

**PRIVATE & CONFIDENTIAL**

**DATED 24 May 2025**

**PORTERBROOK LEASING COMPANY LIMITED**

**AND**

**SOUTH WESTERN RAILWAY LIMITED**

**LEASE AGREEMENT (DRY)**

**IN RESPECT OF THE LEASING OF SEVENTY-SIX (76) CLASS  
455 FOUR (4) CAR ELECTRIC MULTIPLE UNITS**

**LEASE NO. 1720200**

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## A LEASE AGREEMENT dated 24 May 2025

### BETWEEN:

- (1) **PORTERBROOK LEASING COMPANY LIMITED** (Company No. 2912662), a company incorporated under the laws of England whose registered office is at Ivatt House, 7 The Point, Pinnacle Way, Derby DE24 8ZS ("**Porterbrook**"); and
- (2) **SOUTH WESTERN RAILWAY LIMITED** (Company No. 03266760), a company incorporated under the laws of England whose registered office is at Great Minster House, 4th Floor, 33 Horseferry Road, London, SW1P 4DR (the "**Lessee**").

### BACKGROUND:

Porterbrook is to lease and the Lessee is willing to take on lease the Equipment on the terms and subject to the conditions set out herein.

### OPERATIVE PROVISIONS:

#### 1 DEFINITIONS AND INTERPRETATIONS

##### 1.1 In this Agreement:

- 1.1.1 the rules of interpretation set out in Schedule 2 shall apply; and
- 1.1.2 capitalised terms have, unless the context requires otherwise, the meanings set out in Schedule 2.

#### 2 CONDITIONS PRECEDENT

##### 2.1 Porterbrook's obligation to deliver and lease any Equipment to the Lessee under this Agreement is subject to the conditions precedent that:

- 2.1.1 on the date of this Agreement Porterbrook shall have received the documents, evidence and other things specified in Schedule 5 in form and substance reasonably satisfactory to Porterbrook;
- 2.1.2 on the Delivery Date for that Equipment:
  - (a) that Equipment shall have been redelivered to Porterbrook by the relevant Existing Lessee in respect thereof;
  - (b) Porterbrook shall have obtained the consent of any Owner or Financier of that Equipment to the leasing of that Equipment pursuant to this Agreement, to the extent such consent is required pursuant to the terms of any agreement between Porterbrook and any such Owner or Financier;

- (c) the representations and warranties of the Lessee under clause 18 shall be correct as if made in respect of the facts and circumstances existing on such date;
- (d) no Default shall have occurred and be continuing or will result from the leasing of that Equipment to the Lessee under this Agreement;
- (e) Porterbrook shall have received the documents, evidence and other things specified in Schedule 5 in form and substance satisfactory to Porterbrook;
- (f) no Total Loss (and no event which with the giving of notice or lapse of time or the satisfaction of any other condition (or any combination thereof) might constitute a Total Loss) shall have occurred with respect to that Equipment.

2.2 The obligation of the Lessee to take on lease any Equipment under this Agreement is subject to the conditions precedent that on the Delivery Date for that Equipment:

2.2.1 Porterbrook shall have obtained the consent of any Owner or Financier of that Equipment to the leasing of that Equipment pursuant to this Agreement, to the extent such consent is required pursuant to the terms of any agreement between Porterbrook and any such Owner or Financier;

2.2.2 no Total Loss (and no event which with the giving of notice or lapse of time or the satisfaction of any other condition (or any combination thereof) might constitute a Total Loss) shall have occurred with respect to that Equipment.

2.3 If the conditions precedent set out in clause 2.1 have not been satisfied or waived on or before the CP Satisfaction Date, Porterbrook shall be entitled at any time prior to the Delivery Date for any Equipment to terminate each of the Transaction Documents to the extent relating to that Equipment.

### **3 LEASING AND DELIVERY**

3.1 Subject to the terms and conditions of this Agreement, including the fulfilment to Porterbrook's satisfaction, or waiver by Porterbrook, of the conditions precedent specified in clause 2.1, and the fulfilment to the Lessee's satisfaction, or waiver by the Lessee, of the conditions precedent specified in clause 2.2, Porterbrook agrees to lease, and the Lessee agrees to take on lease, each item of Equipment from the Delivery Date, and for the Lease Period, relative to that item of Equipment.

3.2 Subject to the fulfilment or waiver of the conditions precedent specified in clauses 2.1 and 2.2:

- 3.2.1 each item of Equipment will be tendered for delivery by, or on behalf of, Porterbrook to the Lessee at its Delivery Location on, subject as otherwise provided herein, its Expected Delivery Date;
  - 3.2.2 each item of Equipment shall be accepted by or on behalf of the Lessee for the purposes of this Agreement. The Lessee shall not be entitled for any reason whatsoever to refuse to accept delivery of any Equipment under this Agreement;
  - 3.2.3 where the Delivery Location for any item of Equipment is “where-is”, that item of Equipment will be deemed to have been tendered for delivery by, or on behalf of, Porterbrook to the Lessee on its Expected Delivery Date.
- 3.3 When any Equipment is tendered, or deemed tendered, for delivery to the Lessee the Lessee shall:
  - 3.3.1 accept delivery of that Equipment; and
  - 3.3.2 execute and provide to Porterbrook a Delivery and Lease Commencement Certificate confirming the delivery by Porterbrook and acceptance by the Lessee of that Equipment under this Agreement; and
  - 3.3.3 if the Lessee fails to sign and provide to Porterbrook a Delivery and Lease Commencement Certificate, upon being obliged to do so, the Lessee shall nevertheless be deemed to have done so.
- 3.4 The Lessee agrees that Porterbrook shall have no liability of any nature, and the Lessee shall have no recourse against Porterbrook, if Porterbrook fails to deliver any Equipment to the Lessee in the Delivery Condition or in accordance with this clause 3 or any delay in the delivery of any Equipment as a result of:
  - 3.4.1 strike or other labour dispute (other than a strike or other labour dispute by or involving Porterbrook employees or the employees of any of its subcontractors), fire, flood, other extreme weather condition, act of terrorism, explosion, civil commotion, riot, act of God or any other cause to the extent that such cause, whether above-mentioned or not, cannot be controlled by Porterbrook within a reasonable period of time taking such action as is, in the opinion of Porterbrook, reasonable in all the circumstances; or
  - 3.4.2 as a result of an Existing Lessee failing to re-deliver any Equipment to Porterbrook under the Existing Leases at the time required by the relevant Existing Lease or in a condition which complies with the Delivery Condition; or
  - 3.4.3 for any other reason whatsoever.

**4 TITLE AND SUB-LEASING**

- 4.1 The Lessee shall not do or permit to be done anything which might reasonably be expected to prejudice or jeopardise the rights, title and interest of Porterbrook, or any Owner or Financier, in and to the Equipment.
- 4.2 The Lessee shall not:
- 4.2.1 challenge any right, title or interest of Porterbrook or any Owner or Financier in or to the Equipment or purport to sell or otherwise dispose of any Equipment or permit any Security Interest to arise over any Equipment;
  - 4.2.2 subject to paragraphs 10.1 and 10.2 of Schedule 6, part with possession of any Equipment to a third party, without Porterbrook's written consent;
  - 4.2.3 enter into, nor permit the entering into of, any agreement or arrangement in respect of any Equipment (including, for the avoidance of doubt, any Part) which involves pooling with other operators or with other lessors of rolling stock, parts or spares, without Porterbrook's written consent;
  - 4.2.4 hold itself out as owner of the Equipment nor pledge the credit of any Indemnatee for the repair of the Equipment or otherwise.

**5 CONDITION AND WARRANTIES**

- 5.1 The Lessee acknowledges that where immediately prior to the Delivery Date of any Equipment, the Lessee was the Existing Lessee of that Equipment on the terms of the relevant Existing Lease:
- 5.1.1 such Equipment was used by the Existing Lessee, among other things, to provide, or in connection with the provision of, franchised services (as defined in s 23(3) of the Act) on, among other things, the Permitted Routes and was selected by the Existing Lessee for such purposes;
  - 5.1.2 the Lessee is taking over the provision of those franchised services and requires the Equipment in order to be able to do so,
- and therefore, among other things (and without prejudice to the other provisions of this Agreement, including clause 5.4) in making its decision to lease the Equipment from Porterbrook, the Lessee has relied on the fact that the Lessee has been so using the Equipment and not on any representations, warranties, terms or conditions from Porterbrook.
- 5.2 The Lessee agrees that it is its responsibility to satisfy itself as to the size, design, capacity, quality, specification, condition and suitability of the Equipment. Notwithstanding anything else to the contrary, the Lessee agrees and acknowledges that it is taking the Equipment on lease "as is", subject to any and all defects as may

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exist therein at its Delivery Date or which may arise thereafter (and whether latent, inherent or otherwise). The Lessee shall be deemed to have examined the Equipment to the Lessee's satisfaction prior to the Delivery Date.

- 5.3 Safe operation and use of the Equipment is the Lessee's responsibility. Porterbrook shall have no liability, and the Lessee shall bring no claim or proceedings, in respect of the exercise or non-exercise by Porterbrook of any rights and powers under the Transaction Documents, including rights of inspection, audit, testing, the giving and receiving of information, the giving and withholding of consents and approvals whether or not the same relate to potential or actual safety concerns or events.
- 5.4 Porterbrook has not and will not be deemed to have made or given, and the Lessee agrees that it is not relying on, any warranties, representations, terms or conditions, express or implied, with respect to the Transaction Documents or the Equipment or the components comprised therein or works undertaken in respect thereof, including warranties, representations, terms or conditions in respect of specification, quality, safety, merchantability, condition, description, fitness or suitability for any purpose. The Lessee acknowledges that no third party (including any supplier or manufacturer of the Equipment) making or giving any warranty, representation, term or condition, relating to the Equipment or any part thereof is the agent of Porterbrook and Porterbrook is not and shall not be bound by any such warranty, representation, term or condition, made by or on behalf of any such third party.
- 5.5 The Lessee agrees and acknowledges that:
- 5.5.1 Porterbrook shall not be liable for any Losses or other liabilities of any kind or nature (save as expressly set out in the Transaction Documents) caused directly or indirectly by:
- (a) any Equipment, by any inadequacy thereof for any purpose or by any deficiency or defect thereof or therein or the safety thereof or arising out of any regulations concerning the construction or use of any Equipment or the use or performance thereof; or
  - (b) any works, repairs or servicing carried out with respect to the Equipment or any failure to carry out any such works, repairs or servicing; or
  - (c) any Equipment being unavailable for use or unusable for any reason or being a Total Loss (or the occurrence of any event which with the giving of notice or lapse of time or the satisfaction of any other condition (or any combination thereof) might constitute a Total Loss) at any time; or

(d) any failure by Porterbrook to discharge any of its obligations pursuant to the Transaction Documents; and

5.5.2 except as expressly set out in the Transaction Documents, the Lessee shall not be released from any obligations or liabilities under the Transaction Documents for any reason whatsoever (including by reason of any of the matters referred to in clause 5.5.1) save that the Lessee shall not be responsible for carrying out any Excluded Maintenance and Repairs;

5.5.3 save as expressly set out herein, Porterbrook shall not be liable to provide the Lessee with any replacement goods or equipment during the Lease Term.

5.6 Nothing contained in this Agreement shall exclude any liability of Porterbrook for death or personal injury caused by its negligence to the extent that such exclusion is prohibited by statute.

## **6 QUIET ENJOYMENT**

6.1 Porterbrook covenants with the Lessee that, throughout the Lease Period for any Equipment, Porterbrook will not, and Porterbrook shall procure that its employees (acting on behalf of Porterbrook) and any Financier or Security Interest Holder will not, save to the extent set out in, or permitted by, the Transaction Documents, interfere with or do anything which would, or would reasonably be expected to, result in interference with the quiet use, possession and enjoyment of that Equipment by the Lessee.

6.2 Porterbrook may assign, charge, transfer or dispose of any right, benefit or obligation hereunder or in or to the Equipment in accordance with clause 22. Any such assignment, charge, transfer or disposal shall be conditional upon the Financier, assignee, transferee or Security Interest Holder granting to the Lessee a covenant of quiet enjoyment in similar terms to that given by Porterbrook in clause 6.1. Porterbrook undertakes to ensure that on and from the date on which a Financier or Security Interest Holder takes any steps to enforce any of its rights under the Security Interest held by it in respect of Porterbrook's rights and benefits in or under the Transaction Documents or in or to the Equipment that such Financier or Security Interest Holder, a receiver, manager or similar official appointed by it or its successor, assignee or transferee will perform Porterbrook's obligations under the Transaction Documents, provided that no Default has occurred and is continuing.

6.3 Porterbrook covenants not to create any Security Interest in respect of the Transaction Documents or the Equipment other than a Porterbrook Security Interest.



**7 RENTAL AND PAYMENTS**

- 7.1 The Lessee will pay to Porterbrook in full, without any deduction, set-off, counter-claim or withholding (unless the Lessee is legally required to do so but without prejudice to the obligation of the Lessee to make any payment or increased payment in respect thereof under clause 7.9) Rental for the Equipment together with any applicable Value Added Tax thereon.
- 7.2 The Lessee hereby agrees that, save as expressly provided to the contrary in the Transaction Documents, all amounts payable by it in respect of the Rental are payable unconditionally by the Lessee to Porterbrook (or its assignee, as the case may be) and the Lessee further agrees and acknowledges that, save as expressly provided to the contrary in the Transaction Documents, it shall not be entitled to reduce or vary in any way the Rental due from it hereunder including if Porterbrook does not comply with any of its obligations hereunder, or if a Compensation Amount is due from Porterbrook to the Lessee pursuant to the terms of the Transaction Documents.
- 7.3 Rental is payable for the Equipment with effect from its Delivery Date and, save as provided in Schedule 3, shall be payable monthly in advance on the first day of each calendar month during the relevant Lease Period.
- 7.4 If a proposed Variation Order has the effect of increasing or decreasing the Rental (including any proposed variations to the Permitted Use, with Porterbrook's consent) then Porterbrook shall notify the Lessee of the effect on the Rental of, the proposed Variation Order and such Rental increase or decrease shall be agreed as a pre-condition to such Variation Order being agreed or implemented by Porterbrook and the Lessee.
- 7.5 All payments (in addition to Rental) to be made by the Lessee to Porterbrook under the Transaction Documents shall also be made in full, without any deduction, set-off, counter-claim or withholding (unless legally required) and without prejudice to the obligation of the Lessee to make any payment or increased payment in respect thereof under clause 7.9.
- 7.6 All payments due from the Lessee under the Transaction Documents shall be made in cleared funds on the due date to Porterbrook to Porterbrook's Bank Account by BACS priority payment system. If any payment falls due from the Lessee on a day which is not a Business Day, payment shall be made on the preceding Business Day.
- 7.7 All payments (other than any Compensation Amounts) payable under the Transaction Documents are calculated without regard to Value Added Tax. If any such payment constitutes the whole or part of the consideration for a taxable or deemed taxable supply (whether that supply is taxable pursuant to the exercise of an option or otherwise), the amount of that payment shall be increased by an amount equal to the amount of Value Added Tax which is chargeable in respect of

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the taxable supply in question and the Party making the supply shall provide the Party which receives it with an appropriate Value Added Tax invoice in respect thereof.

- 7.8 If the Lessee fails to make any payment due under any Transaction Document on the due date for payment thereof, the late payment shall bear interest, after as well as before judgment, at the Default Rate in respect of the period from (and including) the date on which such payment became due until (but excluding) the date of payment thereof.
- 7.9 If any deduction or withholding for Tax from or against any payment of Rental or any other amount payable by the Lessee under the Transaction Documents is required by law, the Lessee undertakes to pay to Porterbrook such additional amounts as may be necessary in order that the net amount received by Porterbrook after all such deductions and withholdings is not less than such payments of Rental or other amount would have been in the absence of any requirement to make such deduction or withholding.
- 7.10 If Porterbrook determines in its absolute discretion that it has received and realised a genuine financial benefit in respect of any Tax credit resulting from the payment of an additional amount by the Lessee under clauses 7.9 or 11.7.1, Porterbrook shall pay to the Lessee by way of Compensation Amount such part of the benefit as in the sole opinion of Porterbrook will leave Porterbrook (after such payment) in no more and no less favourable a position than Porterbrook would have been in if no such additional amount had been required to be paid, Provided that:
- 7.10.1 no Default has occurred and is continuing at the time;
- 7.10.2 Porterbrook shall be the sole judge of the amount of any such benefit and of the date on which it is received;
- 7.10.3 Porterbrook shall have an absolute discretion as to whether it claims, and as to the order and manner in which it employs or claims, Tax credits available to it;
- 7.10.4 Porterbrook shall not be liable to make any such payment to the Lessee if in the reasonable opinion of Porterbrook such payment would result in the corresponding Tax credit being cancelled, withdrawn or repayable;
- 7.10.5 Porterbrook shall not be obliged to disclose to the Lessee any information regarding Porterbrook's Tax affairs or Tax computations; and
- 7.10.6 if after a payout is made it transpires that the full benefit taken into account is not obtained or retained such adjustment shall be made between the Parties as Porterbrook determines to be necessary to maintain

it in the same position as it would have been if such benefit had been obtained or retained.

- 7.11 The Parties agree that any Compensation Amount due under any Transaction Document as a consequence of the non-performance by Porterbrook of any of its obligations under any Transaction Document represents a full and final settlement between the Parties.

## **8 VARIATION ORDERS AND LEASE AMENDMENT**

- 8.1 Each of Porterbrook and the Lessee hereby agrees that:

- 8.1.1 the specification and/or Agreed Value of any Equipment;
- 8.1.2 the Scheduled Redelivery Date for any Equipment;
- 8.1.3 the Rental in respect of any Equipment;
- 8.1.4 the scope of maintenance comprised within, and any other aspect of, the Maintenance Programme; and
- 8.1.5 changes to the Permitted Routes;

may be amended by way of a Variation Order. Either Party may initiate a Variation Order by submitting a written request for the relevant variation together with a completed draft Variation Order to the other Party. If a proposed Variation Order has the effect of increasing or decreasing the Rental, then Porterbrook shall notify the Lessee of what effect on the Rental the proposed Variation Order will have and such Rental increase or decrease shall be agreed as a pre-condition to any Variation Order being agreed and implemented by Porterbrook and the Lessee.

## **9 ROUTE ACCEPTANCE, OPERATION, MAINTENANCE, INSPECTION AND POSSESSION**

- 9.1 Each Party agrees to comply with its obligations set out in Schedule 6.

## **10 INSURANCE**

- 10.1 Each Party agrees to comply with its obligations set out in Schedule 12.

## **11 INDEMNITY**

- 11.1 The Lessee will indemnify and hold harmless each Indemnatee from and against all demands and proceedings brought against Porterbrook or any other Indemnatee in respect of any personal injury (whether fatal or otherwise) loss of or damage to property or the Equipment (Fair Wear and Tear excepted) and any other loss (excluding loss of profit and Taxes (other than Irrecoverable VAT (without prejudice to clause 7.7)), damages, costs and expenses (including, without limitation, actual

legal fees together with Irrecoverable VAT thereon) ("**Indemnified Losses**") which arise in connection with the use, operation, taking on lease and/or leasing during the Lease Period of the Equipment by the Lessee including (but without limitation):

- 11.1.1 the use by or on behalf of the Lessee of the Equipment;
  - 11.1.2 the maintenance, Modification, overhaul, refurbishment and repair of the Equipment by the Lessee or on behalf of the Lessee by a third party;
  - 11.1.3 that the use, maintenance, Modification or overhaul, repair or refurbishment of the Equipment by or on behalf of the Lessee is an infringement of any patent or intellectual property right (save in so far as such maintenance, Modification (including any Enhancement Modification), overhaul, repair or refurbishment was carried out by Porterbrook or another Indemnitee or on Porterbrook's or another Indemnitee's behalf by a person other than the Lessee).
- 11.2 Save to the extent that such Indemnified Losses are or should be insured (if the Required Insurances are effected as required by this Agreement) or recoverable under any Required Insurance (or would be if the relevant insurers paid all claims under the Required Insurances), the Lessee shall not be obliged to indemnify any Indemnitee in respect of any Indemnified Losses to the extent that such Losses:
- 11.2.1 arise solely out of events which occurred prior to the Delivery Date, or after the Redelivery Date, with respect to that Equipment; or
  - 11.2.2 arise because of a default by Porterbrook in the performance of its express obligations under this Agreement (other than in connection with Schedule 6, paragraph 7 or the exercise of any rights referred to therein); or
  - 11.2.3 arise as a result of an act, omission, negligence, recklessness, breach of this Agreement or wilful misconduct by Porterbrook, any Lessor Maintenance Performer (other than the Lessee or any person appointed by the Lessee) or any of their employees, servants, agents, sub-contractors, directors or officers in carrying out Lessor Works (other than pursuant to Schedule 6, paragraph 7); or
  - 11.2.4 have otherwise been reimbursed out of insurance proceeds or payment of the Agreed Value under paragraph 6.1 of Part 1 of Schedule 12; or
  - 11.2.5 constitute amounts payable by Porterbrook to any Financier to compensate such Financier for the premature termination of any funding hedgings or other financing arrangements other than amounts payable to Porterbrook under clause 15.3.6; or

- 11.2.6 have otherwise been recovered by an Indemnatee under any of the Transaction Documents or otherwise in respect of such Losses provided that the recovery by one Indemnatee of its Losses from another Indemnatee shall not prevent that other Indemnatee from recovering its and/or those Losses in accordance with this clause 11; or
- 11.2.7 arise as a result of any act, omission, wilful misconduct, recklessness or gross negligence of such Indemnatee, its employees, servants, agents, sub-contractors, directors or officers (other than pursuant to Schedule 6, paragraph 7); or
- 11.2.8 constitute the cost of carrying out or remedying any Accepted Faults (save as otherwise provided in this Agreement).
- 11.3 If an Indemnatee has suffered or will suffer any Losses for which it is indemnified under clause 11.1, Porterbrook will notify the Lessee as soon as reasonably practicable after it becomes aware of that fact and the Lessee and Porterbrook shall consult to consider what action may properly be taken in respect of the Losses. Following such consultation, if the Lessee wishes to contest the claim giving rise to such Losses against any third party for such Losses in its own name (and not in the name of Porterbrook or any Indemnatee) it may do so, to the extent permitted by law, provided that the following conditions are met:
- 11.3.1 Porterbrook is indemnified in accordance with clause 11.1 and has been secured (such security not to create an encumbrance over any asset of the Lessee) (on behalf of itself and the relevant Indemnatee) to its satisfaction (acting reasonably) against any additional Losses arising, or which may arise, out of the claim;
- 11.3.2 the claim will not result in the sale, forfeiture or other loss of the Equipment or any interest in them or criminal liability or be prejudicial to any Indemnatee's interest in any other respect; and
- 11.3.3 to the extent that the claim involves judicial, administrative or other similar proceedings, Porterbrook and the Lessee shall have received an opinion of senior counsel reasonably acceptable to both to the effect that there is a reasonable prospect of the claim being successful.
- Porterbrook undertakes to take all reasonable action in order to enforce any other rights or recovery available to it in respect of the Losses subject to the indemnity in clause 11.1. Porterbrook shall, and shall use reasonable endeavours to procure that each other Indemnatee shall, use its reasonable endeavours to mitigate the extent of all Losses.
- 11.4 The Indemnitees (in aggregate) shall not be entitled to recover more than once from the Lessee in respect of the same Losses. To the extent that an Indemnatee has

made any recovery in respect of any Losses from the Lessee and it also recovers an amount from any other person in respect of the same Losses that result in that Indemnatee having recovered an amount in excess of the Losses it has suffered then Porterbrook shall, to the extent that it has recovered in excess of its Losses from the Lessee, repay such excess to the Lessee or, to the extent that another Indemnatee has recovered in excess of its Losses, Porterbrook shall use its reasonable endeavours to procure that excess amount recovered by that Indemnatee shall be repaid to the Lessee save, in either case, to the extent that such amount is payable to any insurer that has rights of subrogation to the relevant claim.

11.5 The Lessee shall:

- 11.5.1 pay promptly all Taxes levied or assessed on or in respect of the Equipment, any payments made under any of the Transaction Documents or any of the transactions contemplated by any of the Transaction Documents but, subject to the remaining provisions of this clause 11, excluding any Taxes levied on Porterbrook by reference to its net overall profits;
- 11.5.2 pay promptly all stamp and other documentary or registration Taxes to which any of the Transaction Documents may be subject at any time;
- 11.5.3 indemnify on demand each Indemnatee for and against any loss of Relief which would otherwise have been available to any Indemnatee which is sustained, or any Taxes imposed on any Indemnatee, in either case, as a result of any breach by the Lessee of its obligations under any Transaction Document, or as a result of a Total Loss.

Porterbrook shall be entitled but not obliged to pay any such duties or Taxes whereupon the Lessee shall on demand indemnify Porterbrook against those duties or Taxes. The Lessee shall, if requested by Porterbrook, promptly produce to Porterbrook evidence of the payment and discharge of any Taxes that it is required to pay pursuant to this clause.

- 11.6 Notwithstanding anything contained in the Transaction Documents, if Porterbrook determines in good faith that any payment which it is required to make to the Lessee under any of the Transaction Documents, if the amount is payable on the assumption that it will be fully deductible, will not or, may not be fully deductible in computing Porterbrook's liability to corporation tax for the Accounting Period of Porterbrook in which the payment is made, Porterbrook shall be entitled to withhold and retain from that payment such amount as Porterbrook determines in good faith to be necessary to leave it in no better and no worse after-Tax position that it would have been in if the payment were fully deductible as aforesaid.

11.7 The Parties agree that:

- 11.7.1 if and to the extent that any sum payable to any Indemnatee by the Lessee under any Transaction Document by way of indemnity or reimbursement is insufficient, by reason of any Taxation suffered thereon, for that Indemnatee to discharge the corresponding liability to a third party, or to reimburse that Indemnatee for the cost incurred by it in discharging the corresponding liability to a third party, the Lessee shall pay that Indemnatee such additional sum as (after taking into account any Taxation suffered by that Indemnatee thereon) shall be required to make up the relevant deficit; and
- 11.7.2 if and to the extent that any sum (the “**indemnity sum**”) constituting (directly or indirectly) an indemnity to any Indemnatee but paid by the Lessee to any person other than that Indemnatee, shall be treated as taxable in the hands of that Indemnatee, the Lessee shall pay to that Indemnatee such sum (the “**compensating sum**”) as (after taking into account any Taxation suffered by that Indemnatee on the compensating sum) shall reimburse that Indemnatee for any Taxation suffered by it in respect of that indemnity sum.

For the purposes of this clause 11.7 a sum shall be deemed to be taxable in the hands of an Indemnatee if it falls to be taken into account in computing the profits or gains of that Indemnatee for the purposes of Taxation and if so that Indemnatee shall be deemed to have suffered Taxation thereon at the rate of Taxation applicable to that Indemnatee’s profits or gains for the period in which the payment falls to be taken into account for the purposes of such Taxation.

- 11.8 The provisions of clauses 11.1 to 11.7 will continue in full force and effect (in respect of any Equipment) and, in respect of events occurring during the Lease Period relative to that Equipment (or thereafter up to and on redelivery thereof), after the expiry of the relevant Lease Period and termination of this Agreement. For the avoidance of doubt no claim may be made under the indemnities in respect of any Equipment for any Losses which arise as a result of acts, events or omissions occurring after the expiry of the Lease Period for that Equipment to the extent that such acts, events or omissions did not arise as a result of acts, events or omissions occurring during the Lease Period.

## 12 INTELLECTUAL PROPERTY RIGHTS

- 12.1 The:

- 12.1.1 Parties agree that:

- (a) the Maintenance Programme, Technical Records, any information required to be inputted into any of the Technical Databases pursuant to the Transaction Documents, all amendments thereto and the Intellectual Property Rights therein; and

- (b) all Intellectual Property Rights relating to any Modifications which are developed specifically for any Equipment or which relate solely to any Equipment other than any such Modifications which the Lessee is required to remove from the Equipment on or before the expiry or termination of the Lease Period relating thereto (**"Equipment Specific Modifications"**); and
- (c) any documentation or information in relation to any Equipment Specific Modifications or developed in the course of, or as a consequence of the design or installation of any Equipment Specific Modifications, all amendments thereto and the Intellectual Property Rights therein,

(the **"Relevant IPR"**) shall, to the extent owned by the Lessee or any member of the Lessee's Group, be the property of Porterbrook or the Owner. The Lessee hereby transfers and assigns (and agrees to procure the transfer and assignment) to Porterbrook or, if requested by Porterbrook, the Owner with full title guarantee and free from all Security Interests of all Relevant IPR to the extent owned by the Lessee or any member of the Lessee's Group. The Lessee shall use reasonable endeavours to ensure that any Relevant IPR owned by a person other than the Lessee or any member of the Lessee's Group is transferred or assigned to the Lessee so that the Lessee can assign or transfer ownership thereof to Porterbrook pursuant to this clause 12.1.1. The Lessee shall, at its own cost, do and execute, or arrange for the doing and executing of, each act, document and thing which is reasonably requested by Porterbrook to ensure that any such Relevant IPR is assigned or transferred to Porterbrook pursuant to this clause 12.1.1.

12.1.2 Lessee grants (or shall procure that there is granted) to Porterbrook, the Owner and each Indemnitee a non-exclusive, irrevocable, royalty-free, transferable, assignable, perpetual licence (including the right to sub-licence) to use, copy, adapt, modify, and to create derivative works based on:

- (a) any Relevant IPR in respect of which ownership is not assigned or transferred to Porterbrook pursuant to clause 12.1.1;
- (b) on all Intellectual Property Rights relating to any Modifications (other than any Equipment Specific Modifications); and
- (c) any documentation or information in relation to any such Modifications or developed in the course of, or as a consequence of the design or installation of any such Modifications, any amendments thereto and the Intellectual Property Rights therein,

(the **"Licensed IPR"**) for the Permitted Purposes.



- 12.2 Without prejudice to clause 12.1, to the extent that any licences of any Intellectual Property Rights owned by third parties (other than any Pre Existing Intellectual Property Rights) are required for the purpose of using, repairing, maintaining or Modifying, operating, owning or leasing any Equipment, any Modifications, the Maintenance Programme, any Technical Records, any information required to be inputted into any of the Technical Databases, all amendments thereto and any derivative works based thereon, the Lessee shall procure (at its own cost and expense) for the benefit of itself, Porterbrook, the Owner and any third party nominated by Porterbrook, a non-exclusive, irrevocable, royalty-free, transferable, assignable, perpetual licence (including the right to sub-licence) to use all such Intellectual Property Rights for the Permitted Purposes. The Lessee shall satisfy itself that it has all appropriate consents and licences in respect of any Intellectual Property for the Permitted Purposes and that Porterbrook shall have no responsibility therefor.
- 12.3 The Lessee shall, promptly upon the same arising or being developed or created, communicate to Porterbrook the nature and existence of all Relevant IPR and all Licensed IPR and shall do all such actions and execute all such documents necessary to licence, assign or transfer the Relevant IPR and the Licensed IPR in the manner required by clauses 12.1 and 12.2.
- 12.4 In the event that any Intellectual Property Rights arise or are developed or created from the Relevant IPR or the Licensed IPR by or on behalf of Porterbrook, the Owner or any Indemnatee (or any of their assignees, transferees or sub licensees) title to such Intellectual Property Rights may remain with Porterbrook, the Owner or any Indemnatee (or any of their assignees, transferees or sub licensees) and, Porterbrook shall not be required to grant a licence of any such Intellectual Property Rights to any third party.
- 12.5 To the extent it is entitled to do so, Porterbrook hereby grants to the Lessee a royalty-free licence to use, and to allow others to use during the Lease Term any Intellectual Property Rights in:
- 12.5.1 the Maintenance Programme, Technical Records, any information in any of the Technical Databases and any amendments thereto;
  - 12.5.2 any Modifications (including Enhancement Modifications) and any documentation or information in relation to any Modifications (including Enhancement Modifications) or developed in the course of, or as a consequence of the design or installation of any Modifications (including Enhancement Modifications) all amendments thereto and the Intellectual Property Rights therein,
- owned by or licensed to Porterbrook for the Permitted Purposes. The Lessee acknowledges and agrees that it is the Lessee's responsibility to ensure that any licence granted by Porterbrook pursuant to this clause 12.5 is sufficient for the

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Lessee's purposes and that Porterbrook gives no representation, warranty, term or condition (whether express or implied) in relation thereto.

- 12.6 Without prejudice to clause 11.1.3 and other than in relation to the Enhancement Modifications, if a third party alleges or claims that any Relevant IPR or the use of any Licensed IPR for the Permitted Purposes infringes that third party's Intellectual Property Rights, then on the instructions of Porterbrook, the Lessee shall, without prejudice to clause 11.1 at the Lessee's expense:
- 12.6.1 procure for the benefit of itself, Porterbrook, the Owner and any third party nominated by Porterbrook, a non-exclusive irrevocable, royalty-free, transferable, assignable, perpetual licence (including the right to sub-licence) to use such Intellectual Property Rights for the Permitted Purposes; or
- 12.6.2 vary or procure the variation of the Relevant IPR or the Licensed IPR without reducing the performance, functionality and interoperability of anything to which such Relevant IPR relates so as to avoid the infringement or the alleged infringement. This clause 12 shall apply to such variation.
- 12.7 Porterbrook shall use reasonable endeavours to procure that the supplier of any Enhancement Modifications:
- 12.7.1 grants to Porterbrook a royalty-free licence for the Permitted Purposes in respect of the Licensed IPR in relation to the Enhancement Modifications to enable Porterbrook to grant the licence to the Lessee in respect thereof pursuant to clause 12.5;
- 12.7.2 indemnifies the Lessee on the same terms that it indemnifies Porterbrook in relation to any allegation or claim by a third party that the use of any Licensed IPR for the Permitted Purposes in relation to the Enhancement Modifications infringes that third party's Intellectual Property Rights.

### **13 REDELIVERY**

- 13.1 On the date which is the earlier of (a) the Scheduled Redelivery Date relative to any Equipment and (b) the date on which the leasing of that item of Equipment is to expire or terminate pursuant to this Agreement, the Lessee will, at its own expense redeliver that item of Equipment (together with the entire Technical Records (in such format as is specified in Schedule 9) in respect of that Equipment and all its Parts to the extent not contained in the Technical Databases) to Porterbrook at the Redelivery Location in the Redelivery Condition.
- 13.1A Not used.

