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October 11, 2022
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October 11, 2022

VIA E-FILING

Cynthia T. Brown
Chief, Section of Administration
Office of Proceeding
Surface Transportation Board
395 E Street, SW
Washington, DC 20024

Re: STB Docket No. FD 36629
Rail Link, Inc. – Petition for Declaratory Order
Opening Statement and Evidence of Rail Link, Inc.

Dear Ms. Brown:

Enclosed for filing in the above-referenced docket is the Opening Statement and Evidence of Rail Link, Inc. as ordered by the Board in its September 19, 2022 Decision opening a proceeding in this matter and establishing a procedural schedule.

If there are any questions related to this filing, please contact me.

Sincerely,

A handwritten signature in blue ink that reads 'Justin J. Marks'.

Justin J. Marks
Counsel to Rail Link, Inc.

Enclosure

cc: All parties shown on the Certificate of Service

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36629

RAIL LINK, INC. – PETITION FOR DECLARATORY ORDER

**OPENING STATEMENT AND EVIDENCE OF
RAIL LINK, INC.**

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Dated: October 11, 2022

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36629

RAIL LINK, INC. – PETITION FOR DECLARATORY ORDER

**OPENING STATEMENT AND EVIDENCE OF
RAIL LINK, INC.**

Pursuant to the Decision served in this proceeding on September 19, 2022 accepting the referral from the District Court of Harris County, Texas (the “Court”), Rail Link, Inc. (“Rail Link”) hereby submits its Opening Statement and Evidence in support of its Petition asking the Surface Transportation Board (“Board”) for an order declaring that Rail Link is not a common carrier.

I. BACKGROUND

A. The State Court Litigation

On April 29, 2019, Plaintiff Demaree Reed, an employee of Rail Link, filed suit against Rail Link and a number of other entities, seeking to recover damages for injuries suffered by Mr. Reed, an employee of Rail Link, while Mr. Reed was providing in-plant switching services on the plant property of defendant INEOS USA, LLC (“INEOS”) is located in La Porte, Texas. The law suit is docketed as *Demaree Reed v. INEOS Americas, LLC, et al*, Cause No. 2019-29955, in the District Court of Harris County, Texas, 215th Judicial District (the “State Court Litigation”). Mr. Reed asserted a personal injury claim against Rail Link under the Federal Employers’ Liability Act, 45 U.S.C. §51, *et seq.* (“FELA”).

Rail Link denies all liability under FELA for Mr. Reed’s injuries. Rail Link denies that Mr. Reed can recover against Rail Link under FELA, because a claim under FELA can only be

brought against an employer that is a common carrier by rail. In the State Court Litigation, Rail Link asserts that it is not subject to FELA claims because it is not a common carrier by rail. Instead, Rail Link asserts that it is liable for compensation for Mr. Reed's injuries only to the extent such compensation is available under applicable Texas worker's compensation law.

On June 21, 2021, Rail Link filed a Motion for Summary Judgment seeking dismissal of Mr. Reed's FELA claim because Rail Link is not an employer (common carrier by rail) under FELA. The Court originally denied the Motion, but, on reconsideration, the Court ordered that the issue of Rail Link's common carrier status be referred to the Board. The Court directed Rail Link to petition the Board for a determination of whether Rail Link is either a common carrier or a private contract operator. *See* Referral Order, attached as Exhibit A to Rail Link's Petition for Declaratory Order and Request to Set Procedural Schedule.

On September 19, 2022, the Board opened a proceeding and established a procedural schedule. Rail Link's Opening Statement is submitted in accordance with the schedule adopted by the Board and is supported by the attached Verified Statement of Andrew T. Chunko ("Chunko VS").

B. As a general matter, Rail Link's business is to provide contract (non-common carrier) in-plant rail switching services for private company clients.

Rail Link is a subsidiary of Genesee & Wyoming Inc., a non-carrier. Rail Link provides non-common carrier in-plant rail switching services pursuant to private written contracts across North America. *Chunko VS* at 1.

Rail Link does not hold itself out to the public to provide common carrier services by rail for compensation. Rail Link has never sought, nor has it ever received, authority from the Board to provide common carrier railroad transportation at any of the private facility locations where it provides services. *Id.*

Rail Link provides in-plant rail switching services for private company clients. These switching services include the internal movement of rail cars at private facility locations, such as industrial plants. *Id.* Such switching services include switching and blocking railcars for private company clients to facilitate service by unrelated common carrier railroads.

Various courts, including the Tenth Circuit Court of Appeals, have determined that Rail Link is not a common carrier. *See Smith v. Rail Link, Inc.*, 697 F.3d 1304, 1310 (10th Cir. 2012) (summarizing other Rail Link FELA cases, “Our conclusion is consistent with those of various trial courts which have addressed the issue. *See Wolf v. Reliance Ins. Co.*, No. 99–CV–40–B, Summary Judgment Memorandum and Order, slip op. at 12–26 (D.Wyo. Jan. 3, 2000)); *Erwin v. Rail Link, Inc.*, No. CIV–93–160–3, *Order Granting Rail Link, Inc. Summary Judgment* (Cir.Ct. Jefferson County, Ark., June 8, 1994); *Waters v. Rail Link, Inc.*, No. 91–26837, *Order Granting Defendant's Motion for Summary Judgment* (D.Ct. Harris County, Tex., May 21, 1992).”

C. Specifically, Rail Link provided only in-plant contract services for INEOS.

The industrial facility in question at the time of Mr. Reed’s accident was INEOS Olefins & Polymers USA, a division of INEOS USA LLC located in La Porte, Texas. At the time of Mr. Reed’s accident, Rail Link was providing rail services solely for INEOS within the confines of the INEOS facility. *Chunko VS* at 1.¹ Rail Link did not offer or provide services to any other entities at the INEOS facility. Rail Link never published any tariff or public charges with respect to services offered or provided at the INEOS facility. Rail Link did not own, lease or maintain any tracks or railroad track equipment at the INEOS chemical plant. In conjunction with its in-plant rail switching services, Rail Link switched and built trains to be pulled by the common carrier that serves the INEOS facility - Port Terminal Railroad Association (“PTRA”). PTRA is independent

¹ Rail Link is no longer providing services at the INEOS facility.

of and unaffiliated with Rail Link. The tracks within the INEOS facility are industry tracks, are owned by INEOS, and are not common carrier tracks. After Rail Link built a train, PTR A hauled it off the INEOS facility and provided interstate rail transportation. Due to the layout of the facility, Rail Link, at times, utilizes PTR A track in addition to the INEOS industrial track to switch cars and to deliver and receive cars from PTR A in connection with movement of the cars over PTR A and the interstate rail network. According to Mr. Chunko, at the time of the accident involving Mr. Reed, Rail Link's contract with INEOS provided that Rail Link would conduct only in-plant switching services for INEOS's shipments inside the INEOS chemical plant on track at the INEOS plant. Rail Link also performed certain inspections and minor repairs of railcars. *Chunko VS* at 2.²

Under the Rail Link/INEOS agreement, Rail Link received compensation on the basis of hours required to perform the in-plant switching operations only from INEOS, its customer, and not on the basis of a fixed division or percentage of the common carrier transportation charges. *Chunko VS* at 2. INEOS's compensation to Rail Link remained the same regardless of the number of railcars received or sent out by INEOS by PTR A or and any other common carrier. Rail Link's contractual obligation ran distinctly and only to INEOS. Rail Link did not participate with PTR A serving INEOS under any tariff, contract, rate or other charge governing interstate movements of any commodity by rail. *Chunko VS* at 2. Further, Rail Link did not act as an agent of PTR A or under the auspices of any other common carrier in providing its services to INEOS. As such, Rail Link did not collect payment from PTR A; and Rail Link and PTR A did not have a contractual relationship as related to movements at the INEOS facility.

² A public version of the Rail Link / INEOS agreement is attached to the *Chunko VS*. A confidential version is being filed under seal with the Board pursuant to the protective order entered by the Board on September 30, 2022.

Rail Link provided state-mandated worker's compensation benefits to Mr. Demaree Reed before and after this accident. *Chunko VS* at 2.

II. ARGUMENT

A. Legal Standard

Under 49 U.S.C § 10102(5) a “rail carrier” is a “person providing common carrier railroad transportation for compensation.” According to the Board, “a common carrier is one that ‘holds itself out to the general public as engaged in the business of transporting persons or property from place to place for compensation.’” *The Louisville & Jefferson County. Riverport Auth.-Petition for Declaratory Ord.*, STB Finance Docket No. 36463, slip op at 5 n. 5 (served Oct. 22, 2021)(“*L&J County Riverport*”)(citing *Am. Orient Express Ry. V. Surface Transp. Bd*, 484 F. 3d 554, 557 (D.C. Cir. 2007); *Wis. Cent. Ltd. V. STB*, 112 F. 3d 881, 884 (7th Cir. 1997)). Whether an entity is holding itself out to the public depends on whether the rail transportation is “the right of the public to use the road's facilities and to demand service of it.” *Assoc of P&C Dock Longshoremen v. The Pittsburgh and Conneaut Dock Co., et al.*, ICC Finance Docket No. 31363 (Sub-No. 1), 8 I.C.C. 2d 293 – 94 (citing *Lone Star Steel Co. v. McGee*, 380 F.2d 640 (5th Cir.), *cert. denied* 389 U.S. 977(1967)). Further, the D.C. Circuit has held that to be a common carrier, an entity “need only, in practice, serve the public indiscriminately and not "make individualized decisions, in particular cases, whether and on what terms to deal.” *Am. Orient Express Ry. Co., LLC* 484 F.3d at 557. In *L&J County Riverport*, the Board explained that holding out includes setting rates or service terms and/or entering into interchange agreements with linehaul railroads. *L&J County Riverport*, slip op at 5.

B. Rail Link is not a rail carrier at the INEOS facility because the public does not have a right to use the INEOS facilities or to demand service from Rail Link.

As noted above, to be considered a “rail carrier” and subject to the Board’s jurisdiction, a person must be acting as a common carrier. Rail Link is not a common carrier because Rail Link does not hold itself out to the public as to the services it provides, including services that were provided at the INEOS facility. Rail Link provided private in-plant rail switching services only to INEOS under a contract between Rail Link and INEOS. Under the Rail Link/INEOS contract, Rail Link received compensation from INEOS based on the hours required to perform the switching operations. Under its contract with INEOS, Rail Link did not have the right to use INEOS’s tracks to perform switching services for any other person, and was thus incapable of offering services to the general public.

At the relevant time, Rail Link conducted its contract services for INEOS on INEOS owned private tracks within the INEOS facility. There is one common carrier track that goes through the INEOS facility that is owned by the serving common carrier PTR, and which connects the facility with the PTR network and the interstate rail system. For rail cars to move from one side of the INEOS facility to the other, they must be hauled over PTR’s track that bisects the facility. Rail Link had no contractual relationship for services with PTR, and no right to use the PTR track for any purposes other than in the course of the services provided for INEOS.

Rail Link is not a common carrier, and it was not a common carrier when it operated at the INEOS facility, because it did not serve or offer to serve the public indiscriminately for rail transportation services at the INEOS facility. Rail Link did not set transportation service rates or transportation service terms for the public, or even for INEOS. Further, Rail Link did not publish any tariffs for rail service at the INEOS facility. Rail Link did not have any rights to use the INEOS tracks to provide service to any person other than INEOS.

Rail Link did not operate as a contractor to PTR A or any other common carrier for the services it performed at the INEOS facility. In addition, Rail Link had no interchange agreement with PTR A at the INEOS facility. As such, Rail Link did not receive any compensation from PTR A or receive any portion of any transportation charges of PTR A or other connecting common carriers.

Because Rail Link only operated under contract with INEOS and did not hold itself out to the public, Rail Link was not acting as a common carrier at the INEOS facility at the time of Mr. Reed's accident, and thus was not a "rail carrier" under 49 U.S.C. §10102(5).

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Conclusion

For the foregoing reasons, Rail Link respectfully requests that the Board issue a declaratory order finding that Rail Link was not a rail carrier at the INEOS facility as defined under 49 U.S.C § 10102(5) because Rail Link was operating under a private contract and was not acting as a common carrier by holding itself out to the general public as engaged in the business of transporting persons or property from place to place for compensation.

Respectfully submitted,



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Counsel for Rail Link, Inc.

Dated: October 11, 2022

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of October, 2022, I caused a copy of the foregoing Opening Statement and Evidence to be served on the persons listed below by electronic filing or by email as indicated.

Counsel for Plaintiff Demaree Reed Kurt Arnold karnold@arnolditkin.com Caj Boatright cboatright@arnolditkin.com Roland Christensen rchristensen@arnolditkin.com Arnold & Itkin LLP 2009 Memorial Drive Houston, Texas 77007	Counsel for INEOS Americas LLC and INEOS USA LLC Cory Reed creed@thompsoncoecoe.com Thompson Coe One Riverway, Suite 1400 Houston, Texas 77056-1988
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VERIFIED STATEMENT OF
ANDREW T. CHUNKO

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36629

RAIL LINK, INC. – PETITION FOR DECLARATORY ORDER

VERIFIED STATEMENT OF ANDREW T. CHUNKO

My name is Andrew T. Chunko. I have served as the President of Rail Link, Inc. (“Rail Link”) since 2015. As such, I am familiar with the operations, business, and personnel of Rail Link at all of the locations it serves. In particular, I am familiar with the services Rail Link provided at the INEOS chemical plant in La Porte, Texas at the time of Demaree Reed’s accident.¹ Likewise, I am familiar with the contracts Rail Link has with its customers, including those relating to services provided at the INEOS chemical plant. A copy of the INEOS contract is attached hereto as Attachment 1.²

Rail Link provides in-plant rail switching services for private company clients. Rail switching services are internal movement services provided at private facility locations, such as industrial plants. Specifically, at the INEOS facility, once in-bound railcars would come into the INEOS chemical plant from the serving common carrier Port Terminal Railroad Association (“PTRA”),³ Rail Link would perform rail-related services in connection with the

¹ Rail Link is no longer providing services at the INEOS facility.

² The copy of the agreement attached as Attachment 1 has been redacted to prevent the disclosure of highly confidential information. Rail Link is simultaneously filing a HIGHLY CONFIDENTIAL version of the agreement under seal pursuant to the protective order entered by the Board on September 30, 2022.

³ PTRA is independent short line rail carrier that is not affiliated with Rail Link.

loading/unloading process, all within the confines of the INEOS facility. Rail Link would also switch INEOS rail cars and build outgoing trains to be pulled by PTR A. Due to the layout of the facility, Rail Link, at times, would utilize the PTR A track that traverses the facility in addition to INEOS's facility tracks to switch cars to and from INEOS, and to build INEOS outbound trains.

Rail Link neither provided nor offered rail services to the general public at the INEOS chemical plant, nor does it do so elsewhere where it provides its contract services. In fact, Rail Link cannot offer its services to the public because Rail Link is not authorized to do so by the United States Surface Transportation Board ("STB"), and thus has no authority to offer rail services to the general public or to operate as a common carrier in the United States. Moreover, Rail Link publishes no tariffs or charges for accepting public business or engaging in any contractual relations with the public. Rail Link has never held itself out as a common carrier or as willing to haul or move goods for the general public, for hire or otherwise. In particular, at the INEOS facility, Rail Link did not have any rights under the INEOS agreement to use the INEOS facility or any INEOS tracks to provide service to any entity other than INEOS.

Rail Link provided its in-plant rail switching services at the INEOS chemical plant, as it does at other locations, pursuant to written contracts. These individually negotiated contracts are private, not public. At the time of the accident involving Mr. Reed, Rail Link's contract was with INEOS Olefins & Polymers USA, a division of INEOS USA LLC. Rail Link's services for INEOS were limited to the handling of INEOS's shipments inside the INEOS chemical plant and were performed on track at the INEOS plant. Rail Link did not own, lease or maintain any tracks or railroad track equipment at the INEOS chemical plant. In conjunction with its in-plant rail

switching services, Rail Link also performed certain inspections and minor repairs of railcars being used by INEOS.

Rail Link received compensation on the basis of hours required to perform the in-plant switching operations, with such compensation being paid only from INEOS, its customer. Rail Link did not receive any compensation from PTR A or any other common carrier, either a fixed charge or division, or a percentage of the interline transportation charges. Furthermore, INEOS's compensation to Rail Link remained the same regardless of the number of railcars received or sent out by INEOS by rail via the serving common carrier railroad (PTR A, NOT Rail Link). Rail Link's contractual obligations ran distinctly and only to INEOS. Rail Link did not and could not participate with PTR A in any tariff, contract, rate or other charge governing interstate movements of any commodity by rail at INEOS. Nor did Rail Link serve as a contractor to PTR A at the INEOS facility.

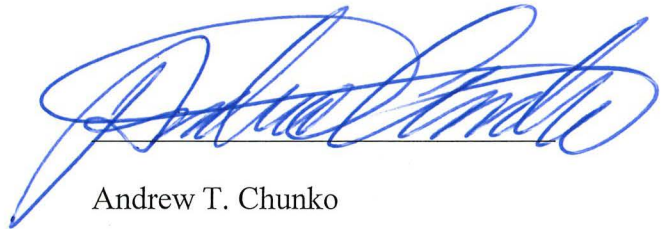
Rail Link has never sought authority or an exemption from the STB or its predecessor the Interstate Commerce Commission ("ICC") to operate as a common carrier railroad. Neither the STB nor the ICC has ever sought to assert jurisdiction over Rail Link. As such, Rail Link does not have authority to publish tariffs offering services to the public.

Rail Link provided workers' compensation benefits to Mr. Reed pursuant to Texas law and consistent with its status of not being a common carrier railroad. This was the case both before and after the January 27, 2019 accident involving Mr. Reed.

VERIFICATION

I, Andrew T. Chunko, declare under penalty of perjury that I have read the foregoing Verified Statement, that I know the facts asserted therein, and that the same are true as stated. Further, I certify that I am qualified to and authorized to submit this Verified Statement.

Executed on October 11, 2022

A handwritten signature in blue ink, appearing to read "Andrew T. Chunko", is written over a horizontal line.

Andrew T. Chunko

Attachment 1

Public - Redacted

PUBLIC VERSION - REDACTED

SITE SERVICES AGREEMENT

Rail Link Agreement: All 12 01085

This Site Services Agreement (hereafter "Agreement"), is made and entered into as of February 1, 2013 (hereafter "Effective Date"), by and between INEOS Olefins & Polymers USA, a division of INEOS USA LLC (hereafter "Buyer"), a Delaware limited liability company having a place of business at 2600 South Shore Boulevard, Suite 500, League City, Texas 77573, and Rail Link, Inc. (hereafter "Seller"), a Virginia corporation having a place of business at 13901 Sutton Park Drive, Suite 125, Jacksonville, Florida 32224. Buyer and Seller may be referred to collectively as "Parties" and individually as a "Party". "Affiliate" or "Affiliates" means, with respect to a Party, any other person or entity directly or indirectly controlling, controlled by, or under direct or indirect common control with the Party; for purposes of this definition, "control" when used with respect to a person or entity means the power to direct the management and policies of that person or entity, directly or indirectly, whether through the ownership of voting securities, by contract, or otherwise.

Recitals

WHEREAS, Buyer desires to purchase certain railcar in-plant support services in accordance with the terms and conditions set forth in this Agreement; and,

WHEREAS, Seller desires to sell certain railcar in-plant support services in accordance with the terms and conditions set forth in this Agreement;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein expressed, the Parties agree as follows:

1. Term. This Agreement commences on the Effective Date and expires January 31, 2018 (hereafter "Term"). The foregoing notwithstanding, Buyer may terminate this Agreement for any reason by giving at least ninety (90) days written notice to Seller of its intent to terminate. This Agreement may also be terminated by Seller, if Buyer breaches a material obligation under this Agreement, including any failure to make timely payment or reimbursement of amounts due under this Agreement, and Buyer has not cured such breach or is not diligently working to cure such breach within thirty (30) days of written notice of such breach given by Seller, by giving Buyer a written termination notice stating the date such termination is to be effective, such date to be no earlier than one hundred fifty (150) days after expiration of the aforementioned cure period.
2. Relationship of the Parties.
 - (a) Each Party assumes its duties under this Agreement as an independent contractor and nothing contained in this Agreement will be construed as inconsistent with such independent contractor relationship; neither Party is an employee or agent of the other Party and as such, neither Party will have the power or authority, express or implied, to pledge credit, to enter into any agreement, or to proffer give any representation, warranty, or guarantee on behalf of the other Party.

- (b) Seller will not utilize subcontractors, including, but not limited to, independent consultants or agents, for performance under this Agreement without prior written approval from Buyer.
- (c) Seller will have the sole responsibility of paying the salaries, taxes, and all other expenses relating to each such employee of Seller.
- (d) Seller's onsite supervisory personnel who are responsible for the direct supervision of Seller's employees and subcontractors will be available at all times to report to and confer with designated employees of the Buyer.
- (e) Seller, its agents, servants, or employees will have no authority to commit Buyer. When a law or regulation requires the filing of a report or other document upon the signature or certification of Buyer or Buyer's authorized representative, Seller will consult with Buyer to assure that appropriate steps are taken to fully comply with said requirement.
- (f) This Agreement is not intended to create nor constitute a joint venture, pooling arrangement, partnership, agency, master-servant, or a business entity, organization, or combination of any type, whatsoever.

3. Description of Services.

- (a) Seller will provide the labor and agreed upon materials to provide and fulfill the in-plant railcar support services (hereafter "Services") subject of this Agreement and generally defined in Exhibit A, "Scope of Work", attached hereto and incorporated by reference for all purposes.
- (b) Seller will safely, diligently, and carefully perform the Services in a good and workmanlike manner, and if permitted to subcontract, will be fully responsible for all services performed by subcontractor(s).
- (c) The Services will be performed by qualified and efficient employees and/or subcontractors in strict accordance with recognized best practices and with the standards and special instructions issued by the Buyer.
- (d) Seller will furnish all labor, equipment, and materials required for the Services, except such labor, equipment, and materials as may be specifically stated in this Agreement to be furnished by Buyer. All Services and related materials will be new, of the required quality in every particular, and subject to inspection and acceptance by Buyer. Any inspection and acceptance by Buyer will not constitute a waiver of any of its rights hereunder.

4. Compensation and Taxes.

- (a) For full and complete performance of this Agreement according to its terms and conditions, Buyer will compensate Seller in accordance with Exhibit B, "Compensation", attached hereto and incorporated by reference for all purposes.
- (b) Seller will pay all taxes, assessments, excises, impositions, licenses, and fees (including interest or penalties, if any) levied, assessed, or imposed upon or on account of the execution of the Services under this Agreement or the receipts therefrom or the materials therefor. When required to do so by law, Buyer may withhold state or federal taxes and pay such taxes to the state; or, in instances

PUBLIC VERSION - REDACTED

where Buyer is required to obtain clearance from the state that Seller has satisfied its tax liability to that state, delay payment hereunder up to the amount of the tax pending such clearance.

5. Bills and Liens.

- (a) Seller will pay promptly all indebtedness incurred by Seller for labor, materials, tools, and equipment used in the performance of this Agreement. If Buyer has a reasonable concern about whether Seller is making such payments, Buyer may require Seller to furnish satisfactory evidence of full payment of such indebtedness before Seller will be entitled to receive payment.
- (b) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, SELLER WILL NOT ALLOW ANY MECHANIC'S, CONTRACTOR'S, MATERIALMAN'S, OR OTHER LIENS TO ENCUMBER BUYER'S REAL OR PERSONAL PROPERTY BY VIRTUE OF ANY WORK, LABOR, SERVICE, OR MATERIAL PERFORMED OR PROVIDED BY SELLER GROUP (AS DEFINED HEREIN) AND SELLER WILL AT ALL TIMES DEFEND, INDEMNIFY, AND HOLD BUYER GROUP (AS DEFINED HEREIN) HARMLESS FROM AND AGAINST ALL CLAIMS (AS DEFINED HEREIN) OCCURRING OR ACCRUING FROM SUCH LIENS OR ENCUMBRANCES, EXCEPT TO THE EXTENT CAUSED BY THE NEGLIGENCE OR FAULT, BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, OR BREACH OF CONTRACT OF BUYER GROUP; FURTHERMORE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, SELLER HEREBY WAIVES AND RELEASES BUYER AND BUYER'S REAL AND PERSONAL PROPERTY FROM ANY AND ALL LIENS OR ENCUMBRANCES ACCRUED OR ACCRUING UNTO SELLER.
- (c) Should any mechanic's, contractor's, materialman's, or other lien come to encumber Buyer's property as a result of the Services, Seller will promptly procure its release. Further, Seller expressly authorizes Buyer to pay any such liens from any payments due Seller. Buyer may withhold a retainer until proper "Release of Lien" documentation is substantiated and provided to Buyer by Seller.

