

LMS PATRIOT COMPANY LIMITED (1)

and

PATRIOT ENTERPRISES LIMITED (2)

LICENCE

**Bowcock Cuerden LLP
South Cheshire House
Manor Road
Nantwich
Cheshire
CW5 5LX**

T: 01270 611106

F: 01270 610515

W: www.bowcockcuerden.co.uk

THIS LICENCE is made the day of 2015

PARTIES:

- (1) **THE LICENSOR:** **LMS-PATRIOT COMPANY LIMITED** a company registered in England & Wales under company number 6502248 and registered charity number 1123521 whose registered office is situate at The Hub, 17 Eastgate Street, Stafford, Staffordshire ST16 2LZ; and
- (2) **THE LICENSEE:** **PATRIOT ENTERPRISES LIMITED** a company registered in England & Wales under company number 08867206 whose registered office is situate at The Hub, 17 Eastgate Street, Stafford, Staffordshire ST16 2LZ.

WHEREAS:

- A The Licensor is a company limited by guarantee and is a registered charity whose objective is to promote the Patriot class of railway Locomotives; and
- B The Licensor wishes to appoint the Licensee to carry out such activities which will result in profit being generated for the Licensee pursuant to the terms of this Agreement;
- C The Licensor is the legal and beneficial owner of the Locomotive and will grant a licence to the Licensee subject to the terms of this Agreement.

AGREED TERMS:

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

“Agreed Purpose” means to carry out such activities which will result in profit being generated for the Licensee pursuant to the terms of this Agreement;

“Commencement Date” means the date of this Agreement;

“DPA 1998” means The Data Protection Act 1998;

“Intellectual Property” means patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or

unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications including Trade Mark Application reference no. UK00003089440 and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

“Locomotive”	means the Patriot Class Locomotive known as “The Unknown Warrior”;
“Logo”	means the logo attached at Schedule 1;
“Name”	means “The Unknown Warrior” also known as (4)5551;
“Neutral Cost Basis”	means a charge to cover cost only with no profit element and not to represent a subsidy to the Licensee. Any loan from the Licensor to the Licensee is to be repaid including a sum equal to the interest the Licensor would have otherwise received if the money lent had remained in the bank account of the Licensor;
“Standard”	means the group standard being the GM/RT 2003 Issue 01 December 1996 certification requirements for registration of Steam Locomotives. This standard refers to MT 276 Issue 1 Examination Schedule for Preserved Steam Locomotives on BR Lines;
“Term”	means the term in accordance with clause 12;
“VAT”	means value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement or additional tax.

- 1.2 Clause, schedule and paragraph headings will not affect the interpretation of this agreement.

- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.4 The Background forms part of this agreement and will have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Background.
- 1.5 Words in the singular will include the plural and vice versa.
- 1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.7 A reference to **writing** or **written** includes faxes but not e-mail.
- 1.8 Any obligation in this agreement on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.
- 1.9 References to clauses and schedules are to the clauses and schedules of this agreement.

2. GRANT OF LICENCE

In consideration of £1, receipt of which is hereby acknowledged, the Licensor grants to the Licensee an exclusive licence to use the Locomotive for the Agreed Purpose in accordance with the terms and conditions of this agreement.

3. INTELLECTUAL PROPERTY RIGHTS

- 3.1 It is hereby acknowledged and agreed that the Licensee is permitted use the Intellectual Property Rights under the licence detailed in clause 2 above for the Agreed Purpose.
- 3.2 It is hereby agreed that in the event of any insolvency, voluntary arrangement with creditors, administrators or administrative receivership by the Licensee, the Licensee agrees that the Intellectual Property Rights will automatically vest in the Licensor and will be returned to the Licensor and the Licensee will do all things and sign all such documents as are necessary to give effect to this clause 3.

4. LICENSOR'S OBLIGATIONS

- 4.1 During the Term the Licensor will: -
 - 4.1.1 allow the Licensee to use the Locomotive for the Agreed Purpose;

4.1.2 allow the Licensee to use its data subject to the DPA 1998 for the Agreed Purpose;

4.1.3 allow the Licensee to use its Intellectual Property for the Agreed Purpose;

4.1.4 allow the Licensee to use the Name for the Agreed Purpose.

5. LICENSEE'S OBLIGATIONS

5.1 During the Term the Licensee will: -

5.1.1 to use the Locomotive for the Agreed Purpose;

5.1.2 use the data of the Licensor subject to the DPA 1998 for the Agreed Purpose;

5.1.3 use the Intellectual Property of the Licensor for the Agreed Purpose;

5.1.4 use the name of the Licensee for the Agreed Purpose;

5.1.5 ensure the Locomotive is kept in good condition and is regularly maintained to the Standard required by the Licensor;

5.1.6 pay the Licensor for its use of the Licensor's staff, property, and equipment on the Neutral Cost Basis;

5.1.7 repay any loan to the Licensor pursuant to the Neutral Cost Basis;

5.1.8 not do any act or omission which may jeopardise the charitable status of or, in the sole opinion of the Licensor, damage the reputation of the Licensor.

6. TITLE AND RISK

6.1 The risk in the Locomotive and the risk in its use will pass to the Licensee during the Term.

6.2 Title to the Locomotive will remain at all times with the Licensor.

7. TERMS OF PAYMENT

7.1 The Licensor will be entitled to invoice the Licensee on a monthly basis for the costs pursuant to clause 5.1.6.

7.2 The Licensor will pay invoices in full within 30 days of receipt. Payment will be made to the bank account nominated in writing by the Licensor.

8. INSURANCE

During this agreement the Licensee will maintain in force the following insurance policies with reputable insurance companies:

- (a) public liability insurance for not less than £5 million per claim; and
- (b) product liability insurance for not less than £5 million for claims arising from any single event and not less than £5 million in aggregate for all claims arising in an year.

9. INDEMNITY

9.1 The Licensee will indemnify the Licensor against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Licensor arising out of or in connection with:

- (a) any claim made against the Licensor by a third party arising out of, or in connection with, the Licence, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this agreement by the Licensee, its employees, agents or subcontractors; and
- (b) any claim made against the Licensor by a third party for death, personal injury or damage to property arising out of, or in connection with, the Licence, to the extent that it is attributable to the acts or omissions of the Licensee, its employees, agents or subcontractors.

9.2 Nothing in this clause will restrict or limit the Licensor's general obligation at law to mitigate a loss which it may suffer or incur as a result of a matter that may give rise to a claim under this indemnity.

10. ASSIGNMENT AND SUBCONTRACTING

The Licensee may not assign or transfer or subcontract any of its rights, benefits or obligations under this agreement without the prior written consent of the Licensor.

11. CONFIDENTIALITY

11.1 Each party undertakes that it will not at any time during this agreement and for a period of two years after termination disclose to any person any confidential information disclosed to it by the other party concerning the business or affairs of the other party or of any member of its group, including information relating to a party's operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and customers (**Confidential Information**), except as permitted by clause 11.2.

11.2 Each party may disclose the other party's Confidential Information:

- (a) to its employees, officers, agents, consultants or subcontractors (**Representatives**) who need to know such information for the purposes of carrying out the party's obligations under this agreement, provided that the disclosing party takes all reasonable steps to ensure that its Representatives comply with the confidentiality obligations contained in this clause 1 as though they were a party to this agreement. The disclosing party will be responsible for its Representatives' compliance with the confidentiality obligations set out in this clause; and
- (b) as may be required by law, court order or any governmental or regulatory authority.

12. COMMENCEMENT AND TERM

This agreement will commence on the Commencement Date and will, subject to the provisions of clause 13, remain in effect for 5 years.

13. TERMINATION

13.1 Subject to the provisions of clause 13, the Licensor may at any time terminate this agreement by giving the Licensee not less than one month notice in writing.

13.2 A party will be entitled to terminate this agreement with immediate effect by giving notice in writing to the other party if:

- (a) the other party fails to pay any undisputed amount due under this agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment; or
- (b) the other party commits a material breach of its obligations under this agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after receipt of notice in writing requiring it to do so; or
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- (d) any Force Majeure Event prevents the other party from performing its obligations under this agreement for any continuous period of 3 months.

14. OBLIGATIONS ON TERMINATION

Each party will promptly:

- (a) return to the other party all equipment, materials and property belonging to the other party that the other party had supplied to it or a member of its group under this agreement;
- (b) return to the other party all documents and materials (and any copies) containing the other party's Confidential Information;
- (c) erase all the other party's Confidential Information from its computer systems (to the extent possible); and
- (d) on request, certify in writing to the other party that it has complied with the requirements of this clause 14.

15. FORCE MAJEURE

15.1 Neither party (or any person acting on its behalf) will have any liability or responsibility for failure to fulfil any obligation under this agreement so long as, and to the extent to which, the fulfilment of such obligation is prevented, frustrated, hindered or delayed as a consequence of a Force Majeure Event, except as provided in clause 15.

15.2 A party claiming the benefit of this provision will, as soon as reasonably practicable after the occurrence of a Force Majeure Event:

- (a) notify the other party of the nature and extent of such Force Majeure Event; and
- (b) use all reasonable endeavours to remove any such causes and resume performance under this agreement as soon as feasible.

15.3 For the purposes of this clause 15, a **Force Majeure Event** means an event beyond the control of a party (or any person acting on its behalf), which by its nature could not have been foreseen by such party (or such person), or, if it could have been foreseen, was unavoidable, and includes acts of God, storms, floods, riots, fires, sabotage, civil commotion or civil unrest, interference by civil or military authorities, acts of war (declared or undeclared) or armed hostilities or other national or international calamity or one or more acts of terrorism or failure of energy sources.

16. SEVERANCE

If any provision of this agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force.

17. VARIATION AND WAIVER

Any variation of this agreement will be in writing and signed by or on behalf of the parties.

18. NOTICES

- 18.1 A notice given under this agreement will be sufficiently served if it is delivered by hand or sent by recorded delivery post to the registered office of the relevant Party or the legal personal representatives as appropriate.
- 18.2 The provisions of this clause 18 will not apply to the service of any process in any legal action or proceedings.

19. ENTIRE AGREEMENT

- 19.1 This agreement and the documents referred to in it constitutes the whole agreement and understanding of the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of this agreement.
- 19.2 Nothing in this clause will limit or exclude any liability for fraud.

20. RIGHTS OF THIRD PARTIES

No term of this agreement will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this agreement, but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.

21. GOVERNING LAW AND JURISDICTION

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) will be governed by and construed in accordance with English law and the parties irrevocably agree that the courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of it.

SCHEDULE 1

Logo



and



EXECUTED for and on behalf of
LMS PATRIOT COMPANY LIMITED
acting by:

.....
Director

.....
Director/Secretary

EXECUTED for and on behalf of
PATRIOT ENTERPRISES LIMITED
acting by:

.....
Director

.....
Director/Secretary