



Registration of a Charge

Company name: **FIRST MTR SOUTH WESTERN TRAINS LIMITED**

Company number: **07900320**



X6E2H2NT

Received for Electronic Filing: **01/09/2017**

Details of Charge

Date of creation: **17/08/2017**

Charge code: **0790 0320 0001**

Persons entitled: **ANGEL TRAINS LIMITED**

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: **BURGES SALMON LLP (GW13)**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 7900320

Charge code: 0790 0320 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 17th August 2017 and created by FIRST MTR SOUTH WESTERN TRAINS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 1st September 2017 .

Given at Companies House, Cardiff on 5th September 2017

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 August 2017

ANGEL TRAINS LIMITED
as Lessor

FIRST MTR SOUTH WESTERN TRAINS LIMITED
as Lessee

DEED OF ASSIGNMENT

relating to Class 444 and 450 Desiro Electric Multiple Units



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THIS ASSIGNMENT is made by way of Deed on 17 August 2017

BETWEEN

- (1) **ANGEL TRAINS LIMITED**, a company incorporated under the laws of England (registered number 2912655) whose registered office is at 123 Victoria Street, London SW1E 6DE (the *Lessor*); and
- (2) **FIRST MTR SOUTH WESTERN TRAINS LIMITED**, a company incorporated under the laws of England (company number 07900320) whose registered office is at 50 Eastbourne Terrace, Paddington, London W2 6LG (the *Lessee*).

THIS ASSIGNMENT WITNESSES as follows:

INTERPRETATION

Definitions

1.1 In this Assignment (including the Schedules hereto): (a) words and expressions defined in the Lease shall bear the same respective meanings; and (b) the following words and expressions have the meanings respectively shown opposite below, in each case unless the context otherwise requires:

Act means the Law of Property Act 1925 as amended and supplemented from time to time;

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

Amendment Agreement means the amendment agreement to the Service Agreement in respect of a mid-life refresh of the Class 444 450 Desiro Multiple Units to be entered into between the Lessee and the Contractor;

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

- (a) the Service Agreement, the Amendment Agreement and the SAG Service Bond; and
- (b) all proceeds in respect of the Service Agreement, the Amendment Agreement and the SAG Service Bond,

together with:

- (i) all claims, rights and remedies of the Lessee arising out of or in connection with a breach of or default under or in connection with the Service Agreement, the Amendment Agreement and the SAG Service Bond (including, without limitation, all damages and other compensation payable for or in respect thereof); and
- (ii) all rights of the Lessee to require, enforce and compel performance of all of the provisions of the Service Agreement, the Amendment Agreement and the SAG Service Bond, and otherwise to exercise all claims, rights and remedies thereunder, including without limitation all rights to give and receive notices, reports, requests and consents, to make demands, to exercise discretions,

options and elections thereunder and to take all other action thereunder, pursuant thereto or in connection therewith;

Assumption Date shall have the meaning attributed to it in Clause 7.4;

Contractor means Siemens plc, a company incorporated under the laws of England and Wales (registered number 727817) whose registered office is at Faraday House, Sir William Siemens Square, Frimley, Camberley, Surrey, GU16 8QD;

Enforcement Event means any Event of Default in respect of which the Lessor has terminated the leasing of all or any of the Items of Equipment under clause 14.2(a) of the Lease;

Lease means the rolling stock operating lease agreement of even date herewith between the Lessee and the Lessor relating to certain Class 444 and 450 Desiro electric multiple units manufactured by Siemens plc, as amended, supplemented or otherwise modified from time to time in accordance with the terms thereof;

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

Receiver means any receiver or receiver and manager appointed by the Lessor hereunder or under any statutory power;

SAG means Siemens AG, incorporated under the laws of Germany;

SAG Service Bond means the bond issued to be entered into by SAG to Lessee in accordance with the terms of the Service Agreement;

Secured Obligations means all moneys, liabilities and obligations which are now, or at any time hereafter may be, due, owing or payable by the Lessee in any currency, actually or contingently, solely or jointly and/or severally with another or others, as principal or surety, on any account whatsoever pursuant to the Lease or this Assignment, by the Lessee (or by any liquidator, receiver, administrative receiver, administrator or any similar officer of the Lessee) in respect of any of its obligations under the Lease or this Assignment and including, without limitation, the obligation of the Lessee to exercise its rights against the Contractor and/or SAG pursuant to the Service Agreement, the Amendment Agreement and/or the SAG Service Bond (as the case may be) in accordance with its covenant under Clause 8.3 of the Lease; and (except as expressly otherwise provided) references to the Secured Obligations include references to any of them;

Security Period means the period commencing on the date hereof and terminating on the date upon which all of the Secured Obligations have been paid, performed and discharged in full;

Service Agreement means the service agreement of even date herewith between the Lessee and the Contractor; and

Siemens Notice means the notice issued by the Contractor to the Lessor specifying that a Company Event of Default (as defined in the Service Agreement) has occurred.

Interpretation

1.2(a) Clause headings in this Assignment shall not affect its interpretation.

