

**AMENDMENT NO. 1
TO DISTRIBUTION SERVICES AGREEMENT**

This Amendment No. 1 to the Distribution Services Agreement, dated January 2015, between the National Railroad Passenger Corporation ("Amtrak") and Wanderu, Inc. ("Wanderu") (the "Agreement") is effective as of April 1, 2016 ("Amendment Effective Date").

1. All capitalized terms shall have the same meaning as defined in the Agreement unless otherwise specified.
2. In Section 3, "Company Compensation," is deleted in its entirety and replaced with the following provision:

For referral bookings and/or direct bookings of Amtrak Products, Amtrak shall pay Wanderu a fee of (b)(4) By the fifteenth (15th) day of each month, Amtrak shall provide Wanderu a report stating: (a) the total number of PNRs booked for the preceding month from Wanderu's referrals; (b) the total price of the PNRs; and (c) the amount due Wanderu. Wanderu shall invoice Amtrak within sixty (60) days of receipt of the invoice and Amtrak shall remit payment within forty-five (45) days of Amtrak's receipt of Wanderu's invoice.

3. All other terms and conditions of the Agreement shall remain in full force and effect.

By execution below, the parties agree to the above terms and conditions as of the Amendment Effective Date.

Wanderu Inc.

National Railroad Passenger Corporation

(b)(6)

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Sent Via Certified Mail and Email

July 15, 2016

(b)(6)

Wanderu, Inc.
80 Bedford St, Floor 2
Boston, MA 02111

(b)(6)

RE: Distribution Services Agreement, between the National Railroad Passenger Corporation (“Amtrak”) and Wanderu, Inc., dated 6th February, 2015, (“Agreement”)

Dear (b)(6)

This letter is to notify you that Amtrak is replacing Attachment I-Amtrak Products with the attached updated Attachment I-Amtrak Products Revised 07-15-16. Please note that under Section 1.2 of the Agreement, Wanderu has fourteen days of receipt of this notice by certified mail to make any necessary changes to its website, Wanderu.com.

We continue to appreciate the opportunity to work with you and your company.

Sincerely,

(b)(6)



TRAVEL ALLIANCE AGREEMENT
BETWEEN
NATIONAL RAILROAD PASSENGER CORPORATION
AND

[]

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counterparty.



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TABLE OF ATTACHMENTS

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TRAVEL ALLIANCE AGREEMENT

This Travel Alliance Agreement ("Agreement") is entered into as of the ___ day of _____, 20__ ("Effective Date") by and between the National Railroad Passenger Corporation, a corporation organized under 49 U.S.C. § 24101 *et seq.* and the laws of the District of Columbia, with its principal office located at 1 Massachusetts Avenue, N.W., Washington, D.C. 20001 ("Amtrak"), and _____, a _____ organized under the laws of _____, with its principal office located at _____ ("Company").

1. Background

- 1.1 Amtrak, which provides nationwide passenger rail services in the United States, seeks to increase its sales in certain markets ("Territory").
- 1.2 Company [_____]
- 1.3 Company and Amtrak desire to use Company's market knowledge and resources to market and sell select Amtrak products and services ("Amtrak Products") in the Territory.

2. Company Services and Connectivity to Amtrak Web Services

- 2.1 Company shall provide the services ("Company Services") set forth in **Attachment 1 – Company Services** in accordance with all requirements and time frames contained therein. The markets that Amtrak seeks to target with Company are set forth in **Attachment 2 – Territory**. Amtrak reserves the right, in its sole discretion, to modify **Attachment 2 – Territory** at any time to (a) add any market in which Company conducts its business or (b) remove any market by providing written notice of the changes to Company.
- 2.2 Company will be an authorized, non-exclusive seller of the Amtrak Products listed in **Attachment 3 – Amtrak Products** in the Territory. Amtrak reserves the right, in its sole discretion, to revise **Attachment 3 – Amtrak Products** at any time to add or remove any Amtrak Product(s) by providing written notice of the changes to Company.
- 2.3 In order for Company's reservation system (the "System") to connect to Amtrak's ticket reservation and booking engine, *Arrow*, and *Arrow's* web-interface application, *Amtrak Web Services*, Company must develop an application to the System. Company shall develop and support the application at its own cost and expense.
- 2.4 Company shall, at no cost to Amtrak, develop, implement, support and maintain the System, which will connect to *Arrow* and *Amtrak Web Services*. Amtrak shall provide reasonable assistance and cooperation, at Amtrak's sole discretion, to Company in the development, implementation, support and maintenance of the System, as well as in the on-going connectivity of the System to Amtrak Web Services. The technical requirements for interfacing with Amtrak Web Services are set forth in **Attachment 4 – Amtrak Web Services Interface Specification**.

Commented [JAM3]: Insert the legal name of the contract counterparty.

Commented [JAM4]: Insert the form of the contract counterparty (e.g., corporation).

Commented [JAM5]: Insert the state or country's laws under which the counterparty is organized.

Commented [JAM6]: Insert the address of the counterparty's principal place of business.

Commented [JAM7]: Insert a description of the Company's business.



Amtrak reserves the right to revise **Attachment 4 – Amtrak Web Services Interface Specification** at any time by providing written notice to Company of such changes. In the event of any inconsistencies between **Attachment 4 – Amtrak Web Services Interface Specification** and **Attachment 3 – Amtrak Products** regarding authorized Amtrak Products, **Attachment 3 – Amtrak Products** controls.

- 2.5 During the term of this Agreement, Company shall ensure that the System complies with Amtrak Web Services Terms of Use, set forth in **Attachment 5 – Amtrak Web Services Terms of Use**. Amtrak reserves the right to revise **Attachment 5 – Amtrak Web Services Terms of Use** at any time by providing written notice to Company of such changes.
- 2.6 Company agrees to immediately notify its agents and subcontractors of any changes made by Amtrak pursuant to this Section and to modify the System as necessary to incorporate and reflect the changes made to the relevant attachment within thirty (30) days of receiving written notice of such changes, except for certain circumstances that require immediate change as determined by Amtrak. Company shall comply at all times with Amtrak's then current ticket booking procedures, which Amtrak will specify from time to time.
- 2.7 Amtrak reserves the right, in its sole discretion, to prohibit the distribution, sale or resale of any or all Amtrak Products to any Company customer, agent or subcontractor upon reasonable written notice to Company. Company shall modify the System as necessary to prohibit the offering of the specified Amtrak Product(s) to those Company customers, agents or subcontractors within five (5) days of receipt of such notice from Amtrak.
- 2.8 Company shall authorize Amtrak to access the System for the sole purpose of monitoring and ensuring compliance with this Agreement. Only Amtrak employees and contractors may access the System. Amtrak may not access the System to print tickets and will not be allocated ticket stock. Company may revoke Amtrak's access to the System upon termination of the Agreement or upon any default by Amtrak.
 - a) Company shall supply Amtrak with the necessary software required to access the System. Company shall provide such software components and documentation to Amtrak within a reasonable time after execution of this Amendment.
 - b) Company shall offer System training to Amtrak as reasonably necessary to ensure that Amtrak has at least one trained Amtrak employee operating the System.
 - c) Company shall provide Amtrak with System technical support through access to Company's technical support desk.

3. Payment and After Sales for Amtrak Products

- 3.1 At the time of booking a reservation for an Amtrak product sold pursuant to this Agreement, Company shall securely submit to Amtrak for payment a valid credit



card which must be included in Amtrak's list of acceptable credit cards as per **Attachment 6 - Payment Cards Accepted**. Amtrak may revise **Attachment 6 – Payment Cards Accepted** upon thirty (30) days written notice, except for certain circumstances that require immediate change as determined by Amtrak. The parties may agree by amendment to this Agreement to have payment made "on account" by which Amtrak shall invoice Company on a monthly basis for bookings made during the previous month and Company shall pay the invoice amount as specified by Amtrak.

- 3.2 Company shall provide adequate communication to ensure that its customers will have access to appropriate customer support including, without limitation, providing its employees, agents and subcontractors appropriate training and maintaining call center and sales staff at adequate levels. Company will be responsible for all Amtrak-related after sales customer service issues, including but not limited to customer complaints, ticket changes or refunds, as appropriate.

4. **Company Compensation**

Amtrak shall initially compensate Company as set forth in **Attachment 7 – Company Compensation**. This attachment will be subject to review on an annual basis.

Commented [JAM8]: Revise as necessary, especially if Amtrak will NOT be compensating Company.

5. **Advertising, Marketing and Promotion**

- 5.1 Company shall advertise, market and promote the sale of Amtrak Products pursuant to an annual marketing plan developed by Company and approved by Amtrak.
- 5.2 All advertising and promotional materials must contain disclaimers, limitations of liability notices, proprietary notices (e.g., trademark and copyright notices) and such other notices as required by Amtrak.
- 5.3 To satisfactorily perform the duties and obligations set forth in this Agreement, Company may need to use certain service marks, trademarks, logos and trade names (collectively, "Marks") and copyrighted works owned by or licensed to Amtrak. Company agrees and acknowledges that its use of these Marks and copyrighted works exists pursuant to a royalty-free, nontransferable, nonexclusive license or sub-license. Company understands that it will not acquire any ownership interest in Amtrak's Marks or copyrighted works or have the right to use such Marks or copyrighted works other than for the sole purpose of performing its duties and obligations to Amtrak under this Agreement.
- 5.4 Company agrees to comply with all of Amtrak's instructions regarding the use of Marks and copyrighted works, including but not limited to the Amtrak Brand Guidelines. Company shall not use Amtrak's Marks or copyrighted works in any manner that does, threatens to or will likely diminish their value or harm the reputation of Amtrak.
- 5.5 Prior to publication, Amtrak will have the right to review and approve any and all content, artwork, copy, advertising, promotional materials, direct mail, inserts, press releases, newsletters, web pages or other communications or any other publicity published, distributed or displayed by Company or at its direction or



authorization which uses Amtrak's Marks, name(s) or trade names or which otherwise refers to Amtrak Products or this Agreement (collectively referred to as "Advertising Materials").

- 5.6 Company shall submit Advertising Materials to Amtrak's representative listed in **Attachment 8 - Contacts**, which may be changed at any time upon written notice, at least thirty (30) days in advance for Amtrak's written approval.
- 5.7 Notwithstanding Amtrak's written approval of any Advertising Materials, upon Amtrak's written request, Company shall employ commercially reasonable efforts to cease publishing, distributing and/or displaying any Advertising Material immediately or within such other period as requested by Amtrak.

6. Contract and Program Administration

Each party shall designate a Contract and Program Representative who shall handle all issues related to this Agreement. Each party shall designate a Technical Representative who shall address technical issues related to this Agreement. Current contacts will be listed in **Attachment 8 - Contacts**. Each party may change such representatives upon written notice to the other party.

7. Term and Termination

- 7.1 This Agreement shall commence on the Effective Date and continue until _____ ("Initial Term") unless terminated earlier pursuant to the terms herein; thereafter, either party may request to renew this Agreement for a successive twelve (12) month period (each, a "Renewal Term" and, together with the Initial Term, "Term") upon the other party's approval by providing notice to the other party within thirty (30) days prior to the end of the Term.
- 7.2 Either party may terminate this Agreement upon written notice to the other party if the other party materially breaches this Agreement and fails to cure such breach within thirty (30) days of receiving written notice of the breach. In the event of an incurable breach, the other party may terminate this Agreement upon ten (10) days written notice to the breaching party.
- 7.3 Either party may terminate this Agreement immediately upon written notice, without providing opportunity to cure, upon the occurrence of any of the following:
 - a) the filing of any petition by or against the other party under any chapter of the Bankruptcy Code, or other insolvency or bankruptcy act enacted by a duly constituted legislative body of government;
 - b) a dissolution and winding up of the other party's business;
 - c) an occurrence of a general assignment for the benefit of creditors of the other party; or
 - d) an appointment of a receiver or trustee to take possession of all or substantially all of the assets of the other party.



- 7.4 Amtrak may terminate this Agreement immediately upon written notice, without providing Company the opportunity to cure, if:
- a) Company, its directors, officers, employees, or agents commits any fraudulent act or makes any fraudulent representation under this Agreement;
 - b) Company is terminated by its credit card processor or merchant bank;
 - c) Company sells all or a substantial part of its assets; or
 - d) Company is subject to a data breach and/or PCI-DSS violation as defined in **Section 11 – Security of Confidential Information**.
- 7.5 Amtrak may terminate this Agreement immediately upon written notice if there is any adverse publicity arising out of:
- a) an alleged or actual fraudulent act or statement by Company, its directors, officers or employees; or
 - b) a misrepresentation by Company, its directors, officers or employees and Company fails to remedy such adverse publicity to the satisfaction of Amtrak within ten (10) days of Amtrak's written notice to Company.
- 7.6 Amtrak may terminate this Agreement immediately upon written notice if Company's risk rating falls within the "High" risk category as defined below and Company fails to cure such rating deficiency within ninety (90) days of Amtrak's written notice of the High-risk rating. The risk rating is calculated as set forth below:
- a) A weight of sixty percent (60%) is assigned to the Credit Score Class indicated in the Dunn & Bradstreet Comprehensive Report
 - b) A weight of forty percent (40%) is assigned to the Financial Stress Class indicated in the Dunn & Bradstreet Comprehensive Report
 - c) A resulting score of above 3.5 is deemed "High" risk.

8. Reports

- 8.1 Company shall provide to Amtrak the reports and information, in such format specified in **Attachment 9 – Reports**.
- 8.2 Company shall provide such other information and reports as reasonably requested by Amtrak at any time in such manner as prescribed by Amtrak.

9. Letters of Credit

If payment is made "on account" as specified in Section 3.1 – Payment and After Sales for Amtrak Products above, Company shall, at its own expense, deliver to Amtrak an irrevocable letter of credit ("Letter of Credit") for the benefit of Amtrak as security for Company's proper performance under and compliance with this Agreement. This procedure will be detailed in a mutually agreed upon addendum to this Agreement.



10. Confidentiality

10.1 For purposes of this Agreement, "Confidential Information" means any of the following:

- a) information provided by or on behalf of either party (as the "Disclosing Party") to the other party (as the "Receiving Party") in connection with this Agreement, including any information collected or used to process payments for the Amtrak Products, including, without limitation, credit or debit cards or other payment or credit or debit card account information collected from or relating to customers or prospective customers ("Payment Related Information") belonging to a party to this Agreement and including information provided prior to the date hereof or the Effective Date;
- b) information about the Disclosing Party or its affiliates, or their respective business or employees, that the Receiving Party obtains in connection with this Agreement, in each case including, without limitation:
 - i. information concerning marketing plans, objectives and financial results;
 - ii. information regarding business systems, methods, processes, clients, financing data, programs and products;
 - iii. information unrelated to this Agreement obtained by the Receiving Party in connection with this Agreement, including, without limitation, by accessing or being present at the business location of the Disclosing Party;
 - iv. proprietary technical information, including trade secrets, source codes or other proprietary information of the Disclosing Party developed in connection with this Agreement; and
 - v. the terms and conditions of this Agreement.
- c) Without limiting the foregoing, Amtrak Confidential Information includes:
 - i. information relating to Amtrak customers or prospective customers created or obtained in connection with this Agreement or otherwise obtained from Amtrak or directly from Amtrak's customers or prospective customers, including the Payment Related Information of its customers, agents, and contractors,
 - ii. lists and data concerning Amtrak customers or prospective customers in the aggregate, and
 - iii. all information related to *Arrow* and the *Amtrak Web Services*.
- d) Without limiting the foregoing, Company Confidential Information includes the System, all information regarding Company's customers, including the



Payment Related Information of its customers, agents and subcontractors and Company's financial statements.

- 10.2 The Receiving Party shall maintain, dispose of and otherwise treat all Confidential Information of the Disclosing Party with the same degree of care as it accords its own Confidential Information, but in no event less than a reasonable degree of care.
- 10.3 The Receiving Party shall use and disclose Confidential Information only for the purpose of performing its obligations or enforcing its rights with respect to this Agreement or as otherwise expressly permitted by this Agreement, and shall not obtain, use or disclose Confidential Information for any other purpose. The Receiving Party shall, in accordance with the terms of this Agreement, limit access to Confidential Information to those employees, authorized agents, vendors, consultants, accountants, service providers who have a commercially reasonable need to access such Confidential Information in connection with this Agreement.
- 10.4 The Receiving Party agrees that any use or disclosure of Confidential Information other than that specifically permitted under this Agreement will cause immediate and irreparable harm to the Disclosing Party for which money damages might not constitute an adequate remedy. As a result, the Receiving Party agrees to the appropriateness of injunctive relief in addition to any other remedies the Disclosing Party may have under applicable laws.
- 10.5 Upon the termination or expiration of this Agreement, the Receiving Party shall comply with the Disclosing Party's instructions regarding the disposition of the Confidential Information, which may include return to the Disclosing Party of any and/or all of the Confidential Information (including any electronic or paper copies, reproductions, extracts or summaries thereof). The Receiving Party may retain one archived copy of such material, subject to the terms of this Agreement, which the Receiving Party may use solely for regulatory purposes and not for any other purpose. The Receiving Party shall certify such compliance in writing, including a certification that the Receiving Party has not kept any copies of Confidential Information except as necessary for regulatory purposes.
- 10.6 With respect to Amtrak Confidential Information, Company shall:
 - a) keep the Confidential Information confidential and secure in accordance with **Section 11 – Security of Confidential Information** of this Agreement and industry practices;
 - b) treat all Payment Related Information in accordance with the requirements of the Payment Card Industry (PCI) Security Standards;
 - c) implement and maintain commercially reasonable physical, electronic, administrative and procedural security measures, including commercially reasonable authentication, access controls, virus protection and intrusion detection practices and procedures in accordance with **Section 11 – Security of Confidential Information** of this Agreement; and



d) ensure that any person with access to the Confidential Information agrees in writing to follow the Confidentiality provisions of this Agreement (including but not limited to **Section 10 – Confidentiality** and **Section 11 – Security of Confidential Information**) and maintain the existence of this Agreement and the nature of their obligations hereunder strictly confidential. Company shall not provide any Amtrak customer or prospective customer non-public personal information (as defined herein) to any third party without Amtrak's express written approval. Furthermore, Company must make such sharing agreement in writing and ensure that the third party has security processes and procedures adequate to comply with its obligations both thereunder and under applicable laws. "Non-public personal information" means (i) personally identifiable information, and (ii) any list, description, or other grouping of customers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information that is not publicly available.

e) in the event of an information security breach by Company resulting in a suspected or actual breach of the security of the data of any Amtrak customer or prospective customer whose nonpublic personal information or Payment Related Information is or is reasonably believed to have been acquired by an unauthorized person or for unauthorized purposes, Company shall (a) consult with Amtrak regarding the appropriate response to each actual or suspected breach, (b) be responsible for complying with all applicable laws requiring notification to customers whose nonpublic personal information or Payment Related Information may be compromised or reasonably believed to be comprised due to a security breach, including mailing notice, if required, to the Amtrak customers or prospective customers at Company's sole expense and (c) obtain a new PCI-DSS certification. In addition, Company shall provide affected customers with one (1) year of complimentary access to credit monitoring services, credit protection services, credit fraud alerts, or similar services. Company shall consult with Amtrak regarding the content of any such notice and the service to be provided. In advance of mailing the notice, and as between the parties, Amtrak, at its election, shall make the final determination of the content of any such notice.

10.7 The restrictions on disclosure of Confidential Information in this **Section 10 – Confidentiality** shall not apply to information that:

- a) is already rightfully known to the Receiving Party, wholly apart from this Agreement as shown by the Receiving Party's written records, at the time it obtains Confidential Information from the Disclosing Party;
- b) at the time of the disclosure is or becomes generally available to the public other than as a result of disclosure in breach of this Agreement or any other confidentiality obligations;
- c) is lawfully received by the Receiving Party on a non-confidential basis from a third party authorized to disclose such information without restriction and without breach of this Agreement;



- d) is contained in, or is capable of being discovered solely through examination of publicly available records or products;
- e) is required to be disclosed by applicable law, regulation, valid court order, government agency order, for law enforcement purposes, or by a self-regulatory body, provided that (i) if possible, the Receiving Party shall promptly notify the Disclosing Party of any such requirement prior to disclosure to afford the Disclosing Party an opportunity to seek a protective order or other appropriate remedy to prevent or limit that disclosure, and (ii) Confidential Information of the Disclosing Party must only be disclosed to the extent required; or
- f) is developed by the Receiving Party without the use of any proprietary or non-public information provided by the Disclosing Party under this Agreement, as demonstrated by the written records of the Receiving Party.

11. Security of Confidential Information

- 11.1 Company shall at all times maintain physical, electronic, administrative and procedural security measures sufficient to protect all Confidential Information from both internal and external threats and sufficient to comply with all applicable local, state and federal laws and all applicable credit card association rules and regulations concerning the security of such data.
- 11.2 Company, its employees, agents and subcontractors shall at all times comply with the Payment Card Industry Data Security Standard (PCI-DSS) required by the credit card associations. Company must, at all times during the term of this Agreement, obtain, retain, and renew, as appropriate, its certification of compliance with the PCI-DSS. Company shall provide Amtrak with a copy of its current PCI-DSS certification and annual audits upon the Effective Date of this Agreement and on each anniversary date thereof for the duration of this Agreement.
- 11.3 Company shall maintain an adequate information security policy and provide Amtrak with a copy of the current policy upon the Effective Date of this Agreement. During the term of this Agreement, Company shall provide Amtrak timely updates and revisions thereto.
- 11.4 Company shall maintain and enforce safety and physical security procedures with respect to its access and maintenance and disposal of Confidential Information that:
 - a) meets or exceeds industry standards for the territories listed in **Attachment 2 - Territory**;
 - b) in the case of Payment Related Information, meets or exceeds PCI requirements for safety and physical security; and
 - c) provides appropriate technical and organizational safeguards against accidental or unlawful destruction, loss, alteration or unauthorized disclosure of or access to the Confidential Information under this Agreement.



Company shall take all commercially reasonable measures to secure and defend its location and equipment against "hackers" and others who may seek, without authorization, to access or modify its systems or the information found therein. Company shall regularly test its systems for potential areas where "hackers" and others could breach security, such testing to be conducted on at least a quarterly basis. Company agrees to advise Amtrak immediately by telephone and in writing via facsimile of any suspected security breach that may have compromised any Confidential Information, or of any suspected unauthorized misappropriation, disclosure or use by any person of the Confidential Information or Payment Related Information, which may come to Company's attention. Company shall take all steps and employ its best and most diligent efforts to remedy such breach of security or unauthorized access in a timely manner and to deliver to Amtrak a root cause assessment and future, incident-mitigation plan with regard to any breach of security or unauthorized access affecting Confidential Information or Payment Related Information.

- 11.5 Company must store all Confidential Information in a physically and logically secure environment that protects it from unauthorized access, modification, theft, misuse and destruction. In addition to these general standards, Company shall maintain an adequate level of physical security controls over its facility including, but not limited to, appropriate alarm systems, fire suppression, access controls (including off-hour controls) which may include visitor access procedures, security guard force, video surveillance, and staff egress searches. Company shall maintain an adequate level of data security controls, including, but not limited to, those set forth in **Attachment 10 – Data Security Controls**. Amtrak may revise the data security controls at any time upon written notice to Company, giving at least thirty (30) days advance notice when possible and/or practical.
- 11.6 Company shall maintain and implement disaster recovery and avoidance procedures and backup procedures as it relates to Confidential Information. During the term of this Agreement, Company shall provide Amtrak with an opportunity to review at Company's premises its current disaster recovery and avoidance plan and backup procedures and all updates thereto. Company shall review and update, as necessary, its disaster recovery and avoidance plan and backup procedures based on the respective recovery priority of each business unit. If Company performs any audit with regard to its disaster recovery and avoidance plan and backup procedures (e.g., ISO 9000), Company shall make the results of that audit available to Amtrak's information security director for on-site review. Amtrak may elect, at its option, to conduct onsite reviews of Company's facilities for, among other things, assessing disaster recovery preparedness and backup procedures.

12. Records and Audit

- 12.1 During the term of this Agreement and for a period of at least three (3) years thereafter, Company and its subcontractors shall keep and maintain complete and accurate books, records and accounts relating to this Agreement and shall conduct such internal audits reasonably required to verify continuing full compliance with the terms and conditions of this Agreement.



- 12.2 Amtrak reserves the right to inspect, copy and audit the records of Company and its agents and subcontractors ("Company's Records") in connection with all matters related to this Agreement. Company's Records shall include, but not be limited to: accounting records (hard copy and electronic); internal audit files; policies and procedures; cost and pricing data; subcontract, purchasing, and agreement files; correspondence; computations and projections; general ledger entries; and any other evidence sufficient to substantiate, in accordance with sound and generally accepted accounting principles and practices consistently applied, all direct and indirect charges, credits, or other financial transactions related in any way to this Agreement.
- 12.3 In addition, Amtrak will have the right to examine copy and audit Company's Records in order to evaluate and verify compliance of Company with governmental and legal requirements as well as all terms, conditions, and requirements of this Agreement.
- 12.4 Company's Records and systems that are used in connection with the sale of Amtrak Products will be made available to Amtrak or its representatives at all reasonable times. Amtrak may interview any of Company's employees, pursuant to the provisions of this Section, throughout the term of this Agreement and for three (3) years thereafter. Company shall provide adequate and appropriate workspace for Amtrak or its representatives to conduct audits in compliance with this Section. Company shall cooperate with all audit procedures, including, without limitation, the furnishing of a management representation letter upon request of the auditor.
- 12.5 Company shall promptly pay Amtrak the amount of any underpayment (and correct any other noncompliance) revealed by any such audit, and otherwise provide any restitution recommended by the results of the audit.
- 12.6 Company shall require all of its agents and subcontractors to comply with the provisions of this Section by insertion of the requirements hereof in a written contract or agreement between Company and each of its agents and subcontractors.
- 12.7 This Section is not in derogation of any rights, obligations or responsibilities that Amtrak's Office of the Inspector General has under the Inspector Generals Act of 1978, as amended, including, without limitation, the right to seek information by subpoena.

13. Notices

Each party must provide any notice, request, demand or other communication required or permitted hereunder in writing and in reference to this Agreement. The following constitutes proper notice:

- a) personal delivery;
- b) delivery by registered or certified mail, return receipt requested and acknowledged, postage prepaid; or



- c) two (2) business days after deposit with a private industry express courier, with written confirmation of receipt.

Each party agrees to send all notices to the addresses set forth in **Attachment 8 – Contacts**, which either party may change by providing proper notice to the party hereunder.

14. Indemnification

14.1 Company (as the "Indemnifying Party") agrees to defend, indemnify and hold harmless Amtrak (as the "Indemnified Party") and its officers, directors, employees, agents, servants, successors, assigns and subsidiaries and their respective successors, assigns and personal representatives (collectively "Indemnified Parties"), from and against any claims, losses, liabilities, fines, penalties, actions, damages, costs and expenses whatsoever (including costs of defense and attorneys' fees) (collectively "Claims"), which any of the Indemnified Parties may hereafter incur, have responsibility for or pay arising out of or related to:

- a) any act or failure to act by the Indemnifying Party and/or its directors, officers, employees, agents, subcontractors, servants, or any other person acting for or on behalf of the Indemnifying Party;
- b) the Indemnifying Party's breach of any term of this Agreement;
- c) any actual or claimed infringement or misappropriation of third-party intellectual property right(s) by the Indemnifying Party;
- d) the Indemnifying Party's breach of any contract, promise or undertaking with or to any third party and related to this Agreement.

Amtrak shall notify Company in writing within a reasonable time after notice of any such Claim.

14.2 Consistent with and in addition to **Section 14.1**, Company accepts sole liability for any failure of Company or any of Company's officers, directors, employees, agents, servants, subcontractors, or any other person acting for or on behalf of Company to maintain the confidentiality of Payment Related Information. Company shall defend, indemnify and hold harmless Amtrak against any and all Claims brought against Amtrak related to Payment Related Information, including those resulting from the action or inaction of Company or any of its directors, officers, employees, agents, servants, subcontractors, or any other person acting for or on behalf of Company.

14.3 The existence of any insurance policy procured or maintained by Company or any limitation on the amount or type of damages, compensation or benefits payable by or for Company or any subcontractor shall not limit the indemnification obligations under this Section.

15. Injunctive Relief



Each party acknowledges that the breach of any provision of **Section 5 – Advertising, Marketing and Promotion** (excluding Section 5.1); **Section 10 – Confidentiality**; or **Section 11 – Security of Confidential Information** may cause irreparable injury to the other party, and agrees that the other party shall have the right to seek temporary, preliminary and permanent injunctive relief, without the necessity of proving actual damages or posting a bond, to prevent any such breach.

16. Performance Standards and Ability to Perform

- 16.1 Company represents and warrants that it shall perform its responsibilities under this Agreement with promptness and diligence and in a professional manner, in accordance with best practices and highest industry standards.
- 16.2 Company shall handle all customer inquiries and complaints in a prompt, courteous and diligent manner. Company shall cooperate with Amtrak to deal appropriately with any customer complaint.
- 16.3 Each party represents and warrants that it knows of no circumstances that would materially impede its ability to perform under this Agreement and shall promptly notify the other party in writing if it acquires knowledge of any circumstances that would materially impede its ability to perform under this Agreement. Without limiting the foregoing, Company represents and warrants that it shall immediately notify Amtrak of:
 - a) any change in its ownership or control; and/or
 - b) its involvement in any actual or threatened major litigation.
- 16.4 Neither party will be liable for any malfunction of System, Arrow, or Amtrak Web Services due to any incompatibility with either party's systems or due to either party's failure to adhere to the guidelines and system parameters under which System, Arrow, or Amtrak Web Services is installed.
- 16.5 EXCEPT AS OTHERWISE PROVIDED HEREIN, AMTRAK MAKES NO OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, UNDER THIS AGREEMENT AND AMTRAK HEREBY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES REGARDING FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OR NONINFRINGEMENT.
- 16.6 EXCEPT FOR EACH PARTY'S INDEMNIFICATION OBLIGATIONS HEREIN, TO THE EXTENT PERMITTED BY LAW, NEITHER PARTY OR ITS AFFILIATES, AND THEIR RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY, ITS "REPRESENTATIVES") SHALL BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, HOWEVER CAUSED, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER THEORY OF LIABILITY, EVEN IF SUCH PARTY OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR EVEN IF ANY SUCH LOSS OR DAMAGES WERE REASONABLY FORESEEABLE.



