



Registration of a Charge

Company name: **TRANSPORT FOR WALES RAIL LTD**

Company number: **12619906**



X9XV2CFK

Received for Electronic Filing: **08/02/2021**

Details of Charge

Date of creation: **05/02/2021**

Charge code: **1261 9906 0001**

Persons entitled: **EVERSHOLT RAIL LEASING LIMITED**

Brief description: **NOT APPLICABLE.**

Contains fixed charge(s).

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S. 859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **ADDLESHAW GODDARD LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 12619906

Charge code: 1261 9906 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 5th February 2021 and created by TRANSPORT FOR WALES RAIL LTD was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 8th February 2021 .

Given at Companies House, Cardiff on 9th February 2021

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

5 February **2021**

TRANSPORT FOR WALES RAIL LTD

EVERSHOLT RAIL LEASING LIMITED

ACCOUNT CHARGE

in respect of security for the
redelivery condition obligations
of the Chargor under an
operating lease of 12 x Mark IV
coaches and 3 x Mark IV DVTs

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Between

- (1) **Transport for Wales Rail Ltd** (registered number 12619906) whose registered office is at 3 Llys Cadwyn, Pontypridd, Wales, CF37 4TH (the **Chargor**); and
- (2) **Eversholt Rail Leasing Limited** (company number 02720809), a company incorporated under the laws of England and Wales, whose registered office is at 210 Pentonville Road, London, N1 9JY (the **Chargee**).

Whereas

- (A) The Chargor and the Chargee have are parties to the Lease, under which the Chargor has certain obligations in respect of the Operational Condition and Redelivery Condition of the Vehicles.
- (B) This Deed is being entered into in accordance with the requirements of the Lease and the Operational and Redelivery Condition Side Letter, for the purposes of providing cash security to the Chargee in respect of the Secured Obligations.

It is agreed

1 Definitions and interpretation

1.1 Definitions

In this Deed, terms defined in the Lease shall have the meanings given to them therein. In addition, the following terms have the following meanings:

Account Balance means all monies at any time, and from time to time, standing to the credit of the Blocked Account and:

- (a) all interest at any time accrued or accruing on such monies;
- (b) all investments at any time made out of such monies or account; and
- (c) all rights to repayment of any of the same;

Account Bank means Barclays Bank PLC;

Act means the Law of Property Act 1925;

Blocked Account means the account of the Chargor held with the Account Bank, having the following details:

Account Name:	TFWRL - EVERSOLT
Sort Code:	201876
Account Number:	0373 [REDACTED]
Branch:	City of Cardiff Branch 3rd Floor, Windsor Court 3 Windsor Place Cardiff, CF10 3BX

together with: (i) any sub-accounts and any additions to or renewals or replacements of such account (in whatever currency) and all investments made out of the same; and (ii) all rights, benefits and proceeds in respect of such account (including interest and rights to repayment of any monies standing to the credit of such account);

Enforcement Event means the Vehicles not being in the required Redelivery Condition upon the occurrence of the Expiry Date under the Lease;

Lease means the operating lease agreement, in respect of 12 x Mark IV coaches and 3 x Mark IV DVT vehicles, originally entered into between the Chargee and Keolis Amey Operations/Gweithrediadau Keolis Amey Limited on 12 October 2018, as the same has been:

- (a) amended and supplemented from time to time; and
- (b) novated (at the lessee level) pursuant to a Deed of Novation, Amendment and Release, dated 5 February 2021,

so as to now exist between the Chargee (as lessor) and the Chargor (as lessee);

Operational and Redelivery Condition Side Letter means the letter so named, originally entered into between the Chargee and Keolis Amey Operations/Gweithrediadau Keolis Amey Limited on 12 October 2018, as the same has been novated, pursuant to a Deed of Novation, Amendment and Release, dated 5 February 2021, so as to now exist between the Chargee and the Chargor;

Party means a party to this Deed;

Secured Obligations means all present and future obligations and liabilities (whether actual or contingent) of the Chargor to the Chargee under clause 13 and schedule 7 (*Redelivery*) to the Lease;

Security Interest means any mortgage, pledge, lien, charge, assignment by way of security, hypothecation, security interest, title retention, preferential right or trust arrangement or any other security agreement or arrangement having the effect of security; and

Security Period means the period beginning on the date of this Deed and ending on the date on which all the Secured Obligations have been unconditionally and irrevocably paid and discharged in full.

1.2 Interpretation

- (a) Unless a contrary indication appears, any reference in this Deed to:
 - (i) any person or entity shall be construed so as to include a reference to that person's or entity's successors in title, permitted assigns and permitted transferees;
 - (ii) any agreement or instrument shall be construed as a reference to such agreement or instrument as amended, supplemented, extended, restated, novated and/or replaced in any manner from time to time (however fundamentally);

- (iii) an Enforcement Event that is "continuing" shall be construed as meaning a Enforcement Event that has not been cured, or waived in writing by the Chargee;
 - (iv) "including" or "includes" means including or includes without limitation;
 - (v) "Secured Obligations" includes obligations and liabilities which would be treated as such but for the liquidation or dissolution of or similar event affecting the Chargor;
 - (vi) a provision of law is a reference to that provision as amended or re-enacted; and
 - (vii) the singular includes the plural and vice versa.
- (b) References to clauses, paragraphs and schedules are to be construed, unless otherwise stated, as references to clauses, paragraphs and schedules of this Deed.
 - (c) Clause and schedule headings are for convenience only and shall not affect the construction of this Deed.
 - (d) Each undertaking of the Chargor contained in this Deed must be complied with at all times during the Security Period and is given by the Chargor for the benefit of the Chargee.
 - (e) If the Chargee reasonably considers that an amount paid in respect of the Secured Obligations is capable of being avoided or otherwise set aside on the liquidation or administration of the relevant party, then that amount shall not be considered to have been irrevocably paid for the purposes of this Deed.
 - (f) The Parties intend that this document shall take effect as a deed notwithstanding any imperfections in the manner of its execution by either Party.

1.3 Third Party Rights

No person who is not a Party shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Deed.

2 Covenant to perform

The Chargor covenants in favour of the Chargee that it will pay and discharge the Secured Obligations when they fall due.

3 Grant of security

3.1 Nature of security

All Security Interests and dispositions created or made by or pursuant to this Deed are created or made:

- (a) in favour of the Chargee;

- (b) with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994; and
- (c) as continuing security for performance of the Secured Obligations.

3.2 Fixed charge

The Chargor charges and agrees to charge to the Chargee, by way of first fixed charge, all its present and future right, title and interest in and to the Blocked Account and the Account Balance from time to time.

3.3 Notice to Account Bank

Immediately upon execution of this Deed, the Chargor shall:

- (a) give notice, in the form set out in Part 1 of Schedule 1 hereto, to the Account Bank of the charge created pursuant to this Deed, and of the other restrictions hereby placed on the operation of the Blocked Account; and
- (b) procure the acknowledgement of the Account Bank to such notice, in the form set out in Part 2 of Schedule 1 hereto.

4 Account block and set off

4.1 Restrictions on dealing

4.2 The Chargor shall not do or agree to do any of the following without the prior written consent of the Chargee:

- (a) create or permit to subsist any Security Interest on the Blocked Account or the Account Balance, other than as created by this Deed; or
- (b) sell, transfer, lend or otherwise dispose of (whether by a single transaction or a number of transactions and whether related or not), the whole or any part of its interest in the Blocked Account or the Account Balance (other than as contemplated by this Deed).

4.3 No withdrawals

- (a) Regardless of the terms on which moneys are credited to the Blocked Account, the Account Balance will not become due or payable to the Chargor unless and until the Secured Obligations have been paid and discharged in full.
- (b) Until the Secured Obligations have been paid and discharged in full, the Chargor shall not withdraw or attempt or be entitled to withdraw (or direct any transfer of) all or any part of the Account Balance, without the prior written consent of the Chargee.
- (c) The Chargee shall be entitled in its absolute discretion to refuse to permit any requested withdrawal or transfer, except where the relevant circumstances described in any of paragraphs 1.5, 1.7 or 2.6 of the Operational and Redelivery Condition Side Letter specifically require the Chargee to authorise the release of applicable monies previously deposited into the Blocked Account (in which case, the Chargee shall instruct the Account Bank to transfer all but £1.00 of the Account Balance to the Chargor's

nominated bank account, but without prejudice to the continuing nature of the security over the Blocked Account).

4.4 Compliance with obligations

The Chargor shall comply with all obligations in relation to the Blocked Account or the Account Balance under any present or future law, regulation, order or instrument or under any bye laws, regulations or requirements of any competent authority or other approvals, licences or consents.

