

BROOKHAVEN RAIL LLC
RULES OF SERVICE

(1) General Provisions

(a) These Rules of Services (“Rules”) Brookhaven Rail LLC (the “BR”) provides for certain intermodal and other transportations support, stevedoring, and storage for delivery of bulk materials to a customer from time to time (“services”) to the site generally known as the Brookhaven Rail Terminal (“BRT”) located in Brookhaven, New York, delivered by rail transportation and switched by BR. BR is a rail carrier, not a motor carrier or a freight forwarder. Any law relating to contract carriers or freight forwarders do not apply to the services that the BR offers.

(b) These Rules are intended to establish, explain and supplement the terms and conditions under which BR will provide services to the other party identified as “customer” on the face of the purchase order referencing these Rules (as well as any other person or entity having an interest in the freight). Unless otherwise agreed to in a written agreement signed by a BR authorized representative, these Rules apply to all shipments tendered for intermodal or highway transportation by BR. Any Rules in any transportation agreement signed by BR and the customer covered by such agreement will prevail over any inconsistent provisions of these Rules. For purposes of these Rules, “intermodal” transportation means transportation using both rail and highway transportation through rail and motor “transportation providers”, or any entity that BR engages to provide or arrange for transportation, including rail carriers, motor carriers, drayage providers, rail transportation providers, intermodal equipment providers, transloading services, freight brokers and other transportation intermediaries.

(c) BR reserves the right to change these Rules from time to time without notice. The terms, conditions, limitations, charges and services of these Rules in effect on the date that the shipment is tendered for transportation will apply. It is the obligation of the customer to obtain the proper version of these Rules in effect on the date of shipment tender, which are accessible at www.brookhavenrail.com.

(d) BR arranges for rail transportation through BR and other North American rail carriers. These contracts are supplemented by the rail transportation provider’s published tariffs, agreements, rules and other publications in effect at the time of shipment (each an “Intermodal Circular”) and all shipments related to the services are subject thereto. It is the obligation of the customer to obtain the proper version of these Intermodal Circulars and be familiar with their terms; failing to comply with them may result in penalties, additional charges, delays and other liability. BR acts as a shipper’s agent in arranging transportation services for customer on rail carriers other than BR. When acting as a shipper’s agent, BR shall have no responsibilities or obligations to a customer other than those set forth in BR’s applicable tariffs, these Rules or other BR contracts with customer.

(e) By tendering freight to BR, customer represent and warrant that customer will notify all persons or entities involved in the transportation, including the consignee, beneficial cargo owner, consignor, and other third parties, such as freight forwarders, freight brokers, third-party logistics providers, intermodal marketing companies and insurers, that these Rules (or approved modifications to them) and the Intermodal Circulars apply to intermodal transportation services.

(f) Any documents tendered with a shipment, even if signed by BR, will serve solely as a receipt indicating transfer of the shipment and not verification of condition or amount of contents.

(2) Rates and Charges.

(a) Credit. All customers are required to apply for credit by visiting the web page www.brookhavenrailterminal.com.

(b) Quotes. The customer may obtain a rate quote by contacting BRT by fax or email.

(c) Information Needed for Rate Quote. The following information is required in order for a rate quote to be issued:

- (i) The commodity being shipped;
- (ii) The equipment size and type required for proper transloading;
- (iii) The service being requested, including all delivery, handling and storage requirements
- (iv) Expected shipment dates, including origin shipping date and expected arrival
- (v) Origin location of commodity being shipped

(d) Issuance of Rate Quote. Rate quotes to a particular customer, referred to as the “bill to” name, and differentiate rate quotes by the relevant shipment specifics, such as type of commodity, equipment size, origin/destination and other information required under Section 2(c). The rate quote will not apply to other “bill to” names or shipment types. Rate quote will be issued for an initial 30-day term, the quote is subject to increase after the initial period and the quote may be canceled at any time. Customers must specify the “bill to” name and shipment specifics at the time the request for services is placed in order to be eligible for transportation under the active rate issued for that “bill to” name and shipment type. BR reserves the right to change rates and charges without notice.

