



Registration of a Charge

LLP name: **VALLEY RAIL PARTNERSHIP NO.2 LLP**

LLP number: **OC425122**



X7XSU121

Received for Electronic Filing: **24/01/2019**

Details of Charge

Date of creation: **23/01/2019**

Charge code: **OC42 5122 0002**

Persons entitled: **NATIONAL WESTMINSTER BANK PLC**

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: **CLIFFORD CHANCE LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

LLP number: OC425122

Charge code: OC42 5122 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 23rd January 2019 and created by VALLEY RAIL PARTNERSHIP NO.2 LLP was delivered pursuant to Part 25 of the Companies Act 2006 as applied by The Limited Liability Partnerships (Application of Companies Act 2006) (Amendment) Regulations 2013 on 24th January 2019 .

Given at Companies House, Cardiff on 28th January 2019

The above information was communicated by electronic means and authenticated
by the Registrar of Companies under the Limited Liability Partnership
(Application of the Companies Act 2006) Regulations 2009 SI 2009/1804



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

DATED 23 January 2019

VALLEY RAIL PARTNERSHIP NO.2 LLP

AS CHARGOR

IN FAVOUR OF

NATIONAL WESTMINSTER BANK PLC

AS THE SECURITY AGENT

ADVANCE PAYMENT BOND SECURITY
ASSIGNMENT

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THIS AGREEMENT is made by way of deed on 23 January 2019

BY

- (1) **VALLEY RAIL PARTNERSHIP NO.2 LLP** (the "**Chargor**") in favour of:
- (2) **NATIONAL WESTMINSTER BANK PLC**, as trustee for each of the APB Secured Parties on the terms and conditions set out in the Intercreditor Agreement (the "**Security Agent**").

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Capitalised terms used but not defined in this Agreement shall have the meanings given to them in the Master Definitions Schedule, and in this Agreement:

"Advance Payment Bond" means, as the context requires:

- (a) the Advance Payment Bond (as defined in the MSA); or
- (b) the Additional Bond (as defined in the MSA); or
- (c) the Final and Fleet Acceptance Bond (as defined in the MSA).

"APB Secured Obligations" means any and all moneys, liabilities and obligations which are now or at any time hereafter may be expressed to be due, owing or payable by the Chargor to any APB Secured Party, actually or contingently, pursuant to or in relation to each Advance Payment Bond (as amended, supplemented, varied, restated, assigned, transferred, novated or replaced from time to time (including on any refinancing)), together with all interest accruing thereon and including all liabilities in connection with any notes, bills or other instruments accepted by any Finance Party for or at the request of the Chargor and all liabilities in respect of further advances made under each Advance Payment Bond and all losses incurred by any Finance Party in connection therewith, or as a consequence of any breach, non-performance, disclaimer or repudiation by the Chargor (or by a liquidator, receiver, administrative receiver, administrator, examiner, or any similar officer in respect of the Chargor) of any of its obligations under or in relation to each Advance Payment Bond (as amended, supplemented, varied, restated, assigned, transferred, novated or replaced from time to time (including on any refinancing)) or any other documents in relation to the financing or refinancing of the Project, including, without limitation, any obligation or liability to pay damages, and shall for the avoidance of doubt include any and all varied, additional and/or increased payment and/or other liabilities and obligations that result from (i) any amendment, supplement, variation, restatement, assignment, transfer, novation or replacement from time to time with respect to each Advance Payment Bond and/or (ii) any change in the economic terms that apply from time to time with respect to the transactions contemplated by each Advance Payment Bond (in each case also in relation to any refinancing whatsoever with respect to the Project).

"Assigned Property" means the rights and property expressed to be assigned in Clause 3 (*Assignment*).

"Collateral Rights" means all rights, powers and remedies of the Security Agent provided by or pursuant to this Agreement or by law.

"Master Definitions Schedule" means the master definitions schedule appended to schedule 1 (*Master Definitions Schedule*) of the Intercreditor Agreement.

"Notice of Assignment" means a notice of assignment in substantially the form set out in Part A of Schedule 1 (*Form of Notice of Assignment*) or in such other form as is acceptable to the Security Agent.

"Receiver" means a receiver, receiver and manager or, where permitted by law, an administrative receiver and that term will include any appointee made under a joint or several appointment.

"Related Rights" means, in relation to each Advance Payment Bond:

- (a) the proceeds arising from any demand and resulting payment under such Advance Payment Bond;
- (b) all rights, powers, benefits, claims, causes of action, contracts, warranties, remedies, security, guarantees, indemnities or covenants for title in respect of or derived from such Advance Payment Bond; and
- (c) any monies and proceeds paid or payable in respect of such Advance Payment Bond,

in each case, if any.

"Security Period" means the period beginning on the date of this Agreement and ending on the Secured Obligations Discharge Date.

1.2 Interpretation

The rules of interpretation set out in clause 2 (*Interpretation*) of the Master Definitions Schedule shall apply to this Agreement.

1.3 Intercreditor Agreement

This Agreement is subject to the terms and conditions of the Intercreditor Agreement. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of the Intercreditor Agreement, the terms and conditions of the Intercreditor Agreement shall prevail.

1.4 Currency symbols and definitions

The rules on currency symbols and definitions set out in clause 3 (*Currency symbols and definitions*) of the Master Definitions Schedule shall apply to this Agreement.

