

# PERMIT AND INDEMNIFICATION AGREEMENT



## 1. Indemnity Agreement.

KNOW ALL MEN BY THESE PRESENTS THAT I, \_\_\_\_\_, representing \_\_\_\_\_ (“Applicant”), have requested and do request permission from NORTHERN INDIANA COMMUTER TRANSPORTATION DISTRICT (“NICTD”) to enter and be present upon equipment, rolling stock, premises, property and/or facilities owned, leased or controlled by NICTD (“NICTD Property”) at or in the vicinity of \_\_\_\_\_.

The time period wherein the Applicant may enter the above-referenced vicinity for the purposes of conducting the activities described below is:

DATE (mm/dd/yy)		TIME (in hours)		Excepting Time	
From	To	From	To	From	To

The Applicant’s purpose for requesting entry and its presence on NICTD Property is: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Applicant [circle one] (is) (is not) required to wear a NICTD visitor identification badge visible at all times while on NICTD Property.

In consideration of the consent of NICTD to Applicant’s entry and presence upon NICTD Property, Applicant agrees and undertakes to:

- (1) Give advance notice to NICTD’s officer or agent signing this Agreement, or Applicant’s authorized representative, of each entry upon NICTD Property;
- (2) Accept direction from NICTD’s supervisory staff while on NICTD Property;
- (3) Assume all risk of injury, including death, and damage to property or property in Applicant’s custody or control arising directly or indirectly from Applicant’s presence on NICTD Property; an
- (4) It is understood by all parties that NICTD’s operations at, near or on NICTD’s Property or other property associated with this Agreement may involve some risk; and Applicant, as part of the consideration for this Agreement, releases and waives any right to request or demand damages for or on account of the loss of or damage to NICTD Property located at or near its facilities at \_\_\_\_\_, including the loss of or interference with service or use of the NICTD Property and irrespective of whether such loss or interference is attributable to the fault, failure or negligence of the Applicant or others.
  - (a) The phrases “Loss” or “Damage” as used within this Agreement shall be interpreted by the parties to include any and all loss of, damage to, or destruction of any real property, personal property, or environment, including, without limitation, damage to or destruction of land, air, water, wildlife, or vegetation, and irrespective of whether the damaged or destroyed property is owned or otherwise possessed by NICTD, the Applicant, or a third party, and injury to or death of any person or persons whomsoever, including, without limitation, the parties to this Agreement, their agents, employees, customers, visitors, suppliers, and any and all non-parties who use, occupy, or otherwise utilized the assets associated with, or participate in the activities arising out of this Agreement.
  - (b) The phrases “Claims”, “Settlements”, “Litigation” or “Related Expenses” shall include any and all losses, damages, costs, payments, and expenses of every kind and nature, including reasonable attorney fees and disbursements incurred by, or attributable to NICTD, other railroad parties lawfully utilizing NICTD Property, or NICTD’s assets, and their respective agents, subcontractors, successors, officers, and assigns as a result of claims, demands, actions, suits, proceedings, judgments, or settlements arising out of, in whole or in part, or in any way connected with NICTD Property, the subject matter of this Agreement, or the activities of the Applicant, its agents, or subcontractors at or near said NICTD Property.

