

FINANCING AGREEMENT

dated as of May 5, 2015

between

The METROPOLITAN TRANSPORTATION AUTHORITY,
a public benefit corporation of the State of New York

and

The UNITED STATES OF AMERICA,
represented by the
SECRETARY OF TRANSPORTATION
acting through the
FEDERAL RAILROAD ADMINISTRATOR

(the “Financing Agreement”)

Positive Train Control Project

PO# RRIF-2015-0036

LOAN TERMS SUMMARY

1. Borrower:	Metropolitan Transportation Authority (the “MTA”).
2. Lender:	The United States of America, represented by the Secretary of Transportation acting through the Federal Railroad Administrator (the “Administrator”).
3. Purpose of Financing:	To finance costs incurred by the MTA in connection with the installation of the federally required Positive Train Control Systems on the tracks operated by The Long Island Rail Road Company and Metro-North Commuter Railroad Company.
4. Loan Amount:	Up to \$967,100,000 – On May 5, 2015, MTA issued a Transportation Revenue Bond (the “Series 2015X Bond”) to the Administrator in the original principal amount of \$0; the principal amount of the Series 2015X Bond will be increased each time MTA is reimbursed by the Administrator for eligible expenditures that satisfy the requirements of the Financing Agreement and federal law (each, an “Advance Date”). The provisions of the TRB Resolution applicable to the issuance of additional bonds there under were satisfied assuming the reimbursement by the Administrator of the full principal amount of the loan.
5. Maturity and Amortization of Loan:	November 15, 2037, paid in annual installments on each November 15, commencing November 15, 2018, calculated on a level debt service basis.
6. Security for Repayment:	Transportation Revenue Bond issued under the MTA’s General Resolution Authorizing Transportation Revenue Obligations, adopted by the Board of the MTA on March 26, 2002 (the “TRB Resolution”), as amended and supplemented from time to time.

7. Source of Repayment:	Trust Estate under the TRB Resolution, consisting primarily of MTA’s pledged transportation revenues from Transit and Commuter System operations and MTA Bus operations, MTA Bridges and Tunnels operating surplus, subsidies from State and local governmental entities and certain other sources.
8. Interest Rates:	<p>Base Rate of 2.38% per annum.</p> <p>During the period that the Administrator or another federal entity is the holder of the Series 2015X Bond, if MTA fails to maintain, for a period of at least 180 consecutive days, unenhanced long-term credit ratings issued by at least two (2) rating agencies on Bonds issued under the TRB Resolution of at least “A-” by S&P or Fitch, or “A3” by Moody’s (a “Ratings Downgrade”), the interest rate will increase by 2.00% per annum.</p> <p>During the period that the Administrator or another federal entity is the holder of the Series 2015X Bond, if MTA fails to pay any interest on or principal amount of the Bond within five (5) business days after the same becomes due and payable (a “Payment Default”), the interest rate will increase by 2.00% per annum.</p> <p>If both a ratings decline and a payment default occur as described in the preceding two paragraphs, the interest rate would increase during such periods by 4.00% per annum during the period that the Administrator or another federal entity is the holder of the Bond.</p>
9. Payment Dates:	<p>Principal Payment Date: each November 15, beginning November 15, 2018, to and including November 15, 2037.</p> <p>Interest Payment Date: each May 15 and November 15 beginning after the first Advance Date.</p>
10. Prepayment Provisions:	The MTA may prepay the Series 2015X Bond in whole or in part at any time, without penalty or premium, at 100% of the principal amount of the Series 2015X Bond to be prepaid, plus accrued interest to but excluding the date of such prepayment. MTA must give written notice to the Lender not less than ten (10) nor more than thirty (30) calendar days prior to the date set for prepayment.
11. Tax Status of Interest:	Taxable

<p>12. Advance Suspension Events:</p>	<p>During the period that the Administrator or another federal entity is the holder of the Series 2015X Bond, the following events constitute “Advance Suspension Events”: a Payment Default; MTA’s breach of a covenant under the Financing Agreement; misrepresentation by the Borrower under the Financing Agreement or the application to the Borrower; the occurrence of a material adverse effect under the Financing Agreement for thirty (30) days; an event of default under the TRB Resolution; the occurrence of a default under any other indebtedness of MTA or any other Related Entity in an aggregate principal amount exceeding \$100,000,000 which would permit the holders thereof to accelerate the principal amount; certain bankruptcy or insolvency events; certain actions by the State of New York in violation of its pledge and agreement to bondholders; unenforceability of material provisions of the TRB Resolution or the Financing Agreement or if any Related Entity challenges the enforceability thereof; and judgments of \$25,000,000 or more in excess of available third party insurance coverage.</p>
<p>13. Remedies following an Advance Suspension Event:</p>	<p>Upon the occurrence of an event of default under the TRB Resolution, each Series 2015X Bondholder (including transferees of the Administrator that are not federal entities), can exercise remedies under the TRB Resolution that are available to all TRB Bondholders.</p> <p>During the period that the Administrator or another federal entity is the holder of the Series 2015X Bond, (a) upon the occurrence of any Advance Suspension Event, the Administrator’s obligation to make additional advances under the Financing Agreement is suspended and the Administrator may exercise any and all available rights and remedies, including specific performance of certain obligations, and (b) upon a Payment Default, the interest rate on the Series 2015X Bond will increase by 2.00% per annum.</p> <p>No Bondholder has any right to require the MTA to redeem the Series 2015X Bond or accelerate the payment of principal thereon or to subject the Series 2015X Bond to mandatory purchase in advance of its stated maturity date.</p>
<p>14. Transferees</p>	<p>If the Administrator transfers all or a portion of the Series 2015X Bond to a holder that is not another federal entity, the following provisions of the Financing Agreement are inapplicable:</p> <ul style="list-style-type: none"> • exercise of any remedies other than those provided to all other TRB Bondholders by the TRB Resolution; • affirmative Covenants under the Financing Agreement; • negative Covenants under the Financing Agreement; • Advance Suspension Events and Remedies; and • right to receive increased interest rate following a Ratings Downgrade or a Payment Default.
<p>15. Governing Law:</p>	<p>Federal Law, or to the extent Federal law does not specify the appropriate rule of decision, New York law.</p>

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Positive Train Control Project

PO#: RRIF-2015-0036

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FINANCING AGREEMENT

This FINANCING AGREEMENT (this “Agreement”) is made and entered into on this 5th day of May, 2015, in Washington, D.C., by and between the UNITED STATES OF AMERICA represented by the SECRETARY OF TRANSPORTATION (the “Secretary”) acting through the FEDERAL RAILROAD ADMINISTRATOR (“Lender”) and the METROPOLITAN TRANSPORTATION AUTHORITY, a public benefit corporation of the State of New York (“Borrower”).

RECITALS

WHEREAS, the Secretary is authorized, pursuant to the Act, to provide financial assistance for such purposes consistent with the Act as may be approved by the Secretary and the Secretary has duly delegated the Secretary’s authority under the Act to the Administrator;

WHEREAS, pursuant to the Act, Borrower has submitted an Application to the Administrator requesting a Loan in the amount of Nine Hundred Sixty Seven Million One Hundred Thousand Dollars (\$967,100,000);

WHEREAS, the proceeds of the Loan will finance Allowable Costs incurred by Borrower in connection with its Positive Train Control Project which will install Positive Train Control on The Long Island Rail Road Company and Metro-North Commuter Railroad Company tracks as and where required by applicable laws and regulations;

WHEREAS, Borrower’s obligation to repay the Loan will be secured by a pledge of certain of Borrower’s gross revenues on a parity basis with the holders of Borrower’s Obligations;

WHEREAS, Borrower’s Board of Directors has authorized the execution and delivery of this Agreement and the issuance of the Series 2015X Bond pursuant to the Transportation Resolution by duly adopting the RRIF Supplemental Resolution;

WHEREAS, Borrower has committed to utilize the savings in debt service expense associated with the Loan in its programs to maintain its transportation systems in a state of good repair; and

WHEREAS, the Administrator has made all findings under the Act required to issue the Loan and, therefore, is willing to enter into this Agreement and provide the Loan pursuant to the Act in accordance with the terms and conditions hereof.

NOW, THEREFORE, in consideration of the premises and the mutual undertakings hereinafter set forth, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATION

Section 1.1 Definitions.

(a) “Act” means Title V of the Railroad Revitalization and Regulatory Reform Act of 1976, as amended, 45 U.S.C. 821 et seq.

(b) “Additional Holder” means any individual or entity other than an agency or instrumentality of the federal government, to which all or a portion of any Series 2015X Bond may be transferred by Lender or by any transferee of Lender.

(c) “Administrator” means the Federal Railroad Administrator or the Administrator’s designee.

(d) “Advance” means an advance of proceeds of the Loan made by the Administrator to Borrower pursuant to Section 2.1.

(e) “Advance Certificate” means, with respect to each Advance, a certificate duly executed by an Approved Officer of Borrower and issued to the Administrator pursuant to Section 2.3(a) which shall: (i) be in substantially the form of Exhibit A; (ii) specify the amount to be advanced and the proposed Advance Date; (iii) be accompanied by or include as attachments thereto documentary evidence reasonably satisfactory to the Administrator of the costs proposed to be financed with proceeds of the Loan which are the subject of such Advance and of their eligibility as Allowable Costs (which may include final invoices due but not yet paid); (iv) certify that all such costs are Allowable Costs; (v) be accompanied by an updated form of Schedule B categorizing the Allowable Costs by line-item identified therein; and (vi) certify that, as of the Advance Date, all conditions precedent set out in Article II will be satisfied and no Material Adverse Effect, Breach or Advance Suspension Event has occurred and is continuing or will occur as the result of the Advance.

(f) “Advance Date” means, with respect to any Advance, the Business Day on which such Advance is made after satisfaction of all conditions thereto set out in Section 2.3.

(g) “Advance Suspension Event” has the meaning given in Section 6.1.

(h) “Agreement” means this Financing Agreement together with all Exhibits (except for other Loan Documents) and Schedules hereto.

(i) “Allowable Costs” means those costs which (i) were incurred by Borrower (whether directly or indirectly through another Related Entity) in furtherance of the RRIF Project within the parameters of the budget provided in Exhibit B as a part of the RRIF Project description, (ii) are eligible to be financed under Section 822(b) of the Act and Section 4.17 hereof, (iii) have not previously been financed by any prior Advance or from any other source of federal funds; and (iv) were approved by the Metropolitan Transportation Authority Capital Program Review Board and all other required corporate action of the Borrower.

(j) “Application” means the application, dated April 21, 2011, as updated and amended on January 27, 2014 to include the Positive Train Control Project, submitted by Borrower to the Administrator to support Borrower’s request for the Loan, including all exhibits, attachments and revisions thereto and supplementary materials submitted in support thereof.

(k) “Approved Officer” means an Authorized Officer with respect to whom an Incumbency Certificate has been delivered by Borrower to the Administrator.

(l) “Authorized Investments” has the meaning given in the Transportation Resolution.

(m) “Authorized Officer” means an “Authorized Officer” as defined in the Transportation Resolution.

(n) “Base Rate” means the rate of 2.38% per annum.

(o) “Board of Directors” means the Borrower’s duly appointed and confirmed board of Directors.

(p) “Borrower” means the Metropolitan Transportation Authority, a public benefit corporation of the State of New York.

(q) “Borrower's Knowledge” means to the actual knowledge of any Authorized Officer, Borrower's chief regulatory compliance officer or Borrower's general counsel, it being agreed that, within the thirty (30) days immediately preceding the date of this Agreement some one of the foregoing individuals has undertaken, and not less often than annually during the term of this Agreement some one of the foregoing individuals shall undertake, a reasonable investigation of the relevant matters.