(e) Confidentiality of Rate Quotes. All rate quotes that BR issues are confidential. BR customers are not permitted to disclose or make available BR rate quotes to persons or entities other than its employees and agents who need to know the rate quotes to perform their transportation-related obligations. During the time that the BR rate quote remains outstanding and in effect, neither BR nor customers will disclose to third-parties not authorized herein and subject to the same level of confidentiality set forth in these Rules, any confidential information obtained from the other party in connection with the issuance of a rate quote, including the rate levels, expected volume of traffic and origins and destinations. These confidentiality restrictions will not apply to information that is generally available to the public, which is independently developed by a party without use of the other party’s information, that was known to a party before disclosure by the other party, or that is obtained from another source without violation of any confidentiality obligations.

(f) No Intermediate Points. Rates are from the origin to destination stated. Rates cannot be applied to or from intermediate points on the route from the stated origin to destination. Rates cannot be used in connection with stopping a shipment in transit at intermediate points for partial loading or unloading.

(g) Restrictions. Rates are valid only for the specific customer and shipment type (e.g., commodity, origin/destination and equipment size/type) quoted. Customers shall not substitute different shipment types at the quoted rate level without BR’s written authorization. In addition, the rates only cover the services described in the rate quote. Additional charges may apply for services requested/performed in addition to those services included in the initial quote.

(h) Mis-declaration. If it is determined that the commodities involved are not those described in the shipping instructions to BR, the customer shall pay the rates and all per diem and other charges based upon the commodities actually shipped. BR may assess and the customer will pay an administrative charge for each mis-declared shipment and any additional charges or penalties assessed by the underlying providers in connection with the mis-declared shipment. Shipments of hazardous materials, restricted commodities or prohibited commodities that are not declared as such are subject to greater mis-declaration charges assessed by BR and the underlying service providers. If mis-declarations continue, BR reserves the right to cancel the customer's rate quotes and refuse to provide service.

(i) Fuel Surcharge. BR may at its sole discretion assess a fuel surcharge on transportation rates depending on the mode of transportation used and based on the DOE's National Average Diesel Fuel Index published by the Energy Information Administration every Monday. Revisions to this surcharge will occur the day after the DOE posts its weekly fuel index. The index is available on the Internet at www.eia.doe.gov.

(3) Payment Terms.

(a) Prepayment. Customers that (i) choose to pay in advance of the services; or (ii) have not established or been denied credit by BR must submit their payment via wire transfer. The amount quoted for a pre-payment may not include all services required or to be incurred on customer's behalf and therefore additional amounts may be due after the initial payment is made.

(b) Credit Information. BR may update BR customers' credit information from time to time using available public information. In addition to public data, BR may request that BR customers provide additional financial data to demonstrate the customer's creditworthiness. If you tender freight to BR for services, you will be deemed to have consented to BR use of financial data about you to verify your creditworthiness. BR reserves the right to revoke credit or to reduce a customer's credit limit due to a change in credit worthiness, pay history or similar considerations. BR will place an account on credit hold if satisfactory arrangements are not made on past due balances.

(c) Terms; Charges. Payments are due within 15 days of invoice date. If an invoice is not paid on or before the due date, such invoice will be subject to a late charge from the date payable until payment in full at 1.5% per month, or such lesser amount as may represent the maximum rate permitted by applicable law. If BR is required to utilize the services of a collection agency or attorneys to collect any amounts due, the customer will be responsible for reasonable collection costs, attorney fees, court costs and other reasonable expenses incurred in collecting amounts owed.

(d) Offset. A customer may not withhold payment as a setoff because of a dispute or claim with BR or its underlying transportation providers, including claims for overcharge, duplicate payment or other invoice-related disputes or claims for loss, damage or delay of freight or equipment.

