

SIDING AGREEMENT

THIS SIDING AGREEMENT ("Agreement") is made as of the ____ day of _____, 20 ____, by and between **RAILWAY NAME** ("Railway") and **INDUSTRY NAME** ("Industry").

Railway and Industry agree as follows:

DESCRIPTION OF TRACK

1. Railway will provide rail service to Industry on the industrial track or tracks that are described below (the "Track"):

An industrial track identified as _____ – _____ feet in length, more or less, as measured from the mainline point of switch identified as Station 0+00 to the end of Track located at Station _____ as located at **CITY, County, State;**

as shown on print of Plan No. _____, dated _____ attached hereto as **Exhibit A** and made a part hereof (the "Plan"), subject to any extensions, additions and relocations thereto or thereof that may be approved in writing by Railway without need of formally amending this Agreement.

OPERATION

2. (a) The Track will be maintained and operated in accordance with the terms and conditions set forth in this Agreement.

(b) Railway hereby authorizes the construction, maintenance and operation by Industry of any unloading pit, tipple, conveyor, Special Facility (as defined in Section 14 hereof), private road crossing, gate or door associated with the Track as shown on the Plan.

RIGHT-OF-WAY

3. (a) Industry hereby guarantees to Railway the right and authority to operate over any portion of the Track, and the tracks of any third party necessary to provide service to the Track (any such track a "Support Track"), located beyond the right-of-way or property of Railway or upon any public roadway.

(b) Railway hereby licenses to Industry and consents to Industry's use of so much of Railway's right-of-way or property as may be necessary for the maintenance of the Industry Segment (as defined in Section 6(a)) (such right-of-way or property the "Premises"). Industry shall not permit any entity or person that is not an Industry Party (each a "Prospective Entrant") to enter the Premises except as pre-approved for entry by Railway in writing. If Railway grants pre-approval for entry for a given Prospective Entrant, such Prospective Entrant shall then be deemed an Industry Party. The term "Industry Party" means each of Industry and any contractor, subcontractor or agent of Industry, as well as their respective directors, officers, agents and employees.

(c) Railway has the right to temporarily or permanently bar from the Premises any Industry Party for any reason, including an Industry Party's failure, in Railway's sole discretion, to act safely, respectfully, responsibly, professionally, and/or in a manner consistent with Railway's desire to minimize risk and maintain its property with maximum security and minimum distractions or disruptions. Railway shall not be required to specify either the basis for its decision or which objections, if any, it has to any individual(s) barred pursuant to this subsection (c).

USE FOR THIRD PARTIES

4. Railway shall have complete control of its operations on the Track and may use the Track to provide service to parties other than Industry. However, any such use of the Industry Segment shall not interfere unreasonably with the business of Industry, and Railway will not use the Industry Segment to provide service to parties other than Industry without the consent of Industry, which consent will not be unreasonably withheld, conditioned or delayed.

OWNERSHIP

5. Ownership of the rails, materials and fixtures in the Track shall be as indicated on the Plan.

MAINTENANCE

6. (a) Industry will, at its sole cost and expense, maintain the portions of Track owned by Industry (the "Industry Segment") and all walkways adjacent to the Track in good condition and repair and free from all debris. In the event that the Industry Segment at any time crosses or is crossed by any public roadway, Industry will, at its sole expense, maintain any such crossing in good condition and repair and in accordance with all applicable requirements of governmental authorities. Industry also shall arrange for and bear all expense related to the installation and maintenance of any grade separation structures and warning devices for any road crossings of the Industry Segment. Prior to any Industry Party initiating any maintenance work, repairs, or construction on any portion of the Industry Segment located on the Premises, Industry shall comply with the following:

- i. Railway's Division Office shall be given at least forty-eight (48) hours' advance notice before entry upon the Premises.
- ii. All reasonable care shall be exercised and such precautions taken as the Superintendent of Railway, or his authorized representative, may deem necessary to protect Railway's facilities and operations. Railway reserves the right to place watchmen, flagmen, inspectors and supervisors for protection purposes during the operations hereunder and the expense thereof, including the expense of any material furnished, shall be promptly paid by Industry upon receipt of Railway's bill therefor. In addition to direct wage and material cost, such expense shall include, but shall not be limited to, cost of supervision, traveling expenses, Federal Railroad Retirement and Unemployment Taxes, vacation allowances and all other expenses incidental thereto.
- iii. A minimum clearance of fifteen feet (15') from the centerline of the nearest track shall be maintained at all times for any material, equipment or vehicles of Industry occupying the Premises unless authorized in writing by Railway or Railway's Superintendent.

