

2009 HOUSE TRANSPORTATION

HB 1195

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1195

House Transportation Committee

☐ Check here for Conference Committee

Hearing Date: 01/15/09

Recorder Job Number: 7069 and 7125 (7m30s)

Committee Clerk Signature

Janette Cook

Minutes:

Chairman Ruby called the hearing to order on HB 1195. The prime sponsor was not there to introduce the bill. **Tom Balzer from the North Dakota Motor Carriers Association** introduced and explained it.

Tom Balzer: (There was no written testimony.) This bill levels the playing field with contracts with motor carriers. We are seeing shippers pushing 100% of their liability off on motor carriers regardless of fault.

The first page of the bill talks about what a motor carrier contract is and who the promisee is, which is the engaging shipper. The meat of the bill is on page two which says anytime in a contract if there is a bit of language that says that the promisee from their own negligence, active omissions, and intentional acts try to push liability off on the motor carrier, that that section of the contract is void and unenforceable.

An example: A trailer from XYZ Company was on the road and was not properly inspected by XYZ Company. The motor carrier picked up the trailer and had an accident 600 miles down the road when the axle fell off the trailer because it was not properly maintained.

Company XYZ had not done proper inspections and maintenance. The motor carrier was being held liable, even though they had nothing to do with the accident.

Tom Balzer: Another thing that we are seeing with transload facilities and other facilities like that, these facilities are trying to say that if a motor carrier comes into their yard and there is an accident, it is the fault of the motor carrier regardless of whose fault it is.

Another example would be in reference to a person who brokers loads. They don't own any trucks or trailers, all they do is find a shipper and a motor carrier and put them together. To make their lives easier they are saying that all liability goes with the motor carrier, so they don't have to negotiate between the two.

Referring to part three, we are seeing contracts out there where someone is storing something for an owner, it has not been properly sealed, and the product gets ruined. The owner is saying the storage facility is at fault, because the product was in their possession when it spoiled.

We are not seeing a lot of incidents like these in North Dakota at this time, but we are seeing the occurrence growing throughout the United States. As North Dakota companies are engaging in these contracts and as the state's economy is growing, we are seeing these things starting to pop up. Our intention with this bill is to take care of this before it becomes an issue, and before we have any North Dakota carriers that are caught in this situation. We are asking for a level playing field. If the motor carrier is found at fault, then it is their responsibility. If the shipper is found at fault, then it is their responsibility. The shipper will not be able to take that liability and always push it onto the carrier. We would like the contracts to be straight forward. In the case of an accident the liability will be placed on the party who is to blame.

Representative Thorpe: Are other states having the same problems with this? Do they have laws in place?

Tom Balzer: There are some states that have this law in place. My colleagues and I are part of a national effort to get these laws on the books in states, so everyone runs by the same set of laws. There are a handful of states that have the laws now. We would like it to be a nation-wide standard.

Representative Weiler: If we pass this law, who will determine who is at fault?

Tom Balzer: It will get resolved through the indemnity language in the contract. It will go through the normal contract process if there is controversy.

Representative Gruchalla: The way that it is now, if a towing vehicle hooks onto a trailer, does the towing vehicle assume the responsibility for the trailer to be licensed and to have the equipment working?

Tom Balzer: The owner of the trailer is responsible for the license of the trailer. They must also do the inspection of the trailer. Most reputable motor carriers will also do their own set of inspections to make sure that the vehicle is road worthy.

Representative Gruchalla: Are you saying that if a trailer, for example, causes an accident because of the negligence of the owner of the trailer; you want the liability to go on the trailer owner rather than on the carrier?

Tom Balzer: We would rely on an investigation of the incident to determine fault. This will place the negligence where it belongs.

Representative Griffin: Are you aware of any case where a court has enforced one of these indemnity clauses?

Tom Balzer: I do not know of any cases, but I can try to find out.

Representative Griffin: If you could find a couple of cases; I would appreciate it.

Representative Weisz: When I was at MTA, we had an expert in contract law speak. He gave an example of a carrier that had signed an indemnity agreement. The carrier was fueling

at a transfer station, and the employee of the transfer station forgot to unhook the hose. This caused an explosion which killed the driver and maybe others. The court held the carrier liable for the accident because of the indemnity agreement that the carrier was forced to sign. Some of the companies insist that if you want their business, you must sign the indemnity agreement or you don't haul their product. I can't address how many states have already passed laws, but that _____ (can't understand) have supported this type of agreement that provides protection for the carriers.

Chairman Ruby: Some of these companies have the same indemnity clauses as the railroad, it sounds like.

Representative Frantsvog: If a carrier picks up a trailer in North Dakota and goes through five states and then there is a problem outside of North Dakota, what state law applies? Is it where the trailer was picked up or where ever the problem happens?

Tom Balzer: There is a section in each contract that stipulates what state law applies to that contract. Carriers will want to make sure that the state of North Dakota contract law applies if this legislation passes. In the contract it specifically states which state law applies.

Representative Weisz: If I'm doing business in a state (Example: SD) that doesn't have this law, could I still be forced to sign an indemnity agreement?

Tom Balzer: I'm sure that there will be carriers that want North Dakota law to prevail and shippers that want SD law to prevail. Part of our job if this does pass would be to provide education for them.

Representative Weisz: If you reside in the state of North Dakota you wouldn't have that option. This would be the law, so you could sign an indemnity agreement in North Dakota if this law passed, and it would transfer the liability. Is that correct?

Tom Balzer: My understanding is that in contract law one of the two parties has to have someone in that state to use that state law.

There was no further support for HB 1195.

There was no opposition to HB 1195.

The hearing was closed and decision was made to hold the bill.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1195

House Transportation Committee

☐ Check here for Conference Committee

Hearing Date: 01/16/09

Recorder Job Number: 7125 (7m30s)

Committee Clerk Signature

Janette Cook

Minutes:

Discussion was continued on HB 1195. A handout was given entitled: Multistate Highway Transportation Agreement.

Representative Griffin stated that he did hear back about his request about court cases

relating to this bill. There were no new cases cited.

Chairman Ruby: This basically holds the motor carrier harmless for damages that are not his fault. There were also issues when transporting from state to state.

Representative Weisz: The goal of this movement is to get all the states to pass this law, so the carrier is protected regardless of which state he comes from.

Chairman Ruby: Is it possible that there could be a decrease in shippers that originate their loads from North Dakota because of this law?

Representative Weisz: I can't imagine that a shipper would pull out of here because of this law. More and more states are passing and will be passing this sort of legislation.

Representative Vigesaa moved a do pass on HB 1195.

Representative Gruchalla seconded the motion.

A roll call vote was taken. Yea 14 Nay 0 Absent 0

Representative Weisz will carry the bill.

Date: 1-16-09

Roll Call Vote #: _____

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1195

House TRANSPORTATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ Do pass ☐ Don't Pass ☐ Amended

Motion Made By Vigesaa Seconded By Gruchalla

Representatives	Yes	No	Representatives	Yes	No
Representative Ruby - Chairman	✓		Representative Delmore	✓	
Rep. Weiler - Vice Chairman	✓		Representative Griffin	✓	
Representative Frantsvog	✓		Representative Gruchalla	✓	
Representative Heller	✓		Representative Potter	✓	
Representative R. Kelsch	✓		Representative Schmidt	✓	
Representative Sukut	✓		Representative Thorpe	✓	
Representative Vigesaa	✓				
Representative Weisz	✓				

Total Yes 14 No 0

Absent 0

Bill Carrier Weisz

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1195: Transportation Committee (Rep. Ruby, Chairman) recommends DO PASS
(14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1195 was placed on the
Eleventh order on the calendar.

2009 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1195

Bill/Resolution No. 1195

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: March 18, 2009

Recorder Job Number: 11167

Committee Clerk Signature



Minutes:

Representative Keiser: This is an important piece of legislation. This deals specifically with motor carriers and indemnity clauses. What some businesses have done is to make the motor carrier responsible for all of their claims. They have placed in their contracts an indemnification clause making the motor carrier responsible for all liability associated with the claim. For example, a motor carrier brings one of their rigs into the facility and the facility loads the truck and the truck leaves the area. The load then falls off and damages a car. The motor carrier will be held responsible. What the motor carriers are asking for is relief from other people's actions. That's the intent of this bill.

Senator Potter: In that example isn't that the point of the contract, to make sure the motor carrier makes sure that his load is safe?

Representative Keiser: That's a fine line. (He gives an example of a truck being over loaded with fuel). Let's define liability properly. If there is a point which someone takes responsibility and demands responsibility for loading the truck and subsequently damages occur. Then how do you properly assign liability? It shouldn't be there fault.

Senator Potter: The point is you could have some assumption of joint liability.

Representative Keiser: That's what the courts will decide. They do that all the time. They decide whether it's sixty or ninety. What they discovered is a strategy where they will allow you to come on to their facility and pick up a load if you agree to sign the contract.

Senator Andrist: It's the first time I've learned that you can buy and sell liability. The courts should decide who is at fault.

Representative Keiser: That's what we are saying it should go to the courts.

Senator Potter: The reason we need legislation is because you feel this is unfair?

Representative Keiser: That's right.

Senator Wanzek: It says in a contract you cannot pass on your liability?

Representative Keiser: That's correct.

Tom Balzer, North Dakota Motor Carriers Association: Written testimony in favor of the bill.

Chairman Klein: Tom what we have here is model legislation and other states have passed bills that are similar?

Tom: Yes, that is our pursuit to get a consistent law that governs contracts of indemnity in each state.

Chairman Klein: And the Multi-State Highway Transportation Association supports this legislation?

Tom: Yes.

Chairman Klein: In North Dakota do we have a number of companies doing this?

Tom: We are seeing a growing number of companies and facilities that are doing this.

Senator Potter: How effective is this? You go from point an in Minnesota, to point b in North Dakota and the company is in Minnesota, does it work that way?

Tom: In contractual law the contractor dictates which state governs. So in that case Minnesota law governs. That's why were making this effort around the nation to have this in all the states.

Senator Behm: To me if we don't pass this law there will be many more law suits.

Tom: That's what we are finding out.

Chairman Klein: Isn't that the downside. When you can't get enough trucks in North Dakota to haul and the truckers are coming in from other states that have already passed the law?

Tom: Yes, North Dakota is a consumer state and we bring in more than we ship out and that could be a problem.

Senator Horne: If this goes through, each party would be responsible for its own action? How would this process work with this legislation?

Tom: It would end up in court.

Senator Horne: If there is an accident in a loading area. And if each party can't decide they go to court then?

Tom: In a lot of cases the two insurance companies will get together and decide. If they can't come to a specific agreement, then it will go to court. What we're seeing is a lot of Insurance companies want to avoid court, so their willing to settle things.

Senator Potter: The only reason that this is being looked at is because some feel the contract is one sided. Now you guys, the motor carriers are able to have an association, with a high price mouth piece such as yourself. Why can't you organize to negotiate the contracts that are unfair?

Tom: The trucking industry is small in North Dakota. We have five thousand trucking

companies in the state it may seem like a lot but eighty percent of them are under five truck companies. So we are for all intensive purposes little. And the trucking industry is big enough

that they will shop around until they find someone who needs the work and will sign the contract.

Mike Rud, ND Petroleum Marketers Association: Written testimony in favor of the bill.

Curtis Jabs, Basin Electric Power Cooperative and Dakota Gasification Company: Written testimony in opposition of the bill.

Senator Andrist: You used the example of a hockey game. If the ceiling falls on him does he sign away his right to collect?

Curtis: That's right, but by buying the ticket you assume responsibility for whatever happens at the game.

Senator Andrist: And you think that's reasonable? For somebody to say they're not going to be responsible for damage I think there is a statute to provide safe premises.

Curtis: I think they would provide safe premises, but again just by buying a ticket and going to the game you inherently take risk. I just pointed this out as an example.

Senator Potter: The only part of the indemnification that it says you can't have, or it has no coarse effect, is for the negligence or intentional acts or omissions of Basin or Dakota Gasification. Isn't that appropriate shouldn't you be going through your own negligence?

Curtis: Intentional acts or omissions we don't have a problem with. Negligence is where we negotiate based on whose going to take the responsibility. That's a financial tool and so if we are embroiled in some type of third party suit then the motor carriers. (inaudible). That avoids both sides having to go to court. If there's ever a case where it is hundred percent someone's fault, it's probably after thousands of dollars have been spent. We can spend all these fees going to court and that's what we are trying to avoid.

Senator Potter: Using your example of Dakota Gasification and the elevator. It seems to me your case is pretty strong, Dakota Gasification is not responsible therefore if this is pursued

you're going to get it back in the end. You'll get back your legal fees from whoever sues you.

Curtis: What we are trying to do is avoid that expenditure for Dakota Gasification. It's not are liability, so we don't want to have to spend all that time and money defending Dakota Gasification, so that's the reason for the indemnity.

Senator Behm: I know several truckers, what is this going to do to their insurance rates?

Curtis: Prices are going to go up, that's part of doing business. It is our position that you price your product appropriately for your business, charge more.

John Frank, Director of Risk and Insurance for Basin Electric: One of the questions was what will this do to insurance? By not passing this law it won't do anything to the insurance rates. Indemnity is allowed now, it's in effect now. The issues about the defense cost, we won't get are defense cost back. The other point I was going to make was about negligence and whether you're liable, it is never clear cut. There are very few cases where one party is a hundred percent negligent and the other party is zero percent. And what will happen if this law goes into effect the insurance companies are going to protect their policy holder. They're not going to pay out claims they are not liable or responsible for. The negligence is going to have to be determined in court. So you can have a party for example, Basin Electric or any facility could be found one percent liable because it happened at their facility, even if they did nothing wrong or improper just because it was at their facility. What this does in advance, says okay here is the party that is going to be responsible, so we don't go to court and litigate this and the trucker doesn't have to sit in a court room for a month or two weeks who is going to be responsible for that claim.

Chairman Klein: But it seems like you win- win on this because the trucker will have to prove that he wasn't responsible. You've just shifted this entire responsibility to the trucker.

John: It hasn't been shifted, that agreement has been done up front. To avoid that court case later on so you don't have to go to court later on to determine what percent they are negligent.

Chairman Klein: They know they are on the hook for the works.

