

**EMPLOYEE'S  
WORKING  
AGREEMENT**

Between

**NORTH CAROLINA & VIRGINIA RAILROAD CO.  
CHESAPEAKE AND ALBEMARLE RAILROAD**

And it's Operating Craft Employees represented by

**INTERNATIONAL ASSOCIATION OF MACHINISTS  
AND AEROSPACE WORKERS**

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## **PREAMBLE**

1. The North Carolina & Virginia Railroad, Chesapeake And Albemarle Railroad (referred to hereinafter collectively as NCVA or Company) recognizes the International Association of Machinists and Aerospace Workers (IAMAW), as the designated representatives, which are signatory to this Agreement, as bargaining representatives of the Conductors and Engineers (Operating Employees) employed by the NCVA.
2. The masculine gender whenever used herein shall be construed to include both masculine and feminine, and the singular shall be construed to include both the singular and plural unless the context clearly indicates otherwise.
3. As used in this Agreement, emergency means an event that disrupts the normal flow of business on the NCVA such as but not limited to: Acts of God, train accidents, vandalism, lack of locomotives, lack of qualified personnel to operate trains.

## **ARTICLE 1** **SCOPE**

1. Train and engine service employees shall include Conductor and Engineer, who shall perform the duties traditionally required of operating employees involved on the NCVA in the movement of trains, rail cars and equipment. The operation of trains, locomotives, remote control devices, and any other motive power used for the makeup or movement of cars and trains will be considered the primary work of Operating Employees. It is further recognized that Operating Employees, in the absence of mechanical department employees who are unavailable for such work, will from time to time be required to perform duties outside their primary duties such as, but not limited to, fueling locomotives, changing brake shoes and conducting repairs to locomotives and cars. When such duties are required the Company will ensure that the train and engine service employees will have accessibility to the proper tools and safety equipment necessary to perform such duties. In addition, in the event any other work is necessary for the operation of the railroad, or in the event of emergency, the Company may require Operating Employees to perform such work.
2. The Company may request train and engine service employees to perform such other jobs as it may have need for. When offered, if such work is declined, the action will nullify the weekly guarantee for that day. However, in the event of an emergency and such work is necessary for the operation of the railroad, the Company may require the train or engine service employee to perform this work.
3. Employees covered by this Agreement shall be governed by all Company rules, policies, practices and procedures previously or hereafter issued or modified by the NCVA, and/or RailAmerica, and any prior or future modifications to these issuances, which are not in conflict with the terms and conditions of this Agreement, which have been or are made available to the affected employees.

4. To maintain operational flexibility, if a sufficient number of rested and qualified train and engine service employees are not available, or in case of emergency, training of employees, and/or familiarization with the physical plant, geography, or equipment of the NCVA, the NCVA shall have the right to use qualified management employees, or any other qualified individual designated by the NCVA, to operate trains or perform any other duties. This provision is not intended to be used to avoid the hiring of additional employees when full time work is available as dictated by business levels. Management employees who are used as train and engine service employees as a result of seasonal work may not displace a regular train and engine service employee during the time of each assignment.

## **ARTICLE 2**

### **RATES OF PAY**

1. In addition to the annual wage increase of two percent (2%) that commenced on January 1, 2010. All employees covered by this agreement are entitled to the benefits set forth in the RailAmerica Incentive Compensation Plan which became effective January 1, 2008.

2. Rates of pay for employees covered by this Agreement shall be as follows:

<b>Occupation</b>	<b>1/1/2010</b>	<b>1/1/2011</b>	<b>1/1/2012</b>	<b>1/1/2013</b>
Engineer	\$21.58	\$22.01	\$22.45	\$22.90
Conductor	\$19.50	\$19.89	\$20.29	\$20.70

3. For work performed under this agreement, Operating Employees will receive the hourly rate of pay for the classification of work they are performing. All employees who are certified and qualified to work as Locomotive Engineer shall be required to protect the higher class of service.

4. In any payroll period where a Carrier error results in an under payment of \$200 or more, the Carrier will issue a check for the under-payment within seventy-two (72) hours of the verified claim. For errors under \$200 or where the employee is at fault, the error will be corrected in the subsequent payroll period.

5. New Hire Employees.

a. Employees hired as Conductor and/or Engineer, who already have experience (professional hires) and were previously qualified to work as such on another railroad, will start at eighty percent (80%) of the pay received by of the lowest paid employee already working in their respective craft. The qualification period will end after 60 working trips or earlier if it is deemed they are fully qualified by management sooner to work independently on the NCVA. Upon receiving the qualification to work independently they will receive (100%) of their established rate of pay.

b. Employees hired as Conductor with no previous experience will receive eighty percent (80%) of the lowest paid Conductor's rate of pay for a period of six (6) months, at which

time such employees' pay will increase to one hundred percent (100%) of their established rate pay.

c. Conductors training new hires and Engineers training student Engineers will be allowed \$8.00 for each trip with a student. The Conductors and Engineers may not refuse to train a student when assigned. The assignment of students to trainers will be determined by management. This allowance is not subject to COLA's or GWI's

6. Operating employees will be guaranteed forty (40) straight-time hours pay in a workweek, and will receive one and one-half times their straight-time hourly rate for all hours worked in excess of forty (40) hours per week. The workweek will begin on Sunday and employees will be paid on a biweekly basis.

A reduction of 8 hours per calendar day for non-compensated mark-offs will be charged against the weekly guarantee. All weekly guarantee is forfeited if an employee marks-off for more than one (1) non-compensated day per week.

### **ARTICLE 3** **SENIORITY**

1. An employee subject to this Agreement will acquire seniority after the completion of a probationary period of ninety (90) working days, retroactive to the first day of service. The entire NCVA shall constitute a single seniority district.

2. The Carrier shall maintain two "official" seniority rosters, one for Engineers and one for Conductors. The Carrier shall post the rosters on bulletin boards at the facilities of the Carrier where such employees are based, or at other locations as may be agreed upon. The "official" rosters shall be updated annually on the anniversary of the effective date of this Agreement. A protest of seniority acquired since the preceding year's roster must be filed within 60 calendar days of posting, or it shall be barred. Typographic errors made from a prior roster may be corrected at any time.

3. Seniority will control in determining vacation requests, furloughs, recalls and choice of assignment.

4. Forfeiting Seniority

An employee, who has left the service of the Company of his/her own accord, shall forfeit his/her seniority rights and shall have no right to reinstatement. If he or she is re-employed by the Company, the employee will be treated as a new hire and seniority shall be established in accordance with Paragraph 1 above.

5. Approval of Applications

a. Employees will be notified in writing within one hundred and twenty (120) calendar days of the date that they first perform service or training as an Operating Employee

if their application is not approved. An application may be rejected by the Company without a showing of cause or determination.

- b. An application that is rejected within such period will result in termination of the employee's relationship with the Company without disciplinary procedures or appeal by the Organization.