- (c) The phrase "Cause of Action" shall include all claims, litigation, settlements, and related matters associated with or arising under this Agreement, whether rightfully or wrongfully made, including, but not limited to, claims, litigations, settlements and/or related expenses associated with any loss or damage arising from the construction, operations, maintenance, use or removal of any assets associated with this Agreement, or property authorized for use by this Agreement, as well as matters associated with or arising under various workers compensation laws, the Indiana Tort Claims Act, the Federal Employees Liability Act, various federal and state environmental statutes, and any other federal or state laws or regulations application to the construction, operation, maintenance, use and/or removal of any assets associated with this Agreement including, but not limited to, NICTD Property. The foregoing examples are only partially illustrative of the types of causes of action contemplated for coverage by this Agreement, it being the parties' mutual intent to include within the scope of the indemnification afforded under this Agreement a full, complete, comprehensive and unconditional grant of indemnity to the Applicant and NICTD with respect to any and all potential exposures risked by NICTD resulting from or arising out of this Agreement.
- (5) Applicant waives all right or alleged right to ask for or demand damages from NICTD, or other railroad parties lawfully utilizing NICTD Property or NICTD assets, or their respective agents, directors, employees, officers, or governing boards, that have occurred or may occur, to Applicant or Applicant's property or with respect to any other loss or damage incurred by Applicant, or its officers, customers, visitors, suppliers, employees or agents, while in or upon NICTD Property or other property authorized for use in accordance with this Agreement, including loss of use of said NICTD Property or other NICTD property, and irrespective of whether said damages are due to the fault, failure or negligence of NICTD, or other parties lawfully using NICTD's Property or assets.
- (6) Applicant shall hold harmless, defend, and indemnify NICTD, other railroad parties lawfully using NICTD's Property or assets, and NICTD's agents, employees, officials, or governing boards from any and all causes of action, as defined above, asserted by any parties and non-parties to this Agreement including, but not limited to, any causes of action for loss or damage due to negligence, misconduct, malfeasance, or misfeasance by NICTD resulting from or arising out of any aspect of NICTD's participation in this Agreement, including, but not limited to, any causes of action in any way related to or associated with, or on account of, the construction, placement, attachment, presence, use, maintenance, repair, alteration, renewal, or relocation of NICTD Property or any property placed thereon or therein by Applicant, whether such loss or damage be suffered or sustained by NICTD directly or by its employees, patrons, or other person or corporations, including the Applicant, its employees, contractors, subcontractors, agents, visitors, customers, or suppliers who may seek to hold NICTD liable, and irrespective of whether said causes of action are caused by or resulting from, in whole or in part, the activities of NICTD, the other railroad parties lawfully using NICTD's property or assets, or their respective agents, directors, employees, officials, or governing boards. Said defense and indemnification shall include, but is not limited to, reimbursement of NICTD for its claims, litigation, settlements and/or related expenses, which may be imposed upon, incurred by, or asserted against NICTD, or for which NICTD may be held or become liable.
- (7) NICTD agrees to promptly notify the Applicant in writing of any claim of which it becomes aware of which may fall within this indemnity provision, provided, however, that failure to notify Applicant in a prompt fashion shall not operate as a bar to Applicant's indemnification obligations as defined in this section.
- (8) NICTD may elect to participate in the defense of any matter associated with this section at its own expense or may, at Applicant's expense, employ attorneys of NICTD's selection to appear and defend same on behalf of NICTD, its agents, employees, officers, directors or governing board. The Applicant shall not enter into any compromise or settlement of any claims, suits, actions or proceedings entrusted to it as Indemnitor without the consent of NICTD, which consent shall not be unreasonably withheld.
- (9) Notwithstanding anything in this Agreement to the contrary, the indemnities contained within this Agreement shall survive its termination for the later of (3) years' time or the termination or settlement of all claims and/or litigation associated with same, including litigation of this Agreement.

If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remaining terms of this Agreement shall not be affected thereby, but shall be valid and enforceable to the fullest extent permitted by law.

Applicant understands that it must present a signed copy of this Agreement upon demand of any NICTD official or police officer. Applicant understands that the authority to conduct activities authorized by this Agreement are subject to oral modification or restriction by any NICTD official or police officer. Applicant further understands that any NICTD official or police officer may revoke this Agreement for any reason and without prior notice. Applicant further agrees to comply with

all NICTD operating practices and federal safety requirements while on or about NICTD Property. Where necessary or appropriate pursuant to NICTD practices, Applicant shall procure and use, at Applicant's sole cost, all necessary and appropriate safety equipment. Applicant shall timely reimburse NICTD for any fines incurred by NICTD arising from Applicant's presence on NICTD Property.

IN WITNESS OF UNDERSTANDING of the foregoing and as evidence that Applicant has READ THIS ENTIRE AGREEMENT AND UNDERSTANDS, ACCEPTS AND AGREES TO ITS TERMS, execution of said Agreement took place on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

APPLICANT: \_\_\_\_\_  
[company name]

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Witness: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**2. Permit.**

By signature below, I certify that I have verified the identity of Applicant and verified the authenticity of the Applicant's signature. In consideration of the above indemnification agreement, permission is hereby granted to \_\_\_\_\_ for and on behalf of \_\_\_\_\_, as its authorized representative, to enter upon NICTD Property for the purposes and at such times as stated above.

**NORTHERN INDIANA COMMUTER  
TRANSPORTATION DISTRICT:**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_