John: Right they know who is responsible who indemnifies. Curtis said we indemnify people and people indemnify us it's a common tool used in contracts. You probably won't see very many contracts that don't have indemnity clauses in them. It's commonly used every day. This bill seems to single out just the motor carriers. Curtis gave some examples about all kinds of different things that have those provisions in and for some reason this bill wants to single out the motor carriers.

Chairman Klein: We heard Wyoming just passed this.

John: I guess we weren't aware of it passing in Wyoming if we had been we wouldn't have supported it there as well.

Senator Wanzek: I have some empathy for your position but I hear you both saying the same thing. You don't want to be held responsible for the acts of the other party with an indemnity clause and I hear them saying the same thing too. And I think how do we approach this in a fair manner and I think the best argument we have is private contracts. I have a hard time believing any one could pass off their responsibility in any contract. Maybe it's more of a legal question.

John: Everyone does this by buying an auto insurance policy. An auto insurance policy is a contract and in that contract the insurance company agrees to indemnify you for your negligence. So if you go out and have an accident and you injure somebody and it's your fault, your negligent, you have transferred that liability to the insurance company.

Chairman Klein: John I paid for that though.

John: You're right, you did and the shifter pays for that as well in the rates they pay to the trucker. So that is part of the negotiation we have a right to negotiate that in a contract. The trucker charges a fee so that he can buy his insurance as well.

Chairman Klein: Generally when you get into an auto accident. Unless your car is parked and no one else is to blame there going to find fault in both parties, they are going to have to share in that. This isn't a free lunch. There is going to be liability placed on both car owners. You can be sitting in the car waiting for your kids to come out and you get run into that. You share some of that responsibility.

John: I agree with that, you do. The way that will be determined though, how much you share, is through a law suit. This is a different situation in that this contract allows you up front to negotiate how that is going to be settled at the end. So if two random cars crash in the street and there is a huge bodily injury claim that claim would be litigated in the courts. This bill the way it is now, the indemnity clauses allows you to determine who is going to be indemnifying who, up front. It avoids that court case.

Senator Horne: If this legislation and bill becomes law. Basin and other companies like yourself wouldn't be able to negotiate contracts spelling out who is liable for what actions on your property. That's how it would be if this passed then? Let's go back to the existing way. You have an indemnification contract and it states, were not going to be held liable for anything that happens on our property when truckers come in to load and unload. Is that what you negotiate now when you negotiate these indemnification contracts?

John: It's not anything that happens on our facility it would be anything that happens as a result of that trucker hauling that load for us. So if a trucker comes into our facility and something happens on our facility, we wouldn't have that trucker indemnify us for that. It would be as a result of his operation in that contract that he has with us. Now some truckers we do

have this provision, some we don't sometimes we haul specialized equipment and we don't have a choice, there may not be other truckers standing in line to do it, and we may have to indemnify them. But it's a negotiating tool we use it's not every contract is the same all contracts are negotiated. So we may have indemnity provisions in our favor and we may have indemnity provisions in favor of somebody else. But they do have that option to negotiate.

Senator Horne: Are you suggesting if this bill becomes law you Basin and other facilities like yourself couldn't negotiate these agreements they would all have to be settled by the courts, pre-hauling, pre-contract agreements would all be settled by the courts?

John: That's correct.

Senator Behm: To me what this is trying to do is keep the lawyers out of these things. So you don't have to go to court to settle all these things. Am I right?

John: This legislation? No I think it will do just the opposite. By allowing indemnity agreements you make that agreement up front, if you disallow the indemnity provisions, than it's going to be settled in courts.

Senator Wanzek: I think your providing some convincing testimony but how far do you carry that. Let's say you have a motor carrier that comes in because of union contract and the nature of filling that truck the companies not authorized (not audible). What if your company makes a mistake and there is a loss of life do you see that as a situation where you indemnify yourself, where there is clear and convincing evidence to the contrary?

John: I am not sure if it's something that is totally willful. I am not an attorney so I am not going to give you a legal opinion. If it's something that is totally willful, I don't know if that provision would apply. I think in most cases, it's a better thing to do this up front then have it all settled in the courts. As I said it's odd that just the motor carriers would want this provision and it's good

for them but it wouldn't be good for everybody. These are used in all walks of life in all contracts in commerce and this bill just singles out motor carriers.

Chairman Klein: Just give us another session or so.

John: If you pass this you may just have a big long line of people that want their name on there.

Senator Horne: By retaining the law as it is and allowing the negotiating indemnification contracts or agreements is Basin trying to escape responsibility for what happens for all the accidents that happen on your property?

John: No, Sir.

Senator Horne: So what are you trying to do?

John: If there is a claim that results in a motor carrier shipping something out of our facility, it probably wouldn't have happened had that motor carrier not been there conducting that transaction. For example, let's say something happens on our facility today and a motor carrier isn't there were not going to try to have that motor carrier indemnify us for anything that happened on that facility. It's only going to be in result of that contract that we had signed and those operations for us to fulfill that contract.

John Olson, BNSF: In opposition to the bill. These are probably being historic words that BNSF supports the position of Basin Electric Cooperative: This is called the Uniform Interchangeable Agreement Act. This is a nationally negotiated agreement among the motor carriers, railroads and steamship lines. We've worked out a lot of provisions and I made one copy, and I am sure this agreement provides throughout the United States for inter motor traffic. Questions have kind of related to the liability issues and you're rightly to be concerned about things that happen on a facility with let's say the railroad. That too is covered in this agreement and there is an indemnity agreement that's extensive but for anything that happens

on the premises of the facility operated by the railroad. And as I said these agreements have been carefully carved out and poured over by attorneys by both all the sides in this particular area of activity.

I hope you would recognize the impact that this could have. By these indemnities we're trying to avoid going to court by allowing this law the way it is. It is very vital with the intermodal operations that we have in this country.

Senator Andrist: I can accept the concept of partial indemnification but being able to sell off all your responsibility isn't right. That should go to the courts.

John: I think Basin has told you that they enter into contracts both ways. They've worked things out through contracts by predetermining accidents.

Chairman Klein: You're showing us this contract and we are hearing from the other side. How do we know where we go with us?

John: I here from your question that you don't know either. Take a harder look at this.

Senator Potter: It seems to me that the kind of differences is the scale of the contract. In BNSF case I don't imagine the railroad has hauled hazardous material at some time and completely indemnified the shipper against a possibility of tanks breaking and spills. You don't do that do you?

John: I don't know, I assume that the railroad has to litigate. There are all kinds of laws that apply to hauling hazardous material. (Inaudible). Your principle doesn't stop here with this bill it will go throughout the whole legal system. What you're being asked to do here is carve out a small area just by restricting contracts between motor carriers and distributors. And I don't think that's right. I think you should look at the entire legal system. (Inaudible).

Senator Wanzek: You're an attorney and if this is clear and convincing evidence, I can't believe you can indemnify this off to someone else. If we allow this to continue and someone

loses a life does this allow Basin to get off the hook? You can totally indemnify the responsibility?

John: Even in your question you raise a lot of legal terms and issues. They should be left to negotiations.

Senator Horne: Assuming that the railroad does the agreements how would an agreement read?

John: This is the agreement on page six. It's the kind of language everyone signs. These are all laid out.

Al Christianson, Great River Energy: This is carving out one part and where is this going to stop. Do not pass this bill.

Chairman Klein: Closed the hearing.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1195

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: March 24, 2009

Recorder Job Number: 11465

Committee Clerk Signature

Era Liebelt

Minutes:

Chairman Klein: 1195. Senator Wanzek do you have some amendments?

This bill deals with motor carriers and indemnification and after the hearing the groups involved began working on some sort of resolution. We can ask the motor carriers to make sure they're on board with this too.

Senator Wanzek: Explains the amendment.

Tom: Adds to the concern of the railroad to the UIA agreement. They add to the indemnity agreement saying that if it's on their property it is their fault and if it is their equipment it is their fault. It also says the motor carriers have to inspect the load.

Senator Potter: What I heard you say, is you sign off on it after you inspect it.

Tom: My understanding if it is a piece that they inspect and sign off on it the motor carrier takes responsibility for the load.

Senator Horne: You also talked about their property their fault.

Tom: The example I gave in my original testimony of a tank being loaded. In that case they could not hold us liable. If it is on their property it's not our fault each would have to defend themselves.

Senator Wanzek: The amendment to the amendment is changing the word "as listed." The motor carrier has the responsibility, if they inspect the equipment to say they cannot pull the trailer.

Tom: Yes, it's their responsibility to let them know they are not going to take the load.

Senator Andrist: Where the promise is not indemnified they don't take total responsibility. That's for the courts to decide.

Tom: We're just saying we don't have to defend them. We will defend ourselves.

Senator Potter: I heard your answer but I don't see this in your amendment that it makes the motor carriers responsible. It doesn't say that the motor carrier is responsible.

Tom: That is what we got from the UIA agreement.

Senator Potter: It doesn't say it transfers the liability over to the motor carrier.

Tom: I believe that is in B.

Senator Potter: Okay.

Senator Wanzek: Moved to pass the amendment.

Senator Nodland: Seconded the motion.

Passed 7-0.

Senator Wanzek: Moved a do pass as amended.

Senator Andrist: Seconded the motion.

Passed 7-0.

Senator Wanzek to carry the bill.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1195

Page 1, line 9, remove the underscored colon

Page 1, line 10, replace "(1) The" with "the"

Page 1, line 12, replace "(2) Entrance" with "entrance"

Page 1, line 14, replace "(3) A" with "a"

Page 1, line 15, after the underscored period insert "The term does not include the uniform intermodal interchange and facilities access agreement administered by the intermodal association of North America or any other agreement providing for the interchange, use, or possession of intermodal chassis, containers, or other intermodal equipment."

Page 1, line 21, after the first underscored comma insert "any portion of"

Page 2, line 2, after "unenforceable" insert "to the extent that the loss or damage:

- a. Occurs during the motor carrier's presence on the promisee's premises and is caused by or results from the negligent or intentional acts or omissions of the promisee; or
- b. Is caused by or results from defects of the equipment used to transport the promisee's property, unless the defects:
 - (1) Relate to equipment owned by the motor carrier or as to which the motor carrier has the responsibility to visually and audibly check before use; or
 - (2) Were caused by or resulted from the negligent or intentional acts or omissions of the motor carrier or the motor carrier's agency, employee, vendor, or subcontractor.
- 3. Under subsection 2, the motor carrier is responsible to visually and audibly check before use of equipment listed in exhibit A of the uniform intermodal interchange and facilities access agreement that was in effect on November 4, 2008"

Renumber accordingly

~~1195~~ as

March 24, 2009

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1195

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 - (1) Relate to equipment owned by the motor carrier or as to which the motor carrier has the responsibility to visually and audibly check before use; or
 - (2) Were caused by or resulted from the negligent or intentional acts or omissions of the motor carrier or the motor carrier's agency, employee, vendor, or subcontractor.
- 3. Under subsection 2, the motor carrier is responsible to visually and audibly check before use of equipment as listed in exhibit A of the uniform intermodal interchange and facilities access agreement that was in effect on November 4, 2008"

Renumber accordingly

Date: 3/24/09
Roll Call Vote #: 1

Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1195

Senate

Committee

Industry, Business and Labor

☐ Check here for Conference Committee

Legislative Council Amendment Number 90571.0101

Action Taken

☒ **Pass**

☐ **Do Not Pass**

☒ Amended

Motion Made By Senator Wanzek Seconded By Senator Nodland

[illegible]

Total (Yes) 7 No 0

Absent 0

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

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Date: 3/24/09Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1195

Senate

Committee

Industry, Business and Labor

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken

☒ **Pass**☐ **Do Not Pass**☐ **Amended**Motion Made By Senator Wanzek Seconded By Senator Andrist

Senator	Yes	No	Senator	Yes	No
Senator Jerry Klein - Chairman	✓		Senator Arthur H. Behm	✓	
Senator Terry Wanzek - V.Chair	✓		Senator Robert M. Horne	✓	
Senator John M. Andrist	✓		Senator Tracy Potter	✓	
Senator George Nodland	✓				

Total (Yes) 7 No 0Absent 0Floor Assignment Senator Wanzek

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1195: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1195 was placed on the Sixth order on the calendar.

Page 1, line 9, remove the underscored colon

Page 1, line 10, replace "(1) The" with "the"

Page 1, line 12, replace "(2) Entrance" with "entrance"

Page 1, line 14, replace "(3) A" with "a" and replace "paragraph 1 or 2" with "this subdivision"

Page 1, line 15, after the underscored period insert "The term does not include the uniform intermodal interchange and facilities access agreement administered by the intermodal association of North America or any other agreement providing for the interchange, use, or possession of intermodal chassis, containers, or other intermodal equipment."

Page 1, line 21, after the first underscored comma insert "any portion of"

Page 2, line 2, after "unenforceable" insert "to the extent that the loss or damage:

- a. Occurs during the motor carrier's presence on the promisee's premises and is caused by or results from the negligent or intentional acts or omissions of the promisee; or
- b. Is caused by or results from defects of the equipment used to transport the promisee's property, unless the defects:
 - (1) Relate to equipment owned by the motor carrier or as to which the motor carrier has the responsibility to visually and audibly check before use; or
 - (2) Were caused by or resulted from the negligent or intentional acts or omissions of the motor carrier or the motor carrier's agency, employee, vendor, or subcontractor.
3. Under subsection 2, the motor carrier is responsible to visually and audibly check before use of equipment as listed in exhibit A of the uniform intermodal interchange and facilities access agreement that was in effect on November 4, 2008"

Renumber accordingly

2009 TESTIMONY

HB 1195

*Hand-
out
information* HB 1195

MULTISTATE HIGHWAY TRANSPORTATION AGREEMENT

RESOLUTION 2005-501 IN SUPPORT OF REASONABLE AND FAIR INDEMNIFICATION AND FACILITY ACCESS AGREEMENTS BETWEEN SHIPPERS, RECEIVERS AND FACILITY OPERATORS AND MOTOR CARRIERS.

