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U.S. DEPARTMENT OF COMMERCE

JET

Patent and Trademark Office  
Docket No. 49540-24033.00

To the Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):  
Via Rail Canada Inc.

Individual(s)       Association  
 General Partnership     Limited Partnership  
 Corporation-Canada     Other

Additional name(s) of conveying party(ies) attached?  Yes  No

2. Name and address of receiving party(ies):

Name: National Railroad Passenger Corporation  
Internal Address:  
Street Address: 60 Massachusetts Avenue, N.E.  
City: Washington State: D.C. ZIP: 20002

Individual(s) citizenship: \_\_\_\_\_  
 Association: \_\_\_\_\_  
 General Partnership: \_\_\_\_\_  
 Limited Partnership: \_\_\_\_\_  
 Corporation-State: District of Columbia  
 Other: \_\_\_\_\_

Additional name(s) & address(es) attached?  Yes  No

3. Nature of conveyance:

Assignment                       Merger  
 Security Agreement             Change of Name  
 Other: License Agreement

Execution Date: May 1, 2000

4. Application number(s) or registration number(s):  
If this document is being filed together with a new application, the execution date of the application is: N/A

A. Trademark Application No.(s)                      B. Registration No.(s)

75/605,220

Additional numbers attached?  Yes  No

ASST COMM FOR  
 TRADEMARKS  
 DEC 20 P 4: 05  
 U.S. PATENT  
 AND  
 TRADEMARK OFFICE

5. Name and address of party to whom correspondence concerning document should be mailed:

Andrew N. Spivak  
Attorney at Law  
Morrison & Foerster LLP  
2000 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006-1888

6. Total number of applications and trademark registrations involved: 1

7. Total fee (37 C.F.R. § 3.41): \$40.00

Enclosed  
 Authorized to be charged to deposit account, referencing Attorney Docket 49540-24033.00

8. Deposit account number: 03-1952

The Commissioner is hereby authorized to charge any fees under 37 C.F.R. § 1.21 which may be required by this paper, or to credit any overpayment to Deposit Account No. 03-1952.

**DO NOT USE THIS SPACE**

9. Statement and signature.  
To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Name: Andrew N. Spivak                      Andrew N. Spivak                      12/13/00  
Registration No: D.C. No. 464376                      Signature                      Date

Total number of pages comprising cover sheet, attachments and document: 26

01 12/2001 MTHAI1 00000162 75605220  
01 FC:481 40.00 OP

Mail documents to be recorded with required cover sheet information to:  
Commissioner of Patents and Trademarks  
Box Assignments  
Washington, D.C. 20231

dc-240577

TRADEMARK  
REEL: 002211 FRAME: 0755

## TRADE MARK LICENSE AGREEMENT

1998

**THIS AGREEMENT** made the 28th day of January (the «Effective Date») between VIA RAIL CANADA INC., a company incorporated under the laws of Canada, the head office of which is at 2, Place Ville Marie, 6<sup>th</sup> Floor, Montreal, Quebec, H3C 3W3 (hereinafter "VIA RAIL CANADA") and NATIONAL RAILROAD PASSENGER CORPORATION, a company incorporated under the laws of the District of Columbia, the principal office of which is at 60 Massachusetts Avenue, NE, Washington DC 20002, USA (hereinafter "AMTRAK").

### WHEREAS

- A. VIA RAIL CANADA and AMTRAK have agreed to offer the transportation of passengers by train and other travel-related services in North America in the countries of Canada and the United States of America (hereinafter "the Territory") by joint promotional activities.
- B. VIA RAIL CANADA is the owner of, or is otherwise entitled to license, certain valuable trade marks, NORTH AMERICA RAIL PASS; CARTE AMERIQUE DU NORD; and DESIGN, some of which have been registered or are in process of registration in Canada (the «Canada Marks»).
- C. AMTRAK is the owner of, or is otherwise entitled to license, certain valuable trade marks, NORTH AMERICA RAIL PASS; CARTE AMERIQUE DU NORD; and DESIGN, some of which have been registered or are in process of registration in the United States of America (the «US Marks»).
- D. It is anticipated that AMTRAK will from time to time wish to use other trade marks of VIA RAIL CANADA in countries of the Territory, and VIA RAIL CANADA and AMTRAK may agree in writing to add such additional trade marks to this Agreement.

- E. AMTRAK is desirous of having the right, under its own name, to use the Canada Marks in relation to all the goods and/or services used in offering, providing and commercializing rail and other transportation and travel-related services including merchandise or in other respects of which the parties have agreed in writing (hereinafter "the Goods and Services") in the Territory and of being appointed a licensee thereof. It is understood and agreed that this right shall pertain only to the Goods and Services and does not extend to any other product or service.
- F. VIA RAIL CANADA is desirous of having the right, under its own name, to use the US Marks in relation to the Goods and Services in the Territory and of being appointed a licensee thereof. It is understood and agreed that this right shall pertain only to the Goods and Services and does not extend to any other product or service.
- G. The parties hereto have agreed upon the terms and conditions under which each party shall have the right to use the trade marks and for the purpose of more specifically defining such terms and conditions have entered into this Agreement.

NOW IT IS HEREBY AGREED AS FOLLOWS:

*ARTICLE I. CANADA MARKS*

1. VIA RAIL CANADA represents and warrants that it owns the Canada Marks and has the right, power and authority to grant AMTRAK use rights as contemplated in this Agreement and that such Canada Marks do not infringe the rights of any other third party in Canada. The Canada Marks are held free and clear of all liens, restrictions, licenses (other than this Agreement), pledges, hypothecs, claims, security interest or other encumbrances. To VIA RAIL CANADA's knowledge, (i) no third party has acquired or claimed to have acquired any right, title or interest in and to the Canada Marks by virtue of the registration or use of, or intent to use, such Canada Marks in all or any geographical areas of Canada, and (ii) VIA RAIL CANADA is not a party to any pending suit, dispute or claim or has received any written notice of any threat, suit, dispute or claim regarding the registration and use of, or intent to use the Canada Marks, and (iii) there is no fact or circumstance that would impair the rights and powers of VIA RAIL CANADA to grant the present use rights or enter into this Agreement with AMTRAK.

