

INSURANCE SPECIFICATIONS

(a) In addition to any other forms of insurance or bonds required under the terms of any contract or specifications and except to the extent that any of the requirements of this section are expressly waived or revised in writing by Conrail, prior to the commencement of any work, licensee, at its own cost and expense, shall maintain insurance of the following kinds and amounts and deliver to Conrail satisfactory evidence of such insurance as indicated herein:

(i) Commercial General Liability Insurance, including contractual liability, products and completed operations, as well as personal and advertising injury insurance with a per occurrence limit of not less than \$5,000,000 and \$10,000,000 in the aggregate for all losses including but not limited to damages, bodily injury, death, property damage and legal fees in any one occurrence and for damage to or destruction of property, including the loss of use thereof, in any one occurrence. Coverage must be purchased on an ISO occurrence form or the equivalent. If the required minimum limits can only be met when applying an umbrella/excess liability policy, the umbrella/excess liability policy must follow form of the underlying policy and be endorsed to “drop down” to become primary in the event the primary limits are exhausted. Conrail shall be added as an additional insured under this insurance. Exclusion of work within 50 feet of railroad right of way shall be deleted (Endorsement CG2417). The policy shall contain a waiver of subrogation in favor of Conrail. The definition of bodily injury should include mental anguish. A per project aggregate limit must be included. Coverage should be primary and non-contributory in favor of Conrail. It is agreed that any workers’ compensation exclusion does not apply to payments related to the Federal Employers Liability ACT or a Railroad Wage Continuation Program or similar programs and any payments made are deemed not to be either payments made, or obligations assumed under any workers’ compensation, disability benefits, or unemployment compensation law or similar law.

(ii) Automobile Liability Insurance with a limit of not less than \$5,000,000 combined single limit for bodily injury and/or property damage per occurrence. Conrail shall be added as an additional insured under this insurance. Exclusion of work within fifty (50) feet of railroad right of way shall be deleted (Endorsement CA2070). The policy shall contain a waiver of subrogation in favor of Conrail. Coverage should apply to any and all motor vehicles owned, non-owned, used or hired and mobile equipment must be covered to the extent it may be excluded from the general liability insurance. Coverage should be primary and non-contributory in favor of Conrail.

(iii) Workers’ Compensation/Employers’ Liability and Occupational Disease Insurance with Limits of \$1,000,000 each accident, \$1,000,000 policy limit and \$1,000,000 each employee. Such Policy shall include a waiver of subrogation in favor of Conrail (if allowable in State project is in).

(iv) Pollution Liability Insurance of not less than \$5,000,000 per occurrence and \$10,000,000 aggregate applying to each annual period, subject to a deductible or self-insured retention not to exceed \$25,000 per occurrence (unless approved in advance by Conrail) covering bodily injury, property damage (including Natural Resource Damage), environmental damage, cleanup costs and defense of third-party claims caused by pollution conditions arising out of the Work under this Agreement. Coverage may be written on an occurrence or claims-made form, but if claims-made coverage is provided, Licensee agrees to use best efforts to renew the coverage with the same terms, conditions and limits for at least three years following the termination of this Agreement. Coverage shall be provided for claims arising out of pollution conditions occurring at non-owned disposal sites and for transportation of materials, including wastes to or from a site where covered operations are conducted. Conrail shall be added as an additional insured under this insurance.

(v) Professional Liability Insurance with limits of not less than \$5,000,000 per occurrence and \$5,000,000 aggregate applying to each annual period, subject to a deductible or self-insured

retention not to exceed \$50,000 per occurrence (unless approved in advance by Conrail) covering claims arising out of alleged or actual negligence in the rendering or failure to render professional services related to the Work under this Agreement. Coverage shall be written on a claim-made form with a retroactive date preceding the date this Agreement was executed. Licensee shall use best efforts to renew this coverage with the same terms, conditions and limits for at least three years following the termination of this Agreement. Defense costs shall be included within the limits of liability specified above.

(vi) Property Insurance, insuring Licensee's property of every kind and description and of persons claiming by or through Licensee against those risks normally encompassed in an "all-risk" policy, including, but not limited to, (1) loss or damage by fire; (2) loss or damage from such other risk or hazards now or hereafter embraced by an "extended coverage endorsement," (3) loss for flood if the area/property upon which Licensee is working is a designated flood or flood insurance area; and (4) such other risks as reasonably prudent owner of similar property in the locality where the work area is located would normally insure against. Such insurance shall provide for the full replacement cost in the event of a total destruction of Licensee's property. A waiver of subrogation shall be provided in favor of Conrail.

(vii) Railroad Protective Liability Insurance. With respect to the operations performed by it or any of its subcontractors, Licensee shall provide Railroad Protective Liability Insurance in the name of Consolidated Rail Corporation, 1717 Arch Street, 13th Floor, Philadelphia PA 19103 with a limit of not less than \$5,000,000 per occurrence, combined single limit for bodily injury and/or property damage, for damage to or destruction of property, including the loss of use thereof. Such insurance shall also contain an aggregate of not less than \$10,000,000 for damages arising out of more than one occurrence. Conrail shall be the only Named Insured on the policy. Policy shall be endorsed to include broad form coverage for property damage "Physical Damage to Property Definition Amendment", Sudden and Accidental Pollution and Evacuation Expenses. Licensee may pay Conrail the sum of \$2,500 in advance, in consideration of which Conrail shall provide Railroad Protective Liability Insurance coverage for the Work.

(viii) The insurance coverages specified above except the Railroad Protective Policy shall be carried for at least three years after the project is satisfactorily completed and formally accepted by Conrail.

(ix) Before commencing the Work, the above insurance coverages from insurance companies lawfully authorized to do business in the state where the Project is located shall be in place and maintained until completion and final acceptance of the Work, or as otherwise stated herein. Conrail shall have the right, without limitation, to reject any insurance company selected by the Licensee or any subcontractor, of any tier, that has an A.M. Best rating of less than A or Standard and Poor's rating of less than AA or a Moody's rating of less than Aa.

(x) The above indicated insurance coverages shall be enforceable by any legitimate claimant after the termination or cancellation of the project, whether by expiration of time, by operation of law or otherwise, so long as the basis of the claim against the insurance company occurred during the project and when the insurance was in force.

(xi) Licensee shall furnish Conrail with certificates of insurance evidencing the insurance coverages required and shall also furnish the original Railroad Protective Liability Insurance policy at least fourteen (14) days prior to commencement of the project. Certificates shall reference Conrail Project Number assigned to specific project, a description of the work and the project location. Certificates, policies and notices should be sent to Director – Design and Construction, Consolidated Rail Corporation, 1000 Howard Blvd, 4th Floor, Mount Laurel, NJ 08054 and to Conrail's Project Engineer identified when the executed License or Agreement is returned to the sponsor.

(xii) All hazards to be covered shall include the so-called "XCU" coverage for explosion, collapse, and damage where work is to be done over or under Conrail property.

(xiii) Policies shall not contain any punitive damages exclusion.

(xiv) All policies must contain a separation of insureds provision except workers compensation. Separation of insureds must be indicated on the certificate of insurance.

(xv) All policies shall be endorsed to provide that the insurance company shall give thirty (30) days' prior written notice to Conrail if the policies are to be terminated or if any changes are to be made which shall in any way affect the insurance requirements of the project.

(xvi) Licensee may not self-insure without the prior written consent of Conrail. If granted by Conrail, any deductible, self-insured retention or other financial responsibility for claims must be covered directly by licensee in lieu of insurance. Any and all Conrail liabilities that would otherwise in accordance with the provisions of the Agreement, be covered by Licensee's insurance will be covered as if Licensee elected not to include a deductible, self-insured retention or other financial responsibility for claims.

(xvii) If any portion of the services are to be subcontracted by Licensee, Licensee must require that the independent associates consultant and/or subcontractor provide and maintain the insurance coverages set forth herein, naming Conrail as an additional insured and requiring that the independent associate, consultant, and/or subcontractor release, defend and indemnify Conrail to the same extent and under the same terms and conditions as licensee is required to release, defend and indemnify Conrail herein.

(xviii) The fact that insurance (including without limitation, self-insurance) is obtained by licensee will not be deemed to release or diminish the liability of Licensee including, without limitation, liability under the indemnity provisions of the agreement. Damages recoverable by Conrail will not be limited by the amount of the required insurance.