

**AGREEMENT**

**by and between**

**KEOLIS RAIL SERVICES VIRGINIA, LLC**

**and**

**UNITED TRANSPORTATION UNION**

**Dated: June 7, 2013**

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# AGREEMENT

by and between

KEOLIS RAIL SERVICES VIRGINIA, LLC

and

UNITED TRANSPORTATION UNION

## PREAMBLE

Keolis Rail Services Virginia, LLC ("Company") has agreed to assume certain responsibilities for the operation and maintenance of the Virginia Railway Express service ("VRE") for the Northern Virginia and the Potomac and Rappahannock Transportation Commissions. The Company started these responsibilities on June 26, 2010.

The right and ability of the Company to provide the VRE service is governed by an Operations and Maintenance Agreement (the "VRE Agreement") under which Company will perform the service until July 1, 2015; VRE has the right to extend the contract for two additional 5 year terms. The VRE Agreement requires several employment policies, including but not limited to:

- The VRE Agreement requires that all Company employees be able to read, write and understand the English language.
- The VRE Agreement requires that all crew members wear a standard, seasonal uniform and maintain a professional appearance.
- The VRE Agreement requires all Company employees to be fully knowledgeable of and comply with all Norfolk Southern, CSXT and Amtrak Operating rules, and to satisfy their qualifications, training and testing requirements, as modified from time to time, in addition to satisfying any VRE and Company requirements.

- The VRE Agreement requires all Company employees to conduct themselves in a professional manner and to comply with the KRSV/VRE Service Instructions, its System Safety Program Plan, its System Security Plan and all other VRE policies and directions.
- Most of the VRE operation is conducted on tracks that are owned by other railroads, not VRE. The Manassas line is owned by Norfolk Southern Railway Company and the Fredericksburg line is owned by CSX Transportation Company. Union Station and its yard tracks are owned by Amtrak. VRE is allowed to use these tracks under trackage rights agreements with these host railroads. Under those agreements, employees operating VRE service must qualify under and comply with the host railroad's operating and safety rules. All Company train operating employees are required to qualify under and comply with the rules and instructions of CSXT, NS, and Amtrak.

The Company and the United Transportation Union (the "Organization") previously entered into an agreement on July 1, 2010 regarding the subject matter hereof, and the parties wish to enter into this Amended and Restated Agreement (this "Agreement") to supersede the previous agreement.

## **NOW THEREFORE IT IS AGREED:**

### **1.0 Representation:**

The Company has voluntarily recognized the Organization as the collective bargaining representative under the Railway Labor Act of the craft or class of conductors, assistant conductors and ACE Employees (as defined in Section 22) and the Company will not withdraw its voluntary recognition of the Organization at the end of any status quo period under that Act.

- 1.1 The Organization:** The Organization shall have the exclusive right to represent all Passenger Conductors, Assistant Passenger Conductors and ACE Employees in company-level grievance, claim and disciplinary proceedings.



**2.0 Scope:** This Agreement will apply to the work or service of transporting passengers performed exclusively by the employees specified herein and governs the rates of pay, hours of service and working conditions of all employees, as defined in this Rule, engaged in the performance of work exclusively accruing to passenger train service employees on main lines, or branch lines or within yard facilities.

**3.0 Definitions:**

**3.1 Employee:** The words "employee" or "employees" as used in this Agreement refer to all train service operating craft personnel. Train service operating craft personnel will be classified as Passenger Conductor, Assistant Passenger Conductor or ACE.

**3.2 Duly Accredited Representative:** "Duly accredited representative" means a member of the Local Committee of Adjustment of the United Transportation Union having jurisdiction or a member of the United Transportation Union designated by the General Chairman.

**3.3 Local Chairman:** "Local Chairman" means the Chairman of a regularly constituted Local Committee of Adjustment of the United Transportation Union having jurisdiction.

**3.4 General Chairman:** "General Chairman" means the Chairman of the regularly constituted General Committee of Adjustment of the United Transportation Union.

**3.5 Crew Base:** "Crew Base" means the territory encompassed within a radius of 30 miles measured from a principal station or facility as agreed to in good faith between the Company and Organization.

**3.6 Compensated Service:** "Compensated service" means service performed by the employee in actual performance of their duties as a marked up train service employee. Compensated Service shall not include initial training, vacation, paid holidays, layover pay, paid or unpaid leaves of absences, or any other compensation not directly involved with performing revenue service.

- 4.0 Wages:** Subject to the layover provisions set forth in this Rule, employees will be paid for each tour of duty at the straight time rate for the first eight hours between the time they are required to report for duty until they are released on completion of service, and at one and one-half the straight time rate for all time in excess of eight hours. The straight time rate of pay for Conductors, effective July 1, 2010, is \$31.64 per hour. The straight time rate of pay for Assistant Conductors, effective July 1, 2010, is \$27.16 per hour.

The straight time rate of pay for ACE employees, effective with the date of this Agreement is \$38.27 per hour.

Wages will be paid semimonthly by direct deposit.

- 4.1 Guarantee:** Employees working a regular assignment or the extra board are guaranteed a minimum of eight hours at the straight time rate for their class of service for each tour of duty. Employees assigned to an extra board who are available for service during an entire weekly period and who do not layoff, miss a call or otherwise fail to perform the required service, will be guaranteed 40 hours at the straight time rate for the position they are protecting each week (Monday through Sunday). Employees assigned to an extra board that mark-off with the approval of a supervisor because of a verified illness or a personal emergency will have their extra board guarantee reduced by one-fifth for each day absent.
- 4.2 Layover:** Employees released from duty for four hours or more at the layover point will be compensated at one half the straight time rate of their assignment for all time released. Released time is not considered time worked for determining straight time for the purposes of computing overtime. Layover points will be determined by the Company.

Employees returning to a layover location because of operational requirements (tracks blocked, weather, cancelled trains) will not be compensated for the first twelve hours of the additional layover. Employees will go back on duty and be paid the straight time rate

after the expiration of the twelve hours. The Company will provide, or reimburse employees for reasonable expenses for meals consumed during this additional layover.

- 4.3 Rate Increases:** The Company will increase the wage rates as follows:

July 1, 2011 (Prior Increase)	1.5%
July 1, 2013	2.5%
January 1, 2014	2.5%
January 1, 2015	2.5%

- 4.4 Performance Incentive Payments:** The parties recognize that VRE or the Company may elect in its discretion to make bonuses or other performance incentive payments available to train service employees (e.g., for on-time or safety performance), and nothing in this Agreement limits or precludes VRE or the Company from granting or suspending such payments to employees as a class.

- 4.5 Certification Pay:** Effective July 1, 2013 employees providing services that require a federal certification will receive \$5.00 per day they work compensated service. Extra Board employees will receive certification pay on the days actually worked. Effective June 30, 2015 Certification pay will escalate to \$10.00 per employee per day worked.

- 4.6 Signing Bonus:** Effective with the execution of this agreement, employees will receive a onetime signing bonus as follows;

Employees hired in calendar year 2010	\$1000.00
Employees hired in calendar year 2011	\$1000.00
Employees hired in calendar year 2012	\$500.00
Employees hired in calendar year 2013 and after	\$0.00

Signing bonus will be paid by the Company to the employee within 14 days of execution of this agreement.

**5.0 Fringe Benefits:** Company will provide the following fringe benefits. Full details of each benefit plan are set forth in the respective plan documents and are available on request from the Company.

**5.1 Health Insurance:** The Company will establish a group health insurance plan(s) for its eligible employees. Employees will be eligible to participate in the plan from the day they are hired by the Company. Subject to the provisions of the Rule, the Health insurance plans will include medical, prescription drug, dental, and vision benefits as described in Appendix A.

**5.1.1 Market Changes:** The plan design may be altered to reflect coverage mandates of the State of Virginia and/or changes in the benefit availability in the local market that are beyond the control of the Company.

**5.1.2 Employee Cost Sharing:** Employees will contribute \$180 per month toward the cost of insurance premiums for providing the health benefits set forth above. The employee's contribution will increase or decrease effective January 1 of each calendar year by the same percentage that the premium for such benefits changes from the premium effective January 1 of the previous year, provided however that the employee contribution will not exceed \$198.00 per month.