(e) Dispute Process. Customers must notify BR in writing of any dispute regarding a BR invoice of any type within 60 days of the date of BR's invoice. If the customer fails to timely notify BR of the dispute, BR's original invoice will be deemed to be final, and the customer will be deemed to have accepted such invoice in full and to have waived any and all claims or defenses to paying such invoice. Disputes must be accompanied by reasonably detailed supporting documentation to facilitate efficient resolution. BR endeavors to resolve customer disputes promptly, therefore if BR fails to respond to a properly documented dispute within 90 days BR's receipt of such notice, the dispute will automatically be deemed to be resolved in favor of the customer. As a condition precedent to collecting such a claim, customers must initiate an arbitration or lawsuit for overcharges, duplicate payment,

overcollection or other invoice-related dispute within 18 months of delivery or tender of delivery of the shipments involved.

(4) No Guaranty.

(a) No Liability for Delay. BR will use commercially reasonable efforts to obtain on-time performance from the underlying transportation providers and other service providers; however BR and the underlying transportation providers do not guarantee adherence to any particular transit schedule and will not be liable for failure to transport any shipment by any particular schedule or in time for any particular market or appointment.

(b) No Equipment Guaranty. BR does not guarantee equipment availability for any services at any specific time

(5) Facility User Responsibilities.

(a) Instructions. Customer must provide accurate, proper and complete instructions in a form acceptable to BR and accurately identify the commodities for which services are being provided including an appropriate description of the commodities. To prevent errors and delays, these instructions must be provided in writing, such as through facsimile or e-mail transmission, to BR, which will be relied upon for its accuracy and completeness.

(b) Cancellation; Changes. Cancellations, corrections or other changes to previously submitted instructions must be submitted to BR in writing. Written notice must clearly indicate the intention to either cancel the services or correct the original instructions; newly submitted instructions without notice of correction or change to an existing order will result in a duplicate order and additional charges to the customer. BR reserves the right to assess an administration and handling charge for each correction or cancellation. Customer may cancel services sufficiently in advance to allow BR to notify the appropriate parties of the cancellation before such services have been dispatched. If the cancellation request is not timely submitted, BR will nevertheless use commercially reasonable efforts to accommodate the cancellation request, however, BR will not be liable, and the customer will be responsible for applicable freight rates, surcharges and accessorial charges associated with these movements and for any administration and handling charge assessed by BR or the underlying transportation providers in connection with cancellation of or changes in shipment movement information.

(c) Commodity Description. Customer is required to provide a detailed description of the commodity for which the services apply. Vague phrases and industry jargon such as Freight All Kinds (FAK) are not sufficient and failure to provide accurate and detailed descriptions may result in delays in services and additional accessorial and related costs and other adverse consequences. If BR reasonably determines you have mis-declared or mis-described freight, BR will have no liability for any loss or damage to that freight that in any way results, directly or indirectly, from such mis-declaration or mis-description or that could have been avoided had such freight been accurately and completely declared or described in accordance with these Rules and the shipments will be subject to the other sections of these Rules including but not limited to Section 2(h).

(d) Hazardous Shipments. All shipments of hazardous materials and hazardous substances are subject to, and you must comply with, all local, state, federal regulations related thereto. BR assesses a surcharge on shipments of hazardous materials.

