

# NARCOA AGREEMENT

**This form MUST BE PRINTED ON BOTH SIDES OF A SINGLE SHEET OF PAPER.**

I, the undersigned, in consideration of North American Railcar Operators Association (NARCOA) (including its officers, directors, affiliates, members, committee members, volunteers, agents, servants, employees and lessors), NARCOA AFFILIATES (including their Excursion Coordinators, officers, directors, members, volunteers, agents, servants, employees, and lessors), and the RAILROADS (including their officers, agents, servants, employees, and lessors) with which NARCOA AFFILIATES contract or arrange for the use of tracks for excursions, hereinafter collectively referred to as "NARCOA/AFFILIATE/RR," allowing or assisting the undersigned to utilize the tracks and facilities of RAILROADS and participate in the motorcar excursions and related activities of NARCOA/AFFILIATE/RR, agree that:

**1. ASSUMPTION OF RISK:** I know and understand the scope, nature, and extent of the risks associated with motorcar/hi-rail/OTE excursions, including (1) those attendant to the operation of motorcars/hi-rails, on track equipment ("OTE") generally and specifically the operation of motorcars on track which may not be maintained to any particular level or standard; (2) related motorcar/hi-rail/OTE activities such as set-on and set-off procedures, and (3) the risk of collision with locomotives, other motorcars/hi-rails/OTE, and motor vehicles, and (4) in general, the risks and dangers of the working railroad environment in which the motorcar/hi-rail/OTE will be operated.

**I WILLINGLY AND KNOWINGLY ACCEPT THOSE RISKS, WHICH I UNDERSTAND COULD RESULT IN DESTRUCTION OF MY PROPERTY AND MY INJURY OR DEATH.**

**2. INFORMING GUESTS AND PASSENGERS:** I am responsible for informing and educating any volunteers, invitees, or guests whom I bring or invite onto railroad property, and all passengers in the motorcars/hi-rails/OTE I operate, about the nature and extent of the risks associated with motorcar/hi-rail/OTE excursions and determining that they understand them and willingly accept them. I shall inform and educate them, and confirm their acceptance of those risks by obtaining their signature(s) on the NARCOA General & Affiliate Release at a time and place which allows them to decline and leave before being exposed to such risks.

**3. RULES COMPLIANCE:** I have read and understand the NARCOA Rule Book, and any applicable additional Affiliate Rules, understand the content and purpose for each of the rules, and agree to abide by them. I further agree to take responsibility for informing those persons I bring to the excursion of all the rules applicable to their conduct.

**4. ADHERENCE TO TRACK AUTHORITY:** As a condition of maintaining NARCOA operating privileges, I will strictly adhere to the requirement that operation on any railroad, whether or not as part of any on track event or excursion (including any excursion sponsored by a NARCOA affiliate), is permissible only with proper track authority, and that verifying such proper track authority is my responsibility. I understand that to use a railroad without proper track authority, regardless of the circumstances surrounding such use, and regardless of civil and criminal actions taken or not taken against me for such use, may result in the loss of my NARCOA operating privileges for a period of at least one year.

**5. MECHANICALLY SAFE MOTORCAR/HI-RAIL/OTE:** I will operate only a mechanically safe motorcar/hi-rail/OTE, and any motorcar/hi-rail/OTE brought by me to an excursion covered by this Agreement for operation in that excursion will be a mechanically safe motorcar/hi-rail/OTE. I also agree that the responsibility for the motorcar/hi-rail/OTE safe mechanical condition rests solely with me regardless of any inspections or absence thereof by NARCOA/AFFILIATE/RR.

**6. RELEASE FROM LIABILITY:** I release NARCOA/AFFILIATE/RR from any liability for any claim, loss, damage, injury, or death, regardless of the cause, including the active or passive negligence of NARCOA/AFFILIATE/RR, sustained by me or my property while participating in the excursions covered by this Agreement. I agree and understand that NARCOA/AFFILIATE/RR, accept no responsibility for my safety, nor for the acts or safety of other operators and guests during motorcar/hi-rail/OTE excursions. By entering into this Agreement I understand that I am surrendering legal rights which I may otherwise have against NARCOA/AFFILIATE/RR, and will be precluded from pursuing a claim or lawsuit NARCOA/AFFILIATE/RR, in the event of destruction of my property or my injury or death.

**7. COVENANT NOT TO SUE NARCOA/AFFILIATE/RR FOR DAMAGES:** I will not make any claim against or bring any legal action or voluntarily assist in any legal action against NARCOA/ AFFILIATE/RR, nor permit anyone else to do so on my behalf, for any claim, loss, damage, or injury sustained by me or my property during any on track event or excursion (including an excursion sponsored by a NARCOA affiliate).

**8. COVENANT NOT TO SUE EXCURSION COORDINATORS AND/OR THEIR ASSISTANTS FOR DAMAGES:** I shall not make any claim or bring any legal action or voluntarily assist in any legal action against the Excursion Coordinator for an excursion, his or her designated Assistant(s), or any other excursion participant for actions or failure(s) to take action: (a) in connection with any excursion covered by this Agreement, or (b) as an official of NARCOA/AFFILIATE/RR.

**9. INDEMNIFICATION AGAINST CLAIMS:** I will indemnify and hold harmless NARCOA/AFFILIATE/ RR and persons covered by paragraph 8, from any liability, including claims and any attorney's fees, costs, losses, or actions which may be presented or initiated by me or on my behalf in contravention of the covenants I have given in paragraphs 7 and 8.

**10. CONDITIONAL INDEMNIFICATION AGAINST OTHER CLAIMS:** I will indemnify and hold harmless NARCOA/AFFILIATE/ RR from any liability, including claims and any attorney's fees and costs, losses, or actions which may be presented or initiated by (a) persons whom I bring or invite to any on track events or excursions (including excursions sponsored by NARCOA affiliates) and (b) passengers in a motorcar operated by me during any excursion covered by this Agreement if such persons have not signed a NARCOA General & Affiliate Release prior to the accident or incident giving rise to their claim.

**11. SURVIVAL OF OBLIGATIONS:** Any and all obligations assumed and promises made by me under this Agreement shall be binding on my heirs, and the executors and administrators of my estate. I further instruct my heirs, administrators, and executors to honor this Agreement and make no claim against NARCOA/AFFILIATE/RR for any claim, loss, damage, or injury which this Agreement purports to cover and release.

**12. VALIDITY OF WAIVER:** If I institute any suit or action or make any claim for any loss or damages to my person or property for causes covered by this Agreement, the releases, waivers and promises I have given in this Agreement shall be enforceable against me. I understand that, by executing this Agreement, I am giving up rights to seek compensation or redress that I otherwise would possess.

**13. REPRESENTATION AND WARRANTIES:** I represent and warrant that I am taking no medication and/or have no physical condition which would impair my safe operation of a motorcar, and I agree not to operate a motorcar in any excursions covered by this Agreement if either my physical condition or any medication I am taking would impair such safe operation.

**14. COOPERATION WITH JUDICIAL COMMITTEE INVESTIGATIONS:** I agree as a NARCOA member to cooperate to the fullest extent required by the Board of Directors involving any incident, rules violation or misconduct report. I understand failure to comply may result in disciplinary action.

**15. WAIVER OF JURY TRIAL:** Any disputes arising from any excursion covered by this Agreement shall be decided by court trial in the jurisdiction (state and county/parish) where the excursion occurred. In agreeing to court trial, I freely and voluntarily waive any rights to jury trial I might possess under state or federal law.

**16. TWO-WAY RADIO USE:** I certify that I will use only narrow band (12.5 kHz) 2 way radios on any and all NARCOA insured excursions. In addition I will ensure that any passenger under my supervision who uses a two-way radio meets this requirement. I understand that wideband (25 kHz) transmissions are illegal after Dec 30th, 2012, and that I and/or NARCOA may be fined by the federal government. I take full responsibility, including paying any fines assessed against myself and/ or NARCOA by an agency of the federal government, due to my use of a non-complying radio, or use by a person under my supervision.

**17. SEVERABILITY OF INVALID PROVISIONS:** If any provision, or application thereof, in this Agreement is held invalid, that shall not affect any other provisions or applications of the Agreement which can be given effect without those held invalid.

**18. ENTIRE AGREEMENT:** This Agreement sets forth the entire Agreement between the parties and can be altered or amended only by subsequent written instrument duly executed by each of the parties hereto.

**READ THE ABOVE CAREFULLY BEFORE SIGNING. YOU WILL BE BOUND BY THE TERMS OF THIS AGREEMENT IF YOU SIGN WITHOUT READING.**

I warrant that I have read and understand this entire Agreement (printed on two pages). I further warrant that its terms are contractual in nature and that in consideration of executing this agreement, I agree that the terms of this agreement shall bind my spouse, children, relatives, heirs, benefactors, descendants, executors, administrators, assigns and legal representatives. I am 18 years of age or older and understand that I am assuming for myself and for all minor children accompanying me or riding on my motorcar/hi-rail/OTE the provisions set forth above.

IN WITNESS THEREOF, the undersigned has executed this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Operator's Signature

\_\_\_\_\_  
Operator's Name (Printed or Typed)