**5.1.3 Labor Management Oversight:** The Company and the Union will meet periodically and review the costs and structure of the plan(s) to attempt to control the cost and coverage of the plan(s) in the best interests of both the employees and the Company.

**5.2 Retirement, Disability and Unemployment Insurance:** The Company has been determined to be an "employer" subject to the Railroad Retirement Act and the Railroad Unemployment Insurance Act. The company will pay the employer portion of taxes for such benefits and will deduct the employee portion from employee's paychecks and

remit such amounts in accordance with those statutes and applicable regulations.

- 5.3 401(k):** The Company has established a non-contributory 401(k) tax-deferred retirement savings plan for its employees. Eligible employees may make voluntary contributions as provided in the Plan through payroll deduction. Employees are eligible for participation 60 days after their first date of compensated service unless their application has been disapproved. The Company will take appropriate actions to maintain the Plan but will not make financial contributions.
- 5.4 Special Accounts:** The Company will establish flexible spending accounts for dependent care and health care. The plans will be in accordance with IRS regulations and applicable laws.
- 6.0 Vacation:** Employees will be granted vacation based on their years of Company service in each calendar year in which the employee performs any compensated service (including extra board availability).

<u>Years of Continuous Service</u>	<u>Weeks of Vacation</u>
Less than 2 years	1 + 1 Day (6 days)
2 to 7 years	2 + 1 Day (11 days)
8 to 16 years	3 + 1 Day (16 days)
17 to 24 years	4 + 1 Day (21 days)
25 to 29 years	5 + 1 Day (26 days)
30 or more years	6 + 1 Day (31 days)

In computing the number of years of Company service, Company will recognize each full year of unbroken prior railroad service for employees hired before January 1, 2013. Employees must produce documentation of prior railroad service. Employees hired after January 1, 2013 will have their vacation entitlement based on their time with the Company only.

- 6.1 Vacation Pay:** An employee receiving compensation for weekly vacation shall be paid for the assigned earnings of the position they hold during the vacation but in no event, shall such payment be less than five (5) eight hour days at the employee's current pay rate. Extra

Board employees will receive eight (8) hours of pay for each day of vacation used.

An employee receiving compensation for a daily vacation shall be paid for the assigned daily earnings of the position they hold but in no event, shall such payment be less than an eight (8) hour day at the employee's current daily pay rate for their assignment. Extra Board employees will receive eight (8) hours of pay for each daily vacation day used.

Employees who exercise seniority to another assignment less than 60 days prior to taking a vacation will be paid the lesser of assigned earnings between the current assignment and the previous assignment.

- 6.2 Military Service:** Employees absent for work to perform military service will continue to accrue years of service for vacation qualification as provided in the federal Uniformed Services Employment and Reemployment Rights Act.
- 6.3 No Effect of Absence:** Time off on account of vacation will not be considered as time off on account of employee's own accord under any guarantee rules and will not be considered as breaking such guarantees. The absence of an employee on vacation with pay, as provided in this agreement, will not be considered as a vacancy, temporary, or otherwise, in applying the bulletin rules of schedule agreements.
- 6.4 Scheduling Vacation:** Employees must apply for vacation scheduling on or before December 1 for the following calendar year. Vacations shall be taken between January 1 and December 31; however, it is recognized that the exigencies of the service create practical difficulties in providing vacations in all instances. Due regard, consistent with requirements of the service, shall be given to the preference of the employees in their seniority order when granting vacations. Representatives of the Company and of the employees will

cooperate in arranging vacation periods, administering vacations and releasing employees when requirements of the service will permit.

Vacation weeks will be scheduled first and have priority over single day vacations. Weeks will be granted in seniority order by granting the senior employee their first week of choice (consecutive weeks will be granted as one) and then moving down the seniority list completing the first choice of each employee. (First choice does not guarantee the week will be available) The second, third, fourth etc. choices will follow the same process until all week requests have been granted.

After all week requests have been granted a similar process will occur for requests of single day vacations.

Employees will be paid for vacations on the scheduled pay date for the pay period that the vacation was taken. Vacation days cannot be carried from one calendar year to the next.

Vacation must be taken in increments of calendar weeks. Employees can take up to two weeks' (10 days) vacation in single days. This will be a matter to be monitored by the Local Chairman and the Company, which will oversee the awarding of vacations. Employees may elect to schedule any number of single day vacation days (up to 10) prior to the start of the calendar year as described above. Selected days will be granted in seniority order based on the needs of the service. Once assigned, these days will be protected preventing a senior employee from displacing a junior employee from that selected date. Remaining single day vacations can be requested no more than 30 days in advance of the requested date. Single day vacations will be granted 72 hours in advance of the date to the senior employee or employees requesting the date. Once granted that day is protected preventing a senior employee from displacing a junior employee from that date.

Vacations will be awarded initially in seniority order, but back-filled on a first come, first serve basis should a week that was awarded

become available before the employee assigned can take the vacation for reasons such as, but not limited to sickness, retirement, death, leave of absence, etc. In the scheduling of vacations, full weeks will be scheduled first followed by vacation days.

**6.5 Vesting:** The vacation provided for in this Agreement shall be considered to have been earned in the year the employee has qualified for vacation. If an employee's employment status is terminated for any reason whatsoever, including but not limited to retirement, resignation, discharge, noncompliance with a union shop agreement, or failure to return after furlough, he shall, at the time of such termination, be paid any unused vacation for that calendar year. If an employee thus entitled to vacation or vacation pay shall die, the vacation pay earned and not received shall be paid to such beneficiary as may have been designated, or, in the absence of such designation, the surviving spouse or children or his estate, in that order of preference.

**7.0 Holidays:** The Company will pay 8 hours at the straight-time rate for each of the following holidays.

- New Year's Day
- Martin L. King Day
- Presidents Day
- Memorial Day
- Independence Day
- Labor Day
- Veterans Day
- Columbus Day
- Thanksgiving Day
- Christmas Eve
- Christmas Day

Holidays will be observed and paid on the days on which VRE does not provide regular service. To qualify for holiday pay, an employee must perform compensated service, or in the case of the extra board be available for service, on his or her workdays immediately prior to and immediately following the holiday. Employees may be required to work on holidays and if so, they will be paid eight (8) hours at one and one-half the straight time rate, and in addition thereto, the employee shall also be paid eight (8) hours at the straight-time rate for the holiday.



**8.0 Attire:** The Company will supply employees standard, seasonal work attire suitable for their positions and which will identify the employees as representatives of the Company. That said attire will be worn in an appropriate, professional manner at all times while the employees are providing service for the Company. The Company will be responsible for all costs associated with providing and maintaining the required attire, including but not limited to providing weekly laundry service. The Company shall provide a sufficient number of shirts and slacks to employees which will allow clean and laundered attire for each day of train service and which will also take in account the weekly laundry schedule. Additional attire worn outside the needs of the service will be the responsibility of the employee. The employee will be responsible for bringing their uniforms home with them once returned from the laundry service.

**9.0 Seniority:** New employees will establish seniority as of the date and time scheduled by the Company for their required pre-employment medical examination.

**9.1 Roster:** A seniority roster showing seniority dates and seniority standing will be posted in a conspicuous place at each crew base, and a copy will be provided to the General Chairman. The roster will be revised and posted in January of each year and will be open to protest by an employee and/or a duly accredited UTU Representative for a period of 60 calendar days from the date of posting.

**9.2 Seniority District:** There is one seniority district for all employee assignments.

**9.3 Exercising Seniority:** An employee may elect to make an optional displacement to an assignment held by a junior employee to be effective the first Monday of each month. Employees can bid on any advertised assignment at any time regardless of time on the current assignment.

Displacements must be made prior to 11:59 PM on the last Tuesday of each month to be effective at 12:01 AM on the first Monday of the following month.

Employees displaced will be notified as soon as possible and will have twenty four (24) hours to exercise seniority against a junior employee or assignment under advertisement. Employees must be qualified on any assignment they wish to displace onto before they can work the assignment. The Company will pay for an agreed upon amount of trips to qualify employees who voluntarily displace onto an assignment for which they are not qualified on a one time only basis.