1.5 Incorporation of provisions from Common Terms Agreement

The provisions of clauses 1.4 (*Third party rights*), 12 (*Tax Gross Up and Indemnities*), 14 (*Other Indemnities*), 35.2 (*Certificates and determinations*) and 38 (*Amendments and Waivers*) of the Common Terms Agreement are incorporated into this Agreement as if expressly set out in full in this Agreement, but so that references in those clauses to the Common Terms Agreement are references to this Agreement.

2. COVENANT TO PAY

The Chargor covenants with the Security Agent that it shall, on demand of the Security Agent pay, discharge and satisfy the APB Secured Obligations in accordance with their respective terms provided that the liability of the Chargor shall be limited to the proceeds of enforcement of the Assigned Property from time to time.

3. ASSIGNMENT

The Chargor assigns and agrees to assign absolutely to the Security Agent with full title guarantee all of its rights, title and interest from time to time in and to each Advance Payment Bond and all Related Rights as continuing Security for the payment and discharge of all the APB Secured Obligations.

4. FIXED CHARGE

The Chargor, by way of first fixed charge, charges in favour of the Security Agent all of its rights, title and interest from time to time in any Advance Payment Bond and all Related Rights.

5. PROVISIONS AS TO SECURITY AND PERFECTION

5.1 Negative pledge and restriction on dealings

Except as permitted under a Finance Document, the Chargor shall not at any time during the Security Period create or permit to subsist any Security over all or any part of the Assigned Property or dispose of or otherwise deal in any way with the Assigned Property or any part of it.

5.2 Implied covenants for title

- (a) The covenants set out in sections 3(1), 3(2) and 6(2) of the Law of Property (Miscellaneous Provisions) Act 1994 will not extend to Clause 3 (*Assignment*).
- (b) It shall be implied in respect of Clause 3 (*Assignment*) that the Chargor is disposing of the Assigned Property free from all charges and encumbrances (whether monetary or not) and from all other rights exercisable by third parties (including liabilities imposed and rights conferred by or under any enactment).

5.3 Notice of Assignment

The Chargor shall, on the date of this Agreement, deliver to the Advance Payment Bond Provider (or procure delivery of) a Notice of Assignment, duly executed by, or behalf of the Chargor in respect of each Advance Payment Bond and the Chargor shall procure

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from the Advance Payment Bond Provider an acknowledgement in the form set out in Schedule 1 (*Form of Notice of Assignment*).

5.4 APB Payments

Subject to the terms of the Finance Documents, where the Advance Payment Bond Provider is under an obligation to make payments to the Chargor in respect of the obligations secured by and amounts covered by any Advance Payment Bond, that obligation shall be deemed to be incorporated into this Agreement as if set out in this Agreement.

6. FURTHER ASSURANCE

6.1 Further assurance

- (a) The Chargor shall promptly, at its own cost, take all such action (including making all filings, registrations and notarisations) and execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Agent may specify (and in such form as the Security Agent may reasonably require) in favour of the Security Agent or its nominee(s):
 - (i) to create, perfect, protect and/or maintain the Security created or intended to be created in respect of the Assigned Property (which may include the execution by the Chargor of a mortgage, charge or assignment over all or any of the assets constituting, or intended to constitute, the Assigned Property) or for the exercise of the rights, powers and remedies of the Security Agent provided by or pursuant to this Agreement or by law;
 - (ii) to confer on the Security Agent security over any assets or undertaking of the Chargor located in any jurisdiction outside England and Wales equivalent or similar to the Security intended to be conferred by or pursuant to this Agreement; and/or
 - (iii) to facilitate the realisation of the Assigned Property.
- (b) The covenant set out in section 2(1)(b) of the Law of Property (Miscellaneous Provisions) Act 1994 shall extend to include the obligations set out in Clause 6.1 below.

6.2 Necessary Action

The Chargor shall take all such action as is available to it (including making all filings and registrations) as may be necessary or as may reasonably be requested by the Security Agent for the purpose of the creation, perfection, protection or maintenance of any security conferred or intended to be conferred on the Security Agent by or pursuant to this Agreement.

7. CHARGOR'S REPRESENTATIONS AND UNDERTAKINGS

7.1 Representations

The Chargor makes the representations and warranties set out in this Clause 7.1 to the Security Agent on the date of this Agreement.

(a) ***Status***

- (i) It is a corporation, duly incorporated and validly existing under the laws of its jurisdiction of incorporation.
- (ii) It and each of its subsidiaries has the power to own its assets and carry on its business as it is being conducted.

(b) ***Binding obligations***

Subject to the Legal Reservations and any Perfection Requirements, the obligations expressed to be assumed by it in this Agreement are, subject to any general principles of law as at the date of this Agreement limiting its obligations which are specifically referred to in any legal opinion delivered pursuant to any provision of the Common Terms Agreement, legal, valid, binding and enforceable obligations.

(c) ***Non-conflict with other obligations***

The entry into and performance by it of, and the transactions contemplated by, this Agreement (including the creation or enforcement of the Security created by this Agreement) do not and will not conflict with:

- (i) any law or regulation applicable to it;
- (ii) its or any of its subsidiaries' constitutional documents; or
- (iii) any agreement or instrument binding upon it any of its assets.

(d) ***Power and authority***

It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Agreement and the transactions contemplated by this Agreement.

(e) ***Validity and admissibility in evidence***

All Authorisations required or desirable:

- (i) to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Agreement; and
- (ii) to make this Agreement admissible in evidence in its jurisdiction of incorporation and the jurisdiction of incorporation of each company whose shares are charged under this Agreement,

have been obtained or effected and are in full force and effect.