(r) “Breach” means any event, circumstance or condition which with the lapse of time or the giving of notice or both would constitute an Advance Suspension Event.

(s) “Business” means the transportation related services and activities conducted by the Related Entities as of the date hereof in accordance with the MTA Act, the TA Act and the TBTA Act (including the ownership and operation of certain real estate assets and investment in certain financial assets intended to provide revenue to support such transportation related services and activities) together with such future expansions of such transportation related services and activities as may be approved by the Board of Directors.

(t) “Business Day” has the meaning given in the Transportation Resolution.

(u) “Commitment Termination Date” means the earliest of: (i) May 14, 2018 (or such later date as the Administrator may agree in writing in his or her sole discretion upon the request of the Borrower), (ii) the Advance Date on which the Maximum Principal Amount of the Loan has been advanced, and (iii) in the event an Advance Suspension Event

has occurred and is continuing, the date on which the FRA notifies the Borrower of the termination of its commitment to make Advances.

(v) “Credit Risk Premium” means a fee that shall be paid by Borrower in accordance with the Act as a condition precedent to each Advance of proceeds of the Loan in an amount equal to zero percent (0.00%) of the Advance amount.

(w) “Director” means any person duly appointed by the Governor of the State of New York with the advice and consent of the New York State Senate serving from time to time as a “member” of the Borrower (within the meaning of Section 1263 of Title 11 of Article 5 of the New York Public Authorities law) who is entitled to a vote (whole or fractional) on resolutions of the Board of Directors.

(x) “Grant Agreements” means (i) the Grant/Cooperative Agreement (FR-TEC-0005-11-01-00), dated on or about January 14, 2011, between the United States of America, represented by the Secretary of Transportation acting through the Federal Railroad Administrator and the Borrower and (ii) each other grant or cooperative agreement entered into from time to time between the United States of America, represented by the Secretary of Transportation, and the Borrower or any other Related Entity relating to the Positive Train Control Project, each as amended and supplemented from time to time.

(y) “Incumbency Certificate” means, with respect to any Approved Officer, a certification executed by the Secretary of Borrower in the form of Exhibit C.

(z) “Interagency Agreement” has the meaning given in the Transportation Resolution; a copy of the Interagency Agreement is attached as Exhibit D.

(aa) “Interest Payment Date” means each May 15 and November 15 beginning after the first Advance Date and in any event not before November 15, 2015 until such Series 2015X Bond is paid in full or, if any such day is not a Business Day, then the next succeeding Business Day.

(bb) “Lender” means the United States of America, represented by the Secretary of Transportation acting through the Federal Railroad Administrator.

(cc) “Loan” means a loan made by Lender to Borrower pursuant to the terms and conditions of the Act, this Agreement and the other Loan Documents in an amount not to exceed the Maximum Aggregate Principal Amount.

(dd) “Loan Documents” means this Agreement, the Transportation Resolution, the Interagency Agreement, the RRIF Supplemental Resolution, the RRIF Certificate of Determination and the Series 2015X Bond, each as the same may be amended, supplemented or restated in accordance with the terms thereof and hereof.

(ee) “Material Adverse Effect” means:

- (i) a material adverse change after the date hereof in (a) the Business, facilities, property, operations or financial condition of the

Borrower and its Related Entities taken as a whole, (b) the ability of Borrower or any other Related Entity to perform or comply with any of its material obligations under the Loan Documents, (c) the validity, priority or enforceability of the liens on the Trust Estate in favor of the Trustee or (d) the rights or benefits available to the Lender under the Loan Documents; or

- (ii) a change after the date hereof in applicable law or regulations thereunder or interpretations thereof by any court of competent jurisdiction that, in the opinion of the Administrator or his counsel, would (a) allow any Related Entity to obtain protection from its creditors under chapter 9 of title 11 of the United States Code or any other state or federal bankruptcy or insolvency law, or (b) make it illegal or contrary to public policy for Borrower or any other Related Entity to enter into or perform any material obligation under this Agreement or any other Loan Document.

(ff) “Maximum Aggregate Principal Amount” means Nine Hundred Sixty Seven Million One Hundred Thousand Dollars (\$967,100,000) which shall be the maximum total principal amount of the Series 2015X Bond.

(gg) “MTA Act” has the meaning given in the Transportation Resolution.

(hh) “Obligation” has the meaning given in the Transportation Resolution.

(ii) “Overdue Rate” means the sum of (i) whichever of the Base Rate or the Ratings Downgrade Rate is applicable at the relevant time and (ii) two percent (2.00%) per annum.

(jj) “Owner” has the meaning given in the Transportation Resolution.

(kk) “Principal Payment Date” means each November 15 beginning November 15, 2018 to and including November 15, 2037 or, if any such day is not a Business Day, then the next succeeding Business Day.

(ll) “Positive Train Control Project” means the Borrower’s Positive Train Control Project as described in the Application.

(mm) “Rail Lines” means the railroad systems of The Long Island Rail Road Company and Metro-North Commuter Railroad Company.

(nn) “Rating Agency” means each nationally recognized and federally accredited statistical credit rating organization then maintaining a rating at the request of Borrower on the Borrower’s Obligations issued under the Transportation Resolution, including, without limitation, the Series 2015X Bond.

(oo) “Ratings Downgrade Event” means the Borrower's failure for any reason, during any period of one hundred eighty (180) consecutive days or more, to maintain

the following unenhanced long-term credit ratings, or higher ratings, issued by at least two Rating Agencies on Borrower's Obligations under the Transportation Resolution, including, without limitation, the Series 2015X Bond: (i) A- in the case of Standard & Poor's Rating Services; (ii) A3 in the case of Moody's Investors Service, Inc.; (iii) A- in the case of Fitch Ratings, and; (iv) in the case of any other Rating Agency, such rating level as is generally recognized to be equivalent to the foregoing ratings.

(pp) "Ratings Downgrade Rate" means the sum of the Base Rate and two percent (2.00%) per annum.

(qq) "Related Entity" means each of the Borrower, the Triborough Bridge and Tunnel Authority (TBTA), the Manhattan and Bronx Surface Transportation Operating Authority (MaBSTOA), the New York City Transit Authority (Transit Authority), the Metro-North Commuter Railroad Company (MNCRC), The Long Island Rail Road Company (LIRR), the Staten Island Rapid Transit Operating Authority (SIRTOA) and the MTA Bus Company (MTA Bus) (as further defined, in each case, in the Transportation Resolution) and any successor entity to any thereof, or any material affiliate or subsidiary of any thereof now or hereafter established the revenues of which constitute any part of the Trust Estate.

(rr) "RRIF Certificate of Determination" means the certificate of an Authorized Officer of Borrower fixing the terms, conditions and other details of the Loan by reference to the terms and conditions of this Agreement in accordance with the delegation of power to do so under a the RRIF Supplemental Resolution, a copy of which is attached as Exhibit E, as the same may be supplemented in connection with each Advance.

(ss) "RRIF Loan Obligations" means (a) all unpaid principal of and accrued and unpaid interest on the Loan (whether at the Base Rate, Ratings Downgrade Rate or Overdue Rate and including interest which accrues during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) and (b) all accrued and unpaid fees and all expenses, reimbursements, indemnities and other payment and performance obligations of the Borrower arising under any of the Loan Documents and owed to the Lender, the Administrator or any party indemnified under this Agreement.

(tt) "RRIF Project" means, collectively, those portions of the Positive Train Control Project which are identified in Exhibit B.

(uu) "RRIF Supplemental Resolution" means the Supplemental Resolution adopted by Borrower on April 29, 2015 authorizing the Loan and Borrower's entry into this Agreement pursuant to the Transportation Resolution a copy of which is attached as Exhibit F.

(vv) "Rule 15c2-12" means Rule 15c2-12 promulgated under the Securities Exchange Act of 1934 (17 C.F.R. 15c2-12), as amended from time to time, or any successor law, rule or regulation thereto.

(ww) "Secretary" means Secretary of the Department of Transportation.

(xx) “Series 2015X Bond” means (i) the Series 2015X Interim Bond or Bonds issued pursuant to Section 2.1(a) evidencing each Advance of proceeds of the Loan by Lender to finance Allowable Costs and (ii) the Series 2015X Final Bond for the full amount of the Loan to be issued pursuant to Section 2.1(d) after the Commitment Termination Date.

(yy) “Series 2015X Final Bond” means a Series 2015X Bond or Bonds issued pursuant to Section 2.1(d) after the Commitment Termination Date in the initial principal amount equal to the aggregate outstanding principal amount of all Advances made under this Agreement which may be either in the form attached hereto as Exhibit G-II or, in the event Lender exercises its right under Section 2.6(b), in substantially the form provided as Exhibit One to the Transportation Resolution revised *mutatis mutandis* to reflect the economic terms and conditions of this Agreement.

(zz) “Series 2015X Interim Bond” means a Series 2015X Bond or Bonds issued pursuant to Section 2.1(a) in the form attached hereto as Exhibit G-I evidencing each Advance of proceeds of the Loan by Lender to finance Allowable Costs.

(aaa) "TA Act" has the meaning given in the Transportation Resolution.

(bbb) "TBTA Act" has the meaning given in the Transportation Resolution.

(ccc) “Transportation Resolution” means the Metropolitan Transportation Authority General Resolution Authorizing Transportation Revenue Obligations, adopted on March 26, 2002, including Annex A thereto (Standard Resolution Provisions), as amended and supplemented from time to time in accordance with the terms thereof, a copy of which is attached as Exhibit H.

(ddd) “Trustee” has the meaning given in the Transportation Resolution.

(eee) “Trust Estate” has the meaning given in the Transportation Resolution.

Section 1.2 Interpretation.

Unless the context shall otherwise require, the words “hereto,” “herein,” “hereof” and other words of similar import refer to this Agreement as a whole. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders and *vice versa*. Words importing the singular number shall include the plural number and *vice versa* unless the context shall otherwise require. Unless the context shall otherwise require, references to sections, subsections and provisions are to the applicable sections, subsections and provisions of this Agreement. The headings or titles of this Agreement and its sections, schedules or exhibits, as well as any table of contents, are for convenience of reference only and shall not define or limit its provisions. Unless the context shall otherwise require, all references to any resolution, contract, agreement or other document shall be deemed to include any amendments to, or modifications or restatements of, such documents that are approved in accordance with the terms thereof and hereof. Unless the context shall otherwise require, all references to statutes and regulations shall be deemed to include any amendments, supplements or successors thereto or re-codifications thereof. Every request, order, demand, application, appointment, notice, statement, certificate, consent or similar communication or action hereunder

by any party shall, unless otherwise specifically provided, be delivered in writing in accordance with Section 7.6 and signed by a duly authorized representative of such party.

ARTICLE II

ISSUANCE OF DEBT

Section 2.1 Issuance of Debt.

(a) Subject to the provisions of the Act and the terms and conditions hereof, including, without limitation, the conditions set out in Section 2.3, on each Advance Date: (i) Borrower shall borrow from Lender the amount equal to the Allowable Costs evidenced by the applicable Advance Certificate delivered by Borrower to the Administrator pursuant to Section 2.3(b) and (ii) Lender shall lend such amount to Borrower by making an Advance thereof in immediately available funds to the bank and account specified by Borrower in the Advance Certificate. The amount of any Advance, when added to all prior such Advances, shall not exceed a Maximum Aggregate Principal Amount.