2. VIA RAIL CANADA hereby grants to AMTRAK the exclusive, irrevocable, fully paid up and royalty-free right to use the Canada Marks in the Territory upon or in connection with the advertising, promotion, manufacture, sale, provision or performance of the Goods and Services distributed under AMTRAK's name subject to VIA RAIL CANADA's retained right to use the Canada Marks for its own complementary Goods and Services. This right extends to use of the Canada Marks on packaging and promotional and advertising material associated therewith.
3. AMTRAK may not sublicense or assign its rights in the Canada Marks to any third party without the prior express written consent of VIA RAIL CANADA who may withhold consent for any reason.
4. AMTRAK expressly recognizes and acknowledges that the Canada Marks are the sole property of VIA RAIL CANADA, and that all rights, title and interest in and to the CANADA MARKS, other than the rights granted hereto to AMTRAK, are expressly reserved to VIA RAIL CANADA for its use and benefit.
5. AMTRAK acknowledges VIA RAIL CANADA's exclusive rights in the Canada Marks in Canada and, further acknowledges that the Canada Marks are unique and original to VIA RAIL CANADA and have developed secondary meaning in those areas of the Territory in which VIA RAIL CANADA provides Goods and Services. AMTRAK agrees not, at any time during or after the effective term of this Agreement, to dispute or contest, directly or indirectly, VIA RAIL CANADA's exclusive right and title to the Canada Marks or the validity thereof or VIA RAIL CANADA's right to grant AMTRAK the rights under this Agreement. AMTRAK further agrees not to object to or file any action or lawsuit because of VIA RAIL CANADA's application to register or otherwise protect the Canada Marks in Canada, or any use by VIA RAIL CANADA of the Canada Marks on or with any goods or services in Canada. AMTRAK shall not, on the basis of its use of Canada Marks, oppose or seek to cancel, in any Canadian court or agency, including, without limitation the Canadian Trade Marks Office, any registration for the Canada Marks or any mark for which VIA RAIL CANADA files an application or obtains a registration for any Goods and Services whether such use be by VIA RAIL CANADA directly or through different licensees or authorized users.
6. Upon VIA RAIL CANADA's request, AMTRAK will cooperate fully in executing any documents required by VIA RAIL CANADA to enable recordal of AMTRAK's appointment as a licensee of the Canada Marks at the Trade Marks Registries in the Territory. The costs for such recordal shall be borne by VIA RAIL CANADA.

7. VIA RAIL CANADA hereby authorizes AMTRAK and AMTRAK in turn undertakes to use the Canada Marks in connection with the Goods and Services only so long as the Goods and Services are provided in accordance with specifications prescribed, standards of quality laid down, and directions and information given from time to time by VIA RAIL CANADA. VIA RAIL CANADA reserves the right to approve and inspect the type of and quality in design, materials and workmanship of any merchandise bearing the Canada Marks sold in connection with the Goods and Services as well as all promotional, packaging, and advertising material relative thereto which shall include all appropriate legal notices as required by law or VIA RAIL CANADA. If the quality of a class of merchandise bearing the Canada Marks falls below such production-run quality, as previously approved by VIA RAIL CANADA, VIA RAIL CANADA may require AMTRAK to immediately discontinue the production, sale, or distribution of such merchandise, artwork or advertising material and shall use its best efforts to restore such quality. In the event AMTRAK has not taken appropriate steps to restore such quality within thirty (30) days after notification by VIA RAIL CANADA, VIA RAIL CANADA may terminate AMTRAK's right to use the Canada Marks without further obligation to AMTRAK under this Agreement except that this Agreement shall remain in effect to the extent not so terminated. In no event shall AMTRAK without the prior written consent of VIA RAIL CANADA offer for sale, advertise, promote, distribute or use for any purpose any merchandise bearing the Canada Marks or packaging that is damaged, defective, or seconds or that otherwise fails to meet the specifications or quality requirements set by VIA RAIL CANADA, which may be amended by VIA RAIL CANADA at any time and from time to time. The Canada Marks identification requirements in effect as of the Effective Date of this Agreement are shown in the attached Schedule «A.» AMTRAK shall defend, fully indemnify and hold VIA RAIL CANADA harmless from and against any and all claims, losses, expenses, including reasonable attorney's fees and costs, damages or other liability asserted or sustained by third parties on account of the use of Canada Marks by AMTRAK in the marketing of such non-conforming Goods and/or Services.

8. AMTRAK shall submit from time to time upon VIA RAIL CANADA's reasonable request, copies of all promotional materials and advertisements for the Goods and Services offered in association with the Canada Marks in the Territory. VIA RAIL CANADA shall have the right to request AMTRAK to change any literature, advertising or promotional materials, which display the Canada Marks or any one of them, produced by or on behalf of AMTRAK, which VIA RAIL CANADA reasonably believes is misleading or which is detrimental to the validity or reputation of the Canada Marks or any one of them or which misuses any of the

Canada Marks, and AMTRAK shall comply with such request as soon as is reasonably practicable under the prevailing circumstances.