- 13.1B The parties acknowledge that they have agreed the decommissioning specification referred to in the Redelivery Condition as being the Porterbrook document PB/TP 1695 issue 1.
- 13.2 Where the leasing of any Vehicle of any type is to terminate or expire on its Scheduled Redelivery Date, not more than seven (7) months prior to the Scheduled Redelivery Date for that Vehicle, Porterbrook will notify the Lessee of the date or dates upon which it and/or any person designated by it will conduct a static and an in service inspection of one (1) Vehicle of that type (including, for the avoidance of doubt, its Technical Records and any uninstalled Parts) at such location as is specified by Porterbrook (acting reasonably), in order to verify that the Redelivery Condition is complied with in relation to that Vehicle. Porterbrook and the Lessee agree that the intention of any inspection referred to in this clause 13.2 is to familiarise the Lessee with Porterbrook's processes for carrying out redelivery inspections to facilitate the inspection of each Vehicle (together with the entire Technical Records in respect of that Vehicle and all its Parts) at such location as is specified by Porterbrook (acting reasonably) referred to in clause 13.3.
- 13.3 Where the leasing of any Equipment is to terminate or expire on its Scheduled Redelivery Date, not more than six (6) months prior to that Scheduled Redelivery Date and then again not more than one (1) month prior to that Scheduled Redelivery Date, Porterbrook will notify the Lessee of the dates upon which it and/or any person designated by it will conduct a static and an in service inspection of that Equipment (including, for the avoidance of doubt, its Technical Records and any uninstalled Parts), in order to verify that the Redelivery Condition is complied with in relation thereto. Porterbrook agrees that in selecting times and dates for any such inspection and in conducting any such inspection it shall use reasonable endeavours not to cause any unreasonable disruption to the operation of that item of Equipment or to any repair and maintenance work being carried out or the Lessee's other operational activities at the place at which such inspection takes place (provided always that in determining what is reasonable all due regard shall be given to Porterbrook's right (as lessor and/or owner of the Equipment) to carry out a thorough inspection of the Equipment to establish whether the Redelivery Condition is, or will be, complied with.
- 13.4 On the date of each Redelivery Inspection with respect to any Equipment, the Lessee shall make that Equipment available to Porterbrook and/or any person designated by it for inspection and the following provisions shall apply to each Redelivery Inspection:
- 13.4.1 the inspection will be for such period as is reasonably necessary to permit Porterbrook and/or any person designated by it to inspect that Equipment (including, for the avoidance of doubt, all its uninstalled Parts and Technical Records);

- 13.4.2 the Lessee shall provide reasonable access rights at the location where that Equipment, any uninstalled Part and any Technical Records are to be inspected to enable Porterbrook and/or any person designated by it to conduct an inspection as permitted by this clause;
- 13.4.3 the Lessee shall provide such assistance, facilities and equipment as Porterbrook reasonably requests in relation to such inspection;
- 13.4.4 in relation to any in service inspection to be conducted by Porterbrook and/or any person designated by it in relation to any Rolling Stock, such inspection shall be of such duration as is reasonably necessary for the purpose of demonstrating the satisfactory operation of such Rolling Stock;
- 13.4.5 in relation to any static inspection of any Rolling Stock:
  - (a) the Lessee shall ensure that such Rolling Stock is available for inspection on a covered illuminated pitted road;
  - (b) the Lessee shall ensure that power is available to such Rolling Stock such that it is possible to test the major sub-systems on such Rolling Stock (including any HVAC, compressors, brakes, lighting and door locking systems);
  - (c) the Lessee shall ensure that suitable access ladders (or other suitable methods of access) are available to inspect the exterior of such Rolling Stock;
  - (d) the Lessee shall ensure that all necessary keys are available to allow access to enclosures within, and underneath, such Rolling Stock;
  - (e) if requested by Porterbrook and/or any person designated by it, the inspection will include an inspection of the roof of such Rolling Stock;
- 13.4.6 without prejudice to clause 13.4.5, in relation to any static inspection of any Equipment:
  - (a) the Lessee shall make available to Porterbrook and/or any person designated by it a list of all sub-assemblies (falling within any categories specified by Porterbrook and/or any person designated by it) fitted to such Equipment, and in respect of all Tracked Components, their serial numbers;

- (b) the Lessee shall make available to Porterbrook and/or any person designated by it all Technical Records for such Equipment (made up to date as at the date of inspection);
- (c) the Lessee shall provide full details of the Modification status of such Equipment;

13.4.7 Porterbrook shall use reasonable endeavours to ensure that any such inspection does not cause any unreasonable disruption to the operation of any Equipment or to any repair or maintenance work being carried out or the Lessee's other operational activities at the place at which such inspection takes place, however the Lessee acknowledges that Porterbrook shall be entitled to carry out an inspection of such Equipment as permitted by this clause 13 in the manner, on the dates, at the times and for the duration determined by this clause 13. The Lessee shall ensure that any such Rolling Stock to be inspected pursuant to this clause 13 is diagrammed so that such an inspection can be carried out (provided that if, after the Lessee has diagrammed such Rolling Stock to facilitate its inspection pursuant to this clause 13 (an "**Inspection Diagram**"), the Lessee has no other reasonable alternative but to operate, or carry out maintenance on, such Rolling Stock, during the period of that Inspection Diagram and the Lessee has given Porterbrook not less than one (1) Business Day's prior notice thereof, the Lessee shall be entitled to re-diagram such Rolling Stock so that such Rolling Stock can be so operated or maintained provided that the Lessee further diagrams such Rolling Stock to facilitate its inspection pursuant to this clause 13 within five (5) Business Days of the date on which such inspection was originally scheduled or, if earlier, before the date of termination or expiry of the leasing of such Rolling Stock).

13.4.8 Porterbrook shall, and shall procure that any person designated by it shall, comply with all Local Depot Instructions (to the extent notified to it) and all Applicable Requirements in relation to each Redelivery Inspection.

### 13.5

13.5.1 If, following any Redelivery Inspection, or upon the Redelivery Date in respect of any Equipment, the Redelivery Condition is not met with respect to that or any other Equipment (and for these purposes the Lessee acknowledges Porterbrook's rights under paragraph 11.2 of Schedule 6), regardless of when that non-compliance comes to Porterbrook's attention:

- (a) Porterbrook shall be entitled to serve written notice on the Lessee (a "**Redelivery Condition Compliance Notice**") setting out details of such non-compliance ("**Redelivery Condition Non Compliance**");

- (b) the Lessee will, unless otherwise expressly agreed in writing, at Porterbrook's option:
  - (i) rectify all Redelivery Condition Non Compliance as soon as possible and, to the extent necessary, the Lease Period in respect of that Equipment will be extended automatically and the leasing of such Equipment pursuant to this Agreement will continue until such Redelivery Condition Non Compliance has been rectified or such other date as specified by Porterbrook provided that:
    - (A) the Rental payable in respect of such Equipment during the extension of that Lease Period shall be at the Extended Lease Rate Rental; and
    - (B) the Lessee shall not use such Equipment except for the sole purpose of rectifying such Redelivery Condition Non Compliance and re-delivering that Equipment to Porterbrook;
  - (ii) redeliver that Equipment to Porterbrook on the Redelivery Date relative to that Equipment or on such other date determined in accordance with clause 13.5.1(b)(i);
- (c) the Lessee shall indemnify Porterbrook on demand against all costs, expenses, fees and liabilities reasonably incurred by Porterbrook in rectifying any Redelivery Condition Non Compliance and putting that Equipment into the Redelivery Condition; and
- (d) Porterbrook shall be entitled to serve notice on the Lessee setting out Porterbrook's reasonable estimate of the Quantum with respect to that Redelivery Condition Non Compliance and to exercise any rights it may have to require the Lessee to provide security to Porterbrook in accordance with clause 14.

13.5.2 Unless otherwise expressly agreed in writing, if at the time of the Redelivery Inspection, or on the Redelivery Date, of any Rolling Stock, all or any part of the Lessee's fleet is undergoing a programme of Modifications (other than Mandatory Modifications), the Redelivery Condition Non Compliance with respect to that Rolling Stock may include the removal of any such Modifications specified by Porterbrook from such Rolling Stock and clause 13.5.1 shall apply accordingly.

13.6 Upon redelivery of any Rolling Stock, the Lessee shall ensure that the Lessee's interest, and that of any sub-lessee (whether as operator, ECM, Keeper or

otherwise), with respect to such Rolling Stock is de-registered from the Rolling Stock Library, the National Vehicle Register and any other register of rolling stock. The Lessee shall also provide such assistance as Porterbrook may reasonably require in registration of the interest of any new operator, ECM or Keeper of such Rolling Stock in any such register and shall acknowledge any notification issued by the person maintaining any such register of any change in the Lessee's status as contained in such register.

- 13.7 Without prejudice to clause 13.5 and without in any way qualifying the obligations of the Lessee under clause 13.1, if the Lessee fails to redeliver any Equipment to Porterbrook on the date, at the place and in the condition required by this Agreement and, as a consequence, Relevant Losses arise, the Lessee shall pay to Porterbrook, on demand, by way of compensation the full amount of any such Relevant Losses.

#### **14 SECURITY FOR DEFAULT MAINTENANCE AND REDELIVERY CONDITION**

- 14.1 Subject to clause 14.8 in relation to the timing of such security and clause 14.10 with regard to the applicability of this clause 14, the Lessee shall provide Security to Porterbrook:
- 14.1.1 in an amount equal to the Quantum, if the Quantum in relation to any or all Outstanding Maintenance exceeds the Vehicle Threshold in respect of any Vehicle or the Fleet Threshold, which Security shall be provided within ten (10) Business Days of Porterbrook's request; and
  - 14.1.2 in an amount equal to the Warranty Amount, which Security shall be provided not less than twelve (12) months prior to the end of the Lease Period for each Vehicle (or, if that Lease Period is terminated pursuant to clause 15, within seven (7) days of such termination) in respect of the obligations of the Lessee pursuant to paragraph 9 of Schedule 6 with respect to that Vehicle.
- 14.2 Subject to clause 14.8 in relation to the timing of such security and the opening of the Lessee's Account, the Security shall take the form of a deposit of Sterling cash, into the Lessee's Account, in an amount equal to the relevant amount as described in clause 14.1.1 and/or, as the case may be, 14.1.2.
- 14.3 If in relation to any Lessee's Account (the "**Original Lessee's Account**"):
- 14.3.1 the credit rating of the Lessee's Account Bank in relation to that Original Lessee's Account falls below the Security Credit Rating; or
  - 14.3.2 an Insolvency Event occurs in relation to the Lessee's Account Bank in relation to in relation to that Original Lessee's Account; or

- 14.3.3 any circumstance or event occurs which in the reasonable opinion of Porterbrook is likely to have a material adverse effect on the financial condition of the Lessee's Account Bank in relation to that Original Lessee's Account; or
- 14.3.4 any obligations of a Security Provider in relation to the Lessee's Account in relation to that Original Lessee's Account become wholly or partly invalid or unenforceable and in the reasonable opinion of Porterbrook the same has a material adverse effect; or
- 14.3.5 the Lessee's Account Bank in relation to that Original Lessee's Account shall threaten to or shall cease to carry on its business or shall transfer or dispose of all or a substantial part of its assets or all or a substantial part of the assets of the Lessee's Account Bank in relation to that Original Lessee's Account are appropriated by any governmental authority,

the Lessee shall procure that within thirty (30) days of notice from Porterbrook that:

- 14.3.6 the Lessee opens a new Lessee's Account with a bank acceptable to Porterbrook having a credit rating of at least the Security Credit Rating;
- 14.3.7 a deposit of Sterling cash, is made into that new Lessee's Account, in an amount equal to the relevant amount as described in clause 14.1.1 and/or, as the case may be, 14.1.2;
- 14.3.8 such new Lessee's Account is charged in favour of Porterbrook pursuant to an Account Charge,

in which case Porterbrook shall release the security created by the Account Charge in relation to that Original Lessee's Account.

- 14.4 The Lessee acknowledges that any Quantum as notified to it by Porterbrook shall be valid and binding on the Lessee. Porterbrook shall provide to the Lessee, as soon as reasonably possible after a request therefor from the Lessee, copies of any estimates or quotes which it has received to carry out such repair or maintenance or other reasonable evidence to support its reasonable estimate of any Quantum.
- 14.5 If the Lessee has provided Security under clause 14.1 but, following an inspection or a re-inspection pursuant to this Agreement or the agreement or determination of any matter pursuant to clause 14.7, the amount of such Security exceeds the amount in respect of which Porterbrook is entitled to require Security under clause 14.1 and provided that the Lessee has paid all amounts owing by it pursuant to clauses 13.5.1(c) and 13.7 and paragraph 7.3 of Schedule 6 and no Default has occurred and is continuing, the Lessee shall be entitled to reduce the level of such Security by an amount equal to such excess. If the Lessee is entitled to reduce the level of Security from time to time pursuant to this clause 14.5 Porterbrook will co-



operate with the Lessee and (at the Lessee's expense) do all such acts or things reasonable and within its power to give effect to such reduction.

- 14.6 Porterbrook shall be entitled to demand and enforce payment under the Security provided by the Lessee pursuant to:
- 14.6.1 clause 14.1.1 to the extent of the costs incurred or that will be incurred to remedy any non-compliance by the Lessee with its obligations under this Agreement or, after the end of the Lease Period for any Equipment, to remedy any Redelivery Condition Non Compliance;
  - 14.6.2 clause 14.1.2 to the extent of the costs incurred or that will be incurred to remedy any non-compliance by the Lessee with its obligations under paragraph 9 of Schedule 6 with respect to any Equipment.
- 14.7 If the Lessee, acting in good faith, disputes all or any Outstanding Maintenance or the Quantum specified in any Quantum Notice it shall notify Porterbrook of such dispute providing its reasons ("**Dispute Notice**") within ten (10) Business Days of receipt of the relevant Maintenance Compliance Notice, Redelivery Condition Compliance Notice or, as the case may be, Quantum Notice in which case the Parties shall consult in good faith to resolve such dispute. If such dispute is not resolved within twenty (20) Business Days of the receipt by Porterbrook of the Dispute Notice the Parties may submit the dispute for Expert Determination. Where, in relation to any dispute which the Lessee wishes to submit for Expert Determination pursuant to this clause, Porterbrook has required the Lessee to provide any Security pursuant to clause 14.1, the Lessee shall be required to provide that security to Porterbrook as a pre-condition to exercising or pursuing such rights and the provisions of this clause 14.7 shall be suspended until such Security is so provided.
- 14.8 Immediately on the date on which the Lessee is obliged to deposit an amount of cash into the Lessee's Account pursuant to clause 14.1.1 and/or, as the case may be, 14.1.2 (with such date being the date by which such amount is required to be deposited), the Lessee shall, to the extent not already in place:
- 14.8.1 open a Lessee's Account with a bank acceptable to Porterbrook having a credit rating of at least the Security Credit Rating; and
  - 14.8.2 provide to Porterbrook a duly executed original Account Charge (and the notice and acknowledgment to be given pursuant thereto) in respect of that Lessee's Account.
- 14.9 Where an Account Charge is in place and the Lessee ceases to be under an obligation to have an amount of cash on deposit in the Lessee's Account, Porterbrook shall at the Lessee's request release and discharge the Account Charge over the Lessee's Account.

- 14.10 The Parties acknowledge and agree that at all times when the Lessee or a subsequent lessee is a public sector company (as defined in the Act), this clause 14 shall not apply.

**15 TERMINATION EVENTS**

- 15.1 The occurrence of any of the following events or circumstances will constitute a breach by the Lessee of the Transaction Documents which shall entitle Porterbrook to terminate the leasing of the Equipment under this Agreement in accordance with the provisions of this clause 15.1:

15.1.1 the Lessee fails to make any payment of Rental or any other sum under any Transaction Document on the due date or, where such failure results solely from technical or administrative failure beyond the control of the Lessee, within five (5) Business Days of the due date; or

15.1.2 the Lessee fails to comply with clauses 14 or 31; or

15.1.3 the Lessee fails to comply with any three (3) Maintenance Compliance Notices or any notice issued by Porterbrook pursuant to paragraph 2.2.2 of Schedule 11 or to deliver any Equipment to Porterbrook as required by paragraph 7.2 of Schedule 6; or

15.1.4 any Required Insurances are not effected or maintained in accordance with the terms of the Transaction Documents for any reason whatsoever or there is any cancellation, revocation, lapse or non-renewal of any Required Insurances without immediate replacement upon the Lessee becoming aware of such cancellation, revocation, lapse or non-renewal; or

15.1.5 without prejudice to clauses 15.1.1 to 15.1.4, the Lessee fails to comply with any material provision of the Transaction Documents, and, where such failure is capable of remedy, the failure is not remedied within twenty one (21) days of the earlier of Porterbrook giving notice to the Lessee or the Lessee first becoming aware of such failure; or

15.1.6 any representation made (or deemed to be made) by the Lessee in or pursuant to any of the Transaction Documents is or proves to have been incorrect in any material respect when made (or deemed to be made) unless the circumstances giving rise to the misrepresentation:

- (a) are capable of remedy; and
- (b) are remedied within twenty one (21) days of the earlier of Porterbrook giving notice and the Lessee becoming aware of the misrepresentation; or

- 15.1.7 any consent, authorisation, licence, certificate or approval of or issued by, or registration with, or declaration to, any Government Authority in connection with the Transaction Documents or the operation of the Equipment (including the Lessee's Passenger Licence or the Safety Case, Safety Management System or the Safety Certificate) is modified (other than any modification to the Railway Safety Case contemplated by The Railways (Safety Case) Regulations 2000), withheld, revoked, suspended, cancelled, withdrawn, terminated or not renewed, or otherwise ceases to be in full force and effect and in the reasonable opinion of Porterbrook the same has a material adverse effect or the Lessee otherwise operates any Equipment in breach of any Applicable Requirements (including the ROGs); or
- 15.1.8 an Insolvency Event occurs in relation to the Lessee or its Parent; or
- 15.1.9 any repayment of Financial Indebtedness by the Lessee in an aggregate principal amount exceeding in respect of the Lessee [REDACTED] [REDACTED] (other than under any overdraft or on-demand facility) is not paid when due or within any applicable grace period therefor; or
- 15.1.10 any demand is made under any overdraft or on-demand facility of the Lessee in an aggregate principal amount exceeding [REDACTED] [REDACTED] which is not paid within five (5) Business Days;
- 15.1.11 any Financial Indebtedness in an aggregate principal amount exceeding [REDACTED] in respect of the Lessee becomes prematurely due and payable or is placed on demand as a result of an event of default (howsoever described) under the document(s) relating to that Financial Indebtedness;
- 15.1.12 the Lessee's obligations under any Transaction Document become wholly or partly invalid or unenforceable and in the reasonable opinion of Porterbrook the same has a material adverse effect (and for these purposes an event or circumstance will be deemed to have a "material adverse effect" if, in the reasonable opinion of Porterbrook, it has affected or is likely to affect in a material and adverse way the ability of the Lessee to perform or comply with any of its obligations under the Transaction Documents or the enforcement thereof against the Lessee) and the Parties have failed to reach agreement on, and to enter into agreements implementing a new transaction to replace the transactions contemplated by that Transaction Document by the day before the date on which such invalidity or unenforceability takes effect; or
- 15.1.13 the Lessee shall threaten to or shall cease to carry on its business or shall transfer or dispose of all or (without the prior consent of Porterbrook) a

substantial part of its assets or all or a substantial part of the assets of the Lessee are appropriated by any governmental authority; or

15.1.14 the Rail Services Contract:

- (a) expires or is terminated for any reason prior to the Scheduled Redelivery Date unless a Permitted Transfer is concurrently effected in accordance with clause 22.1; or
- (b) is novated or assigned or transferred in any manner with the result that the Lessee ceases to be a party to the Rail Services Contract unless a Permitted Transfer is concurrently effected in accordance with clause 22.1; or

15.1.15 if at any time a material change is proposed or takes place in the ownership or management of the Lessee and in Porterbrook's reasonable opinion the Lessee's ability to perform its obligations under any Transaction Document is materially adversely affected;

Provided that any of the events referred to in clause 15.1 shall not constitute a Termination Event where such event occurs solely as a result of any breach by Porterbrook of the Transaction Documents.

15.2 If any Termination Event occurs Porterbrook may at its option (and without prejudice to any of its other rights) by written notice to the Lessee:

- 15.2.1 if such Termination Event is continuing, accept the repudiation of the Transaction Documents by the Lessee and terminate the leasing of any or all Equipment (the "**Relevant Equipment**") (but without prejudice to any outstanding, continuing or accrued obligations of the Lessee in respect of the Relevant Equipment under the Transaction Documents), whereupon all rights of the Lessee under this Agreement and the Transaction Documents in respect of the Relevant Equipment shall cease; and/or
- 15.2.2 proceed by appropriate court action or actions to enforce performance of the Transaction Documents and/or to recover damages for breach of the Transaction Documents; and/or
- 15.2.3 following termination of the leasing of the Relevant Equipment, require the Lessee to redeliver any or all of the Relevant Equipment (together with the entire Technical Records in respect of such Relevant Equipment (to the extent not contained in the Technical Databases) and all its Parts) to Porterbrook at the Redelivery Location and in the Redelivery Condition in accordance with clause 13 (provided that the provisions of clauses 13.2 and 13.3 shall not apply at such time). If the Lessee fails to redeliver any Relevant Equipment forthwith upon being required so to do, Porterbrook

may, without prejudice to the provisions of clause 13, take possession of that Relevant Equipment and, for this purpose, Porterbrook and/or any person designated by it may enter any premises belonging to or in the occupation of or under the control of the Lessee (or, as the case may be, under the control of any liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrator, railway administrator, or examiner of the Lessee, or the like) where that Relevant Equipment and/or any Part thereof may be located and/or may cause that Relevant Equipment to be redelivered to Porterbrook at such location as Porterbrook may notify to the Lessee.

- 15.3 Upon termination of the Transaction Documents pursuant to clause 15.2 and subject to the provisions of clause 11.3, Porterbrook shall be entitled to recover from the Lessee a sum equal to the aggregate of (without double counting) (the **“Termination Sum”**):
- 15.3.1 all sums due to Porterbrook under the Transaction Documents and unpaid as of the date on which Porterbrook terminates the leasing of the Relevant Equipment;
  - 15.3.2 as compensation and/or liquidated damages for the loss suffered by Porterbrook as a result of the termination of the leasing of the Relevant Equipment, a sum equivalent to the amount of Rental that would have been payable during the remainder of the Lease Period in respect of the Relevant Equipment (if the Lease Period for the Relevant Equipment were to continue until the Scheduled Redelivery Date) less a discount for accelerated receipt of each instalment of such Rental by the discounting that instalment from the date of actual payment pursuant to this clause 15.3 to the date on which the payment would have fallen due at the Termination Discount Rate calculated on the basis of the actual number of days elapsed and on a 365 day year;
  - 15.3.3 all costs and expenses incurred by Porterbrook in tracing and/or recovering possession of any Relevant Equipment or collecting any payments due under the Transaction Documents or otherwise in obtaining the due performance of the obligations of the Lessee under the Transaction Documents;
  - 15.3.4 all Losses (excluding, without prejudice to the provisions of clause 13.7, loss of profit) incurred by Porterbrook in repairing or otherwise restoring the Relevant Equipment to the Redelivery Condition;
  - 15.3.5 any costs and expenses incurred by Porterbrook in respect of the Relevant Equipment which should have been incurred by the Lessee or otherwise in obtaining the due performance by the Lessee of its obligations under the

Transaction Documents, or in remedying a breach of contract by the Lessee;

- 15.3.6 all losses, costs and expenses which have been suffered or incurred by any Indemnatee as a result of such termination in repaying or otherwise redeploying funds borrowed to finance the acquisition of the Relevant Equipment, Losses associated with that termination or repayment and all Losses incurred by any Indemnatee in refinancing its investment in the Relevant Equipment or its investment for the purposes of any replacement lease (including any loss, unwind payment, premium, fee penalty or expense incurred by any Indemnatee in liquidating or employing deposits from third parties acquired to make, maintain or fund such investments, or part thereof and any Losses incurred by any Indemnatee in unwinding or terminating any swap agreement, forward interest rate agreement or other financial instrument, or in connection with the breaking of any fixed rate funding or hedging arrangements) and all reasonable costs and expenses incurred by any Indemnatee in negotiating and drafting any replacement leases. Without prejudice to the generality of the foregoing, each Indemnatee shall be entitled to recover any and all legal and administrative expenses and other advisory fees incurred by any Indemnatee in connection with any of the foregoing matters; and
- 15.3.7 an amount equal to interest on all sums specified in clause 15.3.1 to 15.3.6, at the Default Rate from time to time from (and including) the date on which such expenditure is incurred to (but excluding) the date of payment thereof to Porterbrook or the relevant Indemnatee.
- 15.4 If a railway administrator or an administrator appointed in respect of the Lessee obtains a court order (the “**Order**”) pursuant to section 15, or paragraph 72 of Schedule B1, of the Insolvency Act 1986 (as modified by the Act) authorising the disposal of any Equipment, then in addition to and without prejudice to other amounts payable to Porterbrook hereunder, the Lessee shall, immediately upon the sale of such Equipment taking place pursuant to such Order, pay to Porterbrook the proceeds of sale of such Equipment together with any sum which the court determines may be required to make good any deficiency referred to in section 15(5)(b) (which section, for the purposes of railway administration, has been modified pursuant to paragraph 5(2) of Schedule 6 to the Act), or paragraph 72(3)(b) of Schedule B1, of the Insolvency Act 1986 (as modified by the Act).
- 15.5 The amount referred to in clause 15.3.2 shall be reduced by such amount so as to reflect the net economic return to Porterbrook during the period from the date of termination up to the Scheduled Redelivery Date of a lease or other disposition of the Relevant Equipment entered into after the date of termination of the Relevant Equipment.

## 15.6

15.6.1 In making a demand under clause 15.3.2, Porterbrook shall, acting reasonably, determine the amount of any reduction required by clause 15.5 as at the date of its demand and shall verify such value to the Lessee (together with such supporting information as the Lessee may reasonably require to verify such value).

15.6.2 Subsequently, at all times during the period from the date of termination up to the Scheduled Redelivery Date, Porterbrook shall use its reasonable endeavours to secure an alternative lease or, at Porterbrook's discretion any other disposition of the Relevant Equipment ("**New Lease**"). Within twenty (20) Business Days of the commencement of any New Lease of the Relevant Equipment of any part of it, Porterbrook shall certify the net economic return derived from such alternative lease or disposition of the Relevant Equipment (together with such supporting information as the Lessee may reasonably require to verify such net economic return) and notify the Lessee of the recalculated sum which Porterbrook would have demanded under clause 15.3.2 had Porterbrook known as at the date of its demand that it would secure such lease or other disposition of the Relevant Equipment. Where the recalculated sum differs from the original sum demanded Porterbrook shall promptly make a payment to the Lessee or the Lessee shall promptly make a payment to Porterbrook as appropriate of such difference together with interest at SONIA for the period from the date of the original payment until the date of receipt of the balancing payment. The provisions of this clause 15.6.2 apply to each New Lease of the Relevant Equipment.

15.7 No right or remedy conferred on any Party by any Transaction Document shall be exclusive (except where otherwise provided herein) of any remedy provided for herein or by law and all such rights and remedies shall be cumulative. The exercise of any power, or remedy, or the enforcement of any right, under or in connection with any Transaction Document shall not be construed as a waiver of the right or remedy of any Party or of the right to exercise any other power or remedy or to enforce any other right.

15.8 If the Lessee disputes the calculation of the Termination Sum or the Voluntary Termination Sum or any recalculated sum under clause 15.6.2 or Schedule 20 ("**Disputed Sum**") it shall notify Porterbrook of such dispute providing its reasons ("**Termination Sum Dispute Notice**") within ten (10) Business Days of being notified by Porterbrook of the relevant amount. The parties agree to consult in good faith to resolve such dispute. If such dispute is not resolved within ten (10) Business Days of the receipt by Porterbrook of the Termination Sum Dispute Notice the Parties shall submit the dispute for determination by a jointly appointed independent expert who shall determine within ten (10) Business Days the amount which is the subject

of the Termination Sum Dispute Notice. The cost of the appointment of the independent expert shall be borne by Porterbrook if the amount determined by the independent expert is less than the Disputed Sum and by the Lessee if the amount determined is equal to or greater than the Disputed Sum. The Parties agree that the decision of the independent expert shall be final and binding on both Parties. In the absence of agreement between the Parties as to the identity of the independent expert within five (5) Business Days of the decision to refer the matter to an independent expert, the Parties agree to accept an independent expert appointed by the President of the Institute of Chartered Accountants.

## **16 OPTIONS TO ALTER THE LEASE PERIOD**

16.1 The Lessee shall, provided that no Termination Event has occurred and is continuing, be entitled to serve written notice (the **"Reduction Notice"**) on Porterbrook requiring that the then current Scheduled Redelivery Date for any Unit be amended to 01:59 hours on the date specified in the Reduction Notice which is:

16.1.1 on or after 25 May 2025 and before 28 April 2028; and

16.1.2 not less than one (1) calendar month after the date the Reduction Notice is received by Porterbrook,

(any such date so specified in a Reduction Notice in relation to a Unit being the **"Revised Scheduled Redelivery Date"** for that Unit).

16.2 Any Reduction Notice given in respect of any Unit shall with effect from the date of the Reduction Notice (and subject to clause 16.3) have the effect of amending the Scheduled Redelivery Date for that Unit to 01:59 hours on the Revised Scheduled Delivery Date for that Unit.

16.3 The Lessee shall, provided that no Termination Event has occurred and is continuing, be entitled by notice in writing (a **"Withdrawal Notice"**) to withdraw any Reduction Notice issued in accordance with clause 16.1 in respect of any Unit, provided that the Withdrawal Notice is given no less than five (5) Business Days prior to the Revised Scheduled Delivery Date for that Unit as referred to in the Reduction Notice. Any Withdrawal Notice given in respect of any Unit shall with effect from the date of the Withdrawal Notice, have the effect of amending the Scheduled Redelivery Date for that Unit to 01:59 hours on 28 May 2028 (and the Scheduled Redelivery Date shall be deemed to be amended accordingly).

16.4 There shall be no limit as to the number of Reduction Notices which the Lessee shall be permitted to serve pursuant to clause 16.1.

16.5 The Parties acknowledge and agree that, in relation to Units 76, 75 and 74, the following Revised Scheduled Redelivery Dates shall apply:



16.5.1 Unit 76 (455912) – 30 May 2025;

16.5.2 Unit 75 (455905) – 8 June 2025; and

16.5.3 Unit 74 (455857) – 22 June 2025.

## **17 ENHANCEMENT MODIFICATIONS**

17.1 This clause 17 will apply if and to the extent that the Lessee and Porterbrook agree that Porterbrook is to carry out any Enhancement Modifications.

17.2 The Parties shall agree the Enhancement Programme for the Vehicles as soon as reasonably practicable after it is agreed that Porterbrook is to carry out any Enhancement Modifications, such agreement not to be unreasonably withheld or delayed.

17.3 Porterbrook shall use reasonable endeavours to procure that any contract that it enters into for the carrying out of any Enhancement Modifications provides for:

17.3.1 liquidated damages to be payable by the Lessor Maintenance Performer if the Lessor Maintenance Performer fails to deliver any Equipment to the Lessee by the date agreed between Porterbrook, the Lessor Maintenance Performer and the Lessee for delivery of that Equipment to the Lessee after completion of the Enhancement Modifications on that Equipment; and

17.3.2 assignable warranties relating to any Enhancement Modifications carried out with respect to any Equipment, and

Porterbrook hereby assigns to the Lessee the benefit of all unexpired and assignable warranties relating to any Enhancement Modifications carried out with respect to any Equipment vested in Porterbrook for the purpose of facilitating, and to the extent necessary to facilitate, the Lessee's compliance with its obligations under the Transaction Documents and shall (at the Lessee's cost) do and execute, or arrange for the doing and executing of, each act, document and thing as may be reasonably necessary to effect any such assignment.

17.4 Subject to the agreement thereof by the Parties, Porterbrook undertakes to carry out (or procure that there are carried out) the Enhancement Modifications in accordance with the Enhancement Programme.

17.5 The Enhancement Modifications shall be treated as if they were Lessor Maintenance and the person carrying out such work were the Lessor Maintenance Performer and accordingly the provisions of Schedule 11 shall apply thereto (mutatis mutandis) save that:

17.5.1 paragraph 1 of Schedule 11 shall not apply with respect thereto; and

- 17.5.2 if the Lessor Maintenance Performer fails to delivery any Equipment to the Lessee by the date agreed between Porterbrook and the Lessee for delivery of that Equipment to the Lessee after completion of the Enhancement Modifications on that Equipment Porterbrook shall pay to the Lessee, by way of Compensation Amount, such liquidated damages as Porterbrook receives from the Lessor Maintenance Performer as liquidated damages as a result of the Lessee being deprived of all operational use of such Vehicle.
- 17.6 The Parties agree that the Enhancement Programme may be amended with the consent of both Parties, such consent not to be unreasonably withheld or delayed. It will be reasonable for either Party to withhold its consent to an amendment to the Enhancement Programme if the relevant additional variation is one which is likely to give rise to:
- 17.6.1 an increase in the cost of performance by either Party with regard to their maintenance obligations under the Transaction Documents; or
- 17.6.2 have an adverse impact on the performance of any Equipment or give rise to an increase in the cost to the Lessee of operating the Equipment.

## **18 REPRESENTATIONS AND WARRANTIES**

- 18.1 The Lessee represents and warrants to Porterbrook that:
- 18.1.1 it is duly incorporated under the laws of England, has the corporate power to enter into and perform, and has taken all necessary corporate and other action to authorise the entry into, performance and delivery of, each of the Transaction Documents and the transactions contemplated by each of the Transaction Documents and that once executed each of the Transaction Documents will constitute the Lessee's legal, valid and binding obligations;
- 18.1.2 no legal proceedings are pending or to the Lessee's knowledge threatened against it which if decided against the Lessee would have a material adverse effect upon the lessee's financial condition or business or its ability to perform its obligations under the Transaction Documents;
- 18.1.3 the audited accounts and unaudited management accounts of the Lessee supplied to Porterbrook are the latest available accounts and have been prepared in accordance with generally accepted accounting principles and practice in the United Kingdom and show fairly and accurately the financial position of the Lessee as at the date to which they were drawn up. There has been no change in the financial position of the Lessee since the date to which the accounts were drawn up which could have a material adverse effect upon the Lessee's financial condition or business or its ability to perform its obligations under the Transaction Documents;

18.1.4 the financial and written information furnished by the Lessee does not contain any untrue statement which is material or omits to state any fact the omission of which makes the statement therein, in the light of the circumstances under which they were made, misleading in any material respect, nor omits to disclose any material matter to Porterbrook and all expressions of expectation, intention, belief and opinion contained therein were made on reasonable grounds after due and careful enquiry by the Lessee;

18.1.5 the Lessee has procured:

- (a) the entry into by the Lessee of:
  - (i) the Transaction Documents; and
  - (ii) all amendments thereto (entered into at the Lessee's request); and
- (b) all contracts in respect of Modifications carried out or to be carried out by or on behalf of, or at the request of, the Lessee (including any such Modifications procured by or on behalf of Porterbrook at the request of the Lessee),

in accordance with the Procurement Rules; and

18.1.6 the Lessee carries on a Railway Business.

18.2 The representations and warranties set forth in clause 18.1 will survive execution of this Agreement and will be deemed repeated by the Lessee on each Delivery Date and each Rental Payment Date with reference to the facts and circumstances then existing.

18.3 Porterbrook represents and warrants to the Lessee that it is duly incorporated under the laws of England, has the corporate power to enter into and perform, and has taken all necessary corporate and other action to authorise entering into, performance and delivery of, each of the Transaction Documents and the transactions contemplated by each of the Transaction Documents and once executed each of the Transaction Documents will constitute Porterbrook's legal, valid and binding obligations.

## **19 INFORMATION**

19.1 The Lessee undertakes to provide Porterbrook with copies of:

- 19.1.1 all documents sent by the Lessee pursuant to any statutory obligations or any statutory process to its shareholders and any class of creditor (such

documents to be sent to Porterbrook at the same time as being sent to such shareholders and creditors);

- 19.1.2 as soon as available but in any event not later than one hundred and eighty (180) days after the last day of each financial year of the Lessee, its audited balance sheet as of the last day of the financial year of the Lessee and its audited profit and loss statement for the year ending on such day;
- 19.1.3 if the Lessee is not a public sector company (as defined in the Act), as soon as available but in any event not later than thirty (30) days after the last day of each month of the Lessee, its unaudited management accounts for such period including comparisons against budget and full year forecasts;
- 19.1.4 such other financial information about its business and financial status as Porterbrook may from time to time reasonably require (such information to be sent to Porterbrook promptly after a request therefor from Porterbrook); and
- 19.1.5 any information relating to disputes, claims or proceedings relating to or arising from the condition, possession or operation of the Equipment with any supplier thereof or with any other person (such information to be sent to Porterbrook promptly after a request therefor from Porterbrook).

19.2 Not Used.

## **20 SET OFF**

- 20.1 Porterbrook shall be entitled to apply sums held to the credit of or payable to the Lessee against any liability of the Lessee under any Transaction Document and/or any other agreement between the Lessee and Porterbrook.

## **21 VARIATION**

- 21.1 Save as provided herein, the terms of the Transaction Documents shall only be amended or altered by a contract in writing between the Lessee and Porterbrook. No employee of Porterbrook other than a director shall have the right to waive any rights of Porterbrook under the Transaction Documents. Any failure by either Party to insist upon the performance of the terms and covenants of the Transaction Documents or to exercise any right or privilege thereunder shall not be construed thereafter as any waiver by such Party of such terms, covenants, conditions, rights or privileges all of which shall remain in full force and effect notwithstanding any such failure.

