

Non-Passenger Train Licence

granted to

**English Welsh & Scottish Railway
International Limited**

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Note: Conditions 3-7 and 13-18 are not used in this licence.

Part I - Scope

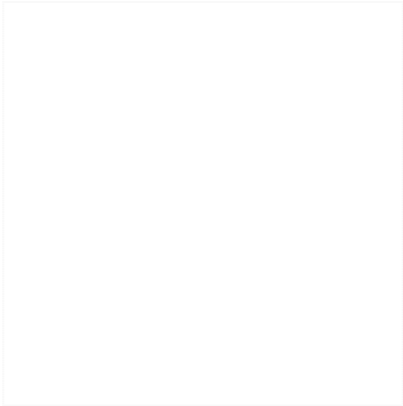
- 1. The Office of Rail Regulation ("ORR"), in exercise of the powers conferred by section 8 of the Railways Act 1993 (as amended) ("the Act"), hereby grants to English Welsh & Scottish Railway International Limited, company registration number 03232475 ("the licence holder") a licence authorising the licence holder:
 - (a) to be the operator of trains being used on a network otherwise than for the purpose of carrying passengers by railway;
 - (b) to be the operator of trains being used on a network for a purpose preparatory or incidental to, or consequential on, using a train as mentioned in (a) above; and
 - (c) to be the operator of trains being used on a network for the purpose of assisting other operators of railway assets

subject to the Conditions set out in Part III.

- 2. This licence shall come into force on 12 October 1996 and shall continue in force unless and until revoked in accordance with Part IV.

11 October 1996

Signed by authority of the
Office of Rail Regulation



Part II - Interpretation

1. In this licence:

“comply” is to be interpreted in accordance with ORR’s most recently published licensing guidance.

"control" (a) A person is taken to have control of the licence holder if he exercises, or is able to exercise or is entitled to acquire, direct or indirect control over the licence holder’s affairs, and in particular if he possesses or is entitled to acquire:

(i) 30% or more of any share capital or issued share capital of the licence holder or of the voting power in the licence holder; or

(ii) such part of any issued share capital of the licence holder as would, if the whole of the income of the licence holder were in fact distributed among the participators (without regard to any rights which he or any other person has as a loan creditor), entitle him to receive 30% or more of the amount so distributed; or

(iii) such rights as would, in the event of the winding-up of the licence holder or in any other circumstances, entitle him to receive 30% or more of the assets of the licence holder which would then be available for distribution among the participators.

(b) Subsections (4) to (6) of section 416 of the Income and Corporation Taxes Act 1988, and the legislative provisions referred to in those subsections, apply to the interpretation of paragraph (a) in the same way that they apply to the interpretation of subsection (2) of section 416 of that Act.

"licensed activities" means things authorised to be done by the licence holder in its capacity as operator of trains pursuant to this licence.

"RSSB" means Rail Safety and Standards Board Limited (a company limited by guarantee and registered in England and Wales under number 04655675), and its successors and assigns.

2. Any reference in this licence to a numbered paragraph is a reference to the paragraph bearing that number in the Condition in which the reference occurs.
3. In interpreting this licence, headings shall be disregarded.
4. Where in this licence the licence holder is required to comply with any obligation within a specified time limit, that obligation shall be deemed to continue after that time limit if the licence holder fails to comply with that obligation within that time limit.
5. Where in this licence there is a provision for ORR or the Secretary of State to give consent, such consent may be given subject to conditions.
6. The Interpretation Act 1978 shall apply to this licence as if it were an Act.
7. The provisions of section 149 of the Act shall apply for the purposes of the service of any document pursuant to this licence.
8. Unless the context otherwise requires, terms and expressions defined in the Act and the Railways Act 2005 shall have the same meanings in this licence.

Part III - Conditions

Condition 1: Insurance Against Third Party Liability

1. The licence holder shall, in respect of licensed activities, maintain insurance (including self-insurance) against third party liabilities on terms approved by ORR (including, but without limitation, with respect to the type, cover and level of insurance and identity of insurer), with any such modification as may be required pursuant to paragraph 3.
2. The licence holder shall, except where ORR may otherwise consent, ensure that every insurance policy maintained pursuant to paragraph 1 shall require 30 days' notice to be given to ORR by the insurer or insurance broker of any lapse or cancellation of or material change to the policy.
3. Where ORR notifies the licence holder that ORR reasonably requires any modification of the insurance approved by ORR pursuant to paragraph 1, the licence holder shall, no later than 60 days (or such longer period as ORR may approve) from the date of the notice, procure that such modification is made.
4. In this Condition:

"self-insurance" means the licence holder's financial capacity to meet any liability to a third party in respect of which the licence holder does not otherwise have insurance.