WHEREAS, in general, indemnification agreements are contractual provisions in which the parties agree to an allocation of responsibility for liabilities that might arise from the activities contemplated by the contract; and

WHEREAS, shippers, receivers and facility operators often present motor carriers with indemnification and hold harmless provisions in motor carrier transportation contracts and facility access agreements that would have motor carriers accept responsibility for all liabilities including those that arise from either contributory or the sole negligence of the shipper/receiver/facility operator; and

WHEREAS, the negative implications for motor carriers are readily apparent in this kind of indemnification/waiver of subrogation provision being abusive and purely a one way street; and

WHEREAS, for example, if the motor carrier's employee driver is injured by the negligence of an employee of the shipper, the motor carrier's worker's compensation coverage would pay the motor carrier's driver and the carrier could not collect reimbursement from the shipper or the shipper's insurer and similarly with facility operators; and

WHEREAS, some states prohibit or restrict motor carrier transportation contracts with abusive indemnification provisions because they are against public policy; and

WHEREAS, that is not the law in all states and that disparity creates even more problems and uncertainty for motor carriers because motor carriers usually operate in more than one state.

NOW THEREFORE BE IT RESOLVED, that MHTA herewith approves a policy, in the public's best interest, that supports having each party to a motor carrier transportation contract take responsibility for the consequences of their own actions which provides for the most incentive and assurance that each party will take the necessary steps to prevent accidents from happening; and

BE IT FURTHER RESOLVED, that MHTA supports the introduction and passage of model legislation in MHTA states that would make void, motor carrier transportation contract provisions, having motor carriers accept responsibility for all liabilities in indemnification/hold harmless agreements between the shipper/receiver/facility operator and motor carrier.

Adopted 15th day of November, 2005

**TESTIMONY
HOUSE BILL 1195
INDUSTRY, BUSINESS & LABOR COMMITTEE
MARCH 18, 2009**

Mr. Chairman and members of the Senate Industry, Business & Labor Committee my name is Tom Balzer, managing director of the North Dakota Motor Carriers Association. I am here this morning to testify in support of House Bill 1195.

Indemnity clauses in agreements are a risk management tool whereby one party agrees to secure another against an anticipated loss or damage. Unfortunately the trend with indemnity clauses is such that one party assumes all the liability that exists even for the other parties' negligence or because of their intentional acts or omissions.

Indemnity clauses like these are too far reaching; they put liability onto one party that has no control of the other party's policies, procedures and practices. They are basically asking someone else to assume liability for their actions. This is difficult and expensive to insure.

House Bill 1195 specifically deals with application of these clauses in motor carrier contracts where the "promisee" is protected from loss or damage resulting from their negligence or intentional acts or omissions and makes them unenforceable. In other words, you cannot put your liability onto trucking companies for acts which are not the fault of the trucking company.

This concept is not unfamiliar territory for the Legislative Assembly. During the 2007 Session a bill was passed that applied a similar standard to contracts for services with the state of North Dakota saying that contracts may not require indemnification for the contributory negligence, comparative degree of fault, sole negligence, or intentional misconduct of the state.

The trucking industry has little, if any, negotiating position when it comes to the terms of contracts. We run a very simple business, take something from point A to point B in the shortest time possible for the least possible cost. Shippers do not negotiate this provision of their contracts; they don't have to as the simplicity of the trucking business affords them the opportunity to shop around for trucking companies until they find one that will agree to their terms.

The trucking industry, for obvious reasons, is required by federal law to carry significant insurance and the industry has seen considerable increases in premiums due, in part, to the trend to indemnify shippers in motor carrier contracts. We have no issue with stipulations in contracts to insure that we are properly insured or that we assume the liability for the actions of our drivers, employees and agents, but we do not feel we should have to be held liable for the actions of others.

It is an unsubstantiated fear that the frequency of lawsuits will increase. In reality, most of these cases will never be in front of a judge, the insurance companies will settle these issues agreeably or through arbitration. All we are asking is that in the most egregious incidents where we are clearly not at fault we have an avenue to absolve ourselves.

This concept is that is supported by the Multi-State Highway Transportation Agreements which is a group made up of state legislators, state departments of transportation and transportation professionals who are working toward developing policies that support the efficient movement of freight in the western United States. North Dakota is a member of this organization with Representative Robin Weisz being our legislative representative.

House Bill 1195 passed the House by a vote of 91-0 and I ask for your DO PASS recommendation.

STATUS OF ANTI-INDEMNIFICATION LEGISLATION
March 3, 2009

I. States with statutes:

IN
KS
MD
MO
NE
NC
OK
SC
TN
TX
VA
WV

II. States actively pursuing legislation or preparing to initiate legislation in 2009:

CO
CT
IL
NM
NY
ND
WI
WY

III. States that may pursue legislation in 2010:

AZ
FL
KY
LA
OH

IV. States in which introducing legislation is being considered or discussed:

AR
IA
MN
UT



ND PETROLEUM MARKETERS ASSOCIATION

1025 N 3rd Street • PO Box 1956 • Bismarck, ND 58502
Telephone 701-223-3370 • www.ndpetroleum.org • Fax 701-223-5004

Testimony HB 1195 March 18, 2009 - Senate Industry Business and Labor Committee

Chairman Klein and members of the Senate IBL Committee:

For the record, my name is Mike Rud. I'm the president of the North Dakota Petroleum Marketers Association. NDPMA is seeking a "DO PASS" recommendation on HB 1195.

Motor carriers (truckers) are probably one of the most limited insurance market risks.

Due to the type of cargo petroleum marketers normally handle their insurance marketplace is further restricted. Current practices force many carriers to assume liabilities that are not in their control. It's pretty simple: If you want the business you've got to go by ground rules set forth at the loading facilities. However, if the carrier is forced to indemnify the supplier, what is the incentive for the supplier to assure quality?

I would like to cite several examples as to why HB 1195 makes good business sense.

A trucker loads liquid in a tanker. Twenty miles down the road the bottom drops out because the fill valve at the loading facility was improperly marked. The trucker had unknowingly loaded acid in his unit. Luckily, the acid only slightly damaged another vehicle. If the passengers would have had their windows open it would have caused bodily injury. With the indemnification the facility is off the hook.

Recently, a trucker loaded fuel from a terminal and dropped it at a retail gas outlet. This fuel was apparently contaminated at the terminal and didn't meet specifications.

Numerous vehicles had to be serviced after filling with the fuel. The retailer was on the hook for damages to the vehicle engines.

These indemnification activities are usually the work of large corporate risk management departments. These companies most likely self insure large portions of their risk or carry large deductibles. They transfer this risk to others through indemnifications.

Passage of HB 1195 would help hold each party responsible for their facilities, equipment and activities.

Again, NDPMA asks for a "DO PASS" on HB 1195.

Curtis Jabs
Basin Electric Power Cooperative, Dakota Gasification Company
North Dakota HB 1195
Senate Industry, Business and Labor Committee
March 18, 2009

Mr. Chairman and members of the committee, my name is Curtis Jabs and I am here representing Basin Electric Power Cooperative and the Dakota Gasification Company. Basin Electric and the Dakota Gasification Company oppose HB 1195.

House Bill 1195 seeks to remove by absolute statutory prohibition, indemnity provisions in private contracts between shippers of goods and the motor carriers who transport those goods. It is the position of Basin Electric Power Cooperative and Dakota Gasification Company that such a prohibition will only serve to deprive the parties the use of this risk management tool with little, if any, corresponding benefit. Why does the State want to get in the middle of private negotiations between two parties?

Currently two parties have the right to negotiate and incorporate indemnification provisions in contractual relationships. In an indemnity or hold harmless agreement, one party (the indemnitor) promises to reimburse, and in some case defend, the other party (the indemnitee) against claims or suits brought against the indemnitee by a third party. There are many contracts where these agreements may be used, including: 1) leases of either real or personal property; 2) easements; 3) construction contracts.; 4) architectural and engineering design contracts and 5) purchase orders to name a few. Some samples are included as follows.

I have attached a copy of a ticket for a Bismarck Bobcats hockey game. As a voluntary spectator at this game, I understand that I assume all risks inherent with being at a hockey event and understand that hockey can result in injuries to the fans. The same type of indemnity provisions are found on Dakota Wizards basketball game tickets and other professional sporting events. On the back of the Wizard ticket, "THE HOLDER OF THIS TICKET VOLUNTARILY ASSUMES ALL RISK AND DANGER of personal injury (including death) and all hazards arising from, or related in any way to, the Event, whether occurring prior to, during, or after the Event, howsoever caused and whether by negligence or otherwise.

I have also attached a copy of the 'Terms of Use' agreement for the website of Ticketmaster. You and I are required to "Limit the Liability" of Ticketmaster, and you and I are also required to "Indemnify and Hold Harmless" ticketmaster from any loss, liability, claim or demand arising out of the use of the Website. In other words, anyone who clicks onto the ticketmaster website is required to Indemnify and Hold Ticketmaster Harmless if there is any type of loss, just because they clicked on their website.

Hold harmless agreements are required for participants who use and participate in facilities that belong to the State of North Dakota. The standard Facilities Use Agreement contains the following language, "Event Sponsor agrees to assume all risk of and liability for and hereby indemnifies, saves and holds harmless the State of North Dakota and its agencies, officers, and employees of, from and against any and all claims of any nature including all costs, expenses and attorney's fees, which may in any manner arise out of, or result from the Event."

Your attendance at a sporting event, use of a state owned facility or buying a ticket from a website are in most cases far less hazardous than hiring a motor carrier to load an 18 wheeler and haul freight down a two lane highway at 65 miles per hour. Yet if this bill passes, you will be required to indemnify the website host and State of North Dakota, but the motor carrier will not be required to indemnify you for events caused by them.

Our company is currently involved in litigation involving a motor carrier who hauled a load of ammonia sulfate fertilizer out of the Dakota Gasification Company to an elevator. A farmer purchased certified wheat seed from this elevator. Somehow in the process, certified winter wheat seed was contaminated with rye seed. Due to the rye seed being introduced into the winter wheat field, the winter wheat was not able to be sold as certified seed, and was less valuable than intended. Dakota Gasification Company is being sued by the elevator who handed the winter wheat seed and our ammonium sulfate fertilizer. There is no chance that rye was introduced though the production of ammonium sulfate fertilize at our facility. This is a chemical process; there is no winter wheat or rye present at our facility. Because Dakota Gasification Company had negotiated an indemnity agreement with the motor carrier, we are asking the motor carrier to defend and indemnify us if the motor carrier and Dakota Gasification Company are brought to trial. If this bill passes, we would be subject to substantial defense costs because of the operations of the motor carrier, without the ability to have the motor carrier defend and indemnify us for a claim resulting from his actions.

The use of an indemnification agreement regarding negligence enables the parties to clearly establish at the outset of the transaction which party (or most often--- which party's insurance carrier) will be responsible to undertake the defense of a third party negligence claim relating to the transaction and who will be financially responsible for an award of damages. Such allocation facilitates the settlement of negligence claims. It also eliminates the considerable expenditure of time, effort and money often involved when the parties to a contract, in the absence of such an allocation of responsibility, become embroiled in a conflict with respect to relative degrees of responsibility for an award made to an injured third party.

Mr. Chairman and members of the committee, this is not about leveling the playing field. Motor carriers always have the right to not agree to any indemnitee agreement within a contract. Negotiations works both ways, Basin Electric and the Dakota Gasification Company have indemnified others through its contacts.

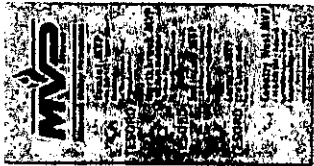
Even though indemnity agreements are common in most contracts, passing HB 1195 will make contracts with indemnity provisions between motor carries and shippers void and unenforceable in North Dakota. Why should indemnity agreements between motor carriers and shippers be singled out in the North Dakota Century Code? We believe this is bad policy and would represent an unwarranted intrusion by the State of North Dakota to the freedom of commercial parties to negotiate and contract for goods and services.

Basin Electric and the Dakota Gasification Company believe that the negotiation relating to the costs and terms of doing business should be left to the parties and not prescribed by the inflexible language of the proposed statute. Therefore, I would ask for a "do not pass" on HB 1195. I will answer any questions from the committee.

02/27/2009 7:30 PM 1:1
Section 4
REG
106408 022709

Bismarck Bobcats
Y. Albert vs J. Hutter
Friday, February 27, 2009
7:30pm
Section 4/D-6

MVP
Missouri Valley Petroleum
Not valid with any other
coupon or special. Limit one
coupon per customer per
visit.
\$1.00 off
8 gallon fill



FREE SMALL SUB
with purchase of 2 or more
large subs
Quiznos SUB
LALAY, MISSOURI

WARNING: Pucks leaving the playing surface can cause serious injury! Be aware of
activity on the ice at all times!

As a voluntary spectator at this game, I understand that I assume all risk inherent with
being at a hockey event and understand that hockey can result in injury to the fan.



Legendary Pit Bar-B-Que®

1/2 price appetizer

Valid only at Bismarck location and
only on Wizards gamedays

Limit one appetizer per coupon

Offer expires March 25, 2009

This ticket is a revocable license. The holder, on behalf of the holder and any minor accompanying the holder (individually and collectively, the "Holder"), agrees to all of the terms hereof. By using this ticket and entering the arena, the Holder agrees to be bound by the terms of this license. The Holder agrees not to transmit, distribute, or sell (or aid in transmitting, distributing, or selling) any description, account, picture, video, audio or other form of reproduction of the event or any surrounding activities (in whole or in part) for which this ticket is issued (the "Event"). This ticket may not be used for any form of commercial or trade purposes, including, but not limited to, advertising, promotions, contests or sweepstakes, without the express written consent of the Dakota Wizards ("Team") and NBA Development League, LLC and/or its affiliates (the "D-League"). Breach of any of the terms of this license, failure to comply with arena rules, or the refunding to the Holder of the printed purchase price of this ticket, shall automatically terminate any rights that the Holder may have hereunder; shall render illegal and unauthorized the Holder's use of the ticket for any purpose; and shall authorize the Team or the D-League to withdraw the ticket, refuse admission to the arena, or eject the Holder from the arena. Breach of any of the terms of this license shall also subject the Holder to all legal remedies available to the D-League, the Team and their affiliates. Resale or attempted resale of this ticket in violation of applicable law is grounds for seizure or cancellation without refund or other compensation. The Holder grants permission to the D-League (and its designees and agents) to utilize the Holder's image, likeness, actions and statements in any live or recorded audio, video, or photographic display or other transmission, exhibition, publication or reproduction made of, or at, the Event in any medium or context for commercial or promotional purposes without further authorization or compensation. THE HOLDER OF THIS TICKET VOLUNTARILY ASSUMES ALL RISK AND DANGER of personal injury (including death) and all hazards arising from, or related in any way to, the Event, whether occurring prior to, during, or after the Event, howsoever caused and whether by negligence or otherwise. The Holder and the Holder's belongings may be searched upon entry into the arena, and the Holder consents to such searches and waives any related claims that might arise against the D-League and the Team. If the Holder elects not to consent to these searches, the Holder will be denied entry into the arena.

K A O

GAME 17



MONDAY

MAR. 2, 2009 • 7:00 PM

Sec 104

Row NN

Seat 12

Price \$17.29



VS. *Wizards*

BISMARCK CIVIC CENTER

TICKET PRICE INCLUDES FACILITY FEE
AND ALL APPLICABLE TAXES

GAME 17

United States

Change Location

Enter Artist, Team, or Venue

Welcome. Sign In

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The following is a partial list of the kind of User Content which is illegal or prohibited on the Site. It includes User Content that:

- is patently offensive to the online community, such as User Content that promotes racism, bigotry, hatred or physical harm of any kind against any group or individual; could be harmful to minors;
- Harasses or advocates harassment of another person;
- Involves the transmission of "junk mail", "chain letters", or unsolicited mass mailing or "spamming";
- Promotes information that you know is false, misleading or promotes illegal activities or conduct that is abusive, threatening, obscene, defamatory or libelous;
- Promotes an illegal or unauthorized copy of another person's copyrighted work, such as providing pirated computer programs or links to them, providing information to circumvent manufacturer-installed copy-protect devices, or providing pirated music or links to pirated music files;
- Contains restricted or password only access pages, or hidden pages or images (those not linked to or from another accessible page);
- Displays pornographic or sexually explicit material of any kind;
- Provides material that exploits people under the age of 18 in a sexual or violent manner, or solicits personal information from anyone under 18;
- Provides instructional information about illegal activities such as making or buying illegal weapons, violating someone's privacy, or providing or creating computer viruses;

Policies and Security

- Privacy Policy
- Privacy Policy FAQ
- Purchase Policy
- Terms of Use
- TicketExchange Selling Policy
- Cookies & Graphics
- Security
- Error Messages
- Enabling Javascript

Help

- Solicit passwords or personal identifying information for commercial or unlawful purposes from other users; or
- Engage in commercial activities without our prior written consent such as contests, sweepstakes, barter, advertising, and pyramid schemes.

Offline Conduct

Although Ticketmaster cannot monitor the conduct of users off the Site, it is also a violation of these rules to use any information obtained from this Site in order to harass, abuse, or harm another person, or in order to contact, advertise to, solicit or sell to any Site user without their prior explicit consent.

Commercial Use

No bulletin board, chat or other areas of this Site may be used by our visitors for any commercial purposes such as to conduct sales of tickets, merchandise or services of any kind, except that TicketExchange can be used to resell tickets to the extent compliant with law. You must obtain our prior written consent to make commercial offers of any kind, whether by advertising, solicitations, links, or any other form of communication, except you may post tickets for resale through TicketExchange to the extent you are doing so in accordance with law. Without limiting the foregoing, you may not use the Site to resell or link to other sites for the purpose of selling tickets of any kind, except you may resell tickets through TicketExchange to the extent you are doing so in accordance with law. We will investigate and take appropriate legal action against anyone who violates this provision, including without limitation, removing the offending communication from the Site and barring such violators from use of the Site. We reserve the right to block access to this Site or Ticketmaster's other services, or cancel a ticket order or ticket with respect to any person believed to be, or believed to be acting in concert with any person who is believed to be, violating the law or these Terms or Ticketmaster's rights, or utilizing automated means to process or place ticket orders, or who has ordered a number of tickets that exceeds the stated limit. Violating any limitations or terms on the Site will be deemed to be a violation of these Terms. Please note that Ticketmaster has entered into agreements with certain sport teams for whom Ticketmaster hosts web sites that are designed to allow such sports teams' season ticket holders to sell individual game tickets from their season ticket packages through such web sites ("Season Ticket Sale Sites"). Some of these Season Ticket Sale Sites can be found through this Site. Nothing in this paragraph shall prohibit the sale or purchase of tickets through the Season Ticket Sale Sites or through TicketExchange, as long as such sales and purchases are conducted pursuant to the terms that apply to the Season Ticket Sale Sites or TicketExchange (as the case may be) and comply with law.

Access and Interference

You agree that you will not use any robot, spider or other automatic device, process or means to access the Site. Nor shall you use any manual process to monitor or copy our web pages or the content contained thereon or for any other unauthorized purpose without our prior expressed written permission. You agree that you will not use any device, software or routine that interferes with the proper working of the Site nor shall you attempt to interfere with the proper working of the Site. You agree that you will not take any action that imposes an unreasonable or disproportionately large load on our infrastructure. You agree that you will not access, reload or "refresh" transactional event or ticketing pages, or make any other request to transactional servers, more than once during any three second interval. You agree that you will not copy, reproduce, alter, modify, create derivative works, or publicly display any content (except for your own personal, non-commercial use) from the Site without the prior expressed written permission of Ticketmaster.

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Any illegal or unauthorized use of the Site shall constitute a violation of these Terms of Use. You do not have permission to access the Site in any way that violates, directly or indirectly, these Terms of Use. Illegal or unauthorized use of the Site includes, but is not limited to, using the site to facilitate illegal ticket sales, unauthorized framing or linking to the Site, or unauthorized use of any robot, spider or other automated process on the Site. It shall also be a violation of these Terms of Use: (a) for any individual (or group of individuals acting in concert) to request, more than 1000 pages of the Site in any twenty-four hour period (hereafter referred to as "Abusive Use"); or (b) to use any passcode or password, regardless of whether or not such password or passcode is unique, to participate in a pre-sale or other offer on the Site if you are not the original recipient of such passcode or password (i.e., if you did not receive the passcode or password from Ticketmaster, or from the fan club or other organization with whom Ticketmaster is working to enable such pre-sale or offer) or if your participation in such pre-sale or other offer is inconsistent with such pre-sale's or offer's terms.

Suspected Violation of these Terms of Use or Law; Injunctive, Equitable Relief, and Liquidated Damages

Violations of these Terms of Use, including Unauthorized Use of the Site, may be investigated and appropriate legal action may be taken, including without limitation civil, criminal and injunctive redress. You understand and agree that in Ticketmaster's sole discretion, and without prior notice, Ticketmaster may terminate your access to the Site, cancel your ticket order or tickets acquired through your ticket order, cancel your ticket postings, remove any unauthorized User Content or exercise any other remedy available, if Ticketmaster believes that your conduct or the conduct of any person with whom Ticketmaster believes you act in concert, or the User Content you provide, or any resale of such tickets purchased through Ticketmaster, violates or is inconsistent with these Terms or the law, or violates the rights of Ticketmaster, a client of Ticketmaster or another user of the Site. You agree that monetary damages may not provide a sufficient remedy to Ticketmaster for violations of these Terms and you consent to injunctive or other equitable relief for such violations.

You agree that Abusive Use of the Site, as defined above, causes damage and harm to Ticketmaster in the form of, among other things, impaired goodwill, lost sales, and increased expenses associated with responding to Abusive Use of the Site. You further agree that monetary damages for Abusive Use of the Site are difficult to ascertain and that proof of monetary damages for Abusive Use would be costly and inconvenient to calculate. Accordingly you agree that liquidated damages are warranted for Abusive Use. Therefore, you agree that if you, or others acting in concert with you, alone or collectively request more than 1000 pages of the Site in any twenty-four hour period, you, and those acting in concert with you, will be jointly and severally liable for liquidated damages in the amount of ten dollars (\$10.00) per page request each time that a page request is made after that first 1000 during that twenty-four hour period. You also agree that this will be the measure of damages for any Abusive Use that occurred prior to this provision of these Terms of Use being in effect.

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Privacy

We believe that your privacy and the privacy of all our users is important. These Terms are subject to the Privacy Policy, which is hereby incorporated by reference. Ticketmaster will not be responsible or otherwise liable for any use or disclosure of your contact information, or financial information, by a third party to whom Ticketmaster is allowed to disclose your contact information under the Privacy Policy. If you post any User Content to the Site, by electronic mail or otherwise, we will treat it as non-confidential and non-proprietary to you. When we say in these Terms "post" we mean the provision of information (including, but not limited to, "User Content") to the Site through features of the Site that are used to make information available to other

Ticketmaster is not liable for any lost data resulting from the operation of the Site or the enforcement of the Terms. We urge all users to maintain their own back up versions of any User Content or other information they submit to the Site.

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Without limiting the foregoing, you may report the misconduct of users and/or third party advertisers, service and/or product providers referenced on or included in the Site to Ticketmaster at legal@ticketmaster.com if on Ticketmaster.com or at legal@ticketmaster.ca if on Ticketmaster.ca. Ticketmaster may investigate the claim and take appropriate action in its sole discretion.

IN NO EVENT WILL TICKETMASTER BE LIABLE TO YOU FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES OR FOR LOST PROFITS, REVENUES OR BUSINESS OPPORTUNITIES, EVEN IF TICKETMASTER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

If you have a dispute and your dispute involves an event (or a ticket for an event) that is located in the United States, then the dispute will be governed by the laws of the State of California without regard to its conflict of law provisions and you consent to personal jurisdiction, and agree to bring all actions, exclusively, in state and federal courts located in Los Angeles County, California. If you have a dispute and your dispute involves an event (or a ticket for an event) that is located in Canada, then the dispute will be governed by the laws of the Province of Ontario without regard to its conflict of law provisions and you consent to personal jurisdiction, and agree to bring all actions, exclusively in courts located in Toronto, Ontario. If you have a dispute regarding the Site but not regarding an event (and not regarding a ticket for an event), then, (a) if you are accessing the Site from the United States or any country other than Canada, then the dispute will be governed by the laws of the State of California without regard to its conflict of law provisions and you consent to personal jurisdiction, and agree to bring all actions, exclusively in state and federal courts located in Los Angeles County, California; and (b) if you are accessing the Site from Canada, then the dispute will be governed by the laws of the Province of Ontario without regard to its conflict of law provisions and you consent to personal jurisdiction, and agree to bring all actions, exclusively in courts located in Toronto, Ontario. If you are purchasing or selling through TicketExchange tickets to an event that is located in the State of Illinois, then this paragraph shall not apply to your purchase or sale, and instead the paragraph that will apply is the paragraph below entitled "Additional Provisions Applicable to Persons Using TicketExchange to Buy or Sell Tickets to any Event Located in the State of Illinois."

You agree to indemnify and hold Ticketmaster and its affiliates, and each of Ticketmaster's and its affiliates' respective officers, agents, employees, contractors and principals, harmless from any loss, liability, claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of your use of the Site, including also your use of the Site to provide a link to another site or to upload content or other information to the Site.

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One or more patents apply to this Site and to the features and services accessible via the Site, including without limitation: USA Patent 6,023,665; USA Patent 6,704,713; USA Patent 6,907,405; and all corresponding foreign counterparts.

Additional Provisions Applicable to Persons Using TicketExchange to Buy or Sell Tickets to any Event Located in the State of Illinois
If, and only if, you are using TicketExchange to purchase or sell a ticket to an event that is located in the State of Illinois, then you understand, agree and acknowledge the following:

- This website is operated by Ticketmaster L.L.C. Ticketmaster's address in the State of Illinois is: 550 W. Van Buren Street, 13th Floor, Chicago, Illinois 60607.
- If you have a complaint or inquiry regarding ticket resales made through TicketExchange for any event located in the State of Illinois, please email us at ticketexchange@ticketmaster.com or call us at (877) 446-9450.
- These Terms shall be governed by and construed in accordance with the laws of the State of Illinois. In the event of a dispute, you, Ticketmaster, and all buyers and sellers of tickets through TicketExchange each agree to submit to the exclusive jurisdiction and venue of the state and federal courts located in Chicago, Illinois, and the parties consent to the exclusive and personal jurisdiction and venue of these courts, subject to the following: If you are a reseller of one or more tickets through TicketExchange and you have a dispute with any person or business who buys any of those tickets from you, or you are a buyer of one or more resold tickets resold through TicketExchange and you have a dispute with the person or business that sold any of those tickets to you, you hereby agree that that dispute will be solely and finally settled in Illinois by binding arbitration in accordance with the Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association, and the non-prevailing party in the arbitration shall pay the fees and expenses of the arbitrator(s) and the costs of arbitration and the enforcement of any award rendered therein, including the attorneys' fees and expenses of the prevailing party. In order to commence such a proceeding, please send a letter describing the dispute to Ticketmaster Legal Department, 8800 Sunset Blvd., West Hollywood, CA 90069.

Additional Provisions Applicable to Persons Using TicketExchange to Buy or Sell Tickets to any Event Located in the Commonwealth of Pennsylvania
If, and only if, you are using TicketExchange to purchase or sell a ticket to an event that is located in the Commonwealth of Pennsylvania, then you understand, agree and acknowledge the following:

- This website is operated by Ticketmaster L.L.C. Ticketmaster's address in the Commonwealth of Pennsylvania is: International Plaza #2, Suite 330, Philadelphia, PA 19113.
- Ticketmaster guarantees it will provide a full refund of the amount paid by the purchaser of a ticket on TicketExchange, including all fees, if any of the following occurs:
 - i. The event is cancelled (in the event of a cancellation, handling and delivery fees will not be refunded).
 - ii. The ticket received by the purchaser does not allow the purchaser to enter the event, for reasons including the fact that the ticket is counterfeit or has been canceled by the issuer due to nonpayment, unless the ticket is canceled due to an act or omission of the purchaser
 - iii. The ticket fails to conform to its description on this website

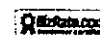
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**PARENT'S OR GUARDIAN'S AGREEMENT OF
WAIVER OF LIABILITY, INDEMNIFICATION, AND MEDICAL RELEASE**

To be signed by adults if the participant is under 18 years of age.

Acknowledgment and Assumption of Risk

The undersigned parent and/or legal guardian does hereby acknowledge that he/she is aware of the dangers and the risks to the participant's person and property involved in participating in: _____

The undersigned parent and/or legal guardian and participant understand that this activity involves certain risks for physical injury to the participant. We also understand that there are potential risks of which may presently be unknown. Because of the dangers of participating in this activity, the undersigned parent and/or legal guardian and participant recognize the importance and the participant agrees to fully comply with the applicable laws, policies, rules and regulations, and any supervisor's instructions regarding participation in this activity.