- (b) References in this Assignment to:
- (i) clauses and any Schedule are to clauses of and any Schedule to this Assignment; and a reference to a sub-clause is, unless otherwise indicated, a reference to a sub-clause of the clause in which the reference appears;
 - (ii) the Lessee and the Lessor include references to the persons deriving title under or through them respectively;
 - (iii) any statutory provision shall be deemed also to refer to any statutory modification or re-enactment thereof or any statutory instrument, order or regulation made thereunder or under any such modification or re-enactment;
 - (iv) any agreement or document, including the Lease, the Service Agreement, the Amendment Agreement, the SAG Service Bond and this Assignment, shall be deemed also to refer to such agreement or document as from time to time amended, varied, supplemented, novated or replaced (in accordance with the Lease or this Assignment);
 - (v) any action, remedy or method of judicial proceeding for the enforcement of the rights of creditors or of security shall be deemed to include, in respect of any jurisdiction other than England, references to such action, remedy or method of judicial proceeding for the enforcement of the rights of creditors or of security available or appropriate in such jurisdiction as shall most nearly approximate to such action, remedy or method of judicial proceeding described or referred to in this Assignment;
 - (vi) a *person* shall be construed as a reference to any person, firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having a separate legal personality) of two or more of the foregoing;
 - (vii) *law* and *relevant law* shall include references to any provision of the laws of any jurisdiction which may from time to time be applicable; and
 - (viii) references to "this Assignment" shall include the schedules hereto and the schedules to this Assignment which shall be construed to be part of this Assignment.
- (d) This Assignment is a Contract Document for the purposes of the Lease.

COVENANT TO PAY

2.1 The Lessee hereby acknowledges to the Lessor that the amount secured by this Assignment, and in respect of which this Assignment and the Security Interest hereby created is enforceable, is the full amount of the Secured Obligations for the time being and from time to time outstanding. The Lessee hereby covenants with the Lessor that it shall pay and discharge all of the Secured Obligations on the due date therefor in the manner provided in the Lease or this Assignment, as the case may be.

ASSIGNMENT

Assignment

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

Re-Assignment

3.2 If the Lessee shall have paid, performed and discharged all of the Secured Obligations in full, the Lessor shall (upon written request by, and at the cost of, the Lessee) re-assign to the Lessee (subject to clause 11.5) the rights, title, benefit and interest in and to the Assigned Property and shall execute such notices and directions to the Lessee and other persons as the Lessee may reasonably require in order to give effect to such re-assignment.

Nature of Security Interests

3.3 The Lessor and Lessee agree that this Assignment shall create and constitute an effective first-ranking Security Interest over all the Assigned Property effective under all Applicable Laws.

Present Assignment and Exercise of Rights

- 3.4(a) The assignment on the terms set out in clause 3.1 constitutes and effects an immediate and full assignment of the Assigned Property and shall be effective, and the security intended to be vested by this Assignment shall be constituted, immediately upon its execution.
- (b) Notwithstanding but without prejudice to clause 3.1 and clause 3.4(a), the Lessor agrees that the Lessee shall continue to be entitled to receive payments and exercise all of the rights, powers, discretions, claims and remedies which would (but for this Assignment) be vested in the Lessee under and in respect of the Assigned Property unless and except that the Lessor requires otherwise following the occurrence of an Enforcement Event or the exercise its rights to step-in in accordance with clause 7.4.

REPRESENTATIONS AND WARRANTIES

4. The Lessee warrants and represents to the Lessor that the Lessee has not assigned, charged, pledged or otherwise encumbered or disposed of any of its rights and benefits under any of the Agreements and the Assigned Property is free from any Security Interests, in each case, other than this Assignment.

COVENANTS AND UNDERTAKINGS

Notices and Acknowledgements

- 5.1 The Lessee shall:
- (a) on the date hereof execute and deliver to the Contractor a notice in respect of the Service Agreement in the form set out in Part 1 of Schedule 1;

- (b) on the date on which the Amendment Agreement is entered into, execute and deliver to the Contractor a notice in respect of the Amendment Agreement in the form set out in Part 1 of Schedule 1;
- (c) on the date on which the SAG Service Bond is delivered to the Lessee, execute and deliver to SAG a notice in the form set out in Part 1 of Schedule 2; and
- (d) as soon as each such acknowledgement is received by the Lessee, deliver to the Lessor such acknowledgement in the respective set out in Part 2 of each of Schedules 1 and 2, duly executed by the respective addressees of the notice relating thereto.

Assignment and Amendment of Assigned Property

5.2 The Lessee hereby undertakes that, throughout the Security Period, it shall not, without the prior written consent of the Lessor (save to the extent permitted under the provisions of the Lease and the Agreements) sell, assign, transfer or otherwise dispose of any of the Assigned Property or create or suffer to exist any Security Interest upon or with respect to any of the Assigned Property except for this Assignment.

RIGHTS, OBLIGATIONS AND LIABILITIES

6. Notwithstanding anything to the contrary herein contained, the Lessee agrees with the Lessor and for the benefit of the Lessor that save where the Lessor has assumed such obligation, duty or liability pursuant to clause 7.4:

- (a) the Lessee shall at all times remain liable to perform all the duties and obligations expressed to be assumed by it in relation to the Assigned Property to the same extent as if this Assignment had not been executed;
- (b) the exercise by the Lessor of any of the rights assigned hereunder shall not release the Lessee from any of its duties or obligations in relation to the Assigned Property;
- (c) the Lessor shall not have any obligation or liability in relation to the Assigned Property by reason of, or arising out of, this Assignment;
- (d) the Lessor shall not be obliged to perform any of the obligations or duties of the Lessee expressed to be assumed by the Lessee in relation to the Assigned Property; and
- (e) the Lessor shall not be required to make any payment or to make any inquiry as to the sufficiency of any payment received by the Lessor or the Lessee, or to present or file any claim or to take any other action to collect or enforce any claim for any payment assigned hereunder.

DEFAULT AND REMEDIES

Powers of Lessor

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

- (a) to apply to any court of competent authority for an order for foreclosure absolute so as to vest all the Lessee's right, title and interest in all or any of the Assigned Property in the Lessor;
- (b) to sell, call in, collect and convert into money all or any of the Assigned Property by public or private contract at any place in the world with or without advertisement or notice to the Lessee or any other person, with all such powers in that respect as are conferred by law; and by way of extension thereof such sale, calling in, collection and conversion may be made for such consideration as the Lessor shall in its sole and absolute discretion deem reasonable (whether the same shall consist of cash or shares or debentures in some other company or companies or other property of whatsoever nature or partly of one and partly of some other species of consideration, and whether such consideration shall be presently payable or by instalments or at some future date, and whether such deferred or future payments shall be secured or not) and in all other respects in such manner as the Lessor shall in its sole and absolute discretion think fit, and without being liable to account for any loss of or deficiency in such consideration; and Section 103 of the Act shall not apply to this Assignment or to the power of sale, calling in, collection or conversion hereinbefore contained; and for the purposes of this sub-clause the Lessor may (in its sole and absolute discretion) by notice appoint the Lessee or any other person its non-exclusive agent to sell all or any of the Assigned Property on terms satisfactory to the Lessor;
- (c) to settle, arrange, compromise or submit to arbitration any accounts, claims, questions or disputes whatsoever which may arise in connection with the Assigned Property or in any way relating to this Assignment and execute releases or other discharges in relation thereto;
- (d) to bring, take, defend, compromise, submit to arbitration or discontinue any actions, suits or proceedings whatsoever, civil or criminal, in relation to the Assigned Property;
- (e) to execute and do all such acts, deeds and things as the Lessor may consider necessary or proper for or in relation to any of the purposes aforesaid; and
- (f) to appoint a Receiver of all or any part of the Assigned Property upon such terms as to remuneration and otherwise as the Lessor shall deem fit; and the Lessor may from time to time remove any Receiver so appointed and appoint another in his stead; and to fix (at or after the time of his appointment) the remuneration of any such Receiver. A Receiver so appointed shall be the agent of the Lessee, and the Lessee shall be liable for such Receiver's actions and defaults to the exclusion of liability on the part of the Lessor. Nothing herein contained shall render the Lessor liable to any such Receiver for his remuneration, costs, charges or expenses or otherwise.

Law of Property Act

7.2 Sections 109(6) and 109(8) of the Act shall not apply in relation to any Receiver appointed under clause 7.1.

Other Powers

7.3 Notwithstanding any other provision of this Assignment, and without limiting, and as an addition to, the powers conferred upon the Lessor (and any Receiver appointed pursuant to clause 7.1) by the laws of England or of any other jurisdiction, the Lessor or the Receiver (as the case may be) may at any time after the occurrence of an Enforcement Event exercise

against or in respect of the Lessee and/or the Assigned Property any of the rights, powers, privileges or discretions conferred from time to time by the Applicable Laws.

Step-in Rights

7.4 Upon the issue of a Siemens Notice, the Lessor shall be entitled, within 30 days of receipt of such Siemens Notice, to issue a notice to Siemens (a *Step-in Notice*) in respect of itself or a person or persons nominated by the Lessor (each an *Obligor*), stating that the Obligor is to become the obligor in respect of the Lessee's obligations under the Service Agreement and/or the Amendment Agreement on and as from the date on which the Step-in Notice becomes effective (the *Assumption Date*) in place of the Lessee (but only in respect of the obligations arising after the Assumption Date).

POWERS OF RECEIVER

Powers of Receiver

8.1 Any Receiver appointed under clause 7.1 shall have all the powers conferred on a receiver by law (save that Section 103 of the Act shall not apply) and by way of addition to but without limiting those powers:

- (a) the Receiver shall have all the powers given to the Lessor hereunder of taking possession of, calling in, collecting, converting into money and selling and dealing with the Assigned Property or any part thereof and generally shall be entitled to the same protection and to exercise the same powers and discretions as are given to the Lessor hereunder and shall also have such other of the powers and discretions given to the Lessor hereunder as the Lessor may from time to time confer on him;
- (b) the remuneration of the Receiver may be fixed by the Lessor (and may be or include a commission calculated by reference to the gross amount of all money received or otherwise), but shall be payable by the Lessee, and the amount of such remuneration may be debited by the Lessor from any account of the Lessee but shall, in any event, be secured on the Assigned Property under this Assignment;
- (c) the Receiver shall have power to make any payment and incur any expenditure which the Lessor is by this Assignment expressly or impliedly authorised to make or incur; any expenses incurred by the Receiver in the exercise of any of his powers hereunder may be paid or retained by him out of any moneys coming into his hands as receiver or may be paid by the Lessor, in which case they shall be treated as expenses properly incurred by the Lessor;
- (d) without prejudice to the provisions of clause 7.1(f), the Receiver shall in the exercise of his powers, authorities and discretions conform with the reasonable directions from time to time made and given by the Lessor;
- (e) the Lessor may at any time require security to be given for the due performance of the Receiver's duties as receiver, at the cost of the Lessee; and
- (f) the Lessor may from time to time determine what funds the Receiver shall be at liberty to keep in hand with a view to the performance of his duties as receiver.

