

DOVETAIL GAMES.

American Powerhaul Train Simulator End User Licence Agreement

(Latest version: 8 March 2016)

1. ABOUT THIS End User Licence Agreement ("EULA")

- 1.1 This EULA governs your use of the RailWorks series of simulations, including without limitation *American Powerhaul Train Simulator* and its successors and any add-ons, user-generated content or downloadable content (which we will call the "Software" in this EULA). Please read it carefully because it is an important document: a lot of time and effort has gone into making the RailWorks series and, in order for us to keep working on them, we need to have some rules about what you can and cannot do when using them. If you have any queries, please contact dovetailgames.kayako.com.
- 1.2 By clicking on the "Yes" or "Install" button, or by downloading or using the Software in any way, you confirm your agreement to this EULA. If you do not agree to the terms of this EULA, please click the "No" or "Exit" button and do not use the Software.
- 1.3 If you are a minor (which will depend on your country of residence), please ask your parent or guardian to review and approve this EULA on your behalf (because legally minors cannot enter into agreements like this EULA).
- 1.4 From time to time, we have tried to explain some of the more 'legal' concepts in this EULA in a helpful manner. For the avoidance of any doubt, these explanations are just to aid your comprehension of this EULA and are not intended to affect the legal meaning of any part of this EULA.

2. USING THE SOFTWARE

- 2.1 We give you the personal right (known as a 'licence') to download, install (and enjoy!) the Software for your personal use. We can terminate this licence in certain circumstances, which are explained further below. This licence is 'non-exclusive', meaning that we can grant similar licences to other people as well.
- 2.2 You may not transfer or sub-license this licence in any way to anyone else unless we first agree to it in writing.

3. ABOUT US

- 3.1 We are Dovetail Games, a trading name of RailSimulator.Com Limited and its associated companies. We're also referred to in this EULA as "Dovetail Games" or "we" or "us" (depending on what makes the most sense).
- 3.2 Please send any correspondence to: Dovetail Games, The Observatory, Chatham Maritime, Chatham, Kent ME4 4NT, UK.

4. USING THE SOFTWARE

- 4.1 In order to use the Software you must have a Steam account. If you don't already have one, creating one is free from <http://store.steampowered.com/> and setting it up involves creating a username and password – which you should keep secure and confidential (i.e. don't give it to anyone else). You must not allow anyone else to access your account.
- 4.2 Please note that the Software is intended strictly for leisure purposes only. It is not designed for, and must not be used, for any training or in any way as a realistic simulation. We accept no responsibility or liability for any failure by users to comply with this clause 4.2.

5. PATCHES, UPDATES AND CHANGES TO THE SOFTWARE

- 5.1 From time to time, we may need to deploy or provide patches, updates, additional content or other modifications to the Software (for example to enhance the Software, to add new features or to resolve software bugs). You hereby grant us your consent for us to deploy and apply such patches, updates or other modifications to the Software automatically.
- 5.2 From time to time, we may also at our absolute discretion remove or suspend access to particular features, content or other parts of the Software from time to time.

6. TECHNICAL REQUIREMENTS

- 6.1 By using the Software you agree that you have the necessary hardware, software and capability required for its use. We accept no responsibility or liability for any failure of your system to meet the technical requirements of the Software as amended or updated from time to time.

7. INTELLECTUAL PROPERTY RIGHTS IN THE SOFTWARE

- 7.1 By "Intellectual Property Rights" what we mean is: all ownership rights and interests in copyright, design right, database rights, patents and any rights to inventions, know-how, trade and business names, confidential information and trade marks (whether registered or unregistered) and any applications and other like rights.
- 7.2 We own and reserve all of the Intellectual Property Rights in the Software (or we license them from third parties) unless we inform you otherwise or unless it is User Generated Content (in which case, please see clause 9 below).

8. WHAT YOU MUST NOT DO REGARDING THE SOFTWARE:

- 8.1 You must not do or try (or permit to be done or tried on your behalf) any of the following:
- (a) To use the Software for any purpose except for personal entertainment (for example, you may not use the Software for commercial purposes such as, but not limited to, employee training, route planning or infrastructure design);
 - (b) Except as authorised by us in this EULA (or as permitted by law) to: copy, rent, sublicense, loan, modify, adapt, merge, translate, reverse engineer, decompile, disassemble or create derivative works based on the whole or any part of the Software;
 - (c) To hack, attempt to hack, distribute, modify, transmit, re-use, re-post, or use any, all or part of the Software (including Intellectual Property Rights or copy protection software that forms part of the Software or Steam or is supplied with either of them) for any purpose unless first authorised by us by writing;
 - (d) Use the Software for any illegal purpose; or
 - (e) To do anything else that may harm the Software.
- 8.2 Please make sure you fully understand and comply with these requirements, since failure to do so can lead to serious legal consequences.

9. USER-GENERATED CONTENT

Please read this section carefully before creating or making available any user generated content for the Software:

- 9.1 If you make content for use with the Software (which we will refer to as "user generated content" or "UGC"), you are solely responsible and liable for that user generated content. We don't accept any liability or responsibility for user generated content for the Software, nor do we provide any support for it. Users of the Software create, download, install and use UGC at their own risk.
- 9.2 Any UGC which you create or make available to other users (even if the UGC you make available was not created by you) must agree to and comply with the following terms and conditions to the fullest extent you are legally able:
- (a) Any part of the UGC which comprises or incorporates any of our Intellectual Property Rights (such as our routes, locomotives, rolling-stock or other assets) remains our property;
 - (b) We have an irrevocable, worldwide, perpetual, payment free right to take any actions we consider appropriate (including without limitation to copy, reproduce, market, advertise, modify, adapt, merge, translate, reverse engineer, decompile, disassemble or create derivative works based on the whole or any part of the UGC), and all consents (if any) required under intellectual property, data protection and privacy laws worldwide, for that use, in respect of any UGC which includes portions of our Intellectual Property as defined above;

- (c) You must include the following message in a prominent manner with any UGC which you make available to other users (this could be in the manual or 'readme' file you provide with the UGC):

"IMPORTANT NOTICE. This is user generated content designed for use with Dovetail Games train simulation products, including RailWorks 7: Train Simulator 2016.

Dovetail Games does not approve or endorse this user generated content and does not accept any liability or responsibility regarding it.

This user generated content has not been screened or tested by Dovetail Games. Accordingly, it may adversely affect your use of Dovetail Games's products. If you install this user generated content and it infringes the rules regarding user-generated content, Dovetail Games may choose to discontinue any support for that product which they may otherwise have provided.

The RailWorks EULA sets out in detail how user generated content may be used, which you can review further here: www.dovetailgames.com/terms. In particular, this user generated content includes work which remains the intellectual property of Dovetail Games and which may not be rented, leased, sub-licensed, modified, adapted, copied, reproduced or redistributed without the permission of Dovetail Games."

- (d) You must not in any way claim or suggest that any UGC is endorsed or supported by, or affiliated with, us;
- (e) The UGC must not be used in, or made available to, any other simulator software which is similar to or competes with the Software (if you any doubt about this, please contact licencing@dovetailgames.com);
- (f) The UGC must be free from any and all viruses or other damaging software and must not in any way impair or harm the Software;
- (g) The UGC must not infringe any third party Intellectual Property Rights or other rights;
- (h) The UGC must comply with all relevant legislation and must not contain any material which may be considered offensive, defamatory, illegal or which could cause any reputational loss or embarrassment to us;
- (i) The UGC must be designed and used for personal entertainment and not for any business purpose or for any commercial purpose such as, but not limited to, employee training, route planning or infrastructure design;
- (j) You must have the right and ability to meet the terms of this licence (so, for example you must not have agreed to signed a contract with another party on terms that conflict with this agreement);
- (k) You must agree that your username and/or other details may be advertised and used in connection with the UGC;
- (l) Any software or tools (also known as the 'Editor') that we supply which assist the creation of UGC are provided on an 'as is' basis without any warranty, representation or support by us. They may be amended, altered or removed by us at our discretion at any time. Please note that they will require expert knowledge to be used properly;
- (m) The Editor contains an optional feature to reference (but not incorporate) material provided by Google Maps. Google Maps are provided by Google and so by using the feature, you are agreeing to be bound by Google's Terms of Use. These terms can be found at <https://developers.google.com/maps/terms>.

9.3 If you breach any of these terms and conditions, then we reserve the right to suspend or permanently remove availability of your UGC or to take any other steps we consider appropriate, including under clause 12.2 of this EULA

10. WARRANTIES AND LIMITATION OF LIABILITY REGARDING THE SOFTWARE

(Note: sorry, but this section is necessarily a bit more 'legal' because it sets out our liability to you. A warranty is a legal statement of fact, some of which we make below. If you have any question regarding the meaning of these terms, please contact support@dovetailgames.com, though please note that you will still be bound by section 1.2 of this EULA).

Warranties

10.1 We warrant that:

- (a) we have the right to enter into this EULA and to grant a licence over the Software to you;
- (b) we will provide our services regarding the Software with reasonable skill and care; and
- (c) we will use reasonable endeavours to comply with applicable laws in the performance of our obligations under this EULA.

Limitation of liability

10.2 However, please also note that (to the maximum extent permitted by law):

- (a) we provide the Software for personal entertainment, on an "as is" basis. This means that we make no warranties or representations about the features, content or other parts of the Software from time to time;
- (b) We make no warranties in any way regarding whether the Software or any part of it is of satisfactory quality or fitness for purpose or for a particular use;
- (c) We do not make any warranties regarding the operation of the Software or that it will be uninterrupted or error free; and
- (d) The Software is produced in the United Kingdom (which is where we are based). Unfortunately therefore we cannot make any representation or warranty regarding whether the Software complies with the local laws of any other country.

10.3 To the maximum extent permitted by law, we exclude liability for any loss or damage of any kind howsoever arising, including without limitation any direct, indirect, punitive or consequential loss whether or not such arises out of any problem you notify to us and we shall have no liability to pay any money by way of compensation, including without limitation all liability in relation to:

- (a) Any breach of the warranties at clause 10.2 above;
- (b) any incorrect or inaccurate information within the Software and all interruptions to or delays in updating the Software;
- (c) any third party infringement of Intellectual Property Rights;
- (d) viruses or other malicious software that may infect a user's computer equipment, software, data or other property caused by persons accessing, using or downloading the Software or from transmissions via emails or attachments received from us or our licensees; and
- (e) any harm or loss you suffer as a result of any interactions by you with third party software, content (including UGC) or web sites (whether or not at our suggestion).

10.4 These terms above will not limit your consumer rights (if any) which we cannot exclude under applicable law, nor will they exclude or limit our liability for death or personal injury resulting from our negligence nor any fraudulent representation.

Indemnity

10.5 You hereby agree on demand to indemnify and hold harmless us and our officers, directors, employees and agents from and against any and all damages, claims, suits, actions, judgments and costs and expenses whatsoever, including reasonable legal fees and costs, arising out of (without limitation): (i) your use of the Software; and (ii) your creation or distribution of any UGC (including any third party claims of infringement of Intellectual Property Rights regarding such UGC); and (iii) any breach by you of the terms of this EULA.

11. PRIVACY

11.1 We take your personal privacy very seriously. We have defined our privacy policy in a short document which can be found at www.dovetailgames.com/terms. By using this Software, you agree to the terms of that privacy agreement.

12. **TERMINATION**

12.1 This EULA will continue in force until you stop using the Software or unless earlier terminated under clause 12.2 of this EULA.

12.2 We are entitled to remove, cancel or suspend your access to and use of the Software if you breach any part of this EULA. This will not restrict us from taking any other action that we consider necessary under this EULA or otherwise.

13. **FORCE MAJEURE**

13.1 We will not be liable for any failure by us to perform any obligation under this EULA if that failure is caused by the happening of any unforeseen event beyond our reasonable control including without limitation: Internet outages, communications outages, fire, flood, war or act of God.

(Explanatory note: this provision means that if unforeseen events beyond our control happen, then we won't be liable to you if we are unable to perform any part of this EULA, e.g. to make the Software available to you).

14. **GENERAL**

14.1 If you breach this EULA and we take no or limited action against you, we will still be fully entitled to take action in any other situation where you breach this EULA.

14.2 If any part of this EULA is held to be unenforceable, then we and you agree to interpret it and the rest of this EULA in such a way as to reflect the parties' intentions as far as possible. Also, if any part of this EULA is held to be unenforceable then that will not affect the enforceability of any other part of this EULA.

14.3 No term of this EULA is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

14.4 This EULA constitutes the entire agreement and understanding between you and us regarding the Software and supersedes any previous agreement or understanding between you and us. You and we agree that neither of us have relied upon any statement, representation, warranty, undertaking or promise which is not expressly set out in this EULA.

14.5 Where we have provided you with a translation of the English language version of this agreement, you agree that the translation is provided for your convenience only and that the English language version will govern your relationship with us. If there is any contradiction between the English language version and a translation, the English language version will take precedence.

15. **GOVERNING LAW AND JURISDICTION**

15.1 You and we agree that:

- (a) Your use of the Software, and the validity and meaning of this EULA, shall be governed by and interpreted according to the laws of England and Wales; and
- (b) Any dispute regarding this EULA shall be heard exclusively by the courts of England and Wales.

16. **CHANGES TO THIS EULA**

16.1 We may vary this EULA as and when we consider it appropriate or necessary. If so, then we will make the revised EULA available at www.dovetailgames.com/terms. Please always refer to the latest version of the EULA.