Unless unable to retain such position based on their seniority, employees receiving compensation to qualify on an assignment must remain on that assignment for a minimum of six months before voluntarily exercising their seniority to another assignment. This does not include employees receiving compensation for re-familiarization trips on territory already qualified on. Any absence due to an authorized leave of absence or vacation shall be counted as days holding an assignment in determining an employee's eligibility for making displacements.

**10.0 Extra Boards:** The Company will establish extra boards for employees as agreed to in good faith by the Company and the Organization. The Company will determine at its sole discretion the number of employees assigned to the extra boards to protect the needs of the service and to allow employees off for vacation, illness, training, leave of absence, etc. Employees assigned to the extra board must be qualified to work all assignments protected by that board. All extra board positions will be assigned regular rest days of Saturday or Sunday.

**10.1 Combination Assignments:** The Company has the right to establish combination regular/extra board assignments. Such assignments will be guaranteed forty (40) straight time hours at the applicable rate per week as provided in Rule 4.1, and will have regular rest days of Saturday or Sunday.

- 10.2 Availability:** Extra board employees must be available to work all VRE assignments all weekdays, and weekends as provided in Rule 10.8.
- 10.3 Assignments:** Extra board employees will be called on a first in, first out basis. Extra board employees must notify the Company immediately upon release from duty, and will be placed at the bottom of the extra board. Extra board employees missing a call for an assignment for which they stand will be placed at the bottom of the extra board.
- 10.4 Notification:** Employees assigned to an extra board will be notified as soon as a vacancy is known but not less than two hours before the time required reporting for service. Extra board employees will not be used to fill vacancies unless they have sufficient rest to complete the assignment under the Hours of Service Law.

The Company will use electronic messaging (SMS Text) as the primary notification method unless other arrangements are agreed to in writing between the Company and the employee. It is the responsibility of the employee to provide the company with a secondary contact number for notification. Employees receiving a notification must acknowledge notification to the Company in the same manner it was received within one hour of receiving notification. The Company will attempt to notify an employee a maximum of three times in the span of two hours before contacting the next available employee on the extra board.

- 10.5 Called Out Of Turn:** Extra employees who are not called in their proper turn will be paid four hours and will retain their place on the extra board.
- 10.6 Hold Downs:** Extra employees may request a “hold down” on an assignment that is known to be vacant for five or more days 72 hours in advance of the vacancy. The 72 hour in advance request for hold downs on assignments does not apply to unexpected or unknown vacancies. Hold downs for unexpected or unknown vacancies will be granted as soon as possible after agreement between the Company

and the Local Chairman. Hold downs will be granted in seniority order to employees holding an extra board assignment. However, in the case of a Conductor's vacancy, should the Assistant Conductor on the assignment be a qualified Conductor and senior to the extra board employee requesting the hold down, the Assistant Conductor on the assignment will fill the Conductor's vacancy for the duration of the vacancy and the Assistant Conductor's vacancy will be filled in accordance with this rule.

- 10.7 Location and Mileage:** Extra boards will be maintained as determined by the Company. When employees are used from one extra board to fill vacancies on the other line, they will be paid a daily mileage allowance equal to twenty (20) miles at the current Internal Revenue Service reimbursement rate.

For vacancies lasting more than one day the employee will be given the option of staying in a Company provided hotel at the other location in lieu of driving. In this case, the Company will provide a hotel room for each night the employee requests to stay, Employee will not receive compensation for time spent at the hotel and the Company will not provide meals for time spent at the hotel. Employees choosing this option will be compensated only once for the daily mileage allowance

- 10.8 Weekend Work:** The Company can assign work, such as special trains or shop-related movements, on either a Saturday or Sunday (but not both in any weekend to a single employee. Weekend work will be assigned to extra board employee(s) in the order they stand to work and who stand to receive a guarantee for days not worked during that week. If no extra board employee(s) stand to receive a guarantee for time not worked, then the senior available extra board employee(s) who request weekend work will be assigned; in the absence of any request for weekend work, the junior available extra board employee(s) will be assigned.

If all extra boards are exhausted, the Company will call in seniority order from the master roster to fill the assignment. If an employee on

a regular assignment is called on for weekend work on a day the employee is not scheduled to work the employee will be paid for actual time worked at one and one half the straight time rate with a minimum of eight hours, provided they have worked all the hours of their regular assignment in the same work week.

**11.0 Mid-day Release:** Employees released from duty for four (4) hours or more on an interim basis will be provided, upon written request, suitable lodging and transportation at the Company's expense in compliance with the Hours of Service Law.

**11.1 Lodging Request:** Employees must request lodging at their release point and must provide 30 days advance notice of a change in their lodging requirements.

**11.2 Additional Expenses:** Employees accepting lodging from the Company will be responsible for all additional expenses incurred.

**12.0 Training and Certification:** Conductors, Assistant Conductors and/or ACE employee may be required to be certified to perform compensated service.

**12.1 Certification:** All Conductors must become and remain certified in accordance with applicable law and/or policies to serve as passenger train conductors and assistant conductors on the VRE commuter operations to which they are assigned.

**12.2 Required Training:** Employees will be required to attend training classes and pass examinations connected with their duties. Employees who are required to attend training classes or examinations will be compensated as follows: If required to lose time, Employees will be paid the amount they would have earned on the assignment they would have worked. If no time is lost, Employees will be paid for the actual time consumed at the straight-time hourly rate, with a minimum of eight (8) hours. Due to the nature of the service the Company may require employees to attend a maximum of two (2) training sessions scheduled on VRE holidays. Employees attending training on scheduled holidays will be compensated for actual time

worked with a minimum of eight (8) hours at the straight time rate in addition to eight (8) hours of holiday pay.

**12.3 Training Pay:** Employees who are authorized by the Company to provide training to new hire employees will be compensated an extra \$40 per training day when providing compensated service. The training rate is subject to all future wage increases.

Employees in training will compensated for time worked at the straight time rate with a minimum of eight (8) hours of the highest position they are certified to work. Layover pay during training will be compensated as prescribed in Rule 4.2.

**13.0 Required Exams:** Employees will schedule their own medical examinations, including vision or hearing tests as required by Company policy and will not be compensated for such time. The Company will pay for the costs of all such required exams.

**14.0 Compliance with Rules:** Employees will comply with all VRE, Host Railroad and Company rules, and employee policies and procedures concerning employee conduct while on duty so as to provide safe, courteous and professional commuter service to the public. Employees will perform on-board and operational duties in accordance with Company and VRE policies and procedures.

**15.0 Compulsory Attendance:**

**15.1 Required by Company:** Employees who are required by the Company to attend court or other legal proceedings, including depositions and investigations, will be paid for the assigned earnings lost from their regular assignments (and in the case of employees on the extra board, will be placed in the same relative standing as if he had been called in his turn) Employees attending court or other legal proceedings should use VRE trains where possible. Employees using personal vehicles must obtain prior approval from their manager.

**15.2 Jury Duty:** Employees will be paid for actual time lost due to required jury duty up to eight (8) hours straight time pay per day. Payment will be reduced by any fees or allowances paid by the court for jury service or expenses. Payment is subject to the following limitations:

a. The employee must furnish the Company a written statement of the days on which jury service was provided and the amount of jury allowances paid.

b. Payment will not exceed sixty days per calendar year.

**15.3 Bereavement Leave:** Upon proof of death, bereavement leave will be allowed in the death of an employee's brother, sister, parent, step parent, child, stepchild, grandparent or grandchild, spouse, spouse's parent or step parent not in excess of three (3) work days. In such cases, regular assigned employees will receive the assigned earnings of the assignment on which the employee is assigned. An extra board employee will receive eight hours at the straight time rate for each day used. Employees involved will make provisions for taking leave with their immediate supervisor.

**16.0 Leaves of Absence:** Any absence of more than thirty (30) consecutive days without approved written leave by the General Manager will result in termination of seniority and dismissal from employment. An employee whose seniority has been terminated may, through his General Chairman, appeal such termination to the General Manager within thirty (30) days of the notice of termination.

**16.1 FMLA:** Company will grant leave(s) of absence for family and medical reasons in accordance with the federal Family and Medical Leave Act.

**16.2 Procedure:** Employees will be allowed up to thirty (30) days off duty upon receipt of permission from the General Manager. Employees must submit in writing a request for a leave of absence when they are to be off duty for more than thirty (30) consecutive days. A request for a leave of absence will be considered only when the requirements of the service permit. If a request for a leave of absence is denied, the

General Chairman will, upon request, be advised the reason for denial. A request for a leave of absence or for an extension must be made in writing to the General Manager, with a copy to the General Chairman. No leave of absence or extension thereof will exceed one (1) year.

**16.3 Leave of Absence Requests:** A written leave of absence without impairment of seniority for the duration of the assignment will be granted upon request to an employee for the following reasons:

**16.3.1** To accept an official position with the Company, or related national railroad agencies.

**16.3.2** To perform union committee work as approved by the Company or to accept full-time union position.

**16.3.3** To accept an elected or appointed public office for which a competitive examination is not required.

**16.4 Reporting back to Duty:** An employee who fails to report for duty within fifteen (15) days after the expiration of an authorized leave of absence or an extension thereof or fails to furnish satisfactory reason for not doing so will have his seniority terminated, dismissed from employment and the record closed. An employee whose seniority has been terminated and dismissed from employment may, through his General Chairman, appeal such termination to the General Manager within thirty (30) days of the notice of termination.

**16.5 Absent without Authorization:** An employee who absents himself without a written authorized leave of absence as provided in this Rule will have his seniority terminated and dismissed from employment.

**16.6 Leave of Absence not Required:** A leave of absence is not required when an employee is unable to perform service for the Company for less than five (5) days due to a bona fide sickness or injury.

**16.7 Forfeit of Seniority:** Except as provided in Rule 16.3, an employee on leave of absence who engages in other employment will forfeit all of



his seniority under this Agreement and be dismissed from employment.

**17.0 Military:** The Company will grant leaves of absence in accordance with the Uniformed Services Employment and Reemployment Rights Act. When employees assigned to regular and/or extra board positions who are members of the Reserves or National Guard are required to be absent from work for annual training exercises for up to ten (10) days in a calendar year, they shall be paid the actual time lost during their regular workdays or workweeks (maximum of eight (8) hours pay at the straight time rate of their positions for each day lost). Compensation received by the employees for other than meals, lodging or transportation, shall be remitted to the Company. Such employees must furnish the Company with a statement signed by their Commanding Officer for compensation paid and the days on which such military training service was performed.

**18.0 Approval of Applications:**

**18.1 Approval / Disapproval of Applications:** Applications of new employees will be approved or disapproved within ninety (90) calendar days after applicants begin work. If applications are not disapproved within the 90-day period, the applications will be considered as having been approved.

**18.2 False Information:** In the event it is discovered within the first year of employment that applicants gave materially false information, the 90-day time limit will not apply, and the employee may be terminated without an investigation. If such information is discovered after the first year of employment, the employee will be entitled to a hearing under Rule 37 of these work rules. Giving materially false information on applications will be grounds for termination.

## **19.0 Physical Re-examinations:**

**19.1 Subject to Exam:** Employees will be subject to periodic medical examination in accordance with Company policy.

**19.2 Mentally or Physically Impaired:** When it is obvious to management that an employee may be medically (physically or mentally) impaired in a way that affects his service, the Company may hold that employee out of service pending the outcome of a medical examination. Employees held out of service by the Company because they are medically unable to perform service may have an examination by a doctor of their own choosing without expense to the Company. In case of disagreement on the employee's fitness to work, the two doctors will select a third doctor, who is a specialist in the medical area involved, and the decision of the majority of the three as to the employee's fitness will be final. The expense of the third doctor will be shared equally by the parties. If it is determined that the employee's condition does not warrant being held out of service, such employee will be returned to service, and if it is determined that the employee was medically fit to perform service at the time he was held out of service, the employee will be paid for all time lost.

**19.3 Medical Disqualification:** An employee who has accepted medical disqualification or who was found to be properly disqualified by a neutral physician may, if there has been a change in his medical condition, request a reexamination by the Company's doctor. If the employee has become medically fit to return to work, he will be returned to service without pay for time lost.

**19.4 Vision Test:** In case of a failure to pass a vision test when examined without corrective lenses, the employee will be given the opportunity for a reexamination with corrective lenses.

**20.0 Locker facilities:** Locker, toilet and lavatory facilities will be provided and maintained where employees regularly go on and off duty.

## **21.0 Certification to Conductor:**

**21.1 Certification Course:** Assistant Passenger Conductors must complete a Passenger Conductor Certification Course, including a written certification examination and re-test if necessary, within one year from their start of work as an Assistant Passenger Conductor, provided they have worked at least 100 days as an Assistant Conductor or by mutual agreement between the Union and the Company.

**21.2 Eligibility for Certification Pay:** Prior to successful completion of the conductor certification course employees will not be eligible for certification pay as described in Rule 4.5

## **22.0 Selection and Training and Seniority to be ACE Certified:**

**22.1 Selection Process:** All employees holding regular and extra board conductor and assistant conductor positions will be eligible to become an ACE employee. Employees who meet the criteria of the position including but not limited to; safety record, rule compliance, compliance with KRSV's drug and alcohol program, attendance etc. will be offered an opportunity to interview to become ACE certified as positions are needed and training slots are available. Employees who successfully complete all the requirements to be selected including the interview process to become ACE certified will be placed in the training program in seniority order. Each time ACE certification training slots become available and the company chooses to fill slots the same interview and selection process will be repeated.

**22.2 Selection Criteria:** All criteria required to be certified under Company's 49 CFR Part 240 program will be considered and could lead to an employee not being eligible.

**22.3 Training:** Employees being selected to become an ACE employee must attend and successfully complete all training requirements as prescribed by the company including two weeks of classroom training that could occur off property including out of state. The Company will pay all reasonable costs associated with the training. Employee will become a fully certified ACE employee only after they successfully

complete all required training, tests, and certification requirements and become qualified to operate trains as a locomotive engineer on all territories and is certified by a Company DSLE.

**22.4 ACE Seniority:** ACE certified employees will maintain their original Company seniority date regardless of when they are selected, trained and/or certified as an ACE employee. Therefore, regardless when an employee is selected, trained or certified as an ACE employee they will always maintain their seniority relative to others. Their Company seniority date will be used to request and be placed on hold downs for any assignment and to be used to bid regularly assigned positions. ACE employees agree not to voluntarily exercise their seniority to a regular conductor or assistant conductor position until either the employee can hold a regular engineer assignment or for a period of two years after becoming ACE certified.

### **23.0 Bulletins & Assignments:**

**23.1 Advertising of New Assignments:** New assignments, assignments subject to re-advertisement, extra board positions and vacancies, will be advertised every Friday. The advertising period will close 11:59 p.m. the following Tuesday, and assignments will be made effective 12:01 a.m. the following Monday.

**23.2 Vacancies:** Vacancies caused by sickness, temporary disability, suspension or leave of absence, when it is known that the employee will be off for a period of thirty (30) or more days or when such employee will have been off duty for a period of thirty (30) days, will be advertised in accordance with section 23.1.

**23.3 Job Bulletin:** For regular assigned service, the advertisement bulletin will show: the reporting and relieving point, turn-around or layover point, days on which the assignment is scheduled to work including "S" scheduled days, assigned reporting time, and train or crew numbers.

- 23.4 Reporting / Relieving Points:** Unless otherwise agreed to by the Local Chairman and the General Manager, the reporting and the relieving point for any assignment will be the same point.
- 23.5 Bidding on Former Position:** An employee who bids for and is awarded another assignment will not be permitted to bid for their former position until it has been filled and again advertised. The employee will be permitted to exercise his seniority to his former assignment if he is displaced from the position to which he bid.
- 23.6 Advertisement of Regular Assignments:** Regular assignments will be re-advertised when any of the following permanent changes are made in such assignments:
- 23.6.1** changing the reporting location, layover /turnaround point, or days off;
  - 23.6.2** changing advertised starting time or arrival time at the relieving point, one hour or more;
  - 23.6.3** significantly changing the operating characteristics of the assignment.
- 23.7 Re-advertisement: of Assignment:** An employee who is occupying a regular assignment which is re-advertised in accordance with the provisions of this Rule may elect to exercise his seniority to another assignment within twenty four (24) hours after the effective date and time of the change causing the re-advertisement. An employee who elects to remain on the assignment must bid for it if he desires to remain after the advertisement is closed and the assignment has been made. If he does not bid for it, and he is not assigned to any other job as the result of that advertisement, he will immediately leave the assignment he has been holding, and will be allowed twenty-four (24) hours in which to exercise his seniority and may select any job held by a junior employee, except the job he has been occupying and on which he did not bid.