(e) **Restricted Commodities.** The rail transportation providers have specific rules regarding the type of freight that they will carry as well as the additional documentation necessary for shipping of these restricted or prohibited commodities. These rules are specified in detail in the Intermodal Circulars. Any commodity that is prohibited by any rail carriers for transportation is also prohibited for intermodal or highway transportation arranged by BR. Prohibited commodities include hazardous wastes, garbage, explosives, metal coils, scrap metal or parts and sodium compounds or other commodities that would reasonably be expected to contaminate or otherwise render the trailer or container unsuitable for future shipments. Any commodity that is classified as “restricted” by a rail carriers is also considered “restricted” for BR and subject to special procedures in order to be eligible for transportation. Restricted commodities include bulk commodities, rolled paper, household goods, metal banding, dense metal items, rubber shavings, tire fabric, over-dimension loads, currency, postage stamps and mail. Other commodities such as freight that could be considered to pose a safety or health issue, is easily perishable, is considered to be of extraordinary value, or needs temperature protective services may also be subject to limitations or special requirements. Before tendering any such freight for transportation, you must make prior arrangements with BR. If you are unsure as to whether or not your commodity has special requirements for shipment, please contact BR. Failure to disclose to BR the presence of restricted commodities or to comply strictly with the requirements for transporting restricted commodities will relieve BR and the transportation provider of any liability for loss or damage directly or indirectly caused to or by the restricted commodities. Likewise, BR and the underlying transportation providers are not liable for loss or damage directly or indirectly arising out of your tendering prohibited commodities to BR or for any loss or damage to any prohibited commodities or to any restricted commodities tendered without strict compliance with the procedures set forth in these Rules. The customer will be responsible for and will defend, indemnify and hold harmless BR and the underlying transportation providers for any liabilities, costs and expenses arising out of your (i) tendering of any prohibited commodity for transportation, (ii) failure to properly declare any restricted commodity or (iii) failure to comply strictly with the requirements for transporting restricted commodities. In addition to the special rate applicable to any restricted commodity and all other charges that apply to that shipment and costs to repair, restore and decontaminate any container or chassis used to transport any restricted or prohibited commodity, the customer will be responsible for any penalties or charges assessed by the underlying transportation provider.

(f) **Shipper Load and Count.** All loads are considered shipper load and count and consignee unload unless arrangements are made at the time of the request for pricing or before the freight is tendered for shipment. The shipper or consignor is responsible for supplying and applying seals, and the consignee should break all seals. A consignee’s failure to use a specialized stamp or form as a delivery receipt for a shipment will not invalidate any other form of delivery receipt obtained by the underlying transportation provider. Furthermore, a consignor’s or consignee’s failure to record the seal number of a shipment will not render BR or the underlying transportation provider liable for shortage in that shipment. Any claim for a shortage must be supported by seal records and actual loading and unloading records. If the seal was intact upon delivery, any shortage claim is likely to be declined unless there is physical evidence of unauthorized entry into the freight vehicle while it was in the possession of the underlying transportation provider. BR is hereby authorized by the customer to break the seal on a trailer or container if it determines that it is reasonably necessary to do so to inspect, reposition, or protect the cargo or the transportation equipment or to comply with federal, state, municipal, or provincial laws, rules, and regulations. The consignee may not refuse delivery of a shipment solely because the seal on the container or trailer is broken.

(g) **Inspection of Equipment.** All empty equipment provided for loading should be inspected prior to loading to ensure that it is in suitable condition to protect and preserve the freight during transit. If an investigation reveals that defects in equipment could reasonably have been discovered prior to loading, any claim for loss or damage will be declined.

(h) Use of Equipment. If customer requests BR arranges for containers or trailers to be dropped at a location and left unattended, customer shall be responsible for any loss or damage to the equipment occurring during or as a result of the possession or use of the equipment.

(6) Liabilities.

(a) Force Majeure. BR and the transportation providers will be excused from performing its services and other obligations if BR or the transportation provider is prevented or delayed by force majeure conditions beyond BR or its reasonable control, including fire or explosions; lockouts, strikes, slowdowns, labor shortages or disturbances; acts of God, including floods, hurricanes, tornadoes, earthquakes, unusually severe weather and natural disasters; war, insurrection, terrorism or riots; acts of the public enemy; acts of governmental authority; embargo; congestion or service issues affecting the transportation providers; and epidemics or quarantine restrictions.

(b) Liability for Freight Loss, Damage or Delay.