6. Promotion to Engine Service

- a. Promotion to engine service is a condition of employment. Employees shall be selected for engine service in seniority order. Employees are required to train and successfully pass all written and field examinations for qualification to engine service. Failure to successfully pass promotion to engine service will result in automatic forfeiture of seniority. The Company will notify the General Chairman in the event of an employee's failure to pass any written or field examination. Employees will be provided two (2) attempts to successfully pass the required examination(s), with a minimum of thirty (30) days between the examinations.

Conductors hired prior to the signing of this agreement will retain the right to refuse promotion to engineer as long as active junior conductors on the seniority roster, not qualified as engineers, are available for promotion.

NOTE: In cases where an employee not first in line for training is ready, due to previous experience, and the first out employee is not sufficiently experienced to begin training, it shall be permissible to run around the first out employee for entry into training; however, this action will not result in the loss of seniority for the senior employee who later enters and successfully completes promotion to engineer once qualified to attend.

- b. Employees will have a minimum of four (4) months training combined with work experience, or prior qualification as a ground service employee prior to entering engine service training. After an employee has entered the engineer's training program the maximum time allowed for an employee to pass the training program for engine service is twelve (12) months.

**ARTICLE 4**  
**REDUCTION IN FORCE**

- 1. When the workforce is reduced, such reduction or furlough shall be offered to employees in seniority order. Should there be insufficient volunteers; junior employees shall be furloughed in reverse order of seniority.

**NOTE:** Furlough shall be offered in seniority order provided sufficient junior employees are qualified to protect the service requirements. Otherwise, furlough will occur in inverse order of seniority.

2. When forces are increased, furloughed employees will be offered recall in seniority order. A senior employee may request to remain in furlough status and pass the recall opportunity on to the next junior employee. If no junior employee is on furlough, or if all furloughed employees are being recalled, the recalled employee must report for duty within fourteen (14) days from (1); date such notice is received as evidenced by return register receipt or (2); letter is returned unclaimed to employing officer, in which latter event the date letter is postmarked at destination will establish date from which the fourteen (14) day period will run. A copy of the recall notice will be furnished to the General Chairmen. Failure of an employee to return to service within this fourteen (14) day period will result in the automatic forfeiture of seniority.

3. Furloughed employees are required to keep the Company currently informed of their address. Failure to do so or failure to report for duty within the time designated in paragraph 2 above will result in forfeiture of all seniority and job rights.

4. Employees accepting service with the Association of American Railroads, Railroad Retirement Board, National Railroad Adjustment Board, International Association of Machinists and Aerospace Workers, RailAmerica or a RailAmerica subsidiary company, National Mediation Board, Surface Transportation Board, Federal Railroad Administration, National Transportation Safety Board, and employees elected to public office, shall be considered on unpaid leave of absence, retaining their employment relationship with the Carrier, including their seniority rights and rank, during the term of such employment, and may subject to Article 4 assert their seniority rights, provided they assert those rights within fifteen (15) days after the release from such employment, subject to the policies and regulations governing employment such as, but not limited to: physical examination, drug screen testing, etc.

5. Effective with the signing of this Agreement, all employees promoted subsequent thereto to official, supervisory, or excepted positions from crafts or classes represented by IAM shall be required to maintain their IAM membership or pay an appropriate monthly fee, not to exceed monthly union dues, in order to retain and continue to accumulate seniority. A supervisor whose payments are delinquent shall be given a written notice by the appropriate General Chairman of the amount owed and ninety (90) days from the date of such notice to cure the delinquency in order to avoid seniority forfeiture.

## **ARTICLE 5**

### **ASSIGNMENTS & EXPENSES AWAY FROM HOME**

1. Work day shall begin when an employee reports at the designated time and place. The Carrier shall post for the exercise of seniority all jobs, their starting time, place to report, and rest days. Job postings shall be open to the exercise of seniority (subject to qualification) for a period of 7 calendar days, and the job will be awarded to the most senior qualified employee in the craft bidding within 48 hours of the close of bids.

2. Assignments may be abolished anytime up to the end of the previous day's tour of duty. As long as assigned employees are notified prior to the end of their tour duty it will be considered as sufficient notice. If an employee is absent on the day the notification to abolish is

made the Company will make attempts to the assigned employee's primary and secondary numbers. These attempts, successful or not, will satisfy as notification in this rule.

3. Displaced (bumped or loss by job abolishment) employees will be given 24 hours from notification of displacement to exercise their seniority to a job for which they are qualified and by seniority can hold. Employees will not be compensated for the time pending exercise of seniority and qualification. If an employee fails to exercise his seniority within 24 hours as defined by this section, he will be considered absent without authority and subject to disciplinary action. An employee who fails to exercise their seniority rights within the 24 hour period shall lose their right, on this bump or roll, and the Carrier may assign him to the position that is left unfilled.

4. Employees who are displaced during weekly vacation periods or while on leave of absence will be given 24 hours from the time they were scheduled to report if returning from vacation or 24 hours from receipt of notice to the Company of their return from a leave respectively to place themselves. If an employee fails to exercise his seniority within 24 hours as defined by this section, he will be considered absent without authority and subject to disciplinary action.

5. Employees who cannot hold a position account seniority or qualification will be considered furloughed.

6. Temporary vacancies on regular assignments between five (5) and thirty (30) days in duration will be filled by the senior employee bidding on such vacancy twenty-four (24) hours prior to the start of the vacancy. Assignment to such vacancies shall be on the basis of seniority of those bidding.

Employees protecting temporary vacancies will remain thereupon such vacancy until they are either removed by displacement or when the temporary vacancy ceases to exist. Regular assigned employees protecting temporary vacancies must return to their previous assignment once the temporary vacancy ceases to exist. In the case of a regular employee having been removed from his regular assignment while protecting a temporary vacancy by a senior employee with a displacement, such affected employee will be allowed a displacement when the temporary vacancy ceases to exist.

7. Permanent vacancies on regular assignments shall be advertised by bulletin for five (5) calendar days on the bulletin boards. Assignment to such vacancies shall be on the basis of seniority of those bidding.

8. When a known permanent vacancy exists or is created, the local chairperson shall have the right to waive the thirty (30) day vacancy period, upon his or her written request.

9. Any employee called into work shall be compensated for a minimum of four hours pay.

10. Employees on regular assignments bulletined to work 5 days per week will, to the extent possible, have two consecutive regular rest days in each work week.



11. Where duties require employees to sign off on documents as "certified" they shall do so as a part of their assigned duties.

12. Employees, after being on duty between four (4) and six (6) hours, will be provided with a twenty (20) minute meal period. The specific time of the meal period within this period, and the ability to grant such period will be subject to the operational requirements of the company. If operational requirements do not permit a meal period between four (4) and six (6) hours on duty, as specified herein, a meal period may be granted outside of this window, however it is not the intention of this rule to grant a meal period at the end of a tour of duty, nor payment of any penalty for failure to take a meal period.

13. Employees using a personal vehicle to travel to an assignment away from his assigned work location will receive a mileage allowance for the miles traveled to/from such assignment that exceed their normal commute miles. The mileage allowance will be equal to the IRS rate then in effect. The intent of this section is to reimburse the person for expenses incurred in the use of such vehicle. Employees will submit the mileage claim on Company provided form.

Personal Mileage Allowance Between Terminals		
Location	Location	Mileage Allowance
Ahoskie, NC	Elizabeth, NC	62 Miles

14. The Company will pay for lodging accommodations when Employees covered by this Agreement are required to stay away from home on Carrier business. The Company in the first instance will make arrangements for direct billing to the Company for such lodging, but in case such direct billing is not available, the Company will reimburse the Employee for his incurred lodging expense (not including food, drink, or other lodging charges, unless approved in advance by the Company).

15. Employees subject to this Agreement will be allowed a \$25.00 per day per diem allowance when Company lodges employee away from his home, on business of the Company. The Employee will claim the allowance on a reimbursable expense form as provided by the Company.

## **ARTICLE 6**

### **TEMPORARY ANNULMENT OF ASSIGNMENTS**

The Company has the option to temporarily annul an assignment. The Company may set back the starting time of an assignment without advertisement. In the event the annulment is caused by business conditions, track problems, derailment or engine availability problems of which the Company had sufficient advance notice, the Company will provide affected Operating Employees with at least two (2) hours notice.

**ARTICLE 7**  
**LEAVE OF ABSENCE**

1. Employees may be granted leave of absence in accordance with the leave of absence provisions contained in the RailAmerica, Inc. Employee Handbook.
2. Employees accepting a supervisory or official position with the NCVA, RailAmerica, of one of its subsidiary companies, or employees accepting an elective or appointive position with a State Commission or engaging in IMAW Committee or Legislative work including Local, General, or Grand Lodge Officers, will, upon request, describing the nature of their work, be granted leave of absence by letter for period so employed, including a fifteen (15) day separation period prior and subsequent to duration of assignment.
3. Subject to approval of the General Chairman and the General Manager, the same privilege will be granted to employees elected to City, County, State, and Federal offices. For recording purposes, after leave of absence has been granted by letter as set forth in the foregoing, regular leave of absence form will be provided by the Company and signed by the employee.
4. Any employee on leave of absence from the Company may not take on an employment relationship with an outside employer, with the exception of those named in Article 4 of this agreement, unless so approved by the General Manager and the General Chairman.
5. Failure of an employee to return to service following the expiration of fifteen (15) calendar days of the termination of their leave of absence, or to make other arrangements with the approval of the General Manager – NCVA and the General Chairman – IMAW, following the end of the leave of absence will be considered a forfeiture of seniority.

**ARTICLE 8**  
**ACCEPTING OFFICIAL POSITIONS**

1. An employee who accepts an official position with the Organization or a supervisory or official position with the NCVA, RailAmerica, or any of its subsidiary companies will retain and continue to accumulate seniority in all crafts where seniority is held. Such employee who voluntarily or involuntarily leaves such position and who returns to the Company within fifteen (15) days thereof will be permitted to exercise seniority in accordance with the provisions of this Agreement.
2. Failure of an employee to return to service following the expiration of the fifteen (15) days described in paragraph 1 above, or to make other arrangements with the approval of the General Manager – NCVA and the General Chairman – IMAW, will be considered a forfeiture of seniority.

## ARTICLE 9

### EMPLOYEE BENEFIT PACKAGE

1. Employees' vacation will be allowed as shown by the schedule listed herein. Employees' sick days (changed to personal leave days as described in Article 10 below), holidays, bereavement leave, jury duty, and unpaid personal days will be no less than those currently provided under the carrier's existing policies. Management has in effect a vacation policy that provides employees with full vacation credit on January 1 of each year and requires employees to use vacation in the calendar year in which it is earned, and pursuant to which employees who resign without proper notice forfeit any accrued vacation.

#### 2. VACATION ENTITLEMENTS

RATE OF ACCRUAL		
Length of Maximum Service	Rate of Accrual/ Hrs/Month	Accrual/Year
1-5 yrs (1-60 mos)	6.67 hours	80 hours
6-10 yrs (61-120 mos)	10 hours	120 hours
11-15 yrs (121-180 mos)	11.34 hours	136 hours
16+ yrs (181+ mos)	13.34 hours	160 hours

a. Employees eligible for more than ten (10) days of annual vacation may, at their option, elect to take the excess days on a single day basis. Unless otherwise agreed to by the management, these single day vacation days must be scheduled at least twenty-one (21) days in advance, and are subject to the needs of the service.

#### 3. HOLIDAYS

Paid holidays recognized by the Company are as follows:

New Year's Day	Thanksgiving Day
Memorial Day	Friday following Thanksgiving Day
July 4th	Christmas Eve Day
Labor Day	Christmas Day

a. Christmas Eve will be treated as all other holidays with respect to payment of holiday pay when not required to work on such day. Additionally, employees shall be paid for actual service performed on recognized holidays at the time and one-half rate of pay.

4. Carrier will make available on the same terms as it does to other employees a 401(k) plan with a company match. Employees covered by this Agreement must meet the Plan eligibility requirements to participate.

5. Employees shall accrue vacation on a current basis as set forth in the RailAmerica Employee Handbook. Five days accrued will be treated as one calendar week of vacation. Operating Employees will be compensated forty (40) hours pay at the normal assignment rate, for each week of vacation claimed.

6. a. The Company shall provide each employee and their eligible dependents a level of hospital, surgical, medical, prescription, dental, vision, term life, accidental death and dismemberment, supplemental life, short-term disability and long-term disability benefits under Group Insurance Plans on the same terms as they apply to other employees of the NCVA and other subsidiaries and as they may be amended from time to time. The Plan benefits are set out in the Summary Plan Description and or Certificate of Coverage.

b. The monthly contribution for active employees shall be made through payroll deduction on a pre-tax basis. Employees out of service on a qualified leave of absence can continue their health insurance coverage for up to twelve weeks (Family Medical Leave) by paying the monthly contribution directly to the Company by money order or certified check.

7. Employees that are required to wear steel-toed boots and who also use leather gloves in their assignment will be reimbursed \$140.00 per year toward the purchase of the boots. Gloves will be distributed on an as needed basis. Employees must return the worn-out gloves for replacement or bear the cost of the replacement gloves through payroll deduction. Employees must submit an expense form on their anniversary date requesting the boot allowance. New hire employees will qualify for boot allowance at the expiration of their probationary period.