Condition 2: Claims Allocation and Handling

1. The licence holder shall, except in so far as ORR may otherwise consent, at all times be a party to and comply with such agreements or arrangements (as amended from time to time) relating to:
 - (a) the handling of claims against operators of railway assets; and
 - (b) the allocation of liabilities among operators of railway assetsas may have been approved by ORR.

2. Except with the consent of ORR, the licence holder shall not, in relation to any of the agreements or arrangements described in paragraph 1 (the "relevant claims handling arrangements"), enter into any agreement or arrangement with any other party to the relevant claims handling arrangements:
 - (a) under which the licence holder agrees not to exercise any rights which it may have under any of the relevant claims handling arrangements; or
 - (b) varying the relevant claims handling arrangementsother than as provided for under the terms of the relevant claims handling arrangements.

Condition 8: RSSB Membership

1. If the licence holder's annual turnover has never exceeded £1 million and the licence holder is not a franchise operator, paragraph 2 shall not have effect until the licence holder's annual turnover exceeds £1 million for the first time. The licence holder shall provide ORR with such information in respect of its annual turnover as ORR may from time to time require.
2. With effect from the date of the coming into force of this licence, the licence holder shall:
 - (a) become and thereafter remain a member of RSSB;
 - (b) comply with its obligations under the Constitution Agreement and the articles of association of RSSB;
 - (c) exercise its rights under the Constitution Agreement and the articles of association of RSSB so as to ensure that RSSB shall act in accordance with the Constitution Agreement; and
 - (d) comply with the Railway Group Standards Code prepared by RSSB.
3. When a licence holder first becomes subject to the obligations in paragraph 2 his rights, obligations and liabilities associated with such membership shall commence on the same day, and the licence holder shall complete the formal and legal documentation associated with such membership within three months of that date.
4. In this condition:

“franchise operator”	includes an operator of last resort, under section 30 of the Act.
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Condition 9: Railway Group Standards

1. The licence holder shall comply with the Railway Group Standards applicable to its licensed activities.
2. In this Condition:

"Railway Group Standards" means standards authorised pursuant to the Railway Group Standards Code prepared by RSSB.

Condition 10: Environmental Matters

1. The licence holder shall establish a written policy designed to protect the environment from the effect of licensed activities, together with operational objectives and management arrangements (together "the environmental arrangements").
2. The environmental arrangements shall:
 - (a) take due account of any relevant guidance issued by ORR;
 - (b) be effective within six months beginning with the day on which this licence comes into force; and
 - (c) be reviewed by the licence holder periodically, and otherwise as appropriate.
3. Nothing contained in paragraph 1 shall oblige the licence holder to undertake any action that entails excessive cost taking into account all the circumstances, including the nature and scale of operations of the type carried out by the licence holder.
4. The licence holder shall, upon establishment and any material modification of the environmental arrangements, promptly send ORR a current copy of the policy together with a summary of the operational objectives and management arrangements.
5. The licence holder shall act with regard to the policy and operational objectives and use its reasonable endeavours to operate the management arrangements effectively.

Condition 11: Payment of Fees

1. In respect of the year beginning on 1 April 1996 and in each subsequent year, the licence holder shall render to ORR a payment which is the aggregate of the following amounts:
 - (a) the annual fee applicable to this licence, as determined by ORR; and
 - (b) an amount which shall represent a fair proportion as determined by ORR of the amount estimated by ORR (in consultation with the Competition Commission) as having been incurred in the calendar year immediately preceding the 1 April in question by the Competition Commission in connection with references made to it under section 13 of the Act with respect to this licence or any class of licence of which ORR determines that this licence forms part.
2. The payment shall be rendered by the licence holder within such time as ORR may require, being not less than 30 days beginning with the day on which ORR gives notice to the licence holder of its amount.

Condition 12: Change of Control

1. The licence holder shall, if any person obtains control of the licence holder, notify ORR as soon as practicable thereafter.

Condition 19: Information on Rolling Stock and Prices

1. Rolling Stock

The licence holder shall provide to ORR not later than 30 April in each year (or such later date as ORR shall approve) a statement in a form approved by ORR specifying in respect of the relevant year expiring on 31 March in that year:

- (a) in respect of each category of goods wagons:
 - (i) the number of goods wagons in Great Britain owned by the licence holder or any affiliate or related undertaking of the licence holder at the end of the relevant year;
 - (ii) the number of such goods wagons used on less than 12 journeys for the carriage of goods during that relevant year; and
 - (iii) the number of such goods wagons available for disposal at the end of the relevant year;

- (b) in respect of each category of locomotive:
 - (i) the number of locomotives in Great Britain owned by the licence holder or any affiliate or related undertaking of the licence holder at the end of the relevant year;
 - (ii) the number of such locomotives recorded on a system for monitoring train movements approved by ORR as having hauled goods wagons during that relevant year for less than 100 hours in aggregate;
 - (iii) the number of such locomotives (other than any included in subparagraph (ii)) recorded on a system for monitoring train movements approved by ORR as having hauled rolling stock during that relevant year for 100 or more hours;
 - (iv) the number of such locomotives not used for haulage but retained as a source of spare parts for operational locomotives during that relevant year; and

- (v) the number of such locomotives available for disposal at the end of that relevant year;
- (c) in respect of the information provided under sub-paragraph (a) and (b) in relation to each category of goods wagon and locomotive the amount of any material change in the number from the previous statement submitted pursuant to paragraph 1, specifying (where appropriate) whether any change is a result of the goods wagon or locomotive:
 - (i) having previously appeared in a different category or sub-paragraph; or
 - (ii) having been purchased or disposed of.

For the purpose of sub-paragraph (c) a change shall be material if the result is more than 5.0% higher or lower than the number previously appearing or (in either case) such other percentage as ORR may, after consulting the licence holder, specify giving not less than three months notice thereof.

2. Prices

The licence holder shall provide to ORR not later than 30 April in each year (or such later date as ORR shall approve) a statement in a form approved by ORR from time to time specifying in respect of each customer or category of customer for whom the licence holder has carried goods (other than in relation to consignments of goods normally requiring less than a single goods wagon):

- (i) the average price per gross tonne mile (or such other unit of charge as ORR may, after consulting the licence holder, specify) for goods carried by railway during the relevant year (inclusive of any fixed or standing charge but excluding any charges relating to the carriage of such goods by non railway methods) charged by the licence holder;
- (ii) the change in the average price per gross tonne mile from the previous relevant year; and
- (iii) where the change shown in sub-paragraph (ii) is more than 10.0% lower or 5.0% higher than the number previously appearing (or such other percentages as ORR may, after

consulting the licence holder, specify, giving not less than three months notice thereof) the reasons for the change.

3. Category

For the purpose of paragraphs 1 and 2 “category” shall mean each of the categories specified by ORR by notice to the licence holder on or before the date on which this Condition comes into operation as varied from time to time by ORR after consulting the licence holder and giving not less than 3 months notice thereof.

4. Interpretation

In this Condition

“available for disposal” means surplus to operational requirements and capable of being sold, given, leased, licensed or otherwise disposed of to a third party taking into account all relevant information including, but not limited to the likelihood of any future operational requirements of the licence holder. For the avoidance of doubt operational requirements shall include use for spare parts and stand-by or emergency capacity;

“goods wagon” means any wagon or other vehicle used on track for the carriage of goods by railway other than:

- (a) carriages primarily intended for use by passengers;
- (b) vehicles primarily intended for the carriage of mail on behalf of the Post Office or any successor business to that carried on by the Post Office;

“journey” means a movement of rolling stock, not being an ancillary movement, for the purpose of fulfilling a contractual obligation of the licence holder to its customer;

“owned”	includes goods wagons or locomotives leased to the licence holder or any affiliate or related undertaking of the licence holder for a term of 7 years or more or including an option enabling the licence to extend a lease for less than 7 years to a term of 7 years or more; and
“relevant year”	means the period of 12 months ending on 31 March, but so that the first relevant year shall be the period commencing on 22 November 1997 and expiring on 31 March 1998.