**23.8 Seniority Order:** Assignments will be made to employees in seniority order from bids submitted prior to the close of an advertisement period.

**23.9 No Bids Received:** When no bids are received for an advertised assignment and no hold down is requested per rule 10.6, the junior extra board employee will be forced to a hold down on that position until it is re-advertised and bid per the requirements of this section. The forced hold down will be for one (1) week and will be reevaluated each week to insure the most junior person is always the employee forced to the hold down of the assignment. While on the hold down the employee will earn the earnings of the assignment of the hold down.

#### **24.0 Reducing & Increasing Forces:**

**24.1 Reduction of Forces:** In reducing forces, seniority will govern. Employees affected by a reduction of force or abolishment of positions will be given five (5) calendar days advance notice. A copy of such notice will be posted on bulletin boards, with a copy to the local chairman.

**24.2 Displacement Rights:** Except where shorter time periods are provided for elsewhere in this agreement, employees whose positions are abolished and/or who have a displacement right and who elect to exercise such displacement right at their crew base must exercise such right within two (2) calendar days after the date of notification of abolishment and/or displacement. Employees displaced must exercise their seniority in the same manner within two (2) calendar days after the date displaced. Employees exercising displacement rights outside their crew base must exercise their seniority rights within five (5) calendar days. Employees who are able to but fail to exercise their displacement rights within the prescribed time limit will revert to the extra board. Employees not possessing sufficient seniority to displace any employees will be placed in furlough status.

**24.3 Displacement onto Vacant Assignment:** Employees will be permitted to select a vacant assignment that is under advertisement. Employees who exercise displacement rights to assignments subject to or being advertised shall be considered automatic bidders for such assignments. An employee who exercises seniority to a vacancy as a result of this Agreement who is not fully qualified on such assignment will not be permitted to occupy such assignment until fully qualified. It should also be noted that in the event a senior employee is awarded the assignment after the advertisement is closed, the junior employee who picked the vacancy will be required to exercise seniority to another assignment within twenty-four (24) hours after the effective date and time of the award.

**24.4** Employees who have exercised displacement rights under this Rule must meet all the qualifications required of the position to which they have displaced before being permitted to work the assignment.

**24.4.1** Employees will promptly notify the Company in writing of any change of name or address, and provide a copy to the local chairman.

**24.4.2** When forces are increased, furloughed employees will be notified by certified mail sent to the last address given, and provide a copy to the local chairman, and will be required to return to service in seniority order.

**25.0 Annulment of Assignments:** When the assignment of a regularly assigned employee does not operate on a day the employee is scheduled to work, the employee will be so notified in advance, if possible, and the employee will receive 8 hours at the regular straight time rate of his/her assignment.

**26.0 Crew Consist:**

**26.1 Revenue Passenger Car:** "Revenue passenger car" is one in which seats or accommodations may be purchased by passengers. Cars that are out of service are not revenue passenger cars

- 26.2 One Revenue Car:** For passenger trains consisting of one (1) revenue passenger car, the minimum crew will be a Passenger Conductor.
- 26.3 Two to Six Revenue Cars:** For passenger trains consisting of two (2) to six (6) revenue passenger cars, the minimum crew will be a Passenger Conductor and one (1) Assistant Passenger Conductor.
- 26.4 Seven or More Revenue Cars:** For trains consisting of seven (7) or more revenue passenger cars, the minimum crew will be a Passenger Conductor and two (2) Assistant Passenger Conductors.
- 26.5 Exceptions to Minimum Crew:** Nothing in this Rule will prevent the Company from using more than the minimum crew requirement, if it so chooses, or to establish single employee assignments which have historically been referred to in the railroad industry as "back out," "couplet," "piper," "pin up," "house" and/or "utility" assignments.
- 27.0 Filling Conductor's Vacancies:** A Passenger Conductor vacancy of less than thirty (30) days will be filled on a daily basis in the following order:
- 27.1 Hierarchy to Fill Vacancy:** By a qualified Passenger Conductor regularly assigned as an Assistant Passenger Conductor on the assignment; if more than one (1) Assistant Passenger Conductor is a qualified Passenger Conductor, the senior will have the option of accepting the Passenger Conductor assignment or of remaining as Assistant Passenger Conductor; then
- By the extra board; and lastly
- By the junior available certified Assistant Passenger Conductor.
- 27.2 Payment of Assignment:** When a regularly assigned Assistant Passenger Conductor fills a Passenger Conductor vacancy, he will be paid the greater of either his earnings as a Passenger Conductor or the amount he would have been paid on his regular assignment.



## **28.0 Deadheading:**

**28.1 Combined Service:** Deadheading and service may be combined in any manner that traffic conditions require, and when so combined, will be paid actual hours on a continuous time basis with not less than eight (8) hours for the combined deadheading and service.

**28.2 Separate Service:** When deadheading is paid for separately and apart from service, actual time consumed with a minimum of eight (8) hours will be allowed.

**29.0 Deferred Starting Time:** Where employees normally report for duty without being called, and it is desired on any day to defer the reporting time at least two hours' advance notice will be given before the usual reporting time of the assignment. The advance notice will specify the new reporting time, and the employees' trip or tour of duty will not begin until that time. If not so notified, the reporting time will be as provided in the assignment. An employee may have his starting time deferred only once for each trip or tour of duty.

## **30.0 Laying Off/Reporting:**

**30.1 Laying Off:** Employees laying off due to sickness must notify the appropriate official in sufficient time to call a replacement. Employees who desire to lay off for personal reasons without pay may do so only when such absence is authorized in advance by the proper officer of the Company. Such requests must be at a minimum twenty-four (24) hours in advance of requested time off.

**30.2 Automatic Mark Up to Assignment:** An employee who has marked off is required to report for his regular assignment the following day unless a layoff of more than one day is authorized by the proper officer of the Company. Requests to layoff for additional days must be made before 7:00 p.m. the evening before the employee is scheduled to return to work.

### **31.0 Calls:**

**31.1 Called and Released:** Employees called, or required to report without being called, and released without having performed service will be paid for actual time held with a minimum of eight hours.

**31.2 Non-Notification of Displacement:** A regular assigned employee who is displaced from his assignment and no attempt was made to notify such employee at least two (2) hours prior to reporting time of his assignment and such employee reports for the assignment without being notified and is not permitted to work, the displaced employee will be allowed the earnings of the assignment from which displaced less any other earnings made on such calendar day. In the application of this Rule, an employee may not physically displace onto an assignment less than four (4) hours prior to the reporting time of the assignment.

**31.3 Second Start:** Employees who are called in to work a second start after having already started another assignment on the day involved will be paid for the actual time worked at one and one-half the straight time rate, with a minimum of eight hours.

### **32.0 Payment for Qualifying:**

**32.1 Compensation for Qualification:** Employees who are instructed to qualify or who are force-assigned to a regular assignment or extra board where it is necessary to qualify, will be compensated for a mutually agreed upon amount of trips for such qualifying. If required to lose time, employees will be paid an amount not less than they would have earned on the assignment they would have worked. If no time is lost, employees will be compensated for the actual time consumed in qualifying, at the straight-time hourly rate, with a minimum of eight (8) hours pay at the rate of the last position worked or the entry rate, if applicable.

**32.2 Qualification on Extraboard:** Employees who voluntarily exercise seniority to an extra board may elect to be compensated for qualifying. Employees who elect to accept compensation for such

qualifying will be required to remain on the Conductors' extra board for not less than six (6) months after completion of such qualifying, unless unable to retain such position based on their seniority.