17. Certain Representations and Warranties

- 17.1 Each party represents and warrants to the other that it has the requisite corporate power and authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement.
- 17.2 Each party represents and warrants that the execution, delivery and performance of this Agreement has been duly authorized and the requisite corporate action on the part of such party for the consummation of the transactions contemplated by this Agreement have occurred.
- 17.3 Company represents and warrants that, it currently is and throughout the entire term of this Agreement shall be, in compliance with all applicable local, state, federal and foreign laws, rules and regulations.
- 17.4 Company represents and warrants that, it currently is and throughout the entire term of this Agreement shall be, in compliance with the then current automated clearinghouse and bankcard association guidelines, rules, regulations and procedures applicable to its payment processing and other services, including, without limitation, the provisions of the Federal Reserve Board's regulations E and Z, the operating rules and operating guidelines of the National Automated Clearing House Association and the rules, regulations and procedures of all credit card associations and companies.
- 17.5 Company represents and warrants that it is not the subject of any litigation initiated by any credit card association or credit card processor with respect to its acceptance of credit card payments on behalf of itself or any other merchant. Company represents and warrants that no agreements, injunctions, restrictions or otherwise exist which may prohibit it from performing its obligations under this Agreement either by statute, rule, regulation, agreement or otherwise.
- 17.6 Company represents and warrants that its advertising, marketing and promotional materials, including Company websites, other web space that Company controls and the content and other information contained or referred to therein will not:
- a) constitute libel, defamation, false or illegal advertising;
 - b) constitute an invasion of privacy or a violation of the rights to publicity of any third party;
 - c) infringe any patent, copyright or trademark;
 - d) contain, link or refer to any offensive or indecent information of any kind;
 - e) contain any information that could be deemed proprietary, except proprietary information owned by or licensed to Company for use therein or therewith (other than trade name(s), trademarks, service marks, or any comparable intellectual property rights); or
 - f) suggest or state that Company and Amtrak have any relationship as agents for one another, as partners, as joint venturers or similar relationship, except as expressly provided herein.



If Company becomes aware of any claim, allegation or notification that the foregoing warranties have been breached, Company shall promptly notify Amtrak.

18. Insurance

Commented [JAM9]: If the cumulative value of the contract exceeds \$10 million, this Section 18 must be revised by Amtrak Risk Management.

18.1 Company shall procure and maintain, at its own cost and expense, continuously during the term of this Agreement, and to the extent it carries any insurance on a "claims-made," "claims-reported," or "occurrences-reported" basis for three (3) years beyond the term of this Agreement, the types of insurance specified below:

a) Commercial General Liability Insurance. A policy issued to and covering liability imposed upon Company arising out of Company's premises or operations or the services to be performed and/or planned and those of any subcontractors or agents and all obligations assumed by Company under the terms of this Agreement. The policy must include products/completed operations liability, independent contractors liability, contractual liability, personal injury liability and advertising liability coverages. The policy must name National Railroad Passenger Corporation as an additional insured with respect to Company's premises, operations and services, and the policy shall contain a waiver of subrogation against National Railroad Passenger Corporation, its subsidiaries and their directors, officers, employees, and agents. Coverage under this policy, or policies, shall have a combined single limit of liability of (b)(4)

b) Professional Liability Insurance. A professional liability insurance policy covering liability imposed on Company for all errors or omissions committed by Company, its subcontractors, agents, or employees in the performance of services under this Agreement. Coverage under this policy shall have limits of liability of (b)(4) per claim and in the annual aggregate.

c) Claims-Made Insurance. If Company provides any insurance specified above on a "claims-made", or "occurrences-reported" basis, then in addition to the coverage requirements above, such policy shall provide that: (i) the retroactive date coincides with or precedes Company's start of Services (including subsequent policies purchased as renewals or replacements); (ii) the policy allows for the reporting of circumstances or incidents that might give rise to future claims; (iii) Company will employ its best efforts to maintain similar insurance for at least three (3) years following completion of the Services; and (iv) if insurance terminates for any reason, Company agrees to purchase an extended reporting provision of at least three (3) years to report claims arising from performance of this Agreement.

d) Crime Insurance. Covering the loss of funds, remittances, vouchers or any other property belonging to Amtrak and caused by fraud, theft, dishonesty, and other wrongful acts by any Company employee, agent or subcontractor employee. Coverage under this policy will have a limit of liability of (b)(4)

(b)(4)



18.2 Company shall submit to Amtrak a certificate of insurance giving evidence of the required coverages prior to the Effective Date of this Agreement. Company shall continue to submit certificates of insurance during the term of this Agreement for those policies to which **Section 18 – Survival** applies, as often as needed to reflect any material changes in, or renewal or replacement of, the required coverages.

18.3 Company shall procure all insurance from insurers which: (a) Amtrak reasonably deems acceptable; (b) have financial ratings of A VIII or better in the Best's Key Rating Guide, latest edition in effect as of the Effective Date of this Agreement, and subsequently in effect at the time of renewal of any policies required hereunder, and (c) agree to give Amtrak thirty (30) days advance written notice of cancellation, non-renewal, or material change in coverage.

19. Survival

The following provisions shall survive expiration or termination of this Agreement: **Section 5 – Advertising, Marketing and Promotion** (excluding Section 5.1); **Section 10 – Confidentiality**; **Section 11 – Security of Confidential Information**; **Section 12 – Records and Audit**; **Section 13 – Notices**; **Section 14 - Indemnification**; **Section 18 – Insurance**; **Section 19 – Survival**; **Section 26 – Governing Law, Jurisdiction and Venue**; and any other provision reasonably understood to survive termination or expiration of this Agreement.

20. Assignment

Company shall not assign, delegate or otherwise transfer this Agreement or any right or obligation hereunder (whether by express transfer, operation of law or otherwise) without the prior written consent of Amtrak. Notwithstanding the foregoing, Company may delegate the performance of certain obligations to certain third party contractors, provided that Company gives Amtrak thirty (30) days written notice of the proposed delegation and Company controls the delivery of such obligations to Amtrak and remains responsible to Amtrak for the delivery of such obligations. Any attempted or purported assignment or other transfer not complying with the foregoing will be null and void. Subject to the foregoing, this Agreement will inure to the benefit of and bind the successors and assigns of the parties.

21. Modifications

Any waiver, modification or amendment of any provision of this Agreement shall be effective only if in writing and signed by the authorized representatives of both parties.

22. Headings

The various section headings exist for convenience of reference only and shall not affect the meaning or interpretation of this Agreement or any section thereof.

23. Severability



Subject to **Section 26 – Governing Law, Jurisdiction and Venue**, if any provision of this Agreement is determined to be invalid, void or unenforceable in any respect, such determination shall not affect, impair or invalidate any other provision hereof.

24. Construction

All parties drafted this Agreement and, in the event of a dispute, no party hereto may attempt to construe any provision against any other party by claiming that one particular party drafted it.

25. No Waiver

No course of dealing, course of performance or failure of either party strictly to enforce any term, right or condition of this Agreement constitutes a waiver of such term, right or condition. No waiver or breach of any provision of this Agreement constitutes a waiver of any subsequent breach of the same or any other provision.

26. Governing Law, Jurisdiction and Venue

Each party agrees to execute and interpret this Agreement in accordance with and subject to the internal laws of the District of Columbia, without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the District of Columbia. Each party agrees to commence any legal suit, action or proceeding arising out of or relating to this Agreement in the United States District Court for the District of Columbia, and each party irrevocably submits to the exclusive jurisdiction and venue of such court in such suit, action or proceeding.

27. Compliance with Laws

Company, its directors, officers, employees, agents and subcontractors shall comply with all applicable local, state, federal and foreign laws, rules and regulations enacted by duly constituted governmental bodies. Company hereby agrees to notify Amtrak in writing within a reasonable time after receiving notice of any failure to or allegation of a failure to comply with the applicable laws. Company must defend, indemnify and hold harmless Amtrak from and against any loss, damage, expense or other harm or liability incurred or suffered by Amtrak due to any failure by Company, any of its directors, officers, employees, agents or subcontractors to comply with such laws, rules, or regulations.

28. Relationship of the Parties

It is understood and agreed that nothing contained in this Agreement shall be deemed or construed as creating a partnership, joint venture, agency or employment relationship between Amtrak and Company. Nothing contained herein or in any agreement between Company and any agent or subcontractor shall create (a) any contractual relationship between Amtrak and such agent or subcontractor or (b) any third-party beneficiary rights in any such agent or subcontractor. The terms agent, subcontractor and independent contractor as used throughout this Agreement do not include travel agents and tour operators.

29. Force Majeure



Except for the payment of monies due hereunder, and subject to **Section 7 – Term and Termination**, neither party has any responsibility or liability for any delay or failure to perform to the extent due to unforeseen circumstances or causes beyond its reasonable control, including, without limitation, acts of God, earthquake, fire, flood, embargoes, labor disputes and strikes, riots, acts of terrorism, war, and acts of civil and military authorities, provided that such party gives the other party prompt written notice of its failure to perform and the reason therefore and employs its reasonable efforts to limit the resulting delay in performance. If either party fails to perform any of its obligations under this Agreement due to a Force Majeure condition, as defined in this Section, for sixty (60) successive days, the other party has the right to terminate this Agreement immediately upon written notice.

30. Entire Agreement

This Agreement, and any attachments and exhibits thereto, contain the entire understanding of the parties with respect to the subject matter of this Agreement and merges and supersedes all prior and contemporaneous agreements and understandings between the parties, whether oral or written, with respect to the subject matter of this Agreement. All attachments are incorporated by reference and made a part of this Agreement.

31. Facsimile Signatures Acceptable

This Agreement may be executed by facsimile in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute the same instrument.

[SIGNATURE

PAGE

FOLLOWS]



IN WITNESS WHEREOF, Amtrak and Company have each caused this Agreement to be signed and delivered by its duly authorized officer, all as of the date first set forth above.

NATIONAL RAILROAD PASSENGER CORPORATION

[_____]

Commented [JAM10]: Insert the full legal name of the Company.

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____



ATTACHMENT 1 – COMPANY SERVICES

Company shall provide Amtrak the following services:

Commented [JAM11]: List the services Company will provide and include specific requirements and time frames.



ATTACHMENT 2 – TERRITORY

Amtrak seeks to target the following markets with Company:

Commented [JAM12]: List the markets Amtrak would like to target with Company.



ATTACHMENT 3 – AMTRAK PRODUCTS

Company will be an authorized, non-exclusive seller of the following Amtrak Products in the Territory:

Commented [JAM13]: List the Amtrak Products that Company will be authorized to sell in the Territory.



ATTACHMENT 4 – AMTRAK WEB SERVICES INTERFACE SPECIFICATIONS

To interface with Amtrak Web Services, Company must satisfy the following technical requirements:

Commented [JAM14]: List and describe the technical requirements for interfacing with Amtrak Web Services.



ATTACHMENT 5 – AMTRAK WEB SERVICES TERMS OF USE

Company must ensure that its System complies with the following terms of use:

Commented [JAM15]: Insert Amtrak Web Services Terms of Use.



ATTACHMENT 6 – PAYMENT CARDS ACCEPTED

Company's valid credit card, which will be submitted to Amtrak for payment under this Agreement, must be one of the following acceptable credit cards:

Commented [JAM16]: List Amtrak's acceptable credit cards.



ATTACHMENT 7 – COMPENSATION

Commented [JAM17]: Describe how Amtrak will compensate Company, including the amounts.



ATTACHMENT 8 – CONTACTS

Any notices, reports, or other information required under this Agreement, should be sent to the following addresses:

If to Amtrak:

National Railroad Passenger Corporation

Attn: _____

Commented [JAM18]: Insert the appropriate Amtrak address.

Commented [JAM19]: Insert title and name of appropriate Amtrak officer.

If to Company:

Attn: _____

Commented [JAM20]: Insert full name and address of the Company.

Commented [JAM21]: Insert title and name of appropriate Company officer.



ATTACHMENT 9 – REPORTS

Company shall provide Amtrak the following reports and information in the format specified below:

Commented [JAM22]: List the reports that Company must provide and specify any formatting requirements.



ATTACHMENT 10 – DATA SECURITY

To keep the Confidential Information secure and confidential, Company shall:

Commented [JAM23]: List the required confidentiality standards and practices.

**AMENDMENT NO. 1 TO
GLOBAL SALES AND SERVICES AGREEMENT**

This Amendment No. 1 to Global Sales and Services Agreement ("Agreement"), dated April 1, 2014, between the National Railroad Passenger Corporation ("Amtrak"), a corporation organized under 49 U.S.C. § 24101 et seq. and the laws of the District of Columbia and SilverRail Technologies, Inc. ("SilverRail"), a corporation organized under the laws of the State of Washington, with its principal office located at 300 Trade Center, Ste 6700, Woburn, MA 01801 is effective as of April 1, 2018 ("Amendment Effective Date").

Whereas, Amtrak had entered into the Agreement with SilverRail Technologies, Inc.;

Whereas, the parties now desire to amend the Agreement.

Now Therefore, the parties agree to the following modifications to the Agreement.

1. All defined terms shall have the meaning set forth in the Agreement unless otherwise defined herein.
2. Section 7.1 (Term and Termination) is deleted and replaced with the following provision:

This Agreement shall commence on the Effective Date and continue until September 30, 2018.

3. In Attachment 7 (Compensation), the Transaction Fee is changed to (b)(4)

4. In Attachment 8 (Contracts), the contact for the Amtrak Contract and Program Representative is changed to: (b)(6)

(b)(6)

5. All other terms and conditions of the Agreement remain in full force and effect.

The parties have caused this Amendment No. 1 to be executed by their duly authorized representatives as of the Amendment Effective Date.

National Railroad Passenger Corporation

SilverRail Technologies, Inc.

(b)(6)

**AMENDMENT NO. 1 TO
GLOBAL SALES AND SERVICES AGREEMENT**

This Amendment No. 1 to Global Sales and Services Agreement ("Agreement"), dated April 1, 2014, between the National Railroad Passenger Corporation ("Amtrak"), a corporation organized under 49 U.S.C. § 24101 et seq. and the laws of the District of Columbia and SilverRail Technologies, Inc. ("SilverRail"), a corporation organized under the laws of the State of Washington, with its principal office located at 300 Trade Center, Ste 6700, Woburn, MA 01801 is effective as of April 1, 2018 ("Amendment Effective Date").

Whereas, Amtrak had entered into the Agreement with SilverRail Technologies, Inc.;

Whereas, the parties now desire to amend the Agreement.

Now Therefore, the parties agree to the following modifications to the Agreement.

1. All defined terms shall have the meaning set forth in the Agreement unless otherwise defined herein.
2. Section 7.1 (Term and Termination) is deleted and replaced with the following provision:

This Agreement shall commence on the Effective Date and continue until September 30, 2018.

3. In Attachment 7 (Compensation), the Transaction Fee is changed to (b)(6)
4. In Attachment 8 (Contracts), the contact for the Amtrak Contract and Program Representative is changed to (b)(6) (b)(6) National Railroad Passenger Corporation, 10 G Street, NE, Washington, DC 20002. The contact for SilverRail is: (b)(6) SilverRail Technologies, Inc., 300 Trade Center, Woburn, MA 01801.
5. All other terms and conditions of the Agreement remain in full force and effect.

The parties have caused this Amendment No. 1 to be executed by their duly authorized representatives as of the Amendment Effective Date.

National Railroad Passenger Corporation

SilverRail Technologies, Inc.

(b)(6)	
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AMENDMENT NO. 2 TO AGREEMENT

This Second Amendment ("Amendment") is made as of July 17, 2018 to the Global Sales and Services Agreement effective as of April 1, 2014 ("Agreement") by and between National Railroad Passenger Corporation ("Amtrak") and SilverRail Technologies, Inc. ("SilverRail"). Amtrak and SilverRail are collectively referred to herein as the "Parties". All capitalized terms used herein shall have the meaning assigned to them in the Agreement, unless otherwise defined herein.

WHEREAS, Amtrak and SilverRail wish to amend certain terms and conditions of the Agreement, and Amtrak and SilverRail consent to and approve the amendment of the Agreement as set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Effective Date.** The Effective Date of this Amendment shall be October 1, 2018.
2. **Term.** The original term of the Agreement, defined in Section 7.1 of the Agreement and extended by Amendment No. 1 to the Agreement, is extended for an additional 1 year beginning on October 1, 2018 and ending on September 30, 2019.
3. **Compensation.** Attachment 7 – Compensation, is deleted in its entirety.

Unless otherwise modified by this Amendment, all terms and conditions contained in the Contract shall continue in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the Effective Date.

NATIONAL RAILROAD PASSENGER CORPORATION
(b)(6)

SILVERRAILTECHNOLOGIES Inc.
(b)(6)

DISTRIBUTION SERVICES AGREEMENT
BETWEEN
NATIONAL RAILROAD PASSENGER CORPORATION
AND
RAILKEY TECHNOLOGY SOLUTIONS, LLC

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DISTRIBUTION SERVICES AGREEMENT

This Distribution Services Agreement ("**Agreement**") is entered into as of the 1st day of August, 2014 ("**Effective Date**") by and between the National Railroad Passenger Corporation, a corporation organized under 49 U.S.C. § 24101 *et seq.* and the laws of the District of Columbia, with its principal office located at 60 Massachusetts Avenue, N.E., Washington, D.C. 20002 ("**Amtrak**"), and Railkey Technology, LLC a Company organized under the laws of Massachusetts, with its principal office located at 15 Hancock Ave Newton, MA 02459 ("**Company**").

1. Background

- 1.1 Amtrak, which provides nationwide passenger rail services in the United States, seeks to increase its sales in certain markets ("**Territory**").
- 1.2 Railkey is in the business of providing travel booking distribution solutions. Railkey's travel booking distribution solutions enable its clients to (a) obtain travel information and book travel from their systems and/or (b) provide to clients' customers the ability to obtain travel information and book travel from the customers' reservation systems by connecting to the reservation systems of travel providers. Railkey's clients may include corporate travel offices, travel agents, tour operators, and reservation systems operators. Railkey's travel distribution solutions are referred to herein as "**Distribution Products**."
- 1.3 Railkey and Amtrak desire to use Railkey's Distribution Products for the sale of Amtrak's products and services ("**Amtrak Products**").

2. Company Services and Connectivity to Amtrak Web Services

- 2.1 Railkey shall provide the services ("**Company Services**") set forth in **Attachment 1 – Company Services** in accordance with all requirements and time frames contained therein. The markets that Amtrak seeks to target with Railkey are set forth in **Attachment 2 – Territory**. Amtrak reserves the right, in its sole discretion, to modify **Attachment 2 – Territory** at any time to (a) add any market in which Railkey conducts its business or (b) remove any market by providing written notice of the changes to Railkey. Railkey shall modify its Distribution Products as necessary to incorporate and reflect changes to **Attachment 2 – Territory** within ninety (90) days of receiving written notice of such changes. If a longer time period is necessitated to modify the products, the parties shall use good faith efforts to agree upon the time period for such modification.
- 2.2 Railkey will be an authorized, non-exclusive seller of the Amtrak Products listed in **Attachment 3 – Amtrak Products** in the Territory. Amtrak reserves the right, in its sole discretion, to revise **Attachment 3 – Amtrak Products** at any time to add or remove any Amtrak Product(s) by providing written notice of the changes to Railkey. Railkey shall modify its Distribution Products as necessary to incorporate and reflect changes to **Attachment 3 – Amtrak Products** within ninety (90) days of receiving written notice of such changes. If a longer time

period is necessitated to modify the products, the parties shall use good faith efforts to agree upon the time period for such modification.

- 2.3 In order for Railkey's reservation system (the "**System**") to connect to Amtrak's ticket reservation and booking engine, *Arrow*, and *Arrow's* web-interface application, *Amtrak Web Services*, Railkey must develop a connection to the System. Railkey shall develop and support the connection at its own cost and expense.
- 2.4 Connectivity to *Arrow* through Amtrak Web Services may be through (a) a **Managed Access Channel** or (b) an **Unmanaged Access Channel** with different security requirements. The Managed Access Channel is available to Railkey only if it has in place system administration controls that (a) limit access solely to Railkey's authorized travel managers and/or employees and (b) validates authorized users identity and access rights.
- 2.5 Railkey shall, at no cost to Amtrak, develop, implement, support and maintain the System, which will connect to *Arrow* and *Amtrak Web Services*. Amtrak shall provide reasonable assistance and cooperation, at Amtrak's sole discretion, to Railkey in the development, implementation, support and maintenance of the System, as well as in the on-going connectivity of the System to Amtrak Web Services. The technical requirements for interfacing with Amtrak Web Services are set forth in **Attachment 4 – Amtrak Web Services Interface Specification**. Amtrak reserves the right to revise **Attachment 4 – Amtrak Web Services Interface Specification** at any time by providing written notice to Railkey of such changes. Railkey shall modify its Distribution Products as necessary to incorporate and reflect changes to **Attachment 4 – Amtrak Web Services Interface Specification** within ninety (90) days of receiving written notice of such changes. If a longer time period is necessitated to modify the products, the parties shall use good faith efforts to agree upon the time period for such modification. In the event of any inconsistencies between **Attachment 4 – Amtrak Web Services Interface Specification** and **Attachment 3 – Amtrak Products** regarding authorized Amtrak Products, **Attachment 3 – Amtrak Products** controls.
- 2.6 During the term of this Agreement, Railkey shall ensure that the System complies with Amtrak Web Services Terms of Use, set forth in **Attachment 5 – Amtrak Web Services Terms of Use**. Amtrak reserves the right to revise **Attachment 5 – Amtrak Web Services Terms of Use** at any time by providing written notice to Railkey of such changes. Railkey shall modify its Distribution Products as necessary to incorporate and reflect changes to **Attachment 5 – Amtrak Web Services Terms of Use** within ninety (90) days of receiving written notice of such changes. If a longer time period is necessitated to modify the products, the parties shall use good faith efforts to agree upon the time period for such modification.
- 2.7 Railkey agrees to immediately notify its agents and subcontractors of any changes made by Amtrak pursuant to this Section and to modify the System as necessary to incorporate and reflect the changes made to the relevant attachment within ninety (90) days of receiving written notice of such changes, except for certain circumstances that would reasonable require immediate

change as determined by Amtrak. If a longer time period is necessitated to modify the interface, the parties shall use good faith efforts to agree upon the time period for such modification. Railkey shall comply at all times with Amtrak's then current ticket booking procedures, which Amtrak will specify from time to time. Amtrak shall strive to provide Railkey with thirty (30) days advance notice of any change to the ticket booking procedures.

- 2.8 Amtrak reserves the right, in its sole discretion, to prohibit the distribution, sale or resale of any or all Amtrak Products to any Railkey customer, agent or subcontractor upon reasonable written notice to Railkey. Railkey shall modify the System as necessary to prohibit the offering of the specified Amtrak Product(s) to those Railkey customers, agents or subcontractors within five (5) days of receipt of such notice from Amtrak.
- 2.9 Railkey shall authorize Amtrak to access the System for the sole purpose of monitoring and ensuring compliance with this Agreement. Only Amtrak employees and contractors may access the System. Amtrak may not access the System to print tickets and will not be allocated ticket stock. Railkey may revoke Amtrak's access to the System upon termination of the Agreement or upon any default by Amtrak.
- a) Railkey shall supply Amtrak with the necessary software required to access the System. Railkey shall provide such software components and documentation to Amtrak within a reasonable time after execution of this Agreement.
 - b) Railkey shall offer System training to Amtrak as reasonably necessary to ensure that Amtrak has at least one trained Amtrak employee operating the System.
 - c) Railkey shall provide Amtrak with System technical support through access to Railkey's technical support desk.

3. Payment and After Sales Support for Amtrak Products

- 3.1 At the time of booking a reservation for an Amtrak product sold pursuant to this Agreement, Railkey shall securely submit to Amtrak for payment a valid credit card which must be included in Amtrak's list of acceptable credit cards as per **Attachment 6 - Payment Cards Accepted**. Amtrak may revise **Attachment 6 – Payment Cards Accepted** upon thirty (30) days written notice, except for certain circumstances that require immediate change as determined by Amtrak. The parties may agree by amendment to this Agreement to have payment made "on account" by which Amtrak shall invoice Railkey on a monthly basis for bookings made during the previous month and Railkey shall pay the invoice amount as specified by Amtrak.
- 3.3 If connectivity to Arrow through Amtrak Web Services is through an Unmanaged Access Channel, Railkey must include a credit card CVV / CID number and a billing postal code for each payment transaction.

- 3.4 Railkey shall provide adequate communication to ensure that its customers will have access to appropriate customer support including, without limitation, providing its employees, agents and subcontractors appropriate training and maintaining call center and sales staff at adequate levels. Railkey will be responsible for all Amtrak-related after sales customer service issues, including but not limited to customer complaints, ticket changes or refunds, as appropriate.

4. **Company Compensation**

Amtrak shall initially compensate Railkey as set forth in **Attachment 7 – Company Compensation**. This attachment will be subject to review on an annual basis.

5. **Advertising, Marketing and Promotion**

- 5.1 Railkey shall advertise, market and promote the sale of Amtrak Products pursuant to an annual marketing plan developed by Railkey and approved by Amtrak.
- 5.2 All advertising and promotional materials must contain disclaimers, limitations of liability notices, proprietary notices (e.g., trademark and copyright notices) and such other notices as required by Amtrak.
- 5.3 To satisfactorily perform the duties and obligations set forth in this Agreement, Railkey may need to use certain service marks, trademarks, logos and trade names (collectively, "Marks") and copyrighted works owned by or licensed to Amtrak. Railkey agrees and acknowledges that its use of these Marks and copyrighted works exists pursuant to a royalty-free, nontransferable, nonexclusive license or sub-license. Railkey understands that it will not acquire any ownership interest in Amtrak's Marks or copyrighted works or have the right to use such Marks or copyrighted works other than for the sole purpose of performing its duties and obligations to Amtrak under this Agreement.
- 5.4 Railkey agrees to comply with all of Amtrak's instructions regarding the use of Marks and copyrighted works, including but not limited to the Amtrak Brand Guidelines. Railkey shall not use Amtrak's Marks or copyrighted works in any manner that does, threatens to or will likely diminish their value or harm the reputation of Amtrak.
- 5.5 Prior to publication, Amtrak will have the right to review and approve any and all content, artwork, copy, advertising, promotional materials, direct mail, inserts, press releases, newsletters, web pages or other communications or any other publicity published, distributed or displayed by Railkey or at its direction or authorization which uses Amtrak's Marks, name(s) or trade names or which otherwise refers to Amtrak Products or this Agreement (collectively referred to as "Advertising Materials").
- 5.6 Railkey shall submit Advertising Materials to Amtrak's representative listed in **Attachment 8 - Contacts**, which may be changed at any time upon written notice, at least thirty (30) days in advance for Amtrak's written approval.

- 5.7 Notwithstanding Amtrak's written approval of any Advertising Materials, upon Amtrak's written request, Railkey shall employ commercially reasonable efforts to cease publishing, distributing and/or displaying any Advertising Material immediately or within such other period as requested by Amtrak.

6. Contract and Program Administration

Each party shall designate a Contract and Program Representative who shall handle all issues related to this Agreement. Each party shall designate a Technical Representative who shall address technical issues related to this Agreement. Current contacts will be listed in **Attachment 8 - Contacts**. Each party may change such representatives upon written notice to the other party.

7. Term and Termination

- 7.1 This Agreement shall commence on the Effective Date and continue until three (3) years ("Initial Term") unless terminated earlier pursuant to the terms herein; thereafter, either party may request to renew this Agreement for a successive twelve (12) month period (each, a "Renewal Term" and, together with the Initial Term, "Term") upon the other party's approval by providing notice to the other party within thirty (30) days prior to the end of the Term.
- 7.2 Either party may terminate this Agreement upon written notice to the other party if the other party materially breaches this Agreement and fails to cure such breach within thirty (30) days of receiving written notice of the breach. In the event of an incurable breach the other party may terminate this Agreement upon ten (10) days written notice to the breaching party.
- 7.3 Notwithstanding anything to the contrary in this **Section 7 – Term and Termination**, either party may terminate this Agreement immediately upon written notice, without providing opportunity to cure, upon the occurrence of any of the following:
- a) the filing of any petition by or against the other party under any chapter of the Bankruptcy Code, or other insolvency or bankruptcy act enacted by a duly constituted legislative body of government;
 - b) a dissolution and winding up of the other party's business;
 - c) an occurrence of a general assignment for the benefit of creditors of the other party; or
 - d) an appointment of a receiver or trustee to take possession of all or substantially all of the assets of the other party.
- 7.4 Notwithstanding anything to the contrary in this **Section 7 – Term and Termination**, Amtrak may terminate this Agreement immediately upon written notice, without providing Railkey the opportunity to cure, if:
- a) Railkey, its directors, officers, employees, or agents commits any fraudulent act or makes any fraudulent representation under this Agreement;

- b) Railkey is terminated by its credit card processor or merchant bank;
- c) Railkey sells all or a substantial part of its assets; or
- d) Railkey is subject to a data breach and/or PCI-DSS violation as defined in **Section 11 – Security of Confidential Information**.

7.5 Notwithstanding anything to the contrary in this **Section 7 – Term and Termination**, Amtrak may terminate this Agreement immediately upon written notice if there is any adverse publicity arising out of:

- a) an alleged or actual fraudulent act or statement by Railkey, its directors, officers or employees; or
- b) a misrepresentation by Railkey, its directors, officers or employees and Railkey fails to remedy such adverse publicity to the satisfaction of Amtrak within ten (10) days of Amtrak's written notice to Railkey.