(b) No Advance shall be made after the Commitment Termination Date, at which date, the commitment of Lender to make Advances hereunder, unless extended in writing by the Administrator, shall terminate whether or not the full amount of the Loan has been advanced. No more than one Advance may be requested by Borrower to be made in any period of thirty (30) consecutive calendar days. No Advance, except the final Advance, may be requested by Borrower for an amount of less than \$25 million.

(c) Lender's obligation to make Advances shall be automatically suspended upon the occurrence of, and shall remain suspended for the duration of: (i) any Advance Suspension Event or (ii) a cessation of operations of the Federal Railroad Administration resulting from the lack of appropriation of funds from the United States Congress to continue to operate unless the Federal Railroad Administration's Railroad Rehabilitation and Improvement Financing Program has been specifically delegated or re-assigned to another agency of the Federal government having express authority and appropriated funds to carry out such program, including the issuance of the Loan.

(d) As evidence of the Borrower's obligation to repay the Loan, on or prior to the date of this Agreement, Borrower shall issue and deliver the Series 2015X Interim Bond in the Maximum Aggregate Principal Amount of the Loan and bearing interest at the rate specified in Section 2.2. The Lender is hereby authorized to enter on the grid attached to the Series 2015X Interim Bond as Schedule A thereto the amount of each Advance of the Loan made under this Agreement. Absent manifest error, the Administrator's determination of the amounts set out on Schedule A to the Series 2015X Interim Bond shall be conclusive evidence thereof.

(e) Not later than thirty (30) calendar days after the Commitment Termination Date, Borrower shall deliver to the Administrator a proposed Series 2015X Final Bond, including a completed Schedule A thereto, and the Administrator shall thereafter notify Borrower of any disagreement with the form or of his acceptance thereof. Within fifteen (15)

days from receipt of the Administrators acceptance, Borrower shall deliver to the Administrator in Washington, D.C., at the address specified in Section 7.6, a duly executed original Series 2015X Final Bond in the principal amount equal to the aggregate outstanding principal amount of all Advances made under this Agreement on or prior to the Commitment Termination Date. Upon receipt of the Series 2015X Final Bond, the Administrator shall return the Series 2015X Interim Bond to Borrower marked cancelled.

Section 2.2 Terms of the Series 2015X Bond.

(a) Subject to clause (d) below, the outstanding principal amount of the Series 2015X Bond shall bear interest at the Base Rate. Accrued interest shall be due and payable on each Interest Payment Date. Interest shall be calculated based on a 365-day or 366-day year, as appropriate, and the actual number of calendar days elapsed from and including the applicable Advance Date or last Interest Payment Date, as the case may be, to but excluding the Interest Payment Date on which such interest is due. For the avoidance of doubt, interest shall be payable on the amount of each Advance from and including its Advance Date to but excluding the next Interest Payment Date, and interest shall be payable on the principal amount of the Series 2015X Bond outstanding at the close of each Interest Payment Date (without double counting any Advance made on such date) from and including such Interest Payment Date to but excluding the next Interest Payment Date.

(b) The outstanding principal amount of the Series 2015X Bond shall be paid in twenty (20) annual installments on each successive Principal Payment Date. The principal amount to be paid on each such Principal Payment Date shall be calculated such that, when added to the amount of interest due and payable, as provided in Section 2.2(a), during the twelve months ending on such Principal Payment Date, the total amount of interest and principal due and payable during each such twelve-month period will be approximately equal.

(c) The Series 2015X Final Bond shall include (as Schedule A thereto) a schedule, approved by the Administrator in accordance with Section 2.1(e), setting out the principal (if any), interest and total amounts payable on each Interest Payment Date. Absent manifest error, the Administrator's determination of the amounts set out on such Schedule A shall be conclusive evidence thereof. The Administrator will deliver a copy of Schedule A to Borrower. Any increase in the amount of interest payable by Borrower resulting from application of the Ratings Downgrade Rate or Overdue Rate shall not affect Schedule A but shall be paid by Borrower as an additional amount on each relevant Interest Payment Date.

(d) In the event that an Advance Suspension Event under Section 6.1(a) occurs and is continuing, the outstanding principal amount of each Series 2015X Bond and any past-due amount of interest shall bear interest at the Overdue Rate commencing on the thirtieth day after the relevant payment was due and continuing until such Advance Suspension Event is cured. Upon the occurrence and during the continuance of a Ratings Downgrade Event, the outstanding principal amount of each Series 2015X Bond shall bear interest at the Ratings Downgrade Rate. For the avoidance of doubt, if at any time both Ratings Downgrade Rate and the Overdue Rate apply, the outstanding principal amount of each Series 2015X Bond and any past-due amount of interest shall bear interest at the rate per annum equal to the Base Rate plus four percent (4.00%).

(e) Each payment shall be applied first to pay accrued interest (whether at the Base Rate, Ratings Downgrade Rate or Overdue Rate) and then to outstanding principal.

(f) All payments of RRIF Loan Obligations shall be made, irrespective of any claim or right of counterclaim or set-off, on or before the date such payment is due hereunder or thereunder by wire transfer of immediately available funds in accordance with written payment instructions provided by the Administrator from time to time for such purposes (subject, in the case of payments specified in clause (a) of the definitions of RRIF Loan Obligations, to any requirements of The Depository Trust Company in the event of a transfer pursuant to Section 2.6). The Lender shall not be required to present or surrender the Series 2015X Bond to the Borrower as a condition to the payment of any RRIF Loan Obligations.

(g) Prior to the issuance of the Series 2015X Final Bond (including Schedule A thereto) and thereafter if either or both of the Ratings Downgrade Rate or the Overdue Rate apply, the Borrower shall calculate the amount of interest due and payable on each Interest Payment Date and deliver such calculation to the Administrator in writing not later than ten (10) Business Days prior to each such Interest Payment Date. The Administrator shall promptly notify the Borrower of any disagreement with the calculation and, absent manifest error, the Administrator's determination of the amount of interest owed shall be conclusive.

Section 2.3 Disbursement Conditions.

(a) Lender's commitment to make an Advance of proceeds of the Loan (including the first Advance) on any Advance Date shall be subject to the satisfaction on or before the first Advance Date hereunder of the following conditions precedent:

- (i) The Transportation Resolution and the RRIF Supplemental Resolution shall have been duly adopted by the Board of Directors, shall be in full force and effect and, to the full extent provided for therein, shall be binding on the Borrower, and current and complete copies of each thereof shall have been duly delivered by Borrower to the Administrator together with the certification of an Approved Officer of Borrower attesting to their authenticity;
- (ii) The Interagency Agreement shall have been duly authorized, executed and delivered by each of the Related Entities party thereto, shall be in full force and effect and, to the full extent provided for therein, shall be binding on each such Related Entity; Section 4.12 thereof shall constitute a legal, valid and binding obligation of the State of New York in favor of the Lender, enforceable against the State of New York in accordance with its terms; and a current and complete copy thereof shall have been duly delivered by Borrower to the Administrator together with the certification of an Approved Officer of Borrower attesting to its authenticity;

- (iii) The RRIF Certificate of Determination and this Agreement shall have been duly authorized, executed and delivered by Borrower to the Administrator, shall be in full force and effect and, to the full extent provided for therein, shall be binding on the Borrower, and current and complete copies of each thereof shall have been delivered by Borrower to the Administrator together with the certification of an Approved Officer of Borrower attesting to their authenticity;
- (iv) The Series 2015X Bond shall have been duly authorized, executed and delivered by Borrower to the Administrator and shall be in full force and effect.
- (v) The Administrator shall have received an Incumbency Certificate with respect to the Approved Officers (1) executing and delivering this Agreement, RRIF Certificate of Determination, the Series 2015X Interim Bond, and the other certificates called for in this Section 2.3(a) and (2) who are authorized to execute and deliver Advance Certificates or other notices or documents to be delivered to the Administrator under the terms of this Agreement. Borrower shall promptly notify the Administrator if, during the term of this Agreement, any such individual is no longer an Approved Officer and shall promptly provide the Administrator with an Incumbency Certificate with respect to any additional or replacement Approved Officer;
- (vi) The Administrator shall have received a favorable opinion, dated the date hereof, from Nixon Peabody LLP, counsel to Borrower in connection herewith, in form, scope and substance reasonably satisfactory to the Administrator covering each of the matters set out in paragraphs 1 through 8 of Schedule 1;
- (vii) The Administrator shall have received ratings confirmation letters from each of Standard and Poor's Rating Services, Moody's Investor Services, Inc. and Fitch Ratings to the effect that, all other relevant matters being assumed unchanged, the issuance by Borrower of the Series 2015X Bond in an amount equal to the Maximum Aggregate Principal Amount of the Loan as contemplated by this Agreement will not result in the withdrawal, downgrade, placement on credit watch for potential downgrade, adverse change in outlook as to either default or recoverability, or any other action by such rating agency equivalent to any of the foregoing with respect to such rating agency's rating as of the date hereof on Borrower's Obligations, including the Series 2015X Bond when issued; and.

- (viii) The Administrator shall have received such other documents and evidence with respect to the Loan Documents as the Administrator, or his counsel, may reasonably request in order to establish the authority of any Related Entity to consummate the transactions contemplated by the Loan Documents and the taking of all necessary corporate proceedings in connection therewith.

(b) Lender's commitment to make an Advance of proceeds of the Loan (including the first Advance) on any Advance Date shall be subject to the satisfaction of the following conditions precedent as of such Advance Date:

- (i) To the extent not otherwise previously submitted to the Administrator with an Advance Certificate in support of an Advance, on or before January 31 and July 31 of each year beginning January 31, 2016 and occurring prior to the Commitment Termination Date, Borrower shall deliver to the Administrator all invoices or other relevant documentation evidencing all Allowable Costs incurred by Borrower during the six-month period preceding such January or July, as the case may be. Borrower shall categorize each such invoice or other document by reference to the individual line item set out in Exhibit B to which it corresponds.
- (ii) Borrower shall have submitted an Advance Certificate to the Administrator (1) not less than thirty (30) calendar days prior to the proposed Advance Date or (2) if the amount of the requested Advance is more than \$315,000,000, sixty (60) calendar days prior to the proposed Advance Date. The requested Advance shall not be made unless and until the Administrator is reasonably satisfied that the requested Advance relates solely to Allowable Costs;
- (iii) Not less than three (3) Business Days prior to each Advance Date, Borrower shall have paid the Credit Risk Premium, if any, due in respect of such Advance by wire transfer of immediately available funds in accordance with written payment instructions provided by Lender from time to time for such purposes. No Advance shall be made unless and until the Credit Risk Premium, if any, has been received by Lender;
- (iv) On such Advance Date: (a) the representations and warranties of Borrower contained in Article III of this Agreement or any other Loan Document shall be true and correct as though made on and as of such Advance Date except to the extent that such representations and warranties explicitly related solely to an earlier date (in which case such representations and warranties shall have been true and correct on and as of such earlier date); and (b) no event or circumstance shall have occurred and be continuing, or

would result from such Advance, as would constitute a Breach or an Advance Suspension Event;

- (v) To the knowledge of any Authorized Officer, no action or proceeding shall have been instituted nor shall governmental action be threatened before any court or governmental agency, nor shall any order, judgment or decree have been issued or proposed to be issued by any court or governmental agency as of such Advance Date, to set aside, restrain, enjoin or prevent the completion and consummation of any material act required to be taken under this Agreement or any other Loan Document; and
- (vi) The Commitment Termination Date shall not have occurred and Lender's obligation to make Advances shall not have been suspended pursuant to Section 2.1(c).

Section 2.4 Prepayment.

