

EDS # A249-16-0N150096

**NATIONAL RAILROAD PASSENGER CORPORATION  
AND  
THE STATE OF INDIANA  
AGREEMENT FOR THE PROVISION OF  
HOOSIER STATE RAIL PASSENGER SERVICE  
August 1, 2015 through June 30, 2017**

THIS AGREEMENT is made as of the first day of August, 2015, between the National Railroad Passenger Corporation (hereinafter referred to as "Amtrak"), a corporation organized under federal law and the laws of the District of Columbia and having its principal office and place of business in Washington, D.C., and the State of Indiana, acting by and through the Indiana Department of Transportation (hereinafter referred to as "the State" or "INDOT").

WHEREAS, the State has requested that Amtrak provide intercity rail passenger service as described herein, and has represented to Amtrak that sufficient funds have been or will be requested to pay for such service and that it is authorized by applicable state law to enter into this Agreement; and

WHEREAS, under Section 209 of the Passenger Rail Investment and Improvement Act of 2008, Pub. L. No. 110-432, 122 Stat. 4848 ("PRIIA"), Congress required, among other things, that Amtrak, in consultation with the relevant states and the District of Columbia, develop and implement a methodology for allocating the operating and capital costs of rail routes of not more than 750 miles and with operation outside the segment of the continuous Northeast Corridor railroad line between Boston, Massachusetts and Washington, District of Columbia; and

WHEREAS, Amtrak and representatives from impacted states, functioning as a State Working Group (the "SWG"), jointly developed such a methodology, but were unable to achieve the necessary concurrence on the methodology from all relevant states and the District of Columbia as required by PRIIA Section 209. Accordingly, on November 21, 2011, Amtrak petitioned the Surface Transportation Board (the "STB") to adopt the Amtrak/SWG proposed methodology; and

WHEREAS, in a decision effective April 14, 2012, the STB adopted the Amtrak/SWG proposed methodology to meet the requirements of PRIIA (the "Agreed 209 Methodology"); and

WHEREAS, the intercity passenger rail service covered by this Agreement consists as of the date of this Agreement of one round-trip, four days per week operating between Chicago, Illinois and Indianapolis, Indiana ("Hoosier State Service" or "Service"); and

WHEREAS, the Hoosier State Service is subject to the Agreed 209 Methodology; and

WHEREAS, Amtrak is a railroad or railroad carrier as defined at 49 U.S.C. 20102(2).

WHEREAS, Amtrak, by prior agreements, has provided rail passenger service, under the name Hoosier State Service, in the States of Illinois and Indiana between Chicago and Indianapolis; and

WHEREAS, Amtrak and the State intend to continue the operation of the Hoosier State Service under the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the covenants herein contained, the State and Amtrak agree as follows:

**Section 1. Service to be Provided**

(a) Subject to sufficient appropriation of Federal funding, Amtrak shall provide the Service (as described below) from August 1, 2015 through June 30, 2017, subject to extension as set forth in this Agreement, over the routes, serving the stations, and substantially in accordance with the schedules and other criteria set forth in **Appendix I** hereto. The State acknowledges that the Service currently operates over five (5) different host railroads, each of which dispatches and controls the train while on its railroad, such that Amtrak does not control on-time performance of the Service, but will make reasonable efforts, including the exercise of remedies afforded to Amtrak and/or the State by statute, to achieve on-time performance. In the event the State desires Amtrak to exercise its statutory rights, the State and Amtrak will negotiate a separate agreement to address litigation or other administrative costs associated with such proceedings. Amtrak shall not be required to provide service on any other route, or to increase any train frequency, or to change schedules, or to operate the Service with passenger equipment other than that described in **Appendix II**, except pursuant to a mutually agreed upon amended **Appendix I** and **Appendix II**, if applicable. The State desires to implement changes to the service schedule current as of the date of this Agreement, to introduce a seven-day per week Hoosier State Service. Any such change shall require an amendment to this Agreement. In the event sufficient Federal funding becomes unavailable for any reason, Amtrak may terminate this Agreement on thirty (30) days' prior written notice to the State.

1. Except as provided in this Agreement for specific aspects of the Service, Amtrak's single point of contact for all matters relating to the Service is:

Michael W. Franke, Senior Director State Government Contracts  
National Railroad Passenger Corporation  
Chicago Union Station  
500 W. Jackson Boulevard, 2<sup>nd</sup> Floor  
Chicago, IL 60601  
Telephone: 312/382-5300  
Email: fran3624@amtrak.com

(b) The Service Amtrak provides shall include: providing operations between Chicago and Indianapolis, operating Third Party Equipment (as defined below) that has been inspected and found to be in compliance with Federal Railroad Administration ("FRA") regulations by FRA, and inspected and approved by the Food and Drug Administration ("FDA") and Amtrak for use in regularly scheduled intercity passenger rail service and such other equipment as has been similarly inspected and found compliant or approved as identified in

**Appendix II** (“Third Party Equipment”), (but no other equipment shall be added to a Hoosier State consist unless approved in advance by Amtrak in accordance with the process set forth in **Appendix II**, such approval not to be unreasonably withheld) road and yard operating crews, non-revenue movement of Third Party Equipment from Indianapolis Union Station to a third party maintenance facility in the Indianapolis area, non-revenue movement of Third Party Equipment between Chicago and Indianapolis via Amtrak’s *Cardinal Service* as shown on **Appendix I**, sales, information and reservation functions, ticketing and revenue collection, Amtrak-acquired insurance, certain station facilities and personnel, and certain system support functions, all as described more fully in this Agreement. Amtrak will arrange for layover of Hoosier State trains using Third Party Equipment in Amtrak’s Chicago, IL yard. Amtrak is not required to provide ground power to the Third Party Equipment while laying over at Amtrak’s Chicago Union Station or Chicago, IL yard facilities. Other than passive storage, no additional services are required to be provided by Amtrak during layover of such Hoosier State trains, other than as set forth in Section 1(h) Support Services.

2. Amtrak’s single point of contact for all matters relating to ticketing and fare structure is Sheryl Richards, Vice President Pricing and Revenue Management, (202) 906-4336; [richars@amtrak.com](mailto:richars@amtrak.com).

(c) Third Party Equipment. The parties acknowledge that INDOT has selected Iowa Pacific Holdings, LLC (“Equipment Provider”) to provide INDOT with locomotives, coach cars and food service cars to support the operation of the Hoosier State Service. INDOT shall require that all such equipment complies with all applicable laws, regulations and standards, and, with respect to all such equipment, Equipment Provider complies with, and defends, indemnifies and holds harmless Amtrak against alleged or actual breaches of or non-compliance with, applicable provisions of 49 CFR Parts 229, 231, 233, 238 and 239; the Americans with Disabilities Act of 1990 (42 USC §12101 et seq.) and implementing regulations (49 CFR Parts 37 and 38), and of the Rehabilitation Act of 1973 (49 USC §701 et seq.) and implementing regulations (49 CFR Part 27). In addition, INDOT shall make Equipment Provider aware that the U.S. Department of Transportation has published a guidance document (copy attached as **Appendix III**), setting forth the U.S. Department of Transportation’s position regarding the standards that should be applied to passenger rail car features for which no particular standard is identified in the ADA regulations.

(d) Alternate Transportation for Emergencies or Day-to-Day Service Disruptions. Amtrak may implement alternative transportation and/or hotel and food accommodations for passengers traveling on the Hoosier State in the event of natural disasters, service problems or other events that are anticipated to potentially delay the arrival of any northbound Hoosier State train by more than three (3) hours into Chicago or arrival of southbound Hoosier State train by more than three (3) hours into Indianapolis. Amtrak shall promptly notify the State of a potential delay greater than three (3) hours, and unless otherwise directed by the State, Amtrak may implement the alternate service. The State shall have responsibility for implementing alternate transportation for passengers travelling on the Hoosier State Service in the event of planned or long-term service outages (i.e., 3 or more consecutive days). The minimum requirements for State’s provision of alternate transportation service are set forth in Section 6 below.

(e) The State agrees to reimburse Amtrak for all costs actually incurred in accordance with the Agreed 209 Methodology associated with the provision of Amtrak-implemented alternate transportation services and/or hotel and food accommodations outlined in Subsection 1(d) above, including all charges associated with procurement of the services, mileage and fuel, use of equipment needed to provide service, driver housing, and any other additional elements involved in providing the alternative transportation service. In the event Amtrak implements alternate transportation in accordance with Subsection 1(d), the State Payment set forth in Section 3 shall be adjusted to reflect the reduction of Route Costs and Additives as defined in **Appendix VI**, if any, and Amtrak shall provide a separate monthly invoice including detailed and itemized costs as described in this Section 1(e), payable upon receipt.

(f) Amtrak shall insert in its National Timetable related to the Service the following statement: "This service is primarily funded through funds made available by the Indiana Department of Transportation and communities along the route."

(g) The State and Amtrak may, from time to time, identify the need to perform additional tasks other than those Support Services identified in Section 1(h) below, including; (1) additional or modified services requiring Amtrak's expenditure of unanticipated costs resulting from changes in the requirements set forth in this Agreement; and (2) projects of limited duration for which the services are not included in the Agreement ("Additional Tasks"). Prior to undertaking any Additional Tasks, and subject to the availability of Amtrak resources to perform the Additional Tasks, the State and Amtrak will agree upon the proposed scope of work and agree upon the estimated cost, and the State will pay Amtrak in accordance with the Agreed 209 Methodology for all costs incurred in performing such Additional Tasks.

(h) Support Services. The State has entered into an agreement ("Mechanical Contract") with Iowa Pacific Holdings, LLC ("Mechanical Contractor") for the maintenance and/or service of the Third Party Equipment used in the Hoosier State Service. Amtrak shall at the State's cost, perform the following activities to support Hoosier State Service (hereinafter referred to as "Support Services"):

1. Unscheduled Mechanical Repairs. In the event of an en route failure of one or more units of Third Party Equipment, Amtrak shall move such unit(s) of Third Party Equipment to the Equipment Provider's maintenance facility in accordance with the existing operating plan set forth in **Appendix I**, unless the Amtrak operating crew determines that the unit(s) of Third Party Equipment is required to be set out. The determination of whether the Third Party Equipment should be set out, or can continue to operate in the consist, will be made in accordance with applicable regulations (e.g., 49 CFR Section 238.17(c)(1)), and Amtrak rules and procedures. If the failure prevents further movement of the entire consist, the consist will be set out at the nearest possible siding, as agreed upon by the operating crew and the host railroad. Amtrak will make a good faith effort to provide mechanical repairs to Third Party Equipment as necessary to return such equipment, in compliance with FRA regulations, to service or to arrange for the movement of such equipment to the facility where it is normally maintained. When permissible by FRA regulation, Amtrak will dispatch bad order unit(s) of

Third Party Equipment rather than cut the unit(s) from a consist for repairs. It is understood that such mechanical repairs performed by Amtrak shall only be intended to meet the minimum requirements in order to dead head the Third Party Equipment to the facility where it is normally maintained, and that it shall not be suitable for revenue service. It is also understood that Amtrak's agreement to provide such unscheduled mechanical repairs is conditioned on Mechanical Contractor's proper maintenance of the Third Party Equipment in accordance with all regulatory requirements. Repairs shall be in accordance with the Mechanical Repair Authorization Form in **Appendix IV** which form may be modified by mutual agreement of the parties. Unless otherwise arranged, the State shall require the Equipment Provider to supply all parts necessary to complete the unscheduled mechanical repairs. The parties agree that Equipment Provider is the State's authorized agent and the Equipment Provider may work directly with Amtrak to address unscheduled mechanical repairs. If one or more units of Third Party Equipment fails en route and is set out of the consist, Amtrak shall have no responsibility under this Agreement to retrieve the unit(s) of Third Party Equipment. Such arrangements will be made directly by the Equipment Provider.

2. Emergency Fueling. Amtrak, at its sole discretion, may fuel or arrange to fuel Third Party Equipment if Amtrak deems such refueling necessary for operation of the Service.
3. Safety and FDA Training for On-Board Service Personnel. Upon request, the State or State Contractor (as defined in Section 9 below) may participate in scheduled Amtrak "Train the Trainer" refresher courses. If such training is requested by the State, Amtrak will provide the State with the next available course schedule and a price proposal for such training services. The State shall reimburse Amtrak for such training services in accordance with the terms of the price proposal.

(i) Reporting Requirements to INDOT. Amtrak shall provide INDOT with the following reports in addition to any other reports required to be provided by Amtrak to INDOT:

1. Daily – Amtrak System Report for State Partners (i.e., the "A Report" or "Morning Report");
2. Monthly – Hoosier State Delay by Route Detail Report; Hoosier State Revenue and Ridership, OTP Reports; Hoosier State Boards and Deboards Report.
3. Telephonic and written report (which written report may be an electronic message or telephonic text message) as soon as reasonably possible of any significant train delay, crew or customer incident, vandalism or trespass of which Amtrak is aware. INDOT's point of contact for such notices is Venetta Keefe, tel: (317) 518-7114; e-mail: [ykeefe@indot.in.gov](mailto:ykeefe@indot.in.gov).

(j) Compliance with Regulatory Requirements. Amtrak and State shall comply with, and State shall assure that each State Contractor shall comply with, all applicable federal, State, and local laws, rules, regulations, ordinances, directives, and notices (“**Regulatory Requirements**”), and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable State or federal statute or the promulgation of rules or regulations thereunder after execution of this Agreement shall be reviewed by INDOT and Amtrak to determine whether the provisions of this Agreement require formal modification.

1. Amtrak shall satisfy the applicable requirements listed in the FRA regulatory compliance and deliverables matrix attached hereto as **Appendix V**. The State shall assure that its State Contractor(s) does the same with respect to its responsibilities under **Appendix V**. The Equipment Provider shall also be responsible for completion of the fire safety analysis required under 49 CFR Section 238.103(d). Amtrak shall coordinate with Mechanical Contractor as shown on **Appendix V** and as otherwise necessary to ensure compliance with the then-current Regulatory Requirements, including, but not limited to the following:

(a) Accident/incident reporting pursuant to 49 C.F.R. 225.11 et seq., for which Amtrak shall be the primary reporting entity, with Mechanical Contractor to coordinate as the contributing reporting entity. Amtrak shall maintain accident statistics in accordance with the Regulatory Requirements and shall coordinate on a monthly basis with the Mechanical Contractor to produce a report that compiles the statistics of both Amtrak and Mechanical Contractor. Amtrak shall be responsible for submitting the consolidated report to FRA. The FRA reporting code for the Hoosier State Service is: **HIES**.

i. Not less frequently than once each month, Amtrak shall submit to INDOT written confirmation that Amtrak has filed all applicable rail safety- and security-related regulatory reports relating to Amtrak’s activities in connection with (i) the Service or (ii) any property Amtrak uses to provide its services in connection with the Service. Amtrak acknowledges that Amtrak and Mechanical Contractor will each maintain primary responsibility for rail safety- and security-related reporting to FRA and other such regulatory bodies for the requirements applicable to each of Amtrak’s and Mechanical Contractor’s respective operations.

ii. Not less frequently than once each month, INDOT shall submit to Amtrak written confirmation that the Mechanical Contractor has filed all applicable rail safety- and security-related regulatory reports relating to its activities in connection with (i) the Service or (ii) any property the Mechanical Contractor uses to provide its services in connection with the Service. INDOT acknowledges that Amtrak and Mechanical Contractor will each maintain primary responsibility for

rail safety- and security-related reporting to FRA and other such regulatory bodies for the requirements applicable to each of Amtrak's and Mechanical Contractor's respective operations.

(b) Emergency preparedness training pursuant to 49 C.F.R. 239.101(a)(2)(iii) and (iv).

2. The Regulatory Requirements applicable to Amtrak include, among others, the Americans with Disabilities Act and accompanying guidance and regulations as applicable to station facilities.
3. Amtrak and its subcontractors, if any, of any tier, and the State, its State Contractors and State Contractors' subcontractors, if any, of any tier, shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all applicable health, safety, and environmental statutes, rules, or regulations. Failure to do so may be deemed a material breach of this Agreement and grounds for immediate termination and denial of further work by Amtrak or with INDOT.

Prior to the start of revenue operations of the Service, 1) Amtrak shall submit to INDOT a written statement confirming that Amtrak has complied with all of the Regulatory Requirements applicable to it; and 2) INDOT shall submit to Amtrak a written statement confirming that INDOT and its State Contractor(s) have complied with all of the Regulatory Requirements applicable to them.

(k) State-Provided Connecting Bus Service. The State may contract separately for connecting bus service (e.g., Gary-Merrillville-Dyer, Bloomington-Crawfordsville). Amtrak shall have no responsibility for reservations, ticketing, operations, or connectivity of any such bus service. However, Amtrak shall publish on its website and in its National Timetable information (as provided by the State) about such connecting bus service and the telephone number travelers should call to make bus reservations or purchase tickets. The State shall provide Amtrak with at least thirty (30) days advance written notice of any change(s) in the connecting bus information published by Amtrak, which change(s) Amtrak shall make on its website and in its National Timetable when next published.

## **Section 2. Decisions Affecting Service**

(a) The State hereby recognizes Amtrak's statutory obligation to act prudently in the management of its rail passenger services including any expansion of rail passenger services. Amtrak will consider the State's significant financial contribution to the provision of said Service and the budgetary limitations of the State in its decisions that could affect the Service. Except as otherwise provided in this Agreement, Amtrak shall give to the State not less than thirty (30) days prior written notice of the proposed date of implementation of any decision that is likely to have a significant effect upon the scheduling, marketing (including fares and ticketing), staffing or operations of the Service provided pursuant to this Agreement. Such notice shall contain

information in sufficient detail to adequately explain facts and circumstances of any such decision. After consulting with its State Contractor as the State deems appropriate, the State shall promptly respond in writing to any such written notice from Amtrak indicating whether the State concurs with any such decision, or, in the alternative, giving reasons in sufficient detail why it does not concur. In the latter event, the parties shall promptly negotiate in good faith to reach mutual agreement on any such decision pursuant to the following procedure:

1. If any such decision can be implemented without otherwise affecting Amtrak's national rail passenger transportation system, Amtrak shall obtain State's concurrence thereon prior to implementation of that decision. The State shall not unreasonably withhold its concurrence.
2. If, any such decision will also affect Amtrak's national rail passenger transportation system, and the parties cannot reach mutual agreement and concurrence within the period of the said notice, then Amtrak may implement such decision upon the expiration of the notice period.
3. If, under Subsections (1) or (2) of this Section 2(a), the State fails to respond in writing to such notice from Amtrak within thirty (30) days of the State's receipt of such notice, the State shall be deemed to have concurred in the decision described in that notice.
4. Notwithstanding the notice procedures contained in this Section 2(a), if access over rail lines on any route described in **Appendix I** shall be unavailable by reason of obstruction or otherwise, Amtrak may suspend or reroute any part of the Service for so long as such access is unavailable. In that event, Amtrak shall promptly notify the State of any such suspension or rerouting of Service and the parties shall cooperate to restore the Service as soon as is practicable.

(b) The State shall have the right to initiate proposals to Amtrak with regard to scheduling, crew assignments, marketing (including fares and ticketing but excluding Amtrak's general tariff policies), food service, reservations and call centers, or other operations relating to the Hoosier State Service by giving Amtrak written notice of its proposal. The implementation of such proposals is subject to the following conditions: (1) proposed changes to fares shall conform to Amtrak's reservation system capabilities; (2) fare changes shall require 30 days' notification in advance of a requested release date; (3) Amtrak tariff policies (including age or membership restrictions to qualify for passenger type discounts, and rules, procedures and fees for handling reservation cancellations, ticket exchanges, and ticket or payment refund(s)) will be held consistent with Amtrak's national policies; (4) the State may initiate proposals to adjust seating inventory allocated at each price point, not-to-exceed one request per week; and (5) Amtrak shall be compensated for the costs that Amtrak may incur in accommodating any State request to set fares, in accordance with Section 3(p). The State's proposal shall contain information in sufficient detail to adequately explain the facts and circumstances of any such proposal. Amtrak shall promptly respond in writing to any such written proposal from the State indicating whether Amtrak concurs with any such proposal or, in the alternative, giving reasons in sufficient detail why it does not concur. In the latter event, the parties shall promptly negotiate

in good faith to reach mutual agreement on any such proposal within thirty (30) days of receipt of such notice, and Amtrak shall not unreasonably withhold, delay or condition its concurrence with the State's proposal. If Amtrak fails to respond in writing to such notice within thirty (30) days of receipt of that notice, then Amtrak shall be deemed to have concurred with State's proposal and that proposal shall be implemented by the parties, subject to required approval of any third parties (e.g., host railroads or State Contractors). Both parties agree that in order to provide a consistent level of service across all Amtrak services nationwide, tariff policies (including age or membership restrictions to qualify for passenger-type discounts, and rules, procedures and fees for handling reservation cancellations, ticket exchanges and ticket or payment refunds) will be handled consistent with Amtrak national policies. Amtrak will provide the State at least thirty (30) days' written notice of any changes to these tariff policies.

(c) The State may, upon not less than one-hundred-twenty (120) days' prior notice or such shorter period as Amtrak may agree to on a case-by-case basis, request that Amtrak increase or decrease the Service and/or the amount of equipment used in the Service, so as to meet the needs of the traveling public, or maximize passenger revenue. If the request is to increase either the Service or the amount of equipment used, Amtrak shall exercise reasonable efforts to accommodate such request, which may include providing additional compatible rail passenger equipment from Amtrak's available resources, consistent with the funding requirements of the Agreed 209 Methodology, or, by written agreement with the State, to employ additional compatible equipment as the State may choose to make available for use in the Service. In the event that equipment is made available by the State, or because the State desires to substitute Third Party Equipment for Amtrak-owned equipment, such equipment will be used in the Service only if it complies with all applicable laws and regulations (including, but not limited to 42 USC §12101 et seq., 49 CFR Parts 37 and 38, 49 USC §701 et seq., and 49 CFR Part 27), has been found in compliance by FRA and approved for service by FDA and Amtrak, and, by mutual agreement of the parties, is compatible with Amtrak operations and associated equipment. The State and Amtrak will use reasonable efforts to resolve discrepancies in compatibility. The State shall be responsible for all costs actually incurred in accordance with the Agreed 209 Methodology associated with approval, certification and/or acceptance of the Third Party Equipment. The parties acknowledge that the State desires to expand Hoosier State Service to seven (7) days per week with increased frequencies on each day.

(d) If equipment normally used in the Service becomes temporarily unavailable due to a mechanical failure such that a Hoosier State Service train cannot operate, Amtrak shall exercise reasonable efforts to substitute rail passenger equipment from Amtrak's available resources, consistent with the funding requirements of the Agreed 209 Methodology, or by other written agreement with the State. The State agrees that should Amtrak be requested to provide equipment from its available resources, a complete Amtrak consist will be provided and maintained by Amtrak. Amtrak will not commingle its rolling stock with Third Party Equipment. Alternatively, the State and Amtrak may agree to use additional compatible equipment as the State or Equipment Provider may make available, subject to the terms relating to such use as set forth in Section 2(c) above.

(e) Amtrak may at any time, with or without the State's concurrence, make changes in the Service that are, in its opinion, necessary for safety, environmental, operational, or legal

reasons, and shall promptly notify the State of any such changes. The parties agree that said changes shall result from temporary and/or emergency conditions. Other operating changes, in accordance with the schedules and criteria set forth in **Appendix I** hereto, shall be addressed in Section 2(a), (b), (c) and (d) herein.

(f) Any change to the Service made pursuant to this Section 2 shall, if appropriate, result in an adjustment of the amounts paid by the State. Changes must be specified in writing as directed in Section 2 of this Agreement.

### **Section 3. Payment of Expenses and Revenue between Amtrak and the State**

Capitalized terms shall have the meaning set forth in the Agreed 209 Methodology.

(a) Operating Costs – General. Operating Costs will be calculated according to the Agreed 209 Methodology. Route Costs and Additives shall be fixed for the period August 1, 2015 through June 30, 2016 in the amounts specified in **Appendix VI**, and are not subject to audit adjustment, though they are subject to adjustments as described in Subsection 3(g) below. Revenue and Third Party Costs shall be credited or charged based on actual costs incurred and actual revenues received as reported by the Amtrak Performance Tracking (APT) system methodology. For the purpose of estimating the net Operating Cost for the period August 1, 2015 through June 30, 2016, estimates of Revenue and Third Party Costs are provided in **Appendix VI**. Because final train consist and seating levels were not finalized as of the date of this Agreement, INDOT and Amtrak assumed eighty-six (86) coach seats and two (2) reserved coach spaces for wheelchair-bound passengers in order to develop estimated Route Costs and Additives and estimated Revenue for the period August 1, 2015 through June 30, 2016. The parties agree to amend this Agreement to reflect revised Route Costs and Additives and estimated Revenue if the train consist and seating levels differ from the above assumption.

(b) Third Party Costs - Fuel and Power Charges. Amtrak acknowledges that except as set forth in Section 1(h)(2) above, the State is providing fuel required for the Service.

(c) Support Services. The State shall pay Amtrak for providing any Support Services or any other extra work as set forth in this Agreement. For maintenance of equipment services, labor costs shall be charged at a flat rate of \$119.74 per hour effective August 1, 2015 for the period August 1, 2015 through June 30, 2016 (“FY15 Base Rate”). The FY15 Base Rate shall be increased by \$0.05 per hour for each calendar quarter thereafter (e.g., October 1, January 1 and April 1). A flat rate for the period July 1, 2016 through June 30, 2017 shall be included in the FY17 Forecast to be provided by Amtrak in accordance with Section 3(h) below. The State shall require Equipment Provider to provide materials for any Support Services other than emergency fueling. However, in the event Amtrak incurs costs for material and fuel in providing the Support Services, the State shall pay Amtrak for the actual cost of such materials and fuel, including the cost of transportation paid to third parties, plus Amtrak’s then current rate for material handling overhead. For emergency fueling services, fuel cost shall be calculated by Amtrak using the Amtrak Performance Tracking (APT) system methodology.

(d) Third Party Costs – Host Railroad Costs. Host railroad expenses shall be reported by Amtrak on a monthly basis based on APT results and invoiced to the State for each billing period. Upon 45 days' written notice, and not more than quarterly, Amtrak shall prepare documentation, for in-person review at Amtrak's Chicago, IL offices located at 500 West Jackson Boulevard, 2<sup>nd</sup> Floor, Chicago, IL 60661, and/or, at Amtrak's option, by webinar, of actual host railroad payments. Subject to applicable State law, the State shall not record or disclose to any third party (including State's Mechanical Contractor and/or Food Service Vendor), without Amtrak's prior approval, any such data, all of which shall be deemed to be confidential or proprietary.

(e) Capital Costs – Passenger Service Equipment. Amtrak acknowledges that the State is providing rolling stock for the Service through Equipment Provider during the term of this Agreement, and therefore no Equipment Capital Charge is included for the Hoosier State Service.

(f) Capital Costs – Fixed Assets. Under the provisions of PRIIA Section 209, Capital Costs associated with the utilization of Amtrak owned fixed asset capital investments, which as of the date of this Agreement are the Dyer, Crawfordsville, Rensselaer and Chicago Union Stations and/or various other non-Amtrak owned fixed assets utilized for the operation of a state-supported route, if any, are to be calculated according to the Agreed 209 Methodology and charged to the applicable state-supported routes utilizing such assets. As of the present time, no specific calculations have been developed for the allocation of such costs and accordingly, no such costs have been allocated, nor are currently being assessed under the provisions of this Agreement.

(g) In the event that all or a portion of the Service is suspended for greater than seven (7) consecutive days for an unscheduled outage, or a scheduled outage for greater than three (3) consecutive days and for which Amtrak is provided with at least fourteen (14) days' advance written notice, the State shall be entitled to an adjustment for any actual reduction in Third Party, Route Costs and associated Additive Costs (as calculated based on Route Costs, Passenger Revenue and Passenger Miles) minus any outage related expenses. Amtrak shall provide a detailed description of its calculation of cost savings, net of outage related expenses, within forty-five (45) days following the last day of the service outage. Credit under this Section 3 shall be provided to the State within sixty (60) days following the State's written concurrence with the proposed adjustment.

(h) On the first day of each month of the term of the Agreement, Amtrak shall invoice the State, and the State shall remit the scheduled payment for that month to Amtrak within thirty-five (35) days. For the period August 1, 2015 through June 30, 2016, the State shall remit to Amtrak timely monthly payments in accordance with the Payment Schedule set forth in **Appendix VII** for operation of the Hoosier State Service. For the period July 1, 2016 through June 30, 2017, Amtrak will provide a proposed forecast to the State by April 15, 2016 ("FY17 Forecast"), and the parties will amend this Agreement to reflect the payments shown in the FY 17 Forecast.

(i) Amtrak shall submit to the State monthly reconciliation invoices that establish the actual Revenue and Third Party Costs for operating the Service as soon as practicable but in any event not more than forty-five (45) days after the end of each calendar month. The State may share the summary page of the monthly reconciliation invoice with Iowa Pacific Holdings, LLC in order to meet the State's contractual obligations to Iowa Pacific Holdings, LLC. The State shall remit all undisputed payments to Amtrak and any unpaid supplemental reimbursement resulting from the monthly reconciliation process, not more than thirty-five (35) days after receipt of such request for payment. In the event that the reconciliation invoice results in a credit due to the State, Amtrak shall issue a credit memo that may be applied to the next scheduled payment due to Amtrak from the State. In the event that a credit is due to the State under a reconciliation invoice, and such credit amount exceeds the next scheduled payment due from the State, the State shall first apply such credit amount to its next scheduled monthly payment. Upon request from the State and assuming the State is current with any other amounts due Amtrak, Amtrak shall remit payment of any net revenue in excess of the next scheduled payment amount to the State within forty-five (45) days of the State's request. Payment may be made by wire transfer to the following account:

Receiving Bank:	PNC Bank
Receiving Bank Address:	500 First Avenue Pittsburgh, PA 15219
PNC Bank Wire ABA:	041000124 (ACH/EFT ABA# 071921891)
Beneficiary:	State of Indiana, Department of Transportation
Beneficiary Acct. #:	4620695315

In the event a credit balance exists at the end of the contract term, upon notice from the State, Amtrak agrees to make payment of all credit balances to the State within 45 days, or to transfer all credit balances to the subsequent contract period, if applicable as the State may request.

(j) In the event the State disputes a charge detailed in an invoice and Amtrak cannot provide a reasonable explanation of said charge, the State shall have the right to withhold the amount in dispute, but shall pay the remainder of the invoice within the required time. The State shall advise Amtrak, in writing, of the amount of disputed charge to be withheld, and promptly provide reasonable detail regarding reasons for the withholding, and the actions that the State considers necessary to resolve the disputed charge. Once resolution of the disputed charge is achieved between the State and Amtrak, the notice to withhold will either be withdrawn or modified, and any portion of the invoice that is no longer disputed will be remitted promptly, not more than thirty-five (35) days after resolution of the dispute. Should resolution of a disputed charge not be achieved, the dispute resolution process outlined in Section 13 of this Agreement shall apply. Should the resolution of the dispute result in a refund to the State, said refund shall be applied as a credit to the next monthly reconciliation payment, and shall be expressly accounted for therein. Should resolution of the dispute result in a payment due to Amtrak, said payment will be made to Amtrak with the next monthly reconciliation payment and shall be expressly accounted for therein.

(k) In the event the State fails to make any payment in full when due, less any amount in dispute, the State shall pay Amtrak interest at the rate permitted by the Indiana Prompt Payment Act, for the amount of any invoice from the due date to the date when paid. In addition, Amtrak may discontinue any portion or portions of the Service on forty-five (45) days' prior notice in writing to the State; provided, however, that such discontinuance shall not constitute or be construed as a waiver by Amtrak of any payment due hereunder; and provided further, that any such discontinuance shall be without prejudice to the continued operation of any remaining portion or portions of the Service.

(l) The parties agree to confer or meet no more than four times per year at an agreed-upon location upon the request of either party to review contract related revenue and expenses as calculated herein. If, based on this review it appears that estimated contract payments for the remainder of the contract year will exceed available funding, the State agrees to (a) obtain supplemental funding and/or (b) assist Amtrak to implement Service modifications necessary to reduce projected contract payments to match the level of anticipated funding. Amtrak shall not be required to operate any service for which the projected cost to the State, as determined hereunder, exceeds the available funding.

(m) In the event the parties fail to reach agreement for operation of the Service for the period July 1, 2017 through June 30, 2018 ("FFY18 Agreement") by June 30, 2017, the State may request a continuation of this Agreement by submitting a written request to Amtrak no later than June 15, 2017. In such event, the parties agree that the terms of this Agreement shall govern continued operation of the Service until a new agreement is executed by the parties ("Continuation Period"). In such event, the State agrees to continue to reimburse Amtrak as set forth in Section 3 for the Continuation Period, plus the addition of a five percent (5%) escalation component to Route Costs and Additives, as set forth in **Appendix VI**, for the term of the Continuation Period. Such escalation costs, added to the other costs the State pays shall not exceed the FFY18 Forecast provided by Amtrak to the State in accordance with Agreed 209 Methodology. Once an FFY18 Agreement is executed by the parties, Amtrak will credit the State's payments made during the Continuation Period to the State's obligations under the FFY18 Agreement. In no event shall the Continuation Period extend beyond January 31, 2018.

(n) Amtrak shall notify the State of any proposed updates or changes to the costing that forms the basis of certain Route Costs and calculated Additive rates under the Agreed 209 Methodology. Amtrak shall provide to the State in a timely manner, a detailed description of the proposed change, the reason(s) for the proposed change, and the estimated impact to Route Costs and/or Additive rates resulting from such change or other modification. In the event any such updates or changes are, consistent with the requirements of the Agreed 209 Methodology, sufficient enough to warrant the revision of any such costs in a manner that would result in an adjustment of the amounts paid by or to be paid by the State under the terms of this Agreement, Amtrak shall, subject to mutual agreement of the parties, amend this Agreement accordingly.

(o) The State shall reimburse Amtrak for its support of fare adjustments as described in Section 2(b) through the Marketing Additive included in **Appendix VI**.

(p) The State shall reimburse Amtrak for Amtrak's support of mobilization activities that may occur beyond July 31, 2015, in accordance with the terms of Amendment 2 and Amendment 3 of the Agreement for the Provision of Rail Passenger Service between the National Railroad Passenger Corporation and the State of Indiana dated February 1, 2015 (Indiana EDS No. A249-15-ON150015).

#### **Section 4. Marketing and Advertising**

(a) The parties shall cooperate for the purpose of promoting the Service and shall take such other actions as may be agreed upon and that are conducive to the provision of the Service on a regular, efficient and economic basis; provided, however, that neither the State nor Amtrak shall have an obligation to contribute monies for that purpose or for purposes other than those set forth in Section 3 of this Agreement. Amtrak may incorporate the Service in the general advertising and promotional programs related to its national system as it deems appropriate. Amtrak will endeavor to provide the State with advance notice of future promotions and obtain State concurrence on special promotions relating to the Hoosier State Service. The State shall assure that the Third Party Equipment clearly identifies that the Service is funded through support of the State of Indiana and the communities along the route, that the equipment is provided by Equipment Provider and that the Service is operated by Amtrak. The State has elected to have local marketing initiatives provided by a third party.

(b) Subject to the conditions and requirements herein, each party grants the other a limited, non-exclusive, non-assignable except as provided herein, license to use its name, trade names, trademarks and service marks (collectively referred to as "Marks") to market and advertise the Service in accordance with the approved regional marketing and advertising plan. The State may sublicense its licensing rights to Iowa Pacific Holdings, LLC; provided, that Iowa Pacific Holdings, LLC is subject to the conditions and requirements herein. Except as expressly provided herein, no right, property, license, permission or interest of any kind in or to the use of any Mark owned or used by a party is or is intended to be given or transferred to or acquired by the other party by the execution, performance or nonperformance of this Agreement or any part thereof. Each party agrees to comply with all of the other party's instructions regarding the other party's Marks. Neither party shall use any Marks of the other in any manner that would diminish its value or harm the reputation of the other party.

(c) Subject to the conditions and requirements herein, each party grants the other the non-exclusive, non-assignable except as provided herein, right to use, copy, display, and distribute the copyrighted materials of the other party. The State may sublicense such rights to Iowa Pacific Holdings, LLC; provided, that Iowa Pacific Holdings, LLC is subject to the conditions and requirements herein.

(d) Each party acknowledges that the other party's Marks and copyrights are considered to be valuable and that the other party (or its licensees) claims to own all worldwide right, title and interest therein and thereto. Each party agrees that it shall in no way contest or deny the validity of, or the right or title of, the other party's Marks by reason of this Agreement. Each party further agrees not to register anywhere in the world any domain name, name, mark,

symbol, logo, copyright, company, product name, service name or description that could be confused with or is similar to or which dilutes the other party's Marks.

(e) Each party shall have the right to review and approve, prior to publication or display, the portion of any and all content, artwork, copy, advertising, promotional materials, direct mail, inserts, press releases, newsletters, web pages, timetables (the State's review and approval is only requested for the Amtrak National Timetable if there are changes to the schedule or service level of the State-supported trains hereunder) or other communications or other publicity published or distributed by the other party (or at its direction and authorization) that specifically references this Agreement, the reviewing/approving party's name, the State-supported trains hereunder, or that uses any of the reviewing/ approving party's Marks and/or copyrighted materials. Within thirty (30) days of the execution of this Agreement, the parties shall establish processes and procedures for coordinating, reviewing and approving the use of each party's respective Marks and copyrighted materials. Such meetings and discussions shall be coordinated through the Senior Director – State Government Contracts and the Hoosier State Contract Manager.

(f) All advertising and promotional materials proposed to be utilized by a party to promote the Service shall contain disclaimers, limitations of liability, notices, proprietary notices (e.g. trademark and copyright notices) and such other notices as are reasonably required by the other party.

(g) If at any time the State and/or Iowa Pacific Holdings, LLC should elect to launch a website promoting the Service, it shall: (1) obtain Amtrak's prior written approval as to the form and content of such website before its launch, which shall not be unreasonably withheld or delayed; and (2) assure that the content is accurate, timely and consistent with information contained on Amtrak's website. Approvals shall be coordinated through Amtrak's E-Commerce and marketing divisions. The State and Iowa Pacific Holdings, LLC may make individual social media entries or website changes so long as such entries and changes are in accordance with the above requirements and with any prior approvals that Amtrak may have given.

#### **Section 5. Maintenance of Third Party Equipment by Third Parties**

(a) Although the State has entered into an agreement (the "Mechanical Contract") with the Mechanical Contractor, the State has the right to enter into a contract with another provider at its sole discretion consistent with the terms and conditions of this Agreement, subject to prior inspection of any Third Party Equipment and maintenance facilities and a finding of compliance by FRA and approval by FDA and Amtrak. The State shall require throughout the term of this Agreement that the Mechanical Contractor or any other contractor performing mechanical services:

I. Complies and requires any subcontractor to comply fully with the terms of this Agreement and with all applicable requirements of 49 CFR Parts 229 and 238 and all other applicable laws and regulations;

2. Maintains the equipment and all components (e.g., heating and cooling systems, head-end power, braking, Positive Train Control) in safe and reliable operating condition, performs repairs as needed (including any repairs or modifications required by applicable laws and regulations) and performs housekeeping functions to provide a clean and sanitary condition on the exterior and interior of the equipment, including windows (“Operational Condition”); provided, however, that Mechanical Contractor will be required to install and maintain Positive Train Control components on the date mandated by federal law.

3. Delivers the needed equipment in Operational Condition to Amtrak in a timely fashion so that Amtrak can meet the schedule set forth in **Appendix I**, and complies with performance standards that assure that the Operational Condition will be met consistently when the Third Party Equipment is being operated in the Hoosier State Service;

4. Complies fully with any security requirements imposed by Amtrak. The specific requirements may include: conducting of background investigations on Mechanical Contractor personnel who meet certain criteria; participation in security training; wearing of appropriate identification; and barring from Amtrak property of Mechanical Contractor personnel for specific reasons, including but not limited to, personnel who have been convicted or found not guilty by reason of insanity of certain disqualifying criminal offenses; and

5. Complies with the applicable provisions of Amtrak Policy 7.39 (Contractor Background Check), a copy of which is incorporated herein by reference. As set forth in the policy, individuals who perform certain work in connection with the Hoosier State Service on behalf of Mechanical Contractor must have background checks conducted within 30 days of his or her commencing work on behalf of Amtrak. Mechanical Contractor shall ensure that such background checks are conducted and shall comply with all other provisions of such policy;

(b) Mechanical Contract. Amtrak shall be afforded a reasonable time to review and comment on any Mechanical Contract and/or any amendment to the Mechanical Contract or any subsequent Mechanical Contract solely to confirm to Amtrak’s satisfaction that its terms meet the requirements of this Agreement, which review and comment shall not be unreasonably delayed, conditioned or denied.

(c) State Representatives. The State shall designate, by written notice to Amtrak prior to the commencement of service, representatives to whom communications under this Section 5, whether written or telephonic, shall be addressed (including email addresses and cell phone numbers). Such designations may be changed from time to time by written notice to Amtrak.

(d) Mechanical Representatives. The Mechanical Contractor’s mechanics shall be permitted to board and remain aboard the locomotive and other cars in the consist (enroute, at the maintenance facility, or at any station stop) subject, however, to the following:

- 1) the purpose must be to evaluate or repair the mechanical operation of the rolling stock;
- 2) anyone riding in the locomotive must hold a current Amtrak Head End Authorization Pass, and must be qualified on all applicable operating rules or accompanied by an Amtrak Road Foreman. Costs associated with obtaining such a Pass (e.g., training) and

with having a Road Foreman on the locomotive shall be reimbursed to Amtrak by INDOT. In that regard, Amtrak makes no assurance that a Road Foreman will be available when requested to accompany the mechanic; and

3) the mechanic shall be an employee of the Mechanical Contractor.

The State shall require the Mechanical Contractor to designate, by written notice to Amtrak prior to the commencement of the Service, the Mechanical Contractor representative for communications from Amtrak (with email addresses and cell phone numbers). Such designations may be changed from time to time by written notice to Amtrak.

(e) Amtrak Actions. Amtrak shall have, and the Mechanical Contract shall so provide, the authority to reject any unit or units of a train consist upon initial terminal inspection. The Mechanical Contract shall provide that Amtrak's train conductors have overall control of Hoosier State trains. Except for approvals and authorizations that are to be provided by the conductor or assistant conductor in the exercise of their overall control of the Hoosier State Service, on board the train, all Mechanical Contractor's requests for any Amtrak approval required hereunder shall be processed initially through, and thereafter coordinated with, the State. Amtrak shall have the right to deny operation of a train consist in the event that, in Amtrak's opinion, the operation of such Third Party Equipment may result in a violation of the applicable law or regulation that poses a substantial risk to the health or safety of the passengers or crew on the train and is not immediately remedied or corrected by the Mechanical Contractor. Amtrak may conduct unannounced inspections of Third Party Equipment or the Service Site (as defined in Section 9(a)(2) below) at any time. Such inspections shall be conducted in accordance with any applicable FRA and Amtrak rules. The results of any inspection shall be communicated to the State in a timely manner. Any deficiencies determined during such inspections shall be remedied immediately by the Mechanical Contractor, and any fines or other penalties imposed by the FRA or other regulatory agency shall be the responsibility of, and shall be paid promptly by, Mechanical Contractor. If any such inspection cites any "critical" item(s), Mechanical Contractor shall provide a written report to Amtrak and the State, within five (5) business days of the inspection, indicating the measure(s) taken to remedy the critical item(s) and to assure that it/they will not occur again.