7.6 Notwithstanding anything to the contrary in this **Section 7 – Term and Termination**, Amtrak may terminate this Agreement immediately upon written notice if Railkey's risk rating falls within the "High" risk category as defined below and Railkey fails to cure such rating deficiency within ninety (90) days of Amtrak's written notice of the High-risk rating. The risk rating is calculated as set forth below:

- a) A weight of sixty percent (60%) is assigned to the Credit Score Class indicated in the Dunn & Bradstreet Comprehensive Report
- b) A weight of forty percent (40%) is assigned to the Financial Stress Class indicated in the Dunn & Bradstreet Comprehensive Report
- c) A resulting score of above 3.5 is deemed "High" risk.

8. Reports

8.1 Railkey shall provide to Amtrak the reports and information, in such format specified in **Attachment 9 – Reports**.

8.2 Railkey shall provide such other information and reports as reasonably requested by Amtrak at any time in such manner as prescribed by Amtrak.

9. Letters of Credit

If payment is made "on account" as specified in Section 3.1 – Payment and After Sales for Amtrak Products above, Railkey shall, at its own expense, deliver to Amtrak an irrevocable letter of credit ("Letter of Credit") for the benefit of Amtrak as security for Railkey's proper performance under and compliance with this Agreement. This procedure will be detailed in a mutually agreed upon addendum to this Agreement.

10. Confidentiality

- 10.1 For purposes of this Agreement, "**Confidential Information**" means any of the following:
- a) information provided by or on behalf of either party (as the "**Disclosing Party**") to the other party (as the "**Receiving Party**") in connection with this Agreement, including any information collected or used to process payments for the Amtrak Products, including, without limitation, credit or debit cards or other payment or credit or debit card account information collected from or relating to customers or prospective customers ("Payment Related Information") belonging to a party to this Agreement and including information provided prior to the date hereof or the Effective Date;
 - b) information about the Disclosing Party or its affiliates, or their respective business or employees, that the Receiving Party obtains in connection with this Agreement, in each case including, without limitation:
 - i. information concerning marketing plans, objectives and financial results;
 - ii. information regarding business systems, methods, processes, clients, financing data, programs and products;
 - iii. information unrelated to this Agreement obtained by the Receiving Party in connection with this Agreement, including, without limitation, by accessing or being present at the business location of the Disclosing Party;
 - iv. proprietary technical information, including trade secrets, source codes or other proprietary information of the Disclosing Party developed in connection with this Agreement; and
 - v. the terms and conditions of this Agreement.
 - c) Without limiting the foregoing, Amtrak Confidential Information includes:
 - i. information relating to Amtrak customers or prospective customers created or obtained in connection with this Agreement or otherwise obtained from Amtrak or directly from Amtrak's customers or prospective customers, including the Payment Related Information of its customers, agents, and contractors,
 - ii. lists and data concerning Amtrak customers or prospective customers in the aggregate, and
 - iii. all information related to *Arrow* and the *Amtrak Web Services*.
 - d) Without limiting the foregoing, Railkey Confidential Information includes the System, all information regarding Railkey's customers, including the Payment Related Information of its customers, agents and subcontractors and Railkey's financial statements.

- 10.2 The Receiving Party shall maintain, dispose of and otherwise treat all Confidential Information of the Disclosing Party with the same degree of care as it accords its own Confidential Information, but in no event less than a reasonable degree of care.
- 10.3 The Receiving Party shall use and disclose Confidential Information only for the purpose of performing its obligations or enforcing its rights with respect to this Agreement or as otherwise expressly permitted by this Agreement, and shall not obtain, use or disclose Confidential Information for any other purpose. The Receiving Party shall, in accordance with the terms of this Agreement, limit access to Confidential Information to those employees, authorized agents, vendors, consultants, accountants, service providers who have a commercially reasonable need to access such Confidential Information in connection with this Agreement.
- 10.4 The Receiving Party agrees that any use or disclosure of Confidential Information other than that specifically permitted under this Agreement will cause immediate and irreparable harm to the Disclosing Party for which money damages might not constitute an adequate remedy. As a result, the Receiving Party agrees to the appropriateness of injunctive relief in addition to any other remedies the Disclosing Party may have under applicable laws.
- 10.5 Upon the termination or expiration of this Agreement, the Receiving Party shall comply with the Disclosing Party's instructions regarding the disposition of the Confidential Information, which may include return to the Disclosing Party of any and/or all of the Confidential Information (including any electronic or paper copies, reproductions, extracts or summaries thereof). The Receiving Party may retain one archived copy of such material, subject to the terms of this Agreement, which the Receiving Party may use solely for regulatory purposes and not for any other purpose. The Receiving Party shall certify such compliance in writing, including a certification that the Receiving Party has not kept any copies of Confidential Information except as necessary for regulatory purposes.
- 10.6 With respect to Amtrak Confidential Information, Railkey shall:
- a) keep the Confidential Information confidential and secure in accordance with **Section 11 – Security of Confidential Information** of this Agreement and industry practices;
 - b) treat all Payment Related Information in accordance with the requirements of the Payment Card Industry (PCI) Security Standards;
 - c) implement and maintain commercially reasonable physical, electronic, administrative and procedural security measures, including commercially reasonable authentication, access controls, virus protection and intrusion detection practices and procedures in accordance with **Section 11 – Security of Confidential Information** of this Agreement; and
 - d) ensure that any person with access to the Confidential Information agrees in writing to follow the Confidentiality provisions of this Agreement (including but not limited to **Section 10 – Confidentiality** and **Section 11 – Security of**

Confidential Information) and maintain the existence of this Agreement and the nature of their obligations hereunder strictly confidential. Railkey shall not provide any Amtrak customer or prospective customer Non-Public Personal Information (as defined herein) to any third party without Amtrak's express written approval. Furthermore, Railkey must make such sharing agreement in writing and ensure that the third party has security processes and procedures adequate to comply with its obligations both thereunder and under applicable laws. "Non-Public Personal Information" means (i) personally identifiable information, and/or (ii) any list, description, or other grouping of customers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information that is not publicly available.

- e) Without limiting the foregoing, in the event of an information security breach by Railkey resulting in a suspected or actual breach of the security of the data of any Amtrak customer or prospective customer whose nonpublic personal information or Payment Related Information is or is reasonably believed to have been acquired by an unauthorized person or for unauthorized purposes, Railkey shall (a) consult with Amtrak regarding the appropriate response to each actual or suspected breach, (b) be responsible for complying with all applicable laws requiring notification to customers whose nonpublic personal information or Payment Related Information may be compromised or reasonably believed to be comprised due to a security breach, including mailing notice, if required, to the Amtrak customers or prospective customers at Railkey's sole expense and (c) obtain a new PCI-DSS certification. In addition, Railkey shall provide affected customers with one (1) year of complimentary access to credit monitoring services, credit protection services, credit fraud alerts, or similar services. Railkey shall consult with Amtrak regarding the content of any such notice and the service to be provided. In advance of mailing the notice, and as between the parties, Amtrak, at its election, shall make the final determination of the content of any such notice.

10.7 The restrictions on disclosure of Confidential Information in this **Section 10 – Confidentiality** shall not apply to information that:

- a) is already rightfully known to the Receiving Party, wholly apart from this Agreement as shown by the Receiving Party's written records, at the time it obtains Confidential Information from the Disclosing Party;
- b) at the time of the disclosure is or becomes generally available to the public other than as a result of disclosure in breach of this Agreement or any other confidentiality obligations;
- c) is lawfully received by the Receiving Party on a non-confidential basis from a third party authorized to disclose such information without restriction and without breach of this Agreement;
- d) is contained in, or is capable of being discovered solely through examination of publicly available records or products;

22. Headings

The various section headings exist for convenience of reference only and shall not affect the meaning or interpretation of this Agreement or any section thereof.

23. Severability

Subject to **Section 26 – Governing Law, Jurisdiction and Venue**, if any provision of this Agreement is determined to be invalid, void or unenforceable in any respect, such determination shall not affect, impair or invalidate any other provision hereof.

24. Construction

All parties drafted this Agreement and, in the event of a dispute, no party hereto may attempt to construe any provision against any other party by claiming that one particular party drafted it.

25. No Waiver

No course of dealing, course of performance or failure of either party strictly to enforce any term, right or condition of this Agreement constitutes a waiver of such term, right or condition. No waiver or breach of any provision of this Agreement constitutes a waiver of any subsequent breach of the same or any other provision.

26. Governing Law, Jurisdiction and Venue

Each party agrees to execute and interpret this Agreement in accordance with and subject to the internal laws of the District of Columbia, without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the District of Columbia. Each party agrees to commence any legal suit, action or proceeding arising out of or relating to this Agreement in the United States District Court for the District of Columbia, and each party irrevocably submits to the exclusive jurisdiction and venue of such court in such suit, action or proceeding.

27. Compliance with Laws

Railkey, its directors, officers, employees, agents and subcontractors shall comply with all applicable local, state, federal and foreign laws, rules and regulations enacted by duly constituted governmental bodies. Railkey hereby agrees to notify Amtrak in writing within a reasonable time after receiving notice of any failure to or allegation of a failure to comply with the applicable laws. Railkey must defend, indemnify and hold harmless Amtrak from and against any loss, damage, expense or other harm or liability incurred or suffered by Amtrak due to any failure by Railkey, any of its directors, officers, employees, agents or subcontractors to comply with such laws, rules, or regulations.

28. Relationship of the Parties

It is understood and agreed that nothing contained in this Agreement shall be deemed or construed as creating a partnership, joint venture, agency or employment relationship between Amtrak and Railkey. Nothing contained herein or in any agreement between Railkey and any agent or subcontractor shall create (a) any contractual relationship

between Amtrak and such agent or subcontractor or (b) any third-party beneficiary rights in any such agent or subcontractor. The terms agent, subcontractor and independent contractor as used throughout this Agreement do not include travel agents and tour operators.

29. Force Majeure

Except for the payment of monies due hereunder, and subject to **Section 7 – Term and Termination**, neither party has any responsibility or liability for any delay or failure to perform to the extent due to unforeseen circumstances or causes beyond its reasonable control, including, without limitation, acts of God, earthquake, fire, flood, embargoes, labor disputes and strikes, riots, acts of terrorism, war, and acts of civil and military authorities, provided that such party gives the other party prompt written notice of its failure to perform and the reason therefore and employs its reasonable efforts to limit the resulting delay in performance. If either party fails to perform any of its obligations under this Agreement due to a Force Majeure condition, as defined in this Section, for sixty (60) successive days, the other party has the right to terminate this Agreement immediately upon written notice.

30. Entire Agreement

This Agreement, and any attachments and exhibits thereto, contain the entire understanding of the parties with respect to the subject matter of this Agreement and merges and supersedes all prior and contemporaneous agreements and understandings between the parties, whether oral or written, with respect to the subject matter of this Agreement. All attachments are incorporated by reference and made a part of this Agreement.

31. Facsimile Signatures Acceptable

This Agreement may be executed by facsimile in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute the same instrument.

IN WITNESS WHEREOF, Amtrak and Railkey have each caused this Agreement to be signed and delivered by its duly authorized officer, all as of the date first set forth above.

NATIONAL RAILROAD PASSENGER CORPORATION

Railkey Technology, LLC

(b)(6)

purchase an extended reporting provision of at least three (3) years to report claims arising from performance of this Agreement.

- d) Crime Insurance. Covering the loss of funds, remittances, vouchers or any other property belonging to Amtrak and caused by fraud, theft, dishonesty, and other wrongful acts by any Railkey employee, agent or subcontractor employee. Coverage under this policy will have a limit of liability of at least

(b)(4)

18.2 Railkey shall submit to Amtrak a certificate of insurance giving evidence of the required coverages prior to the Effective Date of this Agreement. Railkey shall continue to submit certificates of insurance during the term of this Agreement for those policies to which **Section 18 – Survival** applies, as often as needed to reflect any material changes in, or renewal or replacement of, the required coverages.

18.3 Railkey shall procure all insurance from insurers which: (a) Amtrak reasonably deems acceptable; (b) have financial ratings of A VIII or better in the Best's Key Rating Guide, latest edition in effect as of the Effective Date of this Agreement, and subsequently in effect at the time of renewal of any policies required hereunder, and (c) agree to give Amtrak thirty (30) days advance written notice of cancellation, non-renewal, or material change in coverage.

19. Survival

The following provisions shall survive expiration or termination of this Agreement: **Section 5 – Advertising, Marketing and Promotion** (excluding Section 5.1); **Section 10 – Confidentiality**; **Section 11 – Security of Confidential Information**; **Section 12 – Records and Audit**; **Section 13 – Notices**; **Section 14 - Indemnification**; **Section 18 – Insurance**; **Section 19 – Survival**; **Section 26 – Governing Law, Jurisdiction and Venue**; and any other provision reasonably understood to survive termination or expiration of this Agreement.

20. Assignment

Railkey shall not assign, delegate or otherwise transfer this Agreement or any right or obligation hereunder (whether by express transfer, operation of law or otherwise) without the prior written consent of Amtrak. Notwithstanding the foregoing, Railkey may delegate the performance of certain obligations to certain third party contractors, provided that Railkey gives Amtrak thirty (30) days written notice of the proposed delegation and Railkey controls the delivery of such obligations to Amtrak and remains responsible to Amtrak for the delivery of such obligations. Any attempted or purported assignment or other transfer not complying with the foregoing will be null and void. Subject to the foregoing, this Agreement will inure to the benefit of and bind the successors and assigns of the parties.

21. Modifications

Any waiver, modification or amendment of any provision of this Agreement shall be effective only if in writing and signed by the authorized representatives of both parties.

18.1 Railkey shall procure and maintain, at its own cost and expense, continuously during the term of this Agreement, and to the extent it carries any insurance on a "claims-made," "claims-reported," or "occurrences-reported" basis for three (3) years beyond the term of this Agreement, the types of insurance specified below:

- a) Commercial General Liability Insurance. A policy issued to and covering liability imposed upon Railkey arising out of Railkey's premises or operations or the services to be performed and/or planned and those of any subcontractors or agents and all obligations assumed by Railkey under the terms of this Agreement. The policy must include products/completed operations liability, independent contractors liability, contractual liability, personal injury liability and advertising liability coverages. The policy must name National Railroad Passenger Corporation as an additional insured with respect to Railkey's premises, operations and services, and the policy shall contain a waiver of subrogation against National Railroad Passenger Corporation, its subsidiaries and their directors, officers, employees, and agents. Coverage under this policy, or policies, shall have a combined single limit of liability of (b)(4)
- b) Errors and Omissions/Professional Liability Insurance. Contractor shall maintain an errors and omissions/professional liability insurance policy covering liability imposed on Contractor for all acts, errors, omissions, negligence, infringement of intellectual property and network risks committed by Contractor, its agents, or employees in its and/or their performance or non-performance under this Agreement. Network risks includes coverage for the perils of unauthorized network access, failure of security, and breach of privacy, as well as the cost of notification of persons whose information may have been breached and the payment for the defense of, and judgments, settlements, fines or penalties that result from, regulatory violations. Such insurance shall include an affirmative coverage grant for contingent bodily injury and property damage emanating from the failure of its or their action or inaction under this Agreement or an error or omission in the content/information provided. Coverage under this policy shall have limits of liability of no (b)(4) and in the annual aggregate. Such insurance shall be maintained in force at all times during the term of this Agreement and for a period of three (3) years thereafter following the date of termination of this Agreement. This insurance shall name National Railroad Passenger Corporation as an additional insured for the Contractor's wrongful acts under this Contract and coverage shall include a waiver of subrogation against National Railroad Passenger Corporation.
- c) Claims-Made Insurance. If Railkey provides any insurance specified above on a "claims-made", or "occurrences-reported" basis, then in addition to the coverage requirements above, such policy shall provide that: (i) the retroactive date coincides with or precedes Railkey's start of Services (including subsequent policies purchased as renewals or replacements); (ii) the policy allows for the reporting of circumstances or incidents that might give rise to future claims; (iii) Railkey will employ its best efforts to maintain similar insurance for at least three (3) years following completion of the Services; and (iv) if insurance terminates for any reason, Railkey agrees to

- 17.1 Each party represents and warrants to the other that it has the requisite corporate power and authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement.
- 17.2 Each party represents and warrants that the execution, delivery and performance of this Agreement has been duly authorized and the requisite corporate action on the part of such party for the consummation of the transactions contemplated by this Agreement have occurred.
- 17.3 Railkey represents and warrants that, it currently is and throughout the entire term of this Agreement shall be, in compliance with all applicable local, state, federal and foreign laws, rules and regulations.
- 17.4 Railkey represents and warrants that, it currently is and throughout the entire term of this Agreement shall be, in compliance with the then current automated clearinghouse and bankcard association guidelines, rules, regulations and procedures applicable to its payment processing and other services, including, without limitation, the provisions of the Federal Reserve Board's regulations E and Z, the operating rules and operating guidelines of the National Automated Clearing House Association and the rules, regulations and procedures of all credit card associations and companies.
- 17.5 Railkey represents and warrants that it is not the subject of any litigation initiated by any credit card association or credit card processor with respect to its acceptance of credit card payments on behalf of itself or any other merchant. Railkey represents and warrants that no agreements, injunctions, restrictions or otherwise exist which may prohibit it from performing its obligations under this Agreement either by statute, rule, regulation, agreement or otherwise.
- 17.6 Railkey represents and warrants that its advertising, marketing and promotional materials, including Railkey websites, other web space that Railkey controls and the content and other information contained or referred to therein will not:
- a) constitute libel, defamation, false or illegal advertising;
 - b) constitute an invasion of privacy or a violation of the rights to publicity of any third party;
 - c) infringe any patent, copyright or trademark;
 - d) contain, link or refer to any offensive or indecent information of any kind;
 - e) contain any information that could be deemed proprietary, except proprietary information owned by or licensed to Railkey for use therein or therewith (other than trade name(s), trademarks, service marks, or any comparable intellectual property rights); or
 - f) suggest or state that Railkey and Amtrak have any relationship as agents for one another, as partners, as joint venturers or similar relationship, except as expressly provided herein.

If Railkey becomes aware of any claim, allegation or notification that the foregoing warranties have been breached, Railkey shall promptly notify Amtrak.

18. Insurance

preliminary and permanent injunctive relief, without the necessity of proving actual damages or posting a bond, to prevent any such breach.

16. Performance Standards and Ability to Perform

- 16.1 Railkey represents and warrants that it shall perform its responsibilities under this Agreement with promptness and diligence and in a professional manner, in accordance with best practices and highest industry standards.
- 16.2 Railkey shall handle all customer inquiries and complaints in a prompt, courteous and diligent manner. Railkey shall cooperate with Amtrak to deal appropriately with any customer complaint.
- 16.3 Each party represents and warrants that it knows of no circumstances that would materially impede its ability to perform under this Agreement and shall promptly notify the other party in writing if it acquires knowledge of any circumstances that would materially impede its ability to perform under this Agreement. Without limiting the foregoing, Railkey represents and warrants that it shall immediately notify Amtrak of:
 - a) any change in its ownership or control; and/or
 - b) its involvement in any actual or threatened major litigation.
- 16.4 Neither party will be liable for any malfunction of System, Arrow, or Amtrak Web Services due to any incompatibility with either party's systems or due to either party's failure to adhere to the guidelines and system parameters under which System, Arrow, or Amtrak Web Services is installed.
- 16.5 EXCEPT AS OTHERWISE PROVIDED HEREIN, AMTRAK MAKES NO OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, UNDER THIS AGREEMENT AND AMTRAK HEREBY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES REGARDING FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OR NONINFRINGEMENT.
- 16.6 EXCEPT FOR EACH PARTY'S INDEMNIFICATION OBLIGATIONS HEREIN, TO THE EXTENT PERMITTED BY LAW, NEITHER PARTY OR ITS AFFILIATES, AND THEIR RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY, ITS "REPRESENTATIVES") SHALL BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, HOWEVER CAUSED, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER THEORY OF LIABILITY, EVEN IF SUCH PARTY OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR EVEN IF ANY SUCH LOSS OR DAMAGES WERE REASONABLY FORESEEABLE.

17. Certain Representations and Warranties

14. Indemnification

14.1 Railkey (as the "Indemnifying Party") agrees to defend, indemnify and hold harmless Amtrak (as the "Indemnified Party") and its officers, directors, employees, agents, servants, contractors, subcontractors, successors, assigns and subsidiaries and their respective successors, assigns and personal representatives (collectively "Indemnified Parties"), from and against any claims, losses, liabilities, fines, penalties, actions, damages, costs and expenses whatsoever (including costs of defense and attorneys' fees) (collectively "Claims"), which any of the Indemnified Parties may hereafter incur, have responsibility for or pay arising out of or related to:

- a) any act or failure to act by the Indemnifying Party and/or its directors, officers, employees, agents, subcontractors, servants, or any other person acting for or on behalf of the Indemnifying Party;
- b) the Indemnifying Party's breach of any term of this Agreement;
- c) any actual or claimed infringement or misappropriation of third-party intellectual property right(s) by the Indemnifying Party;
- d) the Indemnifying Party's breach of any contract, promise or undertaking with or to any third party and related to this Agreement.

Amtrak shall notify Railkey in writing within a reasonable time after notice of any such Claim.

14.2 Consistent with and in addition to **Section 14.1**, Railkey accepts sole liability for any failure of Railkey or any of Railkey's officers, directors, employees, agents, servants, subcontractors, or any other person acting for or on behalf of Railkey to maintain the confidentiality of Payment Related Information and/or Non-Public Personal Information. Railkey shall defend, indemnify and hold harmless Amtrak against any and all Claims brought against Amtrak related to Payment Related Information and/or Non-Public Personal Information, including those resulting from the action or inaction of Railkey or any of its directors, officers, employees, agents, servants, subcontractors, or any other person acting for or on behalf of Railkey.

14.3 The existence of any insurance policy procured or maintained by Railkey or any limitation on the amount or type of damages, compensation or benefits payable by or for Railkey or any subcontractor shall not limit the indemnification obligations under this Section.

15. Injunctive Relief

Each party acknowledges that the breach of any provision of **Section 5 – Advertising, Marketing and Promotion** (excluding Section 5.1); **Section 10 – Confidentiality**; or **Section 11 – Security of Confidential Information** may cause irreparable injury to the other party, and agrees that the other party shall have the right to seek temporary,

(b) Agreement compliance and performance, including any work or deliverables in progress;

(c) compliance with applicable provisions of Amtrak's federal grant, regulations and statutes; and

(d) support for all direct and indirect costs or prices charged to Amtrak.

12.2 Railkey agrees to maintain all such data and records throughout the term of the Agreement and until three (3) years after final payment under the Agreement, and agrees to cooperate with all audit activities.

12.3 In connection with audit and inspection activities, Amtrak OIG shall be afforded, upon request, (a) access to Railkey's facilities and to Agreement work or deliverables in progress, (b) the opportunity to interview Railkey's employees concerning any matter relating to the Agreement, and (c) adequate and appropriate workspace.

12.4 Railkey agrees to reimburse Amtrak, within sixty (60) calendar days after receipt of a written request, the full amount of any undisputed audit findings or questioned costs, unless otherwise agreed by Amtrak in the course of post-audit negotiations with Railkey.

12.5 Railkey shall include the provisions of this clause in every subcontract or purchase order exceeding \$100,000, as well as a provision requiring all subcontractors to include these provisions in any lower tier subcontracts or purchase orders exceeding \$100,000. Railkey shall be responsible for subcontractor or lower tier subcontractor's compliance with this clause.

12.6 Nothing in this Agreement shall be construed to limit the rights, obligations, authority, or responsibilities of Amtrak's Office of the Inspector General pursuant to the Inspector General Act of 1978, as amended, including the right to seek information by subpoena.

13. Notices

Each party must provide any notice, request, demand or other communication required or permitted hereunder in writing and in reference to this Agreement. The following constitutes proper notice:

a) personal delivery;

b) delivery by registered or certified mail, return receipt requested and acknowledged, postage prepaid; or

c) two (2) business days after deposit with a private industry express courier, with written confirmation of receipt.

Each party agrees to send all notices to the addresses set forth in **Attachment 8 – Contacts**, which either party may change by providing proper notice to the party hereunder.

equipment against "hackers" and others who may seek, without authorization, to access or modify its systems or the information found therein. Railkey shall regularly test its systems for potential areas where "hackers" and others could breach security, such testing to be conducted on at least a quarterly basis. Railkey agrees to advise Amtrak immediately by telephone and in writing via facsimile of any suspected security breach that may have compromised any Confidential Information, or of any suspected unauthorized misappropriation, disclosure or use by any person of the Confidential Information or Payment Related Information, which may come to Railkey's attention. Railkey shall take all steps and employ its best and most diligent efforts to remedy such breach of security or unauthorized access in a timely manner and to deliver to Amtrak a root cause assessment and future, incident-mitigation plan with regard to any breach of security or unauthorized access affecting Confidential Information or Payment Related Information.

- 11.5 Railkey must store all Confidential Information in a physically and logically secure environment that protects it from unauthorized access, modification, theft, misuse and destruction. In addition to these general standards, Railkey shall maintain an adequate level of physical security controls over its facility including, but not limited to, appropriate alarm systems, fire suppression, access controls (including off-hour controls) which may include visitor access procedures, security guard force, video surveillance, and staff egress searches. Railkey shall maintain an adequate level of data security controls, including, but not limited to, those set forth in **Attachment 10 – Data Security Controls**. Amtrak may revise the data security controls at any time upon written notice to Railkey, giving at least thirty (30) days advance notice when possible and/or practical.
- 11.6 Railkey shall maintain and implement disaster recovery and avoidance procedures and backup procedures as it relates to Confidential Information. During the term of this Agreement, Railkey shall provide Amtrak with an opportunity to review at Railkey's premises its current disaster recovery and avoidance plan and backup procedures and all updates thereto. Railkey shall review and update, as necessary, its disaster recovery and avoidance plan and backup procedures based on the respective recovery priority of each business unit. If Railkey performs any audit with regard to its disaster recovery and avoidance plan and backup procedures (e.g., ISO 9000), Railkey shall make the results of that audit available to Amtrak's information security director for on-site review. Amtrak may elect, at its option, to conduct onsite reviews of Railkey's facilities for, among other things, assessing disaster recovery preparedness and backup procedures.

12. Records and Audit

- 12.1 Railkey acknowledges and agrees that Amtrak's Office of Inspector General (OIG) may inspect, copy and/or audit Railkey's data and records (in hard copy and/or electronic format) related in any way to the Agreement, including without limitation, all data and records relating to:
- (a) support for any proposal, change order, or request for equitable adjustment submitted to Amtrak by Railkey;

- e) is required to be disclosed by applicable law, regulation, valid court order, government agency order, for law enforcement purposes, or by a self-regulatory body, provided that (i) if possible, the Receiving Party shall promptly notify the Disclosing Party of any such requirement prior to disclosure to afford the Disclosing Party an opportunity to seek a protective order or other appropriate remedy to prevent or limit that disclosure, and (ii) Confidential Information of the Disclosing Party must only be disclosed to the extent required; or
- f) is developed by the Receiving Party without the use of any proprietary or non-public information provided by the Disclosing Party under this Agreement, as demonstrated by the written records of the Receiving Party.

11. Security of Confidential Information

- 11.1 Railkey shall at all times maintain physical, electronic, administrative and procedural security measures sufficient to protect all Confidential Information from both internal and external threats and sufficient to comply with all applicable local, state and federal laws and all applicable credit card association rules and regulations concerning the security of such data.
- 11.2 Railkey, its employees, agents and subcontractors shall at all times comply with the Payment Card Industry Data Security Standard (PCI-DSS) required by the credit card associations. Railkey must, at all times during the term of this Agreement, obtain, retain, and renew, as appropriate, its certification of compliance with the PCI-DSS. Railkey shall provide Amtrak with a copy of its current PCI-DSS certification and annual audits upon the Effective Date of this Agreement and on each anniversary date thereof for the duration of this Agreement.
- 11.3 Railkey shall maintain an adequate information security policy and provide Amtrak with a copy of the current policy upon the Effective Date of this Agreement. During the term of this Agreement, Railkey shall provide Amtrak timely updates and revisions thereto.
- 11.4 Railkey shall maintain and enforce safety and physical security procedures with respect to its access and maintenance and disposal of Confidential Information that:
 - a) meets or exceeds industry standards for the territories listed in **Attachment 2 - Territory**;
 - b) in the case of Payment Related Information, meets or exceeds PCI requirements for safety and physical security; and
 - c) provides appropriate technical and organizational safeguards against accidental or unlawful destruction, loss, alteration or unauthorized disclosure of or access to the Confidential Information under this Agreement.

Without limiting the generality of the foregoing, Railkey shall take all commercially reasonable measures to secure and defend its location and

ATTACHMENT 1 – COMPANY SERVICES

Company shall provide Amtrak the following services:

Upon Amtrak's approval, Railkey shall make available Amtrak products to Railkey's existing distribution channels within ninety (90) days of the effective date. Railkey's existing distribution channels are defined as any location where online travel reservations are offered. Railkey shall provide Amtrak with a listing of all distribution channels on a quarterly basis via email. By December 31, 2014, Railkey shall provide Amtrak with a full marketing and business plan that describes the intended business activities and channels that will be pursued under this Agreement. Railkey shall only add Amtrak Products to new distribution channels upon advanced written authorization by Amtrak.

ATTACHMENT 2 – TERRITORY

Amtrak seeks to target the following markets with Company:

Railkey's territory is not limited.

ATTACHMENT 3 – AMTRAK PRODUCTS

Company will be an authorized, non-exclusive seller of the following Amtrak Products in the Territory:

Railkey may offer all Amtrak Products, including Point-to-Point tickets and rail passes.