(a) Borrower may prepay the Series 2015X Bond in whole or in part at any time or from time to time, without penalty or premium, by paying to the Lender such principal amount of the Series 2015X Bond to be prepaid, together with the unpaid interest accrued on the amount of principal so prepaid to but excluding the date of such prepayment. Each prepayment shall be specified by Borrower in a written notice delivered to the Lender not less than ten (10) nor more than thirty (30) calendar days prior to the date set for prepayment.

(b) All partial prepayments of principal made before the Commitment Termination Date shall be recorded by the Administrator on Schedule A to the Series 2015X Interim Bond or, if made after the Commitment Termination Date, shall be applied to future installments due on the Series 2015X Bond in the inverse order of maturity, such that the latest principal installment or installments are thereby satisfied first and Schedule A to the Series 2015X Final Bond shall be revised accordingly by the Administrator. In either case, a copy of the revised Schedule A shall be provided to the Borrower by the Administrator.

Section 2.5 Effect of Other Loan Documents.

(a) In accordance with the RRIF Supplemental Resolution, the Series 2015X Bond constitutes an Obligation under the Transportation Resolution and Lender (and any Additional Holder in the event of a transfer in accordance with Sections 2.6 and 2.7) is the Owner of such Obligation entitled to all the rights and benefits conferred to Owner under and subject to the terms and conditions of the Transportation Resolution.

(b) Borrower's obligations to repay the Loan evidenced by the Series 2015X Bond shall rank *pari passu* with its obligations under all other senior unsubordinated Obligations and Parity Debt and are secured by a lien on the Trust Estate in accordance with (and subject to the qualifications set out in) Section 501 of the Transportation Resolution. Lender acknowledges and agrees that the Series 2015X Bond is a special limited obligation of Borrower payable solely from the Trust Estate and is not an obligation of the State of New York or of The City of New York.

(c) The rights and benefits of Lender and the Administrator under this Agreement are in addition to, and are not in any respect to the exclusion of or in substitution for, those rights and benefits conferred on Lender as Owner of an Obligation under the Transportation Resolution and RRIF Supplemental Resolution, and the obligations of Borrower under this Agreement are in addition to, and are not in any respect to the exclusion of or in substitution for, those obligations imposed by the Transportation Resolution and RRIF Supplemental Resolution on Borrower for the benefit of Owners of Obligations.

Section 2.6 Transfer of Series 2015X Bond.

(a) The Administrator represents that Lender is not acquiring the Series 2015X Bond with a view to, or in connection with, any distribution thereof. The Administrator acknowledges that the Series 2015X Bond has not been registered with The Depository Trust Company or any other securities depository. Lender nonetheless shall have the right at any time to assign its interest in the Series 2015X Bond, in whole or in part, to any Additional Holder; provided, however, that (i) the Administrator shall give Borrower written notice of any such assignment and (ii) in the event that Lender intends to assign any interest in the Series 2015X Bond to any Additional Holders which are not a Qualified Institutional Buyers (as defined in the federal securities laws), then the Administrator shall give the Borrower not less than thirty (30) days prior written notice and shall provide such Additional Holders with any information disclosure document concerning the Borrower and the Series 2015X Bond which is delivered by the Borrower to the Administrator within such thirty-day period.

(b) At any time after the issuance of the Series 2015X Final Bond, if requested in writing by the Administrator, Borrower shall, within a reasonable period of time and at its sole expense, register the Series 2015X Final Bond (in which case the Series 2015X Final Bond may be reissued in the form of Exhibit One to the Transportation Resolution but without change to the essential terms of the Series 2015X Bond other than the deletion of provisions thereof not applicable to any Series 2015X Bond held by an Additional Holder as provided in Section 2.7) with The Depository Trust Company or its nominee (or such other depository as is then being employed generally for Borrower's Obligations) as a fully-registered security so as to provide for payments under and transfers of ownership interests in the Series 2015X Final Bond through The Depository Trust Company's Book-Entry-Only System (or such equivalent system as is then in use generally with respect to Borrower's Obligations).

(c) Lender's interest in the Series 2015X Bond may be held by any agency or instrumentality of the federal government and the Administrator shall have the right at any time to assign or delegate the Administrator's rights and obligations under this Agreement, in whole or in part, to any other agency or instrumentality of the federal government; provided, however, that (i) the Administrator shall give Borrower written notice of any such delegation or assignment and (ii) if prior to the Commitment Termination Date, such agency or instrumentality has the authority to issue the Loan.

Section 2.7 Obligations Surviving Transfer.

(a) Any Additional Holders of an interest in the Series 2015X Bond shall have only the rights and benefits conferred on Owners by the Transportation Resolution, the RRIF Supplemental Resolution and the Series 2015X Bond, and shall have none of the additional rights and benefits conferred by this Agreement (including, without limitation, those conferred under Articles IV, V and VI and any right to receive the Ratings Downgrade Rate or the Overdue Rate). The additional rights and remedies under this Agreement shall belong to and be exercisable solely by and for the benefit of Lender and the Administrator. Nothing contained in this Agreement shall confer upon any Additional Holder any such rights or remedies under this Agreement or the right to enforce any such rights or remedies.

(b) Any transfer by Lender of its interest in the Series 2015X Bond, in whole or in part, to an Additional Holder or Additional Holders notwithstanding, this Agreement and Borrower's additional obligations hereunder to Lender shall remain in full force and effect except to the extent the continued obligation of Borrower to comply with any provision of this Agreement is terminated, released or waived in writing by the Administrator in his sole discretion.

(c) Interest on the Series 2015X Bond payable to any Additional Holder shall not be excludable from gross income for federal income tax purposes.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF BORROWER

Borrower hereby makes the following representations and warranties to Lender:

Section 3.1 Organization, Authority and Good Standing.

(a) Borrower is a public benefit corporation of the State of New York organized and existing under Title 11 of Article 5 of the New York Public Authorities law, as amended, and is eligible to receive the Loan under Section 822(a) of the Act. Lender acknowledges that the powers and authority of the Borrower are governed by the laws of the State of New York.

(b) Borrower is duly authorized and created and is in good standing under the laws of the State of New York, has full legal right, power and authority to enter into this Agreement and each of the other Loan Documents to which it is a party, to issue the Series 2015X Bond and to carry out and consummate all transactions contemplated by the Loan Documents, and has duly authorized the execution, delivery and performance of each of the Loan Documents to which it is a party.

(c) Each of the Related Entities other than the Triborough Bridge and Tunnel Authority has full legal right, power and authority to enter into the Interagency Agreement and to carry out and consummate all transactions contemplated by the Interagency Agreement, and has duly authorized the execution, delivery and performance of the Interagency Agreement.

(d) The Approved Officers executing this Agreement and the Series 2015X Bond are duly authorized to execute the same on behalf of Borrower.

(e) Each Related Entity is duly authorized and created and is in good standing under the laws of the State of New York and has full power and authority to own, lease, hold, and operate its property, and to conduct the Business (as now operated and conducted or presently proposed to be operated and conducted) in conformity in all material respects with all applicable federal, state, and local laws, statutes, and regulations. No new or additional authorization from any governmental agency or body is required to permit the Related Entities to operate the Business as now conducted or presently proposed to be conducted.

(f) The Borrower has the lawful right and authority to cause each of the Related Entities to undertake or refrain from the activities specified with respect to them in this Agreement and in the Interagency Agreement.

Section 3.2 Validity and Enforceability of Loan Documents.

The execution, delivery and performance of this Agreement and the other Loan Documents and any other document executed by Borrower in connection with the transaction contemplated herein, and the issuance, sale and delivery of the Series 2015X Bond:

(a) have been duly authorized by all necessary governmental and corporate action;

(b) do not and will not conflict with, violate, or contravene any rights of other creditors of any Related Entity, any statute, law, rule, regulation, order, writ, injunction or decree or other order of any court or governmental authority, or any mortgage, lien, lease or agreement of any Related Entity, nor is any Related Entity subject to any provision of any constitution, statute, regulation, their articles of incorporation and by-laws, mortgage, lien, lease, agreement, order, judgment or decree, or any other restriction of any kind or character, which would prevent any Related Entity from performing any of its material obligations under any Loan Document;

(c) constitute valid and legally binding obligations of the Related Entities which are party thereto enforceable against them in accordance with their terms, except as enforceability may be affected by any applicable laws affecting creditors' rights generally and the application of equitable principles;

(d) do not require the consent or approval of any trustee, holder of any indebtedness of any Related Entity or any other person, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental entity is necessary in connection with the execution and delivery of the Loan Documents, the consummation of any transaction herein or therein described, or the fulfillment of or compliance with the terms and conditions hereof or thereof, except as have been obtained or made and as are in full force and effect and except filing and/or recordation requirements imposed by this Agreement; and

(e) create in favor of the Trustee for the benefit of Lender a lien on the Trust Estate in accordance with (and subject to the qualifications set out in) Section 501 of the Transportation Resolution securing the principal of and interest on the RRIF Loan Obligations described in clause (a) of the definition of RRIF Loan Obligations which rank *pari passu* with Borrower's obligations under all other senior unsubordinated Obligations and Parity Debt. Payments of RRIF Loan Obligations described in clause (b) of the definition of RRIF Loan Obligations are payable from amounts transferred to the Borrower pursuant to clause (d) of Section 504 of the Transportation Resolution or other legally available funds of the Borrower.

Section 3.3 No Bankruptcy of Current Authorized Officers and Directors; No Felony Conviction or Securities Law Violation.

For the period commencing ten (10) years prior to the date hereof and ending on the date hereof, to the Borrower's Knowledge as of the date hereof:

(a) except as previously notified by Borrower in writing to the Administrator, no current Authorized Officer or Director, has been involved (either in his personal capacity or in the capacity of a corporate officer, director or stockholder owning in excess of ten (10) percent of issued and outstanding shares of any class of such corporation's stock) in a bankruptcy or similar type proceeding; and

(b) no current Authorized Officer or Director has been convicted of a felony or violation of securities laws.

In the event that, after the date hereof, any Authorized Officer, Borrower's chief regulatory compliance officer or Borrower's general counsel learns of any such occurrence (i) within such 10-year period with respect to an Authorized Officer or Director as of the date hereof or (ii) during the term of this Agreement with respect to any then current Authorized Officer or Director, Borrower shall promptly notify the Administrator of the relevant facts and circumstances of such occurrence.

Section 3.4 No Changes Since Most Recent Financial Statements.

Borrower maintains its records of account, and will issue its financial statements, in accordance with accounting principles generally accepted in the United States of America and consistently applied as promulgated or otherwise allowed by the Governmental Accounting Standards Board. There has been no material change in the capital structure or the condition (financial, business, labor or operational) of the Related Entities as a whole, since the date of their most recent annual audited financial statements or unaudited consolidated interim financial statements delivered to the Administrator, except as previously disclosed by Borrower to the Administrator in writing.

Section 3.5 Material Contracts, Judgments, Decrees, Obligations or Liabilities.

Neither Borrower nor any other Related Entity is a party or subject to any existing or contingent contract, agreement, debt, mortgage, indenture, instrument, judgment, decree, obligation or other liability which currently is having or could reasonably be expected in the

future to have a Material Adverse Effect except as previously disclosed by Borrower to the Administrator in writing.

Section 3.6 Material Litigation.

Except (i) as set out on Schedule 2 or (ii) as notified in writing to the Administrator and as to which the Administrator has, in his or her discretion, waived in writing the applicability of this representation, there is no litigation, legal or administrative proceeding, investigation or other action of any nature pending or, to the Borrower's Knowledge, threatened against or affecting any Related Entity which could reasonably be expected to result in a Material Adverse Effect.