The undersigned parent and/or legal guardian and participant understand that the State of North Dakota (State) does not insure participants in the above-described activity, that any coverage would be through personal insurance, and the State has no responsibility or liability for injury resulting from this activity.

The undersigned parent and/or legal guardian acknowledges that the participant voluntarily elects to participate in this activity with knowledge of the danger involved, and hereby agrees to accept and assume any and all risks of property damage, personal injury, or death.

Waiver of Liability and Indemnification:

In consideration for being allowed to voluntarily participate in the above-referenced event, on behalf of myself, the participant, his/her personal representatives, heirs, next of kin, successors and assigns, the undersigned parent and/or legal guardian forever:

a. waives, releases, and discharges the State of North Dakota and its agencies, officers, and employees from any and all liability for the participant's death, disability, personal injury, property damages, property theft or claims of any nature which may hereafter accrue to the participant, and the participant's estate as a direct or indirect result of participation in the activity or event; and

b. defend, indemnify, and hold harmless the State of North Dakota, its agencies, officers and employees, from and against any and all claims of any nature including all costs, expenses and attorneys' fees, which in any manner result from participant's actions during this activity or event.

Consent is given for the participant to receive medical treatment, which may be deemed advisable in the event of injury, accident or illness during this activity or event. This release, indemnification, and waiver shall be construed broadly to provide a release, indemnification, and waiver to the maximum extent permissible under applicable law.

I, the undersigned parent and/or legal guardian, affirm that I am freely signing this agreement. **I have read this form and fully understand that by signing this form I am giving up legal rights** and/or remedies which may otherwise be available to myself, the minor participant regarding any losses the participant may sustain as a result of participation in the activity. I agree that if any portion is held invalid, the remainder will continue in full legal force and effect.

READ BEFORE SIGNING

Name of Minor: _____

Age of Minor: _____

Signature of Parent/Guardian: _____

Date _____

Printed Name of Parent/Guardian: _____

Date _____

Witness: _____

Date _____

WAIVER OF LIABILITY, INDEMNIFICATION, AND MEDICAL RELEASE

To be signed by adults participating in the event.

Acknowledgment and Assumption of Risk

I am aware of the dangers and the risks to my person and property involved in participating in:

I understand that this activity involves certain risks for physical injury. I also understand that there are potential risks of which I may not presently be aware. Because of the dangers of participating in this activity, I recognize the importance and agree to fully comply with the applicable laws, policies, rules and regulations, and any supervisor's instructions regarding participation in this activity.

I understand that the State of North Dakota (State) does not insure participants in the above-described activity, that any coverage would be through personal insurance, and the State has no responsibility or liability for injury resulting from this activity.

I voluntarily elect to participate in this activity with knowledge of the danger involved, and I hereby agree to accept and assume any and all risks of property damage, personal injury, or death.

Waiver of Liability and Indemnification:

In consideration for being allowed to voluntarily participate in the above-referenced event, on behalf of myself, my personal representatives, heirs, next of kin, successors and assigns, I forever:

- a. **waive, release, and discharge the State of North Dakota** and its agencies, officers, and employees from any and all negligence and liability for my death, disability, personal injury, property damages, property theft or claims of any nature which may hereafter accrue to me, and my estate as a direct or indirect result of my participation in the above referenced activity or event; and
- b. **defend, indemnify, and hold harmless the State of North Dakota**, its agencies, officers and employees, from and against any and all claims of any nature including all costs, expenses and attorneys' fees, which in any manner result from participant's actions during this activity or event.

I hereby consent to receive medical treatment which may be deemed advisable in the event of injury, accident or illness during this activity or event. This release, indemnification, and waiver shall be construed broadly to provide a release, indemnification, and waiver to the maximum extent permissible under applicable law.

I, the undersigned participant, affirm that I am at least 18 years of age and am freely signing this agreement. **I have read this form and fully understand that by signing this form I am giving up legal rights** and/or remedies which may otherwise be available to me regarding any losses I may sustain as a result of my participation. I agree that if any portion is held invalid, the remainder will continue in full legal force and effect.

READ BEFORE SIGNING

Name: _____

Signature: _____

Date: _____

Witness: _____

Date: _____

Developed By:

Effective: November 5, 2008

The Intermodal Interchange
Executive Committee

**UNIFORM
INTERMODAL
INTERCHANGE
AND
FACILITIES ACCESS
AGREEMENT
(U I I A)**

Administered By:

The Intermodal Association of North America
11785 Beltsville Drive, Suite 1100
Calverton, Maryland 20705-4048

Phone: Toll-Free (877)438-UIIA (438-8442) or (301)474-8700

Fax: (301)982-3414 or (301)982-5478 Website: www.uiia.org

**UNIFORM INTERMODAL INTERCHANGE
AND
FACILITIES ACCESS AGREEMENT**

(A Program of the Intermodal Association of North America)

Participating Party Agreement

The Party named below agrees that by executing the Uniform Intermodal Interchange and Facilities Access Agreement (UIIA) it will be bound by the provisions of the UIIA, and subsequent amendments and/or revisions of that Agreement, and any addendum thereto, that does not conflict with the terms of this Agreement, which govern the interchange and use of Equipment in intermodal interchange service. The Provider named below agrees that in its interchange activities with Motor Carrier participants who are signatories to the Agreement, this Agreement will be the only Agreement it will use, unless superceded in whole by a separate bilateral written agreement.

This Agreement shall be effective unless cancelled in writing, by mutual consent of the Parties, or by any Party upon thirty (30) days prior Notice to the other Party. A copy of the required written Notice must be provided to the President of IANA at the time it is issued. [Revised 04/11/07]

COMPANY NAME: _____

AUTHORIZED BY: (Print or Type) _____

SIGNATURE: _____ **TITLE:** _____ **DATE:** _____

BUSINESS ADDRESS: _____
(Mailing Address) No. Street City

State Zip Code Phone No. Fax E-Mail

Indicate Nature of Business: _____ Motor Carrier _____ Provider

Indicate Standard Carrier Alpha Code (SCAC): _____

If Applicable to a Motor Carrier:

Federal Registration (MC Number) _____ State Authorization (DOT) No. _____

STCC Code: _____ Tax Identification No. _____

Dated: _____

By: _____
President & CEO
Intermodal Association of North America

**UNIFORM INTERMODAL INTERCHANGE
AND
FACILITIES ACCESS AGREEMENT**

(A Program of the Intermodal Association of North America)

Participating Party Agreement

The Party named below agrees that by executing the Uniform Intermodal Interchange and Facilities Access Agreement (UIIA) it will be bound by the provisions of the UIIA, and subsequent amendments and/or revisions of that Agreement, and any addendum thereto, that does not conflict with the terms of this Agreement, which govern the interchange and use of Equipment in intermodal interchange service. The Provider named below agrees that in its interchange activities with Motor Carrier participants who are signatories to the Agreement, this Agreement will be the only Agreement it will use, unless superceded in whole by a separate bilateral written agreement.

This Agreement shall be effective unless cancelled in writing, by mutual consent of the Parties, or by any Party upon thirty (30) days prior Notice to the other Party. A copy of the required written Notice must be provided to the President of IANA at the time it is issued. [Revised 04/11/07]

COMPANY NAME: _____

AUTHORIZED BY: (Print or Type) _____

SIGNATURE: _____ **TITLE:** _____ **DATE:** _____

BUSINESS ADDRESS: _____
(Mailing Address) No. Street City

State Zip Code Phone No. Fax E-Mail

Indicate Nature of Business: _____ Motor Carrier _____ Provider

Indicate Standard Carrier Alpha Code (SCAC): _____

If Applicable to a Motor Carrier:

Federal Registration (Motor Carrier) No. _____ State Authorization (DOT) No. _____

STCC Code: _____ Tax Identification No. _____

The provisions of this agreement shall become effective on the date accepted by the Association of the above named carrier and published in the list of subscribers or supplements thereto.

By: *Joanne F. Casey*
President & CEO
Intermodal Association of North America

KEEP THIS COPY FOR YOUR FILES

UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT

A. Purpose

The Parties to this Agreement hereby acknowledge their respective responsibilities in one Party's access to the Premises of the other for the purpose of interchanging intermodal transportation Equipment and further establish the terms and conditions under which such intermodal Equipment will be used. **[Revised 04/11/07]**

B. Definition of Terms

1. Actual Cash Value: Replacement cost less depreciation as referred to on Equipment Owners' or Providers' Books.
2. Addendum/Addenda: Providers' schedule of economic and commercial terms not appropriate for inclusion in the uniform Agreement and other terms and conditions of Equipment use. **[Revised 04/11/07]**
3. Agreement: This Agreement or amendments thereto and Addendum/Addenda.
4. Contamination: Damage resulting from release of a hazardous material or other substance in Equipment which prevents subsequent use of the Equipment without removal of the material or substance. **[Revised 10/22/04]**
5. Destroyed: Where the reasonable and customary cost to repair Equipment exceeds its Actual Cash Value or depreciated replacement value. **[Revised 7/25/07]**
6. Equipment: Equipment commonly used in the road transport of intermodal freight including trailers, chassis, containers and associated devices.
7. Equipment Owner: The holder of actual or beneficial title to the Equipment, regardless of the form of the title. **[Revised 04/11/07]**
8. Equipment Interchange Receipt (EIR): A document confirming the interchange of Equipment between Parties to this Agreement, or their agents. The physical condition of the Equipment may be described by either Party within the EIR or via recorded images taken at the time of Interchange. **[Revised 04/11/07]**
9. Facility Operator: Party whose Premises are accessed for the purpose of effecting an interchange between signatories to this Agreement. **[Revised 2/24/06]**
10. Indemnitees: Provider, Equipment Owner and/or Facility Operator, as their interest may appear.
11. Interchange: The transfer of physical possession of Equipment under the Agreement.
12. Interchange Period: The period, commencing upon Interchange to Motor Carrier and concluding upon Interchange to Provider.
13. Motor Carrier: The Party being granted access to the Provider's facilities and/or having physical possession of the Equipment for the purpose of road transport or its designated agent or contractor.
14. Notice: A communication between Parties of this Agreement required by the terms of the Agreement.

15. Parties: The Provider, Motor Carrier and/or Facility Operator who are signatories to this Agreement. **[Revised 2/24/06]**
16. Per Diem: Charge to be paid when intermodal Equipment is not returned by the end of the allowable free time to its origin or to another location, as previously agreed to by the Parties. **[Revised 7/25/07]**
17. Premises: The property operated by Equipment Provider or Facility Operator for the purpose of Interchange.
18. Provider: The Party authorizing delivery and/or receipt of physical possession of Equipment with a Motor Carrier.
19. Recorded Image: A date and time stamped electronic image, which depicts the physical condition of the Equipment. **[Added 04/11/07]**
20. Storage/Ocean Demurrage: Charge to be paid when intermodal Equipment is stored on property. **[Revised 7/25/07]**
21. Wear and Tear: Damage or deterioration of Equipment incident to its usual and customary intended use.

C. Premises Access

1. Provider and/or Facility Operator grants to Motor Carrier the right to enter upon its terminal facility for the sole purpose of completing an Interchange of Equipment.
2. Nothing in this Agreement shall preclude Provider or Facility Operator from refusing access to a Motor Carrier for good cause shown. Provider or Facility Operator shall exercise this right in good faith, providing to Motor Carrier a written statement of the reason for its action by registered mail or confirmed facsimile transmission within five (5) business days of the event causing such refusal.

D. Equipment Interchange

1. Notification of Equipment Availability

- a. If Provider/Facility Operator undertakes to notify Motor Carrier of Equipment availability, it represents that the Equipment will be available for Interchange when the Motor Carrier arrives.
- b. Where it is notified, as provided herein, Motor Carrier must Interchange Equipment promptly upon notification. Motor Carrier will be responsible to Provider for the charges, as may be described in Provider's Addendum hereto, in the event Motor Carrier fails to remove Equipment during the free time provided in the Addendum.

2. Equipment Interchange Receipts

- a. At the time of Interchange, the Parties or their agents shall execute an Equipment Interchange Receipt and/or exchange an electronic receipt equivalent, which shall describe the Equipment and any damage observable thereon at the time of Interchange, reasonable Wear and Tear excepted. The physical condition of the Equipment may be described by either Party within the EIR or via recorded images taken at the time of Interchange. **[Revised 08/01/08]**
- b. Each Party shall be entitled to receive a copy and/or an electronic receipt equivalent of the Equipment Interchange Receipt as described in D.2.a above. **[Revised 04/11/07]**

- c. If Recorded Images are taken at the time of Interchange, the words "ADDITIONAL DEFECTS AS FOUND ON RECORDED IMAGES" will be printed on the Equipment Interchange Receipt and/or electronic receipt equivalent and all such Recorded Images will be made available for each Party for a period of 1 year from Interchange. **[Added 04/11/07]**

3. Equipment Condition

- a. Warranty: **WHILE PARTIES MAKE NO EXPRESS OR IMPLIED WARRANTY AS TO THE FITNESS OF THE EQUIPMENT, THEY RECOGNIZE AND AFFIRM THEIR RESPONSIBILITIES UNDER THE FEDERAL MOTOR CARRIER SAFETY REGULATIONS.**

- 1) Motor Carriers will conduct a pre-trip inspection prior to departing with interchanged Equipment that will include those items set forth in Exhibit A to this Agreement. **[Revised 1/17/05]**
- b. Equipment controlled by Provider shall have a valid FHWA inspection sticker. Provider will reinspect and recertify the Equipment, at Motor Carrier's request, if the existing inspection will expire during the Addendum free time period of the Motor Carrier's use.
- c. Motor Carrier will reinspect and recertify the Equipment if the existing inspection will expire prior to the Motor Carrier's return of the Equipment to the Provider.
- d. Motor Carrier will return the Equipment to the Provider in the same condition, reasonable Wear and Tear excepted.
 - 1) The responsibility for the repair and/or replacement of equipment items during the Interchange Period are listed in Exhibits B and C of this Agreement. **[Revised 7/25/07]**
 - 2) Motor Carrier and Provider will not issue an invoice for repair items equal to or less than \$50 per unit per Interchange Period. Provider may, in its Addendum, adopt a different threshold amount as long as that amount is greater than \$50 and applies to both Motor Carrier and Provider. **[Revised 7/25/07]**
 - 3) In any disputes arising in connection with classification of Wear and Tear, the Association of American Railroads TOFC/COFC Interchange Rules, Sections B, G, and F, shall be the controlling document.

E. Equipment Use

- 1. Absent a separate bilateral agreement in written or electronic form between the Parties authorizing the use of the Equipment by others while in the possession of the Motor Carrier and/or authorizing the return of the Equipment to a different location, the Motor Carrier shall use the Equipment only for the purposes for which it was interchanged and shall promptly return it to the location at which it was received. An Addendum to this Agreement does not constitute a separate bilateral agreement. **[Revised 04/11/07]**
- 2. Lost, Stolen, or Destroyed Equipment
 - a. In the event the Equipment is lost, stolen from, or destroyed by Motor Carrier, the method of settlement shall be the Actual Cash Value or the depreciated replacement value, as agreed between the Parties. **[Revised 7/25/07]**

- b. In the event Motor Carrier is compelled to compensate Provider for loss or damage to Equipment due to the acts of third parties, Provider will assign to Motor Carrier its rights against such third party upon receiving payment in full from Motor Carrier.
- c. When Equipment is lost, stolen or destroyed, the Motor Carrier and Provider will follow the notification and invoicing processes as set forth in the Provider's addendum. If the Provider's addendum does not contain notification and/or invoicing processes for lost, stolen, or destroyed equipment, the following will apply:

Motor Carrier shall promptly notify Provider when Equipment is lost, stolen, or destroyed. Provider shall within thirty (30) days after receipt of such notification, secure and furnish to the Motor Carrier a written statement of the depreciated replacement value or Actual Cash Value of the equipment, as agreed between the parties [or as set forth in Provider's addendum]. Motor Carrier shall pay Provider the amount specified in the written statement within (30) days of the date of such written statement. **[Revised 7/25/07]**

- d. Provider will notify Motor Carrier within 18 months from the date of Interchange if Equipment is declared lost, stolen or destroyed. If Provider does not so notify Motor Carrier, the right to recover any associated charges or Actual Cash Value will be lost. **[Revised 7/25/07]**

3. Damage to Equipment

- a. Motor Carrier shall pay to Provider the reasonable and customary costs to repair damages done to Equipment during Motor Carrier's possession.
 - 1) To be valid, invoices must detail the repairs done; include a copy of the actual repair bill upon which the invoice is based and include the factual documentation supporting the Provider's determination that the Motor Carrier is responsible. In instances where a copy of the actual repair bill is not available to Provider, documentation containing the repair vendor's name, repair date, location and a control number that ties the documentation to the invoice provided to the Motor Carrier is acceptable, in lieu of the actual repair bill. In the case of AGS gate transactions such documentation must include images depicting the condition of the equipment at the time the Motor Carrier to be charged both accepted and returned the Equipment. **[Revised 11/05/08]**
- b. Where the reasonable and customary cost to repair exceeds the casualty loss value as determined in Section E.2.a hereof, the Motor Carrier shall be obligated only for the lesser sum.
- c. Provider shall invoice Motor Carrier no later than the following timeframes: If Motor Carrier is not invoiced within the established timeframes, the right of the Provider to recover **such** charges will be lost: **[Revised 11/05/08]**
 - 1) Standard Gate System (manned): Not later than 165 calendar days.
 - 2) AGS Gate System (unmanned): Not later than 120 calendar days following the interchange transaction giving rise to the bill.

4. Tires

- a. Repair of damage to tires during Motor Carrier's possession is the sole responsibility of Motor Carrier, based on prevailing reasonable and customary repair costs and equipment use. **[Revised 7/25/07]**

- b. Repair of tires unrelated to damage occurring during Motor Carrier's possession is the sole responsibility of the Provider, based on prevailing reasonable and customary repair costs and equipment use. **[Revised 7/25/07]**

5. Disposal of Dunnage

- a. Motor Carrier shall return Equipment with all dunnage, bracing, contaminants and debris removed and the floor swept.

6. Free Days and Use Charges

- a. Interchange of Equipment is on a compensation basis. Provider may permit some period of uncompensated use and thereafter impose use charges, as set forth in its Addendum.
- b. Motor Carrier shall be responsible for use and/or storage charges set forth in the Addenda.
- c. Provider shall invoice Motor Carrier for use and/or storage charges within sixty (60) days from the date on which Equipment was returned to Provider by Motor Carrier. If Motor Carrier is not invoiced within the established timeframe, the right of the Provider to recover **such** any associated charges will be lost. **[Revised 11/05/08]**
- d. In absence of a dispute resolution process contained in the Provider's addendum, the following dispute resolution process will apply:

Motor Carrier shall advise Provider in writing of any disputed items on Provider's invoices within 30 days of the receipt of such invoice(s), pursuant to paragraph E.6.g of the Agreement. Provider will undertake to reconcile such disputed items within 30 days of receipt of Motor Carrier's notice and will either provide verification for charges as invoiced or will issue a credit to Motor Carrier's account for any amount not properly invoiced. Such disputes do not constitute valid grounds for withholding or delaying payments of undisputed charges as required by the Terms of this Agreement. In the event that charges have been verified by Provider and are again rejected and disputed by Motor Carrier for whatever reasons, Provider and Motor Carrier reserve their rights and remedies under the law regarding the payment of such charges. **[Revised 5/17/08]**

- e. Provider shall provide the Motor Carrier documentation as is reasonably necessary to support its invoice.
- f. Motor Carrier shall respond in writing to Provider's invoices within thirty (30) days, documenting with appropriate evidence its disagreement with any of Provider's invoices it believes to be incorrect.
- g. Motor Carrier will participate in good faith in Provider's established method of dispute resolution, as set forth in its Addendum.

7. International Trade

Where Equipment is an instrument of international traffic only, Provider shall advise Motor Carrier thereof on the Equipment Interchange Receipt and, thereafter, Motor Carrier agrees to restrict the use of Equipment to the permitted uses contained in 19 CFR 10.41 a (f).

F. Liability, Indemnity, and Insurance

- 1. Fines, citations: Motor Carrier shall pay all fines arising out of its acts or omissions in the operation of Equipment during the Interchange Period.

- a. Motor Carrier will provide a corrected copy of Equipment-related citations to Provider upon completion of Interchange.
2. Independent contractor status: No Party or its agents is the employee or agent of any other Party.
3. If the Equipment is interchanged by Motor Carrier or is otherwise authorized by Motor Carrier to be in the possession of other parties, the Motor Carrier shall be responsible for the performance of all terms of this Agreement in the same manner as if the Equipment were in the possession of the Motor Carrier, unless the written consent of Provider has been obtained.
4. Indemnity:
 - a. Subject to the exceptions set forth in Subsection (b) below, Motor Carrier agrees to defend, hold harmless and fully indemnify the Indemnitees (without regard to whether the Indemnitees' liability is vicarious, implied in law, or as a result of the fault or negligence of the Indemnitees), against any and all claims, suits, loss, damage or liability, for bodily injury, death and/or property damage, including reasonable attorney fees and costs incurred in the defense against a claim or suit, or incurred because of the wrongful failure to defend against a claim or suit, or in enforcing subsection F.4 (collectively, the "Damages"), caused by or resulting from the Motor Carrier's: use or maintenance of the Equipment during an Interchange Period; and/or presence on the Facility Operator's premises. **[Revised 1/17/05]**
 - b. Exceptions: The foregoing indemnity provision shall not apply to the extent Damages: (i) occur during the presence of the Motor Carrier on the Facility Operator's premises and are caused by or result from the negligent or intentional acts or omissions of the Indemnitees, their agents, employees, vendors or third party invitees (excluding Indemnitor); or (ii) are caused by or result from defects to the Equipment with respect to items other than those set forth in Exhibit A, unless such defects were caused by or resulted from the negligent or intentional acts or omissions of the Motor Carrier, its agents, employees, vendors, or subcontractors during the Interchange Period. **[Revised 1/17/05]**
5. Notice of Filed Claims:
 - a. Motor Carrier shall promptly notify Provider, Equipment Owner and/or Facility Operator of any claim arising against Motor Carrier under Section F.4, and shall also advise Provider, Equipment Owner and/or Facility Operator at that time of the legal defense undertaken regarding that claim. Failure of the Motor Carrier to timely provide such legal defense, and the undertaking of that legal defense by Provider, Equipment Owner and/or Facility Operator to protect such Party's respective interests, shall result in the Motor Carrier's bearing such reasonable attorney fees and costs incurred by the Provider, Equipment Owner and/or Facility Operator in providing such legal defense.
 - b. Provider, Equipment Owner and/or Facility Operator shall promptly notify Motor Carrier of any claim arising under Section F.4. which Provider, Equipment Owner and/or Facility Operator receives. Provider, Equipment Owner and/or Facility Operator shall not undertake any legal defense of or incur any legal expenses pertaining to the claim submitted to the Motor Carrier, unless Motor Carrier fails to timely do so as provided in Section 5.a.
6. Insurance: To the extent permitted by law, Motor Carrier shall provide the following insurance coverages in fulfillment of its legal liability and obligations contained in this Agreement:
 - a. A commercial automobile insurance policy with a combined single limit of \$1,000,000 or greater, insuring all Equipment involved in Interchange including vehicles of its agents or contractors; said insurance policy shall be primary to any and all other applicable insurance

and shall name the Equipment Provider as additional insured. The extent of Equipment Providers' additional insured status is limited to the provisions of Section F.4 hereof. **[Revised 1/17/05]**

- b. A commercial general liability policy with a combined single limit of \$1,000,000 per occurrence or greater, of which no portion can be self-insured. **[Revised 04/11/07]**
 - c. Motor Carrier shall have in effect, and attached to its commercial automobile liability policy, a Truckers Uniform Intermodal Interchange Endorsement (UIIE-1), which includes the coverages specified in Section F.4. Motor Carrier shall use endorsement form UIIE-1 (or other corresponding forms which do not differ from UIIE-1) in the most current form available to the insurance carrier. Evidence of the endorsement of the policy and the coverage required by this provision shall be provided to IANA by the insurance company.
 - d. IANA shall receive a minimum of thirty (30) days advance Notice of any cancellation of such coverages.
7. The Provider agrees that it will obtain all information concerning Motor Carrier Certificates of Insurance from the Intermodal Association of North America, and that additional evidence of insurance will not be requested from Motor Carrier Participants.

G. General Terms

1. Entire Agreement: This Agreement, including its Addendum, but only to extent that its terms do not conflict with this Agreement, contain the entire Agreement between the Parties hereto. This Agreement supersedes all prior agreements and understandings, oral or written, if any, between the Parties except as contained herein. No modification or amendment of any of the terms, conditions or provisions herein may be made otherwise than by written Agreement signed by the Parties. **[Revised 04/11/07]**

This Agreement shall apply unless it is superseded in whole by a separate bilateral written contract.

2. Headings: The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
3. Waiver: The terms or conditions of this Agreement may be waived at any time by the Party entitled to the benefit thereof, but no such waiver shall be effective unless the same is in writing and no such waiver shall affect or impair the right of the waiving Party to require observance, performance or satisfaction either of that term or condition as it applies on a subsequent occasion or of any other term or condition hereof. The waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of the same or any other provision of this Agreement by either Party.
4. Material Breach: If it is determined that, at the time of Interchange, the Motor Carrier was not insured in accordance with Section F.6. of this Agreement, the Motor Carrier shall have been in material breach of this Agreement and the Agreement shall, subject to the survivability provisions hereof, terminate immediately pursuant to Section G.16.

With the exception of Section G.4., no breach of this Agreement, either by an individual Motor Carrier or by an individual Provider/Facility Operator, shall affect the rights and obligations of that Motor Carrier or Provider/Facility Operator with all other Parties hereto.

5. Assignment: No Party shall assign this Agreement or any part hereof without the written consent of the other Parties provided that no such consent shall be required in the event of Provider's assignment to a successor-in-interest as a result of a merger or sale of substantially all of Provider's assets.

Except as otherwise provided herein, this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assign.

6. No Third Party Beneficiaries: Except as expressly provided herein, nothing in this Agreement shall entitle any person other than the Parties or their respective successors and mutually accepted assigns to any claim, cause of action, remedy or right of any kind. **[Revised 04/11/07]**
7. Governing Law: The laws of the state of Maryland, the location at the principal place of business of the Intermodal Association of North America shall govern the validity, construction, enforcement and interpretation of this Agreement without regard to conflicts of law principles.
8. Venue: Any action which may be brought to enforce or interpret this Agreement shall be brought in a trial court of competent jurisdiction as follows:
- a. As to questions of interpretation or enforcement of the Agreement, at the location of the principal place of business of the Intermodal Association of North America;
 - b. As to questions of indemnification under the Agreement at the situs of the transaction giving rise to the requested indemnification;
 - c. As to monetary obligations between the Parties by reason of Equipment usage charges at the situs of the transaction giving rise to the requested damages;
 - d. As to monetary damages between the Parties arising out of physical damage to or loss of Equipment, at the situs at which the Equipment was last interchanged prior to such loss or damage.
9. Severability: If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or enforceability shall not change or invalidate any other provisions hereof.
10. Survival: Cancellation of this Agreement notwithstanding, Motor Carrier shall remain obligated to return Equipment provided hereunder and otherwise perform its obligations outstanding at the time of cancellation.
11. Compliance of Law: The Parties shall obey all federal, state and local laws, rules and regulations including those pertaining to the transportation of hazardous materials.
12. Force Majeure: In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment. **[Revised 9/13/04]**
13. Attorney's Fees: Should any action be brought by either Party to enforce or for the breach of any other terms, covenants or conditions of this Agreement, either Party shall be entitled, if it shall prevail, to recover reasonable attorneys' fees together with the cost of the suit therein incurred.

14. Notices:

- a. The Provider agrees to provide ten (10) days written Notice to the Motor Carrier of any changes to the terms or conditions of its Agreement Addendum. The effective date of any change shall be no less than thirty (30) days from the date of notification to Motor Carrier. **[Revised 6/02/05]**
- b. Notices required under this Agreement from Motor Carrier to Provider, or from Provider to Motor Carrier, shall be in writing and sent by confirmed facsimile or by first class mail, postage paid, and properly addressed. Alternatively, such written Notice can be personally served, sent by registered or certified mail, postage prepaid, or by a national overnight courier or delivery service, properly addressed to the individual shown in the UIIA subscriber record. Either Party, at any time, may change its address by written Notice to the other party sent as provided in this Paragraph. The earlier of (1) the date of receipt or (2) three days after the date such written Notice is given in accordance with this Paragraph shall constitute the initial date of Notice in computing the elapsed time as specified in any Notice requirement in this Agreement.
- c. In the event it becomes necessary for the Provider to suspend a Motor Carrier's interchange privileges for non-payment of outstanding invoices, Provider shall notify Motor Carrier, via confirmed facsimile, e-mail or letter, no less than 3 business days prior to suspension, that unless the outstanding issue is resolved, suspension of interchange privileges may occur. The final notification shall include contact information necessary for the Motor Carrier to resolve the outstanding issue. **[Revised 4/26/05]**

15. Multiple Counterparts: The Agreement may be executed in a number of identical counterparts, each of which for all purposes is to be deemed an original, and all of which constitute, collectively, one Agreement; but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

16. Term: This Agreement shall be effective for a period of one year from its execution and shall continue in effect thereafter for consecutive one year terms unless cancelled in writing, by consent of the Parties, or by any Party upon thirty (30) days prior Notice to the other Party or to the President of IANA.

A Party whose participation in the Agreement has been cancelled for nonpayment of the IANA Administrative Service Fee may not assert any rights under this Agreement for any Interchange undertaken during the period of the cancellation.

The absence of insurance as required in Section F.6. hereof shall effect immediate cancellation of the Motor Carrier's rights under this Agreement until such time said requirements are again satisfied.

Notwithstanding any other provisions of this Agreement, the obligations and rights of the Parties under Section F.1, 4, 5, and 6 shall survive any cancellation of this Agreement.

H. Dispute Resolution Process: Parties shall utilize the mandatory and binding Dispute Resolution Process, in accordance with the guidelines listed in Exhibit D, to arbitrate matters relating to per diem/use, maintenance and repair or lost/stolen equipment charges. All claims must have been disputed initially through the standard dispute resolution process under the UIIA/EP Addenda and meet the criteria outlined in Exhibit D. **[Added 08/01/08]**

I. Execution Clause

This Agreement shall be binding upon all Parties, and of full force and effect, at the time of its signing by a duly authorized official of a Party and its acceptance by IANA. An authorized official's signing constitutes the executing Party's representation that the executor possesses such authorization.

ADMINISTRATIVE PROCEDURES

I. Administration and Implementation

- A. The Intermodal Interchange Executive Committee (hereinafter called the "Committee"), a Standing Committee of the Intermodal Association of North America, is responsible for the administration and interpretation of the Agreement, and for the processing of changes and/or modifications to the Agreement. **[Revised 4/06/05]**
- B. The Chairperson of the Committee shall be the President of the Intermodal Association of North America, who shall serve without voting privilege. The President is responsible for the Administration and Management of IANA and the Agreement, as provided in IANA's bylaws.
- C. The Committee shall consist of a minimum of two representatives from each mode representing Motor, Ocean and Rail Carriers participating in the Agreement, with an equal representation of each mode. Each representative shall name his or her alternate from their respective mode who shall participate in Committee meetings and serve as the voting member in the absence of the principal representative. Representatives and their alternates must be from companies that are current signatories to the Agreement. Attendance at meetings is limited to voting members and their alternates. If Committee members wish to have an industry representative invited to attend a meeting in an advisory capacity, the majority of the Committee must approve of this invitation prior to it being delivered. **[Revised 04/11/07]**
- D. To conduct business under the IANA Agreement, a quorum shall consist of the Chairperson and at least two Committee representatives from each involved industry mode or segment.
- E. Items to be included on the Agenda for any regularly scheduled meeting of the Committee must be provided, in writing, to the Chairperson, at least forty-five (45) days in advance of the meeting date. Agenda items received less than 45 days prior to a regularly scheduled Committee meeting, will be placed on the Agenda under Other Business, and will be discussed, time permitting. **[Revised 4/06/05]**
- F. The duties of the Chairperson, shall consist of the following:
 - 1. The Chairperson shall be responsible for the day-to-day management of the Interchange program, including marketing and promoting the Agreement among the various segments of the industry; retaining the originals of the signed Uniform Intermodal Interchange and Facilities Access Agreements or amendments thereof; and exchanging information with Committee members concerning new signatories.
 - 2. The Chairperson shall maintain a current list of the Parties to the Agreement and shall periodically identify newly terminated participants.
 - 3. The Chairperson shall disseminate pertinent information on participating Motor Carriers to Providers, in a method mutually agreed to by Providers and the IANA. Entry by new participants to the Agreement shall become effective on the date the Agreement is accepted by the Chairperson as being in compliance.

4. Committee members will be provided with the meeting Agenda and appropriate backup materials, at least thirty (30) days in advance of any regularly scheduled meeting. **[Revised 4/06/05]**
- G. In the absence of a definitive process within these Administrative Procedures, all meetings shall be conducted in accordance with Roberts Rules of Order. **[Revised 4/06/05]**

II. Review Procedures for New or Revised Providers Addenda

- A. The appropriate modal Committee members will review the Addenda for new Providers and revisions to Addenda for existing Providers. These Committee members will determine whether the Addenda language is consistent with the existing provisions of the Agreement. Economic terms and those commercial terms that are not appropriate for consideration within the UIIA which are included in the Addenda are not reviewed. **[Revised 04/11/07]**
- B. A new or existing Provider shall submit Addendum language to the Chairperson of the Committee a minimum of ninety (90) days prior to the effective date of the Addendum. Within ten (10) working days after receipt of new or revised Addendum language, the Chairperson shall forward, through facsimile transmission or mail, and/or by e-mail, a copy of the proposed Addendum language and an evaluation by IANA staff of the conformance of such language with the Agreement to Committee members representing the affected mode(s). Economic or commercial terms will be deleted from the Addendum before forwarding to the Committee members. **[Revised 4/06/05]**
- C. Modal Committee members shall review the Addendum language and submit any comments, in writing, to the Chairperson of the Committee within fifteen (15) working days of their confirmation of receiving the new Addendum language, and **[Revised 4/06/05]**
 1. In the absence of the submission of any adverse comments from the modal Committee members conducting the review, the new or revised Addendum will become effective on the proposed effective date. **[Revised 11/1/06]**
 2. If any modal Committee member questions Addendum language as being in conflict with the Agreement, a conference call shall be held between the Committee members conducting the review, the Provider submitting the Addendum language in question, and a designated IANA staff member. The purpose of the call will be to discuss the specific provisions in question and shall be held within fifteen (15) working days after the timeframe for Committee review has expired. **[Revised 11/1/06]**
 - a) If a majority of the modal Committee members participating in the meeting or conference call determine that the Addendum language conflicts with the Agreement, the Provider will be requested to modify or delete the specified Addendum language. If such revisions responsive to the Committee's determination are made the Addendum will become effective on the proposed effective date. In the event the Provider refuses to modify the Addendum language, participation in the Agreement will be declined. Regarding modifications to existing Addendum language, Provider will be requested to modify or delete the involved Addendum language and will be provided a ten (10) day comment period to respond to the Committee's determination. Refusal by a Provider to adopt the language modifications will result in the termination of participation in the Agreement.

If a "simple" majority of the modal Committee members participating in the meeting or conference call do not agree on acceptance or denial of the addendum language, the Addendum language in question, will be denied. **[Revised 4/06/05]**

- b) If a majority of the Committee members participating in the meeting or conference call do not agree that the Addendum language conflicts with the Agreement, the Addendum will become effective on the proposed date.
- 3. Once Addendum language is approved by the modal Committee members, with the exception of the discovery of a material mistake regarding the consistency of an Addendum provision with the UIIA, no additional requests from Committee members for modifications to the approved language in the Addendum will be entertained for a period of six months from the effective date of the Addendum. **[Revised 04/11/07]**

III. Requests for Interpretation of Agreement Provisions

- A. Requests for interpretations of the Agreement shall be handled initially by informal ruling of the Chairperson in consultation with Committee members representing the industry segments involved. The IANA's General Counsel will serve as legal advisor for such consultations.

The Party seeking an interpretation shall submit its request in writing to the Chairperson of the Committee, who within seven (7) working days of receipt, shall send a copy to any other party involved in [the particular instance prompting] or known to support the request. Such party shall submit to the Chairperson within seven (7) working days a statement of its position on the matter. The Chairperson shall disseminate both the original request for interpretation and any statements provided by other parties to Committee members representing the involved industry Parties within five (5) working days of receipt. The modal Committee members shall provide the Chairperson with their comments regarding the request for interpretation within ten (10) working days from receipt of information provided by Chairperson. **[Revised 4/06/05]**

- B. The Chairperson shall promptly advise the Party(ies) by facsimile or mail, of the modal Committee members' action on the requested interpretation within five (5) working days. Should the interpretation rendered by the modal Committee members following consideration and determination not be agreed with by the Party(ies) participating in the requested changes or modification, or commenting on the proposed language, such Party(ies), upon a demonstration of new information or previous information not considered or other provisions in the Agreement supporting the proposed language or changes, may request an interpretation by the full Committee. The Committee shall within fifteen (15) working days of request either (1) confirm the determination of the Chairperson and the modal representatives who made the initial interpretation, (2) render a revised interpretation, or (3) decline further comment because good cause has not been shown for reconsidering the initial interpretation. **[Revised 4/06/05]**
- C. In cases of interpretations which affect Parties other than those involved in a particular request, or whose outcome involves a substantive change in the terms of the Agreement, the Chairperson shall prepare and serve Notice thereof on all Parties via first class U.S. mail.

IV. Requests for Modifications to the Agreement.

- A. The full Committee shall be responsible for considering requests for changes to the Agreement. Such requests shall be submitted in writing to the Chairperson and may be filed by any Party that is a participant in the Agreement. The Chairperson shall transmit the request to the full Committee for consideration at its next scheduled meeting. **[Revised 04/11/07]**
- B. The Committee shall consider the request for modification at the next scheduled meeting of the Committee at which a quorum is present and promptly advise petitioner of its decision and reason(s) for that action. If a proposed change to the Agreement is not approved by a three-fourths (3/4's) majority vote of the full Committee, the suggested change will fail. **[Revised 04/11/07]**

V. Notice of Proposed Modifications to the Agreement and Comment Process

- A. If the Committee votes to modify the Agreement, the Chairperson shall provide Notice in writing and by posting on IANA website within ten (10) working days of the Committee vote, of the exact language and a proposed effective date of the proposed change to all Participants in the Agreement. UIIA Participants shall have thirty (30) days from the date of this notification to provide comments on the proposed change. Comments must be submitted in writing to the Chairperson, who shall transmit the comments to the full Committee for consideration within ten (10) working days after the close of the thirty (30) day comment period. The Committee shall consider comments and advise of its decision to either rescind or move forward with the proposed modification within fifteen (15) working days from receipt of comments provided by Chairperson. A three-fourths (3/4's) majority vote of the full Committee will be required to rescind the prior decision to modify.

Notice of the Committee's final decision will be provided to all Parties within five (5) working days from the close of the period to receive comments from the Committee and the proposed effective date of any changes shall not be less than fifteen (15) days from this date of notification. **[Revised 4/06/05]**

- B. If no comments are received, or all comments concur with the Committee's decision to modify the Agreement, the Chairperson shall immediately notify all Parties of the change, and its effective date, which shall be not less than thirty (30) days from the date of the close of the thirty (30) day comment period. **[Revised 4/06/05]**
- C. Staff will review existing Addenda for consistency with the modification(s). If changes are required, the Parties must do so within 30 days of this notice of that requirement, and submit the revised Addenda to IANA. **[Added 04/11/07]**

VI. Prerequisites for Participation

- A. Parties seeking to participate in this Agreement must first provide to IANA, its officially-registered Standard Carrier Alpha Code (SCAC) as issued by the National Motor Freight Traffic Association, the cost of which shall be borne by the prospective Agreement participant. Failure of the participant to maintain its officially-registered SCAC shall constitute grounds for immediate cancellation of its participation in the Agreement and related Addendum/Addenda.
- B. Parties to this Agreement shall maintain facsimile and electronic communications capabilities on a 24 hour per day, 7 days per week, basis. Failure to provide such communication capabilities can result in the cancellation of this Agreement and related Addendum/Addenda. **[Revised 04/11/07]**
- C. Upon demand, Motor Carrier shall furnish to the Intermodal Association of North America (IANA), the insurance policies required under this Agreement and/or any participating Equipment Provider's Addendum. Failure of the Motor Carrier to furnish said policy(ies) on demand shall constitute a breach of this Agreement, and shall be cause for immediate cancellation of the Motor Carrier's Agreement.
- D. Companies "Doing Business As" another entity will be listed in the UIIA database and in other appropriate documents, by the company name as placarded and/or stenciled on the interchange Equipment. Certificates of insurance must clearly identify said company as having all insurance coverages as required under the Agreement and/or any participating Equipment Providers' Addenda.

VII. Party's Right to Terminate Participation

- A. Any party desiring to terminate participation in this Agreement, as subsequently revised or supplemented, shall so notify the Chairperson, in writing, by Certified mail, prior to the effective date of the modification. The absence of such notification will constitute acknowledgement of the Party's intent to continue to participate in the revised or supplemented Agreement.

VIII. Compliance with the Agreement **[Added 11/1/06]**

- A. Parties to this Agreement agree to be bound by the provisions of the UIIA, and subsequent amendments and/or revisions of that Agreement, and any addendum thereto, that does not conflict with the terms of this Agreement.
- B. Violations to this Agreement, upon verification by IANA, will be reported to the Party committing the violation, by the Chairman of the IIEC, with a request to correct the action(s) that are not in compliance.
- C. Parties that repeatedly violate the provisions of this Agreement may face cancellation of their participation in the UIIA.