Railkey may offer customers all Amtrak passenger types, such as:

- Adult
- Student Advantage
- AAA Adult
- ISIC
- Senior (62+)
- Child
- Military Adult
- AAA Child
- NARP
- Military Child
- Veterans Advantage
- Infant

ATTACHMENT 4 – AMTRAK WEB SERVICES INTERFACE SPECIFICATIONS

To interface with Amtrak Web Services, Company must satisfy the technical requirements on the attached document.

ATTACHMENT 5 – AMTRAK WEB SERVICES TERMS OF USE

Company must ensure that its System complies with the following terms of use:

1. Amtrak Web Services user, Railkey, will utilize standard Web Services Security as defined by Oasis in the WS Security 1.1 specification when required for a particular web service. Currently, Amtrak requires and is using SSL (client and server certificates) for transport layer security. Production certificates must be issued by a known signing authority. Both parties will work together to ensure that all information exchanged is safe and secure. Railkey must immediately implement, employ and support such other security features as requested by Amtrak.
2. Amtrak has the right to disable and/or suspend access to Amtrak Web Services to investigate any situations that may appear as possible security attacks or breaches and DOS (Denial of Service) attacks, provided that Amtrak will reasonably cooperate with Railkey with respect to such investigation and not unreasonably withhold or delay such access.
3. In the event Amtrak Web Services monitoring reveals workloads exceeding the agreed upon volumes, or in situations where optimal performance of the Amtrak computer system is being jeopardized and measures taken by Railkey to reduce the number of web service calls back to acceptable levels are not effective, Amtrak reserves the right to limit (throttle), disable and/or suspend access to Amtrak Web Services. Amtrak agrees to cooperate with Railkey in an effort to investigate alternate processing methods that return workload back within optimal performance limits.
4. In the event Amtrak Web Services monitoring reveals volumes exceeding the agreed upon transaction rates, Railkey will be notified and must promptly take measures to fallback any changes that have caused unacceptable impacts. Railkey must respond with corrective action within timeframes agreed to by Amtrak, in an effort to ensure workload returns to the acceptable benchmarks. Amtrak reserves the right to limit (throttle), disable and/or suspend access to Amtrak Web Services, in the interest of preserving Amtrak computer system optimal performance, while Railkey explores necessary alternatives. Any/all corrective measures, timeframe extensions, or service limitations/suspension adjustments must be mutually agreed upon, on a case by case basis, and must be signed-off by Amtrak.
5. Upon execution of the underlying Agreement, Amtrak and Railkey Contract Coordinators will promptly meet to review the web service(s) request/response data that will be used by Railkey from Amtrak. Railkey will register to use those web services by providing the information for connectivity to Amtrak Web Services Test and Production environments (refer to the Amtrak Web Services Registration Document).
6. Railkey must promptly conduct a regression test against new releases and versions of Amtrak Web Services against the Amtrak Web Services QA test environment within 30 calendar days of their release to that environment or a mutually-agreed upon date. Railkey must use the new release and version in production within 90 days of production release or a mutually-agreed upon date.
7. Railkey must provide a support contact, reachable 24/7, to assist with issues related to Railkey's activities and/or to notify Railkey of an Amtrak emergency or operating exception (e.g., needing to extend weekend maintenance window)
8. In the event that the new release or version of Amtrak Web Services requires a change to Railkey's processing code, Railkey may either perform such changes to enable Railkey to use the new release or version within the 90-day period or terminate the Agreement; this 90-day period is subject to extension in case Railkey has issues with changing their processing

- code. Extensions to the 90-day period will be mutually agreed on, on a case by case basis, but will not exceed more than an additional 60 days.
9. Railkey must conduct all testing against the test environment and not the production environment. Railkey shall send web services requests using a secure Internet connection. There will be no leased lines or VPN connections. Secured Internet connections will be used in development/QA test, QA staging and production. The Railkey application must be configurable to accommodate changes in the URL of the Amtrak web service. The URL of the web service should not be hard coded in the application.
 10. Railkey must pre-arrange all load-testing against Amtrak Web Services with Amtrak Application Testing group. Load testing will be allowed only in the web services staging environment.
 11. Railkey must inform Amtrak of their implementation schedule. Railkey must keep Amtrak informed of any business changes (i.e. adding corporate accounts, train schedules or extending features) that could drive an increase in transaction volumes, so that necessary preparations can be made to support the changes. In the event that there are changes to Railkey's business, whether considered a direct impact to Amtrak or non-impacting to Amtrak (i.e. changes made to address another carrier) Railkey will be required to conduct regression testing against Amtrak Web Services; testing is required for any/all enhancements made, and Railkey must pre-arrange such regression test efforts with the Amtrak Application Testing group.
 12. Railkey must adhere to guidelines provided by Amtrak in managing transaction workload volumes deemed acceptable by Amtrak. Using the Estimated Transaction Volumes and Estimated Growth figures from the Amtrak Web Services Registration document provided by Amtrak, Railkey agrees to actively manage transaction workload.
 13. Railkey agrees to work with Amtrak in a cooperative effort to address transaction workload concerns when transaction volumes exceed estimates from the Amtrak Web Services Registration document, or if the above benchmarks are not being met, or as determined by Amtrak.
 14. Railkey agrees to strictly restrict sales to the specific routes authorized by Amtrak. Amtrak has the right to disable and/or suspend access to Amtrak Web Services to investigate any situations where it is determined Railkey is operating outside of these specific authorized routes.
 15. Railkey shall recognize Amtrak's 24x7 production system availability, which excludes a bi-monthly maintenance service outage window on Sunday from 3:00 a.m. to 6:00 a.m. U.S. ET. Amtrak reserves the right to extend the maintenance service outage window. Amtrak will provide Railkey a three days' notice where possible.
 16. Railkey must adhere to Amtrak's hours of test system availability, normally during core business hours, Monday through Friday, 8:30 a.m. to 5 p.m. U.S. ET. Test systems are not available on Wednesday 8 p.m. to Thursday 8:30 a.m. Railkey may have access to test systems at other times; however, Amtrak staff cannot support them. With prior arrangement, Railkey may access a supported test system outside core business hours.

ATTACHMENT 6 – PAYMENT CARDS ACCEPTED

Visa

MasterCard

American Express

Discover Card (NOT including Discover Partners of JCB, China Union Pay, Diners Club International, BC Card (South Korean Card), Dina Card (Serbian Card)).

UATP (Universal Air Travel Plan)

Amtrak does NOT accept any PIN based PIN Debit Cards of any brand. However if a PIN debit card from one of the brands above can also function as a credit card (Signature Based) Amtrak can accept it.

ATTACHMENT 7 – COMPENSATION

<p style="text-align: center;">Compensation Category</p> <p>(b)(4)</p>	

<p>(b)(4)</p>

ATTACHMENT 8 – CONTACTS

Any notices, reports, or other information required under this Agreement, should be sent to the following addresses:

If to Amtrak:

Marketing:

(b)(6)

Contract and Program Representative:

(b)(6)

Technical Representative:

(b)(6)

If to Railkey:

Marketing:

(b)(6)

Contract and Program Representative:

(b)(6)

(b)(6)

Technical Representative:

(b)(6)

ATTACHMENT 9 – REPORTS

Company shall provide Amtrak the following reports and information in the format specified below:

Railkey shall provide Amtrak with access to sales data generated by Railkey. Type of access and report distribution will be determined in subsequent discussions.

The following definitions apply to the type of reporting requested;

Static Reports: standard format indicates sales for a determined period of time:

- Top City Pair Report by country

Ad hoc: Amtrak agrees to give Railkey reasonable advance notice to produce any of the following ad hoc reports that may not be available as a static report.

- PNR
- City Pair
- Train
- Riders
- Class of Service
- Passenger Type
- Discount Codes
- Booking Date
- Payment Date

All reports should be capable of download to an application such as Excel. There should be an area for both international and Domestic Sales

ATTACHMENT 10 – DATA SECURITY

To keep the Confidential Information secure and confidential, Company shall:

1. Amtrak has the right to disable and/or suspend access to Amtrak Web Services to investigate any situations that may appear as possible DoS (Denial of Service) attacks.
2. Railkey must implement measures to ensure that Railkey 's applications/systems shall only allow access to those who are authorized to use the applications or systems.
3. Railkey must ensure that access to resources required for the development, design and operation of Railkey's processing code are based on authenticated Railkey identification.
4. Railkey must ensure that all data files, databases, etc. associated with Railkey.'s processing code, applications and systems are protected against unauthorized access.
5. Railkey must ensure that Railkey's applications, systems and processing code generate a security audit trail that contains information sufficient for investigation of loss or impropriety. Railkey must ensure that at a minimum, logs record all security relevant events, including the Railkey ID associated with the events. Railkey will ensure that Log events include information regarding (a) Invalid Railkey authentication attempts, (b) Logons and activities of privileged Railkey, e.g., System Administrators, (c) Unsuccessful data or transaction access attempts, (d) Successful accesses of security-critical resources (e.g., security logs, security commands), (e) Changes to security profiles, privileges or attributes, (f) Changes to access rights of resources and (g) Changes to the system security configuration
6. Railkey agrees to maintain and implement disaster recovery and avoidance procedures to ensure that Railkey's operation can be restored to normal operation in the event of the loss of data files, hardware or the processing facility itself. Railkey agrees that a disaster recovery plan and/or procedures will be developed, documented and maintained, outlining the steps required to restore Railkey's application/system in the event of a disaster. Railkey agrees that Railkey's disaster recovery plan and/or procedures will be tested at least annually and that results of disaster recovery tests will be available to Amtrak at Amtrak's request.
7. Railkey agrees to monitor security threat and attack trends and assess how they affect Railkey's applications and systems. Railkey agrees to patch all vulnerable versions of Railkey's software (including versions for multiple platforms) when vulnerabilities impacting Railkey's applications and systems are identified.
8. Railkey must provide a support contact, reachable 24/7, to assist with issues related to Railkey's activities and/or to notify Railkey of an Amtrak emergency or operating exception (e.g., needing to extend weekend maintenance window).

DISTRIBUTION SERVICES AGREEMENT
BETWEEN
NATIONAL RAILROAD PASSENGER CORPORATION
AND
RAILKEY TECHNOLOGY SOLUTIONS, LLC

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DISTRIBUTION SERVICES AGREEMENT

This Distribution Services Agreement ("**Agreement**") is entered into as of the 1st day of August, 2014 ("**Effective Date**") by and between the National Railroad Passenger Corporation, a corporation organized under 49 U.S.C. § 24101 *et seq.* and the laws of the District of Columbia, with its principal office located at 60 Massachusetts Avenue, N.E., Washington, D.C. 20002 ("**Amtrak**"), and Railkey Technology, LLC a Company organized under the laws of Massachusetts, with its principal office located at 15 Hancock Ave Newton, MA 02459 ("**Company**").

1. Background

- 1.1 Amtrak, which provides nationwide passenger rail services in the United States, seeks to increase its sales in certain markets ("**Territory**").
- 1.2 Railkey is in the business of providing travel booking distribution solutions. Railkey's travel booking distribution solutions enable its clients to (a) obtain travel information and book travel from their systems and/or (b) provide to clients' customers the ability to obtain travel information and book travel from the customers' reservation systems by connecting to the reservation systems of travel providers. Railkey's clients may include corporate travel offices, travel agents, tour operators, and reservation systems operators. Railkey's travel distribution solutions are referred to herein as "**Distribution Products**."
- 1.3 Railkey and Amtrak desire to use Railkey's Distribution Products for the sale of Amtrak's products and services ("**Amtrak Products**").

2. Company Services and Connectivity to Amtrak Web Services

- 2.1 Railkey shall provide the services ("**Company Services**") set forth in **Attachment 1 – Company Services** in accordance with all requirements and time frames contained therein. The markets that Amtrak seeks to target with Railkey are set forth in **Attachment 2 – Territory**. Amtrak reserves the right, in its sole discretion, to modify **Attachment 2 – Territory** at any time to (a) add any market in which Railkey conducts its business or (b) remove any market by providing written notice of the changes to Railkey. Railkey shall modify its Distribution Products as necessary to incorporate and reflect changes to **Attachment 2 – Territory** within ninety (90) days of receiving written notice of such changes. If a longer time period is necessitated to modify the products, the parties shall use good faith efforts to agree upon the time period for such modification.
- 2.2 Railkey will be an authorized, non-exclusive seller of the Amtrak Products listed in **Attachment 3 – Amtrak Products** in the Territory. Amtrak reserves the right, in its sole discretion, to revise **Attachment 3 – Amtrak Products** at any time to add or remove any Amtrak Product(s) by providing written notice of the changes to Railkey. Railkey shall modify its Distribution Products as necessary to incorporate and reflect changes to **Attachment 3 – Amtrak Products** within ninety (90) days of receiving written notice of such changes. If a longer time

period is necessitated to modify the products, the parties shall use good faith efforts to agree upon the time period for such modification.

- 2.3 In order for Railkey's reservation system (the "**System**") to connect to Amtrak's ticket reservation and booking engine, *Arrow*, and *Arrow's* web-interface application, *Amtrak Web Services*, Railkey must develop a connection to the System. Railkey shall develop and support the connection at its own cost and expense.
- 2.4 Connectivity to *Arrow* through Amtrak Web Services may be through (a) a **Managed Access Channel** or (b) an **Unmanaged Access Channel** with different security requirements. The Managed Access Channel is available to Railkey only if it has in place system administration controls that (a) limit access solely to Railkey's authorized travel managers and/or employees and (b) validates authorized users identity and access rights.
- 2.5 Railkey shall, at no cost to Amtrak, develop, implement, support and maintain the System, which will connect to *Arrow* and *Amtrak Web Services*. Amtrak shall provide reasonable assistance and cooperation, at Amtrak's sole discretion, to Railkey in the development, implementation, support and maintenance of the System, as well as in the on-going connectivity of the System to Amtrak Web Services. The technical requirements for interfacing with Amtrak Web Services are set forth in **Attachment 4 – Amtrak Web Services Interface Specification**. Amtrak reserves the right to revise **Attachment 4 – Amtrak Web Services Interface Specification** at any time by providing written notice to Railkey of such changes. Railkey shall modify its Distribution Products as necessary to incorporate and reflect changes to **Attachment 4 – Amtrak Web Services Interface Specification** within ninety (90) days of receiving written notice of such changes. If a longer time period is necessitated to modify the products, the parties shall use good faith efforts to agree upon the time period for such modification. In the event of any inconsistencies between **Attachment 4 – Amtrak Web Services Interface Specification** and **Attachment 3 – Amtrak Products** regarding authorized Amtrak Products, **Attachment 3 – Amtrak Products** controls.
- 2.6 During the term of this Agreement, Railkey shall ensure that the System complies with Amtrak Web Services Terms of Use, set forth in **Attachment 5 – Amtrak Web Services Terms of Use**. Amtrak reserves the right to revise **Attachment 5 – Amtrak Web Services Terms of Use** at any time by providing written notice to Railkey of such changes. Railkey shall modify its Distribution Products as necessary to incorporate and reflect changes to **Attachment 5 – Amtrak Web Services Terms of Use** within ninety (90) days of receiving written notice of such changes. If a longer time period is necessitated to modify the products, the parties shall use good faith efforts to agree upon the time period for such modification.
- 2.7 Railkey agrees to immediately notify its agents and subcontractors of any changes made by Amtrak pursuant to this Section and to modify the System as necessary to incorporate and reflect the changes made to the relevant attachment within ninety (90) days of receiving written notice of such changes, except for certain circumstances that would reasonable require immediate

change as determined by Amtrak. If a longer time period is necessitated to modify the interface, the parties shall use good faith efforts to agree upon the time period for such modification. Railkey shall comply at all times with Amtrak's then current ticket booking procedures, which Amtrak will specify from time to time. Amtrak shall strive to provide Railkey with thirty (30) days advance notice of any change to the ticket booking procedures.

- 2.8 Amtrak reserves the right, in its sole discretion, to prohibit the distribution, sale or resale of any or all Amtrak Products to any Railkey customer, agent or subcontractor upon reasonable written notice to Railkey. Railkey shall modify the System as necessary to prohibit the offering of the specified Amtrak Product(s) to those Railkey customers, agents or subcontractors within five (5) days of receipt of such notice from Amtrak.
- 2.9 Railkey shall authorize Amtrak to access the System for the sole purpose of monitoring and ensuring compliance with this Agreement. Only Amtrak employees and contractors may access the System. Amtrak may not access the System to print tickets and will not be allocated ticket stock. Railkey may revoke Amtrak's access to the System upon termination of the Agreement or upon any default by Amtrak.
- a) Railkey shall supply Amtrak with the necessary software required to access the System. Railkey shall provide such software components and documentation to Amtrak within a reasonable time after execution of this Agreement.
 - b) Railkey shall offer System training to Amtrak as reasonably necessary to ensure that Amtrak has at least one trained Amtrak employee operating the System.
 - c) Railkey shall provide Amtrak with System technical support through access to Railkey's technical support desk.

3. Payment and After Sales Support for Amtrak Products

- 3.1 At the time of booking a reservation for an Amtrak product sold pursuant to this Agreement, Railkey shall securely submit to Amtrak for payment a valid credit card which must be included in Amtrak's list of acceptable credit cards as per **Attachment 6 - Payment Cards Accepted**. Amtrak may revise **Attachment 6 – Payment Cards Accepted** upon thirty (30) days written notice, except for certain circumstances that require immediate change as determined by Amtrak. The parties may agree by amendment to this Agreement to have payment made "on account" by which Amtrak shall invoice Railkey on a monthly basis for bookings made during the previous month and Railkey shall pay the invoice amount as specified by Amtrak.
- 3.3 If connectivity to Arrow through Amtrak Web Services is through an Unmanaged Access Channel, Railkey must include a credit card CVV / CID number and a billing postal code for each payment transaction.

- 3.4 Railkey shall provide adequate communication to ensure that its customers will have access to appropriate customer support including, without limitation, providing its employees, agents and subcontractors appropriate training and maintaining call center and sales staff at adequate levels. Railkey will be responsible for all Amtrak-related after sales customer service issues, including but not limited to customer complaints, ticket changes or refunds, as appropriate.

4. **Company Compensation**

Amtrak shall initially compensate Railkey as set forth in **Attachment 7 – Company Compensation**. This attachment will be subject to review on an annual basis.

5. **Advertising, Marketing and Promotion**

- 5.1 Railkey shall advertise, market and promote the sale of Amtrak Products pursuant to an annual marketing plan developed by Railkey and approved by Amtrak.
- 5.2 All advertising and promotional materials must contain disclaimers, limitations of liability notices, proprietary notices (e.g., trademark and copyright notices) and such other notices as required by Amtrak.
- 5.3 To satisfactorily perform the duties and obligations set forth in this Agreement, Railkey may need to use certain service marks, trademarks, logos and trade names (collectively, "Marks") and copyrighted works owned by or licensed to Amtrak. Railkey agrees and acknowledges that its use of these Marks and copyrighted works exists pursuant to a royalty-free, nontransferable, nonexclusive license or sub-license. Railkey understands that it will not acquire any ownership interest in Amtrak's Marks or copyrighted works or have the right to use such Marks or copyrighted works other than for the sole purpose of performing its duties and obligations to Amtrak under this Agreement.
- 5.4 Railkey agrees to comply with all of Amtrak's instructions regarding the use of Marks and copyrighted works, including but not limited to the Amtrak Brand Guidelines. Railkey shall not use Amtrak's Marks or copyrighted works in any manner that does, threatens to or will likely diminish their value or harm the reputation of Amtrak.
- 5.5 Prior to publication, Amtrak will have the right to review and approve any and all content, artwork, copy, advertising, promotional materials, direct mail, inserts, press releases, newsletters, web pages or other communications or any other publicity published, distributed or displayed by Railkey or at its direction or authorization which uses Amtrak's Marks, name(s) or trade names or which otherwise refers to Amtrak Products or this Agreement (collectively referred to as "Advertising Materials").
- 5.6 Railkey shall submit Advertising Materials to Amtrak's representative listed in **Attachment 8 - Contacts**, which may be changed at any time upon written notice, at least thirty (30) days in advance for Amtrak's written approval.

- 5.7 Notwithstanding Amtrak's written approval of any Advertising Materials, upon Amtrak's written request, Railkey shall employ commercially reasonable efforts to cease publishing, distributing and/or displaying any Advertising Material immediately or within such other period as requested by Amtrak.

6. Contract and Program Administration

Each party shall designate a Contract and Program Representative who shall handle all issues related to this Agreement. Each party shall designate a Technical Representative who shall address technical issues related to this Agreement. Current contacts will be listed in **Attachment 8 - Contacts**. Each party may change such representatives upon written notice to the other party.

7. Term and Termination

- 7.1 This Agreement shall commence on the Effective Date and continue until three (3) years ("Initial Term") unless terminated earlier pursuant to the terms herein; thereafter, either party may request to renew this Agreement for a successive twelve (12) month period (each, a "Renewal Term" and, together with the Initial Term, "Term") upon the other party's approval by providing notice to the other party within thirty (30) days prior to the end of the Term.
- 7.2 Either party may terminate this Agreement upon written notice to the other party if the other party materially breaches this Agreement and fails to cure such breach within thirty (30) days of receiving written notice of the breach. In the event of an incurable breach the other party may terminate this Agreement upon ten (10) days written notice to the breaching party.
- 7.3 Notwithstanding anything to the contrary in this **Section 7 – Term and Termination**, either party may terminate this Agreement immediately upon written notice, without providing opportunity to cure, upon the occurrence of any of the following:
- a) the filing of any petition by or against the other party under any chapter of the Bankruptcy Code, or other insolvency or bankruptcy act enacted by a duly constituted legislative body of government;
 - b) a dissolution and winding up of the other party's business;
 - c) an occurrence of a general assignment for the benefit of creditors of the other party; or
 - d) an appointment of a receiver or trustee to take possession of all or substantially all of the assets of the other party.
- 7.4 Notwithstanding anything to the contrary in this **Section 7 – Term and Termination**, Amtrak may terminate this Agreement immediately upon written notice, without providing Railkey the opportunity to cure, if:
- a) Railkey, its directors, officers, employees, or agents commits any fraudulent act or makes any fraudulent representation under this Agreement;

- b) Railkey is terminated by its credit card processor or merchant bank;
- c) Railkey sells all or a substantial part of its assets; or
- d) Railkey is subject to a data breach and/or PCI-DSS violation as defined in **Section 11 – Security of Confidential Information**.

7.5 Notwithstanding anything to the contrary in this **Section 7 – Term and Termination**, Amtrak may terminate this Agreement immediately upon written notice if there is any adverse publicity arising out of:

- a) an alleged or actual fraudulent act or statement by Railkey, its directors, officers or employees; or
- b) a misrepresentation by Railkey, its directors, officers or employees and Railkey fails to remedy such adverse publicity to the satisfaction of Amtrak within ten (10) days of Amtrak's written notice to Railkey.

7.6 Notwithstanding anything to the contrary in this **Section 7 – Term and Termination**, Amtrak may terminate this Agreement immediately upon written notice if Railkey's risk rating falls within the "High" risk category as defined below and Railkey fails to cure such rating deficiency within ninety (90) days of Amtrak's written notice of the High-risk rating. The risk rating is calculated as set forth below:

(b)(4)

8. Reports

- 8.1 Railkey shall provide to Amtrak the reports and information, in such format specified in **Attachment 9 – Reports**.
- 8.2 Railkey shall provide such other information and reports as reasonably requested by Amtrak at any time in such manner as prescribed by Amtrak.

9. Letters of Credit

If payment is made "on account" as specified in Section 3.1 – Payment and After Sales for Amtrak Products above, Railkey shall, at its own expense, deliver to Amtrak an irrevocable letter of credit ("Letter of Credit") for the benefit of Amtrak as security for Railkey's proper performance under and compliance with this Agreement. This procedure will be detailed in a mutually agreed upon addendum to this Agreement.

10. Confidentiality

- 10.1 For purposes of this Agreement, "**Confidential Information**" means any of the following:
- a) information provided by or on behalf of either party (as the "**Disclosing Party**") to the other party (as the "**Receiving Party**") in connection with this Agreement, including any information collected or used to process payments for the Amtrak Products, including, without limitation, credit or debit cards or other payment or credit or debit card account information collected from or relating to customers or prospective customers ("Payment Related Information") belonging to a party to this Agreement and including information provided prior to the date hereof or the Effective Date;
 - b) information about the Disclosing Party or its affiliates, or their respective business or employees, that the Receiving Party obtains in connection with this Agreement, in each case including, without limitation:
 - i. information concerning marketing plans, objectives and financial results;
 - ii. information regarding business systems, methods, processes, clients, financing data, programs and products;
 - iii. information unrelated to this Agreement obtained by the Receiving Party in connection with this Agreement, including, without limitation, by accessing or being present at the business location of the Disclosing Party;
 - iv. proprietary technical information, including trade secrets, source codes or other proprietary information of the Disclosing Party developed in connection with this Agreement; and
 - v. the terms and conditions of this Agreement.
 - c) Without limiting the foregoing, Amtrak Confidential Information includes:
 - i. information relating to Amtrak customers or prospective customers created or obtained in connection with this Agreement or otherwise obtained from Amtrak or directly from Amtrak's customers or prospective customers, including the Payment Related Information of its customers, agents, and contractors,
 - ii. lists and data concerning Amtrak customers or prospective customers in the aggregate, and
 - iii. all information related to *Arrow* and the *Amtrak Web Services*.
 - d) Without limiting the foregoing, Railkey Confidential Information includes the System, all information regarding Railkey's customers, including the Payment Related Information of its customers, agents and subcontractors and Railkey's financial statements.

- 10.2 The Receiving Party shall maintain, dispose of and otherwise treat all Confidential Information of the Disclosing Party with the same degree of care as it accords its own Confidential Information, but in no event less than a reasonable degree of care.
- 10.3 The Receiving Party shall use and disclose Confidential Information only for the purpose of performing its obligations or enforcing its rights with respect to this Agreement or as otherwise expressly permitted by this Agreement, and shall not obtain, use or disclose Confidential Information for any other purpose. The Receiving Party shall, in accordance with the terms of this Agreement, limit access to Confidential Information to those employees, authorized agents, vendors, consultants, accountants, service providers who have a commercially reasonable need to access such Confidential Information in connection with this Agreement.
- 10.4 The Receiving Party agrees that any use or disclosure of Confidential Information other than that specifically permitted under this Agreement will cause immediate and irreparable harm to the Disclosing Party for which money damages might not constitute an adequate remedy. As a result, the Receiving Party agrees to the appropriateness of injunctive relief in addition to any other remedies the Disclosing Party may have under applicable laws.
- 10.5 Upon the termination or expiration of this Agreement, the Receiving Party shall comply with the Disclosing Party's instructions regarding the disposition of the Confidential Information, which may include return to the Disclosing Party of any and/or all of the Confidential Information (including any electronic or paper copies, reproductions, extracts or summaries thereof). The Receiving Party may retain one archived copy of such material, subject to the terms of this Agreement, which the Receiving Party may use solely for regulatory purposes and not for any other purpose. The Receiving Party shall certify such compliance in writing, including a certification that the Receiving Party has not kept any copies of Confidential Information except as necessary for regulatory purposes.
- 10.6 With respect to Amtrak Confidential Information, Railkey shall:
- a) keep the Confidential Information confidential and secure in accordance with **Section 11 – Security of Confidential Information** of this Agreement and industry practices;
 - b) treat all Payment Related Information in accordance with the requirements of the Payment Card Industry (PCI) Security Standards;
 - c) implement and maintain commercially reasonable physical, electronic, administrative and procedural security measures, including commercially reasonable authentication, access controls, virus protection and intrusion detection practices and procedures in accordance with **Section 11 – Security of Confidential Information** of this Agreement; and
 - d) ensure that any person with access to the Confidential Information agrees in writing to follow the Confidentiality provisions of this Agreement (including but not limited to **Section 10 – Confidentiality** and **Section 11 – Security of**

Confidential Information) and maintain the existence of this Agreement and the nature of their obligations hereunder strictly confidential. Railkey shall not provide any Amtrak customer or prospective customer Non-Public Personal Information (as defined herein) to any third party without Amtrak's express written approval. Furthermore, Railkey must make such sharing agreement in writing and ensure that the third party has security processes and procedures adequate to comply with its obligations both thereunder and under applicable laws. "Non-Public Personal Information" means (i) personally identifiable information, and/or (ii) any list, description, or other grouping of customers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information that is not publicly available.

- e) Without limiting the foregoing, in the event of an information security breach by Railkey resulting in a suspected or actual breach of the security of the data of any Amtrak customer or prospective customer whose nonpublic personal information or Payment Related Information is or is reasonably believed to have been acquired by an unauthorized person or for unauthorized purposes, Railkey shall (a) consult with Amtrak regarding the appropriate response to each actual or suspected breach, (b) be responsible for complying with all applicable laws requiring notification to customers whose nonpublic personal information or Payment Related Information may be compromised or reasonably believed to be comprised due to a security breach, including mailing notice, if required, to the Amtrak customers or prospective customers at Railkey's sole expense and (c) obtain a new PCI-DSS certification. In addition, Railkey shall provide affected customers with one (1) year of complimentary access to credit monitoring services, credit protection services, credit fraud alerts, or similar services. Railkey shall consult with Amtrak regarding the content of any such notice and the service to be provided. In advance of mailing the notice, and as between the parties, Amtrak, at its election, shall make the final determination of the content of any such notice.

10.7 The restrictions on disclosure of Confidential Information in this **Section 10 – Confidentiality** shall not apply to information that:

- a) is already rightfully known to the Receiving Party, wholly apart from this Agreement as shown by the Receiving Party's written records, at the time it obtains Confidential Information from the Disclosing Party;
- b) at the time of the disclosure is or becomes generally available to the public other than as a result of disclosure in breach of this Agreement or any other confidentiality obligations;
- c) is lawfully received by the Receiving Party on a non-confidential basis from a third party authorized to disclose such information without restriction and without breach of this Agreement;
- d) is contained in, or is capable of being discovered solely through examination of publicly available records or products;

22. Headings

The various section headings exist for convenience of reference only and shall not affect the meaning or interpretation of this Agreement or any section thereof.

