



Registration of a Charge

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

Company number: **12619906**



X9Y0FLXN

Received for Electronic Filing: **10/02/2021**

Details of Charge

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

Charge code: **1261 9906 0003**

Persons entitled: **VALLEY RAIL PARTNERSHIP NO.1 LLP**

Brief description:

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: **NORTON ROSE FULBRIGHT LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 12619906

Charge code: 1261 9906 0003

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 10th February 2021 .

Given at Companies House, Cardiff on 11th 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

Confidential

I certify that, save for material redacted pursuant to s.859G of the Companies Act 2006, this copy instrument is a correct copy of the electronic original instrument.

Norton Rose Fulbright LLP

Date: 9 February 2021

Dated 5 February 2021

TRANSPORT FOR WALES RAIL LTD

and

VALLEY RAIL PARTNERSHIP NO.1 LLP

**ASSIGNMENT OF TRAIN SERVICES AGREEMENT RELATIGN TO 17 X 4-CAR
AND 7 X 3-CAR FLIRT TRI-MODE TRAINS**

 **NORTON ROSE FULBRIGHT**

Contents

Clause	Page
1 Interpretation.....	1
2 Covenant to pay.....	5
3 Assignment.....	5
4 Charge.....	5
5 Trust	5
6 Nature of security created	5
7 Present assignment and exercise of rights	6
8 Perfection of security.....	6
9 Restrictions on dealing	6
10 Further assurances	6
11 Rights, obligations and liabilities.....	7
12 Direct agreement	7
13 Representations and warranties	7
14 Enforcement	8
15 Powers of Receiver	10
16 Power of Attorney.....	11
17 Application of Moneys	11
18 Protection of Third Parties.....	12
19 Protection of the Assignee and any Receiver.....	12
20 Provisions Relating to The Assignee	13
21 Preservation of Security	14
22 Assignment and transfer	16
23 Costs and expenses.....	16
24 Notices.....	16
25 Calculations and certificates.....	16
26 Contracts (Rights of Third Parties) Act 1999	17
27 Amendments and waivers	17
28 Counterparts.....	17
29 Governing Law and Enforcement	17
Schedule 1.....	18

THIS ASSIGNMENT is dated 5 February 2021 and is made between:

- (1) **TRANSPORT FOR WALES RAIL LTD** (Registered number 12619906), a company incorporated in England and Wales whose registered office is at 3 Llys Cadwyn, Taff Street, Pontypridd, Rhondda Cynon Taf, CF37 4TH (the **Assignor**); and
- (2) **VALLEY RAIL PARTNERSHIP NO.1 LLP** (Registered Number 0C424290), a limited liability partnership incorporated in England whose registered office is at 3rd Floor, South Building, 200 Aldersgate Street, London, England, EC1A 4HD (the **Assignee**).

WHEREAS:

- (A) Pursuant to the Operating Lease Agreement, the Assignee has agreed to lease 17 new 4 car and 7 new 3 car FLIRT Tri-Mode Units (the **Unit**) to the Assignor.
- (B) As security for the obligations of the Assignor under the Operating Lease Agreement, the Assignor is required to enter into this Deed to secure the payment and discharge of the Secured Liabilities.

IT IS AGREED as follows:

1 Interpretation

1.1 Definitions

In this Deed (including the Schedules hereto):

Act means the Law of Property Act 1925

Agreements means the agreements or arrangements constituting the Assigned Property specified in the definition of Assigned Property

Assigned Property means all of the right, title and interest, present and future, of the Assignor in, to and under:

- (a) the TSA;
- (b) the TSA Guarantee; and
- (c) all proceeds in respect of the TSA and the TSA Guarantee, together with:
- (d) all claims, rights and remedies of the Assignor arising out of or in connection with a breach of or default under or in connection with the TSA and the TSA Guarantee (including, without limitation, all damages and other compensation payable for or in respect thereof); and

- (e) all rights of the Assignor to require, enforce and compel performance of all of the provisions of the TSA and the TSA Guarantee, and otherwise to exercise all claims, rights and remedies thereunder, including without limitation all rights to give and receive notices, reports, requests and consents, to make demands, to exercise discretions, options and elections thereunder and to take all other action thereunder, pursuant thereto or in connection therewith.

Direct Agreement means the direct agreement, relating to the TSA, entered into between the Welsh Ministers and the Maintainer

Enforcement Event means the exercise by the Assignee of its rights to terminate the Operating Lease Agreement pursuant to clause 13 (*Events of Default*) of the Operating Lease Agreement

Guarantor means Stadler Rail AG (Registered Number 101.581.089), a company incorporated in Switzerland whose registered office is at Ernst-Stadler-Strasse 1, 9565 Bussnang Switzerland

Losses means any losses (other than loss of profit), costs, charges, expenses, interest, fees, payments, demands, liabilities, claims, actions, proceedings, penalties, fines, damages, adverse judgements, orders or other sanctions but excludes Taxes and loss of Relief

Maintainer means Stadler Rail Service UK Limited, a company incorporated in England whose company registered number is 09894948 and registered office is at Stadler Depot Marsh Street, Kirkdale, Liverpool L20 2BN, United Kingdom

Manufacturer means Stadler Bussnang AG (Registered Number CHE-101.468.464), a company incorporated in Switzerland, whose registered address is at Ernst-Stadler-Strasse 4, 9565 Bussnang, Switzerland

Notice of Default means the notice issued by the Maintainer to the Assignee specifying that an Operator Event of Default (as defined in the TSA) has occurred

Novation means the novation agreement dated on or about the date of this Deed between Manufacturer, Maintainer, Guarantor, OpCo, Assignor and Assignee

ODP means Keolis Amey Wales Cymru Limited (registered number 11391059)

OpCo means Keolis Amey Operations / Gweithrediadau Keolis Amey Limited (registered number 11389531)

Operating Lease Agreement means the rolling stock operating lease agreement between Assignee and Assignor dated on or about the date hereof

Railways Act means the Railways Act 1993 (as amended and/or superseded from time to time, including by the Transport Act 2000 and the Railways Act 2005, and as subsequently amended

and/or re-enacted from time to time) and any regulations or orders made under the Railways Act 1993, the Transport Act 2000 or the Railways Act 2005

Receiver means any receiver, receiver or manager or administrative receiver appointed by the Assignee hereunder or under any statutory power

Secured Liabilities means all present and future moneys, liabilities and obligations (whether actual or contingent) which are now or may at any time hereafter be due, owing or payable, or expressed to be due, owing or payable, to the Assignee by the Assignor under or in connection with the Operating Lease Agreement, the Agreements and/or any deed or document supplemental thereto, together with all legal and other costs, charges and expenses which the Assignee may properly incur in enforcing or obtaining, or attempting to enforce or obtain, payment of any such moneys and liabilities

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

Security Period means the period commencing on the date of this Deed and ending on the date on which:

- (a) all of the Secured Liabilities have been unconditionally and irrevocably paid, performed and discharged in full; and
- (b) the Assignor has no further commitment, obligation or liability under or pursuant to the Operating Lease Agreement.

TSA means the train services agreement in relation to the Units dated 9 January 2019 between OpCo (as operator) and the Maintainer, as novated to Assignor (as operator) pursuant to the Novation

TSA Guarantee means the guarantee dated 9 January 2019 from the Guarantor in favour of OpCo, as novated to Assignor (as operator) pursuant to the Novation, and assigned by way of security to Assignee pursuant to this Deed

Welsh Ministers means the Welsh Ministers whose principal place of business is at Crown Buildings, Cathays Park, Cardiff, CF10 3NO, or any successor to all or part of their rights and functions

1.2 Incorporation of terms

Unless the context otherwise requires or unless defined in this Deed, all words and expressions defined or whose interpretation is provided for in the Operating Lease Agreement shall have the same meanings in this Deed.

1.3 Contract document

This Deed is a Contract Document for the purposes of the Operating Lease Agreement and constitutes the Assignment of TSA and TSA Guarantee contemplated therein.

1.4 Interpretation

In this Deed, unless the context otherwise requires:

- (a) words importing the singular shall include the plural and vice versa and reference to any gender includes the other gender;
- (b) the term "assets" includes all property, rights and revenues whatsoever, and wheresoever, present and future;
- (c) references to a "guarantee" include an indemnity or any other form of surety;
- (d) an Operator Event of Default is "**continuing**" if it has not been remedied or waived;
- (e) all references to documents include all variations and replacements of such documents and supplements to such documents;
- (f) all references to a party include references to its personal representatives, permitted assigns and transferees and its successors in title and (where applicable) to any replacement or additional trustee or agent;
- (g) references to persons include bodies corporate, unincorporated associations and partnerships; and
- (h) words and phrases defined in the Companies Act 2006 have the same meanings in this Deed but the word "company" includes any body corporate.

1.5 Statutes and headings

In this Deed:

- (a) any reference to any statute or statutory instrument includes any enactment replacing or amending it or any instrument, order or regulation made under it and also includes any past statutory provisions (as from time to time modified or re-enacted) which such provision has directly or indirectly replaced;
- (b) headings are for reference purposes only and shall not affect the construction of anything in this Deed;

- (c) references to "**Clauses**" are to the clauses or sub-clauses of this Deed and references to the "**Schedule**" are to the schedule to this Deed; and
- (d) the Schedules shall be treated as an integral part of this Deed and references to this Deed shall include the Schedules.

2 Covenant to pay

2.1 Secured Liabilities

The Assignor covenants with the Assignee that it will pay and discharge the Secured Liabilities when due.

3 Assignment

The Assignor hereby assigns and agrees to assign absolutely by way of security the Assigned Property, with full title guarantee in accordance with Part 1 of the Law of Property (Miscellaneous Provisions) Act 1994, to and in favour of the Assignee, in order to secure the payment, performance and discharge in full of all the Secured Liabilities.

4 Charge

The Assignor, as security for the payment, performance and discharge of the Secured Liabilities, charges by way of first fixed charge, to the extent not assigned or effectively assigned by clause 3, all its present and future rights and title and interest in and to the Assigned Property absolutely to the Assignee.

5 Trust

If or to the extent that for any reason the assignment or charging of the Assigned Property is prohibited, the Assignor shall hold it on trust for the Assignee.

6 Nature of security created

6.1 The Security created under this Deed is created:

- (a) as a continuing security to secure the payment and discharge of the Secured Liabilities; and
- (b) with full title guarantee.

7 Present assignment and exercise of rights

- 7.1 The assignment on the terms set out in clause 3 (*Assignment*) constitutes and effects an immediate and full assignment of the Assigned Property and shall be effective, and the Security by way of assignment intended to be vested by this Deed shall be constituted, immediately upon its execution.
- 7.2 Notwithstanding but without prejudice to clause 3 (*Assignment*) and clause 134 (*Enforcement*) the Assignee agrees that the Assignor shall continue to be entitled to receive payments and exercise all of the rights, powers, discretions, claims and remedies which would (but for this Deed) be vested in the Assignor under and in respect of the Assigned Property unless and except that the Assignee requires otherwise following the occurrence of an Enforcement Event or the exercise its rights to step-in in accordance with clause 14.4.

8 Perfection of security

- 8.1 The Assignor shall on the date hereof:
- (a) execute and deliver to the Maintainer a notice in the form set out in Part 1 of Schedule 1;
 - (b) procure that the Maintainer executes and delivers to the addressees thereof the acknowledgement in the form set out in Part 2 of Schedule 1;
 - (c) on the date hereof, execute and deliver to the Guarantor a notice in the form set out in Part 1 of Schedule 2; and
 - (d) procure that the Guarantor executes and delivers to the addressees thereof the acknowledgement in the form set out in Part 2 of Schedule 2.

9 Restrictions on dealing

The Assignor hereby undertakes that, throughout the Security Period, it shall not, without the prior written consent of the Assignee (save to the extent permitted under the provisions of the Operating Lease Agreement and the Agreements) sell, assign, transfer or otherwise dispose of any of the Assigned Property or create or permit to subsist any Security upon or with respect to any of the Assigned Property except for this Deed.

10 Further assurances

The Assignor shall, at its own cost and expense and at the request of the Assignee, promptly sign, seal, execute, deliver, acknowledge, file, register and perfect all such assurances, documents, instruments, agreements, certificates and consents and do any and all such acts and things as may be reasonably necessary or desirable or as the Assignee may reasonably request

from time to time in order to perfect the Security Interest intended to be created by this Deed or to establish, maintain, protect or preserve such Security or the rights of the Assignee under this Deed or to enable the Assignee to obtain the full benefits of such Security and this Deed and to exercise and enforce its rights and remedies under this Deed in respect of the Assigned Property.

11 Rights, obligations and liabilities

Notwithstanding anything to the contrary herein contained, the Assignor agrees with the Assignee and for the benefit of the Assignee that save where the Assignee has assumed such obligation, duty or liability pursuant to clause 13:

- 11.1 the Assignor shall at all times remain liable to perform all the duties and obligations expressed to be assumed by it in relation to the Assigned Property to the same extent as if this Deed had not been executed;
- 11.2 the exercise by the Assignee of any of the rights assigned hereunder shall not release the Assignor from any of its duties or obligations in relation to the Assigned Property;
- 11.3 the Assignee shall not have any obligation or liability in relation to the Assigned Property by reason of, or arising out of, this Deed;
- 11.4 the Assignee shall not be obliged to perform any of the obligations or duties of the Assignor expressed to be assumed by the Assignor in relation to the Assigned Property; and
- 11.5 the Assignee shall not *be* required to make any payment or to make any inquiry as to the sufficiency of any payment received by the Assignee or the Assignor, or to present or file any claim or to take any other action to collect or enforce any claim for any payment assigned hereunder.

12 Direct agreement

As a separate and independent stipulation overriding all other express or implied terms of this Deed, nothing in this Deed shall be construed as giving the Assignee any right to take any step which (i) it may not lawfully take by reason of any restriction or condition contained in the Railways Act; or (ii) would conflict with, or prevent, or hinder exercise of, the rights of the Welsh Ministers pursuant to the Direct Agreement.

13 Representations and warranties

- 13.1 The Assignor warrants and represents to the Assignee that:
 - (a) the Assignor has taken all corporate action necessary to authorise the execution, delivery and performance of this Deed;

- (b) each of the representations and warranties given by the Assignor in Schedule 1 (*Representations and Warranties*) of the Operating Lease Agreement remains true and accurate on the date of this Deed as if given by reference to the facts and circumstances now existing;
- (c) the Operating Lease Agreement and each of the other Agreements constitutes valid and binding obligations of the parties thereto, is in full force and effect and has not been varied or modified in any way or cancelled, and no party thereto is in default thereunder; and
- (d) the Assignor has not assigned, charged, pledged or otherwise encumbered or disposed of any of its rights and benefits under any of the Agreements, and the Assigned Property is free from any Security other than this Deed.

14 Enforcement

14.1 Powers of Assignee

Without prejudice to any of its other rights whether conferred under the Operating Lease Agreement, this Deed or the Agreements or by law generally, at any time upon or following the occurrence of an Enforcement Event, the Assignee shall be entitled:

- (a) to apply to any court of competent authority for an order for foreclosure absolute so as to vest all the Assignor's right, title and interest in all or any of the Assigned Property in the Assignee;
- (b) to sell, call in, collect and convert into money all or any of the Assigned Property by public or private contract at any place in the world with or without advertisement or notice to the Assignor or any other person, with all such powers in that respect as are conferred by law; and by way of extension thereof such sale, calling in, collection and conversion may be made for such consideration as the Assignee shall in its sole and absolute discretion deem reasonable (whether the same shall consist of cash or shares or Deeds 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 future payments shall be secured or not) and in all other respects in such manner as the Assignee shall in its sole and absolute discretion think fit, and without being liable to account for any loss of or deficiency in such consideration; and Section 103 of the Act shall not apply to this Deed or to the power of sale, calling in, collection or conversion hereinbefore contained; and for the purposes of this sub-clause the Assignee may (in its sole and absolute discretion) by notice appoint the Assignor or any other person its nonexclusive agent to sell all or any of the Assigned Property on terms satisfactory to the Assignee;

- (c) to settle, arrange, compromise or submit to arbitration any accounts, claims, questions or disputes whatsoever which may arise in connection with the Assigned Property or in any way relating to this Deed and execute releases or other discharges in relation thereto;
- (d) to bring, take, defend, compromise, submit to arbitration or discontinue any actions, suits or proceedings whatsoever, civil or criminal, in relation to the Assigned Property;
- (e) to execute and do all such acts, deeds and things as the Assignee may consider necessary or proper for or in relation to any of the purposes aforesaid; and
- (f) to appoint a Receiver of all or any part of the Assigned Property upon such terms as to remuneration and otherwise as the Assignee shall deem fit; and the Assignee may from time to time remove any Receiver so appointed and appoint another in his stead; and to fix (at or after the time of his appointment) the remuneration of any such Receiver. A Receiver so appointed shall be the agent of the Assignor, and the Assignor shall be liable for such Receiver's actions and defaults to the exclusion of liability on the part of the Assignee. Nothing herein contained shall render the Assignee liable to any such Receiver for his remuneration, costs, charges or expenses or otherwise.

14.2 Law of Property Act

Sections 109(6) and 109(8) of *the* Act shall not apply in relation to any Receiver appointed under clause 14.1.

14.3 Other Powers

Notwithstanding any other provision of this Deed, and without limiting, and as an addition to, the powers conferred upon the Assignee (and any Receiver appointed pursuant to clause 14.1(f)) by the laws of England or of any other jurisdiction, the Assignee or the Receiver (as the case may be) may at any time after the occurrence of an Enforcement Event exercise against or in respect of the Assignor and/or the Assigned Property any of the rights, powers, privileges or discretions conferred from time to time by the Applicable Laws.

14.4 Assignee's right to remedy

- (a) Notwithstanding the other provisions of this clause 14 at any time the Assignor fails to do any act which it is obliged to do hereunder or to make any payment which it is obliged to make hereunder (other than a payment to the Assignee), the Assignee may (but shall not be bound to) do such act or procure its doing or make such payment itself.
- (b) The Assignor shall pay to the Assignee on demand the amount of payment made or Losses properly incurred by the Assignee in doing any act pursuant to this clause 14, together with

interest thereon calculated from the date of notice of payment by the Assignee to the Assignor until the date of payment by the Assignor at the Default Rate.

15 Powers of Receiver

15.1 Powers of Receiver

Any Receiver appointed under clause 14.1 shall have all the powers conferred on a receiver by law (save that Section 103 of the Act shall not apply) and by way of addition to but without limiting those powers:

- (a) the Receiver shall have all the powers given to the Assignee hereunder of taking possession of, calling in, collecting, converting into money and selling and dealing with the Assigned Property or any part thereof and generally shall be entitled to the same protection and to exercise the same powers and discretions as are given to the Assignee hereunder and shall also have such other of the powers and discretions given to the Assignee hereunder as the Assignee may from time to time confer on him;
- (b) the remuneration of the Receiver may be fixed by the Assignee (and may be or include a commission calculated by reference to the gross amount of all money received or otherwise), but shall be payable by the Assignor, and the amount of such remuneration may be debited by the Assignee from any account of the Assignor but shall, in any event, be secured on the Assigned Property under this Deed;
- (c) the Receiver shall have power to make any payment and incur any expenditure which the Assignee is by this Deed expressly or impliedly authorised to make or incur; any expenses incurred by the Receiver in the exercise of any of his powers hereunder may be paid or retained by him out of any moneys coming into his hands as receiver or may be paid by the Assignee, in which case they shall be treated as expenses properly incurred by the Assignee;
- (d) without prejudice to the provisions of clause 14.1(f), the Receiver shall in the exercise of his powers, authorities and discretions conform with the reasonable directions from time to time made and given by the Assignee;
- (e) the Assignee may at any time require security to be given for the due performance of the Receiver's duties as receiver, at the cost of the Assignor; and
- (f) the Assignee may from time to time determine what funds the Receiver shall be at liberty to keep in hand with a view to the performance of his duties as receiver.

15.2 Other Powers of Receiver

The foregoing powers of a Receiver shall be in addition to any statutory or other powers of the Assignee under the Act and of a receiver under the Insolvency Act 1986, and the Receiver shall in any event have and be entitled to exercise all the rights, powers and remedies conferred upon the Assignee by this Deed and by law with respect to the Assigned Property.

16 Power of Attorney

16.1 Power of Attorney

(a) The Assignor hereby irrevocably (for value and by way of security for the Secured Liabilities) appoints the Assignee and every Receiver appointed hereunder, and any person nominated for such purpose by the Assignee in writing under hand by an officer of the Assignee, severally as attorney and agent of the Assignor for the Assignor and in its name and on its behalf and as its act and deed:

- (i) to execute, seal and deliver (using the company seal of the Assignor where appropriate) and otherwise perfect and do any charge, mortgage, Deed, deed, assurance, agreement, conveyance, instrument, act or thing which the Assignor has failed to execute and do under the covenants, undertakings and provisions contained herein; or
- (ii) (to the extent the Assignee is entitled under this Deed to exercise rights conferred on the Assignee by the terms hereof) to do all things which the Assignor is entitled to do in any of the Agreements or which may be required or deemed proper in the exercise of any rights or powers hereunder or otherwise for any of the purposes of the security created hereby,

and the Assignor hereby covenants with the Assignee to ratify and confirm all acts or things made done or executed or purportedly made done or executed by such attorney and agent as aforesaid.

(b) The power of attorney hereby granted is as regards the Assignee and its delegates (and as the Assignor hereby acknowledges) granted irrevocably and for value as part of the security constituted by this Deed to secure proprietary interests in and the performance of obligations owed to the respective donees within the meaning of the Powers of Attorney Act 1971.

17 Application of Moneys

17.1 Application of moneys

All sums received by virtue of this Deed by the Assignee or any Receiver shall, subject to the payment of any claim having priority to this Deed, be paid or applied in the following order of priority:-

- (a) firstly, in or towards satisfaction pro rata of, or the provision pro rata for, all costs, charges and expenses properly incurred and payments made by the Assignee, or by any Receiver (including legal expenses), together with interest at the Default Rate (both before and after judgment) from the date those amounts became due until the date they are irrevocably paid in full or other person entitled to it;
- (b) secondly, in or towards the payment pro rata of, or the provision pro rata for, any unpaid fees, commission or remuneration of the Assignee or any Receiver;
- (c) thirdly, in or towards payment of the Secured Liabilities in accordance with the Operating Lease Agreement;
- (d) fourthly, in the payment of the surplus (if any), to the Assignor or any other person entitled to it, and section 109(8) of the Act shall not apply.

18 Protection of Third Parties

18.1 Statutory powers

In favour of any purchaser, the statutory powers of sale and of appointing a Receiver which are conferred upon the Assignee, as varied and extended by this Deed, and all other powers of the Assignee, shall be deemed to arise (and the Secured Liabilities shall be deemed due and payable for that purpose) immediately after the execution of this Deed.

18.2 Purchasers

No purchaser from or other person dealing with the Assignee, any person to whom it has delegated any of its powers, or the Receiver shall be concerned to enquire whether any of the powers which they have exercised has arisen or become exercisable, or whether the Secured Liabilities remain outstanding or whether any event has happened to authorise the Receiver to act or as to the propriety or validity of the exercise of any such power, and the title and position of a purchaser or such person shall not be impeachable by reference to any of those matters.

18.3 Receipts

The receipt of the Assignee or the Receiver shall be an absolute and conclusive discharge to a purchaser or any other person dealing with the Assignee.

19 Protection of the Assignee and any Receiver

19.1 No liability

The Assignee and any Receiver shall not be liable in respect of any loss or damage which arises out of the exercise, or attempted or purported exercise of, or the failure to exercise any of their respective powers under this Deed.

19.2 Not mortgagee in possession

Without prejudice to any other provision of this Deed, entry into possession of any Assigned Property shall not render the Assignee or the Receiver liable to account as mortgagee in possession or to be liable for any loss on realisation or for any default or omission for which a mortgagee in possession might be liable and if and whenever the Assignee or the Receiver enters into possession of any Assigned Property it shall be entitled at any time it or he thinks fit to go out of such possession.

19.3 Indemnity

The Assignor shall indemnify and keep indemnified the Assignee, every Receiver, and any person who acts as the servant, agent, delegate or attorney of any of them, against all claims, costs, expenses and liabilities which they may suffer or incur arising in any way out of the taking or holding of this Deed, the exercise or purported exercise of any right, power, authority or discretion given by it, or any other act or omission in relation to this Deed or the Assigned Property.

19.4 Currency protection

If any amount due to be paid to the Assignee is, for any reason, paid in a currency (the **currency of payment**) other than the currency in which it was expressed to be payable (the **contractual currency**), the Assignee may wherever it thinks fit apply the amount of the currency of payment received by it in the purchase, in accordance with its normal practice, of the contractual currency, and if this results in any shortfall below the amount due in the contractual currency, after deducting all taxes, costs and commissions payable in connection with that purchase, the Assignor shall indemnify the Assignee against the amount of the shortfall.

19.5 Continuing protection

The provisions of this clause 18 shall continue in full force and effect notwithstanding any release or discharge of this Deed, or the discharge of any Receiver from office.

20 Provisions Relating to The Assignee

20.1 Powers and discretions

The rights, powers and discretions given to the Assignee in this Deed:

- (a) may be exercised as often as, and in such manner as, the Assignee thinks fit;

- (b) are cumulative, and are not exclusive of any of its rights under the general law; and
- (c) may only be waived in writing and specifically, and any delay in exercising, or non-exercise of, any right, is not a waiver of it.

20.2 Delegation

The Assignee may at any time and from time to time delegate by power of attorney or in any other manner to any person or persons all or any of the rights, powers and discretions which are for the time being exercisable by it under this Deed.

21 Preservation of Security

21.1 Continuing Security

This Deed shall be a continuing security to the Assignee and shall remain in force until expressly discharged in writing by the Assignee notwithstanding any intermediate settlement of account or other matter or thing whatsoever and shall be without prejudice and in addition to any other right, remedy or Security of any kind which the Assignee may have now or at any time in the future for or in respect of any of the Secured Liabilities.

21.2 No Merger

This Deed is in addition to, without prejudice to, and shall not merge with, any other right, remedy, guarantee or Security which the Assignee may at any time hold for any other Secured Liabilities.

21.3 Waiver of defences

Neither the Security created by this Deed nor the obligations of the Assignor under this Deed will be affected by an act omission, matter or thing which, but for this Clause, would reduce, release or prejudice that Security or any of those obligations (whether or not known to it or the Assignee) including:

- (a) any time, waiver or consent granted to, or composition with, the Assignor or other person;
- (b) the release of the Assignor or any other person under the terms of any composition or arrangement with any person;
- (c) the taking, variation, compromise, exchange, renewal, enforcement or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or Security over assets of, the Assignor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;

- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Assignor or any other person;
- (e) any amendment (however fundamental), replacement, variation, novation, Deed or the avoidance or termination of the Operating Lease Agreement or any other document or Security;
- (f) any unenforceability, illegality or invalidity of any obligation of, or any Security created by, any person under the Operating Lease Agreement or any other document; or
- (g) any insolvency, liquidation, administration or similar procedure.

21.4 Order of Recourse

This Deed may be enforced against the Assignor without the Assignee first having recourse to any other right, remedy, guarantee or Security held by or available to any of them.

21.5 Suspense Accounts

The Assignee may, without prejudice to any other rights it may have, at any time and from time to time place (and keep for such time as it may think prudent) any moneys received, recovered or realised under or by virtue of this Deed on a separate or suspense account to the credit either of the Assignor or, at the sole discretion of the Assignee if an Enforcement Event has occurred and is continuing, of the Assignee as the Assignee shall think fit without any intermediate obligation on the Assignee's part to apply the same or any part of it in or towards the discharge of the Secured Liabilities.

21.6 New Accounts

If the Assignee receives notice of any subsequent charge or other security interest affecting any of the Assigned Property, the Assignee shall be entitled to close the Assignor's then current account or accounts and to open a new account or accounts for the Assignor. If the Assignee does not open a new account or accounts immediately on receipt of such notice it shall nevertheless be treated as if it had done so at the time when it received such notice, and as from that time all payments made for the credit of the Assignor shall be credited or be treated as having been credited to such new account or accounts and shall not operate to reduce the amount due from the Assignor to the Assignee at the time when it received such notice.

21.7 Tacking

For the purposes of section 94(1) of the Act the Assignee confirms that it shall make further advances to the Assignor on the terms and subject to the conditions of the Lessee.

21.8 Reinstatement

If any payment by the Assignor or discharge given by the Assignee (whether in respect of the obligations of the Assignor or any Security for those obligations or otherwise) is avoided or reduced as a result of insolvency, liquidation, administration or any similar event:-

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

22 Assignment and transfer

The provisions of clause 14 (*Assignment and Transfer*) of the Operating Lease Agreement shall apply to this Deed, *mutatis mutandis*.

23 Costs and expenses

23.1 Transaction expenses

The Assignor and the Assignee shall bear their own costs and expenses (including legal fees) incurred in connection with the negotiation, preparation and execution of this Deed in accordance with clause 15.7 (*Expenses*) of the Operating Lease Agreement.

23.2 Amendment costs

If the Assignor requests an amendment, waiver, consent or release of or in relation to this Deed, the Assignor shall, within three (3) Business Days of demand, reimburse the Assignee for the amount of all costs and expenses (including legal fees) incurred by it in responding to, evaluating, negotiating or complying with that request or requirement.

23.3 Enforcement costs

The Assignor shall pay to the Assignee the amount of all costs and expenses (including legal fees) incurred by the Assignee in connection with the enforcement of, or the preservation of any rights under, this Deed or the investigation of any possible Operator Event of Default.

24 Notices

Any communication to be made under or in connection with this Deed shall be made in accordance with clause 15.9 (*Notices*) of the Operating Lease Agreement.

25 Calculations and certificates

25.1 Accounts

In any litigation or arbitration proceedings arising out of or in connection with this Deed, the entries made in the accounts maintained by the Assignee are *prima facie* evidence of the matters to which they relate.

25.2 Certificates and determinations

Any certification or determination by the Assignee of a rate or amount under this Deed is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

25.3 Partial Invalidity

If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability 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.

26 Contracts (Rights of Third Parties) Act 1999

26.1 The Assignee, its agents and their respective officers, employees and agents may enforce any term of this Deed which purports to confer a benefit on that person, but no other person who is not a party to this Deed has any right under the Contracts (Rights of Third Parties) Act 1999 (the **Third Parties Act**) to enforce or to enjoy the benefit of any term of this Deed.

26.2 Notwithstanding any term of the Operating Lease Agreement, the Assignee may rescind, vary, waive, release, assign, novate or otherwise dispose of all or any of their respective rights or obligations under this Deed without the consent of any person who is not a party to this Deed.

27 Amendments and waivers

Any term of this Deed may be amended or waived only with the written consent of the Assignor and the Assignee.

28 Counterparts

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

29 Governing Law and Enforcement

The provisions of clause 15.16 (*Law*) and clause 15.17 (*Disputes*) of the Operating Lease Agreement shall apply to this Deed, *mutatis mutandis*,

Executed as a deed and delivered on the date appearing at the beginning of this Deed.

Schedule 1

Part 1

Notice of Assignment of Train Services Agreement

From: Transport for Wales Rail Ltd (the **Assignor**)

To: Stadler Rail Service UK Limited

Copy: Valley Rail Partnership No.1 LLP

Date: []

Dear Sirs

We refer to the train services agreement dated 9 January 2019 between ourselves and yourselves (the **TSA**). We hereby give you notice that pursuant to an Deed dated [●] between ourselves (as assignor) and Valley Rail Partnership No.1 LLP (the **Assignee**) (as assignee) (the **Deed**), we have assigned by way of security to the Assignee all of our rights, title, interest and benefit, present and future, under, in and to the TSA.

Words and expressions defined in the Deed shall bear the same meanings when used in this Notice.

A copy of the Deed is enclosed with this Notice.

Please note the following:

- 1 The Assignor shall at all times remain solely liable to you for the performance of all of the obligations assumed by it under or in respect of the TSA, subject always to the terms of the attached Acknowledgement (as defined in paragraph 6.3 below).
- 2 The Assignor irrevocably and unconditionally instructs you to pay the full amount of any sum which you are (or would, but for the Deed, be) at any time obliged to pay to it under or in respect of the TSA including, without limitation, any sums in the nature of compensation or damages (whether liquidated or otherwise) payable under or in respect of the TSA:
 - 2.1 unless and until the Assignee gives you a notice that an Enforcement Event has occurred (an **Enforcement Notice**), to such bank account as the Assignor may from time to time specify to you; and

- 2.2 at all times after the Assignee has given you an Enforcement Notice, to such bank account as the Assignee may from time to time specify to you.
- 3 Upon and after the giving of any such Enforcement Notice, the Assignee shall be entitled to exercise and give directions regarding the exercise of all or any of those rights, powers, discretions, claims and remedies which would (but for the Deed) be vested in the Assignor under and in respect of the TSA (to the exclusion of the Assignor and to the exclusion of any directions given at any time by or on behalf of the Assignor) as specified in the Enforcement Notice.
- 4 The Assignee has agreed that, notwithstanding the Deed, the Assignor remains entitled to exercise all of the rights, powers, discretions, claims and remedies which would (but for the Deed) be vested in the Assignor under and in respect of the TSA unless, and except to the extent that, either (i) there is a step-in under any direct agreement (Direct Agreement) between, *inter alia*, the Welsh Ministers and you relating to the TSA, or (ii) the Assignee gives you an Enforcement Notice.
- 5 The Assignor has irrevocably and unconditionally appointed the Assignee to be its attorney following the occurrence of an Enforcement Event, to do (among other things) all things which the Assignor itself should do in relation to the TSA.
- 6 The Assignor confirms to you that:
- 6.1 in the event of any conflict between communications received from the Assignor and from the Assignee as to whether an Enforcement Event has occurred, you shall treat the communication from the Assignee as prevailing over the communication from the Assignor; and
- 6.2 none of the instructions, authorisations and confirmations in this Notice can be revoked or varied in any way except with the Assignee's specific prior written consent; and
- 6.3 the Assignor consents to the terms of *the* acknowledgement between yourselves and the Assignee (the **Acknowledgement**) and to the exercise by the Assignee of its rights and powers thereunder at any time after an Enforcement Notice has been served and the Assignor agrees to be bound by, and will act in accordance with, the terms of the Acknowledgment, to the extent (if any) that such terms are applicable to the Assignor.
- 7 Please acknowledge receipt of this Notice, and confirm your agreement to it, by executing and returning to each of the Assignee and the Assignor an original copy of the Acknowledgement attached to this Notice.
- 8 This notice and the instructions herein are irrevocable by the Assignor.
- 9 This Notice is governed by English law.

Yours faithfully,

For and on behalf of

TRANSPORT FOR WALES RAIL LTD

Name:

Title:

Part 2

Acknowledgement of Assignment of Train Services Agreement

From: Stadler Rail Service UK Limited (the **Maintainer**)

To: Valley Rail Partnership No.1 LLP (the **Assignee**)

Address: Valley Rail Partnership No.1 LLP

c/o Equitix Management Services Limited, 5th Floor, 120

Aldersgate Street, London, EC1A 4JQ

Attention: Jonjo Challands

Email: jchallands@equitix.co.uk

With a copy to:

Address: Valley Rail Partnership No.1 LLP

c/o SMBC Leasing (UK) Limited, 99 Victoria Street, London

EC4V 4EG

Attention: Lease Admin

Email: leaseadmin@gb.smbcgroup.com

Copy: Transport for Wales Rail Ltd (the **Assignor**)

Attention: [●]

Email: [●]

Date:

Dear Sirs

We, the Maintainer, acknowledge receipt of the notice dated [●] (a copy of which is attached to this Acknowledgement) (the **Notice**) and the copy of the Deed (the **Deed**) enclosed with the Notice. Words

and expressions defined in the Deed (including such words and expressions defined by cross-reference) and the Notice shall have the same meaning when used in this Acknowledgement.

In consideration of the payment of £1 (the receipt and sufficiency of which is hereby acknowledged), we agree as follows:

1 **Consent**

We fully and unconditionally consent to the terms of the assignment by the Assignor of the TSA and have noted, and will act in accordance with, the terms of the Notice. We have not previously received notice of any other assignment of the TSA and we are not aware of any interest of any third party in any of the Assignor's rights, benefits, interests or claims against us under or in respect of the TSA.

2 **Notice of breach**

- 2.1 We will promptly give to the Assignee a written notice of the occurrence of an Operator Event of Default (as defined in the TSA) (the **Notice of Default**).
- 2.2 For the period from the date of occurrence of the Operator Event of Default to the date falling 60 days thereafter (the **Standstill Period**), we agree that we shall not exercise any of our termination rights under the TSA with respect to that Operator Event of Default.
- 2.3 During the Standstill Period, if the Assignee requests that we carry out any Services (as defined in the TSA) during the Standstill Period, we agree to do so (to the extent we are reasonably able) on the basis that the Assignee shall reimburse us for any such Services which are carried out during the Standstill Period.

3 **Security account**

We irrevocably and unconditionally agree to pay the full amount of any sum which we are (or would, but for the Deed, be) at any time obliged to pay to the Assignor in respect of the Units under or in respect of the TSA including, without limitation, any sums in the nature of compensation or damages (whether liquidated or otherwise) payable under or in respect of the TSA:

- 3.1 unless and until the Assignee gives us an Enforcement Notice, to such bank account as the Assignor may from time to time specify; and
- 3.2 at all times on and after the Assignee has given us an Enforcement Notice, to such bank account as the Assignee may from time to time specify.

4 No liability

We agree that the Assignor shall at all times be liable for the performance of the Assignor's obligations under the TSA and that no Obligor is, or will be, under any liability or obligation of any kind whatsoever under the TSA nor under any liability whatever in the event of any failure by the Assignor to perform its obligations thereunder.

5 No Deed

Save for in circumstances where we are permitted to assign or transfer without consent under the TSA, we will not assign or transfer or agree or attempt to assign or transfer or create a trust over, any of our obligations, rights, title, benefits or interest in the TSA without the prior written consent of the Assignee.

6 Direct Agreement

As a separate and independent stipulation overriding all other express or implied terms of this Acknowledgement, nothing in this Acknowledgement shall be construed as giving the Assignee or any Obligor any right to take any step which (i) it may not lawfully take by reason of any restriction of or condition contained in the Railways Act or (ii) would conflict with or prevent or hinder exercise of, the rights of the Welsh Ministers pursuant to the Direct Agreement or require us to breach or otherwise derogate from our obligations pursuant to the Direct Agreement.

7 No increased liability

Notwithstanding any other provision of this Acknowledgement, nothing in this Acknowledgement shall have the effect of increasing any liability or obligation of us under or in connection with the TSA, and accordingly no step-in, substitution or transfer pursuant to this Acknowledgement shall be effective if it has or is likely to have such an effect.

8 Governing Law

This Acknowledgement is governed by English law.

Yours faithfully,

Signed for and on behalf of

STADLER RAIL SERVICES UK LIMITED

Name:

Title:

Part 3

Notice of Assignment of Train Services Agreement Guarantee

From: Transport for Wales Rail Ltd (the **Assignor**)

To: Stadler Rail AG (Registered Number 101.581.089) (the **Guarantor**)
Ernst-Stadler-Strasse 1
9565 Bussnang
Switzerland

Copy: Valley Rail Partnership No.1 LLP

Date: []

Dear Sirs

- 1 We refer to the guarantee issued by you dated 9 January 2019 relating to the train services agreement dated 9 January 2019 entered into between the Guarantor and the Assignor (the **TSA Guarantee**).
- 2 The Assignor hereby gives you notice that by an Deed dated] between the Assignor and Valley Rail Partnership No.1 LLP (the **Assignee**), the Assignor has assigned to the Assignee by way of security all its right, title and interest in and to the TSA Guarantee.
- 3 Henceforth all rights that may be exercised and all moneys that may be payable under the TSA Guarantee shall be exercised by and paid to the Assignor until the Assignee gives you a notice that an Enforcement Event has occurred, whereupon you are authorised and required to comply with the directions of the Assignee.
- 4 In the event of any conflict between communication received from the Assignor and from the Assignee as to whether an Enforcement Event has occurred, you shall treat the communication from the Assignee as prevailing over the communication from the Assignor.
- 5 Please acknowledge receipt of this Notice, and confirm your agreement to it, by executing and returning to each of the Assignee and the Assignor an original copy of the Acknowledgement attached to this Notice.
- 6 This notice and the instructions herein contained are irrevocable by the Assignor.
- 7 This notice is governed by English law.

Yours faithfully

For and on behalf of

TRANSPORT FOR WALES RAIL LTD

Name:

Title:

Part 4

Acknowledgement of Deed of Assignment of Train Services Agreement Guarantee

From: Stadler Rail AG (Registered Number 101.581.089)
Ernst-Stadler-Strasse 1
9565 Bussnang
Switzerland

To: Valley Rail Partnership No.1 LLP (the "Assignee")

Copy: Transport for Wales Rail Ltd

Date: []

Dear Sirs

- 1 We acknowledge receipt of a notice of Deed from Transport for Wales Rail Ltd (the **Assignor**) dated [●] (the **Notice**) concerning the TSA Guarantee referred to therein.
- 2 We hereby agree to comply with the terms of the notice of Deed, including paying any moneys that may be payable under the TSA Guarantee to the Assignor and on delivery of a notice to us that an Enforcement Event (as defined in the security Deed dated [●]) entered into by the Assignor in favour of the Assignee) has occurred, to the Assignee.
- 3 This Acknowledgement is governed by English law.

Yours faithfully

For and on behalf of

STADLER RAIL AG

Name:

Title:

EXECUTION PAGE


ASSIGNOR

EXECUTED as a DEED by

TRANSPORT FOR WALES RAIL LTD

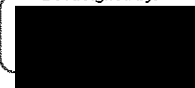
acting by two directors:

Director

DocuSigned by:


Print name Alexia Course

Director

DocuSigned by:


Print name James Price

ASSIGNEE

EXECUTED as a DEED by

VALLEY RAIL PARTNERSHIP NO.1 LLP


acting by two authorised signatories:

Authorised Signatory

DocuSigned by:


Print name Julian Cox

Authorised Signatory

DocuSigned by:


Print name Kash Rahuf