

# READING BLUE MOUNTAIN & NORTHERN RAILROAD COMPANY

## SIDETRACK AGREEMENT OFF RAILROAD PROPERTY

**THIS AGREEMENT** (“Agreement”), made and effective as of \_\_\_\_\_, by and between **READING BLUE MOUNTAIN AND NORTHERN RAILROAD COMPANY (RBMN)**, a Pennsylvania Corporation, **P.O. BOX 188, PORT CLINTON, PA 19549**, and \_\_\_\_\_, with offices at \_\_\_\_\_, (“Industry”).

**WHEREAS**, Industry has requested track facilities at \_\_\_\_\_, \_\_\_\_\_ County, Pennsylvania, described as follows:

An existing industrial sidetrack consisting of about \_\_\_\_\_ feet of track with a point of switch located in \_\_\_\_\_ Yard, MP \_\_\_\_\_ in accordance with Plan NO. \_\_\_\_\_ dated \_\_\_\_\_, attached as “Exhibit A,” such track facilities and the underlying right-of-way being collectively referred to as the “Sidetrack.”

**NOW, THEREFORE**, the parties intending to be legally bound, agree as follows:

### Section 1. Term

1.1 This Agreement shall continue in force until terminated by either party, with or without cause, on thirty (30) days prior written notice to the other party. In the event RBMN is unable to locate Industry, such notice may be posted on or near the Sidetrack and this Agreement shall terminate thirty (30) days after such posting. If RBMN, in accordance with applicable law, abandons or otherwise discontinues service over the rail line that connects with the involved Sidetrack, this Agreement shall terminate automatically on the effective date of any such abandonment or discontinuance. Any obligation assumed and any liability which may have arisen or been incurred by either party shall survive termination of this Agreement.

1.2 Upon termination of this Agreement, RBMN shall have the right, but not the obligation, to remove the switch connection and any portion or all of the Sidetrack on its property and to enter upon property leased to or owned, controlled or maintained by Industry and remove any and all material owned by RBMN.

1.3 Until terminated, this Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and assigns, but Industry shall not assign or otherwise transfer this Agreement without the written consent of RBMN.

Section 2. Construction and Maintenance

2.1 Industry, at its sole cost and expense, shall:

- (i) Provide all necessary right-of-way beyond RBMN's property line;
- (ii) Comply with all requirements of, and obtain all consents required by, public authorities regarding the Sidetrack;
- (iii) Erect and maintain fences and highway-railroad grade crossing protection devices required by public authorities; and
- (iv) Keep the Sidetrack free of all hazardous materials and obstructions, and, as necessary, repair, maintain, replace, renew and remove the portion of the Sidetrack located between points B and C, about \_\_\_\_\_, as indicated on Exhibit A, so as to safely accommodate all railcars shipped or received by Industry.

2.2 RBMN shall perform the following:

- (i) Maintain that portion of the Sidetrack located between points A and B, about \_\_\_\_\_, as indicated on Exhibit A, so as to safely accommodate all railcars moving to and from Industry's facility.

2.3 The Sidetrack shall be maintained to a minimum of Federal Railroad Administration Class II Track Standards. Notwithstanding any provision of Section 2.1, Industry shall be subject to RBMN's Tariff Maintenance Charge for Industrial Switch Connections, attached as "Addendum B" and all reissues and supplements thereto, wherein the word "owner" shall mean Industry.

2.4 The parties recognize that some public authorities may or may not have jurisdiction over Industry as to clearances, bridges or highway-railroad crossings affecting the Sidetrack and such bodies may direct RBMN to take actions regarding such matters. Any expense incurred by RBMN in complying with such directions shall be billed to Industry, which shall reimburse RBMN. This Section 2.4 shall survive termination of this agreement.

Section 3. Ownership

The rails, ties, and fittings in the Sidetrack shall be owned as follows:

- (i) That portion of the Sidetrack located between points A and B, about \_\_\_\_\_, as indicated on Exhibit A, shall be owned by RBMN;
- (ii) That portion of the Sidetrack between points B and C, about \_\_\_\_\_, as indicated on Exhibit A, shall be owned by the Industry.

#### Section 4. Use

4.1 RBMN shall have the right to use the Sidetrack, but may not unreasonably interfere with the use thereof by Industry.

4.2 Neither party hereto shall permit or authorize the use of the Sidetrack by, or for the benefit of, any other person, firm or corporation not a party hereto without the prior written consent of the other party, which consent shall not be unreasonably withheld. Notwithstanding the preceding sentence, RBMN retains the right to construct and use additional switch connections on that portion of the Sidetrack located on RBMN's property when such additional sidetracks may be necessary in the conduct of its business.

4.3 The parties shall comply with (i) all applicable federal, state, and local laws, rules, regulations or orders pertaining to shipments originating or terminating on the Sidetrack and (ii) RBMN's Technical Specifications for Industrial Sidetrack.

4.4 Industry shall not grant or otherwise authorize any rights to establish vehicular or pedestrian grade crossings over the Sidetrack without the prior written consent of RBMN.

4.5 RBMN may enter upon Industry's property for the purpose of inspecting, repairing, or operating over the Sidetrack, but RBMN shall have no duty or obligation to engage in such activities.

#### Section 5. Changes

Industry shall not make any changes in the Sidetrack without the prior written consent of RBMN. Changes in the Sidetrack necessary to comply with the requirements of a public authority shall, following receipt of written notice from RBMN, be made by Industry at its sole expense. If RBMN incurs any expense in connection with any such change, such expense shall be billed to Industry, which shall reimburse RBMN.

#### Section 6. Clearances

Industry shall not construct or permit any obstruction over the Sidetrack less than the statutory limit or 23' above top of rail, whichever is greater, or alongside thereof less than the statutory limit or 8'6" from center of track, whichever is greater (and with the necessary additional clearances on curves), without the prior written approval of RBMN and any public authority having jurisdiction. Such minimum clearances may be changed by RBMN to meet legal requirements and Industry shall, at its sole expense, upon notice from RBMN, make such changes in the Sidetrack as may be necessary.

## Section 7. Liability

7.1 Except as otherwise provided in Section 7.2, responsibility for Claims (as defined in Section 7.5) as between the parties shall be borne as follows:

(i) RBMN shall be responsible for Claims arising from RBMN's and its directors', officers', employees', agents', contractors', or subsidiaries' negligence, and from RBMN's failure to comply with its obligations under this Agreement when such failure is a contributing cause to such Claims;

(ii) Industry shall be responsible for Claims arising from Industry's and its directors', officers', employees', agents', contractors', or subsidiaries' negligence, and from Industry's failure to comply with its obligations under this Agreement when such failure is a contributing cause to such Claims;

(iii) The parties shall share in proportion to their respective degrees of responsibility for all Claims arising from their and their directors', officers', employees', agents', contractors', or subsidiaries' joint or concurring negligence or failure to comply with their respective obligations under this Agreement when any such failure is a contributing cause to such Claims. If RBMN is subjected to any Claims under the Federal Employers' Liability Act ("FELA") based on the allegation that RBMN failed, in respect to the portion of the Sidetrack leased to or owned, controlled or maintained by Industry, to provide a safe place to work or failed to correct or guard against an unsafe condition, the standards of negligence and causality established by FELA shall be applied in determining whether such Claims arose from the individual, joint or concurring negligence of Industry and its directors, officers, employees, agents, subsidiaries and contractors.

(iv) Each party shall be responsible for Claims arising from the presence of trespassers, vandals or other unauthorized persons on the portion of the Sidetrack leased to or owned, controlled, or maintained by it.

7.2 Except where claims result from RBMN's gross negligence or willful and wanton misconduct, Industry shall be responsible for Claims arising from any nonstandard conditions, now or hereafter existing, irrespective of any ordinary negligence on the part of RBMN, including without limitation the following nonstandard conditions: NONE.

7.3 The negligence of any tenant, invitee, licensee or grantee of Industry occurring on property leased to or owned, controlled or maintained by Industry shall be deemed the negligence of Industry. For purposes of this Section 7.3, RBMN shall not be considered to be a tenant, invitee, licensee or grantee of Industry.

7.4 Except as otherwise provided in Section 7.1, the party which is responsible for any claim shall release the other party from all responsibility for such Claims and shall defend, indemnify, protect, and save harmless the other party and its directors, officers, agents, and employees from and against all such Claims. Industry and RBMN waive any

constitutional, statutory, or decisional immunity, which would invalidate Industry's, or RBMN's obligation to indemnify the other party with respect to Claims asserted by employees of Industry and RBMN.

7.5 The word "Claims" as used in this Section 7 shall mean all claims, liabilities, demands, actions at law and equity, judgments, settlements, losses, damages, and expenses of every character (including, without limitation, attorneys' fees) for any injury to or death of any person or persons, for any damage to or loss or destruction of property of any kind, and for any damage to the environment, caused by, arising out of or occurring in connection with the construction, use, maintenance, replacement, presence or removal of the Sidetrack. Except as may otherwise be specifically set forth in this Agreement, neither party shall be liable for consequential damages under this Agreement.

#### Section 8. Discontinuance

RBMN shall not be responsible for any loss or damage sustained by Industry as a consequence of any temporary or permanent elimination of the Sidetrack, or service thereon, due to circumstances beyond RBMN's reasonable control. RBMN may suspend rail service in the event Industry breaches any of the covenants in this Agreement, and such suspension may continue until such breach is remedied.

#### Section 9. Payment

9.1 All payments called for under this Agreement shall be made by Industry within thirty (30) days after receipt of bills. The records of Industry relating to payments due under this Agreement shall be open for inspection by RBMN at all reasonable business hours.

9.2 Except for payments required by Section 2.3., all bills rendered by RBMN shall include direct labor and material costs, together with surcharges for fringe benefits, overheads, material handling costs, and equipment rentals at rates specified by RBMN.