Condition 20: Transactions

1. The licence holder shall, except in so far as ORR may otherwise determine, ensure that every transaction between a relevant business and any associated company or between two relevant businesses or between a relevant business and any other business is at arm's length so that neither gives to nor receives from the other any cross subsidy.
2. The licence holder shall prepare and deliver to ORR in respect of each relevant year of the licence holder and no later than four months after the end of each relevant year a statement in accordance with paragraph 3 of this Condition disclosing the transactions entered into between two relevant businesses or between any relevant business and any other business or any associated company.
3. The statement shall disclose in relation to each transaction of the description specified in paragraph 1 of this Condition which took place during the relevant year, the company or relevant business which was a party or which were parties to the transaction or which otherwise benefited from the transaction and information detailing:
 - (a) the amounts involved;
 - (b) the amounts due to or from the relevant business at the accounts date and provisions for doubtful debts due from such relevant businesses or associated companies at that date;
 - (c) amounts written off in the period in respect of debts to or from such businesses or companies; and
 - (d) the nature of the transaction (being a sale, lease, loan or other dealing (specifying the nature of that dealing)), the basis upon which the terms for the transaction were established and the nature of the goods or services to which it related.
4. Subject to paragraph 5, any amount required to be disclosed in relation to a transaction described in paragraph 1 may be aggregated with any amount related to any other transaction of the same type between the same parties.

ORR may, at the request of the licence holder, issue guidance as to transactions which are to be regarded as being of the same type.

5. If the amount to be disclosed under paragraph 3 in respect of any single transaction exceeds 0.5% of the turnover of that relevant business or £100,000, whichever is the greater, then that transaction shall not be aggregated under paragraph 4.
6. The licence holder shall, when ORR so requires, provide for the statement to be audited (at the expense of the licence holder) by the licence holder's auditors, for the purpose of assessing compliance with this Condition.
7. Nothing in this Condition shall require the disclosure of information which relates to a transaction wholly unconnected with a relevant business.
8. For the purposes of this condition:

“associated company” means any affiliated or related undertaking of the licence holder or of any holding company of the licence holder;

“other business” means any activity of the licence holder which is not a relevant business;

“relevant business” means each of the following activities carried on by the licence holder either alone or in conjunction with an associated company:

- (a) the provision of services for the carriage of goods by railway (including the carriage of parcels or mail for the Post Office);
- (b) the provision of services for the carriage of passengers by railway otherwise than as regular scheduled passenger services (commonly known as Charter services),

so that the activities provided under each of the paragraphs (a) and (b) is a separate relevant business; and

“relevant year”

means the period of 12 months ending on 31 March, but so that the first relevant year shall be the period commencing on 22 November 1997 and expiring on 31 March 1998.

Part IV - Revocation

1. ORR may (after having consulted the appropriate franchising authority where the licence holder is a franchise operator) revoke this licence at any time if agreed in writing by the licence holder.
2. ORR may (after having consulted the appropriate franchising authority where the licence holder is a franchise operator) revoke this licence by not less than three months notice to the licence holder:
 - (a) if a final order has been made, or a provisional order has been confirmed under section 55 of the Act, in respect of any contravention or apprehended contravention by the licence holder of any Condition, and the licence holder does not comply with the order within a period of three months beginning with the day on which ORR gives notice to the licence holder stating that this licence will be revoked pursuant to this term if the licence holder does not so comply; provided that ORR shall not give any such notice before the expiration of the period within which an application could be made under section 57 of the Act in relation to the order in question or before any proceedings relating to any such application are finally determined;
 - (b) if the licence holder has not commenced carrying on licensed activities within one year beginning with the day on which this licence comes into force or if the licence holder ceases to carry on licensed activities for a continuous period of at least one year;
 - (c) if the licence holder is convicted of an offence under section 146 of the Act in making its application for this licence; or
 - (d) if a person obtains control of the licence holder and:
 - (i) ORR has not approved such obtaining of control;
 - (ii) within one month of that obtaining of control coming to the notice of ORR, ORR serves notice on the licence holder stating that ORR proposes to revoke this licence in pursuance of this paragraph unless the person who has obtained control of the

licence holder ceases to have control of the licence holder within the period of three months beginning with the day of service of the notice; and

(iii) that cessation of control does not take place within that period.

3. ORR may (after having consulted the appropriate franchising authority where the licence holder is a franchise operator) revoke this licence by not less than 10 years notice, such notice not to be given earlier than 25 years after the date this licence takes effect.