

NETWORK LICENCE

granted to

FREIGHTLINER LTD

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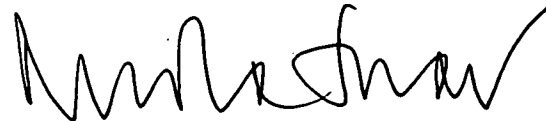
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Part I - Scope of the Licence

1. The Rail Regulator ("the Regulator"), in exercise of the powers conferred by section 8 of the Railways Act 1993 (as amended) ("the Act"), hereby grants to Freightliner Limited (company registration number 3118392) a licence authorising the licence holder:
 - (a) to be the operator of a network of the kinds specified in Schedule 2 hereto;
 - (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) above,

subject to the Conditions set out in Part III hereof ("the Conditions").

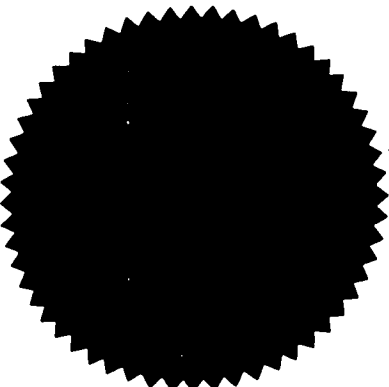
2. This licence shall come into force on 18 February 2002 and shall continue in force unless and until revoked in accordance with the provisions of Schedule 1 hereto or by not less than 10 years' notice given to the licence holder by the Regulator after consultation with the Strategic Rail Authority (the "Authority"), such notice not to be given earlier than 25 years after the date on which this licence comes into force.



(Nicola Shaw)

Signed by authority of
the Rail Regulator

15 February 2002



Part II - Interpretation

1. In this licence:

"control"

shall be construed in accordance with sub-sections (2) and (4) to (6) of section 416 of the Income and Corporation Taxes Act 1988 with the following modifications namely:

- (i) for the words "the greater part" wherever they occur in the said sub-section (2) there shall be substituted the words "30 per cent or more"; and
- (ii) in the said sub-section (6), for the word "may" there shall be substituted the word "shall", the words from "and such attributions" onwards shall be omitted and in the other provisions of that sub-section any reference to an associate of a person shall be construed as including only a relative of his (as defined by section 417(4) of that Act), a partner of his and a trustee of a settlement (as defined by section 681(4) of that Act) of which he is a beneficiary;

"licence holder's network"

means the network of which the licence holder is the operator pursuant to this licence; and

"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.

- 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. The provisions of section 149 of the Act shall apply for the purposes of the service of any document pursuant to this licence.
- 6. Unless the context otherwise requires, terms and expressions defined in the Railways Act 1993 (as amended) shall have the same meanings in this licence.

Part III - Conditions

A. Consumer Protection 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 the Authority (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 as the Authority may otherwise consent, procure that every insurance policy maintained pursuant to paragraph 1 shall bear an endorsement to the effect that 30 days' notice shall be given to the Authority by the insurer or insurance broker of any lapse or cancellation of, or material change to, the policy.
3. Where the Authority notifies the licence holder that the Authority reasonably requires any modification of the insurance approved by the Authority pursuant to paragraph 1 the licence holder shall, no later than 60 days (or such longer period as the Authority 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 the Authority may otherwise consent, at all times be a party to such agreements or arrangements relating to:
 - (a) the allocation, among operators of railway assets, of liabilities to persons other than such operators; and
 - (b) the handling of claims by or on behalf of such persons against such operatorsas may have been approved by either:
 - (i) the Regulator (as amended from time to time) or;
 - (ii) the Authority (as amended from time to time).
2. Except with the consent of the Authority, 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 arrangements,
other than as provided for under the terms of those arrangements.

B. Other Conditions

Condition 3: Railway Group Standards

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

"Railway Group Standards" means:

- (a) technical standards with which railway assets or equipment used on or as part of railway assets must conform; and
 - (b) operating procedures with which the operators of railway assets must comply,
- in each case as authorised pursuant to the Railway Group Standards Code prepared pursuant to the network licence held by Railtrack PLC¹ or its successor.

Condition 4: Liability of Operators to Each Other

1. The licence holder shall, except in so far as the Regulator may otherwise consent, at all times be a party to such agreements or arrangements relating to certain matters relating to the liabilities of operators of railway assets to each other, as may have been approved by the Regulator as at the date on which this licence came into force (as amended from time to time).
2. Except with the consent of the Regulator, 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 arrangements,other than as provided for under the terms of those arrangements.