## **ARTICLE 10**

### **PERSONAL LEAVE / FLEX DAYS**

1. Personal Leave / Flex Days will be in lieu of sick days as outlined in the current RailAmerica, Inc. Employee Handbook. Personal Leave / Flex Days will be accumulated at a rate of .5 days per month. Accrued Personal Leave / Flex Days may be used by an employee to take personal days off for various reasons, provided the employee gives the Company a minimum forty-eight (48) hours advance notice to the designated company officer, unless the company officer is agreeable otherwise due to extenuating circumstances. Flex day requests will be allowed or denied based on the needs of service. Employees shall receive a basic day's pay at the pro rata rate of their assignment for each Personal Leave / Flex Day taken. Employees will be required to take an accumulated Personal Leave / Flex Day, if any, for each day an employee marks-off sick.

2. Flex Days may be accumulated one calendar year to the next to a maximum of twelve days at any given time. Further accumulation shall be suspended until the number of days accumulated is reduced to less than twelve through utilization or buy back.

## **ARTICLE 11**

### **MANAGEMENT RIGHTS**

It is recognized that the management of the business is vested in the Company, whose discretion and judgment shall control as to the selection of employees, the work and duties to which they are assigned, and the terms and conditions of employment, so long as the same are not in conflict with the provisions of the Agreement, and provided that no action may be taken for the purpose of discrimination against any employee because of his membership with the Union.

## **ARTICLE 12**

### **HEARINGS AND DISCIPLINE**

1. Subject to the following, an employee in service more than ninety (90) days will not be disciplined without a fair and impartial hearing. The employee will be notified of the charge against him within ten (10) days of the occurrence on which is to be based, or within ten (10) days of when the Company's knowledge of the incident. Within ten (10) days of notification, the Company will conduct the hearing with the employee and a duly accredited representative, if desired, in attendance. The charged employee will be permitted to attend the investigation, hear all the evidence submitted, interrogate witnesses, and be represented by his choice of a duly-authorized representative of the IAMAW, or an IAM represented employee. An employee required by the NCVA to attend a hearing as a witness during regularly-assigned hours, or at such time as will interfere with the ability to work his assigned hours, will be made whole for time lost. An employee required by the NCVA to attend a hearing as a witness commencing outside his assigned hours will be paid at his regular straight time rate. If the matter is not resolved after an investigation, at the Union's request, the Company will provide a written transcript.

2. In cases Management determines to be serious (such as, but not limited to, theft, altercation, insubordination, dishonesty, negligence, threats to NCVA personnel or customers, damaging or defacing NCVA property or property entrusted to the custody of the NCVA or use or possession of alcoholic beverages, intoxicants, drugs, narcotics or major accidents) or when required by application of federal regulation governing the conduct of railroad operations, an employee may be withheld from service. It is understood that an employee held out of service under this article who, as a result of the investigation, is found to have not committed the offense(s) charged will be reinstated immediately and paid for time lost. Where an employee has not lost time, he will be compensated for time during which the Company required him to be at the hearing.

3. Employees will be notified, in writing, of the disciplinary action assessed within thirty (30) days after the completion of the investigation or the discipline will be considered void. Appeals will be handled as stipulated in Article 13.

4. The employee may waive an investigation and accept discipline which may be assessed, provided that such waiver is agreed-to by the Company Officer, and provided further that

**APPENDIX A – GRIEVANCE/CLAIM FORM**

**NAME:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**ENGINE NUMBER:** \_\_\_\_\_ **JOB NUMBER:** \_\_\_\_\_

**ON-DUTY TIME AND DATE:** \_\_\_\_\_

**OFF-DUTY TIME AND DATE:** \_\_\_\_\_

**CARRIER OFFICIAL INVOLVED:** \_\_\_\_\_

**DESCRIPTION OF CLAIM/REMEDY SOUGHT, RULE CITATION:**

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**Signature of Local Chairman or Aggrieved Employee:** \_\_\_\_\_

**DISPOSITION OF CLAIM: PAID:** \_\_\_\_\_ **DECLINED:** \_\_\_\_\_

**IF DECLINED, BRIEF DESCRIPTION OF REASON(S):**

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**Signature of Carrier Official**

discipline in excess of thirty (30) days suspension will not be issued pursuant to such waiver without the agreement of an IAMAW Representative. A copy of all waivers signed and accepted by employees represented by IAMAW will be presented or mailed to the Local Chairman having jurisdiction.

### **ARTICLE 13**

### **GRIEVANCE AND ARBITRATION PROCESS**

1. Should any differences arise between the Company and the Union pertaining to the meaning, interpretation or application of this Agreement, including whether an employee's discipline or discharge was proper, the Union may request, in writing, a conference to discuss the matter.
2. The party requesting the conference will present to the other party a signed statement of the claim containing the provision(s) of this Agreement or applicable rule(s) alleged to have been violated and a complete statement of the grievance, giving facts, dates, and times of events, in the form attached as Appendix 1 to this Agreement. The signed statement must be presented to a designee of the Company within thirty (30) days of the act or omission complained of.
3. Within thirty (30) days of receipt of the signed statement, the General Manager, or his designee, and the General Chairman, or his designee, will meet to discuss the grievance. During such meeting, the Union may amend its claim, and if it does so, an amended form initialed by the parties shall be prepared. Only those provision or rules specifically set forth in the amended form shall be considered in arbitration, and any claims based on provisions or rules not expressly referenced in the written grievance shall be deemed waived.
4. The time limits at any stage of handling may be extended by written agreement between the carrier and IAMAW. When the U.S. Mail is used, the postmark will govern in determining compliance with the various time limits.
5. If the parties are unable to satisfactorily adjust the dispute in this meeting, the IAMAW may submit it for resolution to an adjustment board that has been agreed-to by the parties pursuant to Section 3, Second of the Railway Labor Act, 45 U.S.C. 153, Second within thirty (30) days from the date of the meeting.

### **ARTICLE 14**

### **REPRESENTATION**

1. The Company respects the right of individual employees to become Union Members in good standing. It shall be a condition of the continued employment of all employees covered by this Agreement that each employee shall, on or before the first day of each calendar month, beginning \_\_\_\_\_, pay to the Union as a fee for such services rendered and to be rendered by the Union in acting as such employee's representative for purposes of collective

bargaining, an amount chargeable as an agency fee. Employees hired after the effective date of this Agreement, shall as a condition of employment pay or tender to the Union such amounts for the period on or after the 60th day after such entrance.

2. The Company will deduct from wages due employees represented by the Union amounts for periodic dues, initiation fees and assessments (but not fines and penalties) for each employee from which the Company has received a written and unrevoked authorization in the form attached hereto as Appendix II. Deductions shall be made by the Company in accordance with certified deduction lists furnished by the Treasurer of the Union. The Company will make deductions monthly from the second pay period in each calendar month, and the Company will remit to the Treasurer the total amount of such deductions on or before the 20th day of the following month. In the event an employee's earnings are insufficient to permit the full amount of deduction, no deduction shall be made for such period and the responsibility for collection will rest entirely with the Union.

