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Michael Dawson, Esq.,
Deputy Director, Access, Competition and Licensing,
Office of the Rail Regulator,
1 Waterhouse Square,
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Dear Mr Dawson,

This is the response of the Freightliner Group to the document containing the final policy conclusions on the model clauses for passenger track access contracts issued in December last year.

The Freightliner Group consists of Freightliner Ltd, which has held a non-passenger operating licence since 1995, and Freightliner Heavy Haul Ltd, whose application for such a licence is currently with your office. We are aware that you propose shortly to consult on model clauses for freight access agreements, and will defer much detailed comment until that consultation is begun. However, we must draw your attention to the major industry-wide issue of liabilities and liability caps, since we fear that passenger-based decisions might be seen as a precedent for what might be institutionalised for freight.

Under our present agreement our general liability to Network Rail (Clause 8 of the agreement) is limited by reference to an amount specified in the Claims Allocation and Handling Agreement, set at £5 million. Increasing this to an amount equal to three times our variable access charge would amount to a more-than-doubling of our liability at a time when insurance premiums have already (on the current basis) increased fourfold and when the ability to insure any increase in liability at all may be in doubt. This scale of change in the terms and allocation of risk in the privatisation model is unacceptable and could lead to dramatic consequences for freight operators which will not be in line with your objectives to promote the use of the network for the carriage of goods or achieve the government's growth targets.

In addition, we find it hard to accept that there really is a need for such caps to be symmetrical; we can easily envisage circumstances in which we could cause multi-

million pound direct losses to Network Rail if our careful management and mitigation of risk were to fail; we find it much harder to imagine circumstances in which they could do that to us. Our turnover is a tiny fraction of theirs; is there to be no recognition of proportionality in these matters?

We look forward to hearing that this crucial issue is addressed before freight model clauses are offered for consultation.

Yours sincerely,

Robert Goundry
Director of Strategy