(b) All classifications, tariffs, and successor documents and all government, Association of American Railroads and carrier rules and regulations that do not expressly conflict with a term of this Agreement (collectively, the “Incorporated Provisions”), as such Incorporated Provisions may be promulgated or amended from time to time, are hereby incorporated into this Agreement by reference. The Incorporated Provisions shall specifically include, but shall not be limited to, Railway’s Conditions of Carriage No. 1-series, all Railway Tariffs and referenced publications listed therein, and any supplements thereto or successor versions thereof. When any Incorporated Provision conflicts with this Agreement, this Agreement will control. As used in any Incorporated Provision, the term “Owner” shall mean Industry.

RAILWAY’S RIGHT TO SUSPEND OPERATION

7. (a) Railway may, in its sole discretion, suspend the operation of the Track immediately and without notice to Industry if Railway determines that the condition of the Track or one or more Support Tracks are unsafe. Upon such occurrence, Railway will notify Industry as quickly as practicable of the reason for the suspension of service and will resume service on the Track as soon as the unsafe condition has been eliminated.

(b) Railway shall have the right, in its sole discretion, to temporarily suspend the operation of the Track immediately and without notice to Industry based on Railway’s operational needs at one or more locations other than the Track (including, but not limited to, a casualty event, track and right of way construction, maintenance and/or repair activities, labor shortage or strike, track outage, equipment shortages, and traffic demands). Upon such occurrence, Railway will endeavor to resume service on the Track as soon as judged expedient by Railway.

CLEARANCES

8. (a) Industry agrees, except for any structures identified with written text and clearly designated on the Plan that do not conform to the standard clearances of Railway (each an “Exempt Structure”), to observe and maintain all clearances in accordance with the applicable specifications shown on **Exhibit B** attached hereto and made a part hereof. Industry will not permit any other structure or obstruction of any kind to be placed or maintained with clearances that do not conform to **Exhibit B**. If the laws or regulations of any governmental authority having jurisdiction over the Track require clearances greater than those required by Railway, Industry will comply with the requirements of such laws or regulations.

(b) With respect to each Exempt Structure, Industry shall, at its expense, provide and maintain warning signs that are acceptable to Railway at locations designated and approved by Railway.

LIABILITY

9. (a) Industry shall indemnify and save harmless Railway, Railway’s parent, subsidiary and affiliated companies, and its and their respective directors, officers, agents and employees (each an “Indemnified Party” and, collectively, the “Indemnified Parties”) from and against any and all claims, demands, losses, suits, judgments, costs, expenses (including without limitation reasonable attorney’s fees) and liability resulting from (1) except as provided in subsection (5) below, any alleged personal or bodily injury to or death of any person, including without limitation any Industry Party, and damage to or loss of any property, including without

limitation property belonging to or in the custody or control of any Industry Party (the "Industry Property"), arising or in any manner growing out of any violation of this Agreement by any Industry Party, the performance of any Industry Party under this Agreement or the presence of any Industry Party or the Industry Property, or both, on or about the Premises, regardless of whether negligence on the part of any Indemnified Party caused or contributed to said loss of life, personal injury or property loss or damage, in whole or in part, provided, however, that if, under the law applicable to enforcement of this Agreement, an agreement to indemnify against the indemnified party's own negligence is invalid, then in that event Industry's obligation to indemnify the Indemnified Parties under this Section shall be reduced in proportion to the negligence of Railway, if any, that proximately contributed to such loss of life, personal injury or property loss or damage; (2) any alleged violation of any law, statute, code, ordinance or regulation of the United States or of any state, county or municipal government (including, without limitation, those relating to air, water, noise, solid waste and other forms of environmental protection, contamination or pollution or to discrimination on any basis) that results in whole or in part, directly or indirectly, from the activities of any Industry Party related in any way to their presence on the Premises or from any other act or omission of any Industry Party contributing to such violation, regardless of whether such activities, acts or omissions are intentional or negligent, and regardless of any specification by Railway without actual knowledge that it might violate any such law, statute, code, ordinance or regulation; (3) any allegation that Railway is an employer or joint employer of any Industry Party or is liable for related employment benefits or tax withholdings; (4) any decision by Railway to bar or exclude an Industry Party from the Premises pursuant to Section 3(c) above; or (5) any loss of or damage to any railcar and any lading therein occurring from whatever cause while such railcar is in the possession or under the control of Industry (as defined in Section 12 below), except to the extent that such loss of or damage to such railcar or lading, or both, is caused by the negligence of Railway.