9. AMTRAK shall comply with all laws and regulations pertaining to the proper use and designation of the Canada Marks and shall be used in their registered form only when registered. On all packaging materials for the Goods and in advertising, promotional and printed materials for the Goods and Services AMTRAK shall cause proper trademark acknowledgment to be used with the Canada Marks and indicate that their use is «Used with permission» or such other notice as may be specified or stipulated by VIA RAIL CANADA in writing from time to time.
10. AMTRAK shall be at all times solely liable for all advertising and promotional costs which it deems are necessary for it to promote its Goods and Services in association with the Canada Marks in the Territory.
11. AMTRAK shall permit VIA RAIL CANADA or its appointed representative to enter the premises of AMTRAK, or the premises from which the Goods and Services are supplied from or originate from, during normal business hours and no more than once during any given six-month period in the absence of good cause otherwise, to inspect the arrangements for the manufacture, provision or performance of the Goods and Services supplied under the Canada Marks, PROVIDED THAT VIA RAIL CANADA gives AMTRAK at least 24 hours' prior written notice of such a visit by VIA RAIL CANADA or its appointed representative and complies with all pertinent AMTRAK security regulations and procedures. All costs associated with any such inspection(s) shall be borne by VIA RAIL CANADA.
12. AMTRAK undertakes that it shall not use the Canada Marks in any manner whatsoever that may jeopardize the significance, distinctiveness or validity of the Canada Marks and that all use of the Canada Marks by AMTRAK including any goodwill shall inure solely to the benefit of VIA RAIL CANADA. AMTRAK expressly renounces any goodwill associated with AMTRAK's use of the Canada Marks and agrees not to take any action that could be detrimental to the goodwill associated with either the Canada Marks or with VIA RAIL CANADA.
13. AMTRAK agrees not to display any other mark in conjunction with its use of the Canada Marks to create the impression of a compound or composite mark.
14. AMTRAK states that, insofar as it knows, the Canada Marks are valid and agrees that any and all rights that might be acquired by the use of the Canada

Marks by AMTRAK shall inure to the sole benefit of VIA RAIL CANADA.

15. Unless expressly permitted by a separate written agreement, AMTRAK shall not use the Canada Marks as a trade name or in any way other than as service or trademarks in accordance with the terms of this Agreement.
16. AMTRAK agrees that it will never take any action which it knows or has reason to know would threaten to injure the image or reputation of VIA RAIL CANADA or any of its copyrights, trade dress, trademarks or products including, without limitation, the Canada Marks.
17. AMTRAK agrees not to use or authorize the use of any configuration, mark, name, design, logo or other designation identical with or confusingly similar to the Canada Marks other than the US Marks.
18. VIA RAIL CANADA shall diligently pursue registration of the Canada Marks in Canada and upon registration shall maintain such registered status; provided, however, that VIA RAIL CANADA shall not seek to register the Canada Marks in the United States based on AMTRAK's use of the Canada Marks.
19. In the event of any infringement or suspected infringement of the Canada Marks or any one of them coming to its knowledge, AMTRAK shall notify VIA RAIL CANADA and shall give to VIA RAIL CANADA such assistance as may reasonably be required by it in any proceedings with respect to such infringement and will agree to become a party to such proceedings if necessary. However, on no account shall AMTRAK take any action to combat such infringement without the prior consent, in writing, of VIA RAIL CANADA. Notwithstanding the foregoing, in the event VIA RAIL CANADA elects not to take any action or fails to respond to a notice of an infringement by AMTRAK within fifteen (15) days from such notice, VIA RAIL CANADA shall be deemed to have consented and AMTRAK shall have the right to institute any suit or take any action on account of any such infringements and shall be entitled to any damages and costs so recovered.
  - (i) If VIA RAIL CANADA so desires, it may prosecute any claims, suits or other proceedings in its own name or jointly with AMTRAK as a party thereto. AMTRAK agrees to cooperate with and assist VIA RAIL CANADA in any such actions by providing evidence, testimony, and documents concerning AMTRAK's use of the Canada Marks and such other reasonable forms of assistance. The cost of such proceedings shall be equally shared by VIA RAIL CANADA and AMTRAK, unless otherwise agreed by the Parties.

- (ii) With respect to all claims and suits, involving any infringement or improper use of the Canada Marks, brought by or against any third party, including suits in which AMTRAK is joined as a party, VIA RAIL CANADA shall have the sole right to employ counsel of its choosing and to direct the handling of the litigation and any settlement thereof. Any damages recovered shall be equally shared by VIA RAIL CANADA and AMTRAK, unless otherwise agreed by the Parties.
- (iii) AMTRAK shall not institute any suit or take any action or contact the third party by making demands or claims on account of any such infringements or imitations whether or not based on use of any material or artwork that includes the Canada Marks including, without limitation, actions involving copyright infringement of any material containing the Canada Marks, without the prior express written consent of VIA RAIL CANADA. All costs and expenses, including attorneys' fees, incurred in connection with any suit instituted or other action taken by AMTRAK without the consent of VIA RAIL CANADA shall be borne solely by AMTRAK. Notwithstanding the foregoing, in the event VIA RAIL CANADA elects not to take any action or fails to respond to a notice of an infringement by AMTRAK within fifteen (15) days from such notice, VIA RAIL CANADA shall be deemed to have consented and AMTRAK shall have the right to institute any suit or take any action on account of any such infringements and shall be entitled to any damages and costs so recovered.
20. AMTRAK shall defend and further fully compensate VIA RAIL CANADA (including, without limitation, its directors, officers, employees, mandataries, agents, servants, representatives or contractors for hire) against all third party claims, costs, charges, losses, liabilities, damages, demands, suits and expenses arising out of the use of the Canada Marks not in accordance with the terms of this Agreement; provided, however, that in no event shall AMTRAK be liable for any indirect, consequential or incidental damages whatsoever arising out of this Agreement.
21. AMTRAK shall, for the terms of this Agreement and thereafter in connection with all Goods and Services manage any and all consumers' complaints in a diligent and expeditious manner consistent with the standards of quality specified by VIA RAIL CANADA and required of AMTRAK under the terms of this Agreement.
22. This Agreement shall continue in force from the Effective Date of this Agreement without limit of period but may be terminated by either party giving to the other at any time after the date five (5) years from the date of this Agreement at least twelve (12) months' notice of termination in writing PROVIDED THAT this



Agreement shall terminate automatically upon the happening of any one or more of the following events:

- (i) termination of the joint service offering between VIA RAIL CANADA and AMTRAK;
- (ii) AMTRAK making an assignment or other arrangement for the benefit of creditors, instituting or having instituted against it proceedings under any bankruptcy, liquidation, winding-up or insolvency legislation (other than a liquidation for the purpose of a reconstruction) affecting the Canada Marks or authorizing any of the foregoing;
- (iii) AMTRAK becoming insolvent or having its assets or any material part thereof levied upon or seized or managed by any creditor, trustee or any other person;
- (iv) an unresolved inconsistency occurring between any applicable laws and regulations and the provisions of this Agreement where VIA RAIL CANADA reasonably determines in good faith that such inconsistency threatens its legal rights in and to the Canada Marks or may subject it to liability for damages or penalties to a third party or government entity; or
- (v) Continued use of the Canada Marks in a particular country of the Territory is prohibited in any respect by the action of any judicial, administrative or like authority, or as a result of an agreement with a third party to settle a dispute relating to the Canada Marks.

23. AMTRAK may unilaterally terminate its right to use the Canada Marks under this Agreement by giving at least sixty (60) days' prior written notice to VIA RAIL CANADA.

24. Upon termination of this Agreement as provided in Clauses 22, 23 or 27, AMTRAK shall within a period of time reasonable in the prevailing circumstances, but in any event not exceeding six (6) months, discontinue all use of the Canada Marks or any colorable imitation thereof and shall destroy all printed materials bearing the Canada Marks and the goodwill connected thereto shall remain the property of VIA RAIL CANADA. AMTRAK shall cooperate with VIA RAIL CANADA or its appointed agent to apply to the Trade Marks Registries in the Territory to cancel any recordal of its appointment as a licensee of the Canada Marks.

25. No license or right is granted to AMTRAK by VIA RAIL CANADA, by implication or otherwise, with respect to any other trademarks and trade name, except as specifically set forth in this Agreement. Upon termination of this Agreement, all rights granted to AMTRAK under this Agreement to use the Canada Marks shall terminate and immediately revert to VIA RAIL CANADA and AMTRAK shall discontinue all use of the Canada Marks except as provided in Clause 24.
26. The exercise of any right of termination under this Article I shall not affect any rights which have accrued prior to termination and shall be without prejudice to any other legal or equitable remedies to which VIA RAIL CANADA may be entitled by reason of such rights. Those rights that by their nature survive termination or expiration of this Agreement shall survive until each such right terminates in accordance with its respective term.
27. VIA RAIL CANADA shall have the right to terminate this Agreement where there has been a breach or default of any of its provisions upon thirty (30) days' written notice to AMTRAK, specifically pointing out the nature of such breach or default and requesting a cure, PROVIDED THAT such notice to terminate shall cease to have effect if AMTRAK shall remedy or undertake reasonable efforts to remedy such breach where such cure cannot be accomplished within a thirty (30) day period. No failure or delay on the part of VIA RAIL CANADA in exercising this right of termination shall be construed to prejudice its rights to terminate for any subsequent or continuing breach or default.

## **ARTICLE II. US MARKS**

1. AMTRAK represents and warrants that it owns the US Marks and has the right, power and authority to grant VIA RAIL CANADA use rights as contemplated in this Agreement and that such US Marks do not infringe the rights of any other third party in the United States. The US Marks are held free and clear of all liens, restrictions, licenses (other than this Agreement), pledges, hypothecs, claims, security interest or other encumbrances. To AMTRAK's knowledge, (i) no third party has acquired or claimed to have acquired any right, title or interest in and to the US Marks by virtue of the registration or use of, or intent to use, such US Marks in all or any geographical areas of the United States, and (ii) AMTRAK is not a party to any pending suit, dispute or claim or has received any written notice of any threat, suit, dispute or claim regarding the registration and use of, or intent to use the US Marks, and (iii) there is no fact or circumstance

that would impair the rights and powers of AMTRAK to grant the present use rights or enter into this Agreement with VIA RAIL CANADA.

2. AMTRAK hereby grants to VIA RAIL CANADA the exclusive, irrevocable, fully paid up and royalty-free right to use the US Marks in the Territory upon or in connection with the advertising, promotion, manufacture, sale, provision or performance of the Goods and Services distributed under VIA RAIL CANADA's name subject to AMTRAK's retained right to use the US Marks for its own complementary Goods and Services. This right extends to use of the US Marks on packaging and promotional and advertising material associated therewith.
3. VIA RAIL CANADA may not sublicense or assign its rights in the US Marks to any third party without the prior express written consent of AMTRAK who may withhold consent for any reason.
4. VIA RAIL CANADA expressly recognizes and acknowledges that the US Marks are the sole property of AMTRAK, and that all rights, title and interest in and to the US MARKS, other than the rights granted hereto to VIA RAIL CANADA, are expressly reserved to AMTRAK for its use and benefit.
5. VIA RAIL CANADA acknowledges AMTRAK's exclusive rights in the US Marks and, further acknowledges that the US Marks are unique and original to AMTRAK and have developed secondary meaning in those areas of the Territory in which AMTRAK provides Goods and Services. VIA RAIL CANADA agrees not, at any time during or after the effective term of this Agreement, to dispute or contest, directly or indirectly, AMTRAK's exclusive right and title to the US Marks or the validity thereof or AMTRAK's right to grant VIA RAIL CANADA the rights under this Agreement. VIA RAIL CANADA further agrees not to object to or file any action or lawsuit because of AMTRAK's application to register or otherwise protect the US Marks, or any use by AMTRAK of the US Marks on or with any goods or services. VIA RAIL CANADA shall not, on the basis of its use of US Marks, oppose or seek to cancel, in any court or state or federal agency including, without limitation, the United States Patent and Trademark Office, any registration for the US Marks or any mark for which AMTRAK files an application or obtains a registration for any Goods and Services whether such use be by AMTRAK directly or through different licensees or authorized users.
6. Upon AMTRAK's request, VIA RAIL CANADA will cooperate fully in executing any documents required by AMTRAK to enable recordal of VIA RAIL CANADA's appointment as a licensee of the US Marks at the Trade Marks Registries in the Territory. The costs for such recordal shall be borne by AMTRAK.

7. AMTRAK hereby authorizes VIA RAIL CANADA and VIA RAIL CANADA in turn undertakes to use the US Marks in connection with the Goods and Services only so long as the Goods and Services are provided in accordance with specifications prescribed, standards of quality laid down, and directions and information given from time to time by AMTRAK. AMTRAK reserves the right to approve and inspect the type of and quality in design, materials and workmanship of any merchandise bearing the US Marks sold in connection with the Goods and Services as well as all promotional, packaging, and advertising material relative thereto which shall include all appropriate legal notices as required by law or AMTRAK. If the quality of a class of merchandise bearing the US Marks falls below such production-run quality, as previously approved by AMTRAK, AMTRAK may require VIA RAIL CANADA to immediately discontinue the production, sale, or distribution of such merchandise, artwork or advertising material and shall use its best efforts to restore such quality. In the event VIA RAIL CANADA has not taken appropriate steps to restore such quality within thirty (30) days after notification by AMTRAK, AMTRAK may terminate VIA RAIL CANADA's right to use the US Marks without further obligation to VIA RAIL CANADA under this Agreement except that this Agreement shall remain in effect to the extent not so terminated. In no event shall VIA RAIL CANADA without the prior written consent of AMTRAK offer for sale, advertise, promote, distribute or use for any purpose any merchandise bearing the US Marks or packaging that is damaged, defective, or seconds or that otherwise fails to meet the specifications or quality requirements set by AMTRAK, which may be amended by AMTRAK at any time and from time to time. The US Marks identification requirements in effect as of the Effective Date of this Agreement are shown in the attached Schedule «B.» VIA RAIL CANADA shall defend, fully indemnify and hold AMTRAK harmless from and against any and all claims, losses, expenses, including reasonable attorneys' fees and costs, damages or liability asserted or sustained by third parties on account of the use of US Marks by VIA RAIL CANADA in the marketing of such non-conforming Goods and/or Services.

8. VIA RAIL CANADA shall submit from time to time upon AMTRAK's reasonable request, copies of all promotional materials and advertisements for the Goods and Services offered in association with the US Marks in the Territory. AMTRAK shall have the right to request VIA RAIL CANADA to change any literature, advertising or promotional materials, which display the US Marks or any one of them, produced by or on behalf of VIA RAIL CANADA, which AMTRAK reasonably believes is misleading or which is detrimental to the validity or reputation of the US Marks or any one of them or which is a misuse of any of the

US Marks, and VIA RAIL CANADA shall comply with such request as soon as is reasonably practicable under the prevailing circumstances.

9. VIA RAIL CANADA shall comply with all laws and regulations pertaining to the proper use and designation of the US Marks and shall be used in their registered form only when registered. On all packaging materials for the Goods and in advertising, promotional and printed materials for the Goods and Services VIA RAIL CANADA shall cause proper trademark acknowledgment to be used with the US Marks and indicate that their use is «Used with permission» or such other notice as may be specified or stipulated by AMTRAK in writing from time to time.
10. VIA RAIL CANADA shall be at all times solely liable for all advertising and promotional costs which it deems are necessary for it to promote its Goods and Services in association with the US Marks in the Territory.
11. VIA RAIL CANADA shall permit AMTRAK or its appointed representative to enter the premises of VIA RAIL CANADA, or the premises from which the Goods and Services are supplied from or originate from, during normal business hours and no more than once during any given six month period in the absence of good cause otherwise, to inspect the arrangements for the manufacture, provision or performance of the Goods and Services supplied under the US Marks, PROVIDED THAT AMTRAK gives VIA RAIL CANADA 'at least 24 hours' prior written notice of such a visit by AMTRAK or its appointed representative and complies with all pertinent VIA RAIL CANADA security regulations and procedures. All costs associated with any such inspection(s) incurred by AMTRAK shall be borne by AMTRAK.
12. VIA RAIL CANADA undertakes that it shall not use the US Marks in any manner whatsoever which may jeopardize the significance, distinctiveness or validity of the US Marks and that all use of the US Marks by VIA RAIL CANADA including any goodwill shall inure solely to the benefit of AMTRAK. VIA RAIL CANADA expressly renounces any goodwill associated with VIA RAIL CANADA's use of the US Marks and agrees not to take any action that could be detrimental to the goodwill associated with either the US Marks or with AMTRAK.
13. VIA RAIL CANADA agrees not to display any other mark in conjunction with its use of the US Marks to create the impression of a compound or composite mark.
14. VIA RAIL CANADA states that, insofar as it knows, the US Marks are valid and agrees that any and all rights that might be acquired by the use of the US Marks by VIA RAIL CANADA shall inure to the sole benefit of AMTRAK.

15. Unless expressly permitted by a separate written agreement, VIA RAIL CANADA shall not use the US Marks as a trade name or in any way other than as service or trademarks in accordance with the terms of this Agreement.
16. VIA RAIL CANADA agrees not to use or authorize the use of any configuration, mark, name, design, logo or other designation identical with or confusingly similar to the US Marks other than the Canada Marks.
17. VIA RAIL CANADA agrees that it will never take any action which it knows or has reason to know would threaten to injure the image or reputation of AMTRAK or any of its copyrights, trade dress, trademarks or products including, without limitation, the US Marks.
18. AMTRAK shall diligently pursue registration of the US Marks in the United States and upon registration shall maintain such registered status; provided, however, that AMTRAK shall not seek to register the US Marks in the Canada based on VIA RAIL CANADA's use of the US Marks.
19. In the event of any infringement or suspected infringement of the US Marks or any one of them coming to its knowledge, VIA RAIL CANADA shall notify and shall give to AMTRAK such assistance as may reasonably be required by it in any proceedings with respect to such infringement and will agree to become a party to such proceedings if necessary. However, on no account shall VIA RAIL CANADA take any action to combat such infringement without the prior consent, in writing, of AMTRAK. Notwithstanding the foregoing, in the event AMTRAK elects not to take any action or fails to respond to a notice of an infringement by VIA RAIL CANADA within fifteen (15) days from such notice, AMTRAK shall be deemed to have consented and VIA RAIL CANADA shall have the right to institute any suit or take any action on account of any such infringements and shall be entitled to any damages and costs so recovered.
  - (i) If AMTRAK so desires, it may prosecute any claims, suits or other proceedings in its own name or jointly with VIA RAIL CANADA as a party thereto. VIA RAIL CANADA agrees to cooperate with and assist AMTRAK in any such actions by providing evidence, testimony, and documents concerning VIA RAIL CANADA's use of the US Marks and such other reasonable forms of assistance. The costs of such proceedings shall be equally shared by VIA RAIL CANADA and AMTRAK, unless otherwise agreed by the Parties.

- (ii) With respect to all claims and suits, involving any infringement or improper use of the US Marks, brought by or against any third party, including suits in which (VIA RAIL CANADA is joined as a party, AMTRAK shall have the sole right to employ counsel of its choosing and to direct the handling of the litigation and any settlement thereof. Any damages recovered shall be equally shared by VIA RAIL CANADA and AMTRAK, unless otherwise agreed by the Parties.
- (iii) VIA RAIL CANADA shall not institute any suit or take any action or contact any third party by making demands or claims on account of any such infringements or imitations whether or not based on use of any material or artwork that includes the US Marks including, without limitation, actions involving copyright infringement of any material containing the US Marks, without the prior express written consent of AMTRAK. All costs and expenses, including attorneys' fees, incurred in connection with any suit instituted or other action taken by VIA RAIL CANADA without the consent of AMTRAK shall be borne solely by the VIA RAIL CANADA. Notwithstanding the foregoing, in the event AMTRAK elects not to take any action or fails to respond to a notice of an infringement by VIA RAIL CANADA within fifteen (15) days from such notice, AMTRAK shall be deemed to have consented and VIA RAIL CANADA shall have the right to institute any action on account of any such infringements and shall be entitled to any damages and costs so recovered.
20. VIA RAIL CANADA shall defend and further fully compensate AMTRAK (including, without limitation, its directors, officers, employees, mandataries, agents, servants, representatives or contractors for hire) against all third party claims, costs, charges, losses, liabilities, damages, demands, suits and expenses arising out of the use of the US Marks not in accordance with the terms of this Agreement; provided, however, that in no event shall VIA RAIL CANADA be liable for any indirect, consequential or incidental damages whatsoever arising out of this Agreement.
21. VIA RAIL CANADA shall, for the term of this Agreement and thereafter in connection with all Goods and Services manage any and all consumers' complaints in a diligent and expeditious manner consistent with the standards of quality specified by AMTRAK and required of VIA RAIL CANADA under the terms of this Agreement.
22. AMTRAK shall have the right to terminate this Agreement where there has been a breach or default of any of its provisions upon thirty (30) days' written notice to VIA RAIL CANADA, specifically pointing out the nature of such breach or default

and requesting a cure, PROVIDED THAT such notice to terminate shall cease to have effect if VIA RAIL CANADA shall remedy or undertake reasonable efforts to remedy such breach where such cure cannot be accomplished within a thirty (30) day period. No failure or delay on the part of AMTRAK in exercising this right of termination shall be construed to prejudice its rights to terminate for any subsequent or continuing breach or default.

23. This Agreement shall continue in force from the Effective Date of this Agreement without limit of period but may be terminated by either party giving to the other at any time after the date five (5) years from the date of this Agreement at least twelve (12) months' notice of termination in writing PROVIDED THAT this Agreement shall terminate automatically upon the happening of any one or more of the following events:
- (i) termination of the joint service offering between VIA RAIL CANADA and AMTRAK;
  - (ii) VIA RAIL CANADA making an assignment or other arrangement for the benefit of creditors, instituting or having instituted against it proceedings under any bankruptcy, liquidation, winding-up or insolvency legislation (other than a liquidation for the purpose of a reconstruction) affecting the US Marks or authorizing any of the foregoing;
  - (iii) VIA RAIL CANADA becoming insolvent or having its assets or any material part thereof levied upon or seized or managed by any creditor, trustee or any other person;
  - (iv) an unresolved inconsistency occurring between any applicable laws and regulations and the provisions of this Agreement where AMTRAK reasonably determines in good faith that such inconsistency threatens its legal rights in and to the US Marks or may subject it to liability for damages or penalties to a third party or government entity; or
  - (v) Continued use of the US Marks in a particular country of the Territory is prohibited in any respect by the action of any judicial, administrative or like authority, or as a result of an agreement with a third party to settle a dispute relating to the US Marks.
24. VIA RAIL CANADA may unilaterally terminate its right to use the US Marks under this Agreement by giving at least sixty (60) days' prior written notice to AMTRAK.



25. Upon termination of this Agreement as provided in Clauses 22, 23 or 24, VIA RAIL CANADA shall within a period of time reasonable in the prevailing circumstances, but in any event not exceeding six (6) months, discontinue all use of the US Marks or any colorable imitation thereof and shall destroy all printed materials bearing the US Marks and the goodwill connected thereto shall remain the property of AMTRAK. VIA RAIL CANADA shall cooperate with AMTRAK or its appointed agent to apply to the Trade Marks Registries in the Territory to cancel any recordal of its appointment as a licensee of the US Marks.
26. The exercise of any right of termination under this Article II shall not affect any rights which have accrued prior to termination and shall be without prejudice to any other legal or equitable remedies to which AMTRAK may be entitled by reason of such rights. Those rights that by their nature survive termination or expiration of this Agreement shall survive until each such right terminates in accordance with its respective term.
27. No license or right is granted to VIA RAIL CANADA by AMTRAK, by implication or otherwise, with respect to any other trade marks and trade name, except as specifically set forth in this Agreement. Upon termination of this Agreement, all rights granted to VIA RAIL CANADA to use the US Marks under this Agreement shall terminate and immediately revert to AMTRAK and VIA RAIL CANADA shall discontinue all use of the US Marks except as provided in Clause 25.

### ***ARTICLE III. MISCELLANEOUS PROVISIONS***

1. Except as otherwise expressly provided herein, each party shall pay its own expenses incurred in connection with the authorization, preparation, execution and performance of this Agreement including, without limitation, all fees and expenses of its own respective counsel, employees, agents and representatives.
2. Nothing herein contained shall be construed to place the parties hereto in the relationship of partners or joint venturers or agent/principal and neither party shall have any power to obligate or bind the other in any manner whatsoever except pursuant to powers of attorney specifically granted either herein or in separate agreements.
3. Each party, using the same standard of care which it uses for the protection of its own proprietary information but no less than a reasonable standard of care, agrees not to disclose to any third party any of the other party's confidential

information which is disclosed to it either in writing marked with an appropriate proprietary legend, such as CONFIDENTIAL INFORMATION, or orally or visually provided such confidential information is identified as such at the time of its disclosure and is summarized in a writing within thirty (30) days thereafter and marked with an appropriate proprietary legend. It is understood by the parties that each may be given access to the confidential information of the other in the course of its access to the premises of the other for the purposes of inspection provided under this Agreement. The obligations not to use other than for the benefit of the other party and for the purposes of this Agreement such other party's confidential information or to disclose it to third parties without the express consent of the other party shall not apply to any portion of such information which: (i) was previously known to the receiving party free of any obligation of confidentiality; (ii) is or becomes publicly available other than by means of unauthorized disclosure by the receiving party; (iii) is independently developed by the receiving party; or (iv) is required to be supplied by the receiving party pursuant to a statute, regulation, or other of a court of competent jurisdiction, provided that the receiving party provides timely notice to the other party to permit the taking of appropriate protective measures, requests confidential treatment for such information from the authority seeking its disclosure, and provides only that information which is strictly responsive to the order compelling disclosure.

4. The validity of Article 1 of this Agreement, the construction and enforcement of its terms and the interpretation of the rights and duties of the parties thereunder shall be governed by the laws of Canada. The validity of Article II of this agreement, the construction and enforcement of its terms, and the interpretation of the rights and duties of the parties thereunder shall be governed by the internal laws of the District of Columbia of the United States of America without regard to its conflicts of laws principles or its Arbitration Statute, D.C. Code Ann. Sections 16-4301 et seq. (1981), and the U.S. Arbitration Act, 9 U.S.C. Sections 1 et seq. VIA RAIL CANADA shall be entitled to take such steps as it may consider necessary or desirable in order to enforce any judgment or order against AMTRAK with respect to this Agreement in any jurisdiction where AMTRAK trades or has assets. AMTRAK shall be entitled to take such steps as it may consider necessary or desirable in order to enforce any judgment or order against VIA RAIL CANADA with respect to this Agreement in any jurisdiction where VIA RAIL CANADA trades or has assets. In the event of a breach of this Agreement, the prevailing party in any action to enforce the terms of this Agreement shall be entitled to reimbursement of its reasonable expenses in such enforcement, including reasonable attorneys' fees.

5. Any and all disputes between both parties arising out of or otherwise relating to Article 1 of this Agreement and its implementation will be settled solely and exclusively by arbitration in the province of Quebec, Canada, pursuant to the Arbitration Proceedings of the Quebec Code of Civil Procedures, then in effect in the province. Any and all disputes between both parties arising out of or otherwise relating to Article II of this Agreement and its implementation will be settled solely and exclusively by arbitration in Washington, D.C., United States of America, pursuant to the J.A.M.S/ENDISPUTE's Streamlined Arbitration Rules and Procedures then in effect. Any decision rendered shall be final and conclusive upon both parties and a judgment thereon may be enforced in any court having jurisdiction. All costs incurred in arbitrating a dispute shall be shared in proportion to the parties' respective amounts of liability. Except where clearly prevented by the subject matter of the dispute, both parties will continue performing their respective obligations under this Agreement while the dispute is being resolved. Notwithstanding the foregoing, either party shall have the right to institute an action in any court or tribunal in the event the other infringes its proprietary rights.

6. All notices, requests, demands or other communications given or required hereunder shall be in writing in the English language and shall be sent by first class mail, registered or certified mail, postage prepaid, or by overnight or express mail, facsimile or telex to the relevant party at its address as set forth below or to such other address as such party shall designate in writing for that purpose.

If to VIA RAIL CANADA:

If to AMTRAK:

Via Rail Canada Inc.  
2, Place Ville Marie, 6<sup>th</sup> Floor  
Montreal, Quebec H3C 3W3

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

Attn: General Counsel

Attn: Vice President, Marketing

Notice sent via electronic means (e.g., telex, facsimile) shall be effective immediately if sent on a business day prior to 5:00 p.m. local time of the recipient. All other notices shall be effective the first business day after transmission.

7. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other



provisions hereof, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.

8. This Agreement, including Schedules A and B, constitutes the entire agreement and understanding of the parties on the subject matter hereof, and, as of the effective date, supersedes all prior or contemporaneous agreements, whether written or oral, between the parties concerning the subject matter hereof. This Agreement may be modified only by further written agreement signed by all of the parties to this Agreement, except as otherwise expressly provided herein. If any non-English interpretive version of the Agreement is created, then, in the event of a conflict between the English version and any non-English version, the English version shall control.
9. The parties hereto acknowledge and agree that (i) each party reviewed and accepts the terms and provisions of this Agreement; and (ii) the terms and provisions of this Agreement shall be construed fairly in accordance with the plain meaning of their respective terms, regardless of which party was generally responsible for the preparation of this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed the day and year first hereinbefore written.

