

- C. Any delays in or failure of performance by either party under this Agreement will not constitute default or give rise to any claims for damages or penalties if the delay or failure is directly caused by a **Force Majeure Event**. A "**Force Majeure Event**" means any of the following and any other event, which are events, circumstances, or conditions beyond the reasonable control of the parties, including, without limitation, acts of God, riots, wars (whether declared or not), equipment malfunction, derailments, civil disturbances, civil disobedience, insurrections, acts of terrorism, sabotage, rockslides, landslides, snowslides, avalanches, earthquakes, explosions, floods, fire, underground damage, lightning, sustained abnormal weather conditions or other natural catastrophes and/or strikes, work slowdown, lockouts or other industrial disturbances, pandemics, epidemics, health emergencies, viruses (e.g. SARS Cov-2), disease (e.g. COVID-19), plague, changes in law or regulations, quarantine, travel restrictions, differing or unforeseeable site conditions, acts of governmental agencies or authorities (whether or not such acts are made in response to other **Force Majeure Events**), whether or not of a similar kind or nature to any of the foregoing. The parties agree that a **Force Majeure Event** does not include economic hardship, changes in market conditions, or insufficiency of funds. Under no circumstances shall an obligation to pay monies owed under this Agreement be delayed, deferred, postponed or excused by a **Force Majeure Event**.

## **XII. General Provisions**

**SOLE BENEFIT.** This Agreement is intended for the sole benefit of the parties hereto. Nothing in this Agreement is intended or may be construed to give any person, firm, corporation, or other entity, other than **Railway** Indemnitees, the parties' successors and permitted assigns, any right or benefit pursuant to any provision or term of this Agreement, and all provisions and terms of this Agreement are and will be for the sole and exclusive benefit of the parties to this Agreement.

**WAIVER.** Any waiver at any time by one party of a breach hereof by the other party will extend only to the particular breach so waived and will not impair or affect the existence of any provision, condition, obligation, or requirement of this Agreement or the right of either party hereto thereafter to avail itself of any rights under this Agreement with respect to a subsequent breach. No provision of this Agreement shall be waived by any act or knowledge of the parties hereto, but only by a written instrument signed by the party waiving a right hereunder.

**SEVERABILITY.** If any part of this Agreement is determined to be invalid, illegal or unenforceable, such determination shall not affect the validity, legality or enforceability of any other part of this Agreement and the remaining parts of this Agreement shall be enforced as if such invalid, illegal or unenforceable part were not contained herein.

**MERGER.** This Agreement and the exhibits attached hereto contain the entire agreement of the parties with respect to the subject matter of this Agreement, and supersede all prior negotiations, agreements and understandings with respect thereto, written or oral.

**AMENDMENT.** No provision of this Agreement shall be modified without the written concurrence of the parties hereto.

**HEADINGS.** The headings of the Sections of this Agreement are inserted for convenience only and are not intended to govern, limit or aid in the construction of any term or provision of this Agreement.