- 33.0 Meal Period:** Employees working in switching and classification service will be allowed twenty (20) minutes for lunch without deduction in pay. The lunch period must be given and completed within four (4) and one-half (1/2) and six (6) hours after starting work. In the event conditions do not allow the lunch period to be taken between four and one-half and six hours after starting work, the employees will be paid an additional twenty (20) minutes at the straight-time rate and will be allowed a twenty (20) minute lunch period as soon as conditions permit.
- 34.0 Shortage Adjustment:** When an employee's actual earnings are short one (1) day or more, adjustment will be made upon request.
- 35.0 Hours of Service:** An employee who is unable to work his regular assignment on a calendar day as a result of working on the preceding trip and not being available due to the Hours of Service Law will be allowed the assigned earnings of his missed assignment for the calendar day. In the event that changes are made to the Hours of Service rules applicable to the VRE service during the term of this contract that have a material impact on crew assignments, the parties agree to renegotiate this rule, notwithstanding the moratorium provision in Rule 43.0.
- 36.0 Claims Procedure:** A claim for compensation alleged to be due may be made only by an employee or on his behalf by a duly accredited representative.
- 36.1 Time limit:** Not later than sixty (60) days from the date of the occurrence on which the claim is based, a claimant or his duly accredited representative must submit a time slip and one duplicate alleging the claim for compensation to the officer of the Company designated to receive time slips. The Company representative accepting the time slips must acknowledge receipt of the time slips by signing and dating them and returning the duplicate copy. The time limit for presenting claims will be tolled for an equal number of days

during which an employee is sick, disabled, or on authorized leave of absence or vacation.

**36.2 Content:** A time claim must contain sufficient information to determine the validity of the claim, including:

- a. employee name/number
- b. train symbol or job number
- c. on- and off-duty time
- d. date and time of day work performed
- e. location and details of work performed for which claim is filed
- f. upon whose orders work was performed
- g. description of instructions issued to perform such work
- h. amount claimed and rule involved, if known.

**36.3 Declination:** Time claims will be paid in part or in full or declined within sixty (60) days of filing. If the claims are denied in whole or in part, a written explanation will be provided. The employee or his duly accredited representative may appeal the declination to the General Manager within sixty (60) days of the declination. The appeal shall be in writing and shall set forth the facts and agreement provisions upon which it is based. The General Manager is the highest designated Company officer to handle claims. Within sixty (60) days of the appeal, the General Manager will either pay the claim in whole or schedule a conference with the employee and/or his representative to discuss the reasons for denying the claim in whole or in part. Within thirty (30) days of the conference, the General Manager shall render his decision in writing to the employee and his duly authorized representative.

**36.4 Delays:** If a claim is not presented or appealed within the time limits specified, it shall be deemed withdrawn. If a response from the Company is not provided within the time limits specified, the claim will be paid. Payment for failure to meet the time limits shall not be evidence of any admission, acquiescence or practice. Nothing in this Agreement prevents the parties from extending the deadlines by mutual agreement.

**36.5 Arbitration:** The written decision of the General Manager shall be final and binding unless, within six months after the date of such decision, the employee or his duly accredited representative submits the claim to an adjustment board established pursuant to Section Three of the Railway Labor Act, or the Company and the Union agree to another method of dispute resolution.

**37.0 Discipline and Investigation:**

**37.1 Hearings and Discipline:** Employees will not be disciplined without first being given a fair and impartial investigation except as provided below.

**37.2 First Knowledge:** When the Company first becomes aware of an alleged offense a company officer with knowledge of that offense will contact the Local Chairman or his designee within three (3) days of that knowledge. If the matter can be handled informally as described below in Rule 37.3 "Informal Handling" no formal written notice will be issued.

**37.3 Informal Handling:** Prior to formal written notice of investigation and described in Rule 37.4 below, the parties may agree to arrange for an informal conference to discuss the alleged offense. Such informal conference may be either in person or by telephone. If such informal conference results in a resolution agreeable to both parties, the resolution will be reduced to writing and no further action will be taken. If no resolution is reached, all matters discussed during the informal conference shall be non-referable in any subsequent proceeding.

**37.4 Written Notice:** Within ten (10) days of the time the appropriate company officer had first knowledge of an alleged offense, the employee will be given written notice of the specific charges including the date, time and location of the incident or infraction for which charged. The notice will be sent by certified US Mail, FedEx or hand delivered to the last known address of the employee and a copy of

such notice will be provided to the UTU Local Chairman. The notice will state the time and place of the investigation which shall not be more than ten (10) days from the date of the notice. Notice shall be furnished sufficiently in advance to allow the employee an opportunity to arrange for representation by an employee or representative of the Organization, and for witnesses.

### **37.5 Investigation:**

**37.5.1** Postponements of the formal hearing may be requested by either party on reasonable grounds and consent shall not be unreasonably withheld.

**37.5.2** The hearing shall be conducted by a designated officer of the company, and only he/she and the employee's designated representatives shall be allowed to interrogate principals and witnesses. If practicable to do so, the hearing shall be held at the Home Terminal of the employee involved, or in cases where more than one employee is involved, at the Home Terminal of the majority of the employees.

**37.5.3** The employee shall have the right to be represented at the hearing by an employee or representatives of the Organization at the employee's own choosing. The employee and/or employee's representatives shall have the right to introduce witnesses on the employee's behalf, to hear all testimony introduced, and to question all witnesses. Witnesses will not be permitted to remain in the hearing unless jointly agreed to by both the Organization and the Company.

**37.5.4** If the notice is not given within the specific time limits, the employee will not be disciplined, will be paid for all time lost, and no disciplinary entry will be made in the employee's personal service record.

### **37.6 Decision:**

**37.6.1** If the formal hearing results in assessment of discipline, such decision shall be rendered within ten (10) calendar days from the date the hearing is concluded, and the employee will be notified in writing of the reason therefore. The notice of discipline will be sent by certified US Mail, FedEx or hand delivered to the last known address of the employee and a copy of such notice will be provided to the employee's representative.

**37.6.2** If the employee is found not at fault, the employee will be paid for all time lost and any notation of the investigation will be removed from the employee's personal record.

### **37.7 Appeals:**

**37.7.1** If the employee is not satisfied with the decision, the UTU Local Chairman may appeal the decision to the General Manager within thirty (30) days from the date of the decision. If not appealed within thirty (30) days the matter will be considered closed and barred from any further handling. This shall not be considered as a precedent or waiver of the contentions of the employees as to other discipline cases. The General Manager shall, within sixty (60) days from the date the appeal is received, render a decision in writing on the appeal and, if the appeal is denied, the reasons for such denial shall be given. If no decision is rendered within sixty (60) days, the appeal shall be considered valid and settled accordingly, but this shall not be considered as a precedent or waiver of the contentions of the Company as to other discipline cases.

**37.7.2** If the employee is dissatisfied with the decision, proceedings for final disposition of the case under the Railway Labor Act must be instituted by the employee or his or her duly authorized representative within six (6) months of the date of

that decision or the case will be considered closed and the discipline will stand as issued.

**37.8 Miscellaneous:**

**37.8.1** If a dispute arises concerning the timeliness of a notice, decision or appeal, the postmark on the envelope containing such document or date of receipt for hand delivery shall be deemed to be the date of such notice or decision. The parties, by mutual agreement may extend the time limits specified in this Agreement at any stage of handling.

**37.8.2** Employees attending an investigation as witnesses at the direction of the company will be compensated for all time lost and, in addition, will be reimbursed for actual, reasonable and necessary expenses incurred. When no time is lost, witnesses will be paid for actual time attending the investigation with a minimum of two (2) hours.

**37.8.3** Employees may be counseled by their supervisor for a variety of reasons or instances that require corrective action. A follow-up letter may be placed on the employee's personal file, which details the counseling session. Such letter of counsel is not considered formal discipline.

**37.9 Time Limits:** If discipline is not appealed within the time limits specified, it shall be deemed final and binding. If an action by the Company is not taken within the time limits specified, the discipline will be vacated and the employee will be reinstated with pay for time lost. Vacating discipline for failure to meet the time limits shall not be evidence that no rule violation occurred or that discipline was not appropriate. Nothing in this Agreement prevents the parties from extending the deadlines by mutual agreement.

