

2. INSURANCE

15.1 Licensee shall, at its sole cost and expense, obtain and maintain insurance of the following kinds and amounts throughout the entire Term for the use of the Licensed Area:

(i) General and Public Liability insurance, including contractual liability insurance, with limits of not less than \$5,000,000 each occurrence for damages arising out of bodily injuries to or death of all persons in any one occurrence and for damage to or destruction of property, including the loss of use thereof, in any one occurrence and \$10,000,000 aggregate policy limit, which may be met through the combination of a primary commercial general liability (“CGL”) policy and an umbrella liability policy. Licensee’s general and public liability coverage must be written or endorsed through the ISO CG 24 17 endorsement (Contractual Liability-Railroads Endorsement) or otherwise to provide coverage for indemnification of a railroad and delete any exclusions or limitations relating to indemnification of railroads or concerning work within fifty (50) feet of a railroad track. Any exclusions relating to explosion, collapse and underground hazards shall be removed. The workers’ compensation exclusion must be amended or endorsed so that it does not apply to railroad payments related to the Federal Employers Liability Act or a railroad wage continuation program or similar programs and any payments are deemed not to be either payments made or obligations assumed under any workers’ compensation, disability benefits, or unemployment compensation law or similar law. The certificate of insurance must reflect these required coverages or endorsements;

(ii) Workers’ Compensation insurance in statutory amounts. Employers’ Liability and Occupational Disease Insurance with limits of \$1,000,000 each accident, \$1,000,000 policy limit, and \$1,000,000 each employee. Licensee’s workers’ compensation policy must be endorsed to name Licensor as “alternate employer” with coverage included under the Federal Employers Liability Act. The naming of Licensor as “alternate employer” is a term of insurance art for the protection of Licensor and does not evidence any alternate or dual employment relationship of any person or employee with Licensor. Such policy shall include a waiver of subrogation in favor of Licensor. The certificate of insurance must reflect the required endorsement and waiver of subrogation;

(iii) Automobile Liability insurance with a limit of not less than \$5,000,000 combined single limit for bodily injury and/or property damage per occurrence. No aggregate limit may apply. Coverage may be combined with excess and umbrella coverage to meet the required limit. Such insurance shall cover liability arising out of any auto (including owned, hired, and non- owned autos). Pollution liability coverage at least as broad as that provided under the ISO pollution liability—broadened coverage for covered autos endorsement (CA 99 48) shall be provided, and the Motor Carrier Act endorsement (MCS 90) shall be attached for all contracts involving transportation of “hazardous material” as this term is defined by applicable law, including, but not limited to, waste, asbestos, fungi, bacteria, and mold. Licensor shall be named as an additional insured under this insurance; and

(iv) Intentionally Deleted. [Railroad Protective Insurance]

15.2 With respect to this Agreement and/or the Licensed Area, Licensee's general and public liability policy, as well as Licensee’s “Special Form” property policy, if applicable, shall include a waiver of subrogation in favor of Licensor. The certificate of insurance must reflect a waiver of subrogation endorsement.

15.3 The insurance policies referenced in this Section 15 shall be written on an “occurrence” based form. Licensee’s general and public liability policy shall also include completed operations coverage, which shall be maintained during the Term and for three (3) years following the expiration or earlier termination of this Agreement. Where allowable by law, the insurance policies referenced in this Section 15 shall contain no exclusion for punitive damages and certificates of insurance shall reflect that no punitive damages exclusion exists. Licensee’s insurance policies shall through policy endorsement include wording that states that the policy shall be primary and non-contributing with respect to any insurance carried by Licensor. The certificate of insurance must reflect that the above wording is included in evidenced policies.

15.4 All insurance obtained pursuant to this Section shall be effected under standard form policies issued by insurers of financial responsibility that are rated "A" or better by Best's Insurance Reports, "AA" or better by Standard & Poor's Insurance Rating Service, and "Aa" or better by Moody's Investors Service. Licensors reserves the right to reject as inadequate any insurance coverage provided by an insurance company that is rated less than the ratings above by any of the aforementioned rating services.

15.5 In the event of any substantial (of which fact Licensor shall be the sole judge) loss, damage to, or destruction of the Licensed Area (if the Licensed Area consist of a building or other similar improvements owned by Licensor), or any major system thereof, by any cause whatsoever, Licensor shall have the option of immediately terminating this Agreement by notice to Licensee, notwithstanding the thirty (30)-day notice of termination set forth in Section 2.2. If Licensor elects to terminate this Agreement, such termination date shall be set forth in the notice from Licensor as aforesaid. If "Special Form" property insurance coverage is applicable or becomes applicable under this Agreement, Licensee shall list Licensor as "loss payee" on such policy, as its interests may appear. If Licensor elects to have such loss, damage or destruction repaired, and if the Licensed Area shall have been rendered wholly untenable by reason thereof, the License Fee shall abate from the date of such loss, damage, or destruction until the date of completion of repairs. In the event the Licensed Area is rendered only partially untenable by such loss, damage or destruction, and Licensee has not terminated this Agreement in accordance with Section 2.2, the License Fee shall continue in full force and effect for that portion of the Licensed Area which remains tenable and Licensee shall proceed to repair such damage after submitting plans to Licensor for its approval within thirty (30) days following such loss, damage, or destruction. Upon approval by Licensor of Licensee's repair plans, Licensee shall proceed immediately to commence such repairs and to diligently and continuously make same until completed at the earliest practicable date. In the event of a termination of this Agreement by Licensor as aforesaid, the License Fee shall end as of the date of such loss, damage, or destruction, and any License Fee paid beyond such date shall be refunded to Licensee on a pro-rata basis.

15.6 If Licensee has not done so prior to the Effective Date, Licensee shall furnish Licensor with certificates of insurance evidencing the insurance coverages required above prior to occupying the Licensed Area. Licensor shall be named as an additional insured under the insurance coverages outlined above. Certificates of insurance and/or policies should be sent to Real Estate Department, Consolidated Rail Corporation, 330 Fellowship Road, Suite 300, Mount Laurel, New Jersey 08054 and emailed to zz-insurance-certificates@Conrail.com.

15.7 Failure to procure and maintain such insurance throughout the duration of this Agreement shall constitute a breach of this Agreement and shall entitle Licensor to immediately terminate this Agreement.

15.8 All insurance policies shall be endorsed to provide that the insurance company shall give thirty (30) days prior written notice to the Law Department via email to: zz-insurance-certificates@Conrail.com, if the policies are to be terminated or if any changes are to be made which will in any way affect the insurance requirements of this Agreement. Licensor reserves the right to increase the amount of the insurance limits in this Section 15 from time to time. Licensor shall provide Licensee with written notice of any such increase at least one hundred eighty (180) days prior to its implementation.

The foregoing requirements may be satisfied through a program of self-insurance meeting the required insurance coverages and the furnishing of a letter evidencing such a program, which letter shall be emailed to Licensor at zz-insurance-certificates@Conrail.com. If Licensee elects to include any deductible, self-insured retention or other financial responsibility for claims, Licensee shall itself directly cover, in lieu of insurance, any and all of Licensee's liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Licensee's insurance as if Licensee elected not to include a deductible, self-insured retention or other financial responsibility for claims. Failure of Licensee to provide evidence of insurance either via a letter of self-insurance or certificate of insurance within thirty (30) days

after the Effective Date of this Agreement shall constitute of material breach of this Agreement and entitle Licensor to immediately terminate this Agreement.