23. Severability

Subject to **Section 26 – Governing Law, Jurisdiction and Venue**, if any provision of this Agreement is determined to be invalid, void or unenforceable in any respect, such determination shall not affect, impair or invalidate any other provision hereof.

24. Construction

All parties drafted this Agreement and, in the event of a dispute, no party hereto may attempt to construe any provision against any other party by claiming that one particular party drafted it.

25. No Waiver

No course of dealing, course of performance or failure of either party strictly to enforce any term, right or condition of this Agreement constitutes a waiver of such term, right or condition. No waiver or breach of any provision of this Agreement constitutes a waiver of any subsequent breach of the same or any other provision.

26. Governing Law, Jurisdiction and Venue

Each party agrees to execute and interpret this Agreement in accordance with and subject to the internal laws of the District of Columbia, without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the District of Columbia. Each party agrees to commence any legal suit, action or proceeding arising out of or relating to this Agreement in the United States District Court for the District of Columbia, and each party irrevocably submits to the exclusive jurisdiction and venue of such court in such suit, action or proceeding.

27. Compliance with Laws

Railkey, its directors, officers, employees, agents and subcontractors shall comply with all applicable local, state, federal and foreign laws, rules and regulations enacted by duly constituted governmental bodies. Railkey hereby agrees to notify Amtrak in writing within a reasonable time after receiving notice of any failure to or allegation of a failure to comply with the applicable laws. Railkey must defend, indemnify and hold harmless Amtrak from and against any loss, damage, expense or other harm or liability incurred or suffered by Amtrak due to any failure by Railkey, any of its directors, officers, employees, agents or subcontractors to comply with such laws, rules, or regulations.

28. Relationship of the Parties

It is understood and agreed that nothing contained in this Agreement shall be deemed or construed as creating a partnership, joint venture, agency or employment relationship between Amtrak and Railkey. Nothing contained herein or in any agreement between Railkey and any agent or subcontractor shall create (a) any contractual relationship

between Amtrak and such agent or subcontractor or (b) any third-party beneficiary rights in any such agent or subcontractor. The terms agent, subcontractor and independent contractor as used throughout this Agreement do not include travel agents and tour operators.

29. Force Majeure

Except for the payment of monies due hereunder, and subject to **Section 7 – Term and Termination**, neither party has any responsibility or liability for any delay or failure to perform to the extent due to unforeseen circumstances or causes beyond its reasonable control, including, without limitation, acts of God, earthquake, fire, flood, embargoes, labor disputes and strikes, riots, acts of terrorism, war, and acts of civil and military authorities, provided that such party gives the other party prompt written notice of its failure to perform and the reason therefore and employs its reasonable efforts to limit the resulting delay in performance. If either party fails to perform any of its obligations under this Agreement due to a Force Majeure condition, as defined in this Section, for sixty (60) successive days, the other party has the right to terminate this Agreement immediately upon written notice.

30. Entire Agreement

This Agreement, and any attachments and exhibits thereto, contain the entire understanding of the parties with respect to the subject matter of this Agreement and merges and supersedes all prior and contemporaneous agreements and understandings between the parties, whether oral or written, with respect to the subject matter of this Agreement. All attachments are incorporated by reference and made a part of this Agreement.

31. Facsimile Signatures Acceptable

This Agreement may be executed by facsimile in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute the same instrument.

IN WITNESS WHEREOF, Amtrak and Railkey have each caused this Agreement to be signed and delivered by its duly authorized officer, all as of the date first set forth above.

NATIONAL RAILROAD PASSENGER CORPORATION

Railkey Technology, LLC

(b)(6)

purchase an extended reporting provision of at least three (3) years to report claims arising from performance of this Agreement.

- d) Crime Insurance. Covering the loss of funds, remittances, vouchers or any other property belonging to Amtrak and caused by fraud, theft, dishonesty, and other wrongful acts by any Railkey employee, agent or subcontractor employee. Coverage under this policy will have a limit of liability of at least

(b)(4)

18.2 Railkey shall submit to Amtrak a certificate of insurance giving evidence of the required coverages prior to the Effective Date of this Agreement. Railkey shall continue to submit certificates of insurance during the term of this Agreement for those policies to which **Section 18 – Survival** applies, as often as needed to reflect any material changes in, or renewal or replacement of, the required coverages.

18.3 Railkey shall procure all insurance from insurers which: (a) Amtrak reasonably deems acceptable; (b) have financial ratings of A VIII or better in the Best's Key Rating Guide, latest edition in effect as of the Effective Date of this Agreement, and subsequently in effect at the time of renewal of any policies required hereunder, and (c) agree to give Amtrak thirty (30) days advance written notice of cancellation, non-renewal, or material change in coverage.

19. Survival

The following provisions shall survive expiration or termination of this Agreement: **Section 5 – Advertising, Marketing and Promotion** (excluding Section 5.1); **Section 10 – Confidentiality**; **Section 11 – Security of Confidential Information**; **Section 12 – Records and Audit**; **Section 13 – Notices**; **Section 14 - Indemnification**; **Section 18 – Insurance**; **Section 19 – Survival**; **Section 26 – Governing Law, Jurisdiction and Venue**; and any other provision reasonably understood to survive termination or expiration of this Agreement.

20. Assignment

Railkey shall not assign, delegate or otherwise transfer this Agreement or any right or obligation hereunder (whether by express transfer, operation of law or otherwise) without the prior written consent of Amtrak. Notwithstanding the foregoing, Railkey may delegate the performance of certain obligations to certain third party contractors, provided that Railkey gives Amtrak thirty (30) days written notice of the proposed delegation and Railkey controls the delivery of such obligations to Amtrak and remains responsible to Amtrak for the delivery of such obligations. Any attempted or purported assignment or other transfer not complying with the foregoing will be null and void. Subject to the foregoing, this Agreement will inure to the benefit of and bind the successors and assigns of the parties.

21. Modifications

Any waiver, modification or amendment of any provision of this Agreement shall be effective only if in writing and signed by the authorized representatives of both parties.

18.1 Railkey shall procure and maintain, at its own cost and expense, continuously during the term of this Agreement, and to the extent it carries any insurance on a "claims-made," "claims-reported," or "occurrences-reported" basis for three (3) years beyond the term of this Agreement, the types of insurance specified below:

a) Commercial General Liability Insurance. A policy issued to and covering liability imposed upon Railkey arising out of Railkey's premises or operations or the services to be performed and/or planned and those of any subcontractors or agents and all obligations assumed by Railkey under the terms of this Agreement. The policy must include products/completed operations liability, independent contractors liability, contractual liability, personal injury liability and advertising liability coverages. The policy must name National Railroad Passenger Corporation as an additional insured with respect to Railkey's premises, operations and services, and the policy shall contain a waiver of subrogation against National Railroad Passenger Corporation, its subsidiaries and their directors, officers, employees, and agents. Coverage under this policy, or policies, shall have a combined single limit of liability of at least (b)(4)

b) Errors and Omissions/Professional Liability Insurance. Contractor shall maintain an errors and omissions/professional liability insurance policy covering liability imposed on Contractor for all acts, errors, omissions, negligence, infringement of intellectual property and network risks committed by Contractor, its agents, or employees in its and/or their performance or non-performance under this Agreement. Network risks includes coverage for the perils of unauthorized network access, failure of security, and breach of privacy, as well as the cost of notification of persons whose information may have been breached and the payment for the defense of, and judgments, settlements, fines or penalties that result from, regulatory violations. Such insurance shall include an affirmative coverage grant for contingent bodily injury and property damage emanating from the failure of its or their action or inaction under this Agreement or an error or omission in the content/information provided. Coverage under this policy shall have limits of liability of not less than (b)(4)

(b)(4) Such insurance shall be maintained in force at all times during the term of this Agreement and for a period of three (3) years thereafter following the date of termination of this Agreement. This insurance shall name National Railroad Passenger Corporation as an additional insured for the Contractor's wrongful acts under this Contract and coverage shall include a waiver of subrogation against National Railroad Passenger Corporation.

c) Claims-Made Insurance. If Railkey provides any insurance specified above on a "claims-made", or "occurrences-reported" basis, then in addition to the coverage requirements above, such policy shall provide that: (i) the retroactive date coincides with or precedes Railkey's start of Services (including subsequent policies purchased as renewals or replacements); (ii) the policy allows for the reporting of circumstances or incidents that might give rise to future claims; (iii) Railkey will employ its best efforts to maintain similar insurance for at least three (3) years following completion of the Services; and (iv) if insurance terminates for any reason, Railkey agrees to

- 17.1 Each party represents and warrants to the other that it has the requisite corporate power and authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement.
- 17.2 Each party represents and warrants that the execution, delivery and performance of this Agreement has been duly authorized and the requisite corporate action on the part of such party for the consummation of the transactions contemplated by this Agreement have occurred.
- 17.3 Railkey represents and warrants that, it currently is and throughout the entire term of this Agreement shall be, in compliance with all applicable local, state, federal and foreign laws, rules and regulations.
- 17.4 Railkey represents and warrants that, it currently is and throughout the entire term of this Agreement shall be, in compliance with the then current automated clearinghouse and bankcard association guidelines, rules, regulations and procedures applicable to its payment processing and other services, including, without limitation, the provisions of the Federal Reserve Board's regulations E and Z, the operating rules and operating guidelines of the National Automated Clearing House Association and the rules, regulations and procedures of all credit card associations and companies.
- 17.5 Railkey represents and warrants that it is not the subject of any litigation initiated by any credit card association or credit card processor with respect to its acceptance of credit card payments on behalf of itself or any other merchant. Railkey represents and warrants that no agreements, injunctions, restrictions or otherwise exist which may prohibit it from performing its obligations under this Agreement either by statute, rule, regulation, agreement or otherwise.
- 17.6 Railkey represents and warrants that its advertising, marketing and promotional materials, including Railkey websites, other web space that Railkey controls and the content and other information contained or referred to therein will not:
- a) constitute libel, defamation, false or illegal advertising;
 - b) constitute an invasion of privacy or a violation of the rights to publicity of any third party;
 - c) infringe any patent, copyright or trademark;
 - d) contain, link or refer to any offensive or indecent information of any kind;
 - e) contain any information that could be deemed proprietary, except proprietary information owned by or licensed to Railkey for use therein or therewith (other than trade name(s), trademarks, service marks, or any comparable intellectual property rights); or
 - f) suggest or state that Railkey and Amtrak have any relationship as agents for one another, as partners, as joint venturers or similar relationship, except as expressly provided herein.

If Railkey becomes aware of any claim, allegation or notification that the foregoing warranties have been breached, Railkey shall promptly notify Amtrak.

18. Insurance

preliminary and permanent injunctive relief, without the necessity of proving actual damages or posting a bond, to prevent any such breach.

16. Performance Standards and Ability to Perform

- 16.1 Railkey represents and warrants that it shall perform its responsibilities under this Agreement with promptness and diligence and in a professional manner, in accordance with best practices and highest industry standards.
- 16.2 Railkey shall handle all customer inquiries and complaints in a prompt, courteous and diligent manner. Railkey shall cooperate with Amtrak to deal appropriately with any customer complaint.
- 16.3 Each party represents and warrants that it knows of no circumstances that would materially impede its ability to perform under this Agreement and shall promptly notify the other party in writing if it acquires knowledge of any circumstances that would materially impede its ability to perform under this Agreement. Without limiting the foregoing, Railkey represents and warrants that it shall immediately notify Amtrak of:
 - a) any change in its ownership or control; and/or
 - b) its involvement in any actual or threatened major litigation.
- 16.4 Neither party will be liable for any malfunction of System, Arrow, or Amtrak Web Services due to any incompatibility with either party's systems or due to either party's failure to adhere to the guidelines and system parameters under which System, Arrow, or Amtrak Web Services is installed.
- 16.5 EXCEPT AS OTHERWISE PROVIDED HEREIN, AMTRAK MAKES NO OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, UNDER THIS AGREEMENT AND AMTRAK HEREBY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES REGARDING FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OR NONINFRINGEMENT.
- 16.6 EXCEPT FOR EACH PARTY'S INDEMNIFICATION OBLIGATIONS HEREIN, TO THE EXTENT PERMITTED BY LAW, NEITHER PARTY OR ITS AFFILIATES, AND THEIR RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY, ITS "REPRESENTATIVES") SHALL BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, HOWEVER CAUSED, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER THEORY OF LIABILITY, EVEN IF SUCH PARTY OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR EVEN IF ANY SUCH LOSS OR DAMAGES WERE REASONABLY FORESEEABLE.

17. Certain Representations and Warranties

14. Indemnification

14.1 Railkey (as the "Indemnifying Party") agrees to defend, indemnify and hold harmless Amtrak (as the "Indemnified Party") and its officers, directors, employees, agents, servants, contractors, subcontractors, successors, assigns and subsidiaries and their respective successors, assigns and personal representatives (collectively "Indemnified Parties"), from and against any claims, losses, liabilities, fines, penalties, actions, damages, costs and expenses whatsoever (including costs of defense and attorneys' fees) (collectively "Claims"), which any of the Indemnified Parties may hereafter incur, have responsibility for or pay arising out of or related to:

- a) any act or failure to act by the Indemnifying Party and/or its directors, officers, employees, agents, subcontractors, servants, or any other person acting for or on behalf of the Indemnifying Party;
- b) the Indemnifying Party's breach of any term of this Agreement;
- c) any actual or claimed infringement or misappropriation of third-party intellectual property right(s) by the Indemnifying Party;
- d) the Indemnifying Party's breach of any contract, promise or undertaking with or to any third party and related to this Agreement.

Amtrak shall notify Railkey in writing within a reasonable time after notice of any such Claim.

14.2 Consistent with and in addition to **Section 14.1**, Railkey accepts sole liability for any failure of Railkey or any of Railkey's officers, directors, employees, agents, servants, subcontractors, or any other person acting for or on behalf of Railkey to maintain the confidentiality of Payment Related Information and/or Non-Public Personal Information. Railkey shall defend, indemnify and hold harmless Amtrak against any and all Claims brought against Amtrak related to Payment Related Information and/or Non-Public Personal Information, including those resulting from the action or inaction of Railkey or any of its directors, officers, employees, agents, servants, subcontractors, or any other person acting for or on behalf of Railkey.

14.3 The existence of any insurance policy procured or maintained by Railkey or any limitation on the amount or type of damages, compensation or benefits payable by or for Railkey or any subcontractor shall not limit the indemnification obligations under this Section.

15. Injunctive Relief

Each party acknowledges that the breach of any provision of **Section 5 – Advertising, Marketing and Promotion** (excluding Section 5.1); **Section 10 – Confidentiality**; or **Section 11 – Security of Confidential Information** may cause irreparable injury to the other party, and agrees that the other party shall have the right to seek temporary,

(b) Agreement compliance and performance, including any work or deliverables in progress;

(c) compliance with applicable provisions of Amtrak's federal grant, regulations and statutes; and

(d) support for all direct and indirect costs or prices charged to Amtrak.

12.2 Railkey agrees to maintain all such data and records throughout the term of the Agreement and until three (3) years after final payment under the Agreement, and agrees to cooperate with all audit activities.

12.3 In connection with audit and inspection activities, Amtrak OIG shall be afforded, upon request, (a) access to Railkey's facilities and to Agreement work or deliverables in progress, (b) the opportunity to interview Railkey's employees concerning any matter relating to the Agreement, and (c) adequate and appropriate workspace.

12.4 Railkey agrees to reimburse Amtrak, within sixty (60) calendar days after receipt of a written request, the full amount of any undisputed audit findings or questioned costs, unless otherwise agreed by Amtrak in the course of post-audit negotiations with Railkey.

12.5 Railkey shall include the provisions of this clause in every subcontract or purchase order (b)(4) as well as a provision requiring all subcontractors to include these provisions in any lower tier subcontracts or purchase orders (b)(4). Railkey shall be responsible for subcontractor or lower tier subcontractor's compliance with this clause.

12.6 Nothing in this Agreement shall be construed to limit the rights, obligations, authority, or responsibilities of Amtrak's Office of the Inspector General pursuant to the Inspector General Act of 1978, as amended, including the right to seek information by subpoena.

13. Notices

Each party must provide any notice, request, demand or other communication required or permitted hereunder in writing and in reference to this Agreement. The following constitutes proper notice:

- a) personal delivery;
- b) delivery by registered or certified mail, return receipt requested and acknowledged, postage prepaid; or
- c) two (2) business days after deposit with a private industry express courier, with written confirmation of receipt.

Each party agrees to send all notices to the addresses set forth in **Attachment 8 – Contacts**, which either party may change by providing proper notice to the party hereunder.

equipment against "hackers" and others who may seek, without authorization, to access or modify its systems or the information found therein. Railkey shall regularly test its systems for potential areas where "hackers" and others could breach security, such testing to be conducted on at least a quarterly basis. Railkey agrees to advise Amtrak immediately by telephone and in writing via facsimile of any suspected security breach that may have compromised any Confidential Information, or of any suspected unauthorized misappropriation, disclosure or use by any person of the Confidential Information or Payment Related Information, which may come to Railkey's attention. Railkey shall take all steps and employ its best and most diligent efforts to remedy such breach of security or unauthorized access in a timely manner and to deliver to Amtrak a root cause assessment and future, incident-mitigation plan with regard to any breach of security or unauthorized access affecting Confidential Information or Payment Related Information.

- 11.5 Railkey must store all Confidential Information in a physically and logically secure environment that protects it from unauthorized access, modification, theft, misuse and destruction. In addition to these general standards, Railkey shall maintain an adequate level of physical security controls over its facility including, but not limited to, appropriate alarm systems, fire suppression, access controls (including off-hour controls) which may include visitor access procedures, security guard force, video surveillance, and staff egress searches. Railkey shall maintain an adequate level of data security controls, including, but not limited to, those set forth in **Attachment 10 – Data Security Controls**. Amtrak may revise the data security controls at any time upon written notice to Railkey, giving at least thirty (30) days advance notice when possible and/or practical.
- 11.6 Railkey shall maintain and implement disaster recovery and avoidance procedures and backup procedures as it relates to Confidential Information. During the term of this Agreement, Railkey shall provide Amtrak with an opportunity to review at Railkey's premises its current disaster recovery and avoidance plan and backup procedures and all updates thereto. Railkey shall review and update, as necessary, its disaster recovery and avoidance plan and backup procedures based on the respective recovery priority of each business unit. If Railkey performs any audit with regard to its disaster recovery and avoidance plan and backup procedures (e.g., ISO 9000), Railkey shall make the results of that audit available to Amtrak's information security director for on-site review. Amtrak may elect, at its option, to conduct onsite reviews of Railkey's facilities for, among other things, assessing disaster recovery preparedness and backup procedures.

12. Records and Audit

- 12.1 Railkey acknowledges and agrees that Amtrak's Office of Inspector General (OIG) may inspect, copy and/or audit Railkey's data and records (in hard copy and/or electronic format) related in any way to the Agreement, including without limitation, all data and records relating to:
- (a) support for any proposal, change order, or request for equitable adjustment submitted to Amtrak by Railkey;

- e) is required to be disclosed by applicable law, regulation, valid court order, government agency order, for law enforcement purposes, or by a self-regulatory body, provided that (i) if possible, the Receiving Party shall promptly notify the Disclosing Party of any such requirement prior to disclosure to afford the Disclosing Party an opportunity to seek a protective order or other appropriate remedy to prevent or limit that disclosure, and (ii) Confidential Information of the Disclosing Party must only be disclosed to the extent required; or
- f) is developed by the Receiving Party without the use of any proprietary or non-public information provided by the Disclosing Party under this Agreement, as demonstrated by the written records of the Receiving Party.

11. Security of Confidential Information

- 11.1 Railkey shall at all times maintain physical, electronic, administrative and procedural security measures sufficient to protect all Confidential Information from both internal and external threats and sufficient to comply with all applicable local, state and federal laws and all applicable credit card association rules and regulations concerning the security of such data.
- 11.2 Railkey, its employees, agents and subcontractors shall at all times comply with the Payment Card Industry Data Security Standard (PCI-DSS) required by the credit card associations. Railkey must, at all times during the term of this Agreement, obtain, retain, and renew, as appropriate, its certification of compliance with the PCI-DSS. Railkey shall provide Amtrak with a copy of its current PCI-DSS certification and annual audits upon the Effective Date of this Agreement and on each anniversary date thereof for the duration of this Agreement.
- 11.3 Railkey shall maintain an adequate information security policy and provide Amtrak with a copy of the current policy upon the Effective Date of this Agreement. During the term of this Agreement, Railkey shall provide Amtrak timely updates and revisions thereto.
- 11.4 Railkey shall maintain and enforce safety and physical security procedures with respect to its access and maintenance and disposal of Confidential Information that:
 - a) meets or exceeds industry standards for the territories listed in **Attachment 2 - Territory**;
 - b) in the case of Payment Related Information, meets or exceeds PCI requirements for safety and physical security; and
 - c) provides appropriate technical and organizational safeguards against accidental or unlawful destruction, loss, alteration or unauthorized disclosure of or access to the Confidential Information under this Agreement.

Without limiting the generality of the foregoing, Railkey shall take all commercially reasonable measures to secure and defend its location and

ATTACHMENT 1 – COMPANY SERVICES

Company shall provide Amtrak the following services:

Upon Amtrak's approval, Railkey shall make available Amtrak products to Railkey's existing distribution channels within ninety (90) days of the effective date. Railkey's existing distribution channels are defined as any location where online travel reservations are offered. Railkey shall provide Amtrak with a listing of all distribution channels on a quarterly basis via email. By December 31, 2014, Railkey shall provide Amtrak with a full marketing and business plan that describes the intended business activities and channels that will be pursued under this Agreement. Railkey shall only add Amtrak Products to new distribution channels upon advanced written authorization by Amtrak.

ATTACHMENT 2 – TERRITORY

Amtrak seeks to target the following markets with Company:

Railkey's territory is not limited.

ATTACHMENT 3 – AMTRAK PRODUCTS

Company will be an authorized, non-exclusive seller of the following Amtrak Products in the Territory:

Railkey may offer all Amtrak Products, including Point-to-Point tickets and rail passes.

Railkey may offer customers all Amtrak passenger types, such as:

- Adult
- Student Advantage
- AAA Adult
- ISIC
- Senior (62+)
- Child
- Military Adult
- AAA Child
- NARP
- Military Child
- Veterans Advantage
- Infant

ATTACHMENT 4 – AMTRAK WEB SERVICES INTERFACE SPECIFICATIONS

To interface with Amtrak Web Services, Company must satisfy the technical requirements on the attached document.

ATTACHMENT 5 – AMTRAK WEB SERVICES TERMS OF USE

Company must ensure that its System complies with the following terms of use:

1. Amtrak Web Services user, Railkey, will utilize standard Web Services Security as defined by Oasis in the WS Security 1.1 specification when required for a particular web service. Currently, Amtrak requires and is using SSL (client and server certificates) for transport layer security. Production certificates must be issued by a known signing authority. Both parties will work together to ensure that all information exchanged is safe and secure. Railkey must immediately implement, employ and support such other security features as requested by Amtrak.
2. Amtrak has the right to disable and/or suspend access to Amtrak Web Services to investigate any situations that may appear as possible security attacks or breaches and DOS (Denial of Service) attacks, provided that Amtrak will reasonably cooperate with Railkey with respect to such investigation and not unreasonably withhold or delay such access.
3. In the event Amtrak Web Services monitoring reveals workloads exceeding the agreed upon volumes, or in situations where optimal performance of the Amtrak computer system is being jeopardized and measures taken by Railkey to reduce the number of web service calls back to acceptable levels are not effective, Amtrak reserves the right to limit (throttle), disable and/or suspend access to Amtrak Web Services. Amtrak agrees to cooperate with Railkey in an effort to investigate alternate processing methods that return workload back within optimal performance limits.
4. In the event Amtrak Web Services monitoring reveals volumes exceeding the agreed upon transaction rates, Railkey will be notified and must promptly take measures to fallback any changes that have caused unacceptable impacts. Railkey must respond with corrective action within timeframes agreed to by Amtrak, in an effort to ensure workload returns to the acceptable benchmarks. Amtrak reserves the right to limit (throttle), disable and/or suspend access to Amtrak Web Services, in the interest of preserving Amtrak computer system optimal performance, while Railkey explores necessary alternatives. Any/all corrective measures, timeframe extensions, or service limitations/suspension adjustments must be mutually agreed upon, on a case by case basis, and must be signed-off by Amtrak.
5. Upon execution of the underlying Agreement, Amtrak and Railkey Contract Coordinators will promptly meet to review the web service(s) request/response data that will be used by Railkey from Amtrak. Railkey will register to use those web services by providing the information for connectivity to Amtrak Web Services Test and Production environments (refer to the Amtrak Web Services Registration Document).
6. Railkey must promptly conduct a regression test against new releases and versions of Amtrak Web Services against the Amtrak Web Services QA test environment within 30 calendar days of their release to that environment or a mutually-agreed upon date. Railkey must use the new release and version in production within 90 days of production release or a mutually-agreed upon date.
7. Railkey must provide a support contact, reachable 24/7, to assist with issues related to Railkey's activities and/or to notify Railkey of an Amtrak emergency or operating exception (e.g., needing to extend weekend maintenance window)
8. In the event that the new release or version of Amtrak Web Services requires a change to Railkey's processing code, Railkey may either perform such changes to enable Railkey to use the new release or version within the 90-day period or terminate the Agreement; this 90-day period is subject to extension in case Railkey has issues with changing their processing

- code. Extensions to the 90-day period will be mutually agreed on, on a case by case basis, but will not exceed more than an additional 60 days.
9. Railkey must conduct all testing against the test environment and not the production environment. Railkey shall send web services requests using a secure Internet connection. There will be no leased lines or VPN connections. Secured Internet connections will be used in development/QA test, QA staging and production. The Railkey application must be configurable to accommodate changes in the URL of the Amtrak web service. The URL of the web service should not be hard coded in the application.
 10. Railkey must pre-arrange all load-testing against Amtrak Web Services with Amtrak Application Testing group. Load testing will be allowed only in the web services staging environment.
 11. Railkey must inform Amtrak of their implementation schedule. Railkey must keep Amtrak informed of any business changes (i.e. adding corporate accounts, train schedules or extending features) that could drive an increase in transaction volumes, so that necessary preparations can be made to support the changes. In the event that there are changes to Railkey's business, whether considered a direct impact to Amtrak or non-impacting to Amtrak (i.e. changes made to address another carrier) Railkey will be required to conduct regression testing against Amtrak Web Services; testing is required for any/all enhancements made, and Railkey must pre-arrange such regression test efforts with the Amtrak Application Testing group.
 12. Railkey must adhere to guidelines provided by Amtrak in managing transaction workload volumes deemed acceptable by Amtrak. Using the Estimated Transaction Volumes and Estimated Growth figures from the Amtrak Web Services Registration document provided by Amtrak, Railkey agrees to actively manage transaction workload.
 13. Railkey agrees to work with Amtrak in a cooperative effort to address transaction workload concerns when transaction volumes exceed estimates from the Amtrak Web Services Registration document, or if the above benchmarks are not being met, or as determined by Amtrak.
 14. Railkey agrees to strictly restrict sales to the specific routes authorized by Amtrak. Amtrak has the right to disable and/or suspend access to Amtrak Web Services to investigate any situations where it is determined Railkey is operating outside of these specific authorized routes.
 15. Railkey shall recognize Amtrak's 24x7 production system availability, which excludes a bi-monthly maintenance service outage window on Sunday from 3:00 a.m. to 6:00 a.m. U.S. ET. Amtrak reserves the right to extend the maintenance service outage window. Amtrak will provide Railkey a three days' notice where possible.
 16. Railkey must adhere to Amtrak's hours of test system availability, normally during core business hours, Monday through Friday, 8:30 a.m. to 5 p.m. U.S. ET. Test systems are not available on Wednesday 8 p.m. to Thursday 8:30 a.m. Railkey may have access to test systems at other times; however, Amtrak staff cannot support them. With prior arrangement, Railkey may access a supported test system outside core business hours.

ATTACHMENT 6 – PAYMENT CARDS ACCEPTED

Visa

MasterCard

American Express

Discover Card (NOT including Discover Partners of JCB, China Union Pay, Diners Club International, BC Card (South Korean Card), Dina Card (Serbian Card)).

UATP (Universal Air Travel Plan)

Amtrak does NOT accept any PIN based PIN Debit Cards of any brand. However if a PIN debit card from one of the brands above can also function as a credit card (Signature Based) Amtrak can accept it.

ATTACHMENT 7 – COMPENSATION

Compensation Category	
(b)(4)	

(b)(4)

ATTACHMENT 8 – CONTACTS

Any notices, reports, or other information required under this Agreement, should be sent to the following addresses:

If to Amtrak:

Marketing:

(b)(6)

Contract and Program Representative:

(b)(6)

Technical Representative:

(b)(6)

If to Railkey:

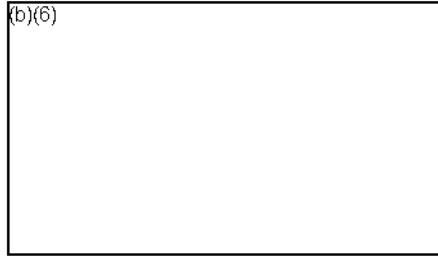
Marketing:

(b)(6)

Contract and Program Representative:

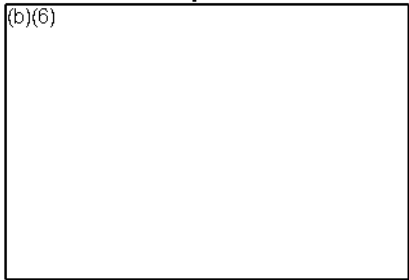
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(b)(6)

A large rectangular box with a black border, completely empty, representing redacted information.