3. Upon written notification from the Union that an employee has failed to pay union dues or an agency fee, and upon request from the Union that the employee be terminated, the Company shall terminate the employee.

5. The Union shall indemnify, defend and save the Company harmless against all claims, suits or liability arising out of the application of this article.





**ARTICLE 15**  
**MORATORIUM AND TERM OF AGREEMENT**

1. This Agreement shall remain in effect through December 31, 2013, and thereafter until changed or modified in accordance with the provisions of the Railway Labor Act, as amended.
2. No party to this Agreement will serve any notice or proposal under the terms of the Railway Labor Act for the purpose of changing the provisions of this Agreement prior to October 1, 2013.
3. All proposals in pending notices served by the Union and the NCVA are hereby withdrawn.
4. This article will not bar the NCVA or the Union from agreeing upon any subject of mutual interest.


IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of this 30th day of March, 2010. This Agreement, if ratified, becomes effective at 12:01 A.M., April 1, 2010.

FOR THE COMPANY:

  
\_\_\_\_\_  
General Manager

  
\_\_\_\_\_  
Regional Vice President

FOR THE UNION:

  
\_\_\_\_\_  
General Chairman IAMAW

**APPENDIX B – WAGE DEDUCTION AUTHORIZATION**

**NORTH CAROLINA & VIRGINIA RAILROAD**

**AND**

**UNITED TRANSPORTATION UNION**

**EMPLOYEE NAME:**

\_\_\_\_\_  
(PRINT)      LAST                              FIRST                              MI

**EMPLOYEE HOME ADDRESS:**

\_\_\_\_\_  
STREET & NUMBER                              CITY                              STATE                              ZIP CODE

**SOCIAL SECURITY #:** \_\_\_\_\_ **IAMAW LOCAL NUMBER** \_\_\_\_\_

Office of Payroll

I hereby assign to the International Association of Machinists and Aerospace Workers that part of my wages necessary to pay periodic dues, assessments and insurance premiums (not including fines and penalties) as reported to the Carrier by the Secretary-Treasurer of my Union Local in a monthly deduction list certified by him as provided in the Deduction Agreement, entered into by the Carrier and the Union, and I authorize the Carrier to deduct such sum from my wages and pay it over to the Secretary-Treasurer of the Local lodge of the Union in accordance with the Deduction Agreement.

I understand in accordance with the Deduction Agreement this assignment for deduction of Union dues shall remain in full force and effect throughout the course of my employment.

**SIGNED:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

March 30, 2010

**Side Letter No. 1**

Mr. Michael Perry, General Chairman  
International Associations of Machinists and Aerospace Workers

Reference: Article 2 -- Rates of Pay

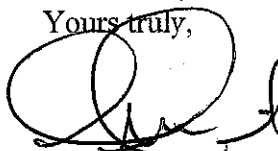
Dear Mr. Perry:

In reference to the collective bargaining agreement signed today, we discussed the concerns expressed by the Organization regarding the possible future modification of the RailAmerica Incentive Compensation Plan (hereinafter referred to as "the Plan"). In that respect, the Company is agreeable to the following:

In the event, during the moratorium period of this contract, the Plan is revised by RailAmerica to provide for a reduction in the potential compensation there under below six percent (6%) of the employees' gross wages, the Organization may, at its option, serve a 30-day written notice upon the Company of its intent to discontinue participation in the Plan effective at the beginning of the next quarter. In that event, the rates of pay will be increased by 1% concurrent with discontinuance of Plan participation for the balance of that calendar year. Thereafter, for the balance of the moratorium period, the remaining general wage increases provided shall be applied at 3% instead of 2%.

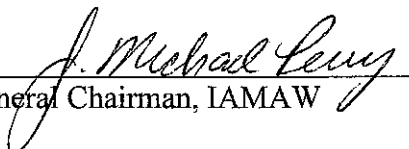
If this accurately sets forth our understanding in this matter, please indicate your concurrence by signing below.

Yours truly,



Todd Gruenemeier  
General Manager  
North Carolina & Virginia Railroad

I AGREE:

  
General Chairman, IMAW

March 30, 2010

**Side Letter No. 2**

Mr. Michael Perry, General Chairman  
International Associations of Machinists and Aerospace Workers

Reference: Entitlements

Dear Mr. Perry:

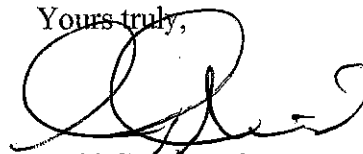
In reference to the collective bargaining agreement signed today, the entitlement schedule contained herein, will not be affected by any future reductions or modifications made to published entitlements in the RailAmerica Handbook. This is applicable to vacations, personal/flex days and holidays.

Should modifications increasing entitlements named above occur in the future, in the RailAmerica Handbook, such changes will become applicable to all Agreement employees at the designated date and time that the other RailAmerica properties are affected.

It is the intent of this letter to hold firm the entitlements named above at the levels existing in the RailAmerica Handbook on the date this agreement is signed.

If this accurately sets forth our understanding in this matter, please indicate your concurrence by signing below.

Yours truly,



Todd Gruenemeier  
General Manager  
North Carolina & Virginia Railroad

I AGREE:

  
General Chairman, IAMAW

## **APPENDIX C UNION SHOP**

1. All employees covered by the Agreement to which this Appendix is attached shall, as a condition of their continued employment, become members of the organization party to that Agreement representing their craft or class within sixty calendar days of the date they are first appointed to a permanent position as such employees after the effective date of that Agreement, and thereafter shall remain members in good standing in such organization.
2. (a). Employees who retain seniority under the rules and working conditions provided in the Agreement to which this Appendix is attached who are regularly assigned or transferred to full-time employment not covered by that Agreement, or who are furloughed on account of force reduction, will not be required to maintain membership where required by Section 1 of this Appendix so long as they remain in such other employment or furloughed, but they may do so at their option. Should such employees return to service covered by the Agreement to which this Appendix is attached, they shall, as a condition of their continued employment subject to Section 1 above, be required to become and remain members in good standing in the organization representing their craft or class within thirty days from the date of their return to such service.
2. (b). The seniority status and rights of employees furloughed to serve in the Armed Forces shall not be terminated by reason of any of the provisions of this Appendix, but such employees shall, upon resumption of employment covered by the Agreement to which this Appendix is attached, be covered by Section 1 of the Appendix.
3. Nothing in this Appendix shall require an employee to become or to remain a member of the organization if such membership is not available to such employee upon the same terms and conditions as are applicable to any other member, or if the membership of such employee is 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 or purposes of this Section, dues, fees, and assessments shall be deemed to be "uniformly required" if they are required of all employees in the same status at the same time in the same organizational unit.
4. (a). The Company will furnish the organization information requested by the General Chairman with respect to the employment status of employees in the craft or class represented by it, and which is reasonably necessary for the administration of this Appendix. The organization will notify the Company in writing of any employee who, by reason of failure to comply with the terms of this Appendix, is not entitled to continue in employment. Upon receipt of such notice, the Company will, as promptly as practicable, but within ten calendar days of such receipt, so notify such employee in writing by certified mail, return receipt requested, or by personal delivery evidenced by receipt. A copy of such notice shall be given to the organization. Any such