(b) Knowledge on the part of Railway of any violation of any of the terms of this Agreement by Industry shall constitute neither negligence nor acquiescence on the part of Railway and shall in no event relieve Industry of any of the responsibilities and indemnity obligations assumed by Industry in this Agreement.

(c) Notwithstanding any provision of this Agreement to the contrary and regardless of the nature of the cause of action (whether in contract, tort or otherwise), in no event shall Railway be liable for any incidental, special, indirect, consequential, special or punitive damages whatsoever (including but not limited to lost profits, business interruption expenses or alternative transportation costs) regardless of whether Railway knew or should have known of the possibility of such damages.

ENVIRONMENTAL REQUIREMENTS

10. (a) In its use and occupancy of the Track and the Premises, Industry will comply with all federal, state, and local laws, rules, regulations and ordinances which relate to the control of air, water, noise, solid waste and other pollution or to the storage, transport, release or disposal of hazardous materials, substances, or waste. Industry will, at its sole expense, make all modifications, repairs, or additions to the Track and the Premises necessary to effect such compliance, and Industry will install and bear the expense of any and all structures, devices or equipment required by any such laws, rules, regulations or ordinances, or by the orders of any governmental agency.

(b) Industry shall not dispose of any wastes of any kind, whether or not hazardous, on the right of way or property of Railway, and Industry shall not conduct any activity on said right of way or property which may or does require a hazardous waste treatment, storage or disposal facility permit from either the federal or state agencies.

(c) Regardless of any Railway acquiescence, Industry agrees to indemnify, protect and hold Railway harmless from and against all liabilities, fines and penalties arising or growing out of a violation of subsections (a) and (b) of this Section, and Industry agrees to reimburse Railway for all costs and expenses incurred by Railway in eliminating or remedying such violations unless such liability, fines, or penalties arise solely from the negligence of Railway.

(d) Industry hereby waives any and all statutes of limitation applicable to claims, demands or suits by Railway under the preceding subsections of this Section, and Industry further agrees that it will not raise or plead a statute of limitation defense against Railway in any claim, action or proceeding arising or growing out of Industry's failure to comply with this Section.

LOADING AND UNLOADING

11. (a) Industry will provide and furnish, at its own cost and expense, and keep ready for use at all times in a convenient place, one or more metal signs, the dimensions of which are at least 12 inches by 15 inches, reading "STOP-Men at Work", with the letters in the word "STOP" to be at least four (4) inches high, and the letters in the words "Men at Work" to be at least two (2) inches high, and the color of which shall be white with blue background (each a "Work Sign"). Industry shall deploy such number of Work Signs in such locations as are reasonably required under the circumstances (i) whenever work is being done or activity performed in or about one or more railcars, by persons or equipment or both; (ii) whenever one or more railcars are being loaded or unloaded by hand or by the use of any mechanical means or device, without regard to whether such mechanical means or device is connected to such railcar(s); (iii) whenever any work is being done or activity performed on or about the Track by persons or equipment or both, without regard to whether one or more railcars are located on the Track while work is being done or the activity is being performed; and (iv) at any other time when any Industry Party or Industry equipment, or both, are engaged in activity such that the movement of railcars could cause injury or damage to any person or equipment or both.