Section 3.7 Defaults Under Existing Agreements.

No Related Entity is:

- (a) in default under either of the Grant Agreements or any other agreement with any agency or instrumentality of the federal government of the United States of America;
- (b) in default under any Loan Document;
- (c) in default under or in violation of (i) any indenture, contract, mortgage, franchise, lease, agreement or instrument, (ii) any applicable law material to the Business as it is presently conducted, (iii) any judgment, order, writ, injunction or decree of any court or (iv) any permit, license or regulation of any federal, state, municipal or other government agency which, individually or in the aggregate, has resulted in a Material Adverse Effect specified in clause (i) of the definition of such term.

Section 3.8 Completeness of Information.

To the best of the knowledge and belief of Borrower after due inquiry and investigation, the information set forth in the Application, and all related submissions to the Administrator, is true and complete in all material respects as of the date of this Agreement.

Section 3.9 Tax Returns.

All federal, state, and other tax returns and reports of Borrower or the other Related Entities required by law or regulation to be filed have been duly filed except those for which the filing date has been duly extended; and other governmental charges (other than those presently payable without penalty) imposed upon Borrower or any other Related Entity with respect to any of their properties, assets or income that are due and payable have been duly paid, except those governmental charges for which payment is being contested in good faith and by appropriate means.

Section 3.10 Related Persons.

Except as has otherwise been disclosed in writing by the Borrower to the Administrator prior to the date hereof, to the Borrower's Knowledge no Director or Authorized Officer any

relative thereof, i.e. parent, spouse or child (a) is retained or employed, directly or indirectly in a material position for, or is a director or officer of any supplier, customer (other than by bill of lading or transportation contract), contractor or any other entity with which Borrower does business in connection with the Positive Train Control Project, other than affiliates of Borrower; or (b) is a stockholder owning in excess of ten (10) percent of the issued and outstanding shares of any supplier, customer (other than by bill of lading or transportation contract), contractor or any other entity with which Borrower does business in connection with the Positive Train Control Project other than affiliates of Borrower.

Section 3.11 Allowable Costs.

All amounts proposed to be financed with proceeds of the Loan will have been incurred prior to the submission of the relevant Advance Certificate solely to fund Allowable Costs.

Section 3.12 Public Benefit.

The extension of the Loan by Lender, and the terms under which the Loan is extended when compared to financing that may be available to the Related Entities as of the date hereof from other sources, will better enable the Borrower and the other Related Entities to meet their operating, maintenance and repair obligations under Section 4.6.

Section 3.13 No Debarment or Suspension.

No Related Entity and, to the Borrower's Knowledge, no current Authorized Officer or Director:

(a) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;

(b) has, within the preceding three-year period, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust laws or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) is presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (b) above; or

(d) has, within the preceding three-year period, had one or more public transactions (federal, state or local) terminated for cause or default.

Section 3.14 Committed Funding.

Borrower has available (as specified in the Borrower's 2010-2014 Capital Program (as amended to the date hereof) including funding available under the Grant Agreements and this Agreement) funding which is sufficient to complete the Positive Train Control Project based on

Borrower's current projection of the necessary capital expenditures consisting of amounts specified in the Borrower's 2010-2014 Capital Program (as amended to the date hereof) including funding available under Grant Agreements and this Agreement, the Borrower's anticipated 2015-2019 Capital Program, and amounts permitted to be borrowed as Subordinated Indebtedness under the Transportation Resolution.

Section 3.15 Restriction On Use of Funds.

The Borrower certifies, to the best of its knowledge and belief, to the following additional representations and warranties pursuant to 49 C.F.R. Part 20:

(a) No Federal appropriated funds have, to the Borrower's Knowledge, been paid or will be paid by or on behalf of the Borrower to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) If any funds other than Federal appropriated funds have been paid or will be paid by or on behalf of the Borrower to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(c) The Borrower shall require that the language of this Section 3.15 be included in the award document for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify accordingly.

This certification is a material representation of fact upon which reliance is placed by the Lender in entering into this Agreement and in making each Advance. Submission of this certification is a prerequisite for entering into this Agreement and making each Advance imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

ARTICLE IV

AFFIRMATIVE COVENANTS OF BORROWER

Borrower hereby makes the following covenants to Lender which shall apply throughout the term of this Agreement, subject only to Section 2.7(a) and (b):

Section 4.1 Further Documentation.

Borrower shall execute and cause to be delivered to the Administrator such other certificates, documents, statements, agreements, or opinions as may be reasonably requested by the Administrator in furtherance of this Agreement.

Section 4.2 Use of Proceeds.

Borrower shall use the proceeds of the Loan solely to finance Allowable Costs in accordance with the terms of this Agreement. In no event shall the Borrower use the proceeds of the Loan (i) to fund costs that are not Allowable Costs or (ii) for any purpose prohibited under 45 U.S.C. 822(b)(2) and 49 C.F.R. 260.5 including, without limitation, for the payment of any railroad operating expenses.

Section 4.3 Completion of Project; Compliance with Grant Agreements.

Borrower shall, and shall cause the relevant Related Entities to, complete the Positive Train Control Project within the timeframe and budget provided for in the Grant Agreements as in effect from time to time. Borrower shall timely comply in all material respects with its other obligations under the Grant Agreements.

Section 4.4 Pay Taxes and Other Claims.

Borrower shall, and shall cause each other Related Entity to, file all federal, state, and other tax returns and reports of Borrower required by law or regulation to be filed and pay and discharge or cause to be paid and discharged all taxes, withholdings, assessments, fees and other governmental charges lawfully levied or imposed upon its property or in connection with the Business before the date on which penalties attach thereto. Borrower shall, and shall cause each other Related Entity to, pay when due all lawful claims for labor, materials, supplies, and rents, and pay all other debts and liabilities, any of which, if unpaid, would by law result it a lien or charge upon the Trust Estate; provided, that, nothing herein shall require any payment so long as (a) such nonpayment is being diligently contested in good faith and by appropriate proceedings, (b) such reserve as may be required by generally accepted accounting principles has been made therefor; and (c) failure to pay when due would not result in the forfeiture or loss of property of Borrower having a Material Adverse Effect specified in clause (i) of the definition of such term.

Section 4.5 Maintenance of Insurance.

Borrower, for itself and each of the other Related Entities, shall maintain property, liability and other insurance coverage, including self-insured retentions, with respect to their property, the Business and the Positive Train Control Project which is equivalent in all material respects as to scope and amounts to the coverage maintained on the date hereof as described in Borrower's most recent Combined Annual Continuing Disclosure Filings Pursuant to Rule 15c2-12, as supplemented May 1, 2014 as such coverage may be adjusted from time to time by the Borrower Directors in the exercise of its reasonable judgment, or which is otherwise required by applicable law.

Section 4.6 Operation, Maintenance and Repair of Rail Properties.

Anything to the contrary in the exception provided for by the second sentence of section 609 of the Transportation Resolution notwithstanding, (a) Borrower shall, and shall cause The Long Island Rail Road Company and Metro-North Commuter Railroad Company to (i) comply with the requirements of Section 822(h)(1)(B) of the Act (ii) operate common or contract carrier rail services over the Rail Lines, and (iii) maintain the Rail Lines and associated locomotives and rolling stock in accordance with the maintenance standards described in 49 C.F.R. 260.39(a) and (b) Borrower shall, and shall cause each of the Related Entities to, maintain their rail and public transportation infrastructure and properties in good repair and operating condition, normal wear and tear excepted, and make all necessary repairs and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect specified in clause (i)(a) of the definition of such term.

Section 4.7 Financial Statements; Notice of Certain Events.

Borrower shall (i) comply with the information and disclosure provisions of Rule 15c2-12, (ii) enter into and maintain, for the benefit of Lender and any Additional Holder, a written continuing disclosure agreement with the Trustee implementing Borrower's compliance with Rule 15c2-12 the terms and conditions of which shall be equivalent in all material respects with those disclosure agreements maintained for the benefit of other Owners of Obligations, and (iii) provide the Administrator with copies of all documents and notices required to be disclosed or delivered under Rule 15c2-12 or such disclosure agreement when required to be so disclosed or delivered thereunder. Borrower shall, in addition, provide the Administrator with access to all information posted by Borrower on the Electronic Municipal Market Access (EMMA) system maintained by the Municipal Securities Rulemaking Board (MSRB) or any equivalent successor or replacement electronic system.

Section 4.8 Project Reports.

(a) Until the later of the last Advance and substantial completion of Positive Train Control Project, the Borrower shall provide the Administrator with copies of all periodic reports relating to the Positive Train Control Project delivered after the date hereof (i) under the Grant Agreements, such copies to be delivered simultaneously with the reports delivered under the Grant Agreements and (ii) to the Metropolitan Transportation Authority Capital Project Oversight Committee, such copies to be delivered not later than the last day of February, May, July and November, or such other months as Borrower may notify the Administrator of in advance, provided that each report to the FRA shall be delivered not more than four (4) months after the prior such report. To the extent not otherwise provided as a part of such periodic reports, the Borrower shall provide the Administrator with a separate written report including the following information:

- (1) a narrative description of project progress and project risk assessment since last report including, without limitation, implementation progress and schedule for wayside miles and on-board units, and a clear indication of whether the project is on budget and on schedule;

- (2) if the project is not on budget and on schedule (relative to the last report), an explanation of the amount or period of variance and the reasons for the delay or cost overrun, the mitigation measures planned to be taken in response including any critical path items to recovering schedule, and a statement indicating the new expected completion date and/or the source of any additional capital needed to complete the Positive Train Control Project;
- (3) a 90-day look ahead at project milestone achievements; and
- (4) the then current Positive Train Control Project implementation schedule and total projected cost.

(b) Within three (3) months after achieving substantial completion of the Positive Train Control Project or the last Advance, whichever event occurs later, the Borrower shall provide the Administrator with a final report on the project including a comparison of the final project cost and schedule with the original cost and schedule at the time of the first Advance, and specifying any significant punch-list items remaining to be completed (and their costs and timing). Information should be included in the final report to demonstrate that the underlying obligations and specifications under the principal construction contracts for the Positive Train Control Project have been fulfilled and whether there is any ongoing or expected litigation related to any such contract. The benefits to the public resulting from Loan and the Positive Train Control Project should be described and confirmed in the final report.

(c) The delivery requirements of Section 7.6 notwithstanding, the reports to be delivered by MTA under this Section 4.8 may be delivered to the Administrator by email alone to the email address provided for under Section 7.6.

Section 4.9 Single Audit Act.

Borrower shall, at its own cost and expense, obtain all financial and compliance audits as required by the Single Audit Act Amendments of 1996, 31 U.S.C. 7501, et seq. in accordance with 2 C.F.R. Subpart F.

Section 4.10 Signed Statement Regarding Breach.

On each Interest Payment Date, Borrower shall furnish to the Administrator the certification of an Approved Officer, substantially in the form of Exhibit I, stating that, other than as notified to the Administrator pursuant to Section 4.16, no Material Adverse Effect, Breach or Advance Suspension Event has occurred since, in the case of the first Interest Payment Date, the date hereof and, thereafter, the date on which the most recent such certification previously was delivered.

Section 4.11 Compliance with Applicable Laws.

(a) Borrower shall, and shall cause each of the other Related Entities, as applicable, to undertake the RRIF Project and conduct the Business in conformity in all material respects with all federal, state, and local laws, statutes, ordinances, regulations and

orders of governmental authorities and all requirements of such foreign jurisdictions as may be applicable and will promptly comply, in all material respects, with any such laws, statutes, ordinances, regulations and orders non-compliance with which could reasonably be expected to have a Material Adverse Effect specified in clause (i) of the definition of such term.

