



Registration of a Charge

Company name: **FIRST RAIL PROCUREMENT LIMITED**

Company number: **02996875**



X9KHLTL4

Received for Electronic Filing: **23/12/2020**

Details of Charge

Date of creation: **18/12/2020**

Charge code: **0299 6875 0006**

Persons entitled: **ANGEL LEASING COMPANY 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 (RS19)**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 2996875

Charge code: 0299 6875 0006

The Registrar of Companies for England and Wales hereby certifies that a charge dated 18th December 2020 and created by FIRST RAIL PROCUREMENT LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 23rd December 2020 .

Given at Companies House, Cardiff on 29th December 2020

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 18 December 2020

FIRST RAIL PROCUREMENT LIMITED
as Assignor

ANGEL LEASING COMPANY LIMITED
as Assignee

SECURITY ASSIGNMENT
in relation to the Transcal Advance Payment Bond

BRYAN
CAVE
LEIGHTON
PAISNER **BLP**

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DATED 18 December 2020

PARTIES

- (1) **FIRST RAIL PROCUREMENT LIMITED** a company incorporated and registered in England and Wales (registered number 02996875) whose registered office is at 4th Floor Capital House, 25 Chapel Street, London NW1 5DH (the "**Assignor**"); and
- (2) **ANGEL LEASING COMPANY LIMITED**, a company incorporated and registered in England and Wales (registered number 03114476) whose registered office is at 123 Victoria Street, London SW1E 6DE (the "**Assignee**"),
- each a "**Party**" and together the "**Parties**".

OPERATIVE PROVISIONS:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed, unless a contrary indication appears, words and expressions defined in the Seat Funding Agreement (as defined below) have the same meaning in this Deed and:

"Assigned Property" means the Assignor's rights, title and interests under, in and to:

- (a) the Transcal Advance Payment Bond that is the Original Transcal Advance Payment Bond; and
- (b) any other Transcal Advance Payment Bond,

and any moneys and proceeds paid or payable pursuant to the Original Transcal Advance Payment Bond and any such other Transcal Advance Payment Bond.

"Collateral Rights" means all rights, powers and remedies of the Assignee provided under this Deed or by law.

"Enforcement Event" means:

- (a) the Assignee gives a notice to the Assignor under clause 9.9 or clause 9.11 of the Seat Funding Agreement;
- (b) the Transcal Contract becoming terminable in the circumstances contemplated by clause 19.3(a) of the Seat Funding Agreement; or
- (c) the occurrence of any other FRP Trigger Event.

"LPA" means the Law of Property Act 1925.

"Novated Transcal Contract" has the meaning given to such term in the Transcal Contract Deed of Novation and Amendment.

"Original Bond Provider" means the issuer of the Original Transcal Advance Payment Bond.

"Original Transcal Advance Payment Bond" means the performance bond (with bond reference G 130807) issued by the Royal Bank of Scotland plc on or about the date of this Deed to the Assignor, as beneficiary, in connection with the Transcal Contract.

"Receiver" means a receiver or receiver and manager or administrative receiver of the whole or any part of the Assigned Property.

"Seat Funding Agreement" means the seat funding agreement dated on or about the date of this Deed between the Assignor and the Assignee titled "Provision of Seats for Class 390 Fleet".

"Secured Obligations" means all obligations at any time due, owing or incurred by:

- (a) the Assignor to the Assignee under clause 19.6(a)(i) of the Seat Funding Agreement;
- (b) Transcal to the Assignee under paragraph 8.4(a) of part 2 (*Special Terms*) of schedule 5 (*Warranty and Special Terms*) of the Novated Transcal Contract; or
- (c) Transcal to the Assignee under the Transcal Contract Deed of Novation and Amendment,

in each case, whether present or future, actual or contingent (and whether incurred solely or jointly and whether as principal or surety or in some other capacity).

"Security Period" means the period starting on the date of this Deed and ending on the earliest date to occur of the following dates:

- (a) the date on which the Minimum Seat Requirement is achieved;
- (b) the date on which the Assignor procures the issuance to the Assignee of an FRP Advance Payment Bond complying in all respects with clause 11 of the Seat Funding Agreement in accordance with clause 19.2(f) of the Seat Funding Agreement;
- (c) the date on which a Current Performance Bond becomes subject to the Release and Reassignment and the Absolute Assignment (as each such term is defined in the Transcal Contract Deed of Novation and Amendment); and
- (d) the date on which Transcal procures the issuance to the Assignee of a New Performance Bond (as defined in the Transcal Contract Deed of Novation and Amendment) in accordance with clause 8.9 of the Transcal Contract Deed of Novation and Amendment.

1.2 Construction

The provisions of clause 1.2 of the Seat Funding Agreement shall apply to this Deed as if such provision were set out herein in full and as if each reference therein to "this Agreement" were a reference to this Deed.

1.3 Third party rights

The Parties hereby agree that the Contracts (Rights of Third Parties) Act 1999 shall not apply to the provisions of this Deed.

2 COVENANT TO PERFORM

The Assignor covenants with the Assignee that it shall on demand pay and perform the Secured Obligations when due provided that:

- (a) the liability of the Assignor in respect of the Secured Obligations referred to in paragraphs (b) and (c) of the definition thereof shall be limited to:
 - (i) the amounts realised by the Assignee from the making of, or held by the Assignee as a consequence of the making of, a demand under any Transcal Advance Payment Bond at any time; and
 - (ii) other amounts payable by the Assignor under this Deed; and
- (b) neither this covenant nor the Security constituted by this Deed shall extend to or include any liability or sum which would, but for this provision, cause this covenant or Security to be unlawful or prohibited by any Applicable Laws.

3 NATURE OF SECURITY

The Security created under this Deed is created:

- (a) in favour of the Assignee;
- (b) as a continuing security to secure the performance and discharge of the Secured Obligations; and
- (c) with full title guarantee (except that the covenant set out in section 3(1) of the Law of Property (Miscellaneous Provisions) Act 1994 shall extend to all charges, encumbrances and rights, even if the Assignor does not know and could not reasonably be expected to know about them).

4 ASSIGNMENT

The Assignor assigns absolutely the Assigned Property to the Assignee.

5 REPRESENTATIONS AND WARRANTIES

The Assignor makes the following representations and warranties to the Assignee on the date of this Deed:

- (a) it is the sole legal and beneficial owner of the Assigned Property;
- (b) it has not sold or disposed of, or created, granted or permitted to subsist any Security over, all or any of its right, title and interest in the Assigned Property; and
- (c) the Original Transcal Advance Payment Bond is in full force and effect and enforceable in accordance with its terms and it is not in breach of any term or condition of the Original Transcal Advance Payment Bond.

6 UNDERTAKINGS

6.1 Notices

6.1.1 The Assignor shall deliver to the Assignee, in the case of the Original Transcal Advance Payment Bond, on the date of this Deed and, in the case of any other Transcal Advance Payment Bond, on the date of such Transcal Advance Payment Bond, a signed, but undated, notice of assignment in the form set out in Schedule 1 (*Notice of assignment*) and addressed to the relevant Bond Provider.

6.1.2 The Assignee shall hold each such signed, but undated, notice of assignment until such time as an Enforcement Event occurs. Following the occurrence of an Enforcement Event, the Assignee may, on behalf of the Assignor, date and deliver to the Bond Provider of the Transcal Advance Payment Bond then in effect the notice of assignment addressed to such Bond Provider.

6.1.3 The Assignee shall request that the Bond Provider to which the notice of assignment is delivered pursuant to Clause 6.1.2 completes and returns to the Assignee an acknowledgement in the form of Schedule 2 (*Acknowledgement of notice of assignment*).

6.1.4 The Assignor shall register the Security created by this Deed at Companies House against the Assignor within 21 days of its creation.

6.2 Negative pledge

The Assignor shall not, at any time during the Security Period, create or permit to subsist any Security over any Assigned Property.

6.3 Amendments

The Assignor shall not agree to any amendments to any Transcal Advance Payment Bond or issue any certificate of decrease under any Transcal Advance Payment Bond, in each case, without the prior written consent of the Assignee.

6.4 Disposals

The Assignor shall not enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any Assigned Property.

7 ENFORCEMENT OF SECURITY

7.1 When the security becomes enforceable and making of demands

7.1.1 The Security created by this Deed shall become enforceable immediately if an Enforcement Event occurs.

7.1.2 If the Assignor is entitled, in accordance with clause 11.5(a) of the Seat Funding Agreement, to issue a written demand under a Transcal Advance Payment Bond, the Assignor may, notwithstanding the Security created under this Deed, issue such written demand provided that, if such written demand is made during the Security Period, such written demand requires the relevant Bond Provider to pay the proceeds of such demand into an account in the name of the Assignee.

7.1.3 Any proceeds of any demand paid into an account in the name of the Assignee in accordance with clause 7.1.2 shall be held by the Assignee until, and released at, the end of the Security Period unless:

- (a) prior to the end of the Security Period, the Security created under this Deed becomes enforceable, in which case, such proceeds shall be applied in accordance with clause 9; or
- (b) such demand was made as a consequence of a Transcal Advance Payment Bond having become an Expiring Advance Payment Bond, a further Transcal Advance Payment Bond is issued in accordance with the terms and conditions of the Seat Funding Agreement and the Assignee has the benefit of valid and effective Security in respect of that further Transcal Advance Payment Bond under this Deed, in which case, such proceeds shall be released by the Assignee to the Assignor.

