



**Registration of a Charge**

Company name: **GB RAILFREIGHT LIMITED**

Company number: **03707899**



X5671S6W

Received for Electronic Filing: **03/05/2016**

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**Details of Charge**

Date of creation: **29/04/2016**

Charge code: **0370 7899 0027**

Persons entitled: **DVB BANK SE**

Brief description:

**Contains fixed charge(s).**

**Contains negative pledge.**

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**Authentication of Form**

This form was authorised by: **a person with an interest in the registration of the charge.**

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**Authentication of Instrument**

Certification statement: **I CERTIFY THAT THE ELECTRONIC COPY INSTRUMENT  
DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION  
IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **EUNAH SHIN**



## **CERTIFICATE OF THE REGISTRATION OF A CHARGE**

Company number: 3707899

Charge code: 0370 7899 0027

The Registrar of Companies for England and Wales hereby certifies that a charge dated 29th April 2016 and created by GB RAILFREIGHT LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 3rd May 2016 .

Given at Companies House, Cardiff on 4th May 2016

The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006



**Companies House**



**THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES**

Dated 29 April 2016

**GB Railfreight Limited**

and

**DVB Bank SE**

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**Mortgage Deed Relating to One (1) Class 66  
Locomotive Serial No. 20148150-001**

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**Freshfields Bruckhaus Deringer**

Freshfields Bruckhaus Deringer LLP  
65 Fleet Street  
London  
EC4Y 1HS

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THIS DEED is dated **29** April 2016 between:

- (1) **GB RAILFREIGHT LTD.**, registered in England and Wales as a private limited company, whose registered office is at 55 Old Broad Street, London, EC2M 1RX, United Kingdom, with company number 03707899 (the *Borrower*); and
- (2) **DVB BANK SE** of Platz der Republik, 6, D-60325, Frankfurt am Main, Germany (the *Lender*).

### Background

It is intended that this document takes effect as a deed notwithstanding the fact that a party may only execute this document under hand.

IT IS AGREED as follows:

## 1. Definitions and Interpretation

### 1.1 Definitions

In this Deed:

*2014 Loan Agreement* means the loan agreement between the Borrower and DVB Bank SE in its capacity as lender dated 12 December 2014.

*2016 Loan Agreement* means the loan agreement in respect of the partial financing of the purchase of the Locomotives between the Borrower and DVB Bank SE in its capacity as lender dated on or about **29** April 2016.

*Collateral Rights* means all rights, powers and remedies of the Lender provided by or pursuant to this Deed.

*Event of Default* means an Event of Default under any Loan Agreement.

*Dispute* has the meaning given to it at Clause 25.1 (*English Courts*).

*Loan Agreement* means the 2014 Loan Agreement or the 2016 Loan Agreement.

*Mortgaged Property* means the property specified in Schedule 1 (*Details of Mortgaged Property*) and includes all Related Rights.

*Receiver* means a receiver or receiver and manager or, where permitted by law, an administrative receiver of the whole or any part of the Mortgaged Property and that term will include any appointee made under a joint and/or several appointment.

*Related Rights* means, in relation to any asset to the extent related to the Mortgaged Property:

- (a) the proceeds of sale of all or any part of that asset;
- (b) all rights under any licence, agreement for sale or agreement for lease or other use in respect of all or any part of that asset;

- (c) all rights, powers, benefits, claims, contracts, warranties, remedies, security, guarantees, indemnities or covenants for title in respect of any part of that asset; and
- (d) any other monies and/or proceeds paid or payable in respect of or derived from that asset.

**Replacement Locomotive** means a replacement for a Locomotive that meets the criteria set out in clause 17.1 (*Total Loss*) of the 2016 Loan Agreement.

**Secured Obligations** means all obligations at any time due, owing or incurred by the Borrower to any Secured Party under the 2014 Loan Agreement and the 2016 Loan Agreement, whether present or future, actual or contingent (and whether incurred solely or jointly and whether as principal or surety or in some other capacity).

