

4.3 Insurance

Prior to entry hereunder, LICENSEE and its consultants and contractors shall provide the MBTA and the Railroad Companies with a certificate or certificates of insurance and shall, during the term hereof, renew and replace any expired certificate, evidencing the insurance of the activities permitted hereunder, and LICENSEE's covenant of indemnification hereinabove, with companies that are reasonably acceptable to the MBTA, as stated below, in which LICENSEE and others hereinafter specified are either additional insureds as their interests may appear or named insureds and which provide minimum liability coverage as follows:

- (a) Commercial General Liability Insurance
Insuring the LICENSEE, the MBTA, the Railroad Companies, the Premises and all activities allowed hereunder as well as LICENSEE's indemnification obligations contained in Section 4 with minimum liability coverage for personal injury, bodily injury and property damage with limits not less than One Million Dollars (\$1,000,000.00) per occurrence and Three Million Dollars (\$3,000,000.00) in aggregate. Umbrella liability coverage with limits of not less than Five Million Dollars (\$5,000,000.00) covering all work performed must also be provided. Such insurance shall be written on an occurrence basis (as opposed to a claims made basis). These policies shall name the MBTA and the Railroad Companies as additional insureds.
- (b) Worker's Compensation Insurance
Insuring all persons employed by LICENSEE in connection with any work done on or about the Premises with respect to which claims for death or bodily injury could be asserted against the MBTA or the Railroad Companies or the Premises with limits of liability of not less than those required by Massachusetts General Laws Chapter 152, as amended. The policy shall contain a clause waiving the right of subrogation in favor of the MBTA. Each of LICENSEE's subcontractors and consultants shall have similar policies covering their employees.
- (c) Railroad Protective Liability Insurance
Insuring the MBTA and the Railroad Companies as named insureds with limits of not less than \$2,000,000.00 per occurrence and \$6,000,000.00 in aggregate combined bodily injury property damage. Massachusetts Bay Commuter Railroad shall be provided with an original policy of Railroad Protective Liability Insurance and the MBTA and the remaining Railroad Companies shall be provided with certificates of insurance.
- (d) Automobile Liability Insurance

Automobile liability insurance with limits of not less than One Million Dollars (\$1,000,000.00) covering all owned, non-owned, hired, rented or leased vehicles of LICENSEE and its consultants and contractors that are used in the activities permitted hereunder.

The required insurance coverages hereinbefore specified shall be placed with insurance companies licensed by the Massachusetts Division of Insurance to do business in the Commonwealth of Massachusetts and having a Best's rating of B+ or better, shall be taken out before the License is commenced and be kept in full force and effect throughout the term of the License, shall be primary to and non-contributory to any insurance or self-insurance maintained by the MBTA, and shall require that the MBTA be given at least 30 days advance written notice in the event of any cancellation or materially adverse change in coverage. All such required insurance, with the possible exception of Pollution Liability Insurance, shall be written on an occurrence basis form, as opposed to a claim made basis form. The MBTA shall be named as an additional insured under the Commercial General Liability, Automobile Liability, Umbrella, Pollution Liability, and Builder's Risk Insurance Policies. The Workers' Compensation and Employers' Liability Insurance Policies shall include a waiver of subrogation in favor of the MBTA which precludes these insurers from being able to make any subrogation claims against the MBTA. All such required insurance shall not contain any exclusions for acts of terrorism, and shall fully cover any acts of terrorism, irrespective of whether such acts of terrorism are caused by domestic or foreign terrorists, and irrespective of whether such acts of terrorism are certified or non-certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act of 2002. All such insurance as is required of the LICENSEE shall be provided by or on behalf of all subcontractors to cover their operations performed. The LICENSEE shall be held responsible for any modifications, deviations or omissions in the compliance with these requirements by the subcontractors. At the inception date of the License and throughout the term of the License, the MBTA shall be provided with certificates of insurance evidencing that such insurance policies are in place and provide coverage as required.

Additional insureds should be listed as follows:

Massachusetts Bay Transportation Authority
10 Park Plaza, Room 5750
Boston, Massachusetts 02116

and

Massachusetts Bay Commuter Railroad
32 Cobble Hill Road
Somerville, Massachusetts 02143

and

BOSTON AND MAINE CORPORATION
SPRINGFIELD TERMINAL RAILWAY COMPANY
Iron Horse Park
High Street
North Billerica, Massachusetts 01862

and

CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202

As pertains to the Railroad Protective Liability Policy, Massachusetts Bay Transportation Authority, Massachusetts Bay Commuter Railroad, Boston and Maine Corporation/Springfield Terminal Railway Company and CSX Transportation, Inc. are NAMED INSUREDS.