(b) Industry will provide and furnish, at its own cost and expense, and keep ready for use at all times in a convenient place, one or more metal signs, the dimensions of which are at least 12 inches by 15 inches, reading "STOP - CAR CONNECTED" with letters at least four (4) inches high (each a "Connection Sign"). Industry shall deploy such number of Connection Signs in such locations as are reasonably required under the circumstances whenever Industry loads or unloads any railcar by using hoses, pipes, conveyors or any other mechanical devices, provided that each such location shall be conspicuous and clearly visible to Railway employees operating on the Track, from either direction. Industry shall ensure that each Connection Sign is conspicuously illuminated during periods of reduced visibility and remains in place until such loading or unloading is completed and until such pipes, conveyors and/or mechanical devices have been disconnected.

(c) Without limiting the provisions of subsection (a) or subsection (b) above, each Work Sign and each Connection Sign shall be conspicuously displayed to give necessary warning as follows:

- (i) On each end of the railcar involved or on the outermost end of the end railcar in the series of railcars; or
- (ii) Alternatively on the Track beyond the end of the railcar involved or on the Track beyond the outermost end of the end railcar in a series of railcars; or,
- (iii) If no railcar or series of railcars is involved on the Track, at the location beyond the limits of any work being done or activity performed;

Notwithstanding the foregoing, if the Track is a “dead end” track, Industry only shall be required to deploy Work Signs or Connection Signs, as the case may be, in the manner stated in subsection (c) above to cover the direction from which train movement might occur.

RAILWAY'S OBLIGATION

12. Railway shall not be liable as a common carrier, or as a bailee, for any property loaded into any railcar on the Track (i) until such railcar is attached or coupled to the engine or train by which it is to be moved from the Track toward its destination by Railway or (ii) after such railcar is placed on the Track and detached from the engine or train by which Railway delivered such railcar to the Track. At all other times a given railcar and its contents shall be deemed to be in the possession of Industry.

HAZARDOUS MATERIALS

13. If Industry ships, receives or handles any material on or about the Track that is classified as a hazardous material by the regulations of the United States Department of Transportation, the following subsections shall apply:

(a) Industry, at its sole expense, shall comply with the policies and practices recommended by the Association of American Railroads and Railway, and with all applicable federal, state or municipal laws, orders, regulations and recommendations relating to safe handling, storage and disposition of the hazardous materials.

(b) If any hazardous material handled on the Track is flammable or explosive, Industry hereby agrees that it will, at its sole cost and expense, and in a manner satisfactory and acceptable to Railway, arrange for installation of: (i) such derail devices as may be specified by Railway at locations on the Track designated by Railway; (ii) such bonding and grounding of the Track as shall be required by Railway; and (iii) such other protective devices as may be required by Railway to protect the Track against any foreign or stray electric current that may be present at or in the vicinity of said Track.

(c) Title to any derail, bonding, grounding or other protective devices installed on the Industry Segment will be vested in Industry. Industry will maintain all such devices, at its sole cost and expense, in good condition and repair and in a manner satisfactory to Railway. At Railway's discretion, Railway may elect to maintain any such devices at the cost of Industry.

GATES, DOORS, PITS, PRIVATE ROAD CROSSING AND RAIL-RELATED STRUCTURES

14. If Industry shall have constructed or shall construct at any time: (1) a gate or gates across the Track; (2) a doorway and/or door(s) affecting the Track; (3) any pit or pit appurtenances beneath the Track; (4) a private road crossing of the Track; or (5) rail-related structures, including but not limited to conveyors or similar apparatus, bridges, platforms, walkways, pipes or similar structures (any structure under clause (5) a "Special Facility") adjacent to or over the Track, then, without limiting any other provision of this Agreement, the following subsections shall apply:

(a) Any gate constructed or maintained by Industry shall be constructed, maintained, and renewed at Industry's sole cost and expense. Each gate shall be of such design and specification as may be approved in writing by Railway and shall be equipped with Railway's standard switch lock, so applied that a gate may be locked and unlocked from the outside, and shall be constructed in such manner as to provide, when opened, an unobstructed space on each side of the center line of the Track of not less than 9.0 feet and a total clearance of not less than 18 feet. Industry shall provide a substantial device on each side of the Track to which the wings of a gate may be fastened, made stationary and made parallel, or substantially parallel, with the Track when railroad equipment is moving through the gateway, with each such device arranged so that, when the wings of the gate are fastened thereto, the distance between the side of each wing and the center line of the Track will not be less than nine (9) feet apart.

