

MR01

Particulars of a charge

19/11/23



Go online to file this information
www.gov.uk/companieshouse

A fee is be payable with this form
Please see 'How to pay' on

What this form is for
You may use this form to register a charge created or evidenced by an instrument.

What this form is NOT for
You may not use this form to register a charge where the instrument. Use form MR08



A23 *A6FSLC8J* #311
26/09/2017
COMPANIES HOUSE

TUESDAY

This form **must be delivered to the Registrar for registration within 21 days** beginning with the day after the date of creation of the charge. If delivered outside of the 21 days it will be rejected unless it is accompanied by a court order extending the time for delivery.

You **must** enclose a certified copy of the instrument with this form. This will be scanned and placed on the public record. **Do not send the original.**

1 Company details

Company number 0 6 6 4 1 0 1 9

Company name in full British American Railway Services Limited

For official use
→ **Filling in this form**
Please complete in typescript or in bold black capitals.
All fields are mandatory unless specified or indicated by *

2 Charge creation date

Charge creation date 01 09 20 09 20 17

3 Names of persons, security agents or trustees entitled to the charge

Please show the names of each of the persons, security agents or trustees entitled to the charge.

Name Cappagh Contractors Construction (London) Limited

Name

Name

Name

If there are more than four names, please supply any four of these names then tick the statement below.

I confirm that there are more than four persons, security agents or trustees entitled to the charge.

MR01

Particulars of a charge

4

Brief description

Please give a short description of any land, ship, aircraft or intellectual property registered or required to be registered in the UK subject to a charge (which is not a floating charge) or fixed security included in the instrument.

Brief description

Not applicable

Please submit only a short description if there are a number of plots of land, aircraft and/or ships, you should simply describe some of them in the text field and add a statement along the lines of, "for more details please refer to the instrument".

Please limit the description to the available space.

5

Other charge or fixed security

Does the instrument include a charge (which is not a floating charge) or fixed security over any tangible or intangible or (in Scotland) corporeal or incorporeal property not described above? Please tick the appropriate box.

Yes

No

6

Floating charge

Is the instrument expressed to contain a floating charge? Please tick the appropriate box.

Yes Continue

No Go to **Section 7**

Is the floating charge expressed to cover all the property and undertaking of the company?

Yes

7

Negative Pledge

Do any of the terms of the charge prohibit or restrict the company from creating further security that will rank equally with or ahead of the charge? Please tick the appropriate box.

Yes

No

8

Trustee statement ¹

You may tick the box if the company named in Section 1 is acting as trustee of the property or undertaking which is the subject of the charge.

¹ This statement may be filed after the registration of the charge (use form MR06).

9

Signature

Please sign the form here.

Signature

Signature

X Simmons & Simmons LLP X
(MLF 25/9/17)

This form must be signed by a person with an interest in the charge.

MR01

Particulars of a charge



Presenter information

You do not have to give any contact information, but if you do, it will help Companies House if there is a query on the form. The contact information you give will be visible to searchers of the public record.

Contact name Amanda Gardam (098077-00001)

Company name Simmons & Simmons LLP

Address CityPoint

One Ropemaker Street

Post town London

County/Region

Postcode EC2Y 9SS

Country United Kingdom

DX DX Box No 12 Chancery Lane London

Telephone 020 7825 4815



Certificate

We will send your certificate to the presenter's address if given above or to the company's Registered Office if you have left the presenter's information blank.



Checklist

We may return forms completed incorrectly or with information missing.

Please make sure you have remembered the following:

- The company name and number match the information held on the public Register.
- You have included a certified copy of the instrument with this form.
- You have entered the date on which the charge was created.
- You have shown the names of persons entitled to the charge.
- You have ticked any appropriate boxes in Sections 3, 5, 6, 7 & 8.
- You have given a description in Section 4, if appropriate.
- You have signed the form.
- You have enclosed the correct fee.
- Please do not send the original instrument; it must be a certified copy.



Important information

Please note that all information on this form will appear on the public record.



How to pay

A fee of £23 is payable to Companies House in respect of each mortgage or charge filed on paper.

Make cheques or postal orders payable to 'Companies House.'



Where to send

You may return this form to any Companies House address. However, for expediency, we advise you to return it to the appropriate address below:

For companies registered in England and Wales:

The Registrar of Companies, Companies House, Crown Way, Cardiff, Wales, CF14 3UZ. DX 33050 Cardiff.

For companies registered in Scotland:

The Registrar of Companies, Companies House, Fourth floor, Edinburgh Quay 2, 139 Fountainbridge, Edinburgh, Scotland, EH3 9FF. DX ED235 Edinburgh 1 or LP - 4 Edinburgh 2 (Legal Post).