(i) BR will be liable for loss or damage to freight to the extent that it is proved that BR's sole gross negligence or willful misconduct in the arranging for transportation of the freight was the proximate cause of the freight loss or damage and then only to the extent, on a comparative basis, that the loss or damage was caused by BR's sole gross negligence or willful misconduct. Liability under 49 U.S.C 14706 (the Carmack Amendment) does not apply to the services. BR shall not be liable for any freight loss or damage caused by the services of the underlying transportation provider or arising out of the negligence or intentional misconduct of the underlying rail or motor transportation provider and such negligence or intentional misconduct shall not be imputed to BR. In no event will BR's total liability for freight loss or damage exceed \$50,000.00 per container or trailer. Freight claims under \$500.00 will not be entertained. BR's maximum liability for freight loss or damage will not exceed the liability of the party tendering the freight for transportation and BR shall be entitled to any lower limitations of liability applicable to the shipment, including limitations under an ocean bill of lading.

(ii) The underlying transportation providers will be liable for loss or damage to freight to the extent provided under the terms of and subject to the procedures set forth in these Rules, the applicable Intermodal Circular or the contract between BR and the transportation provider, or if not covered in these Rules, the applicable Intermodal Circular or the BR contract, under federal transportation law. The aggregate liability limits set forth in these Rules apply to the underlying transportation provider's aggregate liability as well.

(iii) Neither BR nor the underlying transportation providers will be liable for the following: (1) damage to freight or equipment to the extent due to packaging, loading, unloading, blocking, bracing or securing of the freight; (2) inherent vice or defect in the freight transported, including rusting of metals, swelling of wood caused by humidity, moisture or condensation, deterioration of perishable products, or damages caused by heat or cold; (3) force majeure events as described herein; (4) an act, omission or default of any customer, shipper, consignor, consignee, beneficial owner or other third party logistics provider; (5) shipments stopped and held in transit at your request; or (6) loss or damage of freight that violates any federal, state or local law, ordinance or regulation or that has been loaded in a container or trailer so that the combined weight of the chassis, container or trailer and the freight exceed 65,000 pounds.

(iv) Freight loss and damage occurring while in the possession of underlying transportation providers in Mexico are subject to Mexican law and the rules and policies of the Mexican carriers, which differ substantially from the law, rules and policies applicable in the United States. BR is not liable for freight loss or damage that occurs while the freight is in the possession of an international or domestic carrier in Mexico. Furthermore, BR does not assume any liability for shipments outside the United States or Canada.

(c) **Injury and Property Damage.** BR is not liable for any injury or death to persons or damage to property, including loading docks, facilities or other property, which arises out of the negligence, willful misconduct or other acts or omissions of the transportation providers or others in the course of the transportation services that BR arranges for customer. BR is only liable for personal injury or property damage to the extent it is proved that BR's gross negligence or willful misconduct in arranging for transportation of the freight was the proximate cause of the personal injury or property damage and then only to the extent, on a comparative basis, that the injury or damage was caused by BR's gross negligence or willful misconduct.

(7) **Claims.**

(a) **Administration.** BR will use commercially reasonable efforts to assist and cooperate with customers to investigate and process any freight loss or damage claims against the underlying transportation providers and any claim for damage to customer's property occurring in the course of the transportation services rendered to such customer.

(b) **Notice.** If a shipment arrives with visible or obvious damage or loss of cargo, the customer must notify BR promptly (in no event later than the time limit established in the applicable Intermodal Circular) in writing advising BR of the nature and extent of the loss or damage. The transportation providers may consider you to have waived and released the claim if there is a failure to provide this prompt notification. The customer will (or will cause its consignee to) preserve and make available to BR's or the transportation provider's inspectors all damaged cargo, all cargo received in good condition and all packaging, blocking, bracing and security devices to assist the inspectors in determining the cause of the damage or loss. Failure to inspect damaged cargo for whatever reason will not change the burden of proof or customer's obligation to mitigate damages nor will it be considered an admission of liability by BR or the transportation provider.

(c) **Timing.** If, pursuant to any applicable Intermodal Circular, the freight claim is not timely filed, BR and the underlying transportation providers may deny the claim and treat such delay as a full release by customer of BR and the underlying transportation providers from responsibility to pay that freight claim. Should customer believe that BR is directly liable for a freight claim that has not been resolved, as a condition precedent to recovery, the customer must institute litigation against BR to recover on a claim for damage or loss of freight transported within 5 months from the date of the original written disallowance of the claim or any portion of it from BR or the underlying transportation provider. Failure to timely bring a cause of action shall be treated as a release by customer of BR of such claim, and shall be relieved of any and all liability arising therefrom.