**37.10 Deferred Suspension:** Except where a major or decertification offense has been committed, if the discipline to be imposed is suspension, its



application may at the election of the Company be deferred for a 6 month probationary period. Probationary periods will commence as of the date the employee is notified, in writing, of the discipline imposed. If the disciplined employee maintains a record clear of offenses during the probationary period, he/she will not be required to serve the suspension. In all cases the suspended discipline will remain on the employee's record with the notation, "Suspension deferred". If the employee commits another offense within the probationary period, for which discipline by suspension is subsequently imposed, the deferred suspension will be served in addition to any discipline imposed in connection with the subsequent offense. Discipline by dismissal and suspension where a major offense has been committed will not be subject to the probationary period.

### **38.0 Critical Incident Plan:**

The parties will jointly develop and maintain a Critical Incident Plan that will be available to the employees governed by this agreement. The plan will provide compensated time off for employees who are involved in a critical incident and will include, at a minimum, provisions for:

- (a) Providing for immediate response, counseling, guidance, and other appropriate support services;
- (b) Providing timely relief from the balance of the duty-tour for directly-involved employee(s), following any actions necessary for the safety of persons and contemporaneous documentation of the incident;
- (c) Providing timely transportation to a directly-involved employee's home terminal, if necessary;
- (d) Informing directly-involved employee(s) that they may request relief;
- (e) Permitting relief from the duty-tour(s) subsequent to the critical incident, for up to three days if requested by a directly-involved employee; and

(f) Permitting such additional leave from normal duty as may be necessary and reasonable to receive preventive services and/or treatment related to the incident.

### **39.0 Union Shop:**

**39.1 Membership Time Frame:** All employees of the Company subject to this Agreement will, as a condition of their continued employment, become members of the United Transportation Union within sixty (60) calendar days of the date they first perform compensated service and will maintain membership in good standing while subject to this Agreement; provided, however, that the foregoing requirement for membership in the United Transportation Union will not be applicable to:

**39.1.1** Employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member, or

**39.1.2** Employees to whom membership has been denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership in the United Transportation Union, or

**39.1.3** Employees covered by this Agreement who maintain membership in any one of the other labor organizations, national in scope, organized in accordance with the Railway Labor Act and admitting to membership employees of a craft or class in engine, train, yard or hostling service; provided, that nothing contained in this Rule will prevent an employee from changing membership from one organization to another organization admitted to membership employees of a craft or class in any of said services.

- 39.2 Non Membership Requirements:** Employees who retain seniority under this Agreement who are assigned or transferred for a period of thirty (30) calendar days or more to employment not covered by this Agreement, or who are on leave of absence for a period of thirty (30) calendar days or more, will not be required to maintain membership as provided in Rule 39.1 so long as they remain in such other employment, or on such leave of absence, but they may do so at their option. If and when such employees return to any service covered by this Agreement, they will, as a condition of their continued employment, comply with the provisions of Rule 39.1 within thirty (30) calendar days of such return to service.
- 39.3 Termination of Membership:** An employee whose membership in the United Transportation Union is terminated while on furlough due to reduction in force, or while off duty on account of sickness or injury for a period of thirty (30) calendar days or more, and who is required to maintain membership under the provisions of this Rule, will be granted upon his return to service in any of the crafts or classes represented by the United Transportation Union a period of thirty (30) calendar days within which to become a member of the United Transportation Union.
- 39.4 Representation by Organization:** Every employee required by the provisions of this Rule to become and remain a member of a labor organization will be considered by the Company to be either a member of the United Transportation Union or to be a member of any of the other labor organizations referred to in this Rule, unless the Company is advised to the contrary in writing by the United Transportation Union. The United Transportation Union will be responsible for initiating action to enforce the terms of this Rule.
- 39.5 Notification of Termination of Seniority:** The General Chairman will, between the fifteenth day and the last day of any calendar month, furnish to the General Manager in writing, the name and roster number of each employee whose seniority and employment the United Transportation Union requests be terminated by reason of failure to comply with the membership requirements of this Rule.

**39.5.1** In the event that the General Manager wishes to dispute the correctness of the United Transportation Union's position, he will so notify the General Chairman within ten (10) calendar days of receipt of the notice from the latter, stating the reasons therefor. If no such exception is taken by the General Manager or if the General Chairman does not withdraw the notice within ten (10) calendar days from the date of the General Manager's notice of exception, the General Manager will transmit to the employee at his last known address through registered United States mail with return receipt requested, the original of the General Chairman's notice, accompanied by an explanatory letter.

**39.5.2** Within ten (10) calendar days from the date of the General Manager's mailing notice to the employee, as provided in this Rule the said employee's seniority and employment in the crafts or classes represented by the United Transportation Union will be terminated, unless the notice is withdrawn by the United Transportation Union in the interim, or unless a proceeding under the provisions of this Rule is instituted.

**39.6 Trials and Investigations:** The provisions of this Agreement pertaining to investigations, trials and appeals are inapplicable to the termination of seniority and employment provided for in this Rule.

**39.7 Handling of Disputes:**

**39.7.1** For the sole purpose of handling and disposing of disputes arising under this Rule, a System Board of Adjustment is hereby established, in accordance with Section 3, Second, of the Railway Labor Act, as amended, which will consist of four members, two to be appointed by the Company and two by the United Transportation Union.

**39.7.2** An employee notified in accordance with the provisions of Rule 39.6 that he has failed to comply with the membership

requirements of this Rule and who wishes to dispute the fact of such failure will, if he submits request to the Secretary of the System Board of Adjustment within a period of ten (10) calendar days from the date of mailing of such notice, be given a hearing. The Secretary of the Board will notify the employee in writing the time and place at which such hearing will be held. The hearing will be confined exclusively to the question of the employee's compliance with the provisions of this Rule. The employee will be required at this hearing to furnish substantial proof of his compliance with the provisions of this Rule.

**39.7.3**The decision of the System Board of Adjustment will be by majority vote and will be final and binding.

**39.7.4**In the event the System Board of Adjustment is unable to reach a decision, the matter will be submitted to a neutral arbitrator to be selected by the National Mediation Board, whose decision as to whether or not the employee has complied with the provisions of this Rule will be final and binding.

**39.7.5**Receipt by the Secretary of the Board of notice from an employee that he wishes to dispute the charge that he has failed to comply with the membership requirements of this Rule will operate to stay action on the termination of his seniority and employment pending final decision and for a period of ten (10) calendar days thereafter.

**39.7.6**The fee and expenses of the neutral arbitrator, which will be limited to the amount regularly established by the National Mediation Board for such service, will be borne by the United Transportation Union.

**39.7.7**No provision of this Rule will be used as a basis for a grievance or time or money claim against the Company, nor will any provision of any other agreement between the Company and the United Transportation Union be relied upon in support of

any claim that may arise as the result of the operation of this Rule.

**39.7.8**In the event that seniority and employment in the crafts or classes covered by this Rule are terminated under the provisions of this Rule, and such termination of seniority and employment is subsequently determined to be improper, the employee whose seniority and employment was so terminated will be returned to service in said crafts or classes without impairment of seniority rights. In the event an employee brings an action for allegedly wrongful discharge, the United Transportation Union and the Company will share equally any liability imposed in favor of such employee, except in a case where the Railway Labor Act, as amended, and this Rule under it are held by a court of competent jurisdiction to be illegal or unconstitutional or in violation of State Statutes; or where the Company is the plaintiff or moving party in any action; or where the Company acts in collusion or collaboration with an employee seeking damages, resulting from termination of his seniority and employment.

#### **40.0 Dues Deduction:**

**40.1 Withholding of Dues:** The Company will withhold and deduct from wages due employees represented by the United Transportation Union amounts equal to periodic dues, assessments and insurance premiums (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership in the United Transportation Union.

**40.1.1**No such deduction will be made except from the wages of an employee who has executed and furnished to the Company a written assignment of such periodic dues, assessments and insurance premiums. Such assignment will be on the form specified in Attachment "1" to this Rule and will, in accordance with its terms, be irrevocable for one year from the date of this Agreement.