(b) Without limiting the generality of the foregoing, but regardless of whether non-compliance would have a Material Adverse Effect, Borrower shall, and shall cause each of the other Related Entities to, comply in all material respects with the following federal laws applicable to the Related Entities or the RRIF Project:

- (i) the Americans With Disabilities Act of 1990 and implementing regulations (42 U.S.C. 12101 et seq.; 28 C.F.R. Part 35; 29 C.F.R. Part 1630);
- (ii) Title VI of the Civil Rights, Act of 1964, as amended (42 U.S.C. 2000d et seq.; and United States Department of Transportation regulations, 49 C.F.R. Part 21;
- (iii) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 et seq.);
- (iv) Equal Employment Opportunity requirements under Executive Order 11246 dated September 24, 1965 (30 F.R. 12319), any Executive Order amending such order, and implementing regulations (41 C.F.R. Part 60);
- (v) restrictions governing the use of federal appropriated funds for lobbying (31 U.S.C. 1352; 49 C.F.R. Part 20);
- (vi) the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub.L. 91-604);
- (vii) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), including the environmental mitigation requirements and commitments made by Borrower that result in Lender's approval of the Final Environmental Impact Statement (issued pursuant to 42 U.S.C. 4332(2)(C)), Environmental Assessment, or Categorical Exclusion Determination, as applicable;
- (viii) the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub.L. 92-500); and
- (ix) the Endangered Species Act (16 U.S.C. 1531, et seq.).

[Section 4.12 Additional Information on Borrower's Performance.](#)

On request of the Administrator, Borrower shall furnish promptly to the Administrator such information as may be reasonably necessary to determine whether (i) Borrower is fulfilling

its warranties, covenants and agreements contained in this Agreement or (ii) any Breach or Advance Suspension Event has occurred under any Loan Document.

Section 4.13 Audit and Inspection Rights.

(a) Borrower shall, and shall cause each other Related Entity to, give representatives of the Administrator and the Comptroller General of the United States free access during normal business hours and upon reasonable advance notice to examine and inspect all books, accounts, records, reports, files, inventories, equipment, facilities, and other papers, things, facilities or property relating to this Agreement. Such access shall be granted to the extent deemed necessary (as reasonably determined by such representatives) to facilitate any audit to determine compliance by Borrower with the Loan Documents, or to inspect any equipment or facilities relating to Borrower's obligations under the Loan Documents.

(b) Borrower agrees to cooperate, and to cause each other Related Entity to cooperate, with such representatives in connection with any audits and/or inspections pursuant to Section 4.13(a).

(c) Such representatives shall have the right to discuss with the Authorized Officers and other knowledgeable representatives of the Related Entities the Business and affairs of the Related Entities and Borrower's performance of the RRIF Project, and Borrower shall use its best efforts to obtain for such representatives the right with respect to its contractors and subcontractors to discuss their business and affairs relating in any way to the Business or the RRIF Project.

Section 4.14 Budgets.

Borrower shall submit to the Administrator (i) upon adoption by Borrower or the relevant Related Entity, the program description and operating budget referred to in section 611 of the Transportation Resolution for each such Related Entity and any subsequent revision thereto, and (ii) upon receipt by Borrower, each certificate or other notice issued by the Independent Engineer referred to in such section 611.

Section 4.15 Minutes of Meetings.

Upon the Administrator's request, Borrower shall provide the Administrator copies of minutes, or portions thereof, of the meetings of its Board of Directors or any committee thereof relating in any material way to the Loan Documents or the RRIF Loan Obligations.

Section 4.16 Notification of Events.

(a) Borrower shall, within ten (10) Business Days after its occurrence, provide the Administrator with written notice, signed by an Approved Officer, of any of the following events, circumstances or conditions, setting forth the details thereof:

- (i) any Breach or Advance Suspension Event;

- (ii) any event or circumstance required to be disclosed pursuant to Rule 15c2-12;
- (iii) the filing of any litigation, suit, action or arbitration of which the Borrower has actual notice, the delivery to Borrower of any written claim or demand, the initiation of any governmental investigation, or any adverse development in connection with any of the foregoing which in any such case could reasonably be expected to have a Material Adverse Effect specified in clause (i) of the definition of such term;
- (iv) the adoption of any law, rule or regulation by the State of New York, any political subdivision thereof or any other governmental entity the adoption of which could reasonably be expected to have a Material Adverse Effect;
- (v) the failure by the State of New York, any political subdivision thereof or any other governmental entity to adopt any law, rule or regulation proposed or actively supported by the Borrower where such failure could reasonably be expected to have a Material Adverse Effect; or
- (vi) the occurrence of any other event, circumstance or condition having a Material Adverse Effect.

(b) Each such notice shall be accompanied by a written statement signed by an Approved Officer setting forth in detail the remedial actions Borrower is taking or proposes to take with respect thereto.

Section 4.17 Competitive Contracting.

Costs for any work performed on the Positive Train Control Project by an outside contractor, rather than by Borrower or another Related Entity with its own employees, shall be considered Allowable Costs only if the contractor is selected in accordance with the procurement standards set forth in 2 C.F.R. 200.317.

Section 4.18 Debarment and Suspension.

(a) Borrower agrees in connection with the use of Federal funding to comply with the provisions of Order No. 4200.5E issued by the Secretary of the U.S. Department of Transportation on March 15, 2010, Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. 6101 note, and U.S. DOT regulations "Nonprocurement Suspension and Debarment," 2 C.F.R. Part 1200, which adopts and supplements the provisions of U.S. Office of Management and Budget "Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)," 2 C.F.R. Part 180 and specifically Subpart C of the OMB guidance in 2 C.F.R. Part 180 and 2 C.F.R. 180.435.

(b) In connection with entering into any lease, third party contract, or other arrangement in connection with the RRIF Project and prior to entering into such transaction, Borrower shall verify that the parties thereto are not barred, suspended or otherwise excluded by (i) obtaining certifications of debarment and suspension from its contractors and subcontractors, (ii) reviewing the System for Award Management site at www.sam.gov or (iii) adding a clause or condition to any such lease, third-party contract, or other arrangement requiring compliance with Subpart C of the OMB guidance in 2 C.F.R. Part 180, and specifically 2 C.F.R. 180.300.

(c) Borrower agrees to inform the Administrator in writing when Borrower or any other Related Entity suspends or debar a contractor in connection with the use of Federal funding.

(d) The Borrower shall cause each of the other Related Entities to comply with the requirements of this Section 4.18 in connection with the use of Federal funding.

Section 4.19 Small and Disadvantaged Businesses.

(a) Borrower in connection with the Positive Train Control Project agrees to, and shall cause each other Related Entity to: (i) provide maximum practicable opportunities for small businesses, including veteran-owned small businesses and service disabled veteran-owned small businesses, and (ii) implement best practices, consistent with our nation's civil rights and equal opportunity laws, for ensuring that all individuals – regardless of race, gender, age, disability, and national origin – benefit from activities funded through this Agreement.

(b) An example of a best practice under (a)(ii) above would be to incorporate key elements of the Department of Transportation's Disadvantage Business Enterprise ("DBE") program (see 49 C.F.R. Part 26) in contracts funded under this Agreement. This practice would involve setting a DBE contract goal on contracts funded under this Agreement that have subcontracting possibilities. The goal would reflect the amount of DBE participation on the contract that Borrower would expect to obtain absent the effects of discrimination and consistent with the availability of certified DBE firms to perform work under the contract. When a DBE contract goal has been established by Borrower, the contract would be awarded only to a bidder/offer that has met or made (or in the case of a design/build project, is committed to meeting or making) documented, good faith efforts to reach the goal. Good faith efforts are defined as efforts to achieve a DBE goal or other requirement of this Agreement that, by their scope, intensity, and appropriateness to the objective can reasonably be expected to achieve the goal or other requirement.

(c) Borrower must provide the Administrator with a plan for incorporating best practices in accordance with clause (a)(ii) above into its implementation of the RRIF Project within thirty (30) calendar days following execution of this Agreement. If Borrower is not able to substantially incorporate 49 C.F.R. Part 26 elements in accordance with the above-described best practice, Borrower agrees to provide the Administrator with a written explanation and an alternative program for ensuring the use of contractors owned and controlled by socially and economically disadvantaged individuals.

Section 4.20 Cargo Preference

Pursuant to U.S. Department of Transportation, Maritime Administration regulations, “Cargo Preference – U.S.-Flag Vessels,” 46 C.F.R. Part 381, Borrower shall, and shall cause each other Related Entity to, insert the following clauses in contracts in which equipment, materials, or commodities may be transported by ocean vessel in carrying out the Positive Train Control Project:

As required by 46 C.F.R. Part 381, the contractor agrees:

(a) *To utilize privately owned United States-flag commercial vessels to ship at least fifty (50) percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners and tankers) involved whenever shipping any equipment, materials, or commodities pursuant to this contract to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.*

(b) *To furnish within twenty (20) days following the date of loading for shipments originating within the United States, or within thirty (30) working days following the date of loading for shipment originating outside the United States, a legible copy of a rated “on-board” commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (a) above to the recipient (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of Cargo Preference and Domestic Trade, Maritime Administration, 1200 New Jersey Avenue, S.E., Washington, DC 20590, marked with appropriate identification of the RRIF Project as follows: “FRA MTA Positive Train Control RRIF Financing”.*

(c) *To insert the substance of the provisions of the clause in all subcontracts issued pursuant to this contract.*

Section 4.21 Domestic Buying Preference

The Borrower shall comply with the provision to purchase steel, iron and other manufactured goods produced in the United States for the Positive Train Control Project, as set forth in the Federal Railroad Administration’s Notice Regarding Consideration and Processing of Applications for Financial Assistance under the Railroad Rehabilitation and Improvement Financing (RRIF) Program, 75 F.R. 60165, 60166 (2010).

Section 4.22 Employee Protection and Prevailing Wages.

(a) Borrower shall make fair and equitable arrangements to protect the interests of any railroad employees who may be adversely affected by actions taken in connection with the RRIF Project financed pursuant to this Agreement in accordance with the provisions of the Appendix, attached here to as Exhibit J, prescribed by the Secretary of Labor on July 6, 1976 pursuant to 45 U.S.C. 836.

(b) In accordance with 45 U.S.C. 822(h)3(A), Borrower shall, and shall cause each of the other Related Entities to, comply with the standards of 49 U.S.C. 24312 with respect to the RRIF Project in the same manner that the National Railroad Passenger

Corporation is required to comply with such standards for construction work financed under an agreement made under 49 U.S.C. 24308(a).

[Section 4.23 Expenses.](#)

To the fullest extent chargeable by the Administrator pursuant to applicable statute and regulation, Borrower shall, upon demand, pay all expenses (including, without limitation, the reasonable fees of counsel or any financial or industry advisor) incurred by the Administrator or otherwise on behalf of the Lender in connection with the evaluation, consideration, investigation, analysis, exercise or enforcement of any of Lender's rights under the Loan Documents, including, without limitation, in connection with any request by Borrower for an amendment or waiver of any provision of the Loan Documents or any action to recover amounts due under any Loan Document or to compel Borrower's compliance with its obligations under any Loan Document.

[Section 4.24 Project Funding.](#)

The Borrower shall provide funds (including, without limitation, funds available under the Grant Agreements and this Agreement) in amounts sufficient to assure timely and full payment of the Project Costs (as defined in the Grant Agreements) necessary to Complete (as defined in the Grant Agreements) the Positive Train Control Project.