## **Section 6. Provision of Alternate Transportation Services by Third Parties for Planned or Long-term Service Outages**

(a) The State may enter into one or more contracts ("Bus Contract(s)") with third parties (each a "Bus Contractor") for the provision of alternate transportation services used in the Hoosier State Service to support planned or long-term service outages ("Bus Services"). The State has selected Iowa Pacific Holdings, LLC as its Bus Contractor, but has the right to enter into a contract with another provider at its sole discretion consistent with the terms and conditions of this Agreement. The State shall assure throughout the term of this Agreement that each Bus Contractor or any other contractor providing Bus Services:

1. Complies and requires any subcontractor to comply fully with all applicable requirements of the U.S. Department of Transportation and all other applicable laws and regulations;
2. Maintains the bus equipment in safe and reliable operating condition, performs repairs as needed (including any repairs or modifications required by applicable laws and regulations) and performs housekeeping functions to provide a clean and sanitary condition on the exterior and interior of the equipment, including windows ("Operational Condition");
3. Delivers the needed equipment in Operational Condition in a timely fashion so that Amtrak can mitigate delays to passengers;
4. Complies fully with any security requirements imposed by Amtrak. The specific requirements may include: conducting of background investigations on Bus Contractor personnel who meet certain criteria; participation in security training; wearing of appropriate identification; and barring from Amtrak property of Bus Contractor personnel for specific reasons, including but not limited to, personnel who have been convicted or found not guilty by reason of insanity of certain disqualifying criminal offenses; and
5. Complies with the applicable provisions of Amtrak Policy 7.39 (Contractor Background Check), a copy of which is incorporated herein by reference. As set forth in the policy, individuals who perform certain work in connection with the Hoosier State Service on behalf of Bus Contractor must have background checks conducted within 30 days of his or her commencing work on behalf of Amtrak. INDOT shall require that the Bus Contractor ensures that such background checks are conducted and complies with all other provisions of such policy.

(b) Bus Contract. Amtrak shall be afforded a reasonable time to review, comment on and approve each Bus Contract and/or any amendment to the Bus Contract or any subsequent Bus Contract, solely to confirm to Amtrak's satisfaction that its terms meet the requirements of this Agreement, which review, comment and approval shall not be unreasonably delayed, conditioned or denied.

(c) State Representatives. The State shall designate, by written notice to Amtrak prior to the commencement of service, representatives to whom communications under this Section 6, whether written or telephonic, shall be addressed (including email addresses, phone numbers and pager numbers). Such designations may be changed from time to time by written notice to Amtrak.

(d) Bus Contractor Representatives. The State shall require each Bus Contractor to designate, by written notice to Amtrak prior to the commencement of alternate transportation services, each Bus Contractor's representative for communications from Amtrak (with addresses,

phone numbers and pager numbers). Such designations may be changed from time to time by written notice to Amtrak.

(e) Revenue Collection for Bus Services. Prior to the State Contractor engaging a Bus Contractor, the State, Amtrak and the Bus Contractor will reach agreement on how to collect and reconcile train ticket revenue associated with Bus Services.

### **Section 7. Provision of Food and Beverage Service by Third Parties**

(a) If the State enters into one or more contracts (each a "Food Service Contract") with third parties (each a "Food Service Vendor") for the provision of food and beverage (alcoholic and non-alcoholic) service on Hoosier State Service trains ("Food Service"), the State shall assure throughout the term of this Agreement that the Food Service Vendor and any other contractor providing Food Service:

1. Complies with all applicable laws, rules, and regulations, including but not limited to, (a) all aspects of the then-current version of the Food Code (the "Food Code") from time to time promulgated by the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration (the "FDA") and (b) Amtrak's "Food Service Sanitation and Public Health Standards" manual as revised October 28, 1997, as it may be amended or superseded from time to time, and the requirements set forth in the U.S. EPA's letter to Don Pingel, Iowa Pacific Holdings, LLC, dated July 24, 2015, attached hereto and incorporated herein as **Appendix X** (the standards identified at item (b) are collectively the "Amtrak Standards"). A complete list of Amtrak Standards is set forth in **Appendix VIII**. The provisions of this paragraph (e.g., compliance with the Food Code and Amtrak Standards) apply also to any commissary, food storage area or food provider used by the Food Service Vendor. The State shall require the Food Service Vendor to promptly provide to Amtrak a copy of all steps required by U.S. EPA in **Appendix X** (e.g., drain and flush dates, water sampling results).
2. Complies, and requires any subcontractor to comply, with all applicable laws, regulations, licenses (including liquor licenses), and Amtrak safety requirements.
3. Cleans and sanitizes all Food Service areas and equipment in all food service cars and picks up newspapers, magazines, food and beverage containers and wrappers in all passenger areas of the train at least at the end of each trip segment and more often as circumstances may warrant, and ensures that all garbage and trash associated with the Food Service is collected regularly during each trip, properly bagged, tied and stored at locations on the train approved by the State and Amtrak.
4. Regularly off-loads at a proper facility all garbage and trash associated with the Food Service.

5. Assures that the equipment that is installed in any food service car (e.g., microwave oven, refrigerator, sink with running water) of each Hoosier State trainset (including substitute cars that are deployed while regular Hoosier State equipment is being serviced) is in good repair and operating condition and in accordance with the Food Code and Amtrak Standards. In the event either the State or the Food Service Vendor provides notice (or Amtrak otherwise becomes aware) that any such equipment is not performing satisfactorily or otherwise requires repair, maintenance or replacement, the State will arrange for the prompt requisite repair, maintenance or replacement of such equipment at the earliest practicable time with a view to avoiding or minimizing disruption of Food Service operations or Hoosier State operations.
6. Makes suitably qualified personnel available, as needed prior to commencement of the term of this Agreement and thereafter as necessary, to participate in safety training, emergency preparedness training, and on-board operations instructions for the Food Service Vendor's personnel. Such training shall be provided by Amtrak, at the State's expense, and consist of instruction conducted on board Third Party Equipment (including emergency evacuation procedures) plus a qualification ride on the Hoosier State or other Amtrak train, it being understood that such training must be completed by each of the Food Service Vendor's on-board employees prior to commencement of such employee's performance of service on the Hoosier State Service. State shall promptly arrange with Amtrak in advance such training for any new Food Service Vendor personnel that may be deployed during the term of the Agreement.
7. Complies fully with any security requirements imposed by Amtrak. The specific requirements may include: conducting of background investigations on Food Service Vendor personnel who meet certain criteria; participation in security training; wearing of appropriate identification; and barring from Amtrak property of Food Service Vendor personnel for specific reasons, including but not limited to, personnel who have been convicted or found not guilty by reason of insanity of certain disqualifying criminal offenses.
8. Complies with the applicable provisions of Amtrak Policy 7.39 (Contractor Background Check), a copy of which is incorporated herein by reference. As set forth in the policy, individuals who perform certain work in connection with the Hoosier State Service on behalf of Food Service Vendor must have background checks conducted within 30 days of his or her commencing work on behalf of Amtrak. The State shall require that the Food Service Vendor ensures that such background checks are conducted and complies with all other provisions of such policy.
9. Provides for regular pest control treatment of all food service cars in each Hoosier State trainset in accordance with Amtrak's standards in effect from time to time.
10. Cleans and maintains all public areas of the Hoosier State Service including crew seating areas, restrooms and vestibules.

11. Assures that each Hoosier State trainset contains suitable space for receptacles in which closed, leak-proof bags or other similar closed containers containing trash generated by the provision of food service can be stored. Within one (1) year of the date hereof, or as the FDA may otherwise require, the Food Service Vendor shall provide, maintain and clean, the following storage receptacles on each food service car:

- (a) An FDA-approved receptacle for returnable beverage containers;
- (b) An FDA-approved receptacle for recyclable paper;
- (c) An FDA-approved receptacle for garbage (i.e., all trash that does not qualify for (1) or (2) above).

The foregoing storage receptacles shall be of a design and construction sufficient to permit the storage of the indicated materials through one (1) round-trip for that trainset in accordance with the Food Code, the Amtrak Standards and other reasonable requirements of Amtrak. For this and other operational efficiencies associated with the Food Service, it is anticipated that the on-board storage area will be in or adjacent to the food service car. Upon each trainset's arrival at the maintenance facility in Indianapolis, all bags or other receptacles containing trash generated by the provision of Food Service shall be removed within thirty (30) minutes from the train by the Food Service Vendor and handled in accordance with **Appendix IX** hereto.

(b) Amtrak Actions. The Food Service Contract shall provide that Amtrak shall have the authority to direct certain actions of the Food Service Vendor or, under certain circumstances, to suspend its operations altogether. The Food Service Contract shall provide that Amtrak's train conductors have overall control of Hoosier State trains and give Amtrak and FDA direct authority with respect to compliance with the Food Code and the Amtrak Standards. Except for approvals and authorizations that are to be provided by the conductor or assistant conductor in the exercise of their overall control of the Hoosier State Service, on board the train, and except for notices to Amtrak and/or FDA in connection with FDA or Amtrak inspections, all Food Service Vendor's requests for any Amtrak approval required hereunder shall be processed initially through, and thereafter coordinated with, the State. Amtrak shall have the right to deny Food Service Vendor access to the Hoosier State Service in the event that, in Amtrak's opinion, Food Service Vendor's operations result in any violation of the Food Code or Amtrak Standards that poses a substantial risk to the health or safety of the passengers or crew on the train and is not immediately remedied or corrected by the Food Service Vendor. All other directions to the Food Service Vendor or actions under the Food Service Contract shall be administered by the State. Amtrak shall confer with the State prior to taking any action directly with the Food Service Vendor with respect to matters related to compliance with the Food Code or the Amtrak Standards, provided that Amtrak may proceed without such prior consultation in emergency or other exigent circumstances in which such prior consultation is not reasonably practical (in such events, Amtrak shall communicate with the State's representatives concerning Amtrak's actions by the most expeditious means available in the circumstances.) Both the FDA and Amtrak may conduct periodic unannounced inspections of food and beverage service on the Hoosier State Service, as well as at Food Service Vendor facilities. Any deficiencies determined during such inspections shall be remedied immediately by the Food Service Vendor, and any fines or other

penalties imposed by the FDA shall be the responsibility of, and shall be paid promptly by Food Service Vendor. If any such inspection cites any "critical" item(s), Food Service Vendor shall provide a written report to Amtrak and the State, within five (5) business days of the inspection, indicating the measure(s) taken to remedy the critical item(s) and to assure that it/they will not occur again.

(c) Communications. Although the State has the primary relationship with and control over the Food Service Vendor, communications on certain matters by Amtrak with the Food Service Vendor, the FDA and other third parties will need to be coordinated with the State in the manner contemplated by this Section 7. In general, it is anticipated that Amtrak and the State will act cooperatively so that, to the maximum practical extent consistent with the Food Code, the Amtrak Standards and safe train operations, each is kept reasonably advised of the actions of the other with respect to the Food Service on the Hoosier State Service, the Food Service Vendor is not subjected to inconsistent requirements or instructions, and Food Service is available on the Hoosier State Service on a consistent, high quality and efficient basis.

1. Provided that Amtrak has been given the requisite contact information for the State and the Food Service Vendor, as the case may be, Amtrak will endeavor to provide telephone notice (the telephone numbers to be provided in accordance with Sections 7(g) and 7(h) below) to the State's representative and to the Food Service Vendor's designated representatives if:
  - (a) Food Service Vendor's personnel are not on a Hoosier State trainset at the time appointed for loading of the day's provisions for that train;
  - (b) During the course of the day, the Food Service Vendor's employee(s) on board the Hoosier State Service should become ill or otherwise unable to perform his, her or their duties and such circumstance has not apparently been communicated by such personnel to the Food Service Vendor representative and the State; or
  - (c) Food Service Vendor's personnel have taken, or declined to take, any action(s) that make them unfit to continue to provide food and beverage service.
2. The parties acknowledge that so long as the Food Service Vendor has a supervisor onboard the train, Amtrak shall not be obligated to meet the notice requirements in this Section 7(c)(1).
3. Amtrak shall provide the State with prompt notice of any written communications that Amtrak receives from the Food Service Vendor that do not appear on their face to have been communicated to the State.
4. Promptly following Amtrak's receipt thereof, Amtrak shall provide the State with copies of any incident reports prepared by Amtrak personnel on any Hoosier State train that relate to the conduct of the Food Service Vendor employees on the train or

the condition of the equipment or inventories or supplies on the Hoosier State Service, or that otherwise relate to the provision of Food Service on the Hoosier State Service. Amtrak will instruct its crews to report to Amtrak any conduct of Food Service Vendor personnel or other circumstances related to the activities of the Food Service Vendor on board the Hoosier State Service that such Amtrak personnel believe to be inconsistent with the Food Code, the Amtrak Standards, courteous service, or safe operation of the Hoosier State Service.

5. Amtrak shall endeavor to communicate approvals, concerns, etc. to the Food Service Vendor through the State except that communications involving compliance with the Food Code or the Amtrak Standards may be effected directly with the Food Service Vendor with copies to the State concurrently.
6. To the extent permitted by applicable law, promptly following Amtrak's receipt thereof, Amtrak shall endeavor to provide the State copies of any other written communications Amtrak receives from third parties regarding the Food Service Vendor or the provision of Food Service on the Hoosier State Service, including but not limited to any notices from the FDA regarding violations of the Food Code.

(d) Promotions. The State and/or the Food Service Vendor may display advertisements and conduct promotions, including but not limited to advertisements and promotions related to food and other products sold or distributed by Food Service Vendor, in display frames, seatbacks and other areas of the train designed for display of advertising, on other displays in the counter area or on the walls of the café car and by means of materials distributed to passengers. All advertising and promotions shall comply with Amtrak's advertising policy, as then in effect, and shall be subject to Amtrak's approval with regard to placement and size. Furthermore, Amtrak shall have the right to require that any display materials be removed or modified if in Amtrak's reasonable judgment such material poses a safety risk, will damage any Amtrak equipment, or will materially interfere with Amtrak personnel in the performance of their duties on board the Hoosier Service trains.

(e) Amtrak Crew Purchases. Amtrak crew members shall have access to the services and products of the Food Service Vendor at the same prices such products and services are offered to Hoosier State Service passengers. The State shall require Food Service Vendor to stock eight (8) bottles of water in each locomotive prior to each trip.

(f) Food Service Contract. Amtrak shall be afforded a reasonable time to review comment on and approve any Food Service Contract and/or any amendment to the Food Service Contract or any subsequent Food Service Contract solely to confirm to Amtrak's satisfaction that its terms meet the requirements of this Agreement, which review, comment and approval shall not be unreasonably delayed, conditioned or denied.

(g) State Representatives. The State shall designate, by written notice to Amtrak prior to the commencement of service, representatives to whom communications under this Section 7, whether written or telephonic, shall be addressed (including email addresses and cell

phone numbers). Such designations may be changed from time to time by written notice to Amtrak.

(h) Food Service Representatives. The State shall require the Food Service Vendor to designate, by written notice to Amtrak prior to the commencement of Food Service, the Food Service Vendor's representative for communications from Amtrak (with email addresses and cell phone numbers). Such designations may be changed from time to time by written notice to Amtrak.

(i) Picture Identification. All Food Service Vendor personnel shall prominently wear a picture identification while in, on or about trains, stations or layover facilities.

(j) Food and Beverage Revenue Collection. Revenue associated with the provision of Food Service shall be collected by the Food Service Vendor and is the property of the State. The State shall assure that if credit cards are used for food and beverage transactions, (1) Food Service Vendor complies with Payment Card Industry (PCI) Standards; and (2) receipts issued and credit card bills reflect the name of the Food Service Vendor and not Amtrak or Hoosier State Service.

(k) The State has entered into a Food Service Contract with Iowa Pacific Holdings, LLC, but has the right to enter into a contract with other providers at the State's sole discretion consistent with the terms and conditions of this Agreement, subject to prior inspection and approval by FDA and Amtrak.

## **Section 8. Termination**

- (a) Termination for Convenience. Except as otherwise provided herein, this Agreement and any renewal thereof may be terminated by either party upon thirty (30) days' notice to the other. Termination of this Agreement shall be without prejudice to the State's obligation to reimburse Amtrak hereunder for the Service and for any associated capital or other costs, provided until and including the date of termination. 49 U.S.C. Subsection 24706(a) requires that at least one hundred eighty (180) days before "discontinuing service over a route, Amtrak will give notice of the discontinuance in the way Amtrak decides will give a State, a regional or local authority, or another person the opportunity to agree to share or assume the cost of any part of the train, route or service to be discontinued." Because the availability of State funding upon the termination of this Agreement is not now known, Amtrak and the State agree that this Section 8 does, and will be deemed to, constitute adequate notice under 49 U.S.C. Subsection 24706(a) to the State (and/or others working with the State, such as regional or local authorities), assuming that such notice is required. The State concurs that no notice beyond that set forth in this Section need be given.
- (b) Termination for Cause. INDOT may immediately terminate this Agreement upon written notice to Amtrak in the event of an Amtrak Default (as defined in Section 24 below) that results (a) from Amtrak's failure to timely abate a violation of any

Regulatory Requirement for which Amtrak is responsible, or (b) poses an immediate danger to the public, where Amtrak was aware of the conditions giving rise to such Amtrak Default and failed to timely rectify such conditions. In the event of a termination for cause in the event of an Amtrak Default, INDOT shall not be liable for any of Amtrak's costs in connection with the termination of the Service. In addition to Amtrak's right to immediately suspend Service under Section 5(e), Amtrak may terminate this Agreement upon written notice to INDOT in the event of an INDOT Default (as defined in Section 24 below). In the event of a termination for cause in the event of an INDOT Default, INDOT shall be responsible for termination costs in accordance with Section 8(c) below.

- (c) In the event that this Agreement is terminated for any reason, at INDOT's sole option, Amtrak shall provide such Services as shall be necessary or reasonably appropriate in order to safely wind down the Service, finalize all financial transactions to which this Agreement relates, refund any sums due to Hoosier State Service customers and passengers, and to facilitate any audit required by INDOT. Amtrak shall be entitled to compensation for costs actually incurred in connection with providing only those Post-Termination services or activities that INDOT specifically directs it to undertake, or that Amtrak reasonably determines are necessary to accomplish the tasks stated in the previous sentence. The Parties specifically agree that Amtrak shall not be entitled to any compensation for unearned anticipated profits that it would have earned had this Agreement not been terminated.
- (d) The State shall assure that each State Contractor(s) understands and agrees that it is not a third party beneficiary under this Agreement, and further the State hereby, and shall assure that each State Contractor, releases and forever discharges Amtrak from any and all claims, demands, indebtedness, agreements, promises, obligations, damages or liabilities, costs, expenses (including attorneys' fees or liens), and causes of action in law or in equity, of any kind, whether known or unknown, suspected or unsuspected, fixed or contingent, liabilities or damages of any nature whatsoever, in any way arising from or relating to the termination of this Agreement under Section 1(a), this Section 8, or Section 24.

### **Section 9. Indemnity and Defense of Claims**

(a) Subject to the requirements of subsection (b) below, the State shall assure that each Equipment Provider, Mechanical Contractor, Food Service Vendor, Bus Contractor and any other contractor engaged by the State (collectively "State Contractors") defends, indemnifies and holds harmless Amtrak and any railroad over which Third Party Equipment is operated (each an "Operating Railroad"), their respective officers, directors, employees, agents, servants, successors, assigns and subsidiaries (collectively, "Indemnitees"), from and against any and all losses and liabilities, penalties, fines, forfeitures, demands, claims, causes of action, suits, costs, and expenses incidental thereto (including costs of defense and attorneys' fees) (collectively, "Losses"), and without regard to the cause or to the negligence of the State or any Indemnitee, which any Indemnitee may hereafter incur, be responsible for or pay as a result of injury, death,

disease, or occupational disease ("Personal Injury") to any person (including State Contractors' employees), and for damage to or loss (including loss of use and environmental contamination) of any property (including property of State Contractors, of State Contractors' employees or subcontractors, and of the parties hereto) ("Property Damage"), arising out of or in any degree directly or indirectly caused by or resulting from: (1) the Third Party Equipment; (2) activities of or services performed by or for one or more State Contractors or State Contractors' officers, employees, agents, servants, subcontractors, sub-subcontractors or the employees of any of them, or any other person acting for or by permission of State Contractors or State Contractors' subcontractors or agents (collectively, "State Contractors' Agents"); and (3) Losses based upon a claim that one or more State Contractors infringed any patent, copyright, royalty, trademark or service mark or other third party proprietary right, or involved the wrongful use of any trade secret or confidential information, except that:

1. State Contractors shall not be obligated to indemnify the Indemnitees for Losses as a result of Personal Injury to Amtrak employees or damage to property of Amtrak or Amtrak employees regardless of cause or the negligence of State Contractors or State Contractors' Agents.
2. With respect to Losses as a result of Personal Injury or Property Damage suffered by any person or entity, other than State Contractors, State Contractors' Agents or the State, State Contractors shall not be obligated to indemnify an Indemnitee to the extent such Losses were caused by the negligence, gross negligence or willful misconduct of that Indemnitee, occurring at a location other than a facility where the Third Party Equipment is serviced and maintained (a "Service Site"). For clarification purposes the Service Site to be used for servicing and maintaining Third Party Equipment is depicted in **Appendix XI**.
3. State Contractors' duty to indemnify under this Subsection (a) shall not, with respect to railroad passenger liability claims, exceed the then-current statutory cap for passenger liability set forth in 49 USC §28103(a)(2) (currently \$200,000,000.00 per occurrence with a \$200,000,000.00 annual aggregate).

(b) With respect to operation of the Hoosier State Service, and non-revenue movement of Third Party Equipment between Chicago and Indianapolis via Amtrak's Cardinal Service, and non-revenue movement of Third Party Equipment between Indianapolis Union Station and the Service Site, Amtrak shall defend, indemnify and hold harmless the State from any and all claims, actions, or proceedings for injury to or death of any person or for damage to or loss of any property to the extent that such arise from Amtrak's operation of the Service without regard to the cause or to the negligence of the State or any State Contractor, other than as described in Sections 9(a), 9(c), or 9(d). If any claim, action or proceeding shall at any time be brought against the State and/or State Contractor asserting a liability for such injury, death, damage or loss, the State shall promptly give notice thereof to Amtrak and shall thereafter provide, and assure that State Contractor provides, all such information and reasonable assistance as Amtrak may from time to time request. Notwithstanding anything to the contrary in this Agreement, or in any documents which are or become a part of this Agreement, the following sentence will apply and govern Amtrak's indemnity of the State for claims arising out Amtrak's operation of

the Service. Amtrak's duty to indemnify the State for injuries to or claims by passengers, shall not exceed the then-current statutory cap for passenger liability set forth in 49 USC §28103(a)(2) (currently \$200,000,000.00 per occurrence with a \$200,000,000.00 annual aggregate).

(c) The obligation of Amtrak to defend, indemnify and hold harmless the State, as set forth above in Section 9(b), shall not apply to the extent that the injury, death, damage or loss was caused by: (i) any services performed at a Service Site, or (ii) by the Third Party Equipment, or (iii) by any other equipment, property, food, or beverage (or the condition or service thereof) provided by any of the State Contractors, nor shall it apply with respect to claims for injury to or death of State Contractors' employees, State Contractors' Agents, or for damage to or loss (including loss of use) of property of State Contractor or State Contractors' Agents.

(d) The State shall assure that State Contractors release and waive any and all claims against Amtrak and the Operating Railroads, their respective employees and agents, irrespective of any negligence or fault on the part of Amtrak or such Operating Railroads, for damage to or destruction of any Third Party Equipment operated by Amtrak under this Agreement. The State shall require the State Contractors to maintain All-Risk Property Insurance for the duration of this Agreement covering all such equipment, with limits sufficient to cover the replacement cost of such equipment and with Amtrak and the Operating Railroads designated as loss payees as their interests may be determined.

(e) All the indemnification, release and waiver provisions set forth in this Agreement shall survive the expiration or termination of this Agreement.

(f) The provisions of this Section 9 shall be in addition to, and not a limitation upon, any other indemnity required under this Agreement, e.g., Section 1(c).

#### **Section 10. Insurance**

(a) The State shall assure that during the term of this Agreement each Equipment Provider, Mechanical Contractor, Food Service Vendor, Bus Contractor and any other contractor engaged by the State (for purposes of this Section 10, collectively hereinafter referred to as "State Contractors") shall procure and maintain, at no expense of Amtrak, the types of insurance specified in Section 10(c) below. In addition, State Contractors shall obtain such additional insurance and/or increase the foregoing limits as the State or Amtrak may, from time to time, reasonably require by advance written notice. All insurance shall be placed on an occurrence basis with insurance carriers authorized to do business in Illinois and Indiana. The State shall require all State Contractors, and all State Contractors shall require all subcontractors, to carry the insurance required herein, or may, at its option, provide the coverage for any or all subcontractors and, if so, the evidence of insurance submitted shall so stipulate. State Contractor or the State shall provide Amtrak with a certificate of insurance giving evidence of the required coverage prior to the commencement of the term of the Agreement and annually through the term of this Agreement. The insurance shall provide for thirty (30) days' prior written notice to be given to Amtrak and each Operating Railroad in the event coverage is substantially changed, canceled or non-renewed. In no event will Amtrak operate the Service until it has received a

copy of the State's contract with State Contractor evidencing State Contractor's indemnification obligations to Amtrak. If the insurance provided is not in compliance with all the requirements herein, Amtrak maintains the right to cease operation of the Service until proper evidence is provided. During the term of this Agreement the State shall provide or cause State Contractor to provide copies of policies of insurance described herein (or if unavailable, binders adopting the same) required hereunder upon written request of Amtrak within ten (10) days or such other time as agreed to the parties. Evidence of insurance shall be submitted to:

Philip A. Balderston  
Risk Management Director  
Finance Department  
National Railroad Passenger Corporation  
60 Massachusetts Avenue, NE  
Washington, D.C. 20002  
Facsimile: (202) 906-3758  
Email: [Philip.Balderston@amtrak.com](mailto:Philip.Balderston@amtrak.com)

(b) State Contractors shall procure endorsements to its general liability policies that provide the following: (1) that each State Contractor's insurance carrier shall provide thirty (30) days' notice to State Contractor, the State, Amtrak and the Operating Railroads before terminating, amending and/or canceling any specific coverages including endorsements required under Sections 9 and 10 hereof for any reason; (2) (a) if any named insured requests cancellation of insurance, each State Contractor's insurer shall immediately notify State Contractor, Amtrak, and the State and the Operating Railroads (in the manners and at the locations listed in the next sentence) of such request for cancellation, and (b) such insurance shall not be cancelled unless and until State Contractor, Amtrak, the State and the Operating Railroads have given in writing their consent to such cancellation; and (3) that all notice contemplated by this Section 10 shall be provided by certified mail, facsimile transmission, and/or electronic mail, as each respective entity has designated, delivered as follows:

For the State:

*Via certified mail only:*

Indiana Department of Transportation  
Attn: Deputy Commissioner for Engineering and Asset  
Management  
100 N. Senate Avenue, Room N758  
Indianapolis, IN 46204-2216

For Amtrak:

Philip A. Balderston  
Risk Management Director  
National Railroad Passenger Corporation  
60 Massachusetts Avenue, NE  
Washington, D.C. 20002  
Facsimile: (202) 906-3758  
Email: [Philip.Balderston@amtrak.com](mailto:Philip.Balderston@amtrak.com)

Michael W. Franke  
Senior Director – State Government Contracts  
National Railroad Passenger Corporation  
Chicago Union Station  
500 West Jackson Boulevard, 2<sup>nd</sup> Floor  
Chicago, IL 60661  
Facsimile: (312) 544-5105  
Email: [fran3624@amtrak.com](mailto:fran3624@amtrak.com)

For BRC: Mr. Patrick O'Brien, President  
The Belt Railway of Chicago  
6900 S. Central Avenue  
Bedford Park, IL 60638  
Facsimile: (708) 496-4001  
Email: [pobrien@beltrailway.com](mailto:pobrien@beltrailway.com)

For Metra: Mr. Marty Ryan  
Acting Chief Transportation Officer  
Metra Chicago Transit  
547 W. Jackson Boulevard, 5<sup>th</sup> Floor  
Chicago, IL 60661  
Facsimile: (312) 322-8986  
Email: [mryan@metrarr.com](mailto:mryan@metrarr.com)

For Norfolk Southern: Randy Hunt  
Director, Joint Facilities / NRPC Officer  
Norfolk Southern Corporation  
1200 Peachtree Street, NE, Box 158  
Atlanta, Georgia 30309  
Telephone: (404) 529-1813  
Email: [rwhunt@nscorp.com](mailto:rwhunt@nscorp.com)

For CSX Transportation: Jay S. Westbrook  
Vice President Passenger Operations  
500 Water Street  
Jacksonville, FL  
Facsimile: (904) 359-3568  
Email: [jay\\_westbrook@csx.com](mailto:jay_westbrook@csx.com)

For UP: Josephine Jordan  
General Manager Passenger Operations  
Union Pacific Railroad Company  
850 Jones Street – Stop HDC  
Omaha, NE 68102  
Facsimile: (402) 233-2095  
Email: [jjordan1@up.com](mailto:jjordan1@up.com)

For IPH: David Michaud  
General Counsel  
Iowa Pacific Holdings, LLC  
118 South Clinton Street, Suite 400  
Chicago, IL 60661  
Facsimile: 312-509-4030  
Email: [MichaudD@IowaPacific.com](mailto:MichaudD@IowaPacific.com)

(c) Required Insurance Coverage:

Workers' Compensation Insurance

A policy complying with the requirements of the statutes of the jurisdiction(s) in which the contract work will be performed, covering all employees of State Contractor. Employer's Liability coverage with limits of liability of not less than \$1,000,000 each accident or illness shall be included.

General Liability Insurance and Excess Liability Insurance

A policy issued to and covering liability imposed upon State Contractor with respect to all work to be performed and all obligations assumed by State Contractor under the terms of its contract with the State. Products-completed operations, independent contractors, contractual liability, personal injury liability and advertising liability coverages are to be included, and all railroad exclusions are to be deleted. Amtrak and each Operating Railroad are to be designated as additional insureds with respect to operations to be performed in connection with State Contractor's contract with the State and the coverage shall contain a waiver of subrogation against Amtrak and each Operating Railroad. Coverage under this policy, or policies, shall have limits of liability of not less than the then-current statutory cap for passenger liability set forth in 49 USC §28103(a)(2), currently \$200,000,000 per occurrence for bodily injury (including disease or death), personal injury and property damage (including loss of use) liability, with a \$200,000,000 annual aggregate. State Contractor shall be solely responsible for the amount of any deductible/retention applying to coverage under this policy in the same manner as if the amount of deductible/retention were covered by a commercial insurance policy placed by the State Contractor.

#### Automobile Liability Insurance

A policy issued to and covering the liability of State Contractor arising out of the use of all owned, non-owned, hired, rented or leased 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 the State Contractor's General Liability Insurance. The policy shall designate Amtrak and each Operating Railroad as additional insureds with respect to operations to be performed in connection with State Contractor's contract with the State and the policy shall contain a waiver of subrogation against Amtrak and each Operating Railroad. Coverage under this policy (or policies) shall have limits of liability of not less than \$5,000,000 per occurrence, combined single limit for bodily injury and property damage liability.

#### Property Insurance

A policy issued to State Contractor to protect its interest in the equipment (including any Third Party Equipment) to be used in performance of State Contractor's contract with the State, covering all risks of physical loss or damage to such equipment. The coverage under such policy shall have limits of liability adequate to protect the value of the equipment on a replacement cost basis. Amtrak and each Operating Railroad are to be designated as loss payees as their interests may appear and the policy shall contain a waiver of subrogation against Amtrak and each Operating Railroad, their respective employees and agents.

#### Liquor Liability Insurance

A policy issued to State Contractor, or to the entity that holds the liquor license(s), covering liability imposed upon State Contractor or such entity with respect to the sale or distribution of alcoholic beverages. Amtrak, the Operating Railroads, and their respective officers, directors, employees and agents, are to be named as additional insureds with respect to services provided by such entity or the Food Service Vendor. Coverage under this policy shall have limits of liability of not less than five million dollars (\$5,000,000) combined single limit for bodily injury (including disease or death), personal injury, and property damage (including loss of use) liability.

#### Pollution Liability Insurance

A policy issued to and covering the liability of State Contractor arising out of the pollution or impairment of the environment, including costs of investigation and clean-up, caused by the performance of activity in connection with State Contractor's contract with the State. Amtrak and each Operating Railroad shall be named as additional insureds with respect to services to be provided by any State Contractors, and the policy shall contain a waiver of subrogation against Amtrak and each Operating Railroad, their respective employees and agents. Coverage under this policy (or policies) shall have limits of liability of not less than \$10,000,000 each claim.

## **Section 11. Inspection and Audit**

(a) The State or its duly authorized agent may, at any reasonable time and upon receipt of three (3) business days' written notice to Amtrak, inspect any facility used by Amtrak in providing the Service; provided, however, that such inspection shall comply with all applicable safety rules and regulations and shall not interfere with the work of any Amtrak employee or hinder or delay the operation of any Amtrak work, and provided further the State or its duly authorized agent shall execute Amtrak's then-current Permit to Enter. The \$1,000.00 fee set forth in Section 4 of the Permit to Enter shall be waived. Amtrak's current Permit to Enter is set forth in **Appendix XII**. Upon twenty-one (21) calendar days' notice, Amtrak shall permit auditors or any other duly authorized auditing agent of the State to inspect all books, records and accounts in Amtrak's possession relating to the Service, including supporting documentation provided to Amtrak by host railroads in connection therewith, subject to execution of a non-disclosure agreement required by Amtrak, and further including all records and documents relating to the determination and allocation of the costs and revenues of the Service. Upon five (5) business days' prior written notice, Amtrak shall permit INDOT to inspect and review safety- and security-related reports that relate to the Service, subject to execution of a non-disclosure agreement required by Amtrak. Any such inspection of books, records and accounts shall take place where the records are normally maintained. During the audit period and pending the results of the audit, the State may not withhold or short pay any advance or reconciliation invoice amounts either based upon preliminary audit findings or awaiting the results of the audit. All such books, records, accounts and documents shall be maintained by Amtrak and be accessible to the State for a period of three (3) years following the expiration of this Agreement. If any litigation, claim or audit is commenced, the records and accounts along with supporting documents shall be retained until all litigation, claim or audit finding has been resolved even though such litigation, claim or audit continues past such three (3) year retention. The parties agree that the requirement for State funding may be adjusted based on the results of said audit.

(b) Subject to the provisions of Section 17 of this Agreement, Amtrak shall make available to the State such operating, ridership and passenger revenue data relating to the Service as may be available in Amtrak's information retrieval system which may include any or all of the following: ridership, passenger revenue, operating expenses (for host railroad related expenses, subject to execution of a non-disclosure agreement required by Amtrak), on-time performance, passenger miles, frequencies operated, train miles, car miles, seat miles, customer satisfaction scores, and support documentation comparing forecasted contract related costs to actual costs. Such data shall be reported on a monthly basis and furnished within forty-five (45) days after the close of each month or, as may be agreed between the parties. Upon request, Amtrak will endeavor to provide such other data relating to the Service as may be reasonably available. Amtrak shall make available to the State a copy of its Annual Report with audited financial statements after providing said audit to the Congress. The State agrees, to the extent allowed by Indiana law, to not voluntarily disclose individual city pair level data without Amtrak's prior approval.

(c) The State shall require that the State Contractors permit Amtrak to inspect any State Contractor's facilities or equipment used in support of the Hoosier State Service at any time, and Amtrak shall promptly report the results of any inspection to the State.

### **Section 12. Force Majeure**

The obligations of Amtrak hereunder shall be subject to force majeure. Amtrak shall not be liable for any failure to perform, or for any delay or cancellation in connection with the performance of any obligation hereunder, if such failure, delay or cancellation is due or in any manner caused by the laws, regulations, acts, demands, orders or interpositions of any federal, state or local government agency having jurisdiction thereof, or by acts of God, strikes, fire, flood, weather, war, acts of picketing, rebellion, insurrection or terrorism, or any other cause beyond Amtrak's control.

### **Section 13. Dispute Resolution Provisions**

(a) Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, may be settled by arbitration upon written agreement of the parties. If the parties agree in writing, such arbitration shall be administered by the American Arbitration Association under its Commercial Arbitration Rules, and a judgment on the award rendered by the arbitrators may be entered in any United States District Court located in Indiana or Illinois. If the parties do not agree in writing to submit to arbitration, they may instead participate in mediation or another dispute resolution procedure to resolve any controversy or claim arising out of or relating to this Agreement, and either party may resort to litigation only if it becomes apparent to that party that the parties are unable to otherwise resolve the dispute.

(b) In the event of a dispute, Amtrak shall proceed diligently with the operation of the Service, pending final resolution of any request for relief, claim, appeal, or action arising under this Agreement, unless FRA or Amtrak determines continued operation is unsafe or INDOT determines continuation of operations is not in the best interests of the State.

### **Section 14. Notices**

Any notices required by this Agreement or related to the Service provided for under this Agreement by either party shall be in writing and shall be directed to the officials identified herein by personal delivery or by deposit in the United States mail, first class mail, postage prepaid. The representatives and/or addresses set forth herein may be changed at any time by either party hereto by notice in writing to the other.

For Amtrak: Senior Director – State Government Contracts  
National Railroad Passenger Corporation  
Chicago Union Station  
500 West Jackson Boulevard, 2<sup>nd</sup> Floor  
Chicago, IL 60661

With a copy to:

General Counsel  
National Railroad Passenger Corporation  
60 Massachusetts Ave., NE  
Washington, DC 20002

For the State: Indiana Department of Transportation  
Attn: Deputy Commissioner for Engineering and Asset Management  
100 N. Senate Avenue, Room N758  
Indianapolis, IN 46204-2216

With a copy to:

Chief Legal Counsel/Deputy Commissioner  
Indiana Department of Transportation  
100 N. Senate Avenue, Room N758  
Indianapolis, IN 46204-2216

### **Section 15. Agreement Content**

This Agreement constitutes the entire agreement between the parties with respect to its content. There are no agreements, whether express or implied, except as may be expressly set forth herein. All prior agreements and understandings between them with respect to such content on and after the effective date of this Agreement or any renewal thereof are subsumed within this Agreement and any renewal thereof. No change or modification in or to this Agreement shall be effective unless in writing, dated and executed by duly authorized representatives of the parties.

### **Section 16. Construction**

The Section headings used in this Agreement are for convenience only and shall not affect the construction of any of the terms hereof. This Agreement shall be governed by the laws of the State of Indiana, except as may otherwise be required by federal law.

## **Section 17. Confidentiality**

(a) The State desires that Amtrak provide to the State certain commercial and financial information related to the Service that Amtrak deems proprietary and confidential. To the extent permitted by applicable law, the State agrees to keep such information confidential provided Amtrak designates such information as “confidential” or “trade secret” at the time of its initial disclosure to the State, to maintain commercially reasonable security measures to protect such information from disclosure, and to immediately notify Amtrak in writing of any known or suspected disclosure, access or use of such information that is not authorized by Amtrak. Further, the State agrees, unless required by applicable law, that its employees will not, either during or after the term of this Agreement, publish or disclose to any third party or the public any confidential or proprietary information that is provided under this Agreement without Amtrak prior written approval. This Section shall survive the termination or expiration of this Agreement.

(b) Notwithstanding any other provision of this Agreement, if any information that is to be provided to, or is requested by, the State is deemed proprietary and confidential, and is identified as “confidential” or “trade secret” by Amtrak and would be exempt from disclosure under applicable law, and if the State cannot give assurance that such information can and will be kept confidential and not be disclosed to any third party or to the public without the prior written authorization of Amtrak, Amtrak may decline to provide such information to the State, but will allow the State to review such information at Amtrak’s office located at 500 West Jackson Boulevard, 2<sup>nd</sup> Floor, Chicago, IL 60661.

## **Section 18. Title VI Assurances; Non-Discrimination**

(a) This Agreement is governed by applicable provisions of the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the Civil Rights Act of 1964 as amended, the Age Discrimination in Employment Act, and the Americans with Disabilities Act. Breach of this covenant may be regarded as a material breach of this Agreement, but nothing in this covenant shall be construed to imply or establish an employment relationship between the State and any applicant or employee of Amtrak or its contractor, if any.

Under IC 22-9-1-10 Amtrak covenants that it shall not discriminate against any employee or applicant for employment relating to this Agreement with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee’s or applicant’s race, color, national origin, religion, sex, sexual orientation, gender identity, age, disability, ancestry, or status as a veteran.

(b) Amtrak understands that INDOT is a recipient of federal funds. Pursuant to that understanding, Amtrak agrees that if Amtrak employs fifty (50) or more employees and does at least \$50,000.00 worth of business with the State and is not exempt, Amtrak will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. Amtrak shall comply with Section 202 of Executive Order 11246, as amended, and 41 CFR 60-741, as amended, which are

incorporated herein by specific reference. Breach of this covenant may be regarded as a material breach of this Contract.

(c) During the term of this Agreement, during which term INDOT is not using any funds from the Federal Highway Administration for any part of the operation of the Hoosier State Service, Amtrak shall comply with its obligations under the grant agreements current as of the date of this Agreement (FR-AMT-0004-15-01-00 and FR-AMT-0005-15-01-00) with the Federal Railroad Administration. If INDOT elects in future to apply any federal funds to the operation of the Hoosier State Service, Amtrak and INDOT shall cooperate to identify which of the following requirements that may apply during the term of any succeeding agreement are consistent with or the same as Amtrak's obligations under its FRA grant agreements:

1. Compliance with Regulations: Amtrak shall comply with the applicable provisions of the regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, as they may be amended from time to time and to the extent they apply to Amtrak under its annual operating and capital grants from the Federal Railroad Administration (hereinafter referred to in this Section 18 as "the Regulations"), which are herein incorporated by reference and made a part of this Agreement.
2. Nondiscrimination: Amtrak, with regard to the work performed by it during this Agreement, shall not discriminate on the grounds or race, color, sex, sexual orientation, gender identity, religion or national origin in the selection and retention of Contractors. Amtrak shall not participate either directly or indirectly in the discrimination prohibited by the Regulations, including employment practices.
3. Solicitations for Contractors, Including Procurements of Materials and Equipment: In all solicitations either by letters of interest or negotiation made by Amtrak for work to be performed under a subcontract, each potential contractor shall be notified by Amtrak of Amtrak's obligations under the Regulations relative to nondiscrimination on the grounds of race, color, sex, sexual orientation, gender identity, religion or national origin.
4. Reserved.
5. Sanctions for Noncompliance: In the event of Amtrak's noncompliance with the nondiscrimination provisions of this Agreement, INDOT may impose the following sanctions: (a) withholding of payments to Amtrak under this Agreement until Amtrak complies, and/or (b) cancellation, termination or suspension of this Agreement, in whole or in part.
6. Incorporation of Provisions: Amtrak shall include provisions consistent with subparagraphs 18.c.1 through 18.c.5 if required by its annual operating and capital grants from the Federal Railroad Administration in every subcontract, unless exempt by the Regulations, or directives issued pursuant thereto.

(d) Amtrak shall take such action with respect to any subcontract as its annual operating and capital grants from the Federal Railroad Administration may direct as a means of enforcing such provisions including sanctions for non-compliance, provided however, that, in the event Amtrak becomes involved in, or is threatened with, litigation with a contract as a result of such direction, Amtrak may request the State to enter into such litigation to protect the interests of INDOT, and in addition, Amtrak may request the United States to enter into such litigation to protect the interests of the United States.

### **Section 19. Compliance with Collective Bargaining Agreements**

The State acknowledges the existence of collective bargaining agreements between Amtrak and certain labor organizations representing certain of Amtrak's employees and agrees that Amtrak will provide the Service in a manner consistent with its obligations and rights under such agreements, as they may exist from time to time.

### **Section 20. Funding Cancellation Clause**

When the Director of the State Office of Management and Budget makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Agreement, this Agreement shall be automatically canceled. Amtrak may thereupon terminate the Hoosier State Service. A determination by the Director of the State Office of Management and Budget that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

### **Section 21. Subcontracting**

Subcontracting, assignment or transfer of all or part of the interests of the State concerning any of the obligations covered by this Agreement is prohibited without prior written consent of the State.

### **Section 22. Drug-Free Workplace Certification.**

As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, Amtrak hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. Amtrak will give written notice to the State within ten (10) days after receiving actual notice that Amtrak, or an employee of Amtrak in the State of Indiana, has been convicted of a criminal drug violation occurring in the workplace. Violation of this provision may result in sanctions including, but not limited to, suspension of contract payments, termination of this Agreement and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraph, if the total amount set forth in this Agreement is in excess of \$25,000.00, Amtrak certifies and agrees that it will provide a drug-free workplace by:

Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in Amtrak's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;

(a) Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) Amtrak's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;

(b) Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify Amtrak of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

(c) Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;

(d) Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and

(e) Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

### **Section 23. Employment Eligibility Verification.**

As required by IC §22-5-1.7, Amtrak swears or affirms under the penalties of perjury that Amtrak does not knowingly employ an unauthorized alien. Amtrak further agrees that:

(a) Amtrak shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC §22-5-1.7-3. Amtrak is not required to participate should the E-Verify program cease to exist. Additionally, Amtrak is not required to participate if Amtrak is self-employed and does not employ any employees.

(b) Amtrak shall not knowingly employ or contract with an unauthorized alien. Amtrak shall not retain an employee or contract with a person that Amtrak subsequently learns is an unauthorized alien.

(c) Amtrak shall require his/her/its subcontractors, who perform work under this Agreement, to certify to Amtrak that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. Amtrak agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

1. For the purposes of this Agreement, the host railroads (that is, those rail carriers on whose tracks the Hoosier State Service operates) are providing an interest in real estate that will permit the Hoosier State Service trains to operate, including the maintenance of those tracks and the control of train movements on them for the benefit of those rail carriers' own operation as well as those of the Hoosier State Service and are not providing services to INDOT or to Amtrak as a subcontractor as that term is used herein.
2. For the purposes of this Agreement, the term "subcontractor" refers to those persons or entities that are providing services to Amtrak exclusively for the benefit of INDOT and the Hoosier State Service.

The State may terminate for default if Amtrak fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.

#### **Section 24. Default.**

(a) The following shall constitute an event of default under this Agreement by INDOT (each, an "INDOT Default"):

1. INDOT shall fail to pay any sum of money due to Amtrak as and when due, except to the extent such amount is the result of a good faith dispute;
2. INDOT shall fail to comply with any covenant or term described in this Agreement;
3. A State Contractor shall fail to comply with any requirements set forth in this Agreement for a State Contractor, including, but not limited to, any violation or failure to conform with any applicable Regulatory Requirement that a State Contractor fails to correct in accordance with the requirements of applicable law or regulation;
4. The Equipment Provider shall fail to comply with any requirements set forth in the Agreement for TCD System/LDVR between Amtrak and Iowa Pacific

Holdings, LLC dated June 26, 2015 and/or the Authorized Use Agreement between Amtrak and Iowa Pacific Holdings, LLC dated June 26, 2015; or

5. To the extent any such proceedings impose material impediments to the Service and Mechanical Contractor's performance of its duties in connection with the Service, State Contractor (i) admits, in writing, that it is unable to pay its debts as such become due; (ii) makes an assignment for the benefit of its creditors; (iii) files a voluntary petition under the United States Bankruptcy Code (title 11, United States Code) or, if such a petition is filed against it and an order for relief is entered, or if a State Contractor files any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future United States bankruptcy code or any other present or future applicable law, regulation, decision or ordinance, or State Contractor shall seek or consent to the appointment of any trustee, receiver, custodian, assignee, sequestrator, conservator, liquidator, or similar official of Amtrak, of all or any part of its properties or of its rights under this Agreement or any interest therein, or (iv) takes any action in furtherance of any action described in this paragraph.

(b) The following shall constitute an event of default under this Agreement by Amtrak (each, an "Amtrak Default"):

1. Amtrak shall fail to pay any sum of money due to INDOT as and when due, except to the extent such amount is the result of a good faith dispute;
2. Amtrak shall fail to comply with any covenant or term described in this Agreement;
3. To the extent any such proceedings impose material impediments to the Service and Amtrak's performance of its duties in connection with the Service, Amtrak (i) admits, in writing, that it is unable to pay its debts as such become due; (ii) makes an assignment for the benefit of its creditors; (iii) files a voluntary petition under the United States Bankruptcy Code (title 11, United States Code) or, if such a petition is filed against it and an order for relief is entered, or if Amtrak files any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future United States bankruptcy code or any other present or future applicable law, regulation, decision or ordinance or Amtrak shall seek or consent to the appointment of any trustee, receiver, custodian, assignee, sequestrator, conservator, liquidator, or similar official of Amtrak, of all or any part of its properties necessary in the performance of Service hereunder or of its rights under this Agreement or any interest therein, or (iv) takes any action in furtherance of any action described in this paragraph; or

4. Amtrak shall violate or fail to conform with any applicable Regulatory Requirement that Amtrak fails to correct in accordance with the requirements of applicable law or regulation.

(c) Prior to the exercise of any remedy by any Party, the non-defaulting Party shall provide notice of the occurrence of the INDOT Default or Amtrak Default, as the case may be, which notice shall specify the nature of the INDOT Default or Amtrak Default. If the INDOT Default or Amtrak Default can be cured solely with the payment of money to the non-defaulting Party (a "Monetary Default"), then INDOT shall have forty-five (45) days to cure the Monetary Default and Amtrak shall have forty-five (45) days to cure the Monetary Default. If the INDOT Default or Amtrak Default cannot be cured solely with the payment of money to the non-defaulting Party (a "Non-Monetary Default") then INDOT shall have thirty (30) days to cure the Non-Monetary Default and Amtrak shall have thirty (30) days to cure the Non-Monetary Default; provided, however, that if such Non-Monetary Default cannot be fully cured within thirty (30) days, upon advance written agreement of the parties, the thirty (30) day cure period may be extended but the defaulting party shall cure such Non-Monetary Default within agreed upon extended cure period. If the INDOT Default or Amtrak Default, as the case may be, is not timely cured, the non-defaulting Party may exercise the remedies provided in this Section 24.

(d) INDOT's Remedies. Upon the occurrence of an Amtrak Default, INDOT shall have the following rights and remedies:

1. INDOT may terminate this Agreement.
2. INDOT may recover from Amtrak any past due sums owed to INDOT by Amtrak.
3. In addition to the rights and remedies granted to INDOT pursuant to subsection (1) and (2), INDOT shall additionally have all rights and remedies available to it at law or in equity.
4. Each of INDOT's remedies shall be cumulative as to each other and not in the alternative of each other. INDOT shall not be required to elect its remedy.

(e) Amtrak's Remedies. Upon the occurrence of an INDOT Default, Amtrak shall have the following rights and remedies:

1. Amtrak may terminate this Agreement and cease provision of the Service.
2. Amtrak may recover from INDOT any past due sums owed to Amtrak by INDOT.
3. In addition to the rights and remedies granted to Amtrak pursuant to subsection (1) and (2), Amtrak shall additionally have all rights and remedies available to it at law or in equity.
4. Each of Amtrak's remedies shall be cumulative as to each other and not in the alternative of each other. Amtrak shall not be required to elect its remedy.

**Section 25. INDOT Mechanical Inspector and Contract Manager.**

INDOT shall assign one (1) individual or consultant who is knowledgeable regarding passenger train operational and mechanical issues (e.g., diesel-electric locomotives, head-end power, HVAC, braking systems, Positive Train Control). That individual (the "Mechanical Inspector") shall regularly inspect the Third Party Equipment and the Service Site and report to INDOT and Amtrak on the results of such inspections. In addition, INDOT shall assign one (1) individual to manage this Agreement (the "Contract Manager"). INDOT may change the Mechanical Inspector or the Contract Manager upon notice to Amtrak at any time and from time to time and without Amtrak's consent. The Contract Manager shall have full authority to speak on or behalf of INDOT with respect to any matter related or pertaining to this Agreement, INDOT's agreements with any State Contractors, or the Service. Additionally, at the reasonable request of a State Contractor or Amtrak, or at INDOT's discretion, the Contract Manager shall serve as a conduit by which information, documents, and other materials may be transmitted between and among Amtrak and any or all State Contractors. As of the date of this Agreement, the Contract Manager is: Venetta Keefe, tel: (317) 518-7114; e-mail: [vkeefe@indot.in.gov](mailto:vkeefe@indot.in.gov).

**Non-Collusion and Acceptance**

The undersigned attests, subject to the penalties for perjury, that the undersigned is Amtrak, or that the undersigned is the properly authorized representative, agent, member or officer of Amtrak. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of Amtrak, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face hereof.

**In Witness Whereof**, Amtrak and the State have, through their duly authorized representatives, entered into this Agreement. The parties, having read and understood the foregoing terms of this Agreement, do by their respective signatures dated below agree to the terms thereof.

**NATIONAL RAILROAD PASSENGER CORPORATION**

By: \_\_\_\_\_

Joseph H. Boardman  
President and Chief Executive Officer

Date: \_\_\_\_\_

7/30/2015

Approved as to Form:

Jared I. Roberts  
Jared I. Roberts  
Amtrak Law Department

**STATE OF INDIANA**

Indiana Department of Transportation

By: Jason S. Wasson / DEPUTY COMMISSIONER (FOR)  
Brandy Hendrickson  
Commissioner

Date: 7/31/2015

**STATE OF INDIANA APPROVALS:**

**Department of Administration**

Jessica Robertson for 7/31/15  
Jessica Robertson, Commissioner Date

**State Budget Agency**

Brian E. Bailey FOR 7/31/2015  
Brian E. Bailey, Director Date

**Approved as to Form and Legality:**

Gregory F. Zoeller (FOR) 7/31/2015  
Gregory F. Zoeller  
Attorney General of Indiana

**APPENDIX I**

**Hoosier State Service  
Routes and Schedules**

**For the Twenty-Three Month Period of August 1, 2015 through June 30, 2017**

Pursuant to Section 1 of the attached Agreement and subject to compliance by the State with the provisions of Section 3 thereof, Amtrak shall provide rail passenger service over the routes set forth below in accordance with the following schedules. This service shall commence on the first day of August 2015.

<b>Train 850 Hoosier State Service Chicago, IL to Indianapolis, IN</b>		
<b>Days of Operation</b>		Effective 8/1/15 SuMoTu*WeFr
<b>Dp</b>	Chicago, IL CT	5:45 PM
<b>Dp</b>	Dyer, IN	6:55 PM
<b>Dp</b>	Rensselear, IN CT	7:46 PM
<b>Dp</b>	Lafayette, IN ET	9:57 PM
<b>Dp</b>	Crawfordsville, IN F	10:31 PM
<b>Ar</b>	Indianapolis, IN ET	11:50 PM

\*Tuesday, Hoosier State equipment deadheads on Train 50 from Chicago to Indianapolis.

<b>Train 851 Hoosier State Service Indianapolis, IN to Chicago, IL</b>		
<b>Days of Operation</b>		Effective 8/1/15 SuMo*TuWeFr
<b>Dp</b>	Indianapolis, IN ET	6:00 AM
<b>Dp</b>	Crawfordville, IN F	6:58 AM
<b>Dp</b>	Lafayette, IN ET	7:36 AM
<b>Dp</b>	Rensselear, IN CT	7:40 AM
<b>Dp</b>	Dyer, IN	8:29 AM
<b>Ar</b>	Chicago, IL CT	10:05 AM

\*Monday, Hoosier State Equipment deadheads on Train 51 from Indianapolis-Chicago.

**APPENDIX II**

**Train Consists**

**Hoosier State Service**

**Typical Train Consists**

**(Consist is determined on a daily basis by INDOT's Mechanical Contractor)**

<b>Description</b>	<b>No. of Units</b>
Locomotive	2
Coach	2
Food Car	1

**ROLLING STOCK INSPECTION/APPROVAL PROCESS**

The approved Third Party Equipment fleet consists of the following units:

**SLRG 4137 – Diesel Locomotive -**

**SLRG 554 – Dome Car - Summit View**

**MRLX 800748 – Coach Car - Du Quoin**

**MRLX 800880 – Coach Car – Dyersburg**

**SLRG 4135 series – Diesel Locomotive**

In the event the State desires to introduce additional units of Third Party Equipment not identified above, any such unit additional equipment shall not be operated in Hoosier State Service until it has been inspected and approved for use in regularly scheduled intercity passenger rail service by FRA, FDA and Amtrak.

**APPENDIX III**

**U.S. DOT ADA GUIDANCE DOCUMENT**



U.S. Department of  
Transportation  
Office of the Secretary  
of Transportation

GENERAL COUNSEL

1200 New Jersey Avenue, SE  
Washington, DC 20590

49 CFR §§ 27.7(a), 37.5(a), 49 CFR Part 38

December 4, 2012

**QUESTION: WHAT ACCESSIBILITY STANDARDS APPLY TO PASSENGER RAIL CARS WHEN SPECIFIC DESIGN STANDARDS ARE NOT PROVIDED IN 49 CFR PART 38?**

**ANSWER:**

- This guidance applies to all new and remanufactured passenger rail cars, including rail cars that are in the design phase on the date this guidance is issued. Rail cars that are in production but not yet in revenue service on the date this guidance is issued and that may have design elements affected by this guidance should be reviewed by the procuring passenger railroad for compliance with this guidance. The Federal Railroad Administration (FRA) and/or Federal Transit Administration (FTA), as applicable, should be consulted where uncertainty exists as to when or how to apply this guidance.
- It has been brought to the Department's attention that some confusion exists in the industry regarding what standards should be applied where no specific minimum standard exists in 49 CFR Part 38 for certain rail car accessibility features. The Department is issuing this guidance to remedy this confusion.
- Part 38 provides "minimum guidelines and requirements for accessibility standards in part 37 . . . for transportation vehicles required to be accessible by the Americans With Disabilities Act (ADA) of 1990 (42 U.S.C. 1201 et seq.)." There are a few instances where specific design standards are not provided in Part 38. For example, design standards specific to features of food service cars, including lounge or bistro cars, and several features found in sleeping compartment cars, are not described in Part 38. Nonetheless, it is the position of the Department that when specific design standards are not provided in Part 38, it remains the responsibility of the passenger railroad to design and build rail car features that are usable by people with disabilities, including those who use wheelchairs.
- The Department believes that the general nondiscrimination principles found in Section 37.5(a) and Section 27.7(a) apply in this instance. For example, 49 CFR 27.7(a) provides that "No qualified . . . person [with a disability] shall, solely by reason of his disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance administered by the Department of Transportation."

- It is inconsistent with these general nondiscrimination obligations to ignore the impact of the design and construction of rail car features on passengers with disabilities, simply because there is no specific minimum standard found in Part 38, especially when the result is that passengers with disabilities do not have access to and/or cannot use that feature.
- Providing universal access to elements of railcars, such as self-service water fountains, ice machines, and condiment dispensers; countertops and dining elements in lounge and bistro cars; and sleeper beds and eating surfaces provided in sleeper cars affords "a qualified . . . person [with a disability] an opportunity to participate in or benefit from the aid, benefit, or service that is . . . substantially equal to that afforded persons who are not [disabled]." 49 CFR 27.7(b)(ii). Rail cars should be designed and constructed to make these services usable by passengers with disabilities.
- In a situation in which no specific standard is found in Part 38, passenger railroads should meet their nondiscrimination obligation by designing and building rail cars compliant with the standards available for comparable elements in buildings and facilities. For example, the current U.S. Access Board Accessibility Guidelines (ADAAG) standard for countertop dimensions and other dining service elements, including basic guidance on reach ranges and knee and toe clearances, are contained in Chapters 3 and 9 of ADAAG, which are available at: <http://www.access-board.gov/ada-aba/ada-standards-dot.cfm#>. The Department adopted these standards in 2006 to apply to transportation facilities. See 49 CFR 37, Appendix A.
- In designing and building rail cars, passenger railroads should refer to the ADAAG standards for design features not contained in Part 38, except where doing so is infeasible because of particular geometric constraints of the rail car design, rail car safety, or operational considerations unique to rail transportation. In situations involving concerns about infeasibility, the passenger railroad should provide its rationale for noncompliance with these standards to the FRA and/or FTA, as applicable.
- Nothing in this guidance requires passenger railroads to make accessible those features of railcars that are intended only to be used by employees of the passenger railroad for serving passengers. For example, a bistro car food service station that will be open and usable only when an employee of the railroad is present serving passengers from that station is not required to have accessible elements, such as an ice dispenser and soft drink fountain, if that ice dispenser and soft drink fountain are intended only to be used by the railroad's employee providing drinks to passengers. In this scenario, however, the passenger railroad would need to provide an accessible eating/drinking surface, and to the extent feasible, an accessible food service counter per ADAAG Section 904.4.

The General Counsel of the Department of Transportation has reviewed this document and approved it as consistent with the language and intent of 49 CFR Parts 27, 37, and 38.

**APPENDIX IV**

UNSCHEDULED EMERGENCY MECHANICAL REPAIR AUTHORIZATION FORM

**Purpose of this Form:** This form must be completed by Amtrak prior to performing Additional Tasks or beginning any repair work on Third Party Equipment. Unless otherwise agreed, repairs shall be limited to FRA condemnable defects or to other conditions that prevent safe movement of the Third Party Equipment to a set-out location or to the maintenance facility where such Third Part Equipment is normally maintained.

**Instructions:** Check the boxes that apply next to the repairs to be performed. Use a separate form for each piece of equipment requiring repair.

If repairs are likely to exceed the Maximum Cost listed for each task, a New Maximum Cost must be filled in and submitted to INDOT for authorization. *INDOT authorization must be received prior to beginning the repair work if a New Maximum Cost is provided.*

<u>Maximum Cost</u> <u>Repair(s) to be performed</u>	<u>New Maximum Cost</u> <u>pre-authorized by INDOT</u>	<u>(requires INDOT</u> <u>authorization)</u>
<input type="checkbox"/> Changing a wheel set on a coach	\$3,000	\$ _____
<input type="checkbox"/> Changing a traction motor combo (loco)	\$7,500	\$ _____
<input type="checkbox"/> Air Brake Repairs	\$4,000	\$ _____
<input type="checkbox"/> Other Repair (Describe Below)	\$1,000	\$ _____

Description of Other Repair Work:

\_\_\_\_\_

Unit # \_\_\_\_\_

Comments:

\_\_\_\_\_

Name of Amtrak employee completing form:

Date: \_\_\_\_\_

-----

Authorization (if required): INDOT

Signature \_\_\_\_\_ Date \_\_\_\_\_

(\*If authorization is provided by e-mail instead of signature, check this box  and attach e-mail to this form.)

Actual Cost: \$\_\_\_\_\_ (to be completed by Amtrak Finance following completion of work and submitted with invoice).

**APPENDIX V**

**REGULATORY COMPLIANCE AND DELIVERABLES MATRIX**

Deliverables								
Railroad/Transit Authority:								
Contract Operator(s):								
Program Requirements						Time Periods		
Discipline	Item	Part	Summary (Note: Please refer to 49CFR for more info...)	Deliverable Type	Approval Required (y/n)	Date Required		Comments
Civil Rights	1	28.103	ADA Intercity Railroad Requirements - General	Inspection	No	30 Days Notice Prior to Sample Car Inspection Request	Iowa P	
Civil Rights	2	28.104	ADA Intercity Railroad Requirements - Doorways	Inspection	No	30 Days Notice Prior to Sample Car Inspection Request	Iowa P	
Civil Rights	3	28.105	ADA Intercity Railroad Requirements - Interior circulation, handrails and stations.	Inspection	No	30 Days Notice Prior to Sample Car Inspection Request	Iowa P	
Civil Rights	4	28.107	ADA Intercity Railroad Requirements - Floors, steps and thresholds.	Inspection	No	30 Days Notice Prior to Sample Car Inspection Request	Iowa P	
Civil Rights	5	28.109	ADA Intercity Railroad Requirements - Lighting	Inspection	No	30 Days Notice Prior to Sample Car Inspection Request	Iowa P	
Civil Rights	6	28.121	ADA Intercity Railroad Requirements - Public information system.	Inspection	No	30 Days Notice Prior to Sample Car Inspection Request	Iowa P	
Civil Rights	7	28.123	ADA Intercity Railroad Requirements - Restrooms	Inspection	No	30 Days Notice Prior to Sample Car Inspection Request	Iowa P	
Civil Rights	8	28.125	ADA Intercity Railroad Requirements - Mobility aid accessibility	Inspection	No	30 Days Notice Prior to Sample Car Inspection Request	Iowa P	
OP	9	40.25	Background checks completed on any covered employee before entering covered service	In place / On hand	No	Must be in place at start-up	Amtrak & Iowa P	PH once PTC is in effect

Discipline	Item	Part	Summary (Note: Please refer to 49CFR for citation refs...)	Deliverable Type	Approval Required (Y/N)	Date Required		Comments
Track	10	211.7	Designate qualified persons to inspect track for defects and designate qualified persons to supervise restorations & renewals of track under traffic conditions.	In place / On hand	No	Must be in place at start-up	lowa for yard tracks	
Track	11	214.207	Submission to FRA of on-track safety program (RWP) program for formal review & approval	Submittal	Yes	At least 30 days prior to start-up	Could be lowaP for yard tracks	
Track	12	214.311	Written procedure to achieve prompt and equitable resolution of good faith RWP challenges made	In place / On hand	No	Must be in place at start-up	lowa P	
OP	13	217.7(a)	File with the FRA Administrator one copy of its code of operating rules, timetables, and timetable special instructions before it commences operations. Further requirements are detailed in Parts 217 & 218	Submittal	No	Prior to start-up	Amtrak & lowa P	
OP	14	217.7(c)	Keep one copy of its code of operating rules, timetables, and timetable special instructions and any amendments at System Headquarters	In place / On hand	No	Must be in place at start-up	Amtrak & lowa P	
OP	15	217.9(c)	Written program of operational tests and inspection	In place / On hand	No	At least 30 days prior to start-up	Amtrak & lowa P	
OP	16	217.11 218.15	Program of instruction/training/examination on Operating Rules. Instruction to begin on the date of operations	In place / On hand	No	At least 30 days prior to start-up	Amtrak & lowa P	
OP	17	218.37(a)	Each railroad must have in effect an operating rule for flag protection...	In place / On hand	No	Must be in place at start-up	Amtrak	
OP	18	218.37(b)(1)	Adopt & implement written good faith challenge procedures & instruction. Instruction to begin on the date of operations	In place / On hand	No	Must be in place at start-up	Amtrak & lowa P	
OP	19	219.11(a)	Each supervisor responsible for covered employees (except a working supervisor within the definition of co-worker under this part) must be trained in the signs and symptoms of alcohol and drug influence, intoxication and misuse consistent with a program of instruction to be made available for inspection upon demand by FRA	In place / On hand	No	Must be in place at start-up	Amtrak & lowa P	once PTO is effect
OP	20	219.23(d)	Each railroad must provide educational materials that explain the requirements of this part, and the railroad's policies and procedures with respect to meeting those requirements.	In place / On hand	No	Must be in place at start-up	Amtrak	

Discipline	Item	Part	Summary (Note: Please refer to 49CFR for entire rule...)	Deliverable Type	Approval Required (Y/N)	Date Required		Comments
QP	21	219.205(c)(2)	Post-accident testing kits	In place / On hand	No	Must be in place prior to commencement of	Amtrak	
QP	22	219 - Subpart E	Compliant policies in place for the identification of troubled employees.	In place / On hand	No	Must be in place prior to commencement of testing	Amtrak	
QP	23	219.401(b)	Railroad to adopt/publish/implement policies relating to the prevention of the use of alcohol and drugs & make available for inspection by FRA	In place / On hand	No	Must be in place at start-up	Amtrak	
QP	24	219 - Subpart E	Pre-employment negatives for any covered employee before they are allowed to perform covered service	In place / On hand	No	Must be in place before first performance of safety-sensitive functions	Amtrak	
QP	25	219.601(a)	Random plan approved by FRA as well as the implementation tools operational so employees know they are subject to selection and testing	Submittal	Yes	30 Days Prior to Start-up	Amtrak	
QP	26	219.607(a)	Must submit to FRA for approval a Random Alcohol Testing Program	Submittal	Yes	At least 30 days prior to start-up	Amtrak	
QP	27	219.607(c)(1)	The railroad must publish to each of its covered employees, individually, a written notice that the employee will be subject to random alcohol testing under this part.	In place / On hand	No	45 Days Prior to commencement of testing program	Amtrak	
QP	28	219.607(c)(2)	A railroad commencing operations must submit a random testing program	Submittal	Yes	60 days after program	Amtrak	
QP	29	219	Support systems hired, qualified and prepared to begin operations on day one to cover random selections, collections (breath and urine), SAP, MRO, and laboratory	In place / On hand	No	Must be in place at start-up	Amtrak	
QP	30	220.21(b)	Each railroad shall retain one copy of its current operating rules with respect to radio communications	In place / On hand	No	At least 30 days prior to start-up	Amtrak & Iowa P	
QP	31	220.23	Railroad to designate where radio base stations are installed, where wayside stations may be contacted, and the appropriate radio channels used by these stations in connection with railroad operations by publishing them in a timetable or special instruction	In place / On hand	No	Must be in place at start-up	Amtrak & Iowa P	
QP	32	220.202	Each railroad shall adopt operating rules that implement the requirements of Subpart C - Electronic Devices	In place / On hand	No	Must be in place prior to pre-revenue testing	Amtrak & Iowa P	

Discipline	Item	Part	Summary (Note: Please refer to AOCFR for entire rule...)	Deliverable Type	Approval Required (Y/N)	Date Required		Comments
QP	32	220.313(A)	Each railroad shall maintain a written program of instruction and examination implementing the requirements of Subpart C - Electronic Devices.	In place / On hand	No	Must be in place at start-up.	Amtrak & Iowa P	
QP	34	220.315(A)	The railroad's program of operational tests and inspections shall specifically include a minimum number of tests for electronic devices...	In place / On hand	No	Must be in place at start-up.	Amtrak & Iowa P	
QP	35	225.1	Accident/incident reporting requirements (requirements detailed throughout Part 225)	Submittal	No	Within 30 days after the month in which the accident/incident occurred.	Amtrak & Iowa P	Staff will meet monthly to ensure incidents not reported later.
QP	36	225.251(A)	Each railroad shall maintain either the Railroad Employee Injury and/or Illness Record (Form FRA F 6180.98) or an alternative railroad-designed record as described in paragraph (b) of this section of all reportable and accountable injuries and illnesses of its employees.	In place / On hand	No	Varies	Amtrak & Iowa P	
QP	37	225.250.1	Railroad to develop a form for listing all injuries and occupational illnesses monthly...	In place / On hand	No	Within 30 days after the month in which the accident/incident occurred.	Amtrak & Iowa P	
QP	38	225.31	Adopt & comply with a written Internal Control Plan maintained at office of railroad reporting officer.	In place / On hand	No	Must be in place at start-up.	Amtrak & Iowa P	
IH	39	227.103(A)	Develop & implement a noise monitoring program.	In place / On hand	No	Must be in place at start-up.	Iowa P	
IH	40	227.107(A)	The railroad shall administer a continuing, effective hearing conservation program...	In place / On hand	No	Must be in place at start-up.	Iowa P	
IH	41	227.109	Establish & maintain an audiometric testing program.	In place / On hand	No	Must be in place at start-up.	Iowa P	
IH	42	227.119	Institute an occupational noise and hearing conservation training program for all employees included in the hearing conservation program.	In place / On hand	No	Must be in place at start-up.	Iowa P	
QP	43	228.17	Each railroad, or a contractor or a subcontractor of a railroad, shall keep a record, either manually or electronically, concerning the hours of duty of each employee.	In place / On hand	No	Must be in place at start of testing.	Amtrak	

Discipline	Item	Part	Summary (Note: Please refer to 49 CFR for entire rule.)	Deliverable Type	Approval Required (y/n)	Date Required		Comments
QP	44	228.17	Each carrier shall keep, for each dispatching district, a record of train movements made under the direction and control of a dispatcher who uses telegraph, telephone, radio, or any other electrical or mechanical device to dispatch, report, transmit, receive, or deliver orders pertaining to train movements.	In place / On hand	No	Must be in place at start of testing	Amtrak	
QP	45	228.13	Each railroad, or a contractor or a subcontractor of a railroad, shall report to the Associate Administrator for Railroad Safety/Chief Safety Officer, Federal Railroad Administration, Washington, DC 20590, each instance of excess service listed in paragraphs (b) through (e) of this section, in the manner provided by paragraph (f) of this section.	Submittal	No	Within 30 days after the calendar month in which the instance occurs	Amtrak	
QP	46	228.203	Electronic record keeping system requirements	If Applicable	If Applicable	Varies	Amtrak	
QP	47	228.207	A railroad, or a contractor or subcontractor to a railroad, shall provide its train employees, signal employees, and dispatching service employees and its supervisors of these employees with initial training and refresher training.	If Applicable	If Applicable	Varies	Amtrak	
QP	48	228.407(b)	Submissions of certain work schedules and any fatigue mitigation plans and determinations of operational necessity or declarations;	Submittal	Yes	Must be in place at start-up	Amtrak	
QP	49	228.407(c)(1)	If a railroad subject to this subpart wishes to use a model of human performance and fatigue, not previously approved by FRA, for the purpose of making part or all of the analysis required by paragraph (a) or (d) of this section, the railroad shall submit the model and evidence in support of its scientific validation, for the approval of the Associate Administrator.	If Applicable	If Applicable	Varies	Amtrak	
QP	50	228.410(e)	A railroad shall maintain a record of each employee provided training in compliance with this section and shall retain these records for three years.	In place / On hand	No	Must be in place at start-up	Amtrak	
MP&E	51	228.20	The carrier shall provide FRA with all electronic records maintained for compliance with this part for any specific locomotives at any mechanical department terminal upon request.	In place / On hand	No	Prior to pre-revenue testing	low P	
MP&E	52	228.291(b)(1)	Each locomotive or MU locomotive in use shall be inspected at least once during each calendar day, according to 228.2(a) or (b). The report shall be filed and retained for at least 92 days in the office of the carrier at the terminal at which the locomotive is cared for. A record shall be maintained on each locomotive showing the place, date and time of the previous inspection.	In place / On hand	No	Prior to pre-revenue testing	low P	

Discipline	Item	Part	Summary (Basic Plans refer to ASCFR for more info.)	Deliverable Type	Approval Required (Y/N)	Date Required		Comments
MP&E	53	223.21(a)	Each carrier shall designate qualified persons to make the inspections.	In place / On hand	No	Prior to pre-revenue testing	Iowa P	
MP&E	54	223.23(a)	Each new locomotive shall receive an initial periodic inspection before it is used.	In place / On hand	No	Prior to use	Iowa P	
MP&E	55	223.23(i)	The railroad shall provide employees performing inspections under this section with a document containing all tests conducted since the last periodic inspection, and procedures needed to perform the inspection.	In place / On hand	No	Prior to pre-revenue testing	Iowa P	
MP&E	56	223.25(a)	All mechanical gauges used by the engineer to aid in the control or braking of the train or locomotive, except load meters used in conjunction with an auxiliary brake system, shall be tested by comparison with a dead-weight tester or a test gauge designed for this purpose.	In place / On hand	No	Prior to use	Iowa P	
MP&E	57	223.25(a)	All cable connections between locomotives and jumpers that are designed to carry 500 volts or more shall be thoroughly cleaned, inspected, and tested for continuity.	In place / On hand	No	Prior to pre-revenue testing	Iowa P	
MP&E	58	223.25(d)(ii)	A written or electronic copy of the instructions in use for event recorder maintenance and inspection shall be kept at the point where the work is performed and a hard-copy version, written in the English language, shall be made available upon request to FRA.	In place / On hand	No	Prior to pre-revenue testing	Iowa P	
MP&E	59	223.25(f)	The shifter shall be tested, and all automatic timing resets shall function as intended.	In place / On hand	No	Prior to pre-revenue testing	Iowa P	
MP&E	60	223.25(g)	Records of the air brake system maintenance and testing required by this section shall be generated and maintained.	In place / On hand	No	Prior to pre-revenue testing	Iowa P	
MP&E	61	223.3	Each main reservoir shall be tested as required and recorded appropriately on Form FRA F 6189-43A.	In place / On hand	No	Prior to use	Iowa P	

Discipline	Item	Part	Summary (Note: Please refer to FICFR for entire rule.)	Deliverable Type	Approval Required (y/n)	Date Required		Comments
MP&E	62	229.118(f)	Containers shall be provided for carrying fuses and torpedoes. A single container may be used if it has a partition to separate fuses from torpedoes. Torpedoes shall be kept in a closed metal container.	If Applicable	If Applicable	Must be in place at start-up	Iowa P	
MP&E	63	229.119(f)	Each locomotive or remanufactured locomotive ordered on or after June 8, 2012, or placed in service for the first time on or after December 10, 2012, shall be equipped with a securement device on each exterior locomotive cab door that is capable of securing the door from inside of the cab.	If Applicable	If Applicable	Must be in place at start-up	Iowa P	
MP&E	64	229.120(h)(1)	The railroad shall establish an internal, auditable, monitorable system that contains records pursuant to the Locomotive Cab Noise Requirements of 229.121.	In place / On hand	No	Must be in place at start-up	Iowa P	
MP&E	65	229.123(b)(1)(i)	Written reports of locomotive horn testing required by this part shall be made and shall reflect horn type; the date, place, and manner of testing; and sound level measurements. These reports, which shall be signed by the person who performs the test, shall be retained by the railroad, at a location of its choice, until a subsequent locomotive horn test is completed and shall be made available upon request, to FRA as provided by 49 U.S.C. 20107.	In place / On hand	No	Must be in place at start-up	Iowa P	
MP&E	66	229.213	Locomotive manufacturing information.	In place / On hand	No	Must be in place at start-up	Iowa P	
MP&E	67	229.307	A railroad shall develop a Safety Analysis (SA) for each product subject to this subpart prior to the initial use of such product on their railroad.	In place / On hand	No	Must be in place at start-up	Iowa P	
MP&E	68	229.311	Prior to the initial planned use of a product subject to this subpart, a railroad shall inform the Associate Administrator for Safety/Chief Safety Officer, FRA, 1200 New Jersey Avenue SE, Mail Stop 25, Washington, DC 20590 of the intent to place this product in service. The notification shall provide a description of the product, and identify the location where the complete SA documentation described in §229.307, the testing records contained in §229.313, and the training and qualification program described in §229.315 is maintained.	Submittal	No	60 days prior to use	Iowa P	

Discipline	Item	Part	Summary (Note: Please refer to 49CFR for codes ref. 1)	Deliverable Type	Approval Required (y/n)	Gate Required		Comments
MP&E	69	228.31	Results of product testing conducted by a railroad as required by this subpart shall be recorded on preprinted forms provided by the railroad, or stored electronically. Electronic recordkeeping or automated tracking systems, subject to the provisions contained in paragraph (e) of this section, may be utilized to store and maintain any testing or training record required by this subpart. Results of product testing conducted by a vendor or private equipment owner in support of a SA shall be provided to the railroad as part of the SA.	In place / On hand	No	Must be in place at start-up	Iowa P	
MP&E	70	228.35	The railroad shall maintain all documents pertaining to the installation, maintenance, repair, modification, inspection, and testing of a product subject to this part in one Operations and Maintenance Manual (OMM).	In place / On hand	No	Must be in place at start-up	Iowa P	
MP&E	71	231.12	Passenger Car Safety Appliances (wide vestibules)	Inspection	optional	30 Days Notice Prior to Sample Car Inspection Request	Iowa P	
MP&E	72	231.15 231.17	Locomotive Safety Appliances	Inspection	optional	30 Days Notice Prior to Sample Car Inspection Request	Iowa P	
STC	73	233.7	Each carrier shall report any signal failures according to Part 235 using Form FRA F6180-14 "Signal Failure Report"	In place / On hand	No	Within 15 Days of Failure	Amtrak	
STC	74	236.10J	Develop P10P & submit to FRA	If Applicable	If Applicable	Must be in place at start-up	Iowa Pacific with support of Amtrak, INDOT and FRA	
MP&E	75	238.15(a)	Railroad to have in place a reporting and tracking system for passenger equipment with a defect not in conformance with Part 238. Further requirements in Part 238	In place / On hand	No	Must be in place at start-up	Iowa P	
MP&E	76	238.103(a)	Material tests required to demonstrated compliance with 49 CFR Part 238 Appendix B.	If Applicable	If Applicable	At least 30 days prior to relevant testing.	Iowa P	
MP&E	77	238.51(b)	Fire safety analysis for procuring new passenger cars and locomotives.	In place / On hand	No	Must be in place at start-up	Iowa P	

Discipline	Item	Part	Summary (Note: Please refer to 49CFR for titles, etc.)	Deliverable Type	Approval Required (Y/N)	Date Required		Comments
MP&E	78	238.103(d)	(d) Fire safety analysis for existing passenger cars and locomotives. (1) Not later than January 10, 2001, each passenger railroad shall complete a preliminary fire safety analysis for each category of existing passenger cars and locomotives and rail service.	Submittal	No	Within 90 days	Iowa P	
MP&E	79	238.105(e)	Railroad to develop and adopt written procedures for the inspection, testing, and maintenance of all fire safety systems and fire safety equipment on the passenger equipment it operates	In place / On hand				
MP&E	80	238.105(L)	Railroad to develop and maintain a written hardware and software safety program to guide the design, development, testing, integration, and verification of software and hardware that controls or monitors equipment safety functions	In place / On hand	No	Must be in place at start-up	Iowa P	
MP&E	81	238.107(h)	Railroad to develop, and provide to FRA upon request, a detailed inspection, testing, and maintenance plan consistent with the requirements of Part 238	In place / On hand	No	Must be in place prior to start of pre-revenue testing	Iowa P	
MP&E	82	238.109(a)	Railroad to adopt a training, qualification, and designation program for employees and contractors that perform any of the inspections, tests, or maintenance required by Part 238, and train such employees and contractors in accordance with the program.	In place / On hand	No	Must be in place at start-up	Iowa P	
MP&E	83	238.111(A)	For passenger equipment that has previously been used in revenue service in the United States, each railroad to test the equipment on its system prior to placing such equipment in revenue service for the first time on its railroad to ensure the compatibility of the equipment with the railroad's operating system (including the track, and signal system). A description of such testing to be retained by the railroad and made available to FRA for inspection and copying upon request, if applicable	In place / On hand	No	Must be in place prior to start of pre-revenue testing	Iowa P	
MP&E	84	238.118(L2)	Before using passenger equipment for the first time on its system that has not been used in revenue service in the United States, each railroad to prepare a pre-revenue service acceptance testing plan for the equipment, and submit a copy of the plan to FRA at least 30 days prior to starting the equipment and include with that submission notification of the times and places of the pre-revenue service tests to permit FRA observation of such tests (if applicable)	Submittal	No	30 Days Prior to start of pre-revenue testing	Iowa P	
MP&E	85	238.112 238.113 238.114 238.115 238.121 238.122	Emergency egress/access, and rescue access systems, emergency lighting, roof access, emergency communications, markings, and signage.	Inspection	No	30 Days Notice Prior to Sample Car Inspection Request	Iowa P	

Discipline	Item	Part	Summary (Note: Please refer to 49CFR for entire rule.)	Deliverable Type	Approval Required (y/n)	Date Required		Comments
MP&E	86	238.125	Provides requirements for the marking of emergency egress and emergency access doors. Reference: APTA FRA-PS-S-002-88, Rev. 3.	Inspection	No	30 Days Notice Prior to Sample Car Inspection Request	Iowa P	
MP&E	87	238.228(a)	Welded Safety Appliances - Existing Equipment. The railroad shall submit a list to FRA that identifies each piece of equipment equipped with a welded safety appliance bracket or support...	If Applicable	No	Must be in place at start-up	Iowa P	
MP&E	88	238.228(g)	Welded Safety Appliances - Existing Equipment. Written safety appliance inspection plan	If Applicable	No	Must be in place at start-up	Iowa P	
MP&E	89	238.230(b)(2)(i)	Welded Safety Appliances - New Equipment. The railroad shall submit a list to FRA that identifies each piece of new passenger equipment equipped with a welded safety appliance...	If Applicable	No	Must be in place at start-up	Iowa P	
MP&E	90	238.230(b)(2)(j)	Welded Safety Appliances - New Equipment. Prior to placing a piece of equipment in service with a welded safety appliance bracket or support as described in this paragraph, the railroad shall submit documentation to FRA, FRA's review and approval containing the requirements of this part.	If Applicable	No	Must be in place at start-up	Iowa P	
MP&E	91	238.238(d)	Welded Safety Appliances - New Equipment. Request for special approval of alternative compliance pursuant to 238.21.	If Applicable	No	Must be in place at start-up	Iowa P	
MP&E	92	238.307(a)(2)	Petition for alternative periodic mechanical inspection intervals for specific components or equipment...	If Applicable	Yes	30 Days Prior to start of pre-revenue testing	Iowa P	
MP&E	93	238.309(a)(2)	Petition for FRA to approve alternative maintenance procedure providing equivalent safety...	If Applicable	Yes	30 Days Prior to start of pre-revenue testing	Iowa P	

Discipline	Item	Part	Summary (Note: Please refer to ASOP for exact title)	Deliverable Type	Approval Required (y/n)	Date Required		Comments
CP	94	239.10(a)(2)(i)(A), (b)	Emergency Preparedness training to be completed	In place / On hand	No	(1) Railroads with less than 150 route miles and less than 200 million passenger miles annually, not more than 90 days after commencing passenger operations, (2) Railroads with at least 150 route miles and at least 200 million passenger miles annually, not more than 180 days after commencing passenger operations, (3) Each employee shall receive initial training within 90 days after the employee's initial date of service.	Amtrak & Iowa P	
CP	95	239.10(a)(2)(b)	One pry bar and one fire extinguisher must be on board each passenger car and one flashlight must be with each crewmember	In place / On hand	No	Not more than 120 days after commencing passenger operations	Iowa P	Amtrak will supply flash lights to its train
CP	96	239.10(a)(2)(b)	Inter-city trains to have first aid kit on board each passenger car	In place / On hand	No	Not more than 120 days after commencing passenger operations	Iowa P	
CP	97	239.20	File Emergency Preparedness Plan for review and approval with FRA. The content requirement for passenger train emergency preparedness plans are found in 239.101. Additionally the FRA provides a written guide to preparing such plans.	Submittal	Yes	Formal Filing: 45 days prior to passenger operations	Amtrak & Iowa P	
CP	98	240.10(b)	Written program approved by FRA for certifying the qualifications of locomotive engineers	In place / On hand	No	Prior to start-up	Amtrak	Amtrak's submission and written program are already approved by the FRA.
CP	99	240.103(a)	Submission of written certification program to FRA	Submittal	Yes	At least 60 days prior to commencing passenger operations	Amtrak	Amtrak's submission and written program are already approved by the FRA.
CP	100	240.20(a), (a) and (b)	Railroad to designate in writing persons deemed qualified as DSLE's, Locomotive Engineers, and issue certificates	In place / On hand	No	Must be in place at start-up	Amtrak	

Discipline	Item	Part	Summary (Note: Please refer to 49CFR for entire rule...)	Deliverable Type	Approval Required (Y/N)	Date Required		Comments
OP	01	210.202(a)	Program to monitor the conduct of engineers	In place / On hand	No	At least 60 days prior to commencing passenger operations	Amtrak	
OP	02	212.103	Conductor Certification Program	Submittal	Yes	At least 90 days prior to commencing passenger	Amtrak	Amtrak's submission and written program are already approved by the FRA

**APPENDIX VI**

**Indiana Service - Route 54 - Hoosier State**

**Section 209 Services Operating Pricing**

Estimate for the Period of August 1, 2015 through June 30, 2016

NOTE: ALL AMOUNTS SHOWN ARE FOR 11 MONTHS.

BILLINGS WILL NEED TO BE ADJUSTED IF THE ACTUAL SERVICE PERIOD CHANGES.

**Section 209 Line Item**

<u>Estimated Revenue</u>	<u>Amount</u>
Ticket Revenue	\$735,167
Food & Beverage	\$0
Other Revenue	\$0
<b>Total Estimated Revenue</b>	<b>\$735,167</b>
<b>Expenses</b>	
<b>Estimated Third Party Costs</b>	
Host Railroad (Maintenance of Way & Performance Incentives)	\$246,583
Synthetic Host Railroad Charge	\$0
Fuel and Power	\$0
<b>Subtotal: Estimated Third Party Costs</b>	<b>\$246,583</b>
<b>Fixed Route Costs (Note 1)</b>	
Train & Engine Crew Labor	\$1,441,917
Car & Locomotive Maintenance and Turnaround	\$0
OBS - Crew	\$0
Commissary Provisions	\$0
Route Advertising	\$0
Sales Distribution	\$19,250
Reservations & Call Centers	\$133,833
Stations - Route	\$0
Stations - Shared	\$264,917
Commissions	\$16,500
Customer Concession	\$1,833
Connecting Motor Coach	\$0
Regional/Local Police	\$6,417
Block & Tower Operations	\$0
Terminal Yard Operations	\$8,250
Terminal Mo W	\$0
Insurance	\$66,000
<b>Subtotal: Fixed Route Costs</b>	<b>\$1,958,917</b>
<b>Additives (2)</b>	
Estimated Marketing (Note 1 - 2.8% of total revenue forecast)	\$20,585
T&E (30.4% of Train & Engine Crew Labor)	\$438,343
Mo E (27.1% of Car & Loco Maintenance/Turnaround)	\$0
OBS (10.0% of OBS - Crew and Provisions)	\$0
Police (\$0.005 per passenger mile)	\$23,288
G&A (2.0% of route costs)	\$39,178
<b>Subtotal: Additives</b>	<b>\$521,394</b>
<b>Total Estimated 209 Expenses</b>	<b>\$2,726,894</b>
<b>Additional Elements</b>	
Deadhead Fee (mechanical rider still needs to be added)	\$328,167
Mechanical rider for wheel slip monitoring during deadhead moves	\$167,787
<b>Estimated gross annual expenses including Additional Elements, with no revenue credit</b>	<b>\$3,222,847</b>
<b>Estimated state operating payment, including Additional Elements, net of revenue</b>	<b>\$2,487,680</b>

Note 1: Marketing additive based on 2.8% of total revenue forecast. Will be changed based on actual revenue.

Note 2: Only Police additive shows a pro-ration because all other additives are based on already-allocated lines above.

**APPENDIX VII**  
**Indiana Service - Route 54 - Hoosier State**  
**Section 209 Services Operating Pricing**

**Projected Payment Totals and Schedule - For the FY 2016 Period of August 1, 2015 Thru June 30, 2016**

**NOTE: ALL AMOUNTS SHOWN ARE FOR 11 MONTHS. BILLINGS WILL BE NEED TO BE ADJUSTED IF THE ACTUAL SERVICE PERIOD CHANGES.**

**Cost Category:**

**OPERATING**

Fixed Fee Operating (including estimated revenue, host RR, and marketing additive)(1) **\$2,487,680.25**

Estimated Sales Distribution Costs - AmtrakConnect WiFi Services (Not Applicable) **\$0.00**

**SUB-TOTAL: OPERATING BEFORE SUPPLEMENTAL ADVERTISING** **\$2,487,680.25**

**SUPPLEMENTAL ADVERTISING (Not Applicable)** **\$0.00**

**SUB-TOTAL: OPERATING** **\$2,487,680.25**

**EQUIPMENT CAPITAL COST (Not Applicable)** **\$0.00**

**GRAND TOTAL** **\$2,487,680.25**

**Payment Schedule:**

<u>Service Period:</u>	<u>Due Date</u>	Monthly	Monthly	Monthly	Monthly	<u>Total Payment Due</u>
		<u>Fixed Fee Operating Payment Due</u>	<u>Estimated AmtrakConnect Payment Due</u>	<u>Supplemental Advertising Payment Due</u>	<u>Equipment Capital Cost Payment Due</u>	
15-Aug	8/15/2015	\$226,152.75	\$0.00	\$0.00	\$0.00	\$226,152.75
15-Sep	9/15/2015	\$226,152.75	\$0.00	\$0.00	\$0.00	\$226,152.75
15-Oct	10/15/2015	\$226,152.75	\$0.00	\$0.00	\$0.00	\$226,152.75
15-Nov	11/15/2015	\$226,152.75	\$0.00	\$0.00	\$0.00	\$226,152.75
15-Dec	12/15/2015	\$226,152.75	\$0.00	\$0.00	\$0.00	\$226,152.75
16-Jan	1/15/2016	\$226,152.75	\$0.00	\$0.00	\$0.00	\$226,152.75
16-Feb	2/15/2016	\$226,152.75	\$0.00	\$0.00	\$0.00	\$226,152.75
16-Mar	3/15/2016	\$226,152.75	\$0.00	\$0.00	\$0.00	\$226,152.75
16-Apr	4/15/2016	\$226,152.75	\$0.00	\$0.00	\$0.00	\$226,152.75
16-May	5/15/2016	\$226,152.75	\$0.00	\$0.00	\$0.00	\$226,152.75
16-Jun	6/15/2016	\$226,152.75	\$0.00	\$0.00	\$0.00	\$226,152.75
<b>Totals</b>		<b>\$2,487,680.25</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$2,487,680.25</b>

**Footnotes:**

1) Fixed Fee Operating payable under the provisions of Section 3(a) for all non-reimbursed costs. Monthly bill includes estimates for revenue, host railroad costs, and the marketing additive, but will be reconciled with actual data.

## APPENDIX VIII

### **Amtrak Food and Beverage Standards**

#### Required:

1. FDA Food Code 2013
2. Amtrak Public Health Standards (current revision) provided to the State under separate cover
3. Amtrak / EPA Administrative Order of Consent concerning Safe Drinking Water Act provided to the State under separate cover
4. Pertinent sections of 21 CFR 1240 and 1250 provided to the State under separate cover
5. Meeting FDA review and inspection requirements leading to awarding a Certificate of Sanitary Construction for each railroad passenger car
6. FDA / Amtrak Agreement on Annual Backflow Prevention Testing provided to the State under separate cover
7. International Plumbing Code
8. Reduction of Lead in Drinking Water Act

#### Recommended:

9. ASSE standards for backflow preventers
10. USPHS / FDA Handbook on Sanitation of Railroad Passenger Cars
11. USPHS / FDA Handbook on Passenger Railroad Servicing Areas
12. ANSI / NSF standards for food service equipment or the equivalent certification under ETL, UL Sanitation, BISSC, etc.

## APPENDIX IX

### **Trash Handling**

TRASH HANDLING. The parties envision that trash will be stored on each trainset until it returns to the Layover Facility each evening. In the event that such arrangement presents unacceptable health, safety or operational difficulties, in the reasonable judgment of Amtrak, the State will institute a different procedure for removing trash is subject to Amtrak's approval, and the parties shall modify the provisions of this Appendix IX accordingly. The following standards apply:

- Any receptacles used for the storage of trash shall be of sturdy waterproof construction, have a cover, and be easily attached to the inside of the Third Party Equipment. Amtrak recommends that such receptacles have dimensions of approximately 3' deep by 5' wide by 4' high. Each receptacle shall be removed from the Third Party Equipment and washed whenever anything is spilled in or on it, and in any event not less than once per week.
- Trash will be removed from the train at the maintenance facility in Indianapolis as expeditiously as possible upon train arrival. Maximum allowable time to perform such removal – 30 minutes.
- Within 30 minutes of its removal from the train, all trash will be placed in covered dumpsters which, whenever possible, shall be at least 150 feet from the trainset, but in no instance less than 150 feet from the food service car.
- Trash removal from dumpsters should be scheduled to ensure that the dumpsters do not exceed 75% of capacity, and in any event are emptied not less than once a week.
- Sufficient rodent bait/trap stations must be placed around all trash storage areas to control/monitor rodent activity.
- All trash storage areas must be kept clean, sanitary, and free of debris and liquid runoff.

### INSPECTIONS

The success of Amtrak's Integrated Pest Control Program depends a great deal on the regular and effective use of enhanced inspection procedures to ensure that Amtrak's sanitation policies and programs are fully and consistently implemented. This includes systematic sanitation and public health pre-departure and train termination inspections, as well as inspections of all train layover and service points. These inspections serve as a measurement of both compliance with the policies and procedures as well as their ongoing suitability and effectiveness.

## APPENDIX X

### US EPA Drinking Water Standards



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3690

JUL 24 2015

REF ID: A71270

WGT-153

Mr. Don Pingel  
Senior Manager of Operating Practices  
Iowa Pacific Holdings  
1 Packer Place, Suite 112  
Janesville, WI 53545

Dear Mr. Pingel:

Thank you for contacting the U.S. Environmental Protection Agency regarding Iowa Pacific Holdings' planned rail service from Chicago, Illinois to Indianapolis, Indiana starting July 29, 2015. We appreciate your willingness to comply with EPA's safe drinking water regulations and provide safe water to the public. According to Mr. Neil Bagaus, you estimate transporting approximately 133 passengers per day along this route. According to our call on July 22, 2015, you will have food and beverage service aboard these rail cars as well as restrooms. Based on this information, you are subject to the Safe Drinking Water Act (SDWA) as a transient non-community water system (TNCWS). This category of systems includes water systems that serve an average of 25 persons per day for at least 60 days per year. Rail cars fall under a specific category of TNCWS called interstate carrier conveyances (ICCs).

EPA Region 5 and Iowa Pacific Holdings (IPH) will ultimately need to develop an Administrative Order on Consent (AOC) to outline the statutory and regulatory requirements that IPH must meet to maintain compliance under the SDWA. In the interim, we are writing this letter to inform you of our recommendations for startup of water service on your rail cars next week.

In order to protect public health, we would like IPH to perform the following maintenance procedures prior to providing water for human consumption. We recommend that you disinfect and flush (D&F) each of your water tanks in accordance with the manufacturer's operations and maintenance plan, using the appropriate disinfectant and contact time. We would like this to be done on each rail car prior to providing water for human consumption on July 29<sup>th</sup>.

Additionally, ICCs should be sampled periodically for total coliform bacteria to ensure that there is no microbiological contamination in the water systems. On other ICCs, such as aircraft and other rail cars, 100 milliliter samples are collected periodically and sent to

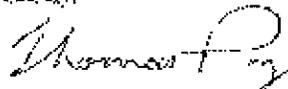
certified labs for total coliform analysis. We would like you to collect water samples from each of your rail cars as soon as possible; we suggest within the first 30 days of operation. Please note that samples should not be collected within 72 hours of disinfecting and flushing, so as not to give false negative results. We have included an attachment giving details on the sampling procedures that we would like you to follow.

Should you find that any of your tanks return positive coliform results, you need to shut the water off until the water tank in the affected rail car can be D&F again. Any coliform positive samples should be further analyzed for *E. coli*. If *E. coli* is found in any tank sample, you need to shut off the water immediately, perform a corrective action D&F and collect follow-up samples. Water should not be served to the public until the follow-up sample results come back clear, i.e., total coliform negative. It is not necessary to wait 72 hours after a corrective action D&F, to collect a follow-up sample.

In order to protect public health and provide a safe reliable source of water, EPA recommends that you follow the above guidelines. We will develop a formal agreement in the near future for water service on your rail cars.

In the meantime, should you have any questions, please do not hesitate to contact Michele Palmer of my staff at 313-355-3646 or [palmer.michele@epa.gov](mailto:palmer.michele@epa.gov).

Sincerely,



Thomas Poy, Branch Chief  
Ground Water Defining Water Branch

Enclosure

cc: Neil Bagdas  
Michele Palmer  
Nicholas Damato  
Dorothy Wozniak  
Joanna Glowacki  
Gina Villanueva  
Cindy Mack

## Enclosure Bacteriological Sampling Protocol

Bacteriological samples are used to indicate the effectiveness of disinfection and flushing procedures. Collect a sample for total coliform and have it analyzed by a State-approved laboratory. The sample must be taken from a "tap" (e.g., water tap, faucet, drinking fountain, or other fixture) which provides water for human consumption to passengers or crew. Human consumption includes drinking, food and beverage preparation, as well as brushing teeth, dishwashing, and hand washing.

If the sample is total coliform-positive (TC+) it must be analyzed for E.coli. State-approved labs should test for E. coli automatically when any sample is TC+ but it is your responsibility to make sure it is done. For a positive total coliform result, you must restrict access to the water system within 72 hours of notification of the result for total coliform positive with E.coli-negative results. Then you must perform a corrective action (D&F), before providing water for human consumption.

The presence of E. coli in a water sample indicates that the water may be contaminated with human or animal fecal waste. This is a serious situation and requires an immediate response. Within 24 hours of notification of the result for E.coli-positive shut off the water. As a corrective measure to an E. coli positive result, the system should be disinfected and flushed in accordance with manufacturer recommendations, and follow-up samples collected. Continue with this process until the follow-up sample results are total coliform negative. Access to the water cannot be provided until a set of follow-up samples is total coliform-negative.

Suggested Sampling Protocols follow. Critical steps in the sample collection procedure include ensuring the sample collection bottle does not become contaminated, and the faucet or fixture to be sampled will not contribute contamination from the external surface.

### Materials and Preparation for Sampling

The laboratory that will perform the analyses should be contacted in advance of the planned sampling collection date. In advance, it should be determined if the laboratory will provide sample bottles, and if so, how many will be needed. Additionally, it should be determined whether the laboratory will provide a return shipping cooler and ice packs (shipment of ADWR samples on ice to obtain a shipping temperature of 10 degrees Celsius or less without freezing the sample is recommended). Sufficient time should be allowed to obtain materials and to agree on a sample submit date.

All materials should be on-hand and ready for use at least 48 hours prior to sampling. (Note that a separate cooler or heating container for each day/iteration of sample collection will be needed if samples are not hand-delivered to the laboratory each day.) The analysis of the samples by the laboratory must begin within 30 hours of sample collection or the sample will be invalid and a replacement sample will be required.

Have on a list of suggested materials needed for sampling.

- 1) Sample collection sheet
- 2) Laboratory chain of custody form
- 3) Indelible pen
- 4) Sample bottles (100-ml, sterile plastic with non-toxic cap and dechlorinating agent)
- 5) Coffee with ice packs (optional) (contained-ice packs are preferable to ice cubes)
- 6) Rubber, latex, or non-latex exam gloves

When collecting a sample, label the bottle (not the lid) prior to sample collection with the following information:

- Sample ID correlating to the sample tap location (e.g., lav or gal) and a 9 or fore) and other information listed on the laboratory chain of custody form and data sheet
- Date and time of collection
- Analyses requested (e.g., total coliform)
- Sampler's initials

For each rail car, total coliform samples must be collected from a galley tap and a lavatory tap unless there is only one tap. Both lavatory and galley samples should be collected from a cold water tap if possible. If the only sampling point in the lavatory or galley is a hot water tap or the coffee maker, collect the sample at that location and indicate the sampling location on the sample collection sheet. [49 CFR 141.833(b)].

During sampling, exam gloves should be used when handling samples to minimize sample contamination and exposure to sample preservatives. Bottles should be kept closed and ready to be filled.

## APPENDIX XI

### Service Site for Third Party Equipment

“McCurdy Facility” means the storage, maintenance and service facility located adjacent to CSXT’s Shelbyville Secondary rail line at approximately mile post QSS 102.0, at approximately West Longitude 86.08160186390118 and North Latitude 39.72953243969761.

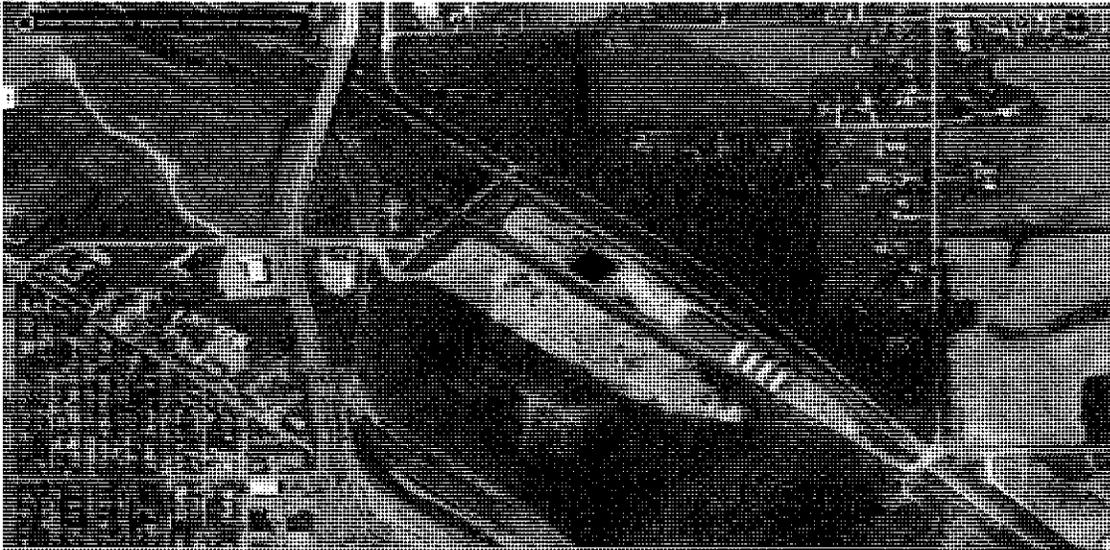


See Next Pages for additional satellite views

**APPENDIX XI**

**(Continued)**

**Site overview**



See Next Page for additional satellite view

APPENDIX XI

(Continued)

APPENDIX XI  
All maps are approximate.

# Train parking



**APPENDIX XII**

**Amtrak Permit to Enter**

NATIONAL RAILROAD PASSENGER CORPORATION  
TEMPORARY PERMIT TO ENTER UPON PROPERTY  
C.E.-17 (REVISED 2/1/14)

Date:  
File: E-47-  
Internal Order:  
WBS Element:

ATTN:

1. TEMPORARY PERMISSION. Temporary permission is hereby granted to \_\_\_\_\_ (hereinafter called "Permittee"), to enter property owned and/or controlled by the National Railroad Passenger Corporation (hereinafter called "Railroad"), for the purpose of \_\_\_\_\_ at \_\_\_\_\_, State of \_\_\_\_\_, under the terms and conditions set forth below.

2. LOCATION AND ACCESS. (Give map reference, description or both)

\_\_\_\_\_  
(hereinafter called "Property").

3. INDEMNIFICATION. Permittee shall defend, indemnify and hold harmless Railroad, its officers, directors, employees, agents, servants, successors and subsidiaries, irrespective of their negligence or fault, from and against any and all losses and liabilities, penalties, fines, forfeitures, demands, claims, causes of action, suits, costs and expenses (including cost of defense and attorneys' fees), which any or all of them may hereafter incur, be responsible for, or pay as a result of injury, death, disease, or occupational disease to any person, and for damage (including environmental contamination and loss of use) to or loss of any property, including property of Railroad, arising out of or in any degree directly or indirectly caused by or resulting from activities of or work performed by Permittee, its officers, employees, agents, servants, contractors, subcontractors, or any other person acting for or by permission of Permittee. The foregoing obligation shall not be limited by the existence of any insurance policy or by any limitation on the amount or type of damages, compensation, or benefits payable by or for Permittee or any contractor or subcontractor, and shall survive the termination of this Temporary Permit for any reason. As used in this paragraph, the term "Railroad" also includes all commuter agencies and other railroads with rights to operate over Railroad property, and their respective officers, directors, employees, agents, servants, successors, assigns and subsidiaries.

4. CONSIDERATION FOR PREPARATION OF TEMPORARY PERMIT. Permittee will pay to Railroad the sum of One Thousand Dollars (\$1,000.00) as compensation for the preparation of this Temporary Permit. This fee is to be delivered to Railroad at the address set forth in paragraph 17 hereof.

5. STARTING OF USE OF PROPERTY. Permittee shall notify Railroad's Deputy Chief Engineer-Construction, or his designee, at least ten (10) days in advance before entering upon, or starting any work on, the Property. No entry upon or use of the Property will be permitted until a fully executed copy of this Temporary Permit is returned to Railroad, and specific permission to enter upon the Property is received by Permittee from Railroad's Senior Manager Engineering. (See paragraph 17 for contact information.)

6. RAILROAD OPERATIONS. All activities performed by or on behalf of Permittee shall be performed so as not to interfere with Railroad's operations or with any of Railroad's facilities. In no event shall personnel, equipment or material cross a track or tracks without special advance permission from Railroad's Deputy Chief Engineer-Construction or his designee. If, in the opinion of Railroad's Deputy Chief Engineer-Construction or his designee, conditions warrant at any time, Railroad will provide flag service and/or other protection at the sole cost and expense of Permittee, and Permittee agrees to pay to Railroad the full cost and expense therefor.

7. CLEARANCES. All equipment and material of Permittee shall be kept at all times not less than fifteen (15) feet from the centerline of the outside track, unless specifically otherwise authorized in writing by Railroad's Deputy Chief Engineer-Construction or his designee. Permittee shall conduct all operations so that no part of any equipment shall foul an operated track; transmission, communication or signal line; or any other structure or facility of Railroad.
8. RESTORATION OF PREMISES. Upon completion of its work, Permittee shall, at the option of Railroad, (a) leave the Property in a condition satisfactory to Railroad, or (b) restore the Property to its original condition. This may include, without limitation, the restoration of any fences removed or damaged by Permittee.
9. TERM OF TEMPORARY PERMIT. This Temporary Permit shall commence on the date Railroad receives a fully executed copy of this Temporary Permit pursuant to paragraph 17 hereof and shall extend until the end of the period Railroad determines is necessary for Permittee to accomplish the purpose set forth in paragraph 1 hereof; provided, however, Railroad reserves the right to revoke this Temporary Permit at any time, and in no event shall this Temporary Permit extend beyond \_\_\_\_\_, 20\_\_ . Under no circumstances shall this Temporary Permit be construed as granting to Permittee any right, title or interest of any kind in any property of Railroad.
10. PROTECTION. All work on, over, under, within or adjacent to the Property shall be performed in accordance with the document entitled "SPECIFICATIONS REGARDING SAFETY AND PROTECTION OF RAILROAD TRAFFIC AND PROPERTY," a copy of which is attached hereto as Attachment A and incorporated herein by reference.
11. INSURANCE. Before Permittee commences any work on, over, under, within or adjacent to the Property, Permittee and its contractors (unless Permittee opts to provide the required coverage for them), shall furnish to Railroad's Senior Manager Engineering, evidence of the insurance coverages specified in the document entitled "INSURANCE REQUIREMENTS - NATIONAL RAILROAD PASSENGER CORPORATION," a copy of which is attached hereto as Attachment B and incorporated herein by reference.
12. SAFETY ORIENTATION CLASS. No person may enter within twenty-five (25) feet of the Property until he/she has attended Railroad's Safety Orientation Class, as noted in paragraph 12 of Attachment A.
13. COMPLIANCE BY CONTRACTORS. Permittee shall take all steps necessary to ensure that its contractors and subcontractors comply with the terms and conditions of this Temporary Permit.
14. SUPPORT SERVICES; COSTS; PAYMENTS. Railroad shall not be responsible for any costs incurred by Permittee in relation to any matter whatsoever. Permittee is required to reimburse Railroad for all costs incurred by Railroad in relation to this Temporary Permit. Without limiting the foregoing, Permittee is required to reimburse Railroad for all costs incurred by Railroad in connection with the review of any plans, drawings or other submissions made by Permittee.

Railroad's costs, expenses and labor charges will be billed to Permittee at Railroad's standard force account rates. Except as specified in paragraphs 1 and 4 hereof, all payments due from Permittee to Railroad under this Temporary Permit shall be due and payable within thirty (30) days from the date of invoice. Permittee shall have no right to set off against any payment due under this Temporary Permit any sums which Permittee may believe are due to it from Railroad for any reason whatsoever. In the event that Permittee shall fail to pay, when due, any amount payable by it under this Temporary Permit, Permittee shall also pay to Railroad, together with such overdue payment, interest on the overdue amount at an annual rate of six (6) percentage points over and above the rate published from time to time by *The Wall Street Journal* as the prime commercial lending rate (or the highest rate allowed by law, if less than the foregoing), calculated from the date the payment was due until paid. All payments due from

Permittee to Railroad hereunder shall be: (a) made by check drawn from currently available funds; (b) deemed made only upon receipt by Railroad of collected funds; (c) made payable to National Railroad Passenger Corporation; and (d) delivered to the National Railroad Passenger Corporation, 23615 Network Place, Chicago, IL 60673-1236. (However, the permit fee referenced in paragraph 4 hereof and the Railroad Protective Liability premium referenced in Attachment B, if applicable, shall be delivered to Railroad at the address set forth in paragraph 17 hereof.) All payment obligations of Permittee under this Temporary Permit shall survive the termination or expiration of this Temporary Permit.

15. ENVIRONMENTAL AND GEOTECHNICAL TESTS AND STUDIES. Permittee shall not perform any environmental or geotechnical tests or studies (e.g., air, soil or water sampling) unless specifically identified and authorized in paragraph 1 of this Temporary Permit. If any such tests or studies are performed, Permittee shall promptly furnish to Railroad, at no cost, a copy of the results including any reports or analyses obtained or compiled. Except as may be required by applicable law or as authorized by Railroad in writing, Permittee shall not disclose the results of any such tests or studies to anyone other than Railroad or Permittee's client. Failure to comply with the provisions of this clause shall result in immediate termination of this Temporary Permit and forfeiture of all compensation paid Railroad therefor.

16. SEVERABILITY. If any provision of this Temporary Permit is found to be unlawful, invalid or unenforceable, that provision shall be deemed deleted without prejudice to the lawfulness, validity and enforceability of the remainder of the Temporary Permit.

17. ACCEPTANCE. To confirm acceptance of this Temporary Permit, one fully executed copy must be returned to: Senior Manager Engineering, National Railroad Passenger Corporation, 30th Street Station, 2955 Market Street, Mail Box 64, Philadelphia, PA 19104 (215/349-1750). The second copy may be retained for your file.

NATIONAL RAILROAD PASSENGER CORPORATION

By: \_\_\_\_\_  
Deputy Chief Engineer - Construction

Date: \_\_\_\_\_

AGREED TO AND ACCEPTED:

By: \_\_\_\_\_  
(signature)

Title: \_\_\_\_\_  
Must be an Owner/Partner or  
duly authorized representative

Date: \_\_\_\_\_

**ATTACHMENT A**  
**Temporary Permit to Enter Upon Property**  
**SPECIFICATIONS REGARDING SAFETY**  
**AND PROTECTION OF RAILROAD TRAFFIC AND PROPERTY (Revised 10/1/12)**

National Railroad Passenger Corporation (Railroad)

In the following Specifications, "Railroad" shall mean National Railroad Passenger Corporation; "Chief Engineer" shall mean Railroad's Chief Engineer or his/her duly authorized representative; "Permittee" shall mean the party so identified in the Temporary Permit to Enter Upon Property; and "Contractor" shall mean the entity retained by the Permittee or the entity with whom Railroad has contracted in a Preliminary Engineering Agreement, Design Phase Agreement, Construction Phase Agreement, Force Account Agreement, or other such agreement, as applicable. Reference to "Permittee/Contractor" includes both the Permittee and the Contractor.

- (1) Pre-Entry Meeting: Before entry of Permittee/Contractor onto Railroad's property, a pre-entry meeting shall be held at which time Permittee/Contractor shall submit for written approval of the Chief Engineer, plans, computations, a Site Specific Safety Work Plan and site-specific work plans that include a detailed description of proposed methods for accomplishing the work and protecting railroad traffic. Any such written approval shall not relieve Permittee/Contractor of its complete responsibility for the adequacy and safety of its operations.
- (2) Rules, Regulations and Requirements: Railroad traffic shall be maintained at all times with safety and continuity, and Permittee/Contractor shall conduct its operations in compliance with all rules, regulations, and requirements of Railroad (including these Specifications) with respect to any work performed on, over, under, within or adjacent to Railroad's property. Permittee/Contractor shall be responsible for acquainting itself with such rules, regulations and requirements. Any violation of Railroad's safety rules, regulations, or requirements shall be grounds for the immediate suspension of Permittee/Contractor work, and the re-training of all personnel, at Permittee's/Contractor's expense.
- (3) Maintenance of Safe Conditions: If tracks or other property of Railroad are endangered during the work, Permittee/Contractor shall immediately take such steps as may be directed by Railroad to restore safe conditions, and upon failure of Permittee/Contractor to immediately carry out such direction, Railroad may take whatever steps are reasonably necessary to restore safe conditions. All costs and expenses of restoring safe conditions, and of repairing any damage to Railroad's trains, tracks, right-of-way or other property caused by the operations of Permittee/Contractor, shall be paid by Permittee.
- (4) Protection in General: Permittee/Contractor shall consult with the Chief Engineer to determine the type and extent of protection required to ensure safety and continuity of railroad traffic. Any Inspectors, Track Foremen, Track Watchmen, Flagmen, Signalmen, Electric Traction Linemen, or other employees deemed necessary by Railroad, at its sole discretion, for protective services shall be obtained from Railroad by Permittee/Contractor. The cost of same shall be paid directly to Railroad by Permittee/Contractor. The provision of such employees by Railroad, and any other precautionary measures taken by Railroad, shall not relieve Permittee/Contractor from its complete responsibility for the adequacy and safety of its operations.
- (5) Protection for Work Near Electrified Track or Wire: Whenever work is performed in the vicinity of electrified tracks and/or high voltage wires, particular care must be exercised, and Railroad's requirements regarding clearance to be maintained between equipment and tracks and/or energized wires, and otherwise regarding work in the vicinity of electrified tracks, must be strictly observed. No employees or equipment will be permitted to work near overhead wires, except when protected by a Class A employee of Railroad. Permittee/Contractor must supply an adequate length of grounding cable (4/0

copper with approved clamps) for each piece of equipment working near or adjacent to any overhead wire.

(6) Fouling of Track or Wire: No work will be permitted within twenty-five (25) feet of the centerline of track or the energized wire or have potential of getting within twenty-five (25) feet of track wire without the approval of the Chief Engineer. Permittee/Contractor shall conduct its work so that no part of any equipment or material shall foul an active track or overhead wire without the written permission of the Chief Engineer. When Permittee/Contractor desires to foul an active track, it must provide the Chief Engineer with its site-specific work plan a minimum of twenty-one (21) working days in advance, so that, if approved, arrangements may be made for proper protection of Railroad. Any equipment shall be considered to be fouling a track or overhead wire when located (a) within fifteen (15) feet from the centerline of the track or within fifteen (15) feet from the wire, or (b) in such a position that failure of same, with or without a load, would bring it within fifteen (15) feet from the centerline of the track or within fifteen (15) feet from the wire and requires the presence of the proper Railroad protection personnel.

If acceptable to the Chief Engineer, a safety barrier (approved temporary fence or barricade) may be installed at fifteen (15) feet from centerline of track or overhead wire to afford the Permittee/Contractor with a work area that is not considered fouling. Nevertheless, protection personnel may be required at the discretion of the Chief Engineer.

(7) Track Outages: Permittee/Contractor shall verify the time and schedule of track outages from Railroad before scheduling any of its work on, over, under, within, or adjacent to Railroad's right-of-way. Railroad does not guarantee the availability of any track outage at any particular time. Permittee/Contractor shall schedule all work to be performed in such a manner as not to interfere with Railroad operations. Permittee/Contractor shall use all necessary care and precaution to avoid accidents, delay or interference with Railroad's trains or other property.

(8) Demolition: During any demolition, Permittee/Contractor must provide horizontal and vertical shields, designed by a Professional Engineer registered in the state in which the work takes place. These shields shall be designed in accordance with Railroad's specifications and approved by Railroad, so as to prevent any debris from falling onto Railroad's right-of-way or other property. A grounded temporary vertical protective barrier must be provided if an existing vertical protective barrier is removed during demolition. In addition, if any openings are left in an existing bridge deck, a protective fence must be erected at both ends of the bridge to prohibit unauthorized persons from entering onto the bridge.

Ballasted track structure shall be kept free of all construction and demolition debris.

(9) Equipment Condition: All equipment to be used in the vicinity of operating tracks shall be in "certified" first-class condition so as to prevent failures that might cause delay to trains or damage to Railroad's property. No equipment shall be placed or put into operation near or adjacent to operating tracks without first obtaining permission from the Chief Engineer. Under no circumstances shall any equipment or materials be placed or stored within twenty-five (25) feet from the centerline of an outside track, except as approved by Railroad in accordance with Permittee's/Contractor's Site Specific Safety Work Plan. To ensure compliance with this requirement, Permittee/Contractor must establish a twenty-five (25) foot foul line prior to the start of work by either driving stakes, taping off or erecting a temporary fence, or providing an alternate method as approved by the Chief Engineer. Permittee/Contractor will be issued warning stickers which must be placed in the operating cabs of all equipment as a constant reminder of the twenty-five (25) foot clearance envelope.

(10) Storage of Materials and Equipment: No material or equipment shall be stored on Railroad's property without first having obtained permission from the Chief Engineer. Any such storage will be on the condition that Railroad will not be liable for loss of or damage to such materials or equipment from any cause.

If permission is granted for the storage of compressed gas cylinders on Railroad property, they shall be stored a minimum of 25 feet from the nearest track in an approved lockable enclosure. The enclosure shall be locked when the Permittee/Contractor is not on the project site.

(11) Condition of Railroad's Property: Permittee/Contractor shall keep Railroad's property clear of all refuse and debris from its operations. Upon completion of the work, Permittee/Contractor shall remove from Railroad's property all machinery, equipment, surplus materials, falsework, rubbish, temporary structures, and other property of Permittee/Contractor and shall leave Railroad's property in a condition satisfactory to the Chief Engineer.

(12) Safety Training: All individuals, including representatives and employees of Permittee/Contractor, before entering onto Railroad's property and before coming within twenty-five (25) feet of the centerline of the track or energized wire must first attend Railroad's Contractor Orientation Computer Based Training Class. The Contractor Orientation Class will be provided electronically @www.amtrakcontractor.com. Upon successful completion of the course and test, the individual taking the course will receive a temporary certificate without a photo that is valid for three weeks. The individual must upload a photo of himself/herself that will be embedded in the permanent ID card. The photo ID will be mailed to the individual's home address and must be worn/displayed while on Railroad property. Training is valid for one calendar year. All costs of complying with Railroad's safety training shall be at the sole expense of Permittee/Contractor. Permittee /Contractor shall appoint a qualified person as its Safety Representative. The Safety Representative shall continuously ensure that all individuals comply with Railroad's safety requirements. All safety training records must be maintained with the Permittee's/Contractor's site specific work plan.

(13) No Charges to Railroad: It is expressly understood that neither these Specifications, nor any document to which they are attached, include any work for which Railroad is to be billed by Permittee/Contractor, unless Railroad makes a specific written request that such work be performed at Railroad's expense.

**ATTACHMENT B  
INSURANCE REQUIREMENTS**

**NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)  
CHICAGO UNION STATION COMPANY (CUSCO)  
WASHINGTON TERMINAL COMPANY (WTC)  
Revised as of May 14, 2013**

**DEFINITIONS**

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

**INSURANCE**

Contractor shall procure and maintain, at its sole cost and expense, the types of insurance specified below. Contractor shall evidence such coverage by submitting to Amtrak the original Railroad Protective Liability Policy and certificates of insurance evidencing the other required insurance, prior to commencement of Operations. All insurance shall be procured from insurers authorized to do business in the jurisdiction(s) where the Operations are to be performed. 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. The insurance shall provide for thirty (30) days prior written notice to Amtrak in the event coverage is substantially changed, canceled or non-renewed. All insurance shall remain in force until all Operations are satisfactorily completed (unless otherwise noted below), all Contractor personnel and equipment have been removed from Railroad property, and any work has been formally accepted. Contractor's failure to comply with the insurance requirements set forth herein shall constitute a violation of the Agreement.

**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 with limits of not less than \$1 million each accident or illness shall be included.

In the event the Operations are to be performed on or over navigable waterways, a Longshoremen and Harbor Workers' Compensation Act Endorsement and a Maritime Coverage Endorsement are to be added, including coverage for wages, transportation, maintenance and cure.

**Commercial General Liability 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 and any Explosion/Collapse/Underground (X-C-U) exclusions deleted. The policy shall name National Railroad Passenger Corporation, as appropriate CUSCO or 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. Coverage under this policy shall have limits of liability of not less than \$2 million each occurrence, combined single limit, for bodily injury (including disease or death), personal

injury and property damage (including loss of use) liability.

**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 Commercial General Liability insurance. The policy shall name National Railroad Passenger Corporation, as appropriate CUSCO or 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. Coverage under this policy shall have limits of liability of not less than \$1 million each occurrence, combined single limit, for bodily injury and property damage (including loss of use) liability.

In the event Contractor or any subcontractor 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.

**Railroad Protective Liability (RRP) Insurance** covering the Operations performed by Contractor or any subcontractor within fifty (50) feet vertically or horizontally of railroad tracks. The current ISO Occurrence Form (claims-made forms are unacceptable) in the name of the National Railroad Passenger Corporation (and as appropriate CUSCO or WTC, and all commuter agencies and railroads that operate over the property or tracks at issue) shall have limits of liability of not less than \$2 million each occurrence, combined single limit, for Coverages A and B, 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. Additionally, Policy Endorsement CG 28 31 - Pollution Exclusion Amendment, is required to be endorsed onto the policy. A \$6 million annual aggregate shall apply. Further, "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."

The original RRP Liability Insurance Policy must be submitted to Amtrak prior to commencement of Operations.

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 of \$\_\_\_ in addition to the Permit Fee, and send its check made payable to National Railroad Passenger Corporation to the individual set forth below prior to commencement of Operations.

**All Risk Property Insurance** covering physical loss or damage to all property used in the performance of the Operations. The policy shall have limits of liability adequate to cover all property of Contractor (including personal property of others in Contractor's care, custody or control) and shall include a waiver of subrogation against Amtrak, as appropriate CUSCO or WTC, and all commuter agencies and railroads that operate over the property or tracks at issue.

**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, that arise from the Operations of Contractor with National Railroad Passenger Corporation, as appropriate CUSCO or WTC, and all commuter agencies and railroads that operate over the property or tracks at issue named as additional insureds. Coverage under this policy shall have limits of liability of not less than \$2 million each occurrence. The coverage shall be maintained during the term of the project, and for at least two (2) years following Amtrak acceptance of the completion of all Operations to be performed.

**Pollution Legal Liability Insurance** is required if any hazardous material or waste is to be transported or disposed of off of the jobsite. Contractor, its subcontractor or transporter, as well as the disposal site operator, shall maintain this insurance. Contractor shall designate the disposal site, and must provide a certificate of insurance from the disposal facility to Amtrak. The policy shall name National Railroad Passenger Corporation, as appropriate CUSCO or WTC, and all commuter agencies and railroads that operate over the property or tracks at issue as additional insureds, with limits of liability of not less than \$2 million per claim.

Further, 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.

**Professional Liability Insurance** covering the liability of Contractor for any and all errors or omissions committed by Contractor in the performance of the Operations, regardless of the type of damages. The coverage shall be maintained during the term of the Operations, and for at least three (3) years following completion thereof. The policy shall have limits of liability of not less than \$2 million per claim and in the annual aggregate. The policy may contain a deductible of a maximum of two hundred fifty thousand dollars (\$250,000), but in such case the deductible is the sole responsibility of Contractor, and no portion of such deductible is the responsibility of Amtrak.

Contractor may elect to satisfy this requirement through the addition of endorsement CG2279 "Incidental Professional Liability" to its CGL policy.

**Claims-Made Insurance** - If any liability insurance specified above shall be provided on a claims-made basis, then in addition to coverage requirements above, such policy shall provide that:

1. The retroactive date shall coincide with or precede Contractor's start of Operations (including subsequent policies purchased as renewals or replacements);
2. The policy shall allow for the reporting of circumstances or incidents that might give rise to future claims;
3. Contractor will use its best efforts to maintain similar insurance under the same terms and conditions that describe each type of policy listed above (e.g., Commercial General Liability, Professional Liability) for at least three (3) years following completion of the Operations; and
4. If insurance is terminated for any reason, Contractor will purchase an extended reporting provision of at least two (2) years to report claims arising from Operations.

Contractor shall furnish evidence of insurance as specified above at least fifteen (15) days prior to commencing Operations. THESE 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. The fifteen (15) day advance notice of coverage 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. Such evidence of insurance coverage shall be sent to:

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