**40.1.2** Deductions as provided for herein will be made by the Company in accordance with a deductions list furnished by the Treasurer of Local 1933 of the United Transportation Union. Such list will be furnished to the General Manager of the Company or his designate on or before the 20<sup>th</sup> day of the month preceding the month, in which the deductions listed thereon are to become effective, and will be in the form and will contain such information as are specified in Attachment "2" to this Rule. Thereafter, a list containing any additions or deletions of names, or changes in amount, will be so furnished to the Company on or before the 20th day preceding the month in which the deduction will be made.

**40.1.3** Deductions as provided in this Rule will be made monthly by the Company from wages due employees for the first complete pay period in each calendar month and the Company will pay, by draft, to the order of the General Secretary and Treasurer of the United Transportation Union, the total amount of such deductions, on or before the 28th day of the month in which such deductions are made. With said draft, the Company will forward to the said General Secretary and Treasurer of the United Transportation Union a list setting forth the deductions made and containing a computation of the sum withheld.

**40.1.4** No deduction will be made from the wages of any employee who does not have due to him for the pay period specified an amount equal to the sum to be deducted in accordance with this Rule, after all deductions for the following purposes have been made:

40.1.4.1 Federal, State, and Municipal Taxes;

40.1.4.2 Other deductions required by law, such as garnishment and attachment; and,

40.1.4.3 Amounts due Company.

- 40.2 Remittance of Dues:** Responsibility of the Company under this Rule will be limited to remitting to the United Transportation Union amounts actually deducted from the wages of employees pursuant to this Rule, and the Company will not be responsible financially or otherwise for failure to make proper deductions. Any question arising as to the correctness of the amount deducted will be handled between the employee involved and the United Transportation Union, and any complaints against the Company in connection therewith will be handled by the United Transportation Union on behalf of the employee concerned.
- 40.3 Revocation of Assignment of Dues:** An employee who has executed and furnished to the Company an assignment may revoke said assignment by executing the revocation form specified herein within fifteen (15) days after the end of the year, but if the employee does not so revoke the assignment, it will be considered as re-executed and may not be revoked for an additional period of one year, unless within such year this Rule is terminated, and the re-executed assignment will similarly continue in full force and effect and be considered as re-executed from year to year, unless and until the employee will execute a revocation form within fifteen (15) days after the end of any such year. Revocations of assignment will be in writing and on the form specified in Attachment "3" to this Rule, and both the assignment and revocation of assignment forms will be reproduced and furnished as necessary by the United Transportation Union without cost to the Company. The United Transportation Union will assume the full responsibility for the procurement of the execution of said forms by employees, and for the delivery of said forms to the Company. Assignment and revocation of assignment forms will be delivered with the deduction list herein provided for to the Company not later than the 20th of the month preceding the month in which the deduction or the termination of the deduction is to become effective.
- 40.4 No basis for Grievance or Time Claim:** No part of this Rule will be used in any manner whatsoever, either directly or indirectly, as a basis for a grievance or time claim by or in behalf of any employee; and no part



of this or any other agreement between the Company and the United Transportation Union will be used as a basis for a grievance or time claim by or in behalf of any employee predicated upon any alleged violation of, or misapplication or noncompliance with, any part of this Rule.

- 40.5 Indemnification:** The United Transportation Union will indemnify, defend and save harmless the Company from any and all claims, demands, liability, losses or damage resulting from the entering into or complying with the provisions of this Rule.
- 41.0 Local Agreements:** When circumstances peculiar or unique to a local condition warrant, agreements may be made between the General Manager and the Local Chairman, subject to the approval of the General Chairman.
- 42.0 Me – Too:** In the event that the Company negotiates an agreement with the representative of another craft or class prior to June 30, 2015 containing wage increases, fringe benefits or lay-over terms that are materially more favorable to such craft or class than those that have been agreed upon herein, such more favorable provisions shall be applicable to the conductors and assistant conductors UTU represents in lieu of the less favorable provisions contained in this agreement.
- 43.0 Moratorium:** This agreement shall become effective upon the signature of the parties and shall remain in effect thereafter unless or until changed pursuant to the terms of the Railway Labor Act. No notice under Section 6 of the Railway Labor Act shall be served by either party prior to January 1, 2015 to be effective no sooner than July 1, 2015. Nothing in this Agreement precludes the parties from changing its terms by mutual agreement in writing.

### Authority of Signatories

Each of the signatories represents and warrants that he is duly authorized to enter into this collective bargaining agreement and that upon execution this agreement will be valid and binding on the parties.

THE UNITED TRANSPORTATION UNION

  
John Previsich, Assistant President/Date

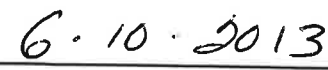
  
Dirk Sampson, General Chairman/Date

 June 7, 2013  
William Bates, Local Chairman/Date

 June 7, 2013  
Lamar Bates, Vice Local Chairman/Date

KEOLIS RAIL SERVICES VIRGINIA, LLC

  
Gregg I. Baxter, General Manager

  
Date

ATTACHMENT 1

WAGE DEDUCTION AUTHORIZATION  
KEOLIS RAIL SERVICES VIRGINIA, LLC  
AND  
UNITED TRANSPORTATION UNION

EMPLOYEE IDENTIFICATION NO. \_\_\_\_\_

EMPLOYEE'S LAST NAME: FIRST NAME: MIDDLE INITIAL:

(PRINT) \_\_\_\_\_

EMPLOYEE'S HOME ADDRESS:

STREET AND NUMBER: TOWN: STATE:

\_\_\_\_\_

GENERAL MANAGER  
KEOLIS RAIL SERVICES VIRGINIA, LLC

I hereby assign to the United Transportation Union that part of my wages necessary to pay periodic dues, assessments and insurance premiums (not including fines and penalties) as reported to the Company by the Treasurer of the Local of the United Transportation Union in a monthly deduction list certified by him as provided in the Deduction Agreement, entered into by the Company and the United Transportation Union; and I authorize the Company to deduct such from my wages and pay it over to the Treasurer of the United Transportation Union in accordance with the Deduction Agreement.

DATE: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_ LOCAL NO. \_\_\_\_\_

## ATTACHMENT 2

### DEDUCTION LIST

GENERAL MANAGER  
KEOLIS RAIL SERVICES VIRGINIA, LLC

Please deduct monthly the amount shown opposite the name of each employee listed beginning with the first complete payroll period of \_\_\_\_\_, 20\_\_\_\_. If you have been previously advised to make deduction from the employee listed, the amount shown will be a correction in the amount to be deducted.

Sheet \_\_\_\_\_ of \_\_\_\_\_ Sheets.

EMPLOYEE IDENTI- FICATION LINE NUMBER	EMPLOYEE'S NAME	AMOUNT TO BE DEDUCTED	REMARKS
--	--------------------	-----------------------------	---------

1

2

3

Etc.

TOTALS

(NAMES TO BE LISTED IN IDENTIFICATION NUMBER ORDER)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title) (Local No.)

\_\_\_\_\_  
(Address)

#### SUMMARY TOTALS:

Sheet No. 1: \_\_\_\_\_

Sheet No. 2: \_\_\_\_\_

Total of \_\_\_\_\_ Sheets \_\_\_\_\_

# ATTACHMENT 3

## WAGE ASSIGNMENT REVOCATION KEOLIS RAIL SERVICES VIRGINIA, LLC AND UNITED TRANSPORTATION UNION

EMPLOYEE IDENTIFICATION NO. \_\_\_\_\_

EMPLOYEE'S LAST NAME: FIRST NAME: MIDDLE INITIAL:

(PRINT) \_\_\_\_\_

EMPLOYEE'S HOME ADDRESS:

STREET AND NUMBER: TOWN: STATE:

\_\_\_\_\_

GENERAL MANAGER  
KEOLIS RAIL SERVICES VIRGINIA, LLC

Effective in the next calendar month, I hereby revoke the Wage Assignment Authorization now in effect assigning to the United Transportation Union that part of my wages necessary to pay my periodic dues, assessments and insurance premiums (not including fines and penalties), and I hereby cancel the Authorization.

DATE: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_ LOCAL NO. \_\_\_\_\_