(f) ***Deduction of Tax***

It is not required to make any Tax Deduction from any payment it may make under any Finance Document to a Funder which is:

- (i) a Qualifying Funder:
 - (A) falling within sub-clause (a)(i) of the definition of "Qualifying Funder"; or
 - (B) except where a Direction has been given under section 931 of the ITA in relation to the payment concerned, falling within sub-clause (a)(ii) or (b) of the definition of "Qualifying Funder"; or
 - (C) falling within sub-clause (c) of the definition of "Qualifying Funder"; or
- (ii) a Treaty Funder and the payment is one specified in a direction given by the Commissioners of Revenue & Customs under Regulation 2 of the Double Taxation Relief (Taxes on Income) (General) Regulations 1970 (SI 1970/488).

(g) ***Security***

No Security exists over any Assigned Property other than the Security created pursuant to this Agreement.

(h) ***Ranking***

The Security created by this Agreement has or will have first ranking priority and it is not subject to any prior ranking or *pari passu* Security.

(i) ***Transaction Security***

Subject any conditions specifically referred to in the Legal Reservations and the Perfection Requirements, this Agreement validly creates the Security which is expressed to be created pursuant to Clause 3 (*Assignment*) and evidences the Security it is expressed to evidence.

(b) ***Legal and beneficial owner***

It is the absolute legal and beneficial owner of the Assigned Property.

(j) ***Centre of main interests and establishments***

- (i) It has its' "centre of main interests" (as that term is used in Article 3(1) of Regulation (EU) 2015/848 of 20 May 2015 on Insolvency Proceedings (Recast) (the "**Recast Regulation**") in England or Wales.

- (ii) It has no "establishment" (as that term is used in Article 2(10) of the Recast Regulation) in any jurisdictions other than England and Wales.

(k) ***Pensions***

- (i) Neither it nor any member of the Group is or has at any time been an employer (for the purposes of sections 38 to 51 of the Pensions Act 2004) of an occupational pension scheme which is not a money purchase scheme (both terms as defined in the Pension Schemes Act 1993); and
- (ii) Neither it nor any member of the Group is or has at any time been "connected" with or an "associate" of (as those terms are used in sections 38 and 43 of the Pensions Act 2004) such an employer.

(l) ***Ownership of the Assigned Property***

- (i) It is the absolute legal and beneficial owner of the Assigned Property and has not sold or disposed of or granted any interest in or rights in respect of any of its right, title and interest, in the Assigned Property (other than as permitted under the Finance Documents).
- (ii) The Assigned Property are not subject to any options to purchase, pre-emption rights or similar rights or other restrictions upon disposal which would operate to restrict in any way their disposal by the Security Agent should it come to enforce its Security contained in this Agreement.

(m) ***Repetition***

The representations set out in paragraphs (a) (*Status*) to (l) (*Ownership of the Assigned Property*) of this Clause are deemed to be made by the Chargor (by reference to the facts and circumstances then existing) on the date of each Utilisation Request and the first day of each Interest Period.

7.2 **Undertakings**

(a) ***Authorisations***

The Chargor shall promptly:

- (i) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (ii) supply certified copies to the Security Agent of,

any Authorisation required under any law or regulation of any relevant jurisdiction to enable it to perform its obligations under this Agreement and (subject to the Legal Reservations and any applicable Perfection Requirements) to ensure the legality, validity, enforceability or admissibility in evidence in any relevant jurisdiction of this Agreement.

(b) ***Compliance with laws***

The Chargor shall comply in all respects with all laws to which it may be subject, if failure so to comply would materially impair its ability to perform its obligations under this Agreement.

(c) ***Merger***

The Chargor shall not enter into any amalgamation, demerger, merger or corporate reconstruction other than as permitted by the Common Terms Agreement.

(d) ***Pensions***

The Chargor shall ensure that no member of the Group is or has been at any time an employer (for the purposes of sections 38 to 51 of the Pensions Act 2004) of an occupational pension scheme which is not a money purchase scheme (both terms as defined in the Pension Schemes Act 1993) or "connected" with or an "associate" of (as those terms are used in sections 38 and 43 of the Pensions Act 2004) such an employer without the prior written consent of the Security Agent. Any consent which may be given by the Security Agent may be subject to such terms and conditions as the Security Agent decides.

(c) ***Preservation of assets***

The Chargor shall not do or permit to be done any act or thing which might jeopardise the rights of the Security Agent in the Assigned Property or which might adversely affect or diminish the value of the Assigned Property.

(d) ***Information and access***

The Chargor shall, and shall ensure that each member of the Group whose shares constitute all or any part of the Assigned Property shall, on request of the Security Agent, provide the Security Agent with any information as the Security Agent may reasonably require about the Assigned Property and the Chargor's compliance with the terms of this Agreement. The Chargor shall permit the Security Agent, its representatives, delegates, professional advisers and contractors, free access at all reasonable times and on reasonable notice at the Chargor's cost to inspect and take copies and extracts from the books, accounts and records of that company and to view the Assigned Property (without becoming liable as mortgagee in possession).

(e) ***Notify***

The Chargor shall promptly notify the Security Agent of any circumstances which give rise, or may reasonably be expected to give rise, to a claim on or in relation to the Assigned Property.

(f) ***Disposals***

Except as permitted by the Finance Documents or where agreed in writing by the Security Agent, no Chargor shall enter into a single transaction or a series of transactions (whether related or not) and whether voluntarily or involuntarily,

to sell, lease, transfer or otherwise dispose of the whole or any part of the Assigned Property.

(g) ***Compliance with Partnership Agreement***

The Chargor shall comply with each of its obligations under the Partnership Agreement and shall indemnify the Security Agent on first demand against any loss, liability, costs or expenses which the Security Agent may suffer as a result of a failure to do so (other than any liability or cost resulting from the Security Agent's gross negligence or wilful default).

8. ENFORCEMENT OF SECURITY

Any time after the occurrence of:

- (a) an Event of Default which is continuing;
- (b) a request from the Chargor to the Security Agent that it exercise any of its powers under this Agreement,

the Security created by or pursuant to this Agreement is immediately enforceable and the Security Agent may, without notice to the Chargor or prior authorisation from any court, in its absolute discretion:

- (i) secure and perfect its title to all or any part of the Assigned Property (including transferring the same into the name of the Security Agent or its nominee(s)) or otherwise exercise in relation to the Assigned Property all the rights of an absolute owner;
- (ii) make any demands under any Advance Payment Bond in the manner which the Chargor would otherwise be entitled to do so;
- (iii) enforce all or any part of that Security, at the times, in the manner and on the terms it thinks fit, and take possession of, hold, dispose of, apply or transfer all or any part of the Assigned Property (and any assets of the Chargor which, when got in, would be part of the Assigned Property), at the times, in the manner and on the terms it thinks fit (including whether for cash or non-cash consideration); and
- (iv) whether or not it has appointed a Receiver, exercise all or any of the rights, powers, authorities and discretions conferred by the Law of Property Act 1925 (as varied or extended by this Agreement) on mortgagees and by this Agreement on any Receiver or otherwise conferred by law on mortgagees or Receivers.

9. EXTENSION OF POWERS AND RIGHT OF APPROPRIATION

9.1 Extension of power of sale

The power of sale or other disposal conferred on the Security Agent and on any Receiver by this Agreement shall operate as a variation and extension of the statutory power of sale under section 101 of the Law of Property Act 1925 and such power shall

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arise (and the APB Secured Obligations shall be deemed due and payable for that purpose) on the date of this Agreement.

9.2 Restrictions

The restrictions contained in sections 93 and 103 of the Law of Property Act 1925 shall not apply to this Agreement or to the exercise by the Security Agent of its right to consolidate all or any of the Security created by or pursuant to this Agreement with any other Security in existence at any time or to its power of sale, which powers may be exercised by the Security Agent without notice to the Chargor on or at any time after the Security created by or pursuant to this Agreement has become enforceable in accordance with Clause 8 (*Enforcement of Security*).

9.3 Right of appropriation

After the Security created by or pursuant to this Agreement has become enforceable in accordance with Clause 8 (*Enforcement of Security*), to the extent that the provisions of the Financial Collateral Arrangements (No. 2) Regulations 2003, as amended (the "Regulations") apply to all or any part of the Assigned Property, the Security Agent shall have the right to appropriate the relevant Assigned Property in or towards the payment or discharge of the APB Secured Obligations and may exercise such right to appropriate upon giving written notice to the Chargor. For this purpose, a commercially reasonable method of valuing the Assigned Property shall be their market value determined by the Security Agent by reference to an independent valuation or by such other process as the Security Agent may select. The parties further agree that the method of valuation provided for in this Agreement shall constitute a commercially reasonable method of valuation for the purposes of the Regulations.

9.4 Statutory powers

The powers conferred by this Agreement on the Security Agent are in addition to and not in substitution for the powers conferred on mortgagees and mortgagees in possession under the Law of Property Act 1925, the Insolvency Act 1986 or otherwise by law (as extended by this Agreement) and such powers shall remain exercisable from time to time by the Security Agent in respect of the Assigned Property. In the case of any conflict between the statutory powers contained in any such Acts and those conferred by this Agreement, the terms of this Agreement shall prevail.

10. APPOINTMENT OF RECEIVER

10.1 Appointment and removal

After the Security created by or pursuant to this Agreement has become enforceable in accordance with Clause 8 (*Enforcement of Security*), the Security Agent may by deed or otherwise (acting through an authorised officer of the Security Agent), without prior notice to the Chargor:

- (a) appoint one or more persons to be a Receiver of the whole or any part of the Assigned Property;
- (b) appoint two or more Receivers of separate parts of the Assigned Property;

- (c) remove (so far as it is lawfully able) any Receiver so appointed; and
- (d) appoint another person(s) as an additional or replacement Receiver(s).

10.2 Capacity of Receivers

Each person appointed to be a Receiver pursuant to Clause 10.1 (*Appointment and Removal*) shall be:

- (a) entitled to act individually or together with any other person appointed or substituted as Receiver;
- (b) the agent of the Chargor which shall be solely responsible for his acts, defaults and liabilities and for the payment of his remuneration and no Receiver shall at any time act as agent for the Security Agent; and
- (c) entitled to remuneration for his services at a rate to be fixed by the Security Agent from time to time (without being limited to the maximum rate specified by the Law of Property Act 1925).

10.3 Statutory powers of appointment

The powers of appointment of a Receiver shall be in addition to all statutory and other powers of appointment of the Security Agent under the Law of Property Act 1925 (as extended by this Agreement) or otherwise and such powers shall remain exercisable from time to time by the Security Agent in respect of any part of the Assigned Property.

11. POWERS OF RECEIVERS

Every Receiver shall (subject to any restrictions in the instrument appointing him but notwithstanding any winding-up or dissolution of the Chargor) have and be entitled to exercise, in relation to the Assigned Property (and any assets of the Chargor which, when got in, would be part of the Assigned Property) in respect of which he was appointed, and as varied and extended by the provisions of this Agreement (in the name of or on behalf of the Chargor or in his own name and, in each case, at the cost of the Chargor):

- (a) all the powers conferred by the Law of Property Act 1925 on mortgagors and on mortgagees in possession and on receivers appointed under that Act;
- (b) all the powers of an administrative receiver set out in Schedule 1 to the Insolvency Act 1986 (whether or not the Receiver is an administrative receiver);
- (c) all the powers and rights of an absolute owner and power to do or omit to do anything which the Chargor itself could do or omit to do; and
- (d) the power to do all things (including bringing or defending proceedings in the name or on behalf of the Chargor) which seem to the Receiver to be incidental or conducive to:
 - (i) any of the functions, powers, authorities or discretions conferred on or vested in him;

- (ii) the exercise of any rights, powers and remedies of the Security Agent provided by or pursuant to this Agreement or by law (including realisation of all or any part of the assets in respect of which that Receiver was appointed); or
- (iii) bringing to his hands any assets of the Chargor forming part of, or which when got in would be part of, the Assigned Property.

12. APPLICATION OF PROCEEDS

All monies received or recovered and any non-cash recoveries made or received by the Security Agent or any Receiver pursuant to this Agreement or the powers conferred by it shall (subject to the claims of any person having prior rights thereto and by way of variation of the provisions of the Law of Property Act 1925) be applied in accordance with clause 7 (*Application of Proceeds*) of the Intercreditor Agreement.

13. PROTECTION OF PURCHASERS

13.1 Consideration

The receipt of the Security Agent or any Receiver shall be a conclusive discharge to a purchaser and, in making any sale or disposal of any of the Assigned Property or making any acquisition, the Security Agent or any Receiver may do so for such consideration (whether cash or non-cash), in such manner and on such terms as it thinks fit.

13.2 Protection of purchasers

No purchaser or other person dealing with the Security Agent or any Receiver shall be bound to inquire whether the right of the Security Agent or such Receiver to exercise any of its powers has arisen or become exercisable or be concerned to inquire whether that power has been properly or regularly exercised by the Security Agent or such Receiver in such dealings.

14. POWER OF ATTORNEY

14.1 Appointment and powers

The Chargor, by way of security, irrevocably appoints the Security Agent and any Receiver severally to be its attorney and in its name, on its behalf and as its act and deed to execute, deliver and perfect all documents and do all things which the attorney may consider to be required or desirable for:

- (a) carrying out any obligation imposed on the Chargor by this Agreement or any other agreement binding on the Chargor to which the Security Agent is a party (including the execution and delivery of any deeds, charges, assignments or other Security and any transfers of the assets subject to the Security and perfecting and/or releasing the Security created or intended to be created in respect of the Assigned Property); and

- (b) enabling the Security Agent and any Receiver to exercise, or delegate the exercise of, any of the rights, powers and authorities conferred on them by or pursuant to this Agreement or by law (including, after this Agreement has become enforceable in accordance with Clause 8 (*Enforcement of security*), the exercise of any right of a legal or beneficial owner of the Assigned Property).

14.2 Ratification

The Chargor shall ratify and confirm all lawful things done and all documents executed by any attorney in the exercise or purported exercise of all or any of his express powers pursuant to Clause 14.1.

15. EFFECTIVENESS OF SECURITY

15.1 Continuing security

- (a) The Security created by or pursuant to this Agreement shall remain in full force and effect as a continuing security for the APB Secured Obligations unless and until discharged by the Security Agent in writing.
- (b) No part of the Security from time to time intended to be created by this Agreement will be considered satisfied or discharged by an intermediate payment, discharge or satisfaction of the whole or any part of the APB Secured Obligations.

15.2 Cumulative rights

The Security created by or pursuant to this Agreement, and the Collateral Rights shall be cumulative, in addition to and independent of every other Security which the Security Agent or any other APB Secured Party may at any time hold for the APB Secured Obligations or any other obligations or any rights, powers and remedies provided by law and shall operate as an independent Security notwithstanding any receipt, release or discharge endorsed on or given in respect of or under any such other Security. No prior Security held by the Security Agent (whether in its capacity as trustee or otherwise) or any of the other Secured Parties over the whole or any part of the Assigned Property shall merge into the Security created by this Agreement.

15.3 No prejudice

The Security created by or pursuant to this Agreement shall not be prejudiced by any unenforceability or invalidity of any other agreement or document or by any time or indulgence granted to The Chargor or any other person, or the Security Agent (whether in its capacity as trustee or otherwise) or any of the other Finance Parties or by any variation of the terms of the trust upon which the Security Agent holds the security or by any other thing which might otherwise prejudice that Security.

15.4 Remedies and waivers

No failure on the part of the Security Agent to exercise, nor any delay on its part in exercising, or delegating the exercise of, any of the rights, powers and authorities conferred on them by or pursuant to this Agreement or by law, shall operate as a waiver

of that right or constitute an election to affirm this Agreement. No election to affirm this Agreement on the part of the Security Agent shall be effective unless it is in writing. No single or partial exercise of any Collateral Right shall preclude any further or other exercise of that or any other Collateral Right.

15.5 No liability

None of the Security Agent, its nominee(s) or any Receiver shall be liable:

- (a) to account as a mortgagee or mortgagee in possession; or
- (b) for any loss arising by reason of taking any action permitted by this Agreement or any neglect or default in connection with the Assigned Property or taking possession of or realising all or any part of the Assigned Property,

except in the case of gross negligence or wilful default upon its part.

15.6 Partial invalidity

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

15.7 Waiver of defences

The obligations assumed, and the Security created, by the Chargor under this Agreement, and the Collateral Rights, will not be affected by any act, omission, matter or thing which, but for this Clause 15.7, would reduce, release or prejudice any of its obligations under, or the Security created by, this Agreement (whether or not known to the Chargor or any APB Secured Party) including:

- (a) any time, waiver or consent granted to, or composition with, the Chargor or other person;
- (b) the release of any other Obligor or any other person under the terms of any composition or arrangement with any of the Creditors;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or Security over assets of, the Chargor 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 Chargor or any other person;
- (e) any amendment, novation, supplement, extension, restatement (in each case, however fundamental and whether or not more onerous) or replacement of a

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Finance Document or any other document or Security or of the APB Secured Obligations including, any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or Security;

- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or Security or of the APB Secured Obligations; or
- (g) any insolvency or similar proceedings.

15.8 Chargor intent

Without prejudice to the generality of Clause 15.7 (*Waiver of defences*), the Chargor expressly confirms that it intends that the Security created under this Agreement, and the Collateral Rights, shall extend from time to time to any (however fundamental and of whatsoever nature, and whether or not more onerous) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following: business acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

15.9 Immediate recourse

The Chargor waives any right it may have of first requiring the any APB 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 other person before claiming from the Chargor under this Agreement or enforcing the Security created by this Agreement. This waiver applies irrespective of any law or any provision of this Agreement to the contrary.

15.10 Deferral of Rights

Until the end of the Security Period, the Chargor will not exercise any rights which it may have by reason of performance by it of its obligations under this Agreement:

- (a) to be indemnified by the Chargor or any other person;
- (b) to claim any contribution from any guarantor or other person in respect of the Chargor's obligations under the Finance Documents;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of any APB Secured Party under the Finance Documents or of any other guarantee or Security taken pursuant to, or in connection with, the Finance Documents by any APB Secured Party;
- (d) to bring legal or other proceedings for an order requiring the Chargor or other person to make any payment, or perform any obligation, in respect of which the

Chargor or other person has given a guarantee, undertaking or indemnity under any Finance Document;

- (e) to exercise any right of set-off against the Chargor or other person; and/or
- (f) to claim or prove as a creditor of the Chargor or other person in competition with any APB Secured Party.

If the Chargor receives any benefit, payment or distribution in relation to such rights, it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to any APB Secured Party by the Obligors under or in connection with the Finance Documents to be repaid in full on trust for the Secured Parties and shall promptly pay or transfer the same to the Security Agent or as the Security Agent may direct for application in accordance with Clause 12 (*Application of Proceeds*).

15.11 Additional Security

The Security created by the Chargor under this Agreement and the Collateral Rights are in addition to and are not in any way prejudiced by any other guarantee or Security now or subsequently held by any APB Secured Party.

16. PRIOR SECURITY INTERESTS

16.1 Redemption or transfer

In the event of any action, proceeding or step being taken to exercise any powers or remedies conferred by any prior ranking Security against any of the Assigned Property or in case of exercise by the Security Agent or any Receiver of any power of sale or right of appropriation or application under this Agreement, the Security Agent may redeem such prior Security or procure the transfer thereof to itself.

16.2 Accounts

The Security Agent may settle and agree the accounts of the prior Security and any accounts so settled and agreed will be conclusive and binding on the Chargor.

16.3 Costs of redemption or transfer

All principal monies, interest, costs, charges and expenses of and incidental to any redemption or transfer will be paid by the Chargor to the Security Agent on demand.

17. SUBSEQUENT SECURITY INTERESTS

If the Security Agent (acting in its capacity as trustee or otherwise) or any of the other Secured Parties at any time receives or is deemed to have received notice of any subsequent Security, assignment or transfer affecting all or any part of the Assigned Property which is prohibited by the terms of any Finance Document, all payments thereafter by or on behalf of the Chargor to the Security Agent (whether in its capacity as trustee or otherwise) or any of the other Secured Parties will (in the absence of any express contrary appropriation by the Chargor) be treated as having been credited to a

new account of the Chargor and not as having been applied in reduction of the APB Secured Obligations at the time that notice was received.

18. SUSPENSE ACCOUNTS

All monies received, recovered or realised by the Security Agent under this Agreement (including the proceeds of any conversion of currency) may in the discretion of the Security Agent be credited to any interest bearing suspense or impersonal account(s) maintained with any bank, building society, financial institution or other person which the Security Agent considers appropriate (including itself) for so long as it may think fit (the interest being credited to the relevant account) pending their application from time to time at the Security Agent's discretion, in or towards the discharge of any of the APB Secured Obligations and save as provided herein no party will be entitled to withdraw any amount at any time standing to the credit of any suspense or impersonal account referred to above.

19. RELEASE OF SECURITY

19.1 Release of Security

Upon the expiry of the Security Period, the Security Agent shall promptly, at the request and cost of the Chargor, procure the absolute reassignment to the Chargor of the Assigned Property, subject to Clause 19.2 (*Clawback*) and without recourse to, or any representation or warranty by, the Security Agent or any of its nominees.

19.2 Clawback

If the Security Agent considers that any amount paid or credited to any APB Secured Party is capable of being avoided or reduced by virtue of any bankruptcy, insolvency, liquidation or similar laws, the liability of the Chargor under this Agreement and the Security created by this Agreement will continue and such amount will not be considered to have been irrevocably paid or credited.

20. SET-OFF

The Chargor authorises the Security Agent (but the Security Agent shall not be obliged to exercise such right), after the occurrence of an Event of Default, to set off against the APB Secured Obligations any amount or other obligation (contingent or otherwise) owing by the Security Agent to the Chargor and apply any credit balance to which the Chargor is entitled on any account with the Security Agent in accordance with Clause 12 (*Application of Proceeds*) (notwithstanding any specified maturity of any deposit standing to the credit of any such account).

21. ASSIGNMENT

21.1 No assignments or transfers by Company

The Chargor may not assign any of its rights or transfer any of its rights or obligations under this Agreement.

21.2 Assignments by the Security Agent

The Security Agent may assign all or any of its rights under this Agreement. The Security Agent shall be entitled to disclose such information concerning the Chargor and this Agreement as the Security Agent considers appropriate to any actual or proposed direct or indirect assignee or to any person to whom information may be required to be disclosed by any applicable law.

21.3 Successors

This Agreement shall remain in effect despite any amalgamation or merger (however effected) relating to the Security Agent. References to the Security Agent shall include (i) any transferee, assignee or successor in title of the Security Agent, (ii) any entity into which the Security Agent is merged or converted or with which it may be consolidated, (iii) any legal entity resulting from any merger, conversion or consolidation to which such Security Agent is a party and (iv) any other person who, under the laws of its jurisdiction of incorporation or domicile, has assumed the rights and obligations of the Security Agent under this Agreement or to which, under such laws, those rights and obligations have been transferred (such person described in (i) to (iv) being a successor to the Security Agent for all purposes under the Finance Documents).

22. NOTICES

22.1 Communications in writing

Any communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be made by fax, electronic mail (if applicable) or letter.

22.2 Addresses

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Agreement is:

- (a) in the case of the Chargor, that identified with its name below;
- (b) in the case of the Security Agent, that identified with its name below,

or any substitute details which that Party may notify to the Security Agent (or the Security Agent may notify to the other Parties, if a change is made by the Security Agent) by not less than five Business Days' notice.

22.3 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective:
 - (i) if by way of fax, when received in legible form; or

- (ii) if by way of letter, when it has been left at the relevant address or five (5) Business Days after being deposited in the post, postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 22.2 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Security Agent will be effective only when actually received by the Security Agent and then only if it is expressly marked for the attention of the department or officer identified above (or any substitute department or officer as the Security Agent shall specify for this purpose).

22.4 Electronic communication

- (a) Any communication to be made between the Chargor and the Security Agent under or in connection with this Agreement may be made by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if those two parties:
 - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
 - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any such electronic communication as specified in paragraph (a) above may only be made in that way to the extent that the Chargor and the Security Agent agree that, unless and until notified to the contrary, this is to be an accepted form of communication.
- (c) Any such electronic communication as specified in paragraph (a) above will be effective only when actually received (or made available) in readable form and in the case of any electronic communication made by the Chargor to the Security Agent only if it is addressed in such manner as the Security Agent shall specify for this purpose.
- (d) Any electronic communication which becomes effective, in accordance with paragraph (c) above, after 5:00 p.m. in the place in which the addressee of the relevant communication has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.
- (e) Any reference in this Agreement to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 22.4.

22.5 English language

- (a) Any notice given under or in connection with this Agreement must be in English.
- (b) All other documents provided under or in connection with this Agreement must be:
 - (i) in English; or
 - (ii) if not in English, and if so required by the Security Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

23. EXPENSES, INDEMNITY

23.1 Expenses

The Chargor shall, from time to time on demand of the Security Agent, reimburse the Security Agent for all the costs and expenses (including legal fees) on a full indemnity basis together with any VAT thereon incurred by it in connection with:

- (a) the negotiation, preparation and execution of this Agreement and the completion of the transactions and perfection of the Security contemplated in this Agreement; and
- (b) the exercise, preservation and/or enforcement of any of the Collateral Rights or the Security contemplated by this Agreement or any proceedings instituted by or against the Security Agent as a consequence of taking or holding the Security or of enforcing the Collateral Rights,

and shall carry interest from the date of such demand until so reimbursed.

23.2 Indemnity

The Chargor shall, notwithstanding any release or discharge of all or any part of the Security created by or pursuant to this Agreement, indemnify the Security Agent, its agents, attorneys and any Receiver against any action, proceeding, claims, losses, liabilities and costs which it may sustain as a consequence of any breach by the Chargor of the provisions of this Agreement, the exercise or purported exercise of any of the rights and powers conferred on them by this Agreement or otherwise relating to the Assigned Property.

24. CURRENCY CONVERSION

- (a) For the purpose of or pending the discharge of any of the APB Secured Obligations the Security Agent may convert any monies received, recovered or realised by the Security Agent from one currency to another, at the spot rate at which the Security Agent is able to purchase the currency in which the APB Secured Obligations are due with the amount received, recovered or realised.

- (b) The obligations of the Chargor to pay in the due currency shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion.

25. CURRENCY INDEMNITY

- (a) If any sum due from the Chargor under this Agreement (a "**Sum**") or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "**First Currency**") in which that Sum is payable into another currency (the "**Second Currency**") for the purpose of:

- (i) making or filing a claim or proof against the Chargor;
- (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings; or
- (iii) applying the Sum in satisfaction of any APB Secured Obligations,

the Chargor shall as an independent obligation, within three Business Days of demand, indemnify the Security Agent and each other APB Secured Party to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to the Security Agent at the time of its receipt of that Sum.

- (b) The Chargor waives any right it may have in any jurisdiction to pay any amount under this Agreement in a currency or currency unit other than that in which it is expressed to be payable.

26. COUNTERPARTS

This Agreement 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 Agreement.

27. DISCRETION AND DELEGATION

27.1 Discretion

Any liberty or power which may be exercised or any determination which may be made under this Agreement by the Security Agent or any Receiver may, subject to the terms and conditions of the Finance Documents, be exercised or made in its absolute and unfettered discretion without any obligation to give reasons.

27.2 Delegation

Each of the Security Agent and any Receiver shall have full power to delegate (either generally or specifically) the powers, authorities and discretions conferred on it by this Agreement (including the power of attorney) on such terms and conditions as it shall see fit which delegation shall not preclude the subsequent exercise, any subsequent delegation or any revocation of such power, authority or discretion by the Security Agent or the Receiver itself.

28. GOVERNING LAW

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

29. ENFORCEMENT

29.1 Jurisdiction

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or the consequences of its nullity or any non-contractual obligations arising out of or in connection with this Agreement) (a "**Dispute**").
- (b) The Chargor agrees that the courts of England are the most appropriate and convenient courts to settle Disputes and, accordingly, it will not argue to the contrary.
- (c) Notwithstanding paragraph (a) of this Clause 29.1 (*Jurisdiction*), Security Agent may take proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Security Agent may take concurrent proceedings in any number of jurisdictions.

THIS AGREEMENT has been signed by the Security Agent and executed as a deed by the Chargor and is delivered by it as a deed on the date stated at the beginning of this Agreement.

SCHEDULE 1
FORM OF NOTICE OF ASSIGNMENT

To: [Banco Santander S.A. / [•] / [•]]

Date: []

Address: []

Dear Sirs

**£[•] [Advance Payment Bond] / [Additional Bond] / [Final and Fleet Acceptance Bond]¹
due [•] issued by [Banco Santander S.A / [•] / [•]]**

1. [] (the "**Security Agent**") and [] (the "**Assignor**") give notice that the Assignor has assigned to the Security Agent pursuant to an assignment entered into by the Assignor in favour of the Security Agent dated on or about hereof, all of the Assignor's rights, title and interests in and to an advance payment bond issued by [Banco Santander S.A./[•]/[•]] in favour of the Assignor, dated on or about the date hereof (the "**Advance Payment Bond**") including all monies which may be payable in respect of the Advance Payment Bond, and any claims, awards and judgments receivable or received by in favour of the Assignor, pursuant to or in connection with the Advance Payment Bond as amended, increased or reduced from time to time.
2. All monies payable by you to the Assignor pursuant to under or in connection with the Advance Payment Bond shall be paid in accordance with the terms of the Advance Payment Bond unless and until you receive written notice from the Security Agent stating that an Event of Default is continuing and not waived, in which event you should make all future payments as then directed by the Security Agent. This authority and instruction is irrevocable without the prior written consent of the Security Agent.
3. The Security Agent or its nominee will, following an Event of Default, be entitled to make demands under the Advance Payment Bond and you will honour such demands to the exclusion of the Assignor.
4. Despite the assignment referred to above or the making of any payment by you to the Security Agent pursuant to it, the Assignor shall remain liable to perform all its obligations under the Advance Payment Bond and neither the Security Agent nor any receiver, delegate or sub-delegate appointed by it shall at any time be under any obligation or liability to you under or in respect of the Advance Payment Bond.
5. The Assignor shall also remain entitled to exercise all its rights, powers and discretions under the Advance Payment Bond, except that the Assignor shall not and you agree that the Assignor shall not amend, vary or waive (or agree to amend, vary or waive) the terms and conditions of the Advance Payment Bond or exercise any right to rescind, cancel or terminate the Advance Payment Bond other than in accordance with the security trust and intercreditor deed between others, the Assignor and the Security Agent, or with the prior written consent of the Security Agent stating that an Event of Default is continuing and not waived and that the security has become enforceable, in

¹ Delete bond types as appropriate.

which event all such rights, powers and discretions shall be exercisable by, and notice shall be given to, the Security Agent or as it directs.

6. Please acknowledge receipt of this Notice of Assignment and confirm that:

- (a) You will pay all sums due under the Advance Payment Bond as directed or pursuant to this Notice of Assignment;
- (b) You will not claim or exercise any set-off or counterclaim in respect of the Advance Payment Bond;
- (c) You have not received any other notice of assignment or charge of the Advance Payment Bond or of any other interest of any third party in the Advance Payment Bond; and
- (d) You will comply with the other provisions of this Notice of Assignment,

by signing the acknowledgment on the attached copy of this Notice of Assignment and returning that copy to Security Agent at [], marked for the attention of [].

.....
(Authorised signatory)

For and on behalf of
[]
As Security Agent

Executed by []

Executive
Committee
Member

.....
signature

(On duplicate)

We acknowledge receipt of the Notice of Assignment of which this is a copy and confirm each of the matters referred to in paragraphs 5.1 to 5.4 (inclusive) of the Notice of Assignment.

.....
For and on behalf of
[]

Date:

EXECUTION PAGE

The Chargor

Executed as a deed by Valley Rail
Partnership No.2 LLP:

signature
of witness

name

address

Aya Elwadia

print name of witness

Clifford Chance LLP
10 Upper Bank Street
Canary Wharf
London
E14 5JJ

Executive
Committee
Member

The Security Agent

EXECUTED as a DEED by
NATIONAL WESTMINSTER BANK PLC

acting by Manuel caseiro

in the presence of

Name of witness:

Signature of witness

Address:

Occupation:

Aya Elwadia

Trainee Solicitor

Clifford Chance LLP
10 Upper Bank Street
Canary Wharf
London
E14 5JJ