

INDUSTRIAL TRACK AGREEMENT INFORMATION SHEET

In all situations involving service to a shipper on a private track (Industry owned) either on or off Railroad property, an Industrial Track Agreement ("ITA") should be entered into between the parties prior to service. The Real Estate Department requires the following minimum information in order to prepare and process such a document. Please return completed form with schematic along with non-refundable \$1,000.00 (U.S.) document preparation fee and \$1,500.00 (U.S.) Engineering review fee (**for new track construction only**) : Processing time is approximately 6-8 weeks. There is a fee of \$1,750 (U.S.) to expedite. *Note: ALL new track to be constructed, as well as additions to existing trackage MUST be approved by the RA-Engineering prior to commencement of construction or request submittal for an ITA.*

1. Complete Legal Name of Shipper/Receiver: _____

2. State of Incorporation: _____

3. Mailing Address: _____

Physical Address of Shipper for overnight service: _____

Physical Address of Industry Track: _____

4. Contact Person: _____ Title: _____

5. Phone No. (____) _____ Fax No.: (____) _____ Email: _____

6. Railroad Name: _____

7. Total Length of Track from Point of Switch (P.S.) to end of track: _____ ft. Mile Post _____

8. Is Shipper exclusive user of track? _____ Private Cars/RR Cars (Circle One)

9. No. of switches owned by RR: _____ Length of turnout (P.S. to boundary of RR property): _____

10. Ownership: P.S. to property line Railroad Property line to end of track _____

11. Maintenance: P.S. to Clearance Point (C.P.) Railroad (If not, who?) _____

C.P. to end of track _____

12. New Construction of Track? (Yes or No) Mile Post at P.S. (Point of Switch) _____

13. Track construction: Who bears cost of construction? () Industry () Railroad
Who bears cost construction of RR Switch/Turnout? () Industry () Railroad
Railroad Switch-Turnout Constructed by: () Railroad () Industry ...at () Railroad () Industry expense.

14. Nearest City: _____ County: _____ State: _____ Subdivision: _____

*15. All commodities to be handled on track (**Include STCC & Descriptions**): _____ (not all hazmat commodities are acceptable and hazmat commodities may require additional charges. Minimum \$10M insurance coverage naming the railroad and RailAmerica, Inc. as additional insured on all hazmat. Non-hazmat minimum \$3M. ***MUST LIST ALL COMMODITIES AND THEIR STCC NUMBERS. IF COMMODITY IS HAZMAT, REGARDLESS OF LEVEL, MSDS PAPERS MUST ACCOMPANY APPLICATION FOR ENVIRONMENTAL APPROVAL.**

Please Note: **There is a \$2,500.00 per switch annual Switch Maintenance Fee on all ITA's.** There also may be additional rental charge per linear foot for all Railroad-owned and maintained trackage.

Dated: _____ Signature: _____

Name Printed: _____

Title: _____

Please return completed form with schematic showing track or plans for new construction for approval and fees if applicable to: Paula Ake, RailAmerica, Inc., Real Estate Department, 7411 Fullerton Street, Suite 300, Jacksonville, FL 32256. For questions, please email Paula.Ake@RailAmerica.com or (904) 538-6344. Document preparation fee and track sketch must accompany application. Incomplete applications will be declined and returned and delay the process. For further information please visit <http://www.railamerica.com/realestate.aspx>

CONTRACT INSURANCE REQUIREMENTS FOR HAZMAT

Licensed or Leased Track

Industry shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

A. Commercial General Liability insurance. This insurance shall contain broad form contractual liability with a single limit of at least \$10,000,000.00 each occurrence or claim and an aggregate limit of at least \$10,000,000.00. Coverage must be purchased on a post 1998 ISO or equivalent form, including, but not limited to, coverage for the following:

- Bodily injury including death and personal injury
- Property damage
- Fire legal liability (Not less than the replacement value of the portion of the premises occupied)
- Products and completed operations
- Contractual Liability RRs endorsement CG 24 17
- Designated Premises Pollution Coverage (CG00-39) endorsement.

The policy shall also contain the following endorsements **which shall be indicated on the certificate of insurance:**

- The employee and worker's compensation related exclusions in the above policy apply to Lessee's employees
- The exclusions for railroads and explosion, collapse and underground hazard shall be removed.
- Waiver of subrogation

B. Business Automobile Coverage insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence or claim, including, but not limited to, coverage for the following:

- Bodily injury and property damage
- Any and all motor vehicles including owned, hired and non-owned

The policy shall also contain the following endorsements **which shall be indicated on the certificate of insurance:**

- The employee and worker's compensation related exclusions in the above policy apply only to Lessee's employees
- Waiver of subrogation
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90)

C. Umbrella or Excess Policies in the event Lessee utilizes Umbrella or excess policies, these policies shall "follow form" and afford no less coverage than the primary policy.

Other Requirements

D. Pollution Legal Liability (PLL) Insurance. This insurance shall be in an amount of at least FIVE MILLION DOLLARS (\$5,000,000) per occurrence and TEN MILLION DOLLARS (\$10,000,000) in the aggregate including but not limited to coverage for the following:

- ◆ bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death;
- ◆ property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, cleanup costs, and the loss of use of tangible property that has not been physically injured or destroyed;
- ◆ defense costs including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages.

Coverage shall apply to sudden and non-sudden pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, which results in BODILY INJURY or PROPERTY DAMAGE.