6. Payment.

- (a) Payment terms will be net thirty (30) days upon receipt of invoice meeting Buyer's requirements for processing.
- (b) For services rendered, Seller will submit to Buyer a proper monthly invoice. A proper invoice must:
 - (1) include the applicable Agreement Number and Purchase Order number; and,
 - (2) include specific breakdowns and delineations as to the cost of (A) Labor, (B) Materials, and (C) Rental; and,
 - (3) be sent to either of the following:
 - (A) Railcar Switching and Railcar Wash

[REDACTED]

(B) Railcar Minishop

[REDACTED]

- (c) If Buyer has a bona fide dispute regarding any portion of the invoice, Buyer will pay the undisputed portion of the invoice and notify Seller of such disputed items within sixty (60) days of receipt of Seller's invoice. The Parties will thereafter, in good faith, work together to promptly resolve such disputes and to mutually agree upon which portions, if any, of the disputed amount are rightly owed to Seller. Upon determination that any of the disputed and unpaid amounts are rightly owed to Seller, Buyer will promptly remit to Seller that portion rightly due Seller after such determination is made.
- (d) Inquiries concerning the status of any payment or other payment-related inquiries must be directed to:
 - Phone: Long Distance (800) 924-5598
Local (281) 535-6898
 - Email: ineosapdept@ineos.com

7. Safety.

- (a) Seller will strictly abide by all of Buyer's written site rules, policies, and procedures when at Buyer's site. It is Seller's obligation to obtain and maintain a copy of Buyer's site rules, policies, and procedures, which may be amended, altered, or revised from time to time at Buyer's sole discretion.
- (b) Seller will abide by any and all of Buyer's and OSHA's (Occupational Safety and Health Administration) safety and health rules and will provide Buyer with a copy of all accident reports related to performance pursuant to this Agreement, including but not limited to all OSHA illness and injury reports. Seller acknowledges and agrees it and any of its subcontractors have read such rules and will abide by them. All Services performed hereunder will comply fully with all governmental safety and health requirements, including but not limited to the rules and standards established by the Occupational Safety and Health Act of 1970, as amended, and any other applicable federal, state, and/or local safety or health laws, rules, or regulations. Seller will maintain a drug and alcohol free work force at all times while on Buyer's premises.
- (c) Seller acknowledges and agrees any equipment provided by Buyer to Seller for the benefit of Seller's employees or those of its subcontractors will be provided on an "As Is" basis with no warranty of performance and at the sole risk and liability of Seller and it is Seller's sole responsibility to ensure such equipment is fit for the use intended and in proper working order. SELLER ACKNOWLEDGES AND AGREES IT WILL INSPECT ANY EQUIPMENT PROVIDED BY BUYER GROUP (AS DEFINED HEREIN) PRIOR TO USE AND, TO THE FULLEST

EXTENT PERMITTED BY APPLICABLE LAW, WILL RELEASE AND INDEMNIFY, DEFEND, AND SAVE HARMLESS BUYER GROUP FROM AND AGAINST ALL CLAIMS (AS DEFINED HEREIN) FOR INJURY OR DEATH TO ANY THIRD PARTY, SELLER GROUP (AS DEFINED HEREIN), OR BUYER GROUP ARISING OUT OF THE USE OF ANY EQUIPMENT PROVIDED BY BUYER GROUP OR ADVICE PROVIDED BY BUYER GROUP RELATING TO SUCH EQUIPMENT. The Parties acknowledge and agree the track and other rail facilities provided by Buyer will not constitute "equipment" under this Section 7(c).

8. Personnel.

- (a) Seller will furnish, and if subcontracting is permitted, will cause its subcontractor to furnish, only qualified, competent, and orderly personnel at Buyer's premises.
- (b) If permitted, Seller will provide to Buyer a complete list of contractors to be used in the performance of this Agreement prior to the performance of any Services utilizing same. Seller must afford Buyer reasonable time to review the list of contractors and Buyer must respond within reasonable time with any objections thereto.
- (c) If for any reason whatsoever, Buyer believes any of Seller's personnel are, or its subcontractor's personnel are, in Buyer's sole opinion, objectionable or disorderly at Buyer's premises, upon receipt of Buyer's complaint, Seller will immediately remove such employee or subcontractor employee from Buyer's premises and such employee or subcontractor employee will not be allowed to return to Buyer's premises without Buyer's prior written consent.

9. Use of Premises.

- (a) Seller acknowledges it has examined and is familiar with the premises upon which the Services are to be performed and knows the location of the Services, the areas that will be assigned for use, the configuration of the ground, the difficulties and potential hazards attending the execution of the Services, the general and local labor conditions, and all other matters in any way affecting the execution or safety of the Services.
- (b) Seller will perform the Services in such a manner so as to cause minimal interference with Buyer's operations and the operations of other contractors on Buyer's premises. Upon completion of the Agreement, Seller will restore Buyer's premises to its original condition with respect to any disruption or damage for which Seller is responsible hereunder and leave said premises clean and free of Seller's tools, equipment, waste materials, and rubbish. Seller will comply with federal, state and local environmental laws and regulations and will be liable for any environmental damage caused by Seller, including, without limitation, cleanup cost to properly dispose of hazardous substances or waste.

10. Warranties.

- (a) Seller warrants and represents it possesses the requisite supervisory, qualified, trained, skilled, and experienced personnel as well as the applicable tools, equipment, supplies, and materials, other than those to be provided by Buyer, as may be necessary to provide such Services in a safe, efficient, and competent manner. In the event Seller and/or its personnel are required to be licensed or certified under any applicable laws, or regulations as a condition to providing the Services, Seller represents and warrants all such licenses or certificates have been obtained and are in full force and effect.
- (b) Seller further warrants and represents the Services will conform to the specifications set forth in Exhibit A.
- (c) Seller further warrants and represents the Services will not infringe any patent, trademark, copyright, or other intellectual property right or the like.
- (e) SELLER MAKES NO OTHER EXPRESS OR IMPLIED WARRANTY, STATUTORY OR OTHERWISE, CONCERNING ITS SERVICES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTY OF MERCHANTABILITY.

11. Notice.

- (a) All Notices and other communications required or permitted under this Agreement will be in writing and addressed to the addressee at the address set forth below, or at such other address as may be specified in writing to the other Party. All such notices will be deemed to have been given only if (1) delivered personally, (2) mailed by first-class, registered or certified mail, return receipt requested, postage prepaid, (3) sent by next-day or overnight mail or delivery, or (4) sent by facsimile.
- (b) All such Notices and other communications will be deemed to have been received (1) if by personal delivery on the date of such delivery, (2) if by certified, registered, next-day or overnight mail or delivery, on the date delivered, and (3) if by facsimile, on the day on which such facsimile was received.

If to Buyer: INEOS Olefins & Polymers USA,
a division of INEOS USA LLC
ATTN: Commodity Manager, Rail
2600 South Shore Boulevard, Suite 500
League City, Texas 77573
Fax No.: (281) 535-6768

If to Seller: Rail Link, Inc.
ATTN: President
13901 Sutton Park Drive, Suite 125
Jacksonville, Florida 32224
Fax No.: (904) 223-8710

12. Insurance. During the term of this Agreement, Seller will maintain the following insurance coverage's with limits not less than the amount specified and, if subcontracting is permitted, Seller will require its subcontractors to maintain similar insurance coverage's whenever subcontractors' personnel are upon Buyer's premises:

- A. Workmen's CompensationStatutory Requirements
- B. Employers' Liability\$ [REDACTED]
- C. Railroad Liability, including Contractual Liability
 - Combined Single Limit.....\$ [REDACTED]
 - General Aggregate\$ [REDACTED]
- D. Automobile Liability--
 - Combined Single Limit\$ [REDACTED]
- E. Excess Liability Insurance above said Employers' Liability, General Liability, and Automobile Liability with a combined single limit for Bodily Injury and Property Damage of \$ [REDACTED] per occurrence and aggregate.

Under items (B), (C), (D), and (E) above, Buyer will be named as an additional insured. Seller's insurance will be primary to any Buyer insurance or self-retention. Each of the policies listed above will be endorsed to waive subrogation against Buyer, its agents and employees by use of the following language: "The insurers hereby waive their rights of subrogation against INEOS USA LLC ("Company"), its affiliates and their employees and agents, and against any individuals or persons for whom or with whom Company may be acting." If there is an exposure of injury to Seller's employees under the U.S. Longshoremen's and Harbor Workers' Compensation Act, the Jones Act or under laws, regulations or statutes applicable to maritime employees, coverage will be included for such injuries or claims.

13. Indemnification.

- (a) "Buyer Group" means Buyer, its Affiliates, and its and their officers, employees, and agents.
- (b) "Seller Group" means Seller, its Affiliates, and its and their officers, employees, subcontractors, if subcontracting is permitted, or agents.
- (c) "Claims" means all suits, actions, losses, damages, claims, or liability of any character, type, or description, including, without limiting the generality of the foregoing, all expenses of litigation, court costs, and attorneys' fees.
- (d) Seller's Indemnities.
 - (1) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, SELLER WILL RELEASE AND INDEMNIFY, DEFEND, AND SAVE HARMLESS BUYER GROUP FROM AND AGAINST ALL CLAIMS FOR INJURY OR DEATH TO, OR DISEASE OF, ANY THIRD PARTY, SELLER GROUP, OR BUYER GROUP ARISING OUT OF, OR OCCASIONED BY, THE ACTS OR OMISSIONS OF SELLER GROUP IN THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT.

- (2) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, SELLER WILL INDEMNIFY, DEFEND, AND SAVE HARMLESS BUYER GROUP FROM AND AGAINST ALL CLAIMS FOR DAMAGE TO ANY PROPERTY, INCLUDING, BUT NOT LIMITED TO, ENVIRONMENTAL CONTAMINATION, RECEIVED OR SUSTAINED BY ANY PERSON OR PROPERTY, INCLUDING, BUT NOT LIMITED TO, SELLER GROUP AND BUYER GROUP, TO THE EXTENT ARISING OUT OF, OR OCCASIONED BY, THE ACTS OR OMISSIONS OF SELLER GROUP IN THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT, EXCEPT TO THE EXTENT CAUSED BY THE NEGLIGENCE OR FAULT, BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, OR BREACH OF CONTRACT OF BUYER GROUP.
 - (3) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, SELLER WILL INDEMNIFY, DEFEND, AND SAVE HARMLESS BUYER GROUP FROM AND AGAINST ALL CLAIMS RESULTING FROM OR ARISING OUT OF INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT, OR OTHER INTELLECTUAL PROPERTY RIGHT DUE TO SERVICES PERFORMED PURSUANT TO THIS AGREEMENT, OR DUE TO THE POSSESSION, MANUFACTURE, USE, OR SALE OF ANY METHOD, STRUCTURE, APPARATUS, MATERIAL, OR OTHER OBJECT OR DOCUMENTATION PROVIDED BY SELLER GROUP PURSUANT TO THIS AGREEMENT, EXCEPT TO THE EXTENT CAUSED BY THE NEGLIGENCE OR FAULT, BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, OR BREACH OF CONTRACT OF BUYER GROUP.
- (e) Buyer's Indemnity. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BUYER WILL INDEMNIFY, DEFEND, AND SAVE HARMLESS SELLER GROUP FROM AND AGAINST ALL CLAIMS FOR INJURY OR DEATH TO, OR DISEASE OF, ANY THIRD PARTY, SELLER GROUP, OR BUYER GROUP OR FOR DAMAGE TO ANY PROPERTY, INCLUDING, BUT NOT LIMITED TO, ENVIRONMENTAL CONTAMINATION, RECEIVED OR SUSTAINED BY ANY PERSON OR PROPERTY, INCLUDING, BUT NOT LIMITED TO, SELLER GROUP AND BUYER GROUP, TO THE EXTENT ARISING OUT OF, OR OCCASIONED BY, THE NEGLIGENT ACTS OF BUYER GROUP IN THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT.
- (f) Proportionate Responsibility. IN INSTANCES WHERE BOTH PARTIES ARE TO SOME DEGREE RESPONSIBLE FOR A CLAIM DESCRIBED IN THIS SECTION 13, THE PARTIES WILL INDEMNIFY EACH OTHER TO THE

EXTENT OF THEIR PROPORTIONATE RESPONSIBILITY FOR SUCH CLAIM.

14. Limitation of Liability. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR LOSS OF PROFITS OR FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF SELLER'S SERVICES, WHETHER BASED ON CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE; provided, however, any other provision to contrary in this Agreement notwithstanding, the foregoing limitation will not apply in instances of Seller's or Buyer's gross negligence or willful misconduct.

15. Force Majeure.

- (a) Neither Party will be liable to the other Party if it is rendered unable by an event of Force Majeure to perform in whole or in part any obligation or condition of this Agreement for so long as the event of Force Majeure exists and to the extent performance is hindered by the event of Force Majeure; provided, however, the Party unable to perform will use all commercially reasonable efforts to avoid or remove the event of Force Majeure. During the period a Party's performance of its obligations has been suspended in whole or part by reason of an event of Force Majeure, the other Party likewise may suspend the performance of all or part of its obligations to the extent such suspension is commercially reasonable, except for any payment and indemnification obligations. The Party rendered unable to perform will give notice to the other Party within a reasonable time after learning of the occurrence of a Force Majeure event. Such notice will state the nature and extent of the Force Majeure condition claimed, the expected duration of the Force Majeure event, and the degree of Services affected. The suspension of performance afforded by this Section 15 will not apply until such notice is given and will not be available to a Party failing to use reasonable diligence to remedy the situation and remove the cause in an adequate manner and with all reasonable dispatch. The requirement that any Force Majeure be remedied with all reasonable dispatch will not require the settlement of strikes or labor controversies by acceding to the demands of the opposing party or parties. For the avoidance of doubt, a change of economic, monetary, or fiscal circumstances rendering this Agreement uneconomic for either Party will not in and of itself constitute Force Majeure.
- (b) The term "Force Majeure" will mean any cause not within the reasonable control of the Party claiming suspension and which by the exercise of due diligence by such Party could not have prevented, including, but not limited to, physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes resulting in evacuation, floods, washouts, explosions, machinery malfunctions or breakdowns, inability to obtain fuel, power, or materials necessary for production, deficient transportation, electric power outages, strikes, lockouts, or other industrial disturbances, acts of a public

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enemy, sabotage, wars, blockades, insurrections, riots, acts of terror, and compliance with any law, order, rule, or regulation of any governmental agency; for the avoidance of doubt, a change of economic, monetary, or fiscal circumstances rendering this Agreement uneconomic for a Party will not in and of itself constitute Force Majeure.

16. Survivability. THE PROVISIONS OF THIS AGREEMENT WHICH, BY THE NATURE OF THEIR CONTENT, ARE INTENDED, EXPRESSLY OR IMPLIEDLY, TO CONTINUE AND HAVE EFFECT REGARDLESS OF THE TERMINATION OF THIS AGREEMENT WHETHER BY DEFAULT OR OTHERWISE, WILL SURVIVE AND CONTINUE TO BIND THE PARTIES, INCLUDING, BUT NOT LIMITED TO, SECTIONS 5(b), 7(c), 13, AND 14.
17. Confidentiality. The Parties agree this Agreement, the terms and conditions hereof, and all information and data exchanged by the Parties in accordance with this Agreement will be maintained in strict and absolute confidence, except to the extent disclosure is necessary to perform a Party's obligations or as required by law.
18. Assignment. This Agreement will not be assignable or transferable by either Buyer or Seller without the prior written consent of the other, which consent will not be unreasonably withheld, and any attempted assignment or transfer without such consent will be void. All covenants and provisions of this Agreement by and for the benefit of the Parties will bind and inure to the benefit of their respective successors and assigns as permitted by the provisions of this Section 18.
19. No Third-Party Beneficiaries. This Agreement is intended solely for the benefit of the Parties and their permitted assigns and will not impart rights enforceable by any other person or entity, except as expressly provided in this Agreement.
20. Entirety of the Agreement.
 - (a) This Agreement constitutes the entire agreement between Buyer and Seller with respect to the Services sold pursuant to this Agreement and supersedes and replaces any prior agreement between the Parties with respect thereto, except with respect to obligations already accrued at the time of execution of this Agreement. There are no oral representations, stipulations, warranties, agreements or understandings with respect to the subject matter of this Agreement which are not fully expressed herein, and neither this Agreement nor its execution has been induced by any representation, stipulation, warranty, agreement, or understanding of any kind other than those expressed in writing in this Agreement.
 - (b) No amendment, addition to, alteration, modification, extension, release, or waiver of all or any part of this Agreement, whether by acknowledgment or acceptance by Buyer of purchase order forms or other documents stipulating additional or different terms or conditions, or otherwise, will be binding upon Buyer or of any force or effect unless agreement thereto is expressed in writing and signed by an

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authorized representative of Seller and an officer of Buyer. If the provisions of this Agreement and the provisions of any purchase order, order acknowledgment, or other similar document written in connection with this Agreement conflict, then the provisions of this Agreement will prevail. Nothing contained in this Agreement, nor any course of conduct or series of sales or transactions will imply or be construed to impose any obligation on Seller or Buyer, or to constitute a contract between Seller and Buyer, for the purchase or sale of any additional quantities of Services other than those either expressly addressed by this Agreement or elsewhere expressly agreed to in a writing signed by an authorized representative of both Parties.

20. Construction and Interpretation. The Parties hereby agree and represent that each has had adequate time to review the terms and conditions of this Agreement with their own legal counsel and that this Agreement was not prepared by either Party to the exclusion of the other and as such, this Agreement will not be construed against either Party by reason of its preparation.
21. Non-waiver. No waiver by either Party of one or more defaults by the other Party in the performance of any of the provisions of this Agreement will operate or be construed as a waiver of any other or further default or defaults, whether of a like or different character.
22. Severability. The invalidity or unenforceability of any particular provision of this Agreement will not affect the other provisions hereof, and this Agreement will be construed in all respects as if such invalid or unenforceable provision was omitted; in particular, in the event that the indemnity obligations in Sections 5(b), 7(c), and 13 herein are deemed violative of TEX. INS. CODE § 151.102, or the insurance provisions of Section 12 herein are deemed violative of TEX. INS. CODE § 151.104, and neither an exception under TEX.INS. CODE § 151.103, nor an exception/exclusion under TEX.INS. CODE § 151.104(b), nor an exclusion under TEX. INS. CODE § 151.105 applies, then such indemnity obligations will be void and unenforceable only to the extent Claims are caused by the negligence or fault, breach or violation of a statute, ordinance, governmental regulation, standard, or rule, or breach of contract of Buyer Group and such insurance provisions will be severed and construed in accordance with this Section 22.
23. Conspicuousness. The Parties acknowledge the provisions of this Agreement comply with any and all requirements of conspicuousness under the laws of the State of Texas.
24. Headings. The titles and headings set forth in this Agreement have been included solely for ease of reference and will not be considered in the interpretation or construction of this Agreement.
25. Counterparts. This Agreement may be executed and delivered in one or more counterparts, and by the different Parties in separate counterparts, each of which when

executed and delivered will be deemed to be an original, but all of which taken together will constitute one and the same agreement.

26. Jurisdiction and Venue. This Agreement will be governed by and construed in accordance with the laws of the State of Texas, excluding any choice of law rules which may direct the application of the laws of any other jurisdiction. Any suit, action, or proceeding relating to or arising from this Agreement must be brought exclusively in the state or federal courts of Harris County, Texas, and Buyer and Seller hereby waive, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of venue of such suit, action, or proceeding in such court or that any such suit, action, or proceeding which is brought in such court has been brought in an inconvenient forum.
27. Dispute Resolution.
- (a) With respect to any claims, counterclaims, demands, causes of action, disputes, controversies, and other matters in question arising out of or relating to this Agreement, including any questions regarding its existence, validity, or termination, any provision hereof, the alleged breach thereof, or in any way relating to the subject matter of this Agreement or the relationship between the Parties created by this Agreement, involving the Parties and not resolved in the ordinary course of business (hereafter "Dispute"), a Party must initiate the dispute resolution procedures set forth below.
 - (1) A Party desiring to initiate dispute resolution must give written notice of the Dispute to the other Party (hereafter "Dispute Notice"). The Dispute Notice will include (A) a statement of that Party's position and a summary of arguments supporting that position, and (B) the name and title of the executive who will represent that Party, and of any other person who will accompany the executive, in the negotiations.
 - (2) Executives appointed to represent the Parties pursuant to any Dispute Notice must have the authority to settle the controversy and must be of a level of management higher than those directly involved in the Dispute.
 - (3) If one Party has issued a Dispute Notice, the Parties will promptly attempt in good faith to resolve the Dispute by negotiations between the executives so appointed.
 - (b) Should a Dispute fail to be resolved pursuant to Section 27(a) within thirty (30) days of receipt of the Dispute Notice, either Party may seek whatever remedies available at law or in equity subject to the limitations set forth in Section 26.
28. Time of the Essence. The Parties acknowledge and agree time is of the essence in the performance of this Agreement.

[Signature Page Follows]

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IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

Seller

Rail Link, Inc.

By:

Wm A. Jasper

Printed
Name:

William A. Jasper

Title:

President

Buyer

INEOS Olefins & Polymers USA,
a division of INEOS USA LLC

By:

CT Saunders

Printed
Name:

CHARLES T. SAUNDERS

Title:

GENERAL COUNSEL

STP
for

Exhibit A

Scope of Work

Redacted

Exhibit B

Compensation

Yearly Compensation.

1. Calendar Year 2013:

(a) Railcar Switching:

- i. [REDACTED]
[REDACTED]
- ii. BMC ([REDACTED])
[REDACTED]
[REDACTED]

(b) Railcar Wash:

- i. CBW [REDACTED]
[REDACTED]
- ii. BMC ([REDACTED])
[REDACTED]
[REDACTED]

(c) Mini Shop:

- i. CBW: [REDACTED]
[REDACTED]
[REDACTED]
- ii. BMC: [REDACTED]
[REDACTED]
[REDACTED]

(d) Other Labor Hours:

- i. CBW – [REDACTED]
[REDACTED]
- ii. BMC – [REDACTED]
[REDACTED]
[REDACTED]

2. Calendar Year 2014:

(a) Railcar Switching:

- i. CBW [REDACTED]
[REDACTED]

ii. BMC

(b) Railcar Wash:

i. CBW

1.

ii. BMC

(c) Mini Shop:

i. CBW:

ii. BMC:

(d) Other Labor Hours:

i. CBW –

ii. BMC –

3. Calendar Year 2015:

(a) Railcar Switching:

i. CBW

ii. BMC

(b) Railcar Wash:

i. CBW

ii. BMC

1. [REDACTED]

(c) Mini Shop:

- i. CBW: [REDACTED]
[REDACTED]
- ii. BMC: [REDACTED]
[REDACTED]

(d) Other Labor Hours:

- i. CBW – [REDACTED]
[REDACTED]
- ii. BMC – [REDACTED]
[REDACTED]
[REDACTED]

4. Calendar Year 2016:

(a) Railcar Switching:

- i. CBW [REDACTED]
[REDACTED]
[REDACTED]
- ii. BMC ([REDACTED]
[REDACTED]
[REDACTED]

(b) Railcar Wash:

- i. CBW [REDACTED]
[REDACTED]
[REDACTED]
- ii. BMC ([REDACTED]
[REDACTED]
[REDACTED]

(c) Mini Shop:

- i. CBW: [REDACTED]
[REDACTED]
- ii. BMC: [REDACTED]
[REDACTED]

(d) Other Labor Hours:

- i. CBW – [REDACTED]
[REDACTED]

- ii. BMC – [REDACTED]
[REDACTED]
[REDACTED]

5. Calendar Year 2017:

(a) Railcar Switching:

- i. CBW ([REDACTED]
[REDACTED]
[REDACTED]
- ii. BMC [REDACTED]
[REDACTED]
[REDACTED]

(b) Railcar Wash:

- i. CBW ([REDACTED]
[REDACTED]
[REDACTED]
- ii. BMC [REDACTED]
[REDACTED]
[REDACTED]

(c) Mini Shop:

- i. CBW: [REDACTED]
[REDACTED]
- ii. BMC: [REDACTED]
[REDACTED]

(d) Other Labor Hours:

- i. CBW – [REDACTED]
[REDACTED]
- ii. BMC – [REDACTED]
[REDACTED]
[REDACTED]

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Parts:

- (a) Outlet gates: Buyer will continue to use Outlet Works of Texas for return/supply of outlet gates. Seller will manage inventory (delivery, return, and timing).
- (b) Small Parts: Buyer will continue to use Salco Products for supply of small parts for mini shop and car wash. Salco will manage inventory on a consignment basis in co-ordination with Seller.
- (c) All other consumables and parts will be paid by Seller and invoiced to Buyer at delivered cost plus three percent (3%); any mark-up on costs for third party maintenance and labor, consumables, and spare parts invoiced directly to Buyer is prohibited. Buyer will only pay for parts listed on the BRC invoice.
- (d) Buyer and Seller will develop a list of parts that Seller will be responsible for sourcing.

FIRST AMENDMENT TO SITE SERVICES AGREEMENT

This First Amendment to Site Services Agreement (hereinafter "Amendment") is made effective as of January 30, 2015 (hereinafter "Effective Date"), by and between INEOS Olefins & Polymers USA, a division of INEOS USA LLC (hereinafter "INEOS"), and Rail Link, Inc. (hereinafter "RLI").

WHEREAS, INEOS and RLI are parties to that certain *Site Services Agreement All 12 01085* effective as of February 1, 2013 (hereinafter "Agreement"); and,

WHEREAS, INEOS and RLI desire to amend the Agreement in accordance with this Amendment;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein expressed, and for other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Terms capitalized herein and not otherwise defined will have the meanings ascribed to such terms in the Agreement.
2. *Exhibit A, Scope of Work (SOW), Section A-2* of the Agreement is modified by adding the following text to the end thereof:

"Supplemental Services:

Notwithstanding anything to the contrary contained herein, if at any time BUYER has a need for additional throughput of hopper cars at either BMC or CBW, BUYER and SELLER acknowledge and agree that SELLER will make available, upon BUYER's written request, such personnel as are necessary to accomplish the additional car wash services requested by BUYER in accordance with the requirements specified herein (hereinafter "Supplemental Services").

Supplemental Services to be provided by SELLER and the work schedule associated therewith will be confirmed in writing to BUYER from SELLER within two (2) business days of SELLER's receipt of BUYER's written request for Supplemental Services."

3. *Exhibit B, Compensation*, of the Agreement is modified by adding the following text to the end thereof:

"Compensation for Supplemental Services:

The rates set forth below apply to the provision of Supplemental Services at CBW. For BMC, the Parties shall agree the rates applicable to the Supplemental Services prior to the provision thereof. For the avoidance of doubt, the Supplemental Services may only be provided if the weekly labor hours for railcar wash services set forth above in this Exhibit B are exceeded.

1. Calendar year 2015:

(a)
(b)

2. Calendar year 2016:

(a)
(b)

3. Calendar year 2017:

(a)
(b)

[End]"

4. The Agreement, as amended by this Amendment, will remain and continue in full force and effect, will constitute a legal, valid, and binding obligation of INEOS and RLI, and is in all respects agreed to, ratified, and confirmed hereby.
5. Any reference to the Agreement after the Effective Date will be deemed a reference to the Agreement as amended by this Amendment.
6. This Amendment will be construed in accordance with, and governed by, the laws of the State of Texas, excluding any choice of law rules which may direct the application of the laws of any other jurisdiction.
7. This Amendment may be executed and delivered in the original, by facsimile, by Portable Document Format (PDF), or by any other generally accepted electronic means, in one or more counterparts, and by the different Parties hereto in separate counterparts, each of which when executed and delivered will be deemed an original, but all of which taken together will constitute one and the same agreement.

[Signature Page Follows]

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IN WITNESS WHEREOF, the Parties have executed this Amendment as of the Effective Date.

INEOS

RLI

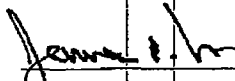
INEOS Olefins & Polymers USA,
a division of INEOS USA LLC

Rail Link, Inc.

By:



By:



Printed
Name:

Dennis J. Serth

Printed
Name:

JAMES E. DEVIN

Title:

CEO & President

Title:

PRESIDENT



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SECOND AMENDMENT TO SITE SERVICES AGREEMENT

This Second Amendment to Site Services Agreement (hereinafter "Amendment") is made effective as of August 17, 2015 (hereinafter "Effective Date"), by and between INEOS Olefins & Polymers USA, a division of INEOS USA LLC (hereinafter "INEOS"), and Rail Link, Inc. (hereinafter "RLI").

WHEREAS, INEOS and RLI are parties to that certain *Site Services Agreement All 12 01085* effective as of February 1, 2013, as amended by that certain *First Amendment to Site Services Agreement* effective January 30, 2015 (hereinafter, collectively "Agreement"); and,

WHEREAS, INEOS and RLI desire to amend the Agreement in accordance with this Amendment;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein expressed, and for other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Terms capitalized herein and not otherwise defined will have the meanings ascribed to such terms in the Agreement.
2. *Exhibit A, Scope of Work (SOW), Section A-1* of the Agreement is modified by adding the following text to the end thereof:

"Supplemental Switching Services:

Notwithstanding anything to the contrary contained herein, if at any time BUYER has a need for additional in plant switching of hopper cars at either BMC or CBW, BUYER and SELLER acknowledge and agree that SELLER will make available, upon BUYER'S written request, such personnel and equipment as are necessary to accomplish the additional hopper car switching services requested by BUYER in accordance with the requirements specified herein (hereinafter "Supplemental Switching Services").

Supplemental Switching Services to be provided by SELLER and the work schedule associated therewith will be confirmed in writing to BUYER from SELLER within two (2) business days of SELLER's receipt of BUYER's written request for Supplemental Switching Services."

3. *Exhibit B, Compensation*, of the Agreement is modified by adding the following text to the end thereof:

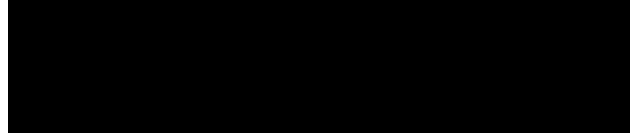
"Compensation for Supplemental Switching Services:

The rates set forth below apply to the provision of Supplemental Switching Services at BMC. For CBW, the Parties will agree the rates applicable to the Supplemental Switching Services prior to the provision thereof. For the avoidance of doubt, the

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Supplemental Switching Services may only be provided if the weekly labor hours for in plant switching of railcars set forth in this Exhibit B are exceeded.

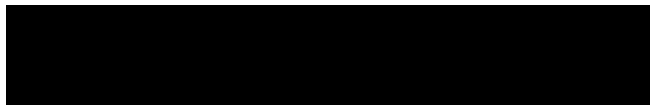
1. Calendar year 2015:



2. Calendar year 2016:



3. Calendar year 2017:



[End]"

4. The Agreement, as amended by this Amendment, will remain and continue in full force and effect, will constitute a legal, valid, and binding obligation of INEOS and RLI, and is in all respects agreed to, ratified, and confirmed hereby.
5. Any reference to the Agreement after the Effective Date will be deemed a reference to the Agreement as amended by this Amendment.
6. This Amendment will be construed in accordance with, and governed by, the laws of the State of Texas, excluding any choice of law rules which may direct the application of the laws of any other jurisdiction.
7. This Amendment may be executed and delivered in the original, by facsimile, by Portable Document Format (PDF), or by any other generally accepted electronic means, in one or more counterparts, and by the different Parties hereto in separate counterparts, each of which when executed and delivered will be deemed an original, but all of which taken together will constitute one and the same agreement.

[Signature Page Follows]

PUBLIC VERSION - REDACTED

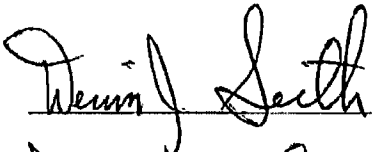
IN WITNESS WHEREOF, the Parties have executed this Amendment as of the Effective Date,

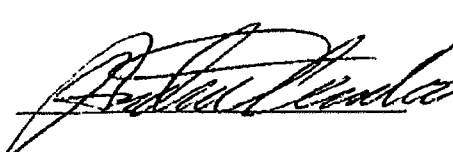
INEOS

RLI

INEOS Olefins & Polymers USA,
a division of INEOS USA LLC

Rail Link, Inc.

By: 

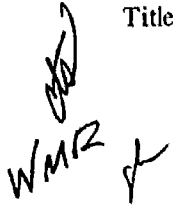
By: 

Printed
Name: Dennis J. Seith

Printed
Name: Andrew T. Chumko

Title: CEO & President

Title: President



All 12 01085

THIRD AMENDMENT TO SITE SERVICES AGREEMENT

This Third Amendment to Site Services Agreement (hereinafter "Amendment") is made effective as of September 1, 2016 (hereinafter "Amendment Effective Date"), by and between INEOS Olefins & Polymers USA, a division of INEOS USA LLC (hereinafter "INEOS"), and Rail Link, Inc. (hereinafter "RLI").

WHEREAS, INEOS and RLI are parties to that certain *Site Services Agreement All 12 01085* effective as of February 1, 2013, as amended by that certain *First Amendment to Site Services Agreement* effective January 30, 2015, and further amended by that certain *Second Amendment to Site Services Agreement* effective August 17, 2015 (hereinafter, collectively "Agreement"); and,

WHEREAS, INEOS and RLI desire to amend the Agreement in accordance with this Amendment;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein expressed, and for other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Terms capitalized herein and not otherwise defined will have the meanings ascribed to such terms in the Agreement.
2. Section 1 (*Term*) of the Agreement is modified by striking the current text and substituting the following:

"This Agreement commences on the Effective Date and expires January 31, 2020 (hereinafter "Term"). The foregoing notwithstanding, Buyer may terminate this Agreement for any reason by giving at least ninety (90) days written notice to Seller of its intent to terminate. This Agreement may also be terminated by Seller if Buyer breaches a material obligation under this Agreement, including any failure to make timely payment or reimbursement of amounts due under this Agreement, and Buyer has not cured such breach or is not diligently working to cure such breach within thirty (30) days of written notice of such breach given by Seller, by giving Buyer a written termination notice stating the date such termination is to be effective, such date to be no earlier than one hundred fifty (150) days after expiration of the aforementioned cure period."

3. *Exhibit B, Compensation*, attached to and made a part of the Agreement is modified by striking the current text and substituting in its place *Exhibit B, Compensation*, attached hereto and incorporated by reference for all purposes.
4. The Agreement, as amended by this Amendment, will remain and continue in full force and effect, will constitute a legal, valid, and binding obligation of INEOS and RLI, and is in all respects agreed to, ratified, and confirmed hereby.

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5. Any reference to the Agreement after the Amendment Effective Date will be deemed a reference to the Agreement as amended by this Amendment.
6. This Amendment will be construed in accordance with, and governed by, the laws of the State of Texas, excluding any choice of law rules which may direct the application of the laws of any other jurisdiction.
7. This Amendment may be executed and delivered in the original, by facsimile, by Portable Document Format (PDF), or by any other generally accepted electronic means, in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed and delivered will be deemed an original, but all of which taken together will constitute one and the same agreement.

[Signature Page Follows]

PUBLIC VERSION - REDACTED

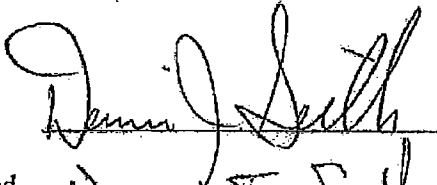
IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the Amendment Effective Date.

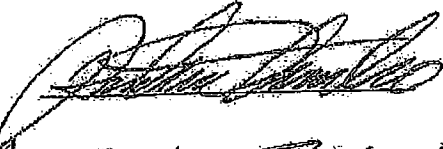
INEOS

RLI

INEOS Olefins & Polymers USA,
a division of INEOS USA LLC

Rail Link, Inc.

By: 

By: 

Printed
Name: Dennis J. Smith

Printed
Name: Andrew T. Chumko

Title: CEO & President

Title: President

WMS

PUBLIC VERSION - REDACTED

Exhibit B – Compensation

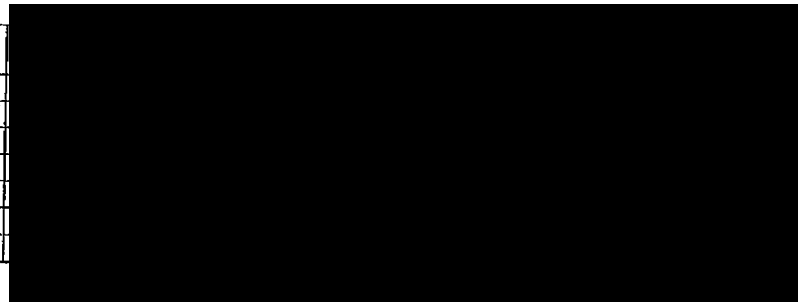
BMC

BMC hourly rates by craft as of:	September 1, 2016		January 1, 2017	
Functional Areas	2016 Average Base Wage	2016 Billing Rate	2017 Average Base Wage	2017 Billing Rate
Car Wash Lead				
Car Wash Lead Overtime				
Car Wash Operator				
Car Wash Operator Overtime				
Rail Switching Lead				
Rail Switching Lead Overtime				
Rail Switching Operator				
Rail Switching Operator Overtime				
Track Walker				
Track Walker Overtime				
Yardmaster				
Yardmaster Overtime				

BMC hourly rates by craft as of:	January 1, 2018		January 1, 2019	
Functional Areas	2018 Average Base Wage	2018 Billing Rate	2019 Average Base Wage	2019 Billing Rate
Car Wash Lead				
Car Wash Lead Overtime				
Car Wash Operator				
Car Wash Operator Overtime				
Rail Switching Lead				
Rail Switching Lead Overtime				
Rail Switching Operator				
Rail Switching Operator Overtime				
Track Walker				
Track Walker Overtime				
Yardmaster				
Yardmaster Overtime				

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BMC Monthly Rates as of:
Site Manager
Car Wash Supervisor
Rail Switching Supervisor
Mechanic (.5) split with CBW
Locomotives (4)
Safety Manager (.5) split with CBW
Safety Manager Vehicle (.5)



CBW

CBW hourly rates by craft as of:	September 1, 2016		January 1, 2017	
	2016 Average Base Wage	2016 Billing Rate	2017 Average Base Wage	2017 Billing Rate
Functional Areas				
Car Wash Lead				
Car Wash Lead Overtime				
Car Wash Operator				
Car Wash Operator Overtime				
Rail Switching Lead				
Rail Switching Lead Overtime				
Rail Switching Operator				
Rail Switching Operator Overtime				

CBW hourly rates by craft as of:	January 1, 2018		January 1, 2019	
	2018 Average Base Wage	2018 Billing Rate	2019 Average Base Wage	2019 Billing Rate
Functional Areas				
Car Wash Lead				
Car Wash Lead Overtime				
Car Wash Operator				
Car Wash Operator Overtime				
Rail Switching Lead				
Rail Switching Lead Overtime				
Rail Switching Operator				
Rail Switching Operator Overtime				

PUBLIC VERSION - REDACTED

CBW Monthly Rates as of:	January 01, 2016 Monthly	January 01, 2017 Monthly	July 01, 2017 Monthly	January 01, 2018 Monthly	January 01, 2019 Monthly
Site Manager					
Car Wash Supervisor					
Mechanic (.5) split with BMC					
Locomotives (2)					
Safety Manager (.5) split with BMC					
Safety Manager Vehicle (.5)					

Mini Shop

BMC & CBW

September 1, 2016

January 1, 2017

January 1, 2018

January 1, 2019

Alt 12 01085

FOURTH AMENDMENT TO SITE SERVICES AGREEMENT

This Fourth Amendment to Site Services Agreement (hereinafter: "Amendment") is made effective as of April 1, 2018 (hereinafter "Amendment Effective Date"), by and between INEOS Olefins & Polymers USA, a division of INEOS USA LLC (hereinafter "INEOS"), and Rail Link, Inc. (hereinafter "RLI").

WHEREAS, INEOS and RLI are parties to that certain *Site Services Agreement Alt 12 01085* effective as of February 1, 2013, as amended by that certain *First Amendment to Site Services Agreement* effective January 30, 2015, as amended by that certain *Second Amendment to Site Services Agreement* effective August 17, 2015, and further amended by that certain *Third Amendment to Site Services Agreement* effective September 1, 2016 (hereinafter, collectively "Agreement"); and,

WHEREAS, INEOS and RLI desire to amend the Agreement in accordance with this Amendment;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein expressed, and for other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Terms capitalized herein and not otherwise defined will have the meanings ascribed to such terms in the Agreement.
2. *Exhibit B, Compensation*, attached to and made a part of the Agreement is modified by striking the current text and substituting in its place *Exhibit B, Compensation*, attached hereto and incorporated by reference for all purposes.
3. The Agreement, as amended by this Amendment, will remain and continue in full force and effect, will constitute a legal, valid, and binding obligation of INEOS and RLI, and is in all respects agreed to, ratified, and confirmed hereby.
4. Any reference to the Agreement after the Amendment Effective Date will be deemed a reference to the Agreement as amended by this Amendment.
5. This Amendment will be construed in accordance with, and governed by, the laws of the State of Texas, excluding any choice of law rules which may direct the application of the laws of any other jurisdiction.
6. This Amendment may be executed and delivered in the original, by facsimile, by Portable Document Format (PDF), or by any other generally accepted electronic means, in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed and delivered will be deemed an original, but all of which taken together will constitute one and the same agreement.

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Execution Version

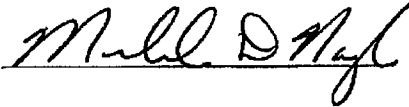
IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the Amendment Effective Date.

INEOS

RLI

INEOS Olefins & Polymers USA,
a division of INEOS USA LLC

Rail Link, Inc.

By: 

By: 

Printed
Name: MICHAEL D NAGLE

Printed
Name: Andrew T. Chumko

Title: CEO

Title: President

WMD



PUBLIC VERSION - REDACTED

Exhibit B – Compensation

BMC

BMC hourly rates by craft as of:	January 01, 2018		April 01, 2018		January 01, 2019	
	2018 Average Base Wage	2018 Billing Rate	2018 Average Base Wage	2018 Billing Rate	2019 Average Base Wage	2019 Billing Rate
Functional Areas						
Car Wash Lead Car Wash Lead Overtime Car Wash Operator Car Wash Operator Overtime Rail Switching Lead Rail Switching Lead Overtime Rail Switching Operator Rail Switching Operator Overtime Track Walker Track Walker Overtime Yardmaster Yardmaster Overtime						

BMC Management Rates as of:	January 01, 2018		April 01, 2018		January 01, 2019	
	2018 Monthly Salary	2018 Billing Rate	2018 Monthly Salary	2018 Billing Rate	2019 Monthly Salary	2019 Billing Rate
Functional Areas						
Site Manager Car Wash Supervisor Rail Switching Supervisor Mechanic (split 50/50 with CBW) Safety Manager (split 50/50 with CBW) Safety Manager - Auto Locomotives (3 @ \$, + 1 @ \$. Rebuilt 1500 hp locos = \$ ea. / mo. Q2 2018 delivery						

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CBW

CBW hourly rates by craft as of:	January 01, 2018		April 01, 2018		January 01, 2019	
	2018 Average	2018 Billing	2018 Average	2018 Billing	2019 Average	2019 Billing
Functional Areas	Base Wage	Rate	Base Wage	Rate	Base Wage	Rate
Car Wash Lead						
Car Wash Lead Overtime						
Car Wash Operator						
Car Wash Operator Overtime						
Rail Switching Lead						
Rail Switching Lead Overtime						
Rail Switching Operator						
Rail Switching Operator Overtime						
Yardmaster						
Yardmaster Overtime						

CBW Management Rates as of:	January 01, 2018		April 01, 2018		January 01, 2019	
	2018 Monthly	2018 Billing	2018 Monthly	2018 Billing	2019 Monthly	2019 Billing
Functional Areas	Salary	Rate	Salary	Rate	Salary	Rate
Site Manager						
Car Wash Supervisor						
Mechanic (split 50/50 with BMC)						
Safety Manager (split 50/50 with BMC)						
Safety Manager - Auto						
Locomotives (2 @ \$5,690 ea.)						
Rebuilt 1500 hp loco = \$8,890 ea. / mo.						
Q2 2018 delivery						

Mini Shop

BMC and CBW