

Network Licence

granted to

Freightliner Heavy Haul Limited

Table of contents

	PAGE
Part I - Scope.....	1
Part II - Interpretation	2
Part III - Conditions.....	4
Condition 1: Insurance Against Third Party Liability	4
Condition 2: Claims Allocation and Handling	5
Condition 9: Railway Group Standards	6
Condition 10: Environmental Matters	7
Condition 11: Payment of Fees	8
Condition 12: Change of Control	9
Condition 13: Non-Discrimination.....	10
Condition 14: Emergency Access.....	11
Part IV - Revocation.....	12
Schedule - List of Networks.....	14

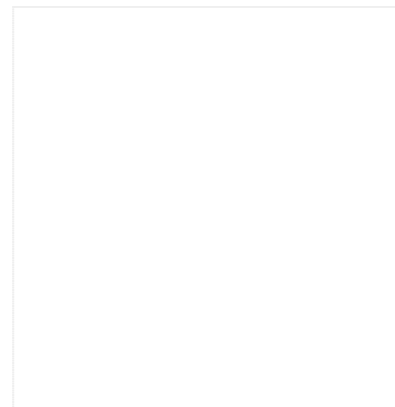
Note: Conditions 3 – 8 are not used in this licence.

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 Freightliner Heavy Haul Limited, company registration number 03831229, a licence authorising the licence holder:
 - (a) to be the operator of a network of the kinds specified in the Schedule;
 - (b) to be the operator of a train being used on any such network for any purpose comprised in the operation of that network; and
 - (c) to be the operator of a train being used on any such network for a purpose preparatory or incidental to, or consequential on, using a train as mentioned in paragraph (b) abovesubject to the Conditions set out in Part III.
2. This licence shall come into force on 14 February 2003 and shall continue in force unless and until revoked in accordance with Part IV.

14 February 2003

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 a network or trains pursuant to this licence; and

"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, level 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 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.
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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 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 2002 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 13: Non-Discrimination

1. Except in so far as ORR may otherwise consent, the licence holder shall not in its licensed activities, or in carrying out any other function contemplated by this licence, unduly discriminate between particular persons or between any classes or descriptions of person.

Condition 14: Emergency Access

1. During any emergency affecting the railway, the licence holder shall, to the extent that it is legally entitled to do so, grant to any person requesting it such permission to use any network of which the licence holder is the operator pursuant to this licence as is necessary or expedient to alleviate the effects of the emergency.

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; or
 - (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; or
 - (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 any person obtains control of the licence holder and:
 - (i) ORR has not approved that 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.

Schedule - List of Networks

1. Networks comprising marshalling yards, holding sidings and recess sidings;
2. Every network comprised in a railway goods terminal;
3. Every network which connects a light maintenance depot or track within a light maintenance depot to any part of a network operated by a person other than the licence holder;
4. Every network which connects a network operated by another person to a network operated by that person or by a third person;
5. Every network which is situated within a harbour or harbour area; and
6. Every network which connects a network situated on premises used for the purposes of:
 - (a) an industrial undertaking (other than an undertaking consisting in the operation of a light maintenance depot);
 - (b) an undertaking engaged in the generation of electrical energy, including a nuclear installation; or
 - (c) a mine or quarry for the purposes of the Mines and Quarries Act 1954to any part of a network operated by another person;

in each case which:

- (i) is in existence on the date upon which this licence came into force; or
- (ii) is specified by the licence holder in a notice given to ORR and in respect of which ORR does not give to the licence holder, within a period of 30 days beginning with the day on which the licence holder gives that notice, a notice objecting to the licence holder's being so authorised; and
- (iii) is not specified in Schedule 1 to the Railways (Class and Miscellaneous Exemptions) Order 1994 or in respect of which the licence holder is not

otherwise exempt from the requirement to be authorised by licence to operate under any exemption under section 7 of the Railways Act 1993.

In this Schedule :

"harbour" and "harbour area" have the same meaning as in the Dangerous Substances in Harbour Areas Regulations 1987;

"mine" and "quarry" have the same meaning as in the Mines and Quarries Act 1954; and

"nuclear installation" has the meaning ascribed to it in the Nuclear Installations Act 1965.