## 22 ASSIGNMENTS

22.1 The Lessee shall not be entitled to assign or transfer all or any of its rights, benefits and obligations contained in the Transaction Documents, provided that in circumstances in which the Rail Services Contract is terminated for any reason or expires by effluxion of time, in each case, prior to the Scheduled Redelivery Date, the Lessee may transfer all the Lessee's rights and obligations under the Transaction Documents to:

22.1.1 the Secretary of State; or

22.1.2 a public sector company (as defined in the Act),

concurrently with such termination or expiry by way of a novation deed substantially in the form set out in Schedule 23 (Form of Novation and Amendment) (any such transfer to the Secretary of State or a public sector company being a "**Permitted Transfer**") without the consent of Porterbrook, provided that Lessee gives Porterbrook at least three (3) months' prior written notice of the date on which the Permitted Transfer is to occur (such notice to include the identity of the public sector company or, as the case may be, to set out that the transferee is the Secretary of State).

22.2 Without prejudice to clause 6, Porterbrook may from time to time:

22.2.1 assign, charge or transfer all or any of its rights and benefits in or under the Transaction Documents or in and to any Equipment without the consent of the Lessee provided that any such assignment, charge or transfer by Porterbrook shall not, as a consequence of such assignment, charge or transfer, impose any obligation or liability on the Lessee under the Transaction Documents which is additional to the obligations and liabilities which the Lessee would have had and shall not reduce the rights which the Lessee would have enjoyed under the Transaction Documents, had such assignment, charge or transfer not occurred; and

22.2.2 transfer or dispose of all or any of its obligations contained in the Transaction Documents to any member of Porterbrook's Group or to a Financier or to a Security Interest Holder without the consent of the Lessee at any time provided that any such transfer or disposal by Porterbrook shall not, as a consequence of such transfer or disposal, impose any obligation or liability on the Lessee under the Transaction Documents which is additional to the obligations and liabilities which the Lessee would have had and shall not reduce the rights which the Lessee would have enjoyed under the Transaction Documents, had such transfer or disposal not occurred.

22.3 A Financier or Security Interest Holder will be entitled to enforce its security or assign, transfer or otherwise dispose of all or any of their rights and benefits in or

under the Transaction Documents or in and to the Equipment on enforcement of its Security Interest over such rights and benefits provided that:

- 22.3.1 Porterbrook has complied with clauses 6.2 and 22.2.1 in relation to such Security Interest;
  - 22.3.2 any such assignment, transfer or disposal shall not, as a consequence of such assignment, transfer or disposal, impose any obligation or liability on the Lessee under the Transaction Documents which is additional to the obligations and liabilities which the Lessee would have had and shall not reduce the rights which the Lessee would have enjoyed under the Transaction Documents, had such assignment, transfer or disposal not occurred;
  - 22.3.3 the assignee or transferee grants to the Lessee a covenant of quiet enjoyment in similar terms to that given by Porterbrook in clause 6.1;
  - 22.3.4 it or the assignee or transferee (as the case may be) covenants that following enforcement of any such Security Interest Porterbrook's obligations under the Transaction Documents will be performed, provided that no Default has occurred and is continuing.
- 22.4 The Lessee shall at the request of Porterbrook, the Owner, any Financier and/or any Security Interest Holder (as applicable) do and execute, or arrange for the doing and executing of, each act, document and thing which is reasonably requested by Porterbrook, the Owner, any Financier and/or any Security Interest Holder in connection with any assignment, charge, transfer or disposal by Porterbrook pursuant to clause 22.2 or assignment, transfer or disposal by a Financier or Security Interest Holder pursuant to clause 22.3. Porterbrook, the Owner, any Financier and/or any Security Interest Holder (as applicable) shall reimburse to the Lessee all reasonable costs and expenses incurred by the Lessee in discharging its obligations under this clause 22.4.

## **23 EXPENSES**

- 23.1 All expenses (including legal, printing and out-of-pocket expenses) reasonably incurred by Porterbrook in connection with:
- 23.1.1 in the event of a Default or breach by the Lessee of its obligations under any Transaction Documents, the enforcement of Porterbrook's rights under any Transaction Document; and
  - 23.1.2 any amendment or extension of, or the granting of any waiver or consent under, any Transaction Document (other than in connection with an amendment requested by Porterbrook where such request is not made by

Porterbrook in connection with a Default or breach by the Lessee of its obligations under any Transaction Documents),

shall be for the Lessee's account and shall be paid by the Lessee to Porterbrook on demand.

## **24 NOTICES**

24.1 Every notice, request, demand or other communication under any Transaction Document:

24.1.1 in relation to any dispute, suit, application, action or other proceedings which may arise out of or in connection with the Transaction Documents shall (unless otherwise specified in that Transaction Document) be in writing delivered personally or by first class prepaid post;

24.1.2 in relation to any other matter under any Transaction Document shall (unless otherwise specified in that Transaction Document) be in writing delivered personally or by first class prepaid post or by email transmission;

24.1.3 shall be deemed to have been received, subject as otherwise provided in that Transaction Document:

(a) in the case of a letter, when delivered personally or three (3) days after being put in the post; and

(b) in the case of an email transmission, upon sending, subject to receipt by the sender from the recipient of a confirmation of receipt;

24.1.4 shall be sent:

pursuant to clause 24.1.1:

to Porterbrook at:

Ivatt House,  
 7 The Point,  
 Pinnacle Way,  
 Derby DE24 8ZS

Attention: Company Secretary;

to the Lessee at:

Great Minster House  
 4<sup>th</sup> Floor 33 Horseferry Road  
 London SW1P 4DR

Attention: Lawrence Bowman  
 Managing Director

pursuant to clause 24.1.2:

to Porterbrook at:

Ivatt House,  
7 The Point,  
Pinnacle Way,  
Derby DE24 8ZSAttention: Company Secretary  
Email:  
company.secretary@porterbrook.co  
.uk

to the Lessee at:

4<sup>th</sup> Floor  
South Bank Central  
30 Stamford Street  
London SE1 9LQAttention: Lawrence  
Bowman Managing Director  
Email:

or to such other address or email address as is notified by one Party to the other under that Transaction Document.

- 24.2 A notice given in accordance with the above but received on a non-Business Day or after business will be deemed to be given on the next Business Day.

## 25 CONFIDENTIALITY

- 25.1 Each Party agrees that it will keep this Agreement, each other Transaction Document, and all information and data which it receives from the other hereunder or thereunder ("**Confidential Information**") confidential and that no Confidential Information will be used by it or any person to whom it furnishes or discloses such Confidential Information or furnished or disclosed by it to any other person (except as specified in clause 25.2) without the other Party's consent.
- 25.2 The restrictions in clause 25.1 shall not apply to any disclosure of any information:
- 25.2.1 to the Regulator, the Authority, HM Revenue & Customs or as required by law or as required by the rules of any Recognised Investment Exchange, but subject, in any such case, to clause 25.3;
- 25.2.2 to any member of the Porterbrook Group, any actual or potential Owner, Financier or Security Interest Holder or lawyers, accountants and others providing professional services to the Lessee, any member of the Porterbrook Group or any actual or potential Owner, Financier or Security Interest Holder provided that (save with respect to lawyers or accountants) the Party disclosing such information has first obtained an undertaking of confidentiality in substantially the same form as set out in this clause 25 from the person to whom the information is to be disclosed in favour of the Parties to this Agreement;
- 25.2.3 by either Party to its shareholders or potential shareholders, but only to the extent and for the purposes that such disclosure is reasonably necessary provided that the Party disclosing such information has first obtained an



undertaking of confidentiality in substantially the same form as set out in this clause 25 from the person to whom the information is to be disclosed in favour of the Parties to this Agreement;

- 25.2.4 which is in the public domain (other than by virtue of a breach of the provisions of this clause 25);
  - 25.2.5 which was made available to the disclosing Party on a non-confidential basis;
  - 25.2.6 which is required by a court order in connection with any litigation;
  - 25.2.7 which is required in connection with an assignment, disposition or other transfer of rights permitted under any Transaction Document provided that (save with respect to lawyers or accountants) the Party disclosing such information has first obtained an undertaking of confidentiality in substantially the same form as set out in this clause 25 from the person to whom the information is to be disclosed in favour of the Parties to this Agreement;
  - 25.2.8 to any actual or potential Successor Operator but only to the extent and for the purposes that such disclosure is reasonably necessary in connection with such Successor Operator's use of any Equipment provided that the Party disclosing such information has first obtained an undertaking of confidentiality from such Successor Operator;
  - 25.2.9 to any person in connection with any works to be carried out with respect to the Equipment but only to the extent and for the purposes that such disclosure is reasonably necessary in connection with such works provided that the Party disclosing such information has first obtained an undertaking of confidentiality from such person;
  - 25.2.10 which is required in connection with a sale or other disposition of shares in any Porterbrook Group Company or any Holding Company of the Lessee provided that the Party disclosing such information has first obtained an undertaking of confidentiality in substantially the same form as set out in this clause 25 from the person to whom the information is to be disclosed in favour of the Parties to this Agreement;
  - 25.2.11 which is required in connection with obtaining any insurance;
  - 25.2.12 to the extent that such disclosure is expressly permitted by this clause 25.
- 25.3 The Parties' ability to disclose Confidential Information to the Regulator, the Authority, HM Revenue & Customs or to the extent required by law or as required by the rules of any Recognised Investment Exchange is limited as follows:

- 25.3.1 either Party may disclose Confidential Information to the minimum extent required by the Regulator, the Authority, HM Revenue & Customs or the laws or regulations of any country with jurisdiction over the affairs of such Party or to any such Recognised Investment Exchange provided that such Party shall:
- (a) notify the other Party of the request; and
  - (b) consult with the other Party before responding to any request; and
  - (c) if the disclosure is in connection with a request under the Freedom of Information Act 2000 or any similar legislation in any relevant jurisdiction use its best endeavours to ensure any relevant exemption of the Freedom of Information Act 2000 (or any similar or applicable legislation in any relevant jurisdiction) is applied;
- 25.3.2 before either Party discloses any information under clause 25.3.1, that Party must (to the extent permitted by law):
- (a) inform the other Party of the full circumstances of the disclosure and the information that will be disclosed;
  - (b) consult with the other Party as to possible steps to avoid or limit disclosure and take those steps where they would not result in significant adverse consequences to such Party;
  - (c) gain assurances (in terms reasonably acceptable to the other Party) as to confidentiality from the body to whom the information is to be disclosed; and
  - (d) where the disclosure is by way of an announcement required by the rules of any such Recognised Investment Exchange, agree the wording with the other Party in advance (such agreement not to be unreasonably withheld or delayed).
- 25.3.3 The relevant Party must co-operate with the other Party in bringing any legal or other proceedings to challenge the validity of the requirement to disclose.
- 25.3.4 If the relevant Party does not inform the other Party before Confidential Information is disclosed, that Party will (to the extent permitted by law) inform the other Party immediately after the disclosure of the full circumstances of the disclosure and the information that has been disclosed.

- 25.4 In fulfilling its obligations under clause 25.1, each Party shall only be required to use the same degree of care to prevent unauthorised disclosure of the information described above as it would use to prevent the disclosure of its own commercial and financial information of the same or similar nature and which it considers proprietary or confidential.

## **26 DISPUTES**

- 26.1 If any Transaction Document provides that a matter shall be submitted to “Expert Determination” that matter shall be submitted for determination to a jointly approved independent expert who shall be instructed to determine that matter within ten (10) Business Days of being so instructed. The cost of the appointment of the independent expert shall be borne by whichever Party to the dispute the independent expert decides against. The Parties agree that the decision of the independent expert shall be final and binding on both Parties. In the absence of agreement between the Parties as to the identity of the independent expert within five (5) Business Days of the decision to refer the matter to an independent expert, the Parties agree to accept an independent expert appointed by the President of the Institute of Mechanical Engineers.
- 26.2 Except to the extent that the terms of any Transaction Document expressly provides for an alternative basis of dispute resolution, the English courts have exclusive jurisdiction to hear or otherwise decide any suit, application, action or other proceedings which may arise out of or in connection with the Transaction Documents and, for these purposes, each party irrevocably submits to the jurisdiction of the English courts.

## **27 COUNTERPARTS**

- 27.1 Each Transaction Document may be executed in any number of counterparts and by the Parties in separate counterparts, each of which shall be deemed to be an original, and all such counterparts shall constitute one and the same instrument. Delivery of a counterpart of any Transaction Document by electronic means (including fax or e-mail attachment) shall be an effective mode of delivery. In relation to each counterpart, upon confirmation by or on behalf of a Party that such party authorises the attachment of its counterpart signature page to the final text of the relevant Transaction Document, such counterpart signature page shall take effect, together with such final text, as a complete authoritative counterpart.

## **28 ENTIRE CONTRACT**

- 28.1 The Transaction Documents shall constitute the entire agreement between the Parties in respect of the leasing of the Equipment and supersedes all prior oral or written contracts, understandings or arrangements relating to the leasing of the Equipment. Neither Party shall be entitled to rely on any contract, understanding or

arrangement in respect of the leasing of the Equipment that is not expressly set forth in the Transaction Documents.

## **29 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

- 29.1 No person shall be entitled to enforce any term of any Transaction Document pursuant to the Contracts (Rights of Third Parties) Act 1999 other than a party to that Transaction Document.
- 29.2 Clause 29.1 shall not apply to any Owner, Financier or Security Interest Holder in its capacity as an Indemnitee, as defined in, and for the purposes of, clauses 11 and 15.3.6 and paragraph 10.3.5 of Schedule 6, provided that the Parties shall not require the consent of any Owner, Financier or Security Interest Holder in connection with any amendment or waiver of any provision of any Transaction Document or any rescission of any Transaction Document even if it adversely affects the rights of any Owner, Financier or Security Interest Holder.

## **30 SEVERABILITY**

- 30.1 Each Transaction Document is severable in that if any provision thereof is determined to be invalid or unenforceable by any court or administrative body of competent jurisdiction, such provision shall be deemed to have been deleted without affecting the remaining provisions of that Transaction Document. It shall not affect the enforceability of the remainder of that Transaction Document, nor shall it affect the validity, lawfulness or enforceability of that provision in any other jurisdiction.

## **31 ANTI-BRIBERY**

- 31.1 The Lessee, (which for purposes of this clause 31 shall include all of the Lessee's employees, agents, representatives, affiliates and any person who performs services on behalf of the Lessee) agrees with Porterbrook that it will not, in connection with the goods or services to be supplied under this Agreement, bribe, or attempt to bribe (which shall include without limitation, any offer of any form of payment, gift or other form of inducement, reward or advantage (whether of money or anything of value)) Porterbrook, any public or government officials or employees, public international organisations, political parties, or private individuals or other entities ("**Relevant Party**").
- 31.2 The Lessee represents and warrants to Porterbrook that it has not, prior to the date of this Agreement, bribed or attempted to bribe any Relevant Party in order to secure any business from Porterbrook whether in connection with this Agreement or otherwise.
- 31.3 The Lessee acknowledges and agrees on behalf of all of the Lessee's employees, agents, representatives, affiliates and any person who performs services on behalf

of the Lessee, that it is familiar with and will abide by the anti-bribery and anti-money laundering laws and regulations in all the countries in which it is incorporated or established and in which it does business.

- 31.4 The Lessee agrees that it will not take or knowingly permit any action to be taken that would cause Porterbrook to be in violation of any applicable anti-bribery or anti-money laundering laws.
- 31.5 The Lessee agrees that its books, records and all accounts shall accurately reflect any and all payments in respect of transactions of the Lessee whether under this Agreement or otherwise, and Porterbrook (and Porterbrook's authorised representatives) shall have the right to inspect and audit the Lessee's books, records and accounts at any time on prior written notice.
- 31.6 If the Lessee discovers that it has or may have violated any of the provisions of this clause 31, the Lessee shall immediately notify Porterbrook and cooperate with any investigations by Porterbrook into such matters.
- 31.7 Without prejudice to the generality of clauses 31.1 to 31.6 inclusive, the Lessee covenants with Porterbrook to establish and at all times maintain and implement such anti-bribery policies and procedures as may be required to ensure that it prevents bribery or attempted bribery taking place on the Lessee's behalf.
- 31.8 Without prejudice to any other rights Porterbrook may have, Porterbrook shall not be required to make any payments to the Lessee that might otherwise be due from Porterbrook if such payments are related to a transaction in connection with which the Lessee has breached this clause 31.

## **32 FREEDOM OF INFORMATION**

- 32.1 The parties acknowledge that the Lessee is subject to the requirements of the Freedom of Information Act and the Environmental Information Regulations (the "**Information Legislation**"), and Porterbrook agrees to assist and co-operate with the Lessee to enable the Authority to comply with its disclosure obligations under the Information Legislation. The foregoing shall not preclude Porterbrook from objecting to a disclosure of any information.
- 32.2 Porterbrook shall:
- 32.2.1 in relation to any request for information held by Porterbrook on behalf of the Lessee, the disclosure of which is validly requested under the Information Legislation ("**Request**") and in relation to which no exemption from disclosure exists under the Information Legislation, provide the Lessee with a copy of any such information in its possession or power in the form that the Lessee reasonably requires within three (3) Business Days of receipt of a copy of the Request; and

- 32.2.2 transfer to the Lessee any Requests received by Porterbrook as soon as practicable and in any event within two (2) Business Day of receiving any such Request, and not respond directly to any Request unless expressly authorised to do so in writing by the Lessee or the Authority; and
- 32.2.3 provide the Lessee with a copy of all information stipulated in a Request which is held by Porterbrook on behalf of the Lessee in such form as the information is held by Porterbrook within five (5) Working Days (or such other period as the Lessee may reasonably specify) of the Lessee's request for such information.
- 32.3 Porterbrook shall not respond to any Request unless expressly authorised to do so by the Lessee.
- 32.4 Porterbrook acknowledges that the Lessee shall be responsible for determining in its absolute discretion whether any information held by Porterbrook on behalf of the Lessee will be disclosed in response to a Request in accordance with the provisions of the Information Legislation, provided always that the Lessee shall (and shall procure that the Authority shall) have regard to any representations made by Porterbrook with regard to any information provided (including as to any confidentiality concerns).
- 33 LAW**
- 33.1 The Transaction Documents and any non-contractual obligations arising out of or in connection therewith shall be governed by and construed in accordance with the laws of England.

**AS WITNESS** the hands of the persons duly authorised on behalf of Porterbrook and the Lessee.

### Schedule 1

#### Description of the Rolling Stock

(1) Vehicle					(2) Delivery Location	(3) Redelivery Location	(4) Expected Delivery Date
Unit Numbe r	DTSO	MSO	TSO	DTSO			
455848	77673	62756	71684	77674	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455849	77675	62757	71685	77676	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455850	77677	62758	71686	77678	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455851	77679	62759	71687	77680	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025

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(1) Vehicle					(2) Delivery Location	(3) Redelivery Location	(4) Expected Delivery Date
Unit Numbe r	DTSO	MSO	TSO	DTSO			
455852	77681	62760	71688	77682	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455853	77683	62761	71689	77684	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455854	77685	62762	71690	77686	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455856	77689	62764	71692	77690	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455857	77691	62765	71693	77692	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025

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(1) Vehicle					(2) Delivery Location	(3) Redelivery Location	(4) Expected Delivery Date
Unit Numbe r	DTSO	MSO	TSO	DTSO			
455858	77693	62766	71694	77694	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455859	77695	62767	71695	77696	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455860	77697	62768	71696	77698	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455861	77699	62769	71697	77700	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455862	77701	62770	71698	77702	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025

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(1) Vehicle					(2) Delivery Location	(3) Redelivery Location	(4) Expected Delivery Date
Unit Numbe r	DTSO	MSO	TSO	DTSO			
455863	77703	62771	71699	77704	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455864	77705	62772	71700	77706	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455865	77707	62773	71701	77708	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455866	77709	62774	71702	77710	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455867	77711	62775	71703	77712	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025

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(1) Vehicle					(2) Delivery Location	(3) Redelivery Location	(4) Expected Delivery Date
Unit Numbe r	DTSO	MSO	TSO	DTSO			
455868	77713	62776	71704	77714	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455869	77715	62777	71705	77716	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455870	77717	62778	71706	77718	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455871	77719	62779	71707	77720	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455872	77721	62780	71708	77722	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025

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(1) Vehicle					(2) Delivery Location	(3) Redelivery Location	(4) Expected Delivery Date
Unit Numbe r	DTSO	MSO	TSO	DTSO			
455873	77723	62781	71709	77724	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455874	77725	62782	71710	77726	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455701	77727	62783	71545	77728	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455702	77729	62784	71547	77730	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455703	77731	62785	71540	77732	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025

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(1) Vehicle					(2) Delivery Location	(3) Redelivery Location	(4) Expected Delivery Date
Unit Numbe r	DTSO	MSO	TSO	DTSO			
455705	77735	62787	71565	77736	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455706	77737	62788	71534	77738	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455707	77739	62789	71536	77740	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455708	77741	62790	71560	77742	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455709	77743	62791	71532	77744	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025

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(1) Vehicle					(2) Delivery Location	(3) Redelivery Location	(4) Expected Delivery Date
Unit Numbe r	DTSO	MSO	TSO	DTSO			
455710	77745	62792	71566	77746	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455711	77747	62793	71542	77748	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455712	77749	62794	71546	77750	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455713	77751	62795	71567	77752	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455714	77753	62796	71539	77754	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025

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(1) Vehicle					(2) Delivery Location	(3) Redelivery Location	(4) Expected Delivery Date
Unit Numbe r	DTSO	MSO	TSO	DTSO			
455715	77755	62797	71535	77756	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455716	77757	62798	71564	77758	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455717	77759	62799	71528	77760	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455718	77761	62800	71557	77762	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455719	77763	62801	71558	77764	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025

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(1) Vehicle					(2) Delivery Location	(3) Redelivery Location	(4) Expected Delivery Date
Unit Numbe r	DTSO	MSO	TSO	DTSO			
455720	77765	62802	71568	77766	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455721	77767	62803	71553	77768	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455723	77771	62805	71526	77772	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455724	77773	62806	71561	77774	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455727	77779	62809	71562	77780	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025

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(1) Vehicle					(2) Delivery Location	(3) Redelivery Location	(4) Expected Delivery Date
Unit Numbe r	DTSO	MSO	TSO	DTSO			
455728	77781	62810	71527	77782	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455729	77783	62811	71550	77784	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455730	77785	62812	71551	77786	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455731	77787	62813	71555	77788	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455732	77789	62814	71552	77790	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025

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(1) Vehicle					(2) Delivery Location	(3) Redelivery Location	(4) Expected Delivery Date
Unit Numbe r	DTSO	MSO	TSO	DTSO			
455733	77791	62815	71549	77792	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455734	77793	62816	71531	77794	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455735	77795	62817	71563	77796	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455737	77799	62819	71544	77800	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455738	77801	62820	71529	77802	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025

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(1) Vehicle					(2) Delivery Location	(3) Redelivery Location	(4) Expected Delivery Date
Unit Numbe r	DTSO	MSO	TSO	DTSO			
455739	77803	62821	71537	77804	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455741	77807	62823	71559	77808	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455742	77809	62824	71543	77810	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455750	77811	62825	71538	77812	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455901	77813	62826	71714	77814	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025

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(1) Vehicle					(2) Delivery Location	(3) Redelivery Location	(4) Expected Delivery Date
Unit Numbe r	DTSO	MSO	TSO	DTSO			
455903	77817	62828	71716	77818	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455904	77819	62829	71717	77820	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455905	77821	62830	71725	77822	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455908	77827	62833	71721	77828	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455910	77831	62835	71723	77832	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025

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(1) Vehicle					(2) Delivery Location	(3) Redelivery Location	(4) Expected Delivery Date
Unit Numbe r	DTSO	MSO	TSO	DTSO			
455911	77833	62836	71724	77834	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455912	77835	62837	67400	77836	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455914	77839	62839	71727	77840	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455915	77841	62840	71728	77842	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455919	77849	62844	71718	77850	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025

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(1) Vehicle					(2) Delivery Location	(3) Redelivery Location	(4) Expected Delivery Date
Unit Numbe r	DTSO	MSO	TSO	DTSO			
455920	77851	62845	71733	77852	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025
455913	77837	67301	71726	77838	where-is	Sims or such other location on the Network as is notified by Porterbrook	02:00 on 25 May 2025

## Schedule 2

### Definitions and Other Relevant Information

#### 1 DEFINITIONS

- 1.1 In the Transaction Documents, unless the context otherwise requires or otherwise defined therein:

**“Accepted Faults”** means those faults specified in Schedule 17;

**“Account Charge”** means a charge over the Lessee’s Account in the form set out in Schedule 18;

**“Accounting Period”** means an accounting period within the meaning of Chapter 2 of Part 2 of the Corporation Tax Act 2009;

**“Act”** means the Railways Act 1993 as amended and/or superseded by the Transport Act 2000, the Railways and Transport Safety Act 2003 and the Railways Act 2005 and Passenger Railway Services (Public Ownership) Act 2024, in each case as subsequently amended and/or re-enacted from time to time and in each case together with any regulations or orders made pursuant thereto;

**“Agreed Value”** means, in respect of each Vehicle:

- (a) in the period from and including its Delivery Date to and including the Redelivery Date, [REDACTED]

in each case, as adjusted in accordance with paragraph 8.7 of Schedule 6 or paragraph 7 of Part 1 of Schedule 12;

**“Amortisation Profile”** in relation to any Modification Amount with respect to any Equipment, has the meaning given to it in paragraph 8.7 of Schedule 6;

**“Applicable Requirements”** means Industry Standards and any other law, statute, act, regulation, code, ordinance, rule, judgment, order, decree, directive or requirement, or any similar form of decision or determination (or any official interpretation or administration of any of the foregoing) by any Competent Authority relating to the Equipment or the operation of the Equipment or the Parties or in connection with the performance by the Parties of their obligations or the exercise by the Parties of their rights under this Agreement;

**“Audit Sample”** has the meaning given to it in paragraph 11.2 of Schedule 6;

**“Authority”** means the Secretary of State for Transport, or any successor to all or part of his functions in relation to the operation of railways;

**“Business Day”** means any day (other than a Saturday, Sunday or public holiday) on which banks are open for domestic business in the City of London;

**“CAA”** means the Capital Allowances Act 2001;

**“Certificate of Engineering Acceptance”** means a certificate or declaration of engineering acceptance issued in accordance with Applicable Requirements covering a particular type of Equipment issued by a Competent Authority and confirming that such type of Equipment meets the requirements of all Applicable Requirements (free of any limitations on the operation of such Equipment save for those agreed by Porterbrook, in which case such certificate or declaration must identify all limitations on the operation of such Equipment);

**“Compensation Amount”** means the amount of any payment described as a “Compensation Amount” in this Agreement;

**“Competent Authority”** means any Government Authority, Group Standards Organisation, Competent Person or Conformance Certification Body responsible for:

- (a) the acceptance of Safety Management Systems under ROGs;
- (b) issuing Railway Group Standards;
- (c) issuing any Certificates of Engineering Acceptance or CCB Certificates;
- (d) issuing any Relevant Consents; or
- (e) otherwise having jurisdiction over the network or the operation of assets on the Network;

**“Competent Person”** has the meaning given to such term in ROGs or the guidance notes on the ROGs issued by the Regulator dated April 2006;

**“Confidential Information”** has the meaning given to it in clause 25.1;

**“Confirmation Period”** has the meaning given to it in paragraph 4.8 of Schedule 6;

**“Conformance Certification Body”** means any person (including a Notified Body appointed by pursuant to the RIRs) authorised by, or pursuant to, Applicable Requirements to issue certificates for conformance for rolling stock so as to permit operation of such rolling stock on Network Rail Infrastructure;

**“Counter Database”** means:

- (a) R2; or



- (b) any other computer system used by the Maintenance Performer, the Lessee, or other person carrying out any maintenance, repair or Modification on any Equipment as such system may be approved by Porterbrook (acting reasonably) from time to time in accordance with the provisions of Schedule 9;

**“Counters”** means the counters specified in Part 2 of Schedule 8 in respect of a Vehicle and/or Identified Component;

**“CP Satisfaction Date”** means 24 May 2025 (or such later date and time as is agreed between the Parties);

**“Daily Rate”** means, in relation to any Equipment and any calendar month, an amount equal to £X where:

$$£X = \frac{A}{B}$$

A is the amount set out opposite such Equipment in the column of the table in paragraph 1 of Schedule 3 headed “Rental per Vehicle per Month” (as such amount may be adjusted from time to time in accordance with clauses 7 or 8 or Schedule 6);

B is the number of days in that calendar month;

**“Default”** means any Termination Event or any event which with the giving of notice or lapse of time or the satisfaction of any other condition (or any combination thereof) could constitute a Termination Event;

**“Default Maintenance”** has the meaning given to it in paragraph 7.1 of Schedule 6;

**“Default Rate”** means two per cent (2%) over SONIA from time to time;

**“Defect Advice Procedure”** means the defect advice procedure set out in Schedule 10;

**“Delivery and Lease Commencement Certificate”** means the certificate in the form set out in Schedule 4 to be signed by the Lessee and Porterbrook as required under clause 3.3;

**“Delivery Condition”** means, in respect of any Equipment, the description of the condition of that Equipment as described in Schedule 14 but it is acknowledged that Accepted Faults may be present with respect to that Equipment;

**“Delivery Date”** means in relation to each item of Equipment the date on which that item of Equipment is delivered or deemed to be delivered by Porterbrook to the Lessee pursuant to clause 3;

**“Delivery Location”** means in respect of any Rolling Stock, the location stated as the delivery location in Schedule 1 or such other location as the Parties may agree;

**“Design Authority”** has the meaning given to it in GEGN 8565;

**“Direct Agreement”** means the OPRAF/ROSCO agreement relating to the Rolling Stock dated 4<sup>th</sup> May 1995 between Porterbrook and the Authority (as amended and supplemented from time to time);

**“Disputed Sum”** has the meaning given to it in clause 15.8;

**“Dispute Notice”** has the meaning given to it in clause 14.7;

**“ECM”** means the entity in charge of maintenance for the purposes of EU Directive 2008/110/EC and all Applicable Requirements;

**“Engineering Change Document”** means the documents issued by Porterbrook with document numbers:

- (a) STD/T2/07, entitled “Management of Change”;
- (b) STD/T2/71, entitled “Engineering Change Agreement”;

(or such other document as shall be specified by Porterbrook);

**“Enhancement Modifications”** means in relation to any Rolling Stock the modifications to be carried out with respect to that Rolling Stock as referred to in Schedule 19 (save to the extent that such modifications have been completed prior to the relevant Delivery Date);

**“Enhancement Programme”** means the programme for carrying out the modifications to certain of the Rolling Stock referred to in Schedule 19 as agreed between Porterbrook and the Lessee pursuant to clause 17 and as amended by agreement between Porterbrook and the Lessee from time to time;

**“Environment”** means air, water or land (including, without limitation, air, water or land within natural or man-made structures above or below ground);

**“Environmental Laws”** means all Applicable Requirements which relate to the Environment or Environmental Matters (including under the Guidance on Contaminated Land and regulations under section 57 of the Environment Act 1995 and the Town and Country Planning Act 1971);

**“Environmental Matters”** means:

- (a) pollution or contamination of the Environment;

- (b) exposure of any person to Hazardous Substances or Waste;
- (c) the creation of any noise, vibration, radiation, common law or statutory nuisance, or other harm to the Environment and/or the health and safety of any human being; and
- (d) the health and safety of any human being;

**“Equipment”** means the Rolling Stock and, where the context permits, includes a separate reference to any Part or Parts installed on or relating to any Rolling Stock, and the Technical Records relating to any Rolling Stock;

**“Equipment Specific Modifications”** has the meaning given to it in clause 12.1.1(b);

**“Excluded Maintenance and Repairs”** means any maintenance and repairs falling within any of the following categories:

- (a) Fair Wear and Tear which has not, at the relevant time, fallen to be rectified in the normal course of routine maintenance under the Maintenance Programme pursuant to this Agreement;
- (b) Lessor Works; and
- (c) Accepted Faults;

**“Excluded Vandalism Damage”** means minor cosmetic damage to the Equipment which does not affect the operation of the Equipment;

**“Existing Equipment”** means any Equipment which, immediately prior to its Expected Delivery Date, is or was on lease to the Lessee or a company within the Lessee’s Group;

**“Existing Leases”** means any lease entered into in respect of any Equipment and in force immediately prior to its Delivery Date;

**“Existing Lessee”** means a lessee under the Existing Leases;

**“Expected Delivery Date”** means, in respect of any Equipment, the date specified as its expected delivery date in the relevant column of the table in Schedule 1 or if later, the date on which the conditions precedent specified in clause 2.1 have been fulfilled (or waived by Porterbrook) and the conditions precedent specified in clause 2.2 have been fulfilled (or waived by the Lessee);

**“Expert Determination”** means the procedure described in clause 26.1;

**“Extended Lease Rate Rental”** means [REDACTED] of the Rental;

**“Extended Lessee Warranty”** has the meaning given thereto in paragraph 9 of Schedule 6;

**“Fair Wear and Tear”** means the wear that arises in the normal course of use or operation of any Equipment for its Permitted Use within its operational thresholds and which is not scheduled to be remedied or repaired pursuant to the Maintenance Programme, or is a natural consequence of the passage of time and is not accidental damage requiring repair, remedy, or replacement pursuant to clause 9;

**“Financial Indebtedness”** means any indebtedness in respect of:

- (a) moneys borrowed and debit balances at banks;
- (b) any debenture, financial bond, note, loan stock or other debt security;
- (c) any acceptance under an acceptance credit opened by a bank or other financial institution or any documentary credit;
- (d) receivables sold or discounted (otherwise than on a non-recourse basis);
- (e) the acquisition cost of any asset to the extent payable before or after the time of acquisition or possession by the party liable where the advance or deferred payment is arranged primarily as a method of raising finance or financing the acquisition of that asset (but excluding trade credit in the ordinary course of business outstanding for a period not exceeding 270 days);
- (f) rental payments so far as attributable to payments of capital under finance leases and hire purchase agreements (but not including, for the avoidance of doubt, operating leases) (whether in respect of land, machinery, equipment or otherwise) entered into primarily as a method of raising finance or financing the acquisition of the asset leased;
- (g) currency, commodity or interest rate swaps or other hedging arrangements;
- (h) amounts raised under any other transaction having the commercial effect of a borrowing or raising of money; or
- (i) any guarantee, indemnity or similar assurance against financial loss of any person in respect of the above, provided that:
  - (i) indebtedness arising from (A) one member of the Lessee's Group to another member of the Lessee Group; or (B) from one member of the Porterbrook Group which is not in the nature of commercial

borrowings to another member of the Porterbrook Group (as the case may be) shall not be Financial Indebtedness;

- (ii) the amount taken into account in relation to any currency, commodity or interest rate swap or other hedging arrangement is the net settlement amount and no amount shall be taken into account more than once in the same calculation; and
- (iii) any letter of credit, insurance bond, performance bond or similar instrument issued in support of actual indebtedness not falling within paragraphs (a) to (i) (inclusive) above shall be excluded.

No amount shall be taken into account more than once in the same calculation;

**“Financier”** means:

- (a) any financial institution or person which from time to time agrees to provide financing facilities to, or for the benefit of, any member of the Porterbrook Group or the Owner which are used in relation to financing or refinancing the cost of any Equipment;
- (b) any financial institution or person for whose benefit security over, or rights relating to, any Equipment and/or any Transaction Document are granted;
- (c) any financial institution or person which from time to time serves as security agent and/or trustee for one or more financial institutions or person(s) falling within paragraphs (a) or (b) above; or
- (d) with respect to any Equipment, the Owner of that Equipment (if not Porterbrook) and any other person (other than a person falling within paragraphs (a) to (c) above) who has a leasehold, proprietary or security interest in that Equipment;

**“Fleet Threshold”** means an amount equal to  $\text{£}X$  where:

$$\text{£}X = A \times B$$

$A$  is the amount equal to [REDACTED] of the Vehicle Threshold; and

$B$  is the aggregate number of Vehicles subject to this Agreement;

**“Government Authority”** means any national, state or local government, any political subdivision thereof or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or other similar entity and shall include the Authority;

**“Group”** means in relation to any person, that person, its ultimate Holding Company (if any) from time to time and any Subsidiary from time to time of that Holding Company or of that person;

**“Group Standards Organisation”** means any authorised person which from time to time produces mandatory standards associated with safety and inter-working for the operation of rolling stock on the Network or any other third party’s facilities and infrastructure;

**“Hazardous Substances”** means any or all materials or substances of any form whether natural or artificial, solid, liquid, gas or vapour or any mixture of the same which are present in such quantities and concentrations as:

- (a) are likely to be harmful or prejudicial to the Environment or human health or living organisms; or
- (b) are specifically regulated under any Environmental Laws; or
- (c) would require investigation or remediation under any Environmental Laws;

**“Heavy Maintenance”** means all or any of that heavy maintenance and repair work which is described in the Heavy Maintenance Programme;

**“Heavy Maintenance Programme”** means the programme which describes in detail the scope, method, periodicity, programme and proposed downtime for mileage and time based heavy maintenance to the Rolling Stock as referred to in Part 2 of Schedule 8 as amended, supplemented and varied from time to time pursuant to the Transaction Documents;

**“Holding Company”** has the meaning given to it in section 1159 of the Companies Act 2006;

**“Identified Component”** means any of those components identified in Part 1 of Schedule 9;

**“Indemnatee”** means Porterbrook, the Owner, each Financier, each Security Interest Holder, each of their respective successors and assigns and any of their, or their successors’ and assigns’, shareholders, Group members, directors, officers, agents, employees and servants;

**“Indemnified Losses”** has the meaning given to it in clause 11.1;

**“Industry Standards”** means all laws, directives, rules or regulations in force in the United Kingdom and the rules, regulations, instructions, applicable codes of practice and conduct applicable to the Equipment which are issued by any person including:

- (a) Railway Group Standards;

- (b) TSIs;
- (c) the ROGs, RIRs, Notified National Technical Rules, the Act and the Network Code;
- (d) the Rule Book;
- (e) any RDG codes of practice, to the extent that such codes of practice are generally complied with in the railway industry;
- (f) all other instruments, rules, regulations, requirements, codes of practice, safety cases, safety systems or procedures which concern the giving of any Relevant Consent in relation to the Equipment, the acceptance or approval of the Equipment or the operation or use thereof on the Network, which are (in each case) from time to time applicable to the Transaction Documents and/or the operation, leasing maintenance, repair, safety or delivery of the Equipment; and
- (g) all documents contemplated by, made or entered into under or pursuant to any of the standards, legislation, instruments, rules, regulations, requirements, safety cases and procedures referred to in paragraphs (a) to (f) above which are or become applicable to any Transaction Document;

**“Insolvency Event”** means in relation to any person:

- (a) that person is, or is deemed for the purposes of section 123(1) of the Insolvency Act 1986 (save that for the purposes of clause 15.1.8 references in that section to “a sum exceeding £750” shall be read as “a sum exceeding [REDACTED]”) to be, unable to pay its debts as they fall due or to be insolvent, or admits inability to pay its debts (with for the purposes of clause 15.1.8 an aggregate principal value of [REDACTED] or more) as they fall due or that person suspends making payments on all or any class of its debts (with for the purposes of clause 15.1.8 an aggregate principal value of [REDACTED] or more) or announces an intention to do so, or a moratorium is declared in respect of any of its indebtedness (with for the purposes of clause 15.1.8 an aggregate principal value of [REDACTED] or more); or
- (b) a meeting of the shareholders or directors of that person is convened to consider a resolution to present an application for an administration order or any such resolution is passed; or
- (c) any step (including petition, proposal or convening a meeting) is taken with a view to composition, assignment or arrangement with any creditors (with for the purposes of clause 15.1.8 an aggregate principal value of [REDACTED] or more) of, or the rehabilitation, administration, railway administration,

custodianship, liquidation, or dissolution of that person, or any other insolvency proceedings involving that person; or

- (d) any order is made or resolution passed for any such composition, assignment, arrangement, rehabilitation, administration, railway administration, custodianship, liquidation, dissolution or insolvency proceedings or, or in relation to, that person, or that person becomes subject to or enters into any of the foregoing; or
- (e) any liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrator, railway administrator, examiner or the like is appointed in respect of that person, or any substantial part of the assets of that person, or that person requests any person to appoint any of the foregoing;

**“Inspection Diagram”** has the meaning given to it in clause 13.4.7;

**“Intellectual Property Rights”** includes copyrights, (including rights in computer software), patents, utility models, trade-marks, trade names, service marks, business names design rights, database rights, get-up, semi-conductor topography rights, rights in undisclosed or confidential information (such as know-how, trade secrets and inventions (whether patentable or not)), and all other intellectual property or similar proprietary rights of whatever nature (whether registered or not and including applications to register or rights to apply for registration) which may now or in the future subsist anywhere in the world;

**“Irrecoverable VAT”** means any charge to VAT which is not recoverable by way of credit of repayment under section 26 of the Value Added Tax Act 1994;

**“Keeper”** has the meaning given to it for the purposes of EU Directive 2004/49/EC (as amended or replaced from time to time, including pursuant to EU Directive 2008/110/EC) and all Applicable Requirements;

**“Lease Period”** means, subject to the provisions of this Agreement in respect of any termination of such period, in relation to any Equipment the period from its Delivery Date until its Redelivery Date, or the date of the receipt by Porterbrook of the Agreed Value with respect to that Equipment pursuant to paragraph 6.1 of Part 1 of Schedule 12;

**“Lease Term”** means the period commencing on the first Delivery Date and ending on the last Redelivery Date;

**“Lessee’s Account”** means the Lessee’s account over which Porterbrook has Security pursuant to the Account Charge or such other account as is opened by the Lessee pursuant to clause 14.3;



**“Lessee’s Account Bank”** means, in relation to any Lessee’s Account, the person with whom such account is opened or by whom such account is held;

**“Lessee Modifications”** means those modifications referred to in Schedule 21;

**“Lessee Warranty Period”** has the meaning given to it in paragraph 9 of Schedule 6;

**“Lessee Works Delivery Location”** means, in relation to any Rolling Stock:

- (a) those depots as are operated by the Lessee for the carrying out of maintenance on such Rolling Stock; and
- (b) such other locations in the UK as are agreed by Porterbrook (acting reasonably);

**“Lessor Maintenance”** means any maintenance or repairs which Porterbrook and the Lessee agree will be undertaken by Porterbrook (which shall exclude any obligation to rectify Accepted Faults or Delivery Condition Defects);

**“Lessor Maintenance Performer”** means Porterbrook Maintenance Limited or any other person from time to time appointed by Porterbrook for the purposes of carrying out Lessor Works;

**“Lessor Works”** means any Lessor Maintenance and Enhancement Modifications;

**“Lessor Works Delivery Location”** means, in relation to any Rolling Stock, such locations in the UK as are specified by Porterbrook;

**“Licensed IPR”** has the meaning given to it in clause 12.1.2;

**“Local Depot Instructions”** means in respect of any maintenance depot those depot procedures and instructions and any health and safety policies generally applicable to access to that depot;

**“Losses”** means any losses, costs, charges, expenses, interest, fees (including legal fees), payments, demands, Taxes, liabilities, claims, actions, proceedings, penalties, fines, damages, adverse judgments, orders or other sanctions;

**“Maintenance Compliance Notice”** has the meaning given to it in paragraph 7.1 of Schedule 6;

**“Maintenance Performer”** means, for the purposes of any Modification, maintenance, repairs, cleaning, servicing or overhaul required by this Agreement to be carried out by the Lessee with respect to any Equipment:

- (a) the Lessee;

- (b) subject to paragraph 4.6 of Schedule 6, the person specified opposite such Modification, maintenance, repairs, cleaning, servicing or overhaul in Schedule 7;
- (c) subject to paragraph 4.6 of Schedule 6, any person approved by RISAS for the purposes of carrying out such Modification, maintenance, repairs, cleaning, servicing or overhaul;
- (d) subject to paragraph 4.6 of Schedule 6, any other competent and qualified company approved by Porterbrook prior to such Modification, maintenance, repairs, cleaning, servicing or overhaul being carried out (which approval shall not be unreasonably withheld or delayed) and appointed by the Lessee for the purposes of carrying out such Modification, maintenance, repairs, cleaning, servicing or overhaul);

**“Maintenance Planning Database”** means the maintenance planning database which sets out all maintenance (both light maintenance and heavy maintenance) with respect to the Equipment and the required intervals with respect thereto as referred to in paragraph 1.1.3 of Part 3 of Schedule 9, as amended from time to time to pursuant to a Variation Order;

**“Maintenance Programme”** means the Heavy Maintenance Programme and the programme for maintenance, repairs and cleaning procedures as referred to in Part 1 of Schedule 8 as amended, supplemented and varied from time to time pursuant to the Transaction Documents;

**“Mandatory Modification”** means a modification or addition to any Equipment which is required to be made under Applicable Requirements to that Equipment;

**“Manuals”** means the documents (other than the Maintenance Programme) which fully describe how the Equipment should be operated, serviced, maintained, repaired and overhauled;

**“Modification”** means any modification or addition to any Equipment (including any change in the configuration of any Equipment, or any systems on it) and **“Modify”** shall be construed accordingly;

**“Modification Amount”** in relation to any Modification to any Equipment, has the meaning given to it in paragraph 8.7 of Schedule 6;

**“National Vehicle Register”** has the meaning given to it in the RIRs;

**“Network”** means the heavy rail network which is situated in England, Wales and Scotland;

**“Network Code”** means the document known as the Network Code and formerly known as the Railtrack Track Access Conditions 1995 (as subsequently replaced or amended from time to time) or any equivalent code or agreement;

**“Network Rail”** means Network Rail Infrastructure Limited, a company incorporated under the laws of England (Registered Number 2904587) and includes any successors to any or all of the functions of Network Rail Infrastructure Limited, or, as the case may be, the person authorised under any applicable laws or applicable standards to produce mandatory operational and engineering standards associated with the safety and interworking of the operation of rolling stock on Network Rail’s Infrastructure;

**“Network Rail’s Infrastructure”** means all facilities, infrastructure, aspects and facets of the Network, and any facilities and infrastructure adjacent or related thereto, which could have an effect on the Equipment or the operation thereof operate including gauging and power supply;

**“New Lease”** shall have the meaning given to it in clause 15.6.2;

**“Notified Body”** has the meaning ascribed to it in regulation 2 of RIRs;

**“Notified National Technical Rules”** has the meaning ascribed to it in regulation 2 of RIRs;

**“Order”** has the meaning given to it in clause 15.4;

**“Original Lessee’s Account”** has the meaning given to it in clause 14.3;

**“Outstanding Maintenance”** means any Default Maintenance or Redelivery Condition Non Compliance;

**“Owner”** means, in relation to any Equipment, such person as is the owner of that Equipment;

**“Parent”** means the Lessee’s ultimate Holding Company;

**“Part”** means any component of, or furnishing or equipment furnished with, any Equipment on its Delivery Date and any component of or furnishing or equipment attached to any Equipment from time to time provided that save as otherwise set forth in this Agreement, at such time as a replacement part shall be substituted for a Part in accordance with paragraph 6.1 of Schedule 6, the Part which has been replaced by such replacement part shall cease to be a Part hereunder;

**“Party”** means either of the parties to this Agreement, and **“Parties”** means each of them;

**“Passenger Licence”** has the meaning given to that term in section 83(1) of the Act;

**“Permitted Purposes”** means operating, using, repairing, maintaining, Modifying, operating, owning, leasing, altering or refurbishing any Equipment;

**“Permitted Routes”** means in respect of any Rolling Stock any of the routes on which that Rolling Stock may be operated in accordance with, and as permitted by, all Applicable Requirements and Relevant Consents;

**“Permitted Transfer”** has the meaning given to it in clause 22.1;

**“Permitted Use”** means the use of the Equipment in accordance with the terms of this Agreement for the operation of passenger services on the Permitted Routes;

**“Performance Criteria”** means that the Rolling Stock will be capable of a standard of performance and passenger comfort which is sufficient to enable it to be used for its Permitted Use in normal operating conditions provided that it is repaired, maintained, cleaned, serviced and overhauled by the Lessee in accordance with the Transaction Documents;

**“Plates”** has the meaning given to it in paragraph 2.1 of Schedule 6;

**“Porterbrook’s Bank Account”** means account number [REDACTED] sort code [REDACTED] of Porterbrook with Lloyds TSB Bank plc, [REDACTED] or such other account as Porterbrook may, from time to time, notify (by written notice signed by any two directors of Porterbrook) to the Lessee;

**“Pre Existing Intellectual Property Rights”** means:

- (a) in respect of any Existing Equipment, any Intellectual Property Rights in the Maintenance Programme or the Technical Records relating to such Existing Equipment as delivered to the Lessee (or a company within the Lessee’s Group) on commencement of an Existing Lease;
- (b) in respect of any Equipment other than any Existing Equipment and any Intellectual Property Rights referred to in paragraph (a) of this definition, any other Intellectual Property Rights in the Maintenance Programme or the Technical Records relating to such Equipment as delivered to the Lessee on the Delivery Date;
- (c) any Intellectual Property Rights licensed by Porterbrook to the Lessee pursuant to clause 12.5;
- (d) any Intellectual Property Rights relating to any Modifications (including Enhancement Modifications) carried out by or on behalf of Porterbrook;

**“Procurement Rules”** includes, but is not limited to the Procurement Act 2023, the Public Contracts Directive 2014/24/EU, the Public Contracts Regulations 2015, the Utility Contracts Directive 2014/25/EU and the principles of transparency, non-

discrimination, equality of treatment, proportionality and mutual recognition as set out in the Treaty on the Functioning of the European Union;

**“Quantum”** means, in relation to any Outstanding Maintenance, Porterbrook’s reasonable estimate of the cost to Porterbrook of rectifying that Outstanding Maintenance or procuring the rectification of that Outstanding Maintenance by a Lessor Maintenance Performer nominated by Porterbrook, including the costs of any associated vehicle movements or paths;

**“Quantum Notice”** means, in relation to any Outstanding Maintenance, any notice given by Porterbrook to the Lessee pursuant to clause 13.5.1(d) or paragraph 7.2.2 of Schedule 6, specifying the Quantum with respect to that Outstanding Maintenance;

**“R2”** means the industry database for rolling stock registration, maintenance planning and component tracking;

**“Rail Services Contract”** means the rail services contract between the Authority, the Lessee and DfT Operator Ltd dated on or around the date of this Agreement (as may be amended from time to time);

**“Railway Business”** has the meaning set out in section 95(3) Capital Allowances Act 2001;

**“Railway Group Standards”** means:

- (a) technical standards with which railway assets, or equipment used as part of railway assets, must conform; and
- (b) operating procedures with which the operation of railway assets must comply,

in each case as authorised pursuant to the document known as the Railway Group Standards Code prepared and issued by RSSB or pursuant to any successor code;

**“RDG”** means Rail Delivery Group, or any successor body;

**“Rectification Period”** means, in relation to any Default Maintenance specified in a Maintenance Compliance Notice, the time period for rectification thereof specified in that Maintenance Compliance Notice;

**“Recognised Investment Exchange”** has the meaning given to it in section 285 Financial Services and Markets Act 2000;

**“Rectification Period”** has the meaning given to it in paragraph 7.1 of Schedule 6;

**“Redelivery Condition”** in respect of the Equipment means the description set out in Schedule 15;

**“Redelivery Condition Compliance Notice”** has the meaning given to it in clause 13.5.1;

**“Redelivery Condition Non Compliance”** has the meaning given to it in clause 13.5.1;

**“Redelivery Date”** means, in relation to any Equipment, the later of:

- (a) the Scheduled Redelivery Date in respect of that Equipment or, if earlier, the date of the termination or expiry of the leasing of that Equipment under this Agreement; and
- (b) the date on which that item of Equipment is redelivered to Porterbrook in accordance with this Agreement;

**“Redelivery Inspection”** means any inspection made by Porterbrook pursuant to clause 13.2 or 13.3, or, as the case may be and as the context so requires, any other inspection of any Equipment, its Technical Records and any uninstalled Parts made by Porterbrook upon or after redelivery of that Equipment pursuant to clause 15.2.3;

**“Redelivery Location”** means in respect of any Equipment the redelivery location for that Equipment specified in the relevant column of the table in Schedule 1 or such other location as the Parties may agree;

**“Reduction Notice”** has the meaning given to it in clause 16.1;

**“Registration Action”** has the meaning given to it in paragraph 4.7.5 of Schedule 6;

**“Registration Event”** has the meaning given to it in paragraph 4.7.5 of Schedule 6;

**“Regulator”** means the Office of Rail and Road established under the Railways and Transport Safety Act 2003, or any successor to all or any of the functions of such Office of Rail and Road under applicable law;

**“Relevant Consents”** means all consents, permissions, approvals, authorisations, acceptances, certifications, licences, exemptions, filings, registrations, notarisations and other matters, official or otherwise (including any Passenger Licence, CCB Certificates, Certificate of Engineering Acceptance or Safety Certificates), which are required from time to time (or which would, in accordance with the standards of a reasonable and prudent person, normally be obtained) in connection with the operation, leasing, maintenance, repair, Modification, safety and delivery of trains or, or for use on, the Network (including advice that there is no objection to a particular proposal or that a particular proposal is not inconsistent with policy or

guidelines) or, or from any person pursuant to any Application Requirements and, where any such person is authorised to prohibit a proposal, the passing of a time limit for such prohibition without the proposal being prohibited;

**"Relevant Equipment"** has the meaning ascribed to such expression in clause 15.2.1;

**"Relevant IPR"** has the meaning given to it in clause 12.1;

**"Relevant Losses"** means any losses (excluding Taxes (other than Value Added Taxes)) suffered or incurred by Porterbrook (as certified by Porterbrook, such certification being, in the absence of manifest error, final and binding on the Lessee) as a consequence of the Lessee failing to redeliver any Equipment to Porterbrook on the date, at the place and/or in the condition required by this Agreement (including, as a consequence of Porterbrook being unable to lease or otherwise dispose of any Equipment on or after the date for its redelivery to Porterbrook under this Agreement when Porterbrook would otherwise have been able to lease or dispose of that Equipment were it not for failure by the Lessee to redeliver that Equipment to Porterbrook on the date, at the place and/or in the condition required by this Agreement or Porterbrook only being able to lease or otherwise dispose of that Equipment on terms which are less favourable than those that would otherwise have applied);

**"Relevant Party"** has the meaning given to it in clause 31.1;

**"Relief"** means any relief, allowance, exemption, set-off, deduction, right of repayment, loss, or credit of a similar nature granted by or available in relation to Tax pursuant to any legislation or otherwise;

**"Rental"** means, in relation to any Vehicle, the rent payable by the Lessee for the use of that Vehicle as specified in Schedule 3, as the same may from time to time be adjusted, increased, or supplemented pursuant to the Transaction Documents (including clauses 7 or 8, Schedule 3 or Schedule 6);

**"Rental Payment Date"** means each of the dates on which Rental is payable pursuant to clause 7.3;

**"Replaced Part"** has the meaning given to it in paragraph 6.1 of Schedule 6;

**"Replacement Criteria"** has the meaning given to it in paragraph 6.1 of Schedule 6;

**"Replacement Part"** has the meaning given to it in paragraph 6.1 of Schedule 6;

**"Required Insurances"** means the insurances which the Lessee is required to effect pursuant to this Agreement;

**“Return”** means the after-tax return to the Porterbrook Group from the acquisition, financing, refinancing and leasing of the Equipment or, as the case may be, any Equipment and any modification, enhancement or improvement thereof or any expenditure thereon and the transactions contemplated by the Transaction Documents;

**“Revised Scheduled Redelivery Date”** has, in respect of a Unit, the meaning given to it in clause 16.1;

**“RIRs”** means the Railways (Interoperability) Regulations 2011;

**“RISAS”** means the Railway Industry Supplier Approval Scheme administered by the RSSB (or where such scheme ceases to operate, such other scheme as is selected by Porterbrook, acting reasonably);

**“ROGs”** means the Railways and Other Guided Transport Systems (Safety) Regulations 2006;

**“Rolling Stock”** means any of the rolling stock more fully described in Schedule 1 and, where the context permits, includes a separate reference to any Vehicle forming part of that Rolling Stock, or Part or Parts installed on or relating to that Rolling Stock, and the Technical Records relating to that Rolling Stock;

**“Rolling Stock Library”** means the national register of rolling stock permitted to operate on Network Rail’s infrastructure (as defined in Railway Group Standard GM/RT2453 Issue 2);

**“RSSB”** means Rail Safety and Standards Board Limited, a company incorporated under the laws of England (registered no. 04655675) and includes any successors to any or all of the functions of Rail Safety and Standards Board Limited;

**“Rule Book”** means the Network Rail Rule Book reference GE/RT8000 (as successor to the GO/RT3000 Master Rule Book) issued by RSSB;

**“Safety Case”** means the statement of procedures, standards and internal regulations designed to achieve the safe provision or operation of passenger services prepared by Lessee and accepted by Network Rail pursuant to The Railways (Safety Case) Regulations 2000;

**“Safety Certificate”** means a safety certificate issued by the Regulator to the Lessee pursuant to the ROGs in relation to, among other things, the Equipment or any similar certificate required in accordance with Applicable Requirements;

**“Safety Management System”** means the safety management system designed to achieve the safe provision or operation of passenger services prepared by the Lessee and which has been accepted by the Regulator (or other applicable



Government Authority) pursuant to the ROGs and in relation to which a certificate has been issued by such Government Authority confirming such acceptance/has the meaning given to such term in ROGs;

**Scheduled Redelivery Date**” in respect of any Unit, means:

- (a) the Revised Scheduled Redelivery Date for that Unit; or
- (b) where there is no such Revised Scheduled Redelivery Date for that Unit, 01.59 hours on 28 May 2028;

**“Security”** means any security provided, or to be provided, by the Lessee to Porterbrook pursuant to and in accordance with clause 14;

**“Security Assignment Letter Agreement”** means a letter agreement in a form substantially the same as that set out in Schedule 22 (*Security Assignment Letter*);

**“Security Credit Rating”** means Standard & Poor’s’ long term unsecured and un-guaranteed debt rating of at least A+ or the equivalent Moody’s credit rating;

**“Security Interest”** shall be construed as a reference to:

- (a) any right of ownership, lien, mortgage, charge, pledge, hypothecation, attachment, security interest, assignment by way of security, right of possession, right of detention, right of set-off or other encumbrance;
- (b) any other preferential arrangement resulting in a secured transaction or having the same economic or legal effect as any of the foregoing;
- (c) any agreement or arrangement to give any of the foregoing;
- (d) any arrangement to prefer one creditor over another creditor;
- (e) the interest of the vendor or owner under any conditional sale agreement, lease, hire purchase agreement or other title retention arrangement; or
- (f) any interest described in paragraph (a) to (e) above over any interest described in paragraph (a) to (e) above;

**“Security Interest Holder”** means any person to whom Porterbrook, any member of the Porterbrook Group or the Owner has granted a Security Interest;

**“Spares Access Agreement”** means any agreement entered into by the Lessee relating to the supply of spare parts for use on or in connection with the Equipment;

**“Special Tools”** means all special tools and software used by the Lessee wholly or mainly in connection with the maintenance, repair, cleaning, servicing or overhaul

of the Rolling Stock that the Lessee is obliged to carry out pursuant to this Agreement;

**“SONIA”** means on any date and in respect of any amount:

- (c) the rate at which interest is paid on sterling short-term wholesale funds in circumstances where credit, liquidity and other risks are minimal as published by the Bank of England on that date (or if such date is not a Business Day, the Business Day preceding such date); and
- (d) if no such interest rate is published for that date, the Bank of England base rate on that date;

**“Subsidiary”** has the meaning given to it in section 1159 of the Companies Act 2006;

**“Successor Operator”** means any person that owns or operates any Equipment after the end of its Lease Period;

**“Tax Authority”** means any authority, whether of the United Kingdom or elsewhere, competent to impose, assess or collect Tax, including Her Majesty’s Revenue & Customs;

**“Taxes”** includes all present and future taxes, levies, imposts, duties, deductions, withholdings, fees or charges of whatever nature, including any value added or similar tax, together with interest thereon and penalties, additions, fines or surcharges in respect thereof and any amount payable on account of or as security for any of the foregoing payable at the instance of or imposed by any statutory, governmental, national, international, state, federal, provincial, local or municipal authority, agency, body, commission, court, division, board or department whatsoever or any central bank, monetary agency or European Union institution in each case whether in the United Kingdom or elsewhere and **“Tax”**, **“Taxation”** and cognate expressions shall be construed accordingly;

**“Technical File”** means the technical file in respect of the Equipment required by Applicable Requirements to be set up and maintained pursuant to Applicable Requirements;

**“Technical Databases”** means each of the Technical Records Database, the Maintenance Planning Database and the Counter Database;

**“Technical Records”** means, in relation to any Equipment, the documentation, records and information referred to in Schedule 9, or the Technical Records Database, to the extent relating to that Equipment;

**“Technical Records Database”** means:

- (a) R2; or

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- (b) any other computer system used by the Maintenance Performer, Lessee, or other person carrying out any Maintenance and Repair or Modification on any Equipment as may be agreed with Porterbrook (acting reasonably) from time to time in accordance with the provisions of Schedule 9;

**“Termination Discount Rate”** means for any amount of Rental and for any period SONIA for such period;

**“Termination Event”** means any of the events or circumstances described in clause 15.1;

**“Termination Sum”** has the meaning given to it in clause 15.3;

**“Termination Sum Dispute Notice”** has the meaning given to it in clause 15.8;

**“Total Loss”** means, with respect to any Equipment (the **“Lost Equipment”**):

- (a) the actual, agreed, constructive, arranged or compromised total loss or destruction of that Lost Equipment or part thereof or of any other Equipment which together with the Lost Equipment was leased by Porterbrook to the Lessee as part of a multiple unit (**“Affected Equipment”**);
- (b) any damage to any part of any Lost Equipment or of any Affected Equipment rendering repair of that Lost Equipment or of any Affected Equipment impractical or uneconomical, or rendering such Lost Equipment or of any Affected Equipment or part thereof permanently unfit for its intended and normal use;
- (c) the requisition of title, or other compulsory acquisition, requisition, expropriation or confiscation, for any reason, of such Lost Equipment or of any Affected Equipment by any Government Authority, but excluding requisition for use or hire not involving requisition of title; or
- (d) the condemnation, confiscation, capture, deprivation, seizure or requisition for use or hire of such Lost Equipment or of any Affected Equipment (other than requisition for use or hire by any Government Authority) which deprives the Lessee of the possession and/or use of such Lost Equipment or of any Affected Equipment for more than ninety (90) days,

Provided that where an event or circumstance described above occurs in relation to an individual Vehicle within a multiple unit such event or circumstance shall be deemed to have occurred in relation to all Vehicles in that multiple unit;

**“Track Access Contract”** means the track access agreement dated on or around the date of this Agreement and made between Network Rail and South Western

Railways Limited (as such agreement may have been amended from time to time) and shall include any replacement thereof;

**“Tracked Components”** means any of the components identified in Part 1 of Schedule 9;

**“Transaction Documents”** means this Agreement, each Account Charge, the Security Assignment Letter Agreement and all notices, consents, certificates, statements and other documents and agreements issued, or entered into, pursuant to or in connection with the foregoing;

**“TSI”** means any applicable technical specification for interoperability published pursuant to the Official Journal pursuant to Directives 96/48/EC, 2001/16/EC and 2004/50/EC on the interoperability of the trans-European high speed and conventional rail systems, or any provisions from time to time notified by the Secretary of State for Transport to the European Commission under those Directives and/or the Railways (Interoperability) (High Speed) Regulations 2002;

**“Unit”** means any multiple unit forming part of the Rolling Stock;

**“Value Added Tax”** means (i) value added tax of the United Kingdom as provided for in the Value Added Tax Act 1994, including legislation (delegated or otherwise) supplementary thereto and any similar or substituted tax, or any tax imposed, levied or assessed in the United Kingdom on added value or turnover and (ii) any similar tax imposed, levied or assessed under any jurisdiction outside the United Kingdom;

**“Variation Order”** means any variation order which is issued by the Parties pursuant to clause 8, such variation order being in the form set out in Schedule 16;

**“Vehicle”** or **“Vehicles”** means any vehicle forming part of the Rolling Stock;

**“Vehicle Threshold”** means [REDACTED] for each Vehicle which at the time the Vehicle Quantum is calculated has more than twelve (12) months to the end of its Lease Period and [REDACTED] for each Vehicle which at the time the Vehicle Quantum is calculated has twelve (12) months or less to the end of its Lease Period;

**“Voluntary Termination Date”** has the meaning defined in Schedule 20;

**“Voluntary Termination Notice”** has the meaning defined in Schedule 20;

**“Voluntary Termination Sum”** is the amount calculated in accordance with Schedule 20;

**“Warranty Amount”** means [REDACTED] per Vehicle;

**“Waste”** means any waste involving anything which is disposed of or abandoned, unwanted or surplus irrespective of whether it is capable of being recovered or recycled or has any value;

**“Withdrawal Notice”** has the meaning given to it in clause 16.3

## **2 RULES OF INTERPRETATION**

- 2.1 Clause headings and the Table Of Contents are inserted for convenience of reference only and shall be ignored in the interpretation of this Agreement.
- 2.2 In the Transaction Documents, unless the context otherwise requires:
- 2.2.1 references to clauses and schedules are to be construed as references to the clauses of, and schedules to, this Agreement and references to this Agreement include its schedules and references, within a schedule, to paragraphs are to paragraphs of that schedule;
  - 2.2.2 references to (or to any specified provision of) any Transaction Document or any other document shall be construed as references to that Transaction Document, that provision or that document as in force for the time being and as from time to time amended, supplemented or replaced in accordance with the terms thereof or, as the case may be, with the agreement of the relevant parties;
  - 2.2.3 words importing the plural shall include the singular and vice versa;
  - 2.2.4 references to a person shall be construed as including references to an individual, firm, company, corporation, unincorporated association or body of persons and any government entity;
  - 2.2.5 without prejudice to any provision of any Transaction Document providing for calculations to be adjusted in the event of a change in a statute or statutory provision, references to any statute or statutory provision include any statute or statutory provision which amends, extends, consolidates or replaces the same, or which has been amended, extended, consolidated or replaced by the same, and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute;
  - 2.2.6 references in any Transaction Document to costs and expenses which are to be reimbursed to or recovered by the person incurring the same shall be construed as references to an amount equal to the amount of such costs and expenses together with any VAT (other than VAT in respect of which that person is able to recover by way of credit or repayment pursuant to sections 24 and 25 of the Value Added Tax Act 1994) or other similar tax thereon in any jurisdiction;

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- 2.2.7 references to a “regulation” include any present or future regulation, rule, directive, requirement, request or guideline (whether or not having the force of law) of any agency, authority, central bank or governmental department or any self-regulatory or other national or supra-national authority; and
- 2.2.8 references to a person shall be construed as including a reference to its successors and assigns.
- 2.3 In each of the Transaction Documents:
- 2.3.1 “includes,” “including,” “include” or similar terms shall not be construed as limiting and shall mean “including, without limitation”;
- 2.3.2 where a Party is entitled to give or withhold its consent to, or approval of, any matter or document, then:
- (a) without prejudice to paragraph 2.3.2(b), where that Party’s consent or approval may only be given with the consent or approval of another person, that Party may withhold its consent or approval to that matter or document while it seeks the consent or approval of that person;
  - (b) that Party may (unless otherwise provided in that Transaction Document) give or withhold its consent or approval in its absolute discretion.

Schedule 3

Rental

1 RENTAL TABLE

Rolling Stock Rental	
Vehicle	Rental per Vehicle per Month
Each Vehicle	<div></div> per Vehicle per month, as such amount may be adjusted from time to time in accordance with the Transaction Documents (including clauses 7 or 8 or Schedule 6).

2 RENTAL ADJUSTMENTS

2.1 The amount of each instalment of Rental for each item of Equipment payable on each Rental Payment Date shall be the amount set out opposite that item of Equipment in the column of the table in paragraph 1 headed “Rental per Vehicle per Month” as such amount may be adjusted from time to time in accordance with the Transaction Documents (including clauses 7 or 8 or Schedule 6) provided that:

2.1.1 where the Delivery Date for that item of Equipment does not fall on the first day of a calendar month the first instalment of Rental for such item of Equipment shall be payable on the Rental Payment Date which is the first day of the next following calendar month in accordance with clause 7.3 and such instalment shall be an amount equal to £X where:

$$£X = (A \times B) + C$$

A is the Daily Rate for that item of Equipment for the calendar month in which such Delivery Date occurs;

B is the number of days in the period from and including such Delivery Date to and including the last day of the calendar month in which such Delivery Date occurs;

C is the amount set out opposite such item of Equipment in the column of the table in paragraph 1 headed “Rental per Vehicle per Month” in the table above (as such amount may be adjusted from time to time in accordance with the Transaction Documents (including clauses 7 or 8 or Schedule 6)).

2.1.2 If the Scheduled Redelivery Date for an item of Equipment does not fall on the final day of a month, the instalment of Rental for that item of

Equipment payable on the Rental Payment Date immediately preceding that Scheduled Redelivery Date shall be  $\pounds X$  where:

$$\pounds X = A \times B$$

$A$  is the Daily Rate for that item of Equipment for the calendar month in which such Scheduled Redelivery Date occurs;

$B$  is the number of days in the period from and including such Rental Payment Date to and including that Scheduled Redelivery Date.



Schedule 4

Delivery and Lease Commencement Certificate

**LEASE AGREEMENT IN RESPECT OF THE LEASING OF SEVENTY-SIX (76) CLASS 455 FOUR (4) CAR ELECTRIC MULTIPLE UNITS DATED [●] 20[●] (THE “LEASE AGREEMENT”) AND MADE BETWEEN PORTERBROOK LEASING COMPANY LIMITED (“PORTERBROOK”) AND SOUTH WESTERN RAILWAY LIMITED (THE “LESSEE”)**

- 1 Terms and expressions defined in the Lease Agreement shall have the same meanings when used in this certificate.
- 2 The Lessee hereby confirms and certifies to Porterbrook that:
  - 2.1. the Equipment specified below has today been delivered by Porterbrook to the Lessee and accordingly has been accepted by the Lessee in accordance with the Lease Agreement; and
  - 2.2. the Lease Period for such Equipment has accordingly commenced and that the Delivery Date for such Equipment is the date hereof.

<b>Equipment</b>
------------------

Dated [●] 20[●]

authorised signatory for and on behalf of  
**SOUTH WESTERN RAILWAY LIMITED**

authorised signatory for and on behalf of  
**PORTERBROOK LEASING COMPANY LIMITED**

## **Schedule 5**

### **Conditions Precedent**

- 1       Originals of each of:
  - 2.3.     this Agreement;
  - 2.4.     the Security Assignment Letter Agreement; and
  - 2.5.     the other Transaction Documents (other than any Account Charge and the notice and acknowledgement to be given pursuant thereto);duly executed by each of the parties thereto (other than Porterbrook).
- 2       An insurance To Whom It May Concern Letter in form and substance acceptable to Porterbrook confirming compliance with the conditions specified in Schedule 12.

## Schedule 6

### Route Acceptance, Operation, Maintenance, Inspection and Possession

#### 1 PERMITTED ROUTES AND ROUTE ACCEPTANCE

1.1 The Lessee shall ensure that the Rolling Stock is not operated (including by any sub-lessee) on routes other than the Permitted Routes without the prior written consent of Porterbrook, such consent not to be unreasonably withheld or delayed.

1.2 The Lessee will, prior to the Delivery Date of any Rolling Stock and prior to any change in the Permitted Routes:

1.2.1 do all things required by Applicable Requirements; and

1.2.2 obtain all Relevant Consents from all Competent Authorities and all such other certificates, consents and licences to the extent required by Applicable Requirements,

to operate that Rolling Stock on the Permitted Routes and will thereafter maintain the same in full force and effect at all times throughout the Lease Period for that Rolling Stock. The Lessee acknowledges and agrees that doing such things and obtaining such certificates, consents and licences and the maintenance thereof shall be the responsibility of the Lessee alone (and not Porterbrook). Without prejudice to the foregoing in this paragraph 1.2 and subject to paragraph 8, the Lessee be responsible for, and shall bear the cost of, any work required to be carried out (including in respect of any of Network Rail's Infrastructure) necessary in order for the Lessee to operate the Rolling Stock on any Permitted Routes (including any such work required in order for the Lessee to so operate the Rolling Stock in accordance with its Safety Management System).