4.5 Information

The Chargor shall provide the Chargee with all information which it may reasonably request in relation to the Blocked Account and the Account Balance, and any communication received by it from the Account Bank in relation to any of them.

5 **Continuing security**

The security constituted by this Deed is continuing and will extend to the ultimate satisfaction of the Secured Obligations regardless of any interim release or transfer of the Account Balance in accordance with the requirements of the Operational and Redelivery Condition Side Letter. This Deed, and the Security Interest hereby created, shall remain in full force and effect as a continuing security for the duration of the Security Period.

6 **Representations**

The Chargor makes the representations and warranties set out in this clause 6:

6.1 Binding Obligations

It is a limited company duly incorporated and validly existing under the laws of England and Wales and has power to enter into and perform its obligations hereunder, which obligations constitute its legal, valid and binding obligations in accordance with their terms, subject to applicable laws relating to bankruptcy, insolvency or liquidation or any other laws or legal procedures affecting generally the enforcement of creditors' rights and the applicable laws of equity.

6.2 Authorisation

It has taken all necessary corporate and shareholder action to authorise the entry into and the performance of this Deed.

6.3 No conflict

The execution, delivery and performance of this Deed does not violate any law, regulation or order of any body or authority or any agreement or other undertaking or instrument binding on the Chargor.

6.4 No Security Interests

The Chargor is the sole legal and beneficial owner of the Blocked Account and the Account Balance, which are free from any Security Interests other than as created by this Deed.

6.5 No avoidance

This Deed creates the Security Interests which it purports to create and is not liable to be avoided or otherwise set aside on the liquidation or administration of the Chargor or otherwise.

6.6 No proceedings pending or threatened

No litigation, arbitration or administrative proceeding has currently been started or threatened in relation to either the Blocked Account or the Account Balance.

7 When security becomes enforceable

7.1 When enforceable

The security constituted by this Deed shall become immediately enforceable upon the occurrence of an Enforcement Event and shall remain so for so long as the Enforcement Event is continuing.

7.2 Powers on enforcement

- (a) At any time after the charge created by this Deed has become enforceable the Chargee may (without prejudice to any other of its rights and remedies and without notice to the Chargor) do all or any of the following:
- (b) apply the Account Balance in or towards satisfaction of the Secured Obligations (including instructing the Account Bank to transfer the Account Balance to a separate account of the Chargee for these purposes); and
- (c) exercise all the powers and rights which may be exercisable by the beneficial owner of the Account Balance and all other powers conferred on mortgagees by the Act, as varied and extended by this Deed, without the restrictions contained in sections 103 or 109(1) of the Act.

8 Application of proceeds

All monies recovered by the Chargee hereunder shall be applied first in (or towards) the satisfaction of the Secured Obligations, and secondly in payment of any surplus to the Chargor or other person entitled to it.

9 Protection of the chargee

9.1 Exclusion of liability

Neither the Chargee nor any of its officers or employees shall have any responsibility or liability:

- (a) for any action taken in relation to the Blocked Account, including the selection of periods for any time deposit or the termination of any such period before its due date of maturity;
- (b) for any failure to take any action in relation to the Blocked Account; or
- (c) for any other default or omission in relation to the Blocked Account or the Account Balance for which a mortgagee in possession might be liable,

except in the case of negligence or wilful misconduct on the part of that person.

9.2 General indemnity

The Chargor shall indemnify the Chargee and its officers and employees against all actions, proceedings, demands claims, costs, expenses and other liabilities incurred by them in respect of all or any of the following:

- (a) any act or omission by any of them in relation to the Blocked Account;
- (b) any payment relating to the Blocked Account which is made at any time by any of them;
- (c) any stamp, registration or similar tax or duty which becomes payable in connection with the entry into, or the performance or enforcement of, this Deed;
- (d) carrying out or purporting to carry out any of the rights, powers and discretions conferred on them by or permitted under this Deed; and
- (e) any breach by the Chargor of any of its covenants or other obligations to the Chargee as described in this Deed,

except in the case of negligence or wilful misconduct on the part of that person.

9.3 Indemnity out of the Account Balance

The Chargee and its officers and employees shall be entitled to be indemnified out of the Account Balance in respect of the actions, proceedings, demands, claims, costs, expenses and liabilities referred to in clause 9.2.

10 **Preservation of security**

10.1 Reinstatement

If any payment by the Chargor or discharge given by the Chargee is avoided or reduced as a result of insolvency, liquidation, administration or any similar event:

- (a) the liability of the Chargor and the security created by this Deed shall continue as if the payment, discharge, avoidance or reduction had not occurred; and
- (b) the Chargee shall be entitled to recover the value or amount of that security or payment from the Chargor, as if the payment, discharge, avoidance or reduction had not occurred.

10.2 Immediate recourse

The Chargor waives any right it may have of first requiring the Chargee (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 the Chargor under this Deed.

10.3 Additional Security

This Deed is in addition to, is not in any way prejudiced by and shall not merge with any contractual right or remedy or other security now or in the future held by or available to the Chargee.

11 Further assurance

11.1 The Chargor shall, at its own expense, promptly take any action and sign or execute any further documents which the Chargee may require in order to:

- (a) give effect to the requirements of this Deed;
- (b) protect, preserve and perfect the rights of the Chargee in relation to the security intended to be created by or pursuant to this Deed;
- (c) protect and preserve the ranking of the security intended to be created by or pursuant to this Deed with any other security over the Blocked Account or the Account Balance;
or
- (d) facilitate the realisation of the Account Balance or the exercise of any rights, powers and discretions conferred on the Chargee in connection with the Blocked Account or the Account Balance,

and any such document may disapply section 93 of the Act.

12 Power of attorney

The Chargor, by way of security, irrevocably appoints the Chargee to be its attorney to take any action which the Chargor is obliged to take under this Deed, including under clause 11. The Chargor ratifies and confirms whatever any attorney does or purports to do pursuant to its appointment under this clause.

13 Discharge of security

13.1 The Chargee shall, at the request and cost of the Chargor, release the Blocked Account and Account Balance from the charge contained in this Deed upon the expiry of the Security Period and as described in paragraph 2.6 of the Operational and Redelivery Condition Side Letter, insofar as the same relate to the Lease and Vehicles.

13.2 Section 93 of the Act shall not apply to this Deed.

14 Costs and expenses

The Chargor shall promptly on demand pay to the Chargee the amount of all costs, charges and expenses (including, (without limitation) legal fees (and any VAT or similar tax thereon)) incurred in connection with the enforcement, exercise or preservation (or the attempted enforcement, exercise or preservation) of any of its rights under this Deed.

15 Miscellaneous

15.1 Amendments

The provisions of this Deed shall be amended only if the Chargee and the Chargor so agree in writing.

15.2 Calculations and certificates

A certificate of the Chargee specifying the amount of any Secured Obligation due (including details of any relevant calculation thereof) shall be prima facie evidence of such amount against the Chargor in the absence of manifest error, and unless and until any contrary finding is upheld pursuant to the relevant disputes process under the Lease or the Operational and Redelivery Condition Side Letter.

15.3 Confidentiality

The provisions of clause 18 (Confidentiality) of the Lease shall apply, mutatis mutandis, to this Deed (with the terms of this Deed and the details of the Blocked Account and the Account Balance being considered as "Confidential Information" for that purpose).

15.4 Notices

The provisions of clause 19 (Notices) of the Lease shall apply, mutatis mutandis, in respect of any notices to be served under or in connection with this Deed.

15.5 Waiver, rights and remedies

No failure to exercise, nor any delay in exercising, on the part of the Chargee, any right or remedy under this Deed shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise, or the exercise of any other right or remedy. The rights and remedies provided are cumulative and not exclusive of any rights or remedies provided by law.

15.6 Partial Invalidity

All the provisions of this Deed are severable and distinct from one another and if at any time any provision is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of any of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

15.7 Counterparts

This Deed may be executed in any number of counterparts, and this has the same effect as if the signatures (and seals, if any) on the counterparts were on a single copy of this Deed.

16 Governing law and jurisdiction

16.1 This Deed and all non-contractual obligations arising out of or in connection with it are governed by and to be construed in accordance with English law.

16.2 The parties agree that the courts of England and Wales are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Deed or any non-contractual obligation arising out of or in connection with this Deed.

In witness of which this **Deed** has been duly executed by the Chargor as a deed and duly executed by the Chargee, and has been delivered on the date first before written.