Signed for and on behalf of  
**VIA RAIL CANADA, INC.**

By *Christina K. Worsley*  
Title *V.P. Marketing and Information Services*  
Date *May 1, 2000*



Signed for and on behalf of  
**NATIONAL RAILROAD PASSENGER CORPORATION**

By *Stephen W. Scott*  
Title *V.P. Marketing*  
Date *4/3/00*

Schedule A

APPL'N/DEM. NO: 889 552

ALLOWED/ADMISE

FILING DATE/DATE DE PRODUCTION:

04 sept/Sep 1998

APPLICANT/REQUERANT:

VIA RAIL CANADA INC.  
2, PLACE VILLE MARIE  
MONTRÉAL QUEBEC  
H3B 2C9

AGENT: REFERENCE: R 940013-0039FMG/BGA

ROBIC  
55 ST-JACQUES  
MONTRÉAL  
QUEBEC H2Y 3X2

REP FOR SERVICE/REP POUR SIGNIFICATION: REFERENCE: R 940013-0039FMG/BGA

ROBIC  
55 ST-JACQUES  
MONTRÉAL  
QUEBEC H2Y 3X2

TRADE-MARK/MARQUE DE COMMERCE:



MARK DESCRIPTIVE REFERENCE/REFERENCE DESCRIPTIVE DE LA MARQUE:

NORTH AMERICA RAIL PASS & DESSIN

DISCLAIMER/DÉSISTEMENT:

Le droit à l'usage exclusif de toute la matière à lire en dehors de la  
marque de commerce n'est pas accordé. Le droit à l'usage exclusif de  
la représentation de la feuille d'érable onze pointes en dehors de la  
marque de commerce n'est pas accordé.

SERVICES/SERVICES:

(1) Service de transport de passagers par train.

CLAIMS/REVENDEICATIONS:

Employée au CANADA depuis au moins aussi tôt que le 27 janvier 1998.

... 2

**TRADEMARK**  
**REEL: 002211 FRAME: 0776**

## ASSOCIATED MARKS/MARQUES LIEES:

889,549 889,551

## WARES &amp; SERVICES CLASS CODES/CODES DE CLASSIFICATION DES MARCHANDISES &amp; SERVICES:

39

## INDEX HEADINGS/RUBRIQUES DE L'INDEX:

NORTH AMERICA RAIL PASS  
 STAR-5 POINTED  
 MAPLE LEAF  
 RECTANGLES

ACTION	DATE	SF
filed/Produite	1998/09/04	
created/Cr��	1998/09/15	
formalized/Formalis��	1998/09/16	
Search Recorded/Recherche enregistr��	1999/03/26	
Examiner's First Report/Premier rapport de l'exami	1999/03/30	1999/07/30
approved/Approuv��	1999/08/16	
translation requested/Traduction demand��	1999/08/17	1999/09/08
19990901073613		
translation received/Traduction re��ue	1999/09/01	
Extracted for Advertisement/Extrait pour Publicati	1999/09/02	
Vol.46 Issue 2342 1999/09/15		
advertised/Publi��	1999/09/15	
Vol.46 Issue 2342		
allowed/Admise	1999/12/02	
allowance notice sent/Avis d'admission envoy��	1999/12/02	2000/06/02

Schedule A

APPL'N/DEM. NO: 889 551

ALLOWED/ADMISE

FILING DATE/DATE DE PRODUCTION:

04 sept/Sep 1998

APPLICANT/REQUERANT:

VIA RAIL CANADA INC.  
2, PLACE VILLE MARIE  
MONTRÉAL QUEBEC  
H3B 2C9

AGENT: REFERENCE: R 940013-0040FMG/BGA

ROBIC  
55 ST-JACQUES  
MONTRÉAL  
QUEBEC H2Y 3X2

REP FOR SERVICE/REP POUR SIGNIFICATION: REFERENCE: R 940013-0040FMG/BGA

ROBIC  
55 ST-JACQUES  
MONTRÉAL  
QUEBEC H2Y 3X2

TRADE-MARK/MARQUE DE COMMERCE:



MARK DESCRIPTIVE REFERENCE/REFERENCE DESCRIPTIVE DE LA MARQUE:

NORTH AMERICA RAIL PASS CARTE AMÉRIQUE DU NORD & DESSIN

DISCLAIMER/DÉSISTEMENT:

Le droit à l'usage exclusif de toute la matière à lire ainsi que la représentation de la feuille d'érable à onze pointes en dehors de la marque n'est pas accordé.

SERVICES/SERVICES:

... 2

**TRADEMARK**  
**REEL: 002211 FRAME: 0778**



(1) Service de transport de passagers par train.

CLAIMS/REVENDEICATIONS:

Employée au CANADA depuis au moins aussi tôt que le 27 janvier 1993.

ASSOCIATED MARKS/MARQUES LIEES:

889,549            889,552

WARES & SERVICES CLASS CODES/CODES DE CLASSIFICATION DES MARCHANDISES & SERVICES:

39

INDEX HEADINGS/RUBRIQUES DE L'INDEX:

NORTH AMERICA RAIL PASS CARTE AMÉRIQUE DU NORD  
 MAPLE LEAF  
 STAR-5 POINTED  
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allowed/Admise	1999/12/02	
allowance notice sent/Avis d'admission envoyé	1999/12/02	2000/06/02

SCHEDULE B

NORTH AMERICA RAIL PASS



**SIGNED COPY**

**TRADE MARK LICENSE AGREEMENT**

**Between**

**VIA RAIL CANADA INC.**

**And**

**NATIONAL RAILROAD PASSENGER CORPORATION**