#### 2 PLATES

2.1 The Lessee shall, if so requested by Porterbrook (at Porterbrook's cost), affix or cause to be affixed to each item of Equipment, or any separate part or parts thereof requested by Porterbrook, a plate or other form of marking ("**Plates**") indicating in terms approved by Porterbrook any ownership interests or the existence of any Security Interests in respect of that Vehicle and that such Vehicle is leased by Porterbrook to the Lessee. The Lessee shall ensure that such Plates remain so affixed and that the same are conspicuous and are at no time removed, obliterated, defaced or covered up.

#### 3 MAINTENANCE PROGRAMME

3.1 Each Party acknowledges that it may be desirable from time to time to add to or vary the Maintenance Programme in order to develop, rationalise and/or correct the practices and procedures described in it. Notwithstanding the foregoing sentence but subject as provided in this paragraph 3.1, neither Party may add to or vary the

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Maintenance Programme without the consent of the other (such consent not to be unreasonably withheld or delayed). For the avoidance of doubt, it shall be reasonable for either Party to withhold its consent to any addition or variation to the Heavy Maintenance Programme, if the relevant addition or variation is one which is likely to (a) give rise to an increase in the cost to such Party of performing its obligations under the Transaction Documents (b) have an adverse impact on the performance of any Vehicle or (c) give rise to an increase in the cost to the Lessee of operating the Rolling Stock. The terms of any addition or variation to the Maintenance Programme may be recorded by way of the issue of a Variation Order. The consent of the Lessee shall not be required for any addition or variation to the Maintenance Programme which is:

- 3.1.1 required in order to comply with any Applicable Requirements; or
- 3.1.2 required in order to ensure that the Equipment is maintained to a standard that can reasonably be expected of a competent and prudent operator and maintainer of rolling stock providing that Porterbrook has first consulted with the Lessee as to what is reasonably required in order to ensure that the Equipment is maintained to a standard that can reasonably be expected of a competent and prudent operator and maintainer of rolling stock; or
- 3.1.3 otherwise (in the case of the Heavy Maintenance Programme only) required by Porterbrook and will not give rise to the carrying out of any Heavy Maintenance which would be likely to (a) increase the cost to the Lessee of performing its obligations under the Transaction Documents with respect to the maintenance and repair of the Equipment (including those obligations of the Lessee contained in this Schedule 6) or (b) have an adverse effect on the performance of any Equipment or (c) give rise to an increase in the cost to the Lessee of operating the Rolling Stock.

In any such case, Porterbrook shall prepare the text of the relevant addition or variation to the Maintenance Programme and deliver a copy of it to the Lessee. The relevant addition or variation shall be deemed to have been made automatically upon delivery of the text of it to the Lessee (but without prejudice to the rights of the Parties subsequently to record such addition or variation to the Maintenance Programme and amend such text by way of a Variation Order).

#### **4 OPERATION, MAINTENANCE AND REPAIR**

- 4.1 All maintenance and repairs and Modifications of any description whatsoever and of whatever nature including cleaning, routine services, overhauls, running or light repairs, heavy repairs, running or light maintenance and heavy maintenance (but excluding any Excluded Maintenance and Repairs) in respect of any Equipment required, carried out or falling due during its Lease Period, shall in all respects, as between Porterbrook and the Lessee, be entirely at the risk and the responsibility of, and for the account of, the Lessee.

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## 4.2 The Lessee shall:

- 4.2.1 operate, repair, maintain, Modify, clean, service and overhaul, or procure the operation, repair, maintenance, Modification, cleaning, servicing and overhaul, of all Equipment throughout its Lease Period:
- (a) in accordance with all Applicable Requirements;
  - (b) subject to the provisions of paragraphs 4.3 and 5, in accordance with the Maintenance Programme;
  - (c) in a careful and proper manner and in accordance with any operating instructions and recommendations (save to the extent that any such instructions and recommendations are inconsistent with the Maintenance Programme or unless agreed otherwise between the Lessee and Porterbrook) issued to the Lessee in respect thereof by the relevant manufacturer or any applicable seller, supplier, sub-contractor, maintenance performer or repairer and so as not to invalidate any continuing warranty in respect of the Equipment given by any relevant manufacturer or any applicable seller, supplier, sub-contractor, maintenance performer or repairer and given or assigned to the Lessee;
- 4.2.2 to the extent not required to be carried out pursuant to paragraph 4.2.1 (or otherwise inconsistent with the Maintenance Programme), take such action as is reasonably required to keep the Equipment in good repair and condition (Fair Wear and Tear excluded) and in working order through appropriate cleaning, servicing and repair;
- 4.2.3 ensure that the Equipment:
- (a) is used, operated, repaired, cleaned and Modified to a standard:
    - (i) so as to ensure that the Equipment, subject to its position from time to time in the maintenance and overhaul cycle specified in the Maintenance Programme: (1) is at all times fit for the operational and safety requirements of providing passenger railway services on the Network; and (2) is at all times capable of being maintained in a safe and reasonably efficient manner free from any unreasonable risk to the health and well-being of persons maintaining them and from any avoidable risk of pollution, nuisance, interference or hazard; and

- (ii) to comply with best industry practice or to a standard that can reasonably be expected of a competent and prudent operator and maintainer of rolling stock;
  - (b) is used and driven by properly skilled, personnel (that are appropriately qualified, and meet the relevant standards of competence as required by, in accordance with the Lessee's Safety Management System and all Applicable Requirements) and is not used outside the tolerances and limitations for which that Equipment was designed or for any unlawful purpose or otherwise misused in any way;
  - (c) is maintained, repaired, cleaned, overhauled and Modified only by a Maintenance Performer and at the Lessee Works Delivery Location;
  - (d) has all licences, certifications, inspections and exemptions as are required by Applicable Requirements in order for such Equipment to be used, operated, maintained, repaired, cleaned, overhauled and Modified as permitted or required by this Agreement and is used, operated, maintained, repaired, cleaned, overhauled and Modified in accordance with all Applicable Requirements;
  - (e) without any limitation to the foregoing, is maintained in a condition in accordance with the appropriate standards referred to in Schedule 15, including in respect of any damage, repair of which shall be undertaken promptly;
  - (f) the Rolling Stock is used only for its Permitted Use;
- 4.2.4 comply with any Applicable Requirements and recommendations of any Government Authority relating to the possession, use, safety, or the safe operation, of the Equipment;
- 4.2.5 take all reasonable steps to ensure the safety of persons and the safe operation of the Equipment, not do anything which might jeopardise or impair the safety of the Equipment or of any persons or property, and not do or fail to do anything if such act or failure might jeopardise or impair the safety of the Equipment or of any persons or property (and the Lessee acknowledges that if any event or matter adversely affects the safety of any persons or property and/or the safe operation of any Equipment, such steps may include suspending the operation of the Equipment until such matter is satisfactorily remedied, if that is prudent);
- 4.2.6 ensure that no Hazardous Substances are at any time used in the operation, repair, maintenance, cleaning, overhaul or Modification of the Equipment,

unless such Hazardous Substance is approved or recommended pursuant to the Maintenance Programme;

- 4.2.7 comply in all material respects with its obligations under each Track Access Contract, the Rail Services Contract, its Passenger Licence and its Safety Management System;
- 4.2.8 provide to Porterbrook on request, a copy of any drivers' manuals relating to the Rolling Stock and shall notify Porterbrook of any amendment to any drivers' manuals. The Lessee hereby consents to Porterbrook giving any owner, operator or financier of any Equipment access to any such drivers' manual or amendment;
- 4.2.9 not use, operate, repair, clean, any Equipment in any way which would, or could reasonably be expected to, diminish its expected operational life (Fair Wear and Tear excepted). The Lessee shall treat the Equipment with the due skill, care and diligence which a competent and prudent operator would use in respect of rolling stock of similar model and type to the Equipment, were such rolling stock leased to such an operator on the same terms as the Transaction Documents;
- 4.2.10 not at any time take the Equipment or permit the Equipment to be taken outside the United Kingdom for any reason whatsoever;
- 4.2.11 at its own expense obtain and keep in full force and effect all permissions, licences and other authorisations which may at any time be required in connection with the possession or use of the Equipment and/or any premises in which any Equipment is located at any time during the relevant Lease Period and the due performance by the Lessee of its obligations under the Agreement and, if so requested, shall provide a copy of each thereof to Porterbrook.
- 4.2.12 Without prejudice to the generality of clause 11, if any Equipment is damaged but not so as to constitute a Total Loss the Lessee shall repair such damage to the satisfaction of Porterbrook (acting reasonably) as soon as reasonably practicable. Paragraphs 8.1 and 8.3 shall apply to such repair and for such purposes such repair shall constitute a Modification (but not a Mandatory Modification).

4.3 The provisions of:

- 4.3.1 Schedule 11 shall apply with respect to the performance of Lessor Maintenance;

4.3.2 Schedule 9 shall apply with respect to the requirements to input information into the Technical Databases and the upkeep of Technical Records,

and each of Porterbrook and the Lessee undertakes to comply with its obligations set out in those schedules.

4.4 The Lessee undertakes to Porterbrook that it will perform and do all such acts and things as are expressed to be performed or done by the Lessee under the Defect Advice Procedure.

4.5 The Lessee shall not (without the consent of Porterbrook, such consent not to be unreasonably withheld or delayed) change the configuration or formation of any Equipment from that which existed as at the Delivery Date of such Equipment.

4.6 Porterbrook shall be entitled by notice in writing to the Lessee to specify that a person shall no longer be a "Maintenance Performer" for the purposes of carrying out any repairs, maintenance, cleaning, servicing or overhaul where Porterbrook or the Lessee has carried out an audit in respect of such Maintenance Performer which has resulted in corrective action requests being issued to such Maintenance Performer and which if the Maintenance Performer failed to correct in a manner and at a time reasonably acceptable to Porterbrook would, or could reasonably be expected to:

4.6.1 jeopardise or impair the safety of the Equipment or of any persons or property;

4.6.2 diminish the expected operational life of any Equipment;

4.6.3 result in a breach by the Lessee of its obligations under the Operative Documents.

Where Porterbrook issues any such notice and where the Lessee so requests Porterbrook will consult in good faith with the Lessee with regard to the appointment of a suitable replacement person to carry out that repair, maintenance, cleaning, servicing or overhaul. Where Porterbrook issues a notice pursuant to this paragraph specifying that a person shall no longer be a "Maintenance Performer" for the purposes of carrying out any repair, maintenance, cleaning, servicing or overhaul the Lessee may appoint another person to carry out such repair, maintenance, cleaning, servicing or overhaul so long as that person falls within the definition of Maintenance Performer for the purposes of such repairs, maintenance, cleaning, servicing or overhaul.

4.7 The Lessee shall ensure that:



- 4.7.1 all Rolling Stock is registered in the Rolling Stock Library and the National Vehicle Register throughout its Lease Period;
- 4.7.2 to the extent permissible under Applicable Requirements, the Owner of any Rolling Stock is registered as the owner of that Rolling Stock in the Rolling Stock Library and the National Vehicle Register throughout its Lease Period. In the event of any change in the Owner of any Rolling Stock, the Lessee shall promptly upon request by Porterbrook, make any such change to such registration as is reasonably requested by Porterbrook;
- 4.7.3 in respect of all Rolling Stock:
- (a) the Lessee is registered as the Keeper; and
  - (b) the Lessee is registered as the ECM,
- in the Rolling Stock Library and the National Vehicle Register throughout its Lease Period. The Lessee shall be fully liable for the activities and responsibilities of the Keeper (even where the Lessee is not registered as the Keeper) and the ECM as defined under Applicable Requirements. The Lessee shall not make any change to the entries in the Rolling Stock Library and the National Vehicle Register in respect of the Equipment without the consent of Porterbrook;
- 4.7.4 it does not do or knowingly omit to do any act or thing which could prejudice any Relevant Consents, the Technical File for the Equipment or any registration in respect of the Equipment as referred to in this paragraph 4.7, or registration of the Owner, the Keeper or the ECM of the Rolling Stock;
- 4.7.5 if, in relation to any Equipment:
- (a) Porterbrook consents to any change in its Permitted Use; or
  - (b) any addition or variation is made to the Maintenance Programme; or
  - (c) such Equipment is sub-leased in accordance this Agreement; or
  - (d) any repair or Modification is made to such Equipment in accordance with this Agreement;
- (each a “**Registration Event**”) then, in any such case, the Lessee shall take (at Lessee’s cost) whatever steps (if any) are necessary (the “**Registration Action**”) in order to ensure that the Technical Records (including the Technical File) and Technical Databases for such Equipment, all Relevant Consents and the registration of such Equipment (that is Rolling Stock) in

the Rolling Stock Library and the National Vehicle Register, in each case, reflect (to the extent possible, if at all) such Registration Event. Where:

- (e) required by Applicable Requirements or where reasonably practicable, all such Registration Action in relation to a Registration Event shall be completed prior to that Registration Event being implemented or otherwise first taking effect, in which case such Registration Event shall not be permitted to take effect unless and until all such Registration Action has been completed;
- (f) to the extent that paragraph 4.7.5(e) does not apply, to any Registration Action in relation to a Registration Event, the Lessee shall procure that such Registration Action is completed as soon as reasonably practicable after that Registration Event is implemented or otherwise first takes effect. If any such Registration Action in relation to any Registration Event is not so completed Porterbrook may revoke its consent to such Registration Action, in which case, where such Registration Event is:
  - (i) a change in Permitted Use, the Permitted Use shall be immediately amended so that such change no longer applies;
  - (ii) an addition or variation to the Maintenance Programme, the Lessee shall procure that Maintenance Programme is immediately amended to remove such addition or variation;
  - (iii) a sub-lease, the Lessee shall procure that such sub-lease is immediately terminated;
  - (iv) a Modification, such Modification is immediately removed and the relevant Equipment reinstated to the specification and condition it would have been in if such Modification had not been made;

4.7.6 it notifies Porterbrook of any registration made, or any addition or change made in respect of the any registration, in respect of the Equipment as referred to in this paragraph 4.7, as soon as reasonably practicable after such registration, addition or change is made. The Lessee shall promptly provide to Porterbrook such information as Porterbrook reasonably requests in relation to any such registration, addition or change.

4.8 For each twelve month period commencing on 1 April in any calendar year the Lessee will provide to Porterbrook an indicative programme for any heavy

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maintenance which it plans to carry out on any Equipment in accordance with the Heavy Maintenance Programme for that twelve month period. Such indicative programme shall be delivered to Porterbrook not later than the first of 30 April, 31 July, 31 October or 31 January which falls more than two (2) months after the first Delivery Date (in respect of the period from that Delivery Date to the following 1 April) and thereafter by 31 December immediately preceding the commencement of that twelve months period. The Lessee shall update such indicative programme, and deliver the updated version to Porterbrook, not later than 30 April, 31 July, 31 October and 31 January in the relevant twelve month period. The Lessee shall further update such indicative programme, and deliver the updated version to Porterbrook, on the Tuesday of each week for the remainder of such week and for the following week (the “**Confirmation Period**”), giving details of the Equipment which is to undergo heavy maintenance in accordance with the Heavy Maintenance Programme on each day in that Confirmation Period. The Lessee shall finally specify the Equipment (from among the Equipment previously detailed) to undergo heavy maintenance in accordance with the Heavy Maintenance Programme in any Confirmation Period and the relevant works location and the time for its delivery to the relevant works location and the anticipated date of its redelivery to the Lessee. Upon completion of the heavy maintenance pursuant to the Heavy Maintenance Programme the Lessee shall within forty-eight (48) hours of redelivery of the Equipment to the Lessee notify Porterbrook in writing (in a form agreed between the Parties, or in the absence of agreement, in the form reasonably specified by Porterbrook) of the date such heavy maintenance was completed.

## **5 ACCEPTED FAULTS**

5.1 The Lessee shall ensure that any Equipment that is subject to an Accepted Fault is regularly inspected by the Lessee in order to monitor such Accepted Fault and each such Accepted Fault is repaired by it to the extent reasonably required to ensure:

- 5.1.1 compliance with paragraphs 4.2.1(a), 4.2.2 to 4.2.6 (inclusive) and paragraph 6.1 and paragraph 1 of Part 2 of Schedule 9;
- 5.1.2 that such Equipment is capable of use for the Permitted Use;
- 5.1.3 that reasonable protection is provided against consequential degradation to any Equipment or Part; and
- 5.1.4 use of such Equipment for the Permitted Use will not accelerate the otherwise expected diminution in the value of such Equipment or Part.

Save as otherwise required by the Maintenance Programme (and without prejudice to paragraphs 7.1 to 7.4 (inclusive) and paragraphs 8.1 to 8.4 (inclusive), 8.7 and 9.1), this paragraph 5 sets out the extent of the Lessee’s obligations to Porterbrook under this Schedule 6 with regard to Accepted Faults.

## 6 PARTS

6.1 The Lessee shall ensure that (save where Porterbrook is obliged to replace such Part pursuant to Schedule 11) there is promptly replaced (in accordance with the Maintenance Programme and the Lessee's Safety Management System, to the extent that the same deals with the replacement of such Part) any Part (a "**Replaced Part**") installed on any Equipment which has become worn out, lost, destroyed, confiscated, unserviceable, time expired, or otherwise unfit for use with an item (the "**Replacement Part**") which meets the following criteria (the "**Replacement Criteria**"):

- 6.1.1 it is (i) the same make and model or an improved or advanced version thereof which is compatible with the Equipment and all other relevant Parts; or (ii) recommended or approved in accordance with the Maintenance Programme, or by the manufacturer of the Equipment or the component to which it is fitted and in the case of (i) and (ii) has been approved by Porterbrook in accordance with the Engineering Change Document; and
- 6.1.2 it is at least the equivalent position in its maintenance cycle as, or is of at least equivalent value to, the Part it is replacing.

The Lessee shall ensure that, subject to paragraph 6.2, no Part is installed on any Equipment, whether by way of substitution, replacement, renewal, Mandatory Modification or addition unless it is (i) then the property of the Owner; or (ii) is such that on installation on that Equipment title thereto shall vest in the Owner. Provided that a Replacement Part meets the Replacement Criteria and that neither Porterbrook, the Owner nor any Financier owned the Replacement Part immediately before it was installed on that Equipment then, upon title to the Replacement Part vesting in the Owner, title to the Replaced Part shall vest in the Lessee. The Lessee shall ensure that:

- 6.1.3 where any Part is installed on any Equipment pursuant to this Agreement (other than pursuant to paragraph 6.2) the Technical Records with respect to such Equipment and all Technical Databases are promptly updated to include the make, model and serial number (to the extent that such information is listed on R2 in relation to equivalent parts) of such Part and the mileage and hours accumulated by such Part at the time it is installed (to the extent that such information is listed on R2 in relation to equivalent parts);
- 6.1.4 where any Part is removed from any Equipment pursuant to this Agreement (other than pursuant to paragraph 6.2) to be overhauled, maintained or repaired and is subsequently refitted to such Equipment, the Technical Records with respect to such Equipment and all Technical

Databases are promptly updated to show such Part as having been removed and refitted.

6.2 The Lessee shall be entitled, so long as no Default has occurred and is continuing, to install any part on any Equipment by way of substitution or replacement notwithstanding that such installation is not in accordance with paragraph 6.1 if:

6.2.1 it is not reasonable to use that Equipment for the Permitted Use unless a replacement part is installed thereon; and

6.2.2 there was not available to the Lessee at the time and in the place that such part was required to be installed on that Equipment a substitute or replacement Part complying with the requirements of paragraph 6.1; and

6.2.3 it would have resulted in an unreasonable disruption to the business of the Lessee to cease operating that Equipment until such time as a part complying with the requirements of paragraph 6.1 became available for installation on that Equipment; and

6.2.4 as soon as practicable (and in any event within thirty (30) days) after installation of the same on the Equipment, the Lessee shall remove any such part not complying with the requirements of paragraph 6.1 and replace or substitute the same by a part complying with the requirements of paragraph 6.1.

If a Part is removed from any Equipment and replaced by a part or parts pursuant to this paragraph 6.2 the Lessee shall promptly update the Technical Records and the Technical Records Database in accordance with its obligations under this Agreement and promptly notify Porterbrook thereof and shall give Porterbrook such information as Porterbrook may reasonably require in connection therewith.

6.3 Any accessories or parts attached to any Equipment (other than pursuant to paragraph 6.2) shall automatically, and without prejudice to any entitlement of Porterbrook to damages, become the property of the Owner.

## 7 MAINTENANCE COMPLIANCE NOTICES

7.1 If the Lessee has failed to comply with its obligations to repair, maintain (excluding, for the avoidance of doubt any Excluded Maintenance and Repairs), Modify, clean, service or overhaul any Equipment, or to procure the same, in accordance with the Transaction Documents in any material respect (and for these purposes the Lessee acknowledges Porterbrook's rights under paragraph 11.2), Porterbrook shall, save in respect of Excluded Vandalism Damage and Excluded Maintenance and Repairs be entitled to serve written notice on the Lessee (a "**Maintenance Compliance Notice**") setting out details of the relevant non-compliance (the "**Default Maintenance**") and requiring the Lessee to rectify such Default Maintenance in respect of the Equipment specified in the Maintenance Compliance Notice. For the purpose of this

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clause, “**material respect**” means that Porterbrook, acting reasonably, has determined that the reasonable cost of procuring the performance of the Lessee Default Maintenance by a competent third party maintenance performer nominated by Porterbrook acting reasonably may exceed the Vehicle Threshold in relation to any Vehicle or the Fleet Threshold. Any such notice will specify such reasonable time period (having regard to the nature of the Default Maintenance and any other relevant timing issues) within which the Default Maintenance must be carried out by the Lessee which shall not in any event be less than twenty (20) Business Days (“**Rectification Period**”).

- 7.2 If, following the issue of any Maintenance Compliance Notice, the Lessee has not delivered a Dispute Notice and the Lessee fails to rectify any Default Maintenance with respect to any Equipment within its Rectification Period, Porterbrook shall be entitled:
- 7.2.1 (without prejudice to its rights pursuant to paragraph 7.2.2) to require that the Lessee delivers to Porterbrook the Equipment specified by Porterbrook and Porterbrook shall, or shall procure that a Lessor Maintenance Performer, notified to the Lessee, shall, rectify that Default Maintenance within such period as is determined by Porterbrook; and/or
  - 7.2.2 to serve a notice on the Lessee setting out Porterbrook’s reasonable estimate of the Quantum with respect to that Default Maintenance and to exercise any rights it may have to require the Lessee to provide security to Porterbrook in accordance with clause 14.
- 7.3 Where Porterbrook exercises its rights pursuant to paragraph 7.1 in respect of any Equipment:
- 7.3.1 the provisions of Schedule 11, paragraphs 2.1.1 (save that under such paragraph the Lessee shall be obliged to deliver that Equipment to Porterbrook or the Lessor Maintenance Performer on demand), 2.2, 2.3, 2.4 and 3 shall apply to any rectification of any Default Maintenance carried out by Porterbrook or a Lessor Maintenance Performer (and Porterbrook shall have no liability or responsibility to the Lessee in connection with any repair, maintenance, Modification, cleaning, servicing or overhaul carried out by it or any Lessor Maintenance Performer pursuant to paragraph 7.2, all such repair or maintenance, Modification, cleaning, servicing or overhaul shall be deemed to have been carried out by the Lessee for all purposes); and
  - 7.3.2 the Lessee shall pay to Porterbrook on demand all Losses (excluding loss of profit) which Porterbrook certifies have been or will be incurred by Porterbrook in procuring the rectification of such Default Maintenance and any other maintenance, repair, Modification, cleaning, servicing or overhaul which the Lessee has failed to carry out in respect of that Equipment in

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accordance with its obligations under the Transaction Documents (including the costs of any associated vehicle movements or paths). The Lessee acknowledges that any amount so certified by Porterbrook shall (in the absence of manifest error) be valid and binding upon the Lessee and, upon issue of any such notice such amount shall become immediately due and payable by the Lessee to Porterbrook.

- 7.4 Nothing in this paragraph 7 shall in any way prejudice any rights of Porterbrook pursuant to clause 15.

## **8 MODIFICATIONS**

- 8.1 Subject to this paragraph 8.1 and paragraph 8.3, the Lessee shall carry out all Mandatory Modifications with respect to any Equipment which are required in order for it to be operated on the Network in passenger service during the Lease Period or which otherwise must (in accordance with the Applicable Requirements) be complied with on or before the expiry or termination of such Lease Period. Subject to paragraph 8.3, the Lessee shall not:

- 8.1.1 make any addition to any Equipment or attach any accessory thereto which cannot be removed without damage to, or impairing, the Equipment; or
- 8.1.2 carry out any other modification or make any alteration to any Equipment; or
- 8.1.3 subject to paragraph 4.2.12, carry out any repair to any Equipment other than in accordance with this Agreement.

- 8.2 Without prejudice to paragraph 8.1, the Lessee may carry out the Lessee Modifications provided that they are carried out:

- 8.2.1 with respect to all Equipment; and
- 8.2.2 in accordance with (and subject to) this paragraph 8.

- 8.3 In connection with any Modification to any Equipment:

- 8.3.1 the Lessee shall not carry out that Modification unless:
  - (a) it has received Porterbrook's consent to such Modification (such consent not to be unreasonably withheld or delayed) requested in accordance with the Engineering Change Document. Any such consent given by Porterbrook shall:
    - (i) be conditional upon Porterbrook obtaining any consents required of the Owner or any Financier;

- (ii) specify any conditions as are reasonable in the circumstances and which are applicable to such consent;
- (iii) be conditional upon compliance with any such conditions and with this paragraph 8.3;
- (iv) specify whether Porterbrook requires any such Modification in relation to an item of Equipment to be removed from that item of Equipment at the end of the Lease Period with respect to that item of Equipment and if Porterbrook fails to so specify, Porterbrook shall be deemed to have specified that such Modifications shall not be removed from that Equipment at the end of its Lease Period.

In determining whether to grant or withhold any such consent, Porterbrook may have regard to the likely impact of the relevant event on the value, utility and condition of the relevant Equipment. Where any consent is given by Porterbrook pursuant to the Engineering Change Document, such consent shall be deemed to include:

- (v) confirmation that Porterbrook has obtained the relevant Owner and/or Financier consents;
- (vi) all conditions which are applicable to Porterbrook's consent,

save to the extent otherwise specified in such consent and without prejudice to the provisions of this paragraph 8.3. If, in advance of obtaining Porterbrook's consent to a Modification issued pursuant to the Engineering Change Document, the Lessee wishes to issue an invitation to tender for the work necessary to carry out any Modification, the Lessee may request Porterbrook to confirm whether it consents to such Modification in principle in which case Porterbrook shall, as soon as reasonably possible after receipt of all relevant information requested by Porterbrook in relation to such Modification, either give or withhold its consent in principle to that Modification. Where such consent in principle is given, such consent shall be without prejudice, and subject to:

- (vii) Porterbrook's right to consent to, or reject, such Modification pursuant to the Engineering Change Document;



- (viii) any conditions which are applicable to Porterbrook's consent given pursuant to the Engineering Change Document;
  - (ix) the provisions of this paragraph 8.3;
- (b) Porterbrook (acting reasonably) has given its approval in writing of the design of such Modification;
- (c) Porterbrook has approved (such approval not to be unreasonably withheld or delayed) the Maintenance Performer to be appointed as the Lessee's nominated subcontractor to carry out such Modification in accordance with its design;
- (d) where any costs to be incurred in connection with such Modification are to be paid by Porterbrook or recovered by way of rent from the Lessee or any future lessee of the Equipment, the Parties have agreed (such agreement not to be unreasonably withheld or delayed) a programme of works for such Modification;

8.3.2 the Lessee shall:

- (a) ensure that such Modification (and the works and services relating thereto) is procured, and carried out, in accordance with all Applicable Requirements and the Lessee shall provide to Porterbrook (promptly after a request therefor) evidence thereof and such other information as may be requested by Porterbrook in connection therewith;
- (b) provide to Porterbrook (promptly after a request therefor) full details of such Modification (which details shall include all drawings, procedures and specifications and all other relevant information in respect of the design, installation, testing, maintenance, Relevant Approvals and approvals required in connection with such Modification (including full details of all relevant Intellectual Property Rights) or otherwise requested by Porterbrook or required by the Engineering Change Document);
- (c) carry out all relevant risk assessments and certifications in connection with such Modification (including any required by any Applicable Requirements or Relevant Consents) and shall provide to Porterbrook (promptly after a request therefor) evidence thereof and such other information as may be requested by Porterbrook in connection therewith;

- (d) modify its Safety Management System appropriately in connection with such Modification and shall provide to Porterbrook (promptly after a request therefor) evidence thereof and such other information as may be requested by Porterbrook in connection therewith;
  - (e) obtain all Relevant Consents that may be required in connection with such Modification and shall provide to Porterbrook (promptly after a request therefor) evidence thereof and such other information as may be requested by Porterbrook in connection therewith;
  - (f) agree with Porterbrook (promptly after a request therefor) all changes that need to be made to the Maintenance Programme in connection with that Modification;
  - (g) (where Porterbrook notifies the Lessee that it considers such Modification to be a “Major Modification” (within the meaning of the RIRs)), be responsible (at its own cost) for appointing a Notified Body to approve the Modification, update the Technical File, and obtain any relevant approvals under Applicable Requirements;
- 8.3.3 the Lessee shall carry out such Modifications in accordance with the agreements, consents, confirmations and approvals given by Porterbrook pursuant to this paragraph 8.3, all Applicable Requirements and all Relevant Consents and shall comply with the provisions of this paragraph 8.3 and if it fails to do so in relation to any Modification, the Lessee shall, if requested by Porterbrook, remove such Modification from all Equipment on request;
- 8.3.4 promptly upon completion of such Modifications to any Equipment, the Lessee shall:
- (a) ensure that all Technical Databases are updated to reflect such Modifications;
  - (b) provide to Porterbrook the necessary information, schedules and documentation to permit the use, repair, maintenance, Modification, overhaul and operation of that Equipment in the “as-Modified” condition by future operators thereof;
  - (c) take whatever steps (if any) are necessary in order to ensure that the Relevant Consents, the Technical Records and the Technical Databases for such Equipment and the registration of such Equipment (that is Rolling Stock) in the Rolling Stock Library, in each case, reflects (to the extent possible, if at all) such

Modification. Notwithstanding anything to the contrary contained in the Transaction Documents, no such Modification shall be permitted hereunder unless and until any necessary revised Relevant Consents will be issued and the Technical Databases and Technical Records will be amended and/or the necessary revised registration has been effected (or, in any such case, Porterbrook, acting reasonably, is satisfied that the relevant revised certificate(s) will be issued and/or the relevant revised registration will be effected when such Modifications are completed).

- 8.4 In addition to any other right Porterbrook might have to require that the Lessee removes any Modification prior to the redelivery of any Equipment pursuant to this Agreement, Porterbrook may require such removal if Porterbrook is of the view that it will not be lawful for Porterbrook or any lessee or purchaser from Porterbrook to use, repair, maintain, Modify, operate, own or lease any Equipment by reason of third party intellectual property rights relating to the Modification.
- 8.5 The Lessee may either fund the cost of any Mandatory Modification itself or require that Porterbrook provides rentalised funding to cover the cost of such Mandatory Modification over the expected operational life in months of the Mandatory Modification or, if less, the expected operational life in months of the item of Equipment to which the Mandatory Modification relates. In pricing the rentalisation of the relevant Mandatory Modification, Porterbrook shall apply the following principles:

$$\text{Incremental Rental per item of Equipment per month} = ((A \div B) \times C) \div A$$

Where:

*A* = the unexpired Lease Period in months in respect of the relevant Equipment calculated from the date of completion of the Mandatory Modification of that Equipment;

*B* = the longer of (a) the expected operational life in months of the Mandatory Modification from the date of completion of the Mandatory Modification or if less the expected operational life in months of that Equipment, and (b) *A* above; and

*C* = the cost to Porterbrook of funding and carrying out the Mandatory Modification in respect of that Equipment together with Porterbrook's return on capital expended;

The revised Rental shall then be payable for the remaining Lease Period in respect of that Equipment, subject to adjustment in accordance with the Transaction Documents (Porterbrook acknowledging that the Lessee shall not be responsible for funding the entire cost of a Mandatory Modification the expected operational life of which exceeds the unexpired Lease Period in respect of that Equipment). Unless

otherwise agreed by Porterbrook, the Lessee shall fund the cost of any Modification (other than a Mandatory Modification) itself. If Porterbrook agrees to fund the cost of any such Modification it shall provide rentalised funding to cover the cost of such Modification over such period as Porterbrook agrees and any such funding shall include Porterbrook's return on capital expended. The terms of any increase in Rental, the funding thereof and any change in Vehicle specification arising from a Modification (including a Mandatory Modification) may be recorded by way of the issue of a Variation Order.

- 8.6 If Porterbrook reasonably determines that the cost of any Mandatory Modification is such that it will be uneconomic to proceed with the making of such Mandatory Modification, then the Parties shall consult in good faith with a view to agreeing what steps may be taken to mitigate the effect of the requirement to make such Mandatory Modification (including by terminating the leasing of the relevant Equipment hereunder and entering into a new operating lease transaction in relation to substitute equipment).
- 8.7 If any Modification is made to any Equipment, whether pursuant to the foregoing provisions of this paragraph 8 or otherwise, and the effect of such Modification is to increase the replacement value of that Equipment in the event of a Total Loss, Porterbrook shall be entitled, by notice in writing to the Lessee to:
- 8.7.1 increase the Agreed Value of that Equipment by such amount as is determined by Porterbrook, acting reasonably (the **"Modification Amount"**);
- 8.7.2 specify the manner in which that Modification Amount is to be amortised for the purposes of the Agreed Value of that Equipment (the **"Amortisation Profile"**).
- 8.8 If Porterbrook wishes to perform any Modification with respect to any Equipment which is necessary to meet Applicable Requirements in circumstances where the latest date for compliance with the relevant Applicable Requirement will occur not more than eighteen (18) months after the Scheduled Redelivery Date for that Equipment, the Lessee shall allow Porterbrook access to that Equipment to perform any such modification (to the extent required to complete such modifications within the applicable compliance period), provided that performance of such modification shall not cause unreasonable disruption to the operation of the Lessee's business. No adjustment to Rental will be made in consequence of any Modification carried out by Porterbrook as referred to in this paragraph 8.8.
- 8.9 The Lessee shall indemnify, and hold harmless, each Indemnatee, on demand, from and against all Losses suffered, sustained or incurred by that Indemnatee as a consequence of, or in connection with, any claim that:
- 8.9.1 the entry into by the Lessee of:

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- (a) any Transaction Document;
  - (b) or any amendment thereto (entered into at the Lessee's request);  
or
- 8.9.2 any contract in respect of Modifications carried out or to be carried out by or on behalf of, or at the request of, the Lessee (including any such Modifications procured by or on behalf of Porterbrook at the request of the Lessee),

has not been, or is not being, procured in accordance with the Procurement Rules.

Porterbrook shall not be entitled to recover from the Lessee pursuant to this paragraph 8.9 any loss of profit in relation to any Equipment save that where Porterbrook is entitled to an indemnity pursuant to this paragraph 8.9, if required by Porterbrook, the Lessee shall be deemed to have served a Voluntary Termination Notice in respect of all Equipment for the purposes of Schedule 20 specifying as the Voluntary Termination Date such date as is notified to the Lessee by Porterbrook and the Lessee shall pay the Voluntary Termination Sum in accordance with Schedule 20.

## 9 LESSEE WARRANTY

- 9.1 The Lessee undertakes to Porterbrook (and Porterbrook shall have the right to assign the benefit of this provision to any Successor Operator of any Equipment) that:
- 9.1.1 the Lessee shall be responsible for making good (or procuring the making good of) any defect occurring on any Vehicle which relates to workmanship on that Vehicle or any Part installed on that Vehicle in the course of Heavy Maintenance and which occurs, in either case, during a period (the "**Lessee Warranty Period**") of twelve (12) months after redelivery of such Vehicle to Porterbrook or, if earlier, the date of completion of the relevant Heavy Maintenance;
  - 9.1.2 where a Part is installed on any Equipment by or on behalf of the Lessee, any sub-lessee or any Maintenance Performer which is supplied from its manufacturer, supplier or repairer with a warranty (the "**Extended Lessee Warranty**") in excess of the Lessee Warranty Period the Lessee will use its reasonable endeavours to procure that the manufacturer, supplier or repairer rectifies any defect in that Part (or replaces that Part) in accordance with the Extended Lessee Warranty. The Lessee shall, as soon as reasonably practicable after a request therefor from Porterbrook in relation to any Equipment, supply Porterbrook with a list of Parts for such Equipment which have an Extended Lessee Warranty together with details of the Extended Lessee Warranty.