E. Lessee agrees to waive its right of recovery, and its insurers, through policy endorsement, agree to waive their right of subrogation against Railroad. Lessee further waives its right of recovery, and its insurers also waive their right of subrogation against Railroad for loss of its owned or leased property or property under its care, custody and control. Lessee's insurance shall be primary with respect to any insurance carried by Railroad. All waivers of subrogation **shall be indicated on the certificate of insurance.**

F. All policy(ies) required above (excluding Workers' Compensation) shall provide severability of interests and shall name Railroad as an additional insured. **Severability of interest and naming Railroad and RailAmerica, Inc. as additional insured shall be indicated on the certificate of insurance.**

G. Lessee shall furnish to Railroad original certificate(s) of insurance evidencing the required coverage, endorsements, and amendments, and reference the contract audit/folder number if available. The certificate(s) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing of any cancellation or material alteration. **Upon request from Railroad, a certified duplicate original of any required policy shall be furnished.**

H. Any insurance policy shall be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state in which the Track is located.

I. Lessee **WARRANTS** that this Agreement has been thoroughly reviewed by Lessee's insurance agent(s)/broker(s), who have been instructed by Lessee to procure the insurance coverage required by this Agreement and acknowledges that Lessee's insurance coverage will be primary.

J. If Lessee fails to procure and maintain insurance as required, Railroad may elect to do so at the cost of Lessee plus a 25% administration fee.

K. The fact that insurance is obtained by Lessee or Railroad on behalf of Lessee shall not be deemed to release or diminish the liability of Lessee, including, without limitation, liability under the indemnify provisions of this Agreement. Damages recoverable by Railroad shall not be limited by the amount of the required insurance coverage.

CONTRACT INSURANCE REQUIREMENTS FOR NON-HAZMAT

Licensed or Leased Track

Industry shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

A. **Commercial General Liability** insurance. This insurance shall contain broad form contractual liability with a single limit of at least \$3,000,000.00 each occurrence or claim and an aggregate limit of at least \$3,000,000.00 Coverage must be purchased on a post 1998 ISO or equivalent form, including, but not limited to, coverage for the following

- Bodily injury including death and personal injury
- Property damage
- Fire legal liability (Not less than the replacement value of the portion of the premises occupied)
- Products and completed operations

The policy shall also contain the following endorsements **which shall be indicated on the certificate of insurance:**

- The employee and worker's compensation related exclusions in the above policy apply only to Industry's employees
- The exclusions for railroads and explosion, collapse and underground hazard shall be removed
- Waiver of subrogation

B. **Business Automobile Coverage** insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence or claim, including, but not limited to, coverage for the following:

- Bodily injury and property damage
- Any and all motor vehicles including owned, hired and non-owned

The policy shall also contain the following endorsements **which shall be indicated on the certificate of insurance:**

- The employee and worker's compensation related exclusions in the above policy apply only to Industry's employees
- Waiver of subrogation
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90)

C. **Workers Compensation and Employers Liability** insurance including but not limited to:

- Industry's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit, \$500,000 each employee

If Workers' Compensation insurance will not cover the liability of Industry in states that require participation in state workers' compensation fund, Industry shall comply with the laws of such states. If Industry is self-insured, evidence of state approval must be provided along with evidence of excess workers compensation coverage. Coverage shall include liability arising out of the U.S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable. The policy shall also contain endorsement **which shall be indicated on the certificate of insurance:**

- Alternate Employer Endorsement

D. **Umbrella or Excess Policies** in the event Industry utilizes Umbrella or excess policies, these policies shall "follow form" and afford no less coverage than the primary policy.

Other Requirements

- E.** Punitive damage exclusion must be deleted, **which deletion shall be indicated on the certificate of insurance.**
- F.** Industry agrees to waive its right of recovery, and its insurers, through policy endorsement, agree to waive their right of subrogation against Railroad. Industry further waives its right of recovery, and its insurers also waive their right of subrogation against Railroad for loss of its owned or leased property or property under its care, custody and control. Industry's insurance shall be primary with respect to any insurance carried by Railroad. All waivers of subrogation **shall be indicated on the certificate of insurance.**
- G.** All policy(ies) required above (excluding Workers' Compensation) shall provide severability of interests and shall name Railroad as an additional insured. **Severability of interest and naming Railroad as additional insured shall be indicated on the certificate of insurance.**
- H.** Industry shall furnish to Railroad original certificate(s) of insurance evidencing the required coverage, endorsements, and amendments, and reference the contract audit/folder number if available. The certificate(s) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing of any cancellation or material alteration. **Upon request from Railroad, a certified duplicate original of any required policy shall be furnished.**
- I.** Any insurance policy shall be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state in which the Track is located.
- J.** Industry **WARRANTS** that this Agreement has been thoroughly reviewed by Industry's insurance agent(s)/broker(s), who have been instructed by Industry to procure the insurance coverage required by this Agreement and acknowledges that Industry's insurance coverage will be primary.
- K.** If Industry fails to procure and maintain insurance as required, Railroad may elect to do so at the cost of Industry plus a 25% administration fee.
- L.** The fact that insurance is obtained by Industry or Railroad on behalf of Industry shall not be deemed to release or diminish the liability of Industry, including, without limitation, liability under the indemnify provisions of this Agreement. Damages recoverable by Railroad shall not be limited by the amount of the required insurance coverage.