

Amended and Restated Cross Guarantee and Indemnity

Rail Corporation New South Wales

ABN 59 325 778 353

RailCorp

Reliance Rail Pty Limited

as trustee for Reliance Rail Trust

ABN 18 111 280 427

Trust Guarantor

Reliance Rail Finance Pty Limited

ACN 120 380 805

Company Guarantor

The Clayton Utz contact for this document are
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Our reference 122/2644/80011438

This Amended and Restated Cross Guarantee and Indemnity is made at Sydney on 30 March 2007

Parties

Rail Corporation New South Wales ABN 59 325 778 353 of Level 6, 18 Lee Street, Chippendale, New South Wales ("**RailCorp**")

Reliance Rail Pty Limited ABN 18 111 280 427 of Level 6, 88 Phillip Street, Sydney, New South Wales as trustee of the Reliance Rail Trust ("**Trust Guarantor**")

Reliance Rail Finance Pty Limited ACN 120 380 805 of Level 6, 88 Phillip Street, Sydney, New South Wales ("**Company Guarantor**")

Recitals

- A. The parties entered into a Cross Guarantee and Indemnity on 3 December 2006. Clause 12.1(f) (Notices) contained a typographical error in that it referred to wrong entities rather than the relevant parties to the deed.
- B. The parties wish to correct this typographical error.

This deed provides

1. Definitions and interpretation

1.1 Definitions

Definitions in and incorporated into the Cross Guarantee and Indemnity apply to this deed.

1.2 Interpretation

Clause 1.3 of the Cross Guarantee and Indemnity applies to this Deed.

1.3 Trust Guarantor's capacity

The provisions of clause 1.15 (Capacity) of the Project Contract are incorporated into this deed by reference as if set out here in full.

2. Amendment to and Restatement of the Cross Guarantee and Indemnity

The parties agree that with effect from 3 December 2006, the Cross Guarantee and Indemnity shall be amended and restated for all purposes as set out in the Exhibit to this deed.

Executed as a deed.

Signed for and on behalf of **Rail Corporation New South Wales** in the presence of:

Jean M Howard
Signature of Witness

JEAN MARY HOWARD
Name of Witness in full

[Signature]
Signature

Executed by **Reliance Rail Pty Limited, ABN 18 111 280 427** in accordance with section 127 of the *Corporations Act* by or in the presence of:

Graeme Bell
Signature of Secretary/~~other~~ Director

GRAEME BELL
Name of Secretary/~~other~~ Director in full

[Signature]
Signature of Director or Sole Director and Secretary

MICHAEL JOHN POLICIA
Name of Director or Sole Director and Secretary in full

Executed by **Reliance Rail Finance Pty Limited, ACN 120 380 805** in accordance with section 127 of the *Corporations Act* by or in the presence of:

Graeme Bell
Signature of Secretary/~~other~~ Director

GRAEME BELL
Name of Secretary/~~other~~ Director in full

[Signature]
Signature of Director or Sole Director and Secretary

MICHAEL JOHN POLICIA
Name of Director or Sole Director and Secretary in full

EXHIBIT TO AMENDED AND RESTATED CROSS GUARANTEE AND INDEMNITY

DATED MARCH 2007



RailCorp

Cross Guarantee and Indemnity

Rail Corporation New South Wales

ABN 59 325 778 353

RailCorp

Reliance Rail Pty Limited

as trustee for Reliance Rail Trust

ABN 18 111 280 427

Trust Guarantor

Reliance Rail Finance Pty Limited

ACN 120 380 805

Company Guarantor

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Cross Guarantee and Indemnity made at

on 3 December 2006

Parties

Rail Corporation New South Wales ABN 59 325 778 353 of Level 6, 18 Lee Street, Chippendale, New South Wales ("**RailCorp**")

Reliance Rail Pty Limited ABN 18 111 280 427 of Level 6, 88 Phillip Street, Sydney, New South Wales as trustee of the Reliance Rail Trust ("**Trust Guarantor**")

Reliance Rail Finance Pty Limited ACN 120 380 805 of Level 6, 88 Phillip Street, Sydney, New South Wales ("**Company Guarantor**")

Recitals

- A. RailCorp has agreed to enter into the Project Contract with the Trust Guarantor and other Project Agreements with the Guarantors on the condition that the Guarantors enter into this deed.
- B. The Guarantors have agreed on the following terms and conditions to guarantee to RailCorp all of the relevant Obligations (as defined in this deed) and to indemnify RailCorp against any loss arising from any failure by the relevant Obligor to perform their Obligations.
- C. The Guarantors consider that by entering into this deed there will be a commercial benefit flowing to them respectively.

This deed provides

1. Definitions and interpretation

1.1 Project Contract definitions

Definitions in the Project Contract apply in this deed unless the relevant term is defined in this deed.

1.2 Definitions

In this deed:

"Company Guarantor Obligations" means all the Obligations of the Company Guarantor to RailCorp under or arising out of or in any way in connection with the RailCorp Project Agreements.

"Event of Default" means any event which constitutes a breach of, or is duly and properly declared to be an event of default (howsoever described) by, the relevant Guaranteed Documents.

"Guaranteed Documents" means the RailCorp Project Agreements and any other documents in relation to the Project entered into by one or more of the Guarantors with RailCorp, by itself or with others, or where the context requires, one or more of them.

"Guaranteed Money" means all money the payment or repayment of which from time to time forms part of the relevant Obligations.

"Guarantors" means the Trust Guarantor and the Company Guarantor in respect to their Obligations referred to in paragraphs (a) and (b) respectively of the definition of Obligations, all jointly and severally.

"Insolvency Provision" means any law relating to insolvency, sequestration, liquidation or bankruptcy (including any law relating to the avoidance of conveyances in fraud of creditors or of preferences, and any law under which a liquidator or trustee in bankruptcy may set aside or avoid transactions), and any provision of any agreement, arrangement or scheme, formal or informal, relating to the insolvent administration of any of the assets of any person.

"Obligations" means:

- (a) in respect of the Trust Guarantor the Company Guarantor Obligations;
- (b) in respect of the Company Guarantor the Trust Guarantor Obligations,

and includes any liabilities or obligations which:

- (i) are liquidated or unliquidated;
- (ii) are present, prospective or contingent;
- (iii) are in existence before or come into existence on or after the date of this deed;
- (iv) relate to the payment of money or the performance or omission of any act;
- (v) sound in damages only; or
- (vi) accrue as a result of any Event of Default,

and irrespective of:

- (vii) whether the Obligor is liable or obligated solely, or jointly, or jointly and severally with another person;
- (viii) the circumstances in which RailCorp comes to be owed each liability or obligation and in which each liability or obligation comes to be secured by this deed, including any assignment of any liability or obligation or of this deed; or
- (ix) the capacity in which the Obligor and RailCorp comes to owe or be owed such liability or obligation,

and **"Obligation"** means any liability or obligation forming part of the Obligations.

"Obligors" means:

- (a) in respect of the Trustee Guarantor, the Company Guarantor; and
- (b) in respect of the Company Guarantor, the Trustee Guarantor.

"Power" means any right, power, authority, discretion, remedy or privilege conferred on RailCorp by the relevant Guaranteed Documents, by statute, by law, or by equity.

"Project Contract" means the agreement entitled "RailCorp Rolling Stock PPP Project Contract" between RailCorp and the Trust Guarantor dated on or about the date of this deed.

"Security" means a mortgage, charge, pledge, lien, hypothecation, guarantee (including this deed), indemnity, letter of credit, letter of comfort, performance bond, contractual right of set-

off or combination or other assurance against loss which secures the Guaranteed Money or the performance of any other Obligation, and whether existing at the date of this deed or at any time in the future.

"Specified Rate" means the rate which is 2% above the rate expressed as a percentage per annum:

- (a) which is the average of the bid rates shown at approximately 10.15 am on reference rate page "BBSY" on the Reuters Monitor System on the day the relevant amount was due and payable for bank accepted bills having a tenor of 30 days; or
- (b) if for any reason the rate referred to in paragraph (a) is no longer available or if there is no rate displayed for that period at that time, then the average of the buying rates quoted by 3 banks selected by RailCorp at or about 10.15 am on the relevant date referred to in paragraph (a) for bills accepted by such banks having a tenor of 30 days.