ARTICLE V

[NEGATIVE COVENANTS OF BORROWER](#)

Borrower hereby makes the following additional covenants to Lender which shall apply throughout the term of this Agreement, subject only to Section 2.7(a) and (b):

[Section 5.1 Indebtedness.](#)

In the event that Borrower or any of the other Related Entities at any time issues, incurs, creates, assumes, guarantees or in any manner becomes liable for Structurally Senior Debt, the Borrower shall provide the Administrator with not less than fifteen (15) days prior written notice of such occurrence and the following shall apply:

(a) in the case of each First Issuance after the date of this Agreement of any Structurally Senior Debt, either:

(i) the Borrower shall deliver with its notice to the Administrator ratings confirmation letters from each Rating Agency then rating Borrower's Obligations under the Transportation Resolution to the effect that, all other relevant facts and circumstances being assumed unchanged, the issuance of such Structurally Senior Debt will not result in the suspension, withdrawal, downgrade, or placement on credit watch for potential downgrade (in each case as to probability of either default or recoverability) or any other action by such rating agency equivalent to any of the foregoing with respect to any of such rating agency's then current unenhanced ratings on Borrower's Obligations under the Transportation Resolution, including, without limitation, the Series 2015X Bond; or

(ii) the Lender shall have the option, exercisable at its sole discretion by the Administrator's delivery of written notice to the Borrower within ninety (90) days from receipt of the Borrower's notice, to exchange the entire outstanding amount of the Series 2015X Bond for such Structurally Senior Debt having an interest rate and remaining amortization schedule identical to the Series 2015X Bond. If Lender exercises such option then: (1) the Borrower shall issue such Structurally Senior Debt to the Lender on the later of the closing date of such First Issuance or ten (10) days after receipt of the Administrator's notice and the Administrator shall deliver the cancelled 2015X Bond to Borrower; (2) this Agreement shall remain in full force and effect except that references to the Transportation Resolution shall be deemed to be references to the resolution of the Borrower (or equivalent indenture or other agreement) under which such Structurally Senior Debt is issued, and all references in this Agreement to the 2015X Bond shall be deemed replaced with references to such Structurally Senior Debt; (3) future Advances, if any, shall be evidenced by such Structurally Senior Debt; and (4) any Ratings Downgrade Event resulting in whole or in part from such issuance of Structurally Senior Debt shall not result in the application of the Ratings Downgrade Rate.

(b) For purposes of this Section 5.1: "Structurally Senior Debt" means any payment obligation of Borrower or any other Related Entity secured by, or with respect to which the payee of such obligation (or any agent) has any security interest in or right to receive revenues or receipts of Borrower or such Related Entity (whether operating revenues, tax receipts, governmental subsidies, or other earnings, rents or payment rights of any nature) which revenues or receipts, but for such payment obligation, would reasonably be expected (based on the law, agreements, policies and practices relating to Borrower in effect or existing on the date hereof) to become part of the Trust Estate; except that Structurally Senior Debt shall not include obligations of the Triborough Bridge and Tunnel Authority or any refinancing or additional issuance of Borrower's Dedicated Tax Fund Bonds or Subordinated Indebtedness; and "First Issuance" means the first issuance of Structurally Senior Debt secured or otherwise supported by revenues or receipts which, prior to such issuance, either constituted part of the Trust Estate or were not previously available to become a part of the Trust Estate, but does not include subsequent issuances of Structurally Senior Debt secured or otherwise supported by the same such revenues or receipts.

Section 5.2 Purchase of Investment Securities, Lending or Advancing Funds.

Borrower shall not invest any operating, construction or debt service reserves other than (i) in the case of funds held pursuant to the Transportation Resolution, in Authorized Investments and (ii) in the case of all other funds, in accordance with the Borrower's All-Agency Investment Guidelines as duly adopted from time to time by the Board of Directors. In addition, Borrower shall not lend or advance any funds generated in or received for purposes of the operation of the Business to any person, corporation, firm or other entity, except in the ordinary course of business, or to a Related Entity.

Section 5.3 Purchase or Lease of Assets.

Borrower shall not use any funds generated in or received for the purpose of the operation of the Business to purchase or lease any chattel, real estate, fixture or other capital

asset unless such asset will be used in the operation of the Business and is acquired in the ordinary course of business.

Section 5.4 Deployment of Assets.

The Borrower shall comply with Section 822(h)(1)(A) of the Act.

Section 5.5 Prohibited Interest.

Except as between Borrower and its affiliates:

(a) Borrower shall not, after the date of this Agreement, enter into any contract, subcontract, or arrangement in excess of \$50,000 in connection with the financing of, or the carrying out of, work related to the Positive Train Control Project in which any Officer or Director of any Related Entity, during his or her subsequent tenure or more recently than two years before the date of such contract (if his or her tenure is continuing), shall have or shall have had any personal interest, direct or indirect, in the other party to such contract, subcontract or arrangement unless such contract, subcontract or arrangement is entered into on a publicly advertised, sealed-bid basis, the recipient is the lowest qualified bidder on such basis, such officer or director recuses himself or herself from further dealings with respect to such contract, subcontract or arrangement, and written records of the entire transactions are sufficient to satisfy the Administrator upon inspection.

(b) Borrower shall not knowingly allow any contractor or subcontractor of Borrower or of any Related Entity to enter into any contract, subcontract, or other arrangement in excess of \$50,000 related to the Positive Train Control Project if any of their Officers or Directors or any members of the immediate family of one of the foregoing has any material interest in the contract, subcontract or arrangement, unless the other party (or parties) to such contract, subcontract or arrangement is the lowest qualified bidder on a publicly advertised, sealed-bid basis and written records of the entire transaction are sufficient to satisfy the Administrator upon inspection.

(c) Borrower shall not allow any member of or delegate to Congress to share any benefit that may arise from this Agreement; but this provision shall not restrict the making of any contract with a publicly held entity for the general benefit of such entity.

(d) Borrower shall not pay any full-time employee of the federal government (unless on leave without pay) any consulting fees, salaries, or travel expenses from any federal funds provided under this Agreement except where specifically authorized by statute.

Section 5.6 Merger, Acquisition, or Sale of Assets.

Borrower shall not, and shall not permit any other Related Entity to: (i) consolidate or merge with or transfer its assets or control of itself to any entity other than another Related Entity; or (ii) anything to the contrary in the exception provided for by the second sentence of section 609 of the Transportation Resolution notwithstanding, sell, lease or otherwise transfer any of its operating assets except for any sale, lease or transfer undertaken in the ordinary course

of its Business or as would not reasonably be expected to have a Material Adverse Effect specified in clause (i)(a) of the definition of such term.

Section 5.7 Encumbrances.

Borrower shall not place, create, incur, assume or permit to exist any mortgage, pledge, lien or encumbrance on the Trust Estate other than (i) the lien created in favor of the Owners under Section 501 of the Transportation Resolution and (ii) any other lien permitted under the Transportation Resolution as to which no enforcement, collection, levy, attachment or foreclosure proceeding has been commenced; it being understood that the Borrower may issue Obligation Anticipation Notes or Revenue Anticipation Notes (each as defined in the Transportation Resolution) as permitted by the Transportation Resolution.

Section 5.8 Curtailment or Discontinuance of Business.

Borrower shall not, except as may be required as the consequence of force majeure, curtail, discontinue or abandon any substantial part of its Business if such curtailment, discontinuance or abandonment would reasonably be expected to have a Material Adverse Effect specified in clause (i)(a) of the definition of such term.

Section 5.9 Abandonment of Rail Lines.

The exceptions provided for by the second sentence of section 609 of the Transportation Resolution and Section 5.8 notwithstanding, Borrower shall not abandon (within the meaning of 49 U.S.C. 10903) the Rail Lines or file an application with the Surface Transportation Board for the abandonment of the Rail Lines.

Section 5.10 Change of Control.

Borrower shall not permit (i) itself to cease to be a public benefit corporation the Directors of which are appointed by the Governor of the State of New York with the advice and consent of the New York State Senate or (ii) any other Related Entity to cease to be a public benefit corporation of the State of New York; provided, however, that nothing shall prohibit any Related Entity from consolidating or merging with or transfer its assets or control of itself or of any other Related Entity to another Related Entity.

ARTICLE VI

ADVANCE SUSPENSION EVENTS AND REMEDIES

Section 6.1 Advance Suspension Events.

The following shall be Advance Suspension Events:

- (a) Payment Default. A failure to pay any interest on or principal amount of the Series 2015X Bond within five (5) Business Days after the same becomes due and payable;

(b) Covenant Defaults. (i) Borrower's breach in the due observance or performance of any covenant or condition contained in Article V; or (ii) Borrower's breach in the due observance or performance of any other covenant or condition contained in this Agreement if Borrower fails to remedy such breach within thirty (30) calendar days of the earlier of (x) an Authorized Officer obtaining actual knowledge of such breach or (y) the receipt of written notice from Lender or the Administrator of its occurrence.

(c) Misrepresentation. Any representation or warranty made by Borrower herein proving to be untrue or incomplete in any material respect as of the date hereof or when deemed repeated hereunder, or any written statement, certificate or information delivered by or on behalf of Borrower to Lender in or in furtherance of the Application or pursuant to this Agreement proving to be untrue or incomplete in any material respect as of the date on which the things therein set forth were stated or certified.

(d) Material Adverse Effect. The occurrence of a Material Adverse Effect and the continuance thereof for a period of thirty (30) calendar days.

(e) Default Under Other Loan Documents. The occurrence of an Event of Default as defined under the Transportation Resolution.

(f) Cross Default. The occurrence of a default under any other indebtedness of Borrower or any other Related Entity in an aggregate principal amount exceeding \$100,000,000 which would permit the holders thereof to declare such principal amount immediately due and payable.

(g) Insolvency Events. Any Related Entity's (i) making a general assignment for the benefit of creditors, or (ii) applying for or consenting to the appointment of a receiver, trustee or liquidator of all or a substantial part of its assets, or (iii) being adjudicated a bankrupt or insolvent, or (iv) filing a voluntary petition in bankruptcy or filing a petition or answer seeking reorganization or an arrangement with creditors who are seeking to take advantage of any other law (whether federal or state) relating to relief of debtors or admitting by answer (by default or otherwise) the material allegations of a petition filed against it in any bankruptcy, reorganization, arrangement, insolvency or other proceeding (whether federal or state) relating to relief of debtors, or (v) suffering or permitting to continue unstayed and in effect for sixty (60) calendar days or more any judgment, decree or order entered by a court of competent jurisdiction which approved a petition seeking reorganization of such Related Entity or appoints a receiver, trustee or liquidator of all or a substantial part of its assets;

(h) Actions by the State of New York. The taking of any action by the State of New York in violation of its pledge and agreement with each Related Transportation Entity and the Owners of Obligations (including the Lender) that State of New York will not limit or alter the denial of authority under subdivision 9 of Section 1269 of the MTA Act and, in the case of the Transit Authority and MaBSTOA, subdivision 11 of Section 1207-m of the TA Act, or the rights and powers vested in any of them by the MTA Act and TA Act to fulfill the terms of any agreement made by any of them with such Owners (whether directly or as

third-party beneficiaries), or in any way impair their rights and remedies until such agreements, bonds, notes and obligations, including this Agreement and the 2015X Bond, together with the interest thereon and all costs and expenses in connection with any action or proceedings by or on behalf of such Owners, are fully met and discharged. As used in this paragraph (h), the terms “Transit Authority,” “MaBSTOA,” and “Related Transportation Entity” have the meanings given to them in the Transportation Resolution.