7.2 Powers on enforcement

At any time after the Security created by this Deed becomes enforceable, the Assignee may, without notice to the Assignor or authorisation from any court and without prejudice to any other of its rights and remedies, in its absolute discretion:

- (a) enforce all or any part of that Security (at the times, in the manner and on the terms it thinks fit);
- (b) exercise any of the Assignor's rights under any Transcal Advance Payment Bond, including making a demand under any such Transcal Advance Payment Bond in accordance with the terms and conditions of the applicable Transcal Advance Payment Bond;
- (c) hold or dispose of all or any part of the Assigned Property; and
- (d) whether or not it has appointed a Receiver, exercise all or any of the powers, authorities and discretions conferred by the LPA (as varied or extended by this Deed) on mortgagees and by this Deed on any Receiver or otherwise conferred by law on mortgagees or Receivers.

8 EXTENSION AND VARIATION OF THE LPA

8.1 Extension of powers

The power of sale or other power conferred on the Assignee and on any Receiver by this Deed shall operate as a variation and extension of the statutory power of sale under section 101 of the LPA and that power shall arise (and the Secured Obligations shall be deemed due and payable for that purpose) on the date of this Deed.

8.2 Restrictions

The restrictions contained in sections 93, 103 and 109(1) of the LPA shall not apply to:

- (a) this Deed;
- (b) the exercise by the Assignee of its right to consolidate all or any of the Security created by or under this Deed with any other Security in existence at any time; or

(c) the Assignee's power of sale,

which rights and powers may be exercised by the Assignee without notice to the Assignor.

9 **APPLICATION OF MONEYS**

The Assignee shall apply all moneys received by it under this Deed after the Security created under this Deed has become enforceable or, as the case may be, held by it at the time that the Security created under this Deed becomes enforceable, in the following order:

- (a) firstly, in or towards the discharge of the Secured Obligations referred to in paragraphs (a) and (b) of the definition thereof; and
- (b) secondly, if the Secured Obligations referred to in paragraphs (a) and (b) of the definition thereof have been discharged in full, in the payment of any surplus to the Assignor or, as applicable, Transcal,

and section 109(8) of the LPA shall not apply.

10 **FURTHER ASSURANCE**

10.1 **Further assurance**

10.1.1 The Assignor shall execute any document and do anything else the Assignee reasonably requests:

- (a) to give effect to this Deed and the transactions intended to be effected by it;
- (b) to create, perfect, protect and preserve the Security intended to be created by this Deed and its ranking with any other Security over any Assigned Property;
- (c) to exercise any rights, powers and discretions of the Assignee in connection with any Assigned Property;
- (d) to facilitate the realisation of any Assigned Property;
- (e) to enable or assist the Assignee to enter into any transaction to start, defend or conduct any proceedings and/or take any other action relating to any Assigned Property in any jurisdiction or under the law of any jurisdiction; and/or
- (f) for any similar or related purpose.

10.1.2 The Assignor shall deliver to the Assignee such evidence of the due authorisation and execution of any document delivered or thing done under Clause 10.1.1 as the Assignee may require.

11 **POWER OF ATTORNEY**

11.1 **Appointment and powers**

The Assignor irrevocably and by way of security appoints the Assignee to be its attorney (with full power of substitution) and in its name, on its behalf to execute,

deliver and perfect all documents and do all things which the attorney may consider necessary or desirable to:

- (a) carry out any obligation imposed on the Assignor by this Deed; and
- (b) enable the Assignee to exercise, or delegate the exercise of, any of the rights, powers and authorities conferred on it under this Deed or by law.

11.2 **Ratification**

The Assignor ratifies and confirms all things done and all documents executed by any attorney in the exercise or purported exercise of all or any of his powers.

12 **EFFECTIVENESS OF SECURITY**

12.1 **Cumulative rights**

The Security created under this Deed shall be cumulative, in addition to and independent of every other Security which the Assignee may at any time hold for the Secured Obligations or any other obligations or any rights, powers and remedies provided by law. No prior Security held by the Assignee over the whole or any part of the Assigned Property shall merge with any contractual right or remedy or other Security now or in the future held or available to the Assignee.

12.2 **No prejudice**

Neither the Security created under this Deed nor the Collateral Rights shall be prejudiced by any unenforceability or invalidity of any other agreement or document or by any time or indulgence granted to the Assignor or any other person or by anything else which might otherwise prejudice that Security or any Collateral Right.

12.3 **Remedies and waivers**

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

12.4 **Effectiveness of security**

The Security created under this Deed shall remain in full force and effect unless and until discharged by the Assignee and no part of the Security from time to time intended to be constituted by this Deed will be considered satisfied or discharged by any discharge or satisfaction of any part of the Secured Obligations.

12.5 **Immediate recourse**

The Assignor waives any right it may have of first requiring the Assignee (or any trustee or agent on its behalf) to proceed against or enforce any other rights or Security from any person before claiming from the Assignor under this Deed.

13 **RELEASE OF SECURITY**

At the end of the Security Period, the Assignee shall release and cancel the Security constituted by this Deed and, if the end of the Security Period arises as a consequence of the occurrence of the date on which the Assignor procures the

issuance to the Assignee of an FRP Advance Payment Bond complying in all respects with clause 11 of the Seat Funding Agreement in accordance with clause 19.2(f) of the Seat Funding Agreement, the Assignee shall reassign the assets assigned under this Deed to the Assignor at the request of the Assignor without recourse to, or any representation or warranty by, the Assignor.

14 **NOTICES**

The provisions of clause 28 (*Notices*) of the Seat Funding Agreement shall apply to this Deed as if such provisions were set out herein in full and as if each reference therein to "this Agreement" were a reference to this Deed.

15 **PARTIAL INVALIDITY**

If at any time any one or more of the provisions of this Deed becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions of this Deed shall not in any way be affected or impaired and, if any part of the Security intended to be created under this Deed is invalid, unenforceable or ineffective for any reason, that shall not affect or impair any other part of the Security.

16 **AMENDMENTS AND WAIVERS**

No amendment of this Deed shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

17 **COUNTERPARTS**

This Deed may be executed in counterparts each of which shall constitute one and the same document.

18 **GOVERNING LAW, JURISDICTION AND DISPUTE RESOLUTION**

The provisions of clause 35 (*Law*) and 36 (*Disputes*) of the Seat Funding Agreement shall apply to this Deed as if such provisions were set out herein in full and as if each reference therein to "this Agreement" were a reference to this Deed.

In witness whereof this Deed has been executed by the Parties as a deed and delivered on the date first above written.

Schedule 1
Notice of assignment

To: [The Bond Provider]

Date: [●]

Dear Sirs

Transcal Advance Payment Bond (ref: [●]) dated [●] between First Rail Procurement Limited and [●] (the "Contract")

- 1 We refer to the Contract.
- 2 We give you notice that by and pursuant to a security assignment (the "**Deed**") dated _____ 2020 between us and Angel Leasing Company Limited of 123 Victoria Street, London SW1E 6DE (the "**Assignee**") we have assigned our rights, title and interests under, in and to the Contract, together with any moneys and proceeds paid or payable pursuant to the Contract, to the Assignee.
- 3 Please acknowledge receipt of this letter by signing the attached form of acknowledgement and returning it to the Assignee.
- 4 This letter is governed by English law.

Yours faithfully

.....

For and on behalf of

First Rail Procurement Limited

Schedule 2
Acknowledgement of notice of assignment

To: Angel Leasing Company Limited
123 Victoria Street
London
SW1E 6DE

For the attention of: Company Secretary

Date: [•]

Dear Sirs

- 1 We acknowledge receipt of a notice dated [•] (the "**Notice**") and addressed to us by First Rail Procurement Limited (the "**Assignor**").
- 2 Terms defined in the Notice but not in this acknowledgement shall have the same meaning in this acknowledgement as in the Notice.
- 3 We acknowledge and confirm that:
 - (a) there has been no amendment of, waiver of or release of any rights or interests in the Contract;
 - (b) we will not:
 - (i) vary or amend, or agree with the Assignor to vary or amend any provision(s) of the Contract; or
 - (ii) terminate, or agree with the Assignor to terminate the Contract (other than in the case of automatic termination of the Contract in accordance with its terms),without the prior written consent of the Assignee;
 - (c) as at the date of this acknowledgement we have not received any notice of assignment or charge of your interest in the Contract in favour of any other person; and
 - (d) we do not have and have not claimed or exercised any right or claim against you or exercised or attempted to exercise any right of set-off, counterclaim or other right relating to the Contract.
- 4 This letter is governed by English law.

Yours faithfully

.....
For and on behalf of

[•]

EXECUTION PAGE

Executed as a deed by **FIRST RAIL
PROCUREMENT LIMITED** acting by

a director
and
a director/secretary

Director
Hugh Clancy

Director/secretary
Andrew James

DocuSigned by:


DocuSigned by:


Executed as a deed by **ANGEL LEASING
COMPANY LIMITED** acting by

a director
and
a director/secretary

Director
David Jordan

Director/secretary
Matthew Prosser

DocuSigned by:


DocuSigned by:
