

TERMS OF USE OF NORTH CAROLINA RAILROAD COMPANY (“NCR”))
DATA BY ENGINEERS, SURVEYORS OR RELATED ENTITIES (“USER”)
(“TERMS OF USE AGREEMENT” OR “AGREEMENT”)

- 1) **Parties to Agreement:** This Terms of Use Agreement is between NCR and User identified below (collectively referred to herein as “Parties”).
- 2) **Nature of Use:** NCR grants to the User a non-exclusive, non-sub-licensable, license to use NCR GIS, CAD or other data. This license agreement applies to all GIS, CAD or other data acquired from NCR (“Data”), regardless of how or in what form such Data is delivered, and as generally described in Section 7(a) herein.
- 3) **No Updates:** NCR is not obligated to provide updates to Data in the event that newer versions become available.
- 4) **Confidentiality:** User acknowledges that the Data provided under this Agreement is valuable proprietary and confidential information of NCR (“Confidential Information”). Confidential Information shall mean proprietary, business, trade secret and/or proprietary commercial information, design, or similar other information now or hereafter owned by or otherwise in the possession or control of or belonging to NCR or any of their affiliates, related to the project described in Section 7(b) and/or NCR business purposes. In connection with this Agreement and the project, all right and title to, and interest in, the Data disclosed to User shall be deemed to be or shall remain with NCR.
- 5) **No NCR Liability:** Any risk as to the use of the Data is entirely assumed by the User. NCR and its directors, officers, agents, employees and subsidiaries shall not be liable for any damages of any kind resulting from use or misuse of any Data. To fullest extent permitted by law, User hereby releases NCR and holds NCR harmless from any and all such liability.
- 6) **Disclaimer:** The Data of NCR is developed and maintained solely for NCR business purposes, and is not guaranteed to be accurate. NCR MAKES NO WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER MATTER. NCR IS NOT RESPONSIBLE FOR POSSIBLE ERRORS, OMISSIONS, MISUSE, OR MISINTERPRETATION. NCR GIS DATA IS PREPARED FOR REFERENCE PURPOSES ONLY AND SHOULD NOT BE USED, AND IS NOT INTENDED FOR, SURVEY OR ENGINEERING PURPOSES. ANY CAD DATA SHARED BY NCR MAY BE ACCOMPANIED BY A SURVEYOR’S REPORT FROM A PROFESSIONAL LAND SURVEYOR DETAILING THE ACQUISITION METHOD, ACCURACY AND PURPOSE OF USE. USER IS SOLELY RESPONSIBLE FOR THE APPROPRIATE USE OF THE CAD DATA WITHIN THE STANDARD PRACTICES OF THE PROFESSION.

7)(a) General Description of Data: NCRR can provide data that may aid User in determining the historic NCRR centerline and/or the NCRR corridor boundary as well as provide positional references if needed. NCRR can also provide other historical documents, and suggest appropriate language for referencing this information. This data may be available in a number of different formats, including GIS Shapefiles, geodatabase, or CAD (various formats/releases/versions).

(b) Limitation on Use and Further Distribution: User agrees that the NCRR Data shall be used only for performing work for the following Project:

Project Title: _____

Project Number: _____

Stakeholders: _____

[Applicant to identify Project, including Project number and stakeholders]

If User seeks to use the NCRR Data to perform any additional work other than that described above, then User shall submit a new Data Disclosure form to NCRR. User may not sell, license, lend, donate, share, distribute or otherwise permit the distribution of the NCRR Data to any other entity, individual or third party, except to a User subcontractor approved by NCRR in advance and only for purposes of performing the work described above. User acknowledges that NCRR retains exclusive ownership of the NCRR Data and that User must take steps to protect both the intentional or accidental dissemination of the NCRR Data to third parties. Use agrees that any disclosure of the Data to third parties in violation of this Agreement may cause irreparable harm to NCRR, which may not be calculated or fully or adequately compensated by recovery of damages alone. Accordingly, User agrees that NCRR shall be entitled to seek interim and permanent injunctive relief, specific performance and other equitable remedies, in addition to any other relief to NCRR.

8) Applicable Law: This Agreement shall be construed, interpreted and applied in accordance with the laws of the State of North Carolina, provided that any conflict of laws provision of such state shall not be used to apply the laws of any other state or jurisdiction. User and NCRR agree that Raleigh, Wake County, North Carolina shall be the jurisdiction for the hearing and adjudication of any disputes arising from or in connection with this Agreement.

9) Binding of Successors/No Assignment: This Agreement and the rights and duties of the parties hereunder shall enure to the benefit of and be binding upon the parties, their representatives, employees, agents, parent or subsidiary corporations, affiliates, or successors. This Agreement and the rights and duties hereunder may not be assigned or delegated by either party

10) No Waiver: The failure by either party to enforce any provision or provisions of this Agreement shall not in any way be construed as a waiver of any such provision or provisions as to any future violation thereof, nor prevent that party thereafter from enforcing each and every other provision of this Agreement. The rights and remedies granted the parties herein are cumulative and the waiver by a party of any single remedy shall not constitute a waiver of such party's right to assert all other legal remedies available to him or it under the circumstances.

11) Entire Agreement: This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes and replaces all other written or oral agreements between the parties hereto. This Agreement may be amended by agreement only if such amendment is in writing and signed by the parties hereto.

TO BE COMPLETED BY REPRESENTATIVE OF USER

Signature: _____ Date: _____

Name (please print): _____ Title: _____

Firm: _____

Address: _____ City: _____ St: _____ Zip: _____

Phone: (____) _____ - _____ Email: _____

Please return completed, signed form to:
GIS and Survey Manager
Kristian Forslin, GISP, PLS
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