Technical Representative:

(b)(6)

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ATTACHMENT 9 – REPORTS

Company shall provide Amtrak the following reports and information in the format specified below:

Railkey shall provide Amtrak with access to sales data generated by Railkey. Type of access and report distribution will be determined in subsequent discussions.

The following definitions apply to the type of reporting requested;

Static Reports: standard format indicates sales for a determined period of time:

- Top City Pair Report by country

Ad hoc: Amtrak agrees to give Railkey reasonable advance notice to produce any of the following ad hoc reports that may not be available as a static report.

- PNR
- City Pair
- Train
- Riders
- Class of Service
- Passenger Type
- Discount Codes
- Booking Date
- Payment Date

All reports should be capable of download to an application such as Excel. There should be an area for both international and Domestic Sales

ATTACHMENT 10 – DATA SECURITY

To keep the Confidential Information secure and confidential, Company shall:

1. Amtrak has the right to disable and/or suspend access to Amtrak Web Services to investigate any situations that may appear as possible DoS (Denial of Service) attacks.
2. Railkey must implement measures to ensure that Railkey 's applications/systems shall only allow access to those who are authorized to use the applications or systems.
3. Railkey must ensure that access to resources required for the development, design and operation of Railkey's processing code are based on authenticated Railkey identification.
4. Railkey must ensure that all data files, databases, etc. associated with Railkey.'s processing code, applications and systems are protected against unauthorized access.
5. Railkey must ensure that Railkey's applications, systems and processing code generate a security audit trail that contains information sufficient for investigation of loss or impropriety. Railkey must ensure that at a minimum, logs record all security relevant events, including the Railkey ID associated with the events. Railkey will ensure that Log events include information regarding (a) Invalid Railkey authentication attempts, (b) Logons and activities of privileged Railkey, e.g., System Administrators, (c) Unsuccessful data or transaction access attempts, (d) Successful accesses of security-critical resources (e.g., security logs, security commands), (e) Changes to security profiles, privileges or attributes, (f) Changes to access rights of resources and (g) Changes to the system security configuration
6. Railkey agrees to maintain and implement disaster recovery and avoidance procedures to ensure that Railkey's operation can be restored to normal operation in the event of the loss of data files, hardware or the processing facility itself. Railkey agrees that a disaster recovery plan and/or procedures will be developed, documented and maintained, outlining the steps required to restore Railkey's application/system in the event of a disaster. Railkey agrees that Railkey's disaster recovery plan and/or procedures will be tested at least annually and that results of disaster recovery tests will be available to Amtrak at Amtrak's request.
7. Railkey agrees to monitor security threat and attack trends and assess how they affect Railkey's applications and systems. Railkey agrees to patch all vulnerable versions of Railkey's software (including versions for multiple platforms) when vulnerabilities impacting Railkey's applications and systems are identified.
8. Railkey must provide a support contact, reachable 24/7, to assist with issues related to Railkey's activities and/or to notify Railkey of an Amtrak emergency or operating exception (e.g., needing to extend weekend maintenance window).

DISTRIBUTION SERVICES AGREEMENT
BETWEEN
NATIONAL RAILROAD PASSENGER CORPORATION
AND
ATRIIS

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ATRIIS DISTRIBUTION SERVICES AGREEMENT

This Distribution Services Agreement ("Agreement") is entered into as of the ___ day of July, 2017 ("Effective Date") between the National Railroad Passenger Corporation ("Amtrak"), a corporation organized under 49 U.S.C. § 24101 *et seq.* and the laws of the District of Columbia, with its principal office located at 60 Massachusetts Avenue, N.E., Washington, D.C. 20002, and Atriis Technologies Inc. ("Atriis"), a company with its principal office located at 4880 Lower Roswell Rd Ste 165-231, Marietta, GA, 30068-5611, USA.

I. Distribution Services

- 1.1 Atriis is in the business of providing travel booking distribution solutions. Atriis's travel booking distribution solutions enable its clients to (a) obtain travel information and book travel from their systems and/or (b) provide to clients' customers the ability to obtain travel information and book travel from the customers' reservation systems by connecting to the reservation systems of travel providers. Atriis' clients may include corporate travel offices, travel agents, tour operators, and reservation systems operators. Atriis' travel distribution solutions are referred to herein as "**Distribution Products**." Through these Distribution Products, Atriis will provide Atriis' clients and clients' customers the ability to research and book Amtrak products and services ("**Amtrak Products**").
- 1.2 Amtrak Products are listed in **Attachment 1 – Amtrak Products**. At its sole discretion, Amtrak may revise Attachment 1 to add or remove any Amtrak Product(s). Within fourteen (14) days of receipt of a revised Attachment 1, Atriis will modify its Distribution Products to reflect the changes in Attachment 1.
- 1.3 Atriis will cause Amtrak Product information to appear on its Distribution Products in a similar manner as the other transportation options. Users will be able to search Amtrak services using city names in addition to, or instead of city codes, as Amtrak city codes differ from airline city codes.
- 1.4 Atriis shall comply at all times with Amtrak's then current ticket booking procedures, which Amtrak will specify from time to time. Amtrak shall strive to provide Atriis with thirty (30) days advance notice of any change to the ticket booking procedures. Atriis shall securely submit to Amtrak for payment a valid credit card of a card type acceptable to Amtrak. A list of acceptable payment cards are set forth in **Attachment 2 – Payment Cards Accepted**. Amtrak reserves the right to revise Attachment 2 upon thirty (30) days prior written notice, except for certain circumstances that require immediate change as determined by Amtrak. If connectivity to Amtrak Web Services is through an **Unmanaged Access Channel** (see Section 2 below), Atriis must include a credit card CVV/CID number and a billing postal code for each payment transaction.

- 1.5 Atrii shall provide quality customer support, including, providing appropriate training and maintaining call center and sales staff at adequate levels and handling after-sales issues that may arise out of problems using or accessing its Distribution Products.

2. **Connectivity and System Requirements**

- 2.1 Atrii shall, at its own costs, develop and maintain a communication link ("Link") to transmit and receive information from Atrii's system ("Atrii System") to Amtrak's web-interface application ("Amtrak Web Services") of its ticket reservation and booking engine ("Arrow").
- 2.2 Atrii shall comply with the requirements set forth in **Attachment 3 - Amtrak Web Services Interface Specifications** and **Attachment 4 - Amtrak Web Services Terms of Use**. Amtrak reserves the right to revise Attachment 3 and Attachment 4 at any time by providing written notice to Atrii of such changes. Within ninety (90) days of receiving written notice of any changes, Atrii shall modify the Atrii System and/or Link as necessary to incorporate and reflect changes to Attachment 3 and/or Attachment 4. If a longer period is necessary, the parties shall use good faith efforts to agree upon the period for such modification. In the event of any inconsistencies between Attachment 3 - Amtrak Web Services Interface Specification and Attachment 1 - Amtrak Products regarding authorized Amtrak Products, Attachment 1 - Amtrak Products controls.
- 2.3 Connectivity to Arrow through Amtrak Web Services may be through (a) a **Managed Access Channel** or (b) an **Unmanaged Access Channel** with different security requirements. The **Managed Access Channel** is available to Atrii only if it has in place system administration controls that (a) limit access solely to Atrii's authorized travel managers and/or employees and (b) validates authorized users identity and access rights.
- 2.4 Amtrak reserves the right, in its sole discretion, to prohibit the distribution, sale or resale of any or all Amtrak Products to any Atrii customer, agent or subcontractor upon written notice to Atrii. Atrii shall modify the Atrii System as necessary to prohibit the offering of the specified Amtrak Product(s) to those Atrii customers, agents or subcontractors within five (5) days of receipt of such notice from Amtrak.
- 2.5 For the sole purpose of monitoring Atrii's compliance with this Agreement, Atrii shall provide Amtrak with access to those parts of the Atrii System and Link directly involved in the referral booking or direct booking and Amtrak shall not use such access for any other purpose. Atrii shall supply Amtrak with the necessary software required to access the Atrii System. Atrii shall provide such software components and documentation to Amtrak within a reasonable time after execution of this Agreement. Atrii shall offer System training to Amtrak as reasonably necessary to ensure that Amtrak has at least one trained Amtrak

employee on the Atriis System operation. Atriis shall provide Amtrak with Atriis System technical support through access to Atriis' technical support desk.

3. Advertising, Marketing and Promotion

- 3.1 Atriis shall advertise, market and/or promote the sale of Amtrak Products pursuant to an annual marketing plan developed by Atriis and approved by Amtrak, which approval shall not be unreasonably withheld or delayed.
- 3.2 All advertising and promotional materials for Amtrak Products must contain disclaimers, limitations of liability notices, proprietary notices (e.g., trademark and copyright notices) and such other notices as required by Amtrak.
- 3.3 Subject to the terms and conditions herein, Amtrak grants Atriis a royalty-free, nontransferable, nonsublicensable, nonexclusive license to use the trademarks and service marks set forth in Attachment 5 -- Licensed Marks (collectively, "Licensed Marks") solely for the purpose of performing Atriis' obligations and/or exercising its rights hereunder or as otherwise permitted by the Amtrak in writing. Atriis understands that it will not acquire any ownership interest in the Licensed Marks or copyrighted works.
- 3.4 Subject to the terms and conditions herein, Amtrak further grants to Atriis a limited right to use, copy, distribute, and/or publicly display the copyrighted materials provided by Amtrak to Atriis solely to fulfill Atriis' obligations hereunder or as otherwise provided by the Licensor in writing.
- 3.5 Atriis agrees to comply with all of Amtrak's instructions regarding the use of the Licensed Marks and copyrighted works, including but not limited to the Amtrak Brand Guidelines. Atriis shall not use the Licensed Marks or copyrighted works in any manner that does, threatens to or will likely diminish their value or harm the reputation of Amtrak.
- 3.6 Amtrak will have the right of prior review and approve any and all content, artwork, copy, advertising, promotional materials, direct mail, inserts, press releases, newsletters, web pages or other communications or any other publicity published, distributed or displayed by Atriis or at its direction or authorization which uses the Licensed Marks, name(s) or trade names or which otherwise refers to Amtrak Products or this Agreement (collectively referred to as "Advertising Materials"), which approval shall not be unreasonably withheld or delayed.
- 3.7 Atriis shall submit Advertising Materials for approval to Amtrak's marketing representative listed in Attachment 6 - Contacts.
- 3.8 Notwithstanding Amtrak's written approval of any Advertising Materials, upon Amtrak's written request, Atriis shall use commercially reasonable efforts to cease publishing, distributing and/or displaying any Advertising Material immediately or within such other period as requested by Amtrak.

4. **Contract and Program Administration**

Each party shall designate a Contract and Program Representative who shall handle all issues related to this Agreement. Each party shall designate a Technical Representative who shall address technical issues related to this Agreement. Such contacts are listed in Attachment 6 - Contacts.

5. **Term and Termination**

5.1 This Agreement shall commence on the Effective Date and continue until for a period of two (2) years ("Initial Term") unless terminated earlier pursuant to the terms herein. Thereafter, either party may request to renew this Agreement for a successive twelve (12) month period (each, a "Renewal Term" and, together with the Initial Term, "Term") upon the other party's approval by providing notice to the other party at least thirty (30) days prior to the end of the Term.

5.2 Either party may terminate this Agreement upon written notice to the other party if the other party breaches this Agreement and fails to cure such breach within thirty (30) days of receiving written notice of the breach. In the event of an incurable breach, the non-breaching party may terminate this Agreement upon ten (10) days written notice to the breaching party.

5.3 Notwithstanding anything to the contrary in this Section 5 - Term and Termination, either party may terminate this Agreement immediately upon written notice, without providing opportunity to cure, upon the occurrence of any of the following:

- a) the filing of any petition by or against the other party under any chapter of the Bankruptcy Code, or other insolvency or bankruptcy act enacted by a duly constituted legislative body of government;
- b) a dissolution and winding up of the other party's business;
- c) an occurrence of a general assignment for the benefit of creditors of the other party; or
- d) an appointment of a receiver or trustee to take possession of all or substantially all of the assets of the other party.

5.4 Notwithstanding anything to the contrary in this Section 5 - Term and Termination, Amtrak may terminate this Agreement immediately upon written notice, without providing Atriiis the opportunity to cure, if:

- (a) Atriiis, its directors, officers, employees, or agents commits any fraudulent act or makes any fraudulent representation under this Agreement;

- (b) Atrii is terminated by its credit card processor or merchant bank;
- (c) Company sells all or a substantial part of its assets;
- (d) Atrii is subject to a data breach or fails to comply with or to validate compliance with the PCI-DSS or any other requirements of the PCI SSC or payment card networks (as defined in **Section 8 – Security of Confidential Information**); or
- (e) Amtrak is prohibited by its credit card processor or merchant bank from using Atrii to perform any of the distribution services contemplated under this Agreement.

5.5 Notwithstanding anything to the contrary in this **Section 6 – Term and Termination**, either party may terminate this Agreement immediately upon written notice if there is any adverse publicity arising out of:

- (a) an alleged or actual fraudulent act or statement by the other party, or its directors, officers or employees; or
- (b) a misrepresentation by the other party, or its directors, officers or employees and the other party fails to remedy such adverse publicity within ten (10) days of written notice to thereof.

5.6 Notwithstanding anything to the contrary in this **Section 6 – Term and Termination**, Amtrak may terminate this Agreement immediately upon written notice if Atrii's risk rating falls within the "High" risk category as defined below and Atrii fails to cure such rating deficiency within ninety (90) days of Amtrak's written notice of the High-risk rating. The risk rating is calculated as set forth below:

(b)(4)

6. Reports

Atrii shall provide to Amtrak a list of agency demographic data on a monthly basis, in a format specified by Amtrak. Atrii shall provide such other information and reports as reasonably requested by Amtrak at any time in such manner as prescribed by Amtrak.

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7. Confidentiality

7.1 Each party (as the "Receiving Party") shall regard as confidential information communicated to it by the other party (as the "Disclosing Party") in connection with this Agreement that is designated as confidential or, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered confidential ("Confidential Information"). Confidential Information includes:

- (a) information provided by or on behalf of either party (as the "Disclosing Party") to the other party (as the "Receiving Party") in connection with this Agreement, including any information collected or used to process payments for the Amtrak Products, including, without limitation, credit or debit cards or other payment or credit or debit card account information collected from or relating to customers or prospective customers ("Payment Related Information");
- (b) information about the Disclosing Party or its affiliates, or their respective business or employees, that the Receiving Party obtains in connection with this Agreement, in each case including, without limitation:
 - 1) information concerning marketing plans, objectives and financial results;
 - 2) information regarding business systems, methods, processes, clients, financing data, programs and products;
 - 3) information unrelated to this Agreement obtained by the Receiving Party in connection with this Agreement, including, without limitation, by accessing or being present at the business location of the Disclosing Party;
 - 4) proprietary technical information, including trade secrets, source codes or other proprietary information of the Disclosing Party developed in connection with this Agreement; and
 - 5) any provision of this Agreement designated as confidential by either of the parties.
- (c) Without limiting the foregoing, Amtrak Confidential Information includes:
 - 1) information relating to Amtrak customers or prospective customers created or obtained in connection with this Agreement or otherwise obtained from Amtrak or directly from Amtrak's customers or prospective customers, including the Payment Related Information of its customers, agents, and contractors;

- 2) lists and data concerning Amtrak customers or prospective customers in the aggregate; and
 - 3) all information related to *Arrow* and the *Amtrak Web Services*.
- (d) Without limiting the foregoing, Atrii's Confidential Information includes all information regarding the Atrii System and Atrii's clients or clients' customers; provided, however any Amtrak PNR information shall not be deemed Atrii Confidential Information (except PNR information).
- 7.2 The Receiving Party shall maintain, dispose of and otherwise treat all Confidential Information of the Disclosing Party with the same degree of care as it accords its own Confidential Information, but in no event less than a reasonable degree of care.
- 7.3 The Receiving Party shall use and disclose Confidential Information only for the purpose of performing its obligations or enforcing its rights with respect to this Agreement or as otherwise expressly permitted by this Agreement, and shall not obtain, use or disclose Confidential Information for any other purpose. The Receiving Party shall, in accordance with the terms of this Agreement, limit access to Confidential Information to those employees, authorized agents, vendors, consultants, accountants, service providers and representatives who have a commercially reasonable need to access such Confidential Information in connection with this Agreement.
- 7.4 Upon the termination or expiration of this Agreement, the Receiving Party shall retain and destroy the other parties' Confidential Information in accordance with applicable law and the Receiving Party's records retention and destruction policies.
- 7.5 With respect to Amtrak Confidential Information, Atrii shall:
- (a) keep the Confidential Information confidential and secure in accordance with **Section 8 - Security of Confidential Information** of this Agreement and industry practices;
 - (b) treat all Payment Related Information in accordance with the requirements of the PCI DSS and other applicable requirements or standards promulgated by the PCI SSC, as further described in **Section 8 - Security of Confidential Information** of this Agreement;
 - (c) implement and maintain commercially reasonable physical, electronic, administrative and procedural security measures, including commercially reasonable authentication, access controls, virus protection and intrusion

detection practices and procedures in accordance with **Section 8 – Security of Confidential Information** of this Agreement; and

- (d) ensure that any person with access to the Confidential Information agrees in writing to follow the Confidentiality provisions of this Agreement (including but not limited to **Section 7 – Confidentiality** and **Section 8 – Security of Confidential Information**) and maintain the existence of this Agreement and the nature of their obligations hereunder strictly confidential. Atrii shall not provide any Amtrak customer or prospective customer Non-Public Personal Information (as defined herein) to any third party without Amtrak's express written approval. Furthermore, Atrii must make such sharing agreement in writing and ensure that the third party has security processes and procedures adequate to comply with its obligations both thereunder and under applicable laws. "Non-Public Personal Information" means (1) personally identifiable information and/or (2) any list, description, or other grouping of customers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information that is not publicly available.
- (e) Without limiting the foregoing, in the event of an actual or suspected information security breach of the Atrii System that resulted in or may have resulted in a breach of the security of the data of any Amtrak customer or prospective customer whose Non-Public Personal Information or Payment Related Information is or may have been acquired or accessed by an unauthorized person or for unauthorized purposes, Atrii shall (1) immediately notify Amtrak of such actual or suspected breach; (2) consult with Amtrak regarding the appropriate response to each actual or suspected breach, and comply with Amtrak's requests related thereto; (3) be responsible for complying with all applicable laws requiring notification to customers whose Non-Public Personal Information or Payment Related Information was or may have been compromised due to the actual or suspected security breach, including mailing notice, if required, to the Amtrak customers or prospective customers at Atrii's sole expense; (4) comply with such other requirements related to the investigation and remediation of the actual or suspected information security breach as Amtrak may request; and (5) obtain a new PCI-DSS certification from a security assessor approved by the payment card networks. In addition, Atrii shall provide affected customers with one (1) year of complimentary access to credit monitoring services, credit protection services, credit fraud alerts, or similar services. Atrii shall consult with and obtain approval from Amtrak regarding the content of any notice of a security breach to be provided to Amtrak customers or prospective customers and regarding credit monitoring and/or related services to be provided. In advance of mailing any such notice, and as between the parties, Amtrak, at its election, shall make the final determination of the content of any such notice.

7.6 The restrictions on disclosure of Confidential Information in this **Section 7 – Confidentiality** shall not apply to information that:

- (a) is already rightfully known to the Receiving Party, wholly apart from this Agreement as shown by the Receiving Party's written records, at the time it obtains Confidential Information from the Disclosing Party;
- (b) at the time of the disclosure is or becomes generally available to the public other than as a result of disclosure in breach of this Agreement or any other confidentiality obligations;
- (c) is lawfully received by the Receiving Party on a non-confidential basis from a third party authorized to disclose such information without restriction and without breach of this Agreement;
- (d) is contained in, or is capable of being discovered solely through examination of publicly available records or products;
- (e) is required to be disclosed by applicable law, regulation, valid court order, government agency order, for law enforcement purposes, or by a self-regulatory body, provided that (1) if possible, the Receiving Party shall promptly notify the Disclosing Party of any such requirement prior to disclosure to afford the Disclosing Party an opportunity to seek a protective order or other appropriate remedy to prevent or limit that disclosure; and (2) Confidential Information of the Disclosing Party must only be disclosed to the extent required; or
- (f) is developed by the Receiving Party without the use of any Confidential Information provided by the Disclosing Party under this Agreement, as demonstrated by the written records of the Receiving Party.

8. Security of Confidential Information

- 8.1 Atrii and Amtrak shall at all times maintain physical, electronic, administrative and procedural security measures sufficient to protect all Confidential Information from both internal and external threats and sufficient to comply with all applicable local, state and federal laws concerning the security of such data.
- 8.2 Atrii acknowledges that it and its employees, agents and subcontractors are responsible for complying with, and shall at all times comply with and ensure that the System and Link comply with, the Payment Card Industry Data Security Standard ("PCI-DSS"), any other applicable requirements or standards promulgated by the Payment Card Industry Security Standards Council (the "PCI SSC") and other information security requirements promulgated by the payment card networks (including those whose payment card products are identified on **Attachment 2 – Payment Cards Accepted** attached hereto). Atrii must, at all times during the term of this Agreement, protect the security and confidentiality of Payment Related Information and shall obtain, retain, and renew, as

appropriate, its certification of compliance with the PCI-DSS. Atrius shall provide Amtrak with a copy of its current PCI-DSS Attestation of Compliance letter and copies of related annual audit results upon the Effective Date of this Agreement and on each anniversary date thereof for the duration of this Agreement.

- 8.3 Atrius shall maintain an adequate information security policy and provide Amtrak with a copy of the current policy upon the Effective Date of this Agreement. During the term of this Agreement, Atrius shall provide Amtrak timely updates and revisions thereto.
- 8.4 Atrius shall maintain and enforce safety and physical security procedures with respect to its access and maintenance and disposal of Confidential Information that:
- (a) in the case of Payment Related Information, meets or exceeds PCI requirements for safety and physical security for Payment Related Information; and
 - (b) provides appropriate technical and organizational safeguards against accidental or unlawful destruction, loss, alteration or unauthorized disclosure of or access to the Confidential Information under this Agreement.

Without limiting the generality of the foregoing, Atrius shall take all commercially reasonable measures to secure and defend its location and equipment against "hackers" and others who may seek, without authorization, to access or modify its systems or the information found therein. Atrius shall regularly test its systems for potential areas where "hackers" and others could breach security, such testing to be conducted on at least a quarterly basis. Atrius agrees to advise Amtrak immediately by telephone and in writing via facsimile of any actual or suspected security breach that may have compromised any Confidential Information, or of any actual or suspected unauthorized misappropriation, disclosure, access to or use by any person of the Confidential Information or Payment Related Information, which may come to Atrius' attention. Atrius shall take all steps and employ its best and most diligent efforts to remedy such breach of security or unauthorized access in a timely manner and to deliver to Amtrak a root cause assessment and future, incident-mitigation plan with regard to any breach of security or unauthorized access affecting Confidential Information or Payment Related Information.

- 8.5 Atrius must store all Confidential Information in a physically and logically secure environment that protects it from unauthorized access, modification, theft, misuse and destruction. In addition to these general standards, Atrius shall maintain an appropriate level of physical security controls over its facility including, but not limited to, appropriate alarm systems, fire suppression, access controls (including off-hour controls) which may include visitor access procedures, security guard force, video surveillance, and staff egress searches. Atrius shall maintain an

adequate level of data security controls, including, but not limited to, those set forth in Attachment 7 – Data Security Controls. Amtrak may revise the data security controls at any time upon written notice to Atriiis, giving at least thirty (30) days advance notice when possible and/or practical.

- 8.6 Atriiis shall maintain and implement disaster recovery and avoidance procedures and backup procedures as it relates to Confidential Information. Atriiis shall provide Amtrak with an opportunity to review at Atriiis' premises its current disaster recovery and avoidance plan and backup procedures and all updates thereto upon reasonable notice at a mutually convenient time during business hours. Atriiis shall review and update, as necessary, its disaster recovery and avoidance plan and backup procedures based on the respective recovery priority of each business unit. If Atriiis performs any audit with regard to its disaster recovery and avoidance plan and backup procedures (e.g., ISO 9000), Atriiis shall make the results of that audit available to Amtrak's information security director for on-site review upon reasonable notice at a mutually convenient time during business hours. Amtrak may elect, at its option, to conduct onsite reviews of Atriiis' facilities for, among other things, assessing disaster recovery preparedness and backup procedures.

9. Records and Audit

- 9.1 Atriiis acknowledges and agrees that Amtrak's Office of Inspector General ("OIG") may inspect, copy and/or audit Atriiis' data and records (in hard copy and/or electronic format) related in to the Agreement, including without limitation, all data and records relating to: (a) support for any proposal, change order, or request for equitable adjustment submitted to Amtrak by Atriiis; (b) Agreement compliance and performance, including any work or deliverables in progress; (c) compliance with applicable provisions of Amtrak's federal grant, regulations and statutes; and (d) support for all direct and indirect costs or prices charged to Amtrak.
- 9.2 Atriiis agrees to maintain all such data and records throughout the term of the Agreement and until three (3) years after final payment under the Agreement, and agrees to cooperate with all audit activities.
- 9.3 In connection with audit and inspection activities, Amtrak OIG shall be afforded, upon request at a mutually convenient time during business hours; (a) access to Atriiis' facilities and to Agreement work or deliverables in progress; (b) the opportunity to interview Atriiis' employees concerning any matter relating to the Agreement; and (c) adequate and appropriate workspace.
- 9.4 Atriiis agrees to reimburse Amtrak, within sixty (60) calendar days after receipt of a written request, the full amount of any undisputed audit findings or questioned costs, unless otherwise agreed by Amtrak in the course of post-audit negotiations with Atriiis.

9.5 Atrius shall include the provisions of this clause in every subcontract or purchase order (b)(4) as well as a provision requiring all subcontractors to include these provisions in any lower tier subcontracts or purchase orders

(b)(4) Atrius shall be responsible for subcontractor or lower tier subcontractor's compliance with this clause.

9.6 Nothing in this Agreement shall be construed to limit the rights, obligations, authority, or responsibilities of Amtrak's Office of the Inspector General pursuant to the Inspector General Act of 1978, as amended, including the right to seek information by subpoena.

10. Notices

Each party must provide any notice, request, demand or other communication required or permitted hereunder in writing and in reference to this Agreement. The following constitutes proper notice: (a) personal delivery; (b) delivery by registered or certified mail, return receipt requested and acknowledged, postage prepaid; or (c) two (2) business days after deposit with a private industry express courier, with written confirmation of receipt. Each party agrees to send all notices to the addresses set forth in **Attachment 6 – Contacts**, which either party may change by providing proper notice to the party hereunder.

11. Indemnification and Limitation of Liability

11.1 Each party (as the "Indemnifying Party") agrees to defend and indemnify the other party (as the "Indemnified Party") and its officers, directors, employees, agents, servants, contractors, subcontractors, successors, assigns and subsidiaries and their respective successors, assigns and personal representatives (collectively "Indemnified Parties"), from and against any third party claims, losses, liabilities, fines, penalties, actions, damages, costs and expenses whatsoever (including costs of defense and attorneys' fees) (collectively "Claims"), which any of the Indemnified Parties may hereafter incur, have responsibility for or pay arising out of or related to:

- (a) any act or failure to act by the Indemnifying Party and/or its directors, officers, employees, agents, subcontractors, servants, or any other person acting for or on behalf of the Indemnifying Party;
- (b) the Indemnifying Party's breach of any term of this Agreement;
- (c) any actual or claimed infringement or misappropriation of third-party intellectual property right(s) by the Indemnifying Party; and/or
- (d) the Indemnifying Party's breach of any contract, promise or undertaking with or to any third party and related to this Agreement.

The Indemnified Parties shall promptly notify the Indemnifying Party in writing within a reasonable time after notice of any such Claim.

- 11.2 The Indemnifying Party shall have the discretion to settle any such Claim, provided that, if any settlement requires an obligation of any of the Indemnified Parties, then such settlement shall require the applicable Indemnified Party's prior written consent, which consent will not be unreasonably withheld, delayed or conditioned.
- 11.3 The Indemnifying Party shall keep the Indemnified Parties advised of the status of any such Claim and of its defense and/or negotiation efforts. The Indemnified Parties shall have the option to participate in such action at their own expense.
- 11.4 The existence of any insurance policy procured or maintained by Atriis or any limitation on the amount or type of damages, compensation or benefits payable by or for Atriis or any subcontractor shall not limit the indemnification obligations under this Section.
- 11.5 Except for each party's indemnification obligations herein, to the extent permitted by law, neither party or its affiliates, and their respective officers, agents and employees (collectively, its "representatives") shall be liable to the other party or any third party for any indirect, exemplary, incidental, or consequential damages, however caused, whether based in contract, tort (including negligence) or any other theory of liability, even if such party or its representatives have been advised of the possibility of such damages or even if any such loss or damages were reasonably foreseeable.

12. Injunctive Relief

Each party acknowledges that the breach of any provision of **Section 3 – Advertising, Marketing and Promotion** (excluding Section 3.1); **Section 7 – Confidentiality**; or **Section 8 – Security of Confidential Information** may cause irreparable injury to the other party, and agrees that the other party shall have the right to seek temporary, preliminary and permanent injunctive relief, without the necessity of proving actual damages or posting a bond, to prevent any such breach.

13. Representation and Warranties

- 13.1 Atriis represents and warrants that it shall perform its responsibilities under this Agreement with promptness and diligence and in a professional manner, in accordance with best practices and highest industry standards. Atriis shall use commercially reasonable efforts to ensure that Its Distribution Products does not contain or passes to Amtrak any malware, spyware or adware software code. Atriis and Amtrak shall each handle all customer inquiries and complaints that

each party is responsible for in a prompt, courteous and diligent manner. Atrii shall cooperate with Amtrak to deal appropriately with any customer complaint.

- 13.2 Each party represents and warrants that it knows of no circumstances that would materially impede its ability to perform under this Agreement and shall promptly notify the other party in writing if it acquires knowledge of any circumstances that would materially impede its ability to perform under this Agreement. Without limiting the foregoing, Atrii represents and warrants that it shall immediately notify Amtrak of: (a) any change in its ownership or control; and/or (b) its involvement in any actual or threatened major litigation.
- 13.3 Each party represents and warrants to the other that it has the requisite corporate power and authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement.
- 13.4 Each party represents and warrants that, it currently is and throughout the entire term of this Agreement shall be, in compliance with all applicable local, state, federal and foreign laws, rules and regulations.
- 13.5 Each party represents and warrants that it is not the subject of any litigation initiated by any credit card association or credit-card processor with respect to its acceptance of credit card payments on behalf of itself or any other merchant. Atrii represents and warrants that no agreements, injunctions, restrictions or otherwise exist which may prohibit it from performing its obligations under this Agreement either by statute, rule, regulation, agreement or otherwise.
- 13.6 Each party represents and warrants that its advertising, marketing and promotional materials, including Atrii websites, other web space that Atrii controls and the content and other information contained or referred to therein will not:
- (a) constitute libel, defamation, false or illegal advertising;
 - (b) constitute an invasion of privacy or a violation of the rights to publicity of any third party;
 - (c) infringe any patent, copyright or trademark;
 - (d) contain, link or refer to any offensive or indecent information of any kind;
 - (e) contain any information that could be deemed proprietary, except proprietary information owned by or licensed to Atrii for use therein or therewith (other than trade name(s), trademarks, service marks, or any comparable intellectual property rights); or

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- (f) suggest or state that Atriiis and Amtrak have any relationship as agents for one another, as partners, as joint venturers or similar relationship, except as expressly provided herein.

If Atriiis becomes aware of any claim, allegation or notification that the foregoing warranties have been breached, Atriiis shall promptly notify Amtrak.

- 13.7 Except as otherwise provided herein, each party makes no other warranties, either express or implied, under this Agreement and Amtrak hereby disclaims all implied warranties, including any warranties regarding fitness for a particular purpose, merchantability or noninfringement. Atriiis disclaims any warranty that the Atriiis System or Link will operate error-free or uninterrupted. Amtrak disclaims any warranty that Amtrak Web Services or Arrow will operate error-free or uninterrupted.

14. Insurance

- 14.1 Atriiis shall procure and maintain, at its own cost and expense, continuously during the term of this Agreement, and to the extent it carries any insurance on a "claims-made," "claims-reported," or "occurrences-reported" basis for three (3) years beyond the term of this Agreement, the types of insurance specified below:

- (a) Commercial General Liability Insurance. A policy issued to and covering liability imposed upon Atriiis arising out of Atriiis' premises or operations or the services to be performed and/or planned and those of any subcontractors or agents and all obligations assumed by Atriiis under the terms of this Agreement. The policy must include products/completed operations liability, independent contractors liability, contractual liability, personal injury liability and advertising liability coverages. The policy must name National Railroad Passenger Corporation as an additional insured with respect to Atriiis' premises, operations and services, and the policy shall contain a waiver of subrogation against National Railroad Passenger Corporation, its subsidiaries and their directors, officers, employees, and agents. Coverage under this policy, or policies, shall have a limit of liability of (b)(4)

(b)(4)

- (b) Cyber Privacy Insurance. A policy that shall include coverage for loss, disclosure and theft of data in any form; system failure; network security failure, including but not limited to, social engineering, phishing, ransomware, denial of service attacks and transmission of malicious code. Coverage shall include regulatory fines and penalties, the cost of notifying individuals of a security or data breach, the cost of credit monitoring services and any other causally-related crisis management expense for up to one (1) year. Coverage under the policy shall extend to actual or alleged acts, errors or omissions committed by Atriiis or its agents, subcontractors, independent contractors or employees and will include Dishonesty of Employees coverage. Additionally,

such policy shall cover consequential or vicarious liabilities and direct losses. This policy shall have the "Insured v. Insured" exclusion amended to allow an "Additional Insured" to bring a claim against the Named Insured. Such policy shall cover consequential or vicarious liabilities and direct losses for the wrongful acts or failures of Atrii. The "Insured v. Insured" exclusion under the policy shall be amended to allow an Additional Insured to bring a claim against the Named Insured.

Required Insurance:

(b)(4)

If Cyber Privacy Insurance is written on a claims-made basis, then in addition to the coverage requirements above: (1) the policy retroactive date coincides with or precedes Contractor's start of contract services (including subsequent policies purchased as renewals or replacements); (2) the policy will allow for the reporting of circumstances or incidents that might give rise to future claims; (3) Contractor will use its best efforts to maintain similar insurance under the same terms and conditions for at least two years following completion of the services under the contract; and (4) if insurance is terminated for any reason, Contractor agrees to purchase an extended reporting provision of at least one year to report claims arising from services performed in connection with the Contract.

- 14.2 Atrii shall submit to Amtrak a certificate of insurance giving evidence of the required coverages prior to the Effective Date of this Agreement. Atrii shall continue to submit certificates of insurance during the term of this Agreement for those policies to which Section 18 – Survival applies, as often as needed to reflect any material changes in, or renewal or replacement of, the required coverages.
- 14.3 Atrii shall procure all insurance from insurers which: (a) Amtrak reasonably deems acceptable; (b) have financial ratings of A VIII or better in the Best's Key Rating Guide, latest edition in effect as of the Effective Date of this Agreement, and subsequently in effect at the time of renewal of any policies required hereunder; and (c) agree to give Amtrak thirty (30) days advance written notice of cancellation, non-renewal, or material change in coverage.

15. Survival

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The following provisions shall survive expiration or termination of this Agreement: Section 3 – Advertising, Marketing and Promotion (excluding Section 3.1); Section 7 – Confidentiality; Section 8 – Security of Confidential Information; Section 9 – Records and Audit; Section 10 – Notices; Section 11 – Indemnification; Section 14 – Insurance; Section 15 – Survival; Section 22 – Governing Law, Jurisdiction and Venue; and any other provision reasonably understood to survive termination or expiration of this Agreement.

16. Assignment

Atriiis shall not assign, delegate or otherwise transfer this Agreement or any right or obligation hereunder (whether by express transfer, operation of law or otherwise) without the prior written consent of Amtrak. Notwithstanding the foregoing, Atriiis may delegate the performance of certain obligations to certain third party contractors, provided that Atriiis gives Amtrak thirty (30) days' written notice of the proposed delegation and Atriiis controls the delivery of such obligations to Amtrak and remains responsible to Amtrak for the delivery of such obligations. Any attempted or purported assignment or other transfer not complying with the foregoing will be null and void. Subject to the foregoing, this Agreement will inure to the benefit of and bind the successors and assigns of the parties.

17. Modifications

Except as otherwise expressly provided herein, any waiver, modification or amendment of any provision of this Agreement shall be effective only if in writing and signed by the authorized representatives of both parties.

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18. Headings

The various section headings exist for convenience of reference only and shall not affect the meaning or interpretation of this Agreement or any section thereof.

19. Severability

Subject to **Section 22 – Governing Law, Jurisdiction and Venue**, if any provision of this Agreement is determined to be invalid, void or unenforceable in any respect, such determination shall not affect, impair or invalidate any other provision hereof.

20. Construction

All parties drafted this Agreement and, in the event of a dispute, no party hereto may attempt to construe any provision against any other party by claiming that one particular party drafted it.

21. No Waiver

No course of dealing, course of performance or failure of either party strictly to enforce any term, right or condition of this Agreement constitutes a waiver of such term, right or condition. No waiver or breach of any provision of this Agreement constitutes a waiver of any subsequent breach of the same or any other provision.

22. Governing Law, Jurisdiction and Venue

Each party agrees to execute and interpret this Agreement in accordance with and subject to the internal laws of the District of Columbia, without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the District of Columbia. Each party agrees to commence any legal suit, action or proceeding arising out of or relating to this Agreement in the United States District Court for the District of Columbia, and each party irrevocably submits to the exclusive jurisdiction and venue of such court in such suit, action or proceeding.

23. Compliance with Laws

Each party, its directors, officers, employees, agents and subcontractors shall comply with all applicable local, state, federal and foreign laws, rules and regulations enacted by duly constituted governmental bodies. Atrix hereby agrees to notify Amtrak in writing within a reasonable time after receiving notice of any failure to or allegation of a failure to comply with the applicable laws. Atrix must defend, indemnify and hold harmless Amtrak from and against any loss, damage, expense or other harm or liability incurred or suffered by Amtrak due to any failure by Atrix, any of its directors, officers, employees, agents or subcontractors to comply with such laws, rules, or regulations.

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18. Headings

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Subject to Section 22 – Governing Law, Jurisdiction and Venue, if any provision of this Agreement is determined to be invalid, void or unenforceable in any respect, such determination shall not affect, impair or invalidate any other provision hereof.

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Each party agrees to execute and interpret this Agreement in accordance with and subject to the internal laws of the District of Columbia, without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the District of Columbia. Each party agrees to commence any legal suit, action or proceeding arising out of or relating to this Agreement in the United States District Court for the District of Columbia, and each party irrevocably submits to the exclusive jurisdiction and venue of such court in such suit, action or proceeding.

23. Compliance with Laws

Each party, its directors, officers, employees, agents and subcontractors shall comply with all applicable local, state, federal and foreign laws, rules and regulations enacted by duly constituted governmental bodies. Atrix hereby agrees to notify Amtrak in writing within a reasonable time after receiving notice of any failure to or allegation of a failure to comply with the applicable laws. Atrix must defend, indemnify and hold harmless Amtrak from and against any loss, damage, expense or other harm or liability incurred or suffered by Amtrak due to any failure by Atrix, any of its directors, officers, employees, agents or subcontractors to comply with such laws, rules, or regulations.

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24. Relationship of the Parties

It is understood and agreed that nothing contained in this Agreement shall be deemed or construed as creating a partnership, joint venture, agency or employment relationship between Amtrak and Atrii. Nothing contained herein or in any agreement between Atrii and any agent or subcontractor shall create (a) any contractual relationship between Amtrak and such agent or subcontractor or (b) any third-party beneficiary rights in any such agent or subcontractor. The terms agent, subcontractor and independent contractor as used throughout this Agreement do not include travel agents and tour operators.

25. Force Majeure

Neither party has any responsibility or liability for any delay or failure to perform to the extent due to unforeseen circumstances or causes beyond its reasonable control, including, without limitation, acts of God, earthquake, fire, flood, embargoes, labor disputes and strikes, riots, acts of terrorism, war, and acts of civil and military authorities, provided that such party gives the other party prompt written notice of its failure to perform and the reason therefore and employs its reasonable efforts to limit the resulting delay in performance. If either party fails to perform any of its obligations under this Agreement due to a Force Majeure condition, as defined in this Section, for sixty (60) successive days, the other party has the right to terminate this Agreement immediately upon written notice.

26. Entire Agreement

This Agreement, and any attachments and exhibits thereto, contain the entire understanding of the parties with respect to the subject matter of this Agreement and merges and supersedes all prior and contemporaneous agreements and understandings between the parties, whether oral or written, with respect to the subject matter of this Agreement. All attachments are incorporated by reference and made a part of this Agreement.

29. Facsimile Signatures Acceptable

This Agreement may be executed by facsimile in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute the same instrument.

SIGNATURE PAGE TO FOLLOW

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IN WITNESS WHEREOF, Amtrak and Atrius have each caused this Agreement to be signed and delivered by its duly authorized officer, all as of the date first set forth above.

**NATIONAL RAILROAD PASSENGER
CORPORATION**

ATRIUS LLC

(b)(6)



ATTACHMENT I - AMTRAK PRODUCTS

Train Name	Train Number
Acela	2100-2300
Capitol Limited	29, 30
Cardinal	50, 51
Crescent	19, 20
Downeaster	678-689
Lake Shore Limited	48, 49 447, 448, 449
Northeast Regional	66, 67, 71 82 - 88 93-99 110 - 198
Silver Service	97, 98 91, 92 89, 90
City of New Orleans	58, 59
Texas Eagle	21, 22 421, 422
California Zephyr	5, 6
Cascades	500-517
Coast Starlight	11, 14
Empire Builder	7, 8, 27, 28 807, 808
Southwest Chief	3, 4
Sunset Limited	1, 2
Capitol Corridor	518 - 553 720 - 751
Carollian / Piedmont	73 - 76 79, 80
Empire Service	230 - 288
Ethan Allen Express	290 - 296
Heartland Flyer	821, 822
Hiawatha	329 - 342

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Train Name	Train Number
Hoosier State	850, 851
Illinois Service	380 - 385 393, 393
Keystone	600 - 674
Lincoln Service	300 - 309
Missouri River Runner	311 - 316
Pacific Surfliner	562 - 599 761 - 796
Palmetto	89, 90
Pennsylvanian	42, 43
San Joaquin	701 - 718
Vermont	54 - 57
Wolverine	350 - 359
Blue Water	364 - 365
Pere Marquette	370 - 373

The Amtrak Product information shall include (a) passenger types fare categories - Adult, Senior (62+), Child, Infant, and Military Adult and (b) membership program fare discounts - AAA Adult and Child, NARP, and Veterans Advantage.

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ATTACHMENT 2 – PAYMENT CARDS ACCEPTED

Visa

MasterCard

American Express

Discover Card (NOT including Discover Partners of JCB, China Union Pay, Diners Club International, BC Card (South Korean Card), Dina Card (Serbian Card)).

UATP (Universal Air Travel Plan)

Amtrak does NOT accept any PIN based PIN Debit Cards of any brand. However If a PIN debit card from one of the brands above can also function as a credit card (Signature Based) Amtrak can accept it.

ATTACHMENT 3 – AMTRAK WEB SERVICES INTERFACE SPECIFICATIONS

To interface with Amtrak Web Services, Atritis must satisfy the technical requirements on the attached document.

ATTACHMENT 4 – AMTRAK WEB SERVICES TERMS OF USE

1. Amtrak Web Services user, Atriis, will utilize standard Web Services Security as defined by Oasis in the WS Security 1.1 specification when required for a particular web service. Currently, Amtrak requires and is using SSL (client and server certificates) for transport layer security. Production certificates must be issued by a known signing authority. Both parties will work together to ensure that all information exchanged is safe and secure. Atriis must immediately implement, employ and support such other security features as requested by Amtrak.
2. Amtrak has the right to disable and/or suspend access to Amtrak Web Services to investigate any situations that may appear as possible security attacks or breaches and DOS (Denial of Service) attacks, provided that Amtrak will reasonably cooperate with Atriis with respect to such investigation and not unreasonably withhold or delay such access.
3. In the event Amtrak Web Services monitoring reveals workloads exceeding the agreed upon volumes, or in situations where optimal performance of the Amtrak computer system is being jeopardized and measures taken by Atriis to reduce the number of web service calls back to acceptable levels are not effective, Amtrak reserves the right to limit (throttle), disable and/or suspend access to Amtrak Web Services. Amtrak agrees to cooperate with Atriis in an effort to investigate alternate processing methods that return workload back within optimal performance limits.
4. In the event Amtrak Web Services monitoring reveals volumes exceeding the agreed upon transaction rates, Atriis will be notified and must promptly take measures to fallback any changes that have caused unacceptable impacts. Atriis must respond with corrective action within timeframes agreed to by Amtrak, in an effort to ensure workload returns to the acceptable benchmarks. Amtrak reserves the right to limit (throttle), disable and/or suspend access to Amtrak Web Services, in the interest of preserving Amtrak computer system optimal performance, while Atriis explores necessary alternatives. Any/all corrective measures, timeframe extensions, or service limitations/suspension adjustments must be mutually agreed upon, on a case-by-case basis, and must be signed-off by Amtrak.
5. Upon execution of the underlying Agreement, Amtrak and Atriis Contract Coordinators will promptly meet to review the web service(s) request/response data that will be used by Atriis from Amtrak. Atriis will register to use those web services by providing the information for connectivity to Amtrak Web Services Test and Production environments (refer to the *Amtrak Web Services Registration Document*).
6. Atriis must promptly conduct a regression test against new releases and versions of Amtrak Web Services against the Amtrak Web Services QA test environment within 30 calendar days of their release to that environment or a mutually-agreed upon date. Atriis must use the new release and version in production within 90 days of production release or a mutually-agreed upon date.

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7. Atriiis must provide a support contact, reachable 24X7, to assist with issues related to Atriiis' activities and/or to notify Atriiis of an Amtrak emergency or operating exception (e.g., needing to extend weekend maintenance window).
8. In the event that the new release or version of Amtrak Web Services requires a change to Atriiis' processing code, Atriiis may either perform such changes to enable Atriiis to use the new release or version within the 90-day period or terminate the Agreement; this 90-day period is subject to extension in case Atriiis has issues with changing their processing code. Extensions to the 90-day period will be mutually agreed on, on a case-by-case basis, but will not exceed more than an additional 60 days.
9. Atriiis must conduct all testing against the test environment and not the production environment. Atriiis shall send web services requests using a secure Internet connection. There will be no leased lines or VPN connections. Secured Internet connections will be used in development/QA test, QA staging and production. The Atriiis application must be configurable to accommodate changes in the URL of the Amtrak web service. The URL of the web service should not be hard coded in the application.
10. Atriiis must pre-arrange all load-testing against Amtrak Web Services with Amtrak Application Testing group. Load testing will be allowed only in the web services staging environment.
11. Atriiis must inform Amtrak of their implementation schedule. Atriiis must keep Amtrak informed of any business changes (i.e. adding corporate accounts, train schedules or extending features) that could drive an increase in transaction volumes, so that necessary preparations can be made to support the changes. In the event that there are changes to Atriiis' business, whether considered a direct impact to Amtrak or non-impacting to Amtrak (i.e. changes made to address another carrier) Atriiis will be required to conduct regression testing against Amtrak Web Services; testing is required for any/all enhancements made, and Atriiis must pre-arrange such regression test efforts with the Amtrak Application Testing group.
12. Atriiis must adhere to guidelines provided by Amtrak in managing transaction workload volumes deemed acceptable by Amtrak. Using the Estimated Transaction Volumes and Estimated Growth figures from the Amtrak Web Services Registration document provided by Amtrak, Atriiis agrees to actively manage transaction workload.
13. Atriiis agrees to work with Amtrak in a cooperative effort to address transaction workload concerns when transaction volumes exceed estimates from the Amtrak Web Services Registration document, or if the above benchmarks are not being met, or as determined by Amtrak.
14. Atriiis agrees to strictly restrict sales to the specific routes authorized by Amtrak. Amtrak has the right to disable and/or suspend access to Amtrak Web Services to investigate any situations where it is determined Atriiis is operating outside of these specific authorized routes.

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15. Atriiis shall recognize Amtrak's 24x7 production system availability, which excludes a bi-monthly maintenance service outage window on Sunday from 3:00 a.m. to 6:00 a.m. U.S. ET. Amtrak reserves the right to extend the maintenance service outage window. Amtrak will provide Atriiis a three (3) days' advance notice when possible.
16. Atriiis must adhere to Amtrak's hours of test system availability, normally during core business hours, Monday through Friday, 8:30 a.m. to 5 p.m. U.S. ET. Test systems are not available on Wednesday 8 p.m. to Thursday 8:30 a.m. Atriiis may have access to test systems at other times; however, Amtrak staff cannot support them. With prior arrangement, Atriiis may access a supported test system outside core business hours.

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ATTACHMENT 5 – LICENSED MARKS



B2B-Program-Image
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ATTACHMENT 6- CONTACTS

Any notices, reports, or other information required under this Agreement, should be sent to the addresses set forth below. Either party can change the contact representatives upon ten (10) days prior written notice.

If to Amtrak:

Contract and Program Representative:

(b)(6)

Marketing Representative:

(b)(6)

Technical Representative:

(b)(6)

If to Atrius:

Contract, Marketing and Program Representative:

(b)(6)

AM

(b)(6)

Technical Representative:

(b)(6)

ATTACHMENT 7 - DATA SECURITY

1. Amtrak has the right to disable and/or suspend access to Amtrak Web Services to investigate any situations that may appear as possible DoS (Denial of Service) attacks.
2. Atriiis must implement measures to ensure that Atriiis' applications/systems shall only allow access to those who are authorized to use the applications or systems.
3. Atriiis must ensure that access to resources required for the development, design and operation of Atriiis' processing code is based on authenticated Atriiis identification.
4. Atriiis must ensure that all data files, databases, etc. associated with Atriiis' processing code, applications and systems are protected against unauthorized access.
5. Atriiis must ensure that Atriiis' applications, systems and processing code generate a security audit trail that contains information sufficient for investigation of loss or impropriety. Atriiis must ensure that at a minimum, logs record all security relevant events, including the Atriiis ID associated with the events. Atriiis will ensure that Log events include information regarding (a) Invalid Atriiis authentication attempts, (b) Logons and activities of privileged Atriiis, e.g., System Administrators, (c) Unsuccessful data or transaction access attempts, (d) Successful accesses of security-critical resources (e.g., security logs, security commands), (e) Changes to security profiles, privileges or attributes, (f) Changes to access rights of resources and (g) Changes to the system security configuration
6. Atriiis agrees to maintain and implement disaster recovery and avoidance procedures to ensure that Atriiis' operation can be restored to normal operation in the event of the loss of data files, hardware or the processing facility itself. Atriiis agrees that a disaster recovery plan and/or procedures will be developed, documented and maintained, outlining the steps required to restore Atriiis' application/system in the event of a disaster. Atriiis agrees that Atriiis' disaster recovery plan and/or procedures will be tested at least annually and that results of disaster recovery tests will be available to Amtrak at Amtrak's request.
7. Atriiis agrees to monitor security threat and attack trends and assess how they affect Atriiis' applications and systems. Atriiis agrees to patch all vulnerable versions of Atriiis' software (including versions for multiple platforms) when vulnerabilities impacting Atriiis' applications and systems are identified.
8. Atriiis must provide a support contact, reachable 24/7, to assist with issues related to Atriiis' activities and/or to notify Atriiis of an Amtrak emergency or operating exception (e.g., needing to extend weekend maintenance window).

AM

National Railroad Passenger Corporation
60 Massachusetts Avenue
N.E. Washington D.C. 20002
USA

25 November 2015

Dear Sirs,

Re: Travelport Agreement between National Railroad Passenger Corporation ("Amtrak") (1) and Travelport LP (2) and Travelport Global Distribution System BV (3) dated 17 June 2013 ("Agreement")

We would like to notify you of a change taking effect next year.

Change in Travelport corporate structure

The Travelport group has restructured its operational entities and effective as of 1 January 2016, the international operations of Travelport Global Distribution System B.V ("TGDSBV") will be transferred to Travelport International Operations Limited ("TIOL").

As part of this restructuring, your agreements with TGDSBV (the "Agreements") will be assigned from TGDSBV to TIOL, with TIOL agreeing to assume all of TGDSBV's responsibilities under the Agreement. The parties to these Agreements will not be changed in any other respect.

Therefore, as of 1 January 2016, all notices relating to your Agreement should be sent to:

Travelport International Operations Limited
Axis One, Axis Park,
10 Hurricane Way,
Langley Berkshire,
SL3 8AG, UK
Attention: Legal Department

Key points to note

1. TIOL is incorporated in the United Kingdom under the provisions of the Companies Act 2006.
2. TIOL is registered for VAT in the UK and the VAT number for the company is **221 6779 06**.
3. From 1 January 2016 and until otherwise notified, all payments under the Agreements should be made to TIOL. Bank account details for the company will be communicated to you in due course.
4. Invoicing changes that may be required as a result of the assignment will be communicated to you in due course.
5. VAT changes
 - i. Following the above change, those parties domiciled in the Netherlands will no longer be charged Dutch VAT for services provided by TIOL under the Agreements. From 1 January 2016, services will be subject to 0% UK VAT (under the European

Travelport Global Distribution System B.V.
Registered office address: Taurusavenue 33A - 2132 LS Hoofddorp - Nederland
Postal address: P.O. Box 3064 - 2130 KB Hoofddorp
telefoon + 31 (0)23 5675333
fax +31 (0)23 5675332

Handelsregister K.V.K. Amsterdam Nr. 34074914 • BTWnr. NL 0092 351 52 B01
Bankrelatie: Bank of America Amsterdam – Rekeningnummer 26.65.25.547

Council Directive 2008/8/EC, Article 44) and those parties will be obliged to self-account for Dutch VAT due on the services under the Reverse Charge Procedure.

- ii. Following the above change, those parties domiciled in the UK will be charged UK VAT for services provided by TIOL under the Agreements at the standard rate.

If you have any questions or concerns regarding this matter, please contact your Travelport account representative.

Yours sincerely

(b)(6)



Amendment No. 1

This Amendment No. 1 (the "Amendment") to the Sabre Rail Associate Distribution and Services Agreement dated December 10, 2015 (the "Agreement"), and as subsequently amended, is entered into by and between National Railroad Passenger Corporation ("Associate") and Sabre GLOB Inc. f/k/a Sabre Inc. ("Sabre") (collectively, the "Parties").

For good and valuable consideration, the Parties agree as follows:

1. This Amendment is effective as of December 11, 2018 (the "2018 Effective Date").
2. The Agreement is amended as of the 2018 Effective Date as follows:
 - 2.1 Section 9 of the Principal Agreement shall be amended and replaced with the following:

The term of the Principal Agreement is amended to provide that: (i) the Principal Agreement remains in effect for a period of one (1) year from the 2018 Effective Date (the "**Extended Term**"). This Agreement continues in effect after the Extended Term until terminated by either party, upon at least ninety (90) days prior written notice to the other party unless terminated earlier in accordance herewith.
3. **Counterparts.** This Amendment may be executed in counterparts by the Parties, each of which are deemed to be an original, but all counterparts shall together constitute one and the same document. Signatures may be exchanged by facsimile or email. Each Party is bound by its own facsimile or electronic or scanned signature and accepts the facsimile or electronic or scanned signature of the other Party.
4. **Governing Law.** This Amendment is governed by and construed in accordance with laws of the United States and the District of Columbia without regard to its conflict of laws rules. Each party hereby consents to the non-exclusive jurisdiction of the courts of the District of Columbia and the United States District Court for the District of Columbia in any dispute arising out of this Amendment. The United Nations Convention on the International Sales of Goods is specifically excluded from this Amendment.
5. **Entire Agreement.** This Amendment contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, oral and written, between the parties with respect to the subject matter hereof. Except for the terms in this Amendment, all other terms and conditions of the Agreement and all rights and liabilities accruing before the 2018 Effective Date shall remain unaffected. To the extent that there is any inconsistency between the terms and conditions of this Amendment and the terms and conditions of the Agreement, the terms and conditions of this Amendment will prevail.
6. **Construction.** The Parties acknowledge that this Amendment and all the terms and conditions contained herein have been fully reviewed and negotiated by the Parties. The Parties agree that any principle of construction or rule of law that provides that, in the event of any inconsistency or ambiguity, an agreement shall be construed against the drafter of the agreement shall have no application to the terms and conditions of this Agreement.
7. **Confidentiality.** The terms and conditions of this Amendment will be held strictly confidential, and neither Party will disclose the same to any Person, except its directors, officers, employees, auditors, lawyers and agents, provided that a Party will be liable for any failure of any such Person to hold the terms of this Amendment strictly confidential, unless, and except to the extent, a Party is required to disclose the terms and conditions of this Amendment by lawful demand or subpoena from a court or a governmental agency, or applicable laws or regulations. In such an event, each Party agrees to notify the other as soon as possible so as to provide the other party reasonable time, under the circumstances, to object to, or seek to limit, the disclosure of the information. The obligations of a party under this paragraph do not apply to information that is or becomes publicly available other than as a result of a disclosure by that Party in breach of this Amendment.

National Railroad Passenger Corporation

Sabre GBLB Inc.

(b)(6)



GLOBAL SALES AND SERVICES AGREEMENT
BETWEEN
NATIONAL RAILROAD PASSENGER CORPORATION
AND
SILVERRAIL TECHNOLOGIES, INC.

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GLOBAL SALES AND SERVICES AGREEMENT

This Global Sales and Services Agreement ("Agreement") is entered into as of the 1st of April, 2014 ("Effective Date") by and between the National Railroad Passenger Corporation, a corporation organized under 49 U.S.C. § 24101 *et seq.* and the laws of the District of Columbia, with its principal office located at 60 Massachusetts Avenue, N.E., Washington, D.C. 20002 ("Amtrak"), and SilverRail Technologies, Inc., a Delaware Company organized under the laws of Delaware, with its principal office located at 300 Trade Center, Suite 5500, Woburn, MA 01801 ("Company" Delaware).

1. Background

- 1.1 Amtrak, which provides nationwide passenger rail services in the United States, seeks to increase its sales in certain markets ("Territory").
- 1.2 The Company's SilverCore system provides corporate and leisure partners with the ability to integrate passenger rail into third party reservations systems, as well as its own customer facing interfaces. The SilverAgent platform, used by travel retailers, is for journey planning offering agents and bookers access to domestic and international rail content and reservations, online and offline.
- 1.3 Company and Amtrak desire to use Company's market knowledge and resources to market and sell select Amtrak products and services ("Amtrak Products") in the Territory.

2. Company Services and Connectivity to Amtrak Web Services

- 2.1 Company shall provide the services ("Company Services") set forth in **Attachment 1 – Company Services** in accordance with all requirements and time frames contained therein. The markets that Amtrak seeks to target with Company are set forth in **Attachment 2 – Territory**. Amtrak reserves the right, in its sole discretion, to modify **Attachment 2 – Territory** at any time to (a) add any market in which Company conducts its business or (b) remove any market by providing written notice of the changes to Company. Company shall modify its interface as necessary to incorporate and reflect changes to **Attachment 2 – Territory** within ninety (90) days of receiving written notice of such changes. If a longer time period is necessitated to modify the interface, the parties shall use good faith efforts to agree upon the time period for such modification.
- 2.2 Company will be an authorized, non-exclusive seller of the Amtrak Products listed in **Attachment 3 – Amtrak Products** in the Territory. Amtrak reserves the right, in its sole discretion, to revise **Attachment 3 – Amtrak Products** at any time to add or remove any Amtrak Product(s) by providing written notice of the changes to Company. Company shall modify its interface as necessary to incorporate and reflect changes to **Attachment 3 – Amtrak Products** within ninety (90) days of receiving written notice of such changes. If a longer time period is necessitated to modify the interface, the parties shall use good faith efforts to agree upon the time period for such modification.