(i) Unenforceability. Any material provision of any Loan Document for any reason ceases to be valid, binding and enforceable in accordance with its terms or any Related Entity challenges the enforceability of any Loan Document or asserts in writing, or engages in any action or inaction based on any such assertion, that any material provision of any of the Loan Documents has ceased to be or otherwise is not valid, binding and enforceable in accordance with its terms.

(j) Judgments. There is entered against the Borrower or any other Related Entity (i) one or more judgments or orders for the payment of money in an aggregate amount (as to all such judgments and orders) of \$25,000,000 or more in excess of available third party insurance coverage (which shall be deemed to include coverage provided by or through First Mutual Transportation Assurance Corporation, the Borrower’s captive insurance company subsidiary) or (ii) any one or more non-monetary judgments or orders which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of thirty (30) consecutive calendar days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, is not in effect.

Section 6.2 Remedies.

During the term of this Agreement, Lender and the Administrator shall have the following rights and remedies:

(a) Upon the occurrence of an Advance Suspension Event specified in Section 6.1(e), Lender shall have those rights and remedies conferred on Lender under the other Loan Documents as Owner of an Obligation under the Transportation Resolution and RRIF Supplemental Resolution.

(b) Following the occurrence and during the continuance of an Advance Suspension Event specified in Section 6.1(a), the outstanding principal amount of each Series 2015X Bond shall bear interest at the Overdue Rate in accordance with Section 2.2(d).

(c) Upon the occurrence and during the continuance of any Advance Suspension Event, the Administrator's obligation to make further Advances shall be suspended.

(d) Upon the occurrence of any Advance Suspension Event, Lender and the Administrator may exercise any and all available rights and remedies, whether specified herein or inherent in law or equity, which shall not be exclusive and shall be cumulative, including enforcement through an injunction or order for specific performance of each of

Borrower's obligations underlying any such Advance Suspension Event, and Borrower agrees not to contest the applicability of specific performance as a remedy, notwithstanding that an action at law for damages may be available, it being understood and agreed that, the remedy of acceleration being unavailable, Lender may have no adequate remedy at law.

(e) The Administrator may require that Borrower, within thirty (30) calendar days from receipt of notice from the Administrator, provide a detailed written description of the facts and circumstances which gave rise to the Advance Suspension Event, a detailed statement of steps Borrower is taking or proposes to take to resolve the issues giving rise to the Advance Suspension Event, and a proposed timeline for resolving the issues giving rise to the Advance Suspension Event. The Administrator may accept Borrower's proposal and permit Borrower time to resolve the issues giving rise to the Advance Suspension Event. If permitted to resolve the issues giving rise to the qualification, Borrower shall, at its own cost and expense and in a custom and manner satisfactory to the Administrator, act in accordance with the proposal and, within fifteen (15) calendar days of completing the proposed steps, provide the Administrator with the certification of an Authorized Officer that all such steps have been fully completed and the issues resolved. If Borrower does not propose a plan for resolving the issues giving rise to the Advance Suspension Event, if the Borrower does not act in accordance with the plan to resolve the issues in a custom and manner satisfactory to the Administrator, or if the Borrower does not timely provide the required certification, then the Administrator may exercise any other remedies available under this Agreement.

(f) To the extent permitted by applicable law, Borrower shall be liable for all the Lender's legally assessed or reasonably incurred expenses of its counsel and other external experts, including financial advisors, incurred in the consideration, investigation, analysis, evaluation, development, negotiation or documentation of any amendment, modification, loan workout, or in any litigation to enforce payment or performance of the RRIF Loan Obligations, including, without limitation, any litigation costs and court costs in connection with any proceeding considered, brought or threatened to enforce payment or performance of the RRIF Loan Obligations, regardless of whether such expenses are incurred in connection with enforcement of this Agreement or any other Loan Document, and Borrower shall pay all such amounts promptly upon receipt of written demand from the Administrator.

(g) As a consequence of an Advance Suspension Event, Lender or the Administrator may suspend or debar the Related Entities, as permitted by applicable statute, regulation, order or guidance, from participation in any federal program including, without limitation, the Railroad Rehabilitation and Improvement Financing Program. The Administrator may notify other federal departments and agencies of the Advance Suspension Event and such departments and agencies may have the right to suspend or revoke the Related Entities' eligibility to receive federal financial assistance in accordance with 31 U.S.C. 3720B and 31 CFR 285.13 and 901.6 (with respect to loans and loan insurance or guarantees) and 2 CFR Part 180 and 2 CFR Part 1200 (with respect to federal financial assistance), including, without limitation, federal financial assistance otherwise available under the Transportation Infrastructure Finance and Innovation Act and the Urbanized Area Formula Funding Program.

ARTICLE VII

MISCELLANEOUS PROVISIONS

Section 7.1 Entire Agreement.

This Agreement together with the other Loan Documents embodies the entire agreement and understanding between Borrower and the Administrator with respect to the subject matter hereof and thereof and supersedes all prior agreements and understandings relative to the same.

Section 7.2 Term.

This Agreement shall terminate upon the satisfaction of the RRIF Loan Obligations in their entirety in accordance with the provisions herein and thereof or, if earlier, in accordance with the provisions of Section 2.7(b).

Section 7.3 Amendments and Waivers.

No amendments, waivers or modifications to this Agreement are to be effective unless executed by Borrower and the Administrator or his authorized designee in a writing referring to this Agreement.

Section 7.4 Parties Bound; Right to Assign.

All the terms and conditions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by and against, each of the parties hereto and their legal representatives and assigns (other than any Additional Holders) to the extent of their respective interest and obligations hereunder; provided, however, that this Agreement may not be transferred or assigned by Borrower without the prior written consent of the Administrator.

Section 7.5 Table of Contents and Headings.

The table of contents and headings of the articles and sections of this Agreement are inserted for convenience only and shall not be deemed to constitute a part hereof or in any manner limit or define the terms of this Agreement.

Section 7.6 Notices; Action to be Taken.

(a) Any notice required or submitted hereunder shall be deemed given if delivered in person, by nationally recognized over-night courier service, or mailed by registered or certified mail, return receipt requested and postage prepaid, with a copy by email, to the following addresses of the parties hereto or at such addresses as either Borrower or the Administrator shall from time to time designate by written notice:

[REDACTED]

[REDACTED]

2 Broadway

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

All notices delivered in person, by courier or by mail shall be deemed given on the date received at the office of the party to whom notice is to be given as evidenced by a personal delivery or courier receipt or the registered or certified mail return receipt. Each notice provided by the Borrower hereunder shall include a reference to this Agreement and the Section hereof pursuant to which such notice is given.

(b) The Administrator may rely upon as authoritative, binding and valid any notice, certification or other document delivered by Borrower if signed by an Approved Officer.

Section 7.7 [Release of Information.](#)

The Administrator shall not disclose any Confidential Information (as defined below) to any person without the consent of the Borrower, other than (a) to the Administrator's officers, directors, employees, agents and advisors, to other federal agencies and to actual or prospective assignees and then only on a confidential basis, (b) as required by any law (including the

Freedom of Information Act (“FOIA”) (5 U.S.C. 552)), rule or regulation or judicial process, (c) as requested or required by any state or federal authority or examiner regulating the Administrator or Congress, and (d) in connection with the exercise of any remedies hereunder or under any other Loan Document or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder. “Confidential Information” means information designated as confidential that the Borrower furnishes to the Administrator, but does not include any such information that is or becomes generally available to the public or that is or becomes available to the Administrator from a source other than the Borrower or which the Administrator determines is not confidential information in accordance with applicable law. For purposes of the FOIA, confidential information shall have the meaning applied through FOIA exemption 4 (5 U.S.C. 552(b)(4)).

Section 7.8 No Waiver by Administrator.

No course of dealing on the part of the Administrator, nor any failure or delay by the Administrator with respect to exercising any right, power, or privilege with respect to the RRIF Loan Obligations shall operate as a waiver thereof, or of any other right, power or privilege, nor shall the Administrator’s failure to exercise any rights granted with respect to the RRIF Loan Obligations in the event of a Breach or Advance Suspension Event, or the Administrator’s exercise of any single or partial exercise of any such right, power or privilege hereunder, operate as a waiver thereof, or of any other right, power or privilege.

Section 7.9 Waiver of Jury Trial.

EACH OF THE BORROWER AND THE LENDER HEREBY WAIVE ANY AND ALL RIGHTS IT MAY NOW OR HEREAFTER HAVE TO TRIAL BY JURY IN ANY ACTION, SUIT OR COUNTERCLAIM ARISING IN CONNECTION WITH, OUT OF OR OTHERWISE RELATING TO THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREUNDER. EACH OF THE BORROWER AND THE LENDER HERETO REPRESENTS THAT EACH HAS REVIEWED THIS WAIVER AND CONSENT AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHT AND CONSENTS TO JUDICIAL REFERENCE FOLLOWING CONSULTATION WITH LEGAL COUNSEL ON SUCH MATTERS.

Section 7.10 Governing Law.

THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE FEDERAL LAW OF THE UNITED STATES. TO THE EXTENT THAT FEDERAL LAW DOES NOT SPECIFY THE APPROPRIATE RULE OF DECISION FOR A PARTICULAR MATTER AT ISSUE, IT IS THE INTENTION AND AGREEMENT OF THE PARTIES HERETO THAT THE SUBSTANTIVE LAW OF THE STATE OF NEW YORK SHALL BE ADOPTED AS THE GOVERNING FEDERAL RULE OF DECISION.

Section 7.11 Indemnification.

(a) Borrower shall promptly upon demand, to the full extent permitted by applicable law, indemnify and hold the United States harmless from and against, and shall

otherwise reimburse it for, any claim, demand, cause of action, damage, liability, cost or expense (including reasonable attorneys' fees and court costs) incurred by the United States and arising out of, or in any way resulting from this Agreement, the Series 2015X Bond, the other Loan Documents, the RRIF Project, or the RRIF Loan Obligations, including, but not limited to, the use, operation or condition of any equipment or facilities to which the proceeds of financial assistance have been applied hereunder (except if the claim, demand, cause of action, damage, liability, cost or expense is asserted against the United States in its governmental capacity or results from the willful act or negligence of the United States).

(b) The provisions of this section shall survive the issuance, execution, delivery and termination of the other RRIF Loan Obligations.

Section 7.12 Representatives.

References to the Administrator or the Comptroller General of the United States include their subordinates, employees, agents and servants. The Administrator and the Approved Officers act hereunder in their official and not personal capacities.

Section 7.13 Counterparts.

This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith, may be executed in any number of counterparts. All such counterparts shall be deemed to be originals and shall constitute but one and the same instrument.

Section 7.14 Severability.

If any provision of this Agreement shall be invalid, illegal, or unenforceable, the validity, legality, or enforceability of the remaining provisions shall not be affected or impaired in any way thereby. A provision held to be unenforceable as applied to any party or circumstance remains applicable to other parties and circumstances.

Section 7.15 No Third Party Rights.

The parties hereby agree that this Agreement creates no third party rights against the United States or the Administrator, solely by virtue of the obligation to make Advances hereunder and that no third party creditor or creditors of Borrower shall have any right against the Administrator with respect to the obligation to make Advances hereunder.

Section 7.16 Remedies Not Exclusive.

No remedy conferred herein or reserved to the Lender is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first entered above.

METROPOLITAN TRANSPORTATION
AUTHORITY

By:

The UNITED STATES OF AMERICA,
represented by the
SECRETARY OF TRANSPORTATION
acting through the
FEDERAL RAILROAD ADMINISTRATOR

By:
