



**Registration of a Charge**

Company name: **GB RAILFREIGHT LIMITED**

Company number: **03707899**



X5671L40

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

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**Details of Charge**

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

Charge code: **0370 7899 0022**

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 0022

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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**Supplemental Mortgage Relating to One (1)  
Class 66 Locomotive Serial No. 20128816-016**

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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

- (A) By a mortgage dated 12 December 2014 (the *Mortgage*), the Borrower charged by way of first fixed legal mortgage in favour of the Lender the Mortgaged Property, as security for the obligations more particularly described in the Mortgage.
- (B) This Deed is supplemental to the Mortgage.
- (C) 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 Incorporated Definitions

- (a) Unless defined in this Deed, or the context otherwise requires, a term defined in the Mortgage has the same meaning in this Deed, or in any notice given under or in connection with this Deed.
- (b) The following terms have the meaning specified in the 2016 Loan Agreement:
  - (i) *Event of Default*; and
  - (ii) *Termination Date*.

#### 1.2 Further definitions

In this Deed:

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

*Dispute* has the meaning given to it at Clause 12.1 (*English Courts*).

*Mortgage* has the meaning specified in Recital (A).

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

*Secured Obligations* means all obligations at any time due, owing or incurred by the Borrower to any Secured Party under 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).

### 1.3 Incorporated construction

The rules of construction and interpretation set out in clause 1.3 (*Construction*) of the Mortgage are incorporated in this Deed as if set out in full in this Deed.

### 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 7 (*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. 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.

## **4. Enforcement of Security**

### **4.1 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 4.2(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 4.

#### 4.2 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.

#### 4.3 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.

#### 4.4 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 the 2016 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.

#### **4.5 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.

### **5. Preservation of Security**

#### **5.1 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.

#### **5.2 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 the 2016 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 the 2016 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 the 2016 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 the 2016 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 the 2016 Loan Agreement or to impair, discharge or adversely affect the Security hereby created.

### **5.3 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.

### **5.4 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.

**5.5 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.

**5.6 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.

**5.7 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.

**6. Discretion and Delegation****6.1 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.

**6.2 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 6.2.

**7. 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 5.1 (*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.

**8. Incorporation of terms of Mortgage**

The provisions of clauses 4 (*Negative Pledge*), 9 (*Further Assurance*), 10 (*Application of Monies*), 11 (*Set-Off*), 12 (*Power of Attorney*), 13 (*Right of Appropriation*), 15 (*Powers of Lender*), 16 (*No Assumption of Borrower's Obligations*), 17 (*Changes to the Parties*), 18 (*Lender's Liability*), 19 (*Amendments*), 20 (*Notices*), 21 (*Expenses, Indemnities and Stamp Taxes*) and 22 (*Partial Invalidity*) of the Mortgage are incorporated in this Deed as if set out in full in this Deed and as if references to the Loan Agreement were references to the 2016 Loan Agreement.

**9. Continuing Security**

The terms of the Mortgage shall, save as supplemented by this Deed, continue in full force and effect as supplemented by this Deed.

**10. 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.

**11. Governing Law**

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

**12. Jurisdiction****12.1 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).

#### **12.2 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.

#### **12.3 Exclusive Jurisdiction**

This Clause 12 (*Jurisdiction*) is for the benefit of the Lender only. As a result and notwithstanding Clause 12.1 (*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**

<b>Description of Locomotive</b>	<b>Serial Number</b>
Electro-Motive-Diesel (EMD) Class 66, 3000 THP	20128816-016

EXECUTION PAGE TO LEGAL MORTGAGE DEED

**The Borrower**

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

ATTORNEY:

}

.....  
*[Signature]*  
.....

IN THE PRESENCE OF:

SIGNATURE OF WITNESS:

.....  
*[Signature]*  
.....

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**

}

.....

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**EXECUTION PAGE TO LEGAL MORTGAGE DEED**

**The Borrower**

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GB RAILFREIGHT LTD.**

**ATTORNEY:**

}

.....

**IN THE PRESENCE OF:**

**SIGNATURE OF WITNESS:**

.....

**NAME OF WITNESS:**

.....

**ADDRESS OF WITNESS:**

.....

**The Lender**

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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**

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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

}



**Jann Gertjegerdes  
Senior Vice President**