of the District of Columbia, or entities representing those officials, may revise or amend the methodology established under subsection (a) as necessary, consistent with the intent of this section, including revisions or modifications based on Amtrak's financial accounting system developed pursuant to section 203 of this division.

(c) REVIEW.—If Amtrak and the States (including the District of Columbia) in which Amtrak operates such routes do not voluntarily adopt and implement the methodology developed under subsection (a) in allocating costs and determining compensation for the provision of service in accordance with the date established therein, the Surface Transportation Board shall determine the appropriate methodology required under subsection (a) for such services in accordance with the procedures and procedural schedule applicable to a proceeding under section 24904(c) of title 49, United States Code, and require the full implementation of this methodology with regards to the provision of such service within 1 year after the Board's determination of the appropriate methodology.

(d) USE OF CHAPTER 244 FUNDS.—Funds provided to a State under chapter 244 of title 49, United States Code, may be used, as provided in that chapter, to pay capital costs determined in accordance with this section.

#### 49 USC § 24102. Definitions

- (5) "national rail passenger transportation system" means -
- (A) the segment of the continuous Northeast Corridor railroad line between Boston, Massachusetts, and Washington, District of Columbia;
  - (B) rail corridors that have been designated by the Secretary of Transportation as high-speed rail corridors (other than corridors described in subparagraph (A)), but only after regularly scheduled intercity service over a corridor has been established;
  - (C) long-distance routes of more than 750 miles between endpoints operated by Amtrak as of the date of enactment of the PRIIA [October 16, 2008]; and
  - (D) short-distance corridors, or routes of not more than 750 miles between endpoints, operated by--(i) Amtrak; or (ii) another rail carrier that receives funds under chapter 244.

**49 USC §24702.** Transportation requested by States, authorities, and other persons provides:

- (a) **CONTRACTS FOR TRANSPORTATION.** Amtrak may enter into a contract with a State, a regional or local authority, or another person for Amtrak to operate an intercity rail service or route not included in the national rail passenger transportation system upon such terms as the parties thereto may agree.

**49 USC § 24904.** General authority

(c) **Compensation for Transportation Over Certain Rights of Way and Facilities.** -- (1) An agreement under subsection (a)(6) of this section shall provide for reasonable reimbursement of costs but may not cross-subsidize intercity rail passenger, commuter rail passenger, and rail freight transportation.

(2) If the parties do not agree, the Interstate Commerce Commission shall order that the transportation continue over facilities acquired under the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) and the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 801 et seq.) and shall determine compensation (without allowing cross-subsidization between commuter rail passenger and intercity rail passenger and rail freight transportation) for the transportation not later than 120 days after the dispute is submitted. The Commission shall assign to a rail carrier obtaining transportation under this subsection the costs Amtrak incurs only for the benefit of the carrier, plus a proportionate share of all other costs of providing transportation under this paragraph incurred for the common benefit of Amtrak and the carrier. The proportionate share shall be based on relative measures of volume of car operations, tonnage, or other factors that reasonably reflect the relative use of rail property covered by this subsection.

**Appendix C: Definition of NEC Capital Charges, Where Applicable**

Normalized Replacement Capital Charge— Replacement of assets on a regular schedule designed to mitigate cyclical imbalances in renewal needs. Normalized replacement is the estimated annual capital investment requirements to maintain infrastructure in a state of good repair once it is in that condition.

State of Good Repair (SOGR) Backlog Capital Charge—An asset or group of assets that have received inadequate maintenance over a long period of time, or have not been replaced within standard life cycle. It may still be functioning as designed but face imminent heavy repair or replacement to overcome a “backlog” of regular maintenance which was not performed on schedule. For the Section 209 policy, SOGR Capital Charge will be calculated as incremental to the Normalized Replacement Capital Charge.

**Appendix D: Amtrak-Owned Right of Way Eligible for Synthetic Host Railroad Charge**

Amtrak-Owned Track Segment	Miles (Timetable)	Routes Affected
New Haven, CT – Springfield, MA	62	Springfield Shuttle
Philadelphia, PA – Harrisburg, PA	104	Keystones, Pennsylvanian
Porter, IN – Kalamazoo, MI	100	Blue Water, Wolverine
New York Penn Station – Spuyten Duyvil, NY	10.7	Empire Service