**Secured Parties** means the Lender and any Receiver.

**Security** means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

## 1.2 Terms defined in the 2016 Loan Agreement

Unless defined in this Deed, or the context otherwise requires, a term defined in the 2016 Loan Agreement has the same meaning in this Deed, or in any notice given under or in connection with this Deed.

## 1.3 Construction

- (a) Unless a contrary indication appears a reference in this Deed:
  - (i) any **Lender**, the **Borrower** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
  - (ii) **assets** includes present and future properties, revenues and rights of every description;
  - (iii) **indebtedness** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
  - (iv) **person** includes any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) of two or more of the foregoing;
  - (v) a **regulation** includes any regulation, rule, official directive, request or guideline having the force of law of any governmental, intergovernmental or supranational body, agency, department or regulatory, or other authority;
  - (vi) **determines** or **determined** means a determination made in the absolute discretion of the person making the determination;

- (vii) a provision of law is a reference to that provision as extended, applied, amended or re-enacted and includes any subordinate legislation; and
- (viii) a time of day is a reference to London time.
- (b) Unless the context otherwise requires, a reference to a liability, obligation or sum (actual or contingent, present or future):
  - (i) outstanding shall be construed as reference to it being due and payable;
  - (ii) owing shall be construed as a reference to it being owing, payable or incurred (in each case whether or not outstanding).
- (c) References to liquidation, dissolution, winding-up, receivership, administration, assignment for the benefit of creditors or voluntary arrangement shall be construed to include a reference to any proceeding which is equivalent or analogous in any relevant jurisdiction.
- (d) References in this Deed to any Clause, paragraph or Schedule shall be to a Clause, paragraph or Schedule contained in this Deed.
- (e) The terms of each Loan Agreement are incorporated in this Deed to the extent required for any contract for the purported disposition of any Mortgaged Property contained in this Deed to be a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

#### 1.4 Third Party Rights

A person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Deed.

#### 1.5 Provisions relating to Security

- (a) All Security created under or pursuant to this Deed:
  - (i) is created in favour of the Lender; and
  - (ii) subject to Clause 14 (*Release of Security*), shall be a continuing security for the payment, discharge and performance of all the Secured Obligations and in particular (without limitation) shall not be, nor be considered as, satisfied by any intermediate discharge or payment on account of any liabilities or any settlement of accounts between the Borrower (or any other person) and the Lender or any other beneficiaries (or any of them) or any other act, event or matter whatsoever, except only the execution by the Lender of an absolute and unconditional release of the Security created by this Deed to the Borrower (or such other person as the Borrower may direct), and this Deed shall extend to cover any sum or sums of money or other

liability and obligations which shall for the time being constitute the balance of the Secured Obligations until all of the Secured Obligations have been paid and discharged in full.

- (b) If the Borrower purports to mortgage, assign or charge (absolutely or by way of first fixed mortgage or charge) an asset under this Deed and such mortgage, assignment or fixed charge breaches a term of an agreement binding on the Borrower in respect of that asset because the consent of a person has not been obtained, then:
  - (i) the Borrower shall notify the Lender immediately;
  - (ii) subject to paragraph (c), the relevant mortgage, assignment or fixed charge will (to the extent no breach of the relevant agreement would occur) secure the Related Rights in respect of that asset but will exclude the asset itself;
  - (iii) unless the Lender otherwise requires, the Borrower shall use its reasonable endeavours to obtain the consent of the relevant person and, once obtained, shall promptly provide a copy of that consent to the Lender; and
  - (iv) forthwith upon receipt of the relevant consent, the relevant asset shall become Mortgaged Property and subject to Clause 2.1 (*Mortgage*).
- (c) The Security created by the Borrower pursuant to this Deed is made with full title guarantee (subject to Permitted Liens) under the Law of Property (Miscellaneous Provisions) Act 1994 but in each case so that the covenants implied by the Law of Property (Miscellaneous Provisions) Act 1994 in relation to such mortgage, charge or assignment are construed with the omission of:
  - (i) the words "except to the extent that" and all the words thereafter in section 3(2) of the Law of Property (Miscellaneous Provisions) Act 1994; and
  - (ii) section 6(2) of the Law of Property (Miscellaneous Provisions) Act 1994.
- (d) The fact that the details of any assets in the Schedule are incomplete shall not affect the validity or enforceability of this Deed in respect of the assets of the Borrower.

## 2. Mortgage

### 2.1 Mortgage

The Borrower with full title guarantee and subject to Permitted Liens charges and agrees to charge by way of first fixed legal mortgage in favour of the Lender as security for the payment, performance and discharge of the Secured Obligations all of its right, benefit, title and interest, present and future, in and to the Mortgaged Property.



## 2.2 Nature of Security

The parties hereto intend that this Deed shall create and constitute an effective first-ranking Security over all the Mortgaged Property wheresoever the same may be situated, and under and so far as effective under all applicable laws.

## 3. Registration of the Locomotive

- (a) As soon as reasonably practicable after the date of this Deed in accordance with good industry practice, the Borrower shall (to the extent permitted and/or required by applicable law) at its own cost:
  - (i) register and, until the Termination Date, maintain or procure the maintenance of the registration of, the Locomotive that is the subject of this Deed and, upon transfer of title thereto to the Borrower of each Replacement Locomotive, on the National Rail Rolling Stock Library (being a national vehicle register held pursuant to Article 33 of the EC Directive 2008/57); and
  - (ii) from time to time take all other steps then required and/or permitted by applicable law or as the Lender may reasonably request to protect, preserve, maintain and perfect to the fullest extent possible in accordance with applicable laws the right, benefit, title and interest of the Secured Parties in and to the Locomotives and, where applicable, the Replacement Locomotives, in each case in any jurisdiction in which the Locomotives and/or the Replacement Locomotives may be operated at any time. The Borrower shall not take any action or omit to take any action that may adversely affect any such registration.
- (b) The Borrower shall provide the Lender with evidence of registration in accordance with paragraph (a)(i) as soon as it is available.

## 4. Negative Pledge and Disposals

The provisions of clauses 15.2 (*Ownership of the Locomotives and possession*) and 15.3 (*No third party rights in the Locomotives*) of the 2016 Loan Agreement shall be incorporated into this Deed mutatis mutandis.

## 5. Representations and Warranties

The Borrower hereby represents and warrants to the Lender that at the time this Deed is entered into, the Mortgaged Property is located in England.

## 6. Enforcement of Security

### 6.1 Timing and manner of enforcement

- (a) The Security created under or pursuant to this Deed shall become enforceable and the powers referred to in Clause 6.2(a) (*General*) shall become exercisable upon the occurrence of an Event of Default (as long as it is continuing).

- (b) After the Security created under or pursuant to this Deed has become enforceable, the Lender may enforce all or any part of such Security in accordance with and subject to this Clause 6.

## 6.2 General

- (a) The Secured Obligations shall be deemed to have become due and payable on the date of this Deed for the purposes of section 101 of the Law of Property Act 1925. The power of sale and other powers conferred by section 101 of the Law of Property Act 1925 (as varied and extended by this Deed) and all other powers conferred on a mortgagee by law shall be deemed to arise immediately after execution of this Deed.
- (b) Section 103 of the Law of Property Act 1925 shall not apply to this Deed.

## 6.3 Exercise of Powers

- (a) All or any of the powers conferred on mortgagees by the Law of Property Act 1925 as varied or extended by this Deed and all or any of the rights and powers conferred by this Deed on a Receiver (whether express or implied) may be exercised by the Lender without further notice to the Borrower at any time after an Event of Default has occurred (as long as it is continuing), irrespective of whether the Lender has taken possession of the Mortgaged Property or appointed a Receiver.
- (b) The Lender shall not be obliged, before exercising any of the rights, powers or remedies conferred upon it by this Deed or by law, to:
  - (i) issue or initiate any proceedings or take action or obtain judgment against the Borrower or any other person in any court or tribunal;
  - (ii) make or file a claim or proof in a winding-up, liquidation, bankruptcy, insolvency, dissolution, reorganization or amalgamation of, or other analogous event of or with respect to, the Borrower or of any other person; or
  - (iii) enforce or seek to enforce the payment or performance of, or the recovery of, any of the moneys, obligations and liabilities hereby secured or any other security, guarantee or other assurance for all or any of the Secured Obligations.

## 6.4 Protection of third parties

- (a) No person (including a purchaser) dealing with the Lender or a Receiver or any of its respective agents will be concerned to enquire:
  - (i) whether the Secured Obligations have become payable;

- (ii) whether any power which the Lender or that Receiver may purport to exercise has become exercisable or is being properly exercised;
  - (iii) whether any amount remains due under any Loan Agreement; or
  - (iv) how any money paid to the Lender or to that Receiver is to be applied.
- (b) The receipt of the Lender or any Receiver shall be an absolute and conclusive discharge and shall relieve any person dealing with the Lender or that Receiver of any obligation to see to the application of any moneys paid to or by the direction of the Lender or any Receiver.

#### **6.5 No Liability as Mortgagee in Possession**

Neither the Lender nor any Receiver will be liable by reason of entering into possession of any Mortgaged Property:

- (a) to account as mortgagee in possession for any loss on realisation in respect of such Mortgaged Property; or
- (b) for any default or omission in connection with such Mortgaged Property for which a mortgagee in possession might otherwise be liable.

### **7. Preservation of Security**

#### **7.1 Reinstatement**

- (a) If any payment by the Borrower or any discharge or release given by a Secured Party (whether in respect of the obligations of any person or any Security for those obligations or otherwise) is avoided or reduced as a result of insolvency or any similar event:
  - (i) the liability of the Borrower and the relevant Security shall continue as if the payment, discharge, release, avoidance or reduction had not occurred; and
  - (ii) the relevant Secured Party shall be entitled to recover the value or amount of that Security or payment from the Borrower, as if the payment, discharge, avoidance or reduction had not occurred.
- (b) The Lender may concede or compromise any claim that any payment, Security or other disposition is liable to avoidance or restoration.

#### **7.2 Waiver of defences**

Neither the obligations of the Borrower nor the Security created under this Deed nor the Collateral Rights will be affected by any act, omission, matter or thing (whether or not known to the Borrower or any Secured Party) which, but

for this provision, would reduce, release, prejudice or provide a defence to any of those obligations including:

- (a) any failure by the Lender or any other person to take or enforce any other Security or other assurance taken or agreed to be taken or given for all or any of the Secured Obligations or under or pursuant to any Loan Agreement or otherwise;
- (b) any time or indulgence given or agreed to be given by the Lender or any other person or any failure or delay by the Lender or any other person in exercising any right, remedy, power or privilege under this Deed or any Loan Agreement or any single or partial exercise of any right, remedy, power or privilege hereunder or thereunder;
- (c) any amendment, modification, variation, supplement, novation, restatement or replacement of all or any part of the Secured Obligations or any Loan Agreement;
- (d) any release or exchange of any Security, guarantee or other assurance now or hereafter held by or enuring to the benefit of the Lender or any other person for all or any part of the Secured Obligations; and
- (e) any other act, omission, fact, matter, circumstance, event or thing (including, without limitation, the invalidity, unenforceability or illegality of any of the obligations of the Borrower or any Loan Agreement, or the bankruptcy, liquidation, winding-up, insolvency, dissolution, administration, reorganisation or amalgamation of, or other analogous event of or with respect to, the Borrower or any other person) which, but for this provision, might operate to impair, discharge or adversely affect the rights of the Lender or any other person under this Deed or any Loan Agreement or to impair, discharge or adversely affect the Security hereby created.

### **7.3 Immediate recourse**

The Borrower waives any right it may have of first requiring any Secured Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or Security or claim payment from any person before claiming from or enforcing against the Borrower under this Deed. This waiver applies irrespective of any law or any provision of this Deed to the contrary.

### **7.4 Additional security/non-merger**

The Security created by or pursuant to this Deed, and the Collateral Rights shall be in addition to and not in substitution for or derogation of any other Security (whether given by the Borrower or otherwise), and shall not be merged into or in any way excluded or prejudiced by any other Security now or from time to time hereafter held by or on behalf of any Secured Party in respect of the Secured Obligations or any other amount due by the Borrower to any Secured Party.

**7.5 No Prejudice**

The Security created by or pursuant to this Deed and the Collateral Rights shall not be prejudiced by any unenforceability or invalidity of any other agreement or document or by any variation of the terms upon which the Lender holds the Security or by any other thing which might otherwise prejudice that Security or any Collateral Right.

**7.6 Remedies and Waivers**

No failure on the part of the Lender to exercise, nor any delay on its part in exercising, any Collateral Right shall operate as a waiver of that Collateral Right. No single or partial exercise of any Collateral Right shall preclude any further or other exercise of that or any other Collateral Right. The rights and remedies provided in this Deed are cumulative and not exclusive of any rights or remedies provided by law.

**7.7 Power of consolidation**

Section 93 (Restriction on consolidation of mortgages) of the Law of Property Act 1925 (and any other relevant statutory provision of similar effect) shall not apply to this Deed or to the Security created under or pursuant to this Deed.

**8. Discretion and Delegation****8.1 Discretion**

Following an Event of Default which is continuing, any liberty or power which may be exercised or any determination which may be made under this Deed by the Lender or any Receiver may be exercised or made in its absolute and unfettered discretion without any obligation to give reasons.

**8.2 Delegation**

- (a) The Lender or any Receiver may delegate by power of attorney or in any other manner to any person any right, power or discretion exercisable by it under this Deed. Any such delegation may be made upon the terms (including power to sub-delegate) which the Lender or Receiver may think fit. The Lender shall give prompt notice to the Borrower of the appointment of any delegate and shall procure that any delegate shall also give prompt notice of the appointment of any sub-delegate to the Lender and the Borrower.
- (b) Neither the Lender nor any Receiver will be in any way liable or responsible to the Borrower for any loss or liability arising from any act, default, omission or misconduct on the part of any delegate except to the extent caused by the gross negligence or wilful default of such party.
- (c) References in this Deed to the Lender or a Receiver shall be deemed to include references to any delegate of the Lender or Receiver appointed in accordance with this Clause 8.2.

## 9. Further Assurance

The Borrower shall at its own cost do all such acts or execute and/or register all such documents (which may include executing any mortgage, transfer, charge, assignment or assurance of the Mortgaged Property (whether to the Lender or its nominees or otherwise), making or filing any registration and giving any notice, order or direction) as the Lender or a Receiver may reasonably require or consider expedient (and in such form as the Lender may reasonably require) for:

- (a) creating, perfecting or protecting any Security intended to be created by or pursuant to this Deed;
- (b) facilitating the realisation of any Mortgaged Property on and after the occurrence of an Event of Default (which is continuing); or
- (c) facilitating the exercise of any right, power or discretion exercisable by the Lender or any Receiver in respect of any Mortgaged Property.

## 10. Application of Monies

Section 109(8) of the Law of Property Act 1925 shall not apply in relation to a Receiver appointed under this Deed.

## 11. Set-Off

The Borrower authorises the Lender (but the Lender shall not be obliged to exercise such right) after the occurrence of an Event of Default which is continuing, to set off against the Secured Obligations any amount or other obligation (contingent or otherwise) owing by the Lender to the Borrower and apply any credit balance to which the Borrower is entitled on any account with the Lender, first towards the payment of any unpaid fees, costs and expenses, second towards the payment of any accrued interest under any Loan Agreement and third towards the payment of any outstanding principal under any Loan Agreement (notwithstanding any specified maturity of any deposit standing to the credit of any such account).