"Taxes" means all present and future taxes, levies, imposts, deductions, charges, fees and withholdings, in each case plus interest, related penalties, and any charges, fees or other amounts in respect of any of them.

"Trust" means the trust named the Reliance Rail Trust, created by the Trust Deed.

"Trust Deed" means the constitution of the Trust dated on or about the date of this deed and executed by the Trust Guarantor.

"Trust Guarantor Obligations" means all the Obligations of the Trust Guarantor to RailCorp under or arising out of or in any way in connection with the RailCorp Project Agreements.

1.3 Interpretation

In this deed:

- (a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) **"person"** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (d) a reference to a document (including this Contract but excluding the Planning Approval) is to that document as updated, varied, novated, ratified or replaced from time to time;
- (e) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re enactments and replacements;
- (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;

- (g) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Contract, and a reference to this Contract includes all schedules, exhibits, attachments and annexures to it;
- (h) a reference in a schedule, exhibit, attachment or annexure to a clause, paragraph, section, schedule, exhibit, attachment or annexure is a reference to a clause, paragraph, section, schedule, exhibit, attachment or annexure to or of that schedule, exhibit, attachment or annexure;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) **"includes"** in any form is not a word of limitation; and
- (k) a reference to **"\$"** or **"dollar"** is to Australian currency.

1.4 No bias against drafting party

Each provision of this deed will be interpreted without disadvantage to the party who (or whose representative) drafted that provision.

1.5 Trust Guarantor's capacity

The provisions of clause 1.15 (Capacity) of the Project Contract are incorporated into this deed by reference as if set out here in full.

2. Guarantee

2.1 Guarantee

The Trust Guarantor irrevocably and unconditionally guarantees to RailCorp performance by the Company Guarantor of all the Company Guarantor's Obligations.

2.2 Payment by Guarantors

If the Trust Guarantor does not pay the Guaranteed Money when due, the Company Guarantor must on demand pay to RailCorp the Guaranteed Money which is then due and unpaid or which later becomes due, owing or payable.

3. Indemnity

As a covenant separate and distinct from that contained in clause 2.1, the Guarantors irrevocably and unconditionally, jointly and severally, agree to indemnify RailCorp and at all times to keep RailCorp indemnified against any Loss suffered by RailCorp arising out of or in connection with:

- (a) any failure by the Obligors to perform their Obligations; or
- (b) any obligation or liability that would otherwise form part of the Obligations being void, voidable or unenforceable against or irrecoverable from the Obligors for any reason, and whether or not RailCorp knew or ought to have known of that reason.

4. Liability as guarantor and indemnifier

A reference in this deed to the obligations or liabilities of the Guarantors is a reference to the Guarantors' obligations or liabilities as either guarantor or indemnifier (or both) under this deed. The use of the expression "Guarantors" in this deed in relation to a party must not be construed as diminishing that party's obligations as an indemnifier under this deed.

5. Nature and preservations of liability

5.1 Absolute liability

- (a) The liability of the Guarantors under this deed is absolute and is not subject to the performance of any condition precedent or subsequent by the Obligors or the Guarantors.
- (b) This deed binds each person who has executed it, notwithstanding that:
 - (i) RailCorp does not execute this deed;
 - (ii) the execution of this deed by any person is invalid, forged or irregular in any way; or
 - (iii) this deed is or becomes unenforceable, void or voidable against any other person.

5.2 Unconditional liability

The liability of the Guarantors under this deed will not be affected by any act, omission, matter or thing which, but for this clause 5.2, might operate in law or in equity to release the Guarantors from that liability or to reduce the Guarantors' liability under this deed, including any of the following:

- (a) **(Event of Insolvency):** the occurrence before, on or at any time after the date of this deed, of any Event of Insolvency in relation to an Obligor or a Guarantor;
- (b) **(Distribution):** the receipt by RailCorp of any payment, dividend or distribution under any Insolvency Provision in relation to an Obligor or a Guarantor;
- (c) **(Event of Default):** the occurrence of any Event of Default;
- (d) **(Invalidity etc.):** the Guaranteed Documents or any payment or other act, the making or doing of which would otherwise form part of the Obligations being or becoming or being conceded to be frustrated, illegal, invalid, void, voidable, unenforceable or irrecoverable in whole or in part for any reason whether past, present or future;
- (e) **(Further Security):** RailCorp accepting or declining to accept any Security from any person at any time;
- (f) **(Time or indulgence):** RailCorp granting time, waiver or other indulgence or concession to, or making any composition or compromise with, an Obligor or a Guarantor;
- (g) **(Forbearance):** RailCorp not exercising or delaying (whether deliberately, negligently, unreasonably or otherwise) in the exercise of any remedy or right it has for the enforcement of the Guaranteed Documents or any Obligation;

- (h) **(Acquiescence or other omission):** any laches, acquiescence or other act, neglect, default, omission or mistake by RailCorp;
- (i) **(Repudiation):** the determination, rescission, repudiation or, subject to clause 2.2, termination, or the acceptance of any of the foregoing, by RailCorp or an Obligor or a Guarantor of the Guaranteed Documents or any Obligation;
- (j) **(Variation):** any variation to the Guaranteed Documents or any Obligation, whether or not that variation is substantial or material, or imposes any additional liability on or disadvantages an Obligor or a Guarantor;
- (k) **(Release):** subject to clause 2.2, the full, partial or conditional release or discharge by RailCorp or by operation of law, of an Obligor or a Guarantor from the Guaranteed Documents or any Obligation;
- (l) **(Change of constitution):** any change in membership (whether by death or retirement of an existing member, admission of a new member, or otherwise) or in the name of any partnership, firm or association in which an Obligor or a Guarantor is a member;
- (m) **(Transfer):** the transfer, assignment or novation by RailCorp or an Obligor or a Guarantor of all or any of its rights or obligations under the Guaranteed Documents or under any other Obligation;
- (n) **(Disclosure):** any failure by RailCorp to disclose to the Guarantors any material or unusual fact, circumstance, event or thing known to, or which ought to have been known by, RailCorp relating to or affecting an Obligor or a Guarantor at any time before or during the currency of this deed, whether prejudicial or not to the rights and liabilities of the Guarantors and whether or not RailCorp was under a duty to disclose that fact, circumstance, event or thing to the Guarantors or to the Obligors;
- (o) **(Covenant not to take action):** RailCorp agreeing with an Obligor or a Guarantor not to sue, issue process, sign or execute judgment, commence proceedings for bankruptcy or liquidation, participate in any administration, scheme or deed of arrangement or reconstruction, prove in any bankruptcy or liquidation, or do anything else in respect of the liability of an Obligor or a Guarantor;
- (p) **(Administration):** the provisions of section 440J of the *Corporations Act 2001* (Cth) operating to prevent or delay:
 - (i) the enforcement of this deed against any Guarantor; or
 - (ii) any claim for contribution against any Guarantor.

5.3 No merger

This deed is in addition to and does not merge with, postpone, lessen or otherwise prejudicially affect the Guaranteed Documents or any other Power of RailCorp.

RailCorp will hold any judgment or order obtained by it against any person in respect of the Guaranteed Money or the Obligations collaterally with this deed, and this deed will not merge in that judgment or order.

5.4 No obligation to gain consent

The Guarantors need not consent to or be made aware of any event referred to in clause 5.2, any transaction between RailCorp and an Obligor, or any particulars concerning any Obligation.

5.5 Appropriation

- (a) RailCorp is under no obligation to marshal or appropriate in favour of any Guarantor, or to exercise, apply, transfer or recover in favour of any Guarantor, any Security or any funds or assets that RailCorp holds, has a claim on, or has received or is entitled to receive, but may do so in the manner and order as RailCorp determines in its absolute discretion.
- (b) RailCorp may hold in a suspense account (without liability to pay interest) any money which it receives from the Guarantors, or which it receives on account of the Guarantors' liability under this deed, and which RailCorp may, at its discretion, appropriate in reduction of the Guarantors' liability under this deed.

5.6 Void or voidable transactions

If:

- (a)
 - (i) RailCorp has at any time released or discharged:
 - A. a Guarantor from its obligations under this deed; or
 - B. any assets of a Guarantor from a Security,in either case in reliance on a payment, receipt or other transaction to or in favour of RailCorp; or
 - (ii) any payment or other transaction to or in favour of RailCorp has the effect of releasing or discharging:
 - A. a Guarantor from its obligations under this deed; or
 - B. any assets of a Guarantor from a Security; and
 - (b) that payment, receipt or other transaction is subsequently claimed by any person to be void, voidable or capable of being set aside for any reason, including under an Insolvency Provision or under the general law; and
 - (c) that claim is upheld or is conceded or compromised by RailCorp,
- then:
- (d) **(Restitution of rights):** RailCorp will immediately become entitled against the relevant Guarantor to all rights (including under any Security) as it had immediately before that release or discharge;
 - (e) **(Restore RailCorp's position):** the Guarantors must immediately do all things and execute all documents as RailCorp may reasonably require to restore to RailCorp all those rights; and
 - (f) **(Indemnity):** the Guarantors must indemnify RailCorp against costs, losses and expenses suffered or incurred by RailCorp in or in connection with any negotiations

or proceedings relating to the claim or as a result of the upholding, concession or compromise of the claim.

5.7 No set-off, counterclaim, etc.

The liability of the Guarantors under this deed will not be reduced or avoided by any defence, set-off or counterclaim available to an Obligor against RailCorp.

5.8 Claim on the Guarantors

- (a) Subject to clause 5.8(b), RailCorp is not required to make any claim or demand on an Obligor, or to enforce the Guaranteed Documents, or any other right, power or remedy against an Obligor, before making any demand or claim on a Guarantor.
- (b) If the Guaranteed Document required RailCorp to allow a specified period of time in which the relevant Obligor may comply with a claim or demand under the Guaranteed Document, then RailCorp must not make a claim or demand on a Guarantor until that period has expired.

5.9 No representation by RailCorp etc.

Each of the Guarantors acknowledge that it has not entered into this deed as a result of any representation, promise, statement or inducement to the Guarantor by or on behalf of RailCorp, the Obligors or any other person.

6. Representations, warranties and undertakings

6.1 Guarantor's representations and warranties

- (a) The Company Guarantor represents and warrants to RailCorp that:
 - (i) it is duly registered and remains in existence;
 - (ii) the execution, delivery and performance of this deed does not violate any law, or any document or agreement to which it is a party or which is binding on it or any of its assets;
 - (iii) it has taken all corporate and other action required to enter into this deed and to authorise the execution and delivery of this deed and the satisfaction of its obligations under it;
 - (iv) this deed constitutes a valid and legally binding obligation of it in accordance with its terms;
 - (v) it subsists and is properly constituted;
 - (vi) except as contemplated by the Equity Documents, it is not the trustee or responsible entity of any trust, nor does it hold any property subject to or impressed by any trust;
 - (vii) it has no subsidiaries;
 - (viii) except as disclosed in writing to RailCorp prior to the date of this deed, it is not a member of any consolidated group for purposes of the *Income Tax Assessment Act 1997* (Cth);
 - (ix) no PPP Co Events of Default or PPP Co Termination Events have

occurred or are subsisting;

- (x) it is not in default of its material obligations under any RailCorp Project Agreement;
 - (xi) it has not traded since its incorporation other than for the purposes of entering into the Project Agreements and has no liabilities other than those that have arisen in connection with entering into the Project Agreements;
 - (xii) except as contemplated by the Debt Finance Side Deed, subject to laws from time to time, its obligations under this deed will rank ahead of, and its obligations under each RailCorp Project Agreement (other than this deed) will rank at least equally with, all its present and future unsecured obligations;
 - (xiii) it does not have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise);
 - (xiv) no litigation, arbitration, mediation, conciliation, criminal or administrative procedures are current, pending or to its knowledge, threatened, which, if adversely determined, would or could have a material adverse effect on its business, assets or financial condition;
 - (xv) there has been no material change in its financial condition (since its incorporation) or the financial condition of the Core Contractors (since the date of their last audited accounts) which would prejudice its ability to perform its obligations under the Project Agreements;
 - (xvi) the most recently published financial statements of the Core Contractors have been prepared on a basis consistently applied and using accounting principles which are generally accepted and give a true and fair view of the financial condition of the Core Contractors and are unqualified for the period in question;
 - (xvii) it is not aware of any material facts or circumstances that have not been disclosed to RailCorp and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this deed; and
 - (xviii) it has provided to RailCorp all material documents relating to the financing of the Project.
- (b) The Trust Guarantor represents and warrants to RailCorp that all of its representations and warranties in the Project Contract are true or, if not yet made, will be true when made.

6.2 Representations and warranties repeated

- (a) The Company Guarantor represents and warrants to RailCorp that except for the representations and warranties contained in clauses 6.1(a)(viii), 6.1(a)(ix), 6.1(a)(x), 6.1(a)(xi), 6.1(a)(xiv), 6.1(a)(xv), 6.1(a)(xvi) and 6.1(a)(xvii), each representation and warranty in this deed will be repeated on each day whilst any of the Guaranteed Money remains outstanding (whether or not then due for payment) with reference to the facts and circumstances then subsisting, as if made on each such day.

- (b) The Trust Guarantor represents and warrants to RailCorp that except for the representations and warranties contained in clauses 38.2(h), 38.2(i), 38.2(j), 38.2(k), 38.2(n), 38.2(o), 38.2(p) and 38.2(w) of the Project Contract, each other representation and warranty in the Project Deed will be repeated on each day whilst any of the Guaranteed Money remains outstanding (whether or not then due for payment) with reference to the facts and circumstances then subsisting, as if made on each such day.

7. Payments

7.1 On demand

All money payable by the Guarantors under this deed must be paid by the Guarantors on demand by RailCorp in immediately available funds to the account and in the manner notified by RailCorp to the Guarantors.

7.2 Payment in gross

All money received or recovered by RailCorp on account of the Guaranteed Money will be treated as payments in gross without any right on the part of the Guarantors to claim the benefit of any money received or recovered by RailCorp or any Security, until RailCorp has been paid 100 cents in the dollar in respect of the Guaranteed Money.

7.3 Interest

As a liability separate and distinct from the Guarantor's liability under clauses 2 and 3, the Guarantors must on demand by RailCorp pay interest on all amounts due and payable by it and unpaid under or in respect of this deed. Interest will accrue on those amounts from day to day from the due date up to the date of actual payment, before and (as a separate and independent obligation) after judgment, at the Specified Rate for successive 90 day interest periods commencing on the date of default and, if not paid when due, will itself bear interest in accordance with this clause 7.3.

7.4 Merger

If the liability of the Guarantors to pay to RailCorp any money under this deed becomes merged in any judgment or order, then, as an independent obligation, the Guarantors will pay interest on the amount of that money at the rate which is the higher of that payable under clause 7.3 and that fixed by or payable under the judgment or order.

7.5 No set-off or deduction

All payments by the Guarantors to RailCorp under this deed must be:

- (a) free of any set-off or counterclaim; and
- (b) without deduction or withholding for or on account of any present or future Taxes, unless the Guarantors are compelled by law to make any deduction or withholding.

If the Guarantors are compelled by law to make any deduction or withholding for or on account of any present or future Taxes (not being Taxes on the overall net income of RailCorp or GST), then the Guarantors must:

- (a) pay to RailCorp any additional amounts necessary to enable RailCorp to receive (after all deductions and withholdings for those Taxes) a net amount equal to the

full amount which would otherwise be payable to RailCorp if no deduction or withholding was required to be made;

- (b) promptly (and within the time prescribed by law) pay to the relevant taxing authority the amount of those Taxes which it is compelled by law to deduct or withhold, and indemnify RailCorp for any Taxes and interest or penalties to which RailCorp may become liable consequent on the failure of the Guarantors to pay those Taxes; and
- (c) deliver to RailCorp, promptly on request from RailCorp, a copy of any receipt issued by the relevant taxing authority on payment of those Taxes.

7.6 Currency indemnity

- (a) The Australian Dollar is the currency of payment by the Guarantors under or in connection with this deed, except that payment by the Guarantors of or in relation to any Obligation which is denominated in a foreign currency must be made in that foreign currency.
- (b) If for any reason any amount payable by the Guarantors under or in connection with this deed is received by RailCorp in a currency ("**Payment Currency**") other than the currency ("**Agreed Currency**") in which that amount is required to be paid under this deed (whether as a result of any judgment or order, the liquidation of the Guarantors or otherwise), and the amount obtained (net of charges) by RailCorp on its conversion of the amount of the Payment Currency received into the Agreed Currency at market rates prevailing at or about the time of its receipt of the amount of the Payment Currency is less than the amount payable under this deed in the Agreed Currency, then the Guarantors will, as an independent and additional obligation, indemnify RailCorp for that deficiency and for any loss sustained as a result of that deficiency.

8. Expenses and costs

8.1 Expenses

The Guarantors must on demand reimburse RailCorp for and keep RailCorp indemnified against all expenses, including legal fees, costs and disbursements on a solicitor/own client basis (or on a full indemnity basis, whichever is the higher) assessed without the necessity of taxation, incurred by RailCorp in connection with any exercise, enforcement or preservation, or attempted exercise, enforcement or preservation, of any rights under this deed.

8.2 Stamp duties

- (a) (**Payment of all duties**): The Guarantors must pay all stamp duties, transaction, registration and similar Taxes, including fines and penalties, financial institutions duty and debits tax which may be payable to or required to be paid by any appropriate authority, or determined to be payable in connection with the execution, delivery, performance or enforcement of this deed or any payment, receipt or other transaction contemplated by this deed.
- (b) (**Indemnity**): The Guarantors must indemnify RailCorp against any loss or liability incurred or suffered by it as a result of the delay or failure by the Guarantors to pay Taxes.

9. GST

The provisions of clause 28.3 (GST) of the Project Contract are incorporated into this deed by reference as if set out here in full.

10. Assignment

The provisions of clause 41.1 (Assignment by RailCorp) of the Project Contract are incorporated into this deed by reference as if set out here in full.

11. Governing law and jurisdiction

11.1 Governing law

This deed is governed by and will be construed according to the laws in force in New South Wales.

11.2 Jurisdiction

The provisions of clause 55.2 (Jurisdiction) of the Project Contract are incorporated into this deed by reference as if set out here in full.

12. Miscellaneous

12.1 Notices

Each communication (including each notice, consent, approval, request or demand) under or in connection with this deed in order to be validly given:

- (a) must be in writing; and
- (b) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

RailCorp

Name: Rail Corporation New South Wales
Address: Level 6, 18 Lee Street, Chippendale, New South Wales
Fax: 61 2 9379 4378
For the attention of: RailCorp's Representative (Rolling Stock PPP)

Trustee Guarantor

Name: Reliance Rail Pty Limited as trustee of Reliance Rail Trust
Address: Level 6, 88 Phillip Street, Sydney, New South Wales
Fax: 61 2 9087 4000
For the attention of: PPP Co's Representative

Company Guarantor

Name: Reliance Rail Finance Pty Limited
Address: Level 6, 88 Phillip Street, Sydney, New South Wales
Fax: 61 2 9087 4000
For the attention of: Project Manager

- (c) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (d) must be delivered or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 12.1(b); and
- (e) is taken to be received by the addressee:
 - (i) (in the case of prepaid post) on the third working day after the date of posting to an address within Australia, and on the fifth working day after the date of posting by airmail to an address outside Australia;
 - (ii) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the machine from which it was sent; and
 - (iii) (in the case of delivery by hand) on delivery,but if the communication is taken to be received on a day which is not a working day or after 5.00 pm, it is taken to be received at 9.00 am on the next working day, where "**working day**" means a day that:
 - (iv) is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is posted, sent or delivered); and
 - (v) does not fall during the period commencing on the Monday before 24 December in any given year and ending on the Friday following 1 January of the following year; and
- (f) which is received by the Trust Guarantor or the Company Guarantor will be deemed to have been received by the other at the same time.

12.2 Continuing obligation

- (a) Subject to clause 12.2(b) this deed is a continuing obligation notwithstanding any termination by the Guarantors, settlement of account, intervening payment, express or implied revocation or any other matter or thing, and RailCorp will continue to be entitled to the benefit of this deed as regards the due and punctual performance of all the Obligations until a final discharge has been given to the Guarantors.
- (b) RailCorp acknowledges and agrees that payment of the Termination Payment under the Project Contract will be in full and final settlement of any claims RailCorp may have against PPP Co, and, as soon as reasonably practicable after payment of the relevant Termination Payment, RailCorp must give a full and final discharge of this deed and in respect of the Obligations to the Guarantors.

12.3 Further assurance

The Guarantors must immediately on the request of RailCorp, and at the cost of the Guarantors, do and perform all further acts and things and execute and deliver all further documents as RailCorp reasonably requires, or as are required by law, to perfect or to give effect to the rights and powers of RailCorp created, or intended to be created, by this deed.

12.4 Form of demand

A demand on a Guarantor for payment under this deed may be in the form and contain any information as RailCorp determines. It need not specify the amount of the Guaranteed Money nor the method or basis of calculation of all or any part of the Guaranteed Money, including amounts of, or in the nature of, interest.

12.5 Severance

If at any time any provision of this deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this deed.

12.6 Remedies cumulative

Each Power is cumulative and in addition to each other Power available to RailCorp.

12.7 Waiver

The provisions of clause 57.4 (Waiver) of the Project Contract are incorporated into this deed by reference as if set out here in full.

12.8 Consents

The provisions of clause 57.5 (Consents) of the Project Contract are incorporated into this deed by reference as if set out here in full.

12.9 Moratorium legislation

The provisions of clause 57.11 (Moratorium legislation) of the Project Contract are incorporated into this deed by reference as if set out here in full.

12.10 Set-off

- (a) RailCorp may (without prior notice at any time) set off any obligation then due and payable by the Guarantors under this deed against any obligation (whether or not due and payable) by RailCorp to the Guarantors, regardless of the place or currency of payment of either obligation or the office or branch through which either obligation is booked. If the obligations are in different currencies, RailCorp may convert either obligation into the currency of the other obligation at a market rate of exchange determined by it for the purpose of the set-off. If either obligation is unliquidated or unascertained, RailCorp may effect the set off in an amount estimated by it in good faith to be the amount of that obligation.

- (b) RailCorp is not obliged to exercise any right of set off pursuant to clause 12.10(a), which is in addition to its other rights of combination of account, set-off or lien (by contract or operation of law).
- (c) On its exercise of any set off pursuant to clause 12.10(a) against the Guarantors, RailCorp will promptly notify the Guarantors of details of that set off.

12.11 Counterparts

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

Executed as a deed.

Signed for and on behalf of **Rail Corporation
New South Wales** in the presence of:

Vince Graham

Signature

Owen John Hayford

Signature of Witness

Owen John Hayford

Name of Witness in full

Signed sealed and delivered for and on behalf of **Reliance Rail Pty Limited** (in its own right and as trustee of the Reliance Rail Trust) by Greg Pauline its Attorney under a Power of Attorney dated 24 November 2006 and the Attorney declares that the Attorney has not received any notice of the revocation of such Power of Attorney, in the presence of:

Matthew Stott

Signature of witness

Matthew Stott

Name of witness in full

Signed sealed and delivered for and on behalf of **Reliance Rail Finance Pty Limited** by Greg Pauline its Attorney under a Power of Attorney dated 24 November 2006 and the Attorney declares that the Attorney has not received any notice of the revocation of such Power of Attorney, in the presence of:

Matthew Stott

Signature of witness

Matthew Stott

Name of witness in full

Greg C. Pauline

Signature of Attorney

Greg C. Pauline

Name of Attorney in full

Greg C. Pauline

Signature of Attorney

Greg C. Pauline

Name of Attorney in full