Condition 5: Environmental Matters

1. The licence holder shall, taking due account of any relevant guidance issued to it by the Regulator, within 6 months beginning with the day on which this licence came into force establish a written policy designed to protect the environment from the effect of licensed activities, together with operational objectives and management arrangements to give effect to the policy. The licence holder shall review the policy, the operational objectives and the management arrangements periodically and otherwise as appropriate. Nothing contained in this paragraph shall oblige the licence holder to undertake any

¹ Currently in railway administration

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.

2. The licence holder shall, upon establishment and any material modification of them, promptly send the Regulator a copy of the policy together with a general description of the operational objectives and management arrangements.
3. 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 6: Non-Discrimination

Except in so far as the Regulator 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 7: Emergency Access

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.

Condition 8: Provision of Information to the Regulator and the Authority

1. Subject to paragraphs 3 and 4, the licence holder shall furnish to the Regulator and the Authority such information as the Regulator may reasonably require for the purpose of carrying out any of his functions under Part I of the Act, or the Authority may reasonably require for the purpose of carrying out any of its functions which relate to consumer protection conditions as defined in section 7A of the Act.
2. Information required to be furnished under this Condition shall be furnished in such form and manner and at such times as the Regulator or the Authority may reasonably require.
3. This Condition shall not require the licence holder to furnish to the Regulator or the Authority information for the purposes of any function of the Regulator under sections 69 and 71 of the Act, or any function of the Authority under section 71A of the Act.
4. Neither this Condition nor any other Condition shall require the licence holder to produce any documents or to furnish any information:
 - (a) for any purpose referred to in section 58 of the Act which it could not be compelled to produce or furnish under that section; or
 - (b) which it could not be compelled to produce or to give in evidence in civil proceedings in any court.
5. Subject to paragraph 4, nothing in this Condition shall prejudice any right of the Regulator or the Authority to require information under or pursuant to any other Condition. The right of the Regulator or the Authority to require information pursuant to

this Condition shall not be affected by any right to require information under or pursuant to any other Condition.

Condition 9: 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 the Regulator a payment which is the aggregate of the following amounts:

- (a) the annual fee applicable to this licence, as determined by the Regulator; and
- (b) an amount which shall represent a fair proportion as determined by the Regulator of the amount estimated by the Regulator (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 the Regulator determines that this licence forms part,

and the payment shall be rendered by the licence holder within such time as the Regulator may require, being not less than 30 days beginning with the day on which the Regulator gives notice to the licence holder of its amount.

Condition 10: Change of Control

The licence holder shall, if any person obtains control of the licence holder, notify the Regulator and the Authority as soon as practicable thereafter.

Schedule 1 - Terms as to Revocation

1. The Regulator may, after having consulted the Authority, at any time revoke this licence by not less than 3 months' notice to the licence holder:
 - (a) if the licence holder agrees in writing with the Regulator that this licence should be revoked; or
 - (b) 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 3 months beginning with the day on which the Regulator 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 the Regulator 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
 - (c) 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
 - (d) if the licence holder is convicted of an offence under section 146 of the Act in making its application for this licence; or
 - (e) if any person obtains control of the licence holder and:
 - (i) the Regulator has not approved that obtaining of control;
 - (ii) within one month of that obtaining of control coming to the notice of the Regulator, the Regulator serves notice on the licence holder stating that the Regulator 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 3 months beginning with the day of service of the notice; and
 - (iii) that cessation of control does not take place within that period.
2. The Regulator may, after having consulted the Authority, revoke this licence forthwith by notice to the licence holder if the licence holder commits a serious breach of the Railways (Safety Case) Regulations 2000.

Schedule 2 - Subject Matter of the Licence

- (a) Networks comprising marshalling yards, holding sidings and recess sidings;
- (b) every network comprised in a railway goods terminal;
- (c) 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;
- (d) every network which connects a network operated by another person to a network operated by that person or by a third person;
- (e) every network which is situated within a harbour or harbour area; and
- (f) every network which connects a network situated on premises used for the purposes of:
 - (i) an industrial undertaking (other than an undertaking consisting in the operation of a light maintenance depot);
 - (ii) an undertaking engaged in the generation of electrical energy, including a nuclear installation; or
 - (iii) 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) was operated by the authority of the Regulator prior to the date upon which this licence came into force;
- (ii) is specified by the licence holder in a notice given to the Regulator and the Authority, and in respect of which the Regulator 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 (as amended).

In this Schedule 2:

"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.