

MOTORCAR OPERATORS WEST

AGREEMENT

The undersigned, in consideration of Motorcar Operators West (MOW) (including its officers, directors, committee members, volunteers, agents, servants, employees and lessors), and the railroads, Transit agencies, government agencies owning rail corridors or other entities with which MOW contracts or arranges for the use of track for excursions (RRs) (including their officers, agents, servants, employees and lessors), hereinafter collectively and individually referred to-as "MOW/RRs", allowing or assisting the undersigned to utilize the tracks and facilities of railroads and participate in the motorcar excursions and related activities of MOW/RRs, agrees that:

1. **ASSUMPTION OF RISK:** I know and understand the scope, nature, and extent of the inherent risks associated with motorcar excursions, including (1) those attendant to the operation of motorcars generally, and specifically, the operation of motorcars on track which may not be maintained to any particular level or standard; (2) related motorcar activities such as set-on and set-off procedures, and (3) in general, the inherent risks and serious dangers of the working railroad environment in which the motorcar will be operated. I willingly and knowingly accept all risks of participating in a motorcar excursion, preparation for excursion, or closing out the end of an excursion, 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 to participate in a motorcar event, including the risk on or near railroad activities. I shall advise and assume complete responsibility for all passengers in the motorcars I operate, about the nature and extent of the risks associated with motorcar 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 Motorcar Operators West General Release at a time and place which allows them to decline and leave before being exposed to such risks. I will assume full responsibility for the acts or admissions of any invitee, and I shall indemnify MOW, other participants, railroads and other persons or entities providing support in accordance with paragraph nine.

3. **RULES COMPLIANCE:** I have read and understand the MOW Rule Book and MOW Operations and Reference Handbook, 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 MOW operating privileges, I will strictly adhere to the requirement that operation on any railroad whether or not as part of a MOW excursion is permissible only with proper track authority, and that acquiring and 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 MOW operating privileges for a period of at least one year.

5. **MECHANICALLY SAFE MOTORCAR:** I will operate only a mechanically safe motorcar, and any motorcar brought by me to an excursion covered by this Agreement for operation in that excursion will be a mechanically safe motorcar. I also agree that the responsibility for the motorcar's safe mechanical condition rests solely with me regardless of any inspections or absence thereof by MOW/RRs.

6. **RELEASE FROM LIABILITY:** I release MOW/RRs from any liability for any claim, loss, damage, injury, or death, regardless of the cause, including the active or passive negligence of MOW/RRs, sustained by me, my invitees, heirs, successors or assigns or my property while participating in the excursions covered by this Agreement. I agree and understand that MOW/RRs accept no responsibility for my safety, nor for the acts or safety of other operators and guests during motorcar excursions. By entering into this Agreement I understand that I am surrendering legal rights, which I may otherwise have against MOW/RRs.

7. **COVENANT NOT TO SUE MOW/RRs FOR DAMAGES:** I will not make any claim or bring any legal action or voluntarily assist in any legal action against MOW/RRs, nor permit anyone else to do so on my behalf, for any claim, loss, damage, or injury sustained by me or my property during excursions covered by this Agreement.

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 any other excursion participant for their actions or conduct (a) arising from their activities in managing or assisting with the managing of any excursion covered by this Agreement, or (b) as an official of MOW/RRs.

9. INDEMNIFICATION AGAINST CLAIMS: I will indemnify and hold harmless MOW/RRs, and persons covered by paragraph 8, from any and all liability and enforcement proceeding, fines, judgments, orders or other adverse proceeding including claims and any attorney's fees, costs, losses, or actions which may be presented or initiated by me, my invitees, guest or agents 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 MOW/RRs 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 MOW excursions and (b) passengers in a motorcar operated by me during any excursion covered by this Agreement, if such persons have not signed a Motorcar Operators West General 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 MOW/RRs 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.

13. REPRESENTATION AND WARRANTIES: I represent and warrant that I am taking no medication and/or have no physical or emotional 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. ARBITRATION: Any disputes arising from the excursions covered by this Agreement will be decided under the laws of the State of California and shall be submitted to arbitration in accordance with the rules and procedures of the American Arbitration Association, or such alternate arbitration forum as the parties to the dispute may mutually agree.

15. DEFINITIONS: The term "excursions covered by this Agreement" in the Agreement above refers only to those excursions where the undersigned is an operator of a motorcar, supplies a motorcar for operation by another individual, or has people attending who are specifically guests of the undersigned.

16. 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.

17. 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.

IN WITNESS THEREOF' the undersigned has executed this Agreement this

_____ day of _____, 20_____

Operator's Signature

Operator's Name(Printed or Typed)