9.3 If RBMN performs any work or satisfies any responsibility or liability which under this Agreement Industry is obligated to perform or satisfy, Industry shall reimburse RBMN for all costs and expenses in accordance with this Section.

#### Section 10. General Provisions

10.1 A determination that any term, covenant, obligation or condition of this Agreement is invalid or unenforceable to any extent shall not affect the validity or enforceability of any other part of this Agreement.

10.2 This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania.

10.3 This Agreement is for the exclusive benefit of the parties and not for the benefit of any other party. Nothing contained in this Agreement shall be construed as conferring upon any other party the rights of a third party beneficiary or any right of such other party to recover by way of damages or otherwise against RBMN or Industry.

10.4 The headings in each section of this Agreement are inserted for convenience only and shall not affect the construction or interpretation of this Agreement.

10.5 This Agreement contains the entire agreement of the parties and supercedes any prior written or oral understandings, agreements or representations of any kind between the parties.

10.6 The terms, conditions and provisions of this Agreement may not be changed, modified, amended, waived or discharged except by an instrument in writing signed by the parties hereto.

10.7 All words, terms, and phrases used in this Agreement shall be construed in accordance with their generally applicable meaning in the railroad industry.

10.8 The provisions of any exhibit or addendum to this Agreement shall be deemed a part hereof.

10.9 Every notice, approval, consent, or other communication desired or required under this Agreement shall be effective only if the same shall be in writing and sent postage prepaid by overnight courier or United States registered or certified mail (or a similar mail service available at the time), and when directed to RBMN, it shall be addressed to the General Manager, and when directed to Industry, it shall be sent to the address listed for Industry in the preamble of this Agreement.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be duly executed as of the date first above written.

**WITNESS:**

**READING BLUE MOUNTAIN &  
NORTHERN RAILROAD COMPANY**

\_\_\_\_\_

**BY:** \_\_\_\_\_

**WITNESS:**

**(INDUSTRY)**

\_\_\_\_\_

**BY:** \_\_\_\_\_

**ADDENDUM B**

The provisions published herein will, if effective, not result in an effect on the quality of the human environment.

<b>RBMN 1111</b>
<p style="text-align: center;"><b>READING BLUE MOUNTAIN AND NORTHERN RAILROAD</b></p> <p style="text-align: center;"><b>FREIGHT TARIFF RBMN 1111</b></p> <p style="text-align: center;">LOCAL AND JOINT FREIGHT TARIFF RULES, REGULATIONS AND CHARGES GOVERNING MISCELLANEOUS SERVICES AND THE HANDLING OF TRAFFIC APPLYING AT STATIONS ON THE <b>READING BLUE MOUNTAIN &amp; NORTHERN RAILROAD</b></p>
<p>This Tariff is also applicable on intrastate traffic except where expressly provided to the contrary in connection with particular items or rates.</p>
<p style="text-align: center;">MISCELLANEOUS SERVICES TARIFF</p>
<p style="text-align: center;"><b>Governed, except as otherwise provided herein, by Uniform Freight Classification, and by Exceptions to said Classification (Item 5).</b></p>
<p><b>ISSUED: December 26, 2007</b>                      <b>EFFECTIVE: December 26, 2007</b></p>
<p style="text-align: center;"><b>ISSUED BY: DANIEL R. GILCHRIST VICE PRESIDENT – MARKETING &amp; SALES READING BLUE MOUNTAIN &amp; NORTHERN RAILROAD COMPANY P.O. BOX 218 PORT CLINTON, PA 19549</b></p>

**RULES AND OTHER GOVERNING PROVISIONS****SPECIAL RULES AND REGULATIONS - UNLIMITED****A ITEM 1111****MAINTENANCE CHARGE FOR INDUSTRIAL SWITCH CONNECTIONS****DEFINITION OF TERMS**

An industrial switch connection is a switch located upon RBMN property and maintained by RBMN for access to privately owned sidetracks.

**CHARGE FOR MAINTENANCE OF INDUSTRIAL SWITCH CONNECTION**

The charge for maintaining each industrial switch connection is \$1,500 per year. This charge is payable by the owner of the sidetrack served by the industrial switch connection within thirty (30) days of invoice date and for each succeeding year.

**EXEMPTIONS**

The charge will not apply as to any calendar year in which the privately owned sidetrack served by the industrial switch connection originates or terminates seven (7) or more carloads.

The charge will not apply where specific terms of an executed Sidetrack Agreement so provide.

The charge will not apply if the owner of the sidetrack served by the industrial switch connection request, before the June 30 payable date of the charge, that RBMN remove the industrial switch connection.

**MULTI-SIDINGS**

Where more than one privately-owned sidetrack is served by a single industrial switch connection, each of the individual owners of the private sidetrack will be liable for an equal share of the charge. The total number of carloads originated or terminated on all of the private sidetracks served by the industrial switch connection will determine whether the exemption above applies.

RBMN is under no obligation to provide service to or from those private sidetracks for which any part of the applicable charge is unpaid.