Reorganized and Revised

By Intermodal Interchange Executive Committee: June 19, 2000

Revised: November 5, 2008

EXHIBITS TO THE

UNIFORM INTERMODAL

INTERCHANGE AND FACILITIES

ACCESS AGREEMENT

(UIIA)

Exhibit A to UHA
As referenced in Sections D.3.a.1 and F.4.b.
(Added to UHA on 1/17/05)

The following list sets forth those items, which the Motor Carrier has responsibility for visually or audibly checking prior to use of the Equipment:

1. Chassis Twist Locks and Safety Latches – (Check that twist locks and safety latches are engaged and properly secured.)
2. Slider Pins – (Check that slider pins are engaged for all sliding chassis.)
3. Bolsters (Check that bolsters are not bent and the container can be secured properly.)
4. Landing Legs (Check that Landing legs are in 90 degree position and they move up and down properly.)
5. Sand Shoes (Check that sand shoes or dolly wheels are attached to landing legs and secure.)
6. Crank Handles (Check that handle is attached, secure and operable to move landing legs up and down.)
7. Mud Flaps – (Check that mud flaps are whole and properly secured.)
8. Tires (Check that the following conditions are **not** present.)
 - a. Tire is flat, underinflated or has noticeable (e.g., can be heard or felt) leak.
 - b. Any tire with excessive wear (2/32nds or less thread depth), visually observable bump, or knot apparently related to tread or sidewall separation.
 - c. Tire is mounted or inflated so that it comes in contact with any part of the vehicle. (This includes any tire contacting its mate in a dual set.)
 - d. Seventy-five percent or more of the tread width is loose or missing in excess of 12 inches (30cm) in circumference.
9. Rims (Check that rims are not cracked and/or bent.)
10. Rear Underride Guard ("ICC Bumper") (Check that Guard is in place and not bent under the frame.)
11. Electrical Wiring/Lights – (Check that lights are in working order.)
12. Reflectors/Conspicuity Treatments (Check for reflector lenses and presence of conspicuity tape or bar on the 3 visual sides of the chassis.)
13. Brake Lines, Including Air Hoses and Glad Hands – (Check for audible air leaks and proper pressurization only.)
14. Current License Plate (Check to see that it is affixed to equipment.)
15. Proper Display of Hazardous Cargo Placards, In Accordance with Shipping Papers
16. Display of Current Non-expired Federal Placards or Stickers (Check to see that it is affixed to equipment.)

The foregoing list does not include latent defects unless caused by or resulting from the negligent or intentional acts or omissions of the Motor Carrier, its agents, employees, vendors or subcontractors during the Interchange Period. The foregoing list is without limitation of any federal or state legal requirements applicable to Motor Carrier with respect to use or operation of Equipment. [Revised 1/17/05]

**Exhibit B to UIIA
Equipment Owners Responsibility
(added to UIIA on 07/25/07)**

Repairs made to any item listed in Exhibit B that were a result of damage and not normal Wear and Tear, are the responsibility of the Motor Carrier.

Application for registration papers
Application of vehicle license plates
Axle due to insufficient lubrication
Axle spindle due to insufficient lubrication
Axles
Battery Box Covers
Brake adjustments on trailers or chassis (1) (2)
Brake and brake component repairs (3)
Broken Batteries
Caulking/Sealing of Old Patches
Caulking/Sealing of Seams
Cleaning and adjustment of electrical connector socket
Closed trailer or container roof bows
Component securements, bolts, rivets, welds
Conspicuity treatment
Container Securement Device Handles
Damage to the first three crossmembers (4)
Dolly Axle
Dolly Wheels
Door Locking Bar Handles
Door Tie-backs
FHWA Inspections
Floor or decking
Heating and/or refrigeration unit repairs
Hub assembly due to insufficient lubrication
Initial + Number Markings
Interior landing gear components
Interior Lining
Interior Posts
Landing Gear Operating Cross shaft
Lift Pads
Lights
Manifest Box
Mud Flaps + brackets
PI Certification
Refrigeration Cabinet Doors
Repairs, renewals or replacement of tires and/or tubes
Replacement of dolly crank handle
Replacement or repair of gladhands
Safety Latches
Sand Shoes
Sign Boards
Sliding Tandem removable locking bars
Tank container Components
Trailer/Chassis locking assemblies

- (1) Not equipped with automatic slack adjusters
- (2) Upon Drivers Request with Drivers signature required
- (3) Except servicing due to accumulation of ice and snow
- (4) Located behind the grid section of trailers not originally equipped with grid extension plate.

**Exhibit C to UIIA
(Added to UIIA on 07/25/07)**

Motor Carrier Responsibility During the Interchange Period

Tires

Sidewall cut/punctured through one or more plies of fabric

Tire shoulder and/or tread cut/punctured through one or more plies of fabric when such injury is larger than 1/4".

Slid Flat damage to tire and/or tube - removal of 4/32 of tread or rubber when compared to the remaining tread.

Run Flat damage to tire and/or tube

Missing Tire, tube or rim

Removable Items

Missing chains, binders and cables

Missing tarpaulins and securements

Missing tarpaulins bows

Missing rear header bar

Missing bulkhead

Cut or Torn (through the thickness of metal)

Metal door, gate, sheet, post, crossmember, brace or support

DOT Under Ride Guard

Bent (where proper operation or function of unit is impaired)

Metal door, gate, sheet, post, crossmember, brace or support

DOT Under Ride Guard

Missing Items

DOT Under Ride Guard

Door or Gate

Removable side or section

Refrigeration unit parts

Interior

Interior not free of dunnage, bracing and/or debris

Contamination (refer to AAR Rule 81 (g) 1-13)

Other

Correction of temporary repairs

Citations

Citations may be rebilled from the owner to the user of the equipment

EXHIBIT D TO THE UIIA
DISPUTE RESOLUTION PROCESS GUIDELINES
(Added to UIIA on 8/1/08)
(Last Revised 11/05/08)

1. This process is applicable for disputed transactions **relating to Maintenance and Repair, Per Diem or Lost/Stolen Equipment invoices** between Equipment Providers and Users (Motor Carriers) of intermodal equipment who are signatories to the Uniform Intermodal Interchange and Facilities Access Agreement (UIIA). [Revised 11/05/08]
2. Disputes handled under the arbitration process will be mandatory and binding upon the parties. The resolution process will be administered exclusively by IANA.
3. A three-member arbitration panel will be appointed by IANA to handle disputed invoices submitted for arbitration. The panel will consist of one IANA member from each mode, i.e. a Motor Carrier, Water Carrier and Railroad. However, the decision will be rendered by the two arbitrators representing the modes involved in the disputed invoice(s). The third appointed arbitrator from the mode not involved in the transaction will act as an alternate, and will render a decision only in the event the arbitrators from the involved modes cannot agree on a resolution of the dispute.
4. Members of the arbitration panels will serve on a voluntary basis without compensation, and for a period of one year. To qualify as an arbitrator the individual must have five years' operating experience involving such matters as gate interchanges, the yard procedures associated with vessels and trains, loading and unloading operations, the operations of marine and rail container yards, the receiving and delivery of containers, and/or with road equipment.
5. Disputes must be submitted to IANA in writing and in accordance with paragraph 7 below and must be accompanied by a filing fee made payable to IANA to cover the costs of the administration of the dispute process.
6. Disputes must be confined to charges arising from Maintenance and Repair (M&R), Per Diem or Lost/Stolen Equipment invoices. There will be no limitation on the amount in controversy. **Disputed invoices can be consolidated for handling in a single arbitration, provided that they involve the same or related charges.** [Revised 11/05/08]
7. All claims must have been disputed initially through the standard dispute resolution process under the UIIA/EP Addenda. In absence of a dispute resolution process contained in the Equipment Provider's Addendum, the default process in the UIIA will be utilized in which a Motor Carrier has 30 days from the date of an invoice for M&R or Per Diem claims to dispute the invoice to the Equipment Provider. The Equipment Provider must respond to the Motor Carrier within 30 days from the date of the notice of the dispute. The Motor Carrier will have 15 days from the date of the Equipment Provider's response to either pay the claim(s) or to seek arbitration.
8. The arbitration process will be initiated by the Motor Carrier or the Equipment Provider by the filing of a Notice of Intent to Seek Arbitration with IANA by e-mail, facsimile, or overnight mail. IANA will transmit the Notice to the appropriate individual in the Equipment Provider or Motor Carrier organization designated to receive such Notice. Within 15 days from the filing of the Notice, the Moving Party must submit its information and arguments to IANA which will submit the documents to the Responding Party. The Responding Party will have 15 days from the date the documents are sent to it by IANA to respond. Upon receipt of the Responding Party's documents, the complete record will be transmitted by IANA to the arbitrators.
9. The arbitration panel will have 45 days from the date the information and arguments submitted by the Parties are sent by IANA to render a written decision indicating the basis for its conclusions. Its findings will address the validity of the claims and the Party responsible for payment or satisfaction thereof. The determinations are to be based solely on the rules in the UIIA and the rules and charges in the Equipment Provider's Addendum.

Exhibit D of the UIIA (continued)

10. If during an arbitration panel's deliberations it appears that further clarification or explanation is needed from a Party or the Parties, a conference call may be conducted with both Parties in the arbitration process participating in the call.
11. The decision of the arbitration panel will be transmitted to IANA which will, in turn, forward the decision to the Parties by e-mail, facsimile, or overnight mail. The decision of the arbitration panel is final and no appeal is permitted.
12. If any part of an invoice submitted for arbitration is not disputed that part must be timely paid and cannot be withheld during the arbitration process. In response to the arbitration panel's decision, payment or cancellation of the invoice must occur within 15 days from the date of receipt of the arbitrators' decision.
13. The cost of the filing fee is assessed against the Party against whom the arbitrators' decision is rendered. Should the filing fee have been paid by the prevailing party, it is entitled to reimbursement by the losing party.
14. **Once the arbitration process has been initiated, no suspension, cancellation, termination or any type of interruption of the Motor Carrier's interchange privileges for the disputed claims may occur. The Equipment Provider and Motor Carrier, nevertheless, retain all of their rights and remedies for the enforcement of the dispute resolution decision. [Revised 11/05/08]**
15. **Initiation of the arbitration process by a Motor Carrier does not preclude an Equipment Provider from suspending, cancelling, or terminating the interchange privileges of this Motor Carrier for reasons not related to the subject of the disputed claim and that are governed by the provisions of the UIIA and/or the Equipment Provider's addendum. [Revised 11/05/08]**
16. Invoices submitted for dispute resolution must arise on or after the announced effective date of the implementation of the program, which is August 1, 2008.

UIIA ADDENDUM TEMPLATE

Listed below is the universe of economic issues that the Intermodal Interchange Executive Committee has approved for inclusion in each participating Equipment Provider's Addendum to the Uniform Intermodal Interchange and Facilities Access Agreement (UIIA).

Equipment Providers who subscribe to this Agreement will utilize this template in creating their individual Addenda. They are not required, nor are they expected, to utilize every component listed below in creating their proprietary Addendum. For example, certain of the Addendum template provisions are more germane to rail-truck Interchange than water carrier-truck Interchange, and vice-versa.

The Parties may not use this Addendum to obviate or undermine the intent of the Agreement. For example, the Agreement contemplates certain reimbursements for the cost of repairs. The Parties may agree to limit the potential cost of those repairs, but such limitations may not be so restrictive that they would virtually eliminate responsibility for reimbursement.

It will be impermissible for Equipment Provider Agreement subscribers unilaterally to add other provisions to their individual Addendum to this Agreement. Requests for addition(s) to the universe of economic issues that can be utilized in an Addendum to this Agreement shall be submitted to the Intermodal Interchange Executive Committee for consideration as set forth in Part II, Implementation, Review, Interpretation and Modification Procedures.

I. Notification and Free Time

- A. Free Time Commences
- B. Amount of Free Time
- C. Weekends – interruption of expiry of free time
- D. Holidays – interruption of expiry of free time
- E. Unroadworthy Equipment – suspension of expiry of free time
- F. Interchange to Inland Carrier – equivalent of termination

II. Origin Storage

- A. Free Time Commences
- B. Amount of Free Time
- C. Charges Per 24-hour Period

III. Destination Storage

- A. Free Time Commences
- B. Amount of Free Time
- C. Charges Per 24-hour Period

IV. Per Diem and Trailer Detention

- A. Type of Equipment
 - 1. Free Time Allowance
 - 2. Per Diem
 - a) Day 1 – _____
 - b) Day _____ – _____
 - c) Day _____ – _____

V. Method of Invoice Dispute Resolution

VI. Other Charges

- A. Empty to Empty
- B. Crossover
- C. Failure to File Crossover Interchange
- D. Hazardous/Municipal Waste
- E. OTHER

VII. Damages to Equipment

- A. Method of Determining Cost
- B. Other

VIII. Repairs to Equipment

- A. Tires
- B. Other

IX. Lost, Stolen or Destroyed Equipment

- A. Suspension of Per Diem
- B. Disposition of Destroyed Equipment

X. Insurance

- A. Amounts of Additional Required Coverage by Class
- B. Limitations on Rating Level of Insurer
- C. Self-Insurance and Minimum Permissible Deductibles

2/10/99

FACILITIES USE AGREEMENT

In consideration for being allowed to use _____
(example, the gymnasium at a State facility), described herein as the "Event," on the
date and times specified below, _____ (hereinafter referred to as
"Event Sponsor") agrees to assume all risk of and liability for and hereby indemnifies,
saves and holds harmless the state of North Dakota and its agencies, officers, and
employees of, from and against any and all claims of any nature including all costs,
expenses and attorney's fees, which may in any manner arise out of, or result from the
Event.

Event Sponsor represents that its activities, pursuant to this agreement, will be supervised
by adequately trained personnel, and that Event Sponsor will observe, and cause the
participants in the activity to observe, all safety rules for the facility and the activity.
Event Sponsor acknowledges that the State has no duty to and will not provide
supervision of the activity.

Event Sponsor shall also secure and keep in force during the entire term of the Event,
from an insurance company, government self-insurance pool or government self-
retention fund authorized to do business in North Dakota, commercial general liability
insurance covering claims based on the vicarious liability of the Event Sponsor arising
out of this agreement, naming the state of North Dakota and its agencies, officers, and
employees (State) as additional insureds, and furnish a certificate of insurance showing
the endorsement naming the State as additional insureds. The limits of liability required
of the liability insurance coverage are at least \$250,000 per person and at least
\$1,000,000 per occurrence. The endorsement to the policy will provide that the policy
may not be canceled without 10 days' written notice to the State, shall contain a "Waiver
of Subrogation" waiving any right of recovery the insurance company may have against
the State and provide that any attorney who represents the State under this policy must
first qualify as and be appointed by the North Dakota Attorney General as a Special
Assistant Attorney General as required by N.D.C.C. Section 54-12-08. Event Sponsor
will deliver said certificate of insurance and endorsement to the undersigned at least 10
days prior to the Event.

Event: _____
Area of and facilities to be used: _____
Date and time of event: _____
Dated this ____ day of _____, 20 ____.

Event Sponsor:

State of North Dakota Facility

By: _____
Its: _____

By: _____
Its: _____