For companies registered in Northern Ireland:

The Registrar of Companies, Companies House, Second Floor, The Linenhall, 32-38 Linenhall Street, Belfast, Northern Ireland, BT2 8BG. DX 481 N.R. Belfast 1.



Further information

For further information, please see the guidance notes on the website at www.gov.uk/companieshouse or email enquiries@companieshouse.gov.uk

This form is available in an alternative format. Please visit the forms page on the website at www.gov.uk/companieshouse



FILE COPY

CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 6641019

Charge code: 0664 1019 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 19th September 2017 and created by **BRITISH AMERICAN RAILWAY SERVICES LIMITED** was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 26th September 2017.

Given at Companies House, Cardiff on 2nd October 2017



Companies House



**THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES**

19 September
DATED: _____ 2017

EXECUTION VERSION

Charge Over Shares

between

British American Railway Services Limited
as Chargor

and

Cappagh Contractors Construction (London)
Limited
as the Secured Party

relating to

shares in
Devon and Cornwall Railways Limited

WE CERTIFY THAT THIS COPY
INSTRUMENT IS A CORRECT COPY
OF THE ORIGINAL INSTRUMENT.

Simmons & Simmons LLP
Signed (firm name)

MLXF
Initials of Signatory

25/9/2017
Dated (DD/MM/YY)

CONTENTS

1. Definitions and interpretation 2

2. Covenant and Charge 3

3. Deposit of certificates 3

4. Voting rights and dividends 3

5. Chargor’s undertakings and representations 4

6. Further assurance 5

7. Power of attorney 5

8. Power of sale 6

9. Effectiveness of Security 7

10. Release of Security 8

11. Accounts 8

12. Costs and expenses 8

13. Notices 8

14. Successors 8

15. Third party rights 8

16. Law 9

17. Jurisdiction 9

19 September
THIS AGREEMENT is dated _____ 2017 and made

BETWEEN:

- (1) **BRITISH AMERICAN RAILWAY SERVICES LIMITED** (registered in England and Wales with company number 6641079) (the "Chargor"); and
- (2) **CAPPAGH CONTRACTORS CONSTRUCTION (LONDON) LIMITED** (registered in England and Wales with company number 1145372) (the "Secured Party").

S&S

WHEREAS:

- (A) The Secured Party will advance a loan of £1,500,000 to the Chargor on and subject to the terms of the Exclusivity Agreement (as defined below), (the "Loan").
- (B) In return for making the Loan, the Chargor has agreed to provide security to the Secured Party over the Shares and it does so pursuant to this Agreement.

IT IS AGREED as follows:

1. **Definitions and interpretation**

1.1 In this Agreement:

"Act" means the Law of Property Act 1925.

"Charged Portfolio" means the Shares and the Related Assets.

"Collateral Rights" means all rights, powers and remedies of the Secured Party provided by this Agreement or by law.

"Company" means Devon and Cornwall Railways ~~Services~~ Limited, a limited liability company incorporated and registered in England and Wales with company number 4973992.

S&S

"Event of Default" means a failure by the Chargor to pay on its due date any of the Secured Obligations.

"Exclusivity Agreement" means the exclusivity deed, dated on or about the date of this Agreement, between the Chargor, the Secured Party and the Company.

"Related Assets" means all dividends, interest and other moneys payable in respect of the Shares and all other rights, benefits, proceeds, shares, warrants and other securities in respect of or derived from the Shares (whether by way of redemption, bonus, preference, option, substitution, subdivision, conversion or otherwise).

"Secured Obligations" means the obligations and liabilities of the Chargor and the Company to the Secured Party under clause 3 (*Initial Sum and Transaction*) of the Exclusivity Agreement or under this Agreement.

"Security" means any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect.

"Shares" means all of the shares in the share capital of the Company.

1.2 In this Agreement, any reference to (a) a "Clause" is, unless otherwise stated, a reference to a clause hereof and (b) "this Agreement" is a reference to this Agreement as amended, varied or supplemented from time to time. Clause headings are for ease of reference only.

1.3 Unless expressly defined in this Agreement, capitalised terms defined in the Exclusivity Agreement have the same meaning in this Agreement.

2. **Covenant and Charge**

2.1 The Chargor charges all of its right, title and interest in and to the Charged Portfolio, with full title guarantee and free from any Security and by way of first fixed charge, in favour of the Secured Party as continuing security for the discharge by the Chargor of the Secured Obligations.