No Liability as Mortgagee in Possession

8.2 Neither the Lessor nor the Receiver shall be liable to account as a mortgagee in possession of the Assigned Property; and neither the Lessor nor any Receiver shall be liable for any loss arising from or in connection with the realisation of the Assigned Property or otherwise for any act, neglect, default or omission for which a mortgagee in possession might be liable as such.

Other Powers of Receiver

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

THIRD PARTIES

Protection of Third Parties

9.1 No person dealing with the Lessor or any Receiver appointed by the Lessor hereunder shall be concerned to enquire whether an Enforcement Event has occurred or whether the power which the Lessor or such Receiver is purporting to exercise has become exercisable or whether any money remains due on the security of this Assignment or otherwise as to the propriety or regularity of any sale or other dealing by the Lessor or such Receiver with the Assigned Property, and all the protections to purchasers conferred by law shall apply to such persons dealing with the Lessor or such Receiver.

Receipts

9.2 The receipt of the Lessor or such Receiver for the purchase moneys shall effectively discharge the purchaser, who shall not be concerned with the manner of application of the same or be in any way answerable therefor.

Meaning of "Purchaser"

9.3 In clauses 9.1 and 9.2, *purchaser* includes any person acquiring for money or money's worth, any lease of, or Security Interest over, or any other interest or right whatsoever in relation to the Assigned Property.

POWER OF ATTORNEY

Power of Attorney

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

- (a) to execute, seal and deliver (using the company seal of the Lessee where appropriate) and otherwise perfect and do any charge, mortgage, assignment, deed, assurance, agreement, conveyance, instrument, act or thing which the Lessee has failed to execute and do under the covenants, undertakings and provisions contained herein; or

- (b) (to the extent the Lessor is entitled under this Assignment to exercise rights conferred on the Lessor by the terms hereof) to do all things which the Lessee is entitled to do in any of the Agreements or which may be required or deemed proper in the exercise of any rights or powers hereunder or otherwise for any of the purposes of the security created hereby,

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

Delegation

10.2 The Lessor shall be entitled, at any time and as often as it may deem expedient, to delegate all or any of the powers and discretions vested in it by or in connection with this Assignment in such manner, upon such terms and to such persons as the Lessor in its absolute discretion may think fit.

Exercise of Power of Attorney

10.3 The Lessor agrees that it will only exercise its rights under clause 10.1(b) following the occurrence of an Enforcement Event.

SECURITY PROVISIONS

Continuing Security

11.1 This Assignment and the security hereby created shall be a continuing security and in particular (without limitation) shall not be, nor be considered as, satisfied by any intermediate discharge or payment on account of any liabilities or any settlement of accounts between the Lessee or any other person, on the one hand, and the Lessor on the other hand, and shall extend to cover any sum or sums of money or other liability and obligations which shall for the time being constitute the balance of the Secured Obligations until all of the Secured Obligations have been paid and discharged in full.

Additional Security

11.2 This Assignment and the security hereby created shall be in addition to and not in substitution for or derogation of any other security (whether given by the Lessee or otherwise) now or from time to time hereafter held by the Lessor in respect of or in connection with any or all of the Secured Obligations. Section 93 of the Act (and any other relevant statutory provision of similar effect) shall not apply.

Exercise of Other Remedies

11.3 Subject to occurrence of an Enforcement Event, the Lessor shall not be obliged, before exercising any of the rights, powers or remedies conferred upon it by this Assignment or by law, to: (a) issue or initiate any proceedings or take action or obtain judgement against the Lessee or any other person in any court or tribunal; (b) make or file any claim or proof in a winding-up or liquidation of the Lessee or of any other person; or (c) enforce or seek to enforce the recovery of the moneys and liabilities hereby secured or any other security.

No Impairment

11.4 The security created by this Assignment shall continue in full force and effect and shall not be discharged, impaired or otherwise affected by:

- (a) any time or indulgence granted by the Lessor or any failure or delay by the Lessor in exercising any right, remedy, power or privilege under this Assignment or under any of the Agreements or any single or partial exercise of any right, remedy, power or privilege hereunder or thereunder;
- (b) any failure by the Lessor to take or enforce any other security or guarantee taken or agreed to be taken for all or any of the Secured Obligations or under or pursuant to the Lease or any of the Agreements or otherwise;
- (c) any amendment, modification, variation, or supplement of all or any part of the Secured Obligations or the Lease or the Service Agreement or the Amendment Agreement;
- (d) any release or exchange of any security or guarantee now or hereafter held by the Lessor for all or any part of the Secured Obligations; or
- (e) any other act, omission, fact, matter, circumstance, event or thing (including, without limitation, the invalidity, unenforceability or illegality of any of the obligations of the Lessee or any of the Agreements, or the bankruptcy, liquidation, winding-up, insolvency, dissolution, administration, reorganisation or amalgamation of, or other analogous event of or with respect to, the Lessee or any other person) which, but for this provision, might operate to impair, discharge or adversely affect the rights of the Lessor hereunder or to impair, discharge or adversely affect the security hereby created.

Conditional Discharge

11.5 Any settlement or discharge between the Lessor and the Lessee and/or any other person shall be conditional upon no security or payment to the Lessor by the Lessee or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any provision or enactment relating to bankruptcy, liquidation, winding-up, insolvency, dissolution, reorganisation, administration, amalgamation or other analogous event or proceedings for the time being in force.

FURTHER ASSURANCES

12. The Lessee shall, at its own cost and expense and at the request of the Lessor, promptly sign, seal, execute, deliver, acknowledge, file, register and perfect all such assurances, documents, instruments, agreements, certificates and consents and do any and all such acts and things as may be reasonably necessary or desirable or as the Lessor may reasonably request from time to time in order to perfect the Security Interest intended to be created by this Assignment or to establish, maintain, protect or preserve such Security Interest or the rights of the Lessor under this Assignment or to enable the Lessor to obtain the full benefits of such Security Interest and this Assignment and to exercise and enforce its rights and remedies under this Assignment in respect of the Assigned Property.

INDEMNITIES

Indemnities

13.1 The Lessee hereby agrees to indemnify on demand, and hold harmless, the Lessor, the Receiver and every attorney, manager, agent or other person appointed by the Lessor or the Receiver, in respect of all Losses from time to time suffered or incurred by any of them:

- (a) in the execution or purported execution of any rights, powers, remedies, authorities or discretions vested in any of them by or pursuant to this Assignment, or otherwise in connection with the performance of this Assignment, or in enforcing or endeavouring to enforce any provisions of this Assignment or the security constituted hereby; or
- (b) by reason of any failure of the Lessee to perform any of its obligations pursuant to this Assignment.

Lessor's Right to Remedy

13.2 If at any time the Lessee fails to do any act which it is obliged to do hereunder or to make any payment which it is obliged to make hereunder (other than a payment to the Lessor), the Lessor may (but shall not be bound to) do such act or procure its doing or make such payment itself. The Lessee shall pay to the Lessor on demand the amount of payment made or Losses incurred by the Lessor in doing any act pursuant to this clause 13.2, together with interest thereon calculated from the date of notice of payment by the Lessor to the Lessee until the date of payment by the Lessee at the Default Rate.

MISCELLANEOUS PROVISIONS

Rights Cumulative

14.1 The rights of the Lessor under this Assignment are cumulative, may be exercised as often as it considers appropriate and are in addition to its rights under general law. The rights of the Lessor (whether arising under this Assignment or the general law) shall not be capable of being waived or varied otherwise than by an express waiver or variation in writing; and in particular any failure to exercise or any delay in exercising any of such rights shall not operate as a waiver or variation of that or any other such right; any defective or partial exercise of any of such rights shall not preclude any other or further exercise of that or any other such right; no failure on the part of the Lessor to execute and no delay on its part in exercising any right or remedy hereunder shall operate as a waiver; and no act or course of conduct or negotiation on the part of the Lessor or on its behalf shall in any way preclude it from exercising any such right or constitute a suspension or any variation of any such right.

Nature of Waivers

14.2 Any waiver and any consent by the Lessor under this Assignment must be in writing and may be given subject to any conditions thought fit by the Lessor. Any waiver or consent shall be effective only in the instance and for the purposes for which it is given.

Severability

14.3 If at any time any one or more of the provisions of this Assignment becomes invalid, illegal or unenforceable in any respect under the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions hereof under the law of such jurisdiction and

the validity, legality and enforceability of such provision under the law of any other jurisdiction shall not in any way be affected or impaired thereby.

Variations

14.4 The provisions of this Assignment shall not be varied otherwise than by an instrument in writing executed by or on behalf of both parties.

Application of Monies

14.5 All proceeds of any enforcement of this Assignment (whether pursuant to clause 7.2 or otherwise) shall be applied by the Lessor in or towards discharge of the Secured Obligations.

Counterparts

14.6 This Assignment may be executed in any number of counterparts and by any party hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which, when taken together, shall constitute one and the same agreement.

Successors in Title

14.7 The provisions of Clause 17 (*Assignment and Transfer*) of the Lease shall apply to this Assignment, *mutatis mutandis*.

NOTICES

Form of Notices

15. The provisions of Clause 19 (*Notices*) of the Lease shall apply to this Assignment, *mutatis mutandis*.

GOVERNING LAW AND JURISDICTION

Governing Law

16.1 This Assignment shall be governed by and construed in accordance with English law.

Jurisdiction

16.2 The provisions of Clause 21.2 (*Jurisdiction*) of the Lease shall apply to this Assignment, *mutatis mutandis*.

Consent to Relief

16.3 The Lessee hereby consents generally in respect of any legal action or proceeding arising out of or in connection with this Assignment to the giving of any relief or the issue of any process in connection with such action or proceeding including, without limitation, the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgement which may be made or given in such action or proceeding.

Waiver of Immunity

16.4 To the extent that the Lessee may in any jurisdiction claim for itself or its assets immunity from suit, execution, attachment (whether in aid of execution, before judgement or otherwise) or other legal process and to the extent that in any such jurisdiction there may be attributed to itself or its assets such immunity (whether or not claimed), the Lessee hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity to the full extent permitted by the laws of such jurisdiction.

Disputes

16.5 Any Dispute arising out of or in connection with this Assignment shall be resolved in accordance with schedule 13 (*Dispute Resolution*) of the Lease.

IN WITNESS whereof the parties hereto have caused this Assignment to be executed as a Deed and it is intended to be and is hereby delivered the day and year first above written.

SCHEDULE 1

Part 1

Notice of Assignment of Service Agreement [and Amendment Agreement]¹

(this *Notice*)

From: First MTR South Western Trains Limited

To: Siemens plc

Date: _____ 2017

Dear Sirs

We refer to the service agreement dated _____ 2017 between ourselves and yourselves (the *Service Agreement*) [and the amendment agreement to the Service Agreement dated _____ 2017 between ourselves and yourselves (the *Amendment Agreement*)]. We hereby give you notice that pursuant to an assignment dated _____ 2017 between ourselves (as assignor) and Angel Trains Limited (*Angel*) (as assignee) (the *Assignment*), we have assigned by way of security to Angel all of our rights, title, interest and benefit, present and future, under, in and to [the Service Agreement] [the Amendment Agreement].

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

A copy of the Assignment is enclosed with this Notice.

Please note the following:

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

¹ References in square brackets to the Amendment Agreement in this form of notice are to be included only in the notice to be served pursuant to Clause 5.1(b) of the Assignment.

- (ii) at all times after Angel has given you an Enforcement Notice to such bank account as Angel may from time to time specify to you.
- (c) Upon and after the giving of any such Enforcement Notice, Angel shall be entitled to exercise and give directions regarding the exercise of all or any of those rights, powers, discretions, claims and remedies which would (but for this Assignment) be vested in the Lessee under and in respect of the Service Agreement [and/or the Amendment Agreement (as applicable)] (to the exclusion of the Lessee and to the exclusion of any directions given at any time by or on behalf of the Lessee) as specified in the Enforcement Notice. Angel has agreed that, notwithstanding the Assignment, the Lessee remains entitled to exercise all of the rights, powers, discretions, claims and remedies which would (but for the Assignment) be vested in the Lessee under and in respect of the Service Agreement [and the Amendment Agreement] unless, and except to the extent that, there is a step-in under any direct agreement (*Direct Agreement*) [and/or the Amendment Agreement] between, *inter alia*, the Secretary of State and you relating to the Service Agreement or Angel gives you an Enforcement Notice.
- (d) The Lessee has irrevocably and unconditionally appointed Angel to be its attorney following the occurrence of an Enforcement Event, to do (among other things) all things which the Lessee itself should do in relation to the Service Agreement [and the Amendment Agreement].
- (e) The Lessee confirms to you that:
 - (i) in the event of any conflict between communications received from the Lessee and from Angel as to whether an Enforcement Event has occurred, you shall treat the communication from Angel as prevailing over the communication from the Lessee; and
 - (ii) none of the instructions, authorisations and confirmations in this Notice can be revoked or varied in any way except with Angel's specific prior written consent; and
 - (iii) the Lessee consents to the terms of the acknowledgement between yourselves and Angel (the *Acknowledgement*) and to the exercise by Angel of its rights and powers thereunder at any time after an Enforcement Notice has been served; **provided that** at any time prior to any Enforcement Notice being served, any amendment to, or variation of, the terms of the Acknowledgement is made with the consent of the Lessee, not to be unreasonably withheld or delayed, and Lessee agrees to be bound by, and will act in accordance with, the terms of the Acknowledgment, to the extent (if any) that such terms are applicable to the Lessee.

Please acknowledge receipt of this Notice, and confirm your agreement to it, by executing and returning to each of Angel and the Lessee an original copy of the Acknowledgement attached to this Notice.

This Notice is governed by, and shall be construed in accordance with, English law.

Yours faithfully,

.....
for and on behalf of

FIRST MTR SOUTH WESTERN TRAINS LIMITED

Part 2

Acknowledgement of Notice of Assignment of Service Agreement [and Amendment Agreement]²

(this *Acknowledgement*)

To: Angel Trains Limited (*Angel*)
Attn: Company Secretary

Copy: First MTR South Western Trains Limited (the *Lessee*)
Attn: Managing Director

Date: _____ 2017

Dear Sirs

We, the Contractor, acknowledge receipt of the notice dated _____ 2017 (a copy of which is attached to this Acknowledgement) (the *Notice*) and the copy of the assignment (the *Assignment*) enclosed with the Notice. Words and expressions defined in the Assignment (including such words and expressions defined by cross-reference) and the Notice shall have the same meanings when used in this Acknowledgement.

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

Consent

- (a) We fully and unconditionally consent to the terms of the Assignment by the Lessee of the Service Agreement [and the Amendment Agreement] and have noted, and will act in accordance with, the terms of the Notice. We have not previously received notice of any other assignment of the Service Agreement [(other than the notice in respect of the Service Agreement served by the Lessee to us dated on or about the date of the Assignment)] [or the Amendment Agreement] and we are not aware of any interest of any third party in any of the Lessee's rights, benefits, interests or claims against us under or in respect of the Service Agreement [or the Amendment Agreement].

Notice of breach

- (b) We will promptly give to Angel a written notice of the occurrence of a Company Event of Default (as defined in the Service Agreement) (the *Siemens Notice*).

Step-in rights

- (c) On or after delivery by us to Angel of a Siemens Notice, Angel may, within 30 days of the date of receipt of the Siemens Notice, give a notice (a *Step-in Notice*) to us in respect of one of:

² References in square brackets to the Amendment Agreement in this form of acknowledgement are to be included only in the acknowledgement to the notice which is to be served pursuant to Clause 5.1(b) of the Assignment.

- (i) itself; or
- (ii) a person or persons nominated by Angel.

(each an **Obligor**), stating that the Obligor is to become the obligor in respect of the Lessee's obligations under the Service Agreement [and/or the Amendment] Agreement on and as from the Assumption Date (as defined in paragraph (d) below) in place of the Lessee (but only in respect of obligations arising after the Assumption Date).

For the period from the date of occurrence of the Company Event of Default to the date falling 30 days thereafter, we agree that we shall not exercise any of our rights, remedies, powers, discretions or claims under the Service Agreement [and/or the Amendment Agreement (as relevant)] with respect to that Company Event of Default.

Effect of step-in

- (d) On and from the date the Step-in Notice becomes effective (as specified therein) (**Assumption Date**), the Obligor shall be deemed a party to the Service Agreement [and/or the Amendment Agreement (as relevant)] in place of the Lessee (but we acknowledge that the Lessee shall remain liable to us in respect of any accrued and unpaid or undischarged obligations of the Lessee under the Service Agreement [and/or the Amendment Agreement (as relevant)] relating to any period prior to the Assumption Date). To give full effect to such assumption by the Obligor, we agree to execute any deeds of accession, notices or other documents which may be necessary, (i) a Service Provider Event of Default (as defined in the Service Agreement) has occurred and is then continuing, at our cost and expense and (ii) in any other case, at the cost and expense of Angel. From the Assumption Date, and subject to paragraphs (c) and (e), the Obligor shall be entitled to the rights and benefits of the Lessee under the Service Agreement [and/or the Amendment Agreement (as relevant)] and shall be liable in place of the Lessee for the performance of all of the Lessee's obligations under the Service Agreement [and/or the Amendment Agreement (as relevant)] arising on or after the Assumption Date.

The Obligor will have no liability whatsoever for any liabilities or obligations under the Service Agreement [and/or the Amendment Agreement (as relevant)] which have arisen on or prior to, or are attributable to matters occurring on or prior to the Assumption Date. Notwithstanding the above, as between the Lessee and the Obligor, on or after the Assumption Date, only the latter is authorised to deal with us and exercise the Lessee's rights, powers and discretions under the Service Agreement and/or the Amendment Agreement (as relevant)] until such time as the Step-out Date (as defined in paragraph (e) below) occurs.

Step-in Period

- (e) The Obligor may at any time give us notice terminating its obligations to us under the Service Agreement [and/or the Amendment Agreement (as relevant)]. Any such notice must be in writing and must specify the date on which such notice takes effect (a **Step-out Date**) (the period between and including each of the Assumption Date and the Step-out Date being a **Step-in Period**) being a date falling no earlier than 5 Working Days after the date of such notice. On a Step-out Date, the Obligor shall be released from all obligations and liabilities under the Service Agreement [and/or the Amendment Agreement (as relevant)] (except for obligations and liabilities which have already arisen or are attributable to matters occurring during the Step-in Period

but have not fallen due to be performed or have not been performed) provided either (i) the Obligor has terminated the Service Agreement [and/or the Amendment Agreement (as relevant)] in accordance with its terms or (ii) has been substituted pursuant to the terms of paragraph (f) below.

Substitution

- (f) We agree that at any time during a Step-in Period, following the occurrence of an Event of Default, Angel may transfer the Obligor's rights and obligations under the Service Agreement [and/or the Amendment Agreement (as relevant)] to a third party nominated by Angel, with our consent, not to be unreasonably withheld or delayed, (and which we agree to give as soon as possible upon being reasonably satisfied that the party nominated is able to perform the obligations to be transferred to that person) by giving us written notice. The Obligor shall be released from any further liability upon such transfer taking effect.

Identical rights

- (g) We agree that upon a step-in pursuant to paragraph (c) or a substitution pursuant to paragraph (f), Angel or any Obligor or transferee and any persons employed or engaged by any of them will have the rights under the Service Agreement [and/or the Amendment Agreement (as relevant)] which are the same in all respects as those which would have been enjoyed by the Lessee and persons employed or engaged by it had no breach of the Service Agreement [and/or the Amendment Agreement (as relevant)] been committed by the Lessee, provided that nothing in this paragraph shall grant, or shall be deemed to grant to Angel or any Obligor or transferee or any persons employed or engaged by any of them any right of access or use which would require the consent of the Office of Rail and Road under Section 18 of the Act (as defined in the Lease).

Security account

- (h) We irrevocably and unconditionally agree to pay the full amount of any sum which we are (or would, but for the Assignment, be) at any time obliged to pay to the Lessee in respect of the Multiple Units under or in respect of the Service Agreement [and the Amendment Agreement] including, without limitation, any sums in the nature of compensation or damages (whether liquidated or otherwise) payable under or in respect of the Service Agreement [and the Amendment Agreement]:
- (i) unless and until Angel gives us an Enforcement Notice, to such bank account as the Lessee may from time to time specify; and
 - (ii) at all times after Angel has given us an Enforcement Notice, to such bank account as Angel may from time to time specify.

Contractor default

- (i) If the Service Agreement [and/or the Amendment Agreement] is terminated by the Lessee or terminates (for whatever reason other than termination by the Contractor following a breach or default by the Lessee of its obligations under the Service Agreement [and/or the Amendment Agreement (as applicable)]), we shall grant access to our premises, records, documents, invoices, notices and other communications to Angel in order that Angel shall be able to undertake a thorough

inspection and audit of the maintenance work undertaken by us pursuant to the Service Agreement [and/or the Amendment Agreement (as applicable)].

No security

- (j) We agree, to the extent that we are entitled to benefit from any Security Interest over or in relation to the Multiple Units, that with effect from the date of this Acknowledgement, any such Security Interest is fully and unconditionally extinguished and that we have no claims to or rights or interest in such Multiple Units. Furthermore, we undertake that we will not, at any time after the date of this Acknowledgement receive, benefit from, assert, claim or exercise any Security Interest of whatever nature in or relating to the Multiple Units.

Pari passu

- (k) We agree that:
- (i) the obligations owed to us by the Lessee under the Service Agreement [and the Amendment Agreement] do not and will not rank ahead of any of the other present or future unsecured obligations of the Lessee; and
 - (ii) we will not request, accept or benefit from any Security Interest, rights of set-off or other assurance against loss given by any person or persons in support of any liabilities (whether present or future, absolute, contingent or otherwise, whether or not matured and whether or not liquidated) owed to us at any time by the Lessee under or in connection with the Service Agreement [or the Amendment Agreement] or on any other account whatsoever.

No liability

- (l) We agree that the Lessee shall at all times be liable for the performance of the Lessee's obligations under the Service Agreement [and the Amendment Agreement] (save as expressly provided in paragraphs (c) and (f) above) and that no Obligor is, or will be, under any liability or obligation of any kind whatsoever under the Service Agreement [or the Amendment Agreement] (save as expressly provided in paragraphs (c) and (f) above) nor under any liability whatever in the event of any failure by the Lessee to perform its obligations thereunder.

No assignment

- (m) We will not assign or transfer or agree or attempt to assign or transfer or create a trust over, any of our obligations, rights, title, benefits or interest in the Service Agreement [or the Amendment Agreement] without the prior written consent of Angel.

Railways Act

- (n) As a separate and independent stipulation overriding all other express or implied terms of this Acknowledgement, nothing in this Acknowledgement shall be construed as giving Angel any right to take any step which (i) it may not lawfully take by reason of any restriction or condition contained in the Act (as defined in the Lease) or (ii) would conflict with or prevent or hinder exercise of, the rights of the Secretary of State pursuant to the Direct Agreement.

This Acknowledgement is for the benefit of Angel and where applicable, the Lessee.

This Acknowledgement is governed by, and shall be construed in accordance with, English law.

Yours faithfully,

Signed for and on behalf of
SIEMENS PLC

SCHEDULE 2

Part 1

Notice of Assignment of SAG Service Bond

From: First MTR South Western Trains Limited (the *Lessee*)

To: Siemens AG
c/o Siemens plc
Faraday House
Sir William Siemens Square
Frimley
Camberley
Surrey
GU16 8QD
Attention: Head of Trade Finance Advisory (SFS)

Date: _____ 2017

Dear Sirs

We refer to the support bond issued by you dated _____ 2017 relating to the service agreement dated _____ 2017 entered into between Siemens plc and the Lessee (the *SAG Service Bond*).

The Lessee hereby gives you notice that by an assignment dated _____ 2017 between the Lessee and Angel Trains Limited (the *Lessor*), the Lessee has assigned to the Lessor by way of security all its right, title and interest in and to the SAG Service Bond.

Henceforth all rights that may be exercised and all moneys that may be payable under the SAG Service Bond shall be exercised by and paid to the Lessee until the Lessor gives you a notice that an Enforcement Event (as defined in the security assignment dated _____ 2017 entered into by the Lessee in favour of the Lessor) has occurred, whereupon you are authorised and required to comply with the directions of the Lessor in relation to the SAG Service Bond. In the event of any conflict between communication received from the Lessee and from the Lessor as to whether an Enforcement Event has occurred, you shall treat the communication from the Lessor as prevailing over the communication from the Lessee.

This notice and the instructions herein contained are irrevocable by the Lessee.

Yours faithfully

.....
For and on behalf of
FIRST MTR SOUTH WESTERN TRAINS LIMITED

Part 2

Acknowledgement of Notice of Assignment of SAG Service Bond

From: Siemens AG
c/o Siemens Financial Services GmbH
SFS FA TFA TM GUA
Postbox 32 40
91050 Erlangen
Germany

To: Angel Trains Limited (the *Lessor*)

Date: _____ 2017

Dear Sirs

We acknowledge receipt of a notice of assignment from First MTR South Western Trains Limited (the *Lessee*) dated _____ 2017 (the *Notice*) concerning the SAG Service Bond referred to therein.

We hereby agree to comply with the terms of the notice of assignment, including paying any moneys that may be payable under the SAG Service Bond to the Lessee and on delivery of a notice to us that an Enforcement Event (as defined in the Notice) has occurred, to the Lessor.

Yours faithfully

.....
For and on behalf of
SIEMENS AG

EXECUTION PAGE

EXECUTED and **DELIVERED** as a **DEED** by
FIRST MTR SOUTH WESTERN TRAINS LIMITED
acting by:

)
)
)



Director:

Hugh Clancy

In the presence of:

Signature of witness:



Name of witness:

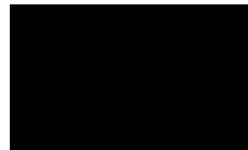
Ranvir Singh

Address of witness:

*One Glass Wharf
Bristol
BS2 0ZX*

EXECUTED and **DELIVERED** as a **DEED** by
ANGEL TRAINS LIMITED
acting by:

)
)
)



Director:

KEVIN TRIBLEY

In the presence of:

Signature of witness:



Name of witness:

RICHARD MURPHY

Address of witness:

*123 VICTORIA STREET
LONDON
SW1E 6DE*