**Appendix E: Definition of Cost Categories Used in State-Supported Service**

Version 2011-06-01																																																			
Major Cost Category	Cost Category	Definition	Formula																																																
Third Party Costs	Host Railroad Maintenance of Way	Payments to host railroads for incremental costs, primarily maintenance of way associated with passenger operations	FM_307(Host RR) less incentives, less Host RR fuel, less Host RR MoE																																																
	Host Railroad Performance Incentives	Incentive payments to host railroads for meeting on-time and other performance targets	FM_307(Host RR) Schedule Adherence account																																																
	Fuel and Power	Diesel fuel and electric power used in train operations	FM_304(Fuel) + FM_307(Host RR) fuel account +																																																
Route Costs	Train & Engine (T&E) Crew Labor	Salaries, wages, benefits, and FELA for employees providing services for train operations. Includes engineers, conductors, assistant conductors, and related extra boards	FM_302_1(T&E Crew)																																																
	Car & Locomotive Maintenance and Turnaround	Turnaround service consists of cleaning, inspection, and minor repairs before or after revenue service. Also contains scheduled running maintenance and bad order repairs. Excludes capitalized maintenance and overhaul	FM_201(MoE Turnaround) + FM_202(MoE Loco Maint) + FM_203(MoE Car Maint) + FM_205(MoE Multiple, direct functions only) - FM_307(Host RR, MoE account only)																																																
	OBS Crew & Provisions	Salaries, wages, and benefits for employees providing On Board Services in Café, Lounge, and Dining Cars, including related extra boards. Also includes provisions loaded on train for sale	FM_301_1(OBS Crew) + FM_301_2(OBS Supplies)																																																
	Route Advertising	Sales & marketing expenses in support of a specific route, budgeted and recorded separate from other sales & marketing expense	Specific cost centers in FM_403(Marketing)																																																
	Sales Distribution	Sales and distribution operations, including development of new ticketing and on-board systems	FM_401(Sales (and Distribution) less Commission accounts																																																
	Reservations & Call Centers	Reservation sales call centers for general public and travel agencies, and supporting information systems	FM_402(Information & Reservations)																																																
	Stations - Route	Stations serving a single route. Depending on location, may include ticketing, baggage and express, stationmaster and ushers, station cleaning and maintenance, training and supervision	FM_501(Stations - Route)																																																
	Stations - Shared	Stations serving multiple routes. In addition to route station services, shared stations may include Red Cap and porter services	FM_502(Stations - Shared)																																																
	Commissions	Commission expense from credit cards, travel agencies, airline system access fees, and sales by other carriers as applicable	Commission accounts in multiple families for credit card sales, travel agents, and interline commission expense																																																
	Customer Concession (P&gr Inconv)	Payments to passengers for food & lodging as a result of delays. Generally includes unscheduled/ emergency motor coaches	Passenger Inconvenience account in FM_G_A(General & Administrative)																																																
	Connecting Motor Coach	Scheduled connecting motor coach services	FM_306(Train Movement) Connecting Motor Coach account																																																
	Regional/Local Police	Local and regional police patrolling duties in support of Amtrak trains, facilities, and rights of way	FM_901_2(Police - Regional/Local)																																																
	Block & Tower Operations	Crews who operate staffed towers along specific rights of way	Specific cost centers in FM_306(Train Movement)																																																
	Terminal Yard Operations	Crews who move train equipment at larger terminals before and after revenue service	FM_303_2(Yard - Train & Equipment Moves) + FM_303_4(Yard - Terminal Rent/Yard Services)																																																
	Terminal MoW	MoW expense at large Amtrak terminals, as applicable	Specific cost centers in FM_MOW(Maintenance of Way)																																																
Insurance	Self and purchased insurance for passenger train operations	Allocated insurance expense in FM_G_A(General & Administrative)																																																	
Additives	T&E	Division-specific and system overhead rates for T&E supervision and management. Includes road foremen, superintendents, crew bases, crew dispatching, local and national operating rule compliance, and other support. Excludes national train dispatching	<table border="1"> <thead> <tr> <th>Division</th> <th>Division Rate</th> <th>System Rate</th> <th>Total</th> </tr> </thead> <tbody> <tr> <td>Central</td> <td>17.5%</td> <td>43.50%</td> <td>12.90%</td> <td>26.40%</td> </tr> <tr> <td>Mid-Atlantic</td> <td></td> <td>18.40%</td> <td>12.90%</td> <td>31.30%</td> </tr> <tr> <td>Mid-Atlantic/Southern</td> <td></td> <td>20.20%</td> <td>12.90%</td> <td>33.10%</td> </tr> <tr> <td>New England</td> <td></td> <td>16.50%</td> <td>12.90%</td> <td>29.40%</td> </tr> <tr> <td>New York</td> <td></td> <td>24.30%</td> <td>12.90%</td> <td>37.20%</td> </tr> <tr> <td>Pacific</td> <td></td> <td>19.50%</td> <td>12.90%</td> <td>32.40%</td> </tr> <tr> <td>Southern</td> <td></td> <td>20.60%</td> <td>12.90%</td> <td>33.50%</td> </tr> <tr> <td>Southwest</td> <td></td> <td>16.30%</td> <td>12.90%</td> <td>29.20%</td> </tr> <tr> <td colspan="4">Total rate to be applied to T&amp;E Crew Labor</td> </tr> </tbody> </table>	Division	Division Rate	System Rate	Total	Central	17.5%	43.50%	12.90%	26.40%	Mid-Atlantic		18.40%	12.90%	31.30%	Mid-Atlantic/Southern		20.20%	12.90%	33.10%	New England		16.50%	12.90%	29.40%	New York		24.30%	12.90%	37.20%	Pacific		19.50%	12.90%	32.40%	Southern		20.60%	12.90%	33.50%	Southwest		16.30%	12.90%	29.20%	Total rate to be applied to T&E Crew Labor			
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MoE	Maintenance of shops and equipment to support direct Mechanical activities. Excludes Backshops and Fleet Engineering	27.10% of Route Cost Car & Locomotive Maintenance and Turnaround																																																	
OBS	OBS and commissary management and supervision	10.00% of OBS Crew & Provisions																																																	
Police	National police operations and support	\$0.0050 per passenger mile																																																	
Marketing	National marketing programs, including national advertising; loyalty marketing; timetables; personnel in support of Route Advertising; shows, exhibits & special events; and other	<table border="1"> <thead> <tr> <th>Region</th> <th>Rate</th> </tr> </thead> <tbody> <tr> <td>Base-Increment routes on NEC</td> <td>2.80%</td> </tr> <tr> <td>Routes with one terminal in Chicago</td> <td>2.90%</td> </tr> <tr> <td>All other routes</td> <td>1.90%</td> </tr> <tr> <td colspan="2">Rate to be applied to Total Revenue</td> </tr> </tbody> </table>	Region	Rate	Base-Increment routes on NEC	2.80%	Routes with one terminal in Chicago	2.90%	All other routes	1.90%	Rate to be applied to Total Revenue																																								
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General & Administrative	Charge for General & Administrative support including Computer Systems, Finance, Legal, and other	2.00% of Route Costs																																																	
Revenue Credit	Ticket revenue, net	Ticket revenue from passengers. Where applicable, includes through revenue adjustments described elsewhere in policy	As reported by APT, with adjustments for through revenue described elsewhere in policy																																																
	Food & Beverage Revenue	On-board food & beverage sales. Where applicable, pro-rated with supply expense across multiple legs	As reported by APT, pro-rated with supply expense across multiple legs																																																
	Other Revenue	Miscellaneous revenue as allocated by APT	As reported by APT																																																

30.4%

**Appendix E: Definition of Cost Categories Used in State-Supported Service - Capital**

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Major Cost Category			
Major Cost Category	Cost Category	Definition	Formula
Equipment	Passenger service equipment	Capital overhauls for Amtrak-owned equipment in service on state-supported routes, including locomotives, cab cars, coaches, and food service cars. States will be charged for the periodic capital overhauls of equipment in a period based on their proportionate use of that equipment in that period	Capital overhaul expense: by equipment type, from Amtrak's capital accounting systems. Equipment usage statistics: from the Amtrak Performance Tracking system. Amtrak will provide States with an estimate of planned overhaul work at the beginning of a contract period and will reconcile the planned usage to actual work performed and actual equipment used in a State's service
	Other mechanical expense	Wreck repair, facility improvements, equipment engineering and design, general safety & reliability, mechanical IT projects	Not charged to States
Other Amtrak Fixed Assets	Amtrak-owned fixed Assets used in State Services	Includes assets such as Amtrak-owned rights of way, large terminals, stations, and other	To be handled on a case-by-case basis between Amtrak and State partners
Other non-Amtrak Fixed Assets	Non-Amtrak-owned fixed assets used in State services	Includes assets used in State services owned by third parties such as host railroads or state and local governments, such as rights of way, stations, and other	To be handled on a case-by-case basis between Amtrak and State partners

## Appendix F: State-Amtrak Contract Template

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### Contract Outline

Effective Date: Contracts aligned to match each Agency's fiscal year

Parties: State Intercity Passenger Rail (IPR) Agency and Amtrak

Recitals/Boilerplate:

Section 1: Services to be Provided (multiple state funded services can be co-mingled under one agreement):