3. **Deposit of certificates**

3.1 Following discharge of the existing Security given by the Chargor over the Shares, the Chargor must on demand:

(A) deposit all certificates and other documents of title to the Shares; and

(B) deposit stock transfer forms (executed in blank by or on behalf of the Chargor) in respect of the Shares,

with the Secured Party (or its solicitors).

3.2 The Chargor shall, promptly upon the accrual, offer or issue of any Related Assets (in the form of stocks, shares, warrants or other securities), procure the delivery to the Secured Party of:

(A) all certificates and other documents of title representing those Related Assets, and

(B) such stock transfer forms or other instruments of transfer forms (executed in blank by or on behalf of the Chargor) in respect of those Related Assets as the Secured Party may require.

4. **Voting rights and dividends**

4.1 Prior to any of the Secured Obligations becoming due and payable and not having been paid on demand the Chargor shall:

(A) exercise all voting rights in a manner that will ensure that (a) the Company does not distribute any dividends, interest and other moneys arising from the Charged Portfolio and (b) in the opinion of the Secured Party the value of, or the ability of the Secured Party to realise, the security created by this Agreement, is not prejudiced; and

(B) in a manner consistent with clause 4.1(A), be entitled to exercise all voting rights in relation to the Charged Portfolio **provided that** the Chargor shall not exercise such voting rights in any manner, or otherwise permit or agree to any (a) variation of the rights attaching to or conferred by all or any part of the Charged Portfolio, or (b) increase in the issued share capital of the Company, which in the opinion of the Secured Party would prejudice the value of, or the ability of the Secured Party to realise, the security created by this Agreement.

4.2 The Secured Party may, if any of the Secured Obligations become due and payable and have not been paid on demand, at its discretion (in the name of the Chargor or otherwise and without any further consent or authority from the Chargor):

- (A) require the Chargor to do all things that the Secured Party may require to transfer the Shares to, and register the Shares in the name of, the Secured Party (or its nominees);
- (B) require the Chargor to issue such instructions as the Secured Party may require in order to procure the issue or transfer to the Secured Party (or its nominees) of the Related Assets;
- (C) exercise (or refrain from exercising) any voting rights in respect of the Charged Portfolio (and the Secured Party may revoke, or cause to be revoked, any proxies given pursuant to clause 4.1(B));
- (D) apply all dividends, interest and other moneys arising from the Charged Portfolio as though they were the proceeds of sale under this Agreement;
- (E) exercise (or refrain from exercising) the powers and rights conferred on or exercisable by the legal or beneficial owner of the Charged Portfolio including the right, in relation to any company whose shares or other securities are included in the Charged Portfolio, to concur or participate in:
 - (1) the reconstruction, amalgamation, sale or other disposal of such company or any of its assets or undertaking (including the exchange, conversion or reissue of any shares or securities as a consequence thereof),
 - (2) the release, modification or variation of any rights or liabilities attaching to such shares or securities, and
 - (3) the exercise, renunciation or assignment of any right to subscribe for any shares or securities,

in each case in such manner and on such terms as the Secured Party may think fit, and the proceeds of any such action shall form part of the Charged Portfolio.

5. **Chargor's undertakings and representations**

5.1 Except with the Secured Party's prior written consent, the Chargor shall not:

- (A) assign or dispose of all or any part of the Charged Portfolio;
- (B) create, grant or permit to exist:
 - (1) any Security over, or
 - (2) any restriction on the ability to transfer or realise,
 all or any part of the Charged Portfolio; or
- (C) cause or permit to be done anything which may, in the reasonable opinion of the Secured Party, jeopardise or otherwise prejudice the value to the Secured Party of the Charged Portfolio.

- 5.2 The Chargor hereby represents and warrants to the Secured Party and undertakes during the subsistence of this Agreement that:
- (A) *it is and will be the sole legal and beneficial owner of the Charged Portfolio free from any Security and all third party rights except as created by this Agreement;*
 - (B) *it has not sold or disposed of, and will not sell or dispose of, the benefit of all or any of its rights, title and interest in the Charged Portfolio;*
 - (C) *it has and will have the necessary power to enable it to enter into and perform its obligations under this Agreement;*
 - (D) *this Agreement constitutes its legal, valid and binding obligation and is an effective security over the Charged Portfolio;*
 - (E) *all necessary authorisations to enable it to enter into this Agreement have been obtained and are, and will remain, in full force and effect;*
 - (F) *the Shares have been duly authorised and validly issued and are free from any restrictions on transfer or (at all times when there is more than one member of the Company) pre-emption rights;*
 - (G) *the Shares are fully paid. The Chargor undertakes to pay all calls or other payments due in respect of any part of the Charged Portfolio. If the Chargor fails to make any such payment the Secured Party may make that payment on behalf of the Chargor and any sums so paid by the Secured Party shall be reimbursed by the Chargor on demand together with interest thereon. Such interest shall be calculated from the due date up to the actual date of payment (after, as well as before, judgement) at such commercial rate as the Secured Party may reasonably determine; and*
 - (H) *it has complied with all notices relating to all or any of the Shares received by it pursuant to sections 790D and 790E of the Companies Act 2006, no warning notice or restrictions notice has been issued under paragraph 1 of Schedule 1B of the Companies Act 2006 in respect of all or any of the Shares.*

6. Further assurance

- 6.1 The Chargor shall promptly execute all documents (including transfers) and do all things (including the delivery, transfer, assignment or payment of all or part of the Charged Portfolio to the Secured Party or its nominee(s)) that the Secured Party may reasonably specify for the purpose of:
- (A) exercising the Collateral Rights or
 - (B) securing and perfecting its security over or title to all or any part of the Charged Portfolio (including transferring the Charged Portfolio into the name of the Secured Party or its nominee(s)).
- 6.2 The Chargor shall upon demand from the Secured Party, at any time after the Secured Obligations have become due and payable but have not been paid or discharged:
- (A) procure the transfer of the Charged Portfolio, into the name of the Secured Party or such nominee(s), agents or purchasers as it shall direct, and
 - (B) execute all documents and do all other things that the Secured Party may require to facilitate the realisation of the Charged Portfolio.

7. Power of attorney

The Chargor, by way of security, irrevocably appoints the Secured Party to be its attorney and in its name, on its behalf and as its act and deed to execute, deliver and perfect all documents (including any stock transfer forms and other instruments of transfer) and do all things that the Secured Party may consider to be necessary or desirable for (a) carrying out any obligation imposed on the Chargor under this Agreement or (b) exercising any of the rights conferred on the Secured Party by this Agreement or by law, (including, after the Security constituted hereby has become enforceable, the exercise of any right of a legal or a beneficial owner of the Charged Portfolio). The Chargor shall ratify and confirm all things done and all documents executed by the Secured Party in the exercise of that power of attorney.

8. Power of sale

- 8.1 If any Event of Default occurs, the Secured Party shall be entitled, without prior notice to the Chargor or authorisation from any court, to sell or otherwise dispose of all or any part of the Charged Portfolio (at the times, in the manner and on the terms it thinks fit). The Secured Party shall be entitled to apply the proceeds of that sale or other disposal in paying the costs of that sale or disposal and in or towards the discharge of the Secured Obligations.
- 8.2 The power of sale or other disposal in clause 8.1 shall operate as a variation and extension of the statutory power of sale under section 101 of the Act. The restrictions contained in sections 93 and 103 of the Act shall not apply to this Agreement or to any exercise by the Secured Party of its right to consolidate mortgages or its power of sale.
- 8.3 A certificate in writing by the Secured Party that any power of sale or other disposal has arisen and is exercisable shall be conclusive evidence of that fact, in favour of a purchaser of all or any part of the Charged Portfolio.
- 8.4 In addition, upon the occurrence of any Event of Default, the Secured Party (or, in relation to paragraphs (A), (B) and (C) below, any receiver appointed by it) will have the following rights:

- (A) to settle, adjust, refer to arbitration, compromise and arrange any claims, disputes or demands relating to the Charged Portfolio;
 - (B) to bring actions or proceedings in relation to the Charged Portfolio; and
 - (C) to do all other acts and things that he reasonably considers necessary for the realisation of the security created by this agreement.
 - (D) without further notice, to appoint by way of deed, or otherwise in writing, any one or more persons to be a receiver of any or all of the Charged Portfolio. This power of appointment is in addition to all statutory and other powers of the Secured Party under the Insolvency Act 1986, the Act or otherwise, and shall be exercisable without the restrictions contained in sections 103 and 109 of the Act or otherwise. The Secured Party may fix the remuneration of any receiver appointed by it without the restrictions contained in section 109 of the Act, and the remuneration of the Receiver shall be a debt secured by this Agreement, to the extent not otherwise discharged.”
- 8.5 All money received as a result of the Secured Party exercising its powers of enforcement under this Agreement will be applied firstly in paying the costs of sale or other disposal, secondly in satisfaction of the Secured Obligations in such order as the Secured Party decides, and thirdly in payment of any surplus to the persons entitled to it.