- 9.2 The Lessee shall be released from its obligations under paragraph 9.1 in relation to any defects in any workmanship or Parts to the extent that it procures that the third party that carried out such workmanship or supplied that Part to the Lessee issues a warranty to Porterbrook in terms reasonably satisfactory to Porterbrook to repair rectify or replace (at its own cost) the defective workmanship or Part during the relevant Lessee Warranty Period or, as the case may be, the Extended Lessee Warranty period.

## **10 POSSESSION AND SUB-LEASING**

- 10.1 The Lessee may deliver possession of any Equipment to the Maintenance Performer for the purposes of carrying out any maintenance, repair, cleaning, servicing or overhaul that the Lessee is obliged to carry out pursuant to this Agreement.

- 10.2 The Lessee may sub-lease any Rolling Stock to a licensed passenger rail service operator in the United Kingdom:

- 10.2.1 without requiring Porterbrook's consent, for a period not to exceed thirty (30) consecutive days provided that:

- (a) the Lessee shall not be entitled to sub-lease any Rolling Stock pursuant to this paragraph 10.2.1 in any twelve (12) month period where it has sub-leased all, or any, or any combination, of the Rolling Stock pursuant to this paragraph 10.2.1 for an aggregate period of more than thirty (30) days in that twelve (12) month period;
- (b) the Lessee gives notice to Porterbrook (within forty eight (48) hours of commencement of such sub-lease) of such sub-leasing, including details of the relevant Rolling Stock, the sub-lessee and term;
- (c) the Lessee remains registered as the ECM in respect of that Rolling Stock in the Rolling Stock Library and the National Vehicle Register and continues to discharge all the obligations of an ECM with respect thereto;

- 10.2.2 for a period exceeding thirty (30) consecutive days so long as the Lessee gives Porterbrook thirty (30) days' prior written notice of the proposed sub-leasing, including details of the relevant Rolling Stock, the proposed sub-lessee and term (which may not be renewed or extended without the consent of Porterbrook) and Porterbrook has consented to such sub-lease,

provided that:

- 10.2.3 where that Rolling Stock is leased by Porterbrook to the Lessee as part of a multiple unit, such sub-lease is in respect of all Rolling Stock forming part of that unit;
- 10.2.4 such Rolling Stock is insured in accordance with the requirements of the Transaction Documents;
- 10.2.5 prior to the commencement of the leasing of the Rolling Stock under that a sub-lease referred to in paragraph 10.2.2 Porterbrook has:
- (a) received the sub-lessee's agreement, in terms acceptable to Porterbrook, that such sub-lessee's rights to that Rolling Stock are subordinated in all respects to the rights of Porterbrook, the Owner and any Financier (and all conditions precedent to such agreement have been satisfied or waived);
  - (b) received any assignment required by paragraph 10.3.4;
  - (c) received a certificate or certificates of insurance in form and substance acceptable to Porterbrook which complies or comply with Schedule 12 and a broker's letter of undertaking in the form set out in Schedule 13;
  - (d) agreed which person will be registered as the ECM in respect of that Rolling Stock in the Rolling Stock Library and the National Vehicle Register and will discharge all the obligations of an ECM with respect thereto; and
- 10.2.6 in addition, in the case of a sub-lease entered into, in accordance with paragraph 10.2.2, the Lessee complies with any other conditions or requirements imposed by Porterbrook in connection with its consent under that paragraph.
- 10.3 If a sub-lease is entered into in respect of any Rolling Stock:
- 10.3.1 the Lessee warrants to Porterbrook that:
- (a) the sub-lessee will operate and maintain that Rolling Stock to the safety standards required by the Transaction Documents and all Applicable Requirements and, the sub-lessee will comply with the Lessee's Safety Management System to the extent relating to that Rolling Stock;
  - (b) the sub-leasing of that Rolling Stock to such sub-lessee will not have an adverse effect on the quality, reliability or value of that Rolling Stock;

- (c) the sub-lessee carries on, and will throughout the lease period under that sub-lease continue to carry on, a Railway Business;
- 10.3.2 the Lessee shall remain fully liable for the performance of all its obligations under the Transaction Documents as if such sub-lease had not been entered into;
- 10.3.3 the term of the proposed sub-lease shall not exceed the Lease Period for that Rolling Stock;
- 10.3.4 the Lessee shall, if so required by Porterbrook, enter into an assignment by way of security in respect of its rights under any sub-lease which has a term of six (6) months or more; and
- 10.3.5 the Lessee shall indemnify each Indemnatee on demand against any Losses (excluding, without prejudice to the provisions of clause 13.7, loss of profit) suffered or sustained by any Indemnatee which that Indemnatee would not have suffered or incurred had such sub-lease not been entered into.

## **11 INSPECTION**

- 11.1 Porterbrook, and/or any person designated by it, shall, provided all Local Depot Instructions and all Applicable Requirements are complied with, at all reasonable times:
  - 11.1.1 have access to the Equipment, the Technical Records, the Technical Databases and all uninstalled Parts for the purpose of inspecting the same;
  - 11.1.2 have access to the driver's cab of any Rolling Stock while it is in service for identification of defects and to observe operation;
  - 11.1.3 be entitled to visit, inspect, survey and audit any repairs and maintenance which the Lessee is obliged to carry out pursuant to the Transaction Documents in respect of the Equipment, the Technical Records, any Parts and any maintenance and repair facilities used in connection with the repair, maintenance, storage or operation of any Equipment;
  - 11.1.4 carry out a safety and environmental inspection or audit of any Equipment in order to satisfy any potential safety concerns or environmental concerns of Porterbrook,

and for these purposes Porterbrook and/or any person designated by it shall be entitled to enter on any land or premises on or in which any Equipment, Technical Records or Part is located and the Lessee shall provide Porterbrook and any person designated by it with such assistance, equipment and facilities reasonably requested by Porterbrook in connection with any such visit, inspection, survey or audit. Porterbrook agrees that such inspection shall not cause any unreasonable



disruption to the operation of any Equipment or to any repair and maintenance work being carried out or the Lessee's other operational activities at the place at which such inspection takes place (provided always that in determining what is reasonable all due regard shall be given to Porterbrook's right (as lessor and/or owner of the Equipment) to inspect the Equipment and to ensure that the Lessee is complying with its obligations under the Transaction Documents).

- 11.2 For the purpose of determining the level of any non-compliance and/or non-performance with the obligations of the Lessee under the Transaction Documents or whether any Equipment is in the Redelivery Condition, the Lessee acknowledges that Porterbrook and/or any person designated by it shall be entitled to inspect or re-inspect a randomly selected sample of not less than [REDACTED] (rounded up to the nearest item of Equipment) of the Equipment (the "**Audit Sample**"). Porterbrook shall be entitled to rely on an Audit Sample for the purpose of:
- 11.2.1 evaluating the likely extent of any non-compliance or non-performance by the Lessee with its obligations under the Transaction Documents with respect to any or all of the Equipment; and/or
  - 11.2.2 exercising its rights pursuant to the Transaction Documents, including pursuant to paragraph 7; and/or
  - 11.2.3 evaluating whether any or all of the Equipment is in the Redelivery Condition; and/or
  - 11.2.4 determining the Quantum with respect to any of the matters referred to in paragraph 11.2.
- 11.3 Where the Lessee has been required to provide security pursuant to clause 14.1 which has not been released in respect of any Equipment the Lessee may request Porterbrook to carry out an inspection of such Equipment (or an Audit Sample), and Porterbrook will carry out an inspection of such Equipment or an Audit Sample (as determined by Porterbrook) as soon as reasonably practicable.
- 11.4 The Lessee will pay to Porterbrook on demand all reasonable costs and expenses incurred by Porterbrook in connection with any visit, inspection, survey or audit pursuant to the Transaction Documents if:
- 11.4.1 a Default has occurred and is continuing at the time of such visit, inspection, survey or audit or is revealed thereby or the visit, inspection, survey or audit is carried out by Porterbrook to establish whether any breach of any Transaction Document has been rectified; or

11.4.2 the visit, inspection, survey or audit is being carried out at the Lessee's request or to determine whether the Lessee has rectified any Outstanding Maintenance.

11.5 Porterbrook shall have no duty or liability to carry out any visit, inspection, survey or audit. Furthermore, Porterbrook shall have no liability arising out of any visit, inspection, survey or audit other than for damage or personal injury caused during the course of conducting any such visit, inspection, survey or audit by the acts or omissions of any persons designated by Porterbrook acting in accordance with their duties to Porterbrook.

## 12 SPARES ACCESS AGREEMENT

12.1 The Lessee shall comply with each Spares Access Agreement to the extent necessary so as not to adversely affect the management of the spares covered by such agreements or the availability of such pooled spares to other users of those pooled spares.

## 13 SPECIAL TOOLS

13.1 Within thirty (30) days after the date falling six (6) months after the Delivery Date of the last item of Rolling Stock, the Lessee shall provide to Porterbrook a list of the Special Tools.

13.2 In the event that the Lessee wishes to dispose of any Special Tool, the Lessee shall give at least six (6) weeks' written notice to Porterbrook of its intention. On receipt of such notice, Porterbrook shall be entitled to acquire that Special Tool, free of charge. The Lessee shall not dispose of the Special Tool until the Lessee has received the written consent of Porterbrook (such consent not to be unreasonably withheld or delayed). Without prejudice to the obligation on Porterbrook not to unreasonably withhold or delay its consent, such consent shall be deemed to have been given if Porterbrook has not notified the Lessee of its requirement to acquire some or all of the Special Tools following the expiry of six (6) weeks following the service by the Lessee of its notice of disposal of such Special Tools pursuant to this paragraph 13.2.

13.3 Within four (4) weeks of the termination or expiry of the Lease Period for the last item of Rolling Stock, Porterbrook shall, by written notice (the "**Purchase Notice**") to the Lessee, be entitled to require the Lessee to transfer to Porterbrook or its nominee the Lessee's rights, title and interest in and to any of the Special Tools specified by Porterbrook. If Porterbrook serves a Purchase Notice on the Lessee pursuant to this paragraph 13.3 in respect of any Special Tool, Porterbrook shall pay the Lessee an amount (the "**Purchase Price**") which is the lower of:

13.3.1 the amount the Lessee paid for such Special Tool subject to depreciation in accordance with the Lessee's normal accounting policies; and

13.3.2 the fair market value of the relevant Special Tool.

The Lessee shall, within five (5) Business Days of a request therefor, provide to Porterbrook such information and evidence reasonably requested by Porterbrook to demonstrate the Purchase Price for any Special Tool. Title to each such Special Tool shall automatically pass to Porterbrook with full title guarantee and free from all Security Interests on the date which the Lessee receives the Purchase Price in full and cleared funds, and the Lessee shall take such action and execute such documents as Porterbrook may reasonably require to ensure that title so passes.

13.4 Should Porterbrook and the Lessee not reach agreement on the Purchase Price for any Special Tool, then either party may refer that matter to Expert Determination.

13.5 Within thirty (30) days of receipt by Porterbrook from the Lessee of a valid VAT invoice following the agreement or determination of the Purchase Price for, any Special Tool Porterbrook shall pay that Purchase Price (together with any applicable VAT).

#### **14 POST LEASE MAINTENANCE MATERIALS**

14.1 If:

14.1.1 requested by Porterbrook, at least six (6) months prior to the expiry or termination of the Lease Period, the Lessee shall promptly place orders (on terms, and with such supplier, approved by Porterbrook (acting reasonably)) for materials specified by Porterbrook that are required to support the maintenance of any Rolling Stock in the twelve (12) month period after the expiry or termination of the Lease Period with respect thereto;

14.1.2 Porterbrook makes any such request as referred to in paragraph 14.1.1, on the expiry or termination of the Lease Period with respect to the relevant Rolling Stock:

(a) subject to the terms of any agreement entered into by Porterbrook and the Lessee pursuant to paragraph (c) and receipt by the Lessee of the purchase price pursuant to paragraph (b) the Lessee shall deliver to Porterbrook or its nominee all such materials delivered to the Lessee by such supplier (in the same condition as when delivered by such supplier to the Lessee);

(b) the Lessee shall invoice Porterbrook for, and Porterbrook shall pay to the Lessee (within thirty (30) days following receipt of such invoice), the purchase price invoiced by such supplier and paid by the Lessee to such supplier for the purchase of such materials provided that such materials are delivered to Porterbrook or its nominee in accordance with paragraph 14.1.2(a);

- (c) Porterbrook and the Lessee shall enter into an agreement (in terms reasonably acceptable to them both) with Porterbrook's nominee pursuant to which the rights and obligations of the Lessee with respect to such order are novated to Porterbrook's nominee on (or as soon as reasonably possible after) the expiry or termination of the Lease Period with respect to the relevant Rolling Stock.

Schedule 7

Approved Maintenance Performers

Maintenance Performer	Nature Of Repair And/Or Maintenance For Which Approval Is Given	Maintenance Location
South Western Railway Limited	All level 1-5 Maintenance	Such depots as are operated by the Lessee for carrying out such Maintenance

**Schedule 8**

**Maintenance Programme**

Part 1

Light Maintenance Programme

The programme for maintenance, repairs and cleaning procedures as set out in document number DM455 Issue 3B September 2016 (or the latest version/issue authorised through engineering change by the Existing Lessee), as listed in the Document Tree set out in Part 3 under the relevant branch for Class 455 and as further supplemented by the following:

Level	Period	Tolerance	Responsible	Document	Downtime
Balanced exam regime	20k miles	+/- 200 miles	South Western Railway	DM455 Issue 3 September 2016	N/A

## Part 2

### Heavy Maintenance Programme

All programmes for maintenance, repairs and cleaning procedures as listed in the Document Tree set out in Part 3 under the relevant branch for Class 455, save for document number DM455 Issue 3B September 2016, as supplemented below:

Heavy Maintenance Event	Specification	Periodicity	Tolerance	Counter
C4	PB/VI4554 Issue 5, (or the latest version/issue authorised through engineering change by the Existing Lessee)	500,000 miles	+25,000 miles	Miles
C6	PB/VI4552 Issue 4 (or the latest version/issue authorised through engineering change by the Existing Lessee)	8 Years	+/- 1 year	Time
Paint	PB/VI4552 Issue 4 (or the latest version/issue authorised through engineering change by the Existing Lessee)	8 Years	+/- 1 year	Time



Part 3

Document Tree

(document PB/DT FMSWT 01 Issue 4)

	DOCUMENT TREE	<b>PB/DT FMTRSW 01</b>  Issue 4  Page 119 of 199
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FIRST MTR SOUTHWESTERN TRAINS

Issue: 4

APPROVAL AND AUTHORISATION

Signature

Job Title

Author:

[Redacted Signature]

Engineering Standards  
& Configuration Manager

Business Group: [REDACTED] Head of Fleet Services  
(Southern & Western)

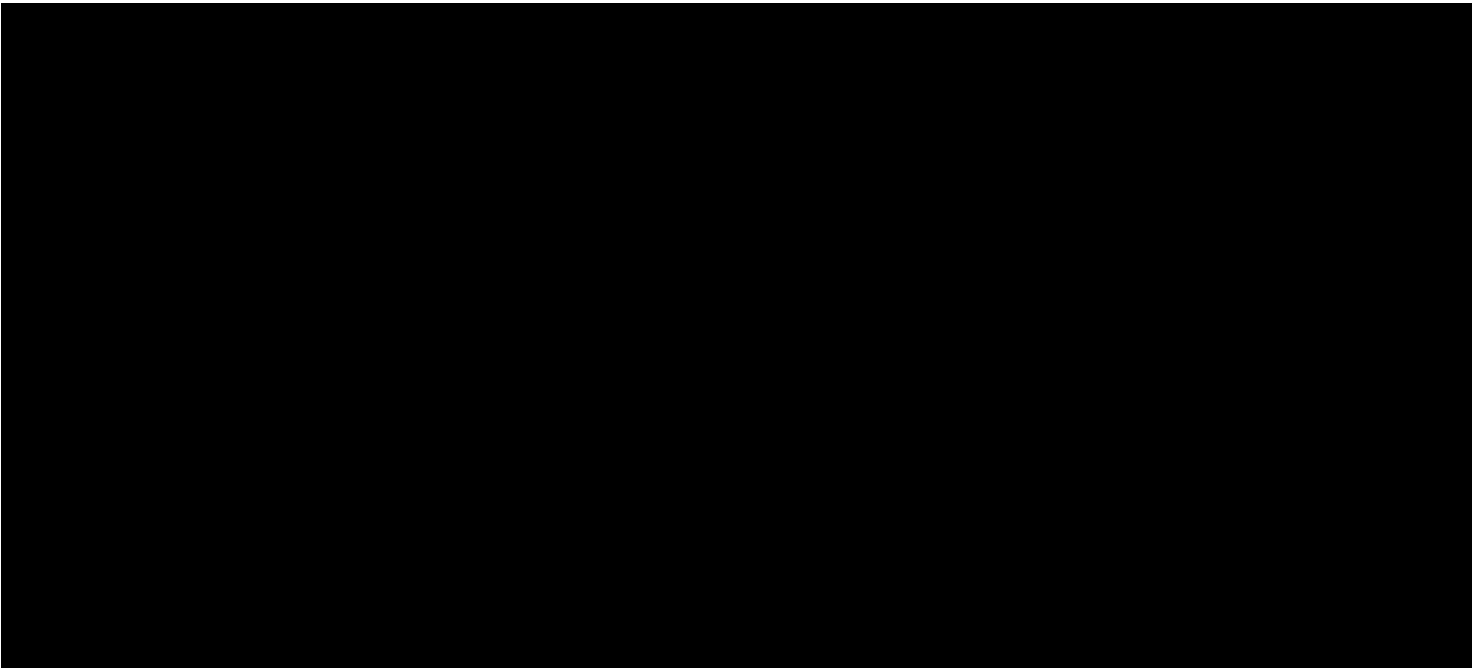
Commercial: [REDACTED] Senior Relationship Manager

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[REDACTED]

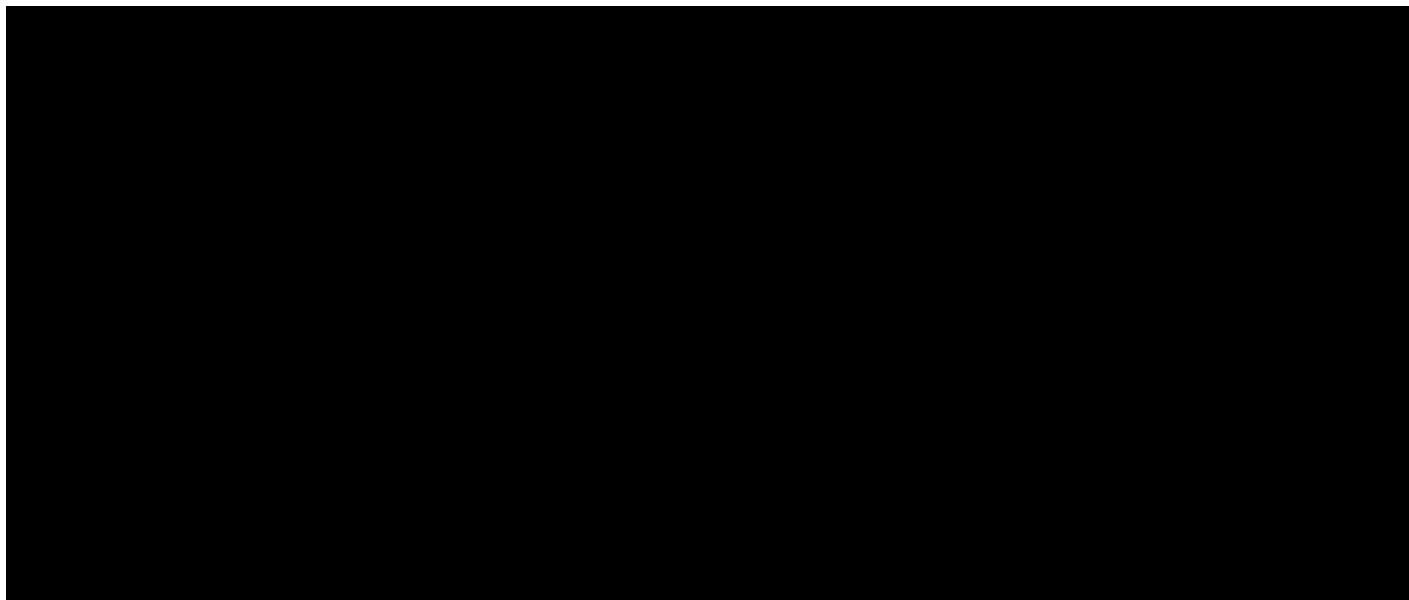
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## REVISION RECORD

This revision record details the changes made in re-issuing this document from issue 3 to issue 4.



**Schedule 9**

**Maintenance Information**

## Part 1

### Identified Components and Tracked Components

#### 1 IDENTIFIED COMPONENTS

Type Generic	Description				Counter (T = time based, M = mileage based tracking)
	Class 455 DTSA	Class 455 TS	Class 455 MS	Class 455 DTSB	
UF	Trailer bogie	Trailer bogie	Power bogie	Trailer bogie	M
UW	Trailer wheelset	Trailer wheelset	Power wheelset	Trailer wheelset	M
AC	Main Compressor			Main Compressor	M
MT			Traction motor		M
MO			Motor Alternator		M

#### 2 TRACKED COMPONENTS

Type Generic	Description				Counter (T = time based, M = mileage based tracking)
	Class 455 DTSA	Class 455 TS	Class 455 MS	Class 455 DTSB	
UF	Trailer bogie	Trailer bogie	Power bogie	Trailer bogie	M
UW	Trailer wheelset	Trailer wheelset	Power wheelset	Trailer wheelset	M
AC	Main Compressor			Main Compressor	M
EV	Data Recorder			Data Recorder	T
SD	TPWS Control Unit			TPWS Control Unit	T

MT			Traction motor		M
MO			Motor Alternator		M

## Part 2

### Fleet Data

#### 1 DATA

1.1 The Lessee hereby covenants with Porterbrook that the Lessee shall at the Lessee's expense:

1.1.1 collect and make available to Porterbrook any utilisation and performance data in respect of the Equipment which Porterbrook may reasonably require;

1.1.2 keep and make available to Porterbrook accurate records of the mileage accumulation and increment in all Counters for each Vehicle and/or Identified Components on each day throughout its Lease Period.

(a) Within thirty (30) days after Delivery of any Equipment the Parties shall agree:

(i) the position of that Equipment in the Heavy Maintenance Programme by reference to the mileage and Counter information for such Equipment held by Porterbrook, the Existing Lessee or any Counter Database or gathered in relation to any heavy maintenance carried out with respect to such Equipment. If the Parties fail to reach agreement on the position of such Equipment in the Heavy Maintenance Programme within thirty (30) days of its Delivery either Party may submit the matter for Expert Determination;

(ii) the method by which the Lessee shall record the mileage accumulation and increment in all Counters for such Equipment and/or Identified Components on the Counters Database. If the Parties fail to reach agreement on such method within thirty (30) days of the first Delivery Date either Party may submit the matter for Expert Determination; and

(iii) the applicable job codes for inputs required to be performed in respect of the Equipment in accordance with paragraph 1.1.3.

(b) Without prejudice to the generality of paragraph 1.1.1 or this paragraph 1.1.2, the Lessee shall:



- (i) input into each Counter Database, the increments in all Counters for each item of Equipment on the previous day;
  - (ii) procure that mileages for the Equipment will be uploaded to the Technical Records Database;
  - (iii) (if the accumulated mileage or any other information in relation to any Equipment inputted or otherwise held in any such Counter Database is inaccurate (including as a result of diagram changes)), correct that information in such Counter Database as soon as reasonably possible after the Lessee becomes aware (or ought reasonably to have known) of such inaccuracy;
  - (iv) agree with Porterbrook in advance of any such alteration being inputted into the Counter Database, any alteration to the mileage or any Counter in respect of any Equipment and/or Identified Components which is outside normal operational parameters, in order to allow both parties to reconcile the accumulated mileage and/or increment in the relevant Counter in respect of such Equipment;
- (c) The Parties shall, not less than once in every five (5) months during the Lease Period, review and agree the position of each item of Equipment in the Heavy Maintenance Programme from the date of the last such review by reference to the mileage and Counter information for such Equipment held by Porterbrook, the Existing Lessee or any Counter Database or gathered in relation to any heavy maintenance carried out with respect to such Equipment), to determine and reconcile any differences in the mileage and Counter information held by Porterbrook and the mileage and Counter information held by the Lessee.
- 1.1.3 perform any inputs in respect of the Equipment required on all Technical Record Databases in accordance with RIS-2706-RST Rail Industry Standard for Rolling Stock Data, as amended from time to time (or as otherwise specified by Porterbrook) including procuring that the following information is entered on all relevant parts of the Technical Records Database within three (3) Business Days of the relevant work being undertaken:
- (a) depot work sheets in respect of each item of Equipment;
  - (b) examinations by type and date;

- (c) work affecting safety or operational performance of the Equipment arising by applicable job code;
- (d) other unscheduled repairs affecting safety or operational performance of the Equipment by applicable job code;
- (e) condition monitoring data;
- (f) warranty records by input to agreed warranty system database;
- (g) casualty and defect records;
- (h) modifications by applicable modifications number;
- (i) experiments and trials by applicable experiment number;
- (j) component changes by serial number;
- (k) ultrasonic axle testing by axle number, wheelset location, equipment examiners code and date;
- (l) attention to major items by applicable job code including, but not limited to, major sub-assemblies currently not installed on the Equipment (if requested by Porterbrook);
- (m) notification of incidents involving the Equipment;
- (n) reliability data produced by the Lessee;
- (o) any changes to any of the Tracked Components whether such changes have taken place as part of heavy maintenance pursuant to the Heavy Maintenance Programme or as part of any unplanned maintenance, or during the removal, overhaul or fitment of a Tracked Component. For the avoidance of doubt the information to be inputted into each Technical Records Database shall include the following:
  - (i) the date the Tracked Component was removed from the Equipment; and
  - (ii) the serial number and refitment date of any Tracked Component refitted to the Equipment (and in relation to any “swingers” which are Tracked Components the start mileage for such Tracked Components);

1.1.4 keep the Technical Databases and the Technical Records up-to-date in every respect provided always that:

- (a) the Lessee shall not be required to perform any such inputs in relation to the carrying out of any Lessor Works in respect of any Rolling Stock other than entries to record that the such Rolling Stock has been delivered to Porterbrook for the purposes of such Lessor Works and redelivered to the Lessee after completion of such Lessor Works;
- (b) if there has been no change to the information currently recorded on the Technical Databases, the Lessee is not required to put an entry in to state that no change has occurred, except in relation to the daily mileage record which must show if applicable, that no change in the previous day's mileage has occurred.

If so requested by Porterbrook from time to time in order to supplement the information on the Technical Databases, the Lessee will provide to Porterbrook such further information relating to the Equipment as Porterbrook may reasonably require to ensure that the Technical Records relating to the Equipment are kept in accordance with all Applicable Requirements.

- 1.1.5 give Porterbrook, any person that is the operator of, and any person with whom Porterbrook has entered into good faith negotiations with a view to that person becoming an operator of, any Equipment access to the Technical Records and provide all reasonable assistance to Porterbrook and any such person in understanding and analysing the Technical Records or to facilitate the integration of any Equipment into the business of such person following redelivery of such Equipment by the Lessee.

### Part 3

#### Changes To Technical Databases

#### **1 CHANGES TO TECHNICAL DATABASES**

##### **1.1 The Lessee may not use:**

- 1.1.1 a Technical Records Database other than R2; or
- 1.1.2 a Counter Database other than R2; or
- 1.1.3 a Maintenance Planning Database other than such system as shall be agreed between Porterbrook and the Lessee within thirty (30) days after Delivery of the first item of Equipment,

unless a Variation Order with respect thereto has been agreed by Porterbrook and that Technical Records Database, Counter Database or Maintenance Planning Database, as the case may be, has been tested and implemented in accordance with that Variation Order. The Lessee shall be responsible for all costs of implementing that Variation Order, such costs shall be payable in accordance with the terms of that Variation Order.

##### **1.2 Any such Variation Order must set out details of how (where applicable):**

- 1.2.1 such Technical Database, will provide the necessary data for the periodic reconciliation of mileage and other applicable counters or repair records in accordance with this Agreement and Porterbrook must be satisfied that such Technical Database, will provide the necessary data for the periodic reconciliation of mileage and other applicable counters or repair records in accordance with this Agreement;
- 1.2.2 the Maintenance Planning Database as amended pursuant to such Variation Order will plan all maintenance (both light maintenance and heavy maintenance) at the required intervals, and Porterbrook must be satisfied that the Maintenance Planning Database will plan all maintenance at the required intervals;
- 1.2.3 such Technical Database will keep (and the format in which it will keep) all other records and information that this Agreement requires such Technical Database to keep and Porterbrook must be so satisfied;
- 1.2.4 electronic access to such Technical Database will be provided to Porterbrook and Porterbrook must be satisfied with such electronic access; and

- 1.2.5 all Parts shown on R2 as fitted to the Equipment will be removed from R2 when the Lessee ceases using R2.
- 1.3 If the Lessee wishes to use a Technical Records Database other than R2 and such Technical Records Database does not automatically interface with R2:
- 1.3.1 the Lessee shall procure that such Technical Records Database must be capable of recording the information specified in this Agreement (including but not limited to that specified in paragraph 1.1.3 of Part 2 of Schedule 9) and it must incorporate a system of input validation to ensure that the data recorded is complete and accurate;
- 1.3.2 the Lessee shall procure that a components interface file is updated with (at least) the information specified in this Agreement (including but not limited to that specified in paragraph 1.1.3 of Part 2 of Schedule 9), and provided to Porterbrook, on a daily basis. Such components interface file must conform to an interface specification available from Porterbrook and must be supplied to Porterbrook in a manner agreed by Porterbrook.
- 1.4 If the Lessee wishes to use a Counter Database other than R2, then the mileage travelled by the Equipment must be provided by the Lessee to Porterbrook on a daily basis via a mileage interface file, and in a manner, approved by Porterbrook (such interface file must conform to an interface specification available from Porterbrook). The Lessee may not use a Counter Database other than R2 unless and until such mileage interface file and the manner of providing it have been approved by Porterbrook and tested and implemented as so approved.

## Part 4

### Technical Records

#### **1 TECHNICAL RECORDS**

- 1.1 The Technical Records in relation to any Equipment shall include the following in relation to that Equipment:
- 1.1.1 the Maintenance Programme (including any deferred work);
  - 1.1.2 depot work sheets;
  - 1.1.3 driver's repair book;
  - 1.1.4 warranty information;
  - 1.1.5 technical records relating to any incident which is reportable in accordance with any requirements issued from time to time by any Government Authority;
  - 1.1.6 all information of the following types which is produced by the Lessee or any person providing any goods or services to the Lessee in connection with that Equipment, in whatsoever form:
    - (a) mileage information relating to that Equipment;
    - (b) the date of the last maintenance services performed on that Equipment, and details of any work carried out at such exam; and
    - (c) the date or mileage of the next maintenance services due for that Equipment;
  - 1.1.7 those documents which fully describe the manner in which that Equipment should be operated, serviced, maintained, repaired and overhauled, any illustrated parts catalogue, any component overhaul instructions relating to that Equipment;
  - 1.1.8 any CCB Certificates, the Certificates of Engineering Acceptance , any technical documents, data and records (including on the Technical Records Database) relating to that Equipment that are required to be produced or maintained pursuant to Industry Standards;
  - 1.1.9 the Technical File relating to that Equipment;
  - 1.1.10 all other information on the Technical Records Database relating to that Equipment;

- 1.1.11 any other records that Porterbrook shall from time to time reasonably require to be classed as Technical Records;
  - 1.1.12 all other elements of the Manuals (to the extent not referred to above; and all additions, supplements, updates and revisions thereto from time to time.
- 1.2 If Technical Records are required to be kept so as not to invalidate any continuing warranty, the Lessee shall ensure that the recommendations of the manufacturer or any applicable seller, supplier, sub-contractor, maintenance performer or repairer are complied with.

## Schedule 10

### Defect Advice Procedure

#### 1 PRE-AMBLE

- 1.1 Porterbrook requires information concerning defects or apparent defects in the service performance of the Equipment. Porterbrook requires this information in order to hold and maintain an accurate whole life history of its assets to facilitate performance improvement initiatives and to help manage residual value. This Schedule defines the Lessee's general obligation to provide feedback on the service performance of the Equipment to Porterbrook for those purposes.

#### 2 CENTRAL DATABASE FOR DEFECTS

- 2.1 At Porterbrook's option all information relating to any defect or alleged defect in any Equipment may be recorded by Porterbrook on an electronically held database. By agreement, free access to this database shall be provided to the Lessee by Porterbrook but such access shall be restricted to information relating to the Rolling Stock and excluding commercially sensitive or confidential information. Porterbrook may also use this database to record defects and other events associated with the Equipment. For the avoidance of doubt, Porterbrook may not require the Lessee to record any information on this database.

#### 3 ADVICE OF A DEFECT

- 3.1 Without prejudice to its obligations under clause 9, the Lessee shall provide to Porterbrook, on a quarterly basis or, if specified by Porterbrook, no less than five (5) Business Days prior to each quarterly contract review meeting, a written report in a format agreed between the Lessee and Porterbrook each acting reasonably) on any defect in design, materials or workmanship in any Equipment that has become apparent in that quarter the cost of repair of which will or has exceeded [REDACTED] and on the occurrence of any safety related events in that quarter. Such report shall include, wherever practically and reasonably possible, the following information:

- 3.1.1 defect description;
- 3.1.2 Equipment serial or painted number;
- 3.1.3 position on Equipment using standard terminology;
- 3.1.4 origin of complaint e.g. driver, fitter, station staff;
- 3.1.5 Equipment diagram, service and approximate time (where known to the Lessee);
- 3.1.6 location of Equipment at time of defect (where known to the Lessee);



- 3.1.7 Environmental conditions, especially the presence of rain, snow, leaves;
- 3.1.8 passenger behaviour and evidence of passenger interference (broken glass, exhausted fire extinguishers etc.) (where known to the Lessee);
- 3.1.9 driving Equipment number ;
- 3.1.10 details of any other rail vehicles coupled to the defective Equipment;
- 3.1.11 time and date of defect (where known to the Lessee);
- 3.1.12 if applicable, details of any remedial action.

#### **4 ACCESS**

- 4.1 Subject to Porterbrook not disrupting the commercial operation of the Lessee, the Lessee shall grant reasonable access to Porterbrook to any information or databases it chooses to maintain for the purpose of compiling its quarterly report referred to in paragraph 3.1 provided prior reasonable notice has been given by Porterbrook. Access to this information or databases shall be restricted to information relating to the Equipment and excluding commercially sensitive or confidential information.
- 4.2 The Lessee shall permit Porterbrook and/or any person designated by it, provided all Applicable Requirements and Local Depot Instructions are followed, to have reasonable access to the Equipment while in service for identification of defects and to observe operation provided reasonable notice has been given and provided that such access does not:
  - 4.2.1 cause any commercial disruption to the operation of the Lessee's business; and
  - 4.2.2 disrupt the operation of any Equipment for its Permitted Use; and
  - 4.2.3 result in the unavailability of any Equipment for its Permitted Use; and
  - 4.2.4 have any safety implications.

The Lessee shall provide free of charge to Porterbrook such duty passes as may be reasonably necessary for this purpose.

## Schedule 11

### Lessor Maintenance

#### 1 UNDERTAKINGS

- 1.1 Porterbrook shall be entitled to carry out Lessor Maintenance in accordance with paragraph 7 of Schedule 6, and as otherwise agreed with the Lessee.