Schedule 1: Forms of Notice and Acknowledgement

Part 1: Notice to Account Bank

To: **Barclays Bank PLC** (the **Account Bank**)
City of Cardiff Branch
3rd Floor, Windsor Court
3 Windsor Place
Cardiff, CF10 3BX

From: **Transport for Wales Rail Ltd** (the **Account Holder**)
3 Llys Cadwyn
Pontypridd
Wales
CF37 4TH

And: **Eversholt Rail Leasing Limited** (the **Chargee**)
210 Pentonville Road
London N1 9JY

Dated 2021

Dear Sirs,

Notice of Account Charge, re:

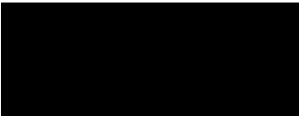
Account Holder: **Transport for Wales Rail Ltd**
Account Name: **TFWRL - EVERSOLT**
Sort Code: **201876**
Account Number: **0373** XXXXXXXXXX
Branch: **City of Cardiff Branch** (the **Blocked Account**)

The Account Holder hereby gives notice to the Account Bank that, by an account charge dated 2021 (the **Charge**), it has charged to the Chargee all of its present and future right, title and interest in and to the Blocked Account, any sub-accounts thereof, and all monies from time to time standing to the credit of the Blocked Account and all additions to or renewals or replacements thereof, including all interest from time to time accrued or accruing on or to the Blocked Account, any investment made out of any such monies or account and all rights to repayment of any of the foregoing by you (the **Security Assets**).

As such:

1. the Account Holder advises the Account Bank that, under the Charge, it is not entitled to withdraw any monies from the Blocked Account without first having obtained the written consent of the Chargee.
2. the Account Holder irrevocably authorises and instructs the Account Bank, from time to time and notwithstanding any existing instructions affecting the Blocked Account which may have been given:
 - a. that no withdrawals are to be permitted from the Blocked Account, unless the Chargee so authorises and instructs the Account Bank in writing;

- b. to hold all monies from time to time standing to the credit of the Blocked Account to the order of the Chargee and to comply promptly with any instructions received from the Chargee in any way relating to the Blocked Account;
 - c. to pay all or any part of the monies standing to the credit of the Blocked Account to the Chargee (or as it may direct) promptly following receipt of written instructions from the Chargee to that effect; and
 - d. to disclose to the Chargee such information relating to the Blocked Account as the Chargee may from time to time request the Account Bank to provide.
3. The Account Holder agrees that the Account Bank is not bound to enquire whether the right of the Chargee to withdraw any monies from the Blocked Account has arisen, nor is it to be concerned with:
 - a. the propriety or regularity of the exercise of that right;
 - b. any prior notice to the contrary; or
 - c. the manner of application of any monies received by the Chargee.
4. This notice may only be revoked or amended with the prior written consent of the Chargee.
5. The Account Bank is requested to confirm, by signing and returning an Acknowledgment in the form enclosed, that:
 - a. it agrees to comply with the stipulations of this notice;
 - b. it shall not exercise any right of combination, consolidation, merger or set off which it may have in respect of, or otherwise exercise any other right which it may have to apply, any monies from time to time standing or accruing to the credit of the Blocked Account except with respect to returned or charged back items or the Account Bank's charges, fees and expenses with respect to the Blocked Account or otherwise at the request of the Account Holder and the Chargee;
 - c. it shall promptly notify the Chargee of any renewal, renumbering or re-designation of the Blocked Account; and
 - d. it has not, as at the date hereof, received notice of any assignment or charge of or claim to the monies standing to the credit of the Blocked Account or the grant of any security or other interest over those monies or the Blocked Account in favour of any third party.
6. This Notice and all non-contractual obligations arising out of or in connection with it are governed by and to be construed in accordance with English law, and the English Courts shall have exclusive jurisdiction to determine any proceedings in relation hereto.



For and on behalf of
Transport for Wales Rail Ltd

.....
For and on behalf of
Eversholt Rail Leasing Limited

Part 2: Acknowledgment from Account Bank

EXECUTION PAGE: ACCOUNT CHARGE

(Wales & Borders - Mk IVs)

Chargor

Executed as a **Deed** by)
Transport for Wales Rail Ltd)
acting by)


.....
Director


.....
Director

Chargee

Signed on behalf of)
Eversholt Rail Leasing Limited)
by:)


.....
Attorney In Fact


.....
..Attorney in Fact.....