employee who disputes the fact that he has failed to comply with the terms of this appendix, shall, within a period of ten calendar days from the receipt of such notice, request the Company in writing to accord him a hearing. Upon receipt of such request, the Company shall set a date for hearing which shall be held as soon as possible and within ten calendar days of the date of receipt or request therefore. Notice of the date set for hearing shall be promptly given the employee in writing by certified mail, return receipt requested, or by personal delivery evidenced by receipt. A copy of such notice of hearing shall be given to the organization and the organization shall attend and participate in the hearing. The receipt by the Company of a request for hearing shall operate to stay action on the termination of employment until the hearing is held and the decision of the Company is rendered. If such employee fails to request a hearing as provided herein, the Company shall proceed to terminate his employment on the basis of the record created by the foregoing procedures, and seniority in that craft or class not later than thirty calendar days from receipt of the above-described notice from the organization, unless the Company and the organization agree otherwise in writing.

(b). The Company shall determine on the basis of the evidence produced at the hearing whether or not the employee has complied with the terms of this Appendix and shall render a decision accordingly. Such decision shall be rendered within ten calendar days of the hearing date and the employee and the organization shall be promptly advised thereof. If the decision is that employee has not complied with the terms of this Appendix, his employment and seniority in that class or craft shall be terminated within ten calendar days of the date of said decision, unless the Company and the organization agree otherwise in writing. If the decision of the Company is not satisfactory to the employee or to the organization, it may be appealed directly to the highest officer of the Company designated to handle such appeals. Such appeal shall be taken within nine calendar days from receipt of the decision appealed from, and if taken, shall operate to stay action on the termination of employment, until the decision on appeal is rendered. The Company shall promptly notify the other party in writing of any such appeal. The decision on such appeal shall be rendered within ten calendar days of the date the appeal is taken, and the employee and the organization shall be promptly advised thereof. If the decision on such appeal is that the employee has not complied with the terms of this Appendix, his employment and seniority in that class or craft shall be terminated within ten calendar days of the date of said decision, unless the Company and the organization agree otherwise in writing. Such decision on appeal shall be final and binding unless within seven days thereof the organization requests in writing that the decision be reviewed in joint conference by the President of the Company or his designee, and the Chief Executive Officer of the organization involved, or his designated representative. If such request is made, the decision on appeal shall be reviewed in such joint conference within seven days of the date such request is received, and any decision rendered within such seven day period shall be final and binding. If the decision on such review is that the employee has not complied with the terms of this Appendix, his employment and seniority in that class or craft shall be terminated within ten calendar days of the date of said decision, unless the Company and the organization

agree otherwise in writing.

(c). Time limits specified in this Section may be extended in individual cases by written agreement of the Company and the organization.

(d). Provisions of discipline rules contained in the Agreement to which this Appendix is attached will not apply to cases arising under the Appendix.

(e). The General Chairman of the organization shall notify the Company in writing of the titles and addresses of its officers and representatives who are authorized to serve and receive the notices described in this Section. The Company shall notify the General Chairman of the organization of the titles and addresses of its officers or representatives who are authorized to receive such notices.

5. Notwithstanding anything in this Appendix, the Company shall not be required to terminate the employment of any employee until such time as the services of a qualified replacement are available. The determination of whether a qualified replacement is available shall be made jointly by the designated representative of the Company and the designated representative of the organization involved. The Company may not, however, retain any employee in service under the provisions of this Section for a period in excess of thirty calendar days from the date of the decision from the last appeal taken. Employees whose service is extended under the provisions of this Section shall not, during such extension, retain or acquire any seniority rights.

6. An employee whose employment and seniority in a craft or class is terminated pursuant to the provisions of this Appendix shall have no time or money claim by reason thereof.

## **APPENDIX D DUES DEDUCTION**

1. It is agreed that the Company will, in accordance with and subject to the terms and conditions of this Addendum, deduct from the wages due to each employee represented by the Union from whom it receives a valid written wage assignment, described in Section 2., an amount each month during the continuance in effect of his assignment, which shall be equal to the aggregate of the amounts to be paid by such employee to the Union for periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership in such Union.
2. No such deductions as fixed by Section 1. shall be made from the wages of an employee until after execution by the employee and delivery by the Union to the Company of a written wage assignment in a manner and form similar to that provided in Attachment "C", which is made a part hereof. The wage assignment shall be revocable and the revocation shall be executed on a form similar to that appearing in Attachment "O", which is made a part hereof. The assignment and revocation forms are to be furnished by the Union without expense to the Company, in the form designated by the Company. The Company shall have no responsibility or obligation whatsoever in connection with the procurement and the execution of such forms by employees and the Union shall arrange for the delivery of the executed forms to the Company. The necessary assignment and revocation forms shall be delivered, with the Master Deduction list hereinafter provided for, to the payroll-making office of the Company not later than the 16<sup>th</sup> day of the month in which the deduction, or termination of deduction, is to be made effective by the Company.

Where the employee submits a form similar to the Wage Assignment Revocation (Attachment "D") signifying his intent and desire to revoke the Wage Assignment Authorization previously submitted by him, to the payroll-making office of the Company not later than the 16<sup>th</sup> day of the month, the Company will accept it and arrange for the discontinuance of the deduction thereafter.

3. The General Chairman of the Union shall furnish to the payroll-making office the name and address of the Secretary-Treasurer authorized to sign the Master Deduction List, together with three (3) original signature of the Secretary-Treasurer and advise promptly in the event of any change in the name or mailing address of the Secretary-Treasurer.
4. Deductions as provided for herein' will be made by the Company in accordance with the Master Deduction List furnished to it by the Union. The Secretary-Treasurer of the Union shall furnish a Master Deduction List for all members who have authorized such deductions, showing the amount of the regular monthly deduction for each member. The Master Deduction List shall be prepared in the form and shall contain the information specified in Attachment "E", which is made a part hereof. Only one copy is needed by the Company. The Master Deduction List should reach the payroll-making



office no later than the 16<sup>th</sup> of the month following the effective date of this Agreement. The Secretary-Treasurer of the Union will maintain a copy of the Master Deduction List and keep it updated for all changes. Employees should be shown in alphabetical order with their identification numbers. The number and complete mailing address of the Secretary-Treasurer to whom the remittance is to be mailed by the Company shall be shown on these lists.

5. The amounts contained in said Master Deduction List for individual employees shall, wherever possible, remain the same from one payroll period to the next. No deduction will be made for any employee for whom an entry on the Master Deduction List is incomplete, illegible or otherwise doubtful. Entries for individual employees may be considered incomplete unless the list contains the information required as specified in Attachment "E", which is made a part hereof.

It will only be necessary for the Secretary-Treasurer to furnish the payroll-Making office each month information as to any change in the deductions from those shown on the Master Deduction List.

The reason for each change in deduction should be fully explained in the "Remarks" column, such as, New Authorization Form, Revocation, Omitted Deduction, Arrears, etc. In cases of Permanent Deduction, Special Assessments and Change in Permanent Deduction, the following abbreviations may be used: Perm. Ded., Spl. Assc., Change Perm. Ded. This is essential so that change may be made where necessary in the deduction file information as taken from the Master Deduction List. The amount to be deducted as established in the deduction file information will not be changed until there is a permanent change in the amount to be deducted each month. In cases of omitted items or non-permanent increases in the amount to be deducted, only the amount in excess of the regular deduction should be reported. In this manner the excess deduction will be dropped from succeeding reports, and only the regular deductions will be continued.

This information should be furnished to the payroll-making office no later than the 16<sup>th</sup> of each month, beginning with the month of. It should be reported on the same kind of form as used for the "Master Deduction List", only one copy will be necessary.

6. Deductions will be made, to the extent of available earnings, each month beginning with coverage for according to information shown on these lists. The deductions will be made only from earnings due the employees for the first payroll period of each month, which is the first period of the month which contains only earnings for the current month. The Carrier will remit by check to the Secretary-Treasurer of the Union the total amount of the deductions on or before the 25<sup>th</sup> day of the succeeding month.

A machine-produced list, in alphabetical order showing amount deducted for each employee each month, will be forwarded to the Secretary-Treasurer along with the remittance. A copy of the list will be forwarded to the General Chairman. The absence of any employees from these lists will indicate such employees were not working or did not have sufficient earnings from which

to make the deductions. Regular deductions will be made in subsequent periods to the extent of available earnings as long as the employee's name remains on the Master Deduction List.

No deductions will be accumulated or carried over from month-to-month for any reason whatsoever. In the event of any error by the Company, it shall be authorized to adjust it, advising all concerned accordingly. In the event of any error by the Company in the amount of its remittance to the Union, if such error is not otherwise adjusted prior to the dispatch of the remittance the following month, the Company will be permitted to adjust the amount of succeeding remittance to correct the error.

7. The Company will not make a deduction from the wages of any employee who does not have due to him the first payroll period of the calendar month an amount equal to the sum to be deducted in accordance with this Agreement, after first deducting, as priority deductions, amounts due in the following categories:
  - a. Federal, State and Municipal taxes,
  - b. Amounts held by orders of Court by garnishment and attachments,
  - c. Amounts due the Carrier,
  - d. Prior Valid Assignments and Deductions.
8. Responsibility of the Company under this Addendum shall be limited to remitting to the Union amounts actually deducted from wages of the employees pursuant to this Addendum and the Company shall not be responsible to any employee for making deductions specified on a deduction list or for failure to do so. Any question arising as to the correctness of the amount listed and deducted shall be handled between the employee involved and the Union, unless the Company, recognizing a mathematical mistake by it, elects to make direct adjustment pursuant to the fourth paragraph of Section 6 above.
9. No part of this Addendum shall 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; likewise, no part of any other agreement between the Company and the Union shall be used as a basis for the grievance or time claim by or in behalf of any employee predicted upon compliance or failure to comply with the provisions of this Addendum.
10. The Union shall indemnify, defend and save harmless the Company from any and all claims, demands, liability, losses, or damage resulting from the making of this Addendum or from compliance or failure to comply with the provisions thereof.
11. In the event of any change in the representation of any craft or class of employees covered by the deduction lists submitted under this Addendum, this Addendum shall automatically terminate as to such employees from the date that the official notification is received from the National Mediation Board of such change. If the Union institutes any suit against the Company under this Addendum, said Addendum shall terminate immediately.

**APPENDIX E  
WAGE ASSIGNMENT REVOCATION**

Mr. \_\_\_\_\_ (Title) \_\_\_\_\_  
North Carolina & Virginia Railroad

\_\_\_\_\_ (Location)

Name: \_\_\_\_\_  
Last First Middle Initial

Home Address: \_\_\_\_\_  
Street and number City State Zip

SSA No.: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

Department: \_\_\_\_\_ City: \_\_\_\_\_ Occupation: \_\_\_\_\_

Effective \_\_\_\_\_, I hereby revoke the Wage Assignment Authorization now in effect assigning to the International Association of Machinists and Aerospace Workers, that part of my wages necessary to pay my monthly dues, assessments, and initiation fees (not including fines and penalties) now being withheld pursuant to the Union Dues Deduction Agreements between the Organization and North Carolina & Virginia Central Railroad, and I hereby cancel the Authorization now in effect authorizing the North Carolina & Virginia Central Railroad to deduct such monthly dues, assessments and initiation fees from my wages.

\_\_\_\_\_, 20\_\_\_\_  
(Date)

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

## Office of Payroll

[illegible]

(Address)

Total of \_\_\_\_ Sheets

**RAILAMERICA, INC.**

**INCENTIVE  
COMPENSATION  
PLAN**

**RAILAMERICA, INC.**  
**INCENTIVE COMPENSATION PLAN**

This plan document sets forth the RailAmerica, Inc. Incentive Compensation Plan (Plan). This Plan supersedes the RailAmerica Inc. Profit Sharing Plan, and any individual Railroad Plan that provided compensation as a "safety incentive" and is effective January 1, 2008. The purpose of this Plan is to enhance the safety and performance of all RailAmerica employees not eligible under another Company bonus or incentive plan, and to attract, retain and motivate those employees.

**ARTICLE I**  
**DEFINITIONS**

Wherever these terms are used in this Plan, they shall have the following meanings:

A. "Administrative Department" means a department that provides a centralized service for the Company's railroads. These departments primarily reside at the Corporate Headquarters in Boca Raton, Florida and San Antonio, Texas, the Dispatching Center in St. Albans, Vermont and the Customer Service Centers.

B. "Affiliate" or "Subsidiary" means (a) any entity that, directly or indirectly, is controlled by the Company, and (b) any entity in which the Company has a significant equity interest.

C. "Company" means RailAmerica, Inc. or any successor corporation or other entity resulting from a merger or consolidation into or with the Company, or a transfer or sale of substantially all of the assets of the Company.

