

UNION PACIFIC RAILROAD COMPANY TEAM TRACK AGREEMENT

The undersigned ("User") wishes to use for User's convenience the public use tracks and related property and facilities ("Team Tracks") of UNION PACIFIC RAILROAD COMPANY ("Railroad") in the State of XXXXXXXXXXX. Railroad is agreeable to such use, provided that User agrees to the following terms and conditions ("Agreement"):

1. User's use of the Team Tracks shall be non-exclusive, and for the purposes of delivering and loading railcars for pickup by Railroad and receiving and unloading railcars set out by Railroad, and for no other purposes. In no event shall the Team Tracks be used by User for railcars containing hazardous materials, as defined by the United States Department of Transportation. Upon written notice to User, Railroad may prohibit the presence of railcars on the Team Tracks containing commodities Railroad in its sole discretion considers environmentally sensitive.
2. Before using any Team Tracks, User shall contact Railroad's Transportation Superintendent's office with jurisdiction over the Team Tracks to be used.
3. Due to the potentially dangerous nature of Railroad operations, User shall conduct its operations in a manner that is free from safety and health hazards, and ensure that its employees are competent, adequately trained in all safety and health aspects of User's operations, and not under the influence of any alcoholic beverage, illegal drug, or any substance that may impair the safe performance of their work. User shall strictly observe the rules, regulations or directions of Railroad's Superintendent or the Superintendent's authorized representatives. However, User shall be solely responsible for the safety of its use of the Team Tracks, both as concerns User's property and employees, and the property and employees of Railroad and any other users of the Team Tracks. Railroad shall have no responsibility for User's operations or employees. User's employees shall in no event be deemed to be employees of Railroad. User shall promptly notify Railroad of any United States Occupational Safety and Health Administration reportable injuries occurring to any person during User's use of the Team Tracks.
4. User shall not cause any interference with the constant, continuous and uninterrupted use of the tracks, property and facilities of Railroad. When not in use, User's loading/unloading machinery shall be kept at least 50 feet from the centerline of Railroad's nearest track and shall be removed from the Team Tracks when loading/unloading is completed. User shall not cross Railroad's tracks except at existing open public crossings.
5. User shall be responsible for the repair or replacement of any damaged or destroyed property of Railroad or other users of the Team Track, when such damage or destruction arises in any manner out of the User's use of the Team Tracks.
6. User shall not release, dispose of or place any materials or debris on the Team Tracks, and shall be responsible for removing and properly disposing of any such materials or debris.
7. User shall pay Railroad all accessorial charges that, pursuant to UP-6000 series tariff publications or any successor publications, are assessed on railcars destined to or originating from the Team Tracks, including, but not limited to demurrage, switching, reconsignments and weighing charges.
8. User shall comply with all applicable governmental laws, rules, regulations and orders in its use of the Team Tracks.

- 9. USER AGREES TO RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS RAILROAD FOR, FROM AND AGAINST ANY AND ALL LOSSES, DAMAGES, CLAIMS, DEMANDS, ACTIONS, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) (COLLECTIVELY, "LOSSES") (a) CAUSED BY OR ARISING FROM, IN WHOLE OR IN PART, ANY ACT OR OMISSION OF USER, OR (b) ANY BREACH BY USER OF THIS AGREEMENT, OR (c) FOR PERSONAL INJURY TO OR DEATH OF USER'S EMPLOYEES, AGENTS OR CONTRACTORS OCCURRING WHILE SUCH PERSON IS ON OR ABOUT THE TEAM TRACKS. THE FOREGOING RELEASE AND INDEMNITY SHALL APPLY REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF RAILROAD EXCEPT TO THE EXTENT THE LOSS IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF RAILROAD.**
10. Before User may use the Team Tracks, User shall provide the Railroad with a Certificate issued by its insurance carrier evidencing the insurance coverage required by the attached Exhibit A. Upon sixty (60) days notice to User, Railroad may increase limits or otherwise change the coverage required by this Agreement, consistent with Railroad's risk management policy, no more frequently than once in any twelve (12) month period. All insurance correspondence shall be directed to:
- Union Pacific Railroad Company
Real Estate Department - Folder XXXX-XX
1400 Douglas Street, STOP 1690
Omaha, NE 68179-1690
11. User's use of the Team Tracks shall be subordinate to such use of the Team Tracks as Railroad may desire to make. Railroad may at its sole discretion temporarily or permanently close any Team Tracks.
12. The term of this Agreement is five (5) years beginning on the Effective Date below, subject to earlier termination as provided in this Paragraph 11. This Agreement may be terminated without cause by either party on thirty (30) days' written notice to the other party. If User defaults under this Agreement, Railroad may terminate this Agreement at any time by oral or written notice to User. Upon termination of this Agreement, User shall immediately remove its property from the Team Tracks.
13. All references in this Agreement to "User" shall mean and include User and its officers, contractors, agents and employees, and others acting under its or their authority.

Please sign and DELIVER, along with certificate of insurance, to:

UNION PACIFIC RAILROAD COMPANY
REAL ESTATE DEPT - FOLDER XXXX-XX
1400 DOUGLAS STREET, STOP 1690
OMAHA, NE 68179-1690

An executed original will be returned for your records. KEEP one copy in your possession at all times while on Railroad property. This signed copy MUST be shown on request to any Railroad employee.

INDUSTRY NAME HERE

UNION PACIFIC RAILROAD COMPANY

By: _____

By: _____

Title _____

Assistant Director – Contracts
Real Estate Department
Effective Date:

SAMPLE AGREEMENT

Exhibit A
Union Pacific Railroad
Contract Insurance Requirements

Public Track

User shall, at its sole cost and expense, procure and maintain during the life of this Agreement (except as otherwise provided in this Agreement) the following insurance coverage:

A. Commercial General Liability insurance. Commercial general liability (CGL) with a limit of not less than \$1,000,000 each occurrence and an aggregate limit of not less than \$2,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

B. Business Automobile Coverage insurance. Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$1,000,000 for each accident, and coverage must include liability arising out of any auto (including owned, hired, and non-owned autos).

C. Workers Compensation and Employers Liability insurance. Coverage must include but not be limited to:

- User'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 User is self-insured, evidence of state approval and excess workers compensation coverage must be provided.

D. Umbrella or Excess insurance. If User utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

Other Requirements

E. All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by User's liability under the indemnity provisions of this agreement.

F. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this agreement, or (b) all punitive damages are prohibited by all states in which this agreement will be performed.

G. Prior to implementation of this agreement, User shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.

H. User waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees for damages covered by the workers compensation and employers liability or commercial umbrella or excess liability obtained by User required in this agreement. This waiver must be stated on the certificate of insurance.

I. All insurance policies must 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(s) covered by this agreement.

J. The fact that insurance is obtained by User, or by Railroad on behalf of User, will not be deemed to release or diminish the liability of User, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from User or any third party will not be limited by the amount of the required insurance coverage.

SAMPLE AGREEMENT