#### 2 DELIVERY TO PORTERBROOK FOR LESSOR MAINTENANCE

##### 2.1

- 2.1.1 In order to enable Porterbrook, or, as the case may be, Lessor Maintenance Performer, to perform its obligations with respect to Lessor Maintenance on any Rolling Stock, the Lessee shall deliver such Rolling Stock to Porterbrook, or, if Porterbrook shall so direct, to the Lessor Maintenance Performer, on such date, at the Lessor Works Delivery Location and:

- (a) in the case of any Enhancement Modifications, in accordance with the Enhancement Programme;
- (b) in any other case, at such time as Porterbrook may specify.

The Lessee shall deliver the Rolling Stock to Porterbrook, or, as the case may be, the Lessor Maintenance Performer with the Safety Certificate in respect of such Rolling Stock (if and to the extent required by Applicable Requirements in relation to that Rolling Stock).

- 2.2 If the Lessee fails to deliver any Rolling Stock in accordance with paragraph 2.1 on the specified date, at the specified location and at the specified time, then:

- 2.2.1 the Lessee shall indemnify Porterbrook on demand and hold Porterbrook harmless from and against any and all costs, expenses, liabilities or losses suffered or incurred by Porterbrook (as certified by Porterbrook and supported by evidence reasonably satisfactory to the Lessee) as a consequence thereof; and
- 2.2.2 Porterbrook shall, in the event of such failure to so deliver any Rolling Stock, be entitled to serve written notice on the Lessee requiring the Lessee to deliver the relevant Rolling Stock to Porterbrook for the purposes of enabling Porterbrook to perform the required Lessor Maintenance on such Rolling Stock.

- 2.3 Porterbrook shall give, or shall procure that the Lessor Maintenance Performer gives, the Lessee no less than five (5) days written notice of the date on which Porterbrook anticipates that the Lessor Maintenance for any Rolling Stock will be

completed. On such date Porterbrook will redeliver that Rolling Stock to the Lessee and the Lessee agrees that it will, at the cost and expense of the Lessee, collect such Rolling Stock from Porterbrook, or as the case may be, from the Lessor Maintenance Performer, at the location and time specified by Porterbrook in such notice. Porterbrook shall have no responsibility to the Lessee for breach of this paragraph 2.3.

- 2.4 The Lessee shall obtain all such rights of track access to and from any location in mainland UK specified by Porterbrook pursuant to paragraph 2.1, or, as the case may be, paragraph 2.3 together with all other consents, licences, authorisations, permits and rights as may be required in order to enable the Lessee to deliver any Rolling Stock to Porterbrook or, as the case may be, the Lessor Maintenance Performer pursuant to paragraph 2.1, or as the case may be, collect any Rolling Stock from Porterbrook or, as the case may be, the Lessor Maintenance Performer pursuant to paragraph 2.4. The Lessee alone (and not Porterbrook) shall be responsible for obtaining such rights of track access, consents, licences, authorisations, permits and other rights. Notwithstanding anything to the contrary, if the Lessee fails to comply with its obligations pursuant to this paragraph within two (2) Business Days after a request from Porterbrook, Porterbrook shall be entitled to procure compliance on the Lessee's behalf and the Lessee shall indemnify Porterbrook on demand and hold Porterbrook harmless for and against any and all costs and expenses suffered or incurred by Porterbrook (as certified by Porterbrook, such certification being, in the absence of manifest error, final and binding on the Lessee) as a consequence thereof.

### **3 LESSOR MAINTENANCE PERFORMER**

- 3.1 The Lessee acknowledges and agrees that Porterbrook may, in its absolute discretion procure that all Lessor Maintenance under this Part of this Schedule are carried out by one or more Lessor Maintenance Performers.

### **4 REMEDIES**

- 4.1 The Lessee acknowledges that its sole and exclusive remedies in respect of, or in connection with, any Lessor Maintenance are as set out of in this Schedule. Accordingly, save as expressly set out in this Schedule, the Lessee acknowledges that it shall not have any rights or cause of action against any Indemnatee in respect of, or in connection with, any Lessor Maintenance or the effects of any Lessor Maintenance and all such rights or causes of action which might otherwise exist are hereby irrevocably waived by the Lessee.

**Schedule 12**

**Insurances**

## Part 1

### Insurance Obligations

#### 1 REQUIREMENT TO MAINTAIN

##### 1.1 The Lessee shall at its own cost and expense:

1.1.1 for the periods specified in Part 2 of Schedule 12 and in accordance with the terms of the Transaction Documents take out and maintain in force or procure the taking out and maintenance of the Required Insurances, and any other insurances as may be required by and in accordance with any law and/or Applicable Requirements and for such risks as may be approved by Porterbrook (such approval not to be unreasonably withheld or delayed). If the Lessee is unable, acting in good faith, to obtain and maintain in the London insurance market on reasonable terms any insurance (or level of deductible) it is otherwise required to obtain or maintain pursuant to the Transaction Documents, then Porterbrook and the Lessee shall consult in good faith to agree the terms of alternative equivalent protection or security satisfactory to Porterbrook (acting reasonably) and the Lessee shall promptly put in place such protection or security at its own cost. For the avoidance of doubt:

- (a) the third party liability insurance specified in Part 2 of Schedule 12 with respect to any Equipment shall be maintained on a losses occurring basis; and
- (b) the minimum levels of cover required in respect of each Required Insurance pursuant to the terms of the Transaction Documents shall be maintained by the Lessee so that such levels of cover are available at all times and shall not be affected by any insurance claim in respect of a matter unrelated to the Transaction Documents and, without prejudice to the foregoing where third party liability insurance is subject to an aggregate limit for the policy period, such insurance must contain a provision for the automatic reinstatement at least once if that limit is exhausted in accordance with the requirements of the Regulator;

1.1.2 promptly pay any premiums due in respect of the Required Insurances;

1.1.3 comply with any insurance related requirements of the Authority including those set out in the Rail Services Contract and, to the extent such requirements are notified by Porterbrook to the Lessee, the Direct Agreement;

- 1.1.4 ensure that all requirements as to insurance of Equipment which may from time to time be imposed by Applicable Requirements, insofar as those requirements affect or concern the operation of the Equipment, are complied with;
  - 1.1.5 use in relation to the Required Insurances only insurance brokers that are appropriately authorised by the Financial Conduct Authority, the Prudential Regulation Authority and all other relevant Government Authorities and approved by Porterbrook (such approval not to be unreasonably withheld or delayed) and the Lessee shall procure that any broker charged with the responsibility from time to time of placing or maintaining any of the Required Insurances provides Porterbrook with a broker's letter of undertaking in the form set out in Schedule 13 on each procurement of any of the Required Insurances, on each renewal thereof in accordance with paragraph 3.1.4(b) and otherwise at Porterbrook's reasonable request;
  - 1.1.6 notwithstanding any provision to the contrary in the Transaction Documents, ensure that all necessary authorisations as may from time to time be required by and in accordance with any Applicable Requirements to enable the Required Insurances to be validly procured and/or maintained by the Lessee or its agents on behalf of Porterbrook and any other party to be insured under any Required Insurance have been obtained and are in full force and effect; and
  - 1.1.7 provide such evidence to Porterbrook as Porterbrook may require from time to time to confirm that the authorisations to which paragraph 1.1.6 refers are in full force and effect.
- 1.2 The Required Insurances specified in Part 2 of Schedule 12 shall:
- 1.2.1 name each insured party as separate co-insureds, each insured for its separate rights and interests;
  - 1.2.2 contain a clause whereby the insurance shall apply to each of the insured parties as if a separate policy had been issued to each of them, other than in the event of exhaustion of the sum insured or the limit of indemnity, with non-vitiation protection in respect of any claim made by any insured party;
  - 1.2.3 contain a clause waiving the insurers' subrogation rights and any other rights of recourse against each insured party and its directors, employees and agents;
  - 1.2.4 provide for thirty (30) days' prior written notice of their cancellation, non-renewal or amendment to be given to Porterbrook, the Owner and each Financier specified by Porterbrook;

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- 1.2.5 provide primary cover for the insured parties so that in the event of loss, destruction damage or liability covered by such insurance, which is also covered (in whole or in part) under any other policy (or policies) of insurance, insurers will indemnify the insured parties as if such other policy (or policies) of insurance were not in force with insurers waiving all rights of recourse and/or contribution against the insurers of such other policy (or policies);
- 1.2.6 contain a clause whereby notice of a claim, circumstance or incident given by an insured party shall be accepted by insurers as valid notification in respect of the interests of all insured parties;
- 1.2.7 provide cover in Pounds Sterling unless otherwise agreed with Porterbrook;
- 1.2.8 as to the third party liability insurance specified in Part 2 of Schedule 12:
  - (a) provide that Porterbrook, or if required by Porterbrook, the Owner, has the right to participate in the conduct/defence of any claims received from third parties and which are made against Porterbrook and/or the Owner; and
  - (b) accept and insure the indemnity provisions in clause 11 to the extent of the risks covered by the policies.
- 1.2.9 as to the property insurance specified in Part 2 of Schedule 12 provide that:
  - (a) insurers are not entitled to replace any Equipment in the event of a Total Loss in relation to that Equipment without the consent of Porterbrook and that any proceeds in respect of a Total Loss shall be paid by insurers to Porterbrook, or if required by Porterbrook, the Owner, or such person nominated by Porterbrook, or if required by Porterbrook, the Owner (in either case, as sole loss payee);
  - (b) any proceeds of such insurance other than in respect of a Total Loss shall be paid by insurers in or towards the cost of repairs and replacement (or where carried out by the Lessee or paid for by the Lessee, to reimburse the Lessee for the costs thereof) unless:
    - (i) otherwise agreed after consultation between the insurers, the Lessee, Porterbrook and the Owner;
    - (ii) a Default has occurred and is continuing, in which event such proceeds shall be payable to Porterbrook and applied towards payment of any amounts owing by the Lessee to Porterbrook;

- (c) the Lessee shall not be entitled to settle and negotiate any insurance claim with insurers without the consent of Porterbrook provided that (and without prejudice to clause 11):
  - (i) for so long as no Default has occurred and is continuing; and
  - (ii) the value of the relevant claim (including any deductible) will not (or in Porterbrook's reasonable opinion will not) exceed [REDACTED] and
  - (iii) the relevant claim relates to the cost of repair of the Equipment and does not involve a claim against any Indemnatee; and
  - (iv) for so long as the Lessee provides Porterbrook with such information and materials as it may request with respect to the relevant claim; and
  - (v) the Lessee takes all reasonable steps to defend or settle such claim; and
  - (vi) the Lessee does not settle any such claim without the consent of Porterbrook,
  - (vii) such consent of Porterbrook shall not be required;
- (d) where Porterbrook requires, any and/or all of Porterbrook's and/or if required by Porterbrook, the Owner's, interest(s) in such insurance and the proceeds thereof shall be assigned to the Owner or a Financier (nominated by Porterbrook, or if required by Porterbrook, the Owner).

1.3 All insurance premiums payable in respect of the Required Insurances and the amount of any loss that would otherwise be recoverable under any of such insurances but for the applicable uninsured deductible and/or limit of indemnity in respect of such insurance shall at all times be the responsibility of the Lessee.

1.4 Notwithstanding any other term of the Transaction Documents, in respect of any third party liability insurance policy procured pursuant to the terms of the Transaction Documents, if Porterbrook reasonably believes, that the insurers and/or underwriters of such policy may not be able to meet all their liabilities and/or potential liabilities under such policy in full, at Porterbrook's request the Lessee shall at its own cost and expense procure additional third party liability insurance (with insurers approved by Porterbrook, acting reasonably) covering all the Lessee's



liabilities and potential liabilities to Porterbrook arising pursuant to clause 11 and this Schedule 12.

- 1.5 The Lessee shall procure that any insurer in respect of any policy of insurance procured in respect of any of the Required Insurances shall acknowledge (either in the policy itself or in another related document) that:
- 1.5.1 the insurer is aware that the Equipment is owned by the Owner and (if applicable) that Porterbrook's and/or the Owner's interest in the Required Insurances is subject to a security assignment in favour of the Owner or a Financier; and
  - 1.5.2 no insured other than the Lessee will have any obligation or responsibility for the payment of any premiums due (but reserve the right for such insureds to pay the same should any of them elect so to do) and that the insurers will not exercise any right of set off or counter claim in respect of any premium due against the respective interests of the insureds other than the Lessee other than outstanding premiums relating to the relevant Equipment the subject of the relevant claim.
- 1.6 Porterbrook may, during the period of this Agreement, determine that the Required Insurances are no longer sufficient to protect the interests of any Indemnatee. In these circumstances, Porterbrook will be entitled to require of the Lessee that it purchases additional insurance cover, at its own cost and expense, to give Porterbrook the protection it has reasonably determined is needed.
- 1.7 The Required Insurances shall be effected and maintained with insurers with a credit rating at least equal to the Security Credit Rating and authorised by the Financial Conduct Authority, the Prudential Regulation Authority and all other relevant Government Authorities to undertake property insurance programmes and approved by Porterbrook (in each case, such approval not to be unreasonably withheld or delayed) either:
- 1.7.1 on a direct basis with insurers based in the European Union; or
  - 1.7.2 with insurers based in the European Union who do not retain the risk but effect substantial reinsurance with reinsurers, and for a percentage of all risks insured, in each case, approved by Porterbrook (such approval not to be unreasonably withheld or delayed). Any such reinsurance must (a) comply with this Schedule 12, (b) be on the same terms as the original insurance, (c) provide in the case of any bankruptcy, insolvency, liquidation, dissolution or similar proceedings of or affecting the original insurer that the reinsurers' liability will be to make such payments as would have fallen due under the relevant policy of reinsurance if the original insurer had (immediately before such bankruptcy, insolvency, liquidation, dissolution or similar proceedings) discharged its obligations in full under the original

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insurance policies in respect of which the then relevant policy of reinsurance has been effected; and (d) contain a “cut through” clause in form reasonably satisfactory to Porterbrook;

provided that:

- 1.7.3 if Porterbrook wishes to revoke its approval of any insurer or reinsurer in respect of the Required Insurances (because of doubts as to the financial condition of such person), the parties and/or their respective brokers for the time being will consult regarding whether that approval should be revoked and the insurer changed; and
- 1.7.4 if, following the consultation, Porterbrook reasonably determines that any such person may be unable to meet its obligations as they fall due, Porterbrook shall so notify the Lessee and the Lessee will then arrange or procure the arrangement of an alternative insurer or reinsurer satisfying, in the reasonable opinion of Porterbrook, the requirements of this paragraph 1.7.

## **2 CONDUCT IN RESPECT OF THE REQUIRED INSURANCES**

- 2.1 The Lessee shall not use, cause or permit any Equipment to be used for any purpose or in any manner not covered by the Required Insurances or in contravention of any term, condition and/or restriction specified in any policy procured in respect of any of the Required Insurances.
- 2.2 The Lessee shall comply with the terms and conditions of the Required Insurances and not do anything or consent or agree to any act or omission which:
  - 2.2.1 invalidates or would reasonably be expected to invalidate any of the Required Insurances;
  - 2.2.2 renders or would reasonably be expected to render void or voidable the whole or any part of the Required Insurances; and/or
  - 2.2.3 brings any liability within the scope of an exclusion or exception applicable to any of the Required Insurances.
- 2.3 The Lessee shall not (and shall use all reasonable endeavours to procure that no member of the Lessee’s Group shall) take any action or fail to take any action, or (insofar as it is reasonably within its power) permit anything to occur, which would entitle any insurer to refuse to pay (in whole or in part) any claim under any insurance policy in which it is an insured, a co-insured or an additional insured person or noted on the policy.
- 2.4 The Lessee shall notify Porterbrook immediately on becoming aware that a risk (or category or element or component of a risk) required to be insured by the Lessee in

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accordance with the Transaction Documents has become uninsured or is likely to become uninsured on the expiry of the insurance then in place in respect of such risk (or category or element or component of a risk). The Lessee shall provide Porterbrook with such information as Porterbrook reasonably requests to evidence why the Lessee believes the risk (or category or element or component of a risk) has, is likely to, become uninsured.

- 2.5 Subject to contrary instructions from Porterbrook from time to time, all insurance proceeds received by the Lessee under the property insurance specified in Part 2 of Schedule 12 shall be paid or applied in accordance with paragraph 1.2.9.

### **3 RENEWAL**

- 3.1 The Lessee will commence renewal procedures in relation to each of the Required Insurances at least sixty (60) days prior to expiry of such Required Insurances and will provide to Porterbrook:
- 3.1.1 not less than one (1) month prior to the termination or expiry of any of the Required Insurances, evidence that the Lessee is renewing such Required Insurances prior to termination or expiry;
  - 3.1.2 if required by Porterbrook, a written status report of renewal negotiations fourteen (14) days prior to each expiry date;
  - 3.1.3 not less than two (2) Business Days before the date of expiration of any of the Required Insurances, confirmation in writing from the Lessee's insurance brokers that such Required Insurances have been renewed and that all premiums in respect thereof as are due upon renewal have been paid; and
  - 3.1.4 within five (5) days of the date of termination or expiration specified in paragraph 3.1.1:
    - (a) the renewal certificate or certificates of insurance in respect of the relevant Required Insurances in form and substance acceptable to Porterbrook (acting reasonably); and
    - (b) a broker's letter of undertaking in the form set out in Schedule 13.

### **4 EVIDENCE OF REQUIRED INSURANCES**

- 4.1 The Lessee shall provide to Porterbrook on request:
- 4.1.1 any other insurance related information or assistance in respect of the Required Insurances as Porterbrook may reasonably require and will preserve, or will procure that its brokers preserve, all placing slips, certificates, renewal receipts, confirmation of renewal cover notes,

correspondence and policies with regard to any of the Required Insurances which the Lessee has within its or its broker's possession;

4.1.2 evidence that the premiums payable under all Required Insurances have been paid and that the Required Insurances are in full force and effect in accordance with the requirements of this Schedule 12; and

4.1.3 in respect of any Required Insurance which is not maintained exclusively in respect of the transactions contemplated by the Transaction Documents and/or which involves a captive insurer, all such documentation and information as Porterbrook may reasonably require from time to time so as to enable Porterbrook to evaluate the adequacy of those insurance arrangements.

4.2 If the Lessee is in breach of paragraphs 1, 2 and/or 3 of Part 2 of Schedule 12, Porterbrook may pay any premiums required to keep the Required Insurances (or any part thereof, at Porterbrook's discretion) in force or itself procure such Required Insurances (or any part thereof, at Porterbrook's discretion) and may in either case recover the amount of such premiums plus interest thereon at the Default Rate, from the date of demand up to but excluding the date of repayment by the Lessee, together with any costs incurred in procuring such Required Insurances (including, but not limited to, brokerage and/or any costs of obtaining any associated authorisation required by law from time to time (notwithstanding any provisions to the contrary in the Transaction Documents)) from the Lessee on written demand. Porterbrook may, at any time while the Lessee is in breach of paragraphs 1, 2 and/or 3 of Schedule 12, require the affected Equipment to remain at any location or to proceed, or be moved, to and remain at any location designated by Porterbrook until the failure is remedied to Porterbrook's reasonable satisfaction.

## 5 CLAIMS

5.1 The Lessee shall promptly:

5.1.1 give notice in writing to Porterbrook of:

- (a) any damage to any Equipment the repair costs of which exceeds or could exceed [REDACTED] or, if less, [REDACTED] of the Agreed Value of that Equipment; and
- (b) any claim in excess of [REDACTED] on any of the Required Insurances, or any event or circumstance which, but for the application of the applicable policy excess, would be likely to form the basis of a claim in excess of [REDACTED] on any of the Required Insurances,

- accompanied (if required by Porterbrook) by full details of the incident, event or circumstance giving rise to the claim;
- 5.1.2 provide such information as Porterbrook may reasonably require from time to time for the purposes of compiling a full historic insurance claims record for each item of Equipment;
- 5.1.3 subject to contrary instructions from Porterbrook from time to time, and diligently deal with all claims received relating to the Required Insurances and in accordance with all insurer requirements and recommendations; and
- 5.1.4 in relation to all claims made under the Required Insurances, give Porterbrook details of the value, nature and progress of all such claims as may from time to time be required by Porterbrook provided always that such information shall in any event be supplied by the Lessee no less frequently than once every three months.
- 5.2 The Lessee shall ensure that, on an annual basis throughout the Lease Term, and at all other times during the Lease Term requested by Porterbrook, Porterbrook shall be provided with historical claims data relating to claims made by the Lessee in respect of damage to any rolling stock leased to, or operated by, the Lessee the cost of repair of which will or has exceeded [REDACTED] save to the extent that the Lessee is prevented from disclosing such data as a result of obligations of confidence owed by the Lessee to third parties. Where the Lessee is so prevented the Lessee shall provide such data on an anonymised basis (to the extent it can do so without breaching any such obligations of confidence) and shall use its reasonable endeavours to obtain the third parties consent to allowing full disclosure to Porterbrook.
- 5.3 Without prejudice to the other provisions of the Transaction Documents limiting or excluding any right of action or other claims against any Indemnatee and/or any member of any Indemnatee's Group, the Lessee shall not pursue any claim against any Indemnatee and/or any member of any Indemnatee's Group in relation to the Transaction Documents where the Lessee is entitled to recover any Losses under any of the Required Insurances, (or where any such Required Insurances are not maintained, to the extent that the Lessee would have been entitled to recover any Losses were such Required Insurances maintained in accordance with the terms of the Transaction Documents).
- 5.4 Neither failure to comply nor full compliance with the insurance provisions of the Transaction Documents shall limit or relieve the Lessee of any of its liabilities and/or obligations under any other provision of the Transaction Documents.

**6 TOTAL LOSS AND REQUISITION**

- 6.1 If any Equipment is or becomes a Total Loss the Lessee shall notify Porterbrook within six (6) hours of the occurrence of such Total Loss (or where it occurs outside of the hours of 08.00 and 18.00 on a Business Day, by 10.00 on the next following Business Day) and the Lessee shall:
- 6.1.1 pay the Agreed Value for that Equipment to Porterbrook on or prior to the earlier of:
- (a) one hundred and twenty (120) days:
    - (i) in relation to any Equipment that is declared (by or on behalf of insurers) to be a total loss for insurance purposes, after that declaration; or
    - (ii) in relation to any Equipment that forms part of a multiple unit in respect of which any Vehicle in that multiple unit is declared (by or on behalf of insurers) to be a total loss for insurance purposes, after that declaration;
    - (iii) in relation to any other Total Loss in respect of that Equipment, after the occurrence of that Total Loss; and
  - (b) the date of receipt of insurance proceeds in respect of that Total Loss; and
- 6.1.2 continue to pay Rental in respect of that Equipment to Porterbrook, until either:
- (a) Porterbrook has recovered an amount equal to the Agreed Value of that Equipment by virtue of the Required Insurances with respect to that Equipment; or
  - (b) in addition to the Rental and all other payments due from the Lessee pursuant to the Transaction Documents, the Lessee shall have paid to Porterbrook an amount equal to the Agreed Value of that Equipment.
- 6.2 During any requisition for use or hire of any Equipment (whether pursuant to section 118 of the Act or otherwise) which does not constitute a Total Loss:
- 6.2.1 the Rental and other charges payable under the Transaction Documents in relation to such Equipment will not be suspended or abated, either in whole or in part, and the Lessee will not be released from any of its other obligations under the Transaction Documents (other than in respect of any

obligations with which the Lessee is unable to comply solely by virtue of the requisition); and

- 6.2.2 so long as no Default has occurred and is continuing, the Lessee will be entitled to any hire or other compensation paid, by the requisitioning authority, in respect of the relevant Equipment during its Lease Period provided that Porterbrook shall be entitled to all compensation payable by the requisitioning authority in respect of any change in the structure, state or condition of the any Equipment arising during the period of requisition, and Porterbrook shall as soon as practicable apply such compensation in reimbursing the Lessee for the cost of complying with its obligations under paragraph 6.5 of Part 2 of Schedule 12 in respect of any such change, provided that, if any Default has occurred and is continuing, Porterbrook may apply the compensation in or towards settlement of any amounts due and owing by the Lessee under the Transaction Documents.
- 6.3 If any Equipment is under requisition at the Scheduled Redelivery Date the leasing of such Equipment under the Transaction Documents shall (unless otherwise determined by Porterbrook) continue until the earlier of:
- 6.3.1 the date on which such Equipment is returned to the Lessee or Porterbrook; or
- 6.3.2 the date so determined by Porterbrook; or
- 6.3.3 the date on which such Equipment becomes a Total Loss and the Lessee pays the Agreed Value in respect thereof pursuant to paragraph 6.1.
- 6.4 For the avoidance of doubt, if Porterbrook receives any such hire or other compensation, to which the Lessee is entitled pursuant to paragraph 6.2.2 of Part 2 of Schedule 12 Porterbrook will pay the amount of such compensation to the Lessee unless, at the relevant time, a Default has occurred and is continuing, in which event Porterbrook shall have no obligation to pay such amount to the Lessee.
- 6.5 The Lessee will, as soon as practicable and at its reasonable cost, after the end of any such requisition of any Equipment, cause that Equipment to be put into the condition required by the Transaction Documents.
- 7 CALCULATION AND ADJUSTMENT OF AGREED VALUE**
- 7.1 The Agreed Value for any Vehicle shall be the amount in Sterling specified as the Agreed Value of such Vehicle in the definition of "Agreed Value" at that applicable time, as adjusted pursuant to paragraph 7.3.
- 7.2 Not Used.

- 7.3 Where the Agreed Value for any Equipment is to be, or has been, adjusted pursuant to paragraph 8.7 of Schedule 6 as a result of a Modification, the Agreed Value for that Equipment to be calculated at any time pursuant to the previous provisions of this paragraph 7 shall be increased by an amount equal to the Modification Amount with respect to that Modification as amortised to that time by applying the Amortisation Profile to that Modification Amount.

## **8 MAINTENANCE OF INSURANCES**

- 8.1 For the avoidance of doubt, if any Equipment is delivered to a third party for any purposes whatsoever during the Lease Period, the Lessee shall procure that the Required Insurances remain in place with respect to such Equipment and that such Equipment remains insured in accordance with the requirements of the Transaction Documents.

## **9 CONTINUING INDEMNITY**

- 9.1 Porterbrook may require the Lessee to effect and to maintain insurance relating to any Equipment after the expiry or termination of the Lease Period with respect to that Equipment covering the Lessee's liability to Porterbrook under the indemnity in clause 11. Porterbrook may not however require the Lessee to effect and maintain any such insurance:

- 9.1.1 for any period in excess of two (2) years after such expiry or termination; or
- 9.1.2 to the extent that the same is not obtainable in the market on reasonable commercial terms (including, without limitation, with respect to the premium payable).

Any such insurance shall name each Indemnatee as an additional assured. The Lessee's obligation under this paragraph 9 in relation to any Equipment shall not be affected by any of the Indemnitees ceasing to have any interest in respect of such Equipment.



## Part 2

### Minimum Insurance Requirements

#### 1 PROPERTY DAMAGE ALL RISKS INSURANCE

- 1.1 **Cover:** All risks of accidental physical loss or damage to the Property Insured from any cause not excluded.
- 1.2 **Insured Parties:**
  - 1.2.1 Porterbrook;
  - 1.2.2 the Lessee;
  - 1.2.3 the Owner and any Financiers specified by Porterbrook;
  - 1.2.4 each of the other Indemnitees;each for their respective rights and interests.
- 1.3 **Period of Insurance:** In respect of any Property Insured throughout its Lease Period and thereafter until the Property Insured is redelivered by the Lessee to Porterbrook either on an annually renewable basis or otherwise as agreed between the Porterbrook and the Lessee.
- 1.4 **Property Insured:** All Equipment leased by Porterbrook to the Lessee pursuant to this Agreement and any associated property of whatsoever nature delivered to the Lessee which is the property of Porterbrook, the Owner or any Financier (or for which Porterbrook is responsible).
- 1.5 **Minimum Sum Insured:** To be effected on an “agreed value basis” which in respect of any Equipment is its Agreed Value and in respect of any other Property Insured is its full reinstatement value plus in each case an amount sufficient to cover the Principal Extensions, where cover is subject to an aggregate loss limit, such limit will be not less than £100,000,000 or such other sum agreed by Porterbrook which represents the estimated maximum loss that could be suffered in a single incident.
- 1.6 **Maximum Deductible:** £250,000 each claim or such other amount as agreed between Porterbrook and the Lessee.
- 1.7 **Principal Extensions:**
  - 1.7.1 Loss payee clause (reflecting the relevant provisions of paragraph 1.2.9(a)) of Part 1 of Schedule 12;
  - 1.7.2 72 hour clause;

- 1.7.3 professional fees;
  - 1.7.4 debris removal costs;
  - 1.7.5 European union local authorities clause;
  - 1.7.6 automatic reinstatement of sum insured;
  - 1.7.7 terrorism and sabotage without sub-limit;
  - 1.7.8 electrical and mechanical breakdown;
  - 1.7.9 pollution and contamination to the Property Insured arising from events covered by the policy (unless otherwise excluded);
  - 1.7.10 repair / reinstatement basis of claims settlement (save in the case of a Total Loss) with cash option for non-reinstatement.
- 1.8 **Principal Exclusions:**
- 1.8.1 radioactive contamination;
  - 1.8.2 unexplained shortages or mysterious disappearance;
  - 1.8.3 the cost of making good wear and tear, gradual deterioration, rust etc., gradually developing defects, flaws, deformation, distortion, cracks or partial fractures, defects in design, materials or workmanship but this shall not exclude subsequent damage resulting;
  - 1.8.4 consequential (financial) losses, loss of revenue, loss of use, etc.
  - 1.8.5 sonic boom;
  - 1.8.6 cyber liability.
- 1.9 **Territorial Limits:** United Kingdom.
- 2 THIRD PARTY LIABILITY INSURANCE (INCLUDING PRODUCTS LIABILITY)**
- 2.1 **Cover:** Legal liability of the Insured Parties (including claimant's costs and expenses) as damages in respect of:
- 2.1.1 death or bodily injury, illness, death, disease contracted by any person;
  - 2.1.2 loss of or damage to property;
  - 2.1.3 interference to any right of air or water;

happening during the Period of Insurance and in each case caused by or arising out of the use and/or operation of the Property Insured as referred to in paragraph 1 of Part 2 of Schedule 12, by the Lessee or for which the Lessee may be liable pursuant to clause 11 or as may be customary from time to time for operators and/or lessors of rolling stock and/or related equipment in the United Kingdom to insure against, but at a minimum will include the ownership, operation, maintenance and/or control of the Property Insured and such other third party liability risks as may be required by Applicable Requirements or as Porterbrook may from time to time reasonably require following advice from its insurance advisers.

- 2.2 **Insured Parties:** The Lessee, the Owner, Porterbrook and each of the other Indemnitees each for their respective rights and interests.
- 2.3 **Period of Insurance:** Throughout the Lease Term either on an annually renewable basis or otherwise as agreed between the Porterbrook and the Lessee.
- 2.4 **Minimum Indemnity Limit:** £155,000,000 each occurrence (or such greater amounts as may be specified from time to time by the Regulator).
- 2.5 **Maximum Deductible:** £1,000,000 each and every occurrence;
- 2.6 **Principal Extensions:**
- 2.6.1 cross liabilities;
  - 2.6.2 contractual liability;
  - 2.6.3 costs inclusive;
  - 2.6.4 worldwide jurisdiction excluding occurrences in USA & Canada;
  - 2.6.5 Health & Safety at Work Act prosecution defence costs;
  - 2.6.6 Defective Premises Act prosecution defence costs;
  - 2.6.7 Consumer Protection Act prosecution defence costs;
  - 2.6.8 Data Protection Act prosecution defence costs;
- 2.7 **Principal Exclusions:**
- 2.7.1 Insured Party's own employees;
  - 2.7.2 fines, penalties, punitive or exemplary damages;
  - 2.7.3 war, invasion, acts of foreign enemies, hostilities (whether declared or not), civil war, rebellion, revolution, insurrection of military or usurped power;

- 2.7.4 nuclear risks;
- 2.7.5 seepage, pollution or contamination unless caused by a sudden unintended and unexpected happening;
- 2.7.6 cyber liability;
- 2.7.7 aircraft and aviation products;
- 2.7.8 professional indemnity;
- 2.7.9 asbestos;
- 2.7.10 toxic mould.

2.8 **Territorial Limits:** United Kingdom

**Schedule 13****Broker's Letter of Undertaking**

[Insurance Broker's Letterhead]

To: Porterbrook Leasing Company Limited  
Ivatt House, 7 The Point, Pinnacle Way, Derby DE24 8ZS

FAO: The Managing Director

20[●]

Dear Sirs

**LEASE AGREEMENT DATED [●] ENTERED INTO BETWEEN PORTERBROOK LEASING COMPANY LIMITED AND SOUTH WESTERN RAILWAY LIMITED (THE "LESSEE") IN RESPECT OF THE LEASING OF SEVENTY-SIX (76) CLASS 455 FOUR (4) CAR ELECTRIC MULTIPLE UNITS (THE "AGREEMENT")**

We confirm that, as Insurance Brokers, we have effected insurances for the account of the Lessee covering the Rolling Stock (the "**Equipment**"), as detailed in the attached Certificate of Insurance (Reference No. [●] dated [●] (the "**Insurances**").

Pursuant to instructions received from the Lessee, we undertake as follows in connection with the Insurances but only in relation to your interest(s) in the Equipment:

- 1 In relation to the Insurances, to hold the insurance slips and the benefit of those insurances to your order in accordance with the loss payable provision referenced in the said Certificate of Insurance, but subject always to our requirements to operate the Insurances insofar as it relates to any other property or risks insured thereunder.
- 2 To advise you, promptly:
  - 2.1. of the receipt by us of any notice of cancellation or material change in the insurances; and
  - 2.2. if any premiums are not paid to us in accordance with the account procedures that exist between the Lessee and ourselves before we notify insurers of such non-payment of premiums; and
  - 2.3. upon application from you, of the premium payment situation; and
  - 2.4. if we cease to be insurance brokers to the Lessee.
- 3 Following a written application received from you not later than one (1) month before expiry of these insurances to notify you within fourteen days of the receipt of

such application in the event of our not having received renewal instructions from the Lessee.

4 The above undertakings are given subject to:

- 4.1. our continuing appointment for the time being as insurance brokers to the Lessee and, following termination of such appointment, our immediate release from all our obligations set out herein; and
- 4.2. all claims and return premiums being collected through ourselves as insurance brokers; and
- 4.3. our lien, if any, on the said insurances for premiums due in respect of the Equipment.

For the avoidance of doubt, all confirmations set out in this letter are given by reference to our state of knowledge at the date hereof.

This letter shall be governed by English law.

Yours faithfully

For and on behalf of  
[Lessee's broker]

**Schedule 14**

**Rolling Stock Delivery Condition**

“as-is”

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## **Schedule 15**

### **Rolling Stock Redelivery Condition**

- 1 Each item of Rolling Stock must be returned:
  - (a) complete and free of all Security Interests (other than Security Interests created by Porterbrook);
  - (b) in the condition required by the decommissioning specification supplied by Porterbrook to the Lessee,but otherwise, “as-is”.
- 2 Notwithstanding anything to the contrary, provided that the Lessee has complied with its obligations under the Maintenance Programme, it is acknowledged by Porterbrook that Accepted Faults may still exist or occur on the Rolling Stock on or after redelivery thereof.