(b) Any door constructed or maintained by Industry shall be constructed, maintained, and renewed at Industry's sole cost and expense. Each door shall be of such design and specification as may be approved in writing by Railway. Each door shall provide, when opened, an unobstructed space over and above the Track of not less than 22 vertical feet from the top of rail and 8 horizontal feet from the center line of the Track. Industry shall provide a substantial device to which a door may be fastened, made stationary and made parallel, or substantially parallel, with the Track when railroad equipment is moving through the doorway, with each such device arranged so that, when the door is in an open position and fastened thereto, the overhead clearance for the Track will be at no point less than 22 vertical feet from the top of rail and the horizontal clearance will not be less than eight (8) feet from the center line of the Track.

(c) Any pit and pit appurtenances constructed or maintained by Industry shall be constructed, maintained, and renewed at Industry's sole cost and expense and to the entire satisfaction of Railway. Each pit shall be of such design and specification as may be approved in writing by Railway. Industry will maintain each pit and appurtenances in such condition that neither they nor the use thereof by Industry shall be or become an obstruction to the safe and proper maintenance of the Track, or obstruct or endanger the operations of Railway upon the Track. Industry shall provide a substantial metal or board cover for each pit, as approved by Railway, and shall keep each pit covered at all times when not in use.

(d) Any private road crossing constructed or maintained by Industry shall be constructed, maintained, and renewed at Industry's sole cost and expense. Each private road crossings shall be of such design and specification as may be approved in writing by Railway. Industry will maintain each private road crossing in such condition that neither they nor the use thereof by Industry shall be or become an obstruction to the safe and proper maintenance of the Track, or endanger employees of Railway or other persons on or about the Track, or obstruct or endanger the operations of Railway upon the Track.

(e) Any Special Facility constructed or maintained by Industry shall be constructed, maintained, and renewed at Industry's sole cost and expense. Each Special Facility shall be of such design and specification as may be approved in writing by Railway. Industry will maintain each Special Facility in such condition that neither it nor the use thereof by Industry shall be or become an obstruction to the safe and proper maintenance of the Track, or endanger employees of Railway or other persons on or about the Track, or obstruct or endanger the operations of Railway upon the Track.

(f) If any of the facilities referred to in this Section are located upon the Premises, Industry will, upon the termination of this Agreement, remove those facilities and restore the Premises to the condition existing prior to their construction, or in default thereof, Railway may, in addition to any other legal remedy it may have, remove the facilities and restore the Premises at the sole expense of Industry. The fact that the design, maintenance, repair or alteration of any of the aforesaid facilities shall have been approved by or performed under the supervision and to the satisfaction of Railway shall not relieve Industry from responsibility or liability undertaken for any injury to or death of any person or damage to property that may occur or arise as the result of the construction, maintenance, presence, use, operation and removal of the facilities.

GOVERNMENTAL AUTHORITY

15. Notwithstanding any other provision of this Agreement, Industry agrees to comply, at its sole expense, with all requirements imposed by any governmental authority with respect to the Industry Segment or any other portion of the Track that it has the obligation to maintain.

SUCCESSORS, ASSIGNS AND THIRD-PARTY RIGHTS

16. (a) The provisions of this Agreement shall inure to the benefit of the successors and assigns of Railway. Industry agrees that, in the event it permits a third party to use the Track, it will furnish Railway written notice in advance of any such third-party use. Industry further agrees that, until the use of the Track by any such third party shall be covered by an appropriate agreement between said third party and Railway, such third party shall be deemed an Industry Party under this Agreement.

(b) This Agreement is not assignable or transferable by Industry, in whole or in part, except with the advance written consent of Railway.

TRACK REMOVAL

17. Upon the termination of this Agreement, Railway may discontinue the operation of the Track and remove its property from the premises. Subject to the requirements of Section 6(a), Industry immediately will take up and remove the track materials in that portion of the Industry Segment located upon the Premises. The work of taking up such track materials on the Premises will be done, if Railway elects, by Railway at the sole expense of Industry.

RIGHT TO DISCONTINUE OPERATIONS

18. Notwithstanding any other provision of this Agreement, if Industry shall fail to comply with any of the terms of this Agreement, Railway shall have the right to immediately discontinue operation of the Track without liability to Industry; provided Railway has given

notice to Industry of the nature of the non-compliance and Industry has failed to correct the non-compliance within thirty (30) days following notification. This Section 18 is not intended to limit Railway's rights under Section 7 with respect to unsafe operating conditions.

NO WAIVER OF BREACH

19. No waiver by Railway of any breach by Industry of the terms of this Agreement shall be construed as a waiver of any other or subsequent breach. Termination of this Agreement shall not be construed to release Industry from any obligation or liability accruing hereunder prior to the time such termination becomes fully effective.

NOTICES

20. Any notice required to be given pursuant to the terms of this Agreement shall be given in writing and shall be transmitted by U. S. Mail, by any other method customarily used in normal business practice, or by hand delivery. Any notice to be given pursuant to this Agreement shall be transmitted to the respective parties at the following addresses or at such other places as the parties may from time to time designate in writing:

As to Railway:
Norfolk Southern Railway Company

As to Industry:

EFFECTIVE DATE AND TERMINATION

21. (a) This Agreement shall be effective as of the date first above written. Either Railway or Industry may terminate this Agreement for convenience at any time upon sixty (60) days' prior written notice of the election to terminate.

(b) In the event of a breach by Industry of any of its obligations under this Agreement, Railway shall have the right to terminate this Agreement on account of breach by giving Industry not less than ten (10) days' prior written notice of the election to terminate.

INSURANCE

22. (a) Industry will, at the sole expense of Industry and for the further protection of Railway, procure and maintain during the life of this Agreement, in a form and with an insurance company that is satisfactory to Railway, a policy of Commercial General Liability Insurance with a combined single limit of not less than \$2,000,000 per occurrence for injury to or death of persons and damage to or loss or destruction of property. Said policy shall be endorsed to provide contractual liability coverage for liability assumed under this Agreement. In addition, said policy shall be endorsed to name Norfolk Southern Corporation and its subsidiary and affiliated companies as additional insureds and shall include a severability of interests provision.

(b) Industry shall provide or cause to be provided to Railway one or more certificates of insurance with respect to the policy contemplated by subsection (a) above at NSRISK1@nscorp.com or Director Risk Management, Norfolk Southern Corporation, Three Commercial Place, Norfolk, Virginia 23510-2191. Neither Industry nor any other Industry Party

shall enter the Premises unless and until the insurance policy contemplated by subsection (a) above has been approved by or on behalf of Railway. The certificate of insurance shall identify Norfolk Southern Corporation and its subsidiary and affiliated companies as the certificate holder and shall state that thirty (30) days' advance written notice will be given to Norfolk Southern Corporation of any material change in or cancellation of such insurance.

(c) The insurance coverage required in this Agreement shall in no way limit Industry's liability under this Agreement.

CONSTRUCTION OF AGREEMENT

23. The headings used in this Agreement are for convenience only and shall not affect the construction or interpretation of any section of this Agreement. If any provision of this Agreement or any part of any provision should become or be found to be invalid or unenforceable, the remaining provisions and parts shall continue to be fully effective and enforceable. Where necessary or appropriate in this Agreement, the singular and plural shall be interchangeable and words of any gender shall include all genders.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement. The parties agree that if an authorized officer of a party fully signs this Agreement in the appropriate location(s) below and then returns that signature to the other party via electronic means with a pdf or similar scanned copy of that signature, then that scanned signature shall serve as that party's signature for the Agreement, and, upon full execution of the Agreement by all parties, shall create a legally binding Agreement. In the alternative, either party may fully sign an actual copy of this Agreement and return the same to the other party.

WITNESS:

RAILWAY NAME

By _____
General Manager

WITNESS:

INDUSTRY NAME

By _____
Title: _____

JLJ\Activity #