## 12. Power of Attorney

### 12.1 Appointment

The Borrower by way of security irrevocably appoints the Lender and each Receiver severally as its attorney (with full power to appoint substitutes and to delegate) on its behalf and in its name or otherwise, at such time and in such manner as the attorney thinks fit on and after the occurrence of an Event of Default (which is continuing):

- (a) to do anything which the Borrower is obliged to do under this Deed; and
- (b) to exercise any of the rights conferred on the Lender or any Receiver in relation to the Mortgaged Property or under any Loan Agreement, the Law of Property Act 1925 or the Insolvency Act 1986.

**12.2 Ratification**

The Borrower ratifies and confirms and agrees to ratify and confirm whatever any attorney shall do in the exercise or purported exercise of the power of attorney granted by it in Clause 12.1 (*Appointment*).

**13. Right of Appropriation**

On and after the occurrence of an Event of Default (which is continuing) and until the Termination Date, the Lender on behalf of each Secured Party may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by that Secured Party (or any trustee or agent on its behalf) in respect of those amounts, or, apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Borrower shall not be entitled to the benefit of the same;
- (b) hold in an interest-bearing suspense account any moneys received from the Borrower or on account of the Borrower's liability under this Deed; and
- (c) to the extent that any of the Mortgaged Property constitutes "financial collateral" and this Deed and the obligations of the Borrower hereunder or under any other Security Document constitute a "security financial collateral arrangement" (in each case as defined in, and for the purposes of the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003 No. 3226) the Lender shall have the right to appropriate all or any part of such financial collateral in or towards discharge of the Secured Obligations and may exercise such right to appropriate upon giving written notice to the Borrower.

**14. Release of Security**

With effect from the Termination Date, the Lender shall, at the request and cost of the Borrower:

- (a) release to the Borrower the right, benefit, title and interest in and to the Mortgaged Property mortgaged by this Deed;
- (b) execute such notices and directions to such persons as the Borrower may reasonably require in order to give effect to such release; and
- (c) procure the release and reassignment to the Borrower of the property and assets mortgaged to the Lender pursuant to this Deed,

in each case, subject to Clause 7.1 (*Reinstatement*), and without recourse to, or any representation or warranty by, the Lender or any of its nominees, but free from any Security created by or arising through the Lender and/or any other Secured Party in respect of the Mortgaged Property.

## 15. Powers of Lender

Without prejudice to any of its other rights whether conferred under any Loan Agreement or by law generally, following the occurrence of an Event of Default (which is continuing) the Lender shall be entitled:

- (a) **Enforcement Order:** to apply to any authority in the country in which the Mortgaged Property or any part thereof is located for an enforcement and attachment order in respect of the Mortgaged Property or any such part thereof;
- (b) **Possession:** to take possession of the Mortgaged Property and for that purpose to enter upon any premises where the Mortgaged Property may be located;
- (c) **Repair:** to repair and maintain and keep in repair the Mortgaged Property;
- (d) **Insurance:** to insure the Mortgaged Property against loss or damage in such sums and for such risks as the Lender shall in its sole and absolute discretion think fit;
- (e) **Foreclosure Order:** to apply to any court of competent authority for an order for foreclosure absolute so as to vest all the Borrower's right, benefit, title and interest in the Mortgaged Property in the Lender for itself and the Secured Parties;
- (f) **Sale:** to sell, call in, collect and convert into money the Mortgaged Property by public or private contract at any place in the world, with or without advertisement or notice to the Borrower or any other person in relation to any private contract, with all such powers in that respect as are conferred by law; and:
  - (i) by way of extension thereof, such sale, calling in, collection and conversion may be made for such consideration as the Lender in its sole and absolute discretion shall deem reasonable (whether the same shall consist of cash or shares or debentures in some other company or companies or other property of whatsoever nature or partly of one and partly of some other species of consideration, and whether such consideration shall be presently payable or by instalments or at some future date, and whether such deferred or further payments shall be secured or not) and in all other respects in such manner as the Lender shall in its sole and absolute discretion think fit and without being liable to account for any loss of or deficiency in such consideration;
  - (ii) section 103 (Regulation of exercise of power of sale) of the Law of Property Act 1925 shall not apply to this Deed or to the power of sale, calling in, collection or conversion herein before contained; and