Schedule 16

Form of Variation Order

<p><b>VARIATION ORDER [   ]</b></p>
<p><b>Description of change</b></p> <p>Each of Porterbrook Leasing Company Limited (“<b>Porterbrook</b>”) and South Western Railway Limited (“<b>Lessee</b>”) refer to the provisions of clause 8 (<i>Variation Orders and Lease Amendment</i>) of the Lease Agreement dated [●] 2025 in respect of the leasing of Seventy-Six (76) Class 455 Four (4) Car Electric Multiple Units (the “<b>Lease</b>”).</p> <p>Words and expressions used in this Variation Order shall have the same meaning as defined terms used in the Lease.</p> <p>Each of Porterbrook and Lessee hereby agrees that the [specification] [Rental] [Scheduled Redelivery Date] [Agreed Value] [Maintenance Programme] in respect of the Equipment shall be, and hereby is, amended as follows:</p> <p><i>[insert details of relevant amendment]</i></p>
<p>Signature:..... Designation:.....</p> <p>Signature:..... Designation:.....</p> <p>For <b>PORTERBROOK LEASING COMPANY LIMITED</b></p> <p>Date:.....</p>
<p>Signature:..... Designation:.....</p> <p>For <b>SOUTH WESTERN RAILWAY LIMITED</b></p>

Date:.....
Comments:

**Schedule 17**

**Accepted Faults**

None

**Schedule 18**

**Form of Account Charge**

**PRIVATE & CONFIDENTIAL**

**DATED [●] 20[●]**

**PORTERBROOK LEASING COMPANY LIMITED**

**AND**

**SOUTH WESTERN RAILWAY LIMITED**

**ACCOUNT CHARGE**

**IN CONNECTION WITH A LEASE AGREEMENT  
IN RESPECT OF THE LEASING OF  
SEVENTY-SIX (76) CLASS 455 FOUR (4) CAR  
ELECTRIC MULTIPLE UNITS**

**A DEED** dated [•] 20[•]

**BETWEEN:**

- (1) **PORTERBROOK LEASING COMPANY LIMITED** (Company No. 2912662), a company incorporated under the laws of England whose registered office is at Ivatt House, 7 The Point, Pinnacle Way, Derby DE24 8ZS ("**Porterbrook**"); and
- (2) **SOUTH WESTERN RAILWAY LIMITED** (Company No. 03266760), a company incorporated under the laws of England whose registered office is at Great Minster House, 4th Floor, 33 Horseferry Road, London (the "**Lessee**").

**BACKGROUND:**

- (A) Pursuant to the Lease, Porterbrook has agreed to lease, and the Lessee has agreed to take on lease, the Equipment on the terms set out therein.
- (B) As security for certain of its obligations and liabilities under the Lease, the Lessee has agreed that it will in certain circumstances place and thereafter maintain certain monies on deposit in the Account and the Lessee has agreed to assign by way of security certain of its rights in relation to the Account and the deposits therein to Porterbrook.

**OPERATIVE PROVISIONS:**

**1 DEFINITIONS AND INTERPRETATION**

**1.1** In this Deed, the context requires otherwise:

**"Account"** means the Sterling account numbered [•] held in the name of the Lessee with the Bank on terms which are acceptable to Porterbrook (acting reasonably);

**"Assigned Property"** means each and all of the rights and title of Lessee assigned and charged pursuant to clause 3;

**"Bank"** means [•];

**"Lease"** means the lease agreement entered or to be entered into between Porterbrook and the Lessee in respect of, among other things, Seventy-Six (76) Class 455 Four (4) Car Electric Multiple Units;

**"LPA"** means the Law of Property Act 1925;

**"Secured Obligations"** means the obligations (whether actual or contingent) of the Lessee pursuant to the Lease which remain unpaid or unperformed in accordance with the Transaction Documents; and

**“Security Period”** means the period commencing on the date of this Deed and ending on the date which is the later of the date on which all of the Equipment has been redelivered to Porterbrook under clause [13] of the Lease and the date on which the Secured Obligations have been paid or performed in full.

- 1.2 Where the context admits, the definitions and rules of construction and interpretation used in the Lease shall apply. For the avoidance of doubt, capitalised words or expressions used in this Deed which are not defined in clause 1.1 shall have the meanings given to those words or expressions in the Lease.

## **2 COVENANT TO PAY**

- 2.1 The Lessee covenants to pay and discharge the Secured Obligations as and when they fall due for payment and/or discharge.
- 2.2 All payments whatsoever to be made by the Lessee to Porterbrook under this Deed shall be made in full, without any deduction, set-off, counter-claim or withholding (unless legally required) and without prejudice to the obligation of the Lessee to make any payment or increased payment in respect thereof under clause 2.3.
- 2.3 If any deduction or withholding for tax from or against any payment due under this Deed is required by law, the Lessee undertakes to pay to Porterbrook such additional amounts as may be necessary in order that the net amounts received by Porterbrook after all such deductions and withholdings is not less than such payment would have been in the absence of any requirement to make such deduction or withholding.

## **3 ASSIGNMENT OF SECURITY**

- 3.1 The Lessee, with full title guarantee and free from Security Interests, hereby irrevocably and unconditionally charges and assigns to Porterbrook as continuing security for the payment and discharge of the Secured Obligations all rights and title in and to:
- 3.1.1 the Account; and
- 3.1.2 all sums of money which may now or which may from time to time or at any time be standing to the credit of the Account, together with all interest thereon and all rights to receive interest and all other rights and benefits accruing to or arising in connection therewith, including all of its rights against the Bank in connection with the Account and together with any certificates of deposit, deposit receipts or other instruments or securities relating thereto.
- 3.2 The Lessee agrees to maintain a credit balance in the Account of at least £1 at all times throughout the Security Period.

**4 NEGATIVE PLEDGE**

- 4.1 Save for the security created by this Deed, the Lessee shall not create, agree to create or permit to exist any trust, interest or Security Interest (howsoever ranking in point of priority) of any nature whatsoever (including such as arises by operation of law or any enactment) in, over or affecting the Account or any amounts from time to time standing to the credit thereof.

**5 NO WITHDRAWAL**

- 5.1 Until the Secured Obligations have been repaid or discharged in full, the Lessee agrees that there shall be no withdrawal of any amounts from the Account without Porterbrook's prior written instructions, nor any transfer from or dealings in the Account, and the Lessee shall not request or agree to (to the extent that the Lessee's agreement is required) any variation of the terms of the agreement with the Bank relating to the Account, without (in each case) Porterbrook's prior written consent.
- 5.2 At the end of the Security Period Porterbrook shall upon request by the Lessee release to the Lessee the amount then standing to the credit of the Account together with any accrued interest then standing to the credit of the Account (and the Lessee shall thereupon be entitled to withdraw any or all of such amount and interest) and Porterbrook shall reassign the Assigned Property to the Lessee and release and discharge in favour of the Lessee the security created by this Deed.

**6 CONTINUING SECURITY**

- 6.1 The security constituted by this Deed shall be continuing and shall not be considered as satisfied or discharged by any intermediate payment or settlement of the whole or any part of the Secured Obligations or any other matter or thing whatsoever including the insolvency liquidation or administration of the Lessee and shall be binding until all the Secured Obligations have been unconditionally and irrevocably paid and discharged in full.

**7 ACKNOWLEDGMENT OF RIGHT TO ASSIGN**

- 7.1 Porterbrook may (at its own cost) without the consent of the Lessee assign, transfer or otherwise dispose of, or create a Security Interest over, all or any of its rights and benefits in or under this Agreement or Assigned Property.
- 7.2 The Lessee will, at Porterbrook's request, co-operate with any of Porterbrook in implementing any transaction contemplated by clause 7.1 and will take all such steps and execute all such documents in connection therewith as Porterbrook may reasonably request.

**8 NOTICE TO BANK**

- 8.1 The Lessee shall forthwith on execution of this Deed give notice to the Bank in the form set out in Schedule 1 (or such other form as is approved by Porterbrook) and

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shall use reasonable endeavours to procure that the Bank gives within ten (10) Business Days of the execution of this Deed a confirmation to Porterbrook in the form set out in Schedule 2 (or such other form as is approved by Porterbrook).

- 8.2 In the event that any transaction contemplated by clause 7.1 is entered into, the Lessee shall (following receipt of a written request from Porterbrook to do so) give notice of such transaction to the Bank (in such form as Porterbrook reasonably requests) and the Lessee shall use reasonable endeavours to procure that the Bank gives a confirmation in relation to such notice to Porterbrook.

## **9 NO WAIVER**

- 9.1 No failure to exercise nor delay in exercising any right, power or remedy under or in connection with this Deed shall operate as a waiver thereof, and no single or partial exercise of any right, power or remedy shall preclude any further or other exercise thereof, or the exercise of any other right or remedy.

## **10 AMENDMENTS**

- 10.1 No amendment to this Deed shall be effective unless made in writing and signed or executed by an authorised representative of Porterbrook and the Lessee.

## **11 WHEN SECURITY BECOMES ENFORCEABLE**

- 11.1 The Secured Obligations shall be deemed for the purposes of all powers implied by statute to have become due and payable within the meaning of section 101 of the LPA immediately on the execution of this Deed and section 103 of the LPA (restricting the right of consolidation) shall not apply to this Deed.

## **12 NOTICES**

- 12.1 All notices under, or in connection with, this Deed will, unless otherwise stated, be given in writing on a Business Day. Any such notice is deemed to be given as follows:

12.1.1 if sent by post, on the third Business Day after posting (first class postage pre-paid); and

12.1.2 if sent by courier, when delivered.

The addresses of the Lessee and Porterbrook are as follows (or such other address notified by the relevant party):

to the Lessee at:

[●]

to Porterbrook at:

Ivatt House,  
7 The Point,



Attention: [●] Pinnacle Way,  
Derby DE24 8ZS

Attention: Company Secretary

**13 GOVERNING LAW**

- 13.1 This Deed and any non-contractual obligations in connection with this Deed shall be shall be governed by, and construed in accordance with, English law.

**14 DISPUTES**

- 14.1 Any disputes arising out of or in connection with this Deed shall be resolved in accordance with clause [26] of the Lease, mutatis mutandis, as if clause [26] of the Lease were set out in full herein.

**15 ACCOUNT ADMINISTRATION EXPENSES**

- 15.1 All expenses incurred in relation to the administration of the Account and shall be for the account of the Lessee and the Lessee shall not be entitled to deduct from the amounts standing to the credit of the Account any amount in respect of such costs and expenses. If any amounts are deducted by the Bank from the Account and such deduction relates to costs or expenses other than tax, the Lessee will forthwith credit the Account in an amount equal to such deduction.

**16 FURTHER ASSURANCE**

- 16.1 Each Party shall, at its own cost, do and execute, or arrange for the doing and executing of, each act, document and thing which is reasonably necessary and which is within its own power or control to implement or establish the obligations imposed on it under this Deed.

**17 COUNTERPARTS**

- 17.1 This Deed may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which shall be deemed to be an original, and all such counterparts shall constitute one and the same instrument. Delivery of a counterpart of this Deed by electronic means (including e-mail attachment or telecopy) shall be an effective mode of delivery. In relation to each counterpart executed by a party, upon confirmation by or on behalf of such party that such party authorises the attachment of its counterpart signature page to the final text of this Deed, such counterpart signature page shall take effect, together with such final text, as a complete authoritative counterpart.

**18 EXCLUSION OF LIMITATIONS**

- 18.1 Sections 93 and 103 of the LPA shall not apply to this Deed.

**19 ILLEGALITY, ETC.**

- 19.1 If any one of the provisions of this Deed is or becomes invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Deed shall not in any way be affected or impaired thereby.

**EXECUTED AS A DEED** by the Parties on the date first above mentioned.

**Schedule 1****Notice of Assignment**

From: [●]

To: [●]

Copy: **PORTERBROOK LEASING COMPANY LIMITED ("Porterbrook")**

Dated: [●] 20[●]

Dear Sirs

- 1 We hereby give you notice that we have assigned by way of security to Porterbrook all our right, title and interest in and to all sums deposited or to be deposited with you in our account bearing account number [●] (the "**Account**"), and so that all interest credited to the Account shall, until further notice, be rolled up and retained in the Account.
- 2 We further notify you that no withdrawal or payment may be made from the Account without the prior written instructions of Porterbrook.
- 3 We should be grateful if you would:
  - 3.1. acknowledge to Porterbrook receipt of this letter;
  - 3.2. confirm Porterbrook's interest and that you have received no notice of any prior assignment;
  - 3.3. confirm that you waive all rights of combination, consolidation, merger or set-off that you may have over all sums deposited with you in the Account; and
  - 3.4. confirm to Porterbrook that you will not seek to modify, vary or amend the terms upon which the sums are deposited in the Account without Porterbrook's prior written consent,

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and, for this purpose, we would be obliged if you would send a letter in the form of the enclosed draft to Porterbrook.

Yours faithfully

.....

For and on behalf of

**SOUTH WESTERN RAILWAY LIMITED**

## Schedule 2

### Acknowledgement of Assignment

From: [●]

To: **PORTERBROOK LEASING COMPANY LIMITED**

Dated: [●] 20[●]

Dear Sirs

#### **South Western Railway LIMITED (the “Lessee”)**

- 1 We hereby acknowledge receipt of the Notice of Assignment dated [●] 20[●].
- 2 We confirm that the account held by the Lessee bearing account number [●] (the “**Account**”) has been opened with us and that, so far as we are aware, the Account and the amounts from time to time standing to the credit of the Account are free of all charges, equities or adverse interests of any kind including any right of set-off, combination of account or other such rights, and the said moneys (including amounts of interest credited to the Account from time to time) are assigned by way of security to you. We further confirm that we have not received any prior notice of assignment from the Lessee or any third party relating to the Account or the sums deposited therein.
- 3 We irrevocably undertake with you that until receipt of notice to us from you confirming that you no longer have any interest in the said sums:
  - 3.1. we shall not exercise any right of combination, consolidation, merger or set-off which we may have in respect of any moneys standing or accruing to the credit of the Account;
  - 3.2. we shall only permit moneys to be drawn on or debited to the Account against the purported signature of one of your authorised signatories as notified to us;
  - 3.3. we shall send to you copies of all statements, orders and notices given by us in connection with the Account; and
  - 3.4. we shall notify you promptly upon our receipt of any notice of any third party interest in the Account or in the sums deposited therein.
- 4 We further acknowledge that you shall have no liability for any costs and expenses incurred in respect of the maintenance and operation of the Account.

Yours faithfully

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.....  
For and on behalf of  
[●]

EXECUTION PAGE - ACCOUNT CHARGE

SIGNED BY

[●]

and

[●]

as authorised signatories  
for and on behalf of  
**PORTERBROOK LEASING COMPANY  
LIMITED**

\_\_\_\_\_  
*Authorised Signatory*

\_\_\_\_\_  
*Authorised Signatory*

EXECUTED AS A DEED BY  
**SOUTH WESTERN RAILWAY LIMITED**  
acting by:

\_\_\_\_\_  
*Director*

\_\_\_\_\_  
*Director/Secretary*

**Schedule 19**

**Enhancement Modifications**

None

**Schedule 20**

**Voluntary Termination Provisions**

Not Used.



**Schedule 21**

**Lessee Modifications**

None

## Schedule 22

### Security Assignment Letter

#### LETTER AGREEMENT FOR CERTAIN MATTERS IN CONNECTION WITH THE SECURITY OVER THE LEASE AND LEASED ASSETS

This Letter Agreement is dated [ ] 20[ ] and made between **Porterbrook Leasing Company Limited** ("**Porterbrook**"), **Porterbrook Leasing Asset Company Limited** ("**Assetco**") and **South Western Railway Limited** ("**SWR**").

#### BACKGROUND:

- (A) Reference is made to the agreements in respect of the leasing of various vehicles described in Schedule 1 (together the "**Leases**"), as varied, amended, novated, transferred and supplemented from time to time in relation to certain assets (the "**Leased Assets**");
- (C) Assetco has leased the Leased Assets to Porterbrook pursuant to a headlease (the "**Headlease**") and Porterbrook has leased those Leased Assets to SWR pursuant to the Leases.
- (C) In connection with the financing advanced to Porterbrook Rail Finance Limited (formerly Porterbrook Capital Bidco Limited), Assetco and Porterbrook are required to grant charges over all their respective interest in the Leased Assets and assign by way of security all their rights, title and interest in the Leases in favour of Kroll Trustee Services Limited (as security trustee to certain banks and financial institutions) (the "**Security Trustee**"). The Security Trustee also holds such security for the benefit of Assetco to secure obligations to Assetco under the Headlease. The Leases contains certain conditions to the grant of such security which are set out in this Letter Agreement.

IN CONSIDERATION of the undertakings contained herein, and for the payment of the sum of £10 by us to you, the receipt and sufficiency of which is hereby acknowledged by each of the parties hereto, it is hereby agreed as follows:

#### 1 **Quiet Enjoyment and Confidentiality Undertakings**

Porterbrook irrevocably undertakes to procure that the Security Trustee provides you with the quiet enjoyment and confidentiality undertakings in the form annexed hereto as Schedule 2 at the date of this Letter Agreement.

#### 2 **Notice**

Porterbrook hereby notifies you that:

- 2.1 SWR may continue to deal with Porterbrook in relation to the Leases until SWR receives written notice to the contrary from the Security Trustee. Thereafter Porterbrook will cease to have any right to deal with you in relation to the Leases and therefore from that time SWR should deal only with the Security Trustee (or the relevant lease transferee if so specified by the Security Trustee);
- 2.2 SWR is authorised to disclose information in relation to the Leases to the Security Trustee and any lease transferee on request but please advise us of any such request;
- 2.3 after receipt of written notice in accordance with paragraph 2.1 above, SWR must pay all monies to which Porterbrook is entitled under the Leases direct to the Security Trustee (or as it shall otherwise instruct) unless the Security Trustee otherwise agrees in writing and SWR shall not be liable to Porterbrook for any losses, costs, expenses or liabilities suffered or incurred by Porterbrook as a result of fully complying with this paragraph 2.3; and
- 2.4 SWR acknowledges that, Porterbrook and/or SWR may not agree to revoke this notice or any provision herein without the written consent of the Security Trustee.

### 3 **Acknowledgement**

Please sign and return the enclosed copy of this notice to the Security Trustee (with a copy to Porterbrook Leasing Asset Company Limited and Porterbrook Leasing Company Limited, at Ivatt House, 7 The Point, Pinnacle Way, Derby DE24 8ZS) by way of confirmation that:

- 3.1 SWR acknowledges the terms set out in this Letter Agreement and agrees to act in accordance with its provisions;
- 3.2 SWR confirms that, so far as it is aware, it has not received notice that Porterbrook has assigned its rights under the Leases to a third party or created any other interest (whether by way of security or otherwise) in the Leases in favour of a third party (other than the Security Trustee).

This Letter Agreement may be signed in any number of counterparts and this will have the same effect as if the signatures were on the same copy of this letter.

References in this Letter Agreement to “Security Trustee” include its successors, assigns and substitutes.

The provisions of this Letter Agreement are governed by English law.

Yours faithfully

For and on behalf of  
**Porterbrook Leasing Company Limited**

For and on behalf of  
**Porterbrook Leasing Asset Company  
Limited**

To: Kroll Trustee Services Limited  
The News Building Level 6  
3 London Bridge Street  
London  
SE1 9SG

Copy to: Porterbrook Leasing Asset Company Limited and Porterbrook Leasing Company  
Limited,  
Ivatt House,  
7 The Point,  
Pinnacle Way  
Derby  
DE24 8ZS

We hereby acknowledge the contents of this letter and confirm the matters set out in paragraph 2 (Notice) of this letter.

for and on behalf of  
**South Western Railway Limited**

Dated: 20[ ]

**Schedule 1**

**Details of Lease Agreements**

[•]

## Schedule 2

### Quiet Enjoyment and Confidentiality Undertakings

Date: 20[ ]

From: Kroll Trustee Services Limited  
Broadwalk House  
The News Building Level 6  
3 London Bridge Street  
London  
SE1 9SG

To: South Western Trains Limited,  
Great Minster House  
4th Floor  
33 Horseferry Road  
London  
SW1P 4DR

Attention: [●]

Dear Sirs

#### Quiet Enjoyment Letter

1 We refer to the following lease agreements (the “**Leases**”):

- 1.1. Lease Agreement (Dry) in respect of the leasing of twenty-nine (29) Three (3) Car Class 159 Diesel Multiple Units And Ten (10) Two (2) Car Class 158 Diesel Multiple Units (Lease No. 1720100-1720101) between Porterbrook and SWR dated [●] as varied, novated, amended, supplemented and transferred from time to time.
- 1.2. Lease Agreement (Dry) in respect of the leasing of Eighty (80) Class 455 Four (4) Car Electric Multiple Units (Lease No. 1620200) between Porterbrook and SWR dated [●] as varied, novated, amended, supplemented and transferred from time to time.
- 1.3. Lease Agreement (Soggy) in respect of the leasing of Thirty Six (36) Class 458/5 Five (5) Car Electric Multiple Units And Certain Spares (Lease No. 1620300) between Porterbrook and First MTR South Wester Trains Limited dated 17 August (as subsequently transferred to SWR pursuant to a transfer scheme made pursuant to the Railways Act 2005 and dated [23]

May 2025) as varied, novated, amended, supplemented and transferred from time to time.

- 1.4. Lease Agreement (Dry) in respect of the leasing of One (1) Class 73/2 Electro-Diesel Locomotive (Lease No. 1720400) between Porterbrook Leasing Company Limited ("**Porterbrook**") and SWR dated [●]) as varied, novated, amended, supplemented and transferred from time to time.
- 2 Words and expressions used but not defined in this letter shall have the meaning given to them in the Leases.
- 3 In connection with the financing advanced to Porterbrook Rail Finance Limited (formerly Porterbrook Capital Bidco Limited) , Porterbrook and Porterbrook Leasing Asset Company Limited ("**Assetco**") are required to, as permitted by the relevant provisions of the Leases, grant charges over all their respective interests in the Vehicles and to assign by way of security all their rights, title and interests in the Leases in favour of us (as Security Trustee to certain banks and financial institutions and, in respect of the security granted by Porterbrook, as security trustee to Assetco) (the "**Security Trustee**"). Accordingly, Porterbrook and Assetco have granted charges over all their respective interest in the Vehicles and have assigned by way of security all their rights, title and interest in the Leases in favour of the Security Trustee and accordingly the Security Trustee is a "Financier" (and Assetco as beneficiary of the security will be a "Security Interest Holder") for the purposes of the Leases in respect of such security.
- 4 Pursuant to the relevant quiet enjoyment provisions of the Leases we hereby covenant on and from creation of the security referred to in the paragraph above until such security is released in full that we will not (and we shall procure that our employees will not) save to the extent set out in, or permitted by, the Leases, interfere with or do anything which would, or would reasonably be expected to, result in interference with your quiet use, possession and enjoyment of the Vehicles,
- 5 Pursuant to the relevant confidentiality provisions of the Leases we hereby covenant on and from creation of the security referred to in the paragraph above until such security is released in full by us that, save as set out in clause 25.2 of the Leases, we will keep the Leases, all other Transaction Documents and all other documents related thereto and all information and data furnished thereunder confidential and that the Leases and all such documents, information and data will not be furnished or disclosed by us to any other person without consent except the disclosure of the information by us to the banks and financial institutions and their affiliates from time to time on behalf of whom we hold the benefit of the security.
- 6 This letter is given for good and valuable consideration and is intended to create legally binding obligations on us. This letter shall be governed by English law.



Please acknowledge receipt of this letter.

Yours faithfully

For and on behalf of  
**Kroll Trustee Services Limited**  
as Security Trustee

**Assetco confirmation**

We confirm our quiet enjoyment undertaking given as headlessor of the Vehicles will also extend to us in our capacity as a Security Interest Holder as beneficiary of the security held by the Security Trustee. We further confirm our confidentiality undertaking given as headlessor of the Vehicles will also extend to us in our capacity as Security Interest Holder as beneficiary of the security held by the Security Trustee.

For and on behalf of  
**Porterbrook Asset Leasing Company Limited**

**Schedule 23**

**Form of Novation and Amendment**

**Dated:**

- (1) [TOC]
- (2) [SUCCESSOR OPERATOR]
- (3) PORTERBROOK LEASING COMPANY LIMITED

**Deed of Novation and Amendment**

relating to lease arrangements in respect of [ ] Lease Number [ ]

THIS DEED OF NOVATION is made on 2025

BETWEEN

- (1) [TOC], (registered number [ ]) whose registered office is at [ADDRESS] (the “Existing Lessee”);
- (2) [SUCCESSOR OPERATOR] (registered number [INSERT]) whose registered office is at [ADDRESS] (the “New Lessee”); and
- (3) PORTERBROOK LEASING COMPANY LIMITED (registered number 02912662) whose registered office is at Ivatt House, 7 The Point, Pinnacle Way, Pride Park, Derby, DE24 8ZS (the “Lessor”).

BACKGROUND

- (A) The Lessor and the Existing Lessee entered in to a lease agreement dated [ ] in respect of [ ] as, [novated,] amended and restated from time to time.
- (B) This Deed of Novation is supplemental to the Lease.
- (C) The parties have agreed that the future rights and Obligations of the Lessee under the Lease should be novated to the New Lessee with effect from the Effective Time on the terms set out below.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

In this Deed of Novation:

- 1.1 words and expressions used in this Deed shall have the meaning given to them in the Lease<sup>1</sup> save that the following words and expressions shall have the meaning given below, unless the context otherwise requires:
  - “Effective Time” the later of:
    - (a) 02:00am on [insert]<sup>2</sup>; and
    - (b) the date on which the condition precedent in clause 8 have been fulfilled;
  - “Lease” [the lease agreement dated [ ] in respect of [ ] as amended and restated from time to time between the Existing Lessee and the Lessor] OR [the lease agreements referred to in Schedule [1] of this Deed];
  - NB (1) consequential changes will be needed if there are multiple leases or there are Maintenance Reserve Agreements to be novated (2) any spares

<sup>1</sup> All defined terms to be checked and conformed to the Lease.  
<sup>2</sup> To be completed with the Direct Award Expiry Date.

**access/maintenance agreements would be with Porterbrook Maintenance Limited (PML) and so either those agreements should be transfer schemed or PML added as a party to this Deed.**

**“Novated Lease”**

the Lease as amended, supplemented and novated pursuant to this Deed and as further transferred, novated, supplemented, amended and restated from time to time;

**“Obligations”**

all of the liabilities and obligations of a party under the Lease (in each case, other than to the extent relating to any Pre Effective Time Total Loss Rolling Stock);

**“Outstanding Maintenance and Repairs”**

any obligation of the Lessee under the Lease to carry out or procure any maintenance, repairs, making good, modifications, cleaning, corrosion, rectification, routine service, overhauls, running repairs, heavy repairs, running maintenance, heavy maintenance in relation to any Rolling Stock which:

(a) the Existing Lessee was required under the terms of the Lease to carry out and complete prior to the Effective Time; and

(b) the Existing Lessee did not carry out and complete prior to the Effective Time;

**“Pre Effective Time Total Loss Rolling Stock”**

has the meaning given to it in clause 3.1.

**“Rights”**

all of the rights of a party under the Leases (other than to the extent relating to any Pre Effective Time Total Loss Rolling Stock);

**“Rolling Stock”**

the rolling stock and other equipment leased by the Lessor to the Lessee pursuant to the Lease.

1.2 the background section and all headings are for ease of reference only and will not affect the construction or interpretation of this Deed of Novation;

1.3 unless the context otherwise requires:

1.3.1 references to the singular include the plural and vice versa and references to any gender include every gender;

1.3.2 references to a “person” include any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local or municipal authority, governmental or supra-governmental agency or department, state or agency of state or any other entity (in each case whether or not having separate legal personality);

1.4 references to any statute or statutory provision will include any subordinate legislation made under it and will be construed as references to such statute, statutory provision or

subordinate legislation as modified, amended, extended, consolidated, re-enacted or replaced and in force from time to time;

- 1.5 any words following the words “include”, “includes”, “including”, “in particular” or any similar words or expressions will be construed without limitation and accordingly will not limit the meaning of the words preceding them;
- 1.6 the rule known as the ejusdem generis rule will not apply and accordingly the meaning of general words introduced by the word “other” or a similar word or expression will not be restricted by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things; and
- 1.7 any obligation on a party not to do or omit to do anything includes an obligation not to allow (whether expressly or by a failure to take reasonable steps to prevent) that thing to be done or omitted to be done by any other person.

## 2. **NOVATION**

- 2.1 In consideration of the mutual undertakings and obligations contained in this Deed of Novation, from and including the Effective Time:
  - 2.1.1 subject to clauses 3 and 4, the New Lessee agrees with the Lessor that it will comply with the Obligations of the Existing Lessee under the Lease, be bound by the terms of the Lease (other than to the extent relating to any Pre Effective Time Total Loss Rolling Stock) in every way and assume the benefit of the Rights under the Lease as if the New Lessee had been party to the Lease in place of the Existing Lessee from and including the Effective Time;
  - 2.1.2 subject to clauses 3 and 4, the Lessor agrees with the New Lessee that it will comply with the Obligations of the Lessor under the Lease, be bound by the terms of the Lease (other than to the extent relating to any Pre Effective Time Total Loss Rolling Stock) and assume the benefit of the Rights under the Lease in every way as if the New Lessee had been party to the Lease in place of the Existing Lessee from and including the Effective Time.
- 2.2 The Lessor and the New Lessee acknowledge that (subject to clauses 3 and 4) the other will be entitled to assume the benefit of the Rights against the other accruing under the Lease from and including the Effective Time.

## 3. **PRE EFFECTIVE TIME TOTAL LOSS ROLLING STOCK**

- 3.1 If prior to the Effective Time any item of Rolling Stock is or becomes a Total Loss (“**Pre-Effective Time Total Loss Rolling Stock**”) then:
  - 3.1.1 each such item of Pre Effective Time Total Loss Rolling Stock shall be deemed to be excluded from the Novated Lease;
  - 3.1.2 the New Lessee shall not be required to comply with the Obligations of the Existing Lessee under the Lease with respect to any such items of Pre Effective Time Total Loss Rolling Stock;
  - 3.1.3 the New Lessee shall not be bound by the terms of the Lease nor shall it assume the benefit of the rights under the Leases with respect to any such items of Pre Effective Time Total Loss Rolling Stock;
  - 3.1.4 clauses 4.1 to 4.3 shall not to apply with respect to any such items of Pre Effective Time Total Loss Rolling Stock;

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- 3.1.5 each such item of Total Loss Rolling shall remain on lease to the Existing Lessee in accordance with the terms of the Lease and the rights and obligations of Porterbrook and the Existing Lessee under the Lease shall remain in full force and effect as between Porterbrook and the Existing Lessee in relation to such items of Pre Effective Time Total Loss Rolling Stock.

#### **4. RELEASES AND LIABILITIES**

4.1 The Existing Lessee (without prejudice to clause 3):

- 4.1.1 releases and discharges the Lessor from all Obligations to the Existing Lessee under the Lease accruing on or after the Effective Time; and
- 4.1.2 will remain liable in respect of all its Obligations (whether to the Lessor or any other person) that accrued prior to the Effective Time.

4.2 The Lessor (without prejudice to clause 3):

- 4.2.1 releases and discharges the Existing Lessee from all Obligations to the Lessor under the Lease accruing on or after the Effective Time;
- 4.2.2 will not be liable to the New Lessee for any Obligations of the Lessor under the Lease that accrued prior to the Effective Time;
- 4.2.3 will remain liable to the Existing Lessee in respect of all its Obligations to the Existing Lessee under the Lease that accrued prior to the Effective Time; and
- 4.2.4 accepts the liability of the New Lessee under the Lease instead of the liability of the Existing Lessee for all Obligations (whether to the Lessor or any other person) under the Lease that accrue on or after the Effective Time.

4.3 The New Lessee:

- 4.3.1 will not be liable for any Obligations of the Existing Lessee (whether to the Lessor or any other person) under the Lease that accrued prior to the Effective Time, including any Obligation to carry out and complete any Outstanding Maintenance and Repairs; and
- 4.3.2 acknowledges that it will be liable in place of the Existing Lessee for all Obligations under the Lease (whether to the Lessor or any other person) that accrue on or after the Effective Time.

#### **5. CONDITION OF THE ROLLING STOCK**

- 5.1 Each of the Existing Lessee, New Lessee and Lessor acknowledges and agrees that the Rolling Stock will be transferred to the New Lessee on an "as-is, where is" basis at the Effective Time.

#### **6. AMENDMENTS TO THE LEASE**

6.1 From the Effective Time, the Lease shall be amended as follows:

- 6.1.1 the definition of "Lessee" in the list of parties shall be deleted and replaced with the following:

“(2) **[SUCCESSOR OPERATOR]** (registered number **[INSERT]**) a company incorporated under the laws of England and Wales whose registered office is at **[INSERT]**”;

- 6.1.2 [the notice details for the Lessor set out in clause 24 shall be deleted and replaced with the following:

“Ivatt House,  
7 The Point,  
Pinnacle Way,  
Pride Park,  
Derby, DE24 8ZS

Fax: 01332 285051

Email: company.secretary@porterbrook.co.uk

Attention: Company Secretary”];

- 6.1.3 the notice details for the Existing Lessee set out in clause **[INSERT]** shall be deleted and replaced with the following:

“**[ADDRESS]**

Fax: [●]

Email: [●]

Attention: **[NAME/ POSITION]**”

- 6.2 From the Effective Time, each reference in the Lease to:

- 6.2.1 the company name “**[TOC]**” shall be deleted and replaced with “**[SUCCESSOR OPERATOR]** Limited”;

- 6.2.2 each reference to the “Lessee” shall be construed as if it was a reference to the New Lessee in place of the Existing Lessee.

- 6.3 From the Effective Time, all references to the Lease in any documents delivered under or pursuant to the Lease shall be construed as references to the Novated Lease.

## 7. **RENTALS**

- 7.1 Subject to clause 6.3, the Existing Lessee agrees to pay the Rental up to (and excluding) the date on which the Effective Time occurs [and the Lessor agrees to refund to the Existing Lessee any amount of Rental previously received by the Lessor from the Existing Lessee which is attributable to the period after the Effective Time<sup>3</sup>].

---

<sup>3</sup> To be checked against lease if any prepayments made for rental.



7.2 Subject to clause 6.3, the New Lessee agrees to pay the Rental from and including the date on which the Effective Time occurs in accordance with the Lease.

7.3 The Rental for any item of Rolling Stock for any day in the month of [ ] shall be the amount which is equal to the monthly Rental for such Rolling Stock multiplied by 12 and divided by 365.

8. **CONDITION PRECEDENT**

8.1 The occurrence of the Effective Time is subject to satisfaction of the following condition precedent:

8.1.1 the New Lessee has entered into (including by way of novation) the following agreements which take effect from the Effective Time: any manufacture and supply agreement, maintenance reserve agreement, maintenance or other works agreement and/or spares access agreement in each case in the same terms as any such agreement that was entered into by the Existing Lessee in relation to that Rolling Stock.

9. **NOTICES**

9.1 Every notice, request, demand or other communication under or in connection with this Deed shall be made in accordance with clause [24]<sup>4</sup> (Notices) of the Novated Lease and shall be sent to:

9.1.1 the Existing Lessee at:

Address: [Insert]

Attention:[Insert]

Fax: [Insert]

9.1.2 the Lessor at:

Address: Ivatt House, 7 The Point, Pinnacle Way, Pride Park, Derby, DE24 8ZS

Attention: Company Secretary

Fax: 01332 285051

9.1.3 the New Lessee:

Address: [Insert]

Attention:[Insert]

Fax: [Insert]

---

<sup>4</sup> Cross-reference to be checked against lease.

This Deed of Novation may be executed in any number of counterparts, each of which will constitute an original, but which will together constitute one agreement.

This Deed of Novation and any non-contractual obligations arising out of or in connection with it will be governed by the law of England and Wales.

12.1 Subject to clause **12.2**, the courts of England and Wales have exclusive jurisdiction to determine any dispute arising out of or in connection with this Deed of Novation (including in relation to any non-contractual obligations).

12.2 Any party may seek specific performance, interim or final injunctive relief or any other relief of similar nature or effect in any court of competent jurisdiction.

12.3 Subject to clause 12.2, each party waives any objection to, and agrees to submit to, the jurisdiction of the courts of England and Wales.

This Deed of Novation is executed as a deed and it is delivered on the date stated at the beginning of this document.

acting by one director in the presence of:                    )

Signature of director

Witness Signature:

Witness Name:

Witness Address:

Signed as a deed by )  
**[SUCCESSOR OPERATOR]** )  
acting by one director in the presence of: )

Signature of director

Witness Signature:

Witness Name:

Witness Address:

Signed as a deed by )  
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acting by two directors: \_\_\_\_\_ )

Signature of director

EXECUTION PAGE

SIGNED BY

[Redacted Signature]

and

[Redacted Signature]

as authorised signatories for and on behalf of  
**PORTERBROOK LEASING COMPANY LIMITED**

[Redacted Signature]

[Redacted Signature]

*Authorised Signatory*

SIGNED BY

[Redacted Signature]

For and on behalf of  
**SOUTH WESTERN RAILWAY LIMITED**

[Redacted Signature]

*Director*