(d) **Limitation of Liability.** In addition to other limits set forth herein, BR shall not be liable for loss of or damage to any goods not identified in the transportation documents, loss of or damage to any dunnage, freight charges, attorneys' fees and brokerage fees, fines, import duties or other charges on shipments intended for export. BR will not, under any circumstances, be liable to any customer, supplier, consignor, consignee, beneficial owner, third party logistics provider or any other party for consequential, special or indirect damages, lost profits, lost savings, punitive damages, losses due to fluctuations in the freight's market value, exemplary damages or attorney's fees or interest relating

in any way to the services us, or to loss, damage or delay of freight, regardless of whether BR was aware of or reasonably or otherwise could have foreseen any such damages. In any legal proceedings with respect to a freight claim, customer shall have the burden to prove, among other items, that (i) the freight was in good condition, properly prepared for transportation, appropriately packaged, loaded, blocked and braced in accordance with industry standards or as specifically approved by the underlying transportation provider, within the vehicle at the time the shipment was tendered by customer to the underlying transportation provider; (ii) the freight arrived at its destination in a damaged or diminished condition; and (iii) the amount of damages due for the freight claim can be specified. BR is not liable for freight loss or damage to any person or entity other than the customer and will not process a freight claim brought by any third parties.

(e) Duty to Mitigate. It is the consignee's obligation to mitigate any losses. Therefore, the consignee should accept damaged freight, and if the consignee is unable to salvage the freight, the freight should be made available to the underlying transportation provider for salvage. If the consignee is unable or unwilling to assist in mitigating the loss, BR will notify customer of the refusal and follow customer's direction regarding the freight, including shipping it to a location designated by customer for further handling. Costs associated with complying with customer's direction will be billed to the customer. If for any reason whatsoever, the consignee refuses the freight or the customer refuses to give timely direction about the disposal of freight rejected by the consignee, BR may, without further notice or demand, place the freight in storage at the risk and expense of the freight and customer. Such stored freight will be subject to a lien in favor of BR for any charges. By tendering freight to BR to arrange for transportation, you will be conclusively presumed to have granted such a lien to BR. BR may exercise the foregoing rights at any time after 48 hours have elapsed since notification of the arrival and availability of the freight at destination or of the consignee's rejection of the freight. Alternatively, BR or the underlying transportation provider may sell the freight to the highest bidder in a public or private sale. Before such a sale of nonperishable freight is made, BR will first give written notice to the customer that the freight has been refused or unclaimed and that it will be subject to sale if disposition is not arranged for within 3 business days. Further failure or refusal to claim or dispose of the freight within this time period will constitute a waiver by you of all right, title and interest in and to the freight and all rights, claims, notices and defenses with respect to the freight to the maximum extent permitted by applicable law. If the receiver of perishable freight fails or refuses to accept it promptly, BR may, in a public or private sale, sell the freight to the best advantage to prevent deterioration. Where the procedures provided for in the two preceding paragraphs are not possible, BR may sell the freight as authorized by law. BR will be entitled to recover from customer, and/or from the proceeds of a sale or disposal of the freight, all costs incurred as a result of the customer's or the consignee's failure to accept delivery of the freight or to provide direction about disposal of rejected freight, including all storage fees, equipment use charges and costs of disposal.