- (iii) for the purposes of this Clause 15, the Lender may (in its sole and absolute discretion) by notice appoint the Borrower or any other person as its non-exclusive agent to sell the Mortgaged Property on terms satisfactory to the Lender;
- (g) *Proceedings*: to bring, take, defend, compromise, submit to arbitration or discontinue any actions, suits or proceedings whatsoever, civil or criminal, in relation to the Mortgaged Property;
- (h) *Settlement of Disputes*: to settle, arrange, compromise or submit to arbitration any accounts, claims, questions or disputes whatsoever which may arise in connection with the Mortgaged Property or in any way relating to this Deed and execute releases or other discharges in relation thereto;
- (i) *Other Acts*: to execute and do all such acts, deeds and things as the Lender may in its sole and absolute discretion consider necessary or proper for or in relation to any of the purposes aforesaid; and
- (j) *Receiver*: to appoint, remove and fix the remuneration of a Receiver of all or any part of the Mortgaged Property from time to time and in the case of:
  - (i) appointment and remuneration, on such terms and otherwise as the Lender shall deem fit; and
  - (ii) removal, appointing and remunerating another in the place of the Receiver on such terms and otherwise as the Lender shall deem fit.

## 16. No Assumption of Borrower's Obligations

The Borrower agrees with the Lender that:

- (a) the Borrower shall at all times remain liable to perform all the duties and obligations expressed to be assumed by it in relation to the Mortgaged Property to the same extent as if this Deed had not been executed, and the Lender shall not be obliged to perform any of such duties or obligations of the Borrower;
- (b) the exercise by the Lender of any of the rights conferred upon it by this Deed shall not release the Borrower from any of its duties or obligations in relation to the Mortgaged Property;
- (c) the Lender shall not have any obligation or liability in relation to the Mortgaged Property by reason of, or arising out of, this Deed; and
- (d) the Lender shall not be required to make any payment or to make any inquiry as to the sufficiency of any payment received by the Lender or the Borrower, or to present or file any claim or to take any other action to collect or enforce any claim for any payment conferred hereunder.

**17. Changes to the Parties**

The Borrower authorises the Lender to execute on its behalf (but at no cost to the Borrower) any document that the Lender (acting reasonably) considers necessary or desirable in relation to a transfer or assignment contemplated by clause 21 (*Transfer of Loan Claims*) of either Loan Agreement in order that upon a transfer or assignment of rights from a Secured Party to a Transferee in accordance with the relevant Loan Agreement, the Lender will hold the benefit of the Security created hereunder for the benefit of any remaining Lender and such Transferee under that Loan Agreement and any Lender under the other Loan Agreement.

**18. Lender's liability**

Neither the Lender, any Receiver nor any Secured Party shall (either by reason of taking possession of the Mortgaged Property or for any other reason and whether as mortgagee in possession or otherwise) be liable to the Borrower or any other person for any costs, losses, liabilities or expenses relating to the realisation of any Mortgaged Property or from any act, default, omission or misconduct of the Lender or any Receiver or any Secured Party or their respective officers, employees or agents in relation to the Mortgaged Property or in connection with any Loan Agreement except to the extent caused by its or his own gross negligence or wilful misconduct.

**19. Amendments**

- (a) The provisions of clause 24.2 of the 2016 Loan Agreement shall apply to this Deed.
- (b) No amendment to this Deed shall be valid unless it is in writing and signed by or on behalf of both parties.

**20. Notices**

The provisions of clause 20 (*Notices*) of the 2016 Loan Agreement shall apply to this Deed.

**21. Expenses, Indemnities and Stamp Taxes**

The provisions of clauses 12 (*General Provisions in Respect of Payments*) and 13 (*Fees, Costs, Expenses, Taxes*) of the 2016 Loan Agreement shall apply to this Deed.

**22. Partial Invalidity**

If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Deed nor of such provision under the laws of any other jurisdiction shall in any way be affected or impaired thereby and, if any part of the Security intended to be created by or pursuant to this Deed is invalid, unenforceable or ineffective for any reason, that shall not affect or impair any other part of the Security.

**23. Counterparts**

This Deed may be executed in any number of counterparts, and by each party on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument. Delivery of a counterpart of this Deed by email attachment or telecopy shall be an effective mode of delivery.

**24. Governing Law**

This Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.

**25. Jurisdiction****25.1 English Courts**

The courts of England have exclusive jurisdiction to settle any dispute (a *Dispute*) arising out of or in connection with this Deed (including a dispute relating to the existence, validity or termination of this Deed or the consequences of its nullity or any non-contractual obligations arising out of or in connection with this Deed).

**25.2 Convenient Forum**

The parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes between them and, accordingly, that they will not argue to the contrary.

**25.3 Exclusive Jurisdiction**

This Clause 25 (*Jurisdiction*) is for the benefit of the Lender only. As a result and notwithstanding Clause 25.1 (*English Courts*), it does not prevent the Lender from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law the Lender may take concurrent proceedings in any number of jurisdictions.

**THIS DEED** has been duly executed and delivered as a deed on the date stated at the beginning of this Deed.

**Schedule 1**  
**Details of Mortgaged Property**

Description of Locomotive	Serial Number
Electro-Motive-Diesel (EMD) Class 66, 3000 THP	20148150-001

EXECUTION PAGE TO LEGAL MORTGAGE DEED

The Borrower

SIGNED and DELIVERED as a  
DEED ON BEHALF OF  
GB RAILFREIGHT LTD.

ATTORNEY:

}

.....  
.....

IN THE PRESENCE OF:

SIGNATURE OF WITNESS:

.....  
.....

NAME OF WITNESS:

.....  
SAMUEL MARTIN

ADDRESS OF WITNESS:

.....  
NORTON ROSE FULBRIGHT  
Norton Rose Fulbright LLP  
3 More London Riverside  
London SE1 2AQ United Kingdom  
[nortonrosefulbright.com](http://nortonrosefulbright.com)

The Lender

SIGNED and DELIVERED as a  
DEED ON BEHALF OF DVB BANK  
SE,  
a company incorporated in Germany,  
by \_\_\_\_\_ being  
a person who, in accordance with the  
laws of that territory, is acting under the  
authority of DVB BANK SE

}

.....  
.....

SIGNED and DELIVERED as a  
DEED ON BEHALF OF DVB BANK  
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a company incorporated in Germany,  
by \_\_\_\_\_ being  
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laws of that territory, is acting under the  
authority of DVB BANK SE

}

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.....

**EXECUTION PAGE TO LEGAL MORTGAGE DEED**

**The Borrower**

**SIGNED and DELIVERED as a  
DEED ON BEHALF OF  
GB RAILFREIGHT LTD.**

**ATTORNEY:**

}

.....

**IN THE PRESENCE OF:**

**SIGNATURE OF WITNESS:**

.....

**NAME OF WITNESS:**

.....

**ADDRESS OF WITNESS:**

.....

**The Lender**

**SIGNED and DELIVERED as a  
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SE,**

a company incorporated in Germany,  
by \_\_\_\_\_ being  
a person who, in accordance with the  
laws of that territory, is acting under the  
authority of DVB BANK SE

}



**Matthias Lieschied  
Senior Vice President**

**SIGNED and DELIVERED as a  
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SE,**

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by \_\_\_\_\_ being  
a person who, in accordance with the  
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authority of DVB BANK SE

}



**Jann Gertjergdes  
Senior Vice President**