



Registration of a Charge

Company name: **KEOLIS AMEY WALES CYMRU LIMITED**

Company number: **11391059**



X7WBSMH7

Received for Electronic Filing: **02/01/2019**

Details of Charge

Date of creation: **17/12/2018**

Charge code: **1139 1059 0001**

Persons entitled: **CAMBRIAN RAIL PARTNERSHIP NO.2 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: **STEPHENSON HARWOOD LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 11391059

Charge code: 1139 1059 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 17th December 2018 and created by KEOLIS AMEY WALES CYMRU LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 2nd January 2019 .

Given at Companies House, Cardiff on 4th January 2019

The above information was communicated by electronic means and authenticated
by the Registrar of Companies under section 1115 of the Companies Act 2006



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

DATED 17 DECEMBER 2018

KEOLIS AMEY WALES CYMRU LIMITED

as ODP

in favour of

CAMBRIAN RAIL PARTNERSHIP NO. 2 LLP

as the Lessor

ASSIGNMENT OF RIGHTS

IN RELATION TO THE

ODP GRANT AGREEMENT

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THIS AGREEMENT is made by way of deed on 17 December 2018

BY

- (1) **KEOLIS AMEY WALES CYMRU LIMITED**, a company incorporated in Wales whose company registered number is 11391059 and whose registered office is at c/o Amey Rail Maindee Depot, Off Caerleon Road, Newport, NP19 9DZ ("**ODP**" or "**Chargor**");

IN FAVOUR OF:

- (2) **CAMBRIAN RAIL PARTNERSHIP NO. 2 LLP**, a limited liability partnership incorporated in England whose partnership registered number is OC424291 and whose registered office is at 10-11 Charterhouse Square, London, EC1M 6EH (the "**Lessor**").

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 Lease Agreement, and in this Agreement:

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

"**Authorisation**" means an authorisation, permit, consent, approval, resolution, licence, exemption, filing, certification, notarisation or registration.

"**Collateral**" means:

- (a) the ODP Assigned Rights; and
- (b) the Letter Agreement Assigned Rights.

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

"**Documents**" means the ODP Grant Agreement and the Tfw Non-CVL Letter Agreement.

"**Enforcement Event**" means any of:

- (a) the CVL Fixed Payment or TFC Fixed Payment (as applicable) not being paid by the Welsh Ministers into the Escrow Account in the circumstances contemplated by paragraph 4 (*Payment Obligation*) of the Tfw Non-CVL Letter Agreement; or

- (b) a failure by ODP to enforce its rights against the Welsh Ministers to require the making of the CVL Fixed Payment or TFC Fixed Payment (as applicable) under the terms of the ODP Grant Agreement, or
- (c) an Insolvency Event of Default in respect of OpCo or analogous event in respect of ODP is continuing at a time when Welsh Ministers have exercised any right under the ODP Grant Agreement of the nature described in paragraphs 4.1.1 to 4.1.3 (inclusive) of the TfW Non-CVL Letter Agreement.

"Insolvency Event of Default" means an Event of Default under paragraphs 9 (*Insolvency*) or 10 (*Liquidation*) of Schedule 11 (*Events of Default*) of the Lease Agreement.

"Lease Agreement" means the lease agreement dated on or about the date hereof between the Lessor (as lessor) and OpCo (as lessee).

"Letter Agreement Assigned Rights" means all rights, title and interest, present and future, of ODP under the TfW Non-CVL Letter Agreement, including all moneys payable to ODP, and any claims, awards and judgments in favour of, receivable or received by ODP under, pursuant to or in connection with such rights.

"Notice of Assignment" means a notice of assignment in substantially the form set out in appendix 2 to the TfW Non-CVL Letter Agreement (*Form of Notice of Assignment*).

"ODP Assigned Rights" means the following rights, title and interest, present and future, of ODP under the ODP Grant Agreement:

- (a) all rights, title and interest, present and future, of ODP under the ODP Grant Agreement in relation to the payments and amounts referred to in (i) clause 5.6(h)(ii) (*CVL Asset Transfer*) of the ODP Grant Agreement, and (ii) paragraph 6.5(b) (*Termination for Convenience*) of Schedule 10.2 to the ODP Grant Agreement in respect of the vehicles which are the subject of the Lease Agreement into a nominated escrow account; and
- (b) all such other rights which are necessary to enforce the obligations of Welsh Ministers to make those payments and/or pay those amounts referred to in (a) above in accordance with the terms of the ODP Grant Agreement, following the occurrence of an Enforcement Event under this Agreement,

including all moneys payable to ODP, and any claims, awards and judgments in favour of, receivable or received by ODP under, pursuant to or in connection with such rights.

"ODP Grant Agreement" means the operator and development partner grant agreement dated 4 June 2018 between the Welsh Ministers and the ODP, relating to the operation of the Wales and Borders passenger rail franchise for railway passenger and other services on the Relevant Network.

"OpCo" means Keolis Amey Operations/Gweithrediadau Keolis Amey Limited, a company incorporated in England whose registered number is 11389531 and whose

registered office is at Evergreen Building North, 160 Euston Road, London, NW1 2DX.

"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 any asset:

- (a) the proceeds of sale or rental of any part of that asset;
- (b) all rights under any licence, agreement for sale or agreement for lease in respect of that asset;
- (c) all rights, powers, benefits, claims, causes of action, contracts, warranties, remedies, security, guarantees, indemnities or covenants for title in respect of or derived from that asset; and
- (d) any monies and proceeds paid or payable in respect of that asset,

in each case, if any.

"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 OpCo to the Lessor, actually or contingently, pursuant to or in relation to clause 5.18 (*TfW Early Termination (Non-CVL)*) of the Lease Agreement (as amended, supplemented, varied, restated, assigned, transferred, novated or replaced from time to time), together with all interest accruing thereon and including all liabilities in connection with any notes, bills or other instruments accepted by the Lessor for or at the request of any Chargor or as a consequence of any breach, non-performance, disclaimer or repudiation by any Chargor (or by a liquidator, receiver, administrative receiver, administrator, examiner, or any similar officer in respect of any Chargor) of any of its obligations under or in relation to any of the Documents (as amended, supplemented, varied, restated, assigned, transferred, novated or replaced from time to time).

"Secured Obligations Discharge Date" means the date of full, final and indefeasible payment of all amounts payable to the Lessor under the Lease Agreement.

"Secured Party" means the Lessor, and any successor in title.

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

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

"TfW Non-CVL Letter Agreement" means the letter agreement dated on or about the date of this Agreement.

1.2 Interpretation

The rules of interpretation set out in clause 1.2 (*Construction*) of the Lease Agreement shall apply to this Agreement.

1.3 Incorporation of provisions from Lease Agreement

The provisions of clauses 5.4, 5.6 and 5.7 (*Payments*), 15.11 (*Indemnities, Contracts (Right of Third Parties) Act 1999*), and 15.15 (*Variation*) of the Lease 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 Lease Agreement are references to this Agreement and to Lessee are to the Chargor.

2. COVENANT TO PAY

The Chargor covenants with the Lessor that it shall, on demand of the Lessor pay, discharge and satisfy the Secured Obligations in accordance with their respective terms.

3. ASSIGNMENT AND CHARGE

3.1 Assignment

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

3.2 Fixed Charge

To the extent that the Collateral is not capable of assignment pursuant to Clause 3.1 (and notwithstanding the provisions of Clause 3.1), as security for the payment, performance and discharge of the Secured Obligations, the Chargor hereby charges, with full title guarantee and by way of first fixed charge the Collateral in favour of the Lessor.

4. PROVISIONS AS TO SECURITY AND PERFECTION

4.1 Negative pledge and restriction on dealings

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.

4.2 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 and Charge*).
- (b) It shall be implied in respect of Clause 3 (*Assignment and Charge*) 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).

4.3 Notice of Assignment

The Chargor shall, on the date of this Agreement, deliver to the Welsh Ministers the Notice of Assignment, duly executed by, or on behalf of, the Chargor.

5. FURTHER ASSURANCE

5.1 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 Lessor may specify (and in such form as the Lessor may require) in favour of the Lessor 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 Lessor provided by or pursuant to this Agreement or by law; and/or

(ii) 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 5.1(a) above.

5.2 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 Lessor for the purpose of the creation, perfection, protection or maintenance of any security conferred or intended to be conferred on the Lessor by or pursuant to this Agreement.

6. CHARGOR'S REPRESENTATIONS AND UNDERTAKINGS

6.1 Representations

The Chargor makes the representations and warranties set out in this Clause 6.1 to the Lessor 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***

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 Lease 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 deduction for or on account of tax from any payment it may make under this Agreement.

(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***

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.

(j) ***Legal and beneficial owner***

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

(k) ***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.

(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 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 Lessor 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 the Lease Agreement and on each Rent Date.

6.2 **Undertakings**

The Chargor makes the undertakings set out in this Clause 6.2 to the Lessor on the date of this Agreement.

(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 Lessor of,

any Authorisation required under any law or regulation of any relevant jurisdiction to enable it to perform its obligations under this Agreement and 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) ***Preservation of assets***

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

(d) ***Notify***

The Chargor shall promptly notify the Lessor 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.