(f) Salvage. Customer shall use all reasonable and good faith efforts to mitigate damages from any freight loss or damage. These efforts will include salvaging the goods in a commercially reasonable manner and repackaging and relabeling the freight. If customer, directly or indirectly, refuses to sell or allow the sale of damaged freight, BR may deduct its reasonable estimate of the salvage value of the damaged freight from the amount of the claim against the transportation provider and BR. Customer shall be bound by the reasonable salvage deduction determined by BR. Furthermore, BR may recover from its customer and/or from the proceeds of a sale of the freight (or deduct from the claim) all costs incurred as a result of the customer's or the consignee's rejection and the customer's failure to provide direction or to sell or permit the sale of the freight, including all storage fees and costs of disposal. Notwithstanding the foregoing, if the freight is offered to BR for salvage, BR is entitled to, but are not required to, undertake salvage efforts. If BR, in BR's discretion, determine that BR will not undertake salvage efforts, BR in no way waive BR's right to assert BR's claim that you failed to mitigate damages by your failure to take efforts to salvage the freight.

(g) **Filing a Claim.** When submitting a claim, the following items must be included. Failure to provide all of the following information within the time limit set forth in Section 7(c) may be considered a waiver and release of the claim: (i) a demand for payment of a specified dollar amount determined in accordance with these Rules (including certified documentation to verify the amount of the demand); (ii) bill of lading number or other information as to identify the shipment; (iii) shipping instructions and other shipping documents; (iv) salvage allowance; (v) legible copies of the loading and unloading tally denoting contents and quantities of each of the cartons, crates, boxes, pallets or shipping units involved in the shipment and seal record (particularly for shortage claims); (vi) photographic and other supporting documentation detailing the nature of the damage or loss including damage within the container; (vii) origin records or certification as to the condition and quantity of freight at the time received from the destination transportation provider; (viii) shipper import declaration; and (ix) evidence that the shipment was properly loaded, blocked, braced and secured for the selected mode of transportation. Freight Claims should be submitted to:

Brookhaven Rail LLC
Attn: Freight Claims
38955 Hills Tech Dr
Farmington Hills, MI 48331

(8) General Provisions.

(a) **Severability.** If a court of competent jurisdiction finds that any provision of these Rules is invalid or unenforceable, such provision will be ineffective as to such jurisdiction, without invalidating the remaining provisions of these Rules or affecting the validity or enforceability of such provision in any other jurisdiction. Furthermore, if such provision could be more narrowly drawn so as not to be invalid or unenforceable in such jurisdiction, it will be so narrowly drawn as to such jurisdiction, without invalidating the remaining provisions of these Rules or affecting the validity or enforceability of such provision or any other provision in any other jurisdiction.

(b) **Waiver.** A failure by BR to enforce strictly any provision of these Rules will not be construed to be a waiver of that provision or as excusing future performance in accordance with the provisions of these Rules.

(c) **Remedies Cumulative.** All remedies hereunder are cumulative, are in addition to any other remedies provided for by law or in equity, and, to the extent permitted by law, may be exercised concurrently or separately, and the exercise of any one remedy will not be deemed to be an election of such remedy or to preclude the exercise of any other remedy. Without limiting the generality of the foregoing, BR's assessment or collection of an administrative charge or other fee set forth in these Rules will not affect or limit BR's right to exercise any other right and remedy.

(d) **Amendment.** BR may change or replace these Rules from time to time without advance notice by posting the revised version on the BR website. Customers are advised that the terms, conditions, charges and services on the date of tender of the shipment will apply and will have a continuing obligation to obtain and be aware of the version of these Rules in effect on the date of tender. The current version of these Rules may be obtained at www.brookhavenrail.com.

(e) **Independent Contractor.** It is understood and agreed that the relationship between BR and the customer is that of independent contractor. None of the terms of these Rules, or any act or omission of either party shall be construed for any purpose to express or imply a joint venture, partnership, principal/agent, fiduciary, employer/employee relationship between the parties.

(f) Controlling Terms. Other than changes to these Rules by BR, these Rules may be amended, modified, waived, or varied only through a written agreement signed by BR.

(g) Governing Law. Except as otherwise agreed by BR in a writing signed by its authorized representative, any dispute arising in connection with the transportation and other services provided by BR will be governed by and interpreted in accordance with federal transportation laws, rules and regulations and to the extent not in preempted, the laws of the State of Michigan, without giving effect to any choice or conflict of law rules.