9. **Effectiveness of Security**

- 9.1 The obligations of the Chargor and the Collateral Rights shall not be discharged, impaired or otherwise affected by:
- (A) any of the Secured Obligations being at any time illegal, invalid, unenforceable or ineffective;
 - (B) any time or other indulgence being granted to the Chargor or any other person;
 - (C) any amendment, variation, waiver or release of any of the Secured Obligations;
 - (D) any failure to take or failure to realise the value of any other securing in respect of the Secured Obligations or any release, discharge, exchange or substitution of any such collateral; or
 - (E) any other act, event or omission which but for this provision would or might operate to impair, discharge or otherwise affect the obligations of the Chargor hereunder.
- 9.2 The Securing constituted by this Agreement and the Collateral Rights shall be cumulative, in addition to and independent of every other security which the Secured Party may at any time hold for the Secured Obligations or any rights, powers and remedies provided by law. No prior security held by the Secured Party over the whole or any part of the Charged Portfolio shall merge into the Securing hereby constituted.
- 9.3 No failure on the part of the Secured Party to exercise, or delay on its part in exercising, any Collateral Right shall operate as a waiver thereof, nor shall any single or partial exercise of a Collateral Right preclude any further or other exercise of that or any other Collateral Right.
- 9.4 The Security created by or pursuant to this Agreement and the Collateral Rights 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 by any other thing which might otherwise prejudice that security or any Collateral Right.
- 9.5 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, the legality, validity or enforceability of (a) the remaining provisions of this Agreement and (b) such provisions under the law of any other jurisdiction shall not in any way be affected or impaired thereby.
- 9.6 None of the Secured Party or its nominee(s) or any person appointed by it in connection with this Agreement shall be liable by reason of (a) taking any action permitted by this Agreement or (b) any neglect or default in connection with the Charged Portfolio or (c) the taking possession or realisation of all or any part of the Charged Portfolio, except in the case of gross negligence or wilful default upon its part and shall not be liable to account as a mortgagee in possession.
- 9.7 Any settlement or discharge hereunder shall be conditional upon no security or payment to the Secured Party by, or on behalf of, the Chargor being avoided or reduced by virtue of any bankruptcy, insolvency or similar laws of general application and shall in those circumstances be void.
- 9.8 The security constituted by this Agreement shall be continuing security and will extend to the ultimate balance of the Secured Obligations regardless of any intermediate payment or satisfaction of the whole or any part of the Secured Obligations.

10. **Release of Security**

10.1 Upon the Secured Obligations being discharged in full, at the request and cost of the Chargor, the Secured Party will take whatever action is necessary to release and cancel the Security constituted by this Agreement and release the Charged Portfolio from the Security created by or expressed to be created by or pursuant to this Agreement.

11. **Accounts**

All moneys received, recovered or realised by the Secured Party under this Agreement (including the proceeds of any conversion of currency) may in its discretion be credited to and held in any suspense or impersonal account pending their application from time to time in or towards the discharge of any of the Secured Obligations.

12. **Costs and expenses**

All the Secured Party's costs and expenses (including reasonable legal fees, stamp duties and any value added tax) incurred in connection with:

- (A) the execution of this Agreement or otherwise in relation to it,
- (B) the perfection or enforcement of the collateral hereby constituted or
- (C) the exercise of any Collateral Right

shall be reimbursed to the Secured Party by the Chargor on demand on a full indemnity basis.

13. **Notices**

Any notice or demand to be served by one person on another pursuant to this Agreement may be served by leaving it at the address specified above (or such other address as such person may previously have specified) or by letter posted by prepaid first-class post to such address (which shall be deemed to have been served two Business Days following the date of posting, or by fax to the fax number specified above (or such other number as such person may previously have specified) which shall be deemed to have been received when transmission has been completed) **provided that** any notice to be served on the Secured Party shall be effective only when actually received by the Secured Party.

14. **Successors**

Any references to the Secured Party shall be deemed to include any assignee or successor in title of the Secured Party and any person who, under the laws of its jurisdiction of incorporation or domicile, has assumed the rights and obligations of the Secured Party hereunder or to which under such laws the same have been transferred.

15. **Third party rights**

No person who is not a party to this Agreement shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

16. Law

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

17. Jurisdiction

17.1 The parties irrevocably agree that the English courts shall have exclusive jurisdiction in relation to any legal action or proceedings arising out of or in connection with this Agreement ("Proceedings") and waive any objection to Proceedings in such courts on the grounds of venue or on the grounds that Proceedings have been brought in an inappropriate forum.

IN WITNESS WHEREOF this Agreement has been executed as a deed by the Secured Party and by the Chargor and is intended to be and is hereby delivered by them as a deed on the date first specified above.