(e) ***Disposals***

Except where agreed in writing by the Lessor, the Chargor shall not 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.

7. ENFORCEMENT OF SECURITY

Any time after the occurrence of:

- (a) an Enforcement Event; or
- (b) a request from the Chargor to the Lessor that it exercise any of its powers under this Agreement,

the Security created by or pursuant to this Agreement is immediately enforceable and the Lessor 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 Lessor or its nominee(s)) or otherwise exercise in relation to the Assigned Property all the rights of an absolute owner;
- (ii) 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

- (iii) 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.

8. EXTENSION OF POWERS AND RIGHT OF APPROPRIATION

8.1 Extension of power of sale

The power of sale or other disposal conferred on the Lessor 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 arise (and the Secured Obligations shall be deemed due and payable for that purpose) immediately on the date of, and at any time after the occurrence of, an Enforcement Event.

8.2 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 Lessor 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 Lessor 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*).

8.3 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 Lessor shall have the right to appropriate the relevant Assigned Property in or towards the payment or discharge of the 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 Lessor by reference to an independent valuation. 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.

8.4 Statutory powers

The powers conferred by this Agreement on the Lessor 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 Lessor 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.

9. APPOINTMENT OF RECEIVER

9.1 Appointment and removal

After the Security created by or pursuant to this Agreement has become enforceable in accordance with Clause 7 (*Enforcement of Security*), the Lessor may by deed or otherwise (acting through an authorised officer of the Lessor), without prior notice to either 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).

9.2 Capacity of Receivers

Each person appointed to be a Receiver pursuant to Clause 9.1 (*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 Lessor; and
- (c) entitled to remuneration for his services at a rate to be fixed by the Lessor from time to time (without being limited to the maximum rate specified by the Law of Property Act 1925).

9.3 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 Lessor 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 Lessor in respect of any part of the Assigned Property.

10. 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 Lessor 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.

11. APPLICATION OF PROCEEDS

All monies received or recovered and any non-cash recoveries made or received by the Lessor 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 first in the payment or other discharge of the costs, charges and expenses incurred and payments made by the Receiver, the payment or other discharge of his remuneration and of any liabilities incurred by the Receiver in, or incidental to, the exercise of any of his powers, and thereafter shall be applied by the Lessor (notwithstanding any purported appropriation by the Chargor) firstly towards discharging the Secured Obligations and subsequently in accordance with the terms of the Lease Agreement.

12. PROTECTION OF PURCHASERS

12.1 Consideration

The receipt of the Lessor 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 Lessor 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.

12.2 Protection of purchasers

No purchaser or other person dealing with the Lessor or any Receiver shall be bound to inquire whether the right of the Lessor 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 Lessor or such Receiver in such dealings.

13. POWER OF ATTORNEY

13.1 Appointment and powers

The Chargor, by way of security, irrevocably appoints the Lessor 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 for:

- (a) carrying out any obligation imposed on the Chargor by this Agreement (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 Lessor 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 7 (*Enforcement of security*), the exercise of any right of a legal or beneficial owner of the Assigned Property).

13.2 Ratification

The Chargor shall ratify and confirm all things done and all documents executed by any attorney in the exercise or purported exercise of all or any of his powers.

14. EFFECTIVENESS OF SECURITY

14.1 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 Secured Obligations unless and until the Secured Obligations Discharge Date.
- (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 Secured Obligations.

14.2 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 Lessor or any other Secured Party may at any time hold for the 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 Lessor (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.

14.3 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 Lessor (whether in its capacity as trustee or otherwise) or any of the other Financiers or by any variation of the terms of the trust upon which the Lessor holds the security or by any other thing which might otherwise prejudice that Security.

14.4 Remedies and waivers

No failure on the part of the Lessor 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 Lessor 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.

14.5 No liability

None of the Lessor, 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.

14.6 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.

14.7 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 14.7, 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 Secured Party) including:

- (a) any time, waiver or consent granted to, or composition with, any Chargor or other person;
- (b) the release of any other Chargor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- (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, any 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, any 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 Document or any other document or Security or of the 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 Document or other document or Security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Document or any other document or Security or of the Secured Obligations; or
- (g) any insolvency or similar proceedings.

14.8 Immediate recourse

The Chargor waives any right it may have of first requiring the any Secured Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or Security or claim payment from any 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.

14.9 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 Secured Party.

15. SUSPENSE ACCOUNTS

All monies received, recovered or realised by the Lessor under this Agreement (including the proceeds of any conversion of currency) may in the discretion of the Lessor be credited to any interest bearing suspense or impersonal account(s) maintained with any bank, building society, financial institution or other person which the Lessor considers appropriate (including itself) until the Secured Obligations Discharge Date (the interest being credited to the relevant account) pending their application from time to time at the Lessor's discretion, in or towards the discharge of any of the 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.

16. RELEASE OF SECURITY

16.1 Release of Security

Upon the expiry of the Security Period, the Lessor shall, at the request and cost of the Chargor, (i) procure the reassignment to the Chargor of the Assigned Property, and (ii) take any such action as necessary to procure such reassignment to the Chargor of the Assigned Property, subject to Clause 16.2 (*Clawback*) and without recourse to, or any representation or warranty by, the Lessor or any of its nominees.

16.2 Clawback

If the Lessor considers that any amount paid or credited to any 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.

17. SET-OFF

The Chargor authorises the Lessor (but the Lessor shall not be obliged to exercise such right), after the occurrence of an Event of Default, to set off against the Secured Obligations any amount or other obligation (contingent or otherwise) owing by the Lessor to the Chargor and apply any credit balance to which the Chargor is entitled on any account with the Lessor in accordance with Clause 11 (*Application of Proceeds*) (notwithstanding any specified maturity of any deposit standing to the credit of any such account).

18. ASSIGNMENT

18.1 No assignments or transfers by the Chargor

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

18.2 Assignments by the Lessor

The Lessor may assign all or any of its rights under this Agreement. The Lessor shall be entitled to disclose such information concerning the Chargor and this Agreement as

the Lessor 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.

18.3 Successors

This Agreement shall remain in effect despite any amalgamation or merger (however effected) relating to the Lessor. References to the Lessor shall include (i) any transferee, assignee or successor in title of the Lessor, (ii) any entity into which the Lessor 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 Lessor 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 Lessor under this Agreement or to which, under such laws, those rights and obligations have been transferred.

19. NOTICES

19.1 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.

19.2 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 Lessor, that identified with its name below,

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

19.3 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 19.2 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Lessor will be effective only when actually received by the Lessor 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 Lessor shall specify for this purpose).

19.4 Electronic communication

- (a) Any communication to be made between the Chargor and the Lessor 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 Lessor 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 Lessor only if it is addressed in such manner as the Lessor 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 19.4.

19.5 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 Lessor, 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.

20. EXPENSES, STAMP TAXES, INDEMNITY

20.1 Expenses

The Chargor shall, from time to time on demand of the Lessor, reimburse the Lessor 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 the exercise, preservation and/or enforcement of any of the Collateral Rights or the Security contemplated by this Agreement and shall carry interest from the date of such demand until so reimbursed.

20.2 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 Lessor, 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.

20.3 Payments free of deduction

All payments to be made to the Lessor under this Agreement shall be made free and clear of and without deduction for or on account of tax unless the Chargor is required to make such payment subject to the deduction or withholding of tax, in which case the sum payable by the Chargor in respect of which such deduction or withholding is required to be made shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the person on account of whose liability to tax such deduction or withholding has been made receives and retains (free from any liability in respect of any such deduction or withholding) a net sum equal to the sum which it would have received and so retained had no such deduction or withholding been made or required to be made.

21. 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.

22. DISCRETION AND DELEGATION

22.1 Discretion

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

22.2 Delegation

Each of the Lessor 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 Lessor or the Receiver itself.

23. GOVERNING LAW

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

24. ENFORCEMENT

24.1 Jurisdiction

- (a) The courts of England and Wales 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 24.1 (*Jurisdiction*), Lessor may take proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Lessor may take concurrent proceedings in any number of jurisdictions.

THIS AGREEMENT has been signed by the Lessor 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.

EXECUTION PAGE

ODP

Executed as a deed by Keolis Amey
Wales Cymru Limited acting by a
director in the presence of:



Director

signature

signature
of witness



L. R. JONES.
print name

name

STUART COTTIS
print name of witness

address

ASHurst LLP
BROADWALK HOUSE
5 APPOLD STREET
LONDON, EC2A 2WA

ODP Notice Details

Address:

Attention:

Fax:

Email:

Lessor

Executed as a deed by Cambrian Rail Partnership No.2 LLP acting by two authorized signatories:



Authorised
Signatory

signature



print name



Authorised
Signatory

signature



print name

Address: Cambrian Rail Partnership No. 2 LLP
c/o Equitix Management Services Limited
5th Floor
120 Aldersgate Street
London
EC1A 4JQ

Attention: Jonjo Challands

Fax: 020 7254 97517

Email: jchallands@equitix.co.uk

With a copy to:

Address: Cambrian Rail Partnership No. 2 LLP
c/o SMBC Leasing (UK) Limited
99 Queen Victoria Street
London
EC4V 4EH

Attention: Lease Admin

Fax: 020 7786 1749

Email: leaseadmin@gb.smbcgroup.com