

INSURANCE REQUIREMENTS

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

Revised as of September 1, 2021

DEFINITIONS

In these Insurance Requirements, "Railroad" or "Amtrak" shall mean National Railroad Passenger Corporation and, as appropriate, its subsidiary, Washington Terminal Company ("WTC"). "Contractor" shall mean the party identified as "Permittee" in the Temporary Permit to Enter Upon Property or the party with whom Amtrak has contracted in another agreement (e.g., Preliminary Engineering Agreement, Design and/or Construction Phase Agreement, Force Account Agreement, License Agreement), as well as its officers, employees, agents, servants, contractors, subcontractors, or any other person acting for or by permission of Contractor. "Operations" shall mean activities of or work performed by Contractor. "Agreement" shall mean the Temporary Permit to Enter Upon Property or other such agreement, as applicable.

INSURANCE

Contractor shall procure and maintain, at its sole cost, the types of insurance specified below:

1. **Workers' Compensation Insurance** complying with the requirements of the statutes of the jurisdiction(s) in which the Operations will be performed, covering all employees of Contractor. Employer's Liability coverage shall have the following minimum limits of coverage:

\$1,000,000	Each Accident
\$1,000,000	Disease Policy Limit
\$1,000,000	Disease Each Employee

In the event the Operations are to be performed on, over, or adjacent to navigable waterways, a U.S. Longshoremen and Harbor Workers' Compensation Act Endorsement and an Outer Continental Lands Act Endorsement are required.

2. **Commercial General Liability (CGL) Insurance** covering liability of Contractor with respect to all operations to be performed and all obligations assumed by Contractor under the terms of the Agreement. Products-completed operations, independent contractors and contractual liability coverages are to be included, with the contractual exclusion related to construction/demolition activity within fifty (50) feet of the railroad deleted and with no exclusions for Explosion/Collapse/Underground (X-C-U). Coverage shall include bodily injury (including disease or death), personal injury and property damage (including loss of use) liability.

This policy shall have the following minimum limits of coverage:

\$5,000,000	Each Occurrence
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\$5,000,000	Annual Policy Aggregate
\$2,000,000	Products and Completed Operations

In addition, the following shall apply:

- A. The policy shall name National Railroad Passenger Corporation (and, as appropriate, WTC) and all commuter agencies and railroads that operate over the property or tracks at issue as additional insureds with respect to the operations to be performed.
 - B. The policy shall include an ISO endorsement Form CG 24 17 10 01 or its equivalent providing contractual liability coverage for railroads listed as additional insureds.
 - C. Coverage for such additional insureds shall be primary and non-contributory with respect to any other insurance the additional insureds may carry.
 - D. Such coverage may be provided by a combination of a primary CGL policy and a following form excess or umbrella liability policy.
3. **Automobile Liability Insurance** covering the liability of Contractor arising out of the use of any vehicles which bear, or are required to bear, license plates according to the laws of the jurisdiction in which they are to be operated, and which are not covered under Contractor's CGL insurance. The policy shall have the following minimum limits of coverage:

\$1,000,000	Each Occurrence, Combined Single Limit
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In addition, the following shall apply:

- A. The policy shall name National Railroad Passenger Corporation (and, as appropriate, WTC) and all commuter agencies and railroads that operate over the property or tracks at issue as additional insureds with respect to the operations to be performed.
 - B. Coverage shall include bodily injury (including disease or death), personal injury and property damage (including loss of use) liability and cover damages resulted from loading and unloading activities.
 - C. In the event Contractor will be transporting and/or disposing of any hazardous material or waste off of the jobsite, a MCS-90 Endorsement is to be added to this policy and the limits of liability are to be increased to **\$5** million each occurrence.
4. **Railroad Protective (RRP) Liability Insurance** covering the Operations performed by Contractor within fifty (50) feet vertically or horizontally of railroad tracks. The policy shall be written on a current ISO Occurrence Form (claims-made forms are unacceptable) in the name of National Railroad Passenger Corporation (and, as appropriate WTC) and all commuter agencies and railroads that operate over the property or tracks at issue). The policy shall have the following minimum limits of coverage:

\$2,000,000	Each Occurrence
\$6,000,000	Policy Aggregate

In addition, the following shall apply:

- A. The policy shall have coverage for losses arising out of injury to or death of all persons, and for physical loss or damage to or destruction of property, including the loss of use thereof.
- B. Policy Endorsement CG 28 31 - Pollution Exclusion Amendment is required to be endorsed onto the policy.
- C. "Physical Damage to Property" as defined in the policy is to be deleted and replaced by the following endorsement:

"It is agreed that 'Physical Damage to Property' means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control."

- D. In the alternative, and upon Amtrak's approval, Contractor may elect to have Amtrak insure the Operations under its Blanket RRP Liability Insurance Program. The premium, which shall be determined by the rate schedule promulgated by the insurer in effect as of the effective date of the Agreement, shall be prepaid by Contractor. In the event Contractor and Amtrak agree to insure the Operations under Amtrak's RRP Program, **Contractor shall include the RRP premium outlined in section 1**, and send its payment prior to commencement of Operations.

- 5. **All Risk Property Insurance** covering damage to or loss of all personal property of Contractor used during Operations including, but not limited to, tools, equipment, construction trailers and their contents and temporary scaffolding at the project site, whether owned, leased, rented or borrowed for the full replacement cost value. Such insurance policies shall include a waiver of subrogation and any other rights of recovery in favor of Amtrak.
- 6. **Contractor's Pollution Liability Insurance** covering the liability of Contractor arising out of any sudden and/or non-sudden pollution or impairment of the environment, including clean-up costs and defense, which arise from the Operations of Contractor. The policy shall have the following minimum limits of coverage:

\$2,000,000	Each Occurrence
\$2,000,000	Annual Policy Aggregate

In addition, the following shall apply:

- A. The policy shall name National Railroad Passenger Corporation (and, as appropriate, WTC) and all commuter agencies and railroads that operate over the property or tracks at issue as additional insureds.
- B. The coverage shall be maintained during the term of the Operations and for at least two (2) years following completion thereof.

7. **Pollution Legal Liability Insurance** is required if any hazardous material or waste is to be transported or disposed of off of the jobsite. Contractor or its transporter, as well as the disposal site operator, shall maintain this insurance. The policy shall have the following minimum limits of coverage:

\$2,000,000	Each Occurrence
\$2,000,000	Annual Policy Aggregate

In addition, the following shall apply:

- A. Contractor shall designate the disposal site and provide a certificate of insurance from the disposal facility to Amtrak.
- B. The policy shall name National Railroad Passenger Corporation (and, as appropriate, WTC) and all commuter agencies and railroads that operate over the property or tracks at issue as additional insureds.
- C. Any additional insurance coverages, permits, licenses and other forms of documentation required by the United States Department of Transportation, the Environmental Protection Agency and/or related state and local laws, rules and regulations shall be obtained by Contractor.

8. **Professional Liability Insurance** covering the liability of Contractor for any errors or omissions committed by Contractor providing professional design or engineering services in the performance of the Operations, regardless of the type of damages. The policy shall have the following minimum levels of coverage:

\$2,000,000	Per Claim
\$2,000,000	Annual Policy Aggregate

In addition, the following shall apply:

- A. The coverage shall be maintained during the Operations and for at least three (3) years following completion thereof.
- B. The policy shall have a retroactive date that coincides with or precedes any design work on the project.
- C. If Contractor is not performing professional design or engineering services, Contractor may elect to satisfy this requirement through the addition of endorsement CG2279 "Incidental Professional Liability" to its CGL policy.

MISCELLANEOUS

1. General

- A. All insurance shall be procured from insurers authorized to do business in the jurisdiction(s) where the Operations are to be performed.
 - B. Contractor shall require all subcontractors to carry the insurance required herein or Contractor may, at its option, provide the coverage for any or all subcontractors, provided the evidence of insurance submitted by Contractor to Amtrak so stipulates.
 - C. The insurance shall provide for thirty (30) days prior written notice to Amtrak in the event coverage is substantially changed, canceled or non-renewed.
 - D. Unless noted otherwise herein, all insurance shall remain in force until all Operations are satisfactorily completed, all Contractor personnel and equipment have been removed from Railroad property, and any work has been formally accepted.
 - E. Contractor may provide for the insurance coverages with such deductible or retained amount as Amtrak may approve from time to time, except, however, that Contractor shall, at its sole cost, pay for all claims and damages which fall within such deductible or retained amount on the same basis as if there were full commercial insurance in force.
 - F. Contractor's failure to comply with the insurance requirements set forth in these Insurance Requirements shall constitute a violation of the Agreement.
2. **Waiver of Subrogation** As to all insurance policies required herein, Contractor waives all rights of recovery, and its insurers must waive all rights of subrogation of damages against Amtrak (and, as appropriate, WTC) and their agents, officers, directors, and employees. The waiver must be stated on the certificates of insurance.
3. **Punitive Damages** Unless prohibited by law, no liability insurance policies required herein shall contain an exclusion for punitive or exemplary damages.
4. **Claims-Made Insurance** If any liability insurance specified herein shall be provided on a claims-made basis then, in addition to coverage requirements above, the following shall apply:
- A. The retroactive date shall coincide with or precede Contractor's start of Operations (including subsequent policies purchased as renewals or replacements);
 - B. The policy shall allow for the reporting of circumstances or incidents that might give rise to future claims;
 - C. Contractor shall maintain similar insurance under the same terms and conditions that describe each type of policy listed above (e.g., CGL, Professional Liability, Pollution Legal Liability) for at least three (3) years following completion of Operations; and
 - D. If insurance is terminated for any reason and not replaced with insurance meeting the requirements herein, Contractor shall purchase an extended reporting provision of at least four (4) years to report claims arising from Operations.
5. **Evidence of Insurance**
- A. Contractor shall submit to Amtrak the original RRP Liability Insurance Policy and certificates of insurance evidencing the other required insurance. In addition, Contractor agrees to provide certified copies of the insurance policies for the required insurance within thirty (30) days of Amtrak's written request.
 - B. Contractor shall furnish evidence of insurance as specified herein at least fifteen (15) days prior

to commencing Operations. The fifteen (15) day requirement may be waived by Amtrak in situations where such waiver will benefit Amtrak, but under no circumstances will Contractor begin Operations without providing satisfactory evidence of insurance as approved by Amtrak.

- C. Prior to the cancellation, renewal, or expiration of any insurance policy specified above, Contractor shall furnish evidence of insurance replacing the cancelled or expired policies.
- D. ALL INSURANCE DOCUMENTS SHALL INCLUDE A DESCRIPTION OF THE PROJECT AND THE LOCATION ALONG THE RAILROAD RIGHT-OF-WAY (typically given by milepost designation) IN ORDER TO FACILITATE PROCESSING.
- E. Evidence of insurance coverage shall be sent to:

Senior Manager Engineering
National Railroad Passenger Corporation
30th Street Station, Mailbox 64
2955 Market Street
Philadelphia, PA 19104-2817