D. "Eligible Employee" means any individual who fulfills the following four (4) criteria:

(i) Is an active, permanent, full-time employee of either:

(a) a Railroad, but specifically excluding Office Managers, Trainmasters, Roadmasters, Chief Mechanical Officers, Assistant General Managers and General Managers, and other employees who may from time-to-time be designated as included in the Company's [Management] Bonus Plan; or

(b) an Administrative Department of the Company, its Affiliate or Subsidiary, but specifically excluding all Company Executive Officers, Managers, Directors, Paralegals, Dispatching Supervisors, and other employees who may from time-to-time be designated as included in the Company's [Management] Bonus Plan;

(ii) Whose terms and conditions of employment are not established by a collective bargaining agreement (unless otherwise agreed to by the Railroad and the appropriate labor organization);

- (iii) Who is not covered by any other Company bonus or incentive plan; and
- (iv) Who remains "FRA reportable injury free and human failure incident free," as defined herein.

E. "Incentive Payment" means the payment to Eligible Employees pursuant to this Plan. Incentive payments will be up to six percent (6%) of an individual's gross earnings. The exact amount will be determined by the employee's performance as an individual, and the performance of the Railroad and the Company.

F. "Railroad" means an Affiliate engaged in the business of operating a railroad or railroad facility.

G. "FRA Reportable injury free and human failure incident free" means not sustaining a Federal Railroad Administration (FRA) reportable injury as a result of the violation of a Company safety or operating rule, and not causing a human-factor incident or derailment as a result of a violation of a Company safety or operating rule.

H. "Payment Date" means the date, following the end of each calendar quarter (for Eligible Employees of a Railroad), or following the end of the year (for Eligible Employees of an Administrative Department), on which the Incentive Payment is paid to Eligible Employees.

I. "Plan" means the RailAmerica, Inc. Incentive Compensation Plan as set forth herein and as hereinafter amended from time to time.

J. Words in the masculine gender shall include the feminine and the singular shall include the plural, and vice versa, unless qualified by the context. Any headings used herein are included for ease of reference only and are not to be construed so as to alter the terms hereof.

## ARTICLE II QUARTERLY INCENTIVE PAYMENT

A. Payment. Subject to the provisions of Articles III and IV, infra, Railroads and Administrative Departments of the Company, its Affiliate and Subsidiaries, will pay, to each Eligible Employee on the Payment Date, an Incentive Payment as calculated in Section II B., subject to appropriate payroll taxes.

B. Calculation. The calculation of the Incentive Payment for each Eligible Employee shall be a percentage of the Eligible Employee's gross wages based on the following factors:

### **For Eligible Employees of Railroads (calculated quarterly):**

(i) Three percent (3%) of the employee's gross wages for the quarter based on the employee remaining FRA reportable injury free and human failure incident free;

(ii) Two percent (2%) of the employee's gross wages for the quarter based on the employee's Railroad remaining FRA reportable injury free and human failure incident free; and

- (iii) One percent (1%) of the employee's gross wages for the quarter based on an improvement of the Railroad's free cash flow as compared to the same period in the prior calendar year.

**For Eligible Employees of an Administrative Department (calculated annually):**

- (i) Five percent (5%) of the employee's gross wages for the year based on the employee satisfactorily fulfilling his or her duties and responsibilities;
- (ii) One percent (1%) of the employee's gross wages for the year based on an improvement of the Company's free cash flow as compared to the prior year.

Employees receiving less than six percent (6%) and those employees determined not to be Eligible Employees for an Incentive Payment during a particular quarter or year will be notified of the reasons for such determination.

The determinations shall be made by the appropriate General Manager or Department head and approved by the Chief Executive Officer (CEO) of the Company.

C. New Hires. An employee hired during a calendar quarter or calendar year and who remains employed by the Railroad or Administrative Department on the Payment Date shall be paid a pro rata amount based on the number of days worked by the employee compared to the number of workdays in the quarter or year.

D. Retirees. An employee who retires during a calendar quarter or calendar year shall be paid a pro rata amount based on the number of days worked by the employee compared to the total number of work days in the quarter or year.

E. New Union Representation. Upon the certification of any previously unrepresented group of Eligible Employees, the Railroad shall continue to pay Incentive Payments pending the outcome of collective bargaining negotiations.

### **ARTICLE III ADMINISTRATION OF THE PLAN**

A. Administration by the CEO. The Company's Chief Executive Officer shall be responsible for the operation and administration of the Plan.

B. Powers and Duties of CEO. The Chief Executive Officer shall administer the Plan in accordance with its terms and shall have all the powers necessary to carry out the provisions of the Plan. The Chief Executive Officer shall determine all questions arising in the administration, interpretation, and application of the Plan, including, but not limited to, questions of coverage, employee status and determination of benefits. Any such determination by the Chief Executive Officer shall be conclusive and binding on all persons.

### **ARTICLE IV AMENDMENT OR TERMINATION**

A. Amendment or Termination. The Company reserves the right to amend or terminate the Plan at any time for any reason in its sole discretion. This Plan does not create any



vested rights for any person. Any amendment or termination of this Plan shall be made pursuant to written action by the Chief Executive Officer.

## ARTICLE V GENERAL PROVISIONS

A. No Enlargement of Employee Rights. No employee or other person shall have any right to receive an Incentive Payment under the Plan except in accordance with the terms of the Plan. Establishment of the Plan shall not be construed to give any employee the right to be retained in the service of the Company, any Railroad, or any other Affiliate or successor.

B. Spendthrift Provision. No interest of any person or entity in, or putative right to receive an Incentive Payment under the Plan shall be subject in any manner to sale, transfer, assignment, pledge, attachment, garnishment, or other alienation or encumbrance of any kind; nor may such interest or right to receive an Incentive Payment be taken, either voluntarily or involuntarily for the satisfaction of the debts of, or other obligations or claims against, such person or entity, including claims for alimony, support, separate maintenance and claims in bankruptcy proceedings.

C. Participant's Rights Unsecured. The Plan at all times shall be entirely unfunded and no provision shall at any time be made with respect to segregating any assets of the Company or of any Railroad for payment of any benefit hereunder. Any right of an Eligible Employee to receive a benefit hereunder shall be an unsecured claim and neither the Eligible Employee nor any beneficiary shall have any rights in or against any specific assets of the Company or of any Railroad.

D. Corporate Successors. The Plan shall not be automatically terminated by a transfer or sale of assets of the Company or any Railroad, or by the merger or consolidation of the Company or any Railroad into or with any other corporation or other entity, but the Plan shall be continued after such sale, merger or consolidation only if and to the extent that the transferee, purchaser or successor entity remains an Affiliate or Subsidiary and agrees to continue the Plan.

E. Limitation of Liability. Notwithstanding any other provisions of the Plan, no officer, director, agent or employee of the Company or of any Railroad, or of any Affiliate or successor, shall be liable to any Eligible Employee or any beneficiary or other person for any claim, loss, liability or expense incurred in connection with the Plan.

F. Applicable Law. The Plan shall be construed and administered under the laws of the State of Florida without regard to its choice of law except to the extent preempted by federal law.

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John Giles  
Chief Executive Officer