- Description of Amtrak Services and Service Standards {unique to each State}
- Train Schedule and Route Description {Train Service Schedules (including Connecting Bus Service, if applicable) detailed in appendix}
- Service Standards (see appendices) [Optional and specific to each State IPR Agency]
- Monitor the fiscal performance of the service/quarterly meetings (budget vs. actual)

Section 2: Decisions Affecting Service:

- Include Agency in discussions with railroads or appropriate regional rail authorities regarding schedule changes which impact service.
- Apprise Agency of any bargaining provisions that may impact service

Section 3: Amount of Reimbursement by the State IPR Agency:

- Agency's total financial obligation to Amtrak for the stated contract term shall be defined in terms of the following elements as part of the Section 209 Policy:
  - Service Fee—including Route Costs and Additives (including General & Administrative costs)
  - Third Party Costs—including fuel, host railroad access fees and incentive performance payments.
  - Other Special Cost Items as agreed upon between Amtrak and the Agency
  - Passenger Related Revenue—including ticket revenues, food and beverage revenues and other allocated revenues. These revenues are offsets from the above cost categories
  - Agency payment is the sum of the Service Fee, Third Party Costs, Other Special Costs Items with a credit for Passenger Related Revenue
- Forecasting financial elements always entails some risk as costs and/or revenues may vary from the forecasts. Amtrak and the Agency will determine the procedure for handling variances from forecasts during contract negotiations and, in particular, which party takes the risk for variances for each cost category. Options for managing and assigning variance risk are noted below:
  - Service Fee. Amtrak will make forecasts for the Service Fee. The assignment of variance risk will be subject to negotiation among the parties.
  - Third Party Costs. By definition, these costs are passed through Amtrak directly to the Agency. While Amtrak will make forecasts for these costs, the Agency will reimburse Amtrak for the actual amount of these costs whether they are lower than or higher than the Amtrak estimates

- Other Special Cost Items. These cost items will be negotiated between Amtrak and the Agency with the management of the variance between forecast and actual expenses governed in accordance with the particular arrangement between the parties
- Passenger Related Revenue. Amtrak will make forecasts for these items and the assignment of variance risk will be subject to negotiation among the parties.

Section 4: Manner of Reimbursement:

- Agency will pay Amtrak in accordance with the monthly payment schedule provided service operates at a deficit (see appendices)
- Invoices shall be rendered not less than forty-five (45) days prior to the due date.
- Force majeure
- Monthly Reconciliation Statements to State IPR Agency
- Remedies in the event that Amtrak fails to perform the services as required by this Agreement or Amtrak fails to provide revenue credits or carryover excess contract revenues
- Remedies in the event the State IPR fails to provide payment to Amtrak

Section 5: Defense of Claims {may vary due to scope of work}

Section 6: Inspection and Audit:

- Agency has the right to inspect the rail passenger and bus feeder services, facilities and equipment provided for service subject to adequate notice
- Amtrak shall provide the number of passengers carried and passenger miles operated for each train as well as other service-related reports as agreed-to by Amtrak and the Agency. Such data shall be computed and furnished on a monthly basis as described in the appendices (varies by State).

Section 7: Dispute Resolution {May vary}

Section 8: Force Majeure

- The obligations of Amtrak hereunder shall be subject to force majeure.

Section 9: Termination

Section 10: Notices

Section 11: Agreement Content

Section 12: Construction {May vary by State}

Section 13: Severability

Section 14: Compliance with Collective Bargaining Agreements

- The State acknowledges the existence of collective bargaining agreements between Amtrak and certain labor organizations representing certain of Amtrak's employees, and agrees that Amtrak will provide the

Service in a manner consistent with its obligations and rights under such agreements, as they may exist from time to time.

Section 15: State-Required Provisions (unique to each State):

- Appropriation of Funds
- Non-Discrimination
- Fair Employment Practices
- Contractor Integrity

Signature Blocks

Appendices: (contents and number of appendices will vary by State):

- National Section 209 Policy
- Train Service Schedules (and Connecting Bus Service, if applicable)
- Budget
- Payment Schedule
- Examples of Services and Performance Standards {OPTIONAL}
  - Provision of Equipment—Availability and Condition
  - Equipment Maintenance Standards
  - Reliability of Service—On Time Performance
  - Maintenance of Stations
  - Crew Performance, Supervision and Standards
  - Food Service
  - Reservations/Call Center
  - Marketing Support
  - Other Services

APPENDIX VI

HOOSIER STATE SERVICE

HEAD END INSPECTORS

Name

Title

TO BE DETERMINED

In accordance with the provisions of Section 5(a) of this Agreement, authority to ride the head-end or locomotive of State-supported Hoosier State trains shall be granted only to those individuals mutually agreed upon by Amtrak and the State.