- 2.3 In order for Company's reservation system (the "System") to connect to Amtrak's ticket reservation and booking engine, *Arrow*, and *Arrow's* web-interface application, *Amtrak Web Services*, Company must develop a connection to the System. Company shall develop and support the connection at its own cost and expense.
- 2.4 Company shall, at no cost to Amtrak, develop, implement, support and maintain the System, which will connect to *Arrow* and *Amtrak Web Services*. Amtrak shall provide reasonable assistance and cooperation, at Amtrak's sole discretion, to Company in the development, implementation, support and maintenance of the System, as well as in the on-going connectivity of the System to Amtrak Web Services. The technical requirements for interfacing with Amtrak Web Services are set forth in **Attachment 4 – Amtrak Web Services Interface Specification**. Amtrak reserves the right to revise **Attachment 4 – Amtrak Web Services Interface Specification** at any time by providing written notice to Company of such changes. . Company shall modify its interface as necessary to incorporate and reflect changes to **Attachment 4 – Amtrak Web Services Interface Specification** within ninety (90) days of receiving written notice of such changes. If a longer time period is necessitated to modify the interface, the parties shall use good faith efforts to agree upon the time period for such modification. In the event of any inconsistencies between **Attachment 4 – Amtrak Web Services Interface Specification** and **Attachment 3 – Amtrak Products** regarding authorized Amtrak Products, **Attachment 3 – Amtrak Products** controls.
- 2.5 During the term of this Agreement, Company shall ensure that the System complies with Amtrak Web Services Terms of Use, set forth in **Attachment 5 – Amtrak Web Services Terms of Use**. Amtrak reserves the right to revise **Attachment 5 – Amtrak Web Services Terms of Use** at any time by providing written notice to Company of such changes. . Company shall modify its interface as necessary to incorporate and reflect changes to **Attachment 5 – Amtrak Web Services Terms of Use** within ninety (90) days of receiving written notice of such changes. If a longer time period is necessitated to modify the interface, the parties shall use good faith efforts to agree upon the time period for such modification.
- 2.6 Company agrees to immediately notify its agents and subcontractors of any changes made by Amtrak pursuant to this Section and to modify the System as necessary to incorporate and reflect the changes made to the relevant attachment within ninety (90) days of receiving written notice of such changes, except for certain circumstances that would reasonable require immediate change as determined by Amtrak. If a longer time period is necessitated to modify the interface, the parties shall use good faith efforts to agree upon the time period for such modification. Company shall comply at all times with Amtrak's then current ticket booking procedures, which Amtrak will specify from time to time. Amtrak shall strive to provide Company with thirty (30) days advance notice of any change to the ticket booking procedures.
- 2.7 Amtrak reserves the right, in its sole discretion, to prohibit the distribution, sale or resale of any or all Amtrak Products to any Company customer, agent or subcontractor upon reasonable written notice to Company. Company shall



modify the System as necessary to prohibit the offering of the specified Amtrak Product(s) to those Company customers, agents or subcontractors within five (5) days of receipt of such notice from Amtrak.

- 2.8 Company shall authorize Amtrak to access the System for the sole purpose of monitoring and ensuring compliance with this Agreement. For avoidance of doubt, Amtrak will not have access to customer information of customers who are not Amtrak customers. Only Amtrak employees and contractors may access the System. Amtrak may not access the System to print tickets and will not be allocated ticket stock. Company may revoke Amtrak's access to the System upon termination of the Agreement or upon any default by Amtrak.
- a) Company shall supply Amtrak with the necessary software required to access the System. Company shall provide such software components and documentation to Amtrak within a reasonable time after execution of this Amendment.
 - b) Company shall offer System training to Amtrak as reasonably necessary to ensure that Amtrak has at least one trained Amtrak employee operating the System.
 - c) Company shall provide Amtrak with System technical support through access to Company's technical support desk.

3. Payment and After Sales for Amtrak Products

- 3.1 At the time of booking a reservation for an Amtrak product sold pursuant to this Agreement, Company shall securely submit to Amtrak for payment a valid credit card which must be included in Amtrak's list of acceptable credit cards as per **Attachment 6 - Payment Cards Accepted**. Amtrak may revise **Attachment 6 – Payment Cards Accepted** upon thirty (30) days written notice, except for certain circumstances that require immediate change as determined by Amtrak. The parties may agree by amendment to this Agreement to have payment made "on account" by which Amtrak shall invoice Company on a monthly basis for bookings made during the previous month and Company shall pay the invoice amount as specified by Amtrak.
- 3.2 Company shall provide adequate communication to ensure that its customers will have access to appropriate customer support including, without limitation, providing its employees, agents and subcontractors appropriate training and maintaining call center and sales staff at adequate levels. Company will be responsible for all Amtrak-related after sales customer service issues arising from its obligations to the customer, including but not limited to customer complaints, ticket changes or refunds, as appropriate.

4. Company Compensation

Amtrak shall initially compensate Company as set forth in **Attachment 7 – Company Compensation**.



5. Advertising, Marketing and Promotion

- 5.1 Company shall jointly work with Amtrak on an annual marketing plan to promote the Amtrak booking process on the SilverRail website. The marketing plan will include promoting Amtrak at trade shows and SilverRail Field Marketing staff to Corporate accounts.
- 5.2 All advertising and promotional materials must contain disclaimers, limitations of liability notices, proprietary notices (e.g., trademark and copyright notices) and such other notices as required by Amtrak.
- 5.3 To satisfactorily perform the duties and obligations set forth in this Agreement, Company may need to use certain service marks, trademarks, logos and trade names (collectively, "Marks") and copyrighted works owned by or licensed to Amtrak. Company agrees and acknowledges that its use of these Marks and copyrighted works exists pursuant to a royalty-free, nontransferable, nonexclusive license or sub-license. Company understands that it will not acquire any ownership interest in Amtrak's Marks or copyrighted works or have the right to use such Marks or copyrighted works other than for the sole purpose of performing its duties and obligations to Amtrak under this Agreement.
- 5.4 Company agrees to comply with all of Amtrak's instructions regarding the use of Marks and copyrighted works, including but not limited to the Amtrak Brand Guidelines. Company shall not use Amtrak's Marks or copyrighted works in any manner that does, threatens to or will likely diminish their value or harm the reputation of Amtrak.
- 5.5 Prior to publication, Amtrak will have the right to review and approve any and all content, artwork, copy, advertising, promotional materials, direct mail, inserts, press releases, newsletters, web pages or other communications or any other publicity published, distributed or displayed by Company or at its direction or authorization which uses Amtrak's Marks, name(s) or trade names or which otherwise refers to Amtrak Products or this Agreement (collectively referred to as "Advertising Materials"). Amtrak shall provide notice of its approval or rejection within a reasonable time frame of receipt of a request for its review.
- 5.6 Company shall submit Advertising Materials to Amtrak's representative listed in **Attachment 8 - Contacts**, which may be changed at any time upon written notice, at least thirty (30) days in advance for Amtrak's written approval.
- 5.7 Notwithstanding Amtrak's written approval of any Advertising Materials, upon Amtrak's written request, Company shall employ commercially reasonable efforts to cease publishing, distributing and/or displaying any Advertising Material immediately or within such other period as requested by Amtrak.

6. Contract and Program Administration

Each party shall designate a Contract and Program Representative who shall handle all issues related to this Agreement. Each party shall designate a Technical Representative who shall address technical issues related to this Agreement. Current contacts will be



listed in **Attachment 8 - Contacts**. Each party may change such representatives upon written notice to the other party.

7. Term and Termination

- 7.1 This Agreement shall commence on the Effective Date and continue until three (3) years ("Initial Term") unless terminated earlier pursuant to the terms herein; thereafter, either party may request to renew this Agreement for a successive twelve (12) month period (each, a "Renewal Term" and, together with the Initial Term, "Term") upon the other party's approval by providing notice to the other party within thirty (30) days prior to the end of the Term.
- 7.2 Either party may terminate this Agreement upon written notice to the other party if the other party materially breaches this Agreement and fails to cure such breach within thirty (30) days of receiving written notice of the breach, or such other time period if mutually agreed upon by the parties. In the event of an incurable breach the other party may terminate this Agreement upon ten (10) days written notice to the breaching party.
- 7.3 Notwithstanding anything to the contrary in this **Section 7 – Term and Termination**, either party may terminate this Agreement immediately upon written notice, without providing opportunity to cure, upon the occurrence of any of the following:
- a) the filing of any petition by or against the other party under any chapter of the Bankruptcy Code, or other insolvency or bankruptcy act enacted by a duly constituted legislative body of government;
 - b) a dissolution and winding up of the other party's business;
 - c) an occurrence of a general assignment for the benefit of creditors of the other party; or
 - d) an appointment of a receiver or trustee to take possession of all or substantially all of the assets of the other party.
- 7.4 Notwithstanding anything to the contrary in this **Section 7 – Term and Termination**, Amtrak may terminate this Agreement immediately upon written notice, without providing Company the opportunity to cure, if:
- a) Company, its directors, officers, employees, or agents commits any fraudulent act or makes any fraudulent representation under this Agreement;
 - b) Company is terminated by its credit card processor or merchant bank (except under the circumstances where termination is not due to any fault of Company);

(b)(4)

a company that would require for the existing operational relationship to be materially changed

- d) Company is subject to a data breach and/or PCI-DSS violation as defined in **Section 11 – Security of Confidential Information**.

7.5 Notwithstanding anything to the contrary in this **Section 7 – Term and Termination**, Amtrak may terminate this Agreement immediately upon written notice if there is any adverse publicity arising out of:

- a) an alleged or actual fraudulent act or statement by Company, its directors, officers or key employees; or
- b) a misrepresentation by Company, its directors, officers or employees and Company fails to remedy such adverse publicity to the satisfaction of Amtrak within ten (10) days of Amtrak's written notice to Company.

7.6 Notwithstanding anything to the contrary in this **Section 7 – Term and Termination**, Amtrak may terminate this Agreement immediately upon written notice if Company's risk rating falls within the "High" risk category as defined below and Company fails to cure such rating deficiency within ninety (90) days of Amtrak's written notice of the High-risk rating. The risk rating is calculated as set forth below:

(b)(4)

8. Reports

- 8.1 Company shall provide to Amtrak the reports and information, in such format specified in **Attachment 9 – Reports**.
- 8.2 Company shall provide such other information and reports as reasonably requested by Amtrak at any time in such manner as prescribed by Amtrak.

9. Letters of Credit

If payment is made "on account" as specified in Section 3.1 – Payment and After Sales for Amtrak Products above, Company shall, at its own expense, deliver to Amtrak an irrevocable letter of credit ("Letter of Credit") for the benefit of Amtrak as security for Company's proper performance under and compliance with this Agreement. This procedure will be detailed in a mutually agreed upon addendum to this Agreement.

10. Confidentiality

- 10.1 For purposes of this Agreement, "Confidential Information" means any of the following:

- a) information provided by or on behalf of either party (as the "Disclosing Party") to the other party (as the "Receiving Party") in connection with this Agreement, including any information collected or used to process payments for the Amtrak Products, including, without limitation, credit or debit cards or other payment or credit or debit card account information collected from or relating to customers or prospective customers ("Payment Related Information") belonging to a party to this Agreement and including information provided prior to the date hereof or the Effective Date;
 - b) information about the Disclosing Party or its affiliates, or their respective business or employees, that the Receiving Party obtains in connection with this Agreement, in each case including, without limitation:
 - i. information concerning marketing plans, objectives and financial results;
 - ii. information regarding business systems, methods, processes, clients, financing data, programs and products;
 - iii. information unrelated to this Agreement obtained by the Receiving Party in connection with this Agreement, including, without limitation, by accessing or being present at the business location of the Disclosing Party;
 - iv. proprietary technical information, including trade secrets, source codes or other proprietary information of the Disclosing Party developed in connection with this Agreement; and
 - v. the terms and conditions of this Agreement.
 - c) Without limiting the foregoing, Amtrak Confidential Information includes:
 - i. information relating to Amtrak customers or prospective customers created or obtained in connection with this Agreement or otherwise obtained from Amtrak or directly from Amtrak's customers or prospective customers, including the Payment Related Information of its customers, agents, and contractors,
 - ii. lists and data concerning Amtrak customers or prospective customers in the aggregate, and
 - iii. all information related to *Arrow* and the *Amtrak Web Services*.
 - d) Without limiting the foregoing, Company Confidential Information includes the System, all information regarding Company's customers, including the Payment Related Information of its customers, agents and subcontractors and Company's financial statements.
- 10.2 The Receiving Party shall maintain, dispose of and otherwise treat all Confidential Information of the Disclosing Party with the same degree of care as



it accords its own Confidential Information, but in no event less than a reasonable degree of care.

- 10.3 The Receiving Party shall use and disclose Confidential Information only for the purpose of performing its obligations or enforcing its rights with respect to this Agreement or as otherwise expressly permitted by this Agreement, and shall not obtain, use or disclose Confidential Information for any other purpose. The Receiving Party shall, in accordance with the terms of this Agreement, limit access to Confidential Information to those employees, authorized agents, vendors, consultants, accountants, service providers who have a commercially reasonable need to access such Confidential Information in connection with this Agreement.
- 10.4 The Receiving Party agrees that any use or disclosure of Confidential Information other than that specifically permitted under this Agreement will cause immediate and irreparable harm to the Disclosing Party for which money damages might not constitute an adequate remedy. As a result, the Receiving Party agrees to the appropriateness of injunctive relief in addition to any other remedies the Disclosing Party may have under applicable laws.
- 10.5 Upon the termination or expiration of this Agreement, the Receiving Party shall comply with the Disclosing Party's instructions regarding the disposition of the Confidential Information, which may include return to the Disclosing Party of any and/or all of the Confidential Information (including any electronic or paper copies, reproductions, extracts or summaries thereof). The Receiving Party may retain one archived copy of such material, subject to the terms of this Agreement, which the Receiving Party may use solely for regulatory purposes and not for any other purpose. The Receiving Party shall certify such compliance in writing, including a certification that the Receiving Party has not kept any copies of Confidential Information except as necessary for regulatory purposes.
- 10.6 With respect to Amtrak Confidential Information, Company shall:
- a) keep the Confidential Information confidential and secure in accordance with **Section 11 – Security of Confidential Information** of this Agreement and industry practices;
 - b) treat all Payment Related Information in accordance with the requirements of the Payment Card Industry (PCI) Security Standards;
 - c) implement and maintain commercially reasonable physical, electronic, administrative and procedural security measures, including commercially reasonable authentication, access controls, virus protection and intrusion detection practices and procedures in accordance with **Section 11 – Security of Confidential Information** of this Agreement; and
 - d) ensure that any person with access to the Confidential Information agrees in writing to follow the Confidentiality provisions of this Agreement (including but not limited to **Section 10 – Confidentiality** and **Section 11 – Security of Confidential Information**) and maintain the existence of this Agreement and the nature of their obligations hereunder strictly confidential. Company shall



not provide any Amtrak customer or prospective customer non-public personal information (as defined herein) to any third party without Amtrak's express written approval. Furthermore, Company must make such sharing agreement in writing and ensure that the third party has security processes and procedures adequate to comply with its obligations both thereunder and under applicable laws. "Non-public personal information" means (i) personally identifiable information, and (ii) any list, description, or other grouping of customers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information that is not publicly available.

- e) Without limiting the foregoing, in the event of an information security breach by Company resulting in a suspected or actual breach of the security of the data of any Amtrak customer or prospective customer whose nonpublic personal information or Payment Related Information is or is reasonably believed to have been acquired by an unauthorized person or for unauthorized purposes, Company shall (a) consult with Amtrak regarding the appropriate response to each actual or suspected breach, (b) be responsible for complying with all applicable laws requiring notification to customers whose nonpublic personal information or Payment Related Information may be compromised or reasonably believed to be comprised due to a security breach, including mailing notice, if required, to the Amtrak customers or prospective customers at Company's sole expense and (c) obtain a new PCI-DSS certification. In addition, Company shall provide affected customers with one (1) year of complimentary access to credit monitoring services, credit protection services, credit fraud alerts, or similar services. Company shall consult with Amtrak regarding the content of any such notice and the service to be provided. In advance of mailing the notice, and as between the parties, Amtrak, at its election, shall make the final determination of the content of any such notice.

10.7 The restrictions on disclosure of Confidential Information in this **Section 10 – Confidentiality** shall not apply to information that:

- a) is already rightfully known to the Receiving Party, wholly apart from this Agreement as shown by the Receiving Party's written records, at the time it obtains Confidential Information from the Disclosing Party;
- b) at the time of the disclosure is or becomes generally available to the public other than as a result of disclosure in breach of this Agreement or any other confidentiality obligations;
- c) is lawfully received by the Receiving Party on a non-confidential basis from a third party authorized to disclose such information without restriction and without breach of this Agreement;
- d) is contained in, or is capable of being discovered solely through examination of publicly available records or products;
- e) is required to be disclosed by applicable law, regulation, valid court order, government agency order, for law enforcement purposes, or by a self-



regulatory body, provided that (i) if possible, the Receiving Party shall promptly notify the Disclosing Party of any such requirement prior to disclosure to afford the Disclosing Party an opportunity to seek a protective order or other appropriate remedy to prevent or limit that disclosure, and (ii) Confidential Information of the Disclosing Party must only be disclosed to the extent required; or

- f) is developed by the Receiving Party without the use of any proprietary or non-public information provided by the Disclosing Party under this Agreement, as demonstrated by the written records of the Receiving Party.

11. Security of Confidential Information

- 11.1 Company shall at all times maintain physical, electronic, administrative and procedural security measures sufficient to protect all Confidential Information from both internal and external threats and sufficient to comply with all applicable local, state and federal laws and all applicable credit card association rules and regulations concerning the security of such data.
- 11.2 Company, its employees, agents and subcontractors shall at all times comply with the Payment Card Industry Data Security Standard (PCI-DSS) required by the credit card associations. Company must, at all times during the term of this Agreement, obtain, retain, and renew, as appropriate, its certification of compliance with the PCI-DSS. Company shall provide Amtrak with a copy of its current PCI-DSS certification and annual audits upon the Effective Date of this Agreement and on each anniversary date thereof for the duration of this Agreement.
- 11.3 Company shall maintain an adequate information security policy and provide Amtrak with a copy of the current policy upon the Effective Date of this Agreement. During the term of this Agreement, Company shall provide Amtrak timely updates and revisions thereto.
- 11.4 Company shall maintain and enforce safety and physical security procedures with respect to its access and maintenance and disposal of Confidential Information that:
 - a) meets or exceeds industry standards for the territories listed in **Attachment 2 - Territory**;
 - b) in the case of Payment Related Information, meets or exceeds PCI requirements for safety and physical security; and
 - c) provides appropriate technical and organizational safeguards against accidental or unlawful destruction, loss, alteration or unauthorized disclosure of or access to the Confidential Information under this Agreement.

Without limiting the generality of the foregoing, Company shall take all commercially reasonable measures to secure and defend its location and equipment against "hackers" and others who may seek, without authorization, to access or modify its systems or the information found therein. Company shall



regularly test its systems for potential areas where "hackers" and others could breach security, such testing to be conducted on at least a quarterly basis. Company agrees to advise Amtrak immediately by telephone and in writing via facsimile of any suspected security breach that may have compromised any Confidential Information, or of any suspected unauthorized misappropriation, disclosure or use by any person of the Confidential Information or Payment Related Information, which may come to Company's attention. Company shall take all steps and employ its best and most diligent efforts to remedy such breach of security or unauthorized access in a timely manner and to deliver to Amtrak a root cause assessment and future, incident-mitigation plan with regard to any breach of security or unauthorized access affecting Confidential Information or Payment Related Information.

- 11.5 Company must store all Confidential Information in a physically and logically secure environment that protects it from unauthorized access, modification, theft, misuse and destruction. In addition to these general standards, Company shall maintain an adequate level of physical security controls over its facility including, but not limited to, appropriate alarm systems, fire suppression, access controls (including off-hour controls) which may include visitor access procedures, security guard force, video surveillance, and staff egress searches. Company shall maintain an adequate level of data security controls, including, but not limited to, those set forth in **Attachment 10 – Data Security Controls**. Amtrak may revise the data security controls at any time upon written notice to Company, giving at least thirty (30) days advance notice when possible and/or practical.
- 11.6 Company shall maintain and implement disaster recovery and avoidance procedures and backup procedures as it relates to Confidential Information. During the term of this Agreement, Company shall provide Amtrak with an opportunity to review at Company's premises its current disaster recovery and avoidance plan and backup procedures and all updates thereto. Company shall review and update, as necessary, its disaster recovery and avoidance plan and backup procedures based on the respective recovery priority of each business unit. If Company performs any audit with regard to its disaster recovery and avoidance plan and backup procedures (e.g., ISO 9000), Company shall make the results of that audit available to Amtrak's information security director for on-site review. Amtrak may elect, at its option, to conduct onsite reviews of Company's facilities for, among other things, assessing disaster recovery preparedness and backup procedures.

12. Records and Audit

- 12.1 Except to the extent prohibited by law, Company acknowledges and agrees that Amtrak's Office of Inspector General (OIG) may inspect, copy and/or audit Company's data and records (in hard copy and/or electronic format) related in any way to the Agreement, including without limitation, all data and records relating to:

(a) support for any proposal, change order, or request for equitable adjustment submitted to Amtrak by Company;

(b) Agreement compliance and performance, including any work or deliverables in progress;

(c) compliance with applicable provisions of Amtrak's federal grant, regulations and statutes; and

(d) support for all direct and indirect costs or prices charged to Amtrak.

12.2 Except to the extent prohibited by law, Company agrees to maintain all such data and records throughout the term of the Agreement and until three (3) years after final payment under the Agreement, and agrees to cooperate with all audit activities.

12.3 In connection with audit and inspection activities, Amtrak OIG shall be afforded, upon request, (a) access to Company's facilities and to Agreement work or deliverables in progress, (b) the opportunity to interview Company's employees concerning any matter relating to the Agreement, and (c) adequate and appropriate workspace.

12.4 Company agrees to reimburse Amtrak, within sixty (60) calendar days after receipt of a written request, the full amount of any undisputed audit findings or questioned costs, unless otherwise agreed by Amtrak in the course of post-audit negotiations with Company.

12.5 Company shall include the provisions of this clause in every subcontract or purchase order ^{(b)(4)} as well as a provision requiring all subcontractors to include these provisions in any lower tier subcontracts or purchase orders ^{(b)(4)} Company shall be responsible for subcontractor or lower tier subcontractor's compliance with this clause.

12.6 Nothing in this Agreement shall be construed to limit the rights, obligations, authority, or responsibilities of Amtrak's Office of the Inspector General pursuant to the Inspector General Act of 1978, as amended, including the right to seek information by subpoena.

13. Notices

Each party must provide any notice, request, demand or other communication required or permitted hereunder in writing and in reference to this Agreement. The following constitutes proper notice:

a) personal delivery;

b) delivery by registered or certified mail, return receipt requested and acknowledged, postage prepaid; or

c) two (2) business days after deposit with a private industry express courier, with written confirmation of receipt.



Each party agrees to send all notices to the addresses set forth in **Attachment 8 – Contacts**, which either party may change by providing proper notice to the party hereunder.

14. Indemnification

14.1 Company (as the "Indemnifying Party") agrees to defend, indemnify and hold harmless Amtrak (as the "Indemnified Party") and its officers, directors, employees, agents, servants, contractors, subcontractors, successors, assigns and subsidiaries and their respective successors, assigns and personal representatives (collectively "Indemnified Parties"), from and against any claims, losses, liabilities, fines, penalties, actions, damages, costs and expenses whatsoever (including costs of defense and attorneys' fees) (collectively "Claims"), which any of the Indemnified Parties may hereafter incur, have responsibility for or pay arising out of or related to:

- a) any act or failure to act by the Indemnifying Party and/or its directors, officers, employees, agents, subcontractors, servants, or any other person acting for or on behalf of the Indemnifying Party;
- b) the Indemnifying Party's breach of any term of this Agreement;
- c) any actual or claimed infringement or misappropriation of third-party intellectual property right(s) by the Indemnifying Party;
- d) the Indemnifying Party's breach of any contract, promise or undertaking with or to any third party and related to this Agreement.

Amtrak shall notify Company in writing within a reasonable time after notice of any such Claim.

14.2 Company shall have the sole control over the defense and/or settlement of any such Claim; provided, that if any settlement requires a non-monetary obligation of any Indemnified Party, then such settlement shall require the applicable Indemnified Party's prior written consent, which consent shall not be unreasonably withheld.

14.3 Company shall have the sole control over the defense and/or settlement of any such Claim; provided, that if any settlement requires a non-monetary obligation of any of the Indemnified Party, then such settlement shall require the applicable Indemnified Party's prior written consent, which consent will not be unreasonably withheld.

14.4 Consistent with and in addition to **Section 14.1**, Company accepts sole liability for any failure of Company or any of Company's officers, directors, employees, agents, servants, subcontractors, or any other person acting for or on behalf of Company to maintain the confidentiality of Payment Related Information and/or Non-public personal information. Company shall defend, indemnify and hold harmless Amtrak against any and all Claims brought against Amtrak related to Payment Related Information, including those resulting from the action or inaction of Company or any of its directors, officers, employees, agents,



servants, subcontractors, or any other person acting for or on behalf of Company.

- 14.5 The existence of any insurance policy procured or maintained by Company or any limitation on the amount or type of damages, compensation or benefits payable by or for Company or any subcontractor shall not limit the indemnification obligations under this Section.

15. Injunctive Relief

Each party acknowledges that the breach of any provision of **Section 5 – Advertising, Marketing and Promotion** (excluding Section 5.1); **Section 10 – Confidentiality**; or **Section 11 – Security of Confidential Information** may cause irreparable injury to the other party, and agrees that the other party shall have the right to seek temporary, preliminary and permanent injunctive relief, without the necessity of proving actual damages or posting a bond, to prevent any such breach.

16. Performance Standards and Ability to Perform

- 16.1 Company represents and warrants that it shall perform its responsibilities under this Agreement with promptness and diligence and in a professional manner.
- 16.2 Company shall handle all customer inquiries and complaints in a prompt, courteous and diligent manner. Company shall cooperate with Amtrak to deal appropriately with any customer complaint.
- 16.3 Each party represents and warrants that it knows of no circumstances that would materially impede its ability to perform under this Agreement and shall promptly notify the other party in writing if it acquires knowledge of any circumstances that would materially impede its ability to perform under this Agreement. Without limiting the foregoing, Company represents and warrants that it shall immediately notify Amtrak of:
- a) any change in its ownership or control; and/or
 - b) its involvement in any actual or threatened major litigation.
- 16.4 Neither party will be liable for any malfunction of System, Arrow, or Amtrak Web Services due to any incompatibility with either party's systems or due to either party's failure to adhere to the guidelines and system parameters under which System, Arrow, or Amtrak Web Services is installed.
- 16.5 EXCEPT AS OTHERWISE PROVIDED HEREIN, AMTRAK MAKES NO OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, UNDER THIS AGREEMENT AND AMTRAK HEREBY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES REGARDING FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OR NONINFRINGEMENT.
- 16.6 EXCEPT FOR EACH PARTY'S INDEMNIFICATION OBLIGATIONS HEREIN AND/OR BREACH OF **SECTION 10 - CONFIDENTIALITY** OR **SECTION 11 - SECURITY OF CONFIDENTIAL INFORMATION**, TO THE EXTENT

PERMITTED BY LAW, NEITHER PARTY OR ITS AFFILIATES, AND THEIR RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY, ITS "REPRESENTATIVES") SHALL BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, HOWEVER CAUSED, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER THEORY OF LIABILITY, EVEN IF SUCH PARTY OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR EVEN IF ANY SUCH LOSS OR DAMAGES WERE REASONABLY FORESEEABLE.

17. Certain Representations and Warranties

- 17.1 Each party represents and warrants to the other that it has the requisite corporate power and authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement.
- 17.2 Each party represents and warrants that the execution, delivery and performance of this Agreement has been duly authorized and the requisite corporate action on the part of such party for the consummation of the transactions contemplated by this Agreement have occurred.
- 17.3 Company represents and warrants that, it currently is and throughout the entire term of this Agreement shall be, in compliance with all applicable local, state, federal and foreign laws, rules and regulations.
- 17.4 Company represents and warrants that, it currently is and throughout the entire term of this Agreement shall be, in compliance with the then current automated clearinghouse and bankcard association guidelines, rules, regulations and procedures applicable to its payment processing and other services, including, without limitation, the provisions of the Federal Reserve Board's regulations E and Z, the operating rules and operating guidelines of the National Automated Clearing House Association and the rules, regulations and procedures of all credit card associations and companies.
- 17.5 Company represents and warrants that it is not the subject of any litigation initiated by any credit card association or credit card processor with respect to its acceptance of credit card payments on behalf of itself or any other merchant. Company represents and warrants that no agreements, injunctions, restrictions or otherwise exist which may prohibit it from performing its obligations under this Agreement either by statute, rule, regulation, agreement or otherwise.
- 17.6 Company represents and warrants that its advertising, marketing and promotional materials, including Company websites, other web space that Company controls and the content and other information contained or referred to therein will not:
- a) constitute libel, defamation, false or illegal advertising;
 - b) constitute an invasion of privacy or a violation of the rights to publicity of any third party;
 - c) infringe any patent, copyright or trademark;



